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"Who's Right When Student Rights Conflict?"

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I. Introduction

II. Inclusion v. Safety

The Conflict: The right of a special education student with aggressive behavioral problems to inclusion and services, pursuant to his/her Individualized Education Program ("IEP") and the Least Restrictive Environment ("LRE") requirement, versus the rights of the other students to be kept safe from physical harm.

A. The special education student's rights are set forth in the Individuals with Disabilities Education Act ("IDEA").

1. LRE Requirement. Each public agency must ensure that:

a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

b. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §300.114.

2. Placement Decisions. According to the IDEA, in determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that:

a. The placement decision:

(1) Is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions.

b. The child's placement:

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 C.F.R. §300.116.

3. Parental consent is required for a change of placement. Pursuant to O.A.C. 3301-51-05(C)(5):

a. A "change of placement" means a change from one option on the continuum of alternative placements to another.

b. General rule: Informed parental consent must be obtained before making a change of placement of a child with a disability.

c. Exceptions. Informed parent consent need not be obtained before:

(1) A change of placement if the school district of residence can demonstrate that it has made reasonable efforts, as described in O.A.C. 3301-51-07, to obtain consent, and the child's parent has failed to respond.

(2) A change of placement of a child with a disability that is the result of a disciplinary action taken in accordance with law. *See* O.A.C. 3301-51-05(K)(20).

(3) Reviewing existing data as part of an evaluation or a reevaluation.

(4) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

4. Limitations on Disciplinary Removals. School personnel may remove a child with a disability, who violates a code of student conduct, from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent such alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, so long as those removals do not constitute a change of placement under 34 C.F.R. §300.536. 20 U.S.C. §1415(k)(1)(B); 34 C.F.R. §300.530(b).

a. A removal constitutes a change of placement pursuant to 34 C.F.R. §300.536 when the removal is for more than 10 consecutive school days, or the child has been subjected to a series of removals that constitute a pattern:

(1) The series of removals total more than 10 school days in a school year;

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

(3) 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.

b. Manifestation Determination: 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 local educational agency, parent, and relevant members of child's IEP Team must conduct a manifestation determination. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e).

(1) 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:

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

(b) If the conduct in question was the direct result of the Local Educational Agency's ("LEA") failure to implement the IEP.

(2) If it is determined that the conduct was a manifestation of the child's disability:

(a) General rule: The IEP Team must return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(b) "Special Circumstances" Exception: School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

(i) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State Educational Agency ("SEA") or an LEA;

(ii) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

34 C.F.R. §300.530(g).

B. Students' right to be kept safe is set forth in various Ohio statutes and cases, as well as implied in federal constitutional and statutory provisions. The following should be noted:

1. Schools boards and their employees are required to exercise due care to protect pupils from unreasonable, foreseeable risks.

2. Some additional duties may be imputed on teachers and administrators because they are often characterized as standing in "*loco parentis*" (in place of a parent) toward the children under their supervision.

In addition to potential civil liability, under O.R.C. §2919.22, it is a criminal violation for a parent, guardian, custodian, person having custody or control, or a person in *loco parentis* to create a substantial risk to the health or safety of a child by violating a duty of care, protection, or

support. While unlikely, it is possible that teachers and administrators may be subject to this statute.

3. The duty set forth in O.R.C. §2151.421 to report suspected child abuse includes a duty to report student-on-student assaults as suspected child abuse. *See* Crenshaw v. Columbus City School Dist. Bd. of Edn., 2008-Ohio-1424 (Ohio Ct. App. 10th Dist.).

C. Resolving the Conflict.

1. Legal options include:

a. Convene the IEP team to:

(1) Develop/revise a behavior intervention plan to address the special education student's behavior;

(2) Consider placement in the current setting with additional supports/services;

(3) Propose a more restrictive placement setting if necessary.

b. Follow procedures for implementing disciplinary removals to the extent permitted.

c. File for an expedited due process hearing pursuant to 34 C.F.R. §300.532 to seek an order for a 45-day placement in an interim alternative educational setting.

(1) 34 C.F.R. §300.532(b) states that a hearing officer may "order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines maintaining the current placement of the child is substantially likely to result in injury to the child or others."

(2) In White Bear Lake Area Schools, 113 LRP 28309 (SEA MN 2013), the ALJ granted a school district's request to change a student's placement to a therapeutic program for 45 days. Such placement was consistent with the recommendations of the child's doctors. The parent objected to the placement and stated, "It doesn't matter.

I'm his Mom and I know what he needs." The therapeutic program was sought in response the child's history of violent outbursts, including punching staff members in the face with a closed fist, punching himself in the face, biting staff members, head-butting others, climbing on a book shelf and then jumping off head first, and kicking a second-story window with the intent of breaking it. The ALJ pointed out that the district, despite its best efforts, was unable to address the behaviors, given that the student's behavior was unpredictable and occurred in a variety of settings. Thus, the student needed a controlled therapeutic environment to address his emotional and behavioral needs, and to address the underlying psychological condition that was causing his outbursts.

d. File for a due process hearing to seek an order implementing a proposed change of placement for which the parent refuses to provide consent. *See* In re Impartial Due Process Hearing of Middletown City Schools, Case No. SE 3141-2015 (Nov. 2, 2015).

2. Practical considerations/guidance.

III. Service Animals v. Animal Allergies

The Conflict: A student with a disability's right to bring a service animal to school versus the right of another student in the building to avoid such animal due to an allergy to the animal.

A. A student's right to bring a service animal to school is set forth in Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Americans with Disabilities Act of 1990 ("ADA").

1. Exceptions. A public entity may ask an individual with a disability to remove a service animal from the premises if:

a. The animal is out of control and the animal's handler does not take effective action to control it.

A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use one, or if such use would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal

must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). 28 C.F.R. §35.136(d).

b. The animal is not housebroken.

A public school district is not responsible for the care or supervision of a service animal. 28 C.F.R. §35.136(e).

c. The animal poses a "direct threat" to others.

(1) An animal that poses a "direct threat" to others is an animal that poses a significant risk to the health and safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids and services as provided in 28 C.F.R. §35.139. 42 U.S.C. §12111(3); 28 C.F.R. §36.208.

(2) Under 28 C.F.R. §35.139, the decision as to whether a service animal may pose an unacceptable risk or threat to others is to be based on a reasonable judgment that relies on the best available objective evidence, to ascertain:

(a) the nature, duration, and severity of the risk;

(b) the probability that the potential injury will actually occur; and

(c) whether reasonable modifications of policies, practices, procedures, or the provision of auxiliary aids and services will mitigate the risk to an acceptable level.

B. A student's right to have his/her pet allergy accommodated is set forth in Section 504 and the ADA, provided that the allergy rises to a "disability," and may further be protected under the IDEA.

1. Eligibility under Section 504 and the ADA – Definition of "Disability."

a. A person with a disability is defined as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. 34 C.F.R. §104.3(j).

Thus, a student has a "disability" because of an allergy if the allergy substantially limits a major life activity, such as breathing, respiratory function, immune system function, or learning.

b. A student may be disabled based on allergies that occur episodically, such as seasonal allergies, if the allergies would substantially limit a major life activity when active. *See* 42 USC §12102(4)(D).

c. Whether an impairment substantially limits a major life activity is to be determined "without regard to the ameliorative effects of mitigating measures." 42 USC §2102(4)(E)(i).

2. The Section 504 regulation at 34 C.F.R. §104.4(a) provides that schools may not discriminate against students with disabilities or exclude them from participating in or deny them the benefits of school programs.

a. The U.S. Department of Education's Office for Civil Rights ("OCR") interprets that provision to mean that schools must take steps to ensure that school environments are made as safe for students with disabilities as they are for nondisabled students. *See* Virginia Beach (VA) City Pub. Schs., 59 IDELR 54 (OCR 2012); Washington Montessori (NC) Pub. Charter Sch., 60 IDELR 79 (OCR 2012).

b. With respect to students with environmental sensitivities, OCR examines whether the district has reasonably attempted to meet such students' needs. *See, e.g.,* Litchfield Pub. Schs., 39 IDELR 244 (OCR 2003); *see also* Hampden-Wilbraham Reg'l Sch. Dist., 108 LRP 29931 (SEA MA 05/15/08) (finding that, although the IEP team did not agree with a doctor's recommendation that the student required an out of district placement, the team offered recommendations which took into account the student's sensitivity to fragrances and cleaning chemicals).

3. Eligibility under the IDEA.

a. A student with allergies may further be eligible for services under the IDEA if the student needs special education and related services because of the allergy disability. *See* M.A. v. Torrington Bd. of Edn., 62 IDELR 28 (D. Conn. 2013).

b. Other health impairment (OHI) – To be classified as OHI, a child must have limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment, and that: (i) is due to chronic or acute health problems, such as asthma, and (ii) adversely affects the child's educational performance. 34 C.F.R. §300.8(c)(9).

4. The obligation to Provide FAPE under the IDEA.

The failure to address a child's unique needs, including needs related to his/her allergies, in the IEP may amount to a denial of FAPE under the IDEA. *See, e.g.*, In re: Student with a Disability, 114 LRP 19510 (SEA KY 02/12/14) (stating that the issue of a child's health condition is "a relevant inquiry in determining whether FAPE has been provided").

C. Resolving the Conflict.

1. Grand Rapids (MI) Pub. Schs., 115 LRP 10965 (OCR 10/21/14). OCR found that the presence of students with allergies in a school did not excuse a district's decision to ban a parent's service animal from the building.

As stated by OCR, neither allergies nor fear of dogs are valid reasons for denying access or refusing services to persons with service animals. Rather, "the individuals concerned should both be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility."

2. Districts will also need to consider physically separating the students for nonacademic services and extracurricular activities.

3. Practical considerations/guidance.

IV. Food Intolerances/Allergies v. Freedom of Food Choice

The Conflict: The right of a student with celiac disease or a peanut allergy to avoid gluten or peanuts versus the rights of the rest of the students who desire to have gluten or peanuts for lunch, classroom parties, etc.

A. A student's right to have his/her food intolerance/allergy accommodated is set forth in Section 504 and the ADA, provided that the intolerance or allergy rises to a "disability," and may further be protected under the IDEA. *See* Section III(B), *supra.*

In addition, state law requires boards of education to establish policies "with respect to protecting students with peanut or other food allergies." *See* O.R.C. §3313.719.

1. Addressing a student's food intolerance or allergy is a highly-individualized process.

2. At times, appropriate accommodations for students with food intolerances or allergies will have either no or minor impact on other students in the classroom/building.

   a. Appropriate accommodations for students with food allergies may include: allowing the student to carry an epinephrine auto-injector; daily cleaning of surfaces at school; designating allergen-free tables in the cafeteria; training all necessary staff, including cafeteria staff, on a student's specific allergies; placing handwashing stations outside of the student's classroom; and/or developing an emergency response plan.

   b. Tolland (CT) School District, 46 IDELR 171 (OCR 2006) provides an example of a 504 Plan for a student with celiac disease that had limited impact on other students and that OCR found to be appropriate. The plan provided: 1) a permanent laminated bathroom pass; 2) a lunch menu with gluten-free choices; 3) gluten-free curriculum for cooking class; 4) a letter advising parents of the presence of a student with wheat and gluten allergies; 5) a list of safe snacks for the student's teachers; 6) the use of a signed agenda to help with organizational issues due to absenteeism; 7) that the parent would call school regarding late or missed assignments and to alert staff regarding issues that might affect the student's school performance that day; and 8) that the case manager would review the plan with the student and help the student develop advocacy skills.

3. Other times, a child's food allergy is so severe that a complete ban of the allergen has been found to be necessary. *See* Mystic Valley Reg'l Charter Sch., 40 IDELR 275 (SEA MA 2004) (a complete ban of peanut and tree nut products in the first-grader's classroom was a reasonable

accommodation under Section 504 that the charter school should have provided); South Windsor (CT) Pub. Schs., 49 IDELR 108 (OCR 2007) (banning peanuts and peanut products from a student's classroom).

B. The rights of other students to not be banned from possessing/eating the disputed foods have been alleged to be protected by various provisions of the United States Constitution, including:

1. The Equal Protection Clause; and

2. The Due Process Clauses of the Fifth and Fourteenth Amendments.

C. Resolving the Conflict.

1. In Liebau v. Romeo Community Schools, 61 IDELR 231 (Mich. Ct. App. 2013), a parent claimed that a schoolwide ban on peanut and tree nut products violated her daughter's right to equal protection and rights to substantive due process under the Constitution. However, as the court explained, the schoolwide ban does not violate such provisions so long as it is rationally related to a legitimate government interest. The court held that the district properly enacted the ban to protect the health and safety of the student with a life-threatening peanut and tree nut allergy, which was so severe that it was triggered by airborne exposure to nut products. The court further concluded that the schoolwide ban was necessary to accommodate the student's allergy.

2. Practical considerations/guidance.

V. Access v. Privacy

The Conflict: A transgender student's right to access facilities consistent with his/her gender identity versus the alleged right of privacy of the boys/girls of the District with whom the student would now be sharing a bathroom, locker room, or travel accommodations.

A. The transgender student's right to access facilities consistent with his/her gender identity has been found to be protected by Title IX of the Civil Rights Act of 1964.

1. Title IX states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any education program or activity receiving federal financial assistance."

2. G.G. ex rel. Grimm v. Gloucester City School. Bd., 4th Cir. Case No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016)

   a. The United States District Court for the Eastern District of Virginia rejected a transgender student's Title IX action against a school board after the school board prohibited the student from using the restroom facility consistent with the student's gender identity. The District Court interpreted the federal regulations permitting school districts to provide separate facilities based on "sex" as applying to the biological sex of a student.

   b. The Fourth Circuit Court of Appeals reversed the District Court's decision, finding that the U.S. Department of Education's own interpretation of its federal regulations should control over the school district's interpretation. Therefore, the Fourth Circuit held that when a school separates students on the basis of sex, the school "generally must treat transgender students consistent with their gender identity", as set forth in a January 2015 Dear Colleague Letter from OCR.

3. "Dear Colleague Letter on Transgender Students," (May 13, 2016).

   a. On May 13, 2016, the U.S. Department of Education and Department of Justice jointly issued a Dear Colleague letter stating that the Title IX's prohibition of sex discrimination in educational programs and activities encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status.

      According to the guidance, gender identity refers to an individual's internal sense of gender. In that regard, a person's gender identity may be different from or the same as the person's sex assigned at birth (which refers to the sex designation recorded on an infant's birth certificate).

   b. The guidance states that when a school provides sex-segregated activities and facilities, such as restrooms and locker rooms, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.

c. Likewise, with respect to travel accommodations, the guidance states that "a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students."

4. State of Texas et al. v. United States of America, 2016 WL 4426495 (N.D. Texas 2016).

a. Various states, state agencies, and school districts ("Plaintiffs") brought a lawsuit against the Department of Education, Department of Labor, and Department of Justice, among others ("Defendants"), challenging Defendants' assertion that Title IX requires that all persons must be afforded opportunity to have access to restrooms, locker rooms, and showers that match their gender identity rather than their biological sex.

b. The United States District Court for the Northern District of Texas ruled in favor of Plaintiffs and issued a preliminary injunction prohibiting the Defendants from taking action to enforce their May 13, 2016 guidance letter on the rights of transgender students under Title IX. The Court also ruled that the injunction applies nationwide, and ordered that Defendants are enjoined from commencing any new investigations to enforce their guidance regarding transgender students. This injunction remains in effect until the Court rules on the merits or until further ruling by the Fifth Circuit Court of Appeals.

5. Board of Education of the Highland Local School District v. United States Department of Education *et al.*, Case No. 2:16-CV-524 (S.D. Ohio 2016).

a. The student at issue, identified by the Court as Jane Doe, currently is an eleven-year-old student in the Highland Local School District ("District"). Jane is a transgender girl, and when Jane entered the first grade, her parents, identified by the Court as Joyce and John Doe, requested that the District treat Jane as female. The District agreed to address Jane by her female name and use the female pronoun when referring to her. However, the District had a policy that permitted Jane to use an individual restroom typically used by staff members, but did not permit Jane to use the girls' restroom.

b. In December of 2013, Joyce filed a complaint with the Office for Civil Rights ("OCR") alleging the District was discriminating against Jane by requiring her to use the individual restroom instead of the girls' restroom. On March 29, 2016, OCR notified the District that its policies toward Jane violated Title IX, and presented the District with a proposed resolution agreement that would require the District to grant Jane access to restrooms and other school facilities consistent with her gender identity. The District refused to enter into the resolution agreement.

c. On June 10, 2016, after the District had rejected the proposed resolution agreement, the District commenced this lawsuit by filing a complaint against the Department of Justice ("DOJ"), Department of Education ("DOE"), and other federal officials. In that regard, the District sought a preliminary injunction to prevent the DOE and DOJ from: (1) enforcing their interpretation that the term "sex" means "gender identity" under Title IX, and (2) requiring the District to provide transgender students with access to school facilities and overnight accommodations that are consistent with their gender identity. The Court denied the District's motion for a preliminary injunction, finding that it did not have jurisdiction. Specifically, the Court determined the District was required to exhaust its administrative remedies through OCR's enforcement proceedings before it could seek review of the matter by a court.

d. On July 21, 2016, Jane and her parents moved to intervene in this lawsuit, and the Court granted her motion. Jane alleged the District had violated her right to equal protection under the laws and her right to be free from sex discrimination, and sought a preliminary injunction requiring the District to "treat her as a girl and treat her the same as other girls, including using her female name and female pronouns and permitting Jane to use the same restroom as other girls at Highland Elementary School during the coming school year."

e. The Court granted Jane's motion for a preliminary injunction and ordered the District "to treat Jane Doe as the girl she is, including referring to her by female pronouns and her female name and allowing her to use the girls' restroom at Highland Elementary School."

f. Notably, the Court referenced the preliminary injunction recently issued in Texas, *et al.* v. United States, *et al.*, N.D. Tex. No. 7:16-cv-00054-O, 2016 WL 4426495 (Aug. 21, 2016), which prohibited the DOE and DOJ from enforcing its May 2016 guidance regarding transgender students. The Court determined the Texas preliminary injunction did not apply to this case because Ohio was not a party to Texas, and this case began prior to that preliminary injunction. The Court continued by noting its determination was consistent with the United States Supreme Court's statement that "injunctive relief should no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs" and further stated that, "to construe otherwise would prevent other district courts and courts of appeal from weighing in on the important issues presented in this case...." As such, the Court did not apply the Texas preliminary injunction in this case.

B. The other students' alleged privacy rights are claimed to be set forth in the Constitution.

C. Resolving the Conflict.

1. Students and Parents for Privacy v. U.S. Dept. of Edn., Case No. 1:16-cv-04945 (N.D. Ill.)

In May 2016, a group called "Students and Parents for Privacy" filed a lawsuit in federal court in Illinois against Township High School District 211 and the Department of Education (DOE) on behalf of 51 school district families who claim that the district and the Department of Education "trample students' privacy" rights and create an "intimidating and hostile environment" for girls who are being required to share the girls locker room and restrooms with a transgender girl. In October 2016, the Magistrate assigned to the case issued a report and recommendation, finding in favor of the defendants, and concluding that high school students do not have a constitutional protection against sharing locker rooms or bathrooms with transgender peers.

2. Practical considerations/guidance.

VI. Meaningful Parent Participation v. Educational Privacy

The Conflict: The right of a special education student to have his/her parent meaningfully participate in placement and other educational decisions and the alleged right to view a proposed or current placement as part of such participation versus the rights of other students in the classroom to have their educational placement and process kept confidential.

A. The right of the special education student to have his/her parent meaningfully participate in placement and other educational decisions is set forth in the IDEA and the case law interpreting its provisions.

In that regard, it has been regularly held that the failure to provide for meaningful participation by parents in the IEP process may result in a denial of FAPE. *See, e.g.,* Deal v. Hamilton County Bd. of Edn., 42 IDELR 109 (6th Cir. 2004), cert. denied, 110 LRP 46999, 546 U.S. 936 (2005), on remand, 46 IDELR 45 (E.D. Tenn. 2006), aff'd, 49 IDELR 123 (6th Cir. 2008).

B. The rights of other students in the classroom to have their educational placement and process kept confidential are set forth in the Family Educational Rights and Privacy Act ("FERPA"), as well as Ohio's Student Privacy Law, O.R.C. §3319.321.

FERPA generally requires that schools have written permission from the parent or eligible student in order to release any personally identifiable information from a student's education records. *See* 34 C.F.R. §99.31.

C. Resolving the Conflict.

1. For years, the U.S. Department of Education's Office of Special Education Programs ("OSEP") has opined, and state hearing officers have determined, that there is no statutory or regulatory authority that provides parents with an entitlement for either them or their professional representative to observe their child in the classroom or in a proposed educational placement. *See* Letter to Mamas, 42 IDELR 10 (OSEP 2004); Manatee County Sch. Dist., 51 IDELR 289 (SEA FL 2008), aff'd, 53 IDELR 149 (M.D. Fla. 2009); and In re: Student with a Disability, 51 IDELR 291 (SEA NY 2008).

2. John M. v. Cumberland Pub. School, 2015 WL 3505215 (D.R.I., 2015).

After the Cumberland Public School District ("District") moved a special education student's reading sessions from a resource classroom to a small

group setting in a different classroom, the student's mother requested to see the new classroom setting while class was in session. The District declined, citing confidentiality concerns. However, the District offered the mother an opportunity to view the classroom when there were no other students present.

The United States District Court ruled in the favor of the District. The Court held that the mother did not have a legal right to observe instruction in a special education classroom, and the District did not violate the IDEA by denying her request to watch the class in session. The Court found that there is no specific right in IDEA to view a proposed educational placement or learning environment. Neither the statute nor regulations provide a legal right for parents of children with disabilities to observe children in any current classroom or proposed educational placement. Further, the Court noted that the District did offer the mother the alternative of visiting the class when no other children were in attendance, which was a reasonable alternative to her request.

3. Practical considerations/guidance.

VII. Conclusion