SPECIAL EDUCATION LEGAL ALERT

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This month's update identifies two recent court decisions addressing a range of IDEA issues, including child find and both the procedural and substantive dimensions of FAPE. For related publications and earlier monthly updates, see **perryzirkel.com**.

On September 19, 2022, the Fifth Circuit Court of Appeals issued an unpublished decision in *Heather B. v. Houston Independent School District*, addressing the respective IDEA obligations to a parentally-placed private school student when the private school is located in a school district other than the one in which the family resides. In this case, 4 years after withdrawing their child from preschool in district A and placing her in a private school within its boundaries, the parents moved to district B. Almost 2 years later they e-mailed representatives of both districts asking about the availability of vision services for their child with low vision. The district B representative soon resigned, without sharing the email with any colleagues. However, the district A representative arranged for an evaluation, which ultimately determined that she met the eligibility standards. The parents then sought services from both districts. Shortly thereafter, they filed for due process hearings against both districts based on child find and FAPE. District A agreed to meet to determine whether she qualified for a service plan under the IDEA obligation for equitable services. District B, where the parents resided, also agreed to eligibility and proposed an IEP with which the parents disagreed. Applying the statute of limitations, which in Texas is only one year, the hearing officers ruled in favor of the defendant districts. The case ultimately proceeded to the Fifth Circuit Court of Appeals.	
The parents claimed that A, the district of location, violated its child find obligation by not referring her for an evaluation within a reasonable period of time after having reasonable suspicion of IDEA eligibility.	The Fifth Circuit concluded, based on the undisputed one-year limitation period, that district A took proactive steps that, under the particular circumstances of this case, met the reasonable-time component for initiating the formal eligibility evaluation of the child.
The parents claimed that B, the district of residence, had the requisite reasonable suspicion upon their email and did not initiate the evaluation within reasonable time thereafter.	The Fifth Circuit concluded that district B did not have the requisite notice until the parents followed up with their specific request for services and that the one-month period until the initiation of the evaluation was "well within the boundaries of reasonableness."
The parents also claimed that, contrary to the regulations, district B did not propose its IEP until a month after the school year started.	The Fifth Circuit concluded that this delay in meeting the regulatory deadline was attributable to the parents' delay in returning the consent form, their rescheduling of the IEP meeting, and a further delay caused by a hurricane.
This case illustrates the confusing IDEA obligations, which overlap but are not identical, when the private school and the residence are in different districts for a parentally-placed (as compared with unilaterally-placed) child who may have, or be suspected of having, a disability. Also of note, for due process complaints filed after September 1, 2022, Texas has changed its statute of limitations to conform to the two-year period (from the KOSHK date) that applies in most states under the IDEA.	

On August 25, 2022, a federal district court in New York addressed multiple issues in an unpublished decision in *E.L. v. Bedford Central School District*. In this case, near the end of grade 1 the teacher noted the student J's struggles with reading and writing, suggesting to the parents that J might have dyslexia. During grade 2, the district provided J with tier 1 RTI services. Dissatisfied with J's progress, the parents arranged for private tutoring and an independent education evaluation (IEE), which concluded that J had a specific learning disability (SLD) in reading. Early in grade 3, the parents shared the IEE with the school district. Based on J's continuing difficulties with reading, the district provided J with tier 2 RTI services for a few months, but upon J's achieving the benchmark at that level, moved J back to tier 1. In grade 4, based on J's less-than-proficient score on the statewide testing in language arts, the district changed J back to tier 2. At a meeting in late October, the parents requested an eligibility evaluation under the IDEA. After the completion of the evaluation in December, the multi-disciplinary team determined that J qualified for special education services under the SLD classification. In January, the IEP team issued a proposed IEP that included resource room services in 45-minute intervals 4 times per week, access to voice-to-text software, monthly occupational therapy consultation, and various accommodations. The parents rejected the proposed IEP, also complaining about alleged bullying of J. After providing timely notice for tuition reimbursement, they unilaterally placed J in a private school. In July, the IEP team proposed an IEP for grade 5 in the district, which increased the resource room services from 4 to 5 days per week, added a monthly counseling consultation, and revised the goals in reading. The parents rejected this IEP and continued J at the unilateral private placement. The hearing officer ruled in favor of the district on the parents' child find and FAPE claims, denying reimbursement or other relief. The review officer reversed the child find ruling but provided no relief. The parents appealed to the federal court.	
First, the parents claimed that the school district failed to comply with the IDEA's requirement for providing a response to the parents' due process hearing complaint.	The court concluded that (a) the parents waived this claim by not raising it at the hearing officer or review officer levels, and, in any event, (b) the parents failed to show the requisite loss to the parents' rights for meaningful participation or the student's substantive right to FAPE.
Second, the parents claimed that the district's evaluation did not meet the requirement for valid and reliable testing.	The court concluded that the evaluation's selection and administration of testing instruments either were not procedural violations or, in any event, did not result in a substantive denial of FAPE to the parents or the student.
Third, the parents challenged the review officer's failure to provide a remedy for the child find ruling, and the district claimed no such violation.	The court concluded that the district had the requisite reasonable suspicion in grade 3 upon receiving the first IEE and not showing progress in its RTI services, but upheld the denial of reimbursement for tutoring based on the lack of parents' request for relief.
Next, the parents alleged that bullying amounted to a denial of FAPE.	The court found that the principal had investigated the alleged bullying and had credibly concluded that it had no connection to the student's disability or FAPE.
Last, the parents' claimed that the two proposed IEPs were not substantively appropriate.	The court concluded that both IEPs met the *Endrew F.* "reasonably calculated" standard and, thus, the parents were not entitled to tuition reimbursement without the need to address the appropriateness of the unilateral placement and the equities.
This multiple rulings in this case are typical of the judicially deferential approach, although the lack of remedial relief for the child find violation is subject to question in light of the court's rather cursory analysis and the child's undisputed eligibility for FAPE.	