WHAT ARE THE COURTS SAYING ABOUT SPECIAL EDUCATION?

The Law Office of Melinda Jacobs
163 Kelly Ridge Road
P.O. Box 249
Townsend, Tennessee 37882
Telephone: 865-604-6340
Email: jacobslawmelinda@gmail.com
Website: www.melindajacobslaw.com

I. BEHAVIOR AND DISCIPLINE

1. *C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist.*, 65 IDELR 195 (N.D. Texas 2015). The parents of a middle school student with ADHD and an SLD could not demonstrate the inappropriateness of their son's 60-day IAES placement simply by pointing out that juvenile justice authorities had decided not to prosecute him for photographing a schoolmate on the toilet. Explaining that the authorities' decision had no bearing on the student's removal, the District Court affirmed an administrative decision in the district's favor. U.S. District Judge John McBryde did not expressly decide whether the IHO exceeded his authority in determining that the student's conduct qualified as a felony under Texas law. Instead, the judge noted that the IHO's finding was not relevant to the student's removal. The key question, the judge explained, was whether the district enforced its disciplinary policies in a nondiscriminatory manner. The judge pointed out that the district conducted a manifestation determination review and found that the student's actions were unrelated to his disabilities. As such, the student was subject to the same discipline policies and procedures as the general education population. The court also observed that the student's actions appeared to be consistent with the felony of improper photography. "The Texas Education Code mandated [an IAES] placement for such conduct," Judge McBryde wrote. Because the parents did not produce any evidence showing that the district punished their son more harshly than other students who committed similar offenses, the court held that

---

[1] ***Note: This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the presenter is not engaged in rendering legal counsel. If legal advice is required, the services of a competent professional should be sought. Melinda Jacobs is licensed to practice law in Tennessee. Ms. Jacobs makes no representation that she is licensed to practice law in any other state.***

the 60-day IAES placement was appropriate. The court also upheld the IHO's finding that the IEP in effect at the time of the incident offered the student FAPE.

2. *Troy Sch. Dist. v. K.M.*, 65 IDELR 91 (E.D. Mich. 2015). The fact that a 13-year-old boy with Asperger syndrome, ADHD, and ODD had a tendency to become violent without warning did not justify a Michigan district's decision to place the student in a center-based program for children with emotional disturbances. Relying on testimony from psychologists and autism experts, the District Court held that the student could have made educational progress in a general education setting. The court recognized that the student had multiple behavioral incidents in his mainstream classes, several of which had resulted in emergency evacuations or police intervention. However, the psychologists and autism experts testified that the student was on "high alert" because he was so fearful during the school day. "Police involvement, restraints and seclusion can be frightening for any student, but more so for a student with disabilities," U.S. District Judge Denise Page Hood wrote. According to the psychologists and autism experts, the court observed, the student was highly intelligent, learned quickly, had a strong work ethic, and wanted to be successful. In addition, the experts opined that the student needed to interact with nondisabled peers to acquire social and behavioral skills. Although the student had disrupted the general education environment several times, the court found no fault with the experts' testimony that he could benefit from mainstream classes if he received appropriate support services. The court upheld an ALJ's determination that the district denied the student FAPE. It also affirmed an order requiring the district to provide a one-to-one psychologist with autism training as the student's "safe person," noting that such relief was clearly permissible under the IDEA.

3. *Dear Colleague Letter*, 64 IDELR 284 (OCR 2014), and *Dear Colleague Letter*, 64 IDELR 249 (OSEP/OSERS 2014). Juveniles with disabilities who are incarcerated in jails or juvenile justice facilities are protected by discipline procedures under Section 504 and Title II of the ADA and are therefore entitled to a manifestation determination prior to removal to a more restrictive setting (confinement to cell, “lockdown”) for disciplinary reasons.

4. *J.F. v. New Haven Unified Sch. Dist.*, 64 IDELR 212 (N.D. Cal. 2014). A high school girl with LD and ADHD was expelled from her high school for her participation in an on-campus fight. The girl also attacked a principal who restrained her while attempting to break up the fight. Within four days after the fight, an IEP team conducted a manifestation determination meeting and determined that fighting was not caused by the girl’s disabilities. Three months later, a district panel recommended her expulsion from school. However, the school board later reversed this recommendation, and the student was permitted to attend a different high school within the district. During the three months of review, the district provided homebound instruction to the student. The court held that the student’s claims were moot since she had been provided instruction throughout the disciplinary process.

5. *Avila v. Spokane Sch. Dist. #81*, 64 IDELR 171 (E.D. Wash. 2014). Six days of suspension over a two-year period is not a "pattern of exclusion" that triggered a manifestation determination review.

6. *Endrew F. v. Douglas County Sch. Dist. RE 1*, 64 IDELR 38 (D. Colo. 2014). The school district responded appropriately to the severe behaviors of a fourth-grade boy with autism when it initiated the process to develop a behavioral intervention plan (BIP) during the IEP review process. The boy had begun to exhibit severe behavior problems that interfered with his learning, including eloping from the classroom, physical aggression, and defecating/urinating in the "calming" room. The court held that the parents were not entitled to reimbursement for a private placement since the district was in the process of developing a BIP at the time the parents unilaterally removed the child and initiated a private placement.

7. *C.P. v. Krum Indep. Sch. Dist.*, 64 IDELR 78 (E.D. Tex. 2014). A fifth-grade girl with an emotional disturbance was permitted as a part of her BIP to leave her classroom when feeling angry. Evidence that the girl was frequently removing herself from the classroom per the BIP supported the appropriateness of the school district's actions, and was not evidence that she had been denied FAPE.

II. BULLYING/HARASSMENT

8. *M.S. v. Marple Newton Sch. Dist.,* 64 IDELR 267 (E.D. Pa. 2015). Evidence that a male classmate was "leering" and "staring" at a 17-year-old girl and making her uncomfortable by pointing cameras at her during the school day was not sufficient to sustain the parents' claims of disability-based harassment under Section 504/Title II. The parents alleged that the district's failure to stop the classmate's behavior or to remove the boy from the school caused their daughter to suffer significant anxiety and PTSD. The parents alleged that the classmate had sexually assaulted their older daughter four years earlier, and that the families became enemies as a result. The effect of the boy's presence at school was not sufficient to trigger the school district's obligation to prevent any association between the students.

9. *G.M. v. Dry Creek Joint Elem. Sch. Dist.*, 64 IDELR 231 (9th Cir. 2014, *unpublished*). The school district's response to disability-based bullying of a sixth-grade boy with dyslexia was sufficient and reasonable. The boy had been bullied in PE class. The district responded by speaking with the bully, separating him from the student in PE class, and suspending another student who had punched the boy in the arm. In fact, in an unpublished decision, the court affirmed the District Court's award of $3,880 in attorney's fees to the school district for defending a "frivolous" lawsuit.

10. *J.W. v. Johnston County Bd. of Educ.*, 64 IDELR 64 (E.D.N.C. 2014). A self-contained classroom teacher joined with the parent of a "life skills" class student to allege wrongdoing by the school district. The teacher alleged that she had suffered retaliation for advocating on behalf of her students with disabilities. The parent alleged that her son's sexual assault in a school restroom by a nondisabled peer mentor was the result of the principal's deliberate indifference to an oversized "life skills" classroom that contained too many students for the teacher to effectively manage. The court rejected the parent's claims, finding that the principal's response to the alleged sexual assault was reasonable and in conformance with the law. The teacher's speech was not constitutionally protected because it involved a personal grievance about her working conditions rather than advocacy on an issue of public concern.

11. *T.K. and S.K. v. New York City Dep't of Educ.*, 63 IDELR 256 (E.D.N.Y. 2014). The school district erred when it failed to address peer harassment in the IEP of a third-grade girl with a language-based learning disability. The girl had become emotionally withdrawn at school, gained 13 pounds, and had 46 absences and tardies due to her fear of being bullied by classmates. The court found that peer harassment had adversely impacted her learning, and that the district should have addressed this issue in the girl's IEP.

III. ELIGIBILITY/CHILD FIND/EVALUATIONS

12. *E.F. v. Newport Mesa Unified Sch. Dist.,* 115 LRP 27706 (C.D. Cal. 2015). A nonverbal child's struggles to understand basic linguistic concepts during his preschool years justified a California district's decision to forego an AT evaluation, but only for a limited time. The District Court upheld an ALJ's finding that the district's failure to evaluate the child in kindergarten required it to provide 20 sessions of compensatory AT services. The court rejected the parents' argument that the district should have conducted an AT evaluation years earlier. Given the student's early difficulties in using the Picture Exchange Communication System, picture cards, and sentence strips, the district had no reason to believe the child was ready to start using high-tech communication devices. However, the court agreed with the ALJ that the district should have assessed the child's AT needs when his parents reported during his kindergarten year in February 2012 that he was using a tablet at home with great success. "The district did not act to have [the child] assessed until November 2012 and did not provide [him] with any AT device or service until the January 2013 IEP meeting, almost a year after the previous IEP meeting," U.S. District Judge Cormac J. Carney wrote. The court observed that the ALJ's award of 20-minute AT therapy sessions, which totaled 400 minutes of compensatory education, was sufficient to remedy the IDEA violation in light of the AT services included in subsequent IEPs. The court also affirmed the ALJ's decision.

13. *Paul T. v. South Huntington Union Free Sch. Dist., unpublished*, 115 LRP 27384 (N.Y.Sup.Ct. 2015). Even if a fifth-grader developed an emotional disturbance as a result of peer bullying, a New York district had no obligation to provide the student with special education and related services. The New York Supreme Court held in an unpublished decision that the lack of impact on the student's academic performance supported the district's eligibility determination. Acting Supreme Court Justice James Hudson explained that having an emotional disturbance such as anxiety or depression will not in itself qualify a child for IDEA services; the parents also must show that the condition had an adverse impact on the child's educational performance. Although New York law does not define the term "educational performance," Justice Hudson pointed out that federal courts interpreting New York law have focused solely on academics. The court noted that the student in this case consistently earned good grades and received average to above-average scores on intelligence tests. "[A]ssuming arguendo that [the student's] mental and emotional state did rise to the level of emotional disturbance ..., the SRO was correct to find that these did not affect [the student's] educational performance," Justice Hudson wrote. Because the purported bullying had no academic impact, the court held that the student was not eligible for IDEA services. The court upheld an SRO's decision at 114 LRP 48011 that the parents were not entitled to reimbursement for the student's unilateral parochial school placement.

14. *Doe v. Cape Elizabeth Sch. Dep't*, 64 IDELR 272 (D. Me. 2014). A teen who made above-average grades and achieved proficiency on state-mandated tests was no longer eligible for special education and related services, despite receiving low scores on an independent assessment of academic performance. The court rejected the parent's claim that the eligibility team should have disregarded the student's grades and statewide testing scores in making an eligibility determination.

15. *Phyllene W. v. Huntsville City Bd. of Educ.*, 64 IDELR 242 (N.D. Ala. 2014). An Alabama school district did not err by failing to conduct additional evaluations of a 10th-grade student with a learning disability prior to determining that she no longer met IDEA eligibility criteria. The evidence showed that the girl was proficient in grade-level academic standards and had mastered her IEP goals for the previous school year. The IDEA does not obligate school districts to conduct additional standardized assessments unless the parent requests these.

16. *Jana K. v. Annville Cleona Sch. Dist.*, 63 IDELR 278 (M.D. Pa. 2014). The school district violated its "child find" obligation when it failed to evaluate a teenaged girl for IDEA eligibility. The court found that the district had sufficient evidence to trigger the obligation and to suspect an emotional disturbance. The girl had visited the school nurse at least 54 times to report injuries, hunger, anxiety, or a need for "moral support." In addition, the girl's grades had significantly declined in seventh grade. Finally, she had swallowed a metal instrument after purposefully cutting herself. The fact that her parent had failed to notify the district that the girl had been privately diagnosed with depression did

not alter the "child find" duty. The court ordered one day of compensatory education services for each day the student had gone without appropriate services.

17. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 63 IDELR 211 (9th Cir. 2014), *cert. denied*, 115 LRP 1299 (U.S. 01/12/15) (No. 14-604). A student who fails to meet eligibility criteria in one IDEA category may qualify under another category, such as OHI. The 9th Circuit held that it could not tell if Congress intended to limit OHI to disabilities that did not fall within any other category. Nevertheless, the court affirmed the school district's decision that a student diagnosed with central auditory processing disorder did not qualify for IDEA eligibility, since there was no evidence that he had limited strength, vitality, or alertness, or a chronic/acute health problem. The court further found that the district's use of an IQ score in its LD eligibility determination was not unreasonable.

IV. FREE APPROPRIATE PUBLIC EDUCATION

18. *Oconee County Sch. Dist. v. A.B.*, 115 lRP 29027 (M.D. Ga. 2015). he risk that a teen with a seizure disorder might not have access to medication within five minutes of the onset of a seizure convinced the U.S. District Court, Middle District of Georgia that a bus aide was needed. The court upheld an ALJ's decision at 8 GASLD 72, ordering the district to provide the teen with an appropriately trained aide. The district was also directed to reimburse the parent 50 percent of her transportation costs. The teen with "profound physical and intellectual disabilities" had a life-threatening condition that required the administration of medication once a seizure reached the five-minute mark. However, the student's IEP did not include adequate health services on the bus. The district contended that an aide was not needed because the teen was always within five minutes of either home or school. The parent filed for due process alleging a denial of FAPE. Because the district's director of transportation acknowledged that traffic and weather conditions could affect the provision of timely emergency treatment, the ALJ concluded that this variable presented an unacceptable risk to the student and ordered that the district provide the aide. The district appealed. Chief U.S. District Judge Clay D. Land noted that under the IDEA, school districts must provide related services, such as transportation and medical services, if those services are required to help children with disabilities receive FAPE. In ordering that the district provide an aide, Judge Land observed, the ALJ struck a balance between the district's interest in obtaining more information from the teen's neurologist and the teen's interest in receiving medication as soon as possible after his seizure reached five minutes. If the parent refused to sign a release to obtain the information, he continued, the district could still try to get the student home or to school within five minutes. Alternatively, the judge reasoned, the parent could sign a release and have the teen's physicians explain why a different course of action, such as stopping the bus and calling 911,

would be justified. Based on the denial of FAPE, the ALJ's order for the district to amend the student's IEP to add the aide was justified, the court concluded. As to reimbursement of transportation costs, the court noted that both the parent and the district were at fault in "derailing the collaborative process." It affirmed the ALJ's decision to award the parent only 50 percent of her costs.

19. *John and Maureen M. v. Cumberland Pub. Sch.*, 65 IDELR 231 (D.R.I. 2015). Because the mother of a second-grader with a disability did not have a legal right to observe instruction in a special education classroom, a Rhode Island district did not violate the IDEA by denying her request to watch the class in session. The District Court reversed an IHO's finding that the district impeded the parents' opportunity to participate in the decision-making process. U.S. District Judge Mary M. Lisi pointed out that the IDEA does not give parents or their representatives the right to review current or prospective placements. *See Letter to Savit*, 64 IDELR 250 (OSEP 2014); and *Letter to Mamas*, 42 IDELR 10 (OSEP 2004). That said, OSEP has encouraged districts to give parents the opportunity to observe classrooms. The judge noted that the district attempted to do just that when it offered the mother an alternative to her request. "[The district] invited [the mother] to view the classroom -- in which [the child] was spending just forty minutes per day at the time of her request -- when no other children were in attendance," Judge Lisi wrote. The court also rejected the parents' argument that the mother's inability to observe the class in session amounted to a procedural denial of FAPE. At best, Judge Lisi noted, the IHO found that the district's denial of the mother's request impeded the parents' ability to participate in decisions about the child's program. "Even that determination ... was called into doubt by the IHO's acknowledgement that 'there is no general right to viewing the environment in the statute,'" the judge wrote.

20. *Grants Pass Sch. Dist. v. Student*, 65 IDELR 207 (D. Oregon 2015). Experts' testimony that an Oregon district could have used different data collection methods to get a more accurate picture of a 15-year-old boy's ESY needs did not convince a District Court that the district denied the student FAPE. The court held that the district's regression and recoupment data justified the IEP team's decision not to include ESY services in the student's IEP. The court criticized the ALJ's reliance on the experts' testimony about optimum data collection methods. Because the collection and analysis of educational data is a question of methodology, the court explained, the district was free to use any method that allowed the student to receive FAPE. U.S. District Judge Owen M. Panner observed that in relying on the experts' opinions, the ALJ held the district to an arbitrarily high standard. "While the data collection and analysis methods proposed by [the parent's] experts might be 'better' than those employed by the District, the ALJ provides no legal authority requiring that the District employ those methods," Judge Panner wrote. The court noted that the parent did not produce any evidence showing that the district's data collection methods were inadequate. Furthermore, the data that the district collected before and after the winter and spring breaks supported the IEP team's decision that the student did

not require ESY services to prevent "undue regression" -- the standard set forth in Oregon's special education rules. The court reversed an administrative decision at 114 LRP 32948 that required the district to provide 360 minutes of ESY services each day.

21. *Grasmick v. Matanuska Susitna Borough Sch. Dist.*, 64 IDELR 68 (D. Alaska 2014). The conduct of the parents prevented the school district from providing appropriate educational services to a child with a severe and progressive neuromuscular disease. The district proposed homebound education services while it worked with the child's physicians to develop an appropriate educational placement for the student. However, the parents repeatedly interfered with the provision of homebound services by refusing to allow district staff to enter their home, keeping staff waiting outside, expressing anger in front of the child during lessons, and interrupting sessions with service providers. A veteran homebound teacher testified that it was the most difficult placement he had encountered in his 30+ years of teaching. Multiple members of the child's IEP team resigned due to the pressures of dealing with the student's parents.

22. *I.S. v. School Town of Munster*, 64 IDELR 40 (N.D. Ind. 2014). A school district violated the IDEA by failing to change the educational methodology it had been using with a fifth-grade student with severe dyslexia. The district had used the Read 180 program, but this program had proven ineffective for the student over the previous school year. The court found that the Read 180 program was inappropriate for the student whose needs were in decoding and encoding, because the Read 180 program emphasized fluency. The court affirmed a hearing officer's order that the district provide an Orton-Gillingham reading program focusing on the child's deficit areas.

V. IEP DEVELOPMENT AND IMPLEMENTATION

23. *P.G. and R.G. v. City Sch. Dist. of New York*, 65 IDELR 43 (S.D.N.Y. 2015). A New York federal judge held that the evidence supported the district's claim that an IEP team properly reviewed and considered the results of an independent educational evaluation obtained by the parent of a 9-year-old girl with learning disabilities. The parent alleged that the school psychologist appeared "shocked" and "surprised" when the parent mentioned the report during an IEP meeting. However, the evidence showed that the team discussed recommendations in the IEE during the IEP meeting and incorporated some of the report's recommendations into the child's IEP. "Even if some of the [district team members] had viewed the [IEE report] for the first time at the meeting, the SRO's review of the documentary evidence demonstrates that the private evaluations were properly 'considered' as contemplated by the IDEA," Judge Katherine Polk Failla wrote.

24. *Stepp v. Midd-West Sch. Dist.*, 65 IDELR 46 (M.D. Pa. 2015). A school district violated the IDEA by limiting a mother's communication with teachers without advance notice or explanation. The district impeded the mother's right to meaningful participation in the development of her child's IEP by informing her during an IEP meeting that she would no longer be permitted to speak directly with teachers or other staff members. The court held that district officials should have first warned the mother about excessive communication with teachers prior to implementing this limitation.

25. *E.H. v. New York City Dept. of Educ.*, 65 IDELR 162 (2nd Cir. 2015). Adopting the IEP goals established by a private school without using the same educational methodology that school used may tip the scales in favor of the parent in her bid for tuition reimbursement. In prior proceedings, the district reimbursed the parent tuition after an IHO determined the district denied her son with autism FAPE. The district subsequently developed an IEP calling for the student to be placed in a specialized classroom within a public school. Although it adopted the IEP goals the private school had established, it did not require that the private school's "DIR/Floortime" teaching methodology be used to implement those goals. The parent filed for due process. After a hearing, the IHO ordered the district to fund the boy's tuition at the private school. An SRO reversed the IHO's decision, concluding that the IEP was designed to enable the student to make progress. The parent was unsuccessful in having a federal District Court overturn the SRO's decision, and she again appealed. The 2d U.S. Circuit Court of Appeals explained that state administrators "are generally superior to federal courts at resolving dispute[s] over an appropriate educational methodology." However, it continued, such deference is warranted only when the state administrators "weigh the evidence about proper teaching methodologies and explain their conclusion." Here, the 2d Circuit observed, neither the IHO nor the SRO determined whether the "DIR/Floortime" methodology was necessary to implement the goals in the IEP, as they erroneously found that this issue had not been raised in the due process complaint. A remand to the District Court was therefore appropriate, the 2d Circuit held. If the SRO determines that the district denied the student FAPE by adopting the private school's goals without adopting its methodology, the three-judge panel explained, either the District Court or the SRO must then determine whether the private school is an appropriate alternative placement and "whether equitable considerations favor reimbursement."

26. *T.M. v. New York City Dept. of Educ.*, 65 IDELR 146 (S.D.N.Y. 2015). A high school student's mastery of basic math computations did not invalidate a math goal that referenced his ability to add, subtract, multiply, and divide. The District Court held that the student's ongoing struggles with memory, sequencing, and reading comprehension supported the IEP team's development of a goal that related specifically to multi-step word problems. The court recognized that the student had passed algebra and geometry, and was working toward a regents diploma. However, it also noted that the student's speech-language impairment had a significant impact on his understanding of written and spoken language. As

the SRO had observed at 114 LRP 8140, requiring the student to use two of the four operations correctly when solving multi-step math problems would address the student's reading and processing difficulties as they manifested in classes with a lesser focus on writing. "The SRO found that the annual goals, 'when read together, targeted the student's identified areas of need and provided information sufficient to guide a teacher in instruction the student and measuring [his] progress,'" U.S. District Judge George B. Daniels wrote. The court also held that the district did not violate IDEA by failing to have a special education teacher on the student's IEP team. Noting that the district representative on the team had 21 years of experience as a special education teacher, the court held that any procedural defect arising from the district's failure to appoint a special education teacher to the team was harmless.

27. *L.G.B. v. School Bd. of the City of Norfolk*, 63 IDELR 197 (E.D. Va. 2014), *adopted by*, 63 IDELR 225 (E.D. Va. 2014). An IEP proposal to place a 13-year-old girl with autism in an educational program run by a state intermediate unit was appropriate even though the IEP failed to identify the specific school the girl would attend.

28. *Cooper v. District of Columbia*, 64 IDELR 271 (D.D.C. 2014). The school district violated the IDEA when an IEP team decided to transition a high school student with LD and ADHD from a private school back into a public school setting before it finalized his IEP. However, this procedural error was harmless because the parent was actively involved in several IEP meetings where the move to a less restrictive environment was thoroughly discussed.

29. *M.S. v. Utah Sch. for the Deaf and Blind*, 64 IDELR 278 (D. Utah 2014). The parents of a teen with multiple disabilities could not recover attorney's fees for the costs of attending an IEP meeting that had been planned weeks before the parents initiated a due process hearing. In order to recover such fees, the due process hearing must be the "catalyst" for the IEP meeting.

30. *Cupertino Union Sch. Dist. v. K.A.*, 64 IDELR 200 (N.D. Cal. 2014). The parents of a 10-year-old child with autism initiated a due process hearing after an initial IEP annual review meeting and refused to attend any further meetings to finalize their son's IEP. The genesis of the parents' dissatisfaction was the alleged failure of the IEP team to properly "consider" a private evaluation from a private behavioral and developmental pediatrician. At the initial IEP meeting, the pediatrician's report was distributed to team members and briefly summarized and discussed. However, the parents believed that the team had failed to give sufficient consideration to the private report and refused to attend any further IEP meetings during the pendency of their due process hearing. After several attempts to persuade the parents to attend an IEP meeting to finalize their son's IEP, the school district convened a meeting without the parents and completed the document. The court held that the school district's actions were justified by the parents' refusal to participate in the IEP development process.

31. *Lofisa S. v. State of Hawaii, Dep't of Educ.,* 64 IDELR 163 (D. Hawaii 2014). A parent's subjective interpretation of a letter she received from the school district did not constitute "predetermination" of her child's educational program. The district sent a letter to the parent of a student with disabilities, who had been enrolled in a private school, inviting her to attend an IEP meeting "if [she] wished to have [her] child receive [FAPE] in a public school." The parent did not respond to the letter or request additional information. She initiated a lawsuit alleging that the district had "predetermined" that it would not consider funding a private school placement for her child. The court held that the parent's "subjective" interpretation of the letter did not constitute predetermination, and found that the district routinely invited parents of private school students to attend IEP meetings where a full range of placement options was considered, including private school placements.

32. *A.L. v. Jackson County Sch. Bd.*, 64 IDELR 173 (N.D. Fla. 2014). The court held that a Florida school district properly convened an IEP meeting without the participation of the parent of a teen with a traumatic brain injury. The evidence showed that the parent had rescheduled the IEP meeting multiple times, and that the district had attempted on multiple occasions, in multiple ways, to schedule the meeting. The court found that the district had complied with all of the procedural requirements of the IDEA, and noted the parent's "repeated and unreasonable history of failure to attend the IEP meeting." The court also noted that the district had properly offered to allow the parent to participate via telephone in lieu of physically attending the meeting. In addition, the parents were not entitled to demand an IEE by an evaluator who was outside the district's geographical and monetary limits.

33. *Sheils v. Pennsbury Sch. Dist.*, 64 IDELR 143 (E.D. Pa. 2014). A school district was sued as a result of being caught in the middle of a dispute between the divorced parents of a middle school boy with a speech/language impairment and a learning disability. The parents shared joint custody of the child and both participated in his IEP meetings. A guidance counselor made a report to a child protective services agency after the child told her that the father "slaps [his children] at his house for misbehaving." In addition, the father disagreed with an IEP team proposal to conduct an FBA of this child (but the mother was in agreement with the proposal). The father alleged that the district had deprived him of his constitutional rights by siding with his wife on educational issues. The court found no evidence that the district had violated the father's rights or conspired with the mother to intentionally violate his rights.

34. *L.M.P. v. School Bd. of Broward County, Fla.*, 64 IDELR 66 (S.D. Fla. 2014). The court refused to dismiss claims made by the parents of triplets with autism alleging that the district had illegally "predetermined" the children's educational services by refusing to consider the provision of ABA therapy. The father alleged that he had attended more than 30 IEP meetings in the past decade and had

requested ABA therapy at each meeting. The parents asserted that they had spent $792,945.15 for private ABA therapy for the children.

35. *A.W. v. District of Columbia*, 64 IDELR 149 (D.D.C. 2014). The school district failed to implement the portion of a child's IEP that required provision of a massage brush, pencil grip, and a fidget object. However, the court found that no educational harm resulted from these omissions.

36. *Blount County Bd. of Educ. v. Bowens*, 63 IDELR 243 (11th Cir. 2014). The parent of a 3-year-old boy with autism met with school officials prior to her son's third birthday to develop an IEP for preschool placement. At this meeting, district officials offered three placement options, but the parent rejected these as inappropriate. Meanwhile, the parent located and placed her son in a private preschool program. A month later, she met with the IEP team and informed district officials about the private placement. The therapist in charge of the meeting stated that the private placement was an excellent choice for the child and disbanded the meeting without discussing reimbursement. The court determined that the district had effectively acquiesced in the private placement by failing to make a formal offer of placement that was appropriate for the child.

37. *Reyes v. New York City Dep't of Educ.*, 63 IDELR 244 (2d Cir. 2014). The school district violated the IDEA by drafting an IEP that provided for a one-to-one aide for three months with the understanding that the IEP could be amended mid-year to continue the provision of the aide. The parents of a teenager with autism objected to the limitation period in the IEP for the aide and sued to recover private tuition reimbursement. The court held that IEPs, as originally drafted, must contain all programs and services to be offered throughout the term of the IEP. In effect, the court held that judges may not consider the possibility of mid-year amendments to an IEP when deciding the appropriateness of an IEP in a reimbursement case. "If the school district were permitted to rely on the possibility of subsequent modifications to defend the IEP as originally drafted, then it could defeat any challenge to any IEP by hypothesizing about what amendments could have taken place over the course of a year," U.S. Circuit Judge Robert D. Sack wrote.

38. *R.L. and S.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014). The transcript of an IEP meeting supported the parents' claim that their son's educational program was "predetermined" by the school district. The teenage boy with Asperger syndrome and ADHD had a history of significant anxiety when placed in large public school settings. The district had provided the boy with varying amounts of homebound instruction services for a few years prior to the dispute, based on the recommendations of the boy's psychiatrist. The parents requested that their son be placed at a small magnet school program within the district for high school, but the district representative in charge of the IEP meeting refused to discuss this option. The court described the district's actions as an "absolute dismissal of the parents' views." The court held that the IDEA

authorizes reimbursement for home-based one-to-one instructional programs when school districts have failed to offer FAPE.

39. *R.B. v. New York City Dep't of Educ.*, 63 IDELR 74 (S.D.N.Y. 2014). Annual goals in an IEP did not have to be specifically measurable because the short-term objectives contained detailed and measurable standards for determining progress. Moreover, the lack of baseline data in the goals was not problematic because the short-term objectives were stated in absolute terms that could be measured without baseline data.

40. *M.M. and E.M. v. Lafayette Sch. Dist.*, 64 IDELR 31 (9th Cir. 2014). Although a California district properly considered RTI data when using a severe discrepancy model to determine whether a grade schooler had SLD, it violated the IDEA by failing to share the RTI data with the child's parents. The 9th Circuit partially reversed the District Court's ruling and remanded the case for further proceedings on the parents' right to reimbursement. By failing to share that data, the district excluded the parents from the IEP process and prevented them from making informed decisions.

VI. LEAST RESTRICTIVE ENVIRONMENT

41. *H.L. v. Downingtown Area Sch. Dist.*, 65 IDELR 223 (3rd Cir. 2015). A Pennsylvania district's inability to identify the factors that it considered when it determined that a fourth-grader with SLDs could not receive reading and writing instruction in the general education setting undermined its claim that it complied with IDEA's LRE requirement. The 3d Circuit held in an unpublished decision that the district denied the student FAPE. The three-judge panel noted that the first step in the LRE analysis is determining whether the district can satisfactorily educate the child in the general education setting with the use of supplementary aids and services. In this case, however, the district offered little evidence to support its decision that the student required pull-out services in language arts for 90 minutes each day. The panel pointed out that the IEP and the placement notice only stated that the district considered a full-time general education placement and rejected that option as being inadequate to meet the student's needs. "Indeed, there is no indication in the record of how the District actually approached the LRE issue, and only limited evidence in the supplemented record of what options may have been available," U.S. Circuit Judge Maryanne Trump Barry wrote. The court rejected the district's argument that the lack of documentation was a procedural flaw that did not amount to a denial of FAPE. The issue was not whether the IEP and placement notice adequately recorded the placement discussion, the 3d Circuit observed, but whether that discussion occurred at all. The court explained that it could not assess the district's placement proposal in the absence of that evidence. The 3d Circuit affirmed the District Court's ruling at 63 IDELR 254 that the district violated the LRE requirement.

42. *H.G. v. Upper Dublin Sch. Dist.*, 65 IDELR 123 (E.D. Pa. 2015). Testimony that a sixth-grader with Fragile X syndrome had difficulty understanding even the most basic work in reading and math supported a Pennsylvania district's proposal to place the student in a special education setting for both subjects. The District Court ordered the district to immediately implement the January 2012 IEP. In determining the student's LRE, the court considered two factors: 1) whether the district could educate the student in a general education classroom with supplementary aids and services; and 2) if not, whether the district mainstreamed the student to the maximum extent appropriate. With regard to the first factor, the court noted that the student's teachers attempted various modifications, accommodations, aids, and supports, many of which were unsuccessful. The math teacher testified that the student struggled with the most basic concepts, and frequently became so frustrated that he had to leave the classroom. According to the language arts teacher, the student would hold his books upside down and take scribbled notes to feel like he was part of the class. "Even [the parent's] own witnesses underscore how [the student] would benefit in a segregated setting," U.S. District Judge Nitzo I. Quiñones Alejandro wrote, citing an independent evaluator's recommendation for a smaller, more supportive classroom environment. The court also pointed out that the student engaged in loud and disruptive behaviors such as calling out and flapping his hands. In light of those factors, the court held that a general education placement was not appropriate for math or science. However, the fact that the district offered a general education placement for the remainder of the day convinced the court that the district mainstreamed the student to the maximum extent appropriate.

43. *M.A. v. Jersey City Bd. of Educ.*, 64 IDELR 196 (3d Cir. 2014, *unpublished*). The IEP for an elementary school boy with autism did not have to specify the child's classroom assignment so long as the IEP described the program and services the child would receive.

44. *S.P. v. Fairview Sch. Dist.,* 64 IDELR 99 (W.D. Pa. 2014). The LRE for a teen with refractory migraine headaches was a full-time "cyber school" program at home. Prior to recommending this placement, the district attempted several modifications of the boy's high school program, including reduced academic requirements, a modified school day/schedule, and completion of some courses online. The cyber school placement was made only after the boy became unable to attend school for even a part of the school day. Moreover, the boy was permitted to participate in extracurricular activities and attend classes at school when he was well enough to do so. The court dismissed the parents' claims that the district had discriminated against the student based on his disability.

45. *B.E.L. v. State of Hawaii, Dep't of Educ.*, 64 IDELR 130 (D. Hawaii 2014). The LRE for a second-grade boy with learning disabilities was placement in a special education classroom for reading and math instruction. The district had unsuccessfully attempted classroom modifications, individualized instruction in

the general education class, nonverbal reminders, modified assignments, and extra time.

46. *K.S. v. Strongsville City Sch. Dist.*, 63 IDELR 125 (N.D. Ohio 2014). An Ohio school district provided FAPE in the LRE for an elementary school boy with autism by providing most of his instruction in a general education classroom with as-needed 5- to 10-minute sensory breaks in a glass-enclosed vestibule near the classroom. The court rejected the parent's allegation that the district was forcing the child to sit in a "glass house" separated from his peers for instruction.

47. *T.M. v. Cornwall Cent. Sch. Dist.*, 63 IDELR 31 (2d Cir. 2014). The fact that a New York district did not offer a summer program for nondisabled students did not excuse its decision to place a 6-year-old boy with autism in a half-day ESY program for children with disabilities. Holding that the LRE requirement applies equally to ESY and school year placements, the 2d Circuit vacated a ruling in the district's favor at 59 IDELR 286 and remanded the case for further proceedings.

VII. MONEY DAMAGES AND LIABILITY

48. *T.R. v. Humboldt Co. Office of Educ.*, 115 LRP 20142 (N.D. Cal. 2015). Allegations that a county ED had information about a deaf teenager's need for intensive psychiatric interventions but failed to provide any mental health services during his nine-month placement in juvenile hall supported the grandparents' claim that the ED acted with deliberate indifference. The District Court denied the ED's motion to dismiss the grandparents' Section 504 and Title II claims. The ED argued that the juvenile court had sole authority to decide issues relating to the student's custody during his incarceration. As such, the ED contended, it could not be responsible for failing to make decisions about his placement or his need for mental health services. The court disagreed. Under California law, the court observed, the ED for the county in which a juvenile facility is located is responsible for providing FAPE to students with disabilities during their detention. Because the juvenile facility was within the county's borders, the ED was responsible for ensuring the student received FAPE. U.S. Magistrate Judge Nandor J. Vadas noted that the grandparents' complaint raised questions as to whether the ED disregarded information about the student's educational needs. Specifically, the grandparents alleged that a nationally recognized expert for deaf children evaluated the student and found him to be in need of intensive psychiatric services and a therapeutic placement in a locked residential facility. Without deciding whether the ED failed to consider that information as the grandparents claimed, the court held that the grandparents sufficiently pleaded claims for disability discrimination. The court also denied the ED's motion to dismiss the grandparents' Section 1983 claims, which alleged violations of the student's 14th Amendment rights.

49. *Lebrón and Portales v. Commonwealth of Puerto Rico*, 64 IDELR 95 (1st Cir. 2014). The parents of an elementary school boy with Asperger syndrome sought to recover more than $6 million in damages from the Puerto Rico Department of Education for refusing to allow them to file a complaint against a private school. The court agreed that the fact that a private school receives some federal funding does not obligate the state to supervise the school.

50. *Chambers v. School Dist. of Philadelphia Bd. of Educ.*, 64 IDELR 132 (E.D. Pa. 2014). The court allowed the parents of a 29-year-old young woman with severe disabilities to pursue a damages claim against the school district. The family had previously been awarded 3,180 hours of compensatory education services and the creation of a $209,000 trust for educational services. The family now seeks money damages for emotional distress and the district's acts of discrimination.

51. *Reid v. Prince George's County Bd. of Educ.*, 64 IDELR 142 (D. Md. 2014). A high school girl with PTSD, ADHD, and ED was severely injured and suffered permanent brain damage after she leapt from a moving school bus. The girl had a long history of emotional disturbance and volatile outbursts, including attempts to elope from the bus. She evaded the bus driver and aide and escaped from the back emergency door exit while the bus was moving, striking her head on the pavement. The court refused to dismiss the parents' suit for money damages based on Section 1983, Section 504, and Title II of the ADA. The parents alleged that the district failed to properly supervise and train the bus driver and aide and to adequately manage the girl's behavioral outbursts.

52. *C.S. v. Platte Canyon Sch. Dist. No. 1*, 64 IDELR 110 (D. Colo. 2014). The parents of a student with cerebral palsy alleged that their son's special education teacher abused the boy by "dumping" him out of his wheelchair rather than "tilting" him to stand; punishing him by isolating him from the rest of the class and forcing him to face the wall in a corner of the classroom; pushing the boy's head and holding it into his desk; and calling the student names, ridiculing him for failures, and mocking him for smelling bad. The court dismissed the claims against the district and the principal because the parents did not bring these complaints to the district's notice until after the school year. District officials cannot be held liable for actions of staff for which they are unaware.

53. *Conway v. Board of Educ. of Northport-East Northport Sch. Dist.*, 63 IDELR 289 (E.D.N.Y. 2014). A high school student diagnosed with anxiety and depression lost consciousness due to a panic attack during the first week of the school year. The student was placed on homebound instruction for the remainder of the school year without having any evaluation by the district of his mental health needs. This action could constitute "deliberate indifference" and disability-based discrimination.

54. *Williams v. Weatherstone*, 63 IDELR 109 (N.Y. Ct. App. 2014). A state appeals court held that the school district was not obligated to protect a special education

student from harm before she boarded her school bus. The sixth-grade student with ADHD and a mild intellectual impairment was hit by a car when she walked across a busy highway trying to catch the bus as it passed her house going the opposite direction. The court recognized that the student's IEP provided for bus transportation, but this did not include monitoring or supervision at the bus stop.

VIII. PRIVATE SCHOOL PLACEMENT

55. *S.E. v. New York City Dept. of Educ.*, 115 LRP 29457 (S.D.N.Y. 2015). The mother of a 9-year-old girl with significant cognitive impairments could not use an assistant principal's alleged statements during a site visit to recover the $36,000 cost of her daughter's unilateral private placement. Citing the parent's failure to provide "hard evidence" of the school's inability to implement the student's IEP, the District Court upheld an administrative decision in the district's favor found at 114 LRP 46691. Chief U.S. District Judge Loretta A. Preska observed that a parent may be entitled to private school costs if she can prove that the assigned school is factually incapable of implementing the student's IEP. However, the judge held that the AP's alleged statements about the student's proposed program did not meet that high standard of proof. Judge Preska distinguished the parent's case from *D.C. v. New York City Department of Education*, 61 IDELR 25 (S.D.N.Y. 2013), in which the District Court held that the presence of fish in the cafeteria of a child's proposed placement showed that the school was not a "seafood free" environment required by his IEP. "The parent's testimony, even if accepted as unchallenged, merely evidences [the assistant principal's] belief that, given [the student's] personality and, critically, what [the parent] 'wanted [her] to achieve,' perhaps other placements were more appropriate," Judge Preska wrote. Furthermore, the judge pointed out that the AP had never met the student or review her IEP. Give

56. *Leggett v. District of Columbia*, 115 LRP 30253 (D.D.C. 2015). The fact that a high school student with SLDs, anxiety, and depression would have gone without special education for the first several weeks of the 2012-13 school year due to the district's delay in developing an initial IEP convinced the Circuit Court that the student's unilateral boarding school placement was educationally necessary. The Circuit Court held that the student's progress demonstrated the appropriateness of the residential placement and entitled her mother to reimbursement. The three-judge panel noted that this was not a case in which a parent places a child in a residential facility to address medical, emotional, or behavioral issues that are entirely separate from the child's learning. Rather, the purpose of the student's placement was "primarily educational." The court pointed out that the student attended the boarding school to receive the small classes, individualized tutoring, and other services that her IEP team and two psychologists identified as being educationally necessary. More importantly, the court observed that the boarding school was the only placement over the dozens considered that was capable of meeting the student's needs. The panel criticized the district's argument that the

public school IEP -- developed one month into the school year -- provided the required educational benefits. "[H]ad [the district] offered [the student] a spot in a less expensive day school in the district -- or just identified one early enough in the process -- the [boarding school] placement may not have been 'necessary,'" U.S. Circuit Judge David S. Tatel wrote for the panel. The court observed that the boarding school provided the student with a "basic floor of opportunity," as demonstrated by the significant improvement in her grades. However, the court acknowledged that the parent might not be entitled to recover the cost of academic activities unrelated to the student's education, such as horseback riding. The Circuit Court reversed a District Court ruling in the district's favor, reported at 62 IDELR 236, and remanded the case for a determination of which expenses were educationally necessary.

57. *Fort Bend Indep. Sch. Dist. v. Douglas A.*, 65 IDELR 1 (5th Cir. 2015). Evidence that the goal of a private mental health facility was to treat children with reactive attachment disorder helped a school district avoid the $7,000 per month cost of the placement. The court held that the IDEA only requires school districts to fund residential placements that are primarily for educational, not mental health, purposes.

58. *Sam K. v. State of Hawaii Dept. of Educ.*, 65 IDELR 222 (9th Cir. 2015). The fact that the Hawaii ED did not propose a placement for a teenager with disabilities until well into the second semester of the 2010-11 school year helped the parents to recover a full year's worth of private school costs. The 9th Circuit held that ED's tacit approval of the student's ongoing private placement made Hawaii's 180-day limitations period for reimbursement actions inapplicable. The decision turned on the distinction between unilateral and bilateral placements. Under Hawaii law, the court observed, parents have only 180 days to seek reimbursement for a private placement made without ED's agreement or consent. The court recognized that ED did not explicitly consent to the student's continued private school placement, which ED had funded through the end of the 2009-10 year as part of a FAPE settlement. However, the court pointed out that an agreement may be tacit when a party remains silent or fails to act. The three-judge panel held that ED gave its unspoken consent for the placement when it failed to develop an IEP before the start of the school year. "The [ED] had not proposed anything else, and it presumably did not intend that [the student] would receive no educational services in the meantime," U.S. Circuit Judge Richard R. Clifton wrote for the majority. Because the placement was not "unilateral," the court explained, the parents' October 2011 request for a due process hearing was timely.

59. *M.C. v. Starr*, 64 IDELR 273 (D. Md. 2014). A 15-year-old girl with ADHD, anxiety disorder, mood disorder, auditory processing disorder, Tourette syndrome, and Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcus (PANDAS) was psychiatrically hospitalized due to her

deteriorating condition at home and at school. After her discharge, her parents unilaterally placed her in a therapeutic boarding school in Connecticut. The IEP team determined that the girl could be appropriately educated in a day treatment program and refused to pay for the out-of-state residential placement. The parents sought reimbursement of $119,000 for the residential placement. The court held that the girl's educational needs could be met in a day treatment facility.

60. *F.K. v. State of Hawaii, Dep't of Educ.*, 64 IDELR 194 (9th Cir. 2014, *unpublished*). The state could not be held liable for damages due to a "stay-put" violation when the private school continued to provide special education services to a 14-year-old girl with autism despite the interruption in funding.

61. *Pinto v. District of Columbia*, 64 IDELR 103 (D.D.C. 2014). The parents of a student with learning disabilities could not seek private school reimbursement unless they proved that the private school was "appropriate" in addition to proving that the school district failed to provide FAPE.

62. *Gore v. District of Columbia*, 64 IDELR 41 (D.D.C. 2014). A student's guardian was not entitled to participate in the decision-making process of transferring a teen with learning disabilities from one private special education school to another. This was a change in location only, and did not qualify as a "change of placement" as contemplated by the IDEA.

63. *Hannah L. v. Downingtown Area Sch. Dist.*, 63 IDELR 254 (E.D. Pa. 2014). A 12-year-old girl with learning disabilities in reading fluency, comprehension, and written language was removed from the district and placed in a private school by her parents before receiving any special education services. After one year at the private school, the district was asked to reevaluate the girl and proposed an IEP. The district recommended that the student receive instruction in a general education classroom for five hours per day, and one hour per day in a resource class for language arts instruction. The IEP's LRE section stated that the team considered "a regular education environment with supplementary aids and services," but rejected this option because "it would not meet Hannah's need for specifically designed instruction at this time." The parents rejected the proposed IEP and sought public funding and reimbursement for her private school placement. The court affirmed the hearing officer's decision in the school district's favor. The court found that the district's proposed IEP was deficient because it failed to sufficiently explain why Hannah could not be served in general education with supplementary aids and services. However, the court refused to award private school reimbursement because the parents failed to prove that the private school program was "appropriate."

64. *K.S. and M.S. v. Summit Bd. of Educ.*, 63 IDELR 253 (D.N.J. 2014). The father of a teenage girl with mental health issues was also the chairman of the school board. The girl was unilaterally placed by her parents in a residential facility in Utah for treatment. In anticipation of her discharge from the Utah facility, the

school district convened an IEP team and recommended placement at a private day school program. At the time, the parents indicated their agreement with the proposed IEP. However, after their daughter returned from Utah, the parents transferred her to an all-girls therapeutic boarding school instead of the agreed-upon day program. The court rejected the parents' suit for reimbursement because they had failed to provide notice of their intent to privately place the girl until one week after her placement at the therapeutic boarding school.

65. *N.B. v. State of Hawaii, Dep't of Educ.*, 63 IDELR 216 (D. Hawaii 2014). The parent of a 7-year-old child with autism called the school district while the family was in the process of relocating from Texas to Hawaii. In a telephone conversation with the student services coordinator, the parent was told that the Hawaii district would conduct its own assessments of the child upon enrollment. The district official did not expressly state that the district would implement the child's Texas IEP pending completion of these assessments. Based on this conversation, the parent refused to enroll the child in public school and made a unilateral private school placement. The court held that the district was not responsible for FAPE until the child was enrolled in the district.

66. *E.M. v. New York City Dep't of Educ.*, 63 IDELR 181 (2d Cir. 2014). In a case of first impression, the court held that the parent of a 6-year-old girl with autism had standing to sue for tuition reimbursement for private school even though she had not paid a dime of the $85,000 tuition. "[I]ndeed, there is nothing in the record to suggest that, if [the parent's] IDEA claim proves fruitless, she is automatically relieved of her contractual promise to pay tuition," U.S. Circuit Judge Susan L. Carney wrote.

67. *Ward v. Board of Educ. of the Enlarged City Sch. Dist. of Middletown, New York*, 63 IDELR 121 (2d Cir. 2014, *unpublished*). The parents of a teenage girl with a learning disability in math could not recover the costs of a residential program. The evidence showed that the residential program did not offer specifically designed instruction to meet the girl's disability-related needs. Although the girl had a disability in math, the residential program placed her in lower-level math classes despite her successful performance in a more challenging math class in public school the previous year with special education support.

68. *C.U. and N.U. v. New York City Dep't of Educ.*, 63 IDELR 126 (S.D.N.Y 2014). The school district violated the parents' right to make an informed decision about the placement offered by the district. The district did not provide the parents of a teenager with autism notice of the school in which their child would be placed until 16 days prior to the start of the school year. The parents attempted to contact the school to ensure that it could offer a quiet place for the girl to recover from seizures and an on-site nurse to administer medications but were unable to speak to a school official or to leave a message. The district also failed to respond to any of the letters sent by the parents to inquire about this situation. The court ruled that the parents were entitled to access to information about their daughter's

proposed placement, and the district's lack of response supported an award of tuition reimbursement.

IX. PROCEDURAL ISSUES

69. *Meridian Joint Sch. Dist. No. 2 v. D.A.,* 115 lRP 29286 (9th Cir. 2015). An Idaho district avoided liability for attorney's fees not because of the timing of the parents' request, but because of its determination that their teenage son was ineligible for IDEA services. The 9th Circuit held that only the parents of "a child with a disability," as that term is defined in the IDEA, may use the statute's fee-shifting provision to recover legal expenses. The three-judge panel relied heavily on the 5th U.S. Circuit Court of Appeals' ruling in *T.B. v. Bryan Independent School District*, 55 IDELR 244 (5th Cir. 2010). In that case, the 5th Circuit noted that the plain language of the IDEA permits a court to award attorney's fees "to a prevailing party who is the parent of a child with a disability." The *T.B.* court interpreted that language to mean that fee awards are available only to the parents of a student found eligible for IDEA services. The 9th Circuit acknowledged the possibility that a district might become adversarial early in the identification or evaluation process if the parents did not have the ability to recover legal expenses. However, the court explained that a plain-language interpretation of the fee-shifting provision would not thwart the statute's purposes. "Limiting the award of attorneys' fees against school districts to instances where the child has been determined to need special education services is not inconsistent with [the provision of FAPE]," U.S. Circuit Judge Consuelo M. Callahan wrote. "Rather, it preserves public resources for those [children with disabilities] most in need of services." The 9th Circuit also held that the fee claims are independent actions under the IDEA, and therefore are not subject to the relevant statute of limitations for administrative appeals. It reversed the District Court's award of attorney's fees to the parents, and vacated a May 2013 decision that enjoined the student's high school graduation while his eligibility was in dispute. The 9th Circuit affirmed the District Court's ruling at 60 IDELR 282 that the district's failure to reevaluate the student after his September 2010 release from a juvenile detention facility required it to fund an IEE.

70. *T.P. v. Bryan County Sch. Dist.,* 115 LRP 29136 (11th Cir. 2015). Without addressing whether the parents of a second-grader with autism only had two years to seek an IEE at public expense, the 11th U.S. Circuit Court of Appeals barred their complaint challenging a District Court's ruling on that issue. Citing the futility of seeking an independent opinion on the adequacy of a three-year-old evaluation, a three-judge panel held that the parents' appeal was moot. The Georgia district initially evaluated the child in September 2010. In November 2012, the parents asked the district to pay for an IEE, contending that the 2010 evaluation was flawed. The district declined, asserting that the IDEA's two-year statute of limitations barred their request. The parents filed a due process complaint on Jan. 5, 2013, seeking an order compelling the district to pay for an

IEE. An ALJ ruled that "the Family's request for an IEE at public expense was barred by the IDEA's statute of limitations." The District Court affirmed. On appeal to the 11th Circuit, the parents argued that the District Court erred in holding that the right to request an IEE is limited two years. The 11th Circuit declined to address the merits of that claim, holding that the issue was moot in light of the fact that the 2010 evaluation was now more than three years old. The purpose of an IEE, the 11th Circuit noted, is to furnish parents independent expertise they can use to decide whether to oppose or accept an evaluation conducted by a district. But in this case, the 11th Circuit noted, the evaluation the parents opposed was outdated and a triennial evaluation was due. "Regardless of the merits of Parents' case, ordering an IEE at public expense in these circumstances would be futile," the three-judge panel wrote. Because such an order would not facilitate the parents' meaningful participation, the parents lacked an interest in the outcome of the controversy. The court vacated the District Court's judgment and remanded the case, with instructions to dismiss the complaint for lack of subject-matter jurisdiction.

71. *G.M. v. Massapequa Union Free Sch. Dist.*, 115 LRP 29241 (E.D.N.Y. 2015). A parent's claim that a New York district failed to provide preferential seating, modified assignments, and other services to address an elementary school student's ADHD prevented her from suing the district under Title II and Section 1983. Holding that the parent's allegations were "inextricably intertwined" with the student's right to FAPE, the District Court ruled that her failure to exhaust her administrative remedies under the IDEA barred her federal claims. The decision turned in large part on the phrasing of the parent's complaint. Although the parent sought relief for her son's seclusion in a storage room in the back of his classroom, as well as his "discriminatory" removal from student council and the district's purported failure to address peer bullying, the court pointed out that the complaint tied those allegations to the student's education. For example, the court explained, the allegations relating to the student's seclusion effectively sought relief for the district's failure to accommodate the student's ADHD. The district's purported failure to provide additional adult supervision, which supposedly resulted in peer bullying, similarly addressed an impediment to FAPE. U.S. District Judge Joanna Seybert further noted that the complaint accused the district of classifying the student's disability-related fidgeting and tics as behavioral issues in order to avoid providing appropriate services. "These allegations make clear that [the parent's] suit challenges the adequacy of the accommodations provided to a [student with a disability] and -- perhaps particularly in [the student's] case -- the often unfortunate and disconcerting consequences thereof," Judge Seybert wrote. The court dismissed the parent's Title II and Section 1983 claims for lack of jurisdiction, and dismissed her remaining state law claims with leave to refile in the appropriate court.

72. *Doe v. East Lyme Bd. of Educ.,* 115 LRP 28270 (2nd Cir. 2015). A Connecticut district could not prevent a mother from recovering the full cost of a grade school

student's stay-put placement merely by alleging that the mother was only entitled to reimbursement for the services she paid for. Ruling that a District Court erred when it awarded the mother "less than the full value of [the child's] stay-put services," the 2d U.S. Circuit Court of Appeals reversed part of the District Court's judgment reported at 59 IDELR 249. After the mother rejected the student's proposed 2009-10 IEP, the district refused to continue the student's speech therapy and OT, which were required by the last-implemented IEP. The mother sued the district under the IDEA's stay-put provision. The District Court ruled in the mother's favor, but held that the district only had to reimburse her for the stay-put services *Doe v. East Lyme Bd. of Educ* she paid for upfront. Both parties appealed. The 2d Circuit explained that, under the IDEA, courts have the authority to "grant such relief as [they] determine appropriate, ... including reimbursement of tuition [and] compensatory education." Here, the three-judge appellate panel opined that while the District Court correctly determined that the district violated the student's stay-put rights, "it abused its discretion by limiting the award of relief to [the mother's] out-of-pocket expenses instead of awarding the full value of services that the [district] should have provided." It noted that the District Court calculated the mother's reimbursement "in a way that would undermine the stay-put provision by giving the [district] an incentive to ignore [its] stay-put obligation." Specifically, the 2d Circuit observed that under the District Court's line of reasoning, a district would have to pay "less than what was needed for the child's benefit" if the parent could not afford to finance all or any of the student's stay-put services. Such an arrangement would make the district's stay-put obligation contingent on the means of the child's family, the court remarked. Although the district argued that reimbursement is a remedy limited to "what has been paid," the court commented that the district could provide the student with compensatory services to "fill in the gap of required services that the parent did not fund." Accordingly, it remanded the case back to the District Court with instructions to recalculate the mother's award.

73. *M.B. v. Islip Sch. Dist.,* 115 LRP 26472 (E.D.N.Y. 2015). A New York district's alleged failure to provide a teenager's parents with notice of their procedural safeguards under the IDEA toppled its motion to dismiss the parents' Section 504 and Title II claims on exhaustion grounds. The District Court held that the purported lack of notice excused the parents' failure to exhaust their administrative remedies. U.S. District Judge Sandra J. Feuerstein observed that the parents' complaint described how the district's handling of the student's behavioral issues and reported bullying by peers impeded the student's education. As such, the court rejected the parents' argument that the IDEA did not offer any relief for the harm alleged. However, the parents also contended that the district's failure to provide them with information about the IDEA's administrative process made exhaustion futile. Explaining that it had to accept the parents' allegations as true when ruling on a motion to dismiss, the court agreed to excuse the parents' noncompliance with the exhaustion requirement. "Based upon the allegations in the [complaint] ..., administrative remedies were not available to [the parents] because they were 'never informed of their due process rights or procedure for

which to challenge the IEP' ... and therefore 'could not be required to exhaust their administrative remedies," Judge Feuerstein wrote. The court dismissed the parents' Section 504 and Title II claims only to the extent to which they sought money damages from individual district employees.

74. *Fry v. Napoleon Community Schs.*, 65 IDELR 221 (6th Cir. 2015). Reasoning that a student's wish for greater independence qualified as an educational goal, the 6th Circuit held that issues relating to the presence of the student's service dog were "crucially linked" to her education. The 6th Circuit ruled that the parents could not pursue Section 504 or Title II claims against the student's former district until they exhausted their administrative remedies under IDEA. The two-judge majority noted that the exhaustion requirement applies if IDEA's administrative procedures can provide some form of relief or if the claims relate to the provision of FAPE. In this case, the court observed, the parents clearly were disputing the appropriateness of the student's IDEA services. Specifically, the parents argued that the dog's presence allowed the student to be more independent so that she would not have to rely on a one-to-one aide for tasks such as using the toilet and retrieving dropped items. They also maintained that the student needed the dog in school so that she could form a stronger bond with the animal and feel more confident. The court explained that the parents' allegations brought the claim squarely within IDEA's scope. "Developing a bond with [the dog] that allows [the student] to function more independently outside the classroom is an educational goal, just as learning to read Braille or learning to operate an automated wheelchair would be," U.S. Circuit Judge John M. Rogers wrote for the majority. The 6th Circuit affirmed the District Court's ruling at 62 IDELR 201 that the parents' failure to exhaust their administrative remedies required dismissal of their Section 504 and Title II claims. U.S. Circuit Judge Martha Craig Daughtrey dissented from the majority's decision, opining that the student's wish to use a service dog on campus had no relationship to her education.

75. *Turton v. Virginia Dep't of Educ.*, 64 IDELR 305 (E.D. Va. 2015). The attorneys for the parents of a group of students with disabilities filed a complaint for sanctions against a school attorney. The complaint accused the school attorney of violating the rights of children with disabilities by attending IEP meetings and advising his clients to violate federal and state special education laws, including advising LEAs to convene IEP meetings without parents present; bullying and harassing parents in IEP meetings; advising LEAs to disregard the opinions of a student's treating physician; and conspiring with LEAs to deny FAPE in the LRE. The court awarded the school attorney sanctions *against the parents' attorneys* for filing a claim without legal support.

76. *Oakstone Community Sch. v. Williams*, 115 LRP 26026 (6th Cir. 2015). The steps that a charter school's attorney took when she realized that a District Court's filing system had removed all electronic redactions from a student's education record helped her to avoid paying $7,500 in sanctions. The 6th Circuit held in an unpublished decision that the one-time filing did not amount to objectively

unreasonable conduct. The majority noted that, at the time of the filing, the parties disputed whether the parent's attempt to publicize the dispute made the administrative record a public document. Although the District Court ultimately held at 58 IDELR 256 that the student's education record was confidential, the 6th Circuit pointed out that neither party knew at the time of the attorney's filing whether FERPA applied to the case. The 6th Circuit explained that the District Court could not sanction the attorney for conduct that predated its FERPA ruling. As for the District Court's ruling that the attorney "repeatedly" filed un-redacted confidential documents, the 6th Circuit observed that the attorney only filed one set of confidential documents in an un-redacted form. Furthermore, the redaction error was the result of technical problems with the court's electronic filing system. "A single filing of multiple exhibits does not amount to 'repeated' filings," U.S. Circuit Judge Gilbert S. Merritt wrote for the majority. The 6th Circuit reversed the District Court order requiring the attorney to pay sanctions. U.S. Circuit Judge Helene N. White dissented from the majority's decision in part. Even if the attorney filed the un-redacted education record in error, Judge White argued, her redaction of subsequent documents in accordance with Fed. R. Civ. P. 5.2 (as opposed to the stricter FERPA standards) justified the District Court's imposition of sanctions.

77. *Foster v. City of Chicago,* 65 IDELR 161 (7th Cir. 2015). The fact that numerous Circuit Courts have interpreted "compensatory education" to include reimbursement for private services helped to revive a parent's IDEA claim against an Illinois district and charter school. The 7th Circuit held in an unpublished decision that the parent's failure to request "reimbursement" in her due process complaint did not preclude her from challenging an IHO's ruling. The three-judge panel rejected the District Court's holding at 63 IDELR 280 that the parent could not be "aggrieved by" the IHO's finding because she never sought repayment for the private speech-language services she obtained while her multiple requests for IDEA evaluations were pending. Although the parent did not use the word "reimbursement" in her petition, she requested several forms of compensatory education, including speech-language services. "The hearing officer's failure to explicitly order the [district and the school] to also pay for the 25 prior sessions -- even though he calculated an appropriate compensatory-education period to begin in March 2012 -- does not mean that [the parent] did not intend such reimbursement to be part of the requested relief," the panel wrote. The 7th Circuit also pointed out that several Circuit Courts have interpreted "compensatory education" to include reimbursement for out-of-pocket educational expenses. Because the parent sufficiently alleged a claim for reimbursement before the IHO, she was entitled to seek reimbursement on appeal. The 7th Circuit vacated the District Court's ruling in part and remanded the case for further proceedings. It affirmed the District Court's holding that the non-attorney parent could not bring IDEA claims on her own behalf without hiring an attorney.

78. *Hoskins v. Cumberland County Bd. of Educ.*, 64 IDELR 234 (M.D. Tenn. 2014). The federal court dismissed all claims against the school district, the police officer, and several administrators by the parents of an 8-year-old boy who was handcuffed by a police officer for 45 minutes after he became physically aggressive toward teachers at his school. At the time, the student was 55.5 inches tall and weighed 112 pounds. At the time of the incident, the student had not been determined to be an individual with a disability under Section 504 or the IDEA. The parents sued, alleging that the police officer violated the boy's constitutional right to be free from unreasonable seizures, and that the school district violated Section 504 by failing to recommend a 504 plan. They sought compensatory damages for physical and emotional pain and suffering, punitive damages, and related costs and fees. The court held that the police officer violated the child's Fourth Amendment rights, but that he was entitled to qualified immunity from suit due to the parent's failure to prove otherwise. The complaints against the school district and school officials were dismissed because the child was not "disabled" at the time of the incident, and because the parents had failed to exhaust their administrative remedies.

79. *Blackman v. District of Columbia*, 64 IDELR 169 (D.D.C. 2014). A school attorney may suffer sanctions after having the police remove a parent's attorney from an IEP meeting. After the IEP meeting, a district official allegedly contacted the student and offered to buy the student a tablet PC if he would attend a follow-up IEP meeting without his attorney.

80. *South Kingstown Sch. Comm. v. Joanna S.*, 64 IDELR 191 (1st Cir. 2014). A settlement agreement required a Rhode Island school district to conduct four specific evaluations of a 13-year-old boy with severe anxiety. Six months after signing the settlement agreement, the parent requested a new psycho-educational assessment. The court agreed with the school district that the terms of the settlement agreement barred the parent from seeking additional publicly funded evaluations until the student's circumstances changed.

81. *Cupertino Union Sch. Dist. v. K.A.*, 64 IDELR 275 (N.D. Cal. 2014). The medical excuses submitted by a parent were insufficient to excuse a 10-year-old boy's seizure-related absences, and the school district did not violate the IDEA by subsequently refusing the parent's request for home instruction based on the absences. State law prohibits home instruction without a medical report that identifies a student's diagnosed condition, certifies that the severity of the condition precludes instruction in a less restrictive environment, and includes a projected date for return to school. Neither of the notes provided by the parents conformed to these requirements. Therefore, the IEP team could not recommend home instruction for the child.

82. *R.K. and D.K. v. Clifton Bd. of Educ.*, 64 IDELR 96 (3d Cir. 2014, *unpublished*). The parents of a 3-year-old boy with autism were not entitled to access an independent consultant's report reviewing his preschool program as a whole. The

consultant's report did not include any child-specific information, and she had never met the child or reviewed any documents pertaining to him. Therefore, the consultant's report was not an "educational record" that the parents had a right to examine under the IDEA.

83. *L.H. v. Hamilton County Dep't of Educ.*, 64 IDELR 207 (E.D. Tenn. 2014). The federal court allowed the parents of a student with disabilities to amend their complaint by adding the Tennessee Department of Education as a defendant. An earlier decision from the same court held that the TDOE could be jointly sued and found liable for an LEA's failure to provide FAPE to a student with disabilities.

84. *L.O. v. East Allen County Sch. Corp.*, 64 IDELR 147 (N.D. Ind. 2014). The federal District Court overturned the decision of a hearing officer because his award of compensatory education to a student with OCD, ADHD, and Tourette syndrome was flatly contradicted by the evidence cited in his amended opinion.

85. *B.G. v. Ocean City Bd. of Educ.*, 64 IDELR 105 (D.N.J. 2014). A hearing officer was ordered to conduct a "proper" due process hearing that provided the student with notice of the witnesses to be called and an opportunity to present evidence regarding the alleged inappropriateness of her IEP. The hearing officer had previously approved the student's graduation, citing her noncompliance with her vocational programming services, but without affording her notice and an opportunity to present all relevant evidence in support of her due process complaint.

86. *Canders v. Jefferson County Pub. Schs.*, 64 IDELR 36 (W.D. Ky. 2014). The mother of two elementary school children diagnosed with PTSD alleged that the principal and other school staff "humiliated" her when her children refused to enter their classroom by suggesting: 1) that a police officer might be able to "encourage" them to attend; 2) that they should go to a psychiatric hospital; and 3) that they needed to be spanked for misbehavior. The parent also alleged that the principal improperly had her cited for trespassing on school grounds. The court dismissed the mother's petition for failure to exhaust administrative remedies. The complaint addressed alleged deficiencies in the children's education programming. Further, the complaint failed to plead a viable claim for defamation. The court stated, "However embarrassed or degraded Canders may have felt, exactly what language was defamatory, to whom it was published, and how it injured Canders' reputation remain unclear. Therefore, Canders pleads no specific facts sufficient 'to raise a right to relief above the speculative level.'"

87. *Walsh v. King*, 64 IDELR 39 (N.D.N.Y. 2014). The parents of a 16-year-old girl with multiple disabilities sought an award of residential placement for their daughter from a federal judge after the state hearing officer had failed to render a final decision seven months past the due process hearing. The federal court found that the hearing officer was in violation of the IDEA, but gave the hearing officer 14 days to issue a final order in the case. The court cited the hearing officer's

"critical role" in the IDEA's complex policy scheme as justification for giving him a chance to comply.

88. *F.H. v. Memphis City Schs*., 64 IDELR 2 (6th Cir. 2014). The 6th Circuit held that a settlement agreement reached as a result of the IDEA's resolution meeting mechanism is enforceable in federal court. The fact that the settlement agreement was finalized 97 days after the resolution meeting did not affect its relation back to the original resolution meeting. Also, the Section 1983 claims brought on behalf of a 20-year-old student with cerebral palsy alleging verbal, physical, and sexual abuse by restroom aides were not subject to the administrative exhaustion rule because the student sought relief not otherwise available under the IDEA (money damages).

89. *D.E. v. Central Dauphin Sch. Dist.,* 64 IDELR 1 (3d Cir. 2014). In a case of first impression, the court held that a school district's noncompliance with a hearing officer's order turned the prevailing party student into an "aggrieved party" for purposes of the IDEA. Therefore, the student had standing to enforce the hearing officer's decision in federal court.

90. *K.S. v. Rhode Island Bd. of Educ*., 64 IDELR 9 (D.R.I. 2014). The court held that the IDEA's exhaustion requirement does not apply when a case turns solely on a question of statutory interpretation. A student with Asperger syndrome was permitted to challenge the state department of education's ruling allowing termination of IDEA services on a student's 21st birthday.

91. *N.W. v. Boone County Bd. of Educ*., 63 IDELR 275 (6th Cir. 2014). A settlement agreement reached during a FAPE dispute in 2010 does not create a "stay-put" placement during subsequent disputes between the parents of a child with autism and severe apraxia and the school district. The settlement agreement's terms specifically stated that the district would fund a private placement "through the summer of 2011." This private placement was not the "current educational placement" for purposes of the "stay-put" provision because the child's IEP team had never approved of a private placement through the IEP process.

92. *J.S. v. Houston County Bd. of Educ*., 63 IDELR 183 (M.D. Ala. 2014, *unpublished*). The parents of a fourth-grade child with cerebral palsy and an intellectual disability were required to exhaust their administrative remedies before seeking money damages under Section 504/Title II in federal court, even though they were completely happy with their child's current educational program.

93. *Motyka v. Howell Pub. Sch. Dist*., 63 IDELR 154 (E.D. Mich. 2014). A state complaint is not the equivalent of a due process hearing for purposes of exhaustion of administrative remedies.

94. *Eley v. District of Columbia*, 63 IDELR 165 (D.D.C. 2014). An Internet-based private school was not the equivalent of a "bricks and mortar" private school for purposes of "stay-put." The court held that a move from the online private school would create a "change of placement" under the IDEA. Therefore, the "stay-put" provision of the IDEA would require the school district to continue the student's virtual school program during the pending due process hearing.

95. *S.C. v. Palo Alto Unified Sch. Dist.*, 63 IDELR 124 (N.D. Cal. 2014). An in-state transfer student with autism came with an IEP that offered a home-based ABA program. The student's parents objected when the new school district offered "comparable" educational services in a school-based program rather than continuing the home-based ABA program during the pendency of a due process hearing. The federal court ruled that the "stay-put" provision of the IDEA "trumps" the transfer requirements. The court held that the school district must provide services that "approximate" the previous IEP services when litigation is pending, rather than simply providing "comparable" services.

96. *Northport Pub. Sch. v. Woods*, 63 IDELR 134 (W.D. Mich. 2014). A school district may seek recovery of its attorney's fees from both the parents and their attorney when a due process complaint is filed that is frivolous, unreasonable, without foundation, or brought for an improper purpose.

97. *Board of Educ. of Plainfield Cmty. Consol. Sch. Dist. 202 v. Illinois State Bd. of Educ.*, 63 IDELR 40 (N.D. Ill. 2014). There was no evidence that the mother of 13-year-old twins with disabilities was coerced into signing a mediation agreement that transitioned the children from a private school into a public middle school after the first semester of their sixth-grade year. The mother alleged that she signed the mediation agreement under duress and received nothing of value in the mediation. However, the court found that the public school's concession of leaving the girls in the private school during the first semester was consideration in the agreement. There was no evidence that the parent signed the mediation agreement against her free will, even if she regretted it later.

X. SECTION 504/TITLE II OF THE ADA

98. *K.M. v. Tustin Unified Sch. Dist.*, 65 IDELR 232 (C.D. Cal. 2015). Two years after the 9th U.S. Circuit Court of Appeals ruled in her favor in a landmark dispute about CART services, the parent of a high schooler with a cochlear implant won a second victory: the right to recover attorney's fees incurred in an IDEA due process proceeding. The District Court held that the parent's need to exhaust her administrative remedies allowed her to recover a portion of her legal expenses despite the fact that the ALJ found in the district's favor. U.S. District Judge David O. Carter pointed out that the U.S. Supreme Court has authorized awards of attorney's fees for administrative proceedings that are a prerequisite to

filing a civil action in federal court. *See New York Gaslight Club Inc. v. Carey*, 112 LRP 28025, 447 U.S. 54 (1980). The judge further noted that the relief the parent sought -- the provision of CART services -- was available under the IDEA. As such, the parent could not sue the district for violating Title II's "effective communication" requirement without first seeking an administrative remedy. The District Court explained that the mandatory exhaustion provision made the IDEA administrative proceeding a component of Title II litigation. "[W]ere [the court] to read the statute otherwise and find [the] IDEA's administrative proceeding to be wholly distinct from the ADA proceeding, the IDEA statute would essentially be restricting the remedies available under the ADA, as a portion of the fees expended for a successful ADA claim (requiring an unsuccessful IDEA claim) would never be recoverable," Judge Carter wrote. Because the parent did not prevail on her IDEA claims, however, she could recover only half of the fees she incurred in the administrative proceeding. The court awarded the parent $369,608 in attorney's fees and costs, which included $55,622 in attorney's fees for the due process hearing. The 9th Circuit previously held at 61 IDELR 182 that the district's provision of FAPE did not necessarily establish compliance with its "effective communication" obligations under Title II.

99. *Ball v. St. Mary's Residential Training Sch.*, 65 IDELR 233 (W.D. La. 2015). A parent who perceived her son as having visible injuries and being "significantly underweight" when she visited him at a nonpublic residential school in October 2013 could not sue the school for violating Section 504 or Title II. The District Court held that the parent's failure to plead discrimination on the basis of disability required it to grant the school's motion to dismiss. U.S. District Judge James T. Trimble Jr. did not address whether Section 504 or Title II applied to the religious facility, which only served students with disabilities. However, he noted that the parent did not allege that the school discriminated against her son on the basis of disability or that it treated the student differently from nondisabled children. Instead, the court observed, the parent claimed that the student suffered abuse and neglect while in the school's custody. The court explained that such charges were not enough to establish a Section 504 or Title II violation. "These are serious allegations, which the court should not be understood to minimize here," Judge Trimble wrote. "However, [the parent's] remedies for breach of contract, intentional tort and negligence do not lie within Title II or Section 504 and remain for further proceedings." The court also dismissed the parent's IDEA claim, explaining that the statute does not apply to nonpublic religious facilities.

100. *K.P. v. City of Chicago Sch. Dist. #299*, 65 IDELR 42 (N.D. Ill. 2015). The court held that the school district was not required to allow an eighth-grade girl with a learning disability to use a calculator on a districtwide math assessment. The assessment was a prerequisite to taking an entrance examination for one of the district's academically competitive high schools. The district argued that the use of a calculator would invalidate the girl's scores, and would give her an unfair advantage over nondisabled peers. The court held that the use of a calculator was

not a "reasonable accommodation" under 504/Title II and was not in the public interest.

101. *J.A. v. Moorhead Pub. Schs., ISD No. 152*, 65 IDELR 47 (D. Minn. 2015). The parents of a 5-year-old girl with Down syndrome must exhaust their IDEA administrative remedies before pursuing a federal lawsuit seeking money damages for alleged disability-based discrimination. The parents alleged that district officials acted with discriminatory intent by allowing the child to be placed in a storage closet when she became overstimulated in the classroom. The court held that the allegations were directly related to the IEP's provision calling for the use of a "quiet room" for the child.

102. *D.F. v. Leon County Sch. Bd.*, 65 IDELR 134 (N.D. Fla. 2015). Despite finding that *Letter to McKethan*, 25 IDELR 295, "falls short of a full and correct analysis" of the relationship between Section 504 and the IDEA, a federal District Court did not fault a Florida district for relying on the Letter of Findings when it denied a parent's request for Section 504 services. The court held that the district's conduct did not amount to retaliation for the parent's revocation of consent under the IDEA. U.S. District Judge Robert L. Hinkle did not squarely decide whether a parent's withdrawal of consent for IDEA services ends a district's obligations under Section 504. Even if the district erred in denying the parent's request for a Section 504 plan, the court explained, the parent did not produce any evidence showing that the district intentionally discriminated against the student, a middle schooler with a hearing impairment, or that the district acted in bad faith. To the contrary, the court observed, the district acted in good faith when it complied with *Letter to McKethan*. "The letter concluded that by revoking consent to IDEA services, 'the parent would essentially be rejecting what would be offered under [Rehabilitation Act] Section 504,'" Judge Hinkle wrote. The court criticized certain aspects of the Letter of Findings, including its failure to discuss the different requirements for FAPE under the IDEA and Section 504. However, it noted that the district could not have predicted those criticisms. "Without definitive guidance from a court, the letter was the best available guidance, other than the statutes and rules themselves," Judge Hinkle wrote. The court also held that the district's failure to develop a Section 504 plan -- an action tempered somewhat by the district's provision of a classroom amplification system and other disability accommodations -- could not amount to disability discrimination under Section 504 or Title II absent evidence that the district was deliberately indifferent to the student's needs.

103. *Alboniga v. School Bd. of Broward County, Fla.*, 65 IDELR 7 (S.D. Fla. 2015). The court held that the school district was responsible for providing an adult "handler" for the service dog accompanying a 6-year-old boy with multiple disabilities, including a seizure disorder, despite Title II's express language stating that agencies are not responsible for the "care and supervision" of service animals. The court equated the provision of an adult handler to a "reasonable accommodation" pursuant to Section 504. The accommodation was not for the

dog, reasoned the court, but to assist the child in walking and caring for his service animal. The court also enjoined the district from requiring that the parent maintain liability insurance for the dog and requiring that the dog be vaccinated in excess of immunizations required by state law.

104. *J.T. v. Dumont Pub. Schs.*, 64 IDELR 248 (N.J. App. Div. 2014). The creation of a centralized "inclusion" kindergarten class where the district placed a child with autism was not inappropriate or illegal. The evidence showing that the child made academic and social benefits proved that the child had received FAPE. The district's refusal to place the child in his neighborhood school did not constitute discrimination under Section 504/Title II of the ADA.

105. *Jason E. v. Department of Educ., State of Hawaii*, 64 IDELR 211 (D. Hawaii 2014). The school district developed a Section 504 plan for a middle school boy with ADHD after his mother revoked consent for special education and related services pursuant to the IDEA. The parent subsequently sued alleging disability-based discrimination under Section 504 because she disagreed with the accommodations provided through the Section 504 plan. The court held that there was no evidence that the boy required any of the accommodations sought by the parent, and dismissed the plaintiff's claims.

106. *Frequently Asked Questions on Effective Commc'n for Students with Hearing, Vision, or Speech Disabilities in Pub. Elem. and Secondary Schs.,* 64 IDELR 180 (OSERS/DOJ/OCR 2014). Three federal agencies jointly issued a policy interpretation warning school districts that FAPE under the IDEA for a student with hearing, vision, or speech disabilities may not meet the requirements of Title II of the ADA. Title II requires districts to provide services that enable students with disabilities to receive benefits that are "as effective as" the benefits received by nondisabled students.

107. *K.D. v. Starr*, 64 IDELR 107 (D. Md. 2014). The parent of a teen with learning disabilities and ADHD was permitted to sue the school district alleging disability-based discrimination. The court held that the parent's allegations that district officials unilaterally discontinued a Section 504 accommodation (oral testing) and that teachers failed to implement other accommodations in the plan could support a finding of disability-based discrimination.

108. *T.F. v. Fox Chapel Area Sch. Dist.*, 64 IDELR 61 (3d Cir. 2014, *unpublished*). The school district's refusal to adopt the 19-page Section 504 plan proposed by the parents of a student with food allergies was not a violation of the law. The court found that the school district's proposed health plan/accommodations would have met the child's unique needs. The district's failure to incorporate all of the parents' requested accommodations did not constitute a violation of Section 504.

109. *K.K. v. Pittsburgh Pub. Schs.*, 64 IDELR 62 (3d Cir. 2014, *unpublished*). The school district's provision of "a modest approximation" of advanced placement

academic classwork during homebound instruction satisfied the requirements of Section 504 for a gifted high school senior with gastroparesis. The 3d Circuit held that the district's failure to realize that the girl had started skipping classes and staying in the library due to anxiety was not a violation of Section 504.

110. *B.D. v. District of Columbia*, 64 IDELR 46 (D.D.C. 2014). The parents of a student with multiple disabilities alleged that district officials retaliated against them for advocating on their son's behalf by reporting the family to child welfare authorities. The district made the report to the state after the student became truant. The court held that the district had a legal obligation to report the truancy to child welfare. "It strains credulity, to say the least, for [the parents] to argue that [the district] engaged in retaliatory behavior simply by reporting conduct that it had a legal obligation to report," Judge Richard J. Leon wrote. The court also dismissed the parents' Section 504 and Title II discrimination claims based on their failure to allege bad faith or gross misjudgment.

111. *Wenk v. O'Reilly, 65 IDELR 121 (6th Cir. 4/15/15).* An administrator's unfavorable statements about the father of a teenager with an intellectual disability came back to haunt her after she reported the father to child welfare authorities for suspected child abuse. Holding that the parents pleaded a violation of clearly established First Amendment rights, the 6th Circuit ruled that the administrator was not immune from the parents' Section 1983 suit. The three-judge panel noted that the administrator would not be entitled to qualified immunity unless the parents failed to plead a violation of a constitutional right or if that right was not clearly established at the time she filed her child abuse report. U.S. Circuit Judge Karen Nelson Moore observed that the parents sufficiently pleaded a First Amendment violation. Under 6th Circuit law, the panel explained, a report of child abuse qualifies as retaliation under the First Amendment if the parents' advocacy plays any role in the decision to report. The court pointed out that the administrator's critical comments about the father in emails she sent to other district employees after IEP meetings suggested that she "harbored animus" toward him. Furthermore, the teachers whose statements allegedly formed the basis for the report denied telling the administrator about the most shocking charges against the parent. "Although [the administrator's] report did contain some true allegations, the facts taken in the light most favorable to [the parents] suggest that she embellished or entirely fabricated other allegations, including those that most clearly suggested sexual abuse," Judge Moore wrote. The court also rejected the administrator's claim that she would have filed the same report regardless of whether the father advocated on the student's behalf. At best, the court observed, the administrator had the information underlying her report for three weeks before she filed. The fact that she did not file immediately as required by Ohio's mandatory reporting statute indicated that she felt the allegations were not worth reporting. Explaining that a reasonable official in the administrator's position would have understood such conduct to be retaliatory, the 6th Circuit affirmed the District Court's denial of qualified immunity.

112. *Blunt v. Lower Merion Sch. Dist.*, 64 IDELR 32 (3d Cir. 2014), *petition for cert. filed* (U.S. 01/27/15) (No. 14-926). The court held that the slightly higher percentage of African-American students identified as disabled did not establish race-based discrimination. The evidence showed that the eligibility results were based on legitimate individualized assessments of all students who were suspected of having disabilities.

113. *R.K. v. Board of Educ. of Scott County, Ky.*, 64 IDELR 5 (E.D. Ky. 2014). The assignment of a kindergartner with diabetes to a non-neighborhood elementary school that was staffed with a full-time nurse was not discriminatory pursuant to Section 504/Title II of the ADA. Section 504 requires school district to provide "reasonable accommodations," not the "best possible accommodations."

114. *T.C. v. Lewisville Indep. Sch. Dist.*, 64 IDELR 113 (E.D. Tex. 2014), *adopted by*, 64 IDELR 148 (E.D. Tex. 2014). The parent of a student with anxiety and organization problems is required to prove that district officials acted with "bad faith" or "gross misjudgment" in order to substantiate her discrimination claim. The fact that the parent disagreed with the accommodations offered by the district is not sufficient to support a discrimination claim.

115. *S.D. v. Moreland Sch. Dist.*, 63 IDELR 252 (N.D. Cal. 2014). A federal court in California refused to dismiss claims made by the parent of a girl with autism. The mother alleged that the district was aware that her daughter's head-banging was causing injury to the student, that it was interfering with her education, and that the district was "deliberately indifferent" to this behavior. The parent alleged that the girl had up to 23 instances of head-banging each school day.

116. *Estrada v. San Antonio Indep. Sch. Dist.*, 63 IDELR 213 (5th Cir. 2014, *unpublished*), *cert. denied*, 115 LRP 7609 (U.S. 02/23/15) (No. 14-648). The sexual assault of a high school student with cerebral palsy by an adult aide did not establish "bad faith" or "gross misjudgment" on the part of the school district. The district had adopted an unofficial practice of utilizing two adult aides in restrooms when students with disabilities required toileting assistance. The district's failure to ensure that two aides were present during all restroom visits with this student did not establish a violation of Title II/intentional discrimination.

117. *Batchelor v. Rose Tree Media Sch. Dist.*, 63 IDELR 212 (3d Cir. 2014). The 3d Circuit held that the IDEA's exhaustion requirements apply to 504/Title II retaliation claims related to alleged violations of the IDEA.