

# Special Education Law for the General Attorney: Know the Basics To Ensure the Best for Your Clients

by Amy K. Bonn

Many practitioners may face issues on behalf of clients involving the rights of children with disabilities. Most attorneys may be familiar with the Americans with Disabilities Act (ADA).<sup>1</sup> However, the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> also presents a complex system of procedural rights belonging to children with disabilities and their parents, as well as a substantive standard by which the adequacy of a child's education must be measured. Understanding the IDEA not only allows an attorney specializing in disability law to address a client's legal needs, but it also assures the family law attorney's ability to vigorously represent his or her client, assists the defense lawyer in obtaining services and appropriate representation of a juvenile, and the list goes on.

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## IDEA Terminology and Rights

The IDEA has improved the lives of millions of children and their families and is premised on familiar constructs of equity and inclusion. To obtain a working knowledge of the IDEA and its regulations, attorneys can look to the U.S. Department of Education, which often puts out guidance documents through its Office of Special Education Programs (OSEP).<sup>3</sup> Additionally, because most education policy is made at the state and local levels, the Nebraska Special Education Act<sup>4</sup> and the Nebraska Department of Education's Rules 51, 52, and 55<sup>5</sup> govern the provision of services and complaint processes.

## Verification

There are 13 categories of eligibility for special education: autism, deaf-blindness, developmental delay, emotional disturbance, hearing impairment, intellectual disability, multiple impairments, orthopedic impairment, other health impairment (including health problems such as attention deficit hyperactivity disorder, lead poisoning, and leukemia), specific learning disability, speech-language impairment, traumatic brain injury, and visual impairment including blindness.<sup>6</sup>

## Free Appropriate Public Education (FAPE)

One of the central issues that an attorney practicing in the area of special education will argue is whether a school district has provided a free appropriate public education (FAPE) to a child with a disability. The IDEA provides that "FAPE means special education and related services that... [a]re provided at public expense... [m]eet the standards of the [state education agency]... and [a]re provided in conformity with an individualized education program [IEP]."<sup>7</sup>



## SPECIAL EDUCATION LAW FOR THE GENERAL ATTORNEY

The 1982 case *Board of Education v. Rowley* was the first interpretation of the IDEA by the U.S. Supreme Court and—until 2017—the only one centering on the substantive prong of the act’s FAPE guarantee. *Rowley* set forth a two-step test for courts to apply in determining whether a school district has provided FAPE, with the first step addressing procedure and the second addressing the substantive FAPE standard: “First, has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?”<sup>8</sup>

Out of *Rowley*, the reigning FAPE case for 35 years, arose two key questions. First, in the event that the parent of a child with a disability claims a denial of FAPE on procedural grounds, just how serious must those procedural violations be to rise to the level of a FAPE denial? And second, with regard to the substantive prong, how much educational benefit is enough?

The various circuit courts developed their own answers to each of those questions. When it comes to questions of procedural due process, the Eighth Circuit’s approach is as follows:

An IEP is set aside “only if procedural inadequacies compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.”<sup>9</sup>

In other words, not just any IDEA procedural violation on the part of a school district will amount to a denial of FAPE.

As for the second step of the *Rowley* two-step test, a split among the circuit courts arose regarding how much “educational benefit” was sufficient, with the Eighth Circuit determining that a school district had met the substantive FAPE requirement as long as “some educational benefit” was conferred.<sup>10</sup> The circuit split over the substantive FAPE standard of the IDEA persisted in the years after *Rowley* until the U.S. Supreme Court delivered its follow-up substantive FAPE decision in March of 2017: *Endrew F. v. Douglas County School District*. The holding in *Endrew F.*, in which the court unanimously ruled in favor of the parents of a child with autism, has a clear focus on student *progress*, as opposed to mere educational *benefit*, which had taken center stage in the *Rowley* ruling. According to the *Endrew F.* court, “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”<sup>11</sup>

*Endrew F.* did not overturn *Rowley*; it functions instead as an expansion of the Supreme Court’s consideration of the fundamental purpose of IEPs as well as the duty of school districts when it comes to educating children with disabilities. The *Endrew F.* court noted both that “[t]he IEP must aim to enable the child to

make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement” and that a child’s IEP “must be appropriately ambitious in light of his circumstances... every child should have the chance to meet challenging objectives.”<sup>12</sup> The *Endrew F.* decision acknowledges that this is particularly important for children who are not fully integrated in the general education classroom and for whom grade-level achievements may be out of reach.

### Child Find

Special education is not just for children whose parents have referred them for evaluations or for children with severe and obvious disabilities.<sup>13</sup> School districts have an affirmative duty to identify, locate, and evaluate all children with disabilities who need special education and related services. This “child find mandate” is extended to all children within a state, including homeless and highly mobile children, children who are wards of the state, and children in private schools.<sup>14</sup>

### The Multidisciplinary Evaluation Team (MDT)

A child’s parent or school personnel can request an initial evaluation to determine if a child is a “child with a disability” under the IDEA and is eligible for special education.<sup>15</sup> Schools must use various strategies and tools to assess “relevant functional, developmental and academic information about the child”<sup>16</sup> and “all areas related to the suspected disability” during an evaluation.<sup>17</sup> Schools must ensure that all evaluative tests include ones “tailored to assess specific areas of educational need,” not just ones meant to provide “a single general intelligence quotient.”<sup>18</sup> The multidisciplinary evaluation team (MDT) that assesses the child must include the child’s parents.<sup>19</sup>

### Response to Intervention (RTI)

The evaluation process for children suspected of having specific learning disabilities differs from the process for all other suspected disabilities. The IDEA mandates that the criteria used by states when determining whether a child has a specific learning disability “[m]ust *permit* the use of a process based on the child’s response to scientific, research-based intervention” (emphasis added).<sup>20</sup> This Response to Intervention (RTI) approach is used by many school districts in Nebraska—and OSEP has clarified that school districts cannot use implementation of RTI to delay or deny evaluations for IDEA eligibility<sup>21</sup>—but districts in Nebraska are also permitted to use the “severe discrepancy” approach, in which criteria for determining whether a child has a specific learning disability include an assessment of whether a child exhibits a “severe discrepancy between intellectual ability and achievement.”<sup>22</sup>

### The Individualized Education Program (IEP)

Where and how students with disabilities should be educated is not determined through blanket decision-making on the

## SPECIAL EDUCATION LAW FOR THE GENERAL ATTORNEY

part of school districts. Rather, the IDEA sets forth detailed rules for the development of an Individualized Education Program (IEP) for each child with a disability—as well as the procedural rights belonging to both the child in question and his or her parents.

The school must provide to parents a copy of what's called the "Procedural Safeguards Notice" at various points throughout the special education process.<sup>23</sup> Among the rights included in this notice are the right to independent educational evaluations, the right to prior written notice, rights governing parental consent, the right of parents to access the education records of their children, and the rules for filing formal state complaints and for requesting a due process hearing should disputes arise between the parents and the school district.<sup>24</sup>

An IEP outlines in writing a child's special education program – or the "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability."<sup>25</sup> In addition to the school officials and teachers (including a regular education teacher and a special education teacher) who are required to attend a child's IEP meeting, team members also include the child's parents and, "whenever appropriate," the child him or herself.<sup>26</sup>

There are several sections that must make an appearance. An IEP must include a "statement of the child's present levels of academic achievement and functional performance" in which

the IEP team documents the ways in which the child's disability affects his or her progress at school.<sup>27</sup> A documented statement in this section that a child's reading grades have fallen for the past two years, for example, can provide the basis for an attorney's argument during an IEP meeting that additional services and supports are required in this year's IEP.

An IEP must also include annual goals, which can be academic and/or functional. (For example, a child with autism may have goals that revolve around the improvement of his or her social skills.) The goals in an IEP must be measurable and designed to enable the child to "make progress in the general education curriculum."<sup>28</sup>

Each child's IEP must also include necessary accommodations and modifications, supplementary aids and services, special education services, and related services,<sup>29</sup> which are supportive services that a child needs to benefit from special education.<sup>30</sup> Transportation, speech-language pathology, occupational therapy, and audiology services are among the related services specifically listed in the IDEA.<sup>31</sup> A child's IEP must also explain the extent to which he or she will not be learning along with his or her nondisabled peers, if applicable.<sup>32</sup>

### The Least Restrictive Environment (LRE)

One of the core tenets of the IDEA is the concept of inclusion within the least restrictive environment. The law requires



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## SPECIAL EDUCATION LAW FOR THE GENERAL ATTORNEY

that children with disabilities should be educated along with their nondisabled peers “to the maximum extent appropriate.”<sup>33</sup> The continuum of educational placements for children with disabilities includes “regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.”<sup>34</sup> The IDEA allows for the removal of children with disabilities from the regular educational environment only when the severity or nature of the disability means that education in that regular environment cannot be satisfactorily achieved with the support of supplementary aids and services.<sup>35</sup>

The Eighth Circuit has interpreted the LRE standard to mean that “the IDEA creates a preference for mainstream education, and a disabled student should be separated from her peers only if the services that make segregated placement superior cannot be feasibly provided in a non-segregated setting.”<sup>36</sup>

### Independent Educational Evaluations (IEEs)

An important right afforded to parents is that they may disagree with the school’s evaluation of a child and obtain an independent educational evaluation (IEE) at the expense of the school district.<sup>37</sup> The IEE would be conducted by a qualified professional of the parent’s choice who is not affiliated with the district (but who may be subject to criteria supplied by the district).<sup>38</sup> Upon the request of a parent for an IEE, the school must ensure that one is made available at public expense *or* must file a due process complaint for the purpose of proving at a hearing that its evaluation was sufficient.<sup>39</sup>

The school must consider, but is not obligated to adopt,<sup>40</sup> any professional recommendations contained in an IEE; if a parent later disagrees with his or her child’s IEP and argues that FAPE has been denied, the IEE could be introduced as evidence at a due process hearing.

### Transition Services

The explicit purpose of the IDEA is the provision of a free and appropriate public education for all children with disabilities that prepares them for “further education, employment, and independent living.”<sup>41</sup>

This purpose is highlighted in the guarantee of transition services to children with disabilities no later than the year when each child turns 16. Transition services in a child’s IEP must be based on his or her “strengths, preferences, and interests,”<sup>42</sup> with the goal of easing the child’s move from school to the endeavors that he or she will pursue after school. Those possible post-school activities include postsecondary education, vocational training, employment, independent living, and participation in the community.<sup>43</sup>

### Discipline

Disciplinary issues to keep in mind with regard to a child with a disability include any removals from school or changes

in placement, including suspensions and expulsions due to conduct violations. If a child with a disability has been suspended or otherwise removed from school for more than ten days (termed a “change of placement”) due to a code of conduct violation, his or her IEP team must meet for a manifestation determination review (MDR) to decide whether the conduct was caused by or was directly and substantially related to the child’s disability or if the child’s conduct resulted from the school’s failure to implement the child’s IEP.<sup>44</sup>

If the team determines that the child’s behavior was a manifestation of his or her disability or if there was a failure to implement the IEP, he or she cannot be removed from school for longer than 10 days<sup>45</sup> (with some exceptions<sup>46</sup>), and a behavioral intervention plan must be put in place.<sup>47</sup>

### Prior Written Notice

One crucial right afforded to parents under the IDEA is prior written notice, which is included in the act’s procedural safeguards. In prior written notice, a school must document any proposal to change—or refusal to change—the child’s identification as a child with a disability eligible for special education, the child’s evaluation, the child’s placement, or any aspect of the provision of FAPE to the child.<sup>48</sup> The school must also explain in writing its reasoning.<sup>49</sup> Prior written notice documentation may be key evidence at a later due process hearing.

### Dispute Resolution

The IDEA provides three separate methods of dispute resolution: state complaint procedures,<sup>50</sup> mediation procedures,<sup>51</sup> and due process procedures.<sup>52</sup> Attorneys may assist parents in filing state complaints and represent families in mediation sessions and due process hearings.

A parent can file a due process complaint regarding the “identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child.”<sup>53</sup> During a due process hearing, the parties may be represented by attorneys, present evidence, and call witnesses.<sup>54</sup> The non-prevailing party can bring a civil action in state or federal court, which will review the records from the administrative proceeding, hear additional evidence upon request, and reach a decision based on the preponderance of the evidence.<sup>55</sup>

Another key IDEA component is the “stay put” provision: throughout the pendency of any due process hearing or judicial proceeding, the child will stay in the current educational placement.<sup>56</sup> If the school proposes, for example, that a child’s placement be changed from a general education classroom to a self-contained special class or special school, and the parent disagrees with this placement, the parent can file a due process complaint, and from that time forward until the completion of administrative proceedings and any civil action that follows, the child’s current placement will stay the same. He or she will “stay put.”

## SPECIAL EDUCATION LAW FOR THE GENERAL ATTORNEY

Attorneys should be mindful of the requirement that a petitioner must exhaust the administrative remedies provided under the IDEA (*i.e.*, he or she must file for a due process hearing) before filing a civil action with regard to matters related to the IDEA.<sup>57</sup> The U.S. Supreme Court recently held in *Fry v. Napoleon Community Schools* that when the central point of a plaintiff's claim is not a FAPE denial (*i.e.*, when the plaintiff is pursuing a claim outside of the purview of the IDEA, such as an ADA or Section 504 claim), exhaustion of administrative remedies under the IDEA is not required.<sup>58</sup> Due to continued trends in IDEA caselaw, however, pleading supplementary non-IDEA claims in a due process complaint may be advisable to avoid dismissal of those claims in federal court later on the basis of a failure to exhaust.

### Remedies for FAPE Denial

Money damages are not available through IDEA dispute resolution procedures. Hearing officers and courts can order equitable relief to families who prevail in their claims of denials of FAPE against their children's school districts.<sup>59</sup> This can take the form of an order to amend a child's IEP to correct deficiencies. It can also involve orders for compensatory education—services meant to compensate for a school's failure to provide FAPE. Examples of compensatory education can include after-school therapies, one-on-one tutoring, and placement in private schools.<sup>60</sup>

Parents can also seek reimbursement for private school tuition in cases where parents removed their children with disabilities from inadequate public-school programs and placed them unilaterally in private schools in order to receive FAPE.<sup>61</sup>

Additionally, parents who prevail in due process hearings and/or in civil actions following those hearings can pursue an award of reasonable attorneys' fees. Prevailing parents in due process hearings must bring a new civil action in state or federal court seeking attorneys' fees.<sup>62</sup>

### Section 504 of the Rehabilitation Act

Attorneys representing parents of children with disabilities should be aware of potential non-IDEA claims that may arise. Section 504 of the Rehabilitation Act of 1973 is an anti-discrimination civil rights law that centers on educational access and provides that “[n]o otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”<sup>63</sup>


Some children with disabilities who do not require specialized instruction and are therefore not eligible for special education (*i.e.*, not eligible for an IEP) may qualify for what's called a 504 Plan, which provides reasonable accommodations. Eligibility under Section 504 applies to “any person who (i) has

a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.”<sup>64</sup>

Section 504 contains a FAPE provision that differs from the one within the IDEA, in that the former requires education that is designed to meet the needs of disabled students “as adequately as” the needs of students without disabilities are met.<sup>65</sup> Further, the anti-discrimination provisions of Section 504 require schools to provide to students with disabilities an “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.”<sup>66</sup> Schools must also afford students with disabilities an “equal opportunity” to participate in extracurricular and non-academic activities.<sup>67</sup> Individuals can file Section 504 complaints with the U.S. Department of Education's Office for Civil Rights (OCR).

### Conclusion

Having a working knowledge of special education law will benefit lawyers in a variety of practice areas, from any attorney wishing to help clients who are parents of children with disabilities become better advocates; to a family law attorney navigating issues of educational decision-making rights when a client with a special-needs child seeks a divorce; to juvenile law attorneys, given that research demonstrates that in juvenile detention facilities, as many as 85% of youths have disabilities for which they would be eligible for special education, but only 37% of these youth have received special education in school.<sup>68</sup>

Appropriate supports in school are crucial for children with disabilities so that they may pursue their own goals for further education, employment, and independent living and fulfill the purpose of the IDEA. Effective legal representation can be key to helping families secure those appropriate supports for their children. 

### Endnotes

- 1 42 U.S.C. § 12101 *et seq.* (2018).
- 2 20 U.S.C. §1400 *et seq.* (2018). IDEA is a federal law that provides funding to states to create and develop programs to provide eligible students with disabilities with instruction specifically designed to meet each student's unique needs.
- 3 OSEP is part of the U.S. Department of Education's Office of Special Education and Rehabilitation Services (OSERS). OSEP administers the IDEA.
- 4 Neb. Rev. Stat. §§ 79-1110 to 79-1167 (2019).
- 5 Chapters 51, 52, and 55 of Title 92 of the Nebraska Administrative Code
- 6 34 C.F.R. § 300.8(c) (2018); 92 Neb. Admin. Code § 51-006.04 (2017).
- 7 34 C.F.R. § 300.17 (2018); 92 Neb. Admin. Code § 51-003.24 (2017).
- 8 *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982).
- 9 *Park Hill Sch. Dist. v. Dass*, 655 F.3d 762 (8th Cir. 2011) (citing *Gray*, 611 F.3d 419, 424 (8th Cir. 2010), quoting *Ind. Sch. Dist.*

## SPECIAL EDUCATION LAW FOR THE GENERAL ATTORNEY

- No. 283 v. S.D. ex rel J.D.*, 88 F.3d 556, 562 (8th Cir.1990); 20 U.S.C. § 1415(f)(3)(E)).
- <sup>10</sup> *Lathrop R-II Sch. Dist. v. Gray ex rel. Gray*, 611 F.3d 419, 427 (8th Cir. 2010) (citing *Blackmon ex rel. Blackmon v. Springfield R. XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999)).
- <sup>11</sup> *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988 (2017).
- <sup>12</sup> *Id.*
- <sup>13</sup> Part B of the IDEA applies to children between the ages of 3 and 21. Part C applies to children from birth to age three; early intervention services are provided to infants and toddlers with disabilities under that part of the IDEA. The information in this article pertains to special education and related services under Part B.
- <sup>14</sup> 34 C.F.R. § 300.111(a)(1)(i) (2018); 92 Neb. Admin. Code § 51-006.01A (2017).
- <sup>15</sup> 34 C.F.R. § 300.301(b) (2018); 92 Neb. Admin. Code § 51-006.02B (2017).
- <sup>16</sup> 34 C.F.R. § 300.304(b)(1) (2018); 92 Neb. Admin. Code § 51-006.02C5 (2017).
- <sup>17</sup> 34 C.F.R. § 300.304(c)(4) (2018); 92 Neb. Admin. Code § 51-006.02C10 (2017).
- <sup>18</sup> 34 C.F.R. § 300.304(c)(2); 92 Neb. Admin. Code § 51-006.02C7 (2017).
- <sup>19</sup> 92 Neb. Admin. Code § 51-006.03A (2017).
- <sup>20</sup> 34 C.F.R. § 300.307(a)(2) (2018).
- <sup>21</sup> OSEP Memorandum to State Directors of Special Education, 56 IDELR 50 (2011).
- <sup>22</sup> 34 C.F.R. § 300.307(a)(1) (2018).
- <sup>23</sup> 34 C.F.R. § 300.504 (2018); 92 Neb. Admin. Code § 51-009.06A (2017).
- <sup>24</sup> 34 C.F.R. § 300.504(c) (2018); 92 Neb. Admin. Code § 51-009.06B (2017).
- <sup>25</sup> 34 C.F.R. § 300.39(a)(1) (2018); 92 Neb. Admin. Code § 51-003.56 (2017).
- <sup>26</sup> 34 C.F.R. § 300.321(a) (2018); 92 Neb. Admin. Code § 51-007.03 (2017).
- <sup>27</sup> 34 C.F.R. § 300.320(a)(1) (2018); 92 Neb. Admin. Code § 51-007.07A1 (2017).
- <sup>28</sup> 34 C.F.R. § 300.320(a)(2) (2018); 92 Neb. Admin. Code § 51-007.07A2 (2017).
- <sup>29</sup> 34 C.F.R. § 300.320 (2018); 92 Neb. Admin. Code § 51-007 (2017).
- <sup>30</sup> 34 C.F.R. § 300.34(a) (2018); 92 Neb. Admin. Code § 51-003.49 (2017).
- <sup>31</sup> 34 C.F.R. § 300.34(a) (2018); 92 Neb. Admin. Code § 51-003.49 (2017).
- <sup>32</sup> 34 C.F.R. § 300.320(a)(5) (2018); 92 Neb. Admin. Code § 51-007.07A6 (2017).
- <sup>33</sup> 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a) (2018); 92 Neb. Admin. Code § 51-008.01A (2017).
- <sup>34</sup> 34 C.F.R. § 300.115 (2018); 92 Neb. Admin. Code § 51-008.01D (2017).
- <sup>35</sup> 34 C.F.R. § 300.114(a)(2) (2018); 92 Neb. Admin. Code § 51-008.01A (2017).
- <sup>36</sup> *Pachl v. Seagren*, 453 F.3d 1064 (8th Cir. 2006) (citing *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983)).
- <sup>37</sup> 34 C.F.R. § 300.502 (2018); 92 Neb. Admin. Code § 51-006.07 (2017).
- <sup>38</sup> 34 C.F.R. § 300.502(a) (2018); 92 Neb. Admin. Code § 51-006.07 (2017).
- <sup>39</sup> 34 C.F.R. § 300.502(b)(2) (2018); 92 Neb. Admin. Code § 51-006.07D (2017).
- <sup>40</sup> 34 C.F.R. § 300.502(c) (2018); 92 Neb. Admin. Code § 51-006.07G (2017).
- <sup>41</sup> 20 U.S.C. § 1400(d)(1) (2018).
- <sup>42</sup> 34 C.F.R. § 300.43(a)(2) (2018); 92 Neb. Admin. Code § 51-003.63 (2017).
- <sup>43</sup> 34 C.F.R. § 300.43(a)(1) (2018); 92 Neb. Admin. Code § 51-003.63 (2017).
- <sup>44</sup> 34 C.F.R. § 300.530(e) (2018); 92 Neb. Admin. Code § 51-016.02E (2017).
- <sup>45</sup> 34 C.F.R. § 300.530(f)(2) (2018); 92 Neb. Admin. Code § 51-016.02F2 (2017).
- <sup>46</sup> A child with a disability who has committed a conduct violation can be removed to an interim alternative educational setting for up to 45 school days even if his or her conduct was a manifestation of his or her disability, if the child brought a weapon to school, on school premises, or to a school function; knowingly possessed, used, or sold illegal drugs at school, on school premises, or at a school function; or inflicted “serious bodily injury” on another person at school, on school premises, or at a school function. 34 C.F.R. § 300.530(g) (2018); 92 Neb. Admin. Code § 51-016.02G (2017).
- <sup>47</sup> 34 C.F.R. § 300.530(f)(1)(i) (2018); 92 Neb. Admin. Code § 51-016.02F1 (2017).
- <sup>48</sup> 34 C.F.R. § 300.503(a) (2018); 92 Neb. Admin. Code § 51-009.05A (2017).
- <sup>49</sup> 34 C.F.R. § 300.503(b)(2) (2018); 92 Neb. Admin. Code § 51-009.05B2 (2017).
- <sup>50</sup> 34 C.F.R. §§ 300.151 – 300.153 (2018); 92 Neb. Admin. Code § 51-009.11 (2017).
- <sup>51</sup> 34 C.F.R. § 300.506 (2018); 92 Neb. Admin. Code § 51-009.12 (2017).
- <sup>52</sup> 34 C.F.R. §§ 300.507-300.516; §§ 300.532-300.533 (2018); 92 Neb. Admin. Code § 51-009.14 (2017).
- <sup>53</sup> 34 C.F.R. § 300.507(a)(1) (2018); 92 Neb. Admin. Code § 51-009.14B (2017).
- <sup>54</sup> 34 C.F.R. § 300.512(a) (2018); 92 Neb. Admin. Code § 51-009.14 (2017); 92 Neb. Admin. Code § 55-007.06 (2012).
- <sup>55</sup> 34 C.F.R. § 300.516 (2018); 92 Neb. Admin. Code § 55-009.05 (2012).
- <sup>56</sup> 34 C.F.R. § 300.518(a) (2018); 92 Neb. Admin. Code § 55-007.08 (2012).
- <sup>57</sup> 20 U.S.C. § 1415(l) (2018).
- <sup>58</sup> *Fry v. Napoleon Cmty. Sch.*, 580 U.S. \_\_\_, 137 S. Ct. 743 (2017).
- <sup>59</sup> 20 U.S.C. § 1415(i)(2)(C)(iii) (2018).
- <sup>60</sup> *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (11th Cir. 2008).
- <sup>61</sup> *Burlington Sch. Comm. v. Dept. of Educ.*, 471 U.S. 359, 402 (1985).
- <sup>62</sup> 20 U.S.C. § 1415(i)(3) (2018).
- <sup>63</sup> 29 U.S.C. § 794 (2018).
- <sup>64</sup> 34 C.F.R. § 104.3(j) (2018).
- <sup>65</sup> 34 C.F.R. § 104.33(b)(1)(i) (2018).
- <sup>66</sup> 34 C.F.R. § 104.4(b)(2) (2018).
- <sup>67</sup> 34 C.F.R. § 104.37(a)(1) (2018).
- <sup>68</sup> National Council on Disability, *Breaking the School-to-Prison Pipeline for Students with Disabilities*, June 18, 2015, at 5.