WHAT'S BEEN GOING ON IN SPECIAL EDUCATION LAW?
THE YEAR IN REVIEW

Tri-State Regional Special Law Conference

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It's been another active year in the area of special education law since last year's Tri-State Conference! Although the IDEA itself has not changed since 2004 and Section 504 has not changed in decades, there continues to be an enormous amount of litigation going on, as courts and federal agencies attempt to interpret and apply the law's provisions to individual cases. In this session, I will update the audience on significant special education "legal happenings" during the past year with an overview of relevant court decisions and some U.S. agency interpretations.

MONEY DAMAGES/LIABILITY/PERSONAL INJURY GENERALLY

A. Plainscapital Bank v. Keller Indep. Sch. Dist., 72 IDELR 207 (5th Cir. 2018) (unpublished). District court's decision to overturn a jury verdict of $1 million for the trustee of a nonverbal middle schooler is upheld. There was no evidence that the district was deliberately indifferent to the student's alleged abuse by his special education teacher, where the school principal investigated the allegations that the teacher had pulled on the student's gait belt and kicked his foot. After investigating and finding no abuse, the principal made a note in the teacher's file and monitored his classroom more closely, directing the teacher to be careful in handling students. Further, the trustee could not show that the teacher was responsible for any subsequent injuries to the student, including a bump on the head and a broken thumb. Thus, the trustee could not prove discrimination under Section 504/ADA on the part of the district and the reversal of the jury verdict was appropriate.

B. Crofts v. Issaquah Sch. Dist., 72 IDELR 15 (W.D. Wash. 2018). Parents' request to amend their complaint to add individual employees—the principal, director of special education and school psychologist—as defendants in this case is denied. This is because the IDEA's language is clear that a local educational agency, not individual employees, is obligated by its receipt of federal funds to provide FAPE to children with disabilities. In addition, the IDEA's language governing the appeals process for disputes specifically references LEAs and parents as parties, but not third parties or employees of the LEA. Finally, there is no

statutory support for the proposition that an individual defendant would be responsible for providing compensatory education.

C. K.C. v. Board of Educ. of Marshall Co. Schs., 71 IDELR 148 (W.D. Ky. 2018). District's motion for summary judgment on parents' claims for money damages under Section 504 and ADA is granted. The school district was not deliberately indifferent when it had notice of a teacher's alleged mistreatment of a student with CP. Once the district was on notice, the teacher was removed from the classroom and the parents immediately withdrew the student. One of the parents of a classmate reported the allegations of abuse, alleging that the teacher was mean, yelled at the student, put him in timeout for long periods of time, yanked him and was "very rough" with him. When the district learned that the department of child-based services would be investigating, it placed the teacher in an administrative position, and the teacher remained in that position during the investigation. Under 504/ADA, parents can establish disability discrimination by showing that 1) a student was harassed based on disability; 2) the harassment created an abusive educational environment; 3) the district knew about the harassment; and 4) the district was deliberately indifferent to the harassment. Because the district did not have notice of the alleged mistreatment until 2 days after the parents removed the student from the district and the district took action as soon as it knew, the parents have not shown the necessary elements of their claim.

D. J.L. v. Wyoming Valley West Sch. Dist., 71 IDELR 142 (3d Cir. 2018) (unpublished). Where parents alleged that their nonverbal 10 year-old son with autism suffered educational injuries as a result of a van driver's use of mechanical restraint, they must firsts exhaust their administrative remedies under the IDEA before bringing claims under Section 504 or Section 1983. The parents' complaint made numerous references to the student's right to specialized transportation, the IEP process and the relationship between the alleged use of restraint and the student's IEP. In addition, the individual claims invoked the IDEA and discussed the impact of the restraint on the student's educational progress. The fact that the parents seek money damages does not excuse their failure to first exhaust their administrative remedies. The parents own allegations and claims placed the denial of FAPE in a central role in this case and the parents cannot negate this fact simply be omitting educational redress from their prayer for relief.

E. Surina v. South River Bd. of Educ., 71 IDELR 217 (D. N.J. 2018). Parent claims for money damages under Section 1983 against the district's special education attorney who attended a series of meetings about their child are dismissed. The parents have not shown that the attorney qualified as a "state actor" subject to Section 1983 claims. The attorney's representation of the school district during IEP disputes did not turn him into an individual acting with the district's authority. "State action" cannot be found when a private attorney is merely retained by a state governmental agency to perform traditional attorney functions. While the attorney could have qualified as a "state actor" if he willfully participated in a "joint action" with the district where he had a prearranged plan with the district and substituted his own judgment for that of district officials. Nothing the parent has alleged indicates that the attorney was a "willful participant" jointly with the district to allegedly deprive them of their constitutional rights.

F. Davis v. Peoria Sch. Dist. 150, 72 IDELR 31 (C.D. Ill. 2018). Section 1983 and state law claims brought against the school's assistant principal will not be dismissed, accepting the claims that the administrator took no disciplinary action, even though he allegedly viewed video footage of a teacher's assistant shoving their ED child into a door frame and striking him in the face. While the truth of these allegations is not being decided, they are sufficient to support claims against the AP under Section 1983 in that they allege that the AP knew about the employee's misconduct and facilitated, approved, condoned or turned a blind eye to it. It is alleged that the AP reviewed the video footage and determined that the TA did not violate district policy; that the AP was a witness to the incident and took no disciplinary action; and that the AP was directly involved in denying the student medical care immediately afterwards. If true, this could result in a finding that the AP is personally responsible for a violation of the student's constitutional rights.

G. Doe v. East Irondequoit Cent. Sch. Dist., 72 IDELR 65 (W.D. N.Y. 2018). Where the district did not know the nature of a previously dismissed charge against a bus driver for acting "in a manner injurious to a child who was less than 17 years of age," the district is entitled to summary judgment. The charges did not provide the district with notice of any prior sexual misconduct for purposes of establishing a Title IX claim based upon an alleged sexual assault by the bus driver of this student with a disability who was transported alone to a day program. To hold the district liable for deliberate indifference requires actual knowledge of at least some incidents of previous harassment on the part of the driver.

H. Leon v. Tillamook Co. Sch. Dist., 72 IDELR 61 (D. Ore. 2018). District's motion to dismiss parent's 4th Amendment claim is denied and the parent's Section 1983 claims for alleged 4th Amendment violations against the bus driver and the district's superintendent may proceed. Here, a 4 year-old was allegedly injured when left strapped in a car seat on the special education bus for 75 minutes. While a district is not automatically liable for employee violations of student constitutional rights, it could be where the alleged constitutional violation results from an official district policy, custom or practice. Not only did the district concede that transportation staff failed to check for bus passengers as required, but the superintendent's executive assistant apparently told the parent that such incidents occurred 4 to 5 times a year. In addition, it is alleged that the district failed to investigate those incidents, take remedial action or implement additional policies to prevent those incidents from reoccurring. If these allegations are true, it suggests that the district has a policy of inaction that amounts to deliberate indifference to the child's constitutional rights.

I. S.V. v. Delano Union Elem. Sch. Dist., 72 IDELR 39 (E.D. Cal. 2018). Parent sufficiently pleaded a violation of the student's 4th Amendment rights and, therefore, the teacher's motion to dismiss Section 1983 claims is denied. While in most instances, a parent must prove a staff member's conduct is so outrageous that it "shocks the conscience," where the parent alleges that excessive force was used during a "search or seizure," the parent need only prove that the staff member's conduct was unreasonable in light of the educational objectives she was trying to achieve. Here, the parent alleged that the teacher grabbed,

seized and dragged the student by her shirt or body without any reason. Thus, the parent's allegations, if true, constitute an unreasonable seizure.

J. E.H. v. Clarksville-Montgomery Co. Bd. of Educ., 72 IDELR 100 (M.D. Tenn. 2018). While the classroom aide had no educational justification for striking the face of a preschooler with autism, the conduct did not violate the child's 14th Amendment rights. Thus, judgment for the aide and district on the parent's Section 1983 claims is granted. The parent's argument that the court should focus on the reasonableness of the aide's conduct is rejected, as it is the standard applicable to 4th Amendment cases. This case does not involve a search or seizure and, therefore, the "shocks the conscience standard used in 14th Amendment cases applies: 1) whether the employee acted with an educational purpose; 2) whether the force was excessive in light of that purpose; 3) whether the employee acted with intent to cause harm; and 4) whether the student suffered a serious injury. Here, the aide did not act with an educational purpose when she reflexively struck the child in the face after the child bit her leg, as the aide could have achieved the same objective without striking the child. However, there is no evidence that the aide acted with malice or intent to harm the child. In addition, the parent failed to show that the child suffered a serious physical or psychological injury. The one isolated slap to the child's face left no permanent mark other than a blotchy redness and fleeting pain and the child's alleged PTSD was not severe enough to support a constitutional claim. The court will not consider the parent's state law claim for battery against the aide.

K. Lichtenstein v. Lower Merion Sch. Dist., 72 IDELR 159 (E.D. Pa. 2018). Motions for judgment filed by two aides are granted where there is no evidence that the aides' use of the taped-up chair amounted to deliberate indifference. To prevail on his constitutional claim under Section 1983, the student needed to show that 1) the chair posed an obvious danger to the student; and 2) the aides used it anyway. While the chair had been reinforced with tape at every joint several weeks before the incident occurred, the aides had no reason to suspect the chair was dangerous. The mere presence of the tape is not sufficient (even along with the knowledge of the student's physical disability), as the chair had been used for years prior to the incident without any issue. Had the student sued his former aides for negligence, a different conclusion might have been reached. However, the student's failure to show a "conscience-shocking" violation of his constitutional rights entitles the aides to judgement on his Section 1983 claim. The claim against the school district is also dismissed, as the district cannot be responsible for the student's injuries based upon its alleged failure to train or supervise the aides.

L. Salyer v. Hollidaysburg Area Sch. Dist., 72 IDELR 182 (W.D. Pa. 2018). Where no reasonable jury could find that the SRO's pat-down search of an 11th-grader with autism who was sensitive to touching was unreasonable under the circumstances, claim under Section 1983 against the SRO is dismissed. The reasonableness of a search under the 4th Amendment does not turn upon whether it was conducted using a less-intrusive means; rather, a court will consider whether the method used was reasonably related to the objectives of the search and whether it was excessively intrusive in light of the student's age, sex and the nature of the infraction. The 4th Amendment does not require an accommodation based upon an individual's "idiosyncratic sensitivity" or require that

officers employ the least-intrusive means when conducting searches. Thus, this SRO's failure to use an available metal-detecting wand to determine whether the student was carrying a knife—rather than tapping the student's back pocket—was not unreasonable. School administrators had reason to suspect that the student was carrying a knife based upon reports that he had threatened a schoolmate. Further, the search was conducted by a male officer who merely touched the student's back pocket to determine whether there was a knife there.

BULLYING AND DISABILITY HARASSMENT

A. Estate of Barnwell v. Watson, 71 IDELR 122, 880 F.3d 998 (8th Cir. 2018). The mother's general statements at IEP meetings regarding her concerns about bullying of her child with Asperger syndrome (who alleged committed suicide based on his inability to cope with bullying by his classmates) were not sufficient to put the district on notice of disability harassment. Unless the parents could show that the district knew about it and failed to intervene, an action for money damages under Section 504 may not proceed. Though the student's mother told the IEP team on more than one occasion that she worried that he was being bullied, she could not say whether the student was being targeted by his classmates. In addition, she did not have any specific observations or reports to substantiate her concerns. Thus, the mother's statements, without more, did not put the district on notice of disability harassment. A failure to address a parent's "worries" fall well short of establishing the level of bad faith or gross misjudgment needed to support a 504 claim. In addition, the parents' claim that the district actively "covered up" the conduct of other students by failing to investigate whether their child had been bullied by peers before his suicide is rejected. There is no authority that a district can discriminate against a student with a disability after his death by failing to investigate harassment that may have occurred before he died.

B. J.M. v. Matayoshi, 72 IDELR 145 (9th Cir. 2018) (unpublished). The IEP's inclusion of a crisis plan and a dedicated aide to the student with autism afforded the student FAPE and was adequate to address peer bullying. While prior IEPs did not adequately address this issue, the Department remedied those deficiencies in 2014 by adding a 1:1 aide and developing a crisis plan that called for adult monitoring of all peer interactions and set out a protocol to stop bullying when it occurred. In fact, it contains many, if not all, of the suggestions to combat bullying set forth in OCR's 2014 *Dear Colleague Letter*.

C. Bowe v. Eau Claire Area Sch. Dist., 71 IDELR 168 (W.D. Wis. 2018). District's motion for judgment on the parents' Section 504 and ADA claims is granted where it was not shown that the district was deliberately indifferent to disability-based peer harassment of a teenager with Asperger Syndrome. While the district favored the use of counseling with the bullies over more serious forms of discipline, the counseling services appeared to have been effective in many instances. In addition, the student here claimed to have been bullied by many other students as opposed to a select few. While continued counseling of a handful of students after numerous instances of bullying might be clearly unreasonable, the evidence does not reflect that is what happened in this case. While the district cannot be

particularly proud of its response to the problem, the district's actions were not clearly unreasonable from a legal standpoint and did not constitute deliberate indifference.

D. Spring v. Allegany-Limestone Cent. Sch. Dist., 71 IDELR 82 (W.D. N.Y. 2017). Without deciding the truth of the parents' complaint under Section 504/ADA, the district's motion to dismiss is denied. While districts are not automatically liable for disability-based bullying and parents are required to show that the district was deliberately indifferent to the bullying, there may be evidence that the district's response in this case to known bullying was not reasonable. According to the complaint, the student's mother met with the principal at least six times between January and June 2013 and informed the principal that two of the student's classmates regularly used disability-related slurs when speaking to him and mimicked his physical and verbal tics caused by his Tourette syndrome. If true, this would put the district on notice of disability-based harassment. Further, the parents allege that despite the mother's meetings with the principal, the district did not investigate or take steps to prevent further bullying. Allegedly, the principal responded by stating that the student was "just trying to get [his classmates] in trouble." If this is true, it could be construed as an unreasonable response to known disability harassment.

E. MJG v. School Dist. of Philadelphia, 71 IDELR 34 (E.D. Pa. 2017). District did not discriminate under the ADA where the special education teacher took steps to separate a teenager with autism and a severe intellectual disability from a classmate who allegedly touched her inappropriately the previous school year. Where parent argued that the district acted with deliberate indifference when it continued both students' placements in a classroom for students with intellectual disabilities that allegedly resulted in a second incident of inappropriate touching during lunch time, her argument is rejected. This is so because the special education teacher separated the students inside the classroom by rearranging their seats and instructed the aides to monitor the student and the alleged harasser more closely. The parent's argument that the district discriminated against the student by having only one classroom for students with intellectual disabilities is also rejected. While this may have been a better accommodation for the student, the suggestion of a better accommodation is not equal to or sufficient for showing deliberate indifference.

RETALIATION

A. Richard v. Regional Sch. Unit 57, 901 F.3d 52, 72 IDELR 203 (1st Cir. 2018). Teacher failed to show that the district transferred her and placed her on a performance improvement plan based upon her advocacy on behalf of two kindergarten students who she referred for IDEA evaluation. To prevail on her retaliation claims, the teacher was required to show that: 1) she engaged in a protected activity; 2) the district took adverse action against her; and 3) the adverse action was based on the protected activity. Here, the teacher was subjected to adverse action following her referral of the students for an evaluation, but the teacher did not connect the referrals to her reassignment and poor performance review. The district regularly referred students for IDEA evaluations and, therefore, would have no reason to retaliate against the teacher for these two referrals. In addition, it appeared that the dissatisfaction with the teacher's performance originated with the Superintendent, who did to appear to be aware of the referrals.

B. Rayborn v. Bossier Parish Sch. Bd., 118 LRP 4586, 881 F.3d 409 (5th Cir. 2018). The district court's granting of summary judgment in favor of the district is affirmed. While the school nurse claimed that the district retaliated against her in violation of the First Amendment for testifying in a student suicide matter and expressing her views about the district's inadequacies in handling various student medical emergencies, she failed to show that the district discharged her from her duties. Thus, she did not satisfy one of the required elements of her due process claim.

C. H.C. v. Fleming Co. Kentucky Bd. of Educ., 72 IDELR 144 (6th Cir. 2018). Where the district kept a detailed record of the parent's contentious and unpleasant interactions with school staff, the parent's claim that the district banned her from school grounds based upon her advocacy on behalf of her son is rejected. Thus, the district court's dismissal of the parent's 504 retaliation claim is affirmed. Assuming that the mother's request for a 504 hearing and complaints about disciplinary measures qualify as "protected activity," the district offered a legitimate, nondiscriminatory reason for banning the parent from school grounds. Not only did the district have documentation showing that the parent harassed, intimidated and threatened its employees, but it explained that it filed a criminal trespass against the parent because she disregarded a letter banning her from entering school property without prior approval. The burden then shifted back to the parent to show pretext, but she failed to present any evidence showing that the proffered reasons for her exclusion were pretextual.

D. L.F. v. Lake Washington Sch. Dist., 72 IDELR 152 (W.D. Wash. 2018). Judgment is granted for the district on the father's 504 unlawful retaliation claim where there is evidence that he has a history of angry, aggressive and hostile encounters with district employees. Based upon such encounters, a communications protocol was put in place that limited the father's communications with school staff by holding biweekly meetings to address his concerns about his children's education. The parent failed to show that the district implemented this plan because of his advocacy. In fact, the record demonstrates that the district imposed the plan in response to the parent's history of burdensome, intimidating and unproductive communication with district staff and was completely unrelated to any attempts by the father to pursue a Section 504 action.

E. Trujillo v. Sacramento City Unif. Sch. Dist., 71 IDELR 213 (E.D. Cal. 2018). Parent who claimed that she was sent truancy letters after she spoke about "corruption in the education system" during a school board meeting may not pursue retaliation claims under Section 504/ADA. This is because the parent was not advocating on behalf of her son with a disability. Her speech at the school board meeting focused upon her belief that the district was providing overly generous benefits packages and had nothing to do with advocacy on behalf of her son. Thus, her speech was not a protected activity under 504/ADA.

F. L.G. v. Fayette Co. Kentucky Bd. of Educ., 72 IDELR 126 (E.D. Ky. 2018). The parents did not engage in any protected activity that would support their claim for retaliation against the district. Their submission of a doctor's note stating that their son would need to be out of school for several months due to an e-coli infection was not "advocacy" sufficient to constitute protected activity for purposes of a retaliation claim. The complaint

never alleges that they requested a 504 plan or any other accommodation dealing with educational needs. Instead, they only provided the district with a doctor's note and a school counselor contacted them a short time later to discuss how the student could access coursework online. Because the parents did not allege that they advocated on behalf of their child before the district filed its truancy petition, they could not show retaliation based upon their advocacy.

G. Camfield v. Board of Trustees of Redondo Beach Unif. Sch. Dist., 70 IDELR 126 (C.D. Cal. 2017). District's motion for summary judgment is granted where repeated episodes of disruptive conduct, not just advocacy on behalf of a child with a disability, caused the district to restrict a parent's presence on her child's elementary school campus. While the district conceded that the restrictions on the mother's access to campus were placed upon her close to the time she was expressing disagreement over where her child would be placed, it was undisputed that school administrators found the mother's use of profanity, raising her voice and showing up on campus unannounced unacceptable. This is a sufficient non-retaliatory basis for restricting her presence on campus.

H. H.C. v. Fleming Co. Bd. of Educ., 70 IDELR 224 (E.D. Ky. 2017). Parent's retaliation claim under Section 504 is dismissed where the district showed that it had a legitimate, nondiscriminatory reason for restricting her access to school grounds. The district's documentation of evidence of unpleasant encounters between the parent and school personnel is sufficient to overcome the parent's retaliation claim. In addition, there were letters from other parents about a particular incident of bullying that further supported that the district was not retaliating for the parent's request for a 504 hearing. Although the superintendent barred her from visiting school property without prior approval just after the parent filed for a hearing, this action was taken based upon her previous behavior toward district staff. In addition, two suspensions of her son after she filed for a hearing were because of his bad behavior, including hitting a classmate with an oversized pencil and threatening to shoot a schoolmate. Where the parent failed to show that the district's justifications for its actions were false, she could not prove unlawful retaliation.

I. McKnight v. Lyon Co. Sch. Dist., 70 IDELR 181 (D. Nev. 2017). Parent's argument that district retaliated against her when it denied her request to participate in an IEP meeting via email is rejected and parent's ADA claim against the district is dismissed. Where a parent sufficiently alleges retaliation, the burden shifts to the district to explain why its actions were not retaliatory. Here, the parent sufficiently pled a claim for retaliation by alleging that the district denied her request after she filed due process complaints against it. However, the district articulated a legitimate reason for denying the parent's request to attend an IEP meeting via email, noting that email-only participation would limit collaboration by IEP team members. In addition, the parent did not show that the district had a different reason for denying her request. Therefore, the parent has not met her burden of proof and is not entitled to relief under the ADA. In addition, the district did not retaliate when it failed to provide her with copies of a specific test that her child had taken. Not only did the district explain that copying the test would violate the testing company's terms of use and subject the district to copyright litigation, but it offered to allow the parent to examine the actual test.

J. Brown v. Metro Govt. of Nashville, 117 LRP 26131 (M.D. Tenn. 2017). District's disciplinary reprimands of three counselors after they reported in 2014 to an investigative reporter that the district improperly removed certain students from "end of course" exams to prevent their test scores from affecting overall school testing statistics may have violated the First Amendment. The district alleges that it reprimanded the counselors for releasing improperly redacted student records to the news media in violation of FERPA and not for reporting the district's illegal activity. Based upon the evidence, however, it is not clear that the counselors inappropriately released personally identifiable information and, while improper disclosure could have been the reason for reprimand, it could also be that the district decided to punish the counselors because they discovered a potential problem and then decided to air it publicly. Questions of fact must still be resolved; thus, the district's motion to dismiss is denied.

K. Carpenter v. School District No. 1, 117 LRP 16259 (D. Colo. 2017). District's motion to dismiss special education teacher's retaliation claims under Section 504 is granted. Where the teacher complained to school staff and parents about the amount of time students with autism were spending in a pragmatic learning and executive functioning program, emailed the superintendent about how the program was "illegally" operated and emailed the district's head of services about her concerns, the adverse action on the part of the district about which she complained did not constitute retaliation. Instructing the teacher not to comment on social media, not to characterize the program as "illegal," and asking her to refrain from communicating too much with parents was not materially adverse action, and she was not removed from her teaching position.

L. Lagervall v. Missoula Co. Pub. Schs., 71 IDELR 40 (D. Mont. 2017). Magistrate Judge's Report is adopted and father's ADA claims are dismissed. While the parent argued that the district excluded him from the grounds of the high school based upon a disability that caused him to speak at a loud volume, the parent had a documented history of yelling at school employees, disrupting meetings with staff members, walking out of meetings because he was angry, and acting in an aggressive and intimidating manner. More than one school employee had reported the parent's behavior to the principal and several expressed concern for their own safety and welfare and were anxious about the father arriving at school in a state of escalated anger. In addition, the principal did not prohibit the father from visiting the school entirely. Rather, the principal informed him that he would need to provide notice and get permission before arriving at the school, which was intended to allow school personnel that were familiar with the father meet with him at a designated time. In addition, the principal testified that the father was allowed to come to the school every time he properly sought permission to do so. Thus, the restrictions on school visits were not based upon a disability or unreasonably restrictive.

RESTRAINT/SECLUSION

A. Parrish v. Bentonville Sch. Dist., 72 IDELR 141 (8th Cir. 2018). District court's decision that district did not violate the IDEA, Section 504, the ADA or constitutional right to bodily integrity when using physical restraint when removing two unrelated students with autism from their classrooms is affirmed. Both students had an IEP and a behavioral intervention

plan that included detailed strategies for addressing their behavioral issues, which included removal to another room when all interventions were unsuccessful. Although the parents objected to the use of physical restraint during those removals, the children's aggressive behavior justified its use. While the district's strategies may have been "imperfect," they complied with the IDEA and did not deny FAPE. In addition, the children made academic progress while attending the district's schools, and the parents failed to show that the district acted with bad faith or gross misjudgment.

B. A.T. v. Dry Creek Joint Elem. Sch. Dist., 72 IDELR 122 (E.D. Cal. 2018). Even though the parents of a student with bipolar disorder authorized educators to restrain their son if he posed an immediate danger to self or others, they can sue them for violating their son's constitutional rights nonetheless. Thus, the educators' motion to dismiss the parents' 4th Amendment claim is denied. This is because the parents' authorization for "therapeutic containment" only authorized the use of physical restraint when necessary to prevent the student from hurting self or others or from damaging property. The parents alleged, however, that district employees restrained their son 112 times over a three-year period. This number itself raises questions as to whether the use of physical restraint was reasonable under the circumstances. Further, the parents allege that the educators failed to notify them after each incident of restraint as required. Thus, the parents have stated a viable claim for relief under the 4th Amendment.

C. J.L. v. Eastern Suffolk Boces, 72 IDELR 33 (E.D. N.Y. 2018). Parent's constitutional claims under the 14th Amendment against a teacher assistant are dismissed where the parent needed to show that the TA's conduct was so egregious and outrageous that it "shocked the conscience." Though it is unclear whether the TA tackled the student with autism from behind or approached him from the side and used a "bear hug" to maneuver him to the ground, neither scenario was conscience-shocking. The physical restraint was necessary under the circumstances where the student pulled his fist back during an altercation with a special education aide and appeared ready to punch her. The TA was acting to maintain order in the classroom and ensure that the student did not suffer serious injury. At most, the parent argues that the TA's tackle was disproportionate to the force needed, which does not rise to the level of conscience-shocking behavior as a matter of law.

D. A.P. v. County of Sacramento, 69 IDELR 273 (E.D. Cal. 2017). County did not discriminate against child with a disability when it kept his foster parents from incorporating a "wrapping" technique into their child's sensory diet. Thus, no violation under Section 504 occurred where the wrapping of the child in a stretchy blanket or fabric was not an appropriate accommodation under California law, which prohibits the use of restraint. There is no evidence that the wrapping technique is a potential exception under California's anti-restraint rule, because it involves tying, depriving or limiting the child's use of hands or feet. It also does not qualify as a "protective device" because those cannot prohibit a child's mobility. Thus, the refusal to allow the wrapping technique to be incorporated into the child's program was not denied because of the child's disability; rather, it was denied because of safety reasons and clearly defined state law restrictions.

CHILD FIND/EVALUATIONS

A. Krawietz v. Galveston Indep. Sch. Dist., 72 IDELR 205, 900 F.3d 673 (5th Cir. 2018). District court's ruling in favor of the parents is affirmed. School districts are required to identify, locate and evaluate all children who need special education as a result of a suspected disability. In this case, when the student re-enrolled in the district for the 2013-14 school year, she immediately had behavioral issues, so a 504 Plan was developed to provide for accommodations needed for PTSD, ADHD and OCD. In addition, her application indicated that she had received special education in the past and that she had never been dismissed from special education services but since the district could not locate her previous records, it was determined that she had been dismissed. Although the accommodations in the Plan, such as extended time to complete assignments and small group testing, enabled the student to pass ninth grade and resulted in improved behaviors during that school year, her behaviors and academic performance deteriorated the following year. The evidence showed that the student scored below the 20th percentile on standardized tests, failed several classes and engaged in criminal behaviors, such as stealing. In addition, records indicated that the student was hospitalized in September 2014 for disability-related health issues. However, the district failed to refer the student for an evaluation until April 2015, approximately 6 months after it became aware of the student's difficulties. The district's argument that the student's academic success in the 9th grade precluded the need for an evaluation is rejected, as the district's child find duty arose anew in the Fall of 2014 based upon the student's decline, hospitalization and incidents of theft during the semester, taken together. Thus, the hearing officer's award of compensatory education is upheld, and the parents are entitled to more than $70,000 in fees.

B. M.G. v. Williamson Co. Schs., 71 IDELR 102 (6th Cir. 2018) (unpublished). School district's failure to immediately conduct a second evaluation after evaluating a kindergartner with speech and motor difficulty and finding her ineligible under the IDEA was justified where district addressed her ongoing deficits with RTI interventions. To establish a child find violation, a parent must show that the district overlooked clear signs of disability and had no justification for its failure to evaluate. Here, the parent failed to show either where the district evaluated the child in December 2010, she began kindergarten less than a year later and, at age 4, was the oldest child in her class. The district effectively used general education intervention strategies, such as RTI and, later, a Section 504 plan, to ensure that the child was making adequate progress. Thus, the district court's decision in the district's favor is affirmed.

C. Mr. P. v. West Hartford Bd. of Educ., 71 IDELR 207, 885 F.2d 735 (2d Cir. 2018). School district's decision to wait until April 2012 to evaluate a student for special education services was reasonable under the circumstances. Although the parents first requested an evaluation in March 2012, the student had just recently stopped attending school. Further, when the district convened a meeting to discuss the parents' request for an evaluation, the parents reported that the student's medications were beginning to help. Because the student had many friends and previously had earned good grades, the district did not err in holding off on the evaluation until April, when it became aware of the student's second hospitalization. Clearly, short-term emotional issues will not qualify a student as ED and

the student would be entitled to services only if he exhibited characteristics over a long period of time. Here, it was reasonable for the district to proceed deliberately when weighing whether a tenth grader who had previously done well in school, should be enrolled in special education. In addition, after the parents requested the evaluation, the district continued to monitor the student's situation and provided him with home tutoring as a temporary measure and sought permission to evaluate when it learned he was hospitalized for a second time. Finally, only three months went by between the time the parent initially referred the student for special education and a meeting where they found the student eligible for services.

D. T.B. v. Prince George's Co. Bd. of Educ., 897 F.3d 847, 72 IDELR 171 (4th Cir. 2018). While the district violated the IDEA in failing to timely evaluate a high school student in a timely manner, it was a harmless error because the child find violation had no impact upon the student's learning. The parents failed to demonstrate a loss of educational benefit where the student's teachers testified that he performed well when he attended class and completed assignments, but the student failed to attend school regularly even after the district found him eligible under the IDEA and placed him in a small, self-contained program for ED students. Albeit belatedly, the student was offered the academic services he sought, "yet he chose not to take advantage of them." Thus, the procedural violation is harmless.

E. Z.B. v. District of Columbia, 72 IDELR 27, 888 F.3d 515 (D.C. Cir. 2018). Where it appeared that the district relied only upon the private evaluation report to develop the 2014 IEP for a student diagnosed with ADHD and learning disabilities rather than conducting its own assessments, it is unclear whether additional data were required to develop an appropriate IEP. After the parents provided a private evaluation report diagnosing the child with ADHD and determining that she had "weaknesses" in math and written expression, the district found the student eligible under the IDEA and developed an IEP based on the evaluation. The parents subsequently enrolled the student in private school and filed a due process hearing for reimbursement of private school costs, arguing that the IEPs for 2014 and 2015 were inadequate because they lacked certain goals and adequate specialized instruction. For the 2014 IEP, the district erred by failing to question whether the IEP team needed additional or different metrics of the child's skills before developing her IEP. It was not enough to reason that the IEP accorded with recommendations in the private evaluator's report. "The school may not simply rubber stamp whatever evaluations parents manage to procure, or accept as valid whatever information is already at hand." As to the 2015 IEP, the district took an affirmative role in collecting information before developing it, so that IEP offered FAPE. The case is remanded to determine the appropriateness of the 2014 IEP.

F. Lincoln-Sudbury Regional Sch. Dist. v. Mr. and Mrs. W, 71 IDELR 153 (D. Mass. 2018). Hearing officer's decision that the district did not violate the IDEA is upheld. The parent's contention that the district should have immediately evaluated the student and found her eligible for IDEA services under the category of TBI when she was accidentally struck with a teammate's hockey stick during field hockey practice is rejected. Although the student's private physician diagnosed her with a concussion, he concluded that the student

could return to school in two weeks with classroom accommodations, including extended time for assignments and tests. However, the district had no reasonable basis to suspect that the concussion negatively impacted the student's ability to learn and, when the student returned to school, she declined to use most of the accommodations offered by the teachers. In addition, she exhibited no lasting symptoms of the concussion, such as change in behavior, once she was cleared to return to school. Although the parents argued that the student received an "incomplete" grade in her advanced math course, the student received that grade because she refused to take the final exam. In fact, she maintained good grades in all other classes and continued to participate in school sports and other nonacademic activities. Thus, there was no reason to suspect any need for special education service sufficient to trigger the duty to evaluate. [NOTE: The district was granted a substantial amount of fees in this matter as reported below].

G. Lawrence Co. Sch. Dist. v. McDaniel, 72 IDELR 8 (E.D. Ark. 2018). While the student with autism and ADHD made good grades, was recognized as an honor student and received commendation to the gifted and honors program, this did not relieve the district of its obligation to evaluate for special education. Thus, the district's request for summary judgment challenging the hearing officer's order to evaluate is denied. Here, the student had a number of social and behavioral issues, including spinning in circles, avoiding human contact, having temper tantrums and pulling his hair out. In addition, his teachers reported that he blurted out answers and argued in class, and his parent had requested an evalu3ation based upon her feeling that the student needed services in the area of social skills. The district had refused to evaluate, contending that the student's 504 plan was sufficient and challenged the hearing officer's order because the student did not need special education. However, the duty to evaluate is triggered when a district identifies a student as possibly having a disability, which requires a "full and individual" evaluation. The hearing officer's order to evaluate does not necessarily contradict the opinions of experts who believe that the student does not need special education. Rather, the hearing officer concluded only that adequate evaluation had not taken place based upon the assumption that children with disabilities who perform well academically do not need special education. Although this position "comports with common sense," it contravenes the IDEA's regulations and guidance from the U.S. DOE.

H. Stephen C. v. Bureau of Indian Educ., 72 IDELR 44 (D. Az. 2018). BIE's motion to dismiss the Section 504 action brought against it is denied where specific descriptions are provided as to how the exposure of three Havasupai students to childhood trauma affected their ability to read, think and concentrate. The complaint describes how exposure to trauma can result in physiological harm to children and how those physiological impairments can manifest in the school setting. Importantly, the student's here described how their own experiences relate to their education, as the complaint is replete with allegations relating to each student's unique exposure to complex trauma and adverse childhood experiences. In addition, the BIE's position that it was unaware of any possible trauma-related disabilities is rejected, based upon BIE's own documentation of the difficulties faced by the Havasupai community. Clearly, the agency had knowledge of the impact of trauma and adversity on Havasupai students. Thus, there is a possible cause of

action for failure to evaluate and noncompliance with Section 504 regulations governing child find and procedural safeguards.

I. D.B. v. Fairview Sch. Dist., 71 IDELR 36 (W.D. Pa. 2017). A district does not necessarily violate its child find duty under the IDEA when it fails to identify a child as having a disability at the "earliest possible moment." While there was a delay in getting an IEP finalized, the district provided the child with extra assistance and the attention of a one-on-one specialist to address his needs. While the child began receiving speech support services as a toddler when in the district's early intervention program, an evaluation for Part B services reflected that the child did not have a disability, but the reevaluation team met after the child began kindergarten and determined that he was eligible and needed an IEP. While the parents did have concerns about the child's hyperactivity issues, the alleged disability manifested itself in behaviors typical of very young children. In addition, even when the district first concluded that the child was not eligible for services, it acted promptly to address the child's behavioral and language deficits. Further, the delay in finding the child eligible did not breach IDEA's child find requirements where the district engaged in proactive screening; a functional behavioral assessment; and the provision of accommodations including consistent intervention with the school psychologist, auditory processing services, and counseling with the district behavioral specialist. Thus, the hearing officer's decision that the IDEA's child find requirement was not violated is affirmed.

J. D.R. v. Michigan Dept. of Educ., 71 IDELR 16 (E.D. Mich. 2017). Parents who have sued for the district's purported failure to have procedures in place to identify and evaluate children for prolonged exposure to lead do not have to first exhaust IDEA's remedies before filing suit. This case falls within the futility exception to the IDEA's exhaustion requirement because the relief that the parents are seeking is plainly not individual and could not be remedied by individual exhaustion since they are challenging the efficacy of the overall evaluation system employed within the district. In addition, the State DOE can be sued based upon its alleged failure to provide necessary oversight and funding.

K. E.S. v. Conejo Valley Unif. Sch. Dist., 72 IDELR 180 (C.D. Cal. 2018). The failure of the district to conduct an FBA prior to convening the child's IEP team impeded the parents' participation in the IEP process, entitling the child to additional hours of compensatory education in addition to 52.5 hours of compensatory services from a one-to-one aide. If the district had conducted an FBA as part of its initial evaluation, the team would have had valuable information about the child's behavior patterns and possible reasons for his aggression. In addition, the FBA would have assisted the parents in deciding which services the child needed and provide them with an opportunity for informed participation.

L. D.J.D. v. Madison City Bd. of Educ., 72 IDELR 273 (N.D. Ala. 2018). Where a fifth-grader with behavioral difficulties consistently earned good grades and responded to some classroom-level interventions, the district did not violate its child find duty to evaluate the student earlier than it did. The IDEA does not require districts to evaluate every student with behavioral problems. Rather, districts are required to evaluate when there is sufficient reason to suspect that a student has a disability and a need for special education services.

Under 11th Circuit authority, it is unlikely that a student needs special education services when he meets academic standards, demonstrates the ability to comprehend class materials and is not recommended for special education by his teachers. Here, the student exhibited classroom misbehavior, but his teachers did not recommend him for special education because he demonstrated a capacity, often times above average, to comprehend class material. In addition, the Alabama Code encourages districts to attempt interventions before evaluating them under the IDEA. While those that were provided here were only moderately successful, the student earned straight A's despite his behavioral problems. Thus, the district's decision to delay the evaluation until after the parent filed for a due process hearing did not violate the IDEA's child find duty, and the hearing officer's decision in favor of the district is upheld.

ELIGIBILITY

A. Durbrow v. Cobb Co. Sch. Dist., 72 IDELR 1, 887 F.3d 1182 (11th Cir. 2018). Student with ADHD was not a student with a disability because he did not demonstrate a need for special education services. A student is unlikely to need special education if, inter alia: (1) the student meets academic standards; (2) teachers do not recommend special education for the student; (3) the student does not exhibit unusual or alarming conduct warranting special education; and (4) the student demonstrates the capacity to understand course material. Here, the student met or exceeded academic expectations during the first three years of high school. Not only was he selected for his school's rigorous magnet program based on his achievement in math and science, but he earned straight A's in his honors and Advanced Placement courses and achieved high scores on college entrance exams. In addition, the student's teachers did not believe he needed special education and several testified that his ADHD did not impede his learning and that he was able to make progress when he put forth sufficient effort. The work the student completed during his senior year showed that he was able to absorb material and maintain focus. The low grades that he received stemmed from his failure to complete homework or take advantage of the accommodations in his Section 504 plan. Thus, the district court did not err when finding that the student's poor grades did not result from his inability to concentrate. Rather, it stemmed from neglect of his studies.

B. S.P. v. East Whittier City Sch. Dist., 72 IDELR 88 (9th Cir. 2018) (unpublished). The failure to classify the 4 year-old student with a speech impairment under the hearing impairment category of eligibility is more than just a labeling issue. This is so because the district failed to fully evaluate the student and develop goals and services to address her hearing difficulty. The district's own evaluations indicating that the student's hearing loss resulted in a language or speech disorder and significantly affected her educational performance. For a student with a hearing impairment, an IEP team must consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level and full range of needs. Thus, the labeling error resulted in substantive harm because the IEP team did not address those needs and only developed goals and programs targeting the student's speech and language delay. In addition, the district violated IDEA by failing to assess the child in all areas of suspected disability. While members of the team were familiar with the student's degree of hearing loss, the

assessments were heavily focused upon her speech and language disability. Though the team considered information provided by the parent, including an audiogram, the district still had an independent obligation to fully evaluate the student. The "auditory skills assessment" consisting of only observation and record review, was insufficient to fulfill that responsibility. Thus, the district court's decision upholding the ALJ's decision that the error was harmless is reversed and remanded.

C. Pocono Mountain Sch. Dist. v. T.D., 72 IDELR 186 (M.D. Pa. 2018). Though elementary school student with anxiety and conversion disorder consistently earned good grades, he nonetheless qualifies for special education services as a child with ED. Thus, the district denied student FAPE when finding him eligible for services under Section 504 as opposed to IDEA. Although the student performed well academically, he had behavioral and social issues at school resulting from his impairments, including altercations with other students, disrespectful behavior toward his teacher, difficulty completing assignments and frequent visits to the school nurse that caused him to miss class time. While the student's 504 plan included weekly check-ins with a guidance counselor, frequent breaks, prompting and extra time on quizzes and tests, the student was also eligible under the IDEA and entitled to services under both statutes. However, the hearing officer erred in ordering private school tuition reimbursement to the parent under Section 504, as that constitutes compensatory damages that are not available under Section 504 unless the district is shown to be deliberately indifferent to the child's needs. Thus, the hearing officer's award is modified to award the reimbursement for the IDEA violation, not the 504 violation.

D. D.L. v. Clear Creek Indep. Sch. Dist., 70 IDELR 32 (5th Cir. 2017) (unpublished). At the time that the district determined that the student with anxiety, depression and ADHD was not eligible for IDEA services in 11th grade, the student was excelling academically and socially. A student with an impairment is not eligible under the IDEA unless there is an academic need for special education services. In determining such need, the district must consider then-current performance and cannot find a student eligible based solely on concerns that the student might require special education services at some point in the future. While the student had received services during his freshman and sophomore years based upon suicidal ideation, declining grades and difficulty with interpersonal relationships, he was dismissed for special education just before the beginning of his junior year based on his academic and social progress. Indeed, the student earned A's in all of his classes, was rarely tardy or absent, and scored average on his college entrance exams. In addition, teachers praised his comportment and academics. Thus, none of the evidence available at the time of the eligibility determination suggested a continued need for services.

E. G.D. v. West Chester Sch. Dist., 70 IDELR 180 (E.D. Pa. 2017). Intellectually gifted third-grader with an anxiety disorder is not eligible under the IDEA for services and the district's determination that there is no need for services is upheld. The school psychologist's evaluation report was not deficient, when the psychologist spoke with the student's therapist two weeks before issuing an evaluation report. The psychologist testified that the therapist did not tell her that the student could not return to school but, instead, told her that the student was able to hold it together at school and that the behaviors at issue were displayed in the home. Further, the therapist's characterization of the school as "an

unhealthy environment" for the student was based on the student's mistrust of her assigned school counselor. The school psychologist recognized, however, that the student needed a trusted adult on campus and indicated that the district could put that support in place. Thus, the school psychologist properly considered the private therapist's input, and the district adequately addressed the student's anxiety by developing a Section 504 plan.

F. Lauren C. v. Lewisville Indep. Sch. Dist., 70 IDELR 63 (E.D. Tex. 2017). District's refusal to add autism eligibility to the student's IEP is upheld where the student does not meet the criteria for autism eligibility. Reportedly, the parents wanted autism added to the IEP because it would help them obtain services from outside agencies. While the district knew in 2002 that the student's physician diagnosed her with autism, the district evaluated the student within a reasonable time after learning of that diagnosis and found her not eligible as a child with autism. The fact that the district did not classify her with autism did not mean that it violated its child find duty. To the contrary, the multiple evaluations that it conducted demonstrate compliance with child find requirements. Further, the IDEA does not require districts to affix a student with a particular label. Rather, the question is whether the district offered an IEP that is sufficiently individualized to address the student's needs and to provide meaningful educational benefit to the student. The district has met that standard by providing the student with ABA and other services that have resulted in academic, social and behavioral progress.

G. A.A. v. District of Columbia, 70 IDELR 21 (D. D.C. 2017). District's argument that the fifth-grader's good grades disqualified her from IDEA eligibility is rejected. Clearly, this child's anxiety, mood disorder and inability to regulate her emotions that resulted in her removal to the kindergarten classroom for approximately 20 days during the school year, caused her to fall behind in classroom instruction. As such, her parents demonstrated that her disability impeded her educational performance. Based upon the fact that the child tried to jump out of her second-floor bedroom at least two times while saying she wanted to kill herself surely meets the criteria of "a general pervasive mood of unhappiness or depression" or "inappropriate types of behavior or feelings under normal circumstances" sufficient to meet eligibility for ED.

INDEPENDENT EDUCATIONAL EVALUATIONS

A. Letter to Anonymous, 72 IDELR 163 (OSERS 2018). A parental request for an IEE does not trigger the IDEA's stay-put provision when a district proposes to exit a student from special education upon reevaluation. However, if the district files a due process request to defend its reevaluation, the district is obligated to keep the student in the current educational placement, unless the parties agree otherwise during the pendency of the IEE hearing.

B. Letter to Anonymous, 72 IDELR 251 (OSEP 2018). Any constraints that a district places upon an evaluator's ability to observe a child in the learning environment must be consistent with a parent's right to an IEE. Whether a district may limit the amount of time an independent evaluator is allotted to observe the child in the educational setting when the evaluator is paid by the parent, independent evaluators may need to access a child's

classroom if the evaluation requires observing the child there. Whether such observation would be required would generally depend on the child's individual needs and on whether the evaluation concerns SLD eligibility. Parents have the right to have the IEP team consider the results of an IEE, whether obtained at private or public expense, in determining eligibility or special education needs, as long as the IEE meets agency criteria. It would be inconsistent with that right to limit an independent evaluator's access in a way that would deny the ability to conduct an evaluation that meets district criteria.

C. B.G. v. Board of Educ. of the City of Chicago, 72 IDELR 231 (7th Cir. 2018). Parent is not entitled to funding for an IEE where the district's evaluation flaws were harmless. A parent is entitled to funding for an IEE only where a hearing officer finds that the district's assessment failed to comply with the IDEA's evaluation requirements. Those requirements include the use of qualified personnel to administer assessments and administering them in a manner that does not discriminate on a racial or cultural basis, as well as ensuring that the student is assessed in all areas of suspected disability. Although the parent argued that the school psychologist should have administered the assessments in Spanish, the student was proficient in English and preferred it to Spanish. In addition, the psychologist's failure to explain certain scores on a behavioral assessment and her failure to consider a behavioral rating scale completed by one of the student's teachers did not impact on the appropriateness of the overall assessment. Even the parent's expert was not willing to state at the hearing that these errors invalidated the results.

D. A.H. v. Colonial Sch. Dist., 72 IDELR 156 (D. Del. 2018). Parent's request for a publicly funded IEE is denied where the parent did not identify any specific flaws with the district's reevaluation and, instead, alleged only that it was "inadequate." Where the district used a variety of assessment tools and strategies, did not rely on any single measure or criterion when determining the student's continued eligibility, and used technically sound instruments, the reevaluation was appropriate. In addition, the district evaluated the student in all areas of suspected disability and, although a private psychologist testified that she would have conducted different or additional assessments, she did not explain why the district's choice of assessments was inappropriate. Certainly, there are always additional tests that could have been chosen, but this alone does not support the conclusion that the district's evaluation was inappropriate as required by the IDEA.

E. Parker C. v. West Chester Area Sch. Dist., 70 IDELR 94 (E.D. Pa. 2017). Where the parents did not challenge the district's evaluator's methodologies or qualifications but simply asserted that their second evaluator's report was more "comprehensive and thorough," the parents' request for school district reimbursement for their IEE is denied. There is no evidence that the district's evaluator's methodologies or credentials were deficient. In addition, the district was not required to re-administer formal cognitive testing when that was done just six months earlier.

F. E.P. v. Howard Co. Pub. Sch. Sys., 70 IDELR 176 (D. Md. 2017). While parents have a right to a publicly funded IEE if the district's evaluations are inappropriate, parents cannot simply challenge an evaluator's conclusions. Rather, they must show that the evaluator's methodologies were flawed. Here, the parents failed to meet this requirement where the

two evaluators at issue were both qualified to assess the student's educational and psychological needs and used a variety of assessment tools and strategies when conducting the evaluations of the student with ADHD. The tools and strategies used included standardized tests of academic performance and intellectual ability, teacher input, parent input, classroom observations and a review of the student's educational history and records. Further, the evaluators offered sound explanations for choices that they made that the parents' expert characterized as errors. For instance, in response to the parents' argument that the district should have conducted additional subtests of the WJ-III academic achievement test, the evaluator explained that the student's above-average performance on the subtests already administered made additional testing unnecessary—a decision which is entitled to substantial deference by the ALJ and the court. Similarly, the school psychologist did not err in using a "pattern of strengths and weaknesses" model, which is a model approved by the Maryland DOE for evaluating SLD. Finally, the psychologist's decision not to interview the student was based upon her belief that the student did not have the necessary self-awareness of his difficulties to provide valuable information.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. Letter to Carroll, 72 IDELR 74 (OSEP 2018). Although it was a strong possibility that the district would not be able to provide five days' worth of specialized instruction to a preschooler who was attending only three out of five days a week, the district still cannot unilaterally reduce the number of service minutes in the child's IEP. The proposed reduction in service minutes would need to be discussed with the child's parents at an IEP team meeting or the district could develop a written document to amend the child's IEP with the agreement of the child's parents and then inform the child's IEP team of the changes.

B. L.M.P. v. School Bd. of Broward Co., 71 IDELR 101, 879 F.3d 1274 (11th Cir. 2018). Parents may not simply allege the existence of an improper district policy in claiming an IDEA procedural violation. In order to sue the district for "predetermination," these parents had to show that they suffered an injury as a result of that policy. While the parents claim that the district injured them by impeding their ability to participate in the IEP process, all three of the IEPs for the autistic triplets included ABA services in the form of PECS-based instruction. Thus, the district's inclusion of an ABA-based service in the IEPs, regardless of how it was intended to be used or whether it matched the specific services requested by the parents refutes the parents' argument that they were denied meaningful participation. They "simply were not denied any ABA-based service in their children's IEPs." Because the parents limited their appeal to the alleged procedural violation, the court will not consider with the PECS-based instruction was appropriate or whether the children needed additional ABA services to receive FAPE.

C. Board of Educ. of the North Rockland Cent. Sch. Dist. v. C.M., 72 IDELR 172 (2d Cir. 2018) (unpublished). Parents' delay for 3 years in challenging district's failure to offer residential placement is time barred, and the district court's dismissal of claims under IDEA and 504 is affirmed. Where it was documented that the parent was provided a copy

of her procedural safeguards in August 2012 advising of the IDEA's two-year statute of limitations period, there is no exception to the statute of limitations period in this case.

D. Pavelko v. District of Columbia, 71 IDELR 165, 288 F.Supp.3d 301 (D. D.C. 2018). Parents' claim that district denied them meaningful participation in the IEP process is rejected. The parents' dissatisfaction with their child's IEP is not sufficient to establish a procedural violation of the IDEA, as the IDEA's requirement for meaningful participation does not give parents the right to veto the team's decisions. The district took action to consider the parents' input, including funding an IEE after the parents disagreed with its evaluation. In addition, the child's mother actively participated in the initial IEP meeting, toured his proposed placement, and received a response from the district when she expressed concerns about the proposed setting. While the parents disagreed with the recommendations of the team, they were provided with meaningful opportunity to participate in the IEP process. Thus, the hearing officer's decision that the proposed IEP afforded the student FAPE is affirmed.

E. Middleton v. District of Columbia, 72 IDELR 94 (D. D.C. 2018). The district's unilateral decision to place the student on a regular diploma track is a denial of FAPE. Parents have a right to participate in all decisions about their children's educational placement. The district's argument that decisions about diploma options are not about educational placement is rejected. This decision "undoubtedly shapes fundamental elements of the student's programming;" thus, the district impeded the parent's opportunity to participate in the IEP process when it failed to invite her to the IEP meeting that resulted in the student's placement on a regular diploma track. The district's argument that the regular diploma track is the "default" option for all students with disabilities is rejected, as the D.C. regulations do not require a placement on this track. Rather, the regulations require the IEP team to decide which type of diploma a student will pursue. Here, the student's low cognitive functioning and memory deficits prevent him from accessing grade-level curriculum in reading, writing and math. Given the student's disability-related needs, the district erred in placing him on a regular diploma track that requires him to master core academic subjects. Thus, the hearing officer's decision in the district's favor is reversed.

F. Howard G. v. State of Hawaii, 72 IDELR 59 (D. Haw. 2018). Because the SEA excluded the parents from meaningful participation in the IEP process, the hearing officer's decision that the SEA denied FAPE is upheld. Deference is given to the hearing officer's finding that the SEA instructed paraprofessionals and behavioral analysts not to speak to the student's parents, thus depriving the parents of information they needed to participate in their autistic child's IEP. Thus, the parents are entitled to reimbursement for the cost of their son's private placement.

G. J.R. v. Smith, 70 IDELR 178 (D. Md. 2017). Where the district's placement specialist allegedly called the student's mother prior to an IEP meeting and told her to be "ready for a fight," that does not mean that predetermination of placement occurred. Rather, the student's IEP team had a "robust" discussion about the potential private placement versus the potential public school placement. Where the mother alleged that the program specialist stated that the IEP team's chair intended to place the student in a public school

program that had been under consideration, this did not prove that the district had made up its mind. The placement specialist was simply alerting the parents to the IEP chair's state of mind and letting them know that they were going to need to persuade the other members of the IEP team that their son required a private school program for FAPE. Indeed, the phone call should be viewed in light of the placement specialist's testimony that "no decision was made outside of the IEP team." In addition, the IEP team chair did not make the placement decision by himself. Instead, the district team members, including the program specialist, agreed on the public school program following a thorough discussion of both placements. Thus, the parents failed to prove that they were excluded from participation in the IEP process. Thus, the ALJ's decision that the parents were not entitled to private school reimbursement is affirmed.

H. Jackson v. Chicago Pub. Schs., 70 IDELR 33 (N.D. Ill. 2017). Where the district took 97 school days to finalize the initial IEP for a preschooler, it was in violation of the state's 60-day timeframe. However, the delay stemmed from the district's efforts to include the parent in the IEP process. Here, the district notified the parent of an IEP meeting within the 60-day period, but the parent did not attend; nor did the parent attend any of the four additional IEP meetings that the district scheduled over the following 10 weeks. The district was correct to prioritize parent participation over the state timeframe, and it would be inconsistent with Supreme Court authority to penalize the district when it was unable to complete the IEP within the deadline because it went out of its way to include the parent in the development of her child's IEP. The district developed the IEP without the parent only after she failed to attend the fifth meeting it had scheduled to discuss her son's program.

I. S.H. v. Mount Diablo Unif. Sch. Dist., 263 F.Supp.3d 746, 70 IDELR 98 (N.D. Cal. 2017). Where the district's interim IEP did not clearly state the setting in which speech/language services would be provided to the student—either individually or in a group setting—it denied FAPE. The services offered were not sufficiently clear and specific enough to permit the parent to make an intelligent decision as to whether to agree, disagree or seek relief through a due process hearing regarding the district's offer of services. Because the parent had requested speech and language services in both individual and group settings, but the district only offered one session without indicating the setting, the parent's ability to meaningfully participate in the development of her child's IEP was impaired. This is especially significant where the independent evaluator recommended services in both settings, but the parent was not provided sufficient information to evaluate the school district's offer of services in light of the evaluator's recommendations. Thus, the district is ordered to convene the full IEP team to develop an appropriate program and is ordered to provide compensatory speech/language services, as well as reasonable attorney's fees to the parent.

J. Tamalpais Union High Sch. Dist. v. D.W., 70 IDELR 230 (N.D. Cal. 2017). Parents are entitled to reimbursement for private school tuition and transportation expenses based upon the district's failure to distinguish between individual and group speech and language therapy in the student's 2015-16 IEP. Parent participation under the IDEA relates to implementation of the IEP as well as development of it. Thus, parents must have a clear

understanding of the type and amount of services being offered. The IEP here did not include a clear description of the student's speech and language services where the IEP team checked boxes indicating that the student would receive "individual" and "group" therapy but omitted any description of the group services to be provided. The district's argument that the IEP team's discussions put the parent on notice that it intended to provide 45 minutes of speech and language services in a pragmatic social skills group with individual therapy to be provided occasionally as needed is rejected. Whether or not the services were discussed at the IEP meeting, the district was required to commit in writing to a clear and enforceable plan.

RELATED SERVICES/ACCOMMODATIONS

A. E.I.H. and R.H. v. Fair Lawn Bd. of Educ., 72 IDELR 263 (3d Cir. 2018) (unpublished). The district's position that the IEP for a student with autism and epilepsy did not need to have nursing services on his IEP is rejected. The district's decision to add the service to the student's health plan, rather than the IEP, is a denial of FAPE. IEPs have procedural protections that do not apply to IHPs, such as stay-put, which prevents districts from unilaterally changing or discontinuing a student's IEP services. Because such protections do not apply to IHPs, which are intended to address medical needs unrelated to a student's education, the decision to include a service in an IHP rather than an IEP can affect the student's right to FAPE. The IDEA and New Jersey's code requires an IEP to include nursing services in an IEP as a related service necessary for a child to receive FAPE. Here, the student could not take advantage of transportation services in her IEP, unless she had a nurse present to administer Diastat in an emergency. Thus, the nurse was necessary for the student to gain access to FAPE. In addition, there is no "severity threshold" that a student's medical condition must meet for school nurse services to qualify as related services under the IDEA. The only relevant question is whether the student requires nursing services to benefit from her education. Thus, the ALJ's decision is reinstated that FAPE was denied and the case is remanded to determine the amount of attorneys' fees to be awarded to the parents.

B. Pollack v. Regional Sch. Unit 75, 71 IDELR 206, 886 F.3d 75 (1st Cir. 2018). In order to prevail on their ADA claim, the parents need to show that the requested accommodation of allowing their son to audio record all classroom interactions would be effective and reasonable. In other words, the accommodation requested must provide a benefit in the form of increased access to a public service. However, in this case, the administrative record from the due process hearing prevents the parents from raising this argument because the hearing office has already resolved this issue and the parents did not appeal the decision. Although the hearing officer did not consider whether allowing the student to carry an audio recording device throughout the school day would be a reasonable accommodation under the ADA, the hearing officer did find that the presence of the device would be "disruptive and detrimental" to the student's education. As such, the parents could not show that the requested accommodation was effective and reasonable.

C. M.C. v. Knox Co. Bd. of Educ., 72 IDELR 91 (E.D. Tenn. 2018). Under the IDEA, staff time to prepare or modify regular education materials for two students with Down

syndrome is not a related service or a supplementary aid or service required to be set forth in an IEP. Requiring educators to include teacher preparation time in an IEP would lead to impractical results because the time would vary depending upon the educator's experience and training in the creation of modified materials, the nature of the materials, and the student's grasp of the concepts. Thus, the parents' assertion that material preparation time constitutes a "supplementary aid or service" is rejected and an IEP is not defective simply because it fails to describe the amount of time to be spent preparing classroom materials. The district's motion to dismiss for failure to state a claim is dismissed.

D. Letter to McDowell, 72 IDELR 252 (OSEP 2018). Intervener services may be related services under the IDEA for a student who is deaf-blind if the service is needed to provide FAPE to the student. Although intervener services do not appear among the list of services in the IDEA's definition of related services, the list is not exhaustive. Rather, related services may include other developmental, corrective or supportive services if the child needs them in order to receipt FAPE. The IEP team is to make individual determinations about whether such services are required to assist the child to benefit from special education.

LEAST RESTRICTIVE ENVIRONMENT

A. L.H. v. Hamilton Co. Dept. of Educ., 900 F.3d 779, 72 IDELR 204 (6th Cir. 2018). A district may only remove a student with a disability from the general education setting if: (1) the student would not receive any benefit from that placement; 2) any benefits of the general education placement would be far outweighed by the benefits of a special education placement; or 3) the student would disrupt the general education class. The *Endrew F.* decision did not change this standard. The restrictiveness of a student's educational placement and the appropriateness of his IEP are two separate issues. The appropriate measure is whether the child, with appropriate supplemental aids and services, can make progress toward the IEP goals in the general education setting. Where the district court found that the 10 year-old with Down syndrome could benefit from the second-grade general education setting, its decision that the proposed placement in a special day class was overly restrictive is affirmed. However, the district court's decision that the student's placement at a Montessori school was not appropriate for reimbursement is remanded for a determination of the amount owed to the parents where the school provided a personalized curriculum and a one-to-one aide for the student.

B. B.E.L. v. State of Hawaii Dept. of Educ., 71 IDELR 162 (9th Cir. 2018) (unpublished). Placement of second grade student with dyslexia in a special education classroom for reading and math was not overly restrictive and did not entitle the parents to private school placement. The child's inability to make appropriate progress despite his teachers' attempts to provide interventions shows that he requires a part-time special education placement. Indeed, the child's second grade teachers had already attempted all of the accommodations, modifications and support the parents requested, but the record reflects that he was far behind his peers in reading and math; thus, the accommodations in the general education setting did not help. Further, the child's special education teacher

testified that the child's confidence improved in her class and the general education teacher testified that it would be difficult to teach multiple grade levels in her classroom. The district balanced the child's need for intensive instruction in reading and math with its duty to provide him with FAPE in the LRE. To determine if a placement is overly restrictive, the Court balances: "(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect [the student] had on the teacher and children in the regular class; and (4) the costs of mainstreaming [the student]."

C. J.G. v. State of Hawaii, 72 IDELR 219 (D. Haw. 2018). District's proposed placement of student with autism in a special education center was the student's LRE; thus, the parents are not entitled to reimbursement for placement in a private school. The parents' allegation that the IEP team's consideration of the LRE was inadequate or predetermined is rejected. The team followed an "LRE worksheet" that required IEP team members to discuss the appropriateness of each placement on the continuum, starting with the general education classroom and documenting the benefits and drawbacks of each setting. Comments on the worksheet reflect that the newly opened special education center offered the educational services needed by the student while giving him opportunities to interact with nondisabled peers as appropriate. While the team did not formally discuss placement in the private program for autistic students that the student had attended for the previous seven years, it was not required to do so because the team properly rejected the more restrictive placements on the LRE continuum. The IDEA requires special education to be delivered in the LRE and the private school was more restrictive.

D. Greene v. East Poinsett Co. Sch. Dist., 72 IDELR 34 (E.D. Ark. 2018). Proposed clinical setting for 8 year-old with autism is the LRE where it was far less restrictive than the home-based program that the student had received without any other children around. While the clinic is more restrictive than the school-based component of the student's former program, it is not unreasonable for the district to recommend ABA services before the student returns to school. This is a temporary plan—four weeks at the most—to address some of the student's behavioral issues and to best prepare her for a mainstream educational environment. Thus, the hearing officer's decision that the district offered FAPE in the LRE is affirmed.

E. C.D. v. Natick Pub. Sch. Dist., 72 IDELR 148 (D. Mass. 2018). Where the student has a "unique…disability in conjunction with weaknesses in receptive and expressive language," it is likely that the student would be unable to benefit from the regular education curriculum even with extensive supports. In addition, the district appropriately balanced the student's academic and social needs when offering to place her in a special education program for her core subjects and a general education classroom for elective courses which would allow her to interact with typically developing peers for part of the school day.

BEHAVIOR/FUNCTIONAL BEHAVIORAL ASSESSMENTS & BIPS

A. Spring Branch Indep. Sch. Dist. v. O.W., 72 IDELR 11 (S.D. Tex. 2018). The district is ordered to reimburse the parents for the cost of two years of private school services for a gifted fifth-grader with an emotional disturbance. The district used time outs, physical

restraint and police intervention to manage the behavioral difficulties of the student instead of implementing the positive behavioral supports and interventions provided in the student's IEP. For example, the IEP provided that teachers would use visual schedules, provide clear rules and offer movement breaks to address the student's tendency to leave the classroom. It also included specific responses for physical and verbal aggression and called for staff to use calm interaction styles and to minimize verbal interactions. "The IEP does not state that time-outs or restraints would be used as a tactic to address any of the above conduct." The district's argument that restraint and police involvement were necessary to address emergency situations is rejected where the staff restrained the student 8 times in 40 days and summoned police to the school four times during that same period. The frequency of these emergencies indicates that either the IEP is inappropriate or that staff members failed to implement the IEP, causing the student's behaviors to escalate. In addition, the district violated its duty to evaluate by waiting 4 months to evaluate the student for special education where the student's behavioral problems at the beginning of the school year, along with the district's inability to manage them with general education interventions put the district on notice of the need for an evaluation.

DISCIPLINE/MANIFESTATION

A. Olu-Cole v. E.L. Haynes Pub. Charter Sch., 71 IDELR 194 (D. D.C. 2018). Although the IDEA's stay-put provision provides a student with a presumptive right to remain in the then-current placement during the pendency of IDEA proceedings, a district can overcome that presumption if the student's current placement would be inappropriate under the preliminary injunction test set out in *Honig v. Doe.* Under that test, a court must consider four factors: 1) the parent's likelihood of success on the merits; 2) irreparable harm to the student; 3) the potential injuries to other parties; and 4) the public interest. Focusing on the 3rd and 4th factors here, the substantial risk of injury to others and the public interest in maintaining school safety outweighs the student's presumptive right to return to the charter school. According to the record, the student at issue attacked a classmate by repeatedly punching him in the head and the classmate suffered a seizure, significant bruising, memory loss and a concussion. In addition, the student has a long history of violent altercations with other students and school staff and his behaviors have not improved. Thus, returning the student to school would raise an "unacceptably significant potential of injury" to others. Further, the student will not suffer irreparable harm if he continues to receive services at home for another two weeks while the school seeks permission from a hearing officer to transfer the student to a more restrictive environment. Thus, the parent's request for a stay-put order requiring the school to readmit the student to campus is denied.

B. A.V. v. Panama-Buena Vista Union Sch. Dist., 71 IDELR 107 (E.D. Cal. 2018). The parent's failure to consent to an IDEA evaluation bars the 12 year-old student with ADHD from claiming the protections of the IDEA in a discipline context. While a district generally must conduct a manifestation determination for a student who does not currently receive IDEA services if it has reason to believe the student has a disability at the time of the disciplinary infraction, an exception exists if the district proposes an evaluation and the parent fails to provide consent for it. Here, the district prepared copies of its assessment plan in both English and Spanish and mailed them to the parent's home address on at least

four occasions. In addition, district personnel provided the parent with a Spanish version of the consent form and reviewed the form with her, explaining why the district was asking to conduct an evaluation. Thus, the district met the requirement to make reasonable efforts to obtain the necessary consent from the parent, going the "extra mile, and then some, to do so, all to no avail." While the parent did return the signed consent form in January 2015, the district was not required to conduct an MD before it expelled the student in November 2014.

C. Letter to Mason, 72 IDELR 192 (OSEP 2018). Shortened school days that are imposed repeatedly as a disciplinary measure could count in creating a "pattern" of removals that trigger the IDEA's procedural protections, including a manifestation determination. For a student who was subjected to an administratively shortened day to address his behavior and it was done outside the IEP team process, those shortened days may count in determining whether a pattern of removals constituting a change of placement occurred. It is up to a district to determine on a case-by-case basis whether a pattern or removal exists that would trigger a manifestation determination.

D. Lawton v. Success Academy Charter Schs., 72 IDELR 176 (E.D. N.Y. 2018). Parents of five unrelated children with actual or perceived disabilities have plead a viable claim under Section 504; thus, the school's motion to dismiss is denied. The parents' complaint meets the required elements for disability discrimination and retaliation where they alleged that 1) the children have disabilities under Section 504; 2) the school discriminated on the basis of their disabilities; and 3) the school acted in bad faith or with gross misjudgment. Here, three of the five children who were repeatedly suspended from the school were 4 or 5 years old at the time of their enrollment and had established disabilities. The other two were "regarded as" having disabilities. Not only did the parents claim that the school frequently removed or suspended their children for having tantrums, running in class and failing to maintain a specific sitting position, the principal also maintained a "Got to Go" list targeting students with disabilities that he wanted to remove permanently.

E. J.M. v. Liberty Union High Sch. Dist., 70 IDELR 4 (N.D. Cal. 2017). District's expulsion of a high school student with ADHD and 504 services is upheld and the student's discrimination suit is dismissed. Under 504, a district must evaluate a student prior to imposing a significant change of placement, including disciplinary removals. When the student here was involved in a "threatening confrontation" with a classmate, the district convened a team and concluded that the student's misconduct did not have "a direct or substantial relationship" to his disability. The student's claim that the district should have assessed whether his conduct merely "bore a relationship" to his ADHD is rejected where 504 does not include guidelines for making manifestation determinations but does provide that a district's compliance with the procedural safeguards of the IDEA is one means of meeting Section 504's evaluation requirement. Here, the evidence showed that the district appropriately followed its evaluation procedures, which mirrored the procedural safeguards outlined in the IDEA regulations.

F. Doe v. Osseo Area Sch. Dist., 71 IDELR 35 (D. Minn. 2017). District did not discriminate when it made its decision as to whether the student's ADHD, PTSD and Major Depressive

Disorder caused him to write racist graffiti on the inside of a stall door and on a toilet paper dispenser in the boys' bathroom. The parents' argument that the manifestation determination should have considered whether there was any connection to his disabilities since it was made under Section 504 is rejected. Section 504 does not establish specific requirements for making manifestation determinations. Rather, 504 regulations require a district to adopt and implement a system of procedural safeguards that can be satisfied by using the same procedural safeguards that would apply in cases with IDEA-eligible students, which is what the district here chose to do. Where the IDEA requires a team to consider whether the student's misconduct was caused by or had a substantial relationship to his disability, the parents' lesser standard is rejected. The parents do not cite any Section 504 student discipline cases that use the standard that they argue the school district should have applied. In addition, OCR applies a causation standard as well; thus, the parents could not show that the district should have applied a lesser standard in its review of the student's conduct.

STUDENTS IN JUVENILE JUSTICE/CORRECTIONAL FACILITIES

A. A.T. v. Harder, 72 IDELR 43, 298 F.Supp.3d 391 (N.D. N.Y. 2018). Injunction is granted to juvenile detainees to require jail to alter its current practices while this class action is pending. Correctional facilities have a joint obligation with school districts to ensure that eligible detainees with disabilities receive FAPE. While the jail does have a strong interest in safety and security, evidence that the jail has placed juveniles in solitary confinement for offenses such as water fights or failing to clean their cells to the guards' satisfaction suggests that the balance of hardships tips in the students' favor. In addition, the class representatives have shown that juveniles in solitary confinement only sporadically receive the educational instruction and related disability services to which they are entitled; thus, the injunction will serve the public interest. Therefore, the jail must ensure that all juveniles receive at least three hours of educational services each day and that all IDEA – eligible ones receive appropriate special education and related services to which they are entitled.

METHODOLOGY

A. E.M. v. Lewisville Indep. Sch. Dist., 72 IDELR 22 (E.D. Tex. 2018). Evidence supports the district's position that sign language interpreter services and articulation goals were no longer necessary for 9 year-old student with multiple disabilities to receive FAPE. While the IEP contemplated the child's use of "total communication," according to the sign language interpreter, however, the child relied primarily on her augmentative communication device to interact with peers. The interpreter spent 200 minutes every day with the student but testified that she would never look at her when she was interpreting, whether she was standing next to the person or right in front of her. In addition, the child—who did not have a hearing impairment—promptly complied with her teacher's directives without her interpreter's assistance. As for the articulation goals, several evaluators testified about the student's inability to articulate sounds that others could understand. Given the child's ongoing difficulty with verbal communication and limited use of sign language, the IEP team did not err in shifting its focus to AT-assisted communication.

B. R.E.B. v. State of Hawaii Dept. of Educ., 70 IDELR 194, 870 F.3d 1025 (9th Cir. 2017). Department violated the IDEA in failing to specify ABA as a teaching methodology in the student's IEP because the student's IEP team discussed ABA at length and recognized that it was integral to the student's education—And ABA is widely recognized as a superior method for teaching children with autism. Where a particular methodology plays a critical role in the student's educational plan, it must be specified in the IEP, rather than left up to individual teachers' discretion. Similarly, the Department violated the IDEA when it did not specify in the IEP the LRE during the regular and extended school year, which left it "as deemed appropriate" by his special education teacher/care coordinator and general education teacher. This improperly delegated that determination of placement to teachers outside of the IEP process. Finally, the failure to include transition services necessary for the student to transition from his private school environment to the public school environment denied FAPE. [NOTE: Rehearing has been granted in this case and the decision withdrawn on April 3, 2018].

PRIVATE SCHOOL PLACEMENT

A. M.E. v. New York City Dept. of Educ., 71 IDELR 125 (S.D. N.Y. 2018). The district's proposed school placement had the ability to meet the sensory needs of a 5 year-old with autism. Thus, the parents are not entitled to reimbursement for their placement of the child in a private setting. Parents seeking reimbursement based upon their belief that a proposed public school placement is inappropriate cannot simply speculate that the proposed placement will not be able to provide required services. Rather, parents must show that the assigned school actually lacks the ability to implement the student's IEP. Here, the lack of visible sensory equipment during the parents' tour of the assigned school did not prove that the school would be unable to provide that equipment. In fact, the school principal testified that the school possessed sensory equipment and had programs in place to address the child's sensory needs. In addition, the testimony of the private school social worker who accompanied the parents on the tour further supported the proposed placement, as she testified that they were shown the room used for OT and PT and the behavioral specialist providing the tour testified that the OT/PT room had some sensory equipment in it. Because the parents only speculated that the public school would be unable to meet the child's needs, the hearing officer's decision denying the parents reimbursement is affirmed.

B. M.N. v. School Bd. of the City of Virginia Beach, 71 IDELR 170 (E.D. Va. 2018). Hearing officer's decision that parents were entitled to reimbursement for their child's placement in a small private school for two years is affirmed. Where the student's teacher was placed on a performance improvement plan for failing to implement the student's IEP during the 2014-15 school year, the district refused the parents' request to place the student in a private school setting, refused to retain the student in the fifth grade and refused to place the student in a more restrictive environment for the 2015-16 school year denied FAPE to the student. While the district's decisions may have been appropriate for the 2015-16 school year had the student been taught by an effective teacher the prior year, the district materially failed to implement the student's IEP during the 2014-15 school year. While the district argued that its staff could remediate the harm that was caused by the ineffective teacher, this

decision must be made based upon the content of the proposed IEP. This IEP failed to offer the student FAPE because it sought to place her in an academic program "beyond her abilities—namely, sixth grade." With respect to the 2016-17 school year, the hearing officer's findings were correct that vague audiology goals and an absence of needed interventions rendered the IEP to be fatally flawed. Where the private school offered FAPE and included a small classroom in with the student's voice could be heard, the private program was appropriate.

C. A.W. v. New York City Dept. of Educ., 71 IDELR 198 (S.D. N.Y. 2018). District's decision that student with LD and ADHD should be placed in an integrated co-teaching class with up to 30 students denied FAPE and the district is required to pay for the student's placement in a private school. The district's and the state review officer's reliance upon the testimony of a school psychologist that the proposed placement in a general education setting was appropriate because the student was "cognitively intact" was in error. According to the private school teachers, the student was easily frustrated by noise, got off topic easily, needed to move around and required frequent redirection. In addition, the school psychologist minimized the student's difficulties with reading and comprehension and the psychologist's conclusion that decoding would not necessarily help the student ignored the psychoeducational assessments that indicated that the student's decoding skills deteriorated with complicated words. Thus the local hearing officer's decision that the proposed class would not provide the support the student needed to receive educational benefit. The private school's small classes and adult support allows the student to receive educational benefit.

D. R.H. v. Board of Educ. of the Saugerties Cent. Sch. Dist., 72 IDELR 58 (N.D. N.Y. 2018). A parent seeking private school reimbursement must prove that the private placement is appropriate. In this context, "appropriate" means that the private school offers instruction that is specially designed to meet the student's unique needs. Here, the private school did not attempt to address the student's anxiety and avoided the student's anxiety-related needs. For instance, if the student did not want to read, he was simply skipped over; if he did not complete assignments, he was not required to make them up or receive any consequences. Further, the parent did not provide any objective evidence of the student's alleged progress at the private school. Because the school did not assign grades or require students to do homework, the parent could only offer subjective opinions of school personnel. In addition, evidence that the student regularly left group instruction, had an altercation with another student that resulted in removal from class and refused to complete assignments suggests that he was regressing in the private school program.

E. J.T. v. Department of Educ., 72 IDELR 95 (D. Haw. 2018). The Hawaii ED is to reimburse the parents 25% of their costs to place their 10-year old son in a private therapeutic day program. While the Department denied FAPE to the student when it failed to address his identified mental health needs, "all relevant factors" must be considered when reviewing a parental request for reimbursement. Many of the private program's components, including cooking, ceramics, filmmaking, dolphin interaction and water sports had no connection to the student's educational needs. Thus, it would not be equitable to require the Department to pay for the student's mixed martial art lessons and dolphin experiences. Further, the

student displayed new behaviors in the private school, including banging on tables, grabbing sensory equipment used by other students, lying on the ground in a fetal position and chasing a classmate while holding a brick that were not evident in the public school program.

F. Katelin O. v. Massachusetts Bureau of Spec. Educ. Appeals, 72 IDELR 185 (D. Mass. 2018). Because there was no evidence that cessation of tutoring services set forth in the student's 504 plan was based upon disability-based animus on the part of the district, the parents cannot establish a 504 claim for the failure to provide about six weeks of those services at the end of the student's 12th-grade year. To establish a 504 claim, parents must show that a student was denied required accommodations and that the denial was based upon disability, which can be shown with evidence that a district was deliberately indifferent to the student's disability-related needs. Here, no facts suggested that the cessation of services was based upon such animus and the parents' request for compensatory damages in the form of private school tuition for a 5th year of high school is rejected.

RESIDENTIAL PLACEMENT

A. Anchorage Sch. Dist. v. M.G., 72 IDELR 124 (D. Alaska 2018). Hearing officer's decision is affirmed where the student's IEP team had agreed to a residential placement based upon the autistic student's multiple needs, including his visual impairment. The district's position that the IEP was merely a "draft" is rejected, as it was signed by the entire IEP team and a prior written notice was provided the next week stated the district's intent to implement the "attached IEP." While the Perkins School for the Blind in Massachusetts is far from the student's home and charged a higher tuition rate than other residential facilities, the district's concerns about it did not alter its obligation to arrange for a residential placement. Because Perkins is the only residential facility capable of meeting the student's needs, the hearing officer's decision ordering the district to pay for it is affirmed. Note: The 9th Circuit also ruled that the school district must continue to pay for the private school while the dispute is pending over the student's educational program, even though the hearing officer's order only required funding through February 17, 2018. 72 IDELR 233 (9th Cir. 2018).

B. Edmonds Sch. Dist. v. A.T., 71 IDELR 31 (W.D. Wash. 2017). ALJ's decision ordering district to reimburse parents for residential placement of a high school student with ADHD, ODD and schizophrenia is affirmed. The district's primary argument that the student could perform well academically when his medical conditions were under control does not make the residential placement "medical" in nature, and the placement was not required based purely on the student's medical needs. The support services the student received at the residential placement in Utah, which included psychological services, social work services, therapeutic recreation, counseling and medication management, all qualify as related services under the IDEA. Clearly, the student needed to receive these services in a residential setting to address his truancy and his tendency to elope—both of which significantly impeded his learning. In addition, the school district's program did not provide FAPE, as the student did not progress in its program.

COMPENSATORY EDUCATION/OTHER REMEDIES

A. Letter to Kane, 72 IDELR 75 (OSEP 2018). Students generally do not have a right to compensatory education for services missed while they participate in statewide or districtwide assessments. This is so because the IDEA requires districts to include students with disabilities in all such assessments with appropriate accommodations or appropriate alternate assessments. Because an IEP itself contemplates the student's participation in standardized assessments, the district would not have to provide compensatory education to make up for the instruction or services the student would have received when testing was going on. In addition, a district would have no obligation to arrange for makeup services when a child misses school on assessment days because the parent decided to keep the child at home.

B. Doe v. East Lyme Bd. of Educ., 70 IDELR 99, 262 F.Supp.3d 11 (D. Conn. 2017). Creation of an escrow account for a student with autism will allow student to arrange for appropriate compensatory education services during his college years. Because the student went without related services set out in his 2008-09 stay-put IEP for 6 years and received only those services that his mother could afford, the district committed a "gross violation" of IDEA rights that entitled the student to services beyond his high school graduation. While the district is currently using videoconferencing to provide speech and language services, the district did not provide any evidence that it could provide PT, OT or Orton-Gillingham instruction in that manner. The value of the compensatory services owed is $203,478 based upon the full value of services set out in the IEP and deducting from it a previous reimbursement award. The district has 14 days to deposit this amount into an escrow account which will be monitored by an agent.

C. R.S. v. Board of Educ. of the Shenendehowa Cent. Sch. Dist., 70 IDELR 154 (N.D. N.Y. 2017). Where pure money damages are not available as relief under the IDEA, the parents' claim for immediate relief in the form of moving and relocation expenses from New York to Massachusetts is denied. Here, the parents point out purely a financial injury estimated to be between $5,500 and $7,000 per month because it cost that much more to move to and live in Massachusetts than in New York. The parents have not offered any legal support for their argument that a district may be responsible for relocation costs and the IDEA does not require districts to pay for non-educational expenses or other types of money damages.

STAY-PUT

A. Scordato v. Kinnikinnick Sch. Dist., 72 IDELR 248 (N.D. Ill. 2018). Notice that the district would be implementing a proposed IEP within 10 days of its issuance made the proposed new placement at the public high school the student's stay-put placement where the parents did not file their request for due process within the 10 days. While the parents filed their due process complaint to challenge the student's movement to a high school from middle school, the new IEP had already taken effect by the time the parents filed it in March. Thus, under the February proposed IEP, the student is set to transition to high school, not stay in middle school, which reflects his educational goals, including postsecondary transition

planning. While the parents' concerns are acknowledged, the stay-put placement is the high school.

ATTORNEY CONDUCT AND ATTORNEYS' FEES

A. Rena C. v. Colonial Sch. Dist., 72 IDELR 26, 890 F.3d 404 (3d Cir. 2018). The parent was justified in rejecting the district's proposed 10-day settlement based upon the district's failure to include payment of her attorney's fees in its offer. While the district's offer stated that it wished to "further limit [its] possible prevailing party attorney fee liability," this cannot be construed as an offer to pay the attorney's fees that the parent had already incurred. Had the district intended to include fees in its offer, it had the burden to state that the offer included payment of fees accrued by the parent up to that point. Because the settlement offer required the parent to choose between obtaining an appropriate placement for her child and recovering her fees, the parent's decision to continue litigating did not limit her fee recovery. Thus, the district court's ruling that the parent was not entitled to recover fees incurred after her rejection of the settlement offer is reversed.

B. Barney v. Akron Bd. of Educ., 72 IDELR 215 (N.D. Ohio 2018). Where the parent acted improperly when continuing to litigate a "meritless" case, the district's motion for attorney's fees is granted against the parent and her counsel. Clearly, the parent's due process complaint was baseless and improper and, although the parent claimed that the district failed to prevent peer harassment, she could not identify any alleged incidents of harassment. Similarly, the parent failed to provide any support for her claim that the district improperly segregated her child with ADHD and a severe peanut allergy from his nondisabled peers. Rather, the student was only asked to eat breakfast with the intervention specialist on one occasion when there was a fear that he would have an allergic reaction. Finally, the parent's attorneys filed multiple motions that unnecessarily prolonged the litigation. Thus, the parent and her attorneys must pay the district $53,287 in fees and $400 in costs, but the court will entertain reducing the award upon receipt of further evidence that the parent/counsel are unable to pay.

C. Lincoln-Sudbury Regional Sch. Dist. v. Bureau of Spec. Educ. Appeals, 72 IDELR 28 (D. Mass. 2018). District is awarded $188,966 in fees and $2,052 in costs where the student who suffered a concussion during field hockey practice never demonstrated a need for special education and her parents could not reasonably argue that the district should have evaluated her and found her eligible for IDEA services. Rather, the parents' action appeared to be a "vendetta against school staff" and the district sufficiently demonstrated bad faith on the part of the parents. However, because the school attorneys periodically used block billing (instead of itemizing each task), the requested fee is reduced by 5%.

D. Price v. Commonwealth Charter Academy-Cyber, 72 IDELR 60 (E.D. Pa. 2018). While the parent's IDEA complaint was untimely filed and dismissed, it did not appear to be frivolous or filed for an improper purpose. While a court may order a parent to pay an LEA's attorneys' fees if the LEA prevails and the parent filed the action for an improper purpose, such as to harass the LEA or drive up litigation costs, that is not the case here. The parent is not an attorney and was not represented by counsel and filed under the

belief—valid or not—that her children had been deprived of educational services and that administrative decisions were not fully honored by the LEA.

E. S.H. v. Diablo Unif. Sch. Dist., 71 IDELR 126 (N.D. Cal. 2018). The district's settlement offer to pay $10,000 in attorneys' fees, which was less than half of the $22,000 the parent had incurred already, justified the parent's decision to proceed with the litigation. While a district does not have to offer the full amount of fees, it must make a "sincere and responsible offer" to pay fees that reflects the services already obtained by the parent prior to the offer. Here, the district does not dispute that it made no effort to learn the amount of fees counsel had incurred as of the date of the settlement offer and there is no evidence in the record suggesting that the district came up with a figure based upon its expectation of what the parent's counsel was likely to receive if the parent prevailed. Thus, the parent's rejection of the proposed settlement did not prevent her from recovering fees incurred after that date, and $71,020 is awarded for counsel's work on the due process hearing proceeding.

F. T.B. v. San Diego Unif. Sch. Dist., 71 IDELR 195 (S.D. Cal. 2018). Although the parents established that the district denied appropriate health services to their child with autism, the parents are not entitled to recover almost $2 million in fees. This is so because the parents successfully litigated only a small portion of their IDEA claims in due process and federal court. While the parents brought a total of 18 issues in their original IDEA complaint, they only obtained favorable judgements on 3 of them related to the student's health services. For instance, the parents successfully established that the district denied FAPE when it refused to include G-tube feedings in the student's IEP for 2006-07. However, they failed to show that the student's prior IEPs and multidisciplinary assessments were deficient. Thus, based upon their relative degree of success, the parents' fee award will be reduced to $934,346.

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

A. A.H. v. Illinois High Sch. Association, 71 IDELR 212 (7th Cir. 2018). High school athlete with CP and spastic quadriplegia did not show that his requested accommodation for state-level track and field events was reasonable. The creation of a separate para-ambulatory division would fundamentally alter the nature of the state championships and is, therefore, not required. While creating the separate track and field division might not result in a financial or administrative burden for the Association, it would fundamentally alter the essential nature of the competition. According to the Association, the purpose of having demanding qualifying times is to ensure that only the best and fastest runners—approximately 10% of all track and field athletes in the state—had the opportunity to compete in the championships. The creation of a new division would lower the current qualifying times and make it easier for certain runners to qualify for state. In addition, the student is a full member of his school's track team and has participated in every meet; thus, being provided with the same opportunity as his nondisabled teammates to compete for a spot in the state championships Thus the Association's refusal to create a separate division did not constitute disability discrimination under Section 504/ADA

B. Brown v. Grove Unif. Sch. Dist., 71 IDELR 163 (E.D. Cal. 2018). Former high school student with emotional disturbance has sufficiently plead claims for disability discrimination under Section 504/ADA. While the court is not deciding whether the student was otherwise qualified to play varsity basketball, the student has clearly established that a disability exists and that he was excluded from the varsity basketball team. Although the district contends that the student's behavioral outbursts made him unfit for team membership regardless of whether they stem from the student's ED, the district's arguments go to the merits of the case and cannot be resolved on motion to dismiss. The student has sufficiently alleged that he was excluded based upon his disability.

C. Clemons v. Shelby Co. Bd. of Educ., 72 IDELR 24 (W.D. Ky. 2018). Ninth-grader with Asperger syndrome was not subjected to disability discrimination when she did not make the cut for the high school tennis team. The coach required all ream members to play challenge matches in order to earn a spot on the team and the coach's reasons for selecting players in this way were legitimate, nondiscriminatory and were not just a cover-up for discrimination. Rather, the tennis coach used a system of challenge matches, requiring players on the team to play head-to-head for rankings—a system that was incorporated into the state athletic association's handbook. The district asserts that the student's performance during the challenge matches resulted in her not making the varsity team, and the parent's position that she did not make it because the coach did not want to deal with her and made disparaging remarks about her is rejected. Clearly, all of the girls on the team played challenge matches against each other to earn the opportunity to play varsity matches.

SERVICE ANIMALS

A. Doucette v. Jacobs, 71 IDELR 131 (D. Mass. 2018). Although the parents argue that their child's desire to bring his service dog to school is unrelated to his IEP, the allegations in their complaint show otherwise. The complaint repeatedly references the school district's refusal to amend the student's IEP to include his service dog as an accommodation; thus, it is in essence a claim under the IDEA which must first be exhausted in a due process hearing.

B. Naegle v. Canyons Sch. Dist., 72 IDELR 99 (D. Utah 2018). Though Utah law allows for nondisabled individuals to be accompanied by service animals in training, it is only allowed in public buildings and facilities such as stores, hotels and amusement parks. The Utah service animal law's list of public buildings and facilities does not include public school classrooms and its plain language cannot be read to require accommodations to nondisabled individuals with service animals in training to the same extent required for disabled individuals with service animals under the ADA. In addition, this case is moot because the plaintiff here—a dog breeder who intended to donate the animal in question to a child with a disability after the dog had been trained in school with the breeder's nondisabled daughter—has moved to a new district and the student no longer attends the high school that had excluded the dog. In addition, the dog at issue is now a retired service dog.

C. Berardelli v. Allied Services Inst. of Rehabilitative Medicine, 900 F.3d 104, 72 IDELR 201 (3d Cir. 2018). The fact that Section 504 does not specifically mention service animals does not mean that the failure to allow a student with a seizure disorder to bring her service dog to school is not actionable under Section 504. Schools covered by Section 504 must modify their policies to allow for the use of service animals by students with disabilities to the same extent as schools covered by the ADA. Under the ADA, a service dog's presence is reasonable as a matter of law unless it is out of control or is not housebroken. Given the similarities between 504 and ADA, the same standard applies to Section 504 claims. However, the parents also need to show that the dog's presence is necessary for the student to meaningfully participate in her educational program. Noting that the evidence in this case could support that finding, the case is remanded for further proceedings and the jury verdict in favor of the school is vacated.

EDUCATION RECORDS/FERPA/CONFIDENTIALITY

A. Burnett v. San Mateo-Foster City Sch. Dist., 72 IDELR 147 (9th Cir. 2018) (unpublished). There is no evidence that the district interfered with the parents' right to review and inspect records when it turned over all emails about their 4th grader with ADHD that it maintained in the student's file. The district had no obligation to turn over unprinted emails, as IDEA and FERPA define "education records" to include those that contain personally identifiable information that are maintained by an educational agency. "Maintained" suggests something more than an ordinary exchange of emails, referring instead to records that are kept in a filing cabinet or a permanent secure database.

B. Wong v. State Dept. of Educ., 71 IDELR 128 (D. Conn. 2018). Parents do not have a private right to sue under FERPA. Therefore, the district's motion to dismiss is granted. The Supreme Court has ruled that FERPA does not provide parents or students with the right to sue for access to education records. Rather, FERPA's remedy is that the Secretary of Education may withhold federal funds from any educational agency or institution that violates the statute's provisions.

C. Magnoni v. Plainedge Union Free Sch. Dist., 72 IDELR 249 (E.D. N.Y. 2018). Even if the parents of a 12 year-old student with autism could use Section 1983 to seek relief for alleged violations of privacy rights under the IDEA, they could not sue the district here for sharing information about their son with an anonymous donor for gift-giving purposes (who the parents later learned from the middle school principal that the donor was the student's estranged aunt who the parents had intentionally excluded from the child's life). The case is dismissed for the failure on the part of the parents to prove that the district disclosed personally identifiable information rather than directory information without parental consent. Although a student's name can qualify as either PII or directory information, the information shared with the anonymous donor falls into the latter category. Based upon the definition of "directory information" as information that would not generally be considered harmful or an invasion of privacy if released, a student's classroom and his favorite candy is directory information rather than PII.

D. Letter to Anonymous, 117 LRP 49571 (FPCO 2018). Where there is no evidence that the teacher improperly disclosed personally identifiable information about a student from her education records, the complaint is closed. The district contended that it had no record of any health conditions for the student and any information about her ADHD was disclosed to the teacher by the student and parent, not from education records. In addition, the student disclosed her own ADHD to the class. While the teacher was present when the student volunteered to share with a small group of students her personal experience with ADHD and the medication she was taking for it, the teacher did not elicit any information from the student that the student herself did not voluntarily disclose.

E. Letter to Anonymous, 117 LRP 46542 (FPCO 2017). Where a third-grade teacher unlawfully disclosed personally identifiable information about a student without parental consent, the district took appropriate action. Here, the parent complained that her child's teacher told two classmates' parents that the child was the perpetrator who started a fight during P.E. and that she did not authorize this disclosure. The district argued that it was not required to seek parent consent to disclose the student's role in the altercation because the school record about the incident contained PII of multiple students. However, even in situations where a student's education record contains information about other children, the district may relay to a parent only the information in the record that pertains to their child, not others. For example, where a school disciplines a perpetrator of a fight, the parents of the student victim are not entitled to know the details of the perpetrator's discipline, unless it directly relates to both students, such as when the perpetrator is ordered to stay away from the victim. Because the teacher in this case had no reason to inform the classmates' parents about the student's involvement in the altercation and the teacher did not obtain prior consent, the district violated student privacy rights. This complaint is closed, however, since the district provided documentation showing that it ordered the teacher to avoid confidentiality violations and to maintain professionalism in the future.