SPECIAL EDUCATION LAW UPDATE

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MONEY DAMAGES/LIABILITY/PERSONAL INJURY GENERALLY

A. Chigano v. City of Knoxville, 61 IDELR 154 (6th Cir. 2013) (unpublished). District employees' failure to notify the arresting police officer that the student at issue had autism did not amount to a "state-created danger" sufficient to support the parents' Section 1983 claim. While a district may be liable for harm caused by a third party if it places a student in a dangerous situation, the district must affirmatively act to create the danger. Here, the parents could not show that there was any affirmative action on the part of the principal or the teacher that created or increased the risk of danger to the student. Thus, the employees did not violate constitutional rights by failing to notify the police officer about her autism, even where the officer said that he would not have arrested her had he known she had autism.

B. Hatfield v. O'Neill, 61 IDELR 211 (11th Cir. 2013) (unpublished). Where former special education teacher was well aware that the profoundly disabled student had undergone brain surgery years before, her alleged striking of the student on the head during a feeding exercise was an obvious use of excessive force. Thus, the teacher is not entitled to summary judgment based upon qualified immunity. In considering whether a teacher's alleged conduct is obviously excessive, a court will consider: 1) the need for corporal punishment; 2) the relationship between that need and amount of punishment administered; and 3) the extent of the injury inflicted. Here, the teacher had no reason to use force against the student and was not acting in self-defense, with a disciplinary purpose, or to protect the student. Rather, according to two of her aides, the teacher struck the student out of frustration based on the student's inability to perform a feeding exercise. While the severity of the student's resulting injury could not be determined based upon the student's limited communication ability, the parents submitted evidence that the student experienced bruising and vomiting after the incident. Further, the teacher's knowledge of the student's prior surgery should have put her on notice that her alleged conduct was excessive. Thus, her behavior was sufficiently conscience-shocking to be found to violate that student's constitutional rights.

C. Estate of A.R. v. Muzyka, 62 IDELR 43 (5th Cir. 2013) (unpublished). The parent's failure to plead intentional discrimination on the part of school personnel entitles the district to judgment on her 504 and ADA claims. While this Court has not decided whether the "intentional discrimination" or "deliberate indifference" standard is applicable to money damages claims in special education cases, it is not important here, because the parent failed to meet either standard. While the district could have installed different types of alarms, posted additional lifeguards or taken other steps to improve safety around the pool area of the special education school, this amounted to negligence, rather than bad faith, gross misjudgment or deliberate indifference. Further, the parent failed to prove that the district excluded the student from its programs or activities on the basis of her hearing impairment or seizure disorder. "Tragically, [her] death resulted from her inclusion in the full activities of a summer school program." Thus, under 504/ADA, the parent is not entitled to recover money damages for her daughter's drowning death.

D. S.H. v. Lower Merion Sch. Dist., 61 IDELR 271, 729 F.3d 248 (3d Cir. 2013). Agreeing with the 2d, 8th, 9th, 10th and 11th Circuits, the deliberate indifference standard is better suited to serve the remedial goals of Section 504 and the ADA, although this Circuit does not require a showing of intentional discrimination to establish liability under these laws. Where the parent here failed to plead deliberate indifference when the district found the former student to be SLD and placed him in special education for six years when he did not need it, she is not entitled to damages of $127,010 for college tuition, psychotherapy and tutoring services. In addition, there was no evidence that the district knew its eligibility determination was flawed, and the district removed the student from special education classes at the parent's request after an IEE revealed the student never had a disability.

E. A.G. v. Lower Merion Sch. Dist., 62 IDELR 102 (3d Cir. 2013). High school graduate's ADA and 504 claims that district should have known that she did not have a disability when it placed her in special education from elementary through high school are dismissed. Student failed to show that the district engaged in intentional discrimination when it initially classified her as SLD, then reclassified her as OHI in high school. Student's testimony that her special education curriculum caused her to miss some general education classes and artificially lowered her GPA is unpersuasive. In addition, there was no evidence that the evaluator's conclusion when she was reclassified as OHI was based upon anything other than his evaluation. Finally, the fact that the parents received numerous copies of their procedural safeguards and attended IEP meetings negated the student's clam that the district intentionally kept her family in the dark concerning basic facts about her placement.

F. B.M. v. South Callaway R-II Sch. Dist., 62 IDELR 42, 732 F.3d 882 (8th Cir. 2013). There was no evidence that the school district acted in bad faith or with gross misjudgment for purposes of supporting the parents' discrimination claims under 504. Under some circumstances, knowledge of a student's disability coupled with delaying accommodations can show bad faith or gross misjudgment. However, in this case, the delay in providing a 504 plan needed to be considered in the context of the district's numerous and continuous attempts to assist the student. For instance, the district was the first to propose accommodating the student, district staff met with the parents numerous times seeking to address the student's needs, and staff members encouraged the mother to seek counseling for the student. In addition, the district allowed the student's counselor to observe him in class and implemented her recommendations to set up a "chill-out room" for him when he was agitated. Moreover, the district promptly implemented a 504 plan for him as soon as it completed an IDEA evaluation and revised the plan several times in response to parental concerns.

G. Hamilton v. Spriggle, 61 IDELR 251, 965 F.Supp.2d 550 (M.D. Pa. 2013). Where three school district administrators attempted to hide reports of a special education teacher's repeated abuse of students in her classroom, they actively created a dangerous situation for a nonverbal autistic teenager, and their motion to dismiss the parents' Section 1983 claim is denied. The "state-created danger" theory of liability allows parents to hold administrators responsible for an employee's misconduct if the administrators used their

authority to create an opportunity for harm that would not have otherwise existed. Here, the special education director and supervisor investigated only one report of abuse reported by the teacher's aides and chose to credit the teacher's statements over those of the aides. When the aides reported concerns to the principal, he reportedly told them that he was unable to intervene, and the special education director instructed the aides not to contact the parents about the allegations or the investigation. "In other words, the directive from all three was to suppress allegations of abuse by keeping the allegations in-house instead of alerting [the student's] parents or the police." Because a jury could find that the teacher's conduct was sufficiently "conscience-shocking," the case may proceed to trial.

H. Herrera v. Hillsborough Co. Sch. Bd., 61 IDELR 137 (M.D. Fla. 2013). Parents have pleaded viable claims under Section 1983, 504 and the ADA, and the district's motion to dismiss is denied. Parents' allegations that district employees knew that their child with a neuromuscular condition had difficulty holding her head upright supported their claim that the district was deliberately indifferent to the student's need for proper positioning on the bus. According to the parents, the district had a history of disregarding the safety of disabled students both before and after the student's death, including sending home a child with an intellectual disability with an unexplained fractured femur, leaving a young child alone on the bus for six hours, letting an LD student off the bus at the wrong location leaving the student to be struck and killed by a car, etc. In addition, the district had specific knowledge of this student's difficulty in holding her head upright, and her most recent IEP recognized the need for proper positioning. Further, the parent and school employees made numerous reports about staff members' failure to position the student properly to prevent an airway obstruction. The parents also alleged facts that demonstrate that the numerous incidents and complaints about the transportation staff's failure to properly handle disabled students put the district on notice that its transportation staff needed additional or different training. This alleged failure to train could qualify as a municipal policy of deliberate indifference sufficient to support a cause of action under Section 1983 against the district.

I. Griffin v. Sanders, 61 IDELR 157 (E.D. Mich. 2013). Disability discrimination case brought under Section 504 and ADA alleging abuse of a former high schooler with disabilities by two district employees is dismissed. The parent did not allege that the district failed to intervene because of the student's disabilities and, therefore, did not state a claim for disability discrimination under 504/ADA. Although the parent claimed that the district allowed a special education teacher and paraprofessional to physically and sexually abuse the student, she did not claim that the district's failure to act had any connection to the student's disability. However, the parent's Section 1983 claim against the paraprofessional for alleged sexual abuse, as well as a claim against the school district under Title IX may proceed.

J. B.B. v. Appleton Area Sch. Dist., 61 IDELR 187 (E.D. Wis. 2013). District is entitled to judgment on the parents' damages claims under Section 1983 because the teacher's alleged conduct was not sufficiently "conscience-shocking" to amount to a violation of the students' constitutional rights. An educator's use of physical force does not rise to

the level of shocking the conscience unless it is obviously excessive under the circumstances and presents a reasonably foreseeable risk of serious bodily injury. Here, neither of the two students allegedly abused by the special education teacher suffered injuries as a result of her actions. In addition, the teacher acted with a pedagogical objective when she allegedly grabbed the students for not following directions, tried to force a fork into one student's mouth when she refused to eat, and squeezed the other's neck when he failed to comply with her instructions. "While not an appropriate way to handle the behavioral problems she confronted, these actions by [teacher], assuming they occurred as reported, can hardly be conscience-shocking."

K. Smith v. School Bd. of Brevard Co., 61 IDELR 160 (M.D. Fla. 2013). While the teaching assistant likely used more force than necessary to obtain compliance when she "slammed" an 8-year-old girl into a chair and shoved her against a table when she failed to sit down as the teacher requested, the assistant's use of force did not violate the student's constitutional rights. An educator's use of force will not violate constitutional rights unless it is "conscience-shocking." In determining whether an en educator's use of force "shocks the conscience," courts will consider the need for corporal punishment, the relationship between that need and the punishment applied, and the extent of the injury inflicted. While the assistant here may have used more force than required, he acted with an educational objective in mind.

L. L.L. v. Tuscaloosa City Bd. of Educ., 60 IDELR 133 (N.D. Ala. 2013). Where school personnel tried to address the behaviors of a teenage boy who sexually assaulted an 8th grader with multiple disabilities, the district is entitled to judgment on the 504, Section 1983 and Title IX damages claims. Liability for disability discrimination and for sexual harassment both require a showing of deliberate indifference on the part of school personnel. The question is not whether the district knew the boy posed a risk of harm to students in the special education school, but whether the district made a deliberate choice not to take any action in response to a threat. Here, when the district learned of the boy's previous attempt to sexually assault a classmate, it suspended him from school and met with his mother to discuss behavioral interventions. Although the responses were ultimately ineffective, it cannot be said that the district was deliberately indifferent. As for the 1983 claim, the district could not be responsible for harm caused by a third party, unless it affirmatively placed the student in a dangerous situation, which it did not do here.

M. Skinner v. Clark Co. Sch. Dist., 61 IDELR 6 (D. Nev. 2013). Case for money damages under Section 504/ADA is dismissed based upon the complaint's failure to state a claim. Allegations that a bus driver permitted and encouraged an aide to hit and shake a 10-year-old child with bipolar disorder, fasten her to the seat with a belt and scream at her were not enough to support the request for money damages. A parent seeking money damages under 504/ADA must show that the district intentionally discriminated against the student on the basis of disability, that the district knew about the student's need for an accommodation and failed to consider the student's unique needs to ensure any accommodations offered were appropriate. This parent's claims did not mention that the

district knew that the student needed accommodations or that the district intentionally discriminated or was deliberately indifferent.

N. D.E. v. Dauphin Sch. Dist., 60 IDELR 98 (M.D. Pa. 2013). Although former LD student went without appropriate special education services for the first 9 years of his public school career, he is not entitled to money damages under Section 504/ADA. Although the district delayed in evaluating the student, it ultimately did conduct evaluations, found the student eligible for speech-language services, and developed IEPs for the student each year thereafter. While the district misclassified the student for two years as having an intellectual disability, neither the misclassification nor the student's improper placement in a life skills program demonstrated the necessary bad faith or gross misjudgment on the part of the district. In fact, as soon as the student's mother notified the district, the district apologized, was not uncooperative and suggested it would correct the error. While the extended failure to provide FAPE may have amounted to negligence, it did not constitute intentional discrimination.

O. Sagan v. Sumner Co. Bd. of Educ., 61 IDELR 10 (M.D. Tenn. 2013). Where the parents of four disabled preschoolers had no evidence that their children suffered serious or lasting harm as a result of a special education teacher's alleged abuse, their initiation of claims under Section 1983 against the school district amounted to a "truly egregious case of misconduct." Thus, the school district may recover a total of $72,118 in attorney's fees with respect to those four cases, but no fees with respect to the fifth one, where the parents presented a plausible claim that the teacher's sticking sharp objects under the child's fingernails "to try to teach her a lesson" amounted to a violation of the child's constitutional rights. In the remaining four cases, however, the parents and their attorneys had no reason to believe the teacher's actions rose to that level. By the time discovery was completed, it should have been apparent to the parents that the continuation of their lawsuits "based on these flimsy allegations had become unreasonable and their claims had tipped into the territory of frivolity."

P. Fulbright v. Dayton Sch. Dist. No. 2, 61 IDELR 47 (E.D. Wash. 2013). While the district may have been negligent when it canceled the services of the student's 1:1 paraprofessional, it was not responsible under Section 1983 for a series of sexual assaults the student experienced while traveling to and from her sheltered work experience. The parents failed to allege deliberate indifference on the part of the school, which is "a very high standard of fault" required to sustain a cause of action for damages under Section 1983. Under Section 1983, the parents must show that the district recognized the existence of an unreasonable risk and actually intended to expose the student to that risk without regard for the consequences. While the parents here alleged that they notified the district about the student's sexual harassment by a male passenger and asked the district to ensure that she was not left alone again, the district only had knowledge of the sexual harassment. The parents did not show that the district was aware of the possibility of a sexual assault or that it intentionally exposed the student to the risk. While the district's actions might constitute "gross negligence," they do not rise to the "markedly higher standard of deliberate indifference." Thus, the parents' Section 1983 claims are dismissed.

Q. Turner v. Houston Indep. Sch. Dist., 61 IDELR 141 (S.D. Tex. 2013). Guardian's substantive due process claims on behalf of 5-year-old student with CP who was allegedly assaulted on the bus by another student are dismissed. A district has no constitutional obligation to safeguard a child from private violence, even though guardian's claim was that the district failed to properly supervise and monitor the students on the bus when it knew the victim was not capable of protecting herself. As a general rule, a district's failure to protect does not constitute a substantive due process violation, unless there is a "special relationship" between the agency and the victim. The 5th Circuit has not extended that exception to include public school students, regardless of whether the particular student has a disability. In addition, 504 and ADA claims are dismissed because the guardian failed to allege that the student was treated differently because of her disability.

R. T.F. v. Fox Chapel Area Sch. Dist., 62 IDELR 74 (W.D. Pa. 2013). Parents' Section 504 claims for money damages are dismissed where there is no evidence of intentional discrimination or deliberate indifference on the part of the school district. Rather, evidence indicated that the district worked diligently to meet the child's tree nut allergy and asthma needs, working with the parents for several months prior to the school year. The district proposed four 504 Plans, made numerous revisions to them and sought to incorporate nearly all parental requests. When the parents believed that seating the student at a student desk during lunch socially isolated him, they asked the district to place him at a rectangular table with peers who had safe lunches, with a small buffer between him and the other students. The principal and head nurse responded that the school's lunch tables were round and that they did not have appropriate chairs for a rectangular table and, therefore, refused. While the reasons for denying that were not adequately explained, this falls far short of establishing deliberate indifference.

S. Kok v. Tacoma Sch. Dist. No. 10, 62 IDELR 89, 317 P.3d 481 (Wash. Ct. App. 2013). School district is not responsible for death of a teenage boy shot and killed at school by a student with paranoid schizophrenia. The district's decision to place the student in the general education setting did not amount to negligence where there was no reason to suspect the student would become violent. A district's duty to exercise reasonable care when supervising students on school grounds only extends to foreseeable risks of harm. Although the student previously attempted suicide and had been suspended years earlier for "defiance of authority," he did not exhibit any assaultive or violent tendencies. Rather, witnesses testified that the student was polite and cooperative in class and had not received any disciplinary referrals after undergoing mental health treatment.

BULLYING AND DISABILITY HARASSMENT

A. Estate of Lance v. Lewisville Indep. Sch. Dist., 62 IDELR 282, 743 F.3d 982 (5th Cir. 2014). There is no evidence that the district was deliberately indifferent to bullying and, therefore, it is not liable for the student's suicide in a school restroom. Rather, the district took affirmative steps to stem harassment of the 4th grader with ADHD, a speech impairment and ED by repeatedly investigating incidents of harassment and punishing all students involved. In addition, the school psychologist observed the student in class to

gain insight into his difficulties with a specific classmate. A teacher testified that she separated the student from another by not allowing them to sit or stand near each other or putting them in groups together. Further, the district's anti-bullying policies met national standards and the district had spoken to students about bullying both before and after the student's suicide. The deliberate indifference standard does not required districts to purge their schools of bullying or harassment, but to respond in a manner appropriate to the circumstances.

B. Moore v. Chilton Co. Bd. of Educ., 62 IDELR 286 (M.D. Ala. 2014). Parents cannot use Section 504 or the ADA to hold district liable for student's suicide based upon alleged bullying. Whether or not her Blount's disease qualifies as a disability or whether others' comments about her weight and limp related to her medical condition—going beyond mere name-calling—the parents needed to show that the district had actual notice of the harassment and was deliberately indifferent to it. Where a district only has actual knowledge if an official with authority to take corrective action receives clear notice of disability harassment, as here, there can be no liability. Although the student's friend informed her science teacher about bullying in the hallways and the bus driver overheard another teenager mocking the student's weight, the parents did not show that those staff members qualified as authority figures. Further, those staff members took steps to help the student, where the science teacher monitored the student in the hallways between classes, and the bus driver changed the harassing student's seat for two weeks on the bus. Given the efforts of staff to assist the student, the district was not deliberately indifferent to peer harassment and judgment is granted in the district's favor.

C. Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013). Consistent with prior DCL's published by the Department, bullying of a student with a disability that results in the student's failure to receive meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied. Whether or not the bullying is related to the student's disability, any bullying of a student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA. Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE in accordance with his/her IEP, and the school should, as part of its appropriate response to bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If this is the case, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's needs and revise the IEP accordingly. The Team should exercise caution, however, when considering a change of placement or location of services and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement. Certain changes to the educational program (e.g., placement in a more restrictive "protected" setting to avoid bullying) may constitute a denial or the IDEA's requirement to provide FAPE in the LRE. Moreover, schools may not attempt to resolve the bullying by unilaterally changing the frequency, duration, intensity, placement, or location of the student's special education and related services. In addition, if the bully is a student with a disability, the IEP Team should review that student's IEP to determine if additional

supports and services are needed to address the bullying behavior. (Attached to this DCL is an enclosure entitled "Effective Evidence-based Practices for Preventing and Addressing Bullying").

D. Long v. Murray Co. Sch. Dist., 61 IDELR 122 (11th Cir. 2013) (unpublished). School district was not deliberately indifferent to peer harassment of student who hanged himself, which is the standard that applies in Section 504 and ADA cases. While the school district should have done more to protect a student with Asperger's who committed suicide, there was insufficient evidence of deliberate indifference. The district responded to the complaints it received in a manner that was not clearly unreasonable, and it neither caused additional harassment nor made an official decision to ignore it. On that basis, the dismissal of the parents' Section 504 claim is upheld. While there was little question that the student was severely harassed based on his disability and the district should have done more to stop it and prevent future incidents, the Supreme Court requires a finding that the district deliberately ignored specific complaints. Here, however, the district disciplined the perpetrators and developed a safety plan that allowed the student to avoid crowds in the hallways and to sit near the bus driver. In addition, the district's decision on at least two occasions to meet with the perpetrators and victim together was not clearly unreasonable, and there were numerous cameras and teachers monitoring the hallways. Though the parents claimed that the student continued to be harassed despite these efforts, there was no evidence that any single harasser repeated his conduct once the district addressed it. The parents pointed out that the day after the student's suicide, students wore nooses to school and wrote messages in the bathroom stating "it was your own fault" and "we will not miss you" and that this was an indication of the culture of harassment and of the district's failure to address it. While the district never held any assemblies to discuss bullying and harassment, it took several steps to address the school climate—its code of conduct contained an anti-bullying policy that staff members were expected to read and it conducted a program in which teachers met with small groups of students to instruct them on peer relationships and review the code of conduct. Finally, the district conducted a school tolerance program and implemented a program aimed at improving overall student behavior. Without evidence of deliberate indifference, the parents' case could not proceed and the district court's decision is affirmed.

E. Sutherlin v. Independent Sch. Dist. No. 40, 61 IDELR 69, 960 F.Supp.2d 1254 (N.D. Okla. 2013). Where the parents of a student with Asperger syndrome alleged that the school district disregarded dozens of reports of verbal and physical harassment, their claims under Section 504 and the ADA will not be summarily dismissed. The parents' allegations connect the alleged harassment to the student's disability, since the complaint alleged that the student was "labeled" as having poor social skills and was mocked for his difficulties with socialization. In addition, the complaint alleged that other students called him names such as "retard," "crazy," "creepy," and "freak," which are names that can reasonably be inferred to make a reference to his social difficulties. In addition, the parents alleged that the district had reports of at least 32 incidents of disability-related harassment against their son between 2010 and 2012 but failed to investigate them or take action to prevent further bullying.

F. D.A. v. Meridian Jt. Sch. Dist. No. 2, 60 IDELR 192 (D. Idaho 2013). Case against district will not be dismissed where there is a genuine dispute as to whether school officials knew the student with Asperger syndrome was being harassed and failed to respond. According to the parents, the student was relentlessly bullied verbally and physically and was called names, such as "retard" during gym and had his clothes stolen. To establish discrimination for disability-based bullying, a parent must show: 1) the harassment was sufficiently severe or pervasive that it altered the condition of the student's education and created an abusive educational environment; 2) the district knew about the harassment; and 3) the district was deliberately indifferent. Where there was testimony that the student's out-of-school behavior (such as burning his parents' house down) was triggered at least in part by the bullying, this was sufficient to show that the harassment was severe and denied him equal access to education. In addition, there was evidence that the P.E. teacher witnessed the bullying and that the student's mother raised the issue during school meetings. Further, after the vice principal learned of an incident, the school undertook little investigation and failed to follow its own anti-bullying procedures.

RETALIATION

A. Pollack v. Regional Sch. Unit 75, 114 LRP 15007 (D. Me. 2014). Where the district had a history of providing the parents copies of education records for free, it could be retaliation under 504 where the parents claim that after they filed a request for due process and the assignment of a new teacher, the district denied their request for copies of records and later offered to provide them for $2,600. Because this could have stemmed from the parents' advocacy efforts, the parents pleaded a viable claim for retaliation.

B. A.C. v. Shelby Co. Bd. of Educ., 60 IDELR 271, 711 F.3d 687 (6th Cir. 2013). Retaliation claims under 504/ADA should not have been dismissed by the district court where a reasonable jury could conclude that the principal reported the parents to child welfare authorities in retaliation for their requests for accommodations for their diabetic child. The elementary school principal testified that she was genuinely concerned by the fluctuations in the second-grader's blood glucose levels, and that was why she reported that they failed to monitor the student's glucose levels, wanting "something horrible" to happen to the student at school so that they could file a lawsuit. However, the parents engaged in protected activities when they asked multiple times in one week that the student's blood testing occur in her classroom rather than the school clinic. The district was aware of that activity and took adverse action when it reported the parents to child welfare authorities. The timing and the content of the initial and follow-up reports raise questions as to the principal's motives and should be heard by a jury. Moreover, while the district offered 10 reasons to show that the principal's reports were legitimate, the parents raised questions as to whether each of those reasons was a pretext for retaliation. Thus, the district court erred in determining that the district's mandatory reporting duty under Tennessee law shielded it from liability and the case is remanded for further proceedings.

C. Edwards v. Gwinnett Co. Sch. Dist., 62 IDELR 3 (N.D. Ga. 2013). Where the principal sought to end the middle school special education teacher's employment because of her untimely IEP paperwork, the teacher's 504 retaliation lawsuit is dismissed. To establish retaliation, the teacher had to show that: 1) she engaged in protected activity; 2) she suffered a materially adverse employment action; and 3) there was a causal relationship between the two events. With respect to the first and second elements, the teacher adequately pointed to protected activity by asserting that she told the principal that she believed complying with IEP deadlines would require modifying the IEPs without parental approval. Further, the recommendation of nonrenewal constituted a material adverse action. However, the teacher could not show that it was her objections that caused the recommendation for termination. For instance, she failed to supply any evidence that the principal knew about her complaints. In addition, she did not assert that there was a close temporal proximity between her resistance to the deadlines and the recommendation that her contract be ended. Even if she had established a case, the district's credible argument that it sought her termination because of her untimely completion of IEPs constituted a legitimate, nondiscriminatory basis for its action.

D. Gainor v. Worthington City Schs., 113 LRP 51116 (S.D. Ohio 2013). An intervention specialist employed by the school district may not proceed with her case under Section 504 and the ADA for retaliation because she did not demonstrate that the district's explanation for suspending her was a pretext for retaliation. The district provided legitimate reasons for suspending her from work, including her failure to follow work procedures and allegedly using a classroom computer for personal matters. The specialist's only argument was to point to the Complaints she had filed on behalf of her son with the State Department of Education, but did not produce any specific argument to cast doubt on the authenticity of the district's explanation.

RESTRAINT/SECLUSION IN SCHOOLS

A. Muskrat v. Deer Creek Pub. Schs., 61 IDELR 1, 715 F.3d 775 (10th Cir. 2013). Even if school district employees violated district policy when placing a child with developmental disabilities in a timeout room, their conduct did not rise to the level of violating the child's constitutional rights; thus, the parents did not establish liability under Section 1983. To establish a constitutional violation, the parents needed to show that the staff members' conduct was so severe, so disproportionate to the need presented, and so inspired by malice or sadism that it shocked the conscience. The parents failed to show that the student's placement in the timeout room following an incident in which he overturned chairs and knocked items from tables amounted to conscience-shocking behavior. Similarly, three alleged instances of abuse that included a "pop" on the cheek, a slap on the arm, and a few minutes of physical restraint did not amount to a brutal or inhumane abuse of power. While the court may rightly condemn this conduct, it does not rise to the level of a constitutional tort.

B. J.P.M. v. Palm Beach Co. Sch. Bd., 60 IDELR 158, 916 F.Supp.2d 1314 (S.D. Fla. 2013). Although the district omitted some critical information when documenting its use of restraint with an autistic middle schooler, there is no evidence that the district

intentionally aggravated the student's behavioral problems by using an inappropriate intervention. The parents' failure to demonstrate intentional discrimination or conscience-shocking behavior entitles the district to judgment on their Section 1983, Section 504 and Title II claims. According to the parents, the district discriminated against the student by restraining him 89 times in 14 months, when it was clear that the use of physical restraint was causing the student to regress behaviorally. While the district's records did not always identify the behavior that prompted staff members to use physical restraint, the parents bear the burden of proving that staff members were deliberately indifferent to the student's needs. "[The district] records show, for the most part, that [the student] was restrained due to his own aggressive or self-injurious behavior," and "[t]he records reveal nothing regarding the intent or knowledge of each person who restrained [the student]." In addition, neither the district's failure to fully document all incidents of restraint nor its failure to conduct an FBA after the first few incidents amounted to the type of "conscience-shocking" behavior that gives rise to liability under Section 1983. Thus, summary judgment is granted in favor of the district on all of the parents' federal claims.

C. Payne v. Peninsula Sch. Dist., 61 IDELR 279 (W.D. Wash. 2013). District's motion to dismiss parent's Section 1983 claim for damages is denied where evidence indicates that the district was well aware of a teacher's ongoing practice of placing young disabled children in a 63 x 68 inch "safe room." While districts are not automatically responsible for a staff member's violation of a child's constitutional rights, a district may be liable under Section 1983 if the parent can show than an individual with policymaking authority ratified the staff person's conduct or if the district has a custom of allowing such conduct to occur. Here, the parent has produced evidence that the district knew of and permitted the teacher's use of the room over time—it was not a one-time event. The evidence raises questions as to whether the district ratified the teacher's use of the safe room and the district's purported awareness of its use could amount to a "custom" of permitting constitutional violations. Since it is not clear, the district's motion is denied.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

A. T.P. v. Bryan Co. Sch. Dist., 63 IDELR 45 (S.D. Ga. 2014). District that evaluated a student with autism in September 2010 is not required to fund an IEE that his parents requested nearly 26 months later. This is so because the IDEA's two-year statute of limitations period bars the parents' request for a publicly funded IEE. It is the September 2010 evaluation that forms the basis for the parents' IEE request, not when the district denied their request in December 2012.

B. M.Z. v. Bethlehem Area Sch. Dist., 60 IDELR 273 (3d Cir. 2013) (unpublished). Where the hearing officer determined that the district failed to conduct an appropriate reevaluation, the IDEA provides only one option: to order an IEE at public expense. Thus, the hearing officer erred in ordering as a remedy only that the district conduct formal classroom observations and seek parent and teacher input. The district's argument that the hearing officer did not find its reevaluation to be inappropriate is rejected, because the record clearly stated that the assessment tools and strategies were not "sufficiently comprehensive," and it failed to consider the student's ability to apply

pragmatic language skills in peer settings on a daily basis. In addition, the reevaluation failed to consider the student's upcoming transition to high school. Thus, the district court correctly ordered an IEE at public expense.

C. M.V. v. Shenendehowa Cent. Sch. Dist., 60 IDELR 213 (N.D. N.Y. 2013). As an initial matter, the parent does not have the right to an IEE at public expense, because she did not disagree with the district's evaluation. Rather, she requested an IEE because she was dissatisfied with the IEP proposed for her son. Even if she had the right to an IEE, however, she failed to show that the district's $1,800 cap on IEEs was unreasonable. Between July 14, 2010 and August 18, 2010, at least 6 public and private clinics in the parent's geographic area were willing to conduct an IEE for $1,800. Although the district was willing to exceed the $1,800 cap if the parent demonstrated the need for an exception, the parent's wish to use a particular neuropsychologist did not amount to "unique circumstances" that would warrant the excess cost. Parent's failure to contact any of the psychologists or neuropsychologists on the list of qualified evaluators supplied by the school district defeated her challenge to the $1,800 cap.

ELIGIBILITY

A. D.A. v. Meridian Joint Sch. Dist. No. 2, 62 IDELR 205 (D. Idaho 2014). Although Idaho law defines "educational performance" to include nonacademic skills such as daily life activities, mobility, vocational skills, and social adaptation, student with autism is not eligible for services. This is so because he performed at least as well as his nondisabled peers in courses such as drama, personal finance, Web design, and broadcasting. In addition, the evidence showed that the student overcame his pragmatic and social difficulties to the extent necessary to succeed in the general education setting. Clearly, the student does not need special education to receive an educational benefit and, at most, requires related services that do not qualify as special education under Idaho law.

B. Torda v. Fairfax Co. Sch. Bd., 61 IDELR 4 (4th Cir. 2013) (unpublished), cert. denied, (3/24/14). The district did not deny FAPE to a teenager with Down syndrome based on its failure to list auditory processing disorder as his secondary disability in his IEP. This is so, because the IEP addressed all of the student's needs, regardless of his classifications. Teachers gave detailed testimony on how they simplified lessons, paired visual material with oral instruction and checked for comprehension. Thus, there is no reason to disturb the district court's decision that the student received FAPE.

C. G.I. v. Lewisville Indep. Sch. Dist., 61 IDELR 298 (E.D. Pa. 2013) (unpublished). Although the district did not label the autistic student with ADHD, the 6th grader with autism still received FAPE. The district's program addressed the child's difficulty of staying on task and paying attention through a variety of accommodations and by placing him in a 1:1 setting for instruction of new material and a 1:2 setting for reteaching. Given that the IEP was tailored to address the needs of the student, the absence of the ADHD label did not constitute a denial of FAPE.

D. Chelsea D. v. Avon Grove Sch. Dist., 61 IDELR 161 (E.D. Pa. 2013). Even though there was evidence of a severe discrepancy between ability and achievement in math reasoning, the district did not violate IDEA in finding the 9th-grader ineligible for special education. Where the student had no need for specialized instruction, she was not a "child with a disability" under the IDEA. In addition to having one of the disabilities set forth in IDEA, the student must show that she needs specialized instruction because of that disability. Although the student had earned a D in math in eighth grade, those grades stemmed from her failure to complete homework. Her grades improved after she began receiving accommodations for her ADHD and, in 9th grade, she earned a final grade of B- in the general education math curriculum. Further, her scores on a statewide math assessment showed her overall math ability to be at the base-to-proficient level. Where she made solid progress in math without any modifications to the content, methodology, or delivery of instruction, the hearing officer's decision that she did not need specialized instruction for an SLD is upheld.

E. G.H. v. Great Valley Sch. Dist., 61 IDELR 63 (E.D. Pa. 2013). Although student had violent tantrums at home, she had few conflicts at school, according to her teachers. Based upon her solid academic performance and generally good behavior at school, her behavioral problems do not adversely affect educational performance sufficient to make her eligible as a student with an emotional disturbance. Neither her grades nor her state assessment results reflect any negative impact of her behaviors at school, even though her behavior at home included flying into violent tantrums, including one where she grabbed a butcher knife and stabbed a chair. In addition, her teachers testified that she was self-controlled at school. Further, her private therapy exclusively focused on issues at home, including issues related to her being adopted and difficulty getting along with her mother and sister. Finally, while her hospitalizations required a month-long absence from school, that in itself did not demonstrate an adverse educational impact. In fact, her teacher indicated that following absences, she needed no time to catch up.

F. R.C. v. Keller Indep. Sch. Dist., 61 IDELR 221 (N.D. Tex. 2013). Where the district developed IEPs that addressed all of the ED student's disability-related needs, regardless of whether the student met the criteria for autism or not, a violation of IDEA did not occur. The IDEA does not confer a specific right to be classified under a particular disability category. "The fact that [student] believes he was mislabeled does not automatically mean that he was denied FAPE." Although the parent argued that an "autism" label would have meant that the student was entitled to receive additional services under Texas law, the district provided most of those services.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. K.A. v. Fulton Co. Sch. Dist., 62 IDELR 161, 741 F.3d 1195 (11th Cir. 2013). Parent consent is not required prior to amending an IEP and changing a student's placement. Where a change of placement was proposed, the district was not required to request a hearing to implement the change. Rather, the IDEA requires a district, when proposing to amend an IEP, to provide parents: 1) prior written notice explaining what is proposed and why; 2) an opportunity to review the child's records; and 3) a full explanation of their

rights. While the district here did not issue proper notice before the IEP meeting, there is no evidence that they were prejudiced by the defective notice. These parents fully participated in the IEP process having received notice of the proposed amendment a month prior to the IEP meeting, an opportunity to observe the new school, and a chance to review IEP team meeting minutes, educational records, and a document describing the procedural safeguards. There is no support for the parents' argument that a district, not parents, must file for due process before an amendment to an IEP can be made over parents' objections. Reading in such a requirement would be inconsistent with other provisions of the IDEA.

B. Doug C. v. Hawaii Dept. of Educ., 61 IDELR 91, 720 F.3d 1038 (9th Cir. 2013). Education Department's failure to reschedule an IEP meeting when requested by the parent amounts to a denial of FAPE to the student. Thus, the case is remanded to the district court to determine the parent's right to private school tuition reimbursement. Where the ED argued that it had to hold the IEP meeting as scheduled to meet the student's annual review deadline, the argument is rejected because the father was willing to meet later in the week if he recovered from his illness and the ED should have tried to accommodate the parent rather than deciding it could not disrupt the schedules of other team members without a firm commitment from the parent. In addition, the ED erred in focusing on the annual review deadline rather than the parent's right to participate in IEP development. While it is acknowledged that the ED's inability to comply with two distinct procedural requirements was a "difficult situation," the ED should have considered both courses of action and determined which was less likely to result in a denial of FAPE. Here, the ED could have continued the student's services after the annual review date had passed and the parent did not refuse to participate in the IEP process. Given the importance of parent participation in the IEP process, the ED's decision to proceed without the parent "was not clearly reasonable" under the circumstances.

C. P.K. v. New York City Dept. of Educ., 61 IDELR 96 (2d Cir. 2013) (unpublished). Parents are entitled to reimbursement for the child's private placement because the proposed IEP did not contain the one-to-one speech-language services that the child required to progress. It is not sufficient that school witnesses testified that such services would have been provided if the student had come to the school's program. Courts hearing reimbursement cases must focus on the terms of the IEP and cannot consider "retrospective testimony" about additional services the district would have offered if the child had actually attended the program.

D. DiRocco v. Board of Educ. of Beacon City Sch. Dist., 60 IDELR 99 (S.D. N.Y. 2013). While the district failed to comply with state and federal regulations when it invited a math teacher who taught 10th, 11th and 12th graders to the IEP meeting to serve as the regular education teacher for a student who was entering high school as a freshman, this did not impede the parents' participation in the IEP process or the student's right to FAPE. The parents' active participation in a discussion about the student's proposed placement in integrated co-teaching classrooms made the violation harmless. In addition, the Team's failure to discuss the student's annual goals at the IEP meeting did not

amount to a denial of FAPE, where the parents were provided with a draft IEP prior to the meeting and were allowed to comment on it during the meeting. Further, the private school's dean participated in the meeting by phone and provided the team with updated information about the student's present levels of academic achievement and functional performance, which was accurately reflected in the goals in the draft IEP. Finally, while the district was required to consider private evaluation reports, it was not required to adopt the evaluators' recommendations. Thus, the parents are not entitled to recover the costs of the private school placement.

E. P.C. v. Milford Exempted Village Schs., 60 IDELR 129 (S.D. Oh. 2013). District predetermined placement prior to the IEP meeting and, therefore, denied FAPE to the student. The district's preplanning notes show that its staff members were "firmly wedded" to a decision to withdraw the student from a private Lindamood-Bell program and return him to his home school to receive reading services. Most troubling was the student's teacher's testimony that the district was prepared to "go the whole distance this year" and force the parents into due process. Clearly, school officials went beyond merely forming opinions and, instead, became impermissibly and "deeply wedded" to a single course of action that the student not continue at the private school. In addition, they made their decision before determining what reading methodology would be used in the public school program and failed to discuss that issue with the parents. In this case, the type of methodology used could mean the difference in whether the student obtained educational benefit and, therefore, it was essential for the parents to participate in a conversation about it.

F. R.G. v. New York City Dept. of Educ., 62 IDELR 84 (E.D. N.Y. 2013). Where district placed a preschooler with developmental delays in a special class without the input of a general education teacher, its placement is rejected. The absence of any general education teacher at the child's IEP team meeting impeded the student's right to FAPE, where the student had made significant progress in a general education class attended by a special education itinerant teacher during the 2009-10 school year. Because the student was currently participating in a private school general education classroom and based on the IDEA's preference for mainstreaming, it was critical to include a general education teacher at the meeting.

IEP CONTENT

A. Jefferson Co. Bd. of Educ. v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013). The district's use of "stock" goals and services with respect to reading and postsecondary transition planning constituted a denial of FAPE. Not only did the IEP team handwrite the student's name on the document after crossing out the typewritten name of another student, the case manager testified at the due process hearing that the student's reading goal, which required him to comprehend grade-level materials, was the standard goal for all 9th grade students. "Such a practice flies in the face of the purpose and goals of the IDEA, which require the district to develop an *individualized* program with *measurable* goals." Where the student performed 6 years below grade level in reading, the reading goal in his IEP was unrealistic. In addition, the district failed to conduct transition

assessments and, instead, developed a transition plan calling for the student to improve his communication skills and participate in a note-taking class that was open to all freshmen.

B. D.S. v. Department of Educ., 62 IDELR 112 (D. Haw. 2013). Student's IEPs were not reasonably calculated to provide him with meaningful educational benefit where they did not adequately address new sexualized behaviors with goals and objectives. According to his private school, the student began engaging in behaviors including grabbing the breasts of female skills trainers, exposing his body parts and removing his clothes in 2009 and 2010. However, his 2011 IEPs relied only upon 2009 assessments when the student's new behaviors had not yet surfaced. Clearly, the ED was on notice of the behavior and was obligated to further investigate the scope of those behaviors in order develop an adequate IEP.

C. C.L.K. v. Arlington Sch. Dist., 62 IDELR 173 (S.D. N.Y. 2013). IEP for 11 year-old autistic student is appropriate. Parents' argument that the IEP did not contain goals addressing each of the child's disability-related needs is rejected, as the IDEA requires an IEP to contain goals "designed to meet" a child's needs, but there is no requirement that an IEP contain goals that explicitly reference each need. In addition, even where certain goals were overly broad, courts have found IEPs to be satisfactory where the IEP's short-term objectives are sufficiently detailed. Here, the child's IEP contained short-term objectives, as well as annual goals that addressed study skills, reading, math, speech-language skills, social sills, motor skills that were reasonably related to her educational deficits. While the goals did not cite to each one of her needs in detail, they were adequate to offer FAPE.

THE FAPE STANDARD

A. T.E. v. Cumberland Valley Sch. Dist., 62 IDELR 204 (M.D. Pa. 2014). Where the parent's IEP challenge appears to stem from her "strong belief" that her child would receive better educational services if she continued in a private school, the IDEA does not require the district to provide the best education possible. Rather, the district is to develop an IEP that provides the student with a meaningful educational benefit, and the IEP here meets that standard. The IEP identifies the student's needs and her present educational levels; it sets goals in multiple areas; and it provides for individualized reading instruction designed to meet her needs.

B. K.K. v. Alta Loma Sch. Dist., 60 IDELR 159 (C.D. Cal. 2013). While the parents of an SLD grade schooler may have been dissatisfied with the progress their daughter had made, they are not entitled to reimbursement for the cost of a private Lindamood-Bell program. An IEP offers meaningful educational benefit if it is tailored to the student's unique needs and is reasonably calculated to produce more than *de minimis* benefits when gauged against the student's abilities. Testimony for district employees showed that the IEP team considered detailed evaluations of the student's skills and limitations and used the information from those evaluations to determine her goals and services. With respect to progress, the student made advancements in the third grade in writing paragraphs on

her own and made progress in fluency and reading comprehension, while meeting many third grade standards. Although not progressing as quickly as her nondisabled peers, the student's slow-but-steady progress showed that her IEPs offered meaningful benefit to her.

DISCIPLINE

A. Ocean Township Bd. of Educ. v. E.R., 63 IDELR 16 (D. N.J. 2014). District is not required to allow 18-year-old with ADHA, impulse control and adjustment disorder to return to his home high school to finish out his senior year while his mother challenged his suspension for bringing a knife to school. The IDEA allows a district to move a student with a disability to an interim alternative educational setting for up to 45 days for such offenses—regardless of whether the offense was a manifestation of disability. The student's act of carrying a knife to school allowed the district to place him in the IAES for up to 45 days. In addition, the subsequent MD review showed that the student's conduct was not related to his disability; thus, the alternative setting became his "current setting" for stay-put purposes when the parent challenged it. While the student would not be able to finish his senior year with his peers if the district did not allow his return to the high school, the severity of the student's misconduct, his history of problem behaviors, and the district's interest in maintaining a safe learning environment supported an order for an injunction to continue the student's alternative placement.

METHODOLOGY

A. Poway Unif. Sch. Dist. v. K.C., 62 IDELR 199 (S.D. Cal. 2014). Court cannot yet determine whether the district's failure to provide CART services to the student deprived her, under the ADA, of an equal opportunity to participate in her classes. The student needs to show the accommodations provided were not reasonable and that she was unable to participate equally in her classes without CART. A school district's obligation under the ADA to provide a specific auxiliary aid or device will depend on the individual's request and a comparative analysis of the services provided to individuals with or without disabilities. The district contends that it provided the student with meaningful access by discussing the parents' request for CART, responding in writing, and offering an effective alternative. However, the student alleges that she had difficulty following class discussions and that the intense concentration require4d to use the meaning-for-meaning transcription system provided by the district caused her to suffer headaches and feel exhausted by the end of the school day. The court needs to make further findings as to whether the student's access to class discussions was meaningful before it can enter a judgment on the ADA claim.

B. K.M. v. Tustin Unif. Sch. Dist., 61 IDELR 182, 725 F.3d 1088 (9th Cir. 2013). (Note: This case reverses and remands two California district court opinions holding that the school district was not required to provide Communication Access Real-time Translation (CART) to a student *with a hearing impairment where it offered FAPE under the IDEA.* The Supreme Court denied review on March 3, 2014*). A district's* compliance with the IDEA in offering an appropriate IEP does not necessarily establish compliance with the

"effective communication" obligations under Title II of the ADA. While the IDEA requires districts to provide a "basic floor of opportunity" to students with disabilities, the ADA requires them to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others. Further, Title II of the ADA requires districts to provide appropriate auxiliary aids and services, including "real-time computer-aided transcription services" when necessary to provide an equal opportunity to participate in district programs and activities. Because the ADA's effective communication requirement differs significantly from the IDEA's FAPE requirement, districts "may be required under the ADA to provide services to deaf or hard-of-hearing students that are different than the services required by the IDEA." The notion that the success of a student's IDEA claims dictates the success of her ADA claims is rejected. Thus, these two cases are remanded to the district courts for further proceedings as to whether each student's district complied with the ADA's effective communication requirement.

C. D.H. v. Poway Unif. Sch. Dist., 62 IDELR 176 (S.D. Ca. 2013). Pending the outcome of the ADA case, the district must go ahead and provide CART services for hearing impaired student, pursuant to (above-referenced) 9th Circuit ruling. Where the ADA requires a district to ensure that communications with students with disabilities are as effective as communications with others and to furnish appropriate aids and services where necessary to afford the student equal opportunity to participate, the student's good grades and school participation does not absolve the district of its ADA obligations. The student struggles to hear in class, misses much of what is said and often leaves school with a headache. These difficulties reflect that the district does not communicate with the student in a matter as effective as it communicates with others, so the temporary injunction is granted.

D. G.A. v. River Vale Bd. of Educ., 62 IDELR 37 (D. N.J. 2013). District is not required to pay for a hearing aid for preschooler with mild to moderate hearing loss in his left ear where a desktop speaker, in conjunction with the student's right ear, would have allowed the student to receive FAPE. While the court sympathizes with the parents' concern for obtaining the best device for the child, the IDEA merely requires the district to offer a device that provides significant learning and will confer meaningful benefit. While an ear-level device might have been optimal for the student, the audiological evaluation did not state that the student could not obtain meaningful benefit without one.

E. Kathryn F. v. West Chester Area Sch. Dist., 62 IDELR 177 (E.D. Pa. 2013). Student's progress in reading from 2009 to 2012 is evidence that she received FAPE, even though the parents believed that the dyslexic student would have made more progress if the district had started using the Wilson reading method in 9th grade rather than adding Wilson tutoring to the student's IEP in 11th grade. The district had no obligation to maximize the student's educational benefit and progress made using the district's Read Naturally program was appropriate.

PRIVATE/RESIDENTIAL PLACEMENT

A. E.K. v. Warwick Sch. Dist., 62 IDELR 289 (E.D. Pa. 2014). School district cannot be held responsible for treating a student's long-term drug addiction, familial problems or delinquent behavior and, therefore, is not responsible for paying for her placement in a residential drug and alcohol treatment facility. The district's offered program included an IEP with organizational and behavioral goals, calling for the student to receive regularly scheduled counseling and social skills instruction. Further, the program's staff included a social worker, a psychologist, a job trainer, a nurse, and a private therapist—all of whom were trained to be aware of and intervene with any drug or alcohol issues. The district's program offers FAPE.

B. Munir v. Pottsville Area Sch. Dist., 61 IDELR 152, 723 F.3d 423 (3d Cir. 2013). Whether the parent of an ED teenager was entitled to funding for a residential placement depends upon whether the student needed to attend the residential program because of his educational needs. Because the parents testified that they "feared for [student's] personal safety" when placing him in the residential facility, the placement resulted from the student's mental health needs, rather than his educational needs. "Indeed, [student] was an above-average student…who had no serious problem with attendance and socialized well with other students" prior to being placed in residential. Because the parents could not show that they placed the student in the residential program for educational reasons, the lower court's decision is affirmed.

C. M.N. v. Dept. of Educ., 60 IDELR 181 (9th Cir. 2013) (unpublished). A parent's unilateral private placement is "proper" for reimbursement purposes only if it offers instruction that is specially designed to meet the child's unique needs and provides the support services a child needs to benefit from instruction. By limiting the autistic child's program to language acquisition, the private school failed to address the child's needs in the areas of academics, social interaction, group instruction, generalization of skills and personal care and grooming. After more than a year in the private program, the record showed "a host of essential areas in which the child made no progress at all" and the child received only "meager" benefits from the private school. Thus, the parent is not entitled to reimbursement for private school tuition. In addition, the district court properly denied reimbursement on equitable grounds where the parent and the private school hindered the ED's development of the child's IEP.

D. M.B. v. Minisink Valley Cent. Sch. Dist., 61 IDELR 5 (2d Cir. 2013) (unpublished). Even though progress reports showed that the student made academic and behavioral gains during his time at a therapeutic boarding school, the school did not provide services to address his unique needs. Academic and behavioral progress alone does not demonstrate the appropriateness of a private program for reimbursement purposes. Rather, the parent must show that the school offered instruction and support services specially designed to meet the student's unique needs. Here, the boarding school did not offer specific services to address the student's difficulties with organization, executive functioning, and fine motor skills. In addition, the school's use of time-outs and other sanctions to address the student's behavioral problems was inappropriate. Because the

parent could not show that their chosen placement was appropriate, she could not recover the cost of it from the district.

E. M.L. v. East Ramapo Cent. Sch. Dist., 61 IDELR 12 (S.D. N.Y. 2013). Where the student's father was the acting Director of a nonprofit special education school that he had helped to establish, the parents were not merely seeking reimbursement for the student's placement. Rather, letters written to the district from the father discussed the parents' intent to expand the school, move it within the district's borders, and seek district funding for the school's program and services. The father never spoke with the district about the possibility of a public school placement and the parents signed a contract for their child's placement at the nonprofit school nearly two months before they attended a meeting with the district to develop the student's 2010-11 IEP. Thus, the equities of the case weigh against reimbursement to the parents for the cost of the private placement.

COMPENSATORY EDUCATION

A. B.M. v. New York City Dept. of Educ., 61 IDELR 68 (S.D. N.Y. 2013). Even though the student's support teacher was unqualified, the parent did not establish a denial of FAPE to support her claim that the autistic student needed 960 hours of compensatory services to make up for inadequate instruction. The student's report cards reflected that he received passing grades in all of his core academic subjects, which he took in the general education setting. The support teacher testified that she was able to address problem behaviors that included picking gum off the floor, and his social studies teacher indicated that he had made social progress and had a "wide circle of friends."

B. I.T. v. Department of Educ., 61 IDELR 192 (D. Haw. 2013). Where district failed to include speech-language services in two successive IEPs and the parents placed their child in a private school as a result, compensatory education can include reimbursement to the parents for private school costs. While compensatory education services are typically prospective services, it also may include reimbursement for private services the parents obtained to make up for deficiencies in the student's IEP. There is no court precedent holding that an award of compensatory education must be prospective. However, because the IEPs were appropriate in all other respects, the parents can recover only 25% of the private school expenses they incurred for the period that the district failed to make FAPE available.

C. Letter to Pergament, 62 IDELR 212 (OSEP 2013). While a district is not required to services during a teacher's strike that significantly disrupts the functioning or delivery of services for all or nearly all students, whether a student with a disability is in need of compensatory education after the end of teachers' strike is a determination that must be made by the child's IEP team based on whether the disruption in services denied educational benefit to the child.

EXTENDED SCHOOL YEAR SERVICES

A. T.M. v. Cornwall Cent. Sch. Dist., 63 IDELR 31 (2d Cir. 2014). The LRE requirement applies to extended school year programs in the same manner as it applies to school year placements. ESY services are an essential program component for students who require year-round services to prevent substantial regression and the LRE requirement applies with the same force in the summer months as it does during the regular school year. Thus, districts must ensure that they have a range of educational settings available for ESY placements. If a district does not offer a mainstream ESY program, it can still make a continuum of ESY placements available by considering a private summer program or a mainstream ESY program offered by another public entity. Because the autistic child here made progress in his general education kindergarten class, the district erred in failing to make a mainstream ESY placement available. Thus, the district court's holding that the district was not obligated to offer a mainstream ESY placement is vacated and remanded for further proceedings.

B. Annette K. v. State of Hawaii, 60 IDELR 278 (D. Haw. 2013). In Hawaii, ESY is considered necessary for FAPE where the benefits the student gains during the regular school year would be significantly jeopardized if he were not provided an educational program over the summer. In this case, it was clear that the student with severe dyslexia lost ground quickly every time there was a break in instruction. Indeed, the principal noted that the student was able to make progress in his reading, but "hours, days, weeks later, it's like you're starting fresh." In addition, the student's private reading tutor echoed the same concern, indicating that when she saw him less than 3-5 times per week, she had to spend significant time backtracking.

LEAST RESTRICTIVE ENVIRONMENT

A. D.W. v. Milwaukee Pub. Schs., 61 IDELR 32 (7th Cir. 2013) (unpublished). District's proposed placement in a special day class for students with intellectual disabilities is the appropriate LRE where this student will receive FAPE. The student earned poor grades in her less restrictive multi-categorical class and often refused to participate. As a result, the student's IEP team developed a BIP that included several hours of daily 1:1 instruction, modification of assignments and daily progress reports. However, the interventions were not successful, and the team modified the student's IEP again to include class work at the student's instructional level, seating near the teacher and positive feedback. Only after those interventions failed did the district propose the more restrictive SDC placement. "The relevant inquiry is whether the student's education in the mainstream environment was 'satisfactory' (or could be made satisfactory through reasonable measures)."

B. J.T. v. Newark Bd. of Educ., 61 IDELR 27 (D. N.J. 2013) (unpublished). School district has no obligation to offer a resource in-class support program to the SLD student at his neighborhood school. In this case, the student's neighborhood school did not offer the special education services set forth in the student's IEP and a district may offer certain types of programming in a centralized location. In addition, the proposed school was only .8 miles from the student's home.

C. V.M. v. North Colonie Cent. Sch. Dist., 61 IDELR 134, 954 F.Supp.2d 102 (N.D. N.Y. 2013). Where evidence indicated that the 9th grader with Down syndrome spent a good deal of time in her Regents-level classes crying, sleeping or engaging in off-task behaviors, her parents' request for increased mainstreaming opportunities was not supported. The district offered the student FAPE in the LRE when the IEP team decided that the student needed specialized instruction for reading, math and social studies. While the team did not have any recent assessments of the student's needs (because the parents denied consent for reevaluation since third grade), the team did have available information about the student's performance that reflected that continued placement in mainstream classes was not appropriate. Clearly, the student struggled in her general education math and social studies courses, despite receiving individualized instruction and a significantly modified curriculum. Teachers reported that the instruction provided there was far beyond the student's comprehension level and that she regressed academically and behaviorally as a result. Thus, she would not benefit from mainstream placement for math and social studies and the IEP team was correct in limiting her general education instruction to English and science.

D. B.B. v. Catahoula Parish Sch. Dist., 62 IDELR 50 (W.D. La. 2013). School district violated IDEA's LRE requirement by prohibiting a 7-year-old with Down Syndrome and behavioral problems to be transported on the regular bus with a "bus buddy" in second grade. Notwithstanding that the student's behaviors included slapping, hitting, spitting, not staying seated, disrobing and throwing his shoes out the window, there was adequate evidence to support the hearing officer's decision that the student would have been able to ride the regular bus at that time with the support of a nondisabled partner. However, while the hearing officer ruled that a denial of FAPE did not occur, that decision is reversed because the LRE violation resulted in a loss of educational opportunity and deprived the student of FAPE. A bus aide who had worked with the student for over a year testified that the child could ride the bus with support, and the parents' expert witness testified that the student could be safely transported on the regular bus with a nondisabled peer to demonstrate appropriate behavior. In addition, the district violated LRE by failing to allow the student to join nondisabled peers for PE, art and music. While the district claimed that the student interacted with nondisabled peers during recess, computer lab and library activities, that did not demonstrate that the student was mainstreamed "to the maximum extent appropriate," as required by IDEA.

ONE-TO-ONE AIDES

A. Lainey C. v. State of Hawaii, 61 IDELR 77 (D. Haw. 2013). Where the social skills training set out in the autistic student's IEP would have met her needs, a one-to-one aide was not necessary for FAPE. Even though a teacher testified that an aide would be "helpful," that is not the same as being necessary for FAPE. While some witnesses supported the idea of a one-to-one aide, others believed it was unnecessary and the ED's behavioral health specialist testified that an aide might make the student overly dependent on the aide and more isolated socially.

ATTORNEYS' FEES

A. Capital City Pub. Charter Sch. v. Gambale, 63 IDELR 6 (D. D.C. 2014). Where the parent attorney was well aware of the charter school's efforts to arrange for a residential placement for a high schooler at the time she filed the due process complaint, her allegations of unreasonable delay on the part of the school were "breath-taking." The charter school satisfied the standard for recovering fees against the parent because the parent's case was frivolous, unreasonable and without foundation. Although the due process complaint alleged that the school took four months to arrange for the placement, emails reflected that the parent never contacted the school to discuss placement and, instead, contacted the private day school the student was attending under an IEP developed by the charter school. The charter school learned of the parent's request for residential placement just days before a scheduled IEP meeting, which was rescheduled after the parent's last-minute cancellation. "[I]f anyone were responsible for delaying [the student's] placement in a residential treatment facility, it was [the attorney] and the parent." Thus, the charter school's request for fees is granted and the attorney must pay the school $11,767.

B. M.M. v. Plano Indep. Sch. Dist., 114 LRP 13171 (E.D. Tex. 2014). Where the parent's attorney acted with an improper purpose when she redacted language from a settlement agreement that explicitly disclaimed her clients' right to legal fees, she is required to pay the district's legal fees to defend the parents' challenge to a magistrate judge's report and recommendation. The attorney did not tell the magistrate judge about the settlement agreement, which the parties reached four months before the magistrate issued his report and recommendation on the parents' fee petition. More importantly, the attorney redacted critical information from the copy of the settlement agreement that she submitted for the court's review. This redacted provision specifically stated that the agreement did not confer prevailing party status on either party and could not be used as the basis of a claim for fees. Here, the attorney's conduct wasted the parties' time, as well as scare judicial resources. The parent attorney had no legitimate reason for failing to disclose the settlement to the magistrate judge or for redacting the limiting language from it. Thus, the district's motion for sanctions against the attorney is granted.

C. L.R. v. Hollister Sch. Dist., 63 IDELR 8 (N.D. Cal. 2014). Parents were not justified in refusing the district's settlement offer and, therefore, could only recover fees incurred through the date of the settlement offer (which decreases their award by over $50,000). In addition, due to their limited success at the hearing, their fees will be further reduced by 50%. Here, the district's offer revealed its willingness to hold subsequent, procedurally correct, IEP meetings after it had held two meetings without inviting a regular education teacher. The settlement offer addressed the district's past procedural violations and included 75 hours of compensatory education and reasonable fees, which was far more reasonable than the 46 hours of social skills training awarded by the ALJ.

D. Alief Indep. Sch. Dist. v. C.C., 61 IDELR 3, 713 F.3d 268 (5th Cir. 2013). District court's denial of parents' fee request is upheld, because these parents were not prevailing parties as contemplated under the IDEA. Prevailing party status under the IDEA has two

requirements: 1) the remedy must alter the legal relationship between the district and the student; and 2) the remedy must foster the purposes of the IDEA. While the district court did deny fees sought by the district against the parents, the parents achieved only a technical victory that had no bearing on their child's services. Here, the parents filed an unsuccessful IDEA case and "were merely fortunate enough to have the lower court deny a common request for attorney's fees" against them. "In no way have they succeeded on the merits of their claim or achieved a desired remedy" sufficient to transform them into prevailing parties under the IDEA.

E. A.L. v. Jackson Co. Sch. Bd., 60 IDELR 187 (N.D. Fla. 2013). District's motion for sanctions is granted because the parent's attorney should have known that her claims that the school district should have revised the student's IEP were groundless. This is so, because the parent attorney was involved in a 2007 Eleventh Circuit case that held that the IDEA's stay-put provision prohibits a district from changing a student's placement after the parent files a due process complaint, unless the parent and the district agree to such a change or a hearing officer orders a new placement. Here, the parties were not able to agree to change the student's program pending due process proceedings, so the stay-put provision prevented the district from updating the IEP. Because the parent's attorney also represented the student in the Eleventh Circuit case in 2007 which specifically ruled this way, she was "well-aware" of the current law on the stay-put provision. Thus, the district is entitled to recover attorney's fees.

F. A.L. v. Jackson Co. Sch. Bd., 62 IDELR 149, 127 So.3d 758 (Fla. Ct. App. 1st Dist. 2013). School district that prevailed in an allegedly frivolous due process hearing cannot recover its legal expenses from the parent and her attorney under the Administrative Procedure Act, because the original due process hearing that was dismissed was brought under Florida's Education Code. The section of the Education Code specifically states that such proceedings are exempt from the APA. Thus, the ALJ's order of attorneys' fees for prevailing in the hearing by having it dismissed is not supported.

G. Bethlehem Area Sch. Dist. v. Zhou, 61 IDELR 9 (E.D. Pa. 2013). The parent's alleged statement that her lawsuit would "go away" if the district would just pay for her sons to go to a private school may entitle the district to a fee award because she filed her hearing request for an improper purpose. The parent requested several due process hearings regarding the IEPs for her sons over the years, despite the fact that they were making significant progress. Under the IDEA, a prevailing district may recover fees from a parent who has litigated for any improper purpose, such as to cause unnecessary delay or to needlessly increase litigation costs. There are several pieces of evidence that indicate the parent's intent in seeking the hearing was to drive up district costs to the point where it would rather pay for her sons to attend private school than oppose her extensive requests. For example, the parent reportedly told a special education director that "if the district would pay for a private school…this would all go away." While the parent is highly ambitious that her sons achieve all they can, the law does not require a district to maximize a child's potential or "cause him or her to become a second Einstein." Because the district prevailed at the due process hearing and the parent pursued her complaint for

an improper purpose, the district is potentially entitled to attorney's fees and a conference will be held to address the issue.

H. D.B. v. Sutton Sch. Dist., 61 IDELR 191 (D. Mass. 2013). Where student was represented in the litigation by his attorney father, his mother could not recover the more than $50,000 in legal expenses she incurred from the district. Attorney-parents cannot recover fees for representing their own children in IDEA cases. While the First Circuit has not yet addressed whether IDEA would permit such awards, the 2d, 3d, 4th and 9th have all prohibited them.

I. Giosta v. Midland Sch. Dist. 7, 62 IDELR 72 (7th Cir. 2013). Parents are not prevailing parties where their success in obtaining three hours of additional reading and writing instruction each week was too minimal to support a fee award under IDEA. "[F]or minor successes, the appropriate award is zero…." The parents sought substantial relief in their due process complaint and sought thousands of dollars' worth of evaluations and assistive technology.

J. A.Z. v. Gateway Sch. Dist., 62 IDELR 135 (W.D. Pa. 2013). Non-attorney parent cannot pursue IDEA action against district on her son's behalf but she can do so on her own behalf. Thus, IDEA claims on child's behalf will be dismissed without a lawyer to represent the child.

SERVICE ANIMALS

A. M.T. v. Evansville Vanderburgh Sch. Corp., 62 IDELR 79 (S.D. Ind. 2013). Case will not be dismissed at this time based upon failure to exhaust administrative remedies under IDEA. Because exhaustion is an "affirmative defense" the parents had no obligation to allege facts negating the defense in their complaint. One of the students relies on her dog to monitor her blood sugar level because of her diabetes and the other student relies on her dog to help her if she has a seizure and to assist with mobility. Here, the parents claim discrimination under 504/ADA based upon the district's new policies that place special burdens on students wishing to bring their service animals to school. As a result, the student with diabetes went to school without her dog for two days, while the other student attended without hers for approximately two weeks.

SECTION 504/ADA GENERALLY

A. D.L. v. Baltimore City Bd. of Sch. Comm'rs, 60 IDELR 121, 706 F.3d 256 (4th Cir. 2013). The duty to provide FAPE to students under Section 504 only extends to students attending public schools, not private ones. A district has no obligation to provide Section 504 services to a parentally placed private school student if it has offered the student appropriate public school services.

B. Moody v. New York City Dept. of Educ., 60 IDELR 211 (2d Cir. 2013) (unpublished). While an 11-year-old diabetic student may have preferred eating hot food for lunch, his preference does not require the school district to heat up lunches prepared by his mother.

The availability of diabetic-friendly lunch options in the school cafeteria satisfied the district's duty to accommodate the student's disability, and the district only is required to ensure that the student has meaningful access to school lunch and other district programs. Here, the school's cafeteria offered a selection of hot and cold foods that the student could eat. Thus, even if the student sometimes skipped lunch and did not like the food on the school menu, that did not warrant a further accommodation beyond what the district had already provided. In addition, the district monitored the student's blood glucose throughout the day to ensure it stayed within acceptable levels.

C. Kimble v. Douglas Co. Sch. Dist. RE-1, 60 IDELR 221, 925 F.Supp.2d 1176 (D. Colo. 2013). District's position that parents' revocation of consent to an IEP under IDEA amounted to a rejection of a 504 Plan is rejected. However, the district convened a Section 504 meeting to discuss the student's need for accommodations and modifications after the parents revoked consent to the IEP and the district's attempt to implement the IEP that it has offered as 504 FAPE is appropriate. Thus, the parents cannot hold the district liable for failing to provide accommodations after rejecting the 504 Plan, and the district's obligation to protect the student from discrimination was satisfied when it offered the same services set out in the IEP.

D. G.B.L. v. Bellevue Sch. Dist. #405, 60 IDELR 186 (W.D. Wash. 2013). It was not a "reasonable accommodation" in the fast-paced gifted program for the student with ADHD and a hearing impairment to be able to complete a lesser amount of homework each night than other students. This is so because the gifted program required all students to learn a significant amount of material on their own through homework assignments. The district is not required to make a fundamental alteration or substantial modification to its programs so that students with disabilities can participate. The parents' request to limit the student to two hours of homework per night was not reasonable, as the assigned homework is an essential component of the coursework in the gifted program. In addition, the student would be unable to keep up with class discussions if he completed only 2 hours of homework each night. Further, evidence shows that the student was already completing only part of the assigned homework and was falling behind as a result. Thus, the student could not meet the program's academic standards even with the required accommodation and judgment is granted in favor of the district.

E. Liebau v. Romeo Comm. Schs., 61 IDELR 231 (Mich. Ct. App. 2013) (unpublished). Parent of a nondisabled student did not have standing to challenge the accommodations set forth in another student's Section 504 Plan that provided for a school-wide ban on peanut and tree nut products. Although the parent claimed that she had requested a 504 Plan for her own daughter based on dietary restrictions and nutritional needs, the parent never appealed the district's decision that her daughter did not need accommodations under 504. Addressing the parent's claim that the nut ban violated her daughter's right to equal protection, the district's policy passes constitutional muster as long as it is rationally related to a legitimate governmental interest. Here, the nut ban was necessary to accommodate a school mate's allergy, which was so severe that it was triggered by airborne exposure to nut products. While less-intrusive procedures for accommodating the other student's allergy were attempted, they were determined to be ineffective. In

addition, the district's practice of removing offending food items and providing appropriate alternatives did not violate this student's right to be free from unlawful searches and seizures. Not only did school personnel have reason to suspect the student would bring nut products to school, given the parent's repeated statements that she would not comply with the ban, the searches were not excessively intrusive and were necessary to protect the other student's safety.

F. Petty v. Hite, 62 IDELR 171 (D. Md. 2013). Where district developed a 504 Plan for a student with allergies and asthma, the parent's claim merely alleging that the accommodations were not sufficient is not adequate to state a 504 claim against the school district. In addition, either bad faith or gross misjudgment must be shown to assert a 504 claim in the context of education of students with disabilities.