YEAR OR TWO IN REVIEW: NATIONAL UPDATE OF CASE LAW UNDER THE IDEA AND § 504/A.D.A.[1]

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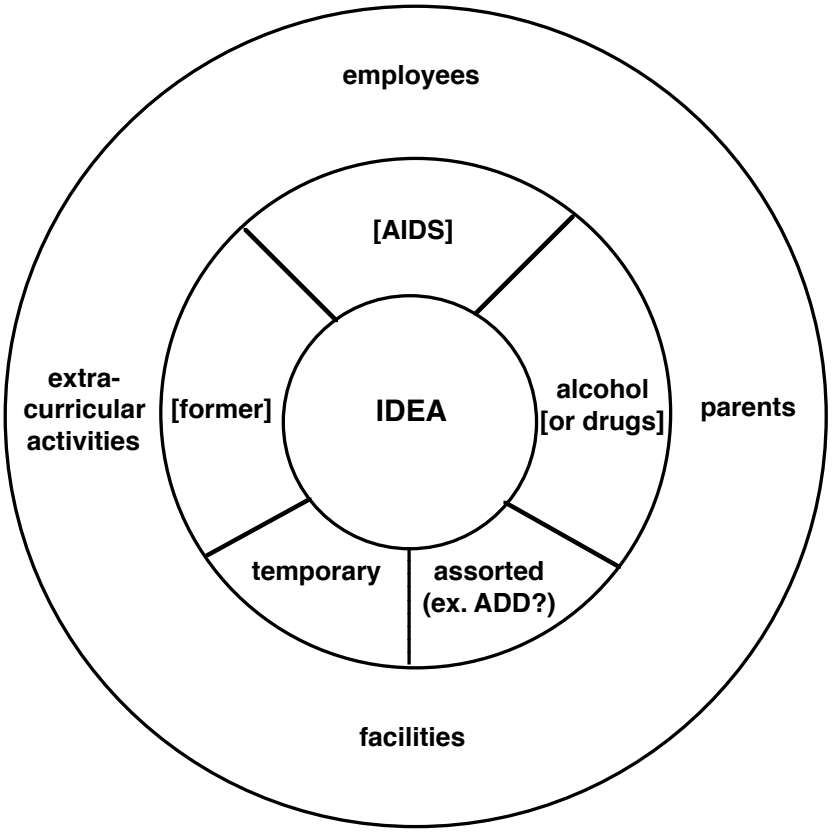

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Notes:

- ***P*** = Parent won; ***S*** = School district won; **( )** = Inconclusive
- supra = cross reference to earlier full citation; infra = cross reference to subsequent citation
- Court decisions in the Tenth Circuit are in **bold font**.
- Court decisions or component concepts for initial discussion are highlighted in yellow.
- Decisions for particular attention are in shaded in grey.
- The acronyms are listed in a glossary on the last page of this document.

[1] A long version of the Zirkel National Update, which extends back to 1998, is available as a free download at www.nasdse.org (in the "Publications" section). The coverage of both this document and the long-term version is limited to officially published decisions (and those in the Federal Appendix).

I. IDENTIFICATION (INCLUDING CHILD FIND)

S Q.W. v. Bd. of Educ. of Fayette Cty., 630 F. App'x 580, 66 IDELR ¶ 212 (6th Cir. 2015), cert. denied, 136 S. Ct. 1729 (2016)
- upheld exiting of high-functioning elementary school student with autism IEP under the IDEA, deferring to evaluation demonstrating his "academic success, an absence of significant social difficulties at school, and a disconnect between his school-based success and at-home problems"

S R.E. v. Brewster Cent. Sch. Dist., 180 F. Supp. 3d 262, 67 IDELR ¶ 214 (S.D.N.Y. 2016)
- rejected parent's child find claim in the wake of private diagnoses (e.g., Tourette syndrome) in light of § 504 plan with good grades and proficient NCLB testing

P Horne v. Potomac Preparatory P.C.S., 209 F. Supp. 3d 146, 68 IDELR ¶ 38 (D.D.C. 2016)
- upheld child find and eligibility (as ED) of first grader in wake of suicide attempt by jumping out of school window

(*P*) Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 68 IDELR ¶ 61 (1st Cir. 2016)
- vacated and remanded ruling that child was ineligible as SLD, requiring reconsideration under prong 1 to determine whether competing general education performance (high) sufficiently counterweighed specific fluency performance (weak), leaving open questions of prong 2 (need for special education) and state law differences for SLD under severe discrepancy approach

S W.A. v. Hendrick Hudson Cent. Sch. Dist., __ F. Supp. 3d __, 69 IDELR ¶ 4 (S.D.N.Y. 2016)
- rejected child find claim, concluding that district had reason to suspect OHI but not the need for special education prior to initiating the evaluation and the 2.5 month time for starting the evaluation was not an unreasonable period [tuition reimbursement case]

P L.J. v. Pittsburg Unified Sch. Dist., 850 F.3d 996 (9th Cir. 2017)
- ruled that student who met one or more classifications under the IDEA was eligible in terms of the need for special education when, at the time of the evaluation, he was receiving services in general education that amounted to specially designed instruction—here, 1:1 aide, individually determined mental health services, BIP and various classroom accommodations

(*P*) Davis v. Dist. of Columbia, __ F. Supp. 3d __, 69 IDELR ¶ 218 (D.D.C. 2017)
- remanded for further development of the record as to the identification approach that the charter school used to determine that the child was no longer eligible as SLD, with reasoning that severe discrepancy may not be used as the sole method

II. APPROPRIATE EDUCATION (INCLUDING ESY)[2]

S **Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 798 F.3d 1329, 66 IDELR ¶ 31 (10th Cir. 2015)**[3]
- ruled that gaps in progress reporting and lack of FBA/BIP constituted harmless procedural error in IEP for child with autism [tuition reimbursement case]

P FB v. N.Y.C. Dep't of Educ., 132 F. Supp. 3d 522, 66 IDELR ¶ 94 (S.D.N.Y. 2015)
- ruled that although district did not engage in predetermination in IEP process for child with autism, 1) it violated parents' right to obtain relevant and timely information as to the proposed school so to be able to meaningfully participate in and beyond the IEP process and 2) the proposed school was incapable of implementing the IEP [tuition reimbursement case]

(P) LaGue v. District of Columbia, 130 F. Supp. 3d 305, 66 IDELR ¶ 101 (D.D.C. 2015)
- ruled that the district of residence's obligation for evaluation and the offer of FAPE is not extinguished upon the parents' unilateral placement of the child even when the parent has not expressed an interest in returning the child to the district [tuition reimbursement case]

P Sch. Bd. of City of Suffolk v. Rose, 133 F. Supp. 3d 803, 66 IDELR ¶ 137 (E.D. Va. 2015)
- ruled that identification of student, who undisputedly was also OHI (based on ADHD) and SLD (in written expression), as ED rather than primarily qualifying with autism, and the failure to address autism in his IEP was a substantive denial of FAPE [tuition reimbursement case]

S O.S. v. Fairfax Cty. Sch. Bd., 804 F.3d 354, 66 IDELR ¶ 151 (4th Cir. 2015)
- upheld substantive appropriateness of IEPs in kgn. and gr. 1 for child with OHI due to various medical conditions, ruling that the outcomes focus of IDEA 2004 did not heighten the Rowley standard of "some" benefit (in the Fourth Circuit)

S Wood v. Katy Indep. Sch. Dist., 163 F. Supp. 3d 396, 66 IDELR ¶ 158 (S.D. Tex. 2015)
- upheld procedural and substantive appropriateness of proposed IEP for high school student with dyslexia [tuition reimbursement case]

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[2] 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2):
> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
> (i) Impeded the child's right to a FAPE;
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
> (iii) Caused a deprivation of educational benefit.

[3] For the Supreme Court's decision, on further proceedings in this case, see infra.

P Phyllene W. v. Huntsville City Sch. Bd., 630 F. App'x 917, 66 IDELR ¶ 179 (11th Cir. 2015)
- ruled that district's failure to reevaluate hearing impairment of student with SLD (dyslexia) upon reasonably suspecting hearing loss, based on recent surgeries and parent's statements beyond statute of limitations, was a prejudicial procedural violation that denied the child FAPE

S D.A.B. v. N.Y.C. Dep't of Educ., 630 F. App'x 73, 66 IDELR ¶ 211 (2d Cir. 2015)
- rejected claims of procedural inappropriateness (e.g., goals that were insufficiently measurable) and substantive inappropriateness (e.g., teacher-student ratio) of proposed IEP for student with autism [tuition reimbursement case]

S Z.R. v. Oak Park Unified Sch. Dist., 622 F. App'x 630, 66 IDELR ¶ 213 (9th Cir. 2015)
- summarily affirmed decision ruling that proposed IEP of student with autism was appropriate, rejecting procedural challenges based on the goals and the IEP team composition (specifically, assistant principal who taught one course qualified as regular education teacher member) [tuition reimbursement case]

P GB v. N.Y.C. Dep't of Educ., 145 F. Supp. 3d 230, 66 IDELR ¶ 223 (S.D.N.Y. 2015)
- ruled that district denied FAPE for child with autism by failing to sufficiently address his medical needs in his IEP, although rejecting various FAPE procedural claims (e.g., predetermination) and "substantive" claims (e.g., present levels, goals, and sensory needs) [tuition reimbursement case]

S C.W.L. v. Pelham Union Free Sch. Dist., 149 F. Supp. 3d 451, 66 IDELR ¶ 241 (S.D.N.Y. 2015)
- ruled that 1) the proposed therapeutic in-district placement for student with ED was substantively appropriate, with due consideration to private psychologist's recommendation, and 2) the various procedural violations were harmless [tuition reimbursement case]

S A.R. v. Santa Monica Malibu Sch. Dist., 636 F. App'x 385, 66 IDELR ¶ 269 (9th Cir. 2016)
- upheld, in brief opinion, that proposed collaborative preschool classroom was FAPE in the LRE for preschool child with autism [tuition reimbursement case]

P S.T. v. Howard Cty. Pub. Sch. Sys., 627 F. App'x 255, 66 IDELR ¶ 270 (4th Cir. 2016)
- ruled that admission of "retrospective evidence" was either not error because it concerned the ability of the placement to provide the appropriate services or was harmless error because the placement would provide all of the necessary services for the child with autism

S A.L. v. Jackson Cty. Sch. Bd., 635 F. App'x 774, 66 IDELR ¶ 271 (11th Cir. 2015)
- ruled that parent's absence from the IEP process resulted from her own actions—district had provided multiple attempts to include her and proceeded due to concern for student with TBI, not due to convenience of other such administrative concerns (distinguishing Doug C., which is not binding here)

S B.P. v. N.Y.C. Dep't of Educ., 634 F. App'x 845, 66 IDELR ¶ 272 (2d Cir. 2015)
- ruled that district's evidence was sufficient to prove that despite its social worker's misstatement, the proposed placement was able to implement the IEP of the child with autism [tuition reimbursement case]

P T.K. v. N.Y.C. Dep't of Educ., 810 F.3d 869, 67 IDELR ¶ 1 (2d Cir. 2016)[4]
- ruled that district's refusal to discuss bullying upon parents' reasonable belief that it interfered with the student's ability to receive meaningful educational benefits significantly impeded their right to participate in the development of the IEP, thus constituting a procedural denial of FAPE -- "not only potentially impaired the substance of the IEP but also prevented them from assessing the adequacy of their child's IEP" [tuition reimbursement case]

P Norristown Area Sch. Dist. v. F.C., 636 F. App'x 857, 67 IDELR ¶ 3 (3d Cir. 2016)
- upheld ruling that district's second-grade IEP and, after unilateral placement, third-grade proposed IEP for student with autism were both not substantively appropriate due to lack of 1:1 aide [compensatory education and tuition reimbursement case]

P/S Miller v. Monroe Sch. Dist., 131 F. Supp. 3d 1107, 67 IDELR ¶ 32 (W.D. Wash. 2015)
- ruled that delay in IHO decision denied FAPE in this case at original placement, but in the transferred placement the district did not deny FAPE in response to claims of parents of student with autism of (a) lack of meaningful participation and (b) alleged IEP violations re seclusion and restraint [tuition reimbursement case]

P Holman v. District of Columbia, 153 F. Supp. 3d 386, 67 IDELR ¶ 39 (D.D.C. 2016)
- ruled that district's 83% implementation of IEP violated Van Duyn "material" failure standard (regardless of harm)

P E.H. v. N.Y.C. Dep't of Educ., 164 F. Supp. 3d 539, 67 IDELR ¶ 61 (S.D.N.Y. 2016)
- ruled that district failed to provide 1) reasonable notice of the proposed public-school placement (only one business day), 2) an appropriate BIP, and 3) an open mind (i.e., engaged in predetermination), resulting in denial of meaningful parental participation and—via inappropriate goals based on DLR/Floortime in private school —lack of the requisite "likely to produce progress" for child with autism [tuition reimbursement case]

P W.W. v. N.Y.C. Dep't of Educ., 160 F. Supp. 3d 618, 67 IDELR ¶ 66 (S.D.N.Y. 2016)
- ruled, in this "expanding, but still opaque, subject-matter area," that parents may prospectively challenge a proposed placement school's capacity to implement an IEP w/o first enrolling their child in that school and in this case the district failed to fulfill the burden (per NY law) to prove this capacity [tuition reimbursement case]

[4] The Second Circuit did not find it necessary to reach the substantive bullying issue, thus leaving in limbo the district court's successive rulings that provided standards for denial of FAPE based on bulling. T.K. v. N.Y.C. Dep't of Educ., 779 F. Supp. 2d 289, 56 IDELR ¶ 228 (S.D.N.Y. 2011), *further proceedings*, 32 F. Supp. 3d 405, 63 IDELR ¶ 256 (S.D.N.Y. 2014).

S M.T. v. N.Y.C. Dep't of Educ., 165 F. Supp. 3d 106, 67 IDELR ¶ 92 (S.D.N.Y. 2016)
- rejected parents' procedural claims of insufficient evaluative materials and lack of opportunity for meaningful participation and upheld substantive appropriateness of proposed placement for student with multiple disabilities, including lack of ABA methodology (because IEP only mentioned it as one of previous successful methods for the student) [tuition reimbursement case]

S J.C. v. N.Y.C. Dep't of Educ., 643 F. App'x 31, 67 IDELR ¶ 109 (2d Cir. 2016)
- ruled that procedural violations (lack of parent counseling and FBA-BIP) was not prejudicial and that the proposed IEP met the substantive standard for the child with autism, also rejecting speculative inability of the school to implement the IEP [tuition reimbursement case]

S S.M. v. Gwinnett Cty. Sch. Dist., 646 F. App'x 763, 67 IDELR ¶ 137 (11th Cir. 2016)
- rejected predetermination and change-in-placement claims and upheld placement of student in special classes for reading, writing, and math as FAPE in the LRE

P/S S.B. v. N.Y.C. Dep't of Educ., 174 F. Supp. 3d 798, 67 IDELR ¶ 140 (S.D.N.Y. 2016)
- ruled that proposed 6:1:1 placement for student was substantively inappropriate due to his need for 1:1 instruction although the various alleged procedural violations were either not required (ABA instruction), not proven (parental participation) or not prejudicial (e.g., lack of FBA-BIP) [tuition reimbursement case]

S Jason O. v. Manhattan Sch. Dist. No. 41, 173 F. Supp. 3d 744, 67 IDELR ¶ 142 (N.D. Ill. 2016)
- rejected parents' various procedural claims as unproven or harmless, including predetermination and those directed at IHO, and ruled that the district's IEPs for child with continuing behavioral problems met the substantive standard for FAPE

S J.M. v. N.Y.C. Dep't of Educ., 171 F. Supp. 3d 236, 67 IDELR ¶ 153 (S.D.N.Y. 2016)
- rejected procedural challenge (specifically, lack of complete transition plan) as not prejudicial and substantive challenge to capability of the proposed placement of student with autism (e.g., size and noise) as impermissibly speculative based on R.E. [tuition reimbursement case]

S M.H. v. Pelham Union Free Sch. Dist., 168 F. Supp. 3d 667, 67 IDELR ¶ 154 (S.D.N.Y. 2016)
- ruled that IEP for child with developmental disability and ADHD was substantively and procedurally adequate [tuition reimbursement case]

S M.M. v. Foose, 165 F. Supp. 3d 365, 67 IDELR ¶ 155 (D. Md. 2015)
- ruled that proposed partially mainstreamed placement for student with autism met substantive standard for FAPE [tuition reimbursement case]

P Dallas Indep. Sch. Dist. v. Woody, 178 F. Supp. 3d 443, 67 IDELR ¶ 168 (N.D. Tex. 2016)
- ruled that district failed to propose an IEP to child with SLD who had become resident while in local private placement from another state [tuition reimbursement case]

S M.E. v. N.Y.C. Dep't of Educ., __ F. Supp. 3d __, 67 IDELR ¶ 167, adopted, __ F. Supp. 3d __, 67 IDELR ¶ 173 (S.D.N.Y. 2016)
- rejected parent's "prospective" challenge to the proposed placement of her child with autism at either of two district schools was speculative, i.e., not reasonably apparent [tuition reimbursement case]

P Brown v. District of Columbia, 179 F. Supp. 3d 15, 67 IDELR ¶ 169 (D.D.C. 2016)
- ruled that IEP team's failure to discuss the LRE and disability effects of the recent multiple gunshot wounds of a high school student each constituted a denial of FAPE in terms of parental participation and student progress, respectively

P S.C. v. Katonah-Lewisboro Cent. Sch. Dist., 175 F. Supp. 3d 237, 67 IDELR ¶ 184 (S.D.N.Y. 2016)
- ruled that proposed 12:2 class placement for student with multiple disabilities was not reasonably calculated to yield benefit [tuition reimbursement case]

S C.W. v. City Sch. Dist. of City of N.Y., 171 F. Supp. 3d 126, 67 IDELR ¶ 186 (S.D.N.Y. 2016)
- ruled that procedural violations (e.g., failure to invite student to participate in IEP meeting for transition plan and insufficient transition plan goals) were not prejudicial, and the proposed segregated 15:1 placement for student with ID and speech/language impairment was a substantively appropriate IEP [tuition reimbursement case]

S Moradnejad v. District of Columbia, 177 F. Supp. 3d 260, 67 IDELR ¶ 261 (D.D.C. 2016)
- ruled that IEPs for first grader with autism that moved from self-contained to partially mainstreamed placement met the substantive standard for FAPE, with due deference to the IHO and to the LRE presumption

S R.E. v. Brewster Cent. Sch. Dist. (supra)
- upheld two successive IEPs for sixth grader with autism with regard to implementation and substantive appropriateness, respectively [tuition reimbursement case]

P L.O. v. N.Y.C. Dep't of Educ., 822 F.3d 95, 67 IDELR ¶ 225 (2d Cir. 2016)
- ruled that combination of serious procedural violations—failure to consider recent evaluative data, lack of FBAs-BIPs (under state law), insufficient S/L services (under state law for students with autism)—along with more minor procedural violations (e.g., parent counseling/training per same state autism law) amounted to denial of FAPE for three successive IEPs, remanding for compensatory education

S M.K. v. Starr, 185 F. Supp. 3d 679 (D. Md. 2016)
- ruled that (a) the district's two consecutive proposed IEPs met the substantive standard for FAPE, (b) any procedural delay in the IEP process was harmless, and (c) the proposed placement was capable of providing the IEP, despite subsequent IEP proposal that added more services [tuition reimbursement case]

P Timothy O. v. Paso Robles Unified Sch. Dist., 822 F.3d 1105, 67 IDELR ¶ 227 (9th Cir. 2016)
- ruled that failure to evaluate preschool child with SLI for autism was procedural violation that deprived him of critical educational opportunities and substantially impairing his parents' ability to fully participate in the collaborative IEP process—district's informal observation does not trump clear notice from IEE and student's behavior

P W.S. v. City Sch. Dist. of N.Y.C., 188 F. Supp. 3d 293, 67 IDELR ¶ 242 (S.D.N.Y. 2016)
- ruled that proposed 6:1:1 placement for child with autism was not individualized in terms of the child's needs and did not address her documented necessity for 1:1 ABA therapy [tuition reimbursement case]

P Damarcus S. v. District of Columbia, 190 F. Supp. 3d 35, 67 IDELR ¶ 239 (D.D.C. 2016)
- rejected the challenges to the evaluation and the measurability of the goals, but ruled that two consecutive IEPs of child with ID were not substantively appropriate, primarily in not only the wholly repeated goals' and PELs' failure to respond to his demonstrated lack of progress in certain areas but also their harmful results with regard to his speech-language pathology

S Baquerizo v. Garden Grove Unified Sch. Dist., 826 F.3d 1179, 68 IDELR ¶ 2 (9th Cir. 2016)
- upheld the substantive appropriateness of the proposed IEP of a high school student with autism in a self-contained class, also rejecting the "laundry list" of procedural violations and the LRE claim of a guardian who had challenged several consecutive prior IEPs [tuition reimbursement case]

S Dervishi v. Stamford Bd. of Educ., 653 F. App'x 55, 68 IDELR ¶ 3 (2d Cir. 2016)
- ruled, in brief opinion, that proposed IEP for child with autism was substantively appropriate and the absence of the parents at one of the IEP meetings, after the parents repeatedly tried to schedule it to fit their schedule, did not deny them meaningful participation [tuition reimbursement case]

P James v. District of Columbia, 194 F. Supp. 3d 131, 68 IDELR ¶ 11 (D.D.C. 2016)
- ruled that school, which did not have this capability, completely failed to implement the IEP of a student with ID and also violated the foundational FAPE requirement of a timely and comprehensive reevaluation [compensatory education case]

P L.R. v. City Sch. Dist. of N.Y.C., 193 F. Supp. 3d 209, 68 IDELR ¶ 13 (S.D.N.Y. 2016)
- ruled that proposed 15:1 placement for secondary student with SLD was not reasonably calculated to yield educational benefits [tuition reimbursement case]

S/(P) Ms. S. v. Reg'l Sch. Unit 72, 829 F.3d 95, 68 IDELR ¶ 31 (1st Cir. 2016)
- upheld substantive appropriateness of IEP and, after expulsion, alternative school placement of student with autism for grades 11–12, although remanding for determination of statute of limitations in light of state law [tuition reimbursement case]

S M.M. v. N.Y.C. Dep't of Educ., 655 F. App'x 868, 68 IDELR ¶ 32 (2d Cir. 2016)
- assuming that the omission of the classroom location and the proportion of time for vocational and academic instruction were procedural violations, ruled that these defects did not result in the requisite loss to the student with autism or the parents [tuition reimbursement case]

P Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ., 655 F. App'x 423, 68 IDELR ¶ 33 (6th Cir. 2016)
- upheld ruling that two of three cumulative procedural violations with regard to transition services for student with multiple disabilities—failure to take meaningful steps to ascertain the student's transition-related preference and to provide her with measurable postsecondary goals based on age-appropriate transition assessments—resulted in a denial of FAPE [compensatory education case]

S M.T. v. N.Y.C. Dep't of Educ., 200 F. Supp. 3d 447, 68 IDELR ¶ 65 (S.D.N.Y. 2016)
- ruled that proposed IEP for student with ADHD and Asperger syndrome that provided 12:1:1 classroom with related services and transitional aide for four months was reasonably calculated for educational benefit [tuition reimbursement case]

S Y.F. v. N.Y.C. Dep't of Educ., 659 F. App'x 3, 68 IDELR ¶ 92 (2d Cir. 2016)
- upheld, in brief opinion, parent's challenge to the capability of the school to implement the IEP for a child with ID as being too speculative (per M.O.) [tuition reimbursement case]

S Johnson v. Boston Pub. Sch., 201 F. Supp. 3d 187, 68 IDELR ¶ 97 (D. Mass. 2016)
- upheld substantive appropriateness of IEP/placement that provided ASL for student with hearing impairment

P L.J. v. Pittsburg Unified Sch. Dist. (supra)
- failure to provide parent, upon her request, with child's records from district's counseling center and to conduct health assessment upon receiving diagnosis of chronic psychiatric illness were prejudicial procedural violations in terms of parent's right to informed consent and participation and the child's substantive right to FAPE, respectively

S Z.B. v. District of Columbia, 202 F. Supp. 3d 64, 68 IDELR ¶ 136 (D.D.C. 2016)
- upheld substantive appropriateness of the proposed IEP for student with OHI (ADHD) and ruled that the procedural defects (e.g., goals and OT) did not result in a substantive loss under the circumstances, with dicta about the non-static and not necessarily perfect nature of IEP and the strong policy considerations against tuition reimbursement

P/S Beckwith v. District of Columbia, 208 F. Supp. 3d 34, 68 IDELR ¶ 155 (D.D.C. 2016)
- ruled that district's failure to follow its own guidelines re notification and IEP membership in the wake of restraint significantly impeded parent's opportunity for participation and its failure to implement approx. 20% of the IEP's specialized instruction was sufficiently significant or substantial in this case, but that the placement was appropriate in terms of both capability and LRE and the IEP w/o a BIP was substantively appropriate

S D.M. v. Seattle Sch. Dist., 170 F. Supp. 3d 1328, 68 IDELR ¶ 165 (W.D. Wash. 2016)
- upheld procedural appropriateness, including lack of preteaching and BCBA, and substantive appropriateness, under snapshot rule, of IEP for child with autism [tuition reimbursement case]

P T.Y. v. N.Y.C. Dep't of Educ., __ F. Supp. 3d __, 68 IDELR ¶ 182 (S.D.N.Y. 2016)
- ruled that, despite nonprejudicial procedural violations for FBA-BIP and parent training/counseling, the proposed IEP was substantially deficient in terms of the need for the child with autism for a relationship-based (DIR Floortime) methodology and additional speech therapy [tuition reimbursement case]

P E.M. v. N.Y.C. Dep't of Educ., __ F. Supp. 3d __, 68 IDELR ¶ 184 (S.D.N.Y. 2016)
- ruled that proposed IEPs for high school student with cerebral palsy was both procedurally and substantively inappropriate based on predetermined 15:1 student-teacher ratio (because it was all that was available at the high school level), even though the student continued to need a 12:1 ratio

S Garris v. District of Columbia, 210 F. Supp. 3d 187, 68 IDELR ¶ 194 (D.D.C. 2016)
- upheld IHO's conclusion that the 15 additional hours of specialized instruction, with parent's expert recommended, would not have made a difference in light of student's truancy and, similarly, the deficiency in the transition plan would not have made a difference where IEP had ample provisions addressing student's truancy

S C.R. v. N.Y.C. Dep't of Educ., __ F. Supp. 3d __, 68 IDELR ¶ 225 (S.D.N.Y. 2016)
- upheld substantive appropriateness of IEP, including PELs and goals, for elementary school student with autism, and ruled that procedural violation (lack of special education teacher on IEP team) did not violate student's or parents' rights [tuition reimbursement case]

P S.Y. v. N.Y.C. Dep't of Educ., 210 F. Supp. 3d 566, 68 IDELR ¶ 230 (S.D.N.Y. 2016)
- ruled that lack of prior written notice and the cumulative, although not single, effect of eight other procedural violations as a "pattern of indifference" (citing L.O.) significantly impeded the parents' opportunity for participation – student with autism was in private school and district proposed in-district placement [tuition reimbursement case]

(*P*) H.G. v. Dep't of Educ., State of Haw., __ F. App'x __, 68 IDELR ¶ 269 (9th Cir. 2016)
- brief ruling remanding to district court to reconsider whether the district's IEP in 2010 was substantively appropriate for child with autism after giving "substantial weight" to the IHO's ruling that it was not in light of child's need for 1:1 instruction

(*P*)/*S* McNeil v. District of Columbia, __ F. Supp. 3d __, 68 IDELR ¶ 271 (D.D.C. 2016)
- upheld ruling that parent failed to prove her actual and able-to implementation claims on behalf of child with major behavioral problems (including incarcerations) but remanded to IHO to determine separable sufficiency (i.e., substantive) FAPE claim

S Forest Grove Sch. Dist. v. Student, 665 F. App'x 612, 69 IDELR ¶ 27 (9th Cir. 2016)
- affirmed lower court judgment that largely upheld, with limited exceptions not on appeal (by parents), appropriateness of successive IEPs for high school student with ADHD and autism, including failure to incorporate parent's preferred methodology, which was based on English teacher's instructional approach

S J.M. v. Dep't of Educ., State of Haw., __ F. Supp. 3d __, 69 IDELR ¶ 31 (D. Haw. 2016)
- upheld substantive appropriateness of IEP for student with autism, including 1:1 aide, counseling, and crisis plan, in relation to bullying for which he was a victim—regarding OCR's Dear Colleague Letter (2014) as "merely aspirational" [tuition reimbursement case]

S Genn v. New Haven Bd. of Educ., __ F. Supp. 3d __, 69 IDELR ¶ 35 (D. Conn. 2016)
- ruled that 20-member IEP team, compared with notice for 10 members, did not impede the parents' opportunity for meaningful participation in this case and that the IEP was substantively appropriate, including the reading method, for this student with multiple disabilities, which included dyslexia

P A.M. v. N.Y.C. Dep't of Educ., 845 F.3d 523, 69 IDELR ¶ 51 (2d Cir. 2017)
- rejected procedural FAPE challenges (e.g., FBA-BIP and transition support services per state law) but ruled in favor of parent of child with autism for substantive FAPE because the proposed IEP's failure to provide 1:1 ABA therapy was contrary to "a clear consensus" of the evaluative info at the IEP meeting [tuition reimbursement case – remanded for remaining steps]

S Dep't of Educ. v. Leo W., __ F. Supp. 3d __, 69 IDELR ¶ 59 (D. Haw. 2016)
- ruled that district's failure to perform timely behavioral evaluation for kgn. child with autism was procedural violation that did not deny the child's or parent's substantive rights [tuition reimbursement case]

S Z.C. v. N.Y.C. Dep't of Educ., __ F. Supp. 3d __, 69 IDELR ¶ 75 (S.D.N.Y. 2016)
- upheld substantive appropriateness of proposed IEP and capability of proposed placement for student with autism [tuition reimbursement case]

S Ms. M. v. Falmouth Sch. Dep't, 847 F.3d 19, 69 IDELR ¶ 86 (1st Cir. 2017)
- rejected parent's contention that the prior written notice, which proposed use of a particular multisensory reading program, was part of the IEP, finding that the IEP's provision for a specified amount of "specially designed instruction" in reading and math was sufficiently unambiguous in light of the IDEA, state law, and agency guidance not to resort to extrinsic evidence (here, the prior written notice) [tuition reimbursement case]

(*P*) J.D. v. N.Y.C. Dep't of Educ., __ F. App'x __, 69 IDELR ¶ 87 (2d Cir. 2017)
- rejected and remanded IHO and SRO decisions that had been in favor of substantive appropriateness of proposed IEP for student with SLD due to reliance on conclusory and contradictory testimony and corresponding lack of objective evidence based on evaluation and progress [tuition reimbursement case]

S P.C. v. Rye City Sch. Dist., __ F. Supp. 3d __, 69 IDELR ¶ 122 (S.D.N.Y. 2016)
- upheld substantive appropriateness of three successive IEPs and ruled that procedural violations (e.g., omission of SLI goals) were harmless error for student with OHI [tuition reimbursement case]

S M.S. v. Lake Elsinore Unified Sch. Dep't, __ F. App'x __, 69 IDELR ¶ 148 (9th Cir. 2017)
- ruling, in brief reversal, that district was not obligated to reevaluate the student with autism despite his escalating behavioral problems because "the [district] did not determine that reevaluation was necessary, [the] parents did not request a reevaluation . . . , [the] teacher did not request a reevaluation, and fewer than three years had elapsed [tuition and IEE reimbursement case]

S S.H. v. Tustin Unified Sch. Dep't, __ F. App'x __, 69 IDELR ¶ 176 (9th Cir. 2017)
- brief ruling upholding rejection of procedural claims of parents of student with Dravets syndrome—ample opportunity for participation in placement decision, harmless failure to provide prior written notice, and "open-minded" IEP process rather than predetermination

(*P*) **Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 69 IDELR ¶ 174 (2017)**
- ruled that the general substantive standard under the IDEA is whether the IEP is "reasonably calculated to enable [the] child to make progress appropriate in light of the child's circumstances," remanding for application to this student with autism in a self-contained class [tuition reimbursement case]

S J.B. v. N.Y.C. Dep't of Educ., ___ F. Supp. 3d ___, 69 IDELR ¶ 184 (S.D.N.Y. 2017)
- upheld procedural appropriateness, which focused here on parental participation, and substantive appropriateness of proposed IEP for in-district placement of 14-year-old with autism who has been in private school [tuition reimbursement case]

S Davis v. District of Columbia (supra)
- upheld appropriateness of charter school's fourth grade IEP for child with autism (prior to disputed exiting based on ineligibility as SLD and SLI) based on Endrew F.'s substantive standard

P M.C. v. Antelope Valley Union High Sch. Dist., 852 F.3d 840, 69 IDELR ¶ 203 (9th Cir. 2017)
- ruled that district's unilateral amendment of was a per se procedural violation (based on parental participation) and failure to specify the AT that the child needed, contrary to state law, was also prejudicial in terms of parental participation plus remanded for substantive FAPE (1) shifting B/P to district for adequacy of unilaterally amended services, and (2) translating Endrew F. as follows: "the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can 'make progress in the general education curriculum,' [citation omitted] commensurate with his non-disabled peers, taking into account the child's potential"

S E.F. v. Newport Mesa Unified Sch. Dist., ___ F. App'x ___, 69 IDELR ¶ 206 (9th Cir. 2017)
- upholding, in brief opinion, that district's IEPs met Rowley substantive standard for FAPE for nonverbal child with autism, with limited exception for AT evaluation and services[5]

S T.M. v. Quakertown Cmty. Sch. Dist., ___ F. Supp. 3d ___, 69 IDELR ¶ ___ (E.D. Pa. 2017)
- upheld substantive appropriateness of IEP for fourth grader with autism and ID, concluding that the evaluation, progress measurement, and ABA-basis met the Endrew F. standard even if not the "gold standard" and 20 hours of 1:1 strict ABA that the parent's BCBA recommended

III. MAINSTREAMING/LRE

S S.M. v. Gwinnett Cty. Sch. Dist. (supra)
- ruled that district's placement in general education with supplementary services and with three core subjects in special education classes met LRE test under first prong of Greer/Daniel R.R. test

S Jason O. v. Manhattan Sch. Dist. No. 41 (supra)
- proposed self-contained program for students with ED was the LRE for child with significant and continuing emotional/behavioral problems where the district's general education placement had been ineffective despite various supplemental aids and services and the proposed placement provided multiple, albeit limited, opportunities for interaction with nondisabled students

(P) Smith v. Los Angeles Unified Sch. Dist., 822 F.3d 1065, 67 IDELR ¶ 226 (9th Cir. 2016)
- allowed parents to intervene to challenge policy resulting from settlement agreement with other parents to eliminate special education centers for more integration of students with disabilities

S D.M. v. Seattle Sch. Dist. No. 1 (supra)
- ruled that district's self-contained placement for approximately 80% of the school day was the LRE for this child with autism

IV. RELATED SERVICES

S Se. H. v. Bd. of Educ. of Anne Arundel Cty., 647 F. App'x 242, 67 IDELR ¶ 198 (4th Cir. 2016)
- ruled that elementary school child with multiple physical disabilities was not entitled to a staff member trained in CPR and the Heimlich maneuver to accompany him throughout the school day in light of the reasonable measures that district had in place

[5] See the Related Services section for the limited exception.

P E.F. v. Newport Mesa Unified Sch. Dist. (supra)
- ruled that belated AT evaluation and services for nonverbal child amounted to denial of FAPE [compensatory education case]

V. DISCIPLINE ISSUES

S C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist., 653 F. App'x 808, 67 IDELR ¶ 254 (5th Cir. 2016)
- subsequent to earlier ruling,[6] brief affirmance that district did not violate the IDEA after failing to reevaluate student with IEP after juvenile authorities decided not to prosecute him for his misconduct that district determined was not a manifestation of his disability

VI. ATTORNEYS' FEES

S McAllister v. District of Columbia, 160 F. Supp. 3d 273, 67 IDELR ¶ 59 (D.D.C. 2016); cf. **R. M-G. v. Bd. of Educ. of Las Vegas Sch., 645 F. App'x 672, 67 IDELR ¶ 167 (10th Cir. 2016)**; Banda v. Antelope Valley Union High Sch. Dist., 637 F. App'x 335, 67 IDELR ¶ 56 (9th Cir. 2016); Kelsey v. District of Columbia, __ F. Supp. 3d __, 69 IDELR ¶ 33 (D.D.C. 2016) (availability of fees- on-fees awards in IDEA cases)
- upheld award of 2/3 hourly rate for "fees on fees" in IDEA case due to lesser complexity

P Norristown Area Sch. Dist. v. F.C. (supra)
- upheld full requested $140k attorney's fees award despite partial success where their claims arose from common core of facts and parents succeeded on two significant issues

S Tina M. v. St. Tammany Parish Sch. Bd., 816 F.3d 57, 67 IDELR ¶ 54 (5th Cir. 2016). But see A.P. v. Bd. of Educ. for City of Tullahoma, 160F. Supp. 3d 1024, 67 IDELR ¶ 69 (E.D. Tenn. 2016)
- ruled that obtaining stay-put order does not qualify the parents for attorneys' fees

S Anaheim Union High Sch. Dist. v. J.E., 637 F. App'x 380, 67 IDELR ¶ 81 (9th Cir. 2016)
- upheld not only reduction in requested hourly rate of parent attorney based on prevailing community rate for commensurate experience (to $400 per hour) but also denial of $16.6K for expert consultant whom the fee request had labeled as a paralegal

S Beauchamp v. Anaheim Union High Sch. Dist., 816 F.3d 1216, 67 IDELR ¶ 107 (9th Cir. 2016); cf. Rena v. Colonial Sch. Dist., __ F. Supp. 3d __, 69 IDELR ¶ 63 (E.D. Pa. 2016)
- upheld award of only 12% of requested $80K in attorneys' fees largely because the district's timely offer of settlement, although not admitting liability, provided far more compensatory relief than the hearing officer ordered upon finding child find violation

[6] See § 504/ADA section infra.

(*P*) Cobb Cty. Sch. Dist. v. D.B., __ F. App'x __, 69 IDELR ¶ 3 (11th Cir. 2016)
- reversed reduction from $271k request to $75K award where not only parent but also district unreasonably protracted the litigation (in case re IEE at public expense)

VII. REMEDIES

A. TUITION REIMBURSEMENT

P Norristown Area Sch. Dist. v. F.C. (supra)
- upheld appropriateness of private school and consideration of transition back to public school as equitable factor in determining whether to reduce tuition reimbursement (here too harsh)

P T.K. v. N.Y.C. Dep't of Educ. (supra)
- ruled that private placement, although not including multiple related services appropriate to the child with autism met the relaxed overall standard of reasonably calculated for benefit, and the parents' payment of precautionary deposit prior to the IEP meeting was not inequitable where its absence would imperil the child's opportunity if the proposed IEP was not appropriate

S Rockwall Indep. Sch. Dist. v. M.C., 816 F.3d 329, 67 IDELR ¶ 108 (5th Cir. 2016); see also M.K. v. Starr (supra)
- finding it unnecessary to decide whether district offered FAPE, denied tuition reimbursement parents based on parents' unreasonable, all-or-nothing position that their high schooler with ED should be re-enrolled in the private placement or else

S E.T. v. Bureau of Special Educ. Appeals, 169 F. Supp. 3d 221, 67 IDELR ¶ 118 (D. Mass. 2016)
- denied tuition reimbursement for unilateral placement of highly intelligent student with Asperger disorder based on equities—district timely provided the parents with a list of schools that could have potentially provided the student with a FAPE, yet the parents—not the district—were the cause of delay prior to the unilateral placement

P/S Dallas Indep. Sch. Dist. v. Woody (supra)
- reduced reimbursement by 50% due to parental contribution to the FAPE denial, which was lack of timely offer of FAPE

P S.Y. v. City Sch. Dist. of N.Y.C. (supra); E.M. v. City Sch. Dist. of N.Y.C. (supra); T.Y. v. City Sch. Dist. of N.Y.C. (supra); L.R. v. City Sch. Dist. of N.Y.C. (supra); W.S. v. City Sch. Dist. of N.Y.C. (supra); S.C. v. Katonah-Lewisboro Cent. Sch. Dist. (supra); S.B. v. N.Y.C. Dep't of Educ. (supra); W.W. v. N.Y.C. Dep't of Educ. (supra); E.H. v. N.Y.C. Dep't of Educ. (supra); GB v. N.Y.C. Dep't of Educ. (supra); FB v. N.Y.C. Dep't of Educ. (supra)
- ruled that private school met reasonably-calculated standard for the student with autism and that the equities favored reimbursement

P/S W.A. v. Hendrick Hudson Cent. Sch. Dist. (supra)
- upheld appropriateness of small boarding school for gr. 10, not gr. 9, based on progress of student with OHI (based on migraines and related psychological issues)

(*P/S*) L.K. v. N.Y.C. Dep't of Educ., __ F. App'x __, 69 IDELR ¶ 90 (2d Cir. 2017)
- upheld that parents are not entitled to reimbursement for supplemental services that were not necessary, i.e., beyond FAPE, but remanded for determination of related reimbursement issue, including full reasonable rate for parent even if more than it would have cost the district in the first place

S M.G. v. District of Columbia, ___ F. Supp. 3d ___, 69 IDELR ¶ ___ (D.D.C. 2017)
- ruled that unilateral placement met the substantive standard for FAPE even though it did not provide special education services, especially in the light of no available alternatives, and the 10-day notice provision did not apply because the district had already expelled the student

B. COMPENSATORY EDUCATION[7]

(*P*) Boose v. District of Columbia, 786 F. 3d 1054, 65 IDELR ¶ 191 (D.C. Cir. 2015)
- differentiating jurisdiction from the merits and retrospective from prospective relief, ruled that parent's child find claim for compensatory education is not moot where district eventually conducted the evaluation, found the child eligible, and provided an IEP

P Brown v. District of Columbia (supra)
- at least under the qualitative approach, compensatory education may be in the form prospective private placement in appropriately equitable circumstances

(*P*) B.D. v. District of Columbia, 817 F. 3d 792, 67 IDELR ¶ 135 (D.C. Cir. 2016); see also Damarcus S. v. District of Columbia (supra) (remanding for more careful calculation and justification)
- remanding, in qualitative jurisdiction, IHO's compensatory education award of OT as not either addressing educational losses or providing reasoned explanation for failing to do so, suggesting an order for assessment if needed (and for updating or supplementing the award based on the assessment) and the time of the award as the reference point

(*P*) Lopez-Young v. District of Columbia, __ F. Supp. 3d __, 68 IDELR ¶ 186 (D.D.C. 2016)
- at least under the qualitative approach, the IHO has the authority to order an IEE to provide an assessment of the amount of compensatory education but the parent has the burden to show the necessity of this IEE

[7] For the latest treatment, see Perry A. Zirkel, "Compensatory Education under the IDEA: The Next Annotated Update of the Law," West's Education Law Reporter, 2016, v. 336, pp. 654–666. For the difference between the quantitative and qualitative approaches, see, e.g., Perry A. Zirkel, "The Two Competing Approaching for Calculating Compensatory Education under the IDEA," West's Education Law Reporter, 2010, v. 157, pp. 55–63.

C. OTHER REMEDIES (INCLUDING IEE REIMBURSEMENT)[8]

S T.P. v. Bryan Cty. Sch. Dist., 794 F.3d 1284, 65 IDELR ¶ 254 (11th Cir. 2015)
- ruled that request for IEE reimbursement, analyzed as a procedural violation allegedly impeding meaningful parental participation, was moot upon expiration of the three-year period for reevaluation

S A.L. v. Jackson Cty. Sch. Bd. (supra)
- ruled that parents were not entitled to reimbursement of their IEE where they "sabotaged" process by not accepting district's reasonable cost and distance limits

(*P*)/(*S*) Seth B. v. Orleans Parish Sch. Bd., 810 F.3d 961, 67 IDELR ¶ 2 (5th Cir. 2016)
- ruled that district's failure to be the filing party in IEE reimbursement case did not constitute a waiver if it showed noncompliance with its criteria (or the appropriateness of its evaluation) without unnecessary delay but the parents are entitled to reimbursement within the reasonable cap if they are in substantial compliance with the criteria for the district's own evaluations

P Q.C-C. v. District of Columbia, 164 F. Supp. 3d 35, 67 IDELR ¶ 60 (D.D.C. 2016)
- ruled that child with SLD (dyslexia) was entitled to the remedy of continuing in private school in the wake of district's inappropriate proposed placement based on D.C. Circuit's multi-factor test for prospective placements in Branham, which includes severity of child's needs, the private school's linkage with those needs, and the LRE

P Jason O. v. Manhattan Sch. Dist. No. 41 (supra)
- ruled that IEE reimbursement is, under the equitable circumstances, the pre-, not post-, insurance amount

(*P*) **M.S. v. Utah Sch. for the Deaf, 822 F.3d 1128, 67 IDELR ¶ 195 (10th Cir. 2016)**
- ruled that remedy of remanding placement decision to IEP team was improper delegation of IHO's authority (extending Reid and L.M.)

P/S Genn v. New Haven Bd. of Educ. (supra)
- awarded reimbursement for general IEE where the hearing officer denied it based on incorrect finding that the parents had not provided the requisite disagreement with the district's evaluation but denied reimbursement for the other, S/L IEE where the parent did not afford the district the opportunity to complete the corresponding evaluation first

S Avila v. Spokane Sch. Dist., __ F. App'x __, 69 IDELR ¶ 204 (9th Cir. 2017)
- ruled that the parent was not entitled to IEE at public expense where the district's evaluation was appropriate, here specifically that reevaluation of child with autism (Asperger disorder) included SLD in reading and writing though not under labels of dyslexia and dysgraphia

[8] For a useful checklist of IHO analysis of IEEs at public expense, see Perry A. Zirkel, "Independent Educational Evaluation Reimbursement: An Update," West's Education Law Reporter, 2014, v. 306, pp. 32–38.

VIII. OTHER IDEA ISSUES

S Z.H. v. N.Y.C. Dep't of Educ., 107 F. Supp. 3d 369, 65 IDELR ¶ 235 (S.D.N.Y. 2015)
- ruled that under New York law IHO lacks authority to order IEP team to place student prospectively in a non-approved private school (distinguishing tuition reimbursement cases)

***P*/(*S*)** DL v. District of Columbia, 109 F. Supp. 2d 12, 65 IDELR ¶ 226 (D.D.C. 2015)
- ruled in class action case that prior to 2007 district failed to provide proper transition from Part C to Part B and violated child find and FAPE for children ages 3-5 and that for the subsequent period (2008–2011) the issue merited further proceedings

S B.S. v. Anoka-Hennepin Sch. Dist., 799 F.3d 1217, 66 IDELR ¶ 61 (8th Cir. 2015)
- upheld IHO's reasonable limit, per unpromulgated best practices rule, on the length of the hearing

(*P*) G.L. v. Ligonier Valley Sch. Dist. Auth., 802 F.3d 601, 66 IDELR ¶ 91 (3d Cir. 2015)[9]; Avila v. Spokane Sch. Dist., 852 F.3d 936, 69 IDELR ¶ 202 (9th Cir. 2017); Damarcus S. v. District of Columbia (supra) (two years forward from KOSHK, or discovery, date of violation, not action or omission)
- ruled that the IDEA statute of limitations is two years from the date that the parent knew or had reason to know of the alleged violation but this limit does not apply to the remedy, which should be to make the child whole for the deprivation (as far back as it goes)

(*P*) **Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 69 IDELR ¶ 116 (2017);** cf. J.M. v. Francis Howell Sch. Dist., 850 F.3d 944 (8th Cir. 2017) (denial of FAPE for money damages)
- ruled, in a student's ADA service-dog suit for money damages, that parents must exhaust the impartial hearing procedures of the IDEA if the "gravamen" (i.e., crux) of their claim is FAPE, reserving the issue of money damages for a future case where the gravamen is FAPE and remanding this case to apply this new exhaustion standard

[9] For an in-depth analysis, see Perry A. Zirkel, "Of Mouseholes and Elephants: The Statute of Limitations for Impartial Hearings Under the Individuals with Disabilities Education Act," *Journal of the National Association of the Administrative Law Judiciary*, v. 35, pp. 305–332 (2016).

IX. SECTION 504/ADA ISSUES[10]

S Frank v. Sachem Sch. Dist., 84 F. Supp. 3d 172, 65 IDELR ¶ 9 (E.D.N.Y. 2015), aff'd mem., 633 F. App'x 14, 67 IDELR ¶ 30 (2d Cir. 2016). But cf. S.S. v. City of Springfield, 146 F. Supp. 3d 414, 66 IDELR ¶ 253 (D. Mass. 2015) (court preserved ADA LRE claim after unsuccessful IDEA FAPE claim at IHO level)
- rejected claim that the district's placement of student with ED at residential treatment program violated the ADA integration mandate–lack of deliberate indifference

S DL v. District of Columbia (supra)
- denied § 504/ADA class action claim on behalf of preschool children, reasoning that "[a]lthough the District may still not be in compliance with federal and D.C. law, it is clear that vast improvements have been made—strongly suggesting a lack of bad faith"

(P) K.R.S. v. Bedford Cmty. Sch. Dist., 109 F. Supp. 3d 1060, 65 IDELR ¶ 272 (S.D. Iowa 2015)
- denied dismissal of § 504 claim that district was deliberately indifferent to pervasive disability-based bullying of student with SLD by other members of h.s. football team

(P)/S T.B. v. San Diego Unified Sch. Dist., 806 F.3d 451 (9th Cir. 2015)
- in latest decision in 10-year dispute for graduated 21-year-old student with multiple disabilities, affirmed summary judgment for district on § 504 g-tube and retaliation claims but denied summary judgment for district on § 504 g-tube nurse claim, all based on deliberate indifference standard

S J.S. v. Houston Cty. Bd. of Educ., 120 F. Supp. 3d 1287, 66 IDELR ¶ 8 (M.D. Ala. 2015)
- rejected § 504/ADA claim for lack of actual knowledge and/or deliberate indifference—simple failure to provide FAPE (here via improper implementation) is not sufficient for discrimination

S Swanger v. Warrior Run Sch. Dist., 137 F. Supp. 3d 737 (M.D. Pa. 2015)
- rejected § 504 liability of school district for peer sexual abuse of special education student due to lack of deliberate indifference

(S) P.P. v. Compton Unified Sch. Dist., 135 F. Supp. 3d 1126, 66 IDELR ¶ 121 (C.D. Cal. 2015)
- denied preliminary injunction in § 504/ADA class action claim seeking system-wide training for student who have experienced complex trauma

P/S M.M. v. Sch. Dist. of Philadelphia, 142 F. Supp. 3d 396, 66 IDELR ¶ 181 (E.D. Pa. 2015)
- upheld expert witness fees (approx. $10K) in addition to reduced attorneys' fees (approx. $130K) under § 504 as a consequence of denial of FAPE under IDEA for twice-exceptional child

[10] For a comprehensive source, see PERRY A. ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011)(available from LRP Publications, www.lrp.com or tel. 800-341-7874).

S **D.A.B. v. N.Y.C. Dep't of Educ. (supra)**
- rejected § 504 discrimination claim of denial of access for student with autism based on lack of vaccination, because parent unilaterally placed the child and failed to apply for vaccination exemption

(*P*) D.N. v. Louisa Cty. Pub. Sch., 156 F. Supp. 3d 767, 67 IDELR ¶ 12 (W.D. Va. 2016)
- refused dismissal of § 504 claim on behalf of student with autism, concluding that allegations of repeated nondisciplinary exclusions from IEP's general education placement and district denials of these exclusions at IEP meetings and involuntary mental health evaluation rather than appropriate private school placement met bad faith or gross misjudgment standard

S R.K. v. Bd. of Educ. of Scott Cty., 637 F. App'x 933, 67 IDELR ¶ 29 (6th Cir. 2016)
- upheld summary judgment for district in dispute between parents' request for nursing services, including insulin pump monitoring, to kindergarten child with Type I diabetes in neighborhood school and district's offer to do so in another school where parents relocated, thus making injunctive relief moot, and failed to show deliberate indifference, thus not qualifying for money damages (note that earlier 6th Cir. decision required individualized assessment per the § 504 evaluation regulation)

(*P*) A.G. v. Paradise Valley Unified Sch. Dist., 815 F.3d 1195, 67 IDELR ¶ 79 (9th Cir. 2016)
- reversed summary judgment for district, finding genuine issues as to the meaningful access and reasonable accommodation claims of middle school gifted student with autism and the deliberate indifference requisite for money damages—parents claimed that district was liable (after settling IDEA claim) for not providing FBA-BIP and 1:1 aide to child in middle school placement that included gifted program rather than changing the placement to private psychiatric school

(*P*) Beam v. W. Wayne Sch. Dist., 165 F. Supp. 3d 200, 67 IDELR ¶ 88 (M.D. Pa. 2016)
- failure to modify and implement student's 504 plan may fulfill the requisite liability standard of deliberate indifference under § 504 and the ADA (here for student who committed suicide after school's knowledge of his emotional state)

S C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist., 641 F. App'x 423, 67 IDELR ¶ 111 (5th Cir. 2016), cert. denied, 137 S. Ct. 297 (2016)
- ruled that placement of special ed student with ADHD in 60-day interim alternate education setting after manifestation determination[11] did not constitute hostile environment under § 504 – lack of requisite deliberate indifference

S S.B. v. Bd. of Educ. of Harford Cty., 819 F.3d 69, 67 IDELR ¶ 165 (4th Cir. 2016); see also Nevills v. Mart Indep. Sch. Dist., 608 F. App'x 217, 65 IDELR ¶ 164 (5th Cir. 2015) (Tourette syndrome)
- rejected § 504 bullying/FAPE claim of student with ADHD and SLD due to lack of deliberate indifference

[11] Rejecting the broad assertion that ADHD's impairment of executive functioning caused the bathroom-photo incident, the appellate court reasoned that "any plaintiff with ADHD could attribute any misconduct, no matter how severe, to the disability."

S K.L. v. Mo. State High Sch. Athletic Ass'n, 178 F. Supp. 3d 792, 67 IDELR ¶ 171 (E.D. Mo. 2016)
- denied preliminary injunction for student with disabilities who competed in track with a racing wheelchair and who sought to earn team points and also to have them assessed against school teams w/o para-athletes—a fundamental alteration, or "affirmative action" relief, not cognizable under § 504 and the ADA

S J.C. v. Cambrian Sch. Dist., 648 F. App'x 652, 67 IDELR ¶ 199 (9th Cir. 2016)
- brief decision affirming that charter school's denial of admission to nonresident second grader was due to lack of space, not student's disability, thus not violating § 504/ADA

S Thurmon v. Mount Carmel High Sch., 191 F. Supp. 3d 894, 68 IDELR ¶ 20 (E.D. Ill. 2016)
- dismissed § 504 claim of student with SLD suspended by parochial school – merely conclusory allegations that did not sufficiently meet standards for liability (including alternative of disproportionate impact)

(*P*) Spring v. Allegany-Limestone Sch. Dist., 655 F. App'x 25, 68 IDELR ¶ 34 (2d Cir. 2016)
- reversed dismissal of harassment (bullying) liability claim under § 504/ADA for student with Tourette Syndrome and ADHD who committed suicide after being bullied—acknowledged liberalizing eligibility standards under ADAAA

(*P*) United States v. Gates-Chili Cent. Sch. Dist., 198 F. Supp. 3d 228, 68 IDELR ¶ 70 (W.D.N.Y. 2016)
- agreed with district that the ADA did not obligate it to provide a handler for service dog for student with autism and seizure disorders but preserved the matter for further proceedings as to whether the student was able to "handle" the dog (including tether and untether it)

(*P*) Conklin v. Jefferson Cty. Bd. of Educ., __ F. Supp. 3d __, 68 IDELR ¶ 122 (N.D. W.Va. 2016)
- denied § 504/ADA liability claims of student with disabilities (on IEP) who was excluded first from school (via homebound) and then from classroom (via school library) based on fear of teacher who had physically assaulted him

S B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 68 IDELR ¶ 151 (2d Cir. 2016)
- ruled, in a disparate impact case, that students with IEPs, i.e., eligible under the IDEA, do not necessarily qualify for eligibility under § 504/ADA due to triable issue of substantial limitation

(*P*) Pollack v. Reg'l Sch. Unit 75, 660 F. App'x 1, 68 IDELR ¶ 181 (1st Cir. 2016)
- remanded for further proceedings § 504/ADA retaliation and failure-to-modify (specifically, refusal to allow child to carry recording device) claims of parent of child with autism

S Doe v. Torrington Bd. of Educ., 179 F. Supp. 3d 179, 67 IDELR ¶ 182 (D. Conn. 2016); Dorsey v. Pueblo Sch. Dist. 60, 140 F. Supp. 3d 1102, 66 IDELR ¶ 183 (D. Colo. 2015)
- dismissed ADA claim of peer harassment (i.e., bullying) of student with SLD (or other disability) where not based on student's disability

(*P*) Chadam v. Palo Alto Unified Sch. Dist., 666 F. App'x 615, 69 IDELR ¶ 2 (9th Cir. 2016)
- reversed dismissal of § 504/ADA claim on behalf of student with genetic markers for cystic fibrosis whom district had excluded for two weeks based on perceived direct threat to other students w/o individualized medical assessment – "regarded as" prong

S Todd v. Carstarphen, __ F. Supp. 3d __, 69 IDELR ¶ 157 (N.D. Ga. 2017)
- ruling that district provided reasonable accommodation rather than blind parent's request for door-to-door transportation for her nondisabled child and that ADA Title II, contrary to its regulations, does not apply to associational claims of nondisabled child

Glossary of Acronyms and Abbreviations

ADA	Americans with Disabilities Act
ADAAA	Americans with Disabilities Act Amendments Act
ADHD	attention deficit hyperactivity disorder
BIP	behavior intervention plan
C.F.R.	Code of Federal Regulations
ED	emotional disturbance
ESY	extended school year
FAPE	free appropriate public education
FBA	functional behavior analysis
IDEA	Individuals with Disabilities Education Act
IEE	independent educational evaluation
IEP	individualized education program
IHO	impartial hearing officer
infra	cross reference to subsequent citation
LRE	least restrictive environment
OHI	other health impairment
OT	occupational therapy
Part C	IDEA provisions specific to infants and toddlers (i.e., ages 0–3)
PT	physical therapy
§ 504	Section 504 of the Rehabilitation Act
SL	speech and language
SLD	specific learning disability
SLI	speech and language impairment
SLT	speech and language therapist
supra	cross reference to earlier, full citation
U.S.C.	United States Code (i.e., federal legislation)