ESTABLISHING THE FRAMEWORK OF SPECIAL EDUCATION LAW

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A. Reviewing Section 504 of the Rehabilitation Act

1. The Purpose of the Act

The Rehabilitation Act of 1973 was the first federal law to prohibit discrimination on the basis of disability. 29 U.S.C. §§701 et seq. It applies to programs conducted by federal agencies and to programs receiving federal financial assistance. The purpose of the Rehabilitation Act is to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, inclusion, and integration into society. 29 U.S.C. §701(b)(1). Section 504 of the Rehabilitation Act specifically prohibits discrimination on the basis of disability.

2. Section 504's Prohibition of Discrimination

Section 504 of the Rehabilitation Act states, in relevant part, "No 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." 29 U.S.C. §794(a).

This prohibition applies to public school districts because the definition of a "program or activity" under Section 504 specifically includes all of the operations of a public system of higher education, a local educational agency, a system of vocational education, or other school system. 29 U.S.C. §794(b)(2).

Under the Rehabilitation Act, a "disability" means a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. 29 U.S.C. § 705; 42 U.S.C. §12102. Major life activities include seeing, hearing, walking, standing, speaking, breathing, learning, reading, concentrating, thinking, and communicating. 42 U.S.C. §12102(2). Students with speech impediments, hearing impairments, asthma, dyslexia, ADHD, cancer, epilepsy, and even food allergies or seasonal environmental allergies may all qualify as individuals with a disability. Note, however, that a student with a visual impairment that is fully correctable by glasses or contact lenses will not qualify as an individual with a disability. 42 U.S.C. §12102(4)(E)(ii).

3. Requirements for School Districts

a. Child-Find Provisions

Section 504 requires school districts to attempt to identify and locate individuals with a disability who reside within the district's jurisdiction and who are not receiving a public

education. The district must take steps to notify such individuals of the district's duties under Section 504. 34 C.F.R. §104.32. Those duties include provision of a free appropriate public education in the most fully integrated setting possible, proper initial and periodic evaluation, procedural safeguards to enable appropriate participation by parents, and equal access to extracurricular activities and services.

b. Free Appropriate Public Education

A school district must provide a free appropriate public education (FAPE) to all individuals with disabilities who meet the age requirements and who reside within the district's jurisdiction, regardless of the severity of the individual's handicap. 34 C.F.R. §104.33(a). In Texas, a disabled student between the ages of 3 and 21 may meet these age requirements. Tex. Educ. Code §29.003. A FAPE consists of:

- The provision of regular or special education and related aids and appropriate services designed to meet the individual educational needs of the disabled student **as adequately as the needs of non-disabled students are met**. 34 C.F.R. §104.33(b) (emphasis added). Note that this standard differs from the standard for FAPE under the Individuals with Disabilities in Education Act (IDEA).
- No charge to the disabled student or his family for these services, whether they are provided directly by school district personnel or by private providers. 34 C.F.R. §104.33(c). The guarantee of a free education may extend to payment for private school tuition or residential school tuition and fees in some instances. 34 C.F.R. §104.33(c)(3).

c. Integrated Setting

To the greatest extent possible, school districts must provide disabled students with academic and non-academic services and activities in an educational setting that includes non-disabled students. 34 C.F.R. §104.34. If a district operates facilities specifically for disabled students, such facilities and the services provided therein must be comparable to the facilities and services provided for non-disabled students. 34 C.F.R. §104.34(c).

d. Evaluation

School districts must evaluate disabled students who need or might need special education or related services before taking any action with respect to their initial educational placement and before making any significant changes to that placement. 34 C.F.R. §104.35(a). Such evaluations must include information from a variety of sources, including properly administered and properly focused tests, teacher recommendations, consideration of physical condition, social or cultural background, and adaptive behavior. 34 C.F.R. §104.35. The

placement decision must be made by a properly constituted group including people with knowledge of the child, knowledge of the proper use of and interpretation of the evaluation data, and knowledge of the placement options. 34 C.F.R. §104.35(c). Reevaluations should be done periodically, although Section 504 does not require a specific frequency for such reevaluations. 34 C.F.R. §104.35(d).

e. Procedural Safeguards

A school district must implement procedural safeguards with respect to the identification, evaluation, and placement of a student with a disability. 34 C.F.R. §104.36. These procedural safeguards must include: notice; an opportunity for the parent to examine relevant records; an opportunity for the parent to participate in and be represented by counsel at an impartial hearing; and a review procedure. 34 C.F.R. §104.36. Note that by complying with IDEA procedures, a school district will also meet Section 504 procedural safeguard requirements. 34 C.F.R. §104.36.

f. Extracurricular and Non-academic Services

School districts must provide extracurricular services and activities in a manner that permits disabled students an equal opportunity to participate. 34 C.F.R. §104.37. Such services may include recreational activities, transportation, work opportunities, referrals to opportunities in the community, and school sponsored special interest clubs. A school which provides physical education courses and athletics may not discriminate on the basis of disability and shall provide to qualified students with disabilities, an equal opportunity for participation. 34 C.F.R. §104.37(c).

B. <u>Examining Title II of the Americans With Disabilities Act (ADA)</u>

1. The Purpose of the Act

The ADA was passed to expand the prohibition against disability-based discrimination which, under Section 504, applied only to entities receiving federal funding. Under the ADA, this prohibition extends to all public agencies and many private entities. 42 U.S.C. 12101 et seq.

The goal of the ADA is to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities. 42 U.S.C. §12101(a)(7). Congress believed that society has tended to isolate and segregate individuals with disabilities and that these forms of discrimination continue to be a serious and pervasive social problem particularly in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services. 42 U.S.C. §12102(a)(2-3).

Title II of the ADA specifically prohibits state and local governments and agencies from

discriminating against individuals on the basis of disability. 42 U.S.C. §12132.

2. ADA's Prohibition of Discrimination

The ADA provides that, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. "Disability" under the ADA has the same definition as applies under Section 504. 42 U.S.C. §12102.

3. ADA Accessibility Requirements for Schools

a. New facilities

In general, the ADA provides that, "no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity." 28 C.F.R. §35.149.

b. Existing facilities

However, as to existing facilities, those built before 1992, the ADA requires that public entities operate each service, program, or activity such that, when viewed in its entirety, the service, program, or activity is readily accessible to and usable by individuals with disabilities. 28 C.F.R. §35.150. A public entity need not therefore make each of its existing facilities accessible to individuals with disabilities, or modify an historic property in a manner that would threaten or destroy its historic significance. 28 C.F.R. §35.150(1-2).

Additionally, a public entity need not take action that would result in a fundamental alteration in the nature of a service, program, or activity or create undue financial and administrative burdens. 28 C.F.R. §35.150(3). In cases involving existing facilities the standard is program access rather than facility access. *Greer v. Richardson Indep. Sch. Dist*., 472 Fed. Appx. 287, 294-295 (5th Cir. 2012). Program access may be achieved through other means than building modification, such as reassignment of services to accessible buildings, or the use of aides. 28 C.F.R.§35.150(b).

4. ADA's Requirements Concerning Communications

The ADA provides that a public entity must ensure that communications with disabled participants or members of the public be as effective as communications with non-disabled individuals. 28 C.F.R.§35.160(a). Where necessary, the public entity must provide auxiliary aids and services to facilitate such communications and to enable disabled individuals to participate in and enjoy the benefits of the entity's services, programs, or activities. 28

C.F.R.§35.160(b). Such auxiliary aids may include sign language interpreters, assistive listening devices, or braille materials, among others. 28 C.F.R.§35.104.

5. Common Treatment of Section 504 and ADA

The remedies, procedures, and rights provided under the ADA's prohibition of discrimination are identical and co-extensive with those provided under Section 504. 42 U.S.C. 12133. The ADA and Section 504 are therefore generally invoked together in disability discrimination litigation, and the same standards are applied as to liability and compliance for the ADA and Section 504. *D.A. v. Houston Indep. Sch. Dist*., 629 F.3d 450, 453 (5th Cir. Tex. 2010); *Pace v. Bogalusa City Sch. Bd*., 403 F.3d 272, 287 (5th Cir. 2005) (en banc); *Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000).

The ADA's Accessibility Guidelines for Buildings and Facilities are nearly identical to the Rehabilitation Act's Uniform Federal Accessibility Standards, and public entities may comply with the requirements of either law by following either set of guidelines when constructing or altering facilities. 28 C.F.R.§35.151; *Greer v. Richardson Indep. Sch. Dist*., 472 Fed. Appx. 287, 291, fn. 2 (5th Cir. 2012).

C. Recent Developments in Special Education Law

1. Professional Bad Faith or Gross Misjudgment Standard in Section 504/ADA Cases

a. The standard

In 2010, the Fifth Circuit, in *D.A. v. Houston Independent School District*, 629 F.3d 450 (5th Cir. 2010), clearly adopted professional bad faith or gross misjudgment as the standard by which to measure intentional disability discrimination in the context of Section 504/ADA claims for mismanagement in special education.

The plaintiffs in *D.A.* complained that the school district violated Section 504 and the ADA by failing to test the student, D.A., for special education services. *Id*. at 451. D.A. began having educational problems in pre-kindergarten, and these problems continued into his first grade year. *Id*. at 452. His mother repeatedly requested that D.A. be tested for special education, and the school began to gather information but delayed D.A.'s referral for formal special education testing. D.A.'s mother withdrew him from the school half-way through his first grade year, before any testing had occurred. *Id*. Plaintiffs filed an IDEA claim with the Texas Education Agency, and a special hearing officer determined that the school district had violated IDEA by failing to timely test D.A. for special education services but declared the claim moot since D.A. had received the necessary testing at his subsequent school. *Id*. Plaintiffs appealed

this decision to the district court who granted summary judgment for the school district. *Id*. The district court held that the plaintiffs had failed to show intentional discrimination necessary to support their claims under Section 504 and the ADA. *Id*. at 453.

The Fifth Circuit affirmed noting that Section 504 and the ADA do not create general tort liability for educational malpractice, but instead require a showing of intentional discrimination against a student on the basis of his disability. *Id*. at 454. The court held that "facts creating an inference of professional bad faith or gross misjudgment are necessary to substantiate a cause of action for intentional discrimination under Section 504 or ADA against a school district predicated on a disagreement over compliance with IDEA." *Id*. at 454-455. In this case Plaintiffs introduced no evidence that the school district's failure to timely test D.A. for special education services resulted from professional bad faith or gross misjudgment, particularly because the school district had authorized a special education evaluation within two months after its initial refusal. *Id*. at 455.

b. What is professional bad faith or gross misjudgment?

The application of this standard is not entirely clear. A district court failed to find this standard met in a recent case involving a profoundly sympathetic scenario. In *J.D. v. Georgetown Independent School District*, No. A-10-CA-717 LY, 2011 U.S. Dist. LEXIS 79335 (W.D. Tex. July 21, 2011), a disabled sixth grade student who was left unattended in his wheelchair beside a river during a school field trip, fell from his wheelchair into the river and had to be pulled out of the water by his classmates. The student sued the school district claiming violations of Section 504 and the ADA. The court upheld dismissal of these claims, noting that the plaintiffs failed to demonstrate intentional discrimination by the school district. *Id*. at *20-23. The court stated, "[w]hile the facts alleged in the complaint are disturbing, and likely point to negligence on the part of those responsible for J.D. on the day in question, they do not rise to the level of bad faith or gross misjudgment." *Id*. at *21.

In *I.A. v. Seguin Independent School District*, No. SA-10-CA-0866-XR, 2012 U.S. Dist. LEXIS 102845 (W.D. Tex. July 24, 2012), another student in a wheelchair complained of several instances in which the school district failed to accommodate his disability. These incidents included his wheelchair falling over on a mulch trail during a field trip, his temporary exclusion from participation in certain physical education activities, his inability to participate in a band performance due to inaccessibility of an off-campus stage, and the school's failure to communicate alternative activity plans for the student during another field trip.

After noting that plaintiffs' complaints were not "predicated on a disagreement over

compliance with the IDEA" quoting language from *D.A. v. Houston ISD*, the court refused to decide whether the gross misjudgment or bad faith standard should apply to all of I.A.'s claims. *Id*. at *15. Nevertheless, the court found that the school district's actions, though perhaps involving some mistakes or negligence, did not rise to the level of bad faith or gross misjudgment. *Id*. at *30-37. Interestingly, the court pointed out that the plaintiff failed to identify any professional standards or regulations that were violated. *Id*. at *36-37. This language may indicate that a gross departure from specified professional standards or regulations may give rise to a finding of professional bad faith or gross misjudgment.

In *S.F. v. McKinney Independent School District*, No. 4:10-CV-323-RAS-DDS, 2012 U.S. Dist. LEXIS 29584 (E.D. Tex. March 6, 2012), an autistic, deaf student sued the school district for violations of IDEA, Section 504, and the ADA. Although the court found that the school district had failed to provide the student with FAPE under IDEA due to improper notice to parents, improper destruction of evaluation materials, and the school's failure to provide sufficient American Sign Language training to the student, the court denied recovery for the student's Section 504 and ADA claims. Even given the school district's violations of IDEA, the court found no evidence to support an inference that the school district acted in bad faith or demonstrated gross misjudgment with respect to the student.

2. Overall Educational Benefit Standard for IDEA Compliance with FAPE

In *Klein Independent School District v. Hovem*, 690 F.3d 390 (5th Cir. 2012), the Fifth Circuit held that the provision of FAPE to a special education student must be judged by the overall educational benefits received, and not solely by the remediation of the student's disability.

Hovem, a high school student who received special education services for a disability of written expression, had a high I.Q. and received above average grades in math and social studies. He attended regular education classes but received accommodations for his learning disabilities. *Id*. at *3. He passed his classes and advanced from grade level to grade level without difficulty until he failed the written portion of the TAKS exit test.

Hovem ultimately dropped a required class in order to keep from graduating on time so that he could enter a private school for remediation of his disability of written expression and to prepare for college level writing. Hovem and his parents sued the school district seeking reimbursement of the costs of this private schooling as compensatory education damages under IDEA. *Id*. at *9. The hearing officer and the district court found that Hovem's Individual Education Plans (IEPs) had not been tailored to his individual needs because they failed to

address his learning disability or to provide transitional planning for college and awarded tuition reimbursement. *Id*. at *10.

The Fifth Circuit reversed, noting that overall educational benefit, not just disability remediation, is the goal of IDEA and that an IEP is not required to maximize a student's potential, but only to provide a certain basic floor of educational opportunity. Id. at *21. As such, the fact that Hovem received above average grades in mainstream classes and progressed from grade to grade, demonstrated that his IEPs were adequate and that the school district had complied both procedurally and substantively with IDEA. *Id*. at *2. The court noted that, "grading and advancement in regular classrooms monitor a child's progress, and the system itself confirms the extent of educational benefits to the child." *Id*. at *26 (citation omitted).

Judge Stewart wrote a strong dissent criticizing the majority for failing to employ a sufficiently deferential standard of review within the IDEA context. Id. at *28 (Stewart, J. dissenting). Judge Stewart believes that this holding may permit school districts to circumvent the purposes of IDEA while meeting the letter of the law by giving disabled students social promotions in mainstream classes without actually addressing their individualized special needs or disabilities. *Id*.

The Fifth Circuit has denied the Hovem's petition for en banc review.

3. Broader Definition of "Disability" Under Section 504 and the ADA

In 2008, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA), in which it broadened the definition of the term disability. This broader definition applies equally to Section 504. 42 U.S.C. §12102.

After the ADAAA, "disability" still means, "a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment." 42 U.S.C. §12102. However, the ADAAA expanded the scope of this definition by introducing rules of construction favoring broad coverage, requiring an expansive definition of the term "substantially limits," identifying specific "major life activities" that might be substantially limited, and including episodic or remitting impairments within the definition. 42 U.S.C. §12102.

Under the ADAAA, and contrary to prior case law, one can no longer consider the "ameliorative effects of mitigating measures" in order to determine whether an impairment substantially limits a major life activity. 42 U.S.C. §12102(4)(E). For instance, a student who takes medication which successfully treats or controls his epilepsy would still qualify as disabled if, without the medication, his epilepsy would substantially limit a major life activity.

Under the ADAAA, the definition of "major life activity" encompasses not only such activities as sleeping, reading, thinking, and learning, but it also includes the operation of a major bodily function, such as the respiratory system or the neurological system. 42 U.S.C. §12102(2). This means, for example, that a student with a food allergy would be considered to have a disability because exposure to the allergen would substantially limit the operation of the student's respiratory system.

The ADAAA also introduced the concept that an individual who experiences episodic or remitting impairments is disabled if, when active, these impairments substantially limit a major life activity. 42 U.S.C. §12102(4)(D). For example, a student with leukemia which is in remission would still be considered disabled because, when active, his leukemia substantially limits the major life activity of normal cell growth.

Due to these changes, more students will qualify as disabled and will consequently be subject to Section 504's child-find, evaluation, FAPE, and procedural safeguard requirements, even if they do not need accommodations or only need intermittent accommodations. *See, e.g.*, Office for Civil Rights, "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools" www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html.

D. Relevant Special Education Case Law

1. "Related Services" and the "Medical Services" Exclusion Under IDEA

In *Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999), the Court found that the school district was required to provide one-on-one nursing services for a quadriplegic student who used a ventilator because this service did not fall within the "medical services" exclusion to "related services" required under IDEA. The IDEA entitles disabled students to receive not only educational services but also "related services" necessary to enable the students to benefit from special education. 20 U.S.C. §1401(a)(17). Such related services include those things which enable a student to remain in school during the day, but exclude "medical services" except those for diagnostic and evaluation purposes. *Id.*

In *Cedar Rapids*, the school district argued that it was not responsible for providing nursing services to the student because such services fell within the "medical services" exclusion to IDEA's definition of "related services." *Cedar Rapids*, 526 U.S. at 72. The school district claimed that the Court should apply a multi-factor test that considers the nature and extent of the services at issue in determining whether they constitute excluded medical services. *Id.* Such a test would essentially establish a type of undue-burden medical services exemption based largely

upon the cost of the required service. *Id*. at 77.

The Court declined to adopt the school district's multi-factor test, finding it unsupported in law and unworkable. *Id*. at 75-76. Instead, the Court reasserted the bright line test it previously identified in *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), that limited the medical services exclusion to services provided by a physician or a hospital. Because a nurse could provide Garret with the services he needed in order to remain in school, such related services did not fall within the medical services exclusion, and the school district was required to pay for these services. *Id*. at 79.

2. Private Placement and Reimbursement of Costs Under IDEA

a. R.H. v. Plano ISD

In *R.H. v. Plano Independent School District*, 607 f.3d 1003 (5th Cir. 2010), the parents of an autistic child sought tuition reimbursement for private pre-school services arguing that the school district, by placing their child in full-time special education classes within a general education school, failed to meet IDEA's least restrictive environment (LRE) requirement. The parents sought a private pre-school placement because Plano ISD offered only special education pre-school, and the private pre-school at issue primarily included general education students.

The court noted that IDEA permits tuition reimbursement when the educational agency had failed to provide the student with a FAPE in a timely manner. *Id*. at 1011, fn. 3. In order to receive such reimbursement, the student must show that his public placement was inappropriate under IDEA and his private placement was proper under IDEA. *Id*. at 1011. To determine whether a student's public placement is appropriate, the court considers first, whether the educational agency complied with the procedural requirements of IDEA and second, whether the student's IEP was reasonably calculated to enable the student to receive educational benefits. *Id*. With regard to the second consideration, courts must decide whether the IEP provided the student with educational services in the least restrictive environment, initially considering whether education in the regular classroom, with accommodations or supplemental services, would be sufficient for the given student. *Id*. at 1013.

In *R.H.*, no general education pre-school classroom was available within the public school system. In this context, the court found that the school district had complied with IDEA's least restrictive environment requirements by placing the student in a full special education classroom within a general education school. Id. at 1015. The court emphasized that IDEA does not create a default option of private placement, but rather treats private placement as an exception. *Id*. at 1014. Here, because the school district complied with IDEA within the public

school, no private placement was warranted.

b. Richardson ISD v. Michael Z.

In *Richardson Independent School District v. Michael Z*, 580 F.3d 286 (5th Cir. 2009), the Fifth Circuit adopted a test for determining when a residential placement is appropriate under IDEA, thereby triggering the educational agency's obligation to reimburse the costs of such a placement. A residential placement is proper if it is, "1) essential in order for the disabled child to receive a meaningful educational benefit, and 2) primarily oriented toward enabling the child to obtain an education." *Id*. at 299.

With regard to the first prong of this test, the court explained that even if a residential placement would be helpful to a child's education, a child who is able to receive an educational benefit without residential placement will not qualify for reimbursement under IDEA. *Id*. at 300.

As to the second prong of this test, after noting that IDEA does not require school districts to pay for services aimed primarily at treating the student's medical impairments or enabling the student to engage in non-educational activities, the court stated, "IDEA ensures that all disabled children receive a meaningful education, but it was not intended to shift the costs of treating a child's disability to the public school district. This was made clear in IDEA's definition of 'related services,' which limit reimbursable medical services to those 'for diagnostic and evaluation purposes only.'" *Id*. The second prong of this test requires review of specific components of private treatment programs to determine whether each component is primarily oriented toward enabling the child to obtain an education. Any components which fail this test are not reimbursable under IDEA. *Id*. at 300-301.

3. Change in Placement and Administrative Exhaustion Under IDEA

In *Comb v. Benji's Special Education Academy, Inc.*, No. H-10-3498, 2012 U.S. Dist. LEXIS 42494 (S.D. Tex. March 28, 2012) (*Comb II*), the plaintiffs argued that the abrupt closure of a charter school serving a special education population amounted to a change in educational placement under IDEA and therefore required prior written notice.

The only notice given to parents was a note sent home with students informing the parents that the board had voted to suspend operations of the school at the end of classes that day. The plaintiffs did not seek a due process hearing prior to filing their suit, but they argued that administrative exhaustion would be futile because their injury, the lack of prior written notice, had already occurred, because the administrative process would take too long to complete, and that the violations alleged are systematic and the result of a settled state policy that cannot be addressed in administrative proceedings. Id. at *24.

The court had previously rejected the plaintiffs' first two arguments regarding administrative exhaustion and had requested further development of their argument regarding whether the violations were systematic and a result of state policy. *See, Comb v. Benji's Special Education Academy, Inc.*, 745 F.Supp.2d 755, 772 (S.D. Tex. 2010)(*Comb I*). Because Plaintiffs failed to submit further evidence on this point, the court found that these factors were not implicated and dismissed plaintiffs' IDEA claims in this case. *Comb II*, at *25-26.

In *Comb I*, the court rejected the plaintiffs' request for a temporary injunction preventing closure of the school. The court therein discussed the question of whether a school closure could amount to a change in educational placement under IDEA which requires written prior notice including a description of the proposed action, and explanation of the reasons for the action, and a statement notifying the parents that they have the right to challenge such action. *Combs I*, at 767.

The court noted that the Fifth Circuit has adopted a narrow interpretation of what constitutes a change in educational placement, focusing on whether a student's IEP continues to be implemented in the new school, and noting that transfer from one school to another does not necessarily constitute a change in educational placement under the IDEA. *Id*. at 768-769. The appropriate focus is not on whether the student's educational location changed but rather on whether the educational setting, such as regular classes, special education classes, special schools, or home instruction, changed. *Id*. at 769. The court wished to review the evidence of change in the education setting and programming in order to determine whether the students were subjected to a change in educational placement by the school closure. *Id*. at 771.