SPECIAL EDUCATION LEGAL UPDATE

Perry A. Zirkel

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This month's update identifies a pair of recent court decisions that illustrate differences in adjudication of IDEA eligibility and related issues. For related publications and earlier monthly updates, see **perryzirkel.com**.

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<tr><td colspan="2">On August 11, 2023, the federal district court in Nevada issued an unofficially published decision in W.T. v. Douglas County School District, addressing the issue of IDEA eligibility. When the child was in second grade, the district determined that he was eligible for an IEP with the classification of specific learning disability (SLD). In fifth grade, his triennial reevaluation noted a previous diagnosis of ADHD but regression in his behavior specific to problems of defiance rather than attention. Considering other health impairment (OHI) as well as SLD, the IEP team concluded that he was no longer eligible because the data showed that he was capable of accessing the general education curriculum without specially designed instruction. The team's conclusion was that his performance deficiency was due to choosing not to complete work that did not interest him. Despite various accommodations during the rest of grade 5, his behavior worsened and his grades dropped. At the end of the year, the district agreed to fund an independent educational evaluation (IEE) and a functional behavior assessment (FBA). The IEE produced multiple diagnoses, including ADHD and Disruptive Mood Dysregulation Disorder, and recommended an IEP. The FBA concluded that a behavior intervention plan (BIP) was not warranted because he was benefiting from universal classroom supports. The IEP team consider these reports and again determined ineligibility. At the end of grade 6, after another FBA, which did recommend a BIP, the team maintained its earlier determination. The parents filed for a due process hearing (and Nevada is one of the handful of states with a second, review-officer level). After the hearing officer and the review officer ruled in favor of the district, the parents brought the case to federal court.</td></tr>
<tr><td>The parents' first claim was that the triennial reevaluation did not adequately consider OHI based on the state law's additional requirements for this classification.</td><td>The court agreed, finding that the team did not meet the Nevada requirement for a "health assessment" (here specific to ADHD) and "a school nurse or other person qualified to interpret [the health] assessment." The court proceeded to the next claim to determine whether this procedural violation resulted in substantive loss.</td></tr>
<tr><td>The parents' substantive claim was that their child was eligible based on the need for special education as a result of OHI.</td><td>The court agreed based on (a) the IEE's insight about the relationship of ADD and the purported willful behaviors; (b) the FBAs' findings about the child's difficulties in the general education classroom; and (c) his grades and conduct without an IEP.</td></tr>
<tr><td>The parents also sought remedial relief and attorneys' fees.</td><td>The court postponed this determination subject to the parties' briefs on whether and to what extent the parents were entitled to equitable relief and attorneys' fees.</td></tr>
<tr><td colspan="2">Although this unofficial federal court decision in Nevada warrants caution against overgeneralization, it illustrates the difficulties of (a) interpreting the impact of ADHD and other such diagnoses on what appears to be willful student misbehavior, and (b) determining the boundaries of the "need prong" for eligibility, including the role of classroom behaviors as compared to academic abilities. In this case, the court expressly declined to follow the general judicial deference to school authorities and hearing/review officers based on these ambiguities.</td></tr>
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<tr><td colspan="2">On March 3, 2023, a federal district court in Pennsylvania issued an unofficially published decision in Brooklyn S.-M. v. Upper Darby School District, which addressed various issues including IDEA eligibility. In kindergarten, in response to the parents' request for a special education evaluation for their daughter, the school district notified them that due to the child's satisfactory academic performance, the evaluation would be limited to suspected speech or language impairment (SLI). Based on this evaluation, the team determined that she was eligible as SLI and provided an IEP for speech and language therapy (SLT). Upon a reevaluation midway in grade 2, the team exited the child based on a determination, with which the parents agreed, that she no longer needed SLT. However, at about the same time, after the child expressed suicidal ideation in an annual checkup with her family physician, a mental health specialist evaluated her, yielding a diagnosis of Other Specified Depressive Disorder and provided private therapy. At the end of grade 2, the parents discontinued the therapy due to conflict between the therapist's limited availability and the child's extracurricular activities. However, after the first few months in grade 4, they took her to a psychologist, who diagnosed Disruptive Mood Dysregulation Disorder and resumed regular mental health therapy sessions. The parents promptly requested that the school district provide her with a 504 plan. In the resulting evaluation report in December, the school psychologist determined that the child did not qualify under the classifications of SLD or emotional disturbance (ED) under the IDEA but recommended a 504 plan for her social and emotional difficulties. The district provided the child with a 504 plan for the second half of grade 4. When the child's emotional problems persisted at home, the parents filed for a due process hearing midway in that semester. They also hired a private, certified school psychologist to review the evaluation report. Based on a records review and an interview with the child's mother, this psychologist disagreed with the SLD, not the ED, eligibility determination. At the end of the summer before grade 5, the hearing officer ruled against the parents' IDEA claims. However, because Pennsylvania is one of the few states that provide its IDEA hearing officers with jurisdiction to also address claims under Section 504, the hearing officer ruled that the 504 plan was too general to address the child's social and emotional difficulties. The remedies were for the district to promptly revise the 504 plan and to provide one hour of compensatory education for each week from the January 504 eligibility meeting until said revision. The parents appealed to the federal district court.</td></tr>
<tr><td>The parents claimed that the district violated child find under the IDEA by limiting its kgn. evaluation and grade 2 reevaluation to SLI.</td><td>The court ruled that the district did not have reasonable suspicion of ED or other IDEA classification based on social-emotional problems because the parents did not share any private diagnosis until after both of these evaluations.</td></tr>
<tr><td>The parents also claimed that the district erred as a matter of law upon not finding the child eligible under the IDEA in the grade 4 evaluation.</td><td>The court ruled that the district's evaluation was more comprehensive than that of the private school psychologist and, even if weighted equally, the testimony of the child's teachers tipped the scale based on their extensive classroom experience and their continuous in-class observations of the child.</td></tr>
<tr><td>Finally, the parents claimed that the compensatory education award under Section 504 was "shockingly" inadequate.</td><td>The court summarily rejected this claim for lack of any specified basis in the record of the case other than the circular reasoning that that "the award … is inadequate because [the child] must 'certainly require' a greater amount."</td></tr>
<tr><td colspan="2">Comparing this decision with the one on the first page confirms the often controlling and often confounding criterion of the "need prong" for eligibility and, on a correlated but less strict level, child find claims under the IDEA. This comparison also reveals the variance in the state systems for administrative adjudication under the IDEA and, to a more limited extent, Section 504.</td></tr>
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