

# *WHAT'S NEW IN SPECIAL EDUCATION LAW*



COUNCIL FOR EXCEPTIONAL CHILDREN

37TH LOUISIANA SUPER CONFERENCE ON SPECIAL  
EDUCATION, JANUARY 22, 2018

# BACKGROUND

**History**

**Training**

**Ed. D. Program creation and now Exceptional Learner concentration**

**Education Law Association (More later)**

**This is not legal advice, just a framework to help with decision-making**

# IMPACT OF *ENDREW F*

Rowley “Some benefit” vs. Endrew F. “Meaningful benefit”

33 cases HO applied Rowley and Court applied Endrew F.

2 different outcomes out of 33 cases

Remand to District Court

Reverse against parents

## ***Real Potential Impact Unknown***

Not sure if HOs are ruling differently by applying Endrew F.

Not sure of influence on IEP team decisions applying Endrew F.

# 504 DATA

**1.8% of students nationwide have a 504 plan only - up from 1% in 2009.**

## **Leading states:**

**New Hampshire 5.5%**

**Louisiana 5.0%**

**Vermont 4.4%**

## **Lowest states**

**New Mexico .5%**

**Nebraska & Utah .7%**



**Demographics show more white students than minority, more male students than female and more at non-Title I schools than Title I schools.**

O.M. VS. FALMOUTH SCHOOL  
DEPT. (1<sup>ST</sup> CIR. 2017)



**Parent claimed IEP specified school would use Specialized Program Individualizing Reading Excellence (SPIRE).**

**Originally parent objected to SPIRE as not scientific based, teachers not qualified and no way to measure success.**

**The suggestion to use SPIRE was in ancillary documents including notices to parents, but not in IEP.**

**Court ruled for school district indicating no requirement to address specific instructional methods in IEP, although many districts do. SPIRE was in ancillary documents that court did not read into being part of official IEP. District instead created an 8 hour 45 minute Literacy & Math program (no title).**

## L.J. VS. PITTSBURGH UNIFIED SCHOOL DISTRICT (9<sup>TH</sup> CIR. 2017)

**Lower court said student had 3 disabilities (bi-polar, ODD & ADHD), but no IEP required because of satisfactory work in general education classes.**

**Appellate Court reversed in favor of the parents holding LJ was doing satisfactory work because of the special services (which were not available to others) including mental health counseling and 1 on 1 services from paraprofessional.**

**Also found lower court did not take into account other factors like suicide attempts, hospitalizations and other disciplinary events.**



# HAMILTON COUNTY, TN CASE ON INCLUSION

**District removed a 2<sup>nd</sup> grade student with Down syndrome from a regular classroom and placed him in a comprehensive development classroom segregated from his peers.**

**Court said the move was more restrictive than necessary. Court cited the requirement to educate students with disabilities alongside those without them to the maximum extent appropriate. The program involved more life skills than academic courses.**

**80% of students with intellectual disabilities attending Hamilton County schools were separated into comprehensive development classrooms for most of the school day.**

**Court said it violated IDEA but was not discriminatory.**

# M.L. V. SMITH, (4TH CIR. 2017)

**Student with Down syndrome was member of Orthodox Jewish faith and attending a private religious school associated with that faith.**

**Age 9 parents wanted public school and the public school assessment said he could learn in public school with constant repetition and consistency.**

**Parents rejected because it did not provide functional instruction to prepare for life in Orthodox Jewish community**

**Court ruled for district holding religious and cultural instruction does not fall within school's duty.**



RACHEL H. V. DEPT. OF  
EDUCATION, STATE OF HAWAII  
(9<sup>TH</sup> CIR. 2017)



**Location and placement issues**

**Family moving 30 miles away wanted private school as no public school was listed for location**

**Court said IDEA does not require identification of the anticipated school where special services would be delivered as student was moving. Location = General setting or type of environment where services will be provide (classroom)**

**Placement = general education program of the student and district is not required to list school in the IEP**

## R.B. V. HAWAII DEPT. OF EDUCATION (9<sup>TH</sup> CIR. 2017)



**Student transitioning from private Autism preschool to public kindergarten. Parents claimed no transition plan was included in IEP.**

**Court agreed saying transition plan is not just for students exiting the public school system. Rather, where transition services become necessary for disabled children to be educated and participate in new academic environments, these services must be included in IEPs in order to satisfy the IDEA's "supplementary aids and services" requirement.**

**Court also noted there was no description of LRE for regular and extended summer school and it should be in the IEP and "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class" and "the anticipated frequency, location, and duration of [the special education] services and modifications."**

## BURKE V. INDEPENDENCE BLUE CROSS - PENNSYLVANIA APPEALS



**Insurer denied claim for “applied behavioral analysis” (ABA) to be provided at the parochial elementary school on account of an express place-of-services exclusion in the Policy delineating that services would not be covered if the care was provided in certain locations, including schools as opposed to the home.**

**Court over-ruled stating “we simply do not believe that the Legislature intended to permit insurers to exclude coverage in the sensory-laden educational environment where children spend large portions of their days, or to require families to litigate the issue of medical necessity discretely in individual cases to secure such location-specific coverage for the treatment. Based on the Pennsylvania Autism Recovery Law**

# SUPREME COURT DENIES WRIT ON STAY PUT CASE

**Is a student's "then-current educational placement" the Stay – Put placement simply because it is the placement listed in an individualized education program (IEP) drafted by the school district, even when the parents objected to the portion of the IEP listing that placement, and the child never actually attended that placement?**

**Court of Appeals in N.E. v. Seattle School District said yes, and Supreme Court refused the writ.**



# RESOURCES

## **1. Education Law Association (“ELA”) Membership**

## **2. A Guide to Special Education Law published by ELA**

**1 / Special Education Legal Literacy - Janet R. Decker and Elizabeth A. Shaver**

**2 / The American Legal System - Charles J. Russo and Allan G. Osborne, Jr.**

**3 / Fundamentals of Federal Disability Law - Julie F. Mead**

**4 / Discrimination under Section 504 of the Rehabilitation Act and Americans with Disabilities Act - Allan G. Osborne, Jr.**

**5 / Qualifying for Special Education Services under IDEA - Elizabeth A. Shaver**

**6 / IEPs, Least Restrictive Environment, and Placement - Jean B. Crockett and Mitchell L. Yell**

**7 / Related Services under the IDEA - Jennifer A. Sughrue**

**8 / Secondary School Transition Planning - Stanley L. Swartz, Philip H. Swartz, and Cathleen A. Geraghty-Jenkinson**

**9 / Disciplining Students with Disabilities - Mark A. Paige**

**10 / Parental Rights - Susan G. Clark**

**11 / Procedural Safeguards: Resolving Family-School Disputes - Susan C. Bon**

**12 / Current Issues in Special Education - Allan G. Osborne, Jr. and Susan C. Bon**

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