

# The Year's Top Special Education Cases

ConnCASE Legal Conference  
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## Agenda

- 💧 IDEA
  - 💧 Child Find, Evaluations, & Eligibility
  - 💧 IEP Implementation
  - 💧 Least Restrictive Environment (LRE)
  - 💧 Behavior and FBAs/BIPs
  - 💧 Procedural Safeguards & Parental Participation
  - 💧 Private School/Residential Placement
- 💧 Section 504, ADA, & Other Related Laws

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## Child Find, Evaluations, & Eligibility



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## Case Law: Child Find: Facts

**JZ v. Cataline Foothills Sch. Dist., 83 IDELR 62 (D.C. AZ., May 4, 2023).**

- 💧 In 9<sup>th</sup> grade the 504 team conducted an annual review and determined JZ, a student with ADHD, was not achieving to his ability (making C's) and was not using the accommodations listed in his 504 plan.
  - 💧 As a result, the team determined the plan should stay in place to provide JZ a chance at achieving academic success.
- 💧 The summer after 9<sup>th</sup> grade, JZ was hospitalized twice.
- 💧 Parents requested an evaluation due to son's hospitalization for depression and suicidal ideation.
  - 💧 Parents submitted a report from their private psychologist detailing JZ's depression and ODD.
- 💧 The district denied Parents request for special education eval.

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## Case Law: Child Find: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Child Find: Ruling Rationale

**JZ v. Cataline Foothills Sch. Dist., 83 IDELR 62 (D.C. AZ., May 4, 2023).**

- 💧 The Court held that “the district should have evaluated JZ not merely because Parents asked for an evaluation, but because the parents’ request, communication, and documentation put the district on notice that JZ had received diagnoses for new suspected disabilities beyond his ADHD.”
- 💧 The Court explained that while a district does not have to evaluate every student whose parent requests an IEP; a district must evaluate a student for a suspected disability when it has notice that the student is displaying signs or symptoms of a particular disability.
  - 💧 District did not share new diagnoses with child study team or include parents in that decision.

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## Case Law: Evaluations: Facts

**Miller ex rel. J.M. v. Charlotte-Mecklenburg Schs. Bd. of Educ., 83 IDELR 1 (4<sup>th</sup> Cir., April 6, 2023).**

- 💧 District agreed to evaluate a 12 year old boy after it learned of a private diagnosis diagnosis of autism.
  - 💧 The evaluation included autism rating scales and assessments in the areas of adaptive behavior, vision, hearing, education, speech and language, and occupational therapy.
- 💧 The team determined that the student did not meet 3 of the 4 impairments required for Autism under State standards.
- 💧 Parent disagreed and filed due process, alleging that the district violated the IDEA when it failed to develop an IEP for her son, J.M., who was privately diagnosed with Autism.

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## Case Law: Evaluations: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Evaluations: Ruling Rationale

**Miller ex rel. J.M. v. Charlotte-Mecklenburg Schs. Bd. of Educ., 83 IDELR 1 (4<sup>th</sup> Cir., April 6, 2023).**

- 💧 The Court held that the district conducted an appropriate evaluation and complied with its child find duty.
- 💧 The Court explained that the district satisfied its child find obligation when it reviewed the data and determined the student failed to meet the state's eligibility criteria.
  - 💧 The parent's disagreement with the outcome of the student's evaluation does not amount to a failure to conduct an evaluation in the first instance.

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## Case Law: Evaluations: Facts

**Perez v. Weslaco Indep. Sch. Dist., 123 LRP 27639 (5<sup>th</sup> Cir. 08/31/23, unpublished).**

- 💧 Parent took O.P., a 6<sup>th</sup> grade student, to psychologist for an evaluation where he was diagnosed with Autism Spectrum Disorder, ADHD, anxiety, communication disorders, and educational problems.
- 💧 After reviewing evaluation, the district determined O.P. was not eligible for sped services under IDEA but qualified under Section 504.
- 💧 The following school year, the team proceeded with updating O.P.'s 504 accommodations without the parent, as she had not responded to the district's invitation.
- 💧 O.P.'s parent was notified of her right to request an evaluation, but instead a due process request was filed, alleging that the district failed to identify O.P.
- 💧 The district then obtained consent and conducted a comprehensive evaluation based on which they determined that O.P. did not have a qualifying disability and did not need special education and related services.

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## Case Law: Evaluations: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Evaluations: Ruling Rationale

**Perez v. Weslaco Indep. Sch. Dist., 123 LRP 27639 (5th Cir. 08/31/23 unpublished).**

- 💧 The 5th Circuit affirmed the district court's ruling, which held that the student did not have a qualifying disability or need special education services.
- 💧 The district's evaluation determined that O.P. did not meet the requirement for sped eligibility and, therefore, was ineligible.
- 💧 The private evaluation on the other hand lacked educational content and feedback of teachers.
- 💧 In addition, the private evaluation also instructed parent to consult with the district regarding special education eligibility.
- 💧 "The IDEA does not require school districts to defer to the opinions of private evaluations procured by a parent." *Miller v. Charlotte-Mecklenburg Sch. Bd. of Educ.*, 64 F.4th 569, 576 (4th Cir. 2023).

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## IEP Development & Implementation



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## Case Law: IEP Implementation: Facts

**Holland v. Kenton County Pub. Schs., 123 LRP 37397 (6<sup>th</sup> Cir. December 21, 2023, unpublished).**

- 💧 J.H. is a student with ADHD, anxiety, dysgraphia, nonverbal learning disorder, sensory integration disorder, and static encephalopathy.
- 💧 Halfway through 11<sup>th</sup> grade, the parent and school district met and updated his IEP, which provided services for both math and English and services in a separate resource room for individualized behavior support during the school day.
- 💧 J.H.'s IEP included some coursework at the community college, and some coursework at a high school where the IEP team could provide support services.
- 💧 For J.H.'s senior year, parents enrolled him full time at the community college.
- 💧 The district explained, with this schedule it could not continue the "collaborative model" at the community college because it would not allow the school district "to send staff to provide services."
- 💧 Parents claim the IDEA required the school district to provide the same support and other special education services there; thus, the district violated the act by failing to implement J.H.'s existing IEP at the community college.

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## Case Law: IEP Implementation: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: IEP Implementation: Ruling Rationale

### **Holland v. Kenton County Pub. Schs., 123 LRP 37397 (6<sup>th</sup> Cir. December 21, 2023, unpublished).**

- 💧 The 6th Circuit affirmed the district court's ruling that the school district did not violate the IDEA that the school district did not need to provide services at the community college to fulfill the IDEA's guarantee of a "free appropriate public education."
- 💧 Whether an education is "secondary" or "postsecondary" is a matter of state law. 20 U.S.C. § 1401(27).
  - 💧 Here, J.H.'s education at Gateway community college was postsecondary under Kentucky state law, not secondary.
  - 💧 However, accepting that dual-credit, dual-enrollment courses are secondary education, J.H. must also show that the courses J.H. took were necessary for FAPE, and Parents failed to do so.

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## Case Law: IEP: Facts

### **Bradley v. Jefferson County Pub. Schs., 123 LRP 37395 (6th Cir. 12/21/23)**

- 💧 An intellectually gifted student with microcephaly, Tourette's Syndrome, autism, and executive processing disorder enrolled in a magnet school where he took advanced courses.
- 💧 After taking a dual credit class, the parent and IEP team began focusing on transition to postsecondary education, pinpointing a "residential college experience."
- 💧 Parents sought out a residential program offering dual-enrollment, dual-credit courses for 11th and 12<sup>th</sup> grade students located outside the district at a State University.
  - 💧 The students attended courses at the college campus.
- 💧 District informed parent that student's services would not apply at the residential program due to it being a "postsecondary program."
- 💧 Parents proceeded to unilaterally enroll student and pay for his support.
- 💧 Parent sought reimbursement for student's support accommodations along with other relief.

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## Case Law: IEP: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: IEP: Ruling Rationale

**Bradley v. Jefferson County Pub. Schs., 123 LRP 37395 (6th Cir. 12/21/23)**

- 💧 6<sup>th</sup> Circuit affirmed the district court's dismissal of the IDEA claims holding that the IDEA applies to "secondary," not postsecondary education.
- 💧 It defers to state law in classifying which courses count as secondary education and which do not, noting that a "secondary education" is "determined under State law," 20 U.S.C. § 1401(27).
- 💧 Kentucky law treats this residential program as "postsecondary" because it delivers a college level course of study on a college campus, for undergraduates pursuing postsecondary degrees, and did not receive federal funds under IDEA.

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## Case Law: IEP Implementation: Facts

**Plotkin v. Montgomery County Pub. Schs., 123 LRP 33167 (4th Cir. 11/03/23, unpublished).**

- 💧 An IEP for a 3rd grade student with high functioning autism included pull-out math instruction for 3.5 hours per week.
- 💧 Instead, student received math instruction in his general education classroom.
  - 💧 The instruction provided was on grade level, and student received overall grade of "proficient" in math at the end of the year.
  - 💧 Class was broken up into groups after teacher instruction, and he was consistently placed in the group needing individualized instruction.
  - 💧 MAP scores increased from 1<sup>st</sup> grade level at the beginning of the year (5<sup>th</sup> percentile) to between 1<sup>st</sup> and 2<sup>nd</sup> by the end of the year (11<sup>th</sup> percentile).
- 💧 Parent claimed district denied O.P. a FAPE by failing to implement the IEP and provide special education instruction in math in a separate education classroom.
- 💧 Parent requested compensatory math tutoring.

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## Case Law: IEP Implementation: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: IEP Implementation: Ruling Rationale

**Plotkin v. Montgomery County Pub. Schs., 123 LRP 33167 (4th Cir. 11/03/23, unpublished).**

- 💧 The 4<sup>th</sup> circuit affirmed the district court's decision finding in favor of the district.
- 💧 Failure to adhere to the IEP constituted a procedural violation of the IDEA.
- 💧 However, a procedural violation "that did not actually interfere with the provision of a FAPE is not enough. Rather, the procedural violation must have caused substantive harm." T.B., Jr. ex rel. T.B., Sr. v. Prince George's Cnty. Bd. of Educ., 897 F.3d 566, 573 (4th Cir. 2018).

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## Case Law: IEP Development: Facts

**Zachary J. by Jonathan and Jennifer J. v. Colonial Sch. Dist., 124 LRP 3915 (3<sup>rd</sup> Cir., 1/31/2024).**

- 💧 Parents of an elementary student with specific learning disabilities and ADHD requested a neuropsychological evaluation.
- 💧 The district offered to conduct the evaluation, but parents refused, wanting another doctor to do it.
- 💧 A day before the annual IEP meeting, parents gave a copy of their IEE to the IEP team.
- 💧 The district discussed the IEE results at the IEP meeting offering to apply some of the suggestions but not all.
- 💧 Parents rejected the IEP and after another IEP meeting in which the parents disagreed, the student was unilaterally withdrawn and enrolled in a private school
- 💧 Parents allege the district failed to consider the IEE, failed to amend the IEP, and failed to offer FAPE in response to the IEE.

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## Case Law: IEP Development: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: IEP: Ruling Rationale

**Zachary J. v. Colonial Sch. Dist., 124 LRP 3915 (3d. Cir. 01/31/24, unpublished).**

- 💧 The 3rd Circuit upheld the district court's ruling that the student's 3<sup>rd</sup> and 4<sup>th</sup> grade IEPs were appropriate.
- 💧 The school district considered the IEE but was not required to maximize the student's potential so long as the student made appropriate progress and the IEPs align with the evaluative data.
- 💧 The judge wrote, "Given [the student's] grade advancement, [the parents] would need to otherwise demonstrate how the IEPs did not meet the reasonable calculation standard."

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## Least Restrictive Environment (LRE)



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## Case Law: LRE: Facts

**Knox County, Tenn. v. M.Q. by N.Q. and J.Q., 82 IDELR 214 (6<sup>th</sup> Cir., March 14, 2023).**

- 💧 M.Q. is a 7-year-old student with autism who is largely nonverbal.
  - 💧 He does not have any significant behavioral issues.
- 💧 In large settings, M.Q. required supports that consisted of “visuals, hand-over-hand prompting, verbal cues, and calming strategies,...supports to help him remain seated during large group activities, such as a cube chair and fidgets or something to hold in his hands.”
- 💧 During the IEP meeting for his kindergarten year, the district proposed placing him in a CDC classroom for 4.75 hours per day because of the smaller class sizes and activity-based curriculum, and 2.25 hours per day in the general education setting with paraprofessional support.
- 💧 Parents filed due process asserting an LRE violation because he was not placed fully in the general education setting.

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## Case Law: LRE: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: LRE: Ruling Rationale

**Knox County, Tenn. v. M.Q. by N.Q. and J.Q., 82 IDELR 214 (6<sup>th</sup> Cir., March 14, 2023).**

- 💧 The Court affirmed the AJL's ruling in favor of the Parents, stating that the "proposed segregated placement was not M.Q.'s LRE and, thus, violates the IDEA."
- 💧 The Court held that based on the evidence M.Q. was not "a disruptive force" and was compliant and cooperative and "would benefit from regular education."
- 💧 The Court also noted that M.Q. benefits from routine, thus, "[r]emaining in the general education environment, rather than transitioning back and forth between the general education classroom and the CDC-A program, would allow M.Q. to follow a regular routine while also modeling his non-disabled peers."

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## Case Law: LRE: Facts

**Killoran ex rel. A.K. v. Westhampton Beach Sch. Dist., 123 LRP 20859 (2d Cir., July 13, 2023).**

- 💧 Parent disagreed with the district's proposed placement, arguing that the IEP should have aligned with grade-level standards.
- 💧 Parent believed that the IEP team should have modified the curriculum in the general education class for A.K.
- 💧 The district proposed an IEP with a 12:1:1 out-of-district placement for A.K. because:
  - 💧 A.K. took alternate assessments,
  - 💧 read at a first-grade level, and
  - 💧 had an IQ of 49
- 💧 Parent acknowledged that implementing the IEP at the schools existing program was not possible.

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## Case Law: LRE: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: LRE: Ruling Rationale

**Killoran ex rel. A.K. v. Westhampton Beach Sch. Dist., 123 LRP 20859 (2d Cir., July 13, 2023).**

- 💧 The Court held in favor of the district determining that the proposed IEP was reasonably calculated to provide FAPE in the LRE.
  - 💧 The Court reasoned that “it is uncontested that [the student] is an alternately assessed student who has significant learning disabilities, which makes adherence with general education standards impossible.”
- 💧 The Court found that the district’s proposed IEP offered the specialized academic instruction the student required, the panel observed, but it allowed the student to participate in nonacademic classes and activities with nondisabled peers.
- 💧 The district educated the student alongside his nondisabled peers to the maximum extent appropriate.

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## Case Law: LRE: Facts

**Navarro Carrillo v. New York City Dep't of Educ., 83 IDELR 57 (2d Cir. May 1, 2023).**

- 💧 The district recommended that M.G., a student who was nonverbal and non-ambulatory due to diagnoses of cerebral palsy, global developmental delays, and a visual cortical impairment, be placed in a 12:1:4 classroom.
  - 💧 The 12:1:4 classroom was for students with severe multiple disabilities whose programs consisted primarily of habilitation and treatment.
- 💧 M.G.'s parents objected to the proposed placement for M.G. and provided notice of their intent to unilaterally place M.G. in a private institution and seek reimbursement.

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## Case Law: LRE: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: LRE: Ruling Rationale

### **Navarro Carrillo v. New York City Dep't of Educ., 83 IDELR 57 (2d Cir. May 1, 2023).**

- 💧 Court held that a district's placement of in a 12:1:4 classroom provided the child FAPE under the IDEA.
  - 💧 The 12:1+4 special class ratio for students with severe multiple disabilities was precisely the type of programming that would address the child's unique needs.
- 💧 The placement provided programming focusing on habilitation and treatment with the presence of additional adults, and offered needed attention and support to students with many management needs, including special education and medical needs
- 💧 The court concluded that the IEP team carefully considered the child's needs and developed a plan that would provide her FAPE, despite the parents' preference for a different placement.

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## Behavior & FBAs/BIPs



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## Case Law: Behavior: Facts

**G.D. v. Utica Cmty. Schs., 83 IDELR 12 (E.D. MI., March 30, 2023).**

- 💧 Kindergartener threw supplies, books, pieces of a broken thermostat, and the base of a phone at district staff members.
- 💧 The district conducted an MDR and determined the behavior was a manifestation of his disability.
- 💧 However, the district removed G.D. to an IAES due to his alleged use of a “weapon.”
  - 💧 The district stated that the services and supports at the IAES aligned with those in G.D.’s IEP.
- 💧 At the IAES, G.D. received 4 hours of instruction per week (3 hours at the district’s central office and 1 hour at home).
- 💧 Parent challenged the district’s decision to remove the child due to the weapon exception.

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## Case Law: Behavior: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Behavior: Ruling Rationale

### **G.D. v. Utica Cmty. Schs., 83 IDELR 12 (E.D. MI., March 30, 2023).**

- 💧 The Court upheld the ALJ's decision in favor of the parents and awarded the student 18 hours of comp. ed.
  - 💧 Holding that the four hours of instruction per week failed to provide him FAPE.
- 💧 The Court held that G.D. should not have been placed in an IAES because he was not in possession of "dangerous weapons" because the objects at issue not readily capable of causing serious bodily injury and that would warrant such removal under the IDEA.
  - 💧 While the manner of an object's use may be relevant to the inquiry of whether an object has the capacity to endanger life or inflict serious physical harm, "[i]t is difficult to imagine any instance where a Kindergarten student could cause death to anyone by throwing any of the objects at anyone at any range or velocity. Plastic phone receivers and thermostats, no matter how broken and jagged, are not readily capable of causing a substantial risk of death."

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## Case Law: Behavior: Facts

### **C.D. v. Atascadero Unified Sch. Dist., 83 IDELR 80 (C.D. Cal., June 5, 2023)**

- 💧 Ninth grade student with multiple disabilities was standing near construction work outside during lunch and refused to move a safe distance away.
  - 💧 He ignored requests to use BIP strategies (going to the break room or taking breaths).
  - 💧 Responded by saying "You are not the boss of me." and "[Y]ou can't tell me what to do, I don't care if I get hurt," but, put his glasses on and said he was "safer."
- 💧 Once C.D. started walking towards the office, school staff "gave him space," when C.D. "suddenly" and "quickly" walked backward and forcefully pushed his back, with his backpack on, against the front of a staff member, pushing her into a wall two times.
- 💧 The principal suspended C.D. for a total of 5 days, then extended the suspension "pending final action of the Board" with a recommendation for expulsion. Ultimately, the expulsion was rescinded, and he missed 22 days of school.
- 💧 Within 10 days of this recommendation, the District held an MDR meeting where it was determined that C.D.'s conduct was not a manifestation.

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## Case Law: Behavior: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Behavior: Ruling Rationale

**C.D. v. Atascadero Unified Sch. Dist., 83 IDELR 80 (C.D. Cal., June 5, 2023).**

- 💧 The District Court upheld an ALJ's decision that the student's misconduct was not a manifestation of his ADHD, intellectual disability, or speech and language impairment.
- 💧 Based on the student's exchanges with school staff, the judge determined that the student's behavior did not stem from communication-related frustrations. Nor could the parent show that the student's misconduct was an impulsive act relating to his ADHD and intellectual disability.
- 💧 Because the student's conduct was not a manifestation of his disabilities, the judge held that the student's 22-day suspension did not violate the IDEA.

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## Case Law: Behavior: Facts

### **Upper Darby Sch. Dist. v. K.W., 123 LRP 22649, (E.D. Penn., July 27, 2023).**

- 💧 During the 2020-21 school year, K.W.'s mother had concerns about his academic progress and his peer interactions while he was placed by the IEP in a nonpublic school (YALE).
- 💧 She expressed concerns about his "frequency of speech services, the effectiveness of his 1:1, and his academic progress," but the IEP was not revised.
- 💧 K.W. exhibited behavioral problems during the school year (often frustrated, yelling, running around the classroom, aggressive behaviors) requiring de-escalation, but YALE employed school-wide PBSP instead of an individualized BIP based on an FBA.
- 💧 On November 4, 2021, the District received notice that YALE was terminating its services for K.W.
- 💧 The family filed a due process complaint challenging K.W.'s removal from YALE for taking place outside of the IEP process.

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## Case Law: Behavior: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Behavior: Ruling Rationale

**Upper Darby Sch. Dist. v. K.W., 123 LRP 22649, (E.D. Penn., July 27, 2023).**

- 💧 The Court held that a district violated the IDEA when it failed to appropriately address the student's behavioral needs.
  - 💧 There was no evidence that the district conducted an FBA, developed an individualized BIP, or incorporated behavioral interventions in the IEPs.
  - 💧 Although the district highlighted that the student received supports through a "school-wide" behavioral support plan, the court opined that this was insufficient to offer FAPE.
- 💧 The court held that the student was entitled to approximately 1,800 hours of compensatory education minus the compensatory tutoring hours he already received.

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## Case Law: FBA: Facts

**Lee v. Board of Educ. for Prince George's County, 124 LRP 3463 (D. Md. 01/31/24).**

- 💧 A parent of a 6<sup>th</sup> grader with SLD requested an IEE.
- 💧 IEE concluded the student met the diagnostic criteria for generalized anxiety disorder.
  - 💧 Student had a history of frequent absences from school since pre-K.
  - 💧 C.L. accrued 36 absences in 5<sup>th</sup> grade, 29 in 6<sup>th</sup> and 45 in 7<sup>th</sup> grade.
- 💧 The student showed no signs of anxiety or behavior while at school, and the district had implemented the student's IEPs and student had made progress (as shown by progress reports).
- 💧 The district addressed the anxiety concerns through the IEP by instructing teachers use a "gentle" tone and offer breaks if needed.
- 💧 Parent alleges the absences were related to anxiety and the district failed to provide supports related to the anxiety or conduct an FBA.

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## Case Law: FBA: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: FBA: Ruling Rationale

**Lee v. Board of Educ. for Prince George's County, 124 LRP 3463 (D. Md. 01/31/24).**

- 💧 The Court upheld an ALJ's finding that the district did not have to address behaviors unrelated to the student's disability due to the lack of connection between the student attendance and anxiety.
  - 💧 A district does not have to address all behaviors that might affect an IDEA-eligible student's attendance, but must determine whether the behaviors affecting the student's attendance were related to his disability.
- 💧 It upheld that the student's IEPs, which included supports for anxiety, were reasonably calculated to provide FAPE.

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## Procedural/Parental Participation



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## Case Law: Parent Participation: Facts

**Luo v. Owen J. Roberts Sch. Dist., 123 LRP 18392 (3d Cir., June 15, 2023).**

- 💧 A parent filed due process alleging that the district violated the IDEA in preparing an April 2021 reevaluation report.
  - 💧 The parent claimed he was unaware of the district's decision to forego new assessments as part of the reevaluation process.
  - 💧 He alleged failure to inform him of his right to request assessments as part of the reevaluation process.
- 💧 He also alleged that the district violated his "liberty right to direct his child's education" by allowing the school psychologist to twice observe the child in the classroom without parental consent.

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## Case Law: Parent Participation: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Parent Participation: Ruling Rationale

**Luo v. Owen J. Roberts Sch. Dist., 123 LRP 18392 (3d Cir., Jun. 15, 2023).**

- 💧 The 3d Circuit held that the procedural violation did not impede the parent's participation in the IEP process or substantially interfere with his constitutional right to direct his son's education.
  - 💧 The IDEA only required the district to seek parental consent for the reevaluation as a whole. "There is no [IDEA] regulation requiring parental consent for an observation alone, whether conducted as part of an evaluation or reevaluation,"
- 💧 As for the district's alleged failure to communicate that it had decided to forego additional assessments, the 3d Circuit found no evidence that purported violation interfered with the parent's constitutional rights.

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## Case Law: Procedural: Facts

**Q.T. ex rel. H.P.-B. v. Pottsgrove Sch. Dist., 123 LRP 18151 (3d Cir., Jun. 14, 2023).**

- 💧 A student was found ineligible for IDEA services.
- 💧 An IDEA due process complaint was filed by the student's adult cousin, with whom the student lived with.
- 💧 The district attempted to dismiss the complaint on the basis that a 2008 court order granted physical and legal custody of the student to her grandmother.
- 💧 The student had lived in the cousin's home for two years.
- 💧 The cousin supported the student financially and assumed all obligations related to the student's education.

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## Case Law: Procedural: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

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## Case Law: Procedural: Ruling Rationale

**Q.T. ex rel. H.P.-B. v. Pottsgrove Sch. Dist., 123 LRP 18151 (3d Cir., Jun. 14, 2023).**

- 💧 The 3d Circuit held that the cousin, who housed the student and supported her financially, met the IDEA's definition of "parent" and rejected the notion that the custody order prevented the cousin from bringing an IDEA claim on the student's behalf.
- 💧 The Court pointed out that the IDEA defines "parent" to include any individual who acts in place of a natural or adoptive parent with whom the student lives or an individual who is legally responsible for the student's welfare.
- 💧 Based on the plain text of the statute, the panel observed, Congress intended for multiple individuals to qualify as a student's "parent" for IDEA purposes.

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## Case Law: Procedural: Facts

**J.S. v. New York State Dep't of Corr. and Cmty. Supervision, 123 LRP 23496 (2d Cir. 08/03/23).**

- 💧 A 20 year old student who received special education services was incarcerated at the age of 17.
- 💧 During the 3 years of incarceration DOCCS provided general education but did not provide the requisite special education.
- 💧 After prevailing on his FAPE claim at due process, he sought attorney's fees in the amount of \$71,542 but was denied his fee claim because IDEA's fee-shifting provision reads that "parent[s] of a child with a disability" may recover attorneys' fees, not the child.

56

## Case Law: Procedural: Holding

- 💧 You be the judge:
  - 💧 A) For the Student
  - 💧 B) For the District
  - 💧 C) Split Decision

57

## Case Law: Procedural: Ruling Rationale

**J.S. v. New York State Dep't of Corr. and Cmty. Supervision, 123 LRP 23496 (2d Cir. 08/03/23).**

- 💧 The 2nd Circuit reversed the judgement of the district court and remanded the case to determine appropriate attorney's fees.
- 💧 In New York as in many jurisdictions, a person over the age of 18 is no longer a "child"--that is, a "minor" and (absent a finding of incapacity) has legal authority to act on his or her own behalf.
- 💧 Thus, there is an incongruence between between a minor under state law (a "minor" is a person under 18 years of age) and the definition of "child with a disability" under the IDEA (a "child" is a person between ages 3 and 21).
- 💧 However, IDEA's definition of parent includes an "individual who is legally responsible for the child's welfare," which may mean the adult "child with a disability."
- 💧 Thus, the Court concluded that "an individual who is legally responsible for the child's welfare" must be read to include "any such individual, including an individual who is a "child with a disability" and who is responsible under state law for their own welfare.

58

## Private School/Residential Placement



59

## Case Law: Placement: Facts

**Steckelberg v. Chamberlain School District, 123 LRP 24587 (8th Cir. 08/15/23).**

- 💧 A student with severe neuropsychiatric disorders, PANS/PANDAS, OCD, Tourette syndrome, and SLD had struggled to attend school since elementary school.
- 💧 By high school, a behavior intervention plan (BIP) (based on an FBA by a BCBA) and behavior contract were developed; however, the BIP was not attached to the IEP and the student's teachers were never provided a copy of the BIP.
  - 💧 District paid for one-hour weekly counseling as a related service.
- 💧 After the student engaged in a sexually related incident with a 6 year old girl, the principle informed parents that the high school was not the appropriate placement.
- 💧 The student was placed in a home setting; however, the educational supports were inadequate (limited contact with teachers and inability to access learning materials).
- 💧 Parents suggested an out-of-state academy, but the district did not approve it (however they did not find any suitable alternatives).
- 💧 Parents unilaterally enrolled him at the academy where he did well and eventually graduated.

60

## Case Law: Placement: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

61

## Case Law: Placement: Ruling Rationale

### **Steckelberg v. Chamberlain School District, 123 LRP 24587 (8th Cir. 08/15/23).**

- 💧 The 8<sup>th</sup> Circuit affirmed the decision, awarding the parents tuition and costs associated with their unilateral private placement.
- 💧 The district failed to consider the behavior support plan that detailed how to support the student in developing appropriate behaviors.
- 💧 When placed at home, the amended IEP lacked adequate information on how the student was going to make progress.
- 💧 The failure to develop an adequate plan ultimately led to denial of a FAPE.
- 💧 The Court found the facility selected by the parents was appropriate because it was specially designed for the teen, equipped to address behaviors and provide counseling.

62

## Case Law: Placement: Facts

### **M.B. v. Fairfax County Sch. Bd., 123 LRP 25649 (E.D. Va. 08/22/23).**

- 💧 IEP team proposed placement at a small, public special education school for an 8<sup>th</sup> grade student with ADHD and dyslexia.
  - 💧 The district's placements had slowly become more restrictive.
  - 💧 Small classes with only special education students that offered behavioral supports and mental health supports for students.
- 💧 Parents disagreed with the placement and unilaterally enrolled M.B. in a private school, but district disagreed with this placement because the students at the private school had more severe behaviors.
  - 💧 Students at this private school required a more restrictive environment because their behaviors are characterized as aggressive, volatile, aggressive, and destructive.
- 💧 Parents filed due process requesting reimbursement for tuition.

63

## Case Law: Placement: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

64



## Case Law: Placement: Ruling Rationale

**M.B. v. Fairfax County Sch. Bd., 123 LRP 25649 (E.D. Va. 08/22/23).**

- 💧 The Court upheld an IHO's decision that the district offered the student FAPE in the LRE.
- 💧 The Judge agreed with IHO's conclusions that the district developed "reasonable calculated" IEPs and actively and proactively addressed behavioral problems.
- 💧 Here, the Hearing Officer appropriately determined that
  - 💧 Burke School provided extensive services, staffing, behavior supports, and academic supports to meet M.B.'s needs.
  - 💧 Phillips School was not an appropriate placement because the students placed at Phillips School had more serious behavior concerns than M.B.

65

## Section 504, ADA, & Other Related Laws



66

## Case Law: 504 Eval: Facts

**P.W. v. Leander Indep. Sch. Dist. 83 IDELR 71 (W.D. TX., April 18, 2023).**

- 💧 The parents claimed disability discrimination because the district wrongly continued using RTI strategies for three years despite the student's ongoing struggles and her teacher's growing concerns about dyslexia.
- 💧 Parents requested a dyslexia evaluation in first grade because P.W. was still reversing letters and numbers but allege that the principal talked them into withdrawing their evaluation request until the district determined whether the RTI strategies were working.
- 💧 The district allegedly declined to evaluate the student for dyslexia until second grade, at which point it offered a Section 504 plan, asserting to the parents several times that dyslexia did not fall under special education (only Section 504).
- 💧 The district developed an IEP after an evaluation in third grade determined the student also had ADHD.
- 💧 The school district filed a motion to dismiss parent's claims in federal court.

67

## Case Law: 504 Eval: Holding

- 💧 You be the judge:
  - 💧 A) Case Dismissed
  - 💧 B) Case Not Dismissed

68

## Case Law: 504 Eval: Ruling Rationale

**P.W. v. Leander Indep. Sch. Dist. 83 IDELR 71 (W.D. TX., April 18, 2023).**

- 💧 The Court explained that the parents must demonstrate that the district acted in bad faith or with gross misjudgment to claim disability discrimination and held that the parents met that pleading standard.
- 💧 The Court held that the district's continued use of RTI strategies despite the student's lack of progress, if true, could qualify as gross misjudgment.
- 💧 The parents also plausibly alleged gross misjudgment based on district staff repeatedly telling them that 'dyslexia is separate from special education' and 'dyslexia is not under special education,' just Section 504.

69

## Case Law: 504 Plan: Facts

**Baker ex rel. I.B. v. Bentonville Sch. Dist. 123 LRP 22497 (8<sup>th</sup> Cir., July 27, 2023).**

- 💧 A kindergartner with a mild visual impairment suffered various injuries on the school playground (collided with another student on the slide, got a splinter, and tripped on a concrete slab).
- 💧 The parents' claim that the school failed to accommodate the child's visual impairment and failed to provide a one-to-one aid per parent request.
- 💧 The district developed a Section 504 plan that included supervision during classroom transitions and activities, a "buddy" for errands and bathroom breaks, and specialized transportation.
  - 💧 Following the incidents, the district twice amended the child's Section 504 plan to include additional safety-related accommodations.
- 💧 Parents agreed to all three Section 504 plans, and the student did not experience any injuries after the third plan was implemented.

70

## Case Law: 504 Plan: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

71

## Case Law: 504 Plan: Ruling Rationale

**Baker ex rel. I.B. v. Bentonville Sch. Dist. 123 LRP 22497 (8<sup>th</sup> Cir., July 27, 2023).**

- 💧 The Court explained that Parent had to show that the district's alleged failure to accommodate the child's disability amounted to bad faith or gross misjudgment.
- 💧 The Court held that the parents failed to meet that standard.
  - 💧 The Court noted that the child's visual impairment was mild enough to place her in the normal range of visual acuity.
- 💧 The student's injuries were common among elementary school students, and the district took steps to protect the child's safety.

72

## Case Law: Exhaustion: Facts

**Perez v. Sturgis Public Schools, 123 LRP 10045 (U.S.S.C. March. 21, 2023).**

- 💧 Perez (a 20 year old student who is deaf) and his parents allege the district assigned aides who were either unqualified (including one who attempted to teach herself sign language) or absent from the classroom for hours on end.
- 💧 They also allege that the district misrepresented Perez's educational progress by inflating his grades and advancing him from grade to grade regardless of his progress.
  - 💧 Plaintiffs allege they believed Perez was on track to graduate from high school with his class. But then, months before graduation, the district revealed that it would not award him a diploma.
- 💧 Perez filed a lawsuit in federal district court under the ADA seeking backward-looking relief in the form of compensatory damages.
- 💧 The district argued that Perez was barred from bringing an ADA claim without first exhausting all of IDEA's administrative dispute resolution procedures.
- 💧 The federal district court agreed and dismissed the case.

73

## Case Law: Exhaustion: Holding

- 💧 You be the judge:
  - 💧 A) Case Reversed by the U.S. Supreme Court
  - 💧 B) Case Affirmed by the U.S. Supreme Court

74

## Case Law: Exhaustion: Ruling Rationale

**Perez v. Sturgis Public Schools, 123 LRP 10045, (U.S. S.Ct., March. 21, 2023).**

- 💧 The USSC reversed the decision and remanded for further proceedings.
- 💧 The Court reasoned that “a plaintiff who files an ADA action seeking both damages and the sort of equitable relief IDEA provides may find his request for equitable relief barred or deferred if he has yet to exhaust § 1415(f) and (g).”
- 💧 The Court noted that “in *Fry*, the Court held that § 1415(l)'s exhaustion requirement does not apply unless the plaintiff ‘seeks relief for the denial of’ a free and appropriate public education ‘because that is the only relief’ IDEA's administrative processes can supply.”
- 💧 The Court held that “the statute's administrative exhaustion requirement applies only to suits that seek relief also available under IDEA. And that condition simply is not met in situations...where a plaintiff brings a suit under another federal law for compensatory damages--a form of relief everyone agrees IDEA does not provide.”

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## Case Law: Exhaustion after *Perez*: Facts

**Shefke ex rel. Doe v. Macomb Intermediate Sch. Dist., 83 IDELR 79 (6<sup>th</sup> Cir., May 23, 2023).**

- 💧 A Michigan district had previously used the IDEA's exhaustion requirement to shield itself from a parent's 4th and 14th Amendment claims.
- 💧 Now, the parent appeals the district court's judgment dismissing her complaint for failure to exhaust her administrative remedies under the IDEA.
- 💧 Parent sought money damages for the district's alleged failure to address the student's self-injurious behaviors, which allegedly caused the student brain injury.

76

## Case Law: Exhaustion after *Perez*: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District

77

## Case Law: Exhaustion after *Perez*: Ruling Rationale

*Shefke ex rel. Doe v. Macomb Intermediate Sch. Dist.*, 83 IDELR 79 (6<sup>th</sup> Cir., May 23, 2023).

- 💧 The 6th Circuit held in an unpublished decision that the parent did not have to seek relief in an IDEA administrative proceeding before suing the district for money damages based on *Perez*.
- 💧 The 6th Circuit pointed out that the parent in this case was not seeking changes to the student's educational program, which the district had already done.
- 💧 Rather, the parent sought money damages for the district's alleged failure to address the student's self-injurious behaviors -- a decision that purportedly caused the student to suffer a brain injury.
- 💧 Thus, the type of relief sought made exhaustion unnecessary even if the parent was seeking relief for a denial of FAPE.
  - 💧 "The complaint seeks monetary damages only and thus, pursuant to *Perez*, is not subject to the IDEA's exhaustion requirement."

78

## Case Law: Exhaustion after Perez

**F.B. by Bono v. Francis Howell Sch. Dist., 123 LRP 33906 (8<sup>th</sup> Cir. 11/16/2023).**

- 💧 Student sued district alleging staff unlawfully isolated and restrained him, seeking compensatory damages, equitable relief, and attorney's fees.
- 💧 8<sup>th</sup> Circuit vacated and remanded dismissal of student's compensatory damages claims.

**Powell v. School Bd. of Volusia County, Fla., 123 LRP 33407 (11<sup>th</sup> Cir. 11/13/23).**

- 💧 A class action lawsuit alleged a Florida District used exclusions and disciplinary removals to address their children's disability-related behaviors seeking damages in excess of \$50,000,000 including attorney's fee[s] and all allowable costs,
- 💧 The 11<sup>th</sup> Circuit vacated the District Court's 2022 dismissal of the parents' Section 504 and ADA complaint and remanded the case for further proceedings.

**Chollet and Ma ex rel. C.M. v. Brabrand, 123 LRP 25321 (4<sup>th</sup> Cir. 8/18/2023).**

- 💧 Parents filed suit directly in district court alleging an "unconstitutional 'taking' of their children's purported Fifth Amendment property interest in a public education due to the inconsistent remote instruction during COVID19 closure.
- 💧 4<sup>th</sup> Circuit vacated the district court's order dismissing the complaint for failure to exhaust state administrative remedies and remanded for further proceedings.

79

## Case Law: Teacher Conduct: Facts

**Breda v. Delaware Valley Sch. Dist., 123 LRP 18390 (3d Cir., June 13, 2023).**

- 💧 The district exited the student from special education in 8<sup>th</sup> grade.
- 💧 In 11<sup>th</sup> grade, he enrolled in a nursing occupational program where a teacher, Ms. Coyle supervised the program.
- 💧 Coyle allegedly harassed Joseph and threatened to throw him out of the program.
  - 💧 The parents filed a complaint with the School District, and Ms. Coyle was reprimanded.
- 💧 Ms. Coyle later "bumped" and "banged" into Joseph in what the Parents contend was an "apparent attempt to threaten, harass and annoy Joseph."
  - 💧 Joseph sought counseling after the event.
- 💧 The parents sued, alleging the district's failure to protect their son from his teacher's harassment, physical, and mental abuse constituted disability-based discrimination and a denial of FAPE.
- 💧 District filed a motion to dismiss.

80



## Case Law: Teacher Conduct: Holding

- 💧 You be the judge:
  - 💧 A) Case Dismissed
  - 💧 B) Case Not Dismissed

81

## Case Law: Teacher Conduct: Ruling Rationale

**Breda v. Delaware Valley Sch. Dist., 123 LRP 18390 (3d Cir., June 13, 2023).**

- 💧 The Court held that the parents failed to state a claim.
  - 💧 "Isolated comments or conduct by a teacher, while perhaps hurtful, do not violate the Rehabilitation Act in the absence of allegations that the student was excluded from participation in educational activities or denied educational benefits."
  - 💧 Bumping into the student once, and "making some scattered statements" which didn't result in the student being excluded due to any alleged disability are insufficient to state a claim.
- 💧 The court added that the parents didn't allege intentional conduct, or anything beyond mere negligence, to entitle them to compensatory damages.
  - 💧 To the contrary, they admitted district responded to their complaints and accommodated the student.

82

## Case Law: Teacher Conduct: Facts

**Lamar Consol. Indep. Sch. Dist. v. J.T. by April S., 83 IDELR 22 (S.D. TX., March. 24, 2023).**

- 💧 Teacher grabbed, kicked, and pushed a student with learning disabilities and Rubenstein-Taybi syndrome.
- 💧 The district administrators began investigating when they first received the reports.
- 💧 After learning of a second incident of misconduct, the district terminated the teacher's employment less than a week later.
- 💧 The parent sought relief for the district's allegedly inadequate response to the teacher's misconduct.

83

## Case Law: Teacher Conduct: Holding

- 💧 You be the judge:
  - 💧 A) For the Parent
  - 💧 B) For the District
  - 💧 C) Split Decision

84

## Case Law: Teacher Conduct: Ruling Rationale

**Lamar Consol. Indep. Sch. Dist. v. J.T. by April S., 83 IDELR 22 (S.D. TX., March. 24, 2023).**

- 💧 The Court held that the district's response was not unreasonable.
- 💧 The parent failed to show that an appropriate district employee had actual notice of the teacher's misconduct and responded in a manner that was "something more" than deliberate indifference.
- 💧 The Court rejected the notion that the AP's overall response was inadequate and pointed out that the AP began investigating the kicking incident as soon as she learned of it. The AP also watched surveillance footage of the shoving incident, which allegedly occurred outside of her sightline, within 24 hours of her classroom visit.

85

## Case Law: Discrimination: Facts

**Torres v. Stewart County Sch. Sys., 123 LRP 30393 (D.C. TN., Sept. 28, 2023).**

- 💧 X.T.'s parent refused special education services, but the school was on notice of his disabilities.
- 💧 After a report that X.T. (a 12<sup>th</sup> grade student) inappropriately touched a female student, X.T. received written notice that he was being placed at an "ALC."
- 💧 The decision was appealed, during which time, X.T. opted to stay home rather than attend the ALC (a total of 4 days).
- 💧 After the decision was upheld, X.T.'s mother contacted the Title IX coordinator who reopened the case and allowed X.T. to return to school until the investigation was completed.
- 💧 The Title IX Coordinator concluded discrepancies between interviews and ultimately decided the incident would not be considered sexual harassment but "conduct unbecoming of student."
- 💧 The district vacated all disciplinary measures and X.T. returned to school
- 💧 Parent claims the School discriminated against him by failing to conduct a manifestation determination.

86

## Case Law: Discrimination: Holding

- 💧 You be the judge:
- 💧 A) For the Parent
- 💧 B) For the District
- 💧 C) Split Decision

87

## Case Law: Discrimination: Ruling Rationale

**Torres v. Stewart County Sch. Sys., 123 LRP 30393 (D.C. TN., Sept. 28, 2023).**

- 💧 The Court held in favor of the school system because a manifestation determination is only required if the school implements a "significant change in placement" -- i.e., removal from class or school for longer than 10 consecutive school days.
- 💧 Here, no manifestation determination was required because the student only missed four days of school, never "served time" in the ALC, and did not receive any other discipline as a result of the incident.

88

## Case Law: Discrimination: Facts

### **J.W. v. Paley, 123 LRP 30393 (5<sup>th</sup> Cir. 8/28/2023).**

- 💧 J.W., 17 year old student diagnosed with "an intellectual disability" and "an emotional disturbance," became angry with another student during class, punched the student, and left the classroom.
- 💧 He attempted to enter his "chill-out" room but when it was in use by another student, he escalated even more and headed to the school exit.
- 💧 The SRO along with other staff members encountered the student at the exit and attempted to de-escalate him to no avail.
- 💧 After a struggle ensued, the officer fired his taser knocking J.W. to the ground where another officer handcuffed him.
- 💧 Following the incident, J.W. was taken to the nurse, medics were called to evaluate J.W., and his mother was notified.

89

## Case Law: Discrimination: Holding

### **You be the judge:**

- 💧 A) For the Parent
- 💧 B) For the District
- 💧 C) Split Decision

90

## Case Law: Discrimination: Ruling Rationale

**J.W. v. Paley, 123 LRP 30393 (5<sup>th</sup> Cir. 8/28/2023).**

- 💧 The Court of Appeals granted judgment for the District.
- 💧 The Court held that the officer did not intentionally discriminate against student by reason of his disability when he used stun gun on student, precluding disparate treatment claims for damages under ADA and Rehabilitation Act.
- 💧 There was no evidence officer was aware or should have been aware of further accommodation that would have calmed down student.

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## Case Law: Discrimination: Facts

**B.S. and K.S. v. Carter County Bd. of Educ., 123 LRP 36527 (E.D. Tenn. 12/12/23)**

- 💧 A Teenager with Batten disease had significant mobility issues.
- 💧 IEP goals included increasing independence in daily activities and using assistive devices such as a gait belt, cane, or rollator for participation.
- 💧 IEP noted “significant assistance boarding/disembarking vehicles,” but did not include use of a wheelchair or special transportation.
- 💧 10 days prior to a scheduled field trip, B.S. suffered a seizure that impacted her mobility even further.
- 💧 A couple of days prior to the trip, the district notified parent there was no wheelchair accessible bus available but instead assisted student on and off of the bus using a transfer chair as they had on previous field trips as noted in the IEP, which prevented her from napping resulting in fatigue for days.
- 💧 Parent alleges that the school district discriminated against B.S. based on her disability by failing to provide a wheelchair-accessible bus.

92

## Case Law: Discrimination: Holding

- 💧 You be the judge:
- 💧 A) For the Parent
- 💧 B) For the District
- 💧 C) Split Decision

93

## Case Law: Discrimination: Ruling Rationale

**B.S. and K.S. v. Carter County Bd. of Educ., 123 LRP 36527 (E.D. Tenn. 12/12/23)**

- 💧 The court dismissed any claims of discrimination.
- 💧 Complaint does not suggest that the district intentionally deprived B.S. of a wheelchair accessible bus because of her disability, but instead due to a general lack of resources.
- 💧 There are no allegations the district had “discriminatory motive.”
- 💧 Complaint does not allege that the accommodations district provided on the field trip failed to comply with her current IEP.

94