SPECIAL EDUCATION LEGAL ALERT

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This month's update identifies a pair of recent court decisions that illustrate varied IDEA issues arising from, but not at all exclusive to, safety concerns. For related publications and earlier monthly updates, see **perryzirkel.com**.

On May 18, 2023, the federal district court in Mississippi issued an unofficially published decision in *Boone v. Rankin County Public School District*, addressing various IDEA claims of a child with severe autism. During the three school years prior to 2020–21, the district placed the child at a private center specializing in students with autism, where he continued to struggle academically and developed behavior problems, including elopement, aggression, and self-injurious conduct. The center acknowledged that he had regressed to functioning at a kindergarten level at 14 years of age. For 2020-21, the center discharged him because it was not equipped to meet his needs including age and curriculum. The IEP team placed him at the district's middle school, offering no other alternatives despite the parent's safety concerns about the lack of a plan to address potential elopement. The parent promptly filed for a due process hearing. The hearing officer (a) ruled that the district's IEP was not substantively appropriate; (b) ordered various purely prospective remedies, such as a transition plan from the center to the middle school, a new evaluation, a resulting revised IEP with an elopement provision, and meaningful parent involvement; and (c) denied compensatory education because the parent refused to ever have the student attend the stay-put placement. Both parties appealed to federal court.	
The district claimed that the hearing officer's decision was in error with regard to elopement, arguing that (1) it was not a major issue for the student, and (2) the BIP in the IEP sufficiently addressed it.	The court rejected these arguments, pointing to (1) ample evidence of the student's continuing attempts at elopement at the center, and (2) the district did not provide any staff training or other preparatory provisions for implementing the BIP until the student attended the middle school.
The district also claimed that the hearing officer erred in ruling that the district engaged in predetermination of the middle school placement.	Also rejecting this claim, the court agreed with the hearing officer that the district's take-it-or-leave it position at and after the IEP meeting, despite the parent's expressed concerns, constituted predetermination.
The district contended that the student had demonstrated individually appropriate progress.	The court disagreed, point to the testimony of the center's principal that the continuing insufficient services had resulted in regression.
The parent claimed that the hearing officer erred by failing to provide compensatory education.	The court was not persuaded, pointing out the hearing officer's prospective remedies to address each of the specific FAPE denials.
The parent also sought attorneys' fees, arguing that she was the prevailing party.	The court agreed, concluding that the parent met the test of "succeed[ing] on any significant issue … that achieve[d] some benefit" that she sought.
This case is particularly noteworthy in its ruling for the parent on the predetermination issue, which usually too steep a slope for parental success, and the awarding of purely prospective remedies, which is worth consideration whether as an alternative or accompaniment to compensatory education. Such an exercise of the hearing officer's broad equitable authority is exemplary in terms of enforcement of IDEA obligations of school districts and the basis for attorneys' fees awards for parents.	

On April 20, 2023, a federal district court in New York issued an officially published decision in *B.D. v. Eldred Central School District*, which addressed various FAPE issues for a student with diagnoses of autism, ADHD, reading and writing impairments, and chronic kidney disease. Midway in his seventh grade, after his parents filed a report under the state's anti-bullying law, the IEP team met, reviewed various evaluations, and did not make any revisions. The IEP already indicated concerns with bullying and his difficulties identifying social cues. In early May, the parents filed another complaint under the anti-bullying law, identifying another student-offender. Shortly thereafter, a video showed a peer approach from behind and push the student down to the ground. Less than an hour later, the student hit a classmate that, after he admitted doing so upon being questioned, resulted in his 5-day suspension. The school district offered the parents a placement at a different public school. However, continuing to have safety concerns, the parents removed the student for the limited remainder of the school year. At the June IEP meeting, the team rejected the parents' request to change his classification from other health impaired (OHI) to autism; replaced the acknowledgment about bullying concerns to relationship difficulties; and provided various services and accommodations, including counseling and specific seating on the school bus. In September, the school issued a "safety plan" for him containing 11 obligations for staff, 3 for the student, and 2 for the parents. Dissatisfied, the parents did not return the student for grade 8, instead placing him in a private school. They filed for a due process hearing, seeking reimbursement and an independent educational evaluation (IEE) at public expense. In lengthy proceedings under New York's 2-tier system, for which the district largely prevailed at the hearing officer level and entirely prevailed at the review officer level, the parents appealed to the federal district court.	
The parents claimed that the safety plan did not amount to reasonable steps to address the known repeated bullying of the student.	The court deferred to the hearing and review officers' determination that the safety plan satisfactorily met this standard and did not result in a substantive denial of FAPE.
At the hearing and review officer levels, the parents challenged the district's refusal to change the student's classification from OHI to autism.	The court concluded that by not raising this issue in their appeal, the parents waived this issue but, in any event, the IEP took into account the student's individual needs. Thus, for FAPE, the eligibility classification was a difference without a distinction.
The parents sought reimbursement for the IEE that they obtained since the district's refusal.	In rejection, the court ruled that the district did not conduct an evaluation with which the parent disagreed, which is the initial basis for an IEE at public expense.
The parents alleged various procedural violations, including 1) failing to develop the safety plan as part of the IEP process, and 2) bullying by the district's legal counsel after the parents' lawyer disclosed his own autism.	Applying the two-part test for procedural FAPE, the court found that 1) the IDEA does not require an anti-bullying plan as part of an IEP and does not address litigation behavior as part of a district's FAPE obligation, and, even if there were any procedural violations, 2) the evidence did not show the requisite substantive harm to the student or parents.
This decision is largely typical of the case law, including the protracted proceedings from the parents' initial filing for a hearing. It should not at all be confused with best practice and professional norms for collaborative processes and effective services.	