SPECIAL EDUCATION LEGAL ALERT

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This month's update concerns two issues that were subject to recent court decisions and are of practical significance: (a) contingent IEPs for students in third-party placements, such as Medicaid-provided residential treatment facilities; and (b) restrictions on parental communications to district personnel based on a previous pattern of excessive or intimidating e-mails, calls, and/or visits.

In *L.T. v. North Penn School District* (2018), a federal district court in Pennsylvania addressed the extent, if any, of the IDEA obligations of the school district of residence to a child who is may be discharged from a residential treatment facility (RTF) that is outside of the district's boundaries. In this case, a 16-year-old with severe autism was in an RTF located in another Pennsylvania school district and at the expense of state Medicaid based on medical necessity. The parents received a notice that the student would be discharged due to a determination that the placement was no longer medically necessary. The district of residence took the position that it had no obligation to develop an IEP for the student until he re-enrolled upon discharge from the residential facility.

First, the court cited a previous federal court ruling in Pennsylvania (*I.H. v. Cumberland Valley School District*, 2012), which required a contingent IEP in an arguably similar cyber-school situation based on (1) the difference between FAPE and an IEP, and (2) the remedial purposes of the IDEA.	The court explained that (1) although overlapping, an IEP is merely "an offer of FAPE"; it is a prospective proposal for as compared with the actual delivery of FAPE, and (2) the remedial purpose of the IDEA outweighs the possibly futile purpose of returning the child for a day to establish actual residency or leaving the child in legal limbo.
Next, applying these two factors to the circumstances of this case, the court ruled that the resident district has the obligation under the IDEA to develop a contingent IEP for a child in an RTF beyond the district's boundaries.	This ruling is not likely limited to RTFs or this jurisdiction because *I.H.* was beyond this circumstance and it cited case law beyond Pennsylvania. Where this contingent-IEP ruling does extend, so does the accompanying obligation for evaluation, which was not at issue in this case.
The reference to a "contingent" IEP is a potential source of confusion. Although the RTF's notice of discharge prompted the action, the real trigger appears to be the parents' request, and the contingency ultimately is that the IEP is a proposal conditional upon the parents' agreeing to the IEP or challenging it as not meeting the FAPE requirements.	In this case, all the parents actually won was the right to have a due process hearing to determine whether the IEP provided FAPE (in the LRE), because (1) the district had gone beyond what it had regarded as legally required by developing an IEP, (2) the proposed placement was at the district's high school, and (3) when the parents originally filed for due process, the hearing officer had granted the district's dismissal motion.

For the separate but similar issue of the respective but overlapping obligations under the IDEA of the district of location and the district of residence for parental private placements, see Perry A. Zirkel, *Legal Obligations to Students with Disabilities in Private Schools*, 351 EDUC. L. REP. 688 (2018), which is available as a free download at perryzirkel.com.

A recent cluster of cases illustrate the courts' position on school district communication protocols that limit, but do not prohibit, interactions from parents with disabilities in response to a previous pattern of disruptiveness. Although these unofficially published federal district court decisions are of limited precedential weight, they illustrate the various legal bases that the parents have asserted to challenge these restrictions and the relatively consistent outer boundary that the resulting rulings have demarcated.	
One basis for parental challenge is the IDEA. In *Forest Grove School District* (2018), a federal district court in Oregon ruled that the successive limitations that the school placed on the e-mails of a parent of a child with autism, which were based on their continuing excessive amount and increasingly aggressive tone, did not significantly deny the their opportunity for participation in the IEP process.	The district first required the parents' e-mails to go only to the case manager, then limiting these communications to one weekly e-mail to the case manager, and ultimately only to the district's attorney in response to the e-mails' increased excessiveness and aggressiveness. These restrictions did not affect the parents' telephone and in-person access. The court used the IDEA's FAPE standard for parents' rights—the opportunity for meaningful participation.
First Amendment expression and state civil rights legislation are other potential bases. In *L.F. v. Lake Washington School District #414* (2018), a federal district court in Washington State ruled that the successive restrictions that the school district placed on in-person meetings with the divorced father of a child with disabilities in response to his continuing pattern of angry and hostile encounters with district personnel did not violate the freedom of expression under the First Amendment or the anti-discrimination provision of the state civil rights act in relation to sex and marital status.	The district successively limited all parental communications first to one biweekly meeting with three designated school representatives; second, in response to the parent's continued violations, to one meeting per month; and finally, upon further violations, to e-mail only. The restrictions did not apply to the parent's access to the child's school records, the activities open to parents, and any emergency situations. For the First Amendment, the communication limits were based on the means, not the content of expression, and they met the resulting test of being reasonable and viewpoint-neutral. For the state civil rights statute, the parent did not show sex or marital discrimination.
Another possible basis consists of Section 504 and the Americans with Disabilities Act (ADA). In the aforementioned *L.F.* decision, the court rejected the parent's Section 504 retaliation claim based on the lack of a causal link between the protected activity of the parent's lawsuit and the district's adverse action of the communication restrictions. In *Lagervall v. Missoula County Public Schools* (2018), a federal district court in Montana provided a more comprehensive analysis in response to the more specific pertinent provisions of the ADA to reach the same overall outcome.	Section 504 and, more specifically, the ADA prohibit disability-based retaliation. Both the *L.F.* and *Lagervall* decisions concluded that the parent failed to show a causal link between any protected activity and the adverse action; the likely reasoning was that the restrictions applied to this pattern of parental communications regardless of whether they were on behalf of a child with disabilities. This pair of statutes also prohibits disability-based coercion, but, as *Lagervall* ruled, the requisite causal link again was fatally missing. Finally, the ADA specifically requires "equally effective communication," but the *Lagervall* court found no violation in the specific case circumstances.
The bottom line is for school districts to make sure that any limitations on communications from parents with disabilities (a) have a legitimate, nondiscriminatory basis, and (b) are tailored to the level of disruptiveness without being all-encompassing or absolute in terms of access and interaction.	