SPECIAL EDUCATION LEGAL UPDATE

Perry A. Zirkel

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This month's update identifies two recent court decisions that respectively illustrate the continuation of the emergence of dyslexia in litigation under the IDEA and the long line of lawsuits asserting liability of state education agencies, here via the ADA in tandem with the IDEA and Section 504. For previous monthly updates and related publications, see **perryzirkel.com**

On May 2, 2025, the Fifth Circuit Court of Appeals (which covers Louisiana, Mississippi, and Texas) issued an unofficially published decision in *Moore-Watson v. Rankin County Public School District*, addressing the IDEA FAPE claims of a third grader with an IEP for speech/language therapy. In kindergarten, the child failed a routine screening for dyslexia. In first grade, the district provided the child with Tier 2 interventions in reading. In second grade, the district moved the child to Tier 3 support in reading, added Tier 2 support in math, and—after an evaluation by its speech therapist—provided an IEP for speech/language therapy. In February, the parents brought the child to the Mississippi Dyslexia Center, which provided a diagnosis of mild dyslexia and ADHD. Upon receiving the diagnosis, which included IQ testing, the district concluded that (a) the child did not meet its severe discrepancy approach for eligibility for specific learning disabilities and (b) its services, which included a 504 plan in addition to the tiered interventions, were appropriate to meet the child's needs. At the end of grade 2, the district determined that the child's progress was not sufficient for promotion. Upon learning of the retention decision, the parents provided notice to the district that they would unilaterally place their child for the coming school year in a private school. In September they filed for a due process hearing. The hearing officer ruled that the district did not deny FAPE to the child and, thus, did not have to reimburse the parents for the private school tuition. The parents filed an appeal to the federal district court, which reversed the hearing officer's FAPE ruling. However, the court concluded that the parents were not entitled to tuition reimbursement because they did not prove that the private school was an appropriate placement for the child. Instead, the court ordered the district to reimburse the parents for the private dyslexia assessment and their attorneys' fees and, if the parents re-enroll the child in the district, to evaluate the child for dyslexia and ADHD and revise the IEP to address any identified dyslexia or ADHD needs. Both sides appealed to the Fifth Circuit.

For substantive FAPE, the Fifth Circuit uses a four-factor approach that fulfills the *Endrew F.* standard.	The Fifth Circuit affirmed the district court's ruling that the district did not provide FAPE to the child based on the IEP team's failure to consider the diagnosis of dyslexia and, subsequently, to revise the IEP upon realizing that the child would fail second grade.
For the appropriateness of the private placement, the parents argued that the school reasonably addressed the child's needs.	Rejecting their argument, the Fifth Circuit agreed with the lower court's conclusion that the parents had failed to refute the hearing officer's findings that the school lacked rigor, had unqualified teachers, and inflated the child's grades.
For attorneys' fees, the district argued that the parents did not qualify as prevailing due to their failure to obtain tuition reimbursement.	The Fifth Circuit concluded that the district court's orders for further evaluation and any needed IEP revisions met the standards for "prevailing," which are to alter the parties' relationship and foster the IDEA's purposes.
This decision illustrates the continuing emergence of dyslexia in the identification and FAPE processes under the IDEA, which has resulted in varying outcomes based on the specific facts of the case and adjudicative interpretation of the IDEA and related state laws.	

On May 21, 2025, the Sixth Circuit Court of Appeals (which covers Kentucky, Michigan, Ohio, and Tennessee) issued an officially published decision in *Y.A. v. Hamtramck Public Schools*, addressing whether a state agency is subject to suit under the Americans with Disabilities Act (ADA) for alleged inadequate supervision of school districts regarding students with disabilities. The other defendant in this case was a small school district with particular challenges associated with poverty and immigration. For example, 8 in 10 students are below grade level, 7 in 10 qualify for free school meals, and 2 in 10 graduate either late or not at all. Almost half of the residents were born abroad, with most of them speaking Arabic or Bengali at home. A group of parents with children with IEPs sued both the district and the Michigan Department of Education (MDE) for failure to offer or implement adequate special education services. Two of the families filed state complaints, resulting in findings of IDEA violations and orders for corrective actions. The group filed a class action lawsuit under the IDEA, Section 504, and Title II of the ADA, which prohibits disability discrimination or exclusion in "the services, programs, or activities of a public entity." The named defendants were the district and, due to alleged lack of sufficient supervision, MDE. The defendants filed a dismissal motion, which the federal district court denied. MDE appealed. This Sixth Circuit decision is limited to its appeal regarding the motion to dismiss the ADA Title II claim, which was based on sovereign immunity. The plaintiffs counter-argued that the ADA explicitly abrogates this immunity. To resolve the tension between the 11th Amendment basis of this immunity defense and the 14th Amendment basis of the ADA, the Supreme Court in 2006 set forth a three-step, flowchart-like analysis on a claim-by-claim basis: (1) Did the state violate Title II of the ADA and, if so, which aspects of its conduct did so? (2) If so, did the state's conduct also violate the 14th Amendment? (3) If the state's conduct violated the ADA's Title II but not the 14th Amendment, was Congress's attempted abrogation congruent with and proportional to the task? The Sixth Circuit found that applying the first step was determinative in the resolution of the claim in this case.	
MDE argued that Michigan's public schools are not a "service," "program," or "activity" of the state.	The Sixth Circuit agreed, concluding that under Michigan law school districts have the delegated and separated responsibility for public education.
The plaintiff-parents counter-argued that state funding for and supervision of the public schools makes MDE jointly liable for the local district's exclusionary actions.	The Sixth Circuit rejected this claim of supervisory liability because the scope of Title II of the ADA is limited compared to that of Title I (employment) and III (private businesses that provide public accommodations) of the ADA.
The plaintiff-parents also asserted that "state action," which in some circumstances attributes the action of a private party to the government, applies here to MDE.	Again disagreeing, the Sixth Circuit pointed out that (a) school districts are not private parties and (b) the action at issue is, under state law, attributable to school districts, not MDE.
The plaintiffs next pointed to MDE's responsibility for supervision and procedural protections under the IDEA.	In rejection, the Sixth Circuit concluded that this extensive IDEA oversight "does not transform a local school into a state school" under Title II of the ADA.
Additionally, the plaintiffs pointed, by way of analogy, to judicial precedents with respect to state universities.	The Sixth Circuit rejected this analogy because Michigan law sets forth its choice as to the responsibility for public schools and, differently, for public universities.
Finally, the plaintiffs sought to have the court refocus on the special education actions of MDE, including allocating funds and resolving complaints.	Serving as a reminder of the claim-by-claim limits of this decision, the court concluded: "To the extent that such a case exists, it assuredly is not this one. . . . two of [these parents] turned to the State for help—and got it."
This decision illustrates the rather thorough and ponderous adjudication process that ultimately resolved only one issue of a multi-pronged special education lawsuit. The case represents the latest in a long line of case law concerning potential state education agency liability.	