Law Dawg ED DAILY
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A BLOG FROM WALSH GALLEGOS TREVIÑO RUSSO & KYLE

TRAINING FOR SROS

OCTOBER 16, 2019

A recent decision from the 5th Circuit draws attention to the need for good training for SROs and other law enforcement personnel who may be called on to deal with students in school. The case has a long way to go. The 5th Circuit held that there were fact issues that needed to be resolved before the case could be decided, and so it sent it back down to the lower court for further proceedings. But the facts that were outlined in the court's decision indicate that the SRO handled things poorly. The city that employed the SRO later described his conduct as "demeaning, berating and antagonizing" toward an 8-year old boy.

The story begins with that 8-year old boy out of control at school. School officials called for the SRO to help, but instructed him to "stand and watch right here, say nothing." The SRO failed to comply with that directive. Here's how the court described it:

Seconds later, as [the student] was twirling his jump rope Baker [the SRO] handcuffed [the student] and took him to [the principal's] office. Baker sat face-to-face with [the student], screamed at him, called him names, including "punk" and "brat," mocked [the student] and laughed at him. While screaming, Baker indicated that he was reacting the way he was because of how [the student] had acted during a previous incident.

Baker continued antagonizing [the student] and aggravating the situation until [the student's] parents arrived. When [the student's] mother asked Baker if he realized handcuffing a child with autism would traumatize him, Baker replied: "You know what? You're right, I don't know that. I'm not a psychologist." With regard to [the student] having autism Baker said, "You know what, he has no sign on his head that says 'I have autism, I hit people.' You can't do that in a free society." Baker then continued to laugh and make comments like "Great parenting!" [The student's] mother yelled at Baker for laughing and asked for his information. Baker then demanded that they leave the school.

Yikes. While this case has some important fact issues that are disputed, the court noted that "The parties do not contest these particular facts." It's not surprising that the City's internal investigation concluded that the officer's conduct was "unprofessional and unreasonable," leading to his termination.

The subsequent lawsuit was against the SRO, the City of Southlake and the police department. As noted above, no ruling about liability has been made. But golly gee whiz does this not demonstrate that some SROs need to get some training on how to interact with children at school? The case is *Wilson v. City of Southlake,* decided by the 5th Circuit Court of Appeals on August 28, 2019. We found it at 936 F.3d 326.

DAWG BONE: DEALING WITH 8-YEAR OLDS IS DIFFERENT FROM DEALING WITH HARDENED CRIMINALS ON THE STREET.

A MAJOR SPECIAL EDUCATION CASE FROM THE 5TH CIRCUIT

SEPTEMBER 30, 2019

Two weeks ago the 5th Circuit issued an important decision with implications for general and special educators. Because of the significance of the case, and the number of key legal issues it addresses, we are going to spend all week on *O.W. v. Spring Branch ISD.* Today, we take up one specific component of the Child Find responsibility.

The issue is this: once the school has notice that the student may have a disability, how long does the school have to begin the process by making a referral for testing? We know exactly how long we have to conduct an evaluation after the parent has given consent for it—that timeline is spelled out in the law. But let's consider what happens before that. Suppose you have clear indications that the student may have a qualifying disability. Do we have to refer the child that day? Within a week? A month? What's the timeline?

Courts have the luxury of looking backward and pinpointing a specific date when the district was "on notice." In the hectic rush of day to day schooling, it's rarely that clear. In this case, the court concluded that the district had notice of a possible disability by October 8, 2014. That was the date when the school held a 504 meeting, declared the student eligible for a 504 plan and began implementing a BIP (Behavior Intervention Plan).

The school implemented that 504 plan for the rest of that fall semester, but by January 15, 2015, the school concluded that more extensive services might be needed. Thus on that date the school initiated a referral for a Full Initial Individual Evaluation

(FIIE)—the first step toward determining the student eligible for an IEP.

So there is your timeline: we have "notice" of a possible need for special education on October 8th. We refer for testing on January 15th. That's 99 days. Is that OK?

The court noted that the law did not provide a specific timeline, so we look to the standard of "reasonableness." How long of a delay is "reasonable"? Courts look to their earlier decisions to decide issues like this. Here, there were two cases that were relevant. In *Dallas ISD v. Woody* the 5th Circuit held that a delay of 89 days was reasonable. But in *Krawietz v. Galveston ISD* the 5th Circuit held that four months (120 days) was too long. So 89 days is OK; 120 is not OK. How about 99?

The court did not base its decision on a specific number. Instead, the overall reasonableness of the actions of the school would be the decisive factor. Here is the key holding:

Taken together, Krawietz *and* Woody *stand for the proposition that the reasonableness of a delay is not defined by its length but by the steps taken by the district during the relevant period. A delay is reasonable when, throughout the period between notice and referral, a district takes proactive steps to comply with its child find duty to identify, locate, and evaluate students with disabilities. Conversely, a time period is unreasonable when the district fails to take proactive steps throughout the period or ceases to take such steps.*

So what "proactive steps" did the district take from October 8th to January 15th? In accordance with our state regulations, the district attempted regular behavioral interventions—specifically RtI, Response to Intervention. The Texas Administrative Code requires schools to consider general education interventions, including RtI "prior to" making a referral for special education testing.

The 5th Circuit rode roughshod over that regulation, noting that RtI strategies "cannot be used to delay or deny the provision of an "cannot be used to delay or deny the provision of an [evaluation] ." The court did not say that RtI would never be an appropriate "proactive step" but only that it should have been obvious that it wasn't going to work in this case. Key Quote:

The record in this case reflects that as of the October 8 notice date, the School District had attempted to engage with O.W. and his parents for the purpose of offering positive incentives and that such attempts had utterly failed to improve O.W.'s behavior.

Thus the court concluded that "the continued use of behavioral interventions was not a proactive step toward compliance with the School District's child find duties and that, therefore, a child find violation occurred.

This is a 5th Circuit decision that sends a strong message. A 504 plan is not an adequate substitute for a student who needs "specially designed instruction" under IDEA. RtI cannot justify the delay of

a referral of a student demonstrating signs of a disability under IDEA.

The case is *Spring Branch ISD v. O.W.*, decided by the 5th Circuit on September 16, 2019. We found it at 2019 WL 4401142. More on this case tomorrow.

DAWG BONE: IT'S SAFER (LEGALLY) TO MAKE THAT IDEA REFERRAL SOONER RATHER THAN LATER.

Tomorrow: the 5th Circuit addresses some Toolbox issues!

TOOLBOX TUESDAY!! DOES THE BIP HAVE TO AUTHORIZE THE USE OF PHYSICAL RESTRAINT? WHAT ABOUT CALLING THE COPS?

OCTOBER 1, 2019

I heaved a sigh of relief when I read what the 5th Circuit said about the use of physical restraint and the intervention of law enforcement when dealing with students with disabilities. In the Toolbox Training that our firm provides, we address these issues specifically. A very recent 5th Circuit ruling is consistent with what we have been saying.

Let's take up each issue.

Issue One: Does the IEP or BIP have to "authorize" the use of physical restraint? No. Key Quotes:

Unlike the use of time-outs, the law contains no provision requiring that the use of physical restraints be expressly authorized by a student's IEP.

Therefore, so long as the School District's use of physical restraints complied with state law, the use of restraints did not violate the IEP.

Issue Two: If the IEP/BIP calls for positive interventions, calm interactions and the avoidance of power struggles, is it a violation of the IEP when the school calls in the cops? The 5th Circuit said no. Key Quote:

These strategies are not necessarily violated by a mere request for police presence, particularly to deal with a violent and escalating situation such as a student repeatedly striking a teacher and charging at her, as was the case here.

That's the ruling in *Spring Branch ISD v. O.W.*, decided by the 5th Circuit on September 16, 2019. We found it at 2019 WL 4401142.

DAWG BONE: BUT REMEMBER: PHYSICAL RESTRAINT IS OK ONLY IN AN "EMERGENCY."

Tomorrow: Did you notice that reference to "time out"? Tune in tomorrow.

HOW OFTEN DO TEACHERS SEND KIDS TO "TIME OUT"?

OCTOBER 2, 2019

"Thus, an IEP or BIP which does not authorize the recurrent use of time-outs effectively prohibits its use."

Let that sink in. This is a Key Quote from the 5th Circuit in a case decided two weeks ago. The upshot: you can't use "time out" on a "recurrent" basis unless the IEP or BIP says that you can.

The student in this case was frequently directed to a "take-desk." Teachers would do this after redirection and warnings failed to deter the student from inappropriate behavior. The "take-desk" was in the classroom. The boy would be sent there for five or ten minutes, where he would have the opportunity to "pursue replacement behavior, such as drawing."

The school district argued that this was not "time out." The desk was in the same classroom—he was not sent elsewhere. Moreover, he could engage in "preferred activities."

The court cited the very ambiguous definition of "time out" in our Administrative Code and concluded that the district was using "time out," even though it didn't call it that. Key Quote:

While the School District is correct the desk was in O.W.s classroom and that O.W. was allowed to partake in preferred activities, nothing in the administrative definition of "time out" suggests the definition is limited to placement in a separate room or is inapplicable when the student is allowed certain activities. Section 89.1052(b) only requires a "separation from other students for a limited period…."

So if the teacher sends the student to a desk, or a comfy beanbag chair that is in the same classroom but physically "separated" from the rest of the class, it's a "time out." If this is done "recurrently" it has to be authorized by the IEP or BIP. If it's done recurrently and not authorized in the IEP or BIP, the district may be guilty of failing to implement the IEP.

That's what happened according to the 5th Circuit in the case of *Spring Branch ISD v. O.W.*

This case has important implications. It would be a good idea for principals and special education directors to survey teachers and find out if they are using any techniques, regardless of what the teachers call them, that might be characterized as "time out." It might also be a good idea to routinely authorize "time out" in IEPs or BIPs, particularly BIPs. If a student needs a

behavior plan some short term "separation" from other students might be appropriate. I hear a lot of references to

"cooling down" spaces. You might call it cooling down, but the 5th Circuit might call it "time out" and examine the IEP to see if it is authorized.

The case is *Spring Branch ISD v. O.W.*, decided by the 5th Circuit on September 16, 2019. We found it at 2019 WL 4401142.

DAWG BONE: IT WOULD BE NICE TO HAVE A CLEARER DEFINITION OF "SEPARATION."

Tomorrow: More on the Spring Branch case.

CHANGING THE IEP WITHOUT AN ARDC MEETING.

OCTOBER 3, 2019

Federal regulations permit parents and schools to modify a student's IEP without the formality of an ARDC meeting, if there is a "written document" to that effect. 34 CFR 300.324(a)(4). In its recent decision, the 5th Circuit cites one modification that was properly done, and one that was not.

On May 5, 2015, the school called in the cops to deal with a student who had "repeatedly struck his teacher with a closed fist and then charged at her." The next day, the school and the mother "without consultation with [the student's] ARDC, agreed in writing that [the student's] school day should begin at 9 a.m. instead of the normal 7:30 a.m."

This shortened the student's school day by 90 minutes, but the court was OK with it because the "formal written document" that the school and mother signed satisfied the requirements of the law.

Twelve days later the parties agreed that the school day for the remaining 11 days of the school year would be shortened to a mere three hours. Note: the court's decision says that the mother "agreed" to this. However, there was no "formal written document" in place. The only "written" documentation the school could cite was an email from one staff member to another which noted that they had discussed this with the mother, and that a "brief ARD" would be necessary. That ARD was never held. There was no written confirmation of the mother's agreement. The court held that this was an "actionable violation" of the IEP.

That email said that this shortened day was needed in order to "survive the last 11 days of school." Reading this court decision, even years after these events, the weariness and frustration of school staff is evident. It's also understandable. This was a challenging student, the year was almost over and everyone was exhausted. In fact, at the suggestion of an outside counselor the boy was pulled out of school altogether for the final three days. So they did not "survive" the last 11 days.

Of course emotional exhaustion is not going to factor into a court's decision. The regulations require a formal written document. There wasn't one.

The case is *Spring Branch ISD v. O.W.*, decided by the 5th Circuit on September 16, 2019. We found it at 2019 WL 4401142.

DAWG BONE: CHANGES TO AN IEP REQUIRE AN ARDC MEETING, OR A WRITTEN AGREEMENT BETWEEN SCHOOL AND PARENTS. NO EXCEPTIONS IN HARD CASES.

Tomorrow: Some opinions.

PERSPECTIVE ON THE 5TH CIRCUIT CASE

OCTOBER 4, 2019

We've spent all of this week on a single case. Decisions from the 5th Circuit create binding legal precedent for us in Texas, and thus they are particularly important. Before we conclude the discussion, I want to make an observation that is strictly my own.

We are over legalizing education. It would be nice if federal judges recognized that classroom teachers need to have the ability to control the classroom, just as much as the judge needs the ability to control the courtroom. The ability to control requires the exercise of discretion. This decision turns, in part, on the use of very short cool down periods that were given to a highly disruptive student at teacher discretion. According to the court, the IEP called for such "cool downs." But because the word "time out" did not appear in the IEP, the judges deemed the use of this very common disciplinary tool to be a violation of the student's IEP. Sharp lawyers, carefully parsing every word in our regulations, convinced the court that the teachers were using a procedure that had to be authorized as "time out" by the IEP.

Well, I'm a lawyer and I can see how that argument was made, and why it worked. But I can also see what's going on here. Legal formalities and technicalities become more important than results. In the name of upholding the law, judges clip the wings of educators who struggle to find the formula that will work with our most challenging students.

It sounds like nothing worked for the student in this case. The school shortened the boy's day near the end of the year, and one staff member noted that they were trying to "survive" to the end of the year. The student's parents end up placing him in an out-of-state residential facility. In a situation like that, our special education system goes to fault finding, which plays into the wheelhouse of the legal profession.

I don't know why O.W. did not have a successful experience in 5th grade in Spring Branch. But I'd be willing to bet that it wasn't because his IEP did not use the term "time out" to describe the five to ten minute cool downs that his teachers ordered.

Special education is mired in process rather than results. In this case, for example, if the

court had simply looked at the results, and concluded that the boy did not make any educational progress, the decision would be easier to abide. Instead, our detailed regulations force the parties to focus on petty issues. Thus we have a high level court trying to figure out how far a desk has to be physically separated from the rest of the class to be "separated" as that term is used in the Texas Administrative Code. That's a silly thing to be arguing about. Lawyers thrive on stuff like that. It doesn't help educators much. It doesn't help parents. It doesn't help kids.

Who are we trying to serve?

The case is *Spring Branch ISD v. O.W.*, decided by the 5th Circuit on September 16, 2019. We found it at 2019 WL 4401142.

DAWG BONE: DESPITE ALL THAT, LET'S REMEMBER THAT THE MAIN THING IS TO KEEP THE MAIN THING THE MAIN THING. THE MAIN THING IS EDUCATIONAL PROGRESS.

5TH CIRCUIT AFFIRMS WHAT WE THOUGHT ALL ALONG ABOUT DYSLEXIA. YOU HAVE TO "NEED" SPECIAL EDUCATION TO BE ELIGIBLE FOR IT.

SEPTEMBER 4, 2019

The case of *William V. v. Copperas Cove ISD* stirred things up last year when a federal judge held that students who are identified as having dyslexia are automatically eligible for special education under IDEA. The judge overlooked the element of "educational need" and focused only on the fact that dyslexia is listed in federal regulations as an example of a condition that can qualify as a learning disability. In the judge's analysis it was a very simple equation:

Dyslexia=SLD=IDEA eligible

Now the 5th Circuit has overturned the judge's decision. The Court noted that eligibility hinges on two factors—a qualifying disability and an educational need. The Circuit Court faulted the lower court for failing "to engage with the second part of the test." So the case was returned to the lower court for further proceedings.

Educational diagnosticians will likely be relieved by this decision, as it confirms what we have always believed, and what the Dyslexia Handbook says. Dyslexia is listed in federal regulations as an example of a learning disability—but the law still requires some showing of a need for

"specially designed instruction." Students with dyslexia are on a wide spectrum. Some will need specially designed instruction. Others will not.

The Court dipped its judicial toes into the murky waters of eligibility. Key Quote:

While the line between "special education" and "related services" may be murky, case law suggests that where a child is being educated in the regular classrooms of a public school with only minor accommodations and is making educational progress, the child does not "need" special education within the meaning of the IDEA.

So carry on, evaluating each child individually, with an eye toward what level of services the student needs. The case of *William V. v. Copperas Cove ISD* was decided in an unpublished opinion from the 5th Circuit on August 8, 2019.

DAWG BONE: NO ONE IS ELIGIBLE FOR SPECIAL EDUCATION SERVICES WITHOUT A NEED FOR SUCH SERVICES.

Tomorrow: Houston ISD handles a student-to-student harassment case well.

5TH CIRCUIT RULES ON STUDENT-TO-STUDENT HARASSMENT CASE.

SEPTEMBER 5, 2019

Houston ISD's prompt response to a report of student-to-student sexual misconduct was the key factor in the 5th Circuit's ruling in favor of the district. The court concluded that "no reasonable jury could conclude that the school's response was clearly unreasonable."

How did the school respond? This all started at orientation day at the Houston High School for the Performing and Visual Arts in August, 2014. A girl reported that she was sexually assaulted by a fellow student. Here's what happened next:

* The district "performed an immediate internal investigation while turning over a potential criminal investigation to the district's police department."

* "HISD also placed a strict no-contact order on the male student that was largely successful in preventing all contact between him and the victim and prevented any further sexual harassment."

* An assistant principal informed the male student that if he saw the girl in the hallway "he should go in the opposite direction, that he was not to be alone with [the student] at any time, and that if [she] entered a room he was in he had to leave the room immediately."

* All of those restrictions were also communicated to the boy's mother.

* The A.P. checked up throughout the semester to ensure compliance with these rules. He met with the male student monthly.

* The school also supported the girl, offering assistance to her for both academic and attendance problems.

Plaintiffs carry a high burden of proof in cases like this. Proving that a sexual assault happened is one thing, but proving that the school knew about it and shrugged its shoulders is a lot harder.

On the other hand, it's often difficult for the school to get a case like this tossed out of court early. That's because if there are important, relevant, unresolved factual issues, the court will not dismiss the case. Instead, the court will deny any "Motion to Dismiss" and force the parties into an expensive and uncertain trial. When that happens, the cost of settlement goes way up.

In its opinion, the 5th Circuit sends a signal to lower courts that they should not be timid about granting a school's Motion to Dismiss when appropriate. Citing an earlier 5th Circuit opinion, the court says:

There is no reason why courts, on a motion…for summary judgment…could not identify a response as not clearly unreasonable as a matter of law.

That phrase "as a matter of law" means that the court will take the matter away from a jury on the theory that "no reasonable jury" could conclude otherwise.

One more thing: "That this case involves a single instance of sexual harassment on a school campus is particularly relevant to our analysis." In a footnote, the court cited the seminal Supreme Court ruling about student-to-student harassment:

The Supreme Court has recognized that single instances of sexual harassment typically do not involve behavior "serious enough to have the systemic effect of denying the victim equal access to an educational program or activity." Davis v. Monroe County Board of Education *(1999).*

The case is *I.L. v. Houston ISD*, decided by the 5th Circuit on June 24, 2019. We found it at 2019 WL 2591696.

DAWG BONE: A PROMPT AND EFFECTIVE RESPONSE IS YOUR BEST DEFENSE.

IT SURE IS NICE TO SEE THE GOOD WORK OF EDUCATORS RECOGNIZED BY THE 5TH CIRCUIT.

DECEMBER 20, 2018

We are approaching a break in the school year in which we celebrate with loved ones and seek to foster peace on earth and good will toward all. So I want to start the final week of 2018's Daily Dawgs with a wonderful affirmation of the good work done by educators in Spring Branch ISD. Sifting through the dry legal analysis of the 5th Circuit I could clearly see the professionalism and caring of educational professionals.

The case involved a little girl with significant disabilities and health issues. Despite the fact that she lived just one block from Frostwood Elementary, she was assigned to Wilchester because that's where the Life Skills unit was. Everyone was happy with this arrangement for several years. In April, 2014, the ARDC met to consider the IEP for 4th grade. The IEP was agreed to, including the placement in the Life Skills unit at Wilchester.

One week later the school decided to transfer the girl to Frostwood, where a new Life Skills unit would be opening for the 2014-15 school year. No ARDC meeting was held to discuss this. Upon being informed of it, the parents were nervous. They were very happy with everything at Wilchester and wondered if this change would be good for their little girl.

To make a long story short, I will just say that there was a lot of back and forth between parents and school during that fall semester at Frostwood. In January, the parents pulled their child out of Spring Branch, placed her in a private program and sought a due process hearing to recover tuition. The parents alleged that the district had failed to provide FAPE.

The hearing officer ruled for the school, as did the district court, and as did the 5th Circuit. The court's decision features two legal headlines. First, the court held that the SCOTUS ruling about FAPE in *Endrew F. v. Douglas County* is not a game changer for us in the 5th Circuit as it is consistent with the way we have always interpreted what "FAPE" means. Second, the court

affirmed that this ARD-less transfer was just a change of location—not a change of placement. Thus, an ARD meeting was not necessary.

Beyond those legal points, though, the court cited many ways in which the school responded to parental concerns professionally.

*At parent request, the school transferred to the new school an aide who was familiar with the child.

*The principal immediately granted the dad's request for a change in morning drop off procedures.

*In response to parent concerns, the school nurse trained a number of staff members to assist the student in the event of a medical emergency.

*The court cited the extensive and "free-flowing" communication between teacher and parents, including a blog. The mom and the teacher texted each other "frequently during the day."

*The teacher agreed to microwave the student's food to make it more appealing.

*When the Life Skills teacher was going to be absent for a time due to her own medical issues the school held a meeting with all of the parents in that unit.

*In response to the teacher's absence from the classroom, the father, a lawyer, threatened to sue "with unimpeded professional aggressiveness." The district responded to this by reassuring the father that a certified teacher would be in the classroom. The district's behavioral coordinator visited the classroom the next day and brought in an instructional facilitator who specialized in teacher training.

Some of these are big things and some small. But overall, the court painted a picture of caring educators addressing parental concerns with patience and professionalism. Do these things factor into the court's legal analysis? You bet they do. The professionalism of the school staff made it easy for the court to see that there was no "predetermination" here:

SBISD had not predetermined the outcome of E.R.'s 2014-15 IEP at the ARDC meeting. Again, E.R.'s parents agreed with the end result. There is no reason to believe SBISD would not have listened to, and considered E.R.'s parents' positions about adding more goals to E.R.'s IEP. The facts are replete with accommodations made by SBISD. From a blog, to emails, to personal meetings, SBISD communicated with E.R.'s parents.

So congratulation to Spring Branch ISD and its staff. This is how it's supposed to work.

The case of *E.R. v. Spring Branch ISD* was decided by the 5th Circuit Court of Appeals on November 28, 2018. We found it at 2018 WL 6187765.

DAWG BONE: DO THE RIGHT THING. YOU'D BE AMAZED HOW OFTEN THAT CONFORMS WITH YOUR LEGAL DUTIES.

Tomorrow: Well....just tune in tomorrow.

LEWISVILLE ISD PREVAILS AT THE 5TH CIRCUIT

OCTOBER 10, 2018

When the fighting over the IEP, the IEE, the evaluation, the placement and all that is over, sometimes there is one more fight to be endured: who just won? That's what was at stake in a case recently decided by the 5th Circuit.

The parents claimed that they were entitled to the payment of their attorneys' fees because they were the "prevailing party." The hearing officer who originally heard the case had ordered the school district to add "autism" as a disability category for the student. The hearing officer ruled in favor of the district on all other issues. The student's IEP was good. She received FAPE. The district's evaluation was properly done. The parents were not entitled to an independent evaluation at public expense. But the hearing officer did order the district to add "autism" as a disability category, and to review the student's IEP in light of this change.

The district did that. The paperwork was changed to indicate that the student had autism, as well as an intellectual impairment. The ARD Committee reviewed the student's IEP with this new diagnosis in mind and made the following changes: zero. The ARD Committee concluded that the new diagnosis did not warrant any changes to the IEP. The IEP already incorporated strategies from the "autism supplement." School participants at the ARDC meeting felt that everything was good as it stood, and "Neither [the student's] parents nor her counsel offered any suggestions for further altering her plan."

The parents claimed that the hearing officer's order made them the "prevailing parties" and thus the district should pay for their attorney. Nope. The 5th Circuit ruled that the hearing officer's ruling was "the type of 'de minimis' or 'technical victory' that the Supreme Court has found so insignificant as to not create prevailing party status."

Why would the court say that? The key point in this case is a familiar one in special education disputes: the label is not as important as the services that are provided. This is a great example of that. The district changed the label, which caused it to change nothing about the IEP. The IEP was good with the old label; and good with the new label. Key Quote:

"The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate public education." *Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997). The order at issue concluded that Lauren's existing plan provided precisely what IDEA promises—a FAPE—regardless of her diagnosis. We conclude that the order's alteration of her diagnosis alone did not confer prevailing party status on Lauren.

The case is *Lauren C. v. Lewisville ISD*, decided by the 5th Circuit on September 14, 2018. We found it at 118 LRP 38037. I'm pleased to report that the district was represented by our firm

in this case. Nona Matthews and Gigi Driscoll took the lead on this one at the local level, and Meredith Walker handled the 5th Circuit appeal.

DAWG BONE: IT'S IMPORTANT TO GET THE LABEL RIGHT. IT'S MORE IMPORTANT TO GET THE SERVICES RIGHT.
