The Year's Most Important Special Education Cases: 2017

The Law Office of Melinda Jacobs, PLLC
163 Kelly Ridge Road
Townsend, Tennessee 37882
Phone: 865-604-6340
Email: jacobslawmelinda@gmail.com
www.melindajacobslaw.com

I. U.S. SUPREME COURT DECISIONS

1. ***Fry v. Napoleon Cmty. Schs*., 65 IDELR 221, 788 F.3d 622 (6th Cir. 2015), *reh'g denied,* 115 LRP 36429 (6th Cir. 08/05/15), 137 S. Ct. 743, 2017 U. S. LEXIS 2047 (2017*).*** A student's wish for greater independence qualified as an educational goal, and therefore issues relating to the presence of the student's service dog were "crucially linked" to her education and were subject to the exhaustion requirements of the IDEA. The 6th Circuit ruled that the parents could not pursue Section 504 or Title II claims against the student's former district until they exhausted their administrative remedies under the IDEA. The court held that the exhaustion requirement applies if the IDEA's administrative procedures can provide some form of relief or if the claims relate to the provision of FAPE. In this case, the court observed, the parents clearly were disputing the appropriateness of the student's IDEA services. Specifically, the parents argued that the dog's presence allowed the student to be more independent so that she would not have to rely on a one-to-one aide for tasks such as using the toilet and retrieving dropped items. They also maintained that the student needed the dog in school so that she could form a stronger bond with the animal and feel more confident. The court explained that the parents' allegations brought the claim squarely within IDEA's scope. "Developing a bond with [the dog] that allows [the student] to function more independently outside the classroom is an educational goal, just as learning to read Braille or learning to operate an automated wheelchair would be," held the court.

   - Unanimous decision rendered on Feb. 22, 2017. Cases in which the "gravamen" of a complaint is a denial of FAPE must be administratively exhausted; other types of claims do not require exhaustion.

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

New Cases Apply the *Fry* Test:

a. *L.D. v. Los Angeles Unified Sch. Dist.*, 117 LRP 16903 (C.D. Cal. 2017). Guardian ad litem for a child with Down Syndrome must exhaust IDEA administrative process prior to suing in federal court. Although the complaint only alleged violations of the child's ADA and Section 504 rights, the court found that the plaintiff was actually seeking relief for a denial of FAPE.

b. *Bowe v. Eau Claire Area Sch. Dist.*, 117 LRP 16602 (W.D. Wis. 2017). Court refused to dismiss a complaint filed on behalf of a former student with autism who alleged disability-based peer harassment denied his right to a harassment-free educational environment, finding that his claim was not for a denial of FAPE per se.

c. *N.S. v. Tennessee Dept. of Educ. et al.,* 117 LRP 14817 (M.D. Tenn. 2017). The court rejected the school district's attempt to win dismissal of a complaint alleging improper restraint and seclusion of two students with disabilities. The federal judge ruled that the court held that administrative remedies would be futile because the parents contended that the frequent use of restraint and seclusion on students with disabilities stemmed from the district's inappropriate disciplinary practices and indifference to complaints of abuse.

d. *M.B. and R.B. v. Islip Sch. Dist.*, 117 LRP 15359 (E.D.N.Y. 2017). Court dismissed plaintiffs' complaint, rejecting their argument that it would be futile for them to seek relief in an IDEA due process hearing. Plaintiffs fail to satisfy their burden of demonstrating that the administrative remedies provided for under the IDEA were futile such that their failure to exhaust should be excused. In arguing that exhaustion would have been futile, Plaintiffs neither claim that they were unaware of the administrative remedies provided for under the IDEA nor that the school district had "adopted a policy or pursued a practice of general applicability that is contrary to the law.

e. *K.G. v. Sergeant Bluff-Luton Cmty. Sch. Dist.*, 69 IDELR 216 (N.D. Iowa 2017). Exhaustion was not required per the Fry case for the parents of a child with autism. The complaint sought monetary damages for the alleged physical mistreatment of the child, and was not merely a strategy to obtain relief while avoiding exhaustion.

f. *J.M. v. Francis Howell Sch. Dist.*, 69 IDELR 146 (8th Cir. 2017). A complaint alleging disability discrimination for the alleged improper use of restraint and seclusion hinged on a purported denial of FAPE and must be exhausted at the administrative level before proceeding to federal court.

g. *F.C. v. Tenn. Dept. of Educ. and Franklin City Spec. Sch. Dist.*, 117 LRP 11997 (M.D. Tenn. 2017). The parents of a child with physical disabilities filed a federal lawsuit alleging that the school district was guilty of a systematic denial of procedural rights under the IDEA and Title VI of the Civil Rights Act. Plaintiffs admitted that an administrative law judge had dismissed their complaint without convening a hearing prior to filing their federal action. The court held that the plaintiffs were required to exhaust IDEA administrative remedies prior to filing their case in federal court.

2. ***Endrew F. v. Douglas County Sch. Dist. RE-1*,, 66 IDELR 31, 798 F.3d 1329 (10th Cir. 2015), 137 S. Ct. 988, 2017 U.S. LEXIS 2025 (2017)**. To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. When a child is fully integrated in the regular classroom, providing a FAPE that meets the unique needs of a child with a disability typically means providing a level of instruction reasonably calculated to permit advancement through the general curriculum (*Rowley* standard). However, if progressing smoothly through the regular curriculum is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement, but must be "appropriately ambitious in light of his circumstances." This standard is markedly more demanding than a "merely more than *de minimis*" test for educational benefit.

- Unanimous decision rendered on March 22, 2017. The Court has defined a bifurcated FAPE standard, maintaining the *Rowley* standard (an IEP that is procedurally compliant and that is "reasonably calculated to confer educational benefit) for students who are "fully integrated" into the general education curriculum, and a "markedly" different standard for students who are not expected to

progress in the general education curriculum. Students who are not "fully integrated" into the general curriculum must have IEPs that are "appropriate ambitious in light of their circumstances." This ruling leaves much room for interpretation by parents and school districts, and will likely spark a surge in special education litigation as parties begin to test the boundaries of the Court's opinion.

New Cases Applying the *Endrew* Test:

a. *C.M. ex rel. C.M. v. Warren Indep. Sch. Dist.*, 117 LRP 17212 (E.D. Tex. 2017). A nine-year-old boy with an emotional disturbance had made measurable progress with his behavioral goals, but minimal academic progress. The court held that the behavioral progress was proof that the child was receiving FAPE, even though he was not yet performing on grade level academically.

b. *E.D. by T.D. and C.D. v. Colonial Sch. Dist.*, 117 LRP 12348 (E.D. Pa. 2017). An administrative decision rendered prior to the U.S. Supreme Court's ruling in *Endrew* is still valid if the judge applied a sufficiently rigorous test and considered the child's circumstances. The court held that the child's academic progress was "appropriate in light of her age and disability-related needs," even though she was not proficient in all academic areas by the end of the school year.

c. *A.G. v. Bd. of Educ. of the Arlington Central Sch. Dist.*, 69 IDELR 210 (S.D.N.Y. 2017). The use of a resource room to provide 1:1 academic instruction in reading for a 12-year-old student with dyslexia and ADHD was sufficient to provide FAPE. Progress reports shows that the student was meeting IEP goals, and the district's programs were tailored to meet the student's needs in decoding, encoding, reading, and writing.

d. *C.D. v. Natick Pub. Sch. Dist. et al.,* 69 IDELR 213 (D. Mass. 2017). The federal court remanded a case back to an IDEA hearing officer to determine whether the school district's programs were sufficient to meet the "appropriately ambitious" standard of the *Endrew* case.

II. BULLYING AND HARASSMENT

3. *T.K. and S.K. v. New York City Dept. of Educ.*, 67 IDELR 1, 810 F.2d 869 (2d. Cir. 2016). School district denied the parents of a third-grade girl with disabilities the right to "meaningful participation" in the development of their child's IEP. The district officials refused to discuss the parent's concerns about bullying in the child's IEP meeting, and wound up paying for the costs of a fully year of private schooling.

4. *Landon B. v. Hamburg Area Sch. Dist.*, 67 IDELR 203 (E.D. Pa. 2016). The school district's proposal to return a teenage boy to public school after his withdrawal was appropriate. The district had paid for the student to attend a private school for two years after he was subjected to peer bullying and was assaulted at school. The parents opposed any effort to return their son to public school, but the court found that the teen's development of social skills and "comfortable" interactions with former peers at school demonstrated his ability to return to public school.

5. *C.C. v. Hurst-Euless-Bedford Ind. Sch. Dist.,* 67 IDELR 111 (5th Cir. 2016), *unpublished, cert. denied*, 116 LRP 43118 (10/11/16). A Texas school district did not subject a twelve-year-old boy to a "hostile environment" by placing him in an alternative learning center for 60 days following an incident where the boy surreptitiously took and shared photos of a classmate on the toilet. The court found that the parents failed to prove that the act was caused by the boy's diagnosed ADHD, or that his placement at the alternative school constituted disability-based harassment.

6. *S.B. v. Bd. of Educ. of Hartford Co.*, 67 IDELR 165, 819 F.3d 69 (4th Cir. 2016). The Fourth Circuit adopted the "deliberate indifference" standard in disability harassment claims, finding that the district's response to a boy's bulling by peers was reasonable. The district officials investigated each allegation of harassment, punished perpetrators, and assigned a paraprofessional to the student to monitor him at school.

7. *Doe v. Torrington Bd. of Educ.*, 67 IDELR 182 (D. Conn. 2016). A high school student with SLD failed to prove that his alleged bullying was disability-related and therefore actionable under Section 504/Title II. The school offered to provide the boy tutoring in the administrative offices when he began skipping school due to fear of persistent bullying. Even if this was an inadequate response, there was no proof that the boy was subjected to bullying that was disability-related.

8. *Krebs v. New Kensington-Arnold Sch. Dist.*, 69 IDELR 9 (W.D. Pa. 2016). The parents of a ninth grade girl who committed suicide after suffering three years of persistent bullying at school were entitled to pursue their claim for money damages against the school district. The parents alleged that their complaints and requests for help were ignored or dismissed by school administrators

9. *J.M. v. Selma City Bd. of Educ.*, 116 LRP 48696 (S.D. Ala. 2016). A state anti-bullying law did not confer a private right of action, dismissing the claims that a

ninth-grade boy with a visual impairment was entitled to money damages as a result of being bullied at school.

III. BEHAVIOR AND FBAs/BIPs

10. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). A student's repeated suspension, even if not related to the student's disability, should cause school districts to consider whether behavioral interventions must be added to the student's IEP.

11. *J.C. v. New York Dept. of Educ.*, 67 IDELR 109 (2d Cir. 2016), *unpublished*. The school district's decision not to conduct a formal FBA when informal positive interventions reduced an autistic student's unruly behaviors did not constitute a denial of FAPE.

12. *T.L. v. Lower Merion Sch. Dist.*, 68 IDELR 12 (E.D. Pa. 2016). A Pennsylvania school district convened a series of IEP meetings adjusting the level and type of behavioral supports and services needed to meet the needs of an elementary student with ADHD and LD. Eventually, the district conducted a formal FBA and drafted a Positive Behavior Support Plan. The district did not deny FAPE to the student. The district's continuing efforts to revise the support systems provided to the child constituted evidence that it met the obligation to address the child's behaviors.

13. *Garris v. District of Columbia*, 68 IDELR 194 (D.D.C. 2016). The BIP addressing a student's truancy was sufficient, despite the plan's failure to address a major incident preceding the girl's refusal to attend school (being assaulted by classmates).

14. *N.G. v. Tehachapi Unified Sch. Dist.,* 117 LRP 14815 (E.D. Cal. 2017). *N.G. v. Tehachapi Unified Sch. Dist.*, 117 LRP 14815 (E.D. Cal. 2017). A California school district appropriately implemented behavior interventions to address the aggressive and eloping behaviors of a seven-year-old student with autism, and was not penalized for waiting to conduct a formal FBA. The court affirmed an ALJ's decision finding that the district had taken appropriate steps to address the student's behavioral challenges in view of the child's particular circumstances per *Endrew*, such as adding an adult aide to work 1:1 with the student; using positive reinforcement; incorporating timers and cues for transitions; and eliminating behavioral triggers (i.e., the cafeteria).

15. *Paris Sch. Dist. v. A.H.*, 69 IDELR 243 (W.D. Ark. 2017). A BIP developed for a fourth grade student with Asperger Syndrome was inappropriate because it failed to effectively address her problem behaviors. Teachers had identified the girl's behaviors as verbal disruptions, physical aggression, property destruction, and elopement. However, the BIP characterized her behavior as "noncompliance." The disconnect between the child's actual behavioral issues and the drafted BIP

was proof that the district had failed to properly address the child's behavior at school.

16. *G.L. v. Saucon Valley Sch. Dist.,* 117 LRP 11567 (E.D. Pa. 2017). The positive outcomes documented in witness statements and progress reports for an eleven-year-old boy with an Emotional Disturbance proved that the school district had adequately addressed his behavioral needs. The records showed that the child had reduced elopement, increased classroom participation, and improved his reading skills.

17. *Brandywine Heights Area Sch. Dist. v. B.M.,* 69 IDELR 212 (E.D. Pa. 2017). A school district's failure to address the behaviors of a preschool student with autism led to an award of compensatory education services. The district waited six months into the child's Kindergarten year to develop an appropriate BIP, despite evidence that the child had been exhibiting the inappropriate behaviors in preschool.

IV. CHILD FIND/ELIGIBILITY/EVALUATIONS

18. *Memorandum to State Directors of Special Educ.*, 67 IDELR 272 (OSEP 2016). A preschool program's failure to implement RtI cannot delay or deny the receiving school district's obligation to "locate, identify, and evaluate" a child suspected of having a disability.

19. *R.E. v. Brewster Cent. Sch. Dist.,* 67 IDELR 214 (S.D.N.Y. 2016). Documentation showed that a grade school boy with Tourette Syndrome was making meaningful educational progress under a Section 504 plan. This documentation justified the school district's decision not to refer the child for a full IDEA eligibility evaluation.

20. *Timothy O. and Amy O. v. Paso Robles Unified Sch. Dist.*, 67 IDELR 227, 822 F.3d 1105 (9th Cir. 2016), *cert. denied*, 117 LRP 15003 (U.S. 2017). A "casual" observation of a preschool student by a staff member "off the top of [his] head" was not a sufficient basis for failing to conduct an evaluation to determine if the student had autism. The court held that eligibility decisions must be based on evaluations that conform to the IDEA requirements, and cannot be based on subjective observations of school staff.

21. *Letter to Morath*, 68 IDELR 231 (OSERS 2016). The State of Texas was cited for enforcing a "cap" of 8.5 percent on the number of students identified for IDEA eligibility. The state's cap was resulting in the under-identification of "thousands of students with disabilities," according to the U.S. Dept. of Education.

22. *Mr. and Mrs. Doe v. Cape Elizabeth Sch. Dist.*, 68 IDELR 61 (1st Cir. 2016). A student who is earning straight A's and has above-average scores on statewide assessments may still be eligible for special education and related services. The teen had a deficit in reading fluency, and the school district erred in relying solely

on her grades and state testing scores to determine that she was ineligible for services.

23. *L.J. v. Pittsburg Unified Sch. Dist.*, 68 IDELR 121 (9th Cir. 2016); amended and replaced by 117 LRP 6572 (9th Cir. 2017). The school district erred by discounting an elementary student's multiple suspensions and suicide attempts, and the counseling and other services provided to him at school, when determining that he was not eligible for special education and related services. The child began having serious behavior problems at school in the second grade, including bullying other students/anger/lack of self-control/suicidal ideations. The district provided a Behavior Support Plan and revised it multiple times without success, then provided a 1:1 behavioral aide. An IDEA eligibility evaluation concluded that the child was not eligible to receive special education and related services. Two suicide attempts followed and a psychiatric hospitalization. Although the student made satisfactory academic progress, his extreme behavior problems at school continued, and another eligibility evaluation concluded that he had ADHD but was not eligible for special education and related services due to his academic performance. The court held that the specialized services provided to the student in the general education program (Behavior Support Plan, 1:1 paraprofessional, accommodations) constituted "special education" and were not merely general education interventions.

24. *James v. District of Columbia*, 68 IDELR 11 (D.D.C. 2016). The school district violated the IDEA by failing to conduct new assessments as a part of a reevaluation for a teen with ID in response to the guardian's request for a comprehensive psychological evaluation.

25. *Horne v. Potomac Preparatory Charter Sch.*, 68 IDELR 38 (D.D.C. 2016). A first grade student was found ineligible for special education and related services. Two months later the boy tried to kill himself by jumping out of a school window. The school district violated the IDEA by failing to reconsider the child's eligibility in view of the seriousness of his behavior. The federal judge noted that the suicide attempt met one of the ED criteria, "inappropriate behavior under normal circumstances."

26. *Letter to Carroll*, 68 IDELR 279 (OSEP 2016). School districts must respond to a parental request for an IEE by either agreeing to pay for the IEE, or initiating a due process hearing to defend the appropriateness of the evaluation with which the parents disagree.

27. *Krawietz v. Galveston Indep. Sch. Dist.*, 69 IDELR 207 (S.D. Tex. 2017). Development of a 504 plan does not relieve a school district of its obligation to consider IDEA eligibility for an IEP should circumstances warrant. In this case, a high school student with ED, OHI, and SLD had a 504 Plan. However, the school district erred by failing to conduct a full IDEA eligibility evaluation when the student's standardized test scores declined, he failed several classes, and engaged in criminal behavior.

28. *Davis v. District of Columbia*, 69 IDELR 218 (D.D.C. 2017). A charter school violated the IDEA when it failed to reevaluate a girl whose grades plummeted after she was removed from special education eligibility the previous year.

29. *B.G. v. City of Chicago Sch. Dist.* 299, 69 IDELR 177 (N.D. Ill. 2017). A school district did not violate the IDEA when it evaluated a bilingual student in English rather than Spanish. The student spoke Spanish at home, but was fluent in English and had informed the school evaluators that he felt more comfortable taking assessments in English.

30. *Joanna S. v. South Kingstown Pub. Sch. Dist.*, 69 IDELR 179 (D.R.I. 2017). A student's eligibility classification (e.g., autism vs. ED) or label is unimportant so long as it does not interfere with the development of an appropriate IEP and the provision of educational services.

31. *A.A. v. Goleta Union Sch. Dist.*, 69 IDELR 156 (C.D. Cal. 2017). Parents who failed to justify an exception to the district's stated "cap" on costs of IEEs based on proof of "unique circumstances" were not entitled to recover reimbursement for a $6,000 neuropsychological examination.

V. DISCIPLINE OF STUDENTS WITH DISABILITIES

32. *Smith v. Rockwood R-VI Sch. Dist. and Knost,* 69 IDELR 268 (E.D. Mo. 2017). The parent of a student diagnosed with autism, Tourette Syndrome, ED (Major Depression; OCD), and ADHD sought money damages for her son's emotional pain and suffering, humiliation, and loss of reputation allegedly caused by his 180-day suspension from school. The student was suspended after an MDR concluded that his misbehavior WAS "directly and substantially related to" his disabilities (it appears likely that the suspension was issued per the 45-day exception). The case was dismissed for failure to exhaust administrative remedies, with the court holding that the student's claims "revolve[d] around [the student's] exclusion from school and the consequential deprivation of educational benefits, or rather, the denial of FAPE."

VI. IEP DEVELOPMENT AND IMPLEMENTATION

33. *L.M.H. v. Arizona Dept. of Educ.*, 68 IDELR 41 (D. Ariz. 2016). In one of the few cases to interpret the IDEA's provision requiring IEP services to be "based on peer-reviewed research to the extent practicable," a federal court in Arizona held that the school district denied FAPE to a preschool student with a speech impairment by failing to consider any peer-reviewed research in recommending speech/language therapy for the child. The IEP team based its recommendation of speech therapy 2x per week (30 minutes per session) on its speech therapist's professional knowledge and coursework, rather than on peer-reviewed research. The court found that the school district was not legally bound to follow the ASHA's

recommendation for 3x-5x per week, but that the IEP team was legally bound to cite peer-reviewed research as a basis for its therapy recommendation.

34. *Kent Sch. Dist. v. N.H. and D.N.*, 68 IDELR 276 (W.D. Wash. 2016). The court held that the fact that the 1:1 nurse provided for a first grade student missed two days of work during the first semester of the school year did not constitute to a material implementation failure of the child's IEP. The court overturned a hearing officer's decision that the school district's failure to include provision of a substitute nurse in the child's IEP was a denial of FAPE. There was no evidence that the two missed days impeded the child's educational progress (she only missed one day of school as a result).

35. *Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ.*, 68 IDELR 33 (6th Cir. 2016), *unpublished*. The school district's failure to conduct timely transition services assessments, and its failure to consider the student's preferences and needs, constituted a denial of FAPE. The district erred in basing the development of the girl's transition services plan on observations of her wiping tables and shredding documents, and this did not take into account the girl's actual preferences. The court recognized that the antagonistic nature of the IEP meetings (yelling, slamming doors, and general animosity) made it unlikely that the student's input could have been received. But this did not excuse the district from its obligation to conduct appropriate transition assessments that provided insight into the girl's preferences and abilities.

36. *L.B. v. F.B. v. New York City Dept. of Educ.*, 68 IDELR 195 (S.D.N.Y. 2016). The transition plan developed for a student with cognitive, academic, and speech/language delays was general and somewhat vague (stating that the student would "integrate into the community," "attend a post-secondary educational or vocational program," "live independently," and "be employed"). However, the IEP goals mitigated the lack of detail in the transition plan by including goals and objectives for OT, S/L, and counseling that were expressly designed to promote independence, pragmatic language skills, self-advocacy, and social reasoning and problem solving skills.

37. *K.P. v. District of Columbia*, 69 IDELR 233 (D.D.C. 2017), *unpublished*. The IDEA's "stay put" provision required a school district to continue a single-classroom placement for a student with autism pending the completion of a due process hearing, even though the IEP did not actually describe the type of classroom the student would attend.

38. *M.C. v. Antelope Valley Union High School District*, 69 IDELR 203 (9th Cir. 2017). A district's unilateral modification of IEP services for a blind student with Norrie Disease constituted a substantive violation of the parent's right to meaningful participation of the development of her son's IEP. Interestingly, the modification substantially INCREASED the amount of VI services provided to the student (from 240 minutes per month to 240 minutes per week).

39. *A.V. v. Lemon Grove Sch. Dist.*, 69 IDELR 155 (S.D. Cal. 2017). The IEP team's discussion of parents' preferred placement, and the team's willingness to

investigate the advocate's concerns about its proposed placement proved that the district did not "predetermine" the student's placement.

40. *Pangrel v. Peoria Unified Sch. Dist.*, 69 IDELR 133 (D. Ariz. 2017). A school district did not violate the IDEA when an IEP team continued working on a transition plan after the parent and two advocates left the IEP meeting due to scheduling issues. The evidence showed that the parent and advocates were active participants in the IEP development for two hours prior to their departure, and that the parent attended and participated in two follow-up IEP meetings.

41. *C.M. v. New York City Dept. of Educ.*, 69 IDELR 117 (S.D.N.Y. 2017). Gaps in the annual goals for a 13-year-old boy with autism were remedied by the details provided in the short-term objectives. The school district was not liable for the $94,000/year private placement chosen by the student's parents.

42. *Nicholas H. v. Norristown Area Sch. Dist.*, 69 IDELR 118 (E.D. Pa. 2017). This case involves the IEP developed for a teen boy diagnosed with LDs, ADHD, and anxiety.

43. The IEP failed to describe the services offered in clear and specific language that the parents could understand. Rather, the IEP provided for "direct instruction, and included broad and general terms describing the services and classroom supports for the student. This failure to draft the IEP by included specific language explaining terms like "co-teaching" and "direct instruction" led to the court refusing to consider the testimony of staff who explained what the general language was intended to mean.

VII. FERPA/CONFIDENTIALITY

44. *W.A. and M.S. v. Hendrick Hudson Cent. Sch. Dist.*, 67 IDELR 178 (S.D.N.Y. 2016). A New York school district may have violated the Constitutional rights of a high school student with a disability when it sent the student's educational records containing confidential medical information to several potential private school placements without authorization. Although there is no private right of action under FERPA, the court held that the parent could sue the district for the confidentiality breach under the 14th Amendment.

VIII. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

45. *Sch. Dist. of Pittsburgh v. C.M.C.,* 68 IDELR 102 (W.D. Pa. 2016). A fifteen-year-old girl with Asperger's Syndrome was not a candidate for online instruction while being phased back into regular school attendance following a physical altercation with a classmate. The evidence showed that the girl was "obsessed" with the internet and had great difficulty staying on task while on a computer. Moreover, the online program would not meet the student's need for social interaction.

46. *G.S. and A.S. v. New York City Dept. of Educ.*, 68 IDELR 154 (S.D.N.Y. 2016). A school district's refusal to include music therapy in the IEP of a nine-year-old girl with autism did not constitute a denial of FAPE. The evidence showed that the girl was verbal, and that the counseling services included in the IEP were sufficient to address her social-emotional needs and interpersonal skills.

47. *K.M. v. Tehachapi Unified Sch. Dist.*, 69 IDELR 241 (E.D. Cal. 2017). IEP goals do not have to specifically address each of a student's areas of educational need, so long as the IEP goals as a whole adequately address these needs. In this case, the IEP for an elementary school student with autism addressed the child's need to comply with directions. None of the goals specifically addressed the need to stay on task, but the court ruled that the goals as a whole (complying with 2-3 step directions; provision of a visual schedule, preferential seating, on-task reminders, and a 1:1 aide) adequately addressed this deficit area.

48. *M.G. v. District of Columbia*, 69 IDELR 246 (D.D.C. 2017). After a finding that the school district had failed to provide FAPE to a high school student with multiple disabilities, the court also held that the private placement chosen by the parents was "appropriate" for the student. The district challenged the appropriateness of the private placement on the grounds that it did not provide any special education instruction via 'pull out' services. The court held that the services provided by the private school (including a small, quiet and supportive environment) led to the student making passing grades and many friends.

49. *Parrish v. Bentonville Sch. Dist.*, 69 IDELR 219 (W.D. Ark. 2017). An Arkansas school district that moved a third-grade student with autism and violent behaviors from a general education classroom to an autism class for one school day pending an IEP meeting did not violate the IDEA. The student had a history of physical aggression at school, and on the day of his removal had charged another student. The student was physically restrained and the parent notified that day that her son would attend the autism classroom pending an IEP meeting the following day. The court held that the temporary change in placement did not violate the IDEA because the student's educational services remained the same and the temporary removal did not exceed ten days.

50. *E.F. v. Newport Mesa Unified Sch. Dist.*, 69 IDELR 206 (9th Cir. 2017). The school district's proposed IEP provided FAPE for a kindergarten student with autism, despite the fact that the district did not conduct an AT evaluation for a high-tech communication device. The court determined that the non-electronic AT provided to the child enabled him to make educational progress, and that the student was not ready to handle high-tech communication devices.

51. *S.G.W. v. Eugene Sch. Dist.*, 69 IDELR 181 (D. Oregon 2017). A school district violated a high school student's right to appropriate transition services when it failed to conduct age-appropriate transition assessments to determine the girl's unique needs. Instead, the district provided the girl access to programs and services that were generally available to all students in the district (attend career day; take finance and career classes; visit a local community college).

52. *V.W. et. al. v. Conway et. al.*, 69 IDELR 185 (N.D.N.Y. 2017). A federal judge has ordered the State of New York to ensure that incarcerated juveniles with disabilities are provided FAPE, even when placed in solitary confinement. The juveniles were deprived of educational services when in solitary confinement, except for the provision of "cell packets." The judge found that this practice violated the students' rights, and that the jail's need to maintain safety and security was not as strong as the juveniles' right to appropriate educational services.

IX. LEAST RESTRICTIVE ENVIRONMENT

53. *L.H. v. Hamilton Co. Dept. of Educ.*, 68 IDELR 274 (E.D. Tenn. 2016). The school district violated the IDEA by proposing a special education classroom placement for a ten-year-old boy with Down Syndrome because he was unable to master general education curriculum content. The court held that the IDEA requires placement in general education classes "to the maximum extent possible," and that the boy was able to make educational progress despite his inability to keep pace with his general education classmates.

54. *T.M. by T.M. and C.M. v. Quakertown Cmty. Sch. Dist.*, 69 IDELR 276 (E.D. Pa. 2017). The parents of an eleven-year-old student with autism, global apraxia, and an ID alleged that their child should be provided 1:1 academic instruction rather than opportunities for socialization with peers. The court found that the student had made increasing gains in socialization, and upheld the school district's placement.

X. MONEY DAMAGES AND LIABILITY

55. *T.G. v. Detroit Pub. Schs.*, 69 IDELR 7 (E.D. Mich. 2016). A high school student with severe physical and cognitive impairments sustained severe injuries to his head and face as a result of falling out of his wheelchair at school. The parent alleged that the special education teacher and two classroom assistants were guilty of negligence and sought money damages under Section 1983. The court dismissed the claims on the grounds that, even if true, the allegations failed to satisfy the test for behavior that would "shock the conscience of the average person."

56. *Garza v. Lansing Sch. Dist.*, 68 IDELR 10 (W.D. Mich. 2016). This complaint alleged that school administrators failed to investigate numerous reports that a special education teacher was abusing students in his classroom. The court refused to dismiss the claims seeking money damages under Section 1983.

57. *Conklin v. Jefferson Co. Bd. of Educ.*, 68 IDELR 122 (N.D.W.V. 2016). A high school student with multiple disabilities sought money damages after he was placed on homebound instruction following an altercation with his special education

classroom teacher. The student was allegedly grabbed by the neck and pushed into a bookcase by the teacher, resulting in the teacher being criminally charged with assault. Afterward this incident, the student became fearful and anxious about seeing the teacher, and was placed on homebound instruction as an alternative to attending the same teacher's classroom. The court refused to dismiss the student's claims alleging discrimination under Section 504 and Title II.

58. *K.T. v. Pittsburg Unified Sch. Dist.*, 68 IDELR 272 (N.D. Cal. 2016). A principal who failed to act immediately upon receipt of a report of alleged abuse of an eight-year-old girl with autism by a special education aide. The principal received a report from parents of other children in the classroom that the aide was pushing, slapping and kicking the child. Despite this report, the principal allegedly failed to act until two days later. The parents were entitled to pursue their claims of deliberate indifference seeking money damages.

59. *Fernandez v. City of New York,* 68 IDELR 50 (N.Y. Sup. Ct. 2016), unpublished. A bus aide who suffered serious and permanent injuries after being attacked by a five-year-old boy with disabilities could sue the school district that contracted with a private carrier for transportation services. The court held that the school district had knowledge that the child could become violent with no provocation, and had previously been violent at school. In fact, the evidence showed that the district had previously recognized that the child became especially violent when on the bus with his brother.

60. *A.C. v. Scanton Sch. Dist.*, 69 IDELR 211 (M.D. Pa. 2017). The school district was not responsible for the actions of private school staff using inappropriate physical restraints at least 23 times over a three-year period on a ten-year-old boy with a developmental disorder, autism, ID, ADHD, and Mixed Receptive/Expressive Disorder. The court refused to hold the public school district responsible for the actions of the private school employees, despite the existence of an indemnity clause in the contract between the public and private school agencies.

61. *McKenzie v. Talladega City Bd. of Educ.*, 69 IDELR 149 (N.D. Ala. 2017). The parents of a nonverbal 14-year-old girl with multiple severe disabilities could not seek money damages under Section 1983 for injuries their daughter sustained during a bus evacuation drill. During the bus evacuation drill, the bus drive and a special education teacher instructed the student to leave her wheelchair and exit the bus with the other students. As a result, the girl fell, sustaining broken bones in her wrist and neck. The parents' failure to properly plead "conscience shocking behavior" resulted in dismissal of the claims.

62. *Maldanado v. City of New York Bd. of Educ.*, 69 IDELR 283 (NY Sup. Ct., Bronx Co. 2017), *unpublished*. The father of a five-year-old boy with autism, ADHD, and ID could sue the public school district for injuries his son sustained during a sexual assault while riding a special education bus. The boy continued to ride the special education bus, despite reports to school officials from bus monitors that the child had been found in various stages of undress during several bus rides. The evidence that the district was aware of potential safety issues led to the court's refusal to dismiss the claims.

XI. PRIVATE SCHOOL/RESIDENTIAL PLACEMENT

63. *R.B. and M.L.B. v. New York City Dept. of Educ.*, 69 IDELR 263 (2nd Cir. 2017). The parents of a high school student with autism alleged that the school district had failed to conduct appropriate transition assessments and sought reimbursement for private school tuition. The court found that the district had conducted appropriate transition assessment procedures (vocational interview with the parents; consultation with private school teachers; invited the student to meetings where transition services were discussed), despite not conducting formal transition assessments.

64. *Y.D. v. New York City Dept. of Educ.*, 69 IDELR 178 (S.D.N.Y. 2017). The failure to include a specific sensory diet in a nine-year-old boy's IEP did not constitute a denial of FAPE. The federal judge ruled that IEPs do not have to contain a detailed sensory diet, so long as the IEP contains information about the student's sensory needs and suggests appropriate ways of managing these needs (e.g. proprioceptive movement-based activities; singing familiar songs).

65. *J.S. v. New York City Dept. of Educ.*, 69 IDELR 153 (S.D.N.Y. 2017). The circulation of a draft IEP prior to an IEP meeting does not constitute "predetermination," ruled a federal judge in New York. The judge rejected the parents' allegation that the district disregarded their input by giving them a draft IEP before an IEP meeting and recommending the same specific classroom several years in a row.

XII. PROCEDURAL VIOLATIONS/SAFEGUARDS

66. *Letter to Andel,* 67 IDELR 156 (OSEP 2016). School districts that, when confronted with the unexpected attendance of a parent's attorney at an IEP meeting, cancel and reschedule the IEP meeting so that the school attorney may attend violate the IDEA's procedural safeguards, including the parents' right to "meaningful participation."

67. *Letter to Savit*, 67 IDELR 216 (OSEP 2016). School districts must provide parents sufficient notice of an IEP meeting in order to allow them (if required) the opportunity to provide notice of intent to tape-record the IEP meeting.

68. *Dear Colleague Letter*, 68 IDELR 108 (OSERS/OSEP 2016). OSERS opined that students with disabilities who attend virtual schools maintain the same IDEA rights as students attending "brick and mortar" schools (e.g., child find, LRE, FAPE).

69. *R.F. v. Delano Union Sch. Dist.*, 69 IDELR 236 (E.D. Cal. 2017). A parent of a child with a disability may seek federal court adjudication of issues such as "stay put" during the pendency of a due process hearing. But that does not allow parents

to tack on other FAPE-related claims, which must be exhausted at the administrative level.

70. *Forrester v. Indep. Sch. Dist. No. 19 of Carter County, State of Oklahoma*, 69 IDELR 247 (E.D. Okla. 2017). The federal courts are split on the issue of whether parents have standing to pursue 504/Title II discrimination claims on their own behalf. In this case, a federal judge in Oklahoma ruled that parents do not have standing to pursue discrimination claims on their own behalf.

71. *Avila v. Spokane Sch. Dist.*, 69 IDELR 202 and 69 IDELR 204 (9th Cir. 2017). In a case of first impression, the Ninth Circuit ruled that the IDEA's two-year statute of limitations does not bar suits seeking relief for alleged denials of FAPE that occurred more than two years earlier. The IDEA specifically requires parents to file their IDEA claim within two years of the time they "knew or should have known" that a potential IDEA violation had occurred, but is unclear as to whether this limits the time period for which a parent can seek relief.

72. *S.H. v. Tustin Unified Sch. Dist.*, 69 IDELR 176 (9th Cir. 2017). A California federal court ruled that the parents of a thirteen-year-old girl had more than adequate opportunity for input into the development of her IEP.

73. *T.O. v. Cumberland County Bd. of Education*, 69 IDELR 182 (E.D.N.C. 2017). Lawsuit dismissed for failure to exhaust IDEA's administrative remedies. An administrative law judge had previously dismissed the parent's claims because she refused to exchange the evidence she intended to introduce at the hearing.

74. *Porco v. Lewis Palmer Sch. Dist. 38*, 69 IDELR 150 (D. Colo. 2017). Voluntary resolution of an OCR complaint does not equate to exhaustion of IDEA's administrative remedies. A student who filed a federal lawsuit seeking damages for his expulsion and denial of FAPE was required to proceed to a due process hearing prior to seeking relief in federal court.

75. *Parent and Student v. Pittsford Central Sch. Dist.*, 69 IDELR 158 (W.D.N.Y. 2017). A district's provision of at least two earlier Prior Written Notices under Section 504 served as effective notice of the parent's procedural safeguards. This lawsuit was dismissed for failure to exhaust administrative remedies.

76. *McKnight v. U.S. Dept. of Educ., Office for Civil Rights*, 117 LRP 14542 (D. Nev. 2017). The parent of a student with a disability sued OCR alleging that the agency had violated Section 504/ADA by (1) failing to conduct a fact-specific investigation, (2) failing to ensure that her 504 hearing was impartial, (3) failing to ensure that her child's IEPs were appropriate, and (4) failing to ensure that the district had a designated 504 Coordinator. The parent also alleged that OCR had retaliated against her for sending an email complaining about a previous OCR investigation. The magistrate judge issued a Report & Recommendation advising dismissal of the claims against OCR, and giving the parent an opportunity to refile her claims against a "proper Defendant," suggesting that IDEA and 504 claims for denials of FAPE should be brought against an LEA rather than the federal agency.

XIII. COMPENSATORY EDUCATION AND OTHER REMEDIES

77. *A.S. v. Harrison Twp. Bd. of Educ.*, 68 IDELR 96 (D.N.J. 2016). A federal court upheld its previous order directing the school district to establish a trust fund to pay for 72 hours of compensatory education services for a student with a disability who had been denied educational services for twelve days. The court ruled that it had the authority to grant any "appropriate relief," and affirmed its order to establish the trust fund.

78. *Tehachapi Unified Sch. Dist. v. K.M.*, 117 LRP 14366 (E.D. Cal. 2017). A federal judge ordered a California school district to pay $15,000 for a summer Lindmood-Bell reading program, despite the fact that an appeal of this due process order was pending.

79. *Foster v. Bd. of Educ. of the City of Chicago and Amandla Charter School*, 69 IDELR 205 (7th Cir. 2017), *unpublished*. The court upheld a written settlement agreement that waived the parent's claims, including Section 1983 claims for money damages. The parent had been provided a court-appointed attorney to assist her in reaching the settlement agreement. The mother left the settlement negotiations before the written agreement was completed, but had verbally acknowledged her agreement with the terms. The parent's court-appointed counsel signed the agreement after the mother left.

XIV. ATTORNEY'S FEES AND ATTORNEYS

80. *Tina M. v. St. Tammany Parish Sch. Bd.*, 67 IDELR 54, 816 F.3d 57 (5th Cir. 2016). The Fifth Circuit held that the issuance of a "stay put" order by an administrative law judge/hearing officer does not warrant an award of attorneys' fees because it does not confer "prevailing party" status.

81. *Anaheim Union High Sch. Dist. v. J.E.,* 67 IDELR 81 (9th Cir. 2016), *unpublished*. A parent could recover attorneys' fees by disguising work done by an educational consultant who testified as an expert witness in a due process hearing as fees for a "paralegal."

82. *Beauchamp v. Anaheim Union High Sch. Dist.*, 67 IDELR 107, 816 F.3d 1216 (9th Cir. 2016). Parents seeking 20 hours of counseling and 80 hours of tutoring rejected a settlement proposal and proceeded to a due process hearing. After the hearing, the judge found the school district had violated the IDEA's "child find" requirement, but awarded only six hours of counseling. The relief granted to the parents was far less that that offered in the proposed settlement agreement. Therefore, the court reduced the amount of attorneys' fees awarded to less than 12 percent of the parents' request (which amounted to less than $8,000).

83. *Cobb Co. Sch. Dist. v. D.B.*, 69 IDELR 3 (11th Cir. 2016), *unpublished*. A school district could not claim that it lacked knowledge that a student may be a "child with a disability," when the evidence showed that school administrators attended a previous Section 504 meeting where they discussed the student's anxiety and panic attacks, suicide attempt, and inability to complete work. Therefore, the district had knowledge that the student was a "child with a disability," and the student was entitled to a Manifestation Determination prior to a suspension.

84. *Ebonie S. v. Pueblo Sch. Dist. 60*, 67 IDELR 149 (D. Colo. 2016). The court reduced the amount of attorneys' fees awarded from a request of $1.2 million to $978,000 due to the attorneys repeated use of duplicative and "block" billing.

85. I*rvine Unified Sch. Dist. v. K.G.*, 69 IDELR 232 (9th Cir. 2017). The court vacated an award of more than $174,000 to an adult student who had continued to participate in a lawsuit involving a dispute among three state agencies over the funding of the student's post-secondary school placement. The court held that the student's interests were not affected by the funding dispute, as it was clear that his residential placement would continue to be funded by the State.

86. *Morgan Hill Concerned Parents Assoc. v. Calif. Dept. of Educ.*, 117 LRP 4435 (E.D. Cal. 2017). A federal court ordered the CDE to produce more than 29,000 documents in the specific electronic format requested by the plaintiffs in this class action lawsuit alleging a statewide denial of FAPE. The plaintiffs sought the release of emails from CDE, including all "metadata." The CDE produced the emails in "load" format, omitting all metadata. The court rejected CDE's argument that production of the emails with metadata would be overly burdensome, holding that this was a problem of CDE's own making. The court also found that the CDE's production of "privilege logs" documenting all emails not provided due to attorney-client privilege was insufficient because the logs did not include information sufficient for the court to ascertain which documents were privileged and which were not privileged.

XV. RETALIATION

87. *Falash v. Inspire Academics, Inc.*, 68 IDELR 163 (D. Idaho 2016). A former program manager for an online educational company alleged that his employment was terminated shortly after he recommended certain equipment for students with disabilities. The former employee had standing to pursue his retaliation claims against the online education company.

88. *Lindstrom v. St. Joseph's Sch. for the Blind, Inc.*, 68 IDELR 203 (D.N.J. 2016), *unpublished*. The federal court dismissed 504 claims made by the mother of an adult nonverbal son with cerebral palsy who complained that the residential facility bedrooms were infested by bed bugs. The court held that these claims were not properly brought under Section 504 because they did not related to her son's disability. The court also ruled that the mother's claims should be brought in state court under negligence theory.

89. *Z.F. by M.G. and J.F. v. Ripon Unified Sch. Dist.*, 70 IDELR 19 (E.D. Cal. 2017). The fact that a private agency that provided ABA had a wait list did not equate to intentional discrimination under Section 504. The court rejected the parents' claims that the district was intentionally restricting their children's access to ABA services.

XVI. RESTRAINT AND ISOLATION

90. *J.V. and M.W. v. Albuquerque Pub. Schs.*, 67 IDELR 55 (10th Cir. 2016). The parents of a second-grade boy with autism failed to prove that a school district discriminated against their son by handcuffing him to a chair after he repeatedly kicked a social worker and SRO and ran around the school for two hours. The decision did not address whether the use of a mechanical restraint was appropriate. Rather, the decision was that the use of handcuffs was not due to the child's disability, but was based on his conduct.

91. *Miller v. Monroe Sch. Dist.*, 67 IDELR 32 (W.D. Wash. 2016). The placement of an elementary school student with autism in seclusion, sometimes several times daily, without first attempting less severe crisis management strategies may constitute disability-based discrimination. The BIP listed techniques such as putting his head down on his desk and going to a "quiet room" with teachers monitoring him through a window.

92. *Phipps v. Clark Co. Sch. Dist.*, 67 IDELR 91 (D. Nev. 2016). An aide claimed that she fully complied with the district's crisis prevention training when she dragged a nonverbal student with autism by his wrist and pinned him to the floor with her knees and elbows. The district will have to defend a claim for money damages under Section 1983.

93. *Beckwith v. District of Columbia*, 68 IDELR 155 (D.D.C. 2016). A school district's failure to adequately train its staff, and staff failure to comply with district procedures requiring them to send a written notification to the parent of within one school day or convene an IEP meeting within five days after a physical restraint, constituted a violation of the IDEA and impeded the parent's meaningful participation in the IEP process.

XVII. SERVICE ANIMALS

94. *United States v. Gates-Chili Cent. Sch. Dist.*, 68 IDELR 70 (W.D.N.Y. 2016). This case may be the first to interpret the U.S. DOJ's regulations requiring a service animal to be "under the handler's control." The government (OCR) claimed that the child in question only needed assistance with untethering and occasional prompting. The district argued that an adult handler was required to command the dog. The court denied the government's motion for summary judgment.

95. *A.P. v. Pennsbury Sch. Dist.*, 68 IDELR 132 (E.D. Pa. 2016). A federal court denied the parents' request for a preliminary injunction allowing her child with disabilities to attend school with her service dog. The school district had refused to permit the dog on campus after it had bitten a classmate, and had exhibited frequent incidents of barking, growling, nipping, and chewing on classroom supplies. The court noted that the DOJ regulations expressly permit a school district to ban a dog that cannot be controlled by its handler and bites others.

XVIII. SECTION 504/ADA

96. *B.C. v. Mount Vernon Sch. Dist.*, 68 IDELR 151 (2nd Cir. 2016). The court held that students who qualify for eligibility under the IDEA do not automatically qualify under Section 504/ADA.

97. *J.C. v. Cambrian Sch. Dist.*, 67 IDELR 199 (9th Cir. 2016), *unpublished*. A charter school that rejected the enrollment application of a nonresident student with ADHD was not guilty of disability-based discrimination. The charter school refused to enroll the student because its classrooms were at capacity. The court held that schools can enforce facially neutral admissions criteria, so long as these do not operate to screen out otherwise qualified students with disabilities.

98. *Pollack and Quirion v. Regional Sch. Unit 75,* 117 LRP 17221 (D. Me. 2017). The parents of an 18-year-old student with autism sought a ruling to force a school district to allow the student to wear a recording device to school so that the parents could know what happened all day. A hearing officer previously ruled that the student had made "continuous and significant progress" without the use of a recording device, and therefore was not entitled to wear a recording device to receive FAPE. The court refused to allow the parents to re-litigate this issue in federal court.

99. *Harrington v. Jamesville Central Sch. Dist. et al.*, 117 LRP 14109 (N.D.N.Y. 2017). A school district barred an honors student with anxiety and depression from participating in a school play as a punishment for plagiarism. His parents argued that the plagiarism was actually a mistake in citation caused by their son's mental health conditions, and that participation in the play was therapeutic. The court upheld the school district's actions, ruling that the actions were not based on the student's disability but on his behavior.

100. *M.M. v. New York City Dept. of Educ.*, 69 IDELR 208 (S.D.N.Y. 2017). A school district did not act in bad faith or gross misjudgment when it refused to provide home-based instruction, Assistive Technology, and behavior services to a 10-year-old girl with autism. The parent had previously won a due process hearing seeking the provision of these services. However, the court ruled that the district's loss in the due process hearing did not prove that it had acted with the requisite intent to recover money damages under Section 504/ADA.