

# The Year in Review

Presented by:

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# ADA/504

- ❑ 22 Cases! What does that tell you????
- ❑ You don't have a case due to bullying unless the bullying is BECAUSE of your disability.
- ❑ Accommodations can be denied—see *KP v. Chicago*, and *K.L. v. Missouri SHSAA*.
- ❑ Vicarious liability—see *Lipsey v. Baton Rouge*.
- ❑ Anti-vaxxers? See *D.A.B. v. NYC DOE*.

## More on ADA/504

- ❑ Handcuffing a 7-year old will always get you bad press. But you might be OK in the suit: *J.V. v. Albuquerque*.
- ❑ Neighborhood school? See *R.K. v. Scott County*.
- ❑ Expect to see more suits for damages. See *A.G. v. Paradise Valley*.

# Attorneys' Fees

- ❑ Will you take a look at some of these hourly rates?!
- ❑ But sometimes districts recover fees: C.W. v. Capistrano USD.
- ❑ And bad behavior by the lawyer can hurt— J.L. v. Harrison Township.
- ❑ You don't have to pay attorney fees to recover attorney fees. D.G. v. New Caney ISD.

# More on Attorneys' Fees

- ❑ Getting a “stay put” order is not “winning.”  
See *Tina M. v. St. Tammany Parish*.
- ❑ Don’t tell the court you are broke. *E.C. v. Philadelphia School District*.

# Behavior

- ❑ The question is this: does the student have behaviors that impede learning of the student or others? If so, consider a BIP.
- ❑ Usually a bad idea to refuse to evaluate a student who is in need. See Oakland case.

# Bullying/ Harassment

- ❑ The courts are assessing legal liability, which is very difficult to impose on a school district.
- ❑ But that should not be our standard.
- ❑ Make your list of “things not to say.”
- ❑ Suggestions for the list: SEE NEXT SLIDE!

# Things Not to Say About Bullying

1. Boys will be boys.
2. Girls are just mean these days.
3. I don't have time to deal with this.
4. It's not our fault. Look at the culture these kids grow up with. Look at the media.
5. It's just part of growing up. Get over it.



# Child Find

- ❑ The two cases in the materials speak for themselves.
- ❑ One more thing to think about: Child Find pulls you toward special education referrals. RTI pulls you away. There is a natural tension there.
- ❑ Be sure your staff knows how to respond to a parent request for referral. SEE NEXT SLIDE!

# Child Find v. RTI

- ❑ RTI was designed to slow down referrals BY THE SCHOOL. But not by the parent.
- ❑ If parent seeks referral, there are only two good responses.
  1. Yes: please sign consent for the FIE.
  2. No: here is our Prior Written Notice.
- ❑ Either way, provide a copy of the Procedural Safeguards document.

# Discipline

- ❑ Compare Troy case and Wayne Westland.
- ❑ Lewisville case shows us who is the better “expert.”
- ❑ Hurst-Eules-Bedford case: shows that parents have two avenues of appeal. Don’t get them confused.
- ❑ How not to do MDR—see Bristol Township.

# Eligibility

- ❑ “The student has autism but is not eligible for special education.” Huh????
- ❑ Things not to say: He’s not eligible for special ed. He’s too smart.

# Evaluations

- ❑ West Contra case is a good example of how to respond to parent requests for special treatment.
- ❑ Sometimes I wonder if I understand special education law at all: Cobb County case.
- ❑ Evaluation data is the rudder that steers the ship. Look at 9<sup>th</sup> Circuit view—Paso Robles USD.

# Exhaustion of Administrative Remedies

- ❑ 18 cases deal with this boring but important issue.
- ❑ Only one really matters—
- ❑ Fry v. Napoleon going before SCOTUS. Stay tuned.

# ESY

- ❑ How can you provide LRE in an ESY program that serves only students with disabilities?

# IEEs

- ❑ The big news here is the 5<sup>th</sup> Circuit decision in *Seth B. v. New Orleans* that overturned the conventional wisdom about IEEs.
- ❑ We thought you could only respond to an IEE request with 1) we will pay for it; or 2) we are asking for a hearing to prove our FIE is good.
- ❑ 5<sup>th</sup> Circuit allows third option: refuse to pay, citing ways in which the IEE does not satisfy criteria.



# Practice and Procedure

- ❑ 15 Cases! Notice: OK to put time limits on hearings.
- ❑ Lawyers: study 3<sup>rd</sup> Circuit case re: statute of limitations.
- ❑ Be reasonable at all times. See S.K. v. North Allegheny.

# Stay Put

- ❑ What schools worry about with stay put: see Philadelphia v. Kirsch and Misher.
- ❑ Didn't we just say that getting a "stay put" order does not mean you won? So what about A.P. v. Tullahoma Tennessee?

## Miscellaneous

- ❑ Wenk v. O'Reilly is the scariest case of the year: “...a report of child abuse—even if it is not materially false and there is evidence in the record to support a ‘reasonable basis’ to suspect child abuse—is actionable if the reporter made the report ‘at least in part’ for retaliatory motives.”

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