SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that illustrate the continuing evolution of IDEA claims for FAPE and corollary remedies. For related publications and special supplements, see **perryzirkel.com**

On June 18, 2025, the Fifth Circuit Court of Appeals, which covers Louisiana, Mississippi, and Texas, issued an officially published decision in *Boone v. Rankin County Public School District*, addressing the appropriate placement and remedy for a teenager with severe autism. Since kindergarten, this student has had behavioral problems, including obsessive-compulsive tendencies, aggression, self-harm, and elopement. At age 12, as a result of the student's eloping from his assigned elementary school, the district suspended him, and subsequently the IEP team changed his placement to a fenced and locked private school for children with autism. At this new placement, the student regressed academically, and his behavioral issues persisted. Upon the latest incident, the IEP team had a meeting at which the district's representatives informed the student's parent of their intent to change his placement to the district's middle school zoned for his family residence. The parent ardently opposed this proposed placement based on a previous agreement for the student to visit smaller schools that were more tailored to his needs. She argued that the middle school was too large and lacked appropriate programming, thus exacerbating his elopement problems. At a second IEP meeting two weeks later, the parent argued that the district's high school had a smaller setting, more appropriate programming, and more long-term stability for him, but the district members proceeded with their proposed change to his "home" middle school. The parent filed for a due process hearing. The hearing officer ruled that the district denied FAPE to the student and ordered, as the remedy, a new evaluation and resulting IEP but not compensatory education. Upon the parent's appeal, the federal district court affirmed, adding an award for her attorneys' fees. Both sides appealed to the Fifth Circuit.	
Following on its 4-factor test, the Fifth Circuit concluded, that, on balance, the district denied FAPE to the student.	The factors favoring the parent were predetermination, the failure to adequately address the student's elopement, and, most importantly, the lack of reasonable calculation for appropriate progress.
The court upheld the denial of direct compensatory education services for the student, which would be in addition to the new evaluation and the resulting IEP.	The court's rationale was that the remedial orders were equitably tailored to the gist of the parent's continued concerns, which was involvement in and determination of an appropriate placement for this student.
This decision, which has notable precedential weight as an officially published decision at the federal appellate level, illustrates the importance of tailoring the IEP, including the proposed placement, to the individual needs of the child. However, it also illustrates the continuing unsettled state of and, thus, unpredictable results for, the IDEA remedy of compensatory education.	

On July 21, 2025, a federal district court in New York issued an unpublished decision in *Ogunleye v. Banks*, addressing various FAPE claims on behalf of a student with multiple disabilities. The student in this case was non-verbal and non-ambulatory based on seizure disorder, cerebral palsy, cortical visual impairment, and other diagnoses. The student attended a specialized private school in 2020–21 and 2021–22 under IEPs that included a small, well-staffed class and 60-minute sessions of various related services including music therapy. In March 2022, the New York City school district convened an IEP meeting for 2022–23 that the parents and private school staff attended. The resulting IEP included intensive interventions in a highly structured classroom, a paraprofessional, a 12-month school year, and 60-minute sessions of occupational, physical, and speech/language therapy totaling 19 hours per week. In May, the district sent the parents a prior written notice of the recommended placement in one of its public schools. The parents responded with disagreement for the proposed placement and notification of their unilateral decision to continue the private placement and to seek tuition reimbursement. They filed for a due process hearing. After several sessions, the hearing officer ruled in favor of granting tuition reimbursement. Inasmuch as New York is one of the approximately seven states that provide for a second tier, the district filed an appeal with the state review officer (SRO). The SRO reversed the hearing officer's decision, concluding that the district's proposed IEP for 2022–23 provided the student with FAPE. The parents appealed to the federal district court.	
As a threshold matter, the parents argued that the SRO's decision was not entitled to judicial deference.	The court disagreed, citing precedents that even when not agreeing with the hearing officer, the SRO decision is entitled to judicial deference when, as in this case, it is well-reasoned, thorough, and well supported by the record of the case.
Next, the parents claimed that the assigned school was incapable of implementing the proposed IEP, including the purported impossibility of including all 19 hours of related services in its school week.	The court disagreed, relying on (a) the SRO's factual findings that credited the testimony of the school's principal about the feasibility of doing so within the school's 45-minute periods and 30-hour week and (b) Second Circuit precedent against speculation about capability to implement IEPs.
The parents' second FAPE claim was based on the proposed IEP's omission of music therapy as compared to its inclusion in the previous, private-school IEPs.	Finding it unnecessary to address whether the student needed this service for appropriate progress, the court relied on (a) the SRO's finding that the assigned school provided access to music therapy and (b) precedents supporting FAPE irrespective of such preferred services.
The parents' final claim was that the district engaged in predetermination of the IEP.	Again disagreeing, the court concluded that the parents actively and meaningfully participated in the IEP.
This case is representative of the trend to date of judicial rulings regarding judicial deference and FAPE claims based on capability to implement the IEP, the substantive standard for appropriateness, and predetermination. Yet, it also illustrates the fuzzy or fluid outer boundaries of deference, speculation, *Endrew F.*'s substantive standard for FAPE, predetermination, and "placement" in comparison to either the IEP or location. Finally, it reflects the push-and-pull of the tuition reimbursement issue in the nation's largest school district.	