WHAT'S HAPPENING IN SPECIAL EDUCATION LAW NATIONALLY: TEN HOT TOPICS OF 2020/21

2020-21 State Superintendent's (Virtual) Conference on Special Education and Pupil Services Leadership

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I. INTRODUCTION

Although the country has turned most of its attention during the past year to questions related to the provision of appropriate educational services to students with disabilities during the chaos of a pandemic, there has yet to be issued any real substantive and/or binding decisional law to guide us on those questions. However, there continues to be a good bit of court activity nationally in the area of special education law that is not COVID-related. In this special education legal update, I will highlight ten hot topics and interesting court decisions issued about them during the past year.

HOT TOPIC #1: COVID-RELATED COURT DECISIONS

A. Hernandez v. Lujan Grisham, 77 IDELR 185 (D. N.M. 2020). Based upon the state's COVID school reentry guidance and its allowance for districts and the state ED to offer in-person learning to certain students with disabilities, the state Secretary of Education is ordered to ensure that the SLD student's IEP be revised to provide for her need for in-person instruction. The student's most recent IEP likely denies her FAPE by explicitly barring her from receiving in-person instruction. Although the state ED argues that the student's district developed the IEP based upon state health regulations issued during the pandemic, the IEP fails to properly address the student's needs. When the district shuttered brick-and-mortar schools, the student was unable to make progress with remote services and evidence shows that the student may have already experienced irreparable "severe learning loss" because she does not have access to the specialized instruction and services she needs at home. In addition, the IEP misinterprets state health regulations as forbidding in-person instruction where state reentry guidance permits in-person instruction for special needs students. In its current state, the student's IEP improperly prioritizes the district's preference for fully remote instruction instead of prioritizing services that provide the student education benefit. Amending the student's IEP to reflect her need for in-person services is not against the public interest. While the gravity of the pandemic is noted, the state ED is not being instructed to fully reopen schools. Rather, a TRO is issued requiring the state ED to instruct the student's district to amend the IEP regardless of the LEA's preference for remote instruction. NOTE: On December 28, 2020, the court issued a second order essentially denying all claims brought against SEA officials and the school district involved for a variety of reasons. 78 IDELR 12 (D. N.M. 2020). Notably, the court held that with respect to a parent concern about remote instruction violating IDEA's LRE provision, "when children with disabilities are offered the same remote instruction that is available to children without disabilities, the remote instruction setting qualifies as a regular educational environment, or regular class, under the LRE provision."

B. J.T. v. de Blasio, 120 LRP 26297 (S.D. N.Y. 2020). The court entertains "serious doubts" about numerous procedural aspects of this case, all of which must be resolved before the court will begin to consider any application for preliminary injunctive relief. In this case purporting to bring action against every school district and state department in the United States asserting that they have all violated IDEA by closing schools and requiring students to say home during the pandemic, the court "harbors considerable doubt that it has jurisdiction over any school district in any state other than New York, where it sits." Thus, Plaintiffs are ordered to show cause why their complaint should not be dismissed as against

all school districts from the other 49 states. The arguments already made in previous briefing in support of the court's exercise of long-arm jurisdiction over the out-of-state districts and state departments "do not pass what one of my former partners called 'the laugh test.'" NOTE: The court dismissed the case without prejudice on November 13, 2020 for a number of reasons. 77 IDELR 252 (S.D. N.Y. 2020). Notably, the plaintiffs failed to show that the New York district's school closures amounted to a change in placement for purposes of stay-put.

C. J.C. v. Fernandez, 77 IDELR 15 (D. Guam 2020). Temporary injunction is denied where five students with disabilities failed to establish that they would suffer irreparable harm without it. The students are required to show that: 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm in the absence of the preliminary relief; 3) the balance of equities tips in their favor; and 4) a preliminary injunction is in the public interest. Here, the students failed to present substantial evidence that they need four hours of daily in-school educational services, including assistance from a specialized paraprofessional, for four weeks during the summer to avoid irreparable harm. In addition, it is not possible to determine whether the students are likely to succeed on the merits of their claim, where the students based their request on the assumption that they are entitled to stay-put protections under IDEA. It is unclear whether the coronavirus-related school closures constitute a change in educational placement that would trigger IDEA's stay-put provision. According to the Ninth Circuit in *N.D. v. State of Hawaii, Department of Education*, "Congress did not intend for the IDEA to apply to system wide administrative decisions." The court needs "a clear[er] picture of the situation" to grant injunctive relief, but the students may file another motion for a preliminary injunction with supporting evidence before July 24, 2020. (Case dismissed by stipulation on August 7, 2020).

HOT TOPIC #2: RETALIATION/FREEDOM OF SPEECH

Case brought by employee

A. Norris v. Opelika City Bd. of Educ., 77 IDELR 250 (M.D. Ala. 2020). School district's motion for judgment is denied where special education teacher's consistently favorable performance reviews did not mention any of the performance concerns cited by the district as the reason for nonrenewal of her contract. Under 504/ADA, to prove unlawful retaliation, a litigant must show that 1) she engaged in a protected activity; 2) the district took adverse action against her; and 3) the adverse action was in response to the protected activity. If a district alleged a legitimate, nonretaliatory reason for the adverse action, a litigant may still prevail if it is shown that the district's reasoning was a false excuse for the adverse action. Here, the teacher has sufficiently pleaded retaliation by alleging that the district did not renew her contract because she repeatedly objected to a student's segregation from the rest of his PE class. Although the district claims that it had already decided not to renew the contract for the next year due to her poor performance, the district's written evaluations of her do not support that claim. Rather, they reveal that the teacher conducted herself and her classroom in a satisfactory manner. In addition, the deposition testimony of several district officials acknowledges that the teacher provided

FAPE to her students. Because a reasonable jury could find that the district retaliated against the teacher, the district's motion for judgment is denied.

Cases brought by parents

B. L.F. v. Lake Washington Sch. Dist. #414, 75 IDELR 239, 947 F.3d 621 (9th Cir. 2020). Parent cannot show that the district violated his First Amendment rights when he was barred from communicating with school staff after he challenged a team's decision that his daughter did not need a Section 504 plan. Thus, the district court's decision that the communication plan was reasonable is upheld. While the First Amendment prohibits school districts from infringing on the right to free speech, the communication plan here did not do so, as it only advised him that school employees would no longer respond to substantive communications about his daughter's educational services, regulating the district's conduct, not the parent's. Even if the plan did restrict the parent's right to free speech, it did not violate the First Amendment because a school is not a forum for public expression. Thus, the district could set reasonable limitations on time, place and manner of parent communications. Here, the plan allowed the parent to have biweekly in-person meetings with district administrators to discuss the student's Section 504 needs and addressed the manner in which the parent communicated with the district—not the content of his speech or any viewpoints that he wished to convey. Thus, the plan was a reasonable effort to manage the parent's communication with staff, including his pattern of incessant emails accusing staff of wrongdoing, making presumptuous demands and leveling demeaning insults, as well as aggressive, hostile and intimidating interactions face-to-face.

C. Aponte v. Pottstown Sch. Dist., 76 IDELR 38 (E.D. Pa. 2020), aff'd, 2021 WL 141608 (3d Cir. 2021) (unpublished). To establish unlawful retaliation, a parent must show that 1) she engaged in a protected activity (advocacy); 2) the district took action that would deter a typical person from engaging in that protected activity; and 3) the adverse action taken by the district stemmed from the protected activity. Addressing the third element, the principal testified extensively about his motivation for calling child welfare authorities and his concerns about the emotionally disturbed student's atypical and dangerous behavior (which caused a lockdown of several classrooms), prompting staff to call paramedics. In addition, the principal learned through conversations with school staff that the student had stopped taking his psychiatric medication. For those reasons, the principal believed that the student's behavior met the criteria of "potential serious mental injury," which he was required to report as a mandatory reporter, even if his belief was based upon suspicion rather than actual proof. Thus, the hearing officer's decision that the principal acted out of genuine concern for the student's wellbeing rather than to punish the parent for her past advocacy is affirmed and the district's motion for judgment on the parent's 504 retaliation claims is granted.

HOT TOPIC #3: CHILD FIND DUTY TO TIMELY EVALUATE

A. P.P. v. Northwest Indep. Sch. Dist., 77 IDELR 7 (5th Cir. 2020) (unpublished). Where the purpose of a compensatory education award is to put a student in the position that she would have been if the district had complied with its IDEA obligations, parents must show

that their child lost ground because of the district's child find violation. Here, the parents rejected several remedial services offered by the district as part of general education, including a dyslexia class, individualized tutoring and further evaluations. In addition, the parents stymied the efforts of the district to correct deficiencies in the student's initial IEPs by refusing to meet with the IEP Team while an independent educational evaluation was pending and refusing to adopt agreed-upon revisions in an IEP proposed in May 2017. In addition, the student made substantial progress under her February and May 2017 IEPs and, therefore, was not entitled to compensatory education services just because the district waited seven months to evaluate the student for dyslexia and other learning disabilities. Thus, the district court's decision that compensatory education was not warranted is affirmed.

HOT TOPIC #4: EVALUATION OF PARENTALLY PLACED PRIVATE SCHOOL STUDENTS

A. Bellflower Unif. Sch. Dist. v. Lua, 77 IDELR 181 (9th Cir. 2020) (unpublished). District's refusal to develop a new IEP for a middle schooler unless and until she left her parochial school and reenrolled in the public school system is a denial of FAPE, and the parents are entitled to reimbursement for the cost of the student's private school placement. Districts are required to make FAPE available to all of their students with disabilities who are residents of the district, even those enrolled in out-of-district private schools, upon parent request. Here, where the student still resided in the district, the district remained responsible for reevaluating her and providing special education services. While the district would not have to make a written offer of FAPE if the parents had clearly stated their intent to continue the student's private placement, these parents wrote a total of three letters in 2015 and 2016 indicating that they were still interested in a public school placement and an updated IEP.

B. A.B. v. Abington Sch. Dist., 440 F.Supp.3d 428, 76 IDELR 41 (E.D. Pa. 2020), aff'd, 78 IDELR 1 (3d Cir. 2021)l (unpublished). While a district must make FAPE available to a parentally placed private school student with autism upon parent request, even if the student has not enrolled in a district school, the parent's general inquiries about the types of services the district has to offer did not qualify as a request for FAPE. To prove an IDEA violation, parents must prove that they specifically asked the district for an evaluation and development of an IEP and the district refused. Here, the student services coordinator at the high school testified that the parent called him and, in a very brief conversation, asked about special education services available in the district. The parent ended the call by thanking him for the information and the coordinator noted that the person on the phone did not ask about an evaluation for her child. In addition, the parent did not request an evaluation or an IEP in her prior emails to the district. Thus, the hearing officer's decision that the district had no obligation to reevaluate the student is upheld.

HOT TOPIC #5: ELIGIBILITY

A. William V. v. Copperas Cove Indep. Sch. Dist., 77 IDELR 92 (5th Cir. 2020) (unpublished). District court's decision granting judgment in favor of the district is affirmed where the

court found that the student was, in fact, eligible under IDEA as an SLD student, but that it was a procedural violation that caused no substantive harm. While the student's scores on standardized tests showed he was performing below grade level, IDEA requires focus upon individual progress—not how a student's progress compares to that of his or her same-age peers. Here, the student's grades and reading level assessments demonstrated that he was making progress. Thus, the parents did not show that the district court clearly erred in finding that the student was making continuous progress in the general education setting in reading, writing and math. In addition, the parents' assertion that the district failed to use a "research-based" reading program is rejected where the district used the Wilson reading program, which is a structured research-based program that meets state standards for dyslexia instruction. Since the student did not lose any educational opportunities as a result of the flawed SLD eligibility determination, there was no denial of FAPE.

B. Independent Sch. Dist. No. 283 v. E.M.D.H., 960 F.3d 1073, 76 IDELR 203 (8th Cir. 2020). District court's ruling that student with depression, anxiety and other conditions is eligible for special education is affirmed. To be eligible for services, the student must have a disability and a disability-related need for special education services. Here, the student qualifies as a student with emotional disturbance where she has suffered for years from a "panoply" of mental health issues that have kept her in her bedroom, socially isolated, and terrified to attend school, which resulted in earning very few course credits. The district's argument that the student's above-average intelligence, above-average standardized test scores and exceptional performance on the rare days she attended school reflect that she does not have a disability-related need for special education is rejected. IDEA does not focus upon a student's innate intelligence; rather, it focuses upon a student's ability to make progress in the general curriculum. Clearly, the record reflects that this student's intellect alone is insufficient for her to progress academically and that she needs special education and related services.

HOT TOPIC #6: INDEPENDENT EDUCATIONAL EVALUATIONS

A. D.S. v. Trumbull Bd. of Educ., 975 F.3d 152, 77 IDELR 122 (2d Cir. 2020). District court's opinion is vacated, reversed and remanded because a functional behavioral assessment is not an "evaluation" for which a parent may seek a publicly funded IEE. Although IDEA does not specifically define "evaluation," it sets forth specific requirements for evaluations and reevaluations. Those requirements taken together make it clear that an "evaluation" refers to a comprehensive assessment of a child in all areas of suspected disability to determine whether the student has a disability and the nature and extent of special education and related services that are needed. An FBA, by title and definition, is not a comprehensive assessment of a child's disability and is "a purposefully targeted examination of a child's behavior." While the U.S. DOE has a longstanding view otherwise, its view does not reflect the plain text of the IDEA and its implementing regulations and, therefore, the court owes it no deference. In addition, the IDEA's 2-year statute of limitations period does not apply to requests for IEEs, because IDEA provides for parental requests for due process complaints about identification, evaluation, placement or services, but parents are not required to file a due process complaint to request an IEE. Here, the parents challenged the student's October 2014 reevaluation five months before

the next reevaluation was due. Thus, the request for an IEE was timely. Thus, the case is remanded for further proceedings on the appropriateness of the October 2014 reevaluation.

HOT TOPIC #7: IEP CONTENT/IMPLEMENTATION ISSUES

A. Piotrowski v. Rocky Point Union Free Sch. Dist., 76 IDELR 209 (E.D. N.Y. 2020). District's failure to distribute the IEP for a teenager with Type I diabetes could support the parent's claim for money damages under Section 504/ADA. Not only did the parent claim that the district failed to accommodate the student's diabetes, but she also alleged that administrators acted in bad faith or with gross misjudgment when the student was repeatedly punished for using his cell phone in class to check glucose levels and going to the nurse's office to do the same. In addition, the parent alleged that administrators were aware of the student's disability-related accommodations, despite the district's failure to provide his high school with a copy of his IEP. Finally, because the parent is not seeking relief for a denial of FAPE, she is not required to first exhaust administrative remedies before bringing 504/ADA claims in federal court.

B. E.C. v. U.S.D. 385 Andover, 76 IDELR 212 (D. Kan. 2020). Administrative decision is upheld that student received FAPE, even though the district failed to implement an elementary student's BIP on three occasions. While the Tenth Circuit has not decided whether parents are only entitled to relief for a "material implementation failure," other Circuits have held that parents would need to provide a significant deviation from the IEP occurred. Although the parents were correct that an administrator violated their child's IEP in November 2016 by entering a seclusion room before the student was calm, the student's teacher had been following the BIP until then. In addition, the teacher did fail to restrain the student as required by the BIP when the student began banging his head in the seclusion room, but the teacher expressed a valid concern that the student would become more violent if restrained. In fact, the student eventually did calm down and his actions did not result in any long-term harm. Finally, as for a February 2017 incident where the school principal verbally engaged the student while he was pulling limbs off a tree (which contradicted the BIP), the principal was able to eventually calm the student. Thus, the deviations from the BIP were not material and did not deny FAPE.

C. Grafton Sch. Dist. v. J.L., 76 IDELR 281 (E.D. Wis. 2020). ALJ's decision that district denied FAPE for two consecutive school years is upheld and parent shall be reimbursed for the student's unilateral residential placement at the Brehm School in Illinois. An IEP implementation failure can amount to a denial of FAPE if there is more than a minor discrepancy between the services required by the IEP and the services that the district provided. Here, the special education teacher failed to check the student's assignment notebook daily, which may have hindered the student's progress toward his annual goal of recording his daily assignments with 90% accuracy. In addition, the teacher failed to include the student's writing assignments toward his English grade, which suggested that he was not providing paragraph outlines and extra time for writing assignments as contemplated by the student's IEP. Further, the student's lack of progress on his writing goal is evidence that this failure to implement was material and denied the student FAPE. Finally, given that the student's 11th-grade IEP was substantially similar to the one for 10th

grade, there is no fault with the ALJ's conclusion that the district had denied FAPE for two consecutive school years. However, since the district paid for a private Lindamood-Bell writing program during the summer of 2018 with the understanding that it could use the data to develop the student's next IEP, the cost of that program is deducted from the reimbursement amount.

HOT TOPIC #8: TRANSFER STUDENTS

A. Y.B. v. Howell Tshp. Bd. of Educ., 76 IDELR 102 (D. N.J. 2020) (unpublished). New district did not violate IDEA when it refused to fund a private placement arranged by the student's former district when the student enrolled in the middle of the school year. The new district made FAPE available when it offered a placement in a public school program that offered comparable services. The parents' argument that IDEA's stay-put provision required the new district to continue the publicly funded private placement is rejected. IDEA has adopted a specific requirement for transfer students, requiring the new district to provide services "comparable" to those in the intrastate transfer student's IEP until such time as the new district adopts the IEP or develops and implements a new one. Here, the new district reviewed the student's IEP and determined it could provide all of the required services in its own schools. Thus, the parents are not entitled to reimbursement for the private school costs.

HOT TOPIC #9: DISCIPLINE AND BEHAVIOR

A. Elizabeth B. v. El Paso Co. Sch. Dist. 11, 78 IDELR 5 (10th Cir. 2020). The district court's decision in favor of the district is affirmed where the 6-year-old autistic student's IEP offered FAPE. The fact that a BIP was not developed for the student as part of the IEP did not amount to a denial of FAPE where IDEA requires only that districts consider the use of positive behavioral interventions and supports when a student's behavior is found to impede her learning or that of others. Here, the district did consider them but found them unnecessary where district witnesses testified that the student's noncompliant self-injurious and self-stimulating behaviors occurred only during unstructured activities, such as recess and other unstructured time and quickly subsided once learning commenced. These witnesses consistently stated that the child's behaviors did not interfere with her ability to learn or interact with others. In addition, while the district did not create a formal BIP, it did begin to draft a "tip sheet" for the child's teachers to help them identify and respond to any negative behaviors. In addition, the district was not required to include ABA therapy in the child's IEP where the parent's preferred label of ABA is not required, and the IEP included strategies consistent with ABA.

B. J.N. v. Oregon Dept. of Educ., 77 IDELR 105 (D. Ore. 2020). The parents of four students with disabilities and the Council of Parent Attorneys and Advocates have standing to sue the Oregon SEA under IDEA, ADA and Section 504 where it is alleged that the SEA has allowed districts to repeatedly shorten students' school days rather than providing appropriate behavioral supports. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and similarly situated Oregon students currently or at substantial risk of being subjected to a shortened day due to disability-related behaviors and allege that the

SEA has failed to properly monitor districts it knows are unlawfully shortening students' school days. To demonstrate standing, a plaintiff must show an injury in fact that is 1) concrete and particularized and actual or imminent; 2) fairly traceable to the challenged conduct; and 3) likely to be redressed by a favorable decision. Here, one of the students has sufficiently alleged that he suffered an actual injury, while the other three claim that they have yet to receive supports they need to succeed at school on a full-day schedule and are, therefore, at risk of imminent future harm from again suffering unnecessarily shortened school days. In addition, the students have sufficiently alleged that the harm is fairly traceable to the SEA's neglect of its duty to monitor districts and ensure they provide FAPE. The alleged harm is redressable, since the SEA is ultimately responsible for ensuring children with disabilities receive FAPE. Finally, since plaintiffs' parents are among the organization's members, COPAA has associational standing to sue. Update: On February 5, 2021, the court granted the plaintiffs' motion to certify the case as a class action on behalf of all students with disabilities aged 3 to 21 residing in Oregon and are currently being subjected to a shortened school day or are at risk of being subjected to a shortened school day due to their disability-related behaviors. 2021 WL 408093 (D. Ore. 2021).

C. Enterprise City Bd. of Educ. v. S.S., 76 IDELR 295 (M.D. Ala. 2020). Hearing officer's ruling that the district's program failed to appropriately address the behaviors of a middle schooler with autism, CP and Chiari malformation is upheld. Here, the student frequently presented dangerous behaviors that interfered with his receipt of services, such as hitting, biting, pulling hair, pica, eloping and self-harm. The evidence reflected that his behaviors escalated to the point where his one-to-one aide requested assistance and subsequently resigned. However, the district did not incorporate into the student's IEP any positive interventions or develop a BIP, which resulted in the student's regression in both academic skills and behavior over the course of two school years. The district's position that IDEA only requires development of a BIP when the district seeks to discipline a student is rejected. Clearly, IDEA requires an IEP team to consider positive behavioral interventions and strategies where the student's behaviors are found to interfere with his learning or that of others. Thus, the district is ordered to conduct an FBA, develop an IEP, assign a BCBA, and provide counseling to the student.

HOT TOPIC #10: RESIDENTIAL PLACEMENT

A. N.G. v. Placentia Yorba Linda Unif. Sch. Dist., 76 IDELR 117 (9th Cir. 2020) (unpublished). District court's ruling that the district's proposed placement of adult student with autism in a nonpublic day school was appropriate is upheld. There is no evidence that the student needs residential placement for educational reasons. Although the student allegedly exhibits aggressive and self-injurious behaviors at home, evidence shows that she was making significant educational and behavioral progress at school. In fact, the ALJ found that some behaviors had not occurred at all in the two months leading up to the IEP meetings where the proposal was made. After the parents rejected the placement offered by the district, there was strong evidence that the maladaptive behaviors did not abate at all subsequent to the parents' unilateral residential placement. However, because the district failed to verify that the proposed day placement was available from April 7, 2017

to June 22, 2017, the parents were entitled to reimbursement for the cost of the residential placement during that time period.

B. Banwart v. Cedar Falls Comm. Sch. Dist., 77 IDELR 126 (N.D. Iowa 2020). Where 8th grader with Reactive Attachment Disorder made significant progress in a day program for students with emotional and behavioral disabilities, the student's behavioral problems in his parents' absence when they went on vacation does not reflect a need for a residential placement. Thus, the ALJ's decision that the parents are not entitled to reimbursement for the student's placement in a residential treatment facility in Utah is upheld. While the student's academic deficits resulted from his behavioral outbursts and his tendency to walk out of class, the student attended class 90% of the time once being placed in the day program and he had fewer incidents of aggressive behavior. In addition, he made significant progress in reading, writing and math. The student's sudden refusal to attend school in April 2016 was not surprising given the nature of his disability and his fear that his mother would abandon him. Until his parents' vacation at that time, the student had not missed a single day at the day program and some of his most concerning out-of-school behaviors occurred while they were gone. Upon the parents' return from vacation, the student's academic and behavioral performance improved. Thus, the residential placement was not educationally necessary.

C. Colonial Sch. Dist. v. E.G., 76 IDELR 7 (E.D. Pa. 2020). School district's offer of a therapeutic day program for the return of a 17-year-old student with ASD, ADHD, OCD and Conduct Disorder from a residential placement in Utah does not offer FAPE. The student needs to continue at a residential placement that provides around-the-clock behavioral supports to address his elopement, school aversion and violent behaviors—all of which stem from the attempts of educators to set reasonable limits on his use of electronics. According to the school psychologist's testimony, the district typically considers factors such as elopement and school aversion when determining whether a student needs residential placement—both of which the student presents. In addition, the day program's director did not appear to understand the student's needs when she testified that the student could occupy himself during the hour-long bus ride to the day program by playing video games. Where the evidence is that the residential program had assisted the student in academic instruction and to accept limits on the use of electronics, the parents are entitled to reimbursement for the out-of-state residential placement.

D. Braydon K. v. Douglas Co. Sch. Dist. RE-1, 76 IDELR 207 (D. Colo. 2020). Because there is evidence that the district could meet the needs of the student with ADHD, PTSD and behavioral problems in a therapeutic day treatment program, the parents' request for funding for a residential placement in Wisconsin is denied. The parents failed to show that the student has an educational need for around-the-clock services, and the proposed day program offers the same highly structured environment and therapeutic supports that helped him to make progress in the residential program. While the parents' main concern is their ability to reinforce the behavioral management strategies applied in the classroom, the district is required only to provide those services necessary for the student to receive FAPE. Here, the residential placement was intended to help the student with medication management and mental health issues, and the student's out-of-school behaviors have no

impact on his classroom performance. Therefore, the recommendation for residential placement does not demonstrate that it is necessary for the student to make educational progress. However, the case is remanded for the ALJ to determine whether the district impeded parent participation in the IEP process by creating an "imbalance of information" about the proposed day treatment program.

E. G.R. v. Del Mar Union Sch. Dist., 76 IDELR 152 (S.D. Cal. 2020). ALJ's decision that elementary student with autism and severe anxiety did not need residential placement to receive FAPE is upheld. Therefore, the parents' request for reimbursement for residential services is denied. The parents were not able to show that the student had an educational need for residential placement, even though the student's behavioral problems escalated in 4th grade and resulted in 45 incidents of restraint in a four-month period. There is evidence that the student made academic and social progress during that same period, including increased willingness to participate in therapy sessions, increased participation in class, and ability to ride the bus to and from school without adult support. In addition, staff members were able to deescalate the student and get him back on task. Thus, the ALJ has an appropriate basis to conclude that by the time of the June 9, 2017 IEP meeting, there was sufficient progress shown to support that placement in a more restrictive setting was not necessary for educational purposes.