NEW DEVELOPMENTS IN IDEA LITIGATION

MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
IDEA TRAINING FOR ADMINISTRATIVE HEARING COMMISSIONERS

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I. INTRODUCTION

This document lists and describes significant cases as well as selected U.S. Department of Education documents and academic research on topics of concern to Individuals with Disabilities Education Act due process hearing decision makers. The period covered is January 2024 through August 2026, with a few exceptions. Cases and other materials since the last update in February 2026 are highlighted in green and marked "[New]." Where only part of an entry is new, the end of the new material is marked "[End New]." The focus is on full, precedential opinions of the federal courts of appeals and federal guidance documents that break new ground and have special bearing on matters likely to arise at due process hearings. However, a few particularly noteworthy unpublished federal appellate opinions and decisions from other courts are also included. Cases concerning issues not of primary importance to IDEA due process decision makers, for example, many cases that focus on administrative exhaustion, class action status, Section 504-Americans with Disabilities Act claims, and attorneys' fees awards, are omitted. Under each heading, the cases are arranged by level of authority, then date within each level.

II. CHILD FIND

[New] *J.R. v. Ventura Unified Sch. Dist.*, 173 F.4th 1039 (9th Cir. Apr. 22, 2026). This case concerned a student assessed for disability by the district in 2012 when a six-year-old kindergartener, and found to have clinically significant "behavior ratings in hyperactivity, attention, and atypicality; poor auditory processing; and lower-extreme to below-average academic ranges." *Id.* at 1046. The assessment also found a specific learning disability, but there was no assessment for autism, nor did the district discuss the possibility of autism with the parents. From 2013 to 2015, the student disobeyed directions, yelled, and blurted out inappropriate noises or comments in class. In second grade, he was placed in a special education learning disabilities class for all subjects. The district's 2015 triennial assessment found very low cognitive functioning as well as poor behavior. The student's behavior improved

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over the next three years, but in sixth grade the student was still at a kindergarten level in reading and otherwise academically well below average. A 2018 assessment rejected an autism classification "[b]ased on parent reports, school records, observations and current testing," *id.* at 1047. The parents' private evaluation in 2018 found a learning disability, but did not mention autism. In February 2021, when the student was in ninth grade, the district's psychologist conducted a new evaluation, and the parent asked about assessment for autism, but the psychologist rejected that request. The parent engaged a private clinical psychologist who diagnosed autism after additional assessments, and in October 2021, the student's family moved out of state. In the due process proceedings, the ALJ found that the two-year limitations statute barred claims predating April 8, 2019, but as for the period after that date the district failed to provide the student a FAPE because of the failure to assess for autism. The ALJ ordered the district to provide $19,000 for 152 hours of compensatory education, and to reimburse the costs of the parents' two independent evaluations. The district court reversed on the limitations issue, holding that the parents lacked the specialized skill to know the district should have assessed for autism, and even if they did, "statutory exceptions applied because [the district] 'recklessly misrepresented J.R.'s assessment results' and 'withheld information' that prevented [the student's] parents from understanding that [the district] had improperly diagnosed him." *Id.* at 1048. The court ordered the district to put $510,960 into a special needs trust to fund compensatory education for violations going back to 2012. The court of appeals reversed. The court said "for an IDEA claim alleging that a school district's failure to assess and diagnose a student has resulted in the alleged denial of a FAPE, the statute of limitations begins to run when parents know or should know (1) the fact of the school district's action or inaction (i.e., the failure to assess and diagnose), and (2) that their child is being denied a FAPE (i.e., the child's education is inadequate). The second requirement is essential, for mere awareness (actual or constructive) that a school district has not diagnosed a student for a particular disability is of little moment if the education is otherwise meeting the student's needs, or if the parents do not know or have reason to know otherwise." *Id.* at 1051. "[F]or an IDEA misdiagnosis-based claim, the statute of limitations begins to run when parents know or should know about the school district's failure to assess their child for a certain disability, and when the inadequacy of the child's education is sufficiently apparent and persistent to put a reasonably diligent parent on notice that the child is being denied a FAPE." *Id.* at 1052. On this record, said the court, the parents should have known about the action that was the basis of the complaint by the end of 2018. The 2018 assessment mentioned autism and found the student did not meet the eligibility criteria. The parents were long aware of the student's behavior problems and academic struggles. The court rejected the parents' position that the statute began to run when the student actually received the diagnosis of autism from the private evaluator in 2021. The court said that it sympathized with the parents and "[t]he IDEA's discovery rule should be applied with due regard for the fact that parents are usually not experts." *Id.* at 1054. The court further rejected the application of the statutory exceptions to limitations for specific misrepresentations preventing the parents from requesting due process and for withholding of required information.

A.P. v. Pearland Indep. Sch. Dist., 158 F.4th 672, 125 LRP 30747 (5th Cir. Nov. 10, 2025). The student in this case had trouble with attendance at least as early as seventh grade, and the district provided targeted intervention in eighth grade. The student passed her classes successfully despite 25 absences, but in ninth grade she failed advanced courses she was taking.

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The district suggested switching her to grade-level courses, but her parents refused. In ninth grade she missed 24 to 29 days of various courses on her schedule. The parents explained the absences as due to minor medical problems and family travel. A teacher reported the student's absenteeism to the student's counselor and vice principal, but denied suspecting a disability. The student passed Algebra I, English I, and Biology by taking the courses in the summer. For tenth grade, the student was again enrolled in advanced classes. She missed 25 days, but performed adequately when present. During February of her tenth-grade year, the student left the public school and the parents began homeschooling. The parents filed the due process complaint in September 2022, and on October 6, 2022, the public school offered to begin an evaluation, but the parents did not consent. A privately engaged neuropsychologist found that the student did not have ADHD or dyslexia, but concluded that she did have learning disabilities in reading comprehension, math computation, and math reasoning. The district scheduled a meeting to discuss the private evaluation, but the parents did not attend, and the district concluded that it could not assess the student's eligibility with the information it had. The hearing officer and district court ruled for the school district. The court of appeals affirmed. On the parents' claim that the district violated IDEA's child-find provision by not beginning the evaluation process until October 6, 2022, the court noted that cases saying that absenteeism triggered child-find obligations all involved extra factors like behavior or medical difficulties. The poor grades in advanced classes were not enough, either. The court further declared that the student was not eligible for services under IDEA, so any child-find violation did not deny a free appropriate public education. On the topic of eligibility, the court found the private evaluation of little value since it failed to include classroom observations and teacher reports, and failed to take into account the role of the absences on the student's progress. The court found the negative eligibility determination reasonable considering the information the district had.

B.S.M. v. Upper Darby Sch. Dist., 103 F.4th 956, 124 LRP 17147 (3d Cir. June 4, 2024), **[New]** *subsequent proceedings sub nom. Brooklyn S.-M. v. Upper Darby Sch. Dist.*, Civ. No. 21-5164, 2025 WL 1311909 (E.D. Pa. May 6, 2025), *aff'd*, No. 25-2071, 2026 WL 1165303 (3d Cir. Apr. 29, 2026) **[End New]**. The student in this case had academic weaknesses from the beginning of her education and over time developed emotional issues. The parent requested a psychoeducational evaluation when the student was in kindergarten. The school district found the evaluation unnecessary after reviewing academic records but did conduct a speech and language evaluation and found the student IDEA-eligible under the Speech or Language Impairment classification. The student received speech and language therapy for part of kindergarten through most of second grade. The student continued to struggle academically in first and second grade, achieving below-average scores on assessments and developing emotional problems. The academic and emotional struggles continued into fourth grade, and the student scored below basic on math and reading assessments. A private psychologist found that the student had disruptive mood regulation disorder and recommended therapy. The parent requested a Section 504 plan, and the district, after evaluating her, found her not eligible under IDEA but agreed to develop a Section 504 plan. The student's behavior problems continued, and a second private evaluator concluded she was not eligible for IDEA under Emotional Disturbance but should be found IDEA-eligible under Specific Learning Disability. At due process, the parent claimed the district denied the student a FAPE under both IDEA and Section 504 by failing to satisfy child-find and not timely identifying and evaluating the student; by

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incorrectly determining that the student was not eligible for an IEP; and by not offering the student an appropriate Section 504 plan. The hearing officer concluded that the kindergarten evaluation was timely and thorough enough to satisfy child-find, that the issuance of a Section 504 plan was timely, that the student did not meet the burden of showing eligibility under IDEA's SLD and ED categories, but that the Section 504 plan was too general as to its accommodations to meet the student's social-emotional challenges. The hearing officer ordered the Section 504 plan revised, awarding one hour of compensatory education per week that school was in session from the start date of the Section 504 plan until an appropriate plan was developed. The parent filed an appeal in district court, which affirmed on the basis of the administrative record. The court of appeals vacated and remanded. It noted that IDEA and Section 504 both have child-find, evaluation, and FAPE requirements, but it stressed that Section 504 defines disability more broadly than IDEA does, so some students covered by Section 504 are not covered by IDEA. Section 504's definition includes "any mental or psychological disorder," 34 C.F.R. § 104.3(j)(2)(i)(B), as long as other standards are met, whereas IDEA requires a disability that falls into one or more of 13 categories. The court of appeals declared: "The same conduct can, of course, serve as the basis for IDEA and Section 504 claims. But that doesn't avoid the need to perform a Section 504 analysis. As noted above, Section 504 covers more students than does the IDEA, including students who are merely perceived as disabled. 28 C.F.R. § 35.108(a)(1)(iii). A student could be covered under one statute but not the other. . . . Indeed, [the student's] educational history is a case in point; from kindergarten through second grade, she received special education services under the IDEA, and from fourth grade on, she received them under Section 504. Her claims under both laws are plainly different—their timing alone reveals that. Moreover, the differences in the statutes' definitions of disability—particularly which emotional issues they encompass—are central to the family's argument. . . . Here—where the crux of [the student's] argument hinges on the School District repeatedly refusing to perform a comprehensive evaluation that might have detected a Section 504-eligible disability at a much earlier date—is an instance where they are [important]." *Id.* at 964-65. The court stressed the need to analyze whether the school district violated Section 504's child-find requirement by failing to conduct a comprehensive evaluation earlier than it did, in line with the family's repeated requests and the definition of disability under Section 504. The court further noted that modified de novo review, affording significant deference to hearing officer determinations, applies only to district court review of IDEA due process decisions. **[New]** In subsequent proceedings, however, the district court went through the child-find efforts for kindergarten through fourth grade and found no violation of child-find under Section 504, and denied the parents' claim for compensatory education. The Third Circuit affirmed in a brief, nonprecedential order. **[End New]**

Jennifer N. Rosen Valverde, *A Panoramic IDEA: Cabining the Snapshot Rule in Special Education Cases*, *infra* (Conducting Due Process Hearings)

III. EVALUATION AND ELIGIBILITY

[New] *Annie M. v. Aledo Indep. Sch. Dist.*, No. 25-10824, 2026 WL 2545318, --- F.4th --- (5th Cir. Aug. 28, 2026). This case involved a five-year-old child with Down syndrome and a congenital heart defect, who as a baby experienced cardiac arrest during surgery, causing oxygen deprivation. When the child was three, the parent granted the district consent to some testing

for the initial evaluation but not to tests that could produce an IQ score, specifically Woodcock-Johnson IV Tests of Early Cognitive and Academic Development ("ECAD") and the Wechsler Preschool and Primary Scale of Intelligence ("WPPSI"). The court of appeals ruled that the district did not need to provide a FAPE to the student, reasoning that the tests were appropriate as part of the student's evaluation based on testimony before the hearing officer and the hearing officer decision adverse to the parent. The evidence included testimony that evaluators typically cannot determine which precise assessments will be needed before they encounter the student, and that it was uncertain whether the assessment the parent consented to would provide enough cognitive data for the student's program. The court further found that the district's efforts to obtain consent were reasonable. The court also rejected an ADA reasonable modification claim to accommodate the student by deleting the challenged tests, stating that if the IDEA claim failed, so did the duplicative ADA claim. Judge Oldham dissented, relying on testimony by a school representative that IQ tests are useless for children like this student. The dissent also contended that the IDEA and ADA claims were independent.

[New] *Herbert v. St. James Parish Sch. Bd.*, 177 F.4th 630 (5th Cir. June 2, 2026), *infra* (Maintenance of Placement (Stay-Put))

G.M. v. Barnes, 114 F.4th 323, 124 LRP 32983 (4th Cir. Sept. 5, 2024). This case concerned a second-grade student who had been diagnosed with dyslexia, ADHD, and other conditions, and whose performance on standardized tests had sharply declined compared to the previous year, but who was, according to district assessments, performing at average or low average levels in reading and writing. The district maintained that the student was not eligible under IDEA. The parents disagreed, placing the student in a private school at the end of second grade and later filing for due process. In second grade, working with a tutor and in the private school for third grade, the student made progress using Orton-Gillingham methodology. After hearing, the ALJ upheld the denial of IDEA eligibility, and the district court agreed. The ALJ found the standards for specific learning disability were not met, though the decision said the ADHD qualified as an other health impairment. But the ALJ ruled that the student did not need special education by reason of the impairment because he was performing at grade-level standards. The ALJ said Orton-Gillingham methodology was not special education because it could be used with children without dyslexia in general education. The court of appeals held that the ALJ's findings of fact and credibility determinations were regularly made. On the merits, the court said the student did not satisfy a Maryland standard requiring that for a determination of specific learning disability the student must exhibit a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level standards, or intellectual development. The court agreed with the parties that the student's ADHD was an other health impairment that adversely affected his educational performance, though it disagreed with the ALJ's conclusion that Orton-Gillingham was not special education, citing the description of the method as specially designed instruction highly recommended for students with dyslexia and noting that the district did not use the methodology. Nonetheless, assuming without deciding that Orton-Gillingham as requested by the parents was special education, the court said that the student was not in need of special education, reasoning that he was achieving passing marks and advancing from grade to grade in general education, and so was already getting a FAPE without special education.

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J.B. v. Kyrene Elementary Sch. Dist. No. 28, 112 F.4th 1156, 124 LRP 30919 (9th Cir. Aug. 20, 2024). The facts of this case go back a decade. In 2013-14, the child was enrolled in the district as a special education student on account of his disabilities including reactive attachment disorder, fetal alcohol syndrome, intellectual disability, Klinefelter's syndrome, ADHD, dyslexia, and dysgraphia. On January 31, 2013, the IEP team updated the IEP. In August 2013, school staff physically restrained the student many times, and the parent stopped sending the student to school in early September because of concerns over the use of restraint. The district held an IEP meeting on September 19 to address the concerns, and the parent that day told the district of her intention to place the student in a private school. At a meeting in October, the district offered to pay for a placement at the parent's chosen private school for the next nine weeks, and discussions ensued about returning the student to a district school in January 2014. On December 18, the district offered to pay for an additional month, with a February 3 date for placement in-district. The proposed agreement required the parent to consent to additional testing for the student and provided for another IEP meeting no later than January 29, 2014. The email attachment said to sign if the parent agreed. On December 19, 2013, the next day, the parent and district met again, and the district explained the desired assessments and observations. The parent proposed using videos and audio recordings rather than in-person assessments and observations. The district agreed to try that option. The parent at the end of the meeting presented a proposed agreement saying the parent would not consent to testing because none had been proposed but would consider any evaluations that were proposed and would notify the district if she would consent within five business days. Early the next day the parent emailed the district to request an independent evaluation. After an initial response saying the district would provide a copy of the procedures for the independent evaluation, the district issued a prior written notice to the parent saying that because the student was not currently enrolled in the school district, no further IEP meetings would take place. The parent filed for due process, and the district court ultimately affirmed ALJ determinations in favor of the district on all issues. The court of appeals affirmed, holding that there was no clear error in the conclusion that the parent refused consent to evaluate the student despite the district's efforts to accommodate the parent. The court also found no clear error in the conclusion that the parent expressed a clear intention not to re-enroll the student in the district. The court said there was no denial of a FAPE by the district's refusal to offer an IEP after December 19, 2013. The court said the parent's refusal to consent to evaluations while the student was enrolled in the private school relieved the district of further IDEA obligations, and that a district is not required to continue offering a FAPE if the parent of a privately placed student makes clear the intent not to re-enroll the student in the district. The court conceded that "The District's written reason for discontinuing IEP meetings—because J.B. was not enrolled in the District—was not a valid reason under the IDEA." *Id.* at 1164-65 (citing 34 C.F.R. § 300.131). But the court ruled the error harmless on the ground that the district had valid reasons to refuse evaluations and IEP meetings. Judge Collins dissented, contending that by failing to include the valid grounds for the district's decision on the prior written notice and instead terminating the IEP process on an invalid ground, the district significantly impeded the parent's opportunity to participate in the decision-making process.

B.S.M. v. Upper Darby Sch. Dist., *supra* (Child Find)

Alex W. v. Poudre Sch. Dist. R-1, *infra* (*Endrew F.* and Free Appropriate Public Education)

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Board of Educ. of Twp. of Sparta v. M.N., 318 A.3d 670, 124 LRP 29999 (N.J. Aug. 7, 2024). In this case, the New Jersey Supreme Court unanimously held that a state-issued high school diploma based on passing the General Education Development (GED) test does not disqualify a student with a disability from re-enrolling in public high school to receive a free appropriate public education. The case involved a student with an IEP who withdrew from public high school, took and passed the GED test, and received a state-issued high school diploma. He subsequently re-enrolled in the public high school, but the school eventually informed the parents that the student's services would be discontinued because he had a high school diploma. The parents objected, and the student continued to receive services, but difficulties with attendance and completion of work ensued, and after another withdrawal from public school and an attempt to re-enroll, which was denied, the parent filed for due process, and ultimately an ALJ determined that the state-issued diploma was not merely a GED but a regular high school diploma fully aligned with state standards. On appeal, the State Commissioner of Education concurred, and the Appellate Division affirmed. The Supreme Court reversed, relying on 34 C.F.R. § 300.102(a)(3) and noting that the state recognizes both state-endorsed diplomas and state-issued diplomas. State-issued diplomas are based on demonstrations of academic competency, including but not limited to the GED. The school board argued that the diploma was not simply a GED, which 34 C.F.R. § 300.102(a)(3)(iv) says is not a regular high school diploma, but instead a regular high school diploma within the meaning of the regulation due to its alignment with state standards. The Supreme Court reasoned, however, that the state-issued diploma is not sufficient to be a regular high school diploma under the language of § 300.102(a)(3)(iv) providing that "the term regular high school diploma means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma." Citing official data, the court noted that of all state students who entered high school four years before 2022, 91.1% graduated and earned a state-endorsed high school diploma by completing local graduation requirements, the vast preponderance of graduating students. The court rejected a further argument that a 2017 amendment to the language of § 300.102(a)(3)(iv) gave the language a different meaning than what its plain reading demanded. The court relied as well on state law clarifying that a student does not receive a state-endorsed diploma based on passing the GED, but instead may receive only a state-issued diploma.

IV. AGE ELIGIBILITY

J.M. v. New York City Dep't of Educ., 161 F.4th 149, 125 LRP 32414 (2d Cir. Dec. 9, 2025). This case primarily concerned administrative exhaustion requirements, but did so in the context of the ongoing controversy regarding special education age eligibility in New York. The case was filed as a class action seeking declaratory, injunctive, and compensatory education relief. It claimed that the New York City Department and Board of Education and the Chancellor in her official capacity acted in violation of IDEA by ending special education services to students before the students reached their 22nd birthday. The lower court dismissed the case, saying there was no subject matter jurisdiction in light of the failure to exhaust administrative remedies. The court of appeals vacated and remanded, ruling that the exhaustion requirement in IDEA is not jurisdictional, but instead is a claim-processing rule, a view taken by the Fourth, Ninth, Seventh, and Eleventh Circuits. The court further declared that exhaustion would be excused because the case challenged a policy or practice of general applicability. It said that to rely on

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the policy or practice exception, plaintiffs had to identify a specific policy of broad applicability and meet possible objections that exhaustion would promote efficiency, develop facts, and capitalize on available expertise. The court also said that for the exception to apply, there should be no need for deep inquiry into the facts of each child's case. Under those standards, the court determined that the plaintiffs did identify a specific policy and practice, and that the purposes of exhaustion would not be served if exhaustion were required. The case was remanded to the lower court.

N.D. v. Reykdal, 102 F.4th 982, 124 LRP 16052 (9th Cir. May 22, 2024). This class action case challenged the policy of Washington State to discontinue special education services at the end of the school year in which the student turns 21. The court vacated a district court order that had denied a preliminary injunction. The court said that under IDEA, eligibility generally ends on the student's 22nd birthday, except if the state opts to not offer services for students aged 18 through 21 and it also fails to provide public education to nondisabled students in the same age range. The court noted that Washington provides two educational programs to 21-year-olds, High School+ and GED preparation. There is a $25-per-quarter tuition for each of those programs, but about 40 percent of students receive a waiver due to inability to pay. The court said the case was not moot in that one of the named plaintiffs would not turn 22 until July 2024. It appeared that he did not graduate and receive a regular high school diploma due to requesting due process and invoking stay-put. Defendants' projected difficulties in complying with an injunction did not render the case moot. The court said the district court abused its discretion in denying the injunction, reasoning that the plaintiffs were likely to succeed on the merits. *E.R.K. v. Hawaii Department of Education*, 728 F.3d 982, 61 IDELR 241 (9th Cir. 2013), read the IDEA provision to require a comparison to free education for nondisabled students, but the court noted that Washington waived the fees for the two programs for tens of thousands of students. The court further said there was irreparable harm from interrupting the named plaintiff's special education and that compensatory education is not an adequate substitute. Finally, balance of hardships and public interest worked in the students' favor. The court said the duties under IDEA are unequivocal, and the burdens were comparable to those imposed by stay-put or a new special education student moving into a school in the state. Class certification was left to the district court on remand. On remand, the district court found that the case was not moot, that the class action requirements were met, and that declaratory and preliminary injunctive relief without bond was appropriate for a provisional class of "All students with disabilities in Washington who aged out of their special education programs at the end of the 2022-2023 school year who have not yet turned 22 and all students with disabilities in Washington at risk of aging out of their special education programs before they turn 22 years old as a result of Section 28A.155.020 of the Revised Code of Washington and Section 392.172A.02000(2)(c) of the Washington Administrative Code." *N.D. v. Reykdal*, No. 2:22-cv-01621-LK, 2024 WL 3358743, 124 LRP 25498 (W.D. Wash. July 10, 2024). Approval of a class action settlement is reported at 2025 WL 1736639, 125 LRP 18892 (W.D. Wash. June 23, 2025).

Mahopac Cent. Sch. Dist. v. New York State Educ. Dep't, 240 N.Y.S.3d 534, 125 LRP 21209 (N.Y. App. Div. July 17, 2025), **[New]** *leave to appeal granted*, 45 N.Y.3d 903 (Apr. 21, 2026) **[End New]**. The court in this New York CPLR Article 78 proceeding ruled that a student's parents could make a special education complaint to the State Education Department even though the student was already 21 years old, and that the Department did not violate separation of powers

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by issuing a formal opinion that public schools in the state must provide special education and related services until the student reaches 22. The court found that opinion not to be arbitrary and capricious, reasoning that the IDEA exception allowing states not to serve students from age 18 up to age 22 when nondisabled students in the same age range are not offered free public education, 20 U.S.C. § 1412(a)(1)(B)(i), did not apply to New York. The court drew a comparison to *A.R. v. Connecticut State Board of Education*, 5 F.4th 155, 79 IDELR 34 (2d Cir. 2021). The court stated, "The record reveals that the adult education programs offered in New York, i.e., the General Educational Development (hereinafter GED) and National External Diploma Program (hereinafter NEDP) programs, possess sufficient attributes of public education to qualify under the IDEA." 240 N.Y.S.3d at 542.

Katonah-Lewisboro Union Free Sch. Dist. v. New York State Educ. Dep't, 239 N.Y.S.3d 336, 125 LRP 21207 (N.Y. App. Div. July 17, 2025), **[New]** *leave to appeal granted*, 45 N.Y.3d 903 (Apr. 21, 2026). **[End New]** The court in this Article 78 proceeding upheld a determination by the State Education Department on a state complaint under N.Y. Comp. Codes R. & Regs. tit. 8, § 200.5(l)(1) that the school district was obligated to provide a free appropriate public education until the student turned 22. The court ruled that 20 U.S.C. § 1412(a)(1)(B)(i), which allows an exception to the requirement that FAPE be provided until the student turns 22 when the state does not provide public education to students without disabilities who are in the age ranges 18 through 21, did not apply to New York. The court found that information from official government websites relied upon in the State Education Department brief was properly before the court. Relying on *Mahopac Central School District v. New York State Education Department*, 240 N.Y.S.3d 534, 125 LRP 21209 (N.Y. App. Div. July 17, 2025), *supra*, the court stated that New York law extends the right to a free public education to the student's 22nd birthday.

Pennsylvania Sch. Bds. Ass'n v. Mumin, 317 A.3d 1077, 124 LRP 15580 (Pa. Commw. Ct. May 16, 2024). In this case the court declared void a Pennsylvania State Education Department policy requiring school districts to offer special education services up to students' 22nd birthday, when the Pennsylvania School Code requires that services be provided only through the end of the term in which the student turns 21. A student in 2023 had filed a class action against the department in federal court, and the department entered into a settlement agreement undertaking, as of the beginning of the 2023-24 school year, to change the expiration of the entitlement to special education to special education students' 22nd birthday. The department altered its policy accordingly but had not notified school districts and intermediate units before entering into the settlement. School districts filed a petition for review in the commonwealth court's original jurisdiction, seeking declaratory and injunctive relief against the new policy. After determining that an actual controversy existed, that the petitioners had standing to make a pre-enforcement challenge, and that no exhaustion was needed, the court found the policy invalid on the grounds that it amounted to a regulation in the sense of a binding norm, and so the department had to promulgate it through the formal notice-and-comment rulemaking requirements of the Commonwealth Documents Law and Regulatory Review Act, which the department failed to do.

V. INDEPENDENT EDUCATIONAL EVALUATION (IEE) AT PUBLIC EXPENSE

Alex W. v. Poudre Sch. Dist. R-1, *infra* (*Endrew F.* and Free Appropriate Public Education)

VI. IEPs, IEP IMPLEMENTATION, AND RELATED

[New] *L.B. v. San Diego Unified Sch. Dist.*, 168 F.4th 1150 (9th Cir. Feb. 27, 2026). This case involved a student with mental health challenges who was in seventh grade in school year 2019-20. He stopped attending the school district in October 2019 and was placed by his parents in a residential treatment center in November. The parents met with district officials in December, and the district developed an IEP offering "specialized academic instruction, mental health services, and behavioral intervention services. SDUSD also offered L.B. placement at Riley Alternative School ('Riley'), a San Diego public school that provides intensive mental health services for students with severe social or emotional difficulties." *Id.* at 1155-56. The IEP team and parents met two additional times that winter, but the parents and the district could not agree on an IEP. The parents requested due process in February 2020 and the parties settled, making an agreement that the parents would accept the proposed IEP and have the student attend Riley in school year 2020-21. The student started at Riley in eighth grade in fall 2020, but the schools were closed due to the pandemic so instruction was virtual. The student struggled with the instruction, missed classes, and became agitated and aggressive toward family members and himself, threatening violence. On September 29, 2020, the parents informed the district that the student would attend a residential, in-person wilderness therapy program in North Carolina, and the district said it would not fund that placement. The parents and IEP team met in October. The district disenrolled the student from Riley and offered an IEP calling for the student to attend Riley, the IEP to be revised when he returned. Contact continued in late October and the parents met with the IEP team on November 5, 2020, which meeting confirmed the disenrollment from the district. The parents and team met again on November 13 and the district sent the parents an IEP saying the district would disenroll the student as of September 30, 2020, and revert his grades back to that date. The student continued at the North Carolina placement, then moved to a residential treatment center in South Carolina. In March 2021, the parents requested reconsideration of the decision not to fund the residential treatment center placement and provided an independent evaluation report and other information. The district held another IEP meeting on April 27, 2021. The parents informed the district of the South Carolina residential treatment placement on that date, and the independent evaluator attended the meeting, providing findings and recommendations for placement in a therapeutic boarding environment with few transitions between home and school. The parents agreed to a district evaluation of the student at the South Carolina placement, and the assessment took place that summer and fall. On November 28, 2021, the district completed its evaluation, changing the student's classification from emotionally disturbed to specific learning disability and offering placement at a day treatment school for students with disabilities. The parents consented to the IEP and returned the student to the district to attend that school. On August 31, 2022, the student filed for due process seeking tuition reimbursement for the two parental placements. The ALJ denied relief, not reaching the question whether the district denied the student a FAPE while he was privately placed, reasoning that there was no duty to offer a FAPE when the parents had not expressly requested an IEP during that period. The district court affirmed, saying the parents requested IEP meetings but not an IEP document. The court of appeals reversed and remanded. The court noted that the parents found that the virtual instruction from Riley was not meeting the student's educational and mental health needs. The parents enrolled the student at the private

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placement and attended six IEP meetings with the IEP team while the student was residentially placed, and the parents told the district during the meetings that the existing IEP failed to work during virtual instruction, and asked for reimbursement or funding for residential placement. The court declared that the district court erred in holding that the district lacked the duty to offer the student a FAPE during that period. "Because the purpose of an IEP meeting under federal and state law is to develop and offer an IEP that will provide a FAPE, Parents' participation in IEP meetings created a continuous obligation during the period at issue for SDUSD to offer L.B. a FAPE. The record demonstrates that SDUSD officials understood this obligation and, in fact, offered L.B. an IEP during the time at issue." *Id.* at 1161. The case was different from one in which parents refused to respond at all to a school district's request for an IEP meeting and later sought private school reimbursement. The court remanded the case to the district court to determine whether the IEP that the district wrote offered the student a FAPE during the time the student was privately placed. If the district court were to determine that the district did not offer the student a FAPE and that the private placements were appropriate, the district court should then exercise its broad discretion, weighing equitable considerations to decide whether, and how much, reimbursement would be appropriate. The court commented in a footnote, "While, as SDUSD emphasizes, Parents' failure to provide 10-day notice to SDUSD of their placement of L.B. in Trails [the wilderness therapy program] may lead any reimbursement to be reduced or denied, 20 U.S.C. § 1412(a)(10)(C)(iii)(bb), the determination of whether to reduce or deny reimbursement based on this or other equitable factors and whether L.B. may qualify for the 'physical harm' or 'emotional harm' exceptions to the 10-day notice requirement, § 1412(a)(10)(C)(iv)(I)(cc), (II)(bb), are issues for the district court to resolve in the first instance." *Id.* at 1163 n.9.

Los Angeles Unified Sch. Dist. v. A.O., 92 F.4th 1159, 124 LRP 5221 (9th Cir. Feb. 15, 2024). The court in this case affirmed in part and reversed in part a district court decision and accordingly upheld an ALJ decision that agreed with the parents' position on most issues. The case involved a child turning three who had profound hearing loss and relied on cochlear implants. The parents rejected an IEP that called for placement in a public school setting in which 85% of the student's time would be with children who were deaf and hard of hearing. The student would be in an integrated setting for music, recess, library, art, and occasional holiday parties for the remaining time. The proposed IEP also provided that the student would receive language and speech therapy one to ten times per week for a total of thirty minutes a week and audiology services one to five times per month for a total of twenty minutes per month, and did not specify if the language and speech therapy would be group or individual. The court affirmed that the school district violated IDEA by failing to specify the frequency and duration of audiology and speech and language services, citing 34 C.F.R. § 300.320(a)(7) and noting evidence from the ALJ hearing that multiple short sessions of speech and language would prevent the targeting of needed skills. Some flexibility could be permitted on the IEP, such as provision of one to three sessions, but not one to ten. The error was not harmless, for the ALJ found the parents did not understand how frequently the student would receive speech and language and audiology and were thus unable to decide if they agreed with the proposal. Even staff did not know what the frequency would likely be. The court also affirmed the ALJ's conclusion that the district's proposed program denied a FAPE under IDEA and state law in that it did not provide enough interaction with typically hearing peers for the student to make meaningful progress in spoken language. The court relied on the expert testimony at hearing,

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saying recess and holiday parties, plus the other opportunities for mainstreaming in the IEP, were not enough to support progress for the student. The court held there was no requirement for the ALJ to defer to the testimony of the district's staff, and the ALJ found the parents' experts' testimony more persuasive. The court further affirmed that the district's placement did not provide the least restrictive environment for the student, applying the test of *Sacramento City Unified School District v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994). The student was not ready for full-time mainstream instruction, but only ninety minutes per week was not enough in light of the student's needs. The district's plan did not address support services to permit an increase in the amount. The fact that the public school was large and diverse, with many non-disabled students, did not matter. Instead, said the court, the focus should be on the individual student's educational experience. In upholding the parents' cross-appeal of the district court decision, the court ruled that the IEP was deficient in not specifying individual speech and language therapy, as opposed to group therapy. The court said the issue was substantive in this case, not a procedural failing of the IEP, in that the student needed individual therapy to receive a FAPE. The court noted the ALJ's reliance on expert testimony that individual therapy was essential for the student to learn to pronounce final consonants of words. The school district did not contest the appropriateness of the private school where the parents placed the student, a placement the ALJ upheld. Judge Collins dissented on procedural and substantive issues.

Pitta v. Medeiros, 90 F.4th 11, 124 LRP 521 (1st Cir. Jan. 4, 2024), *cert. denied*, 144 S. Ct. 2631 (June 10, 2024). In this unusual case, the court of appeals affirmed the dismissal of a claim by the father of a public school special education student that the defendants violated his rights under the First Amendment by forbidding him from making a video recording of an IEP meeting that was held over the internet. The father said he wanted to make the recording because there were omissions and inaccuracies in the school district's minutes of a prior meeting. In rejecting the claim, the court said that cases upholding the First Amendment right to record police interactions were not applicable. The court said that unlike police interactions that bystanders filmed, "[a] student's IEP Team Meeting, whether virtual or in person, is ordinarily not conducted in a 'public space.' The meeting could not be public because only members of a student's IEP Team may attend an IEP Team Meeting, and because IEP Team Meetings involve the discussion of sensitive information about the student." *Id.* at 20. The court also argued that the recording would not further the interest in the free discussion of public affairs and that the barring of video recording was a permissible time, place, and manner regulation, both content neutral and narrowly tailored.

Rivas v. Banks, No. 22-CV-10007 (LJL), 2023 WL 8188069, 123 LRP 34269 (S.D.N.Y. Nov. 27, 2023), *reconsideration denied*, 2024 WL 292276 (S.D.N.Y. Jan. 25, 2024), *aff'd sub nom. Rivas v. Ramos*, No. 24-268, 2024 WL 5244849 (2d Cir. Dec. 30, 2024) (unpublished). Here the district court affirmed administrative decisions rejecting a parental challenge to the district's placement. The IHO, SRO, and court all relied on the failure of the parent to properly offer evidentiary support for the claim that the school chosen was not appropriate for the student, who was an eleven-year-old with cystic encephalomalacia, global central nervous system injury, seizure disorder, hypoxic-ischemic encephalopathy, cerebral palsy, optic atrophy, and cortical visual impairment. He was non-ambulatory and nonverbal and used a feeding tube. He attended a private school called iBrain, and personnel there developed an education plan for him for 2021-

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22 on January 22, 2021. On February 1, the district IEP team wrote an IEP that was similar in calling for 12-month education, 6:1:1 classes, and a 1:1 paraprofessional, but lacked music therapy called for in the private school plan. Later that month, the district issued a letter saying the services would be provided at P.S. 168, a public school in District 75, but then in June sent the parent a letter saying the student was reassigned to the same school but a different location. The parent rejected the IEP and placement, saying she would unilaterally place the student at iBrain, but still remained open to the student's enrollment in an appropriate public school. She filed for due process seeking tuition payment. The hearing officer concluded that the district offered a FAPE for the 2021-22 school year. Though music therapy would be beneficial, the goals it served could be met with other services. The student was said to not require an extended school day, and the concern the student would be inappropriately placed with children with autism was called speculative. An issue about wheelchair accessibility of the public school placement was rejected because the parent did not address it until the closing argument. The hearing officer also determined that iBrain was an appropriate placement and the equities favored the parent. The review officer affirmed the decision in favor of the district. On appeal, the district court found that the evidence supported the administrative decisions, and held specifically that the objection to the placement with students with autism was speculative. The issue about wheelchair accessibility was waived, in that it was not in the due process complaint, nor reached by the IHO or SRO, nor was at the heart of the dispute. In a summary order, the court of appeals affirmed, agreeing that the accessibility issue was waived and that the claim that the student would be inappropriately placed with students with autism was based on speculation. It also agreed with the district court that push-in services could be provided in the public school placement, eliminating the need for an extended school day, and that the functions of music therapy could be fulfilled with other interventions.

VII. *ENDREW F.* AND FREE APPROPRIATE PUBLIC EDUCATION

North East Indep. Sch. Dist. v. I.M., 163 F.4th 193, 125 LRP 34991 (5th Cir. Dec. 23, 2025), *vacating and superseding* 160 F.4th 630, 125 LRP 31441 (Nov. 21, 2025). The student in this case had autism, speech impairment, and an intellectual disability, communicating primarily via gestures, facial expressions, and a communication app. The student's behavior included hitting furniture and walls, jumping, handstands, spinning, and running away from the school building. He also had problems with toileting. In fourth grade, he was performing academically at a kindergarten level. The district placed the student in a three-week half-day summer school year program following second grade, but he ran away frequently. He regressed significantly as of the start of third grade, running away on 40% of his school days. He regressed as well after spring break, and urinated in class twice. The parent asked the district to provide full-day ESY during the summer after third grade, but the district provided six weeks of half-day instruction. At the outset of fourth grade, the student again regressed, running away from school three times in a two-week period and experiencing 20 toileting incidents during the first six weeks of the school year. In fourth grade, he ran away from the school bus. Once he ran across a busy street and was restrained by bystanders. The parent requested due process, arguing that the student should receive ESY services for all breaks, a GPS tracker, and that an IEP goal of safe bus riding should be added. The hearing officer ordered full-summer ESY services, as well as year-round access to voice-assisted communication technology. The district court and the court of appeals affirmed. The court of appeals looked to *Cypress-Fairbanks Indep. Sch. Dist. v. Michael*

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F., 118 F.3d 245, 253 (5th Cir. 1997), and determined that the district court did not commit clear error in concluding that the IEP was not adequately individualized. The court of appeals said the continuing problems with behavioral regression outweighed the IEP's academic benefits. It further declared that the district court did not improperly focus on remediating the student's disability. Remediation may be part of an appropriate IEP, especially with regard to behavior. Academic benefit alone may not be enough. The record indicated that the behavior interventions used up to that point were not sufficient.

Boone v. Rankin Cnty. Pub. Sch. Dist., 140 F.4th 697, 125 LRP 18544 (5th Cir. June 18, 2025). This case involved a teenage student with autism who made limited academic progress over several years and manifested disruptive behavior including fecal smearing and elopement. The district proposed immediately moving the student from a private therapeutic school to Brandon Middle School, over the objections of the parent, who contended the student needed a smaller environment better tailored to his needs, and that the district's transition plan did not address his elopement problem. The parent suggested a transition to Florence High School, a smaller setting with other students with autism, which featured vocational programs. Florence was the school where the student would eventually be placed, therefore avoiding a second transition. The hearing officer and district court ruled that the school district's proposed placement denied a FAPE, though they denied the parent's request for compensatory education. The court of appeals affirmed, reasoning that the district's proposal was not individualized in that the district's transition plan did not address elopement, and the proposal was predetermined, in that it was firmly decided upon before the parent's input. The court said the proposed placement was not shown to violate least restrictive environment standards. The court held that the district court did not clearly err in finding the school district's plan did not provide educational benefits when the student's experience with the district's special education services over seven years appeared to show regression from a first-grade academic level to a kindergarten level or only slight non-academic progress. The court ruled that the district court was within its discretion in denying compensatory education when the focus of the parent's case was on the deficiencies of the district's proposed placement at Brandon Middle School. The court affirmed the district court's award of attorneys' fees for the parent.

Cruz v. Banks, 134 F.4th 687, 125 LRP 12165 (2d Cir. Apr. 15, 2025), **[New]** *certified question answered*, 45 N.Y.3d 599, --- N.E.3d ---, 126 LRP 3907 (N.Y. Feb. 17, 2026), *answer conformed to and judgment affirmed*, 172 F.4th 208, 126 LRP 10055 (2d Cir. Apr. 7, 2026). **[End New]** In a case involving a student with cerebral palsy, a visual impairment, a seizure disorder, and scoliosis who attended the iBrain school starting in 2018, the parent challenged the public school system's IEPs of May 2020 and June 2021. The 2020 IEP recommended a 6:1:1 classroom with extensive services. It called for a placement at Horan Public School and no music therapy. The 2021 IEP recommended a 12:1:4 classroom but was otherwise similar to the 2020 IEP. The hearing officer found that both IEPs offered a free appropriate public education, but that Horan could not implement the IEPs because its school days were too short for all the required instruction and services. The parent's iBrain placement was found appropriate, but the IHO ordered a reduced tuition reimbursement amount on grounds of excessive cost. The state review officer reversed the holding that the public school could not implement the IEPs, saying some services could be provided concurrently. The district court agreed with the SRO. Agreeing with the SRO, the district court rejected a contention of the parent that under state regulation,

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the student had to be placed in a classroom with no more than six students. The district court said the school system could choose to apply another regulation setting a twelve-student maximum for students with severe multiple disabilities. On appeal, the Second Circuit said that the question whether a FAPE was offered turned on an issue regarding the state regulations for which there was no controlling decision of the state courts, so it certified that question to the New York Court of Appeals. In doing so, the Second Circuit first determined that several of the parent's objections to the IEPs failed: Horan was said to have been able to implement the IEPs through simultaneous provision of services; music therapy's goals could be accomplished by other services in the IEP; a new evaluation was not needed before the switch to the larger class; and there was no evidence that the student needed oxygen and a ventilator during transportation. Second, the court noted that N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) sets a maximum of six students for classes of "students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention," while § 200.6(h)(4)(iii) sets a class size maximum of 12 for "students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment." The court said that in light of the textual dissonance between the two provisions, whether courts should apply deference to the agency's interpretation is itself a question suited to the state court's resolution. The Second Circuit said the interpretation question implicated state policy concerns and that the state law issue was dispositive in the case. It rejected worries about delay since the case requested reimbursement rather than immediate services, and said the dissent conflated certification with abstention. The question the court certified was: "When a student is covered by more than one class size regulation under § 200.6(h)(4), do the varying restrictions serve as distinct requirements that must be independently fulfilled or as a list of class size options from which the DOE may pick?" 134 F.4th at 698-99. Park, J., dissented, arguing that certification was not proper and the court should have deferred to the hearing officer and review officer's interpretation of the law. **[New]** Answering the certified question, the New York Court of Appeals stated that § 200.6(h)(4) "sets forth a list of mutually exclusive alternatives" regarding classroom sizes and staffing levels for special education classes. A "student's committee on special education (CSE) must therefore select the listed alternative that best meets a student's individual needs. We answer the certified question accordingly." The court said that section 6(h) provides what seems to be a default rule that the maximum class size for students found to need self-contained settings is 15, or in some instances 12. There are four exceptions:

> First, for classes with "students whose management needs interfere with the instructional process, to the extent that an additional adult is needed within the classroom," "the maximum class size . . . shall not exceed 12 students, with one or more supplementary school personnel assigned to each class" (*id*. § 200.6 [h] [4] [i]). Second, for classes with "students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention," "the maximum class size . . . shall not exceed six students with one or more supplementary school personnel assigned to each class" (*id*. § 200.6 [h] [4] [ii] [a]). Third, for classes with "students whose management needs are determined to be intensive, and requiring a significant degree of individualized attention and intervention," "the maximum class size . . . shall not exceed eight students, with one or more supplementary school personnel assigned to each

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class" (*id*. § 200.6 [h] [4] [ii] [b]). Finally, for "students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment," "the maximum class size . . . shall not exceed 12 students" and "the staff/student ratio shall be one staff person to three students" (*id*. § 200.6 [h] [4] [iii]).

45 N.Y.3d at 605-06. The court said that looking to the regulation's text, "it is possible to interpret the fourth exception as either an alternative to the first three requirements, or as an additional requirement that must also be satisfied." *Id.* at 606. But "[t]he structure of the regulation indicates that the State DOE intended the former." A contrary "interpretation would require schools not only to operate separate classrooms with each of the five configurations expressly contemplated in the regulation, but also to operate additional classrooms with 6:1+(3:1) and 8:1+(3:1) configurations . . . for students covered by both the fourth exception and either the second or the third." The court declared: "It seems unlikely that the agency meant to tacitly require these more resource-intensive configurations based on the cumbersome intersection between multiple items in the list." *Id.* at 607. Students with severe multiple disabilities who primarily need habilitation and treatment, as called for in exception four, likely have intensive or highly intensive management needs, requiring significant individualized attention. Had the State Education Department "wanted students with multiple disabilities principally to be in 6:1+(3:1) or 8:1+(3:1) classrooms, it likely would have said so, rather than imposing a 12-person class limit that applies to relatively few, if any, students." *Id.* The court said that the history of the regulation also supported the interpretation that the four exceptions present mutually exclusive alternatives. In a brief, per curiam opinion, the Second Circuit applied the state court's interpretation of the regulation and affirmed the judgment of the district court upholding the defendant's placement of the student in the 12:1:4 classroom. The Second Circuit said that according to the interpretation of the state law provided by the New York court, "because O.F. 'has both severe multiple disabilities and highly intensive management needs,' . . . he could properly be placed in either a 12:1:4 classroom, pursuant to § 200.6(h)(4)(iii), or a 6:1:1 classroom, pursuant to § 200.6(h)(4)(ii)(a)." 172 F.4th at 209. Moreover, said the court, the state review officer and the impartial hearing officer in the case reasonably ruled that the 12:1:4 classroom was appropriate in light of the student's needs, and the court would not disturb that finding. **[End New]**

William A. v. Clarksville-Montgomery Cnty. Sch. Sys., 127 F.4th 656, 125 LRP 3627 (6th Cir. Feb. 3, 2025). This case concerned a dyslexic student served by the school district from fifth grade forward who graduated from high school with a 3.4 grade-point average but still could not read, or even spell his own name. The student's IEPs remained similar despite his failure to meet reading fluency goals and an expression of concern by a high school special education teacher that the student could not read. Eventually, in the student's eleventh-grade year, the parent requested an evaluation for dyslexia, and the district's evaluation made that diagnosis. A private tutor hired by the parents began dyslexia instruction, but the district rejected the proposal to incorporate the program into the student's IEP. The hearing officer found a denial of FAPE and ordered 888 hours of tutoring as compensatory education. The district court affirmed, though denying a request to order the district to have the student's current tutor be the one to provide the tutoring. The court of appeals affirmed. After determining that the district's appeal remained justiciable because of collateral effects such as attorneys' fees even though the district did not challenge bases for relief under the ADA and Section 504, the court

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affirmed the district court's judgment on the IDEA claim. The court noted that the accommodations the district provided hid the student's disability without addressing it:

> [P]er the terms of his IEPs, he relied on a host of accommodations that masked his inability to read. To write a paper, for example—as the ALJ described—William would first dictate his topic into a document using speech-to-text software. He then would paste the written words into an AI software like ChatGPT. Next, the AI software would generate a paper on that topic, which William would paste back into his own document. Finally, William would run that paper through another software program like Grammarly, so that it reflected an appropriate writing style. Not all these workarounds were specifically listed in his IEP, but all were enabled by an accommodation that was: 24 extra hours to complete all assignments, which allowed William to complete his assignments at home, using whatever technology tools he could find.

Id. at 660. The court held that the fact that the student passed from grade to grade did not mean he received appropriate education. "When a child is capable of learning to read, and his IEP does not aim to help him overcome his particular obstacles to doing so, that IEP does not provide him the 'free appropriate public education' to which he is entitled." *Id.*

Osseo Area Schs., Indep. Sch. Dist. No. 279 v. A.J.T., 96 F.4th 1062, 124 LRP 9021 (8th Cir. Mar. 21, 2024). The student in this case had a rare form of epilepsy that left her needing help with daily tasks including walking and toileting. Her seizures were so frequent in the morning that she was unable to attend school before noon, but she could remain alert from then until about 6 p.m. The Kentucky district she attended before moving to Minnesota in 2015 provided her evening instruction at home, but the Minnesota district refused the parents' requests for evening instruction, and from 2015 to 2018 provided one-on-one instruction in the afternoon, 4.25 hours each school day. When the student entered middle school, where the standard school day ended at 2:40, the district proposed to cut back to about 3 hours per day. The parents filed for due process, and the pending proceeding kept the student at 4.25 hours under stay-put. After hearing, the ALJ ruled that the district made maintaining the regular school faculty hours its paramount consideration, rather than the student's needs, and ordered compensatory education and the addition to the student's IEP of home instruction from 4:30 to 6 p.m. each day. The district court affirmed, finding that although the student made some progress while in the district, her overall progress was de minimis, and she regressed in areas such as using hand signs to communicate, returning greetings using a button switch, and toileting. The district court found the student could have made more progress if she had received evening instruction and that a 3- to 4-hour school day was too short to pursue many goals recommended by the experts. The court of appeals affirmed. The court said that IDEA's reach is not restricted to the ordinary school day. It echoed the finding of the district court that the student's progress was de minimis, noting that the student met none of her annual goals for 2016 and 2017, met only a few short-term objectives in 2018, had no progress reports for 2019, and met only a single objective and no goals in 2020. The student regressed with regard to toileting, with a success rate of 45% at the end of her time in Kentucky and declining success once in the Minnesota school district, to the point of having only minimal success. For a while the toileting goal was

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removed due to the time constraint of the short day. Expert opinion showed that the student would have made more educational progress with evening instruction, and none of the district's explanations for refusing evening instruction were based in the student's needs. In a footnote, the court emphasized that it was rejecting the school district's argument that the IEP should be upheld because it ought to be evaluated as a snapshot at the time it was created, stating that "[H]ere, the District had more and more information about A.J.T.'s instructional needs and insufficient progress each year. This is not a case where it only became apparent that the student's IEP was inappropriate after the fact." *Id.* at 1066 n.4.

Alex W. v. Poudre Sch. Dist. R-1, 94 F.4th 1176, 124 LRP 7692 (10th Cir. Mar. 7, 2024). This case concerned a student with Down syndrome, autism spectrum disorder, and vision and hearing impairments, who experienced significant behavior difficulties, including grabbing at others, kicking, pulling hair, undressing himself, and trying to run away, and who was largely nonverbal but used a touchscreen tablet with icons to communicate. The parents alleged a denial of FAPE for the school years from 2014 to 2018. The ALJ and the district court rejected claims regarding school years 2014 and 2015 as outside the statute of limitations, and found no denial of FAPE for the other two years. The court of appeals affirmed these rulings. The ALJ and district court also found that the district had to reimburse the parents for an independent educational evaluation. The court of appeals reversed on that issue. Regarding limitations, the court found that the parents did not properly reserve their contention that the statute of limitations does not restrict the time frame for recovery of damages. Regarding FAPE and the evaluations that led to the student's IEPs, the court said that the student's behavioral needs were adequately addressed, and that a functional behavioral analysis was not needed because the IEP team felt confident in helping the student regulate his behavior and knew what worked for him. The court said that the ALJ correctly found that the 2016 IEP included goals, supports, and accommodations to meet the behavioral needs, that it was possible for the student to progress on his goals even though his problem behaviors continued, and that the 2017 IEP had additional goals that responded to the findings of a 2017 reevaluation. The court also agreed that the student received a FAPE despite a reduction in direct speech-language and occupational therapy hours when indirect hours were added and instructional time increased, with the court saying that the therapy offered was adequate. The court further rejected an argument that extended school year services should have been offered, noting that the student's regression in the past had been minor and declaring irrelevant the parents' contention that the reason the regression was minor was the summer services they funded. The court said the district could consider other resources available in determining the need for ESY. The court concluded that the district evaluated the student in all areas of disability, saying the district used autism-related assessments and tools. It further noted that the student worked with a speech-language therapist trained to use the touchscreen tablet device, and the student's functional communication improved. On the IEE issue, the court said that the school district did afford the parents an IEE at public expense after an August 2017 triennial reevaluation in accordance with their request in February 2018 for an IEE in the areas of speech and language and occupational therapy. The district, the court said, did not need to afford another IEE in response to a June 2018 request for a neuropsychological evaluation. The court relied on 34 C.F.R. § 300.502(b)(5), which provides that the parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation. The court relied on the regulation's text and said the issue was one of first impression in the circuit.

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Los Angeles Unified Sch. Dist. v. A.O., *supra* (IEPs, IEP Implementation, and Related)

VIII. COVID-19

Chollet v. Brabrand, 137 F.4th 241, 125 LRP 15058 (4th Cir. May 19, 2025), *cert. denied*, 146 S. Ct. 359 (Nov. 10, 2025). In this case, parents of children with disabilities attending public school in Fairfax County, Virginia, alleged that the transition to remote learning during the COVID-19 pandemic was an unconstitutional taking of the parents' children's property interest in education, in violation of the Takings Clause. The court affirmed dismissal of the action, reasoning that a property interest for purposes of the Due Process Clause encompasses more than a property interest calling for compensation under the Takings Clause. The Takings Clause applies only to private property, not public benefits, and public education is not the private property of the plaintiffs for which the plaintiffs must be compensated if it is taken for public use. The court noted, among other points, that students' use of public education is subject to many restrictions, and there is no option to buy, sell, or assign the right to attend school, just as there is no right to exclude others.

Abigail P. v. Old Forge Sch. Dist., 105 F.4th 57, 124 LRP 21769 (3d Cir. June 26, 2024). In this case involving a student with severe disabilities including epilepsy, autism, global developmental delays, and other conditions, the court affirmed a district court's affirmance of a hearing officer decision that the school district did not deny the student a free appropriate public education when it changed her instruction to remote from November 25, 2020, until February 16, 2021 (plus four more days in spring 2021 for specialized cleaning of facilities). The student had an IEP providing for specialized instruction and related services, which included three half-hour sessions per week for both speech-language therapy and occupational therapy, plus one half-hour session a week for both physical therapy and physical education. The IEP team modified the IEP in December. Quoting the court's description, the revised "IEP stated that Abigail would have Zoom sessions five days per week, with optional Google classroom assignments four days per week. Two days per week, Abigail's mother opted to have Abigail participate in circle (i.e., group) time instead of occupational therapy because of a scheduling conflict. One behavioral goal related to following schedules was 'placed on hold' because it could not 'be monitored appropriately in a virtual setting.' For similar reasons, the monitoring of Abigail's completion of instructional tasks throughout the day was slightly reduced. Abigail's mother agreed to each of these revisions." *Id.* at 62. The student received the full amount of PT and speech therapy, as well as some other services, but had less one-on-one instruction, only about 15 minutes of math and 15 minutes of reading a day, and the instruction was provided by an aide some days. The student struggled during remote instruction and regressed in some areas, but was offered compensatory education, which the mother declined because the student had been placed in another program for the summer. Deferring to hearing officer determinations, the court said that the modified program met the standard for FAPE and was implemented adequately. The student received behavior tech and behavior analyst services as well as the full amount of PT and speech, and missed OT sessions because her mother opted for circle time instead. The student's instructional time was only slightly diminished during remote instruction, and she received most of her related services and was given equipment for independent activities. Thus there was no "failure by Old Forge to implement substantial or significant provisions of her

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IEP." *Id.* at 66. The court said that remote instruction is not a per se violation of IDEA, but "a school district is *never* relieved of its legal obligations under the IDEA," and must "continue to offer an educational program reasonably calculated to confer meaningful educational benefits *in light of the child's individual circumstances*. As counsel acknowledged at oral argument, such circumstances can surely be affected by a global pandemic." *Id.* at 66-67 (emphasis in original).

Doe v. Franklin Square Union Free Sch. Dist., infra (Administrative Exhaustion and Non-IDEA Claims)

Arc of Iowa v. Reynolds, 94 F.4th 707, 124 LRP 6281 (8th Cir. Feb. 27, 2024). This case challenged the enforcement of a state statute prohibiting mask requirements in schools unless otherwise required by law. The lower court granted the plaintiffs' motion for summary judgment and, according to the court of appeals, "issued two declarations: (1) 'the phrase 'other provision[s] of law' as is used in Iowa Code section 280.31 includes Title II of the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act;' and (2) 'Iowa Code section 280.31 cannot be cited as the only basis to deny a student's request for reasonable modification or accommodation made under Title II of the ADA or section 504 of the Rehabilitation Act that includes requiring others to wear masks.'" *Id.* at 710. On appeal, the court vacated the district court's order and remanded the case with instructions to dismiss the case for lack of standing. Agreeing with a variety of other circuits' decisions, the court said that "the general risks associated with COVID-19, even though COVID-19 remains an ever-present concern in society, are not enough to show 'imminent and substantial' harm for standing." *Id.* at 711. The court said the risk of harm was too speculative to support injury in fact, and that the plaintiffs could not show traceability. On traceability, the court said that "Plaintiffs here have not shown that either the Governor or the Director of the Department of Education have a duty to enforce Iowa Code § 280.31 or that they have attempted to enforce the law in a manner that has directly affected them. Further, Iowa Code § 280.31 does not prohibit a school from complying with disability laws, nor have Plaintiffs alleged that a school denied their request for masking as a reasonable accommodation tailored to their child's situation." *Id.*

We the Patriots USA, Inc. v. Connecticut Off. of Early Childhood Dev., 76 F.4th 130, 123 LRP 23566 (2d Cir. Aug. 4, 2023), *cert. denied*, 144 S. Ct. 2682 (June 24, 2024). In this broad-based challenge to Connecticut's decision to repeal religious exemptions to vaccination requirements for students and participants in childcare programs, the court affirmed dismissal of all claims except the claim of one of the plaintiffs that the repeal violated IDEA. On that claim, the court overturned the district court's dismissal. The district court had relied on the fact that the complaint alleged that the child of the plaintiff received special services without saying that the child received special education, but the court of appeals said a reasonable inference was that the child received special education when other allegations pertained to the child's speech and learning disorder and asserted the child was disabled within the meaning of IDEA. The court remanded for consideration of the merits of the parent's claim.

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IX. AUTISM-SPECIFIC SERVICES

X. INFANT AND TODDLER PROGRAMS

XI. BEHAVIOR SERVICES AND STUDENT DISCIPLINE

North East Indep. Sch. Dist. v. I.M., supra (*Endrew F.* and Free Appropriate Public Education)

Alex W. v. Poudre Sch. Dist. R-1, *supra* (*Endrew F.* and Free Appropriate Public Education)

Secretary's Letter on Restraint and Seclusion (U.S. Sec'y of Educ., Jan. 8, 2025), https://www.ed.gov/laws-and-policy/key-policy-letters/secretarys-letter-restraint-and-seclusion states that restraint and seclusion practices can have a lasting negative impact on children and provides links to Department of Education guidance on the topic.

XII. PRIVATE SCHOOLS, VOUCHERS, AND RELATED

[New] *Hellman v. Massachusetts Dep't of Elementary & Secondary Educ.*, 171 F.4th 69 (1st Cir. Mar. 20, 2026), *petition for cert. filed*, No. 26-97 (U.S. July 21, 2026). In this case, parents of children with disabilities who attend private schools and who, under Massachusetts law, have an individual entitlement to publicly funded special education services, challenged a state requirement that the students may receive the services only at a public school or another public or neutral location. Public school children generally receive special education services at the schools at which they are enrolled. The plaintiffs, who were two sets of parents of children enrolled at private schools, claimed a violation of the Fourteenth Amendment Due Process, Equal Protection, and Privileges and Immunities Clauses, arguing that the policy, embodied in a regulation and based on the state constitution's barring of the use of public money for the purpose of founding, maintaining, or aiding any primary or secondary school that is not publicly owned, interfered with their fundamental constitutional right to have their children attend private school. The district court granted the defendants' motion to dismiss all claims, and the court of appeals affirmed. As to substantive due process, the court reasoned that the parents have a fundamental right to send their children to private school, but that the failure to subsidize is not the same as interference. At most, there is an increased logistical burden on the right. The entitlement to services under state law does not affect the scope of a federal fundamental right. The comparison to free exercise rights-equal benefits also does not work, and the least restrictive environment duty says nothing about the physical location where services are delivered. The parents did not bring a First Amendment free-exercise claim in light of the fact that the regulation applies to all private schools, religious or not. Since interference with fundamental rights does not apply, rational basis analysis does. The state has a legitimate government interest in complying with the state constitution, and state law classifications may be over- or under-inclusive. Children placed by the state in private schools and those placed in private schools by parents may be treated differently due to the difference in reasons for the placement. As to equal protection, similar reasons defeat the parents' claim. The court said there is no discrimination on the basis of a suspect classification or the exercise of a fundamental right. The court also found the Privileges and Immunities Clause unavailing.

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Loffman v. California Dep't of Educ., *infra* (Private and Residential Placement)

XIII. LEAST RESTRICTIVE ENVIRONMENT

[New] *N.T. v. Galesburg Cmty. Unit Sch. Dist. No. 205*, 174 F.4th 1044, 126 LRP 12580 (7th Cir. May 6, 2026), *petition for cert. filed*, No. 26-171 (U.S. Aug. 6, 2026). This case involved a student with behavioral disabilities who was initially placed in a neighborhood public school special education class, but was then swiftly offered a proposed individualized education program (IEP) that would have placed him in a private therapeutic day school a 45-minute bus ride from his home. The parents filed for due process, and the impartial hearing officer ruled that the district's proposal complied with IDEA. The parents appealed to the district court, which held an evidentiary hearing and reversed the hearing officer decision, relying on the duty of the school district to place the student in the LRE. The Seventh Circuit Court of Appeals affirmed. The court stressed the language of 20 U.S.C. § 1412(a)(5)(A) as well as the requirement in 34 C.F.R. § 300.115 that the state make available a continuum of alternative placements that range from more to less mainstreamed. The court noted that the student struggled with aggressive behavior, cursing, and physical violence "including kicking and throwing classroom items, causing minor injuries to staff." *Id.* at 1050. In the student's first-grade year, after the student was given a functional behavior assessment and behavior intervention plan, the parents and school entered into a mediation agreement placing him in a self-contained classroom for students with emotional and behavioral disorders (EBD). The class at that time had seven students, with a special education teacher and two paraprofessionals. Three weeks later, the district determined the student was eligible for special education and proposed an IEP placing him at a private, therapeutic day school. The district rejected the idea of keeping the student in the EBD classroom with a one-on-one aide. The private day school exclusively served disabled students and offered no mainstreaming opportunities. The parents filed for due process. The hearing officer ruled that the student had not made progress in his current placement, that the EBD program could not meet his behavior and academic needs, and that additional supports, including an aide, were not needed, but that the therapeutic day school was needed. The district court reversed, after hearing new testimony focused on developments since the administrative hearing, a period when the student remained in the EBD placement under IDEA's stay-put provision. In affirming, the court of appeals applied a de novo standard of review to pure issues of law, which included the degree of deference to the administrative decision and how to weigh the evidence. The court said the district court had to give due weight to the administrative decision, but the meaning of due weight varies from case to case, and when the district court receives new evidence, there is a sliding scale in which the greater the new evidence the less deference is required. In this case, the district court heard a significant amount of evidence that was new, material, and important to the court's decision. Thus there was no abuse of discretion in the district court's weighing of the evidence. On the ultimate determination of whether the district's proposed placement violated the LRE standard, the court pointed out that the Seventh Circuit had not adopted a multi-factor test, unlike some circuits. Applying the statute itself, the court called the district's proposed placement "as restrictive as a placement can be." *Id.* at 1059. Although both the EBD placement and the private day school placement were forms of segregated special education, the EBD placement was at the school the student would attend if not disabled and was closer to the student's home. On the continuum of alternative placements, the private school was in a different school district and was significantly more restrictive than

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the EBD placement. The court deferred to the district court's decision that the EBD class could provide the student with a satisfactory education, finding that the student "made 'significant progress' and formed 'positive relationships' in the EBD classroom. The [district] court observed that by March 2024, C.T. had reached a behavioral goal in his IEP that he was not expected to reach until December 2024. Moreover, C.T.'s math and reading standardized test scores improved dramatically." *Id.* The student would benefit from a one-on-one aide. The district had afforded the student only three weeks of the EBD class before seeking the change in placement. The court also placed emphasis on the concluding language of *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386, 404 (2017), stating that deference to school district decisions derives from application of expertise and judgment by school officials, and reviewing courts may "fairly expect" those authorities to offer a "cogent and responsive explanation for their decisions." The court of appeals said that courts are as equipped as educators are to evaluate fact questions under the IEP, such as progress towards goals. On the issue of the need for an aide, the court stressed that the explanations of the school district lacked cogency and responsiveness.

[New] *C.B. v. Henry Cnty. Sch. Dist.*, 167 F.4th 1134 (11th Cir. Feb. 19, 2026). This case involved a student with Down syndrome. In fourth grade, the student was in general education classes for art, physical education, and music, and attended general education classes with paraprofessional support for science and social studies, and an interrelated resource class (IRR) for language arts and math. The IRR class lacked nondisabled students. In spring of fourth grade, the district proposed removing the student from the IRR class and placing him in a mild intellectual disability (MID) class for language arts and math. "The MID class included students who were impaired to a greater extent than students in the IRR class, and the MID class's curriculum was paced and modified to support the students' cognitive and adaptive abilities." *Id.* at 1138. The parents filed for due process, arguing the MID class was not the least restrictive environment. The ALJ ordered the student to be served in the IRR class during the pendency of the hearing process. The ALJ upheld the district's MID placement, and the district court affirmed. The court of appeals affirmed the decision as it related to the LRE claim. It ruled that whether a student is placed in the least restrictive environment under IDEA is a mixed question of law and fact to be reviewed de novo. To the extent that the issue concerns IDEA interpretation, it is a question of law reviewed de novo, but to the extent the issue concerns the ALJ's factual findings, it is reviewed for clear error. The court said that the requirement of placement in the LRE "applies only to the placement choice between a regular education class and a special education class—not to placement choices among different types of special education classes. . . . a child's removal from one special education class and placement in a different special education class within the same school does not present a least-restrictive-environment concern under the IDEA." *Id.* at 1141. Earlier circuit cases involved moving a student from general education with additional services to a self-contained special education setting, so were inapplicable. The courts are not to substitute their judgment on educational policy when the school authorities provide a cogent and responsive explanation for their decisions. The court thought that test was met. The court said the parents waived any objection to the admission of the IEP transcript into the hearing by not requesting limits on its use until the motion for final judgment in district court. The court of appeals reversed the district court on its determination regarding the parents' objection to the use of the Georgia Alternate Assessment rather than the Georgia Milestones Assessment to determine diploma eligibility.

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Because of stay-put, the student remained subject to Milestones since fifth grade and was now in eleventh grade. The court accepted the parents' argument that "the issue is not moot because an IEP assessment must occur annually, and state rules require the IEP team to consider alternative assessments even if C.B. would no longer be eligible for an alternative diploma. . . . A student's placement in an alternative assessment track rather than the statewide assessment track must be included in each student's annually revised IEP." *Id.* at 1144. The issue was remanded to the district court.

Jacobs v. Salt Lake City Sch. Dist., 154 F.4th 790, 125 LRP 29753 (10th Cir. Oct. 9, 2025). The plaintiffs in this case alleged that the school district assigned students with intellectual disabilities to specific schools called "hubs" without taking into account the students' individual needs, in violation of IDEA, the ADA, and Section 504. The complaint said that the school district concentrated services for students with intellectual disabilities at a few elementary schools, and assigned students to particular schools based on IQ scores. Specifically, "'[S]tudents with an IQ above 70 or without a flat IQ profile' are placed in the mild/moderate category, while 'student[s] with an IQ of less than 70 with a flat IQ profile' are placed in the severe category." *Id.* at 796 (quoting joint appendix). Students placed in the mild/moderate category were assigned to one of three of 27 elementary schools in the district, and students placed in the severe category received assignments to one of four other elementary schools. The complaint alleged that individual needs of the students were not considered, and that the district gave no meaningful attention to placing students with intellectual disabilities in the general education environment. The plaintiffs made both individual and class action allegations. Parents who challenged the placements of their children in due process proceedings joined with the state protection and advocacy agency in filing suit putting forward both individual and class allegations. The lower court dismissed the plaintiffs' Section 504 claims for failure to exhaust and dismissed the IDEA and ADA claims, saying they failed to state a claim. The court of appeals reversed and remanded. First, it held that at least the plaintiff families had standing. It then held that the plaintiffs presented a plausible claim for relief under IDEA, the ADA, and Section 504 by challenging a policy that assigned students with intellectual disabilities to special education classrooms by category, without particularized determinations that the placements were the most appropriate ones for the students. The court further noted that the plaintiffs claimed that the school district did not adequately consider supplementary aids and services to enable the students to be served in neighborhood schools, and it declared that that placement should be based on each student's IEP. Regarding the plaintiffs' Section 504 and ADA claims, the court reasoned that the plaintiff parents tried to assert the ADA claims in their IDEA due process hearings, and it would have been futile for plaintiffs to have attempted to exhaust the Section 504 claims. The plaintiffs stated a cause of action under the ADA with their allegation that the district failed to provide them services in the most integrated setting appropriate to their needs, and the Section 504 claim for unequal treatment was also properly stated.

Los Angeles Unified Sch. Dist. v. A.O., supra (IEPs, IEP Implementation, and Related)

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XIV. RELATED SERVICES

Pierre-Noel v. Bridges Pub. Charter Sch., 113 F.4th 970, 124 LRP 32461 (D.C. Cir. Sept. 3, 2024). This case involved an eight-year-old with multiple disabilities who used a wheelchair for mobility. After attending school remotely in earlier years, he was set to begin first grade in person, and his mother requested the District of Columbia and his school to provide transportation from the door of his apartment in a walk-up building to the vehicle that would take him to school. The District denied the request, relying on its policies that transportation is provided only from the outermost door of a student's dwelling, and that students should not be lifted or carried. The student's mother filed for due process. The hearing officer denied the relief the mother asked for, although the hearing officer ordered the District to provide transportation to and from the outermost door of the apartment building. In the mother's suit against the District and the student's charter school, the district court granted summary judgment for the defendants. The court of appeals reversed, ruling that IDEA required transportation from the apartment door to the school so that the student could attend class in person. The court said the District of Columbia has the obligation to provide transportation services to students with disabilities within its borders. Discussing mootness, the court noted that the student was no longer enrolled at the charter school where he initially enrolled. He attended a private school for a while, but as of the time of the circuit court decision, he was re-enrolled in the D.C. schools. The school system again had refused transportation to and from the door of the apartment, however. The court found the appeal moot as to the charter school, but held that it was live as to the District of Columbia on the ground that the case was capable of repetition yet evading review. On the merits, the court rejected an argument based on *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291, 295–96, 45 IDELR 267 (2006), that the obligation to provide door-to-door transportation was not clear enough that it could be imposed on the defendant. The court said that as long as the defendant can make a clear choice to accept federal funds (and incur the relevant obligation) or reject the money (and avoid the obligation), the *Murphy* standard is met. The court said that IDEA provided ample notice in this case. The court applied a plain-meaning interpretation to "transportation" in IDEA, emphasizing that it is modified by the language "as may be required to assist a child . . . to benefit from special education," 20 U.S.C. § 1401(26)(A), and is not limited to "vehicular" transportation, as in the Americans with Disabilities Act. The court also pointed out that the situation of a mobility-limited "child who lives in a walk-up apartment accessible by stairs [is] an everyday occurrence that hardly would have fallen outside Congress's expectations in enacting the IDEA." 113 F.4th at 981. The court noted as well the range of educational settings and locations contemplated by the statute and the statutory obligation to educate the student in the least restrictive environment, which it described as a central feature of IDEA. The court also read the relevant provision of the IDEA regulations, 34 C.F.R. § 300.34(c)(16), to embrace the transportation the mother requested for the student.

LePape v. Lower Merion Sch. Dist., *infra* (Administrative Exhaustion and Non-IDEA Claims)

Alex W. v. Poudre Sch. Dist. R-1, *supra* (*Endrew F.* and Free Appropriate Public Education)

Los Angeles Unified Sch. Dist. v. A.O., *supra* (IEPs, IEP Implementation, and Related)

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Assistive Technology Devices and Services for Children With Disabilities Under the IDEA, 124 LRP 1839, 124 LRP 1843, https://sites.ed.gov/idea/idea-files/at-guidance/ (OSEP Jan. 22, 2024). This Dear Colleague letter – Myths and Facts document updates the Department of Education's guidance on assistive technology. The materials place emphasis on the need to consider AT whenever an IEP team meets to develop an IEP, as well as the range of devices and services to consider. Text-to-speech software, word prediction devices, augmentative and alternative communication devices, and visual schedules and timers are singled out as examples of the devices and services IEP teams should employ as needed to provide a FAPE for a student with disabilities. The AT should be included in the IEP, considered for a student's transition plan, and may need to be provided for use at home and in other non-school locations. The materials also address AT for children served under IDEA Part C.

XV. PRIVATE AND RESIDENTIAL PLACEMENT

Loffman v. California Dep't of Educ., 119 F.4th 1147, 124 LRP 37590 (9th Cir. Oct. 28, 2024). In this case, the court held that parents of a high school student had standing and plausibly pled that the California statutory requirement that the private schools it contracts with to provide education to students with disabilities under IDEA had to be nonsectarian violated plaintiffs' rights under the Free Exercise Clause of the First Amendment. The court reversed the dismissal of the free exercise claims and the denial of a motion for preliminary injunction, vacated dismissal of a claim under the Equal Protection Clauses, and remanded for further proceedings. The court, however, ruled that some plaintiffs, including two Orthodox Jewish schools and parents of a pre-school child, lacked standing. As to the standing of the Orthodox schools, the court ruled that the schools had not plausibly alleged they were able and ready to satisfy the requirements of a contracting school apart from the nonsectarian obstacle, and instead suggested they sought public funding for religious instruction. In addition, the pre-school student's parents had not plausibly alleged that their child could be placed in a private school even apart from the nonsectarian requirement. The parents of a high school student, however, had plausibly alleged that the student could be placed in a private school to meet his need for a FAPE. As to the free exercise claim of the family who were found to have standing, the court relied on *Trinity Lutheran Church v. Comer*, 582 U.S. 449 (2017), regarding Missouri's Department of Natural Resources policy categorically disqualifying religious organizations from receiving playground resurfacing grants, as well as *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), regarding tuition assistance to parents who send their children to private schools but limited to nonsectarian schools under the state constitution, and *Carson v. Makin*, 596 U.S. 767 (2022), regarding a tuition assistance program for parents of students living in districts that do not operate their own high schools only as long as the private school chosen was nonsectarian. The court in *Loffman* said that under these precedents there was a cognizable burden on the families' free exercise in their efforts to obtain a public benefit. The court applied strict scrutiny and said there was no compelling state interest in avoiding the establishment of religion that could not be met by more narrowly tailored means, declaring, "The State Appellee does not present any historical analysis to support its position that California's nonsectarian requirement is narrowly tailored," as required by *Kennedy v. Bremerton School District*, 597 U.S. 507, 525 (2022). *Loffman*, 119 F.4th at 1171.

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S.M. v. Chichester Sch. Dist., No. 2:21-cv-04266, 2024 WL 4438472, 124 LRP 35901 (E.D. Pa. Oct. 7, 2024), *aff'd*, No. 24-2727, 2025 WL 649894, 125 LRP 6255 (3d Cir. Feb. 28, 2025) (unpublished). This case involved a 17-year-old boy whose autism and intellectual disabilities entailed a need for assistance to do tasks such as dressing himself, showering, and using the bathroom. When living at home, he was hospitalized multiple times due to concerns for his safety and the safety of his family. The district court found that the student had made progress only when educated in a residential facility. Upon moving to the defendant Chichester school district, the parents requested a residential placement for the student, but the district offered only a day placement. The parents placed the student at a medical residential treatment facility called Elwyn RTF and had him attend school at the Delaware County Intermediate Unit. But his medical programming and educational programming were not coordinated, and he struggled to develop basic life skills. In February 2022, the court granted a preliminary injunction requiring Chichester School District:

> [T]o make all necessary referrals for residential educational placement for purposes of S.M.'s [free appropriate public education], in full consultation with parents; make all necessary arrangements to secure such placement and authorize the necessary funding; and plan for and execute a reasonable and appropriate plan for transitioning S.M. from the [residential treatment facility] where he currently resides, to the residential educational placement the parties mutually select, as soon as practicably possible.

2024 WL 4438472, at *2 (describing prior proceedings). That order was affirmed on appeal, but the parties could not agree on a placement among the few schools that would accept the student, and they returned to the district court with the parents proposing a residential educational placement at Melmark, and the district arguing that residential placement was not needed but, as a fallback, that Elwyn Children's Residential Treatment and Learning Center could serve the student. The court heard testimony from an independent evaluator the court appointed and others, and "ordered Chichester to (1) take all necessary steps to secure S.M.'s residential educational placement at the Melmark School for his immediate admission—including signing an enrollment contract and completing all related requirements—on or before September 5, 2024; and (2) make all necessary arrangements to fund S.M.'s placement at the Melmark School." *Id.* at *7. In support of the decision, the court reasoned that the student continued to need residential placement, noting his problem behaviors, which spiked whenever he was home for more than one night, and his ongoing struggles with basic self-help, social, and life skills. The court deemed education for a student with those needs to cover development of such basic self-help and social skills. The court further ruled that the Elwyn placement was not appropriate. The court pointed out that the proposed Elwyn educational placement would include vocational math involving decimals and money values when the student was functioning at the level of a toddler between the ages of two and three. Melmark's program was oriented around life skills, and it employed Applied Behavior Analysis. The school district agreed ABA was needed, but the court said that Elwyn did not appear to apply it as consistently as Melmark did. Therefore, the court issued the preliminary injunction. The district appealed, and the Third Circuit affirmed. It noted that the offer of admission at Melmark was open for only three weeks and was about to expire, so the lower court had to act quickly. The court of appeals said the parents had long ago exhausted their administrative remedies, and it was up to

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the district court to determine what satisfied that court's orders. The order did not need to include a termination date. The court found no clear error in the district court's determination that the student needed residential education and Elwyn was not adequate. It further cited the stay-put provision of IDEA, 20 U.S.C. § 1415(j). The court remanded for proceedings on the merits of the case, though it suggested that a negotiated settlement could avoid that necessity. In the remand proceedings, the district court granted the plaintiffs' motion for judgment on the administrative record and ordered the school district to pay for the student's residential placement at Melmark School through August 2028. **[New]** The school district again appealed, and the court of appeals affirmed. *S.M. v. Chichester Sch. Dist.*, No. 2:21-cv-04266, 2025 WL 2404383, 125 LRP 24349 (E.D. Pa. Aug. 19, 2025), *aff'd*, No. 25-2750, 2026 WL 1383301 (3d Cir. May 18, 2026) (rejecting school district argument that prospective placement in residential school was an improper award of compensatory education; upholding residential placement as compensatory education for period when FAPE had been denied; also rejecting an LRE argument). **[End New]**

XVI. POST-SECONDARY TRANSITION

XVII. MAINTENANCE OF PLACEMENT (STAY-PUT)

[New] *Juca v. Banks*, No. 25-2327, 2026 WL 2435596, --- F.4th --- (2d Cir. Aug. 20, 2026). In this case, involving a teenaged student with developmental and physical disabilities, the court affirmed dismissal of some claims for failure to exhaust and dismissed other claims on grounds of mootness. The defendant issued an IEP for the student in 2023. The parent disagreed and enrolled the student in a private school called iBrain. The parent filed for due process alleging failure to offer the student a FAPE during the 2022-23 and 2023-24 school years, and then filed a later complaint regarding the 2024-25 school year. On the 2022-23 claim, the impartial hearing officer (IHO) found a denial of FAPE but denied tuition reimbursement on equitable grounds. The state review officer (SRO) reversed and ordered reimbursement. On the 2023-24 claim, the IHO ruled that the defendant offered the student a FAPE, but the SRO reversed that determination and remanded the case to the hearing officer to rule on equitable grounds regarding reimbursement. On the 2024-25 claim, the IHO found a denial of FAPE but denied reimbursement on equitable grounds. The SRO reversed and ordered direct funding of the student's full program for the school year. The parent filed suit in district court alleging denial of FAPE and seeking a preliminary injunction to compel compliance with the SRO determinations for the 2023-24 and 2024-25 school years. The district court dismissed the case. After determining that the court of appeals had jurisdiction, the court ruled against the parent. The court held that the parent failed to exhaust her claim to enforce the SRO decision regarding the 2023-24 school year, stating that the stay-put provision did not exempt her from the exhaustion requirement despite the argument that the SRO decision on the 2022-23 school year necessarily also covered the 2023-24 year. The court said any delay in the case was due to the parent, who did not appeal the determination of the IHO concerning school year 2023-24. The court dismissed the claim for the 2024-25 school year as moot because the SRO already decided that the parent had to be reimbursed and the case in any instance became moot when the school year ended. The court said that the stay-put provision does not provide for recovery for school years that have ended unless a showing is made that failure of the defendant to pay for a past school year puts the student's current educational placement in jeopardy. The court

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reasoned that the stay-put provision is not to be used to automatically require fast-tracking past-due payments.

[New] *Herbert v. St. James Parish Sch. Bd.*, 177 F.4th 630 (5th Cir. June 2, 2026). On August 7, 2024, the parent enrolled the student in Cypress Grove School, operated by the St. James Parish School Board. The parent stated in the enrollment application that she lived in St. John the Baptist Parish and that the student, who had a disability, lived in St. James Parish. The parent subsequently filed an affidavit saying that the student lived with her in St. James Parish. The St. James School Board approved the enrollment. On October 22, Cypress Grove found the student eligible for special education and set an IEP meeting for November 7. St. James Parish School Board officials then determined that the parent admitted that she lived in St. John the Baptist Parish, though the parent maintained that the student lived in St. James Parish. On November 4, the board informed the parent that the student would be disenrolled. The parent filed for due process and requested a stay-put order and an independent educational evaluation. She alleged a denial of FAPE due to the disenrollment and the failure to conduct an IEP meeting or provide services after the residency determination. In response to the hearing request, the parish challenged the ALJ's jurisdiction. The ALJ granted a stay-put order for the duration of the due process proceedings, and held a hearing focused on residency. The ALJ ruled that there was no jurisdiction, and dismissed the due process complaint. The parent then sued the school board in federal district court. The district court denied a request for a preliminary injunction and dismissed the case with prejudice. The court of appeals affirmed. The court of appeals first ruled that the complaint failed to allege sufficient facts to state a claim for relief under the Americans with Disabilities Act and Section 504, and that the district court correctly reviewed de novo and rejected on grounds of residency the parent's IDEA claim alleging St. James's failure to respond to the parent's request for an independent evaluation at public expense. On the broader issue of residency, the court said that under Louisiana law, local educational agencies must provide a FAPE to students with disabilities who are resident, defined as living within the geographic boundaries of the local education agency in which the parent or parents have legal residence. The parent had custody of the student, so the student's residency was that of the parent. The court also rejected an estoppel argument. With regard to the district court's refusal to reinstate the stay-put order, the court said that when the ALJ determines that there is no jurisdiction, the stay-put order ends. The court said there was no basis for compensatory education since there was no violation of IDEA.

B.D. v. District of Columbia, No. 23-7132, 2025 WL 1540560, 125 LRP 16125 (D.C. Cir. May 30, 2025) (unpublished). This case involved a student with autism. The District paid for a home tutor as well as occupational therapy and speech and language services for two years when the student could not attend school. The District tried to place him in a school in 2011, but he was dismissed. The District proposed a different school, but the parents considered it inappropriate and filed for due process. They continued educating the student at home, paying for tutoring and occupational therapy themselves. In a March 2012 decision, the hearing officer agreed that the District had denied the student a FAPE and ordered the District to reimburse the parents for the tutoring and OT they had provided, to furnish the student a certain amount of occupational therapy as compensatory education, and to reconvene the IEP team to conduct assessments and determine appropriate interim services pending the assessments. The interim services had to include one-on-one home instruction for two hours a day, five days a week. The IEP team

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developed a new IEP later that year, but the parents disagreed and filed for due process to challenge that program. They made a motion to the hearing officer to establish the student's current educational placement for purposes of stay-put, and the parties agreed that the current educational placement was the placement when the hearing officer in March 2012 ruled in favor of the parents. The hearing officer in the second proceeding ruled that the current placement "was his home program — consisting of only the one-on-one tutoring and occupational therapy that the [parents] had provided [the student] out-of-pocket while challenging the 2011 individualized education program." 2025 WL 1540560, at *2. The parents challenged that determination in district court, but the district court upheld it. The court of appeals affirmed, reasoning that "one-on-one tutoring and occupational therapy were the only services the hearing officer approved in the March 2012 decision," so the student's "'then-current educational placement' included only those services." The services to be determined by the IEP team were services in the future and not part of stay-put. The court overturned a denial of attorneys' fees for the parents' achievement of a consent order providing reimbursement for an independent evaluation.

Scheff v. Banks, *infra* (Mootness)

Davis v. District of Columbia, 80 F.4th 321, 123 LRP 24587 (D.C. Cir. Aug. 15, 2023), *cert. denied*, 144 S. Ct. 2684 (June 24, 2024). This case involved a student with autism spectrum disorder and other disabilities, who had a history of aggression, self-injury, and property destruction, all easily triggered by a range of environmental stimuli. The residential facility in which he received special education services unilaterally discharged him at the end of October 2021. The defendant said it was unable to locate a new residential placement, and offered him in-home services or virtual services with a virtual support aide in a high school classroom until it found a new residential setting for him. Nineteen residential facilities rejected him. The parent filed for due process shortly before the student's discharge from the residential facility, and requested a stay-put injunction from the district court, but the district court denied a motion for a temporary restraining order or injunction to maintain the placement at a residential facility or provide comparable interim services. The court of appeals affirmed. The court declared, "The stay-put mandate does not apply because the District did not effectuate a fundamental change in [the student's] educational placement by attempting to alter or undo the services to which he is entitled under his IEP." *Id.* at 326 (internal quotation marks deleted). The court repeated the district court's finding that the defendant engaged in a thorough and ongoing search for a placement. It continued, "[T]he stay-put provision is inapplicable because the residential component of [the student's] IEP became unavailable for reasons outside of the District's control." *Id.* at 327. The court, however, noted that "the District may ultimately be responsible for failing to provide [the student] a FAPE." *Id.* at 328. The court went on to state that even if the stay-put provision applied, denial of relief was proper, saying that the language of 20 U.S.C. § 1415(j) speaks of remaining in the then-current placement, but "a student cannot remain in an unavailable placement." *Id.* The court said the provision did not require the defendant to create an alternative placement under the circumstances of the case. The court left open the possibility of injunctive relief under traditional standards, as opposed to an automatic stay-put injunction, as well as retrospective relief if the defendant shirked its duty to provide a FAPE.

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Mendez v. Banks, 65 F.4th 56, 83 IDELR 28 (2d Cir. Apr. 12, 2023), *cert. denied*, 144 S. Ct. 559 (Jan. 8, 2024). Here the parents and guardians of five students with disabilities who filed due process proceedings alleging that the New York City Department of Education denied the students a FAPE had obtained pendency orders requiring the department to fund the students' placement at a specialized private school for the duration of the proceedings. The parents sued the department and its chancellor for failing to make payments. The district court denied a preliminary injunction, and the court of appeals affirmed. The court declared, "The IDEA's stay-put provision entitles families to automatic relief with respect to educational placement but not with respect to payments. Parents seeking educational payments may still be entitled to automatic injunctive relief if they can show that a delay or failure to pay has threatened their child's placement. But absent such a showing, the IDEA does not compel the state to accelerate its disbursement of funds." *Id.* at 59. In applying that rule, the court noted that the department said that it was applying its usual payment process and needed to receive and review financial documentation, and that it had already issued payment through at least March 2023. The parents were not yet entitled to relief in the form of tuition payment for the remainder of the school year, and there was no guarantee that the proceedings would be pending that long, even if that may be probable. Accordingly, the claim for payment of tuition was not yet ripe. Prophylactic relief was not warranted when the department had paid the obligations when due. A claim for unpaid transportation costs incurred in February and still unpaid was ripe, however. The court said that entitlement to an automatic injunction without a showing of irreparable injury did not create an obligation that the department fast-track the payment in the absence of jeopardy to a student's placement. Traditional preliminary relief standards did not compel relief when by the plaintiffs' own concession the placements were not in danger.

C.S. v. New York City Dep't of Educ., No. 24-CV-02111 (ER), 2025 WL 964008, 125 LRP 9549 (S.D.N.Y. Mar. 31, 2025), *subsequent proceedings*, 2025 WL 3224989 (S.D.N.Y. Nov. 19, 2025). This action concerned seven student plaintiffs who had attended a private school for children with autism, Reach for the Stars Learning Center (RFTS-LC). Before the 2021-22 school year, the private school had a tuition-based program. Starting that year, it switched to fees for services, providing services through a different corporate entity, RFTS-LD (LD stands for learning and development). This change increased the costs dramatically, doubling them or more in some instances. Various of the plaintiffs sought funding for tuition and related services for the school years from fall 2021 through spring 2024, claiming that pendency agreements or unappealed pendency orders covered RFTS-LD, though some of the orders' texts provided pendency at RFTS-LC. The court denied the plaintiffs' motions for summary judgment. For students whose agreement called for RFTS-LC, the court ruled, in line with the SRO, that the parental agreement to placement at RFTS-LD changed the students' placement from what had been the pendency placement, and there was no pendency at RFTS-LD. The court also found that RFTS was not shown to be an appropriate placement in one case. In three other students' cases, the defendant did not dispute that the pendency placement was at RFTS-LD, but issues of fact existed about whether payments were made, so summary judgment was not appropriate. The court denied plaintiffs' requests for declaratory relief, attorneys' fees, and sanctions. In later proceedings, the court granted summary judgment to the defendant in the case of one of the students, denying their claim for reimbursement of tuition during the pendency periods following the change in corporate structure from RFTS-LC to RFTS-LD, and in the case of

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another student, denying reimbursement for July 6, 2022, when the due process complaint was filed after school hours on July 6, 2022.

A.M-G. v. Salem Keizer Pub. Schs., Nos. 6:24-cv-01517-MC, 6:24-cv-01575-MK, 2024 WL 4867060, 124 LRP 40061 (D. Or. Nov. 22, 2024). This case concerned two deaf students in the Salem Keizer Public School District (SKPS), designated as A.M-G. and K.B. The students attended the regional Deaf/Hard of Hearing (D/HH) Center Site Program run by the Willamette Educational Service District (WESD) and housed at Crossler Middle School, until WESD decided to close the D/HH program. The students' families demanded due process hearings and invoked the right to maintenance of placement during the pendency of the dispute. They moved for preliminary relief from the court to order SKPS and WESD to reopen the D/HH program, reinstate the students, and maintain the program during the litigation. The court denied the relief.
The students used American Sign Language and relied on teachers of the deaf to supplement their instruction at Crossler Middle School. SKPS and WESD maintained an inter-district agreement for WESD to provide services for deaf and hard-of-hearing students, and the program was housed at Salem Heights Elementary School, Crossler Middle School, and Sprague High School. Deaf students had the option "to receive their education at these schools, giving them access to centralized support services and a cohort of Deaf peers." 2024 WL 4867060, at *1 (citing complaint). On March 21, 2024, WESD informed the parents that the Crossler and Sprague programs would close at the end of the school year and the students would be returned to their neighborhood settings, with IEP services remaining effective. Students at Crossler could continue there through eighth grade, unless they chose to be served by their neighborhood schools. Students wishing to attend Sprague High School could request a transfer if it was not their neighborhood school. In due process proceedings, the ALJ denied motions for stay-put relief and dismissed the due process complaints on the ground they were not ripe since they asserted only future harm in the following school year. In rejecting the motions for a temporary restraining order or preliminary injunction, the court said there was no change in educational placement. The court said the then-current placement is the placement set out in the student's last-implemented IEP. The students' special education placement determinations were "Access to special education in, or outside of the general education setting for up to 20% of the school day." In a June 2022 IEP, A.M-G. had as placement "Crossler Center Site for D/HH Students – 1 Class in Special Education Classroom: Study Skills." The May 2024 IEP's "special education placement determination" was also "Access to special education in, or outside of the general education setting for up to 20% of the school day," and the placement was "Foundations class at the high school. Offering academic supports and study skills." The court said, "A.M-G.'s education remains primarily in the general education classroom, or the same option on the continuum of placement options." K.B. had a November 2023 special education placement determination of "Access to special education in, or outside of the general education setting for up to 20% of the school day" in an "Advisory class 20 minutes a day, 4 days a week." In the June 2024 IEP, K.B.'s "special education placement determination" was also "Access to special education in, or outside of the general education setting for up to 20% of the school day." The placement determination stated that since Sprague High School ran a block schedule, K.B. would "be removed for one class period … for a Study Skills tutorial class." The court declared that "K.B.'s education likewise remains primarily in the general education classroom, or the same option on the continuum of placement options." *Id.* at *3. To support its conclusion that there was no change in the current educational placement for either student, the court said

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that the students' prior and proposed IEPs were substantially similar, and the students would be educated with nondisabled students to the same extent under both sets of IEPs. There was no evidence of a barrier to participation in extracurriculars. The parents argued that the cohort of deaf peers at the Center Site program was an integral part of the prior placement. They noted that "students previously had daily access to a teacher of the deaf, received direct instruction in ASL, and had onsite technology support for their assistive devices." *Id.* at *4. The court countered that these objections went to whether a FAPE was offered, rather than whether the placements in the IEPs had been maintained. The court also stated that "even if the D/HH program were the students' current educational placement, stay put would not require that the program reopen. SKPS contracts with WESD to provide services for D/HH students. . . . The responsibility to provide identified students with a FAPE remains with SKPS, not with WESD. . . . WESD ran the D/HH program and made the decision to close the program. Neither SKPS nor this Court can compel WESD to reinstate the program." *Id.* at *6.

XVIII. MAINTENANCE OF PLACEMENT AND COVID-19

XIX. MOOTNESS

C.B. v. Henry Cnty. Sch. Dist., 167 F.4th 1134 (11th Cir. Feb. 19, 2026), *supra* (Least Restrictive Environment)

Pierre-Noel v. Bridges Pub. Charter Sch., supra (Related Services)

Scheff v. Banks, No. 23-1006-cv, 2024 WL 3982986, 124 LRP 32027 (2d Cir. Aug. 29, 2024) (unpublished). This case involved a demand for payment for a private placement during the 2022-23 extended school year while IDEA administrative proceedings were pending. The district court denied the request and issued summary judgment against the plaintiffs, and they appealed. The court dismissed the appeal as moot, stating that the defendants and the plaintiffs agreed that the defendants had to pay the tuition and transportation for 2022-23. The plaintiffs, however, alleged that the defendants had not paid for nursing services that were inadvertently omitted from the original order for which pendency was requested. The nursing services were included in a "Corrected Final Order" from the impartial hearing officer (which the defendants contended was not a valid order because it did more than fix minor, typographical errors), but the court said that all that was before it was the appeal of the district court's denial of a request for a pendency order concerning the original due process decision and order. That order was now superseded by the corrected final order, whatever its validity might be. Because the defendants and the plaintiffs agreed that the defendants had to pay the tuition and transportation for 2022-23, the dispute that was actually before the court was moot. The court further rejected an argument based on the contention the case was capable of repetition yet evading review.

Kass v. Western Dubuque Cmty. Sch. Dist., infra (Compensatory Education and Related)

XX. PRECLUSION AND RELATED

LePape v. Lower Merion Sch. Dist., *infra* (Administrative Exhaustion and Non-IDEA Claims)

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Lartigue v. Northside Indep. Sch. Dist., *infra* (Administrative Exhaustion and Non-IDEA Claims)

XXI. DUE PROCESS HEARING COMPLAINTS

XXII. DUE PROCESS HEARING REQUEST LIMITATIONS

Warner Chappell Music, Inc. v. Nealy, 601 U.S. 366 (May 9, 2024). In this Copyright Act case, the Supreme Court held that, assuming the three-year statute of limitations employs a discovery rule in which accrual of the action occurs when the claimant discovers or with due diligence should have discovered the infringing conduct, the claimant may obtain damages for the entire period of infringement rather than damages for only the three years prior to filing of the action.

[New] *J.R. v. Ventura Unified Sch. Dist.*, 173 F.4th 1039 (9th Cir. Apr. 22, 2026), *supra* (Child Find)

Edward M.R. v. District of Columbia, 128 F.4th 290, 125 LRP 4880 (D.C. Cir. Feb. 14, 2025). The due process complaint of the student in this case, filed in June 2020, alleged that his IEPs from 2015 through 2019 were insufficient to meet his needs and reflected a decrease in speech and language services despite lack of progress in pragmatic language skills, increases in time spent outside general education without an increase in needed support, a cut in occupational therapy, and failure to address needs in a variety of areas with research-based instruction. The hearing officer found the challenges to the 2015 through 2017 IEPs untimely, and ruled that the 2018 and 2019 IEPs offered a FAPE. The district court affirmed. On appeal, the student continued to challenge the 2017 through 2019 IEPs, but the court affirmed that the claims concerning the 2017 IEP were barred by limitations, noting that the student did not contest the hearing officer's finding that he had notice of the claims regarding that IEP on the date it issued, November 27, 2017. Therefore, the student needed to file the due process complaint as to that IEP by November 27, 2019. The court affirmed the district court on the claims regarding the content of the 2018 and 2019 IEPs, holding that the repetition of some goals was not enough to show a denial of FAPE when the student had severe memory issues requiring repetition and consistency in instruction. The law was said not to ensure outcomes, and the claim that the IEPs did not include research-based instruction failed when the omission was not shown to affect substantive rights to instruction. A claim concerning lack of applied behavior analysis was deemed an implementation claim, which was found to be not exhausted when the due process complaint raised only claims regarding IEP content. Henderson, J., concurred, questioning the propriety of summary judgment as a vehicle to resolve appeals of IDEA hearings in district court.

Peter G. v. Derry Twp. Sch. Dist., No. 1:23-CV-00043, 2025 WL 270057, 125 LRP 2346 (M.D. Pa. Jan. 22, 2025). This case involved a 16-year-old student with ADHD, learning disabilities, epilepsy, incomplete hippocampal inversion, and accommodative vision spasms. The parents asked for a special education evaluation in January 2017, when the student was in third grade. Rather than conduct an IDEA evaluation, the district created a Section 504 service agreement, which was modified several times. The district proposed a Section 504 service agreement again in August 2020, but agreement was not reached. In fourth grade, 2017-18, the student told the parents he was being moved to a different reading class. The parents asked the district about the move,

and were told there might be changes to the student's accommodations. No special education evaluation was recommended, however. At the end of fourth grade, a district reading specialist recommended summer reading tutoring, which the parents obtained at their own expense. At the end of fifth grade, the parents were told the student was not permitted to pursue foreign language instruction because of his "Tier II" reading needs. Finally, in October 2019, the parents formally requested evaluation of the student for learning disabilities. On January 10, 2020, the district issued an evaluation report, finding the student not eligible under IDEA. The report showed very low test scores in many areas, including reading comprehension scores in the first and fifth percentiles. The parents disagreed with the district's educational placement recommendation and requested mediation, which never occurred. During remote instruction occasioned by the COVID-19 pandemic, the parents continued to seek additional support for the student. Then, in March 2021, they requested reevaluation for special education. The district found the student to meet the eligibility criteria due to ADHD. An IEP was issued on May 27, 2021, but the parents enrolled the student in a private school. The parents filed for due process on January 10, 2022, seeking compensatory education, tuition reimbursement, and payment for an independent educational evaluation. Upon the district's raising a statute-of-limitations defense, the hearing officer issued an order limiting the scope of the parents' claims to events that occurred on or after January 10, 2020. After hearing evidence under this restriction, the hearing officer ruled against the parents, and the parents filed in court for review citing IDEA, Section 504, the ADA, and state law. In its decision of January 22, 2025, the court resolved only the limitations issue. The court noted that the hearing officer made no findings of fact as to the date the parents knew or should have known of the special needs of the student and the failure of the district to respond to the needs appropriately, instead treating the limitations as a remedy cap. The court ruled that this was directly contrary to *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601, 66 IDELR 91 (3d Cir. 2015). The parents contended that they neither knew nor should have known of the failure to provide a FAPE until the January 10, 2020, evaluation report, due to the district's continual assurances that the Section 504 accommodations met the student's educational needs. The court stressed that knowledge of the school's programming does not trigger the statute of limitations. The court said:

> The relevant inquiry is not whether Peter's parents were *concerned* about his academic performance and educational supports before the Evaluation Report was issued, but whether they *knew or should have known* that the District would not provide Peter with the educational supports necessary to provide him with a FAPE. The administrative hearing officer in this case made no factual findings on this issue. Considering the record before us de novo, we find that, as Peter's parents have contended, the issuance of the January 10, 2020, Evaluation Report constitutes the sort of clear action or inaction by the District sufficient to alert a reasonable parent that Peter's educational support needs would not be appropriately accommodated.

2025 WL 270057, at *9 (emphasis in original). The court considered the issue de novo on the basis of the record and found that the January 10, 2020, report provided the relevant date for limitations, that the complaint was timely filed, and "the hearing officer erred in limiting the scope of the claims she considered to those occurring on or after January 10, 2020." *Id.* at *9. The case was remanded to the hearing officer to consider actions or events preceding the January

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10, 2020, report, and the court case was stayed until the conclusion of the administrative proceedings.

XXIII. CONDUCTING DUE PROCESS HEARINGS

Jennifer N. Rosen Valverde, *A Panoramic IDEA: Cabining the Snapshot Rule in Special Education Cases*, 55 ARIZ. ST. L.J. 1445 (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4718851 (free registration required). This paper discusses the "snapshot" rule, by which some evidence not available to a school district at the time it acts is excluded from consideration by decision makers in special education cases. The author contends that application of the rule to child-find and eligibility contexts is contrary to IDEA's language and intent; Supreme Court precedent interpreting the statute; and procedural due process principles. It proposes an alternate approach allowing wide consideration of post-hoc evidence in child find and eligibility cases, subject to limits generally applicable under the rules of evidence.

XXIV. DUE PROCESS AND COVID-19

XXV. TUITION REIMBURSEMENT

[New] *L.B. v. San Diego Unified Sch. Dist.*, 168 F.4th 1150 (9th Cir. Feb. 27, 2026), *supra* (IEPs, IEP Implementation, and Related)

[New] *Landsman v. Banks*, No. 24-2303, 2025 WL 2155553, 125 LRP 22327 (2d Cir. July 31, 2025) (unpublished), *cert. denied*, 146 S. Ct. 1651 (Feb. 23, 2026). The student in this case had an individualized education program from the New York City Department of Education that called for a full-time aide, therapy (not specified in the judicial opinion), special education instruction, and transportation. The department failed to provide what the IEP required, and the parent placed the student in a private school, then sought tuition reimbursement. Administrative decisions in the case denied reimbursement on the ground that the parent failed to give the department ten days' written notice before moving the student to the private school and that the parent had acted unreasonably. On appeal to the district court, the parent lost, with the district court stating that the parent failed to prove that the services were appropriate. The Second Circuit affirmed. The parties agreed that the district court erred in weighing the equities of reimbursement by failing to consider the school district's conduct. The court stated that the district court made a further error in the equities determination by relying on the parent's litigation conduct rather than conduct related to the effort to find an appropriate placement. Nonetheless, the court said the district court did not make a clear error in finding that the parent failed to give timely written notice, as required by 20 U.S.C. § 1412(a)(10)(C). That failing provided the basis for reducing or denying reimbursement. The court ruled that the parent did not show that the education department's conduct would alter the analysis of the equities sufficiently to call for a different result. Other bases for reimbursement were rejected for lack of any argument in the briefs and lack of a record of the expenses.

Ferreira v. Aviles-Ramos, 120 F.4th 323, 124 LRP 37950 (2d Cir. Oct. 30, 2024). In this case, involving a student with a brain injury, cerebral palsy, and epilepsy, the district court required

the public school system to make a retrospective tuition payment for the 2020-21 school year directly to a private school, as opposed to waiting for the parent to pay the school and reimbursing the parent on proof of payment. The district court further held that the parent did not need to show a lack of resources to obtain direct payment to the school. The district court, however, affirmed a state review officer order denying tuition reimbursement to the parent for the 2019-20 school year on the equitable grounds that the parent was not cooperative in completing updated evaluations of the student and failed to attend a CSE meeting. It was this denial of reimbursement for 2019-20 that the parent took up on appeal. The Second Circuit affirmed the district court, but clarified that the district court needs to make an independent decision on the balancing of the equities concerning reimbursement. As relevant to the 2019-20 school year, the Committee on Special Education met on May 20, 2019, to develop the student's IEP, but the parent did not attend, instead re-enrolling the student at iBrain, a private placement. The CSE recommended the student's placement at a public school, and the parent filed for due process stating that the school system's placement denied a free appropriate public education, and requesting tuition reimbursement for the school year. The hearing officer upheld the school system placement and further ruled that the equities did not support reimbursement because the parent's failure to attend the IEP meeting impeded efforts to include the parent in the meeting and prevented obtaining a current evaluation. The review officer ruled that the school system placement was not appropriate and the private placement at iBrain was appropriate, but agreed that the parent impeded the IEP process by not producing the student for scheduled evaluations and by not assisting in getting updated progress reports from the private school. The review officer concluded that the balance of equities disfavored reimbursement. The district court upheld the reimbursement denial for 2019-20, and the court of appeals affirmed. The court of appeals commented that district courts must give due weight to administrative decisions with regard to the substantive and procedural adequacy of the IEP. Decisions on adequacy of IEPs involve hard questions of educational policy on which the administrative decision makers are thought to have specialized knowledge, justifying the district courts' deference. But balancing of equities "is an exercise of judgment that falls squarely within federal courts' expertise." *Id.* at 332. The court declared:

> We therefore conclude that the "substantial deference" that the IDEA requires for matters of educational policy is inapplicable to the equitable balancing called for at the third step of the *Burlington/Carter* test. While courts are of course free to consider an IHO and/or SRO's views of the equities for their power to persuade, we now hold that a district court reviewing a claim pursuant to section 1415(i)(2) errs as a matter of law when it fails to (1) engage in an independent review of the administrative record, and (2) make a determination [of the balance of the equities] based on a preponderance of the evidence.

Id. at 332-33 (citations and internal quotation marks omitted). The court then reviewed the district court's ruling denying reimbursement on equitable grounds, and determined that "the district court neither improperly deferred to the IHO and SRO's view of the equities nor abused its discretion in concluding that the equities disfavored reimbursement." *Id.* at 333. The court of appeals said the record of parental noncooperation supported the view of the district court that the equities favored denying reimbursement.

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A.P. v. New York City Dep't of Educ., No. 22-2636, 2024 WL 763386, 124 LRP 6283 (2d Cir. Feb. 26, 2024) (unpublished). In this decision, the court of appeals vacated and remanded a district court decision concerning a 13-year-old student with autism who had been approved by the defendant to attend a nonpublic school for students with special education needs. For the 2020-21 school year, however, the defendant did not offer a FAPE to the student. The parents enrolled the student in Keswell, a private special-needs school, and they opted for remote instruction for that year due to concerns over COVID-19. The parents then initiated due process to obtain reimbursement for the placement. The IHO found Keswell generally appropriate as a placement, but awarded only partial tuition reimbursement for the 2020-21 school year due to the remote instruction. The SRO denied that the Keswell placement was appropriate and denied any tuition award for 2020-21. The district court, on the parent's suit, reinstated the IHO award of partial tuition. In vacating and remanding, the court of appeals held that the district court failed to meaningfully weigh the equities as to the tuition award. The district court accepted the finding that the remote live sessions of three hours per day were appropriate, but did not weigh equities in reducing the tuition award. The court also said that the district court and IHO erred in applying the test for tuition reimbursement:

> In its analysis of the second prong of the test—the appropriateness prong—the IHO found that three hours of remote sessions out of an eight-hour day were appropriate, thus entitling Appellants to 3/8th of the tuition reimbursement. The IHO incorrectly applied the *Burlington-Carter* test by conducting reimbursement calculations in its appropriateness analysis. It should have determined only whether the placement was appropriate or not.

Id. at *2. Moreover, said the court of appeals:

> [O]nce parents pass the first two prongs of the *Burlington-Carter* test, the Supreme Court's language in *Forest Grove Sch. Dist.*[*v. T.A.*, 557 U.S. 230 (2009)], stating that the court retains discretion to "reduce the amount of a reimbursement award if the equities so warrant," suggests a presumption of a full reimbursement award. *Id.* at 247; *see also* 20 U.S.C. § 1412(a)(10)(C)(ii) (suggesting that reimbursements "for the cost of ... enrollment" is the ordinary remedy when a student is denied a FAPE and must be placed in private school, subject to certain limitations in (a)(10)(C)(iii)). . . . Here, after finding that Appellants were eligible for relief, the IHO also found that the equities favored Appellants. But it nonetheless awarded only partial reimbursement without explaining any equitable factors that justified this reduction.

Id. Therefore the district court decision was overturned and the case remanded. The district court further remanded the case "to the IHO to develop the factual record on the third prong of the *Burlington/Carter* test – 'a consideration of the equities' – and thereby determine the proper amount of reimbursement." No. 21 Civ. 7439 (LGS), 2025 WL 1466844, at *4, 125 LRP 15663 (S.D.N.Y. May 22, 2025).

M.M. v. New York City Dep't of Educ., No. 21-cv-3693 (BMC), 2024 WL 3904771, 124 LRP 31321 (E.D.N.Y. Aug. 22, 2024). Here the court reversed a denial of tuition reimbursement by the

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hearing officer and state review officer, who had ruled that the private school chosen by the parents was not appropriate. The student had autism spectrum disorder and ADHD, and her primary language was Spanish. In 2017, the IEP team recommended a day bilingual Spanish special class in a nonpublic school, with related services, and a bilingual Spanish district-run special class to be implemented until the district arranged the other class. But the district failed to provide a permanent placement for the 2017-18, 2018-19, or 2019-20 school years. It recommended an interim English-language public school placement just before the 2017 school year. However, the parties agreed that placement would not have provided a free appropriate public education. The parents reacted by placing the student at the Nord Anglia International School (NAIS), and sought tuition reimbursement for the 2018-19 and 2019-20 school years, settling a claim for tuition for the 2017-18 school year. The IHO ruled that the district failed to offer the student a FAPE, but that the parents did not demonstrate NAIS was appropriate. The SRO agreed, admitting that the student made educational progress at NAIS, but nonetheless labeling the placement not appropriate. The administrative decisions focused on the private school's failure to provide Spanish-language or bilingual classes and speech-language and occupational therapy, which were related services listed on the IEP. The school did feature small classes of 11 or 12 students, broken into groups of four, and there was a learning assistant fluent in Spanish in 2018-19, and a teacher who spoke Spanish as well in 2019-20. The school provided a differentiated curriculum and behavior plans that included multisensory instruction. The court reversed the denial of tuition reimbursement, reasoning that administrative decisions do not merit deference if they are not well-reasoned or are unsupported by the record. The court said that it was proper to apply the relaxed standard of appropriateness for parental placements found in *Frank G. v. Board of Education of Hyde Park*, 459 F.3d 356, 364-65, 46 IDELR 33 (2d Cir. 2006). The court went on to say, "To deny plaintiffs recovery would allow defendants to benefit from their failure to provide G.M. with an appropriate placement. Instead of requiring defendants to provide G.M.'s FAPE, they could simply fail to find a suitable program and shirk their responsibilities under the IDEA altogether." 2024 WL 3904771, at *6. The court declared that "the IHO and SRO did not afford proper weight to defendants' failure to recommend any placement whatsoever that would have satisfied G.M.'s IEP," "a fundamental unfairness at the core of this case." *Id.* at *5. Moreover, although the defendant stressed the lack of Spanish language classes, the court found the student did have access to resources for her bilingual needs at the private school. In addition, NAIS offered an inclusion model with small class sizes and differentiated instruction in a general education setting. Some of the differentiation met needs that might have been addressed with related services under the public school IEP. The court emphasized that the parents acted in good faith and the student made academic progress.

XXVI. COMPENSATORY EDUCATION AND RELATED

[New] *S.M. v. Chichester Sch. Dist.*, No. 25-2750, 2026 WL 1383301 (3d Cir. May 18, 2026), *supra* (Private and Residential Placement) **[End New]**, under *S.M. v. Chichester Sch. Dist.*, No. 2:21-cv-04266, 2024 WL 4438472, 124 LRP 35901 (E.D. Pa. Oct. 7, 2024), *aff'd*, No. 24-2727, 2025 WL 649894, 125 LRP 6255 (3d Cir. Feb. 28, 2025) (unpublished))

Boone v. Rankin Cnty. Pub. Sch. Dist., *supra* (*Endrew F.* and Free Appropriate Public Education)

Kass v. Western Dubuque Cmty. Sch. Dist., 101 F.4th 562, 124 LRP 15032 (8th Cir. May 10, 2024). In this case, a student with epilepsy, autism, ADHD, severe vision impairment, and intellectual disabilities had accumulated enough credits for high school graduation by the end of the 2019-20 school year, but his IEP team recommended he stay in school to receive services for unmet transition needs, and proposed an IEP in May 2020 offering two hours of instruction at school or in the community, followed by outside work with a job coach and necessary transportation. The parents demanded due process and invoked stay-put rights, so that the student stayed in the high school placement until losing age eligibility at the end of the 2022-23 school year. The May 2020 IEP was never implemented. Meanwhile, in April 2021, the ALJ ruled against the parents on their claims concerning the 2018-19 and 2019-20 school years. The parents appealed to district court, and the district judge affirmed, also rejecting claims under Section 504 and the ADA. On appeal to the circuit court, the parents abandoned the claims for 2018-19 and 2019-20, but maintained that the May 2020 IEP and its adoption violated IDEA and Section 504. The court rejected the school district's argument that the case was moot, reasoning that the claim for compensatory education for fall 2020 through spring 2023 remained viable despite the fact that the student was now 22 years old. The court reasoned that compensatory education is a restorative remedy and that the inability of parents to front the costs of a placement should not eliminate the entitlement to free education. Moreover, "As the First Circuit noted in *Pihl* [*v. Massachusetts Dep't of Educ.*, 9 F.3d 184, 20 IDELR 668 (1st Cir. 1993)], if compensatory education is not an available remedy beyond a student's twenty first birthday, 'school districts simply could stop providing required services to older teenagers, relying on the Act's time-consuming review process to protect them from further obligations.' [*Id.*] at 189." On the merits of the procedural and substantive claims, however, the court ruled that the district engaged in numerous meetings with the parents, involving them in the IEP process and determining that community engagement activities were more appropriate than the core academics the parents preferred. The program did not need to be optimal, and though the school day was shortened to just include mornings, the services included individualized instruction in functional math, reading, and writing, and the services of the job coach were provided. The IEP goals were said to be adequately measurable. Judge Colloton dissented, arguing the case was moot.

XXVII. ADMINISTRATIVE EXHAUSTION AND NON-IDEA CLAIMS

A.J.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279, 605 U.S. 335, 125 LRP 17919 (June 12, 2025) (Roberts, C.J.). In this case, the parents sued for a permanent injunction, reimbursement of costs, and compensatory damages under Section 504 and the ADA for the repeated denial of their requests for evening instruction for their daughter so as to provide her a school day closer in length to that of students without disabilities. The student's epileptic condition was so severe in the morning hours that the student could not attend school until noon, but the student was alert enough to receive instruction in the afternoon and evening. Nonetheless, the school district rejected the parental requests for evening services and gave the student only 4.25 hours of instruction daily, compared to the 6.5-hour day for other students. It eventually proposed cutting the instructional time still further, to about three hours. The parents filed for due process, claiming a violation of IDEA's obligation to provide a FAPE. They prevailed on the IDEA claim before an administrative law judge, as well as in the courts on review. *See Osseo Area Schs., Indep. Sch. Dist. No. 279 v. A.J.T.*, 96 F.4th 1062, 124 LRP 9021 (8th Cir. Mar. 21, 2024). But in the parent's separate suit for injunctive, damages, and other relief premised on violation of

Section 504 and the ADA, the district court granted summary judgment to the school district, holding that the district did not act with bad faith or gross misjudgment. The Eighth Circuit Court of Appeals affirmed, saying that when the ADA or Section 504 violation is based on educational services for children with disabilities, the district will not be liable based on denial of reasonable accommodation. "Rather, a plaintiff must prove that school officials acted with 'either bad faith or gross misjudgment,' *Monahan v. Nebraska*, 687 F.2d 1164, 1171 (8th Cir. 1982), which requires 'something more than mere non-compliance with the applicable federal statutes,' *B.M. [v. South Callaway R–II Sch. Dist.*, 732 F.3d [882] at 887 [(8th Cir. 2013)] (citation omitted). The district's 'statutory non-compliance must deviate so substantially from accepted professional judgment, practice, or standards as to demonstrate that [it] acted with wrongful intent.' *Id.*" *A.J.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 96 F.4th 1058, 1061, 124 LRP 9023 (8th Cir. Mar. 21, 2024). The court said that the district did not ignore the student's needs or delay efforts to address them, even if the efforts were inadequate and failed to provide meaningful access to educational benefits, so there was no showing of wrongful intent. In a footnote, the court of appeals questioned why there should be "such a high bar for claims based on educational services when we require much less in other disability-discrimination contexts," but it said that even though the *Monahan* case was rejected by Congress in passing 20 U.S.C. § 1415(*l*), it remained the law of the circuit. *Id.* n.2.

The Supreme Court unanimously vacated and remanded. It said that apart from cases involving elementary and secondary education, the Eighth Circuit and the courts of appeals generally allow plaintiffs "to establish a statutory violation and obtain injunctive relief under the ADA and Rehabilitation Act without proving intent to discriminate." 605 U.S. at 344. For compensatory damages, the courts generally hold that the plaintiff has to show intentional discrimination, which is satisfied by proof of deliberate indifference. That standard requires only that the plaintiff show the defendant disregarded a strong likelihood that the conduct would result in a violation of statutory rights. That standard does not require ill will or animosity toward the plaintiff with a disability. The Court said that "We hold today that ADA and Rehabilitation Act claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts. Nothing in the text of Title II of the ADA or Section 504 of the Rehabilitation Act suggests that such claims should be subject to a distinct, more demanding analysis." *Id.* The Court said various provisions applicable to remedies also fail to make that distinction. The *Monahan* decision was based on a desire to harmonize the law that became known as IDEA with broadly applicable anti-discrimination laws. But Congress rejected that effort, as it did the similar effort of the Supreme Court itself in *Smith v. Robinson*, 468 U.S. 992, 555 IDELR 493 (1984), by enacting what is now 20 U.S.C. § 1415(*l*). Section 1415(*l*) provides that nothing in IDEA is to be construed "to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act [including § 504], or other Federal laws protecting the rights of children with disabilities," with the caveat that some such claims may need to be exhausted under IDEA's administrative procedures. *Monahan*'s higher bar for claims based on educational services, as opposed to other discrimination claims, placed a limit on the ability to vindicate ADA and Section 504 rights that "is irreconcilable with the unambiguous directive of § 1415(*l*)." 605 U.S. at 348. The Court further rejected a last-minute argument by the school district that *Monahan* was wrong in creating an asymmetric rule for educational and other cases because the bad-faith-or-gross-misjudgment standard should be applied to all disability discrimination

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cases, not just those having to do with elementary and secondary education. The Court said that contention was not presented below and would not be entertained now. The Court concluded by saying: "That our decision is narrow does not diminish its import for A.J.T. and 'a great many children with disabilities and their parents.' *Luna Perez v. Sturgis Public Schools*, 598 U. S. 142, 146 (2023). Together they face daunting challenges on a daily basis. We hold today that those challenges do not include having to satisfy a more stringent standard of proof than other plaintiffs to establish discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act." 605 U.S. at 351. The Court stated in a footnote that "Because we address only the application of the heightened bad faith or gross misjudgment standard of intent to education related ADA and Rehabilitation Act claims, our opinion should not be read to speak to any other showing that a plaintiff must make in order to prove a violation of the respective requirements of those statutes or the IDEA." *Id.* at 348 n.6.

Justice Thomas, joined by Justice Kavanaugh, concurred, questioning the view of many courts that the language in the ADA and Section 504 requires different things with respect to showings of intent depending on whether the plaintiff seeks compensatory damages or injunctive relief. Justice Thomas found Spending Clause concerns about a Section 504 claim based on anything less than an intent standard, and other constitutional concerns about allowing ADA liability on less than intent. Justice Sotomayor, joined by Justice Jackson, also concurred. Justice Sotomayor stressed that the text of the ADA and Section 504 excluded a reading that would require a showing of improper purpose or animus. Justice Sotomayor pointed out that people with disabilities can lose access to services and benefits by reason of disability without an invidious animus or purpose on the part of the defendant, as, for example, with architectural barriers or failure to provide communication accommodations. The concurrence continued, "There can be no question, too, that the statutes impose an affirmative obligation on covered entities to provide reasonable accommodations, undercutting any improper-purpose requirement," *id*. at 357 (Sotomayor, J., concurring), something reinforced by the statutes' use of the passive voice as well as by the history and purpose of the statutes, as articulated in cases such as *Alexander v. Choate*, 469 U.S. 287, 556 IDELR 293 (1985).

Luna Perez v. Sturgis Pub. Schs., 598 U.S. 142, 82 IDELR 213 (Mar. 21, 2023) (Gorsuch, J.). The Supreme Court applied a plain-meaning interpretation to the language of 20 U.S.C. § 1415(*l*), holding that "before the filing of a civil action under [other] laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter." Accordingly, a student who used sign language and was allegedly denied appropriate services for years, who settled an IDEA claim against the school district, did not need to exhaust IDEA due process procedures and was free to pursue an action seeking compensatory damages under Americans with Disabilities Act Title II.

Y.A. v. Hamtramck Pub. Schs., 137 F.4th 862, 125 LRP 15657 (6th Cir. May 22, 2025), *subsequent proceedings sub nom. Alzandani v. Hamtramck Pub. Schs.*, 176 F.4th 455 (6th Cir. May 12, 2026). Here three parents brought a class action case alleging violations of ADA Title II by the school district and the state. Specifically, they alleged that the district failed to provide essential special education services and the state failed to adequately supervise the district and provide needed funding. The court of appeals reversed the district court's denial of a motion to dismiss

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the Title II claim against the state defendant. The court noted that the named-plaintiff parents alleged that services in their children's IEPs were not delivered, that the students were sent home early or improperly placed in seclusion, and they were denied evaluations and enrollment in needed programs. In two cases, the state education department, in response to complaints, ordered compensatory services and corrective action plans, but the parents alleged failure to implement the corrective action plans, and said that abbreviated school days, limited services, and inadequate processes remained pervasive. As the first step in the determination whether Eleventh Amendment-style sovereign immunity protects the state defendant, a defense providing the basis for the interlocutory appeal, the court asked whether the state in fact was sufficiently alleged to have violated ADA Title II. It concluded that it was not. The court said that Michigan's schools are not a service, program, or activity of the state so as to be covered by ADA Title II. Instead, under state law, school districts have responsibility for public education, and are separate public entities under control of local boards of education and subject to suit under Title II and other laws. The court said that state funding was not enough to make the state liable. The court distinguished IDEA's imposition of duties on states, as well as instances in which local agencies act as agents of the state. **[New]** In the later opinion, the court of appeals reversed the district court's denial of defendants' motion to dismiss claims based on alleged violation of IDEA as well as ADA Title II, Section 504, and state law, holding that plaintiffs were required to exhaust their administrative remedies. The district court had said that exhaustion did not apply because the plaintiffs alleged systemic failures such as inadequate resources and staffing. The court reviewed exceptions to exhaustion based on relief sought that was not available under IDEA, claims where FAPE is not at the heart of the case, and refusal to provide a hearing, and said none of those applied to the case. It said that IDEA's text does not support a sweeping systemic violations or class action exception to the due process hearing requirement. The court noted the Supreme Court's reluctance to expand private statutory rights of action and the limits it has put in place on unexpected duties imposed on defendants by spending power statutes. The court also noted the prospect of fees in due process proceedings and the individualized nature of IDEA as reasons not to have a systemic violation exception, in addition to the prospect that individual successes may benefit other students. The court rejected the application of precedent for a futility exception, saying it was not the same as a systemic violation exception and should not be read broadly if recognized at all. Other circuits that recognize a systemic violation exception were said not to accept one as broad as that proposed by plaintiffs. **[End New]**

Hawai'i Disability Rights Ctr. v. Kishimoto, 122 F.4th 353, 124 LRP 40099 (9th Cir. Nov. 26, 2024). Here a federally funded protection and advocacy agency brought a case for declaratory and injunctive relief against the state education and human services departments, claiming that a practice of denying access to ABA services to students with autism during the school day violated IDEA, the Americans with Disabilities Act, Section 504, and the Medicaid Act. The agency contended that "unless DOE independently determines a student requires ABA for educational purposes and provides DOE-approved personnel for that purpose, a student with autism who has been medically prescribed ABA services will not receive services during the school day." *Id.* at 358. Reviewing the district court's grant of summary judgment against all the agency's claims, the court affirmed the district court's ruling that the agency needed to exhaust the IDEA claim through the due process procedure, although it reversed that ruling in part, saying that the agency did not have to ensure that individual parents exhausted. The court of

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appeals refused to excuse the agency from the exhaustion requirement, rejecting arguments based on futility, reasoning that the agency had not tried to obtain administrative relief and some parents had succeeded administratively; systemic violation, reasoning that the alleged violation was not concerned with the integrity of the IDEA dispute resolution procedures or a demand for restructuring of the educational system; and inadequacy of remedy, reasoning that hearing officers are bound by IDEA in the face of contrary local or state policies. The court reversed the district court as to exhaustion of the agency's claims of violations of the Medicaid Act, Section 504, and the ADA, applying 20 U.S.C. § 1415(*l*) and the factors identified in *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017). The court said that the claims under Section 504 and the ADA did not concern the provision of educational services and could be brought if a different public facility refused to allow ABA therapists to provide on-site services or if access to an accompanying ABA therapist were denied to a nonstudent visitor. There was no history of IDEA administrative proceedings on the claim brought by the agency. Similar reasoning applied to the Medicaid Act claim, and the court further noted that the agency's claim was that the Department of Human Services "violates the Medicaid Act's early and periodic screening, diagnostic, and treatment mandate *by* delegating ABA services to DOE during school hours. The State of Hawaii is statutorily required under the Medicaid Act to provide early and periodic screening, diagnostic, and treatment services that have been found to be medically necessary, regardless of their educational relevance." *Id.* at 371 (emphasis in original).

LePape v. Lower Merion Sch. Dist., 103 F.4th 966, 124 LRP 17149 (3d Cir. June 4, 2024). The student in this case, a non-speaker, was classified for IDEA under Autism, Intellectual Disability, and Speech and Language Impairment. In 2017, when he was 16, the family began requesting the school district to consider using a communication technique called "Spelling to Communicate" ("S2C"), which involves a student pointing at letters on an alphabet board held by a trained communication support person. Over 17 months, covering 2 school years, the family made at least 33 requests to the district to allow the student to use the S2C letter board in school and train school staff to assist him in using it. The school rejected the requests, doubting the basis in scientific evidence for the communication method, although the student's psychiatrist, speech therapist, and behavior analyst all deemed the method an effective means of communication for him. Eventually, the parents withdrew the student from public school. The family filed for due process, alleging denial of rights to a free appropriate public education under IDEA, Section 504, the ADA, and state law. The hearing officer ruled that the district did not discriminate against the student in violation of Section 504, and did not deny the student a FAPE under IDEA and the statutes other than the ADA. The decision further stated that although there was no jurisdiction over the ADA claim, the claim should be denied if jurisdiction existed. The family filed an action in district court alleging a denial of FAPE under IDEA, Section 504, and state law. The action also asserted claims of intentional discrimination against the student in violation of Section 504 and the ADA, seeking compensatory damages and a jury trial. The court denied summary judgment to the district on the Section 504 claim, but granted the district's summary judgment motion on the ADA claim, reasoning that the ADA claim was subsumed by the IDEA FAPE claim. Then, on the basis of modified de novo review, the court affirmed the hearing officer's decision that there was no FAPE denial under IDEA. Further relying on the due process hearing record, the district court denied relief under Section 504 and the ADA, reasoning that the intentional discrimination claims were denial-of-FAPE claims. The family appealed the grant of summary judgment on the ADA claim and the entry of judgment on the administrative record on the ADA and Section 504 claims. The court of appeals

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reversed the district court. It reasoned that *Fry v. Napoleon Community Schools*, 580 U.S. 154, 170-71 (2017), imposed an exhaustion requirement on some ADA and Section 504 claims, but otherwise placed no restrictions on the claims. The court said a plaintiff could succeed on an intentional discrimination claim under the ADA even if the plaintiff received a FAPE under IDEA. Specifically with regard to the facts before the court, under the ADA the public entity must give primary consideration to the requests of the individual with disabilities to auxiliary aids and services such as methods of communication and has to honor those requests unless it can show that another effective means of communication exists. 28 C.F.R. § 35.160(b)(2); 28 C.F.R. Part 35, App. A. "[T]he only effect of finding that the gravamen of an ADA claim is denial of a FAPE should be that the claim must be exhausted through an IDEA hearing, which the District Court correctly found the Le Papes had done." *LePape*, 103 F.4th at 980. The court endorsed the conclusion of *Lartigue v. Northside Independent School District*, 100 F.4th 510, 523, 124 LRP 9486 (5th Cir. 2024), that a standalone ADA claim is permitted. The court noted that the effective communication requirement in the ADA puts a greater obligation of equal access on the public agency than the FAPE requirement does. Quoting *K.M. v. Tustin Unified School District*, 725 F.3d 1088, 1092, 1101, 61 IDELR 182 (9th Cir. 2013), the court said that "there is no basis to conclude that 'the success or failure of a student's IDEA claim dictates, as a matter of law, the success or failure of her [ADA] claim.'" *LePape*, 103 F.4th at 981. The court of appeals said there clearly was a disputed issue of fact whether the communication methods used by the school district were an effective alternative to the student's preferred method of communication, S2C. The court declared:

> We need not resolve this dispute now, nor was it proper for the District Court to do so. Under the Constitution's Seventh Amendment, the Le Papes were entitled to have a jury evaluate the effectiveness of the communication supports for Alex, and this precluded summary judgment where there existed a disputed issue of material fact. . . . Critically, the Court's role on summary judgment was not to decide that issue. Still less was its role to defer the question and then decide it by a judgment on the administrative record under the modified de novo standard of review.

Id. at 982. Nor was the disputed issue of fact resolved by the result in the due process hearing:

> "[w]hen exhausting an administrative process is a prerequisite to suit in court," we do not give "preclusive effect to the agency's determination ... [.]" *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 152 (2015). Additionally, "the legal standards under the IDEA and the ADA in this context are significantly different, barring application of issue preclusion to [the Le Papes'] federal ADA claim." *Lartigue*, 100 F.4th at 522.

Id. at 983. Applying modified de novo review to the non-IDEA claims restricted the rights and remedies of the family under the laws other than IDEA, and violated the Seventh Amendment right to jury trial. Moreover, the lower court effectively disregarded significant evidence developed during pretrial discovery.

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Doe v. Franklin Square Union Free Sch. Dist., 100 F.4th 86, 124 LRP 13128 (2d Cir. Apr. 25, 2024), *cert. denied*, 145 S. Ct. 570 (Nov. 18, 2024). This case alleged that the school district failed to grant a student with asthma an exemption to the requirement that students wear masks pursuant to the New York State Department of Health's regulation responding to the COVID-19 pandemic. The student and parent alleged that asthma prevented her from being able to medically tolerate wearing a face mask, and that the district's conduct violated the Due Process Clause of the U.S. Constitution, the ADA, Section 504, and state law. The lower court dismissed the constitutional claim and state law claim on the merits, and the ADA and Section 504 claims for failure to exhaust IDEA administrative remedies. On appeal, the plaintiffs pursued these claims and sought damages. The court of appeals affirmed the dismissal of the due process claim, applying rational basis review. Regarding the ADA and Section 504 claims, the court reversed the dismissal. It rejected an argument that an agreement at one point to permit the student to wear a mesh mask was a reasonable accommodation because the parent agreed to it, when the plaintiffs alleged that the arrangement was not satisfactory in preventing asthma attacks. The court said reasonable accommodation is a fact-specific issue. Regarding exhaustion, the court said the claims were not for denial of FAPE, reasoning that the claim could have been brought in a non-school environment and could have been brought by an adult visitor to the school. In addition, the case in its posture on appeal involved only damages claims, relief not available in an IDEA claim. The state law claim was deemed abandoned.

Lartigue v. Northside Indep. Sch. Dist., 100 F.4th 510, 124 LRP 9486 (5th Cir. Mar. 26, 2024), *superseding* 86 F.4th 689, 123 LRP 33956 (5th Cir. Nov. 16, 2023). This case alleged that the school district failed to accommodate the student's hearing impairment adequately during high school. The complaint said that, among other things, the district failed to accommodate her as the ADA required in that it did not:

> (1) provide her with Communication Access Realtime Translation ("CART") services for her use during class, and during her training and participation in debate tournaments; (2) furnish copies of notes for all of her academic classes; (3) supply two interpreters for all classes and extracurricular activities in line with professional standards of care; (4) arrange Consultative AI Teacher Services; (5) provide closed-captioning services for in-class films and videos; (6) furnish AI Counseling Services in a consistent and private fashion; (7) supply group counseling, a service all other students at a regional school for the deaf were given; (8) designate a private "quiet space" to cut out multiple voices and stimuli; (9) provide an interpreter on the bus to assist her during normal school days; and (10) implement a "flashing lights" system during the school's emergency drills, leaving her unaware of a called emergency.

100 F.4th at 516. The student claimed that:

> [A]s a result of these failures, she experienced panic attacks, could not participate in certain debate competitions, that she suffered alone, and that her physical and emotional state deteriorated as a result. Taken together, Lartigue claims that "[Northside's] refusals to accommodate [her] hearing impairment left her isolated from her peers and unable to meaningfully participate in

> various educational programs and activities," forcing Lartigue to leave the [public school] in March 2019 to be homeschooled.

Id. The parents initially sought relief as part of a putative class action alleging violations of IDEA, the ADA, and Section 504. A month after that filing, the parents filed for due process, but the hearing officer accepted the school district's argument that there was no jurisdiction over any claims but those under IDEA, and on the IDEA claims ruled that the district's services and accommodations were sufficient to meet its duty to offer a free appropriate public education. The student and parents returned to the suit originally filed as a class action, and, after amendments, became the sole plaintiffs. They claimed violations of ADA Title II, Section 504, and the United States Constitution, but not a violation of IDEA. They asked for compensatory damages as relief. The district court ruled in favor of the school district on the ADA claim and dismissed the remaining claims. Although the district court rejected the argument that the ADA claim was barred by issue preclusion due to the due process decision, it found that the gravamen of the complaint was a denial of FAPE. On the student's appeal of the district court's ruling on the ADA claim, the court of appeals vacated the district court decision and remanded the case. The court of appeals reasoned that the district court correctly ruled that the gravamen of the complaint was denial of FAPE, but said the plaintiffs did not need to exhaust the IDEA procedures because they sought damages relief. The court further ruled that the ADA claim was not precluded by the hearing officer decision adverse to the student because legal standards applicable to IDEA claims differ significantly from those of ADA failure-to-accommodate claims, quoting the district court's statement,

> The legal standards applied by the hearing officer in Lartigue's due process hearing and the Court in this case are significantly different. The purpose of the due process hearing was to determine whether NISD provided an educational program reasonably calculated to enable Lartigue's progress. Lartigue's ADA claim turns on whether NISD discriminated against her on account of her disability. That issue was not considered in the due process hearing.

Id. at 520. The court further stated that the ADA and IDEA require different accommodations for students with hearing impairments. "First, the ADA and its accompanying regulations require entities to 'give primary consideration to the requests of individuals with disabilities,' an element absent in the IDEA. Second, the ADA requires public entities to provide equal opportunities to disabled and non-disabled individuals; the IDEA does not." *Id.* (footnotes omitted). The court elaborated, "For example, accommodations under the ADA must present 'an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity,' while an IDEA IEP must only help students 'advance appropriately,' 'make progress' in their education, and 'participate' in extracurricular activities." *Id.* at 520-21 (footnotes omitted). Under the ADA, communications with people with disabilities must be as effective as those with others, while IDEA does not have that mandate. "When reviewing these standards, it becomes evident that a school district could establish a FAPE in compliance with the IDEA, while nevertheless engaging in discriminatory conduct under the ADA." *Id.* at 521. The court also noted that the IDEA hearing officer did not consider and make findings regarding important fact issues alleged in the ADA complaint. The court further rejected the district court's view that the standalone ADA complaint was an evasion of the gravamen

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reasoning in *Fry v. Napoleon Community Schools*, 580 U.S. 154, 157, 69 IDELR 116 (2017). The court said that the gravamen test applies only to the exhaustion requirement. In addition, the court said that *Cummings v. Premier Rehab Keller*, 596 U.S. 212 (2022), did not forbid the filing of a damages claim, and pointed out that the question whether *Cummings* applies to ADA Title II remained open in the Fifth Circuit, and the district court never ruled on the issue. Judge Jerry E. Smith dissented, arguing that collateral estoppel effects of the hearing officer's decision barred the case.

Richard Marsico, *A New Hope:* Perez v. Sturgis Public Schools *Opens the Courthouse Doors to Children with Disabilities*, 11 BELMONT L. REV. 210 (2024). This article discusses the *Luna Perez* case and its interpretation of the exhaustion requirement for cases brought under laws protecting the rights of children with disabilities other than IDEA. It collects post-*Luna Perez* cases relating to schooling of children with disabilities that claim violations of Section 504 and the ADA, and discusses the impact of *Luna Perez*. It contends that the case has opened the courthouse doors to Section 504 and ADA cases for monetary damages, as well as opening the doors for cases alleging race discrimination in special education and law reform litigation over systemic IDEA violations.

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