UPDATE ON SPECIAL EDUCATION LAW: THE YEAR IN REVIEW

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It is a very active time in the area of special education law, and there is an enormous amount of litigation going on, as courts and agencies attempt to interpret and apply the law's provisions. In this session, I will update school psychologists on recent significant special education "legal happenings," including court decisions and U.S. agency interpretations. Issues addressed will include legal liability and money damages, disability harassment, retaliation, child-find and evaluations, discipline, Section 504 issues and much, much more!

MONEY DAMAGES/LIABILITY/PERSONAL INJURY GENERALLY

A. Domingo v. Kowalski, 66 IDELR 268 (6th Cir. 2016). The special education teacher's alleged actions, while misguided, do not entitle the parents of three students with disabilities to relief under Section 1983. While not passing judgment on the advisability of the alleged instructional methodologies (including belting a student with CP to the toilet to aid her balance; gagging an autistic student with a bandana to stop him from spitting; and toilet training an autistic child inside the classroom because of difficulties with transition), the district court's decision that these did not rise to the required level of "conscience-shocking" is affirmed. As required, the court considered 1) whether the teacher had pedagogical justification for her alleged actions; 2) whether the techniques were excessive in light of the teacher's goals; 3) whether the teacher acted in good faith; and 4) the severity of the students' injuries. Here, the teacher's "unorthodox" methods did reflect a pedagogical objective, involving attempts to address her students' undisputed educational or disciplinary needs. In addition, the teacher appeared only to have used the amount of force necessary to achieve her goals and she did not act with malice or deliberate indifference. Further, the parents did not show that their children suffered serious physical or psychological injury.

B. A.G. v. Paradise Valley Unif. Sch. Dist., 815 F.3d 1195, 67 IDELR 79 (9th Cir. 2016). District court's dismissal of parents' 504 and ADA claims is reversed where there is a factual dispute as to whether a 7th-grader with autism could have stayed in her gifted program with a BIP and a full-time behavioral aide. The district court is directed to consider whether the district failed to provide reasonable accommodations to the student, where a behavioral psychologist testified that the student's behavioral outbursts demonstrated a need for an FBA and BIP, which was corroborated by the student's classroom teacher who believed that the student needed more behavioral support and sought assistance to better meet the student's needs. As for the parents' request for damages, there is evidence indicating that the parents had previously asked the district for a full-time behavioral aide. This request, along with the psychologist's testimony and a teacher email describing the current level of supports as inadequate, could support a finding that the district was deliberately indifferent to an obvious need for accommodations. Thus, on remand, the district court must consider whether the student's need for behavioral accommodations was obvious and whether the district made reasonable accommodations available.

C. <u>Beam v. Western Wayne Sch. Dist.</u>, 67 IDELR 88 (M.D. Pa. 2016). Parents may seek money damages under Section 504 and ADA for a denial of educational benefits. The failure to implement a Section 504 Plan may qualify as a denial of access to district programs. Here, the parents allege that the district failed to modify the student's 504 Plan or implement key provisions of it, despite having knowledge of the student's ongoing academic difficulties. Thus, they adequately plead a denial of educational opportunities. In addition, the parents have sufficiently alleged deliberate indifference on the part of the district that knew the student was failing several classes, was seeing a therapist for emotional difficulties and had spoken and written about suicide. However, the district failed to address the student's academic concerns or email them about them, as required by the 504 Plan. However, the parents' claim under Section 1983 is dismissed because the student's suicide was not a foreseeable and fairly direct result of the district's alleged failure to implement the student's 504 Plan.

D. <u>E.T. v. Bureau of Spec. Educ.</u>, 67 IDELR 118 (D. Mass. 2016). Parents of middle school student with Asperger's cannot recover money damages on their claims under the 4th Amendment for illegal search and seizure from two school administrators who reviewed the student's drawing notebook against his wishes. Searches on school grounds are allowed as long as they are justified at the time of inception and reasonably related to the circumstances that prompted the search. Here, the student's behavioral issues, including aggressive verbal outbursts, disengagement and isolation, raised concerns for school officials. In addition to drawing pictures that often focused on guns and bombs, the student wrote an essay that discussed conflict with teachers and his plans to prove them wrong. Further, the student refused to hand over his notebook as requested by his shadow aide and, when the aide sent him to the principal's office, the principal had reasonable grounds for suspecting that the search would turn up evidence that the student had violated the rules of the school and, specifically, that his drawings were a threat to school safety. The administrators' review of the notebook two months later was equally reasonable where the first search revealed drawings of a violent battle against teachers, but the student refused to provide his notebook on request due to fears that he would be suspended again. Finally, the search was limited to a review of the notebook and did not include his locker or other belongings.

E. <u>Disability Rights New York v. North Colonie Cent. Schs.</u>, 67 IDELR 152 (N.D. N.Y. 2016). Protection and advocacy group has the right to investigate reports of abuse and neglect against students in a separate day class, because the students placed there are clearly students with disabilities. Both the Developmental Disabilities and Bill of Rights Act and the Protection and Advocacy for Individuals with Mental Illness Act contain a specific definition under which the children fall and a third statute at issue, the Protection and Advocacy for Individual Rights Act does not define "disability" at all. As such, the court rejects the district's argument that the P&A group must first prove that the group of students meet the definitions under those laws. The group has provided "substantial evidence" of the students' disability status—specifically, the district's decision to place them in a separate day class. This allows for an inference that the students have disabilities as defined by these statutes. Here, however, no injunctive relief is necessary because the district has now allowed the group to access the classroom and has provided approximately 805 pages of student records.

F. J.S. III v. Houston Co. Bd. of Educ., 66 IDELR 8 (M.D. Ala. 2015). Even where the 4th grade student was removed from his general education setting, which may have amounted to an IDEA violation, it did not amount to disability discrimination under Section 504 or the ADA. Parents seeking relief under Section 504/ADA must allege more than a denial of FAPE under the IDEA. The parents did not produce any evidence suggesting that the district acted with discriminatory intent, and the principal's knowledge of the removals did not put the district on notice of the aide's alleged physical or verbal abuse.

G. K.M. v. Chichester Sch. Dist., 65 IDELR 6 (E.D. Pa. 2015). Section 1983 claims against a bus driver and aide are dismissed based upon the doctrine of qualified immunity. Governmental actors are entitled to qualified immunity if their conduct does not violate a clearly established constitutional right. A right is "clearly established" if, under the circumstances, a reasonable official could not have believed his conduct was lawful. In this case, the question is whether a reasonable school official would recognize that the procedures for securing vehicles used to transport students could potentially affect a student's constitutional rights. While the improper supervision of students with disabilities could amount to a violation of clearly established constitutional rights in some cases, these employees had no reason to suspect that their end-of-shift procedures that resulted in their locking up the bus for the night with a sleeping autistic student on board had constitutional implications. NOTE: In a related case, the same court refused to dismiss Section 1983 claims against the school district based upon a "state-created danger" theory and the failure to train bus drivers on end-of-shift procedures. K.M. v. Chichester Sch. Dist., 65 IDELR 5 (E.D. Pa. 2015). While parents seeking damages under such theories must allege conscience-shocking conduct, the level of culpability needed to "shock the conscience" is not as high when the alleged injuries result from an unhurried judgment as opposed to a snap decision. Here, the district should have known that the student's autism would make it more likely that he would fall asleep and fail to exit the bus at his assigned stop. Further, the "emotional fragility" that many autistic children exhibit makes it more likely that the student would suffer psychological harm when waking up alone on the closed-up bus. The district's argument that checking the bus for children was a matter of "common sense" that did not require training is rejected.

H. <u>H.B. v. State Bd. of Educ.</u>, 65 IDELR 200 (E.D. N.C. 2015). Parents may sue N.C. School for the Deaf employees responsible for assigning a student to the same room as a schoolmate who allegedly raped him. The parent sufficiently stated a "state-created danger" claim under Section 1983. While educators are not generally responsible for injuries caused to students by third parties, they may be liable if they intentionally or with reckless indifference place the student in the dangerous situation. Here, the parent claimed that employees had actual notice that the schoolmate had a history of verbal, emotional and physical bullying of the student during his day placement at the school. In addition, the school's Director allegedly assured the parents that he would take steps to separate the students. Further, the parents alleged that the school knew about the sexual abuse the schoolmate had suffered in his own home. Nonetheless, they assigned both boys to the same dorm room on the first night of the student's residential program. The student requested that he be moved to a different room, but the request was denied. Without deciding the truth of these claims, the parents have stated enough to deny dismissal of the complaint.

I. <u>Ripple v. Marble Falls Indep. Sch. Dist.</u>, 65 IDELR 98, 99 F.Supp.3d 662 (W.D. Tex. 2015). There is no evidence that the school district acted in bad faith or with gross misjudgment with regard to the student's physical safety. Thus, the student's 504 disability discrimination claims are dismissed. According to the student, the district violated athletic association rules and its own policies and procedures when it failed to ensure that the football coach and trainer had adequate training on concussions and head injuries. He also claimed that football personnel encouraged him or allowed him to engage in unreasonably dangerous athletic activities. However, the student's physician cleared him to play football every year and the athletic trainer pulled him from a game in which he suffered a concussion. Further, the trainer followed up with the student the following season and the student insisted that he could play. The only concussion that the student informed the athletic team about was that one and he avoided reporting and seeking treatment for his concussive symptoms thereafter in an attempt to remain competitive for college scholarships. While a failure to identify the signs of a concussion could potentially amount to negligence, the district here did not intentionally discriminate against the student under Section 504.

J. <u>Wellman v. Butler Area Sch. Dist.</u>, 66 IDELR 65 (W.D. Pa. 2015). Former student's 504 and ADA case is dismissed for failure to exhaust administrative remedies under the IDEA. Where the student alleged that after he suffered a concussion during a PE class and two high school football games, the district and its officials failed to provide adequate educational support and ignored his condition by failing to adjust his educational program to better accommodate him. Since these claims directly relate to the IDEA's identification, evaluation, placement and FAPE requirements, the student must seek administrative relief before suing the district for discrimination.

K. <u>Doe v. Darien Bd. of Educ.</u>, 65 IDELR 194 (D. Conn. 2015). District's motion for judgment in a case for damages brought under Section 504 and the ADA is denied, because there is an issue of fact as to whether the district failed to conduct an appropriate investigation of the student's reported sexual abuse by his one-to-one aide. Where the district argued that the student's cognitive and communication impairments had no impact upon its decision not to investigate the student's reports, testimony by district and school officials raised issues as to whether the district gave the student's reports the weight that they deserved. For instance, the special education director stated that she would not believe any allegations of abuse made by this student based upon his history of confusing in-school and out-of-school events. Other officials made similar statements that they did not believe the student because he also "talks about robbers and kissing and different things." In addition, the assistant superintendent failed to interview the student or the parents and the school psychologist testified that she did not believe the aide would engage in inappropriate behavior.

BULLYING AND DISABILITY HARASSMENT

A. <u>T.K. v. New York City Dept. of Educ.</u>, 810 F.2d 869, 67 IDELR 1 (2d Cir. 2016). The district's denial of the parents' request for their daughter's IEP team to discuss peer bullying is a denial of FAPE. This refusal significantly impeded the parents' participation in the IEP process and the denial of the opportunity to discuss bullying during the creation of the IEP not only potentially impaired the substance of the IEP, but also prevented the parents from assessing the adequacy of it. Thus, the district court's decision that the parents could recover the cost of private school placement is affirmed. The parents had good reason to believe that peer harassment was interfering with their daughter's ability to make educational progress. According to the student's one-to-one special education instructors, she had difficulty concentrating and staying on task based upon her classmates' verbal and physical harassment. Three of the instructors testified that the constant peer teasing and exclusion created a hostile environment, and additional evidence showed that the student dreaded going to school, was frequently tardy and began to carry dolls for emotional support.

B. <u>S.B. v. Board of Educ. of Harford Co.</u>, 67 IDELR 165, 819 F.3d 69 (4th Cir. 2016). Parent cannot demonstrate an entitlement to relief under Section 504 where none of the reported incidents of harassment related to the student's disabilities. In addition, the district investigated every incident of bullying that the parent or student reported and, in almost every instance, the district disciplined the bullies with measures ranging from parent phone calls to suspension. Further, the district assigned a para-educator to the student during his junior year who accompanied the student during the school day to ensure his safety and to serve as an objective witness to alleged incidents of bullying. Thus, the district is entitled to judgment on the parent's 504 claim.

C. <u>Doe v. Torrington Bd. of Educ.</u>, 67 IDELR 182 (D. Conn. 2016). A student does not state a claim for relief under Section 504/ADA without connecting alleged bullying to his disability. High schooler's claim that the district was aware of his SLD and knew that it made him more vulnerable to harassment did not establish the necessary link. Because the student did not sufficiently allege that anyone actually harassed, bullied or assaulted him because of his disability or perceived disability, rather than some other reason (such as personal animus), claims are dismissed. In addition, the student failed to allege deliberate indifference on the part of the school district, which is required for a recovery of money damages under Section 504/ADA. While the student may not have been satisfied with the district's response, he could not show a complete failure to address bullying.

D. C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist., 67 IDELR 111 (5th Cir. 2016) (unpublished). Dismissal of parents' 504 discrimination claims for money damages based upon hostile environment is affirmed. When the district transferred the student with ADHD to an interim alternative educational setting for 60 days after he took and displayed a picture of a classmate using the bathroom, it was not disability harassment. The parents cannot establish a hostile environment claim without showing that the district harassed the student based upon his disability. Even if it were true that district officials "conspired" to remove the student from school as alleged by his parents, they still need to connect the purported harassment to the student's ADHD. However, the parents did not allege any facts to show that the district acted in response to the student's disability rather than his behavior. Instead, the evidence showed that the district did not change the student's placement until after it conducted a manifestation determination and determined that the conduct at issue was not related to his disability. The parents' broad claim that the student's ADHD affected his ability to make good decisions is not sufficient to plead discrimination and "[i]f that conclusory statement were enough to plead discrimination, any plaintiff with ADHD could attribute any misconduct, no matter how severe, to the disability."

E. Nevills v. Mart Indep. Sch. Dist., 65 IDELR 164 (5th Cir. 2015) (unpublished). Parents failed to demonstrate deliberate indifference on the part of the school district to disability-based harassment. Districts are not required to "purge" schools of bullying to avoid liability under the ADA and Section 504. Rather, the deliberate indifference standard requires focus on whether the district reasonably responded to reported incidents of peer harassment. While the district did not punish alleged offenders in every incident, the notes from the principal's investigations support her decision not to do so in some instances. In addition, the principal hired an outside organization to conduct teacher training on bullying and scheduled a presentation for the 5th and 6th grade boys, and training was conducted based upon two nationally-recognized programs designed to teach kindness and compassion to students. Thus, the parents' claims are dismissed.

F. K.R.S. v. Bedford Comm. Sch. Dist., 65 IDELR 272 (S.D. Iowa 2015). The 9th grader with SLD is not required to show that his football teammates understood the exact nature of his disability in order to show disability-related harassment. The teammates' general knowledge that the student received special education services, along with the comments that he was "stupid" and "dumb," could establish a link between the alleged harassment and his disability. The district's suggestion that the student is required to show that the other students who allegedly harassed him did so specifically because he struggled with writing in English class is rejected as a "tortured interpretation of the required elements for a Section 504 harassment claim. Rather, the student only needs to show that his teammates' actions were reasonably connected to his disability. Although the evidence appears "skimpy," the teammates' purported taunts of "idiot" and "moron" suggest a link to the student's SLD. In addition, the alleged bullying was sufficiently severe and pervasive where the student was hospitalized with a head injury after two teammates reportedly threw footballs at his head. Thus, the district's motion for judgment on the student's 504 claim is denied.

G. V.S. v. Oakland Unif. Sch. Dist., 65 IDELR 234 (N.D. Cal. 2015). Parent states viable claims under Sections 1983 and 504 for disability-based bullying on the school bus. While the district maintains that it was unaware of the alleged harassment, which allegedly occurred on a bus owned and operated by an independent contractor, the complaint alleges that the bus driver told the parent that she had contacted district officials about the bullying and had not received a response. Thus, the driver's purported statements raise questions about the district's knowledge and the district's deliberate failure to protect the student from known bullying and assault on the school bus.

H. Visnovits v. White Pine Co. Sch. Dist., 65 IDELR 167 (D. Nev. 2015). Student failed to establish an ADA or 504 claim for disability harassment where her statement that she did not report prior incidents of bullying by another student in her yearbook class undermined her claim that the district was deliberately indifferent to known disability-based harassment. While the 9th Circuit has not adopted a test for deliberate indifference to disability harassment, the Supreme Court's standard for sexual harassment will be used here, requiring the student to prove that: 1) she had a disability; 2) she was harassed on the basis of disability; 3) the harassment was so severe or pervasive that it created an abusive educational environment; 4) the district knew about the harassment; and 5) the district was deliberately indifferent to it. The student also stated that she did not know why the bully targeted her and she noted that she would not doubt the other student if that student indicated that she did not know that a disability even existed. Thus, she cannot prove the necessary elements of her claim.

RETALIATION

A. Pollack v. Regional Sch. Unit 75, 67 IDELR 40 (D. Me. 2016). Superintendent's motion for qualified immunity on the First Amendment claim and district's motion for judgment on 504 and ADA claims are denied where the district allegedly provided the parents with copies of hundreds of staff emails about their student before they filed for due process. After they filed for due process, the Superintendent requested $2,600 for the production of certain emails, which could have been considered retaliatory. The question of the Superintendent's intent is a matter for a jury to decide.

B. Jenkins v. Butts Co. Sch. Dist., 67 IDELR 90 (M.D. Ga. 2016). Judgment is granted for the district on the parent's claim of retaliation where it could not be held liable when a teacher reported the parent to child welfare authorities legitimately and for a non-retaliatory reason. Not only was the teacher a mandatory reporter of suspected child abuse or neglect under Georgia law, she testified that she was concerned about possible harm to the child. The parent offered no evidence beyond conclusory statements and testimony to show that the district's reasons for its action were pretext for retaliation for the parent's filing of a due process hearing complaint.

C. Wenk v. O'Reilly, 65 IDELR 121, 783 F.3d 585 (6th Cir. 2015). Case will not be dismissed on the basis of qualified immunity against Director of Pupil Services alleging retaliation under the First Amendment based upon the parent's advocacy on behalf of his daughter. A report of child abuse, as was made in this case, qualifies as retaliation under the First Amendment if the parent's advocacy plays any role in the decision to report. Critical comments that the Director made about the father in emails she sent to other district employees after IEP meetings suggest that she harbored "animus" toward him. In addition, teachers whose statements allegedly formed the basis of the child abuse report denied telling the Director about the most shocking charges against the parent. Although the Director's report contained some true allegations, the facts taken in the light most favorable to the parent suggest that she embellished or fabricated other allegations, including those that most clearly suggested sexual abuse. The Director's claim that she would have filed the same report whether the father advocated for his daughter or not is rejected, as the Director had the information underlying her report for 3 weeks before she filed it and the she made the report 3 weeks after the Ohio DOE contacted her about parent concerns. A reasonable official in the Director's position would have known that such conduct was retaliatory. Thus, the district court's denial of qualified immunity is affirmed.

RESTRAINT/SECLUSION

A. J.V. v. Albuquerque Pub. Schs., 67 IDELR 55 (10th Cir. 2016). School district did not violate the ADA when it briefly used mechanical restraint to manage the child's behavior. In order to prove disability discrimination, the parents needed to show that: 1) the child has a disability; 2) the district discriminated against the child; and 3) the discrimination was based on the child's disability. Here, the parents failed to meet the second and third requirements. This court has held that a law enforcement officer does not violate the ADA if her actions are based on the student's conduct rather than his disability. Here, the school safety officer handcuffed the child based on his conduct consisting of two hours of disruptive behavior, including running from room to room, kicking the officer and a social worker and refusing to stop, not based upon the student's disability. In addition, the parents failed to prove that discrimination occurred where they promptly enrolled the child in another school district and could not show that the handcuffing resulted in a denial of educational benefits. In addition, they failed to show that the district failed to accommodate the child or disregarded an obvious need for staff training. In addition, the school safety officer contacted the child's mother during the behavioral incident and requested permission to restrain the child if necessary.

B. Miller v. Monroe Sch. Dist.., 67 IDELR 32 (W.D. Wash. 2016). Claims may proceed against the school district under Section 504 and ADA alleging that two teachers frequently placed an 8 year-old autistic student in seclusion when he lashed out. The district's alleged failure to ensure that its employees were using aversives properly could amount to disability discrimination. A reasonable juror could find that the child was subjected to intentional discrimination where parent claims that the district did not respond to her concerns about the teachers' failure to attempt less severe crisis management strategies before frequently placing him in seclusion, sometimes several times a day, when his autism caused him to become disruptive or aggressive. However, the claims under Section 1983 against the teachers are dismissed based upon qualified immunity, since they had no reason to believe they were violating the child's constitutional rights by using the "quiet room" and other strategies set out in the student's IEP.

C. Phipps v. Clark Co. Sch. Dist., 67 IDELR 91 (D. Nev. 2016). Parties' motion to dismiss Section 1983 claims are denied where school district refuted the aide's description of her classroom conduct and use of physical restraint with a nonverbal student with autism. School officials testified that the aide's physical interactions with the student were not appropriate crisis management techniques where the aide's testimony suggested that she was acting in accordance with district policy and training. Where sufficient evidence exists for a reasonable jury to find either that the aide restrained the student in the way she was trained or that her actions were in defiance of the district's training and policies, motions to dismiss are denied. School districts can be held liable under Section 1983 for an employee's violation of a student's constitutional rights if the employee acted in accordance with district policy, custom or practice. The district here did not contest the parents' claim that the aide violated the student's constitutional rights when she dragged him from under a table by the wrist, pinned him to the floor with her knees and elbows, and shoved another student into him. Police arrested the aide on the date of the restraints in question after seeing her conduct on live-feed surveillance after they had installed hidden cameras in the classroom based upon 2 reports of suspected physical abuse from parents of other students.

D. Payne v. Peninsula Sch. Dist., 66 IDELR 3 (9th Cir. 2015) (unpublished). District court's denial of qualified immunity to special education teacher who placed student in a 63-inch by 68-inch "safe room" to manage his behavior is reversed. Teacher is entitled to qualified immunity defense under Section 1983 where the child's constitutional rights were not "clearly established" at the time of the incident. While the district court held that the teacher should have known she was violating the child's constitutional rights when she allegedly locked him in the small, dark closet and purportedly required him to clean up his feces when he defecated in it, the child's IEP authorized the teacher to use the safe room. Thus, at the time the teacher acted, it would not have been clear to a reasonable official that placing the child in the room was an unconstitutional seizure.

E. Zdrowski v. Rieck, 66 IDELR 42 (E.D. Mich. 2015). Actions of two elementary school teachers in using the "transport position" to bring the violent second-grader with Asperger syndrome to the school office were not unreasonable in light of their need to remove the student from the classroom and to minimize any additional stress to the student that the "team control position" may have caused. While one teacher testified that she considered using the "team control position," which is the recommended position for a student who is struggling, she decided that the student would experience greater stress if required to put his head between his legs. In the context of this case, there the student was threatening to harm himself and had a history of violent outbursts and may have been agitated by being restrained in the control hold, no reasonable jury could find that the teachers acted with bad faith or gross misjudgment. Thus, the district's motion for judgment on the parent's Section 504 and ADA claims is granted.

CHILD FIND/EVALUATIONS/REEVALUATIONS

A. Memorandum to State Directors of Special Education, 65 IDELR 181 (OSEP 2015). High cognition is not, in itself, a bar to eligibility under the IDEA and OSEP is concerned that some districts are refraining from evaluating students with disabilities because they have high cognition. As OSEP said in 2013 in Letter to Delisle, districts may not use cut-off scores as the sole basis for determining the eligibility of a student with high cognition who may qualify on the basis of SLD. Eligibility determinations must be made using a variety of assessment tools and strategies and may not rely on any single measure or assessment as the sole criterion for the decision. OSEP is continuing to receive letters from those working with children with disabilities, particularly those with ED or mental illness, indicating that some districts may be resisting conducting an initial evaluation on the basis of the student's high cognitive skills. State Directors are asked to disseminate Letter to Delisle to district and remind them of the obligation to evaluate all children, regardless of cognitive skills, who are suspected of having one of the 13 disabilities outlined in the IDEA.

B. Phyllene W. v. Huntsville City Bd. of Educ., 66 IDELR 179 (11th Cir. 2015) (unpublished). Case is reversed and remanded to the district court to determine an appropriate remedy where school district did not reevaluate an SLD student when it clearly had reason to suspect that the student might have a hearing impairment. The district was aware that the student had undergone 7 ear surgeries, was being fitted for a hearing aid and had difficulty communicating with others. Although the parent did not ask the district to evaluate the student's hearing, the IDEA does not require parents to ask for evaluations of suspected disabilities. Rather, districts have a continuing obligation to evaluate all students suspected of needing IDEA services and there was good reason to suspect that this student might have a hearing impairment. Notification by the parent that the student was being fitted for a hearing aid along should have raised a red flag that an evaluation was necessary to determine whether she had a hearing impairment necessitating further services.

C. A.W. v. Middletown Area Sch. Dist., 65 IDELR 16 (M.D. Pa. 2015). District's delay in comprehensively evaluating teenager with an anxiety disorder is a denial of FAPE and entitles the student to compensatory education. The IDEA requires districts to conduct a "full and individual" initial evaluation of a student who is suspected of having a disability and districts must use a variety of assessment tools and strategies to gather relevant information about the student's functional, developmental and academic needs. Here, the district sought parental consent only to conduct a psychiatric evaluation of the student. The evaluation information did not include information from which the district could develop a positive behavior plan or IEP goals or to rule out SLD. From the outset, the district knew that the psychiatric evaluation would not address educational matters and should have known that it would need to conduct additional assessments to determine the full scope of the student's needs. In addition, the district did not convene the IEP team until 13 months after it first had reason to suspect that the student had a qualifying disability and the student went without appropriate services in the interim.

D. C.C. v. Beaumont Indep. Sch. Dist., 65 IDELR 109 (E.D. Tex. 2015) (unpublished). A district has a duty to evaluate under the IDEA when it has reason to suspect that a child has a disability and may be in need of special education services. Here, the district had reason to suspect the need to evaluate a 3 year-old when his mother, a district diagnostician, played an audio recording of her son's speech for the district's SLP. Based upon the mother's conversations with the SLP, the district had notice of the child's disability by his third birthday on January 25, 2013. In addition, the district's policy of not evaluating any child that is not enrolled in its programs violates the IDEA and likely contributed to the delay here. If the district had evaluated the child in a timely fashion, he would have received services approximately 30 days earlier. Thus, the hearing officer's award of compensatory speech services is affirmed.

E. E.F. v. Newport Mesa Unif. Sch. Dist., 65 IDELR 265 (C.D. Cal. 2015). Based upon the nonverbal child's difficulty understanding basic linguistic concepts as a preschooler and difficulties in using the Picture Exchange Communication System, picture cards and sentence strips, the district had no reason to believe the child was ready to use high-tech communication devices and needed an AT evaluation. However, the district should have assessed the child's AT needs when his parents reported in February 2012 that he was using a tablet at home with great success as a kindergartner. The district waited until November of 2012 to evaluate and January 2013 to provide services. The ALJ's award of 20-minute AT therapy sessions, totaling 400 minutes of compensatory education, was sufficient to remedy the IDEA violation in light of the AT services provided in subsequent IEPs.

F. Student R.A. v. West Contra Costa Unif. Sch. Dist., 66 IDELR 36 (N.D. Cal. 2015). District made numerous attempts to schedule reevaluation of 11 year-old with autism and it had no obligation to accept the mother's demand for an evaluation location to be identified with a one-way mirror that would allow her to see and hear the assessments. In addition, the parent failed to respond to an email from the district stating that it would interpret the mother's lack of contact as a refusal to make the student available for reevaluation. The mother's request to observe the assessment was unreasonable, given the district's longstanding policy of precluding parental observations in an effort to prevent an alteration of the testing environment that might skew results. In addition, neither the IDEA nor its regulations give parents the right to observe an evaluation.

ELIGIBILITY

A. M.P. v. Aransas Pass Indep. Sch. Dist., 67 IDELR 58 (S.D. Tex. 2016). Where student was diagnosed privately with ADHD and a mood disorder, an impairment alone will not qualify a student for special education. A parent must also show that the student needs special education services to receive educational benefit. Prior services provided pursuant to a 504 Plan and diagnosis of Asperger's appeared to be roughly the same as the efforts made for the general student population and the student was abundantly successful. Without evidence that the student needs specialized instruction, the student is not eligible under the IDEA.

B. Dear Colleague Letter, 66 IDELR 188 (OSEP 2015). In response to concerns that districts are hesitant to reference or use the terms dyslexia, dyscalculia and dysgraphia in IEPs and other related documents, it is noted that nothing in the IDEA forbids districts from using such terminology. Using such terms may be helpful for districts at times, even though it is not a legal requirement to do so. In the IDEA regulations, a non-exhaustive list of examples of SLD includes dyslexia, but not dyscalculia or dysgraphia. However, this does not matter since what is most important is that districts conduct an evaluation to determine whether a child meets the criteria for SLD or any other disability and to determine the need for special education and related services. Information about a student’s learning difficulties may be helpful in determining educational needs. In addition, since a child’s IEP must be accessible to the regular education teacher or other school personnel responsible for implementation, noting the specific condition involved might be a way for districts to inform personnel of their specific responsibilities related to implementing the IEP. It may also serve as a way for districts to ensure that specific accommodations, modifications and supports are provided in accordance with the IEP. Thus, districts are encouraged to consider situations where it would be appropriate to use specific terms like dyslexia, dyscalculia or dysgraphia to describe a child’s unique needs through evaluation, eligibility and IEP documentation.

C. D.A. v. Meridian Jt. Sch. Dist. No. 2, 65 IDELR 286 (9th Cir. 2015) (unpublished). The district did not err in finding that the student was not eligible for services under the IDEA. High schooler’s Asperger syndrome does not have an adverse effect on his educational performance (which in Idaho includes academic areas such as reading, math and communication, as well as nonacademic areas such as daily living skills, mobility and social skills). Although the parents allege that the district focused too much on academic performance, the hearing officer and district court noted that the student had done well in classes that emphasized pre-vocational and life skills.

D. Department of Educ. v. Patrick P., 65 IDELR 285 (9th Cir. 2015) (unpublished). The ED did not err in finding the student ineligible for IDEA services. A child needs to satisfy two sets of criteria in order to receive services as an SLD student: first, the child must demonstrate either inadequate achievement or severe discrepancy between achievement and ability. Second, the child must demonstrate either insufficient progress or a pattern of strength or weaknesses in performance consistent with SLD. The student here failed to meet the first criteria, as the student performed well in the classroom, was engaged in his classes and received good grades. Further, the student was only receiving Tier I accommodations that were available to all students attending his private school, regardless of their disability status. The district court’s decision is affirmed reversing the administrative hearing order in the parents’ favor.

E. Q.W. v. Board of Educ. of Fayette Co., 64 IDELR 308 (E.D. Ky. 2015), aff’d, 66 IDELR 212 (6th Cir. 2015) (unpublished). District’s finding that the student no longer requires IDEA services is upheld. The student’s alleged difficulties at home do not require the district to continue providing special education services. Under the IDEA, a student with autism is not eligible for special education and related services, unless his disability adversely affects his educational performance. The ordinary meaning of "educational performance" requires courts and hearing officers to focus on school-based evaluation. Here, the student did not appear to exhibit any academic, behavioral or social difficulties at school. Rather, his teachers testified that he earned good grades, participated in class, exhibited the same level of emotion as his peers and was "a joy" to have in class. While "educational performance" may extend beyond grades to the classroom experience as a whole, it does not include behaviors exhibited solely in the home. "Social and behavioral deficits will be considered only insofar as they interfere with a student's education."

F. H.M. v. Weakley Co. Bd. of Educ., 65 IDELR 68 (W.D. Tenn. 2015). An ALJ's ruling that the frequently truant high schooler was "socially maladjusted" did not mean that the student was not IDEA-eligible. The student's lengthy history of severe major depression coexists with her bad conduct and qualifies her as an ED child. Social maladjustment does not in itself make a student ineligible under the IDEA. Rather, the IDEA regulations provide that the term "emotional disturbance" does not apply to children with social maladjustment unless they also meet one of the five criteria for ED. Since age 9, this student has been diagnosed with severe major depression and later medical and educational evaluations stated that she had post-traumatic stress disorder in addition to a recurrent pattern of disruptive and negative attention-seeking behaviors. Further, the depression was marked, had lasted a long time and affected her performance at school. Thus, it is "more likely than not" that her major depression, not just misconduct and manipulation, underlie her difficulties at school. Thus, the hearing officer's decision finding her ineligible under the IDEA is reversed.

G. In the Matter of P.T., 65 IDELR 273 (N.Y. 2015) (unpublished). Even if a 5^{th} grader developed an emotional disturbance based upon peer bullying, the lack of impact on the student's academic performance supports the district's determination that the student is not eligible under the IDEA. Having an emotional disturbance, such as anxiety or depression, will not in itself qualify a child for IDEA services. Parents must also show that the condition has an adverse impact on educational performance. Here, the student consistently earned good grades and received average to above-average scores on intelligence tests. Assuming that the student's mental and emotional state did rise to the level of emotional disturbance, the SRO was correct to find that it did not affect the student's educational performance. Thus, the parents are not entitled to reimbursement for a parochial school placement.

REEVALUATION

A. Brock v. New York City Dept. of Educ., 65 IDELR 135 (S.D. N.Y. 2015). Existing evaluative data did not support the IEP team's recommendation that the student be placed in a public 12:1+1 public school program. The failure to conduct a reevaluation in the previous six years resulted in substantive harm, as the district's reliance upon information from the student's private school was misplaced. Not only did the student's progress reports use broad grading criteria and "rudimentary grading differentials," the private school's data did not include any educational testing or standardized assessments that supported the district's proposed change in placement. Thus, these were insufficient substitutes for the mandatory triennial reevaluation where the existing data did not indicate how the student might perform in a public school setting. Where the district did not challenge the appropriateness of the private placement or argue that the equities in the case would preclude reimbursement for the private placement, the district is ordered to reimburse the mother and grandmother for private school tuition costs.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

A. Seth B. v. Orleans Parish Sch. Bd., 67 IDELR 2 (5th Cir. 2016). In a case of first impression, a "substantial compliance" standard applies to the question of whether parents are entitled to reimbursement for an IEE. While the IDEA provides that a district is not required to pay for an IEE if it can demonstrate at a hearing that it does not "meet agency criteria," it does not define this phrase. Since a "substantial compliance" standard as already been applied in other FAPE disputes, such as those involving IEP implementation, it should apply to IEE instances as well. The adoption of such a standard would safeguard parental rights to participate in the IEP process, especially in states that have adopted complex evaluation criteria. If districts are allowed to deny reimbursement based upon ambiguities or inconsequential nonconformities with such criteria, they will be effectively able to treat the parental right to an IEE as a privilege to be granted at their discretion. While the district's concern that some judges or hearing officers might adopt an "unreasonably low standard" for substantial compliance is recognized, that risk is acceptable given the strong interest in preserving the parental right to an IEE. Thus, the case is remanded to the district court for a determination of whether the parents' privately-obtained IEE substantially complied with Louisiana's evaluation requirements. However, the possible amount of reimbursement is limited to $3,000, based upon the parents' failure to request an exemption from the district's reasonable cost criteria. (Note: The dissenting opinion notes that the substantial compliance standard usurps regulatory authority and invites courts and hearing officers to participate in arbitrary decision-making).

B. Haddon Township Sch. Dist. v. New Jersey Dept. of Educ., 67 IDELR 44 (N.J. Sup'r Ct. 2016) (unpublished). Where reevaluation consisted of review of existing data only, and parent disagreed with the failure to conduct additional assessments, they are entitled to an independent FBA of a 6th grade OHI student. District's review of existing data qualified as an evaluation with which the parent disagreed, triggering the right to an IEE.

C. Fullmore v. District of Columbia, 67 IDELR 144 (D. D.C. 2016). An unreasonable delay in authorizing payment for an IEE is a procedural violation of the IDEA. As such, a parent is not entitled to relief, unless she is able to show that the alleged delay caused substantive educational harm to the child. Thus, the parent here was required to show that the student made marked improvements as a result of the IEE that was conducted—improvements that he would have made earlier if the district had granted the request for an IEE in a timely manner. Although progress reports indicated that the student's grades and behavior slightly improved in the spring of 2013 and the fall of 2014, those improvements were unrelated to the December 2012 IEE. Absent any evidence that the student improved as a result of the IEE, the parent did not show that any delay in the IEE authorization resulted in a denial of FAPE. (In fact, the district authorized the IEE just 13 days after the parent's request for it).

D. Letter to Baus, 65 IDELR 81 (OSEP 2015). If a parent disagrees with a district's evaluation based upon the district's failure to assess the child in a specific area of need, the parent has the right to request an IEE at public expense in that area to determine whether the child has a disability and the nature and extent of the special education and related services the child needs. At that point, the district is required to either request a due process hearing to show that its evaluation is appropriate or provide the requested IEE at its expense.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. Letter to Andel, 67 IDELR 156 (OSEP 2016). While the school district must inform parents before an IEP meeting as to who will be in attendance, there is no similar requirement for the parent to inform the school district, in advance, if he/she intends to be accompanied by an individual with knowledge or special expertise regarding the child, including an attorney. "We believe in the spirit of cooperation and working together as partners in the child's education, a parent should provide advance notice to the public agency if he or she intends to bring an attorney to the IEP meeting. However, there is nothing in the IDEA or its implementing regulations that would permit the public agency to conduct the IEP meeting on the condition that the parent's attorney not participate, and to do so would interfere with the parent's right…." It would be, however, permissible for the public agency to reschedule the meeting to another date and time "if the parent agrees so long as the postponement does not result in a delay or denial of a free appropriate public education to the child."

B. Letter to Savit, 67 IDELR 216 (OSEP 2016). States have the discretion to put criteria in place regarding audio or video recording of IEP team meetings, which may include a requirement for parents to notify the district a certain number of days in advance of the meeting that he/she plans to record it. However, a district will need to take such a requirement into account when deciding how much notice to provide a parent of an IEP meeting in order to schedule the meeting at a time that allows the parent to meet the notice requirement and fully participate in the meeting. In addition, a school district may suspend the recording of an IEP meeting it if determines that it is not necessary in order for the parent to fully understand the meeting. However, it must ensure that doing so will not interfere with the parent's understanding of the IEP, the IEP process, or other procedural safeguards under the IDEA.

C. Conway v. Board of Educ. of Northport-East Northport Sch. Dist., 67 IDELR 16 (E.D. N.Y. 2016). In a failure to exhaust administrative remedies case, the parent could not claim that she never received notice of her right to file for a due process hearing where the evidence showed that the district provided such notice. Indeed, the district documented each instance in which it provided the parent a copy of her procedural safeguards under the IDEA. The first notice accompanied a prior written notice form regarding a referral for an evaluation and request for consent, and another was provided along with April 2013 IEP team findings regarding the student's eligibility for services. Because the parent had adequate notice of her rights, her argument that exhaustion of administrative remedies would be futile is rejected.

D. D.B. v. Santa Monica-Malibu Unif. Sch. Dist., 65 IDELR 224 (9th Cir. 2015). District's exclusion of parents from an IEP meeting constituted a denial of FAPE to the deaf teenager. The unavailability of certain IEP team members during the summer did not justify the district's decision to go ahead with the meeting in the parents' absence and after they had asked for it to be rescheduled for a date when they would be available. An agency can make a decision without the parents only if it is unable to obtain their participation, which was not the case here. Where the district claimed that it needed to hold the meeting because the current school year was ending, the IDEA only requires the district to have an IEP in effect at the start of the school year. Thus, the failure to review and revise the student's IEP before the beginning of summer break would not cause the district to run afoul of another procedural requirement. The parents' attendance at the meeting takes priority over the attendance of other team members.

E. Z.R. v. Oak Park Unif. Sch. Dist., 66 IDELR 213 (9th Cir. 2015) (unpublished). Assistant Principal who also taught a general education Spanish class could serve in the role of the regular education teacher at a student's IEP team meeting. The AP was a general education teacher "who is, or may be" responsible for implementing a portion of the student's IEP. Thus, his presence at the meeting satisfied the requirement that the team contain at least one regular education teacher of the child. In addition, any procedural effort was harmless based upon the parents' participation in the development of the IEP and the student's program.

F. A.G. v. State of Hawaii, 65 IDELR 267 (D. Haw. 2015). Parents' argument that the district's reference to the workplace-readiness program in the 14-year-old's draft IEP reflected predetermination of placement is rejected. Rather, the parents had the opportunity to express their concerns at the IEP meeting, including their desire for the student to spend part of the school day with nondisabled peers and to attend college. The district members of the IEP team reviewed the results of a recent assessment indicating that the student performed well below average academically and scored in the first percentile for cognitive functioning. In addition, the team modified the draft IEP in response to the parents' input, adding speech-language objectives and progress-monitoring requirements. There was no dispute that the IEP team discussed placement in the workplace-readiness program and attempted to address parental concerns at the IEP meeting. Further, the evaluative data supports the recommended placement in that program.

G. A.P. v. New York City Dept. of Educ., 66 IDELR 13 (S.D. N.Y. 2015). District gave meaningful consideration to the parents' concerns during an IEP meeting. The draft IEP that was distributed at the beginning of the meeting did not identify a placement for the student. In addition, the father testified that the team had a "heated discussion" about the student's ability to perform in the general education setting, and the final IEP developed documented the father's concern that the proposed integrated co-teaching class would not provide sufficient support. While the parents argued that the district refused to consider alternative placements, the district's documentation showed otherwise, stating that other programs, both 12:1:1 and 12:1 special education classes, were considered but were ultimately rejected because they were overly restrictive for the student. Thus, the records of the team's discussions, along with the substantial differences between the draft and final IEPs, prevented a finding that the district predetermined the student's placement in an integrated co-teaching class.

H. D.N. v. New York City Dept. of Educ., 65 IDELR 34 (S.D. N.Y. 2015). Parent's claim that the district predetermined placement is rejected. The IEP meeting minutes, along with testimony from district team members reflect that the district properly considered parental input during the IEP meeting. A parent cannot prevail on a predetermination claim when the record shows that she had a meaningful opportunity to participate in educational decision-making. Here, the testimony by the school psychologist reflected that the parent actively contributed to the development of the IEP and that the team modified some provisions of it in response to her input. For example, the parent had expressed concerns that her child required a 12-month program with greater support than a 6:1:1 staffing ratio. In response, the team included a recommendation for a 12-month program in a 6:1:1 class with the extra support of a one-to-one paraprofessional in the student's IEP. Further, the IEP meeting minutes expressly state that the parent was "asked explicitly" if she agreed with the proposed IEP goals or wanted to add any provisions to the IEP.

I. F.B. v. New York City Dept. of Educ., 66 IDELR 94 (S.D. N.Y. 2015). The parents' right to meaningfully participate in the IEP process includes the right to obtain relevant and timely information about the proposed school, and such information is necessary for parents to evaluate a placement offer and decide whether to accept it. Here, however, the district delayed school selection until June 2010—more than 4 months after the IEP team had developed an IEP for the 2010-11 school year. The parents sent two letters during that period asking for information about the proposed school, but did not receive a response. The district also failed to respond to a subsequent letter seeking information about the school identified in a June 22, 2010 placement notice. The lack of available information about the proposed placement justified the parents' decision to enroll the child in private school. Thus, the parents are entitled to reimbursement for the private placement.

J. John and Maureen M. v. Cumberland Pub. Sch., 65 IDELR 231 (D. R.I. 2015). District did not violate the IDEA when it denied the parent's request to observe her second-grader in the special education classroom. The IDEA does not give parents or their representatives the right to review current or prospective placements, although OSEP has encouraged districts to give parents an opportunity to do so. Here, the district offered the mother an alternative to her request, which would have allowed her to observe the classroom when no other children were in attendance.

IEP CONTENT/IMPLEMENTATION

A. E.H. v. New York City Dept. of Educ., 67 IDELR 61 (S.D. N.Y. 2016). The district has not shown that the IEP was likely to produce progress because it contained goals that were designed to expire by the time the new IEP was to begin implementing them. Here, the district erred in relying on 6-month goals contained in a December 2011 progress report from a private school in developing goals for the 2012-13 school year's IEP. The progress report, developed by the private school that the child attended for 3 years, included goals that the school expected the student to meet by June 2012, which the parent and the private school teacher testified that the child had progressed on. Nonetheless, the school district relied on the December 2011 report when it convened in June 2012. Thus, the goals in the proposed IEP for the 2012-13 school year did not reflect the child's present levels of academic achievement and functional performance and, therefore, denied FAPE.

B. S.B. v. Murfreesboro City Schs., 67 IDELR 117 (M.D. Tenn. 2016). Parents' motion for judgment for the cost of the student's unilateral residential placement is granted where district assigned a substitute teacher without special education certification to a full-time special education setting when the regularly-assigned special education behavior management teacher was out on maternity leave. The student's IEP focused solely on the student's severe behavioral problems, and the IEP team had determined that the student, although very intelligent, struggled to make progress because of frequent outbursts and "rage episodes." However, the district failed to ensure that he received behavioral services—the sole reason for his full-time special education placement—while the teacher was out on leave. The district's assignment of a substitute who was not certified in special education had more than a trivial impact on the student's education. In addition, residential placement was educationally necessary because the IEP's focus on behavioral issues showed that his emotional and behavioral problems were not separate from his learning.

C. Oskowis v. Sedona-Oak Creek Unif. Sch. Dist. #9, 67 IDELR 150 (D. Az. 2016). District is required to provide 212 hours of compensatory education to a nonverbal 10 year-old boy with autism where it waited too long between working on short-term objectives on three of his annual IEP goals. For the only goals that correlated with basic reading skills—color-matching and photo-matching—the IEP allotted 200 minutes per week. However, the district's 2-month delay in advancing the student between the first and second short-term objectives for those goals entitled him to 93 hours of compensatory education. Similarly, the district's 2-month delay in advancing the student between objectives on his shape-matching goal—the only one that correlated with basic math skills—required it to provide 84 hours of compensatory education. Finally, where the district did not provide the modeling that the student needed to work on related short-term objectives for the "object motor action" goal, an award of 23 hours of compensatory education for listening skills and 12 hours of OT are awarded. As the ALJ noted, the district did not begin working with the student on his second short-term objectives related to color-matching, photo-matching and shape-matching until November 2012, despite the fact that the student had mastered the first short-term objectives for all three of those goals in September 2012.

D. Meares v. Rim of the World Sch. Dist., 66 IDELR 39 (C.D. Cal. 2015). It was not an IEP implementation failure or denial of FAPE when aides assigned to the 17 year-old autistic student were not able to keep up with him during mountain biking practices. While the student's IEP called for a one-to-one aide during the school day, it did not provide that the student required an aide to participate in extracurricular activities; nor did it indicate that the student needed to participate in mountain biking in order to receive FAPE. Nonetheless, individuals who served as the student's aide were willing to ride with him during practice session and his parents' argument that their inability to keep up with him rendered them unqualified is rejected. "The Court questions how far [the parents'] logic must be extended; if [the student] was the preeminent mountain biker in Southern California, would the District be required to somehow locate a biking aide to keep pace?"

E. Morgan M. v. Penn Manor Sch. Dist., 64 IDELR 309 (E.D. Pa. 2015). The part of the hearing officer's order that awarded compensatory education is vacated, as its analysis ignores the content of the student's IEP. The district's failure to use the term "autistic support" in the first grader's IEP should not have been the basis for awarding compensatory education, as the IEP included a full range of services designed to meet the student's identified needs in the areas of empathetic social, sensory processing, behavioral and receptive communication skills. The hearing officer, therefore, erred in focusing on the lack of the IEP's inclusion of a specific term rather than the actual content of the IEP and the services listed in it.

F. Tyler J. v. Department of Educ., 65 IDELR 45 (D. Haw. 2015). The charter school's receipt of the student's IEP during the second week of school was not a "material implementation failure" that constitutes a denial of FAPE. There must be more than a minor discrepancy between the services that the LEA provides and those required by the student's IEP for it to be a material implementation failure. Here, the parents did not show that the delay in the school's receipt of the IEP impeded the student's educational progress. The evidence showed that charter school staff was familiar with the contents of the student's IEP on the first day of school, but the first few days were devoted to orientation and community building. The school was, in fact, implementing the IEP within days of the beginning of the school year.

G. Dear Colleague Letter, 66 IDELR 227 (OSERS/OSEP 2015). The fact that a student performs significantly below grade level in some academic areas does not mean that his IEP should set less ambitious goals. IEP goals must align with state academic content standards for the grade in which the student is enrolled. Aligning IEP goals with grade-level content standards reflects the IDEA's emphasis on having high expectations for students with disabilities and meets the instructional standards set out in NCLB. However, districts are cautioned not to abandon the individualized decision-making process that is the hallmark of IEP development. IEP teams must consider how a student's disability affects progress toward annual goals that are aligned with state grade-level standards. For example, the team may consider the special education instruction that has been provided, the child's previous rate of academic growth, and whether the child is on track to achieve grade-level proficiency within the year. All this said, states still have the ability to adopt alternate achievement standards for students with the most severe cognitive disabilities. However, IEP goals developed for them must reflect high expectations and be based on the state's content standards for the grades in which they are enrolled.

THE FAPE STANDARD

A. Reyes v. Manor Indep. Sch. Dist., 67 IDELR 33 (W.D. Tex. 2016). The parents' argument that FAPE was denied because the 19 year-old failed to master any of his IEP goals is rejected. The district took extensive measures to address the student's aggression and self-injurious behaviors, and the district could not help the student with functional skills until it addressed his unpredictable aggression toward staff members. The district consulted with a board certified behavior analyst, who remained with the student all day in his separate classroom and trained two full-time aides with respect to the student's behavior. Those staff members monitored and recorded the student's behavior every 5 to 15 minutes in an effort to identify the precursors to his aggression. In addition, the behavioral interventions employed allowed staff to work toward progress on the student's IEP goals. For example, the district introduced a tablet into the student's routine and attempted to teach him to say "yes" or "no" to reflect his desires; the student began to tolerate the sound of an electronic razor near his face; and, on occasion, the student did fold towels of different sizes. While the student's progress was slow and not always consistent, there was progress nonetheless sufficient to constitute FAPE.

B. M.H. v. Pelham Union Free Sch. Dist., 67 IDELR 154 (S.D. N.Y. 2016). Where the school district maintained detailed documentation of the student's progress in reading, math, comprehension and motor skills, the student's slow but steady progress during the previous two school years showed that he was receiving FAPE. The court was able to identify numerous gains that the student had made during the 2011-12 and 2012-13 school years, including reading words beginning with "th" and "sh" and progressing from reading 40 "consonant-vowel-consonant" words to reading every one that he encountered. The documentation also reflected that the student had learned to perform basic addition without using manipulatives, was following multi-step directions and answering reading comprehension questions. Further, progress reports showed that the student had mastered 10 of the 24 annual IEP goals and made varying degrees of progress toward another 10 of them. Thus, the student's progress demonstrates that the district's program was likely to yield progress, not regression, for the 2013-14 school year. Thus, the parents are not entitled to reimbursement for the student's unilateral private school placement.

C. O.S. v. Fairfax Co. Sch. Bd., 66 IDELR 151, 804 F.3d 354 (4th Cir. 2015). Based upon progress reports and teacher testimony that the student with OHI received nontrivial educational benefit from his kindergarten and first-grade IEPs, FAPE has been provided. The court refused to change its position that the IDEA only requires an IEP to provide nontrivial educational benefit and rejected the parents' argument that the preamble to

2004 IDEA modified the "basic floor of opportunity" standard set forth by the U.S. Supreme Court in the Rowley case. The 2004 statute's shift in focus from access to education to results did not alter the "some educational benefit" standard. Rather, the 2004 provision requiring districts to assess student "progress" does not include a modifier, such as "meaningful" progress, which Congress could have done if it had intended to change the standard. While other Circuit Courts have used the term "meaningful benefit" when describing the FAPE standard, that term simply means that an IEP must provide more than minimal or trivial benefit.

D. Endrew F. v. Douglas Co. Sch. Dist. RE-1, 66 IDELR 31, 798 F.3d 1329 (10th Cir. 2015). Parents are not entitled to recover the costs of a unilateral private school placement where the student had received "some educational benefit" from the district's program. While some Circuit courts have adopted a "meaningful educational benefit" standard, this court follows the "some educational benefit" standard and has no authority to deviate from other 10th Circuit cases. This student made some educational benefit by making some progress toward his academic and functional goals, even after his behavioral problems escalated in the 4th grade. In addition, the student's short-term goals and measuring criteria increased in difficulty from year to year, further demonstrating progress. Although the parents showed that the student was "thriving' in his private school program for autistic students, the district had no obligation to maximize the student's educational benefit.

E. Sneitzer v. Iowa Dept. of Educ., 66 IDELR 1, 796 F.3d 942 (8th Cir. 2015). Parent failed to establish a denial of FAPE for a gifted sophomore with Asperger syndrome. While her primary difficulties were following directions, understanding social rules and behavioral expectations and responding appropriately and respectfully to peers and adults, she excelled in her general education classes. The student's improved attendance after an off-campus rape and her 4.024 GPA suggested that her IEP provided some educational benefit to her. Although grades are not dispositive, in this kind of case where the goals in the IEP are non-academic in nature, the student's academic progress further undermines the contention that she was not receiving educational benefit when she was removed from the district by her mother. The district worked closely with the student's medical team and implemented its recommended accommodations following the rape. In addition, the parent and her witnesses testified at the hearing that the student could return to school. It appeared that the mother's decision to withdraw her stemmed from the student's failure to be chosen for the varsity show choir as opposed to lack of appropriate special education services. Absent evidence that the student needed to participate in varsity show choir to receive FAPE, the parent is not entitled to recover the cost of the student's out-of-state private placement.

RELATED SERVICES

A. Oconee Co. Sch. Dist. v. A.B., 65 IDELR 297 (M.D. Ga. 2015). District is ordered to provide an appropriately trained aide on the bus for a teenager with a seizure disorder who might need access to Diastat within five minutes of the onset of a seizure. Where the district contended an aide was not needed because the student was always within five minutes of home or school, the district's director of transportation acknowledged that traffic and weather conditions could affect the provision of timely emergency treatment. The ALJ's conclusion that this variable presents an unacceptable risk to the student is upheld. In ordering an aide, the ALJ struck a balance between the district's interest in obtaining more information from the student's neurologist and the student's interest in receiving his medication as soon as possible after his seizure reached 5 minutes.

B. DeKalb Co. Bd. of Educ. v. Manifold, 65 IDELR 268 (N.D. Ala. 2015). Hearing officer's decision that deaf high schooler needs CART services in order to receive FAPE is upheld. The hearing officer relied on reports by two independent assistive technology experts in finding that the district could not provide the basic floor of opportunity without CART. The reports of the AT experts who observed the student in school stated that the student missed approximately 60 percent of classroom instruction when using the district's FM system, which did not always work properly. It is especially persuasive that both experts brought to observe were in agreement with the parents than an IEP without CART or another speech-to-text method was not providing her with sufficient access to lectures, discussions and classroom materials. In addition, the student's grades improved substantially when the district provided CART services midway through her 9th grade year and dropped when the IEP team decided to discontinue CART for 10th grade. Thus, the evaluators' reports and the student's classroom performance with and without CART demonstrated an educational need for speech-to-text technology.

ASSISTIVE TECHNOLOGY

A. School Dist. of Philadelphia v. Williams, 66 IDELR 214 (E.D. Pa. 2015). District's IEP implementation failure is material where the student's IEPs consistently indicted that he requires or benefits from the use of an IPad or other assistive technology to help develop his writing and communication skills. The fact that the student was already "verbal" and could speak without the device did not mean that its role in his IEP was not substantial or significant. Rather, the student regularly used the IPad's vocabulary word bank with pictures whenever he struggled to find words that he needed to communicate with others at school or home. Without it, he had difficulty spontaneously constructing sentences that were grammatically correct. Thus, the hearing officer's order of compensatory education is affirmed.

LEAST RESTRICTIVE ENVIRONMENT

A. A.R. v. Santa Monica Malibu Sch. Dist., 66 IDELR 269 (9th Cir. 2016) (unpublished). While the district has the obligation to educate a preschooler with autism with nondisabled peers to the maximum extent appropriate, its placement of the student in a collaborative class is the child's LRE. Given that the child required prompting to interact with other children, he would not benefit from a general education placement. In addition, the IEP team discussed a number of placement options and when the parents rejected one preschool collaborative class option due to the age of the other children in that class, the district offered an alternative in a pre-academic preschool class with more age-appropriate models. The district provided several options tailored to the meet the needs of the child, including programs with non-disabled peers. Thus, the district complied with the IDEA's requirements and the parents are not entitled to reimbursement for their unilateral private school placement.

B. S.M. v. Gwinnett Co. Sch. Dist., 67 IDELR 137 (11th Cir. 2016) (unpublished). The district's documentation of the full range of supplementary aids and services considered for a second-grader with difficulties in reading, writing and math supported its decision to offer pull-out instruction in those academic classes. The district provided supplementary aids and services so that the child could remain in the regular classroom in other academic subjects. For example, co-teaching was provided in the regular classroom for science and social studies. Clearly, the child required direct, explicit, small-group instruction with drill and repetition to make progress in the areas of reading, writing and math, which was very different from that provided in the general education classroom. Thus, the district could not meet the child's needs in a mainstream setting even with supplementary aids and services and the district has mainstreamed the child to the maximum extent appropriate.

C. Smith v. Los Angeles Unif. Sch.. Dist., 67 IDELR 226 (9th Cir. 2016). Group of parents who want their children to stay in separate special education settings may intervene in this case to challenge a settlement agreement entered into by a different group of parents and the school district that would lead to the elimination of special education centers. The settlement agreement, which was renegotiated, resulted in curriculum change for the students in the centers that had not been imposed on students whose IEPs previously recommended full-time placement in a special education center. Thus, challenging at this time is appropriate, even though the litigation has been going on over 20 years. The parents' delay in intervening into the lawsuit as also justified because they did not appreciate the "full import" of the changes based upon the "rosy language in which the changes were portrayed" by the district. Thus, these factors weigh in favor of the parents' intervention in this case.

D. Jason O. v. Manhattan Sch. Dist. No. 114, 67 IDELR 142 (N.D. Ill. 2016). The district's proposed self-contained classroom is the LRE for a kindergartner with persistent behavioral problems. The program will provide opportunities for the child to interact with nondisabled peers in art, music and gym, as well as in academic classes when appropriate. The district provided social emotional services, resource support and a BIP to support the student in the general education class, but his frequent aggression and non-compliance continued and his academics were on a "downward trajectory." The child's behavior was not improving and instances of non-compliance have increased. Meeting goals is not possible in the general education setting where the child could not receive immediate, frequent correction to address his anger and insensitivity toward peers. Thus, the self-contained class is the LRE where the student can receive educational benefit.

E. H.L. v. Downington Area Sch. Dist., 65 IDELR 223 (3d Cir. 2015) (unpublished). The district denied FAPE in the LRE to a 4th-grader with SLD when deciding that she could not receive reading and writing instruction in the general education classroom. The first step in the LRE analysis is determining whether the student can be educated satisfactorily in the general education setting with the use of supplementary aids and services. Here, there is little evidence to support the district's decision that the student required pull-out services in language arts for 90 minutes per day. The IEP and the placement notice only vaguely stated that the district considered a full-time general education placement and rejected that option as being inadequate to meet the student's needs. There was no evidence in the record as to how the district actually approached the LRE issue and only limited evidence in the supplemented record of options that might have been available. There is no documentation that discussion of this issue at all. Thus, the district's proposed placement could not be assessed in the absence of that evidence.

F. H.G. v. Upper Dublin Sch. Dist., 65 IDELR 123 (E.D. Pa. 2015). Where testimony indicated that sixth-grade student with Fragile X syndrome had difficulty understanding the most basic work in reading and math supports the district's proposal to place him in a special education setting for both subjects. In determining a student's LRE, two factors are considered: 1) whether the district could educate the student in a general education classroom with supplementary aids and services; and 2) if not, whether the district mainstreamed the student to the maximum extent appropriate. With respect to the first factor, the student's teachers attempted various modifications, accommodations, aids and supports, many of which were unsuccessful. The math teacher testified that the student struggled with the most basic concepts and frequently became so frustrated that he had to leave the classroom. According to his language arts teacher, he would hold his books upside down and take scribbled notes to be part of the class. Even the parents' witnesses underscored how the student would benefit in a segregated setting when recommending a smaller, more supportive classroom environment. The student also engaged in loud and disruptive behaviors such as calling out and flapping his hands. In light of these factors, a general education placement is not appropriate for math or science. The fact that the district offered a general education placement for the rest of the day indicates that the district mainstreamed the student to the maximum extent appropriate.

G. Letter to Deal and Olens, 115 LRP 31259 (DOJ 2015). The State of Georgia has violated the ADA by the unwarranted segregation of over 5,000 students enrolled in the Georgia Network for Educational and Therapeutic Support (GNETS) program. The state must redirect its resources and capital to ensure that all GNETS students are transferred to "the most integrated setting appropriate." Under the ADA, educational agencies must place a student in an integrated educational setting that provides him "with opportunities to interact with his…[nondisabled] peers to the fullest extent appropriate." Here, the state automatically refers students with behavioral disabilities to the GNETS program even though the vast majority of them could participate with additional services and supports in general education schools. The evidence showed that these students, whether they attended a separate center or a classroom within a local school, spent their entire day, including meals, exclusively with other disabled students. In addition, the GNETS program failed to offer equal opportunities to its students by not providing them with grade-level instruction, extracurricular activities or elective courses. Instead, students only received instruction in core academic subjects and were assigned to inferior facilities that lacked many of the features and amenities of regular schools, such as air conditioning and appropriate lighting. The state is ordered to use its available funds to properly evaluate all GNETS students, transition them back into their local schools and provide them with necessary services.

ONE-TO-ONE AIDES

A. Lainey C. v. Department of Educ., 65 IDELR 32 (9th Cir. 2015) (unpublished). District court's decision that a one-to-one aide was not necessary for 5th grader with autism is upheld. The district court's reliance upon the testimony of a behavioral specialist--who opined that an aide would not necessarily assist the student with socialization and that it might lead to the student becoming more socially isolated and less independent—was appropriate. Given the potential drawbacks of providing a one-to-one aide, it was not unreasonable for the IEP team to recommend that the district first try a social skills group and autism consultation services.

BEHAVIOR/FUNCTIONAL BEHAVIORAL ASSESSMENTS

A. J.C. v. New York City Dept. of Educ., 67 IDELR 109 (2d Cir. 2016) (unpublished). District's failure to conduct an FBA and create a BIP separate from the student's IEP did not rise to the level of a denial of FAPE, even where New York law required it. The student's 2011-12 IEP appropriately addressed the student's behavioral issues. While New York law does require that an FBA be conducted when a student has behaviors that impede learning, the failure to do so will not be a violation of FAPE as long as the IEP adequately identifies the student's behavioral impediments and implements strategies to address the behavior. Here and according to the district court, teachers were able to reduce the student's disruptive classroom behaviors, such as jumping and squealing, by using interventions and supports outlined in the student's IEP. In addition, the student's behaviors occurred infrequently and did not usually impede his learning or that of others. Thus, the district's procedural violation did not constitute a denial of FAPE.

DISCIPLINE/MANIFESTATION

A. Bristol Township Sch. Dist. v. Z.B., 67 IDELR 9 (E.D. Pa. 2016). Determination that teenager's ADHD did not play any role in the alleged physical assault of a teacher is inappropriate and the hearing officer's order of compensatory education for one day for each day after 10 days the student was removed is affirmed. The manifestation team did not discuss whether the student actually assaulted the teacher or whether his alleged misconduct had a direct and substantial relationship to his disability. In fact, the special education supervisor testified that the team looked at it "more from a global picture," and did not look at what occurred during the specific incident. According to the supervisor, the team only considered whether ADHD generally has a connection to aggressive behavior. In addition, the team's failure to consider the student's horseplay in the school hallway and refusal to follow teacher's direction, both of which came before the alleged assault, made the manifestation decision deficient. Further, the supervisor's decision to complete the MDR report prior to the team's discussion was ill-advised, even though she gave team members an opportunity to object to it, which was not an appropriate substitute for meaningful discussion.

B. Z.H. v. Lewisville Indep. Sch. Dist., 65 IDELR 147 (E.D. Tex. 2015). The district's determination that the student's creation of a list of schoolmates he wanted to shoot was not a manifestation of his disability is upheld. While the district had evaluated the student for Asperger's the previous school year at his parents' request, the school psychologist determined that no further assessment was necessary based upon the student's extremely sociable nature and good sense of humor. The MDR team did discuss a PDD-NOS diagnosis by the student's pediatrician issued five days after the discovery of the shooting list and offered to complete an autism evaluation, but the parents would not consent to it. After the school psychologist explained why further autism testing had not been done the previous year, the team limited its review to the student's ADHD and depression. While the student's ADHD caused him to act impulsively, the shooting list was developed over several days and was not the result of his ADHD. In addition, the parents could not identify any evidence in the record linking the creation of the list to the student's depression. Thus, the district's determination that the behavior was not a manifestation of disability is upheld.

C. C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist., 65 IDELR 195 (N.D. Tex. 2015). The fact that juvenile authorities decided not to prosecute the student for photographing another student on the toilet was not relevant to the school district's decision to place the student in an interim alternative educational setting for 60 days. The district had found that the behavior was not a manifestation of the student's ADHD and SLD, so the student was subject to the same discipline policies and procedures as the general student population. The Texas Education Code calls for such a placement for such conduct and it did not matter that the criminal authorities decided not to prosecute the student for the conduct.

DANGEROUS BEHAVIORS

A. Wayne-Westland Comm. Schs. v. V.S., 64 IDELR 139 (E.D. Mich. 2014) and 65 IDELR 15 (E.D. Mich. 2015). District's motion for an injunction temporarily prohibiting a teenager with a disability from entering the high school grounds is granted where an administrator's statement indicates that the student has become physically violent on multiple occasions. A court may, in appropriate situations, temporarily enjoin a dangerous student from attending school when the student poses an immediate threat to the safety of others, Here, the district's complaint showed that the 6-foot, 250-pound student kicked, punched and spit on students and staff; threatened to rape a female staff member; and threatened to stab two staff with a pen. After the IEP team reduced the student's attendance to one hour a day, the student attacked the school's security liaison. When told to leave the school building, the student tried to force his way back into the building and four staff members were required to hold the school doors shut to keep him out. Since then, the student had also threatened to bring guns to school, made racist comments to staff, and punched the school's director in the face. Thus, the district may temporarily educate the student through an online charter school program. NOTE: On February 4, 2015, the court granted a permanent injunction barring the student from entering any premises owned by the district or attending school events. The district was able to prove all four factors required to obtain permanent relief: 1) that it would suffer irreparable harm; 2) the remedies available at law are inadequate to compensate for that harm; 3) the balance of hardships tip in its favor; and 4) the injunction would not be against public interest. This is so because of the student's history of physical violence that demonstrated an "extreme risk" of imminent and irreparable injury. Remedies such as money damages would be inadequate to address any injuries to others resulting from the student's conduct and schoolmates and staff would suffer a far greater injury than the student, who can continue his education through an online program. Protecting the safety of others is in the public's interest.

B. Troy Sch. Dist. v. v. K.M., 64 IDELR 303 (E.D. Mich. 2015). District's request for a temporary restraining order is denied where it was not shown that the district would suffer irreparable harm or imminent injury if the teenager returned to his public high school. The IDEA's stay-put provision requires that a student remain in his then-current educational placement during any pending administrative proceedings. While a court can authorize a change in placement when a student engages in violent or dangerous behavior, it cannot do so unless the district shows that maintaining the student in his current placement is substantially likely to result in injury to the student or others. Here, the district did not meet that burden where the incident that resulted in the student's most recent suspension occurred in the absence of the "safe person" required by his IEP and no serious injuries were recorded. Thus, the student is not substantially likely to injure himself or others if the district implements his IEP. NOTE: In a subsequent case regarding placement for the student and appealing a hearing officer decision, the court upheld the parent's challenge to the district's proposed placement in a center-based program for children with ED. Based upon testimony from psychologists and autism experts, the student could have made educational progress in a general education setting. While the student has had multiple behavioral incidents in mainstream classes, several of which resulted in emergency evacuations or police intervention, the experts testified that the student was on "high alert" because he was so fearful during the school day—"Police involvement, restraints and seclusion can be frightening for any student, but more so for a student with disabilities." According to the psychologists and autism experts, the student is highly intelligent, learns quickly, has a strong work ethic and wants to be successful. In addition, experts have opined that he needs to interact with nondisabled peers to acquire social and behavioral skills and that he could benefit from a mainstream class if provided appropriate support services. Thus, the ALJ's decision that the district denied FAPE is upheld and the order requiring the district to provide a one-to-one psychologist with autism training as the student's "safe person" is clearly permissible under the IDEA.

STUDENTS IN JUVENILE JUSTICE/CORRECTIONAL FACILITIES

A. Buckley v. State Correctional Institution-Pine Grove, 65 IDELR 127, 98 F.Supp.3d 704 (M.D. Pa. 2015). State prison erred in discontinuing special education services to an incarcerated teenager with ED and the provision of "self-study packets" to be completed in the student's cell denied FAPE. As allowed by the IDEA, the public agency was able to show that the prison had a bona fide security interest that would allow them to modify the student's IEP where the student's prison record reflected four instances of assault and approximately 25 other incidents of serious misconduct. However, the official comments to the 1999 IDEA regulations state that the IEP team must consider possible accommodations for an incarcerated student who poses a security risk. Here, the prison did not convene the student's IEP team and instead enforced a policy requiring all eligible inmates in its restrictive housing unit to study in their cells. Further, the right to modify the IEP of an incarcerated student who cannot otherwise be accommodated does not allow a public agency to discontinue IDEA services altogether. An education program should be revised, not annulled, in light of safety considerations. Thus, the student is awarded a full day of compensatory education for each school day that he was placed in the prison's restrictive housing unit.

METHODOLOGY

A. W.D. v. Watchung Hills Regional High Sch. Bd. of Educ., 65 IDELR 63 (3d Cir. 2015) (unpublished). The IEP team did not violate the parent's procedural safeguards by failing to answer his specific questions about educational methodologies and personnel qualifications. This is so because the IDEA does not require IEPs to include such information. In addition, the team provided adequate information by informing the parent that the reading program that would be used was a research-based program and would be taught by a certified special education teacher.

B. Dear Colleague Letter, 66IDELR 21 (OSEP 2015). Based upon concerns being heard "in the field," including the fact that SLPs may be left out of the loop when determining eligibility for students with ASD, educational agencies are reminded that ABA therapy is just one methodology that may be appropriate for a child with autism. Part C and Part B require IEP teams to determine a child's services based on the child's unique needs, and evaluations conducted under Part C must include assessment of the child's needs in several areas, including communication, physical and adaptive development. Under Part B, districts must ensure that evaluators assess children in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social/emotional status, general intelligence, academic performance, communicative status and motor abilities. The objective of the evaluation and IEP development process is for the IEP team to create a program tailored to the specific child's needs. That cannot occur if key service providers are not involved and services are restricted to a particular methodology. "We recognize that ABA therapy is just one methodology used to address the needs of children with ASD and remind States and local programs to ensure that decisions regarding services are made based on the unique needs of each individual child."

C. J.N. v. South Western Sch. Dist., 66 IDELR 102 (M.D. Pa. 2015). The district's proposed use of the Read 180 program will address all of the student's identified needs, notwithstanding the private psychologist's recommendation that the SLD student receive Wilson-based reading instruction. Although the student's scores in 6^{th} grade on standardized tests were lower than those of other children his age, the results of the district's skills-based exams indicated that the student made more than one year's worth of progress in reading. Thus, the student's performance on district assessments, along with the student's mastery of his annual reading goals carries far more weight than his inability to meet grade-level standards. The normed test results upon which the parents rely merely reiterate the severity of the student's special needs in reading.

PRIVATE SCHOOL/RESIDENTIAL PLACEMENT

A. Rockwall Indep. Sch. Dist. v. M.C., 67 IDELR 108 (5th Cir. 2016). The unreasonable nature of the parents' behavior justifies the denial of their request for tuition reimbursement for private schooling. In this case, the evidence indisputably shows that the parents were not reasonable when they took an "all-or-nothing" approach and refused to attend a follow-up IEP meeting with the district unless the district agreed to their request to allow the student to remain in private school for the rest of the semester and to reimburse them for the cost of the private placement. At a December 2011 meeting, the IEP team discussed techniques that had benefited the student in her private school placement and agreed to incorporate many of those methods into the proposed public school program. The parents asked that the student remain in the private school for the rest of the semester while taking one or two public school classes and refused to attend a follow-up meeting to finalize the student's IEP, as evidence in their email correspondence with the district's special education director. According to them, all that was left for the district was to "let us know what their decision is" regarding their proposal to allow the student to remain in the private school. Later correspondence from the parents reflected their complete unwillingness to cooperate unless the district agreed to their proposal in full.

B. Luo v. Baldwin Union Free Sch. Dist., 67 IDELR 15 (E.D. N.Y. 2016). Hearing officer's decision that the district offered FAPE is upheld, and the district is not required to provide an out-of-state private school placement for the student with autism. Parent's argument that he was denied meaningful opportunity to participate in the placement decision because the district refused to consider information about the out-of-state school is rejected. The right to participate in the placement process does not include the right to select the specific school that the student will attend. Further, New York regulations require IEP teams to consider in-state programs before approving out-of-state ones. Here, the parent did not appear willing to accept any placement other than the private special education school and refused to visit any other options. The IDEA, however, only guarantees an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents." The team considered a variety of evaluative data and identified multiple public school programs that could meet the student's needs. Thus, the district was not required to offer the out-of-state placement that the parent wanted.

C. W.W. v. New York City Dept. of Educ., 67 IDELR 66 (S.D. N.Y. 2016). Parent is entitled to private school funding because district did not present any evidence that the proposed assigned school was able to provide the types of services the student needed. In addition, the district failed to contradict information in a letter from the mother where she related that the school's parent coordinator had told her that the school would not and could not implement the student's IEP during a site visit. While parents who reject public school placements based upon information obtained during school site visits do so at their own risk if the district can demonstrate that the proposed school was capable of implementing a student's IEP, the district here did not demonstrate that and bore the burden of proving that. The parent coordinator purportedly told the mother that the school could provide a 12:1 class or integrated co-teaching classes but not the combination of the two settings as set forth in the student's IEP. In addition, she also allegedly stated that the school did not offer integrated co-teaching classes for art, music or P.E.

D. J.M. v. New York City Dept. of Educ., 67 IDELR 153 (S.D. N.Y. 2016). Where 14 year-old's IEP did not require her to attend a small school or have a noise-free setting at all times, her parents' request for private school costs is rejected. The student's placement in a self-contained special education program on the campus of a large district high school was appropriate. While the IEP requires that the student be placed in a classroom with a 6:1:1 teaching ratio, it makes no mention of the size of the school that she must attend, whether with respect to the physical building itself or the number of other students in the school. In addition, the IEP did not require her to have a quiet environment at all times or to have opportunities to socialize with peers at lunch. Where class bells were not audible in the special education wing and the students there had the ability to eat lunch in a private cafeteria, the school was able to implement the student's proposed IEP.

E. Leggett v. Dist. of Columbia, 65 IDELR 251 (D.C. Cir. 2015). Due to the district's delay in developing an initial IEP and the fact that the high schooler with SLD, anxiety and depression would have gone without special education services for the first month of the 2012-13 school year, the parents' unilateral placement in a boarding school was educationally necessary. The student's progress at the school shows the appropriateness of the residential placement and entitles her mother to reimbursement for it. This is not a case where the parent placed a child in a residential facility to address medical, emotional or behavioral issues that are entirely separate from the child's learning. Rather, the purpose of the placement was "primarily educational." However, the parent might not be able to recover the costs of activities unrelated to the student's education, such as horseback riding. The district court's decision in the district's favor is reversed and remanded to determine what expenses were educationally necessary.

F. Fort Bend Indep. Sch. Dist. v. Douglas A., 64 IDELR 1 (5th Cir. 2015) (unpublished). Reimbursement to parents for placement of their child in a $7,000-per-month residential treatment facility is reversed. When determining whether a residential placement is appropriate, the court will determine 1) whether the parents placed the student in the facility for educational reasons; and 2) whether the facility evaluates the student's progress primarily by educational achievement. Here, there was no evidence that the parents placed their son in the facility for educational purposes versus his emotional and mental health needs. Further, the facility's founder "expressly disclaimed" that education was the primary purpose of the facility. Rather, the founder testified that a student's discharge from the facility is based upon progress made with respect to Reactive Attachment Disorder and not educational achievement. The parents' notion that educational progress made as a result of receiving mental health treatment makes the placement appropriate is rejected. "[M]easuring progress by success in treating the underlying condition, on the theory that such progress will eventually yield educational benefits as well, is insufficient." Because the placement was not appropriate, the court will not consider whether the district offered FAPE.

G. S.E. v. New York City Dept. of Educ., 65 IDELR 295 (S.D. N.Y. 2015). In light of the fact that the Assistant Principal had never met the student at issue or reviewed her IEP, the AP's alleged statements to the parent about the student's proposed program during a site visit were not sufficient to find that program inappropriate. A parent must prove that an assigned school is factually incapable of implementing a student's IEP. However, the parent's testimony, even if unchallenged, merely showed the AP's belief that, given the student's personality and what the parent wanted her to achieve, other programs may be more appropriate for her. Thus, the parent's rejection of the proposed placement was not appropriate and private school reimbursement is not warranted.

H. D.N. v. Board of Educ. of Center Moriches Union Free Sch. Dist., 66 IDELR 163 (E.D. N.Y. 2015). District's proposed 1:1+1 program for 10 year-old autistic student was not appropriate where an IEP socialization goal stated that when the student was greeted by a peer, he would respond with an appropriate gesture or greeting with no more than one prompt and with 80% accuracy. In the proposed 1:1 program, however, the child would have no exposure to other children and would spend his entire day with one teacher and one aide. Thus, it was impossible for the child to accomplish the goals and objectives set out in the IEP. In the private program, the child attended class with three other autistic students where he worked on peer interaction and social skills. Thus, the private placement was appropriate for reimbursement purposes.

I. M.C. v. New York City Dept. of Educ., 65 IDELR 290 (S.D. N.Y. 2015). Parents are not entitled to reimbursement for private schooling based solely on speculation that the assigned school would not implement the kindergartner's IEP. The parents' argument that the principal's statement about class composition proved the school's inability to implement their son's IEP is rejected. According to them, the principal said that the child would be attending class with second graders and that the class was in danger of cancellation due to low enrollment. However, the parents would not be entitled to reimbursement even if those statements were made because New York law allows age ranges of up to 36 months in special education classrooms. In addition, a district official testified that the class was not canceled and that it had space available for the child in the 2012-13 school year. Where the parents did not submit any evidence that the assigned school was not able to meet their son's needs, their contentions as to inadequacy are impermissibly speculative.

J. Matthew D. v. Avon Grove Sch. Dist., 65 IDELR 291 (E.D. Pa. 2015). Parents' request for private school reimbursement is denied based upon the 4th-grader's ongoing struggles with reading and math after spending more than three years in the private school. The private school failed to confer a meaningful educational benefit, where it spent most of its time trying to control the student's severe behavioral problems. As a result, the student received little academic instruction despite his significant deficits in reading and math. It was not until the parents received and shared with the school the results of an IEE conducted during the Summer of 2010 that the school understood the severity of the student's needs and began providing focused reading instruction. The student functions between a pre-k and 1st grade level academically and is unable to read age-appropriate material. In addition, the school did not record data about the frequency, duration and intensity of the student's behaviors or implement a behavioral plan. The hearing officer's decision that the parents are not entitled to tuition reimbursement is, therefore, affirmed.

K. York Sch. Dept. v. S.Z., 65 IDELR 39 (D. Me. 2015). The district's failure to provide more intensive language-based instruction denied SLD student FAPE and entitles parents to recover tuition for two years of placement at a private special education boarding school. Although the student earned passing grades in all of his classes while in the public school program, his math teacher admitted that the student's class participation grade offset his poor performance on quizzes and tests. In addition, the special education director testified that she was unfamiliar with teacher grading procedures and was unaware of whether they modified grades for students with IEPs. This supports a finding that the district lacks "hard-and-fast" standards for assigning grades and, therefore, undercuts their evidentiary significance. An independent psychoeducational evaluation identifies the student's need for small classes and language-based learning instruction, and the district's SLP's classroom observations showed that the student was unable to process information, had significant organizational difficulties and was not engaged. Thus, the district's offer to continue the existing level of services is a denial of FAPE.

COMPENSATORY EDUCATION

A. Holman v. District of Columbia, 67 IDELR 39 (D. D.C. 2016). Even though 18 year-old student graduated from high school with a 2.23 GPA, she is entitled to compensatory education where the district's failure to implement her IEP was a "material implementation failure." The "crucial measure" under the materiality standard is the "proportion of services mandated to those provided and not the type of harm suffered by the student. Thus, the due process hearing officer's reliance on the fact that the student did not suffer harm based upon the fact that she graduated from high school in three years is irrelevant. The fact that the district only scheduled 28% of the service hours required by the student's IEP, as well as the fact that her special education teacher missed at least one class per week and did not stay for the entire class period denied FAPE. Even if the student needed to demonstrate educational harm for a finding of denial of FAPE, she still proved it here where she regressed in five core academic areas between 2010 and 2014 and was reading at a 4th grade level when she received her diploma. Thus, the district must convene an IEP meeting for the student who will remain eligible for compensatory education until age 22.

B. Kelsey v. District of Columbia, 65 IDELR 92, 85 F.Supp.3d 327 (D. D.C. 2015). Student's complaint that the hearing officer underestimated the amount of compensatory speech-language services is rejected. The hearing officer conducted a "qualitative, fact-intensive inquiry" when calculating the student's award of 96 hours of compensatory education, which must provide a student with the educational benefits she would have received had the district provided FAPE. A compensatory award cannot be the result of a "cookie cutter approach" that presumes that each hour without FAPE entitles the student to one hour of compensatory instruction. Here, the hearing officer's decision to award the student 1.5 hours of speech-language services for each of the 64 hours she missed was properly based upon "a thorough and reasonable analysis of the evidence," that included relevant evaluations, educational records and witness testimony. The student's position that the hearing officer discounted expert testimony recommending more services to get her to the 7th grade level is rejected, as the hearing officer did accept that testimony but also considered other factors that affected her learning, including her "dismal" attendance record. Thus, the award of compensatory services was reasonable.

ATTORNEY CONDUCT AND ATTORNEYS' FEES

A. E.C. v. Philadelphia Sch. Dist., 67 IDELR 138 (3d Cir. 2016) (unpublished). Under the IDEA, its fee-shifting provision does not allow courts to reduce fee awards based on the school district's financial hardship. While recognizing that the district is facing a potential shortfall of $1.35 billion over the next five years, the IDEA nonetheless did not warrant any reduction in the parents' fee award.

B. Anaheim Union High Sch. Dist. v. J.E., 67 IDELR 81 (9th Cir. 2016) (unpublished). Parent is not entitled to $16,650 for a consultant's work. Parents who prevail in IDEA actions are not entitled to recover expert witness or consulting fees, according to Supreme Court authority. Although the parent claimed that the consultant worked as a paralegal on her case, the attorney's billing records demonstrated otherwise. In addition, the consultant was introduced as an educational consultant at the due process hearing and was identified as an advocate in the attorney's billing records. Further, she billed the attorney for tasks that are not typical of a paralegal, such as review of the student's educational assessments and IEP goals.

C. Beauchamp v. Anaheim Union High Sch. Dist., 67 IDELR 107 (9th Cir. 2016). Even though the district would not admit liability for a child find violation when it made its settlement offer, the relief obtained by the parent at a due process hearing was far less favorable than that offered by the district prior to the hearing. Had the parent accepted the district's offer on her child find claim, the district court's analysis of issues on the disciplinary removal would have been unaffected. The proposed settlement offered 80 hours of individual tutoring from a credentialed special education teacher and 20 hours of counseling from a credentialed school psychologist, where the ALJ's order only awarded 6 hours of counseling services. Thus, the district court's ruling awarding less than 12% of the fees requested is affirmed.

D. Ebonie S. v. Pueblo Sch. Dist. 60, 67 IDELR 149 (D. Colo. 2016). Mother's fee claim for $1.2 million in a 504 case where there was a successful jury verdict is excessive and should be reduced by 16% to $978,000. Here, the mother's attorneys likely overestimated the amount of hours they worked on the case. According to the record, the attorneys billed more than 1,000 hours for several tasks without elaborating on the amount of time each task took. While "block billing" is generally permitted in fee calculations, this practice may be strong evidence that a claimed amount of fees is excessive. In addition, the attorneys repeatedly charged for duplicative work.

E. Oconee Co. Sch. Dist., 66 IDELR 274 (M.D. Ga. 2016). Parent failed to show that she was required to retain an Atlanta attorney where there were two local attorneys who were qualified to represent a disabled teenager in an IDEA case. Fee awards to prevailing parents must reflect the prevailing rate of the community in which the action arose. If a parent seeks to recover a higher rate for out-of-town counsel, she must show that there is no qualified local attorney willing or able to take her case. Although the parent claimed to have had difficulty finding qualified counsel, she had done so 15 years earlier when she filed an unrelated due process complaint against the district and provided little evidence of her efforts to do so with respect to this more recent case. Where the district provided evidence that at least 2 attorneys with offices in a city just 40 miles away had handled special education cases in the mother's geographic area, parent is not entitled to recover fees at non-local rates and, therefore, will be entitled to only a reduced fee based upon a reduced rate.

F. I.W. v. School Dist. of Philadelphia, 67 IDELR 14 (E.D. Pa. 2016). Prevailing parents' lead attorney is entitled to $600 per hour, based upon her experience in special education law, including making numerous conference presentations, publications and 27 years of experience litigating special education cases. The reasonable hourly rate is calculated according to the prevailing market rates in the relevant community, and the court is to assess the experience and skill of the prevailing party's attorney to calculate was is "reasonable." Note: In a subsequent case involving the same parent attorney, the court reduced the rate to $450 per hour where district affidavits set forth rates of practitioners in the community, and requested $600 per hour is unreasonable. The $450/hour rate sets forth more accurately the prevailing market rate. School Dist. of Philadelphia v. Williams, 67 IDELR 120 (E.D. Pa. 2016). When an attorney works for an organization that does not charge its clients, the court may consider affidavits from counsel with similar experience, bar surveys of customary rates, amounts charged by opposing counsel in similar litigation, amounts awarded to counsel with similar experience and prior fee awards.

G. Meridian Joint Sch. Dist. No. 2 v. D.A., 65 IDELR 253, 792 F.3d 1054 (9^{th} Cir. 2015). Under the IDEA, only parents of "a child with a disability," as defined by the IDEA, may use the statute's fee-shifting provision to recover attorney fees. The plain language of the IDEA permits an award of fees only "to a prevailing party who is the parent of a child with a disability." A plain-language interpretation of this provision would not thwart the statute's purposes and is not inconsistent with the provision of FAPE. Instead, it preserves public resources for those most in need of services. Thus, even though relief was granted to the parents in the form of funding for an IEE, the child was ultimately found ineligible. Thus, the district court's fee award to the parents is vacated.

H. C.W. v. Capistrano Unif. Sch. Dist., 65 IDELR 31, 784 F.3d 1237 (9^{th} Cir. 2015). For a district to recover fees based upon a claim that a parent's lawsuit is frivolous, a claim is not frivolous unless the result is obvious or the arguments are wholly without merit.

Here, the ALJ carefully reviewed the parent's arguments under IDEA related to the appropriateness of the district's OT evaluation, and did not indicate that these claims were frivolous. Instead, the ALJ's careful analysis, findings of fact and conclusions of law indicate the seriousness of the parent's claims. Similarly, the reviewing district court carefully considered the parent's claim that the district retaliated against her in violation of Section 504 by threatening to seek sanctions if she appealed the ALJ's decision. However, when the parent refiled her ADA Title II and Section 1983 claims, despite the district court's previous dismissal of them as groundless, this could be considered frivolous and the case is therefore referred to the Appellate Commission for further proceedings on those claims.

I. Turton v. Virginia Dept. of Educ., 64 IDELR 305 (E.D. Va. 2015). School attorney's motion for sanctions is granted based upon the lack of legal and factual support for the parent attorneys' claims against district counsel. The Federal Rules of Civil Procedure allow courts to sanction an attorney who files a claim for an improper purpose, asserts claims or defenses that are not supported by existing law (or a reasonable extension of it), or makes statements of fact that have no evidentiary support. Here, the parent attorneys offered no legal support for their claim that the school districts' counsel violated duties that he owed to parents of students with disabilities. Further, case law clearly shows that the school attorney's sole duty is to the districts he represents. In addition, the complaint incorrectly identified the school attorney as counsel for all four districts involved in the case. Had the parent attorneys researched the case before filing, they would have known that the school attorney represented only two of the four districts they accused of violating special education laws. Thus, the parties must confer and provide information that will help the court determine appropriate sanctions against the parent attorneys.

SERVICE ANIMALS

A. Frequently Asked Questions about Service Animals and ADA, (DOJ 7/20/15), www.ada.gov/regs2010/service_animal_qa.pdf. This document presents FAQs that are helpful to schools in considering the creation or review and revision of policies and procedures relative to service animal requests.

B. Fry v. Napolean Comm. Schs., 65 IDELR 221, 788 F.3d 622 (6th Cir. 2015), cert. granted, 116 LRP 27666 (6/28/16). Parents may not pursue their 504/ADA claims against the student's former district until they exhaust their IDEA administrative remedies. If the IDEA's administrative procedures can provide some form of relief or if the claims relate to the provision of FAPE, then exhaustion is required. Here, the parents were clearly disputing the appropriateness of the student's IDEA services, arguing that the presence of the service dog would allow the student to be more independent so that she would not have to rely upon a one-to-one aide for toileting assistance and retrieval of dropped items. They also maintained that the student needed the dog in school so that she could form a stronger bond with the dog and feel more confident. These allegations bring the case squarely within the scope of the IDEA. Developing a bond with the dog that would allow the student to function more independently outside the classroom is an educational goal, just as learning to read Braille or learning to operate an automated wheelchair would be. Thus, the parents are required to exhaust their administrative remedies. [Note: The dissenting judge opined that the wish to use a service dog at school had no relationship to the student's education and exhaustion should not have been required].

C. Alboniga v. School Bd. of Broward Co., 65 IDELR 7, 87 F.Supp.3d 1319 (S.D. Fla. 2015). The ADA regulation stating that public entities are not responsible for the "care and supervision" of service animals does not justify the district's insistence on having a 6-year-old boy's parent provide a handler for his service dog. The district's failure to provide an employee to assist the child with the dog's routine care amounts to a failure to accommodate. In the vast majority of cases, permitting the use of a service animal is a reasonable accommodation. The fact that the child's teachers and paraprofessionals were able to detect and address his seizures has no bearing on the parent's desire to have the seizure-alert dog present in the classroom. "[R]efusing [the parent's] requested accommodation if it is reasonable in favor of one the [district] prefers is akin to allowing the public entity to dictate the type of services a [person with a disability] needs in contravention of that person's own decision's regarding his own life and care." The district's argument that providing an employee to help the child walk the dog would amount to care and supervision is rejected. The parent is not asking the district to walk the animal; rather, she wants an employee to accompany her son outside so that he can take care of the dog. This requested assistance is no different from having an employee help a child with diabetes use an insulin pump or help a blind child to deploy a white cane. "[The district] is being asked to accommodate [the child], not to accommodate, or care for, [the dog]." Thus, the district is ordered to provide the assistance the child requires to provide his service animal with routine care such as feeding, watering, and walking. It is also enjoined from requiring the parent to maintain additional liability insurance for the dog and from requiring that the parent obtain vaccinations in excess of those required by Florida law.

D. West Gilbert (AZ) Charter Elem. Sch., Inc., 115 LRP 52095 (OCR 2015). While students with disabilities have the right under 504 and the ADA to be accompanied at school by a service animal, when another person allergic to dog dander and the person with a service animal must spend time in the same facility, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility. While the school here attempted to accommodate both the students by modifying their schedules, installing air filters and providing additional cleaning, these attempts were insufficient to ensure that the allergic student continued to receive FAPE. The school never formally reevaluated the allergic student's needs after the introduction of the service dog, nor did it convene the IEP team to discuss incorporating additional services into the student's IEP. As such, the measures the school took were not based on an assessment of the student's individual conditions and educational needs, but on the so-called "common sense" of school personnel. To resolve the 504/ADA violation, the school agreed to reevaluate the student as soon as possible, revise his IEP if necessary, provide him with compensatory education services and revise its policies and procedures.

SECTION 504/ADA ISSUES GENERALLY

A. J.C. v. Cambrian Sch. Dist., 116 LRP 15734 (9th Cir. 2016) (unpublished). There is no evidence of discrimination under Section 504/ADA on the basis of the non-resident second-grader's ADHD. The charter school has consistently enforced its enrollment policy that explicitly gives preference on admission to existing students and the student's enrollment in the school for first grade did not guarantee continued admission. The definition of "existing students" under the school's enrollment policy reasonably excluded students like the student here who moved out of the district will attending the school. Further, the school did not admit any non-resident students for the 2011-12 school year, regardless of their disability status. Thus, there is no evidence of disability discrimination and the district court's dismissal of the parent's claims is affirmed.

B. K.P. v. City of Chicago Sch. Dist. #299, 65 IDELR 42 (N.D. Ill. 2015). School district is not required to allow SLD student to use a hand-held calculator on a district-wide math assessment that would affect her right to take an entrance exam for one of its competitive high schools. The fundamental unfairness to nondisabled students, as well as the strong likelihood that the test scores would be invalidated, requires the denial of the requested accommodation under the ADA. An accommodation is not "reasonable" if it would impose undue financial and administrative burdens on the district. Although the parent argued that the use of a calculator would not invalidate the student's test results (which would likely lead to additional litigation), the assessment instructions specifically require districts to consider the student's use of calculators and other nonstandard accommodations when interpreting test results. Further, the use of the calculator throughout the math portion of the assessment would give the student an unfair advantage over nondisabled peers, who were likely to make some errors in their mental calculations. As such, the requested accommodation would not be in the public interest.

C. D.F. v. Leon Co. Sch. Bd., 65 IDELR 134 (N.D. Fla. 2015). The school district was not at fault for relying on Letter to McKethan when taking the position that the parent's revocation of consent to IDEA services for a hearing impaired middle schooler waived the right to services under Section 504. In addition, the district's refusal to provide 504 services did not amount to retaliation for the parent's revocation of consent to IDEA services. Even if the district erred in denying the parent's request for a 504 Plan, the parent did not produce any evidence showing that the district intentionally discriminated against the student or acted in bad faith. To the contrary, the district acted in good faith when it complied with Letter to McKethan because the letter concluded that by revoking consent to IDEA services, "the parent would essentially be rejecting what would be offered under Section 504." Without definitive guidance from a court, the letter was the best available guidance, other than the statutes and rules themselves. Finally, the district's failure to develop a 504 plan—tempered somewhat by the district's provision of a classroom amplification system and other accommodations—did not amount to disability discrimination without evidence of deliberate indifference to the needs of the student.

D. A.M. v. American Sch. for the Deaf, 65 IDELR 131 (D. Conn. 2015). In an action brought under Title III of the ADA against a private school for the deaf, the parent cannot show that the school discriminated against their son by failing to train its staff on appropriate behavior management techniques. Individuals seeking relief under Title III or Section 504 can advance three theories of discrimination: 1) intentional disparate treatment; 2) disparate impact; or 3) failure to accommodate. However, neither 504 nor ADA mandate a comparison of the services provided to other individuals with disabilities. Rather, these statutes only address whether individuals with disabilities receive services and benefits that are equivalent to those made available to nondisabled students. Therefore, it follows that a student participating in a program for individuals with similar disabilities will not be able to satisfy the comparative component required to demonstrate disability discrimination. While the parents here did not claim that the school's policies or procedures had a disparate impact on a certain class of students, the school's motion to dismiss is granted. However, the parents are granted leave to amend their complaint to allege disparate treatment against students with ADHD and other behavioral problems.

E. Laura A. v. Limestone Co. Bd. of Educ., 65 IDELR 163 (11^{th} Cir. 2015) (unpublished). While the grandmother mentioned Section 504 in her IDEA due process hearing complaint, that was not enough to constitute exhaustion of administrative remedies on claims for disability discrimination or retaliation. While the grandmother mentioned the student's 504 Plan in her brief to the hearing officer, she did not raise any discrimination claims in her due process complaint; nor did she request an impartial hearing as set forth in the district's 504 procedural safeguards. As such, she cannot show that she exhausted her 504 claim. It would subvert the purposes of the exhaustion requirement to allow exhaustion of an IDEA claim to also suffice for a 504 claim seeking some of the same relief.

F. Snell v. North Thurston Sch. Dist., 66 IDELR 186 (W.D. Wash. 2015). A proposed mid-week transition of a first-grader with diabetes and other disabilities to another school with a full-time nurse was not a reasonable accommodation of her medical condition. The suggested transfer was not unreasonable on its face, but the manner in which the district proposed to implement the accommodation was not reasonable. This is because the district notified the parent on October 17^{th} that the child would be attending the new school on October 20, with just two days to transition the student who had significant health, learning and behavioral issues. This might have been reasonable had the district offered that option at the beginning of the school year or if it had offered an extended transition period. Thus, the district's motion for judgment is denied. A jury will also need to decide whether the district's assignment of a 1:1 aide is an appropriate substitute for a functioning FM system to accommodate the student's hearing impairment.

G. P.P. v. Compton Unif. Sch. Dist., 66 IDELR 121 (C.D. Cal. 2015). District's motion to dismiss 504/ADA claims is denied and case may proceed. While exposure to traumatizing events is not a disability in its own right, a physical or mental effect of such trauma could amount to a substantial limitation of a major life activity. Here, the complaint adequately alleges on behalf of 5 unrelated students that experiences with shootings, stabbings, sexual abuse and other crimes cam impact major life activities. In addition, the complaint adequately alleges the neurological changes caused by complex trauma and alleges that the students have experienced particular limitations in their abilities to perform tasks, such as learning, reading, concentrating, thinking, and communicating—limitations that are alleged to be causally related to the trauma the students have experienced and are consistent with the neurological changes discussed.

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

A. C.S. v. Ohio High Sch. Athletic Ass'n, 66 IDELR 15 (S.D. Oh. 2015). Student is not entitled to a waiver of the athletic association's rule that prohibits non-resident students from participating in intramural sports. Here, a waiver of the in-state residency requirement for a Kentucky student whose parents placed him in an Ohio residential school would have no impact on the student's LD or ADHD. The student is ineligible to play sports for the school because his parents live outside of Ohio, not because of his disabilities. The parents' argument that the out-of-state placement was necessary to provide the student with educational accommodations is rejected. The parents' own testimony showed that they placed him in the Ohio school because of its superior program. He could have obtained all of the special education services he needed in Kentucky. Because the parents did not tie the association's denial of their waiver request to the student's disability, the court's previous order temporarily granting an injunction is vacated.

B. K.L. v. Missouri State High Sch. Athletic Assn., 66 IDELR 152 (E.D. Mo. 2015). Section 504 and ADA claims are dismissed where the scope of modifications requested by a disabled high schooler for a statewide track-and-field program is unreasonable. Here, the student was not requesting accommodations so that she could compete alongside nondisabled peers. Rather, the student requested a court order that would require the Association to create six new statewide events for racers in wheelchairs, develop safety guidelines and qualifying standards for athletes and their equipment, alter existing standards for scoring and participation, and recognize athletes with disabilities and nondisabled athletes as co-champions. The student is requesting to change the current program to include, add and encompass events, precautions and rules which do not currently exist in the program. Because those would fundamentally alter the nature of the high school track-and-field program, the requests are unreasonable as a matter of law.

FERPA/CONFIDENTIALITY

A. W.A. v. Hendrick Hudson Cent. Sch. Dist., 67 IDELR 178 (S.D. N.Y. 2016). Parents' Section 1983 suit will not be dismissed where the district disregarded privacy concerns when referring a student to several potential placements, even though the parents refused consent to disclosure of education records. The Second Circuit has repeatedly recognized a protected right to privacy in medical records under the Due Process Clause of the 14th Amendment. Here, the district forwarded student special education records, including a neuropsychological evaluation and psychiatric update. While the district disclosed the records in its effort to comply with its obligations under the IDEA, the disclosure was made against the express statements of the student's parents and were "excruciatingly private and intimate in nature." Although the district argued that neither FERPA nor HIPAA creates a private cause of action for a breach of confidentiality, the parents' claims are based on a constitutional violation. Unauthorized disclosure of certain medical information might be a constitutional violation, and the district's motion to dismiss the parents' constitutional claims is denied.

B. Letter to Anonymous, 115 LRP 33141 (FPCO 2015). A district did not violate FERPA when it disclosed the results of a student's threat assessment to local police and other area schools without parental consent. While districts must generally obtain parental consent prior to disclosing personally identifiable information from education records to a third party, FERPA allows for it if a district determines that there is "an articulable and significant threat to the health or safety of a student or other individuals." In such cases, information may be disclosed to anyone "whose knowledge of the information is necessary to protect the health or safety of the student or other individuals." Here, the district conducted a risk assessment of the student and described him as a "high level of risk." Thus, the district disclosed this to the police and area schools. As long as the district had a "rational basis" for its determination that the student posed an "articulable and significant" threat to his own safety or that of others, FPCO will not substitute its judgment for that of the district.

C. Letter to Flores, 115 LRP 39433 (FPCO 2015). Where district provided parent with an electronic copy of her children's TAG test answer sheets, as well as an electronic copy of the booklet that accompanied them, district did not violate FERPA by not providing her with copies of the originals, which had been destroyed after electronically stored. Unless the district has an outstanding request on inspect and review records from a parent, the district is not required under FERPA to maintain records for any period of time. In addition, if a district has provided a parent with access to an exact copy of a document, FERPA does not require that it make the original of that document available.

TRANSGENDER STUDENTS

A. G.G. v. Gloucester Co. Sch. Bd., 116 LRP 15374 (4th Cir. 2016). District court's dismissal of transgender student's claims for injunctive relief under Title IX is reversed. Here, the district offered, consistent with its policy, the use of single-stall unisex restrooms, but the high school student diagnosed with gender dysphoria (who had not had sex reassignment surgery), claimed that using either the girls' restroom or a unisex one was psychologically damaging when the student wishes to use the boys' bathroom. Moreover, the unisex restrooms, the student argued, were a constant reminder that the school viewed the student as "different." Interpreting the Title IX regulation at issue, which permits the provision of separate restroom facilities "on the basis of sex," the Court noted that OCR had provided clarification in 2015 (Letter to Prince), that when a school elects to separate or treat students differently on the basis of sex…a school generally must treat transgender students consistent with their gender identity." The district court erred when it did not defer to OCR's interpretation, as the regulation is ambiguous as to transgender students and OCR's interpretation, therefore, was not plainly erroneous nor inconsistent with the regulation's text and was the result of its fair and considered judgment. Further, the district court relied upon an inappropriate standard when it declined to consider declarations from the student and a medical expert in determining whether a preliminary injunction was in order.

B. <u>Dear Colleague Letter on Transgender Students</u>, 116 LRP 19809 (OCR & DOJ 2016). Under Title IX, school districts may not treat students differently based upon their transgender status. When a student or parent notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the district must begin treating the student consistently with the student's gender identity and may not require the student to produce identification documents before being treated according to their gender identity. Doing so would have the practical effect of limiting or denying equal access to an educational program or activity and could create or contribute to a hostile environment, which may be harassment under Title IX. In addition, school district staff and contractors must use pronouns and names consistent with a student's gender identity. As to sex-segregated activities and facilities, such as restrooms and locker rooms, districts must allow transgender students to participate in them and access facilities consistent with their gender identity and cannot require them to use individual-user facilities when other students are not required to do so. Similarly, districts must allow for access to housing and overnight accommodations consistent with the student's gender identity and may not require a transgender student to stay in single-occupancy accommodations. As to information contained in education records, personally identifiable information, such as a student's birth name or sex assigned at birth may not be disclosed without consent, which could be harmful to or invade the privacy of the student and may also violate FERPA.