**THE YEAR IN REVIEW: 2017**

**And a Look Ahead to 2018**

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1. **U.S. SUPREME COURT**
2. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 137 S.Ct. 988 (2017). In a unanimous decision, the Court held that, to meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress “appropriate in light of the child’s circumstances.” When a child is “fully integrated” into a regular classroom, providing FAPE that meets the unique needs of a child with a disability typically mean providing a level of instruction reasonably calculated to permit advancement through the general curriculum (*Rowley* standard). However, if progressing smoothly through the general curriculum is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement, but must be “appropriately ambitious in light of his circumstances.” The Court states “this standard is markedly more demanding than a ‘merely more than *de minimis’* test for educational benefit. This ruling leaves much room for interpretation and has sparked a national surge in special education litigation as parties begin to test the boundaries of the *Endrew F*. decision.

New Cases Applying the *Endrew F*. Standard:

a. *C.M. ex rel. C.M. v. Warren Ind. Sch. Dist*., 69 IDELR 282 (E.D. Tex. 2017, *unpublished*). A 9-year-old boy with an emotional disturbance had made reasonable progress with his behavioral goals but minimal academic progress. The court held that the behavioral progress was proof that the child was receiving FAPE, even though he was not yet performing on grade level academically.

b. *E.D. by T.D. and C.D. v. Colonial Sch. Dist*., 69 IDELR 245 (E.D. Pa. 2017).

An administrative decision rendered prior to the *Endrew F*. ruling is still valid if the judge applied a sufficiently rigorous test and considered the child’s circumstances. The court held that the child’s academic progress was

“appropriate in light of her age and disability-related needs,” even though she was not proficient in all academic areas by the end of the school year.

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

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

2. *Fry v. Napoleon Cmty. Schs.*, 69 IDELR 116, 137 S. Ct. 743 (2017). The Court overturned a decision from the 6th U.S. Circuit Court of Appeals holding that a student’s desire to be accompanied at school by her service dog was “crucially linked” to her IEP goals and therefore subject to the “exhaustion” requirements of the IDEA. The Supreme Court’s unanimous decision held that cases in which the “gravamen” of the complaint is a denial of FAPE must be administratively exhausted, while other types of claims (e.g., claims of systemic denial of rights and

504/Title II claims seeking money damages only) do not have to be exhausted.

New Cases Applying the *Fry* Test:

a. S.D. v. Haddon Heights Bd. of Educ., 118 LRP 4137 (3d Cir. 2018). Court dismissed the federal lawsuit filed by the parents of a student with multiple medical problems and a 504 plan. The court held that the allegations were subject to the exhaustion requirements of the IDEA because the essence of the claims was a denial of FAPE.

b. *A.H. by H.C. v. Craven County Bd. of Educ.,* 70 IDELR 148 (E.D.N.C.

2017). The federal court dismissed the parents’ 504/Title II lawsuit seeking money damages for the alleged creation of a “hostile education environment.” The court held that the fact that the student’s IEP contained provisions related to the use of physical restraint as a crisis management technique made this a “denial of FAPE” case requiring the exhaustion of administrative remedies.

c. *L.D. v. Los Angeles Unified Sch. Dist*., 69 IDELR 272 (C.D. Cal. 2017). The guardian ad litem for a child with Down syndrome must exhaust the IDEA administrative process prior suing in federal court. Although the complaint only alleged violations of the child’s ADA and Section 504 rights, the court found that the plaintiff was actually seeking relief for a denial of FAPE.

d. *Bowe v. Eau Claire Area Sch. Dist*., 69 IDELR 275 (W.D. Wis. 2017), *reconsideration denied*, 117 LRP 21341 (W.D. Wis. 05/25/17). The court refused to dismiss a complaint filed on behalf of a former student with autism who alleged disability-based peer harassment denied his right to a harassment-free educational environment, finding that his claim was not for a denial of FAPE per se.

e. *N.S. v. Tennessee Dept. of Education,* 69 IDELR 280 (M.D. Tenn. 2017).

The court rejected the school district’s attempt to win the dismissal of a complaint alleging improper restraint and seclusion of two students with disabilities. The federal judge ruled that the court held that administrative remedies would be futile because the parents contended that the frequent use of restraint and seclusion on students with disabilities stemmed from the district’s inappropriate disciplinary practices and indifference to complaints of abuse.

f. *MB and RB v. Islip Sch. Dist*., 69 IDELR 281 (E.D.N.Y. 2017). The court dismissed the plaintiffs’ complaint, rejecting their argument that it would be futile for them to seek relief in an IDEA due process hearing. The plaintiffs failed to satisfy their burden of demonstrating that the administrative remedies provided for under the IDEA were futile such that their failure to exhaust should be excused. In arguing that exhaustion would have been futile, the plaintiffs neither claimed that they were unaware of the administrative remedies provided for under the IDEA nor that the school district had “adopted a policy or pursued a practice of general applicability that is contrary to the law.”

g. *Colombo v. Board of Educ. for the Clifton Sch. Dist*., 71 IDELR 43 (D.N.J.

2017, *unpublished*). A parent’s claim of bullying and peer harassment must be exhausted in a due process hearing since the gravamen of her claim was that her son had been denied participation in “education benefits.” The mother of a student alleged that the school principal had offered to refrain from disciplining her son in exchange for sexual favors. She also claimed that her son was forced to complete his senior year at home due to the principal’s failure to stop the student from being bullied at school.

h. *Abraham P. v. Los Angeles Unified Sch. Dist*., 71 IDELR 41 (C.D. Cal.

2017). A money damages case alleging that a student with Down syndrome

suffered years of abused at a segregated special school was not subject to the IDEA’s exhaustion requirement because the gravamen of the case was not a denial of FAPE and, importantly, because similar claims had been dismissed by an ALJ for lack of jurisdiction.

i. *Z.T. v. Santa Rosa City Schs.,* 71 IDELR 14 (N.D. Cal. 2017). The federal court rejected a parent’s claim that she was not subject to the IDEA’s exhaustion requirements because she could not obtain relief in a due process hearing. The parent alleged that the school district had failed to

school. The court found no evidence that the parent had made any effort to obtain relief via the due process hearing procedures.

j. *J.M. v. Francis Howell Sch. Dist*., 69 IDELR 146 (8th Cir. 2017). The 8th Circuit interpreted the *Fry* decision as requiring parents to exhaust IDEA administrative remedies for any claim premised on a denial of FAPE. In this case, the parents alleged that their son was subjected to disability-based discrimination and denied educational benefits due to the district’s inappropriate use of physical restraint and isolation. The court dismissed the claims, requiring the parents to exhaust the IDEA due process hearing procedures prior to seeking relief in federal court.

**II. BULLYING AND HARASSMENT**

3. *Condit v. Bedford Cent. Sch. Dist*., 71 IDELR 8 (S.D.N.Y. 2017). A complaint filed by the parent of an IDEA-eligible student was dismissed because it failed to properly plead “deliberate indifference” or identify any egregious behavior of staff. The complaint alleged that their son’s anxiety medication had to be increased after a classmate pushed him and stared directly into his face. The parents also alleged that the student suffered a seizure requiring hospitalization due to the increased medication. However, the parents made no allegations that the school district officials acted with “deliberate indifference” or violated any law entitling the parents to money damages.

4. *MJG v. School Dist. of Philadelphia*, 71 IDELR 74 (E.D. Pa. 2017). A federal judge rejected the claims brought by the parent of a teen with autism and severe intellectual disabilities alleging disability-based discrimination. Allegedly, a classmate inappropriately touched the teen the previous school year. The following school year the girl and classmate were again placed in the same special education classroom for students with intellectual disabilities. The parent was not satisfied with the actions taken by school officials to prevent an incident, such as separating the two students’ desks and having aides closely monitor the student. The court held that, although separating the students into two separate classrooms may have been preferable, the school district’s actions were not sufficient to show deliberate indifference and did not constitute disability-based discrimination.

5. *Lewis v. Blue Springs Sch. Dist*., 71 IDELR 33 (W.D. Mo. 2017). The parent of a high school student with depression, ADHD, and a speech impairment and who committed suicide properly alleged disability-based discrimination. The parent alleged that the district had knowledge that the student was diagnosed with and suffered from depression and that the district’s actions and inactions in responding to her reports of severe bullying ultimately led to her son’s suicide. The parent specifically alleged that district officials treated incidents of peer bullying as teasing or “kids being kids” rather than appropriately responding in

hospitalization and suicide attempt.

**III. BEHAVIOR AND FBAS/BIPS**

6. *N.G. v. Tehachapi Unified Sch. Dist*., 69 IDELR 279 (E.D. Cal. 2017). A school district appropriately implemented behavior interventions to address the aggressive and eloping behaviors of a 7-year-old student with autism and was not penalized for waiting to conduct a formal functional behavioral assessment. The court affirmed an ALJ’s decision finding that the district had taken appropriate steps to address the student’s behavioral challenges in view of the child’s circumstances per *Endrew F.,* such as adding an adult aide to work one- to-one with the student, using positive reinforcement, incorporating timers and cues for transitions, and eliminating triggers (i.e., the cafeteria).

7. *Paris Sch. Dist. v. A.H.*, 69 IDELR 243 (W.D. Ark. 2017). A BIP developed for a fourth-grade student with Asperger syndrome was inappropriate because it failed to effectively address her problem behaviors. Teachers had identified the girl’s behaviors as verbal disruptions, physical aggression, property destruction, and elopement. However, the BIP characterized her behavior as “noncompliance.” The disconnect between the child’s actual behavior issues and the draft BIP proved that the district had failed to properly address the child’s behaviors at school.

8. *G.L. v. Saucon Valley Sch. Dist*., 69 IDELR 249 (E.D. Pa. 2017). The positive outcomes documented in witness statements and progress reports for an 11- year-old boy with an emotional disturbance proved that the school district had adequately addressed the boy’s behavioral needs. The records showed that the child had reduced elopement, increased classroom participation, and improved his reading skills.

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

10. *Doe v. Osseo Area Sch. Dist. ISD No. 279*, 71 IDELR 35 (D. Minn. 2017). A federal court rejected the parent’s claim that Section 504 mandates a lower standard for manifestation determination reviews than that imposed by the IDEA. The school district conducted an MDR to determine whether a high school student’s ADHD, PTSD, and depression caused him to write racist graffiti on the inside of a restroom stall at school, and the team determined that there was no causal connection between the misconduct and the student’s disabilities. The parent argued that Section 504 requires school districts to find a

connection” to the student’s diagnoses. The court rejected that analysis and held that districts should follow the same MDR tests for both the IDEA and Section

504, citing OCR interpretations to that effect.

**IV. CHILD FIND/ELIGIBILITY/EVALUATIONS**

11. *M.G. v. Williamson County Schools*, 71 IDELR 102 (6th Cir. 2018), *unpublished*. A Tennessee school district complied with the procedural and substantive requirements of the IDEA and 504 when responding to the needs of a young girl with developmental delays. The district conducted a comprehensive IDEA eligibility evaluation when the girl entered Pre-K at 3 years of age. This evaluation found that the child did not meet eligibility criteria for special education and related services. The parent enrolled her in Kindergarten at 4 years of age, against the recommendation of her treating physician. As the youngest child in the class, she struggled academically and developmentally. The district’s GEIT team provided multiple accommodations, and the girl received additional interventions via the RTI program. As a result, she made tremendous gains but repeated Kindergarten to “catch up” with her peers. When she began exhibiting behavior problems in her second year of Kindergarten (as a result of new medication), the district identified her as a 504- eligible student and offered a 504 plan with any services the parents requested (they requested no direct services). The district also proposed a second IDEA eligibility evaluation, but the parents withdrew her from public school before the evaluation could be completed. The Court affirmed the decisions of the ALJ, Magistrate Judge, and federal judge in favor of the school district.

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

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

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

student’s eligibility classification (e.g., autism v. ED) or “label” is unimportant as long as it does not interfere with the development of an appropriate IEP and the provision of educational services.

16. *A.A. v. Goleta Union Sch. Dist*., 69 IDELR 156 (C.D. Cal. 2017). Parents who failed to justify an exception to the district’s stated “cap” on costs of IEEs based on proof of “unique circumstances” were not entitled to reimbursement for a

$6,000 neuropsychological examination.

17. *G.D. v. West Chester Area Sch. Dist*., 70 IDELR 180 (E.D. Pa. 2017). The parents of a gifted third-grade student with an anxiety disorder disagreed with the results of a school psychologist’s eligibility determination finding that their child was not “in need of” special education and related services. However, there was no evidence that the school psychologist’s evaluation was “legally deficient” simply because she disagreed with the recommendation of the child’s treating therapist. The court held that the school district had appropriately considered the child’s anxiety issues by developing a 504 plan offering the designation of a “trusted adult” for the child.

18. *D.B. v. Fairview Sch. Dist*., 71 IDELR 36 (W.D. Pa. 2017). The proactive measures taken by the school district to address a preschool student’s behavior and language deficits were appropriate and sufficient to survive a challenge to its “child find” implementation. The parents filed a lawsuit alleging that the district had taken too long to identify the child as eligible for an IEP pursuant to the IDEA and provide special education and related services. However, the evidence showed that the district had acted quickly to provide appropriate services before an IEP was finally developed. The court held that the IDEA does not require school districts to develop an IEP “at the earliest possible moment.”

19. *R.Z.C. v. Northshore Sch. Dist*., 71 IDELR 2 (W.D. Wash. 2017). The federal court upheld the school district’s decision to exit a student from special education, rejecting the opinion of an independent evaluator who found that the boy’s writing difficulties warranted continued IDEA eligibility. The court found that there was no evidence that the student’s mild dysgraphia had an adverse impact on his education.

**V. DISCIPLINE OF STUDENTS WITH DISABILITIES**

20. *Smith v. Rockwood R-VI Sch. Dist.*, 69 IDELR 268 (E.D. Mo. 2017). The parent of a student diagnosed with autism, Tourette syndrome, ED (major depression and OCD), and ADHD sought money damages for her son’s emotional pain and suffering, humiliation, and loss of reputation allegedly caused by his 180-day suspension from school. The student was suspended after an MDR concluded that his misbehavior was “directly and substantially related to” his disabilities

case was dismissed for a failure to exhaust administrative remedies, with the court holding that the student’s claims were based on his alleged deprivation of educational benefits (e.g., a denial of FAPE) and therefore must be exhausted administratively.

**VI. IEP DEVELOPMENT AND IMPLEMENTATION**

21. *Ms. M. v. Falmouth Sch. Dep't*, 69 IDELR 86 (1st Cir. 2017), *cert. denied*, 117

LRP 42127, 138 S. Ct. 128 (2017). A reference in a prior written notice to a specific methodology (SPIRE) did not bind the school district to using that methodology since it was not included in the child’s IEP. The IEP called for “specially designed instruction” in reading and math.

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

23. *M.C. v. Antelope Valley Union High Sch. Dist*., 69 IDELR 203 (9th Cir. 2017)*, amended by*, 117 LRP 21748, 858 F.3d 1189 (9th Cir. 2017), *cert. denied*, 117

LRP 50165, 138 S. Ct. 556 (2017). A district’s unilateral modification of IEP

services for a blind student with Norrie disease constituted a substantive violation of the parent’s right to meaningful participation in the development of her son’s IEP. Interestingly, the modification actually substantially increased the amount of VI services provided to the student (from 240 minutes per month to 240 minutes per week).

24. *A.V. v. Lemon Grove Sch. Dist*., 69 IDELR 155 (S.D. Cal. 2017). The IEP team’s discussion of parents’ preferred placement and the team’s willingness to investigate the advocate’s concerns about its proposed placement proved that the district did not predetermine the student’s placement.

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

26. *C.M. v. New York City Dep't of Educ*., 69 IDELR 117 (S.D.N.Y. 2017). Gaps in the annual goals for a 13-year-old boy with autism were remedied by the details provided in the short-term objectives. The school district was not liable for the

$94,000 per year private placement chosen by the parents.

27. *Nicholas H. v. Norristown Area Sch. Dist*., 69 IDELR 118 (E.D. Pa. 2017). The IEP for a teenage boy diagnosed with LD, ADHD, and anxiety failed to describe the services offered in clear and specific language that the parents could understand. This failure to draft the IEP by including specific language explaining terms like “co-teaching” and “direct instruction” led to the court refusing to consider the testimony of staff who explained what this general language was intended to mean.

28. *J.R. v. Smith*, 70 IDELR 178 (D. Md. 2017). A special education administrator’s statement to parents during a telephone conversation that they should be “ready for a fight” when they arrived at their child’s IEP meeting did not constitute “pre-determinism.” The “robust discussion” that occurred during the subsequent IEP meeting about two potential placements proved that the school district was effectively considering the parents’ preferred placement option. The federal judge found that the administrator’s pre-IEP meeting statement was meant simply to alert the parents to the state of mind of the IEP chairperson.

29. *McKnight v. Lyon Co. Sch. Dist*., 70 IDELR 181 (D. Nev. 2017). The parent of a child with a disability asked to participate in IEP meetings via email rather than in person after she had filed a request for a due process hearing against the district. The court found that the district had not engaged in retaliation against the parent by refusing to allow her to participate via email, since the district gave a non-discriminatory reason for refusing the request. The district asserted that its reason for refusing to conduct IEP meetings via email is that email-only participation would limit collaboration by IEP team members.

30. *F.L. v. Board of Educ. of the Great Neck U.F.S.D*., 70 IDELR 182 (E.D.N.Y.

2017). The creation of similar IEP goals over several school years does not automatically mean that a school district has failed to provide FAPE to a student with a disability. The court ruled that the critical question was whether the IEPs allowed the student to receive a meaningful educational benefit.

31. *M.L. v. Smith*, 70 IDELR 142 (4th Cir. 2017), *cert. denied*, 118 LRP 2066 (01/16/18). The parents of a 9-year-old boy with Down syndrome did not prove that their school district denied the child FAPE by offering an IEP that did not include instruction in the customs and practices of Orthodox Judaism. The court held that the IDEA’s definition of FAPE does not include religious and cultural instruction.

32. *Sean C. and Helen C. v. Oxford Area Sch. Dist.,* 70 IDELR 146 (E.D. Pa. 2017).

This court held that the substantive appropriateness of IEPs must be judged

based on the information available at the time of the IEP’s formation and not be second-guessed by information that becomes available afterwards.

33. *Benjamin A. v. Unionville-Chadds Ford Sch. Dist*., 70 IDELR 150 (E.D. Pa.

2017). The court held that the fact that the IEPs developed for an elementary

“executive functioning skills” as an annual measurable IEP goal did not render the IEPs deficient. Many of the individual skills the IEP focused on were directly related to the development of executive functioning skills, including task initiation, writing, and reading comprehension.

34. *I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Schs*., 70 IDELR 86 (8th Cir.

2017). Occasional IEP implementation failures do not rise to the level of a

denial of FAPE where the evidence shows that the student made good grades and his progress in the general education curriculum was not impeded. The student, who was blind, was provided Braille materials for all but some short assignments that he could read with alternative aids and large print.

35. *Rachel H. v. Department of Educ., State of Hawaii*, 70 IDELR 169 (9th Cir.

2017). School districts are not required to identify on the IEP which particular school building a student will attend. The court interpreted the IDEA’s requirement that an IEP denote the “location” of a student’s services to mean the “type of placement” as opposed to the physical location.

**VII. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

36. *A.M. v. New York City Dep’t of Educ*., 69 IDELR 51 (2d Cir. 2017). The school district denied FAPE to a 6-year-old boy with autism when it failed to provide one-to-one ABA instruction. Every evaluation in the child’s file recommended intensive one-to-one ABA therapy; therefore, the district should have either conducted its own assessments or accepted the “clear consensus” of the private evaluators.

37. *Dallas Ind. Sch. Dist. v. Woody*, 70 IDELR 113 (5th Cir. 2017). The parents of a teen girl who had been in a private residential psychiatric facility for two years sought funding for the girl’s continued residential placement after she moved from California to Dallas. The Texas school district convened a meeting to review her California IEP and determine “comparable” services. A series of events, some caused by the parents, resulted in a delay of several months for the collection of evaluations and other relevant educational and assessment information. The school district initiated its own IDEA eligibility evaluation in January of the school year. In April, the district first found the girl eligible as having ED, then a week later, it determined that she was ineligible for special education and related services. The district finally reversed itself again and found her eligible approximately one month before the girl was set to graduate from high school. The parents initiated a due process hearing seeking reimbursement for the costs of the private placement for the entire school year. The court rejected the parents’ claims, limiting reimbursement to the period from April to May only (the dates during which the student had been determined to be eligible).

goals do not have to specifically address each of a student’s areas of educational need as long as the IEP goals as a whole adequately address these needs. In this case, the IEP for an elementary school student with autism addressed the child’s need to comply with directions. None of the goals specifically addressed the need to stay on task, but the court ruled that the goals and aids as a whole (complying with two- to three-step directions and the provision of a visual schedule, preferential seating, on-task reminders, and a one-to-one aide) adequately addressed this deficit area.

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

40. *Parrish v. Bentonville Sch. Dist*., 69 IDELR 219 (W.D. Ark. 2017). An Arkansas school district that moved a third-grade student with autism and violent behaviors from a general education classroom to an autism class for one school day pending an IEP meeting did not violate the IDEA. The student had a history of physical aggression at school and on the day of his removal had charged another student. The student was physically restrained, and the parent was notified that day that her son would attend the autism classroom pending an IEP meeting the following day. The court held that the temporary change in placement did not violate the IDEA because the student’s educational services remained the same and the temporary removal did not exceed 10 school days.

41. *E.F. v. Newport Mesa Unified Sch. Dist*., 69 IDELR 206 (9th Cir. 2017), *vacated and remanded by,* 117 LRP 42131, 138 S. Ct. 169 (2017.). The school district’s proposed IEP provided FAPE for a kindergarten student with autism, despite the fact that the district did not conduct an AT evaluation for a high-tech communication device. The 9th Circuit determined that the non-electronic AT provided to the child enabled him to make educational progress and that the student was not ready to handle high-tech communication devices. On writ of certiorari, the U.S. Supreme Court vacated and remanded the decision for further consideration in light of its decision in *Endrew F.* on 03/22/17.

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

the state of New York to ensure that incarcerated juveniles with disabilities are provided FAPE, even when placed in solitary confinement. The juveniles were deprived of educational services when in solitary confinement except for the provision of “cell packets.” The judge found that this practice violated the students’ rights and that the jail’s need to maintain safety and security was not as strong as the juveniles’ right to appropriate educational services.

44. *N.B. and C.B. v New York City Dep’t. of Educ.*, 70 IDELR 245 (2d Cir. 2017, *unpublished*). An IEP team’s adoption of IEP goals drafted by a private school utilizing the DIR/Floortime methodology did not obligate the public school to provide instruction in the same methodology. The court held that the public school used a variety of methodologies and tailored instructional techniques to the student’s unique needs and therefore the public school was not obligated to provide the same methodology as that used by the private school.

45. *S.M. and L.C. v. Hendry County Sch. Bd*., 70 IDELR 249 (M.D. Fla. 2017). The district’s oversight in filing a form with the Florida Department of Education recording the qualifications of a speech-language associate was not sufficient to prove a deprivation of FAPE. The speech-language associate had satisfied the state law requirements for education and experience.

**VIII. LEAST RESTRICTIVE ENVIRONMENT**

46. *T.M. v. Quakertown Cmty Sch. Dist*., 69 IDELR 276 (E.D. Pa. 2017). The parents of an 11-year-old student with autism, global apraxia, and an intellectual disability alleged that their child should be provided one-to-one academic instruction rather than opportunities for socialization with peers. The court found that the student had made increasing gains in socialization, and it upheld the school district’s placement.

47. *A.A. v. Walled Lake Consol. Schs*., 71 IDELR 37 (E.D. Mich. 2017). A Michigan district’s argument that the parents of an elementary school student with Down syndrome were not looking out for the child’s educational interests did not allow it to name the child as a plaintiff in its own complaint against the state ED. The U.S. District Court, Eastern District of Michigan denied the district’s motion to “realign” the parties so that the district and the student were on the same side in the LRE dispute.

48. *J.S. III v. Houston County Bd. of Educ*., 70 IDELR 219 (11th Cir. 2017, *unpublished*). Allegations that two teachers and an elementary school principal failed to follow up after they learned that an aide was repeatedly removing a fourth-grade student from the general education classroom could constitute disability-based discrimination. The court overturned a lower court’s ruling and remanded the parent’s Section 504/ADA claims for further proceedings. The ruling was based on previous U.S. Supreme Court precedent (*Olmstead v. L.C.,*

disabilities is a form of disability discrimination.

**IX. MONEY DAMAGES AND LIABILITY**

49. *Crofts v. Issaquah Sch. Dist*., 71 IDELR 61 (W.D. Wash. 2017). In a decision going against the clear weight of authority, a federal court held that the parents of a student with disabilities may seek money damages under the IDEA against a Superintendent and Director of Special Education.

50. *A.C. v. Scranton Sch. Dist*., 69 IDELR 211 (M.D. Pa. 2017). The school district was not responsible for the actions of private school staff using inappropriate physical restraints at least 23 times over a three-year period on a 10-year-old boy with a mixed developmental disorder, autism, an intellectual disability, ADHD, and mixed receptive/expressive disorder. The court refused to hold the public school district responsible for the actions of the private school employees despite the existence of an indemnity clause in the contract between the public and private school agencies.

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

52. *Maldanado v. City of New York Bd. of Educ*., 69 IDELR 283 (N.Y. Sup. Ct.

2017, *unpublished*). The father of a 5-year-old boy with autism, ADHD, and an intellectual disability could sue the public school district for injuries his son sustained during a sexual assault while riding a special education bus. The boy continued to ride the special education bus despite reports to school officials from bus monitors that the child had been found in various stages of undress during several bus rides. The evidence that the district was aware of potential safety issues led to the court’s refusal to dismiss the claims.

53. *Crochran v. Columbus City Schs*., 70 IDELR 251 (S.D. Ohio 2017). A special education teacher’s use of a “body sock” with a fifth-grade student with autism did not even come close to “conscience shocking” behavior needed to sustain an allegation of a violation of the student’s constitutional rights. The student testified that he enjoyed using the body sock and that he accidentally fell and injured his face. There was no evidence that the teacher used the body sock in a way that was brutal, demeaning, or harmful. Rather, the evidence showed that the teacher had a legitimate educational reason for trying the body sock to manage the students’ behavior.

54. *R.E.B. v. State of Hawaii, Dep’t of Educ*., 70 IDELR 194 (9th Cir. 2017). The district violated the IDEA by failing to develop a transition plan for a kindergarten student with autism who had spent the previous two years in a small private school for children with autism.

**X. PRIVATE SCHOOL/RESIDENTIAL PLACEMENT**

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

56. *Y.D. v. New York City Dep’t of Educ*., 69 IDELR 178 (S.D.N.Y. 2017). The failure to include a specific sensory diet in a 9-year-old boy’s IEP did not constitute a denial of FAPE. The federal judge ruled that IEP’s do not have to contain a detailed sensory diet as long as the IEP contains information about the student’s sensory needs and suggests appropriate ways of managing these needs (e.g., proprioceptive movement-based activities, singing familiar songs).

57. *J.S. and R.S. v. New York City Dep’t of Educ.,* 69 IDELR 153 (S.D.N.Y. 2017).

The circulation of a draft IEP prior to an IEP meeting does not constitute “predetermination,” a federal judge in New York ruled. The judge rejected the parents’ allegation that the district disregarded their input by giving them a draft IEP before an IEP meeting and recommending the same specific classroom several years in a row.

58. *Doe v. League Sch. of Greater Boston Inc*., 70 IDELR 179 (D. Mass. 2017). A private special education school could be liable for a Title IX claim since it had accepted IDEA funds from the student’s home school district. Even though the private school benefitted only indirectly from the IDEA funds, it legally became a “federal funding recipient” and could be liable for a denial of FAPE.

59. *J.T. v. Department of Educ., State of Hawaii*, 70 IDELR 144 (9th Cir. 2017, *unpublished*). The 9th U.S. Circuit Court of Appeals held that courts should not consider whether a student actually made progress in a private school placement when determining whether placement at a private school offered “appropriate” educational services. Rather, the proper inquiry is whether, at the time of enrollment, the private school placement was “specially designed to meet the unique needs of a student with a disability.”

60. *Methacton Sch. Dist. v. D.W*. *and R.W.*, 70 IDELR 247 (E.D. Pa. 2017). A court held that the school district denied FAPE to a high school student with SLD by failing to obtain baseline evaluative data prior to developing goals. As a result, the IEP goals did not align with the student’s evaluative data. The court awarded funding for a private school placement to the parents of the student.

**XI. PROCEDURAL VIOLATIONS/SAFEGUARDS**

61. *L.M.P. v. Sch. Bd. of Broward Co., Fla*., 118 LRP 2518 (11th Cir. 2018). The parents of a student with autism alleged that the school district had refused to consider the provision of ABA therapy to their child, and alleged that this refusal constituted “pre-determinism.” The court found that the IEP team’s inclusion of PECS (picture exchange communication system) in the child’s IEP was “related to” ABA therapy, and therefore proved that the school district had not refused to consider ABA.

62. *R.F. v. Delano Union Sch. Dist*., 69 IDELR 236 (E.D. Cal. 2017). A parent of a child with a disability may seek federal court adjudication of issues such as stay-put during the pendency of a due process hearing. But that does not allow parents to tack on other FAPE-related claims, which must be exhausted at the administrative level.

63. *Forrester v. Independent Sch. Dist. No. 19 of Carter Co., State of Oklahoma*, 69

IDELR 247 (E.D. Okla. 2017). The federal courts are split on the issue of whether parents have standing to pursue 504/Title II discrimination claims on their own behalf. In this case, the judge ruled that parents do not have standing to pursue discrimination claims on their own behalf.

64. *Avila v. Spokane Sch. Dist*., 69 IDELR 202 and 69 IDELR 204 (9th Cir. 2017).

In a case of first impression, the 9th Circuit ruled that the IDEA’s two-year statute of limitations does not bar suits seeking relief for alleged denials of FAPE that occurred more than two years earlier. The IDEA specifically requires parents to file their IDEA claim within two years of the time they “knew or should have known” that a potential IDEA violation had occurred but is unclear as to whether this limits the time period for which a parent can seek relief.

65. *S.H. v. Tustin Unified Sch. Dist.,* 69 IDELR 176 (9th Cir. 2017, *unpublished*). A California federal court ruled that the parents of a 13-year-old girl had more than adequate opportunity for input into the development of her IEP.

66. *T.O. v. Cumberland Co. Bd. of Educ*., 69 IDELR 182 (E.D.N.C. 2017), *aff'd*, 70

IDELR 170 (4th Cir. 2017). A lawsuit was dismissed for a failure to exhaust IDEA administrative remedies. An ALJ had previously dismissed the parent’s claims because she had refused to exchange with the school district the evidence she intended to introduce at the hearing.

voluntary resolution of an OCR complaint does not equate to exhaustion of IDEA’s administrative remedies. A student who filed a federal lawsuit seeking damages for his expulsion and denial of FAPE was required to proceed to a due process hearing prior to seeking relief in federal court.

68. *McKnight v. U.S. Dep't of Educ., Office of Civil Rights*, 117 LRP 14542 (D.

Nev. 02/13/17), *adopted by*, 69 IDELR 234 (D. Nev. 2017). The parent of a

student with a disability sued OCR alleging that the agency had violated Section

504/the ADA by (1) failing to conduct a fact-specific investigation; (2) failing

to ensure that her 504 hearing was impartial; (3) failing to ensure that her child’s IEPs were appropriate; and (4) failing to ensure that the district had a designated 504 coordinator. The parent also alleged that OCR had retaliated against her for sending an email complaining about a previous OCR investigation. The magistrate judge issued a Report and Recommendation advising the dismissal of the claims against OCR and giving the parent an opportunity to refile her claims against a proper defendant, suggesting that IDEA and Section 504 claims for denials of FAPE should be brought against an LEA rather than the federal agency.

69. *M.R. and J.R. v. Ridley Sch. Dist*., 70 IDELR 141 (3d Cir. 2017). The 3d Circuit ruled in a case of first impression that parents who prove that a school district violated the IDEA’s stay-put provision and win compensatory services qualify as a “prevailing party” under the IDEA, making them eligible for an award of attorney’s fees.

70. *M.C. v. Oregon Dep’t of Educ.*, 70 IDELR 143 (9th Cir. 2017, *unpublished*). A parent’s claims against the state ED were improper because they did not involve the identification, evaluation, placement, or provision of educational services to a fifth-grade student with disabilities. The claims brought against the SEA by the parent sought reimbursement for a $300 bill from the student’s physician for two telephone conversations with school personnel to discuss evaluation results. The SEA had investigated the parent’s complaint that they were billed for the physician’s time during the calls and found that it was the physician who initiated the telephone conversations with the school in order to gather information for an upcoming office visit.

71. *E.G. v. Anchorage Indep. Pub. Schs*., 71 IDELR 13 (W.D. Ky. 2017). The parents of a high school student with autism jumped the gun and filed an action for due process seeking funding for a private school placement before the student’s IEP team could complete the development of a new IEP. The federal court dismissed the action for a failure to exhaust administrative remedies.

72. *Ostby v. Manhattan Sch. Dist. No. 114*, 69 IDELR 175 (7th Cir. 2017). The parents’ claim that the district had violated the LRE requirement was mooted by the district’s pre-trial agreement to place the student in a general education

recommend a placement in the future that violates the LRE requirement.

**XII. COMPENSATORY EDUCATION AND OTHER REMEDIES**

73. *Tahachapi Unified Sch. Dist. v. K.M*., 69 IDELR 237 (E.D. Cal. 2017). A federal judge ordered a California school district to pay $15,000 for a summer Lindamood-Bell reading program, despite the fact that an appeal of the due process order was pending.

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

75. *D.L. v. District of Columbia*, 70 IDELR 59 (D.D.C. 2017). Federal courts have jurisdiction to order specific reforms to address systemic compliance failures by granting requests for systemic injunctive relief as opposed to individual rulings on an entire class of affected students.

**XIII. ATTORNEY’S FEES AND ATTORNEY CONDUCT**

76. *Morgan Hill Concerned Parents Assoc. v. Calif. Dep't of Educ*., 117 LRP 40307 (E.D. Cal. 2017). A federal court ordered the California Department of Education to produce more than 29,000 documents in the specific electronic format requested by the plaintiffs in this class action lawsuit alleged a statewide denial of FAPE. The plaintiffs sought the release of emails from CDE, including all metadata rather than in “load” format. The court rejected CDE’s argument that the production of all emails with metadata would be overly burdensome.

77. *Jefferson County Bd*. *of Educ. v. Bryan M. and Darcy M.,* 70 IDELR 145 (11th Cir. 2017, *unpublished*). A parent who wins substantive relief becomes a prevailing party eligible for an award of attorney’s fees, even when the parent later decides not to accept the substantive award of services. In this case, the parents of a student with a disability won a due process hearing challenging the district’s proposed placement of their child. Despite winning the case, the parents chose to withdraw the student and enroll him in private school.

78. *R.J. v. Rivera*, 70 IDELR 152 (E.D. Pa. 2017). The Pennsylvania Department of Education was liable for an award of attorney’s fees in a case against a charter school that went bankrupt following an adverse due process hearing decision.

The court held that the parents of the student were entitled to recover the costs of their attorney’s fees, even though the charter school had gone out of business. In such cases, the court held, the SEA was financially liable for the payment of the attorney’s fees because the state agency retains ultimate responsibility for ensuring that students receive FAPE.

79. *M.K. v. Prestige Academy Charter Sch.*, 118 LRP 4138 (D. Dela. 2018). A federal court refused to dismiss claims regarding the enforceability of a settlement agreement between a parent and a now-defunct charter school concerning IDEA services. The settlement agreement obligated the charter school to pay $30,000 worth of compensatory education services. The court found that the State Department of Education was a proper party to the case and could be liable for the costs if the charter school ceased to operate.

80. *Angelique D. v. Pennsylvania Dept. of Educ*., 118 LRP 3774 (E.D. Pa. 2018).

The federal court held that the State Dept. of Educ. could be liable for paying

attorney’s fees to a parent who prevailed against a charter school in a due process hearing if the charter school went bankrupt (the charter school was found liable for 1,708.3 hours of compensatory education services).

81. *Utica Cmty Schs. v. Alef*, 70 IDELR 246 (6th Cir. 2017, *unpublished*). After years of litigation, the school district sought recovery of its attorney’s fees from the parent’s attorney on the grounds that he had made frivolous allegations in a due process hearing complaint, including the allegation that the district had convened a “secret meeting” about the IEP without inviting the parents to attend. An ALJ found no evidence of a secret meeting, but the 6th Circuit affirmed the district court’s dismissal of the complaint because the ALJ had found that the school district had failed to prosecute the claim.

82. *A.P. v. Shamokin Area Sch. Dist*., 70 IDELR 248 (M.D. Pa. 2017). A parent who prevailed in a due process hearing on one of five issues was only entitled to a proportional share of her attorney’s fees. The court reduced the fees awarded from the requested $28,468 to $4,000 based on the relief obtained.

**XIV. RETALIATION**

83. *Z.F. v. Ripon Unified Sch. Dist*., 70 IDELR 19 (E.D. Cal. 2017). Parents who claimed that a California district and a private nonprofit organization unlawfully restricted their children’s access to ABA services were not entitled to relief under Section 504. The U.S. District Court, Eastern District of California held that the parents’ failure to establish “deliberate indifference” to their children’s rights required it to grant the district’s motion for judgment. The fact that a popular special education program has a waitlist or eligibility criteria does not in itself prove that a district intentionally denied students access to necessary services. To establish liability under Section 504, the parents must show that the district: 1) knew the student’s federally protected rights were likely to be

violated; and 2) failed to act despite that knowledge. These parents argued that the district and the nonprofit wrongfully used the waitlist and eligibility criteria to screen out otherwise qualified children. However, they did not explain how the enforcement of the program’s requirements amounted to deliberate indifference.

84. *Hamilton v. Hite*, 70 IDELR 175 (E.D. Pa. 2017). Evidence showing that the district repeatedly offered educational services to the grandmother of a child with severe behavioral problems negated the grandmother’s claim that the district retaliated against her for her advocacy by refusing to provide services, repeatedly suspending the student, and filing a complaint with child protective services. The evidence showed that the grandmother had consistently declined the services offered by the district. Moreover, each suspension was the result of significant behavior offenses, including physical aggression (hitting and choking students and staff). The reports to child protective services were warranted due to staff overhearing the grandmother telling the child to “beat the ass” of any kid who hit them.

**XV. RESTRAINT AND ISOLATION**

85. *I*.*L. v. Tennessee Dep't of Educ. and Knox County Schs.*, 117 LRP 17249 (E.D.

Tenn. 04/27/17). A federal judge found in favor of the school district on the issue of whether the IEPs developed for a 10-year-old girl with Down syndrome provided FAPE in the least restrictive environment by proposing a split special ed/general ed placement. The girl enrolled in the school district having been home-schooled for most of her educational career and brought an IEP that placed her in a general education classroom with support services. Within a few days of her enrollment, her teachers and district staff became concerned about her behavior (which included yelling obscenities, pinching staff members’ genital areas, throwing objects, and spitting). The child’s behavior prevented her from making educational progress and significantly disrupted the general education classroom environment, even with the provision of two one-to-one assistants and consultation by a BCBA. During the pendency of the legal proceedings, the classroom aides used a gym mat to protect themselves from injury and spitting/hitting during removals of the child to the hallway when her disruption significantly interfered with instruction in the classroom. The court held that the use of the gym mat (for four days) constituted an illegal “seclusion” within the meaning of a state law and awarded four days’ of compensatory education services for the child. *See related decision at* 70

IDELR 71 (E.D. Tenn. 2017).

86. *Kimes v. Matayoshi*, 71 IDELR 7 (D. Hawaii 2017). The court held that the use of physical restraint with an elementary school student with autism could constitute disability-based discrimination. The child’s behavior intervention plan provided for the use of physical restraint, but a crisis plan developed prior to her public school enrollment by a private school specifically prohibited the

use of such restraint on the grounds that it would reinforce the child’s attention- seeking behaviors. The court found that the school district’s failure to consider the BIP’s prohibition against physical restraint may mean that the district officials knew of the child’s needs and deliberately failed to act on that knowledge.

**XVI. SERVICE ANIMALS**

87. *A.R. v. School Admin. Unit #23*, 71 IDELR 12 (D.N.H. 2017). The parents of an

8-year-old boy with a seizure disorder must exhaust the IDEA’s administrative remedies before pursuing a federal action seeking money damages for alleged violations of Section 504 and the ADA. The parents admitted that they were happy with the child’s educational instruction. However, the parents were asking the school district to hire, train, and pay for a handler for their son’s service dog. The judge held that such services were “support services” as a part of FAPE, and therefore the gravamen of the lawsuit was a denial of FAPE.

**XVII. SECTION 504 AND TITLE II OF THE ADA**

88. *Pollack and Quirion v. Regional Sch. Unit 75*, 69 IDELR 271 (D. Me. 2017).

The parents of an 18-year-old student with autism sought a ruling to force a school district to allow the student to wear a recording device to school so that the parents could know what happened all day. A hearing officer previously ruled that the student had made “continuous and significant progress” without the use of a recording device and therefore was not entitled to wear a recording device to receive FAPE.

89. *Harrington v. Jamesville Cent. Sch. Dist.,* 69 IDELR 235 (N.D.N.Y. 2017). A school district barred an honors student with anxiety and depression from participating in a school play as a punishment for plagiarism. His parents argued that the plagiarism was actually a mistake in citation caused by their son’s mental health conditions and that participation in the play was therapeutic. The court upheld the school district’s actions, ruling that the actions were not based on the student’s disability but on his behavior.

90. *M.M. v. New York City Dep’t of Educ*., 69 IDELR 208 (S.D.N.Y. 2017). A school district did not act in bad faith or gross misjudgment when it refused to provide home-based instruction, assistive technology, and behavior services to a

10-year-old girl with autism. The parent had previously won a due process hearing seeking the provision of these services. However, the court ruled that the district’s loss in the due process hearing did not prove that it had acted with the requisite intent to recover money damages under Section 504/ADA.

91. *Morales v. Newport-Mesa Unified Sch. Dist*., 71 IDELR 38 (C.D. Cal. 2017). A

high school senior who sustained serious injuries after being hit by a car was

provided several accommodations, including a 504 plan offering extra time on tests, open-note exams, and tutoring. Importantly, the parent refused to permit the district to identify the girl as in need of special education and related services. The court found that the district had tried to accommodate the girl’s needs and that the evidence of these accommodations negated the parents’ claim that the district officials were “deliberately indifferent” to the girl’s disability.

92. *Doe v. Columbia-Brazoria Indep. Sch. Dist*., 69 IDELR 262 (5th Cir. 2017).

The parents of an elementary school student alleged that another child had sexually assaulted him in the school restroom a decade earlier. The court dismissed the claims because the parents could not connect their allegations of a failure to provide reasonable accommodations to the alleged harm. There was no proof that the school district’s alleged assignment of the child to “secluded locations” for studying and taking tests lead to his sexual assault in a school restroom.