



QUARTERLY E-NEWSLETTER

April — June 2020

LEGAL UPDATES

June 2020

- A recent Federal court ruling in [Doe ex. rel. Doe v. Township High School District 214](#) stated that the parents of a student with Autism did not have to exhaust IDEA remedies prior to filing a federal court complaint related to disability discrimination. The parents of the student, who filed a complaint after the District had disciplined their child for behaviors related to his disability, were not claiming a denial of FAPE in the complaint. Instead, they were suing the District for discrimination after administrators pulled the student out of class, subjecting him to searches, and disciplining him for behaviors related to his social deficit. The federal judge ruled that because the parents were not seeking relief related to the IDEA, they had a right to move forward with the discrimination claims without filing for due process first. However, the judge also ultimately dismissed the parents' discrimination claim, finding that the parents could not prove that the student was excluded from school programming solely due to discriminatory practices.
- ISBE and the Illinois Department of Public Health (IDPH) has released [formal guidance](#) for school instruction for the 2020-2021 school year. The guidance delineates that "in person instruction is highly encouraged" as Illinois moves into Phase 4 re-opening but allows school districts to develop hybrid in-person/remote learning plans in the event schools cannot comply with IDPH guidelines.
- The Illinois Federation of Teachers (IFT) issued an official [statement](#) regarding the return of in-person learning in Illinois. The IFT indicated its "grave concerns" regarding the safety of its teachers, students and community members without adequate social distancing and other safety precautions, including adequate cleaning protocols, ventilation systems, temperature checks, contact tracing and COVID-19 testing accessible to all community members.

May 2020

- The U.S. Department of Education published its final regulations for Title IX in May 2020 with an effective date of August 14, 2020. The new rules define sexual harassment, including sexual assault, as unlawful sex discrimination and require schools subject to the federal law to amend their policies related to Title IX, including their grievance procedures, in order to be in compliance with the final regulations.

- The Illinois State Board of Education (“ISBE”) has proposed amendments to the pupil transportation and special education reimbursement sections of the Illinois Administrative Code in order to address issues arising from COVID-19 and the suspension of in-person instruction. The emergency rules would allow for reimbursement for out-of-the-ordinary transportation costs (e.g., distribution of food, pick-up of student assignments, use of vehicles to provide wi-fi connections, etc.), as well as for continued payment of tuition and room and board costs for private special education placements, despite school closure status.
- An Illinois Senate Bill, SBI857, which has passed both the Senate and House and is currently awaiting signature by the Governor, would allow for retired teachers to substitute teach for 120 school days per school year without impacting their Teachers’ Retirement System (TRS) benefits.

April 2020

- The U.S. Department of Education released [guidance](#) last month to school districts nationwide requiring them to continue to provide a free and appropriate public education (“FAPE”) to students during the coronavirus pandemic if they are providing educational opportunities to the general education population and to also make individualized determinations as to whether and to what extent compensatory education services are required for students.. The guidance also suggests that it would be “prudent” for IEP teams to include contingency distance learning plans into all students’ IEPs due to the potential for future outbreak(s) and school closures.
- The U.S. Department of Education issued a [Supplemental Fact Sheet](#), reminding school districts to seek various ways to deliver services to students with disabilities, including online or virtual instruction. In response to states’ “serious misunderstanding” regarding the provision of a FAPE to students with disabilities during the coronavirus pandemic, OCR clarified that compliance with the IDEA, ADA and Section 504 laws, “should not prevent any school from offering educational programs through distance instruction.” Examples offered by the Office of Civil Rights (OCR) included, “...extension of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.”
- The U.S. Department of Education has issued [guidance](#) to all school district staff to ensure children with disabilities are provided the same learning opportunities as regular education students during the COVID-19 school closures. The Office of Civil Rights (“OCR”) emphasized that accessibility to technology is an important component to provide students with disabilities educational opportunities, and advised IEP teams to continue holding annual review meetings, initial evaluations and re-evaluations (if possible) via telephone or electronic means. If face-to-face evaluations are required, OCR is allowing continuations of the evaluations until after school facilities reopen.

RECENT FIRM SUCCESSES

- Secured a Section 504 Plan for a student diagnosed with ADHD, Anxiety and Depressive Disorder after his high school district previously denied the student 504 services twice in the past school year.
- Successfully negotiated a settlement agreement in a due process hearing matter which provided \$65,000 worth of reimbursement to the parents for private school tuition.
- Prevailed in a dispute regarding the “stay-put” provision in IDEA law, securing continued funding from a high school district for placement of a disabled student attending a non-public therapeutic day school.

UPCOMING PRESENTATIONS

<u>Date</u>	<u>Title/Topic</u>	<u>Organization</u>
July – September 2020	Psychiatry and the Law	University of Illinois at Chicago (“UIC”)/ Rush University Medical Center

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