THE YEAR IN REVIEW: 2016

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A. BEHAVIOR AND DISCIPLINE

1. **Bristol Twp. Sch. Dist. v. Z.B., 67 IDELR 9 (E.D. Pa. 2016).** A school district erred by failing to discuss whether a 17-year-old boy's alleged assault of a teacher at school was "caused by" his ADHD. The manifestation determination review team had a generalized discussion of the typical kinds of behaviors that would be associated with ADHD, but failed to discuss whether or not the student had actually committed an assault and whether such action was directly related to the student's disability. The court affirmed a hearing officer's order to provide the student one day of compensatory education services for each day of his removal from school.

2. **Troy Sch. Dist. v. K.M., 65 IDELR 91 (E.D. Mich. 2015).** The parents of a 13-year-old boy with Asperger syndrome, ADHD, and ODD alleged that the school district was in violation of the LRE requirements of the IDEA when it proposed placing the boy in a separate center-based program for children with an emotional disturbance. The student had exhibited violent and disruptive behavior in class, resulting in emergency evacuations and police interventions. The court gave credit to the testimony of several psychologists and an autism expert who testified that the student's disability was the primary cause of his behaviors in class. The court held that the district's proposed placement denied the student FAPE in the LRE, and agreed with the experts that he could function appropriately in a mainstream class with proper support services. The court ordered the district to provide a 1:1 psychologist with autism training for the student.

3. **T.L. by K.L. v. Lower Merion Sch. Dist., 116 LRP 27140 (E.D. Pa. 2016).** The school district did not violate the IDEA by failing to conduct an FBA and develop a Positive Behavior Support Plan. The IDEA requires districts to address student discipline/behavior problems, but does not specifically mandate the use of FBAs/BIPs except in a disciplinary situation. In this case, the district had addressed the student's behavior through classroom supports, modifications, counseling, and frequent adult check-ins.

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

B. BULLYING AND HARASSMENT

4. **M.S. v. Marple Newton Sch. Dist., 64 IDELR 267 (E.D. Pa. 2015),** ***vacated and remanded in part by*** **66 IDELR 273 (3d Cir. 2015).** The parents of a 17-year-old girl must exhaust their IDEA administrative remedies before seeking money damages for the district's alleged failure to prevent peer harassment. An earlier District Court ruling held that evidence that a male classmate was "leering" and "staring" at the girl and making her uncomfortable by pointing cameras at her was not sufficient to sustain the parents' claims of disability-based harassment under Section 504/Title II. The parents alleged that the district's failure to stop the classmate's behavior or to remove the boy from school caused the girl to suffer significant anxiety and PTSD. The parents alleged that the classmate had sexually assaulted their older daughter four years earlier, and that the families became enemies as a result.

5. **Kuhner ex rel. Estate of J.K. v. Highland Community Unit Sch. Dist. No. 5, 116 LRP 26033 (S.D. Ill. 2016)**. A teenaged girl with a learning disability was allegedly bullied at school so severely that it led to her suicide attempt and removal to home instruction. The girl's parents alleged that their daughter was called embarrassing names, such as "fat," "ugly," "whore," and "skank," and that students made pig noises when she passed by them. In addition, the student was physically harassed by being shoved into doors and lockers, and tripped while walking up stairs. The court empathized with the student's plight, but dismissed the parents' lawsuit seeking money damages for failure to exhaust IDEA administrative remedies. The court based its dismissal of the claims on the fact that counseling was an available related service under the IDEA, and could have remediated the effects of the students' bullying if it had been made available.

C. ELIGIBILITY/CHILD FIND/EVALUATIONS

6. **Seth B. v. Orleans Parish Sch. Bd., 67 IDELR 2 (5th Cir. 2016).** The 5th Circuit ruled that a "substantial compliance" standard applies to the criteria for an IEE. This means that parents can obtain reimbursement for IEEs that "substantially comply" with state requirements (even if the IEEs do not fully comply with these requirements).

7. **Baquerizo v. Garden Grove Unified Sch. Dist., 116 LRP 17020 (9th Cir. 2016).** Delays in evaluating a teenager with autism were primarily due to the guardian's actions that "thwarted [the district's] efforts to assess [the student]" for more than a year. The court held that the district had complied with the IDEA by proposing a 30 day transition placement and discussing the student's condition and determining that non further assessments were warranted.

8. **E.E. v. Tuscaloosa City Bd. of Educ., 116 LRP 28804 (N.D. Ala. 2016).** An Alabama school district violated the IDEA by failing to provide the parents with a copy of a classroom observation report that supported the parents' claims. However, there was no harm caused by the district's procedural error. The district's eligibility determination was based on attendance records, academic and behavioral history, standardized test scores, a behavioral evaluation, and another classroom observation completed by a guidance counselor. The parents failed to produce any evidence that the excluded observation would have swayed the eligibility determination of the child's IEP/Eligibility team.

9. **Phyllene W. v. Huntsville City Bd. of Educ., 66 IDELR 179 (11th Cir. 2015).** Parents are not responsible for requesting evaluations of suspected disabilities, ruled the 11th Circuit. Rather, it is the school district's responsibility to ensure that all students who are suspected of having a disability are properly identified and evaluated. In this case, the parent had reported that the student had a history of ear surgeries and was being fitted with a hearing aid. This information was sufficient to trigger an obligation for the district to evaluate the student for a possible hearing impairment.

10. **Q.W. v. Board of Educ. of Fayette County, Ky., 66 IDELR 212 (6th Cir. 2015).** The court upheld the school district's determination that an elementary school student with autism no longer was "in need of" special education and related services. Importantly, the court held that eligibility for special education was limited to a student's school-based performance and behavior, and was not meant to consider a student's performance and behavior at home.

11. **Student R.A. v. West Contra Costa Unified Sch. Dist., 66 IDELR 36 (N.D. Cal. 2015).** The court upheld the school district's refusal to conduct an evaluation of an 11-year-old boy with autism in a room with a one-way mirror to allow the parent to observe the evaluation. The court agreed that the district was not required to accept the mother's "improper conditions" and that the delays in conducting the evaluation were the fault of the mother, not the school district. Nothing in the IDEA gives parents the right to observe evaluations, and the district had a reasonable basis for refusing the parent's demands (to prevent an alteration of the testing environment and to prevent skewing of the test results). The district documented its numerous efforts to schedule the evaluations, and the parent repeatedly refused to cooperate unless her demands were met.

12. **K.K. v. State of Hawaii, Dep't of Educ., 66 IDELR 12 (D. Hawaii 2015).** After an eighth-grade student with disabilities was physically assaulted on school grounds, the district proposed a reevaluation to determine the extent to which the student required different educational services. The parent refused to consent to the release of medical records, impeding the district's efforts to complete the testing. The court rejected the parent's demand for funding for private tutoring services on the grounds that the district had offered to provide homebound instruction during the testing period, and the parent's refusal to cooperate had hampered completion of the assessments.

13. **M.S. v. Lake Elsinore Unified Sch. Dist., 66 IDELR 17 (C.D. Cal. 2015).** Having a 1:1 aide collect observational data while observing a student with autism does not constitute an "evaluation" pursuant to the IDEA, ruled a federal court in California. The court held that the district had failed to "use a variety of assessment tools and strategies to evaluate the student's behavior," as required by law. Moreover, the aide (who was seeking board certification in behavioral analysis) was not qualified to conduct an FBA. The girl's maladaptive behaviors had increased, and included ripping out her own hair, eyelashes, fingernails, and toenails. In addition, she engaged in echolalia and perseveration, and had begun destroying property and attacking strangers. These behaviors resulted in her removal from the classroom, and the district's failure to conduct a proper FBA constituted a denial of FAPE.

14. **M.W. v. New York City Dep't of Educ., 66 IDELR 71 (S.D.N.Y. 2015).** A 21-year-old student with a speech-language impairment and an auditory processing disorder was misidentified as a student with a severe cognitive impairment. As a result, she was placed in a non-diploma track program for nine years and not eligible to earn a regular high school diploma. The court rejected the district's argument that the girl was not eligible for compensatory education services past the age of 21, and ordered the district to provide 1:1 home instruction during the appeals process.

15. **Independent Sch. Dist. No. 413, Marshall v. H.M.J., 66 IDELR 41 (D. Minn. 2015).** A school district violated the IDEA's "child find" requirements when it ignored evidence that an 8-year-old girl's chronic truancy could be caused by her medical conditions. The child had missed an average of 35 days per school year, and teachers had noted problems with anxiety and attention. Moreover, the parent had provided a neuropsychological report citing a connection between the child's anxiety and her inability to attend school.

16. **A.A. v. New York City Dep't of Educ., 66 IDELR 73 (S.D.N.Y. 2015).** A school district was not obligated to conduct a three-year reevaluation of a 17-year-old boy who was returning to public school from a private school because it had access to all of the information it needed to develop a new IEP. The district utilized a classroom observation report, a progress report, and input form the student's private school teachers. In addition, the parent conceded that the information about the student's present levels of performance was accurate based on this information.

17. **Oakland Unified Sch. Dist. v. N.S., 66 IDELR 221 (N.D. Cal. 2015).** The school district was responsible for evaluating a student for a suspected emotional disturbance, despite evidence that the student's drug use may be causing or contributing to his emotional difficulties. Behavior rating scales showed that the teen had "clinically significant" scores in anxiety, attention, and social skills. This information was sufficient to trigger an obligation to evaluate the student's mental health needs. The court agreed that the district was not responsible for drug rehab treatment, but should have evaluated the student instead of assuming that his behavior was caused by illegal drug use.

18. **Cobb County Sch. Dist. v. D.B., 66 IDELR 134 (N.D. Ga. 2015).** A behavior specialist's failure to collect data on the consequences of a 5-year-old child's aggressive behavior at school invalidated her recommendations. The behavior specialist collected data on the antecedents and behavior, but failed to collect data on the consequences of the child's behavior (she did the A-B, but not the C). Therefore, the court ruled that the FBA developed was insufficient and failed to properly identify the child's needs and could not be used to develop an appropriate IEP or behavior plan.

19. **E.F. v. Newport Mesa Unified Sch. Dist., 65 IDELR 265 (C.D. Cal. 2015).** A district's decision to delay an assistive technology evaluation for a nonverbal preschool boy was justifiable considering his difficulty in learning a picture-exchange communication system. However, the district should have conducted an AT assessment during the boy's kindergarten school year after his parents reported that he was proficient in using a tablet at home.

20. **Paul T. v. South Huntington Union Free Sch. Dist., 65 IDELR 273 (N.Y. Sup. Ct. 2015).** A fifth-grade student who developed an emotional impairment as a result of being bullied at school was not eligible as "ED" under the IDEA. The court held that being diagnosed with an emotional impairment or disability does not, in itself, entitle a student to receive special education and related services. Because the girl consistently earned passing grades, there was no evidence of the required "adverse impact" on her educational performance. Because the bullying had no academic impact, it did not adversely affect her educational performance and render her eligible under the IDEA. Therefore, the court denied the parents' request for funding for a private school placement.

21. **E.M. v. Pajaro Valley Unified Sch. Dist., 63 IDELR 211 (9th Cir. 2014), *cert. denied*, 115 LRP 1299, 135 S. Ct. 996 (U.S. 01/12/15) (No. 14-604).** A student who fails to meet eligibility criteria in one IDEA category may qualify under another category, such as OHI. The 9th Circuit held that it could not tell if Congress intended to limit OHI to disabilities that did not fall within any other category. Nevertheless, the court affirmed the school district's decision that a student diagnosed with central auditory processing disorder did not qualify for IDEA eligibility, because there was no evidence that he had limited strength, vitality, or alertness, or a chronic/acute health problem. The court further found that the district's use of an IQ score in its LD eligibility determination was not unreasonable.

22. **Baquerizo v. Garden Grove U.S.D., 116 LRP 27020 (9th Cir. 2016).** A California school district was not to blame for delays in completing an evaluation of a teenager with autism. The delays were caused by the guardian's refusal to cooperate with the evaluation process for more than a year.

23. **Greenwich Bd. of Educ. v. G.M. and J.M., 116 LRP 27276 (D. Conn. 2016).** A federal court held that the school district's use of RTI to address a grade school student's reading deficits rather than referring the child for an IDEA eligibility evaluation constituted a child find violation. The court held that the district had sufficient evaluative and performance data to indicate that the child was eligible for special education and related services.

D. FREE APPROPRIATE PUBLIC EDUCATION

24. **J.L. by Y.L. v. Manteca Unified Sch. Dist., 116 LRP 26039 (E.D. Cal. 2016).** The court held that consultation services were insufficient to provide FAPE to an elementary child with autism who had significant deficits in communication skills. The court ordered the district to provide direct speech-language therapy to the child. However, the court agreed with the district that the student did not require direct OT services (and that consultative OT services integrated into the classroom were appropriate to meet the child's needs).

25. **Stapleton v. Penns Valley Area Sch. Dist., 67 IDELR 268 (M.D. Pa. 2016).** A Pennsylvania federal judge refused to dismiss the claims made by the parent of an eight-year-old student with disabilities. The parent is seeking compensatory education in the form of funding for postsecondary education expenses.

26. **O.S. v. Fairfax County Sch. Bd., 66 IDELR 151 (4th Cir. 2015).** The court rejected the parents' argument that the IDEA Reauthorization of 2004 raised the FAPE standard from "some benefit" to "meaningful benefit." The parents argued that the IDEA 2004 preamble contained phrases such as "high expectations" and "maximum extent possible," and this was an indication of Congressional intent to raise the traditional *Rowley* "FAPE" standard. In rejecting the parents' argument, the court stated, "Congress could easily have modified 'progress' with 'meaningful' if that were its intent." As long as a school district provides educational benefits that are "nontrivial" it meets the *Rowley* FAPE standard.

27. **D.A.B. v. New York City Dep't of Educ., 66 IDELR 211 (2d Cir. 2015).** The court held that a 6-year-old boy with autism did not require 1:1 instruction for the entire school day in order to make educational progress. The evidence proved that the boy was being successfully integrated

into activities with peers and with the provision of supplementary aids and services (an aide to accompany him in a "typical" preschool class for a portion of the day).

28. **Sneitzer v. Iowa Dep't of Educ., 66 IDELR 1 (8th Cir. 2015).** A teenage girl with Asperger syndrome and giftedness made good grades following an off-campus rape. Although not determinative of FAPE, the girl's good grades were an indication of the appropriateness of her IEP. The court noted that the parent's withdrawal of their daughter from public school appeared to be motivated by the fact that she was not chosen for show choir rather than motivated by a legitimate concern about her IEP. The court denied the parent's demand for funding for an out-of-state private placement.

29. **Pointe Educ. Servs. v. A.T., 66 IDELR 4 (9th Cir. 2015).** The court affirmed the due process hearing decision in favor of the parents of an 8-year-old boy with autism. The district proposed placement at a private school. At this school, the boy would be required to make multiple transitions during the school day, and would be grouped with significantly older students. The court afforded deference to the decision of the hearing officer, who credited the testimony of the child's advocate, who had met with the child, over that of the school's psychologists, who had never met the child or observed him in an educational setting.

30. **Ruby J. v. Jefferson County Bd. of Educ., 66 IDELR 38 (N.D. Ala. 2015).** An Alabama school district complied with the IDEA when it offered to reimburse the parent mileage for transporting her child to school until it could arrange for nursing services on the school bus. This arrangement was identical to the services being provided by the student's previous district in California, and therefore constituted "comparable" services.

31. **Oconee County Sch. Dist. v. A.B., 65 IDELR 297 (M.D. Ga. 2015).** Per physician orders, a teenager with profound disabilities had to be administered anti-seizure medication within five minutes of seizure onset to prevent a life-threatening situation. The school district refused to provide an adult aide to ride the bus with the student, rationalizing that the length of the student's bus ride was not more than five minutes to/from home and school. The court affirmed a due process hearing decision in the parent's favor, reasoning that unforeseen traffic or accidents could affect the provision of medical interventions for the student. The court held that the IDEA required the district to provide appropriate related services to the student, including transportation and medical services. The judge ordered the school district to provide an aide on the bus for the student, but reduced the parent's costs by 50 percent due to the parent's refusal to sign consent for the district to obtain information directly from the student's neurologist.

32. **Matthew D. and Jennifer D. v. Avon Grove Sch. Dist., 65 IDELR 291 (E.D. Pa. 2015).** After more than three years enrolled in a private school, a fourth-grade boy with reading and math deficits had made little to no academic progress. The court rejected the parent's attempt to recover reimbursement for the costs of the private school placement, citing the fact that the student had received little academic instruction while at the placement. The student returned to public school functioning between a pre-K and first–grade level academically. Moreover, the private school failed to record data about the frequency, intensity, or duration of the student's behavior problems.

33. **J.N. and J.N. v. South W. Sch. Dist., 66 IDELR 102 (M.D. Pa. 2015).** The standardized achievement scores for a seventh-grade boy with a learning disability in reading were substantially lower than the average scores of his classmates. However, the court refused to find that this evidence showed that the district's provision of educational services was deficient. The results of

the district's skill-based assessments, along with evidence of the boy's mastery of IEP goals, carried more weight and showed that he had made more than one year's growth in reading during a single school year. "The normed testing results upon which [the parents] rely merely reiterate the severity of [the student's] special needs in reading," Chief U.S. District Judge Christopher C. Conner wrote. "They do not ... provide an accurate assessment of [the student's progress]." Judge Conner observed that the student's progress under the phonics-based System 44 method bolstered testimony by the district's reading specialist that he was ready for broader-based instruction. Noting that the Read 180 program addressed fluency, vocabulary, and comprehension in addition to phonics, the court affirmed a due process hearing decision that the methodology was appropriate.

34. **A.T. and C.T. v. Fife Sch. Dist., 66 IDELR 104 (W.D. Wash. 2015).** A student who returned to her public school district following a private placement in an out-of-state facility in Utah was not entitled to continued residential placement. The out-of-state facility never created an IEP for the student. Therefore, the school district was not obligated to have a new IEP in place upon her return. The district was entitled to conduct new evaluations and draft a revised IEP. Because the private facility did not create an IEP, there was no way for the school district to provide "comparable services" during the pendency of its IEP revision.

35. **D.N. and J.V.N. v. Board of Educ. of Ctr. Moriches Union Free Sch. Dist., 66 IDELR 163 (E.D.N.Y. 2015).** The IEP developed for a 10-year-old boy with autism was inappropriate solely due to its inability to provide the child with socialization opportunities. A single goal in the child's IEP stated that, when greeted by a peer, the child would respond with an appropriate gesture or greeting with no more than one prompt and with 80 percent accuracy. However, the district's proposed IEP placed the child in a 1:1:1 setting with no opportunities for integration with peers. Therefore, the IEP could not possibly be implemented. The court awarded the parents funding for a private placement.

36. **M.B. v. New York City Dep't of Educ., 66 IDELR 182 (S.D.N.Y. 2015).** The parent of a student with disabilities could not introduce on appeal letters from three physicians that were never entered into evidence in the underlying due process hearing. Moreover, the letters failed to address the student's intellectual and motor impairments during the time period relevant to the case at hand. The parent was barred from introducing evidence that she failed to introduce in the due process hearing.

37. **John and Maureen M. v. Cumberland Pub. Sch., 65 IDELR 231 (D.R.I. 2015).** The mother of a second-grader with a disability did not have a legal right to observe instruction in a special education classroom, and a Rhode Island district did not violate the IDEA by denying her request to watch the class in session. The federal court reversed a due process hearing decision in the mother's favor, finding that the IDEA does not give parents an unfettered right to observe their child in class. The court noted that the district did offer the mother the alternative of visiting the class when no other children were in attendance, which was a reasonable alternative to her request.

38. **Grants Pass Sch. Dist. v. Student, 65 IDELR 207 (D. Or. 2015).** The school district was not required to use the parent's preferred data collection method, and was justified in using a "regression and recoupment" formula for determining a student's need for ESY services. The court criticized the ALJ's reliance on the experts' testimony about optimum data collection methods. Because the collection and analysis of educational data is a question of methodology, the court explained, the district was free to use any method that allowed the student to receive FAPE. The

data that the district collected before and after the winter and spring breaks supported the IEP team's decision that the student did not require ESY services to prevent "undue regression" — the standard set by state law.

39. **Endrew F. v. Douglas County Sch. Dist. RE-1, 66 IDELR 31 (10th Cir. 2015), *cert. granted,* 2016 U.S. LEXIS 3517, 195 L.Ed. 2d 761 (2016)** Proof that the school district had made annual revisions to the IEP objectives for an elementary student with autism convinced the court that the boy had made "some educational progress" and received FAPE. The 10th Circuit declined to adopt the standard of "meaningful educational benefit" being applied by some other Circuits. Evidence that the child was making excellent progress in a private school for children with autism was irrelevant to the issue of whether the school district had provided FAPE.

E. IEP DEVELOPMENT AND IMPLEMENTATION

40. **I.R. v. Los Angeles Unified Sch. Dist., 66 IDELR 208 (9th Cir. 2015).** A California school district violated state law when it failed to initiate a due process hearing against the parents of a student with a disability who refused to sign an IEP. As a result, the child remained in an inappropriate educational placement for 18 months while the district attempted to negotiate with the parent. The district's delay in suing the parent was "unreasonable," held the court.

41. **Leggett v. District of Columbia, 65 IDELR 251 (D.D.C. 2015).** The school district failed to develop an IEP for a high school student with learning disabilities, anxiety, and depression until a month after the beginning of the school year. This procedural violation justified the parent's decision to place the student in a residential placement and seek funding reimbursement. At the residential boarding school, the student received small classes, individualized tutoring, and other services that were identified as being educationally necessary. The court was willing, however, to deduct the charges from the private school for horseback riding and other non-educationally related services.

42. **Oakland Unified Sch. Dist. v. N.S., 66 IDELR 221 (N.D. Cal. 2015).** The court held that the school district violated the IDEA by ignoring the signs that the student suffered from an emotional disturbance and required special education services. The court cited the boy's suicidal statements and his "clinically significant" difficulties with anxiety, attention, and social skills as indicators that the student should have been evaluated by the district. The court rejected the district's argument that the boy's behaviors (which included drug use, association with a negative peer group, chronic truancy, lack of effort/motivation at school, and flat affect) were caused by his matriculation to high school and peer pressure.

43. **School Dist. of Philadelphia v. Williams, 66 IDELR 214 (E.D. Pa. 2015).** The school district failed to provide a tablet for seven months to a student with a communication disorder, ignoring the fact that his IEP specifically included this assistive technology. The court rejected the school district's argument that the student did not "need" the tablet to receive FAPE because he was verbal. The court held that the district's failure to provide the services specified in the student's IEP constituted a violation of the IDEA, and awarded compensatory services to the student.

44. **J.M. v. Kingston City Sch. Dist., 66 IDELR 251 (N.D.N.Y. 2015).** The parent of a student with autism claimed that the IEP team's failure to conduct a "detailed discussion" of the girl's needs, annual goals, and proposed program constituted a denial of the parent's right to meaningful

participation in the development of their son's IEP. The court rejected the parent's claims, citing proof that the parent had "specifically declined to ask questions or identify concerns" during the IEP meeting. The court recognized that the IDEA does not specify the degree of participation that a parent is to have in an IEP meeting, and there isn't a set agenda for discussion of topics.

45. **J.D. v. New York City Dep't of Educ., 66 IDELR 219 (S.D.N.Y. 2015).** School districts are not required to adopt all of the recommendations made by private evaluators for students with disabilities. The court ruled that the IEP team for a seventh-grade student with reading deficits appropriately considered the private evaluation, and adopted some of the evaluator's recommendations for specialized reading instruction. The court held that the proposed IEP was "comparable" to the services proposed by the private evaluator even though it did not adopt all of the evaluator's recommendations.

46. **Z.R. v. Oak Park Unified Sch. Dist., 66 IDELR 213 (9th Cir. 2015).** The court held that an assistant principal could satisfy the IDEA requirement for both the "LEA Rep" and a "general education teacher" in an IEP meeting. The AP also taught a general education Spanish class, and therefore qualified as a teacher as well as an administrator.

47. **P.G. and R.G. v. City Sch. Dist. of New York, 65 IDELR 43 (S.D.N.Y. 2015).** A New York federal judge held that the evidence supported the district's claim that an IEP team properly reviewed and considered the results of an independent educational evaluation obtained by the parent of a 9-year-old girl with learning disabilities. The parent alleged that the school psychologist appeared "shocked" and "surprised" when the parent mentioned the report during an IEP meeting. However, the evidence showed that the team discussed recommendations in the IEE during the IEP meeting and incorporated some of the report's recommendations into the child's IEP. "Even if some of the [district team members] had viewed the [IEE report] for the first time at the meeting, the SRO's review of the documentary evidence demonstrates that the private evaluations were properly 'considered' as contemplated by the IDEA," Judge Katherine Polk Failla wrote.

48. **T.F. and A.F. v. New York City Dep't of Educ., 66 IDELR 136 (S.D.N.Y. 2015).** The court refused to find that the IEP and placement proposed by the school district were inappropriate for a teen with Down syndrome, despite finding that teachers told the mother that the school could not provide the related services in the child's IEP and district administrators failed to respond to her letters. The court ruled that the district's "habit" of failing to respond to parent letters "undermines the IDEA and is unfair to parents of [c]hildren with disabilities." Nevertheless, the court ruled that the parent's inability to provide evidence that the district could not implement her child's IEP entitled the district to judgment in its favor.

49. **LaGue v. District of Columbia, 66 IDELR 101 (D.D.C. 2015).** The parents of a teen with ADHD canceled an IEP meeting one day after they unilaterally placed their son in a private school. Two weeks later, the parents notified the school district of their desire to attend an IEP meeting. An administrator responded that the district would not convene an IEP meeting for the student because he had been placed in private school. The court held that this refusal to convene an IEP meeting could constitute a failure to make FAPE available. The court remanded the case to the hearing officer for additional evidentiary findings.

50. **J.K. v. Hudson City Sch. Dist. Bd. of Educ., 66 IDELR 165 (N.D. Ohio 2015).** The court rejected the claims made by the guardian of a student with autism that the IEP goals lacked

sufficient specificity and were therefore not "measurable" as required by the IDEA. The court ruled that the IEP described the words that the student was able to read, as well as the words that required verbal prompting. The reading goal further stated that the student would decode 75 new sight words within a set time frame. Although the IEP did not identify the specific words that the student would learn, the magistrate judge explained that such details were unnecessary. "[T]here is no legal precedent indicating that [the student's] IEP had to identify seventy-five new sight words that [the district] intended to introduce to [the student]," the magistrate judge wrote. Also, the guardians could not demonstrate that the student's math goals were immeasurable. The court pointed out that the short-term objectives, which stated that the student would solve single-digit subtraction problems and double-digit addition problems without regrouping, would allow educators to determine whether the student was adding and subtracting numbers independently as set forth in her computation goal. The magistrate judge at 66 IDELR 142 advised the District Court to affirm an SRO's finding that the district offered the student FAPE.

51. **Joaquin v. Friendship Pub. Charter Sch., 66 IDELR 64 (D.D.C. 2015).** A charter school violated the IDEA because it failed to provide transition services for a student. The charter school argued that the teen's sporadic school attendance made it impossible to deliver the transition services, but the court held that the services should have been delivered on those days that the student did attend school. The student's truancy was a relevant factor in the delivery of transition services, but it did not excuse the lack of any provision of transition services.

52. **Stepp v. Midd-West Sch. Dist., 65 IDELR 46 (M.D. Pa. 2015).** A school district violated the IDEA by limiting a mother's communication with teachers without advance notice or explanation. The district impeded the mother's right to meaningful participation in the development of her child's IEP by informing her during an IEP meeting that she would no longer be permitted to speak directly with teachers or other staff members. The court held that district officials should have first warned the mother about excessive communication with teachers prior to implementing this limitation.

53. **E.H. v. New York City Dep't of Educ., 65 IDELR 162 (2d Cir. 2015).** A school district erred when it adopted the IEP goals developed by a private school but failed to adopt the same educational methodology that the private school used. The public school adopted the IEP goals the private school developed, but it did not require that the private school's "DIR/Floortime" teaching methodology be used to implement those goals. Decisions regarding methodology are normally for the school district to decide, but the facts of this case warranted reimbursement for the private school. The public school could not show that the child was receiving educational benefit without the adoption of the DIR/Floortime methodology.

54. **T.M. v. New York City Dep't of Educ., 65 IDELR 146 (S.D.N.Y. 2015).** A high school student's mastery of basic math computations did not invalidate a math goal that referenced his ability to add, subtract, multiply, and divide. The District Court held that the student's ongoing struggles with memory, sequencing, and reading comprehension supported the IEP team's development of a goal that related specifically to multistep word problems. The court recognized that the student had passed algebra and geometry, and was working toward a regents diploma. However, it also noted that the student's speech-language impairment had a significant impact on his understanding of written and spoken language. As the SRO had observed at 114 LRP 8140, requiring the student to use two of the four operations correctly when solving multistep math problems would address the student's reading and processing difficulties as they manifested in classes with a lesser focus on writing. "The SRO found that the annual goals, 'when read together, targeted the student's identified areas of need and provided information sufficient to guide a

teacher in [instructing] the student and measuring [his] progress,'" U.S. District Judge George B. Daniels wrote. The court also held that the district did not violate the IDEA by failing to have a special education teacher on the student's IEP team. Noting that the district representative on the team had 21 years of experience as a special education teacher, the court held that any procedural defect arising from the district's failure to appoint a special education teacher to the team was harmless.

F. LEAST RESTRICTIVE ENVIRONMENT

55. **A.R. v. Santa Monica-Malibu Sch. Dist., 66 IDELR 269 (9th Cir. 2016, *unpublished*).** The range of preschool placements available in one California district helped the district to overcome allegations that it placed a 4-year-old boy with autism in an overly restrictive setting. The 9th Circuit held in an unpublished decision that the preschool collaborative class was the child's LRE. The three-judge panel noted that the district had an obligation to educate the child alongside his nondisabled peers to the maximum extent appropriate. Given that the child required prompting to interact with other children, the 9th Circuit agreed with the ALJ and the District Court that he would not benefit from a general education placement. The court also pointed out that the IEP team discussed a number of placement options. When the parents rejected one preschool collaborative class due to the age of the child's would-be classmates and the focus on play-based learning, the district offered a placement in a pre-academic preschool class that had more age-appropriate peer models. "The [district] provided several placement options tailored to meet [the child's] needs, including programs with non-disabled peers," the 9th Circuit wrote. Holding that the district complied with the IDEA's procedural and substantive requirements, the Court held that the parents were not entitled to reimbursement for the child's unilateral private placement.

56. **H.L. v. Downingtown Area Sch. Dist., 65 IDELR 223 (3d Cir. 2015).** A Pennsylvania school district failed to convince a federal court that it had applied a proper LRE analysis when developing its placement recommendation for a fourth-grade student with SLD. The district proposed a special education classroom placement for the child's academic instruction (90 minutes per day). There was no proof that the district adequately considered whether the child could be effectively educated within the general education classroom on a full-time basis. Therefore, the court ruled that the district had denied the child FAPE by failing to document its efforts to consider a less restrictive environment.

57. **H.G. v. Upper Dublin Sch. Dist., 65 IDELR 123 (E.D. Pa. 2015).** A sixth-grade student with Fragile X syndrome required placement in a special education classroom to benefit from academic work on reading and math, ruled a Pennsylvania federal judge. The court considered two factors: 1) whether the district could educate the student in a general education classroom with supplementary aids and services; and 2) if not, whether the district mainstreamed the student to the maximum extent appropriate. The evidence showed that, despite numerous classroom modifications, accommodations, and support services, the student struggled with basic concepts and frequently had to leave the classroom due to his frustration. In language arts, he held books upside down and scribbled on paper to feel part of the class. Even the parent's independent evaluator recommended a small, supportive classroom environment. The court approved the district's proposal to provide reading and math instruction in a special education classroom, with general education placement for the remainder of the school day.

58. **W.H. v. Tennessee Dep't. of Educ., 67 IDELR 6 (M.D. Tenn. 2016).** Parents who alleged that

the Tennessee ED provided financial incentives for districts to place IDEA-eligible students in overly restrictive settings could sue the state ED and their children's district for disability discrimination. The U.S. District Court, Middle District of Tennessee denied the agencies' motions to dismiss the parents' Section 504 and Title II claims. Even in jurisdictions that require a showing of bad faith or gross misjudgment for education-related Section 504 claims, parents do not need to plead malice or an intent to harm a child. Rather, the parent only needs to allege that the education agency acted despite its awareness of an adverse impact on students with disabilities. The parents here claimed that the ED gave more funds to districts that had students in segregated settings, thereby giving LEAs a financial incentive to offer overly restrictive placements. Those allegations were sufficient to satisfy the "bad faith" standard regardless of the agencies' intent.

G. NON-IDEA CLAIMS/MONEY DAMAGES AND LIABILITY

59. **Doe v. Dallas Ind. Sch. Dist., 116 LRP 29424 (N.D. Texas 2016).** Parents' claim that the district's failure to prevent their daughter's on-campus rape resulted in her academic decline was subject to the exhaustion requirements of the IDEA.

60. **Nardella ex rel. C.D. v. Leyden High Sch. Dist. 212, 116 LRP 27278 (N.D. Ill. 2016).** The mother of a teen with Asperger Syndrome sued several employees of a postsecondary transition facility for allegedly humiliating her adult son on a regular basis for disability-related behaviors (e.g., taking too long in the restroom and public reprimands for failure to turn in assignments). The parent alleged that the district employees had inflicted "emotional distress" and sought money damages. The court found that the employees had behaved unprofessionally and disrespectfully towards the student, and had "turned a blind eye" to his needs. However, the parent failed to prove that the employees' conduct constituted distress that was "so severe that no reasonable person could be expected to endure it."
61. **Dervishi v. Mayville, 66 IDELR 34 (D. Conn. 2015).** The court dismissed a parent's claims against a private evaluator for an allegedly faulty assessment who evaluated her son at the request of the school district. The court held that the parent was required to exhaust her administrative remedies because her claims were based on the IDEA's requirements for educational evaluations.

62. **Gohl v. Livonia Pub. Schs., 66 IDELR 122 (E.D. Mich. 2015).** The parents of a 3-year-old boy with hydrocephalus alleged that the actions of his teacher warranted an award of money damages for violating the boy's Constitutional rights. However, a showing that the boy made progress toward his IEP goals after a special education teacher allegedly jerked his head back and yelled in his face weakened the parent's claim that the incident deprived the child of educational benefits. The court dismissed the parent's claims under Section 504/Title II. To establish liability under Section 504 or Title II, the parent needed to show that the district excluded the child from participating in its programs, denied him the benefits of its programs, or otherwise subjected him to discrimination on the basis of disability. The court held that the parent failed to meet that standard. The federal judge gave little weight to the testimony of the parent's experts, noting that they spoke generally about the potentially harmful effects of abuse instead of focusing specifically on the child's experiences. Furthermore, the judge pointed out that a progress report issued 10 days after the incident in question demonstrated the child's improvements in behavior, sensory needs, attention span, and communication. "To be sure, the reports reflect that [the preschooler] remained a very challenged child," Judge Goldsmith wrote. "But the portrait that emerges is hardly one of a child who has been excluded from his educational program or deprived of educational benefits." The court also granted judgment for the teacher on the parent's Section 1983 claim. Even if the

teacher acted as the parent alleged, the court explained, the single instance of rough handling was not sufficiently "conscience-shocking" to amount to a 14th Amendment violation.

63. **Dervishi ex rel. T.D. v. Stamford Bd. of Educ., 116 LRP 27444 (2nd Cir. 2016).** The Second Circuit held that the "stay put" placement for a 12 year old boy with autism is a home-based autism program, despite a settlement agreement limiting the district's agreement to pay for the program until the completion of an evaluation. The court interpreted the IDEA's "stay put" mandate to apply to the "then current" educational placement of the child.

    But See, N.W. v. Boone County Bd. of Educ., 763 F.3d 611 (6th Cir. 2014). The Sixth Circuit held that a child's "stay put" placement means the last placement that was agreed to by the LEA, not the "then current" placement of the child.

H. PRIVATE SCHOOL PLACEMENT

64. **C.D. v. T.B. ex rel. H.B. v. New York City Dep't of Educ., 116 LRP 26717 (E.D.N.Y. 2016).** The federal court found that the public school placement offered to a seventh grade student with social anxiety, impulsivity, difficulty with transitions, and epilepsy was not the student's appropriate "least restrictive environment." The parents and the student's healthcare providers had requested a full-time placement in a small special education school with intensive academic and behavioral supports. The district rejected this request, and proposed placement in a 12:1:1 classroom located in a school with more than 400 students. The court opined, "The record unmistakably shows that a community school recommendation was not conducive to the student's progress because it hazarded placement in a school environment that could exacerbate many of the challenges the IEP was designed to manage."

65. **L.R. ex rel. L.R. v. New York City Dep't of Educ., 116 LRP 26715 (E.D. N.Y. 2016).** The court found that the school district denied FAPE to an adult student with a learning disability. The district had proposed a 15:1 placement in a regular public school setting rather than continuing the 12:1 placement in a private school. Witnesses for the district testified that the rationale for the proposed public school placement was to place the student in his "least restrictive environment," but could not explain how the new placement would meet the student's unique needs. The court favored the testimony of the private school staff that the student required a smaller classroom environment in order to make academic progress.

66. **J.F. v. Byram Twp. Bd. of Educ., 66 IDELR 180 (3d Cir. 2015).** The court held that the IDEA's procedures for intrastate transfers trump the "stay put" provision. The court rejected the parents' allegation that when they relocated from one part of the state to another school district within the same state, the receiving district was obligated to continue the residential placement provided by their previous district. Rather, the receiving district could provide "comparable services" to those in the incoming IEP until it either adopts that IEP or develops and implements one of its own.

    But see, D.G. v. San Diego Unified Sch. Dist., 66 IDELR 167 (S.D. Cal. 2015). Citing 9th Circuit precedent, the court ordered a "receiving" school district to continue to fund the private placement recommended by the student's former school district (a private autism school) during the pendency of a due process hearing. The court ruled that transferring students were entitled to a continuation of their existing educational programs if the parents challenged the district's proposed placement.

67. **S.E. v. New York City Dep't of Educ., 65 IDELR 295 (S.D.N.Y. 2015).** The mother of a 9-year-old girl with significant cognitive impairments could not use an assistant principal's alleged statements during a site visit to recover the $36,000 cost of her daughter's unilateral private placement. The court found no evidence to support a claim that the child was denied an appropriate education, despite the alleged comments from the AP. Judge Preska distinguished the parent's case from New York in which the District Court held that the presence of fish in the cafeteria of a child's proposed placement showed that the school was not a "seafood free" environment required by his IEP. "The parent's testimony, even if accepted as unchallenged, merely evidences [the AP's] belief that, given [the student's] personality and, critically, what [the parent] 'wanted [her] to achieve,' perhaps other placements were more appropriate," Judge Preska wrote. Furthermore, the judge pointed out that the AP had never met the student or reviewed her IEP.

68. **Kornblut v. Hudson City Sch. Dist. Bd. of Educ., 66 IDELR 66 (N.D. Ohio 2015).** Evidence that an 8-year-old girl with autism had some difficulties with transition did not entitle the child's grandparents to recover the cost of her private school placement from an Ohio district. The District Court held that the child's history of trauma did not invalidate the district's proposal to transition her to a public school setting. U.S. District Judge Sara Lioi recognized that the child, who had been present in the family home years earlier when her father killed her mother, had experienced significant trauma in her life. However, she explained that the child's history did not oblige the district to continue a private placement that the child did not need simply to prevent further disruptions in her life. Even if the court considered the opinion of the private psychologist who evaluated the child in the summer of 2013 — information that was not available during the April 2013 IEP meeting — it could not find that the child needed to attend the private school to receive an educational benefit. The judge noted that the psychologist only testified about the child's difficulties with transition; he never stated that the child would be unable to transition between schools. Moreover, the psychologist believed that the transition between schools would be abrupt. "[The psychologist] had been given the district's proposed transition plan for [the child], but admitted he had not taken time to look at it," Judge Lioi wrote. While the judge did not fault the grandparents for wanting to keep the child's routine as consistent as possible, she found no evidence that the child would be unable to learn in the public school setting. The court affirmed an SRO's decision that the district offered the child FAPE.

69. **John M. v. Brentwood Union Free Sch. Dist., 66 IDELR 129 (E.D.N.Y. 2015).** The parents of a teen diagnosed with anxiety and depression allegedly as a result of bullying at school sought public funding for a private parochial school placement. The court rejected the parent's claims, finding a lack of evidence that the private school could provide appropriate educational services to address the boy's disabilities. Mere assertions that the parochial school offered the student "encouragement and support" were not enough.

70. **Fort Bend Indep. Sch. Dist. v. Douglas A., 65 IDELR 1 (5th Cir. 2015).** Evidence that the goal of a private mental health facility was to treat children with reactive attachment disorder helped a school district avoid the $7,000 per month cost of the placement. The court held that the IDEA only requires school districts to fund residential placements that are primarily for educational, not mental health, purposes.

I. PROCEDURAL ISSUES

71. **Doe ex rel. Dallas Indep. Sch. Dist., 116 LRP 29424 (N.D. Tex. 2016).** The parent of a high school girl with cerebral palsy who was allegedly raped by a classmate at school must exhaust her IDEA administrative remedies before proceeding to federal court. The court ruled that the IDEA's "due process hearing" procedures must be exhausted for any claim's related to a disabled student's receipt of educational services, even if the claims are filed under another federal law.

72. **Maple Heights City Sch. Bd. v. A.C. ex rel. A.W., 116 LRP 27742 (N.D. Ohio 2016).** A federal court affirmed the decision of a hearing officer giving greater weight to the expert witness testifying on behalf of the parents than he gave to the testimony of the school's expert. The hearing officer found that the expert witness on behalf of the student conducted a more thorough evaluation of the student and was a pediatric clinical psychologist from the Cleveland Clinic. The school's expert witness was a behavior specialist and educational consultant who failed to notice numerous mathematical errors on the district's behavior data sheets. The school's expert also failed to interview the student's parent or contact the parent's expert to obtain her report for consideration.

73. **D.G. v. New Caney Indep. Sch. Dist., 66 IDELR 209 (5th Cir. 2015).** Adding to the ongoing split among the Circuits on the statute of limitations period for seeking attorney's fees, the 5th Circuit ruled that petitions for attorney's fees are separate and distinct from IDEA appeals. The court ruled that the statute of limitations for filing a petition for attorney's fees does not begin to run until the expiration of the time period for filing an appeal of an adverse due process hearing decision.

74. **Carroll v. Lawton Indep. Sch. Dist. No. 8, 66 IDELR 210 (10th Cir. 2015).** The 10th Circuit dismissed parents' claims for their failure to exhaust administrative remedies, even though the parents were seeking monetary damages for alleged violations of Section 505, Section 1983, and Title II. The court's decision was based on the fact that the parents' complaint included allegations of "educational harm" and a request for tutoring. These issues were subject to the IDEA's requirement of administrative exhaustion.

75. **G.L. v. Ligonier Valley Sch. Dist. Auth., 66 IDELR 91 (3d Cir. 2015).** In a case of first impression, the 3d Circuit ruled that the IDEA's two-year statute of limitations period applied only to the filing of a due process hearing complaint, and does not limit the time period for which relief can be awarded. The court affirmed a decision granting the parents of a teenager with a learning disability relief for alleged IDEA violations occurring from 2008 through 2012.

76. **T.P. v. Bryan County Sch. Dist., 65 IDELR 254 (11th Cir. 2015).** Without addressing whether the parents of a second-grader with autism only had two years to seek an IEE at public expense, the 11th U.S. Circuit Court of Appeals barred their complaint challenging a District Court's ruling on that issue. Citing the futility of seeking an independent opinion on the adequacy of a 3-year-old evaluation, a three-judge panel held that the parents' appeal was moot. The Georgia district initially evaluated the child in September 2010. In November 2012, the parents asked the district to pay for an IEE, contending that the 2010 evaluation was flawed. The district declined, asserting that the IDEA's two-year statute of limitations barred their request. The parents filed a due process complaint on Jan. 5, 2013, seeking an order compelling the district to pay for an IEE. An ALJ ruled, "the Family's request for an IEE at public expense was barred by the IDEA's statute of limitations." The District Court affirmed. On appeal to the

11th Circuit, the parents argued that the District Court erred in holding that the right to request an IEE is limited to two years. The 11th Circuit declined to address the merits of that claim, holding that the issue was moot in light of the fact that the 2010 evaluation was now more than 3 years old. The purpose of an IEE, the 11th Circuit noted, is to furnish parents independent expertise they can use to decide whether to oppose or accept an evaluation conducted by a district. But in this case, the 11th Circuit noted, the evaluation the parents opposed was outdated and a triennial evaluation was due. "Regardless of the merits of Parents' case, ordering an IEE at public expense in these circumstances would be futile," the three-judge panel wrote. Because such an order would not facilitate the parents' meaningful participation, the parents lacked an interest in the outcome of the controversy. The court vacated the District Court's judgment and remanded the case, with instructions to dismiss the complaint for lack of subject-matter jurisdiction.

77. **B.S. v. Anoka Hennepin Pub. Schs., 66 IDELR 61 (8th Cir. 2015).** The fact that a Minnesota hearing officer consulted with both parties' attorneys prior to ruling that each side had a nine-hour limit for presenting their case led to the court ruling that this action was not an abuse of discretion. The State Administrative Rules provided that the hearing officer must balance each parties' rights against limited public resources and the need for administrative efficiency. In speaking with both attorneys, the parents' counsel stated that she would need a day and a half to present evidence, and the school district's counsel stated that one day would be sufficient. Moreover, the parent's attorney did not object when the judge ruled that she would have nine hours to present her case, and only objected when her time expired on the second day of the hearing.

78. **A.F. v. Espaňola Pub. Schs., 66 IDELR 92 (10th Cir. 2015).** The court ruled that mediation does not satisfy the IDEA's exhaustion requirement, "And to earn the right to bring a civil action under [the] IDEA, it's just an implacable fact that you must qualify ... as a party 'aggrieved by the findings and decision' of administrative trial or appellate authorities," U.S. Circuit Judge Neil M. Gorsuch wrote for the majority. The 10th Circuit acknowledged that the exhaustion requirement might not apply if the parent's agreement with the district had provided all of the relief available under the IDEA. Because the parent never alleged the futility exception, however, the 10th Circuit declined to consider such an argument. The 10th Circuit affirmed the District Court's dismissal of the parent's lawsuit.

79. **H.T. and S.T. v. Hopewell Valley Reg'l. Bd. of Educ., 66 IDELR 48 (D.N.J. 2015).** The parents of a 17-year-old boy could not file a complaint that was based on 25 exhibits that were attached. The federal court upheld the ALJ's dismissal of the complaint on the grounds of insufficiency. The court agreed that a due process hearing complaint must include a statement of the nature of the dispute, and that courts and ALJs are not required to "parse through what might be numerous and lengthy exhibits to hunt for the petitioner's claims."

80. **T.L. v. Lower Merion Sch. Dist., 66 IDELR 218 (E.D. Pa. 2015).** In the 3d Circuit, parties are normally barred from admitting into evidence information/documents that were not introduced at the due process hearing level. However, the court permitted the parents of an elementary school student to introduce a progress report that did not exist at the time of the hearing. This document was relevant, and was not cumulative or unnecessary.

81. **M.P. v. Penn-Delco Sch. Dist., 66 IDELR 252 (E.D. Pa. 2015).** The court rejected a parent's petition for attorney's fees based upon the terms of a settlement agreement. The settlement agreement specifically waived any outstanding IDEA claims as of the date of execution, including attorney's fees. The court ruled that settlement agreements are legally binding as written,

especially where the terms are "clear and unambiguous."

82. **G.M. v. Massapequa Union Free Sch. Dist., 65 IDELR 296 (E.D.N.Y. 2015).** A parent's claim that a New York district failed to provide preferential seating, modified assignments, and other services to address an elementary school student's ADHD prevented her from suing the district under Title II and Section 1983. Holding that the parent's allegations were "inextricably intertwined" with the student's right to FAPE, the District Court ruled that her failure to exhaust her administrative remedies under the IDEA barred her federal claims. The decision turned in large part on the phrasing of the parent's complaint. Although the parent sought relief for her son's seclusion in a storage room in the back of his classroom, as well as his "discriminatory" removal from student council and the district's purported failure to address peer bullying, the court pointed out that the complaint tied those allegations to the student's education. For example, the court explained, the allegations relating to the student's seclusion effectively sought relief for the district's failure to accommodate the student's ADHD. The district's purported failure to provide additional adult supervision, which supposedly resulted in peer bullying, similarly addressed an impediment to FAPE. U.S. District Judge Joanna Seybert further noted that the complaint accused the district of classifying the student's disability-related fidgeting and tics as behavioral issues in order to avoid providing appropriate services. "These allegations make clear that [the parent's] suit challenges the adequacy of the accommodations provided to a [student with a disability] and — perhaps particularly in [the student's] case — the often unfortunate and disconcerting consequences thereof," Judge Seybert wrote. The court dismissed the parent's Title II and Section 1983 claims for lack of jurisdiction, and dismissed her remaining state law claims with leave to re-file in the appropriate court.

83. **Doe v. East Lyme Bd. of Educ., 65 IDELR 255 (2d Cir. 2015).** A Connecticut district could not prevent a mother from recovering the full cost of a grade-school student's stay-put placement merely by alleging that the mother was only entitled to reimbursement for the services she paid for. The court ruled that the mother was entitled to seek funding for the private placement that was continued under "stay-put" pending the outcome of a due process hearing and appeal, not just reimbursement for the services the mother could afford during this time.

84. **MB and RB v. Islip Sch. Dist., 65 IDELR 269 (E.D.N.Y. 2015).** A New York district's alleged failure to provide a teenager's parents with notice of their procedural safeguards under the IDEA toppled its motion to dismiss the parents' Section 504 and Title II claims on exhaustion grounds. The District Court held that the purported lack of notice excused the parents' failure to exhaust their administrative remedies. U.S. District Judge Sandra J. Feuerstein observed that the parents' complaint described how the district's handling of the student's behavioral issues and reported bullying by peers impeded the student's education. As such, the court rejected the parents' argument that the IDEA did not offer any relief for the harm alleged. However, the parents also contended that the district's failure to provide them with information about the IDEA's administrative process made exhaustion futile. Explaining that it had to accept the parents' allegations as true when ruling on a motion to dismiss, the court agreed to excuse the parents' noncompliance with the exhaustion requirement. "Based upon the allegations in the [complaint] ..., administrative remedies were not available to [the parents] because they were 'never informed of their due process rights or procedure for which to challenge the IEP' ... and therefore 'could not be required to exhaust their administrative remedies," Judge Feuerstein wrote. The court dismissed the parents' Section 504 and Title II claims only to the extent to which they sought money damages from individual district employees.

85. **Fry v. Napoleon Cmty. Schs., 65 IDELR 221 (6th Cir. 2015), *reh'g denied,* 115 LRP 36429**

(6th Cir. 08/05/15), ***petition for cert. filed*** **(U.S. 10/15/15) (No. 15-497);** ***cert. granted*****, 2016 U.S. LEXIS 4264 (6/28/16).** A student's wish for greater independence qualified as an educational goal, and therefore issues relating to the presence of the student's service dog were "crucially linked" to her education and were subject to the exhaustion requirements of the IDEA. The 6th Circuit ruled that the parents could not pursue Section 504 or Title II claims against the student's former district until they exhausted their administrative remedies under the IDEA. The court held that the exhaustion requirement applies if the IDEA's administrative procedures can provide some form of relief or if the claims relate to the provision of FAPE. In this case, the court observed, the parents clearly were disputing the appropriateness of the student's IDEA services. Specifically, the parents argued that the dog's presence allowed the student to be more independent so that she would not have to rely on a one-to-one aide for tasks such as using the toilet and retrieving dropped items. They also maintained that the student needed the dog in school so that she could form a stronger bond with the animal and feel more confident. The court explained that the parents' allegations brought the claim squarely within IDEA's scope. "Developing a bond with [the dog] that allows [the student] to function more independently outside the classroom is an educational goal, just as learning to read Braille or learning to operate an automated wheelchair would be," held the court.

86. **Turton v. Virginia Dep't of Educ., 64 IDELR 305 (E.D. Va. 2015).** The attorneys for the parents of a group of students with disabilities filed a complaint for sanctions against a school attorney. The complaint accused the school attorney of violating the rights of children with disabilities by attending IEP meetings and advising his clients to violate federal and state special education laws, including advising LEAs to convene IEP meetings without parents present; bullying and harassing parents in IEP meetings; advising LEAs to disregard the opinions of a student's treating physician; and conspiring with LEAs to deny FAPE in the LRE. The court awarded the school attorney sanctions against the parents' attorneys for filing a claim without legal support.

87. **Oakstone Cmty. Sch. v. Williams, 65 IDELR 257 (6th Cir. 2015).** The steps that a charter school's attorney took when she realized that a District Court's filing system had removed all electronic redactions from a student's education record helped her to avoid paying $7,500 in sanctions. The 6th Circuit held in an unpublished decision that the one-time filing did not amount to objectively unreasonable conduct. The majority noted that, at the time of the filing, the parties disputed whether the parent's attempt to publicize the dispute made the administrative record a public document. Although the District Court ultimately held that the student's education record was confidential, the 6th Circuit pointed out that neither party knew at the time of the attorney's filing whether FERPA applied to the case. The 6th Circuit explained that the District Court could not sanction the attorney for conduct that predated its FERPA ruling. As for the District Court's ruling that the attorney "repeatedly" filed un-redacted confidential documents, the 6th Circuit observed that the attorney only filed one set of confidential documents in an un-redacted form. Furthermore, the redaction error was the result of technical problems with the court's electronic filing system. "A single filing of multiple exhibits does not amount to 'repeated' filings," held the court.

88. **Foster v. Board of Educ. of the City of Chicago, 65 IDELR 161 (7th Cir. 2015).** A parent's pleading that requested the provision of "compensatory services" did not bar her from later seeking reimbursement for her out-of-pocket expenses in obtaining private services.

89. **Smith v. Cheyenne Mountain Sch. Dist. 12, 116 LRP 26277 (10th Cir. 2016).** The school district was required to maintain a first grader with autism in a charter school program previously

agreed to by the parties. The mother of the child sought a "stay put" placement at a private school pending her appeal of an adverse due process decision. The court held that the "stay put" provision of the IDEA does not require school districts to place students in settings they have never previously attended.

J. SECTION 504/TITLE II OF THE ADA

90. **Smith v. Tobinworld, 116 LRP 27976 (N.D. Cal. 2016).** A private school's contention that it never received federal assistance for its education programs was not enough to derail the Section 504 claim filed by the parents of a first-grader who was allegedly improperly restrained due to his multiple disabilities. Finding that the private school was prohibited from discriminatory acts once it accepted the student's enrollment, the U.S. District Court, Northern District of California declined to dismiss the parents' suit. It pointed out that "Section 504 applies if [the private school] receive[d] IDEA funds, whether directly or indirectly."

91. **A.C. by Jerry C. and Jennifer C. v. Scranton Sch. Dist., 116 LRP 25554 (M.D. Pa. 2016).** A federal court refused to dismiss claims for money damages brought under Section 504 and Title II of the ADA alleging that district officials had denied appropriate educational services to their child on the basis of his disability. The student, who has a development disability, ADHD, and a receptive/expressive language disorder, was inappropriately restrained and repeatedly placed in a 5' x 6' room with no windows and a play area that was a concrete, fenced-in enclosure. The court held that the parents had sufficiently pled facts that could rise to the level of "deliberate indifference" to a violation of the law.

92. **Zdrowski v. Rieck, 66 IDELR 42 (E.D. Mich. 2015).** Two elementary school teachers were sued for using a "transport position" restraint on a violent second-grade student with Asperger syndrome and ODD. The court accepted the teacher's testimony that they decided to use this type of restraint instead of the "team control position" restraint advocated by the parent because they believed the student would experience greater stress if required to put his head between his legs. In this case, the student was threatening to harm himself, had a history of violent outbursts, and his behavior could have been exacerbated by increased stress. The court found that the teacher's account was reasonable based on the circumstances, and would not constitute "gross misconduct."

93. **Snell v. North Thurston Sch. Dist., 66 IDELR 75 (W.D. Wash. 2015).** The federal court ruled that a victory in an IDEA due process hearing does not constitute proof of disability-based discrimination under Section 504/Title II. Parents must prove the elements of a disability-based discrimination claim in order to prevail on this separate and distinct action. A school district's failure to provide FAPE under the IDEA does not entitled a parent to money damages under Section 504 or Title II as a matter of law.

94. **J.R. v. New York City Dep't of Educ., 66 IDELR 32 (E.D.N.Y. 2015).** A principal's alleged statements could constitute "deliberate indifference" to bullying and result in an award of money damages to a student with a disability. The principal allegedly refused to allow a student with disabilities to change school buses because he would likely be subjected to bullying on any school bus in the city. If true, this statement could constitute "deliberate indifference." The court noted that school districts are not required to eradicate all forms of bullying in school or on buses, but are obligated to take reasonable measures to respond to reported bullying and/or harassment.

95. **T.B. v. San Diego Unified Sch. Dist., 66 IDELR 2 (9th Cir. 2015).** The 9th U.S. Circuit Court of Appeals overturned a prior decision in favor of the school district. The issue was whether the district had been "deliberately indifferent" to the medical needs of a student who required G-tube feedings at school by assigning the task to a behavioral assistant instead of a qualified and trained staff member. The court found that a jury could reasonably conclude that the district's failure to hire a qualified individual to perform the G-tube feedings constituted a violation of the law.

96. **S.S. v. City of Springfield, Mass., 66 IDELR 253 (D. Mass. 2015).** The parents of a fourth-grade boy with an emotional disturbance alleged that their son was subjected to discrimination as a result of his placement in a separate ED program outside of his neighborhood school. The court refused to dismiss the Title II claims for discrimination, ruling that the parents had raised plausible allegations that the school could have included the student in his neighborhood elementary school with reasonable modifications. Importantly, the parents had previously lost an IDEA due process hearing on the placement issue. The court held that the due process hearing results did not bar the parents from pursuing their discrimination claim under Title II, because Title II has a different standard from the IDEA. While the IDEA mandates the provision of a "free appropriate public education," Title II requires districts to provide "an opportunity to participate in or benefit from the aids, benefits, or services" provided by the district that is "equal to" the opportunity provided to non-disabled students.

97. **Carroll v. Lawton Indep. Sch. Dist. No. 8, 66 IDELR 210 (10th Cir. 2015).** The parents of a third-grade girl with autism alleged that a special education teacher had abused their child by pulling and tearing her underwear and placing her in a dark closet for punishment. The parents also alleged that the child refused to attend school and suffered academic and behavioral regression as a result of this conduct. The court ruled that the references in the complaint to the child's academic regression required the parents to exhaust their IDEA administrative remedies prior to seeking relief in federal court.

98. **T.R. v. Humboldt County Office of Educ., 65 IDELR 293 (N.D. Cal. 2015).** The guardians for a deaf teen sought money damages pursuant to Section 504/Title II, alleging that, despite available information regarding his need for psychiatric services, their grandson was provided no mental health services during his nine-month placement in juvenile detention. The court refused to dismiss the claims, holding that the grandparents had sufficiently pled claims for disability-based discrimination.

99. **C.G. v. Cheatham County Bd. of Educ., 65 IDELR 301 (M.D. Tenn. 2015).** The parents of a student with a severe peanut allergy were not required to exhaust their IDEA administrative remedies because their claims were not related to the child's education. The parents claimed that the school principal reported them to child welfare authorities for severe child abuse in retaliation for requesting accommodations for their daughter. The parents sought money damages for intangible pain, suffering, humiliation, and embarrassment. The parents' claims were unrelated to IDEA issues, and therefore the exhaustion requirement did not apply.

100. **M.M. and E.M. v. School Dist. of Philadelphia, 66 IDELR 181 (E.D. Pa. 2015).** The decision not to seek compensatory damages for a Pennsylvania district's alleged Section 504 and Title II violations allowed a grade-school student's parents to recover more than $9,000 in litigation costs. Explaining that the parents proved disability discrimination simply by establishing a denial of FAPE, the District Court ruled that they could recover expert witness fees in addition to attorney's fees, compensatory education, and tuition reimbursement. U.S. Magistrate Judge Thomas J. Rueter observed that while expert fees are not recoverable under the IDEA, they are

available under Section 504 and Title II. As such, the parents would be entitled to expert fees if they could prove the district discriminated against their son, an intellectually gifted student with autism and ADHD, on the basis of his disabilities. Because the parents expressly stated that they were not seeking compensatory damages — a remedy that requires a showing of intentional discrimination — they only needed to prove that the district excluded the student from or denied him the benefits of its programs. The court held that the parents met that standard. "The Hearing Officer concluded that for the time period of April 3, 2013, through the end of the 2012 to 2013 school year, the [IEP] established for [the student] was 'inappropriate to meet the student's needs,'" Magistrate Judge Rueter wrote. Relying on the IHO's findings regarding the denial of FAPE, the court granted judgment for the parents on the Section 504 and Title II claims and ordered the district to pay $9,394 in expert witness fees. The court also affirmed the IHO's awards of compensatory education and tuition reimbursement, and ordered the district to pay $118,572 in attorney's fees.

101. **Easter v. District of Columbia, 66 IDELR 62 (D.D.C. 2015).** Without deciding whether the District of Columbia improperly limited a 22-year-old student's options for compensatory education, the District Court held that the student sufficiently pleaded a violation of Section 504. The court granted the student's motion to amend his discrimination claim and denied the district's motion to dismiss. The case arose out of the district's alleged failure to provide the student FAPE during his five-year stint in a juvenile detention facility. After an IHO ordered the district to provide compensatory education, the district purportedly gave the student two options: enroll in the local high school as a ninth-grader or participate in an adult education program that could not address his SLD. The court observed that the amended complaint included sufficient facts to suggest that the district denied the student the opportunity to attend an alternative program with same-age peers. "In other words, [the student] alleges that he was denied the same services as other adult students solely because of his disability," U.S. District Judge Emmet G. Sullivan wrote. The court also ruled that the student pleaded a systemic IDEA violation by alleging that the district failed to identify the educational agency responsible for providing FAPE to students with disabilities in the juvenile detention facility.

102. **Ball v. St. Mary's Residential Training Sch., 65 IDELR 233 (W.D. La. 2015).** A parent who perceived her son as having visible injuries and being "significantly underweight" when she visited him at a nonpublic residential school in October 2013 could not sue the school for violating Section 504 or Title II. The District Court held that the parent's failure to plead discrimination on the basis of disability required it to grant the school's motion to dismiss. U.S. District Judge James T. Trimble Jr. did not address whether Section 504 or Title II applied to the religious facility, which only served students with disabilities. However, he noted that the parent did not allege that the school discriminated against her son on the basis of disability or that it treated the student differently from nondisabled children. Instead, the court observed, the parent claimed that the student suffered abuse and neglect while in the school's custody. The court explained that such charges were not enough to establish a Section 504 or Title II violation. "These are serious allegations, which the court should not be understood to minimize here," Judge Trimble wrote. "However, [the parent's] remedies for breach of contract, intentional tort and negligence do not lie within Title II or Section 504 and remain for further proceedings." The court also dismissed the parent's IDEA claim, explaining that the statute does not apply to nonpublic religious facilities

103. **K.P. v. City of Chicago Sch. Dist. #299, 65 IDELR 42 (N.D. Ill. 2015).** The court held that the school district was not required to allow an eighth-grade girl with a learning disability to use a calculator on a districtwide math assessment. The assessment was a prerequisite to taking an entrance examination for one of the district's academically competitive high schools. The

district argued that the use of a calculator would invalidate the girl's scores, and would give her an unfair advantage over nondisabled peers. The court held that the use of a calculator was not a "reasonable accommodation" under 504/Title II and was not in the public interest.

104. **J.A. v. Moorhead Pub. Schs., Indep. Sch. Dist. No. 152, 65 IDELR 47 (D. Minn. 2015).** The parents of a 5-year-old girl with Down syndrome must exhaust their IDEA administrative remedies before pursuing a federal lawsuit seeking money damages for alleged disability-based discrimination. The parents alleged that district officials acted with discriminatory intent by allowing the child to be placed in a storage closet when she became over-stimulated in the classroom. The court held that the allegations were directly related to the IEP's provision calling for the use of a "quiet room" for the child.

105. **D.F. v. Leon County Sch. Bd., 65 IDELR 134 (N.D. Fla. 2015).** A federal court in Florida ruled that parents who withdraw consent for special education do not automatically waive their child's right to eligibility and services under Section 504, despite an OCR determination to the contrary (*Letter to McKethan,* 25 IDELR 295 (OCR 1996). However, the court held that the school district's reliance on the OCR letter was reasonable given the lack of interpretations of the applicable regulations on withdrawal of parental consent for special education. Therefore, the district's reliance on the OCR letter could not constitute disability-based discrimination.

106. **Alboniga v. School Bd. of Broward County, Fla., 65 IDELR 7 (S.D. Fla. 2015).** The court held that the school district was responsible for providing an adult "handler" for "Stevie," the service dog accompanying a 6-year-old boy with multiple disabilities, including a seizure disorder, despite Title II's express language stating that agencies are not responsible for the "care and supervision" of service animals. The court equated the provision of an adult handler to a "reasonable accommodation" pursuant to Section 504. The accommodation was not for the dog, reasoned the court, but to assist the child in walking and caring for his service animal. The court also enjoined the district from requiring that the parent maintain liability insurance for the dog and requiring that the dog be vaccinated in excess of immunizations required by state law.

107. **Wenk v. O'Reilly, 65 IDELR 121 (6th Cir. 2015), *cert. denied*, 116 LRP 2124 (01/11/16).** Comments made by a school administrator to child welfare authorities about the father of a teenager with an intellectual disability came back to haunt her after she reported the father to child welfare authorities for suspected child abuse. Holding that the parents pleaded a violation of clearly established First Amendment rights, the 6th Circuit ruled that the administrator was not immune from the parents' Section 1983 suit. Under 6th Circuit law, the panel explained, a report of child abuse qualifies as retaliation under the First Amendment if the parents' advocacy plays any role in the decision to report. The administrator's critical comments about the father in emails she sent to other district employees after IEP meetings suggested that she "harbored animus" toward him. Furthermore, the teachers whose statements allegedly formed the basis for the report denied telling the administrator about the most shocking charges against the parent. "Although [the administrator's] report did contain some true allegations, the facts taken in the light most favorable to [the parents] suggest that she embellished or entirely fabricated other allegations, including those that most clearly suggested sexual abuse," U.S. Circuit Judge Karen Nelson Moore wrote. The court also rejected the administrator's claim that she would have filed the same report regardless of whether the father advocated on the student's behalf. At best, the court observed, the administrator had the information underlying her report for three weeks before she filed. The fact that she did not file immediately as required by Ohio's mandatory reporting statute indicated that she felt the allegations were not worth reporting. Explaining that a reasonable official in the administrator's position would have understood such conduct to be retaliatory, the 6th Circuit

affirmed the District Court's denial of qualified immunity.

108. **P.P. v. Compton Unified Sch. Dist., 66 IDELR 121 (C.D. Cal. 2015).** The parents of a 17-year-old girl must exhaust their IDEA administrative remedies before seeking money damages for the district's alleged failure to prevent peer harassment. An earlier District Court ruling held that evidence that a male classmate was "leering" and "staring" at the girl and making her uncomfortable by pointing cameras at her was not sufficient to sustain the parents' claims of disability-based harassment under Section 504/Title II. The parents alleged that the district's failure to stop the classmate's behavior or to remove the boy from school caused the girl to suffer significant anxiety and PTSD. The parents alleged that the classmate had sexually assaulted their older daughter four years earlier, and that the families became enemies as a result.

109. **G.G. v. Gloucester Co. Sch. Bd., 132 F. Supp. 3d 736 (E.D. Va. 2015); *rev'd*, 2016 U.S. App. LEXIS 7026 (4th Cir. 2016); *re-hearing en banc denied*, 2016 U.S. App. LEXIS 9909 (4th Cir. 2016); *preliminary injunction issued*, 116 LRP 27265 (E.D. Va. 6/23/16), *motion for stay pending appeal denied*, 116 LRP 30048 (4th Cir. 7/12/16); *appl. to recall and stay granted*, (U.S. 8/3/16).** The U.S. Supreme Court has granted the school district's request to stay the decision of the 4th Circuit Court of Appeals reversing and remanding a prior ruling by a Virginia trial court that dismissed the Title IX claims made by a transgender student. The student, a transgender male, was denied the right to use the boy's bathroom at school, and refused the district's offer of a unisex bathroom. The trial court rejected the student's request for a preliminary injunction, and dismissed his Title IX claims. The appellate court held that the trial judge's ruling was in error, and remanded the case back for further evidentiary findings. On remand, the trial judge issued injunctive relief to the student. The Fourth Circuit denied the school district's requests for rehearing en banc and a stay pending appeal to the U.S. Supreme Court. On Aug. 3, 2016, the Supreme Court granted the school district's request to recall and stay the 4th Circuit's decision pending the Court's consideration of the school district's petition for writ of certiorari on or before Aug. 29, 2016.

As of 8/7/16, a total of 23 states have filed lawsuits against the federal government challenging the U.S. Department of Justice's *Dear Colleague Letter on Transgender Students*, 116 LRP 19809 (USDOJ 5/13/16) and OCR's *Letter to Prince* (116 LRP 15437 (OCR 2015). This letter interprets Title IX to prohibit discrimination on the basis of gender identity, and directs public school districts to allow transgender persons to use facilities (restrooms, locker rooms, showers, etc.) that correspond to their gender identity. Fifteen (15) states have filed amicus briefs on behalf of the student.

States opposing the USDOJ/OCR transgender policy directive:

Texas, Alabama, Wisconsin, West Virginia, Tennessee, Oklahoma, Louisiana, Utah, Georgia, Maine, Arizona, Kentucky, Mississippi, Nebraska, Arkansas, Kansas, Michigan, Montana, North Dakota, Ohio, South Carolina, South Dakota, and Wyoming.