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DIFFICULT PEOPLE, PLACES, & THINGS

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MASE Best Practices Conference

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I. CUSTODY.

A. What is Custody? There are two types of custody: legal and physical.

1. Legal custody. Legal custody is "the right to determine the child's upbringing, including education." Minn. Stat. § 518.003, subd. 3(a). The parent who has "legal custody" has most, but not all, parental rights.

2. Physical custody. Physical custody is "the routine daily care and control of the residence of the child." Minn. Stat. § 518.003, subd. 3(c).

B. Joint Custody. Depending on the custody arrangement or divorce decree, parents might share custody of minor children. In such cases, the parents are said to have "joint custody" of the child. Joint custody can be legal, physical, or both.

1. Joint legal custody. When parents share joint legal custody, "both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education." Minn. Stat. § 518.003, subd. 3(b).

2. Joint physical custody. If parents have joint physical custody, "the routine daily care and control and the residence of the child is structured between the [the parents]." Minn. Stat. § 518.003, subd. 3(d).

C. Unmarried parents. "The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established . . . or until custody is determined [pursuant to the Minnesota Statutes]." Minn. Stat. § 257.541, subd. 1.

D. Married Parents. In the case of children born to a married couple, the school must assume that both parents have full parental rights and share custody and decision-making authority.

1. **"Separated" parents**. Unless the parents are legally separated, the parents are still married, even if they are not living together. If the parents are legally separated, the school should review a copy of the separation order, like with a divorce, to determine the effect of the separation order on custody.

2. Absent a legal separation decree or agreement or court order that provides otherwise, both separated parents have equal decision-making authority.

E. Divorced Parents. Most disputes between parents arise in the context of divorce. In the case of divorce, the parents' rights are entirely dictated by the scope of the custody and/or divorce order.

F. Meeting Attendance.

1. Data and Meetings. Absent a court order to the contrary, both parents have the right:

a. "of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children;"

b. "to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences."

See Minn. Stat. § 518.17, subd. 3; Minn. Stat. § 120A.22, subd. 1a.

2. **Separate Meetings?**

a. Law. Absent a court order to the contrary, a "school is not required to hold a separate conference." *See* Minn. Stat. § 518.17, subd. 3; Minn. Stat. § 120A.22, subd. 1a. Even without such a court order, however, a school could accommodate the parents to alleviate tension at the meeting or even choose to offer separate meetings.

b. Order for Protection ("OFP"). An OFP between parents issued by a court could order one of the parents to have no contact with the other parent whether in person, by telephone, mail, e-mail, messaging, through a third party, or by any other means.

III. COMMUNICATION.

A. Communication Plans.

1. ***Forest Grove Sch. Dist. v. Student*, No. 3:14-CV-00444-AC, 2018 WL 6198281 (D. Or. Nov. 27, 2018).**

a. Facts. Due "to the volume and tone of Parent's emails received by the District's staff, the District put in place various communication protocols" regarding e-mails. At all times, however, the Parent had

"access to school staff by telephone" and her "in person" access to the school was maintained. The Parent also fully participated in IEP team meetings with her attorney and her input was reflected in the Student's program.

i. 2011-12 School Year. In November 2011, the District instituted a communication plan that directed the Parent to "summarize her concerns and consolidate them into a single, weekly email directed solely to" the case manager because "the District was having difficulty responding to Parent's multiple requests and assessing which requests were necessary to the ongoing IEP process." The case manager would then respond to the e-mail that day. The purpose of the communication plan was to "ensure effective communication." The Parent communicated with the case manager via e-mail.

In May 2012, the Parent was directed that all future e-mails must be sent initially to the special education coordinator and then the District's attorney. The change was made because a "large volume of emails" was sent, the tone "was terse and intimidating," and that staff were not comfortable responding especially in light of the due process hearing.

ii. 2012-13 School Year. In early September 2012, an administrative law judge issued a decision that included corrective action. In mid-September 2012, a new e-mail communication plan was instituted. Pursuant to the e-mail communication plan, the Parent was "instructed to direct all communications regarding the due process hearing" and the administrative law judge's decision to the District's legal counsel. In the week or two following the instruction, the Parent "sent multiple terse and aggressive emails to District staff, many combining issues concerning day-to-day issues along with the remedies" required by ALJ. As a result, in early October 2012, "the District blocked Parent's email from its server." In late October 2012, the Parents were authorized to "contact any of Student's teachers concerning classroom issues" and the special education director with "other special education issues."

In February 2013, the Parent again was sending a high volume of e-mails and the Parent was instructed "to limit

her contact for day-to-day issues to appropriate District staff, and issues relating to IEP changes, curriculum and their implementation to [the special education director] once per week, who would respond within three days."

The Parent continued to communicate with the District about the Student's IEP and fully participated in the Student's IEP team meetings. In fact, some of the Parent's suggested changes were included in the proposed IEP and the ESY services reflected the Parent's input.

b. Issue. Was the Student denied a FAPE?

c. Holding. The Court held that "[m]aximum parental participation is not the standard under the IDEA; rather, the standard is meaningful participation." *Id.* (citation omitted). The Court held that neither communication plan violated the IDEA because neither "seriously infringe[d]" the Parent's ability to participate in the formulation of the Student's IEP nor denied the Student a FAPE.

2. ***Broward Cty. (FL) Sch. Dist.*, 74 IDELR 109 (OCR 2018)**.

a. Facts. The Parent sent a high volume of e-mails to multiple school staff members. The District created a communication plan. The Parent was directed to send all the Parent's e-mails to the principal and assistant principal. The two administrators would then "clarify with the teachers any questions" the Parent had and respond to the Parent. The District instituted the communication plan because it wanted to "provide a more coordinated response to address the Student's academics." The Parent e-mailed the administrators and the administrators diligently responded to the Parent's "substantiative questions regarding the Student's academics" and the Parent "received meaningful communication in response to her questions."

b. Issue. Did the communication plan violate Section 504 and Title II of the Americans with Disabilities Act ("ADA")?

c. Holding. There was insufficient evidence of a violation of Section 504 and Title II. The communication plan did not affect the Parent "in an unwarranted, serious, lasting or tangible manner."

3. ***Flagstaff (AZ) Junior Academy*, 117 LRP 3118 (OCR 2016).**

   a. Facts. The Parent sent a high volume of e-mails to the Student's teacher (up to four per day) and expected a "prompt response." The e-mails also were "sarcastic, inflammatory, and attacking." The e-mails interfered with the teacher's ability to do his job. In response, the charter school developed in a communication plan where the teacher provided "one update each week" to the Parent and that all other communications with the Parent were between the director of the charter school and the Parent.

   b. Issue. Did the communication plan violate Section 504 and Title II of the ADA?

   c. Holding. There was insufficient evidence of a violation of Section 504 and Title II of the ADA. The Office for Civil Rights ("OCR") held that the charter school had a legitimate, non-retaliatory reason for the communication plan that was not a pretext for illegal retaliation.

4. ***Ringwood (NJ) Sch. Dist.*, 80 IDELR 232 (OCR 2021).**

   a. Facts. After the District lifted a communication plan that was instituted because the Parent sent "a large volume of emails" including e-mails that were "discourteous" and included "repeated[] and wrong[]" allegations, the Parent again over a six month period "sent a high volume of emails, which created confusion and required significant time for District staff to resolve; and the emails included language that was inappropriate and disrespectful to District staff." As a result, the District initiated another communication plan that required all e-mails intended for District staff members to be sent to the Director of Special Services. The Parent was still allowed to call the school, attend meetings, and make records requests.

   b. Issue. Did the communication plan violate Section 504 and Title II of the ADA?

   c. Holding. There was insufficient evidence of a violation of Section 504 and Title II. The District proffered legitimate, non-retaliatory reasons for imposing the communication plan that were not pretext for retaliation.

B. Parents' Use of A.I.

1. According to a 2025 nationally representative survey by The EdWeek Research Center, the following percentages of educators were certain or suspected a parent or student used A.I. to compose a complaint to or about them:

   a. 38% of district leaders;

   b. 30% of school leaders;

   c. 10% of teachers;

   See Education Week, *Schools Are Fielding Complaints Generated by AI. How You Can Tell* (Nov. 14, 2025), https://www.edweek.org/technology/schools-are-fielding-complaints-generated-by-ai-how-you-can-tell/2025/11.

2. According to EdWeek's survey, 25% of educators reported that it took more time to respond to a complaint they knew or suspected was composed with A.I. Educators reported that complaints drafted by A.I. can:

   a. Be very long, complex, and detailed;

   b. Use many legal terms and note many legal issues; and

   c. Be off topic and not align with the school's understanding of the parent or advocate's prior concerns.

   Id.

3. "Hallucinations."

   a. "The issue of AI programs populating and citing to fake or nonexistent legal authority, what has become known as AI 'hallucinations,' is an issue for courts that is becoming far too common." *Powhatan Cty. Sch. Bd. v. Skinger*, No. 3:24CV874, 2025 WL 1559593, at *9 (E.D. Va. June 2, 2025).

   b. ***Powhatan Cty. Sch. Bd. v. Skinger*, No. 3:24CV874, 2025 WL 1559593 (E.D. Va. June 2, 2025).** A *pro se* plaintiff, who had already brought "endless IDEA actions against Virgina school

boards," repeatedly "cited cases that do not exist" in a proceeding against a school board. The citations to non-existent cases was "likely" a result of the plaintiff's use of AI, including ChatGPT, which the plaintiff admitted to using.

IV. IEP TEAM MEETINGS AND IDEA DECISIONS.

A. IEP Team and Parental Input.

1. Team Members. Generally, IEP teams must include: (1) the parents; (2) a regular education teacher "if the child is, or may be, participating in the regular education environment"; (3) a special education teacher or, where appropriate, a special education provider; (4) a school district representative; and—when required or appropriate—(5) the child with a disability. 34 C.F.R. § 300.321(a). The IEP team also needs to include an "individual who can interpret the instructional implications of evaluation results," if not otherwise already an IEP team member. *Id.* At "the discretion of the parent or the [school district], other individuals who have knowledge or special expertise regarding the child" must also be IEP team members. *Id.* In addition, in certain situations related to transition services and with consent, a representative of a participating agency may require to be invited. 34 C.F.R. § 300.321(b).

    a. Member Selection. "[A]ppropriate professionals," which could include speech-language pathologists, should be included in the evaluation and eligibility determination as well as in the IEP meetings to develop the IEP. *Dear Colleague Letter*, 66 IDELR 21 (OSEP 2015). Districts should not have a set practice of always "including applied behavior analysis (ABA) therapists exclusively without including, or considering input from, speech language pathologists and other professionals who provide different types of specific therapies that may be appropriate for children with [autism spectrum disorder ("ASD")] when identifying IDEA services for children with ASD." *Dear Colleague Letter*, 66 IDELR 21 (OSEP 2015).

    b. Excusing Team Members. A required member of the IEP team from the school district can be excused from an IEP meeting, in whole or in part, if:

        i. the parent and school district agree, in writing, that "the attendance of the member is not necessary because the

member's area of the curriculum or related services is not being modified or discussed in the meeting;" or

ii. "when the meeting involves a modification to or discussion of the member's area of the curriculum or related services" if the parent—in writing—and school district agree and the "member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting." 34 C.F.R. § 300.321(e).

c. Purpose. The IDEA's IEP process is "designed to ensure that an appropriate program is developed to meet the unique individual needs of a child with a disability, and that services are identified based on the unique needs of the child by a team that include the child's parents." *Dear Colleague Letter*, 66 IDELR 21 (OSEP 2015).

2. Educators' Role. Educators on the IEP team must consider the input provided. Specifically, "[c]ompeting opinions and parental preferences should be considered during the formulation of an IEP." *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1037 (8th Cir. 2000). In addition, "[p]arents and guardians play a significant role in the IEP process, and a school district cannot refuse to consider their concerns or evidence when drafting an IEP. . . . [W]hen a school district predetermines the educational program to be provided to a [student with a disability], including the student's placement, prior to meeting with the parents and closes its mind to the concerns or evidence of the parents, the IEP is procedurally flawed and must be set aside because the parents were deprived of any meaningful opportunity to participate in the formulation process." *Fort Osage R-1 Sch. Dist. v. Sims ex rel. B.S.*, 641 F.3d 996, 1005 (8th Cir. 2011).

3. Parent's Role. "Parents who believe that their child would benefit from a particular type of therapy are entitled to present their views at meetings of their child's IEP team, to bring along experts in support, and to seek administrative review." *Gill*, 217 F.3d at 1038. However, IDEA "does not empower parents to make unilateral decisions about programs the public funds." *Id.*

B. METHODOLOGY.

1. Types of Methodologies. There are many programs to educate students with disabilities. For instance, "ABA therapy is just one methodology

used to address the needs of children with ASD and . . . [schools must] ensure that decisions regarding services are made based on the unique needs of each individual child with a disability." *Dear Colleague Letter*, 66 IDELR 21 (OSEP 2015). In fact, "autism experts have a variety of opinions about which type of program is best." *Gill*, 217 F.3d at 1038.

2. Selection of a Methodology.

a. Selection of a Methodology. Whether a student with a disability needs a specific methodology is an IEP team decision and depends on the needs of the individual child. *See Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46,540, 46,665 (Dep't of Educ. Aug. 14, 2006). For "many children," a specific methodology—such as ABA therapy—is not needed to provide a FAPE and thus, the IEP would "not need to address a specific approach." *See Letter to Wilson*, 37 IDELR 96 (OSEP 2002) (stating such is true under Part C of IDEA); *Letter to Anonymous*, 49 IDELR 258 (OSEP 2007) (same). In that case, the educators can select the methodology as long as the student is being provided a FAPE in the least restrictive environment ("LRE"). *E.S. v. Indep. Sch. Dist., No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); *Gill*, 217 F.3d at 1038.

b. Specific method. In "some cases," a student's unique needs may require a "particular methodology or instructional approach" and in such a situation the IEP team must propose an IEP or serve the student with an IEP that provides the particular methodology or instructional approach. *See Letter to Wilson*, 37 IDELR 96 (OSEP 2002) (stating such is true under Part C of IDEA); *Letter to Anonymous*, 49 IDELR 258 (OSEP 2007) (same); *see also A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 545 (2d Cir. 2017) (holding a school district "was bound, at a minimum, to require some level of ABA support in a 1:1 classroom setting").

c. Disability Category. "The IDEA does not dictate the services or accommodations to be provided to individual children based solely on the disability category in which the child has been classified, or the specific condition underlying the child's disability classification." OSERS, *Dear Colleague: Dyslexia Guidance* 1 (Oct. 23, 2015), https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-ideaiep-terms/.

C. Providers.

1. Selection of Providers. The school district can select the providers as long as the student is being provided a FAPE in the LRE. *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580*, 259 F. Supp. 2d 880, 884-886 (D. Minn. 2003); *see also Gill*, 217 F.3d at 1038. Furthermore, if a school district can provide a student a FAPE with its employees, the school district is not required to utilize the services of an outside provider regardless of whether the parent requests such or the outside provider is more equipped than school district employees to serve the student. The Minnesota federal district court explicitly held such in *Slama*, 259 F. Supp. 2d 880. In that case, a school district refused to allow a parent's preferred outside provider to be a student's personal care attendant ("PCA") without a clear reason beyond the outside provider not being a school district employee. *Id.* at 885. Instead, the school district selected a school district employed educational assistant. *Id.* at 881. The court held that the school district did not deny the student a FAPE. *Id.* at 886. The court reasoned that the school district's obligation was only to assign a PCA who was capable of providing the student a FAPE and that, while the preferred outside provider may have been the "best," the preferred outside provider was not necessary for the student to receive a FAPE. *Id.* at 885; *see also id.* at 882.

2. Staff Shortages. Staff shortages do not lessen a school district's obligation to provide students with disabilities a FAPE. *See, e.g.*, *Special Educ. Compl. 23-130C*, 123 LRP 21873 (Minn. SEA 2023).

D. Responding to a Parent's Request for a Specific Methodology or Provider.

1. Responding to Parents' Requests for Specific Methodology or Specific Provider. While the school district must consider the parent's request, it does not necessarily have to agree to the request. The key inquiry is what the student needs to receive a FAPE. As noted above, if the IEP team determines that the student is or can be provided a FAPE without the requested methodology or provider, the school district does not have to acquiesce to the parent's request. However, if the IEP team determines that the student needs the requested methodology or provider to receive a FAPE, the IEP team must propose an IEP that includes such.

2. Responding to Parents' Rejection of a Proposed IEP that Does Not Provide the Specific Methodology or Provider. The school district should attempt to reach an agreement with the parent and make clear that it stands ready to serve the student. The school district should also keep the

proposed IEP and written rejection in the student's file, as well as document its efforts to reach an agreement with the parent. *See Buffalo-Hanover-Montrose Independent School District #877*, 112 LRP 32683 (Minn. SEA 2011) (holding the District provided a FAPE as it offered services, sought to reach an agreement regarding the services, and made it clear it stood ready to serve the student).

3. Acquiescing to a Parent's Request Solely to Reach Agreement? Acquiescing to a parent's request is not necessarily a viable option even if the attempts to reach an alternative agreement are unsuccessful. If granting the request will not provide the student a FAPE in the LRE, the school district cannot grant the request. Nonetheless, granting a parent's request may be a viable option in some situations even if it is not required for the student to receive a FAPE. To the extent that acquiescing to the parent's request will not violate the student's right to a FAPE in the LRE, the school district may wish to grant the request.

V. OUTSIDE PROVIDERS.

A. Considerations Stemming from Parent Requests related to Outside Providers.

1. Consider the District's Obligations under IDEA and Section 504. Remember to analyze whether the request triggers obligations under IDEA and Section 504. This will be a fact-specific determination. For instance, the school must consider IDEA's FAPE obligation when determining how to respond to requests related to parentally provided private services. Likewise, pursuant "to the Section 504 regulation[s], a district may need to make adjustments to its policies to provide a student with a disability aids, benefits or services that are as effective as those provided to students without a disability." *Seminole Cty. (FL) Pub. Schs.*, 68 IDELR 23 (OCR 2016); *see also* 34 C.F.R. § 104.4(b). Similarly, "[t]he Title II implementing regulation[s] state[] that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." *Seminole Cty. (FL) Pub. Schs.*, 68 IDELR 23 (OCR 2016); *see also* 28 C.F.R. § 35.130(b)(7).

2. Consider Attendance. Schools must consider attendance when determining how to respond to parentally provided private services during the school day. States typically have laws and schools typically have

policies that address a student's attendance at school and under what circumstances attendance may be excused. Minnesota has such laws. *See* Minn. Stat. § 120A.22, subd. 5(a), subd. 6(a), subd. 12. Consistent with above, Section 504 and the ADA, can require the reasonable modification of an attendance policy in addressing a student's absences resulting from parentally provided services during the school day. *See Seminole Cty. (FL) Pub. Schs.*, 68 IDELR 23 (OCR 2016).

3. Care and Treatment. Schools must consider whether Minnesota's care and treatment rule is triggered.

   a. For purposes of Minnesota Rules, part 3525.2325, "pupils and regular education students placed in the following facilities by someone other than the district are considered to be placed for care and treatment: chemical dependency and other substance abuse treatment centers; shelter care facilities; home, due to accident or illness; hospitals; day treatment centers; correctional facilities; residential treatment centers; and mental health programs." Minn. R. 3525.2325, subp. 1.

   b. "The district in which the facility is located must provide regular education, special education, or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility, or in the student's home for care and treatment. Education services must be provided to a pupil or regular education student who is:

      i. prevented from attending the pupil's or student's normal school site for 15 consecutive school days; or

      ii. predicted to be absent from the normal school site for 15 consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or other court-appointed authority; or

      iii. health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent school days."

      Minn. R. 3525.2325, subp. 1.

c. "The responsibility for special instruction and services for a child with a disability temporarily placed in another district for care and treatment shall be determined in the following manner:

i. When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment program and an appropriate educational program for the child. . . . The resident district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

ii. When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program; and must bill the district of the child's residence for the actual cost of providing the program, as outlined in section 125A.11, [with limited exceptions].

iii. The district of residence shall pay tuition and other program costs, not including transportation costs, to the district providing the instruction and services. . . . Transportation costs must be paid by the district responsible for providing the transportation and the state must pay transportation aid to that district."

Minn. Stat. § 125A.15; *see also* Minn. Stat. § 125A.515, subd. 3 ("The district in which the children's residential facility is located must provide education services, including special education if eligible, to all students placed in a facility.").

d. Students "who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, and placed at home or in facilities not licensed by the Departments of Corrections or Human Services are entitled to regular and special education services consistent with this section or Minnesota Rules, part

3525.2325. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center." Minn. Stat. § 125A.515, subd. 10.

B. OAH No. 21-1300-38944 (Minn. SEA 2023).

1. Facts. During the 2021-22 school year, a student with an ASD diagnosis attended school five days per week in accordance with the student's IEP. The student made adequate progress on the student's IEP goals without regression. The student also received a Comprehensive Multi-Disciplinary Evaluation ("CMDE") and qualified for Early Intensive Developmental and Behavioral Intervention ("EIDBI") through the State of Minnesota based upon medical necessity. While the CMDE did not conclude that ABA was educationally necessary, it recommended that the student receive ABA 35 to 50 hours per week, including in school.

During approximately the 2022 summer, the student began receiving ABA therapy. The overall progress was "mixed."

During the 2022-23 school year, the student's IEP was again designed for the student to attend school five days per week. At the beginning of the school year, the student's parent requested for the student to receive ABA sessions at school. The school district rejected the request because it "did not allow private ABA therapists to come into its schools, and reiterated [the] offer 'to have regular virtual meetings with [the therapist] or go observe [the student] at ABA therapy." Also at the beginning of the 2022-23 school year, a doctor recommended that the student continue to receive special education services and ABA therapy. It was not recommended that the student specifically receive ABA therapy in school or instead of attending school.

Shortly thereafter, the parents notified the school district that the student would miss school three days per week to attend ABA therapy and the student's IEP team met to discuss the parents' request to have the student's ABA therapist attend school. The school district rejected the parents' request based on the student's educational needs, LRE considerations, school district professionals being able to meet the student's needs, compulsory attendance law, school district policy, and a lack of space at school.

In the winter of the 2022-23 school year, the student received another CMDE. The evaluator recommended 15 to 30 hours per week of ABA, including at the school.

Throughout the school year, the student attended ABA therapy three days per week. School district staff collaborated with Student's EIDBI providers. The student continued to make "some progress on the goals and objectives in [the student's] IEP." However, the student's "attendance at school for less than 40% of the time expected in [the student's] IEP . . . resulted in stagnation in some areas and, in some instances, regression, of [the student's] progress toward some of [the student's] goals."

2. Issue. Did the District deny the Student a FAPE by refusing to allow the student's private ABA therapist to attend school? If so, is the student entitled to compensatory education for the days the student went to ABA therapy instead of attending school?

3. Holding. The administrative law judge ("ALJ") held that the student does not have an educational need nor a medical need for an ABA therapist at school. The ALJ further held that the parents "have not established that Student is regressing because of not having [Student's] ABA therapist attend school with [Student]." Instead, the ALJ held that, "[t]o the extent that Student is not making expected progress, the lack of progress is most likely attributable to the failure to attend school five days a week." As such, "[t]o the extent that Student is not accessing [Student's] education, this is due to Parents' choosing ABA therapy with their preferred provider over school."

The ALJ further held that adopting Parents' request would not have complied with the LRE requirement. It would have "restrict[ed] Student's ability to attend class and interact with neurotypical children. As such, it would have been "unnecessarily restrictive where, as here, collaboration and consultation between providers will foster Student's progress."

The ALJ also held that, "[a]ssuming that some amount of ABA therapy is 'medically necessary' for a student, a district must evaluate the basis of the request, the purpose of the proposed services, and the potential for disruption." The ALJ held that the school district's concerns about "the presence of additional people in the classroom" potentially being "overstimulating and distracting to other students" is a "valid" concern.

In sum, the ALJ concluded that the District provided the student a FAPE. The ALJ also held that the student is not entitled to compensatory education.

IV. INSTRUCTION OUTSIDE THE "REGULAR" SCHOOL DAY.

A. Legal Principles.

1. Shortening the "Regular" School Day. For IDEA-eligible students, use the IEP process to shorten a student's school day. A student's school day should only be shortened to meet a student's individual needs.

2. Instruction Outside of the "Regular" School Day. IDEA's FAPE requirement obligates a school district to educate a student outside the "regular hours of the school day" if it is necessary to provide the student a FAPE. *Osseo Area Sch. v. A.J.T. ex rel. A.T.*, 96 F.4th 1062, 1066 (8th Cir. 2024).

B. *A.J.T. v. Osseo Area Schools*.

1. Facts. A.J.T. has a form of epilepsy. A.J.T. did not attend school until noon. Pursuant to her IEP, A.J.T. received intensive special education from noon until after the school day at 4:15 p.m. A.J.T.'s parents made requests for A.J.T. to receive additional evening instruction, but the District denied the requests.

2. Issue.

   a. Did the District deny A.J.T. a FAPE in violation of the IDEA?

   b. Did the District engage in disability discrimination in violation of Section 504 and Title II of the ADA?

3. IDEA Holding. The panel held that the school district denied the student a FAPE.

   a. The panel held that IDEA's FAPE requirement obligates a school district to educate a student outside the "regular hours of the school day" if it is necessary to provide the student a FAPE.

   b. The panel held that A.J.T. made "only slight progress in a few areas" over a period spanning multiple school years. For instance, A.J.T. did not meet her annual IEP goals from 2016 to 2020. The

panel held that the progress was *de minimis* and that the level of progress was "predictable" and "strong evidence" that the school district denied A.J.T. a FAPE.

c. The panel found that "toileting ability" is "essential" for A.J.T. to live a "healthy and dignified life" and that the District "remov[ing] her toileting goal for lack of time in the short day" for a period violated its obligation to provide a FAPE.

d. The panel held that the school district denying the evening instruction was a "purely administrative decision" and that "its choice to prioritize its administrative concerns had a negative impact on A.J.T.'s learning." The panel further held that A.J.T. "would have made more progress with evening instruction."

4. Section 504 and ADA Case.

a. Eighth Circuit's Holding. The Eighth Circuit panel held that the District could not be held liable for disability discrimination. The Eighth Circuit panel held that the law of the circuit requires plaintiffs to prove that school officials acted with bad faith or gross misjudgment when bringing Section 504 and ADA claims based on educational services for a student with a disability. The panel held that A.J.T. had failed to make such a showing. The school district met with the parents, updated A.J.T.'s IEP each year, provided the student a "variety of services" including intensive one-on-one instruction, extended A.J.T.'s school day so that she could safely leave school, and offered 16 three-hour sessions at home each summer. The panel concluded that, regardless of whether the school district complied with Section 504 and the ADA, the bad faith or gross misjudgment standard was not met. The entire Eighth Circuit declined to review the decision or, in other words, declined *en banc* review.

b. Nicole Reaves for the U.S., as Amicus Curiae. "[O]ne thing I would just point out is . . . just because after-hours education is required under the IDEA does not mean that that's a required reasonable accommodation under Title II and Section 504." *See* U.S. Tr., Ct Dkt. No. 24-249 (Oral Arg. Apr. 28, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/24-249_4fci.pdf.

c. Supreme Court's Holding. In a "narrow" holding that did not address whether the District engaged in discrimination, the Court held—in agreement with both parties—that ADA and Section 504 disability discrimination "claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts." The Court declined to make holdings on other issues, such as what the particular intent standard is for such claims. A two-Justice concurring opinion, however, noted that the District's undecided arguments on the particular intent standard "may have a point" and that in a future case those Justices "would be willing to address" the "important" and "serious arguments" raised by the District. The concurrence further instructed the lower courts to "carefully consider whether the existing standards comport with the Constitution and the underlying statutory text."

F. PARTICULAR SCHOOLS.

1. Legal Principles. Pursuant to IDEA's regulations, "[u]nless the IEP of a child with a disability requires some other arrangement, the child [must be] educated in the school that he or she would attend if nondisabled." 34 C.F.R. § 300.116(c).

2. *D.L. ex rel. Landon v. St. Louis City Sch. Dist.*, 950 F.3d 1057 (8th Cir. 2020).

a. Facts. D.L. is diagnosed with, among other disabilities, ASD. D.L. has special education toileting and behavioral needs. D.L.'s prior District school no longer had space and D.L.'s IEP team proposed placing D.L. at a new district school: (1) with no students with ASD nor ASD-specific resources; (2) staff lacking experience with toileting issues; and (3) that was only beneficial for students whose behavior issues were "purely voluntary." D.L. instead attended a private school that provided "autism-focused resources" and had "experienced staff." D.L. made academic progress at the private school.

b. Issues.

i. Did the proposal to have D.L. attend the new District school offer a FAPE?

ii. Was the private school appropriate for D.L.?

c. Holdings.

i. The new District school would not have provided D.L. a FAPE. It did not have the resources to address D.L.'s ASD-related needs. Furthermore, "[o]ne of the hallmarks of autism is that the behavioral issues associated with it are involuntary" and thus, the District cannot provide D.L. a FAPE "by placing him in a school limited to correcting purely voluntary behavior."

ii. The private school was appropriate for D.L. The school's "autism-focused resources and experienced staff" led to the Student making academic progress, which the Court found was a "significant factor" in determining that the private school was appropriate for D.L.'s behavioral needs.

3. *Thompson ex rel. M.C. v. Lakeville Area Schs.*, No. 24-CV-3717 (KMM/TNL), 2024 WL 4441769 (D. Minn. Oct. 8, 2024).

a. Facts. A student with a disability completed elementary school. The parent requested that the school district establish a developmental cognitive disability ("DCD") classroom at every middle school so that that the student, as well as other students with disabilities, could attend their neighborhood school. The school district declined the request to establish the DCD classroom at the student's neighborhood school not for discriminatory reasons but because it was "unworkable for a variety of reasons." The school district also declined the request to assign the student to his neighborhood school based on an individualized assessment of his educational needs and the educator's reasoned decision that a different school with a DCD classroom best met the student's needs.

b. Issue. Did the school district discriminate against the student based on his disability in violation of State and federal anti-discrimination laws when it declined to establish a DCD program at the student's neighborhood school and assigned the student to a different school with a DCD program?

c. Holding. The Court, in part, denied the plaintiff's motion for preliminary injunction because the plaintiff was unlikely to succeed on the merits of her claims. The Court held that plaintiff is unlikely to demonstrate that the school district denied the student the benefits of its programs or services, that the school district

discriminated against the student based on his disability, or that the school district acted in bad faith or with gross misjudgment. The Court reasoned that only reasonable accommodations are required by law and that there is no support for the proposition that the school district was required to "alter the entire model through which it provides special education services" so that it can provide all necessary special education services to each student with a disability at their neighborhood school. The Court further reasoned that the plaintiff cited no legal support for the conclusion that a school district engages in disability discrimination by assigning a student with a disability to a school other than the student's neighborhood school after concluding that the selected school best serves the student's needs.