

## SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that address the nuances in the adjudication of not only FAPE but also remedies that are potentially of high stakes for the parties. For related publications and special supplements, see [perryzirkel.com](http://perryzirkel.com)

**On January 23, 2026, a federal court in Pennsylvania issued an unofficially published decision in *Laboratory Charter School v. A.M.*, addressing FAPE and remedy claims on behalf of a fifth grader. In grade 1 (2019–20), the child received private diagnoses of autism and ADHD. In grade 2 (2020–21), the charter school determined that the child was eligible under the classification of other health impairment (OHI) based primarily on ADHD and low academic achievement, and on February 1 provided him with an IEP. In 2021–22, he repeated second grade at his parents' request. The school failed to fully implement his continuing IEP and, despite progress reports showing no improvement in math, issued a substantially similar IEP at the start of the second semester. For the first half of grade 3 (2022–23), his progress reports revealed a decline in math skills. Despite his regression in math and increase in problematic behavior, the mid-year IEP did not change the nature and reduced the amount of special education services in addition to lacking a behavior intervention plan. In grade 4 (2023–24), his triennial reevaluation included an autism rating scale at his parents' request, and the teachers' total scores were in the "Very Elevated" range, but the IEP team concluded that his current classification was sufficient. The report also revealed achievement test scores that increased the gap from those of his nondisabled peers. The resulting mid-year IEP failed to address various needs, including emotional/behavioral regulation and sensory processing. In March, his parents arranged for an independent educational evaluation (IEE) that diagnosed him with autism, and they promptly provided the school with the evaluation report. However, the school did not revise the IEP until the start of grade 5 (2024–25), and then without adding autism as a primary or secondary classification and continuing his limited special education services. In November 2024, the parents filed for a due process hearing, claiming denial of FAPE for the three years starting with grade 3. The hearing officer (HO) ruled in their favor, ordering an IEE at public expense, a 100-day autism-exclusive diagnostic placement, a 3-year compensatory education award. The district appealed.**

First, the school claimed that the hearing officer erred by finding denial of FAPE based on procedural violations.	Denying this claim, the court upheld the hearing officer's ruling that the school violated procedural requirements, such as failing to timely produce student's records and to keep complete records, resulting in losses in meaningful parental participation and appropriate student progress.
Second, the school claimed that the IEPs met the substantive standard for FAPE.	Rejecting this claim too, the court concluded that the IEPs' failure to address the child's identified increasing deficits showed that they were not reasonably calculated to yield appropriate progress, which is the applicable substantive standard under <i>Endrew F.</i>
Finally, the school challenged the remedies of diagnostic placement and compensatory education.	Again affirming the HO's decision, the court concluded that (a) least restrictive environment does not apply to a diagnostic placement, and (b) the compensatory education award was equitable in relation to the denial of FAPE and not subject to the statute of limitations.
This decision is another illustration of the flexibility in the adjudicative standards for both denial of FAPE and the resulting remedies.	

**On October 8, 2025, the federal district court for the District of Columbia issued an unofficially published decision in *E.B. v. District of Columbia* specific to the placement of a seventh grader with ADHD. At the end of grade 2 (2018–19), the district determined that the student was eligible as OHI based on ADHD and provided an IEP at her public school. At the end of grade 3 (2019–20), the parents disagreed with the next similar IEP based on her limited progress and unilaterally placed her in a well-established local private school specializing in students with specific learning disabilities (SLD), including those who also have ADHD. They filed for a due process hearing that resulted in a May 2021 decision in their favor, finding that the proposed placement in the school system was not appropriate, the private placement was appropriate, and tuition reimbursement was equitable for the 2020–21 school year. Meanwhile, the district proposed an IEP for public school placement for grade 4 (2021–22) that the parents challenged in another due process hearing. After the hearing officer issued an interim ruling that the private school was the stay-put, the parties settled the case for reimbursement for 2021–22. Starting earlier in that year, the district again proposed an IEP for placement back in the public schools, and the parents filed for another hearing. This time, the hearing found that the student qualified under the classifications of not only OHI but also SLD and needed the specialized features of the private school, including small classes and intensive instruction in reading. In this November 2022 decision, the remedy was not only reimbursement for tuition to date but also prospective continued placement at the private school for the rest of grade 5 (2022–23). At the end of the school year, the same pattern started again for grade 6 (2023–24). This time, the hearing officer ruled that the proposed placement was not appropriate, but the parents had not met their burden to prove that the private school met the standards for appropriateness. Because only a small percentage of the private school teachers had certification in special education, the hearing officer reasoned that the school did not meet the student’s need for extensive and intensive special education services. Consequently, the remedy was limited to an order for the district to issue a revised IEP. The parents appealed to federal court.**

<p>First, the parents argued that the latest hearing officer, unlike the previous one, erred in applying the third of the five factors that the federal appeals court had specified for prospective placement – “the link between [the child’s] needs and the services offered by the private school.”</p>	<p>The court agreed with the parents for three alternative reasons: (1) the IDEA does not define “special education” to include only instruction provided by special education teachers; (2) the applicable certification regulations in D.C. are explicitly limited to public school teachers; and (3) the private school holds a certificate of approval to serve special education students from D.C.’s education agency.</p>
<p>Second, the parents argued that they were entitled to reimbursement for the residual tuition costs based on the IDEA’s stay-put provision.</p>	<p>Agreeing instead with the hearing officer, the court denied the parents’ request because the record in this case lacks specific evidence of inadequate or withheld tuition payments.</p>
<p>This case illustrates (1) the differences between the remedies of tuition reimbursement (for which teacher certification and other procedural standards applicable to public schools do not apply to the appropriateness of private schools) and prospective placement (for which this leading jurisdiction has established a multi-factor standard), and (2) the ponderously slow process of litigation under the IDEA (which in this case amounted to a declaratory judgment rather than a definitive resolution of the payment for the private school’s costs for 2023–24 and the subsequent period extending beyond 2024–25). Moreover, the potential additional issues include appeal or separate enforcement actions of this court decision and determination of the district’s liability for the parents’ attorneys’ fees.</p>	