THE YEAR'S MOST IMPORTANT SPECIAL EDUCATION CASES: 2016-2017

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I. U.S. SUPREME COURT

1. *Endrew F. v. Douglas County Sch. Dist. Re-1*, 137 S. Ct. 988, 2017 LEXIS 2025 (2017). In a unanimous decision, the Court held that, to meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress "appropriate in light of the child's circumstances." When a child is "fully integrated" into a regular classroom, providing a FAPE that meet the unique needs of a child with a disability typically means providing a level of instruction reasonably calculated to permit advancement through the general curriculum (*Rowley* standard). However, if progressing smoothly through the general curriculum is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement, but must be "appropriately ambitious in light of his circumstances." The Court states "this standard is markedly more demanding that a 'merely more than de minimis' test for educational benefit."

   This ruling leaves much room for interpretation, and has sparked a national surge in special education litigation as parties begin to test the boundaries of the *Endrew F*. decision.

   New Cases Applying the *Endrew F*. Standard:

   a. *C.M. ex rel. C.M. v. Warren Ind. Sch. Dist*., 117 LRP 17212 (E.D. Texas 2017). A nine-year-old boy with an emotional disturbance had made reasonable progress with his behavioral goals, but minimal academic progress. The court held that the behavioral progress was proof that the child was receiving FAPE, even though he was not yet performing on grade level academically.

   b. *E.D. by T.D. and C.D. v. Colonial Sch. Dist*., 117 LRP 12348 (E.D. Pa. 2017). An administrative decision rendered prior to the *Endrew F*. ruling is still valid if the judge applied a sufficiently rigorous test and considered the child's circumstances. The court held that the child's academic progress was

"appropriate in light of her age and disability-related needs," even though she was not proficient in all academic areas by the end of the school year.

c. *A.G. v. Bd. of Educ. of the Arlington Central Sch. Dist*., 69 IDELR 210 (S.D.N.Y. 2017). The use of a resource room to provide 1:1 academic instruction in reading for a 12-year-old student with dyslexia and ADHD was sufficient to provide FAPE. Progress reports show that the student was meeting IEP goals, and the district's programs were tailored to meet the student's needs in decoding, encoding, reading, and writing.

d. *C.D. v. Natick Pub. Sch. Dist*., 69 IDELR 213 (D. Mass. 2017). The federal court remanded a case back to an IDEA hearing officer to determine whether the school district's programs were sufficient to meet the "appropriately ambitious" standard of the *Endrew F.* case.

2. *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 2017 U.S. LEXIS 2047 (2017). The Court overturned a decision from the Sixth Circuit Court of Appeals holding that a student's desire to be accompanied at school by her service dog was "crucially linked" to her IEP goals and therefore subject to the "exhaustion" requirements of the IDEA. The Supreme Court's unanimous decision held that cases in which the "gravamen" of the complaint is a denial of FAPE must be administratively exhausted, while other types of claims (e.g., claims of systemic denial of rights and 504/Title II claims seeking money damages only) do not have to be exhausted.

<u>New Cases Applying the *Fry* Test</u>:

a. *A.H. by H.C. v. Craven County Bd. of Educ.,* 117 LRP 33253 (E.D.N.C. 2017). The federal court dismissed the parents' 504/Title II lawsuit seeking money damages for alleged creation of a "hostile education environment." The court held that the fact that the student's IEP contained provisions related to the use of physical restraint as a crisis management technique made this a "denial of FAPE" case requiring exhaustion of administrative remedies.

b. *L.D. v. Los Angeles Unified Sch. Dist*., 117 LRP 16903 (C.D. Cal. 2017). Guardian ad litem for a child with Down Syndrome must exhaust IDEA administrative process prior suing in federal court. Although the complaint only alleged violations of the child's ADA and Section 504 rights, the court found that the plaintiff was actually seeking relief for a denial of FAPE.

c. *Bowe v. Eau Claire Area Sch. Dist*., 117 LRP 16602 (W.D. Wis. 2017). Court refused to dismiss a complaint filed on behalf of a former student with autism who alleged disability-based peer harassment denied his right to a

harassment-free educational environment, finding that his claim was not for a denial of FAPE per se.

d. *N.S. v. Tennessee Dept. of Education, et al.,* 117 LRP 14817 (M.D. Tenn. 2017). The court rejected the school district's attempt to win dismissal of a complaint alleging improper restraint and seclusion of two students with disabilities. The federal judge ruled that the court held that administrative remedies would be futile because the parents contended that the frequent use of restraint and seclusion on students with disabilities stemmed from the district's inappropriate disciplinary practices and indifference to complaints of abuse.

e. *M.B. and R.B. v. Islip Sch. Dist*., 117 LRP 15359 (E.D.N.Y. 2017). Court dismissed plaintiff's complaint, rejecting their argument that it would be futile for them to seek relief in an IDEA due process hearing. Plaintiffs fail to satisfy their burden of demonstrating that the administrative remedies provided for under the IDEA were futile such that their failure to exhaust should be excused. In arguing that exhaustion would have been futile, Plaintiffs neither claim that they were unaware of the administrative remedies provided for under the IDEA nor that the school district had "adopted a policy or pursued a practice of general applicability that is contrary to the law."

II. BULLYING AND HARASSMENT

3. *T.K. and S.K. v. New York City Dept. of Educ*., 67 IDELR 1, 810 F.2d 869 (2nd Cir. 2016). School district denied the parents of a third-grade girl with disabilities a right to "meaningful participation" in the development of their child's IEP. The district officials refused to discuss the parents' concerns about bullying in the child's IEP meeting, and wound up paying for the costs of a full year of private school as a result of the denial of rights.

4. *Landon B. v. Hamburg Area Sch. Dist*., 67 IDELR 203 (E.D. Pa. 2016). The school district's proposal to return a teenage boy to public school after his withdrawal was appropriate. The district had paid for the boy to attend a private school for two years after he was subjected to peer bullying and was assaulted at school. The parents opposed any effort to return their son to public school, but the court found that the teen's development of social skills and "comfortable" interactions with former peers at school demonstrated his ability to return to public school.

5. *C.C. v. Hurst-Euless-Bedford Ind. Sch. Dist*., 67 IDELR 111 (5th Cir. 2016), *unpublished, cert. denied*, 116 LRP 43118 (2016). A Texas school district did not subject a twelve-year-old boy to a "hostile environment" by placing him in an alternative learning center for 60 days following in incident where he surreptitiously took and shared photos of a classmate on a toilet. The court

found that the parents failed to prove that the act was caused by the boy's diagnosis of ADHD, or that his placement at the alternative school constituted disability-based harassment.

6. *S.B. v. Bd. of Educ. of Hartford Co*., 67 IDELR 165, 819 F.3d 69 (4th Cir. 2016). The Fourth Circuit Court of Appeals adopted the "deliberate indifference" standard in disability harassment claims, finding that the district's response to a boy's bullying by peers was reasonable. The district officials investigated each allegation of bullying, punished the perpetrators, and assigned a paraprofessional to the student to monitor him at school.

7. *Doe v. Torrington Bd. of Educ.,* 67 IDELR 182 (D. Conn. 2016). A high school student with SLD failed to prove that his alleged bullying was disability-related and therefore actionable under Section 504/Title II. The school offered to provide the boy tutoring in the administrative offices after he began skipping school due to his fear of persistent bullying. Even if this was an inadequate response, there was no proof that the boy was subjected to bullying that was disability-related.

8. *Krebs v. New Kensington-Arnold Sch. Dist*., 69 IDELR 9 (W.D. Pa. 2016). The parents of a ninth grade girl who committed suicide after suffering three years of persistent bullying at school were entitled to pursue their claim for money damages against the school district. The parents alleged that their complaint and requests for help were ignored or dismissed by school administrators.

9. *J.M. v. Selma City Bd. of Educ*., 116 LRP 48696 (S.D. Ala. 2016). A state anti-bullying law did not confer a private right of action, dismissing the claims that a ninth-grade boy with a visual impairment was entitled to money damages as a result of being bullied.

III. BEHAVIOR AND FBAs/BIPs

10. *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016). A student's repeated suspension, even if not related to the student's disability, should cause school districts to consider whether behavioral interventions must be added to the student's IEP.

11. *J.C. v. New York Dept. of Educ*., 67 IDELR 109 (2nd Cir. 2016), unpublished. The school district's decision not to conduct a formal FBA when informal positive interventions reduced an autistic student's unruly behaviors did not constitute a denial of FAPE.

12. *T.L. v. Lower Merion Sch. Dist*., 68 IDELR 12 (E.D. Pa. 2016). A Pennsylvania school district convened a series of IEP meetings adjusting the level and type of behavioral supports and services needed to meet the needs of an elementary

student with ADHD and LD. Eventually, the district conducted a formal FBA and drafted a Positive Behavior Support Plan. The district did not deny FAPE to the student because its continuing efforts to revise the behavior management techniques provided to the child constituted evidence that it met the obligation to address the child's behaviors.

13. *Garris v. District of Columbia*, 68 IDELR 194 (D.D.C. 2016). The BIP addressing a stuent's truancy was sufficient, despite the plan's failure to address a major incident preceding the girl's refusal to attend school (she had been assaulted by classmates).

14. *N.G. v. Tahachapi Unified Sch. Dist*., 117 LRP 14815 (E.D. Cal. 2017). A school district appropriately implemented behavior interventions to address the aggressive and eloping behaviors of a seven-year-old student with autism, and was not penalized for waiting to conduct a formal FBA. The court affirmed an ALJ's decision finding that the district had taken appropriate steps to address the student's behavioral challenges in view of the child's circumstances per Endrew F., such as adding an adult aide to work 1:1 with the student; using positive reinforcement; incorporating timers and cues for transitions; and eliminating triggers (i.e., the cafeteria).

15. *Paris Sch. Dist. v. A.H.*, 69 IDELR 243 (W.D. Ark. 2017). A BIP developed for a fourth grade student with Asperger's Syndrome was inappropriate because it failed to effectively address her problem behaviors. Teachers had identified the girl's behaviors as verbal disruptions, physical aggression, property destruction, and elopement. However, the BIP characterized her behavior as "noncompliance." The disconnect between the child's actual behavior issues and the draft BIP proved that the district had failed to properly address the child's behaviors at school.

16. *G.L. v. Saucon Valley Sch. Dist*., 117 LRP 11567 (E.D. Pa. 2017). The positive outcomes documented in witness statements and progress reports for an eleven-year-old boy with an emotional disturbance proved that the school district had adequately addressed the boy's behavioral needs. The records showed that the child had reduced elopement, increased classroom participation, and improved his reading skills.

17. *Brandywine Heights Area Sch. Dist. v. B.M.,* 69 IDELR 212 (E.D. Pa. 2017). A school district's failure to address the behaviors of a preschool student with autism led to an award of compensatory education services. The district waited six months into the child's Kindergarten year to develop an appropriate IEP, despite evidence that the child had been exhibiting the inappropriate behaviors since entering preschool.

IV. CHILD FIND/ELIGIBILITY/EVALUATIONS

18. *Memorandum to State Directors of Special Education,* 67 IDELR 272 (OSEP 2016). A preschool program's failure to implement RTI cannot delay or deny the receiving school district's obligation to "locate, identify, and evaluate" a child suspected of having a disability.

19. *R.E. v. Brandywine Cent. Sch. Dist*., 67 IDELR 214 (S.D.N.Y. 2016). Documentation showed that an elementary age boy with Tourette Syndrome was making meaningful educational progress under a Section 504 plan. This documentation justified the school district's decision not to refer the child for a full IDEA eligibility evaluation.

20. *Timothy O. and Amy O. v. Paso Robles Unified Sch. Dist*., 67 IDELR 227, 822 F.3d 1105 (9th Cir. 2016), *cert. denied*, 117 LRP 15003 (U.S. 2017). A "casual" observation of a preschool student by a staff member "off the top of [his] head" was not a sufficient basis for failing to conduct an evaluation to determine if the student had autism. The court held that eligibility decisions must be based on evaluations that conform to the IDEA requirements, and cannot be based on subjective observations of school staff.

21. *Letter to Morath*, 68 IDELR 231 (OSERS 2016). The State of Texas was cited for enforcing a "cap" of 8.5 percent on the number of students identified for IDEA eligibility. The state's cap was resulting in the under-identification of "thousands" of students with disabilities, according to the USDOE.

22. *Mr. and Mrs. Doe v. Cape Elizabeth Sch. Dist*., 68 IDELR 61 (1st Cir. 2016). A student who is earning straight "A's" and has above-average scores on statewide assessments may still be eligible for special education and related services. The teen had a deficit in reading fluency, and the school district erred in relying solely on her grades and state testing scores to determine that she was ineligible for services.

23. *L.J. v. Pittsburgh Unified Sch. Dist*., 68 IDELR 121 (9th Cir. 2016); *amended and replaced by* 117 LRP 6572 (9th Cir. 2017). The school district erred by discounting an elementary student's multiple suspensions and suicide attempts, and the counseling and other services provided to him at school, when determining that he was not eligible for special education and related services. The child began having serious behavior problems at school in the second grade, including bullying other students, anger, lack of self-control, and suicidal ideations. The district provided a Behavior Support Plan and revised it multiple times without success, then provided a 1:1 behavioral aide. An IDEA eligibility evaluation concluded that he was not eligible for special education and related services. Two suicide attempts followed, and a psychiatric hospitalization. Although the student made satisfactory academic progress, his extreme behavior problems at school continued. A follow-up eligibility evaluation found that he

had ADHD but was still not eligible under the IDEA due to his academic performance. The court held that the specialized services provided to the student in the general education program (Behavior Support Plan, 1:1 aide, accommodations) constituted "special education" and were not merely general education interventions.

24. *James v. District of Columbia*, 68 IDELR 1 (D.D.C. 2016). The school district violated the IDEA by failing to conduct new assessments as a part of a reevaluation for a teen with ID in response to the guardian's request for a comprehensive psychological evaluation.

25. *Horne v. Pomomac Preparatory Charter Sch*., 68 IDELR 38 (D.D.C. 2016). A first grade student was found ineligible for special education and related services. Two months the boy tried to kill himself by jumping out of a school window. The district violated the IDEA by failing to reconsider the boy's eligibility in view of the seriousness of the behavior. The federal judge noted that the suicide attempt met one of the ED criteria, "inappropriate behavior under normal circumstances."

26. *Letter to Carroll*, 68 IDELR 279 (OSEP 2016). School districts must respond to a parental request for an IEE by either agreeing to pay for an IEE, or by initiating a due process hearing to defend the appropriateness of the evaluation with which the parents disagree.

27. *Krawietz v. Galveston Ind. Sch. Dist.,* 69 IDELR 207 (S.D. Tex. 2017). Development of a 504 Plan does not relieve a school district of its obligation to consider IDEA eligibility for an IEP should circumstances warrant. In this case, a high school student with ED, OHI, and SLD had a 504 Plan. However, the school district erred by failing to conduct a full IDEA eligibility evaluation when the student's standardized test scores declined, he failed several times, and engaged in criminal behavior.

28. *Davis v. District of Columbia*, 69 IDELR 218 (D.D.C. 2017). A charter school violated the IDEA when it failed to reevaluate a girl whose grades plummeted after she was removed from special education eligibility the previous year.

29. *B.G. v. City of Chicago Sch. Dist. 299*, 69 IDELR 177 (N.D. Ill 2017). A school district did not violate the IDEA when it evaluated a bilingual student in English rather than Spanish. The student spoke Spanish at home, but was fluent in English and had informed the school evaluators that he felt more comfortable taking assessments in English.

30. *Joanna S. v. South Kingstown Pub. Sch. Dist*., 69 IDELR 179 (D.R.I. 2017). A student's eligibility classification (e.g., Autism v. ED) or "label" is unimportant so long as it does not interfere with the development of an appropriate IEP and the provision of educational services.

31. *A.A. v. Goleta Union Sch. Dist*., 69 IDELR 156 (C.D. Cal. 2017). Parents who failed to justify an exception to the district's stated "cap" on costs of IEEs based on proof of "unique circumstances" were not entitled to recover reimbursement for a $6,000 neuropsychological examination.

32. *G.D. v. West Chester Area Sch. Dist*., 117 LRP 33803 (E.D. Pa. 2017). The parents of a gifted third-grade student with an anxiety disorder disagreed with the results of a school psychologist's eligibility determination finding that their child was not "in need of" special education and related services. However, there was no evidence that the school psychologist's evaluation was "legally deficient" simply because she disagreed with the recommendation of the child's treating therapist. The court held that the school district had appropriately considered the child's anxiety issues by developing a 504 Plan offering designation of a "trusted adult" for the child.

V. DISCIPLINE OF STUDENTS WITH DISABILITIES

33. *Smith v. Rockwood R-VI Sch. Dist. et al*., 69 IDELR 268 (E.D. Mo. 2017). The parent of a student diagnosed with autism, Tourette Syndrome, ED (Major Depression and OCD), and ADHD sought money damages for her son's emotional pain and suffering, humiliation, and loss of reputation allegedly caused by his 180-day suspension from school. The student was suspended after an MDR concluded that his misbehavior was "directly and substantially related to" his disabilities (it appears likely that the suspension was issued per the 45-day exception). The case was dismissed for failure to exhaust administrative remedies, with the court holding that the student's claims were based on his alleged deprivation of educational benefits (e.g., a denial of FAPE), and therefore must be exhausted administratively.

VI. IEP DEVELOPMENT AND IMPLEMENTATION

34. *L.M.H. v. Arizona Dept. of Educ*., 68 IDELR 41 (D. Ariz. 2016). In one of the few cases to interpret the IDEA's provision requiring IEP services to be "based on peer reviewed research "to the extent practicable," a federal court in Arizona held that the school district denied FAPE to a preschool student with a speech impairment by failing to consider any peer-reviewed research in recommending the amount and frequency of speech/language therapy for the child. The IEP team based its recommendation of speech therapy (2x per week for 30 minutes) on its speech therapist's professional knowledge and coursework, rather than on peer-reviewed research. The court found that the school district was not legally bound to follow the ASHA's recommendation for 3-5x per week, but that the IEP team was legally bound to cite peer-reviewed research as a basis for its therapy recommendation.

35. *Kent Sch. Dist. v. N.H. and D.N.,* 68 IDELR 276 (W.D. Wash. 2016). The court held that the fact that the 1:1 nurse provided for a first grade student missed two days of work during the first semester of the school year did not constitute a material implementation failure of the child's IEP. The court overturned a hearing officer's decision that the school district's failure to include provision of a substitute nurse in the child's IEP was a denial of FAPE. There was no evidence that the two missed days impeded the child's educational progress (she only missed one day of school as a result).

36. *Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ*., 68 IDELR 33 (6th Cir. 2016), *unpublished*. The school district's failure to conduct timely transition services assessments, and its failure to consider the student's preferences and needs constituted a denial of FAPE. The district erred in basing the development of the girl's transition services plan on observations of her wiping tables and shredding documents, and this did not take into account the girl's actual preferences. The court recognized that the antagonistic nature of the IEP meetings (yelling, slamming doors, and general animosity) made it unlikely that the student's input could have been received. But this did not excuse the districts from its obligation to conduct appropriate transition assessments that provided insight into the girl's preferences and abilities.

37. *L.B. and F.B. v. New York City Dept. of Educ*., 68 IDELR 195 (S.D.N.Y. 2016). The transition plan developed for a student with cognitive, academic, and speech/language delays was general and somewhat vague (stating that the student would "integrate into the community," "attend a post-secondary educational vocational program," "live independently," and "be employed"). However, the IEP goals mitigated the lack of detail in the transition plan by including goals and objectives for OT, S/L therapy, and counseling that were expressly designed to promote independence, pragmatic language skills, self-advocacy, social reasoning and problem–solving.

38. *K.P. v. District of Columbia*, 69 IDELR 233 (D.D.C. 2017), *unpublished*. The IDEA's "stay put" provision required a school district to continue a single-classroom placement for a student with autism pending the completion of a due process hearing, even though the IEP did not actually describe the type of classroom the student would attend.

39. *M.C. v. Antelope Valley Union H.S. Dist*., 69 IDELR 203 (9th Cir. 2017). A district's unilateral modification of IEP services for a blind student with Norrie Disease constituted a substantive violation of the parent's right to meaningful participation in the development of her son's IEP. Interestingly, the modification substantially INCREASED the amount of VI services provided to the student (from 240 minutes per month to 240 minutes per week).

40. *A.V. v. Lemon Grove Sch Dist*., 69 IDELR 155 (S.D. Cal. 2017). The IEP team's discussion of parents' preferred placement, and the team's willingness to

investigate the advocate's concerns about its proposed placement proved that the district did not "predetermine" the student's placement.

41. *Pangrel v. Peoria Unified Sch. Dist.,* 69 IDELR 133 (D. Ariz. 2017). A school district did not violate the IDEA when an IEP team continued working on a transition plan after the parent and two advocates left the IEP meeting due to scheduling issues. The evidence showed that the parent and advocates were active participants in the IEP development for two hours prior to their departure, and that the parent attended and participated in two follow-up IEP meetings.

42. *C.M. v. New York City Dept. of Educ*., 69 IDELR 117 (S.D.N.Y. 2017). Gaps in the annual goals for a thirteen-year-old boy with autism were remedied by the details provided in the short-term objectives. The school district was not liable for the $94,000 per year private placement chosen by the parents.

43. *Nicholas H. v. Norristown Area Sch. Dist*., 69 IDELR 118 (E.D. Pa. 2017). The IEP for a teenage boy diagnosed with LD, ADHD, and anxiety failed to describe the services offered in clear and specific language that the parents could understand. This failure to draft the IEP by including specific language explaining terms like "co-teaching" and "direct instruction" led to the court refusing to consider the testimony of staff who explained what this general language was intended to mean.

44. J.R. v. Smith, 117 LRP 34578 (D. Maryland 2017). A special education administrator's statement to parents during a telephone conversation that they should be "ready for a fight" when they arrived at their child's IEP meeting did not constitute "pre-determinism." The "robust discussion" that occurred during the subsequent IEP meeting about two potential placements proved that the school district was effectively considering the parents' preferred placement option. The federal judge found that the administrator's pre-IEP meeting statement was meant simply to alert the parents to the state-of-mind of the IEP Chairperson.

45. *McKnight v. Lyon Co. Sch. Dist*., 117 LRP 33805 (D. Nevada 2017). The parent of a child with a disability asked to participate in IEP meetings via email rather than in person after she had filed a request for a due process hearing against the district. The court found that the district had not engaged in retaliation against the parent by refusing to allow her to participate via email, since the district gave a non-discriminatory reason for refusing the request. The district asserted that its reason for refusing to conduct IEP meetings via email is that email-only participation would limit collaboration by IEP team members.

46. *F.L. ex rel. R.C.L. v. Bd. of Educ. of the Great Neck U.F.S.D*., 117 LRP 34949 (E.D.N.Y. 2017). The creation of similar IEP goals over several school years does not automatically mean that a school district has failed to provide FAPE to a student with a disability. The court ruled that the critical question was

whether the IEPs allowed the student to receive a meaningful educational benefit.

47. *M.L. by Leiman v. Smith*, 70 IDELR 142 (4th Cir. 2017). The parents of a nine-year-old boy with Down Syndrome did not prove that their school district denied the child FAPE by offering an IEP that did not include instruction in the customs and practices of Orthodox Judaism. The court held that the IDEA's definition of FAPE does not include religious and cultural instruction.

48. *Sean C. and Helen C. v. Oxford Area Sch. Dist.,* 117 LRP 33250 (E.D. Pa. 2017). This court held that the substantive appropriateness of IEPs must be judged based on the information available at the time of the IEP's formation, and not be second-guessed by information that becomes available afterwards.

49. *Benjamin A. by Micheal and Karen A. v. Unionville-Chadds Ford Sch. Dist*., 117 LRP 33082 (E.D. Pa. 2017). The court held that the fact that the IEPs developed for an elementary school boy with ADHD did not specifically refer to development of "executive functioning skills" as an annual measurable IEP goal did not render the IEPs deficient. Many of the individual skills the IEP focused on were directly related to development of executive functioning skills, including task initiation, goals for writing and reading comprehension.

VII. FERPA/CONFIDENTIALITY

50. *W.A. and M.S. v. Hendrick Hudson Cent. Sch. Dist*., 67 IDELR IDELR 178 (S.D.N.Y. 2016). A school district may have violated the Constitutional rights of a high school student with a disability when it sent the student's educational records containing confidential medical information to several potential private school placements without authorization. Although there is no private right of action under FERPA, the court held that the parent could sue the district under the 14th Amendment for the confidentiality breach.

VIII. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

51. *Sch. Dist. v. Pittsburgh v. C.M.C*., 68 IDELR 102 (W.D. Pa. 2016). A fifteen-year-old girl with Asperger's Sydrome was not a candidate for online instruction while being phased back into general school attendance following a physical altercation with a classmate. The evidence showed that the girl was "obsessed" with the internet and had great difficulty staying on task while on a computer. Moreover, the online program would not meet her need for social interaction.

52. *G.S. and A.S. v. New York City Dept. of Educ*., 68 IDELR 154 (S.D.N.Y. 2016). A school district's refusal to include music therapy in the IEP of a nine-year-old

girl with autism did not constitute a denial of FAPE. The evidence showed that the girl was verbal, and that the counseling services included in the IEP were sufficient to address her social-emotional needs and interpersonal skills.

53. *K.M. v. Tehachapi Unified Sch. Dist.,* 69 IDELR 241 (E.D. Cal. 217). IEP goals do not have to specifically address each of a student's areas of educational need, so long as the IEP goals as a whole adequately address these needs. In this case, the IEP for an elementary school student with autism addressed the child's need to comply with directions. None of the goals specifically addressed the need to stay on task, but the court ruled that the goals as a whole (complying with 2-3 step directions; provision of a visual schedule; preferential seating; on-task reminders; and a 1:1 aide) adequately addressed this deficit area.

54. *M.G. v. District of Columbia,* 69 IDELR 246 (D.D.C. 2017). After a finding that the school district had failed to provide FAPE to a high school student with multiple disabilities, the court also held that the private placement chosen by the parents was "appropriate" for the student. The district challenged the appropriateness of the private placement on the grounds that it did not provide any special education instruction via "pull out" services. The court held that the services provided by the private school (including a small, quiet and supportive environment) led to the student making passing grades and many friends.

55. *Parrish v. Bentonville Sch. Dist*., 69 IDLER 219 (W.D. Ark. 2017). An Arkansas school district that moved a third-grade student with autism and violent behaviors from a general education classroom to an autism class for one school day pending an IEP meeting did not violate the IDEA. The student had a history of physical aggression at school, and on the day of his removal had charged another student. The student was physically restrained and the parent notified that day that her son would attend the autism classroom pending an IEP meeting the following day. The court held that the temporary change in placement did not violate the IDEA because the student's educational services remained the same and the temporary removal did not exceed ten school days.

56. *E.F. v. Newport Mesa Unified Sch. Dist*., 69 IDELR 206 (9th Cir. 2017). The school district's proposed IEP provided FAPE for a kindergarten student with autism, despite the fact that the district did not conduct an AT evaluation for a high-tech communication device. The court determined that the non-electronic AT provided to the child enabled him to make educational progress, and that the student was not ready to handle high-tech communication devices.

57. *S.G.W. v. Eugene Sch. Dist*., 69 IDELR 181 (D. Oregon 2017). A school district violated a high school student's right to appropriate transition services when it failed to conduct age-appropriate transition assessments to determine the girl's unique needs. Instead, the district provided the girl access to programs and services that were generally available to all students in the district (attend career day; take finance classes; visit a local community college).

58. *V.W. et al. v. Conway, et al.*, 69 IDELR 185 (N.D.N.Y. 2017). A federal judge has ordered the State of New York to ensure that incarcerated juveniles with disabilities are provided FAPE, even when placed in solitary confinement. The juveniles were deprived of educational services when in solitary confinement except for the provision of "cell packets." The judge found that this practice violated the students' rights, and that the jail's need to maintain safety and security was not as strong as the juveniles' right to appropriate educational services.

IX. LEAST RESTRICTIVE ENVIRONMENT

59. *L.H. v. Hamilton Co. Dept. of Educ.*, 68 IDELR 274 (E.D. Tenn. 2016). The school district violated the IDEA by proposing a special education classroom placement for a ten-year-old boy with Down Syndrome because he was unable to master general education curriculum content. The court held that the DIEA requires placement in general education classes "to the maximum extent possible," and that the boy was able to make educational progress despite his inability to "keep pace with" his general education classmates.

60. *T.M. by T.M. and C.M. v. Quakertown Cmty Sch. Dist.*, 69 IDELR 276 (E.D. Pa. 2017). The parents of an eleven-year-old student with autism, global apraxia, and an ID alleged that their child should be provided 1:1 academic instruction rather than opportunities for socialization with peers. The court found that the student had made increasing gains in socialization, and upheld the school district's placement.

X. MONEY DAMAGES AND LIABILITY

61. *T.G. v. Detroit Pub. Schs.,* 69 IDELR 7 (E.D. Mich. 2016). A high school student with severe physical and cognitive impairments sustained severe injuries to his head and face as a result of falling out of his wheelchair at school. The parents alleged that the special education teacher and two classroom assistants were guilty of negligence and sought money damages under Section 1983. The court dismissed the claims on the grounds that, even if true, the allegations failed to satisfy the test for behavior that would "shock the conscience of the average person."

62. *Garza v. Lansing Sch. Dist.*, 68 IDELR 10 (W.D. Mich. 2016). This complaint alleged that school administrators failed to investigate numerous reports that a special education teacher was abusing students in his classroom. The court refused to dismiss the claims seeking money damages under Section 1983.

63. *Conklin v. Jefferson Co. Bd. of Educ.*, 68 IDELR 122 (N.D.W.Va. 2016). A high school student with multiple disabilities sought money damages after her was placed on homebound instruction following an altercation with his special

education classroom teacher. The student was allegedly grabbed by the neck and pushed into a bookcase by the teacher, resulting in the teacher being criminally charged with assault. After the incident, the student became fearful and anxious about seeing the teacher, and was placed on homebound instruction as an alternative to attending the same teacher's classroom. The court refused to dismiss the student's claims alleging discrimination under Section 504 and Title II of the ADA.

64. *K.T. v. Pittsburg Unified Sch. Dist*., 68 IDELR 272 (N.D. Cal. 2016). A principal allegedly failed to act until two days after receiving a report of alleged abuse of an eight-year-old girl with autism by a special education aide. The court held that the parents wee entitled to pursue their claims of deliberate indifference seeking money damages.

65. *Fernandez v. City of New York*, 68 IDELR 50 (N.Y. Sup. Ct. 2016), *unpublished*. A bus aide who suffered serious and permanent injuries after being attacked by a five-year-old boy with disabilities could sue the school district that contracted with a private carrier for transportation services. The court held that the school district had knowledge that the child would become violent with no provocation, and had previously been violent at school. In fact, the evidence showed that the district had previously recognized that the child became especially violent when on the bus with his brother.

66. *A.C. v. Scranton Sch. Dist*., 69 IDELR 211 (M.D. Pa. 2017). The school district was not responsible for the actions of private school staff using inappropriate physical restraints at least 23 times over a three-year period on a ten-year-old boy with Developmental Disorder, Autism, Intellectual Disabilities, ADHA, and Mixed Receptive/Expressive Disorder. The court refused to hold the public school district responsible for the actions of the private school employees, despite the existence of an indemnity clause in the contract between the public and private school agencies.

67. *McKenzie v. Talladega City Bd. of Educ*., 69 IDELR 1249 (N.D. Ala. 2017). The parents of a nonverbal 14-year-old girl with multiple severe disabilities could not seek money damages under Section 1983 for injuries their daughter sustained during a bus evacuation drill. During the bus evacuation drill, the bus driver and a special education teacher instructed the student to leave her wheelchair and exit the bus with the other students. As a result, the girl fell and sustained broken bones in his wrist and next. The parents' failure to properly plead "conscience shocking behavior" resulted in dismissal of the claims.

68. *Maldanado v. City of New York Bd. of Educ*., 69 IDELR 283 (N.Y. Sup.Ct. 2017), *unpublished*. The father of a five-year-old boy with Autism, ADHD, and ID could sue the public school district for injuries his son sustained during a sexual assault while riding a special education bus. The boy continued to ride the special education bus despite reports to school officials from bus monitors that the child had been found in various stages of undress during several bus

rides. The evidence that the district was aware of potential safety issues led to the court's refusal to dismiss the claims.

XI. PRIVATE SCHOOL/RESIDENTIAL PLACEMENT

69. *R.B. and M.L.B. v. New York City Dept. of Education,* 69 IDELR 263 (2nd Cir. 2017). The parents of a high school student with Autism alleged that the school district had failed to conduct appropriate transition assessments and sought reimbursement for private school tuition. The court found that the district had conducted appropriate transition assessment procedures (vocational interview with the parents; consultation with private school teachers; invited the student to meetings where transition services were discussed), despite not conduct formal transition assessments.

70. *Y.D. v. New York City Dept. of Educ*., 69 IDELR 178 (S.D.N.Y. 2017). The failure to include a specific sensory diet in a nine-year-old boy's IEP did not constitute a denial of FAPE. The federal judge ruled that IEP's do not have to contain a detailed sensory diet, so long as the IEP contains information about the student's sensory needs and suggests appropriate ways of managing these needs (e.g., proprioceptive movement-based activities; singing familiar songs).

71. J.S. v. New York City Dept. of Education, 69 IDELR 153 (S.D.N.Y. 2017). The circulation of a draft IEP prior to an IEP meeting does not constitute "predetermination," ruled a federal judge in New York. The judge rejected the parents' allegation that the district disregarded their input by giving them a draft IEP before an IEP meeting and recommending the same specific classroom several years in a row.

72. *Doe ex rel. J.D. v. League Sch. of Greater Boston Inc*., 117 LRP 34219 (D. Mass. 2017). A private special education school could be liable for a Title IX claim since it had accepted IDEA funds from the student's home school district. Even though the private school benefitted only indirectly from the IDEA funds, it legally became a "federal funding recipient" and could be liable for a denial of FAPE.

73. *J.T. v. Renee and Floyd T. v. Dept. of Educ. of State of Hawaii*, 117 LRP 33184 (9th Cir. 2017). The Ninth Circuit Court of Appeals held that courts should not consider whether a student actually made progress in a private school placement when determining whether placement at a private school offered "appropriate" educational services. Rather, the proper inquiry is whether, at the time of enrollment, the private school placement was "specially designed to meet the unique needs of a student with a disability."

XII. PROCEDURAL VIOLATIONS/SAFEGUARDS

74. *Letter to Andel*, 67 IDELR 156 (OSEP 2016). School districts that, when confronted with the unexpected attendance of a parent's attorney at an IEP meeting, cancel and reschedule the IEP meeting so that the school attorney may attend violate the IDEA's procedural safeguards, including the parents' right to "meaningful participation."

75. *R.F. v. Delano Union Sch. Dist*., 69 IDELR 236 (E.D. Cal. 2017). A parent of a child with a disability may seek federal court adjudication of issues such as "stay put" during the pendency of a due process hearing. But that does not allow parents to tack on other FAPE-related claims, which must be exhausted at the administrative level.

76. *Forrester v. Indep. Sch. Dist. No. 19 of Carter Co., State of Oklahoma*, 69 IDELR 247 (E.D. Okla. 2017). The federal courts are split on the issue of whether parents have standing to pursue 504/Title II discrimination claims on their own behalf. In this case, the judge ruled that parents do not have standing to pursue discrimination claims on their own behalf.

77. *Avila v. Spokane Sch. Dist*., 69 IDELR 202 and 69 IDELR 204 (9th Cir. 2017). In a case of first impression, the Ninth Circuit ruled that the IDEA's two-year statute of limitations does not bar suits seeking relief for alleged denials of FAPE that occurred more than two years earlier. The IDEA specifically requires parents to file their IDEA claim within two years of the time they "new or should have known" that a potential IDEA violation had occurred, but is unclear as to whether this limits the time period for which a parent can seek relief.

78. *S.H. v. Tustin Unified Sch. Dist.,* 69 IDELR 176 (9th Cir. 2017). A California federal court ruled that the parents of a thirteen-year-old girl had more than adequate opportunity for input into the development of her IEP.

79. *T.O. v. Cumberland Co. Bd. of Educ*., 69 IDELR 182 (E.D.N.C. 2017). Lawsuit was dismissed for failure to exhaust IDEA administrative remedies. An administrative law judge had previously dismissed the parent's claims because she had refused to exchange with the school district the evidence she intended to introduce at the hearing.

80. *Porco v. Lewis Palmer Sch. Dist. 38*, 69 IDELR 150 (D. Colo. 2017). Voluntary resolution of an OCR complaint does not equate to exhaustion of IDEA's administrative remedies. A student who filed a federal lawsuit seeking damages for his expulsion and denial of FAPE was required to proceed to a due process hearing prior to seeking relief in federal court.

81. *McKnight v. U.S. Dept. of Education, Office of Civil Rights*, 117 LRP 14542 (D. Nev. 2017). The parent of a student with a disability sued OCR alleging that

the agency had violated Section 504/ADA by (1) failing to conduct a fact-specific investigation; (2) failing to ensure that her 504 hearing was impartial; (3) failing to ensure that her child's IEPs were appropriate; and (4) failing to ensure that the district had a designated 504 Coordinator. The parent also alleged that OCR had retaliated against her for sending an email complaining about a previous OCR investigation. The magistrate judge issued a Report and Recommendation advising dismissal of the claims against OCR, and giving the parent an opportunity to re-file her claims against a proper Defendant, suggesting that IDEA and Section 504 claims for denials of FAPE should be brought against an LEA rather than the federal agency.

82. *M.R. and J.R. v. Ridley Sch. Dist*., 70 IDELR 141 (3rd Cir. 2017). The Third Circuit ruled in a case of first impression that parents who prove that a school district violated the IDEA's "stay put" provision and win compensatory services qualify as a "prevailing party" under the IDEA, making them eligible for an award of attorney's fees.

83. *M.C. by D.C. v. Oregon Dept. of Education*, 117 LRP 33447 (9th Cir. 2017). A parent's claims against the State Dept. of Education were improper because they did not involve the identification, evaluation, placement, or provision of educational services to a fifth-grade student with disabilities. The claims brought against the SEA by the parent sought reimbursement for a $300 bill from the student's physician for two telephone conversations with school personnel to discuss evaluation results. The SEA had investigated the parent's complaint that they were billed for the physician's time during the calls, and found that it was the physician who initiated the telephone conversations with the school in order to gather information for an upcoming office visit.

XIII. COMPENSATORY EDUCATION AND OTHER REMEDIES

84. *Tahachapi Unified Sch. Dist. v. K.M*., 117 LRP 14366 (E.D. Cal. 2017). A federal judge ordered a California school district o pay $15,000 for a summer Lindamood-Bell reading program, despite the fact that an appeal of the due process order was pending.

85. *Foster v. Bd. of Educ. of the City of Chicago et al*., 69 IDELR 205 (7th Cir. 2017), *unpublished.* The court upheld a written settlement agreement that waived the parent's claims, including Section 1983 claims for money damages. the parent had been provided a court-appointed attorney to assist her in reaching the settlement agreement. The mother left the settlement negotiations before the written agreement was completed, but had verbally acknowledged her agreement with the terms. The parent's court-appointed counsel signed the agreement after the mother left.

XIV. ATTORNEY'S FEES AND ATTORNEY CONDUCT

86. *Morgan Hill Concerned Parents Assoc. v. Calif. Dept. of Educ*., 117 LRP 4435 (E.D. Cal. 2017). A federal court ordered the CDE to produce more than 29,000 documents in the specific electronic format requested by the plaintiffs in this class action lawsuit alleged a statewide denial of FAPE. The plaintiffs sought the release of emails from CDE including all "metadata" rather than in "load" format. The court rejected CDE's argument that production of all emails with metadata would be overly burdensome.

87. *Jefferson County Bd*. of Educ. v. Bryan M. and Darcy M. ex rel. R.M., 70 IDELR 145 (11th Cir. 2017). A parent who wins substantive relief becomes a "prevailing party" eligible for an award of attorney's fees, even when the parent later decides not to accept the substantive award of services. In this case, the parents of a student with a disability won a due process hearing challenging the district's proposed placement of their child. Despite winning the case, the parents chose to withdraw the student and enroll him in private school.

88. *R.J. v. Rivera*, 70 IDELR 152 (E.D. Pa. 2017). The Pennslvania Dept. of Education is liable for an award of attorney's fees against a charter school that went bankrupt following an adverse due process hearing decision. The court held that the parents of the student were entitled to recover the costs of their attorney's fees, even though the charter school had gone out of business. In such cases, the court held, the State Educational Agency was financially liable for payment of the attorney's fees because the State agency retains ultimate responsibility for ensuring that students receive FAPE.

XV. RETALIATION

89. *Z.F. by M.G. and J.F. v. Ripon Unified Sch. Dist*., 70 IDELR 19 (E.D. Cal. 2017). Parents who claimed that a California district and a private nonprofit organization unlawfully restricted their children's access to ABA services were not entitled to relief under Section 504. The U.S. District Court, Eastern District of California held that the parents' failure to establish "deliberate indifference" to their children's rights required it to grant the district's motion for judgment. The fact that a popular special education program has a waitlist or eligibility criteria does not in itself prove that a district intentionally denied students access to necessary services. To establish liability under Section 504, the parents must show that the district: 1) knew the student's federally protected rights were likely to be violated; and 2) failed to act despite that knowledge. These parents argued that the district and the nonprofit wrongfully used the waitlist and eligibility criteria to screen out otherwise qualified children. However, they did not explain how the enforcement of the program's requirements amounted to deliberate indifference.

90. *Hamilton v. Hite*, 117 LRP 35206 (E.D. Pa. 2017). Evidence showing that the school district repeatedly offered educational services to the grandmother of a child with severe behavioral problems negated the grandmother's claim that the district retaliated against her for her advocacy by refusing to provide services, repeatedly suspending the student, and filing complaint with child protective services. The evidence showed that the grandmother had consistently declined the services offered by the district. Moreover, each suspension was the result of significant behavior offenses, including physical aggression (hitting and choking students and staff). The reports to child protective services were warranted due to staff overhearing the grandmother telling the child to "beat the ass" of any kid who hit them.

XVI. RESTRAINT AND ISOLATION

91. *Phipps v*. Clark Co. Sch. Dist., 67 IDELR 91 (D. Nev. 2016). An aide claimed that she fully complied with the district's crisis prevention training when she dragged a nonverbal student with Autism by his wrist and pinned him to the floor with her knees and elbows. The court refused to dismiss the claims, and allowed the case to proceed to trial seeking money damages.

92. *I.L. by D.T. v. Tenn. Dept. of Education and Knox County Schools*, 117 LRP _____ (E.D. Tenn. 2017). The federal judge found in favor of the school district on the issue of whether the IEPs developed for a ten-year-old girl with Down Syndrome provided FAPE in the "least restrictive environment" by proposing a split special ed./general ed. placement. The girl enrolled in the school district having been home-schooled for most of her educational career, and brought an IEP that placed her in a general education classroom with support services. Within a few days after her enrollment, her teachers and district staff became concerned about her behavior (which included yelling obscenities, pinching staffs' genital areas, throwing objects, and spitting). The child's behavior prevented her from making educational progress and significantly disrupted the general education classroom environment, even with the provision of two 1:1 assistants and consultation by a BCBA. During the pendency of the legal proceedings, the classroom aides used a gym mat to protect themselves from injury and spitting/hitting during removals of the child to the hallway when her disruption significantly interfered with instruction in the classroom. The court held that the use of the gym mat (for four days) constituted an illegal "seclusion" within the meaning of a State law, and awarded four days' of compensatory education services for the child.

XVII. SERVICE ANIMALS

93. *United States v. Gates-Chili Cent. Sch. Dist*., 68 IDELR 70 (W.D.N.Y. 2016). This case may be the first to interpret the USDOJ's regulations requiring a service animal to be "under the handler's control." The government (OCR)

claimed that the child in question only needed assistance with untethering and occasional prompting. The district argued that an adult handler was required to command the dog. The court denied the government's motion for summary judgment.

94. *A.P. v. Pennsbury Sch. Dist*., 68 IDELR 132 (E.D. Pa. 2016). A federal court denied the parents' request for a preliminary injunction allowing her child with disabilities to attend school with her service dog. The school district had refused to permit the dog on campus after it had bitten a classmate, and had exhibited frequent incidents of barking, growling, nipping, and chewing on classroom supplies. The court noted that the DOJ regulations expressly permitted a school district to ban a dog that cannot be controlled by its handler and bites others.

XVIII. SECTION 504 AND TITLE II OF THE ADA

95. *J.C. v. Cambrian Sch. Dist*., 67 IDDELR 199 (9th Cir. 2016), unpublished, A charter school that rejected the enrollment application of a nonresident student with ADHD was not guilty of disability-based discrimination. The charter school refused to enroll the student because its classrooms were at capacity. The court held that schools can enforce facially neutral admissions criteria, so long as these do not operate to screen out otherwise qualified students with disabilities.

96. *Pollack and Quirion v*. Regional Sch. Unit 75, 117 LRP 17221 (D. Me. 2017). The parents of an 18-year-old student with Autism sought a ruling to force a school district to allow the student to wear a recording device to school so that the parents could know what happened all day. A hearing officer previously ruled that the student had made "continuous and significant progress" without the use of a recording device, and therefore was not entitled to wear a recording device to receive FAPE.

97. *Harrington v. Jamesville Cent. Sch. Dist. et al.,* 117 LRP 14109 (N.D.N.Y. 2017). A school district barred an honors student with anxiety and depression from participating in a school play as a punishment for plagiarism. His parents argued that the plagiarism was actually a mistake in citation caused by their son's mental health conditions, and that participation in the play was therapeutic. The court upheld the school district's actions, ruling that the actions were not based on the student's disability, but on his behavior.

98. *M.M. v. New York City Dept. of Educ*., 69 IDELR 208 (S.D.N.Y. 2017). A school district did not act in bad faith or gross misjudgment when it refused to provide home-based instruction, assistive technology, and behavior services to a ten-year-old girl with Autism. The parent had previously won a due process hearing seeking the provision of these services. However, the court ruled that

the district's loss in the due process hearing did not prove that it had acted with the requisite intent to recover money damages under Section 504/ADA.