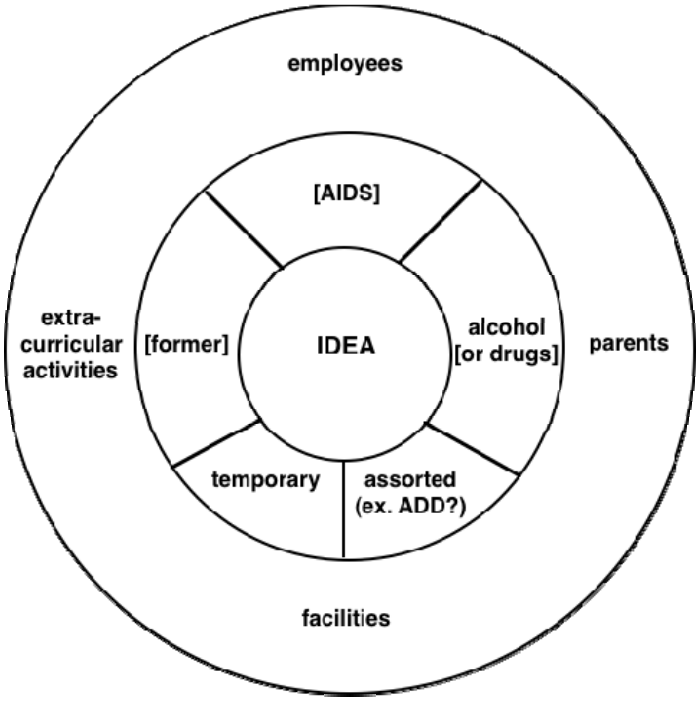
A NATIONAL UPDATE OF CASE LAW 1998 TO THE PRESENT UNDER THE IDEA AND SECTION 504/A.D.A.

Perry A. Zirkel
University Professor of Education and Law
Lehigh University
111 Research Drive
Bethlehem, PA 18015
(tel. 610/758-3239)
perry.zirkel@lehigh.edu



January 2012

National Association of State Directors of Special Education, Inc.
1800 Diagonal Road, Suite 320, Alexandria, VA 22314
Tel: 703/519-3800 Fax: 703/519-3808 www.nasdse.org

PREFACE

This annotated outline is a relatively comprehensive compilation of the published[1] special education decisions under the Individuals with Disabilities Education Act (IDEA) and Section 504 (§ 504) or the Americans with Disabilities Act (ADA) for students from pre-K through grade 12, starting in 1998 and ending approximately midway in 2011.[2] The coverage focuses on the issues of primary concern to educators and parents, such as eligibility, free appropriate public education (FAPE), least restrictive environment (LRE), and the remedies of tuition reimbursement and compensatory education.[3] In partial contrast, the coverage of attorneys' fees is limited to a more modest sampling of the published decisions, because they are so numerous and of less immediate interest to the primary audience. In complete contrast, the compilation does not extend, however, to technical adjudicative issues, such as exhaustion, jurisdiction, stay-put and statute of limitations. The author welcomes suggested additions of any missing cases within these boundaries.

The case entries are organized in approximate chronological order within the common special education categories, starting with eligibility. Each entry consists of a standard citation, including the parallel cite in the INDIVIDUALS WITH DISABILITIES LAW REPORTS (IDELR), and a blurb that summarizes the major ruling(s). In addition, prefacing each citation is the outcome for the summarized ruling(s) in terms of these categories: ***P*** = Parent won; ***S*** = School district won; ***P/S*** = mixed (i.e. partially for each side); **( )** = Inconclusive.[4]

---

1 "Published" in this context refers to the narrow meaning of decisions appearing in the official court reporters, with the limited exception of the Circuit Court of Appeal decisions in West's Federal Appendix (F. App'x).

2 For a corresponding similar sampling of earlier decisions, see the following series: Perry A. Zirkel, Special Education Law Updates I-VI, 133 Educ. L. Rep. 323 (1999); 116 Educ. L. Rep. 1 (1997); 98 Educ. L. Rep. 1 (1995); 83 Educ. L. Rep. 543 (1993); 66 Educ. L. Rep. 901 (1991); 48 Educ. L. Rep. 317 (1988).

3 Some of these categories inevitably overlap, such as the merits of FAPE and LRE and the remedies for denial of FAPE.

4 "Inconclusive" in this context refers to rulings, such as denying the defendant's motion for dismissal or either party's motion for summary judgment, that preserve a final decision on the merits of the issue for further proceedings that did not appear as a published decision. Conversely, if a published decision at the trial court level is succeeded by an appellate decision that is published, only the final decision is included herein.

Those entries for decisions by the U.S. Supreme Court are in bold font. For decisions that have rulings in more than one category, the second entry has an abbreviated citation ending with "supra" (literally meaning "above"), which is a cross reference to the complete citation in the earlier listing. The only area of systematic overlap is tuition reimbursement cases; if the court resolved the issue—in the applicable, multi-step decisional framework—by determining whether the district provided FAPE, the entry appears within the "appropriate education" category,[5] whereas if the court's ruling focused on the other steps, such as whether the parent's placement was appropriate, the entry appears within the "tuition reimbursement" category.

To keep the entries brief, the blurbs include the following acronyms:

ABA = applied behavior analysis
ADAAA = Americans with Disabilities Act Amendments Act
ADHD = attention deficit hyperactivity disorder
BIP = behavior intervention plan
DTT = discrete trial training
ED = emotional disturbance
ESY = extended school year
FAPE = free appropriate public education
FBA = functional behavior assessment
ID = intellectual disabilities
IEE = independent educational evaluation
IEP = individualized education program
IFSP = individualized family service plan
IHO = impartial hearing officer
LRE = least restrictive environment
OCD = obsessive compulsive disorder
OCR = Office for Civil Rights
ODD = oppositional defiant disorder
OHI = other health impairment
OT = occupational therapy
PDD = pervasive developmental disorder
PEL = present educational level
PRR = peer-reviewed research
PT = physical therapy
PTSD = post-traumatic stress disorder
SLD = specific learning disabilities
SLI = speech or language impairment
TBI = traumatic brain injury

This document is not intended as legal advice. The categories and the blurbs are illustrative

[5] In such instances, the blurb shows the overlap by ending with the designation "[tuition reimbursement case]."

and representative but not precise or complete. Listing these entries as merely a starting point, the author strongly encourages direct reading of the cited cases for independent verification of the citation and interpretation of the case contents. For readers who are not attorneys, consultation with competent counsel is recommended.

Finally, the author expresses his appreciation for NASDSE deputy executive director Nancy Reder for her erstwhile editing of this document and to NASDSE executive director Bill East for his leadership in disseminating this information for the public interest.

TABLE OF CONTENTS

I. DIAGNOSIS AND PLACEMENT

A. IDENTIFICATION

S Springer v. Fairfax Cnty. Sch. Dist., 134 F.3d 659, 27 IDELR 367 (4th Cir. 1998); cf. Mars Area Sch. Dist. v. Laurie L., 827 A.2d 1249, 39 IDELR ¶ 96 (Pa. Commw. Ct. 2003)
- despite failing grades, truancy, and drug use, evidence was insufficient to establish ED eligibility as compared to pure social maladjustment [tuition reimbursement case]

P Muller v. Comm. on Special Educ., 145 F.3d 95, 28 IDELR 188 (2d Cir. 1998)
- student diagnosed with ODD and PTSD and treated as Sec. 504-eligible instead qualified as ED under IDEA

S Carter v. Prince George's Cnty. Pub. Sch., 23 F. Supp. 2d 585, 29 IDELR 42 (D. Md. 1998)
- upheld district's determination that slow learner was not SLD, ID, or speech/language impaired

S Norton v. Orinda Union Sch. Dist., 168 F.3d 500, 29 IDELR 1068 (9th Cir. 1998)
- upheld school district's determination that student with severe achievement-ability discrepancy was not eligible as SLD because he did not need special education

S Hoffman v. E. Troy Sch. Dist., 38 F. Supp. 2d 750, 29 IDELR 1074 (E.D. Wis. 1999)
- rejecting Child Find claim, court concluded that district did not have reason to suspect the student was ED [tuition reimbursement case]

P Corchado v. Bd. of Educ., 86 F. Supp. 2d 168, 32 IDELR ¶ 116 (W.D.N.Y. 2000)
- a student with OHI, SLD and speech impairment was eligible under IDEA, although achieving at an average level, based on the adverse educational effects of his seizure disorder and stuttering

S J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 33 IDELR ¶ 34 (2d Cir. 2000)
- gifted child with emotional/behavioral impairment was not eligible under IDEA due to lack of requisite adverse educational effect [tuition reimbursement case]

P/S Johnson v. Metro Davidson Cnty. Sch. Sys., 108 F. Supp. 2d 906, 33 IDELR ¶ 59 (M.D. Tenn. 2000)
- concluded, based on additional evidence, that student met criteria for ED, including adverse effect in terms of attendance rather than grades, but granted parents only second of two requested years of tuition reimbursement due to belated notice

S Maricus v. Lanett City Bd. of Educ., 141 F. Supp. 2d 1064, 34 IDELR ¶ 233 (M.D. Ala. 2001)
- rejected ED eligibility of student with discipline problems, providing latitude for district's professional judgment and noting that father flip-flopped his position to avoid child's expulsion

S Austin Indep. Sch. Dist. v. Robert M., 168 F. Supp. 2d 635, 35 IDELR ¶ 182 (W.D. Tex. 2001), aff'd mem., 54 F. App'x 413 (5th Cir. 2002)
- AD/HD student in gifted program who lacked motivation did not need special education and thus was not eligible under IDEA

P W. Chester Area Sch. Dist. v. Bruce C., 194 F. Supp. 2d 417, 36 IDELR ¶ 154 (E.D. Pa. 2002); cf. Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002) (OHI and ED based on behavior problems)
- bright ADHD student needed special education and thus was IDEA-eligible, based on his high potential and his extensive parental help

S Ford v. Long Beach Unified Sch. Dist., 291 F.3d 1086, 37 IDELR ¶ 1 (9th Cir. 2002)
- upheld decision that student was not eligible as SLD, ruling that the district was not required to use an IQ test (as compared to alternative assessment measures) for the "severe discrepancy" determination

S Delaware Cnty. Intermediate Unit v. Jonathan S., 809 A.2d 1051, 37 IDELR ¶ 282 (Pa. Commw. Ct. 2002)
- rejected financial responsibility of education agency under IDEA Part C (early intervention) for a child with cerebral palsy where the hearing officer relied on "conventional wisdom"—and the record was devoid of specific facts—that the child needed special education

P Elida Local Sch. Dist. Bd. of Educ. v. Erickson, 252 F. Supp. 2d 476, 38 IDELR ¶ 237 (N.D. Ohio 2003)
- ruled that student with leukemia continued to be eligible as OHI even though she performed up to her potential, deferring to review officer's decision based on parents' experts

P New Paltz Cent. Sch. Dist. v. St. Pierre, 307 F. Supp. 2d 394, 40 IDELR ¶ 211 (N.D.N.Y. 2004)
- ruled that substance-abusing ninth grader was eligible as ED (rather than purely socially maladjusted) and that district was liable for tuition reimbursement due to delayed evaluation

S C.J. v. Indian River Cnty. Sch. Bd., 107 F. App'x 893, 41 IDELR ¶ 120 (11th Cir. 2004)
- ruled that student diagnosed with bipolar disorder and ODD was not eligible as ED because her behavior problems did not affect her educational performance

S Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist., 473 F. Supp. 2d 532, 47 IDELR ¶ 95 (S.D.N.Y. 2007), aff'd, 300 F. App'x 11, 51 IDELR ¶ 149 (2d Cir. 2008)
- ruled that sexually abused drug-abusing student did not qualify as ED based on any of the five alternative conditions [tuition reimbursement case]

P Mr. I. v. Maine Sch. Admin. Dist. No. 55, 480 F.3d 1, 47 IDELR ¶ 121 (1st Cir. 2007)
- ruled that student's Asperger Disorder adversely affected educational performance as broadly defined by state law, establishing that student was eligible here, since "need" was not a contested issue

S Hood v. Encinitas Union Sch. Dist., 486 F.3d 1099, 47 IDELR ¶ 213 (9th Cir. 2007)
- rejected student's eligibility as SLD or OHI based on lack of need for special education—student performed at or above grade level with 504 plan

P Bd. of Educ. v. S.G., 230 F. App'x 330, 47 IDELR ¶ 285 (4th Cir. 2007)
- affirmed ruling that child with schizophrenia qualified as ED in terms of adverse effect, concluding that her frequent absenteeism was a relevant factor because the middle school environment aggravated and contributed to her condition

S R.B. v. Napa Valley Sch. Dist., 496 F.3d 932, 48 IDELR ¶ 60 (9th Cir. 2007)
- failure to include appropriate general and special ed teachers on the team was harmless error because the child did not qualify as ED [tuition reimbursement case]

S Alvin Indep. Sch. Dist. v. A.D., 503 F.3d 378, 48 IDELR ¶ 240 (5th Cir. 2007)
- held that student with AD/HD was not eligible, even if ADHD adversely affected his educational performance, because he did not need special education by reason of his ADHD (as compared with his family issues, including alcohol abuse)

S Richardson v. Dist. of Columbia, 541 F. Supp. 2d 346, 50 IDELR ¶ 6 (D.D.C. 2008)
- upheld determination that student was not eligible as ED where parent refused to release the private psychiatric evaluation information that was the missing link (and the reasonable prerequisite for the district to arrange for such an evaluation)—parental participation rationale used in favor of district)

P N.G. v. Dist. of Columbia, 556 F. Supp. 2d 11, 50 IDELR ¶ 7 (D.D.C. 2008)
- upheld Child Find claim of parent, including tuition reimbursement, for student with AD/HD and depression where district determined ineligibility based on recommended § 504 accommodations

S cf. Parker v. Friendship Edison Pub. Charter Sch., 577 F. Supp. 2d 68, 51 IDELR ¶ 37 (D.D.C. 2008)
- ruled that failure to include classroom observation in determination that student with adjustment disorder did not qualify as OHI was harmless error in this case

P Eschenasy v. New York City Dep't of Educ., 604 F. Supp. 2d 639, 52 IDELR ¶ 62 (S.D.N.Y. 2009)
- held that teenager who cut classes, took drugs, stole classmates' property, and engaged in self-injurious behavior was eligible as ED and thus for private therapeutic placement

S C.B. v. Dep't of Educ., 322 F. App'x 20, 52 IDELR ¶ 121 (2d Cir. 2009)
- ruled that student with ADHD and bipolar disorder was not eligible under the IDEA due to successful educational performance

S cf. J.A. v. E. Ramapo Sch. Dist., 603 F. Supp. 2d 684, 52 IDELR ¶ 196 (S.D.N.Y. 2009)
- misclassification of child as OHI rather than autistic was not substantive flaw entitling the parents to reimbursement for additional 1:1 behavior therapy where they failed to show that the child needed higher allocation of 1:1 as compared to group behavior therapy

S Loch v. Edwardsville Sch. Dist. No. 7, 327 F. App'x 647, 52 IDELR ¶ 244 (7th Cir. 2009), cert. denied, 130 S. Ct. 90 (2010)
- upheld district's determination that student with diabetes and social anxiety disorder, who was on a 504 plan, did not qualify as OHI because the parents failed to meet their burden to show a need for special education, including lack of medical evidence that her conditions justified her absenteeism

S Pohorecki v. Anthony Wayne Local Sch. Dist., 637 F. Supp. 2d 547, 53 IDELR ¶ 22 (N.D. Ohio 2009)
- upheld district's determination that district properly classified child, who had previous diagnoses of ADHD, "absence seizures" and—most recently—Asperger Disorder, as ED rather than parent's proposed classifications of autism or OHI

S A.J. v. Bd. of Educ., 679 F. Supp. 2d 299, 53 IDELR ¶ 327 (E.D.N.Y. 2010)
- ruled that child with Asperger Disorder (and ADHD) was not eligible as under autism classification based on "educational performance" being primarily academic, although the adverse affect need not be severe or significant

S Maus v. Wappingers Cent. Sch. Dist., 688 F. Supp. 2d 282, 54 IDELR ¶ 10 (S.D.N.Y. 2010)
- ruled that child with various diagnoses, including Asperger Disorder, ADHD, and dysgraphia, was not eligible as OHI or ED based on narrow, academic view of adverse affect on "educational performance" [tuition reimbursement case]

S Nguyen v. Dist. of Columbia, 681 F. Supp. 2d 49, 54 IDELR ¶ 18 (D.D.C. 2010)
- upheld district's determination that child was not eligible as either ED or SLD with poor achievement likely attributable to attendance (and drug) problems

S Marshall Joint Sch. Dist. No. 2 v. C.D., 616 F.3d 632, 54 IDELR ¶ 307 (7th Cir. 2010)[6]
- upheld district's position that third-grade student with Ehlers-Danlos Syndrome, who had an IEP as OHI, no longer had adverse effect nor needed special education

P Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024, 56 IDELR ¶ 2 (8th Cir. 2011)
- ruled that student with ADHD and bipolar disorder was eligible as OHI and ED with adverse effect on educational performance based in part on failing standardized test required for promotion

S W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142, 56 IDELR ¶ 230 (S.D.N.Y. 2011)
- ruled that the child was not eligible as ED because his academic downturn was due to social maladjustment, including conduct disorder and truancy [tuition reimbursement case]

[6] This reversal of the trial court decision resulted in vacating the separate $89k attorneys' fee ruling that had been in favor of the parents. Traci D. v. Marshall Joint Sch. Dist., 53 IDELR ¶ 225 (W.D. Wis. 2009).

(*P*) E.M. v. Pajaro Valley Unified Sch. Dist., 652 F.3d 999, 57 IDELR ¶ 1 (9th Cir. 2011)
- remanded to determine whether bilingual child was eligible, based on IEE,[7] and SLD and whether the child's auditory processing disorder qualified him as OHI

(*P*) Michael P. v. Dep't of Educ., State of Hawaii, 656 F.3d 1057, 57 IDELR ¶ 123 (9th Cir. 2011)
- after ruling that requiring exclusive reliance on the severe discrepancy model of identifying SLD violated the IDEA, remanded to determine whether student was eligible as SLD and, if so, whether the private tutoring and placement were appropriate so as to entitle the parents to reimbursement

P P.C. v. Oceanside Union Free Sch. Dist., __ F. Supp. 2d __, 56 IDELR ¶ 252 (E.D.N.Y. 2011)
- ruled that the child did not qualify as ED (and alternatively that the parents' unilateral placement was not appropriate) [tuition reimbursement case]

B. APPROPRIATE EDUCATION (including ESY)

S Walczak v. Florida Union Free Sch. Dist., 142 F.2d 119, 27 IDELR 1135 (2d Cir. 1998)
- upheld substantive appropriateness of district's proposed placement of a child with SLD in a day school [tuition reimbursement case]

P Stroudsburg Area Sch. Dist. v. Jared M., 712 A.2d 807, 28 IDELR 284 (Pa. Commw. Ct. 1998)
- held that district's IEP was inappropriate in terms of OHI student's social, emotional and behavioral needs [tuition reimbursement and compensatory education relief]

S Kathleen H. v. Massachusetts Dep't of Educ., 154 F.3d 8, 28 IDELR 1067 (1st Cir. 1998)
- upheld district's proposed mainstreamed placement of SLD student rather than parents' unilateral placement in private school [tuition reimbursement case]

S Frank S. v. Sch. Comm., 26 F. Supp. 2d 219, 29 IDELR 707 (D. Mass. 1998)
- upheld school district's proposed IEP for 12th-grade student with atypical PDD under state's maximum benefit standard [tuition reimbursement case]

P Mohawk Trail Regional Sch. Dist. v. Shaun D., 35 F. Supp. 2d 34, 29 IDELR 885 (D. Mass. 1999)
- upheld residential placement for student with pedophilia, paraphilia and other emotional conditions

(P) Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 30 IDELR 41 (3d Cir. 1999)
- "more than a trivial educational benefit" does not meet the FAPE standard of "significant learning" and "meaningful education benefit" based on an individual analysis of the type and amount of learning of which the eligible child is capable (thus with the level of FAPE directly proportional to the child's potential)

[7] This additional evidence arose after the IHO's decision, here causing a remand to the trial court for consideration. For a similar situation in a FAPE case that resulted in a remand to the IHO, see Taylor v. Dist. of Columbia, 700 F. Supp. 2d 105, 56 IDELR ¶ 128 (D.D.C. 2011).

P Cumberland Valley Sch. Dist. v. Lynn T., 725 A.2d 215, 30 IDELR 356 (Pa. Commw. Ct. 1999)
- district committed substantive and procedural FAPE violations to eligible student who moved from another district

S Ross v. Framingham Sch. Comm., 44 F. Supp. 2d 104, 30 IDELR 378 (D. Mass. 1999)
- district adequately implemented undisputed appropriate IEP

P T.H. v. Bd. of Educ., 55 F. Supp. 2d 830, 30 IDELR 764 (N.D. Ill. 1999)
- rejected district's cross-categorical early childhood placement, w/o aide, upholding instead appropriateness of parents' home-based Lovaas placement for autistic five-year-old [tuition reimbursement case]

S Renner v. Bd. of Educ., 185 F.3d 635, 30 IDELR 885 (6th Cir. 1999)
- upheld the appropriateness of the district's IEP for an autistic child even though it did not have the extent of Lovaas-type discrete trial training sought by the parents

S Wagner v. Short, 63 F. Supp. 2d 672, 31 IDELR ¶ 53 (D. Md. 1999)
- upheld appropriateness of IFSP proposed for autistic child, despite parents' preference for a particular ABA program

(***P***) Metropolitan Bd. of Pub. Educ. v. Guest, 193 F.3d 457, 31 IDELR ¶ 75 (6th Cir. 1999)
- remanded the case to determine whether the district's procedural errors were prejudicial and whether the proposed 67% segregated placement was reasonably calculated to provide FAPE [tuition reimbursement case]

S Mandy S. v. Fulton Cnty. Sch. Dist., 205 F. Supp. 2d 1358, 31 IDELR ¶ 79 (N.D. Ga. 2000), aff'd mem., 273 F.3d 114 (11th Cir. 2001)
- concluded that district's IEPs, including transition plans, were "substantially" in compliance with procedural requirements and met substantive standards of IDEA

P/S Adams v. State of Oregon, 195 F.3d 1141, 31 IDELR ¶ 130 (9th Cir. 1999)
- upheld district's IFSP for child with autism, rather than intensive Lovaas-type program parent preferred, but rejected district's revised IFSP that reduced weekly service hours, because it "was not linked to [the child's] unique developmental needs" [tuition reimbursement case]

P Walker Cnty. Sch. Dist. v. Bennett, 203 F.3d 1293, 31 IDELR ¶ 239 (11th Cir. 2000)
- upheld tuition reimbursement for private placement for student with autism, declining to hear additional evidence and pointing out deficiencies in IEP, including lack of BIP, OT and ESY

S Soraruf v. Pinckney Cmty. Sch., 208 F.3d 215, 32 IDELR ¶ 4 (6th Cir. 2000); cf. Gill v. Columbia #3 Sch. Dist., 217 F.3d 1027, 32 IDELR ¶ 254 (8th Cir. 2000)
- upheld procedural and substantive appropriateness of district's self-contained placement for a student with autism

P Wilson Cnty. Sch. Sys. v. Clifton, 41 S.W.3d 645, 32 IDELR ¶ 34 (Tenn. Ct. App. 2000)
- rejected district's proposed placement for hearing-impaired child based on deficiencies in classroom physical setting, instructional methods and teacher's experience/training [tuition reimbursement case]

S Burilovich v. Bd. of Educ., 208 F.3d 560, 32 IDELR ¶ 85 (6th Cir. 2000)
- upheld the substantive and procedural appropriateness of district's IEP for elementary school student with autism, thereby rejecting reimbursement for in-home program

S Briley v. Bd. of Educ., 87 F. Supp. 2d 441, 32 IDELR ¶ 119 (D. Md. 2000)
- district's procedural violations, including untimely placement notice, were not sufficient to amount to a denial of FAPE

S Bd. of Educ. v. Hunter, 84 F. Supp. 2d 702, 32 IDELR ¶ 95 (D. Md. 2000)
- upheld private placement for ED student with epilepsy rather than district's proposed mainstreamed placement—LRE not a factor where lack of FAPE [tuition reimbursement case]

(*P*) Bd. of Educ. v. Michael M., 95 F. Supp. 2d 600, 32 IDELR ¶ 170 (S.D. W.Va. 2000)[8]
- ruled that district did not meet its burden to prove that its program, rather than the parents' in-home Lovaas program, was appropriate [tuition reimbursement case]

P/S Nein v. Greater Clark Cnty. Sch. Corp., 95 F. Supp. 2d 961, 32 IDELR ¶ 171 (S.D. Ind. 2000)
- ruled that district's proposed program was not appropriate for dyslexic child but, due to their failure to follow notice requirements, parent's tuition reimbursement should be reduced to one half

S Socorro Indep. Sch. Dist. v. Angelic Y., 107 F. Supp. 2d 761, 33 IDELR ¶ 273 (W.D. Tex. 2000)
- upheld appropriateness of school district's IEP based on: 1) sufficiently individualized assessment; 2) elaborately designed and effectively implemented to meet child's individual needs; and 3) meaningful progress in the LRE, with test scores assessed in relation to the student, not the rest of the class [tuition reimbursement case]

(*P*) Knable v. Bexley City Sch. Dist., 238 F.3d 755, 34 IDELR ¶ 1 (6th Cir. 2001)
- ruled that: 1) failure to convene an IEP meeting within the mandated IDEA timeline was a prejudicial violation in terms of depriving parents of meaningful role in formulating an appropriate program; 2) draft IEP failed to meet IDEA's technical and substantive requirements; and 3) full reimbursement would not be equitable to the extent that the costs were unreasonable [tuition reimbursement case]

[8] The court subsequently upheld the appropriateness of the parents' program and ordered tuition reimbursement. Board of Educ. v. Michael M., 33 IDELR ¶ 185 (S.D. W.Va. 2000).

S Steinberg v. Weast, 132 F. Supp. 2d 343, 34 IDELR ¶ 113 (D. Md. 2001)
- upheld appropriateness of district's proposed placement of SLD (borderline ID) child in segregated public rather than private residential school

P/S Gonzalez v. Puerto Rico Dep't of Educ., 254 F.3d 350, 34 IDELR ¶ 291 (1st Cir. 2001)
- upheld district's proposed placement of 17-year-old student with autism in self-contained class rather than residential placement, but added parent training to manage the child's behavior to the extent it linked to education progress

S Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 34 IDELR ¶ 203 (11th Cir. 2001)
- upheld appropriateness of district's specialized day program for child with autism rather than parent's unilateral residential placement [tuition reimbursement case]

P Amanda J. v. Clark Cnty. Sch. Dist., 267 F.3d 877 (9th Cir. 2001); cf. Jaynes v. Newport News Sch. Bd., 13 F. App'x 166, 35 IDELR ¶ 1 (4th Cir. 2001) (repeated failure to notify parents of right to challenge IEP via due process hearing)
- failure to furnish parents with copies of child's evaluation reports was prejudicial procedural violation based on need for early detection of autism and for parental participation in planning

S White v. Sch. Bd., 549 S.E.2d 16, 35 IDELR ¶ 7 (Va. Ct. App. 2001)
- upheld substantive appropriateness (including LRE) of SLD child's placement in regular school and concluded that various procedural violations did not deny him FAPE [tuition reimbursement case]

S W.A. v. Pascarella, 153 F. Supp. 2d 144, 35 IDELR ¶ 91 (D. Conn. 2001)
- district's failure to implement IEP team's unanimous recommendation of full-time special education teacher was not a prejudicial procedural violation where it was an optimal, not necessary, service and the IEP was not revised to reflect this recommendation

P/S Pitchford v. Salem-Keizer Sch. Dist. No. 24J, 155 F. Supp. 2d 1213, 35 IDELR ¶ 126 (D. Or. 2001)
- upheld appropriateness of a series of IEPs for a child with autism, including TEACCH rather than Lovaas, but found that lack of district (or other child-knowledgeable) member of IEP team for one year was a prejudicial error (ordering mediation as the first-resort remedy)

(*P*) Lagares v. Camdenton R-III Sch. Dist., 68 S.W.3d 518, 35 IDELR ¶ 270 (Mo. Ct. App. 2001)
- remanded determination of whether IEP was appropriate for failure to apply the higher, maximization standard under state law

S Sch. Bd. v. K.C., 285 F.3d 977, 36 IDELR ¶ 122 (11th Cir. 2002)
- upheld appropriateness of district's proposed IEP for student with SLD where key stakeholders implemented it in collaborative manner and its procedural deficiencies did not impact FAPE

S Faulders v. Henrico Cnty. Sch. Bd., 190 F. Supp. 2d 849, 36 IDELR ¶ 183 (E.D. Va. 2002)
- upheld appropriateness of district's ESY program for high functioning autistic child, with focus on improving social communication rather than 1:1 services and with goal of reasonable progress rather than mastery of skills

S Tyler v. Nw. Indep. Sch. Dist., 202 F. Supp. 2d 557, 36 IDELR ¶ 236 (N.D. Tex. 2002)
- upheld procedural and substantive appropriateness of proposed IEP for autistic child, which included six hours of Lovaas in-home training instead of the 25 hours the parents insisted was necessary

S Delaware Valley Sch. Dist. v. Daniel G., 800 A.2d 989, 37 IDELR ¶ 7 (Pa. Commw. Ct. 2002)
- upheld substantive appropriateness of IEP for SLD student who made two months of progress in 10 instructional months via specially targeted instruction (Lindamood Bell)

S Vasheresse v. Laguna Salada Union Sch. Dist., 211 F. Supp. 2d 1150 (N.D. Cal. 2001)
- procedural violations in evaluation process did not deprive student of FAPE; evaluation was adequate; and IEP was substantively appropriate [IEE and tutoring reimbursement case]

S Todd v. Duneland Sch. Corp., 299 F.3d 899, 37 IDELR ¶ 151 (7th Cir. 2002)
- upheld substantive appropriateness of IEP for SLD student who demonstrated improvement in grades and standardized test scores (and ESY denial based on regression standard) [tuition reimbursement case]

S MM v. Sch. Dist., 303 F.3d 523, 37 IDELR ¶ 183 (4th Cir. 2002); see also Gray v. O'Rourke, 48 F. App'x 899, 37 IDELR ¶ 272 (4th Cir. 2002)
- neither failure to start school year w/o completed IEP nor failure to develop new IEP for the following year was prejudicial in this case (and single standard for ESY—significant regression jeopardizing progress during year or toward self sufficiency—did not violate IDEA)[9]

S A.S. v. Bd. of Educ., 245 F. Supp. 2d 417, 37 IDELR ¶ 179 (D. Conn. 2001), aff'd mem., 47 F. App'x 615, 37 IDELR ¶ 246 (2d Cir. 2002)
- upheld proposed IEP for student with SLD, ED and ADHD at the district's high school, finding the school staff members to be more weighty witnesses than the parents' outside experts [tuition reimbursement case]

S J.S. v. Shoreline Sch. Dist., 220 F. Supp. 2d 1175, 37 IDELR ¶ 253 (W.D. Wash. 2002)
- upheld proposed IEP, using deferential reasonableness approach and applying equities to district's evaluation in light of parents' concealment [tuition reimbursement case]

[9] The federal Office of Special Education Programs interpreted the MM decision as requiring significant regression or a jeopardization of benefits accrued during the school year, not lack of progress alone, for ESY. Letter to Given, 39 IDELR ¶ 129 (OSEP 2003).

(*S*) DiBuo v. Bd. of Educ., 309 F.3d 184, 37 IDELR ¶ 271 (4th Cir. 2002)
- remanded to determine whether procedural violations (e.g., failure to consider parents' evaluations for ESY) amounted to denial of FAPE

S J.P. v. W. Clark Cmty. Sch., 230 F. Supp. 2d 910, 38 IDELR ¶ 5 (S.D. Ind. 2002)
- upheld appropriateness of district's eclectic TEACCH/PECS-based program, which included ABA/DTT, for high school student with autism rather than parents' full-time Lovaas-type program—rejection of parents' cookie-cutter, cost-related arguments

S Waller v. Bd. of Educ., 234 F. Supp. 2d 531, 38 IDELR ¶ 37 (D. Md. 2002)
- upheld substantive appropriateness of proposed IEP for student with SLD and used equitable-type analysis to reject parents' procedural claims

S Arlington Cnty. Sch. Bd. v. Smith, 230 F. Supp. 2d 704, 38 IDELR ¶ 38 (E.D. Va. 2002)
- upheld appropriateness of district's resource program for ED student rather than private day school, based largely on expert testimony

P Neosho R-C Sch. Dist. v. Clark, 315 F.3d 1022, 38 IDELR ¶ 61 (8th Cir. 2003). But cf. Sch. Bd. of Indep. Sch. Dist. No. 11 v. Renollett, 440 F.3d 1007, 45 IDELR ¶ 117 (8th Cir. 2006) (not required and not denial of FAPE in this case)
- held that the IEP's failure to include a proper BIP amounted to, in this case, a denial of FAPE in light of the obvious need of the child with autism and SLD for a BIP and unpersuasive evidence of academic progress

S N.L. v. Knox Cnty. Pub. Sch., 315 F.2d 688, 38 IDELR ¶ 62 (6th Cir. 2003)
- held that failure to include the parent in the multidisciplinary evaluation team and in the preparation of the draft assessment report, which concluded that the child was ineligible under the IDEA, did not amount to a denial of FAPE in this case

S Kuszewski v. Chippewa Valley Sch., 56 F. App'x 655, 38 IDELR ¶ 63 (6th Cir. 2003)
- upheld appropriateness of district's IEP, concluding that failure to update it during stay-put was not procedural violation and that district maintained substantial communication with parents

S Banks v. Danbury Bd. of Educ., 238 F. Supp. 2d 428, 38 IDELR ¶ 65 (D. Conn. 2002)
- upheld substantive appropriateness of proposed IEP that provided one hour per day of Orton-Gillingham ("not a 'Cadillac'") [tuition reimbursement case]

P Shapiro v. Paradise Valley Unified Sch. Dist., 317 F.3d 1072, 38 IDELR ¶ 91 (9th Cir. 2003)
- held that failure to have the private school special education teacher on the IEP team and to reschedule the IEP meeting for the parents' participation was a prejudicial procedural violation

S CJN v. Minneapolis Pub. Sch., 323 F.3d 630, 38 IDELR ¶ 208 (8th Cir. 2003)
- upheld appropriateness of IEP based on reasonable academic progress despite increased use of time-outs and physical restraints

P/S Troy Sch. Dist. v. Boutsikaris, 250 F. Supp. 2d 720, 38 IDELR ¶ 210 (E.D. Mich. 2003)
- upheld procedural (harmless error approach) and substantive (Chevy, not Cadillac) appropriateness of IEP with limited exception of insufficient integration consultant services (for which court upheld compensatory education)

S Kings Local Sch. Dist. Bd. of Educ. v. Zelazny, 325 F.3d 724, 38 IDELR ¶ 236 (6th Cir. 2003)
- upheld appropriateness of IEP despite child's increasing behavior problems at home and harmless procedural error (here, lack of parental participation at third IEP meeting)

S Adam J. v. Keller Indep. Sch. Dist., 328 F.3d 804, 39 IDELR ¶ 1 (5th Cir. 2003)
- upheld substantive appropriateness of proposed IEP for student with autism (Asperger Disorder), rather than private placement, based on Cypress-Fairbanks four-factor test and upheld procedural appropriateness based on no loss of educational opportunity (or infringement on parental-participation opportunity)

P S.H. v. State-Operated Sch. Dist., 336 F.3d 260, 39 IDELR ¶ 121 (3d Cir. 2003)
- reversed district court's decision that proposed IEP for hearing impaired child was appropriate (including LRE), ruling that said court did not accord sufficient deference to the factual conclusions of the hearing officer under the "modified de novo" standard of judicial review—de minimis mainstreaming opportunities and prejudicial deficiencies, including recognition, but failure, to address need for ESY

S Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 40 IDELR ¶ 2 (2d Cir. 2003)
- procedural violations of delayed IEPs were not prejudicial after parents' unilateral placement of SLD child, absent evidence they would have returned the child to the district, and district's choice not to use Orton-Gillingham method was within its discretion [tuition reimbursement case]

(*P*) G v. Fort Bragg Dependent Sch., 343 F.3d 295, 40 IDELR ¶ 4 (4th Cir. 2003)
- remanded to determine whether the district's proposed IEP for four-year-old with autism, which contained Lovaas elements but not a Lovaas-certified consultant, met the Rowley substantive standard and whether the district denied the child FAPE during the previous three years (rejecting parental-objection standard for triggering compensatory education)

S Alexis v. Bd. of Educ., 286 F. Supp. 2d 551, 40 IDELR ¶ 7 (D. Md. 2003)
- omission of PELs was harmless procedural error in this case, and lack of progress in one of several SLD child's sub-skill areas did not constitute violation of substantive standard of FAPE

S Cnty. Sch. Bd. v. Palkovics, 285 F. Supp. 2d 701, 40 IDELR ¶ 13 (E.D. Va. 2003)
- upheld substantive appropriateness of proposed program for severely autistic child in reliance on district's witnesses, more than on parents' experts, and regarded the three procedural violations found significant by the hearing officer (e.g., lack of BIP) to be harmless in light of parents' failure to allow the child to move from the private, ABA school to the district

S/P E.D. v. Enterprise City Bd. of Educ., 273 F. Supp. 2d 1252, 40 IDELR ¶ 35 (M.D. Ala. 2003)
- procedural violations were not prejudicial but district's failure to include provisions in the IEP for speech/language impaired child with school phobia for transition to the in-school placement constituted a substantive violation of FAPE (with the remedy being involvement of the child's psychiatrist on the IEP team)

S A.B. v. Lawson, 354 F.3d 315, 40 IDELR ¶ 121 (4th Cir. 2003)
- upheld substantive and procedural appropriateness of IEP proposed for mainstreamed SLD student [tuition reimbursement case]

P Pawling Cent. Sch. Dist. v. New York State Educ. Dep't, 771 N.Y.S.2d 572, 40 IDELR ¶ 180 (App. Div. 2004)
- held that IEP was not appropriate due to failure to complete district's recommended testing, lack of measurable goals, absence of description of specially designed instruction and unilateral change in related services [tuition reimbursement case]

S Cone v. Randolph Cnty. Sch., 302 F. Supp. 2d 500, 40 IDELR ¶ 207 (M.D.N.C. 2004)
- held that district's proposed transfer of student from out-of-state school to in-state residential placement met the state's more stringent standard for FAPE and that the procedural violations were not prejudicial

S T.B. v. Warwick Sch. Comm., 361 F.3d 80, 40 IDELR ¶ 253 (1st Cir. 2004)
- upheld district's proposed placement of autistic kindergarten student in a specialized class that used the TEACCH approach rather than private school that relied on DTT – nonprejudicial procedural violations and deferential Rowley standard [tuition reimbursement case]

S Johnson v. Olathe Dist. Sch., 316 F. Supp. 2d 960, 41 IDELR ¶ 64 (D. Kan. 2003)
- upheld district's proposed IEP for an autistic sixth grader in a life skills class that used ABA and redirection techniques rather than home placement—procedural violations (e.g., IEP team composition) were nonprejudicial and methodology (here, using redirection more than planned ignoring) is within district's discretion

S Keith H. v Janesville Sch. Dist., 305 F. Supp. 2d 986, 41 IDELR ¶ 132 (W.D. Wis. 2004)
- upheld appropriateness of district's placement for child with SLD and OHI, including temporary homebound placement and subsequently proposed school-based placement

S Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist., 375 F.3d 603, 41 IDELR ¶ 146 (7th Cir. 2004)
- upheld appropriateness of district's IEP for disruptive third grader with OHI, rejecting parents' argument that the IDEA had a substantive standard for a BIP and an implementation standard beyond "good faith" for staff training

S Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d 141, 41 IDELR ¶ 181 (N.D.N.Y. 2004), aff'd, 142 F. App'x 9 (2d Cir. 2005), cert. denied, 546 U.S. 1091 (2006)
- upheld appropriateness of district's IEP for SLD student rather than parents' proposal for placement in private school that offered Orton Gillingham—methodology is within the district's discretion

P Bd. of Educ. v. Summers, 325 F. Supp. 2d 565, 41 IDELR ¶ 210 (D. Md. 2004)
- ruled that IEP, which provided for largely mainstreamed placement of student with multiple disabilities was – based on substantive, not procedural, grounds—inappropriate (including restrictive effect of aide and lack of speech and language progress) and that parents' proposed private special education placement provided FAPE in the LRE

P Shore Reg'l High Sch. Bd. of Educ. v. P.S., 381 F.3d 194, 41 IDELR ¶ 234 (3d Cir. 2004)
- ruled that the district did not offer FAPE to ninth-grade student with a disability (OHI) who had been the target of constant peer harassment and bullying—based on deference to the hearing officer's assessment of the expert testimony (and lower court's lack of sufficient explanation for disagreeing with said assessment), thus awarding tuition reimbursement case for parents' unilateral placement at neighboring district

P Fisher v. Bd. of Educ., 856 A.2d 552, 41 IDELR ¶ 238 (Del. 2004)
- ruled that district did not offer FAPE to sixth grade student with SLD (ADHD and dyslexia), providing deference (modified de novo standard) to hearing officer re lack of progress on standardized tests and loss of instruction (distraction plus pull-out) in mainstreamed placement and upholding compensatory education award of two-years at prep school

(*S*) Kenton Cnty. Sch. Dist. v. Hunt, 384 F.3d 269, 41 IDELR ¶ 259 (6th Cir. 2004)
- reversed and remanded district court's ESY decisions in favor of parents for previous four summers, requiring rigorous application of whether the parents had proven "significant skill losses of such degree and duration so as to seriously impede [the child's] progress toward his educational goals"

S Wagner v. Bd. of Educ., 340 F. Supp. 2d 603, 42 IDELR ¶ 6 (D. Md. 2004)
- upheld appropriateness of proposed IEP, despite cut-and-pasted goals/objectives from previous IEP and placement, which was change from Lovaas to non-Lovaas school, including rejection of procedural violations as nonprejudicial

P M.L. v. Fed. Way Sch. Dist., 394 F.3d 634, 42 IDELR ¶ 57 (9th Cir. 2004), cert. denied, 545 U.S. 1128 (2005)
- held that failure to include a general education teacher on the IEP team where mainstreaming is a possibility was a significant structural error requiring re-convening the required IEP team—rejected harmless error approach and ducked deciding whether the IEP was appropriate

P Deal v. Hamilton Cnty. Dep't of Educ., 392 F.3d 840, 42 IDELR ¶ 109 (6th Cir. 2004), cert. denied, 546 U.S. 936 (2005); see also H.B. v. Las Virgenes Unified Sch. Dist., 239 F. App'x 342, 48 IDELR ¶ 31 (9th Cir. 2007) (predetermination)[10]

- held that parents were entitled to tuition reimbursement based on two independent prejudicial procedural violations (fixed predetermination for TEACCH, not Lovaas, and repeated absence of general education teacher on IEP team where integration was at issue) and possible substantive violation of FAPE (remanding for careful determination, with limits on deference re methodology, based on "meaningful benefit" standard)[11]

S J.R. v. Bd. of Educ., 345 F. Supp. 2d 386, 42 IDELR ¶ 113 (S.D.N.Y. 2004); see also Parents of Danielle v. Mass. Bd. of Educ., 430 F. Supp. 2d 3, 45 IDELR ¶ 247 (D. Mass. 2006)

- upheld appropriateness of inclusionary class for student with speech/language and other disabilities based on genetic disorder, deferring to hearing officer's progress findings and commenting that "IDEA [does not] entitle … [the student] to the 'best education that money can buy' at the expenditure of the District's finite financial resources" [tuition reimbursement case]

(*S*) JH v. Henrico Cnty. Sch. Bd., 395 F.3d 185, 42 IDELR ¶ 199 (4th Cir. 2005)

- reversed and remanded for determination as to whether parents sustained burden of proof that the level of ESY services significantly jeopardized gains kindergarten student with autism made during the school year

P Lamoine Sch. Comm. v. Ms. Z, 353 F. Supp. 2d 306, 42 IDELR ¶ 172 (D. Me. 2005)

- held that district's failure to act decisively to address student's attendance problems resulting from his SLD-related depression constituted denial of FAPE [tuition reimbursement case]

(*P*) Cnty. Sch. Bd. v. Z.P., 399 F.3d 298, 42 IDELR ¶ 229 (4th Cir. 2005)[12]

- remanded appropriateness issue to trial court to reconsider with due deference to the hearing officer's findings that the parent's ABA placement for preschool student with autism was appropriate and the district's proposed TEACCH placement was not [tuition reimbursement case]

S Pace v. Bogalusa City Sch. Bd., 403 F.3d 272, 43 IDELR ¶ 2 (5th Cir. 2005)

- denied sovereign immunity defense but, on the merits, rejected wheelchair-bound student's IDEA accessibility claim, thereby precluding same claim under § 504 and the ADA

[10] In an unpublished decision, the Ninth Circuit confirmed its ruling. 54 IDELR ¶ 73 (9th Cir. 2010)

[11] In an unpublished decision, that the Sixth Circuit affirmed, the district prevailed on remand with regard to the methodology issue, but, based on the overall outcome of the case, the parents received 50% reimbursement. Deal v. Hamilton Cnty. Dep't of Educ., 46 IDELR ¶ 45 (E.D. Tenn. 2006), aff'd, 258 F. App'x 863 (6th Cir. 2008). In a separate decision, the trial court awarded attorneys' fees to the parents in the substantially reduced amount of approximately $240,000. Deal v. Hamilton Cnty. Dep't of Educ., 2006 WL 285446 (E.D. Tenn. 2006).

[12] In an unpublished decision, the district prevailed on remand. Cnty. Sch. Bd. v. Z.P., 45 IDELR ¶ 96 (E.D. Va. 2005).

S L.C. v. Utah State Bd. of Educ., 125 F. App'x 252, 43 IDELR ¶ 29 (10th Cir. 2005)
- upheld substantive appropriateness in formulation and implementation of IEP for student with multiple disabilities and rejected his procedural challenges (e.g., impartiality) to the due process hearing

S Fayette Cnty. Bd. of Educ. v. M.R.D., 158 S.W.3d 195, 43 IDELR ¶ 37 (Ky. 2005)
- upheld substantive appropriateness of district's IEP for middle school child with SLD based on various sources of evidence of progress despite admitted difficulty in attribution "due to the extensive private assistance procured by his parents"

P Montgomery Twp. Bd. of Educ. v. S.C., 135 F. App'x 534, 43 IDELR ¶ 186 (3d Cir. 2005)
- rejected substantive appropriateness of district's proposed placement for various reasons, including inflated grades, substantial parental assistance and lack of significant difference from previous services in general education [tuition reimbursement case]

S R.D. v. Dist. of Columbia, 374 F. Supp. 2d 84, 43 IDELR ¶ 194 (D.D.C. 2005)
- upheld hearing officer's finding that parent and her legal counsel engaged in bad faith attempt to "game the system" by upping the hours of special education to obtain a private placement

P Zayas v. Commonwealth of Puerto Rico, 378 F. Supp. 2d 13, 43 IDELR ¶ 246 (D.P.R. 2005), aff'd, 163 F. App'x 4, 44 IDELR ¶ 241 (1st Cir. 2005)
- concluded that district did not provide FAPE, where the proposed IEP met the substantive standard, but the trial placement was deleterious to the child [tuition reimbursement case]

S B.L. v. New Britain Bd. of Educ., 394 F. Supp. 2d 522, 44 IDELR ¶ 126 (D. Conn. 2005)
- upheld substantive appropriateness of district's IEP for SLD student based on "snapshot" standard—expert's reevaluation report was after the events [tuition reimbursement case]

S Clear Creek Indep. Sch. Dist. v. J.K., 400 F. Supp. 2d 991, 44 IDELR ¶ 60 (S.D. Tex. 2005)
- ruled that incomplete implementation of IEP provision for in-home and parent training sessions for child with autism did not amount to denial of FAPE where the child received the requisite overall benefit from the IEP and the parents did not prove that the failure was more than de minimis

S Mackey v. Bd. of Educ., 373 F. Supp. 2d 292, 44 IDELR ¶ 155 (S.D.N.Y. 2005) (Mackey V); see also Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 44 IDELR ¶ 89 (2d Cir. 2005)
- upheld the appropriateness of IEP for high school student with SLD based on deference to review officer's decision and inconsequential effect of child's classification [tuition reimbursement case]

(*S*) D.F. v. Ramapo Cent. Sch. Dist., 430 F.3d 595, 44 IDELR ¶ 180 (2d Cir. 2005)
- reversed and remanded decision that had ordered district to provide at least 10 hours of in-home ABA therapy in the preschool program, requiring the district court to decide whether the hearing and review officers committed reversible error by using post-IEP evidence to determine the substantive appropriateness of the IEP

S Iapalucci v. Dist. of Columbia., 402 F. Supp. 2d 152, 44 IDELR ¶ 255 (D.D.C. 2005)
- upheld procedural (despite technical violations such as partial PELs) and substantive (despite largely anecdotal rather than quantitative evidence – nonacademic too) appropriateness of district's IEP for SLD student [tuition reimbursement case]

P Escambia Cnty. Bd. of Educ. v. Benton, 406 F. Supp. 2d 1248, 44 IDELR ¶ 272 (S.D. Ala. 2005)
- rejected appropriateness of IEP for student with autism based on prejudicial procedural violations (e.g., measurable PELs and goals/objectives) and lack of FBA-BIP

S W.C. v. Cobb Cnty. Sch. Dist., 407 F. Supp. 2d 1351, 44 IDELR ¶ 273 (N.D. Ga. 2005)
- ruled that district's proposed placement for sixth grader with ED met Rowley substantive standard in terms of primarily academic, but also behavioral progress and that the parents' placement was inappropriate (LRE and certification) despite his progress there [tuition reimbursement case]

S M.M. v. Sch. Bd., 437 F.3d 1085, 45 IDELR ¶ 1 (11th Cir. 2006)
- parents claim that a particular approach (here, auditory verbal method) was "the best and most desirable method" does not state a claim under IDEA

S McQueen v. Colorado Springs Sch. Dist., No. 11. 419 F. Supp. 2d 1303, 45 IDELR ¶ 157 (D. Colo. 2006)
- deferred to district policy that limited ESY programs to the IEP goals/services needed to prevent regression

S Lesesne ex. rel. B.F., 447 F.3d 828, 45 IDELR ¶ 208 (D.C. Cir. 2006)
- upheld appropriateness of district's proposed IEP where parents failed to show that the failure to meet some of the IDEA's procedural violations affected FAPE

S Ariel B. v. Fort Bend Indep. Sch. Dist. 428 F. Supp. 2d 640, 45 IDELR ¶ 210 (S.D. Tex. 2006)
- upheld procedural and substantive appropriateness of program for student with ADHD and sleep disorder who had progressed satisfactorily despite attendance problems [tuition reimbursement case]

S T.F. v. Special Sch. Dist., 449 F.3d 816, 45 IDELR ¶ 237 (8th Cir. 2006); cf. Viola v. Arlington Cent. Sch. Dist., 414 F. Supp. 2d 366, 45 IDELR ¶ 39 (S.D.N.Y. 2006)
- upheld appropriateness of district's proposed placement of student with multiple disabilities, including autism, in self-contained class in regular school with mainstreaming opportunities, rather than residential placement [tuition reimbursement case]

P Gellert v. Dist. of Columbia Pub. Sch., 435 F. Supp. 2d 18, 45 IDELR ¶ 248 (D.D.C. 2006)
- rejected appropriateness of proposed placement for ED student who needed small classes [tuition reimbursement case]

P Cnty. Sch Bd. v. R.T., 433 F. Supp. 2d 657, 45 IDELR ¶ 274 (E.D. Va. 2006)
- upheld ABA at-home program as FAPE in the LRE for four-year-old with autism rather than district's TEACCH program [tuition reimbursement case]

S Nack v. Orange City Sch. Dist., 454 F.3d 604, 46 IDELR ¶ 32 (6th Cir. 2006)
- upheld appropriateness of IEP in special class for seventh grader with SLD and speech/language disorder, concluding that lack of progress was not substantively fatal due to reasonable calculation (specifically, "extraordinary effort") and harmless procedural violations (preparation rather than predetermination and sufficient test results without PELs)

S Reinholdson v. Bd. of Educ., 187 F. App'x 672, 46 IDELR ¶ 63 (8th Cir. 2006)
- rejected parents' claim that the IDEA required the district to provide them with its ESY proposal at least 105 days before the start of the summer

S Miller v. Bd. of Educ., 455 F. Supp. 2d 1286, 46 IDELR ¶ 133 (D.N.M. 2006), further proceedings, 565 F.3d 1232, 52 IDELR ¶ 61 (10th Cir. 2009)
- rejected parents' claim that their proposed methodology (Alternative Language Therapy + Books on Tape) was essential to FAPE of student with SLD

S Cabouli v. Chappaqua Cent. Sch. Dist., 202 F. App'x 519, 46 IDELR ¶ 211 (2d Cir. 2006)
- ruled that the proposed IEP for student with Asperger Disorder and pervasive developmental disorder, although representing an abrupt change to a much more mainstreamed environment, met the substantive standard for appropriateness [tuition reimbursement case]

S Mr. B. v. E. Granby Bd. of Educ., 201 F. App'x 834, 46 IDELR ¶ 212 (2d Cir. 2006); A.E. v. Westport Bd. of Educ., 463 F. Supp. 2d 208, 46 IDELR ¶ 277 (D. Conn. 2006), aff'd, 251 F. App'x 685, 48 IDELR ¶ 270 (2d Cir. 2007)
- upheld procedural and substantive appropriateness of IEPs [tuition reimbursement cases]

S B.B. v. Hawaii Dep't of Educ., 483 F. Supp. 2d 1042, 46 IDELR ¶ 213 (D. Hawaii 2007)
- rejected parents' various procedural and substantive challenges to IEP, including predetermination and inadequate "transfer" plan (from private school)

S Leighty v. Laurel Sch. Dist., 457 F. Supp. 2d 546, 46 IDELR ¶ 214 (E.D. Pa. 2006)
- upheld appropriateness of IEP as proposed and implemented for student with SLD, rejecting gap-closing and NCLB-testing arguments [tuition reimbursement case]

S W.S. v. Rye City Sch. Dist., 454 F. Supp. 2d 134, 46 IDELR ¶ 285 (S.D.N.Y. 2006)
- upheld appropriateness of proposed 50/50 placement of kindergartner with autism in regular school, concluding that FBA was appropriate and district's failure to send out notices to private schools did not constitute predetermination [tuition reimbursement case]

S Z.W. v. Smith, 210 F. App'x 282, 47 IDELR ¶ 4 (4th Cir. 2006)
- upheld appropriateness of district's proposed placement for student with SLD and ADHD based on the "modest" IDEA substantive standard for FAPE

S Leticia H. v. Ysleta Indep. Sch. Dist., 502 F. Supp. 2d 512, 47 IDELR ¶ 13 (W.D. Tex. 2007)
- lack of specific diagnosis of autism and lack of precise goals did not deny this eligible preschool child FAPE

S Bd. of Educ. v. Ross, 486 F.3d 267, 47 IDELR ¶ 241 (7th Cir. 2007)
- rejected procedural (e.g., predetermination) and substantive (including LRE) challenges to mid-year change from mainstreamed placement to "multiple needs" program for 11th grader with Rett Syndrome

P A.K. v. Alexandria City Sch. Bd., 484 F.3d 672, 47 IDELR ¶ 245 (4th Cir. 2007), cert. denied, 552 U.S. 1170 (2008), on remand, 544 F. Supp. 2d 487, 50 IDELR ¶ 13 (E.D. Va. 2008). But see T.Y. v. New York City Dep't of Educ., 584 F.3d 412, 53 IDELR ¶ 69 (2d Cir. 2009), cert. denied, 130 S. Ct. 3277 (2010); Brad K. v. Bd. of Educ., 787 F. Supp. 2d 834, 56 IDELR ¶ 197 (N.D. Ill. 2011) ("location" refers to type of appropriate environment, not specific school site)
- ruled, in tuition reimbursement case for a child with Asperger Disorder and OCD, that district's proposed placement in an unspecified (rather than one specifically identified) private day school was a prejudicial procedural error amounting to denial of FAPE [tuition reimbursement case]

S San Rafael Elementary Sch. Dist. v. California Special Educ. Hearing Office, 482 F. Supp. 2d 1152, 47 IDELR ¶ 259 (N.D. Cal. 2007); see also L.G. v. Sch. Bd., 255 F. App'x 360, 48 IDELR ¶ 271 (11th Cir. 2007)
- upheld district's proposed placement of 13-year-old with autism in private day school rather than parents' requested residential placement, rejecting parents' claim that substantive standard for FAPE extended to generalization of behavioral effects to the home environment

S A.S. v. Madison Metropolitan Sch. Dist., 477 F. Supp. 2d 969, 47 IDELR ¶ 304 (W.D. Wis. 2007)
- rejected tuition reimbursement for residential placement of child with autism where the parents failed to show the connection between his aggressive behavior at home and the services he received at school—i.e., parents' reason rather than child's need

S O'Dell v. Special Sch. Dist., 503 F. Supp. 2d 1206, 47 IDELR ¶ 216 (W.D. Tex. 2007)
- lack of precise goals/objectives were not substantively harmful to child with multiple disabilities

S Marc V. v. N.E. Indep. Sch. Dist., 455 F. Supp. 2d 577, 48 IDELR ¶ 41 (W.D. Tex. 2006)
- upheld appropriateness of program/placement of prekindergarten child with autism despite district's refusal to grant parents' medically-based (diagnosis of PTSD after district stopped parent from accompanying child to class) request for homebound instruction—parents refused to allow district to speak with the doctor

S Hjortness v. Neenah Joint Sch. Dist., 507 F.3d 1060, 48 IDELR ¶ 119 (7th Cir. 2007), cert. denied, 554 U.S. 930 (2008)
- procedural errors, including alleged predetermination in LRE, were not prejudicial and despite lack of current PELs, the proposed IEP for gifted student with autism, ADHD and OCD was substantively appropriate under these particular circumstances [tuition reimbursement case]

P A.D. v. Sumner Sch. Dist., 166 P.3d 837, 48 IDELR ¶ 191 (Wash. Ct. App. 2007)
- district's failure to identify additional data and to take into consideration private school's recommendations for ESY deprived parents of meaningful opportunity for participation

S Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811 (9th Cir. 2007); see also Melissa S. v. Sch. Dist., 183 F. App'x 184, 45 IDELR ¶ 271 (3d Cir. 2006); Catalan v. Dist. of Columbia, 478 F. Supp. 2d 73, 47 IDELR ¶ 223 (D.D.C. 2007); cf. S.S. v. Howard Road Acad., 585 F. Supp. 2d 56, 51 IDELR ¶ 151 (D.D.C. 2008) (failure to provide ESY per IEP was "material," i.e., significant or substantial)
- rejected FAPEimplementation claim for student with severe autism, concluding that the standard is whether district's implementation was more than a minor discrepancy with due attention to child's progress (and with liberal credit for the district's "corrective actions" in compliance with hearing officer's prospective order, which did not provide compensatory education)

S Mr. C. v. Maine Sch. Admin. Dist. No. 6, 538 F. Supp. 2d 298, 49 IDELR ¶ 36 (D. Me. 2008)
- rejected claim that IDEA 2004 changed the Rowley standard for FAPE

S M.M. v. Special Sch. Dist. No. 1, 512 F.3d 455, 49 IDELR ¶ 61 (8th Cir. 2008), cert. denied, 129 S. Ct. 452 (2008)
- district did not deny FAPE to child with ED when 1) she made academic progress despite clear failure to meet behavioral goals; and 2) during the following year, she incurred eight short-term suspensions totaling 30 school days in a four-month period and, although agreeing that a placement change would be warranted, parent refused the district's offer of alternative education services at home

S Fairfax Cnty. Sch. Bd. v. Knight, 261 F. App'x 606, 49 IDELR ¶ 122 (4th Cir. 2008)
- upheld substantive appropriateness of IEPs for high school student with SLD, deferring to district's experts and methodology in spite of remarkable increase in student's test scores at the private placement [tuition reimbursement case]

S Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 518 F.3d 18, 49 IDELR ¶ 180 (1st Cir. 2008)
- upheld procedural and substantive appropriateness of IEP for child with multiple disabilities, rejecting what the parents purported to be requirements for a transition plan (in contrast with transition services) and for a BIP (in contrast with consideration as to whether the child needed it)

S Jalloh v. Dist. of Columbia, 535 F. Supp. 2d 13, 49 IDELR ¶ 190 (D.D.C. 2008)
- district's insufficient response to parents' due process hearing request was not prejudicial procedural violation in this case

S Travis G. v. New Hope-Solebury Sch. Dist., 544 F. Supp. 2d 435, 49 IDELR ¶ 248 (E.D. Pa. 2008)
- upheld appropriateness of district's IEP for kindergarten child with autism, including reduction of OT and ABA, and the district's proposed ESY placement

P Sch. Bd. v. E.S., 561 F. Supp. 2d 1282, 49 IDELR ¶ 251 (M.D. Fla. 2008)
- upheld residential placement for child with autism, rejecting district's proposed transfer to nonresidential program

P/S Claudia C-B v. Bd. of Tr., 539 F. Supp. 2d 474, 49 IDELR ¶ 276 (D. Mass. 2008)
- upheld appropriateness of charter school's IEP for ninth grader with ADHD and executive functioning difficulties despite problematic competency-based grading system but awarded partial attorneys' fees for consultation order

S J.N. v. Pittsburgh City Sch. Dist., 536 F. Supp. 2d 564, 50 IDELR ¶ 74 (W.D. Pa. 2008)
- upheld appropriateness of IEP for child with autism in approved private school, concluding, inter alia, that child's injuries from classmates did not result in denial of FAPE

S Mendoza v. Placentia Yorba Linda Unified Sch. Dist., 278 F. App'x 737, 50 IDELR ¶ 93 (9th Cir. 2008)
- upheld substantive appropriateness of district's evaluation and program for student with disabilities, including factors that 1) student's poor attendance gave the district little time to assess the benefits of his IEP; and 2) his parents refused mental health goals and services

P/S JG v. Douglas Cnty. Sch. Dist., 552 F.3d 786, 50 IDELR ¶ 119 (9th Cir. 2008)
- district's evaluation was appropriate and reasonably timely, and district had adequate resources to implement IEPs of twins with autism, but procedural violation of not providing parents with notice of the evaluation warranted full reimbursement where parents' refusal to share information was neither prejudicial nor a breached obligation

S Thompson R2-J Sch. Dist. v. Luke P., 540 F.3d 1143, 50 IDELR ¶ 212 (10th Cir. 2008), cert. denied, 129 S. Ct. 1356 (2009)
- ruled that district did not deny FAPE to student with autism who made progress under three successive IEPs even though it did not generalize to other settings [tuition reimbursement case]

S Sytsema v. Acad. Sch. Dist. No. 20, 538 F.3d 1306, 50 IDELR ¶ 213 (10th Cir. 2008)
- ruled that district's failure to provide finalized IEP to preschool student with autism was procedural error that did not result in substantive harm [tuition reimbursement case][13]

S N.B. v. Hellgate Elementary Sch. Dist., 541 F.3d 1202, 50 IDELR ¶ 241 (9th Cir. 2008)
- upheld tuition reimbursement for IEP where district did not evaluate the child with speech impairment in all the areas of suspected disability, i.e., autism (treating it as prejudicial procedural violation), but rejected parents' claim that the child was eligible for ESY, thus ducking question of FAPE substantive standard for ESY

S Fisher v. Stafford Twp. Bd. of Educ., 289 F. App'x 520, 50 IDELR ¶ 272 (3d Cir. 2008)
- district's failure to provide a child with autism any classroom aide for ten days during a five-week period and parent's belief that she was required to supplement the aides' salaries to prevent them from resigning did not constitute denial of FAPE

S Sinan v. Sch. Dist., 293 F. App'x 912 (3d Cir. 2008)
- upheld the appropriateness of the IEP despite sketchy transition plan, deferring to the hearing/review officer decisions [tuition reimbursement case]

S O.O. v. Dist. of Columbia, 573 F. Supp. 2d 41, 51 IDELR ¶ 9 (D.D.C. 2008); see also Hinson v. Merritt Educ. Ctr., 579 F. Supp. 2d 89, 51 IDELR ¶ 65 (D.D.C. 2008)
- ruled that proposed IEP and placement were each appropriate despite not being semantically precise and best suited, respectively

S Winkelman v. Parma City Sch. Dist., 294 F. App'x 997, 51 IDELR ¶ 92 (6th Cir. 2008), cert. denied, 129 S. Ct. 2862 (2009)
- rejected parents' claim of denial of FAPE based on delayed OT goals, lack of music therapy and lack of 1:1 aide [tuition reimbursement case]

S M.M. v. New York City Dep't of Educ., 583 F. Supp. 2d 498, 51 IDELR ¶ 128 (S.D.N.Y. 2008)
- rejected procedural challenges, including predetermination, and ruled that district's proposed IEP met substantive standard, which is not maximization of potential, for student with autism [tuition reimbursement case]

S A.C. v. Bd. of Educ., 553 F.3d 165, 51 IDELR ¶ 147 (2d Cir. 2009)
- held that IEP for child with autism developed, in violation of state regulation requiring FBA, was neither procedurally nor substantively deficient—IDEA's IEP "special consideration" provision, in effect, trumped state regulations [tuition reimbursement case]

[13] On remand, however, the court granted tuition reimbursement for the previous year based on substantive inappropriateness. Sytsema v. Acad. Sch. Dist. No. 20, 53 IDELR ¶ 226 (D. Colo. 2009).

S N.M. v. Sch. Dist., 585 F. Supp. 2d 657, 51 IDELR ¶ 154 (E.D. Pa. 2008), aff'd, 394 F. App'x 718, 55 IDELR ¶ 91 (3d Cir. 2010)
- upheld substantive appropriateness of IEP, including provisions for multisensory instruction and auditory processing provisions, for student with SLD (and inappropriateness based on LRE of unilateral placement) [tuition reimbursement case]

S T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 51 IDELR ¶ 176 (2d Cir. 2009)
- held that consultant chart's "School Response" showing that district did not intend to offer more than 10 hours of school-based ABA did not constitute predetermination of IEP for kindergarten child with autism [tuition reimbursement case]

S Schaffer v. Weast, 554 F.3d 470, 51 IDELR ¶ 177 (4th Cir. 2009)
- held that "inclusion-model" (one half mainstreamed) 8th grade IEP for child with SLD and ADHD was appropriate despite 10th grade IEP that called for self-contained class [tuition reimbursement case]

S Stanley C. v. M.S.D. of Sw. Allen Sch., 628 F. Supp. 2d 902, 51 IDELR ¶ 207 (N.D. Ind. 2008)
- ruled that IEPs for child with multiple disabilities, including TBI, had various deficiencies, e.g., lack of goals for social skills, that did not rise to the level of a denial of FAPE [tuition reimbursement case]

S Kasenia R. v. Brookline Sch. Dist., 588 F. Supp. 2d 175, 51 IDELR ¶ 218 (D.N.H. 2009)
- held that: 1) lack of pull-out services did not invalidate IEP where parents had objected to them and IEP was reasonably calculated to confer benefit without them; and 2) unilateral placement was not LRE [tuition reimbursement case]

S B.S. v. Placentia-Yorba Linda Unified Sch. Dist., 306 F. App'x 397, 51 IDELR ¶ 237 (9th Cir. 2009)
- upheld substantive appropriateness and LRE of two successive IEPs for child with autism

P Blake C. v. Dep't of Educ., 593 F. Supp. 2d 1199, 51 IDELR ¶ 239 (D. Hawaii 2009)
- held that district's program for child with autism did not meet the heightened "meaningful benefit standard" for FAPE under Hellgate (supra), showing difficulty of measuring progress and resulting in award of remaining tuition reimbursement for part of 2007 ($62,000) as compensatory education for violation in 2005-06

S G.N. v. Bd. of Educ., 309 F. App'x 542, 52 IDELR ¶ 2 (3d Cir. 2009)
- upheld substantive appropriateness of IEP and concluded that various procedural defects, including lack of individualized goals and objectives, were not prejudicial [tuition reimbursement case]

S A.G. v. Placentia-Yorba Linda Unified Sch. Dist., 320 F. App'x 519, 52 IDELR ¶ 63 (9th Cir. 2009)
- reluctantly concluded, based on Ninth Circuit precedent (R.B. v. Napa Valley (supra), that one of the student's previous special education teachers, rather than the current one, sufficed as the required special education teacher/provider member of the IEP team

S Joshua A. v. Rocklin Unified Sch. Dist., 319 F. App'x 692, 52 IDELR ¶ 64 (9th Cir. 2009)
- upheld appropriateness of eclectic approach for child with autism as sufficient for PRR provision in the IDEA

S Anderson v. Dist. of Columbia, 606 F. Supp. 2d 86, 52 IDELR ¶ 100 (D.D.C. 2009)
- held that new, proposed placement and IEP for four-year-old student with developmental disability was substantively appropriate and that lack of full IEP team and monthly progress reports in this case were harmless procedural violations [tuition reimbursement case]

S K.C. v. Mansfield Indep. Sch. Dist., 618 F. Supp. 2d 568, 52 IDELR ¶ 103 (N.D. Tex. 2009)
- upheld appropriateness of transition plan that focuses on fashion and child care, student's biggest strengths, but not the music, which was area of major interest but limited skill

S M.M. v. Gov't of Dist. of Columbia, 607 F. Supp. 2d 168, 52 IDELR ¶ 128 (D.D.C. 2009)
- district's refusal to revise IEP was not denial of FAPE where reevaluation was pending

S S.J. v. Issaquah Sch. Dist., 326 F. App'x 423, 52 IDELR ¶ 153 (9th Cir. 2009)
- ruled that IEPs for child with SLD did not have fatal deficits (e.g., blank section for teacher supports/aids was not prejudicial in this case; lack of timely IEP was due to parents' delays) and parents' meaningful participation does not mean veto power [tuition reimbursement]

S R.R. v. Scarsdale Union Free Sch. Dist., 615 F. Supp. 2d 283, 52 IDELR ¶ 185 (S.D.N.Y. 2009)
- rejected various procedural challenges, including predetermination claim, to child's IEP [tuition reimbursement case]

S T.H. v. Dist. of Columbia, 620 F. Supp. 2d 86, 52 IDELR ¶ 216 (D.D.C. 2009)
- teenager's lack of progress was not dispositive of substantive appropriateness of IEP where district modified his services and placement in response to it

S E.G. v. City Sch. Dist., 606 F. Supp. 2d 384, 52 IDELR ¶ 228 (S.D.N.Y. 2009)
- rejected parents' predetermination claim and ruled that district's proposed IEP, which included 10 hours of at-home behavior therapy and five half-days in general education for child with autism, was FAPE in the LRE [tuition reimbursement case]

S Richard S. v. Wissahickon Sch. Dist., 334 F. App'x 508, 52 IDELR ¶ 245 (3d Cir. 2009)
- held that district did not violate its Child Find obligations during student's 7th and 8th grade years and that subsequent IEPs met Rowley's substantive standard in light of parents' continued resistance and refusals

S L. v. N. Haven Bd. of Educ., 624 F. Supp. 2d 163, 52 IDELR ¶ 254 (D. Conn. 2009)
- upheld procedural and substantive appropriateness (in the LRE) of successive IEPs for child with Down Syndrome

S James D. v. Bd. of Educ., 642 F. Supp. 2d 804, 52 IDELR ¶ 281 (N.D. Ill. 2009)
- ruled that IEP of fourth grader with SLD and SLI provided FAPE in the LRE, rejecting alleged procedural violations (e.g., failure to consider IEE or allow evaluator to observe the class w/o student there) and substantive limited progress (e.g., declining percentiles) [tuition reimbursement case]

S L.M. v. Capistrano Unified Sch. Dist., 556 F.3d 900 (9th Cir. 2009), cert. denied, 130 S. Ct. 90 (2009)
- reversed the lower court's ruling of denial of FAPE based on procedural violation concerning parental participation where there was no finding that said violation—limiting observation time for independent evaluator—had significant effect rather than being harmless error (despite violation of state law that required equivalent opportunity)

P Houston Indep. Sch. Dist. v. V.P., 582 F.3d 576, 53 IDELR ¶ 1 (5th Cir. 2009), cert. denied, 130 S. Ct. 1892 (2010)
- upheld, based on clear error review standard, that successive IEPs for student with hearing and speech impairment denied FAPE because they were not: 1) sufficiently individualized; 2) effectively in the LRE; 3) implemented with sufficient collaboration and training; and 4) yielding, except for unapproved deviations, meaningful, reliably measured progress [tuition reimbursement case]

S P.P. v. W. Chester Area Sch. Dist., 585 F.3d 727, 53 IDELR ¶ 109 (3d Cir. 2009)
- concluded that an unduly long period to complete evaluation was not procedurally prejudicial violation of FAPE where the child was in private school and the IEP were substantively appropriate

S E.H. v. Bd. of Educ., 361 F. App'x 156, 53 IDELR ¶ 141 (2d Cir. 2009), cert. denied, 130 S. Ct. 2064 (2010)
- ruled that district did not deny FAPE by placing student with PDD in class of 12, rather than 6, other students and did not deny parents meaningful participation in development of the IEP

S Sch. Bd. v. M.M., 348 F. App'x 504, 53 IDELR ¶ 142 (11th Cir. 2009)
- ruled that the various procedural violations in developing the IEP and its deficiencies prior to the behavior-improving effects of medication did not result in substantive denial of FAPE for first-grade child with multiple disabilities

P Springfield Sch. Comm. v. Doe, 623 F. Supp. 2d 150, 53 IDELR ¶ 158 (D. Mass. 2009)
- ruled that districts have a duty in certain relatively narrow circumstances to revise IEP in the face of chronic absenteeism

S Ashland Sch. Dist. v. Parents of Student R.J., 588 F.3d 1004, 53 IDELR ¶ 176 (9th Cir. 2009)
- held that private residential program was not necessary for the educational needs of teenager with ADHD and home-related adjustment disorder [tuition reimbursement case]

S Rodriguez v. San Mateo Union High Sch. Dist., 357 F. App'x 752, 53 IDELR ¶ 178 (9th Cir. 2009)
- summarily rejected parents' various claims of denial of FAPE, including district's failure to refer the student to county mental health services

S Souderton Area Sch. Dist. v. J.H., 351 F. App'x 755, 53 IDELR ¶ 179 (3d Cir. 2010)
- ruled that district's IEP for student with SLD was appropriate in terms of the three challenged components: OT, SLT and—including the use of standardized tests, a rubric, and a "research-based" best practice—writing

S Rosinsky v. Green Bay Area Sch. Dist., 667 F. Supp. 2d 964, 53 IDELR ¶ 193 (E.D. Wis. 2009)
- ruled that formulation and implementation of IEP for student with Fragile X syndrome was appropriate, including reevaluation and transition plan

P Drobnicki v. Poway Unified Sch. Dist., 358 F. App'x 788, 53 IDELR ¶ 210 (9th Cir. 2010)
- ruled that district's failure to make reasonable efforts to schedule IEP team meeting for parents to attend deprived them of opportunity for meaningful participation

S Anello v. Indian River Sch. Dist., 355 F. App'x 594, 53 IDELR ¶ 253 (3d Cir. 2009)
- rejected not only Child Find claims, which were based on the child's § 504 plan, but also the subsequent substantive and procedural FAPE claims due, respectively, to IEP's focus on the SLD's qualifying area of reading and the lack of prejudicial effect

S Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 53 IDELR ¶ 279 (1st Cir. 2010)
- rejected parents' challenges to qualifications of the provider of the methodology component of the IEP, the sufficiency of the transition plan and the LRE of the day school placement (in comparison to their home-community proposal)

S J.L. v. Mercer Island Sch. Dist., 592 F.3d 938, 53 IDELR ¶ 280 (9th Cir. 2010)
- upheld appropriateness of IEP for child with autism, rejecting lower court's ruling that IDEA '97 raised the Rowley substantive standard and concluding that various asserted procedural violations, such as failure to include methodology in the IEP and premeeting meeting, were not a denial of FAPE

S K.S. v. Fremont Unified Sch. Dist., 679 F. Supp. 2d 1046, 53 IDELR ¶ 287 (N.D. Cal. 2009), aff'd, 426 F. App'x 536, 56 IDELR ¶ 190 (9th Cir. 2011)
- rejected parents' substantive FAPE challenge to IEP, including their claim that the child with autism, who had made slow progress, needed 30 hours of ABA therapy per week

P Dist. of Columbia v. Bryant-James, 675 F. Supp. 2d 115, 53 IDELR ¶ 290 (D.D.C. 2010)
- ruled that district's IEP and inclusionary placement at a charter school was inappropriate due to its failure to reflect the recommendations of the two evaluators whose expertise and whose evaluations were not questioned

P J.N. v. Dist. of Columbia, 677 F. Supp. 2d 314, 53 IDELR ¶ 326 (D.D.C. 2010)
- ruled that district's failure coordinate with parent to schedule the child's IEP meeting eliminated her ability to participate in the formulation process and thus was a denial of FAPE

S J.L. v. Francis Howell R-3 Sch. Dist., 693 F. Supp. 2d 1009, 54 IDELR ¶ 5 (E.D. Mo. 2010)
- ruled that district's IEP for ninth grader with OHI (based on ADHD and bipolar disorder) met the Rowley substantive standard [tuition reimbursement case]

S J.G. v. Briarcliff Manor Union Free Sch. Dist., 682 F. Supp. 2d 387, 54 IDELR ¶ 20 (S.D.N.Y. 2010)
- ruled that: 1) parents had meaningful opportunity to participate in IEP development despite goals/objectives drafted after (and outside) the initial meeting, short notice for next meeting, and parents' absence from that meeting; and 2) IEP sufficiently addressed the child's needs [tuition reimbursement case]

P/S Anchorage Sch. Dist. v. D.S., 688 F. Supp. 2d 883, 54 IDELR ¶ 29 (D. Alaska 2010)
- ruled that three consecutive IEPs failed to provide FAPE to child with autism based on prejudicial procedural violations, including lack of accurate and timely evaluation, and upheld tuition reimbursement for ABA home program despite lack of special education certification, but reversed hearing officer's order to replace IEP team with private company that implements the program

S Jaccari J. v. Bd. of Educ., 690 F. Supp. 2d 687, 54 IDELR ¶ 53 (N.D. Ill. 2010)
- rejected parents' substantive FAPE challenge to IEP of fourth grader, concluding that purported regression in standard scores of achievement testing was commensurate with his limited cognitive abilities and use of Wilson trainer not certified by the company did not show requisite lack of qualifications when the company allowed her to continue to conduct the training

S Adrianne D. v. Lakeland Cent. Sch. Dist., 686 F. Supp. 2d 361, 54 IDELR ¶ 95 (S.D.N.Y. 2010)
- ruled that progress of sixth grader, although he did not fulfill 9 of 10 goals in reading and 2 of 7 in writing, met substantive standard for FAPE [tuition reimbursement case]

P D.S. v. Bayonne Bd. of Educ., 602 F.3d 553, 54 IDELR ¶ 141 (3d Cir. 2010)
- ruled that IEP for ninth grader in self-contained special education class who had 92 average, but low standardized achievement test scores was not reasonably calculated to provide meaningful benefit [tuition reimbursement case]

S M.N. v. New York City Dep't of Educ., 700 F. Supp. 2d 356, 54 IDELR ¶ 165 (S.D.N.Y. 2010)
- held that procedural violations (e.g., lack of FBA) did not deny FAPE and that the IEP for five-year-old at public charter school for children with autism (using an ABA model) met the substantive standard without the parents' additionally sought itinerant services

P N.S. v. Dist. of Columbia, 709 F. Supp. 2d 57, 54 IDELR ¶ 188 (D.D.C. 2010)
- ruled that IEP that lacked specifics (e.g., PELs, specialized instruction and related services) constituted denial of FAPE [tuition reimbursement case]

P D.B. v. Bedford Cnty. Sch. Bd., 708 F. Supp. 2d 564, 54 IDELR ¶ 190 (W.D. Va. 2010)
- ruled that district denied FAPE based on 1) confusion between ID, SLD, and OHI, without consideration of suspected SLD; and 2) lack of meaningful progress in inclusionary placement [tuition reimbursement case]

S W.T. v. Bd. of Educ., 716 F. Supp. 2d 270, 54 IDELR ¶ 192 (S.D.N.Y. 2010)
- upheld procedural and substantive appropriateness of IEP, despite possible violation of state regulations for the age range within a class, based on deference to review officer [tuition reimbursement case]

S C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 54 IDELR ¶ 212 (3d Cir. 2010); cf. Tracy N. v. Dep't of Educ., 715 F. Supp. 2d 1093, 54 IDELR ¶ 216 (D. Hawaii 2010) (reasonably justifiable delay)
- ruled that district's failure to provide timely notice of subsequent IEP meeting and its delay in finalizing IEP until one week after school year started were harmless procedural violations, and used alternative rationale of equities based on lack of parental notice of unilateral placement [tuition reimbursement case]

S Doe v. Hampden-Wilbraham Reg'l Sch. Dist., 715 F. Supp. 2d 185, 54 IDELR ¶ 214 (D. Mass. 2010)
- ruled that: 1) failure to have IEP in place at start of school year for child with autism could be attributed to the parents (deference to hearing officer's finding); 2) parents' approval of previous IEPs did not waive FAPE implementation claim; 3) parents did not meet their burden of proving district did not implement expired IEP; and 4) the new IEP met the substantive standard for FAPE (including PRR)

S Lathrop R-II Sch. Dist. v. Gray, 611 F.3d 419, 54 IDELR ¶ 276 (8th Cir. 2010)
- ruled that lack of baseline data, behavioral goal and full parental notice did not amount to denial of FAPE where the district made a good faith effort and reasonably met individual needs of student with autism

S M.F. v. Irvington Union Free Sch. Dist., 719 F. Supp. 2d 302, 54 IDELR ¶ 288 (S.D.N.Y. 2010)
- ruled that various procedural violations did not amount to denial of FAPE and that strict "four-corners" rule did not apply where child with SLD received services reasonably calculated to meet his needs [tuition reimbursement case]

S K.J. v. Fairfax Cnty. Sch. Bd., 361 F. App'x 435 (4th Cir. 2010); cf. Shaw v. Weast, 364 F. App'x 47, 53 IDELR ¶ 313 (4th Cir. 2010) (appropriate, specified interim placement was sufficient under the circumstances)

- ruled that IEP's failure to specify a particular private day school was a not a FAPE-denying procedural violation for child with ED and that each of the offered alternative placements met the substantive standard for FAPE, thus denying tuition reimbursement for parents' unilateral out-of-state residential placement

S Bougades v. Pine Plains Cent. Sch. Dist., 376 F. App'x 95, 54 IDELR ¶ 181 (2d Cir. 2010)

- upheld substantive appropriateness of IEP for child with SLD in challenged areas of homework assignments and writing, according deference to hearing/review officers [tuition reimbursement case]

S A.H. v. Dep't of Educ. of New York City, 394 F. App'x 718, 55 IDELR ¶ 36 (2d Cir. 2010)

- failure to properly constitute child's IEP team was not prejudicial procedural violation [tuition reimbursement case]

S M.S. v. New York City Dep't of Educ., 734 F. Supp. 2d 271, 55 IDELR ¶ 40 (E.D.N.Y. 2010)

- upheld substantive appropriateness of IEP for child with autism, including transition provision to return the child from private school and use of shorthand descriptors in BIP [tuition reimbursement case]

P Klein Indep. Sch. Dist. v. Hovem, 745 F. Supp. 2d 700, 55 IDELR ¶ 92 (S.D. Tex. 2010)

- ruled that IEP for gifted child with ADHD and SLD in written expression did not meet test for substantive FAPE, including circumventing rather than individualizing, NCLB and other standardized test results and token transition plan [tuition reimbursement case]

P/S E.S. v. Katonah Lewisboro Sch. Dist., 742 F. Supp. 2d 417, 55 IDELR ¶ 130 (S.D.N.Y. 2010)

- upheld appropriateness of first, but not second, of two successive IEPs for student with schizoaffective disorder and borderline intellectual functioning, concluding that the second IEP did not sufficiently take into account the progress data from the first year of the child's unilateral placement [tuition reimbursement case]

S J.W. v. Fresno Unified Free Sch. Dist., 626 F.3d 431, 55 IDELR ¶ 153 (9th Cir. 2010)

- held that mainstreamed placement of child with hearing impairment constituted FAPE in the LRE, using parental participation rationale to conclude that parents' insistence on this placement was not a waiver of their right challenge it, but was relevant to its appropriateness

S D.G. v. Cooperstown Cent. Sch. Dist., 746 F. Supp. 2d 435, 55 IDELR ¶ 155 (N.D.N.Y. 2010)

- upheld appropriateness of two successive IEPs that provided for a coteaching mixed setting with multisensory reading instruction rather than the Wilson program that the parents' unilateral placement utilized [tuition reimbursement case]

S C.G. v. New York City Dep't of Educ., 752 F. Supp. 2d 355, 55 IDELR ¶ 157 (S.D.N.Y. 2010)
- upheld discontinuation of 15 hours per week of ABA after-school services based on substantive appropriateness of the IEP at a private day school without such services [tuition reimbursement case]

S J.D.G. v. Colonial Sch. Dist., 748 F. Supp. 2d 361, 55 IDELR ¶ 197 (D. Del. 2010)
- rejected various claims to IHO process and upheld substantive appropriateness of IEP for middle school student with intellectual disabilities

S A.M. v. Monrovia Unified Sch. Dist., 627 F.3d 773, 55 IDELR ¶ 215 (9th Cir. 2010)
- rejected, for child with multiple disabilities who transferred from virtual charter school to school district, the parent's various procedural and substantive FAPE challenges, including alleged lack of meaningful opportunity for parental participation and the district's transitional use of the last implemented IEP, not the subsequent one that the charter school and parents had agreed to but had yet to implement

P D.B. v. Gloucester Twp. Sch. Dist., 751 F. Supp. 2d 764, 55 IDELR ¶ 224 (D.N.J. 2010)
- ruled that the district denied FAPE via predetermination (i.e., arrived at "definitive conclusions on [the child's] placement without parental input, failed to incorporate any suggestions of the parents or discuss with the parents the prospective placements, and in some instances even failed to listen to the concerns of the parents"), thereby depriving the parents of an opportunity for meaningful participation in the IEP process

P Marc M. v. Dep't of Educ., 762 F. Supp. 2d 1235, 56 IDELR ¶ 9 (D. Hawaii 2010)
- held that failure to revise the IEP during a sufficient period of time before implementation was a denial of FAPE where the IEE that the parent had provided at the end of the IEP meeting without comment included significant information contradicting the IEP's PELs

S E.Z.-L. v. New York City Dep't of Educ., 763 F. Supp. 2d 584, 56 IDELR ¶ 10 (S.D.N.Y. 2011)
- upheld appropriateness of district's proposed IEP, including placement (which is not "bricks and mortar"), of child with autism, both procedurally (specifically, parental participation and FBA-BIP) and substantively (specifically, omission of parent training/counseling and transition plan; contrary to state law requirement, was not fatal where the district provided such services as needed) [tuition reimbursement case]

S R.R. v. Manheim Twp. Sch. Dist., 412 F. App'x 544, 56 IDELR ¶ 63 (3d Cir. 2011)
- upheld procedural and substantive appropriateness of IEP for middle school student with SLD and SLI, rejecting parent's principal claim on appeal that the district failed to provide timely comprehensive language evaluation—no proof that it was needed [tuition reimbursement case]

S J.J. v. Dist. of Columbia, 768 F. Supp. 2d 214, 56 IDELR ¶ 93 (D.D.C. 2011)
- ruled that district's failure to timely convene multidisciplinary team eligibility meeting did not constitute a denial of FAPE where the behavior of the parent and the parent's counsel caused much of the delay

P/S Long v. Dist. of Columbia, 780 F. Supp. 2d 49, 56 IDELR ¶ 122 (D.D.C. 2011)
- upheld appropriateness of IEP and placement, but ruled that the district earlier denied FAPE by not providing a comprehensive evaluation for three years after being put on notice of IEE concluding that child was SLD and also needed FBA-BIP—remanded to hearing officer for determination of compensatory education under qualitative approach

P Wilson v. Dist. of Columbia, 770 F. Supp. 2d 270, 56 IDELR ¶ 125 (D.D.C. 2011)
- ruled that district denied FAPE by not having transportation ready for eligible student until three weeks after a four-week ESY program

P Sumter Cnty. Sch. Dist. v. Heffernan, 642 F.3d 478, 56 IDELR ¶ 186 (4th Cir. 2011)
- held that the child's gains and district's rectifying measures were insufficient to avoid the denial of FAPE from the district's failure to implement a material portion of the IEP of a child with autism, which was 15 hours/week of ABA therapy, and that the parent's unilateral home placement was appropriate (with LRE not applying) [tuition reimbursement case]

S Sebastian M. v. King Philip Reg'l Sch. Dist., 774 F. Supp. 2d 393, 56 IDELR ¶ 204 (D. Mass. 2011)
- upheld appropriateness of district's program for student with multiple disabilities despite lack of transition plan in IEP where district provided transition planning, transition content in IEP and actual transition services [tuition reimbursement case]

S Mahoney v. Carlsbad Unified Sch. Dist., 430 F. App'x 562, 56 IDELR ¶ 217 (9th Cir. 2011)
- rejected various alleged procedural claims as either not violations (e.g., SLI therapist as IEP member who "actually taught" student) or harmless (e.g., not providing parent with initial draft of IEP goals)

P B.H. v. W. Clermont Bd. of Educ., 788 F. Supp. 2d 682, 56 IDELR ¶ 226 (S.D. Ohio 2011)
- ruled that district denied FAPE to child with multiple disabilities, including autism, by 1) failing to consider IEEs for SLT and OT (predetermination, thus violating parent's right of meaningful participation); 2) failing to provide these needed services; and 3) providing ineffective (including punitive and lack of PRR) behavioral services

(*P*) T.K. v. New York City Dep't of Educ., 779 F. Supp. 2d 289, 56 IDELR ¶ 228 (S.D.N.Y. 2011)
- rejected parents' predetermination claim, but remanded the case for further proceedings on their bullying claim, ruling that "under IDEA the question to be asked is whether school personnel [were] deliberately indifferent to, or failed to take reasonable steps to prevent bullying that substantially restricted a child with learning disabilities in her educational opportunities" [tuition reimbursement case]

P Bd. of Educ. v. Schaefer, 923 N.Y.S.2d 579, 56 IDELR ¶ 234 (App. Div. 2011)
- upheld denial of FAPE based on district significantly impeding parents' opportunity to participate in IEP meetings

(***S***) Lorenzen v. Montgomery Cnty. Bd. of Educ., 403 F. App'x 832, 56 IDELR ¶ 245 (4th Cir. 2011)
- vacated and remanded summary judgment, which had been in favor of the parents, concluding that there was a genuine issue of material fact as to why the school board had changed recommended placement of child with autism [tuition reimbursement case]

S Fort Osage R-1 Sch. Dist. v. Sims, 641 F.3d 996, 56 IDELR ¶ 282 (8th Cir. 2011)
- ruled that district's failure to diagnose the child's autism did not amount to a denial of FAPE where the district's IEP met the substantive standard for FAPE, including addressing his unique needs, and the parents failed to prove their predetermination claim [tuition reimbursement case]

P New Milford Bd. of Educ. v. C.R., 431 F. App'x 157, 56 IDELR ¶ 283 (3d Cir. 2011)
- upheld ruling that district's private school program for child with autism did not provide for a meaningful benefit because he additionally required an after-school ABA program [tuition reimbursement case]

S C.T. v. Croton-Harmon Union Free Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 37 (S.D.N.Y. 2011)
- ruled that: 1) absence of private school special education representatives on the IEP team and lack of an FBA were not prejudicial; 2) the mainstreamed IEP met the Rowley substantive standard; and 3) the student, classified as ED, no longer needed the residential placement [tuition reimbursement case]

S K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 57 IDELR ¶ 61 (8th Cir. 2011)
- upheld, in a 2-to-1 decision, substantive appropriateness of IEP for student with OHI (ADHD and personality disorder) and rejected challenges that: 1) district failed to consider private evaluations (including partial incorporation); 2) district denied parent opportunity for meaningful participation (where parent truncated it); and 3) various alleged procedural IEP deficiencies (in light of child's progress, including cohesive BIP)

S A.L. v. New York City Dep't of Educ., __ F. Supp. 2d __, 57 IDELR ¶ 69 (E.D.N.Y. 2011)
- rejected parent's various procedural and substantive claims of denial of FAPE for student with autism, including parental participation, FBA-BIP and transition plan [tuition reimbursement case]

S Tindell v. Evansville-Vanderburgh Sch. Corp., __ F. Supp. 2d __, 57 IDELR ¶ 71 (S.D. Ind. 2011)
- lack of timely transition plan was not a denial of FAPE where the student, who had pervasive developmental disorder, received appropriate transition (in his residential placement)

S K.C. v. Nazareth Area Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 92 (E.D. Pa. 2011)
- upheld both the appropriateness of the postsecondary transition plan and other IEP services for 20-year-old student with multiple disabilities and the hearing officer's attribution of delay in receipt of IEP services to the parents' conduct

P K.I. v. Montgomery Pub. Sch., __ F. Supp. 2d __, 57 IDELR ¶ 93 (M.D. Ala. 2011)
- rejected proposed IEP and placement of student with rare and severe muscular condition due to failure to evaluate her cognitive functioning and her ability to use assistive technology

S Park Hill Sch. Dist. v. Dass, 655 F.3d 762, 57 IDELR ¶ 121 (8th Cir. 2011)
- ruled that the respective IEPs for twins with autism were substantively appropriate despite the absence of BIP and transition plan [tuition reimbursement case]

S B.O. v. Cold Spring Harbor Cent. Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 130 (E.D.N.Y. 2011)
- upheld procedural and substantive appropriateness of district's proposed IEP for student with SLD, cautioning the IHO that the deference to school authorities that Rowley prescribes only applies at the court level [tuition reimbursement case]

P Moorestown Twp. Bd. of Educ. v. S.D., __ F. Supp. 2d __, 57 IDELR ¶ 158 (D.N.J. 2011)
- ruled that district of residence's refusal to evaluate and offer IEP to student whom it knew had a disability based on his enrollment in an out-of-district private school was a denial of FAPE

(*S*) Poway Unified Sch. Dist. v. Cheng, __ F. Supp. 2d __, 57 IDELR ¶ 189 (S.D. Cal. 2011)
- remanded IHO's decision that applied a "potential-maximizing" rather than "some benefit," substantive standard for FAPE in requiring parents' chosen transcription service rather than the IEP's specified transcription service for student with hearing impairment

P J.S. v. Scarsdale Union Free Sch. Dist., __ F. Supp. 2d __ (S.D.N.Y. 2011)
- ruled, inter alia, that the district's proposed placement was not appropriate even though the parties agreed that the IEP was appropriate [tuition reimbursement case]

S D.R. v. Dep't of Educ., Hawaii, __ F. Supp. 2d __, 57 IDELR ¶ 217 (D. Hawaii 2011)
- rejected claim that lack of evaluation for auditory processing disorder, submucous cleft palate and behavior for student with SLI rendered her proposed IEP inappropriate where there was no reason to suspect these issues [tuition reimbursement case]

S C.H. v. Nw. Indep. Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 225 (E.D. Tex. 2011)
- discontinuation of dyslexia services (under state law) did not deny FAPE where district provided replacement services and child made reasonable progress in reading

S M.B. v. Hamilton Se. Sch., __ F.3d __, 57 IDELR ¶ __ (7th Cir. 2011)
- upheld rejection of parents' Child Find and FAPE claim with regard to district's evaluation and proposed IEP, which provided half-day kindergarten and ESY services for a young child with TBI, concluding that the alleged procedural violations were either unproven (e.g., predetermination) or harmless (e.g., absence of kindergarten teacher at the IEP team meeting) and that—based on the snapshot approach—the IEP was "likely to produce progress, not regression or trivial educational advancement"

C. MAINSTREAMING/LRE

P Corey H. v. Bd. of Educ., 995 F. Supp. 900, 27 IDELR 713 (N.D. Ill. 1998)
- ruled that SEA violated IDEA by inadequately monitoring LRE mandates as well as by having certification categories and financial incentives that tended toward segregation

P Millersburg Area Sch. Dist. v. Lynda T., 707 A.2d 572, 27 IDELR 595 (Pa. Commw. Ct. 1998)
- ruled that district's failure to meet step 1 of Oberti test, via lack of 1) supplementary aids/services; and 2) a behavior management plan, justified compensatory education and inclusive placement for SED student

S Walczak v. Florida Union Free Sch. Dist. (supra); see also M.H. v. Monroe-Woodbury Cent. Sch. Dist., 296 F. App'x 126, 51 IDELR ¶ 91 (2d Cir. 2008), cert. denied, 129 S. Ct. 1584 (2009) (upheld day school placement where residential placement was not educationally necessary)
- upheld appropriateness of district's proposed placement in special education class rather than residential placement [tuition reimbursement case]

S Mr. & Mrs. H. v. Region 14 Bd. of Educ., 46 F. Supp. 2d 106, 30 IDELR 359 (D. Conn. 1999)
- upheld appropriateness of inclusionary, rather than parents' unilateral private, placement of fifth grader with SLD [tuition reimbursement case]

P Bd. of Educ. v. Illinois State Bd. of Educ., 184 F.3d 912, 30 IDELR 891 (7th Cir. 1999)
- rejected district's segregated preschool program as not meeting the LRE requirement for an IDEA-eligible student [tuition reimbursement case]

S Blackmon v. Springfield R-12 Sch. Dist., 198 F.3d 648, 31 IDELR ¶ 132 (8th Cir. 1999)
- upheld reverse mainstreaming classroom placement of TBI/autistic child rather than parent's unilateral home-based early childhood program, concluding that procedural deficiencies were waived and, in any event, nonprejudicial [tuition reimbursement case]

S Dong v. Bd. of Educ., 197 F.3d 793, 31 IDELR ¶ 157 (6th Cir. 1999)
- upheld school-based TEACCH program, rather than parents' home-based Lovaas-type program for autistic child [tuition reimbursement case]

(*P*) T.R. v. Kingwood Twp. Bd. of Educ., 205 F.3d 572, 32 IDELR ¶ 30 (3d Cir. 2000)
- remanded to determine whether regular class options were available within reasonable distance to implement the IEP of this preschool child with a speech and motor disability

S St. Johnsbury Academy v. D.H., 240 F.3d 163, 34 IDELR ¶ 32 (2d Cir. 2001)
- private school's requirement for a fifth-grade achievement level for mainstreaming did not violate IDEA (or § 504)

S J.W. v. Contoocook Valley Sch. Dist., 154 F. Supp. 2d 217, 35 IDELR ¶ 123 (D.N.H. 2001)
- upheld appropriateness of district's proposed self-contained placement for SLD student with emotional difficulties, rejecting parents' arguments about his asserted additional eligibility labels ("code war"), his purported need for a shortened school day and the IEP's lack of ESY

S Coale v. State Dep't of Educ., 162 F. Supp. 2d 316, 35 IDELR ¶ 149 (D. Del. 2001)
- upheld mainstreamed IEP for sixth-grade student with SLD—the IEP flaws were nonprejudicial

S Douglas W. v. Greenfield Pub. Sch., 164 F. Supp. 2d 157, 35 IDELR ¶ 183 (D. Mass. 2001)
- upheld district's 60%-40% mainstreamed placement of student with ADHD and dyslexia rather than parent's unilateral private school placement [tuition reimbursement case]

P A.S. v. Norwalk Bd. of Educ., 183 F. Supp. 2d 534, 36 IDELR ¶ 92 (D. Conn. 2002)
- upheld inclusionary placement for multiply disabled ninth grader based on the Oberti factors (i.e., reasonable efforts, comparative benefits and substantial disruptiveness)

P Bd. of Educ. v. Jeff S., 184 F. Supp. 2d 790, 36 IDELR ¶ 93 (C.D. Ill. 2002)
- rejected segregated placement for hearing-impaired preschool child [tuition reimbursement case]

S Beth B. v. Van Clay, 282 F.3d 493, 36 IDELR ¶ 121 (7th Cir. 2002)
- upheld full-time special education placement with reverse mainstreaming for severely physically and mentally challenged seventh-grade student rather than parents' preferred and previously applicable inclusionary placement

P Girty v. Sch. Dist. of Valley Grove, 163 F. Supp. 2d 527, 35 IDELR ¶ 181 (W.D. Pa. 2001), aff'd mem., 60 F. App'x 889, 37 IDELR ¶ 1 (3d Cir. 2002)
- rejected district's proposed partially segregated special education placement of mainstreamed student with intellectual disabilities

S M.A. v. Voorhees Twp. Bd. of Educ., 202 F. Supp. 2d 345, 37 IDELR ¶ 3 (D.N.J. 2002), aff'd mem., 65 F. App'x 404, 39 IDELR ¶ 262 (3d Cir. 2003)
- upheld district's proposed out-of-district IEP for severely autistic student rather than placement in the self-contained district class that the parents sought to continue

S Sch. Dist. of Wisconsin Dells v. Z.S., 295 F.3d 671, 37 IDELR ¶ 34 (7th Cir. 2002)
- upheld homebound placement for disruptive student with autism (rather than 70% mainstreaming)

S Hanson v. Smith, 212 F. Supp. 2d 474, 37 IDELR ¶ 153 (D. Md. 2002)
- upheld district's proposed change in placement of student with multiple disabilities from private school to modestly mainstreamed in-district program – cost viewed as an allowable factor (and deferentially rejecting alleged procedural violations)

P Warton v. New Fairfield Bd. of Educ., 217 F. Supp. 2d 261, 37 IDELR ¶ 281 (D. Conn. 2002)
- upheld parents' preferred placement of student with SLD in inclusive middle school program (Oberti factors)

P Katherine G. v. Kentfield Sch. Dist., 261 F. Supp. 2d 1159, 39 IDELR ¶ 63 (N.D. Cal. 2003)
- rejected district's full inclusion placement for kindergarten child with communication disability [tuition reimbursement case]

S White v. Ascension Parish Sch. Bd., 343 F.3d 373, 39 IDELR ¶ 182 (5th Cir. 2003); McLaughlin v. Holt Pub. Sch. Bd. of Educ., 320 F.3d 663, 38 IDELR ¶ 152 (6th Cir. 2003); Urban v. Jefferson Cnty. Sch. Dist., 89 F.3d 720, 24 IDELR 465 (10th Cir. 1996); Veazey v. Ascension Parish Sch. Bd., 109 F. Supp. 2d 482, 40 IDELR ¶ 179 (M.D. La. 2004)
- rejected mandatory right of placement in neighborhood school under IDEA (as well as under § 504 and the ADA)

S Brillon v. Klein Indep. Sch. Dist., 100 F. App'x 309, 41 IDELR ¶ 121 (5th Cir. 2004)
- held that IEP team's decision to move child with disability in second grade into special education setting for science and social studies did not violate LRE due to "unduly burdensome modifications to the regular curriculum"

S Tammy S. v. Reedsburg Sch. Dist., 302 F. Supp. 2d 959, 41 IDELR ¶ 133 (W.D. Wis. 2004)
- upheld placement of student with deafness, PDD, and medical complications in hybrid program three days/week in another district approximately one hour each way and two days/week at state school for the deaf approximately 2+ hours each way

P L.B. v. Nebo Sch. Dist., 379 F.3d 966, 41 IDELR ¶ 206 (10th Cir. 2004)
- rejected, based on LRE, district's proposed placement of preschool child with autism in "hybrid" (approximately 50% nondisabled children) plus 8-15 hours/week of ABA as compared with parents' unilateral placement of the child in a mainstream private preschool with phasing-out aide plus 40 hours/week of ABA, awarding parents equitable reimbursement of ABA program and aide (tuition not requested)

S R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d 222, 43 IDELR ¶ 57 (D. Conn. 2005)
- upheld district's proposed IEP for child with multiple, degenerative disabilities, ruling that the technical procedural deviations did not constitute a denial of FAPE and that the 60% mainstreaming was also appropriate given the trade-off of pull-out related services

S T.W. v. Unified Sch. Dist. No 259, 136 F. App'x 122, 43 IDELR ¶ 187 (10th Cir. 2005)
- ruled that district's proposed placement of student with Down syndrome in self-contained kindergarten class did not violate LRE – Daniel R.R. test (including teacher training, curricular modifications and nine-week trial placement)

S Dick-Friedman v. Bd. of Educ., 427 F. Supp. 2d 768, 45 IDELR ¶ 181 (E.D. Mich. 2006)
- upheld IEP that offered one half of the school day in general education and one half in categorical class, without providing justification in the IEP, as FAPE in the LRE [tuition reimbursement case]

S Pachl v. Seagren, 453 F.3d 1064, 46 IDELR ¶ 1 (8th Cir. 2006)
- upheld district's proposed placement, which was 30% in segregated program, for 12-year-old student with multiple disabilities including autism, rather than full inclusion sought by parents

(*P*) John M. v. Bd. of Educ., 450 F. Supp. 2d 880, 46 IDELR ¶ 951 (N.D. Ill. 2006)
- issued preliminary injunction against district because it offered the parents one inclusive option and one self-contained option without individualized assessment and programming

S A.U. v. Roane Cnty. Bd. of Educ., 501 F. Supp. 2d 1134, 48 IDELR ¶ 3 (E.D. Tenn. 2007)
- upheld placement of preschool child with hearing impairment in collaborative Head Start class rather than parents' advocated private placement that was totally with nondisabled other students

P Jennifer D. v. New York City Dep't of Educ., 550 F. Supp. 2d 420, 50 IDELR ¶ 93 (S.D.N.Y. 2008)
- rejected proposed placement of student with ADHD in small class in public high school for students with ED as not FAPE in the LRE (without adopting and applying separate LRE test) as compared to placement in small class in regular high school based on improved behavior [tuition reimbursement case]

P/S P. v. Newington Bd. of Educ., 546 F.3d 111, 51 IDELR ¶ 2 (2d Cir. 2008)
- upheld hearing officer's decision in favor of the district's 74% mainstreaming for 2005-06 for 9-year-old with intellectual disabilities and her order for inclusion consultant for one year as compensatory education for LRE violation (60% mainstreaming) for 2004-05

S Patskin v. Bd. of Educ. of Webster Cent. Sch. Dist., 583 F. Supp. 2d 422, 51 IDELR ¶ 94 (W.D.N.Y. 2008)
- upheld review officer's decision that district's placement of fifth grader with SLD in special education class for most of the day was the LRE rather than the specialized day school that the parents' sought—not a prejudicial procedural error and supported by evidence that the child displayed emotional difficulties at home but not at school

S J.S. v. N. Colonie Cent. Sch. Dist., 586 F. Supp. 2d 74, 51 IDELR ¶ 150 (N.D.N.Y. 2008)
- upheld removal of high school student with autism to a self-contained class as meeting the Oberti factors

S A.G. v. Wissahickon Sch. Dist., 374 F. App'x 330, 54 IDELR ¶ 113 (3d Cir. 2010)
- upheld school district's self-contained placement, with review officer-ordered inclusion for one class and various nonacademic activities for 18-year-old with severe intellectual disabilities

S R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003, 54 IDELR ¶ 211 (5th Cir. 2010), cert. denied, 131 S. Ct. 1471 (2011)
- upheld placement for child with autism in district's preschool special education program rather than inclusionary private preschool program—LRE within FAPE analysis and flexibly oriented to public placements [tuition reimbursement case]

P G.B. v. Tuxedo Union Free Sch. Dist., 751 F. Supp. 2d 552, 55 IDELR ¶ 228 (S.D.N.Y. 2010)
- held that district's successive placements for 8-year-old with PDD violated the two-part test for LRE [tuition reimbursement case]

S Lebron v. N. Penn. Sch. Dist., 769 F. Supp. 2d 788, 56 IDELR ¶ 72 (E.D. Pa. 2011)
- rejected, in upholding the appropriateness of an IEP that provided regular kindergarten services for a child with autism plus supplemental services in an autistic support class at a different school, applicability of LRE because district did not remove the child from the general education program

S Barron v. S. Dakota Bd. of Regents, 655 F.3d 787, 57 IDELR ¶ 122 (8th Cir. 2011)
- rejected parents' claim that state school for the deaf violated FAPE and LRE, commenting that the "[t]he IDEA's integrated-classroom preference makes no exception for deaf students" and that "the state is not required to make available 'the best possible option'"

D. RELATED SERVICES AND ASSISTIVE TECHNOLOGY

P Helms v. Pickard, 151 F.3d 347, 28 IDELR 972 (5th Cir. 1998); Peck v. Lansing Sch. Dist., 148 F.3d 619, 28 IDELR 472 (6th Cir. 1998)
- providing special education or related services to student with a disability on the premises of his/her sectarian school does not violate the establishment clause—nor does providing transportation to and from the sectarian school

(*P*) Peter v. Wedl, 155 F.3d 992, 28 IDELR 1071 (8th Cir. 1998)
- remanded for possible constitutional violation (First Amendment free exercise and free speech and 14th Amendment equal protection) if differential treatment of IDEA-eligible students in parochial schools, as compared to those in other private and in home schools with regard to related services

P Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 29 IDELR 966 (1999)
- specialized health care services that do not require a physician and are necessary for an IDEA-eligible student are related, not medical, services

S Armstrong v. Alicante Sch. , 44 F. Supp. 2d 1087, 30 IDELR 251 (E.D. Cal. 1999)
- drug prevention is not a supportive, or related, service under the IDEA

S KDM v. Reedsport Sch. Dist., 196 F.3d 1046, 31 IDELR ¶ 107 (9th Cir. 1999)
- a state (Oregon) regulation requiring that special education and related services be provided in a religiously neutral setting neither violated First Amendment free exercise and establishment clauses nor 14th Amendment equal protection where the district provided vision specialist services at a nearby public site rather than at the parochial school

S Jasa v. Millard Pub. Sch., 206 F.3d 813, 32 IDELR ¶ 57 (8th Cir. 2000); Cyrex v. Ascension Parish Sch. Bd., 31 IDELR ¶ 54 (5th Cir. 1999); Russman v. Bd. of Educ., 150 F.3d 219, 28 IDELR 612 (2d Cir. 1998) (Russman I); Nieuwenhuis v. Delavan-Darien Sch. Dist., 996 F. Supp. 855, 27 IDELR 839 (E.D. Wis. 1998)
- IDEA (prior to 2004 reauthorization) did not require district to provide related services to students with disabilities enrolled in parochial schools

S Russman v. Bd. of Educ., 92 F. Supp. 2d 95, 32 IDELR ¶ 115 (E.D.N.Y. 2000) (Russman II)
- First Amendment establishment clause—and state statute—do not require providing related services at parochial schools

P Bd. of Educ. v. Thomas K., 926 N.E.2d 250, 54 IDELR ¶ 125 (N.Y. 2010) (1:1 aide as related service per dual enrollment statute); Bd. of Educ. v. Kain, 875 N.Y.S.2d 239, 52 IDELR ¶ 75 (App. Div. 2009) (case-by-case basis under state law depending on necessity); Richard K. v. Petrone, 815 N.Y.S.2d 270 (App. Div. 2006) (state health and welfare law); Veschi v. Nw. Lehigh Sch. Dist., 772 A.2d 469, 34 IDELR ¶ 142 (Pa. Commw. Ct. 2001), appeal denied, 788 A.2d 382 (Pa. 2001) (dual enrollment statute plus outdated equal opportunity regulation); Dep't of Educ. v. Grosse Point Sch., 701 N.W.2d 195, 43 IDELR ¶ 115 (Mich. Ct. App. 2005), vacated based on mootness, 712 N.W.2d 445 (Mich. 2005) (IEE based on state statute requiring equal auxiliary services to students in private schools and state special ed regs for "every" student with a disability); Indep. Sch. Dist. No. 281 v. Minnesota Dep't of Educ., 743 N.W.3d 315 (Minn. Ct. App. 2008) (ESY). But cf. Bay Shore Union Free Sch. Dist. v. T., 405 F. Supp. 2d 230 (E.D.N.Y. 2005), vacated, 485 F.3d 730, 47 IDELR ¶ 243 (2d Cir. 2007) (dismissed for lack of jurisdiction)
- injunctive relief for parentally-placed students in private schools to obtain special education and/or related services based on state law[14]

S Roslyn Union Free Sch. Dist. v. University of the State of New York, 711 N.Y.S.2d 582, 33 IDELR ¶ 2 (N.Y. App. Div. 2000)
- ruled that district was not obligated under the IDEA to provide transportation home from eligible child's private after-school program where that program was not necessary for him to receive FAPE, even though the district's after-school program was not appropriate and included transportation home

S Dale M. v. Bd. of Educ., 237 F.3d 813, 33 IDELR ¶ 266 (7th Cir. 2001)
- confinement in a residential school is not a related service under the IDEA [tuition reimbursement]

[14] For an additional, unpublished decision, see John T. v. Delaware Cnty. Intermediate Unit, 32 IDELR ¶ 142 (E.D. Pa. 2000), dismissed at plaintiff's request, 35 IDELR ¶ 211 (E.D. Pa. 2001).

P Dep't of Educ. v. Cari Rae, 158 F. Supp. 2d 1190, 35 IDELR ¶ 90 (D. Hawaii 2001)
- cost of hospitalizations were related services when they were for diagnostic and evaluation purposes

S Bristol Warren Reg'l Sch. Comm. v. Rhode Island Dep't of Educ., 253 F. Supp. 2d 236, 38 IDELR ¶ 238 (D.R.I. 2003)
- the IDEA (and 14th Amendment equal protection) do not require on-site provision of special education services at a parochial school

S Fick v. Sioux Falls Sch. Dist. 49-5, 337 F.3d 968, 39 IDELR ¶ 151 (8th Cir. 2003)
- ruled that the IDEA's transportation entitlement does not extend to out-of-district after-school center

S Nishanian v. Mamaroneck Union Free Sch. Dist., 340 F.3d 87, 39 IDELR ¶ 181 (2d Cir. 2003)
- ruled that TI-82 calculator, rather than the TI-92 that the parents' demanded and that did factoring of polynomials, was appropriate for SLD high school junior even though he failed the course without the TI-92 (due to lack of effort, as determined by hearing and review officers)

S Ms. S. v. Scarborough Sch. Comm., 366 F. Supp. 2d 98, 42 IDELR ¶ 117 (D. Me. 2005)
- rejected parent's request for adult hand-off for general education bus as being either beyond the scope of the IDEA or not in accordance with LRE mandate

P Dist. of Columbia v. Ramirez, 377 F. Supp. 2d 63, 43 IDELR ¶ 245 (D.D.C. 2005)
- ruled that the student was entitled to door-to-door transportation, including aide, where it was necessary for him to receive FAPE

P DeKalb Cnty. Sch. Dist. v. M.T.V., 413 F. Supp. 2d 1322, 45 IDELR ¶ 30 (N.D. Ga. 2005), aff'd, 164 F. App'x 900, 45 IDELR ¶ 30 (11th Cir. 2006)
- upheld reimbursement for costs of vision therapy based on evidence that student had blurred and double vision that affected his reading

S M.K. v. Sergi, 554 F. Supp. 2d 201, 50 IDELR ¶ 126 (D. Conn. 2008); cf. Mary T. v. Sch. Dist., 575 F.3d 235, 52 IDELR ¶ 211 (3d Cir. 2009) (acute mental health placement); P.K. v. Bedford Cent. Sch. Dist., 569 F. Supp. 2d 371, 50 IDELR ¶ 251 (S.D.N.Y. 2008) (substance abuse treatment)
- rejected noneducation services, including wraparound services and medication management, as not related services—wraparound services were not necessary for educational progress, and medication management was within medical treatment exclusion

S Petit v. U.S. Dep't of Educ., 756 F. Supp. 2d 11, 55 IDELR ¶ 288 (D.D.C. 2010)
- upheld 2006 IDEA regulation that cochlear implant mapping is not a related service

II. DISCIPLINE ISSUES

(S) Gadsden City Bd. of Educ. v. B.P., 3 F. Supp. 2d 1299, 28 IDELR 166 (N.D. Ala. 1998)
- held that school district was not required to exhaust IDEA's expedited hearing provision before seeking Honig injunction

S Horry Cnty. (supra)
- upheld hearing officer's Honig injunction as meeting the requirements in the 1997 IDEA Amendments for a 45-day interim placement for dangerousness

P/S Colvin v. Lowndes Cnty. Sch. Dist., 114 F. Supp. 2d 504, 32 IDELR ¶ 32 (N.D. Miss 2000). But cf. J.C. v. Reg'l Sch. Dist., 115 F. Supp. 2d 297, 33 IDELR ¶ 151 (D. Conn. 2000) (parent-requested evaluation)
- required expedited evaluation based on oral request for testing, but allowed expulsion of student who brought weapon into the school—plaintiff did not preponderantly prove that the district had reason to suspect the child's purported disability and, more importantly here, that it contributed to this misconduct

S Parent v. Osceola Cnty. Sch. Bd., 59 F. Supp. 2d 1243, 32 IDELR ¶ 144 (M.D. Fla. 1999)
- upheld appropriateness, including LRE, of extended alternative school placement in wake of unchallenged determination that student's misconduct (slashing another student with a box cutter) was not a manifestation of his disability (LD/ED)

S In re Charles U., 837 N.Y.S.2d 356 (App. Div. 2007); In re Beau II, 715 N.Y.S.2d 686, 33 IDELR ¶ 180 (2000); cf. In re Erich D., 767 N.Y.S.2d 488, 40 IDELR ¶ 96 (N.Y. App. Div. 2003). But see In re Doe, 753 N.Y.S.2d 656 (N.Y. Family Ct. 2002)
- ruled that PINS petition, which is a status rather than criminal offense, does not trigger IDEA procedural safeguards where its purpose, to obtain probation department monitoring, was to reinforce, not alter, the child's educational placement

S Randy M. v. Texas City Indep. Sch. Dist., 93 F. Supp. 2d 1310, 32 IDELR ¶ 168 (S.D. Tex. 2000)
- denied injunction request of 13-year old SLD student whom the district placed in an alternative setting after determining that his assault of another student (with sexual overtones) was not a manifestation of his disability

P LIH v. New York City Bd. of Educ., 103 F. Supp. 2d 658, 33 IDELR ¶ 1 (E.D.N.Y. 2000)
- issued preliminary injunction to the effect that the IDEA disciplinary protections apply during summer school

S Farrin v. Maine Sch. Administrative Dist., 165 F. Supp. 2d 37, 35 IDELR ¶ 189 (D. Me. 2001)
- upheld both the district's determination that 14-year-old SLD student's involvement in marijuana sale on school premises was not a manifestation of his disability and the resulting "expulsion IEP"

S Commonwealth v. Nathaniel N., 764 N.E.2d 883, 36 IDELR ¶ 131 (Mass. App. Ct. 2002); cf. In re P.E.C., 211 S.W.3d 368 (Tex. Ct. App. 2006) (IDEA "stay-put does not apply to juvenile court dispositions)

- ruled that IDEA does not preempt or prevent filing or adjudication of juvenile charges against a student with a disability who commits a crime

S Roslyn Union Free Sch. Dist. v. Geffrey W., 740 N.Y.S.2d 451, 36 IDELR ¶ 239 (App. Div. 2002)

- granted Honig injunction for homebound placement of dangerous middle school student pending completion of psychiatric evaluation and IEP team review

(*P*) S.W. v. Holbrook Pub. Sch., 221 F. Supp. 2d 222, 37 IDELR ¶ 216 (D. Mass. 2002)

- ruled that child was entitled to "stay-put" in school after parent filed for due process to challenge multidisciplinary team's decision, in wake of student's expulsion for selling drugs, that child was not eligible under IDEA

S cf. Souderton Area Sch. Dist. v. Elisabeth S., 820 A.2d 863, 38 IDELR ¶ 244 (Pa. Commw. Ct. 2003)

- IDEA's disciplinary removal protections do not apply to student with a disability whom the district excluded because of head lice

S Corey H. v. Cape Henlopen Sch. Dist., 286 F. Supp. 2d 380, 40 IDELR ¶ 37 (D. Del. 2003)

- pushing student out the door was not a change in placement and thus not a violation of the IDEA (Honig)

S AW v. Fairfax Cnty. Sch. Bd., 372 F.3d 674, 41 IDELR ¶ 119 (4th Cir. 2004)

- upheld preexpulsion determination that ED student's threatening letter to another student was not a manifestation of his ADHD (and that his transfer to a similar program at another school was within the stay-put provision)

(*P*) Coleman v. Newburgh Enlarged City Sch. Dist., 319 F. Supp. 2d 446, 41 IDELR ¶ 126 (S.D.N.Y. 2004)

- granted preliminary injunction against two-month suspension of student with SLD based on questionable manifestation determination—team had not sufficiently considered disability-related taunting that led to the altercation and lack of FBA despite IEP team's recommendation (which should have triggered at least greater scrutiny)

(*P*) Gutin v. Washington Twp. Bd. of Educ., 467 F. Supp. 2d 414, 47 IDELR ¶ 8 (D.N.J. 2006)[15]

- preserved for trial IDEA/§ 504 claim that district did not provide FAPE in the wake of unappealed determination that the misconduct (drug use) was not a manifestation of the ADHD of the IDEA student

[15] In an unpublished decision, Gutin v. Washington Twp. Bd. of Educ., 48 IDELR ¶ 126 (D.N.J. 2007), the same court dismissed this suit based on the failure to exhaust and the intervening Third Circuit decision in A.W. v. New Jersey City Pub. Sch., 486 F.3d 791 (3d Cir. 2007).

S Fitzgerald v. Fairfax Cnty. Sch. Bd., 556 F. Supp. 2d 543, 50 IDELR ¶ 165 (E.D. Va. 2008)
- upheld district's determination for student with ED that his disability did not cause him to paintball the school in a drive-by with a couple of his friends—also ruled that parents may invite additional participants to the manifestation determination meeting without district approval, but that parents may not veto the team's decision

(*P*) Shelton v. Maya Angelou Pub. Charter Sch., 578 F. Supp. 2d 84, 51 IDELR ¶ 31 (D.D.C. 2008)
- upheld hearing officer's decision that failure to provide FBA-BIP and to continue services in wake of determination that the conduct was not a manifestation of the child's disability was denial of FAPE but reserved judgment on compensatory education pending determination of whether the district's refusal to implement the hearing officer's remedy during the appeal of the decision constituted denial of FAPE

S Hollingsworth v. Hackler, 303 S.W.3d 884, 53 IDELR ¶ 298 (Tex. Ct. App. 2009)
- held that parent's right to be part of any group making educational placement decisions does not extend to making disciplinary placement decisions in the wake of a determination that the child's misconduct was not a manifestation of his disability

P Sch. Bd. v. Brown, 769 F. Supp. 2d 928, 56 IDELR ¶ 18 (E.D. Va. 2010)
- ruled that district violated Child Find by not conducting an evaluation of the behavioral problems of student with OHI (cerebral palsy) and violated parents' opportunity of meaningful participation in the manifestation determination (for which the hearing officer misapplied the implementation criterion), upholding—as compensatory education—her order for counseling services

(*S*) Jefferson Cnty. Bd. of Educ. v. S.B., 788 F. Supp. 2d 1347, 56 IDELR ¶ 300 (N.D. Ala. 2011)
- ruled, in context akin to a preliminary injunction, that the IDEA did not require district to treat student with a disability (who had been expelled for gun possession after a determination that this conduct was not a manifestation of his disability) differently from nondisabled students who were not allowed to: 1) return to the same school for a semester after the expulsion; or 2) participate in graduation ceremony

III. ATTORNEYS' FEES

A. ELIGIBILITY

S Z.A. v. San Bruno Park Sch. Dist., 165 F.3d 1273, 29 IDELR 792 (9th Cir. 1999)
- denied attorneys' fees award to attorney not licensed in the state where the case was litigated

P/S Lucht v. Molalla River Sch. Dist., 225 F.3d 1023, 33 IDELR ¶ 89 (9th Cir. 2000). But see Vultaggio v. Bd. of Educ., 343 F.3d 598, 39 IDELR ¶ 261 (2d Cir. 2003); Megan C. v. Indep. Sch. Dist. No. 625, 57 F. Supp. 2d 776, 30 IDELR 132 (D. Minn. 1999)
- mixed results whether "action or proceeding" includes state complaint resolution process

P Daniel S. v. Scranton Sch. Dist., 230 F.3d 90, 33 IDELR ¶ 179 (3d Cir. 2000)
- allowed attorneys' fees for IEP meeting where the scheduled due process hearing was the catalyst for said meeting

S D.S. v. Neptune Twp. Bd. of Educ., 264 F. App'x 186, 49 IDELR ¶ 181 (3d Cir. 2008); see also T.B. v. Bryan Indep. Sch. Dist., 628 F.3d 240, 55 IDELR ¶ 244 (5th Cir. 2010)
- held that even though parents prevailed with regard to IEE reimbursement and evaluation order, they were not entitled to attorneys' fees where, as a result of said evaluation, the child was not eligible for special education services

S Pardini v. Allegheny Intermediate Unit, 524 F.3d 419, 50 IDELR ¶ 2 (3d Cir. 2008); Ford v. Long Beach Unified Sch. Dist., 461 F.3d 1087, 46 IDELR ¶ 92 (9th Cir. 2006); S.N. v. Pittsford Cent. Sch. Dist., 448 F.3d 601, 45 IDELR ¶ 270 (2d Cir. 2006); Woodside v. Sch. Dist., 248 F.3d 129, 34 IDELR ¶ 179 (3d Cir. 2001); Doe v. Bd. of Educ., 165 F.3d 260, 33 IDELR ¶ 63 (4th Cir. 1998); Erickson v. Bd. of Educ., 162 F.3d 289, 29 IDELR 478 (4th Cir. 1998); cf. Bowman v. Dist. of Columbia, 496 F. Supp. 2d 160 (D.D.C. 2007) (court-appointed advocates who did not establish attorney-client relationships). But see Matthew V. v. DeKalb Cnty. Sch. Sys., 244 F. Supp. 2d 1331, 38 IDELR ¶ 181 (N.D. Ga. 2003)
- ruled that parent-attorneys who represent their children in IDEA actions are not eligible to receive attorneys' fees if they prevail

P Children's Ctr. for Dev. Enrichment v. Machle, 612 F.3d 518, 54 IDELR ¶ 273 (6th Cir. 2008)
- ruled that reverse attorneys' fees provision in IDEA does not apply to private schools

(*P*) E.D. v. Newburyport Pub. Sch., 654 F.3d 140, 57 IDELR ¶ 91 (1st Cir. 2011)
- parents' move out of state after obtaining hearing officer's decision in favor of tuition reimbursement does not render their attorneys' fees claim moot

B. "PREVAILING"

S Warner v. Indep. Sch. Dist. No. 625, 134 F.3d 1334, 27 IDELR 499 (8th Cir. 1998)
- parents were not prevailing party where changed relationship was for state-, not IDEA- based relief (thus, $0, rather than $158,000 originally requested and $63,500 awarded at trial level)

S J.C. v. Mendham Twp. Bd. of Educ., 29 F. Supp. 2d 214, 29 IDELR 603 (D.N.J. 1998)
- parents are not prevailing party if all they obtained was stay-put

S Joshua H. v. Lansing Pub. Sch., 161 F. Supp. 2d 888, 35 IDELR ¶ 180 (N.D. Ill. 2001)
- parents were not prevailing party where they obtained, via the hearing, no more than what the district had timely offered before the hearing

S J.O. v. Orange Twp. Bd. of Educ., 287 F.3d 267, 36 IDELR ¶ 206 (3d Cir. 2002); Bd. of Educ. v. Nathan R., 199 F.3d 377, 31 IDELR ¶ 182 (7th Cir. 2000)
- parent is not prevailing party where interim relief is not merit-based

P M.L. v. Fed. Way Sch. Dist., 401 F. Supp. 2d 1158, 44 IDELR ¶ 214 (W.D. Wash. 2005)
- granted $94,000 attorneys' fees award for reimbursement amount of less than $2500, which was same amount as timely offer of settlement but which had better IEP team composition (though parents moved, thus mooting the FAPE issue)

P Hawkins v. Berkeley Unified Sch. Dist., 250 F.R.D. 459, 50 IDELR ¶ 14 (N.D. Cal. 2008)
- district was not eligible for reverse attorneys' fees where parents' claims, even if frivolous, were connected to, rather than independent from, their successful claims

S Robert K. v. Cobb Cnty. Sch. Dist., 279 F. App'x 798, 50 IDELR ¶ 62 (11th Cir. 2008)
- parents did not qualify as prevailing parties for attorneys' fees based on their victory at due process hearing re stay-put order and enforcement of settlement agreement because the first was not merit-based and the second was state law breach of contract claim

P Doe v. Boston Pub. Sch., 550 F. Supp. 2d 170, 50 IDELR ¶ 73 (D. Mass. 2008)
- held that parents prevailed for purposes of attorneys' fees even though the relief on the two claims decided in their favor was limited to three months of reimbursement

P Oscar v. Alaska Dep't of Educ., 541 F.3d 978, 50 IDELR ¶ 211 (9th Cir. 2008); cf. Dist. of Columbia v. West, 699 F. Supp. 2d 773, 54 IDELR ¶ 117 (D.D.C. 2010); Dist. of Columbia v. Nahass, 699 F. Supp. 2d 175, 54 IDELR ¶ 115 (D.D.C. 2010) (not frivolous or unreasonable)
- educational agency was not entitled to recover its attorneys' fees in wake of parents' voluntary dismissal of their claim, because the agency was not the prevailing party (i.e., altered the legal relationship) even if the parents' claim was frivolous

S Bingham v. New Berlin Sch. Dist., 550 F.3d 601, 51 IDELR ¶ 61 (7th Cir. 2008); P.N. v. Seattle Sch. Dist. No. 1, 474 F.3d 1165, 46 IDELR ¶ 61 (9th Cir. 2007); Mr. L. v. Sloan, 449 F.3d 405 (2d Cir. 2006); Maria C. v. Sch. Dist. of Philadelphia, 142 F. App'x 78, 43 IDELR ¶ 243 (3d Cir. 2005); Smith v. Fitchburg Pub. Sch., 401 F.3d 16, 42 IDELR ¶ 28 (1st Cir. 2005); Alegria v. Dist. of Columbia, 391 F.3d 262, 42 IDELR ¶ 110 (D.C. Cir. 2004); Doe v. Boston Pub. Sch., 358 F.3d 20, 40 IDELR ¶ 176 (1st Cir. 2004); T.D. v. LaGrange Sch. Dist. No. 102, 349 F.3d 469, 40 IDELR ¶ 32 (7th Cir. 2003); J.C. v. Regional Sch. Dist., 278 F.3d 119, 36 IDELR ¶ 31 (2d Cir. 2002); James T. v. Troy Sch. Dist., 407 F. Supp. 2d 827 (E.D. Mich. 2005); Matthew V. v. DeKalb Cnty. Sch. Sys., 244 F. Supp. 2d 1331, 38 IDELR ¶ 181 (N.D. Ga. 2003); Van Aucken v. Skiver, 38 IDELR ¶ 95 (N.D. Ohio 2002); J.S. v. Ramapo Cent. Sch. Dist., 165 F. Supp. 2d 530, 35 IDELR ¶ 185 (S.D.N.Y. 2001); April M. v. W. Boylston Pub. Sch., 35 IDELR ¶ 154 (D. Mass. 2001); Baer v. Klagholz, 786 A.2d 907, 35 IDELR ¶ 272 (N.J. Super. Ct. App. Div. 2001); cf. C.Z. v. Plainfield Cmty. Unit Sch. Dist., 680 F. Supp. 2d 050 (C.D. Ill. 2010) (extension in certain circumstances). But see Kaitlyn B. v Sch. Dist., 37 IDELR ¶ 278 (E.D. Pa. 2002); P.O. v. Greenwich Bd. of Educ., 210 F. Supp. 2d 76 (D. Conn. 2002); Ostby v. Oxnard Union High, 209 F. Supp. 2d 1035, 37 IDELR ¶ 4 (C.D. Cal. 2002)

- rejected "catalyst theory" under IDEA based on Supreme Court's ADA decision in Buckhannon[16]

P John M. v. Bd. of Educ., 612 F. Supp. 2d 981, 52 IDELR ¶ 154 (N.D. Ill. 2009)

- parents prevailed, resulting in $45,000 in attorneys' fees for obtaining qualitatively "significant" relief, although it amounted to only $6,000 of the $33,000 market value of the sought services

P J.D. v. Kanawha Cnty. Bd. of Educ., 571 F.3d 38, 52 IDELR ¶ 182 (4th Cir. 2009)

- upheld attorneys' fees award of $34,000 because purportedly equally favorable timely settlement offer referred to mediation session, which is confidential

P Keene v. Zelman, 337 F. App'x 553, 53 IDELR ¶ 5 (6th Cir. 2009)

- upheld $81,000 in attorneys' fees award against state, rejecting various "special circumstances" defenses, including good faith prompt rectification of the problem

P V.G. v. Auburn Enlarged Cent. Sch. Dist., 349 F. App'x 582, 53 IDELR ¶ 140 (2d Cir. 2009)

- ruled that parents were entitled to attorneys' fees as prevailing party under Buckhannon based on private settlement that the hearing officer approved via a consent decree

[16] Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Serv., 531 U.S. 598 (2001). Although the clear majority of the lower courts have found Buckhannon to apply by analogy to the IDEA, those in the majority have not interpreted it uniformly in relation to private settlement agreements. Compare Abraham v. Dist. of Columbia, 338 F. Supp. 2d 113 (D.D.C. 2004), with Smith v. Fitchburg Pub. Sch., 401 F.3d 16 (1st Cir. 2005).

P/S El Paso Indep. Sch. Dist. v. Richard R., 591 F.3d 417, 53 IDELR ¶ 175 (5th Cir. 2009), cert. denied, 130 S. Ct. 3467 (2010); cf. Gary G. v. El Paso Indep. Sch. Dist., 632 F.3d 201, 56 IDELR ¶ 32 (5th Cir. 2011) (failure to include attorneys' fees in settlement offer does not justify rejection)

- vacated $46,000 attorneys' fees award for parents due to unreasonable protraction of litigation in unreasonably rejecting settlement offer

P/S El Paso Indep. Sch. Dist. v. Berry, 400 F. App'x 947, 55 IDELR ¶ 186 (5th Cir. 2010)

- upheld trial court's order for parents' attorney to pay $10,000 of district's $80,000 in attorneys' fees due to "repeatedly prolonging litigation and stonewalling efforts to conclude it to the detriment of his client [the child] who continued receiving services under an old and unnecessary [IEP] while the 'grown-ups' fought"

P/(S) R.P. v. Prescott Unified Sch. Dist., 631 F.3d 1117, 56 IDELR ¶ 31 (9th Cir. 2011); Dist. of Columbia v. West, 699 F. Supp. 2d 773, 54 IDELR ¶ 117 (D.D.C. 2010); Dist. of Columbia v. Nahass, 699 F. Supp. 2d 175, 54 IDELR ¶ 115 (D.D.C. 2010); cf. Sch. for Arts in Learning Pub. Charter Sch. v. Barrie, 724 F. Supp. 2d 86, 54 IDELR ¶ 315 (D.D.C. 2010) (dismissal does not qualify as prevailing party). But see Bridges Pub. Charter Sch. v. Barrie, 796 F. Supp. 2d 39, 57 IDELR ¶ 3 (D.D.C. 2011) (including refusal to participate in resolution session); cf. Alief Indep. Sch. Dist. v. C.C., 655 F.3d 412, 57 IDELR ¶ 151 (5th Cir. 2011) (district's filing does not require dismissal)

- declined to grant district's attorneys' fees claim against parent's attorney, concluding that the complaint was not frivolous

S McCrary v. Dist. of Columbia, 791 F. Supp. 2d 191, 56 IDELR ¶ 291 (D.D.C. 2011)

- prevailing status for an award of attorneys' fees (in the D.C. Circuit) requires not only an adjudicative change in the parties' legal relationship, but also adjudicative relief

P/S Walker v. Dist. of Columbia, 798 F. Supp. 2d 48, 57 IDELR ¶ 41 (D.D.C. 2011)

- private settlement does not, but IHO-approved settlement does, trigger attorneys' fees

C. SCOPE

S King v. Floyd Cnty. Bd. of Educ., 5 F. Supp. 2d 393, 28 IDELR 963 (E.D. Ky. 1998)

- reduced attorneys' fees to exclude time familiarizing oneself with the field, for post-relief monitoring expenses and for Westlaw charges

P Dale M. v. Bd. of Educ., 29 F. Supp. 2d 925, 29 IDELR 600 (C.D. Ill. 1998)[17]; cf. Brillon v. Klein Indep. Sch. Dist., 274 F. Supp. 2d 864, 39 IDELR ¶ 184 (S.D. Tex. 2003) (full expert fees but reduced attorneys' fees)

- upheld award for expert witness, but reduced award by approximately 50% due to undocumented expenses; excessive investigation, client-conferencing and monitoring; and uncovered (here, OCR) hours

[17] The Seventh Circuit independently held that the parents' attorney must return the fees to the district after the appeals court reversed the underlying decision. Dale M. v. Bd. of Educ., 282 F.3d 984, 36 IDELR ¶ 127 (7th Cir. 2002).

P/S Mr. X v. New York State Educ. Dep't, 20 F. Supp. 2d 561, 29 IDELR 705 (S.D.N.Y. 1998); see also I.B. v. New York City Dep't of Educ., 336 F.3d 79, 39 IDELR ¶ 155 (2d Cir. 2003)
- upheld Wall Street attorney's billing rule of $350-$375 per hour but reduced award 20% to $147,000 in light of excessive and duplicative time entries

P P.L. v. Norwalk Bd. of Educ., 64 F. Supp. 2d 61, 31 IDELR ¶ 50 (D. Conn. 1999); see Gross v. Perrysburg Exempted Village Sch. Dist., 306 F. Supp. 2d 726, 40 IDELR ¶ 258 (N.D. Ohio 2004); Pazik v. Gateway Reg'l Sch. Dist., 130 F. Supp. 2d 217, 34 IDELR ¶ 58 (D. Mass. 2001)
- upheld full attorneys' fees request of $112,000 for 13-day due process hearing, including fee application, travel time and expert witness fees

P/S Crawford v. San Dieguito Union Sch. Dist., 202 F. App'x 185 (9th Cir. 2006); Neosho R-V Sch. Dist. v. Clark (supra); see also Benito M. v. Bd. of Educ., 544 F. Supp. 2d 713, 49 IDELR ¶ 221 (N.D. Ill. 2008); Bd. of Educ. v. Summers, 358 F. Supp. 2d 462, 42 IDELR ¶ 265 (D. Md. 2005) (95% of $236.5k); Koswenda v. Flossmoor Sch. Dist. No. 161, 227 F. Supp. 2d 979, 37 IDELR ¶ 273 (D. Ill. 2002) (18% of requested amount)
- reduced requested amount of attorneys' fees by 40% based on limited success of parents

S Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 45 IDELR ¶ 267 (2006)
- held that IDEA does not allow for prevailing parents to recover expert fees

P/S Ryan M. v. Bd. of Educ., 731 F. Supp. 2d 776, 55 IDELR ¶ 8 (N.D. Ill. 2010)
- awarded $78,000 rather than requested $95,000 in attorneys' fees due to incomplete success and unsubstantiated or duplicative billing, but allowed prejudgment interest

IV. REMEDIES

A. TUITION REIMBURSEMENT

P/S Montgomery Twp. Bd. of Educ. v. S.C. (supra); Ridgewood Bd. of Educ. (supra); Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss, 144 F.3d 391, 28 IDELR 32 (6th Cir. 1998). But see Rafferty v. Cranston Pub. Sch. Comm., 315 F.3d 21, 38 IDELR ¶ 31 (1st Cir. 2002); Reese v. Bd. of Educ., 225 F. Supp. 2d 1149, 37 IDELR ¶ 252 (E.D. Mo. 2002); Sylvie M. v. Bd. of Educ., 48 F. Supp. 2d 681, 31 IDELR ¶ 28 (W.D. Tex. 1999); cf. Suzawith v. Green Bay Area Sch. Dist., 132 F. Supp. 2d 718, 33 IDELR ¶ 209 (E.D. Wis. 2000) (equities)

- upheld tuition reimbursement for one of two years, concluding that the private school's failure to comply with the LRE requirement could not be used to bar its appropriateness

S Jones v. Bd. of Educ., 15 F. Supp. 2d 783, 28 IDELR 961 (D. Md. 1998)

- rejected tuition reimbursement, according presumption of correctness to board's proposed placement

P/S Bd. of Educ. v. Illinois State Bd. of Educ., 21 F. Supp. 2d 862, 29 IDELR 32 (N.D. Ill. 1998)

- limited reimbursement to tuition and related educational expenses, not room and board or transportation

(*P*) Carnwarth v. Bd. of Educ., 33 F. Supp. 2d 431, 29 IDELR 853 (D. Md. 1998); cf. Sarah M. v. Weast, 111 F. Supp. 2d 695, 33 IDELR ¶ 5 (D. Md. 2000); Mayo v. Baltimore City Pub. Sch., 40 F. Supp. 2d 331, 30 IDELR 861 (D. Md. 1999)

- reversed and remanded hearing officer's dismissal of tuition reimbursement case on procedural grounds—school district's procedural safeguards notice (and parents' actual notices via their experienced attorney) was insufficient to trigger the parental duty to notify the district of the unilateral placement

P/S Connors v. Mills, 34 F. Supp. 2d 795, 29 IDELR 946 (N.D.N.Y. 1998)

- the parents may be entitled to tuition reimbursement on a prospective basis where they cannot afford to "front" the costs, at least where the Burlington prerequisites are met or the district agrees it cannot provide the student with FAPE

P/S Warren G. v. Cumberland Cnty. Sch. Dist., 190 F.3d 80, 31 IDELR ¶ 27 (3d Cir. 1999)

- denied tuition reimbursement for the period before parents requested due process hearing, but rejected reduction due to parents unreasonable conduct for the post-filing period (pre-IDEA 1997)

S Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341, 31 IDELR ¶ 185 (5th Cir. 2000); Linda W. v. Indiana Dept. of Educ., 200 F.3d 504, 32 IDELR ¶ 66 (7th Cir. 1999); see also Wanham v. Everett Pub. Sch., 550 F. Supp. 2d 152, 50 IDELR ¶ 44 (D. Mass. 2008) (need to show harm)

- denied tuition reimbursement to parent where the district failed to implement portions of the IEP but, after providing compensatory education, it had implemented substantial or significant provisions of the IEP

S Patricia P. v. Bd. of Educ., 203 F.3d 462, 31 IDELR ¶ 211 (7th Cir. 2000); P.S. v. Brookfield Bd. of Educ., 353 F. Supp. 2d 306, 42 IDELR ¶ 204 (D. Conn. 2005), aff'd mem., 186 F. App'x 79 (2d Cir. 2006); cf. Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 40 IDELR ¶ 203 (1st Cir. 2004) (no request for evaluation or notice of placement – not in special ed); Morgan v. Greenbrier Cnty. Bd. of Educ., 83 F. App'x 566, 40 IDELR ¶ 122 (4th Cir. 2003) (jumped the gun on unilateral placement); M.S. v. Mullica Twp. Bd. of Educ., 485 F. Supp. 2d 555, 47 IDELR ¶ 251 (D.N.J. 2007), aff'd, 263 F. App'x 263, 49 IDELR ¶ 154 (3d Cir. 2008) (failed to consent to reevaluation and cooperate with IEP team); L.K. v. Bd. of Educ., 113 F. Supp. 2d 856, 33 IDELR ¶ 213 (W.D.N.C. 2000) (plus lack of timely notice). But cf. Goldstrom v. Dist. of Columbia, 319 F. Supp. 2d 5, 41 IDELR ¶ 129 (D.D.C. 2004) (requires determination first of whether district violated IDEA)

- denied tuition reimbursement where parents did not allow the district a reasonable opportunity to evaluate their child

P/S Bd. of Educ. v. Kelly E., 207 F.3d 931, 32 IDELR ¶ 62 (7th Cir. 2000)

- IDEA validly abrogated states' 11th Amendment immunity, but it does not entitle a school district to any or all of a tuition reimbursement award from the state

S M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 33 IDELR ¶ 91 (2d Cir. 2000)

- barred reimbursement, based on equities, for costs of child's psychological treatment where parents failed to raise the issue until after the treatment ended

(*P/S*) James v. Upper Arlington City Sch. Dist., 228 F.3d 764, 33 IDELR ¶ 122 (6th Cir. 2000)

- district's refusal to conduct preenrollment IEP after child's unilateral removal was violation of IDEA, but parents could not recover reimbursement for expenses retroactively for the period before they requested IEP

S M.S. v. Bd. of Educ., 231 F.3d 96, 33 IDELR ¶ 183 (2d Cir. 2000)

- ruled against reimbursement for private SLD school based on objective evidence of progress and LRE as a consideration

P/S Glendale Unified Sch. Dist. v. Almasi, 122 F. Supp. 2d 1093, 33 IDELR ¶ 221 (C.D. Cal. 2000)

- district's offer of multiple placement types rather than specific firm recommendation constituted a denial of FAPE, and mother's withholding of assessment records equitably warranted reduction in reimbursement

S Dale M. v. Bd. of Educ. (supra)

- ruled that district's obligation to provide eligible student with FAPE does not extend to reimbursement of placement that is essentially custodial in nature

P/S Rome Sch. Comm. v. Mrs. B., 247 F.3d 29, 34 IDELR ¶ 200 (1st Cir. 2001). But cf. Katherine G. (supra) (dicta that not moot)

- dismissed parents' appeal as moot where lower court reversed hearing officer's award of tuition reimbursement but did not require, based on circumstances of this case, the parents to pay back the district

S Doe v. Metropolitan Nashville Pub. Sch., 9 F. App'x 453, 34 IDELR ¶ 256 (6th Cir. 2001)
- rejected parents' private-school, Child Find claim that district should have provided them with individualized information about its special education program, finding instead the district's Child Find program sufficed and the delayed evaluation of this out-of-state student excusable, thus rejecting tuition reimbursement

(*P*) Justin G. v. Bd. of Educ., 148 F. Supp. 2d 576, 35 IDELR ¶ 3 (D. Md. 2001)
- preserved for trial whether: 1) lack of IEP denied FAPE; 2) segregated unilateral placement was appropriate; and 3) parents' delay was one-sided bad faith

P Wolfe v. Taconic-Hills Cent. Sch. Dist., 167 F. Supp. 2d 530, 35 IDELR ¶ 186 (N.D.N.Y. 2001)
- rejected review officer's denial of tuition reimbursement because his equitable factors lacked sufficient factual foundation

S Rafferty v. Cranston Pub. Sch. Comm. (supra); R.E. v. New York City Dep't of Educ., 785 F. Supp. 2d 28 (S.D.N.Y. 2011); cf. Pollowitz v. Weast, 34 IDELR ¶ 171 (4th Cir. 2001) (state law).
- denied tuition reimbursement where parents failed to provide the district with timely notice of their objections to the proposed IEP

P Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 37 IDELR ¶ 62 (2d Cir. 2002), aff'd on other grounds, 548 U.S. 291, 45 IDELR ¶ 267 (2006); Bd. of Educ. v. Schutz, 290 F.3d 476, 36 IDELR 261 (2d Cir. 2002); St. Tammany Parish Sch. Bd. v. State of Louisiana, 142 F.3d 776, 28 IDELR 194 (5th Cir. 1998); Ashland Sch. Dist. v. V.M., 494 F. Supp. 2d 1180, 48 IDELR ¶ 130 (D. Or. 2007); Cnty. Sch. Bd. v. R.T. (supra); L.B. v. Greater Clark Cnty. Sch., 458 F. Supp. 2d 845, 45 IDELR ¶ 273 (S.D. Ind. 2006); Escambia Cnty. Bd. of Educ. v. Benton, 358 F. Supp. 2d 1112, 43 IDELR ¶ 5 (S.D. Ala. 2005); Bd. of Educ. v. O'Shea, 353 F. Supp. 2d 306, 42 IDELR ¶ 202 (S.D.N.Y. 2005); Bd. of Educ. v. Illinois State Bd. of Educ., 10 F. Supp. 2d 971, 28 IDELR 716 (N.D. Ill. 1998); cf. Houston Indep. Sch. Dist. v. V.P. (supra) (despite insufficiently clear parental hearing request); Mackey v. Bd. of Educ., 386 F.3d 158, 42 IDELR ¶ 2 (2d Cir. 2004) (Mackey III) (as of the due date, not, if later, the actual date, of the state-level administrative decision)
- ruled that district was responsible to "front" the funds necessary for continued private placement once a state-level administrative or judicial decision supports the appropriateness(subject to further review) in a unilateral placement case

S Daniel G. v. Delaware Valley Sch. Dist., 813 A.2d 36, 38 IDELR ¶ 40 (Pa. Commw. Ct. 2002)
- district's proposed program only need be appropriate at the time proposed, even if parent's unilateral placement is superior based on information at the time or subsequently, and the district's good faith efforts count for appropriateness

P/S M. v. Weast, 240 F. Supp. 2d 426, 38 IDELR ¶ 96 (D. Md. 2003)
- denied or granted tuition reimbursement depending primarily on whether parents were cooperative in IEP development

P L.M. v. Evesham Twp. Bd. of Educ., 256 F. Supp. 2d 290, 39 IDELR ¶ 124 (D.N.J. 2003); Matthew J. v. Massachusetts Dep't of Educ., 989 F. Supp. 380, 27 IDELR 339 (D. Mass. 1998)
- upheld tuition reimbursement for sectarian school as not violating First Amendment establishment clause (or IDEA)

S Berger v. Medina City Sch. Dist., 348 F.3d 513, 40 IDELR ¶ 31 (6th Cir. 2003); see also Tracy v. Beaufort Cnty. Sch. Dist., 335 F. Supp. 2d 675 (D.S.C. 2004)
- denied tuition reimbursement where: 1) private school did not offer any special education for what was the district's deficiency (here, pretutoring for child with hearing impairment); and 2) parents did not provide timely notice before enrollment as compared with removal of the child

(*P*) Loren F. v. Atlanta Indep. Sch. Dist., 349 F.3d 1309, 40 IDELR ¶ 34 (11th Cir. 2003)
- reversed and remanded denial of tuition reimbursement, requiring fact-finding as to parents' alleged unreasonableness and systematic multistep tuition reimbursement analysis

S Ms. M. v. Portland Sch. Comm., 360 F.3d 267, 40 IDELR ¶ 228 (1st Cir. 2004)
- rejected parent's claim that she should be excused from notice requirement for tuition reimbursement based on alleged illiteracy

P Bucks Cnty. Dep't of MH/MR v. De Mora, 379 F.3d 61, 41 IDELR ¶ 233 (3d Cir. 2004)[18]
- tuition reimbursement award, at least under IDEA Part C, may include time expended by parent serving as Lovaas instructor

P Kitchelt v. Weast, 341 F. Supp. 2d 553, 42 IDELR ¶ 48 (D. Md. 2004)
- where district did not have appropriate IEP available at the start of the year, concluded that tuition reimbursement for one half of that year (rather than hearing officer's one month and parents' one year) was equitable based on various factors

S Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 43 IDELR ¶ 59 (S.D.N.Y. 2005)
- held that district's failure to provide the parents with adequate opportunity to explore its proposed residential program was a fatal procedural flaw, but that the inappropriateness of the parents' unilateral placement (lack of any special education or related services) and the equities (sham cooperation with district) defeated their claim for tuition reimbursement

P/S Gabel v Bd. of Educ., 368 F. Supp. 2d 313, 43 IDELR ¶ 137 (S.D.N.Y. 2005)
- held that parents sustained their burden of proof as to the appropriateness of the unilateral placement and that the equities supported tuition reimbursement, but related services were solely within the jurisdiction of the IHO and state's commissioner of education, not the courts

[18] For an earlier decision in this case, where the state appellate court concluded that the IFSP failed to provide meaningful progress toward more than one of its goals, see De Mora v. Dep't of Pub. Welfare, 768 A.2d 904, 34 IDELR ¶ 85 (Pa. Commw. Ct. 2001). For a subsequent decision, in which the court concluded that attorneys' fees are not available under Part C, see Bucks Cnty. Dep't of MH/MR v. De Mora, 38 IDELR ¶ 2 (E.D. Pa. 2002).

P Alfono v. Dist. of Columbia, 422 F. Supp. 2d 1, 45 IDELR ¶ 118 (D.D.C. 2006)
- awarded tuition reimbursement where district had not completed IEP prior to the start of the school year in question

P N. Reading Sch. Comm. v. Bureau of Special Educ. Appeals, 480 F. Supp. 2d 479, 47 IDELR ¶ 215 (D. Mass. 2007)
- upheld tuition reimbursement for private placement of student with SLD based on deference to hearing officer's analysis and relaxed standards at second step

S Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 48 IDELR ¶ 1 (2d Cir. 2007)
- where district's proposed placement of student with Asperger Disorder in relatively distant approved private day school was not FAPE in the LRE, at the second step court rejected appropriateness of unilateral placement in neighborhood prep school—despite student's progress—as not targeted to his identified needs

S C.G. v. Five Town Cmty. Sch. Dist., 513 F.3d 279, 49 IDELR ¶ 93 (1st Cir. 2008)
- denied tuition reimbursement for residential placement where the parents' unreasonable obstruction, or Boulwarism, led to district not developing a complete IEP for student with ED

S Matrejek v. Brewster Cent. Sch. Dist., 293 F. App'x 133, 50 IDELR ¶ 271 (2d Cir. 2008); Pinn v. Harrison Cent. Sch. Dist., 473 F. Supp. 2d 477, 47 IDELR ¶ 133 (S.D.N.Y. 2007)
- denied tuition reimbursement where parents failed to prove that their unilateral placement was appropriate (including LRE in second case)

(*P*) M.S. v. Fairfax Cnty. Sch. Bd., 553 F.3d 315, 51 IDELR ¶ 148 (4th Cir. 2009)
- reversed and remanded decision where student made overall progress, requiring the FAPE determination for tuition reimbursement be made on a year-by-year basis

P/S Madison Metro. Sch. Dist. v. P.R., 598 F. Supp. 2d 938, 51 IDELR ¶ 269 (W.D. Wis. 2009)
- ruled that district was obligated to reimburse parents for partial, not full, day program where preschool child with disability received special education services in LRE

P/S Lauren P. v. Wissahickon Sch. Dist., 310 F. App'x 554, 51 IDELR ¶ 206 (3d Cir. 2009)
- upheld compensatory education for part of one year due to insufficient BIP, but denied tuition reimbursement based on inappropriate unilateral placement for the following year

(*P*) Forest Grove Sch. Dist. v. T.A., 129 S. Ct. 2484, 52 IDELR ¶ 151 (2009)[19]
- child's lack of previous enrollment in special education is not a categorical bar to tuition reimbursement instead being one of the various equities

[19] For the subsequent decision after remand, see Forest Grove v. T.A. (infra).

S Mary T. v. Sch. Dist. (supra)
- denied tuition reimbursement where the reason was severably medical, not educational

(*S*) Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 52 IDELR ¶ 277 (5th Cir. 2009)
- remanded to determine whether the hybrid residential placement met this (rather than the Third Circuit's "inextricable intertwined") test: was it 1) essential in order for the disabled child to receive meaningful educational benefit; and 2) primarily oriented toward enabling the child to obtain an education

P JP v. Cnty. Sch. Bd., 641 F. Supp. 2d 499, 52 IDELR ¶ 294 (E.D. Va. 2009)
- after again finding denial of FAPE on remand from Fourth Circuit, awarded parents' credit-card interest and transaction fees ($3,000) in addition to tuition reimbursement ($30,000) plus approximately $300,000 in attorneys' fees

P Hogan v. Fairfax Cnty. Sch. Bd., 645 F. Supp. 2d 554, 53 IDELR ¶ 14 (E.D. Va. 2009)
- revised reduction of tuition reimbursement from one-third to one-sixth where parents' obstructionist conduct was balanced against district's ultimate obligation and letting the student "fall off its proverbial radar screen"

S Schoenbach v. Dist. of Columbia, 309 F. Supp. 2d 71, 41 IDELR ¶ 2 (D.D.C. 2004); cf. Sch. Union No. 37 v. Ms. C., 518 F.3d 31, 49 IDELR ¶ 179 (1st Cir. 2008) (laches)
- denied tuition reimbursement where parents' did not provide timely notice to district, thereby contributing to inappropriateness of proposed IEP

S S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346 (S.D.N.Y. 2009)
- ducked deciding whether IDEA permits direct tuition payment to the private school retroactively, where the equities, especially lack of timely notice, weighed against the parents

P/S Cone v. Randolph Cnty. Sch. Bd. of Educ., 657 F. Supp. 2d 667, 53 IDELR ¶ 113 (M.D.N.C. 2009)
- ruled that district's proposed placement at high school was not substantively appropriate based on the extensive needs of the student with multiple disabilities, including autism, and that the district's subsequently proposed residential placement was not ready on time, but excepted from reimbursement that part of the delay attributable to the parents' lack of reasonable cooperation

S Ashland Sch. Dist. v. Parents of Student E.H., 587 F.3d 1175, 53 IDELR ¶ 176 (9th Cir. 2009)
- upheld denial of reimbursement for lack of timely written notice based on respective review standards of hearing officer's decision (de novo) and district court's decision (abuse of discretion)

P A.D. v. Bd. of Educ., 690 F. Supp. 2d 193, 54 IDELR ¶ 9 (S.D.N.Y. 2010); cf. G.B. v. Tuxedo Union Free Sch. Dist. (supra) (reduced reimbursement for lack of timely notice)
- ruled, contrary to review officer, that the parents' unilateral placement of child with autism was appropriate (including responsibility for inadequate evaluation being the district's) and that they were entitled to tuition reimbursement

P Bd. of Educ. v. Wilhelmy, 689 F. Supp. 2d 970, 54 IDELR ¶ 58 (N.D. Ohio 2010)
- upheld tuition reimbursement for segregated placement of child with hearing impairment where the mainstreamed placement provided trivial benefit and the intensive services of the restrictive placement helped close the significant gap

S Maynard v. Dist. of Columbia, 701 F. Supp. 2d 116, 54 IDELR ¶ 158 (D.D.C. 2010)
- denied tuition reimbursement where parent acted unreasonably by not allowing district sufficient time to develop IEP before unilaterally placing the child in a private school

P M.H. v. New York City Dep't of Educ., 712 F. Supp. 2d 125, 54 IDELR ¶ 221 (S.D.N.Y. 2010); cf. Schreiber v. E. Ramapo Cent. Sch. Dist., 700 F. Supp. 2d 529, 54 IDELR ¶ 161 (S.D.N.Y. 2010) (LRE plus other considerations)
- upheld $80,000 tuition reimbursement for kindergarten child with autism based on finding that child needed extensive 1:1 discrete-trial ABA services, which district's proposed 6:1 placement did not provide and which conformed to LRE consideration for the parent's unilateral private placement

P/S R.B. v. New York City Dep't of Educ., 713 F. Supp. 2d 235, 54 IDELR ¶ 223 (S.D.N.Y. 2010)
- rejected reimbursement for $29,700 prep school placement as inappropriate for child's needs, but ordered reimbursement for $13,800 supplemental special education program because district's lack of proposed placement for child with SLD excused parent's lack of timely notice

P Atlanta Indep. Sch. Sys. v. S.F., 740 F. Supp. 2d 1335, 55 IDELR ¶ 97 (N.D. Ga. 2010)
- ruled that school district is not entitled to recover tuition reimbursement paid due to hearing officer's order that the court subsequently reversed

P/S Klein Indep. Sch. Dist. (supra)
- awarded reimbursement of tuition, but not room and board, because parents did not meet the Fifth Circuit's two-part test for residential placement

P Sudbury Pub. Sch. v. Massachusetts Dep't of Elementary & Secondary Educ., 762 F. Supp. 2d 254, 55 IDELR ¶ 284 (D. Mass. 2010)
- evidence that parent's primary motivation was to obtain public funding for her unilateral placement of her child with SLD did not reach level of affirmatively impeding the IEP development, thus not warranting equitable reduction or elimination of tuition reimbursement

S Indianapolis Pub. Sch. v. M.B., 771 F. Supp. 2d 928, 56 IDELR ¶ 8 (S.D. Ind. 2011)
- although the child showed progress, denied tuition reimbursement where the unilateral private placement did not provide special education services

P E.Z.- v. L. v. New York City Dep't of Educ. (supra)
- rejected defendant district's unjust enrichment counterclaim, upon tuition reimbursement decision in its favor, for recoupment of tuition paid during stay-put, "given that both binding and nonbinding case law is to the contrary"

S Covington v. Yuba City Unified Sch. Dist., 780 F. Supp. 2d 1014, 56 IDELR ¶ 37 (E.D. Cal. 2011)
- although ruled that district's IEP was not appropriate, denied tuition reimbursement on alternative grounds—inappropriateness of the parents' unilateral placement and their lack of timely notice

P Mr. A. v. New York City Dep't of Educ., 769 F. Supp. 2d 403, 56 IDELR ¶ 42 (S.D.N.Y. 2011)
- upheld tuition payment relief to parents who met the three-part test for reimbursement but had not paid the tuition due to inability to afford it

P C.B. v. Garden Grove Unified Sch. Dist., 635 F.3d 1155, 56 IDELR ¶ 121 (9th Cir. 2011), cert. denied, 132 S. Ct. 500 (2011)
- upheld, as equitable, full reimbursement for private program that met many, but not all of the educational needs of child with autism and ADHD

P R.E. v. New York City Dep't of Educ., 785 F. Supp. 2d 28, 56 IDELR ¶ 131 (S.D.N.Y. 2011)
- granted tuition reimbursement based on all three steps, including justifiable excusal for late notice, for student with autism

S Forest Grove v. T.A., 638 F.3d 1234, 56 IDELR ¶ 185 (9th Cir. 2011)
- on remand from Supreme Court, denied tuition reimbursement based on the equities (lack of timely notice and, more significantly, reason for the unilateral placement)

S C.B. v. Special Sch. Dist. No 1, 636 F.3d 981, 56 IDELR ¶ 187 (8th Cir. 2011)
- LRE does not apply to unilateral parental placements in tuition reimbursement cases

S J.G. v. Kiryas-Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 56 IDELR ¶ 200 (S.D.N.Y. 2011)
- held that district's self-contained program was too restrictive for five-year-old with multiple disabilities, but the unilateral placement at orthodox religious school was also inappropriate (e.g., staff training and curriculum)

S Davis v. Wappingers Cent. Sch. Dist., 772 F. Supp. 2d 500 (S.D.N.Y. 2011), aff'd, 431 F. App'x 12, 56 IDELR ¶ 248 (2d Cir. 2011)
- denied tuition reimbursement because, although the district's proposed IEP was procedurally and substantively deficient, the private school program was not appropriate (based on lack of progress and thus not purely prospective evidence)

P A.G. v. Dist. of Columbia, 794 F. Supp. 2d 133, 57 IDELR ¶ 9 (D.D.C. 2011)
- ruled that IHO must allow the parent flexible opportunity to present costs for reimbursement

P Jefferson Cnty. Sch. Dist. R-1. v. Elizabeth E., 798 F. Supp. 2d 1177, 57 IDELR ¶ 13 (D. Colo. 2011)
- ruled that child was entitled to reimbursement, at Step 2, for the residential placement under all of the various tests of federal appellate courts (in the absence of a Tenth Circuit ruling for one of these tests)

S Weaver v. Millbrook Cent. Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 126 (S.D.N.Y. 2011)
- upheld, with due deference, review officer's determination that parent's private placement was not appropriate

P/S W.M. v. Lakeland Cent. Sch. Dist., 783 F. Supp. 2d 497, 57 IDELR ¶ 137 (S.D.N.Y. 2011)
- granted partial tuition reimbursement based on balancing of the equities

P P.K. v. New York City Dep't of Educ., __ F. Supp. 2d __, 57 IDELR ¶ 139 (E.D.N.Y. 2011)
- upheld direct retroactive payment of tuition after finding that the proposed IEP for preschool child with autism lacked sufficient specially designed instruction (1:1 ABA) and related services (speech therapy and parent training per state regulation) and that the parent's unilateral placement was appropriate

P/S Moorestown Twp. Bd. of Educ. (supra)
- pro-rated tuition reimbursement as of the date the district knew it should have provided an IEP

P/S J.S. v. Scarsdale Union Free Sch. Dist. (supra)
- reduced tuition reimbursement by 75% based on detailed balancing of the equities, including parent's lack of timely notice (after ruling that the district's proposed placement was not, and parent's unilateral placement was, appropriate)

S G.R. v. Dallas Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 223 (D. Or. 2011)
- denied tuition reimbursement where the unilateral residential placement was not (and the district's proposal was) appropriate

S M.B. v. Hamilton Se. Sch. (supra)
- concluded that parents' reliance on the general information and good reputation of the unilateral placement (Lindamood Bell Center) and the successful performance of the child upon moving to another district was insufficient to prove appropriateness at the second step of tuition reimbursement analysis

B. COMPENSATORY EDUCATION

(*P*) Ridgewood Bd. of Educ. (supra)
- compensatory education requires an inappropriate education, not necessarily an inappropriate IEP, and it accrues where the district knows or should know that the child is being denied FAPE

P Wayne Cnty. Regional Educ. Serv. Agency v. Pappas, 56 F. Supp. 2d 807, 30 IDELR 868 (E.D. Mich. 1999)
- upheld compensatory education award beyond age 21 for FAPE denial prior to age 21

(*P*) Sabatini v. Corning-Painted Post Area Sch. Dist., 78 F. Supp. 2d 138, 31 IDELR ¶ 183 (W.D.N.Y. 1999)
- granted preliminary injunction to require, as compensatory education, district to "front" tuition at college for student with multiple disabilities to obtain a high school diploma

S Wenger v. Canastota Cent. Sch. Dist., 979 F. Supp. 147, 26 IDELR 1128 (N.D.N.Y. 1997), aff'd, 181 F.3d 84, 32 IDELR ¶ 64 (2d Cir. 2000)
- denied compensatory education under IDEA where denial of FAPE did not result in regression (equitable remedy—deference to state-level review officer)

P Unified Sch. Dist. No. 1 v. Connecticut Dep't of Educ., 780 A.2d 154, 35 IDELR ¶ 30 (Conn. Ct. App. 2001)
- upheld award of one year of compensatory education, rejecting laches (where no prejudice), incompetency and evidentiary defenses

(*P/S*) Montour Sch. Dist. v. S.T., 805 A.2d 29, 37 IDELR ¶ 93 (Pa. Commw. Ct. 2002)
- mixed results for whether the limitations period for compensatory education is one year statute for filing for due process hearing (except two years where mitigating circumstances) or that it does not being to run until child reaches age 21

P/S Susquehanna Twp. Sch. Dist. v. Frances J., 823 A.2d 249, 39 IDELR ¶ 5 (Pa. Commw. Ct. 2003)
- upheld compensatory education at postgraduation college prep school for failure to implement transition plan calling for application to said school, but modified the award from open-ended to one-year period on grounds of exceeding the denial of FAPE

(*P*) Lewis Cass Intermediate Sch. Dist. v. M.K., 290 F. Supp. 2d 832, 40 IDELR ¶ 8 (W.D. Mich. 2003)
- parents' move to residency elsewhere does not moot their claim for compensatory education for alleged denial of FAPE when they were residents of defendant district

P Mr. R. v. Maine Sch. Admin. Dist. No. 35, 295 F. Supp. 2d 113, 40 IDELR ¶ 93 (D. Me. 2003)
- ruled that compensatory education applies to stay-put where denial of FAPE

P Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M., 356 F.3d 798, 40 IDELR ¶ 175 (7th Cir. 2004)
- upheld compensatory education and occupational therapy award for lack of licensed OT

(*P*) Barnett v. Memphis City Sch. Sys., 294 F. Supp. 2d 924, 42 IDELR ¶ 56 (W.D. Tenn. 2003)
- rejected mootness of compensatory education claim where student, now age 24, had received special, but not general, education diploma (and the district allegedly forced him out, thus engaging in disability harassment)

P Argueta v. Dist. of Columbia, 355 F. Supp. 2d 408, 42 IDELR ¶ 268 (D.D.C. 2005)
- upheld three-year compensatory education for district's failure to provide the special education and related services in the child's IEP

S Shawsheen Valley Reg'l Vo-Tech. Sch. Dist., 367 F. Supp. 2d 44, 43 IDELR ¶ 109 (D. Mass. 2005)
- compensatory education is not available for purely or de minimis procedural violations

S Park v. Anaheim Union High Sch. Dist., 464 F.3d 1025, 46 IDELR ¶ 151 (9th Cir. 2006)
- upheld compensatory education for training for teachers to meet student's particular needs where speculative that student would benefit from such services directly

P Keystone Cent. Sch. Dist. v. E.E., 438 F. Supp. 2d 519, 46 IDELR ¶ 16 (E.D. Pa. 2006)
- upheld compensatory education award that was on a day-for-day basis and that left implementation to the parents' choices

(*P*) Bd. of Educ. v. L.M., 478 F.3d 307, 47 IDELR ¶ 122 (6th Cir. 2007), cert. denied, 552 U.S. 1042 (2007)[20]; Reid v. Dist. of Columbia, 401 F.3d 516, 43 IDELR ¶ 32 (D.C. Cir. 2005); see also Branham v. Dist. of Columbia, 427 F.3d 7, 44 IDELR ¶ 149 (D.C. Cir. 2005); Thomas v. Dist. of Columbia, 407 F. Supp. 2d 102, 44 IDELR ¶ 246 (D.D.C. 2005); B.C. v. Penn Manor Sch. Dist., 805 A.2d 642, 46 IDELR ¶ 135 (Pa. Commw. Ct. 2006)
- rejected mechanical "cookie cutter" counting approach for compensatory education (here one-hour per day for resource room denial), requiring instead equitable approach qualitatively based on "specific educational deficits resulting from [the child's] loss of FAPE"

P/S Heather D. v. Northampton Area Sch. Dist., 511 F. Supp. 2d 549, 48 IDELR ¶ 67 (E.D. Pa. 2007)[21]
- ruled in favor of an education fund of $182,000, representing 2,428 hours (hour-for-hour partial approach) x $75 (based on parent rather than district-determined rate), whereas parents had sought approximately 7,000 hours x $132 per hour

P Draper v. Atlanta Indep. Sch. Dist., 518 F.3d 1275, 49 IDELR ¶ 211 (11th Cir. 2008)
- upheld, as compensatory education under qualitative standard, approximately five years of private placement at its full cost ($34,000 per year plus any increases to $38,000 per year) based on denial of FAPE to student with dyslexia

P P. v. Newington Bd. of Educ. (supra). But cf. J.A. v. E. Ramapo Cent. Sch. Dist. (supra) (gross-violation standard applies generally)
- upheld compensatory education award of inclusion consultant for LRE violation, interpreting Second Circuit's gross violation standard to apply only to plaintiff students who are, at the remedial stage, over age 21

[20] Upon remand, the federal district court ordered the review officer—not the state education department, which the parents requested—to determine the amount of services owed to the child per the Sixth Circuit's ruling. Bd. of Educ. v. L.M., 48 IDELR ¶ 97 (E.D. Ky. 2008).

[21] In a subsequent, unpublished decision, the court approved an attorneys' fees award, reduced from the requested $175,000 to $147,000.

S Garcia v. Bd. of Educ., 520 F.3d 1116 (10th Cir. 2008)
- upheld, as within equitable discretion of lower court, denial of compensatory education to student who had dropped out and was unlikely to take advantage of the services

(*P*) Tereance D. v. Sch. Dist. of Philadelphia, 570 F. Supp. 2d 739, 50 IDELR ¶ 248 (E.D. Pa. 2008)
- held that the two-year limitation period under IDEA 2004, in this case for compensatory education, does not apply to claims arising, or accruing, before the July 1, 2005 effective date of these amendments regardless of whether the parents filed for a due process hearing after that date

P/S Streck v. Bd. of Educ., 642 F. Supp. 2d 105, 52 IDELR ¶ 285 (N.D.N.Y. 2009), modified, 408 F. App'x 411, 55 IDELR ¶ 216 (2d Cir. 2010)
- ordered escrow account for $37,778 for compensatory reading services in addition to partial reimbursement for tuition (and laptop) at postsecondary institution for reading and writing remediation—in contrast with parents' requested past and prospective reimbursement of $150,000 for tuition, room and board

P/S Hogan v. Fairfax Cnty. Sch. Bd. (supra)
- ruled that the balancing of the equities applies in compensatory education cases, here revising the award from nothing to six weeks of summer programming for a year's denial of FAPE

S P.P. v. W. Chester Area Sch. Dist. (supra)
- ruled that compensatory education is not available for a unilaterally placed private school student

(*P*) Stanton v. Dist. of Columbia, 680 F. Supp. 2d 201, 53 IDELR ¶ 314 (D.D.C. 2010)
- upheld child's entitlement to compensatory education for failure to implement counseling and tutoring provisions of IEP but remanded to hearing officer to justify the amount of the award (via qualitative approach)

(*P*) Breanne C. v. S. York Cnty. Sch. Dist., 732 F. Supp 474, 54 IDELR ¶ 47 (M.D. Pa. 2010)
- upheld reduction of compensatory education award from three hours to one hour per day for child with SLD based on the extent of her special education program

P Ferren C. v. Sch. Dist. of Philadelphia, 612 F.3d 712, 54 IDELR ¶ 274 (3d Cir. 2010)
- upheld district court's order, as unusual equitable remedy, for the school district to provide the three-year entitlement of compensatory education of 23-year-old student in the form of an IEP

P/S Steven I. v. Cent. Bucks Sch. Dist., 618 F.3d 411, 55 IDELR ¶ 35 (3d Cir. 2010), cert. denied, 131 S. Ct. 1507 (2011)
- held that IDEA 2004 statute of limitations applies to cases filed before effective date of these amendments

(*P/S*) Banks v. Dist. of Columbia, 720 F. Supp. 2d 83, 54 IDELR ¶ 282 (D.D.C. 2010); see also Walker v. Dist. of Columbia, 786 F. Supp. 2d 232, 56 IDELR ¶ 258 (D.D.C. 2011)
- remanded to IHO to determine whether implementation failure met applicable standard for denial of FAPE and, if so, to apply qualitative approach for reasonably crafting award, including additional fact-finding if necessary

(*P/S*) Dracut Sch. Comm. v. Bureau of Special Educ. Appeals, 737 F. Supp. 2d 35, 55 IDELR ¶ 66 (D. Mass. 2010)
- upheld entitlement to compensatory education, including consultant services, for denial of transition services before issuance of diploma to child with Asperger Disorder, but not as extension of eligibility after diploma and not to hire parents' experts as the consultants

S Gill v. Dist. of Columbia, 751 F. Supp. 2d 104, 55 IDELR ¶ 191 (D.D.C. 2010), further proceedings, 770 F. Supp. 2d 112, 56 IDELR ¶ 129 (D.D.C. 2011); cf. Henry v. Dist. of Columbia, 750 F. Supp. 2d 94, 53 IDELR ¶ 187 (D.D.C. 2010) (seemingly rejecting burden of proof rationale for denying compensatory education, remanded to hearing officer for crafting an award)
- after IHO found denial of FAPE, but refused compensatory education based on parents' failure to provide sufficient factual foundation, court allowed parent limited opportunity via its authority to hear additional evidence; however, the additional evidence was "sketchy and patently insufficient"

P B.H. v. W. Clermont Bd. of Educ. (supra)
- upheld compensatory education award of two years of PT and OT and, retrospectively, two of his three years of private placement

C. TORT-TYPE DAMAGES[22]

P Goleta Union Elementary Sch. Dist. v. Ordway, 248 F. Supp. 2d 936, 38 IDELR ¶ 64 (C.D. Cal. 2002); see also P.N. v. Greco, 282 F. Supp. 2d 221, 40 IDELR ¶ 9 (D.N.J. 2003)
- held special education director personally liable under Sec. 1983/IDEA for changing child to inappropriate placement without investigating its appropriateness – no heightened standard of culpability required

(*P*) Roe v. Nevada, 332 F. Supp. 2d 1331, 41 IDELR ¶ 266 (D. Nev. 2004); Zearley v. Ackerman, 116 F. Supp. 2d 109, 33 IDELR ¶ 156 (D.D.C. 2000); R.B. v. Bd. of Educ., 99 F. Supp. 2d 411, 32 IDELR ¶ 226 (S.D.N.Y. 2000); L.C. v. Utah State Bd. of Educ., 57 F. Supp. 2d 1214, 30 IDELR 961 (D. Utah 1999); Cappillino v. Hyde Park Cent. Sch. Dist., 40 F. Supp. 2d 513, 30 IDELR 253 (S.D.N.Y. 1999); cf. B.H. v. Southington Bd. of Educ., 273 F. Supp. 2d 194, 40 IDELR ¶ 36 (D. Conn. 2003); M.H. v. Bristol Bd. of Educ., 169 F. Supp. 2d 21, 36 IDELR ¶ 123 (D. Conn. 2001); Butler v. South Glens Falls Cent. Sch. Dist., 106 F. Supp. 2d 414, 33 IDELR ¶ 3 (N.D.N.Y. 2000)
- upheld possibility of compensatory damages under Sec. 1983/IDEA

[22] For a well publicized state trial court decision, see Doe v. Withers, 20 IDELR 422 (W. Va. Cir. Ct. 1993).

S Chambers v. Sch. Dist., 587 F.3d 176, 53 IDELR ¶ 139 (3d Cir. 2009); Diaz-Fonseca v. Commonwealth of Puerto Rico, 451 F.3d 13, 45 IDELR ¶ 268 (1st Cir. 2006); Ortega v. Bibb Cnty. Sch. Dist., 397 F.3d 1321, 42 IDELR ¶ 200 (11th Cir. 2005); Polera v. Bd. of Educ., 288 F.3d 478 (2d Cir. 2002); Wolverton v. Doniphan R-1 Sch. Dist., 34 IDELR ¶ 261 (8th Cir. 2001); Wenger (supra); Thompson v. Bd. of Educ., 144 F.3d 574, 28 IDELR 173 (8th Cir. 1998); Sellers v. Sch. Bd., 141 F.3d 524, 27 IDELR 1060 (4th Cir. 1998); J.L. v. Ambridge Area Sch. Dist., 622 F. Supp. 2d 257, 49 IDELR 224 (W.D. Pa. 2008); A.A. v. Bd. of Educ., 196 F. Supp. 2d 259, 36 IDELR ¶ 239 (S.D.N.Y. 2002); Butler v. South Glens Falls Sch. Dist. (supra); Wayne Cnty. (supra); cf. A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 47 IDELR ¶ 282 (3d Cir. 2007); Padilla v. Sch. Dist. No. 1, 233 F.3d 1268, 33 IDELR ¶ 217 (10th Cir. 2000) (not via § 1983); Blanchard v. Morton, 509 F.3d 934, 49 IDELR ¶ 96 (9th Cir. 2007), cert. denied, 552 U.S. 1231 (2008) (not via § 1983 for parent's lost earnings and suffering); L.M.P. v. Sch. Bd., 516 F. Supp. 2d 1305, 48 IDELR ¶ 249 (S.D. Fla. 2007) (no individual liability via §§ 1983 or 1985)

- no compensatory damages under IDEA

S Indep. Sch. Dist. No. 432 v. J.H., 8 F. Supp. 2d 1166, 28 IDELR 427 (D. Minn. 1998)

- where school district agreed to conduct an evaluation and IEP, parents' request for a due process hearing was premature and thus beyond hearing officer's jurisdiction

V. OTHER IDEA-RELATED ISSUES

(*P*) Armijo v. Wagon Mound Pub. Sch., 159 F.3d 1253, 29 IDELR 593 (10th Cir. 1998); cf. Sutton v. Utah Sch. for the Deaf, 173 F.3d 1226, 30 IDELR 12 (10th Cir. 1999)
- possible liability under 14th Amendment (SDP) for suicide of special education student in wake of suspension in violation of school rules—danger-creation actions may have "shocked the conscience"

S Michael C. v. Radnor Twp. Sch. Dist., 202 F.3d 642, 31 IDELR ¶ 184 (3d Cir. 2000); cf. Ms. S v. Vashon Island Sch. Dist., 337 F.3d 1115, 39 IDELR ¶ 154 (9th Cir. 2003) (same for in-state move if special circumstances)
- held that a district in one state is not required to implement an IEP developed by a district in the child's previous state of residence [tuition reimbursement case]

S In re Arons, 756 A.2d 867, 32 IDELR ¶ 253 (Del. 2000); cf. L.L. v. Vineland Bd. of Educ., 128 F. App'x 916, 43 IDELR ¶ 83 (3d Cir. 2005) (disputed issues of unauthorized practice of law and consultation v. advocacy)
- interpreted the IDEA as prohibiting nonlawyers from representing parents of students with disabilities at due process hearings

S Hooks v. Clark Cnty. Sch. Dist., 228 F.3d 1036, 33 IDELR ¶ 120 (9th Cir. 2000); cf. Forstrom v. Byrne, 775 A.2d 65, 34 IDELR ¶ 260 (N.J. Super. Ct. App. Div. 2001)
- states have discretion to determine whether home education constitutes an IDEA-qualifying private school

P Sackets Harbor Cent. Sch. Dist. v. Munoz, 725 N.Y.S.2d 119, 34 IDELR ¶ 227 (N.Y. Sup. Ct. App. Div. 2001)
- held that when IEP teams decide matters by vote, all members are entitled to vote, including those invited by the parents or district who have special knowledge or special expertise regarding the child

(*S*) Rene v. Reed, 751 N.W.2d 736, 34 IDELR ¶ 284 (Ind. Ct. App. 2001)
- upheld denial of preliminary injunction for students with disabilities who sought exemption, as a class, from state's graduation requirement examination

S Saucon Valley Sch. Dist. v. Jason O., 785 A.2d 1069, 35 IDELR ¶ 209 (Pa. Commw. Ct. 2001); see also Hempfield Sch. Dist. v. Barry M., 38 IDELR ¶ 68 (Pa. Commw. Ct. 2003) (reevaluation); cf. Mifflin Cnty. Sch. Dist. v. Special Educ. Due Process Appeals Bd., 800 A.2d 1010, 37 IDELR ¶ 39 (Pa. Commw. Ct. 2002) (IDEA case)
- held that second tier appeals panel lacked remedial authority (in gifted child's case) to order inservice training of IEP team, contracting of outside expert for IEP and student's graduation without requisite credits

(*P*) Navin v. Park Ridge Sch. Dist., 270 F.3d 1147, 35 IDELR ¶ 239 (7th Cir. 2001), after remand, 49 F. App'x 69 (7th Cir. 2003); cf. Taylor v. Vermont Dep't of Educ., 313 F.3d 768, 38 IDELR ¶ 32 (2d Cir. 2002); Schares v. Katy Indep. Sch. Dist., 252 F. Supp. 2d 364, 39 IDELR ¶ 156 (S.D. Tex. 2003)
- noncustodial parent has standing to file for a due process hearing unless the divorce decree expressly eliminates all rights in educational matters or custodial parent's exercise of decreed rights trumps it

S Ullmo v. Gilmour Acad., 273 F.3d 671, 35 IDELR ¶ 240 (6th Cir. 2001)
- private or parochial school is not an LEA under the IDEA and thus is not subject to an IDEA suit

(*P/S*) Chapman v. California Dep't of Educ., 229 F. Supp. 2d 981, 36 IDELR ¶ 91 (C.D. Cal. 2002), rev'd in part sub nom Smiley v. California Dep't of Educ., 37 IDELR ¶ 219 (9th Cir. 2002), dismissed for lack of standing, 40 IDELR ¶ 45 (N.D. Cal. 2003)
- postponed preliminary injunction to enforce the accommodations and alternative-assessment requirement of the IDEA—and the accommodations requirement of Sec. 504—in relation to the state's high stakes test

S S.C. v. Deptford Twp. Bd. of Educ., 213 F. Supp. 2d 452, 37 IDELR ¶ 155 (D.N.J. 2002). But cf. Asbury Park Bd. of Educ. v. Hope Acad. Charter Sch., 278 F. Supp. 2d 417, 39 IDELR ¶ 213 (D.N.J. 2003) (no standing to challenge placement by charter schools to private special education schools)
- defendant district may file third-party complaint against other agencies for reimbursement under IDEA's interagency cooperation provisions[23]

S Great Valley Sch. Dist. v. Douglas M., 807 A.2d 315, 37 IDELR ¶ 214 (Pa. Commw. Ct. 2002)
- ruled that district has no duty to evaluate a child under the IDEA while s/he remains outside the state in a unilateral placement

S Eric H. v. Methacton Sch. Dist., 265 F. Supp. 2d 513, 38 IDELR ¶ 182 (E.D. Pa. 2003)
- ruled that refusal to provide videoconferencing to homebound student (with leukemia) did not violate the IDEA's FAPE and LRE requirements

S Zasslow v. Menlo Park City Sch. Dist., 60 F. App'x 27, 38 IDELR ¶ 187 (9th Cir. 2003); see also B.V. v. Educ Dep't, 514 F.3d 384 (9th Cir. 2008) (special education teacher); M.T.V. v. DeKalb Cnty. Sch. Dist., 446 F.3d 1153, 45 IDELR ¶ 177 (11th Cir. 2006) (evaluator); B.V. v. Dep't of Educ., 451 F. Supp. 2d 1113, 45 IDELR ¶ 10 (D. Hawaii 2005) (special education teacher)
- brief ruling that despite turnover, district provided qualified speech therapist, thus supporting proposition that parents do not have the right to select service deliverer

S Krista P. v. Manhattan Sch. Dist., 255 F. Supp. 2d 873, 38 IDELR ¶ 239 (N.D. Ill. 2003)
- rejected parents' claim for IEE at public expense, concluding that district's reevaluation the previous year was appropriate, that there was no need for another reevaluation at this time, and that the district did not violate its Child Find obligation

S Slama v. Indep. Sch. Dist. No. 2580, 259 F. Supp. 2d 880, 39 IDELR ¶ 3 (D. Minn. 2003)
- district's change in child's aide does not deny FAPE where the IEP does not clearly require a particular individual to serve in said capacity

[23] However, in this case, the Division of Developmental Disabilities escaped liability on Eleventh Amendment grounds. S.C. v. Deptford Twp. Bd. of Educ., 248 F. Supp. 2d 368 (D.N.J. 2003). For the main issue, the court upheld the parents' proposed residential placement of the child with severe autism rather than the day placement where the district had placed the child.

S In re D.D., 788 N.E.2d 10, 39 IDELR ¶ 68 (Ill. Ct. App. 2003); see also Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ., 868 N.E.2d 1068 (Ill. Ct. App. 2007); cf. In re Doe Children, 93 P.3d 1145, 41 IDELR ¶ 151 (Hawaii 2004) (family court)
- ruled that juvenile court lacked authority to order school district to pay for educational component of out-of-state placement it ordered for delinquent student with a disability

(*P*) Hornstine v. Twp. of Moorestown, 263 F. Supp. 2d 887, 39 IDELR ¶ 64 (D.N.J. 2003)
- granted preliminary injunction for student classified as IDEA-eligible to be sole class valedictorian, preventing school board from retroactively changing its policy that did not allow covaledictorians

P Cartwright v. Dist. of Columbia, 267 F. Supp. 2d 83, 39 IDELR ¶ 94 (D.D.C. 2003)
- ruled that IDEA regulations required reevaluation upon parental request without having to be warranted

S Wagner v. Bd. of Educ., 335 F.3d 297, 39 IDELR ¶ 122 (4th Cir. 2003)
- when service provider was no longer available (here due to eroded relationship between parents and Lovaas in-home service provider), stay-put is of no avail to the parents; they should have either agreed to a new placement arrangement or filed for a judicial injunction

P Blackman v. Dist. of Columbia, 277 F. Supp. 2d 71, 39 IDELR ¶ 241 (D.D.C. 2003)
- in class action, granted preliminary injunction for reimbursement and private placement subject to prompt due process hearing after the district failed to convene the hearing within the 45-day "window"

S Reid L. v. Ill. State Bd. of Educ., 358 F.3d 511, 40 IDELR ¶ 177 (7th Cir. 2004)
- held that students with disabilities and their teachers lacked standing to challenge state's new, cross categorical special education teacher certification rules adopted as result of Corey H. settlement agreement (antiquated categories with inadequate training impermissibly permitted categorical segregation of students with disabilities)

(*P*) E.W. v. Sch. Bd., 307 F. Supp. 2d 1363, 40 IDELR ¶ 257 (S.D. Fla. 2004)
- ruled that child who had never enrolled in public school was only entitled to service plan requirements of IDEA, as determined by state complaint procedure, not by IHO

S Gary S. v. Manchester Sch. Dist., 374 F.3d 15, 41 IDELR ¶ 118 (1st Cir. 2004)
- IDEA's differential treatment of students in parochial schools does not violate First Amendment free exercise clause, 14th Amendment due process and equal protection clauses, or Religious Freedom Restoration Act

S Schuylkill Haven Area Sch. Dist. v. Rhett P., 857 A.2d 226, 41 IDELR ¶ 269 (Pa. Commw. Ct. 2004)
- ruled that a district is not obligated under state law to honor IEPs from private schools

(*P*) In re C.M.T., 861 A.2d 348, 42 IDELR ¶ 63 (Pa. Super. Ct. 2004)
- ruled that in dependency hearing for habitual truancy of special education student in juvenile court, the relationship between the child's disability and her absenteeism, including evidence as to the availability of services that would facilitate her school attendance, is necessary to prove dependency

S Veazey v. Ascension Parish Sch. Bd., 121 F. App'x 552, 42 IDELR ¶ 140 (5th Cir. 2005)
- moving the location alone (here from one school site to another for implementing same IEP) is not a change in placement

S Herben v. Dist. of Columbia, 362 F. Supp. 2d 254, 43 IDELR ¶ 110 (D.D.C. 2005)
- four-month delay in responding to request for reevaluation after recently completed evaluation did not violate IDEA

(*P/S*) Pardini v. Allegheny Intermediate Unit, 420 F.3d 181, 44 IDELR ¶ 30 (3d Cir. 2005), cert. denied, 547 U.S. 1050 (2006). But see D.P. v. Sch. Bd. of Broward Cnty., 483 F.3d 725, 47 IDELR ¶ 181 (11th Cir. 2007), cert denied, 128 S. Ct. 1080 (2008); Johnson v. Special Educ. Hearing Office, 287 F.3d 1176 (9th Cir. 2002)[24]
- split as to whether "stay-put" applies in transitioning from an IFSP to an IEP

S Schaffer v. Weast, 546 U.S. 49, 44 IDELR ¶ 150 (2005); cf. L.E. v. Ramsey Bd. of Educ., 435 F.3d 384, 44 IDELR ¶ 269 (3d Cir. 2006) (extends to LRE); Antoine M. v. Chester Upland Sch. Dist., 420 F. Supp. 2d 396, 45 IDELR ¶ 120 (E.D. Pa. 2006) (extends to eligibility); W. Platte R-II Sch. Dist. v. Wilson, 439 F.3d 782, 45 IDELR ¶ 88 (8th Cir. 2006); Greenwood v. Wissahickon Sch. Dist., 44 IDELR ¶ 34 (E.D. Pa. 2006) (reversible error to place burden on district); Gagliardo v. Arlington Cent. Sch. Dist., 418 F. Supp. 2d 559, 45 IDELR ¶ 119 (S.D.N.Y. 2006)(interpreted Schaffer as putting burden of proof on every Burlington factor on—in almost every case—the parents
- ruled that the burden of proof (specifically, burden of persuasion) in a case challenging the appropriateness of an IEP is on the challenging party

S Stringer v. St. James R-1 Sch. Dist., 446 F.3d 799, 45 IDELR ¶ 179 (8th Cir. 2006)
- upheld dismissal where parent did not connect alleged IDEA harassment claim to FAPE and state department's refusal to provide parent with audio-tape, rather than official transcript, of the due process hearing was harmless error

S Shelby S. v. Conroe Indep. Sch. Dist., 454 F.3d 450, 45 IDELR ¶ 269 (5th Cir. 2006), cert. denied, 549 U.S. 1111 (2007)
- upheld district's request for medical IEE, despite lack of parental consent, of medically fragile child under reevaluation circumstances of conflicting information and constraining parent

S Arizona State Bd. for Charter Sch. v. Leona Group Arizona, 464 F.3d 1003, 46 IDELR ¶ 153 (9th Cir. 2006)
- held that for-profit charter schools were not entitled to IDEA funding

[24] For the current rule, see 34 C.F.R. § 300.518(c) (stay-put does not apply except, if district determines child is eligible, for services not in dispute).

(*P*) D.D. v. New York City Bd. of Educ., 465 F.3d 503, 46 IDELR ¶ 181 (2d Cir. 2006), amended, 480 F.3d 138 (2d Cir. 2007)
- rejected substantial-compliance standard for "as soon as possible" requirement for implementing students' IEPs—factors include length of delay, reasons for delay, and steps to overcome it—and rejected incorporation of state 30-day standard

(*P*) Smith v. Guilford Bd. of Educ., 226 F. App'x 58, 48 IDELR ¶ 32 (2d Cir. 2007)
- disability-based peer harassment could constitute denial of FAPE

P/S Andrew M. v. Delaware Cnty. Office of MH/MR, 490 F.3d 337, 48 IDELR ¶ 30 (3d Cir. 2007)
- upheld tuition reimbursement and compensatory education for child with developmental delay under Part C based on the private preschool being the natural environment for social interaction, but reversed the award of attorneys' fees under § 504 due to failure to meet the causality ("sole reason") criterion

(P) Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007). But cf. KLA v. Windham Se. Supervisory Union, 348 F. App'x 604, 54 IDELR ¶ 112 (2d Cir. 2010) (not for representing IDEA rights of their child, who in this case was incompetent adult)
- parents may proceed pro se in federal court to enforce their independent rights under the IDEA

(*P*) Dist. of Columbia v. Abramson, 493 F. Supp. 2d 80, 48 IDELR ¶ 96 (D.D.C. 2007)
- ruled that IDEA's Child Find responsibility of district where the private school is located does not relieve district of residence of its obligation to conduct an initial evaluation of the student upon parental request (but remanded for determination of whether the parents are entitled to tuition reimbursement)

S Bd. of Educ. v. Johnson, 543 F. Supp. 2d 351, 50 IDELR ¶ 33 (D. Del. 2008)
- hearing officer exceeded IDEA authority by ordering ASL interpreter for parentally placed private school student with hearing impairment

S Harris v. Dist. of Columbia, 561 F. Supp. 2d 63, 50 IDELR ¶ 194 (D.D.C. 2008)
- ruled that FBA was an "educational evaluation" (and thus an IEE) under the IDEA

(*P*) Fuentes v. Bd. of Educ., 540 F.3d 145, 51 IDELR ¶ 4 (2d Cir. 2008), further proceedings, 569 F.3d 46, 52 IDELR ¶ 152 (2d Cir. 2009)
- held that whether noncustodial parent retains the right to participate in educational decisions of his/her child with a disability where the divorce decree grants exclusive custody to the other parent but, as a matter of state law, is silent on the matter of educational decision-making and affirmed the dismissal of the father's FAPE action based on the New York highest court's answer[25] that said parent had no right to make education decisions (as compared with the right to receive education information)

[25] Fuentes v. Bd. of Educ., 879 N.Y.S.2d 818, 52 IDELR ¶ 164 (2009).

(*P*) Disability Law Ctr. of Alaska, Inc. v. Anchorage Sch. Dist., 581 F.3d 936, 53 IDELR ¶ 2 (9th Cir. 2009); Disability Rights Wisconsin, Inc. v. State of Wisconsin Dep't of Pub. Instruction, 463 F.3d 719, 46 IDELR ¶ 122 (7th Cir. 2006); cf. Connecticut Office of Protection & Advocacy for Persons with Disabilities v. Hartford Bd. of Educ., 464 F.3d 229, 46 IDELR ¶ 121 (2d Cir. 2006) (interviews and observations)

- held that advocacy organization may obtain access for certain personally identifiable information about students with disabilities as part of its investigation of alleged violations of IDEA

S Bethlehem Area Sch. Dist. v. Zhou, 976 A. 2d 1284, 53 IDELR ¶ 24 (Pa. Commw. Ct. 2009); see also D.Z. v. Bethlehem Area Sch. Dist., 2 A.3d 712, 54 IDELR ¶ 323 (Pa. Commw. Ct. 2010) (rejecting parent's various due process challenges to IHO's conduct of the hearing based on abuse of discretion/actual prejudice standard)

- ruled that parent is not entitled to a translated transcript of the due process hearing absent binding legal authority (here under the state's regulations for gifted education)

(*P*) Kalbfleisch v. Columbia Cmty. Sch. Dist., 644 F. Supp. 2d 1084, 53 IDELR ¶ 12 (S.D. Ill. 2009), further proceedings, 53 IDELR ¶ 57 (Ill. Cir. Ct. 2009); see also K.D. v. Villa Grove Cmty. Unit Sch. Dist., 936 N.E.2d 690, 55 IDELR ¶ 78 (Ill. Ct. App. 2010)

- after federal court rejected removal, state trial court granted preliminary injunction to child with autism to be accompanied by service dog based on Illinois state law specific to this issue[26]

S Horen v. Bd. of Educ., 655 F. Supp. 2d 794, 53 IDELR ¶ 79 (N.D. Ohio 2009)

- summarily rejected parents' various legal claims (including § 504/ADA) on behalf of student with SLD, including their purported IDEA right to record the IEP meeting

P Compton Unified Sch. Dist. v. Addison, 598 F.3d 1191, 54 IDELR ¶ 71 (9th Cir. 2010) cert. denied, _S.Ct._(2012)

- rejected district's argument that Child Find claims are not cognizable due to the scope of the procedural safeguards and the lack of clear notice in the IDEA

P/S G.J. v. Muscogee Cnty. Sch. Dist., 704 F. Supp. 2d 1299, 54 IDELR ¶ 76 (M.D. Ga. 2010)

- held that parents' various restrictions on the district's requested triennial evaluation amounted to refusal to consent and, ordering the parents to provide consent, ruled that the child would no longer be entitled to services only if the parents elected to refuse the order for consent

S N.D. v. State of Hawaii Dep't of Educ., 600 F.3d 1104, 54 IDELR ¶ 111 (9th Cir. 2010)

- systemwide layoffs that affect students with disabilities and those without disabilities alike are not changes in educational placement and thus are not subject to the IDEA stay-put provision

[26] The newly amended regulations of the ADA have largely resolved the service animal school-access issue in favor of students with disabilities. For a preliminary injunction enforcing this ADA regulation for a student with autism, see C.C. v. Cypress Sch. Dist., 56 IDELR ¶ 295 (C.D. Cal. 2011).

S D.C. v. Klein Indep. Sch. Dist., 711 F. Supp. 2d 793, 54 IDELR ¶ 187 (S.D. Tex. 2010)
- ruled, among other things, that district did not have duty under IDEA to convene IEP team for annual review where the parent had unilaterally placed the child outside the district

P Am. Nurses Ass'n v. O'Connell, 110 Cal. Rptr. 3d 305, 54 IDELR ¶ 259 (Ct. App. 2010), review granted, 116 Cal. Rptr. 3d 194 (2010)
- ruled that state nurse practice act did not allow school personnel who were not licensed nurses to administer insulin to children with diabetes per the child's IEP or § 504 plan—rejecting applicability of federal preemption under IDEA or § 504

S A.P. v. Woodstock Bd. of Educ., 370 F. App'x 202, 55 IDELR ¶ 61 (2d Cir. 2010). But cf. El Paso Indep. Sch. Dist. v. Richard R., 567 F. Supp. 2d 918, 50 IDELR ¶ 256 (W.D. Tex. 2008) (consecutive NCLB test failures plus ineffective § 504 accommodations)
- rejected parent's Child Find claim when district first provided general education interventions (via child study team) prior to evaluation for special education on individualized, not absolute, basis and promptly initiated the evaluation upon the parents' presentation of IEE

S C.W v. Rose Tree Media Sch. Dist., 395 F. App'x 824, 55 IDELR ¶ 123 (3d Cir. 2010)
- ruled that district's delay for more than one year to process parent's due process request in case where the ultimate determination was that the district had provided the child with FAPE, did not justify either tuition reimbursement or compensatory education, which are for the remediation of denials of FAPE and not to punish districts

P Indep. Sch. Dist. No. 12 v. Minnesota Dep't of Educ., 788 N.W.2d 907, 55 IDELR ¶ 140 (Minn. 2010), cert. denied, 131 S. Ct. 1566 (2011)
- ruled that IEP requirement for extracurricular and nonacademic activities, including identification of the appropriate supplementary aids and services necessary, is not limited to those activities needed for FAPE

(*S*) Comb v. Benji's Special Educ. Acad., 745 F. Supp. 2d 755, 55 IDELR ¶ 162 (S.D. Tex. 2010)
- denied preliminary injunction for parents' claim of lack of prior individualized notice for closing of charter special education school—failure to show that change in location (transfer to other schools) constituted change in placement (noncontinuity of IEPs) plus failure to show exception to exhaustion requirement

S Doe v. Todd Cnty. Sch. Dist., 625 F.3d 459, 55 IDELR ¶ 185 (8th Cir. 2010), cert. denied, 132 S. Ct. 367 (2011)
- ruled school board's refusal to hold a hearing regarding disciplinary change in placement of student with disability after parent challenged or revoked her consent to the change did not violate 14th Amendment procedural due process—she should have resorted instead to IDEA IEP and impartial hearing processes

S Linda E. v. Bristol Warren Reg'l Sch. Dist., 758 F. Supp. 75, 56 IDELR ¶ 218 (D.R.I. 2010)
- upheld, in Child Find case, hearing officer's decision that the child with multiple diagnoses relating to her behavior was entitled to therapeutic residential placement and 21 weeks of compensatory education

S Jefferson Cnty. Bd. of Educ. v. S.B., 788 F. Supp. 2d 1347, 56 IDELR ¶ 300 (N.D. Ala. 2011)

- rejected requiring participation in graduation ceremony of student with disability, whom the district had expelled for possessing a gun in school that was not a manifestation of his disability, where the parent did not prove that it was part of his IEP or FAPE

P/S J.P. v. Anchorage Sch. Dist., 260 P.3d 285, 57 IDELR ¶ 169 (Alaska 2011)

- for child ultimately determined to be ineligible (because, although SLD, he did not need special education), upheld IEE reimbursement, based on Child Find theory where district delayed its evaluation and relied on the parent's IEE, but rejected tutoring reimbursement (due to noneligibility)

VI. § 504/ADA ISSUES[27]

S Bercovitch v. Baldwin Sch., 133 F.3d 141, 27 IDELR 357 (1st Cir. 1998)
- refused, based on arbitration remedy in enrollment contract, to enjoin dismissal from private school of student with ADHD for behavior relating to his disability

S Crisp Cnty. Sch. Dist. v. Pheil, 498 S.E.2d 134, 27 IDELR 1033 (Ga. Ct. App. 1998)
- no liability under § 504 for failure to reasonably accommodate headaches and allergies of student who fatally fell changing classes—district did not know she needed accommodation with respect to class changes

P Borough of Palmyra Bd. of Educ. v. F.C., 2 F. Supp. 2d 637, 28 IDELR 12 (D.N.J. 1998)
- granted preliminary injunction for tuition reimbursement for "pure" § 504 student where accommodation plan failed to address impact of ADHD on his written and organizational skills

S A.W. v. Marlborough Co., 25 F. Supp. 2d 27, 29 IDELR 189 (D. Conn. 1998)
- ruled that § 504 regulationss (here, grievance procedure regulation) cannot be the basis of suit and, in any event, that a FAPE violation under § 504 requires bad faith or poor misjudgment

P Jensen v. Reeves, 45 F. Supp. 2d 1265, 30 IDELR 368 (D. Utah 1999)
- district's 10-day suspension of student with ADHD did not violate § 504 where parents had not signed consent for evaluation after receiving IDEA procedural safeguards notice

P/S Axelrod v. Philips Acad., 46 F. Supp. 2d 72, 30 IDELR 516 (D. Mass. 1999), further proceedings, 74 F. Supp. 2d 106, 31 IDELR ¶ 135 (D. Mass. 1999)
- ADHD student whom private residential school had academically dismissed was not "otherwise qualified" under ADA for injunctive relief, but court preserved parents' claim for money damages

S Timothy H. v. Cedar Rapids Sch. Dist., 178 F.3d 968, 30 IDELR 535 (8th Cir. 1999)
- district's failure to provide transportation for student with mobility disabilities in connection with intradistrict transfer program that was based on parental preference did not violate § 504

P Alvarez v. Fountainhead, Inc., 55 F. Supp. 2d 1048, 30 IDELR 584 (N.D. Cal. 1999)
- granted preliminary injunction ordering private (Montessori) preschool to enroll asthmatic child, allow him to have access to his Albuterol asthma inhaler and to arrange for reasonable relevant training of its staff

[27] For a comprehensive source, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) (available from LRP Publications, www.lrp.com).

P/S Washington v. Indiana High Sch. Athletic Ass'n, 181 F.3d 840, 31 IDELR ¶ 6 (7th Cir. 1999); Bingham v. Oregon Sch. Activities Ass'n, 60 F. Supp. 2d 411, 30 IDELR 20 (D. Or. 1999), vacated as moot, 35 IDELR ¶ 219 (9th Cir. 2001)
- majority view that enforcement of interscholastic rule that limited eligibility to eight consecutive semesters, without exceptions for disabled students, violates § 504/ ADA

(*P*) Baird v. Rose, 192 F.3d 462, 31 IDELR ¶ 105 (4th Cir. 1999)
- preserved for trial whether exclusion of student diagnosed with depression from school's show choir constituted discrimination, ruling that the Title VII "motivating factor" standard applied to the ADA rather than the § 504 "solely by reason of" standard for causation

S Doe v. Eagle-Union Cmty. Sch. Corp., 101 F. Supp. 2d 707, 32 IDELR ¶ 117 (S.D. Ind. 2000); cf. Sonkowsky v. Board of Educ., 327 F.3d 675, 39 IDELR ¶ 2 (8th Cir. 2003) (state statute parallel to ADA)
- rejected § 504 suit where plaintiff-student failed to show causal connection between his disability and the decision not to select him for basketball team

S J.D. v. Pawlet Sch. Dist. (supra)
- held that proposed IEP for student determined ineligible under IDEA was a reasonable accommodation under § 504

S Long v. Bd. of Educ., 167 F. Supp. 2d 988, 34 IDELR ¶ 232 (N.D. Ill. 2001)
- rejected restraining order for student dismissed from lacrosse and football teams for disability-related violations of code of conduct

(*P*) Cruz v. Pennsylvania Interscholastic Athletic Ass'n, 157 F. Supp. 2d 485, 34 IDELR ¶ 290 (E.D. Pa. 2001); see also Baisden v. W. Virginia Secondary Sch. Activities Comm'n, 568 S.E.2d 32, 39 IDELR ¶ 67 (W. Va. 2002). But see McFadden v. Grasmick, 485 F. Supp. 2d 642, 34 NDLR ¶ 203 (D. Md. 2007) (wheelchair racers' team points)
- enjoined enforcement of age 19 rule pending development and implementation of a waiver procedure to determine whether requested modification was reasonable, necessary and would fundamentally alter the outcome of the competition (based on PGA Tour, Inc. v. Martin)

(*P*) Weixel v. Bd. of Educ., 287 F.3d 138, 36 IDELR ¶ 152 (2d Cir. 2002)
- preserved for trial whether school officials' actions, including refusal to evaluate child with CFS and fibromyalgia, violated § 504/ADA (and IDEA)

S Molly L. v. Lower Merion Sch. Dist., 194 F. Supp. 2d 422, 36 IDELR ¶ 182 (E.D. Pa. 2002)
- held that district's proposed 19-point § 504 plan for child who was severely asthmatic and had physical sensitivity and motor problems, but did not need special education, provided FAPE utilizing combination of IDEA appropriateness and § 504 reasonable accommodation standards

S N.L. v. Knox Cnty. Pub. Sch. (supra)
- seemed to suggest that a student duly determined ineligible under the IDEA is also ineligible under § 504

(*P*) M.P. v. Indep. Sch. Dist. No. 721, 326 F.3d 975, 38 IDELR ¶ 262 (8th Cir. 2003)
- preserved for trial the parents' § 504 claim that after giving their schizophrenic child a 504 plan rather than an IEP, district officials failed to take appropriate action to protect the child's academic and safety interests in response to peer harassment, which arose from the district's disclosure of his medication information

S Power v. Sch. Bd., 276 F. Supp. 2d 515, 39 IDELR ¶ 214 (E.D. Va. 2003)
- § 504 provides no individual right to sue to enforce its procedural safeguards regulation

(*P*) P.N. v. Greco (supra)
- possible liability of public school official for discrimination and, separately, of private school official for retaliation under § 504 and the ADA

(*P*)/*S* K.M. v. Hyde Park Cent. Sch. Dist., 381 F. Supp. 2d 343, 44 IDELR ¶ 37 (S.D.N.Y. 2005). But see S.S. v. E. Kentucky Univ., 532 F.3d 445, 50 IDELR ¶ 91 (6th Cir. 2008); Werth v. Bd. of Directors of the Pub. Sch., 472 F. Supp. 2d 1113 (E.D. Wis. 2007)
- mixed results on whether district was liable for student-to-student disability harassment

S Alex G. v. Bd. of Trustees, 387 F. Supp. 2d 1119, 44 IDELR ¶ 130 (E.D. Cal. 2005)
- held that district officials' restraint, transfer and filing for Honig injunction of escalating disruptive 3rd grader with autism did not violate § 504 in terms of discrimination against student or retaliation against parents

S Janet G. v. State of Hawaii Dep't of Educ., 410 F. Supp. 2d 958, 45 IDELR ¶ 5 (D. Hawaii 2005)
- rejected tuition reimbursement (under IDEA regulation) for student with dyslexia whom the district had found ineligible for special education

(*P*) Indiana Area Sch. Dist. v. H.H., 428 F. Supp. 2d 361, 45 IDELR ¶ 155 (W.D. Pa. 2006); cf. Breanne C. v. S. York Cnty. Sch. Dist., 665 F. Supp. 2d 504, 53 IDELR ¶ 191 (M.D. Pa. 2009) (money damages available under § 504, not IDEA)[28]
- possible compensatory damages for pain and suffering under § 504/ADA where IDEA claim for compensatory education failed

S Vives v. Fajardo, 472 F.3d 19, 47 IDELR ¶ 1 (1st Cir. 2007); see also Hesling v. Seidenberger, 286 F. App'x 773 (3d Cir. 2008)
- rejected retaliation claim of parent of child with autism, finding lack of requisite connection between her OCR complaints (as compared with concerns with child's health) and the district's filing of child neglect charges

S Lauren W. v. DeFlaminis, 480 F.3d 259, 47 IDELR ¶ 183 (3d Cir. 2007)
- in complicated case with various issues, rejected parents' § 504 retaliation claim that district had required a waiver because they had advocated on behalf of their child

[28] However, in a subsequent ruling (732 F. Supp. 2d 474 (M.D. Pa. 2010)), the court concluded that the compensatory education award under the IDEA sufficed in this case.

S Benedict v. Cent. Catholic High Sch., 511 F. Supp. 2d 854, 48 IDELR ¶ 213 (N.D. Ohio 2007)
- parents failed to show that parochial school's refusal to reenroll former special education (SLD and ADHD) student who had voluntarily withdrawn upon facing expulsion for possession of marijuana on campus was a discriminatory pretext

P Lower Merion Sch. Dist. v. Doe, 931 A.2d 640, 48 IDELR ¶ 255 (Pa. 2007)
- held that § 504 student in private school was entitled to OT from the district, corresponding to IDEA precedent in Veschi, premised on dual enrollment

(*P*) L.M.P. v. Sch. Bd. of Broward Cnty., 516 F. Supp. 2d 1294, 49 IDELR ¶ 14 (S.D. Fla. 2007)
- preserved for trial whether district's alleged policy predetermining segregated placement of triplets with autism violated § 504, including requisite proof of intentional discrimination

(*P*) Mark H. v. LeMahieu, 513 F.3d 922, 49 IDELR ¶ 91 (9th Cir. 2008), further proceedings sub nom. Mark H. v. Hamamoto, 620 F.3d 1090, 55 IDELR ¶ 31 (9th Cir. 2010); cf. Wiles v. Dep't of Educ., State of Hawaii, 555 F. Supp. 2d 1143, 50 IDELR ¶ 64 (D. Hawaii 2008) (alleged violation of § 504 legislation, not its regulations, suffices)[29]; D.L. v. Waukee Cmty. Sch. Dist., 578 F. Supp. 2d 1178, 51 IDELR ¶ 67 (S.D. Iowa 2008) (money damages claim under § 504 in wake of successful IDEA claim for compensatory education)
- held that § 504 provides a money damages remedy for failure of a district to provide FAPE to special education students (here two children with autism, for which the district spends approximately $250,000 per year as a result of losing the due process hearing) if they prove: 1) failure to provide "meaningful access" (i.e., reasonable accommodation/commensurate opportunity); and 2) deliberate indifference on the part of the school authorities

(*P*) M.G. v. Crisfield, 547 F. Supp. 2d 399 49 IDELR ¶ 217 (D.N.J. 2008)
- denied dismissal of claim that conditioning return of student with disability from suspension on the parents' consent for special education services—possible violation of § 504 "regarded as" prong

(P)/S A.P. v. Anoka-Hennepin Sch. Dist. No. 1, 538 F. Supp. 2d 1125, 49 IDELR ¶ 245 (D. Minn. 2008)
- summarily denied parents claim that district's refusal to train staff members to administer a diabetic child's glucagon injections violated § 504/ADA, but preserved for trial whether its refusal to assist the child with his blood testing and insulin pump operation violated § 504/ADA—reasonable accommodation and deliberate indifference issues

S Robinson v. Dist. of Columbia, 535 F. Supp. 2d 38, 49 IDELR ¶ 252 (D.D.C. 2008); see also Williams v. Dist. of Columbia, 771 F. Supp. 2d 29, 56 IDELR ¶ 164 (D.D.C. 2011)
- alleged failure to comply with FAPE settlement did not rise to § 504 violation in the absence of bad faith or gross misjudgment

[29] However, the court ultimately upheld the jury's verdict in favor of the school authorities on both the FAPE/accessibility and retaliations claims. Wiles v. Dept. of Educ., 593 F. Supp. 2d 1176, 51 IDELR ¶ 212 (D. Hawaii 2008.)

(*P*) M.M.R.-Z. v. Commonwealth of Puerto Rico, 528 F.3d 9, 50 IDELR ¶ 61 (1st Cir. 2008)
- preserved for trial retaliation claim of parents of a child with cerebral palsy

(*P*) Alston v. Dist. of Columbia, 561 F. Supp. 2d 29, 50 IDELR ¶ 152 (D.D.C. 2008)
- ruled contrary to some jurisdictions (e.g., 4th Circuit) that individual school officials could be personally liable for retaliation under § 504/ADA

(P)/S Centennial Sch. Dist. v. Phil L., 559 F. Supp. 2d 634, 50 IDELR ¶ 153 (E.D. Pa. 2008)
- seemed to rule that § 504 requires procedural safeguards, including an impartial hearing, but not a manifestation determination

(*P*) D.G. v. Somerset Hills Sch. Dist., 559 F. Supp. 2d 484, 50 IDELR ¶ 70 (D.N.J. 2008)
- ruled, in Child Find case, that parents' stated claim for money damages under § 504, although not under IDEA

S M.Y. v. Special Sch. Dist. No. 1, 544 F.3d 885, 51 IDELR ¶ 1 (8th Cir. 2008)
- although IDEA exhaustion requirement did not apply to parent's liability claim, district's refusal to provide transportation to and from summer school did not deny FAPE to child with a disability where the IEP showed child was not entitled to ESY

(P)/S Derrick F. v. Red Lion Area Sch. Dist., 568 F. Supp. 2d 282, 51 IDELR ¶ 120 (M.D. Pa. 2008)
- rejected § 504 retaliation claim, but postponed judgment on intertwined IDEA (FAPE) and § 504 (discrimination) lack of implementation claims

(*P*) Spann v. Word of Faith Christian Ctr. Church, 559 F. Supp. 2d 759, 51 IDELR ¶ 186 (S.D. Miss. 2008)
- church preschool program was subject to § 504 based on parents' use of federally funded day care vouchers for their son's tuition

(*P*)/*S* S.L.-M. v. Dieringer Sch. Dist. No. 343, 614 F. Supp. 2d 1152, 50 IDELR ¶ 97 (W.D. Wash. 2008)
- preserved for trial: 1) whether student with hypospadias was eligible under § 504; and, if so, 2) which accommodations were warranted (via interactive process); 3) whether the asserted § 504 regulations were valid basis for damages claim and, if so, whether the district officials had been deliberately indifferent; and 4) only one of three retaliation claims

S Miller v. Bd. of Educ., 565 F.3d 1232, 52 IDELR ¶ 61 (10th Cir. 2009); see also Ellenberg v. New Mexico Mil. Inst., 572 F.3d 815, 52 IDELR ¶ 181 (10th Cir. 2009), cert. denied, 130 S. Ct. 1016 (2009)
- ruled that violation of IDEA is not necessarily § 504 violation, instead additionally requiring proof of eligibility and discrimination

S P.P. v. W. Chester Area Sch. Dist. (supra)
- ruled that statute of limitations under § 504 is the same as under IDEA, i.e., two years

(*P*) Franchi v. New Hampton Sch., 656 F. Supp. 2d 252 (D.N.H. 2009)
- rejected dismissing student's ADA suit against private school that allegedly expelled student for an eating disorder, applying the ADAAA's liberalizing rules of construction and preserving for trial whether her disorder "substantially limited" the major life activity of eating

S Torrence v. Dist. of Columbia, 669 F. Supp. 2d 68, 53 IDELR ¶ 223 (D.D.C. 2009)
- rejected claim under § 504 that district did not conduct timely evaluation of IDEA-covered child due to programmatic failure or discrimination beyond denial of FAPE

(P)/S United States v. Nobel Learning Communities, Inc., 676 F. Supp. 2d 379 (E.D. Pa. 2009)
- dismissed ADA pattern or practice claims against private charter school operator with regard to its daycare, elementary and secondary programs, but not with regard to its preschool programs because 11 of the 12 plaintiff children with disabilities had been "disenrolled" or denied admission at the preschool level, but only one at the other levels—also dismissed parents' associated discrimination claim because the association between the two entities was only indirect

S Doe v. Wells-Ogunquit Cmty. Sch. Dist., 698 F. Supp. 2d 219, 54 IDELR ¶ 120 (D. Me. 2010)
- dismissed § 504 retaliation claim that mirrored the parents' IDEA FAPE claim

(*P*) Celeste v. E. Meadow Union Free Sch. Dist., 373 F. App'x 85, 54 IDELR ¶ 142 (2d Cir. 2010)
- upheld jury verdict under the ADA for district's denial of meaningful facilities access to student with cerebral palsy, but vacated its damages award for retrial due to excessiveness

S K.R. v. Sch. Dist. of Philadelphia, 373 F. App'x 204, 54 IDELR ¶ 144 (3d Cir. 2010)
- upheld jury verdict in favor of district under § 504/ADA when student with autism challenged the behavioral and social support services and peer harassment

(*P*) Bishop v. Children's Ctr. for Developmental Enrichment, 618 F.3d 533, 55 IDELR ¶ 32 (6th Cir. 2010)
- borrowed Ohio's minority tolling statute to apply § 504 limitations period for child with autism

S J.D.P. v. Cherokee Cnty. Sch. Dist., 735 F. Supp. 2d 1348, 55 IDELR ¶ 44 (N.D. Ill. 2010)
- rejected § 504 failure-to-train money damages claim on behalf of child with autism and other disabilities (who had IEP plus, for after-school program, § 504 plan)—deliberate indifference standard

(*P*) Taylor v. Altoona Area Sch. Dist., 737 F. Supp. 2d 474, 55 IDELR ¶ 65 (W.D. Pa. 2010)
- while rejecting liability under IDEA Child Find and § 1983 constitutional claims, preserved for trial § 504/ADA (and § 1983 due process) claims on behalf of child with asthma who died in school allegedly due to refusal to provide him with reasonable accommodation

(*P*) D.R. v. Antelope Valley Union High Sch. Dist., 746 F. Supp. 2d 1132, 55 IDELR ¶ 163 (C.D. Cal. 2010)
- granted preliminary injunction to high school student with physical disabilities to have an elevator key (while also concluding that she did not qualify under the IDEA—disagreeing with Yankton regarding the need for special education)

S R.K. v Bd. of Educ., 755 F. Supp. 2d 800, 55 IDELR ¶ 247 (E.D. Ky. 2010)
- ruled that offer to provide insulin pump monitoring in another district school sufficed under § 504/ADA rather than hiring nurse in neighborhood school for kindergarten child with Type I diabetes[30]

S Brown v. Dist. 299-Chicago Pub. Sch., 762 F. Supp. 2d 1076, 55 IDELR ¶ 283 (N.D. Ill. 2010)
- ruled that even if the failing grades of a high school student with SLD showed denial of access to education, the parent failed to provide evidence that they were attributable to the alleged denial of FAPE (via nonimplementation)

(*P*) Ms. H. v. Montgomery Cnty. Bd. of Educ., 784 F. Supp. 2d 1247, 56 IDELR ¶ 268 (M.D. Ala. 2011)
- preserved for trial whether district's purported failure to evaluate and update student's 504 plan constituted deliberate indifference, which is the standard for money damages under § 504 in the Eleventh Circuit

(*P*)/*S* Centennial Sch. Dist. v. Phil L., 799 F. Supp. 2d 473, 56 IDELR ¶ 289 (E.D. Pa. 2011)
- ruled that student with ADHD was, pre-ADAAA and contrary to the district's evaluation, eligible under § 504 before, but not after, taking medication and that compensatory education was available for this period if the parents' proved that the lack of a § 504 plan, despite informal accommodations, constituted a denial of FAPE under § 504

S Chambers v. Sch. Dist., __ F. Supp. 2d __, 57 IDELR ¶ 216 (E.D. Pa. 2011)
- ruled that intentional discrimination (i.e., deliberate indifference) is required for money damages—distinct from other remedies—under § 504 or the ADA

[30] The court subsequently denied the parents' motion for relief from the judgment, concluding that the new evidence was irrelevant. R.K. v. Bd. of Educ., 56 IDELR ¶ 259 (E.D. Ky. 2011).