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Commentary

SPECIAL EDUCATION LAW UPDATE XIII [a1]

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This annotated outline is the thirteenth in a series of special education law updates. [1] The entries consist of select special education court decisions (including denials of certiorari) issued since the last update. Per past practice, administrative adjudications [2] and court decisions that are not officially published [3] are excluded. Each entry consists of current, parallel citations from 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). A brief summary of relevant findings is presented below each citation. Consistent with the earlier updates in this series, the entries are grouped within five broad categories that, although only approximate and sometimes overlapping, [4] are of primary interest to educators, parents, and attorneys. Some categories are further divided to highlight specific subcategories of interest, including identification, free appropriate public education (FAPE), least restrictive environment (LRE), and the remedies of tuition reimbursement and compensatory education. Except for the attorneys' fees category, [5] the coverage within these boundaries is comprehensive. 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.

The major acronyms and abbreviations used in the case blurbs designate three source statutes: "IDEA" for the Individuals with Disabilities Education Act; [6] "§ 504" for Section 504 of the Rehabilitation Act; [7] and "ADA" for the Americans with Disabilities Act. [8] The other acronyms are from special education and its intersecting legalized field: ABA = applied behavior analysis; ADHD = attention deficit hyperactivity disorder; CAPD = Central Auditory Processing Disorder; BIP = behavior intervention plan; ESY = extended school year; ED = emotional disturbance; FBA = functional behavior assessment; ID = intellectual disabilities; IEE = independent educational evaluation; IEP = individual education program; IHO = impartial hearing officer; LRE = least restrictive environment; OHI = other health impairment; OSEP = Office of Special Education Programs; OT = occupational therapy; PT = physical therapy; RTI = response to intervention; SLD = specific learning disabilities; SLI = speech and language impairment; SLT = speech and language therapist; SRO = state review officer; and Tourette Syndrome = TS.

Overall, the contents for this latest update reveal the following continuing trends: (1) increasing focus on peer harassment and bullying claims under § 504 and IDEA; (2) skewing of outcomes in favor of districts; (3) growing number of § 504 claims by students who are also eligible under IDEA; (4) continued prevalence of autism in FAPE–related decisions, despite their lower prevalence in the total population; (5) continued attention, although with mixed results, to reverse attorney fees claims by districts for frivolous or improper claims, and (6) continued predominance of a limited number of jurisdictions. [9] The contents also reveal these possible new or different trends: (1) appearance in all categories of claims of students with mental health issues (e.g., anxiety, depression, and suicidal tendencies) under IDEA and § 504; (2) initiation of new FAPE claim, primarily in New York, targeting capacity of schools to implement the IEP; (3) reduction of discipline claims but renewed focus on mainstreaming/LRE; and (4) increased claims based on the lack of parent training and inappropriate teacher–student ratios in determining FAPE. [10]

I. DIAGNOSIS AND PLACEMENT

A. Identification

M.A. v. Torrington Bd. of Educ., 980 F.Supp.2d 245 [304 Ed.Law Rep. 384], 62 IDELR ¶ 28 (D. Conn. 2013)

• ruled that district violated child find, per *Forest Grove*,[11] but that the child, who had diagnoses of asthma and various serious allergies (e.g., mold), was not eligible as OHI due to lack of need for special education, thus denying tuition reimbursement but leaving the remedy question open for supplemental briefs [tuition reimbursement case[12]

M.M. v. N.Y.C. Dep't of Educ., 26 F.Supp.3d 249 [311 Ed.Law Rep. 792], 63 IDELR ¶ 156 (S.D.N.Y. 2014)

• ruled that high school student with psychiatric problems who had good but declining grades, long absences, and insufficient credits to move to the next grade qualified as ED [tuition reimbursement case]

E.M. v. Pajaro Valley Sch. Dist., 758 F.3d 1162 [307 Ed.Law Rep. 713], 63 IDELR ¶ 211 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 996 (2015)

• after previous appeals and remands, upheld district's determination, based on its severe discrepancy testing, that child was not eligible as SLD and—while deferring to OSEP's interpretation that a determination of eligibility under one classification does not preclude eligibility for the same or different diagnosis under another classification—also upheld district's determination that this child's CAPD did not meet the criteria for OHI (based insufficient evidence of limited alertness, without reaching the other two criteria—acute or chronic and adverse effect)

Jana K. v. Annville–Cleona Sch. Dist., 39 F.Supp.3d 584 [313 Ed.Law Rep. 702], 63 IDELR ¶ 278 (M.D. Pa. 2014)
• upheld child find claim under IDEA, concluding that 7th grader's behavior (e.g., nurse office visits and "cutting") and declining grades warranted district's evaluation and constituted denial of FAPE [compensatory education case]
Paul T. v. S. Huntington Union Free Sch. Dist., 14 N.Y.S.3d 627 [320 Ed.Law Rep. 373], 65 IDELR ¶ 273 (Sup. Ct., Suffolk Cnty. 2015)

• ruled that victim of bullying did not qualify as ED or OHI based on lack of adverse effect on educational performance–also rejected child find claim

Dep't of Educ., State of Haw. v. Patrick P., 609 Fed.Appx. 509, 65 IDELR ¶ 285 (9th Cir. 2015)

• upheld determination that student who was performing well in his Tier I, or core classes, was not eligible as SLD based on first of two applicable criteria—severe discrepancy or inadequate achievement

D.A. v. Meridian Joint Sch. Dist. No. 2, 618 Fed.Appx. 891 [323 Ed.Law Rep. 711], 65 IDELR ¶ 286 (9th Cir. 2015)

• upheld, in brief opinion, district's determination that high–functioning high school student with Asperger's disorder was not eligible under the IDEA [13]

Indep. Sch. Dist. No. 413 v. H.M.J., 123 F.Supp.3d 1100 [327 Ed.Law Rep. 213], 66 IDELR ¶ 41 (D. Minn. 2015)

• upheld IHO's finding of child find violation requiring added evaluation (not compensatory education) for a child with cancer who was struggling in school likely due to excessive absenteeism and who had a diagnosis of general anxiety disorder—the district's evaluation, which found the student ineligible as OHI, lacked a medical evaluation

Q.W. v. Bd. of Educ. of Fayette Cnty., 630 Fed.Appx. 580 [327 Ed.Law Rep. 639], 66 IDELR ¶ 212 (6th Cir. 2015) *cert. denied*, 136 S.Ct. 1729 (2016)

• upheld exiting of high–functioning elementary school student with autism eligible under the IDEA, deferring to evaluation demonstrating his "academic success, an absence of significant social difficulties at school, and a disconnect between his school–based success and at–home problems"

R.E. v. Brewster Cent. Sch. Dist., __ F.Supp.3d __, 67 IDELR ¶ 214 (S.D.N.Y. 2016)

• rejected parent's child find claim in the wake of private diagnoses (e.g., TS) where student had § 504 plan, good grades, and proficiency on state testing

Horne v. Potomac Preparatory P.C.S., __ F.Supp.3d __, 68 IDELR ¶ 38 (D.D.C. 2016)

• upheld child find and eligibility (as ED) of first grader in wake of suicide attempt by jumping out of school window

Doe v. Cape Elizabeth Sch. Dist., __ F.3d __, 68 IDELR ¶ 61 (1st Cir. 2016)

• vacated and remanded ruling that child was ineligible as SLD, requiring reconsideration under prong 1 to determine whether competing general education performance (high) sufficiently counterweight specific fluency performance (weak), leaving open questions of prong 2 (need for special education) and state law differences for SLD under severe discrepancy approach

B. Appropriate Education/FAPE

Torda v. Fairfax Cnty. Sch. Bd., 517 Fed.Appx. 162, 61 IDELR ¶ 4 (4th Cir. 2013), *cert. denied*, 134 S.Ct. 1538 (2014)

• rejected claim that failure to evaluate CAPD of child with ID amounted to denial of FAPE where 1) failure to prove that child has CAPD separable from his ID; 2) parent prevented the challenged reevaluation; and 3) district properly accommodated and remediated any auditory processing deficits [compensatory education case]

D.W. v. Milwaukee Pub. Sch., 526 Fed.Appx. 672 [297 Ed.Law Rep. 756], 61 IDELR ¶ 32 (7th Cir. 2013)

• upheld substantive appropriateness of IEP of ninth grader with ID despite student's low grades, which were based on objective criteria for all ninth graders

J.T. v. Dumont Pub. Sch., 533 Fed.Appx. 44 [299 Ed.Law Rep. 47], 61 IDELR ¶ 33 (3d Cir. 2013)

• upheld procedural and substantive appropriateness of placement of student with autism in inclusionary kindergarten in non–neighborhood school (and same outcome under § 504) [14]

Doug C. v. Haw. Dep't of Educ., 720 F.3d 1038 [295 Ed.Law Rep. 480], 61 IDELR ¶ 91 (9th Cir. 2013)

• held that district denied FAPE to student with autism where it held IEP meeting without parent even though parent actively sought to reschedule the meeting for a time soon after the deadline and, though apparently not essential, the parent's absence resulted in the strong likelihood that the private placement was not sufficiently considered [tuition reimbursement case]

R.G. v. Downingtown Area Sch. Dist., 528 Fed.Appx. 153 [298 Ed.Law Rep. 134], 61 IDELR ¶ 93 (3d Cir. 2013)

• upheld substantive appropriateness of proposed IEP for second grader with rare neurological disorder based on testimony of speech–language therapist that her IEP services would be individualized [tuition reimbursement case]

W.K. v. Harrison Sch. Dist., 509 Fed.Appx. 565, 61 IDELR ¶ 123 (8th Cir. 2013)

• rejected procedural challenge to IEP, concluding that parents' knowledge of child's aggressive behaviors mitigated failure to provide proper notice for safety–related IEP meeting [tuition reimbursement case]

James v. Dist. of Columbia, 949 F.Supp.2d 134 [299 Ed.Law Rep. 873], 61 IDELR ¶ 141 (D.D.C. 2013)

• ruled that the district's proposed reassignment of student to "substantially and materially similar placement" did not require parental participation and that this placement met the appropriateness standard—"one which can implement a student's IEP and meet his specialized educational and behavioral needs" [tuition reimbursement case]

D.C. v. N.Y.C. Dep't of Educ., 950 F.Supp.2d 494 [299 Ed.Law Rep. 943], 61 IDELR ¶ 25 (S.D.N.Y. 2013)

• ruled that district's proposed placement was not substantively appropriate where the evidence that it would provide a seafood–free environment to 10–year–old with autism and seafood allergy were *R.E.*–excluded statements [15] of school officials after the parent's unilateral placement decision [tuition reimbursement case]

Horen v. Bd. of Educ., 948 F.Supp.2d 793 [299 Ed.Law Rep. 613], 61 IDELR ¶ 103 (N.D. Ohio 2013)

• ruled, in longstanding line of litigation with pro se parents of child with multiple disabilities, that 1) the parents failed to fulfill their duty to participate in the IEP process, thereby impeding the process "irredeemably" and accounting for lack of IEP, 2) they were responsible for their child's attendance,

and 3) district's offered placement in self–contained special education class as appropriate and the LRE

H.C. v. Katonah–Lewisboro Union Free Sch. Dist., 528 Fed.Appx. 64 [298 Ed.Law Rep. 129], 61 IDELR ¶ 121 (2d Cir. 2012)

• upheld substantive appropriateness of IEP for second grader with SLD despite growing gap from peers' achievement and lack of parents' preferred assistive technology [tuition reimbursement case]

Turner v. Dist. of Columbia, 952 F.Supp.2d 31 [300 Ed.Law Rep. 70], 61 IDELR ¶ 126 (D.D.C. 2013)

• rejected FAPE challenges based on lack of special education teacher on IEP team (nonprejudicial) and transition plan (moot) but ruled denial of FAPE based on total lack of implementation of special education services in general education classroom (based on *Van Duyn*[16]), remanded for compensatory education

W.H. v. Schuykill Valley Sch. Dist., 954 F.Supp.2d 315 [300 Ed.Law Rep. 192], 61 IDELR ¶ 133 (E.D. Pa. 2013)

• ruled that IEPs for child with SLI and behavioral issues were substantively appropriate and that district did not significantly impede parental opportunity of participation

V.M. v. N. Colonie Cent. Sch. Dist., 954 F.Supp.2d 102 [300 Ed.Law Rep. 155], 61 IDELR ¶ 134 (N.D.N.Y. 2013)

• rejected challenges of parent of student with Down Syndrome to successive IEPs due to parent's repeated refusal to consent to reevaluation and, in any event, to insufficient proof of material non–implementation and of harm from lack of FBA [compensatory education case]

M.W. v. N.Y.C. Dep't of Educ., 725 F.3d 131 [296 Ed.Law Rep. 57], 61 IDELR ¶ 151 (2d Cir. 2013)

• upheld procedural and substantive appropriateness of district's proposed IEP for 9–year–old with autism, ADHD, and TS, including lack of FBA and parental counseling in violation of state law [tuition reimbursement case]

Munir v. Pottsville Sch. Dist., 723 F.3d 423 [295 Ed.Law Rep. 529], 61 IDELR ¶ 152 (3d Cir. 2013)

• ruled that the district's proposed IEP for high school student with ED was substantively appropriate, where it incorporated most of the recommendations of the private school's evaluation and where smaller classes and more emotional support were not necessary for meaningful benefits

K.L. v. N.Y.C. Dep't of Educ., 530 Fed.Appx. 81 [298 Ed.Law Rep. 692], 61 IDELR ¶ 184 (2d Cir. 2013)

• upheld substantive appropriateness of proposed IEP for child with autism, concluding that consideration of testimony about additional services the district "would have" provided does not invalidate an adjudicative decision under the IDEA where permissible evidence supports the IHO's or court's ruling [tuition reimbursement case]

A.M. v. N.Y.C. Dep't of Educ., 964 F.Supp.2d 270 [302 Ed.Law Rep. 114], 61 IDELR ¶ 214 (S.D.N.Y. 2013)

• rejected procedural challenges (e.g., lack of special education teacher on IEP team as nonprejudicial and predetermination unproven) and substantive challenges to proposed IEP for child with intellectual and learning disabilities, including application of "opening the door" and "on its face" evidentiary rules [tuition reimbursement case]

Tyler W. Upper Perkiomen Sch. Dist., 963 F.Supp.2d 427 [301 Ed.Law Rep. 777], 61 IDELR ¶ 218 (E.D. Pa. 2013)

• ruled that 1) evaluation was appropriate because, although it omitted some of his numerous diagnoses, it identified the child's individual needs; 2) the child's placement in a therapeutic day school was substantively appropriate and the LRE; but 3) the lack of implementation of the IEP while the child was in partial hospitalization was a denial of FAPE [compensatory education case]

R.C. v. Keller Indep. Sch. Dist., 958 F.Supp.2d 718 [301 Ed.Law Rep. 212], 61 IDELR ¶ 221 (N.D. Tex. 2013)

• ruled that IEP was substantively appropriate based on ED where additional classification of autism was not clear or necessary [tuition reimbursement case]

D.B. v. N.Y.C. Dep't of Educ., 966 F.Supp.2d 315 [302 Ed.Law Rep. 257], 61 IDELR ¶ 245 (S.D.N.Y. 2013)

• ruled that district's failure to conduct triennial reevaluation was not fatal procedural violation where the district had adequate evaluative data from other sources and that the proposed IEP was also substantively appropriate for the 12–year–old with autism [tuition reimbursement case]

N.K. v. N.Y.C. Dep't of Educ., 961 F.Supp.2d 577 [301 Ed.Law Rep. 630], 61 IDELR ¶ 252 (S.D.N.Y. 2013)

• rejected claims of procedural inappropriateness (e.g., lack of parent counseling/training per state law) and substantive inappropriateness (e.g., teacher–student ratio) of proposed IEP for student with multiple disabilities [tuition reimbursement case]

P.G. v. N.Y.C. Dep't of Educ., 959 F.Supp.2d 499 [301 Ed.Law Rep. 304], 61 IDELR ¶ 258 (S.D.N.Y. 2013)

• upheld the procedural appropriateness of proposed IEP and its substantive appropriateness except remanded to determine whether the teacher–student ratio, which the district raised in its opening statement and evidence, was appropriate [tuition reimbursement case]

Patterson v. Dist. of Columbia, 965 F.Supp.2d 126 [302 Ed.Law Rep. 135], 61 IDELR ¶ 278 (D.D.C. 2013)

• ruled that temporary imposition of inadequate transition plan was not prejudicial procedural violation where district cured it with appropriate transition services

Johnson v. Dist. of Columbia, 962 F.Supp.2d 263 [301 Ed.Law Rep. 742], 61 IDELR ¶ 286 (D.D.C. 2013)

• upheld substantive appropriateness of district's proposed program for student with ED [tuition reimbursement case]

K.S. v. Dist. of Columbia, 962 F.Supp.2d 216 [301 Ed.Law Rep. 723], 61 IDELR ¶ 291 (D.D.C. 2013)

• upheld substantive appropriateness of IEPs in 5th and 6th grade for student with SLD [tuition reimbursement case]

Dist. of Columbia v. Vinyard, 971 F.Supp.2d 103 [302 Ed.Law Rep. 1064], 62 IDELR ¶ 13 (D.D.C. 2013); *see also Dist. of Columbia v. Wolfire*, 10 F.Supp.3d 89 [309 Ed.Law Rep. 684], 62 IDELR ¶ 198 (D.D.C. 2014)

• ruled that district of residence was obligated to prepare an appropriate IEP for a parentally placed private school child upon notice of the parent's interest in enrolling the child but that the obligation extinguishes upon the parent's communicated decision to keep the child in the private placement

Jalloh v. Dist. of Columbia, 968 F.Supp.2d 203 [302 Ed.Law Rep. 618], 62 IDELR ¶ 18 (D.D.C. 2013)

• ruled that district's notice to both grandparents and mother of transfer of child with ED and ADHD due to school closing was proper; the IEP meeting with only the grandfather was not a denial of FAPE after due notice of the meeting to the grandmother and mother and upon no change in the IEP except the school; and that the new school was able to implement the IEP appropriately [tuition reimbursement case]

T.G. v. N.Y.C. Dep't of Educ., 973 F.Supp.2d 320 [303 Ed.Law Rep. 161], 62 IDELR ¶ 20 (S.D.N.Y. 2013)

• rejected claims of procedural inappropriateness (e.g., lack of FBA per state law and failure to discuss nonpublic placements) and substantive inappropriateness (e.g., teacher–student ratio) of proposed IEP for student with autism [tuition reimbursement case]

F.O. v. N.Y.C. Dep't of Educ., 976 F.Supp.2d 499 [304 Ed.Law Rep. 102], 62 IDELR ¶ 51 (S.D.N.Y. 2013)

• ruled that proposed IEP for child with autism and other disabilities was not reasonably calculated for benefit—insufficient attention to physician's testimony that autism was the child's primary area of need [tuition reimbursement case]

L.Y. v. Bayonne Bd. of Educ., 542 Fed.Appx. 139 [301 Ed.Law Rep. 56], 62 IDELR ¶ 71 (3d Cir. 2013)

• upheld resident district's proposed IEP and its right to file for an impartial hearing to challenge the charter school's placement of the child, upon its conclusion that it could no longer meet his special education needs appropriately, in an out–of–district private school

R.G. v. N.Y.C. Dep't of Educ., 980 F.Supp.2d 345 [304 Ed.Law Rep. 441], 62 IDELR ¶ 84 (E.D.N.Y. 2013)

• ruled that absence of regular education teacher on IEP team constituted a denial of FAPE for the lack of fair consideration of a mainstreamed placement for child with developmental delays, limiting the remedy to re–doing the program/placement process properly [tuition reimbursement case—IHO found private placement inappropriate but district had paid the tuition in the interim]

K.A. v. Fulton Cnty. Sch. Dist., 741 F.3d 1195 [301 Ed.Law Rep. 35], 62 IDELR ¶ 161 (11th Cir. 2013)

• ruled that district may amend the IEP at duly conducted IEP meeting even if the parent objects (and even with a deficient notice if not prejudicial to the parents)

Jenn–Ching Luo v. Baldwin Union Free Sch. Dist., 556 Fed.Appx. 1, 62 IDELR ¶ 162 (2d Cir. 2013)

• brief ruling that affirmed dismissal of alleged procedural violations where they did not deny the child with autism "the right to a [FAPE], deprive [him] of educational benefits, or unlawfully preclude [the parent] from participating in the decision–making process concerning his son's education"

Lofton v. Dist. of Columbia, 7 F.Supp.3d 117 [308 Ed.Law Rep. 959], 62 IDELR ¶ 175 (D.D.C. 2013)

• granted preliminary injunction to reinstate student in private placement per prior IEP because, in addition to significantly impeding the parent's participation, the public school placement could not implement the OT provision of the new IEP

F.L. v. N.Y.C. Dep't of Educ., 553 Fed.Appx. 2 [303 Ed.Law Rep. 825], 62 IDELR ¶ 191 (2d Cir. 2014)

• upheld substantive and procedural appropriateness of proposed IEP for student with autism, including use of retrospective testimony (i.e., not stated in the IEP) to explain, not add to, the IEP [tuition reimbursement case]

Caldwell Indep. Sch. Dist. v. L.P., 994 F.Supp.2d 811 [306 Ed.Law Rep. 772], 62 IDELR ¶ 192 (W.D. Tex. 2014), *aff'd mem.*, 551 Fed.Appx. 140 (5th Cir. 2014)

• ruled that district denied to student with multiple disabilities both via both obstructing parental participation (and "circling the wagons" in the employees' subsequent testimony) and not providing substantive FAPE in the LRE

S.M. v. Taconic Hills Cent. Sch. Dist., 553 Fed.Appx. 65, 62 IDELR ¶ 223 (2d Cir. 2014)

• short opinion that district's procedural violations in the proposed placement of student with autism at specialized day school did not result in denial of FAPE (e.g., district's "pendency" plan to provide IEP services after parent filed for hearing to challenge lack of openings at the proposed private school)

C.L. v. N.Y.C. Dep't of Educ., 552 Fed.Appx. 81, 62 IDELR ¶ 224 (2d Cir. 2014)

• short opinion deferring to IHO's—more well–reasoned than the SRO's—conclusion that district did not meet its burden to prove that the proposed 6:1:1 program would enable the child to learn new material [tuition reimbursement case—appropriateness of $125k private placement not at issue]

K.E. v. Dist. of Columbia, 19 F.Supp.3d 140 [310 Ed.Law Rep. 829], 62 IDELR ¶ 236 (D.D.C. 2014)

• ruled that district's failure to have completed IEP available on the first day of the school year was prejudicial procedural violation in the circumstances of this case, which included a "premature" but not unreasonable unilateral placement [tuition reimbursement case]

N.M. v. Cent. Bucks Sch. Dist., 992 F.Supp.2d 452 [306 Ed.Law Rep. 360], 62 IDELR ¶ 237 (E.D. Pa. 2014)

• upheld substantive appropriateness of successive IEPs for student with SLD and OHI (post–traumatic stress disorder and anxiety disorder), including reliance on teachers' progress reports when the student's test scores were mixed and response to bullying was reasonable though not optimal [tuition reimbursement case]

A.K. v. Gwinnett Cnty. Sch. Dist., 556 Fed.Appx. 790 [304 Ed.Law Rep. 749], 62 IDELR ¶ 253 (11th Cir. 2014), *cert. denied*, 135 S.Ct. 78 (2014)

• rejected pro se parent's proposed placement of student with severe autism in the home rather than in a specialized classroom based on the statutory preference for integration, including social benefits, and the district's ability to provide the special nonprescription diet for the child

G.W. v. Rye City Sch. Dist., 554 Fed.Appx. 56, 62 IDELR ¶ 254 (2d Cir. 2014)

• brief ruling that district's proposed IEP for first grader with SLI/SLD was substantively appropriate and district had not engaged in spoliation of e–mail evidence [tuition reimbursement case]

Porter v. Ill. State Bd. of Educ., 6 N.E.3d 424 [303 Ed.Law Rep. 476], 62 IDELR ¶ 267 (Ill. Ct. App. 2014)

• affirmed IHO's decision that the district's modified IEP for the elementary student with SLD, which provided for 25% time in a special education class and multi–sensory instruction, was appropriate rather than parent's proposed placement in a therapeutic day school, rejecting the predetermination claim and upholding the LRE rationale

C.F. v. N.Y.C. Dep't of Educ., 746 F.3d 68 [302 Ed.Law Rep. 901], 62 IDELR ¶ 281 (2d Cir. 2014)

• ruled that that the procedural violations in the proposed IEP, based on state law, of failing to provide for parent training and counseling and in producing an inappropriately vague BIP in the absence of an FBA combined with its substantive inadequacy of providing for a 6:1 student/teacher ratio, where child with autism clearly needed a 1:1 ratio, amounted to a denial of FAPE [tuition reimbursement case]

M.S. v. N.Y.C. Dep't of Educ., 2 F.Supp.3d 311 [308 Ed.Law Rep. 200], 62 IDELR ¶ 297 (E.D.N.Y. 2013)

• rejected procedural, substantive, and implementation challenges to proposed IEP for child with autism and found no fatal reliance on retrospective testimony [tuition reimbursement case]

A.G. v. Paso Robles Joint Unified Sch. Dist., 561 Fed.Appx. 642 [305 Ed.Law Rep. 685], 63 IDELR ¶ 2 (9th Cir. 2014)

• ruled that lack of general education teacher at IEP meeting, FBA–BIP per state law, and quantifiable present educational levels were harmless procedural violations in light of progress of student with SLD

T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145 [305 Ed.Law Rep. 29], 63 IDELR ¶ 31 (2d Cir. 2014). *But cf. A.L. v. Jackson Cnty. Sch. Bd.* (*supra*) (parent did not prove that alternative school was not the LRE, if it applies to ESY)

• ruled the IDEA's LRE requirement applies to ESY placements just as it does to school–year placements, but that the lack of an FBA–BIP and parent counseling training (both per state law) for child with autism were procedural violations that did not result in a substantive loss of education [tuition reimbursement case]

Scott v. N.Y.C. Dep't of Educ., 6 F.Supp.3d 424 [308 Ed.Law Rep. 914], 63 IDELR ¶ 43 (S.D.N.Y. 2014)

• ruled that the various procedural violations (e.g., failure to conform to state law standard for SLT for students with autism) did not individually or cumulatively result in substantive denial of FAPE but—disagreeing with the second tier for various evidentiary shortcomings—that the placement was not substantively appropriate [tuition reimbursement case]

B.K. v. N.Y.C. Dep't of Educ., 12 F.Supp.3d 343 [309 Ed.Law Rep. 977], 63 IDELR ¶ 68 (E.D.N.Y. 2014)

• ruled that the proposed IEP for eight–year old with autism was substantively appropriate and rejected the various procedural challenges as either unproven (e.g., predetermination and FBA/BIP) or nonprejudicial (lack of parent counseling/training [tuition reimbursement case]

L.M. v. E. Meadow Sch. Dist., 11 F.Supp.3d 306 [309 Ed.Law Rep. 777], 63 IDELR ¶ 71 (E.D.N.Y. 2014)

• ruled that the IEP for the five–year old with autism was substantively appropriate, resulting in progress when the parents pulled him out at noon each day and where their challenge was to the reasonableness of the IEP's feeding provision [tuition reimbursement case]

C.B. v. Garden Grove Unified Sch. Dist., 575 Fed.Appx. 796 [309 Ed.Law Rep. 194], 63 IDELR ¶ 122 (9th Cir. 2014)

• rejected procedural challenges to IEP (e.g., absence of certain goals and of accommodations section) and upheld substantive appropriateness of interim small–group placement of child with autism who previously received 1:1 services

C.U. v. N.Y.C. Dep't of Educ., 23 F.Supp.3d 210 [311 Ed.Law Rep. 170], 63 IDELR ¶ 126 (S.D.N.Y. 2014)

• ruled that district failed to provide parents of 15–year–old with autism with meaningful opportunity for participation by not providing them with 1) copy of IEP in timely manner and 2) relevant information (e.g., resources adequate to implement the IEP) about the school placement (i.e., process, not necessarily site, of school selection), although rejected other procedural challenges and substantive challenge [tuition reimbursement case]

McAllister v. Dist. of Columbia, 45 F.Supp.3d 72 [314 Ed.Law Rep. 612], 63 IDELR ¶ 130 (D.D.C. 2014)

• upheld IHO's rejection of parent's FAPE separate claims based respectively on 1) IHO's broad discretion in weighing of the testimony and 2) complaint's failure to put district on reasonable notice

V.S. v. N.Y.C. Dep't of Educ., 25 F.Supp.3d 295 [311 Ed.Law Rep. 612], 63 IDELR ¶ 162 (S.D.N.Y. 2014)

• ruled that district's "bait and switch" regarding proposed site for IEP for student with autism was a denial of FAPE in terms of parental opportunity for meaningful participation [tuition reimbursement case]

E.M. v. N.Y.C. Dep't of Educ., 758 F.3d 442 [307 Ed.Law Rep. 639], 63 IDELR ¶ 181 (2d Cir. 2014)

• remanded case where lower adjudications relied on extrinsic evidence, i.e., information not provided in the IEP, in determining that the proposed IEP for child with autism was appropriate [tuition reimbursement case]

R.L. v. Miami Dade Cnty. Sch. Bd., 757 F.3d 1173 [307 Ed.Law Rep. 596], 63 IDELR ¶ 182 (11th Cir. 2014)

• ruled that district denied FAPE for high school student with developmental and digestive disorders not only substantively (e.g., IEP shortcomings for stress management and reading comprehension) but also procedurally (specifically, predetermination for not evidencing open mind receptive and responsive to parents' position) [tuition reimbursement and compensatory education case]

Reyes v. N.Y.C. Dep't of Educ., 760 F.3d 211 [308 Ed.Law Rep. 57], 63 IDELR ¶ 244 (2d Cir. 2014)

• ruled that IEP for child with autism did not meet substantive standard for FAPE without additional services and that review officer's reliance on testimony about modifying the IEP to provide these services mid–year was improper (based on Second Circuit's modified four–corners rule) [tuition reimbursement case—remanded for remaining steps]

Blount Cnty. Bd. of Educ. v. Bowens, 762 F.3d 1242 [308 Ed.Law Rep. 609], 63 IDELR ¶ 243 (11th Cir. 2014)

• upheld ruling, in case of child with autism upon transitioning from Part C (early intervention), that district offered "inadequate option[s] and [attempted to] wash its hands of its obligations" by acquiescing to the private placement [tuition reimbursement case]

Marcus I. v. Dep't of Educ., 583 Fed.Appx. 753 [311 Ed.Law Rep. 35], 63 IDELR ¶ 245 (9th Cir. 2014)

• upheld rulings that any procedural violation with regard to notice of the proposed placement for student with autism was harmless in this case and that the proposed placement could have implemented the IEP, but remanded for consideration of reimbursement claim for housing expenses

A.S. v. N.Y.C. Dep't of Educ., 573 Fed.Appx. 63, 63 IDELR ¶ 246 (2d Cir. 2014)

• upheld procedural and substantive appropriateness of proposed IEP, including the TEACCH® methodology, for child with autism despite parents' preference for ABA–based program [tuition reimbursement case]

M.M. v. Lafayette Sch. Dist., 767 F.3d 842 [309 Ed.Law Rep. 155], 64 IDELR ¶ 31 (9th Cir. 2014)

• ruled that the district, which used RTI to corroborate the severe–discrepancy SLD evaluation, violated the IDEA's procedural requirements by failing to have the IEP team document and carefully

consider the RTI data and to provide the data to the parents, preventing parents from meaningful participation in the IEP process

Coleman v. Pottstown Sch. Dist., 581 Fed.Appx. 141 [310 Ed.Law Rep. 673], 64 IDELR ¶ 33 (3d Cir. 2014) [17]

• upheld appropriateness of IEP for high school student with ED, both substantively (e.g., sufficient 1:1 instruction) and procedurally (e.g., lack of FBA and progress monitoring) [compensatory education and tuition reimbursement case]

Jefferson Cnty. Bd. of Educ. v. Lolita S., 581 Fed.Appx. 760 [310 Ed.Law Rep. 686], 64 IDELR ¶ 34 (11th Cir. 2014)

• ruled that IEP for teenager with SLD was not substantively appropriate in terms of reading (including stock goals) and transition skills [compensatory education case]

R.K. v. Clifton Bd. of Educ., 587 Fed.Appx. 17 [312 Ed.Law Rep. 65], 64 IDELR ¶ 96 (3d Cir. 2014)

• ruled that even if the district's refusal to provide parents with copy of consultant's report evaluating the system's ABA program and to allow their expert to observe the child's class were procedural violations, neither refusal deprived them of their opportunity for meaningful participation in the IEP and IHO process

S.S. v. Dist. of Columbia, 68 F.Supp.3d 1 [318 Ed.Law Rep. 230], 64 IDELR ¶ 72 (D.D.C. 2014)

• while recognizing lack of uniform specific standard, rejected denial of FAPE claim based on bullying because the bullying was not of sufficient severity to deny the child access and the child's lack of progress was due to absenteeism, not school avoidance due to bullying

P.L. v. N.Y.C. Dep't of Educ., 56 F.Supp.3d 147 [316 Ed.Law Rep. 180], 64 IDELR ¶ 100 (E.D.N.Y. 2014)

• ruled that lack of transition assessment, FBA, and parent counseling/training per state law did not rise to the level of denial of FAPE for child with autism, but the proposed 6:1:1 placement was not reasonably calculated to provide benefit due to the child's proven needs for 1:1 instruction [tuition reimbursement case]

R.B. v. N.Y.C. Dep't of Educ., 589 Fed.Appx. 572 [313 Ed.Law Rep. 28], 64 IDELR ¶ 126 (2d Cir. 2014)

• rejected procedural challenge (less than full reevaluation after one year), mixed procedural–substantive (omission of parents' choice of methodology) challenges to the proposed IEP and upheld substantive appropriateness of 6:1:1 placement to return middle school child with autism from specialized private school [tuition reimbursement case]

L.O. v. E. Allen Sch. Corp., 58 F.Supp.3d 882 [316 Ed.Law Rep. 754], 64 IDELR ¶ 147 (N.D. Ind. 2014)

• rejected child find and other IHO FAPE–related orders for lack of sufficient factual foundation or legal violations

E.L. v. Chapel Hill–Carrboro Bd. of Educ., 773 F.3d 509 [312 Ed.Law Rep. 539], 64 IDELR ¶ 192 (4th Cir. 2014)

• ruled that district's embedded implementation, including supervised SLT interns, rather than the one–on–one approach that was the preference of the resigned SLT and that was the parents' interpretation, fulfilled IEP provision for four hours per week of SLT in the "total school environment" of eight–year–old with autism

F.K. v. Dep't of Educ., State of Haw., 585 Fed.Appx. 710, 64 IDELR ¶ 194 (9th Cir. 2014)

• ruled that the district's placement for middle–school student with autism met the substantive and implementation standards for appropriateness

M.A. v. Jersey City Bd. of Educ., 592 Fed.Appx. 124 [314 Ed.Law Rep. 85], 64 IDELR ¶ 196 (3d Cir. 2014)

• upheld changed placement of child with autism from private ABA school to less intensive ABA program within the district based on the child's progress, ruling that the failure of the notice to specify the school did not deny the parents' meaningful opportunity for participation in this case

T.M. v. Dist. of Columbia, 75 F.Supp.3d 233 [319 Ed.Law Rep. 329], 64 IDELR ¶ 197 (D.D.C. 2014)

• rejected various challenges to IEP, including lack of speech and language services (snapshot approach), incomplete implementation (*de minimis* misses attributable to staff compared to student), refusal for parental/attorney observations (no right upon request), and delay in revising FBA–BIP (reasonable time) [compensatory education case]

G.M. v. Dry Creek Joint Elementary Sch. Dist., 595 Fed.Appx. 698 [315 Ed.Law Rep. 88], 64 IDELR ¶ 231 (9th Cir. 2014)

• rejected parents' various procedural and substantive (including gap–closing) challenges to IEP for student with SLD (dyslexia) who had experienced disability–based bullying [18]

Cupertino Union Sch. Dist. v. K.A., 75 F.Supp.3d 1088 [319 Ed.Law Rep. 352], 64 IDELR ¶ 200 (N.D. Cal. 2014)

• reversed the IHO's ruling that the district had engaged in predetermination for IEP of child with autism and seizure disorder, concluding instead that—distinguishable from *Doug C.* [19]—the continuation of the IEP meeting without the parent did not violate the opportunity for meaningful participation in the specific circumstances of this case, but upheld the IHOs ruling that the district failed to implement the IEP at a material level for three–month period [compensatory education case]

Lainey C. v. Dep't of Educ., Haw., 594 Fed.Appx. 441, 65 IDELR ¶ 32 (9th Cir. 2015)

• upheld procedural (specifically, parental participation) and substantive appropriateness (specifically, socialization needs) of most recent IEP for 12–year–old with autism (after parent won tuition reimbursement in un–appealed decision concerning the child's previous IEP)—also, briefly, that it met the multi–factor LRE test

R.B. v. N.Y.C. Dep't of Educ., 603 Fed.Appx. 36 [318 Ed.Law Rep. 662], 65 IDELR ¶ 62 (2d Cir. 2015) [20]

• affirmed ruling that procedural blemishes (e.g., lack of vocational assessment, parent training/counseling, and measurable goals) were not a denial of FAPE in individual circumstances of this case and the 6:1:1 placement for this child with autism was substantively appropriate [tuition reimbursement case]

W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ., 602 Fed.Appx. 563 [317 Ed.Law Rep. 596], 65 IDELR ¶ 63 (3d Cir. 2015)

• ruled that district's failure to provide more information about its proposed methodology beyond it being research–based and its teacher beyond being duly certified did not deny the opportunity for meaningful participation of parent of child with dyslexia [tuition reimbursement case]

Dixon v. Dist. of Columbia, 83 F.Supp.3d 223 [320 Ed.Law Rep. 797], 65 IDELR ¶ 67 (D.D.C. 2015)

• ruled that parent failed to prove that significantly reduced level of special education services (27.5 to 15 hours per week) for high school student with OHI (epilepsy+) did not meet the substantive standard of conferring benefit and that the alleged procedural violation of not changing the IEP goals upon this reduction "affected the student's substantive rights"

S.W. v. N.Y.C. Dep't of Educ., 92 F.Supp.3d 143 [322 Ed.Law Rep. 154], 65 IDELR ¶ 70 (S.D.N.Y. 2015)

• rejected procedural challenges—here, predetermination (not proven), failure to consider IEE (unproven), and absence of additional parental member on IEP team per state law (not prejudicial)—and upheld substantive appropriateness of the proposed IEP for high school student with SLD, including LRE consideration and failure to prove narrow "factually incapable" exception for implementation of the IEP [tuition reimbursement case]

J.W. v. N.Y.C. Dep't of Educ., 95 F.Supp.3d 592 [322 Ed.Law Rep. 849], 65 IDELR ¶ 94 (S.D.N.Y. 2015)

• ruled that parents of child with autism sufficiently had raised methodology issue in their complaint but, even assuming arguendo that the ABA methodology was inconsistent with the success of the child's IEP, they failed to prove that the school was incapable of implementing the IEP [tuition reimbursement case]

Stanek v. St. Charles Cmty. Unit Sch. Dist. No. 303, 783 F.3d 634 [316 Ed.Law Rep. 618], 65 IDELR ¶ 122 (7th Cir. 2015)

• denied district's motion to dismiss FAPE implementation claim of graduated 19–year–old student with autism and, based on his delegation–of–rights upon turning 18, of his parents

E.H. v. N.Y.C. Dep't of Educ., 611 Fed.Appx. 728 [321 Ed.Law Rep. 113], 65 IDELR ¶ 162 (2d Cir. 2015)

• rejected parent's procedural and substantive challenges to the BIP for their child with autism and their claim regarding the proposed classroom capacity, but remanded for determination of whether the IEP's adoption of the private school's goals without its Floortime method resulted in a substantive denial of FAPE [tuition reimbursement case]

K.R. v. N.Y.C. Dep't of Educ., 107 F.Supp.3d 295 [325 Ed.Law Rep. 124], 65 IDELR ¶ 173 (S.D.N.Y. 2015)

• ruled that exclusion of parents from the IEP process and, separately, inability of the proposed district placement to meet the child's sensory needs constituted a denial of FAPE [tuition reimbursement case]

J.G. v. Baldwin Park Unified Sch. Dist., 78 F.Supp.3d 1268 [319 Ed.Law Rep. 941], 65 IDELR ¶ 177 (C.D. Cal. 2015)

• ruled that district's refusal, based on stay–put, to discuss parent's request for a possible referral to specialized placement for student with hearing impairment as well as its failure to share information that the parent needed to participate meaningfully as a member of the IEP team amounted to a denial of FAPE (resulting in remedy of ordering IEP team to consider said placement)

Jalen Z. v. Sch. Dist. of Philadelphia, 104 F.Supp.3d 660 [324 Ed.Law Rep. 766], 65 IDELR ¶ 198 (E.D. Pa. 2015)

• upheld IHO's ruling that the various alleged procedural violations (e.g., lack of teacher on IEP team and insufficient info for parent) were either unproven or not prejudicial and that the alleged substantive inadequacies (in the related services, transition plan, and BIP) did not fall below the *Rowley* reasonably–calculated standard in proposed IEP for changing placement from early intervention to district–based program for child with autism—accepted extrinsic evidence under *R.E.* standard [21]

J.S. v. N.Y.C. Dep't of Educ., 104 F.Supp.3d 392 [324 Ed.Law Rep. 743], 65 IDELR ¶ 201 (S.D.N.Y. 2015)

• rejected parents' procedural challenges (e.g., FBA) and upheld substantive appropriateness of proposed placement of twice–exceptional child with dyslexia [tuition reimbursement case]

D.B. v. Santa Monica–Malibu Unified Sch. Dist., 606 Fed.Appx. 359, 65 IDELR ¶ 224 (9th Cir. 2015)

• ruled, in brief opinion, that holding IEP meeting without parents based on employee–members' scheduling unavailability was a denial of FAPE in terms of interference with parental participation [tuition reimbursement case]

Leggett v. District of Columbia, 793 F.3d 59 [320 Ed.Law Rep. 44], 65 IDELR ¶ 251 (D.C. Cir. 2015)

• ruled that district's failure to have the initial IEP for the eligible child available at the start of the school year, when the parent was cooperative rather than an impediment (distinguishing *C.H. v. Henlopen* [22]), amounted to a prejudicial procedural violation in relation to the student and, thus, a denial of FAPE [tuition reimbursement case]

Doe v. E. Lyme Bd. of Educ., 790 F.3d 440 [319 Ed.Law Rep. 641], 65 IDELR ¶ 255 (2d Cir. 2015)

• ruled that issuance of the IEP after the meeting was not a denial of the parents' participation right and that the proposed IEP for this child with autism met the substantive standard, but the failure to offer IEPs during the subsequent years of the out–of–district unilateral placement was a denial of FAPE [tuition reimbursement case]

S.B. v. N.Y.C. Dep't of Educ., 117 F.Supp.3d 355 [326 Ed.Law Rep. 158], 65 IDELR ¶ 264 (S.D.N.Y. 2015)

• ruled that district's failure to include parent in drafting of IEP goals was a procedural violation that did not result in denial of FAPE but its use of measurement methods in the goals was a prejudicial procedural violation; the proposed 15:1 placement did not meet the individual needs of this child with SLD and CAPD; and its proposed location was not appropriate (narrowly interpreting *R.E.*[23] in terms of this prospective issue) [tuition reimbursement case]

Dist. of Columbia v. Walker, 109 F.Supp.3d 58 [325 Ed.Law Rep. 308], 65 IDELR ¶ 271 (D.D.C. 2015)

• ruled, based on snapshot standard, that proposed in–district placement for student with ED was substantively appropriate despite subsequent evidence, including psychiatric hospitalizations, that she needed residential placement [tuition reimbursement case]

S.E. v. N.Y.C. Dep't of Educ., 113 F.Supp.3d 695 [325 Ed.Law Rep. 823], 65 IDELR ¶ 295 (S.D.N.Y. 2015)

• ruled that parent of child with autism failed to prove that this case was one of the "few circumstances" in which the proposed placement is unable to implement an appropriate (or here unchallenged) IEP when the child never attended the school [tuition reimbursement case]

M.O. v. N.Y.C. Dep't of Educ., 793 F.3d 236 [320 Ed.Law Rep. 77], 65 IDELR ¶ 283 (2d Cir. 2015)

• ruled that the modified four–corners approach of *R.E.*[24] applies to challenges to the substantive appropriateness of the IEP but not to the proposed school's capacity to implement the IEP—thereby affirming the lower court's decision in favor of the district because the parent's challenges were substantive attacks on the IEP that were couched as challenges to the adequacy of the assigned school [tuition reimbursement case]

Sneitzer v. Iowa Dep't of Educ., 796 F.3d 942 [321 Ed.Law Rep. 44], 66 IDELR ¶ 1 (8th Cir. 2015)

• ruled that district's IEP for twice–exceptional student was reasonably calculated for educational benefit (after off–campus rape) [tuition reimbursement case]

Pointe Educ. Serv. v. A.T., 601 Fed.Appx. 702, 66 IDELR ¶ 4 (9th Cir. 2015)

• ruled, with short opinion in "close case," that the district's proposed placement for eight–year–old with autism was not substantively appropriate based on IHO's thorough and careful findings of excessive transitions between classes, inclusion of significantly older students in academic classes, and exposure to a student population with more severe behavioral issues than the student's

M.L. v. Starr, 121 F.Supp.3d 466 [326 Ed.Law Rep. 853], 66 IDELR ¶ 7 (D. Md. 2015)

• upheld the substantive appropriateness of an IEP for a child with a disability who lived in a Jewish orthodox home, concluding that the proposed IEP need not account for the child's individual religious and cultural needs [tuition reimbursement case]

Endrew F. v. Douglas Cnty. Sch. Dist. Re–1, 798 F.3d 1329 [321 Ed.Law Rep. 639], 66 IDELR ¶ 31 (10th Cir. 2015)

• ruled that gaps in progress reporting and lack of FBA/BIP constituted harmless procedural error and proposed IEP for child with autism was substantively appropriate [tuition reimbursement case]

Ruby v. Jefferson Cnty. Bd. of Educ., 122 F.Supp.3d 1288 [327 Ed.Law Rep. 134], 66 IDELR ¶ 38 (N.D. Ala. 2015)

• ruled that IEP for child with physical disabilities who moved from another state was procedurally and substantively appropriate [compensatory education and reimbursement case]

FB v. N.Y.C. Dep't of Educ., 132 F.Supp.3d 522 [328 Ed.Law Rep. 713], 66 IDELR ¶ 94 (S.D.N.Y. 2015)

• ruled that although district did not engage in predetermination in IEP process for child with autism, 1) it violated parents' right to obtain relevant and timely information as to the proposed school so to be able to meaningfully participate in and beyond the IEP process and 2) the proposed school was incapable of implementing the IEP [tuition reimbursement case]

LaGue v. Dist. of Columbia, 130 F.Supp.3d 305 [328 Ed.Law Rep. 207], 66 IDELR ¶ 101 (D.D.C. 2015)

• ruled that the district of residence's obligation for evaluation and the offer of FAPE is not extinguished upon the parents' unilateral placement of the child even when the parent has not expressed an interest in returning the child to the district [tuition reimbursement case]

Sch. Bd. of City of Suffolk v. Rose, 133 F.Supp.3d 803 [328 Ed.Law Rep. 805], 66 IDELR ¶ 137 (E.D. Va. 2015)

• ruled that identification of student, who undisputedly was also OHI (based on ADHD) and SLD (in written expression), as ED rather than primarily qualifying with autism, and the failure to address autism in his IEP was a substantive denial of FAPE [tuition reimbursement case]

O.S. v. Fairfax Cnty. Sch. Bd., 804 F.3d 354 [323 Ed.Law Rep. 70], 66 IDELR ¶ 151 (4th Cir. 2015)

• upheld substantive appropriateness of IEPs in kindergarten and 1st grade for child with OHI due to various medical conditions, ruling that the outcomes focus of IDEA 2004 did not heighten the *Rowley* standard of "some" benefit (in the Fourth Circuit)

Phyllene W. v. Huntsville City Sch. Bd., 630 Fed.Appx. 917 [327 Ed.Law Rep. 648], 66 IDELR ¶ 179 (11th Cir. 2015)

• ruled that district's failure to reevaluate hearing impairment of student with SLD (dyslexia) upon reasonably suspecting hearing loss, based on recent surgeries and parent's statements beyond statute of limitations, was a prejudicial procedural violation that denied the child FAPE

D.A.B. v. N.Y.C. Dep't of Educ., 630 Fed.Appx. 73 [327 Ed.Law Rep. 623], 66 IDELR ¶ 211 (2d Cir. 2015)

• rejected claims of procedural inappropriateness (e.g., goals that were insufficiently measurable) and substantive inappropriateness (e.g., teacher–student ratio) of proposed IEP for student with autism [tuition reimbursement case]

Z.R. v. Oak Park Unified Sch. Dist., 622 Fed.Appx. 630, 66 IDELR ¶ 213 (9th Cir. 2015)

• summarily affirmed decision ruling that proposed IEP of student with autism was appropriate, rejecting procedural challenges based on the goals and the IEP team composition (specifically, assistant principal who taught one course qualified as regular education teacher member) [tuition reimbursement case]

G.B. v. N.Y.C. Dep't of Educ., 145 F.Supp.3d 230 [331 Ed.Law Rep. 114], 66 IDELR ¶ 223 (S.D.N.Y. 2015)

• ruled that district denied FAPE for child with autism by failing to sufficiently address his medical needs in his IEP, although rejecting various FAPE procedural claims (e.g., predetermination) and "substantive" claims (e.g., present levels, goals, and sensory needs) [tuition reimbursement case]

C.W.L. v. Pelham Union Free Sch. Dist., 149 F.Supp.3d 451 [331 Ed.Law Rep. 769], 66 IDELR ¶ 241 (S.D.N.Y. 2015)

• ruled that 1) the proposed therapeutic in–district placement for student with ED was substantively appropriate, with due consideration to private psychologist's recommendation, and 2) the various procedural violations were harmless [tuition reimbursement case]

A.R. v. Santa Monica Malibu Sch. Dist., 636 Fed.Appx. 385 [330 Ed.Law Rep. 85], 66 IDELR ¶ 269 (9th Cir. 2016)

• upheld, in brief opinion, that proposed collaborative preschool classroom was FAPE in the LRE for preschool child with autism [tuition reimbursement case]

S.T. v. Howard Cnty. Pub. Sch. Sys., 627 Fed.Appx. 255, 66 IDELR ¶ 270 (4th Cir. 2016)

• ruled that admission of "retrospective evidence" was either not error because it concerned the ability of the placement to provide the appropriate services or was harmless error because the placement would provide all of the necessary services for the child with autism

A.L. v. Jackson Cnty. Sch. Bd., 635 Fed.Appx. 774 [330 Ed.Law Rep. 60], 66 IDELR ¶ 271 (11th Cir. 2015)

• ruled that parent's absence from the IEP process resulted from her own actions—district had provided multiple attempts to include her and proceeded due to concern for student with traumatic brain injury, not due to convenience of other such administrative concerns (distinguishing *Doug C.*,[25] which is not binding here)

B.P. v. N.Y.C. Dep't of Educ., 634 Fed.Appx. 845 [330 Ed.Law Rep. 23], 66 IDELR ¶ 272 (2d Cir. 2015)

• ruled that district's evidence was sufficient to prove that despite its social worker's misstatement, the proposed placement was able to implement the IEP of the child with autism [tuition reimbursement case]

T.K. v. N.Y.C. Dep't of Educ., 810 F.3d 869 [326 Ed.Law Rep. 609], 67 IDELR ¶ 1 (2d Cir. 2016)[26]

• ruled that district's refusal to discuss bullying upon parents' reasonable belief that it interfered with the student's ability to receive meaningful educational benefits significantly impeded their right to participate in the development of the IEP, thus constituting a procedural denial of FAPE—"not only potentially impaired the substance of the IEP but also prevented them from assessing the adequacy of their child's IEP" [tuition reimbursement case]

Norristown Area Sch. Dist. v. F.C., 636 Fed.Appx. 857 [330 Ed.Law Rep. 512], 67 IDELR ¶ 3 (3d Cir. 2016)

• upheld ruling that district's second–grade IEP and, after unilateral placement, third–grade proposed IEP for student with autism were both not substantively appropriate due to lack of 1:1 aide [compensatory education and tuition reimbursement case]

Miller v. Monroe Sch. Dist., 131 F.Supp.3d 1107 [328 Ed.Law Rep. 599], 67 IDELR ¶ 32 (W.D. Wash. 2016)

• ruled that delay in issuing hearing officer decision denied FAPE in this case at original placement, but in the transferred placement the district did not deny FAPE in response to claims of parents of student with autism of lack of meaningful participation and alleged IEP violations regarding seclusion and restraint [tuition reimbursement case]

Holman v. Dist. of Columbia, 153 F.Supp.3d 386 [332 Ed.Law Rep. 145], 67 IDELR ¶ 39 (D.D.C. 2016)

• ruled that district's 83% implementation of IEP violated *Van Duyn*[27] "material" failure standard (regardless of harm—here, the child had graduated)

E.H. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 61 (S.D.N.Y. 2016)

• ruled that district failed to provide 1) reasonable notice of the proposed placement (only one business day), 2) an appropriate BIP, and 3) an open mind (i.e., engaged in predetermination), resulting in denial of meaningful parental participation and—via inappropriate goals—lack of the requisite "likely to produce progress" for child with autism [tuition reimbursement case]

W.W. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 66 (S.D.N.Y. 2016)

• ruled, in this "expanding, but still opaque, subject–matter area," that parents may prospectively challenge a proposed placement school's capacity to implement an IEP without first enrolling their child in that school and in this case the district failed to fulfill the burden (under NY law) to prove this capacity [tuition reimbursement case]

M.T. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 92 (S.D.N.Y. 2016)

• rejected parents' procedural claims of insufficient evaluative materials and lack of opportunity for meaningful participation and upheld substantive appropriateness of proposed placement for student with multiple disabilities, including lack of ABA methodology (because IEP only mentioned it as one of previous successful methods for the student) [tuition reimbursement case]

J.C. v. N.Y.C. Dep't of Educ., __ Fed.Appx. __, 67 IDELR ¶ 109 (2d Cir. 2016)

• ruled that procedural violations (lack of parent counseling and FBA–BIP) was not prejudicial and that the proposed IEP met the substantive standard for the child with autism, also rejecting speculative inability of the school to implement the IEP [tuition reimbursement case]

S.M. v. Gwinnett Cnty. Sch. Dist., __ Fed.Appx. __, 67 IDELR ¶ 137 (11th Cir. 2016)

• briefly rejected predetermination and change–in–placement claims

S.B. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 140 (S.D.N.Y. 2016)

• ruled that proposed 6:1:1 placement for student was substantively inappropriate due to his need for 1:1 instruction although the various alleged procedural violations were either not required (ABA instruction), not proven (parental participation), or not prejudicial (e.g., lack of FBA–BIP) [tuition reimbursement case]

Jason O. v. Manhattan Sch. Dist. No. 41, __ F.Supp.3d __, 67 IDELR ¶ 142 (N.D. Ill. 2016)

• rejected parents' various procedural claims as unproven or harmless, including predetermination and those directed at IHO, and ruled that the district's IEPs for child with continuing behavioral problems met the substantive standard for FAPE

J.M. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 153 (S.D.N.Y. 2016)

• rejected procedural challenge (specifically, lack of complete transition plan) as not prejudicial and substantive challenge to capability of the proposed placement of student with autism (e.g., size and noise) as impermissibly speculative based on *R.E.* [28] [tuition reimbursement case]

M.H. v. Pelham Union Free Sch. Dist., __ F.Supp.3d __, 67 IDELR ¶ 154 (S.D.N.Y. 2016)

• ruled that IEP for child with developmental disability and ADHD was substantively and procedurally adequate [tuition reimbursement case]

N.M. v. Foose, __ F.Supp.3d __, 67 IDELR ¶ 155 (D. Md. 2016)

• ruled that proposed partially mainstreamed placement for student with autism met substantive standard for FAPE [tuition reimbursement case]

M.E. v. N.Y.C. Dep't of Educ., __ F.Supp.3d __, 67 IDELR ¶ 167, *adopted*, __ F.Supp.3d __, 67 IDELR ¶ 173 (S.D.N.Y. 2016)

• rejected parent's "prospective" challenge to the proposed placement of her child with autism at either of two district schools was speculative, i.e., not reasonably apparent [tuition reimbursement case]

Dallas Indep. Sch. Dist. v. Woody, __ F.Supp.3d __, 67 IDELR ¶ 168 (N.D. Tex. 2016)

• ruled that district failed to propose an IEP to child with SLD who had become resident while in local private placement from another state [tuition reimbursement case]

Brown v. Dist. of Columbia, __ F.Supp.3d __, 67 IDELR ¶ 169 (D.D.C. 2016)

• ruled that IEP team's failure to discuss the LRE for and the disability effects of the recent multiple gunshot wounds of a high school student each constituted a denial of FAPE in terms of parental participation and student progress, respectively

S.C. v. Katonah–Lewisboro Cent. Sch. Dist., __ F.Supp.3d __, 67 IDELR ¶ 184 (S.D.N.Y. 2016)

• ruled that proposed 12:2 class placement for student with multiple disabilities was not reasonably calculated to yield benefit [tuition reimbursement case]

C.W. v. City Sch. Dist. of City of N. Y., __ F.Supp.3d __, 67 IDELR ¶ 186 (S.D.N.Y. 2016)

• ruled that procedural violations (e.g., failure to invite student to participate in IEP meeting for transition plan and insufficient transition plan goals) were not prejudicial and the proposed segregated 15:1 placement for student with ID and SLI was substantively appropriate IEP [tuition reimbursement case]

Moradnejad v. Dist. of Columbia, __ F.Supp.3d __, 67 IDELR ¶ 261 (D.D.C. 2016)

• ruled that IEPs for first grader with autism that moved from self–contained to partially mainstreamed placement met the substantive standard for FAPE, with due deference to the IHO and to the LRE presumption

R.E. v. Brewster Cent. Sch. Dist. (*supra*)

• upheld two successive IEPs for sixth grader with autism with regard to implementation and substantive appropriateness, respectively [tuition reimbursement case]

J.S. v. N.Y.C. Dep't of Educ., __ Fed.Appx. __, 67 IDELR ¶ 197 (2d Cir. 2016)

• ruled, in brief affirmance, that IEP with co–teaching model was substantively appropriate to address the individual needs of this high school student with TS and generalized anxiety disorder [tuition reimbursement case]

L.O. v. N.Y.C. Dep't of Educ., 822 F.3d 95 [331 Ed.Law Rep. 609], 67 IDELR ¶ 225 (2d Cir. 2016)

• ruled that combination of serious procedural violations—failure to consider recent evaluative data, lack of FBAs–BIPs (under state law), insufficient speech and language services (under state law for students with autism)—along with more minor procedural violations (e.g., parent counseling/training per same state autism law) amounted to denial of FAPE for three successive IEPs, remanding for compensatory education

Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105 [331 Ed.Law Rep. 673], 67 IDELR ¶ 227 (9th Cir. 2016)

• ruled that failure to evaluate preschool child with SLI for autism was procedural violation that deprived him of critical educational opportunities and substantially impaired his parents' ability to fully participate in the collaborative IEP process—district's informal observation does not trump clear notice from IEE and student's behavior

W.S. v. City Sch. Dist. of N.Y.C., __ F.Supp.3d __, 67 IDELR ¶ 242 (S.D.N.Y. 2016)

• ruled that proposed 6:1:1 placement for child with autism was not individualized in terms of the child's needs and did not address her documented necessity for 1:1 ABA therapy [tuition reimbursement case]

Damarcus S. v. Dist. of Columbia, __ F.Supp.3d __, 67 IDELR ¶ 239 (D.D.C. 2016)

• ruled that two consecutive IEPs of child with ID were not substantively appropriate, primarily in not only the goals' and present education levels' failure to respond to his demonstrated lack of progress in certain areas but also their harmful results with regard to his speech–language pathology

Baquerizo v. Garden Grove Unified Sch. Dist., ___ F.3d ___, 68 IDELR ¶ 2 (9th Cir. 2016)

• upheld the substantive appropriateness of the proposed IEP of a high school student with autism in a self–contained class, also rejecting the "laundry list" of procedural violations and the LRE claim of a guardian who had challenged several consecutive prior IEPs [tuition reimbursement case]

James v. Dist. of Columbia, __ F.Supp.3d __, 68 IDELR ¶ 11 (D.D.C. 2016)

• ruled that school, which did not have this capability, completely failed to implement the IEP of a student with ID and also violated the foundational FAPE requirement of a timely and comprehensive reevaluation [compensatory education case]

L.R. v. City Sch. Dist. of N.Y.C., __ F.Supp.3d __, 68 IDELR ¶ 13 (S.D.N.Y. 2016)

• ruled that proposed 15:1 placement for secondary student with SLD was not reasonably calculated to yield educational benefits [tuition reimbursement case]

Ms. S. v. Reg'l Sch. Unit 72, __ F.3d __, 68 IDELR ¶ 31 (1st Cir. 2016)

• upheld substantive appropriateness of 11th and 12th grade IEPs for student with autism, while remanding the case for consideration of the statute of limitations for the prior period

Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ., __ Fed.Appx. __, 68 IDELR ¶ 33 (6th Cir. 2016)

• upheld ruling that two of three cumulative procedural violations with regard to transition services for student with multiple disabilities—failure to take meaningful steps to ascertain the student's transition–related preference and to provide her with measurable postsecondary goals based on

age–appropriate transition assessments—resulted in a denial of FAPE [compensatory education case]

C. Mainstreaming/LRE

D.W. v. Milwaukee Pub. Sch. (*supra*)

• ruled that placement of high school student with ID in classroom for students with ID was the LRE based on evidence that the student could not learn satisfactorily in the parents' preferred placement in multi–categorical classroom

M.W. v. N.Y.C. Dep't of Educ. (*supra*)

• upheld "integrated co–teaching" placement, which is "somewhere in between a regular classroom and a segregated, special education classroom" as the LRE for this individual 9–year–old child with autism, ADHD, and TS

Cobb Cnty. Sch. Dist. v. A.V., 961 F.Supp.2d 1252 [301 Ed.Law Rep. 682], 61 IDELR ¶ 242 (N.D. Ga. 2013)

• ruled that change of placement of high school senior with SLD/SLI (based on apraxia) from general education to special education track for core classes violated LRE where co–teaching model would have provided greater educational benefits (only disputed factor of the test)

B.E.L. v. Haw., 63 F.Supp.3d 1215 [317 Ed.Law Rep. 830], 64 IDELR ¶ 130 (D. Haw. 2014)

• upheld, based on *Rachel H.* test, placement of student with SLD in segregated classes for math and reading, rather than parents' proposed full inclusion placement

H.L. v. Downingtown Area Sch. Dist., 624 Fed.Appx. 64 [325 Ed.Law Rep. 614], 65 IDELR ¶ 223 (3d Cir. 2015)

• ruled that failure of proposed IEP to show sufficient consideration of full–inclusion, rather than 90–minutes of pull–out for language arts per day, for student with SLD previously in fully inclusive private school was substantive LRE defect that rendered the IEP inappropriate [tuition reimbursement case]

S.M. v. Gwinnett Cnty. Sch. Dist. (*supra*)

• ruled that district's placement in general education with supplementary services and with three core subjects in special education classes met LRE test under first prong of *Greer/Daniel R.R.* test

Jason O. v. Manhattan Sch. Dist. No. 41 (*supra*)

• proposed self–contained program for students with ED was the LRE for child with significant and continuing emotional/behavioral problems where the district's general education placement had

been ineffective despite various supplemental aids and services and the proposed placement provided multiple, albeit limited, opportunities for interaction with nondisabled students

Smith v. Los Angeles Unified Sch. Dist., 822 F.3d 1065 [331 Ed.Law Rep. 652], 67 IDELR ¶ 226 (9th Cir. 2016)

• allowed parents to intervene to challenge policy resulting from settlement agreement with other parents to eliminate special education centers for more integration of students with disabilities

D. Related Services and Assistive Technology

Cobb Cnty. Sch. Dist. v. A.V. (*supra*)

• upheld IHO decision that vision therapy was, but sensory integration therapy was not, necessary for the special education benefit of a high school student with SLD/SLI (based on apraxia)

Ruby v. Jefferson Cnty. Bd. of Educ. (*supra*)

• ruled that district comparably complied with temporary specialized transportation services provision of IEP from out–of–state transfer back of student with multiple physical disabilities—alleged violations of notice/consultation procedures were unproven or harmless, and temporary accommodating arrangement was not denial of FAPE

Se. H. v. Bd. of Educ. of Anne Arundel Cnty., __ Fed.Appx. __, 67 IDELR ¶ 198 (4th Cir. 2016)

• ruled that elementary school child with multiple physical disabilities was not entitled to a staff member trained in cardiopulmonary resuscitation (CPR) and the Heimlich maneuver to accompany him throughout the school day in light of the reasonable measures that district had in place

II. DISCIPLINE ISSUES

C.C. v. Hurst–Euless–Bedford Indep. Sch. Dist., 641 Fed.Appx. 423 [332 Ed.Law Rep. 40], 67 IDELR ¶ 254 (5th Cir. 2016)

• subsequent to earlier ruling [29], brief affirmance that district did not violate the IDEA after failing to reevaluate student with IEP after juvenile authorities decided not to prosecute him for his misconduct that district determined was not a manifestation of his disability

III. FINANCIAL ISSUES

A. Attorney's Fees

1. Eligibility

Meridian Sch. Dist. No. 2 v. D.A., 792 F.3d 1054 [320 Ed.Law Rep. 8], 65 IDELR ¶ 253 (9th Cir. 2015)

• held that even though parents prevailed with regard to IEE reimbursement and evaluation order, they were not entitled to attorneys' fees where, as a result of said evaluation, the child was not eligible for special education services

2. "Prevailing"

Davis v. Dist. of Columbia, 71 F.Supp.3d 141 [318 Ed.Law Rep. 819], 64 IDELR ¶ 135 (D.D.C. 2014)

• failure to include attorneys' fees justified rejection of timely settlement offer

Bobby v. Sch. Bd. of City of Norfolk, 54 F.Supp.3d 466 [315 Ed.Law Rep. 829], 64 IDELR ¶ 175 (E.D. Va. 2014). *But see Capital City Pub. Charter Sch. v. Gambale*, 27 F.Supp.3d 121 [311 Ed.Law Rep. 879], 63 IDELR ¶ 6 (D.D.C. 2014); *cf. G.M. v. Saddleback Valley Unified Sch. Dist.*, 583 Fed.Appx. 702, 63 IDELR ¶ 214 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 1705 (2015) (remanding to question frivolousness based on close child find case)

• mixed outcomes for districts' attorneys' fees claims against parents or their attorney based on frivolousness or improper purpose

Y.Z. v. Clark Cnty. Sch. Dist., 54 F.Supp.3d 1171 [315 Ed.Law Rep. 871], 64 IDELR ¶ 131 (D. Nev. 2014

• IHO–approved private settlement triggers attorneys' fees

Giosta v. Midland Sch. Dist. No. 7, 542 Fed.Appx. 523 [301 Ed.Law Rep. 76], 62 IDELR ¶ 72 (7th Cir. 2013)

• upheld denial of attorneys' fees where parents prevailed only on minor items, which were *de minimis* compared to their extensive claims (e.g., compensatory education for reading goals but not three years of entire denial of FAPE nor IEE at public expense)

Los Angeles Cnty. Office of Educ. v. C.M., 550 Fed.Appx. 387, 62 IDELR ¶ 164 (9th Cir. 2013)

• parents were prevailing party where they succeeded on the issue of the county's temporary liability for the student's residential service while in and upon release from juvenile hall, even though not subsequently (but only for the due process hearing, not the court proceeding)

Justin R. v. Matayoshi, 561 Fed.Appx. 619, 62 IDELR ¶ 283 (9th Cir. 2014)

• ruled that magistrate judge's order that specified jurisdiction for oral settlement agreement was sufficient for "judicial imprimatur" prerequisite for prevailing status

Hawkins v. Potomac Lighthouse Pub. Charter Sch., 19 F.Supp.3d 330 [310 Ed.Law Rep. 884], 62 IDELR ¶ 291 (D.D.C. 2014)

• ruled that child's failure to avail herself of significant portion of compensatory education does not affect prevailing status

Boyd v. Idea Pub. Charter Sch., 42 F.Supp.3d 217 [314 Ed.Law Rep. 182], 63 IDELR ¶ 128 (D.D.C. 2014)

• ruled that parent did not qualify as prevailing party where consent order settlement required the school to conduct new evaluations and provide access to her daughter's service logs and special education files—not material alteration of the parties' legal relationship

Tina M. v. St. Tammany Parish Sch. Bd., 816 F.3d 57 [328 Ed.Law Rep. 512], 67 IDELR ¶ 54 (5th Cir. 2016). *But see A.P. v. Bd. of Educ. for City of Tullahoma*, __ F.Supp.3d __, 67 IDELR ¶ 69 (E.D. Tenn. 2016)

• ruled that obtaining stay–put order does not qualify the parents for attorneys' fees

3. Scope

Jo.R. v. Garden Grove Unified Sch. Dist., 551 Fed.Appx. 902 [303 Ed.Law Rep. 108], 62 IDELR ¶ 166 (9th Cir. 2013)

• concluded that district court abused its discretion in limiting attorneys' fees, in case where parent prevailed in 2 or their 19 claims, to $51,000 excluding, for example, time spent researching successful issues, reviewing/annotating transcript and preparing closing arguments, awarding instead $242,000

K.L. v. Warwick Valley Cent. Sch. Dist., 584 Fed.Appx. 17, 64 IDELR ¶ _195 (2d Cir. 2014)

• upheld not only determination that parents were prevailing party despite limited relief but also reduced rate per hour, number of hours, and—as not abuse of discretion here—denial of fee petition time

C.W. v. Capistrano Unified Sch. Dist., 784 F.3d 1237 [317 Ed.Law Rep. 53], 65 IDELR ¶ 31 (9th Cir. 2015)

• ruled that parents' IDEA and Sec. 504 claims were not frivolous but ADA intimidation claim and Sec. 1983 money damages claim were frivolous, entitling district to partial attorney's fees paid by parents' attorney

McAllister v. Dist. of Columbia, 794 F.3d 15 [320 Ed.Law Rep. 610], 65 IDELR ¶ 284 (D.C. Cir. 2015)

• disallowed recovery, as part of attorneys' fees award, of "paralegal" who was consultant expert and, thus, within the exclusion under *Murphy* [30]

F.S. v. Dist. of Columbia, 307 F.R.D. 28 [318 Ed.Law Rep. 1003] (D.D.C. 2014); *cf. R. M–G. v. Bd. of Educ.*, __ Fed.Appx. __, 67 IDELR ¶ 167 (10th Cir. 2016); *Banda v. Antelope Valley Union High Sch. Dist.*, __ Fed.Appx. __, 67 IDELR ¶ 56 (9th Cir. 2016) (availability of fees–on–fees awards in IDEA cases)

• upheld award of 2/3 hourly rate for "fees on fees" in IDEA case due to lesser complexity

Norristown Area Sch. Dist. v. F.C. (*supra*)

• upheld full requested $140k attorney's fees award despite partial success where their claims arose from common core of facts and parents succeeded on two significant issues

Anaheim Union High Sch. Dist. v. J.E., 637 Fed.Appx. 380, 67 IDELR ¶ 81 (9th Cir. 2016)

• upheld not only reduction in requested hourly rate of parent attorney based on prevailing community rate for commensurate experience (to $400 per hour) but also denial of $16.6K for expert consultant whom the fee request had labeled as a paralegal

Beauchamp v. Anaheim Union High Sch. Dist., 816 F.3d 1216 [329 Ed.Law Rep. 43], 67 IDELR ¶ 107 (9th Cir. 2016)

• upheld award of only 12% of requested $80K in attorneys' fees largely because the district's timely offer of settlement, although not admitting liability, provided far more compensatory relief than the hearing officer ordered upon finding child find violation (thus limiting the compensable time to the work before the settlement offer)

B. Remedies

1. Tuition Reimbursement

M.B. v. Minisink Valley Cent. Sch. Dist., 523 Fed.Appx. 76 [296 Ed.Law Rep. 833], 61 IDELR ¶ 5 (2d Cir. 2013)

• deferred to SRO's decision that the parents' private placement for the child with ED did not meet the Second Circuit's test for its substantive appropriateness—here lack of individualized program targeted to child's identified needs despite some academic and behavior progress

D.C. v. N.Y.C. Dep't of Educ. (*supra*)

• concluded that the private placement was appropriate despite teacher's lack of certification in the school's methodology and that the equities supported reimbursement where parent cooperated throughout the process

Munir v. Pottsville Sch. Dist. (*supra*)

• followed *Mary T.* (*supra*) to reject entitlement to tuition reimbursement at residential facility where the student required it for mental health needs segregated from his educational needs

Cobb Cnty. Sch. Dist. v. A.V. (*supra*)

• upheld appropriateness of private placement, although less rigorous and less integrated than district's proposed placement and reduction of reimbursement to one half for tuition and vision therapy where both parties were equally at fault

D.B. v. N.Y.C. Dep't of Educ. (*supra*)

• concluded, alternatively to dicta, that parent's unilateral placement was inappropriate because contrary to IEP the school lacked socialization opportunities, OT/PT, and extensive academic instruction

F.O. v. N.Y.C. Dep't of Educ. (*supra*)

• concluded that private day school was appropriate for child with autism and other disabilities and that the equities favored the payment, ordering reimbursement for annual tuition of $92k

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

• upheld reimbursement to student's medical malpractice trust fund, which had paid the tuition for the unilateral placement

Jenna R.P. v. City of Chicago Sch. Dist. No. 229, 3 N.E.3d 927 [301 Ed.Law Rep. 966], 62 IDELR ¶ 180 (Ill. Ct. App. 2013)

• ruled that the parent's unilateral placement need not be in the LRE and need not be FAPE in the sense of the district's earlier–step obligation, remanding for determination of the amount of reimbursement

K.E. v. Dist. of Columbia (*supra*)

• ruled that the residential placement for this child with ED was not necessary for educational purposes

M. K–N v. Dist. of Columbia, 35 F.Supp.3d 1 [312 Ed.Law Rep. 792], 62 IDELR ¶ 295 (D.D.C. 2014)

• upheld full reimbursement from unilateral placement to IEP meeting (in the wake of prejudicial procedural violation of failing to hold the IEP meeting and, thus, violating parental participation) but rejected the parents' contention that the IEP meeting was invalid, because it is the issue of a separately filed proceeding

C.F. v. N.Y.C. Dep't of Educ. (*supra*)

• deferred to the IHO's determination that the unilateral placement was appropriate and that the equities did not weight against reimbursement

C.L. v. Scarsdale Union Free Sch. Dist., 744 F.3d 826 [302 Ed.Law Rep. 539], 63 IDELR ¶ 1 (2d Cir. 2014)

• ruled that parent's placement was appropriate and that the equities (i.e., parental cooperation) also weighed in favor of reimbursement, reaffirming that LRE was a, but not the, factor in determining appropriateness of the unilateral placement

Scott v. N.Y.C. Dep't of Educ. (*supra*)

• upheld, based on equities (e.g., parents' prompt notification and district being less than forthcoming), direct payment to private school where parent bartered for and could not come close to affording the tuition

S.L. v. Upland Unified Sch. Dist., 747 F.3d 1155 [304 Ed.Law Rep. 15], 63 IDELR ¶ 32 (9th Cir. 2014)

• ruled that parents' unilateral placement in parochial school was appropriate and they were entitled to reimbursement for the tuition and transportation but not, due to insufficient documentation, the private aides

Ward v. Bd. of Educ., 568 Fed.Appx. 18 [307 Ed.Law Rep. 752], 63 IDELR ¶ 121 (2d Cir. 2014)

• upheld inappropriateness of unilateral placement based on 1) unsuccessful placement to lower level math class rather than providing specially designed instruction and 2) lack of behavioral goals and progress

C.U. v. N.Y.C. Dep't of Educ. (*supra*)

• upheld tuition reimbursement based on equities—parents' notice was one day late but attributable to district conduct

M.M. v. N.Y.C. Dep't of Educ. (*supra*)

• ruled that the residential placement was appropriate, with LRE as only one factor and with the psychiatric treatment facilitating the student's education; the lack of notice was not materially inequitable in this case; and the grandparent's loan did not preclude the remedy

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

• ruled that the unilateral placement met the applicable standard based on student's progress and that the equities favored reimbursement

E.M. v. N.Y.C. Dep't of Educ. (*supra*)

• ruled that parent has standing to seek reimbursement where "as a result of the [district's] alleged failure to provide a FAPE, [the parent] has incurred a financial obligation to [the private school] under the [loan receipt–type] terms of the enrollment contract"

R.L. v. Miami Dade Cnty. Sch. Bd. (*supra*)

• upheld full reimbursement to 1) parents for home–based 1:1 program for high school student with autism under the specific circumstances (e.g., certified special education teacher) despite shortcomings in socialization, and 2) Medicaid for OT and SLT (not medical in nature regardless of label)—including revisitation of predetermination in determining the equities

Blount Cnty. Bd. of Educ. v. Bowens (*supra*)

• excused timely notice requirement where IEP team had acquiesced to the placement

N.W. v. Boone Cnty. Bd. of Educ., 763 F.3d 611 [308 Ed.Law Rep. 616], 63 IDELR ¶ 275 (6th Cir. 2014)

• ruled that IDEA prohibits tuition reimbursement where the district offered FAPE and the parent unilaterally placed the child

Pinto v. Dist. of Columbia, 69 F.Supp.3d 275 [318 Ed.Law Rep. 331], 64 IDELR ¶ 103 (D.D.C. 2014)

• ruled that parents' challenge to IHO's ruling that the unilateral placement was not appropriate (because it was not the LRE for the individual child) focused on the inadequacy of the district's proposed IEP, which is a separate matter and thus insufficient to override the IHO's ruling

Hardison v. Bd. of Educ. of Oneonta City Sch. Dist., 773 F.3d 372 [312 Ed.Law Rep. 521], 64 IDELR ¶ 161 (2d Cir. 2014)

• rejecting the IHO's decision in favor of reimbursement at residential placement, deferring instead to the review officer's reasoned conclusion that "the hearing record lacks sufficient information regarding how [the private placement] provided educational instruction specially designed to meet the unique needs of the student"

Fort Bend Indep. Sch. Dist. v. Douglas A., 601 Fed.Appx. 250 [317 Ed.Law Rep. 86], 65 IDELR ¶ 1 (5th Cir. 2015)

• denied reimbursement for residential placement where the placement was for therapeutic reasons (suicide attempt and drug problem) and the child's progress at the facility was primarily not judged by educational achievement

W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ. (*supra*)

• denied tuition reimbursement for lack of parents' timely notice of unilateral placement

A.H. v. Independence Sch. Dist., 466 S.W.3d 17 [321 Ed.Law Rep. 1168], 65 IDELR ¶ 149 (Mo. Ct. App. 2015)

• denied jurisdiction for tuition reimbursement where parent moved student to private school before filing for due process—based on OSEP–criticized and outlier Eighth Circuit decision [31]

H.L. v. Downingtown Area Sch. Dist. (*supra*)

• denied reimbursement based on minimal progress at private placement on tests in areas of need of student with SLD

Doe v. E. Lyme Bd. of Educ. (*supra*)

• ruled that the private placement in a religious school, which provided small classes and modified grades but no specialized services itself (as compared with those from outside providers) was not tailored to the individual needs of this child with autism

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

• ruled that parent was entitled to tuition reimbursement for a residential program that was necessary for emotional but not medical reasons in the absence of any identified nonresidential placement on the record that would meet the student's needs, but not for any specific components of the program, such as extracurricular activities or horseback riding, shown not to be primarily oriented to her needs —and the balance of the equities favored the parent here

Norristown Area Sch. Dist. v. F.C. (*supra*)

• upheld appropriateness of private school and consideration of transition back to public school as equitable factor in determining whether to reduce tuition reimbursement (here too harsh)

T.K. v. N.Y.C. Dep't of Educ. (*supra*)

• ruled that private placement, although not including multiple related services appropriate to the child with autism met the relaxed overall standard of reasonably calculated for benefit, and the parents' payment of precautionary deposit prior to the IEP meeting was not inequitable where its absence would imperil the child's opportunity if the proposed IEP was not appropriate

Rockwall Indep. Sch. Dist. v. M.C., 816 F.3d 329 [329 Ed.Law Rep. 30], 67 IDELR ¶ 108 (5th Cir. 2016)

• finding it unnecessary to decide whether district offered FAPE, denied tuition reimbursement parents based on parents' unreasonable, all–or–nothing position that their high schooler with ED should be re–enrolled in the private placement or else

E.T. v. Bureau of Special Educ. Appeals, __ F.Supp.3d __, 67 IDELR ¶ 118 (D. Mass. 2016)

• denied tuition reimbursement for unilateral placement of highly intelligent student with Asperger's disorder based on equities—district timely provided the parents with a list of schools that could have potentially provided the student with a FAPE, yet the parents—not the district—were the cause of delay prior to the unilateral placement

L.R. v. City Sch. Dist. of N.Y.C. (*supra*); *W.S. v. City Sch. Dist. of N.Y.C.* (*supra*); *S.C. v. Katonah–Lewisboro Cent. Sch. Dist.* (*supra*); *S.B. v. N.Y.C. Dep't of Educ.* (*supra*); *W.W. v. N.Y.C. Dep't of Educ.* (*supra*); *E.H. v. N.Y.C. Dep't of Educ.* (*supra*); *GB v. N.Y.C. Dep't of Educ.* (*supra*); *FB v. N.Y.C. Dep't of Educ.* (*supra*); *K.R. v. N.Y.C. Dep't of Educ.* (*supra*); *P.L. v. N.Y.C. Dep't of Educ.* (*supra*); *T.K. v. N.Y.C. Dep't of Educ.* (*supra*)

• ruled that private school met reasonably–calculated standard for the student with autism and that the equities favored reimbursement

Dallas Indep. Sch. Dist. v. Woody (*supra*)

• reduced reimbursement by 50% due to parental contribution to the FAPE denial, which was lack of timely offer of FAPE

2. Compensatory Education

Tyler W. v. Upper Perkiomen Sch. Dist. (*supra*)

• ruled that child was entitled to full days while the child was in partial hospitalization due to entire lack of implementation of IEP, resulting in 420 hours of compensatory education, and no reduction for reasonable rectification where the district knew well in advance of the violation

Dist. of Columbia v. Masucci, 13 F.Supp.3d 33 [309 Ed.Law Rep. 1023], 62 IDELR ¶ 228 (D.D.C. 2014)

• granted stay of IHO's order of private school placement as compensatory education due to likelihood of success on appeal that it did not meet qualitative approach

Fullmore v. Dist. of Columbia, 40 F.Supp.3d 174 [313 Ed.Law Rep. 730], 63 IDELR ¶ 94 (D.D.C. 2014)

• ruled that IHO's granting of parent's other requested remedy of an IEE does not moot the claim for compensatory education to the extent that the challenged reevaluation was inappropriate and resulted in denial of FAPE

Morris v. Dist. of Columbia, 38 F.Supp.3d 57 [313 Ed.Law Rep. 515], 63 IDELR ¶ 99 (D.D.C. 2014)

• ruled that student's placement in juvenile detention center does not moot the claim for compensatory education

R.L. v. Miami Dade Cnty. Sch. Bd. (*supra*)

• upheld denial of compensatory education based on equitable factor of parents' failure to consider less restrictive unilateral placement

D.E. v. Cent. Dauphin Sch. Dist., 765 F.3d 260 [308 Ed.Law Rep. 664], 64 IDELR ¶ 1 (3d Cir. 2014)

• ruled that IDEA provides avenue for enforcement of IHO decision in favor of parent (here, 10,000 hours of compensatory education) without exhaustion

Jana K. v. Annville–Cleona Sch. Dist. (*supra*)

• applied full–day quantitative approach as default for qualitative approach

Cupertino Union Sch. Dist. v. K.A. (*supra*)

• vacated and remanded IHO's award of "essentially day–for–day compensatory education to achieve an undefined level of 'educational progress' [that] lacks support in the evidence"—recommending possible delegation to IEP team and focus on child's present needs and warranted rectification [32]

Copeland v. Dist. of Columbia, 82 F.Supp.3d 462 [320 Ed.Law Rep. 737], 65 IDELR ¶ 71 (D.D.C. 2015)

• ruled that IHO did not provide sufficient explanation for his compensatory education in calculus

Kelsey v. Dist. of Columbia, 85 F.Supp.3d 327 [320 Ed.Law Rep. 1025], 65 IDELR ¶ 92 (D.D.C. 2015)

• rejected parent's challenge to IHO's compensatory education award of "1.5 hours of services for every hour of services she missed, provided by a professional speech language therapist who has experience with working with older students"—IHO's decision sufficiently explained in accordance with *Reid*[33] qualitative approach

Boose v. Dist. of Columbia, 786 F.3d 1054 [318 Ed.Law Rep. 43], 65 IDELR ¶ 191 (D.C. Cir. 2015)

• differentiating jurisdiction from the merits and retrospective from prospective relief, ruled that parent's child find claim for compensatory education is not moot where district eventually conducted the evaluation, found the child eligible, and provided an IEP

B.D. v. Dist. of Columbia, 817 F.3d 792 [329 Ed.Law Rep. 612], 67 IDELR ¶ 135 (D.C. Cir. 2016)

• remanding IHO's compensatory education award of OT as not either addressing educational losses or providing reasoned explanation for failing to do so, with suggestion of an order for assessment if needed (and for updating or supplementing the award based on the assessment)

IV. OTHER, IDEA–RELATED ISSUES

Gore v. Dist. of Columbia, 67 F.Supp.3d 147 [318 Ed.Law Rep. 158], 64 IDELR ¶ 41 (D.D.C. 2014)

• moving the location alone (here from one school site to another for implementing same IEP) is not a change in placement

M.Z. v. Bethlehem Area Sch. Dist., 521 Fed.Appx. 74 [296 Ed.Law Rep. 92], 60 IDELR ¶ 273 (3d Cir. 2013), *cert. denied*, 134 S.Ct. 479 (2013)

• upon finding the district's evaluation was not appropriate, the IHO was without authority to order curative measures for the evaluation, instead being obligated under the IDEA to approve the parent's request for an IEE at public expense

Smith v. Henderson, 982 F.Supp.2d 32, 61 IDELR ¶ 65 (D.D.C. 2013)

• denied preliminary injunction, ruling that closing of multiple schools for under–enrollment did not violate the IDEA (or the ADA) where the reassigned schools offered the students the same services

Driessen v. Miami–Dade Cnty. Sch. Bd., 520 Fed.Appx. 912, 61 IDELR ¶ 95 (11th Cir. 2013)

• upheld *sua sponte* dismissal for frivolousness where parent lacked standing as having legal guardianship of her children

Chigano v. City of Knoxville, 529 Fed.Appx. 753 [298 Ed.Law Rep. 159], 61 IDELR ¶ 154 (6th Cir. 2013)

• affirmed rejection of Fourteenth Amendment substantive due process liability claim challenging school officials' failure to inform police officer, called in response to high school student's disruptive conduct, of her disability (autism)

R.B. v. Mastery Charter Sch., 532 Fed.Appx. 136 [299 Ed.sLaw Rep. 24], 61 IDELR ¶ 183 (3d Cir. 2013), *cert. denied*, 134 S Ct. 1280 (2014)

• ruled that charter school's disenrollment of IEP student, which was purportedly based on truancy, violated stay–put even though parent filed for due process after the disenrollment (last agreed upon IEP standard)

Am. Nurses Ass'n v. Torlakson, 304 P.3d 1038 [295 Ed.Law Rep. 688], 61 IDELR ¶ 230 (Cal. 2013)

• ruled that state nurse practice act allows school personnel who are not licensed nurses to administer insulin to children with diabetes per the child's IEP or § 504 plan where specifically authorized by physician's prescription

E.R.K. v. State of Haw. Dep't of Educ., 728 F.3d 982 [297 Ed.Law Rep. 20], 61 IDELR ¶ 241 (9th Cir. 2013)

• ruled that a state law that ends eligibility for both special and general education students at their 20th birthday violates the IDEA where it offers public education for adults—in this case, GED and competency–based programs

A.S. v. Office for Dispute Resolution, 88 A.3d 256 [303 Ed.Law Rep. 323], 62 IDELR ¶ 239 (Pa. Commw. Ct. 2014)

• ruled that 1) IHO had authority under IDEA to determine whether a valid settlement agreement existed between the parties and 2) settlement agreement was the result of a unilateral mistake on part of school district, rather than a mutual mistake, thus being valid

Everett v. Dry Creek Joint Elementary Sch. Dist., 5 F.Supp.3d 1184 [308 Ed.Law Rep. 842], 63 IDELR ¶ 5 (E.D. Cal. 2014) [34]

• dismissed § 1983 liability claims against individual defendants based on IDEA, § 504, and ADA, but preserved the corresponding claims against the local and state education agencies on behalf of child with multiple disabilities, including autism, allegedly subjected to severe retaliatory physical and mental abuse

Blunt v. Lower Merion Sch. Dist., 767 F.3d 247 [309 Ed.Law Rep. 28], 64 IDELR ¶ 32 (3d Cir. 2014), *cert. denied*, 135 S.Ct. 1738 (2015)

• ruled that plaintiff–parents failed to establish prima facie claim of disproportionate minority placement in special education under Title VI or § 1983 (Fourteenth Amendment equal protection) via circumstantial, including statistical, evidence of the requisite intentional discrimination

Jefferson Cnty. Bd. of Educ. v. Lolita S. (*supra*)

• upheld reimbursement of IEE where district did not file for impartial hearing to show that its evaluation was appropriate

Colon–Vazquez v. Dep't of Educ. of Puerto Rico, 46 F.Supp.3d 132 [314 Ed.Law Rep. 673], 64 IDELR ¶ 108 (D.P.R. 2014), *permanent injunction*, 79 F.Supp.3d 382 [320 Ed.Law Rep. 148], 64 IDELR ¶ 312 (D.P.R. 2015)

• granted preliminary injunction, under express threat of contempt, to implement IHO orders based on likelihood of success of FAPE development and implementation claim on behalf of 5th grader with ADHD–related health issues associated with Down syndrome

S. Kingstown Sch. Comm. v. Joanna S., 773 F.3d 344 [312 Ed.Law Rep. 507], 64 IDELR ¶ 191 (1st Cir. 2014); *cf. A.L. v. Jackson Cnty. Sch. Bd.* (*supra*) (parent "sabotaged" process by not accepting district's reasonable cost and distance limits)

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

Pittsburgh Bd. of Pub. Educ. v. Pittsburgh Fed'n of Teachers, 105 A.3d 847 [312 Ed.Law Rep. 877] (Pa. Commw. Ct. 2014)

• upheld grievance arbitration award that district violated the collective bargaining agreement's "sole[ly]" seniority criterion by furloughing special education teachers who had not attained "highly qualified teacher" status under the IDEA, rejecting the district's arguments based on the deferential "essence" review standard and—because the district had not yet reached the three–consecutive–year deadline—alleged conflicting law or public policy

Foster v. Bd. of Educ. of City of Chicago, 611 Fed.Appx. 874 [321 Ed.Law Rep. 146], 65 IDELR ¶ 161 (7th Cir. 2015)

• ruled that under *Winkelman*[35] the parent may not proceed pro se to appeal to court the IHO decision concerning her daughter's IDEA rights but, based on her liberally read pleading for compensatory education she qualified as a "party aggrieved" to proceed pro se with regard to her own rights under the IDEA

Z.H. v. N.Y.C. Dep't of Educ., 107 F.Supp.3d 369 [325 Ed.Law Rep. 189], 65 IDELR ¶ 235 (S.D.N.Y. 2015)

• ruled that under New York law IHO lacks authority to order IEP team to place student prospectively in a non–approved private school (distinguishing tuition reimbursement cases)

DL v. Dist. of Columbia, 109 F.Supp.3d 12 [325 Ed.Law Rep. 279], 65 IDELR ¶ 226 (D.D.C. 2015)

• ruled in class action case that prior to 2007 the district failed to provide proper transition from Part C to Part B and violated child find and FAPE for children ages 3–5 and that for the subsequent period (2008–2011) the issue merited further proceedings

T.P. v. Bryan Cnty. Sch. Dist., 792 F.3d 1284 [320 Ed.Law Rep. 25], 65 IDELR ¶ 254 (11th Cir. 2015)

• ruled that request for IEE reimbursement, analyzed as a procedural violation allegedly impeding meaningful parental participation, was moot upon expiration of the three–year period for reevaluation

B.S. v. Anoka–Hennepin Sch. Dist., 799 F.3d 1217 [322 Ed.Law Rep. 45], 66 IDELR ¶ 61 (8th Cir. 2015)

• upheld IHO's reasonable limit, per unpromulgated best practices rule, on the length of the hearing

G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601 [322 Ed.Law Rep. 633], 66 IDELR ¶ 91 (3d Cir. 2015); *Damarcus S. v. Dist. of Columbia* (*supra*)

• ruled that the IDEA statute of limitations is two years from the date that the parent knew or had reason to know of the alleged violation but this limit does not apply to the remedy, which should be to make the child whole for the deprivation (as far back as it goes)

Seth B. v. Orleans Parish Sch. Bd., 810 F.3d 961 [326 Ed.Law Rep. 620], 67 IDELR ¶ 2 (5th Cir. 2016)

• ruled that district's failure to be the filing party in IEE reimbursement case did not constitute a waiver if it showed noncompliance with its criteria (or the appropriateness of its evaluation) without unnecessary delay but the parents are entitled to reimbursement within the reasonable cap if they are in substantial compliance with the criteria for the district's own evaluations

Q.C–C. v. Dist. of Columbia, __ F.Supp.3d __, 67 IDELR ¶ 60 (D.D.C. 2016)

• ruled that child with SLD (dyslexia) was entitled to the remedy of continuing in private school in the wake of district's inappropriate proposed placement based on D.C. Circuit's multi–factor test for prospective placements in *Branham*,[36] which includes severity of child's needs, the private school's linkage with those needs, and the LRE

Jason O. v. Manhattan Sch. Dist. No. 41 (*supra*)

• ruled that IEE reimbursement is, under the equitable circumstances, the pre–, not post–, insurance amount

M.S. v. Utah Sch. for the Deaf, 822 F.3d 1128 [331 Ed.Law Rep. 696], 67 IDELR ¶ 195 (10th Cir. 2016)

• ruled that remedy of remanding placement decision to IEP team was improper delegation of IHO's authority (extending impartiality rationale of *Reid*[37])

V. § 504/ADA ISSUES[38]

G.C. v. Owensboro Pub. Sch., 711 F.3d 623 [290 Ed.Law Rep. 527], 60 IDELR ¶ 272 (6th Cir. 2013)

• rejected parent's child find claim under § 504 in absence of sufficient evidence of discrimination, i.e., bad faith or gross misjudgment

Sutherlin v. Indep. Sch. Dist. No. 40, 960 F.Supp.2d 1254 [301 Ed.Law Rep. 379], 61 IDELR ¶ 69 (N.D. Okla. 2013)

• denied dismissal of parent's claim that district was deliberately indifferent to disability–based bullying leading to suicidal depression of 13–year–old with SLD and Asperger's disorder

Long v. Murray Cnty. Sch. Dist., 522 Fed.Appx. 576, 61 IDELR ¶ 122 (11th Cir. 2013)

• rejected § 504 liability suit filed on behalf of student with Asperger's disorder who committed suicide allegedly as a result of disability–based peer harassment—lack of deliberate indifference

K.M. v. Tustin Unified Sch. Dist., 725 F.3d 1088 [296 Ed.Law Rep. 800], 61 IDELR ¶ 182 (9th Cir. 2013), *cert. denied*, 134 S.Ct. 1493 (2014)

• preserved for further proceedings where high school students with hearing impairment were entitled to Communication Action Real Time Transcription (CART) under Title II (public services) of the ADA even if not under the IDEA, ruling that a school district's compliance with its obligations to a deaf or hard–of–hearing child under the IDEA does not necessarily establish compliance with the ADA Title II effective communication regulation [39]

Mann v. Louisiana High Sch. Athletic Ass'n, 535 Fed.Appx. 405 [299 Ed.Law Rep. 445], 61 IDELR ¶ 186 (5th Cir. 2013)

• ruled, in denying preliminary injunction that psychologist's diagnosis of anxiety disorder, standing alone with only a conclusory statement about ADA eligibility, does not suffice to establish that the student met the definition of disability under the ADA (as overlapping with but distinct from the definition under the IDEA)

Starego v. N.J. Interscholastic Athletic Ass'n, 970 F.Supp.2d 303 [302 Ed.Law Rep. 998], 61 IDELR ¶ 274 (D.N.J. 2013)

• denied preliminary injunction under the ADA for fifth year of high school football for student with autism who had qualitatively same four–year experience as nondisabled peers

T.M. v. Dist. of Columbia, 961 F.Supp.2d 169 [301 Ed.Law Rep. 621], 61 IDELR ¶ 296 (D.D.C. 2013)

• rejected § 504 claim where allegations of bad faith or gross misconduct either amounted to repetition of denial of FAPE or speculation as to district's motives

Chambers v. Sch. Dist. of Philadelphia, 537 Fed.Appx. 90 [299 Ed.Law Rep. 851], 62 IDELR ¶ 1 (3d Cir. 2013)

• ruled that district's repeated failure to implement OT and SLT provisions of IEP for student with autism, who had received an IHO award of $209,000 in compensatory education under the IDEA (in the form of a trust fund), could constitute deliberate indifference, thus liability for money damages, under § 504

Pagan–Negron v. Seguin Indep. Sch. Dist., 974 F.Supp.2d 1020 [303 Ed.Law Rep. 302], 62 IDELR ¶ 11 (W.D. Tex. 2013)

• rejected hostile environment claim under § 504/ADA based on principal's alleged disciplinary berating of student with SLI where the principal did not know of the child's behavior related disability until a diagnosis months later for Asperger's disorder

CG v. Pennsylvania Dep't of Educ., 734 F.3d 229 [298 Ed.Law Rep. 120], 62 IDELR ¶ 41 (3d Cir. 2013)

• ruled that state's census–based funding formula for special education does not violate § 504 and the ADA—failure to prove that it denied the class members meaningful access (i.e., deprived them of "a program, benefit, or service that was provided to the disabled students who attend schools in the nonclass districts")

B.M. v. S. Callaway R–II Sch. Dist., 732 F.3d 882 [297 Ed.Law Rep. 712], 62 IDELR ¶ 42 (8th Cir. 2013)

• upheld summary judgment against parent's § 504/ADA claims, ruling that district's delay in evaluating and providing 504 plan for child with alternate diagnoses of ADHD and dysthymic disorder, including insisting on prerequisite of IDEA evaluation, did not constitute bad faith or gross misjudgment [40]

Estate of A.R. v. Muzyka, 543 Fed.Appx. 363 [301 Ed.Law Rep. 113], 62 IDELR ¶ 43 (5th Cir. 2013)

• upholding rejection of liability lawsuit on 9–year–old child with disabilities who drowned while participating in summer enrichment program—lack of showing of bad faith, gross misjudgment, or deliberate indifference

A. v. Hartford Bd. of Educ., 976 F.Supp.2d 164 [304 Ed.Law Rep. 66], 62 IDELR ¶ 47 (D. Conn. 2013)

• ruled that § 504 is one means of enforcing (i.e., responding to non–implementation of) an IDEA hearing officer decision

A.G. v. Lower Merion Sch. Dist., 542 Fed.Appx. 194 [301 Ed.Law Rep. 61], 62 IDELR ¶ 102 (3d Cir. 2013); *see also S.H. v. Lower Merion Sch. Dist.*, 729 F.3d 248 [297 Ed.Law Rep. 58], 61 IDELR ¶ 271 (3d Cir. 2013) [41]

• upholding summary judgment against parent's § 504/ADA "regarded–as" money–damages claim for failure to show that alleged misidentification as a special education student (here SLD/SLI, including suspected ADHD) constituted deliberate indifference

B.J. v. Homewood Flossmoor Cmty. High Sch. Dist., 999 F.Supp.2d 1093 [307 Ed.Law Rep. 862], 62 IDELR ¶ 141 (N.D. Ill. 2013)

• denied dismissal based on lack of standing of child with obsessive compulsive disorder who alleged that state's policy for approved schools discriminated against an appropriate placement for him

CTL v. Ashland Sch. Dist., 743 F.3d 524 [302 Ed.Law Rep. 31], 62 IDELR ¶ 252 (7th Cir. 2014)

• summarily rejecting § 504 suit of 1st grade student with diabetes due to lack of intentional discrimination or reasonable accommodation—minor deviations in implementing 504 plan or doctor's orders that were not unsafe are not sufficient to meet these standards

Estate of Lance v. Lewisville Indep. Sch. Dist., 743 F.3d 982 [302 Ed.Law Rep. 492], 62 IDELR ¶ 282 (5th Cir. 2014)

• summarily rejecting § 504 liability for suicide of child with disability—lack of proof of deliberate indifference of district in response to bullying, which had allegedly led to the suicide

Moore v. Chilton Cnty. Bd. of Educ., 1 F.Supp.3d 1281 [307 Ed.Law Rep. 949], 62 IDELR ¶ 286 (M.D. Ala. 2014)

• rejected, due to lack of deliberate indifference, parent's claim that district was liable for disability–based bullying leading to suicide of high school student with growth disorder

C.L. v. Scarsdale Union Free Sch. Dist. (*supra*)

• ruled that a § 504 claim may be predicated on the alleged denial of access to FAPE as compared to nondisabled students but it requires proof of bad faith or gross misjudgment

M.A. v. New York Dep't of Educ., 1 F.Supp.3d 125 [307 Ed.Law Rep. 868], 63 IDELR ¶ 18 (S.D.N.Y. 2014)

• summarily rejected parent's ADA retaliation claim for failure to show any causal connection between her advocacy on behalf of her daughter with autism and the paraprofessional's alleged abuse of child and supervisors' alleged failure to report it

Pollack v. Reg'l Sch. Unit 75, 12 F.Supp.3d 173 [309 Ed.Law Rep. 921], 63 IDELR ¶ 72 (D. Me. 2014)

• denied dismissal of § 504/ADA retaliation and failure–to–modify (specifically, refusal to allow child to carry recording device) claims, among others (e.g., First and Fourth Amendment claims), of parent of child with autism and Landau–Kleffner syndrome that were separable from their IDEA FAPE claim, which they lost at the due process hearing and is included in the appeal [42]

Estrada v. San Antonio Indep. Sch. Dist., 575 Fed.Appx. 541 [309 Ed.Law Rep. 189], 63 IDELR ¶ 213 (5th Cir. 2014), *cert. denied*, 135 S.Ct. 1408 (2015)

• in context of an employee's sexual assault on their son with cerebral palsy, rejected parents' ADA accessibility claims as devoid of factual foundation and their § 504 claims with regard to the IEP as procedural only lacking in requisite bad faith or gross misjudgment

Shadie v. Hazleton Area Sch. Dist., 580 Fed.Appx. 67 [310 Ed.Law Rep. 668], 64 IDELR ¶ 35 (3d Cir. 2014)

• upheld summary rejection of money damages suit under § 504 on behalf of student who autism, concluding the aide's three instances of inappropriate verbal and/or physical treatment did not amount to the requisite deliberate indifference

B.D. v. Dist. of Columbia, 66 F.Supp.3d 75 [318 Ed.Law Rep. 76], 64 IDELR ¶ 46 (D.D.C. 2014)

• ruled that mandatory report to child welfare authorities for student's failure to attend school did not constitute retaliation under § 504

T.F. v. Fox Chapel Area Sch. Dist., 589 Fed.Appx. 594 [313 Ed.Law Rep. 34], 64 IDELR ¶ 61 (3d Cir. 2014)

• rejected parent's § 504 challenge to district's proposed 504 plan for student with severe tree–nut allergy, concluding that the multiple meetings and revised proposals, including the last one submitted to and approved by the child's physician, were reasonable even though they did not include the various additional accommodations that the parents wanted and the existing accommodations in the district–wide food allergy policy and training–oddly adding dicta that "the higher standard of proof for intentional discrimination applies here because [they] seek compensatory damages in the form of tuition reimbursement"

K.K. v. Pittsburgh Pub. Sch., 590 Fed.Appx. 148 [313 Ed.Law Rep. 71], 64 IDELR ¶ 62 (3d Cir. 2014)

• upheld summary rejection of money damages suit under § 504 on behalf of gifted graduate who had 504 plan for gastroparesis and, subsequently, anxiety disorder during senior year, concluding that the district's occasional lapses did not amount to the requisite deliberate indifference

D.A.B. v. N.Y.C. Dep't of Educ., 45 F.Supp.3d 400 [314 Ed.Law Rep. 626], 64 IDELR ¶ 69 (S.D.N.Y. 2014)

• rejected claim that the district excluded the child based on autism, as contrasted with its general vaccination requirement (with medical exemption), based on failure to exhaust this claim and, in any event, on lack of discrimination

Lebron v. Commonwealth of Puerto Rico, 770 F.3d 25 [310 Ed.Law Rep. 71], 64 IDELR ¶ 95 (1st Cir. 2014)

• upheld dismissal of § 504/ADA money damages suit against state and local education agency on behalf of IEP student with Asperger's disorder whom the parents voluntarily had placed in a private school, ruling that SEA has no obligation under § 504/ADA for such students other than to avoid associational discrimination and, in any event, that the claim did not show any evidence of intentional discrimination or retaliation

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

• rejected § 504 bullying/FAPE claim for same reasons in this case as under the IDEA

K.D. v. Starr, 55 F.Supp.3d 782 [316 Ed.Law Rep. 124], 64 IDELR ¶ 107 (D. Md. 2014)

• preserved for trial whether district's actions, allegedly including repeatedly failing to adequately strengthen and consistently implement the 504 plan of middle school student with SLD upon declining academic performance and evaluated need for special education, constituted bad faith or gross misjudgment, which does not require personal animosity, ill will, or malice

Thomas v. Springfield Sch. Comm., 59 F.Supp.3d 294 [316 Ed.Law Rep. 864], 64 IDELR ¶ 213 (D. Mass. 2014); *see also Doe v. Torrington Bd. of Educ.*, __ F.Supp.3d __, 67 IDELR ¶ 182 (D Conn. 2016); *Dorsey v. Pueblo Sch. Dist. 60*, 140

F.Supp.3d 1102 [330 Ed.Law Rep. 130], 66 IDELR ¶ 183 (D. Colo. 2015); *Zdrowski v. Rieck*, 119 F.Supp.3d 643 [326 Ed.Law Rep. 724], 66 IDELR ¶ 42 (E.D. Mich. 2015)

• dismissed ADA claim of peer harassment (i.e., bullying) of student with SLD (or other disability) where not based on student's disability

G.M. v. Dry Creek Joint Elementary Sch. Dist. (*supra*); *see also S.B. v. Bd. of Educ. of Harford Cnty.*, 819 F.3d 69, 67 IDELR ¶ 165 (4th Cir. 2016) (ADHD and SLD); *Nevills v. Mart Indep. Sch. Dist.*, 608 Fed.Appx. 217 [319 Ed.Law Rep. 707], 65 IDELR ¶ 164 (5th Cir. 2015) (TS)

• rejected § 504 bullying/FAPE claim of student with SLD (dyslexia) due to lack of deliberate indifference

T.L. v. Sherwood Charter Sch., 68 F.Supp.3d 1295 [318 Ed.Law Rep. 272], 64 IDELR ¶ 233 (D. Or. 2014)

• rejected ADA denial–of–reasonable–accommodation claim of student with diabetes at charter school, ruling that single failure to ensure he ate lunch did not amount to requisite exclusion from participation or denial of benefits, and rejected § 504 disability discrimination claim based on inadequate showing of requisite federal financial assistance in comparison to state statutes governing funding for charter schools coupled with the testimony of district business officials

M.S. v. Marple Newtown Sch. Dist., 82 F.Supp.3d 625 [320 Ed.Law Rep. 756], 64 IDELR ¶ 267 (E.D. Pa. 2015)

• rejected parents' peer–harassment claim based on lack of disability connection and their retaliation claim based on lack of causal connection

Alboniga v. Sch. Bd. of Broward Cnty., 87 F.Supp.3d 1319 [321 Ed.Law Rep. 331], 65 IDELR ¶ 7 (S.D. Fla. 2015) [43]

• interpreted the ADA Title II regulation for service dogs to enjoin the district from requiring the parents to maintain additional liability insurance, to obtain vaccinations beyond those required by state law, and to provide a handler for the dog—ordered the district, as a reasonable accommodation, to provide the assistance that the child required to provide his service animal with routine care such as feeding, watering, and walking

Eskenazi–McGibney v. Connetquot Cent. Sch. Dist., 84 F.Supp.3d 221 [320 Ed.Law Rep. 888], 65 IDELR ¶ 8 (E.D.N.Y. 2015)

• rejected 1) parents' peer–harassment claim based on lack of disability connection and 2) their retaliation claim based on lack of protected conduct

Frank v. Sachem Sch. Dist., 84 F.Supp.3d 172 [320 Ed.Law Rep. 862], 65 IDELR ¶ 9 (E.D.N.Y. 2015), *aff'd mem.*, 633 Fed.Appx. 14, 67 IDELR ¶ 30 (2d Cir. 2016). *But cf. S.S. v. City of Springfield*, 146 F.Supp.3d 414 [331 Ed.Law Rep. 214], 66 IDELR ¶ 253 (D. Mass. 2015) (court preserved ADA LRE claim after unsuccessful IDEA FAPE claim at IHO level)

• rejected claim that the district's placement of student with ED at residential treatment program violated the ADA integration mandate–lack of deliberate indifference

Lee v. Natomas Unified Sch. Dist., 93 F.Supp.3d 1160 [322 Ed.Law Rep. 301], 65 IDELR ¶ 41 (E.D. Cal. 2015); *cf. Pollard v. Georgetown Sch. Dist.*, 132 F.Supp.3d 208 [328 Ed.Law Rep. 610], 66 IDELR ¶ 98 (D. Mass. 2015) (student on 504 plan)

• preserved for trial whether district 's seeking of restraining order against parent to protect staff was pretext for retaliation for parent's advocacy on behalf of his child with SLI

Ripple v. Marble Falls Indep. Sch. Dist., 99 F.Supp.3d 662 [323 Ed.Law Rep. 748], 65 IDELR ¶ 98 (W.D. Tex. 2015)

• rejected money damages suit under § 504/ADA of high school graduate who experienced concussions and other injuries on the football team—failure to exhaust child find and accommodation claims and lack of bad faith or gross misjudgment for safety claim

Schiffbauer v. Schmidt, 95 F.Supp.3d 846 [322 Ed.Law Rep. 865], 65 IDELR ¶ 100 (D. Md. 2015)

• rejected § 504/ADA claim of hostile environment, based on alleged single incident of physical restraint and alleged peer bullying, due to lack of sufficient severity and pervasiveness

Stanek v. St. Charles Cmty. Unit Sch. Dist. No. 303 (*supra*)

• preserved for further proceedings parent's, not student's retaliation and student's discrimination (based on failure to implement IEP) claims under § 504 against the district, not its personnel

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

• denied § 504/ADA class action claim on behalf of preschool children, reasoning that "[a]lthough the District may still not be in compliance with federal and D.C. law, it is clear that vast improvements have been made—strongly suggesting a lack of bad faith"

K.R.S. v. Bedford Cmty. Sch. Dist., 109 F.Supp.3d 1060 [325 Ed.Law Rep. 327], 65 IDELR ¶ 272 (S.D. Iowa 2015)

• denied dismissal of § 504 claim that district was deliberately indifferent to pervasive disability–based bullying of student with SLD by other members of high school football team

T.B. v. San Diego Unified Sch. Dist., 806 F.3d 451 [324 Ed.Law Rep. 98] (9th Cir. 2015), *cert. denied*, __ S.Ct. __ (2016)

• in latest decision in 10–year dispute for graduated 21–year–old student with multiple disabilities, affirmed summary judgment for district on § 504 gastrostomy tube and retaliation claims but denied summary judgment for district on § 504 gastrostomy tube nurse claim (regarding state law "qualified personnel" provision), all based on deliberate indifference standard

J.S. v. Houston Cnty. Bd. of Educ., 120 F.Supp.3d 1287 [326 Ed.Law Rep. 843], 66 IDELR ¶ 8 (M.D. Ala. 2015)

• rejected § 504/ADA claim for lack of actual knowledge and/or deliberate indifference—simple failure to provide FAPE (here via improper implementation) is not sufficient for discrimination

Swanger v. Warrior Run Sch. Dist., 137 F.Supp.3d 737 [329 Ed.Law Rep. 702] (M.D. Pa. 2015)

• rejected § 504 liability of school district for peer sexual abuse of special education student due to lack of deliberate indifference

P.P. v. Compton Unified Sch. Dist., 135 F.Supp.3d 1126 [329 Ed.Law Rep. 300], 66 IDELR ¶ 121 (C.D. Cal. 2015)

• denied preliminary injunction in § 504/ADA class action claim seeking system–wide training for student who have experienced complex trauma

M.M. v. Sch. Dist. of Philadelphia, 142 F.Supp.3d 396 [330 Ed.Law Rep. 169], 66 IDELR ¶ 181 (E.D. Pa. 2015)

• upheld expert witness fees (approx. $10K) in addition to reduced attorneys' fees (approx. $130K) under § 504 as a consequence of denial of FAPE under IDEA for twice–exceptional child

D.A.B. v. N.Y.C. Dep't of Educ. (*supra*)

• rejected § 504 discrimination claim of denial of access for student with autism based on lack of vaccination, because parent unilaterally placed the child and failed to apply for vaccination exemption

D.N. v. Louisa Cnty. Pub. Sch., 156 F.Supp.3d 767, 67 IDELR ¶ 12 (W.D. Va. 2016)

• refused dismissal of § 504 claim on behalf of student with autism, concluding that allegations of repeated nondisciplinary exclusions from IEP's general education placement and district denials of these exclusions at IEP meetings and involuntary mental health evaluation rather than appropriate private school placement met bad faith or gross misjudgment standard

R.K. v. Bd. of Educ. of Scott Cnty., 637 Fed.Appx. 933, 67 IDELR ¶ 29 (6th Cir. 2016)

• upheld summary judgment for district in dispute between parents' request for nursing services, including insulin pump monitoring, to kindergarten child with Type I diabetes in neighborhood school and district's offer to do so in another school–parents relocated, thus making injunctive relief moot, and failed to show deliberate indifference, thus not qualifying for money damages [44]

A.G. v. Paradise Valley Unified Sch. Dist., 815 F.3d 1195 [328 Ed.Law Rep. 495], 67 IDELR ¶ 79 (9th Cir. 2016)

• reversed summary judgment for district, finding genuine issues as to the meaningful access and reasonable accommodation claims of middle school gifted student with autism and the deliberate indifference requisite for money damages—parents claimed that district was liable (after settling IDEA claim) for not providing FBA–BIP and 1:1 aide to child in middle school placement that included gifted program rather than changing the placement to private psychiatric school

Beam v. W. Wayne Sch. Dist., __ F.Supp.3d __, 67 IDELR ¶ 88 (M.D. Pa. 2016)

• failure to modify and implement student's 504 plan may fulfill the requisite liability standard of deliberate indifference under § 504 and the ADA (here for student who committed suicide after school's knowledge of his emotional state)

C.C. v. Hurst–Euless–Bedford Indep. Sch. Dist., 641 Fed.Appx. 423 [332 Ed.Law Rep. 40], 67 IDELR ¶ 111 (5th Cir. 2016)

• ruled that placement of special education student with ADHD in 60–day interim alternate education setting after manifestation determination [45] did not constitute hostile environment under § 504–lack of requisite deliberate indifference

K.L. v. Mo. State High Sch. Athletic Ass'n, __ F.Supp.3d __, 67 IDELR ¶ 171 (E.D. Mo. 2016)

• denied preliminary injunction for student with disabilities who competed in track with a racing wheelchair and who sought to earn team points and also to have them assessed against school teams w/o para–athletes—a fundamental alteration, or "affirmative action" relief, not cognizable under § 504 and the ADA

J.C. v. Cambrian Sch. Dist., __ Fed.Appx. __, 67 IDELR ¶ 199 (9th Cir. 2016)

• brief decision affirming that charter school's denial of admission to nonresident 2nd grader was due to lack of space, not student's disability, thus not violating § 504/ADA

Spring v. Allegany–Limestone Sch. Dist., __ Fed.Appx. __, 68 IDELR ¶ 34 (2d Cir. 2016)

• reversed dismissal of harassment (bullying) liability claim under § 504/ADA for student with TS and ADHD who committed suicide after being bullied—acknowledged liberalizing eligibility standards under ADAAA

U.S. v. Gates–Chili Cent. Sch. Dist., __ F.Supp.3d __, 68 IDELR ¶ 70 (W.D.N.Y. 2016)

• agreed with district that the ADA did not obligate it to provide a handler for service dog for student with autism and seizure disorders but preserved the matter for further proceedings as to whether the student was able to "handle" the dog (including tether and untether it)

Footnotes

a1 The views expressed are those of the authors and do not necessarily reflect the views of the publisher. Cite as 334 Ed.Law Rep. [1] (October 20, 2016).

1 The previous twelve updates appeared at 292 Ed. Law Rep. [505] (2013); 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).

2 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 exception herein is in occasional footnotes for unpublished noteworthy rulings via further proceedings in the same case.

3 The limited exception is for the federal appeals court decisions published in West's FEDERAL APPENDIX.

4 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."

5 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.

6 20 U.S.C §§ 1401 *et seq.* (2014).

7 29 U.S.C §§ 794 (2014).

8 42 U.S.C §§ 12101 *et seq.* (2014).

9 For a systematic analysis of state–by–state frequency trends across the entire period of this series of case law updates, see Tessie Rose Bailey & Perry A. Zirkel, *Frequency Trends in Court Decisions under the Individuals with Disabilities Education Act,* 28 J. SPECIAL EDUC. LEADERSHIP 3 (2015)

10 For a more comprehensive longitudinal analysis of special education case law trends, see Zorka Karanxha & Perry A. Zirkel, *Trends in Special Education Case Law: Frequency and Outcomes of Published Court Decisions 1998–2012*, 27 J. SPECIAL EDUC. LEADERSHIP 55 (2014).

11 The district made the legal error of contending that the exclusive responsibility for evaluations and IEPs for parentally placed children in private schools belonged to the district of location. Thus, the case illustrates the potential intersection of tuition reimbursement and parentally placed children when the placement is "unilateral."

12 In a subsequent, unpublished decision, the court denied the parents' alternative requests for tuition reimbursement and money damages, but took the equities of the case into consideration in awarding the parents' partial attorneys' fees amounting to $56K. *M.A. v. Torrington Bd. of Educ.*, 980 F.Supp.2d 279 [304 Ed.Law Rep. 418], 63 IDELR ¶ 64 (D. Conn. 2014).

13 In a companion decision, the Ninth Circuit held that the parents were not entitled to attorneys' fees in the wake of prevailing for an IEE at public expense and the resulting district determination that the student was not eligible under the IDEA, *D.A. v. Meridian Joint Sch. Dist. No. 2* (*infra*).

14 Moreover, in a separate state court action, the New Jersey intermediate, appellate court rejected the plaintiffs' claim under the state law that parallels § 504. *J.T. v. Dumont Pub. Sch.*, 103 A.3d 269 [311 Ed.Law Rep. 101], 64 IDELR ¶ 248 (N.J. Super. Ct. App. Div. 2014).

15 For the Second Circuit's modified four–corners approach, which largely limits FAPE review to the explicit contents of the IEP, see *R.E. v. N.Y.C. Dep't of Educ.,* 694 F.3d 167 [284 Ed.Law Rep. 629], 59 IDELR ¶ 241 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 2802 (2013).

16 For the Ninth Circuit's standard for failure–to–implement FAPE cases, see *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 [225 Ed.Law Rep. 136] (9th Cir. 2007).

17 The appellate court ended its analysis with this statement: "Were our inquiry limited to rewarding the generosity of a loving family, we would almost certainly reach a different result. We are obliged, however, to apply the governing law, which requires that we affirm."

18 For the unpublished district court decision subject to this brief affirmance, see *G.M. v. Drycreek Joint Elementary Sch. Dist.*, 59 IDELR ¶ 223 (E.D. Cal. 2012).

19 *Doug C. v. Haw. Dep't of Educ.,* 720 F.3d 1038 [295 Ed.Law Rep. 480], 61 IDELR ¶ 91 (9th Cir. 2013).

20 This case concerns the IEP for the year after the one ultimately addressed in the Second Circuit appeal *supra*.

21 See *supra* note 14.

22 *C.H. v. Cape Henlopen Sch. Dist.,* 606 F.3d 59 [257 Ed.Law Rep. 39], 54 IDELR ¶ 212 (3d Cir. 2010).

23 See *supra* note 14.

24 See *supra* note 14.

25 See *supra* note 18.

26 The Second Circuit did not find it necessary to reach the substantive bullying issue, thus leaving in limbo the district court's successive rulings that provided standards for denial of FAPE based on bulling. *T.K. v. N.Y.C. Dep't of Educ.*, 779 F.Supp.2d 289 [270 Ed.Law Rep. 593], 56 IDELR ¶ 228 (S.D.N.Y. 2011), *further proceedings*, 32 F.Supp.3d 405 [312 Ed.Law Rep. 603], 63 IDELR ¶ 256 (S.D.N.Y. 2014).

27 See *supra* note 15.

28 See *supra* note 14.

29 See § 504/ADA section *infra*.

30 *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 45 IDELR ¶ 267 (2006) (ruled that prevailing parents are not entitled to expert witness fees under the IDEA).

31 *Thompson v. Bd. of Special Sch. Dist.*, 144 F.3d 574 [126 Ed.Law Rep. 665], 28 IDELR 173 (8th Cir. 1998).

32 More specifically, the court instructed: "the ALJ [administrative law judge] can develop evidence of [the child's] present needs and consider to what extent those needs were affected by the District's actual provision of instruction services from [for the period directly before the denial of FAPE via material non–implementation], and to what extent any regression is attributable to the failure of implementation as opposed to other factors such as [the child's] physical health or his removal from the school active learning environment."

33 *Reid v. Dist. of Columbia*, 401 F.3d 516 [196 Ed.Law Rep. 402], 43 IDELR ¶ 32 (D.C. Cir. 2005).

34 In an unpublished decision, the court subsequently denied dismissal of the parents' direct IDEA claims against the state. *Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, 63 IDELR ¶ 39 (E.D. Cal. 2014).

35 *Winkelman v. Parma City Sch. Dist.,* 550 U.S. 516 [219 Ed.Law Rep. 29], 47 IDELR ¶ 281 (2007).

36 *Branham v. Dist. of Columbia*, 427 F.3d 7 [202 Ed.Law Rep. 610], 44 IDELR ¶ 149 (D.C. Cir. 2005).

37 *See supra* note 28.

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

39 Subsequently, the parties subsequently entered into a court–approved settlement for $198K, and the trial court awarded $370K (of the requested $443) in attorney's fees. *K.M. v. Tustin Unified Sch. Dist.*, 78 F.Supp.3d 1289 [319 Ed.Law Rep. 962], 65 IDELR ¶ 232 (C.D. Cal. 2015).

40 Before filing suit, the parents received a ruling from Office of Civil Rights (OCR) that the district violated § 504 for two of her twelve complaints, which both concerned discipline but not, for example, delayed evaluation or delayed FAPE.

41 In *S.H.*, the court also rejected an IDEA child find claim because, as both parties apparently agreed, the student did not qualify as having a disability.

42 In an unpublished subsequent decision, the court similarly denied dismissal, with limited exception, the parents' retaliation claims re a $2,600 charge for records access. *Pollack v. Reg'l Sch. Unit 75*, 67 IDELR ¶ 40 (D. Me. 2016).

43 For an unpublished decision that reached the opposite result based on the child's inability to control the service dog, see *Riley v. Sch. Admin. Unit #23*, 67 IDELR ¶ 8 (D.N.H. 2016).

44 In an earlier decision in this case, the Sixth Circuit required an individualized assessment per the § 504 evaluation regulation. *R.K. v. Bd. of Educ. of Scott Cnty.*, 494 Fed.Appx. 589 [289 Ed.Law Rep. 563], 59 IDELR ¶ 152 (6th Cir. 2012).

45 Rejecting the broad assertion that ADHD's impairment of executive functioning caused the bathroom–photo incident, the appellate court reasoned that "any plaintiff with ADHD could attribute any misconduct, no matter how severe, to the disability."

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