SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that cumulatively illustrate child find and what may be considered "partial child find," with secondary attention to bullying and the statute of limitations, under the IDEA. For previous monthly updates and related publications, see **perryzirkel.com**

On April 4, 2025, the federal district court in D.C. issued an officially published decision in *H.P v. District of Columbia*, addressing the child find obligation under the IDEA. In this case, the parents enrolled their child at a bilingual school in the district. For her pre-k and kindergarten years, the child's report cards contained generally satisfactory grades. However, based on behavioral issues that they noticed as first grade approached, the parents arranged for a private psychological evaluation, resulting in a diagnosis of Separation Anxiety Disorder and a recommendation for a 504 plan. The district responded with a 504 plan, which focused on regular communications with the parents and advance notice of tests to mitigate the student's anxiety. The student received generally strong scores on her report cards for grades 1 and 2. In October 2019 of grade 3, the parents and school representatives met to review the student's 504 plan. Because the student's frequent visits to the school counselor exceeded the counselor's available time, they added a provision for 1:1 services from the school's social worker for four hours per month, which focused on coping skills for anxiety. Based on the identified difficulties in Spanish and social interaction, the school placed her in an acceleration group in Spanish. However, her relationship with peers, including those who were native Spanish speakers, worsened during grades 3–5, including bullying that she reported to her parents but did not to school officials. The school took actions to address the incidents of teasing and bullying within its limited awareness, including midway in grade 5 (a) developing a targeted student safety plan for her, and (b) transferring a student to another class for repeatedly targeting her for bullying and warning that student's parents of expulsion if this behavior continued. However, a month later, after a private psychological evaluation that yielded a diagnosis of Oppositional Defiant Disorder (ODD) and that they did not share with the district, the parents unilaterally placed her in a small private school for students with academic and social-emotional challenges. A year later, after another private evaluation added a diagnosis of ADHD and recommended an IEP, the parents filed for a due process hearing. They sought reimbursement for denial of FAPE based on both child find and bullying. The hearing officer ruled against them, even though the district eventually determined that the student was eligible for an IEP. The parents appealed to federal court.

For the child find issue, the court agreed with the hearing officer's rulings.	The contributing factors included the child's strong academic performance, her non-flagrant behavioral problems, her unrelated aversion to Spanish, and the district's proactive interventions.
For the bullying issue, the court also concluded that it did not amount to denial of FAPE.	Borrowing the standards from the limited supportive case law, the court concluded that the evidence was preponderant that the school took reasonable steps to prevent the bullying and that the bullying did not substantially restrict the child's educational opportunities.
This case illustrates that (a) child find is a fact-based, case-by-case determination of whether the district had reason to suspect the child's possible eligibility under the IDEA at that time, without armchair quarterbacking based on any eventual evaluation or ultimate adjudication and (b) establishing bullying as amounting to a denial of FAPE is an uphill climb for parents under the IDEA.	

On January 20, 2025, a federal district court in New York issued an officially published decision in *Boffa v. Banks*, addressing a range of IDEA issues from the statute of limitations to the remedy of compensatory education. The student in this case had multiple physical and mental disabilities resulting in IEP-team placement in a specialized district school for the first 11 years of her education. During the COVID-19 shift to remote instruction, her parents became dissatisfied with the school and, after due notice to the school district, unilaterally placed her in a private school that offered a higher intensity of services. In July 2020, upon the district's refusal to fund this placement, the parents filed for a due process hearing to seek reimbursement and other retrospective relief. In fall 2020, the private school assessed the student and found indications of cortical visual impairment, a neurological processing disorder that impacts one's vision. In April 2021, the IEP team met and proposed its original public placement with increased specialized services. In July 2021, the parents filed another due process hearing request to cover the continued period for reimbursement. In November 2021, the parents arranged for a private vision evaluation at NYU's Langone Eye Center, which diagnosed her as legally blind and recommended that the IEP include full vision services. In February 2022, the district conducted its own assessment and recommended full vision services by a trained vision instructor for two 30-minute sessions per week. In March 2022, the parents arranged for an extensive neuropsychological independent educational evaluation (IEE). The neuropsychologist reported finding "little evidence of measured progress" at the public school placement, but significant measurable improvements across a variety of areas since she started attending the private school. A few weeks later, the IEP team met and again proposed the public school placement with the twice-weekly vision services. After consolidating the two hearing requests and conducting a six-session hearing, the hearing officer issued a decision that ruled (a) the school years from 2009-10 through 2017-18 were barred by the two-year statute of limitations; (b) the district denied FAPE to the student for school years 2018-19 through 2021–22; and (c) the parent was entitled to reimbursement for tuition and transportation for 2020-21 and 2021-22 and, as compensatory education for not only 2018-19 and 2019-20 but also 2009-10 through 2017-18, continued eligibility for the private-school placement at public expense until age 25. The district appealed to the state review officer (SRO).* The SRO concluded that the hearing officer legally erred in extending the FAPE determinations back to the period barred by the statute of limitations and forward to 2021-22, thus limiting the remedy to reimbursement for 2019-20 and 2020-21. The parents filed an appeal with the federal court.	
The IDEA's two-year statute of limitations starts on the date that *the parents* knew of should have known (KOSHK) of the alleged violation.	The court agreed with the parents that they did not know or have reason to know of the student's blindness until the eye doctor's definitive diagnosis in late 2021, thus making their claim about the lack of vision services timely.
The FAPE denial based on the lack of vision services is as of the date that *the district* had reason to suspect this additional disability classification.	Deferring to the hearing officer, the court concluded that this denial of FAPE, based on the failure to assess and address the student's vision-related deficits, extended back to school year 2009–10.
The parents argued that the few years at the private school did not compensate for the many-year denial of vision services.	Agreeing, the court reinstated the prospective placement at the private school for extended eligibility until the student reached age 25.
This complicated case includes other issues and is on appeal at the Second Circuit, but it illustrates the significant and elastic issues of the statute of limitations, partial child find (i.e., the IDEA obligation to evaluate all areas of suspected disability), and compensatory education.	

* New York is one of the relatively few states with a second tier of administrative adjudication under the IDEA preceding the judicial level.