

SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that respectively illustrate different specialized aspects of the IDEA—state policy documents and manifestation determinations. For previous monthly updates and related publications, see perryzirkel.com

On May 16, 2024, the Pennsylvania Commonwealth Court issued an officially published decision in *Pennsylvania School Boards Association v. Mumin*, addressing the legal force of state policy documents. In this case, the documents at issue were the result of the settlement of a lawsuit that challenged the age-out provision in Pennsylvania law. This provision set the ceiling for services under the IDEA at the student's 21st birthday, except that if that birthday was during the school year, eligibility extended to the end of that school year. The settlement agreement, which Pennsylvania's Department of Education agency signed on August 30, 2023 without prior notice to school districts and after they had established their budgets for the 2023–24 school year, changed the end of IDEA eligibility to the student's 22nd birthday. In accordance with the settlement agreement, the Department immediately changed its mandated model policy for school districts and issued a directive that effective September 5, 2023 the right to FAPE under the IDEA and the corollary Pennsylvania regulations continued until the child's 22nd birthday. The state school boards association and a few individual school districts filed suit in this intermediate, appellate state court to challenge the enforceability of the Department's new age-out policy. The Department raised various threshold defenses, including subject matter jurisdiction, standing, and exhaustion, and ultimately asserted that its age-out plan was merely a reinterpretation of the IDEA.

First, the Department argued that the court lacked jurisdiction under the state's Declaratory Judgments Act in the absence of imminent enforcement.	Rejecting this argument, the court concluded that "the Department's claims that it merely issued advice or guidance lack merit and are disingenuous," and "the asserted impact of the [new age-out plan] in the instant case is sufficiently direct and immediate to render the issue appropriate for judicial review."
Second, for the overlapping prerequisite of standing, the Department asserted that the plaintiffs lacked the requisite "substantial, direct, and immediate interest in this case."	With similar outright rejection, the court concluded that the specific rights of the plaintiffs under the Pennsylvania laws requiring formal rule-making procedures and state legislature review, which are variants of the federal Administrative Procedures Act (APA), met these prerequisites and surpassed the abstract interests of citizens.
Third, the Department argued that the plaintiffs must first exhaust administrative remedies.	Again in rejection, the court concluded that these state law counterparts to the federal APA lacked pre-judicial administrative remedies.
Finally, the Department asserted that its age-out plan was merely a reinterpretation of the IDEA.	Unconvinced, the court ruled that, due to the failure to comply with the applicable rule-making process, the Department's policy statement was void and unenforceable.
The general lesson from this case is that regardless of the label (e.g., policy, plan, manual, bulletin, directive, or FAQ), any state education agency guidance documents are just guidance, without legally binding force in courts, as compared to legislation or properly issued regulations. Indeed, per my recent special supplement , even regulations are not all automatically enforceable in the judicial arena.	

On February 13, 2024, a federal district court in North Carolina issued an officially published decision, *Sampson County Board of Education v. Torres*, which is currently on appeal at the Fourth Circuit Court of Appeals and which concerned the manifestation determination provision of the IDEA. In this case, the student was a sixth grader with an IEP for other health impairment based on diagnoses of selective mutism, ADHD, and oppositional defiant disorder. He had a long history of often-inappropriate physical touching for attention and communication, resulting in disciplinary incidents and an FBA-based behavior intervention plan (BIP). For example, in April of grade 5, he was suspended for physically touching a female student that qualified as sexual assault. Early in grade 6, he received a three-day suspension for fighting. In the following month, for the conduct at issue in this case, he entered another classroom during the transition to the school bus at the end of the school day, approached the same female student, and when she told him to “get away,” he touched her buttocks and breast. The school promptly arranged for a manifestation determination meeting attended by the student’s legal guardians, who are his grandparents; the principal, the special education director, and two of the student’s teachers. At the meeting, the administrators mis-reported that the student did not have a FBA or BIP and they cut short the grandparents’ attempts to discuss the student’s previous pattern of behavior, including the role of his diagnoses. The team’s determination was that the conduct in question was not a manifestation of the student’s disability. A disciplinary hearing in November found that the student’s behavior constituted a sexual assault in violation of the district’s code of conduct and recommended a long-term suspension for the rest of the school year. The grandparents appealed to the school board, which affirmed the disciplinary determination in March. In the intervening January, the grandparents filed for an expedited due process hearing to challenge the manifestation determination. After hearing testimony from various witnesses, including the grandparents and their two experts as well as the special education director and an outside expert for the district, the administrative law judge (ALJ) issued a decision in March. The ALJ found both fatal procedural and substantive violations and ordered reinstatement of the student, invalidation of the long-term suspension, and a new FBA and BIP. The district appealed the ALJ’s decision to the federal district court.

First, the school district challenged the ALJ’s review and refinement of the conduct in question as contrary to the deference owed to school authorities.	Disagreeing, the court concluded that the causal nature of the manifestation determination permits review of the specifics of the conduct in question as well as the specifics of the student’s disability.
On an overlapping basis, the district challenged the ALJ’s credibility-based factual findings as not deferring to school’s witnesses.	Disagreeing, the court carefully reviewed the ALJ’s factual findings and found them to provide the requisite deference to school officials and to be within the similarly deferential range of discretion for IDEA hearing officers.
Next, the district challenged the ALJ’s ruling that the team failed to consider all relevant information, a procedural violation impairing the grandparents’ right of participation.	Disagreeing, the court concluded that the team’s failure to consider the student’s FBA-based BIP, compounded by its failure to consider the pattern of previous disciplinary incidents, amounted to a denial of FAPE.
Finally, the district challenged the ALJ’s determination of a substantive error for the casual questions alternatively based on the student’s disability and the IEP implementation.	Again disagreeing, the court found each of these alternative conclusions within the range of deference that is accorded to hearing officers, especially in light of the ALJ’s thorough and careful decision.
This court decision illustrates the complexity, both legally and educationally, of the various parts of the IDEA provisions applicable to disciplinary changes in placement. Given the interpretive latitude of these provisions, stay tuned for the Fourth Circuit’s eventual decision.	

