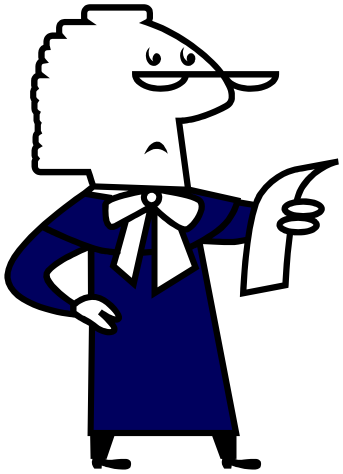
RESOLUTIONS IN SPECIAL EDUCATION: RECENT CASES AND THEIR IMPLICATIONS



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Unfortunately, it is an extremely active time for special education litigation and it does not appear to be slowing down! Below are summaries of some relevant court decisions issued in 2013 and so far in 2014, as well as some recent federal agency guidance that is important for anyone who works in the area of educating students with disabilities. We will cover each topical category in detail, as appropriate, and discuss the implications of recent decisions in each area.

MONEY DAMAGES/LIABILITY/PERSONAL INJURY GENERALLY

A. Chigano v. City of Knoxville, 61 IDELR 154 (6th Cir. 2013) (unpublished). District employees' failure to notify the arresting police officer that the student at issue had autism did not amount to a "state-created danger" sufficient to support the parents' Section 1983 claim. While a district may be liable for harm caused by a third party if it places a student in a dangerous situation, the district must affirmatively act to create the danger. Here, the parents could not show that there was any affirmative action on the part of the principal or the teacher that created or increased the risk of danger to the student. Thus, the employees did not violate constitutional rights by failing to notify the police officer about her autism, even where the officer said that he would not have arrested her had he known she had autism.

B. Hatfield v. O'Neill, 61 IDELR 211 (11th Cir. 2013) (unpublished). Where former special education teacher was well aware that the profoundly disabled student had undergone brain surgery years before, her alleged striking of the student on the head during a feeding exercise was an obvious use of excessive force. Thus, the teacher is not entitled to summary judgment based upon qualified immunity. In considering whether a teacher's alleged conduct is obviously excessive, a court will consider: 1) the need for corporal punishment; 2) the relationship between that need and amount of punishment administered; and 3) the extent of the injury inflicted. Here, the teacher had no reason to use force against the student and was not acting in self-defense, with a disciplinary purpose, or to protect the student. Rather, according to two of her aides, the teacher struck the student out of frustration based on the student's inability to perform a feeding exercise. While the severity of the student's resulting injury could not be determined based upon the student's limited communication ability, the parents submitted evidence that the student experienced bruising and vomiting after the incident. Further, the teacher's knowledge of the student's prior surgery should have put her on notice that her alleged conduct was excessive. Thus, her behavior was sufficiently conscience-shocking to be found to violate that student's constitutional rights.

C. Estate of A.R. v. Muzyka, 62 IDELR 43 (5th Cir. 2013) (unpublished). The parent's failure to plead intentional discrimination on the part of school personnel entitles the district to judgment on her 504 and ADA claims. While this Court has not decided whether the "intentional discrimination" or "deliberate indifference" standard is applicable to money damages claims in special education cases, it is not important here, because the parent failed to meet either standard. While the district could have installed different types of alarms, posted additional lifeguards or taken other steps to improve safety around the pool area of the special

education school, this amounted to negligence, rather than bad faith, gross misjudgment or deliberate indifference. Further, the parent failed to prove that the district excluded the student from its programs or activities on the basis of her hearing impairment or seizure disorder. "Tragically, [her] death resulted from her inclusion in the full activities of a summer school program." Thus, under 504/ADA, the parent is not entitled to recover money damages for her daughter's drowning death.

D. S.H. v. Lower Merion Sch. Dist., 61 IDELR 271, 729 F.3d 248 (3d Cir. 2013). Agreeing with the 2d, 8th, 9th, 10th and 11th Circuits, the deliberate indifference standard is better suited to serve the remedial goals of Section 504 and the ADA, although this Circuit does not require a showing of intentional discrimination to establish liability under these laws. Where the parent here failed to plead deliberate indifference when the district found the former student to be SLD and placed him in special education for six years when he did not need it, she is not entitled to damages of $127,010 for college tuition, psychotherapy and tutoring services. In addition, there was no evidence that the district knew its eligibility determination was flawed, and the district removed the student from special education classes at the parent's request after an IEE revealed the student never had a disability.

E. A.G. v. Lower Merion Sch. Dist., 62 IDELR 102 (3d Cir. 2013). High school graduate's ADA and 504 claims that district should have known that she did not have a disability when it placed her in special education from elementary through high school are dismissed. Student failed to show that the district engaged in intentional discrimination when it initially classified her as SLD, then reclassified her as OHI in high school. Student's testimony that her special education curriculum caused her to miss some general education classes and artificially lowered her GPA is unpersuasive. In addition, there was no evidence that the evaluator's conclusion when she was reclassified as OHI was based upon anything other than his evaluation. Finally, the fact that the parents received numerous copies of their procedural safeguards and attended IEP meetings negated the student's clam that the district intentionally kept her family in the dark concerning basic facts about her placement.

F. B.M. v. South Callaway R-II Sch. Dist., 62 IDELR 42, 732 F.3d 882 (8th Cir. 2013). There was no evidence that the school district acted in bad faith or with gross misjudgment for purposes of supporting the parents' discrimination claims under 504. Under some circumstances, knowledge of a student's disability coupled with delaying accommodations can show bad faith or gross misjudgment. However, in this case, the delay in providing a 504 plan needed to be considered in the context of the district's numerous and continuous attempts to assist the student. For instance, the district was the first to propose accommodating the student, district staff met with the parents numerous times seeking to address the student's needs, and staff members encouraged the mother to seek counseling for the student. In addition, the district allowed the student's counselor to observe

him in class and implemented her recommendations to set up a "chill-out room" for him when he was agitated. Moreover, the district promptly implemented a 504 plan for him as soon as it completed an IDEA evaluation and revised the plan several times in response to parental concerns.

G. Hamilton v. Spriggle, 61 IDELR 251 (M.D. Pa. 2013). Where three school district administrators attempted to hide reports of a special education teacher's repeated abuse of students in her classroom, they actively created a dangerous situation for a nonverbal autistic teenager, and their motion to dismiss the parents' Section 1983 claim is denied. The "state-created danger" theory of liability allows parents to hold administrators responsible for an employee's misconduct if the administrators used their authority to create an opportunity for harm that would not have otherwise existed. Here, the special education director and supervisor investigated only one report of abuse reported by the teacher's aides and chose to credit the teacher's statements over those of the aides. When the aides reported concerns to the principal, he reportedly told them that he was unable to intervene, and the special education director instructed the aides not to contact the parents about the allegations or the investigation. "In other words, the directive from all three was to suppress allegations of abuse by keeping the allegations in-house instead of alerting [the student's] parents or the police." Because a jury could find that the teacher's conduct was sufficiently "conscience-shocking," the case may proceed to trial.

H. Herrera v. Hillsborough Co. Sch. Bd., 61 IDELR 137 (M.D. Fla. 2013). Parents have pleaded viable claims under Section 1983, 504 and the ADA, and the district's motion to dismiss is denied. Parents' allegations that district employees knew that their child with a neuromuscular condition had difficulty holding her head upright supported their claim that the district was deliberately indifferent to the student's need for proper positioning on the bus. According to the parents, the district had a history of disregarding the safety of disabled students both before and after the student's death, including sending home a child with an intellectual disability with an unexplained fractured femur, leaving a young child alone on the bus for six hours, letting an LD student off the bus at the wrong location leaving the student to be struck and killed by a car, etc. In addition, the district had specific knowledge of this student's difficulty in holding her head upright, and her most recent IEP recognized the need for proper positioning. Further, the parent and school employees made numerous reports about staff members' failure to position the student properly to prevent an airway obstruction. The parents also alleged facts that demonstrate that the numerous incidents and complaints about the transportation staff's failure to properly handle disabled students put the district on notice that its transportation staff needed additional or different training. This alleged failure to train could qualify as a municipal policy of deliberate indifference sufficient to support a cause of action under Section 1983 against the district.

I. Griffin v. Sanders, 61 IDELR 157 (E.D. Mich. 2013). Disability discrimination case brought under Section 504 and ADA alleging abuse of a former high schooler with disabilities by two district employees is dismissed. The parent did not allege that the district failed to intervene because of the student's disabilities and, therefore, did not state a claim for disability discrimination under 504/ADA. Although the parent claimed that the district allowed a special education teacher and paraprofessional to physically and sexually abuse the student, she did not claim that the district's failure to act had any connection to the student's disability. However, the parent's Section 1983 claim against the paraprofessional for alleged sexual abuse, as well as a claim against the school district under Title IX may proceed.

J. B.B. v. Appleton Area Sch. Dist., 61 IDELR 187 (E.D. Wis. 2013). District is entitled to judgment on the parents' damages claims under Section 1983 because the teacher's alleged conduct was not sufficiently "conscience-shocking" to amount to a violation of the students' constitutional rights. An educator's use of physical force does not rise to the level of shocking the conscience unless it is obviously excessive under the circumstances and presents a reasonably foreseeable risk of serious bodily injury. Here, neither of the two students allegedly abused by the special education teacher suffered injuries as a result of her actions. In addition, the teacher acted with a pedagogical objective when she allegedly grabbed the students for not following directions, tried to force a fork into one student's mouth when she refused to eat, and squeezed the other's neck when he failed to comply with her instructions. "While not an appropriate way to handle the behavioral problems she confronted, these actions by [teacher], assuming they occurred as reported, can hardly be conscience-shocking."

K. Smith v. School Bd. of Brevard Co., 61 IDELR 160 (M.D. Fla. 2013). While the teaching assistant likely used more force than necessary to obtain compliance when she "slammed" an 8-year-old girl into a chair and shoved her against a table when she failed to sit down as the teacher requested, the assistant's use of force did not violate the student's constitutional rights. An educator's use of force will not violate constitutional rights unless it is "conscience-shocking." In determining whether an en educator's use of force "shocks the conscience," courts will consider the need for corporal punishment, the relationship between that need and the punishment applied, and the extent of the injury inflicted. While the assistant here may have used more force than required, he acted with an educational objective in mind.

L. L.L. v. Tuscaloosa City Bd. of Educ., 60 IDELR 133 (N.D. Ala. 2013). Where school personnel tried to address the behaviors of a teenage boy who sexually assaulted an 8th grader with multiple disabilities, the district is entitled to judgment on the 504, Section 1983 and Title IX damages claims. Liability for disability discrimination and for sexual harassment both require a showing of deliberate indifference on the part of school personnel. The question is not whether the district knew the boy posed a risk of harm to students in the special

education school, but whether the district made a deliberate choice not to take any action in response to a threat. Here, when the district learned of the boy's previous attempt to sexually assault a classmate, it suspended him from school and met with his mother to discuss behavioral interventions. Although the responses were ultimately ineffective, it cannot be said that the district was deliberately indifferent. As for the 1983 claim, the district could not be responsible for harm caused by a third party, unless it affirmatively placed the student in a dangerous situation, which it did not do here.

M. Skinner v. Clark Co. Sch. Dist., 61 IDELR 6 (D. Nev. 2013). Case for money damages under Section 504/ADA is dismissed based upon the complaint's failure to state a claim. Allegations that a bus driver permitted and encouraged an aide to hit and shake a 10-year-old child with bipolar disorder, fasten her to the seat with a belt and scream at her were not enough to support the request for money damages. A parent seeking money damages under 504/ADA must show that the district intentionally discriminated against the student on the basis of disability, that the district knew about the student's need for an accommodation and failed to consider the student's unique needs to ensure any accommodations offered were appropriate. This parent's claims did not mention that the district knew that the student needed accommodations or that the district intentionally discriminated or was deliberately indifferent.

N. D.E. v. Dauphin Sch. Dist., 60 IDELR 98 (M.D. Pa. 2013). Although former LD student went without appropriate special education services for the first 9 years of his public school career, he is not entitled to money damages under Section 504/ADA. Although the district delayed in evaluating the student, it ultimately did conduct evaluations, found the student eligible for speech-language services, and developed IEPs for the student each year thereafter. While the district misclassified the student for two years as having an intellectual disability, neither the misclassification nor the student's improper placement in a life skills program demonstrated the necessary bad faith or gross misjudgment on the part of the district. In fact, as soon as the student's mother notified the district, the district apologized, was not uncooperative and suggested it would correct the error. While the extended failure to provide FAPE may have amounted to negligence, it did not constitute intentional discrimination.

O. Sagan v. Sumner Co. Bd. of Educ., 61 IDELR 10 (M.D. Tenn. 2013). Where the parents of four disabled preschoolers had no evidence that their children suffered serious or lasting harm as a result of a special education teacher's alleged abuse, their initiation of claims under Section 1983 against the school district amounted to a "truly egregious case of misconduct." Thus, the school district may recover a total of $72,118 in attorney's fees with respect to those four cases, but no fees with respect to the fifth one, where the parents presented a plausible claim that the teacher's sticking sharp objects under the child's fingernails "to try to teach her a lesson" amounted to a violation of the child's constitutional rights. In the remaining four cases, however, the parents and their attorneys had no reason to

believe the teacher's actions rose to that level. By the time discovery was completed, it should have been apparent to the parents that the continuation of their lawsuits "based on these flimsy allegations had become unreasonable and their claims had tipped into the territory of frivolity."

P. Fulbright v. Dayton Sch. Dist. No. 2, 61 IDELR 47 (E.D. Wash. 2013). While the district may have been negligent when it canceled the services of the student's 1:1 paraprofessional, it was not responsible under Section 1983 for a series of sexual assaults the student experienced while traveling to and from her sheltered work experience. The parents failed to allege deliberate indifference on the part of the school, which is "a very high standard of fault" required to sustain a cause of action for damages under Section 1983. Under Section 1983, the parents must show that the district recognized the existence of an unreasonable risk and actually intended to expose the student to that risk without regard for the consequences. While the parents here alleged that they notified the district about the student's sexual harassment by a male passenger and asked the district to ensure that she was not left alone again, the district only had knowledge of the sexual harassment. The parents did not show that the district was aware of the possibility of a sexual assault or that it intentionally exposed the student to the risk. While the district's actions might constitute "gross negligence," they do not rise to the "markedly higher standard of deliberate indifference." Thus, the parents' Section 1983 claims are dismissed.

Q. Turner v. Houston Indep. Sch. Dist., 61 IDELR 141 (S.D. Tex. 2013). Guardian's substantive due process claims on behalf of 5-year-old student with CP who was allegedly assaulted on the bus by another student are dismissed. A district has no constitutional obligation to safeguard a child from private violence, even though guardian's claim was that the district failed to properly supervise and monitor the students on the bus when it knew the victim was not capable of protecting herself. As a general rule, a district's failure to protect does not constitute a substantive due process violation, unless there is a "special relationship" between the agency and the victim. The 5th Circuit has not extended that exception to include public school students, regardless of whether the particular student has a disability. In addition, 504 and ADA claims are dismissed because the guardian failed to allege that the student was treated differently because of her disability.

R. T.F. v. Fox Chapel Area Sch. Dist., 62 IDELR 74 (W.D. Pa. 2013). Parents' Section 504 claims for money damages are dismissed where there is no evidence of intentional discrimination or deliberate indifference on the part of the school district. Rather, evidence indicated that the district worked diligently to meet the child's tree nut allergy and asthma needs, working with the parents for several months prior to the school year. The district proposed four 504 Plans, made numerous revisions to them and sought to incorporate nearly all parental requests. When the parents believed that seating the student at a student desk during lunch socially isolated him, they asked the district to place him at a rectangular table with peers who had safe lunches, with a small buffer between him and the other

students. The principal and head nurse responded that the school's lunch tables were round and that they did not have appropriate chairs for a rectangular table and, therefore, refused. While the reasons for denying that were not adequately explained, this falls far short of establishing deliberate indifference.

S. Kok v. Tacoma Sch. Dist. No. 10, 62 IDELR 89, 317 P.3d 481 (Wash. Ct. App. 2013). School district is not responsible for death of a teenage boy shot and killed at school by a student with paranoid schizophrenia. The district's decision to place the student in the general education setting did not amount to negligence where there was no reason to suspect the student would become violent. A district's duty to exercise reasonable care when supervising students on school grounds only extends to foreseeable risks of harm. Although the student previously attempted suicide and had been suspended years earlier for "defiance of authority," he did not exhibit any assaultive or violent tendencies. Rather, witnesses testified that the student was polite and cooperative in class and had not received any disciplinary referrals after undergoing mental health treatment.

BULLYING AND DISABILITY HARASSMENT

A. Estate of Lance v. Lewisville Indep. Sch. Dist., 62 IDELR 282, 743 F.3d 982 (5th Cir. 2014). There is no evidence that the district was deliberately indifferent to bullying and, therefore, it is not liable for the student's suicide in a school restroom. Rather, the district took affirmative steps to stem harassment of the 4th grader with ADHD, a speech impairment and ED by repeatedly investigating incidents of harassment and punishing all students involved. In addition, the school psychologist observed the student in class to gain insight into his difficulties with a specific classmate. A teacher testified that she separated the student from another by not allowing them to sit or stand near each other or putting them in groups together. Further, the district's anti-bullying policies met national standards and the district had spoken to students about bullying both before and after the student's suicide. The deliberate indifference standard does not required districts to purge their schools of bullying or harassment, but to respond in a manner appropriate to the circumstances.

B. Moore v. Chilton Co. Bd. of Educ., 62 IDELR 286 (M.D. Ala. 2014). Parents cannot use Section 504 or the ADA to hold district liable for student's suicide based upon alleged bullying. Whether or not her Blount's disease qualifies as a disability or whether others' comments about her weight and limp related to her medical condition—going beyond mere name-calling—the parents needed to show that the district had actual notice of the harassment and was deliberately indifferent to it. Where a district only has actual knowledge if an official with authority to take corrective action receives clear notice of disability harassment, as here, there can be no liability. Although the student's friend informed her science teacher about bullying in the hallways and the bus driver overheard another teenager mocking the student's weight, the parents did not show that those staff members qualified as authority figures. Further, those staff members

took steps to help the student, where the science teacher monitored the student in the hallways between classes, and the bus driver changed the harassing student's seat for two weeks on the bus. Given the efforts of staff to assist the student, the district was not deliberately indifferent to peer harassment and judgment is granted in the district's favor.

C. Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013). Consistent with prior DCL's published by the Department, bullying of a student with a disability that results in the student's failure to receive meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. Whether or not the bullying is related to the student's disability, any bullying of a student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA. Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his/her IEP, and the school should, as part of its appropriate response to bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If this is the case, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's needs and revise the IEP accordingly. The Team should exercise caution, however, when considering a change of placement or location of services and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement. Certain changes to the educational program (e.g., placement in a more restrictive "protected" setting to avoid bullying) may constitute a denial or the IDEA's requirement to provide FAPE in the LRE. Moreover, schools may not attempt to resolve the bullying by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services. In addition, if the bully is a student with a disability, the IEP Team should review that student's IEP to determine if additional supports and services are needed to address the bullying behavior. (Attached to this DCL is an enclosure entitled "Effective Evidence-based Practices for Preventing and Addressing Bullying").

D. Long v. Murray Co. Sch. Dist., 61 IDELR 122 (11th Cir. 2013) (unpublished). School district was not deliberately indifferent to peer harassment of student who hanged himself, which is the standard that applies in Section 504 and ADA cases. While the school district should have done more to protect a student with Asperger's who committed suicide, there was insufficient evidence of deliberate indifference. The district responded to the complaints it received in a manner that was not clearly unreasonable, and it neither caused additional harassment nor made an official decision to ignore it. On that basis, the dismissal of the parents' Section 504 claim is upheld. While there was little question that the student was severely harassed based on his disability and the district should have done more to stop it and prevent future incidents, the Supreme Court requires a finding that the district deliberately ignored specific complaints. Here, however, the district

disciplined the perpetrators and developed a safety plan that allowed the student to avoid crowds in the hallways and to sit near the bus driver. In addition, the district's decision on at least two occasions to meet with the perpetrators and victim together was not clearly unreasonable, and there were numerous cameras and teachers monitoring the hallways. Though the parents claimed that the student continued to be harassed despite these efforts, there was no evidence that any single harasser repeated his conduct once the district addressed it. The parents pointed out that the day after the student's suicide, students wore nooses to school and wrote messages in the bathroom stating "it was your own fault" and "we will not miss you" and that this was an indication of the culture of harassment and of the district's failure to address it. While the district never held any assemblies to discuss bullying and harassment, it took several steps to address the school climate—its code of conduct contained an anti-bullying policy that staff members were expected to read and it conducted a program in which teachers met with small groups of students to instruct them on peer relationships and review the code of conduct. Finally, the district conducted a school tolerance program and implemented a program aimed at improving overall student behavior. Without evidence of deliberate indifference, the parents' case could not proceed and the district court's decision is affirmed.

E. Sutherlin v. Independent Sch. Dist. No. 40, 61 IDELR 69, 960 F.Supp.2d 1254 (N.D. Okla. 2013). Where the parents of a student with Asperger syndrome alleged that the school district disregarded dozens of reports of verbal and physical harassment, their claims under Section 504 and the ADA will not be summarily dismissed. The parents' allegations connect the alleged harassment to the student's disability, since the complaint alleged that the student was "labeled" as having poor social skills and was mocked for his difficulties with socialization. In addition, the complaint alleged that other students called him names such as "retard," "crazy," "creepy," and "freak," which are names that can reasonably be inferred to make a reference to his social difficulties. In addition, the parents alleged that the district had reports of at least 32 incidents of disability-related harassment against their son between 2010 and 2012 but failed to investigate them or take action to prevent further bullying.

F. D.A. v. Meridian Jt. Sch. Dist. No. 2, 60 IDELR 192 (D. Idaho 2013). Case against district will not be dismissed where there is a genuine dispute as to whether school officials knew the student with Asperger syndrome was being harassed and failed to respond. According to the parents, the student was relentlessly bullied verbally and physically and was called names, such as "retard" during gym and had his clothes stolen. To establish discrimination for disability-based bullying, a parent must show: 1) the harassment was sufficiently severe or pervasive that it altered the condition of the student's education and created an abusive educational environment; 2) the district knew about the harassment; and 3) the district was deliberately indifferent. Where there was testimony that the student's out-of-school behavior (such as burning his parents' house down) was triggered at least in part by the bullying, this was sufficient to show that the

harassment was severe and denied him equal access to education. In addition, there was evidence that the P.E. teacher witnessed the bullying and that the student's mother raised the issue during school meetings. Further, after the vice principal learned of an incident, the school undertook little investigation and failed to follow its own anti-bullying procedures.

G. Morton v. Bossier Parish Sch. Bd., 60 IDELR 220 (W.D. La. 2013). Exhaustion of administrative remedies is not required in a 504/ADA case alleging that district inadequately responded to disability harassment of a teenager with diabetes, depression and bipolar disorder. Where the student victim committed suicide, a "common-sense analysis" would make exhaustion futile or inadequate since the district cannot now craft an administrative remedy to alleviate the alleged education deficiencies that the student may have experienced prior to her death.

H. Wright v. Carroll Co. Bd. of Educ., 61 IDELR 289 (D. Md. 2013). The parent's statements at the beginning of the school year that her 5th-grader with autism was afraid of his male classmates does not render the district liable under 504/ADA for a classmate's attack that left the student with two black eyes and a swollen lip. A single instance of peer harassment is not enough to demonstrate that a district is deliberately indifferent. In addition, although the parent claimed that she notified district employees early in the year that her son was afraid of this classmate, she did not elaborate or identify any specific incidents of bullying. As such, the district did not have actual knowledge or peer harassment until the day of the attack and did not ignore the incident that occurred. The district responded to the incident by notifying the parents immediately, inviting the mother to the school and allowing the mother to observe her child in class for three days.

RETALIATION

A. Pollack v. Regional Sch. Unit 75, 63 IDELR 72 (D. Me. 2014). Where the district had a history of providing the parents copies of education records for free, it could be retaliation under 504 where the parents claim that after they filed a request for due process and requested the assignment of a new teacher, the district denied their request for copies of records and later offered to provide them for $2,600. Because this could have stemmed from the parents' advocacy efforts, the parents have pled a viable claim for retaliation.

B. Grummons v. Williamson Co. Bd. of Educ., 63 IDELR 61 (M.D. Tenn. 2014). Although state law protects the identity of individuals who report child abuse, the parents have filed a federal 504 retaliation case, alleging that child abuse reports were filed in retaliation for their challenge to the district's refusal to provide their daughter with certain special education services. In an action alleging violation of constitutional rights by an employee or agent of a governmental agency, the state interest in confidentiality of child abuse or neglect investigations "must yield to the federal interests in securing evidence in federal civil rights litigation." Thus,

state law cannot prevent the parents of a student with a disability from viewing documents related to the child abuse reports.

C. A.C. v. Shelby Co. Bd. of Educ., 60 IDELR 271, 711 F.3d 687 (6th Cir. 2013). Retaliation claims under 504/ADA should not have been dismissed by the district court where a reasonable jury could conclude that the principal reported the parents to child welfare authorities in retaliation for their requests for accommodations for their diabetic child. The elementary school principal testified that she was genuinely concerned by the fluctuations in the second-grader's blood glucose levels, and that was why she reported that they failed to monitor the student's glucose levels, wanting "something horrible" to happen to the student at school so that they could file a lawsuit. However, the parents engaged in protected activities when they asked multiple times in one week that the student's blood testing occur in her classroom rather than the school clinic. The district was aware of that activity and took adverse action when it reported the parents to child welfare authorities. The timing and the content of the initial and follow-up reports raise questions as to the principal's motives and should be heard by a jury. Moreover, while the district offered 10 reasons to show that the principal's reports were legitimate, the parents raised questions as to whether each of those reasons was a pretext for retaliation. Thus, the district court erred in determining that the district's mandatory reporting duty under Tennessee law shielded it from liability and the case is remanded for further proceedings.

D. Edwards v. Gwinnett Co. Sch. Dist., 62 IDELR 3 (N.D. Ga. 2013). Where the principal sought to end the middle school special education teacher's employment because of her untimely IEP paperwork, the teacher's 504 retaliation lawsuit is dismissed. To establish retaliation, the teacher had to show that: 1) she engaged in protected activity; 2) she suffered a materially adverse employment action; and 3) there was a causal relationship between the two events. With respect to the first and second elements, the teacher adequately pointed to protected activity by asserting that she told the principal that she believed complying with IEP deadlines would require modifying the IEPs without parental approval. Further, the recommendation of nonrenewal constituted a material adverse action. However, the teacher could not show that it was her objections that caused the recommendation for termination. For instance, she failed to supply any evidence that the principal knew about her complaints. In addition, she did not assert that there was a close temporal proximity between her resistance to the deadlines and the recommendation that her contract be ended. Even if she had established a case, the district's credible argument that it sought her termination because of her untimely completion of IEPs constituted a legitimate, nondiscriminatory basis for its action.

E. Gainor v. Worthington City Schs., 113 LRP 51116 (S.D. Ohio 2013). An intervention specialist employed by the school district may not proceed with her case under Section 504 and the ADA for retaliation because she did not demonstrate that the district's explanation for suspending her was a pretext for

retaliation. The district provided legitimate reasons for suspending her from work, including her failure to follow work procedures and allegedly using a classroom computer for personal matters. The specialist's only argument was to point to the Complaints she had filed on behalf of her son with the State Department of Education, but did not produce any specific argument to cast doubt on the authenticity of the district's explanation.

RESTRAINT/SECLUSION IN SCHOOLS

A. Muskrat v. Deer Creek Pub. Schs., 61 IDELR 1, 715 F.3d 775 (10th Cir. 2013). Even if school district employees violated district policy when placing a child with developmental disabilities in a timeout room, their conduct did not rise to the level of violating the child's constitutional rights; thus, the parents did not establish liability under Section 1983. To establish a constitutional violation, the parents needed to show that the staff members' conduct was so severe, so disproportionate to the need presented, and so inspired by malice or sadism that it shocked the conscience. The parents failed to show that the student's placement in the timeout room following an incident in which he overturned chairs and knocked items from tables amounted to conscience-shocking behavior. Similarly, three alleged instances of abuse that included a "pop" on the cheek, a slap on the arm, and a few minutes of physical restraint did not amount to a brutal or inhumane abuse of power. While the court may rightly condemn this conduct, it does not rise to the level of a constitutional tort.

B. J.P.M. v. Palm Beach Co. Sch. Bd., 60 IDELR 158, 916 F.Supp.2d 1314 (S.D. Fla. 2013). Although the district omitted some critical information when documenting its use of restraint with an autistic middle schooler, there is no evidence that the district intentionally aggravated the student's behavioral problems by using an inappropriate intervention. The parents' failure to demonstrate intentional discrimination or conscience-shocking behavior entitles the district to judgment on their Section 1983, Section 504 and Title II claims. According to the parents, the district discriminated against the student by restraining him 89 times in 14 months, when it was clear that the use of physical restraint was causing the student to regress behaviorally. While the district's records did not always identify the behavior that prompted staff members to use physical restraint, the parents bear the burden of proving that staff members were deliberately indifferent to the student's needs. "[The district] records show, for the most part, that [the student] was restrained due to his own aggressive or self-injurious behavior," and "[t]he records reveal nothing regarding the intent or knowledge of each person who restrained [the student]." In addition, neither the district's failure to fully document all incidents of restraint nor its failure to conduct an FBA after the first few incidents amounted to the type of "conscience-shocking" behavior that gives rise to liability under Section 1983. Thus, summary judgment is granted in favor of the district on all of the parents' federal claims.

C. Payne v. Peninsula Sch. Dist., 61 IDELR 279 (W.D. Wash. 2013). District's motion to dismiss parent's Section 1983 claim for damages is denied where evidence indicates that the district was well aware of a teacher's ongoing practice of placing young disabled children in a 63 x 68 inch "safe room." While districts are not automatically responsible for a staff member's violation of a child's constitutional rights, a district may be liable under Section 1983 if the parent can show than an individual with policymaking authority ratified the staff person's conduct or if the district has a custom of allowing such conduct to occur. Here, the parent has produced evidence that the district knew of and permitted the teacher's use of the room over time—it was not a one-time event. The evidence raises questions as to whether the district ratified the teacher's use of the safe room and the district's purported awareness of its use could amount to a "custom" of permitting constitutional violations. Since it is not clear, the district's motion is denied.

CHILD-FIND/EVALUATIONS

A. Demarcus L. v. Board of Educ. of the City of Chicago, 63 IDELR 13 (N.D. Ill. 2014). District court did not err in finding that there was no child find violation. A parent seeking relief for a child find violation must show that the district 1) overlooked clear signs of disability and negligently failed to order an evaluation; and 2) had no rational justification for its decision not to evaluate. Here, the parent failed to meet either standard. While the child was rude and discourteous, had disrupted classroom activities and engaged in behaviors such as fighting and yelling when he did not get his way, there was no fault in the district's belief that it could manage the child's behaviors using classroom-level interventions. District personnel managed and de-escalated the child's behavior through the first semester of 2011 while he was in second grade and the district conducted an IDEA evaluation in late 2011, after it suspended him twice for disrupting classroom activities and learned of his subsequent psychiatric hospitalization.

B. Timothy F. v. Antietam Sch. Dist., 63 IDELR 70 (E.D. Pa. 2014). Parents of student with math difficulties did not show that a psychologist's administration of two unconventional testing instruments invalidated the district's evaluation and determination that the student was not eligible for services. While the psychologist conceded that DIBELS was not to be used for determining IDEA eligibility and that the GMADE (Group Mathematics Assessment Diagnostic Evaluation) should not be used for a significant discrepancy analysis, the psychologist did not base her recommendation on the results of either test. Rather, she used the WISC-IV to evaluate the student's ability and used the WJ-III to measure the student's achievement. Using the DIBELS and GMADE to obtain additional perspective on the student was not an error on the psychologist's part.

C. Rodriguez v. Independent Sch. Dist. of Boise City, 63 IDELR 36 (D. Idaho 2014). Where the district requested documentation of an illness or accident in response to

a parental request for homebound services based upon his increased anxiety about interactions with his classroom teacher and bus drive, it violated the IDEA. It was not the parents' responsibility to prove the student's anxiety was more severe than usual. Rather, it was the district's duty to evaluate the student in light of the parents' legitimate concerns and the student's physician's recommendation. Where the student went without services for 8 months, the district's summary rejection of the parents' request for homebound services resulted in a denial of FAPE.

D. Letter to Gallo, 61 IDELR 173 (OSEP 2013). Whether school districts are required to obtain consent from parents before collecting academic functional assessment data within an RTI model depends on the purpose of the data collection. Parental consent is required when an FBA is being conducted as part of an initial evaluation or reevaluation of a child to determine if the student qualifies as a child with a disability under IDEA. Thus, in a typical first-tier scenario, where any such data collection would not be focused upon the educational or behavioral needs of an individual child, consent would not be required. "However, parental consent would be required if, during the secondary or tertiary level of an RTI framework for an individual student, a teacher were to collect academic functional assessment data to determine whether the child has, or continues to have, a disability and to determine the nature and extent of the special education and related services that a child needs." A district would not be required to obtain parental consent, however, to review data collected during RTI as part of an initial evaluation or reevaluation because the data would be considered "existing evaluation data" under the IDEA regulations.

E. Letter to State Directors of Special Education, 61 IDELR 202 (OSEP 2013). School districts cannot use RTI as a reason to expand the timeline for completing an initial evaluation of a transfer student who was in the process of being evaluated by the former district. Districts must complete evaluations for such students, including highly mobile students, without undue delay and, preferably, on an expedited basis. When a highly mobile child changes districts after the prior district has begun but not completed an evaluation, the new district may not postpone the evaluation until its own RTI process has been completed. While the new district may choose to provide interventions while it is in the process of completing its evaluation, it is inconsistent with IDEA to delay completing it because a child has not participated in an RTI process in the new district.

F. J.B. v. Lake Washington Sch. Dist., 60 IDELR 130 (W.D. Wash. 2013). School district has a legal right to evaluate an interstate transfer student's need for special education services. Both the IDEA and Washington law give the district the right to evaluate whether the student had an ongoing need for special education services and neither requires the district to prove the reasonableness of the proposed evaluation. Nonetheless, the evaluation data from the student's California district supported the new district's request, as the most recent

evaluation in California resulted in a finding that the student was not eligible for services.

G. T.J. v. Winton Woods City Sch. Dist., 60 IDELR 244 (S.D. Ohio 2013). Independent psychologist's use of "facilitated communication" approach when evaluating a teenager with severe disabilities renders the evaluation unreliable. According to the results of the independent evaluation, the student was capable of doing academic work at the 9th grade level, which contrasted sharply with the district's evaluation results showing that the student has a full-scale IQ of 33 and performs at the kindergarten level in math and a 1st grade level in reading. Clearly, the parents' psychologist physically supported the nonverbal student's hand/wrist during testing, which raises questions as to whether the student independently gave correct answers. In addition, the psychologist's expertise is in cognitive abilities and not behavior or communication; thus, the private evaluation could not be used either to rebut the district's measure of the student's cognitive ability or to question the behavioral goals contained in the district's proposed IEP.

RESPONSE TO INTERVENTION/INSTRUCTION (RTI)

A. Letter to Zirkel, 62 IDELR 151 (OSEP 2013). While OSEP does not endorse a particular RTI model, there are certain essential components that any RTI process must include: 1) high quality, evidence-based instruction in general education settings; 2) screening of all students for academic and behavioral problems; 3) two or more levels of instruction that are progressively more intense and based on the student's response to instruction; and 4) progress monitoring of student performance. Regardless of the general intervention process used and whether it is or is not RTI, it must not be used to delay or deny an initial evaluation.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

A. T.P. v. Bryan Co. Sch. Dist., 63 IDELR 45 (S.D. Ga. 2014). District that evaluated a student with autism in September 2010 is not required to fund an IEE that his parents requested nearly 26 months later. This is so because the IDEA's two-year statute of limitations period bars the parents' request for a publicly funded IEE. It is the September 2010 evaluation that forms the basis for the parents' IEE request, not when the district denied their request in December 2012.

B. M.Z. v. Bethlehem Area Sch. Dist., 60 IDELR 273 (3d Cir. 2013) (unpublished). Where the hearing officer determined that the district failed to conduct an appropriate reevaluation, the IDEA provides only one option: to order an IEE at public expense. Thus, the hearing officer erred in ordering as a remedy only that the district conduct formal classroom observations and seek parent and teacher input. The district's argument that the hearing officer did not find its reevaluation to be inappropriate is rejected, because the record clearly stated that the assessment tools and strategies were not "sufficiently comprehensive," and it

failed to consider the student's ability to apply pragmatic language skills in peer settings on a daily basis. In addition, the reevaluation failed to consider the student's upcoming transition to high school. Thus, the district court correctly ordered an IEE at public expense.

C. M.V. v. Shenendehowa Cent. Sch. Dist., 60 IDELR 213 (N.D. N.Y. 2013). As an initial matter, the parent does not have the right to an IEE at public expense, because she did not disagree with the district's evaluation. Rather, she requested an IEE because she was dissatisfied with the IEP proposed for her son. Even if she had the right to an IEE, however, she failed to show that the district's $1,800 cap on IEEs was unreasonable. Between July 14, 2010 and August 18, 2010, at least 6 public and private clinics in the parent's geographic area were willing to conduct an IEE for $1,800. Although the district was willing to exceed the $1,800 cap if the parent demonstrated the need for an exception, the parent's wish to use a particular neuropsychologist did not amount to "unique circumstances" that would warrant the excess cost. Parent's failure to contact any of the psychologists or neuropsychologists on the list of qualified evaluators supplied by the school district defeated her challenge to the $1,800 cap.

ELIGIBILITY

A. D.A. v. Meridian Joint Sch. Dist. No. 2, 62 IDELR 205 (D. Idaho 2014). Although Idaho law defines "educational performance" to include nonacademic skills such as daily life activities, mobility, vocational skills, and social adaptation, student with autism is not eligible for services. This is so because he performed at least as well as his nondisabled peers in courses such as drama, personal finance, Web design, and broadcasting. In addition, the evidence showed that the student overcame his pragmatic and social difficulties to the extent necessary to succeed in the general education setting. Clearly, the student does not need special education to receive an educational benefit and, at most, requires related services that do not qualify as special education under Idaho law.

B. W.W. v. New York City Dept. of Educ., 63 IDELR 66 (S.D. N.Y. 2014). The failure to explicitly mention a diagnosis of dyslexia in the IEP goals for an LD student is not fatal to the IEP because the IEP goals were adequately designed to address the student's learning challenges, which include not only dyslexia, but also dyscalculia and dysgraphia.

C. Torda v. Fairfax Co. Sch. Bd., 61 IDELR 4 (4th Cir. 2013) (unpublished), cert. denied, (3/24/14). The district did not deny FAPE to a teenager with Down syndrome based on its failure to list auditory processing disorder as his secondary disability in his IEP. This is so, because the IEP addressed all of the student's needs, regardless of his classifications. Teachers gave detailed testimony on how they simplified lessons, paired visual material with oral instruction and checked for comprehension. Thus, there is no reason to disturb the district court's decision that the student received FAPE.

D. G.I. v. Lewisville Indep. Sch. Dist., 61 IDELR 298 (E.D. Pa. 2013) (unpublished). Although the district did not label the autistic student with ADHD, the 6th grader with autism still received FAPE. The district's program addressed the child's difficulty of staying on task and paying attention through a variety of accommodations and by placing him in a 1:1 setting for instruction of new material and a 1:2 setting for reteaching. Given that the IEP was tailored to address the needs of the student, the absence of the ADHD label did not constitute a denial of FAPE.

C. Chelsea D. v. Avon Grove Sch. Dist., 61 IDELR 161 (E.D. Pa. 2013). Even though there was evidence of a severe discrepancy between ability and achievement in math reasoning, the district did not violate IDEA in finding the 9th-grader ineligible for special education. Where the student had no need for specialized instruction, she was not a "child with a disability" under the IDEA. In addition to having one of the disabilities set forth in IDEA, the student must show that she needs specialized instruction because of that disability. Although the student had earned a D in math in eighth grade, those grades stemmed from her failure to complete homework. Her grades improved after she began receiving accommodations for her ADHD and, in 9th grade, she earned a final grade of B- in the general education math curriculum. Further, her scores on a statewide math assessment showed her overall math ability to be at the base-to-proficient level. Where she made solid progress in math without any modifications to the content, methodology, or delivery of instruction, the hearing officer's decision that she did not need specialized instruction for an SLD is upheld.

D. Shafer v. Whitehall Dist. Schs., 61 IDELR 20 (W.D. Mich. 2013). District staff committed a procedural error by deciding, prior to the IEP team meeting, that the student's IEP would classify him primarily as SLD and secondarily as OHI and speech-language impaired and that he would not be classified as autistic. However, a procedural error constitutes a denial of FAPE only if it impedes the child's right to FAPE, significantly impedes the parents' opportunity to participate in the decision making process regarding the provision of FAPE, or causes a deprivation of educational benefits. The ALJ was correct in distinguishing between predetermination of a student's classification and predetermination of an IEP and correctly concluded that the procedural misstep was not fatal because the IEP nevertheless put the student in other eligibility categories and provided him with appropriate services. In addition, the evidence reflected that the parent fully participated in the development of the IEP and the team considered the relevant data, creating an IEP that addressed the student's unique needs. Thus, the failure to classify the student as autistic did not amount to a denial of FAPE.

E. G.H. v. Great Valley Sch. Dist., 61 IDELR 63 (E.D. Pa. 2013). Although student had violent tantrums at home, she had few conflicts at school, according to her teachers. Based upon her solid academic performance and generally good

behavior at school, her behavioral problems do not adversely affect educational performance sufficient to make her eligible as a student with an emotional disturbance. Neither her grades nor her state assessment results reflect any negative impact of her behaviors at school, even though her behavior at home included flying into violent tantrums, including one where she grabbed a butcher knife and stabbed a chair. In addition, her teachers testified that she was self-controlled at school. Further, her private therapy exclusively focused on issues at home, including issues related to her being adopted and difficulty getting along with her mother and sister. Finally, while her hospitalizations required a month-long absence from school, that in itself did not demonstrate an adverse educational impact. In fact, her teacher indicated that following absences, she needed no time to catch up.

F. R.C. v. Keller Indep. Sch. Dist., 61 IDELR 221 (N.D. Tex. 2013). Where the district developed IEPs that addressed all of the ED student's disability-related needs, regardless of whether the student met the criteria for autism or not, a violation of IDEA did not occur. The IDEA does not confer a specific right to be classified under a particular disability category. "The fact that [student] believes he was mislabeled does not automatically mean that he was denied FAPE." Although the parent argued that an "autism" label would have meant that the student was entitled to receive additional services under Texas law, the district provided most of those services.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. G.W. v. Rye City Sch. Dist., 62 IDELR 254 (2d Cir. 2014) (unpublished). District court's decision is upheld finding that district did not predetermine placement merely because private school representatives from the child's private school did not physically attend IEP meetings. Indeed, the team considered information from the private school representatives offered by phone and, as the district court pointed out, the private school's IEP liaison and the child's science teacher participated in the relevant IEP meetings by phone. In addition, as the district court observed, the IEP team incorporated many of the private school employees' suggestions into the child's programs, and the science teacher helped draft his goals and offered suggestions for program modifications. Further, the IEP team added ESY services to the child's second grade program based on the private school representatives' concerns about regression. Thus, given the private school's participation, no predetermination occurred and the district court's analysis is adopted.

B. M.A. v. Jersey City Bd. of Educ., 63 IDELR 9 (D. N.J. 2014). Educational placement does not include the specific location where a child will receive services. Rather, it refers to the type of placement and services a district is offering. Where the student's father attended an IEP meeting in June 2012 and the IEP team decided to transition the student from a private special education school to a public school class for children with autism, no additional meeting

was required prior to the proposal that the specific location of the placement would be in a specific teacher's classroom. In addition, the student remained in his private school during the pendency of the parents' claim. Thus, even if the district's failure to include the parents in discussions about the specific location of services amounted to a procedural violation, the error did not result in educational harm to the student.

C. K.A. v. Fulton Co. Sch. Dist., 62 IDELR 161, 741 F.3d 1195 (11th Cir. 2013). Parent consent is not required prior to amending an IEP and changing a student's placement. Where a change of placement was proposed, the district was not required to request a hearing to implement the change. Rather, the IDEA requires a district, when proposing to amend an IEP, to provide parents: 1) prior written notice explaining what is proposed and why; 2) an opportunity to review the child's records; and 3) a full explanation of their rights. While the district here did not issue proper notice before the IEP meeting, there is no evidence that they were prejudiced by the defective notice. These parents fully participated in the IEP process having received notice of the proposed amendment a month prior to the IEP meeting, an opportunity to observe the new school, and a chance to review IEP team meeting minutes, educational records, and a document describing the procedural safeguards. There is no support for the parents' argument that a district, not parents, must file for due process before an amendment to an IEP can be made over parents' objections. Reading in such a requirement would be inconsistent with other provisions of the IDEA.

D. Doug C. v. Hawaii Dept. of Educ., 61 IDELR 91, 720 F.3d 1038 (9th Cir. 2013). Education Department's failure to reschedule an IEP meeting when requested by the parent amounts to a denial of FAPE to the student. Thus, the case is remanded to the district court to determine the parent's right to private school tuition reimbursement. Where the ED argued that it had to hold the IEP meeting as scheduled to meet the student's annual review deadline, the argument is rejected because the father was willing to meet later in the week if he recovered from his illness and the ED should have tried to accommodate the parent rather than deciding it could not disrupt the schedules of other team members without a firm commitment from the parent. In addition, the ED erred in focusing on the annual review deadline rather than the parent's right to participate in IEP development. While it is acknowledged that the ED's inability to comply with two distinct procedural requirements was a "difficult situation," the ED should have considered both courses of action and determined which was less likely to result in a denial of FAPE. Here, the ED could have continued the student's services after the annual review date had passed and the parent did not refuse to participate in the IEP process. Given the importance of parent participation in the IEP process, the ED's decision to proceed without the parent "was not clearly reasonable" under the circumstances.

E. W.K. v. Harrison Sch. Dist., 61 IDELR 123 (8th Cir. 2013) (unpublished). Although the district did not provide proper notice of the purpose of the

emergency IEP meeting, the procedural error was harmless because the parents knew of the student's recent suspension for assault (that required the paraprofessional to receive emergency medical treatment), and they participated in discussions about the new placement. While the district should have informed the parents that the meeting would address the possibility of home instruction, the parent had reason to know that the team would discuss the student's aggressive and violent behaviors. Further, the parents participated in team discussions about the student's placement and the district abandoned its proposal for home instruction based upon the parents' opposition. Since the district's procedural error did not impede the parents' participation in the IEP process or result in educational harm, the parents were not entitled to private school reimbursement.

F. P.K. v. New York City Dept. of Educ., 61 IDELR 96 (2d Cir. 2013) (unpublished). Parents are entitled to reimbursement for the child's private placement because the proposed IEP did not contain the one-to-one speech-language services that the child required to progress. It is not sufficient that school witnesses testified that such services would have been provided if the student had come to the school's program. Courts hearing reimbursement cases must focus on the terms of the IEP and cannot consider "retrospective testimony" about additional services the district would have offered if the child had actually attended the program.

G. DiRocco v. Board of Educ. of Beacon City Sch. Dist., 60 IDELR 99 (S.D. N.Y. 2013). While the district failed to comply with state and federal regulations when it invited a math teacher who taught 10th, 11th and 12th graders to the IEP meeting to serve as the regular education teacher for a student who was entering high school as a freshman, this did not impede the parents' participation in the IEP process or the student's right to FAPE. The parents' active participation in a discussion about the student's proposed placement in integrated co-teaching classrooms made the violation harmless. In addition, the Team's failure to discuss the student's annual goals at the IEP meeting did not amount to a denial of FAPE, where the parents were provided with a draft IEP prior to the meeting and were allowed to comment on it during the meeting. Further, the private school's dean participated in the meeting by phone and provided the team with updated information about the student's present levels of academic achievement and functional performance, which was accurately reflected in the goals in the draft IEP. Finally, while the district was required to consider private evaluation reports, it was not required to adopt the evaluators' recommendations. Thus, the parents are not entitled to recover the costs of the private school placement.

H. Horen v. Board of Educ. of the City of Toledo Pub. Sch. Dist., 61 IDELR 103, 948 F.Supp.2d 793 (N.D. Ohio 2013). District's motion for judgment is granted where it made numerous efforts to schedule an IEP meeting with the student's parents who canceled several IEP meetings. One meeting was canceled by them because the district's attorney would be present; three were canceled because the district would not allow them to record the meetings; one other was canceled

because the district could not provide licensing information about the student's stay-put special center school. After the cancellations, the district sought updated information about the student's educational performance and developed a draft IEP, but the parents did not respond to the request for updated data or the draft IEP. "Their doing so kept the cornerstone of an IEP from the builder's hands." While the student had gone without services for some time, it was because the parents would not send her to her stay-put placement. In addition, the student's failure to receive FAPE stemmed from the parents' failure to cooperate with the IEP process, and the district was, therefore, not liable for the student's loss of educational services.

I

I. S.P. v. Scottsdale Unif. Sch. Dist., 62 IDELR 86 (D. Ariz. 2013). Parents' claim that the district's placement team decided their child's placement 10 days prior to the IEP meeting is rejected. While the team identified a number of potential placements, the team discussed each of them at the IEP meeting, including the private school requested by the parent. In addition, the parents' key piece of evidence—an internal email from a special education administrator stating that the placement team had "approved" the special day class placement—merely memorialized the district's preparation for the upcoming IEP meeting. According to the administrator's deposition testimony, the term "approved" meant that the special day class was an appropriate placement option for the IEP team to consider and did not prove that the district was putting forth a "take it or leave it" proposition to the parents or that it was unwilling to consider other options. The team met for two hours where the district members of the IEP team considered the parents' input. Thus, the parents are not entitled to reimbursement for private schooling.

J. Z.F. v. Ripon Unif. Sch. Dist., 60 IDELR 137 (E.D. Cal. 2013). District did not commit a procedural violation when it terminated its contract with a third-party behavioral aide for a student with autism. The contract termination did not mean that the district was unwilling to consider parental input about the child's transition needs or that the district was unable to meet those needs. Furthermore, the evidence reflected that the parent participated in discussions about the change in aides. Based upon the fact that the child had been provided with 10 different aides since kindergarten (with 4 different ones in the previous year alone), the district members of the IEP team determined that the child did not need an elaborate transition plan to adjust to a new provider. While the parent may have disagreed with the decision, the district did not exclude her from the IEP process when failing to use the previous provider's services beyond the contract's termination date.

K. P.C. v. Milford Exempted Village Schs., 60 IDELR 129 (S.D. Oh. 2013). District predetermined placement prior to the IEP meeting and, therefore, denied FAPE to the student. The district's preplanning notes show that its staff members were "firmly wedded" to a decision to withdraw the student from a private Lindamood-Bell program and return him to his home school to receive reading services. Most

troubling was the student's teacher's testimony that the district was prepared to "go the whole distance this year" and force the parents into due process. Clearly, school officials went beyond merely forming opinions and, instead, became impermissibly and "deeply wedded" to a single course of action that the student not continue at the private school. In addition, they made their decision before determining what reading methodology would be used in the public school program and failed to discuss that issue with the parents. In this case, the type of methodology used could mean the difference in whether the student obtained educational benefit and, therefore, it was essential for the parents to participate in a conversation about it.

L. Aikens v. District of Columbia, 61 IDELR 132, 950 F.Supp.2d 186 (D. D.C. 2013). While the new school selected for the ED student was not identical to the self-contained program recently closed by the district, the student's relocation did not amount to a change of placement. Thus, the district had no obligation to provide the parent with prior written notice of the change or involve her in the decision. A change of setting does not constitute a change of placement unless the substantive differences between the two sites are substantial or material. As such, the district could move its ED program from one school to another without parental involvement as long as the program settings were similar. While the new program is housed in a public high school instead of in a separate building, students in the program would not have contact with typically developing peers unless required by their IEPs. In addition, any differences in the classroom spaces set aside for behavior management were not material or substantial. In essence, the student would be receiving the same program she received in the previous school.

M. R.G. v. New York City Dept. of Educ., 62 IDELR 84 (E.D. N.Y. 2013). Where district placed a preschooler with developmental delays in a special class without the input of a general education teacher, its placement is rejected. The absence of any general education teacher at the child's IEP team meeting impeded the student's right to FAPE, where the student had made significant progress in a general education class attended by a special education itinerant teacher during the 2009-10 school year. Because the student was currently participating in a private school general education classroom and based on the IDEA's preference for mainstreaming, it was critical to include a general education teacher at the meeting.

N. Letter to Breton, 62 IDELR 183 (OSEP 2013). It is inconsistent with the intent and requirements of IDEA for an LEA to adopt a blanket policy requiring parents to provide a written copy of their concerns to the IEP Team three days before the a meeting in order to have their concerns addressed at that meeting.

IEP CONTENT

A. R.B. v. New York City Dept. of Educ., 63 IDELR 74 (S.D. N.Y. 2014). Because of space limitations on the district's IEP form, the IEP team was not able to include details in the field designated as "annual goals." However, the team used the "short-term objectives" filed to expand upon each goal. Although the annual goals in the IEP were "short and broadly worded," the IEP contained detailed and objective standards that allowed for progress measurement on a short and long-term basis. For example, the student's reading comprehension skills could be measured, in the short term, by whether he is able to answer certain questions about a text at a sufficient rate of accuracy as observed and tested by his teacher. Because all of the IEP objectives were detailed, measureable and tailored to the needs of the student, the lack of detail in the goals themselves did not result in a denial of FAPE. In addition, the lack of baseline data in the goals did not amount to a procedural violation because they were stated in absolute terms that the district could measure without a baseline.

B. R.E.B. v. State of Hawaii Dept. of Educ., 63 IDELR 105 (D. Haw. 2014). Where the IEP stated that the autistic student would receive specialized instruction in the general education setting for science and social studies activities "as deemed appropriate by his Special Education teacher/Care Coordinator and General Education teacher," this provision is consistent with LRE principles and does not violate the IDEA. Rather, the language ensures the student will have access to general education science and social studies activities when appropriate, and to the maximum extent possible, based on his needs and abilities. It also affords teachers with necessary flexibility because their particular lessons and their propriety for the student's inclusion, may not be determined far in advance, and the potential need to convene an IEP team each time such an opportunity arose would, in practical terms, mean that the student would lose out on an educational opportunity. Thus, the IHO's decision that the placement provision gave the student's teachers appropriate discretion to decide his participation in specific academic activities is affirmed.

C. Jefferson Co. Bd. of Educ. v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013). The district's use of "stock" goals and services with respect to reading and postsecondary transition planning constituted a denial of FAPE. Not only did the IEP team handwrite the student's name on the document after crossing out the typewritten name of another student, the case manager testified at the due process hearing that the student's reading goal, which required him to comprehend grade-level materials, was the standard goal for all 9th grade students. "Such a practice flies in the face of the purpose and goals of the IDEA, which require the district to develop an *individualized* program with *measurable* goals." Where the student performed 6 years below grade level in reading, the reading goal in his IEP was unrealistic. In addition, the district failed to conduct transition assessments and, instead, developed a transition plan calling for the student to improve his

communication skills and participate in a note-taking class that was open to all freshmen.

D. D.S. v. Department of Educ., 62 IDELR 112 (D. Haw. 2013). Student's IEPs were not reasonably calculated to provide him with meaningful educational benefit where they did not adequately address new sexualized behaviors with goals and objectives. According to his private school, the student began engaging in behaviors including grabbing the breasts of female skills trainers, exposing his body parts and removing his clothes in 2009 and 2010. However, his 2011 IEPs relied only upon 2009 assessments when the student's new behaviors had not yet surfaced. Clearly, the ED was on notice of the behavior and was obligated to further investigate the scope of those behaviors in order develop an adequate IEP.

E. C.L.K. v. Arlington Sch. Dist., 62 IDELR 173 (S.D. N.Y. 2013). IEP for 11 year-old autistic student is appropriate. Parents' argument that the IEP did not contain goals addressing each of the child's disability-related needs is rejected, as the IDEA requires an IEP to contain goals "designed to meet" a child's needs, but there is no requirement that an IEP contain goals that explicitly reference each need. In addition, even where certain goals were overly broad, courts have found IEPs to be satisfactory where the IEP's short-term objectives are sufficiently detailed. Here, the child's IEP contained short-term objectives, as well as annual goals that addressed study skills, reading, math, speech-language skills, social sills, motor skills that were reasonably related to her educational deficits. While the goals did not cite to each one of her needs in detail, they were adequate to offer FAPE.

THE FAPE STANDARD

A. T.E. v. Cumberland Valley Sch. Dist., 62 IDELR 204 (M.D. Pa. 2014). Where the parent's IEP challenge appears to stem from her "strong belief" that her child would receive better educational services if she continued in a private school, the IDEA does not require the district to provide the best education possible. Rather, the district is to develop an IEP that provides the student with a meaningful educational benefit, and the IEP here meets that standard. The IEP identifies the student's needs and her present educational levels; it sets goals in multiple areas; and it provides for individualized reading instruction designed to meet her needs.

B. K.K. v. Alta Loma Sch. Dist., 60 IDELR 159 (C.D. Cal. 2013). While the parents of an SLD grade schooler may have been dissatisfied with the progress their daughter had made, they are not entitled to reimbursement for the cost of a private Lindamood-Bell program. An IEP offers meaningful educational benefit if it is tailored to the student's unique needs and is reasonably calculated to produce more than *de minimis* benefits when gauged against the student's abilities. Testimony for district employees showed that the IEP team considered detailed evaluations of the student's skills and limitations and used the information from those evaluations to determine her goals and services. With respect to progress,

the student made advancements in the third grade in writing paragraphs on her own and made progress in fluency and reading comprehension, while meeting many third grade standards. Although not progressing as quickly as her nondisabled peers, the student's slow-but-steady progress showed that her IEPs offered meaningful benefit to her.

C. D.C. v. New York City Dept. of Educ., 61 IDELR 25, 950 F.Supp.2d 494 (S.D. N.Y. 2013). District failed to offer an appropriate placement to an autistic student with a life-threatening seafood allergy when the information presented to the parent during her tour of the proposed school showed that the district was not able to provide a seafood-free environment. Testimony that the special education school could have been made into a seafood-free environment if the parent had accepted the district's placement offer is not sufficient. Courts and hearing officers deciding IDEA private school reimbursement claims cannot consider the services a district "would have" provided in addition to the services identified in the student's IEP. "Prior to making a placement decision, a parent must have sufficient information about the proposed placement school's ability to implement the IEP to make an informed decision as to the school's adequacy." At the time the parent toured the proposed school, the cafeteria included fish on the menu, and school personnel informed the parent that students were free to bring lunches from home which might include fish. In addition, because culinary arts students came from the high school and prepared seafood dishes to be served in the teachers' cafeteria, the child may have been exposed to seafood smells that would trigger an anaphylactic reaction. When failing to promptly inform the parent of its plan to create a seafood-free environment for the student, the district failed to offer an appropriate placement.

CHANGE OF PLACEMENT/STAY-PUT

A. M.R. v. Ridley Sch. Dist., 62 IDELR 251, 744 F.3d 112 (3d Cir. 2014). The IDEA's stay-put provision applies through the final resolution of a case. While the 6th and D.C. Circuits have held that the stay-put obligations terminate at the end of a district court proceeding, the 9th Circuit has held that it applies through the end of the appeals process. Agreeing with the 9th Circuit, Congress intended stay-put to remain in effect though the final resolution of a dispute, as the statute's text is broadly written to encompass the pendency of "any proceedings" conducted, and narrowing the provision's scope to exclude the appellate process "strikes us an unnatural reading of such expansive language." Thus, the district must continue to fund a placement even if a district court later determines that their proposed IEPs were appropriate and the parent appeals on to Circuit Court.

B. R.R. v. Oakland Unif. Sch. Dist., 62 IDELR 290 (N.D. Cal. 2014). Although the current IEP for an autistic teenager provided for services two days per week in a separate day class, the district is to provide three days per week while the parents' appeal is pending. This is so because the parties modified the student's current placement in August 2013 by increasing his SDC attendance to three days per

week. While a student's stay-put placement is typically that identified in the most recent IEP, the parties here modified the stay-put by having him attend the SDC for three days per week and reducing his home instruction to two days per week. The purpose of the stay-put provision under the IDEA is to maintain the status quo until the parties resolve all disputes about a student's placement.

C. R.B. v. Mastery Charter Sch., 61 IDELR 183 (3d Cir. 2013) (unpublished). Charter school's disenrollment of student with Down syndrome before mother filed for a due process hearing violated the Act's stay-put requirement. The school's argument that its termination of the student from its rolls in accordance with the state's mandatory attendance law required the district of residence to assume responsibility for the student's IEP is rejected. The stay-put placement is the placement identified in the student's last-implemented IEP, which identified the charter school as her educational placement at the time of her disenrollment. Thus, the charter school is responsible for the student's educational services while the parent's FAPE complaint is pending. In addition, the IDEA's stay-put provision preempts a state law requiring districts to disenroll students after 10 consecutive days of absence.

D. A.D. v. State of Hawaii Dept. of Educ., 61 IDELR 181 (9th Cir. 2013). Where the 20-year-old student still had the right to FAPE when he raised his challenge to the State's age limit for special education services, the stay-put provision applied, making the ED responsible for continued payment for private school expenses while the IDEA complaint proceeds. While the ED's claim that the student's right to FAPE had ended under state law at the end of the year that he turned 20, the student filed his due process complaint six weeks before the end of the school year. Thus, he is entitled to the protections of the stay-put provision regardless of whether he was likely to prevail on the merits of his case challenging Hawaii's age rule.

E. P.V. v. School Dist. of Philadelphia, 60 IDELR 185 (E.D. Pa. 2013). While school districts generally have the right to determine the specific schools that students with disabilities will attend, this district's practice of unilaterally transferring autistic students with autism between centralized grade-level programs located in different schools violates the IDEA. Because children with autism typically have difficulty with transitions and changes in routine, a change in the physical location of services would likely be far more traumatic for them than it would be for students with other disabilities. "Accordingly, we must conclude that under the particular facts of our case, [transferring] students with autism to a separate school building in the school district constitutes a change in their 'educational placement' under the IDEA." As such, the district must follow the IDEA's placement procedures, including parent participation and appropriate notice, before transferring students with autism to new schools.

F. J.R. v. Cox-Cruey, 61 IDELR 212 (E.D. Ky. 2013). Parents' request to continue services to a 21-year-old student with TBI while their due process complaint was

pending is denied. Kentucky law makes students eligible for public education until they turn 21. Thus, the student's eligibility for IDEA services terminated on her 21st birthday, and the parents' request for a stay-put order while due process is pending is denied.

G. D.K. v. District of Columbia, 61 IDELR 292 (D. D.C. 2013). Transfer of a multiply disabled student from one private school to another is not a change of placement, so the IDEA's stay-put provision does not apply. To show a change of placement, parents must identify a fundamental change in, or elimination of, a basic element of the student's educational program. While the parent argued that the student's current school offered access to nondisabled students while the proposed school was one only for disabled students, this distinction is not pertinent because this student's IEP requires all instruction and services outside of a general education setting. Thus, in the context of this student's particular program, the locations were equivalent.

H. Taylor F. v. Arapahoe Co. Sch. Dist. 5, 61 IDELR 156, 954 F.Supp.2d 1197 (D. Colo. 2013). A settlement agreement placed the student in a private school for 7th and 8th grades and addressed the possibility of further FAPE disputes by providing that the student's stay-put placement would be "the program proposed by the IEP team through the IEP process." However, the settlement agreement did not state that the identified stay-put placement would apply for the duration of the dispute. Rather, the plain language of the agreement specified only that the "stay-put" placement was the public high school at the end of the student's 8th grade year. Had the district intended the public high school to serve as the student's stay-put placement for the duration of the dispute, it should have included language to that effect in the settlement agreement. Without it, the public school only served as the student's stay-put placement until the ALJ issued a decision on the parents' FAPE claim. Because the ALJ found that the district denied FAPE and the private placement was appropriate, the district is responsible for funding the private placement from the date of the ALJ's decision.

BEHAVIOR/FBA'S

A. C.F. v. New York City Dept. of Educ., 62 IDELR 281 (2d Cir. 2014). While the failure to conduct an FBA does not amount to an IDEA violation where the IEP identifies the student's behavioral problems and implements strategies to address them, that was not the case here. The lack of an FBA in this case resulted in the development of an inappropriate BIP which caused the district to offer an inappropriate placement. The IEP team drafted a vague BIP that failed to match the child's behaviors with specific interventions and strategies. Further, the deficient BIP had an adverse impact on the team's placement recommendation. Thus, the parents are awarded tuition reimbursement for private schooling.

B. M.L. v. New York City Dept. of Educ., 63 IDELR 67 (S.D. N.Y. 2014). Where the autistic student's IEP identified all of her problematic behaviors and included

appropriate behavioral strategies and goals, the parents' request for private school tuition is denied. The failure to conduct an FBA does not result in a denial of FAPE if the IEP adequately addresses the child's interfering behaviors. Although the district committed a procedural violation by failing to conduct its own FBA as required by New York regulations, a recent FBA conducted by the student's private school provided the IEP team with sufficient information. The private school FBA, conducted just one month before the IEP meeting, identified all factors that contributed to the student's behavioral issues and offered theories about the causes of those behaviors. In fact, the district's psychologist testified that it was one of the "more extensive FBA's he has reviewed." Not only did the IEP identify all of the student's problem behaviors, it also included many of the behavioral goals and strategies that the private school had used for the student. Thus, the district's failure to conduct an FBA did not result in a denial of FAPE.

C. E.H. v. New York City Dept. of Educ., 63 IDELR 47 (S.D. N.Y. 2014). Where the school district had sufficient evaluative data to determine the underlying cause of a private school student's problem behaviors, its failure to conduct a "formal" FBA did not entitle the parent to recover the student's private school costs. While New York's special education regulations require a district to conduct a functional behavioral assessment of a child whose behaviors impede his own learning or the learning of others, the regulations do not require a formal assessment of the child's behavioral problems. Rather, the regulations state that the FBA shall "be based on multiple sources of data," including, but not limited to, information obtained from direct observation, information from the child, information from teachers and services providers, a review of the child's record, and other sources (including information provided by the parent). The district's "informal" FBA did not violate the IDEA's procedural requirements where the IEP team relied on a classroom observation of the student by a school psychologist, the input of his classroom teacher about the nature and cause of his disruptive behaviors and information from the parent. Thus, the informal FBA provided all of the information the IEP team needed.

DISCIPLINE

A. Ocean Township Bd. of Educ. v. E.R., 63 IDELR 16 (D. N.J. 2014). District is not required to allow 18-year-old with ADHD, impulse control and adjustment disorder to return to his home high school to finish out his senior year while his mother challenged his suspension for bringing a knife to school. The IDEA allows a district to move a student with a disability to an interim alternative educational setting for up to 45 days for such offenses—regardless of whether the offense was a manifestation of disability. The student's act of carrying a knife to school allowed the district to place him in the IAES for up to 45 days. In addition, the subsequent MD review showed that the student's conduct was not related to his disability; thus, the alternative setting became his "current setting" for stay-put purposes when the parent challenged it. While the student would not be able to finish his senior year with his peers if the district did not allow his

return to the high school, the severity of the student's misconduct, his history of problem behaviors, and the district's interest in maintaining a safe learning environment supported an order for an injunction to continue the student's alternative placement.

B. Anaheim Union High Sch. Dist. v. J.E., 61 IDELR 107 (C.D. Cal. 2013). District had notice of student's likely status as a child with a disability when the Section 504 Team met to discuss the student's panic attacks, inability to complete work, failing grades, inability to remain in class and hospitalization for attempted suicide. Thus, the district had an obligation to conduct a manifestation determination before placing him in an alternative school for disciplinary purposes. A school district is deemed to have knowledge of a student's disability before the misconduct occurred where a teacher or other staff member "expresses concern about a pattern of behavior" to the special education director or other district supervisor. This does not require teachers to suggest a special education evaluation. Rather, the high school AP's attendance at the 504 meeting triggered the knowledge that the student was likely covered by IDEA. Thus, the hearing officer's decision requiring a manifestation determination is upheld.

TRANSITION SERVICES

A. R.R. v. Oakland Unif. Sch. Dist., 62 IDELR 287 (N.D. Cal. 2014). District's motion to dismiss is granted where there was 3 months left before the student turned 16 and time to incorporate into the student's IEP a postsecondary transition plan. While the case will be dismissed, however, the district should convene an IEP meeting so the student will have an appropriate transition plan in place on his 16th birthday. In addition, the parents' 504 claims are dismissed because there is no right to postsecondary transition planning under Section 504.

B. D.C. v. Mount Olive Twshp. Bd. of Educ., 63 IDELR 78 (D. N.J. 2014) (unpublished). Courts are not to evaluate IEPs in hindsight and must consider the evaluative data available at the time an IEP is developed and determine whether the IEP was reasonably calculated to provide an educational benefit. While the former high school student with autism did not ultimately attend college, pursue a career in computer animation, or live independently as set out in his postsecondary transition plan, the plan was not inadequate at the time it was written. The IEP identified agencies that offered vocational services as required by state law and the district administered a career interest inventory and entered the results into its college and career planning software program. In addition, no member of the student's IEP team stated a belief that the student's wish to attend college and work in theater arts was unrealistic or unachievable.

C. Gibson v. Forest Hills Sch. Dist. Bd. of Educ., 61 IDELR 97 (S.D. Ohio 2013). The district's concerns about the high school student's ability to tolerate a lengthy, contentious IEP meeting that addressed issues well above her level of comprehension did not excuse its failure to include her in postsecondary transition

planning. The district took no other steps to ensure that the team considered the student's preferences and interests, which is a procedural violation amounting to a denial of FAPE. The IDEA requires districts to invite students with disabilities to any IEP meeting that will include a discussion of postsecondary goals and transition services. Although the student's IEP meetings tended to be long and adversarial due to the parties' poor relationship, the student's special education teacher conceded that she could have helped the student prepare for an IEP meeting. In addition, the team could have modified or structured the meeting in a way that made the student's attendance easier. Although the procedural violation would not amount to a denial of FAPE if the district took steps to ensure the team considered the student's preferences and interests, the district had not done age-appropriate transition assessments at the time of the IEP meeting. The notion that the student's voluntary choices between classroom tasks that included stapling, shredding documents, and wiping tables provided an accurate picture of her interests and skills is rejected. "This informal approach to determining [the student's] postsecondary preferences and interests was not sufficient," and the court will meet with the parties to determine an appropriate remedy for the flawed transition plan.

D. Maksym v. Strongville City Sch. Dist., 61 IDELR 294 (N.D. Ohio 2013). The district appropriately addressed the transition needs of a high schooler with brain damage and cerebral palsy and the services provided, taken in their entirety, are reasonably calculated to enable the child to benefit. While the parent alleged that his eighth-period placement as an aide in the guidance office for two days per week was just "idle time" for him, it contributed to his employability skills. While the parent argued that no learning took place during 8th period, the parent failed to point out any requirement that every minute of every school day must provide the maximum educational benefit. Here, the student's IEP focused on the student's functional skills, including reading, math and vocational skills, to enable him to transition into adult life and the 8th period placement furthered these goals. In addition, the student made progress during the school year toward those goals and the student's participation as an "office aide" in the guidance office provided in-school work experience to foster his employability.

METHODOLOGY

A. Poway Unif. Sch. Dist. v. K.C., 62 IDELR 199 (S.D. Cal. 2014). Court cannot yet determine whether the district's failure to provide CART services to the student deprived her, under the ADA, of an equal opportunity to participate in her classes. The student needs to show the accommodations provided were not reasonable and that she was unable to participate equally in her classes without CART. A school district's obligation under the ADA to provide a specific auxiliary aid or device will depend on the individual's request and a comparative analysis of the services provided to individuals with or without disabilities. The district contends that it provided the student with meaningful access by discussing the parents' request for CART, responding in writing, and offering an effective

alternative. However, the student alleges that she had difficulty following class discussions and that the intense concentration require4d to use the meaning-for-meaning transcription system provided by the district caused her to suffer headaches and feel exhausted by the end of the school day. The court needs to make further findings as to whether the student's access to class discussions was meaningful before it can enter a judgment on the ADA claim.

B. W.D. v. Watchung Hills Reg. High Sch. Bd. of Educ., 62 IDELR 299 (D. N.J. 2014) (unpublished). While the parent of a teenager with dyslexia and ADHD might have wanted the district to provide detailed information about her son's proposed reading program, the district's failure to discuss education methodologies or teacher qualifications did not entitle her to relief under the IDEA. The district did not impede the parent's participation in the IEP process, and while districts must develop IEPs that are designed to confer a meaningful educational benefit, they have no obligation to maximize a student's potential. This "basic floor of opportunity" standard also applies to the information the district members of the IEP team are required to share with the parents of students with disabilities. Thus, while the parent requested information about the educational methodologies the district intended to use and the qualifications of the teachers who would provide her son's instruction, the district had no obligation to provide those details, and the parent has not shown that, in this specific instance, this lack of information would sufficiently restrict the student's right to access educational benefits and opportunities or the parent's right to meaningfully participate. Even if the failure to provide the information the parent requested amounted to a procedural violation of the IDEA, it would be harmless. In addition, the parent's failure to provide appropriate notice of the student's unilateral private placement barred her reimbursement request.

C. K.M. v. Tustin Unif. Sch. Dist., 61 IDELR 182, 725 F.3d 1088 (9th Cir. 2013). (Note: This case reverses and remands two California district court opinions holding that the school district was not required to provide Communication Access Real-time Translation (CART) to a student *with a hearing impairment where it offered FAPE under the IDEA.* The Supreme Court denied review on March 3, 2014*). A district's* compliance with the IDEA in offering an appropriate IEP does not necessarily establish compliance with the "effective communication" obligations under Title II of the ADA. While the IDEA requires districts to provide a "basic floor of opportunity" to students with disabilities, the ADA requires them to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. Further, Title II of the ADA requires districts to provide appropriate auxiliary aids and services, including "real-time computer-aided transcription services" when necessary to provide an equal opportunity to participate in district programs and activities. Because the ADA's effective communication requirement differs significantly from the IDEA's FAPE requirement, districts "may be required under the ADA to provide services to deaf or hard-of-hearing students that are different than the services required by the IDEA." The notion that the success of

a student's IDEA claims dictates the success of her ADA claims is rejected. Thus, these two cases are remanded to the district courts for further proceedings as to whether each student's district complied with the ADA's effective communication requirement.

D. D.H. v. Poway Unif. Sch. Dist., 62 IDELR 176 (S.D. Ca. 2013). Pending the outcome of the ADA case, the district must go ahead and provide CART services for hearing impaired student, pursuant to (above-referenced K.M. decision) 9th Circuit ruling. Where the ADA requires a district to ensure that communications with students with disabilities are as effective as communications with others and to furnish appropriate aids and services where necessary to afford the student equal opportunity to participate, the student's good grades and school participation does not absolve the district of its ADA obligations. The student struggles to hear in class, misses much of what is said and often leaves school with a headache. These difficulties reflect that the district does not communicate with the student in a matter as effective as it communicates with others, so the temporary injunction is granted.

E. G.A. v. River Vale Bd. of Educ., 62 IDELR 37 (D. N.J. 2013). District is not required to pay for a hearing aid for preschooler with mild to moderate hearing loss in his left ear where a desktop speaker, in conjunction with the student's right ear, would have allowed the student to receive FAPE. While the court sympathizes with the parents' concern for obtaining the best device for the child, the IDEA merely requires the district to offer a device that provides significant learning and will confer meaningful benefit. While an ear-level device might have been optimal for the student, the audiological evaluation did not state that the student could not obtain meaningful benefit without one.

F. Kathryn F. v. West Chester Area Sch. Dist., 62 IDELR 177 (E.D. Pa. 2013). Student's progress in reading from 2009 to 2012 is evidence that she received FAPE, even though the parents believed that the dyslexic student would have made more progress if the district had started using the Wilson reading method in 9th grade rather than adding Wilson tutoring to the student's IEP in 11th grade. The district had no obligation to maximize the student's educational benefit and progress made using the district's Read Naturally program was appropriate.

PRIVATE/RESIDENTIAL PLACEMENT

A. C.L. v. Scarsdale Union Free Sch. Dist., 63 IDELR 1 (2d Cir. 2014). District court's decision in favor of the school district is reversed and tuition reimbursement for private schooling at Eagle Hill of 4th-grader with ADHD and a nonverbal learning disability is granted to the parents. The district court's focus on the fact that the private school was too restrictive and did not serve any nondisabled students was misplaced. Although courts may consider the restrictiveness of a private placement when determining whether it is appropriate, courts must also look at the services the private program offers. Here, the private

school offered a research-based curriculum that was individualized for each student and this student spent two periods of each school day in tutorials focused on written expression and study skills—two of his most significant areas of need. In addition, the school provided the student with an advisor who met with him daily, observed him in class and participated in weekly staff meetings, none of which were mentioned by the reviewing hearing officer. Importantly, the student made significant progress at the private school; thus, the fact that it was a restrictive environment did not make it inappropriate. Because the district denied FAPE to the student, and where a district denies FAPE, a private placement is not inappropriate merely because the environment is more restrictive than the public school alternative. In addition, the IDEA's LRE provision is aimed at preventing *schools* from segregating students with disabilities, not to restrict parent options.

B. K.E. v. District of Columbia, 62 IDELR 236 (D. D.C. 2014). Although the district's failure to have an IEP in place by the first day of school (and did not have one in place until 11 school days after) constituted a denial of FAPE, the parent's chosen out-of-state residential placement was not appropriate. Thus, the parent is not entitled to tuition reimbursement for the student's placement there. Where the district held IEP team meetings in May and June of 2012, it did not convene a planned follow-up meeting to complete the IEP for the upcoming school year. During June and July, the parent and her attorney called and emailed the district to schedule the meeting but received no response and an IEP was not developed until 11 days after the school year began. While this procedural violation was not de minimis, it is important that the parent enrolled the student in the private school while the district still had 3 weeks to complete the IEP. Further, the parent's selection of an expensive, out-of-state residential program that lacked a therapeutic component and was not geared toward the student's learning and emotional needs and, therefore, was not appropriate for the student.

C. E.K. v. Warwick Sch. Dist., 62 IDELR 289 (E.D. Pa. 2014). School district cannot be held responsible for treating a student's long-term drug addiction, familial problems or delinquent behavior and, therefore, is not responsible for paying for her placement in a residential drug and alcohol treatment facility. The district's offered program included an IEP with organizational and behavioral goals, calling for the student to receive regularly scheduled counseling and social skills instruction. Further, the program's staff included a social worker, a psychologist, a job trainer, a nurse, and a private therapist—all of whom were trained to be aware of and intervene with any drug or alcohol issues. The district's program offers FAPE.

D. Suffield Bd. of Educ. v. L.Y., 62 IDELR 203 (D. Conn. 2014). Because the private school in which the parents placed the student did not provide math supports, speech-language services or interaction opportunities required by the student, parents could not recover the cost of the placement from the district, even though the proposed IEP did not include appropriate services to support the student's move from the private school back to the public school.

E. Munir v. Pottsville Area Sch. Dist., 61 IDELR 152, 723 F.3d 423 (3d Cir. 2013). Whether the parent of an ED teenager was entitled to funding for a residential placement depends upon whether the student needed to attend the residential program because of his educational needs. Because the parents testified that they "feared for [student's] personal safety" when placing him in the residential facility, the placement resulted from the student's mental health needs, rather than his educational needs. "Indeed, [student] was an above-average student…who had no serious problem with attendance and socialized well with other students" prior to being placed in residential. Because the parents could not show that they placed the student in the residential program for educational reasons, the lower court's decision is affirmed.

F. M.N. v. Dept. of Educ., 60 IDELR 181 (9th Cir. 2013) (unpublished). A parent's unilateral private placement is "proper" for reimbursement purposes only if it offers instruction that is specially designed to meet the child's unique needs and provides the support services a child needs to benefit from instruction. By limiting the autistic child's program to language acquisition, the private school failed to address the child's needs in the areas of academics, social interaction, group instruction, generalization of skills and personal care and grooming. After more than a year in the private program, the record showed "a host of essential areas in which the child made no progress at all" and the child received only "meager" benefits from the private school. Thus, the parent is not entitled to reimbursement for private school tuition. In addition, the district court properly denied reimbursement on equitable grounds where the parent and the private school hindered the ED's development of the child's IEP.

G. M.B. v. Minisink Valley Cent. Sch. Dist., 61 IDELR 5 (2d Cir. 2013) (unpublished). Even though progress reports showed that the student made academic and behavioral gains during his time at a therapeutic boarding school, the school did not provide services to address his unique needs. Academic and behavioral progress alone does not demonstrate the appropriateness of a private program for reimbursement purposes. Rather, the parent must show that the school offered instruction and support services specially designed to meet the student's unique needs. Here, the boarding school did not offer specific services to address the student's difficulties with organization, executive functioning, and fine motor skills. In addition, the school's use of time-outs and other sanctions to address the student's behavioral problems was inappropriate. Because the parent could not show that their chosen placement was appropriate, she could not recover the cost of it from the district.

H. M.L. v. East Ramapo Cent. Sch. Dist., 61 IDELR 12 (S.D. N.Y. 2013). Where the student's father was the acting Director of a nonprofit special education school that he had helped to establish, the parents were not merely seeking reimbursement for the student's placement. Rather, letters written to the district

from the father discussed the parents' intent to expand the school, move it within the district's borders, and seek district funding for the school's program and services. The father never spoke with the district about the possibility of a public school placement and the parents signed a contract for their child's placement at the nonprofit school nearly two months before they attended a meeting with the district to develop the student's 2010-11 IEP. Thus, the equities of the case weigh against reimbursement to the parents for the cost of the private placement.

COMPENSATORY EDUCATION

A. B.M. v. New York City Dept. of Educ., 61 IDELR 68 (S.D. N.Y. 2013). Even though the student's support teacher was unqualified, the parent did not establish a denial of FAPE to support her claim that the autistic student needed 960 hours of compensatory services to make up for inadequate instruction. The student's report cards reflected that he received passing grades in all of his core academic subjects, which he took in the general education setting. The support teacher testified that she was able to address problem behaviors that included picking gum off the floor, and his social studies teacher indicated that he had made social progress and had a "wide circle of friends."

B. I.T. v. Department of Educ., 61 IDELR 192 (D. Haw. 2013). Where district failed to include speech-language services in two successive IEPs and the parents placed their child in a private school as a result, compensatory education can include reimbursement to the parents for private school costs. While compensatory education services are typically prospective services, it also may include reimbursement for private services the parents obtained to make up for deficiencies in the student's IEP. There is no court precedent holding that an award of compensatory education must be prospective. However, because the IEPs were appropriate in all other respects, the parents can recover only 25% of the private school expenses they incurred for the period that the district failed to make FAPE available.

C. Letter to Pergament, 62 IDELR 212 (OSEP 2013). While a district is not required to services during a teacher's strike that significantly disrupts the functioning or delivery of services for all or nearly all students, whether a student with a disability is in need of compensatory education after the end of teachers' strike is a determination that must be made by the child's IEP team based on whether the disruption in services denied educational benefit to the child.

EXTENDED SCHOOL YEAR SERVICES

A. T.M. v. Cornwall Cent. Sch. Dist., 63 IDELR 31 (2d Cir. 2014). The LRE requirement applies to extended school year programs in the same manner as it applies to school year placements. ESY services are an essential program component for students who require year-round services to prevent substantial regression and the LRE requirement applies with the same force in the summer

months as it does during the regular school year. Thus, districts must ensure that they have a range of educational settings available for ESY placements. If a district does not offer a mainstream ESY program, it can still make a continuum of ESY placements available by considering a private summer program or a mainstream ESY program offered by another public entity. Because the autistic child here made progress in his general education kindergarten class, the district erred in failing to make a mainstream ESY placement available. Thus, the district court's holding that the district was not obligated to offer a mainstream ESY placement is vacated and remanded for further proceedings.

B. Annette K. v. State of Hawaii, 60 IDELR 278 (D. Haw. 2013). In Hawaii, ESY is considered necessary for FAPE where the benefits the student gains during the regular school year would be significantly jeopardized if he were not provided an educational program over the summer. In this case, it was clear that the student with severe dyslexia lost ground quickly every time there was a break in instruction. Indeed, the principal noted that the student was able to make progress in his reading, but "hours, days, weeks later, it's like you're starting fresh." In addition, the student's private reading tutor echoed the same concern, indicating that when she saw him less than 3-5 times per week, she had to spend significant time backtracking.

LEAST RESTRICTIVE ENVIRONMENT

A. A.K. v. Gwinnett Co. Sch. Dist., 62 IDELR 253 (11th Cir. 2014). While home instruction is an available placement on the continuum of alternative placements, it is not the LRE for this 11 year-old autistic student. Her strict diet was not prescribed by a medical doctor, she does not have a life-threatening condition, and she is not under the regular care of a medical doctor. Further, the parents did not show that the district was unable to provide the nutritional supplements to the student during the school day. Thus, the LRE for her is the public school SDC where should would have opportunities to interact with peers and to develop social skills.

B. Anthony C. v. Department of Educ., 62 IDELR 257 (D. Haw. 2014). The district's proposed public school placement is the autistic high-schooler's LRE where the team discussed the student's possible functional, social, behavioral and academic difficulties if he attended the program in the public high school. While the parents had legitimate concerns that the student's behaviors might interfere with his success at the high school, the district considered the potentially harmful effects of the placement and the IEP team spent a significant portion of the LRE discussion weighing the benefits of a public school placement against the potential harms. In addition, the team discussed ways to mitigate any of the potential difficulties and, while the parents may not be pleased with how the team considered these potential harmful effects, their argument that they were not considered is rejected. Importantly, the IEP team also intended to develop a transition plan to ease the student's move from the private school where he had

been for the previous 10 years. In addition, the team discussed a variety of possible placement options before deciding to recommend the public school placement with limited mainstreaming. Thus, predetermination did not occur.

C. C.L. v. Lucia Mar Unif. Sch. Dist., 62 IDELR 202 (C.D. Cal. 2014). Proposed separate day class for large and aggressive autistic student is upheld as the student's LRE. The proposed IEP included a detailed description of the student's present levels of performance, including his behavioral difficulties, and set out an array of goals, including especially detailed goals concerning his behavior, his difficulties with compliance, attentiveness, aggression and toleration of frustration. The IEP also provided OT, speech therapy, a one-to-one aide, supervision by an autism behavior specialist and consultation with a nonpublic agency. Based on the thoroughness of the IEP, the testimony of the behavioral specialist and the FBA evaluator's recommendations, the ALJ did not err in finding that the IEP offered the student FAPE. Further, the IEP's requirement that the student spend 45 percent of his day in a special day class and 55 percent in a general education setting complied with the Act's LRE requirement where the student's behavioral difficulties showed that additional time in a general education setting would not have benefited him and would have extended his disruptive impact on classmates and teachers.

D. Bookout v. Bellflower Unif. Sch. Dist., 63 IDELR 4 (C.D. Cal. 2014). Where autistic child received significant academic and nonacademic benefits from his general education kindergarten program, the general education classroom was his LRE, not a special day class. While a district may consider a child's effect on teachers and classmates when determining placement, the evidence here shows that the district did not give general education teachers the support they needed to address disability-related behavior problems. Instead, the district intentionally rotated students with disabilities through different classrooms to ensure that no general education teacher had an inclusion class for two years in a row. In addition, general education teachers were not provided with any training in the education of students with disabilities. The child's behavioral and social skills improved significantly with exposure to nondisabled peers; thus, the SDC placement is far too restrictive.

E. D.W. v. Milwaukee Pub. Schs., 61 IDELR 32 (7th Cir. 2013) (unpublished). District's proposed placement in a special day class for students with intellectual disabilities is the appropriate LRE where this student will receive FAPE. The student earned poor grades in her less restrictive multi-categorical class and often refused to participate. As a result, the student's IEP team developed a BIP that included several hours of daily 1:1 instruction, modification of assignments and daily progress reports. However, the interventions were not successful, and the team modified the student's IEP again to include class work at the student's instructional level, seating near the teacher and positive feedback. Only after those interventions failed did the district propose the more restrictive SDC placement. "The relevant inquiry is whether the student's education in the

mainstream environment was 'satisfactory' (or could be made satisfactory through reasonable measures)."

F. J.T. v. Newark Bd. of Educ., 61 IDELR 27 (D. N.J. 2013) (unpublished). School district has no obligation to offer a resource in-class support program to the SLD student at his neighborhood school. In this case, the student's neighborhood school did not offer the special education services set forth in the student's IEP and a district may offer certain types of programming in a centralized location. In addition, the proposed school was only .8 miles from the student's home.

G. V.M. v. North Colonie Cent. Sch. Dist., 61 IDELR 134, 954 F.Supp.2d 102 (N.D. N.Y. 2013). Where evidence indicated that the 9th grader with Down syndrome spent a good deal of time in her Regents-level classes crying, sleeping or engaging in off-task behaviors, her parents' request for increased mainstreaming opportunities was not supported. The district offered the student FAPE in the LRE when the IEP team decided that the student needed specialized instruction for reading, math and social studies. While the team did not have any recent assessments of the student's needs (because the parents denied consent for reevaluation since third grade), the team did have available information about the student's performance that reflected that continued placement in mainstream classes was not appropriate. Clearly, the student struggled in her general education math and social studies courses, despite receiving individualized instruction and a significantly modified curriculum. Teachers reported that the instruction provided there was far beyond the student's comprehension level and that she regressed academically and behaviorally as a result. Thus, she would not benefit from mainstream placement for math and social studies and the IEP team was correct in limiting her general education instruction to English and science.

H. B.B. v. Catahoula Parish Sch. Dist., 62 IDELR 50 (W.D. La. 2013). School district violated IDEA's LRE requirement by prohibiting a 7-year-old with Down Syndrome and behavioral problems to be transported on the regular bus with a "bus buddy" in second grade. Notwithstanding that the student's behaviors included slapping, hitting, spitting, not staying seated, disrobing and throwing his shoes out the window, there was adequate evidence to support the hearing officer's decision that the student would have been able to ride the regular bus at that time with the support of a nondisabled partner. However, while the hearing officer ruled that a denial of FAPE did not occur, that decision is reversed because the LRE violation resulted in a loss of educational opportunity and deprived the student of FAPE. A bus aide who had worked with the student for over a year testified that the child could ride the bus with support, and the parents' expert witness testified that the student could be safely transported on the regular bus with a nondisabled peer to demonstrate appropriate behavior. In addition, the district violated LRE by failing to allow the student to join nondisabled peers for PE, art and music. While the district claimed that the student interacted with nondisabled peers during recess, computer lab and library activities, that did not

demonstrate that the student was mainstreamed "to the maximum extent appropriate," as required by IDEA.

ONE-TO-ONE AIDES

A. Lainey C. v. State of Hawaii, 61 IDELR 77 (D. Haw. 2013). Where the social skills training set out in the autistic student's IEP would have met her needs, a one-to-one aide was not necessary for FAPE. Even though a teacher testified that an aide would be "helpful," that is not the same as being necessary for FAPE. While some witnesses supported the idea of a one-to-one aide, others believed it was unnecessary and the ED's behavioral health specialist testified that an aide might make the student overly dependent on the aide and more isolated socially.

CHARTER SCHOOLS

A. Midlands Math and Business Academy Charter Sch. v. Richland Co. Sch. Dist. One, 60 IDELR 229 (S.C. Ct. App. 2013) (unpublished). Charter school's failure to provide required progress reports for all students with IEPs was an appropriate reason for the sponsor district to revoke the school's charter. The charter school's issuance of IEP progress reports for some students did not excuse its failure to provide them to all students. Because the school violated federal law, the ALJ's decision that state law required the district to revoke the school's charter is affirmed.

PARENTALLY PLACED PRIVATE SCHOOL STUDENTS

A. Letter to Corwell, 61 IDELR 82 (OSEP 2013). Parentally placed private school students whose parents live outside of the U.S. are entitled to participate in equitable services. Under IDEA, the district where the private school is located is responsible for providing for the equitable participation of parentally placed private school students with disabilities by providing them with special education and related services consistent with their numbers and their need. The IDEA does not distinguish between parentally placed private school children whose parents reside in other countries and those whose parents reside in the U.S. with respect to the district's obligation to provide equitable services under the IDEA.

RESOLUTION MEETINGS

A. Letter to Casey, 61 IDELR 203 (OSEP 2013). It is contrary to IDEA for a school district to convene a resolution meeting but refuse to discuss the issues raised in the parent's request for due process at that meeting. The stated purpose of a resolution meeting is for the parent and the district to discuss the facts and issues that form the basis of the parents' complaint so that the district has the opportunity to resolve it. Where the district instead told the parent at the meeting that she would have to broach her issues with the district in an IEP team meeting, that would not serve the purpose of a resolution meeting.

ATTORNEYS' FEES

A. Capital City Pub. Charter Sch. v. Gambale, 63 IDELR 6 (D. D.C. 2014). Where the parent attorney was well aware of the charter school's efforts to arrange for a residential placement for a high schooler at the time she filed the due process complaint, her allegations of unreasonable delay on the part of the school were "breath-taking." The charter school satisfied the standard for recovering fees against the parent because the parent's case was frivolous, unreasonable and without foundation. Although the due process complaint alleged that the school took four months to arrange for the placement, emails reflected that the parent never contacted the school to discuss placement and, instead, contacted the private day school the student was attending under an IEP developed by the charter school. The charter school learned of the parent's request for residential placement just days before a scheduled IEP meeting, which was rescheduled after the parent's last-minute cancellation. "[I]f anyone were responsible for delaying [the student's] placement in a residential treatment facility, it was [the attorney] and the parent." Thus, the charter school's request for fees is granted and the attorney must pay the school $11,767.

B. M.M. v. Plano Indep. Sch. Dist., 63 IDELR 49 (E.D. Tex. 2014). Where the parent's attorney acted with an improper purpose when she redacted language from a settlement agreement that explicitly disclaimed her clients' right to legal fees, she is required to pay the district's legal fees to defend the parents' challenge to a magistrate judge's report and recommendation. The attorney did not tell the magistrate judge about the settlement agreement, which the parties reached four months before the magistrate issued his report and recommendation on the parents' fee petition. More importantly, the attorney redacted critical information from the copy of the settlement agreement that she submitted for the court's review. This redacted provision specifically stated that the agreement did not confer prevailing party status on either party and could not be used as the basis of a claim for fees. Here, the attorney's conduct wasted the parties' time, as well as scare judicial resources. The parent attorney had no legitimate reason for failing to disclose the settlement to the magistrate judge or for redacting the limiting language from it. Thus, the district's motion for sanctions against the attorney is granted.

C. L.R. v. Hollister Sch. Dist., 63 IDELR 8 (N.D. Cal. 2014). Parents were not justified in refusing the district's settlement offer and, therefore, could only recover fees incurred through the date of the settlement offer (which decreases their award by over $50,000). In addition, due to their limited success at the hearing, their fees will be further reduced by 50%. Here, the district's offer revealed its willingness to hold subsequent, procedurally correct, IEP meetings after it had held two meetings without inviting a regular education teacher. The settlement offer addressed the district's past procedural violations and included 75

hours of compensatory education and reasonable fees, which was far more reasonable than the 46 hours of social skills training awarded by the ALJ.

D. Brighthaupt v. Dist. of Columbia, 63 IDELR 65 (D. D.C. 2014). Parent was justified in rejecting district's offer of only $300 in attorneys' fees to settle her FAPE complaint. The parent's attorney, who had practiced exclusively in special education law since 1997 and had represented parents in more than 1,600 proceedings, had worked 15.4 hours on the case at the time the district offered to settle. The offer of $300 "was so low that it could only be considered an insincere offer." Thus, the district is to pay the parent $24,196 in fees.

E. Alief Indep. Sch. Dist. v. C.C., 61 IDELR 3, 713 F.3d 268 (5th Cir. 2013). District court's denial of parents' fee request is upheld, because these parents were not prevailing parties as contemplated under the IDEA. Prevailing party status under the IDEA has two requirements: 1) the remedy must alter the legal relationship between the district and the student; and 2) the remedy must foster the purposes of the IDEA. While the district court did deny fees sought by the district against the parents, the parents achieved only a technical victory that had no bearing on their child's services. Here, the parents filed an unsuccessful IDEA case and "were merely fortunate enough to have the lower court deny a common request for attorney's fees" against them. "In no way have they succeeded on the merits of their claim or achieved a desired remedy" sufficient to transform them into prevailing parties under the IDEA.

F. A.L. v. Jackson Co. Sch. Bd., 60 IDELR 187 (N.D. Fla. 2013). District's motion for sanctions is granted because the parent's attorney should have known that her claims that the school district should have revised the student's IEP were groundless. This is so, because the parent attorney was involved in a 2007 Eleventh Circuit case that held that the IDEA's stay-put provision prohibits a district from changing a student's placement after the parent files a due process complaint, unless the parent and the district agree to such a change or a hearing officer orders a new placement. Here, the parties were not able to agree to change the student's program pending due process proceedings, so the stay-put provision prevented the district from updating the IEP. Because the parent's attorney also represented the student in the Eleventh Circuit case in 2007 which specifically ruled this way, she was "well-aware" of the current law on the stay-put provision. Thus, the district is entitled to recover attorney's fees.

G. A.L. v. Jackson Co. Sch. Bd., 62 IDELR 149, 127 So.3d 758 (Fla. Ct. App. 1st Dist. 2013). School district that prevailed in an allegedly frivolous due process hearing cannot recover its legal expenses from the parent and her attorney under the Administrative Procedure Act, because the original due process hearing that was dismissed was brought under Florida's Education Code. The section of the Education Code specifically states that such proceedings are exempt from the APA. Thus, the ALJ's order of attorneys' fees for prevailing in the hearing by having it dismissed is not supported.

H. Bethlehem Area Sch. Dist. v. Zhou, 61 IDELR 9 (E.D. Pa. 2013). The parent's alleged statement that her lawsuit would "go away" if the district would just pay for her sons to go to a private school may entitle the district to a fee award because she filed her hearing request for an improper purpose. The parent requested several due process hearings regarding the IEPs for her sons over the years, despite the fact that they were making significant progress. Under the IDEA, a prevailing district may recover fees from a parent who has litigated for any improper purpose, such as to cause unnecessary delay or to needlessly increase litigation costs. There are several pieces of evidence that indicate the parent's intent in seeking the hearing was to drive up district costs to the point where it would rather pay for her sons to attend private school than oppose her extensive requests. For example, the parent reportedly told a special education director that "if the district would pay for a private school…this would all go away." While the parent is highly ambitious that her sons achieve all they can, the law does not require a district to maximize a child's potential or "cause him or her to become a second Einstein." Because the district prevailed at the due process hearing and the parent pursued her complaint for an improper purpose, the district is potentially entitled to attorney's fees and a conference will be held to address the issue.

I. D.B. v. Sutton Sch. Dist., 61 IDELR 191 (D. Mass. 2013). Where student was represented in the litigation by his attorney father, his mother could not recover the more than $50,000 in legal expenses she incurred from the district. Attorney-parents cannot recover fees for representing their own children in IDEA cases. While the First Circuit has not yet addressed whether IDEA would permit such awards, the 2d, 3d, 4th and 9th have all prohibited them.

J. Giosta v. Midland Sch. Dist. 7, 62 IDELR 72 (7th Cir. 2013). Parents are not prevailing parties where their success in obtaining three hours of additional reading and writing instruction each week was too minimal to support a fee award under IDEA. "[F]or minor successes, the appropriate award is zero…." The parents sought substantial relief in their due process complaint and sought thousands of dollars' worth of evaluations and assistive technology.

K. A.Z. v. Gateway Sch. Dist., 62 IDELR 135 (W.D. Pa. 2013). Non-attorney parent cannot pursue IDEA action against district on her son's behalf but she can do so on her own behalf. Thus, IDEA claims on child's behalf will be dismissed without a lawyer to represent the child.

SERVICE ANIMALS

A. E.F. v. Napoleon Comm'y Schs., 62 IDELR 201 (E.D. Mich. 2014). Parents' 504/ADA case alleging discrimination on the part of the school district is dismissed where they have not first exhausted their administrative remedies under the IDEA. This is so because the service dog's presence at school would, at least

partially, implicate issues related to the student's IEP and it appears conceivable that the IEP would undergo some modification. For example, there would need to be some accommodation for the concerns of allergic students and teachers and to diminish the distractions that the dog's presence would have. Moreover, having the dog accompany the student to recess, lunch, computer lab and the library would likewise require changes to the IEP. "Again, by way of example, the IEP would need to include plans for handling Wonder on the playground or in the lunchroom. Defendants (i.e., the school and school district) would also have to make certain practical arrangements—such as developing a plan for Wonder's care, including supervision, feeding, and toileting—so that the school continued to maintain functionality." Since all of these things "undoubtedly" implicate the student's IEP and would be best dealt with through the administrative process, the IDEA's due process procedures must first be exhausted.

B. M.T. v. Evansville Vanderburgh Sch. Corp., 62 IDELR 79 (S.D. Ind. 2013). Case will not be dismissed at this time based upon failure to exhaust administrative remedies under IDEA. Because exhaustion is an "affirmative defense" the parents had no obligation to allege facts negating the defense in their complaint. One of the students relies on her dog to monitor her blood sugar level because of her diabetes and the other student relies on her dog to help her if she has a seizure and to assist with mobility. Here, the parents claim discrimination under 504/ADA based upon the district's new policies that place special burdens on students wishing to bring their service animals to school. As a result, the student with diabetes went to school without her dog for two days, while the other student attended without hers for approximately two weeks.

SECTION 504/ADA GENERALLY

A. CTL v. Ashland Sch. Dist., 62 IDELR 252 (7th Cir. 2014). Where the district failed to train at least three staff members on the first-graders diabetes equipment as stated in the 504 Plan, that did not amount to a failure to accommodate the child's disability under Section 504. The school nurse's monitoring of the blood glucose levels afforded the child access to the district's programs and services. Where the 5th, 8th and 9th Circuits apply a materiality standard to IEP implementation failures and the 504 standard for FAPE focuses on a student's meaningful access to public school programs, the district's failure to implement the 504 Plan is not disability discrimination unless the deviation from the Plan was so significant that it effectively denies the child the benefit of public education. The district's decision to hold two widely attended training sessions for all staff as opposed to training specific staff members did not prevent the student from accessing district programs.

B. D.F. v. Leon Co. Sch. Bd., 62 IDELR 167 (N.D. Fla. 2014). Parent's decision to withdraw consent for IDEA services when the school district offered her middle schooler with a hearing impairment placement in a special one-hour class each day for students with disabilities does not preclude her from challenging the

district's refusal to provide assistive technology under Section 504. The parent's rejection of IDEA services has no bearing on the student's right to assistive technology under Section 504 and the ADA where the parent expressly requested services under 504 at the time she revoked her consent for IDEA services. As such, the parent did not waive her right to services that might be available under other statutes. "The import is clear: a parent's refusal to consent to a more-comprehensive plan that includes a one-hour class for students with disabilities does not necessarily authorize a school district to refuse to provide technology to help a student hear in other classes." The district's alleged refusal to provide assistive technology could amount to disability discrimination.

C. S.L. v. Downey Unif. Sch. Dist., 63 IDELR 15 (C.D. Cal. 2014). Where the district had determined on multiple occasions that the student with a seizure disorder was not eligible for services under the IDEA, student is not required to exhaust IDEA's administrative remedies prior to bringing her lawsuit under Section 504/ADA. The student did not require instructional modifications; nor was she seeking specialized instruction. Rather, the student alleged here that her academic performance suffered because the district failed to reasonably accommodate her seizures. Thus, she is not required to exhaust under the IDEA prior to bringing her claims.

D. D.L. v. Baltimore City Bd. of Sch. Comm'rs, 60 IDELR 121, 706 F.3d 256 (4th Cir. 2013). The duty to provide FAPE to students under Section 504 only extends to students attending public schools, not private ones. A district has no obligation to provide Section 504 services to a parentally placed private school student if it has offered the student appropriate public school services.

E. Moody v. New York City Dept. of Educ., 60 IDELR 211 (2d Cir. 2013) (unpublished). While an 11-year-old diabetic student may have preferred eating hot food for lunch, his preference does not require the school district to heat up lunches prepared by his mother. The availability of diabetic-friendly lunch options in the school cafeteria satisfied the district's duty to accommodate the student's disability, and the district only is required to ensure that the student has meaningful access to school lunch and other district programs. Here, the school's cafeteria offered a selection of hot and cold foods that the student could eat. Thus, even if the student sometimes skipped lunch and did not like the food on the school menu, that did not warrant a further accommodation beyond what the district had already provided. In addition, the district monitored the student's blood glucose throughout the day to ensure it stayed within acceptable levels.

F. Kimble v. Douglas Co. Sch. Dist. RE-1, 60 IDELR 221, 925 F.Supp.2d 1176 (D. Colo. 2013). District's position that parents' revocation of consent to an IEP under IDEA amounted to a rejection of a 504 Plan is rejected. However, the district convened a Section 504 meeting to discuss the student's need for accommodations and modifications after the parents revoked consent to the IEP and the district's attempt to implement the IEP that it has offered as 504 FAPE is

appropriate. Thus, the parents cannot hold the district liable for failing to provide accommodations after rejecting the 504 Plan, and the district's obligation to protect the student from discrimination was satisfied when it offered the same services set out in the IEP.

G. G.B.L. v. Bellevue Sch. Dist. #405, 60 IDELR 186 (W.D. Wash. 2013). It was not a "reasonable accommodation" in the fast-paced gifted program for the student with ADHD and a hearing impairment to be able to complete a lesser amount of homework each night than other students. This is so because the gifted program required all students to learn a significant amount of material on their own through homework assignments. The district is not required to make a fundamental alteration or substantial modification to its programs so that students with disabilities can participate. The parents' request to limit the student to two hours of homework per night was not reasonable, as the assigned homework is an essential component of the coursework in the gifted program. In addition, the student would be unable to keep up with class discussions if he completed only 2 hours of homework each night. Further, evidence shows that the student was already completing only part of the assigned homework and was falling behind as a result. Thus, the student could not meet the program's academic standards even with the required accommodation and judgment is granted in favor of the district.

H. Liebau v. Romeo Comm. Schs., 61 IDELR 231 (Mich. Ct. App. 2013) (unpublished). Parent of a nondisabled student did not have standing to challenge the accommodations set forth in another student's Section 504 Plan that provided for a school-wide ban on peanut and tree nut products. Although the parent claimed that she had requested a 504 Plan for her own daughter based on dietary restrictions and nutritional needs, the parent never appealed the district's decision that her daughter did not need accommodations under 504. Addressing the parent's claim that the nut ban violated her daughter's right to equal protection, the district's policy passes constitutional muster as long as it is rationally related to a legitimate governmental interest. Here, the nut ban was necessary to accommodate a school mate's allergy, which was so severe that it was triggered by airborne exposure to nut products. While less-intrusive procedures for accommodating the other student's allergy were attempted, they were determined to be ineffective. In addition, the district's practice of removing offending food items and providing appropriate alternatives did not violate this student's right to be free from unlawful searches and seizures. Not only did school personnel have reason to suspect the student would bring nut products to school, given the parent's repeated statements that she would not comply with the ban, the searches were not excessively intrusive and were necessary to protect the other student's safety.

I. Petty v. Hite, 62 IDELR 171 (D. Md. 2013). Where district developed a 504 Plan for a student with allergies and asthma, the parent's claim merely alleging that the accommodations were not sufficient is not adequate to state a 504 claim against the school district. In addition, either bad faith or gross misjudgment must be

shown to assert a 504 claim in the context of education of students with disabilities.

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

A. Dear Colleague Letter, 60 IDELR 167 (OCR 2013). Because extracurricular athletics offer benefits such as socialization, fitness, and teamwork and leadership skills, districts must make more of an effort to ensure that students with disabilities have an equal opportunity to participate in athletic programs. Districts should not act on the basis of generalizations and stereotypes about a particular disability. While students with disabilities do not have a right to join a particular team or play in every game, decisions about participation must be based on the same nondiscriminatory criteria applied to all prospective players. In addition, districts have the obligation to offer reasonable modifications so that students with disabilities may participate. If a particular modification is necessary, the district must offer it unless doing so would fundamentally alter the nature of the activity or give the student with a disability an unfair advantage. For example, using a visual cue to signal the start of the 200-meter dash would not fundamentally alter a track meet or give a student with a hearing impairment an unfair advantage over other runners. If a district does determine that a requested modification is unreasonable, it must consider whether the student could participate with a different modification or accommodation. While some students might be unable to participate in traditional athletic activities, even with modifications and supports, districts should offer athletic opportunities that are separate or different from those offered to nondisabled students in these instances. Such opportunities might include disability-specific team sports, such as wheelchair basketball, or teams that allow students with disabilities to play alongside nondisabled peers. Districts should be flexible and creative when developing alternative programs for students with disabilities.

B. Starego v. New Jersey State Interscholastic Athletic Ass'n, 61 IDELR 274 (D. N.J. 2013). 19-year-old student with autism is not entitled to an injunction that would mandate waiver of the state athletic association's 8-semester eligibility rule, because the state association is not discriminating on the basis of disability. The purpose of waivers is to equalize opportunities for students who would otherwise be ineligible to participation in high school sports due to circumstances beyond their control. "Significantly, the ADA does not provide [the student] with additional opportunities because of his disabilities, but rather, the statute puts him on an equal footing with every other student player." To show discrimination, the student would have to show that his experiences on the football team were not "qualitatively similar" to the experiences of his nondisabled peers. Here, the student failed to show this, as the football coach testified that the student's difficulties with contact and reaction time were typical of freshman players and that this student was not treated differently than his teammates. In addition, he assigned the student two positions on the team—wide receiver and kicker—due to his abilities, and the student's progress was so significant that he earned the spot

of starting varsity kicker his senior year. Since his experiences matched those of his nondisabled teammates, the association was not excluding him from a 5th year of participation on the basis of disability.

C. Letter to Negron, 62 IDELR 185 (OCR, December 16, 2013). In response to a letter of concern sent to OCR on May 21, 2013 by General Counsel for the National School Boards Association, it is clarified that OCR's earlier guidance (in the DCL cited above) that schools "should offer" separate and different athletic opportunities for students with disabilities who are unable to participate in traditional school sport programs, did not reflect a legal mandate. Section 504 does not require districts to develop activities such as wheelchair basketball to create additional opportunities for students with disabilities, and the new DCL did not impose any new obligations on districts. Rather, it was designed to clarify how OCR interprets the Section 504 regulations addressing participation in extracurricular activities. OCR noted that the regulation at 34 CFR 104.37 requires districts to provide an equal opportunity to participate. "It does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities just for students with disabilities." OCR nonetheless encourages districts to develop additional opportunities for students with disabilities, which could include separate or different activities. If a district chooses to create different or separate programs, it must ensure that it provides the same level of support that it provides to comparable activities for non-disabled students. "For example, if a school district created a varsity wheelchair lacrosse activity, OCR would look to the supports provided to other varsity teams as a benchmark for what might be appropriate for the adapted varsity activity/" In addition, districts must make a reasonable, timely, and good-faith effort to determine whether students with disabilities can participate in existing activities with modifications, aids, or supports, but these determinations may be made outside of the Section 504 team process.