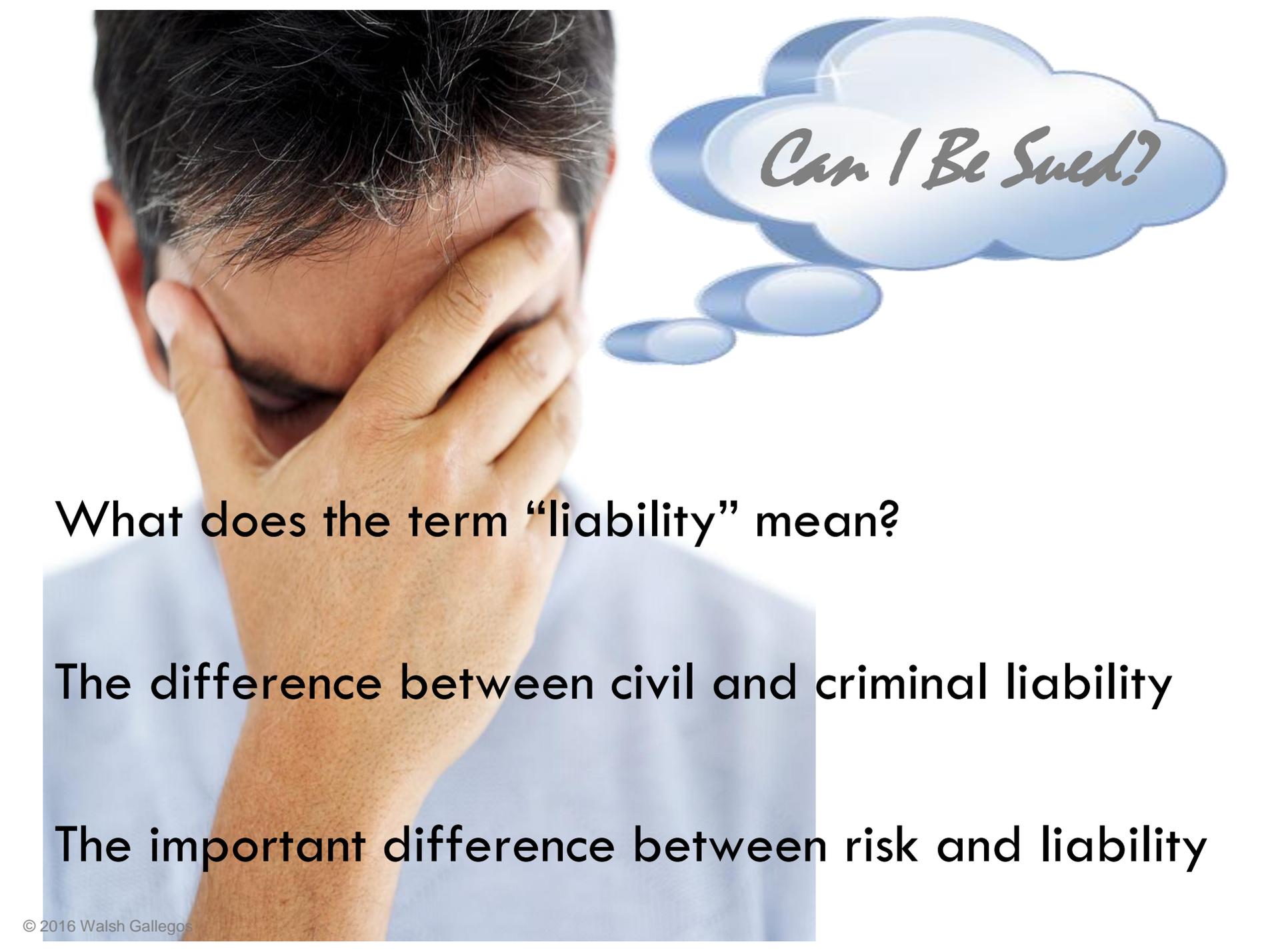




# Personal Liability in Special Education

Presented by:  
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A man with dark hair is shown from the chest up, covering his face with both hands. He appears to be in a state of distress or worry. Above his head is a blue thought bubble containing the text "Can I Be Sued?".

*Can I Be Sued?*

What does the term “liability” mean?

The difference between civil and criminal liability

The important difference between risk and liability

# School District Liability Exposure Cases Involving Children with Disabilities

The Individuals with Disabilities Education Act  
Section 504 of the Rehabilitation Act  
The Americans with Disabilities Act  
Section 1983





A closer look...

## Cases Brought Under the IDEA

Parents have the right to challenge the appropriateness of the school's proposed program for their eligible child pursuant to a request for due process hearing.

The IDEA is the 4<sup>th</sup> most litigated federal civil statute in the United States.

Litigation in this area of the law is increasing, based upon the number of reported cases.

# IDEA Practical Considerations

## The 4 “FAPE Factors”

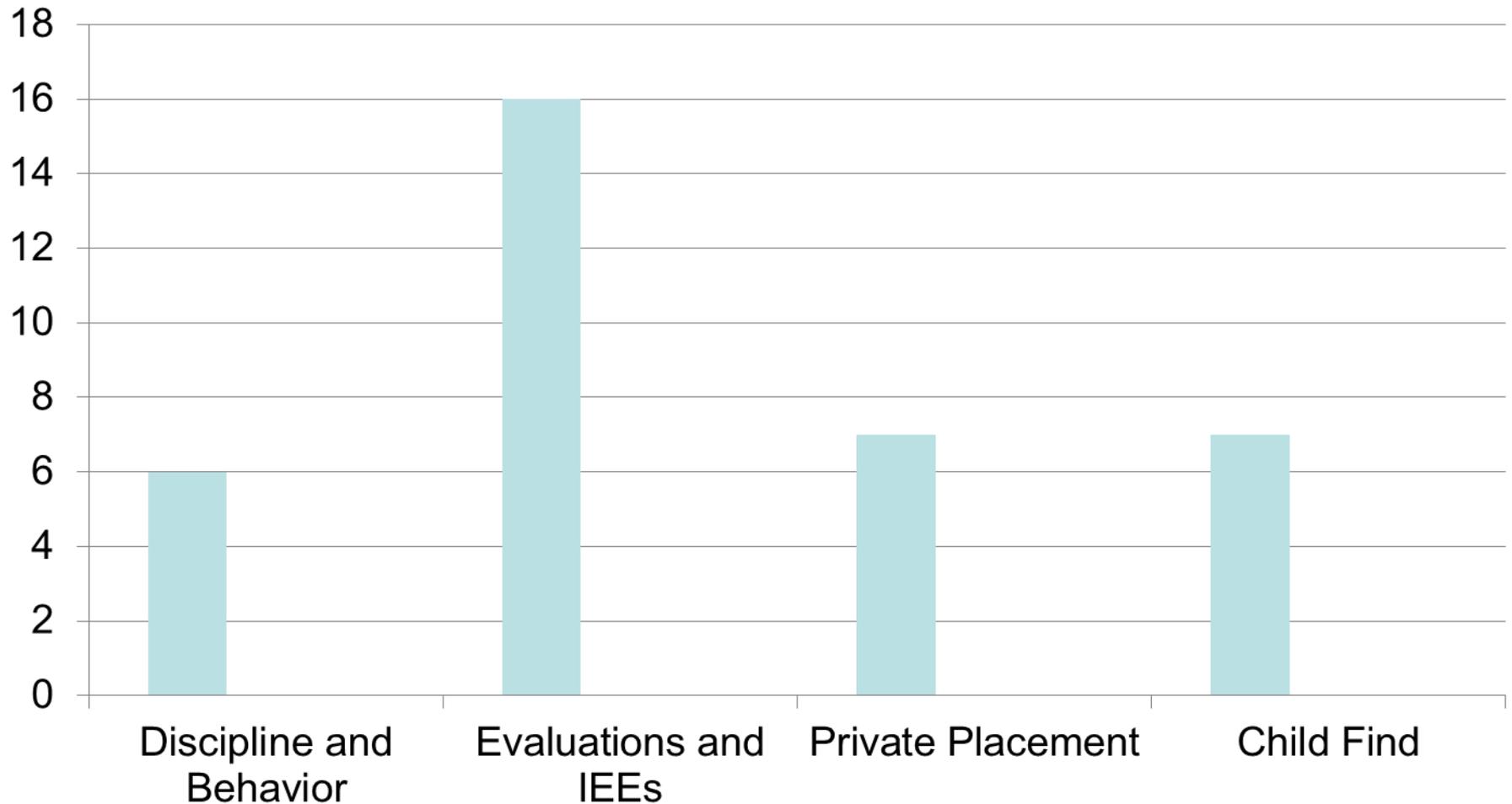
From *Cypress-Fairbanks ISD v. Michael F.* (5<sup>th</sup> Cir. 1997):

- Is the program individualized on the basis of evaluation and performance?
- Is the program administered in the LRE?
- Are the services provided in a coordinated and collaborative manner by all key stakeholders?
- Have positive academic and non-academic benefits been demonstrated?



# Common IDEA Claims

(2013 Requests for Due Process Hearing)



# 504

## A closer look... Cases Brought Under the ADA/Section 504

Generally speaking, both laws preclude discrimination on the basis of disability.

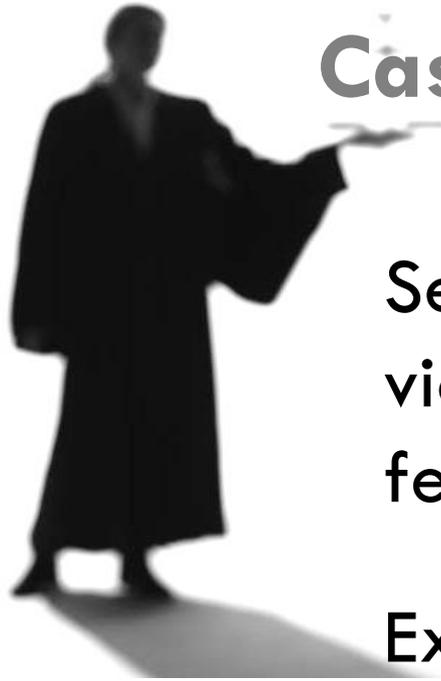
When can a school district be held liable? When there is a showing of bad faith or gross misjudgment on the part of school officials.

Enforcement through the Department of Education's Office for Civil Rights (OCR).

Cases generally relate to eligibility, accommodations, and discrimination.

A closer look...

## Cases Brought Under Section 1983



Section 1983 protects citizens from violations of their U.S. Constitutional or federally protected rights.

Examples of prior cases against school districts under Section 1983 include cases involving alleged violations of free speech, physical assault, and sexual abuse by school personnel.

## A closer look...

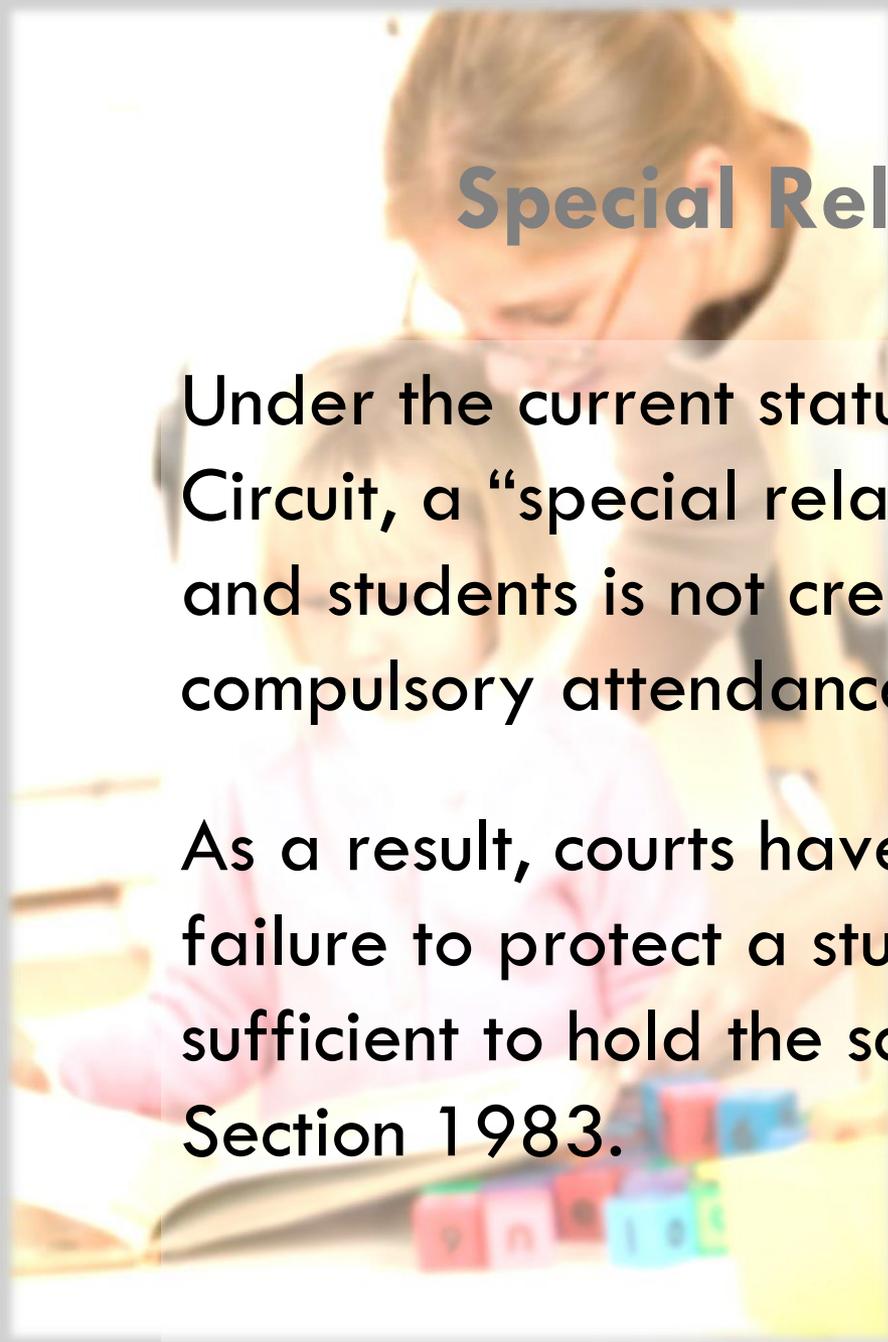
# Section 1983

- A plaintiff must establish a school district **policy or custom** that was the moving force behind a deprivation of rights to a child.

This includes an injury that was caused by the *deliberate indifference* of a school policy maker—this is a high standard.

- The failure to **train** on a policy can result in school liability.
- The failure to **protect** a student from actions by an outside 3<sup>rd</sup> party likely won't result in liability.





A closer look...

## Special Relationship/Section 1983

Under the current status of the law in the 5<sup>th</sup> Circuit, a “special relationship” between schools and students is not created by a student’s compulsory attendance at school.

As a result, courts have found that a school’s failure to protect a student from a 3<sup>rd</sup> party is not sufficient to hold the school district liable under Section 1983.

A closer look...

## Individual Liability Under Section 1983



To prove that a teacher violated the constitutional rights of a student, the student must show that the teacher's behavior "shocked the conscience."

School districts and school administrators can be held liable for the acts of a school staff member under certain circumstances.

## A closer look... **Qualified Immunity**



School officials may have qualified immunity for actions performed in the course and scope of their official duties, unless they violate *clearly established law* in an *objectively unreasonable* manner.

Under the **IDEA**, the most commonly awarded relief is compensatory education and tuition reimbursement for a unilateral private placement of a student by his or her parent. The prevailing view is that damages are not available.

Under **Section 504 and the ADA**, money damages can be recovered if intentional discrimination is proven.



## Traditional Remedies

There is no general tort liability for educational malpractice...

Neither the **IDEA** nor the **ADA** provide remedies against individual defendants.



# Individual Remedies

**Section 1983** does allow individual liability for violations of constitutional rights.

Speech infringement, unreasonable search and seizure, excessive force, denial of equal protection, and violation of a student's liberty interest in bodily integrity can all create individual liability.

Students have the Constitutional right to be free from invasion of personal security by use of excessive force and discipline.

Court refused to dismiss, or apply IDEA exhaustion, for individual in §1983 claim who made student kneel for extended periods, yelled at, shook, and assaulted student. *Tristan v. Socorro Indep. Sch. Dist.*, (W.D. Tex. 2012).

Teacher who helped special needs student create a false outcry of abuse was not entitled to qualified immunity. *Morris v. Dearborne*, (5th Cir. 1999).



Eyes Wide  
Open

A false child abuse report violates a clearly established constitutional right to family integrity and is a criminal offense.

Under Section 1983, a school official can be held personally liable for a subordinate's violation of a student's constitutional right if:

(1) the defendant learned of facts or a pattern of inappropriate behavior pointing plainly toward the conclusion that the student was at serious risk;

(2) the defendant demonstrated deliberate indifference; and,

(3) such failure caused a constitutional injury to the student.

*Doe v. Taylor Indep. Sch. Dist.*, (5th Cir. 1994).



**But I didn't  
do anything!  
Yes, exactly.**

The school officials' argument that they could ignore the teacher's sexual abuse of a student is, as a practical matter perverse, and, as a legal matter, not supported by the laws.

When Congress creates a specific and comprehensive enforcement mechanism (such as the IDEA, ADA, or § 504), a presumption prevents invoking a more general remedial scheme (such as §1983) to vindicate those rights.

*D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.* (5th Cir. 2010).

When a plaintiff's alleged injuries are not "educational in nature," damages may be recovered.

*Padilla ex rel. Padilla v. Sch. Dist. No. 1* (10th Cir. 2000).

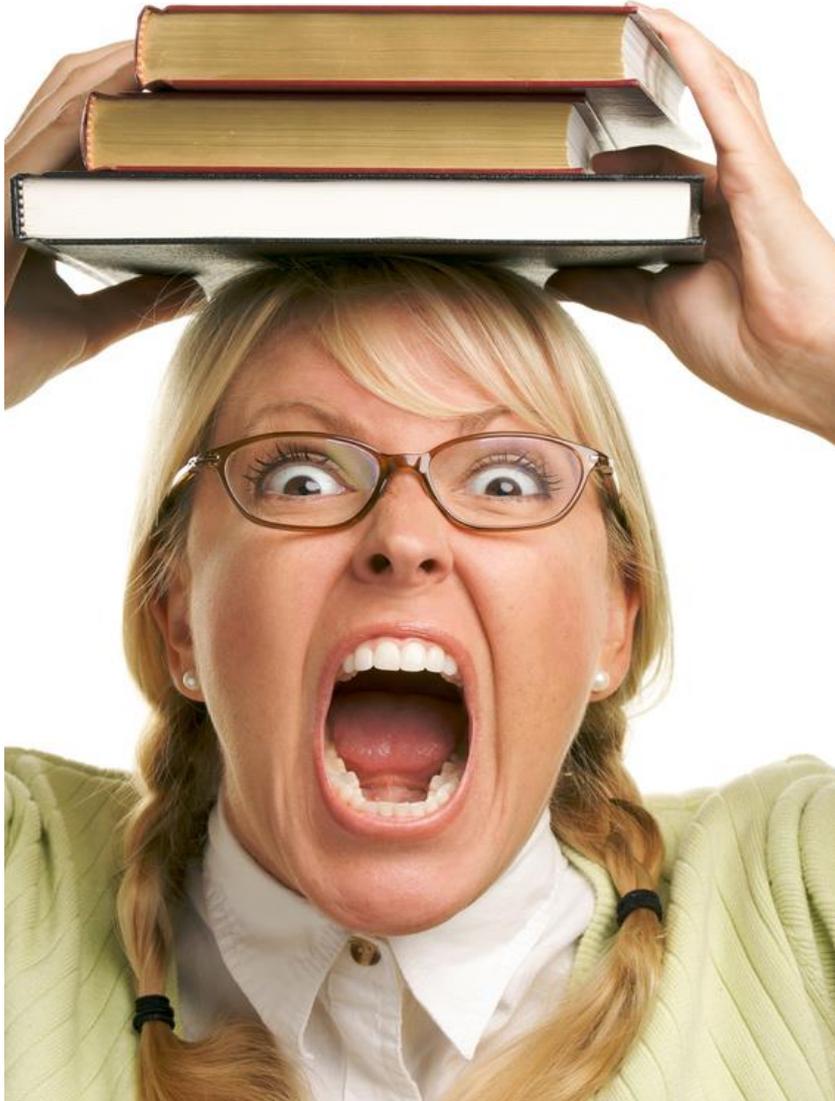


**Specific controls  
over more  
general.**

The dispositive question generally is whether the plaintiff has alleged injuries that could be redressed to any degree by the IDEA's administrative procedures and remedies.

# How to Keep from Being Sued

## Reducing Risk



- Communication with Parents
- Candid Reviews of School Climate, Culture, Accessibility, and History
- Train Staff and Hold Staff Accountable
- Train Parents and Students
- Watch Your Stats on Discipline
- Know When to Contact Legal Counsel



# How to Reduce Liability Exposure

- ✓ Take every allegation seriously
- ✓ Engage in prompt remedial action
- ✓ Acknowledge mistakes, with the help of legal counsel, instead of covering them up
- ✓ Train, Train, Train

- ✓ Conduct a self audit
- ✓ Monitor the effectiveness of services
- ✓ Never make decisions based on administrative convenience
- ✓ Keep child-centered in every decision
- ✓ Go back to IEP Team
- ✓ Document, Document, Document
- ✓ Hire a good lawyer

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*The information in this handout was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*

