

Special Education Case Law: 2011-2012

What Are the Court Saying About the IDEA and Section 504?

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Case Topics:

**FAPE & IEPs
Attorney's Fees
Least Restrictive Environment
Behavior & Discipline
Eligibility & Identification
Evaluation
Compensatory Ed & Other Remedies
Confidentiality & Student Records**

**Medical Services
Money & Liability Issues
Private School Placement
Section 504/ADA
Seclusion & Restraint
Procedural & Litigation
Service Animals
Stay Put**

I. BEHAVIOR AND DISCIPLINE

1. **Sher v. Upper Moreland Sch. Dist.**, 112 LRP 22313 (3rd Cir. 2012). The court refused to dismiss the claims filed by the grandparents of a student with ADHD alleging that the district had improperly refused to consider the effects of their grandson's disability prior to imposing disciplinary sanctions.
2. **C.F. v. New York City Dept. of Education**, 57 IDELR 255 (S.D.N.Y. 2011). The parents of a six-year-old boy with autism sued the school district seeking funding for private educational services for their son. The parents alleged that the district had denied FAPE by failing to conduct a functional behavior assessment (FBA) prior to the development of a Behavior Intervention Plan (BIP) to address the boy's noncompliant behaviors at school. The court held that the IDEA does not mandate an FBA, and that the BIP was adequate if the IEP team collected and considered various sources of information regarding the causes of the child's behaviors. In this case, the IEP team considered reports from the child's private school teachers prior to drafting the BIP, and two of the child's private school teachers attend the IEP meeting and

gave input to the team. "For example, [the child's ABA therapist] wrote that 'screaming [and] dropping to the floor,' two of the behaviors listed in the BIP, were caused by [the child's] 'low frustration-tolerance,'" U.S. District Judge Laura Taylor Swain wrote. The court found that the BIP adequately identified the causes of the child's behaviors and provided appropriate behavior intervention strategies and supports to address these behaviors at school.

3. **D.R. v. State of Hawaii, 57 IDELR 217 (D. Hawaii 2011).** This case involved a student with a speech impairment and a history of suicidal threats, tantrums, and school refusal. The boy's severe behavior problems at school had subsided over the years, and at the time of the lawsuit were not an issue. Although he occasionally "shut down" and refused to complete assignments, the boy's behavior problems usually could be addressed by teachers' re-direction, prompts, and rewards. The court upheld a hearing officer's determination that the school district's IEP provided the boy with a free appropriate public education, and refused to award the parent reimbursement for private schooling. According to the court, the school district was not obligated to conduct additional assessments of the student's emotional or behavioral issues because he did not have any significant behavior issues that adversely impacted his ability to receive an educational benefit from his IEP.

4. **Danny K. v. Dept. of Education, State of Hawaii, 57 IDELR 185 (D. Hawaii 2011).** A school district determined that ADHD did not cause a sixteen-year-old young man to set off fireworks in the boy's restroom at an alternative school. Danny had been assigned to the alternative school for cutting classes and failing grades. The fireworks explosions caused extensive damage to the bathroom, and Danny confessed to school administrators that he had set off the explosives. The IEP team conducted a manifestation determination and concluded that Danny's actions were not caused by his disability (ADHD) because they required forethought, planning, and attention to detail. The mother challenged the manifestation determination, alleging that Danny's confession was merely to get money from the "real" perpetrators by diverting suspicion from them. However, the vice principal of the school testified that Danny admitted, "I just told my mom that so she'll get off my case." Danny's mother also claimed that, if he was guilty, setting off fireworks was an impulsive action caused by her son's ADHD. The court agreed with the school district, stating, "[T]he manifestation team was required by the IDEA to determine whether the actions leading to Student's potential suspension – as determined by [district's] investigation – were a manifestation of an eligible disability." The testimony of school officials and the school psychologist supported the determination of the manifestation determination committee.

5. **N.T. v. Baltimore City Bd of Sch. Commissioners, 57 IDELR 94 (D. Maryland 2011).** A parent who claimed that the school district conducted manifestation determinations without providing proper notice to her and refused to permit her or her son to present evidence in support of his innocence was allowed to bring a lawsuit seeking money damages pursuant to Section 504. The court held that the district's changing positions may form the basis for liability if a jury found that the district's actions constituted bad faith or gross misjudgment.

6. **A.L. v. New York City Dept. of Education, 57 IDELR 69 (S.D.N.Y. 2011).** A teenager with autism had attended a private school for several years. The boy exhibited many aberrant behaviors that interfered with learning, including

perseverative behaviors and communication/social deficits. The school district proposed placing the boy in a public school special education classroom with a small pupil:teacher ratio and a 1:1 aide. At the IEP meeting to develop his proposed IEP, the school district considered information from his private school teachers and evaluations completed by the private school. The parent challenged the proposed IEP and placement, and alleged that the school district erred by developing a behavior plan without conducting its own Functional Behavior Assessment (FBA). The court rejected the parent's claims, holding that the IDEA does not expressly require school districts to conduct FBAs for all students with behavior problems. The court also found that the information obtained and considered from the private school was sufficient upon which to base the development of the behavior plan.

7. **M.G. v. Caldwell-West Caldwell Bd of Education, 57 IDELR 11 (D.N.J. 2011).** A special education teacher repeatedly used physical restraint to subdue a six-year-old boy with autism who exhibited aggressive behaviors in the classroom. The child frequently hit, bit, kicked, and pulled the hair of his classmates and ran from school staff. In order to prevent the child from harming himself or others, the teacher used a "basket hold" restraint or placed her hands on the child's shoulders when he was seated to keep him in his desk. The court examined whether the force used by the teacher was beyond what was necessary to maintain an environment conducive to learning, and whether there was an educational justification for using that force. "Because [the child] repeatedly endangered himself and other students by running around the room and hitting and biting, the force [the teacher] used was no greater than necessary," U.S. District Judge Katharine S. Hayden wrote. The court held that the teacher's actions were minimal considering the risk of harm presented by the child. The parent's claims pursuant to the IDEA and Section 504 were dismissed for failure to exhaust administrative remedies, and their equal protection claims were also dismissed.
8. **Jefferson County Bd of Education v. J.B., 56 IDELR 300 (N.D. Ala. 2011).** The parent of a twelfth grader with a learning disability challenged the district's policy prohibiting her son from participating in graduation exercises. The young man had been caught at school carrying a loaded handgun, and was subjected to a mandatory one-year expulsion. The court held that participation in graduation exercises is not a part of a "free appropriate public education." Thus, the district was authorized to apply its normal policy of prohibiting students who were expelled from participating in graduation exercises. "All of the uncontroverted evidence indicates ... that a nondisabled student in [the student's] same situation would not be permitted to return to [the public high school], and would not be permitted to participate in the graduation ceremony," U.S. District Judge C. Lynwood Smith Jr. wrote. Therefore, unless the student's IEP provided that he would participate in graduation exercises he was barred from this activity.

II. BULLYING AND HARASSMENT

9. **M.S. v. Marple Newtown Sch. Dist., 112 LRP 8009 (D.N.J. 2012).** The parents of a young girl may be able to sue the school district for failing to prevent their daughter from being bullied by a classmate. The court directed the parents to amend their complaint to seek money damages against the school district rather than injunctive

relief. The parents may be able to recover money damages pursuant to Section 504 if they can prove that district officials acted with “bad faith” or “gross misjudgment” by refusing to place their daughter and her antagonist in separate classes. The parents claimed that the girl was being traumatized by a male peer who had previously molested her sister, and who would leer at the girl and point a camera at her at school. The girl’s academic had declined and she allegedly had developed anxiety and post-traumatic stress disorder. The court also stressed that the parents were required to prove a nexus between the girl’s disability and the bullying in order to recover money damages against the school district.

10. **Adam C. v. Scranton Sch. Dist., 57 IDELR 159 (M.D. Pa. 2011).** The issue in this case is whether the school district knowingly placed a student with autism at a private school where he was likely to suffer physical injuries and bullying. The parents alleged that the private school was known to be an unsafe educational environment that was plagued by fighting. After his placement at this school, the student with autism was involved in more than twenty-five fights with peers and suffered an aneurism as a result. The parents sued seeking money damages pursuant to Section 504. In order to recover money damages, the parents will be required to prove that school officials were aware of the hostile environment at the private school and acted with deliberate indifference to the student’s safety. The evidence showed that the private school staff was not trained in crisis intervention/restraint, and that the school was inadequately staffed for the number and type of students attending. The court refused to dismiss the parents’ lawsuit.

III. CONFIDENTIALITY AND STUDENT RECORDS

11. **L.S. v. Mount Olive Bd of Education, 56 IDELR 99 (D.N.J. 2011).** This case arose when a special education “inclusion” teacher tried to assist special education students with a literature assignment by providing to them a copy of a classmate’s psychiatric evaluation report. The 11th grade general education teacher had assigned students to create a psychological profile of the protagonist in J.D. Salinger’s novel, *The Catcher in the Rye*. The special education teacher asked the school’s social worker for a sample psychiatric evaluation report to use with his students. The social worker provided a copy of a classmate’s psychiatric report, but reminded the teacher to redact the personally identifiable information. In what the court later described as “a feeble attempt to conceal the student’s identity,” the teacher redacted the student’s name, but left his age/religion/grade/names of family members, and his physical condition (diabetes and anxiety), and passed out copies of the report to the class. The student was easily identifiable, and one student in the class asked if the report was for “S.S.” The special education teacher affirmed that it was, and directed the class to continue with their assignment. The court dismissed the claims against the school district, and the IDEA/Section 504 claims, but allowed the negligence claims against the special education teacher and the social worker to continue.
12. **Public Interest Law Center of Philadelphia v. Pocono Mtn. Sch. Dist., 57 IDELR 43 (M.D. Pa. 2011).** The parent of a child with a disability filed a due process hearing seeking the release of all email and other correspondence among school district staff concerning his son, and test protocols. The court ruled that the emails

and correspondence were “education records” within the meaning of the IDEA and FERPA, but the test protocols were subject to copyright laws and were restricted.

IV. COMPENSATORY EDUCATION AND OTHER REMEDIES

13. **Brooks v. District of Columbia, 58 IDELR 103 (D.D.C. 2012).** A former student with a learning disability who had graduated with a regular high school diploma could proceed with her lawsuit alleging that she had been denied FAPE while in school. The court held that the receipt of a high school diploma did not bar the student from suing her former school district. According to the court, students with disabilities retain their right to seek compensatory education services if they can prove a denial of FAPE.
14. **Dudley v. Lower Merion Sch. Dist., 58 IDELR 12 (E.D. Pa. 2011).** A twenty-year-old student with a learning disability and an emotional disability returned to public school after being released from a juvenile detention facility. He was incarcerated on charges of robbery, assault, and criminal conspiracy. The student’s mother initiated a due process hearing and was awarded compensatory education services in the form of a specialized reading program and counseling with an escort to ensure his attendance. However, the young man refused to attend the compensatory education sessions, with or without his escort, and was subsequently arrested for burglary and re-incarcerated. The student’s mother sued the district for failure to comply with an administrative order. The court refused to impose liability on the school district for what the court characterized as “an exercise in futility.” The federal judge wrote, “The school district cannot use physical force on [the student] aside from escorting him to class, which it attempted to do.”

ELIGIBILITY AND IDENTIFICATION

15. **Lamkin v. Lone Jack C-6 Sch. Dist., 112 LRP 13571 (W.D. Mo. 2012).** The court held that parents of students with disabilities cannot revoke consent for special education and related services under the IDEA, and subsequently demand a Section 504 plan.
16. **M. M. v. Lafayette Sch. Dist., 112 LRP 6947 (N.D. Cal. 2012).** A California school district had no obligation to use RTI data collected prior to a student’s referral for evaluation to determine initial eligibility for special education and related services when it based its determination on a “severe discrepancy” formula.
17. **I.H. v. Cumberland Valley Sch. Dist., 58 IDELR 94 (M.D. Pa. 2012).** A middle school boy with anxiety and learning difficulties who was enrolled in a cyber charter school remained entitled to have an IEP developed by his home school district. Even though the child had been formally withdrawn from the public school, he was still a resident of the public school district. Thus, the school district was still responsible for drafting and proposing an IEP for the student should he be re-enrolled in the

public school. The court held that the public school's obligation to develop an IEP for the boy was independent of the cyber charter school's responsibility to provide FAPE.

18. **H.B. v. Haddon Heights Bd. Of Education, 57 IDELR 186 (D.N.J. 2011).** A weakness in oral reading fluency is not a basis for LD eligibility when a student did not meet the state eligibility criteria under the IDEA. The girl's teachers testified that her oral reading skills were as good as or better than her fifth-grade classmates. Therefore, despite her weakness in oral reading skills, the girl was not adversely impacted educationally and did not require special education and related services.
19. **G.J.D. v. Wissahickon Sch. Dist., 56 IDELR 294 (E.D. Pa. 2011).** A school psychologist erred by refusing to recommend eligibility for a kindergarten child with an above-average IQ and above-grade-level academic performance who was diagnosed with ADHD. Although the child's academics were outstanding, the psychologist ignored the fact that the child's behavior problems in the classroom were spiraling out of control. The court reiterated that IDEA eligibility is not based on academic performance alone, but also encompasses social, emotional, and behavioral performance. "[The psychologist] and the district had an obligation to look beyond simply [the child's] cognitive potential or academic progress and to address the attentional issues and behaviors that [the teacher] had identified as impeding his progress," U.S. District Judge Michael M. Baylson wrote. The court upheld an award of compensatory education because of the improper evaluation.
20. **P. C. v. Oceanside Union Sch. Dist., 56 IDELR 252 (E.D.N.Y. 2011).** The parents of an eighth grade boy who admitted to smoking marijuana daily and abusing alcohol and prescription drugs alleged that their son's anger, anxiety, and declining academic performance was caused by an emotional disturbance. The parents sought special education eligibility for their son and reimbursement for private schooling. The court ruled that the boy's acknowledged drug and alcohol abuse appeared to be the primary cause of his academic and behavior problems in school, and not the result of an emotional disturbance.
21. **W.G. v. New York City Dept. of Education, 56 IDELR 260 (S.D.N.Y. 2011).** A New York teenager who had experienced a single mild episode of depression was not "emotionally disturbed" within the meaning of the IDEA. The court rejected the parents' contention that their son's truancy, defiance, and refusal to complete classwork was attributable to an emotional impairment. Every mental health professional who had evaluated the boy had concluded that he evidenced "oppositional defiant disorder" and had willfully refused to attend school. Therefore, the court concluded that the teen's misbehaviors were the result of "social maladjustment" rather than an "emotional disturbance."

V. EVALUATION

22. **K.B. v. Pearl River Union Free Sch. Dist., 58 IDELR 108 (S.D.N.Y. 2012).** The court ruled that the school district was not responsible for reimbursing the costs of a private evaluation obtained by the mother of a child with autism. In April of 2007 the mother objected to the results of the school district's psycho-educational evaluation of her son and requested an independent educational evaluation, or "IEE." The school district denied her request for an IEE and requested a due process hearing to defend the appropriateness of its own evaluation. The parent withdrew her request for the IEE, and then privately obtained a neuropsychological evaluation costing \$3,500. The school district agreed to reimburse her \$3,000 rather than to fight another request for reimbursement of an IEE. The mother pursued her claim for the whole \$3,500. The district argued that the neuropsychological evaluation could not be an IEE because it was a different type of evaluation than that performed by the district's school psychologist. The court ruled that the mother was barred from seeking reimbursement because she failed to "disagree" with the district's evaluation, and because she had failed to litigate her reimbursement claim in 2007.
23. **Aaron P. v. State of Hawaii Dept. of Education, 57 IDELR 251 (D. Hawaii 2011).** The school district violated the procedural requirements of the IDEA when it failed to conduct autism-specific assessments of a preschool child who had been previously diagnosed with PDD-NOS. However, the district's procedural violation did not constitute a substantive deprivation of FAPE because the child's IEP addressed autism and provided for an autism consultant, the child's teachers were trained in the provision of ABA methodology, and the district provided daily discrete trial training for the child.
24. **K.I. v. Montgomery Pub. Schs., 57 IDELR 93 (M.D. Ala. 2011).** The court reversed a hearing officer's decision that the school district had offered FAPE to a child with severe impairments including arthrogyrosis and muscular dystrophy. The court found fault with the district's failure to conduct cognitive intelligence and assistive technology testing of the child, and held that the lack of an IQ score and information about the child's ability to benefit from the use of assistive technology made the child's IEP inappropriate. "The record reflects that no one -- neither [the district] nor [the student's] parents -- actually knows what level of cognitive function [the student] possesses," U.S. District Judge Mark E. Fuller wrote. The district needed the missing data in order to develop appropriate goals that were based on the child's unique abilities and needs. However, the court did approve the district's placement of the girl in a special education school for medically fragile students. The court recognized that, even if the girl was capable of achieving academic benefit from placement in a general education classroom, her medical needs (including gastronomy tube feedings and airway suctioning) would be so distracting to the rest of the class as to render such a placement unfeasible and inappropriate.
25. **Phillip and Angie C. v. Jefferson Co. Bd of Education, 57 IDELR 97 (M.D. Ala. 2011).** The federal judge reserved a magistrate's previous ruling that the IDEA does not authorize public funding for independent educational evaluations (IEEs). The court recognized that the IDEA does not contain details about the content of an IEE or the procedures by which an IEE may be properly requested. However, the court

interpreted the federal law to mean that, where the law is vague, the federal agency (USDOE) has the authority to promulgate regulations to explain the purpose and intent of the statute.

VI. FAPE and IEPs

- 26. L.F. v. Houston Ind. Sch. Dist., 58 IDELR 63 (5th Cir. 2012).** The IEP notes taken by a Texas school district proved that the parent was actively involved in the development of her child's IEP. The parent of a fifth grade student with an emotional disturbance alleged that the district failed to develop strategies to address her child's behavior problems at school and violated the "least restrictive environment" provisions of the IDEA by placing the student in a self-contained behavior classroom. However, the evidence showed that the IEP team considered several alternative placements before recommending the behavior classroom and conducted an FBA prior to developing a Behavior Intervention Plan.
- 27. T.G. v. Midland Sch. Dist., 58 IDELR 104 (C.D. Ill. 2012).** The parent of a high school girl with a speech/language impairment alleged that her daughter's IEP goals were inappropriate and not measurable. However, the court held that the IEP goals met the standards of the IDEA. The evidence showed that the girl's reading comprehension increased after the IEP was implemented. Also, the court found that it was appropriate for the teacher to determine the girl's progress in writing by using a numerical scale based on the teacher's opinion rather than the use of objective testing. "It is not unreasonable to provide for a teacher to qualitatively measure a student's writing, and, indeed, the Court does not see any other means of measuring progress in writing skills," U.S. District Judge Joe Billy McDade wrote.
- 28. B.P. v. New York City Dept. of Education, 58 IDELR 74 (E.D.N.Y. 2012).** The "regular education teacher of the child" serving as a member of an elementary school student's IEP team was not required to be the child's actual teacher, held the New York court. The parents alleged that the regular education teacher was not a valid member of the IEP team because she was not teaching fourth or fifth grade at the time of her IEP meeting participation. The court rejected the parents' claims, noting that the IDEA does not require the regular education teacher to be teaching any particular grade level.
- 29. J.M. v. Morris Sch. Dist., 58 IDELR 48 (D.N.J. 2012).** The parent of a twelve-year-old girl with dyslexia alleged that their daughter was not making meaningful progress in reading. In the fourth grade, the girl's reading skills were measuring below the 1st percentile on standardized assessments. The school district proved that the student was making measurable progress in reading based on the statewide achievement testing. However, the court rejected the district's contention that this progress was sufficient to meet the FAPE standard of the IDEA. The court noted that the girl was provided several accommodations on the statewide assessments that overshadowed her actual progress in reading. For example, the student was not required to write on the writing assessment, and was not required to read on the assessment of reading comprehension skills. "The accommodations rendered the assessment a poor indicator of [the student's] reading and writing skills progress,"

U.S. District Judge Susan D. Wigenton wrote. The school district was ordered to provide the girl with compensatory reading instruction.

30. **M.P. v. Hamilton Southeastern Schs, 58 IDELR 92 (7th Cir. 2012).** The Seventh Circuit Court of Appeals affirmed an earlier decision of a federal court in Indiana, holding that a kindergarten child with a traumatic brain injury (and a FSIQ of 112) was not entitled to attend “double” Kindergarten sessions in order to receive FAPE. The child’s treating neuropsychologist opined that attending duplicate sessions (morning and afternoon) of Kindergarten would be “optimal” for the child. However, the court noted that the IDEA does not require the provision of educational services that are superior, optimal, or “maximizing.” “Given that [the child] was making progress ... while receiving half-day, early-childhood services, it was reasonable ... to conclude that [he] did not require double-session kindergarten to meet his needs,” the 7th Circuit wrote. The testimony of the child’s pediatrician was also discredited when the physician admitted that he had signed a letter “strongly recommending” full-day Kindergarten that was actually composed by the parents. The court denied the parents request for public funding for private school placement.
31. **Madeline P. v. Anchorage Sch. Dist., 58 IDELR 17 (D. Alaska 2011).** The school district temporarily assigned a second-grade boy with a disability to receive his writing instruction in a special education resource room while his general education classroom teacher was on an emergency medical leave. The trouble began when the district failed to return the child to his general education classroom following the teacher’s return from medical leave. The child missed approximately six weeks of writing instruction in his regular classroom due to this mistake. Therefore, the court awarded fifteen hours of compensatory education services for the district’s failure to follow-up and return the child to his previously agreed placement. The court did, however, approve the change in placement on a temporary basis due to a medical emergency of the child’s teacher.
32. **B.D. v. Puyallup Sch. Dist. 57 IDELR 211 (9th Cir. 2011).** The parents of a student with a genetic-based disability alleged that the school district violated the IDEA by failing to include an expert on Landau-Kleffner Syndrome on their son’s IEP team. The Court of Appeals affirmed a lower court’s ruling that the IDEA does not require IEP teams to include experts in specific disabilities. Rather, the IEP team must include the parents, a representative of the LEA, a special education teacher, a general education teacher (if the child is, or may be, in the general education program), and an interpreter of the assessment results.
33. **M.N. v. State of Hawaii Dept. of Education, 111 LRP 73980 (D. Hawaii 2011).** The Hawaii school district avoided liability for the costs of a unilateral private placement made by the parents of a child with autism by showing that the private school chosen was not providing appropriate educational services for the child. The parents had withdrawn the child from public school and placed him in a private ABA-based program that focused on language acquisition. The private ABA-based program did not, however, address the child’s deficits in reading, math, writing, OT, Speech, and other areas. In addition, the private placement failed to provide services to address the child’s need for group instruction, socialization, and generalization of skills. Moreover, after more than a year in the private program the child had failed to make any measurable gains in academic, social, or self-help skills. The private

placement was inappropriate and the court refused to award reimbursement for its services.

34. **Daniel P. v. Downingtown Area Sch. Dist., 57 IDELR 224 (E.D. Pa. 2011).** A Pennsylvania school district avoided liability for private schooling by carefully documenting a second grader's progress in its RTI program. The boy was identified in the first grade as having a learning disability, but was found ineligible for an IEP due to his progress in the district's RTI program. By the end of the second grade, however, the child was not making satisfactory academic progress and his was developing anxiety related to his school performance. The district determined that the child was eligible for an IEP at the end of second grade. The court was persuaded by the district's implementation of its RTI program, including the program monitoring of the student and the fact that he made meaningful progress through his second grade year.
35. **C.H. v. Northwest Ind. Sch. Dist., 57 IDELR 225 (E.D. Texas 2011).** A Texas school district violated the procedural requirements of the IDEA when it discontinued a fourth grade student's dyslexia program without notice to his parents. However, no harm was caused by the action because the district provided one-to-one reading assistance after the discontinuation of the dyslexia program. The court held that any error was therefore harmless.
36. **T.M. v. Gwinnett County Sch. Dist., 57 IDELR 272 (11th Cir. 2011).** The mother of a high school student challenged the district's classification of her son as autistic, and alleged that his IEP failed to provide FAPE. The mother wanted the student to be classified as speech/language impaired rather than autistic, as she was concerned that the autism label would affect him negatively throughout his life. The court upheld the district's classification, noting that several evaluations had concluded that he met the diagnostic criteria for autism. The court also rejected the mother's demand that her son be provided the Lindamood-Bell reading program, and approved the district's proposal to place him in small-group special education instruction. The IEP proposed by the district provided the student with FAPE, as it offered goals and objectives to address his deficits in academics, communication, social skills, and auditory processing.
38. **Weston v. Kansas City Mo. Sch. Dist., 57 IDELR 284 (W.D. Mo. 2011).** A Missouri school district offered an appropriate IEP for a second grade boy with a speech/language impairment and oppositional defiant disorder (ODD). The court rejected the testimony of a private psychologist who did not meet the child or review his educational records until a week before the underlying due process hearing. This psychologist testified that the child also suffered from dyslexia and should have been labeled LD, a point that the court deemed irrelevant to the issue of whether the proposed IEP was sufficient. The issue was whether the proposed IEP offered FAPE to the boy. The court found that the parent had failed to offer any proof that the district's proposed remedial reading program was inappropriate for the child. Moreover, the fact that the child had been unilaterally placed by his parent in a French magnet school for kindergarten and part of first grade, with his resistance to the French immersion program and lack of success there, could have adversely affected his progress in reading in the regular public school.

39. **S.F. v. New York City Dept. of Education, 57 IDELR 287 (S.D.N.Y. 2011).** The fact that there were students with emotional disturbance in the classroom proposed as a placement for a thirteen-year-old girl with LD did not render the placement inappropriate, held a New York court. Neither did the fact that the students in this class functioned between third and seventh grade academic levels. The girl's academic level of achievement was within this range of abilities, and the school district was free to group students with similar needs in a classroom. "It may be that the parents would prefer that the student not be placed in a classroom in which there is a student categorized as 'emotionally disturbed,' but this preference is not sufficient to show that [the district] has denied the student a FAPE," U.S. District Judge Denise Cote wrote.
40. **D.T. v. Seattle Sch. Dist., 57 IDELR 249 (W.D. Wash. 2011).** The parents of a elementary school boy who is deaf sought public funding for a private placement. The parents alleged that the district's instructors in its deaf and hard of hearing program were incompetent in their use of Signing Exact English and denied FAPE to their child. The court rejected the parents' contentions, holding that the district's "total communication" program (a combination of spoken English and Signed Exact English) was the same type of program requested by the parents and offered the child FAPE, despite the alleged errors of the instructors. "Regardless of the sign code used, there was insufficient evidence to establish that the student could not benefit from it," U.S. District Judge James L. Robart wrote. In addition, the district produced evaluation data proving that the boy had made meaningful progress while in its program.
41. **Poway Unified Sch. Dist. v. Cheng, 57 IDELR 189 (S.D. Cal. 2011).** The court remanded a case back to an administrative law judge to determine whether a high school student with a hearing impairment could receive educational benefit from the transcription method used by the school district. The district had provided "meaning for meaning" transcription services for the student. His parents alleged that he required "word for word" transcription services in order to receive FAPE. The court rejected the ALJ's previous ruling that word-for-word transcription was necessary because it was "better" than meaning-for-meaning transcription services. "So long as [the meaning-for-meaning method] confers 'some educational benefit' upon [the student], it satisfies [the IDEA]," U.S. District Judge Larry Alan Burns wrote. The case was remanded back to the ALJ for a FAPE analysis that was consistent with the U.S. Supreme Court's criteria in the Rowley decision.
42. **Moorestown Township Bd. Of Education v. S.D., 57 IDELR 158 (D.N.J. 2011).** A New Jersey court ruled that school districts are required to develop IEPs for students with disabilities whose parents reside in their jurisdiction, regardless of whether the students are actually enrolled in the districts at the time of the request for evaluation. The school district refused to conduct a reevaluation and develop an IEP for a student who had been previously withdrawn and placed in a private school by his parents. The district insisted that the student must be reenrolled before it was obligated to perform the reevaluation. The court found that the IDEA mandates a reevaluation whenever a parent requests it in order to develop an IEP or determine a student's continuing eligibility for special education and related services. "Surely, Congress did not intend to turn special education into a game of poker, where a

school district does not have to show its cards until after the parents have taken the gamble of enrolling their child," U.S. District Judge Renee Marie Bumb wrote.

43. **Park Hill Sch. Dist. v. Dass, 57 IDELR 121 (8th Cir. 2011).** A Missouri court ruled that school districts are not required per se to develop transition plans to ease students return to public school after their enrollment in private school programs. Furthermore, the court held that the IDEA does not mandate the development of Behavior Intervention Plans (BIPs) for students with behaviors that interfere with their ability to learn. Rather, each student's IEP must be developed individually and districts must "consider" whether students require transition plans and/or BIPs. In order for the parents of twin boys with autism to prevail, they must prove that the omission of a transition plan and a BIP led to a denial of FAPE.
44. **Rodriquez v. Fort Lee Bd of Education, 57 IDELR 152 (3rd Cir. 2011).** The court held that the transition plan developed for a high school girl with cerebral palsy was appropriate because it contained all of the elements required by the IDEA. The girl planned to enroll in college following her graduation from high school. She had attended general education classes in high school and succeeded with numerous special education supportive services. Her transition plan listed the academic requirements necessary to prepare the girl for college and contained a detailed checklist designed to assist her and her parents in making the transition to post-secondary life. Further, the court rejected the parents' assertion that the girl's IEP team was deficient because it lacked an expert on her particular disability. The court noted that the IDEA does not require school districts to include experts on specific disabilities on IEP teams.
45. **Bridges v. Spartanburg County Sch. Dist. Two, 57 IDELR 128 (D.S.C. 2011).** The parents of a student with a disability challenged the appropriateness of their son's IEP because it used percentages as a measure of progress. For example, the IEP required the student to master the general education curriculum with "at least 80 percent mastery." The court ruled that the use of percentages to measure proficiency in IEP goals did not render the goals immeasurable. "While the goals were not expressed in the manner that [the parents] consider to be the optimal manner, the goals were sufficiently measurable to reasonably gauge [the student's] progress," U.S. District Judge J. Michelle Childs wrote. Furthermore, evidence that the student had made significant progress in reading convinced the court that the IEP goals were appropriate.
46. **G.A. v. State of Hawaii, Dept. of Education, 57 IDELR 133 (D. Hawaii 2011).** The school district proposed transitioning a private school student back into a regular school placement. The student's parent challenged the proposed placement and claimed that the failure of the district to include the child's current private school teacher on the IEP team rendered the placement inappropriate. The court ruled that the IDEA does not require the inclusion of private school teachers on IEP teams. Rather, the law requires the district to ensure that "at least one general education and special education teacher" is included on the team. The court also noted that the district did obtain written input from the student's private school teacher prior to the IEP meeting. "Although Plaintiffs are not satisfied with the [ED's] offer of FAPE, an IEP need not conform to a parent's wishes in order to be sufficient," U.S. District Judge Leslie E. Kobayashi wrote.

47. **Dunn-Fisher v. Sch. Bd of Collier County, Florida, 57 IDELR 230 (M.D. Fla. 2011).** The parent of an elementary school student with autism sought recovery of her moving expenses after she relocated from Florida to Texas, and then to Arizona. The mother claimed that her relocation was precipitated by her desire to obtain an appropriate education for her child. The court denied the parent's request, noting that the IDEA does not provide for reimbursement of moving expenses for parents who relocate for the purpose of seeking appropriate educational services.
48. **K.E. v. Independent Sch. Dist. No. 15, 57 IDELR 61 (8th Cir. 2011).** An eleven-year-old girl with bipolar disorder made significant progress in academics, despite her failure to maintain grade-level achievement along with her non-disabled peers. The parents claimed that the district denied FAPE by failing to consider recommendations made by the student's treating neurologist, neuropsychologist, and psychiatrist. However, the court found that the district's IEP notes recorded the team's discussion of these private recommendations and that the proposed IEP incorporated several of the recommendations. "The notes also contain a detailed account of the discussions that the IEP team had on those topics, and they show that the team attempted to contact [the psychiatrist] by telephone during the meeting in the hope that she would agree to participate in those conversations," U.S. Circuit Judge Morris S. Arnold wrote. The court held that the girl's progress belied the parents' claim that she was failing "losing ground" educationally. The proper assessment was to analyze the girl's rate of progress against her previous achievement, rather than to compare her progress to that of her non-disabled peers.
49. **M.C.E. v. Bd of Education of Frederick County, 57 IDELR 44 (D. Maryland 2011).** It was appropriate for the school district to bring representatives of a particular private school to an IEP meeting for an elementary school student with ADHD and anxiety disorder, ruled a Maryland court. The district brought a draft IEP to the meeting that recommended the girl's placement at a particular private school and included representatives from that school on the IEP team. The parents objected to the proposed placement and alleged that the inclusion of the private school representatives proved that the district had "predetermined" the girl's placement prior to the IEP team meeting. The court rejected the parents' claims, ruling "preparation is not predeterminism." Predeterminism occurs only when a school district makes up its mind prior to an IEP meeting and then refuses to hear or consider a parent's requests. Notes from the IEP team meeting proved that the team allowed the parents to voice their objections and concerns, and that the child's treating psychologist was present and actively participated in the team discussions.
50. **New Milford Bd of Education v. 56 IDELR 283 (3rd Cir. 2011).** A New Jersey school district was ordered to fund a home-based afterschool ABA program for a student with autism because the program was necessary for the student to receive FAPE at school. This student exhibited severe aggression at school when frustrated with academic tasks and communication. The home-based ABA program was focused on reducing the student's aggression by teaching him to communicate effectively. The court recognized that schools are not normally required to pay for at-home ABA programs, in this case the program was directly tied to the student's academic and behavioral performance at school. Therefore, the home-based ABA program was necessary for the student to receive FAPE. "If a mentally disabled child continuously presents an adverse behavior that genuinely interferes with his ability to garner any real benefit from the education provided and the IEP does not adequately

remedy this behavior, it stands to reason that the school district has failed to provide even a 'basic floor of opportunity,'" the 3d Circuit wrote.

51. **Mahoney v. Carlsbad Unified Sch. Dist., 56 IDELR 217 (9th Cir. 2011).** The parents of a twelve-year-old student with a learning disability alleged a denial of FAPE based on the composition of the child's IEP team. The parents challenged the district's inclusion of a speech/language therapist who had not treated the student for three years, rather than his current therapist. The court held that the IDEA does not require the "current" therapist, and that the legal requirement is satisfied if the team includes a therapist who had actually treated the student at some point. Furthermore, there was no evidence that the inclusion of this therapist caused any type of denial of FAPE to the student.
52. **Sumter County v. Heffernan, 56 IDELR 186 (4th Cir. 2011).** A middle school student with autism was entitled to receive a specific amount of ABA therapy at school, according to his IEP. However, the student's teacher and classroom aides were not competently trained to deliver the ABA therapy required by the IEP. As a result, the student became extremely aversive to instruction and developed aberrant behaviors such as biting himself and wiping his face until it bled. Despite the fact that the student made "some educational progress" in the district's program, the court determined that he had been denied FAPE due to the lack of staff training and proper implementation of the IEP services. "While there is evidence showing that [the student] made some gains in certain skill areas tested in the spring of 2006, these gains were not so significant as to *require* a conclusion that [the student] received some non-trivial educational benefit from the 2005-06 IEP as implemented by the district," Chief U.S. Circuit Judge William B. Traxler Jr. wrote.
53. **Ortiz v. Puerto Rico Dept. of Education, 57 IDELR 214 (D.P.R. 2011).** The school district was not responsible for reimbursing the costs of a private evaluation conducted by a psychologist who was not licensed in Puerto Rico. The court ruled that the district's refusal to pay was reasonable based on state licensure laws, and there was no evidence that the refusal was based on discriminatory or retaliatory acts.
54. **D.S. v. Dept. of Education, State of Hawaii, 112 LRP 58 (D. Hawaii 2011).** The parent of a 14-year-old with autism failed to show that a mere change in terminology to refer to a child's dedicated aide rendered the student's IEP inadequate. The District Court noted that the parent fully participated in the IEP process and comprehended that "adult support" referred to a dedicated aide. The new IEP proposed to transition the student from a private to a public school. It continued to offer 2,250 minutes of weekly support from a dedicated aide, but changed the terminology it used to refer to the aide from "paraprofessional" to "adult support." The draft IEP included a clarification section stating, "paraprofessional services" would be supplied throughout the school day. The parent claimed the ED denied the student FAPE, and sought private school reimbursement, because the IEP didn't clarify that it was offering a dedicated aide. An IEP must include a statement of the special education and related services to be provided to a child to advance her goals. 20 USC 1414(d)(1)(A). The court observed that the IEP adequately identified the services, and the frequency and duration of the services. Moreover, the testimony of other IEP team members clearly showed that the parent, who herself worked in special education, fully participated in the IEP team meeting at which the draft IEP was discussed, that she voiced no concerns about the issue, and that she understood the student would be receiving

services from a one-to-one paraprofessional, even though the ED was now using a new term. This was not a case in which services were left completely undefined or were so lacking in specificity as to fail to convey what aids and services were needed. Because the parent failed to show that the IEP was inappropriate, she was not entitled to reimbursement.

55. **K.M. v. Tustin Unified Sch. Dist., 57 IDELR 8 (C.D. Cal. 2011).** A student with a hearing impairment sought provision of real-time captioning in the classroom to assist her in understanding classroom instruction and discussions. The girl had a cochlear implant and used lip reading. Her IEP provided closed-captioning for videos, and accommodations such as preferential seating, copies of notes, and having student comments repeated for clarification. The student claimed that, despite the provision of these services and accommodations, she was unable to understand significant portions of the classroom activities and instruction. However, she achieved average to above-average grades in general education classes and had no difficulty taking notes in class. "Repeated classroom observations of her performance in classes depict a student thriving despite the obstacles," U.S. District Judge David O. Carter wrote.

VII. LEAST RESTRICTIVE ENVIRONMENT

56. **J.P. v. New York City Dept. of Education, 58 IDELR 96 (E.D.N.Y. 2012).** A New York court upheld the district's proposal to place a twelve-year-old boy with an emotional disturbance in a self-contained special education classroom based on the level of the boy's disruptiveness in general education settings. The student called out answers, made inappropriate comments, and cried when he became frustrated. In addition, he had frequent difficulties with peer interaction and required excessive attention from his teachers during instructional time. The court recognized that disruptiveness in the general education classroom is a factor in determining the least restrictive environment for a student, and approved the district's proposed to remove the boy from general education classes.
57. **D.F. v. Red Lion Sch. Dist., 58 IDELR 65 (M.D. Pa. 2012).** The court upheld the school district's proposal to provide ESY services to a deaf-blind student by enrolling him in a summer camp for students with disabilities. The parents wanted their son enrolled in a summer camp where the majority of campers were nondisabled. The court found that the camp preferred by the parents could not provide appropriate services for the student because its staff was not trained to deal with the student's level of needs and did not provide same-age peers. The summer camp offered by the school district met the requirements of the law because it offered appropriate supports for the student and nondisabled "peer buddies" to accompany him.
58. **N.T. v. District of Columbia, 58 IDELR 69 (D.D.C. 2012).** The court refused to order the school district to pay for a private placement that served students with moderate and severe disabilities on the grounds that it was not the least restrictive environment for an elementary school student. The LRE requirements do not apply to private schools, but a court may consider a private placement's restrictiveness in determining whether reimbursement is warranted. In this case, the court determined

that the school district was “ready, willing, and able” to provide appropriate educational services to the student that offered her the opportunity to be integrated with her nondisabled peers.

59. **D.B. v. New York City Dept. of Education, 57 IDELR 219 (S.D.N.Y. 2011).** The court held that a ninth-grade student with ADHD and learning disabilities could be appropriately served in a collaborative team teaching class, despite her parents’ desire for their daughter to be placed in a special education classroom. The court found that the student was below grade level in academics, but that she had adequate reading comprehension, phonological, and decoding skills. In addition, she was a compliant child with no behavior problems in class. The district correctly determined that, while she could not be appropriately placed in a general education classroom, the move to self-contained special education instruction was also not warranted.
60. **Barron v. South Dakota Bd of Regents, 57 IDELR 122 (8th Cir. 2011).** The parents of deaf students challenged the State’s decision to cut programs and funding for the state school for the deaf that resulted in the placement of their children in their home school districts. The court recognized that the “least restrictive environment” requirements of the IDEA applied to all students, including those in state schools for the deaf. “The IDEA’s integrated classroom preference makes no exception for deaf students,” U.S. Circuit Judge Roger L. Wollman wrote. In addition, the IDEA mandates the provision of an “appropriate” education, not the “best” educational setting for students with disabilities.
61. **D. D.-S. v. Southold Union Free Sch. Dist., 57 IDELR 164 (E.D.N.Y. 2011).** A New York court refused to order the public school district to fund an out-of-state residential placement for a student with learning disabilities who performed above grade level academically. The fact that the student excelled at the private school was not sufficient to warrant public funding for the placement. Additionally, the court was troubled by the fact that the program segregated the student from her non-disabled peers and was located in another state. “[P]lacement in a such a residential program, out-of-state, where she is managed from the moment she wakes up to the moment she goes to bed, with no opportunity to interact academically with her typically developing peers in mainstream classes is, in the words of the IHO, ‘particularly troubling [given] that [she] is capable of performing at grade level in most academic areas with appropriate education supports,’” U.S. District Judge Joanna Seybert wrote.

VIII. MONEY AND LIABILITY ISSUES

62. **Mark H. v. Hamamoto, 58 IDELR 101 (D. Hawaii 2012).** To recover money damages for its denial of appropriate educational services, the parents of two sisters with autism needed to prove that the Department of Education officials were deliberately indifferent to their daughters’ needs. The evidence supported a finding of negligence, but the court could not substantiate the parents’ claim that the DOE officials intentionally violated the girls’ rights.

63. **Deshotel v. West Baton Rouge Sch. Bd., 57 IDELR 254 (M.D. La. 2011).** The Louisiana court refused to dismiss the claims against a school district seeking money damages for allegedly violating the Constitutional rights of a preschool child with autism. The parents sued after they discovered that the child's teachers were strapping the child to a Rifton chair to prevent his movement in the classroom and for behavior management. The court ruled that the parents' claims were not barred, and that it would have been futile for them to pursue a due process hearing since money damages are not authorized by the IDEA. "Plaintiffs' claims in this lawsuit involve claims for damages based on severe psychological, and wholly non-educational, injuries for which they seek monetary relief which is clearly not available to the plaintiffs under the IDEA," U.S. District Judge Frank J. Polozola wrote.

IX. PARENT ISSUES

64. **M.R. v. South Orangetown Cent. Sch. Dist., 111 LRP 76821 (S.D.N.Y. 2011).** The New York school district proposed to place a middle school boy with learning disabilities, seizure disorder, anxiety, attention problems, sensory motor deficits, and possible Asperger Syndrome in a private school at public expense. The district offered the parent's choice of three possible private placements for students with emotional disturbances and encouraged the parent to visit each. However, the parent refused to visit any of the placements offered by the school district and sued seeking tuition reimbursement for another private school of her choice. In addition, the parent delayed the IEP process, cancelling meetings and refusing to meeting with school officials. The court held that the mother's intransigence barred her recovery of public funding. Even though the district's proposed placement was inappropriate, the court refused to order the district to pay for the parent's preferred placement due to her lack of cooperation with the process. The court held the parent responsible for her child's lack of FAPE.
65. **J.S. v. Scarsdale Union Free Sch. Dist., 58 IDELR 16 (S.D.N.Y. 2011).** Parents who refused to cooperate with the school district's efforts to evaluate and place their daughter were denied 75 percent of their request for private school tuition reimbursement. Their daughter, an honors student, began experiencing academic and emotional difficulties near the end of her freshman year and progressed for the next two years. The parents made a unilateral private placement and, afterwards, requested an initial evaluation to determine her eligibility for special education and related services. They refused to produce their daughter for an interview with the private school proposed by the district. The court found that the district had failed to identify the girl, but reduced the award of placement by 75 percent due to the parents' obvious lack of seriousness about obtaining a district placement and their failure to give the district a legitimate opportunity to provide an appropriate placement for their daughter.
66. **French v. New York State Dept. of Education, 57 IDELR 241 (2nd Cir. 2011).** The father of a young woman with severe autism repeatedly failed to attend scheduled and agreed to IEP meetings, produce proof of his residency in the district, allow teachers to meet with the student, and cooperate with attempts to

conduct evaluations of his daughter. The girl went without educational services for two years while her father fought with the school district. The court ruled that the father caused the deprivation of educational services by his “dilatory tactics and refusal to cooperate” with the school district. “[The parent], by engaging in the obstructionist tactics discussed above, substantially prevented the District from implementing properly-developed IEPs that it was ready and willing to implement, and from developing revised IEPs that could have assuaged his concerns,” the court wrote. The court therefore denied his bid for compensatory education.

X. PRIVATE SCHOOL PLACEMENT

- 67. T.B. v. St. Joseph Sch. Dist., 58 IDELR 242 (8th Cir. 2012).** The parents of a child with autism could not recover the costs of the home-based autism program they procured after withdrawing their son from public school. The court concluded that the home-based autism program did not provide “appropriate” educational services because it focused on social and self-help skills with a minimal amount of academic instruction.
- 68. S.H. v. Eastchester Union Free Sch. Dist., 111 LRP 75094 (S.D.N.Y. 2011).** The parent of a high school boy with an emotional disturbance and reactive attachment disorder sought funding for a unilateral private residential school placement. The boy was placed for one semester in the district’s alternative school program, which contained a therapeutic component, and he made academic strides and improved behaviorally and emotionally. The parent withdrew her son from the alternative school program because she believed that students at the school were using illegal drugs and teachers were not adequately trained in Reactive Attachment Disorder. The court rejected the parent’s claims, reasoning that the IDEA does not require school staff to be specifically trained in every child’s disability or type of psychiatric disorder. Even if the parent’s preferred placement was superior to the alternative school program offered by the district, the school was only required to offer FAPE. The evidence supported the school district’s claim that the student was progressing in its alternative school.
- 69. J.E. v. Boyertown Area Sch. Dis., 57 IDELR 273 (3rd Cir. 2011).** The parents of a student with Asperger Syndrome rejected the placement offered by the school district because they feared their son would be bullied if he returned to public school. The school district’s proposed placement offered an autism support class with transition services, 1:1 instructional support, and social skills instruction. The court refused to award tuition reimbursement to the parents, holding that the FAPE requirement does not obligate school districts to provide “the best” educational environment. The court held that the school district’s proposed placement in the autism support program was reasonably calculated to provide “meaningful benefit” to the student.
- 70. G.R. v. Dallas Sch. Dist. No. 2, 57 IDELR 223 (D. Oregon 2011).** The parents of a high school boy who was on probation for sexually assaulting a female

classmate placed their son in a residential sex offender treatment program and sued the school district to recover the costs of the private program. The school district offered placement in a school-based program offering a highly-structured behavior classroom, therapy, and behavioral supports. The court criticized the residential program for its lack of female students. "Because it has both sexes in the classroom, [the SDC program] would have given [the student] the opportunity to practice appropriate behavior with teenage girls, his most serious behavioral issue," U.S. District Judge Garr M. King wrote. According to the court, the boy needed to practice interactions with females, and the school district's proposed program offered him FAPE in an environment with both sexes.

71. **Lexington County Sch. Dist. One v. Frazier, 57 IDELR 190 (D.S.C. 2011).** A South Carolina school district was ordered to fund a residential private school placement for a high school student with Asperger Syndrome who was unresponsive to teachers' attempts to engage him in a public school setting. The student "shut down" at school due to his anxiety and frustration. The court found that the only setting in which the student could benefit from educational programming was in a residential setting. The parent had placed the student in the residential facility only after he had failed in the public school setting and become unresponsive to both his parent and school officials' attempts to reach him. "The parent placed [the student] at [the residential facility] only after he was perpetually truant and unresponsive to her and the District's efforts to educate him," U.S. District Judge Margaret B. Seymour wrote.
72. **Weaver v. Millbrook Central Sch. Dist., 57 IDELR 126 (S.D.N.Y. 2011).** The parents of a sixth grade boy with a learning disability unilaterally placed their son in a private school that used the Orton-Gillingham reading methodology and subsequently sued the school district for tuition reimbursement. The student made some progress, but continued to struggle academically. The court held that the appropriateness of a private program is not whether a student makes progress, but whether the program provides the student's unique needs. The court determined that the private school program did not provide educational services that were appropriate to the child's needs.
74. **T.G. v. Baldwin Park Unified Sch. Dist., 57 IDELR 33 (9th Cir. 2011).** It was not appropriate for an administrative law judge to dismiss a due process complaint filed by the parents of a high school student with autism, ruled the court. An ALJ had previously upheld the school district's proposal to place the student in a special education day school for the 2008-2009 school year. However, that ruling did not prevent the parents from filing another lawsuit seeking residential placement for the 2009-2010 school year. The court held, "Each school year is a separate issue under the IDEA."
77. **Drake P. v. Council Rock Sch. Dist., 56 IDELR 250 (E.D. Pa. 2011), affirmed 58 IDELR 243 (3rd Cir. 2012).** The school district was not required to re-examine the IEP of a student after two separate tragedies in three days impacted his private life. The district had developed an IEP for the student's 2008-2009 school year, but the parents had enrolled the boy in private school in July of 2008. In January of 2009, the student's house burned down and his father died three days later. The mother sued for private school tuition reimbursement, arguing that the public school had a duty to re-examine the child's IEP following the personal calamities in January of

2009. However, the court noted that the parent evidenced no intention of returning her son to public school in 2009. "[A]bsent an indication that [the parent] intended to re-enroll [the student] in the district, the district had no responsibility to update [the student's] IEP in the middle of the year," U.S. District Judge Jan E. Dubois wrote.

78. **Forest Grove Sch. Dist. v. T.A., 56 IDELR 185 (9th Cir. 2011).** Despite the court's ruling that the public school had failed to properly identify a student with ADHD and develop an IEP for him, the court refused to order the district to pay for the boy's unilateral residential placement. The admission form completed by the boy's father indicated that the reasons for his admission to the residential program were "inappropriate behavior, depression, opposition, drug use, runaway." The public school district was not responsible for paying for the placement because it was not made for educational reasons, but was primarily for drug abuse treatment.

XI. PROCEDURAL AND LITIGATION ISSUES

a. Attorney's Fees

79. **Cain v. Nevada Sch. Dist., 111 LRP 77371 (W.D. Ark. 2011).** The parents of a student with a disability were not entitled to recover their attorney's fees because they obtained relief through a settlement with the school district. Attorney's fees are not recoverable unless they are awarded by a judicially sanctioned determination. The settlement arose through a routine Resolution Session and was never formally adopted by a court or administrative law judge.

C.O. v. Portland Public Schools, 112 LRP 24761 (9th Cir. 2012). The court reversed a district court's award of \$1.00 in damages to the parent of a child with learning disabilities. The court held that the IDEA does not provide for recovery of "nominal" damages, and dismissed the parent's claims. The damages were based on the lower court's finding that the school's attorney and the district had violated the parent's rights by unnecessary delay in providing educational records, refusal to allow the parent to discuss litigation issues without the permission of the school attorney, and refusal to participate in discovery. The appellate court held that no private right of action exists in the IDEA, no matter how much the lower court might want to create such a right.

b. Exhaustion of Administrative Remedies

80. **Ashford v. Edmond Public Sch. Dist., 57 IDELR 183 (W.D. Okla. 2011).** The parent of an elementary school student who was placed in a time-out room for disciplinary purposes sued seeking money damages from the school district. The parent alleged that the school district failed to provide appropriate educational services and implement appropriate disciplinary techniques for her son. The court held that the parent could not sue for money damages without

exhausting her administrative remedies. Even though money damages are not available under the IDEA or Section 504, the facts alleged clearly centered upon the District's compliance with these laws.

81. **A.B. v. Avila R-XIII Sch. Dist., 112 LRP 87 (W.D. Mo. 2011).** The parent of an elementary school child with Apert Syndrome sought money damages alleging that her son was denied the use of Assistive Technology at school. The court ruled that the lawsuit was subject to exhaustion of administrative remedies because the parent's allegations concerned the type of accommodations and assistive technology devices that would be provided in compliance with the requirements of the IDEA.
82. **A.L.A. v. Avilla R-XIII Sch. Dist., 111 LRP 74980 (W.D. Mo. 2011).** The parents of an elementary school student with Down Syndrome sought money damages against a school district alleging that their child was routinely confined to "a small, closet-like room, with no windows or natural light." The court held that these claims must be considered in a due process hearing prior to a lawsuit seeking money damages because the claims centered on the implementation of the child's IEP.
83. **Patrick V. v. Paradise Protectory and Agricultural Sch., Inc., 57 IDELR 286 (M.D. Pa. 2011).** The parent of a child with a disability was required to exhaust her administrative remedies prior to seeking money damages for the school district's alleged violation of Section 504. The complaint sought not only money damages, but also declaratory relief and attorney's fees that are available under the IDEA. A lawsuit seeking relief that is available under the IDEA must be first brought in a due process hearing.
84. **P.V. v. Sch. Dist. of Philadelphia, 57 IDELR 253 (E.D. Pa. 2011).** Parents of students with disabilities filed a class action alleging a systematic violation of the IDEA. The parents accused the school district of a policy of automatically transferring students with autism to new schools when they reached the third grade. The court waived the exhaustion requirement for this class action because district-wide systemic change cannot be awarded by a hearing officer in a due process hearing.

c. **Participants in IEP Meetings**

85. **B.P. v. New York City Dep't. of Education, 112 LRP 1297 (E.D. N.Y. 2012).** The court rejected the parent's contention that the school district had violated the IDEA by selecting a general education teacher as a member of an IEP team who did not currently teach their child. The

court held that the IDEA does not require the general education teacher who serves as a member of an IEP team to be currently teaching a particular grade level. The IEP contained measurable goals and the team reviewed all current assessment data prior to developing the child's IEP.

86. **L.I. v. State of Hawaii Dept. of Education, 58 IDELR 8 (D. Hawaii 2011).** The mother of a student with a disability could not voluntarily leave an IEP meeting in progress and subsequently allege a denial of her right to participate in the development of her child's IEP. Moreover, the school district offered to disband the IEP meeting and reconvene at a later date. "[The parent] expressly consented to [the ED's] completing of the IEP without her," Chief U.S. District Judge Susan Oki Mollway wrote. "Yet now, without challenging any factual findings, she asks the court to find [the ED] liable for having done exactly what she said it could do."

XII. SECTION 504/TITLE II OF THE ADA

88. **A.M. v. New York City Dept. of Education, 58 IDELR 67 (E.D.N.Y. 2012).** A New York school district did not discriminate against an eleven-year-old boy with diabetes by refusing to microwave his homemade meals at school. The district had a duty to accommodate the boy's disability, but it was not medically necessary for him to eat heated meals due to his diabetes. The reason for the parent's insistence that her son's meals be heated was due to her belief that he would be inclined to eat more consistently if his food was warm. "Though it is understandable that [the student] -- like others with or without diabetes -- would prefer to eat food intended to be eaten hot while hot, or eat lunches other than 'cold sandwiches' (not to mention any other available cold lunch, salads as but one healthy example), this does not mean the school district was obligated under the applicable disability statutes to accommodate this preference," U.S. District Judge Raymond J. Dearie wrote. The court granted the school district's motion to dismiss the lawsuit based on its finding that the refusal to heat the boy's lunch did not violate Section 504 or Title II of the ADA.
89. **Bishop v. Children's Center for Developmental Enrichment, 58 IDELR 11 (S.D. Ohio 2011).** A private preschool could be sued under Section 504 by the parent of a student with autism enrolled at the facility. The parent of a child with autism sued the private school after her son was expelled. The preschool argued that the law prohibited it from discriminating against students with disabilities, but did not require private preschools to provide FAPE. The court held that the preschool could be liable under Section 504 if the parent could prove that the preschool discriminated against the boy on the basis of his disability by expelling him.
90. **Schnelting v. St. Clair R-XIII Sch. Dist., 58 IDELR 15 (E.D. Mo. 2011).** An eighteen-year-old young man with ADHD alleged that the school district discriminated against him in violation of Section 504 by failing to provide appropriate educational services resulting in failing grades. The evidence showed that the young man did not qualify as eligible for services under Section 504. There was no evidence that his ADHD substantially limited a major life activity (i.e., learning). Rather, the

evidence showed that his failing grades were directly linked to his part-time job and lack of motivation to attend school. The federal judge said, "his grades suffered as a result of his failure to make an effort and turn in his assignments, his part-time job, his spotty attendance record and his difficult home life."

91. **Cain v. Owensboro Public Schs., 57 IDELR 246 (W.D. Ky. 2011).** A Kentucky school district did not violate a high school student's rights under Section 504 by failing to identify him as a "student with a disability." The student self-reported to school officials that he was smoking marijuana in order to cope with the pressures of school and football. The student was also exhibiting academic and behavioral difficulties. However, it was not unreasonable for school officials to assume that these difficulties were the direct result of the student's admitted drug use rather than attributable to a disability. Moreover, there was no evidence that the district had acted with bad faith or deliberate indifference to the student's problems. "In fact, school officials repeatedly referred [the student] to organizations that specialize in the treatment of drug abuse," U.S. District Judge Joseph H. McKinley Jr. wrote.
92. **Bishop v. Children's Center for Developmental Enrichment, 57 IDELR 156 (S.D. Ohio 2011).** A private school that allegedly expelled a child with autism because his parent cursed staff will have to defend against charges of disability-based discrimination. The court refused to dismiss the claims filed by the child's father based on the allegation that school officials deliberately lied to the parent about their willingness to discuss the situation prior to giving the autistic's child's slot to another child. If true, these allegations could constitute "bad faith" to constitute a violation of Section 504.
93. **Ridley Sch. Dist. v. M.R., 112 LRP 25613 (3rd Cir. 2012).** The school district did not fail to reasonably accommodate the needs of a young girl with learning problems and severe allergies to specific foods and materials. The court found that the school district attempted to include the child in all classroom activities to the level permitted by her disability. The school district was not required to provide alternative foods for the child so long as it allowed the parent to send alternative snacks and meals to school for her. She was also appropriately included in classroom activities even when she was unable to handle the same materials as her classmates (such as pebbles and sand).
94. **T.B. v. San Diego Unified Sch. Dist., 112 LRP 23919 (S.D. Cal. 2012).** There was no evidence to support the allegations that school district officials discriminated against a medically fragile student who required gastronomy-tube feeding during the school day. The parent of the student objected to the district's assignment of a non-medical personnel to provide the feedings, and to the district's refusal to specify a particular staff member responsible for the feedings in the student's IEP. The court found that the dispute was based on a difference of opinion between the parent and the school district. However, the evidence showed that district officials had acted reasonably to provide appropriate feeding services to the student. There was no evidence that the district staff had acted with deliberate indifference or to discriminate against the student on the basis of his disability. Moreover, 95 of the 100 students in the district receiving g-tube feeding were provided this service by non-medical personnel.