

## B.D. v. Dist. of Columbia D.C. Cir. 2016

- Issue: adequacy of compensatory education award.
- When a hearing officer or district court concludes that a school district has failed to provide a student with FAPE, it has broad discretion to fashion an appropriate remedy, which can include compensatory education.
- Compensatory education aims to put a student in the position he would be in absent the denial of FAPE.



## B.D. v. Dist. of Columbia cont'd.

- Comp. ed. award must rely on individualized assessment which produces different results in different cases (i.e., not formulaic).
- Seeks to undo the harm caused to the student and to compensate for the lost progress the student would have made had FAPE been provided.
- Hearing officer's award of 5 hrs. of OT/wk. for 3 months was insufficient. Remanded to district court to fashion an appropriate remedy.



## Leggett v. District of Columbia (D.C. Cir., 2015)

- Issue: reimbursement of parentally placed private boarding school expenses.
- Test: 1) school district failed to offer FAPE; 2) private-school placement was proper; and 3) equities weigh in favor of reimbursement (i.e., parent did not act unreasonably).
- School district failed to develop IEP to start year. Mother willing to send child to public school if appropriate IEP had been developed.



## Leggett v. District of Columbia (cont'd.)

- School district failed to respond to mother's inquiries regarding developing IEP by beginning of school year.
- Private school placement must be reasonably calculated to enable the child to receive educational benefits.



## Doe v. East Lyme Bd. of Ed. 2d Cir. 2016

Issue: School district failure to provide an IEP denied FAPE; violated stay-put by refusing to fund related services during litigation; and compensatory education awarded to make up for difference between full value of services owed and reimbursable services parent obtained.



## Doe v. E. Lyme Bd. of Ed. (cont'd.)

- Parent was not denied participation in IEP despite claim that IEP was issued after the last meeting at which the parent was present. No evidence that IEP team met without her presence.
- IEP must be reasonably calculated to enable the child to receive educational benefits.
- Private placement need not meet state education standards or provide certified teachers or an IEP.
- No tuition reimbursement because private school had no specialized instruction.



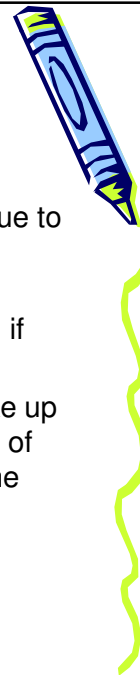
## Doe v. E. Lyme BOE (cont'd)

- Purpose of stay-put is to maintain educational status quo during litigation.
- Stay-put requires a school district to continue funding whatever educational placement was last agreed upon for the child during litigation.
- Stay-put placement=1) the placement described in most recently implemented IEP; 2) the placement actually operating; or 3) the placement at the time of the previous IEP.



## Doe v. E. Lyme BOE (cont'd)

- School district violated stay-put by refusing to continue to fund additional related services at private school as stated in the most recently implemented IEP.
- Stay-put requires implementation of status-quo even if student would not otherwise have a right to it.
- Compensatory education should be awarded to make up for any appreciable difference between the full value of stay-put services owed and reimbursable services the parent actually obtained.



## T.K. v. NY City Dept. of Ed. (2d Cir. 2016)

- Issue: parents entitled to private school reimbursement due to bullying causing denial of FAPE.
- Bullying severely restricted student's educational opportunities.
- School district refused to discuss bullying during IEP development.



## T.K. v. NYC Dept. of Ed. (cont'd)

- The test for whether a private placement serves the educational needs of the child is whether it is appropriate, not whether it is perfect.
- Parents bear a lower burden to demonstrate the appropriateness of a private placement than school districts do to demonstrate a provision of FAPE.
- Though this private school did not provide all services child needed, it provided many of them in a bully-free environment.



## D.M. v. NJ Dept. of Ed. 3d Cir. 2015

- Issue: Court issued injunction to parents of student with intellectual disabilities and private school for students with intellectual disabilities allowing the student to attend classes with non-disabled students.
- Due process hearing would have been unable to provide relief to parents, so exhaustion of administrative remedies was unnecessary.
- Action against NJ Dept. of Ed. appropriate since it was requiring segregated classes.
- Stay-put injunction appropriate since prohibition on mainstreaming was a change in placement. Automatic injunction.



## M.S. v. Marple Newtown School Dist. (3d Cir. 2015)

- Issue: Parents brought action under ADA and Sec. 504 against school district due to student's harassment by 2 fellow students, one of whom allegedly sexually assaulted her sister and district refused to separate the students from each other.



## M.S. v. Marple Newtown School Dist. (cont'd)

- Parents are required to exhaust their administrative remedies under the IDEA before bringing claims under the ADA and Sec. 504.
- Parents' claim intrinsically concerned whether student's educational placement under the IDEA was appropriate and whether or not district provided FAPE.



## J.F. v. Byram Township Bd. of Ed. (3d Cir. 2015)

- Issue: what services must a district provide to student who transfers districts?
- District's obligation was to provide student with services comparable to what he received from prior school district until it implemented its own IEP.
- District met its obligation so stay-put at private school denied due to parent's unilateral change of placement.





## O.S. v. Fairfax Cty. School Bd. (4<sup>th</sup> Cir. 2015)

- Issue: IDEA 2004 amendments did not heighten the standard of FAPE from provision of “some” educational benefit to “meaningful” educational benefit.
- Great deference to education professionals.
- IEP reports showed progress was made on objectives therefore FAPE provided.



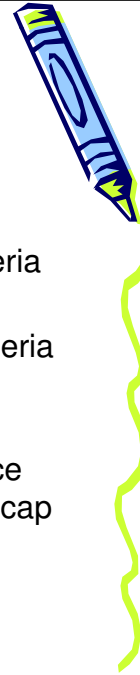
## Rockwall Independent School Dist. v. M.C. (5<sup>th</sup> Cir. 2016)

- Issue: Tuition reimbursement for unilateral parental private school placement where parents acted unreasonably in terminating collaborative and interactive IEP process.
- School district repeatedly solicited and incorporated parents’ suggestions for IEP but parents adamantly refused to consider any of school’s proposals.
- The right to input is not the right to dictate an outcome.



## Seth B. v. Orleans Parish School Bd. (5<sup>th</sup> Cir. 2016)

- Issue: reimbursement for IEE.
- IEE had to meet state-mandated evaluation criteria for parents to obtain reimbursement.
- Substantial compliance with state evaluation criteria sufficient for IEE reimbursement (insignificant deviations ok).
- Remanded to determine if substantial compliance was met. Parents bound by school board's cost cap even though IEE cost more.



## Rideau v. Keller Independent School Dist. (5<sup>th</sup> Cir. 2016)

- Issue: Parents could sue under ADA for damages and medical expenses due to special education teacher's mistreatment of child (ranging from petty slights-teacher ate child's lunch, not following IEP, and physical abuse (broken thumb, dislocated knee and skull contusions).
- IDEA exhaustion not raised by school dist.



## Q.W. v. Bd. of Ed. of Fayette Cty., Ky. (6<sup>th</sup> Cir. 2015)

- Issue: whether high functioning student with autism was eligible for special education under IDEA.
- Found ineligible despite some self-injurious behavior at home and in community, because well behaved at school and no connection between home and community problems and school success.



## Foster v. Bd. of Ed. of City of Chicago (7<sup>th</sup> Cir. 2015)

- Issue: can mother bring *pro se* claims on behalf of daughter?
- Mother cannot bring claims on behalf of daughter.
- Mother can bring parental claims when school district refused to evaluate child despite repeated requests.



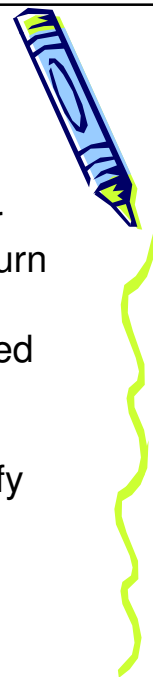
## **Meridian Joint School Dist. No. 2 v. D.A. (9<sup>th</sup> Cir. 2015)**

- Issue: was student entitled to IEE at public expense?
- High school student was entitled to IEE at public expense after he returned to school following placement in juvenile detention center, even though another school had evaluated him while at center.



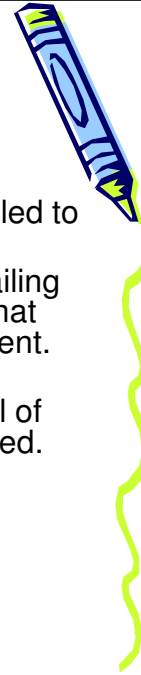
## **Meridian Jt. School Dist. No. 2 v. D.A. (cont'd)**

- Prior evaluation clearly stated that further evaluation might be appropriate upon return to public high school.
- Student's history suggested he would need assistance with transition.
- No stay-put injunction granted to prevent graduation because student did not qualify for special education.



## Phyllene W. v. Huntsville City Bd. of Ed. (11<sup>th</sup> Cir. 2015)

- Issue: Did school board violate IDEA when it failed to evaluate child?
- School board violated child find provisions by failing to evaluate student when faced with evidence that she suffered from a suspected hearing impairment.
- Failure to obtain medical information in order to adequately evaluate student resulted in a denial of FAPE because no meaningful IEP was developed.



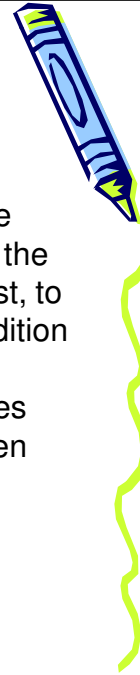
## DOJ Action

- US Dept. of Justice files “Statement of Interest” in School Resource Officer (SRO) case.
- *S.R. v. Kenton Cty.* (E.D. Ky. 2015)
- The case involves a school resource officer (SRO) in the Covington Independent School District, who is accused of handcuffing 2 students: 8 and 9 years old, behind their backs, and above their elbows, at the biceps. Both children have disabilities and the behavior for which they were handcuffed arose out of their disabilities.



## SRO case

- The federal government is not taking sides in the lawsuit brought by the children's parents, it took the unusual step of submitting a statement of interest, to make sure that the court understands that in addition to the normal way of analyzing excessive use of police force cases, the Americans with Disabilities Act (ADA) imposes additional requirements when police deal with people with disabilities.



## SRO case (cont'd)

The ADA requires police departments to:

- “reasonably modify procedures, practices, and policies unless doing so would result in a fundamental alteration,” and
- “create policies and administer those policies in a way that does not have the effect of discriminating against children with disabilities.”



## SRO case (cont'd)

*This litigation implicates the rights of children in schools to be free from unconstitutional police seizures, the rights of children with disabilities to be free from disability-based discrimination, and the rights of children to be free from civil rights violations that lead to the cycle of harsh school discipline and law enforcement involvement known as the “school-to-prison pipeline.”*



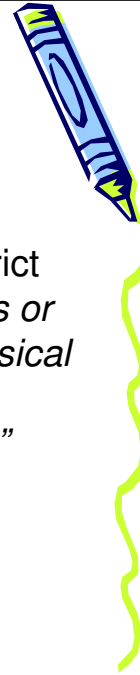
## SRO case (cont'd)

- *“the United States has a strong interest in eliminating the school-to-prison pipeline, which has a disproportionate effect on students with disabilities and students of color.”*



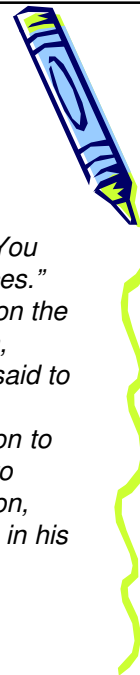
## SRO case (cont'd)

The Sheriff's Office, when asked to supply school resources officers to the school district **never**, *“provided training or created policies or procedures for the SROs on the use of physical force, including the use of handcuffs, on children, including children with disabilities.”*



## SRO case (cont'd)

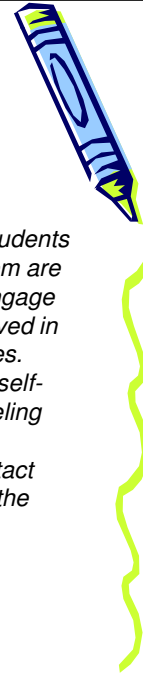
The plaintiffs' complaint alleges that: *video footage of S.R.'s handcuffing depicts Defendant Sumner saying to the child: “You can do what we ask you to or you can suffer the consequences.” The video also allegedly shows Defendant Sumner pushing on the chain of the handcuffs to place S.R. in a chair and telling him, “Now sit down like I asked you to.” Defendant Sumner also said to S.R.: “You know you're . . . going to behave the way you're supposed to or you suffer the consequences. It's your decision to behave this way. If you want the handcuffs off, you're going to have to behave and ask me nicely.” Throughout the interaction, the video depicts S.R. crying in pain, gasping, and squirming in his chair.*





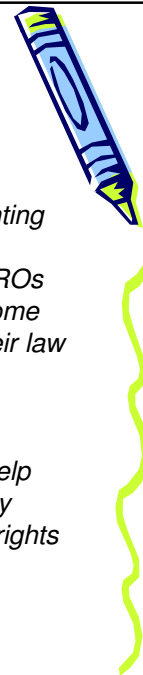
## SRO case (cont'd)

DOJ correctly points out that, *“students can suffer lasting harmful consequences after an interaction with law enforcement. Indeed, students who experience coercive force by those in the criminal justice system are more likely to miss critical instructional time, struggle in class, disengage from learning, feel stigmatized or alienated, drop out, become involved in the juvenile justice system, and miss future educational opportunities. They face a greater risk of drug use, emotional difficulties, and low self-esteem. These law enforcement interactions can leave students feeling traumatized, anxious, humiliated, and deeply fearful of school. For children with disabilities, who may experience disproportionate contact with law enforcement in schools, such interactions can exacerbate the disability and the very behaviors that led to the SRO interaction.”*



## SRO case (cont'd)

DOJ goes on to say, *“Best practices developed for implementing SRO programs demonstrate that, in efforts designed to help promote a safe learning environment in school, the role of SROs should be carefully circumscribed to ensure they do not become involved in routine disciplinary matters. SROs should use their law enforcement powers judiciously, to focus on safety, to avoid disability-based discrimination, and to avoid unnecessary criminalization of childhood behavior and perpetuation of the school-to-prison pipeline. These practices, if implemented, help ensure that schools and law enforcement agencies effectively protect school safety while avoiding violations of the federal rights of students.”*



## DOJ Guidance on SROs

*Examples of reasonable modifications that might be necessary for law enforcement officers when interacting with individuals with disabilities include:*

- *Being aware that the officer's uniform, gun, or handcuffs may frighten an individual with mental illness, and instead adopting a nonconfrontational stance by removing the officer's hat, sitting down, and assuring the individual that he or she is heard.*
- *2. Asking an individual with mental illness questions regarding his basic needs such as "What would make you feel safer/calmer, etc.?"*



## Web links on SROs

- *OCR/DOJ guidance:*  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>
- *My blog on this case:*  
<https://systemschangeconsulting.wordpress.com/2015/10/09/departement-of-justice-makes-strong-disability-statement-in-school-to-prison-pipeline-case/>



## OSERS letter

- IDEA applies and services must be delivered in nursing home; state responsible for child find:

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl-children-in-nursing-homes-04-28-2016.pdf>



## OSERS letter

- IEPs must be aligned with state academic content standards for the grade in which the child is enrolled.

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf>



## OSERS letter

Nothing in IDEA prohibits use of the terms dyslexia, dyscalculia, and dysgraphia, which are conditions that could qualify a child as a child with a specific learning disability.

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/guidance-on-dyslexia-10-2015.pdf>



## OSERS letter

LEA Maintenance of Effort (MOE): an LEA may not reduce the amount of local, or State and local, funds that it spends for the education of children with disabilities below the amount it spent for the preceding fiscal year.

<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osepmemo1510leamoeqa.pdf>



## OSERS letter

- Speech and Language evaluation of Autism.

<http://www2.ed.gov/policy/speced/guid/i/idea/memosdcltrs/dclspeechlanguageautism0706153q2015.pdf>



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# Legal Updates 2015-16

