SPECIAL EDUCATION LEGAL UPDATE

Perry A. Zirkel
July 2025

This month's update identifies two recent court decisions that illustrate the continuing limits of the IDEA in response to extremely challenging behaviors by parent advocates and eligible students, respectively. For related publications and special supplements, see **perryzirkel.com**

On May 23 and June 2, 2025, a federal district court in Virginia issued successive rulings in an ongoing dispute between a school district and a parent represented by a lay advocate (*Powhatan Cnty. Sch. Bd. v. Skinger*). The previous steps in this dispute include the filing of 10 due process hearing (DPH) requests by this parent and his advocate, which all resulted in hearing officer rulings in favor of the district. The parent did not appeal any of these decisions, but the district went to court seeking (a) a permanent injunction against their filing further DPH requests and (b) recovery of the district's attorneys' fees in defending the previous 10 filings based on allegedly being frivolous and for an improper purpose. In the interim before the court completed its customary proceedings, the parent, via his advocate, responded by filing 8 more DPH requests. The court then held a 3-day evidentiary hearing on the district's motion for an injunction and attorneys' fees. As the final prerequisite for a ruling on the district's motion, the court scheduled the date for the parties' supporting briefs. The parent and his advocate responded with a motion for a free copy of the court's evidentiary-hearing transcripts. Their motion included citations to IDEA legislation, regulations, and case law for support. Soon thereafter, they followed with further motions, including one to recuse the federal judge.	
For their claim for free transcripts of the court proceedings, the parent and his advocate relied on (a) the IDEA provision for "the right to a written, or, at the option of the parents, electronic verbatim record of [the] hearing" and (b) two court decisions based on meaningful parental participation.	The court roundly rejected this claim, pointing out that (a) the cited IDEA provision and corresponding regulation was specific to the DPH hearing, not any subsequent judicial appeal (for which other legislation provides for transcripts contingent upon payment), and (b) the two cited court decisions did not even mention a parental right to court transcripts.
For their follow-up motion, the parent and his advocate filed voluminous briefs and attachments that not only far exceeded the applicable rules but also were largely pejorative, irrelevant, and incomprehensible in relation to the claims in their motion, including citations to more than 40 nonexistent court decisions.	Citing the clear violations of the applicable rules of civil procedure and the admitted use of generative artificial intelligence, the court chastised the parent advocate for "a mockery of the judicial process" and "a waste of judicial resources." However, observing that parent was pro se and the advocate was likely judgment proof, the court's selected sanction was to strike much of the advocate's brief and allow an opportunity to file a compliant new brief.
These rulings are only the most recent battles in a seemingly unending war pitting this parent and his advocate against a local school district, with the court attempting to resolve the matter but only succeeding thus far in becoming an additional target of their ire and alienation. The judicial restraint in the selected sanction for the intemperate advocacy in this case is notable. Perhaps, if nothing else, this sad story shows that courts may serve as a venue for catharsis for such broad-based, deeply rooted discontent even when they do not achieve timely and effective dispute resolution. Its continuing salvos also serve as a lesson for the vast majority of schools and parents to avoid the extremes of prolonged adjudicative proceedings in favor of compromise, collaboration, or at least mutually efficient representation.	

<table>
<tr><td colspan="2">On June 3, 2025, the Third Circuit Court of Appeals issued an unpublished decision in S.M. v. Freehold Regional High School District Board of Education, addressing the extent of the IDEA's FAPE obligation in terms of services in the home. This case concerns a student with autism whose age, during the two school years at issue, was approximately 18–19. The student's previous placement was in a private special education school, which disenrolled him at age 13 due to grievous oppositional behaviors. For example, his confrontational behaviors at home interfered with his attendance to the extent that "even four adult men could not get [him] on to school transportation." Initially after the private school's disenrollment, the district provided him with a comprehensive home-based special education program via a contracted private agency, but his aggression toward the service providers and the family increased along with his other oppositional behaviors, including refusal to dress and urinating on the floor. When he was 14, his mother stopped his medication, whereupon he experienced frequent seizures. The private agency then tried instruction at its site, providing staff to assist him in the morning and transport him back and forth, but these efforts were also unsuccessful. The next steps were psychiatric hospitalization for a few months and then three years of residential placement until he reached age 17. For the next two years, which were the ones at issue, the parents arranged for a private evaluation that supported a private day placement, and the district's IEP team arranged for him to attend a local private school for students with autism. The IEP included provisions for an aide for door-to-door transportation and at the private school. However, his parents' work schedules prevented them from helping him get ready for school during the 1–2 hours before the transportation started. As a result, he was absent or late 69 times and 129 times, respectively for these 2 years, and his progress was marginal. For the last half of the second year, the district proposed residential placement, but before its effectuation the parents filed for a due process hearing, which triggered "stay-put" at the day placement. The hearing officer ruled in favor of the district, and the parents appealed successively to federal district court in New Jersey and the Third Circuit of Appeals.</td></tr>
<tr><td>The parents argued that the district's failure to provide a morning aide to help the student get ready for school was a denial of FAPE.</td><td>The Third Circuit rejected this argument, concluding that no reasonable interpretation of the IDEA requirement for "transportation … required to assist [the student] … to benefit from special education" extended to services prior to picking up the child for school.</td></tr>
<tr><td>The parents alternatively argued that the district's failure to provide him with instruction in the home was a denial of FAPE.</td><td>The Third Circuit also rejected this argument, concluding that the experience with the student during the initial years after his disenrollment showed that, due to his increasing oppositional behaviors, these services would not be appropriate.</td></tr>
<tr><td>The parents' final argument was that the district's failure to reevaluate the student during these 2 years denied him FAPE.</td><td>This final argument also failed based on the Third Circuit's conclusion that the district had evaluated him during the year 1 and taken appropriate steps to address the student's behavior problems, culminating with its proposal for returning him to residential placement.</td></tr>
<tr><td colspan="2">This decision illustrates the not entirely settled boundaries of school districts' IDEA FAPE obligations in relation to students with disabilities whose challenging behaviors extend to the home and, due to their severity, obstruct school attendance.</td></tr>
</table>