SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that illustrate FAPE issues under the IDEA. For related publications and special supplements, see **perryzirkel.com**

On October 23, 2026, a federal district court in Pennsylvania issued an unofficially published decision in *M.C. v. Williamsport Area School District*, addressing the first FAPE step for tuition reimbursement of a student with a specific learning disability in reading. In second grade, the district determined that the student was eligible for an IEP under the IDEA. Starting midway in grade 4, his IEP provided for 90 minutes of Wilson Reading Program instruction. In grades 5 and 6, he received this instruction during the English Language Arts (ELA) block. In a series of IEP meetings in grade 6 in preparation for his transition to middle school, the district proposed and the parents reluctantly agreed to a reduction of Wilson instruction to 60 of the 90 minutes in the ELA block in grade 7. The district proceeded with this IEP in grade 7, but the parents reported malfunctions in the speech-to-text software technology. In October, they proposed and the IEP team denied residential placement of the student at the Gow School in New York. In December, the parents provided the district with a 10-day notice maintaining that the IEP did not provide FAPE and that they intended to unilaterally place their child at Gow School and seek reimbursement. Starting in January, they placed their child at Gow. In March, the parents filed for a due process hearing, seeking compensatory education for the alleged denials of FAPE from last part of grade 5 to the middle of grade 7, reimbursement for their Gow placement in the second half of grade 7, and prospective placement at Gow for grade 8. The hearing officer ruled that the ESY programs and the grade 7 IEPs were appropriate except for the implementation of the assistive technology software during the first 6 weeks of the school year. The remedy was limited to 1.5 hours of compensatory education for each of the school days during this 6-week period. The parents appealed. The district counterclaimed only to challenge the compensatory education award.	
The parents alleged that the hearing officer committed various harmful procedural violations, such as applying various "nonexistent" rules of evidence and refusing to consider their attorney's reply brief because it was unsolicited and beyond his prescribed page limit.	Rejecting this claim, the court concluded that none of the hearing officer's procedural choices beyond the minimum requirements of the IDEA exceeded the flexible discretion accorded to IDEA hearing officers.
The parents also claimed that (a) the IEP did not meet the *Endrew F.* standard because the district's reliance on Wilson instruction failed to result in appropriate progress for their child, and (b) the Gow placement was appropriate.	Disagreeing, the court respectively concluded that (a) methodology was in the district's discretion, Wilson was peer-reviewed, and the child made sufficient progress, and (b) the Gow placement did not provide FAPE in the LRE.
The district counterclaimed that the IEP's assistive technology provision was for text-to-speech, not speech-to-text, software.	The court agreed, thus finding no failure-to-implement denial of FAPE and, thus, reversed the compensatory education award.
This court decision is subject to question for various nuances of its reimbursement analysis, especially for the private placement (e.g., role of LRE and peer-reviewed standard) as alternative rather than integral grounds, but it illustrates the cursory and deferential posture that federal courts sometimes reflect in IDEA cases.	

On September 23, 2026, a federal district court in Michigan issued an unofficially published decision in *Henke v. East Lansing Public Schools*, addressing various FAPE issues for a child with autism and anxiety. Dissatisfied with the use of seclusion and restraint of the child in kindergarten elsewhere, the parents enrolled their child in a district school for grade 1. First, they met with the principal and social worker, who (a) recommended starting with placement in a general education class because most of the children in the autism program were, unlike their child, nonverbal, and (b) promised to try to avoid the use of seclusion. Next, the IEP team met and developed an IEP that provided for a mainstreamed placement with various supports and accommodations, including consultant services, weekly meetings with the social worker, and 25-minute speech and language therapy (SLT) sessions 4–5 times/month. The shortened school day initially ended at 11, with attendance at an applied behavior analysis (ABA) program in the afternoon. The school day was gradually extended to 1 pm by early November, whereupon the schedule of the ABA program no longer was workable. The child's progress was satisfactory until then. Soon thereafter, however, problems arose including increasingly frequent and extended bathroom breaks to avoid the classroom and culminating in refusal to return to school after the winter break. The parents and staff were able to get him to return for a two-hour school day that devolved into 1:1 services due to issues with other students. Despite continuing amendments to the IEP, his learning regressed along with his behaviors, which included laying on the floor in the main office for long periods; repetitively counting cars in the school parking lot; eloping from service providers and from school; and, in March, incidents of property destruction and assaulting staff members culminating in the brief and unsuccessful use of the school's seclusion room. After the district did not agree to rule out any future possibility of seclusion and only agreed to trying the autism classroom in the upcoming summer, they withdrew their son and placed him in out-of-state school in grade 2. However, upon its use of seclusion, they moved the child elsewhere. They filed for a due process hearing, which was decided in favor of the district, whereupon they appealed.	
First, the parents alleged that the district excessively used "seclusion" under Michigan law, including the 1:1 teaching in a separate room.	Disagreeing, the court concluded that the only use of seclusion was the one brief instance, which met the definition in the Michigan statute and which met that law's specified emergency exception.
Second, the parents argued that the district kept the child out of general education in violation of the IEP.	Again disagreeing, the court concluded that the discrepancy from the IEP was limited and even if a violation, it reduced rather than resulted in harm.
Third, they claimed that the district should have placed the student in the autism classroom.	The court concluded that the choices of deferring placement in the autism classroom during the school year were justifiable in this case.
Fourth, they contended that the district failed to provide all the SLT specified in the IEP.	The court found that the 5-minute shortfall in the SLT sessions were not a "material" or harmful failure to implement the IEP in this case.
Their various other claims were what the court regarded as procedural forms of FAPE, such as the documentation of progress and the use of a shortened school day.	Per the two-step analysis for procedural FAPE, the court concluded that even if these actions were violations (step 1), the parents failed to prove the requisite step 2 substantive harm to the child.
This legal outcome is not unusual. Yet, considering the potentially lasting loss to this young child and his parents after two years of costly litigation, one cannot help but wonder about the educational placement choices the district made, the extent of district accountability under the IDEA in relation to parental authority, and the efficacy of the Act's ponderous process of private enforcement.	