STATE EDUCATION AGENCIES AS DEFENDANTS UNDER THE IDEA AND RELATED FEDERAL LAWS: A COMPILATION OF THE COURT DECISIONS*

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For this brief annotated compilation of court decisions in approximate chronological sequence since the year 2000,[1] the acronyms are: Americans with Disabilities Act (ADA); CRP=complaint resolution process; FAPE=free appropriate public education; IDEA= Individuals with Disabilities Education Act; IHO=impartial hearing officer; LEA=local education agency; SEA=state education agency. Additionally, the following two symbols precede each citation to designate the outcome of the case in terms of fitting within scope of potential SEA liability: ***P***=in favor of the plaintiff-parent(s); **(*P*)**=potential but not actual liability; ***S***=in favor of the SEA.[2]

The coverage is limited to the issue of whether SEAs are subject to litigation under the IDEA and, as a secondary matter, § 504 or the ADA.[3] The coverage does not extend to the unquestioned FAPE liability for SEAs in their provision of direct services to students with

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[1] For the prior case law, see Thomas Mayes & Perry A. Zirkel, *State Education Agencies and Special Education: Obligations and Liabilities*, 10 B.U. PUB. INT. L.J. 62 (2000). Additionally, this more recent coverage does not extend to relevant federal agency policy interpretations. See, e.g., Letter to Kane, 65 IDELR ¶ 303 (OSEP 2015) (opining that an SEA's refusal to take the direct service funding action under 34 CFR § 300.227 after a factual determination has been made that a LEA is "unable to establish and maintain programs of FAPE" for an eligible child or group of children violates the IDEA); Letter to Covall, 48 IDELR ¶ 106 (OSEP 2006) (opining that SEA has ultimate responsibility for FAPE for placements by non-education agencies though SEA can seek reimbursement from the non-education agency).

[2] The outcome entries in the case list are only approximate in light of the fuzzy scope of potential liability.

[3] In contrast, cases limited to constitutional claims are not included herein. See, e.g., *Brittany O. v. Bentonville Sch. Dist.,* 67 IDELR ¶ 114 (E.D. Ark. 2016).

disabilities, such as via a state school for the deaf.[4] It also does not include the related but separable issues of SEA consent decrees under the IDEA or § 504/ADA.[5] The final exclusion was for cases resolved on or limited to adjudicative issues, such as the exhaustion requirement,[6] statute of limitations,[7] claim preclusion,[8] and class certification.[9]

The relevant provisions of the IDEA are primarily those concerning the SEA's obligations to provide (1) direct services to students with disabilities,[10] (2) direct services when the LEA is unable to provide FAPE,[11] (3) general supervision for LEA compliance,[12] and (4) an IHO system within a specified subject matter jurisdiction.[13]

Although interested individuals and organizations should examine the cited court opinions with legal counsel for the interpretation as applied to their particular jurisdiction, the author offers the following tentative overall conclusions for the further developing case law during the recent

[4] See, e.g., *M.S. v. Utah Sch. for the Deaf*, 822 F.3d 1128, 331 Ed.Law Rep. 696 (10th Cir. 2016); *Barron v. S. Dakota Bd. of Regents*, 655 F.3d 787, 272 Ed.Law Rep. 831 (8th Cir. 2011); *Mo. Dep't of Elementary & Secondary Educ. v. Springfield Sch. Dist. R-12*, 358 F.3d 992, 185 Ed.Law Rep. 416 (8th Cir. 2004); *C.S. v. State of Mo.*, 670 F. Supp. 2d 972, 253 Ed.Law Rep. 414 (E.D. Mo. 2009).

[5] See, e.g., *Emma C. v. Estin*, 985 F. Supp. 940, 123 Ed.Law Rep. 717 (N.D. Cal. 1997), *various further proceedings including* 67 IDELR ¶ 119 (N.D. Cal. 2016); *Gaskin v. Commw. of Pa*., 231 F.R.D. 195 (E.D. Pa. 2005). *Corey H. v. Chicago Bd. of Educ.*, 528 F. App'x 666 (7th Cir. 2013); *Angel G. v. Texas Educ. Agency*, 41 IDELR ¶ 31 (W.D. Tex. 2004).

[6] See, e.g., *Brooke M. v. Alaska Dep't of Educ.,* 293 F. App'x 452, 239 Ed.Law Rep. 365 (9th Cir. 2008).

[7] See, e.g., *Brittany O. v. Bentonville Sch. Dist*., 64 IDELR ¶ 299 (E.D. Ark. 2015).

[8] See, e.g., *Blunt v. Lower Merion Sch. Dist*., 767 F.3d 247, 309 Ed.Law Rep. 28 (3d Cir. 2014).

[9] See, e.g., *Jamie S. v. Milwaukee Pub. Sch*., 668 F.3d 481, 277 Ed.Law Rep. 34 (7th Cir. 2012).

[10] 20 U.S.C. § 1413(g)(1)(D).

[11] *Id*. § 1413(g)(1)(B).

[12] *Id*. §§ 1412(a)(11)(A) and 1416(a)(1)(C).

[13] *Id*. § 1415(b)(6)(A). For the derivative right of judicial review, see *id.* §1415(i)(2)

period for SEA's susceptibility to suit[14] (with the numbers for the cited cases listed in after each one):[15]

- Neither school districts nor private schools may not sue SEAs under the IDEA – case nos. **4**, **8**, 21, 28, 31, 40, 41.
- However, advocacy groups for parents do have representational standing for such suits – case nos. 16, 34.
- In the jurisdictions that have addressed these situations thus far, parents of students with disabilities may sue SEAs under the IDEA for:
    (a) direct services (e.g., state schools) – see *supra* note 3.
    (b) state regulations – case nos. (**33**), **43**; *cf*. 2 (failure to issue regs).
    (c) systemic violations – case nos. 12, (15), (17), (19), (20), 26, 29, 32, 34, (42).
    (d) contingent direct service[16] but only upon strict conditions – case no. (**30**), (48); *cf*. 39.
    (e) enforcement of IHO decision – case nos. 10, (14).
- Conversely, in most jurisdictions that have addressed the issue, parents of students with disabilities may not sue SEAs under the IDEA for the following issues:
    - an IHO decision where SEA is not substantially involved – case nos. 1, **9**, 11, 22, 29, 35, 43; *cf*. 25, 45 (individual FAPE). *But see* case nos. 13, 36.
    - the IHO system – case no. 38.

[14] "Suit" in this context specifically refers to the judicial context. For the contrasting IHO context, see case no.

[15] Bold font designates those case numbers for federal appellate court decisions. Although not entirely precise, the parenthetical case nos. designate case nos. that represent but fail to fulfill or succeed with the identified feature. For the trends during the earlier period, see Mayes & Zirkel, *supra* note 1,

[16] "Contingent" here refers to the regulatory of the LEA's inability to provide FAPE. For an example of a formalized state procedure for such situations, see Georgia's mandatory determination regulation. GA. COMP. R. & REGS. 160-4-7-.20.

- a CRP decision – case nos. 6, 40; *cf*. 45. *But see* case no. 18.

• For corresponding claims against SEA based on § 504/ADA, the basic applicable requirements are:

(a) prima facie elements – case nos. (7), (22), 24, (**37**).

(b) bad faith or gross misjudgment – case nos. (25), 26, 44, (46), (48).

• Conclusive rulings against SEAs in such cases have been negligible thus far, although perhaps attributable in part to settlements and unreported decisions.

1. ***S*** *Carnwath v. Grasmick,* 115 F. Supp. 2d 577, 247 Ed.Law Rep. 955 (D. Md. 2000)
- ruled that parents do not have viable claim against SEA, in wake of losing IHO decision, with respect to IHO errors of law or procedural violation, training/competence, or delay in decision not directly attributable to SEA nor to child's alleged denial of FAPE where not involved in it

2. ***P*** *J.R. v. Waterbury Bd. of Educ.*, 272 F. Supp. 2d 174, 180 Ed.Law Rep. 172 (D. Conn. 2001)
- ruled that parents' stated claim against SEA under § 1983-IDEA for failing to promulgate standards governing the operation of private entities that provide vocational opportunities to special education students

3. ***P*** *John T. v. Iowa Dep't of Educ.,* 258 F.3d 860, 155 Ed.Law Rep. 1077 (8th Cir. 2001)
- ruled that the SEA was liable for attorneys' fees where instead of seeking dismissal as a real party in interest at the court level the SEA took a zealous position against the ultimately prevailing parents, but not for those fees attributable to the due process hearing, where the SEA was not a party

4. ***S*** *Cty. of Westchester v. State of N.Y.,* 286 F.3d 150, 163 Ed.Law Rep. 602 (2d Cir. 2002)
- ruled that counties (or any other LEA) seeking to challenge the lack of an interagency agreement do not have a private right of action (to sue the SEA) under the IDEA

5. ***S*** *Adams v. Sch. Bd. of Anoka-Hennepin Indep. Sch. Dist.,* 38 IDELR ¶ 6 (D. Minn. 2002); *see also Canton Bd. of Educ. v. N.B.*, 343 F. Supp. 2d 123, 193 Ed.Law Rep. 719 (D. Conn. 2004)
- ruled that parent's claim of improper training of IHOs was not a viable claim against SEA under the IDEA or § 1983 IDEA

6. ***S*** *Va. Office of Protection and Advocacy v. Va. Dep't of Educ.,* 262 F. Supp. 2d 648, 177 Ed.Law Rep. 1079 (E.D. Va. 2003)
- ruled that the IDEA does not provide a private right of action against an SEA to challenge a CRP investigation

7. ***P*** *D.D. v. N.Y.C. Bd. of Educ.*, 41 IDELR ¶ 8 (S.D.N.Y. 2004), *vacated on other grounds*, 480 F.3d 138, 217 Ed.Law Rep. 86 (2d Cir. 2007)
- ruled that SEA was proper defendant under § 1983 IDEA (not IDEA alone) in class action on behalf of more than 500 preschool children who lacked full implementation of their IEPs
- dismissed class action § 504 reasonable accommodation claim against SEA for missing essential element—denial of participation or benefits or other discrimination by reason of their disabilities

8. ***S*** *Lawrence Twp. Bd. of Educ. v. State of N.J.*, 417 F.3d 368, 200 Ed.Law Rep. 524 (3d Cir. 2006)
- ruled that IDEA does not provide LEA with private right of action against SEA[17]

9. ***S*** *Pachl v. Seagren*, 453 F.3d 1064, 210 Ed.Law Rep. 940 (8th Cir. 2006)
- affirmed dismissal of claim against SEA, as part of appeal of IHO decision, due to failure to "articulate a specific manner" in which the SEA allegedly neglected its duties of general supervision (with appointment of IHO itself insufficient for this purpose)

10. ***P*** *Allen v. Ark. Dep't of Educ.*, 48 IDELR ¶ 95 (E.D. Ark. 2007)
- preserved for further proceedings whether the SEA breached its obligations to enforce an IHO decision under the IDEA

11. ***S*** *Friendship Edison Pub. Charter Sch. v. Smith*, 429 F. Supp. 2d 195, 210 Ed.Law Rep. 214 (D.D.C. 2006)
- ruled that the SEA is not a proper (or necessary) party in the judicial appeal of an IHO's decision under the IDEA

12. **(*P*)** *M.K. v. Sergi*, 47 IDELR ¶ 214 (D. Conn. 2007); *Fetto v. Sergi*, 181 F. Supp. 2d 53, 161 Ed.Law Rep. 347 (D. Conn. 2001)
- ruled that SEA is a proper defendant in court for a systemic, not an individual, IDEA claim, but in both of these cases the SEA did not violate the IDEA in failing to extend the IHO system to non-education state agencies

13. ***P*** *T.B. v. Bryan Indep. Sch. Dist.*, 47 IDELR ¶ 224 (S.D. Tex. 2007)
- denied dismissal in ruling that parent, in the wake of adverse IHO decision, has standing to sue SEA, which is ultimately liable under the IDEA (citing, inter alia, 5th Circuit's 1998 decision in *St. Tammany Parish v. La.*)

14. ***S*** *Dormevil v. Cal. Dep't of Educ.*, 48 IDELR ¶ 182 (S.D. Cal. 2007)
- ruled that parents have neither standing nor cause of action for a IHO decision in favor of the parents that the district implemented

15. **(*P*)** *J.S. v. Sylvan Union Sch. Dist.*, 49 IDELR ¶ 253 (E.D. Cal. 2008)
- ruled that parents failed to sufficiently plead systemic violation against SEA (here in terms of unfairness in the IHO system)—factual allegations must contain more than a formulaic recitation of the elements for a cause of action

[17] This Third Circuit decision seems to have overruled *S.C. v. Deptford Township Board of Education*, 213 F. Supp. 2d 452, 168 Ed.Law Rep. 283 (D.N.J. 2002), which ruled that LEAs (as third-party plaintiffs) had private right of action and standing against SEA and that SEA was ultimately liable under IDEA 1997 provision for inter-agency agreements. See *Twp. of Bloomfield Bd. of Educ. v. S.C.,* 44 IDELR ¶ 128 (D.N.J. 2005).

16. ***P*** *N.J. Protection & Advocacy, Inc. v. N.J. Dep't of Educ.*, 563 F. Supp. 2d 474, 235 Ed.Law Rep. 964 (D.N.J. 2008)
- ruled that protection and advocacy agency has standing under IDEA to sue SEA for alleged systemic violations

17. ***S*** *H.H. v. Ind. Bd. of Special Educ. Appeals*, 50 IDELR ¶ 131 (N.D. Ind. 2008)
- ruled that parent's claim that SEA violated its obligation to ensure that LEAs provide a continuum of placements did not survive summary judgment

18. ***P*** *S.A. v. Tulare Cty. Office of Educ.*, 51 IDELR ¶ 244 (E.D. Cal. 2009)
- ruled that parents have private right of action under IDEA in the wake of CRP investigation

19. ***S*** *Quattroche v. E. Lyme Bd. of Educ.*, 604 F. Supp. 2d 403, 243 Ed.Law Rep. 670 (D. Conn. 2009)
- ruled that parent's claim that IHO's dismissal of her § 504 claim based on a state circular concerning subject matter jurisdiction did not sufficiently state a systemic violation under the IDEA

20. **(*P*)** *M.O. v. Ind. Dep't of Educ.*, 635 F. Supp. 2d 847, 248 Ed.Law Rep. 392 (N.D. Ind. 2009); *see also H.H. v. Ind. Bd. of Special Educ. Appeals*, 50 IDELR ¶ 34 (N.D. Ind. 2008)
- without directly addressing whether the parents had a right to sue the SEA upon losing at the second tier, ruled that they did not survive summary judgment because (1) their claim of an unfair two-tier system lacked sufficient evidence of a systemic violation, and (2) the applicable case law concerning procedural violations did not support the application of their claim
- also ruled that the state's second tier system was entitled to quasi-judicial, absolute immunity

21. ***S*** *P.W. v. Delaware Valley Sch. Dist.*, 52 IDELR ¶ 192 (E.D. Pa. 2009)
- ruled that LEA does not have right to sue SEA under the IDEA (citing *Lawrence*)

22. ***S*** *R.W. v. Ga. Dep't of Educ.*, 48 IDELR ¶ 279 (N.D. Ga. 2007), *aff'd mem.*, 353 F. App'x 422 (11th Cir. 2009)
- ruled that parent's suit, based on IDEA, § 504, and Constitution in the wake of IHO dismissal of their IDEA IHO filing for being one day late, lacked standing against SEA (for lack of causally traceable injury-in-fact) and lacked jurisdiction against state office of administrative hearings
- awarded attorneys' fees against plaintiff's counsel for lack of reasonable basis in law (per IDEA provision for reverse attorneys' fees)

23. ***P*** *L.M.P. v. Florida Dep't of Educ.*, 345 F. App'x 428, 252 Ed.Law Rep. 134 (11th Cir 2009)
- ruled that parents do not have standing to sue the SEA under the IDEA based on an IHO decision that is not yet final (here a ruling that the district denied FAPE as basis for requested remedy)

24. ***P*** *P.W. v. Delaware Valley Sch. Dist.*, 53 IDELR ¶ 289 (E.D. Pa. 2009)
- ruled that parents stated IDEA claim against the SEA for failing to establish "'procedures to ensure that it complies with the monitoring and enforcement requirements'"
- ruled also that parents stated prima facie claim against the SEA under § 504

25. ***S*** *B.J.S. v. State Educ. Dep't/Univ. of N.Y.*, 699 F. Supp. 2d 586, 258 Ed.Law Rep. 140 (W.D.N.Y. 2010)
- ruled, via detailed analysis, that the SEA is not properly a defendant in a lawsuit concerning individual FAPE under the IDEA
- dicta that even if the plaintiff-parents had directed their ADA claim against the SEA, it would not be viable in the absence of bad faith or gross misjudgment

26. ***P*** *Kalliope R. v. N.Y. State Dep't of Educ.*, 827 F. Supp. 2d 130, 279 Ed.Law Rep. 640 (E.D.N.Y. 2010)
- ruled that plaintiff's claim of systemic violation, here being alleged state policy prohibiting a certain student-teacher-paraprofessional ratio, qualified as exception to exhaustion doctrine and sufficiently stated claim against SEA under the IDEA
- also ruled that the systemic claim sufficiently pled gross misjudgment or bad faith for further proceedings under § 504

27. ***S*** *Orange Cty. Dep't of Educ. v. Cal. Dep't of Educ.*, 668 F.3d 1052, 277 Ed.Law Rep. 74 (9th Cir. 2010)
- ruled that, under state law, the SEA is not responsible under the IDEA for FAPE for ward of state in out-of-state placement after Oct. 10, 2007

28. ***S*** *Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ.,* 615 F.3d 622, 260 Ed.Law Rep. 28 (6th Cir. 2010)
- ruled that LEAs do not have an express or implied private right of action under the IDEA to challenge the state's implementing administrative adjudicative system

29. ***P/S*** *L.K. v. N.C. State Bd. of Educ.,* 55 IDELR ¶ 47, *adopted*, 55 IDELR ¶ 70 (E.D.N.C. 2010)
- ruled that parent, in the wake of a second tier decision has standing to challenge the second tier, as an IDEA implementing structure, but not the review officer's decision (here, challenge to the review officer's state standard of review)

30. ***S*** *Chavez v. New Mexico Pub. Educ. Dep't,* 621 F.3d 1275, 261Ed.Law Rep. 71 (10th Cir. 2010)
- ruled that the SEA was not within IHO's jurisdiction when the SEA—as compared with the LEA—was only potentially, not actually, involved in the provision of FAPE
- ruled that the SEA was not responsible under the IDEA for direct services (as contrasted with financial liability) in the absence of sufficient notice of noncompliance (and exhaustion of reasonable opportunity to correct it)

31. ***S*** *Yolo Cty. Office of Educ. v. Cal. Dep't of Educ.*, 59 IDELR ¶ 123 (E.D. Cal. 2012)
- ruled that an LEA lacks a private right of action under the IDEA to challenge a CRP decision (*citing Lake Washington > S.A.)*

32. ***P*** *Chester Upland Sch. Dist. v. Commw. of Pa.*, 284 F.R.D. 305, 285 Ed.Law Rep. 869 (E.D. Pa. 2012)
- ruled that parents, in class action, have standing and private right of action against SEA under the IDEA (for alleged systemic violation re funding)

33. **(*P*)** *Bryant v. N.Y.S. Educ. Dep't*, 692 F.3d 202, 284 Ed.Law Rep. 1 (2d Cir. 2012); *see also Alleyne v. N.Y.S. Educ. Dep't*, 691 F. Supp. 2d 322, 257 Ed.Law Rep. 119 (N.D.N.Y. 2010)
- ruled that state regulation prohibiting aversives did not violate IDEA or, in the absence of bad faith or gross misjudgment, § 504

34. ***P*** *Morgan Hill Concerned Parents Ass'n v. Cal. Dep't of Educ.*, 61 IDELR ¶ 13 (E.D. Cal. 2013)
- ruled that organization of parents of students with disabilities has standing and private right of action under the IDEA for alleged systemic violations of IDEA

35. **(*P*)** *I.E.C. v. Minneapolis Pub. Sch.*, 970 F. Supp. 2d 917, 302 Ed.Law Rep. 1025 (D. Minn. 2013)
- ruled that parents, in wake of two IHO dismissal decisions, did not fulfill the "specific manner" criterion of *Pachl* (*supra*)

36. ***P*** *O.J. v. Bd. of Educ. v. Union Cty.,* 61 IDELR ¶ 158 (E.D. Tenn. 2013); *see also L.H. v. Hamilton Cty. Dep't of Educ.,* 64 IDELR ¶ 207 (E.D. Tenn. 2014) (allowed plaintiff parents to amend their complaint to assert SEA liability[18])
- ruling, rather briefly, that parents, in the wake of losing an IHO decision bring its appeal against not only the LEA but also the SEA, briefly relying on the broad view in the 4th Circuit's 1997 decision in *Gadsby v. Grasmick* rather than the competing view limited to systemic violations

37. **(*P*)** *CG v. Pa. Dep't of Educ.*, 734 F.3d 229, 298 Ed.Law Rep. 120 (3d Cir. 2013)
- ruled that parents' class failed to show that SEA's special education funding formula violated § 504/ADA (not appealing lower court's same conclusion under the IDEA)

[18] The court in this pair of unpublished decisions ultimately relied on *Ullmo v. Gilmour Academy*, 273 F.3d 671, 679, 159 Ed.Law Rep. 251 (6th Cir. 2001), in which the court in background dicta commented: "Although the IDEA does not specifically name the party against whom such an action may be brought, the 'language and structure of [the] IDEA suggest that either or both entities [the SEA or LEA] may beheld liable for the failure to provide a [FAPE]'" (citing St. Tammany Parish Sch. Bd. v. La., 142 F.3d 776, 784 (5th Cir. 1998) (quoting Gadsby v. Grasmick, 109 F.3d 940, 955 (4th Cir. 1997)).

38. ***S*** *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 309 Ed.Law Rep. 155 (9th Cir. 2014)
- ruled that the IDEA does not confer on parents an express right to sue the SEA re their administrative dispute resolution systems (while declining to address whether the IDEA implies such a private right of action)

39. ***P*** *Charlene R. v. Solomon Charter Sch.,* 63 F. Supp. 3d 510, 317 Ed.Law Rep. 761 (E.D. Pa. 2014); *see also R.V. v. Rivera,* 69 IDELR ¶ 30 (E.D. Pa. 2016); *H.E. v. Walter D. Palmer Leadership Learning Partners Charter Sch.*, __ F. Supp. 3d __ (E.D. Pa. 2016)[19]
- ruled that a settlement agreement (here as a result of the resolution meeting process) between a parent and a charter school, which is an LEA, is enforceable against the SEA in the "limited scenario" where the charter school ceased to exist (here due to insolvency)—preemption of conflicting state law

40. ***S*** *Fairfield-Suisun Unified Sch. Dist. v. State of Cal. Dep't of Educ.*, 780 F.3d 968, 315 Ed.Law Rep. 39 (9th Cir. 2015); *Lake Washington Sch. Dist. No. 414 v. Office of Superintendent of Pub. Instruction*, 634 F.3d 1065, 265 Ed.Law Rep. 889 (9th Cir. 2011)
- ruled that IDEA did not confer upon LEAs the express right to sue the SEA in federal court (in wake of CRP decision in *Fairfield-Suisun* and in wake of IHO decision in *Lake Washington*) while declining to reach issue of possible implied private right of action in *Fairfield-Suisun*

41. ***S*** *E. Ramapo Cent. Sch. Dist. v. King,* 11 N.Y.S.3d 284, 318 Ed.Law Rep. 1078 (App. Div. 2015)
- ruled that LEAs do not have right sue SEA under the IDEA in the wake of a CRP decision

42. ***S*** *B.S. v. Anoka-Hennepin Sch. Dist.*, 799 F.3d 1217, 322 Ed.Law Rep. 45 (8th Cir. 2015)
- affirmed dismissal of SEA as defendant in the absence of a systemic violation – here, the SEA's only connection to the ALJ's time limits was ITS appointment of the ALJ (citing *Pachl*)

43. ***P*** *D.M. v. N.J. Dep't of Educ.*, 801 F.3d 205, 322 Ed.Law Rep. 127 (3d Cir. 2015), *on remand*, 66 IDELR ¶ 226 (D.N.J. 2015)
- ruled that parents have right to sue SEA to challenge state regulation regarding private schools that allegedly interfered with child's right to FAPE in the LRE (with exhaustion excused due to inability to include SEA in IHO proceeding)
- ruled also, on remand, that private school lacks express and implied right of action against SEA under the IDEA

44. ***P*** *W.H. v. Tenn. Dep't of Educ.,* 67 IDELR ¶ 6 (M.D. Tenn. 2016)
- ruled that systemic claim of alleged practice of providing more funding for segregated placements, thus incentivizing IEP teams to violate the LRE mandate, satisfied the bad faith or gross misjudgment standard for § 504 and ADA liability regardless of subjective intent

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[19] For related case law, Olivia B. v. Sankofa Acad. Charter Sch., 63 IDELR ¶ 247 (E.D. Pa. 2014) (recognizing residual breach of contract claim against the LEA).

45. ***P*** *Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, 63 IDELR ¶ 39 (E.D. Cal. 2014), *reconsideration denied*, 66 IDELR ¶ 68 (E.D. Cal. 2015), *further proceedings*, 68 IDELR ¶ 190 (E.D. Cal. 2016) (denied both parties' motions for summary judgment)
- ruled that parents have implied private right of action against SEAs under the IDEA for overall policies and procedures (here CRP investigations)

46. ***S*** *Y.D. v. N.Y.C. Dep't of Educ.,* 67 IDELR ¶ 57 (S.D.N.Y. 2016)[20]
- ruled that the SEA is not properly a defendant in a lawsuit concerning a particular IEP (in contrast with a systemic violation) under the IDEA
- ruled also that the plaintiff-parents did not state a claim against the SEA under § 504 in the absence of inferable factual basis for bad faith or gross misjudgment (here review officer decision 462 days late with apology letter explaining that the circumstances were beyond the review officer's control)

47. ***S*** *Coningsby v. Or. Dep't of Educ.,* 65 IDELR ¶ 159 (D. Or. 2016)
- upheld the IHO's ruling that the SEA was not a proper party at the due process hearing because it was not involved in the actual provision of FAPE (citing *Chavez*)
- also dismissed with prejudice the plaintiff-parent's claim in the wake of CRP decision because, based alternatively on *Rooker-Feldman* doctrine and issue preclusion, the state court had already litigated this issue

48. ***S*** *Johnston v. New Miami Local Sch. Bd*., 68 IDELR ¶ 201 (S.D. Ohio 2016)
- ruled that LEA's delay in providing FAPE in the wake of an expulsion even after SEA CRP investigation and order (1) did not require the SEA to provide direct services under the IDEA in light of the SEA's exercise of "a reasonable opportunity to compel compliance through setting deadlines, threatening to withhold funding, and ultimately withholding funding," and (2) did not violate § 504 due to SEA's lack of gross misjudgment or bad faith

49. ***S*** *Manning v. Mo. Dep't of Educ*., 68 IDELR ¶ 243 (E.D. Mo. 2016)
- dismissed claim of pro se parent against SEA regarding her individual child because IDEA does not provide for money damages and, in any event, she failed to exhaust the IDEA's administrative adjudication procedures

[20] The court also dismissed the plaintiff's tort claims (here negligent or intentional infliction of emotional distress) based on Eleventh Amendment immunity.