

SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent decisions that respectively reflect the majority and minority outcome trends in the world of special education litigation. For related publications and special supplements, see perryzirkel.com

On July 28, 2026, a federal district court in California issued an unofficially published decision in *E.S. v. Newport-Mesa Unified School District*. The student in this case was a 14-year-old with autism, other health impairment, and speech/language impairment. Dissatisfied with the district's proposed placement in a public school, the parents unilaterally placed their child in a private school. They filed for a due process hearing, claiming that the district had procedurally and substantively violated its obligation to provide their child with a free appropriate public education (FAPE). Based on the alleged denial of FAPE, they sought tuition reimbursement. After 7 days of hearings, the administrative law judge (ALJ) issued a decision in favor of the school district. The parents filed for judicial review.

First, the parents claimed that the district committed procedural violations during the last 3 IEP meetings by not having all the invited members present.	Disagreeing, the court concluded that the relevant members had attended, others were not necessary, and, even if there was a violation, the parents failed to show the requisite resulting loss to the child's progress or the parents' participation.
Second, the parents asserted that the IEP's baselines were not sufficiently specific and the goals were not sufficiently measurable or ambitious.	Also rejecting this claim, the court affirmed the ALJ that the baselines and goals were sufficient in relation to the applicable judicial precedents and the preponderance of the evidence in this case.
Third, the parents claimed that their child needed a more intensive placement both in relation to the presumption for the least restrictive environment (LRE) and the substantive standard for FAPE.	Again disagreeing with the parents, the court ruled that the district's proposed placement met both the 4-factor test for LRE and the <i>Andrew F.</i> substantive FAPE standard of being reasonably calculated to enable the child to make progress appropriate under the circumstances.
Finally, the parents more specifically targeted the lack of a 1:1 aide as a fatal flaw in the substantive appropriateness of the proposed IEP.	Deferring to the ALJ's finding that the parents' experts were unpersuasive and emphasizing the snapshot standard for assessing the appropriateness of the IEP, the court concluded that the parents had not proven the necessity of a 1:1 aide.
In contrast to professional norms in special education, this court decision is another illustration of the courts' often rather non-nuanced assessment of the common claims of parents in light of (a) the largely relaxed standards for FAPE and LRE, (b) the traditional deference to hearing officers or school authorities, and (c) the burden of persuasion being on parents in most states.	

On August 12, 2026, the federal district court in Oregon issued an unofficially published decision in *Estacada School District v. Student*. At an early age, the child in the case had an individualized family service plan for developmental disabilities based on behavioral issues and social-emotional delays. A few months before kindergarten, the IEP team met and developed an IEP that had a social-emotional goal, a self-management goal, 30 minutes of special education per week for each of these goals, and various supports targeting transitions and elopements. The child's behavioral problems started almost immediately upon the start of his kindergarten year, including inappropriate language, physical aggression to peers and staff, and elopement. Each time the school responded by sending the child to the principal's office, having the parents pick him up early, or issuing a half- or full-day suspension. In September, based on his parents' request, the district conducted a functional behavioral assessment (FBA). A second IEP team meeting at the end of September added a behavior intervention plan (BIP) based on the FBA, but not the full-time 1:1 aide that the parents requested. After the child's problematic behaviors and the district's disciplinary responses continued without abatement, the IEP team met in late October, doubling the special education minutes per week for each goal and adding 60 minutes per week for transitions, which resulted in a reduction to 40% in the general education classroom. The unwanted behaviors, which included property destruction and multiple instances of hitting teachers, continued without sustained improvement. In December, the IEP team met to conduct a manifestation determination review (MDR) based on the accumulation of six suspension days, determining that his behavior was a manifestation of his disability. In January, the child was suspended after threatening to go home, retrieve a gun, and return to shoot peers and staff. In February, after the child had accumulated a pattern of more than 10 days of suspension, the IEP team met and conducted another MDR, resulting in not only the same conclusion but also fine-tuning of his BIP. The team did so six more times in March, April, and May in response to suspensions for successive assaults on peers and staff in combination with elopements and other violations of the school conduct code. In April, the district assigned a 1:1 aide for 2/3 of the day and subsequently two such aides for a half-day each, but not the requested single 1:1 aide full-time. At the end of May, the IEP team met for a final time, proposing a therapeutic private school placement despite the parents' report, from their observations, that it was not a good fit. The parents filed for a due process hearing, and the district filed a motion for the ALJ to grant a 45-day interim alternate educational setting (IAES) at the private school based on an alleged substantial likelihood of injuring others. After successive expedited and regular stages, the ALJ respectively denied the district's motion and ruled that the district denied FAPE based on the lack of services for suspensions beyond the requisite cumulative pattern, the failure to revise the FBA-BIP upon the first MDR, and the proposed segregated private school rather than providing suitable supports at his public school. As remedies, the ALJ ordered the district to (a) provide 200 hours of compensatory education, (b) hire an independent specialist to develop a new BIP, and (c) convene a facilitated IEP meeting that includes the behavior specialist. The district filed an appeal with the court.

The district challenged the ALJ's expedited order that denied its request for the 45-day danger-based IAES at the private school.	The court deferred to the ALJ's determination based on (a) the lack of injury for the past repeated behavior without any relevant change, and (b) the district's failure to specifically prove that the IAES met the applicable standard.
The district argued that the first MDR was proactively prior to the requisite number of days and, thus, did not require revising the FBA-BIP.	The court disagreed, primarily because (a) there is not authority providing an exception to the requirements specific to an MDR and, alternatively, (b) the district's FAPE obligation extends to updating an ineffective IEP.
The district challenged the ALJ's remedial orders.	The court concluded that the orders were within the ALJ's equitable authority.
This decision, which extends to further rulings and is available on Google Scholar , is worth reading on your own as an example of what a specialized parent attorney and relatively unusually affirmative adjudicators may produce even upon at least partially proactive district actions.	