IMPORTANT HOT TOPICS IN THE WORLD OF SPECIAL EDUCATION LAW: STATUS OF THE U.S. DOE AND RECENT COURT AND AGENCY GUIDANCE

G-CASE Spring Legal Conference

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INTRODUCTION

This presentation will address important special education legal issues that have been going on across the country during the past year. What is happening with the "dismantling" of the U.S. Department of Education (US DOE) and important court and agency guidance from 2025 will be reviewed and will include lessons learned for special education administrators and others who dedicate themselves to the education of students with disabilities.[1]

UPDATES ON THE STATUS OF US DOE, IDEA, AND SECTION 504

Dismantling of the US DOE Generally

As to the future of the U.S. Department of Education (US DOE), the President signed an Executive Order on March 20, 2025 "closing the Department of Education and returning authority to the states" to the "maximum extent appropriate and permitted by law." While it is a simple fact that the President cannot completely close the US DOE without an Act of Congress, the current Administration is definitely working on the "dismantling" and much has happened, including litigation to prevent and, in some cases, reverse or pause what has been done.

[1] **Important Disclaimers:** The information that I will provide today is intended as general information only and the opinions and interpretations are those of only one special education school attorney. You must consult with your agency's school attorney on specific, local matters and for legal advice. In addition, this information must be analyzed in light of any FDOE (and/or your local district's) guidance on all things related to the provision of educational services to students with disabilities.

State of New York v. McMahon, Case No. 1:25-CV-10601 (D. Mass.) filed on March 13, 2025, consolidated with Somerville Pub. Schs. v. Trump, Case No. 1:25-CV-10677 (D. Mass.) filed on March 24, 2025. In these consolidated cases, 20 states and the District of Columbia (NY, MA, CA, AZ, CO, CT, DE, HI, IL, ME, MD, MI, MN, NJ, NV, OR, RI, VT, WA, WI) as well as educator groups, school districts, teachers' unions and others seek injunctive relief to prevent the dismantling of US DOE (the RIFs, transfer of duties to other agencies, etc.) and a declaration that the President's directive (Executive Order issued in March 2025) is unconstitutional and violates the law.

- On May 22, 2025, the federal district court in Massachusetts initially granted the Plaintiffs' request for a preliminary injunction keeping the Administration from implementing the reduction in force (RIF) and dismantling of US DOE. The court also ordered US DOE to reinstate nearly 1,400 US DOE employees who were fired as part of the RIF.

- On May 23, 2025, the Administration appealed to the First Circuit and asked for a stay of the district court's injunction, which was denied by the First Circuit on June 4, 2025. Somerville Pub. Schs. v. McMahon, 139 F.4th 63 (1st Cir. 2025).

- On June 6, 2025, the Administration filed an application with the U.S. Supreme Court to stay the injunction, calling the lower court's order "unlawful" and stating that the injunction "causes irreparable harm to the Executive Branch." The question presented to the Court: "Whether the Supreme Court should stay a district court order requiring the government to reinstate Department of Education employees fired as part of a reduction in force."

- On July 14, 2025, the Supreme Court granted the Administration's request to pause the reinstatement Order while the First Circuit appeal proceeds, which meant that the US DOE was not required to immediately reinstate staff. McMahon v. New York, 145 S. Ct. 2643, (2025). In my Southern terms, "This ain't over yet." It is important to remember that the Administration still cannot shut down the US DOE without a literal "Act of Congress."

- Since the Supreme Court's July 14 decision pausing action on the district court's Order to reinstate DOE employees, litigation continued in the lower courts, where the First Circuit set a briefing schedule for the Administration's appeal of the preliminary injunction order. On August 14, 2025, lawyers for some of the challengers filed a letter to inform the First Circuit that they had asked the district court and the court agreed to issue an order indicating that he would lift the preliminary injunction if the case were returned to the district court. In the wake of the Supreme Court's July 14, 2025 decision, the challengers explained, "the Department of Education put into effect the RIFs that had been enjoined," so "that the injunction therefore could no longer have the intended effect of preserving the status quo at the Department pending the conclusion of the litigation." The challengers also asked the First Circuit to freeze the briefing on the Administration's appeal of the preliminary injunction, but there has not yet been any action on that request.

- Meanwhile, back in the federal district court, the court entered an order in late August setting a schedule for litigation on the merits of the challengers' claims – which contests both the RIFs and the dismantling of US DOE – to move forward into the Fall.

- As everyone is keenly aware, the government shut down on October 1, 2025, which lasted until November 12, 2025, and nothing happened in any of the litigation against the government, including in this case. On October 1, 2025, the district court vacated the preliminary injunction issued in May in order to move forward with an actual trial on the merits but, at the same time, issued an Order staying all of the proceedings due to the government shutdown.

- Discovery motions and other activities have resumed in this case as of the reopening of the government on November 12, 2025.

  Note: During the government shutdown, the Administration also made further reductions in force at the U.S. DOE and, according to several reports, fired 121 of 135 remaining employees at OSERS. As part of negotiating the reopening of the government, however, those 121 staffers were reinstated, but only through January 30, 2026.

- On November 25, 2025, some of the Plaintiffs (American Association of University Professors, American Federation of State, County, and Municipal Employees, Council 93, American Federation of Teachers, American Federation of Teachers Massachusetts, Easthampton Public Schools, Service Employees International Union, Somerville Public Schools, The Arc of the United States) filed an Amended Complaint in this case and now also challenge the US DOE's recent actions to shift many of its core functions to the Department of Labor and other federal agencies through "Interagency Agreements." The amended Complaint claims, among other things, that while the Administration knows that it cannot close the US DOE without Congressional action and consent, in order to "get around" Congress, the Administration has set about "systemically dismantling the Department: staff, programs, funds" and has fired more than 50% of US DOE's employees, moved key Department functions to other agencies, and pledged billons of the Department's funds to those agencies, consistent with the President's March 20 Executive Order. This, plaintiffs say, is unlawful and will "harm millions of students and their families, school districts, and educators across the nation." The Amended Complaint can be found at:

https://storage.courtlistener.com/recap/gov.uscourts.mad.281941/gov.uscourts.mad.281941.187.0.pdf. Importantly, US DOE's special education agencies, OSERS/OSEP, have not been the subject of these Agreements....yet. Popular rumor has it that the plan is to move federal IDEA oversight special education to the Department of Health and Human Services (DHH).

- On January 9, 2026, another Amended Complaint has been filed by the State Plaintiffs also challenging the US DOE's recent actions to shift many of its core functions to the Department of Labor and other federal agencies through "Interagency Agreements."

The above case is the one that I have chosen to watch generally as it relates to the overall "dismantling" of the US DOE. You can watch it too online at:
https://www.courtlistener.com/docket/69732750/state-of-new-york-v-mcmahon/

Dismantling of US DOE's Office for Civil Rights (OCR) Specifically

Victim Rights Law Center v. U.S. Dept. of Educ., Case No. 1:25-CV-11042 (D. Mass.) filed on April 21, 2025. This case was brought by a nonprofit organization that represents students and families in discrimination matters, along with students and parents, and it also challenges the dismantling of the US DOE but, more specifically, the termination of US DOE's OCR staff and the closure of the regional OCR offices in March 2025. They seek essentially the same declaratory and injunctive relief as in the New York v. McMahon case discussed above, and oral argument was had on the motion for preliminary injunction against the government on June 5, 2025.

- On June 18, 2025, the same federal Massachusetts Judge in the State of New York v. McMahon case issued a preliminary injunction requiring US DOE to reinstate all employees terminated at OCR during the RIF, to immediately notify former OCR employees and other officials of their reinstatement order within 24 hours, and to file weekly reports to the Judge as to the status of the reinstatement process. The court stated the purpose of the order is "to restore the OCR to the status quo such that it is able to carry out its statutory functions." The court noted that since March 11 and the RIF, the government "had frozen nearly all investigations except for a select few high-profile investigations regarding diversity, equity and inclusion programs that Defendants allege discriminate against white and Asian students" and that OCR had not "announced any investigations or resolutions of complaints based on (1) disability discrimination; (2) sex discrimination, besides those based on policies or practices that permit transgender students to access school facilities and activities; or (3) race discrimination against Black, Latino or Indigenous students." The court also noted that OCR had instructed staff to "not communicate with students, families, and schools involved in their cases and to cancel scheduled meetings and mediations." Staff were also told not to use typical investigation processes—document requests, interviews, negotiation of resolution agreements, etc. The court concluded, based upon all of the evidence presented, that it was "making it impossible for OCR to complete investigations and cases promptly and fairly." While the case is similar to the others discussed above, the Judge added that this case "warrants a separate decision to address the unique harms [Plaintiffs] are suffering." Victim Rights Law Center v. U.S. Dept. of Educ., 788 F.Supp.3d 70, 2025 WL 1704311 (D. Mass. 2025).

- On June 23, 2025, US DOE submitted its first Declaration as part of the Judge's requirement to file weekly reports and reported that affected employees had been notified of the court's order as instructed. From that point forward, weekly reports were filed by the US DOE during most of the summer of 2025 that provided updates on action taken to reinstate employees, investigate and resolve pending OCR Complaints, reopen offices, etc. Declarations filed throughout the summer and into the Fall detailed all of the action that the US DOE had taken to comply with the Court's order.

- On July 21, 2025, the Administration filed a Motion to Vacate the Judge's injunction based upon the Supreme Court's ruling in McMahon v. New York on July 14th referenced above.

- On August 13, 2025, the Judge denied the Motion to Vacate, so the Administration filed its Notice of Appeal with the First Circuit the next day, in addition to an Emergency Motion to Stay the district court's injunction pending appeal.

- On September 23, 2025, the Administration filed its last required Declaration so far in the case, reporting that US DOE had updated and continued implementing the schedule it had set forth in its August 19, 2025 Declaration that the Department had set to return to active duty, via remote-work status, the approximately 264 OCR employees who received RIF notices on March 11, 2025, with the following details: 27 employees returned to active duty on September 8, 2025; 58 employees returned to active duty on September 22, 2025 (after identifying a group of 60, two employees had voluntarily resigned prior to the return to work date); continued identifying and determining initial supervisory reporting for approximately 60 employees to return to active duty on or about October 6, 2025; approximately 60 employees will return to active duty on or about October 20, 2025; approximately 60 employees will return to active duty on or about November 3, 2025. In addition, the Declaration set out that from March 11 to September 15, 2025, OCR received 9,269 complaints; opened 635 for investigation; opened 32 directed investigations; dismissed 6,353 complaints consistent with OCR's Case Processing Manual; resolved 138 complaints after investigation concluding insufficient evidence for findings; and resolved 581 complaints with voluntary agreements. It is important to note that all of the furloughed employees have been paid while on administrative leave while the lawsuit has played out.

- On September 29, 2025, the First Circuit Court of Appeals granted the Administration's request to stay the district court's preliminary injunction pending appeal on the basis that "[w]e are persuaded that, given the particular facts and the arguments made by the parties in the stay briefing to us, this case appears to be—unlike other cases in which we have considered the Supreme Court's McMahon order—effectively a subset of McMahon and is sufficiently 'like' McMahon such that the McMahon order must control the outcome at this early stage of the litigation." The government then shut down on October 1, 2025.

- Upon reopening of the government, the parties agreed that the appeal before the First Circuit Court of Appeals should be put in abeyance so that the parties can return to the district court for a trial on the merits of the case. On November 25, 2026, the First Circuit agreed and entered an order to that effect.

- On January 12, 2026, the district court vacated and dissolved the preliminary injunction so that the trial may proceed and pursuant to stipulation of the parties, the First Circuit dismissed the Appeal on January 15, 2026.

While there are others, this case is the one to watch as it relates to the overall status of the US DOE's OCR and its pending activity regarding resolution of complaints. You can watch it at: https://www.courtlistener.com/docket/69921190/victim-rights-law-center-v-united-states-department-of-education/

Important update to report regarding OCR and its employees: On December 5, 2025, news outlets reported that US DOE sent out an email indicating that it was bringing back a number of furloughed employees to OCR that they had been trying to lay off since this all began in March. NPR (only one of the sources reporting this) reported on December 10th that these workers include many OCR attorneys who investigate family complaints of discrimination in schools. Apparently, after the March RIF (and according to the declarations filed in the Victim Rights case above), that left roughly half of OCR's employees (around 299), and 52 chose to leave rather than to remain on

paid leave. The remaining 247 (according to NPR) received the email on December 5th (which was shared with NPR by two people who received it), saying that while the Administration would continue its legal battle to downsize the Department, "utilizing all OCR employees, including those currently on administrative leave, will bolster and refocus efforts on enforcement activities in a way that serves and benefits parents, students, and families." Apparently, the email told them to report to their regional office on Monday, December 15th. The US DOE's press secretary for legal affairs confirmed that the Department "will temporarily bring back OCR staff." One Department source apparently speaking on the condition of anonymity told NPR that OCR currently has about 25,000 pending complaints, including around 7,000 open investigations. In all, NPR notes, just 62 OCR employees have not received a termination notice at some point this year, which is about 10% of OCR's headcount in January 2025. Here's the NPR Article: https://www.npr.org/2025/12/10/nx-s1-5637464/education-department-layoffs-civil-rights#:~:text=Court%20records%20show%2052%20have,for%20much%20of%20the%20year.

US DOE Funding/Grant Cancellations

State of Washington v. United States Dept. of Educ., Case No. 2:25-cv-01228 (W.D. Wash. 2025). On June 30, 2025, 16 states (WA, CA, CO, CN, DE, IL, ME, MD, MA, MI, NM, NY, NV, OR, RI, WI) filed a Complaint for injunctive and declaratory relief against US DOE seeking to enjoin the discontinuation of $1 billion in mental health grant funding that had been provided in the aftermath of the 2022 Uvalde, Texas school shootings. The States claim, among other things, that US DOE's action violates the APA and the US Constitution and threatens the provision of mental health services necessary to ensure the safety of students in low income and rural schools. The Complaint notes that schools were able to hire 1,296 school mental health professionals and provide mental and behavioral health services to nearly 775,000 students and without an injunction to continue the funds, many districts will have more difficulty providing the services to students who need them.

- On September 5, 2025, the Administration filed a motion to dismiss the case for lack of jurisdiction, but on October 21, 2025, the district court denied the Administration's motion to dismiss.

- October 27, 2025, the district court granted the States' motion for a preliminary injunction, finding that they were likely to succeed on the merits of their claim that the grant discontinuations were "arbitrary and capricious" under the Administrative Procedure Act (APA).

- On November 13, 2025, the Administration filed a Motion with the Ninth Circuit Court of Appeals seeking an Emergency Stay on the district court's preliminary injunction freezing discontinuation of the multi-year grants supporting the mental health programs in elementary and secondary schools in the states that filed the lawsuit.

- On December 4, 2025, the Ninth Circuit Court of Appeals denied the Administration's Motion for Stay and the parties continue preparation for trial with summary judgment motions pending.

- On December 19, 2025, the Court granted the states' motion for summary judgment and

ordered the US DOE to reinstate the mental health grant funding and to provide status reports of its actions as the litigation continues.

The docket and progression of this case can be found at: https://www.courtlistener.com/docket/70679500/state-of-washington-v-united-states-department-of-education/

OTHER RELEVANT 2025 SPECIAL EDUCATION CASE LAW AND "LEGAL HAPPENINGS"

THE LEGAL STANDARD FOR OBTAINING MONEY DAMAGES IN SPECIAL EDUCATION CASES

A.J.T. v. Osseo Area Schs., 605 U.S. 335, 146 S.Ct. 1816 (June 12, 2025). The decision can be found at https://www.supremecourt.gov/opinions/24pdf/24-249_a86c.pdf.

Federal court case history: There were essentially two important case decisions going on in 2024 that led to the Supreme Court's decision on June 12, 2025—One regarding the provision of FAPE to the student and one involving the parents' claims against the Minnesota district for money damages and injunctive relief under Section 504/ADA for its denial of FAPE.

Case Decision #1: The FAPE Case

The federal district court's review of the IDEA due process hearing decision on FAPE

The A.J.T. case began in federal court when the school district sought court review of a due process hearing decision finding that the district denied FAPE to a young lady named Ava Tharpe with a rare and severe form of epilepsy—Lennox-Gastaut Syndrome. The Administrative Law Judge (ALJ) ordered the district to provide instruction to Ava at school from noon to 4:15 and then services at home to include discrete trial training interventions between 4:30 pm and 6:00 pm each school day, along with 495 hours of compensatory education services. Because Ava's seizure activity kept her from attending school until after noon each day, the ALJ found that the district's proposal to end Ava's day at 3 p.m. because the middle school's day ended at 2:40 p.m. was not FAPE designed to enable Ava to make appropriate progress in light of her circumstances.

In 2022, the federal district court affirmed the hearing decision, noting that during a shortened school day, the evidence reflected that Ava made *de minimis* progress. In addition, the court noted that the district categorically refused to extend her school day based upon administrative convenience and availability of personnel rather than upon Ava's individual needs, which is "never an excuse for impermissibly shortening the instructional time that students with disabilities receive." Osseo Area Schs. v. A.J.T., 81 IDELR 256 (D. Minn. 2022).

The district appealed this ruling to the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals' decision on the district court's FAPE ruling

The Eighth Circuit affirmed the district court's decision that the district denied FAPE to Ava. As an initial matter, the court rejected "the notion that the IDEA's reach is limited to the regular hours of the school day. Neither the District nor *amici* identify anything in the IDEA implying—let alone stating—that a school district is only obligated to provide a FAPE if it can do so between the bells." Turning to Ava's IEPs and whether she received FAPE, the court pointed to several things that convinced it that she did not. First, Ava made *de minimis* progress overall. She regressed in toileting and, at one point, the court noted that the district removed the toileting goal from her IEP because there was not enough time to work on it during her short school day and noted that the district's records clearly reflected that. In addition, the court noted that the district cited only slight progress in a few areas and one of the district's experts agreed that the student's progress was minimal. Progress reports reflected that Ava met none of her annual goals in 2016 or 2017 and, by the end of 2018, she had met only a few short-term objectives. Finally, the court pointed out that the record contained no progress reports for 2019.

The Eighth Circuit also rejected an additional argument made by the district that the district court erred when it considered expert testimony that Ava would have benefited from evening instruction because it imposed a requirement to "maximize the student's potential." The Court noted that asking whether Ava would have made more progress with evening instruction is not about maximizing potential— "it's about whether the District's purely administrative decision not to provide evening education caused her *de minimis* progress and regression." The Court concluded that the expert testimony showed that the district's choice to prioritize its administrative concerns (such as creating an unfavorable precedent for itself and other districts, state law does not require it, etc.) had a negative impact on Ava's learning. Considering that Ava made *de minimis* progress overall, that she regressed in toileting, and that she would have made more progress with evening instruction, the Court saw no error in the district court's conclusion that the district denied FAPE. Osseo Area Schs. v. A.J.T., 96 F.4th 1062, 124 LRP 9021 (8th Cir. 2024). The district did not seek review of this decision.

Case Decision #2: The Money Damages Case

The federal district court's decision on the parents' claims for additional relief under 504/ADA for money damages

Before the same federal district court, the parents sought relief in addition to what they received in the IDEA hearing in the form of compensatory money damages under Section 504 and the ADA. The district court, however, granted the district's motion for judgment on these claims, finding that district officials exercised professional judgment in a way that did not depart grossly from accepted standards among educational professionals, especially because they had convened multiple IEP meetings, extended Ava's school day beyond the school day of her peers, incorporated many of the parent's expert suggestions into Ava's IEPs, and ensured that Ava always had at least one and often two aides with her at school. Finding that the parents had failed to show that the district acted "with bad faith or gross misjudgment" required in the Eighth Circuit to make a case under ADA/504, the court dismissed the claims for compensatory money damages. A.J.T. v. Osseo Area Schs., 82 IDELR 158 (D. Minn. 2023).

The parents appealed this ruling to the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals' decision on the 504/ADA claims for money damages

The Eighth Circuit also affirmed this decision of the district court but did so with language that appeared reflect regret. The Court held that while the district may have improperly refused to provide Ava with instruction after school hours to accommodate her epilepsy and seizure disorder, its actions did not constitute intentional discrimination required to substantiate a 504/ADA claim for disability discrimination in the Eighth Circuit.

The Court noted further that in order to successfully assert a federal claim under 504/ADA for money damages in the Eighth Circuit, parents must prove that the district intentionally discriminated by acting "with bad faith or gross misjudgment." Here, the Court noted that the parents did not meet this standard and while the district's denial of the parents' request for extended day services for Ava may have violated her educational rights and amounted to "negligence or deliberate indifference," this was not enough.

The Court noted that the district did not ignore Ava's needs nor did it delay efforts to address them. Rather, the district appropriately met with the parents and updated her IEP every school year, which included a variety of services, including intensive one-on-one instruction and a 15-minute extension of the school day so that the halls could clear of other students before she left school. Further, the district offered the student 16 three-hour instructional sessions at home each summer. This does not show wrongful intent for purposes of disability discrimination in the Eighth Circuit. A.J.T. v. Osseo Area Schs., 124 LRP 9023 (8th Cir. 2024).

The parents asked the Supreme Court to review the decision and their petition was granted on January 17, 2025.

The specific question presented to the Supreme Court

When reviewing the decision of the Supreme Court issued on June 12, 2025, it is important to note the specific (and narrow) question the Court was asked to address:

> Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Rehabilitation Act) require public entities and organizations that receive federal funding to provide reasonable accommodations for people with disabilities. In the decision below, the Eighth Circuit held that, for discrimination claims "based on educational services" brought by children with disabilities, these statutes are violated only if school officials acted with "bad faith or gross misjudgment." App.3a. That test squarely implicates an entrenched and acknowledged 5-2 circuit split over the standard governing such claims. It is also plainly mistaken on the merits: As the Eighth Circuit itself acknowledged, the test lacks "any anchor in statutory text," App.5a n.2, and it arbitrarily departs from the more lenient standards that all courts-including the Eighth Circuit-apply to ADA and Rehabilitation Act claims brought by plaintiffs outside the school setting. The question presented is: **Whether the ADA and Rehabilitation Act require children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education.**

The Supreme Court's answer to the question presented

The Supreme Court's short and unanimous answer to the above question is "No." The longer answer is that students bringing ADA and 504 claims related to their education are not required to make a heightened showing of "bad faith or gross misjudgment," but instead are subject to the same standards that apply in other disability discrimination cases.

The Court pointed out that in cases outside the context of elementary and secondary education, the general approach of the courts of appeals, including the Eighth Circuit, permits plaintiffs to establish a statutory violation and obtain injunctive relief under the ADA and Section 504 without proving intent to discriminate. To obtain compensatory damages, however, courts of appeals generally agree that a plaintiff must show intentional discrimination and "a majority" of those courts that have weighed in on the question, including the Eighth Circuit, find the requirement to show "intentional discrimination" satisfied by proof that the defendant acted with "deliberate indifference." That standard "does not require a showing of personal ill will or animosity toward the disabled person." [citations omitted]. Rather, to show deliberate indifference, it is enough that a plaintiff prove the defendant disregarded a "strong likelihood" that the challenged action would "result in a violation of federally protected rights." [citations omitted].
The Court held specifically that ADA and 504 claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts as described, without saying "deliberate indifference" is the chosen or right one directly. The Court also noted that there is nothing in the text of ADA or Section 504 that such claims should be subject to a distinct, more demanding analysis, such as "bad faith or gross misjudgment."

Finally, the Court ended its ruling by saying:

> That our decision is narrow does not diminish its import for A.J.T. and "a great many children with disabilities and their parents." [citation omitted]. Together they face daunting challenges on a daily basis. We hold today that those challenges do not include having to satisfy a more stringent standard of proof than other plaintiffs to establish discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act. The judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

My impressions of the Supreme Court's ruling

What the Court did not Say

1. That Ava or her parents are entitled to money damages and that the parents proved a violation of 504/ADA;
2. That schools are required to accommodate and make school day modifications upon request of every parent of a student with a disability;
3. That it is now easier for parents to recover money damages for violations of IDEA by using 504/ADA as a "gateway" to litigation;
4. That "deliberate indifference" is the definitive standard for recovering money damages under 504/ADA in a FAPE-related case; or

5. That intentional discrimination is not required in order to recover money damages under 504/ADA.

My final thoughts: Also unsettled is whether 504 was violated in the first place when IDEA FAPE was denied in not providing an extended day to Ava. While the lower courts ruled that IDEA was violated based on the failure to consider Ava's individual needs in programming for her, was it a denial of a reasonable accommodation under 504? Or might modification to the school day be a fundamental alteration required under IDEA but not a reasonable accommodation under Section 504? The Court made clear in footnote 6 that "[b]ecause we address only the application of the heightened bad faith or gross misjudgment standard of intent to education related ADA and Rehabilitation Act claims, our opinion should not be read to speak to any other showing that a plaintiff must make in order to prove a violation of the respective requirements of those statutes or the IDEA."

While I was hoping that this case would go back for a full trial so that we could see whether money damages would actually be awarded, the parties settled the case in the Fall. There is a very interesting video about the Supreme Court's decision that you can watch it on YouTube at: https://youtu.be/JsOiVmjv-5k?si=z7dQJv5OU40b18fZ

MONEY DAMAGES/LIABILITY/PERSONAL INJURY CASES: WHAT KINDS OF CLAIMS ARE WE SEEING IN THESE CASES?

W.H. v. Fort Bend Indep. Sch. Dist., 2025 2147067 (5th Cir. 2025). In filing this action seeking review of a due process hearing decision that the district provided FAPE to the student with SLD, the parents also filed claims under Section 504. Even if the Court evaluates the parent's 504 claims under the "newly clarified deliberate indifference standard" set forth by the Supreme Court in the A.J.T. case, the student's claim requires him to show that (1) he is a qualified individual with a disability under 504; (2) he was excluded from participation in, or was denied the benefits of services, programs, or activities for which the district is responsible; (3) his exclusion, denial of benefits, or discrimination was by reason of his disability; and (4) the exclusion, denial, or discrimination was intentional. For a claim asserting that the district's failure to make reasonable accommodations for disability, this student must also show that (1) his disability and limitations were known by the school district; (2) the school district failed to make reasonable accommodations for the known limitations; and (3) the failure was intentional. As the A.J.T. Court explained, the "intentional" element of the claim can be satisfied by evidence establishing deliberate indifference. In the 5th Circuit, deliberate indifference is a "high bar" and neither negligent nor merely unreasonable responses are enough. Instead, to clear the "high bar" of proving deliberate indifference, the challenged action must be "clearly unreasonable in light of the known circumstances." Here, the record reflects that the district's decision to place the student in a resource classroom for Math and English (rather than the general ed classroom), was not clearly unreasonable in light of the known circumstances.

J.M. v. Ozark Horizon State Sch., 125 LRP 18546 (W.D. Mo. 2025). State Department of Education's motion to dismiss claims for money damages under 504/ADA for physical injuries allegedly suffered by a severely developmentally disabled 9-year-old student at the hands of his teacher at the state-run school is denied. Just five days earlier, the Supreme Court issued the A.J.T. decision and rejected a "bad faith" or "gross misjudgment" standard for 504/ADA claims. Thus, the parents need only establish "deliberate indifference." Here, the parents' complaint is sufficient where it alleges that school staff knew of the alleged abuse and failed to respond appropriately. For

example, it is alleged that the state school's building administrator observed and/or had personal knowledge of the teacher's physically abusive behavior and failed to report it to any law enforcement or child protective agency. In addition, it is alleged that other staff observed or had knowledge of the abuse but were directed to report the teacher's misconduct to the building administrator, rather than calling Missouri's hotline as required by state law. It is also claimed that similar assaults have occurred on at least one other student at the school and that Defendants had knowledge of the events yet took no action. Finally, despite knowledge of the teacher's assault of the student, the teacher was allowed to keep teaching. If these claims are true, it could amount to disability discrimination where the alleged "physical assaults and the alleged awareness and failure to report and protect [the student] is sufficient to state a claim" against the DESE and the state school.

A.F. v. St. Tammany Parish Sch. Bd., 125 LRP 13123 (E.D. La. 2025). District's motion for summary judgment on the parents' ADA claims for "conscious discrimination" and failure to accommodate is denied. Parents seeking relief for a failure to accommodate must show that the district was aware of the student's disability and the student's limitations as a result. In addition, parents must show that the district failed to make reasonable accommodations. Here, the three paraprofessionals working with the nonverbal blind student with autism knew about his disabilities, as they were apparent. In addition, video surveillance footage showed the paraprofessionals responding inappropriately to the student's white cane when it hit one paraprofessional's leg. Three different incidents with three different paraprofessionals occurred within a 10-minute period where the first para kicked him; the second shoved him and hit him in the face with a walkie talkie; and the third pushed his head into the cafeteria table. The parents allege that school officials placed one of the paras on administrative leave on the same day that the first incident occurred and asked her to resign, which she did. However, the parents claim that the other two paras were not immediately sanctioned and, as a result, remained with the student for several more weeks, until they were asked to resign as well. The parents claim that they were notified by the school on the day of the incidents but were told that the student was "love tapped" by a school employee and that there was nothing to be concerned about. Further, the parents allege that the principal only referenced one of the three incidents that day, and because it was intentionally downplayed, they did not think to investigate the matter more closely. The parents, however, learned later that the paras had suddenly resigned, which prompted them to inquire further into the incident. The parents also claim that when they asked the principal why she did not tell them about the other two incidents from that day, she said that she must have forgotten about them. Finally, the parents allege that the principal also told a teacher not to speak with anyone about the incidents because she was going to handle it, and when the parents asked to see the security footage from that day, the principal made excuses as to why she could not get it. They were later told by an Assistant Superintendent that the footage had been deleted as more than 31 days had passed since the incident occurred, which the parents claim to be a lie where the School Board intentionally withheld the videos for nearly two years. The court agrees with the parents that their claims sufficiently state a case under ADA. No one disputes that the paraprofessionals were aware that the student has a disability. Further, the parents provided video evidence arguably showing the paras taking the student's walking cane away, striking him with it, and then bodily moving him down the hall rather than returning the cane. The Court finds that choosing to take away a blind child's walking cane, hitting him with it, and making him walk without the cane is sufficient to support a claim for intentional denial of a reasonable accommodation under ADA.

Acosta v. Amarillo Indep. Sch. Dist., 125 LRP 13397 (N.D. Tex. 2025). District's motion to dismiss the parent's 504/ADA claims for money damages for their daughter's untimely death is denied at this juncture. Here, it is alleged that while the district developed an allergy action plan calling for school personnel to administer epinephrine, contact emergency medical services, and notify parents when the 10-year-old student experienced an episode related to her severe dairy allergy, the school nurse was not available when the student had an anaphylactic episode during her lunch period. On January 17, 2023, the student was eating lunch in the school cafeteria and began experiencing an allergic reaction, so she went to the office of the school nurse who was not there. A school official called the student's mother to ask if they could administer Benadryl and were given permission to do so. The student took the Benadryl, but then became sick and vomited, so the student's grandmother came to the school. The student was struggling with a breathing treatment, and the grandmother called the local fire department, and was told that they had just received the emergency call from the school. The student collapsed, and her grandmother began administering CPR. The fire crew then arrived and took over until the ambulance arrived and transported the student to the hospital. The student died two days later as a result of the anaphylactic episode. While the Fifth Circuit has not adopted any rigid test for proving "intentional discrimination" (which is the standard for recovering damages under 504/ADA), the parent does not necessarily need to prove discriminatory animus or malicious intent. Rather, the parent may plead intentional discrimination by showing that the district had actual knowledge of the student's disability and made specific choices about which accommodations to provide. The parent has met this standard and may pursue this case at this time. The district's failure to administer life-saving medication could be viewed as a failure to accommodate and the alleged failure to have a trained nurse on campus, train other staffers, or allow the student to carry and self-administer epinephrine could be seen as intentional and discriminatory. In closing, "the Court does not hesitate in the slightest to presume that every single individual involved in the events underlying this lawsuit wanted E.C. to live. Plaintiff has not alleged, and the Court does not imagine, that AISD or any of its employees was motivated by a desire for bad events to transpire because of E.C.'s disability. And it may be that, after some discovery, the weight of the evidence is such that no reasonable jury could find that E.C.'s unfortunate death was the result of intentionally discriminatory acts or omissions on the part of AISD. But that is not the standard at this stage in the litigation. Plaintiff has stated a claim for relief that is plausible on its face, and her lawsuit cannot be dismissed pursuant to Rule 12(b)(6)."

Willauer v. Chester Co. Intermed. Unit, 2025 WL 2377680 (E.D. Pa. 2025). The Intermediate Unit's (IU's) motion to dismiss the severely disabled adult student's 504/ADA claims is denied based upon an incident where the student was severely burned while participating in the automative vocational program. At the time the student was injured, the student was twenty years old and diagnosed with Autism, Intellectual Disability, and ADHD, had profound executive functioning and attentional deficits, and was reading at a kindergarten level. The student alleges that he required constant, intensive, individual attention and instruction in order to function within any classroom or vocational setting, and that he earned very low scores in "competency, following directions, and complying with safety rules" and had a documented need "for constant supervision, prompting, and individualized attention." Before he entered the automotive program, however, neither the district nor the IU revised the student's IEP. On January 27, 2022, it is alleged that the student was working in the IU's program and his instructor directed staff to give him a hand-held electric grinder to file down metal. Staff did so but then closed an "opaque curtain" around the student and directed him to use the grinder unsupervised without a work apron or other protective clothing while staff sat at a desk across the room. While using the grinder, sparks flew onto the student's shirt, which melted the

shirt and burned him, but the student did not put the grinder down until its wheel stopped turning as he was instructed. He then sought the staff's attention to put out the fire on his body, and they doused the student with a fire extinguisher. The student was transported to and stayed at the hospital for 6 weeks while he was treated for third degree burns. To establish a claim under 504/ADA, the plaintiff must prove that (1) he has a disability; (2) he "was "otherwise qualified" to participate in school activities; and (3) he was denied the benefits of the program or was otherwise subject to discrimination because of disability. For Section 504 claims, there are two additional requirements (4) that the school receives federal financial assistance; and (5) that the denial of benefits or discrimination at issue was solely on the basis of disability. Where compensatory damages are sought, the plaintiff must also show that any discrimination was intentional and can satisfy this requirement by showing that the defendant acted with deliberate indifference to the discrimination and (a) had knowledge that a federally protected right was substantially likely to be violated and (b) failed to act despite that knowledge. Here, the student has sufficiently alleged facts showing that the IU denied him the benefits of his program or discriminated against him because of his disability because he claims that the IU both (1) failed to update his IEP after he enrolled in the auto program and (2) failed to implement his existing IEP that required "intensive instruction, modifications, and specially designed instruction with extensive adaptations and substantial modifications of the general education curriculum." Where a student with a disability suffers an injury at school because the school failed to update or implement his IEP, the school has discriminated against that student because of his disability. Thus, the student has alleged sufficient facts to show that he was denied the benefits of his program or discriminated against because of his disability. In addition, the student has alleged facts showing that the IU's discrimination was intentional based upon its actual knowledge that the IEP was not updated to respond to new educational challenges that the automotive program posed and that the student required close supervision in educational contexts. The student also claims that the IU did not create a new IEP for him or implement his existing IEP despite this knowledge. Because the student has alleged facts showing that the IU intentionally discriminated against him because of his disability, the IU's motion to dismiss the 504/ADA claims is denied.

Larsen v. Papillon La Vista Comm'y Sch. Dist., 319 Neb. 823, 2025 WL 2552469 (2025). In 2021, an 11-year-old child with autism, Tourette's, and "absence seizures" was left unattended and walked out of his public elementary school and was never seen again (federal court dismissed her federal claims in 2023). In 2023, Ryan's mother filed this negligence action against the district and staff under Nebraska's Political Subdivisions Tort Claims Act (PSTCA), alleging that her child's disappearance was a result of the district's negligent supervision. The defendants moved to dismiss the Complaint, asserting that the court lacked subject matter jurisdiction and that the Complaint failed to state a claim upon which relief could be granted. The lower court granted the motion and dismissed the Complaint, and the parent appeals to this court, which will reverse the dismissal and remand the case for further proceedings. Here, it is alleged that the student had significant learning and behavioral issues, including wandering from the school building. It is also alleged that district and school staff at the Elementary School had firsthand knowledge of the student's disabilities, were aware of his special needs, knew that he needed to be supervised at all times, and that he had a documented history of leaving or attempting to leave school grounds. In the weeks and months before the student's disappearance, district staff was also aware of three separate occasions when he walked out of the school and off school grounds when he was left alone and unsupervised—on January 16, April 28, and May 10, 2021. On May 17, 2021, district staff again left the student alone and unsupervised in a classroom. Three school district employees allegedly watched as the student walked out of the school building in the middle of the day unattended but did not attempt to prevent

him from leaving school grounds and made no immediate attempts to retrieve him and return him to school. The parent's Complaint alleges it is "more likely than not" that he died following his disappearance, but his body has not been recovered. The Complaint seeks general and special damages on behalf of both the parent and her son, as well as attorney fees and costs. Limiting our analysis to the allegations in the Complaint and the reasonable inferences therefrom and construing them in the light most favorable to the parent, the court concludes, for a number of reasons, that the lower court erred when it found that certain exemptions to the PSTCA bar the parent's claims. Instead, this court's *de novo* review of the Complaint persuades us that a plausible path may exist for district liability outside these exemptions, and therefore, determining the applicability of the exemptions must await a more developed factual record. The case is reversed and remanded for further proceedings.

LIABILITY FOR INJURIES TO STAFF

Sims v. Dallas Indep. Sch. Dist., 2025 WL 2602362 (5th Cir. 2025). "Underlying this case is great tragedy—the death of a special education teaching assistant stemming from injuries she suffered in an attack by a student in January 2021." The Plaintiffs are her survivors and assert claims against the district under Section 1983 alleging that the district violated their mother's substantive due process rights by affirmatively acting to create or enhance a danger to her physical safety. Where the district court dismissed the Second Amended Complaint because plaintiffs had not plausibly alleged district liability under the Supreme Court's 1978 decision in Monell v. Department of Social Services of New York, the district court's dismissal is affirmed. Here, the Plaintiffs argued that 3 months before the fatal incident, the district's ARD Committee decided not to move the student out of his classroom, even though he had attacked their mother and others in September of 2020. They also alleged that the ARD Committee made this decision knowing that the student had punched and kicked teachers before and following official school district policy, did not permit the ARD Committee to change the student's placement. However, the district court was correct in finding that the plaintiffs did not plausibly allege that the district knowingly ratified the ARD Committee's decision—or any other conduct—by readopting the same policy after the assistant's death. As the district court identified, plaintiffs failed to plausibly allege that an official policy of the district was the moving force behind the alleged constitutional violation. As a result and based on the allegations made, the district could not be held liable for any underlying constitutional violation.

RESTRAINT/SECLUSION

On December 12, 2025, both the House and Senate reintroduced the "Keeping All Students Safe Act of 2025" (H.R. 6617/S. 3470) in order to ban dangerous use of restraint and seclusion in federally funded schools and limiting physical restraint to imminent threats. It provides for federal grants for training and monitoring to improve school safety and support students with disabilities, which builds on similar efforts since 2009 by Congress to pass a federal restraint/seclusion law, which has not occurred. The proposed legislation generally prohibits harmful practices, requires staff certification and training, ensures parent notification and increases transparency. Here is the current text of the bill: https://www.congress.gov/119/bills/hr6617/BILLS-119hr6617ih.pdf.

RETALIATION

Prato v. Pinellas Co. Sch. Bd., 125 LRP 7936 (M.D. Fla. 2025). District's motion to dismiss the special education case manager's ADA complaint is denied for a number of reasons, including her allegations that because she objected to discrimination against special education students, she suffered retaliation under ADA. Here, the case manager alleges that she repeatedly complained to school administrators about inadequate special education services and unlawful treatment of students with disabilities, as well as inappropriate student ratios in classrooms, unlawful class sizes, lack of instruction on IEP goals, and a general lack of compliance with discipline and bullying policies. The anti-retaliation provision of ADA prohibits discrimination against an individual because that individual "opposed any act or practice made unlawful by [the ADA] or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing" conducted under the statute. To sustain a cause of action, she must show that (1) she engaged in a statutorily protected expression; (2) she suffered an adverse employment action; and (3) a causal link exists between the adverse action and her protected expression. The complaint alleges that the case manager voiced her opposition about several issues she observed regarding special education at the school and just one day after she filed two reports on behalf of a particular student pertaining to an incident of bullying of that student, she was demoted and transferred to a warehouse to work. At this juncture, her claims are plausible. "Whether Plaintiff can establish [these claims] after the record is developed is left to another day."

BULLYING/DISABILITY HARASSMENT

Kohn v. Camden Co. Sch. Dist., 125 LRP 4906 (S.D. Ga. 2025). District's motion for summary judgment on the parent's 504/ADA disability-based harassment/bullying claim is denied. Where the parent is suing for money damages and attempting to hold the district liable for her son's suicide, there are five elements to "peer-on-peer" disability harassment claims that must be shown: (1) that the student was an individual with a disability; (2) he was harassed based on that disability; (3) the harassment was sufficiently severe or pervasive that it altered the condition of his education and created an abusive educational environment; (4) the district knew about the harassment; and (5) the district was deliberately indifferent to the harassment. While the first element is satisfied because the district assumes, for purposes of summary judgment that the student has a disability based on "his ADHD diagnosis," there are factual disputes about the remaining elements and, therefore, summary judgment cannot be granted. The district's position that the student's classmates did not mistreat the student on the basis of his disability is rejected where the student's ADHD was "more nuanced," as it was invisible and inextricably linked with his demeanor (citing a OCR DCL from 2014 regarding bullying—explaining that taunting a student with ADHD by calling him names such as "weirdo" and "gay" would constitute disability harassment in an OCR enforcement action). Here, the parent testified that she knew that her son was bullied because of his ADHD where his talkative and attention-drawing behavior in class, stemming from his ADHD, resulted in his classmates making fun of him. Indeed, the 8th grade math teacher who disciplined him the day he committed suicide testified that some of his behaviors suggested that he had ADHD. His suicide note said that "I [am] always being bullied at this middle school. The main reason why is because I am weird. I like girls but I act gay at school, in school, people call me "gay boy" or "faggot boy" and it really hurts me." In the video recorded before he committed suicide, the student said, "I feel lonely every day and I just can't. Being called names at school, just can't." In addition, the parent submitted an expert report that concluded that "there is a high likelihood that the bullying and disability were

linked" because of the "context" in which the student was bullied. Focusing on the 5th element, the district may have also been deliberately indifferent to the disability-based harassment where the student reported that several peers threw balls at his head in gym class, kicked him in the back of the knee in the hallway, and called him names. The mother also met with school officials to report the alleged bullying and asked for a 504 Plan, but the district never investigated the claims or took action to stop the alleged bullying. Instead, the district admitted that it was not able to address the bullying claims because the student did not identify the peer involved. Thus, the case will not be dismissed, and the mother's claims will go to a jury.

T.H. v. Archdiocese of New York, 125 LRP 3671 (S.D.N.Y. 2025). Parochial school's motion for summary judgment on the parent's 504/ADA claims is granted where the parent of the 8th grader with a history of some difficulty with speech in her younger years has not properly stated a claim for disability-based harassment. To show disability harassment, parents are required to show that the alleged harassment was "severe and pervasive" and that the school's response was so unreasonable that it amounted to deliberate indifference. Although the student's classmates had subjected her to incidents of teasing and name-calling at times over the years, it was not sufficiently severe or pervasive to constitute disability-based harassment actionable under federal law. The only recent name-calling episode that the parents describe that was arguably connected to the student's disability was when a student told her that two other girls had said that she "sounds and looks retarded." "While this word is unquestionably unkind and hurtful, one instance of a peer repeating that she had heard others saying the word does not rise to the level of severe or pervasive required to attach liability under the ADA or Section 504." Further, even though the student may have heard another call her "so big" for a kindergartner when she repeated the grade back then, connecting that comment to her speech disability is "attenuated." Even were the court to make that inferential jump, the second isolated comment does not rise to the level of severe and pervasive harassment. While the student certainly had an "unpleasant experience with the girls in her class who were unkind to her," the allegations have no connection to her disability. It is also important that the principal verbally reprimanded the unkind girls who used the disability-related term, instructed them to stay away from the student, and warned them of severe consequences if they did not comply. Thus, the parent also failed to establish disability-based harassment toward which the school was deliberately indifferent.

CHILD FIND DUTY TO APPROPRIATELY/TIMELY EVALUATE

A.P. v. Pearland Indep. Sch. Dist., 158 F.4th 672 (5th Cir. 2025). District court's ruling that the district complied with IDEA's child find duty to evaluate and identify a teenager privately diagnosed with specific learning disabilities in reading and math is affirmed. IDEA's child find duty is triggered "'after the school district is on notice of facts or behavior likely to indicate a disability.'" The district submits that the duty was triggered when the student's parents requested a due process hearing in September 2022 because they were concerned that the student had dyslexia, while the parents argue that the duty was triggered much earlier than that because of the student's chronic absenteeism, her poor academic record, and when the student's ninth grade teacher reached out to the counselor and vice principal about her chronic absenteeism. While the parents cite many cases where poor attendance was found to trigger the child find duty to evaluate, in each of those cases, the district was on notice of the student's behavioral, medical, or psychological problems. Here, there was no evidence of any behavior, psychological, or serious health concerns regarding this student. Rather, her parents frequently excused her absences for reasons such as family travel or benign medical issues, which were not sufficient to put the district on notice. "That a student's absenteeism results

in educational impediment is simply not the same as the student's suffering mental or cognitive problems that created a learning disability. Moreover, to hold otherwise could require a school district to be skeptical of parents making accepted excuses for their child's absences. Such a result would create unnecessary friction and waste administrative resources." Further, the student's poor academic performance was also insufficient to trigger IDEA's child find duty. "Poor grades do not require schools to 'rush to judgment or immediately evaluate every student exhibiting below-average capabilities.'" Among other things and against district advice, the student enrolled in advanced courses meant for exceptionally bright and diligent students. Her teachers noted that while she had the capability to understand academic concepts and do the work when she attended consistently, she struggled and received poor overall grades. However, her teachers did not suspect a disability and instead believed the reason for her failure to be her inconsistent attendance. Her ninth grade English teacher was clear that when the student came to class, "'she was on top of it,' 'knew what she was reading,' and 'understood what was happening,'" and that her issues were caused by poor attendance. Even if the district had violated the child find duty to timely evaluate, the parents would not allow for the district to conduct an evaluation in accordance with IDEA and insisted that the district rely upon their private evaluator's evaluation, which was not comprehensive (did not include classroom-based observations or information from teachers, etc.). Importantly, the private neuropsychologist who evaluated the student did not consider whether the student suffered a "lack of appropriate instruction" in math and reading due to consistent absences and, in fact, did not even know that the student had a long record of attendance issues. "Dr. Roman's failure to investigate A.P.'s attendance record is inexplicable given his testimony that 'the importance of attendance is a given. If you are not there to benefit from instruction, it becomes an issue.'" Given that, the district reasonably determined that it did not have sufficient evidence to find the student eligible under IDEA. The judgment of the district court is, therefore, affirmed.

ELIGIBILITY/CLASSIFICATION

Erde v. Carranza, 2025 WL 3295110 (2d Cir. 2025). District court was correct in finding that the district did not deny FAPE to the student diagnosed with CP and other medical conditions when it changed his disability classification from TBI to "multiple disabilities." A student's actual disability classification is generally immaterial to the determination of whether FAPE was provided if the IEP otherwise sufficiently meets the needs of the student. As the State Review Officer recognized, because the student's eligibility for special education was not in dispute, the significance of the label is more relevant to reporting requirements than it is to the appropriateness of the student's IEP. The district court was also correct in granting the district's motion for summary judgment because IDEA is clear that unless the other party consents, parties requesting a hearing may not raise challenges to the IEP that they did not include in the due process complaint. Where the complaint did not mention a nurse in transportation and only sought the costs for a "travel aide," the original hearing officer's finding that the IEP was defective because it did not provide for a transportation nurse was in error.

Zayas v. New York City Dept. of Educ., 125 LRP 11659 (2d Cir. 2025) (unpublished). District court's decision is affirmed where the parents failed to establish that the proposed public school placement was not appropriate and, therefore, tuition reimbursement to the parents of the teenager with CP and seizure disorder for the student's placement at iBrain is denied. In addition, the parents' argument that the district's proposed IEP is substantively inadequate because the student's eligibility classification was changed from traumatic brain injury to multiple disabilities is rejected. This argument is unavailing because the change in the student's classification is immaterial to whether

the proposed IEP provided FAPE. The parents agreed in briefing that the disability classification determines whether a student is eligible to receive services, but that it does not determine what those services are. Thus, because there was no dispute about the student's eligibility for special education, the change in his disability classification did not impact the goals, accommodations, or special education services in the student's IEP and, therefore, had no impact on the district's offer of FAPE to the student. Accordingly, the Court agrees with the district court that the student was not denied FAPE on the grounds that his disability classification was changed.

F.C. v. Irvine Unif. Sch. Dist., 125 LRP 2497 (C.D. Cal. 2025). Seventeen year-old student with Kleine-Levin syndrome (a rare neurological condition that causes recurring bouts of excessive sleep, altered behavior, cognitive impairment, and memory loss) is not eligible for services under IDEA because he does not need special education and related services. While the court notes that the student experiences episodes where he will sleep for 20 hours a day for several weeks and wake up only to eat and use the bathroom, he did not require special education services. This is so because once an episode of excessive sleep ends and the student returns to school, he understands the curriculum, performs at grade level, and receives mostly As and Bs. The student's 504 Plan includes accommodations, such as a reduced workload and make-up classes, and will appropriately "fill any gaps" after prolonged episodes. While the parents believe that the student needs a "stop-and-start" plan under an IEP to allow him to pause and restart instruction when necessary, this would violate state law requiring a public school to complete the required curriculum for graduation within a certain number of days. Thus, the dismissal of the parents' FAPE claims by the ALJ is upheld.

INDEPENDENT EDUCATIONAL EVALUATIONS

Mantua Township Bd. of Educ. v. E.K., 2025 WL 2753580 (D. N.J. 2025). ALJ's hearing decision is reversed and remanded for further proceedings where the ALJ misinterpreted applicable law and inappropriately ordered the Board to fund three IEEs of a former student with autism. In 2019, the parent's counsel filed a due process petition demanding, among other things, that the board fund an unspecified number of IEEs "in all areas of suspected disability." Parent's counsel two days later sent the Board a letter disputing its most recent evaluation and requested 7 IEEs to be conducted by evaluators of the parent's choosing. While the court notes that the Board had previously conducted no fewer than 12 evaluations, the Board agreed to the parent's request to fund the 7 IEEs, subject to its reasonable cost caps for outside providers. The parent proceeded to have the student evaluated throughout 2020 and had the invoices sent directly to the Board for payment. The Board paid all invoices in full except for 3 of them: a Speech/Language IEE ($2,500), a "Reading" IEE ($3,200), and an FBA ($2,973.75). For those, the Board remitted partial payment to each of the evaluators of $1,200, stating that was the maximum reimbursement permitted for those types of evaluations. In fact, the special education director noted that those were the highest invoices she had ever seen for those types of evaluations. Neither the parent nor her counsel contacted the Board before obtaining the IEEs or sought exception to the Board's cost caps but filed a second due process petition alleging that she had personally paid the outstanding balances and seeking reimbursement to the parent. [There were other concerns found during discovery (such as the contents of the IEEs being improperly edited and influenced by the parent's counsel and that parent's counsel had actually paid the balances on the IEEs) that were never sorted out]. After multiple hearings, the parent moved for an order that the Board reimburse her, and the ALJ issued a 4-page decision ordering the Board to pay the remaining balances and held that the Board had forfeited its right to raise any objection to the IEEs because it did not initiate its own hearing to contest the IEEs. This was erroneous because

the IDEA's IEE regulation requires that a Board do one of two things when a parent properly submits a request for an IEE: Either (1) file a due process complaint to request a hearing to show its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. The "unless" clause makes it clear that a board's initial agreement to fund does not create an unconditional obligation to pay. In this case, the Board received the IEE request in December 2019 and had two options. The Board could have refused and would have been required to request a hearing to show its evaluation was appropriate, but it did not. It chose the second route and agreed to fund the requested IEEs, contingent on the parent's future compliance with agency criteria. Neither IDEA's regulations nor the state code required the district to file a due process complaint in order to enforce its criteria. It only required the Board to simply "demonstrate in a hearing" that the IEEs that the parent obtained did not meet criteria.

PROCEDURAL VIOLATIONS

Boone v. Rankin Co. Pub. Sch. Dist., 140 F.4th 697 (5th Cir. 2025). The court's decision that the school district denied FAPE to the teenager with severe autism is affirmed. Not only did the district fail to individualize the student's program to address his elopement issues appropriately, but the district also predetermined the student's placement without sufficient opportunity for parent participation and input. Predetermination occurs when a district makes educational decisions too early in the planning process, in a way that deprives the parents of meaningful opportunity to fully participate as equal members of the IEP team. To avoid a finding of predetermination, there must be evidence that the district has an "open mind" and "might possibly be swayed by the parents' opinions....'" "Of course, '[t]he right to provide meaningful input' is not the same as 'the right to dictate an outcome.'" (citations omitted). Here, the record supports the conclusion that the district predetermined the student's placement. When the parent was informed that the student would be discharged from his current program and sent to another school, she was told by the principal that the transition would occur "right away." Further, when the parent argued that the new timeline violated a transition plan that had been previously agreed upon, a district representative responded that since the student's residence was in the other school's zone, he would go to his home middle school. "That response suggests that the School District did not have an 'open mind' about the student's placement. The district also conceded that its Director had decided that the student was to return to his home school, which was confirmed by the Principal—not the student's IEP committee. The district's argument that parents are to be consulted in determining placement but not "site selection" is rejected. While "educational placement" under IDEA does mean "educational program" rather than the particular site where the program is implemented, two things can be true at once where the district's decision to transfer the student was both a change in site and a change in placement under IDEA. Indeed, the Principal explicitly stated that the student had to be removed from the current placement because of his age and the lack of a program to meet his needs. In acknowledging that the home middle school would provide a different program for the student, the district demonstrated that it contemplated not only a change in site but also in placement. Thus, the district's argument that it proposed merely a change in site, as opposed to placement, is "meritless."

J.R.B. v. Quakertown Comm. Sch. Dist., 125 LRP 12111 (3d Cir. 2025) (unpublished). District court's ruling that the district did not deny FAPE to a kindergartner with an emotional disturbance is affirmed. While the unilateral decision by the school to modify the student's educational placement violated IDEA, it did not entitle the parent to relief. It is clear that the district procedurally violated

IDEA when it moved the student from a regular education setting to a special education setting on a trial basis consisting of an emotional support classroom, conference room, a hallway inside the main office, and a room that the district calls the "serenity space." In doing so, the district failed to convene an IEP meeting to discuss the change in placement and failed to provide prior written notice of it to the parent. However, parents are only entitled to relief based upon procedural violations under IDEA when the procedural violation results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. As the district court ruled, the record supports the hearing officer's conclusion that none of those things happened where the trial placement with 1:1 instruction and time with an emotional support teacher was relatively short. In addition, the student received services over and above those required in his IEP. Though the parent argues that the trial placement was overly restrictive, the student's aggressive behaviors continued in that setting, and there was no educational harm to the student. The trial placement also did not impede the parent's participation in the decision-making process regarding FAPE to the student. Here, the emotional support teacher provided the parent with information about the trial placement four days after it started and the district convened two IEP meetings to discuss the change. The parent also seemed to accept and approve of how the student was being instructed, and within the next couple of weeks, the parent was in communication with the teacher, expressing her concerns about the "less stimulating environments" in some messages and seemingly agreeing with the means and goals of the "trial" in others. Within three weeks, the district formally notified the parent about the trial at an IEP meeting and the parent agreed then that the "trial" could continue. While the district did not formally notify the parent before the start of the "trial placement," the parent was not seriously deprived of her participation rights in this case.

A.B. v. McKnight, 125 LRP 2203 (D. Md. 2025). Decision of the ALJ is affirmed that the district provided FAPE to an 18 year-old gifted student with SLD. Therefore, the parents are not entitled to reimbursement for unilateral placement at the Lab School. In addition to finding that the proposed placement was appropriate, the court rejects the parents' claim that the district procedurally violated IDEA by predetermining the proposed placement. Under IDEA, districts may not predetermine a student's placement before creating an IEP and must propose a placement that aligns with the child's IEP, not the reverse. Courts have interpreted relevant case law to require districts "to come to the table with an 'open mind,'" not a "blank mind'" and "predetermination is not synonymous with preparation." "Thus, while a school system must not finalize its placement decision before an IEP meeting, it can, and should, have given some thought to that placement." [case citations omitted]. Here, the record reflects, among other things, that various written notes taken at the IEP meeting show that substantial dialogue occurred before the school-based team recommended the student's placement. The version of the minutes taken by the parent's expert indicates that the district first solicited input from the parents before confirming that the requests made at an earlier meeting had been incorporated into the IEP. District staff then offered their detailed recommendations for the IEP, including co-taught honors classes, reading intervention programming, resource courses, and elective options. When the parent's expert asked team members to explicitly connect the recommendations to the student's needs, they specifically detailed how the proposed services would address the student's academic and emotional needs. The school-based team's meeting notes reflect the same. As explained previously, impermissible predetermination under IDEA does not mean that school team members have a "blank mind." Rather, some preparation and thought as to the appropriate placement is not only permissible, but also necessary. The parents have not met their burden to show that the district impermissibly predetermined rather than properly prepared where the record reflects repeated attempts on the part of the district to involve the parents, incorporate their feedback, and

listen to their concerns. The student's mother acknowledged during the hearing that the district never prevented the parents or their expert from speaking at meetings; nor did it refuse to accept the information they provided or otherwise frustrate their ability to participate in the IEP process. Thus, the court finds that the district did not engage in predetermination where the evidence reflects that the IEP was developed over a series of conversations between the parents and the school team, and the school team listened to and considered parent input at every stage. The fact that the parents ultimately disagreed with the placement determination does not mean that their feedback was not noted nor that their participation in the process was foreclosed.

IEP CONTENT CHALLENGES

Mobley v. Laboratory Charter School, 2025 WL 2621303 (E.D. Pa. 2025). Parent's Motion for Judgment on the Record is granted where the School denied FAPE to the third grader diagnosed with autism, PTSD, ODD, and Impulse Control Disorder, and the case is remanded to the hearing officer to make a determination as to whether the student is entitled to "hour-for-hour" compensatory services. Among other things, the student's IEPs drafted in January and October 2023 are substantively deficient. Both drafts fall short of what is required by IDEA under the circumstances. For instance, the record reflects that the first draft relied on a single BASC-3 score to identify the student's disabilities and failed to discuss some of his most significant known diagnoses. While the law does not require historical baselines be set forth in IEPs, it does require baselines relating to the "child's present levels of academic achievement and functional performance." In addition, the second draft IEP in October should have added baseline data taken from his performance up until October when the IEP was issued, but it did not. The Hearing Officer correctly observed that the draft IEPs are generic and are not tailored to the student's emotional, behavioral, academic, or social disability-related needs or circumstances. In addition, the record shows that the school's development of a "safety plan" (rather than conducting an FBA and developing a BIP as required by law to address the student's significant elopement and aggressive behaviors) did not meaningfully benefit him in important areas like social development, independence, and his ability to behave. The safety plan is not a substitute for meeting the requirements of IDEA and case law interpreting it: an adequate IEP, meaningful progress, and here, an FBA and PSBP. Finally, because the proposed IEP lacked behavioral goals with any baseline data, his teachers were unable to track his progress toward any improvement in behavior. As the Hearing Officer noted, "[t]he Student's Lab Charter school records do not include IEP-specific progress monitoring data," so there was, in effect, no way to measure whether I.W.M. was making any progress, meaningful or otherwise." Where a review of the draft IEPs does not glean anything different, the Hearing Officer's finding that both IEPs drafted by the School fell short of IDEA's requirements. Thus, the case is remanded to the Hearing Officer to either reconsider his conclusion in rejecting the "hour-for-hour" approach for determining whether compensatory education should be awarded or explain in more detail why the facts show this form of compensatory education relief is not appropriate here.

Edward M.R. v. District of Columbia, 128 F.4th 290, 125 LRP 4880 (D.C. Cir. 2025). District court's thorough opinion is affirmed upholding the hearing officer's determinations finding the 2018 and 2019 IEPs for the middle schooler with autism and ADHD appropriate. First, the student's contention that the IEPs were inappropriate based upon the fact that some of the educational goals in them were repeated year-to-year and because he regressed and failed to make meaningful progress on those goals is rejected. Courts are to evaluate the substantive adequacy of an IEP as of the time the IEP was created rather than with the benefit of hindsight. In addition, parents must show by a

preponderance of the evidence that a hearing officer was wrong in concluding that the student's IEPs were appropriate, and these parents did not do so. While the 2018 IEP repeated some of the goals from the 2017 IEP and the 2019 IEP repeated several goals from the 2018 IEP, this repetition was reasonable because the student had yet to achieve them. In addition and based upon witness testimony, the hearing officer reasonably concluded that "consistency and repetition" were "important" for the student considering his "severe memory issues." It is also important that the 2019 IEP contained a number of new goals which appear to have been "appropriately ambitious." At times, the student seems to suggest that an IEP must ensure "meaningful progress." However, "a child's 'educational outcome' isn't the measure of his IEP's sufficiency—rather, the proper measure is the reasonableness of his IEP's design." And here, "even if we consider [the student's] lack of progress as some evidence that his IEPs were not reasonably designed from the get-go, that evidence is not enough. [The student] must identify a flaw in the design of an IEP, and he has not done so." In response to the argument that the IEPs did not include "research-based instruction" in speech and language or OT, the record shows that the student received research-based instruction in speech and language and OT, even if his IEPs were silent on that. Lastly, the student claims that the school did not provide ABA as set forth in the IEP. However, this is an implementation claim and the due process complaint raised only IEP content claims. Because the implementation claim was not exhausted, we do not consider it.

A.A. v. Montgomery Co. Bd. of Educ., 2025 WL 2637480 (D. Md. 2025). Parents' motion for summary judgment is denied where the district provided FAPE to the student with autism during kindergarten and first grade. The parent argues, among other things, that the student's IEPs were not appropriate because some goals and objectives were repeated from year-to-year and changes were made to some goals to make them easier—establishing that the student was not making progress. In addition, the parent argues that the district's failure to provide data to show that the goals were appropriate and that the student was making progress, resulting in no way to tell if progress occurred. Under IDEA, schools are to offer IEPs that are reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. This does not require a school to develop an ideal IEP, but it should be "appropriately ambitious." The repetition of a few goals from one IEP to the next is not sufficient to establish that the IEPs were inadequate or constituted a deprivation of FAPE, and failure to meet certain goals or objectives does not necessarily mean the IEPs themselves were inappropriate when created. Thus, "it is certainly possible that a student will not meet all the goals set for that student. To decide otherwise would encourage schools to be overly cautious and include only goals that they are confident the student will meet, which would be inconsistent with the broad purpose of the IDEA." Here, while some of the student's goals were repeated, "the context of the repetition and the content of the full IEPs" show that the IEPs were reasonably calculated for the student to make appropriate progress. For example, the March 2021 IEP had seven goals, and the March 2022 IEP had nine. Four goals were repeated between the two IEPs. One of those was for fine motor skills, but it was expanded upon to be more detailed and the objectives in support of it became more challenging in the March 2022 IEP. For two other repeated goals for language and literacy, progress reports indicate that the student started the 2021–2022 school year progressing in this area, but progress slowed in January 2022. As a result, the language/literacy and occupational therapy goals were updated at an IEP meeting in January. In light of this context, repeating these goals later in the March 2022 IEP—only two months after the progress reports showed sufficient progress on them—does not show that the IEPs were inappropriate. In fact, the evidence shows that the student moved from "not making sufficient progress" to "making sufficient progress" between April and June 2022, which suggests that the goal was a reasonable one for the March 2022 IEP at

the time it was developed. While the fourth repeated goal for adaptive skills and its associated objectives did not change from March 2021 to March 2022, the student's consistent progress on this goal as noted in the March 2021 IEP suggests that including it again in the March 2022 IEP may not have been necessary. However, repeating it does not mean that the March 2022 IEP was inappropriate. As to the social emotional/behavioral goals, although the parents may wish that the goals were even more ambitious, a school is not required to design an 'ideal' IEP to provide a FAPE." As to the parents' argument that the district did not have sufficient data to show that the IEP goals were appropriate, such as service logs, autism grids, and clicker reports, the IEPs included information reflecting specific data points about the student's problem behaviors, that directly connect to the IEP goals. Thus, the court does not find that there was a failure to provide FAPE on the basis of inadequate data.

THE FAPE STANDARD

A.L. v. Howell Tsp. Bd. of Educ., 125 LRP 4958 (D. N.J. 2025). The court upholds the ALJ's decision that the district provided FAPE to the sixth grader with ADHD, anxiety, and learning disabilities. Thus, the district is not responsible for funding the unilateral placement in a specialized accredited Academy for students with dyslexia and ADHD. While the student struggled to make progress, the student was provided with numerous IEPs "that were, notably, consented to by the [parents]." While she had difficulty making significant progress when compared to other students at the school, the hearing officer found that the student made adequate, "gradual," and satisfactory progress as reflected in numerous reports and exhibits in the administrative record. For example, many of the progress reports submitted to the parents indicated that the student was progressing satisfactorily in many respects, and testimony at the hearing established that there was "some gradual progress." The parents have stipulated that the student progressed each year to the next grade and that whenever she struggled, the district adjusted her IEPs accordingly. For example, the record illustrates that when the student's initial IEP did not work well for her, the district modified it with the parents' consent so that the student received supplementary support via a paraprofessional. In addition, the district continuously sought consent to re-evaluate the student and re-evaluated her on multiple occasions to assess her needs and to establish an educational plan suitable for her. When there were times of regression, the record indicates that the IEPs were adjusted, as the parents acknowledge in their statement of material facts. By way of further example, when the student's December 2021 IEP failed to work as planned, the district placed her in smaller groups and in a more individualized setting. In March 2022, the IEP was amended again with a new behavioral plan. "In short, the administrative record shows that Defendant regularly updated the IEPs to provide more support for M.L. As Plaintiffs recognize in their brief, 'the essential function of an IEP is to set out a plan for pursuing academic and functional advancement,' which is exactly what the IEPs did." While the parents understandably seek more and argue that the adjustments the district made to the IEPs were minor and insignificant to the student's progress, the argument is rejected both because the IEPs met the FAPE standard required under Third Circuit authority and because the parents could have rejected the IEPs when they were presented but did not. The court is satisfied that the district met its obligation under IDEA to provide FAPE.

THE USE OF ARTIFICIAL INTELLIGENCE IN SCHOOLS

William A. v. Clarksville-Montgomery Co. Sch. Sys., 127 F.4th 656, 125 LRP 3627 (6th Cir. 2025). District court's decision is affirmed upholding ALJ's decision that the district denied FAPE to a high

schooler with dyslexia for which 888 hours of tutoring from a reading interventionist trained in the Wilson Reading System was ordered. While the student graduated from high school with a 3.4 GPA, he is not able to read or even to spell his own name. That was because, per the terms of his IEPs, he relied on a host of accommodations that masked his inability to read. To write a paper, he would first dictate his topic into a document using speech-to-text software and then paste the written words into AI software like ChatGPT. The AI software would next generate a paper on that topic, which the student would paste back into his own document, and he would run the paper through another software program like Grammarly, so that it reflected an appropriate writing style. "Not all these workarounds were specifically listed in his IEP, but all were enabled by an accommodation that was: 24 extra hours to complete all assignments, which allowed William to complete his assignments at home, using whatever technology tools he could find."

LEAST RESTRICTIVE ENVIRONMENT

Jacobs v. Salt Lake City Sch. Dist., 154 F.4th 790 (10th Cir. 2025). The district court's dismissal of the plaintiffs' claims under IDEA, 504, and ADA is reversed. Here, two elementary school students with intellectual disabilities and the Disability Law Center challenge the overall manner in which the district educates its intellectually disabled students. It is alleged that the district automatically places students with intellectual disabilities in self-contained special education classes in a few designated schools located throughout the district, without first making an individualized assessment as to whether each student could instead be in a general education classroom, supported by supplementary special education services. The district court erred in construing the original Complaint as one seeking only placement in neighborhood schools—a form of relief held unavailable under 10th Circuit precent—and dismissed the case for failure to exhaust administrative remedies. This Court concludes, instead, that plaintiffs have sufficiently stated plausible claims for relief under all three statutes by alleging that the district fails to make individualized educational placement determinations for each intellectually disabled student. For example, the Complaint alleges that the district has adopted what it refers to as its "hub" system, which "consolidate[d] educational services for certain children with intellectual disabilities and/or cognitive impairments" in a few designated elementary schools in the district. Students that the district categorizes with "mild/moderate" intellectual disabilities are assigned to one of three of the district's 27 elementary schools, while students "categorized" with "severe" intellectual disabilities are assigned to one of 4 other elementary schools. The district places intellectually disabled students in one of these two categories based solely on their IQ scores. "[S]tudents with an IQ above 70 or without a flat IQ profile" are placed in the mild/moderate category, while "student[s] with an IQ of less than 70 with a flat IQ profile" are placed in the severe category. It is alleged that the district does not "consider the individual needs of students in assigning them to [these] group programs." Nor does the district "meaningful[ly]" consider whether intellectually disabled students could be placed in the "general education environment,", rather than the "predetermined" special education class. "The stated purpose of the ['hub' system's] consolidation was to congregate children with disabilities at specific elementary schools in an effort to maximize efficiency in service delivery and transportation." Plaintiffs allege that, in implementing its "hub" system, the district is circumventing IDEA's requirement of an individualized determination of the appropriate educational placement for each intellectually disabled student by automatically placing them in special classes for mild/moderate or severe intellectual disabilities based solely on a student's IQ. That allegation states a plausible IDEA claim sufficient to survive a motion to dismiss. We therefore reverse the district court's dismissal of the Plaintiffs' IDEA, ADA, and RA claims. However, we further conclude that the individual

Plaintiffs, E.J. and H.S., did not allege IDEA claims challenging the hearing officers' rulings in their individual administrative proceedings. We remand this case for further proceedings consistent with this decision.

EXTENDED SCHOOL YEAR SERVICES

North East Indep. Sch. Dist. v. I.M., 160 F.4th 630 (5th Cir. 2025), withdrawn and superseded on denial of rehearing, 2025 WL 3717272 (5th Cir. 2025) (unpublished). The district court's conclusion that the school denied FAPE is affirmed in this case involving the provision of ESY services to an elementary school student with autism and intellectual disabilities with "uniquely severe" behavioral issues, including frequent elopement and toileting issues. Thus, the hearing officer's order that the district provide full-summer ESY services and year-round access to a voice-assisted communication device is upheld. While the parties first agreed with the programming provided by the district for first and second grade, the IEP team met to develop the IEP for 3rd grade, as well as ESY services to "prevent regression" between second and third grade. For three weeks in June, the student attended ½ day ESY sessions for four days per week. During that time, IM ran away on 18% of school days. But when ESY ended that summer, he had "regressed significantly" and as a third grader ran away more than 40% of school days. After Spring break that year, he regressed further, urinating in the classroom twice, which he had not done before. The Team met to prepare an IEP for fourth grade, and the parent requested full-day ESY throughout the summer. However, the district refused but "conceded" that while additional ESY would help, full-summer services were not necessary and offered ½ day services for 6 weeks, "which it reasoned were sufficient to maintain IM's progress." The ESY program for that summer before 4th grade ended in mid-July with a month until 4th grade began. When IM began 4th grade, he regressed in toileting and had 20 incidents in the first 6 weeks, while he had none during ESY. IM's mother began to become increasingly concerned about his lack of meaningful progress and she worried about regression, even over short breaks. There was an incident where IM "had his most dangerous elopement yet" and escaped and exited campus through an unlocked gate into a nearby busy road but some bystanders were able to restrain him. This triggered an IEP meeting, but the district noted that IM's elopement data was "trending downward" and denied the parent's request for more ESY services over the summer and over other breaks. The parent initiated the due process hearing seeking ESY for any break, a GPS tracking device, and an IEP goal for safe bus riding. After a 2-day hearing, the hearing officer concluded that the district failed to provide FAPE and ordered the provision of full-summer ESY services and year-round access to a voice-assisted communication device. Using the 5th Circuit's standard for FAPE and its four factors, "we cannot conclude that the district court clearly erred in finding IM's IEP was not sufficiently individualized." As the school district points out, the student's IEP reflected myriad behavioral interventions and supports to address elopement and toileting, including a behavior intervention plan. For elopement, the IEP provided strategies like an incentive system and cues, and for toileting, it provided visual reinforcement to encourage him to eliminate in designated areas. "The School District claims this was enough. Granted, with these interventions, IM's elopements reduced and his toileting improved. Over second grade, his elopement diminished from 83% of school days to only 23%. Yet, after every break, IM regressed. When second grade began, he ran away on 45% of school days." After Spring break, he had 2 toileting incidents, and the IEP team determined that breaks caused IM to regress in behaviors and skills related to independence, such as toileting. Indeed, the team noted that he generally "has a documented history of regression caused by the interruption of services." The district knew that IM regressed over breaks and identified the solution of extending the ESY program by two weeks before the third-grade year. In the ESY

program after third grade, he eloped only 25% of days and had no toileting incidents. However, even with the extra weeks, IM kept regressing and had 20 toileting incidents in the first 2 months of 4th grade with the same amount of ESY services during the summer break. In the first 2 weeks, he ran away more than 30% of days. Most seriously, he escaped from school and crossed a busy road where he might have been seriously injured or killed. "This fourth-grade regression shows that the summer, 6-week ESY program did not fully address IM's regression," and the district that did not offer ESY during other breaks, even those that caused regression too. There was no clear error in the district court's ruling upholding the decision to order full-summer ESY services.

TRANSPORTATION AS A RELATED SERVICE

S.M. v. Freehold Regional High Sch. Dist. Bd. of Educ., 2025 WL 156359 (3d Cir. 2025). District court's decision that the district did not deny FAPE to the adult student with autism when it refused to send an aide into the home every morning to assist the student in getting ready for school is affirmed. The requested assistance falls outside of the district's obligation to provide appropriate special education and related services under IDEA. While the student does need help getting dressed, eating breakfast, taking medications, and getting to the school bus, IDEA does not require the district to do such things. While the district provides the student with door-to-door transportation and a 1:1 bus aide, the parents' position that the student also needs "home programming" as a related service is rejected, as their request stems from their work schedules as opposed to the student's educational needs. While the parents are correct that transportation is a "related service" under IDEA, the district satisfied that obligation by providing the student with transportation to and from school with his own aide. "But that statutory duty did not oblige Freehold to provide B.M. with an aide before he was picked up for school. No reasonable construction of Freehold's statutory duty to provide "transportation ... required to assist a child with a disability to benefit from special education," 20 U.S.C. § 1401(26)(A), could include services antecedent to picking up the student for school."

DISCIPLINE/MANIFESTATION

R.R. v. Mineral Wells Indep. Sch. Dist., 2025 WL 2543998 (5th Cir. 2025) (unpublished). Substantially based upon the reasons given by the district court, its granting of the district's motions for judgment on the administrative record and summary judgment is affirmed. Student was a 9th grader when the incident occurred for which he was expelled from school. According to his IEP, the student has SLD affecting five areas: oral expression, listening comprehension, written expression, reading comprehension, mathematics calculation, and mathematics problem solving. In February of his ninth-grade year, a classmate on the student's baseball team threw a snowball in his face. In response, he confronted the classmate in the locker room after class and pointed a knife at his neck. The student was arrested for aggravated assault with a deadly weapon and based upon finding that the incident was not a manifestation of the student's disability, the district expelled him. His parents appealed the decision and while the appeal was pending, the district convened multiple meetings to discuss the student's IEP and what educational services the district would offer during the student's expulsion. The parents rejected the district's proposals for continued "FAPE," and the meetings ended without consensus, so the district finalized the expulsion. The parents filed a due process complaint, which was dismissed when the student filed a case in federal court alleging that the district denied FAPE and that the district's refusal to modify the terms of his expulsion was intentional discrimination under 504/ADA. The district court found that the post-expulsion IEP was appropriate, applying the four-factor test established in 1997 by the Fifth Circuit. First, the student's IEP was

"individualized and based on [R.R.'s] assessment and performance" because the Committee considered "multiple assessments" of R.R.'s progress, reviewed teacher and parent input, and regularly updated his services and goals based on that data. Second, the district provided services in the "least restrictive environment" for his education because the district expelled him for conduct that it correctly found was not a manifestation of his disability. Third, the district provided services "in a coordinated and collaborative manner" because it conducted "a number of meetings in which the parents were involved" and "their concerns were taken into account." Finally, the student derived a meaningful "educational benefit" from his IEP because he "passed all his courses" in seventh and eighth grade, "participated in baseball," had "good relationships with his" classmates and teachers, and was overall "making progress" prior to his expulsion. The district court also granted summary judgment in favor of the district for R.R.'s 504/ADA claims, holding that the claims were issue precluded because they "stem from" and were "synonymous" with his IDEA claims.

D.S. v. Blue Ridge Sch. Dist., 125 LRP 9175 (M.D. Pa. 2025). Hearing officer's decision in favor of the district in the parent's challenge to the district's expulsion of the high school student with emotional disturbance is upheld. While six months after the expulsion the district adopted the results of an IEE and concluded that the student was eligible under IDEA as an ED student, that did not entitle the student to an MDR. The right to an MDR is afforded to a student who has not yet been found eligible at the time of the behavioral incident only if the district has knowledge that the student has a disability prior to the incident. Here, the student did not have an eligible disability, and the district was not aware of a potential disability at the time of the altercation with a school administrator for which the student was expelled for 180 days in May 2023. In October 2023 and while the student was expelled, the district conducted an evaluation and initially found the student not eligible, and the parent requested a due process hearing, wherein the hearing officer ordered an IEE be conducted. The IEE was conducted and seven months after the incident, the district adopted its conclusion and determined the student was eligible as an ED student. While the parent argues that the district should have conducted an MDR before the expulsion, the argument is rejected. The district must have had knowledge that the student was "a child with a disability" at the time of the suspension for the student to invoke the requirement of 300.530(e). As the hearing officer found, however, the district did not have knowledge that the student had a disability at the time of the expulsion. Thus, the hearing officer rightfully concluded that an MDR was not required at the time of the incident that led to the expulsion.

SHORTENED SCHOOL DAY

J.N. v. Oregon Dept. of Educ., 2025 WL 1863189 (9th Cir. 2025). District court's ruling in 2023 that the Oregon legislature's enactment of Senate Bill 819 rendered moot a class action lawsuit against the Oregon Department of Education (ODE) is reversed and remanded to the district court. In this case, several students with disabilities alleged that ODE was in violation of IDEA by failing to have adequate policies and procedures in place to prevent the state's school districts from inappropriately placing students on shortened school days. Under applicable standards, the district court erred when it found that S.B. 819 fully addressed three of Plaintiffs' alleged harms. Although S.B. 819 somewhat addresses two of the alleged harms—1) ODE's lack of data collection and 2) failure to monitor district compliance with the law—it does not provide complete relief for either. S.B. 819 also does not address Plaintiffs' allegations about ODE's funding formula. At best, S.B. 819 provides partial relief to two of Plaintiffs' alleged harms, and it fails to render any claim entirely moot. ODE's additional argument that its voluntary changes in policies and practices provide whatever relief

Plaintiffs seek beyond what S.B. 819 requires is rejected. ODE's voluntary changes, such as its new hires or redesigned general supervision system, could easily be abandoned or altered in the future. Thus, Plaintiffs still have an interest in the outcome of this lawsuit. ODE also has not shown that its alleged lack of training and resources for school districts cannot "reasonably be expected to recur" upon dismissal of this lawsuit, so its changes fail to provide relief. ODE's voluntary changes in this case are insufficient to moot any of Plaintiffs' claims under a "voluntary cessation doctrine." On remand, the court suggests that the district court, when evaluating the merits of Plaintiffs' claims, should consider whether to reopen discovery for the limited purposes of (1) allowing the parties to determine if and how S.B. 819 has affected the use of shortened school days in Oregon, and (2) determining how ODE has implemented S.B. 819's new requirements since the law's enactment. For instance, how often Oregon school districts continue to place students on shortened school days after S.B. 819 seems crucial for evaluating Plaintiffs' claims that under federal law ODE must do more to protect students. To add another example, if Plaintiffs' complaints about ODE's lack of data collection are intertwined with S.B. 819's new reporting requirements, the record is silent on how consistently or accurately school districts have reported the newly required data in the past two years. In all, limited discovery may aid the district court in evaluating each of Plaintiffs' claims on summary judgment and/or at trial.

COMPENSATORY EDUCATION SERVICES

J.R. v. Ventura Unif. Sch. Dist., 2025 WL 2377085 (C.D. Cal. 2025). On December 23, 2024, this court found that the statute of limitations did not bar the student's pre-2019 claims and that the district's failure to evaluate the student for autism denied the student FAPE from 2012. As a result, the court ordered the district to provide the student with compensatory education via the creation of a special needs trust in the amount of $510,960 plus $6,000 to set up the trust. Specifically, the trust was to be used to provide 25 hours per week of ABA services targeting useful life skills, 10 hours per week of intensive literacy skills tutoring, 2 hours per week of speech services, and $200 per week of transportation services for three years. The district appealed the ruling and moved to stay execution of the Order pending appeal to the Ninth Circuit, but this court denied the motion to stay and on May 21, 2025, the Ninth Circuit also denied the district's motion. Despite the district's repeated failure to obtain a stay, the district has not funded the special needs trust, and objects to the fact that the language in the Order regarding the trust does not contain language ensuring that the funds are managed and disbursed in compliance with the Court's order. In addition, the district has not paid the trust attorney. The parent is now seeking enforcement of the trust Order and sanctions against the district. While the court agrees with the district that the trust language should clarify that the trust is to be used to fund ABA services, intensive literacy skills tutoring, speech services, and transportation services, the court rejects the district's argument based on California law concerning money damages remedies that the trust does not have to be funded until the district's appeal to the Ninth Circuit is resolved. This Order is for an IDEA equitable remedy of compensatory education services designed to rectify the district's failure to provide FAPE, not an order to pay money damages. Thus, the district is ordered to fund the charitable trust in compliance with the judgment by August 28, 2025. Note: The district has appealed this ruling to the Ninth Circuit.

Fisher v. Prince George's Co. Pub. Schs., 2025 WL 2418620 (D. Md. 2025). Student's graduation with a regular high school diploma does not necessarily moot claims for compensatory education for past denials of FAPE to the student. While the student with autism and other disabilities earned sufficient credits to graduate, good grades, and a 3.959 grade point average, that does not necessarily

moot her claims. Here, the claims are for past denials of FAPE and a need for compensatory education based upon the fact that the student reads on a first-grade level and does not have the comprehension or skills necessary for receipt of a high school diploma. While IDEA does not require that FAPE be made available for students who have graduated with a high school diploma, that does not mean that a student's graduation cannot be challenged and a request for compensatory education for past denials of FAPE is moot. The ALJ's findings of fact were regularly made and conclusions of law were legally correct, with the sole exception that Plaintiffs' claim for compensatory services based on an alleged failure to provide FAPE before the student's graduation was not rendered moot by her graduation. Thus, this case is remanded to the Office of Administrative Hearings for further proceedings consistent with this ruling.

OBLIGATIONS TO PARENTALLY PLACED PRIVATE SCHOOL STUDENTS (PPPSS)

Dear Colleague Letter (US DOE 2025). Issued on August 21, 2025 and while not addressing district obligations to PPPSS with disabilities specifically, this DCL is noted by US DOE to be the fourth piece of guidance issued on expanding education choice options under ESEA. In introducing the DCL, the Department notes that:

> In general, the Department recognizes that families of students attending a private school are still Federal taxpayers. Congress also recognizes this and accordingly enshrined in ESEA that students in private schools are eligible recipients of services, similar to those provided to their public school peers using Federal funding. This Department stands ready to enforce and improve implementation of ESEA's equitable services provisions in the pursuit of an excellent education for all American children in the setting their parents choose. The flexibilities under Title I provide State educational agencies (SEAs) and local educational agencies (LEAs) with discretion to support greater education choice. Specifically, this letter focuses on ways SEAs can help their LEAs provide Title I equitable services efficiently while effectively supporting LEAs with offering a choice of services to parents of participating private school children. Under some circumstances, the SEA might serve as the Title I equitable services provider in place of the LEA.

https://www.ed.gov/media/document/dear-colleague-letter-equitable-services-school-choice-guidance-august-21-2025-110531.pdf

Note: In the past, we have discussed the fact that private schools reportedly are filing more State Complaints and that some have made it to the federal level if the private school wishes to appeal the State's findings to US DOE. For that reason, I suggest that districts become familiar with information coming out of US DOE regarding school district obligations to PPPSS with disabilities, such as the "Sample Organizational Chart for Consultation," which is a checklist "designed to assist LEAs in meeting the consultation requirements at 34 CFR 300.134." While it is only a "sample," it gives insight as to what US DOE will look for if the Complaint relates to the district's process for "meaningful consultation with private school representatives" on PPPSS obligations, equitable share calculation, etc. See checklist at https://www.ed.gov/sites/ed/files/about/inits/ed/non-public-education/files/samplechecklist.pdf.

DEALING WITH DIFFICULT ADVOCATES

Powhatan Co. Sch. Bd. v. Skinger, 2025 WL 2496396 (E.D. Va. 2025) (August 29, 2025). At the request of the district, a permanent injunction will be entered that prohibits advocate Lucas from participating, directly or indirectly, as a special advocate on behalf of any Powhatan County student, including the pursuit of any further due process complaints under IDEA as to any Powhatan County student, without first obtaining leave of this Court. The advocate's tactics amount to a gross abuse of IDEA, harming both the district and the student. As she has done in previous cases, the advocate has filed 18 due process complaints against the district challenging the IEP proposed for the student, all of which are based upon the same set of facts. In each of the 9 initial complaints filed, hearing officers resolved the case adversely to the advocate and the original case was dismissed on the merits. After a hearing officer again ruled against her on the 10th due process complaint filed and after the district filed this action for relief against her, she filed the 11th due process complaint and then an additional 6 due process complaints. This order goes farther than two previous injunctions issued in other cases, "because it has been determined that granting the same relief as in either of those cases would not stop—indeed has not stopped the serious harm imposed upon [the district] by [the advocate's] strategy and conduct."

Powhatan Co. Sch. Bd. v. Skinger, 2025 WL 2174854 (E.D. Va. 2025) (July 31, 2025). Advocate Lucas has not shown sufficient cause why she should not be sanctioned for practicing law without a license and violating a permanent injunction in effect against her in another case. [As appears to be the habit in past cases, this advocate filed a total of 18 due process complaints regarding FAPE for the same student based on the same facts where hearing officers all ruled against the student). Thus, the court imposes a sanction on the advocate in the amount of $3,000 for each violation identified in the show cause Order, for a total of $6,000. Under IDEA, parents may obtain the assistance of "other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate," to assist them and their child in developing the IEP and navigating the IDEA'S complex procedures. 20 U.S.C. §1414(d) (1) (B) (vi). Those individuals are generally known as "special advocates" who may provide services and advice to parents and children to assist them in navigating the complex IDEA and special education process. These services are known as "related services." A subset of those related services is "parent counseling and training services," which includes having the special advocate: "assisting parents in understanding the special needs of their child"; "[p]roviding parents with information about child development;" and "[h]elping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP." In Virginia, parents "shall have the right to be represented by legal counsel or other representative before [administrative] hearing officer[s]." Consequently, special advocates may provide guidance, including "related services," to parents as they navigate the hearing process at the administrative level. This guidance at the administrative level by special advocates does not constitute the practice of law. However, neither "IDEA nor Virginia law authorizes these advocates to represent the parents once the matter is appealed to federal court." Once the dispute reaches this Court, only attorneys licensed to practice law in Virginia may represent parents, or parents may proceed pro se. Under no circumstances does Virginia's special advocate law allow a special advocate to represent another individual in a federal court. Moreover, the record shows that, even though Virginia allows special advocates in administrative IDEA proceedings, Virginia neither issues certificates to them nor otherwise regulates their conduct. Lucas is neither licensed nor accredited as a special advocate because Virginia does not issue such licenses or accreditation to

such people. Thus, Lucas is incorrect when she represents, either to parents or to the Court, that she is a licensed or accredited special advocate.

Powhatan Co. Sch. Bd. v. Skinger, 2025 WL 1842621 (E.D. Va. 2025) (July 2, 2025). Defendant Lucas' Motion to Reconsider the Court's Order striking her pleadings is denied. First, the pleadings were laden with more than three dozen (42 to be exact) citations to nonexistent legal authorities that made it exceedingly difficult, and often impossible, to make sense of the contentions made therein, to assess the purported "support" for them, and to properly address them. Based on the extensive nature of these "nonsensical and nonexistent" citations and based on Lucas' admission on the record during an April Evidentiary Hearing that she used generative artificial intelligence ("AI") programs to write substantial portions of her filings, the nonexistent legal authorities cited by her were likely "hallucinations" by these AI programs and, in fact, did not correspond with any existing caselaw or other legal authority.

SECTION 504 CHILD FIND

Brooklyn S.-M. v. Upper Darby Sch. Dist., 125 LRP 14109 (E.D. Pa. 2025). On remand from the Third Circuit, the court finds that while the district failed to evaluate the student under Section 504 during second grade and finally did so when she entered fourth grade, the parent did not establish that the district had reason to know of the student's diagnosis of depression. The parents' contention that the mother shared an outside agency's report diagnosing the student with depression during her second-grade year is not persuasive. Given the parents' frequent communication with the school concerning the student's needs and their concerns, the mother had multiple opportunities to convey the information but seemingly failed to do so prior to the student's 4th grade year. Thus, the parents did not establish that the district should have had reason to believe that the student had a mental health impairment and needed to be evaluated under Section 504.

Boe v. Mead Sch. Dist., 125 LRP 7245 (E.D. Wash. 2025). Where there is a genuine issue of fact as to whether the district was on notice of the parents' request for a 504 evaluation and formal 504 plan, the district's motion for judgment on the parents' 504/ADA discrimination claims is denied. Here, the parents claim that the district discriminated against their middle schooler diagnosed with ADHD who was blinded when he shot himself at home on January 9, 2022, because he was concerned about a paper due in class the next day. On January 13, 2022, a treating psychiatrist wrote: "Per patient, recent dysphoria primarily related to school making him do everything through a screen and refusing his request for paper assignments in addition to his perception an English teacher was not listening to his concerns. Reportedly, school refused 504 plan accommodations requested by patient, family, and R. Beck. Suicide attempt temporally correlated to missed medication dose, sleep deprivation, and facing an assignment without accommodation." The parents claim that discrimination occurred when the district did not evaluate their son and develop a 504 Plan after many discussions and requests over the years and the fact that a psychiatrist faxed a second letter to the school counselor on November 17, 2021 indicating a need for a 504 plan. To succeed on the 504/ADA claims of discrimination, the student must show that the district acted with deliberate indifference that requires both knowledge that a harm to a federally protected right is substantially likely and a failure to act on that likelihood. Where the district initially admitted to receipt of the faxed letter from the psychiatrist, the district later said that the admission was a mistake. If the district did receive the letter, the parents would have a "strong argument" for deliberate indifference because the letter provided the requisite notice to the district and the district never responded. If a jury concludes that the district received the letter, then it could also conclude that the district acted with deliberate

indifference in not evaluating the student. Thus, where there are disputed material facts, summary judgment is denied and a jury must decide the claims.

SECTION 504 DISCIPLINE

E.W. v. Mt. Vernon Comm. Sch. Corp., 2025 WL 3142173 (S.D. Ind. 2025). School district's motion for summary judgment is granted, and the parent's case brought under § 1983, 504, and ADA on behalf of her daughter with depression and anxiety is dismissed. The student began attending school within the district as a non-resident student (in accordance with the district's nonresident "Transfer Policy") in the 6th grade and attended there until the conclusion of 8th grade in the spring of 2023. In May of 2021, a "Section 504 Plan" was developed and implemented to allow for the student to take frequent breaks with the use of a "hot pass" when she felt anxious, to take tests in the general education room or in the testing center, and to use ear plugs when working on tests and assignments. Due to a series of behavioral issues, her Plan was modified throughout the 2021-22 school year. Behavioral issues continued through the 2022-23 school year resulting in suspensions, detentions, and other disciplinary consequences. By the Spring of 2023, the student was threatening teachers and other students, and there was a significant issue with another student. By April 26, 2023, the student had accumulated 8 days of suspension and the Principal emailed the student's parent indicating increasing concern about threatening and insubordinate behavior and language that would "not be tolerated." In May, the student received 2 days of OSS and the parents indicated at a meeting on May 15th that she had accumulated enough suspensions to require a manifestation meeting. The student also had 62 days with some form of attendance issue, including 18 full-day absences unrelated to discipline. On June 7, 2023, the Superintendent sent the parents a letter indicating that the student's "transfer application" was not being approved due to an "extreme number of absences" and an "excessive number of days" of OSS for the 2022-23 school year and quoted the Transfer Policy providing that under Indiana law, a student's application could be denied if the student is suspended for more than 10 days or the student has a history of unexcused absences. The court in a very lengthy opinion dismissed all claims for a variety of reasons, including the parents' argument that a manifestation determination was required because her anxiety and depression manifested themselves as mood swings, suicidal ideation, and rage, as well as their argument that discrimination occurred where each of her absences were excused because of her anxiety and depression. Specifically with respect to the parents' 504 claims of discrimination, the court cited to an opinion from Pennsylvania that held that: "Nothing in the text of the statute or its regulations...suggest that a student is entitled to a manifestation determination under the Rehabilitation Act. A manifestation determination is a creature of statute; specifically, the IDEA, not the Rehabilitation Act. Matthew's parents seek to engraft an IDEA procedural protection onto the Rehabilitation Act's statutory scheme but provide no reason why the Court should engage in such statutory alchemy." In light of this authority, Plaintiffs in this case failed to establish a dispute as to whether the school here failed to provide reasonable accommodations by refusing to hold a manifestation meeting since 504 does not even require it. Note: This case was appealed to the Seventh Circuit Court of Appeals on November 4, 2025.

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

Spring v. Allegany-Limestone Cent. Sch. Dist., 125 LRP 11973 (2d Cir. 2025) (unpublished). After a jury found disability-based discrimination under 504/ADA against a 17-year-old with Tourette syndrome and ADHD (and awarded $25,000 in damages), the district court did not err in denying

judgment to the district and denying its motion for a new trial. First, the student clearly had a disability under 504/ADA where the student's Tourette syndrome affected the major life activity of communication, often triggering outbursts and the use of profanity when feeling bullied or controlled. The evidence also supported the fact that outbursts caused the student anxiety and difficulty communicating with peers and staff and a reasonable jury could conclude that the student had a disability. With respect to the jury's finding of discrimination when the student was dismissed from the baseball team, under 504, "the defendant must have discriminated against the plaintiff solely because of the plaintiff's disability, whereas under the ADA, it is enough if the plaintiff's disability was a motivating factor in the discrimination." Here, there was enough for a reasonable jury to conclude that the student's disability was a "motivating factor" when his school's baseball coach removed him from the baseball team. The coach testified that the student was removed from the team after an incident where the student kicked another student in the groin and then uttered the F-word repeatedly and told the coach to "suck it." The coach explained that the specific reason the student was removed from the team was the way he acted after he kicked the other student, and "the total disrespect in front of the rest of the players." In other words, the reason for the disciplinary action, according to the coach, was what the student said after the altercation with the other student--not for his role in the altercation itself. Importantly, although the coach maintains that he would have punished any student who acted as this student did, he admitted that he has never actually banned anyone else from the team. The coach also knew that the student had a disability and an IEP. Thus, the jury could have reasonably concluded that the student's disability was a "motivating factor" in the decision to remove him from the baseball team, as there is ample evidence in the record indicating that swearing and verbal outbursts were "tics" resulting from the student's Tourette syndrome. The trial testimony clearly supports that the district removed the student from the baseball team for this very type of behavior, despite knowledge of the student's condition. Accordingly, the judgment of the district court against the district as a matter of law and the district's request for a new trial is affirmed.

Doe v. Rhode Island Interscholastic League, 125 LRP 14988 (1st Cir. 2025). District court's injunction granting a waiver of the League's eight-semester play limit rule to a high schooler diagnosed with anxiety, ADHD, learning disorders, and depression is vacated and remanded. The rule provides that once a student enters the 9th grade, whether in a junior high school or a 4-year high school within the League, that student is limited to eight (8) consecutive semesters of eligibility to play and automatically becomes ineligible for athletic competition within the League four years from the date of entry into the 9th grade. Here, the student was required under the ADA to show that he was denied a reasonable accommodation in the form of a waiver of the rule where he repeated his 9th grade year because of a disability. However, the student chose to repeat his 9th grade year not because of a disability according to his father's testimony, but because COVID significantly reduced his opportunities to participate in athletics the first time around in 9th grade. The student's diagnoses of learning disorders had no bearing on his eligibility to play intramural sports within the League as a 5th-year senior (nor did it have any impact on his academic grades). Thus, it was clearly not the case that he was not eligible to play his senior year because of a disability. In addition, the requested waiver in order to allow him to play as a 5th-year senior is not a reasonable accommodation under ADA where the League's eight-semester rule is in place to ensure even competition and maximum participation across the state's high school sports program. This student's continued participation in multiple sports would deprive other students of the opportunity to play. Thus, a waiver would constitute a fundamental alteration of the program.

D.M. v. Oregon School Activities Ass'n, 2025 WL 2400439 (9th Cir. 2025) (unpublished). District court's summary judgment ruling in favor of the OSSA is reversed and remanded where high school athlete with a 504 Plan for ADHD, ODD, and PTSD challenged a denial of his request to play football for a 5th year and a modification to the "eight-semester rule," since he had been out for a year while in a residential facility to address his disabilities. Under ADA Title II, public entities must make reasonable modifications that are "necessary to avoid discrimination on the basis of disability," unless the modification would "fundamentally alter the nature" of the program or activity. What constitutes a reasonable modification requires a fact-specific, individualized analysis of the disabled individual's circumstances and the modifications that might allow him to meet the program's standards. The district court erred by failing to conduct an individualized analysis of the student's circumstances and instead relied upon OSAA's exemptions for students with an IEP under IDEA. Whether a student with disabilities needs specialized education under IDEA is different from whether a student needs reasonable modifications under ADA. In addition, there are genuine disputes of material fact as to whether the student's requested modification was reasonable and whether the modification would have fundamentally altered OSAA's football program. The record before us does not show as a matter of law that granting him a waiver would have undermined the goals of OSAA's eight-semester rule, i.e., to promote academic progress and to ensure safe and fair competition. Further, OSAA does not argue or show that providing waivers in these circumstances would result in "undue financial and administrative burdens." Indeed, OSAA already has exceptions for students with IEPs. In order to show a violation of ADA Title II, the student must show that he was excluded from participation in OSAA football "by reason of" his disabilities. The language "by reason of" means that he must show "but-for causation," which "directs us to change one thing at a time and see if the outcome changes." If it does, then there is "but-for cause." [citations omitted]. Here, there is a genuine dispute of fact regarding whether the student's disabilities were the "but-for cause" of his ineligibility to play football, and the student has presented facts that show that if he did not have disabilities, then he would not have gone to a residential treatment facility, he would not have had to repeat a grade, and then he would have been eligible to play football under the eight-semester rule. Because the result changes, the student has raised a genuine dispute of fact as to whether there is but-for cause. To the extent the district court considered whether the student's year at a residential treatment facility was "necessary," instead of whether there was but-for causation, it erred. The district court and OSAA construe the facts as establishing that it was the student's mother's choice to send D.M. to a residential treatment facility, and not due to his disabilities. But that there may be "multiple but-for causes" does not preclude liability, and on summary judgment, we must construe the evidence and draw all reasonable inferences in the light most favorable to the student. Finally, facially discriminatory policies present per se violations of ADA. The district court erred in granting summary judgment as to the student's facial challenge and erroneously applied the "reasonable modifications test," which does not apply to facially discriminatory policies. For these reasons, the district court's decision is reversed and remanded. Note: The dissenting Justice noted that the student's only remaining claims at this juncture are for money damages against the OSAA and therefore would affirm the district court's dismissal because the student is not entitled to damages under ADA absent a showing of deliberate indifference.

SERVICE ANIMALS

Dietz v. Germantown Municipal Sch. Dist., 125 LRP 12991 (W.D. Tenn. 2025). Where the seizure alert dog (Herbie) for a 9-year-old nonverbal student with multiple disabilities does not follow commands and engages in inappropriate behaviors, the district may exclude the dog from the school

setting, and the court will not grant injunctive relief at this juncture while the parents' 504/ADA lawsuit proceeds. The parents are not likely to succeed on their case where the dog usually fails to respond to commands from the student and school staff and instead wanders around the classroom, gets the "zoomies," eats out of the trash can and off the floor, and chases other students. The dog's presence also results in other disruption when the student tries to harm the dog by hitting or kicking him or pulling his ears and tail when the dog fails to obey commands. On one occasion, the student repeatedly stomped on the dog's leg. Because the dog is not in the student's control, the district's exclusion of the dog does not likely violate federal law. In addition, the parents' request for "some assistance" to the student in commanding the dog at school is not reasonable and is well beyond "some assistance." Importantly, school staff have devoted "much time and attention" to assisting the student, but it has not been successful in controlling the dog. In balancing the equities, "Herbie's exclusion does not harm the Plaintiffs. But the harm to Germantown and other students is substantial. When Herbie attended Dogwood, he was disruptive. He would get the zoomies in the classroom, sniff people, and eat food not meant for him. (record citations omitted). And so allowing Herbie in the classroom places additional responsibilities on school staff. (record citation omitted). And, likewise, Herbie detracts from Germantown's ability to educate and tend to M.D. and the other students." [Interesting note: The court also mentioned that it would not, at this juncture, determine whether the ADA's regulations on service animals are valid under the Supreme Court's 2024 decision in Loper Bright since the parties have not yet challenged those regulations. It should be noted that on November 25, 2025, however, an Order was issued by the Sixth Circuit dismissing the appeal].

Kimball Area Pub. Schs. v. I.M., 2025 WL 1172007 (D. Minn. 2025). The district's proposed IEP that does not include services of a handler for the student's service dog and proposes a full day (rather than a half day) for the student is appropriate and offers FAPE. While the student's trained service dog is helpful in interrupting and redirecting inappropriate behaviors and sometimes calms the student, there is no evidence that the dog is necessary for the student to receive FAPE, particularly where the dog is only sometimes useful in reducing inappropriate behaviors and keeping the student in one place. The district can address the student's behavioral needs through the proposed IEP's positive interventions and redirection by school staff working with him. Because the district's proposed IEP includes interventions and paraprofessional support which are equally if not more effective than the service dog, the IEP offers FAPE. Thus, the due process decision of the ALJ finding the dog necessary for FAPE under IDEA is reversed. Since the IEP is appropriate and offers FAPE, the court need not address whether the district is required to provide staff to serve as the handler for the dog. [Note: The court also ruled that the IEP's proposal for a full day (rather than a half day to accommodate private ABA services is appropriate for the student. The court's decision was appealed by the parent to the Eighth Circuit Court of Appeals but the case was settled and dismissed].

EDUCATION RECORDS/EMAILS

D.M.S. v. Upper Darby Sch. Dist., 2025 WL 2724380 (E.D. Pa. 2025), amended and superseded, Sandra S. v. Upper Darby Sch. Dist., 2025 WL 3770095 (E.D. Pa. 2025). Hearing officer's dismissal of the parent's IDEA claim was in error and, therefore, the district's motion to dismiss this appeal on that claim is denied. Here, the parents of a 12-year-old student with autism requested education records from the district through their attorney. In response, the district produced some—but not all—of the records requested. In January 2025, the parents filed for due process and asserted that the

district failed to conduct an appropriate evaluation and failed to provide all education records in violation of 504 and IDEA. The evaluation issue resolved, and the hearing officer agreed to grant the district's motion to dismiss the remaining records claim on the basis that no independent cause of action exists for denial of records under IDEA or 504. On review of the IDEA claim and as part of IDEA's specific procedural safeguards, parents are provided the right to "examine *all records"* relating to their child "with respect to the identification, evaluation, and educational placement of the child, and the provision of free appropriate public education to such child." The court rejects the district's argument that this language does not entitle parents to file a due process complaint solely on the basis of a district's failure to produce all education records. The language of IDEA allows parents specifically to initiate a due process complaint "with respect to *any matter* relating to the identification, evaluation, or educational placement of the child, or the provision of [FAPE]." The term "any matter" necessarily encompasses the provision of records, as long as those relate to the identification, evaluation, placement, or FAPE of the child. However, this is a procedural violation that does not necessarily impede the parents' opportunity to participate or deny FAPE to the student. In looking at the parents' Complaint, they have plausibly pleaded that the denial of records impeded their opportunity to participate in the decision-making process of providing FAPE to their child, but they will have the burden of proving that the violation occurred and that it resulted in a loss of educational opportunity for the student, seriously deprived them of their participation rights, or deprived the student of educational benefit. While IDEA creates a private cause of action for violations arising from a denial of access to education records, however, Section 504 does not. The 504 regulation requiring federal fund recipients to provide an opportunity for parents to examine relevant records does not create a private cause of action. Rather, the regulation is directed toward the regulated entity (the district) and requires the federal fund recipient to establish a system of procedural safeguards but does not construe and define a personal right created by Section 504 itself.

Clark Co. Sch. Dist. v. The Eighth Judicial Dist. Ct. of the State of Nevada, 2025 WL 3438172 (Nevada Supreme Court (Nev. 2025). District court must vacate its May 30, 2024 opinion requiring the school district to produce all emails that reference student J.B. J.B. currently attends a school for students with disabilities within the district and his grandmother, who is his court-appointed educational decisionmaker, asked for his education records from the district. She was concerned that the records were not complete and requested any emails that the district stored in Google Workspace that identified him by first or last name or initials. After a dependency hearing, the district court presiding there found that any emails containing a reference to J.B. are education records when maintained by the district on a secured database. We rescind our former opinion and replace it with this one after en banc reconsideration. The U.S. Supreme Court in Owasso Indep. Sch. Dist. v. Falvo in 2022 interpreted when documents are "maintained" by a school district in order to constitute education records under FERPA. In interpreting this decision, to be an education record, a document or other material must be an institutional record stored in a designated place that is, typically, overseen by a designated individual responsible for maintaining such records. These records are stored with controlled access because they may contain personal and sensitive information and affect the course of a student's education. FERPA accordingly provides parents an opportunity to challenge the content of education records and to provide an explanation of their content. Thus, education records "generally exclude materials informally created in the ordinary course of business that a school possesses but which do not rise to the level of institutional records. That being said, "an email *may* constitute an education record. To be an education record, the email related to the student "must be deliberately stored by the records custodian as part of that student's records. We emphasize that deliberate action to store such emails as institutional records is critical. The school district thus

ultimately decides what materials constitute institutional records that are part of a student's record and then ensures that those materials are protected and preserved." When looking at the entire consents of the .ccsd domain that the district stores with Google Workspace, there are many discussions exchanged by email that are informal conversations, distinguishable from the type of information formally designated as education records and stored in a single place with of log of who has accessed them. Also, the records must *directly* relate to the student, not *incidentally* just because they mention the student's name while primarily addressing something else. It must have a "close connection" with the student. In conclusion, ordinary emails exchanged in the routine course of daily activities are not "maintained by" the school district within the meaning of FERPA, even if stored on a database that the district manages. In addition, an email that merely mentions a student does not necessarily relate to and bear a close connection to the student. Thus, the district court erred in concluding that all emails referring to J.B. and were stored on the district's domain were education records and required to be produced to the grandparent.