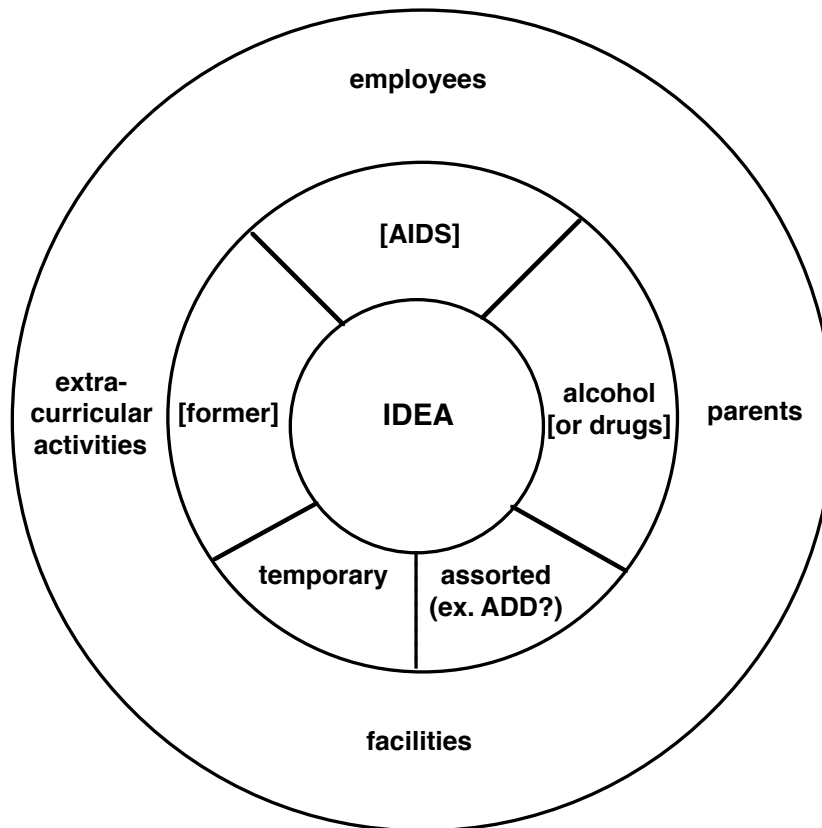


# KEY COURT DECISIONS IN 2022–23 UNDER THE IDEA AND § 504/A.D.A.<sup>1</sup>

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## Notes:

- **P** = Parent won; **S** = School district won; ( ) = Inconclusive
- supra = cross reference to earlier full citation
- Cases from Wisconsin or the Seventh Circuit are in **bold font**, and those in smaller, italicized font are not officially published.
- Repeating or emerging topics are highlighted in yellow.
- Decisions for particular attention are in shaded in blue-green.
- The acronyms are listed in a glossary on the last page of this document

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<sup>1</sup>A long version of the Zirkel National Update, which extends back to 1998, is available as a free download at [perryzirkel.com](http://perryzirkel.com). The coverage of both this document and the long-term version is limited to officially published decisions (and those in the Federal Appendix).

**I. IDENTIFICATION (INCLUDING CHILD FIND)**

- S** Crofts v. Issaquah Sch. Dist. No. 411, 22 F.4th 1048, 80 IDELR ¶ 61 (9th Cir. 2022)
- concluded that initial evaluation determining SLD was appropriate even though it did not specifically instead target **dyslexia**
- S** J.M. v. Summit City Bd. of Educ., 39 F.4th 126, 81 IDELR ¶ 91 (3d Cir. 2022)
- ruled that district did not violate **child find** for SLD, autism, or OHI (ADHD) due to no reason to suspect need for special education—proactive district interventions, including RTI, with due consideration of private diagnoses
- S** Minnetonka Pub. Schs. v. M.L.K., 42 F.4th 847, 81 IDELR ¶ 123 (8th Cir. 2022)
- ruled that reevaluation’s failure to identify student’s **dyslexia** and ADHD in addition to his previously identified autism classification did not amount to denial of FAPE in this case
- S** D.T. v. Cherry Creek Sch. Dist. No. 5, 55 F.4th 1268, 82 IDELR ¶ 78 (10th Cir. 2022)
- ruled that district did not violate **child find** for 11<sup>th</sup> grader who threatened to shoot up the school, whereupon district conducted evaluation and determined that he was eligible as ED – district successfully provided 504 plan and other general ed interventions per state law, and state law also specified requirement for of symptoms in 2 settings, including school, and the student’s previous problems were almost entirely at home, including culminating brief therapeutic hospitalization
- S** Phillips v. Banks, \_\_\_ F. Supp. 3d \_\_\_, 82 IDELR ¶ 178 (S.D.N.Y. 2023)
- ruled that district’s evaluation of 20-year-old with multiple disabilities relied on sufficient multiple sources of clinical information regardless of whether the student also qualified as TBI
- S** Ja. B. v. Wilson Cnty. Bd. of Educ., 61 F.4th 494, 82 IDELR ¶ 191 (6th Cir. 2023)
- ruled that district did not violate **child find** for middle school student who moved from another state, had escalating behavior problems during 4-month period, and received 504 plan and RTI services before and after parents disenrolled him (tuition reimbursement case)
- S** Miller v. Charlotte-Mecklenburg Schs. Bd. of Educ., 64 F.4th 569, 83 IDELR ¶ 1 (4th Cir. 2023)
- upheld district’s evaluation that child was not eligible under the classification for autism and ruled that the 20-day delay in completing it was a procedural violation that did not result in denial of FAPE
- S** B.D. v. Eldred Cent. Sch. Dist., \_\_\_ F. Supp. 3d \_\_\_, 83 IDELR ¶ 31 (S.D.N.Y. 2023)
- ruled that eighth grader’s eligibility classification as OHI did not amount to denial of FAPE, despite his undisputed autism, because his IEP took into account his individualized needs and would not have changed with the asserted reclassification

## II. APPROPRIATE EDUCATION (INCLUDING ESY)<sup>2</sup>

- S** Crofts v. Issaquah Sch. Dist. No. 411 (supra)
- upheld substantive appropriateness of IEP for second grader with **dyslexia** based on the child's progress with the multisensory reading program even though it was not specifically the Orton-Gillingham **methodology** that the parent requested
- S** Lamar Consol. Indep. Sch. Dist. v. J.T., 577 F. Supp. 3d 599, 80 IDELR ¶ 73 (S.D. Tex. 2021)
- ruled that district **failed to implement** the IEP, including the BIP, but it engaged in remedial efforts and, more importantly, met the **Andrew F.** standard for FAPE for the proper measuring frame of a year, not a semester
- S** G.D. v. Swampscott Pub. Schs., 27 F.4th 1, 80 IDELR ¶ 149 (1st Cir. 2022)
- upheld proposed IEP, which moved second grader with severe **dyslexia** from partial inclusion placement to substantially separate language-based classroom based on slow gains, as meeting **Andrew F.** individual-circumstances standard, including the LRE preference [tuition reimbursement case]
- S/(P)** C.M. v. Rutherford Cnty. Schs., 595 F. Supp. 3d 630, 80 IDELR ¶ 239 (M.D. Tenn. 2022)
- rejected **predetermination** claim on behalf of high school student with **dyslexia** but postponed substantive FAPE ruling for his IEP pending mediation
- S** G.A. v. Williamson Cnty. Bd. of Educ., 594 F. Supp. 3d 979, 80 IDELR ¶ 255 (M.D. Tenn. 2022)
- rejected parent's various nuanced **procedural claims, including predetermination**, and supposedly substantive claims, including goals and counseling, for student with **autism** and ED under **Andrew F.** [tuition reimbursement case]
- S** Minnetonka Pub. Schs. v. M.L.K. (supra)
- IEP for student with autism met **Andrew F.** standard, including for his reading and attentional needs despite not identifying him with diagnoses of **dyslexia** and ADHD

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<sup>2</sup> 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2):

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit.

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

- P* Falmouth Sch. Dep't v. Doe, 44 F.4th 23, 81 IDELR ¶ 151 (1st Cir. 2022)
- upheld ruling that two of district's IEPs for complex child with **dyslexia** and ADHD did not meet the **Andrew F.** standard by failing to provide reading program specially designed to address the child's specific orthographic processing deficit [tuition reimbursement case]
- P* Doe v. Newton Pub. Schs., 48 F.4th 42, 81 IDELR ¶ 211 (1st Cir. 2022)
- upheld rulings that (a) district's first proposed IEP, which was 80% in general education, was not sufficient in light of the severe mental health needs and very recent crisis of high school student with **autism** but (b) the next two IEPs, which were for private day placement in grade 12, were sufficiently therapeutic except they did not take into consideration the disruptive effect of changing the child from his residential placement [tuition reimbursement case]
- S* A.M. v. Wallingford-Swarthmore Sch. Dist., 629 F. Supp. 3d 285, 81 IDELR ¶ 246 (E.D. Pa. 2022)
- ruled that proposed IEP for ninth grader with SLD (writing) was "appropriately ambitious" and that **procedural violations** (assistive technology evaluation and transition goals) did not result in loss to the student or the parents [tuition reimbursement case]
- S* AAA v. Clark Cnty. Sch. Dist., \_\_\_ F. Supp. 3d \_\_\_, 82 IDELR ¶ 94 (D. Nev. 2022)
- ruled that even if the 122-day delay after IEE in revising IEP of student with hearing impairment was a **procedural violation**, it did not result in requisite loss to the student or parents
- S* D.O. v. Escondido Union Sch. Dist., 59 F.4th 394, 82 IDELR ¶ 125 (9th Cir. 2023)
- ruled that district's 4-month delay in assessing student for reasonably suspected additional classification of **autism** was not a **procedural violation** in the circumstances of this case and, even if it were, did not result in a substantive denial of FAPE
- P/S* M.G. v. McKnight, \_\_\_ F. Supp. 3d \_\_\_, 82 IDELR ¶ 128 (D. Md. 2023)
- upheld ALJ ruling the district's proposed IEP for high school student with ED, which was for an in-district social-emotional program that included general education classes, was FAPE in the LRE under **Andrew F.**, but concluded that the **procedural violation** of the three-month delay in developing the proposed IEP resulted in a substantive loss to the student in the absence of sufficient proof that the parents would not have moved him back at the mid-year time the IEP was due [tuition reimbursement case]
- S* Phillips v. Banks (*supra*)
- upheld appropriateness of unchanged IEP goals for 20-year-old with multiple disabilities [tuition reimbursement case]

- S** R.S. v. Lower Merion Sch. Dist., \_\_ F. Supp. 3d \_\_, 82 IDELR ¶ 194 (E.D. Pa. 2023)
- ruled that district’s proposed therapeutic private placement of disruptive 12<sup>th</sup> grader with ED (bipolar disorder) was FAPE (**Andrew F.**) in the LRE [tuition reimbursement case]
- S** L.J.B. v. N. Rockland Cent. Sch. Dist., \_\_ F. Supp. 3d \_\_, 83 IDELR ¶ 13 (S.D.N.Y. 2023)
- ruled that IEP for continued placement in private school of student with multiple disabilities provided FAPE, including its provision for assistive technology and its lack of an FBA
- P** District of Columbia Int’l Charter Sch. v. Lemus, \_\_ F. Supp. 3d \_\_, 83 IDELR ¶ 19 (D.D.C. 2023)
- ruled that two successive IEPs for seventh grader with ID, including various amendments, did not meet did not meet **Andrew F.** standard [compensatory education case]
- P** Pierre-Noel v. Bridges Pub. Charter Sch., \_\_ F. Supp. 3d \_\_ (D.D.C. 2023)
- ruled that district’s failure to amend the IEP to provide an in-person aide for first grader who was unable to attend school due to his physical disabilities after having ample notice of the situation amounted to denial of FAPE
- S** B.D. v. Eldred Cent. Sch. Dist. (*supra*)
- ruled that proposed IEP for eighth-grader with OHI (autism, ADHD, and chronic kidney disease) took reasonable steps, via **safety plan** (despite lack of formal IEP meeting and amendment), to address bullying [tuition reimbursement case]
- P** Steckelberg v. Chamberlain Sch. Dist., 77 F.4th 1167, 83 IDELR ¶ \_\_ (8th Cir. 2023)
- ruled, briefly, that district’s failure to consider private BCBA’s BIP of h.s. student with severe neuropsychiatric conditions and its change in his placement to home instruction w/o adjusted and adequate academic support violated **Andrew F.** [tuition reimbursement case]
- S** M.B. v. Fairfax Cnty. Sch. Bd., \_\_ F. Supp. 3d \_\_, 83 IDELR ¶ \_\_ (E.D. Va. 2023)
- ruled that IEP for eighth grader with ADHD, which provided full-time special education services, met the **Andrew F.** standard, including proactive behavior steps and supports [tuition reimbursement case]

### III. MAINSTREAMING/LRE

- S** Rabel v. New Glarus Sch. Dist., 79 IDELR ¶ 71 (W.D. Wis. 2021)<sup>3</sup>
- upheld IHO decision that the continued placement for the child with **autism** in virtual instruction from the private therapeutic school (due to the pandemic) for the majority of the school day and the behavioral support in the child's home for the other part of the day met the **Seventh Circuit's benefit standard for LRE** rather than the parents' preference for virtual instruction from the school district, for which the child's peers had opted for in-person instruction under the district's return-to-school policy for the 2021–22 school year
- S** H.W. v. Comal Indep. Sch. Dist., 32 F.4th 454, 81 IDELR ¶ 2 (5th Cir. 2022)
- ruled that blended program for third grader with ID and other disabilities, as the next step in a progression of placements that started primarily in general education and successively included increased inclusion support and segregated component, met the Daniel R.R. multi-factor test and, on a holistic approach contrary to L.H., the embedded **Andrew F.** standard
- S** J.P. v. Belton Sch. Dist. No. 124, 40 F.4th 887, 81 IDELR 124 (8th Cir. 2022)
- upheld change in placement for student with multiple disabilities from completely segregated class in the district to nearby state school for severe disabilities based on comparable benefits LRE analysis – “the IDEA does not ... sacrific[e] a student's access to a FAPE to have him in a more integrated setting”
- P/S** D.R. v. Redondo Beach Unified Sch. Dist., 56 F.4th 636, 82 IDELR ¶ 77 (9th Cir. 2022)
- ruled in favor of inclusive placement (75% rather than district's proposed 44%) for fifth grader with **autism** based on all Rachel H. factors favoring it – the first, academic factor is the most important but its criterion is progress toward IEP goals rather than grade level performance for students whose disabilities preclude it (citing **Andrew F.** and L.H.), and this child's progress being attributable to his 1:1 aide along with his receiving substantial modifications of the general ed curriculum are irrelevant – but parents were not entitled to reimbursement because they should have relied on stay-put rather than unilaterally arranging for private services
- P** Knox Cnty. v. M.Q., 62 F.4th 978, 82 IDELR ¶ 214 (6th Cir. 2023)
- ruled that present year's general education teacher on IEP team at the meeting on last day of the school year was not a procedural violation, but the placement of the kindergarten child with **autism** largely in a self-contained class was not the LRE based on the Sixth Circuit's approach – LRE upon two competing placements both providing substantive FAPE

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<sup>3</sup> In a subsequent decision for these parties, the court summarily rejected the parents' Sec. 1983 claim based on the Fourth Amendment for 47 alleged restraints of the child per the IEP's BIP, ruling that they did not show the requisite policy/custom and causation for district liability. Rabel v. New Glarus Sch. Dist., 80 IDELR ¶ 130 (W.D. Wis. 2022).

#### IV. RELATED SERVICES

- P/S* Elmira City Sch. Dist. v. N.Y. State Educ. Dep't, 166 N.Y.S.3d 710, 80 IDELR ¶ 294 (App. Div. 2022)
- ruled that district denied FAPE for the period that it was unable to find a 1:1 registered nurse required by the child's IEP (but not for the prior period when the parties were not able to finalize this IEP provision) and that the district's proposal to provide residential placement for this purpose was overly restrictive, entitling the child to compensatory education
- S* Pierre-Noel v. Bridges Pub. Charter Sch. (*supra*)
- ruled that the entitlement to transportation on IEP of first grader who was medically fragile, nonverbal, and wheelchair-bound does not extend to travel from the school bus to the door of his apartment building or up the stairs to his apartment as either a related or supportive service under the IDEA

#### V. DISCIPLINE ISSUES

- (P)/S* K.C. v. Reg'l Sch. Unit 73, 616 F. Supp. 3d 63, 81 IDELR ¶ 93 (D. Me. 2022)
- ruled that district's (a) written notice w/o oral explanation of parent's consent rights for change in placement, (b) use of IAES for supposed special-circumstances seriously disruptive conduct that was manifestation of multiple behavioral disabilities of fifth grader, and (c) out-of-district placement proposal were not violations of IDEA, but the district's unilateral change of the IEP's first determination of the IAES did violate IDEA and, based on the undisputed additional denials of FAPE, remand to the IHO for an appropriate compensatory education award
- P* Petition of State, 288 A.3d 431, 82 IDELR ¶ 96 (N.H. 2022)
- ruled that state law that requires district to conduct a manifestation determination review before filing a juvenile delinquency petition incorporates this IDEA procedure but not its 10-day exemption, thus applying to this child even though it was in the wake of a short-duration suspension

#### VI. ATTORNEYS' FEES

- S* Pocono Mountain Sch. Dist. v. T.D., 597 F. Supp. 3d 709, 80 IDELR ¶ 280 (M.D. Pa. 2022)<sup>4</sup>
- awarded parents—based on reasonable rates, partial success, excessive entries—\$127k rather than the \$627k requested for attorneys' fees
- P* Bellflower Unified Sch. Dist. v. Arnold, 586 F. Supp. 3d 1010 (C.D. Cal. 2022)
- awarded full requested amount of \$76k as reasonable and adequately documented

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<sup>4</sup> In an unpublished decision, the Third Circuit vacated and remanded this award as too low in several respects, including parents' degree of success. T.D. v. Pocono Mountain Sch. Dist., 83 IDELR ¶ 30 (3d Cir. 2023).

- P/S** H.C. v. N.Y.C. Dep't of Educ., 71 F.4th 120, 83 IDELR ¶ \_\_ (2d Cir. 2023)
- upheld 50% reduction in lodestar for parents' attorneys' fees, concluding that the complexity of the case may factor into whether the rate and also the hours were reasonable and that the district's unreasonable protraction of the litigation does not prevent the reduction of unreasonable rates, but ruled that the court may reduce, but not eliminate, travel expense with attorneys' fees
- S** J.S. v. N.Y.S. Dep't of Corr. & Cmty. Supervision, 76 F.4th 32, 83 IDELR ¶ \_\_ (2d Cir. 2023)
- ruled that student (with requisite status under IDEA) who successfully sues on his own behalf qualifies as prevailing party
- (P)** A.B. v. Brownsburg Cmty. Sch. Corp., \_\_ F.4th \_\_, 83 IDELR ¶ \_\_ (7th Cir. 2023)
- ruled that the parents qualified for prevailing party status in the wake of IHO order, in conjunction with prehearing dismissal after district's draft stipulation, that child was eligible under the IDEA and that the IEP team should meet to develop an IEP

## VII. REMEDIES

### A. TUITION REIMBURSEMENT

- S** R.G. v. N.Y.C. Dep't of Educ., 585 F. Supp. 3d 524, 81 IDELR ¶ 84 (S.D.N.Y. 2022)
- upheld, based on balance of the equities, denial of the two months of tuition reimbursement at issue
- P** Falmouth Sch. Dep't v. Doe (supra)
- upheld full reimbursement based on the unilateral placement's provision of some element of the special education services missing from the public alternative so that the placement is reasonably calculated to enable the child to receive educational benefit regardless of LRE
- P/S** Doe v. Newton Pub. Schs. (supra)
- upheld reimbursement award for the three years of tuition without the travel and boarding costs of the unilateral residential placement, because student needed therapeutic but not residential placement
- (P)** A.C. v. Henrico Cnty. Bd. of Educ., 610 F. Supp. 3d 857, 82 IDELR ¶ 3 (E.D. Va. 2022); Navarro-Villanueva v. Puerto Rico, 628 F. Supp. 3d 326, 81 IDELR ¶ 253 (D.P.R. 2022)
- denied dismissal of parent's appeal of IHO decision that found denial of FAPE but rejected tuition reimbursement at appropriateness step for private school – not aggrieved party



***P/S*** M.G. v. McKnight (*supra*)

- ruled that the unilateral residential placement did not meet the Fourth Circuit’s **necessary, intertwined test** parents but that parents were entitled to five-months (one semester) of reimbursement of education and clinical portion of residential placement cost based on its disqualified part and the insensitivity of the district’s proposed April return

***S*** R.S. v. Lower Merion Sch. Dist. (*supra*)

- ruled that the parent’s 1:1 private placement was not appropriate due to its lack of sufficient **emotional**, as compared to **academic**, supports and services

***P*** Steckelberg v. Chamberlain Sch. Dist. (*supra*)

- ruled that the out-of-state school, which focused on **behavioral** issues, was appropriate for the student with severe psychiatric conditions in light of his evident **academic** progress—and the travel costs related to his placement were presumptively reimbursable

***S*** M.B. v. Fairfax Cnty. Sch. Bd. (*supra*)

- ruled, in the alternative or as dicta, that the unilateral placement was not appropriate, including it having a more restrictive approach than necessary for this student

**B. COMPENSATORY EDUCATION<sup>5</sup>*****P/S*** District of Columbia Int’l Charter Sch. v. Lemus (*supra*)

- rev’d and remanded compensatory education award for not meeting qualitative and **nondelegation** standards, although upholding order for **IEE** to help determine the appropriate amount

**C. OTHER REMEDIES (INCLUDING IEE REIMBURSEMENT)<sup>6</sup>*****(P)*** A.C. v. Henrico Cnty. Sch. Bd., 610 F. Supp. 3d 857, 81 IDELR ¶ 98 (E.D. Va. 2022)

- denied dismissal of claim of student with various disabilities based on IHO’s denial of reimbursement or other relief upon finding substantive denial of FAPE<sup>7</sup>

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<sup>5</sup> For the latest treatment, see Perry A. Zirkel, “Compensatory Education under the IDEA: The Latest Annotated Update of the Law,” West’s Education Law Reporter, 2020, v. 376, pp. 850–863. For the difference between the quantitative and qualitative approaches, see, e.g., Perry A. Zirkel, “The Competing Approaching for Calculating Compensatory Education under the IDEA: The Next Update,” West’s Education Law Reporter, 2022, v. 405, pp. 621–633. [available at [perryzirkel.com](http://perryzirkel.com)].

<sup>6</sup> For a useful checklist of IHO analysis of IEEs at public expense, see Perry A. Zirkel, “Independent Educational Evaluations at Public Expense: The Next Update,” West’s Education Law Reporter, 2022, v. 402, pp. 23–40. [available at [perryzirkel.com](http://perryzirkel.com)].

<sup>7</sup> In a subsequent, unpublished decision, the court declined to dismiss the district’s counterclaim that challenged the IHO’s adverse ruling regarding FAPE. A.C. v. Henrico Cnty. Sch. Dist., 82 IDELR ¶ 3 (E.D. Va. 2022).

- (P) C.B. v. Bd. of Educ. of Chi. Dist. 299, 624 F. Supp. 3d 898, 81 IDELR ¶ 184 (N.D. Ill. 2022)
- declined dismissal of § 1983 IDEA claim for **money damages** against district and individual school officials based on uncertain effect of 7th Circuit’s 2015 decision in Stanek
- S Bouabid v. Charlotte-Mecklenburg Schs. Bd. of Educ., 62 F.4th 851, 82 IDELR ¶ 216 (4th Cir. 2023)
- upheld IHO’s prospective order for LRE violation as **nondelegation** – “[The IHO] instead precisely identified where [student’s] IEP had fallen short and instructed [the district] as to how to properly cure the deficiency”

### VIII. OTHER IDEA ISSUES

- S Bradley v. Jefferson Cnty. Pub. Schs., 598 F. Supp. 3d 552, 80 IDELR ¶ 275 (W.D. Ky. 2022)
- ruled that IDEA obligation for FAPE for gifted high school student with OHI did not extend to postsecondary education under state dual enrollment statute
- (S) Brach v. Newsom, 38 F.4th 6, 81 IDELR ¶ 62 (9th Cir. 2022), cert. denied, 143 S. Ct. 854 (2023)
- rejected IDEA, § 504, and 14<sup>th</sup> Amendment challenges to statewide **COVID-19** change to distance learning due to mootness – dramatically changed conditions
- S Special Educ. Complaint 22-027C, 981 N.W.2d 201, 82 IDELR ¶ 11 (Minn. Ct. App. 2022)
- reversed state complaint decision that interpreted the requirement for districts to “provide” all their eligible students with special education and related services as meaning to “receive” these services, ruling instead the district fulfilled its obligation by making FAPE available to parents, who refused to send their child back to school upon resumption of in-person instruction with a mask and refused the various district proposals for instruction in the home
- (P) Perez v. Sturgis Pub. Schs., 143 S. Ct. 859, 82 IDELR ¶ 213 (2023)
- held that exhaustion under the IDEA does not apply to claims under another federal statute (e.g., § 504) that, premised on denial of FAPE, seek money damages (or any other remedy not available under the IDEA)
- (P) Q.T. v. Pottsgrove Sch. Dist., 70 F.4th 663, 83 IDELR ¶ \_\_ (3d Cir. 2023)
- reversed IHO’s dismissal for lack of standing, ruling instead that cousin who assumed all responsibility for school requirements and provided both home and support not just during the school year was acting in place of the natural **parent**, thus qualifying under one of the multiple options in the statutory definition of the statutes and triggering Chevron deference for the narrower IDEA regulation

- S** Davis v. District of Columbia, \_\_\_ F.4th \_\_\_, 83 IDELR ¶ \_\_ (D.C. Cir. 2023)
- ruled that **stay-put** is not applicable where the reason for unavailability is beyond the school district's control, here being the residential placement discharging the student because it was no longer an appropriate placement and the 19 other residential placements that the district diligently sought all denying admission to the student<sup>8</sup>
- S** Roe v. Healey, 78 F.4th 11, 83 IDELR ¶ \_\_ (1st Cir. 2023)
- upheld dismissal of multi-pronged (including IDEA) **J.T.**-type challenge to **COVID-19 closure** of schools based on standing, mootness, and exhaustion<sup>9</sup>
- (P)** We the Patriots USA, Inc. v. Conn. Off. of Early Childhood Dev., 76 F.4th 130, 83 IDELR ¶ \_\_ (2d Cir. 2023)
- vacated and remanded dismissal of IDEA claim against school district in the wake of state law repeal of religious exemption for vaccination requirement to attend public school

## IX. SECTION 504/ADA ISSUES

- S/(P)** ARC of Iowa v. Reynolds, 24 F.4th 1162, 80 IDELR ¶ 91 (8th Cir. 2022), vacated as moot, 33 F.4th 1042 (8th Cir. 2022), further proceedings, 638 F. Supp. 3d 1006, 82 IDELR ¶ 28 (D. Iowa 2022)
- modifying preliminary injunction, based on § 504/ADA, against governor's order prohibiting school districts from mandating **masks during COVID-19**, limiting the relief to the schools and districts attended by the plaintiff students – vacated due to dramatically changed conditions – granted summary judgment for plaintiffs, ordering districts to permit universal masking as § 504/ADA reasonable accommodation/modification based on exception in governor's order
- S** Disability Rights S.C. v. McMaster, 24 F.4th 893, 80 IDELR ¶ 92 (4th Cir. 2022)
- vacating preliminary injunction, based on § 504/ADA, against governor's order prohibiting school districts from mandating **masks during COVID-19** – lack of standing (including conclusion that order allows for district exceptions)
- P** M.F. v. N.Y.C. Dep't of Educ., 582 F. Supp. 3d 49, 80 IDELR ¶ 96 (S.D.N.Y. 2022)
- ruled that school district's limited provisions for medication to students with diabetes on field trips and school buses were not a **reasonable accommodation** under § 504/ADA

<sup>8</sup> For a comprehensive canvassing of stay-put, see Perry Zirkel, "Stay-Put under the IDEA: The Latest Update," West's Education Law Reporter, 2022, v. 404, pp. 398–414. [available at [perryzirkel.com](http://perryzirkel.com)]

<sup>9</sup> For a similar **J.T.**-type suit currently on appeal at the Seventh Circuit, see Simmons v. Pritzker, 82 IDELR ¶ 5 (N.D. Ill. 2022) (dismissed for lack of exhaustion).

- (S/P)** Doe 1 v. Upper Saint Clair Sch. Dist., 581 F. Supp. 3d 711, 80 IDELR ¶ 104 (W.D. Pa. 2022) and Doe 1 v. N. Allegheny Sch. Dist., 580 F. Supp. 3d 140, 81 IDELR ¶ 79 (W.D. Pa. 2022)<sup>10</sup>
- denied preliminary injunction for § 504/ADA challenge to school district change from universal to optional **masking during COVID-19** – alternative grounds of standing (lack of concrete risk due to alternative mitigation measures), exhaustion (Fry criteria), and unreasonable accommodation (as compared to available alternatives)
- (P)** Doe 1 v. Perkiomen Valley Sch. Dist., 585 F. Supp. 3d 668, 80 IDELR ¶ 182 (E.D. Pa. 2022)<sup>11</sup>
- granted preliminary injunction for § 504/ADA challenge to school district change from universal to optional **masking during COVID-19** – exception from exhaustion and requested reinstatement of universal masking is reasonable accommodation
- S** Ervins v. Sun Prairie Sch. Dist., 609 F. Supp. 3d 709, 81 IDELR ¶ 105 (W.D. Wis. 2022)
- summarily denied student with SLD’s **harassment/bullying** claim under § 504/ADA for failure to show disability connection
- S** Goe v. Zucker, 43 F.4th 19, 81 IDELR ¶ 122 (2d Cir. 2022)
- affirmed § 504 (and 14<sup>th</sup> Amendment) challenge to tightened medical exemption for **vaccine mandates generally** – lack of causal element (“solely by reason of disability”)
- S** E.T. v. Paxton, 41 F.4th 709, 81 IDELR ¶ 126 (5th Cir. 2022)
- vacated lower court’s preliminary injunction, based on § 504/ADA, against governor’s ban of district **mask mandates during COVID-19** – students’ alleged increased risk of suffering complications from contracting COVID-19 was not an injury in fact that could support Article III standing
- S** D.M. v. Or. Scholastic Activities Ass’n, 627 F. Supp. 3d 1182, 81 IDELR ¶ 215 (D. Or. 2022)
- denied TRO to student with 504 plan who sought exemption from **interscholastic athletic** organization’s 8-semester rule that included an express disability exemption for students with IDEA IEPs

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<sup>10</sup> In successive unpublished decisions, the Third Circuit vacated the decision as moot and declined to award attorneys’ fees to the plaintiff-parents, concluding that they had not attained prevailing party status due to the limited, ephemeral injunctive relief. Doe 1 v. N. Allegheny Sch. Dist., 82 IDELR ¶ 105 (3d Cir. 2023); Doe 1 v. Upper Saint Clair Sch. Dist., 82 IDELR ¶ 104 (3d Cir. 2023).

<sup>11</sup> The court subsequently dissolved the preliminary injunction based on updated CDC guidance. Doe 1 v. Perkiomen Valley Sch. Dist., 80 IDELR ¶ 182 (E.D. Pa. 2022).

- (P) L.E. v. Superintendent of Cobb Cnty. Sch. Dist., 55 F.4th 1296, 82 IDELR ¶ 79 (11th Cir. 2022)
- reversed and remanded denial of preliminary injunction to parents of students with disabilities § 504/ADA claim for mandatory **masking and other pandemic safety procedures upon return to in-person instruction** – failure to focus on in-person schooling rather than education in general and to address Olmstead unjustified isolation claim, which is independent of disparate treatment
- (P/S) Doe v. Knox Cnty. Bd. of Educ., 56 F. 4th 1076, 82 IDELR ¶ 103 (6th Cir. 2023)
- remanded, after denying exhaustion defense and requested preliminary injunction, for determining whether magnet school’s neutral policy and 504 plan for student with misophonia was a **reasonable accommodation** under § 504/ADA and, if not, whether parents’ proposed accommodation of ban on chewing food and gum in all classrooms was reasonable
- S Baker v. Bentonville Sch. Dist., 75 F.4th 810, 83 IDELR ¶ \_\_\_\_ (8th Cir. 2023)
- upheld rejection of liability lawsuit challenging formulation and implementation of 504 plan for kindergartner with vision problems – lack of **gross misjudgment or bad faith**
- S J.W. v. Paley, \_\_ F.4th \_\_, 83 IDELR ¶ \_\_\_\_ (5th Cir. 2023)
- rejected § 504 intentional discrimination and failure-to-accommodate claims of 11<sup>th</sup> grader with ID and ED in wake of school resource officer’s use of taser (and handcuffs) to stop him from leaving school

### Glossary of Acronyms and Abbreviations

ADA	Americans with Disabilities Act
ADHD	attention deficit hyperactivity disorder
BCBA	board certified behavior analyst
BIP	behavior intervention plan
C.F.R.	Code of Federal Regulations
ED	emotional disturbance
ESY	extended school year
FAPE	free appropriate public education
FBA	functional behavior analysis
IAES	interim alternative educational setting
ID	intellectual disabilities
IDEA	Individuals with Disabilities Education Act
IEE	independent educational evaluation
IEP	individualized education program
IHO	impartial hearing officer
LRE	least restrictive environment
OHI	other health impairment
RTI	response to intervention
§ 504	Section 504 of the Rehabilitation Act
SLD	specific learning disability
<u>supra</u>	cross reference to earlier, full citation
TBI	traumatic brain injury
TRO	temporary restraining order
U.S.C.	United States Code (i.e., federal legislation)

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