



Legal Updates



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Kansas leads the world in the success of each student.

Disclaimer



- * ***Bold** and/or underlined text highlights the principal points of emphasis.*
- * *These materials are provided as informal guidance. They are intended to be used for general information only, and are not to be considered legal advice or official KSDE policy for any specific situation. If specific legal advice is sought, please consult an attorney. If official KSDE policy is sought, please contact the Office of General Counsel at KSDE.*



Reminder: What To Do When a Complaint is Filed

Talk to the Complainant



Try to come to a resolution with the complainant and they may be willing to withdraw the complaint.

Consider Mediation



The complainant may request a result that the district considers to be unworkable. That is when mediation may be a good option.

Both parties must agree in writing to mediate and to a specific extension of the complaint timeline.

Propose a Resolution



KSDE must provide districts with the opportunity to propose a resolution to the complaint.

District may a propose a resolution to one, some, or all the complaint issues.

Respond Timely to the Investigator



Providing clear, concise information in a complaint investigation helps the process move as quickly as possible



Data

- 171
- 386
- 64
- 320
- 17





Artificial Intelligence



Mark



Green v. Sch. Dist. of Philadelphia, 126 LRP 2437 (E.D. PA 2026)



Plaintiff attempted to avoid due process and go straight to court on the allegation that the district's failure to provide transportation as required by the IEP, was a breach of contract. The court said that "An IEP is not governed by the law of contracts..."

Green v. Sch. Dist. of Philadelphia, 126 LRP 2437 (E.D. PA 2026)



Also see, Sytsema v. Academy Sch. Dist. No. 20, 50 IDELR 213 (10th Cir. 2008) The adequacy of an IEP is limited to an assessment of the terms in the written document, itself. The court rejected the school's argument that the proposed IEP was only a "first draft" and that the court should consider subsequent verbal offers made by the IEP team. The court disagreed, saying oral offers will not be considered by the court when determining whether a district has offered a FAPE. *Extrinsic evidence not admissible (4 corners) – works both ways.

Brian



Regan Wilkes v. Canyons School District, 126 LRP 14862 (D.C. UT 2026)



The court dismissed this case after the defendant school district demonstrated that the plaintiff used **Artificial Intelligence to cite non-existent case law** in their brief. The court also **sanctioned the attorneys** in the amount of \$7,000.00 finding that they violated their professional responsibilities under Rule 11(b) by failing to reasonably verify the existence and accuracy of the non-existent cases and case law cited within their Amended Complaint.

Regan Wilkes v. Canyons School District, 126 LRP 14862 (D.C. UT 2026)



The Tenth Circuit recently ruled that relying on non-existent cases or citing actual cases that do not support the asserted propositions is sufficient grounds to dismiss an appeal before the Tenth Circuit. *Sifuentes v. Capital One*, No. 25-4123, 2026 WL 322610 (10th Cir. Feb. 6, 2026).

Mark



Q&A: IEP Meeting Timing



We have parents who want to push back their child's IEP meeting by two weeks when the 3 year re-evaluation is due so we don't have to have parents come in twice for separate meetings! Is there anything that states we cannot push the IEP date back and just hold one meeting?

Q&A: IEP Meeting Timing



A13. In Doug C. V. State of Hawaii, 61 IDELR 91 (9th Cir. 2013) the school was faced with a situation where the parent became ill and could not attend a scheduled IEP meeting. The district elected to meet the required annual meeting date by conducting the meeting without the parent. The court said that when faced with two opposing procedural requirements: (1) annual IEP review or (2) parent participation, the better choice is to favor parent participation and courts give schools reasonable discretion to choose which option they believe best suits the intent of the law – with parent participation in most cases more important than the annual review date.

Q&A: IEP Meeting Timing



This court said the school's decision to prioritize strict deadline compliance over parental participation was "clearly not reasonable."

1. Parent participation rights are more important than meeting IEP review timelines and
2. Courts should allow the school reasonable latitude in making the determination of whether to schedule an IEP meeting beyond the annual review date when requested to do so by a parent.

We follow this guidance when considering state complaints/ but Not an invitation to miss the annual IEP review date!

Brian



Laboratory Charter School v. M.R.S., 126 LRP 11297 (3d. Cir. 2026)



Federal regulations require a reevaluation “every three years unless the parent and the public agency agree otherwise. 34 C.F.R. 300.303(b)(2).

Additionally, the district must develop an IEP that is reasonably calculated to enable the child to make progress that is appropriate in light of her circumstances.

Laboratory Charter School v. M.R.S., 126 LRP 11297 (3d. Cir. 2026)



An independent educational evaluation revealed that the IEP, which the charter school developed in May 2020 with **outdated data**, failed to address the child's needs and led to her 81 absences. The court added that the student "**suffered from several mental-health issues,**" including significant symptoms of depression, cognitive and executive functioning deficits, and academic weaknesses across multiple subjects., and that "if those difficulties did not put [the school] on notice of the need for a **new IEP**, [the student's] '**lack of progress** in school' should have."

*A school cannot ignore a clearly failing IEP *Cite 10th Circuit court re annual review requirement.

Mark



26FC002: MDR



The parent alleged that the district failed to conduct a manifestation determination review (MDR) before suspending her child. The investigator determined that the district was not required to conduct an MDR and the parent appealed.

26FC002: MDR



Sec. 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under Sec. Sec. 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days, or

(2) The child has been subjected to a series of removals that constitute a pattern--

26FC002: MDR



- (i) Because the series of removals total more than 10 school days in a school year;*
- (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and*
- (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.*

26FC002: MDR



(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

Brian



J.M. v. Comel School District, 126 LRP 8641 (W.D. TX 2026)



This student with autism and a speech impairment received homebound services in his bedroom. The district found that the initial site for homebound services, J.M.'s bedroom, was impractical because of the room's size, overstimulating environment, and his parents' alleged intrusions. On the same day it determined that it could not continue services in J.M.'s bedroom, the district proposed alternative locations outside the home, such as public libraries. When the parents objected, the district proposed other locations and parameters for education inside the home. J.M.'s parents refused these offers and denied that any factors mandated changing J.M.'s location. After deeming the bedroom unfit the district stopped providing services to J.M.

J.M. v. Comel School District, 126 LRP 8641 (W.D. TX 2026)



Requiring relocation outside the home could constitute a failure to implement the IEP, which required a homebound placement. But the court noted that the district repeatedly attempted to hold meetings with J.M.'s IEP team to reevaluate J.M.'s conditions and needs, and sought access to J.M.'s medical records to ascertain appropriate alternatives and the least restrictive environment. J.M.'s parents refused access to records and frequently refused to schedule meetings.

J.M. v. Comel School District, 126 LRP 8641 (W.D. TX 2026)



Furthermore, the record supports the district's contention that it could not fully implement the IEP because of conditions in the home, refuting Plaintiffs' argument that the district abruptly terminated services without cause. The district did not fail to implement the IEP when, for example, services paused after an instructor "cowered in--in a corner of the room" because she "didn't feel safe" in the home. Out of J.M.'s five homebound instructors, four "asked to not be in that role" because of "the same concerns about ... the environment in the home."

J.M. v. Comel School District, 126 LRP 8641 (W.D. TX 2026)



Under the heading titled: Conclusion, the court said: “Every factor supports the conclusion that the district offered, and briefly employed, an IEP reasonably calculated to enable J.M. to receive educational benefits. As the **district did not cause the lapse in services and made diligent efforts to** reevaluate J.M. and resume services, the Court finds that the district satisfied its IDEA obligations.”

*Kansas consent requirements: Preliminary injunction.

Mark



B.M. v. Freehold High School, 125 LRP 16316 (3rd Cir. 2025)



The lower court said, “B.M. is highly oppositional and requires assistance in the morning to prepare him to go to school, including assistance getting dressed, eating breakfast, taking required medications, and getting to the school bus (emphasis added).”

B.M. v. Freehold High School, 125 LRP 16316 (3rd Cir. 2025)



The court of appeals disagreed, saying that the school, “satisfied that obligation by providing B.M. with transportation to and from school with his own aide. But that statutory duty did not oblige Freehold to provide B.M. with an aide before he was picked up for school. No reasonable construction of Freehold's statutory duty to provide "transportation ... required to assist a child with a disability to benefit from special education...could include services antecedent to picking up the student for school.”

B.M. v. Freehold High School, 125 LRP 16316 (3rd Cir. 2025)



Compare with: K.N. v. Bridges Public Charter School, 124 LRP 32461 (U.S. Ct. of Appeals, DC Cir. 2024), where the circuit court faced a situation where the school staff were told they could not cross the threshold of a ground floor door leading to an **upstairs apartment** to assist a student to get to the bus. The court said “The service she seeks--moving K.N. from their apartment (upstairs) to the vehicle that will take him to school--fits within the scope of transportation services that must be provided to disabled students.”

Brian



Richmond City Sch. Bd. V. Black, 126 LRP 11307 (ED. VA 2026)



The district had knowledge that an unidentified student had a disability during a series of suspensions because the parent told school officials of a ADHD diagnosis and because teachers reported specific concerns about a pattern of behavior directly to school officials. This advance knowledge meant that the district should have provided the IDEA disciplinary protections, including a manifestation determination review (34 C.F.R. 300.534).

Mark



Q&A: Incidental Benefit



Can we conduct MTSS services with special education students who are receiving specially designed instruction in a general education setting (a reading group for example) and consider that as “incidental benefit, in which there is no need for prorating funds.”

Q&A: Incidental Benefit



We cannot give you a precise line where “incidental benefit” begins and ends, but it is not intended to be used as a planned and scheduled MTSS service, at which there is a mix of general and special education students.

Q&A: Incidental Benefit



Special education funding is specifically for the time that qualified staff are providing special education and related services to children with disabilities in accordance with an IEP. Nothing more. It is not to be used for MTSS, at any level.

Q&A: Incidental Benefit



The intent of allowing incidental benefits to nondisabled students is more like saying that when specially designed instruction is being provided in a general education setting to children with disabilities, the general education students do not need to close their eyes, hold their hands over their ears, and hum the national anthem. Those general education students can watch and listen to the instruction. However, that does not apply when there is a planned instruction activity for the benefit of both general and special education students. That kind of activity requires prorating.

Brian



Greenway v. Finletter School, 126 LRP 1246 (E.D. PA 2026)



Under a court-ordered custody agreement, the father had joint custody, but mother had sole authority for educational decisions. The order added that:

- Father shall be welcome at all IEP meetings and may contact the school, but **Mother may solely sign all permission forms and all IEP forms for the Child's placement and education...** Both Mother and Father are to be provided all results of these evaluations and protocols, but **Father may not interfere with the execution of same.**

Greenway v. Finletter School, 126 LRP 1246 (E.D. PA 2026)



Mother consented to an evaluation and initial IEP. Father alleged that the school excluded him from the IEP process, and refused his requests for access to his child's educational records. the court said:

Greenway v. Finletter School, 126 LRP 1246 (E.D. PA 2026)



“Nothing in the IDEA overrides states' allocation of authority as part of a custody determination,” and added: “Therefore, because (mother) has sole custody in the areas of N.G.'s education, evaluation, and educational placement, (father) lacks the legal authority to claim his consent or participation in those areas was required. In other words, the lack of custody in these areas **deprives him of standing** to proceed on his IDEA claims.”

Mark



Q&A: Parent Revocation of Consent



Can parents revoke consent for only related services in Kansas?

Q&A: Parent Revocation of Consent



The federal regulation (34 C.F.R. 300.300(b)(4)) does not permit parents to revoke consent for particular services. That regulation applies only when a parent revokes consent for all special education services because the federal law requires consent for the initial IEP, not for anything that happens after the initial IEP has been implemented.

Q&A: Parent Revocation of Consent



Kansas regulations are the same, except there is a very limited authority that allows a parent to revoke consent for a particular service, only when an “IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education.” See K.A.R. 91-40-27(k).

Q&A: Parent Revocation of Consent



This provision is necessary because Kansas law requires consent for material changes in services and substantial changes in placement after the initial services are provided and the definition of consent includes the right to revoke consent. Thus, this very limited ability for parents to revoke consent for particular services had to be added to the state law. Effectively, however, parents do not have an independent right to revoke consent for particular services, absent approval of the IEP team.

Brian



Q&A: Transportation



If a sped student is riding a general education bus and get's suspended from that bus, does this count as a suspension day (even if parent brings them to school)?

Q&A: Transportation



Yes, if: (1) transportation is in the student's IEP as a related service and (2) the school district does not provide the transportation in some other way.

- If so, if the district pays the parent mileage on those days, does it count as a suspension day?

No, that is one of the other ways that a district can provide the service.

Q&A: Transportation



- If a sped student suspended from the gen ed bus has a cumulative amount of suspensions that add up to 10 days, are we then doing an MDR?

Not necessarily. There are other factors beyond ten days of suspension that are used in determining whether an MDR is needed.

Q&A: Transportation



An MDR is needed when disciplinary removals reach more than 10 days in a school year and constitute a change in placement (300.530(e)). A change in placement for disciplinary removals is explained in federal regulation 34 C.F.R. 300.536, as follows:

Sec. 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under Sec. Sec. 300.530 through

300.535, a change of placement occurs if--

Q&A: Transportation



(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a **pattern**--

(i) **Because** the series of removals total more than 10 school days in a school year;

(ii) **Because** the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; **and**

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Q&A: Transportation



(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

Q&A: Transportation



The MDR is necessary when a suspension is for more than 10 consecutive days or when two things occur at the same time, see below:

suspensions accumulate to more than 10 school days in a school year; and

the series of removals constitute a pattern because of the reasons stated in the regulations.

There is nothing about 10 (non-consecutive) school days of suspension that automatically requires an MDR.

Mark



26FC001: Focus Rooms (Suspension?)



With limited notice to the parent, the district implemented a **new building-wide behavior plan** that resulted in the student being placed in a "Focus Room" where she was considered to be "on restriction" and was **not allowed to participate in her "specials" (PE, Music, Library, Art, and Technology)**. In addition, she was not with nondisabled students one hour per day, as specified in her IEP while in the Focus Room.

26FC001: Focus Rooms (Suspension?)



The district argued that the Focus Room was not an in-school suspension because it was in a room separate from the in-school suspension room.

HELD: Violation

26FC001: Focus Rooms (Suspension?)



REASON: A suspension, by any other name is still a **suspension**. This student was being removed from the educational setting described in her IEP by school administration for behavioral reasons and placed in a more restrictive setting, where she was denied participation in “specials.” Moreover **time in the Focus room was dependent on the student’s behavior in the focus room, where she could be held for an indeterminant time.**

26FC001: Focus Rooms (Suspension?)



Any removal of a student from the placement(s) specified in his/her IEP to any other location for disciplinary reasons counts as a day of suspension, unless the disciplinary setting meets the requirements for exception to the disciplinary protections described in the Federal Register, August 14, 2006, p. 46715. Those requirements were explained by the Office for Special Education Programs (OSEP) as follows:

26FC001: Focus Rooms (Suspension?)



*"It has been the Department's long-term policy that an **in-school suspension** would not be considered a part of the days of suspension addressed in Sec. 300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in Sec. 300.536."*

26FC001: Focus Rooms (Suspension?)



Also see, Mamaroneck Union Free Sch. Dist. v. A.N.S. 126 LRP 9275 (2nd Cir. 2026), where student was moved to home instruction, for same analysis.

Brian



Q&A: Parent Requests LEA Rep Not Attend



A parent has requested that I no longer attend IEP meetings as the LEA representative. This parent is argumentative at meetings and has asked that the meeting be recorded. My understanding is that the district may determine appropriate team membership and participation in order to ensure legal obligations are met and that FAPE is protected.

Q&A: Parent Requests LEA Rep Not Attend



The district decides who its LEA representative will be at any IEP meeting so the decision is yours to make. If you believe you have someone who is competent to act as this student's LEA representative at meetings and that making a change to that person would ease tension and help the team work together it would likely be worth a try. If you decide to try someone else, you may explain that while the decision is yours you are willing to withdraw in hopes that a change will help the team going forward.

Q&A: Parent Requests LEA Rep Not Attend



If you decide to honor the parent's request and the new LEA representative meets with the same difficulties, then perhaps you might decide that a firmer response is required. In short, it's up to you.

Mark



Q&A: Confidentiality: DCF



A Department for Children and Families (DCF) case worker has requested copies of IEPs and other special education records. Do we need parent consent to send these records to DCF?

Q&A: Confidentiality: DCF



FERPA was amended in 2013, in an amendment titled the “**Uninterrupted Scholars Act**” (USA), to permit information in student records to be released, even without parent consent, to a child welfare agency that is legally responsible for the care of the student under state law. And, there are a couple of other requirements, which are listed below.

Q&A: Confidentiality: DCF



The only child welfare agency in Kansas that is legally responsible for the care of a student in Kansas is the Kansas Department for Children and Families (DCF). This amendment to FERPA does not apply to contractors with DCF. When in doubt, it is recommended that you deny a request for education records until the entity requesting the records obtains **parent consent** for the release.

Q&A: Confidentiality: DCF



If you have **ALL** of the following, you may, but are not required to, send the requested information, including the IEP, to a case worker or other representative of DCF who is authorized to access the student's case plan:

1. A signed letter on the **letterhead** of the Kansas Department for Children and Families (DCF) from a DCF official;
2. The letter states that the writer of the letter is a DCF official and that DCF is legally responsible for the care and protection of the named student under state law;

Q&A: Confidentiality: DCF



- 3. The letter identifies the person to receive the records;
- 4. The letter states that the named person to receive the records is a case worker or other representative of DCF; AND
- 5. The letter states that the person to receive the records has a right to access the student's DCF case plan.

*See Chapter 9 of Kansas Special Education Process Handbook

Brian



Q&A: MDR: Which Discipline event?



If a student has been suspended 7 times for similar issues but then the 8th time is a different and more severe behavior should the MDR team look at only the specific incident that led to the latest suspension since it was different than normal or should they decide based on all 8 behaviors that led to a suspension?

Q&A: MDR: Which Discipline event?



The discipline regulations are difficult to follow and certainly not a model of clarity. It takes a careful reading.

The pertinent regulation is 34 C.F.R. 300.530(e). That regulation states (emphasis added with bold print):

(e) **Manifestation determination.** (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must **review all relevant information in the student's file**, including the child's IEP, any teacher observations, and any relevant information provided by the parents **to determine--**

Q&A: MDR: Which Discipline event?



(i) If the **conduct in question** was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the **conduct in question** was the direct result of the LEA's failure to implement the IEP.

Q&A: MDR: Which Discipline event?



(2) The conduct must be determined to be a **manifestation** of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that **a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.**

Q&A: MDR: Which Discipline event?



So, the analysis is based on the “conduct in question.” Not all of the student’s misconduct, but only the “conduct in question.”

In your scenario, the student is being suspended for “a different and more severe behavior” than previously. That “different and more severe behavior” is the conduct in question that has prompted the MDR. It is that “different and more severe behavior” which the relevant members of the IEP team must determine is or is not a manifestation of the student’s disability – not the previous behaviors.

Q&A: MDR: Which Discipline event?



An exception to this analysis can occur if the child is being suspended for a group of violations. When that happens all of the behaviors in the group must be considered in the MDR. For example, a school may have a point system that requires a long-term suspension for accumulating, say, more than 20 points. In that case the “conduct in question” is not just the most recent conduct. The conduct in question includes all of the behaviors that that are included in the accumulation of 20 or more points. Under that circumstance, the MDR would need to include all the behaviors that contributed to the accumulation of 20 points.

Mark



Hellman v. Massachusetts Dept. of Education, 126 LRP 6701 (1st Cir. 2026)



Massachusetts enacted a regulation allowing private school special education students to receive special education services at a public or neutral location, but required parents to transport them to the public locations. The parents brought this action alleging that requiring parents to provide transportation was a violation the **14th Amendment** which prohibits states from depriving individuals of life, liberty, or property without due process of law.

Hellman v. Massachusetts Dept. of Education, 126 LRP 6701 (1st Cir. 2026)



The court upheld the district court's ruling that the state regulation did not bar the parents from choosing a private school, and **it did not restrict or penalize that choice.** It merely defined the terms on which the state would provide publicly funded services to parentally placed private school students.

Hellman v. Massachusetts Dept. of Education, 126 LRP 6701 (1st Cir. 2026)



Thus, the court held that the Massachusetts regulation did not bar private education, did not compel public education, did not deprive parents of access to the private school option, or condition services on relinquishing that right, the court concluded. At most, the parents alleged an increased logistical burden, it remarked.

Hellman v. Massachusetts Dept. of Education, 126 LRP 6701 (1st Cir. 2026)



Finally, the court held that the regulation was rationally related to the legitimate state governmental interest of expanding special education services to all students in compliance with its constitution.

Brian



Loudoun County School Board v. D.V., 126 LRP 1635 (E.D. VA 2026)



The student was found eligible for an IEP on December 6, 2019. The parents requested an Independent Educational Evaluation (IEE) at public expense on December 14, 2021. The district refused the request saying that the evaluation was outdated and sent parents a PWN proposing a reevaluation. The parents made then made several more requests for an IEE at public expense, and finally obtained their own IEE and requested reimbursement, which was also denied. The parents filed a complaint with the Virginia Department of Education, which found the complaint was filed too late. The parents then filed a request for a due process hearing.

Loudoun County School Board v. D.V., 126 LRP 1635 (E.D. VA 2026)



The court said: “The Parents acknowledge that the “IDEA’s 2-year SOL period applies to the filing by a parent or school district of a request for due process. Thus, the primary **dispute between the parties in this regard is when the statute of limitations began to run.** LCPS argues that the triggering date is December 16, 2021, when LCPS denied the IEE request, and thus the statute of limitations expired on December 16, 2023. The Parents argue each request by the Parents “for either an IEE or reimbursement for the IEE was a new request based upon new facts, and each denial of those requests triggered its own 2-yr [sic] SOL.

Loudoun County School Board v. D.V., 126 LRP 1635 (E.D. VA 2026)



The court said:

- Thus, by January 24, 2022, the parents "knew or should have known" everything that formed the basis of their due process complaint. 20 U.S.C. § 1415(b)(6)(B); 34 C.F.R. § 300.507(a)(2). Accordingly, the statute of limitations expired no later than January 24, 2024, and the Parents' February 1, 2024 request was untimely... Indeed, judges in this District have recognized that **an IDEA action accrues "when the plaintiffs learn of the injury, 'whether or not they [know] the injury is actionable.'"** *Richards v. Fairfax Cnty. Sch. Bd.*, 798 F. Supp. 338, 341 (E.D. Va. 1992), *aff'd*, 7 F.3d 225 (4th Cir. 1993)... The Parents' argument that each request for an IEE or for reimbursement triggered a new start of the statute of limitations would render the statute of limitations meaningless.

Mark



S.B. v. Idaho State Board of Education, 126 LRP (D. ID 2026)



where court admitted the case was borderline frivolous, but not ""wholly without merit." It **did not award attorney fees** because it said such sanctions can " result in a **chilling effect** on the public within the district. If plaintiffs are afraid of attorney's fees, they might not bring suit to enforce their rights if they think they may lose their case."

S.B. v. Idaho State Board of Education, 126 LRP (D. ID 2026)



And see, Powhatan County School District v. Skinger and Lucas, 125 LRP 15683 (E.D VA, May 2025)

Two parties filed 10 due process hearing (DPH) requests, which were held, and lost them all. The district sought compensation for their attorney fees and other costs of litigation, and sought a permanent injunction against the Defendants from filing additional DPH Requests. Before the court could rule, the defendants filed an additional 8 DPH, for a total of 18.

Brian



Q&A: Parent Limiting Evaluation



When a school district requests consent for an initial evaluation, can a parent restrict the scope of the evaluation by giving consent to only some of the assessments that are being proposed?

Q&A: Parent Limiting Evaluation



No. The parent in your scenario is citing 34 C.F.R. 300.300(d)(3), which says a district may not use a parent's refusal to consent to one service or activity under paragraph (a) of this section (regarding consent) to deny the parent or child any other service, benefit, or activity of the public agency, except as required by IDEA. The IDEA's requirement to evaluate in all areas of suspected disability meets the "exception" to this rule."

Q&A: Parent Limiting Evaluation



In Dublin City Schools, 70 IDELR 110 (SEA OH, Complaint 2017), the District and the nonpublic school suspected autism along with deficits in pragmatic language, social-emotional skills, social skills and sensory concerns. Therefore, the District was required to include assessments to address all of those concerns in the evaluation, even though the parents opposed assessments related to autism.

Q&A: Parent Limiting Evaluation



- *Counter offer

- *Initial services: When parents do not consent to initial services there is no FAPE or IEP meeting requirement; see 34 C.F.R. 300.300(b)(4).

Mark



V.B. v Monroe Bd. of Education, 126 LRP 8651 (D.C. Conn. 2026)



The school **failed to provide 63 of the 70 speech services** required by the IEP. The IEP included a statement that speech therapy was "a service that went to the heart of [the student's] ability to communicate and access instruction." The district made no effort to provide compensatory services. The court ruled this to be a substantive violation of the IDEA.

Brian



Q&A: IEP Meeting Without the Parent



We've determined that a child is eligible and now tried to have 2 meetings but mom has not shown up. We have a 3rd one scheduled and are going to mail her a meeting notice and call her for our two ways to document. Can we have this 3rd meeting without the parent being present, as this is an initial placement and parent consent is required?

Q&A: IEP Meeting Without the Parent



Yes, with the proper notices you can hold the meeting without the parent.

Remember that the meeting needs to be scheduled at a “mutually agreed upon time and place.” So, it is important to first establish a time that the parent is available and willing to attend and then give the parents two different notices in two different ways (with documentation of these notices) of the scheduled meeting and let the parent know in those notices that the meeting will be held whether or not the parent attends the meeting.

Q&A: IEP Meeting Without the Parent



If these actions are later contested by the parent it is important that the school district was appropriately responsive to parents difficulties in getting to scheduled meetings and that the district was not being unreasonable in how it scheduled the meeting.

Q&A: IEP Meeting Without the Parent



Case law emphasizes that parental participation is crucial and the district should use this option only in the situation described in the regulations, when the school “is unable to convince the parents that they should attend.”

A PWN and the proposed IEP can then be mailed to the parent asking for consent.

Brian



Q&A: IEE Request Without Evaluation



An already identified student moved into our district just this school year. WE have not done any evaluations. Mom is requesting an IEE. My understanding is an IEE can only be requested after an evaluation has been done. If we deny this request due to never doing an evaluation, does this mean we have to trigger due process even though this does not meet the requirements for an IEE?

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Under your theory, that WE did not do an evaluation with which a parent can disagree, means that when a parent moves into a different school district they no longer have a right to an IEE. The old district that did the most recent evaluation no longer has any duty (or authority) to serve or evaluate the student and the new district has not conducted an evaluation with which the parent can disagree. Although we have not seen this exact scenario, we do not think a complaint investigator or hearing officer would agree with your interpretation, because doing so would effectively remove the parent's right to an IEE when they disagree with the last evaluation that actually took place.

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The only case we could find is Wayne Local Schools, 121 LRP 24194 (SEA OH 05/26/21), where a due process hearing officer ruled that when a child transfers to a new district and the new (receiving) district does not conduct its own evaluation (whether the transfer is in-state or out-of-state) the receiving district effectively accepts the existing evaluation brought to it by the student and so is subject to the requirement to provide an IEE at public expense. Its refusal to do so without requesting a due process hearing was found to be a violation of law.

Brian



Q&A: Virtual Student Reevaluation



We have students in our virtual programs who need a re-evaluation because it has been three years since their last evaluation, but we either can't get consent or we get consent but the student does not show up even for electronic sessions. Is there any point that we can just stop and document that we tried.

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The answer is yes. Kansas regulation K.A.R. 91-40-8 requires that any evaluation (including re-evaluations) must be completed within 60 school days of the date consent was given. However, section (g)(1) of that regulation says that a school is not subject to that timeline if “the parent or parents of the child who is to be evaluated repeatedly fail or refuse to produce the child for the evaluation.”

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So, when parents fail to make a student available for an evaluation or re-evaluation, the school may notify the parent (using a PWN) that the evaluation or re-evaluation will not proceed until such time as the parents produce the student. This will not constitute a failure to complete the evaluation or re-evaluation within 60 school days because it is an exception to that requirement.

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With regard to when you can re-evaluate a student without consent, Kansas regulation K.A.R. 91-40-27(g) says:

“(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child **if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond** (Emphasis added).

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91-40-17(e) says:

(1) An agency may conduct an IEP team meeting without parental participation if the agency, despite repeated attempts, has been unable to contact the parent or parents or to convince them that they should participate **and may proceed with a reevaluation, a material change in services or a substantial change in placement without consent** if the agency has provided the parents with at least two Prior Written Notices and the parents have failed to respond.

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(2) If an agency conducts an IEP team meeting without parental participation, the agency shall have a record of the attempts that the agency made to contact the parents to provide them notice of the meeting and to secure their participation. The record shall include **at least two of the following:**

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(A) Detailed records of telephone calls made or attempted, including the date, time, and person making the calls and the results of the calls.

(B) detailed records of visits made to the parent's home, including the date, time, and person making the visit and the results of the visit.

(C) copies of correspondence sent to each parent and any responses received; and

(D) detailed records of any other method attempted to contact the parents and the results of that attempt. (Bold print added to apply K.A.R. 91-40-27(g))

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*For proceeding with a reevaluation, a material change in services or a substantial change in placement without parent consent the agency must have at least two Prior Written Notices.

Keep in mind that is a minimum standard. An agency may certainly make more than two attempts before proceeding with a re-evaluation, a material change in services or a substantial change in placement. Also note that in each attempt, the parent must be given a reasonable time in which to respond (at least 15 school days, unless that would be unreasonable).

Brian



Q&A: Parents Refuse to Meet



Following an initial evaluation, the District attempts to set up multiple IEP team meetings, offering a number of meeting dates/times and considering parents' proposed dates/times. Parents decline all proposed meeting dates, including their own proposed dates. In general, what is a District's obligation if parents continue to reschedule or decline any date proposed by a District? And, what is a District's obligation regarding truancy for a student who has been found eligible for an IEP, but parents have not agreed to services?

Q&A: Parents Refuse to Meet



when a district believes a parent is refusing to meet and/or refusing to consent to the initial IEP offered by the district, the district may notify the parent with a PWN that its IEP offer stands but that it will not implement its proposed IEP, with the explanation that state law at K.S.A. 72-3428(g) prohibits a district from initiating services and from taking any further action to get authority for implementing the proposed IEP (such as due process – or a truancy report).

Q&A: Parents Refuse to Meet



The explanation portion of the PWN could include the applicable statute. Section (g) is below:

(g) (1) If it is determined that a child is an exceptional child, the agency shall seek consent from the parent of the child to provide special education and related services to the child. **No such services shall be provided until consent is given by the parent.**

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- (2) If the parent of a child refuses to consent to the provision of services, or fails to respond to a request for consent to services, the agency:
- (A) Shall not initiate any procedure or proceeding under this act to gain authority to provide services to the child;
 - (B) shall not be considered to be in violation of the requirement to provide a free appropriate public education to the child; and
 - (C) shall not be required to convene an IEP meeting or develop an IEP for the child. (Emphasis added)

Q&A: Parents Refuse to Meet



With regard to question 2, that is not a truancy question. Although the student is eligible for special education, the student has no IEP and so is not subject to the compulsory attendance statute for exceptional children. Parents have a statutory right to refuse to give or withhold “voluntary” consent. Also note (g)(2)(A) above. A RWA letter never hurts but is not necessary given the PWN described above.

Brian



James F. v. Clear Creek School District, 126 LRP 5448 (S.D. Tex. 2026)



At the student's 2020 triennial reevaluation, the district concluded that he had a cortical visual impairment but that it did not adversely impact his educational performance. It refused to add visual impairment to the student's list of disabilities (SLD and OHI). The court acknowledged that the parents did not argue that the accommodations found in the student's IEP were insufficient but instead took issue with the district's conclusion that the student is not visually impaired.

James F. v. Clear Creek School District, 126 LRP 5448 (S.D. Tex. 2026)



The court said that argument is misplaced because "Various courts throughout the nation have ... held that school districts are **not required to classify a student into a particular category, or affix that student with a particular label.** Instead, the IDEA only requires that the school district provide an appropriate education."

James F. v. Clear Creek School District, 126 LRP 5448 (S.D. Tex. 2026)



300.304(c)6) In evaluating each child with a disability...the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.



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