

SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that cumulatively revisit the recurring issues of child find, eligibility, substantive FAPE, tuition reimbursement, and IEEs at public expense, with the rising issues of attendance and after-school services. For related publications and special supplements, see perryzirkel.com

On September 22, 2025, the federal district court in New York issued an unofficially published decision in *R.F. v. New York City Department of Education*. The child in this case is a 10-year-old with severe deficits in academics, communication, sensory processing, self-help skills, and behaviors. In June 2023, the child's parents notified the IEP team that in the absence of an appropriate placement they would continue his placement in a private school and would seek reimbursement for his tuition and after-school services, which were applied behavior analysis, occupational therapy, and speech-language therapy. Soon thereafter they filed for a due process hearing seeking said reimbursement and funding for an independent educational evaluation (IEE) by a neuropsychologist. During the hearing, the district did not provide any evidence. Moreover, the district conceded that (a) it had failed to propose an appropriate placement for the child and (b) there were no equitable circumstances against tuition reimbursement. For the remaining issue for tuition reimbursement, the hearing officer ruled that the private school was appropriate. The resulting remedy was to reimburse the \$132k tuition for 2023–24, but not the parents' costs for either the after-school services or the IEE. The parents appealed the denied reimbursements.

The parents argued that after-school services were warranted because the relevant equitable analysis was limited to the reasonableness of each side's conduct for which they had been cooperative participants in the IEP process.	Disagreeing, the court ruled that the equitable factors extended to the reasonableness of the costs in relation to the requirements for FAPE and that the after-school services, which were designed for generalization and maximization, were not necessary under the <i>Endrew F.</i> standard based on the individual circumstances of this case.
The parents argued that the IEE reimbursement was warranted because the district had failed to provide the required triennial reevaluation and, thus, the general requirement to convey disagreement does not apply.	To the contrary, the court concluded that the disagreement prerequisite applies to IEE reimbursement, and if no (re)evaluation, the parents' recourse is to request one and, if the district does not provide it, challenge the failure at the due process hearing.
This decision is specific to its limited jurisdiction in New York, but it presents two issues that are relatively novel and suggest a resolution for future iterations elsewhere that may be persuasive. Note that the IEE ruling represented a blanket approach, whereas the after-school services ruling was based on the individual circumstances.	

On November 10, 2025, the Fifth Circuit Court of Appeals, which covers Louisiana, Mississippi, and Texas, issued an officially published decision in *A.P. v. Pearland Independent School District*, addressing child find and eligibility under the IDEA. After generally satisfactory attendance and achievement in the district during the earlier grades, A.P. was homeschooled in sixth grade. For grade 7, she returned to the district, missed 10% of her classes, and failed the state proficiency exams. In grade 8, the district responded with targeted interventions, and she passed all of her classes, although her attendance issues remained until the COVID-19 pandemic hit toward the end of the school year. She struggled with attendance during distance learning, which ended in late November of grade 9. The parents rejected the school officials' recommendation to move her from advanced to on-level classes. Upon completion of ninth grade, she had approximately 25 absences, for which the parents provided various excuses (e.g., family trips, indigestion, and menstrual cramps), and failed 5 of 7 classes. She attended summer school to make up for 3 of the 5 failed classes. For grade 10, the school again recommended, and the parents again rejected, switching to on-level classes. The absenteeism pattern continued, and the school suggested its special program for extra help. AP applied and was accepted for the extra-help program, but her parents did not permit her participation. Instead, in February of that school year, her parents withdrew her from the district for homeschooling. In the following September, they filed for a due process hearing and informed the district that they suspected that A.P. had dyslexia. During mediation, the district offered an evaluation for special education eligibility under the IDEA, but the parents refused consent. Instead, at their attorney's suggestion, they arranged for an independent educational evaluation (IEE) by a neuropsychologist. The IEE report, which did not include teacher input or a classroom observation, concluded that A.P. had specific learning disabilities in reading and math, but not dyslexia or ADHD. Upon receiving the report, the district scheduled an IEP team meeting, which the parents did not attend. The team determined that the IEE did not provide sufficient information to determine eligibility due to the lack of in-class performance data. After a due process hearing, which revealed that the neuropsychologist was not aware of A.P.'s homeschooling in grade 6 and her subsequent continuing attendance problems, the hearing officer ruled that the parents did not meet their burden to prove a child find or eligibility violation under the IDEA. Upon appeal, the federal district court affirmed. Next, the parents filed an appeal with the Fifth Circuit.

The parents claimed that A.P.'s chronic absenteeism, poor grades, and teachers' concern combined to trigger the district's child find duty well before the district's initiation of an evaluation upon their filing for a hearing.

The Fifth Circuit was not persuaded. The court concluded that the absenteeism was not triggering factor in the absence of evidence of a suspected underlying disability linkage and that the poor grades were reasonably attributable to the absenteeism and parental refusals for the district's responsive recommendations.

The parents claimed that the neuropsychologist's IEE proved that the child was eligible under the IDEA in light of her chronic absenteeism and poor grades.

The Fifth Circuit reasoned that A.P.'s "consistent absences prevented her from receiving appropriate instruction" and that the IEE lacked evidence of the need for special education.

Both child find and eligibility continue to be individualized determinations based on multiple factors, with attendance continuing to be a difficult variable, but the parents' actions in this case certainly did not augur well for a favorable adjudicative outcome.