

**399 Ed. Law Rep. 931**

West's Education Law Reporter

June 23, 2022

Education Law into Practice

Perry A. **Zirkel**, Ph.D., J.D., LL.M.<sup>aa1</sup>

Copyright © 2022 by Thomson Reuters/West - No Claim to Original U.S. Government Works; Perry A. Zirkel, Ph.D., J.D., LL.M.

**STATE EDUCATION AGENCIES AS DEFENDANTS UNDER FEDERAL DISABILITY LAWS: AN UPDATED COMPILATION OF THE COURT DECISIONS<sup>a1</sup>**

This annotated compilation of court decisions represents the update of a previous article in the Education Law Reporter.<sup>1</sup> The case annotations are in approximate chronological sequence since the year 2000.<sup>2</sup> The acronyms are as follows: 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 ruling in the case limited to the issue of *potential* SEA liability: **P**=in favor of the plaintiff-parent(s) to the extent of at least gaining further judicial proceedings (e.g., denial of motion for dismissal); **(P)**=potential but not actual liability in this case; **S**=in favor of the SEA.<sup>3</sup>

Not limited to the narrow meaning of “liability” in terms of monetary damages or only to suits by parents, 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.<sup>4</sup> The coverage does **\*932** not extend to the unquestioned FAPE liability for SEAs in their provision of direct services to students with disabilities, such as via a state school for the deaf.<sup>5</sup> It also does not include the separable issues of SEA consent decrees under the IDEA or § 504/ADA,<sup>6</sup> state-takeover districts,<sup>7</sup> or indirect claims of SEA liability.<sup>8</sup> Similarly, it excludes case law limited to interim proceedings, such as discovery rulings.<sup>9</sup> The final exclusion was for cases resolved on or limited to adjudicative issues, such as standing,<sup>10</sup> statute of limitations,<sup>11</sup> claim preclusion,<sup>12</sup> and class certification,<sup>13</sup> or, with limited exceptions, the exhaustion requirement.<sup>14</sup>

The relevant provisions of the IDEA are primarily those concerning the SEA's obligations to provide (1) direct services to students with disabilities,<sup>15</sup> (2) direct services when the LEA is unable to provide FAPE,<sup>16</sup> (3) general supervision for LEA compliance,<sup>17</sup> and (4) an IHO system within a specified subject matter jurisdiction.<sup>18</sup>

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 this recent period with regard to SEA's susceptibility to suit as the springboard for more intensive and extensive follow-up research.<sup>19</sup>

- Neither school districts nor private schools may not sue SEAs under the IDEA.
- However, advocacy groups for parents do have representational standing for such suits.

**\*933** • 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)
  
- (b) state regulations
  
- (c) systemic violations
  
- (d) contingent direct service<sup>20</sup> but only upon strict conditions
  
- (e) as the representative for state laws that are corollary to the IDEA

• Conversely and with more exceptions, in the majority of the 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
  
- enforcement of IHO decision
  
- the IHO system
  
- a CRP decision

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

- (a) prima facie elements
  
- (b) bad faith or gross misjudgment

- 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 Educ. L. 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 Educ. L. 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*) *Manalansan v. Bd. of Educ. of Balt. City*, 35 IDELR ¶ 122 (D. Md. 2001)

- denied dismissal of SEA for its non-conclusive CRP decision, but resolving the matter by reversing the IHO to find a district failure to implement the IEP

4. *P John T. v. Iowa Dep't of Educ.*, 258 F.3d 860, 155 Educ. L. 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

\*934 5. *S Cnty. of Westchester v. N.Y.*, 286 F.3d 150, 163 Educ. L. 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

6. *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 Educ. L. 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

7. *S* Va. Off. of Protection & Advocacy v. Va. Dep't of Educ., 262 F. Supp. 2d 648, 177 Educ. L. 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

8. *P* Oliver v. Dall. Indep. Sch. Dist., 40 IDELR ¶ 10 (N.D. Tex. 2003)

- ruled that SEA was proper defendant under its IDEA supervisory responsibility (citing *St. Tammany*)

9. *P/S* Wachlarowicz v. Sch. Bd. of Indep. Sch. Dist. No. 832, 40 IDELR ¶ 209 (D. Minn. 2004)

- dismissed SEA from parent's challenge to CRP system and from parent's impartial hearing but not for failure to provide notice regarding statute of limitations

10. *S* Zahran v. N.Y. State Educ. Dep't, 306 F. Supp. 2d 204 (N.D.N.Y. 2004)

- dismissed individual FAPE claims against SEA under Section 504 for lack of allegations of bad faith or gross misjudgment and under the IDEA for lack of availability of requested relief

11. *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 Educ. L. 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

12. *S* Lawrence Twp. Bd. of Educ. v. N.J., 417 F.3d 368, 200 Educ. L. Rep. 524 (3d Cir. 2006)

- ruled that IDEA does not provide LEA with private right of action against SEA<sup>21</sup>

**13. S** *Pachl v. Seagren*, 453 F.3d 1064, 210 Educ. L. Rep. 940 (8th Cir. 2006)

- affirmed dismissal of parent's 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)

**\*935 14. S** *Friendship Edison Pub. Charter Sch. v. Smith*, 429 F. Supp. 2d 195, 210 Educ. L. 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

**15. 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

**16. (P)** *M.K. v. Sergi*, 47 IDELR ¶ 214 (D. Conn. 2007); *Fetto v. Sergi*, 181 F. Supp. 2d 53, 161 Educ. L. 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

**17. 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.*)

**18. S** *Dormevis 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

**19. (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

**20.** *P* N.J. Protection & Advocacy, Inc. v. N.J. Dep't of Educ., 563 F. Supp. 2d 474, 235 Educ. L. Rep. 964 (D.N.J. 2008)

- ruled that protection and advocacy agency has standing under IDEA to sue SEA for alleged systemic violations

**21.** *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 in the absence of the LEA's inability or unwillingness to provide the services

**22.** *S* Papania-Jones v. Dupre, 275 F. App'x 301, 234 Educ. L. Rep. 60 (5th Cir. 2008)

- dismissed parents' IDEA Part C claim for failure to exhaust IHO mechanism--2 CRP decisions were of no import

**23.** *P* S.A. v. Tulare Cnty. Off. 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

**24.** *(P)* Quattroche v. E. Lyme Bd. of Educ., 604 F. Supp. 2d 403, 243 Educ. L. 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

**\*936 25.** *(P)* M.O. v. Ind. Dep't of Educ., 635 F. Supp. 2d 847, 248 Educ. L. 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

**26. *S.P.W. v. Del. Valley Sch. Dist.*, 52 IDELR ¶ 192 (E.D. Pa. 2009)<sup>22</sup>**

- ruled that LEA does not have right to sue SEA under the IDEA (citing *Lawrence*)

**27. *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)

**28. *S.L.M.P. v. Fla. Dep't of Educ.*, 345 F. App'x 428, 252 Educ. L. 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)

**29. *P.P.W. v. Del. 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

**30. *S.B.J.S. v. State Educ. Dep't/Univ. of N.Y.*, 699 F. Supp. 2d 586, 258 Educ. L. 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

**31. *P* Kalliope R. v. N.Y. State Dep't of Educ.**, 827 F. Supp. 2d 130, 279 Educ. L. 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

**\*937** • also ruled that the systemic claim sufficiently pled gross misjudgment or bad faith for further proceedings under § 504

**32. *S* Orange Cnty. Dep't of Educ. v. Cal. Dep't of Educ.**, 668 F.3d 1052, 277 Educ. L. 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

**33. *S* Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ.**, 615 F.3d 622, 260 Educ. L. 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

**34. *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)

**35. *S* Chavez v. N.M. Pub. Educ. Dep't**, 621 F.3d 1275, 261 Educ. L. 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)

**36. S** *Yolo Cnty. Off. 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.*)

**37. P** *Chester Upland Sch. Dist. v. Pa.*, 284 F.R.D. 305, 285 Educ. L. 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)

**38.(P)** *Bryant v. N.Y. State Educ. Dep't*, 692 F.3d 202, 284 Educ. L. Rep. 1 (2d Cir. 2012); *see also Alleyne v. N.Y. State Educ. Dep't*, 691 F. Supp. 2d 322, 257 Educ. L. 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

**39. P** *Morgan Hill Concerned Parents Ass'n v. Cal. Dep't of Educ.*, 61 IDELR ¶ 13 (E.D. Cal. 2013), *further proceedings*, 258 F. Supp. 3d 1114 (E.D. Cal. 2017)<sup>23</sup>

- 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

**40.(P)** *I.E.C. v. Minneapolis Pub. Sch.*, 970 F. Supp. 2d 917, 302 Educ. L. Rep. 1025 (D. Minn. 2013)

- \*938** • ruled that parents, in wake of two IHO dismissal decisions, did not fulfill the “specific manner” criterion of *Pachl* (*supra*)

**41. P** *O.J. v. Bd. of Educ. v. Union Cnty.*, 61 IDELR ¶ 158 (E.D. Tenn. 2013); *see also L.H. v. Hamilton Cnty. Dep't of Educ.*, 64 IDELR ¶ 207 (E.D. Tenn. 2014) (allowing plaintiff parents to amend their complaint to assert SEA liability<sup>24</sup>)

- ruling, rather briefly, that parents, in the wake of losing an IHO decision may bring their 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

**42.** *S.E. Ramapo Cent. Sch. Dist. v. DiLorenzo*, 62 IDELR ¶ 48 (S.D.N.Y. 2013)

- ruled that the IDEA does not confer on parents right to sue the SEA under § 1983 (here for declaratory judgment re procedures for settlements in connection with resolution sessions)

**43.** (P) *CG v. Pa. Dep't of Educ.*, 734 F.3d 229, 298 Educ. L. 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)

**44.** (P) *S.B. v. Trenton Sch. Dist.*, 62 IDELR ¶ 147 (D.N.J. 2013)

- summarily rejected parent's § 504/ADA claims against SEA for lack of specificity and timeliness

**45.** *S.M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 309 Educ. L. 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)

**46.** *P.M.H. v. Mt. Vernon City Sch. Dist.*, 2014 WL 901578 (S.D.N.Y. Mar. 3, 2014)

- denied dismissal of IDEA and § 504/ADA claims of systemic violations that SEA knew of and failed to remedy and excused exhaustion based on futility exception

**47.** *P.M.K. v. Prestige Acad. Charter Sch.*, 470 F. Supp. 3d 417, 383 Educ. L. Rep. 855 (D. Del. 2020); *Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 317 Educ. L. Rep. 761 (E.D. Pa. 2014); *see also Pa. Dep't of Educ. v. D.E.*, 74 IDELR ¶ 62 (M.D. Pa. 2019); *R.V. v. Rivera*, 220 F. Supp. 3d 588 (E.D. Pa. 2016); *H.E. v. Walter D. Palmer Leadership Learning Partners Charter Sch.*, 220 F. Supp. 3d 574 (E.D. Pa. 2016)<sup>25</sup>

**\*939** • 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

**48. S** *Fairfield-Suisun Unified Sch. Dist. v. Cal. Dep't of Educ.*, 780 F.3d 968, 315 Educ. L. Rep. 39 (9th Cir. 2015); *Lake Washington Sch. Dist. No. 414 v. Off. of Superintendent of Pub. Instruction*, 634 F.3d 1065, 265 Educ. L. 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*

**49. S** *E. Ramapo Cent. Sch. Dist. v. King*, 11 N.Y.S.3d 284, 318 Educ. L. Rep. 1078 (App. Div. 2015)

- ruled that LEAs do not have right sue SEA under the IDEA in the wake of a CRP decision

**50.(P)** *B.S. v. Anoka-Hennepin Sch. Dist.*, 799 F.3d 1217, 322 Educ. L. 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*)

**51. S** *J.E. v. Chappaqua Cent. Sch. Dist.*, 66 IDELR ¶ 37 (S.D.N.Y. 2015)

- dismissed, base on lack of standing, claim for future injunctive relief to remove IHOs who are not competent

**52. P** *D.M. v. N.J. Dep't of Educ.*, 801 F.3d 205, 322 Educ. L. 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

**53.** *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, could proceed under the IDEA without exhaustion and also satisfied the bad faith or gross misjudgment standard for § 504 and ADA liability regardless of subjective intent

**54.** *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*, 70 IDELR ¶ 8 (E.D. Cal. 2017)<sup>26</sup>

- \*940** • ruled that parents have implied private right of action against SEAs under the IDEA for overall policies and procedures (here CRP investigations) and possible money damages under § 504/ADA

**55.** (*P*) *Y.D. v. N.Y.C. Dep't of Educ.*, 67 IDELR ¶ 57 (S.D.N.Y. 2016)<sup>27</sup>

- 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)

**56.** *S* *Parrish v. Bentonville Sch. Dist.*, 67 IDELR ¶ 209 (W.D. Ark. 2016), *aff'd on other grounds*, 896 F.3d 889, 356 Educ. L. Rep. 900 (8th Cir. 2018)

- dismissed outright failure-to-supervise claim due to no showing of any substantive or procedural violation and addressed but rejected various claims against the SEA with regard to the conduct of the impartial hearing

**57.** *S* *Coningsby v. Or. Dep't of Educ.*, 68 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

**58.** *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

**59.** *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

**60. (P)** *T.D. v. Rutherford Cnty. Bd. of Educ.*, 69 IDELR ¶ 52 (M.D. Tenn. 2017)

- dismissed complaint re OT/PT services for failure to exhaust the impartial hearing process--lack of systemic IDEA violation

**61.** *S Pedraza v. Alameda Unified Sch. Dist.*, 676 F. App'x 704, 343 Educ. L. Rep. 732 (9th Cir. 2017)

- upheld dismissal of IDEA suit against SEA for lack of jurisdiction (citing *M.M. v. Lafayette Sch. Dist.*)

**\*941 62. P** *Stanek v. Saint Charles Cmty. Sch. Dist.*, 69 IDELR ¶ 151 (N.D. Ill. 2017)

- denied dismissal of amended IDEA complaint against SEA (but not its chief official) as within statute of limitations as applied to pro se parent

**63.** *S A.G. v. Tenn. Dep't of Educ.*, 69 IDELR ¶ 103 (E.D. Tenn. 2017)

- dismissed IDEA claim against SEA for allegedly insufficient complaint investigation, concluding the proper recourse was to file for a due process hearing

**64.** *P Jackson v. Pine Bluff Sch. Dist.*, 2017 WL 2296896 (E.D. Ark. May 12, 2017), *adopted*, 2017 WL 2296956 (E.D. Ark. May 25, 2017)

- denied dismissal of IDEA claim against SEA for allegedly failing to supervise FAPE at private school where LEA's IEP team placed the child

**65.** *P.N.S. v. Tenn. Dep't of Educ.*, 2017 WL 1347753 (M.D. Tenn. Apr. 12, 2017)

- denied dismissal of IDEA-based claim against SEA for allegedly failing to enforce the state special education law re seclusion and restraints-- within subject matter jurisdiction and prior exhaustion ruling unaffected by *Fry*

**66.** *S.I.L. v. Knox Cnty. Bd. of Educ.*, 257 F. Supp. 3d 946, 348 Educ. L. Rep. 651 (E.D. Tenn. 2017), *aff'd on other grounds* (mootness), 739 F. App'x 319, 358 Educ. L. Rep. 844 (6th Cir. 2018)

- ruled that parents lacked private right of action to claim unavailability of CRP (for FAPE claims) and, although they had right of action to sue SEA under IDEA supervision obligation and under § 504/ADA, they failed to establish a sufficient claim under either one in this case

**67.** *S.ASAH v. N.J. Dep't of Educ.*, 70 IDELR ¶ 105 (D.N.J. 2017)

- dismissed students' IDEA related-services suit for lack of standing because apprehension of loss of related services is not a tangible injury

**68.** *S.Avaras v. Clarkstown Cent. Sch. Dist.*, 70 IDELR ¶ 129 (S.D.N.Y. 2017)

- dismissed claims against the SEA based on (a) IDEA FAPE (absent direct and specific connection), (b) IDEA money damages, and (c) IHO/RO bias (due to sovereign immunity where no injunctive relief sought)

**69.** *S.M.C. v. Or. Dep't of Educ.*, 695 F. App'x 302 (9th Cir. 2017)

- upheld IHO's dismissal of claim against SEA based on dissatisfaction with outcome of IDEA state complaint procedures case, for which state court had issued final judgment

**70.** *P/S D.R. v. Mich. Dep't of Educ.*, 71 IDELR ¶ 16 (E.D. Mich. 2017), *appeal denied pending issuance of final order*, 71 IDELR ¶ 52 (6th Cir. 2017)

- denied dismissal of class action claims on behalf of lead-exposed children under IDEA and § 504/ADA against SEA for screening but not for universal preschool education

71. *S.A.A. v. Walled Lake Consol. Sch. Dist.*, 71 IDELR ¶ 37 (E.D. Mich. 2017)

- dismissed the school district's third-party § 504/ADA and § 1983 complaint (allegedly on behalf of the child) against SEA as separate and independent from parent's IDEA claim against district (in case that went to both CRP and due process hearing)

72. *P/S R.S. v. Bd. of Educ. of Shenendehowa*, 71 IDELR ¶ 85 (W.D.N.Y. 2017)

- **\*942** • dismissed § 504 claims against the commissioner in the absence of showing of bad faith or gross misjudgment and IDEA claims challenging review officer's decision but denied dismissal of IDEA claims challenging state policies not requiring ABA methodology in IEPs

73. *(P) McKnight v. Seattle Off. for Civil Rights*, 71 IDELR ¶ 103 (D. Nev. 2018)

- dismissed without prejudice § 504 claim against SEA for compensatory damages for lack of specificity

74. *(P) Wong v. State Dep't of Educ.*, 71 IDELR ¶ 128 (D. Conn. 2018)

- dismissed IDEA claims against SEA for appeal of hearing officer's decision between parent and district in the absence of an alleged systemic violation

75. *S Los Altos Sch. Dist. v. L.S.*, 71 IDELR ¶ 130 (N.D. Cal. 2018)

- denied preliminary injunction that LEA sought against withholding of IDEA funding based on SEA request for confirmation of compliance with IHO's decision

76. *(P) Carr v. Dep't of Pub. Instruction*, 71 IDELR ¶ 197 (W.D. Wis. 2018)

- dismissed IDEA claims against SEA for appeal of hearing officer's decision as lacking both systemic linkage (beyond providing the forum) and exhaustion

77. *S C.P. v. Tenn. Dep't of Educ.*, 72 IDELR ¶ 6 (M.D. Tenn. 2018)

- dismissed bias claim against state's CP system as insufficient for exhaustion exception (and as not stating claim even if exhaustion did not apply)

**78. (P)** *Price v. Commw. Charter Acad. Cyber Sch.*, 72 IDELR ¶ 41 (E.D. Pa. 2018)

- dismissed IDEA and § 504/ADA claims against SEA for attempted appeal of complaint investigation--lack of systemic violation

**79. S** *S.B. v. Cal. Dep't of Educ.*, 327 F. Supp. 3d 1218, 358 Educ. L. Rep. 1921 (E.D. Cal. 2018)

- dismissed IDEA claim against SEA and ruled that § 504 claim was subject to exhaustion because, specific to access to appropriate residential treatment, its gravamen was FAPE

**80. S** *F.C. v. Tenn. Dep't of Educ.*, 745 F. App'x 605, 361 Educ. L. Rep. 75 (6th Cir. 2018)

- dismissed various claims, including challenge to DPH system, as too broad and unspecific to qualify for futility exception to exhaustion

**81. (P)** *Avaras v. Clarkstown Cent. Sch. Dist.*, 73 IDELR ¶ 50 (S.D.N.Y. 2018), *further proceedings*, 75 IDELR ¶ 71 (S.D.N.Y. 2019)

- dismissed IDEA claims against the SEA for lack of systemic violations

**82. P** *S.P. v. Knox Cnty. Bd. of Educ.*, 329 F. Supp. 3d 584, 359 Educ. L. Rep. 244 (E.D. Tenn. 2018), *reconsideration denied*, 388 F. Supp. 3d 947, 362 Educ. L. Rep. 1072 (M.D. Tenn. 2019)

- denied SEA's summary judgment motion, concluding that material factual issues remained as to whether the SEA fulfilled its supervisory duties under the IDEA for district that required students with seizure disorders to transfer to schools with full-time nurse on staff

**83. S** *Rio Rancho Pub. Sch. Bd. of Educ. v. N.M. Pub. Educ.*, 353 F. Supp. 3d 1145, 362 Educ. L. Rep. 919 (D.N.M. 2018)



\*943 • rejected jurisdiction, for lack of substantial federal question, for LEA challenge to state's specific methodology in determining that the LEA had engaged in significant disproportionality of African American students in its special education programs, sending the case back to state court

**84. (P)** *Robinson v. Colo. Dep't of Educ.*, 2018 WL 5792706 (D. Colo. Nov. 5, 2018), *adopted*, 2019 WL 1465514 (D. Colo. Apr. 3, 2019)

- dismissed parent's IDEA suit against SEA, rather than LEA, in wake of adverse IHO decision--lack of fit under *Chavez* exception

**85. (P)** *J.M. v. Tenn. Dep't of Educ.*, 358 F. Supp. 3d 736, 363 Educ. L. Rep. 301 (M.D. Tenn. 2018)

- granted summary judgment for SEA, concluding that it could be sued for IDEA systemic violations of the state's seclusion/restraint law as part of its FAPE responsibility but this case was moot in light of the SEA's subsequent, specific training of LEA personnel and the absence of any showing that compensatory education was warranted

**86. P L.L. v. Tenn. Dep't of Educ.**, 73 IDELR ¶ 227 (M.D. Tenn. 2019), *reconsideration denied sub nom. Be.R. v. Tenn. Dep't of Educ.*, 75 IDELR ¶ 272 (M.D. Tenn. 2020)

- denied dismissal of IDEA failure-to-supervise claim against SEA in LRE case for preschool child, with distinctions for systemic v. common violations and the application of the exhaustion doctrine

**87. P A.H. v. Clarksville-Montgomery Cnty. Sch. Sys.**, 73 IDELR ¶ 237 (M.D. Tenn. 2019)

- denied dismissal of IDEA claims against LRE based on its awareness and failure to act on LEA's systemic practices

**88. S/(P)** *Ascent v. N.Y. State Educ. Dep't*, 74 IDELR ¶ 69 (S.D.N.Y. 2019)

- ruled that private ABA schools lacked standing to sue SEA under IDEA and dismissed parents' claims as speculative at this point with regard to new state policy requiring ABA schools to offer related services, not just ABA, to students who need them

**89. (P)** *Saenz v. Bd. of Educ. of Silver Consol. Schs.*, 74 IDELR ¶ 97 (D.N.M. 2019)

- ruled that the plaintiff-parents did not meet the requirements for the *Chavez* exception in their IDEA claim that the SEA failed to assure sufficient special education teachers in their district

**90. P/S** *P.J. v. Conn. State Bd. of Educ.*, 931 F.3d 156, 368 Educ. L. Rep. 618 (2d Cir. 2019)

- ruled that Supreme Court's *Buckhannon* decision did not abrogate, by silence, its *Delaware Valley* decision that reasonable attorney's fees are available for useful and necessary work in monitoring class action consent decree, further reducing district's court's award of \$470k, rather than parent attorneys' request of \$1.1 million, to approximately \$200k liability of SEA

**91. (P)** *L.H. v. Tenn. Dep't of Educ.*, 75 IDELR ¶ 150 (M.D. Tenn. 2019)

- dismissed IDEA challenge to state special ed voucher program as procedural violation lacking evidence of injury to the student--and § 504/ADA claim as lacking requisite causal connection

**92. P** *Ga. Advocacy Off. v. Ga.*, 447 F. Supp. 3d 1311, 379 Educ. L. Rep. 941 (N.D. Ga. 2020); see also *United States v. Ga.*, 461 F. Supp. 3d 1315, 382 Educ. L. Rep. 315 (N.D. Ga. 2020)

- \*944** • denied dismissal of ADA integration and unequal education challenge to statewide network of programs for students with ED and other behavioral disorders, reserving the “difficult question” of whether the SEA “administers” this network for the summary judgment stage

**93. (P)** *M.F. v. N.Y. State Educ. Dep't*, 76 IDELR ¶ 156 (S.D.N.Y. 2020)

- dismissed for lack of sufficient showing of systemic violation parent's IDEA challenge to state's review officer procedures--here merely conclusory and conjectural

**94. P** *C.P. v. N.J. Dep't of Educ.*, 76 IDELR ¶ 214 (D.N.J. 2020), *further proceedings*, 77 IDELR ¶ 288 (D.N.J. 2020)

- denied dismissal of class action IDEA claim of systemwide delays in hearing officer decisions beyond the 45-day timeline

**95.** *P J.N. v. Or. Dep't of Educ.*, 77 IDELR ¶ 105 (D. Or. 2020), certifying class, 338 F.R.D. 256, 391 Educ. L. Rep. 850 (D. Or. 2021)

- ruled that individually named plaintiff students and COPAA had standing to sue SEA in class action under IDEA and § 504/ADA for alleged supervisory failure in allowing rural districts to shorten the school day

**96. (P)** *Hernandez v. Grisham*, 508 F. Supp. 3d 893, 391 Educ. L. Rep. 207 (D.N.M. 2020)

- ruled that SEA was proper defendant for injunctive relief under IDEA due to direct responsibilities for statewide policy (during the pandemic)<sup>28</sup>

**97. S** *Cooper v. Bd. of Educ. of Albuquerque Pub. Sch.*, 78 IDELR ¶ 135 (D.N.M. 2021)

- dismissed amended § 504 disparate impact claim re SEA's actions in wake of state law limiting restraints--failure to show discrimination based on disability

**98. S** *Larach-Cohen v. Porter*, 78 IDELR ¶ 196 (S.D.N.Y. 2021)

- ruled that IDEA does not provide private right against SEA for its supervisory duties (here regarding the timeliness of appointment of hearing officer)

**99. P** *A.R. v. Conn. State Bd. of Educ.*, 5 F.4th 155, 393 Educ. L. Rep. 28 (2d Cir. 2021); *K.L. v. R.I. Bd. of Educ.*, 907 F.3d 639, 359 Educ. L. Rep. 721 (1st Cir. 2018)

- ruled that the IDEA exception for providing FAPE to age 21 (here interpreted as until the student's 22nd birthday), which applies when the state does not provide "public education" beyond age 18, is inapplicable when the state provides adult education for that period, thus entitling the plaintiff class to compensatory education

**100. S** *Heather B. v. Hous. Indep. Sch. Dist.*, 2021 WL 1215848 (S.D.N.Y. Mar. 31, 2021)

- ruled that SEA was only responsible under direct services provision or when LEA did not meet its IDEA obligations--here, child find ruling in favor of LEA effectively disposed of claim against SEA

**101. (P)** *M.C. v. L.A. Unified Sch. Dist.*, 559 F. Supp. 3d 1112 (C.D. Cal. 2021)

- ruled, in denying dismissal, that the SEA was subject to IDEA (futility exception to exhaustion) and § 504/ADA claims based on LRE for ESY

**\*945 102. (P)** *A.B. v. Mich. Dep't of Educ.*, 80 IDELR ¶ 19 (W.D. Mich. 2021)

- denied dismissal of parents' § 504/ADA claim that SEA did not enforce its state complaint corrective action order that district unnecessarily shorted the student's school day

**103. (P)** *Does v. Key*, 80 IDELR ¶ 10 (E.D. Ark. 2021)

- denied dismissal of parents' § 1983 14th Amendment due process claim concerning the qualifications and decision writing of the IDEA hearing officer

**104. (P)** *Donohue v. Hochul*, 80 IDELR ¶ 155 (S.D.N.Y. 2022)

- dismissed IDEA, § 504/ADA, and constitutional class action claims against state mask mandate

**105. (P)** *E.E. v. Cal.* 80 IDELR ¶ 193 (D.N.J. 2022)

- granted preliminary injunction under Section 504/ADA for medically vulnerable students to have reasonable accommodation, such as remote instruction, for their safety upon general return to in-person instruction

**106. (P)** *R.K. v. Lee*, 80 IDELR ¶ \_\_ (6th Cir. 2022); *ARC of Iowa v. Reynolds*, \_\_ F.4th \_\_ (8th Cir. 2022); [Disability Rights S.C. v. McMaster](#), 24 F.4th 893 (4th Cir. 2022); *M.B. v. Lee*, 80 IDELR ¶ 32 (6th Cir. 2021); *G.S. v. Lee*, 80 IDELR ¶ 5 (6th Cir. 2021); *E.T. v. Paxton*, 80 IDELR ¶ 1 (5th Cir. 2021); *Seaman v. Va.*, 80 IDELR ¶ 260 (W.D. Va. 2022); *Hayes v. DeSantis*, 79 IDELR ¶ 198 (S.D. Fla. 2021)

- ongoing litigation challenging ban of school mask mandates based on Section 504 and the ADA, with mixed outcomes

**107. (P)** *M.D. v. Vineland City Bd. of Educ.*, 80 IDELR ¶ 263 (D.N.J. 2022); *Joanna v. Monroe Twp. Bd. of Educ.*, 80 IDELR ¶ 243 (D.N.J. 2022); *S.S. v. Hillsborough Twp. Bd. of Educ.*, 80 IDELR ¶ 220 (D.N.J. 2022)

- denied dismissal of parents' IDEA and § 504 claims against defendant SEA of untimely due process hearing (per “45-day rule”) as sufficing at this initial level

108. (P) *Carmona v. N.J. Dep't of Educ.*, 80 IDELR ¶ \_\_ (D.N.J. 2022)

- denied preliminary injunction under IDEA (stay-put-- finding *J.T.* persuasive<sup>29</sup>) in class action challenge to statewide pandemic change to remote instruction

#### Footnotes

- a1 *Education Law Into Practice* is a special section of the Education Law Reporter sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 399 Ed.Law Rep. 931 (June 23, 2022).
- aa1 Dr. Zirkel is University Professor Emeritus of Education and Law at Lehigh University, Bethlehem, PA. He is a Past President of the Education Law Association.
- 1 Perry A. Zirkel, *State Education Agencies as Defendants under the IDEA and Related Federal Laws: A Compilation of the Court Decisions*, 336 Educ. L. Rep. 667 (2016).
- 2 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. *E.g.*, Letter to Anonymous, 69 IDELR ¶ 189 (OSEP 2017) (opining that the IHO “has the authority to determine, based on the individual facts and circumstances in the case, whether the SEA is a proper party to the due process hearing”); 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).
- 3 These outcome entries in the case list are only approximate in light of the fuzzy scope of potential liability, but they do not equate to the usual outcomes categorization of the parenthetical entries as inconclusive.
- 4 In contrast, cases limited to constitutional claims are not included herein. *E.g.*, *Brittany O. v. Bentonville Sch. Dist.*, 67 IDELR ¶ 114 (E.D. Ark. 2016), *aff’d mem.*, 683 F. App’x 556 (8th Cir. 2017). Although also not included, a recent decision that rejected a suit against the U.S. Department of Education’s OCR was premised in part on the SEA’s responsibility for assuring school district compliance with the IDEA. *McKnight v. U.S. Dep’t of Educ. Off. for Civil Rights*, 2017 WL 1383449 (D. Nev. Apr. 12, 2017), *adopting* 2017 WL 136 3333 (D. Nev. Feb. 13, 2017).
- 5 *E.g.*, *M.S. v. Utah Sch. for the Deaf*, 822 F.3d 1128, 331 Educ. L. Rep. 696 (10th Cir. 2016); *Barron v. S. Dakota Bd. of Regents*, 655 F.3d 787, 272 Educ. L. Rep. 831 (8th Cir. 2011); *Mo. Dep’t of Elementary & Secondary Educ. v. Springfield Sch. Dist. R-12*, 358 F.3d 992, 185 Educ. L. Rep. 416 (8th Cir. 2004); *C.S. v. State of Mo.*, 670 F. Supp. 2d 972, 253 Educ. L. Rep. 414 (E.D. Mo. 2009).

- 6 *E.g.*, *Corey H. v. Chi. Bd. of Educ.*, 528 F. App'x 666 (7th Cir. 2013); *Emma C. v. Estin*, 985 F. Supp. 940, 123 Educ. L. Rep. 717 (N.D. Cal. 1997), *various further proceedings including* 67 IDELR ¶ 119 (N.D. Cal. 2016); *Gaskin v. Pa.*, 231 F.R.D. 195, 203 Educ. L. Rep. 264 (E.D. Pa. 2005); *Angel G. v. Tex. Educ. Agency*, 41 IDELR ¶ 31 (W.D. Tex. 2004).
- 7 *E.g.*, *M.A. v. State-Operated Sch. Dist.*, 344 F.3d 335, 181 Educ. L. Rep. 38 (3d Cir. 2003).
- 8 *E.g.*, *King v. Pioneer Reg'l. Educ. Serv. Agency*, 688 S.E.2d 7, 252 Educ. L. Rep. 985 (Ga. Ct. App. 2009) (rejecting IDEA basis for state tort claim).
- 9 *E.g.*, *D.R. v. Mich. Dep't of Educ.*, 70 IDELR ¶ 173 (E.D. Mich. 2017).
- 10 *E.g.*, *D.J. v. Conn. State Bd. of Educ.*, 74 IDELR ¶ 63 (D. Conn. 2019).
- 11 *E.g.*, *Paul G. v. Monterey Peninsula Sch. Dist.*, 72 IDELR ¶ 127 (N.D. Cal. 2018), *aff'd on other grounds*, 933 F.3d 1096, 369 Educ. L. Rep. 11 (9th Cir. 2019); *Brittany O. v. Bentonville Sch. Dist.*, 64 IDELR ¶ 299 (E.D. Ark. 2015), *aff'd on other grounds*, 683 F. App'x 556 (8th Cir. 2017).
- 12 *E.g.*, *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 309 Educ. L. Rep. 28 (3d Cir. 2014).
- 13 *E.g.*, *Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 277 Educ. L. Rep. 34 (7th Cir. 2012).
- 14 *E.g.*, *Paul G. v. Monterey Peninsula Sch. Dist.*, 933 F.3d 1096, 369 Educ. L. Rep. 11 (9th Cir. 2019); *Brooke M. v. Alaska Dep't of Educ.*, 293 F. App'x 452, 239 Educ. L. Rep. 365 (9th Cir. 2008); *Brach v. Newsom*, 77 IDELR ¶ 285 (C.D. Cal. 2020); *K.W. v. District of Columbia*, 385 F. Supp. 3d 29, 368 Educ. L. Rep. 145 (D.D.C. 2019); *Robinson v. Colo. Dep't of Educ. Exceptional Student Serv. Unit*, 2019 WL 1465514 (D. Colo. Apr. 3, 2019); *E.G. v. Northside Indep. Sch. Dist.*, 2014 WL12537177 (W.D. Tex. Mar. 31, 2014).
- 15 20 U.S.C. § 1413(g)(1)(D) (2018).
- 16 *Id.* § 1413(g)(1)(B).
- 17 *Id.* §§ 1412(a)(11)(A) and 1416(a)(1)(C).
- 18 *Id.* § 1415(b)(6)(A). For the derivative right of judicial review, see *id.* § 1415(i)(2).
- 19 For the earlier period, ending approximately in 1999, see *Mayes & Zirkel*, *supra* note 2. Moreover, “suit” refers here to the court context. For the IHO context, see *Letter to Anonymous*, *supra* note 2.
- 20 “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*.
- 21 This Third Circuit decision seems to have overruled *S.C. v. Deptford Township Board of Education*, 213 F. Supp. 2d 452, 168 Educ. L. Rep. 283 (D.N.J. 2002), *further proceedings*, 44 IDELR ¶ 128 (D.N.J. 2005), which ruled that LEAs (as third-party plaintiffs) had a private right of action and standing against SEA and that SEA was ultimately liable under IDEA 1997 provision for inter-agency agreements.

- 22 For further proceedings with separate relevant rulings, see *infra* case no. 29.
- 23 The federal district court in eastern California subsequently transferred the case to the federal district court in northern California based on the overlap with the northern district's *Emma C. case. Morgan Hill Concerned Parents Ass'n v. Cal. Dep't of Educ.*, 2018 WL 2716900 (E.D. Cal. June 6, 2018).
- 24 The court in this pair of unpublished decisions ultimately relied on *Ullmo v. Gilmour Academy*, 273 F.3d 671, 159 Educ. L. 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)).
- 25 For related case law, see *LeJeune v. Khepera Charter Sch.*, 327 F. Supp. 3d 785, 358 Educ. L. Rep. 1002 (E.D. Pa. 2018), *aff'd* based on waiver, 779 F. App'x 984 (3d Cir. 2019); *Jada H. v. Rivera*, 73 IDELR ¶ 197 (E.D. Pa. 2019); *Ida D. v. Rivera*, 73 IDELR ¶ 122 (E.D. Pa. 2018); *Creative Educ. Prep. Inst. v. N.M. Pub. Educ. Dep't*, 117 LRP 4367 (D.N.M. 2017) (ruling that SEA has limited liability when charter school is unable to meet its IDEA obligations due to financial difficulties); *Olivia B. v. Sankofa Acad. Charter Sch.*, 63 IDELR ¶ 247 (E.D. Pa. 2014) (recognizing residual breach of contract claim against the LEA); *S.P. v. Pa. Dep't of Educ.*, 731 F. App'x 130 (3d Cir. 2018) (ruling that SEA is not liable for attorneys' fees when its role was for IEE reimbursement when charter school closed--not a party to the due process hearing); *Joan P. v Khepera Charter Sch.*, 420 F. Supp. 3d 347 (E.D. Pa. 2019) (awarding partial attorneys' fees as a result of settlement agreement for compensatory education); *Angelique P. v. Pa. Dep't of Educ.*, 71 IDELR ¶ 152 (E.D. Pa. 2018) (ruling that SEA is liable for attorneys' fees when it was party to IHO decision in wake of closing of charter school).
- 26 Subsequently, the court upheld a jury verdict that ruled against the plaintiff parents, concluding that the state had legitimate reasons for refusing to investigate some of the parent's complaints. *Everett v. Dry Creek Joint Elementary Sch. Dist.*, 72 IDELR ¶ 179 (E.D. Cal. 2018).
- 27 The court also dismissed the plaintiff's tort claims (here negligent or intentional infliction of emotional distress) based on Eleventh Amendment immunity.
- 28 For pandemic-related IDEA rulings that did not directly address SEA responsibilities and that were limited to adjudicative issues, see, e.g., *J.T. v. de Blasio*, 500 F. Supp. 3d 137, 390 Educ. L. Rep. 126 (S.D.N.Y. 2020) (jurisdiction and exhaustion); *J.C. v. Fernandez*, 77 IDELR ¶ 15 (D. Guam 2020) (stay-put).
- 29 *Supra* note 28. Both *J.T.* and this case also rejected a civil RICO claim, although here based on the lack of a private right of action.