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Commentary

*505 SPECIAL EDUCATION LAW UPDATE XII [FNa1]

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This annotated outline provides recent case law entries in special education since the last update in this series. The entries consist of court decisions (including denials of certiorari) in the same categories as in the last update but issued more recently. The coverage focuses on the issues of primary concern to educators and parents, such as eligibility, free appropriate public education (FAPE), least restrictive environment (LRE), and the remedies of tuition reimbursement and compensatory education. [FN1] Per past practice, court decisions that are not officially published [FN2] and administrative adjudications are not included. [FN3] The coverage within these boundaries is comprehensive except for attorneys' fees category. [FN4] Similarly, the parallel citations for each entry consist of not only the official reporter and WEST'S EDUCATION LAW REPORTER (Ed.Law Rep.), but also the specialized source—the INDIVIDUALS WITH DISABILITIES LAW REPORTS (IDELR). For cases cited in more than one category, the first citation is complete and the subsequent ones use “supra” as a shorthand cross–reference back for full citation. Additionally, consistent with the earlier updates in this series, the organizational headings herein are only approximate and sometimes overlapping. [FN5]

The major acronyms and abbreviations used in the case blurbs designate three source statutes: “IDEA” for the Individuals with Disabilities Education ***506** Act [FN6]; “§ 504” for Section 504 of the Rehabilitation Act [fn7]; AND “ADA” for amerICANs witH disabilities Act [fn8]. THE OTHER acronyms in this update are from special education and its intersecting legalized field: ABA ' applied behavior analysis; ADHD ' attention deficit hyperactivity disorder; BIP ' behavior intervention plan; ESY ' extended school year; ED ' emotional disturbance; FAPE ' free appropriate education; FBA 'functional behavior assessment; ID ' intellectual disabilities; IEE 'independent educational evaluation; IEP ' individual education program; IHO 'impartial hearing officer; LRE ' least restrictive environment; ODD 'operational defiant disorder; OHI ' other health impairment; OT ' occupational therapy; PDD ' pervasive development disorder; PEL ' present levels of performance [FN9]; PRR ' peer reviewed research; PT ' physical therapy; RO 'review officer; SLD ' specific learning disabilities; SLI ' speech and language impairment; and TBI ' traumatic brain injury.

Overall, the contents reveal the following continuing trends: (1) the predominance of ED and, to a lesser extent, OHI in the eligibility cases; (2) the prevalence of autism and nonprejudicial procedural violations in the FAPE cases; (3) the clarification between special education placement and types of services; (4) the emphasis on tuition reimbursement rather than compensatory education as remedies; (5) the testing of boundaries of “reverse” attorney fees (i.e., for prevailing districts) under the IDEA, with negligible rulings in favor of district recovery; and, on an overall basis, (6) skewing of outcomes in the districts' favor. The contents also reveal these possible emerging trends: (1) decreasing claims under mainstreaming/LRE and related services and assistive

technology; (2) increasing attention on placement for students expelled or suspended for discipline issues; (3) increasing focus on peer harassment and bullying violations under § 504; and (4) growing number of § 504 claims by students who are also eligible under IDEA.

I. DIAGNOSIS AND PLACEMENT

A. Identification

W.G. v. New York City Dep't of Educ., 801 F.Supp.2d 142 [274 Ed.Law Rep. [438]] 56 IDELR ¶ 230 (S.D.N.Y. 2011)

• ruled that the child was not eligible as ED because his academic downturn was due to social maladjustment, including conduct disorder and truancy [tuition reimbursement case]

P.C. v. Oceanside Union Free Sch. Dist., 818 F.Supp.2d 516 [277 Ed.Law Rep. [888]] 56 IDELR ¶ 252 (E.D.N.Y. 2011)

• ruled that the child did not qualify as ED (and alternatively that the parents' unilateral placement was not appropriate) [tuition reimbursement case]

***507** *G.D v. Wissahickon Sch. Dist.*, 832 F.Supp.2d 455 [280 Ed.Law Rep. [71]] 56 IDELR ¶ 294 (E.D. Pa. 2011)

• ruled that fatally skewed initial eligibility evaluation of child with ADHD who belatedly received an IEP amounted to denial of FAPE, entitling student to compensatory education

H.M. v. Heights Bd. of Educ., 822 F.Supp.2d 439 [278 Ed.Law Rep. [190]] 57 IDELR ¶ 186 (D.N.J. 2011)

• ruled that student identified as SLD in basic reading and math computation but declassified upon the triennial reevaluation was not eligible—based on larger picture, including teacher observations and other testing—as SLD in overall reading fluency despite tested weakness in oral reading fluency

C.M. v. Dep't of Educ., State of Hawaii, 476 Fed.Appx. 674 [283 Ed.Law Rep. [850]] 58 IDELR ¶ 151 (9th Cir. 2012)

• ruled that student with ADHD and central auditory processing disorder was not eligible as SLD or OHI

D.G. v. Flour Bluff Indep. Sch. Dist., 481 Fed.Appx. 887 [286 Ed.Law Rep. [131]] 59 IDELR ¶ 2 (5th Cir. 2012)

• vacated lower court ruling of child find violation (with compensatory education and attorneys' fees) where the student was not eligible for special education at the time

D.K. v. Abington Sch. Dist., 696 F.3d 233 [285 Ed.Law Rep. [730]] 59 IDELR ¶ 271 (3d Cir. 2012)

• rejected parent's child find and inappropriate evaluation claims for elementary school child with ADHD (and both auditory processing and sensory stimulation diagnoses) who was ultimately, upon a second evaluation,

determined to be eligible as OHI [compensatory education case]

Lauren G. v. W. Chester Area Sch. Dist., 906 F.Supp.2d 375, 60 IDELR ¶ 4 (E.D. Pa. 2012)

• upheld parents' child find claim under IDEA (and § 504), concluding that the student's psychiatric hospitalizations and failing grades provided reason to suspect disability, and determined that the child was eligible as ED (rejecting the district's claim that the duration had not been a long period) [tuition reimbursement case]

B. Appropriate Education (including ESY)

Lathrop R–II Sch. Dist. v. Gray, 611 F.3d 419 [258 Ed.Law Rep. [983]] 54 IDELR ¶ 276 (8th Cir. 2010), *cert. denied*, 131 S.Ct. 1017, 178 L.Ed.2d 843 (2011)

• ruled that lack of baseline data, behavioral goal and full parental notice did not amount to denial of FAPE where the district made a good faith effort and reasonably met individual needs of student with autism

R.P. v. Prescott Unified Sch. Dist., 631 F.3d 1117 [264 Ed.Law Rep. [618]] 56 IDELR ¶ 31 (9th Cir. 2011)

• ***508** rejected claims of parent of child with autism that IEP team lacked autism expert (not required), IEP was cut–and–pasted from previous year's with increase (meaningful changes), methods were not PRR (district discretion + parents' expert), goals were subjective (objectively measureable), and child did not make meaningful progress (slow and scattered but significant)

***James M. v. State of Hawaii Dep't of Educ.*, 803 F.Supp.2d 1150 [274 Ed.Law Rep. [958]] 56 IDELR ¶ 100 (D. Haw. 2011)**

• ruled that district provided reasonable participation measures for parent who did not attend IEP meeting and that the IEP that reduced the services for the child with dysarthia and hypotonia met the substantive standard for FAPE [tuition reimbursement case]

Long v. Dist. of Columbia, 780 F.Supp.2d 49 [270 Ed.Law Rep. [664]] 56 IDELR ¶ 122 (D.D.C. 2011)

• upheld appropriateness of IEP (parental participation) and placement (full–time special education), but ruled that the district earlier denied FAPE by not providing a comprehensive evaluation for three years after being put on notice of IEE concluding that child was SLD and also needed FBA–BIP—remanded to hearing officer for determination of compensatory education under qualitative approach

***E.J. v. San Carlos Elementary Sch. Dist.*, 803 F.Supp.2d 1024 [274 Ed.Law Rep. [949]] 56 IDELR ¶ 159 (N.D. Cal. 2011)**

• rejected child find claim and upheld appropriateness of non–static IEP for child with Asperger's and anxiety disorder

***S.M. v. State of Hawaii Dep't of Educ.*, 808 F.Supp.2d 1269 [276 Ed.Law Rep. [153]] 56 IDELR ¶ 193 (D. Haw. 2011)**

• ruling that IEP for student with autism did not have to specify the qualifications of the service provider or

the methodology and that the subsequent changes, including adding a transition plan and autism consultant teacher services, did not render the original version defective because they promptly resulted from information that the parent disclosed only belatedly [tuition reimbursement case]

Brad K. v. Bd. of Educ., 787 F.Supp.2d 734 [272 Ed.Law Rep. [376]] 56 IDELR ¶ 197 (N.D. Ill. 2011)

• ruled that the required specification of "location" in an IEP refers to type of appropriate environment, not specific school site

Mahoney v. Carlsbad Unified Sch. Dist., 430 Fed.Appx. 562 [271 Ed.Law Rep. [809]] 56 IDELR ¶ 217 (9th Cir. 2011)

• rejected various alleged procedural claims as either not violations (e.g., SLI therapist as IEP member who "actually taught" student) or harmless (e.g., not providing parent with initial draft of IEP goals)

New Milford Bd. of Educ. v. C.R., 431 Fed.Appx. 157 [271 Ed.Law Rep. [820]] 56 IDELR ¶ 283 (3d Cir. 2011)

• upheld ruling that district's private school program for child with autism did not provide for a meaningful benefit because he additionally required an after–school ABA program [tuition reimbursement case]

***509** *Swope v. Cent. York Sch. Dist.*, 796 F.Supp.2d 592 [273 Ed.Law Rep. [790]] 56 IDELR ¶ 286 (M.D. Pa. 2011)

• denied dismissal of parents' denial of FAPE claim on behalf of eleventh–grader who left district two years earlier, pending factual determination of when parent "knew or should have known" of the alleged violations

C.T. v. Croton–Harmon Union Free Sch. Dist., 812 F.Supp.2d 420 [276 Ed.Law Rep. [226]] 57 IDELR ¶ 37 (S.D.N.Y. 2011)

• ruled that: (1) absence of private school special education representatives on the IEP team and lack of an FBA were not prejudicial; (2) the mainstreamed IEP met the *Rowley* substantive standard; and (3) the student, classified as ED, no longer needed the residential placement [tuition reimbursement case]

A.L. v. New York City Dep't of Educ., 812 F.Supp.2d 492 [276 Ed.Law Rep. [270]] 57 IDELR ¶ 69 (E.D.N.Y. 2011)

• rejected parent's various procedural and substantive claims of denial of FAPE for student with autism, including parental participation, FBA–BIP and inter–school transition plan [tuition reimbursement case]

Tindell v. Evansville–Vanderburgh Sch. Corp., 805 F.Supp.2d 630 [275 Ed.Law Rep. [655]] 57 IDELR ¶ 71 (S.D. Ind. 2011)

• lack of timely transition plan was not a denial of FAPE where the student, who had PDD, received appropriate transition (in his residential placement)

K.C. v. Nazareth Area Sch. Dist., 806 F.Supp.2d 806 [275 Ed.Law Rep. [748]] 57 IDELR ¶ 92 (E.D. Pa. 2011)

• upheld both the appropriateness of the postsecondary transition plan and other IEP services for 20–year–old student with multiple disabilities and the hearing officer's attribution of delay in receipt of IEP services to the parents' conduct

K.I. v. Montgomery Pub. Sch., 805 F.Supp.2d 1283 [275 Ed.Law Rep. [702]] 57 IDELR ¶ 93 (M.D. Ala. 2011)

• rejected proposed IEP and placement of student with rare and severe muscular condition due to failure to evaluate her cognitive functioning and her ability to use assistive technology

Park Hill Sch. Dist. v. Dass, 655 F.3d 762 [272 Ed.Law Rep. [823]] 57 IDELR ¶ 121 (8th Cir. 2011)

• ruled that the respective IEPs for twins with autism were substantively appropriate despite the absence of BIP and transition plan [tuition reimbursement case]

B.O. v. Cold Spring Harbor Cent. Sch. Dist., 807 F.Supp.2d 130 [275 Ed.Law Rep. [776]] 57 IDELR ¶ 130 (E.D.N.Y. 2011)

• upheld procedural and substantive appropriateness of district's proposed IEP for student with SLD, cautioning the IHO that the deference to school authorities that *Rowley* prescribes only applies at the court level [tuition reimbursement case]

***510** *Rodrigues v. Fort Lee Bd. of Educ.*, 458 Fed.Appx. 124 [278 Ed.Law Rep. [843]] 57 IDELR ¶ 152 (3d Cir. 2011)

• rejected procedural violations—lack of measurable objectives and "imperfect" transition plan—as not resulting in loss of educational opportunity

Moorestown Twp. Bd. of Educ. v. S.D., 811 F.Supp.2d 1057 [276 Ed.Law Rep. [196]] 57 IDELR ¶ 158 (D.N.J. 2011); *see also I.H. v. Cumberland Valley Sch. Dist.*, 842 F.Supp.2d 762 [281 Ed.Law Rep. [1057]] 58 IDELR ¶ 94 (M.D. Pa. 2012) (student enrolled in cyber charter school) [FN10]

• ruled that district of residence's refusal, upon the parents' request, to evaluate and offer IEP to student whom it knew had a disability based on his enrollment in an out–of–district private school was a denial of FAPE

Poway Unified Sch. Dist. v. Cheng, 821 F.Supp.2d 1197 [278 Ed.Law Rep. [158]] 57 IDELR ¶ 189 (S.D. Cal. 2011)

• remanded IHO's decision that applied a "potential–maximizing" rather than "some benefit," substantive standard for FAPE in requiring parents' chosen transcription service rather than the IEP's specified transcription service for student with hearing impairment

D.R. v. Dep't of Educ., Hawaii, 827 F.Supp.2d 1161 [279 Ed.Law Rep. [717]] 57 IDELR ¶ 217 (D. Haw. 2011)

• rejected claim that lack of evaluation for auditory processing disorder, submucous cleft palate and behavior for student with SLI rendered her proposed IEP inappropriate where there was no reason to suspect these issues [tuition reimbursement case]

C.H. v. Nw. Indep. Sch. Dist., 815 F.Supp.2d 977 [277 Ed.Law Rep. [268]] 57 IDELR ¶ 225 (E.D. Tex. 2011)

• discontinuation of dyslexia services (under state law) did not deny FAPE where district provided replacement services and child made reasonable progress in reading

J.E. v. Boyertown Area Sch. Dist., 452 Fed.Appx. 172 [277 Ed.Law Rep. [146]] 57 IDELR ¶ 273 (3d Cir. 2011)

• ruled that the proposed, 51–page IEP for an in–district placement for the student with Asperger's Disorder and SLD was substantively appropriate, rejecting the parents' arguments that the return from the private placement did not sufficiently consider the risk of bullying and the sensitivity to loud noise [tuition reimbursement case]

G.S. v. Cranbury Twp. Bd. of Educ., 450 Fed.Appx 197 [276 Ed.Law Rep. [681]] 57 IDELR ¶ 274 (3d Cir. 2011)

• rejected parents' various *pro se* challenges—including PRR (deferring to IHO's credibility determination of their expert)—to substantive appropriateness of district's proposed IEP for high school student with multiple disabilities [tuition reimbursement case]

***511 *K.D. v. Dep't of Educ., State of Hawaii*, 665 F.3d 1110 [275 Ed.Law Rep. [585]] 58 IDELR ¶ 2 (9th Cir. 2011) [FN11]**

• upheld appropriateness of proposed IEP for child with autism, rejecting procedural challenges (specifically, predetermination and holding IEP meetings, after repeated attempts, without parents present) and substantive challenges (e.g., goals, assessment, and—school rather than classroom—"actual placement") [tuition reimbursement case]

J.S. v. Scarsdale Union Free Sch. Dist., 826 F.Supp.2d 635 [279 Ed.Law Rep. [229]] 58 IDELR ¶ 16 (S.D.N.Y. 2011)

• ruled, *inter alia*, that the district's proposed placement was not appropriate even though the parties agreed that the IEP was appropriate [tuition reimbursement case]

***Madeline P. v. Anchorage Sch. Dist.*, 265 P.3d 308 [274 Ed.Law Rep. [698]] 58 IDELR ¶ 17 (Alaska 2011)**

• ruled that district's failure to provide written prior notice before (1) temporary move in location of writing instruction for child with SLD from regular to resource room and (2) amending the IEP as to the location of the writing instruction, where parent knew about these changes and where the child continued to progress, did not result in loss of educational opportunity for parental participation, but failure to follow the IEP between the return of the teacher from leave (which was the justification for the temporary move) and the amendment of the IEP was a material failure, not minor discrepancy (citing *Van Duyn*), thus entitling the child to 15 hours of compensatory education

***Dep't of Educ., State of Hawaii v. M.F.*, 840 F.Supp.2d 1214 [281 Ed.Law Rep. [886]] 58 IDELR ¶ 34 (D. Haw. 2011)**

• reversed IHO order for tuition reimbursement and compensatory education due to (1) failure to determine whether the procedural violations (not offering IEP to unilaterally placed student) resulted in loss of educational benefit or parental opportunity and (2) failure to weight equitable factors for each remedy

J.K. v. Council Rock Sch. Dist., 833 F.Supp.2d 436 [280 Ed.Law Rep. [159]] 58 IDELR ¶ 43 (E.D. Pa. 2011)

• ruled that IEP for return of student with SLD from private school to public middle or high school was appropriate [tuition reimbursement case]

G.J. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258 [277 Ed.Law Rep. [90]] 58 IDELR ¶ 61 (11th Cir. 2012)

• upheld the district court's ruling, which was that parents' extensive conditions to their consent for reevaluation of their child with autism and brain injuries amounted to a refusal, and its remedy, which was an order for a reevaluation with specified reasonable conditions—also found that parents failed to prove that the other procedural violations, beyond those intertwined ***512** with the parents' rejected reevaluation claim, impacted the substantive side of the child's FAPE

L.F. v. Houston Indep. Sch. Dist., 459 Fed.Appx. 358 [278 Ed.Law Rep. [853]] 58 IDELR ¶ 63 (5th Cir. 2012), *cert. denied*, 133 S.Ct. 248, 184 L.Ed.2d 132 (2012) [FN12]

• rejected alleged procedural violations as unproven and upheld substantive appropriateness of IEP for student with ED in self–contained class for all but approx. 7 hours per week based on *Cypress–Fairbanks* four–factor test (“1. the program is individualized on the basis of the student's assessment and performance; 2. the program is administered in the [LRE]; 3. the services are provided in a coordinated and collaborative manner by the key ‘stakeholders'; and 4. positive academic and non–academic benefits are demonstrated”)

B.P. v. New York City Dep't of Educ., 841 F.Supp.2d 605 [281 Ed.Law Rep. [933]] 58 IDELR ¶ 74 (E.D.N.Y. 2012)

• upheld procedural and substantive appropriateness of IEP for student with SLD [tuition reimbursement case]

***M.B. v. Hamilton Se. Sch.*, 668 F.3d 851 [277 Ed.Law Rep. [60]] 58 IDELR ¶ 92 (7th Cir. 2011)**

• upheld rejection of parents' child find and FAPE claim with regard to district's evaluation and proposed IEP, which provided half–day kindergarten and ESY services for a young child with TBI, concluding that the alleged procedural violations were either unproven (e.g., predetermination) or harmless (e.g., absence of kindergarten teacher at the IEP team meeting) and that—based on the snapshot approach—the IEP was “likely to produce progress, not regression or trivial educational advancement”

T.G. v. Midland Sch. Dist., 848 F.Supp.2d 902 [282 Ed.Law Rep. [425]] 58 IDELR ¶ 104 (C.D. Ill. 2012)

• upheld substantive and procedural formulation and the implementation of the IEP for grades 7–9 except for reading/writing and vocational components in grade 9 [compensatory education case]

Savoy v. Dist. of Columbia, 844 F.Supp.2d 23 [282 Ed.Law Rep. [212]] 58 IDELR ¶ 129 (D.D.C. 2012)

• upheld hearing officer's rulings that (1) the district need not consider private placements when it has an

appropriate public placement, (2) district's provision of the specified services and structure were not a substantial departure from IEP's specification of separate school, and (3) its provision of 27.6 rather than the specified 28.5 hours did not meet the prevailing "substantial or significant" standard for failure–to–implement claims

Nalu Y. v. Dep't of Educ., State of Hawaii, 858 F.Supp.2d 1127 [284 Ed.Law Rep. [325]] 58 IDELR ¶ 154 (D.D.C. 2012)

• upheld district's rejection of autism classification for elementary student with SLI/OHI who was afraid of school and the PELs and goals of his IEP

***513** *Smith v. Dist. of Columbia*, 846 F.Supp.2d 197 [282 Ed.Law Rep. [356]] 58 IDELR ¶ 155 (D.D.C. 2012)

• upheld hearing officer's ruling that the district met the substantive "floor of opportunity" standard for FAPE based on concrete progress according to testing and teacher (when measured against the child's potential for growth (though generally well less than a year)) and extensive although not optimal services—thus, failure to provide laptop and software at home was not denial of FAPE in this case

G.D. v. Torrance Unified Sch. Dist., 857 F.Supp.2d 953 [284 Ed.Law Rep. [180]] 58 IDELR ¶ 156 (C.D. Cal. 2012)

• ruled that IEP that did not have separate behavioral goals/services and that discontinued five weekly hours of home based behavior services met the substantive standard for FAPE

D.B. v. Esposito, 675 F.3d 26 [278 Ed.Law Rep. [716]] 58 IDELR ¶ 181 (1st Cir. 2012)

• upheld appropriateness of child with multiple disabilities, concluding that the meaningful benefit standard may be applied without a determination of the child's potential where this determination is infeasible (e.g., due to severely impaired capacity for communication)

J.W. v. Governing Bd. of E. Whittier City Sch. Dist., 473 Fed.Appx. 531 [282 Ed.Law Rep. [127]] 58 IDELR ¶ 211 (9th Cir. 2012)

• upheld substantive appropriateness of the IEP and the IHO's determination that special ed director's brief conversation with speech provider for minor revision of one of the IEP goals was not procedural violation that deprived parents of meaningful opportunity for participation

M.D. v. Hawaii Dep't of Educ., 864 F.Supp.2d 993 [285 Ed.Law Rep. [320]] 58 IDELR ¶ 221 (D. Haw. 2012)

• upheld substantive appropriateness (including implementation) and procedural appropriateness (parent participation) of district's proposed IEP for fourth–grade child with autism [tuition reimbursement case]

D.P. v. Council Rock Sch. Dist., 482 Fed.Appx. 669 [286 Ed.Law Rep. [834]] 58 IDELR ¶ 243 (3d Cir. 2012)

• upheld determination that the IEP for a student with autism was appropriate for the second half of the

2008–09 school year (with the appropriateness of the first half of the year unchallenged upon appeal), ruling that district was not obligated to update the IEP in the absence of parental notification of possible re–enrollment [tuition reimbursement case]

Ridley Sch. Dist. v. M.R., 680 F.3d 260 [280 Ed.Law Rep. [37]] 58 IDELR ¶ 271 (3d Cir. 2012)

• rejected child find claim, concluding that district should have "reasonable time" to reevaluate the student in grade 1 after evaluation determined that she was ineligible at the end of kindergarten and upheld the IEP, after the district's reevaluation determined that the child was eligible as SLD—procedural violations (e.g., absence of statement of special education in the IEP) are not actionable in the absence of resulting educational loss, and the ***514** standard for PRR is reasonable, not optimal [compensatory education and tuition reimbursement]

Stamps v. Gwinnett Cnty. Sch. Dist, 481 Fed.Appx. 470 [286 Ed.Law Rep. [113]] 59 IDELR ¶ 1 (11th Cir. 2012), *cert. denied*, 133 S.Ct. 576, 184 L.Ed.2d 375 (2012)

• ruled that proposed in–school placement, rather than homebound instruction, for three siblings with genetic neurological disorders met substantive standard for FAPE in the LRE

M.W. v. New York City Dep't of Educ., 869 F.Supp.2d 320 [286 Ed.Law Rep. [197]] 59 IDELR ¶ 36 (E.D.N.Y. 2012)

• upheld procedural and substantive appropriateness of district's proposed IEP for nine–year–old with autism, ADHD, and Tourette syndrome [tuition reimbursement case]

I.M. v. Northampton Pub. Sch., 869 F.Supp.2d 174 [286 Ed.Law Rep. [165]] 59 IDELR ¶ 38 (D. Mass. 2012)

• upheld placement of student with multiple disabilities in residential school for the blind

Carrie I. v. Dep't of Educ., State of Hawaii, 869 F.Supp.2d 1225 [286 Ed.Law Rep. [268]] 59 IDELR ¶ 46 (D. Haw. 2012)

• ruled that procedural violations, including failure to provide transition assessments and services for 18–year–old with autism, resulted in loss of educational opportunities

Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 79 [282 Ed.Law Rep. [28]] 59 IDELR ¶ 61 (1st Cir. 2012)

• upheld appropriateness of district's program for student with multiple disabilities despite lack of transition plan in IEP where district provided transition planning, transition content in IEP and actual transition services [tuition reimbursement case]

E.S. v. Katonah–Lewisboro Sch. Dist., 742 F.Supp.2d 417 [264 Ed.Law Rep. [724]] 55 IDELR ¶ 130 (S.D.N.Y. 2010), *aff'd*, 487 Fed.Appx. 619, 59 IDELR ¶ 63 (2d Cir. 2012)

• upheld appropriateness of first, but not second, of two successive IEPs for student with schizoaffective disorder and borderline intellectual functioning, concluding that the second IEP did not sufficiently take into account the progress data from the first year of the child's unilateral placement [tuition reimbursement case]

Woods v. Northport Pub. Sch., 487 Fed.Appx. 968 [287 Ed.Law Rep. [746]] 59 IDELR ¶ 64 (6th Cir. 2012)

• after a 32–day IHO proceedings with more than 7,000 pages of testimony concerning the IEPs in grades 1–3 for a child with autism and cerebral palsy, upheld the rulings that (1) the second–grade IEP amounted to a substantive denial of FAPE due to substantial lack of implementation plus lack of meaningful benefit in relation to child's potential and (2) the third–grade IEP represented procedural denial of meaningful parental participation due to (a) failure to provide access to test protocols to parents' expert and ***515** (b) development of goals/objectives outside of parents' presence plus substantive denial of FAPE due to reduction of services resulting in lack of meaningful benefit

L.G. v. Fair Lawn Bd. of Educ., 486 Fed.Appx. 967 [287 Ed.Law Rep. [691]] 59 IDELR ¶ 65 (3d Cir. 2012)

• rejected parents' claim that meeting of district personnel without them prior to the IEP meeting constituted predetermination where they had opportunity for meaningful participation at the IEP meeting for preschool child with autism [tuition reimbursement case]

S.H. v. Fairfax Cnty. Bd. of Educ., 875 F.Supp.2d 633 [287 Ed.Law Rep. [232]] 59 IDELR ¶ 73 (E.D. Va. 2012)

• ruled that increasingly intensive services student for SLD in grades 5–8 constituted FAPE in the LRE [tuition reimbursement case]

Ravenswood City Sch. Dist. v. J.S., 870 F.Supp.2d 780 [286 Ed.Law Rep. [377]] 59 IDELR ¶ 77 (N.D. Cal. 2012)

• upheld, with deference, the IHO's thorough and careful ruling that the limitations period extended to three years due to misrepresentation and that the three years of IEPs were procedurally and substantively inappropriate

Anchorage Sch. Dist. v. M.P., 689 F.3d 1047 [283 Ed.Law Rep. [653]] 59 IDELR ¶ 91 (9th Cir. 2012)

• ruled that district failed to meet the substantive standard for FAPE for third grader with autism "by relying on an outdated IEP to measure [the child's] academic and functional performance and provide educational benefits to [the child]" and that the parents' active dissidence did not excuse the district from its affirmative obligation to provide FAPE [tuition reimbursement case]

D.B. v. Gloucester Twp. Sch. Dist., 751 F.Supp.2d 764 [265 Ed.Law Rep. [719]] 55 IDELR ¶ 224 (D.N.J. 2010), *aff'd*, 489 Fed.Appx. 564 [288 Ed.Law Rep. [109]] 59 IDELR ¶ 92 (3d Cir. 2012)

• ruled that the district denied FAPE via predetermination (i.e., arrived at "definitive conclusions on [the child's] placement without parental input, failed to incorporate any suggestions of the parents or discuss with the parents the prospective placements, and in some instances even failed to listen to the concerns of the parents"), thereby depriving the parents of an opportunity for meaningful participation in the IEP process (per se approach?)

C.C. v. Fairfax Cnty. Bd. of Educ., 879 F.Supp.2d 512 [287 Ed.Law Rep. [843]] 59 IDELR ¶ 95 (E.D. Va. 2012)

• upheld district's proposed placement in small self–contained class for core academic classes for student with multiple disabilities met substantive standard for FAPE [tuition reimbursement case]

Johnson v. Dist. of Columbia, 873 F.Supp.2d 382 [287 Ed.Law Rep. [73]] 59 IDELR ¶ 101 (D.D.C. 2012)

• ruled that failure to provide the student with ESY was not substantive denial of FAPE and parent's failure to participate in one of two IEP ***516** meetings for this determination was not a procedural denial of FAPE—plus not failure to implement material part of IEP

Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390 [283 Ed.Law Rep. [667]] 59 IDELR ¶ 121 (5th Cir. 2012), *cert. denied*, 133 S.Ct. 1600, 185 L.Ed.2d 580 (2013)

• ruled that IEP for gifted child with ADHD and SLD in written expression met the substantive standard for FAPE despite particular No Child Left Behind and other standardized test results—*Rowley* benefit standard applies to educational benefit holistically, not specifically related to the child's disability [tuition reimbursement case]

E.W.K. v. Bd. of Educ., 884 F.Supp.2d 39 [288 Ed.Law Rep. [594]] 59 IDELR ¶ 166 (S.D.N.Y. 2012)

• upheld substantive appropriateness of IEPs for middle–school student with SLD based on evidence of progress despite lack of specialized reading program, refusing to speculate on the impact of private tutoring in reading in the absence of more specific factual foundation [tuition reimbursement case]

S.H. v. Plano Indep Sch. Dist., 487 Fed.Appx. 850 [287 Ed.Law Rep. [721]] 59 IDELR ¶ 183 (5th Cir. 2012)

• ruled that IEP for child with autism met *Rowley* reasonably–calculated standard without actual progress and that procedural violation in terms of lack of general education teacher on IEP team did not result in educational loss, but concluded that parent was entitled to reimbursement for ESY based on reasonable expectation of regression that cannot be recouped within a reasonable period of time (per Texas regulations)

Y.B. v. Bd. of Educ. of Prince George's Cnty., 895 F.Supp.2d 689, 59 IDELR ¶ 222 (D. Md. 2012)

• ruled that IEP and proposed day (rather than residential) placement of high school student with ED was substantively appropriate [tuition reimbursement case]

R.E. v. New York City Dep't of Educ., 694 F.3d 167 [284 Ed.Law Rep. [629]] 59 IDELR ¶ 241 (2d Cir. 2012)

• adopting the snapshot approach but not strict four–corners rule and differentiating between serious (FBA) and minor (parent counseling) procedural violations based on state standards for FAPE analysis, reached mixed outcomes in three consolidated cases concerning students with autism (two for district and one in favor of the parent, including tuition reimbursement)

S.A. v. Weast, 898 F.Supp.2d 869 [291 Ed.Law Rep. [241]] 59 IDELR ¶ 243 (D. Md. 2012)

• ruled, with high deference to IHO, that IEPs for student with SLD (dyslexia and ADHD) were procedurally and substantively appropriate [tuition reimbursement case]

Aaron P. v. State of Hawaii, Dep't of Educ., 897 F.Supp.2d 1004 [291 Ed.Law Rep. [73]] 59 IDELR ¶ 256 (D. Haw. 2012)

• ruled that first of two IEPs was not appropriate for child with autism but remanded the appropriateness of the second IEP's appropriateness (in ***517** terms of placement and implementation) for application of the proper standard

H.D. v. Cent. Bucks Sch. Dist., 902 F.Supp.2d 614 [291 Ed.Law Rep. [733]] 59 IDELR ¶ 275 (E.D. Pa. 2012)

• ruled that IEP that increased the behavioral aspect and that changed the child's placement from an itinerant learning support class in the neighborhood school to an itinerant emotional support class in another district school amounted to substantive FAPE in the LRE

Coventry Pub. Sch. v. Rachel J., 893 F.Supp.2d 322 [290 Ed.Law Rep. [105]] 59 IDELR ¶ 277 (D.R.I. 2012)

• ruled that IEP for student with emotional and learning disabilities was not substantively appropriate due to failure to address his behavioral needs [tuition reimbursement case]

A.B. v. Franklin Twp. Cmty. Sch. Corp., 898 F.Supp.2d 1067 [291 Ed.Law Rep. [265]] 59 IDELR ¶ 278 (S.D. Ind. 2012)

• ruled that other IEP team members' statements prior to the meeting that the child with autism could be educated satisfactorily in a district school did not amount to predetermination [tuition reimbursement case]

Nickerson–Reti v. Lexington Pub. Sch., 893 F.Supp.2d 276 [290 Ed.Law Rep. [79]] 59 IDELR ¶ 282 (D. Mass. 2012)

• upheld procedural and substantive appropriateness of district's private day–school placement of high school student with multiple disabilities but reversed dismissal with prejudice for failure to prosecute prior claims

T.M. v. Cornwall Cent. Sch. Dist., 900 F.Supp.2d 344 [291 Ed.Law Rep. [583]] 59 IDELR ¶ 286 (S.D.N.Y. 2012)

• ruled that the absence of a FBA/BIP did not amount to denial of FAPE in this case and that the IEP's segregated ESY program for a child mainstreamed during the school year was not a violation of the IDEA, because a district that does not operate a mainstream educational program during the summer months is not obligated to create one simply to satisfy the LRE requirements of the IDEA (citing the Third Circuit's decision in *T.R. v. Kingwood School District*) [tuition reimbursement case]

Red Clay Consol. Sch. Dist. v. T.S., 893 F.Supp.2d 643 [290 Ed.Law Rep. [122]] 59 IDELR ¶ 287 (D. Del. 2012)

• ruled that actual progress is not the standard for FAPE under the snapshot approach and that the IEP for this seventh grader with multiple disabilities was FAPE in the LRE despite the IEP's lack of baseline historical data, an FBA/BIP, and full integration of his voice output device

R.C. v. Byram Hills Sch. Dist., 906 F.Supp.2d 256, 60 IDELR ¶ 35 (S.D.N.Y. 2012)

• upheld appropriateness of proposed consecutive one–year IEPs, which initially provided 8:1:1 for math and language arts, one period of resource room, and a 3:1 aide for general education in addition to various related

services and which increased the special ed class size to 12:1 and removed the aide during the second year, for 14–year–old student with SLD—no prejudicial***518** procedural violations (e.g., lack of BIP and, in light of LRE preference, class size); failure to implement resource room in year one every sixth day and providing 45–minute rather than 60–minute resource room periods each was de minimis (i.e., not material failure); and substantively at the requisite non–ideal level [tuition reimbursement case]

R.P. v. Alamo Heights Indep. Sch. Dist., 703 F.3d 801 [288 Ed.Law Rep. [552]] 60 IDELR ¶ 60 (5th Cir. 2012)

• ruled that district did not deny FAPE for fourth grader with autism and other disabilities both procedurally (specifically, early end of some IEP meetings due to parent's behavior and other such action did not deny meaningful parental participation) and substantively (*Cypress–Fairbanks* four–factor test)

Hupp v. Switzerland of Ohio Local Sch. Dist., 2012 WL 6184916, 60 IDELR ¶ 63 (S.D. Ohio. 2012)

• rejected parent's child find, procedural, and substantive FAPE challenges to IEP for previously home–schooled third grader with Asperger's Disorder and ADHD, including claims that district had coerced revocation consent and engaged in retaliatory animus

M.M. v. Dist. 0001 Lancaster Cnty. Sch., 702 F.3d 479 [288 Ed.Law Rep. [35]] 60 IDELR ¶ 92 (8th Cir. 2012)

• ruled that proposed IEP for fourth grader with autism, which included “calming room” in the BIP, amounted to substantive FAPE in the LRE and also rejected the parents' pre–determination claim [tuition reimbursement case]

B.R. v. New York City Dep't of Educ., 2012 WL 6691046, 60 IDELR ¶ 102 (S.D.N.Y. 2012)

• ruled that the proposed placement was not appropriate because it would not provide the student, a nine–year old with autism, with her IEP–specified 1:1 OT services (thus not reaching the parent's alternate arguments regarding the lack of a sensory gym or highly qualified special education teacher)—snapshot approach (which IHO and RO had not followed) [tuition reimbursement case]

Reg'l Sch. Unit 51 v. Doe, 2013 WL 357793, 60 IDELR ¶ ¶ 163 and 197 (D. Me. 2013)

• ruled that district violated child find by providing student with a 504 plan, not an IEP, but upheld the substantive appropriateness of the IEP that the district provided after two years [tuition reimbursement as compensatory education case]

FB v. New York City Dep't of Educ., 2013 WL 592664, 60 IDELR ¶ 189 (S.D.N.Y. 2013)

• ruled that student with autism did not need an FBA under state law and absence of parent counseling and training alone was insufficient procedural violation to amount to denial of FAPE [tuition reimbursement case]

G.G. v. Dist. of Columbia, 2013 WL 620379, 60 IDELR ¶ 183 (D.D.C. 2013)

• ***519** ruled that district's child find failure to evaluate the child constituted a denial of FAPE

Pass v. Rollinsford Sch. Dist., 2013 WL 812371, 60 IDELR ¶ 214 (D.N.H. 2013)

• upheld substantive appropriateness of IEP, based on snapshot standard, for high school student with SLD in terms of both academic and social needs

T.B. v. Haverstraw–Stony Point Cent. Sch. Dist., 2013 WL 1187479, 60 IDELR ¶ __ (S.D.N.Y. 2013)

• ruled that IEP for second grader with ADHD, ODD, and PDD diagnoses was substantively appropriate based on careful review of the record in accordance with Second Circuit's decision in *M.H.*, thereby agreeing with RO's, not hearing officer's, decision

Dep't of Educ. v. S.C., 2013 WL 1336580, 61 IDELR ¶ 18 (D. Haw. 2013)

• ruled that IEP was not sufficiently individualized and was not the LRE for child with autism [tuition reimbursement case]

A.M. v. Dist. of Columbia, 2013 WL 1248999, 61 IDELR ¶ 21(D.D.C. 2013)

• rejected parent's pre–determination claim and ruled that IEP for student with SLD met substantive standard for FAPE [tuition reimbursement case]

Deer Valley Unified Sch. Dist. v. L.P., 2013 WL 1790320, 61 IDELR ¶ __ (D. Ariz. 2013)

• ruled that district's proposed placement of high–functioning student with autism in "special school" did not meet substantive standard for FAPE because the lack of interaction with peers at the same or higher level of verbal skills prevented meeting his IEP socialization goals, but rejected the parents' procedural, predetermination claim based on the designated IEP location [tuition reimbursement case]

C. Mainstreaming/LRE

Barron v. S. Dakota Bd. of Regents, 655 F.3d 787 [288 Ed.Law Rep. [35]] 57 IDELR ¶ 122 (8th Cir. 2011)

• rejected parents' claim that closing the state school for the Deaf violated FAPE and LRE, commenting that the "[t]he IDEA's integrated–classroom preference makes no exception for Deaf students" and that "the state is not required to make available 'the best possible option' "

L.G. v. Fair Lawn Bd. of Educ. (*supra*)

• upheld, via global application of *Oberti* that focused on substantive appropriateness (i.e., meaningful benefit), proposed continued placement of child with autism in specialized preschool program, which included 1:1 ABA services for half of the time and limited reverse–inclusion component, in comparison to parents' unilateral placement of the child in an inclusive preschool [tuition reimbursement case]

***520** *J.H. v. Fort Bend Indep. Sch. Dist.*, 482 Fed.Appx. 915 [286 Ed.Law Rep. [844]] 59 IDELR ¶ 122 (5th Cir. 2012)

• upheld, based primarily on first and second factors of *Daniel R.R.*, the IEP team's change in placement of middle school student with ID from 50% mainstreaming to self–contained special education class

D. Related Services and Assistive Technology

Petit v. U.S. Dep't of Educ., 675 F.3d 769 [278 Ed.Law Rep. [735]] 58 IDELR ¶ 241 (D.C. Cir. 2012)

• upheld 2006 IDEA regulation that cochlear implant mapping is not a related service

II. DISCIPLINE ISSUES

Jefferson Cnty. Bd. of Educ. v. S.B., 788 F.Supp.2d 1347 [272 Ed.Law Rep. [563]] 56 IDELR ¶ 300 (N.D. Ala. 2011)

• ruled, in context akin to a preliminary injunction, that the IDEA did not require district to treat student with a disability (who had been expelled for gun possession after a determination that this conduct was not a manifestation of his disability) differently from nondisabled students who were not allowed to: (1) return to the same school for a semester after the expulsion or (2) participate in graduation ceremony

Fisher v. Friendship Pub. Charter Sch., 857 F.Supp.2d 64 [284 Ed.Law Rep. [120]] 58 IDELR ¶ 287 (D.D.C. 2012)

• district violated IDEA by not providing FAPE, via an alternative placement, to a student with OHI (ADHD) expelled for use of marijuana that was not a manifestation of his disability

Garmany v. Dist. of Columbia, 2013 WL 1291289, 60 IDELR ¶ 15 (D.D.C. 2013)

• ruled that parents failed to prove that the district's in–school suspension of student with SLD constituted a failure to implement the IEP—standard is substantial departure, and parents did not show that the IEP precluded any punishment options other than the BIP's listed consequences

III. FINANCIAL ISSUES

A. Attorney's Fees

I. Eligibility

Henry v. Friendship Edison P.C.S., 880 F.Supp.2d 5 [287 Ed.Law Rep. [896]] (D.D.C. 2012)

• although hearing officer ultimately ordered a psychological evaluation, the parents were not entitled to attorneys' fees where they never requested an evaluation and had refused the district's offer of an evaluation at resolution meeting

***521** *2. "Prevailing"*

McCrary v. Dist. of Columbia, 791 F.Supp.2d 191 [273 Ed.Law Rep. [169]] 56 IDELR ¶ 291 (D.D.C. 2011)

• prevailing status for an award of attorneys' fees (in the D.C. Circuit) requires not only an adjudicative

change in the parties' legal relationship, but also adjudicative relief

Alief Indep. Sch. Dist. v. C.C., 655 F.3d 412 [272 Ed.Law Rep. [797]] 57 IDELR ¶ 151 (5th Cir. 2011)

• district's filing for an impartial hearing first does not preclude recovery of attorneys' fees if they prove the parents' subsequent filing for a hearing was for an improper purpose

Woods v. Northport Pub. Sch. (*supra*)

• upheld limiting award to pre–settlement hours amounting to $25k in attorneys' fees because although the parents were substantially justified in rejecting the settlement due to its failure to include attorneys' fees, the limitation was reasonable in light of the parents' limited success of the overly long and contentious administrative proceeding

J.G. v. Kiryas Joel Union Free Sch. Dist., 843 F.Supp.2d 394 [282 Ed.Law Rep. [170]] 59 IDELR ¶ 79 (S.D.N.Y. 2012)

• ruled that parents, who sought tuition reimbursement and won on LRE issue at Step 1 but lost overall based on Step 2, were not prevailing party but that their motion for attorneys' fees was not frivolous; thus, neither party was entitled to attorneys' fees

PILCOP v. Pocono Mountain Sch. Dist., 491 Fed.Appx. 316 [288 Ed.Law Rep. [581]] 59 IDELR ¶ 93 (3d Cir. 2012)

• parents' symbolic victory of the interpretation of “education records” did not entitle them to prevailing party status

W.V. v. Encinitas Union Sch. Dist., 289 F.R.D. 308 [291 Ed. Law Rep. [781]] 59 IDELR ¶ 289 (S.D. Cal. 2012)

• granted district's motion for Rule 11 sanctions of $2,500 against parent for pursuing IDEA case in bad faith (i.e., despite terms of the parties' settlement)

Doe v. Attleboro Pub. Sch., 2013 WL 1002249, 60 IDELR ¶ 247 (D. Mass. 2013)

• denied parents' request for attorneys' fees because they proceeded pro se (i.e., without an attorney) except for a brief period and district's corresponding request for attorneys' fees because parents' action was not frivolous

Smith v. Imagine Hope Cmty. Pub. Charter Sch., 2013 WL 1277875, 60 IDELR ¶ __ (D.D.C. 2013); *cf. M.R. v. Dist. of Columbia*, 841 F.Supp.2d 262 [281 Ed.Law Rep. [924]] 58 IDELR ¶ 102 (D.D.C. 2012) (private settlement that includes attorneys' fees is breach of contract case beyond jurisdiction of federal courts)

• held that private settlement with the local education agency (here, a charter school) reached before due process hearing did not qualify parents with prevailing party status for attorneys' fees

***522** *Genrette v. Options Pub. Charter Sch.*, 2013 WL 789102, 60 IDELR ¶ 216 (D.D.C. 2013)

• order for FBA but not for parents' other requests for private placement or compensatory education does not

suffice for prevailing party status for attorneys' fees

Alief Indep. Sch. Dist. v. C.C., 713 F.3d 268 [292 Ed.Law Rep. [67]] 61 IDELR ¶ 3 (5th Cir. 2013)

• parents who lost their case are not prevailing party entitled to attorneys' fees upon successfully defending district's request for recovery of their attorneys' fees

3. Scope

Rooths v. Dist. of Columbia, 802 F.Supp.2d 56 [274 Ed.Law Rep. [522]] (D.D.C. 2011)

• substantially reduced attorneys' fees from requested amount for five attorneys, including approximately halving of their requested hourly rates (e.g., $557–$569 for attorney with 11 years of litigation experience)

Ector Cnty. Indep. Sch. Dist. v. VB, 420 Fed.Appx. 338 [269 Ed.Law Rep. [65]] 56 IDELR ¶ 151 (5th Cir. 2011)

• district court did not abuse its discretion in determining that parents' refusal to attend IEP meeting to resolve their complaint did not unduly protract the proceedings, thus not warranting reduction in their $39k attorneys' fees award

E.S. v. Katonah–Lewisboro Sch. Dist., 796 F.Supp.2d 421 [273 Ed.Law Rep. [777]] 56 IDELR ¶ _231 (S.D.N.Y. 2010), *aff'd*, 487 Fed.Appx. 619, 59 IDELR ¶ 63 (2d Cir. 2012)

• reduced requested total from $289k to $157k based on unreasonable rates and unreasonable billing, but not for obtaining only one of two years of requested tuition reimbursement

A. " Damages"

1. Tuition Reimbursement

Lauren G. v. W. Chester Area Sch. Dist. (*supra*)

• denied tuition reimbursement where parents delayed in making the child available for evaluation

Covington v. Yuba City Unified Sch. Dist., 780 F.Supp.2d 1014 [270 Ed.Law Rep. [713]] 56 IDELR ¶ 37 (E.D. Cal. 2011)

• although ruled that district's IEP was not appropriate, denied tuition reimbursement on alternative grounds—inappropriateness of the parents' unilateral placement and their lack of timely notice

Forest Grove v. T.A., 638 F.3d 1234 [267 Ed.Law Rep. [22]] 56 IDELR ¶ 185 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1145 (2012)

• ***523** on remand from Supreme Court, denied tuition reimbursement based on the equities (lack of timely notice and, more significantly, reason for the unilateral placement)

C.B. v. Special Sch. Dist. No 1, 636 F.3d 981 [266 Ed.Law Rep. [71]] 56 IDELR ¶ 187 (8th Cir. 2011)

Weaver v. Millbrook Cent. Sch. Dist., 812 F.Supp.2d 514 [276 Ed.Law Rep. [284]] 57 IDELR ¶ 126 (S.D.N.Y. 2011)

• upheld, with due deference, RO's determination that parent's private placement was not appropriate

W.M. v. Lakeland Cent. Sch. Dist., 783 F.Supp.2d 497 [271 Ed.Law Rep. [233]] 57 IDELR ¶ 137 (S.D.N.Y. 2011)

• granted partial tuition reimbursement based on balancing of the equities

P.K. v. New York City Dep't of Educ., 819 F.Supp.2d 90 [277 Ed.Law Rep. [941]] 57 IDELR ¶ 139 (E.D.N.Y. 2011)

• upheld direct retroactive payment of tuition after finding that the proposed IEP for preschool child with autism lacked sufficient specially designed instruction (1:1 ABA) and related services (speech therapy and parent training per state regulation) and that the parent's unilateral placement was appropriate

Moorestown Twp. Bd. of Educ. v. S.D. (*supra*)

• pro–rated tuition reimbursement as of the date the district knew it should have provided an IEP

J.S. v. Scarsdale Union Free Sch. Dist. (*supra*)

• reduced tuition reimbursement by 75% based on detailed balancing of the equities, including parent's lack of timely notice (after ruling that the district's proposed placement was not, and parent's unilateral placement was, appropriate)

G.R. v. Dallas Sch. Dist., 823 F.Supp.2d 1120 [278 Ed.Law Rep. [951]] 57 IDELR ¶ 223 (D. Or. 2011)

• denied tuition reimbursement where the unilateral residential placement was not (and the district's proposal was) appropriate

Dep't of Educ., State of Hawaii v. M.F. (supra)

• remanded for determination of tuition reimbursement, if any, depending on the equities including lack of timely written notice

***M.B. v. Hamilton Se. Sch.* (*supra*)**

• concluded that parents' reliance on the general information and good reputation of the unilateral placement (Lindamood Bell Center) and the successful performance of the child upon moving to another district was insufficient to prove appropriateness at the second step of tuition reimbursement analysis

***524** *N.T. v. Dist. of Columbia*, 839 F.Supp.2d 29 [281 Ed.Law Rep. [452]] 58 IDELR ¶ 69 (D.D.C. 2012)

• denied tuition reimbursement where district could provide an appropriate placement and the unilateral

placement, in comparison, was not the LRE

T.B. v. St. Joseph Sch. Dist., 677 F.3d 844 [279 Ed.Law Rep. [572]] 58 IDELR ¶ 242 (8th Cir. 2012)

• denied tuition reimbursement where basis of parent's FAPE challenge was the district's failure to develop IEPs after the unilateral placement of the child with autism in a home–based program and, alternatively, their home–based program was not reasonably calculated to meet the child's educational needs (per department of mental health waiver that the program would not supplant district's special education services)

Ka.D. v. Nest, 475 Fed.Appx. 658 [282 Ed.Law Rep. [877]] 58 IDELR ¶ 244 (9th Cir. 2012), *cert. denied*, 133 S.Ct. 650, 184 L.Ed.2d 458 (2012)

• upheld tuition reimbursement for child with autism, concluding that the district's placement in the general education class was a denial of FAPE in the LRE and that the unilateral placement in a private school was appropriate

R.S. v. Lakeland Cent. Sch. Dist., 471 Fed.Appx. 77, 59 IDELR ¶ 32 (2d Cir. 2012)

• denied tuition reimbursement where, based on lack of evidence of student's progress and its failure to address student's unique needs, the private school program was not appropriate

M.H. v. New York City Dep't of Educ., 685 F.3d 217 [282 Ed.Law Rep. [37]] 59 IDELR ¶ 62 (2d Cir. 2012)

• upheld $80,000 tuition reimbursement for kindergarten child with autism based on finding that child needed extensive 1:1 discrete–trial ABA services, which district's proposed 6:1 placement did not provide and which conformed to LRE consideration for the parent's unilateral private placement—deference to IHO rather than RO where “more thorough and careful reasoning”

Fisher v. Friendship Pub. Charter Sch. (*supra*)

• ruled that timely notice requirement does not apply to district denial of FAPE in the wake of an expulsion

• upheld reimbursement for second year based on progress in private school (and equitable considerations)

• upheld reimbursement for tutoring expenses for uncooperative, actively litigious parents when district's failure to proceed with IEP process was equally or more inequitable

S.H. v. Plano Indep. Sch. Dist. (*supra*)

• ***525** upheld substantial reduction of tuition reimbursement to a few ESY weeks based on effects of state dual enrollment law and corrective IEP

R.E. v. New York City Dep't of Educ. (*supra*)

• granted tuition reimbursement based on all three steps, including justifiable excusal for late notice, for

student with autism

Coventry Pub. Sch. v. Rachel J. (*supra*)

• ruled that out–of–state residential, therapeutic placement was appropriate for student with emotional and learning disabilities in tuition reimbursement context

Aaron P. v. State of Hawaii, Dep't of Educ. (*supra*)

• upheld appropriateness of autism–specific unilateral placement and non–reduction of tuition reimbursement based on parental conduct (i.e., not unreasonable or in bad faith)

Upper Freehold Reg'l Bd. of Educ. v. T.W., 496 Fed.Appx. 238 [290 Ed.Law Rep. [23]] 59 IDELR ¶ 215 (3d Cir. 2012)

• ruled that impasse after parents' active participation was not grounds for equitable reduction of tuition reimbursement (distinguishing *Cape Henlopen*), remanding for multi–step determination of whether parents were entitled to this requested remedy

T.M. v. Kingston City Sch. Dist., 891 F.Supp.2d 289 [289 Ed.Law Rep. [747]] 59 IDELR ¶ 254 (N.D.N.Y. 2012)

• ruled that parent was not entitled to tuition reimbursement where (1) student earned, though had not received, high school diploma at the time of the unilateral placement (thus, no longer eligible) and (2) the parents withheld the previous private school's transcript, which unreasonably prevented determination of the student's graduation status

Lauren G. v. W. Chester Area Sch. Dist. (*supra*)

• denied tuition reimbursement under IDEA based on equitable considerations—parents' failure to cooperate for timely evaluation (but granted it under § 504 *infra*)

Jefferson Cnty. Sch. Dist. R–1 v. Elizabeth E., 702 F.3d 1227 [288 Ed.Law Rep. [65]] 60 IDELR ¶ 91 (10th Cir. 2012)

• ruled that child with ED was entitled to reimbursement, at Step 2, for the residential placement under "straightforward application" of IDEA for accredited education facility plus mental health support as related services (here not challenged in terms of the medical–services exception)

B.R. v. New York City Dep't of Educ. (*supra*)

• ruled that parent was entitled to reimbursement of $92k annual tuition for day–school for child with autism based on the equities—although parents made clear their desire to keep the child at the private school, they cooperatively participated at every step of the district's belated placement process

D.D–S. v. Southold Union Sch. Dist.,——Fed.Appx.——, 60 IDELR ¶ 94 (2d Cir. 2012)

• ***526** affirmed denial of tuition reimbursement for child with SLD based on inappropriateness, including restrictiveness, of residential placement

C.L. v. Scarsdale Union Free Sch. Dist.,——F.Supp.2d——, 60 IDELR ¶ 103 (S.D.N.Y. 2013)

• upheld denial of tuition reimbursement, ruling that evidence of progress alone is not sufficient to show appropriateness of the unilateral placement due to LRE [FN13]

M.N. v. State of Hawaii Dep't of Educ., 2013 WL 601816, 60 IDELR ¶ 181 (9th Cir. 2013)

• upheld denial of tuition reimbursement for child with autism who received a "meager" educational benefit after a year in a private ABA–based program

G.G. v. Dist. of Columbia (*supra*)

• ruled that the parents' unilateral placement and hearing–filing in the wake of a child find violation did not equitably eliminate the district's reimbursement obligation at least where the district did not have an appropriate placement at those times

Latynski–Rossiter v. Dist. of Columbia, 2013 WL 794090, 60 IDELR ¶ 215 (D.D.C. 2013)

• ruled that transfer of rights at age 18 does not extinguish parent's standing to pursue tuition reimbursement, at least when the claim accrued before the transfer

L.K. v. Ne. Sch. Dist., 2013 WL 1149065, 60 IDELR ¶ 286 (S.D.N.Y. 2013)

• upheld denial of tuition reimbursement where the parent did not meet burden of proof that the private school's program was reasonably calculated to meet the child's unique needs based on services and progress

Dep't of Educ. v. S.C. (*supra*)

• reduced reimbursement 50% due based on the equities—good faith efforts of district and unreasonable conduct of parent that tainted collaborative process, e.g., failed to raise issue of inclusion until the hearing

Blount Cnty. Bd. of Educ. v. Bowens, 2013 WL 839897, 60 IDELR ¶ 281 (N.D. Ala. 2013)

• roundly rejected district's equity claims, including lack of timely notice, where district knew of and acquiesced, even approved, of parents' placement

Deer Valley Unified Sch. Dist. v. L.P. (*supra*)

• parent's unilateral placement met *Rowley* "floor of opportunity" standard

***527** *2. Compensatory Education*

Walker v. Dist. of Columbia, 786 F.Supp.2d 232 [272 Ed.Law Rep. [192]] 56 IDELR ¶ 258 (D.D.C. 2011)

• remanded to IHO to determine whether 5–year–old boy with physical impairments, who progressed physically despite district's failure to provide PT services, was entitled to compensatory PT

French v. New York State Educ. Dep't, 476 Fed.Appx. 468 [283 Ed.Law Rep. [821]] 57 IDELR ¶ 241 (2d Cir. 2011)

• rejected compensatory education where gross denial of FAPE was due to parent's obstructionist actions rather than district's procedural violations

Dep't of Educ., State of Hawaii v. M.F. (*supra*)

• remanded to apply the equities to compensatory education (not only tuition reimbursement)

Brooks v. Dist. of Columbia, 841 F.Supp.2d 253 [281 Ed.Law Rep. [915]] 58 IDELR ¶ 103 (D.D.C. 2012)

• obligation to provide compensatory education continues, rather than is moot, upon the student's graduation

T.G. v. Midland Sch. Dist. (*supra*)

• upheld specified reading/writing services, including order for evaluator, under deferential qualitative approach (but parent challenged the award, seeking more)

Woods v. Northport Pub. Sch. (*supra*)

• upheld 758–hour compensatory education award for two–year denial of FAPE (12 hours for each of 64 weeks of denial) for the child to "reasonably recover" in light of potentially closing window of opportunity, plus upheld requirement that the delivery be via a teacher with autism certification due to this provision in the IEP

Ravenswood City Sch. Dist. v. J.S. (*supra*)

• upheld, as compensatory education, placement at unapproved private school for three years, including summers, and 600 hours of tutoring for three–year denial of FAPE

Cousins v. Dist. of Columbia, 880 F.Supp.2d 142 [287 Ed.Law Rep. [901]] 59 IDELR ¶ 125 (D.D.C. 2012)

• reversed IHO's award of no compensatory education, concluding instead that the experts had provided sufficient evidence for each of the *Reid* factors for the qualitative approach

D.F. v. Collingswood Borough Bd. of Educ., 694 F.3d 488 [284 Ed.Law Rep. [659]] 59 IDELR ¶ 211 (3d Cir. 2012)

• ruled that move out of state does not moot the issue of compensatory education, but remanded the matter to determine whether denial of FAPE and, if so, amount of compensatory education

L.R.L. v. Dist. of Columbia, 896 F.Supp.2d 69 [290 Ed.Law Rep. [818]] 59 IDELR ¶ 273 (D.D.C. 2012)

• ***528** ruled that student moving to another district does not moot the claim for compensatory education against the original district

Phillips v. Dist. of Columbia, 2013 WL 1189324, 60 IDELR ¶ 277 (D.D.C. 2013)

• upheld denial of compensatory education after extensive and expensive remand process based on ultimate conclusion that the child's "current difficulties do not stem from the original denial of a FAPE"

3. Tort–Type Damages

C.O. v. Portland Pub. Sch., 679 F.3d 1162 [280 Ed.Law Rep. [28]] 58 IDELR ¶ 272 (9th Cir. 2012), *cert. denied*, 133 S.Ct. 859, 184 L.Ed.2d 657 (2013)

• no compensatory damages under IDEA

VI. OTHER IDEA ISSUES

Compton Unified Sch. Dist. v. Addison, 598 F.3d 1181 [255 Ed.Law Rep. [20]] 54 IDELR ¶ 71 (9th Cir. 2010) *cert. denied*, 132 S.Ct. 996, 181 L.Ed.2d 732 (2012)

• rejected district's argument that child find claims are not cognizable due to the scope of the procedural safeguards and the lack of clear notice in the IDEA

Doe v. Todd Cnty. Sch. Dist., 625 F.3d 459 [262 Ed.Law Rep. [85]] 55 IDELR ¶ 185 (8th Cir. 2010), *cert. denied*, 132 S.Ct. 367, 181 L.Ed.2d 233 (2011)

• ruled school board's refusal to hold a hearing regarding disciplinary change in placement of student with disability after parent challenged or revoked her consent to the change did not violate 14th Amendment procedural due process—she should have resorted instead to IDEA IEP and impartial hearing processes

Lake Washington Sch. Dist. No. 414 v. Office of the Superintendent, 634 F.3d 1065 [265 Ed.Law Rep. [889]] 56 IDELR ¶ 61 (9th Cir. 2011)

• held that school district does not have standing to challenge state education department under the IDEA (in this case regarding enforcement of 45–day rule)

J.P. v. Anchorage Sch. Dist., 260 P.3d 285 [271 Ed.Law Rep. [1077]] 57 IDELR ¶ 169 (Alaska 2011)

• for child ultimately determined to be ineligible (because, although SLD, he did not need special education), upheld IEE reimbursement, based on child find theory where district delayed its evaluation and relied on the parent's IEE, but rejected tutoring reimbursement (due to noneligibility)

Nelson v. Dist. of Columbia, 811 F.Supp.2d 508 [276 Ed.Law Rep. [187]] 57 IDELR ¶ 192 (D.D.C. 2011)

• reversed and remanded the parts of the IHO's private placement order, in wake of denial of FAPE, that (1) effectively eliminated the district's representative on the IEP team, (2) required sufficient services/supports for ***529** student to graduate, and (3) effectively limited the team's duties to revise the IEP annually or as otherwise needed, and to change the placement of the student in accordance with LRE

DL v. Dist. of Columbia, 845 F.Supp.2d 1 [282 Ed.Law Rep. [308]] 57 IDELR ¶ 279 (D.D.C. 2012)

• ruled in class action case that district failed to provide proper transition from Part C to Part B and violated child find and FAPE for children ages 3–5

Orange Cnty. Dep't of Educ. v. California Dep't of Educ., 668 F.3d 1052 [277 Ed.Law Rep. [74]] 58 IDELR ¶ 1 (9th Cir. 2011)

• after state supreme court declined to answer this certified question, held that (1) the agency responsible for

funding a special education student's education at an out–of–state residential treatment facility is the school district in which the student's parent, as defined by 2007 and 2009 versions of applicable state legislation, resides, and (2) this special education student's former foster parent was student's parent under 2007 and 2009 versions of applicable statute though not under 2005 version

Los Angeles Unified Sch. Dist. v. Garcia, 669 F.3d 956 [277 Ed.Law Rep. [109]] 58 IDELR ¶ 62 (9th Cir. 2012)

• certified to state supreme court whether the state legislation generally providing that for qualifying children ages 18 to 22 the school district where child's parent resided was responsible for providing special education services applies to children incarcerated in county jails

N.D. v. State of Hawaii Dep't of Educ., 600 F.3d 1104 [255 Ed.Law Rep. [537]] 54 IDELR ¶ 111 (9th Cir. 2010), *vacated as moot*, 469 Fed.Appx. 570 [281 Ed.Law Rep. [40]] 58 IDELR ¶ 121 (9th Cir. 2012)

• systemwide layoffs that affect students with disabilities and those without disabilities alike are not changes in educational placement and thus are not subject to the IDEA stay–put provision

Council Rock Sch. Dist. v. Bolick, 462 Fed.Appx. 212 [279 Ed.Law Rep. [91]] 58 IDELR ¶ 122 (3d Cir. 2012)

• ruled that parents were not entitled to reimbursement of their IEE where the district's evaluation had been appropriate

Bryant v. New York State Educ. Dep't, 692 F.3d 202 [284 Ed.Law Rep.[1]] 59 IDELR ¶ 151 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 2022 (2013)

• ruled that state regulation banning aversives did not violate the IDEA, § 504, or the 14th Amendment (due process and equal protection clauses)

CG v. Pennsylvania Dep't of Educ., 888 F.Supp.2d 534 [289 Ed.Law Rep. [178]] 59 IDELR ¶ 192 (M.D. Pa. 2012)

• ruled that state's funding formula for special education did not violate IDEA, Equal Opportunity and Affirmative Action (EOAA), or § 504

D.K. v. Abington Sch. Dist. (*supra*)

• strictly construed the IDEA statute of limitations' exceptions and rejected the alternative of equitable tolling

***530** *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691 [287 Ed.Law Rep. [50]] 60 IDELR ¶ 30 (11th Cir. 2012)

• upheld the validity of the IDEA regulation providing for IEEs at public expense

Lauren G. v. W. Chester Area Sch. Dist. (*supra*)

• applied statute of limitations period in relation to when parents knew or had reason to know of the “injury”

Dist. of Columbia v. Pearson, 2013 WL 485666, 60 IDELR ¶ 194 (D.D.C. 2013)

• invalidated IHO remedial order in the absence of (1) issue/ruling of denial of FAPE and (2) reasonable evidentiary basis

Barton v. State Bd. of Educator Certification, 382 S.W.3d 405 [287 Ed.Law Rep. [562]] (Tex. App. 2012)

• reversed, on technical grounds, professional practice board's reprimand of principal who modified IEPs of various students with disabilities to improve No Child Left Behind test scores with oral consent but not prior written notice of their parents

VII. § 504/ADA ISSUES [FN14]

Williams v. Dist. of Columbia, 771 F.Supp.2d 29 [268 Ed.Law Rep. [866]] 56 IDELR ¶ 164 (D.D.C. 2011)

• alleged failure to comply with FAPE settlement did not rise to § 504 violation in the absence of bad faith or gross misjudgment

Dutkevitch v. Pa. Cyber Charter Sch., 439 Fed.Appx. 177 [273 Ed.Law Rep. [641]] 57 IDELR ¶ 32 (3d Cir. 2011), *vacatur denied*, 439 Fed.Appx. 177 [273 Ed.Law Rep. [641]] 59 IDELR ¶ 184 (3d Cir. 2012), *cert. denied*, 132 S.Ct. 1750, 182 L.Ed.2d 539 (2013)

• upheld dismissal of parent's § 504/ADA claim for money damages against school district and vocational–technical school, because their respective decisions not to recommend or admit the student, who had an IEP, was not based on his disability

Doe v. Big Walnut Sch. Dist. Bd. of Educ., 837 F.Supp.2d 742 [281 Ed.Law Rep. [292]] 57 IDELR ¶ 74 (S.D. Ohio 2011)

• rejected ADA (and 14th Amendment substantive due process) claim of parent on behalf of student with a disability who had been the target of bullying—lack of objective component of severe or pervasive element and of deliberate indifference

Chambers v. Sch. Dist., 827 F.Supp.2d 409 [279 Ed.Law Rep. [673]] 57 IDELR ¶ 216 (E.D. Pa. 2011)

• ruled that intentional discrimination (i.e., deliberate indifference) is required for money damages—distinct from other remedies—under § 504 or the ADA

***531** *Zachary M. v. Bd. of Educ.*, 829 F.Supp.2d 649 [279 Ed.Law Rep. [798]] 57 IDELR ¶ 244 (N.D. Ill. 2011)

• rejected various § 504 claims including alleged district policy denying 504 plans to students with good grades and, due to lack of proof of deliberate indifference, liability for money damages

A.B. v. Adams–Arapahoe 28J Sch. Dist., 831 F.Supp.2d 1226 [279 Ed.Law Rep. [913]] 58 IDELR ¶ 14 (D. Colo. 2011)

• preserved for trial § 504 money damages claim as whether district's use of restraint chair constituted

discrimination and, if so, whether district was deliberately indifferent to its use

A.M. v. New York City Dep't of Educ., 840 F.Supp.2d 660 [281 Ed.Law Rep. [854]] 58 IDELR ¶ 67 (E.D.N.Y. 2012), *aff'd sub nom. Moody v. New York City Dep't of Educ.*, 2013 WL 906110, 60 IDELR ¶ 211 (2d Cir. 2013)

• ruled that requested accommodation of heating up the homemade food of student with diabetes was preferential, not necessary, for meaningful access to lunch, and in any event the district was not deliberate indifferent—also rejected retaliation claim for lack of evidence and § 504 procedural claims based on harmless error approach

Weidow v. Scranton Sch Dist., 460 Fed.Appx. 181 [278 Ed.Law Rep. [879]] 58 IDELR ¶ 93 (3d Cir. 2012)

• rejected disability–harassment claim of former student with bipolar disorder for failure to prove its substantial limitation on social interaction (pre–ADAAA)

I.H. v. Cumberland Valley Sch. Dist. (*supra*)

• expert witness fees are available to prevailing parents under § 504

R.N. v. Cape Girardeau 63 Sch. Dist., 858 F.Supp.2d 1025 [284 Ed.Law Rep. [291]] 58 IDELR ¶ 193 (E.D. Mo. 2012)

• granted district's motion for summary judgment for § 504/ADA suit by student in wheelchair for Perthes Disease of the hip, which healed within 2–3 years, because student had failed to exhaust hearing under IDEA (although no IEP) and/or his impairment was not permanent or sufficiently long–term

D.B. v. Esposito (*supra*)

• ruled that § 504 (1) has additional FAPE element of "disability–based animus," thus not being coextensive with IDEA FAPE claim, and (2) like the ADA, provides for an independent retaliation claim—parent failed to prove either one in this case

Ridley Sch. Dist. v. M.R. (*supra*)

• ruled that 504 plan for child with food allergies (as well as SLD) provided reasonable accommodations and that parent's request to be allowed to prepare snacks for the entire class that met her dietary needs was a substantial modification, which is beyond § 504's scope

Sher v. Upper Moreland Sch. Dist., 481 Fed.Appx. 762 [286 Ed.Law Rep. [127]] 58 IDELR ¶ 273 (3d Cir. 2012)

• ***532** vacated and remanded denial of dismissal of parents' § 504 claim for money damages for discriminatory discipline—sufficient exhaustion and coverage

Preston v. Hilton Cent. Sch. Dist., 876 F.Supp.2d 235 [287 Ed.Law Rep. [289]] 59 IDELR ¶ 99 (W.D.N.Y. 2012)

• denied dismissal of parents' § 504 claim that district officials were deliberately indifferent to continuing

disability–based peer harassment

R.K. v. Bd. of Educ. of Scott Cnty., 494 Fed.Appx. 589 [289 Ed.Law Rep. [563]] 59 IDELR ¶ 152 (6th Cir. 2012)

• remanded for a factual record, via discovery, as to whether district's offer to provide nursing services, including insulin pump monitoring, to kindergarten child with Type I diabetes in another—rather than the parents' requested neighborhood school—was based on an individualized assessment (per the § 504 evaluation regulation)

I.A. v. Seguin Indep. Sch. Dist., 881 F.Supp.2d 770 [288 Ed.Law Rep. [121]] 59 IDELR ¶ 133 (W.D. Tex. 2012)

• dismissed ADA accessibility and § 504 accommodation claims of student with paraplegia for lack of deliberate indifference

Nixon v. Greenup Cnty. Sch. Dist., 890 F.Supp.2d 753 [289 Ed.Law Rep. [703]] 59 IDELR ¶ 215 (E.D. Ky. 2012)

• denied summary judgment based on factual issue whether incomplete implementation of § 504 plan for second grader with diabetes constituted deliberate indifference—same for retaliation claim

Lauren G. v. W. Chester Area Sch. Dist. (*supra*)

• granted tuition reimbursement under § 504 for residential placement in the wake of child find and eligibility violations, using the statute of limitation cut–off as a significant equitable consideration (and while denying the same relief under the IDEA for other equitable considerations)

Braden v. Mountain Home Sch. Dist., 903 F.Supp.2d 729 [292 Ed.Law Rep. [138]] 60 IDELR ¶ 16 (W.D. Ark. 2012)

• denied district's motion for summary judgment of parent's § 504 claim based on bullying and sexual assault of student with a disability by another student in middle–school alternative education program—genuine issue of bad faith or gross misjudgment

Greer v. Richardson Indep. Sch. Dist., 472 Fed.Appx. 287 [282 Ed.Law Rep. [101]] (5th Cir. 2012), *further proceedings*, 471 Fed.Appx. 336 [281 Ed.Law Rep. [814]] (5th Cir. 2012) (upheld attorney's fees sanctions under 28 U.S.C. § 1927 for unreasonable and vexatious conduct)

• held that district's provision of alternative seating section in front of or immediately adjacent to the general seating section met the ADA standard for program accessibility for “existing” structures

D.L. v. Baltimore City Bd. of Sch. Comm'rs, 706 F.3d 256 [289 Ed.Law Rep. [493]] 60 IDELR ¶ 121 (4th Cir. 2013)

• held that § 504 does not compel public schools to provide FAPE to children with disabilities in private schools (and that having a prerequisite ***533** that they enroll in public schools does not violate their First Amendment freedom of religion)

J.P.M. v. Palm Beach Cnty. Sch. Bd., 2013 WL 360043, 60 IDELR ¶ 158 (S.D. Fla. 2013)

• granted district's motion for summary judgment on § 504 liability claim of parent of student with autism allegedly subject to physical restraint 89 times (27 prone) in 14 months for aggressive and self–injurious behaviors—lack of intentional discrimination (i.e., deliberate indifference)

D.A. v. Meridian Joint Sch. Dist. No. 2, 2013 WL 588761, 60 IDELR ¶ 192 (D. Idaho 2013)

• denied district's motion for summary judgment of parent's § 504 liability claim based on bullying of student on 504 plan for high–functioning Asperger's Disorder (who sought IEE and eligibility under IDEA in separate proceeding)

Kimble v. Douglas Cnty. Sch. Dist. RE–1, 2013 WL 659109, 60 IDELR ¶ 221 (D. Colo. 2013)

• issued summary judgment for district that offered § 504 plan identical to the IEP the parent revoked, interpreting § 504 as permitting but not requiring district to offer other educational modification or accommodations [FN15]

Stewart v. Waco Indep. Sch. Dist., 711 F.3d 513 [290 Ed.Law Rep. [503]] 60 IDELR ¶ 241 (5th Cir. 2013)

• distinguishing between the two standards in the context of a § _504 peer harassment case, concluded that parent stated claim under gross misjudgment/bad faith but not under deliberate indifference

A.C. v. Shelby Cnty. Bd. of Educ., 711 F.3d 687 [290 Ed.Law Rep. [542]] 60 IDELR ¶ 271 (6th Cir. 2013)

• preserved for trial § 504 retaliation claims of parent who filed OCR complaint on behalf of elementary school child with peanut allergy, diabetes, and learning problems—genuine factual issues as to whether the principal's reporting of the parent for child abuse was retaliation for the parent's repeated requests for monitoring the child's glucose levels in the classroom rather than the school clinic

[FNa1] The views expressed are those of the authors and do not necessarily reflect the views of the publisher. Cite as 292 Ed.Law Rep. [505] (July 4, 2013).

[FN1]. The previous eleven updates appeared at 272 Ed. Law Rep. 709 (2011); 240 Ed. Law Rep. 503 (2009); 206 Ed. Law Rep. 501 (2006); 183 Ed. Law Rep. 35 (2004); 160 Ed. Law Rep. 1 (2002); 133 Ed. Law Rep. 323 (1999); 116 Ed. Law Rep. 1 (1997); 98 Ed. Law Rep. 1 (1995); 83 Ed. Law Rep. 543 (1993); 66 Ed. Law Rep. 901 (1991); 56 Ed.
Law Rep. 20 (1990). For an allied annotated outline on the overlapping federal law for students with disabilities, see Zirkel, *Section 504: Generation of Special Education*, 85 Ed. Law Rep. 601 (1993).
[FN2]. The limited exception is for the federal appeals court decisions published in West's FEDERAL APPENDIX.

[FN3]. A wider sample that includes but is not limited to these additional adjudicative rulings is available in LRP's Publications' INDIVIDUALS WITH DISABILITIES LAW REPORTS (IDELR). The limited exceptions herein are (1) in occasional footnotes for unpublished noteworthy rulings via further proceedings in the same case and (2) for the decisions published in West's FEDERAL APPENDIX. For the readers' convenience, the entries herein include parallel citations to the West and IDELR series.

[FN4]. The coverage of attorneys' fees is limited to a more modest sampling of the published decisions representing trends of a broader interest, because they are so numerous and of less immediate interest to the primary audience.

[FN5]. For example, tuition reimbursement cases that are ended at the first, appropriateness step are listed under "Appropriate Education," whereas those decided at the other steps are listed under "Tuition Reimbursement."

[FN6]. 20 U.S.C §§ 1401 *et seq.* (2010).

[FN7]. 29 U.S.C §§ 794 (2010).

[FN8]. 42 U.S.C §§ 12101 *et seq.* (2010).

[FN9]. The IDEA regulations refer more specifically to "present levels of academic and functional performance." 34 C.F.R § 300.320(a)(1) (2012).

[FN10]. In an unpublished decision, the court remanded to the hearing officer the issue of the appropriateness of the offered IEP, while rejecting the parents' remaining claims. *I.H. v. Cumberland Valley Sch. Dist.*, 59 IDELR ¶ 138 (M.D. Pa. 2012).

[FN11]. In an unpublished decision, the Ninth Circuit subsequently vacated this ruling as moot in light of Hawaii's change in state law. *N.D. State of Hawaii Dep't of Educ.*, 58 IDELR ¶ 121 (9th Cir. 2012).

[FN12]. The parent failed in bringing a duplicate complaint. *L.F. v. Houston Indep. Sch. Dist.*, 488 Fed.Appx. 818, 60 IDELR ¶ 182 (5th Cir. 2012).

[FN13]. The court reasoned that "[the child] also could have progressed in a more mainstream environment.... The distinction is important, because presumably any student—disabled or not—would make progress in a small, nurturing, academic environment with a tailored curriculum." *Id*. at——. This case is currently on appeal at the Second Circuit.

[FN14]. For a comprehensive source, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) (available from LRP Publications, www.lrp.com).

[FN15]. For an unpublished decision that reached the same overall outcome but with different facts and a separate route, see *Lamkin v. Lone Jack C–6 Sch. Dist.*, 58 IDELR ¶ 197 (W.D. Mo. 2012). __
292 Ed. Law Rep. 505

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