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**HOT TOPICS IN SPECIAL EDUCATION**

**New Leaders Cohort**

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1. **School Districts Have two Basic Obligations Under the Individuals with Disabilities Education Act (“IDEA”)**
2. Comply with the Procedure Requirements of the IDEA; and

This includes providing parents with an opportunity to meaningfully participate in the development of the child’s educational plan. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.345.

1. Provide students with “an Individualized Education Program developed through the [IDEA’s] procedures that is reasonably calculated to enable the child to receive educational benefits.” *Hendrick Hudson Dist. Bd. Of Ed. v. Rowley*, 458 U.S. 176, 206-07 (1982).
2. **What is a Free Appropriate Public Education (“FAPE”)?**
   * 1. Under the IDEA, FAPE is the provision of individualized special education and related services that permit students to receive meaningful educational benefit. *Rowley*, 458 U.S. at 206-07. The services must:
3. be “provided at public expense, under public supervision and direction, and without charge;”
4. meet the State standards, including the requirements of the IDEA regulations;
5. “include an appropriate preschool, elementary school, or secondary school education in the State involved;” and
6. be “provided in conformity with an [IEP] that meets the requirements of [IDEA regulations].”

34 C.F.R. § 300.17.

* + 1. ***Endrew v. Douglas County School District*, 137 S. Ct. 988 (2017)**

1. **Facts.** Endrew, a child diagnosed with autism, received annual IEPs from preschool through fourth grade. His IEP goals and objectives largely carried over from one year to the next, without significant improvement on Endrew’s problematic behaviors. Endrew’s parents believed his academic and functional progress had stalled and, when the district proposed a similar IEP for Endrew’s fifth grade year, they withdrew him from public school. Endrew’s parents then placed him in a private school that specializes in educating students diagnosed with autism. Endrew’s parents eventually filed a complaint seeking reimbursement for the tuition they paid to that private school.
2. **Issue.** What level of educational benefit is guaranteed under the IDEA?
3. **Holding.** Explicitly rejecting that merely more than *de minimis* progress is required for a FAPE, the Supreme Court opted for a more rigorous standard. The new standard requires each child’s educational program to be “appropriately ambitious in light of his circumstances” and grant “every child the chance to meet challenging objectives.”
4. **Implication.**  Prior to this ruling, the Eighth Circuit Court of Appeals, which has jurisdiction over Minnesota, declared that FAPE required schools to provide an IDEA-eligible student with an IEP that confers “some educational benefit” that is more than trivial. *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)*; see also* *E.S. v, Ind. Sch. Dist. No. 196*, 135 F.3d 566, 569 (8th Cir. 1998). This standard was similar to the *de minimis* standard that the Supreme Court rejected in *Endrew*. The *Endrew* standard is more demanding and, accordingly, IEP teams will need to reevaluate whether the goals in students’ IEP are “appropriately ambitious” based on the student’s individual needs.
5. **The Takeaway.** IEP teams should take care to document the rationale for goals and services in the IEP. Given the standard set forth in *Endrew*, that documentation should include the discussion of why each goal is appropriately ambitious for the student. If an IEP is challenged, school officials should be able to point to documentation that clearly outlines the team’s reasoning. The lack of any record of the team’s decision-making process may be used against the school in the event of a legal challenge.
6. **Implementation of the IEP Matters**
7. The IDEA provides that, in order to constitute a FAPE, special education and related services must be “**provided in conformity with** an [IEP] that meets the requirements of [IDEA regulations].” 34 C.F.R. § 300.17 (emphasis added).
8. *Julie Denny, individually & on behalf of H.A.B., v. Bertha-Hewitt Pub. Sch., Indep. Sch. Dist. No. 786*, 2017 WL 4355968 (D. Minn. 2017).

In the *H.A.B.* case, the United States District Court for the District of Minnesota issued a decision regarding a school district’s provision of FAPE to an eleven-year-old girl with Down Syndrome. After an administrative hearing where an ALJ concluded that the parent of the student did not meet her burden to establish that the district failed to provide the student with a FAPE, the parent and student filed a lawsuit in federal district court, appealing an ALJ’s decision under the IDEA and bringing a number of additional claims under state and federal law. The court’s decision was lengthy and fact-specific. Ultimately, the school district prevailed, and the two motions brought by the student and her mother were dismissed because the court concluded that any procedural violations made by the district were minor and did not compromise the student’s right to a FAPE and that the district had not substantively violated the IDEA. The key takeaways are as follows:

1. Procedural violations do not necessarily amount to a substantive violation of the IDEA. In this case, the district had a number of procedural violations, yet the court determined that the student was still provided with a FAPE. To be clear, if the procedural violations were such that the student was denied a FAPE, those violations *would* constitute a violation of the IDEA.
2. What is written in the IEP matters, as does staff’s implementation of the IEP. When considering whether the district materially deviated from the student’s IEP, the court looked to the language of the IEP which explicitly allowed for the student to be removed from the mainstream classroom if necessary to avoid disruption. The court determined the plaintiffs in this case failed to demonstrate a failure to implement substantial or significant provisions of the IEP based, in part, on the claim that the student was not in her mainstream classroom at dedicated times. Looking to the IEP, the court noted that “this [was] particularly true in light of the IEPs’ provisions” regarding removing the student from the mainstream classroom. The court again emphasized this same language when considering whether the district failed to serve the student in the least restrictive environment consistent with her IEP.
3. The court expressly declined to conclude in this case that two isolated incidents of a potentially improper restraint being used on the student violated any relevant Minnesota laws governing the use of restraints in schools. The court opined “[e]ven if there were such a violation, it would not support the conclusion that the District denied the Student a FAPE….”
4. While it is always advisable to document, document, document, in this case, the court concluded that any inadequacies in the district’s documentation of the student’s education did not amount to an actionable procedural violation under the IDEA. Furthermore, the court noted that it was not aware of any affirmative obligations within the IDEA requiring schools to generate records upon a parent’s request.
5. Recent MDE complaint decisions emphasize that students are entitled to receive the services identified in their IEP.
6. **Best Practices for Ensuring Implementation of the IEP.**
7. **Potential Consequences for Failing to Implement an IEP.**

**IV. The Importance of Working as a Team**

Developing and implementing effective management skills is essential to being an effective educator. These considerations are especially important in the special education context, where administrators must work intimately with parents. Parents and administrators may differ drastically on their notions of what is best for the children. Even other co-workers may frustrate the IEP team process. Emotions can run high, but the stakes are even higher. It is therefore essential to develop strategies for working effectively with parents.

* 1. **Meaningful Participation.** School districts are obligated to provide parents an adequate opportunity to meaningfully participate in the IEP process. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.345. The IDEA requires that all significant decisions regarding a child with a disability’s program of education be made, in the first instance, by the IEP team, including the parents.
  2. **School Districts Have the Obligation to “Consider” Information Provided by Parents.** The IEP team must fully consider any request that parents make to change the identification, evaluation, or special education services provided to their child. Full consideration entails consideration of all facts and circumstances relevant to the decision, as well as the range of available alternatives.

For IDEA purposes, the term “consider” is not synonymous with “accept,” “agree,” or “incorporate.” *K.E. v. Independent School District No. 15*, 647 F.3d 795, 805-06 (8th Cir. 2011); *see also Evans v. Dist. No. 17*, 841 F.2d 824, 830 (8th Cir. 1988); *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942, 947 (1st Cir. 1991). An IEP team “considers” parental requests when it discusses them at a team meeting. *Id.* Actually incorporating parent input into the IEP, however, is strong evidence that the team “considered” the parent’s request. *Id.*

* 1. **Parents may not Dictate IEP Team Decisions.** The IDEA does not require that school districts simply accede to parents’ demands. *See Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999). A school district’s adherence to a decision does not constitute a procedural violation of IDEA simply because the district did not grant a parent’s request. Parents have the right to participate, not to dictate the IEP team decisions.

Parent preference alone cannot be the basis for compelling a school district to provide a particular education plan for a child with disabilities. *See Slama v. Independent Sch. Dist. No. 2580*, 259 F.Supp.2d 880, 885 (D. Minn. 2003). In *Slama*, the Court held that “no parent of a public school child – whether disabled or not –is entitled to select every component of the child’s education,” and that “an IEP is to be created by an IEP team, and not dictated by the parents of the student.” 259 F.Supp.2d at 889.

**V. Child Find Obligations**

* 1. The IDEA requires school districts to identify, locate, and evaluate children with disabilities who reside in their district. This so-called “child find” obligation is triggered where a district has reason to suspect that the child may have a disability and that special education services may be necessary to address that disability.” *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 942 (E.D. Va. 2010) (emphasis added).

The mere fact that a student has or may have an identified condition or diagnosis does not trigger a district’s child-find obligation. The district must also reasonably suspect that the student needs special education because of the condition. The student’s performance either with or without accommodations is a good barometer of whether the student needs special education. If a student struggles and fails to respond to interventions, the district should propose an evaluation, even if the student’s underlying disability is uncertain.

* 1. **Child Find Obligations in Light of the Pandemic**
     + - 1. OSERS has suggested that schools “should reexamine the efficacy of their existing child find practices and initiate new activities in light of the educational disruptions caused by the COVID-19 pandemic.” Return to School Roadmap: Q&A on Child Find (OSERS, August 24, 2021). As examples, OSERS suggests that additional screenings for children who demonstrate academic or behavioral needs may be required due to those disruptions. OSERS also suggests steps for raising awareness of the school’s child find activities.
         2. The fact that a student who had disrupted education made little academic progress is not necessarily grounds for a special education evaluation. The lack of progress, however, may be a factor that triggers the need to evaluate a student. Return to School Roadmap: Q&A on Child Find (OSERS, August 24, 2021).
         3. Long COVID may trigger a school’s child find obligation. Return to School Roadmap: Q&A on Child Find (OSERS, August 24, 2021).
         4. Students who are returning to school may experience new needs that derived from the pandemic or have been exacerbated by the return to school.
  2. **Absenteeism and Child Find**
     1. *Ind. Sch. Dist. 283 v. E.M.D.H.,* 960 F.3d 1073 (8th Cir. 2020), cert. denied, 2021 WL 4507624 (2021).
        1. **Facts.** In March 2015, when the Student was in eighth grade, the Student stopped attending school completely and was soon after diagnosed with “depression not otherwise specified and generalized anxiety disorder” at a psychiatric evaluation by the Prairie Care Medical Group. When the Student stopped attending school, one of her teachers brought her concern to a group consisting of the Student’s teachers and the Dean of Students, but “the group decided not to refer the Student to the District’s Student Intervention Teacher Team (“SITT”), which is one of the District’s child-find activities,” because the Student’s grades “were excellent when she attended school.” Furthermore, the school staff “were aware of the Student’s mental health issues and that the Student had been admitted to the Prairie Care day treatment program.” The Student’s attendance was again “irregular” in ninth grade. In April of 2017, the Parents requested that the District evaluate the Student’s eligibility for special education and the District agreed. The District never completed a functional behavioral assessment (“FBA”) nor systematic observations in the classroom or other learning environment. The District concluded that the Student did not qualify for special education in the serious emotional disturbance/emotional behavioral disorder (“EBD”) or other health disabilities (“OHD”) categories.
        2. **Issue.** Following a due process hearing, the Administrative Law Judge held that: (1) the “District failed to conduct an appropriate evaluation;” (2) the Student qualifies for special education under the EBD and OHD categories; and (3) the District violated its child-find obligations. The District challenged the above findings and both parties moved for judgment on the administrative record. The United States District Court for the District of Minnesota held in favor of the Student. The District appealed to the Eighth Circuit Court of Appeals.
        3. **Holding.** The Eighth Circuit affirmed the decision by the Administrative Law Judge and partially affirmed the District Court’s decision. The Court noted that Minnesota law requires that school districts “use technically sound instruments that are designed to assess the relative contribution of … behavioral factors” in conducting evaluations that determine eligibility under the IDEA. Additionally, with respect to determinations regarding EBD, evaluators must include data from, among other sources, “systematic observations in the classroom or other learning environment” and an FBA. Regarding OHD, evaluators must include data from, among other sources, “systematic observations in the classroom or other learning environment.” Therefore, because the District “concede[d] that it did not conduct any systematic observations of the Student in the classroom or an FBA,” the Court concluded that “the District’s evaluations of the Student in the fall of 2017 were deficient under Minnesota law.”

Second, the Court concluded that “the Student is eligible for special education and related services under both federal and state eligibility guidelines” for EBD and OHD because the Student’s mental health issues “appear to have directly impacted her attendance at school,” which “inhibited her progress in the general curriculum.”

Third, the Court concluded that the District failed its child-find obligations with respect to the Student because it was aware no later than the spring of 2015 that “the Student had stopped attending school because of her anxiety” and did not act on this information.

* + - 1. **Takeaway.** Students’ absences can be relevant in the “child find” process. While a Student’s attendance problems do not automatically trigger a school district’s “child find” obligations, *Round Rock Independent School Dist.*, 25 IDELR 336 (SEA July 8, 1996), a school district’s “child find” obligation may be triggered where there are significant absences, a reason to believe the absences are linked to a disability, and a need for services.

As such, “out of sight” cannot mean “out of mind.” In responding to excessive student absences, it is important that educators are proactive. Not only will responding proactively to students’ absences benefit the school district in this context by lowering the chances of costly administrative proceedings, it will also help students get back in school and resume learning.

* + 1. *Independent School District No. 413, Marshall v. H.M.J.*, 66 IDELR 41 (D. Minn. 2015).
       1. **Facts.** H.J. was an eight-year-old girl who was diagnosed with anaplastic large cell lymphoma in 2007 at the age of nineteen months. She underwent chemotherapy for one year, ending in August 2008. She has remained in remission for the last six years. Despite remaining in remission, H.J. continues to have frequent illnesses and infections. These conditions range from fevers, coughs, and colds, to constipation, bilateral lower extremity weakness, recurrent urinary tract infections, gastroesophageal reflux, insomnia, and anxiety.

When H.J. started kindergarten in the School District, her anxiety manifested in symptoms that disrupted her academic progress. One primary symptom was that H.J. exhibited separation anxiety when her mother would drop her off at school. She enrolled in therapy “due to concerns regarding difficulty separating from her mother in the morning at school.” According to her therapist [H.J.] would “scream and have a fit” when her mother dropped her off at school, with school staff requiring 20 minutes to calm her down. H.J.'s separation anxiety in the mornings continued during first grade, when her parents would accompany her to the classroom. In addition to separation anxiety in the mornings, H.J. would demonstrate anxiety and frequently report feeling physically ill from headaches or stomachaches throughout the day. At times, she would request to go to the nurse's office at least three times a day. The school nurse at H.J.'s elementary school reported that H.J. sometimes “seem[s] so nervous, and wants to have mom called and go home. Sometimes [she] is just convinced she is going be sick.”

In February 2012, when H.J. was in kindergarten, her parents took her to the Pediatric Neuropsychology Clinic at the University of Minnesota Medical Center Fairview. The Neuropsychology Clinic listed the reason for the visit as: “to assess her current neurobehavioral functioning in light of recent difficulties with anxiety.” The District provided a “school information form” as part of the evaluation, in which the social worker at H.J.'s elementary school “noted that she has observed [H.J.] to ‘act insecure, distracted, and anxious at school.’” The Neuropsychology Clinic ultimately diagnosed her on March 30, 2012 with “Generalized Anxiety Disorder” and made several specific recommendations about strategies for addressing H.J.'s anxiety in both a home and school setting.

Sometimes due to anxiety or illness and sometimes for various other reasons, H.J. missed a substantial amount of school from kindergarten through second grade. H.J.'s parents requested a special education evaluation, which the District performed in December 2013 and found H.J. ineligible for special education under the IDEA. The District developed an individualized health plan to address the H.J.’s asthma and had received a copy of the private neuropsychology evaluation that stated H.J. had anxiety.

* + - 1. **Issues.** Whether the School District failed to identify the Student as a possible child with a disability when it refused the Parents' requests for initial evaluation from kindergarten until October 2013?

Whether the School District failed to ensure the initial evaluation of the Student in December 2013 was sufficiently comprehensive to identify all of the Student's special education and related service needs?

Whether the Student is a child with a disability under the definition of “Other Health Disabilities” within Minnesota rules?

* + - 1. **Holding.** The Court determined that the district violated the IDEA when it failed to arrange a medical evaluation to determine whether an H.J.’s excessive absenteeism related to her private diagnoses of asthma and generalized anxiety disorder. Specifically, the district committed a child find violation by failing to fully evaluate H.J. The District’s special education evaluation of H.J. did not indicate that the team had adequate physician evaluations to reach a decision, or that the team had considered all of the OHD criteria and determined that H.J. was not eligible under them, it is not yet certain whether H.J. is entitled to specialized instruction or whether she has received a FAPE from the School District. As a result, the Court finds that the School District failed to consider comments from teachers on how H.J.’s anxiety was impacting her ability to pay attention in class or complete her work.
         1. **Reading Disabilities and Interventions**

1. ***Minnetonka Public Schools, Indep. Sch. Dist. No. 276 v. M.L.K.*, 42 F.4th 847 (8th Cir. 2022)**
   * + - 1. **Facts.** M.L.K., a special education student, began receiving special education services in 2014 under the criteria for Autism Spectrum Disorder. He was evaluated at the end of each year by an IEP team, who set goals for the following year. He progressed each year but still experienced difficulties. In 2019, M.L.K.’s parents requested and Independent Education Evaluation which formally diagnosed M.L.K. with ADHD and severe dyslexia. M.L.K.’s parents brought a due process challenge under IDEA claiming that the District denied M.L.K. a FAPE by failing to address M.L.K.’s most debilitating disabilities: dyslexia and ADHD. The administrative law judge (“ALJ”) held that the school denied M.L.K. a FAPE. The case was affirmed at the district court level and appealed to the Eighth Circuit.

2. **Issue.** If a school district misclassifies a student’s disability, is that considered a FAPE denial?

* + 1. **Holding.** Not necessarily. In reversing the ALJ and district court’s holding, the Eighth Circuit court held that a school district’s failure to identify a child’s most debilitating disabilities does not necessarily constitute a FAPE denial if his IEPs were reasonably calculated to enable the child to make appropriate progress in light of the child’s circumstances.
    2. **The Takeaway.** The IDEA requires that IEPs be tailored to unique needs of the particular child and “reasonably calculated” to enable a child to make progress appropriate in light of their circumstances. The Court emphasizes that “reasonably calculated” does not require that school district “maximize a student’s potential or provide the best possible education at public expense.” Rather, IDEA considers the child’s improvement rather than mastery of a specific subject. The 8th Circuit affirmed *Endrew* that judicial review of school decisions under the IDEA is limited. The review “is focused on ‘whether the IEP is *reasonable*, not whether the court regards it as ideal.’” (citing *Endrew F.*, 137 S.Ct. at 999).
       - 1. **Other Recent Decisions Affecting Special Education**
  1. ***Re: Special Education Complaint 22-027C, on behalf of V.S., L.S., and G.S. from Waconia ISD 0110-01*, No. A22-0250 (Minn. App. 2022) October 10, 2022**
     1. **Facts.** Students’ parents brought a complaint alleging that during the preceding calendar year, the district had failed to provide the students with special education and related services and had failed to consider parent’s concerns for enhancing the students’ education. Following an investigation, the Minnesota Department of Education (“MDE”) determined that the district had made special education and related services available to the students during the 2020-21 school year and had considered parent’s concerns for enhancing the students’ education. However, MDE concluded that the district violated federal and state law “when it failed to provide the students with special education and related services” during part of the 2021-22 school year. The MDE acknowledged the district’s extensive efforts to develop new IEPs for the students and to provide the students with special education and related services during the first half of the 2021-22 school year. It also recognized that parent refused to cooperate with the district and rejected all of the educational services that the district offered. The MDE issued a corrective-action order requiring the district to provide compensatory services to the students with disabilities despite parents rejecting special educational services that the district made available to the students.
     2. **Issue.**  Did the MDE improperly issue a corrective-action order requiring the district to provide compensatory services to students with disabilities when the district offered and made available special-educational services in conformity with the students’ existing IEPs that the students did not receive due to their parent’s rejection of the services and refusal to cooperate with the district?
     3. **Holding.**  The MDE’s decision and corrective-action order were based on an error of law. MDE’s decision failed to apply the plain language of section 125A.08(b) and the corresponding federal regulation by interpreting the obligation to “provide” special-educational services to require that a student actually receive those services. The court reversed MDE’s decision.
     4. **Impact.** A district is required to offer and make available special education and related services, but it may not be liable when a student does not receive the services offered when parents refuse to allow the student to receive the special education services offered.
  2. ***Osseo Area Schs. v. M.N.B.,* 970 F.3d 917 (8th Cir. 2020).**
     1. **Facts.**  M.N.B. resided in Big Lake District. She required special education. The Student’s IEP called for individual transportation to and from school and placed her at Karner Blue Education Center (“Karner”). The Student attended Karner during third and fourth grade. Accordingly, while the Student was in third and fourth grade, Big Lake District reimbursed M.N.B.’s mother based on mileage driven to and from Karner.

For M.N.B.’s fifth grade year, the mother applied under Minnesota’s open enrollment program for M.N.B. to enroll in Osseo Area Schools (“District”). Upon approval, M.N.B. was enrolled in the District and began attending the North Education Center (“School”), which is located five miles from the District and thirty-four miles from M.N.B.’s residence. The IEP developed at Big Lake District remained in effect during the court proceedings. As such, the School “is not located in the district where the student resides and is not the placement agreed upon by parents and school officials in the IEP that called for individual transportation.”

The mother sought reimbursement for mileage costs between M.N.B.’s residence and the School. The District maintained that because M.N.B. resided in Big Lake and attended the School via placement by it through the open enrollment program, it was only required to reimburse the mother for mileage costs from the border of the District to the School. The District declined to reimburse the mother for mileage costs between M.N.B.’s residence and the District’s border.

The District requested a due process hearing to address whether the District had to reimburse the full amount of transportation costs pursuant to IDEA. The ALJ ruled that the District was “required to reimburse the cost of transportation for the full distance between M.N.B.’s home and the school in which the Osseo District placed her.” The District challenged the decision in district court. The district court granted summary judgment in favor of the mother, reasoning that “[b]ecause the District is responsible for providing M.N.B. with a FAPE, it is necessarily responsible for providing her with specialized transportation as stated in her IEP.” The District appealed to the Eighth Circuit.

* + 1. **Issue.** “[W]hether the IDEA requires a school district that enrolls a nonresident student like M.N.B. to provide transportation between the student's home and the school district where her parent has chosen to enroll her?”
    2. **Holding and Takeaways.** The IDEA does not require a school district that enrolls a nonresident student like M.N.B. to provide transportation between the student's home and the school district where her parent has chosen to enroll her.

First, the Eighth Circuit held that the State of Minnesota “satisfied the obligation to provide a FAPE when the Big Lake District reimbursed the cost of transporting M.N.B. to and from the school that was agreed upon in her IEP[, Karner,] … and the IDEA does not unambiguously require the State to do more because M.N.B.’s parent unilaterally chose to enroll the student elsewhere.”

Second, the Court held that “the IDEA does not require the District to reimburse M.N.B.’s parent for the cost of transportation between her home and the border of the District” under the circumstances in the case. The Eighth Circuit reasoned that “governing Minnesota statutes and rule provide that when a school district enrolls a student through the open enrollment program, it must provide transportation only ‘within its borders’ or ‘within the district.’” Relatedly, “Minnesota law … provides that an enrolling district is responsible for transportation costs only within the district.”

* + 1. **One Caveat: Minnesota Department of Education Complaint Decision 21-035C.**
       1. **Facts.** The Student open enrolled in the District. The Student lived in a different school district. The District provided transportation to the Student prior to August 11, 2020. Effective August 11, 2020, the District decided it would no longer provide transportation outside of its borders or, in other words, it decided to transport non-resident students only within its borders. Instead, open-enrolled students outside of the District’s border were required to provide transportation to a District bus-stop within the District or the Parents could transport students.

As a result, during fall 2020, the Student’s Parent transported the Student to and from school. Nonetheless, the Student’s IEP in effect at the start of the 2020-21 school year continued to provide the Student with special transportation to and from school daily. The IEP explained that the Student required special transportation because the Student is “vulnerable to strangers and is not able to make safe decisions.”

In December 2020, the District revised the Student’s IEP, including the special transportation section. In the revised IEP, the special transportation section stated that transportation is provided within District boundaries and a pick up/drop off location can/will be provided to the Parents unless they choose to transport the Student to and from school each day. In addition, the section stated that the Student would be provided transportation to and from home to ESY. No additional supplemental aids and services pertaining to transportation were included in the Student’s IEP. The IEP went into effect in January 2021.

* + - 1. **Issues.**  Did the District provide the Student a FAPE from March 30, 2020 to December 7, 2020?Did the District’s transportation practices with respect to the Student comply with special education law?
      2. **MDE’s Decision.** The District violated federal special education law “when it failed to ensure the Student’s IEP team revised the Student’s IEP to address the Student’s anticipated transportation needs related to the August 2020 change in District policy regarding transportation of open-enrolled students.” First, MDE concluded that a school district is not required to provide special education transportation to students with disabilities outside its borders. As such, the District’s change in busing practices for the 2020-21 school year was permissible. Second, MDE concluded that it is “permissible for a school district to provide special education transportation for a student with a disability outside its borders. Specifically, … if a student’s IEP team determines on a case-by-case basis that special transportation across district borders is necessary to assist that student benefit from special education, the school district may provide this special transportation and seek reimbursement ….” Third, MDE concluded that the “Student’s IEP team determined on a case-by-case basis that special transportation across district borders is necessary to assist the Student to benefit from ESY services during summer 2021.” Fourth, MDE concluded that “the IEP team did not revise the Student’s IEP to address the Student’s anticipated needs related to the change in the pick-up and drop-off locations offered to the Student, including, as appropriate, supports to address the Student’s vulnerability to strangers and need for personal safety.”

As a result, the IEP team “must review and revise the Student’s IEP, as appropriate, to include any supplementary aids and services necessary to address the Student’s transportation needs … while being picked up and dropped off at the District boundary.”