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PRIMARY SPECIAL EDUCATION STATUTES AND REGULATIONS

- ❖ IDEA: 20 USC § 1400 *et. seq.*
Available at: <http://idea.ed.gov/>

- ❖ IDEA Regulations: 34 CFR § 300 *et. seq.*
Available at: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

- ❖ District of Columbia Code, Chapter 25C. Special Education
Student Rights: § 38–2571.01 *et. seq.*
Available at:
<https://code.dccouncil.us/dc/council/code/titles/38/chapters/25C/>

- ❖ Title 5 of the District of Columbia Municipal Regulations
("DCMR")
5 DCMR § E-3000-3033
Available at: <http://www.dcregs.dc.gov/Default.aspx>.

- ❖ Part C Final Regulations: 5 DCMR § A-3100 *et. seq.*
Available at: <http://www.dcregs.dc.gov/Default.aspx>.

Summary of Special Education Case Law* September 2017 ¹

*All cases prior to 1990 were decided under the Education for All Handicapped Children Act (EHA) – the first iteration of a federal special education law. The EHA was revised and renamed the Individuals with Disabilities in Education Act (IDEA), which was passed in 1990 and revised in both 1997 and 2004. The 2004 amendments renamed the Act the Individuals with Disabilities in Education Improvement Act (IDEIA) – though the “Improved” name has not stuck and most still refer to it as IDEA.

U.S. Supreme Court

Andrew F. v. Douglass County School District, 137 S.Ct. 988 (2017)

- ◆ An IEP must be reasonably calculated to enable student progress appropriate in light of the child’s circumstances

Andrew F, a child with autism, received annual IEPs in Douglas County School District from preschool through fourth grade. By fourth grade, Andrew's parents believed his academic and functional progress had stalled. When the school district proposed a fifth grade IEP that resembled those from past years, Andrew's parents removed him from public school and enrolled him in a specialized private school, where he made significant progress. School district later presented Andrew's parents with a new fifth grade IEP, but they considered it no more adequate than the original plan. Parents then sought reimbursement for Andrew's private school tuition by filing a complaint under the IDEA with the Colorado Department of Education. Their claim was denied and affirmed by both a Federal District Court and the Tenth Circuit. The Tenth Circuit, interpreting *Rowley* to establish a rule that a child's IEP is adequate as long as it is calculated to confer an “educational benefit [that is] merely ... more than *de minimis*,” the Tenth Circuit concluded that Andrew's IEP had been reasonably calculated to enable him to make *some* progress. Thus holding that Andrew had received a FAPE. Here, the Supreme Court considered the issue of what level of progress must an IEP be reasonably calculated for a student to make. **The Court rejected the Tenth Circuit’s *de minimis* progress standard and held that in order to meet its substantive obligation under the IDEA, a school must offer an individual education plan (IEP) reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.**

¹ Please note that this is not an exhaustive list of key special education decisions, but provides some helpful case citations that come up in special education practice in the District of Columbia.

Fry v. Napoleon Community Schools, 137 S.Ct. 743 (2017)

- ◆ Exhaustion of administrative procedure
- ◆ Civil action alleging violation under ADA

Petitioner, E.F. is a child with a severe form of cerebral palsy, which significantly limits her motor skills and mobility. E.F.'s parents obtained a trained service dog for her, as recommended by her pediatrician, helped E.F. live as independently as possible by assisting her with various life activities (retrieving dropped items, helping take off E.F.'s coat, etc.). However, because E.F. already had a one-to-one human aide in school, the school refused to allow her dog to attend school with her. The Frys filed a complaint with U.S. Department of Education's Office for Civil Rights (OCR), alleging that the school's refusal to allow her dog into school violated the ADA and § 504 of the Rehabilitation Act. OCR agreed with the Frys and issued a decision to that effect to the school. Following the OCR decision, the school finally agreed to allow E.F.'s dog to attend school with her. However, fearing that the school administration would resent E.F. and make her return to school difficult, the Frys found a different public school, in a different district that would welcome E.F. and her dog and enrolled E.F. in that school. The Frys then filed suit in federal court against the school district, alleging that the school districts violated Title II of the ADA and § 504 of the Rehabilitation Act by denying E.F. equal access to the local school and its programs, refusing to reasonably accommodate E.F.'s use of a service animal, and otherwise discriminating against E.F. as a person with disabilities. The IDEA, at 20 U.S.C. § 1415(l), requires that before bringing a civil suit, a petitioner must exhaust all other IDEA administrative procedures. The federal district court granted the school districts motion to dismiss based on the fact that the Frys had not exhausted administrative remedies under IDEA. The Sixth Circuit affirmed, holding that the injuries alleged in the suit relate to the specific substantive protections of the IDEA and that exhaustion is necessary whenever "the genesis and the manifestations" of the complained-of harms were educational in nature. The Supreme Court granted cert on the issue of the scope of § 1415(l)'s exhaustion requirement. **The Court vacated the Sixth Circuit opinion holding, that the exhaustion of the administrative procedures established by the Individuals with Disabilities Education Act is unnecessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee of a "free appropriate public education".** The court analyzed the structure of the IDEA and found the primacy of FAPE throughout. The primary purpose of the IDEA is to provide a free appropriate public education and the bulk of the following provisions deal with a school's obligation and procedures to guarantee student's receipt of FAPE. The Court remanded the case to the Sixth Circuit for a determination of whether the gravamen of the Fry's complaint seeks relief for a denial of FAPE.

Forest Grove Sch. Dist. v. T.A., 129 S. Ct. 2484 (2009)

- ◆ Reimbursement allowed even if student never received special education services in public school.

An LEA repeatedly failed to find a student eligible for special education in his first years of high school. The parents did not seek review of the decisions at the time. During the student's junior year his problems worsened, the parents sought private assistance, and the student was diagnosed with ADHD. The parents followed private professional advice to enroll the student in a residential-learning facility. After providing notice of the student's private placement, the parents requested a due process hearing for reimbursement. The District again conducted evaluations and again refused to identify the student as a child with a disability under the IDEA. A hearing officer, decided that the ADHD did adversely affect the student's performance such that the child qualified for special education, that the District failed under its IDEA obligations, and that the District had to reimburse the parents for the private placement. **The Court considered the issue of whether the IDEA barred parents from receiving reimbursements when their children had never received special education services in the public schools. The Court decided that a failure to receive special education did not bar claims for reimbursement.** The Court found that the statute gives courts broad authority to provide appropriate relief, which includes reimbursement of private school expenses when schools have failed to provide a FAPE. Though the 1997 amendments to the IDEA added a safe harbor from reimbursement for schools that are providing a FAPE, the court may still award reimbursement when the school fails to provide a FAPE – regardless of whether the child previously received services from the LEA.

Schaffer v. Weast 546 U.S. 49 (2005).

- ◆ Burden of proof/burden of persuasion

The parents of a student who suffered from learning disabilities and speech-language impairments placed their son in a private school because they were not satisfied with the MCPS (Montgomery County Public Schools) placements offered by the IEP team. The issue was which party bears the burden of persuasion at an administrative hearing challenging an IEP? (The plain text of the Individuals with Disabilities Education Act is silent on the allocation of this burden.) **The Supreme Court held that the burden of persuasion lies with the party seeking relief because that is where it usually falls and there is no indication that Congress intended otherwise.** In this case the burden fell on the student, as represented by his parents, because they were seeking relief, but if a school district seeks to challenge an IEP, they will bear the burden of persuasion at the administrative hearing. Dicta in the case regarding access to expert testimony between the parent and the school is helpful in establishing a parent's right to have experts observe/evaluate/participate.

Cedar Rapids Community School District v. Garret, 526 U.S. 66 (1999)

- ◆ Definition of related services

The parents of a quadriplegic ventilator-dependent student requested that the school-district provide one-on-one nursing services to assist with his ventilator, noting that a physician was

not required to provide these services. The school district denied that it had an obligation to fund the one-on-one nursing services as a provision of FAPE, arguing that this was a medical service the school district was not required to fund under the IDEA. **The Supreme Court agreed with the school hearing officer, Federal District Court, and Court of Appeals that the requested nursing services was constituted “related services” that the school district is required to provide to a student under the IDEA.** Specifically, the services provided were “supportive services” that enable a disabled child to remain in school during the day that provide the student with the meaningful access to education that Congress envisioned under the statute. Under prior case law, it had been interpreted that those services qualifying as “medical services” are not obligatory provisions mandated under the IDEA. The court find that, by case law, “medical services” referred to services requiring a physician, but does not include school health services. Because nursing services could be provided by a person other than a physician, it did not constitute a medical service. The court found that a narrowly-defined scope for the medical services exemption to the related services requirement was a reasonable and workable interpretation of the IDEA. Since Congress intended to open the door to public education and the student needed this service in order to remain in school and since a physician was not required to provide the ventilator services, the school district was required to fund the nursing as a related service.

Florence County School District v. Carter 510 U.S. 7 (1993).

- ◆ Placement
- ◆ Reimbursement to parent for funding private placement

The parents of a learning disabled child were dissatisfied with their daughter’s IEP and enrolled her in a private school. A hearing officer determined that the IEP was adequate. The District Court found that the IEP violated the IDEA and that the student’s private school education was appropriate; the Court of Appeals affirmed. The issue before the Supreme Court was whether a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under the IDEA and put the child in a private school that provides an education that is otherwise proper under the IDEA, but does not meet all of the requirements of FAPE? **The Supreme Court held that a court may order reimbursement where a private school does not meet state education standards, as the §1401(a)(18) FAPE requirements, including the requirement that the school meet the standards of the SEA, do not apply to private parental placements. Parents have no way of knowing at the time they select a private school whether the school meets state standards. The parents will be entitled to reimbursement only if a federal court determines that the public placement violated the IDEA and the private school placement was proper under the IDEA.** Once a court holds that the public placement violated the IDEA, it is authorized to grant such relief as it determines appropriate; total reimbursement will not be appropriate if the court determines that the cost of private education was unreasonable.

School C'tee Town of Burlington, MA v. Dept. of Ed., MA, 471 U.S. 359 (1985)

- ◆ Private placement
- ◆ Reimbursement to parent for private placement

Parents challenged the proposed IEP of their learning disabled child, placed their learning disabled child in a private school during the interim leading up to the review proceedings, and then sought reimbursement for the private school tuition from the town. Though the law stipulates that a child shall remain in his or her current education placement during the pendency of any review proceedings unless both the parents and the state or local educational agency agree, the Massachusetts Department of Education's Bureau of Special Education Appeals ordered the town to reimburse the parents and the town appealed. **The Supreme Court held that the EAHCA grants courts the authority to order school districts to reimburse to parents for private school tuition and related expenses where a court determines that a private placement desired by the parents was proper under the Act and that the proposed IEP calling for placement in a public school was inappropriate for the child.** The fact that a parent changes the placement of his or her child while proceedings are pending does not waive the parent's the right to seek reimbursement for the private tuition outlay. However, the Court cautioned that parents who unilaterally change their child's placement during the pendency of review proceedings without the consent of state or local school officials do so at their own financial risk. If the court ultimately determines that the IEP proposed by school officials was appropriate, the parents would be barred from obtaining reimbursement for any interim period in which their child's changed placement violated the stay-put provision stipulated in 20 U.S.C. §1415(e)(3).

Bd. of Ed. of the Hendrick Hudson Central School Dist. v. Rowley 458 U.S. 176 (1982).

- ◆ FAPE defined

The parents of a deaf student who had an IEP and was receiving specialized instruction and related services (a hearing aid and speech therapist) insisted that the public school provide the student with a sign language interpreter in all her classes. The student was performing above average in the general education classrooms at the school; the school and an independent examiner agreed that an interpreter was not necessary. The District Court and the Second Circuit found a denial of FAPE because the student was not provided "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." There are 2 issues in the case: 1) What is meant by the Education of the Handicapped Act's requirement of FAPE? and 2) What is the role of state and federal courts in exercising review?

The Supreme Court held that a school provides a FAPE when the disabled child has access to specialized instruction and related services which are individually designed to provide educational benefit to that child. The Education of the Handicapped Act "does not require a State to maximize the potential of each handicapped child commensurate with the opportunity provided non-handicapped children." Congress intended primarily to make public education

available to handicapped children but did not impose any greater substantive educational standards than would be necessary to make their access to public education meaningful. **The personalized instruction and support services must (1) be provided at public expense, (2) meet the State's educational standards, (3) must approximate the grade levels used in the State's regular education, (4) and must comport with the child's IEP.** The Court established a 2-part test for courts reviewing cases under the Education of the Handicapped Act: **1) Did the State comply with the statutory procedures? and 2) Is the individualized program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?** Once a court determines that these requirements have been met, questions of methodology are for resolution by the States. Congress did not restrict the role of reviewing courts, whose decision must be based on the preponderance of the evidence, but courts may not impose their own ideas about educational policy or preference for educational methods on the States. Because there was no finding the school district failed to comply with the procedural requirements and none of the findings supported that the child's educational program did not comply with the Education of the Handicapped Act's substantive requirements, the Supreme Court reversed the Court of Appeals' finding.

DC Circuit Court of Appeals

Branham v. Government of the Dist. Of Columbia 427 F. 3d 7 (D.C. Cir. 2005)

- ◆ Provided factors reviewed in determining parent's right to reimbursement for nonpublic placement (or nonpublic placement)

The Parent of a 13 year old learning disabled student filed a due process complaint when the student failed to make meaningful progress after two years in a full-time public special education program. The parent requested compensatory education (in the form of tutoring) and nonpublic placement. The parent lost the due process complaint, and appealed to US District Court. After a status hearing to address deficiencies in the record, the District Court judge ruled in favor of Branham, and awarded compensatory education (in the form of a lump sum of tutoring) and nonpublic placement. The school district appealed, not challenging that it had denied the student a FAPE, but that the lower court failed to make findings of fact as to the remedies awarded.

The Court of Appeals concurred that the lower court had failed to make such findings of fact, and specifically enumerated five factors triers of fact should consider in assessing the appropriateness of a student's placement: "(1) nature and severity of the student's disability, (2) the student's specialized educational needs, (3) the link between those needs and the services offered by the private school, (4) the placement's cost, and (5) the extent to which the placement represents the least restrictive educational environment (numbers added)."

Lesesne v. District of Columbia 447 F.3d 828 (D.C. Cir. 2006).

- ◆ Procedural violations as IDEA claim

The mother of an intellectually disabled and cannabis-dependent student did not demonstrate that her son was harmed by any statutory violations DCPS might have committed. DCPS had attempted to evaluate the student and schedule an IEP meeting, but the student's truancy and his mother's lack of cooperation frustrated the progress. The District Court granted summary judgment in favor of DCPS. There are 3 issues in the case: 1) Is the case moot because an IEP was developed?; 2) Did the District Court have jurisdiction over the merits of the claim?; 3) Was the student per se harmed by DCPS' alleged procedural violations? The case is not moot because the mother's complaint included a demand for compensatory education, which presented the District Court with a live controversy. Since the case was not moot, the District Court and D.C. Court of Appeals had jurisdiction to decide the case on the merits. Further, even if DCPS had committed the alleged procedural violations, an **IDEA claim is only viable if the procedural violations affected the student's substantive rights.** (Though the Court noted it did not believe DCPS had committed any procedural violations.) The D.C. Court of Appeals affirmed the District Court's decision.

Reid v. DC 401 F.3d 516 (D.C. Cir. 2005).

- ◆ Compensatory education

A Hearing Officer awarded a 16-year-old student with severe learning disabilities one hour of compensatory education for each day of the four and half years he was denied appropriate instruction. The 2 issues in this case are: 1) Is a Hearing Officer's one hour per day calculation of compensatory education relief appropriate under IDEA? and 2) May IDEA Hearing Officers authorize IEP teams to reduce or continue compensation awards based on the IEP team's decision that the student is no longer benefiting from the compensatory education? The D.C. Court of Appeals held that the standard of review should accord deference to hearing officers, but less deference than is conventional in administrative proceedings. A hearing decision without reasoned and specific findings deserves little deference, and the officer's implicit ruling on delegating authority to the IEP team raises issues of statutory construction. First, in this case, D.C. joined other circuits in holding that compensatory education awards are within the broad discretion of courts fashioning and enforcing IDEA remedies. The court rejected the Hearing Officer's mechanical calculations of compensatory education relief and adopted a qualitative standard, establishing that compensatory education awards should be designed to put disabled children in the same position they would have occupied but for the school district's violation of IDEA. **Awards compensating past violations must rely on individual assessments; to accomplish the IDEA's purposes, the inquiry must be fact-specific and must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Second, a Hearing Officer may not authorize IEP teams to reduce or discontinue compensatory education awards because an IEP team may not exercise a Hearing Officer's powers.** Absent

a new hearing, an existing compensatory education award is binding on both parties. The D.C. Court of Appeals reversed the grant of summary judgment to the school district and remanded the case for the fashioning of an appropriate compensatory education award and further proceedings.

Angevine v. Smith, 959 F.2d 292 (D.C. Cir. 1992)

(Education for All Handicapped Children Act (EAHCA) at-issue.)

- ◆ Placement
- ◆ Standard of review of Hearing Officer's Determination

The parents of a child with an intellectual disability and multiple disabilities challenged the child's public school placement as being unable to provide their child with an appropriate education and sought alternate placement at a private school. The hearing officer determined that the public school offered an appropriate program for the child for the school year, as it was able to provide the child with certain programs deemed necessary on the child's newly-developed IEP. Months later, the school district inadvertently offered and subsequently revoked a mistakenly sent offer to fund the private school placement, and the parents sought a temporary restraining order and preliminary injunction to require the school district to fund the child's placement at the private school even though the child had never attended or been ordered to attend the school in the first instance. The district court overturned the hearing officer's decision, finding that the student should be placed at the private school based on the lack of progress the student had made during her four prior years at the public school. On appeal, the Court of Appeals cautioned against courts imposing their own views of preferable education methods upon the states and discussed the District Court's inappropriate reliance on the school's past performance as the sole criterion for deciding against the public school. Rather, the court stated that **a child's placement should not be based on his or her past performance at a school or the desire to find the best possible education for a child, but should singularly consider whether the public school would have been able to implement the child's new IEP. A party challenging an administrative determination bears the burden of persuading a court that the hearing officer was wrong;** in this instance, there was no evidence indicative of the court's basis for overturning the hearing officer's decision. District Court failed to adequately explain the basis for refuting the hearing officer's determination that the public school was appropriate to suit the student's needs.

Kerkam v. Superintendent, 931 F.2d 84 (D.C. Cir. 1991)

- ◆ Standard for appropriate placement
- ◆ Least restrictive environment

The fact that a student may have been less successful under a public school program is not a factor that may be considered when determining a student's placement so long as the public-school placement confers some educational benefit. When determining the least restrictive alternative for a child, **a residential placement far from home is deemed more restrictive than**

a local extended-day program, in spite of the benefit that may be received from the residential programming.

Spiegler v. District of Columbia, 866 F.2d 461 (D.C. Cir. 1989)

(Education for All Handicapped Children Act (EAHCA) at-issue; IDEIA has since been revised to stipulate that parents must be provided notice of all procedural safeguards and timelines affecting special education.)

- ◆ Exception to statute of limitations- equitable tolling doctrine

Subsequent to a due process hearing, the hearing officer issued a determination that the IEP the school district had created for a disabled student was sufficient to meet the child's needs. Three years after the hearing officer's decision had been issued, the child's parents brought an appeal in district court alleging that the child had been inappropriately placed at a public school and sought to recover the tuition costs and related expenses associated with the child's private school. Though the EAHCA did not contain a statutory timeline governing appeals, the district court dismissed the suit as time-barred. The parents appealed the dismissal, and in response, The Court of Appeals held that the 30-day statute of limitations period for appeal advocated by the school district was an appropriate length of time. However, the court held that **the District had failed to provide parents with clear notice of the availability of judicial review and of the 30-day limitations period, and as such, the 30-day statute of limitations could not be invoked as grounds to dismiss the parents' appeal. Further, the court held that in light of the remedial intentions of the EAHCA, the principles of equitable tolling could warrant the extension of the 30-day time limit where certain case-specific factors justified a departure from the 30-day timeline.**

Kerkam v. McKenzie, 862 F.2d 884 (D.C. Cir. 1988)

- ◆ Standard for appropriate placement
- ◆ Standard for review of Hearing Officer's Determination

The parents of a student who had previously attended a nonpublic, residential school sought to continue the same placement for the child when the family moved to a different state. The local education agency offered a public special day program, and additional hours and services and a hearing officer ultimately found that placement adequate to suit the student's needs. The District Court reversed, without giving due deference to the decision of the hearing officer. **The Court of Appeals rejected the notion that an educational placement must maximize the potential of a disabled child, and instead reiterated the Rowley standard that a placement must be "reasonably calculated to enable the child to receive educational benefit."**

Additionally, the Court of Appeals rejected the idea that a reviewing court may make a *de novo* review of administrative IDEA proceedings without giving deference to a hearing officer. Rather, **a party challenging the administrative determination must at least take on the burden on persuading the court that the hearing officer was wrong and, a court opting to upset a hearing officer's decision must at least explain its basis for its contrary decision.** The Court of

Appeals remanded this case to the district court to decide whether plaintiffs' showing is enough to overcome the hearing officer's conclusion that the special day program was "appropriate" under the IDEA.

District Court for the District of Columbia

District of Columbia v. Abramson, 493 F. Supp. 2d 80 (D.D.C. 2007)

- ◆ **Child Find obligation is ongoing, even if a child has been moved to a school outside of the District of Columbia**

The parents of an unidentified child moved their child to a therapeutic residential program in another state after referring the child for evaluation for special education and related services. DCPS stopped the evaluation process, stating that they no longer had to complete the process because the student had transferred to another LEA. The Court found that DCPS was obligated to continue the evaluation process, even though the LEA the child had moved to might also have Child Find obligations (and that moving to another LEA did not eliminate a prior LEA's Child Find obligations).

S.S. v. Howard Road Academy, 585 F. Supp. 2d 56 (D.D.C. 2008)

- ◆ Reasonableness of the IEP measured prospectively

The court held that whether or not an IEP is reasonably calculated to provide the student educational benefits can only be determined by looking at the reasonableness at the time the IEP is developed, not in hindsight. IDEA does not guarantee that an IEP will be effective. The court found that based on a student's progress, it was reasonable that the IEP was amended to *reduce* the number of specialized instructions hours. And, when the student subsequently demonstrated increasing problems, the school did respond by increasing the specialized instruction hours, which was not unreasonable. Despite hindsight, the court held that the actions were reasonable at the time.

D.C. v. Strauss, No. 09-7051, 2010 WL 45932 (D.C. Cir. Jan. 8, 2010)

- ◆ Standard for a School District to recover fees from a Plaintiff
- ◆ Mootness

The court held that for a prevailing LEA/SEA to recover attorneys' fees from the plaintiff's attorney, it must meet three requirements: 1) a court-ordered change in the legal relationship of the parties; 2) judgment in favor of the LEA/SEA; and 3) judicial pronouncement must be accompanied by judicial relief. In this case, the hearing officer dismissed the plaintiff's complaint with prejudice because he determined that the issue was moot after DCPS authorized an independent evaluation, which is what the parents had requested. While the judgment was in favor of DCPS, DCPS did not gain any judicial relief from the judgment because it had agreed

to the parents' request to perform the evaluation. DCPS cannot be a prevailing party in this situation because otherwise it could consistently ignore its legal duties, comply once parents sue, and then recover attorney's fee.

Scott v. District of Columbia 2006 WL 1102839 (D.D.C. 2006).

- ◆ Child Find
- ◆ School district's duty of Child Find regardless of parental action

The mother notified her son's teachers and school administrators that he was diagnosed with ADHD. The mother, the teacher, and the special education coordinator met and agreed to develop alternative strategies to help the student with his difficulties. There are 2 issues: 1) Did the mother's cooperation release DCPS from their obligation to evaluate the student for special education services and develop an IEP? 2) Did DCPS deny the student a FAPE by not developing an IEP for him? **The Court found that the duty to conduct initial evaluations of the child arises from the child find provisions of the Act and that DCPS was required to evaluate the student whether or not the parent had made any request. Further, even if a parent agrees to the school trying alternative strategies, DCPS is not relieved of its obligation to comply with the child find provisions.** The Hearing Officer erred in finding that DCPS had not denied the student a FAPE and had not violated IDEA provisions. Also, the preponderance of the evidence indicated DCPS was aware the student had been diagnosed with ADHD. DCPS' failure to develop an IEP for the student was a denial of FAPE. The District court granted the mother's motion for summary judgment.

Massey v. D.C. 400 F.Supp.2d 66 (D.D.C. 2005).

- ◆ Preliminary injunction
- ◆ Exception to requirement of exhaustion of administrative remedies

A student diagnosed with emotional disabilities and emotional disturbances lived at a residential treatment facility, but when she was discharged she was no longer able to attend the adjacent school. The student's parents had notified DCPS in advance, and without indication DCPS was acting on their daughter's case they enrolled her in a private school. After an IEP meeting, DCPS provided the parents with two inappropriate options the day after the parents requested a due process hearing. Six days after the parents' request, DCPS made an official placement at one of the two inappropriate options. **A court has no subject matter jurisdiction over an IDEA claim if the parents have not first exhausted their administrative remedies, however, exhaustion is not required when continuing through the administrative process would be futile or inadequate.** The Court found that because of DCPS' repeated failures to follow the law and to correct its mistakes (including DCPS' failure to place the student, its failure to hold a Resolution Conference, and its failure to respond to the parents' due process request in writing as required by the IDEA), DCPS' process for administrative relief was inadequate so the Court properly exercised subject matter jurisdiction over the complaint. A request for preliminary injunction requires consideration of 1) the likelihood of success on the

merits, 2) the irreparable harm the plaintiffs will suffer, 3) the harm the defendants or other parties will suffer under the injunction, and 4) the public interest. The Court determined it was likely the student would prevail on the claim she was denied a FAPE, she would suffer irreparable harm from being unable to attend school, the balance of harms did not tip in the school's favor, and the proper enforcement of the IDEA in providing the student a proper placement would serve the public interest. **The Court granted the student's motion for a preliminary injunction.**

Goldring v. District of Columbia, NOT REPORTED, 2005 WL 3294005 (D.D.C. 2005)

- ◆ Definition of "prevailing party"
- ◆ Attorney's fees
- ◆ Expert fees

Five plaintiffs prevailing in an IDEIA claim sought to recover reasonable attorneys' fees from the school district in accord with the IDEIA provision authorizing the issuance of such awards. The school district refrained from awarding attorneys' fees to one of the plaintiffs, and the respective plaintiff appealed the decision. The District Court found that a "catalyst plaintiff," or one whose suit was a catalyst to prompt the change or action sought by the plaintiff, did not qualify as a "prevailing party" entitled to attorneys' fees. Rather, in either a judicial or administrative proceeding, **the measure of prevailing party status is defined by whether one has succeeded "on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."** Thus, if two parties in a litigated IDEIA case reach a settlement agreement, neither party is entitled to attorneys' fees under the prevailing party designation. **With regard to the "reasonableness" of recovering attorneys' fees to cover the attorneys' costs incurred for expert witness fees, the court opted to adhere to the witness fees limits authorized by 28 U.S.C. § 1920(3) and 28 U.S.C. § 1821(b),** holding that plaintiffs may recover for "expert costs" at the rate of only \$40 per day for witness fees. Furthermore, because the fees claimed were only vaguely described and lacked sufficiently detailed descriptions, the court correspondingly ordered a 15 percent reduction of the hours claimed by the plaintiffs to tally the total amount sum due to the plaintiffs' attorneys.

Diatta v. District of Columbia, 319 F. Supp. 2d 57 (D.D.C. 2004)

- ◆ Rowley standard limited
- ◆ Compensatory education

On appeal, the mother of a severely autistic child brought an action alleging that the Hearing Officer improperly denied the mother's request for compensatory education where the Hearing Officer agreed that the child had been denied FAPE by the school district where the child had been misdiagnosed and placed in an inappropriate program for four years, and as such, was not operating at the educational level to be expected of a child with is age and abilities. The Hearing Officer had denied compensatory education sought by the family for the child on the basis that the relief sought exceeded the permissible scope of the IDEA. The defendants

contested the plaintiff's motion on the basis that the child's parents were not "aggrieved parties" under the statute, and therefore, were not entitled to maintain an action under the IDEA. However, the court ruled that in accord with the broad educational objectives of the IDEA and the broad rights afforded to parents under the statute, the plaintiff's parents were aggrieved parties with the right to appeal the hearing officer's determination because the hearing officer had effectively denied them of the relief requested under the Act on behalf of their child. Though *Rowley* held that the FAPE requirement is satisfied when a child receives "some educational benefit," the court distinguished this case from *Rowley*, finding that *Rowley* is limited to cases where it is found that a child has not been denied FAPE. In this instance, since the parents alleged and the hearing officer agreed that the child had been denied the "basic floor of [educational] opportunity" for more than four years, the court found that the found inadequacy of the child's former schooling entitled him to compensatory education using a program specifically designed to meet the child's educational needs in light of his severe autism. The need for compensatory education was compounded by the fact that the school district had been well-aware of the child's autism diagnosis and his need for requisite therapeutic education, and should have developed an IEP reflective of his diagnosis that would have provided him with FAPE. Since the school district alternately misclassified the student as having a speech and language impairment and subsequently provided him with inappropriate educational instruction for four years, the court ordered the school district to provide four years of compensatory education using the educational program that parents' witnesses undisputedly found to be wholly appropriate for the child's intensive remedial needs.

Hammond v. District of Columbia, NOT REPORTED, 2001 WL 34360429 (D.D.C. 2001)

(The case at issue in Hammond v. District of Columbia was also at-issue in a subsequent case pertaining to attorney's fees, expert fees, and the statutory cap imposed in fiscal year 2001. See Hammond v. District of Columbia, NOT REPORTED, 2001 WL 34664116 (D.D.C. Sept. 01, 2001))

- ◆ Exception to the statute of limitations: continuing violation doctrine
- ◆ Compensatory education

Though a three-year statute of limitations for civil actions in D.C. applies to requests for IDEA due process hearings, a continuing violation is "one that could not reasonably be expected to be made the subject of a lawsuit when it first occurred because its character as a violation did not become clear until it was repeated during the limitations period." The general rule in the IDEA context is that a claim accrues when parents know or have reason to know of the injury or event that is the basis for their claim. In this instance, it was initially not obvious that the school district was violating the student's rights, and the totality of the school district's initial actions and subsequent inaction constituted an on-going violation of the denial of FAPE. Therefore, the claim was not time barred by the three-year statute of limitations. Rather, the continuing violations doctrine applies and the timeliness of the student's claims prior to the three-year statute of limitations entitle the student to a lump sum award of compensatory education. In this instance, the Court granted such relief, in part, because the defendant school district did not voice an objection to the specific relief requested by the plaintiffs.

NOTE: While this case stated that the defendants bear the burden of proving the appropriateness of an IEP and the provision of FAPE in an administrative due process hearing, this aspect of the case is no longer good law on this point, as the burden of proof has shifted to the party bringing an administrative action.

Blackman v. District of Columbia, 185 F.R.D. 4 (1999).

- ◆ Overdue due process hearings
- ◆ Failure to implement Hearing Officer's Determinations and settlement agreements

In this class action litigation, the first subclass includes plaintiffs with DCPS complaints under § 615(b)(6) of the IDEA and whose requests for Due Process Hearings are overdue. The second subclass includes plaintiffs who are entitled to but have been denied a FAPE because DCPS either (a) has failed to fully and timely implement the determination of Hearing Officers, or (b) failed to fully and timely implement settlement agreements concerning a child's identification, evaluation, educational placement, or provision of FAPE that DCPS has negotiated with the child's parent or educational advocate. The Court granted plaintiffs' motion for summary judgment as to liability on June 3, 1998. The Court did not issue a broad, class-wide preliminary injunction requiring the District to comply with its obligations to all class members partly because the District did not have the resources to come into immediate compliance. However, even after individual motions for preliminary injunction had been filed, the District was unresponsive to the plaintiffs and the Court while at least some of the children faced immediate irreparable harm. Given that DC failed to provide services, return phone calls, or meet the Court's deadlines, aggravating the threat of injury to children, **the Court held that the appointment of a Special Master was warranted for the limited purposes of assisting the Court in resolving the requests for immediate injunctive relief. The case presented extraordinary circumstances: the District could not argue that it was in compliance with the IDEA, the District failed to recognize the serious physical, emotional, and educational difficulties that individual plaintiffs faced as a result of the District's failure to comply with the IDEA, and time was of the essence with the motions. The Special Master, Elise Baach, was assigned to 1) facilitate settlement meetings and 2) in the absence of a mutually agreeable resolution, issue a report and recommendation for the Court's review. The Special Master was to schedule a settlement meeting within seven days after the filing of a motion seeking immediate injunctive relief to facilitate a good faith discussion between a DCPS representative, a representative from the Office of Corporation Counsel, and counsel for plaintiffs about whether there was a mutually agreeable means of resolving the claims of plaintiffs. If an agreement could not be reached, the Special Master was to issue a report and recommendation to the Court, including proposed findings of fact and conclusions of law with respect to whether plaintiffs had established that they were entitled to a preliminary injunction and the scope of any such preliminary injunction.**

Wirta v. D.C. 859 F. Supp. 1 (D.D.C. 1994).

- ◆ School district does not have a second opportunity to correct itself after failing a child

DCPS funded the child at the Lab School, but the school determined it could no longer meet her needs. The parents requested a due process hearing, and moved the child to a nonpublic school in Virginia. The Hearing Officer found the appropriateness of the newest school placement could not be determined without DCPS reevaluating the child, and the officer declined to order DCPS reimbursement. The Court, applying the 2-part analysis from Rowley, asked whether DCPS complied with IDEA procedures and whether the IEP was reasonably calculated to enable the child to receive educational benefit. The court found that, as the Hearing Officer determined, DCPS had not met the procedural requirements of the IDEA because DCPS had failed to conduct a triennial evaluation, failed to conduct a prompt review of the placement after the parents' hearing request, delayed in providing FAPE, and failed to propose an appropriate special education program and placement. Also, **the court found that the Hearing Officer erred in deciding that he could not consider the appropriateness of the placement or order reimbursement without first having DCPS complete a reevaluation and then determining whether an alternative placement needed to be proposed. School systems are not entitled to a second opportunity to conduct evaluations and propose an alternative placement where their failure to do so in the first place violates the IDEA.** Because DCPS failed to meet the Rowley standard and the parents placed the child at an appropriate or "proper" school placement, the court held that the placement was appropriate and plaintiffs were entitled to reimbursement.

Harris v. District of Columbia, 1992 WL 205103 (D.D.C. 1992)

- ◆ Compensatory education

A plaintiff deprived of 9 ½ months of special education sought compensatory education during a due process hearing. The hearing officer refrained from awarding compensatory education on the basis that he did not have valid statutory authority to issue such an award. However, the Court found that, in general, **compensatory education is an appropriate remedy once it has been shown that a child is entitled to coverage under the Act and the child was inappropriately denied the FAPE to which s/he was entitled.** Furthermore, in spite of the ambiguity of the IDEA with regard to the authority of hearing officers, the intentions of the IDEA and the state education agency's policies led the court to conclude that hearing officers have the authority pursuant to IDEA to award compensatory education as appropriate relief for a denial of special education.

Kroot v. DC, 800 F. Supp. 976 (D.D.C. 1992).

- ◆ School district cannot raise defense not in answer
- ◆ Burden of proof (but see Weast)

The parents of a five-year-old student requested special education services, but the MDT determined that he was ineligible for special education under the IDEA. (The student's mother and an educational consultant attended the meeting.) After the Hearing Officer also found the

student ineligible for special education, the student's parents enrolled him in full-time special education private school and sought reimbursement. **The court found that the defendants could not raise statute of limitations or laches defenses because they failed to raise them in their answer to the parents' complaint. The Court found that the Hearing Officer's allocation of the burden of proof to the plaintiffs at the hearing was inconsistent with the officer's ruling that DCPS could not meet its burden of proof because of its defective notice to the parents.** Also, the notice DCPS provided the parents of the MDT's conclusion was adequate, as the notice need not include an exhaustive explanation of the reasoning behind the decision because DCPS has to provide an exhaustive explanation for its actions at the hearing; the notice must just provide parents sufficient notice of their rights. Here, since the notice was adequate, the hearing officer should not have precluded DCPS from presenting evidence at the hearing. Deference to the Hearing Officer's conclusions was not possible in this case because his decision to shift the burden of proof to the plaintiffs tainted his determination. Because of the Hearing Officer's errors, the Court could not review the officer's substantive ineligibility conclusion so the court remanded the case for the Hearing Officer to conduct a new hearing and consider the evidence in light of the correct burden of proof.

Mills v. Bd. of Education, 348 F. Supp. 866 (D.D.C. 1972).

- ◆ School discipline
- ◆ Requirement that educational services be provided to children with special needs who are disciplined
- ◆ Insufficient funding not a defense

This class action litigation sought a declaration of rights and to enjoin the school board from excluding children from public schools or denying them publicly supported education. **The Court held that the case arose from D.C.'s failure to provide publicly supported education to some "exceptional" children and excluding, suspending, expelling, reassigning, and transferring exceptional children without providing them with due process.** The defendants admitted they failed to supply the children with the publicly supported education they were required to provide and failed to afford them adequate prior hearing and periodic review. **Insufficient funding was not an acceptable justification for these problems; inadequacies of the DCPS system could not bear more heavily on "exceptional" or handicapped children than on other children.** The Court granted summary judgment in favor of the plaintiffs and held that the Board had a duty to provide the children with publicly supported education, unless a child was provided with adequate alternative educational services suited to the child's needs, including special education or tuition grants, and a constitutionally adequate prior hearing and periodic review of the child's status, progress, and adequacy of any alternative. The Board had to file with the Court a comprehensive plan for the identification, notification, assessment, and placement of class members. **The order also provided for specific notice requirements and hearing procedures. DCPS could not suspend a child from public schools**

for disciplinary reasons for more than two days without affording the child a hearing and without providing for the child's education during the period of any such suspension.

Exceptions to 2-Year Statute of Limitations

1. IDEA statutory exception (20 USC §1415(f)(3)(D))
 - Applies where parent was prevented from requesting the hearing earlier due to LEA's withholding of information from the parent they were required to provide under the IDEA
 - Example: DCPS' failure to provide parent procedural safeguards, including failure to provide notice to parent of referral process, right to hearing, statute of limitations. Without notice of her rights, parent did not know rights were being violated or what her rights were and therefore was prevented from requesting a hearing.

2. Continuing violation doctrine

Hammond v. D.C., 2001 US Dist. LEXIS 25846
K.P. v. Juzwic, 891 F. Supp. 703, Dist. Ct. of Conn. (1995)

 - Applies when an individual doesn't know their rights are being violated. (i.e. school district did not provide parent with info needed for parent to know child was being harmed)
 - IDEA claim accrues when a parent knows or has reason to know of injury- only when she has critical facts alerting her to the fact that an injury exists does the claim accrue. (Hammond, 15)
 - Applied where plaintiff was not aware that education, services, and diminished expectations and goals provided all those years were inappropriate until the child was placed at a better school and started to improve (K.P. v. Juzwic)
 - Example: Parent didn't know the extent of the injuries to daughter over the years she was denied services. As a result, there was a continuing denial of FAPE that parent was unaware of until recent evaluations showed the extent of child's disabilities and her dire need for help. Parent did not sleep on her rights, but was denied an understanding of them. Parent didn't know that there was continuing injury to daughter until daughter finally received a comprehensive, thorough evaluation.

3. Equitable tolling doctrine

Hammond v. D.C., 2001 US Dist. LEXIS 25846
Spiegler v. DC, 866 F. 3d 461 (Ct. App. D.C. 1989)

 - Applies when an individual hasn't received adequate notice of their rights
 - Equitable tolling doctrine applies in IDEA cases where school districts have not fully apprised parents of their due process rights and the applicable statute of limitations, as required by law §1415(d)(2) (Hammond, p19, FN8, Spiegler, 467-468)
 - Courts have recognized this exception, and stressed that it's important that school districts ensure parents are aware of the availability of the hearing process,

- especially b/c parents are usually unrepresented for most of the time that their kids are in school (Spiegler, 468)
- Example: Due to DCPS' failure to provide her with notice of her due process rights, parent did not know that she had the right to bring a complaint, have a due process hearing or the applicable statute of limitations until recently. Therefore, the equitable tolling doctrine applies, and DCPS cannot invoke the statute of limitations.

Parent's Right to School Records Legal Overview

- ◆ Parents have the right to examine all records relating to the child. 20 USC §1415(b)(1).
- ◆ Parent can inspect, review and copy records related to identification, evaluation, and educational placement and provision of FAPE. DCMR §5-3021.3; 34 CFR §300.591(a).
- ◆ LEA must permit parents to inspect and review and education records collected, maintained, or used by LEA in connection with special education. 34 CFR §300.613(a).
- ◆ LEA must comply with records request without unnecessary delay, before any meeting regarding an IEP, a hearing, or a resolution session and no later than 45 days after request was made. 34 CFR §300.613.
- ◆ LEA must develop a process for parent to correct information in a child's record. DCMR §5-3021.3
- ◆ Pursuant to March 2015 Special Education Legislation, schools have to provide evaluations and other school records to parents five days before a school meeting to review that information. DC CODE § 38-2571.03.

AN ACT

D.C. ACT 20-488

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2014

To amend the District of Columbia School Reform Act of 1995 to authorize charter schools to establish an admission preference for students with disabilities, and to require by a date certain that each public charter school be its local educational agency; to amend the State Education Office Establishment Act of 2000 to establish the Special Education Enhancement Fund; and to amend the Ombudsman for Public Education Establishment Act of 2007 to clarify the ability of the ombudsman to examine patterns of complaints, and to authorize the Ombudsman to observe instruction at any public school or public charter school.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Special Education Quality Improvement Amendment Act of 2014”.

TITLE I. SPECIAL EDUCATION CAPACITY

Sec. 101. Short title.

This title may be cited as the “District of Columbia School Reform Amendment Act of 2014”.

Sec. 102. The District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C. Official Code § 38-1800.01 *et. seq.*), is amended as follows:

(a) Section 2002 (D.C. Official Code § 38-1800.02) is amended as follows:

(1) A new paragraph (18A) is added to read as follows:

“(18A) *IDEA*. – The term “IDEA” means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400*et seq.*), and its implementing regulations.”.

(2) A new paragraph (19A) is added to read as follows:

“(19A) *Individualized education program or IEP*. – The term “individualized education plan” or “IEP” means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).”.

(3) A new paragraph (30A) is added to read as follows:

ENROLLED ORIGINAL

“(30A) *Rehabilitation Act.* – The term “Rehabilitation Act” means the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 355; 29 U.S. C. § 701 *et seq.*).”.

(b) Section 2202 (D.C. Official Code § 38-1802.02) is amended as follows:

(1) Paragraph (16)(H) is amended by adding the word “and” at the end.

(2) Paragraph (18) is amended by striking the phrase “; and” and inserting a period in its place.

(3) Paragraph (19) is repealed.

(c) Section 2206 (D.C. Official Code § 38-1802.06) is amended by adding a new subsection (c-1) to read as follows:

“(c-1)(1) *Random selection special education.* -- If there are more applications to enroll in a public charter school from students who are residents of the District of Columbia than there are spaces available, students shall be admitted in accordance with subsection (c) of this section; provided, that with the prior approval of the Public Charter School Board, a preference in admission may also be given to an applicant with an IEP or an applicant in a disability category pursuant to IDEA, in order to facilitate the planning, development, and maintenance of high quality special education programs in the District of Columbia.

“(2) A public charter school seeking to establish a preference for admission under this subsection shall apply to the Public Charter School Board no later than July 1 of the year before the proposed effective date of the lottery preference.

“(3) In reviewing an application by a public charter school to establish a preference for admission under this subsection, the Public Charter School Board shall ensure that the proposed preference will increase educational opportunities for, and not adversely impact, students with disabilities.

“(4) In approving an application by a public charter school to establish a preference for admission under this subsection, the Public Charter School Board shall make publicly available a written document that specifies the preference established and the reasons for granting the preference.”.

(d) Section 2210 (D.C. Official Code § 38-1802.10) is amended as follows:

(1) Subsection (c) is amended to read as follows

“(c) *Education of children with disabilities.* – By August 1, 2017, each public charter school shall be its own local educational agency for the purpose of Part B of IDEA and section 504 of the Rehabilitation Act (29 U.S.C. § 794); provided, that the Public Charter School Board may, in its discretion, waive application of this subsection to allow a currently existing public charter school with more than 90% of its students entitled to receive services pursuant to an individualized educational program to continue to be a District of Columbia public school for the purposes of Part B of IDEA and section 504 of the Rehabilitation Act (29 U.S.C. § 794).”.

(2) A new subsection (c-1) is added to read as follows:

“(c-1) No newly approved public charter school shall elect to be treated as a District of Columbia public school for the purpose of Part B of IDEA and section 504 of the Rehabilitation Act of 1973(29 U.S.C. § 794).”.

TITLE II. SPECIAL EDUCATION ENHANCEMENT FUND

Sec. 201. Short title.

This title may be cited as the "State Education Office Special Education Enhancement Fund Amendment Act of 2014".

Sec. 202. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended by adding a new section 7g to read as follows:

"Sec. 7g. Special Education Enhancement Fund.

"(a)(1) There is established as a special fund the Special Education Enhancement Fund ("Enhancement Fund"), which shall be administered by OSSE in accordance with subsections (c) and (d) of this section.

"(b) Revenue from the following sources shall be deposited into the Enhancement Fund:

"(1) Any excess appropriated funds remaining at the end of each fiscal year in the operating budget for the non-public tuition paper agency within OSSE;

"(2) Any other annual appropriation, if any; and

"(3) Grants, gifts, or subsidies from public or private sources.

"(c) The Enhancement Fund shall be used solely to:

"(1) Provide additional funds to those public schools that demonstrate they have incurred costs associated with providing special education services above that for which the school was funded pursuant to the Uniform Per Student Funding Formula allocation;

"(2) Support special education capacity expansions, including:

"(A) Partnerships developed among nonpublic schools and public schools or public charter schools to provide special education services and training; and

"(B) Collaborative ventures among public charter schools to develop special education capacity through joint special education training, administration, or instruction;

"(3) Support:

"(A) Programs providing joint professional development and training opportunities;

"(B) Joint agreements to procure or provide special education services; or

"(C) Joint evaluations or assessments developed by groups of public schools or public charter schools; and

"(4) Support the development of educational programs specifically targeted at overage, under-credited youth with intensive special educational needs.

"(d) Notwithstanding any other provision of law, no funds provided under this section shall be counted for the purposes of calculating the maintenance of effort under IDEA.

"(e) OSSE may issue rules to implement the provisions of this section.

TITLE III. OMBUDSMAN.

Sec. 301. Short title.

This title may be cited as the “Ombudsman for Public Education Establishment Amendment Act of 2014”.

Sec. 302. The Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351 *et seq.*), is amended as follows:

(a) Section 604 (D.C. Official Code § 38-353) is amended as follows:

(1) Paragraph (13) is amended by striking the word “and” at the end.

(2) Paragraph (15) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (16) is added to read as follows:

“(16) Identify school-level concerns based upon a pattern of complaints or concerns and recommend changes to improve the delivery of public education services.”.

(b) Section 605 (D.C. Official Code § 38-354) is amended by adding a new paragraph (3A) to read as follows:

“(3A)Have the authority to observe instruction at any District of Columbia public school (“DCPS”) or public charter school; provided, that DCPS or the public charter school may require advance notice before an observation may take place, but shall impose no other conditions or restrictions on such observations except those necessary to:

“(A) Ensure the safety of children in a program; or

“(B) To protect children in the program from disclosure by an observer of confidential and personally identifiable information if such information is obtained in the course of an observation;”.

TITLE IV. GENERAL PROVISIONS.

Sec. 401. Fiscal impact statement.

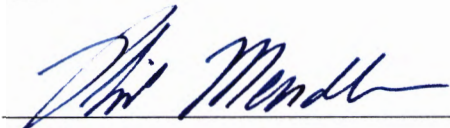
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

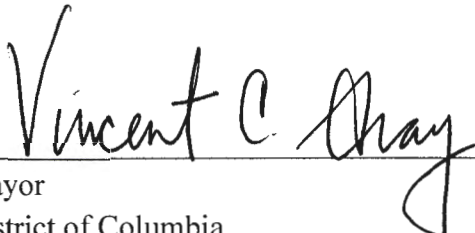
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
November 18, 2014



**COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004**

Docket No. **B20-0725**

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 10/7/2014

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11.7.14

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 10/28/2014

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11.7.14

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Catania					McDuffie				
Alexander					Cheh					Orange				
Barry					Evans					Wells				
Bonds					Graham									
Bowser					Grosso									
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD



Secretary to the Council

Date

AN ACT

D.C. ACT 20-487

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 18, 2014

To amend the State Education Office Establishment Act of 2000 to provide for special education service enhancements; and to amend the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006 to decrease the number of days within which an evaluation of a student who may have a disability must occur, and to clarify that the requirements of the act apply to all public school students.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Enhanced Special Education Services Amendment Act of 2014”.

TITLE I. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Sec. 101. Short title.

This title may be cited as the “State Education Office Establishment Amendment Act of 2014”.

Sec. 102. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended as follows:

(a) Section 2b (D.C. Official Code § 38-2601.02) is amended as follows:

(1) Redesignate paragraph (1) as paragraph (1A).

(2) Redesignate paragraph (1A) as paragraph (1B).

(3) Redesignate Paragraph (1B) as paragraph (1C).

(4) A new paragraph (1) is added to read as follows:

“(1) “Child with a disability” shall have the same meaning as provided in section 602(3) of the Individuals with Disabilities Education Act, approved April 13, 1970, (84 Stat. 175; 20 U.S.C. § 1401(3)).”.

(5) New paragraphs (2C) and (2D) are added to read as follows:

“(2C) “IDEA” means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*), and its implementing regulations.

“(2D) “Individualized education program” or “IEP” means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).”.

(b) A new section 7h is added to read as follows:

“Sec. 7h. Special education.

ENROLLED ORIGINAL

“(a)(1) Beginning July 1, 2016, or upon funding, whichever occurs later, the first IEP in effect after a child with a disability reaches 14 years of age shall include transition assessments and services, including:

“(A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills and the transition services needed to assist the child in reaching those goals;

“(B) A statement of inter-agency responsibilities or any needed linkages before the child leaves the school setting; and

“(C) If the IEP team determines that transition services are not needed, a statement to that effect and the basis upon which the determination was made.

“(2) Not later than one year before a child with a disability’s anticipated high school graduation or attainment of a certificate of IEP completion, the IEP team shall identify which adult services might be appropriate for the child and what evaluations should occur to determine the child’s eligibility for those services; provided, that nothing in this section shall be construed to impose any obligation on an LEA to conduct evaluations to determine eligibility for adult services.

“(3) Beginning July 1, 2017, or upon funding, whichever occurs later, a child shall be eligible for Part C of IDEA if the child is otherwise an eligible infant or toddler with a disability and the child demonstrates a delay of at least 25%, using appropriate diagnostic instruments and procedures, in one of the following developmental areas:

“(A) Physical development, including vision or hearing;

“(B) Cognitive development;

“(C) Communication development;

“(D) Social or emotional development; or

“(E) Adaptive development.

“(b) By October 1, 2015, OSSE shall issue:

“(1) Rules to implement the provisions of this section; and

“(2) A report that includes recommendations on the advisability, timing, and expected cost to:

“(A) Further expand eligibility for early intervention or early childhood services to include any subset of infants or toddlers who are at risk of experiencing developmental delays because of the additional biological or environmental factors as described in 34 C.F.R. § 303.5; and

“(B) Expand eligibility for special education services by matching the definition of developmental delay of Part B of IDEA, defined in section 5-E3001 of Title 5 of the District of Columbia Municipal Regulations, and the definition of developmental delay under Part C of IDEA, defined in section 5-A3108.3 of Title 5 of the District of Columbia Municipal Regulations .

“(c) Subsection (a)(1) and (3) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.”.

TITLE II. NON-PUBLIC PLACEMENTS

Sec. 201. Short title.

This title may be cited as the "Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2014".

Sec. 202. The Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 38-2561.01) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

"(2) "DCPS" means the District of Columbia Public Schools, established by section 102 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D. C. Official Code § 38-171)."

(2) Paragraph (3)(D) is amended by striking the word "plan" and inserting the word "program" in its place.

(3) Paragraph (5) is amended by striking the phrase "Individualized education plan" and inserting the phrase "Individualized education program" in its place.

(4) A new paragraph (6A) is added to read as follows:

"(6A) "Local education agency" or "LEA" means an educational institution at the local level that exists primarily to operate a publicly funded school or schools in the District of Columbia, including the District of Columbia Public Schools and a District of Columbia public charter school."

(5) A new paragraph (8A) is added to read as follows:

"(8A) "Public charter school" means a publicly funded public school established pursuant to the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800 *et seq.*), and is not part of DCPS."

(b) Section 102(a) and (b) (D.C. Official Code § 38-2561.02(a) and (b)) is amended to read as follows:

"(a)(1) Before paragraph (2)(A) of this subsection taking effect, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

"(2)(A) Beginning July 1, 2017, or upon funding, whichever occurs later, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within 60 days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within 30 days from the date the student is referred for an assessment or evaluation.

"(B) This paragraph shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

“(3) For the purposes of this subsection, a referral for an evaluation or assessment for special education services may be oral or written. An LEA shall document any oral referral within 3 business days of receipt.

“(b) An LEA shall provide a student with a disability a free and appropriate public education in an appropriate special education placement in accordance with this act and IDEA; provided, that an LEA shall not remove a student with a disability from an age-appropriate classroom solely because of needed modifications in the general education curriculum.”.

(c) Section 103 (D.C. Official Code § 38-2561.03) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) If an LEA anticipates that it may be unable to implement a student’s IEP or provide a student with an appropriate special education placement in accordance with the IDEA and other applicable laws or regulations, the LEA shall notify the SEA. The SEA shall cooperate with the LEA to provide a placement in a more restrictive setting in conformity with the IDEA, and any other applicable laws or regulations.”.

(2) Subsection (c) is amended to read as follows

“(c) The SEA shall be responsible for paying the costs of education, including special education and related services, of a student with a disability when the student is placed at a nonpublic special education school or program pursuant to this section; provided, that, in conformity with IDEA, the SEA shall not be responsible for paying the cost of education, including special education and related services, of a student with a disability who attends a nonpublic special education school or program if:

“(1) An LEA made a free and appropriate public education available to the student; and

“(2) The student’s parent or guardian elected to place the student in a nonpublic special education school or program.”.

(3) Subsection (d) is amended by striking the phrase “and with parental or guardian consent,”.

(4) A new subsection (e) is added to read as follows:

“(e) The Office of the State Superintendent of Education shall issue updated rules to implement the provisions of this section by October 1, 2015.”.

(d) Section 104 (D.C. Official Code § 38-2561.04) is amended by striking the acronym “DCPS” wherever it appears and inserting the acronym “the SEA” in its place.

(e) Section 105 (D.C. Official Code § 38-2561.05) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) The due process procedures set forth in the Special Education Student Rights Act of 2014, passed on 2nd reading on October 28, 2014 (Enrolled version of Bill 20-723), Chapter 30 of Title 5 of the District of Columbia Municipal Regulations, and IDEA shall govern any disputes between a student’s parent or guardian and the LEA or SEA regarding the assessment, evaluation, placement, and funding of a student with a disability in a nonpublic special education school or program.”.

(2) Subsection (b) is amended by striking the acronym “DCPS” and inserting the phrase “the SEA” in its place.

(f) Section 106 (D.C. Official Code § 38-2561.06) is amended as follows:

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(1) The heading is amended by striking the acronym “DCPS” and inserting the acronym “LEA” in its place.

(2) The text is amended as follows:

(A) Strike the phrase “DCPS shall participate” and insert the phrase “the LEA shall participate” in its place.

(B) Strike the phrase “a DCPS representative” and insert the phrase “the LEA representative” in its place.

(C) Strike the phrase “as planned.” and insert the phrase “as planned and does not negate or diminish the LEA’s obligation to provide a free and appropriate public education.” in its place.

(g) Section 107(d) (D.C. Official Code § 38-2561.07(d)) is amended by striking the phrase “the Internet site of the District of Columbia Public Schools” and inserting the phrase “its website” in its place.

(h) Section 109(b) (D.C. Official Code § 38-2561.09(b)) is amended as follows:

(1) Paragraph (3) is amended to read as follows:

“(3) To investigate allegations or complaints related to this act, violations of the IDEA, or an applicable local or federal law regarding child safety and welfare; during which the nonpublic school’s Certificate of Approval shall be placed on probation throughout the pendency of any investigation of an allegation or complaint of child safety and welfare; and”.

(2) Paragraph (4) is amended by striking the acronym “DCPS” and inserting the phrase “applicable local” in its place.

(i) Section 110(b) (D.C. Official Code § 38-2561.10(b)) is amended as follows:

(1) Strike the phrase “DCPS Superintendent of Schools” and insert the acronym “LEA” in its place.

(2) Strike the phrase “to any DCPS-funded” and insert the phrase “for any District of Columbia funded” in its place.

(j) Section 111 (D.C. Official Code § 38-2561.11) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “or DCPS”.

(B) Paragraph (2) is amended by striking the phrase “or DCPS” and inserting the phrase “or an LEA” in its place.

(C) Paragraph (6) is amended as follows:

(i) Strike the acronym “DCPS” and insert the phrase “an LEA” in its place.

(ii) Strike the phrase “initial application” and insert the word “application” in its place.

(2) Subsection (b)(4) is amended by striking the period at the end and inserting the phrase “; provided, that if the issues under review relate to student safety or welfare, the SEA shall change the status of the Certificate of Approval to probationary, the SEA may refuse to issue a location assignment to the nonpublic special education school or program, and the SEA may recommend to the LEA to remove some or all of its students from the nonpublic school pending resolution of the matter.” in its place.

(k) Section 114(a) (D.C. Official Code § 38-2561.14(a)) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “Superintendent of Schools” and inserting the phrase “State Superintendent of Education” in its place.

(2) Paragraph (2) is repealed.

(l) Section 116 (D.C. Official Code § 38-2561.16) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (5) is amended by striking the phrase “the SEA” and inserting the phrase “an LEA” in its place.

(B) Paragraph (6)(B) is amended to read as follows:

“(B) Whether the parents or guardian of the student, the LEA, and the SEA have been informed of the report; and”.

(2) Subsection (b) is amended by striking the phrase “SEA and DCPS Internet sites” and inserting the phrase “SEA’s website” in its place.

TITLE III. GENERAL PROVISIONS

Sec. 301. Fiscal impact statement.

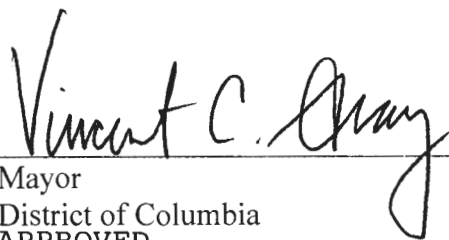
The Council adopts the fiscal impact statement of the Chief Financial Officer, dated October 6, 2014, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
November 18, 2014



**COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004**

Docket No. **B20-0724**

[] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FIRST READING, 10/7/2014

[X] VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

[] ROLL CALL VOTE - Result (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11-7-14

Date

[X] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE

ADOPTED FINAL READING, 10/28/2014

[X] VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

[] ROLL CALL VOTE - Result (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11-7-14

Date

[] ITEM ON CONSENT CALENDAR

[] ACTION & DATE

[] VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

[] ROLL CALL VOTE - Result (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Catania					McDuffie				
Alexander					Cheh					Orange				
Barry					Evans					Wells				
Bonds					Graham									
Bowser					Grosso									
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD



Secretary to the Council

Date

AN ACT

D.C. ACT 20-486

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 20, 2014

To provide for additional procedural safeguards for students with disabilities and their families, to provide for the neutral administration of due process hearings for students with disabilities as required under the Individuals with Disabilities Education Act, and to require the State Superintendent of Education to issue rules to implement this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Education Student Rights Act of 2014".

TITLE I. PROCEDURAL PROTECTIONS

Sec. 101. Short title.

This title may be cited as the "Special Education Procedural Protections Expansion Act of 2014".

Sec. 102. Definitions.

For the purposes of this act, the term:

(1) "Child with a disability" shall have the same meaning as provided in section 602(3) of IDEA (20 U.S.C. § 1401(3)).

(2) "IDEA" means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*), and its implementing regulations.

(3) "Individualized education program" or "IEP" means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a child with a disability, as required under section 614(d) of IDEA (20 U.S.C. § 1414(d)).

(4) "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability and the infant's or toddler's family that:

(A) Is based on the evaluation and assessment of the child and family, consistent with the requirements of 34 C.F.R. § 303.321;

(B) Consistent with the requirements of 34 C.F.R. § 303.344, includes:
(i) Information about the child's present levels of
development;

(ii) Information about the family;

(iii) The results or outcomes to be achieved;

(iv) The early intervention services necessary to meet the needs of the child and family, and

(v) To the extent appropriate, the identification of other services that the child or family needs or is receiving through other sources;

(C) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained, consistent with 34 C.F.R. § 303.420; and

(D) Is developed in accordance with the IFSP procedures in 34 C.F.R. §§ 303.342, 303.343, and 303.345.

(5) "Infant or toddler with a disability" shall have the same meaning as provided in section 632(5) of the IDEA (20 U.S.C. § 1432(5)).

(6) "Local education agency" or "LEA" means the District of Columbia Public Schools system or any individual or group of public charter schools operating under a single charter.

(7) "OSSE" means the Office of the State Superintendent of Education, as established by the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601, *et seq.*).

(8) "Parent" means a natural or adoptive parent of a child, a legal guardian, a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare, or a surrogate parent who has been appointed in accordance with 34 C.F.R. §300.519. The term "parent" may also include a foster parent when the natural parent's authority to make educational decisions on the child's behalf has been extinguished under applicable law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make educational decisions for the child as required under IDEA, and has no interest that conflicts with the interest of the child.

(9) "Public agency" means either OSSE or a local education agency.

(10) "Service location" means the physical address at which instruction occurs or at which a student with disabilities receives special education and related services. The term "service location" does not refer to a specific classroom within a building or a specific building on a campus.

Sec. 103. Procedural safeguards; due process requirements.

In addition to any procedural safeguards and due process requirements required by IDEA:

(1) Before any change in service location for a child with a disability is made, the LEA shall provide the parent with written notice of the proposed change, which shall at minimum include:

(A) A description of the action proposed by the LEA;

(B) An explanation of why the LEA proposes to take the action;

(C) A description of each evaluation procedure, assessment, record, and report the agency used as a basis for the proposed action;

(D) A statement that the parents of a child with a disability have protection under the procedural safeguards of IDEA and that describes the means by which a copy of the procedural safeguards can be obtained;

(E) Sources for parents to contact to obtain assistance in understanding the provisions of IDEA;

(F) A description of other options that the LEA considered and the reasons why those options were rejected; and

(G) A description of any other factors relevant to the LEA's proposal.

(2) Any notice provided to the parent of a child with a disability or the parent of an infant or toddler with a disability pursuant to section 625(c)(1) or 639(a)(6) of IDEA (respectively, 20 U.S.C. § 1439(a)(6) and 20 U.S.C. § 1415(c)(1)) or this act shall include a list of sources the parent may contact for assistance, including contact information for the:

(A) Parent Training and Information Center established pursuant to section 671 of IDEA (20 U.S.C. § 1471);

(B) Office of the Ombudsman for Public Education; and

(C) Office of the Student Advocate.

(3) No fewer than 5 business days before a scheduled meeting where an IEP, IFSP, or eligibility for special education services will be discussed, the public agency scheduling the meeting shall provide parents with an accessible copy of any evaluation, assessment, report, data chart, or other document that will be discussed at the meeting; provided, that if a meeting is scheduled fewer than 5 business days before it is to occur, then these documents shall be provided no fewer than 24 hours before the meeting.

(4)(A) No later than 5 business days after a meeting at which a new or amended IEP has been agreed upon, the public agency shall provide the parents with a copy of the IEP. If an IEP has not yet been completed by the 5th business day after the meeting or additional time is required to comply with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*) ("Language Access Act"), the public agency shall provide the parent with the latest available draft IEP and a final copy upon its completion; provided, that the final copy of the IEP shall be provided to the parents no later than 15 business days after the meeting at which the IEP was agreed upon.

(B) No later than 5 business days after a meeting at which a new or amended IFSP has been agreed upon, the public agency shall provide the parents with a copy of the IFSP for their review and signature. If additional time is required to comply with the Language Access Act, the public agency shall provide the parent with a copy for parental review upon completion; provided, that the IFSP shall be provided to the parents for review no later than 15 business days after the meeting at which the IFSP was agreed upon.

(5)(A) Upon request, an LEA shall provide timely access, either together or separately, to the following for observing a child's current or proposed special educational program:

(i) The parent of a child with a disability; or

(ii) A designee appointed by the parent of a child with a disability who has professional expertise in the area of special education being observed or is necessary to facilitate an observation for a parent with a disability or to provide language translation assistance to a parent; provided, that the designee is neither representing the parent's child in litigation related to the provision of free and appropriate public education for that child nor has a financial interest in the outcome of such litigation.

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(B) The time allowed for a parent, or the parent's designee, to observe the child's program shall be of sufficient duration to enable the parent or designee to evaluate a child's performance in a current program or the ability of a proposed program to support the child.

(C) A parent, or the parent's designee, shall be allowed to view the child's instruction in the setting where it ordinarily occurs or the setting where the child's instruction will occur if the child attends the proposed program.

(D) The LEA shall not impose any conditions or restrictions on such observations except those necessary to:

- (i) Ensure the safety of the children in a program;
- (ii) Protect other children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation by a parent or a designee; or
- (iii) Avoid any potential disruption arising from multiple observations occurring in a classroom simultaneously.

(E) An observer shall not disclose nor use any information obtained during the course of an observation for the purpose of seeking or engaging clients in litigation against the District or the LEA.

(F) The LEA may require advance notice and may require the designation of a parent's observer to be in writing.

(G) Each LEA shall make its observation policy publicly available.

(H) Nothing in this paragraph shall be construed to limit or restrict any observational rights established by IDEA or other applicable law.

(6)(A) In special education due process hearings occurring pursuant to IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)), the party who filed for the due process hearing shall bear the burden of production and the burden of persuasion; except, that:

(i) Where there is a dispute about the appropriateness of the child's individual educational program or placement, or of the program or placement proposed by the public agency, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided, that the party requesting the due process hearing shall retain the burden of production and shall establish a prima facie case before the burden of persuasion falls on the public agency. The burden of persuasion shall be met by a preponderance of the evidence.

(ii) Where a party seeks tuition reimbursement for unilateral placement, the party seeking reimbursement shall bear the burden of production and the burden of persuasion on the appropriateness of the unilateral placement; provided, that the hearing officer shall have the authority to bifurcate a hearing regarding a unilateral placement; provided further, that if the hearing officer determines that the program offered by the public agency is appropriate, it is not necessary to inquire into the appropriateness of the unilateral placement.

(B) This paragraph shall apply to special education due process hearings resulting from complaints filed after July 1, 2016.

(7)(A) In any action or proceeding brought under Part B or Part C of IDEA, a court, in its discretion, may award reasonable expert witness fees as part of the costs to a prevailing party:

- (i) Who is the parent of a child with a disability;
- (ii) That is a local educational agency or OSSE, when the attorney of a parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (iii) That is a local educational agency or OSSE against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(B) Any fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished; provided, that the maximum award shall be \$6,000 per action or proceeding. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

(C) Expert witness fees otherwise available under this paragraph shall not be awarded if reimbursement of attorneys' fees and related costs would be prohibited in the proceeding under 20 U.S.C. § 1415(i)(3)(D).

(D) Any expert witness fees available under this paragraph, shall be subject to reduction if the court makes a finding listed under 20 U.S.C. 1415(i)(3)(F).

(E) Expert witness fees otherwise available under this paragraph shall not be awarded to compensate the moving party for an independent educational evaluation unless that party would be entitled to compensation for the evaluation under IDEA.

(F) This paragraph shall apply to actions and proceedings initiated after July 1, 2016.

Sec. 104. Transfer of rights.

(a) A child with a disability who has reached 18 years of age shall be presumed to be competent, and all rights under IDEA shall transfer to the student, unless:

- (1) The student has been adjudged incompetent under law;
- (2) Pursuant to a procedure established by OSSE pursuant to 20 U.S.C. § 1415(m)(2), the student has been determined to not have the ability to provide informed consent and another competent adult has been appointed to represent the educational interests of that student; provided, that the adult student shall have the opportunity to challenge any determination made under this paragraph; or

(3)(A) The student has designated, in writing, by power of attorney or similar legal document, another competent adult to be the student's agent to:

- (i) Make educational decisions;
- (ii) Receive notices; and
- (iii) Participate in meetings and all other procedures related to the student's educational program on behalf of the student.

(B)The student may terminate the power of attorney at any time and assume the right to make decisions regarding his or her education.

(b)(1) A student who has reached 18 years of age may receive support from another competent and willing adult to aid them in their decision-making.

(2) The student's decisional choice shall prevail any time that a disagreement exists between the student and the other adult providing support.

(c) No less than one year before a child with a disability reaches 18 years of age, the LEA shall notify the parents, in writing, that adult students with disabilities are presumed competent, and that all rights under IDEA will transfer to the student when the student reaches 18 years of age, unless the student or the family exercises one of the options described in subsection (a) of this section. The notice shall also describe the necessary procedure to exercise any of the options provided for in subsections (a) and (b) of this section.

TITLE II. DUE PROCESS HEARINGS

Sec. 201. Short title.

This title may be cited as the "Special Education Due Process Hearing Independence and Transparency Act of 2014".

Sec. 202. Hearing officer selection.

(a) OSSE shall administer impartial due process hearings as required by IDEA (20 U.S.C. § 1415(f) and 20 U.S.C. § 1439(a)(1)) and may issue regulations necessary for this purpose.

(b) In selecting hearing officers for administering special education due process hearings, OSSE shall submit potential candidates for review to a 7-member community review panel.

(c)(1) The members of the community review panel shall be appointed by OSSE and consist of the following:

(A) One attorney knowledgeable in the field of special education who has experience representing parents and who is admitted to practice and in good standing in the District of Columbia;

(B) One attorney knowledgeable in the field of special education who has experience representing schools and who is admitted to practice and is in good standing in the District of Columbia;

(C) One educator knowledgeable in the field of special education and special education programming;

(D) One representative from a charter school LEA who is knowledgeable in the field of special education and special education programming;

(E) One representative from DCPS who is knowledgeable in the field of special education and special education programming; and

(F) Two parents of individuals who are or at one time were eligible to receive special education and related services in the District of Columbia.

(2) No member of the community review panel may be an employee of OSSE.

(d) Following its review of candidates for hearing officers, the community review panel shall forward its recommendations to the State Superintendent of Education.

Sec. 203. Evaluation and termination of hearing officers.

(a) The State Superintendent of Education may establish a process for submitting the records of individual hearing officers to the community review panel for evaluation before exercising a contract option year.

(b) The contract of a hearing officer may only be terminated for good cause and after the hearing officer has been given notice and an opportunity to be heard.

Sec. 204. Attorney abuses.

(a) Subject to IDEA and other applicable law, the chief hearing officer in the office for administering special education due process hearings (“office”) may enter an order restricting the practice of any attorney before the office after a showing that the attorney has engaged in a pattern of filing frivolous pleadings.

(b) A pattern of filing frivolous pleadings shall be established when an attorney has:

(1) Three or more federal court judgments against him or her due to the filing of frivolous pleadings;

(2) Three or more pleadings that are deemed by the chief hearing officer for the office as frivolous, unreasonable, or without foundation, including pleadings that were filed for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation; or

(3) Filed a due process complaint without the knowledge and consent of the represented party.

(c) The restrictions that may be imposed by the chief hearing officer of the office include:

(1) Disqualification from a particular case;

(2) Suspension or disqualification from practice in special education due process hearings in the District of Columbia;

(3) A requirement that an attorney obtain ethics or other professional training; or

(4) A requirement that an attorney appear only when accompanied by another attorney.

(d) An attorney subject to a restriction under subsection (c) of this this section shall be given notice and an opportunity to be heard before the imposition of the restriction or as soon after imposition of the restriction as is practicable.

(e) Any person suffering a legal wrong or adversely affected or aggrieved by any order under this section may obtain judicial review of that order in the United States District Court for the District of Columbia.

TITLE III: RULES

Sec. 301. Rules.

Pursuant to the authority granted in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11), the State Superintendent of Education may issue rules to implement the provisions of this act; provided, that the State Superintendent of Education shall issue rules to implement section 104(a) by July 1, 2016.

TITLE IV. GENERAL PROVISIONS

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated October 6, 2014, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

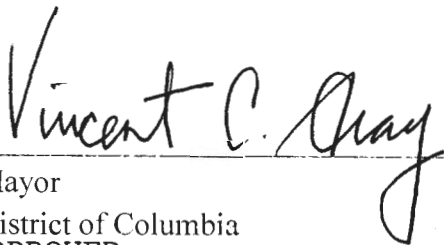
Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman

Council of the District of Columbia



Mayor

District of Columbia

APPROVED

November 20, 2014



**COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004**

Docket No. **B20-0723**

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 10/7/2014

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ROLL CALL VOTE - Result _____ (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11-12-14

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 10/28/2014

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ROLL CALL VOTE - Result _____ (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				McDuffie	X			
Alexander	X				Cheh	X				Orange	X			
Barry				X	Evans	X				Wells	X			
Bonds	X				Graham	X								
Bowser	X				Grosso	X								
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

11-12-14

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result _____ (.....)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Catania					McDuffie				
Alexander					Cheh					Orange				
Barry					Evans					Wells				
Bonds					Graham									
Bowser					Grosso									
X - Indicate Vote					AB - Absent					NV - Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

Date

DC Special Education Legislation Effective Dates

Provision	Effective Date
Notice of Change of Location: Written notice must be given to parents before a change of location in writing.	March 10, 2015 DC CODE § 38-2571.03
Getting Documents to Parents: Copies of written documents (IEPs and IFSPs) must be provided 5 business days prior to an IEP meeting and final drafts within 5 days after.	March 10, 2015 DC CODE § 38-2571.03
Observation: Parents—or their designee—are entitled to observe their child in his or her current or proposed special education classroom.	March 10, 2015 DC CODE § 38-2571.03
Transfer of Rights: Students over 18 will be able to permit others to make educational decisions about their rights.	March 10, 2015 (with one section awaiting regulations from OSSE) DC CODE § 38-2571.04
Resources for Parents: Written notice must include resources for parents to resolve problems with a child’s education.	March 10, 2015 DC CODE § 38-2571.03
Hiring and Review of Hearing Officers: A community review panel will review hearing officer candidates for special education due process hearings.	March 10, 2015 (Pending Panel development) DC CODE § 38-2572.02-3
Sanctions Against Attorneys: Attorneys can be restricted from special education due process hearings if they are found to engage in a pattern of frivolous pleadings.	March 10, 2015 DC CODE § 38-2572.04
Lottery Preference: Charter schools can establish a preference for students with an IEP or particular disability through the lottery system.	March 10, 2015 DC CODE § 38-1802.06
Ombudsman: The Ombudsman for Public Education has the authority to observe instruction in the school and identify school level concerns.	March 10, 2015 DC CODE § 38-354
Transition Planning: Schools will be required to provide transition services to students with IEPs starting at age 14. One year before completion of school the IEP team must identify any needed adult services.	March 10, 2015 DC CODE § 38-2614
Burden of Proof in Due Process Hearings Shift: Except for reimbursement cases, burden of persuasion falls on the school district if the dispute is about educational placement.	For proceedings initiated after July 1, 2016 DC CODE § 38-2571.03
Expert Fees: Parents who prevail at a hearing can recover reasonable expert fees up to \$6,000.	For proceedings initiated after July 1, 2016 DC CODE § 38-2571.03
Evaluation: Children who have been referred for a special education evaluation must be evaluated within 60 days from parental consent or 90 days from referral.	July 1, 2017 or upon funding, whichever is later DC CODE § 38-2561.02
Early Intervention: Children up to age three will be eligible for early intervention services if they have a 25% delay in just one developmental area.	July 1, 2017 or upon funding, whichever is later DC CODE § 38-2614
Elimination of Dependent Local Education Agencies: Every current charter school must become its own LEA for the purpose of Part B of the IDEA. Exceptions may be made if a school with more than 90% of its students entitled to receive services pursuant to an Individualized Education Program.	August 1, 2017 DC CODE § 38-1802.10

CLC Tip Sheet for Advocates

The New Special Education Legislation: How to Make It Work for Your Clients

The Basics (See also Effective Dates chart)

The DC Special Education Legislation mandated several reforms (some immediately in effect) which:

- Enhanced protections for parental participation;
- Mandated changes in special education litigation;
- Changed service and basic eligibility requirements for services for certain age groups;
- Reduced the time schools have to evaluate a child who has been referred for special education;
- Made several changes to charter school operations (including eliminating dependent LEA status for most charter schools).

When Did It Become Effective?

The legislation became law on **March 10, 2015**, but some provisions are not immediately in effect (see Effective Dates chart for specifics).

Dos and Don'ts Under the New Special Education Legislation

DO review the Effective Dates chart for specific entitlements under each component of the legislation.

DON'T assume all line school staff have been briefed on implementation of the new legislation.

DO request records in writing in advance of MDT and IEP meetings referencing the new legislation.

DO push back if schools are not providing detailed information when proposing a change in location under the new legislation provisions. A school's definition of a program as location or placement no longer creates a legal difference in the notice the parent is entitled to.

Does the New Legislation Address School Observations?

Yes, it makes observation policies uniform across schools and allows for observation by:

- Parents and parents designees;

- Translators or other individuals assisting parents;
- A person with professional expertise in the area being observed.

When are Observations Not Permitted?

If the observation is being conducted by an attorney representing parents in active litigation or by individuals with a financial interest in the litigation (ex: an expert who will only be paid if the parent prevails).

What about increased sanctions for frivolous pleading?

The new legislation contains explicit sanctions for all attorneys who are found to be engaged in a “pattern” of frivolous pleading. This provision is immediately effective, and applies to both parents’ attorneys and attorneys representing the school district.

More Questions? Want to Report Implementation Concerns?

Please reach out to Children’s Law Center at 202-467-4900, Option 3, the Helpline.



Department of Education Advisory Letters

To search the Department of Education Office of Special Education's Advisory Letters, go to:
<http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/index.html>

Other Resources

Council of Parent Attorneys and Advocates (COPAA) (subscription required for parts of site)
<http://www.copaa.org/>

Department of Education, Office of Special Education Programs
<http://www2.ed.gov/about/offices/list/osers/osep/index.html>
Guidance, including official letters from OSEP to states

National Association of Special Education Directors
<http://www.nasdse.org/LinkClick.aspx?fileticket=RgDZJaopzMc%3d&tabid=36>
Various resources, including an excellent summary of case law

NICHCY
<http://www.parentcenterhub.org/nichcy-resources/>
Resources on disabilities and basics about IDEA

Special Education Connection (subscription required)
<http://www.specialedconnection.com>

Office of the State Superintendent of Education
Specialized Education Local Policies
<http://osse.dc.gov/service/specialized-education-local-policies>