

What Are the Courts Saying About Special Education: 2013

The 100 Most Important Legal Decisions of the Year

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I. BEHAVIOR AND DISCIPLINE

1. **Council Rock Sch. Dist. v. M.W., 59 IDELR 132 (E.D. Pa. 2012).** A school district's failure to address the behavior problems of a student with a genetic disorder resulted in a denial of a free appropriate public education and an award of two years' private schooling. The eighth grade boy suffered from Volecardiofacial Syndrome (22Q Deletion), a genetic disorder characterized by multiple physical and brain atypicalities that often result in behavior issues. When the student entered puberty he began exhibiting new and severe behavior problems, including stealing, anxiety, and tantrums, and inappropriate sexual behavior towards female students. M.W.'s mother emailed her son's teachers several times noting his increased behavior problems at home and asking if these problems were occurring at school. The teachers responded that they had been seeing some of the same behaviors at school and would be bringing in a behavior specialist to address them. One teacher urged the parent to seek psychiatric intervention for M.W. However, at the annual IEP review the district's proposed plan did not address behavior problems or contain a Behavior Management Plan. Dissatisfied with the proposed IEP, the parents unilaterally placed M.W. at a private school. The court upheld the hearing officer's decision to award tuition reimbursement to the parents for the private placement. The decision was largely based on the testimony of a private neuropsychologist who was retained by the parents to evaluate M.W. On appeal, the court rejected the district's claims that the neuropsychologist violated ethical rules by administering two subtests that were outdated at the time of his evaluation. The neuropsychologist admitted that two of the seventy subtests administered were not valid, but explained that these subtests were used for the basis of clinical diagnosis and not in support of his findings and recommendations.

2. **W.K. v. Harrison Sch. Dist., 59 IDELR 103 (W.D. Ark. 2012).** The parents of a student with autism unilaterally placed their son in a private school and sought tuition reimbursement after he assaulted his paraprofessional. The student was suspended after he hit his aide in the neck causing her to lose consciousness. An IEP meeting previously scheduled for following week was moved up to the next day, but the district admittedly failed to specify to the

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parents that the purpose of the meeting would include a manifestation determination and possible homebound placement. The parents claimed that they were unfairly prejudiced and “blind-sided” by the expedited IEP meeting, and based their suit for tuition reimbursement on an alleged procedural violation of the IDEA. The court held that the district violated the procedural requirements of the law by failing to specify the purposes of the IEP meeting. However, the court refused to find a substantive violation of the IDEA, based on the fact that the parents obviously had been informed of the assault and reasonably should have foreseen that the issue would be reviewed at the expedited meeting.

3. M.W. v. New York City Bd. Of Education, 59 IDELR 36 (E.D.N.Y. 2012). The school district’s failure to conduct a “functional behavior analysis” or FBA, did not constitute a denial of FAPE because there was no actual harm to the student, an elementary school child with autism. Even though there was no formal FBA, the district had included positive behavior supports and interventions, and a Behavior Plan, in the child’s proposed IEP. Also, there was no harm in the IEP’s omission of “parent training and counseling” because the child’s school offered numerous opportunities for the parents to attend workshops for training in strategies to assist their child at home. The court refused to order the district to reimburse the parents for the costs of a private school placement.

4. Alexander v. Lawrence County Bd. Of Developmental Disabilities, 58 IDELR 153 (S.D. Ohio 2012). The parent of a student with autism may proceed with her lawsuit seeking money damages against a developmental disabilities center in Southern Ohio for the use of physical restraint on her son. The boy was placed at the developmental disabilities center by his home school district due to his aggressive behaviors and severe autism. At the center, the staff used physical restraint almost on a daily basis to subdue the boy during behavioral outbursts. The parent alleged that the center continued to use physical restraint even after the boy began regressing emotionally and educationally. The court found that the center failed to conduct an FBA to determine the causes of the student’s aggression, and continued to utilize physical restraint in the face of evidence that it was causing the boy to regress. Additionally, the center improperly shortened the length of the boy’s school day due to his aggression at school rather than to properly address the behavior problems through an FBA or other means. “[T]he alleged factual context can give rise to the inference that [the IEU], as a special education provider, consciously disregarded [the student's] situation by employing physical restraint techniques, despite knowledge of their ineffectiveness and harm,” U.S. District Judge Timothy S. Black wrote. The suit for money damages will continue to proceed against the developmental disabilities center.

5. Fisher v. Friendship Public Charter Sch., 58 IDELR 287 (D. D. C. 2012), *related attorney’s fees decision*, 59 IDELR 128 (D.D.C. 2012). A charter school in the District of Columbia expelled a seventeen-year-old boy with ADHD after he came to school under the influence of marijuana. The school properly conducted a manifestation determination before it expelled the boy, but failed to provide educational services afterwards. Instead, the charter school provided the boy’s mother with a list of potential alternative schools and their telephone numbers, and told her that the charter school would pay for six hours per week of individualized instruction during his expulsion. The mother didn’t place her son at any of the schools on the list, she located and placed him at a private school of her choice and sought tuition reimbursement. The ten-day notice requirement of the IDEA did not apply to this mother because the student was already expelled when she was forced to find a private placement. The district was ordered to reimburse the full cost of the private school.

II. BULLYING AND HARASSMENT

6. **Wright v. Carroll Co. Bd. Of Education, 113 LRP 34730 (D. Maryland Aug. 26, 2013).** The fact that the parent of an autistic fifth-grader informed school officials that her son was afraid of a particular classmate did not make the district liable for injuries suffered by the student after the same classmate attacked the autistic student. The attack left the student with two black eyes and a swollen lip. However, there was no evidence that the district officials had ignored specific complaints or that the assault was part of a continuing pattern of harassment. Furthermore, the district immediately responded to the attack by notifying the parent, inviting her to observe in class for three days, and punishing the perpetrator.

7. **Preston v. Hilton Cent. Sch. Dist., 59 IDELR 99 (W.D.N.Y. 2012).** The parents of a seventeen-year-old boy with Asperger's Syndrome sued the school district for money damages for the bullying of their son at school. The parents alleged that their son had been routinely harassed in a Basic Electronics Class at the high school, with students calling him offensive names and epithets on a daily basis. The complaint also alleged that the class teacher used profanity and inappropriate sexual stories and anecdotes in class aimed at the student. After the parents complained, the school principal assigned a 1:1 aide to accompany the boy to the class. Unfortunately, the aide's presence did nothing to stem the abuse and she stopped accompanying him after a few weeks. When the boy enrolled in a Construction class the following semester the daily harassment worsened, with classmates mocking the student with vulgar and offensive language alleging that he was mentally deficient and/or gay, and often making inappropriate sexual references. Allegedly, the teacher did little to stop this bullying and again the student's aide stopped going to the class after a few weeks. The court refused to dismiss the parents' lawsuit seeking money damages for bullying and harassment, finding that the allegations if proven could sustain a jury verdict in favor of the student. "In light of these allegations, I find that [the parents] have sufficiently stated a claim that [the district and its employees] acted with deliberate indifference to the harassment of [the student] by his peers because of his disability, and that [their] alleged conduct has had the effect of denying [the student] access to educational opportunities," U.S. District Judge David G. Larimer wrote.

BONUS CASE:

M.J. v. Marion Ind. Sch. Dist., 61 IDELR 76 (W.D. Texas May 3, 2013). The court held that the school district could be liable under Section 504 for failure to adequately respond to peer harassment and bullying of a student with bipolar disorder at school if its administrators were guilty of "deliberate indifference." The student testified that his math teacher routinely told him to "sit down and get to work" each time the student reported that another student had hit him on the head with a ring. "[A]ccording to [the student's] deposition testimony, [the classmate's] actions were part of a larger pattern of 'getting picked on' in math lab," U.S. District Judge David Alan Ezra wrote. The student also testified that he attempted to address the math lab bullying at a meeting of his IEP team, but that the district team members "brushed [his] comments off" and moved on to another topic. The court thus held that the student raised questions as to whether the district was deliberately indifferent to his harassment by his classmate.

III. ELIGIBILITY AND EVALUATION

8. Phillip and Angie C. v. Jefferson County Bd. Of Education, 60 IDELR 30 (11th Cir. 2012). Overturning a lower court's ruling, the Eleventh Circuit ruled that the IDEA requires school districts to fund "independent educational evaluations" or IEEs, for students whose parents "disagree" with the results of district eligibility assessments. The appellate court rejected the lower court's ruling that the U.S. Department of Education exceeded its authority in promulgating the IDEA regulations authorizing payment for IEEs.

9. R.C. v. Keller Ind. Sch. Dist., 61 IDELR 221 (N.D. Texas July 31, 2013). The dispute over whether a student should have been classified as "autistic" due to Asperger's Syndrome was irrelevant to a determination of FAPE, ruled a Texas court. The parents cited what they claimed was "overwhelming evidence" that their son met the diagnostic criteria for Asperger's Syndrome. The district had evaluated the student and classified him as ED, due to his previous medical diagnoses of ADHD, Bipolar Disorder, and depression (together with a series of psychiatric hospitalizations). However, the parents completely failed to prove that a different classification would have significantly altered the provision of educational services to the student. The IDEA does not confer a specific right to be classified under a particular disability category, ruled the court, especially since there was no proof of a denial of FAPE.

10. D.K. v. Abington Sch. Dist., 59 IDELR 271 (3rd Cir. 2012). A school district was not at fault for failing to evaluate a grade school student earlier. The court found that the district's delay in evaluating the child for special education and related services was appropriate in light of the child's young age and the progress he was making with informal accommodations and supports in the general education program. During Kindergarten, the boy exhibited numerous behavior problems, including failing to follow directions and practice self-control. The parents agreed with the district's recommendation that their child repeat Kindergarten, but the boy failed to make much progress the second time around as well, despite the implementation of a behavior plan and token reward system. Teachers recorded forty-three tantrums in two months near the end of the school year. First grade brought more concerns, with the boy's teacher reporting that he was copying other students' work, unable to remember instruction, was losing his classwork frequently, stuttered, and frequently lost his train of thought. Later, the parents were informed that he had been making obscene gestures to classmates and was struggling academically. At the time, the parents viewed these behaviors as not being significant and typical of a young boy. However, the parents consented to a district assessment that concluded that the child was not in need of special education and related services. The following year, the boy began seeing a private therapist who diagnosed him with ADHD and recommended special education and related services. The parents sued the district alleging a violation of its "child find" obligations for failing to make an eligibility determination earlier. The court supported the district's efforts, finding that the district had provided numerous accommodations to the child through the general education program. "It would be wrong to conclude that the [district] failed to identify [the child] as a challenged student when it offered him substantial accommodations, special instructions, additional time to complete assignments, and one-on-one and specialist attention en route to eventually finding a disability," U.S. Circuit Judge Thomas M. Hardiman wrote for the three-judge panel, affirming an earlier judgment for the district reported at 54 IDELR 119.

11. A.G. v. Lower Merion Sch. Dist., 59 IDELR 279 (E.D. Pa. 2012). In an unusual twist, a high school graduate sued the school district for money damages on the grounds that it had identified her as a "student with a disability." The court agreed that the district's evaluations had problems, but found that the evaluations were in compliance with the state of the law at the time they were administered. Although the evidence weighed in favor of the girl's argument that she

should have never been identified as a special education student, the court found no evidence that the district had acted with deliberate indifference, bad faith, or gross misjudgment.

12. C.W. v. Capistrano Unified Sch. Dist., 59 IDELR 163 (C.D. Cal. 2012). The school district's failure to respond to a parental request for an "independent educational evaluation" for 41 calendar days was not unreasonable given the parent's statements and behavior. The court noted that the parent did not specify that she was "disagreeing" with the district's evaluation, nor did she indicate any specific part of the report she found objectionable. Rather, the mother simply stated that she thought the evaluation report was "stupid." Given the lack of clarity, the court ruled that the district was justified in taking more than a month to thoroughly review its evaluation and report, and to file a request for a due process hearing to support the same. **See related decision awarding \$96,660 in attorney's fees and costs to the school district at 60 IDELR 67 (C.D. Cal. 2012).**

13. I.T. v. Renee and Floyd T. v. Dept. of Education, State of Hawaii, 59 IDELR 129 (D. Hawaii 2012). The Hawaii school district committed itself to evaluating a student for a central auditory processing disorder (CAPD) when it sent a written notice to the parent more than a month before an IEP meeting that indicated the "possibility of auditory processing." "[T]he information available to the [ED] by the March 3, 2009, IEP team meeting triggered [its] duty to assess the student for [central auditory processing disorder] as an area of suspected disability," U.S. District Judge Leslie E. Kobayashi wrote. Nevertheless, the district's failure to evaluate for CAPD was harmless error. A subsequent CAPD evaluation concluded that the student did not suffer from CAPD. *Editor's note: The District Court amended this decision at 59 IDELR 219 and remanded the case back to the IHO with an order for the parties to brief the issue of compensatory education relief. See also related attorney's fee award at 60 IDELR 155 (D. Hawaii 2013).*

14. Brown v. Sch. Dist. of Philadelphia, 59 IDELR 130 (E.D. Pa. 2012). A school district that delayed a Section 504 eligibility evaluation for two years after it was made aware that a teen had been diagnosed with ADHD may be liable for money damages. The parent sufficiently pleaded facts that, if found true, could support a finding that the district intentionally discriminated against the student. Also, the parent alleged that the district failed to provide her with notice of her procedural safeguards under Section 504, even after it developed a Section 504 plan to address behavioral issues. Furthermore, the district was potentially at fault for conditioning the provision of special education and related services on the parent's release of existing IDEA and Section 504 claims. The court refused to dismiss the parent's claims, finding that the allegations suggested that the district acted with more than negligence, i.e., bad faith.

15. J.B. v. Lake Washington Sch. Dist., 60 IDELR 130 (W.D. Wash. 2013). A Washington school district was entitled to evaluate an out-of-state transfer student to determine her eligibility for special education and related services, despite the refusal of the parent to provide consent. The court ordered the parent to submit her daughter for an eligibility evaluation, based on the IDEA and state law requiring school districts to evaluate transfer student's eligibility. The court held that the law gives the school district the right to evaluate a transfer student's continuing eligibility for special education and related services, and does not require the district to prove the reasonableness of its proposed evaluation. Moreover, in this case the most recent assessment from California had concluded that the student did not qualify for special education eligibility.

16. E.M. v. Pajaro Valley Unified Sch. Dist., 58 IDELR 187 (N.D. Cal. 2012). The court found that the school district's reliance on the WISC-III to determine that a student was not

eligible as “learning disabled” was appropriate, despite the fact that the district’s own administration of the Kaufman Assessment Battery for Children (KABC) concluded otherwise. The court accepted testimony that the WISC-III was a more accurate measure and predictor of the student’s performance.

17. S.F. v. McKinney Indep. Sch. Dist., 59 IDELR 261 (E.D. Texas 2012). A Texas school district was found liable for the costs of two independent educational evaluations obtained by the parents of a student with autism and hearing/speech impairments. The student used sign language as his primary mode of communication, but the district failed to conduct its assessments in the student’s “native language” (i.e., sign language). Also, the district used assessment instruments that were not designed for use with students having hearing impairments. The court ordered the district to reimburse the parents for the costs of two private evaluations, based on the district’s failure to utilize testing instruments that were designed to provide accurate results.

18. T.G. v. Midland Sch. Dist., 58 IDELR 104 (C.D. Ill. 2012). The court found that the IEP goals for a high school girl with learning disabilities were appropriate, despite the parent’s objections. The parent challenged several IEP goals: (1) the “reading comprehension” goal did not require the girl to read; (2) the writing goal failed to provide an objective measure for progress, and (3) the speech goal for verbal expression failed to state how many words her sentences should contain. The court found that the reading comprehension goal was appropriate because the evidence showed that the girl’s reading comprehension skills did improve during the year despite a somewhat-vague goal. Also, the court found that using a subjective measure to assess progress in writing skills was appropriate. The IEP goal required the teacher to use a subjective numerical scale to rate the girl’s progress, and the court found no problem with this type of evaluation. "It is not unreasonable to provide for a teacher to qualitatively measure a student's writing, and, indeed, the Court does not see any other means of measuring progress in writing skills," U.S. District Judge Joe Billy McDade wrote. The court also found that the speech goal was not sufficient vague to render it immeasurable.

IV. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

1. Autism

19. Young v. State of Ohio, 60 IDELR 134 (S. D. Ohio 2013). The State of Ohio’s early infant and toddlers program was guilty of “predetermination” when representatives informed the parents of a two-year-old boy with autism that ABA therapy would not be provided to their son because it was not available in their area. The court ordered the agency to immediately begin the provision of ABA services to the child, either directly or by reimbursing the parents for private ABA services, finding a substantial likelihood of irreparable harm to the child if he did not receive early intervention services pending further hearings.

20. Z.F. v. Ripon Unified Sch. Dist., 60 IDELR 137 (E.D. Cal. 2013). A parent who disagreed with the district’s decision to hire a different aide for an elementary school boy with autism could not prevent the district’s action. The court found no merit to the parent’s argument that the district’s proposed termination of its previous contract with an aide would deny the child adequate time to adjust to a new provider. The evidence showed that the child had changed aides multiple times during his elementary school years without any adverse impact. The district was

not obliged to bend to the parent's wishes even though she did not agree with the decision to hire a different aide for her son.

21. R.P. v. Alamo Heights Ind. Sch. Dist., 60 IDELR 60 (5th Cir. 2012). A school district's delay in providing a voice output communication system for a non-verbal ten-year-old girl with autism did not result in a denial of FAPE. The school team admittedly failed to consider an Assistive Technology Evaluation for seven months after it was made available to the district. However, the evidence showed that the girl continued to make educational progress throughout the school year pending her IEP team's review of the AT report. Although the earlier provision of a voice output device may have maximized the girl's educational gains, the evidence supported the district's position that the girl had not been denied FAPE. Also, the court held that the district's termination of tense IEP meetings did not deny the parents a "meaningful opportunity to participate in developing the student's IEP" because the district promptly scheduled follow-up IEP meetings.

22. Reyes v. New York City Dept. of Education, 60 IDELR 64 (S.D.N.Y. 2012). The parent of a teenager with autism and sensory integration dysfunction could not demand the provision of particular equipment for the student as a condition of returning him to public school. Although the school district admittedly did not have the particular swing or other equipment preferred by the parent, it did offer a variety of other types of sensory equipment such as mats, a beanbag chair, a weighted vest, therapy balls, ramp-shaped mats, and tables. The parent's skepticism about the district's ability to meet her child's sensory needs was not justification for demanding funding for a private placement.

23. Hupp v. Switzerland of Ohio Local Sch. Dist., 60 IDELR 63 (S.D. Ohio 2012). An elementary school student with autism did not require a 1:1 aide throughout the school day to make educational progress. The student's physicians recommended that he have a 1:1 aide during all instructional time, but the school district offered an aide only for lunch, music, and P.E. The court credited the testimony of the district's autism experts, who opined that the provision of a 1:1 aide throughout the school day would prevent the student from developing independence and hinder socialization. "[The district] ... relied on the opinions of the professionals with expertise in autism who actually observed [the child] in the classroom prior to making recommendations regarding the use of an aide," U.S. District Judge Edmund A. Sargus Jr. wrote. The court discounted the opinions of the student's physicians, none of whom had observed the student at school.

24. W.B. v. Houston Ind. Sch. Dist., 60 IDELR 69 (S.D. Texas 2012). A child's regression in some academic skills was due to his mother's serious illness (cancer) and the stresses caused by the family's move to Houston to seek cancer treatment for her, rather than from the school district's failure to provide appropriate educational programming and services. "Especially in light of the stressful environmental changes encountered by this nine-year-old child during this one-year period, the Court finds from a preponderance of the evidence that any lack of progress in the advancement of [the child's] education was not attributable to a failure by [the teacher] to implement the IEP," U.S. District Judge Ewing Werlein Jr. wrote.

25. Yu v. Hillsborough City Elementary Sch. Dist., 59 IDELR 276 (N.D. Cal. 2012). School districts are not obligated to fund unilateral private school placements, even if the private placement chosen by the parents can be proven to offer "far greater" programming for the student. The parents in this case demanded the "best" educational program for her child. The court held that the IDEA does not require districts to "maximize" the educational benefits for

students with disabilities, but to provide them a “free appropriate public education.” “Certainly, as any parent, she wants the best for her child and believes [the private program] best meets her expectations,” U.S. District Judge Marilyn Hall Patel wrote. “However, ... the law does not require the ‘best.’”

26. Doe v. East Lyme Bd. Of Education, 59 IDELR 249 (D. Conn. 2012). School districts are required to continue to develop and propose IEPs for students who are unilaterally placed in private programs, as long as the parent indicates interest in possibly enrolling the student in public school. The school district failed to develop an IEP for a student with autism after his mother unilaterally enrolled him in a private facility. When the parent sued seeking tuition reimbursement, the district argued that the private placement made IEP development unnecessary. The court held that the district should have continued to develop and propose an IEP for the student, especially in view of the fact that the mother remained in contact with the district by sharing evaluations from the private school and submitting requests for reimbursement.

27. Aaron P. v. State of Hawaii, Dept. of Education, 59 IDELR 256 (D. Hawaii 2012). A district’s proposed IEP was found deficient because it failed to address the four-year-old, nonverbal autistic girl’s severe behavior challenges. The child had frequent meltdowns, cried, and became physically aggressive and self-injurious when frustrated. However, the IEP’s PLEPS (present levels of educational performance) did not even mention these behaviors, nor did the IEP contain any goals/objectives for behavior.

28. Anchorage Sch. Dist. v. M.P., 59 IDELR 91 (9th Cir. 2012). A school district stopped reviewing and revising the IEP for an elementary school child with autism after his parents filed several IDEA administrative complaints. The court agreed with the parents that the district denied the student FAPE by refusing to participate in the IEP process. Although the parents were “zealous” and difficult for district officials to work with, this did not relieve the district from carrying out its legal obligations to the student. “Having reviewed the record, we are aware that this zealousness probably contributed to [the parents’] strained relationship with [the district],” U.S. Circuit Judge Richard A. Paez wrote. “Yet it would be antithetical to the IDEA’s purposes to penalize parents -- and consequently children with disabilities -- for exercising the very rights afforded to them under the IDEA.”

29. Woods v. Northport Pub. Sch., 59 IDELR 64 (6th Cir. 2012), *related decision rejecting parent’s attempt to file an appeal as a “counterclaim” to district’s petition for attorney’s fees, 60 IDELR 154 (W.D. Mich. 2013).* The Sixth Circuit affirmed a district court’s ruling that the school district had failed to provide appropriate educational services to a student with autism. The court agreed that the student had made “some” educational progress, but found that the progress was “minimal” compared to the student’s potential. In fact, during the preceding two years, the student had regressed in reading, writing, and math skills. The court approved a “massive” compensatory education award of 768 hours of autism services. In addition, the court criticized the district for developing IEP goals and objectives outside of the IEP meeting and without input from the student’s parents. The district’s refusal to provide copies of test protocols to the parent’s expert prior to an IEP meeting also constituted a substantive violation of their right to “meaningful participation” in the development of their child’s educational program.

30. T.B. v. St. Joseph Sch. Dist., 58 IDELR 242 (8th Cir. 2012). The parents of an autistic child who withdrew him from school and set up a home-based program were not entitled to reimbursement. The court agreed with the parents that the district failed to offer FAPE to the child. However, under the Carter precedent (U.S. Supreme Court), the parents were required to

also prove that the home-based program did provide appropriate educational services to the child. The home-based program focused on self-help and social skills, with little or no emphasis on academics. "Math, for example, was included as part of learning how to wait in line and place an order or as part of the money management lessons," the three-judge panel wrote. "Spelling and vocabulary expansion were done on the way to a social activity." Therefore, the court refused to order the district to reimburse the parents for the costs of the home-based program.

2. Emotional Disturbance

31. **Xykirra C. v. Sch. Dist. of Philadelphia, 61 IDELR 72 (E.D. Pa. May 8, 2013).** The school district agreed to provide homebound education services for 30 days to a 14-year-old girl who began suffering from anxiety after she witnessed an altercation between the police and her mother. The homebound services were continued for an additional month based upon a written request from the girl's physician. However, the district balked when the mother demanded further continuation of the homebound services and requested permission to speak directly with the girl's psychotherapist. The mother refused to consent to the request unless she was present when the interview took place, and then interfered with the interview and the district's attempt to gain information about the girl's educational and related mental health needs. "The factual findings that [the parent] had a mental health professional fill out answers on her permission to evaluate form and her developmental history form and ... limited the amount of communication the District could have with behavioral health agency staff is enough to find ... that she was actively working to prevent the District from conducting a full and appropriate evaluation," U.S. District Judge Ronald L. Buckwalter wrote. Based on this evidence, the court granted judgment on favor of the school district.

32. **District of Columbia v. Pearson, 113 LRP 6452 (D.D.C. 2013).** A hearing officer went too far when she ordered the school district to provide "supervisory services" for a teenager with ADHD and depression. Despite finding that the district had provided FAPE to the student, the hearing officer ordered the district to provide an adult to ensure that the teen went to bed at a reasonable hour and walk him to and from school and from class to class. These measures were to address the teen's truancy. The court found no evidence to suggest that the adult supervision would curb the teen's truancy, and no basis for making such an award after finding that the student's IEP was appropriate. "There is also no evidence in the record or in the hearing officer's findings of fact suggesting that daily supervision, particularly through a service provider, will resolve [the student's] emotional difficulties and depression, the central cause of his inability to perform well in school," U.S. District Judge Rudolph Contreras wrote.

33. **Plainville Bd. Of Education v. R.N., 58 IDELR 257 (D. Conn. 2012).** A school district erred when its response to an emotionally disturbed sixth-grade student's escalating behavior problems was to shorten his school day for several years. The boy only attended school until 11:00 a.m. each day, and as a result, received no instruction in science and social studies. The court ordered the district to fund a residential placement for the boy after the evidence showed that he made considerable educational progress in that placement. Although the school's shortened school day program would have been acceptable as a short-term measure, it was not appropriate to deprive the student of his education as a method of addressing his psychiatric issues. . "A two-hour school day with no additional services was not sufficient to provide [the student] with a reasonable chance of making academic progress, especially in view of the [IEP team's] determination that he should be in school 30.75 hours per week," U.S. District Judge Robert N. Chatigny wrote.

3. Hearing Impairment

34. **J.F. v. Shirvell, 59 IDELR 197 (D. Conn. 2012).** The parents of a six-year-old boy with a hearing impairment alleged that the school district failed to provide FAPE to their son. The parents were convinced of this by a psychological evaluation showing that their son's academic skills were below those of his same-age nondisabled peers. The district prevailed by proving that the student, although below grade level in academic skills, had made a year's progress during the previous school year. The court held that the IDEA does not obligate school districts to close the academic gap with nondisabled peers, but to provide an "appropriate" education that enables the child to make progress. The court found the child's progress to be "more than trivial" and compliant with the law.

35. **D.H. v. Poway Unified Sch. Dist., 59 IDELR 39 (S.D. Cal. 2012).** The federal court held that a school district that provides FAPE to a student with a disability cannot be found to have denied FAPE under Section 504/Title of the ADA. The parents of a teen with a bilateral hearing impairment could not prove that their daughter required computer-assisted "real-time" captioning services to make adequate educational progress. The court found the district's offer of an FM amplification system for the classroom, with a pass-around microphone during class discussions, copies of teacher's and classmate's notes and preferential seating met the FAPE requirements. Moreover, the evidence showed that the girl had made A's and B's in general education classes with these services.

4. Intellectual Disability

36. **Jackson Johnson v. District of Columbia, 59 IDELR 101 (D.D.C. 2012).** The parents of a teen with an intellectual disability alleged that the school district's refusal to provide Extended School Year (ESY) services constituted a denial of FAPE. The court agreed with the district that the girl's academic failure was due to her truancy rather than from a deficiency in her IEP program and services. ESY services are due only when a student would significant regress in skills during summer breaks without the provision of continued services. "Unfortunately, the record does not establish either that the student was making gains, or that gains would be significantly jeopardized (or even partially jeopardized) without the reinforcement that a summer program would provide," U.S. District Judge Amy Berman Jackson wrote. The parents were unable to prove that the provision of ESY services would address the truancy problems.

37. **E.S. v. Katonah-Lewisboro Sch. Dist., 59 IDELR 63 (2nd Cir. 2012).** A New York school district was not responsible for the costs of a unilateral private placement because it had proposed an appropriate IEP for a student with an intellectual disability. However, the district was liable for the following year's tuition at the private facility because it failed to revise the student's IEP to consider his progress in the private school. The district's IEP team failed to consider any the progress reports from the private school, and merely proposed the same IEP it had proposed prior to the unilateral placement.

38. **D.B. v. Esposito, 58 IDELR 181 (1st Cir. 2012).** The school district was able to propose an appropriate IEP for an eight-year-old boy with cognitive disabilities, even though it had no measure of the boy's cognitive skills. The parents alleged that, without a cognitive score, it was impossible for the district to measure progress against his potential and therefore determine

the IEP's appropriateness. The court disagreed, holding that in cases where it is not possible to determine a child's true cognitive potential, evidence of educational progress may prove a child's receipt of FAPE. In this case, the boy at three years of age was "nonverbal and and unfocused." After five years of education in the district, the child was a "total communicator" with verbal skills and demonstrated academic growth. The court found that the child's progress was "meaningful" and rejected the parent's demand for private schooling. "Even without knowing the upper limit of [the child's] potential for learning and self-sufficiency, we have no trouble concluding that these achievements were meaningful for him, and advanced him measurably toward the goal of increased learning and independence," U.S. Circuit Judge Kermit V. Lipez wrote for the three-judge panel.

5. Learning Disability

39. **K.K. v. Alta Loma Sch. Dist., 60 IDELR 159 (C.D. Cal. 2013).** An elementary school girl with a learning disability who made "slow but steady" progress in reading was receiving FAPE, despite her inability to maintain grade-level progress when measured against her nondisabled peers. The parents demanded funding for a private Linda-Mood Bell Reading Program, arguing that their daughter's progress was *de minimus*. However, the evidence showed that the girl had made measurable progress in writing, fluency, and reading comprehension. The court concluded that the district had provided a "meaningful benefit" to the student, even if her progress was less than that desired by her parents.

40. **McCallion v. Mcmaroneck Union Free Sch. Dist., 60 IDELR 162 (S.D.N.Y. 2013).** The court rejected the opinions of a private evaluator who concluded that a ninth-grade student with learning disabilities' proposed IEP was inappropriate. The private evaluator had based his opinions largely on the parent's inaccurate representation of the IEP services rather than on the actual program and services being offered. The evidence showed that the student was making passing grades in all courses and was promoted from grade to grade. Importantly, the district had offered additional services to the student, including assistive technology, a word processor, and a different reading methodology.

41. **K.A.B. v. Downingtown Area Sch. Dist., 61 IDELR 159 (E.D. Pa. July 16, 2013).** A Russian child who was adopted from an orphanage just before he turned 5 years old was not identified as a "student with a disability" until the second grade, despite academic struggles throughout Kindergarten and the first grade. The court rejected the parents' claim that the school district had violated its "child find" obligations, citing instead the reasonableness of the district's belief that the child's difficulties were attributable to his difficulty in learning English. The court cited the IDEA's admonition that language barriers are not to be the basis for identification as a special education student, and must be ruled out before a student can be classified as having a learning disability. "After all, even [the child's] mother was concerned that he would 'be misdiagnosed as disabled because of acclimation and language issues,'" U.S. District Judge William H. Yohn Jr. wrote. There was no evidence that the district's delay in identifying the child was unreasonable.

42. **Klein Indep. Sch. Dist. v. Hovem, 59 IDELR 121 (5th Cir. 2012).** The appeals court overturned a lower court's ruling in favor of the parents of a high school student with a learning disability in written expression and superior intellectual abilities. The student had transferred to a Texas high school after moving with his parents from Norway, and also was an English Language Learner. The boy was placed in the general education program and provided accommodations in

classwork and testing, in addition to being offered assistive technology to address his lack of writing skills. The student refused to utilize some of the assistive technology equipment, but made passing grade in all subjects. The evidence showed that his teachers overlooked errors in writing rather than addressing the boy's refusal to use the assistive technology in the IEP process. The parents alleged that the district had failed to provide FAPE, and sought funding for a private college preparatory program. The appeals court rejected the district court's reliance on an inappropriate FAPE standard. The district court appeared to have based its ruling in favor of the parents on the fact that the district had failed to specifically address all of the boy's deficits in written expression. However, the Fifth Circuit held that the student's academic achievement proved that he had been provided with adequate educational services. "Viewed from the holistic *Rowley* perspective, rather than the District Court's narrow perspective of disability remediation, [the student] obtained a high school level education that would have been sufficient for graduation," Judge Jones wrote.

43. **Chelsea D. v. Avon Grove Sch. Dist., 61 IDELR 161 (E.D. Pa. July 15, 2013).** The fact that a high school girl had a severe discrepancy between her ability and achievement in math did not render her eligible for special education because she was not "in need of special education" services to succeed in general education math. Her failing grades in math were due to her failure to turn in homework rather than being attributable to an inability to perform. Furthermore, her grades in math had risen from D- to B- after the district began providing accommodations for her diagnosed ADHD. This improvement showed that the student was capable of making solid progress in math with any modification to the "content, methodology, or delivery" of the general education curriculum.

6. **Other Health Impairment (OHI)**

44. **S.D. v. Starr, 60 IDELR 70 (D. Maryland 2012).** The parent of a kindergarten boy with a chronic lung condition withdrew her son from public school and refused to return him due to her concerns about his health. The boy had allegedly experienced a "respiratory flare-up" at school, and the mother was afraid he would develop pneumonia if he returned. The parent's medical expert witness testified that the student could suffer serious health risks if he returned to public school. However, the court refused to award tuition reimbursement for a private school placement. The court credited the testimony of teachers and related services providers who had previously worked with the boy, and who testified that they were able to respond to the child's health needs within the school setting. The medical expert had never observed the child at school and was not familiar with the school's ability to provide accommodations for the child. The court also cited evidence that the child used public transportation safely and participated in community events as support for its findings.

7. **Speech-Language Impairment**

45. **K.M. et al. v. Tustin Unified Sch. Dist., 61 IDELR 182 (9th Cir. Aug. 6, 2013).** In a case of first impression, the Ninth Circuit held that compliance with the IDEA does not foreclose claims brought under Title II of the ADA. Title II requires district to provide appropriate auxiliary aids and services for students, including for students with communications disorders, "real-time computer-aided transcription services" where necessary to provide individuals with disabilities an equal opportunity to participate in district programs and activities.

The provision of FAPE may not satisfy the requirements of the ADA for students with communication disorders.

46. *Nalu v. Dept. of Education, State of Hawaii*, 58 IDELR 154 (D. Hawaii 2012). The parent of a first grade boy with a speech/language impairment sought funding for a private placement, alleging that the school district had failed to propose an appropriate IEP for the child. The child allegedly was terrified of returning to a specific public school. The mother testified that the child would “freak out and cry” whenever she drove him past the school building. The court held that the hearing officer in the underlying due process hearing failed to consider evidence that the boy feared returning to the school, and remanded the case back for further deliberations.

8. Visual Impairment

47. *I.M. v. Northampton Pub. Schs.*, 59 IDELR 38 (D. Mass. 2012). A ten-year-old boy with a visual impairment was not denied FAPE when his public school proposed transferring him to a state school for the blind. The parents pointed to the fact that the IEP to be implemented at the school for the blind contained much less direct special education services than the previous IEP. However, the court held that IEP for the school for the blind could not be compared side-by-side with the public school IEP. At the school for the blind, services to address the boy’s visual impairment were integrated into every part of the residential environment, and all staff members were highly trained to educate blind students. Therefore, the specialized services previously provided at the public school during portions of the school day would be seamlessly integrated throughout the student’s day at the school for the blind. The proposed IEP had to be considered in the context of the residential environment, rather than in isolation by looking merely at the hours of specialized services written into the IEP. “Given the substantially different environment for which the prior ... IEP was created, it was ... reasonable and appropriate that the ... IEP for the 2010-2011 school year represented a departure from the service delivery grid of its predecessor,” U.S. Magistrate Judge Kenneth P. Neiman wrote.

V. IEP DEVELOPMENT AND IMPLEMENTATION

48. *P.C. v. Milford Exempted Village Schools*, 60 IDELR 129 (S.D. Ohio 2013). An Ohio school district was guilty of “predetermination” when it came to an IEP meeting already “firmly wedded” to moving a student into a public school reading program. The district’s preplanning notes convinced the court that the staff members had made come to the IEP meeting with their minds made up. The court’s opinion shows that there is a difference between coming to an IEP meeting with preformed “opinions” and coming with an unalterable determination to force a particular placement or program. One of the problems for the district was the testimony of teachers that the district was going “to go the whole distance this year which means the [parents] will be forced into due process.” In addition, the district was unprepared to discuss the type of reading methodology that would be used in its proposed placement. In this case, the type of reading methodology was crucial to making a decision about the appropriateness of the program for the student.

49. *Maksym v. Strongsville City Sch. Dist.*, 113 LRP 34468 (N.D. Ohio Aug. 22, 2013). The parent of a high school with brain damage and cerebral palsy alleged that the post-secondary

transition services provided to her son were insufficient and constituted “idle time” that would not assist him in securing employment after high school. The parent presented an email written by the guidance office secretary to the student’s teachers asking for class work so that he “wouldn’t sit and do nothing” during the eighth period class time when he was assigned to work in the guidance office. Importantly, the district court held that the IDEA’s transition services requirements do not require districts to ensure that every minute of the school day, including the time allotted for transition services, provides the maximum amount of educational benefit. The court held that the time working in the guidance office provided the student with the required federal floor of opportunity and contributed to his employability after high school.

50. Rachel L. v. State of Hawaii, Dept. of Education, 59 IDELR 244 (D. Hawaii 2012), see related decision ordering HDOE to pay for stay-put placement, 60 IDELR 10 (D. Hawaii 2012). The court rebuffed arguments by the parent of a twelve-year-old girl with a disability that she had been excluded from her daughter’s IEP development. The parent complained about the school district sending the IEP notice to the wrong email account, but she continued to use that same email account to communicate with the district afterwards. The evidence also showed that the district not only sent IEP notices via email, and made follow-up phone calls to confirm meetings, and sent letters to the parent via regular and certified mail. The court found that the parent had refused to cooperate with the district’s attempt to schedule an IEP meeting by failing to suggest alternative date. As a result, the court held that the district had taken reasonable steps to ensure the parent’s meaningful participation in the development of her daughter’s IEP.

51. K.A. v. Fulton County Sch. Dist., 59 IDELR 248 (N.D. Ga. 2012). When the IEP team failed to reach consensus regarding a proposed change of placement to a more restrictive environment for a seven-year-old girl with disabilities, the parents alleged that the school district was barred from implementing the proposed IEP. The parents argued that the revised IEP was invalid without their consent. The court held that, while parents have a right to actively participate in the development of their child’s IEP, school districts are not bound to bend to the wishes of the parent in the final IEP determination. School districts comply with the IDEA by providing parents notice of upcoming IEP meetings and their procedural safeguards, and by ensuring that parents have an opportunity for meaningful participation in the IEP development process. Consensus does not equate to unanimity.

52. Upper Freehold Reg’l. Bd. Of Education v. T.W., 59 IDELR 213 (3rd Cir. 2012). The parents of a five-year-old boy with a pervasive developmental disorder actively participated in the IEP development for their son until the team reached an impasse concerning the child’s placement in kindergarten. At that point, the parents withdrew from the process and enrolled their son in a private preschool program, then filed a lawsuit seeking tuition reimbursement. The Third Circuit Court of Appeals reversed a district court’s ruling that the parents’ withdrawal from the IEP development process prevented them from attacking the resultant IEP. The appeals court remanded the case to the district court for further proceedings on whether the proposed IEP was appropriate for the child.

53. S.H. v. Plano Indep. Sch. Dist., 59 IDELR 183 (5th Cir. 2012). A Texas school district refused to consider ESY services for a child with severe autism the summer before the child was going to transfer from a private school to public school. At the IEP meeting the previous spring, the school district included a special education teacher who had never worked with the child, and who was not the planned teacher for the following school year. The court held that the district violated the IEP by failing to invite a teacher who had worked with the child in his private school. Only a teacher who had worked with the student would have relevant information with which to consider the parents’ request for ESY services, ruled the court. However, the court refused to

grant an award of attorney's fees to the parents because the school district had proposed a settlement offer that actually exceeded the final reimbursement award by almost \$1,000 and would have prevented the litigation. The parents offered no evidence as to why they rejected the settlement offer. Therefore, the court held that the parents had unreasonably protracted the litigation as a basis for denying their request for attorney's fees.

54. Doug C. v. State of Hawaii, Dept. of Education, 61 IDELR 91 (9th Cir. June 13, 2013). A school district's refusal to reschedule an IEP meeting after the parent requested it constituted a violation of their right to "meaningful participation in the development" of their child's IEP. The fact that the student's IEP was set to expire did not excuse the district's refusal to reschedule the meeting until the parent recovered from an illness. According to the court, the district should have simply continued the student's current services until the IEP team could be convened with the parent's participation. The parent's participation was more important than complying with the annual IEP review deadline.

55. Corpus Christi Indep. Sch. Dist. v. C.C., 59 IDELR 42 (S.D. Tex. 2012). A district admittedly failed to comply with a student's IEP as written, but this failure did not result in a denial of FAPE. The IEP provided for 189 minutes per day of general education instruction. However, on Tuesdays and Wednesdays the student was pulled from general education to receive speech therapy and fine arts instruction, meaning that he "lost" 44 minutes of general education time two days per week. This represented a loss of 9% of general education time per week (and less than 5% of his total education week), which did not amount to a material implementation failure, ruled the court. Additionally, the evidence showed that the student made both academic and social progress during the school year.

56. J.T. v. Dept. of Education, State of Hawaii, 59 IDELR 4 (D. Hawaii 2012), *related decisions on attorney's fee award*, 60 IDELR 8 (D. Hawaii 2012) and 113 LRP 4745 (D. Hawaii 2013). A school district violated a parent's right to "meaningful participation" in the development of her son's IEP when it refused to reschedule an IEP meeting to accommodate the parent's wishes. The court rejected the district's argument that it was required to convene the meeting without the parent because the student's annual IEP was set to expire. The court was also troubled by the district's refusal to consider a private evaluation obtained by the parent and the parent's concerns about her child's mental health. The court held that school districts must include the parents in an IEP meeting unless they affirmatively refuse to attend.

57. Ruffin v. Houston Ind. Sch. Dist., 58 IDELR 63 (5th Cir. 2012), *petition for certiorari denied*, 133 S. Ct. 782, 112 LRP 57692 (U.S. 2012). The court rejected the allegations of the parents of a student with an emotional disturbance that it had failed to consider the unique needs of the student in developing an IEP. The notes taken at IEP meetings helped the district prove that it had appropriately considered the student's behavioral needs by including a functional behavior assessment (FBA) and developed a behavior intervention plan (BIP), considering the provision of ESY, and considered several placements before making a final recommendation. The evidence also showed that the district had made several attempts to involve the parents in their daughter's IEP development but could get no response from them.

58. Gibson v. Forest Hills Sch. Dist. Bd. Of Education, 61 IDELR 97 (S.D. Ohio June 11, 2013). An Ohio school district violated the IDEA by excluding a high school student from development of her postsecondary transition plan. The district excluded the girl because of concerns that she could not comprehend the discussion due to her lack of cognitive ability, and due to the expected contentiousness of the parties in the meeting. The court was especially troubled by the fact that the school district had also failed to conduct vocational preference

assessments prior to its development of the girl's postsecondary transition plan, making it impossible to base the plan on the student's preferences and interests as required by law. The court rejected 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. "This informal approach to determining [the student's] postsecondary preferences and interests was not sufficient," U.S. District Judge Susan J. Dlott wrote.

VI. LEAST RESTRICTIVE ENVIRONMENT

59. Bd. Of Educ. of Evanston-Skokie Community Consol. Sch. Dist. v. Risen, 61 IDELR 130 (N.D. Ill. June 25, 2013). An Illinois school district went too far in its LRE initiative by automatically assigning all students with disabilities to general education classrooms. The district violated the IDEA when it failed to develop and offer special education placements in favor of offering varying levels of services and supports in general education classrooms. The court cited the IDEA's requirement that districts offer a full "continuum of educational placement," including self-contained special education classrooms and private placements for students who are unable to benefit from instruction in general education classes, with or without accommodations and modifications.

60. New Jersey Dept. of Education Complaint Investigation C2012-4341, 59 IDELR 294 (N.J. Sup. Ct. 2012). A four-year-old boy could not be safely educated within a public school setting due to his medical condition, a body temperature regulation disorder. The medical condition required the boy to consistently be in environments of not less than 77 degrees Fahrenheit, which was impossible to guarantee in a public school setting. Therefore, the court agreed with the parent and ordered the school district to provide ten hours per week of home instruction, which in this case was the "least restrictive environment" for the child.

61. D. D.-S. v. Southold Union Free Sch. Dist., 60 IDELR 94 (2nd Cir. 2012). Testimony that a teenager with learning disabilities made outstanding academic progress in a residential school convinced a court that the student did not require such a placement. After a year in the residential school, the girl was performing a full year above grade level and excelling in advanced classes. This suggested to the court that the girl did not need such a restrictive setting in order to make "adequate" progress. The court held that the restrictiveness of a private school program could be legitimately taken into consideration when evaluating a parent's request for private school funding.

62. Williams v. Milwaukee Public Schs., 58 IDELR 252 (E.D. Wis. 2012). The placement of a ninth-grade girl with cognitive deficits in a multi-categorical special education class where, even with an array of supplementary aids and services she was making "nonexistent progress," was not appropriate given her level of functioning and educational needs. The court acknowledged her parent's desire to have the girl placed in the same class as her sister, whose educational needs were not as severe. However, the evidence supported the school district's position that the girl required a more restrictive setting to make adequate progress towards her IEP goals.

63. H.D. v. Central Bucks Sch. Dist., 59 IDELR 275 (E.D. Pa. 2012). A student with learning disabilities, social skills deficits, and a history of aggression did not have a right to be educated at his neighborhood school when the evidence showed that he required a more

restrictive placement. The student had received numerous special education services aimed at remediating his escalating behavior problems, including several revised Behavior Intervention Plans (BIPs) and the provision of counseling. The court cited the district's "extraordinary efforts" to accommodate the young man at his zoned school, and agreed that his needs required the district to move him to another school with an established emotional support program to manage his academic, social, and behavioral needs.

64. T.M. v. Cornwall Cent. Sch. Dist., 59 IDELR 286 (S.D.N.Y. 2012). School districts are not required to create integrated summer school programs to ensure that students with disabilities are educated with nondisabled peers for ESY programs, ruled a federal district court in New York. In this case, a six-year-old boy with autism was "mainstreamed" during the school year. However, his parents objected when the district proposed placement in a special education class for ESY services during the summer. The court held that the district was not required to create a less restrictive summer program where none previously existed.

65. J.H. v. Fort Bend Ind. Sch. Dist., 59 IDELR 122 (5th Cir. 2012). The fact that a sixth-grade boy with an intellectual disability was not disruptive in his general education classroom did not override his lack of academic benefit. The student had failed to make any academic progress, even with the provision of a modified curriculum and the assistance of a paraprofessional. In order to maintain the student's placement in the general education classroom, it had become necessary to have an assistant work with him separate from the rest of the class, resulting in no appreciable opportunities for social interaction with peers. Moreover, the student was becoming increasingly defiant and disruptive due to being presented with academic work that was far above his capabilities. The court approved the school district's proposal to place the student in a special education classroom, due to the lack of educational benefit to the student in general education classes.

66. L.G. v. Fair Lawn Bd. Of Education, 59 IDELR 65 (3rd Cir. 2012). A videotape of a preschool child with autism in a general education/inclusion class convinced a court that the placement was not appropriate. The child engaged in self-stimulatory behaviors and did not engage with classmates, despite assistance from paraprofessionals. The video conflicted with the testimony of the parent's expert witness, who opined that the child could successfully participate in a general education classroom with assistance. The district's proposal to place the child in a preschool program specifically designed for children with autism, that provided 1:1 ABA therapy and opportunities to be integrated into programs with nondisabled peers as appropriate was approved by the court. "The ALJ's independent review of the video provided by [the] parents 'generally confirmed' the interpretation offered by [the district] that [the child] 'is unable to engage with her peers' rather than the opposite conclusion that was offered by an expert hired by [the] parents," U.S. Circuit Judge Dolores K. Sloviter wrote in an unpublished decision. The court refused to order the school district to reimburse the parents for the costs of their unilateral placement of the child in a private preschool program.

67. D.F. v. Red Lion Area Sch. Dist., 58 IDELR 65 (M.D. Pa. 2012). Placement of a deaf-blind teen in a nonacademic summer camp for students with severe disabilities did not violate the "least restrictive environment" requirement of the IDEA. The court held that school districts are not required to place students in environments with nondisabled peers if the placement does not confer "meaningful educational benefit" and is not appropriate for the student. In this case, the severity of the student's disabilities rendered it inappropriate for him to be placed in a typical summer camp that lacked facilities, staff, and training to respond to his unique needs. The proposed camp for students with disabilities offered the student the opportunity to socialize with same-aged peers, and provided opportunities for the student to have

an assigned nondisabled “peer buddy.” Therefore, the proposed summer camp satisfied the “least restrictive environment” requirements.

VII. MONEY DAMAGES AND LIABILITY

68. D.C. v. Central Dauphin Sch. Dist., 60 IDELR 98 (M.D. Pa. 2013). A school district failed to appropriately identify a student with learning disabilities and provide appropriate educational services for nine years. This determination was not enough to warrant a parent’s demand for money damages for violating the student’s rights. The court agreed that the district had failed to comply with the IDEA, but found no evidence of bad faith or intentional discrimination.

69. Ballard v. Mastery Charter Sch., 60 IDELR 108 (E.D. Pa. 2012). Parents of students with disabilities may not seek money damages for emotional harm they suffer in witnessing a violation of their child’s rights, ruled a federal court in Pennsylvania. In this case, the parents of a teenager with Down Syndrome sought money damages for alleged mental anguish and emotional distress brought about by the district’s failure to comply with the law. The court dismissed the parent’s claims because she was asserting violations of her daughter’s rights rather than her own.

70. Tristan v. Socorro Indep. Sch. Dist., 59 IDELR 290 (W.D. Texas 2012). The parents of a middle school student with a traumatic brain injury will be permitted to sue a teacher who allegedly assaulted their child. The court refused to require the parents to exhaust administrative remedies under the IDEA, finding that the parents did not raise any IDEA-related claims or seek any relief that would be available under the IDEA.

71. Patrick B. v. Paradise Protectory and Agricultural Sch., Inc., 59 IDELR 162 (M.D. Pa. 2012). A parent alleged that district officials acted with “intentional discrimination” by using physical restraint to subdue a second grade boy. The crux of the parent’s complaint was the allegation that the district had failed to conduct a functional behavior assessment (FBA) after her son exhibited at least a dozen incidents of escalating physical aggression at school. The parent argued that the school would not have had to resort to physical restraint if it had properly assessed the child’s behavior and developed interventions to address the behaviors.

72. Estate of A.R. v. Grier, 60 IDELR 157 (S.D. Texas 2013). An elementary school student with a hearing impairment and a seizure disorder died after she suffered a seizure, fell into a pool, and drowned while attending a summer school program. The parents alleged that their daughter was killed due to the district’s failure to provide adequate supervision at the pool, including a lifeguard and emergency-alert systems. The court dismissed the complaint, ruling that absent evidence of intentional injury to the child, the school district had no special relationship or duty to protect the student.

73. T.B. v. San Diego Unified Sch. Dist., 58 IDELR 278 (S.D. Cal. 2012). A school district denied FAPE to a student with autism and a metabolic disorder that required him to be fed with a G-tube when it failed to provide a nurse to administer feedings at school. However, the parents were not able to seek money damages because there was no evidence of intentional discrimination. Although the district was found in noncompliance with state law (required an individual with medical training, or a trained individual supervised by a school nurse), it appears

that the denial resulted from confusion over the interpretation of the statute rather than from any deliberate intent to discriminate against the student. In addition, the proof showed that out of 100 students in the district receiving tube feedings, 95 of these students were served by non-medical personnel.

VIII. PRIVATE PLACEMENTS

74. Jefferson Co. Sch. Dist. R-1 v. Elizabeth E., 60 IDELR 91 (10th Cir. 2012), *appeal dismissed as moot*, 60 IDELR 125 (10th Cir. 2013). The parents of a teenager with an emotional disturbance were entitled to reimbursement for the costs of an out-of-state residential placement. The school district did not contest a due process hearing determination that the district had failed to provide FAPE for the girl, but objected to paying for the private placement on the grounds that the facility was not an appropriate educational placement. The court disagreed, finding that reimbursement was appropriate where: 1) the district denied the student FAPE; 2) the residential facility was a state-accredited elementary or secondary school; 3) the facility provided specially designed instruction to meet the student's unique needs; and 4) any nonacademic services the student received met the IDEA's definition of "related services."

75. Munir v. Pottsville Area Sch. Dist., 61 IDELR 152 (3rd Cir. July 25, 2013). A school district was not responsible for funding a residential placement that was precipitated by a student's suicide attempt, rather than from educational need. The fact that the residential placement offered a full school day program did not mean that it was educationally necessary for the student, ruled the court. Citing the parents' testimony that they "feared for [the student's] personal safety," the 3d Circuit concluded that the placement resulted from the student's mental health needs, and that any educational benefit was incidental. "Indeed, [the student] was an above-average student ... who had no serious problem with attendance and socialized well with other students," U.S. Circuit Judge Thomas M. Hardiman wrote for the three-judge panel.

76. Coventry Pub. Schs. v. Rachel J. and William J., 59 IDELR 277 (D. R. I. 2012). A Rhode Island school district that included only academic goals in the IEP for a student with ADHD and ODD was liable for the costs of placing the teenager in an out-of-state therapeutic residential facility. The court found that the district failed to provide FAPE by its failure to address the student's social and behavior deficits in his IEP. "The record is abundantly clear that [the student's] behavioral disabilities act like a boulder that block[] his way from making academic and educational advancements," U.S. District Judge John J. McConnell Jr. wrote. The court held that the IDEA requires school districts to address all of an eligible student's disability-related needs in an IEP, not merely those that directly relate to the identified educational disability.

77. Y.B. v. Bd. Of Education of Prince George's County, 59 IDELR 222 (D. Maryland 2012). A high school student's truancy and drug abuse were the primary cause of his inability to make educational progress at school, ruled a federal court in Maryland. The student was identified with an emotional disturbance, but the district proved that he made adequate progress when he attended school. The student had missed almost four months of school the previous school year, and the court refused to link his academic deficits to an inappropriate IEP rather than to his truancy and substance abuse problems.

78. Mt. Vernon Sch. Corp. v. A.M., 59 IDELR 187 (S.D. Ind. 2012), magistrate's recommendation adopted, 59 IDELR 100 (S.D. Ind. 2012). An Indiana school district was responsible for the costs of a residential placement and two years of compensatory education for its failure to provide appropriate educational services to a teenager with autism who was physically aggressive, hyperactive, and who exhibited inappropriate sexual behaviors. The district had placed the teen on home instruction for an extended period of time after his behaviors became unmanageable in the school setting. The court found that the student could not progress on his IEP goals via home instruction, and credited the expert testimony of an evaluator that clearly supported the student's need for residential placement.

79. Eley v. District of Columbia, 59 IDELR 189 (D.D.C. 2012). When the school district had still not assigned a student with multiple disabilities (cerebral palsy, motor skills deficits, adjustment disorder, and learning disabilities) to a school by the beginning of the school year, the parents enrolled him in a private school and sought reimbursement. The court held that the district's failure to make a specific school assignment by the beginning of the school year was a substantive violation of the IDEA, and was especially egregious given the nature and extent of the student's disabilities.

80. K.L. v. New York City Dept. of Education, 59 IDELR 190 (S.D.N.Y. 2012). Failure to conduct a functional behavior assessment (FBA) for an eight-year-old girl with autism did not violate the IDEA, ruled the federal court in New York. The girl often shredded her clothing with her teeth as a result of anxiety and her inability to communicate. The district had successfully managed this behavior in the past by assigning a 1:1 aide for the girl, and her current IEP contained goals for eliminating this behavior and a Behavior Intervention Plan (BIP) to address the behavior. In addition, having the district psychologist read the draft IEP goals and ask for comment from members of the IEP team, including the child's parents, was consistent with the requirements of the IDEA.

81. C.C. v. Fairfax County Bd. Of Education, 59 IDELR 95 (E.D. Va. 2012). The parent of a teenage girl with multiple disabilities rejected the proposed IEP's placement of her daughter in a self-contained classroom within a large middle school. In fact, the mother announced to the IEP team that her daughter would attend the middle school, "over my dead body." The court rejected the mother's request for private school tuition reimbursement, finding that she had enrolled her daughter at the private school before the public school district had the opportunity to finalize an IEP and that the district's proposed IEP was reasonably calculated to confer educational benefit to the student. The court said that the issue was not whether the private school was "a better fit" for the student, but whether the school district had proposed an appropriate educational program for the teen.

82. Sebastian M. v. King Phillip Reg'l Sch. Dist., 59 IDELR 61 (1st Cir. 2012). A lawsuit seeking reimbursement for residential placement for a student with an intellectual disability turned on the credibility of expert witness testimony. The court rejected the testimony of the parent's expert witnesses, a neuropsychologist who had never spoken with the student's teachers or reviewed his schoolwork, and an educational consultant who had never evaluated the student or observed him at school. The court was persuaded by the testimony of the student's teachers who worked directly with him on a daily basis. "All of these educators testified that the proposed IEPs offered an appropriate combination of services designed to permit [the student] to achieve meaningful educational progress, including counseling services, occupational therapy, social skills training, and vocational training," U.S. Circuit Judge Kermit V. Lipez wrote for the three-judge panel. The school district's witnesses were therefore due more deference than the expert witness on behalf of the parents.

83. R.S. v. Lakeland Cent. Sch. Dist., 59 IDELR 32 (2nd Cir. 2012). A school district was not required to reimburse the parents of a twelve-year-old boy with a learning disability for the costs of a unilateral private placement, even though the school district had denied FAPE to the student. In order to win reimbursement, parents must show that the private school was providing appropriate educational services to the student. In this case, the evidence showed that the parent's private evaluator had recommended the use of an Orton-Gillingham methodology, but there was no evidence that this type of methodology was used at the private school. Also, the private school did not provide speech-language therapy or opportunities for the student to read out loud in class, which were described by the expert as fundamental to addressing the boy's decoding and fluency problems.

84. D.P. v. Council Rock Sch. Dist., 58 IDELR 243 (3rd Cir. 2012). Although it was sympathetic to the plight of a young autistic boy who suffered some family-related emotional trauma, the court refused to require the school district to fund a private school placement. The boy's father died, and his home burned down, within a short period of time. The mother argued that continuing the private placement was essential to avoid any additional emotional upheaval in this boy's life. The district had no obligation to develop an IEP based on the tragedies that had occurred in the child's family.

85. T.R. v. Cherry Hill Township Bd. Of Education, 58 IDELR 260 (D.N.J. 2012). The court ordered a New Jersey school district to fund the residential placement of a twelve-year-old boy with severe autism. The boy's behaviors, which included physical aggression, almost continual screaming, throwing objects, and self-stimming, had escalated at school despite the provision of an array of supplementary aids and supports. For some activities, the child required 2:1 supervision. The school district's position was that this child did not require a residential placement due to his moderate cognitive impairment and potential to acquire academic and self-help skills. However, the court found that the student's aberrant behaviors, and the fact that the behaviors were increasing despite numerous behavior interventions, negated the opportunity for him to receive FAPE in the public school setting. The court was convinced that only a residential setting could provide the consistency needed for this student to progress. The court also addressed the allegation that the residential placement was being primarily sought for self-help skills, like toilet training. "[A]n 'educational program' does not simply include the material taught in lessons ... but ... necessary life skills such as toileting are considered part of [the child's] 'educational needs,'" U.S. District Judge Robert B. Kugler wrote

IX. PROCEDURAL ISSUES

BONUS CASE:

O.J. v. Board of Education of Union County, TN, 61 IDELR 158 (E.D. Tenn, June 18, 2013). The federal court refused to dismiss the state department of education from an appeal of a due process final judgment in favor of the school district. U.S. District Judge Karen K. Caldwell relied on the 6th Circuit's ruling in *Ullmo v. Gilmour Academy*, 35 IDELR 240 (6th Cir. 2001), that SEAs may be responsible for failing to ensure compliance with the IDEA. "Although *Ullmo* is distinguishable from this case because it concerned a private educational facility that received federal funds, the case is still good law and therefore controlling," Judge Caldwell wrote. Furthermore, the District Court pointed out that the 4th and 8th Circuits have held that SEAs are

not limited to liability for systemic IDEA violations. "On the facts of this case and in this Circuit, the [ED] as the SEA can be held liable if it does not ensure that the local educational agency provides a "free appropriate public education," Judge Caldwell wrote.

86. G.M. v. Saddleback Valley Sch. Dist., 60 IDELR 72 (C.D. Cal. 2012). A federal court awarded more than \$54,000 in attorney's fees to a California school district after a parent filed a frivolous lawsuit. The mother of a student with depression initiated a due process hearing alleging that the school district had failed to evaluate her child. However, the evidence showed that the mother had actually refused to allow the district to conduct its evaluation by refusing to sign consent for the evaluation, intentionally withholding medical information, and refusing to attend IEP meetings to discuss the district's efforts to reassess the student.

87. A.B. v. Franklin Twp. Cmty Sch. Corp., 59 IDELR 278 (S.D. Ind. 2012). The parents of a nonverbal autistic child terminated an IEP meeting shortly after the special education director stated that she wanted the child to be educated in a public school, and filed a lawsuit alleging that the statement was proof that the district had "predetermined" the child's placement prior to the IEP meeting. The court rejected the parents' argument. The director's statement indicating that she had wanted to serve the child in school since preschool, and that the public school was the least restrictive environment, did not prove that the district team had come to the IEP meeting with its mind set on the child's placement. The statement merely expressed the district's desire to provide educational services to the child. To qualify as "predetermination," the statement would have been accompanied by a refusal to consider the parents' input. The evidence showed that the meeting was terminated by the parents' advocate, and not the district, when the advocate announced that the student "would not be returning" to public school and the parents left the meeting.

88. Nickerson-Reti v. Lexington Pub. Schs., 59 IDELR 282 (D. Mass. 2012). An audiotape recording and notes from an IEP meeting proved that the district did not engage in "predetermination." The parent of a high school student with Asperger's Syndrome and ADHD participated in an IEP meeting, but refused to discuss her concerns about the proposed IEP or to provide the team with any current medical information. Because the parent prevented the team from receiving any current information, the district's legal counsel stated in the meeting that the team would rely on the information it had from previous IEPs (a year and a half old) before the student was withdrawn from public school by the parent. The court held that the parent could not attack the district for using "outdated" information when she was responsible for the team's lack of current data.

89. J.H. v. Lake Central Sch. Corp., 113 LRP 33790 (N.D. Ind. Aug. 19, 2013). When an Indiana school district appealed an adverse due process hearing order, the student sued the district officials who decided to pursue the appeal. The student alleged that the appeal caused him to suffer emotional and financial distress, and culminated in a violation of his Constitutional rights. The court rejected the claims, holding that the IDEA gives the school district the right to appeal an adverse due process decision. Moreover, the IDEA does not grant any student a right to recover money for emotional and financial distress, but guarantees students a right to a "free appropriate public education."

90. C.O. v. Portland Public Schs., 58 IDELR 272 (9th Cir. 2012), *petition for certiorari denied*, 113 LRP 786 (U.S. 2013). The Ninth Circuit Court of Appeals ruled that nominal damages of \$1 are not appropriate in IDEA actions. The Court reversed a lower court's award of \$1 to the parent of a student with a disability, holding that the IDEA does not authorize

compensatory or nominal money damages. "Without some indication that Congress intended 'to create not just a private right but also a private remedy ... a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute,'" U.S. Circuit Judge Diarmuid F. O'Scannlain wrote for the three-judge panel.

91. D.A. v. Fairfield-Suisun Unified Sch. Dist., 58 IDELR 105 (E.D. Cal. 2012). The court dismissed the claims filed by the parents of a thirteen-year-old girl with a disability for lack of sufficient factual allegations. The parents claimed that the Dep't. of Education had violated the IDEA and Section 504 by failing to provide an Administrative Law Judge who was properly trained in special education law, but failed to cite legal or factual support for this claim. The court cited legal precedent from another federal district court holding that the ED does not have supervisory responsibility for ALJs.

92. B.P. v. New York City Dep't. of Education, 58 IDELR 74 (E.D.N.Y. 2012). There is no IDEA requirement that the general education teacher on an child's IEP team must be presenting teaching a particular grade level, ruled a federal district court in New York. The court rejected the parents' allegation that the assignment of a certified general education teacher to their child's IEP team was inappropriate because she did not teach either the child's prior or future grade level. The court refused to impose this requirement absent specific IDEA language to that effect, noting that the teacher was familiar with the student and had previously taught him.

X. SECTION 504/TITLE II OF THE ADA

93. Liebau v. Rome Community Schs., 61 IDELR 231 (MI App. July 30, 2013). In a case of first impression, the parent of a general education student alleged that a school-wide ban on peanut and tree nut products violated her daughter's constitutional right to equal protection. The court held that (1) the parent lacked standing to challenge the accommodations in another child's 504 plan; and, (2) the ban on nuts was rationally related to a legitimate government interest. The ban was instituted because of another child's severe and life-threatening allergy to tree nuts, which could be triggered by airborne exposure to nuts and nut products. The court also rejected the mother's claim that the district's practice of confiscating nut products from students did not violate the child's constitutional right to be free from unreasonable search and seizure. The parent's child was routinely searched at school for nut products, and this was reasonable given the parent's repeated assertions that she would not comply with the district's request to avoid bringing nut products into the school.

94. Braden v. Mountain Home Sch. Dist., 60 IDELR 16 (W.D. Ark. 2012). The parents of a fourth-grade boy with ADHD and reactive attachment disorder alleged that the school district discriminated against their son by placing him, over their objection, at the district's alternative school with older students. The parents claimed that the district ignored their warnings that the boy was subject to sexual abuse and would be a target for bullies because of his social deficits. The parents alleged that the boy was, in fact, sexually assaulted at the alternative school with the knowledge of the employees at the school. The court refused to dismiss the case, finding that the parents' claims could prove that district officials acted with bad faith or gross misjudgment. "[The parent] asserts that [the student] was subjected to multiple incidents of sexual abuse and sexual assault in his classroom in the presence of teachers and students and with school officials' knowledge," U.S. District Judge P.K. Holmes III wrote. These allegations established a genuine

issue of whether the district acted with conscious disregard of risk to this student, and whether these actions were “conscience shocking.”

95. Doe v. Darien Bd. Of Education, 59 IDELR 257 (D. Conn. 2012). The parents of a multiply disabled boy alleged that school teachers failed to respond when the boy reported that he had been sexually abused by his paraprofessional and physically abused by another special education teacher. Specifically, the parents alleged that the district’s failure to act stemmed from the teacher’s belief that the student’s reports were not credible due to the severity of his disabilities. “[The parents] allege that normal reporting and investigation procedures were not followed in this case because the [district] discredited [the student’s] statements as a result of his severe disability,” Judge Arterton wrote. The court refused to dismiss the parent’s claims under Section 504/Title II of the ADA, finding sufficient evidence to proceed to trial.

96. Vernon v. Bethel Sch. Dist., 59 IDELR 199 (Wash. Ct. App. 2012). The parents of a deaf-blind teenager alleged that the district discriminated against their son by using offensive and abusive behavior management strategies. The parents alleged that teachers and assistants grabbed the boy hard enough to bruise his arm, isolated him from peers, left him alone for hours while they socialized, and led him around the school by using a fork with food to entice him. The court found no evidence to support the parent’s claims, and cited the fact that the parents had previously approved the use of smells to communicate with the boy. In addition, the school proved that the boy had become increasingly physically aggressive to staff and repeatedly disrobed at school. The court found the staff’s reaction reasonable as a technique to avoid negative reinforcement of his behaviors.

97. R.K. v. Board of Educ. of Scott County, Ky, 59 IDELR 152 (6th Cir. 2012). The Sixth Circuit Court of Appeals remanded a case to the district court for further evidentiary findings to determine whether a school district improperly assigned a student with diabetes to a non-neighborhood school with a full-time nurse. The parent alleged that the school district had a blanket policy of automatically placing all diabetic students in schools that had full-time school nurses. If true, the use of such a blanket policy may constitute discrimination under Section 504/Title II of the ADA. However, the court could not determine from the “dueling affidavits” of the parent and the district’s Section 504 Coordinator whether or not such a blanket policy existed.

98. M.C. v. Arlington Cent. Sch. Dist., 59 IDELR 134 (S.D.N.Y. 2012). The parents of a high school boy with Asperger’s Syndrome alleged that school administrators and the SRO discriminated against their son by involuntarily sending him to the hospital on their belief that he may be suicidal. For some reason that is not clearly explained in the court’s opinion, school officials interviewed the student following reports that he may be suicidal. The student was taken to the hospital over his parent’s objection, assessed, and released the same day. The parents alleged that the school officials acted with bad faith or gross misjudgment, and because he had a disability. The court rejected the parent’s claims, finding that even if the school officials were incorrect about their assessment, the evidence did not prove that they acted with malice. “In fact, if [the staff members] truly believed [the student] to be suicidal, it is hard to see how their conduct does not amount to prudent behavior,” U.S. District Judge Cathy Seibel wrote. The court found no evidence of “conscience shocking” behavior.

99. I.A. v. Seguin Indep. Sch. Dist., 59 IDELR 133 (W.D. Texas 2012). Several accessibility and accommodation snafus occurred to a student with a mobility impairment at school, but these did not prove that the school district acted with bad faith or gross misjudgment. The student was a member of the school band, but was unable to participate on stage during a

concert because the facility was not accessible. In another incident, the student was prohibited from swimming in P.E. due to concerns about his safety. The district obviously failed to employ proper planning to accommodate the boy in class activities, but this lack was more negligent than deliberate. . "Although mistakes may have been made, they do not rise to the level of bad faith or gross misjudgment," U.S District Judge Xavier Rodriguez wrote.

100. A.M. v. New York City Dep't. of Education, 58 IDELR 67 (E.D.N.Y. 2012). The school district was not required to microwave an eleven-year-old boy's lunch in order to comply with Section 504, ruled a New York federal district court. The boy's mother demanded that the school heat his homemade lunches due to her concern that he was not eating his entire meal. The court held that eating his entire meal was not medically necessary, but preferred by his mother. Therefore, the school district was not responsible for ensuring that he ate his lunch, or for heating the lunch to make it more appetizing to him. "Though it is understandable that [the student] -- like others with or without diabetes -- would prefer to eat food intended to be eaten hot while hot, or eat lunches other than 'cold sandwiches' (not to mention any other available cold lunch, salads as but one healthy example), this does not mean the school district was obligated under the applicable disability statutes to accommodate this preference," U.S. District Judge Raymond J. Dearie wrote.