Hearing Officers & Mediators' Training
Hilton Garden Inn
Richmond Airport
May 21, 2019

AGENDA

Tuesday, May 21

7:30 - 7:50 a.m.	**Registration**
7:50 - 8:00 a.m.	Welcome / Announcements / Introductions **Kathryn Jones**
8:00 - Noon	"Special Education Law Updates" **Julie Weatherly, Esquire** Resolutions in Special Education, Inc. Mobile, Alabama
Noon - 1:00 p.m.	**Working Lunch** • **"What You Need to Know About Mediation"** - Art Stewart
1:00 - 4:15 p.m.	Julie Weatherly, continued
4:15 - 4:30 p.m.	Virginia Education Legislative Update **Pat Haymes** Department of Education

(Ms. Weatherly will schedule breaks during her presentation)

2019 Bio

Julie J. Weatherly, Esq. is the owner of Resolutions in Special Education, Inc., a special education law firm with offices and attorneys in Alabama and Florida. Julie is a member of the State Bars of Alabama and Georgia and has provided legal representation and consultation to school agencies across the country in the area of educating students with disabilities under IDEA and Section 504/ADA. She has been a member of the faculty for many national and state legal institutes and is a frequent speaker at special education law conferences. Julie has developed a number of training programs that support special education legal compliance and has been published nationally as a part of her trainings, workshops and seminars. She is the author of the legal update article for the National CASE quarterly newsletter and is a member of LRP's Special Education Attorneys Advisory Council. In June of 1996, Julie appeared with Leslie Stahl on CBS news program "60 Minutes" to discuss the cost of meeting the legal requirements of the IDEA. In 1998, she was honored by Georgia's Council for Exceptional Children as the Individual who had Contributed Most to Students with Disabilities, and in April 2012, Julie received the Award for Outstanding Service from the National Council of Administrators of Special Education.

Virginia MCLE Board

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MCLE Compliance Deadline - October 31. MCLE Reporting Deadline - December 15.
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Course ID Number: **NGG0874**

Sponsor: **Virginia Department of Education**

Course/Program Title: **Virginia Department of Education Hearing Office and Mediator's Conference**

Live Interactive * **CLE Credits (Ethics Credits):** **6.0** **(0.0)**

Date Completed: _____ **Location:** _____

By my signature below I certify

___ I attended a total of _____ (hrs/mins) of **approved CLE**, of which (_____) (hrs/mins) were in **approved Ethics**. Credit is awarded for actual time in attendance (0.5 hr. minimum) rounded to the nearest half hour. (Example: 1hr 15min = 1.5hr)

___ The sessions I am claiming had written instructional materials to cover the subject.

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___ I understand I may not receive credit for any course/segment which is not materially different in substance than a course/segment for which credit has been previously given during the same completion period or the completion period immediately prior.

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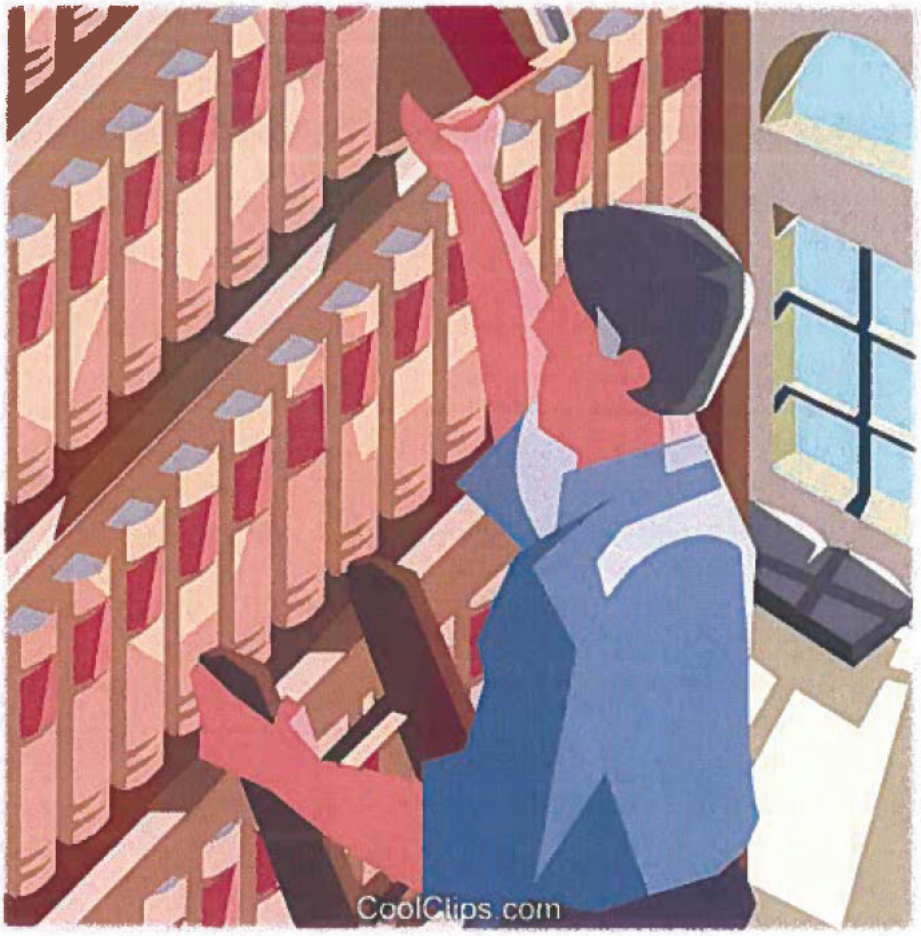
Special Education Law Update



Virginia Hearing Officer/Mediator Training
Virginia Department of Education

May 21, 2019

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MAY 21, 2019
PRESENTER: JULIE J. WEATHERLY, ESQ.

SPECIAL EDUCATION LAW UPDATE: CASES FOR DISCUSSION

SPECIAL EDUCATION LAW UPDATE

EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. E.D. v. Palmyra R-1 Sch. Dist., 73 IDELR 137, 911 F.3d 938 (8th Cir. 2019). Parents of a student with Down syndrome are required to exhaust administrative remedies under the IDEA, even though they rejected IEPs that were offered and instead sought a 504 Plan with provisions in it that would allow the student to use an iPad to compensate for his speech and fine motor delays. Under the *Fry* case, these parents could not have brought suit for the same accommodations against another public entity; nor could an adult have pursued this claim. The exhaustion requirement applies to all parents, not just those who have previously sought or accepted IDEA services. Thus, the granting of the school district's motion for summary judgment is affirmed.

B. E.F. v. Napoleon Comm. Schs., 73 IDELR 253 (E.D. Mich. 2019). The parents are not required to exhaust IDEA remedies prior to seeking money damages under Section 504/ADA for the district's refusal to allow their daughter to bring her service dog to school. While the parents' initial request for mediation may suggest that their claims related to the provision of special education services to their daughter, the parents explained that they requested mediation because it was the only option provided to them to dispute the service animal decision. It was the school district that insisted on treating the service animal issue as an IEP issue, not the parents. Rather, the parents' correspondence to the district emphasized that they were not disputing their daughter's educational program and were simply asking that the district accommodate the service dog at school. Thus, their failure to exhaust IDEA remedies does not bar their 504/ADA claims and the parents are allowed to proceed with this case.

C. Sophie G. v. Wilson Co. Schs., 72 IDELR 143 (6th Cir. 2018) (unpublished). The parent is not required to exhaust administrative remedies in this case where she is suing the district over its refusal to provide toileting assistance to her child and exclusion of her child from an afterschool program. The fact that the student could not sue another Title II entity such as a theater or public library that refused to provide toileting assistance or that an adult at the school could not sue for failing to provide toileting assistance, some disability discrimination claims apply only to children, so the *Fry* hypotheticals are not binding. The more pertinent question in this case is whether essentially the same claim could be brought against another public childcare provider. In addition, the child did not need to attend the afterschool program in order to receive an educational benefit. Because the parent is not seeking relief for a denial of FAPE, the district court erred in dismissing her 504 and ADA claims on exhaustion grounds.

D. Nelson v. Charles City Comm. Sch. Dist., 72 IDELR 202, 900 F.3d 587 (8th Cir. 2018). The parents' attempt to generally frame their Section 504 action as a claim for a "broken promise of non-discriminatory access" is rejected. It is the actual misconduct—the mishandling of an open enrollment application for an online educational program—that will be examined for purposes of the requirement to exhaust IDEA's administrative remedies before seeking relief in federal court. While the general claim of a "broken

promise of non-discriminatory access" could be brought against any public entity, the question here is whether the student could sue another public entity, such as a theater or library, for mishandling her enrollment application for an online educational program. Here, she could not do so, because the 504 claim is tied to the student's education. Thus, she is first required to exhaust her claims under the IDEA, since her parents are really seeking relief for a denial of FAPE.

E. Cordero v. Picayune Sch. Dist., 72 IDELR 158 (S.D. Miss. 2018). Because the parent's claims on behalf of her two sons with hearing impairments focused on the district's alleged failure to provide adequate support services, the parent first must exhaust administrative remedies before proceeding in court. For instance, the complaint alleged a loss of educational benefits, including one son's inability to effectively communicate with his teachers regarding deadlines and other assignment expectations and the other son's receipt of ISS because he was not able to effectively communicate with school officials in his defense. There is also "voluminous" documentation of various efforts the parent had made to obtain FAPE for her sons over a three-year period. These allegations demonstrate that this parent's complaint concerned a denial of FAPE.

F. Smith v. Rockwood R-VI Sch. Dist., 72 IDELR 111 (8th Cir. 2018). While the parent insists that she is seeking relief for disability discrimination as opposed to a denial of FAPE, the complaint repeatedly alleges a loss of educational benefits based upon suspension of the student for 180 days despite a finding that the student's misconduct was a manifestation of his disability. Since the "gravamen" of the complaint is the denial of a public education, the parent must first exhaust administrative remedies.

BULLYING AND DISABILITY HARASSMENT

A. Renee J. v. Houston Indep. Sch. Dist., 73 IDELR 168 (5th Cir. 2019). The school district made FAPE available where it was able to show that it made multiple attempts to accommodate the teenager with autism, InD and ADHD. While the student had gotten into altercations with other student and had anxiety about attending school based upon some of those incidents, the student's teacher communicated with the parents nearly 30 times over a 4-month period of time in an attempt to convince them to return the student to school. In addition, the district arranged for the teacher to escort him from his parents' car into the school building every morning and allowed him to attend the first hour of each school day in the office to ease his transition into the school setting. Based upon these efforts, the parents' claim that teachers and school administrators were "callous and unresponsive" to the student's fears about bullying is rejected. As to the parents' claim that the district should have offered home instruction even though there was no medical need, Texas law prohibits that. The parents' inability to provide the necessary information despite several requests by the district prevented an IEP team from placing the student on a home instruction program.

B. J.M. v. Matayoshi, 72 IDELR 145 (9th Cir. 2018) (unpublished), reh'g denied, 118 LRP 33122 (9th Cir. 2018). The IEP's inclusion of a crisis plan and a dedicated aide to the student with autism afforded the student FAPE and were 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*.

RETALIATION

A. Richard v. Regional Sch. Unit 57, 72 IDELR 203, 901 F.3d 52 (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 evaluations. 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 not appear to be aware of the referrals that she made.

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. 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.

RESTRAINT/SECLUSION

A. Ricks v. State of Hawaii Dept. of Educ., 73 IDELR 225 (9th Cir. 2019) (unpublished). District court's denial of the parent's motion for judgment on her Section 504 claim regarding the use of a Rifton chair that was not included in the autistic preschooler's IEP is upheld. Where the parties disagreed on the facts at issue, the district court was correct in allowing the case to proceed to a jury trial, where the jury found in favor of the district after a four-day trial. While the teacher's use of a Rifton chair was not set forth in the child's IEP, the teacher explained that the child's lethargy and poor muscle tone prevented him from sitting upright and interfered with the provision of special education services, so she placed him in the chair once or twice per week over a two-month period to provide physical support and to keep him from falling. Based upon this, it "does not follow that the use of a Rifton chair, above and beyond the aids and services listed in the IEP, necessarily violates Section 504's regulations...."

B. 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.

C. Crochran v. Columbus City Schs., 73 IDELR 33 (6th Cir. 2018) (unpublished). Dismissal of parents' claims for damages under Section 1983 is affirmed where the claim speaks to a potential claim for negligence rather than a constitutional violation. There is no evidence that the student's teacher used a "body sock" for the purpose of harming the student with autism and ADHD. Rather, the teacher's use of the "breathable cocoon" of stretchable fabric was for pedagogical purposes when the student was acting out in class and did not respond to typical behavioral interventions. Finding that the use of a body sock helps children who are "sensory seeking" and is used as a sensory tool to put pressure on a child and because this student's IEP indicated that he needed "heavy work sensory warm up" in order to be successful with fine or visual motor tasks, the teacher's actions did not "shock the conscience." In addition, the teacher did not force the student to get into the body sock; rather, the student willingly stepped into it when the teacher asked if he would like to use it. While the student did fall and sustain injury to his teeth while in the body sock, the teacher did not violate his constitutional rights.

D. 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.

E. Cameron D. v. Arab City Bd. of Educ., 73 IDELR 11 (N.D. Ala. 2018). District's motion for summary judgement on parents' 504/ADA claims is granted where the parents failed to prove deliberate indifference on the part of the district. The parents were required to show that the district was aware of the special education teacher's use of an adaptive chair as "timeout" for a kindergartner with a disability but failed to intervene. Here, the school principal responded to the parents' complaint by investigating the allegations and sending a report of her findings. In addition, the principal instructed teachers at the school to stop using adaptive equipment like the chair at issue here when addressing student behavioral issues. This response was reasonable in light of the known circumstances.

CHILD FIND

A. T.W. v. Leander Indep. Sch. Dist., 119 LRP 8969 (W.D. Tex. 2019). The hearing officer's decision that the district did not violate its child find duty when it refused the parent's request to evaluate a former star high school football player with dyslexia is upheld. Here, the student did not establish that he had any need for special education and related services that would have made him eligible for special education under the IDEA.

The student passed all of his classes, graduated from high school, was admitted to college and performed well on most state assessments. Further, the student made behavioral progress and had appropriate social skills. Contrary to the student's assertions, the accommodations provided to the student both at home and school were not "highly individualized," but were available to other students as needed, including things such as extra time and opportunity to make up homework and tests. The provision of those accommodations did not show that the student needed specialized instruction. While the hearing officer considered the help and encouragement the student received from his parent and coaches, the student's overall performance, graduation and admission to college showed that he did not need special education. Thus the district's motion for judgment on the child find claim is granted.

B. 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.

C. T.B. v. Prince George's Co. Bd. of Educ., 897 F.3d 566, 72 IDELR 171 (4th Cir. 2018), cert. denied, 119 LRP 7071 (2019). 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.

D. 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 evaluation 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.

E. 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 students 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.

F. 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.

G. K.W. v. Tuscaloosa Co. Sch. System, 73 IDELR 157 (N.D. Ala. 2018). The district's decision to hold off on referring a first-grader with reading and attentional difficulties based upon progress that he had made when he received classroom-level interventions is justified. The district properly followed Alabama's child find requirements under the AAC that set forth specific rules for conducting special education assessments. Unless a parent requests an evaluation, the district may not refer for a special education assessment unless it has attempted interventions in the general education classroom for at least eight weeks, and those interventions are deemed unsuccessful. Here, the district attempted to address the child's reading difficulties by providing one-on-one and small group instruction with the school's reading intervention specialist, and the classroom teacher attempted to manage the child's issues with focus and work completion by seating him near her desk and away from high traffic areas. Though the teacher and reading specialist referred the child to the district's RTI team, which determined that he needed additional interventions, the team continued to monitor the child's progress and did not see a need for a special education evaluation. Rather, the record indicates that both the teacher and the reading specialist did not think that the interventions were unsuccessful or that the child's progress had stalled, and special education services were warranted. Further, the parent did not request an evaluation until after she filed a due process complaint, and the eligibility team ultimately found the child to be ineligible for special education.

H. Avaras v. Clarkstown Cent. Sch. Dist., 73 IDELR 50 (S.D. N.Y. 2018). State Review Officer's decision in favor of the district is reversed where minimal progress was made with a student with SLD during the 16 months he received RTI interventions. A district is required to evaluate a student within a reasonable time of having notice of a potential disability. Although the district argued that its timeframe for evaluating was reasonable considering the student's progress, the student continued to struggle despite receiving Tier 1 and Tier 2 interventions for the last 7 months of kindergarten. Instead of referring the student for an evaluation, however, the district began Tier 3 interventions and continued them for 9 months, even though it typically referred students for evaluation after 8 weeks of unsuccessful Tier 3 services. By the time the district conducted the evaluation, the student's entire first grade year had essentially passed. This amounted to a denial of FAPE. However, private school funding is not appropriate, because the student did not begin attending private school until after his first-grade year had ended and he had been identified as eligible.

EVALUATIONS

A. 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.

B. 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.

ELIGIBILITY

A. Bentonville Sch. Dist. v. Smith, 73 IDELR 203 (W.D. Ark. 2019). Where the special education services in the student's IEP are tailored to address his academic and behavioral needs, FAPE was not denied when the district changed the student's classification from autism to emotional disturbance. The parent's claim that the change in classification was incorrect and, as a result the district could not appropriately address the student's autism-related behaviors, is rejected. The change in classification had no effect on the special education services set out in the IEP, since the most recent IEP and BIP continued to offer the student positive behavioral interventions, such as frequent breaks, positive reinforcement and encouragement, a highly-structured environment, a separate desk and alternative work options. These interventions were the same ones provided when the student was classified with autism. In addition, the evidence is that the interventions have continued to reduce the student's behavioral issues in class and helped him to improve his overall social skills and academic performance. Thus, the particular disability classification will, "in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs." Thus, the hearing officer's decision in favor of the parent is reversed.

B. S. v. West Chester Area Sch. Dist., 119 LRP 9383 (E.D. Pa. 2019). The district's initial evaluation and finding that the student with a health impairment was not eligible for special education services was appropriate. The fact that the district reevaluated the student less than a year after finding the student ineligible and found him eligible at that time does not invalidate its earlier decision that there was no need for specially designed instruction and that a Section 504 plan would be provided instead. The district had the right to monitor the student's progress with the 504 plan before considering the need for additional services. The district conducted a second IDEA evaluation after the student's 5th grade teachers reported that he was having academic, social and emotional difficulties and found him eligible in light of the new information. Thus, the hearing officer's finding that the district's initial evaluation and eligibility determination was appropriate is upheld.

C. 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.

D. 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 indicated 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.

E. 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.

INDEPENDENT EDUCATIONAL EVALUATIONS

A. D.S. v. Trumbull Bd. of Educ., 73 IDELR 224 (D. Conn. 2019). Where the school district had conducted an FBA, the parents were not able to show how their requested IEE was within the scope of the district's evaluation. The right to an IEE must be premised upon an actual disagreement with an evaluation that the school district has conducted. Thus, there must be a "connection between the evaluation with which the parents disagree and the independent evaluation they demand." Here, the additional assessments that the parents sought went beyond what the district's FBA measured. If parents were to have such "free-ranging" rights to impose financial obligations on schools every time that a school district conducts a limited assessment...then schools would understandably be reluctant to conduct any interim testing or assessment beyond the bare statutory minimum for fear of significant financial liability from parental demands for publicly funded IEEs." Thus, the hearing officer's ruling that the parents' disagreement with the FBA did not entitle them to an IEE for the additional requested assessments of OT, AT and PT is upheld.

B. 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.

C. 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. When an evaluator is paid by the parent, the evaluator 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.

D. 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.

E. 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.

THE FAPE STANDARD/PROVISION OF FAPE

A. A.W. v. Tehachapi Unif. Sch. Dist., 119 LRP 8970 (E.D. Cal. 2019). The due process hearing decision that the district provided FAPE to the 9 year-old student with autism and ADHD is affirmed. While the student continued to occasionally present behavioral

difficulties when a one-to-one aide was provided by the district, the student's disruptive behaviors decreased, including the severity and frequency of his spitting, biting, kicking, hitting, screaming and eloping behaviors. The parent's position that the student's aide needed supervision from a BCBA for two hours per week in order to completely eliminate his behaviors and ensure FAPE is rejected. "A student is not denied FAPE simply because the district's proposed education plan provides less educational benefit than what a student's parent might prefer."

B. Endrew F. v. Douglas Co. Sch. Dist. RE 1, 71 IDELR 144 (D. Colo. 2018). On remand, it is found that the IEP proposed by the school district at the time the parents withdrew their child with autism from public school and placed him in a private school for students with autism was not reasonably calculated to enable him to make progress appropriate in light of his circumstances. Specifically, the IEP proposed for the fifth grade in April 2010 contained the same annual goals as those IEPs for the second, third and fourth grades, with only minor changes to the short-term objectives. In addition, the district had not conducted a functional behavioral assessment or developed a formal BIP for the student. The district's inability to develop a formal plan or properly address the student's behaviors that, in turn, negatively impacted his ability to make progress on his educational and functional goals "cuts against the reasonableness of the April 2010 IEP." While the proposed IEP may have been appropriate under the 10th Circuit's previous "merely more than de minimis" standard, under the Supreme Court's FAPE standard, the proposed IEP denied FAPE. Thus, on remand from the 10th Circuit, the administrative law judge's decision denying the request for reimbursement of private school tuition and transportation costs is reversed. [UPDATE: It has been reported that the school district settled the case for $1.3 million. The case has been dismissed and is over: 69 IDELR 174 (D. Colo. 2018)].

C. Johnson v. Boston Pub. Schs., 73 IDELR 31, 906 F.3d 182 (1st Cir. 2018). District court's ruling that district afforded FAPE to the student with a profound hearing impairment at a district school for the deaf is affirmed. Where the student made meaningful progress in his linguistic skills under his prior IEP, it was reasonable to find that he would continue to make progress in a similar program. While the parent points to statements by the district court that characterize the student's progress as being "slow," this does not, by itself, mean that the student is not receiving meaningful benefit. Rather, the relationship between speed of advancement and educational benefit must be viewed in light of the student's individual circumstances. Here, the speed of advancement and benefit was appropriate where viewed in light of factors such as the student's beginning point and the parent's resistance to educating the student using ASL and spoken language. For example, objective evidence indicates that the child made progress in the district's program, where the student moved from a substantial inability to communicate or understand spoken or signed language to gradually signing, vocalizing and demonstrating comprehension of other linguistic concepts. In addition, the program's use of both spoken and sign language is consistent with recommendations made by medical experts and educators, despite the parent's opposition to this approach.

D. E.R. v. Spring Branch Indep. Sch. Dist., 73 IDELR 112, 909 F.3d 754 (5th Cir. 2018).

The *Endrew F.* decision did not render the 5th Circuit's 4-factor test (i.e., 1) the IEP is individualized based on the student's assessment and performance; 2) the IEP is administered in the LRE; 3) the IEP is implemented in a coordinated and collaborative manner; and 4) the IEP allows the student to receive positive academic and nonacademic benefits) for determining FAPE invalid. Here, the significantly health impaired student's IEP was reasonably calculated to allow for appropriate progress, even though the district did not incorporate grade-level standards into the fourth-grader's IEP. Not only did the IEP address the student's disability-related needs, but the student's teacher testified that the student's progress toward her IEP goals reflected her abilities. In other words, the student's goals were "appropriately ambitious." In addition, the parents agreed to placement in a life skills program and the district provided all services outlined in the IEP. Thus, the parents are not entitled to reimbursement for the student's private placement.

E. F.L. v. Board of Educ. of the Great Neck Union Free Sch. Dist., 72 IDELR 232 (2d Cir. 2018) (unpublished). Parent is not entitled to reimbursement for private tutoring and instruction in Lindamood-Bell for student with multiple disabilities. While an IEP must be reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances, the fact that there were similarities in the high schooler's annual IEPs for 2012-13, 2013-14 and 2014-15 did not mean that the student did not make appropriate progress or that the district denied FAPE. Rather, the state review officer found that the weight of the evidence showed that the student was making progress, even though it was not at a pace that his father would have preferred. While the SRO's decision was issued before *Endrew F.*, the Second Circuit has determined that its earlier rulings were consistent with *Endrew F.* Thus, the SRO applied the correct standard of FAPE when reviewing the student's IEPs.

F. K.D. v. Downingtown Area Sch. Dist., 72 IDELR 261, 904 F.3d 248 (3d Cir. 2018). The district court did not err in applying a "meaningful benefit" standard for FAPE, which aligns with *Endrew F.* Although the annual goals in the student's 2nd grade IEP were carried over from her 1st grade IEP, the student made appropriate progress. The significant improvement in the student's PLAAFP's from one year to the next demonstrated progress. While the IEP team opted to keep many of the goals from the previous year's IEP, the team developed more advanced goals in the areas of writing, reading comprehension and math calculation. In addition, with respect to the unchanged goals, the student's baselines increased significantly. The fact that the school district did not revise these goals merely shows it was continuing to target the student's reading ability with repetition in core areas. The IDEA does not require a district to increase a student's annual goals based on her lack of achievement; rather, the IDEA states that the team must revise the student's IEP to address lack of progress. Here, the district modified the student's IEPs to include additional specialized instruction and it tried different research-based reading programs until it found one that worked. Finally, placement tests conducted in second grade showed that the student's reading and writing skills improved dramatically during the 2nd grade school year. While the student did not make as much progress as her parents would have liked, her progress was appropriate in light of the severity of her learning disabilities.

G. M.L. v. Smith, 72 IDELR 218 (D. Md. 2018). While the proposed IEPs for fourth and fifth grades were not perfect, they were reasonably tailored to meet the SLD student's unique needs; thus, the ALJ's denial of reimbursement for unilateral private schooling is affirmed. IEPs are not to be evaluated in hindsight and must be considered in light of the information available to the IEP team at the time of development of the IEP. Here, evaluative data indicated that the student had made meaningful progress toward her IEP goals in her public school program. For example, at the beginning of third grade, the student could only identify 4 words on the district's kindergarten list. By January, she could correctly read and identify 24 out of 25 words and had mastered an additional 12 words on the next list. In addition, the student's end-of-year report card showed improvement in most academic areas. The proposed IEPs also "significantly increased" the amount of time she would spend outside of the general education setting, calling for small classes for children who performed at her reading level. Though the student was still reading at kindergarten level at the end of third grade, her skills improved significantly during the year and she made "uneven but steady progress" toward her IEP goals.

H. Rosaria M. v. Madison City Bd. of Educ., 72 IDELR 9 (N.D. Ala. 2018). Student with ADHD and dyslexia was provided FAPE, and the parents' suggestion that her IEP was not sufficiently ambitious is rejected. Prior to being on an IEP, the student's academic performance was below grade level. After the IEP's implementation, the student made quantifiable gains in reading over a 3-month period and went from being far below grade level in math to just below the designated grade equivalent during the same period. The district's characterization of this as a "huge gain" in math is accepted. In addition, the student achieved passing grades in science, social studies, PE, technology skills and music. The hearing officer's conclusion, therefore, is affirmed that the IEP was reasonably calculated to provide FAPE.

I. C.S. v. Yorktown Cent. Sch. Dist., 72 IDELR 7 (S.D. N.Y. 2018). Progress made by a fifth grade student with SLD on every category of her IEP's annual goals supported the school district's decision to offer a similar program for the student's sixth grade year. The parent's reliance upon the student's comparatively low scores on standardized grade-level assessments as proof that she failed to make progress in fifth grade is rejected. Rather, the student's performance reflects the severity of her disability, and it was irrational to expect the student to suddenly begin reading at a fifth grade level after a year when she began that year at a first grade reading level. Here, the student achieved many of her annual goals for fifth grade and made good progress toward the remaining ones. In addition, the IEP team made numerous changes to the student's program for sixth grade, including movement to a smaller class for reading instruction, four new reading goals and increased criteria for fluency and comprehension in two existing reading goals. The student's writing goals were also increased in difficulty as well, which the teacher testified was intended to get the student to "raise the bar" from writing more than one paragraph with moderate support and to work on revising and editing independently. Thus, the SRO's decision that the parent is not entitled to private school reimbursement is upheld.

J. J.G. v. New Hope-Solebury Sch. Dist., 72 IDELR 240, 323 F.Supp.3d 716 (E.D. Pa. 2018). The hearing officer's ruling that the parents are not entitled to reimbursement for private schooling for the student with SLDs, a speech/language impairment and ADHD is upheld. While the student did not make progress toward his speech and language goal in the 2013 IEP and the written expression goals in his 2014 and 2015 IEPs, the student was not denied FAPE. Rather, the student made dramatic improvements with speech and language after the IEP team revised the program to address his lack of progress. His progress was so significant that it represented goal mastery indicating that he no longer needed special education services in that area. Though the IEP team did not revise the student's written expression goal to address declining achievement scores, the team modified the student's instruction, and the student made significant progress toward that goal following that IEP revision. In addition, the student consistently made meaningful progress on his other IEP goals.

K. Johnson v. St. Louis Pub. Sch. Dist., 72 IDELR 266 (E.D. Mo. 2018). When the district developed an IEP for the 9th grade student with schizophrenia in March 2017, the team did not have access to 744 pages of medical records that the parent sought to introduce during a due process hearing a month later. The March IEP addressed the issues that the district identified during the student's reevaluation, including auditory and visual hallucinations, and the team developed a safety plan to reduce unsupervised contact with the general student population at school. When the parent produced the medical records during the due process hearing, the district convened an IEP team meeting to review the information and revise the IEP as needed. The fact that the district issued a new IEP when presented with the student's medical records did not render the March 2017 IEP defective. Because the district team members were not aware of the medical information, the hearing commission's decision that the IEP was appropriate at the time it was created is upheld.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. Colonial Sch. Dist. v. G.K., 73 IDELR 224 (3d Cir. 2019) (unpublished). Although the parents of a student with autism may not have understood exactly how the school district would measure their son's progress toward his annual goals, they could not show that they were excluded from the IEP decision-making process. The purpose of the IDEA's provisions is to ensure that parents can exchange information with other members of the IEP team and understand what is happening during an IEP meeting. These are procedural safeguards rather than a substantive guarantee that parents will fully comprehend and appreciate to their satisfaction "all of the pedagogical purposes in the IEP." Here, the district members of the IEP team attempted to address all parental concerns by authorizing assessments that would give the parents a clearer understanding of their child's progress and also convened an emergency IEP meeting to address the student's allegedly deficient annual goals. Where the parents appear to be objecting to the goals themselves rather than their understanding of them, there is no evidence of a procedural violation.

B. Jones v. District of Columbia, 73 IDELR 233 (D. D.C. 2019). Where the student actually

received 32.5 hours per week of special education services (in accordance with a ruling of a hearing officer), rather than the incorrect number of hours of 21.5 hours per week set forth in the IEP, the parent was denied sufficient participation in the IEP decision-making process. However, the student did not actually lose any services sufficient for an award of compensatory education services. The district did not harm the student's education, it harmed the parent's role in developing that education. An award of compensatory education to the student would have no impact on the parent's participation in the IEP process and, therefore, the parent's request for compensatory services is denied.

C. 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.

D. 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.

E. Forest Grove Sch. Dist. v. Student, 73 IDELR 115 (D. Ore. 2018). District did not impede the parents' participation in the IEP process by establishing a communication protocol with her limiting her ability to email school staff. This did not violate the IDEA, as parents do not have an unlimited right to communication with school staff. Reasonable restrictions on communication may be appropriate when a parent sends an excessive number of emails or uses an inappropriate tone with staff. The district must still, however, ensure that the parent has the opportunity to participate in the IEP process and can speak with teachers and other service providers when necessary. Here, the district adopted the protocol in response to the large number of emails the parent sent to school staff, which limited her to one weekly email sent to the student's case manager regarding all of her concerns about the student's services. When the parent failed to comply with that protocol, the district began to block her email address for a few weeks in October 2012; however, the parent fully participated in every IEP meeting held and regularly spoke to the student's teachers by phone. Since the parent had no difficulty advocating for the student, the ALJ's finding that the district violated the IDEA by putting the protocol in place should be reversed.

F. 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.

G. 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.

H. Steven R.F. v. Harrison Sch. Dist., 72 IDELR 181 (D. Colo. 2018). Where the proposed special school offered two different programs for students with autism, the district's failure to identify which of the programs the student would attend is a denial of FAPE and the district must reimburse the parent for unilateral private school placement. The programs within the school were not the same, where one had a low student-teacher ratio and was designed to assist students with functional communication deficits to work on their behavioral skills. The other program was designed for students with stronger communication skills, had a larger student-teacher ratio and focused primarily upon academics. While the parents participated in the discussion leading to the IEP team's recommended placement at the special school, the team did not discuss which of the two programs their child would attend. Thus, the parents were excluded from the IEP decision-making process and FAPE was denied.

STUDENTS WITH HEALTH CARE NEEDS/HEALTH CARE PLANS

A. Barney v. Akron Bd. of Educ., 73 IDELR 251 (6th Cir. 2019) (unpublished). The district's creation of an "allergy action plan" separate from the student's IEP did not violate the IDEA. The plan set forth appropriate precautions to protect the student with a severe peanut allergy from a possible allergic reaction. Where the IEP is only required to address the student's needs as they relate to his IDEA-eligible disability and because the student did not need special education for his peanut allergy, the district was not required to include a detailed safety plan in the IEP. It was proper for the district to address the parent's concerns by referencing the student's allergy in the "other information" section of the IEP and developing the separate allergy action plan. The IDEA does not require more.

B. 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.

MISCELLANEOUS RELATED SERVICES

A. 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.

B. 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.

C. 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. A.H. v. Smith, 73 IDELR 234 (D. Md. 2019). The ALJ's decision that the school district offered FAPE in the LRE is upheld and private school funding is not warranted. While the parents were concerned about the proposed program's inability to keep their child with autism safe, the district sufficiently addressed the concerns about elopement when its proposal included paraprofessional support during lunch and recess. The student's emerging social skills and desire to interact with adults and peers suggest that he would benefit from general education lunch and recess. In addition, the district planned to collect data upon the student's enrollment in public school and revisit the proposed placement if necessary. Under the circumstances, the plan was reasonable, and the evidence supports that the student's initial inclusion in the general education setting for lunch and recess was appropriate. While the cafeteria had doors that lead to outside and recess was held outside on the playground, the IEP called for frequent eye contact/proximity control, along with paraprofessional support.

B. L.L. v. Tennessee Dept. of Educ., 73 IDELR 227 (M.D. Tenn. 2019). Student with autism may proceed with claims against the State that it failed to monitor and enforce IDEA's LRE requirements when a school district placed him in a preschool program exclusively for students with disabilities. Like many states, Tennessee permits, but does not mandate, that school districts operate preschool programs for "at-risk" 4-year-olds. This means that a preschooler with an IDEA disability may be in a school district or zone where there is no public general education preschool for mainstreaming with non-disabled same-aged peers. The simple assumption that every child of a certain age "shall be wholly segregated from non-disabled children is a failure to make an individualized LRE determination," and is a "challengeable procedural violation of the IDEA" Thus, the student has stated a claim under the IDEA and the State's motion to discuss is denied.

C. A.S. v. Board of Educ. of Shenendehowa Cent. Sch. Dist., 73 IDELR 260 (N.D. N.Y. 2019). The district's failure to consider a full-day inclusive program for the child with autism does not warrant funding for the home-based program provided by private service providers. While parents generally do not have to meet the same LRE requirements as school districts when choosing a private program, the unilateral placement must, at a minimum, address the alleged deficiencies in the child's IEP. Where the one alleged flaw in the district's proposal was its failure to make a full continuum of educational placements available, the unilateral placement could only be found appropriate if it addressed the LRE deficiency. Instead, the child's home-based program consisting of

ABA services removed the child even further from the general education setting.

D. L.H. v. Hamilton Co. Dept. of Educ., 72 IDELR 204, 900 F.3d 779 (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. (NOTE: On remand, the district court ordered the district to reimburse the parents $103,274 for private school tuition and the cost of a full-time aide during the 3rd through the 8th grades. 73 IDELR 121 (E.D. Tenn. 2018)).

E. 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.

F. 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.

G. 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.

H. S.M. v. Arlotto, 73 IDELR 74 (D. Md. 2018). Parents' argument that the student with SLD and emotional issues needs a full-time special education placement is rejected, and their request for unilateral private placement is denied. The student's IEP team struck an appropriate balance when offering a combination of "push-in" services in a co-taught classroom and "pullout" services in a special education setting. The student performed at grade level and earned mostly A's and B's when receiving his instruction in the co-taught classroom and each proposed IEP increased the amount of time that he would spend outside of the general education setting. The fact that the parents prefer a full-time special education placement does not require the district to provide it. The district's teacher testified that the student was cooperative and easily directed, which made him an ideal student for placement in a public school setting with supplementary aids and instruction.

I. A.B. v. Clear Creek Indep. Sch. Dist., 73 IDELR 3 (S.D. Tex. 2018). Hearing officer's decision that student's proposed placement in a more restrictive environment is not appropriate is upheld. First, the court is to consider whether the student can receive satisfactory education in the general education setting with the use of supplementary aids and services. If the answer is no, then the court will turn to the second question: whether the district included the student in the general education setting to the maximum extent appropriate. In this case, the 10 year-old student with autism not only made satisfactory progress in the general education setting, he performed better than expected. In fact, in social studies, the student made more progress by the 18th week mark than he had been projected to make by the 27th week mark. In addition, the student had almost achieved his 27th week projections for math and science by the 18th week mark. Finally, the student benefited from modeling behaviors of nondisabled classmates and followed directions while showing initiative in completing tasks. While the student was not at grade level, his academic and behavioral progress showed that he could receive satisfactory benefit in the general education setting with resource room support.

J. Nathan M. v. Harrison Sch. Dist. No. 2, 73 IDELR 148 (D. Colo. 2018). While transitioning a student with autism to the district's proposed public school autism program would be "difficult," the proposed change of placement is FAPE in the LRE. The transition was proposed to occur in small steps and would offer the student the opportunity to progress academically and interact with nondisabled peers. Unlike the private school, which focuses on behavioral intervention, the public school program has certified teachers and would enable the student to make academic progress. In addition, the child would be transitioned incrementally, with time in both schools. There are no nondisabled students of the 27 students in the private program, but at the proposed

elementary school, the student would have the opportunity to participate with nondisabled students at lunch, music, art and extracurricular activities, as well as in science and social studies. Thus, the proposed program is FAPE in the LRE for this student.

ONE-TO-ONE AIDES

A. M.B. v. City Sch. Dist. of New Rochelle, 72 IDELR 12 (S.D. N.Y. 2018). Parent's assertion that student with hydrocephalus, macrocephaly, epilepsy, CP and spastic dysplasia needs a 1:1 aide to ensure FAPE is rejected. The parent failed to show why a 1:1 aide was necessary or that the IEP team, which reviewed detailed information about the student's medical, academic and safety needs, erred in concluding that substantial shared-aide services were sufficient to meet the student's needs. The evidence showed that the student was supervised by an adult at all times and received considerable individualized attention for redirection and refocusing.

B. McKnight v. Lyon Co. Sch. Dist., 73 IDELR 13 (D. Nev. 2018). Parent's assertion that the student with autism would make more progress in the regular education classroom with a one-to-one aide does not mean that the student needed it in order to ensure FAPE. The student's success in the general education setting is reflected by his passing grades and advancement from grade to grade. Although the student's standardized test scores do not reflect expected grade-level achievement, the student is receiving passing grades. In addition, the cost of providing a 1:1 aide far outweighs the benefit that the student will receive from it. Finally, without an aide, the student is better able to develop the skills of thinking and working independently.

BEHAVIOR/FUNCTIONAL BEHAVIORAL ASSESSMENTS & BIPS

A. S.W. v. Abington Sch. Dist., 73 IDELR 179 (E.D. Pa. 2018). District did not deny FAPE to a student with ADHD, ODD and disruptive behavior disorder where the behavioral interventions in the student's IEP were effective in reducing disciplinary incidents. The parent's claim that the district did not properly address the student's behavioral needs during two school years is rejected. Although the district did not conduct an FBA or develop a stand-alone BIP for the student, the district did include appropriate behavioral interventions in the student's IEP. For instance, the student's first-grade teachers provided him with an individualized behavior management system, daily check-ins and check-outs, and social skills training to address aggressive behaviors. During the second-grade year, the district provided new positive behavioral motivators, including allowing the student to spend time with preferred staff. Because these interventions reduced the student's disciplinary infractions and helped him to maintain grade-level academic performance, the district was not required to develop a BIP document separate from the IEP.

B. 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 out, 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 but did not provide 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.

C. Pottsgrove Sch. Dist. v. D.H., 72 IDELR 271 (E.D. Pa. 2018). The hearing officer's decision that the district denied FAPE is upheld where district staff restrained the student with autism 11 times during first grade and regularly sent him home early for behavioral problems. In addition, the BIP for the student had a "reactive, crisis-oriented nature" and was primarily focused on how to respond to the student's misbehavior after it occurred. While the BIP did contain a few preventive strategies, such as a "star chart" to track the child's good behavior, repeated use of physical restraint as a behavior management technique shows that the district's reactive approach was ineffective and that the BIP was not working. Although the BIP was not appropriate, the hearing officer's finding that the district violated the IDEA by failing to conduct an FBA or including a BCBA on the child's IEP team is overruled. Since the hearing officer's compensatory education award relied partially on these incorrect findings, the case is remanded for further proceedings as to an appropriate remedy.

DISCIPLINE/MANIFESTATION

A. McNeil v. Sherwood Sch. Dist. 88J, 119 LRP 9741 (9th Cir. 2019). Student may be disciplined for off-campus speech where he created a list of students that "must die" in his personal journal while at home. Thus, the district court's dismissal of the parents' Section 1983 claims is affirmed. When the police learned about the list from the student's therapist and informed the district, the district was correct in expelling the student for one year without violating the student's free speech rights. A school district may constitutionally regulate off-campus speech if, based on the totality of the circumstances, the speech bears a sufficient nexus, or close connection, to the school. Under this standard, "there is always a sufficient nexus between the speech and the school when the school district reasonably concludes that it faces a credible, identifiable threat of school violence." Because the "hit list" identified 22 classmates and one former school employee by name, the student has access to guns and 525 rounds of ammunition

at home and lived close to the school, the situation constituted a credible, identifiable threat to the school. The parents' argument that the district's decision to expel the student was no longer reasonable once the student was released by police is rejected. Schools have a right and an obligation to address a credible threat of violence involving the school community, even where police or mental health professionals have elected not to take action. Thus, the expulsion was constitutional under the Supreme Court's decision in *Tinker*. It is also noted that allowing the student to return to school after the discovery of the journal entry would have caused a substantial disruption to school activities and interfered with other students' right to be secure.

B. J.H. v. Rose Tree Media Sch. Dist., 72 IDELR 265 (E.D. Pa. 2018). Hearing officer's decision upholding the district's determination that the 15 year-old student's conduct was not a manifestation of his ADHD and SLD is upheld. Video recordings showed the student approaching another student in the cafeteria, pushing his face into his food and punching him in the face. In conducting an MDR, the team cannot focus on traits typically associated with the student's disability; rather, it must consider how the disability impacts the student specifically. Here, the team considered the student's impulsivity and low tolerance for frustration, as well as factors such as family dynamics and reports of cyberbullying against the student. None of the evidence connects the student's disability to violence and, at most, it suggests that the student exhibits verbal aggression due to his disability-related frustration. In addition, the district's deletion of certain video footage did not impede the MDR team's review of the incident where two videos by the student's friends captured the assault in its entirety. The fact that several of the student's friends captured the entire six-second incident on video also indicated that he planned the attack against his fellow student.

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 are a change of placement that would 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, 323 F.Supp.3d 353 (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.

STUDENTS IN JUVENILE JUSTICE/CORRECTIONAL FACILITIES

A. Letter to Duncan, 73 IDELR 264 (OSEP 2019). Where an incarcerated student presents a "bona fide security or compelling penological interest" that prevents the student from receiving a regular high school diploma, the IEP team may determine that the student needs to earn a GED credential. The IEP team for a student who has been convicted as an adult and is incarcerated in an adult prison must make this determination on an individual basis. In doing so, the team may consider whether the student actually presents a bona fide security or penological interest that cannot otherwise be accommodated to allow the student to receive the special education and related services necessary to enable the student to earn a regular high school diploma. However, neither a state's unwillingness to spend money nor administrative convenience rise to this level. If a team decides that the GED credential will be awarded, that student will continue to have the right to FAPE after completing the GED program, subject to the state's age restrictions and IDEA's FAPE limitations applicable to incarcerated students.

B. 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.

POST-SECONDARY TRANSITION SERVICES

A. Rogers v. Hempfield Sch. Dist., 73 IDELR 7 (E.D. Pa. 2018). Hearing officer's decision that FAPE was provided is affirmed. Based upon the autistic student's uncertainty about what he wanted to do after high school, the transition plans developed for him reflected his unique circumstances. Post-secondary transition plans should focus on exposure to opportunities rather than the achievement of specific outcomes. Thus, the student's IEP team did not err in developing a plan that indicated that the student "may" attend community college after graduation and that the student was "unsure" of how he would like to be employed in the future. These defined goals for employment and education are measurable, but also reflect the student's indecision regarding his future. The district also offered a wide range of transition services to help the student narrow his interests,

which included a four-week program allowing students to experience college life and a variety of job shadowing opportunities. Finally, when the student left high school, he easily transitioned to a university program and got paid employment without assistance.

METHODOLOGY

A. Matthews v. Douglas Co. Sch. Dist. RE 1, 73 IDELR 42 (D. Colo. 2018). ALJ's decision that the district provided FAPE to a student with dyslexia and other disabilities is affirmed. Where the district agreed to use the Orton-Gillingham approach recommended by an independent evaluator for the provision of reading instruction to the student, it did not violate the IDEA when the Wilson Reading System was used. This is so because the Wilson program incorporates the Orton-Gillingham approach. Based upon their arguments, the parents apparently do not understand that the Wilson program uses the Orton-Gillingham approach. Further, the IEP team had no obligation to include a specific educational methodology in the student's program.

B. 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, 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 the student would never look at her when she was interpreting, whether the student 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.

C. K.G. v. Cinnaminson Tshp. Bd. of Educ., 73 IDELR 19 (D. N.J. 2018). Parent is not entitled to reimbursement for private school placement. Although the IEPs for the intrastate transfer student with epilepsy and Landau-Kleffner syndrome did not specify the reading methodology that would be used, the proposed IEPs would have met the student's educational needs. The IDEA does not require IEPs to include educational methodologies that a district intends to use; thus, the ALJ did not err in considering testimony that the district regularly used the Orton-Gillingham reading approach. The O-G reading approach is similar to the Wilson Reading System used in the student's private school and the ALJ's finding that the district offered a reading program effectively identical to the one the student was receiving at the private school supports the decision that the proposed IEP sufficiently addressed the student's reading needs.

PRIVATE SCHOOL PLACEMENT

A. 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.

B. 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.

C. 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. In order 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. M.S. v. Los Angeles Unif. Sch. Dist., 73 IDELR 195 (9th Cir. 2019). District court's decision that the school district denied FAPE to a teenager with ED is affirmed. Where a school district has the duty to make a continuum of alternative educational placements available for students with disabilities, the school district erred when it did not consider whether this student needed residential placement for educational reasons just because

the Department of Children and Family Services placed her in the locked residential treatment facility for mental health reasons under state law and pursuant to a Juvenile Court order. Because DCFS could change that placement at any time, the school district has an independent duty under the IDEA to consider whether residential placement was needed for educational reasons as part of her IEP and not merely "necessary quite apart from the learning process." The district court's finding that the school district erred in offering a placement in a nonpublic school with the expectation that DCFS would keep the student in a residential placement is upheld.

STAY-PUT

A. Oliver C. v. State of Hawaii Dept. of Educ., 119 LRP 7821 (9th Cir. 2019) (unpublished). When the parents of a preschooler with life-threatening medical conditions moved from one side of Oahu to the other, IDEA's stay-put provision does not require the DOE to keep the student in his former elementary school. The district court was correct when it ruled that it was not a change of placement in violation of the law's stay-put provision when the location of the services changed to a school in the new district. Rather, a change of placement occurs when there is a significant change in the student's program. Where the program at the new school was comparable to the program the child had previously attended and the new school could implement the child's IEP, it was not a change in the child's educational placement to which the IDEA's stay-put provision applies. In addition, the DOE was not required to provide a formal prior written notice for the change in location of the child's services; however, official notice was given to the parents.

B. 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 in March, the new IEP had already taken effect by the time the parents filed it. Thus, under the February 2018 IEP, the student is set to transition to high school, not stay in middle school, which reflected his educational goals, including postsecondary transition planning. While the parents' concerns are acknowledged, the stay-put placement is the high school.

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. Smith v. Cheyenne Mountain Sch. Dist. 12, 72 IDELR 173 (D. Colo. 2018). Where the purpose of compensatory education is to place a student in the position he would have been had the district complied with its IDEA obligations, the administrative decision that this student with autism is not entitled to relief is affirmed. While the child's performance upon his return to school showed that he had lost some skills, the regression was not permanent. The child's scores on standardized assessments increased significantly just eight days after the child returned to school and report cards showed that he received above-average grades in most subjects. In addition, the regular education teacher testified that his performance was "just like every other student" and that he was at or above grade level in reading, math and spelling by the end of the first grade and there were no concerns about recommending that he advance to the second grade. Thus, there is no need for compensatory education. The recommendation of the magistrate is, therefore, rejected.

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. Lauren C. v. Lewisville Indep. Sch. Dist., 72 IDELR 262, 904 F.3d 363 (5th Cir. 2018). While the hearing officer ordered the school district to change the 21 year-old student's disability classification from ID to autism, the hearing officer's order did not change the parties' legal relationship. Thus, the student was not a prevailing party for purposes of recovering attorneys' fees against the district. In order to be considered a prevailing party, the student was required to show that the hearing officer's order materially altered her legal relationship with the district and required the district to modify its behavior in a way that directly benefited her. Here, the hearing officer's decision had no material impact, where the IEP team was not required to make any changes to the content of the student's IEP, since the hearing officer had found the IEP appropriate in all areas (even though the student was not labeled as autistic) and the team had already considered certain educational strategies that the student wanted and had already implemented them. The key concern is whether the student receives FAPE, not whether the district labeled her properly.

C. J.S. v. Westerly Sch. Dist., 73 IDELR 111 (1st Cir. 2018). District court's award of fees to the parents of a student with Lyme disease is reversed because the parents were not prevailing parties, when comparing what the district court ordered the district to do with what the parents were seeking. Here, the parents were seeking a finding of eligibility under the IDEA. After the parents refused to consent to an evaluation, they obtained an order from the district court ordering the district to forego its own evaluation and make an expedited determination on the student's eligibility based upon existing data, including private evaluations. The district did so and found the student not eligible; however, the district court ordered fees to the parents as prevailing parties. The order of fees is reversed, because the district court did not order that the student was eligible for an IEP and IDEA protections. Instead, the district court only granted the parents' request for an expedited hearing on the merits of their request for an IEP. Obtaining this order forcing a decision on eligibility was no more than a "Pyrrhic procedural victory" that did not advance the parents' goal and may have actually undercut it. Thus, the parents were not prevailing parties entitled to fees from the district.

D. 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%.

E. 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.

F. School Bd. of Broward Co. v. C.B., 315 F.Supp.3d 1312 (S.D. Fla. 2018). Administrative Law Judges do not have authority to award fees to prevailing parents in due process matters. The language of the Florida Rules does not change this.

SECTION 504/ADA DISCRIMINATION ISSUES GENERALLY

A. P.F. v. Stanford Taylor, 73 IDELR 167, 914 F.3d 467 (7th Cir. 2019). Wisconsin's open enrollment law allowing for districts to make individualized determinations about their ability to serve nonresident students is not discriminatory under Section 504/ADA. The parents' argument on behalf of three unrelated students that the program is discriminatory because it allows districts to deny open enrollment applications based upon criteria that only applies to applicants with disabilities is rejected. The statute does not allow districts to deny open enrollment based solely on disability; rather, the statute requires a district to consider its ability to provide the special education and related services in a student's IEP. A program is not discriminatory merely because it takes disability into account. Federal law forbids discrimination based on stereotypes about a disability, but it does not forbid decisions based upon the actual attributes of the disability. Further, the open enrollment process functions similarly for nondisabled students, as it allows districts to deny enrollment based on lack of capacity. For example, if a district only has space available in its 6th grade general education program, it would not discriminate by denying enrollment to a nondisabled 4th grader based upon a lack of space. The same reasoning applies if a student with an IEP requires special resources, as "it doesn't make any more sense to treat his needs as identical to those of his peers than it would to treat fourth-graders the same as sixth-graders."

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

A. 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 team 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. Pettus v. Conway Sch. Dist., 73 IDELR 176 (E.D. Ark. 2019). Parent's request for preliminary injunction requesting district be ordered to allow high-achieving 12th-grader with anxiety and depression to bring her service animal to school is denied. The ADA's regulations do not mean that a service animal's presence is always reasonable. The key question is whether the service animal would be a reasonable accommodation. Here, it would be unreasonable to require the district to allow the service animal on school grounds because the dog's presence would be a distraction to other students and for

students, faculty and staff with allergies, the dog could be "truly disruptive. This would be compounded if multiple students were permitted to bring dogs to school." In addition, the district offered other ways to address the student's relatively infrequent panic attacks. For instance, the district agreed, via a 504 plan, that the student could leave the classroom and go to the school nurse or counselor at the onset of anxiety; could have an alternative seating arrangement; and could leave class early to avoid crowds. In addition, the school agreed to keep the student's prescription medication in the school nurse's office; to alert the student in advance of drills so she could avoid crowds; allow the student to be in an alternative location during assemblies; have extra time on assignments; and wear a weighted vest during panic attacks. The 504 team "voted" that the student should not be allowed to bring the dog to school, and the district decided the dog would not be allowed. The student's ability to earn straight A's, participate in band and attend football games shows that her anxiety does not impede her ability to participate in the school district's program. In addition, district staff discussed the issue and decided that the student did not need to be accompanied by her service dog—which is a decision that is entitled to the court's deference. Thus, the unlikelihood of the student's success on the merits prevents the court from granting the request for an injunction.

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. Doe v. U.S. Secretary of Transportation, 73 IDELR 152 (S.D. N.Y. 2018). While the parents of a middle schooler with asthma and severe allergies cannot sue the school district for its refusal to exclude service animals from school premises, they may file disability discrimination claims for the school district's alleged failure to protect their daughter from exposure to service dogs and implementing her 504 Plan. Allegations that the student encountered a service animal at school raised questions as to whether the district reasonably accommodated her disabilities as set forth in her 504 Plan. According to the parents' complaint, the district violated 504 when it allowed another person's service dog to come within 30 feet of the student during two school events in violation of the student's 504 Plan. There were also four other incidents where the student allegedly had a reaction to service animal dander on school grounds. Thus, the parents' allegations are sufficient to support a claim against the district sufficient to deny the district's motion to dismiss the complaint at this juncture.

D. 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. 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.

B. 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.

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 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 Hastings, 119 LRP 1745 (FPCO 2018). Based upon the severe injuries that three school employees suffered during an altercation with the student, the district was not in violation of FERPA when it released PII via an incident report without parental consent to a police officer investigating the incident. The student's violent outbursts posed an "articulable and significant threat" to the student and school staff, where the student had an emotional meltdown and hit, kicked, bit and head-butted his special education teacher, paraprofessional and principal. Thus, the disclosure falls within FERPA's health and safety emergency exception.