

**66 IDELR 221**

**115 LRP 53402**

**OAKLAND UNIFIED SCHOOL  
DISTRICT, Plaintiff/Cross-Complainant,  
v. N.S., a minor, by and through his  
parents Angela GENNING and Wayne  
SAMDAHL,  
Defendants/Cross-Complainants  
U.S. District Court, Northern District of  
California**

**C 14-05569 JSW**

**November 10, 2015**

**Related Index Numbers**

**185.035 Need for Evaluation**

**445.015 In General**

**Judge / Administrative Officer**

**JEFFREY S. WHITE**

See related decision at 114 LRP 49754

**Case Summary**

Parent and teacher feedback indicating that a teenager with academic difficulties also had "clinically significant" difficulties with anxiety, attention, and social skills undercut a California district's claim that it had no reason to assess the student's need for mental health services. The District Court denied the district's motion to reverse an ALJ's finding at 114 LRP 49754 that it denied the student FAPE. The district argued that the ALJ improperly focused on suicidal statements the student made in March 2014, well after the development of the IEPs in question. The court disagreed. U.S. District Judge Jeffrey S. White observed that the student's problem behaviors, which the parents and teachers had reported as early as seventh grade, were enough to signal the need for a mental health assessment even without the suicide event. "The Court does not find persuasive the district's contention that all of [the student's] behaviors -- drug use, association with [a] negative peer group, material increase in absences and tardies, disengagement from class, unusually awkward behavior, lack of motivation or effort while

at school, and flat affect -- are attributable merely to entry into high school and to peer pressure," the judge wrote. Judge White agreed that the district was not responsible for treating any substance abuse issues the student might have, as such treatment would qualify as a medical service that is expressly excluded under the IDEA. However, he rejected the notion that the student's emotional problems were the result of his drug use. The court deferred to the ALJ's finding that the student began using drugs as a coping mechanism and that his substance abuse did not relieve the district of its duty to conduct a mental health assessment.

**Full Text**

**Appearances:**

**APPEARANCES:**

For Oakland Unified School District, a local educational agency, Plaintiff: David Reis Mishook, LEAD ATTORNEY, Lenore Silverman, Fagen Friedman and Fulfrost, LLP, Oakland, CA.

For Angela Gennino, Guardian Ad Litem for Defendant and Counter-Plaintiff N.S., Wayne Samdahl, Guardian Ad Litem for Defendant and Counter-Plaintiff N.S., N.S., a minor, Defendants: Natashe Washington, LEAD ATTORNEY, Hee Joong Kim, Miller Washington & Kim, LLP, Oakland, CA.

For N.S., a minor, Counter-claimant: Natashe Washington, LEAD ATTORNEY, Hee Joong Kim, Miller Washington & Kim, LLP, Oakland, CA.

For Oakland Unified School District, a local educational agency, Counter-defendant: David Reis Mishook, LEAD ATTORNEY, Lenore Silverman, Fagen Friedman and Fulfrost, LLP, Oakland, CA.

**Opinion**

**Order on Cross-Motions for Summary  
Judgment**

This matter comes before the Court upon consideration of the motion for summary judgment filed by Plaintiff Oakland Unified School District

("District") and the cross-motion for summary judgment filed by Defendant N.S., a minor, by and through his parents, Angela Genning and Wayne Samdahl ("Student"). Having considered the parties' pleadings, the administrative record, the Court DENIES the District's motion and DENIES IN PART and GRANTS IN PART Student's cross-motion for summary judgment.

### **Background**

At the time his parents brought a due process hearing before the Office of Administrative Hearings ("OAH") naming the District for its failure to assess or offer or provide mental health services to their son, Student was a 16-year old boy. On November 3, 2014, OAH Administrative Law Judge Theresa Ravandi issued a final administrative decision after an extensive hearing pursuant to the Individuals with Disabilities Education Act ("IDEA"). 20 U.S.C. § 1401. The decision found substantially in favor of the Student in holding that the District wrongfully failed to offer him mental health services as part of his individualized education plan ("IEP") and that the District failed to provide the Student with a therapeutic placement following his removal to a crisis wilderness program in March 2014.

The District appeals two parts of the decision of the OAH for failure to provide standardized assessments to inform the transition post-secondary goals in Student's IEP and for finding Student's claim regarding the following year's placement, for school-year 2014-2015 was not ripe for review while simultaneously holding the District as the prevailing party on that issue.

#### **A. Procedural Background**

On July 16, 2014, pursuant to the IDEA, Student, through his parents, requested a due process hearing. Student claimed that from July 2012 through July 2014, the District denied Student a free appropriate public education ("FAPE") by failing to assess him in the area of mental health and/or failing to offer appropriate mental health services. Student contended that the District denied Student a FAPE for the

2013-2014 school year by failing to offer a legally compliant transition plan and transition goals and/or failing to implement the plan it had offered. Lastly, the Student contended that the District failed to offer the Student a FAPE for the 2014-2015 school year by failing to offer a placement that could meet his unique needs. (See OAH Decision, at 2.)

The due process hearing took place before the OAH in Oakland, California from September 9 through 11, and 26, 2014 and a final telephonic hearing day in Sacramento, California on September 29, 2014. The District and the Student each presented a significant volume of evidence and multiple experts in support of their respective positions at the hearing. On November 3, 2014, the Administrative Law Judge issued a 37-page decision.

On December 22, 2014, the District initiated the present action in this Court, seeking review of the state administrative decision under the IDEA pursuant to 20 U.S.C. section 1415(i)(2)(A), claiming that the "OAH decision was substantially erroneous, wrongly decided, not supported by sufficient evidence or by the law," and that the "OAH was not thorough and careful in the findings." (Complaint at ¶ 52.) On July 17, 2015, the District moved for summary judgment on the basis that the OAH decision was erroneous. On August 11, 2015, Student cross-moved for summary judgment to seek reversal of the OAH decision only as it pertains to the second and third issues presented concerning whether the District provided a legally-compliant individual transition plan ("ITP") and whether the District should have been found to have prevailed on the issue whether it offered a FAPE for the 2014-2015 school year when the judge found the issue was not ripe for decision.

#### **B. Factual Background**

According to the substantial record developed in this case and the underlying administrative decision, it is clear that Student's mental health functioning has been impaired by his unique life history. Student was born in Africa and was adopted around the age of eight years old. (AR 769-770, Decision at 3.) Student

lived in an orphanage after the death of both parents and was separated from his younger brother. (AR 771.) He had no formal education until he was adopted to California in the summer of 2006. (*Id.*) Thereafter, Student's American parents immersed him in language-based learning and he attended several schools during his elementary school years, and had private tutoring and attended therapy. (Decision at 3.) During the 2010-2011 school year, Student began to resist the treatment of his private therapist and refused to continue counseling and eventually stopped taking psychotropic medication he had been prescribed. (*Id.*)

The District initially assessed Student as eligible to receive special education services in November 2011 when he attended seventh grade at North Oakland Community Charter School. (AR 423-41.) For this assessment, Student submitted a letter from his private therapist indicating that Student was being treated for Post-Traumatic Stress Disorder, Major Depressive Disorder, and Reactive Attachment Disorder. (AR 376.) The therapist indicated that these issues could cause him to lose focus in the classroom. (*Id.*) Based on this letter, the District was aware of Student's mental health diagnosis which stemmed from his early childhood trauma and loss. (Decision at 3.) At the administrative hearing and again in briefing the motion for summary judgment, the District dismissed the therapist's letter as a medical diagnosis from an individual who was not a licensed educational psychologist and who had not observed the Student at school. (*Id.*; see also MSJ Br. at 2-3.) However, during this initial assessment, the District explored Student's social-emotional functioning and, although both his parents and teachers identified clinically significant issues with anxiety, attention, adaptive and social skills, and other at-risk behaviors, the District concluded that Student did not present social-emotional or mental health needs. The IEP team did develop academic goals in the areas of writing, math, and organization for Student and provided him academic accommodations for his eighth grade school year. (Decision at 4.)

At the annual IEP meeting for Student on

October 30, 2012, the District received information from his teachers and parents that Student was struggling with completing his homework and had poor engagement which had earned him an increased number of office referrals. (*Id.*) Student was able to keep up with his school work and meet some organizational goals. However, by November 2012, it was apparent to the District that Student was using drugs and the District suspended him for five days. (*Id.*) At Parents' request, the District held two additional IEP meeting in early 2013. Student progressed and the District determined that he did not appear to require assessment of his mental health functioning. (*Id.* at 5.)

During the 2013-2014 school year, Student attended Oakland Technical High School as a ninth grader and was found eligible for special education under the IDEA. By the end of the first six-week grading period, it was clear that Student was struggling academically in all of his classes, he was not finishing his homework, and was exhibiting difficulties with attendance, motivation, and chemical dependency. (*Id.*) Several teachers expressed concern about Student's withdrawn and depressed behavior in class and his tardies and unexcused absences increased substantially. (*Id.* at 6.)

On October 29, 2013, the Student's IEP team met for his annual meeting and because there had been a material change in Student's behavior, attendance, schoolwork and overall functioning, the team determined that he needed study skills goals, attendance goals, a writing goal, and a self-help goal for Student to request assistance when he did not understand class assignments. (*Id.* at 9.)

On January 21, 2014, the District convened another meeting of the IEP team, the team discussed the introduction of mental health services. The team agreed that Student's substance use was affecting his ability to access the educational curriculum. (AR 336.) The District established a behavior plan that provided for preferential seating, cues, and organizational supports, and called for Student to attend class, develop self-advocacy skills, and to stop

using marijuana. However, again, no mental health services were provided. Parents did not consent to the January 2014 IEP offer as they believed the District did not understand the true extent of Student's needs and did not incorporate their recommended mental health services. Student's attendance and engagement at school continued to decline. (Decision at 13.)

On March 3, 2014, Student was found by neighbors passed out on his front lawn, bloodied and with a .29 percent blood alcohol level. (*Id.* at 14.) He was severely intoxicated, delusional and screaming that he did not want to live because his friend had recently committed suicide. (*Id.*) Due to his suicidal statements, severe intoxication, and aggressive behavior, Student was placed on 72-hour involuntary psychiatric Welfare and Institutions section 5150 hold and transferred to the adolescent psychiatric unit at Alta Bates Medical Center. (*Id.*) During his five-day hospitalization, the treating psychiatrist diagnosed Student as suffering from depression, attention deficit hyperactivity disorder, post-traumatic stress disorder, and reactive detachment disorder. (*Id.*) Student was discharged from the hospital and went directly to Open Sky on March 11, 2014.

The District was made aware of Student's circumstances leading to his absence from school in a letter from his parents dated April 4, 2014 which discussed Student's suicidality, alcohol poisoning, 5150 hold, hospital stay, and transfer to Open Sky. (*Id.* at 15.) The Student's IEP team met again on April 22, 2014 and the District was informed about the details of Student's hospital stay and subsequent transfer to Open Sky. (*Id.*) At this meeting, the District changed Student's primary eligibility to that of emotional disturbance and added a secondary disability category of health impaired. (*Id.*) The IEP team determined that Student's diagnosis of depression, reactive attachment disorder, and attention deficit hyperactivity disorder impacted his ability to engage in the academic tasks within the school setting. (*Id.* at 16.) On May 14, 2014, Parents sent the District written notification that they rejected the continued placement at school and instead

planned to enroll Student at Ashcreek at public expense beginning May 30, 2014. (*Id.*) The District provided Parents with written notice of its offered FAPE and rejected the request to fund the placement. Parents transferred Student from his discharge at Open Sky directly to Ashcreek. (*Id.*)

The administrative law judge heard from many witnesses from both parties. Student proffered expert witnesses, including independent evaluators and therapists, who testified persuasively that "Student's use of marijuana and other controlled substances was a symptom of his underlying psychological distress and an attempt to self-medicate his depression or otherwise modulate his mood. Student's mental health issues fueled his substance abuse and needed to be addressed in order to break his addiction." (*Id.* at 8.) The judge found the District's expert unpersuasive when he testified that Student's drug use "must be treated first, outside the special education arena, before the district could assess and address mental health needs." (*Id.*) The judge determined this opinion reflected "an outdated, compartmentalized approach to treatment." (*Id.*)

The Court shall address additional specific facts in the remainder of this order.

## **Analysis**

### **A. The Individuals With Disabilities Education Act**

Originally enacted by Congress in 1975 as the Education of the Handicapped Act, one of the purposes of the Individuals with Disabilities Education Act ("IDEA") is "to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, school districts are required to provide eligible disabled student with a free appropriate public education, including special education and related services. A child's unique needs are to be broadly constructed to include academic,

social, emotional, health, communicative, physical, and vocational needs. See *Seattle Sch. Dist., No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (citing H.R. Rep. Mp. 410, 1983 U.S.C.C.A.N. 2088, 2106). A FAPE is intended to provide a "basic floor of opportunity" in public education that "consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

To achieve this purpose, the IDEA "provides federal money to assist state and local agencies in educating handicapped children ... ." *Id.* at 179. In order to qualify for such funding, a state must "provide every qualified child with a FAPE that meets [substantive] federal statutory requirements." *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001); see also 20 U.S.C. § 1412. In addition to the substantive requirements, "the IDEA also includes procedural safeguards which, if violated, may prevent a child from receiving a FAPE." *Amanda J.*, 267 F.3d at 882.

Substantively, states must create an individualized education program ("IEP") tailored to the unique needs of the disabled child. *Id.* § 1412(a)(4). An IEP is a written document prepared annually that outlines the educational plan for the student. *Rowley*, 458 U.S. at 182; 20 U.S.C. § 1414(d). The IEP should be crafted in such a way that the child's individual needs, supported by services, allow the child to benefit from the education. *Rowley*, 458 U.S. at 189. States must also ensure that the child has access to education in the least restrictive environment, which means that a disabled child should be educated with non-disabled children, i.e. "mainstreamed," to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A). A special education student, however, may be removed from the regular education environment when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and

services "cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A); see also *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044-45 (9th Cir. 1989). California law provides that the services of a nonpublic school shall be made available only in the absence of an appropriate public education program. Cal. Ed. Code § 56365(a).

Procedurally, parents have a right to participate in the development of their child's IEP. 20 U.S.C. § 1415(b)(1); *Amanda J.*, 267 F.3d at 882. Parents also have the right pursue a complaint regarding the evaluation or educational placement of the disabled child. 20 U.S.C. § 1415(b)(6). The state educational agency conducts an "impartial due process hearing" to address complaints. *Id.* § 1415(f). If unsatisfied with the findings or decision at the hearing, either party can bring a civil action in a district court regardless of the amount in controversy. *Id.* § 1415(i)(2)(A).

"[A] court's inquiry in suits brought under § [1415(i)(2)] is twofold. First, the court must determine whether the State has complied with the procedures set forth in the Act. Second, the court must assess whether the individualized education program developed through the Act's procedures was reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07. The IEP is not to be evaluated in light of information only accessible with hindsight. Rather, the reasonableness of the offered IEP is adjudged in light of the information available to the school district at the time the IEP was developed -- known as the "snapshot rule." See *J.G. v. Douglas County Sch. Dist.*, 552 F.3d 786, 801 (9th Cir. 2008); *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). "Actions of [ ] school systems cannot be judged exclusively in hindsight." *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011). "But that exclusive use of hindsight is forbidden does not preclude consideration of subsequent events. The clear implication of permitting some hindsight is that additional data ... may provide significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." *Id.*

## **B. Standard of Review and Burden of Proof<sup>1</sup>**

As the party seeking relief in this Court, Plaintiff bears the burden of demonstrating that the Hearing Officer's decision on the merits of whether a FAPE was offered should be reversed. *Clyde K. v. Puyallup Sch. Dist., No. 3*, 35 F.3d 1396, 1399 (9th Cir. 1994), superseded by statute on other grounds. If an aggrieved party files a civil action after a state hearing officer's decision, a reviewing court "shall receive the records of the administrative proceedings; shall hear additional evidence at the request of the party; and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C).<sup>2</sup>

The preponderance of the evidence standard "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U.S. at 206. Rather, a reviewing court accords "due weight" to the administrative proceedings. *Id.* Due weight means that "the courts are to consider the findings 'carefully and endeavor to respond to the hearing officer's resolution of each material issue,' but the court 'is free to accept or reject the findings in part or in whole.'" *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995) (quoting *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1311 (9th Cir. 1987)). The amount of deference the Court affords the administrative process is a matter within its sole discretion. *See Capistrano*, 59 F.3d at 891 ("[t]he amount of deference accorded to a hearing officer's findings increases where they are 'thorough and careful'").

When determining what weight to give the hearing officer's findings, the Ninth Circuit has explained that it often is useful to examine the thoroughness and care of the findings. *Wartenberg*, 59 F.3d at 891. Substantial weight is given to the hearing officer's decision "when it 'evinces his careful, impartial consideration of all the evidence and demonstrates his sensitivity to the complexity of

the issues presented.'" *County of San Diego v. Cal. Special Educ. Hearing Office*, 93 F.3d 1458, 1466 (9th Cir. 1996) (citation omitted). In this case, the transcript of the due process hearing and the Hearing Officer's decision demonstrates that she carefully and impartially considered all the evidence, and demonstrated her sensitivity to the issues presented by the parties. Accordingly, the Court shall accord substantial weight to the Hearing Officer's findings.<sup>3</sup>

## **C. District's Motion for Summary Judgment Is Denied**

The District contends that the OAH decision was made in error because it faulted the District for failing to provide mental health services or a comprehensive assessment whether mental health services should be provided. First, the District contends that the administrative decision was based primarily on the basis of hindsight, using the suicidal behavior of Student in March 2014 as the basis for the conclusion that he required mental health services prior to reaching that point. However, the Court finds that the administrative law judge correctly evaluated the voluminous evidence of assessments by therapists, teachers, and parents to support the decision that Student needed further educationally-related mental health services and assessment, even when viewed in the absence of the suicidal event in March leading to Student's departure from the District. *See, e.g., Douglas County Sch. Dist.*, 552 F.3d at 801; *Pajaro Valley Unified*, 652 F.3d at 1006. The Court agrees with the administrative law judge that the threshold trigger for mental health assessment is relatively low and was triggered by Student's significant decline in his educational setting. The Court does not find persuasive the District's contention that all of Student's behaviors -- drug use, association with negative peer group, material increase in absences and tardies, disengagement from class, unusually awkward behavior, lack of motivation or effort while at school, and flat affect -- are attributable merely to entry into high school and to peer pressure. The District's contention that the administrative law judge should have disregarded the advice of Student's

therapists, especially Dr. Peterson, is similarly unpersuasive.

Second, the District contends that the administrative decision is in error and should be reversed because the judge rejected the District's argument that treatment for chemical dependency must precede assessment for or provision of mental health services. There is no dispute that the District has no legal obligation to provide substance abuse treatment to Student, which is considered a medical service and not part of the special education program requirements. The District contends that it is unpersuaded by Student's theory that his drug use was predicated upon his mental health issues and was an effort at self-medication. The District also continues to argue that in order to assess Student for his special education interventions, he would have to be clean of all drug use. (AR 974-75.) However, the judge heard from multiple experts from both parties, and the parties were able fully to address and litigate their respective contentions about Student's drug use. The administrative judge was persuaded that the "student's substance abuse disorder is a function of his co-occurring mental health conditions and both must be treated for Student to be able to function in the school setting." (Decision at 8.) The Court agrees with this conclusion and finds that the District was not relieved of its obligation to provide an accurate assessment of Student's special education challenges based on the information it had at the time Student was enrolled. Having failed to provide a FAPE as required by law, the District's motion for summary judgment to reverse the decision of the OAH is DENIED.

#### **D. Student's Motion for Summary Judgment Is Denied in Part and Granted in Part**

Student moves for summary judgment seeking reversal of the OAH decision only as it pertains to the second and third issues presented concerning whether the District provided a legally-compliant individual transition plan ("ITP") and whether the District should have been found to have prevailed on the issue

whether it offered a FAPE for the 2014-2015 school year when the judge found the issue was not ripe for decision.

#### **1. Individual Transition Plan**

Student contends the administrative decision failed to account for the participation of the parents with regard to the ITP services. Student argues that without a proper formal assessment of his needs with regard to a transitional plan and without specific recommendations based upon that assessment, his parents could not have participated in the execution of the plan, thus resulting in a procedural violation by denying Student a FAPE. See 20 U.S.C. § 1414(d)(1)(A)(i)(VIII)(bb). Instead of a formal standardized assessment, Student was merely informally interviewed by Resource Specialist Brooke Roche. Based on this lack of formal assessment, Student contends the ITP services were legally inadequate and form the basis for a finding of the automatic denial of a FAPE based upon the procedural violation of the IDEA regulations.

The Court finds, however, that while the IDEA requires transition plans based upon age appropriate assessments, those assessments need not be formalized or based upon standardized measures. (See Decision at 29.) The cases cited by Student do not evidence any specific regulatory requirement for the development of the ITC plan, but merely determined whether particular standardized assessments were age-appropriate or the conversations with the student too brief to be adequate. *See, e.g., Student v. Los Angeles Unified Sch. Dist.*, 112 LRP 27364, OAH Case No. 2011110413 (2011) (holding that assessments given were not age-appropriate); *Student v. Palo Alto Unified Sch. Dist.*, 111 LRP 58914, OAH Case No. 2010070435 (2010) (holding that a single, generalized transitional goal based upon brief interview with student was insufficient to constitute age-appropriate assessment). Here, the administrative judge found that Ms. Roche "developed Student's transition plan based upon her knowledge of Student, her experience as a resource teacher, and interviews and conversations with him. Ms. Roche's efforts to

obtain information constitute an appropriate assessment in this case." (Decision at 29.) This Court agrees and DENIES Student's motion as to the alleged ITC procedural violation.

## 2. Prevailing Party for Unripe Issue

The administrative at once found the issue of whether the District provided an adequate FAPE for the 2014-2015 school year not to be ripe, but also indicated that the District prevailed on this issue. The Court finds this determination to be contradictory and finds that the full FAPE for the 2014-2015 was indeed not ripe for review. California Education Code section 56507 requires that the administrative decision "shall indicate the extent to which each party has prevailed on each issue heard and decided." Cal. Educ. Code § 56507(d). In this instance, however, the judge explicitly determined that the matter of the upcoming year was "not ripe for adjudication." (Decision at 32.) Accordingly, as the issue was not "heard and decided," the designation of the District as prevailing party was in error. Accordingly, the Court GRANTS Student's motion for summary judgment as to the prevailing party on the adequacy of the District's providing a FAPE for the 2014-2015 school year.

### Conclusion

Accordingly, the District's motion for summary judgment is DENIED, and the Student's cross-motion for summary judgment is DENIED IN PART and GRANTED IN PART.

IT IS SO ORDERED.

### Judgment

Pursuant to the Order dated November 10, 2015 denying Plaintiff's motion for summary judgment and granting in part and denying in part Defendants' cross-motion for summary judgment, judgment is entered in favor of Defendants and against Plaintiff.

IT IS SO ORDERED.

<sup>1</sup>The Ninth Circuit has explained that when an aggrieved party files a civil action under the IDEA, the use of cross-motions for summary judgment to resolve such a case is, in effect, a procedural

convenience. Substantively, however, "the procedure is ... an appeal from an administrative determination." Accordingly, the Court analyzes the parties' arguments under the appropriate standards of review for IDEA cases.

<sup>2</sup>Neither party has asked the Court to receive additional evidence.

<sup>3</sup>To the extent the Hearing Officer made credibility findings, she was in a better position than this Court is to assess the demeanor and testimony of the witnesses, and the Court shall not disturb those findings.

### Statutes Cited

20 USC 1400(d)(1)(A)  
20 USC 1412(a)(4)  
20 USC 1414(d)  
20 USC 1412(a)(5)(A)  
20 USC 1415(b)(1)  
20 USC 1415(b)(6)  
20 USC 1415(f)  
20 USC 1415(i)(2)(A)  
20 USC 1415(i)(2)(C)  
20 USC 1414(d)(1)(A)(i)(VIII)(bb)

### Cases Cited

82 F.3d 149324 IDELR 68  
458 U.S. 176553 IDELR 656  
267 F.3d 877  
874 F.2d 1036441 IDELR 433  
552 F.3d 78651 IDELR 119  
195 F.3d 114131 IDELR 130  
652 F.3d 99957 IDELR 1  
35 F.3d 139621 IDELR 664  
59 F.3d 88422 IDELR 804  
93 F.3d 145824 IDELR 756  
112 LRP 27364  
111 LRP 58914