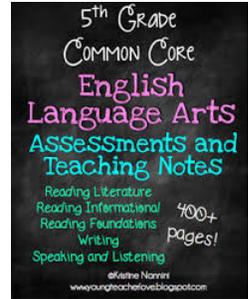


March 2014

The Blue Sea Educator

COMMON CORE PANEL PROPOSES FIXES A panel assembled by Governor Cuomo of educators, parents and others has recommended changes to how New York implements Common Core, including limiting time for test preparation, protecting student data by severing ties with “cloud” technology, and ending standardized tests earlier than the third grade. Recently the Board of Regents released similar proposals in response to parents and teachers who criticized common core’s implementation. Cuomo commented recently that “the flawed implementation of the Common Core curriculum has resulted in frustration, anxiety and confusion for children and parents...It is in everyone’s best interest to have high, real-world standards for learning and to support the Common Core curriculum, but we need to make sure that our students are not unfairly harmed by its implementation .”



2nd Circuit Court of Appeals Awards Tuition A district’s failure to conduct an FBA of a 6-year-old with autism snowballed into liability for the child’s private school tuition. Explaining that the lack of an FBA led to the development of an inappropriate BIP and caused the district to offer an inappropriate placement, the 2nd Circuit held that the district procedurally and substantively violated IDEA. The 3-judge panel acknowledged failure to conduct an FBA does not amount to an IDEA violation so long as the BIP identifies the student’s behavioral problems and implements strategies to address them. In this case, however, the IEP team drafted a vague BIP that failed to match the child’s behaviors with specific interventions and strategies. *(Continued on P.3).*

L.I. Regional Summit School-Justice Partnerships

“Keeping kids in school, and out of court,” was the focus of the Long Island Regional Leadership Summit convened at Hofstra law school on March 7th and hosted by Hon. Judith S. Kaye, former Chief Judge of the State of New York. Topics covered included enhancing school climate, building community schools, understanding behavior, best practices for school safety and student interaction, model discipline code and school reform, collaborative engagement for re-entry and court-involved youth, and restorative practices in action. The New York State Permanent Judicial Commission on Justice for Children, in partnership with the New York State Division of Criminal Justice Services (DCJS) and the Maurice A. Deane School of Law at Hofstra University, sponsored the Summit with funding from The Atlantic Philanthropies, DCJS and the New York State Juvenile Justice Advisory Group. For additional information contact the NYS Permanent Judicial Commission on Justice for Children at 150 State Street, Second Floor Albany, NY 12207 Tel. No.: 518-285-8780.



EDUCATION QUOTE... “Education is the ability to listen to almost anything without losing your temper or your self-confidence.” [Robert Frost](#)

EDUCATION REGULATORY UPDATES

NYS DEPARTMENT OF EDUCATION

- **DISPROPORTIONALITY TECHNICAL ASSISTANCE ANNOUNCED FOR SUMMER INSTITUTE**
TCAD is designed to provide schools strategies to address issues related to disproportionality including impact on students’ achievement. Focus is on equity in teaching and learning, and includes breakout sessions. Keynote speaker is Dr. Wade Boykin, and Panel moderator is Dr. Pedro Noguera. Institute is June 27, 2014 at NYU’s Kimmel Center in NYC.
- **SAMPLE DUE PROCESS COMPLAINT NOTICE** A model form for parents and school districts has been posted to assist in filing for a due process proceeding relating to the identification, evaluation, or educational placement of a student with a disability, or suspected of having a disability. It was revised to require information from parents requesting an Impartial as to whether they have another hearing pending or, within the prior year, had requested an impartial hearing and subsequently withdrew their request.
- **ADDITIONAL GUIDANCE TO PART 200 AMENDMENTS** has been provided relating to special education impartial hearings. Amendments became effective February 1, 2014.
- **PUBLIC COMMENT** sought on revised proposed amendment to State Regs related to Chapter 501 “Protection of People with Special Needs Act.” Proposed amendment was revised as a result of discussions with the Justice Center and other State oversight agencies with additional clarification provided. Comments are due by no later than March 28, 2014.
- **SUMMER 2014 EXTENDED SCHOOL YEAR** information and materials are available with a submission deadline of June 2, 2014. Includes ESY Special Education Programs and clarifying programmatic and reimbursement policies.

See NYSED Special Education Notices at <http://www.p12.nysed.gov/specialed/timely.htm>

US DEPARTMENT OF EDUCATION

OCR REACHES AGREEMENT WITH SCHOOL ON DISPROPORTIONATE DISCIPLINE PRACTICES

USDOE announced that its Office for Civil Rights (OCR) reached an agreement with the Christian County Public Schools in Kentucky to improve the district’s disciplinary system so that all students will receive equitable treatment. In addition, the district will impose less frequent exclusionary discipline and will increase students’ educational opportunities.

OCR's investigation revealed that the majority of the violations listed in the district's disciplinary code were open to interpretation and undefined, leaving administrators broad discretion in assigning sanctions. This practice left students and their parents and guardians without adequate notice of the specific behaviors that may result in discipline and what sanction would be imposed. In addition, the district had no safeguards in place to ensure discretion is exercised by referring teachers and other staff in a non-discriminatory manner.

For the period under review, black students were also disproportionately over-represented in referrals to School Resource Officers. For example, in school year 2010-2011, black students composed 33.8 percent of the district's enrollment, but represented nearly 65 percent of the students referred to SROs. OCR noted that, although expulsion was rarely assigned by the district, when the district took the extreme step of expelling students, over two-thirds of the expulsions were of black students.

The investigation also revealed that black students were consistently more likely than white students to be assigned in-school suspension and out-of-school suspension when their first disciplinary referral was for violations that were subjective in nature, such as Deliberate Classroom Disruption, Disorderly Conduct, Failure to Follow Directives, and Profanity/Vulgarity. For example, in school year 2010-2011, black students were nearly 3.5 times more likely than white students to receive out-of-school suspension for Profanity/Vulgarity.

LEGAL BRIEFS

(Continued from Page 1) **2nd Circuit Awards Tuition in C.F. by R.F. and G.F. v. NYCDOE**

Furthermore, the deficient BIP had an adverse impact on the team's placement recommendation. Witnesses who recommended a 1:1 placement did so out of concerns relating to the child's maladaptive behaviors. Determining that the child could not receive FAPE in the 6:1+1 setting the IEP team recommended, especially in light of the deficient BIP, the 2nd Circuit held that the district denied the child FAPE. The 2nd Circuit vacated a District Court ruling in the district's favor, and remanded the case with instructions to award the parents tuition reimbursement. **Case Site: 62 IDELR 281; 114 LRP 10019**

Procedural History

- 2008-2009 Parents unilaterally place their son, a child with autism, in a private school and seek tuition reimbursement .
- June 14, 2010, Impartial Hearing Officer (IHO) grants Parent's request for tuition reimbursement.
- September 8, 2010 State Review Officer (SRO) reverses the IHO's decision.
- October 11, 2011 U.S. District Court affirms the SRO.
- March 4, 2014 The 2nd Circuit Court of Appeals vacates the District Court's judgment, and holds the Parents are entitled to tuition reimbursement under the Burlington/Carter Test.



Legal Background

- IDEA requires an IEP be reasonably calculated to enable a child to receive educational benefits.
- IDEA's "appropriate" education standard does not require a child be provided with the optimal programmatic alternative. Rather, it calls only for selection of a program that provides a "basic floor of opportunity" that is "likely to produce progress, not regression."

- Because public resources are not infinite, federal law does not secure the best education money can buy; it calls upon government, more modestly, to provide an appropriate education for each disabled child.
- Federal and NYS law impose certain procedural requirements on CSEs. Relevant to this case are the following requirements: for students who engage in behaviors that impede learning, Committees shall conduct, as necessary, FBAs that determine why the student engages in such behaviors and how the behaviors relate to the environment.
- For students who engage in behaviors that impede learning despite consistent interventions, Committees shall consider the development of a BIP based on the FBA, that creates a baseline and performance criteria to measure improvement in behavior and identifies intervention strategies.
- Burlington/Carter Test: (1) Whether the LEA's proposed plan will provide FAPE, and (2) Whether the parents' private placement is appropriate, and (3) Consideration of the equities.
- NYS Law: At the due process hearing, LEA bears the burden of establishing the validity of the IEP, while the parents bear the burden of establishing the appropriateness of the private placement.

Parent Argue they were Denied FAPE because the LEA

- (1) Failed to include the parents in school site selection (procedural violation);
- (2) Failed to make express provisions for parents' counseling and training (procedural violation);
- (3) Failed to develop an FBA or adequate BIP (procedural violation);
- (4) Failed to offer an individualized placement that addressed the student's demonstrated need for a 1:1 classroom instead of the proposed 6:1+1 proposed by the district (substantive violation); and
- (5) The private school (McCarton) was an appropriate private placement (substantive violation).

Court Ruling

- (1) Court rejects Parents arguments, holding the LEA included the parents in the determination of the type of placement, the 6:1+1 at the school.
- (2) The LEA's failure to include Parent Training on the IEP as a related service was a procedural violation. Further, the LEA cannot cure violations of not providing parent training by offering testimony that it "would have been offered."
- (3) While the omission of an FBA causes the Court to take particular care to ensure that the IEP adequately addresses the child's problem behaviors, the production of such assessment is not required by the IDEA. Under NYS law, assessments are only required "as necessary to ascertain the physical, mental, behavioral and emotional factors which contribute to the suspected disabilities." Thus, the NYS law requirements does not raise the IDEA bar by rendering IEP's developed without an FBA legally inadequate.

*** Instead, the court's focus is on the BIP developed by the LEA. IDEA requires the LEA consider use of positive behavioral interventions and supports, and other strategies when a child's behavior impedes learning. Failure to conduct an FBA, therefore, does not render an IEP legally inadequate under IDEA so long as the IEP adequately identifies a student's behavioral impediments and implements strategies in its BIP. The Court ruled that the plan in this case failed to match strategies with specific behaviors, instead simply listing behaviors and strategies. The school's psychologist admitted the plan was vague compared to standards in the field. The failure to produce an appropriate BIP was the procedural violation. The lack of an FBA is relevant only to the extent that it lead to this failure.

- (4) Court agrees with the Parents that the school failed to consider a 1:1 ratio placement classroom, despite overwhelming evidence that the student required one. This determination was made because:

- All witnesses familiar with the student testified he requires a 1:1 placement. This testimony went un rebutted, except for the testimony of a special education teacher that the student would fit in her classroom.
- While witnesses testified that 6:1+1 classroom placement incorporated 1:1 ABA principles, this was ruled improper retrospective testimony.
- The issue of classroom placement ratio cannot be separated from the failure to conduct an FBA or BIP procedural violation discussed above. Witnesses who recommended a 1:1 placement did so out of concerns relating to the student's maladaptive behaviors. Failure to consider such concerns is related to the failure to properly draw up a plan to account for those behaviors. Thus, the IEP was substantively inadequate.
- The 1:1 placement instruction should have been considered in this case ... not because the IDEA requires that a child be provided with the optimal educational program, but rather due to the overwhelming testimony that 1:1 instruction was necessary in this student's case.

(5) The issue is whether this placement is reasonably calculated to enable the child to receive educational benefits. The IHO held, based on testimony of the McCarton witnesses, that the school was an appropriate placement. Also, the court notes the student attended McCarton for the year prior to the year at issue, and the LEA itself relied on McCarton reports in formulating its IEP. Accordingly, the court ruled the second element of the Burlington/Carter Test favors the Parents.

Consideration of the Equities

- The court acknowledged credible testimony that the Parent attempted to find a 1:1 placement program within the LEA; that he attempted to make contact with the LEA's placement site; and that he did not make plans to enroll the student in McCarton until after the Committee met.
- As the LEA failed to provide for parent training and counseling, produced an inappropriately vague BIP, and failed to consider a 1:1 ratio classroom placement despite overwhelming evidence the student required one, and as the parents' private placement was appropriate to the student's needs, the Court ruled that the equities did not weigh against the Parents, and thus the court held that the third element of Burlington/Carter favors the Parents.

BLUE SEA GOES TO HARVARD Blue Sea President Nicholas Mortati and Executive Director Cheryl Reeves have enrolled at Harvard University's Kennedy School Executive Education with Marshall Ganz in Leadership, Organizing & Action Leading Change. The Blue Sea project through Harvard is focused on increasing parent and family participation in the educational process, and reducing disproportionate suspensions of black and hispanic students. Ganz was a civil rights organizer in Mississippi in 1965, worked with Cesar Chavez and the United Farm Workers for over 16 years, and currently lectures on public policy at the Harvard Kennedy School of Government.



Blue Sea celebrated at the Long Island Walk Now for Autism Speaks Recognition Dinner on March 6 at the Milleridge Inn in Jericho. In attendance and "dressing up" for the occasion was Blue Sea's (l.to r.) Christine Pusateria, Nicholas Mortati, Kim Balan, Cheryl Reeves, and Michelle Kahn.



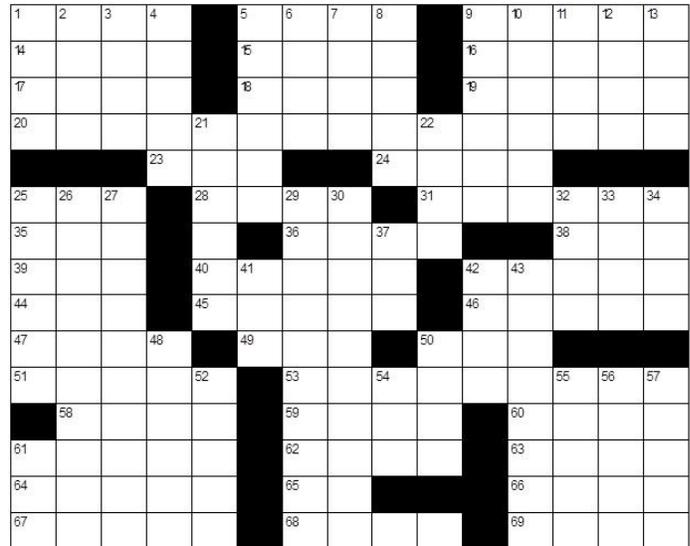
SPECIAL EDUCATION CROSSWORD PUZZLE

Across

- 1 Paper _____, or _____ Art
 5 This is "Common" in NYS
 9 Ogle
 14 Ireland name
 15 La. Univ. abbrevs.
 16 To have, Span.
 17 Astrological Lions
 18 Dismounted
 19 UN's Kofi _____
 20 IEP measureable outcomes
 23 Corn comes in this
 24 One with ESP
 25 Social skills scale, abbrev.
 28 Repurchase agreement, for short
 31 Clinically measure
 35 Felix is one
 36 Drummer Buddy
 38 Contest
 39 Small guitar, for short
 40 WWII A-Bomb Bomber first name
 42 One from Scandinavia
 44 Education plan document
 45 "Total Flow Consult" on NYSE
 46 Too much caffeine?
 47 Punk Band 'The Story So Far,' initials
 49 Med. Research Center, abbrev.
 50 Computer network abbrev.
 51 Email name
 53 Four legged police squad member
 58 Chickens live here
 59 In the matter of, legal abbrev.
 60 Shakespeare King
 61 High class, Fr.
 62 Exclamation, O.E.
 63 Int'l Legal Tech Assn, abbrev.
 64 Market Research Company
 65 SW opposite
 66 Norwegian name
 67 Equals
 68 Russian ruler
 69 Oral or written

Down

- 1 SLP's test
 2 'Instead' word
 3 Press
 4 Italian fish
 5 Homeland actress Danes



- 6 Norwegian city, accords
 7 Destroy
 8 You are, Spanish
 9 Places for actors
 10 Three opera singers
 11 Karenina
 12 Not fake
 13 White tailed eagle
 21 Compromised store
 22 Sitcom actress Remini
 25 Keeness of sight
 26 Cooks dessert?
 27 Homeless Veterans Home in TN
 29 High skill level
 30 Car fluid exchanges
 32 Always
 33 Angle counterpart
 34 Plant this
 37 Premium cigar brand
 41 Negative prefix
 42 Elegant bird
 43 Liquor lineup
 48 Header opposite
 50 Fibbed
 52 Pries
 54 Gun group
 55 Search
 56 Hall and
 57 USS General
 61 Liver disease, abbrev

Solution to Puzzle can be found on our website at at <http://blueseaeeducation.com/>
 Contact Blue Sea Education at 631-368-BLUE (2583) or by email at info@blueseaeeducation.com

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