

Legal Brief

A short summary of a recent case, including background context, legal issues, the court's ruling and reasoning, and takeaways for educators.

A.A. v. Northside Independent School District, 951 F.3d 678 (5th Cir., 2020)

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Case Background

This case originates from San Antonio, Texas, when a legal suit was brought by the parent of K.K., an elementary student at Northside Independent School District (NISD) who received special education services for a serious emotional disturbance, based on a previous diagnosis of pediatric bipolar disorder. K.K. had other diagnoses as well, including autism spectrum disorder; severe, combined ADHD; and a mood disorder. K.K.'s parent claimed that when they enrolled him in NISD as a third grader during the 2015-2016 school year, almost all the special education services he received in the therapeutic program were eliminated, and K.K. was placed in a self-contained classroom setting where he received only three hours of behavior support weekly. During third and fourth grade, subsequent to multiple behavioral incidents, including homicidal and suicidal ideations, K.K. was hospitalized for more than 120 days. During one of these hospitalizations, he was diagnosed with schizoaffective disorder.

After a parental request for a psychological evaluation and assessments, the district agreed to conduct a full evaluation of K.K. The assessments revealed that K.K. qualified for speech services and had cognitive processing weaknesses impacting his academic achievement, but did not meet the existing criteria for a cognitive disability, and declined to conduct any further testing. Shortly thereafter, K.K. was placed in a different treatment center where he received counseling, occupational therapy, and speech therapy. While at the same treatment center, a separate evaluation revealed that K.K. had multi-faceted aggressive behaviors. NISD notified K.K.'s parent of an Individualized Education Plan (IEP) conference, but she stated she would not attend. When K.K. returned to NISD in January 2017, an IEP plan was developed to specifically address his impulsive behaviors. In April 2017, a dyslexia evaluation indicated K.K. qualified for services, but none were added to his IEP because the team could not reach a consensus. At the parents' request, an Independent Educational Evaluation (IEE) was attempted but not completed based on K.K.'s aggressiveness. In August 2017, K.K.'s parent requested a due process hearing, which ruled in favor of NISD.

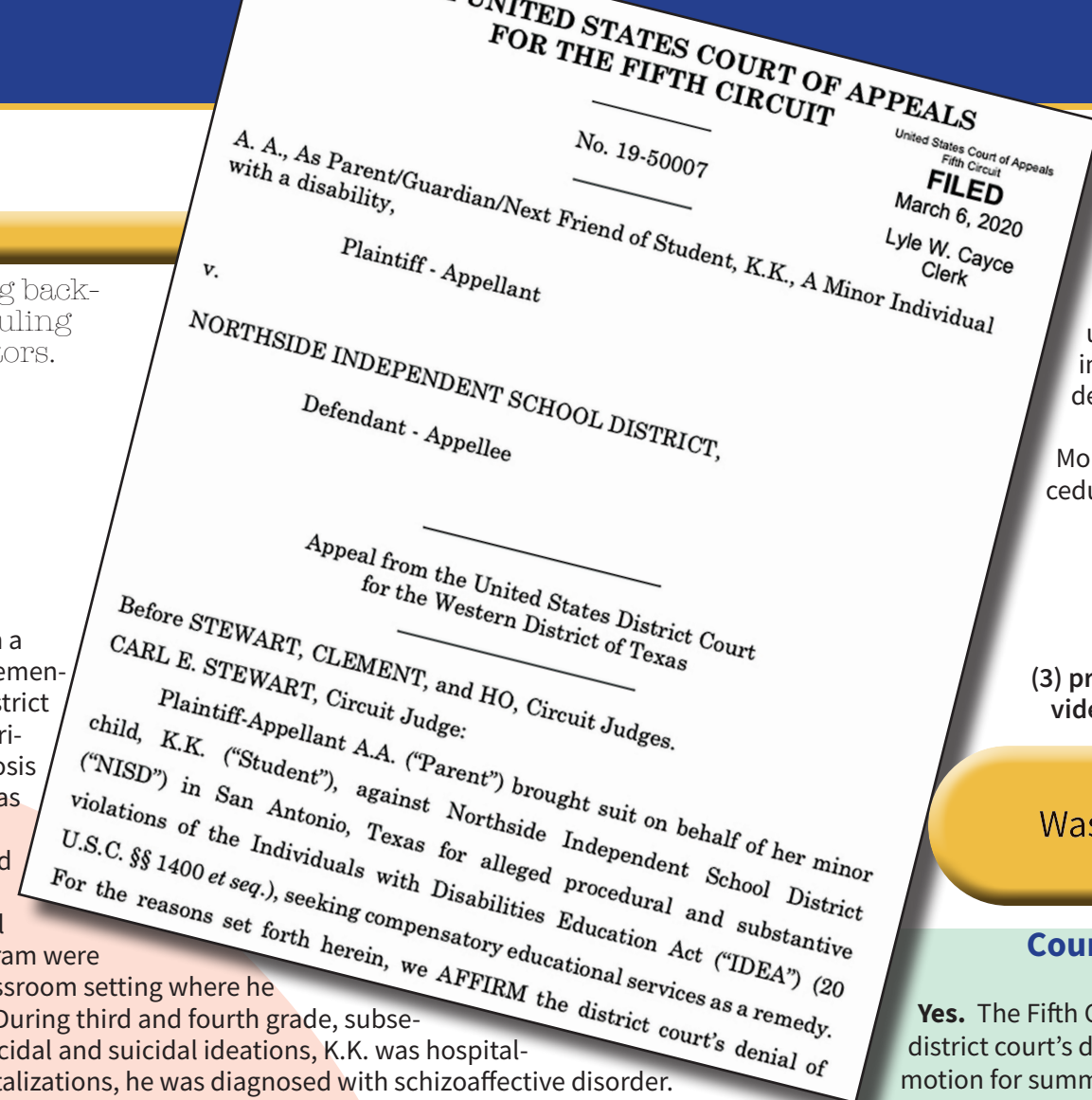
After the due process hearing, K.K. was involved in an altercation with his mother and was later hospitalized. At the hospital, he attacked his mother and a nurse, then fled the emergency department. Texas Children's Hospital recommended residential treatment, which K.K.'s parent requested the district consider. No IEP meeting was convened. K.K.'s parent notified family protective services that she was unable to meet her son's worsening mental health needs and filed a "Refusal to Accept Parental Responsibility" case so the state of Texas would provide K.K. with residential treatment.



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Legal Concerns

K.K.'s parent alleged that NISD committed both procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA) and sought legal remedy relief of compensatory education services. Under the IDEA, procedural violations are errors committed when due process requirements of the federal law are not followed. Substantive violations under the IDEA often occur based on procedural violations and result in a student not receiving the special education services they need, which can result in a failure to provide the student with a free appropriate public education, or FAPE, which is required under federal law.

More specifically, K.K.'s parent alleged that NISD committed three procedural violations under the IDEA, including:

- (1) failure to conduct timely evaluations as K.K.'s parent formally requested
- (2) changed K.K.'s services without officially convening the IEP team
- (3) prevented K.K.'s parent from actively participating in the decision-making process by failing to provide her with prior written notice (PWN) of changes to K.K.'s special education and related services

Legal Issue

Was the student's IEP sufficient to provide him with a free appropriate public education (FAPE), as required under the IDEA?

Court Decision

Yes. The Fifth Circuit affirmed the district court's denial of K.K.'s parent's motion for summary judgment against the school district for alleged procedural and substantive violations of the Individuals with Disabilities Education Act (IDEA). Specifically, the Fifth Circuit held that the district court did not err in finding that the parent failed to meet her legal burden of showing that the school district violated the procedural requirements of the IDEA. In this case, none of the incidents the parent claimed amounted to a procedural violation, and the court was not convinced that the student was denied the required free and appropriate public education (FAPE) provision under the IDEA.

The court also held that there were no substantive IDEA violations. The court was satisfied that the school district took the necessary steps to ensure that the student was being properly serviced under this individualized education plan (IEP), despite K.K.'s significant absences from school based on his hospitalizations.

Takeaways for Educators

"Procedural defects alone do not constitute a violation of the right to a [free appropriate public education] unless they result in the loss of an educational opportunity." *Adam J. ex rel. Robert J. v. Keller Independent School District*, 328 F.3d 804, 812 (5th Cir., 2003).

The IDEA requires public school districts to conduct reevaluations of enrolled special education students under the following two conditions:

- (1) the district "determines that the educational or related services needs... of the child warrant a reevaluation" OR
- (2) "the child's parents or teacher requests a reevaluation." (34 C.F.R. § 300.303(a).

Based on the Supreme Court's 2017 *Endrew F. v. Douglas County School District RE-1* decision, a student's IEP does not need to be perfect, nor is an IEP required to insulate a student from experiencing hardships. Rather, in order for an IEP to be sufficient, it must be individually designed to meet the student's unique needs and be supported by services that allow the student to benefit from instruction.

In the specific case, the Fifth Circuit was legally satisfied that the NISD took the appropriate steps to ensure that student K.K. was properly provided with special education and supporting services under the IDEA. Since the court believed he was, they concluded that there was no substantive violation of the IDEA.