



QUARTERLY E-NEWSLETTER

July — September 2020

LEGAL UPDATES

September 2020

- An Idaho hearing officer found in [West Ada School District No. 2](#) that the district's substitution of a 1:1 school nurse for a disabled student did not constitute a violation of FAPE. While the parents of the student argued that the student's initial nurse had been chosen and trained by the parents, when that nurse had to take medical leave and a substitute had to be chosen, the IHO found that the parents did not have a right to participate in the selection of the substitute. The IHO further noted that prior consent/approval for substitute personnel are not required by law, nor did the student's IEP require parental participation in substitution decisions.
- The 2nd Circuit Appellate court has ruled in [D.S. by M.S. and R.S. v. Trumbull Board of Education](#) that parents who disagreed with a district's Functional Behavioral Assessment ("FBA") were not entitled to an independent educational evaluation ("IEE") at public expense. While parents can be awarded IEEs for disagreeing with "comprehensive assessments" provided by school districts, the appellate panel ruled that FBAs do not qualify as a "comprehensive assessment," but instead are considered "targeted examinations" of a child's behavior.
- The 9th Circuit Court of Appeals has ruled in [McIntyre v. Eugene School District 4J](#) that parents of a student with ADA claims arising out of a district's failure to implement 504 Plan do not have to exhaust administrative remedies prior to suing their school district. The appellate panel noted that while *Fry v. Napoleon Community Schools* (69 IDELR 116) requires parents to exhaust all non-IDEA claims alleging a denial of FAPE, it only applies to cases where FAPE is defined by the IDEA. The appellate panel found that the student, who was seeking relief for the denial of equal access as opposed to a denial of FAPE, could sue without exhausting administrative claims.

August 2020

- The Illinois State Board of Education ("ISBE") has adopted new rules which expand the Registered Apprenticeship Program for high school students. The program will allow students 16 years of age and older to enroll in an apprenticeship program which will allow them to earn their high school diploma and an industry-related occupational skills certificate at the same time. Governor Pritzker also authorized additional funding for the program, which will receive \$20 million of funding in 2020 to help expand programming across the state.
- New rules and regulations were authorized by the Illinois State Board of Education ("ISBE") regarding the administration of Charter Schools throughout the state. The new rules will shift the authority of the Charter Schools Commission to oversee appeals of local school board decisions to revoke or no longer renew a school's charter to ISBE, instead. It also clarifies whether charter schools created by a local school board may have their authorization transferred to ISBE.

- The Illinois State Board of Education (“ISBE”) has revised its rules to expand the definition of “temporary school records” in the School Student Records Act. The new rules now specify that information contained in service logs maintained by educational professionals as part of their service to students with disabilities will be included in the definition of temporary school record. In addition, the new rules expand the ways that school districts can notify parents of the impending destruction of records to include publication in a student handbook or student newspaper, by U.S. mail or by, “any other means provided receipt of the notice is confirmed.”

July 2020

- A Federal judge in Missouri has ruled in [L.G. by M.G. v Columbia Public Schools](#) that the parents of a student with a disability had valid constitutional claims against a school district for interrogating their daughter without their knowledge regarding an off-campus crime. The student, who was diagnosed with Anxiety Disorder, OCD and Depression, was pulled out of class during final exams and questioned by school administration and police regarding a community crime that was committed outside of school hours and off school property. The court found that schools can be held liable for violating 4th and 14th amendment (unreasonable searches and deprivation of liberty without due process) rights of students, and the practice of permitting law enforcement officials to seize minor students, during school hours, without a valid warrant or notifying their parents is particularly harmful to a student who already has mental health needs.
- The Illinois State Board issues guidance on several issues, including the implementation of [learning standards](#), [transportation](#) and [school sports](#) for schools planning to re-open during the continuing COVID-19 pandemic.
- A newly proposed House Bill, HB 1459, would create the Nurse Licensure Compact Act, would allow nurses to hold “multistate” licenses, allowing licensed nurses to practice not only in their resident state, but also in additional coordinating compact states.