

**SPECIAL
POINTS OF
INTEREST:**

- The Eastern District of Pennsylvania affirmed a hearing officer's decision regarding the appropriateness of a school district's modifications for a student's anxiety.
- A student's failure to achieve IEP goals does not automatically render an IEP inappropriate. School districts must monitor a student's progress in light of his or her circumstances.
- General education teachers are mandatory IEP Team members and should be sure to understand their role.

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District Court Rules Modifications for Anxiety Were Appropriate

The U.S. District Court of Eastern Pennsylvania found no evidence that a school district failed to provide an appropriate 504 plan for a student with anxiety, depression, and OCD.

Anxiety can form the basis of eligibility under Section 504 and the failure to appropriately address it in a student's IEP can result in a denial of FAPE. The Court found that the school district appropriately

addressed a student's anxiety when it offered accommodations that reduced the difficulty of homework and allowed the student to opt out of class presentations, based on the student's anxiety resulting from homework and public speaking.

The Eastern District Court of Pennsylvania reiterated that a school district must *reasonably* accommodate the needs of a child with a disability

to enable the child to have meaningful participation in school.

Although a school district need not provide an ideal or perfect education, school districts should be sure to offer accommodations and supports specifically geared toward addressing the student's disability so that the student can access their education.

[Read More about this case law update on page 2.](#)

General Education Teachers: Mandatory IEP Team Members

The IEP Team is responsible for developing, reviewing, and revising the special education program for a student with a disability. Districts, as well as parents, are free to invite other individuals who have knowledge or special expertise about the child; however, the IDEA requires specific members that must be part of the IEP Team. School district must be sure to ensure general educators, as required IEP Team members, understand their role in implementing students IEPs.

[Read More about General Education Teachers: Mandatory IEP Team Members on page 5.](#)

District Court Rules Modifications for Anxiety Were Appropriate

(continued from page 1)

H.D. v. Kennett Consolidated School District Eastern District of Pennsylvania

FACTS: The student, H.D., attended the school district beginning in first grade. H.D. performed well in school until the seventh grade, when he started exhibiting signs of anxiety. After the student received a medical diagnosis of anxiety, the school district evaluated H.D. to determine if he should be supported by Section 504 Service Agreement.

In the evaluation, H.D.'s parent provided input regarding his anxiety. Their input stated that H.D.'s anxiety often affected homework completion, which made it harder for him to sleep, get up in the morning, and get to school on time. H.D.'s parents also indicated that classroom participation or answering questions in front of the class also triggered his anxiety. The evaluation also included input from H.D.'s teachers that stated the student often seemed sleepy and required a significant amount of prompting.

The evaluation report recommended that the school district provide three accommodations: (1) assigned homework must be a practice of a lesson or skill that the student has already demonstrated an ability to complete independently; (2) when an assignment involves a class participation, the student will be given an option to present or an alternate to or excused from the class; and (3) when an assignment is graded for accuracy rather than completion, the student will be able to meet with the teacher to review the incorrect questions and will be given an additional day to complete the assignment for a grade.

The school district implemented these accommodations. After monitoring how the student responded to the new accommodations, the district acknowledged the Service Agreement was not serving H.D.'s needs and issued a Permission to Reevaluate to reevaluate H.D. Before the district could conduct a reevaluation, the parents sent H.D. to an out-of-state wilderness program.

PROCEDURAL HISTORY: The parents of H.D. filed a due process complaint asserting the district failed to provide FAPE to H.D. under the IDEA, Section 504, and the ADA. The parents alleged that the District violated Child Find obligations by failing to identify and evaluate H.D. prior to seventh grade. The complaint also asserted that the Service Agreement was inadequate and resulted in a denial of FAPE.

The hearing officer found that the school district had met its obligations under the IDEA and Section 504 of the Rehabilitation Act.



DECISION: The Eastern District of Pennsylvania found no evidence that the District developed an inappropriate Section 504 Plan for the student. Under the Rehabilitation Act, a school district must reasonably accommodate the needs of the child with a disability to ensure meaningful participation in educational activities and meaningful access to educational benefits. Although the 504 Plan did not address all sources of the student's anxiety, the school district implemented accommodations that were reasonably calculated to mitigate the student's absenteeism and improve his academic performance. The Court found that the school district provided accommodations that specifically addressed the anxiety triggers the parents reported to the district. Therefore, the Court affirmed the Hearing Officer's conclusion that the Service Agreement represented a reasonable attempt to address the student's anxiety.

WHAT IT MEANS: A district must ensure that the accommodations in a student's Section 504 plan meets his or her individual needs. However, it is not obligated to provide the best possible education. After the student reported that significant triggers for his anxiety and absenteeism were homework and public speaking, the school district appropriately offered accommodations that reduced difficulty of homework and offered alternatives for class presentations. The accommodations were aimed at managing the student's anxiety and encouraging him to school more frequently; therefore, the district offered the student FAPE.

CASE LAW UPDATE

Failure to Meet IEP Goals

**PERKIOMEN VALLEY SCHOOL DISTRICT v.
S.D.
Eastern District of Pennsylvania
Providing FAPE and IEP Goals**

FACTS: The student was enrolled at the school district at the beginning of third grade and was identified as a student with specific learning disabilities in reading, mathematics, and written expression. The school district created an IEP that included a reading fluency goal of 127 word correct per minute (wcpm) at a third-grade level probe. At that time, S.D.'s present level of achievement was calculated at 38 wcpm on a third grade level. The school district also administered a second grade probe, and S.D.'s median score was 58 wcpm.

The school district revised S.D.'s IEP in the middle of fourth grade. It was reported that S.D. improved to 80 wcpm on a second grade probe. No changes were made to S.D.'s goals.

At the end of S.D.'s fourth grade year, S.D.'s IEP was again revised. Her present levels of achievement indicated a median score of 87 wcpm on a fourth grade probe but had no reports for third grade probe scores. On a second grade probe, S.D. had improved to 96 wcpm. The school district maintained the 127 wcpm on a third grade probe goal.

At the end of fifth grade, S.D.'s present level of achievement on a third grade level improved to a median score of 103.5 wcpm. Her second grade score was reported at a medium of 108 wcpm. Fourth grade probe data was recorded at 76 wcpm. After reviewing the information, the IEP Team set a new goal of 107 wcpm on a fourth grade probe.

Before sixth grade, S.D.'s parents unilaterally removed S.D. from the school district and enrolled her in a private placement.

PROCEDURAL HISTORY: Parents of a student identified with specific learning disabilities in reading, math, and written expression filed a due process complaint against the school district, alleging deficiencies in the programming. The Hearing Officer found that although the District met its obligations to provide the student FAPE in many goal areas, the Dis-

trict denied the student FAPE in its handling of reading fluency, and it ordered the district to reimburse the parents for private school tuition for the 2017-2018 school year and the cost of transportation to and from the private school for the 2017-2018 school year. The school district filed an appeal of the decision and moved for disposition on the administrative record.

DECISION: After giving due weight to the Hearing Officer's findings, the Court acknowledged while S.D. did not meet her IEP reading fluency goals, her IEPs were "reasonably calculated to enable" her to receive meaningful educational benefits in light of her potential. The Court explained that a student's failure to reach IEP goals does not automatically render an IEP inappropriate or inadequate. Further, IEPs are not required to provide an optimal level of services. Rather, all of S.D.'s IEPs show that she progressed steadily in reading fluency each year. Apart from reading fluency, the Court noted that the student met the rest of her IEP goals. Therefore, the Court concluded the IEP was appropriate regardless of whether S.D. met the goals. The Court held that tuition reimbursement for private school and transportation was not warranted.

WHAT IT MEANS: Annual goals in IEPs are projections, not guarantees. A student's failure to meet every goal does not render an IEP inadequate. Rather, in order to provide FAPE under the IDEA, an IEP must be reasonably calculated to enable a student to make adequate progress in light of the individual student's circumstances. FAPE does not require an optimal level of services that parents might want. This district set short-term and long-term reading goals based on available data, and the student's inability to meet the goal did not make the IEP inappropriate.



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WHAT DO YOU THINK?

Christina is an 11-year-old girl with an emotional disturbance who has anxiety and depression. She mostly keeps to herself at school but is a talented painter and would like to share her interest with her classmates.

She often makes social missteps at school because she reacts in ways that do not match situations. Sometimes, Christina overreacts to academic challenges and underreacts to classmates' concerns. Christina needs to work on her social skills so she can build better connections with her peers.

The IEP Team discusses Christina's present levels of academic achievement and functional performance, including her need to improve her social skills. She can display socially expected behavior accurately in three out of five situations presented in a social-skills group if she receives verbal prompting. The IEP Team focuses on improving Christina's ability to identify and demonstrate socially appropriate behaviors in the coming school year. The Team writes the following goal:

GOAL: By the end of the school year, after receiving a verbal prompt within a social-skills group, Christina will demonstrate a socially expected behavior in three out of four situations. Christina's teacher will track and share her progress with her parents every six weeks.

Is this goal sufficient?



A district must include in an IEP a description of how a child's progress toward meeting annual goals will be measured. 34 C.F.R. 300.320(a)(3).

The goal as written for Christina fails to detail how her teacher will monitor her improvement in recognizing and demonstrating appropriate social skills. A more appropriate goal in this hypothetical might be:

By the end of the school year, after receiving a verbal prompt within a social-skills group, Christina will demonstrate a socially expected behavior in three out of four situations, as measured by teacher observation and recorded using a social-skills rubric. Christina's teacher will share her progress with her parents every six weeks.

This sample goal shows one way to enable Christina to demonstrate her growing social skills.

GENERAL EDUCATION TEACHERS: MANDATORY IEP TEAM MEMBERS

(continued from p. 1)

The IDEA requires an IEP Team to include certain core members. 34 CFR 300.321(a). The school district should ensure that an IEP Team for a child with a disability includes:

1. The parents of the child.
 2. No less than one general education teacher of the child (if the child is or may be participating in the general education environment).
 3. No less than one special education teacher of the child or, where appropriate, no less than one special education provider of the child.
 4. A district representative who: i) is qualified to provide, or supervise the provision of, special designed instruction to meet the unique needs of children with disabilities; ii) is knowledgeable about the general education curriculum; iii) is knowledgeable about the availability of district resources
 5. An individual who can interpret the instructional implications of evaluation results.
 6. At the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
 7. Whenever appropriate, the child.
- 34 CFR 300.321(a).

Note that a general education teacher is a required member, even if the student is not currently participating in the general education curriculum but may soon be participating in the general education classroom. The Education Department has stated that if the district has no reason to anticipate a change in the student's participation during the next 12 months, it does not need to include a general education teacher on the student's IEP Team. However, it has also stated that such circumstances are rare, and that most student's IEP Teams will need to include a general education teacher.

For students whose IEP Team require a general education teacher, the teacher should understand their role as an important member of the Team. The general education teacher is especially important because failure to implement a student's IEP can quickly

lead to a denial of FAPE. He or she can provide valuable insight on how the student behaves in the general education curriculum to fellow team members. The teacher can also help pinpoint appropriate accommodations and modifications for the student.

Before the meeting, the general education teacher should gather information for the present levels of academic achievement and functional performance. The teacher should review the data on the student's progress to share his or her insights on the student's strengths and needs with the student's case manager. In considering the information, the teacher can share recommendations for goals, short term objectives, accommodations or modifications. Reviewing the student's progress will allow the teacher to weigh in when appropriate when it comes to academics, behavior, and nonacademic and extracurricular activities in general education.

Following the meeting, the teacher should review the parts of the IEP that relates to his or her responsibilities. After reviewing the annual goals, accommodations, and modifications relevant to the his or her teaching, the teacher can ask the case manager questions regarding his or her responsibilities in order to properly implement all modifications and accommodations.

Reviewing a student's progress and IEP in preparation before a meeting and reviewing the IEP following the meeting allows the general education teacher to be a valuable member of the IEP Team. It will also ensure that the accommodations and modifications are appropriately provided to the student and will help to prevent any complaints regarding the denial of FAPE.



4 SITUATIONS THAT MAY CALL FOR AN FBA

Circumstance	Description	Law/Regulation
<p style="text-align: center;">Conduct is a manifestation of a disability</p>	<p>The district proposes to subject a student with a disability to a disciplinary change of placement. A manifestation determination review team determines that the conduct is a manifestation of a disability.</p>	<p>In this situation, the district must conduct an FBA and implement a positive behavior support plan (PBSP) for the student (unless it already completed an FBA before the student engaged in the behavior. 34 C.F.R. 300.350(f)(1)(i).</p>
<p style="text-align: center;">Conduct is NOT a manifestation of a disability</p>	<p>The district proposes to subject a student with a disability to a disciplinary change of placement. An manifestation determination review team determines that the conduct is NOT a manifestation of a disability.</p>	<p>The district must provide the student, “as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.” 34 CFR 300.530(d)(1)(i).</p>
<p style="text-align: center;">Student is placed in an interim alternative education setting based on “special circumstances”</p>	<p>The district removes a student to an alternative education setting based on behavior related to weapons, drugs, or infliction of serious bodily injury.</p>	<p>The district must provide the student, “as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.” 34 CFR 300.530(d)(1)(i).</p>
<p style="text-align: center;">FBA is necessary to develop behavioral interventions</p>	<p>The IEP Team needs information from an FBA to develop effective behavioral interventions. For example, if educators have been providing the student interventions but the student’s behavior has not improved or is escalating, or if the IEP Team cannot determine what is causing the behavior and how to address it.</p>	<p>The IEP Team has discretion whether to conduct an FBA in these circumstances. The school district must consider positive behavior interventions where a student’s behavior impedes learning. 20 U.S.C. 1414(d)(3)(B)(i). Pennsylvania regulations provide that a positive behavior plan is a plan for students who require specific intervention “to address behavior that interferes with learning,” and shall be developed by an IEP Team, be based on an FBA, and become part of the student’s IEP.</p>



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Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



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Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.