IDEA

Case Law Update

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IDEA CASE LAW UPDATE—October, 2012

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Child Find

Ridley Sch. Dist. v. M.R., 680 F.3d 260 (3d Cir. May 17, 2012) (affirming district court's reversal of hearing officer determination that district committed child find violation and child was denied appropriate education in first grade when teacher postponed meeting early in school year, and re-evaluation in mid-year led to determination child was eligible under IDEA; noting that evaluations indicated that in kindergarten child had cognitive functioning and academic skills within normal ranges)

M.B. v. Hamilton Se. Schs., 668 F.3d 851 (7th Cir. Dec. 22, 2011) (in case involving young child with traumatic brain injury, holding that district satisfied child-find obligations by meeting state law timeline for evaluation within 60 instructional days of receiving parental consent)

Compton Unified Sch. Dist. v. Addison, 598 F.3d 1181 (9th Cir. Mar. 22, 2010) (in case of high school student performing in first percentile and exhibiting problem behavior who was not evaluated until parent made request in junior year, upholding claim for compensatory education for failure to previously identify and evaluate child as child with disabilities), *cert. denied*, 132 S. Ct. 996 (Jan. 9, 2012)

M.J.C. v. Special Sch. Dist. No. 1, No. 10-4861 (JRT/TNL), 2012 WL 1538339 (D. Minn. Mar. 30, 2012) (concluding that district failed to comply with its child find responsibilities when it failed to propose needed evaluations in writing and fully evaluate child and for more than one school year; holding that district is not permitted to shift responsibility for obtaining physician's diagnosis to parent and should have arranged medical evaluation of child suspected of other health impairment if needed; further stating that district could not rely on oral expressions of reluctance on part of parent to allow testing for emotional disturbance when written proposal was not made and parent did accept written proposal when it was made; finding that IEP finally provided was sufficient to confer appropriate education; remanding to hearing officer for determination of compensatory education, noting that compensatory time may exceed period of statute of limitations)

M.M. v. Lafayette Sch. Dist., Nos. CV 09-4624, 10-04223 SI, 2012 WL 398773 (N.D. Cal. Feb. 7, 2012) (finding that claims of violation of child-find provisions were time-barred when parents knew facts with regard to district's education of child and received procedural protections notice)

Centennial Sch. Dist. v. S.D., No. 10–CV–4129, 2011 WL 6117278, at *6 (E.D. Pa. Dec. 8, 2011) (in case of 21-year-old student with asthma and gastrointestinal condition causing nausea and cyclic vomiting, who was first enrolled in district in 1996, holding that two-year statute of limitations did not begin to run until 2008 because parents lacked

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knowledge that school district denied services and accommodations to child when he continually missed school because of medical condition and parents made district aware of medical condition; reasoning that parent verbally raised concerns about impact of student's medical condition to school district multiple times and requested help every year child attended public school; stating "Requiring a talismanic incantation by the parents requesting an evaluation of their child, using the language of the IDEA, is inconsistent with the goals of the IDEA."; noting that district failed to provide request to evaluate form as required by state law, even though district placed required notices in newspaper)

J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635 (S.D.N.Y. Nov. 18, 2011) (in case of child with emotional disturbance who presented deteriorating performance and suicide risk during high school, affirming administrative determination that district met child-find obligation given child's rebound at end of sophomore year and some success in junior year; holding that district continued to have child-find obligation after child's withdrawal from public school and residential placement out of state by parents when parents sought services from home district; awarding partial tuition reimbursement)

E.J. v. San Carlos Elementary Sch. Dist., 803 F. Supp. 2d 1024 (N.D. Cal. Mar. 24, 2011) (finding no violation of child-find obligations when school personnel were responsive to parent concerns and actively modified child's education but did not consider child to need special education services and parents did not request referral for assessment)

Long v. District of Columbia, 780 F. Supp. 2d 49 (D.D.C. Mar. 23, 2011) (finding that child-find obligation was violated when at request of charter school for which defendant was local education agency, evaluator in 2006 completed psycho-social evaluation diagnosing child with learning disorder, developmental coordination disorder and possible language disorder and recommending specialized education services to address weaknesses in reading and writing, further assessments, and behavior intervention plan, but defendant did not act until child's mother requested services in 2009; remanding to hearing officer to craft compensatory education remedy)

Evaluation

G.J. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258 (11th Cir. Jan. 31, 2012) (holding that when parents attached excessive conditions to their consent to triennial reevaluation, including district's agreement not to use reevaluation in litigation, who was to conduct interview, presence of parents, and whether parents received information before district did, parents effectively did not provide consent)

E.M. v. Pajaro Valley Unified Sch. Dist., 652 F.3d 999 (9th Cir. July 14, 2011) (applying California's then-current standard for specific learning disability, concluding that student established he had disorder in basic psychological process in form of auditory processing disorder; ruling that court should have admitted evidence of evaluation conducted after due process hearing; holding that court should also consider subsequent evaluation by district finding child eligible; remanded for determination whether school district met

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obligation to locate, identify, and evaluate child as child with other health impairment or specific learning disability related to auditory processing disorder), *on remand*, No. C-06-4694 MMC, 2012 WL 909514 (N.D. Cal. Mar. 16, 2012) (affirming ALJ's determination that child did not have specific learning disability despite auditory processing disorder; applying state regulation defining severe discrepancy in intellectual ability and achievements to be at least 22.5 points adjusted by four-point standard error of measurement; holding that district reasonably relied on WISC-III score failing to show discrepancy that large, rather than Kaufman Assessment Battery for Children (K-ABC), which showed large discrepancy; further holding that child's auditory processing disorder did not qualify as other health impairment, and that other health impairment does not include one or more disorder considered under specific learning disability category)

J.M. v. Morris Sch. Dist. Bd. of Educ., No. 10-CV-06660 SDW, 2011 WL 6779546 (D.N.J. Dec. 23, 2011) (unpublished op.) (in action by parents of 12-year-old child with learning disabilities and ADHD, affirming determination that Diagnostic Reading Assessment intended for students at lower grade level was not valid for assessing child's performance and was not used according to its instructions; further affirming determination that accommodations given on other testing inflated child's scores and failed to assess her writing skills by having questions read to her and allowing her to dictate answers, and that report cards were not reliable indicators of child's achievement; finding that unilateral private placement was appropriate)

Aaron P. v. Department of Educ., Haw., No. CIV. 10-00574 LEK, 2011 WL 5320994 (D. Haw. Oct. 31, 2011) (holding that failure to evaluate child for autism at time of entry into public school system violated requirement to assess in all areas of suspected disability, but that error did not cause loss of educational opportunity when child received significant levels of autism services and personnel were qualified in autism programs, including applied behavioral analysis), *reconsideration denied*, 2011 WL 6934560 (D. Haw. Dec. 30, 2011)

D.R. v. Department of Educ., 827 F.Supp.2d 1161 (D. Haw. Oct. 21, 2011) (rejecting argument that assessment for auditory processing order should have been undertaken, noting that child passed screening for disorder; further holding that failure to identify possible submucous cleft palate did not amount to actionable wrong when parent did not disclose information about impairment to school system and testimony on existence of impairment was inconclusive; further holding that failure to conduct behavioral assessment or neuropsychological evaluation did not cause denial of appropriate education when behavior had improved and teachers used interventions to control problem behaviors)

Moorestown Twp. Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057 (D.N.J. Sept. 15, 2011) (holding that school district violated IDEA in case of child with multiple disabilities who was initially enrolled in public school receiving special education but whose parents moved him to private school because of dissatisfaction with his educational progress, then 18 months later requested public school to evaluate and formulate IEP for him so they could determine whether to return him to public school, but public school refused

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unless child enrolled in public school; relying on statutory obligation on local education agencies to have IEP in effect for all children in jurisdiction and obligation to provide evaluation when requested, stressing that residency, rather than enrollment, triggers appropriate education obligations; further noting risk to parents of losing child's place in private school if enrollment were made in public school without knowing if public school would offer appropriate program; also noting United States Department of Education interpretation favoring parents' position awarding partial tuition reimbursement)

K.I. v. Montgomery Pub. Schs., 805 F. Supp. 2d 1283 (M.D. Ala. Aug. 24, 2011) (in case of child with rare congenital condition characterized by multiple joint contractures, muscle weakness, and fibrosis as well as muscular dystrophy and restricted lung disorder, who is unable to speak or raise arms, uses wheelchair, needs tube feeding and needs periodic suctioning to prevent respiratory problems, holding that district did not conduct required comprehensive evaluation of child when it failed to make cognitive evaluation or assistive technology assessment, and that failure led to denial of appropriate education; further holding that without needed data, IEP was not appropriately designed)

G.D. v. Wissahickon Sch. Dist., 832 F. Supp. 2d 455 (E.D. Pa. June 14, 2011) (affirming hearing officer's determination that re-evaluation was inadequate when it stressed child's superior cognitive abilities and progress but did not incorporate observations of occupational therapist about failure of behavior interventions, did not incorporate classroom observation, did not include functional behavioral analysis despite evidence behavior was impeding child's progress, and included only limited analysis of great discrepancy between verbal IQ and memory and processing speeds; affirming award of compensatory education)

Response to Intervention (RTI)

Michael P. v. Department of Educ., 656 F.3d 1057 (9th Cir. Sept. 8, 2011) (in case of child who was 2.4 grade levels behind in reading by middle of fourth grade, reversing district court decision affirming hearing officer's conclusion that child was not eligible for services under IDEA on ground that child could not demonstrate severe discrepancy between actual achievement and intellectual capacity; holding that states are prohibited from requiring exclusive reliance on severe discrepancy model to determine if child is eligible under specific learning disability, and that Hawaii's operation of unitary school system did not permit it to continue to operate under state regulation, later changed, that required use of severe discrepancy model and did not permit use of response to intervention model; remanding to district court to determine if child would be eligible under changed regulation)

M.M. v. Lafayette Sch. Dist., Nos. CV 09-4624, 10-04223 SI, 2012 WL 398773 (N.D. Cal. Feb. 7, 2012) (holding that when IEP team did not use RTI model to determine child's eligibility, but rather severe-discrepancy model, team was not required to disclose or use RTI data that it had)

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Daniel P. v. Downingtown Area Sch. Dist., No. CIV.A. 07-4363, 2011 WL 4572024 (E.D. Pa. Oct. 3, 2011) (affirming decision of appeals panel that reversed hearing officer and found that district timely identified child as having specific learning disability, that district's IEP was appropriate, and that parents should be denied tuition reimbursement; reasoning that child made academic progress with instructional support team services under response to intervention program and contribution of parentally provided tutoring was minimal, and child received good grades, even though diagnosis had been made of ADHD and evaluation indicated child had specific learning disability as shown by severe discrepancy between cognitive ability and reading comprehension nearly two years before district ultimately found child eligible for special education under specific learning disability category)

State Directors of Special Education, 56 IDELR 50 (OSEP Jan. 21, 2011) (stating, "The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§ 300.304-300.311, to a child suspected of having a disability under 34 CFR § 300.8. . . . It would be inconsistent with the evaluation provisions at 34 CFR §§ 300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.")

Zirkel, 56 IDELR 140 (OSEP Jan. 6, 2011) (stating that school district using RTI to evaluate children suspected of having learning disabilities need not use RTI for parentally placed private school children within its jurisdiction; also stating that school districts may not use any single measure or assessment, including RTI, as sole criterion for determining whether children are children with disabilities under IDEA and for determining appropriate educational programs; further stating that observation requirement of 34 C.F.R. § 300.310(a) stands as separate requirement and is not intended to describe RTI model; additionally stating that IDEA and regulations do not prohibit school districts from using data gathered through RTI process or model in identifying disabilities other than learning disabilities)

Independent Evaluation

G.J. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1266 (11th Cir. Jan. 31, 2012) (stating with respect to request for independent evaluation at public expense, "The district court correctly determined that the statutory provisions for a publicly funded independent educational evaluation never kicked in because no reevaluation ever occurred. The right to a publicly funded independent educational evaluation does not obtain until there is a reevaluation with which the parents disagree."; further holding that any procedural failure did not affect education of child to substantive degree)

S.F. v. McKinney Indep. Sch. Dist., No. 4:10-CV-323-RAS-DDB, 2012 WL 718589, (E.D. Tex. Mar. 6, 2012) (magistrate judge report and recommendation) (in case of student with autism, deafness, and speech impairment, affirming decision of due process hearing officer that district reimburse parents for independent evaluations, finding district's evaluation not appropriate on basis of evidence cautioning about use of Autism

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Diagnostic Observation Schedule to evaluate deaf individuals and indicating that neither it nor communication assessment were administered in American Sign Language, child's natural mode of communication, by fluent user of ASL, as well as evidence that district failed to keep test protocols, impeding parents' opportunity to participate in decision-making process), *adopted*, 2012 WL 1081064 (E.D. Tex. Mar. 30, 2012)

M.Z. v. Bethlehem Area Sch. Dist., No. CIV.A. 11-2313, 2011 WL 2669248 (E.D. Pa. July 8, 2011) (finding that hearing officer committed error of law when after correctly finding school district's report of evaluation on which it based discontinuance of child's special education to be inappropriate, hearing officer declined to order independent educational evaluation requested by parents and instead required expansion and updating of district's evaluation; ordering independent educational evaluation)

Board of Educ. v. H.A., No. CIV.A. 2:09-01318, 2011 WL 861163 (S.D. W. Va. Mar. 9, 2011) (upholding determination of hearing officer that school district interfered with procedure for selecting independent evaluator mandated by prior due process hearing decision, when parent agreed to evaluator only after school district rejected parent's proposed evaluators, including state-licensed school psychologist), *aff'd*, 445 Fed. App'x 660 (4th Cir. Sept. 9, 2011)

J.P. v. Anchorage Sch. Dist., 260 P.3d 285 (Alaska Sept. 16, 2011) (when parents requested evaluation of child but district did not act within 45 school days and then obtained independent evaluation for child who was also receiving private tutoring arranged by parents, and ultimately child was found not eligible for special education, affirming order that parents be reimbursed for independent evaluation; reasoning that right to independent evaluation at public expense is not conditioned on eligibility, noting that district made use of private evaluation, and stating that parents are entitled to remedy)

Eligibility under IDEA

Fort Osage R-1 Sch. Dist. v. Sims, 641 F.3d 996 (8th Cir. June 17, 2011) (affirming decision of district court, which reversed hearing panel's order of reimbursement for private placement; reasoning that even if IEP did not specifically identify child as having autism, program was reasonably calculated to enable child to receive educational benefits and affirming district court determination that school district afforded parents opportunity to work with team and provided all material information to parents)

Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024 (8th Cir. Jan. 21, 2011) (in case of student diagnosed with conduct disorder, bipolar disorder, and ADHD who had been suspended frequently for threatening students and teachers, had made suicidal comments, whom district determined not to be eligible in decision that hearing officer upheld after district made motion for directed verdict at close of parent's case without submitting evidence of its own, affirming district court decision finding child eligible under emotional disturbance category on strength of evidence of inability to maintain interpersonal relationships and poor performance in class and on standardized tests;

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rejecting argument that child was merely socially maladjusted; also affirming decision finding child eligible under other health impaired category, noting evidence of adverse effect on educational performance and pointing out improvement in performance after taking medication for ADHD)

H.M. v. Haddon Heights Bd. of Educ., 822 F. Supp. 2d 439 (D.N.J. Sept. 27, 2011) (affirming ALJ decision that child was no longer eligible for special education; affirming conclusion that child did not have specific learning disability, applying New Jersey severe discrepancy standard, noting that reading fluency includes more than oral fluency, in which student was deficient and that child's overall reading scores showed achievement at grade level and fluency at or near grade level, and other measures of educational achievement showed child performed at grade level with good marks)

Hailey M. v. Matayoshi, No. CIV. 10-00733 LEK, 2011 WL 3957206 (D. Haw. Sept. 7, 2011) (in case of child found eligible under mental retardation category in 1999, then after independent evaluation in 2006 and reevaluation by district in 2008 found eligible under learning disability category instead, affirming hearing officer decision in favor of school system; stating that IDEA does not give student right to correct disability classification when actual needs are addressed)

P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (May 24, 2011) (affirming determination of hearing officer and review officer holding that student was not eligible under category of emotional disturbance when deterioration in academic performance and other behavior stemmed from drug abuse and student performed well when drug free)

W.G. v. New York City Dep't of Educ., 801 F.Supp.2d 142 (S.D.N.Y. May 18, 2011) (affirming decision of state review officer that reversed hearing officer decision and ruled that child with history of assaultive behavior, substance abuse, truancy, and impulsiveness, but whose limited history of depression was found by court not to cause academic difficulties and who performed successfully in some academic subjects, did not meet IDEA eligibility criteria for emotional disturbance but was merely socially maladjusted)

J.C. v. New Fairfield Bd. of Educ., No. 3:08-CV-1591 VLB, 2011 WL 1322563 (D. Conn. Mar 31, 2011) (in case of child with congenital amputation of arm who was originally found eligible for special education on basis of orthopedic impairment but whose classification was later changed to developmental delay, holding that parents were not deprived of meaningful opportunity to participate in meetings concerning child's IEP and decisions were not predetermined, holding that change in disability classification did not violate IDEA, stressing that services remained same under both categories and child also had social and emotional challenges due to awareness of condition)

Ms. H. v. Montgomery Cnty. Bd. of Educ., No. 2:10CV247-WHA-SRW, 2011 WL 666033 (M.D. Ala. Feb 14, 2011) (affirming determination of hearing officer that child did not have a specific learning disability when hearing officer and school district considered various sources of evidence including IQ testing, observations, and other

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educational testing, when achievement testing failed to indicate severe discrepancy under state regulations, and poor grades, though evidence of specific learning disability, likely stemmed from poor attendance and attitude; affirming determination that child's urinary and heart problems, combined with ADHD, did not adversely affect her educational performance)

Williamson Cnty Bd. of Educ. v. C.K., No. 3:07-0826, 2009 WL 499386 (M.D. Tenn. Feb. 27, 2009) (in case of child with high academic potential but weak performance, affirming determination of ALJ that child should have been evaluated and found eligible for special education, and that procedural violation caused substantive harm; affirming award of compensatory education)

IEP Process, Implementation, and Related Issues

Anchorage Sch. Dist. v. M.P., 689 F.3d 1047, 1051 (9th Cir. July 19, 2012) (in case of high-functioning child with autism and other disabilities, holding that school district deprived child of appropriate education by relying on outdated IEP, which district did not revise due to parental disagreement and pendency of four due process complaints; awarding partial reimbursement and remanding for consideration of additional reimbursement; stating: "The Individuals with Disabilities Education Act ("IDEA") mandates that public educational agencies review and revise annually an eligible child's IEP. Neither the IDEA nor its implementing regulations condition this—or any other—duty expressly imposed on a state or local educational agency upon parental cooperation or acquiescence in the agency's preferred course of action. Penalizing M.P.'s parents—and consequently M.P.—for exercising the very rights conferred by the IDEA undermines the statute's fundamental purposes.")

Woods v. Northport Pub. Sch. Bd. of Educ., Nos. 11-1493, 11-1567, 2012 WL 2612776 (6th Cir. July 5, 2012) (finding that child was denied meaningful educational benefit in relation to potential when resource room services promised in IEP were not provided and child made only small progress; further holding that failure to address academic goals during IEP meeting was procedural violation that denied meaningful participation to parents and caused substantive harm; affirming compensatory education award; further holding that parents were entitled to be given copies of test protocols for expert to review when expert was too far away to inspect records in person)

M.H. v. New York City Dep't of Educ., 685 F.3d 217 (2d Cir. June 29, 2012) (in one of two cases decided together, affirming determination of district court that IEP for child with autism was not adequate in that annual goals were those for first grader when child was entering kindergarten, and were not based on child's actual needs but on expected grade level, further that short-term objectives, particularly academic objectives, lacked measurement, and many were unattainable; in case of second child with autism, stating that photocopying of goals from prior IEP was "disturbing" (p. 256), but finding no violation on ground that no evidence established that goals were no longer appropriate; observing little evidence that district predetermined program)

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Ridley Sch. Dist. v. M.R., 680 F.3d 260 (3d Cir. May 17, 2012) (finding that any deficiency in listing of instructional services in IEP did not deny educational opportunity and that IEP containing Project Read program was adequately based on peer-reviewed research)

T.B. v. St. Joseph Sch. Dist., 677 F.3d 844 (8th Cir. Apr. 27, 2012) (upholding affirmance of hearing officer decision denying tuition reimbursement when parents withdrew child from public school and placed him at private school, even though events later in school year were alleged to have rendered district's previous IEP not appropriate and need for private school clear; reasoning that parent never requested school district to reevaluate child or informed district of intent to re-enroll child in public school, and that district was no longer under obligation to update IEP once child was withdrawn)

K.D. v. Department of Educ., 665 F.3d 1110 (9th Cir. Dec. 27, 2011) (upholding IEPs on merits, concluding that placement was not predetermined, parent was afforded opportunities to raise concerns over meeting dates, services offered met need for on-on-one skill trainer, goals and assessments were sufficient, and actual placement was adequately specified on IEP and appropriate)

Park Hill Sch. Dist. v. Dass, 655 F.3d 762 (8th Cir. Sept. 9, 2011) (in case of twins with autism, finding that administrative panel committed error of law in finding that absence of transition services and behavior interventions in IEP rose to level of substantive error when parents did not give school district opportunity to implement IEP and reimbursement was issue; further holding that panel erred in failing to consider transition plan formulated after IEP but before beginning of school year; further rejecting panel's holding that lack of behavior intervention plan compromised right to appropriate education when district personnel testified that they planned to use teaching methods and strategies that had worked with other children with autism and if that proved unsuccessful would conduct functional behavioral assessment and develop individualized behavior intervention plan)

Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478 (4th Cir. Apr. 27, 2011) (in case of child with moderate to severe autism, affirming district court's conclusion that school denied child appropriate education by material failure to implement IEP—providing 7.5 to 10 hours per week of ABA therapy without use of proper techniques rather than 15 hours called for in IEP—even though child made small improvements in tested areas)

B.W. v. Durham Pub. Schs., No. 1:09CV00970, 2012 WL 2344396 (M.D.N.C. June 20, 2012) (in case of child with autism, holding that refusal to discuss possibility of one-on-one aide was procedural violation, but did not deprive parents of rights to meaningfully participate in IEP development given changes in staffing considered and made by district at meeting)

West Virginia Schs. for the Deaf & Blind v. A.V., No. 3:11-CV-38, 2012 WL 1677939 (N.D. W. Va. May 14, 2012) (in case of nine-year-old with speech apraxia, global developmental delays and other disabilities, but no significant hearing loss, who was

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being served at state school but as a result of monitoring was to be exited for not meeting eligibility criteria for hearing or visual impairment, affirming hearing officer decision that child be permitted to remain at state school where she received total communication environment in class with four other students or fewer, rather than moved to home county school district where speech therapist would work with her 60 minutes per week and total communication environment could be provided for only small portion of school day; noting that proposed IEP was inconsistent in calling for general education 96% of time while also calling for full-time placement in self-contained setting, concluding that IEP was created to facilitate removal from state school rather than to meet child's needs; further holding that state law was preempted by IDEA to extent that it would prevent placement of child without hearing impairment in state school when need for total communication environment could not be met at local school)

Department of Educ. v. C.B., No. CIV. 11-00576 SOM, 2012 WL 1537454 (D. Haw. May 1, 2012) (in case of five-year-old with autism, stating that IDEA does not mandate creation of transition plan in IEP when child moves to public school; further holding that IEP reference to daily provision of paraprofessional services was not a failure to state frequency of services that would amount to denial of appropriate education)

Department of Educ., State of Haw. v. M.F., No. CIV. 11-00047 JMS, 2011 WL 6940877 (D. Haw. Dec 29, 2011) (holding that public school must convene IEP meeting and develop IEP when parents have not revoked consent for continuing provision of special education in writing, but instead have orally withdrawn student and placed her in private school, but ruling that hearing officer erred in determining that violation necessarily denied child appropriate education; remanding to hearing officer), *clarified on denial of reconsideration*, 2012 WL 639141 (D. Haw. Feb. 28, 2012)

C.F. v. New York City Dep't of Educ., No. 11 CIV. 00157 LTS, 2011 WL 5130101, (S.D.N.Y. Oct. 28, 2011) (rejecting contention that IEP was deficient for failure to specify precise school child would attend; stating that IEP's omission of parent training and counseling was procedural defect but affirming conclusion it did not cause denial of appropriate education)

H.M. v. Haddon Heights Bd. of Educ., 822 F. Supp. 2d 439 (D.N.J. Sept. 27, 2011) (ruling that IEP lacking oral reading goals and not changing over two years was not deficient given child's success in regular curriculum, and that failure to provide special education teacher for two months did not lead to loss of educational opportunity)

A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 492 (S.D.N.Y. Aug. 19, 2011) (in case of child with autism who engaged in various ritualistic behaviors interfering with socialization and learning and who threw objects, hit teachers, and engaged in self-stimulatory and self-injurious behavior, affirming administrative decision in favor of school district's proposed placement despite argument that children at proposed placement were not all receiving all services on their IEPs)

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B.H. v. West Clermont Bd. of Educ., 788 F. Supp. 2d 682 (S.D. Ohio Apr. 26, 2011) (ruling that school district failed to consider independent evaluations showing need for speech services and predetermined that child did not need speech services, that it failed to consider evaluation indicating need for occupational therapy services, that it failed to give notice of refusal to consider outside evaluations, and that parent's signature on IEP did not establish that she agreed with IEP; upholding hearing officer determination that failures denied appropriate education and meaningful participation and reversing review officer decision; further ruling that behavior interventions provided in IEP lacked any scientific basis, in violation of requirement that services be based on peer-reviewed research to extent practicable, citing Ohio Administrative Code)

J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606 (S.D.N.Y. Mar. 31, 2011) (finding no violation of IDEA in failure to have regular education teacher at meeting when district lacked reason to expect that child would be placed in mainstream environment, and finding that failure to have special education teacher present did not obstruct child's right to appropriate education or parents' opportunity to participate in process)

Wilson v. District of Columbia, 770 F. Supp. 2d 270 (D.D.C. Mar. 18, 2011) (in case involving failure to provide transportation and resulting inability of child with multiple disabilities to attend four-week summer program provided for in IEP, holding that failure to demonstrate educational harm is not necessary to establish IDEA claim when material failure to implement IEP occurred; remanding for compensatory education remedy)

Parental Consent and Related Issues

G.J. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258 (11th Cir. Jan. 31, 2012) (holding that when parents attached excessive conditions to their consent to triennial reevaluation, including district's agreement not to use reevaluation in litigation, who was to conduct interview, presence of parents, and whether parents received information before district did, parents effectively did not provide consent)

M.J.C. v. Special Sch. Dist. No. 1, No. 10-4861 (JRT/TNL), 2012 WL 1538339, (D. Minn. Mar. 30, 2012) (reversing decision of hearing officer and concluding that district failed to comply with its child find responsibilities; stating that district could not rely on oral expressions of reluctance on part of parent to allow testing for emotional disturbance when written proposal was not made and parent did accept written proposal when it was made)

Appropriate Education Issues in General

Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390 (5th Cir. Aug. 6, 2012) (finding that school district sufficiently individualized child's educational program by permitting accommodations; stating that overall educational benefit, rather than solely remediation of disability, is decisive under *Rowley*, and that IEPs were sufficient because they were

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reasonably calculated to enable child to achieve passing marks and advance from grade to grade, and child received academic benefit)

Woods v. Northport Pub. Sch. Bd. of Educ., Nos. 11-1493, 11-1567, 2012 WL 2612776 (6th Cir. July 5, 2012) (affirming hearing officer ruling that IEP decreasing instructional support services, both autism teacher consultant sessions and resource program services, for child failing to progress in general curriculum and previously denied promised services, failed to meet appropriate education standard)

D.B. v. Esposito, 675 F.3d 26 (1st Cir. Mar. 23, 2012) (affirming district court decision affirming determination of hearing officer that fifteen-year-old child with severe developmental disabilities was offered appropriate education by district's proposed IEP; reasoning that determination of child's potential does not always need to precede determination that child's IEP complies with IDEA, and finding no clear error in district judge's determination that child's potential was unknowable; affirming determination that meaningful advancement under prior IEPs with services contested IEP kept in place supported conclusion IEP was appropriate)

K.E. v. Independent Sch. Dist. No. 15, 647 F.3d 795 (8th Cir. Aug. 3, 2011) (affirming district court decision overturning ALJ decision that had found denial of appropriate education; concluding that school district considered results of outside evaluations obtained by parent, that IEPs adequately addressed child's deficits in organizational skills, that child made progress in areas of reading, spelling, and math despite failure to meet some IEP goals, and that child received required level of educational benefit; dissenting opinion by Bye, J., disagreeing with affording deference to district court's factual findings and concluding record established denial of appropriate education)

C.B. v. Special Sch. Dist. No. 1, 636 F.3d 981, 991 (8th Cir. Apr. 21, 2011) (upholding decisions of hearing officer and district court that although child made progress in reading over relevant two school years, education offered was not appropriate when gap between student and peers increased each year, and in sixth grade student was reading at first grade level despite average intellectual ability, positive attitude, and willingness to work; overturning district court's denial of tuition reimbursement even though private school had no students without disabilities, and ruling that "a private placement need not satisfy a least-restrictive environment requirement to be 'proper' under the Act.")

West Virginia Schs. for the Deaf & Blind v. A.V., No. 3:11-CV-38, 2012 WL 1677939 (N.D. W. Va. May 14, 2012) (in case of nine-year-old with speech apraxia, global developmental delays and other disabilities, but no significant hearing loss, who was being served at state school but as a result of monitoring was to be exited for not meeting eligibility criteria for hearing or visual impairment, affirming hearing officer decision that child be permitted to remain at state school where she received total communication environment in class with four other students or fewer rather than moved to home county school district where speech therapist would work with her 60 minutes per week and total communication environment could be provided for only small portion of school day)

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S.F. v. McKinney Indep. Sch. Dist., No. 4:10-CV-323-RAS-DDB, 2012 WL 718589 (E.D. Tex. Mar. 6, 2012) (magistrate judge report and recommendation) (in case of student with autism, deafness, and speech impairment, holding IEP not to be appropriate when it failed to address toileting goal and did not provide for placement with peers fluent in signing for more than hour per day; further finding behavior intervention plan not appropriate when it included compliance with student code of conduct child could not fully understand; requiring extended school year services), *adopted*, 2012 WL 1081064 (E.D. Tex. Mar. 30, 2012)

J.M. v. Morris Sch. Dist. Bd. of Educ., No. 10-CV-06660 SDW, 2011 WL 6779546, (D.N.J. Dec. 23, 2011) (in action by parents of 12-year-old child with learning disabilities and ADHD, affirming decision of ALJ that program offered by district was not appropriate, noting that Balanced Literacy Program and Words Their Way, used for all students from kindergarten through fifth grade, were not individualized for child or intended for students with dyslexia, further noting that child did not progress in reading or writing skills and regressed in spelling skills; also affirming determination that Diagnostic Reading Assessment intended for students at lower grade level was not valid for assessing child's performance and was not used according to its instructions; further affirming determination that accommodations given on other testing inflated child's scores and failed to assess her writing skills by having questions read to her and allowing her to dictate answers, and that report cards were not reliable indicators of child's achievement; finding that child could not be provided appropriate education in mainstream and that unilateral private placement was appropriate) (unpublished op.)

Independent Sch. Dist. No. 12, Centennial v. Minnesota Dep't of Educ., 788 N.W.2d 907, (Minn. Oct. 7, 2010) (in case of child with autism and Tourette's Syndrome who had strong sensory needs and need for motor breaks to move around classroom, holding that extracurricular and nonacademic activities to be included in IEP are not only those required for education of student with disabilities, relying on IDEA regulations providing for equal opportunity for participation in extracurricular and nonacademic activities and for participation with nondisabled students to maximum extent appropriate but not limiting activities to those necessary to provide appropriate education), *cert. denied*, 131 S. Ct. 1556 (2011)

Residential Placement

J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635 (S.D.N.Y. Nov. 18, 2011) (in case of child with emotional disturbance who manifested deteriorating performance and suicide risk during high school, affirming determination that district failed to show that private school proposed by district could implement IEP; affirming determination that residential placement chosen by parents was appropriate; finding that failure of parents to provide notice before withdrawal of child, reluctance to consider alternative placements, and failure to produce child for interview with district's proposed placement justified decrease of tuition reimbursement by 75%)

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Lexington Cnty. Sch. Dist. One v. Frazier, No. CA 3:10-01808-MBS, 2011 WL 4435690, (D.S.C. Sept. 22, 2011) (affirming determination of state review officer that parents should obtain reimbursement for residential placement of child with Asperger's Syndrome and other disabilities for school year 2007-08, noting that truancy was related to anxiety and depression symptomatic of child's disability, as was unresponsive behavior and withdrawal, that child made no progress at public high school, and IEP lacked provision for counseling or psychiatric evaluation of child; further noting that child exhibited unresponsive behavior at school and in other educational settings, supporting view that child's mental health needs were not segregable from educational needs; denying reimbursement for later residential placement when child's condition had improved and IEP was revised to provide additional services)

Extended Year Services

R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003 (5th Cir. May 27, 2010) (in case of preschool child with autism, ruling that tuition for summer program was properly denied because parent failed to give notice to district even though district did not respond to parents' request for extended school year), *cert. denied*, 131 S. Ct. 1471 (Feb.. 22, 2011)

Autism Programs and Applied Behavior Analysis

R.E. v. New York City Dep't of Educ., Nos. 11-1266-CV, 11-1474-CV, 11-655-CV, 2012 WL 4125833 (2d Cir. Sept 20, 2012) (in one of three cases decided together involving children with autism, finding that evidence supported 1:1 instruction but not necessarily by teacher rather than aide; in second case, finding that child needed ABA services not offered in IEP, and finding significant procedural error in failing to provide FBA and BIP; in third case, rejecting claim based on prediction school would not implement IEP)

M.H. v. New York City Dep't of Educ., 685 F.3d 217, 252 (2d Cir. June 29, 2012) (in one of two cases decided together, holding that district court properly reversed state review officer decision that failed to account for expert testimony that child with autism needed intensive 1:1 instruction, stating, "Although courts should generally defer to the state administrative hearing officers concerning matters of methodology, the SRO's failure to consider any of the evidence regarding the ABA methodology and its propriety for P.H. is more than an error in the analysis of proper educational methodology. It is a failure to consider highly significant evidence in the record. This is precisely the type of determination to which courts need not defer, particularly when the evidence has been carefully considered and found persuasive by an IHO."; determining that private autism center chosen by parents was appropriate and likely offered more mainstreaming opportunities than public school placement; in second case observing little evidence that district predetermined program; deferring to hearing officers in concluding that proposed ratio of six students to one teacher and one aide met child's needs)

K.D. v. Department of Educ., 665 F.3d 1110 (9th Cir Dec. 27, 2011) (upholding 2007 and 2008 IEPs on merits, concluding that placement for child with moderate to severe autism was not predetermined, parent was afforded opportunities to raise concerns over meeting

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dates, services offered met need for on-on-one skill trainer, goals and assessments were sufficient, and actual placement was adequately specified on IEP and appropriate)

Fort Osage R-1 Sch. Dist. v. Sims, 641 F.3d 996 (8th Cir. June 17, 2011) (affirming decision of district court, which reversed hearing panel's order of reimbursement for private placement; reasoning that even if IEP did not specifically identify child as having autism, program was reasonably calculated to enable child to receive educational benefits)

Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478 (4th Cir. Apr. 27, 2011) (in case of child with moderate to severe autism, affirming district court's conclusion that school denied child appropriate education by material failure to implement IEP; further upholding ruling that school could not provide appropriate education as of time of child's removal by parents; also holding that parental placement's restrictiveness is relevant factor to its appropriateness but that parental placements should not be considered inappropriate simply because they do not meet least-restrictive-environment requirement)

Deal v. Hamilton Cnty. Dep't of Educ., 258 F. App'x 863 (6th Cir. Jan. 7, 2008) (determining that defendant did not commit substantive violation, but finding that procedural violation denied child appropriate education and reimbursing for half of cost of home ABA program)

B.W. v. Durham Pub. Schs., No. 1:09CV00970, 2012 WL 2344396 (M.D.N.C. June 20, 2012) (upholding public school program involving ABA-intensive services throughout school day, though not always in one-on-one setting)

P.K. v. New York City Dep't of Educ., 819 F. Supp. 2d 90 (E.D.N.Y. Aug. 15, 2011) (reversing decision of state review officer and determining that termination of one-on-one speech therapy and ABA therapy deprived kindergarten child with autism of appropriate education; further ruling that private placement was appropriate and tuition should be paid directly to private placement)

B.H. v. West Clermont Bd. of Educ., 788 F. Supp. 2d 682 (S.D. Ohio Apr. 26, 2011) (upholding hearing officer's award of two years of services from agency employing ABA techniques in light of two years of inappropriate behavioral interventions in public school placement, which led to child's behavioral regression)

Board of Educ. v. J.A., No. 5:09CV58, 2011 WL 1231317 (N.D. W. Va. Mar. 30, 2011) (upholding school district's non-ABA methodology for program for child with autism when goals, benchmarks, and objectives were proper and methodology employed was tailored to meet them)

West Windsor-Plainsboro Reg'l Sch. Dist. Bd. of Educ. v. M.F., No. 09-CV-4326, 2011 WL 835609 (D.N.J. Mar. 4, 2011) (affirming due process decision awarding parents costs of more than two years of supplemental in-home ABA program when evidence indicated curriculum at district's placement was too easy and that child needed full-time ABA

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program to make meaningful progress and later placement proposed by district was withdrawn, suggesting it was not appropriate)

No Child Left Behind (NCLB)

M.M. v. Lafayette Sch. Dist., Nos. CV 09-4624, 10-04223 SI, 2012 WL 398773 (N.D. Cal. Feb. 7, 2012) (holding that IDEA IEP requirements do not incorporate No Child Left Behind Act standards)

Personnel Qualifications

M.M. v. Lafayette Sch. Dist., Nos. CV 09-4624, 10-04223 SI, 2012 WL 398773 (N.D. Cal. Feb. 7, 2012) (finding that under California law, school psychologist intern with internship pupil personnel services credential may conduct psychoeducational assessment for district under close supervision of experienced school psychologist; determining that school district's assessment was adequate)

T.B. v. San Diego Unified Sch. Dist., No. 08CV28–MMA, 2011 WL 1212711 (S.D. Cal. Mar. 30, 2011) (finding no support for compensatory education award given lack of evidence of loss of educational benefit, even though child was not taught by credentialed professional but instead was instructed by mother)

Peer Harassment and Bullying

T.K. v. New York City Dep't of Educ., 779 F. Supp. 2d 289 (E.D.N.Y. Apr. 25, 2011) (denying defendant's motion for summary judgment in case in which parents alleged that program for child with learning disability failed to address persistent and severe bullying by classmate despite parents' repeated attempts to have school address problem, synthesizing authorities to establish rule that IDEA violation occurs when bullying is likely to affect child's opportunity for appropriate education and school fails to take appropriate steps to prevent it, even if bullying is not due to child's specific disability)

J.E. v. Boyertown Area Sch. Dist., No. CIV.A. 10-2958, 2011 WL 476537, (E.D. Pa. Feb. 8, 2011) (affirming determination of hearing officer that placement of child with Asperger's Syndrome in autism support class at large public high school met appropriate education standard when parent contended, among other things, that placement would expose child to bullying, noting that history of bullying at other school did not support concern, and that program could effectively deal with any bullying that might occur and it would be impossible to show that no future bullying could ever occur), *aff'd*, 452 Fed. App'x 172 (3d Cir. Nov 21, 2011)

Assistive Technology

J.C. v. New Fairfield Bd. of Educ., No. 3:08-CV-1591 VLB, 2011 WL 1322563 (D. Conn. Mar. 31, 2011) (refusing to overturn hearing officer determination that myoelectric arm used by child constituted medical device rather than assistive

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technology, and holding that funding for device was not required on account of ability of child to perform tasks of preschool curriculum without use of arm)

J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606 (S.D.N.Y. Mar. 31, 2011) (affirming state review officer determination that assistive technology evaluation be completed for child with severe speech and language deficits)

D.H. v. Poway Unified Sch. Dist., No. 09CV2621-L NLS, 2011 WL 883003 (S.D. Cal. Mar. 14, 2011) (in case of child with moderate to profound hearing loss using cochlear implant and hearing aid, affirming hearing decision upholding school district's refusal to provide computer-assisted real-time captioning (CART) services; noting that child received FM amplification system for classroom and school assemblies with pass-around microphone and other services, and received excellent grades in regular classes)

Related Services

Petit v. U.S. Dep't of Educ., 675 F.3d 769 (D.C. Cir. Apr. 13, 2012) (holding that federal regulation excluding mapping of cochlear implants from related services that districts must provide does not contradict IDEA, reasoning that mapping is not clearly part of audiology services and exclusion is reasonable interpretation, emphasizing expertise and cost required for mapping; further holding that exclusion of mapping does not violate 20 U.S.C. § 1406(b)(2) by lessening protections provided in 1983 regulations)

K.C. v. Nazareth Area Sch. Dist., 806 F. Supp. 2d 806 (E.D. Pa. Aug. 26, 2011) (affirming decision of hearing officer that services provided to 20-year-old student met appropriate education standard; ruling that hearing officer properly relied on evaluation report in terminating physical therapy services and concluding that further services were not needed to permit student to function in school environment; finding occupational therapy and executive functioning coaching services appropriate)

Doe v. Attleboro Pub. Schs., No. CIV.A. 09-12127-DJC, 2011 WL 3854649 (D. Mass. Aug. 31, 2011) (overturning hearing officer's dismissal of claim for reimbursement of transportation expenses for school year in which parents signed intradistrict placement form to place child at nearby school that parents preferred over school offered by district, which they felt was not appropriate because of open-plan classroom; noting that parents alleged that they were coerced into filing form after repeatedly attempting to reject placement at school offered by district, and alleged that school district failed to provide them with notice of procedural safeguards but instead told them signing form was only way to keep child at preferred school; further noting irregularity in attendance of teacher at IEP meeting; remanding case to Bureau of Special Education Appeals)

A.G. v. District of Columbia, 794 F. Supp. 2d 133 (D.D.C. July 1, 2011) (overturning hearing officer decision barring reimbursement for wraparound services including counseling, social work, psychological services, and parent counseling obtained when child was undergoing transition from residential placement but when school district did not provide IEP, and later provided IEP without needed services; agreeing with hearing

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officer's conclusion that parents did not need to place district on notice that they were obtaining and paying for private services, and holding that decision of hearing officer to deny reimbursement when parents failed to submit invoices or other evidence should be overturned in light of equitable considerations and ambiguities of hearing officer's statements; allowing submission of evidence of payments)

Least Restrictive Environment

R.H. v. Plano Indep. Sch. Dist., 607 F.3d 1003 (5th Cir. May 27, 2010) (in case of preschool child with autism for whom parents advocated placement in regular education preschool with supports, addressing least restrictive environment in framework of *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997) (5th Cir. 1997), regarding appropriate education, and ruling that rejection of mainstreamed environment was supported by evidence of needs for low staff-to-student ratio, special education teacher with knowledge of autism, and regular collaboration with speech pathologist), *cert. denied*, 131 S. Ct. 1471 (Feb.. 22, 2011)

J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606 (S.D.N.Y. Mar. 31, 2011) (concluding that although wholly self-contained setting for child with severe communication and language disabilities satisfied appropriate education standard, school district's placement offer failed to satisfy least restrictive environment obligation by not providing option of integration into non-academic offerings at private religious school chosen by parents; further ruling that unilateral placement at religious school that had no experience with or capacity to educate students with disabilities did not meet standard of appropriate education, thus reimbursement for placement would be denied)

Behavior Management Issues

R.E. v. New York City Dep't of Educ., Nos. 11-1266-CV, 11-1474-CV, 11-655-CV, 2012 WL 4125833 (2d Cir. Sept 20, 2012) (in one of three cases decided together involving children with autism, finding that evidence supported 1:1 instruction but not necessarily by teacher rather than aide, and finding behavioral services adequate; in second case, finding that child needed ABA services not offered in IEP, and finding significant procedural error in failing to provide FBA and BIP; in third case, rejecting claim based on prediction school would not implement IEP)

Bryant v. New York State Educ. Dep't, No. 10–4029–cv, 2012 WL 3553361 (2d Cir. Aug. 20, 2012) (affirming dismissal of case brought by parents of children at Judge Rotenberg Center challenging state regulations generally prohibiting use of aversives on New York students; also affirming denial of motion for preliminary injunction; reasoning that prohibiting one possible method of dealing with behavior disorders does not undermine right to individualized and appropriate education and is consistent with IDEA policies, and deferring to state's policy judgment regarding health and safety of its children.)

Park Hill Sch. Dist. v. Dass, 655 F.3d 762 (8th Cir. Sept. 9, 2011) (in case of twins with autism, rejecting panel's holding that lack of behavior intervention plan compromised

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right to appropriate education when district personnel testified that they planned to use teaching methods and strategies that had worked with other children with autism and if that proved unsuccessful would conduct functional behavioral assessment and develop individualized behavior intervention plan)

S.F. v. McKinney Indep. Sch. Dist., No. 4:10-CV-323-RAS-DDB, 2012 WL 718589 (E.D. Tex. Mar. 6, 2012) (magistrate judge report and recommendation) (in case of student with autism, deafness, and speech impairment, finding behavior intervention plan not appropriate when it included compliance with student code of conduct child could not fully understand), *adopted*, 2012 WL 1081064 (E.D. Tex. Mar. 30, 2012)

J.W. v. Unified Sch. Dist. No. 231, No. 09-2357-CM-DJW, 2012 WL 628181 (D. Kan. Feb. 27, 2012) (finding no procedural violation of IDEA in district's failure to conduct functional behavioral analysis in 2006 reevaluation of child with autism who displayed significant injurious behaviors when district employed variety of assessment tools and parents failed to establish that absence of FBA resulted in educational harm)

C.F. v. New York City Dep't of Educ., No. 11 CIV. 00157 LTS, 2011 WL 5130101 (S.D.N.Y. Oct. 28, 2011) (stating that FBA is intended to be basis of BIP, but concluding that when BIP documents child's interfering behaviors and proposes ways to address child's behavior, failure to conduct FBA is not denial of appropriate education)

A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 492 (S.D.N.Y. Aug. 19, 2011) (in case of 13-year-old child with autism functioning between first and third grade level who engaged in various ritualistic behaviors interfering with socialization and learning and who threw objects, hit teachers, and engaged in self-stimulatory and self-injurious behavior, affirming decision that behavior intervention plan was sufficient when it was based on evaluations from previous private placement, observations by Department of Education personnel, information from various service providers and child's mother)

G.D. v. Wissahickon Sch. Dist., 832 F. Supp. 2d 455 (E.D. Pa. June 14, 2011) (holding that failure to develop IEP with positive behavior support plan denied appropriate education to child)

B.H. v. West Clermont Bd. of Educ., 788 F. Supp. 2d 682 (S.D. Ohio Apr. 26, 2011) (ruling that behavior interventions provided in IEP lacked any scientific basis, in violation of requirement that services be based on peer-reviewed research to extent practicable, citing Ohio Administrative Code; further holding that point system was not appropriate when child did not understand it and it was inconsistently applied, that restraint was shown to be unnecessary given success at managing behavior at later placement without use of restraint, and that absence of negative impact on academic performance from school district's behavioral interventions was irrelevant when child's behavior regressed and district failed to implement appropriate positive behavioral interventions in violation of IDEA standards; awarding compensatory services)

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Long v. District of Columbia, 780 F. Supp. 2d 49 (D.D.C. Mar. 23, 2011) (holding that defendant must afford child functional behavioral analysis and behavior intervention plan in light of his behavior's harmful effect on academic performance)

Kingsport City Sch. Sys. v. J.R., No. 2:06-CV-234, 2008 WL 4138109 (E.D. Tenn. Sept. 4, 2008) (affirming determination by ALJ that behavior interventions including shadow aides and reporting were not appropriate, and promoted dependency)

Anonymous (OSEP Apr. 9, 2012) (stating that if district conducts functional behavioral analysis of individual child to determine whether child is eligible under IDEA and what nature and extent of special education and related services is needed by child, evaluation is subject to notice and parental consent requirements in 34 C.F.R. §§ 300.503-.504 and 300.300; in addition, when child with IEP transfers to school district in new state and district wishes to conduct evaluation while delivering comparable services to those on out-of-state IEP, evaluation is treated as initial evaluation)

Student Discipline

District of Columbia v. Doe, 611 F.3d 888 (D.C. Cir. July 6, 2010) (in case of child with attention deficit hyperactivity disorder whom district decided to place in interim alternative educational setting for 45 days on account of disruptive and disrespectful behavior following earlier infractions, and whose conduct was determined not to be manifestation of his disability, holding that IDEA hearing officer had authority to reduce exclusion from 45 days to 11 in light of minor nature of misconduct and inadequacy of interim placement; reasoning that hearing officer modified punishment only after finding that exclusion would deny child appropriate education)

Fisher v. Friendship Edison Pub. Charter Sch., No. 10-cv-886 (RCL), 2012 U.S. Dist. LEXIS 59510 (D.D.C. Jan. 26, 2012) (awarding full reimbursement of private school tuition when charter school suspended teen with ADHD for coming to school under influence of marijuana, multi-disciplinary team concluded that conduct was not manifestation of child's disability, child was expelled, but was not offered new placement, and parent was merely provided phone numbers for district public schools and public charter school board, and after attempts to find other schools parent enrolled child in private school)

Settlement

Traverse Bay Intermediate Sch. Dist. v. Michigan Dep't of Educ., 615 F.3d 622 (6th Cir. Aug. 4, 2010) (in case brought by school district challenging state review officer's authority to hear appeal of decision denying parent's request to incorporate due process hearing settlement into order of dismissal, which resulted in state review officer ordering incorporation of settlement agreement into dismissal order, holding that IDEA fails to provide school districts with an express or implied right of action to compel state defendants to comply with procedural safeguards in 20 U.S.C. § 1415(b), absent underlying claim directly involving child's educational program)

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J.K. v. Council Rock Sch. Dist., 833 F. Supp. 2d 436 (E.D. Pa. Dec. 14, 2011) (holding that hearing officers lack jurisdiction to enforce settlement agreements, even those reached at mediation or resolution session; also holding that hearing officer exceeded jurisdiction by interpreting settlement agreement to establish pendent placement in public school with support services; judicially enforcing settlement agreement with regard to its designation of current educational placement as being in public school despite settlement's placement of child in private school for one school year)

Due Process Hearing Requests

M.H. v. New York City Dep't of Educ., 685 F.3d 217 (2d Cir. June 29, 2012) (holding that when parents challenge substantive sufficiency of IEP and school district responds by arguing IEP placement was better because it used multiple methodologies, parents were not barred from contesting appropriateness of methodologies even though parents' due process complaint did not raise issue of teaching methodologies)

Adam Wayne D., v. Beechwood Indep. Sch. Dist., Nos. 10-5388, 10-5422, 2012 WL 1861041 (6th Cir. May 22, 2012) (holding that school district had adequate notice that IEP was at issue though due process complaint emphasized learning disability eligibility; remanding case when district court decided merits after informing parties it would decide notice issue first)

Due Process Hearing Limitations and Laches Issues

Swope v. Central York Sch. Dist., No. 1:10-CV-2541, 2012 WL 10583 (M.D. Pa. Jan. 3, 2012) (in case seeking compensatory education for period from student's seventh grade through eleventh grade years, ruling that claims concerning any school years before eleventh grade were barred by limitations; applying IDEA two-year statute of limitations; reasoning that plaintiff failed to identify any specific misrepresentation and that parent had information by which to know of actions forming basis of complaint)

R.B. v. Department of Educ., No. 10 CIV. 6684 RJS, 2011 WL 4375694 (S.D.N.Y. Sept. 16, 2011) (granting motion for summary judgment affirming review officer's decision dismissing claim for tuition reimbursement as barred by statute of limitations, reasoning that in case of child with traumatic brain injury who was recommended for placement by school district in residential private school but was not assigned a school or placed by beginning of school year, and for whom parent provided unilateral placement, action for reimbursement accrued in September of 2006 when child began attending unilateral placement, and thus due process complaint filed on March 19, 2009, was untimely under two-year statute or limitations), *reconsideration denied*, 2012 WL 2588888 (S.D.N.Y. July 2, 2012)

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Scope of Due Process Hearing, Including Party Status

Chavez v. New Mexico Pub. Educ. Dep't, 621 F.3d 1275 (10th Cir. Oct. 8, 2010) (finding that administrative exhaustion and ripeness requirements did not bar action when parents attempted to make state educational agency party to hearing but hearing officers refused, but nonetheless holding that state education department was not proper party to due process hearing given that it was not providing direct services to child; further holding that state was not obligated to provide direct services upon being made aware of district's unwillingness to provide them; noting tension with caselaw from other circuits regarding state educational agency liability)

D.H. v. Lowndes Cnty. Sch. Dist., 57 IDELR 162 (M.D. Ga. Sept. 9, 2011) (overturning ALJ's dismissal of claims for compensation and reimbursement against district in which child was no longer enrolled; collecting cases and adopting view that principles of fairness and policy support allowing parents to recover for violations of IDEA when hearing is requested after leaving district; noting that parents alleged extensive efforts to schedule IEP meeting without success and moved child to cyber school in frustration over trying to work with district; remanding case to ALJ for full hearing on claims for compensatory education and reimbursement)

Goetz & Reilly, 57 IDELR 80 (OSEP Oct. 4, 2010) (stating that Minnesota law, as interpreted in Thompson v. Board of Special Sch. Dist. No. 1, 144 F..3d 574 (8th Cir. 1998) and other cases to deny parents right to file due process complaint against school district when child is no longer enrolled in that school district is inconsistent with IDEA and its regulations, which permit filing of due process complaint for any violation occurring within two years of time complaint is filed)

Conduct of Due Process Hearing

R.E. v. New York City Dep't of Educ., Nos. 11-1266-CV, 11-1474-CV, 11-655-CV, 2012 WL 4125833 (2d Cir. Sept 20, 2012) (in three cases decided together involving children with autism, ruling that evidence should not be admitted to show adequacy of services when those services are not provided for in IEP, though testimony many explain or justify services provided for in IEP; emphasizing need for parents to rely on IEP document itself; stating that deficiencies in IEP might be remedied during resolution meeting period, but not afterward; holding that parents may use retrospective evidence to support the adequacy of a unilateral placement)

Lake Washington Sch. Dist. No. 414 v. Office of Superintendent of Pub. Instruction, 634 F.3d 1065 (9th Cir. Feb. 22, 2011) (dismissing for want of standing case filed by school district alleging that office of administrative hearings granted continuance of due process hearing without justification, reasoning that statutory private right of action applies only to children and parents, apart from ability to contest issues raised in due process complaint)

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Department of Educ. v. T.G., No. CIV. 10-00362 LEK, 2011 WL 816808 (D. Haw. Feb. 28, 2011) (in case involving three-month delay in school district's transmission of hearing request to office of administrative hearings, holding that failure to hold timely resolution session and due process hearing constituted per se harm and denial of appropriate education to student, and that parents need not seek intervention of hearing officer if district fails to hold timely resolution session; remanding for determination whether private placement chosen by parents was appropriate)

K.R. v. Missouri Dep't of Elementary and Secondary Educ., No. 2:11-CV-04042-DGK, 2011 WL 550077 (W.D. Mo., Feb. 9, 2011) (denying motion for temporary restraining order against two-day limit on amount of time permitted for presenting due process hearing case, stating that parent-plaintiffs failed to show immediate and irreparable injury in that they failed to specify when pending hearings would take place and remedy of new hearing with defendants' payment of attorneys' fees would suffice)

L.G. v. Wissahickon Sch. Dist., Nos. CIV.A. 06-0333, CIV.A. 06-3816, 2011 WL 13572 (E.D. Pa. Jan. 4, 2011) (affirming determinations of hearing officer that parents' experts' testimony should be accorded no weight because they did not observe regular education class in which child would have been placed or child's participation in public school placement, and witnesses appeared biased in favor of verbal behavior methodology)

Hearing Officer Impartiality and Qualifications

M.N. v. Rolla Pub. Sch. Dist. 31, No. 2:11-CV-04173-NKL, 2012 WL 2049818, (W.D. Mo. June 6, 2012) (stating that hearing officers are presumed to be unbiased and party alleging bias has to produce sufficient evidence to overcome presumption; finding no bias on basis of hearing record)

D.R. v. Department of Educ., 827 F. Supp. 2d 1161 (D. Haw. Oct. 21, 2011) (affirming decision of hearing officer that child's IEP was sufficient; rejecting argument that hearing officer was biased on account of being former deputy attorney general representing Education Department and former co-worker of attorney representing defendant, and finding no evidence of bias in decision)

R.K. v. New York City Dep't of Educ., No. 09-CV-4478 KAM, 2011 WL 1131492 (E.D.N.Y. Jan. 21, 2011) (rejecting parents' allegations of bias on part of state review officer premised on newspaper article, Internet search, statistical analysis of decisions, and fact of officer's cohabitation with attorney for state educational agency; ruling for parents on merits of case), *adopted*, 2011 WL 1131522 (E.D.N.Y. Mar 28, 2011), *aff'd*, Nos. 11-1266-CV, 11-1474-CV, 11-655-CV, 2012 WL 4125833 (2d Cir. Sept 20, 2012).

Burden of Proof at Due Process Hearing

M.H. v. New York City Dep't of Educ., 685 F.3d 217, 224-25 & n.3 (2d Cir. June 29, 2012) (stating that New York places burden of persuasion and burden of production on

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school district to demonstrate appropriateness of its proposed IEP at due process hearing; leaving unresolved question whether state has power to allocate burden accordingly)

Finality of Due Process Hearing

Weiner, 57 IDELR 79 (OSEP Oct. 28, 2010) (stating that once final decision has been issued, no motion for reconsideration is permissible; states may allow motions for reconsideration prior to issuance of final decision, but final decision must be issued within 45-day timeline or properly extended timeline)

Judicial Jurisdiction

Knight v. Washington Sch. Dist., 416 F. App'x 594 (8th Cir. Apr. 27, 2011) (holding that action brought to appeal hearing officer's pre-hearing determination that due process complaint was insufficient was properly dismissed for lack of jurisdiction; holding dismissal should have been without prejudice) (unpublished op. – not precedential)

Preclusion Issues

T.G. v. Baldwin Park Unified Sch. Dist., 443 F. App'x 273, 276 (9th Cir. July 15, 2011) (unpublished op.) (ruling that when placement offer for 2008-09 school year was before ALJ, decision did not preclude subsequent action over 2009-10 school year, even though remedy touched on 2009-10 school year, stating, "Each school year is a separate issue under the IDEA; whatever is deemed appropriate for one year cannot preclude dispute about the next.")

Mootness

E.D. v. Newburyport Pub. Schs., 654 F.3d 140 (1st Cir. Aug. 19, 2011) (Souter, J.) (holding that claim for reimbursement of tuition in private school incurred when school district allegedly failed to provide timely IEP was not mooted by parents' subsequent move from school district to Connecticut to be near school where parents had enrolled child because parents wanted to be near child and could not afford to maintain two residences; reasoning that advance tuition payments were due when they were still residents of district)

Gary G. v. El Paso Indep. Sch. Dist., 632 F.3d 201 (5th Cir. Jan. 31, 2011) (holding that under IDEA, case continues to present live controversy even though school district offers full relief in settlement offer)

District of Columbia v. Doe, 611 F.3d 888 (D.C. Cir. July 6, 2010) (in case of child with attention deficit hyperactivity disorder whom district decided to place in interim alternative educational setting for 45 days on account of disruptive and disrespectful behavior following earlier infractions, and whose conduct was determined not to be manifestation of his disability, holding that IDEA hearing officer had authority to reduce exclusion from 45 days to 11 in light of minor nature of misconduct and inadequacy of

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interim placement; further holding that action was not moot despite child's graduation from eighth grade and non-attendance at any district school, under principle that action was capable of repetition yet evading review)

M.M. v. Lafayette Sch. Dist., Nos. CV 09-4624, 10-04223 SI, 2012 WL 398773 (N.D. Cal. Feb. 7, 2012) (holding that appeal of decision not to award full payment for independent educational evaluation was moot when district sent parent check for remaining amount)

Prospective Relief

Woods v. Northport Pub. Sch. Bd. of Educ., Nos. 11-1493, 11-1567, 2012 WL 2612776 (6th Cir. July 5, 2012) (holding that child not re-enroll in district to obtain evaluations and amended IEP, but holding that prospective receipt of appropriate education may be conditioned on re-enrollment)

B.A. v. Missouri, No. 4:09CV1269 TIA, 2010 WL 1254655 (E.D. Mo. Mar. 24, 2010) (in case of child with severe disabilities attending state school who allegedly was subjected to verbal and physical abuse and neglect, and whose IEP was allegedly not implemented and who was otherwise allegedly denied appropriate education, denying motion to dismiss action seeking reversal of due process decision and order to install audio-visual monitoring of all classrooms and hallways, compensatory services and other relief; reasoning that allegations of past patterns of practice support claims for injunctive relief; holding that audio-visual monitoring may be proper relief if it assists in providing child with special education and related services)

Tuition Reimbursement Issues

T.B. v. St. Joseph Sch. Dist., 677 F.3d 844 (8th Cir. Apr. 27, 2012) (upholding affirmance of hearing officer decision denying tuition reimbursement when parents withdrew child from public school and placed him at private school, even though events later in school year were alleged to have rendered district's previous IEP not appropriate and need for private school clear; reasoning that parent never requested school district to reevaluate child or informed district of intent to re-enroll child in public school, and that district was no longer under obligation to update IEP once child was withdrawn)

E.D. v. Newburyport Pub. Schs., 654 F.3d 140 (1st Cir. Aug. 19, 2011) (Souter, J.) (holding that claim for reimbursement of tuition in private school incurred when school district allegedly failed to provide timely IEP was not mooted by parents' subsequent move from school district to Connecticut to be near school where parents had enrolled child because parents wanted to be near child and could not afford to maintain two residences; reasoning that advance tuition payments were due when they were still residents of district)

Forest Grove Sch. Dist. v. T.A., 638 F.3d 1234 (9th Cir. Apr. 27, 2011), (applying abuse-of-discretion standard to district court decision, affirming district court's reversal of

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hearing officer decision and holding that tuition reimbursement should not be awarded when enrollment in private placement was undertaken for reasons other than conditions of ADHD and depression, but instead for child's drug abuse and behavioral problems)

Sumter County Sch. Dist. 17 v. Heffernan, 642 F.3d 478 (4th Cir. Apr. 27, 2011) (holding that parental placement's restrictiveness is relevant factor to its appropriateness but that parental placements should not be considered inappropriate simply because they do not meet least-restrictive-environment requirement)

C.B. v. Special Sch. Dist. No. 1, 636 F.3d 981, 991 (8th Cir. Apr. 21, 2011) (upholding decisions of hearing officer and district court that although child made progress in reading over relevant two school years, education offered was not appropriate when gap between student and peers increased each year, and in sixth grade student was reading at first grade level despite average intellectual ability, positive attitude, and willingness to work; overturning district court's denial of tuition reimbursement even though private school had no students without disabilities, and ruling that "a private placement need not satisfy a least-restrictive environment requirement to be 'proper' under the Act.")

C.B. v. Garden Grove Unified Sch. Dist., 635 F.3d 1155 (9th Cir. March 28, 2011) (in case of child with autism and attention deficit disorder, affirming district court decision holding that in circumstances where school district failed to offer appropriate placement for child, full reimbursement for private placement would be awarded when private placement met some of child's needs and child received significant benefits in important areas, but placement did not meet all needs; rejecting argument that reimbursement should be reduced when parent cannot find or cannot afford program that meets all of child's needs), *cert. denied*, 132 S. Ct. 500 (2011)

Fisher v. Friendship Edison Pub. Charter Sch., No. 10-cv-886 (RCL), 2012 U.S. Dist. LEXIS 59510 (D.D.C. Jan. 26, 2012) (awarding full reimbursement of private school tuition when charter school suspended teen with ADHD for coming to school under influence of marijuana, multi-disciplinary team concluded that conduct was not manifestation of child's disability, child was expelled, but was not offered new placement, and parent was merely provided phone numbers for district public schools and public charter school board, and after attempts to find other schools parent enrolled child in private school; finding compensatory education not proper in light of child's graduation from high school; finding reduction in tuition reimbursement not proper in that school violated IDEA and provisions requiring notice before parental placement did not apply when child was expelled without new placement being provided)

N.T. v. District of Columbia, 839 F. Supp. 2d 29 (D.D.C. Jan.11, 2012) (upholding hearing officer determination that parents were not entitled to reimbursement because private placement lacked children without disabilities, despite hearing officer's ruling that IEP denied child appropriate education by failing to specify small-group instruction; reasoning that public school could have provided small group instruction, that private school lacked nondisabled peers of child, and that public schools could implement appropriate education for child; noting that parental placement need not be least

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restrictive environment, but concluding that least restrictive environment could be considered in determining remedy)

J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, (S.D.N.Y. Nov. 18, 2011) (affirming determination that district failed to show that private school proposed by district could implement IEP; affirming determination that residential placement chosen by parents was appropriate; finding that failure of parents to provide notice before withdrawal of child, reluctance to consider alternative placements, and failure to produce child for interview with district's proposed placement justified decrease of tuition reimbursement by 75%)

Daniel P. v. Downingtown Area Sch. Dist., No. CIV.A. 07-4363, 2011 WL 4572024 (E.D. Pa. Oct. 3, 2011) (affirming decision of appeals panel that reversed hearing officer and found that district timely identified child as having specific learning disability, that district's IEP was appropriate, and that parents should be denied tuition reimbursement; reasoning that child made academic progress with instructional support team services under response to intervention program and contribution of parentally provided tutoring was minimal, and child received good grades, even though diagnosis had been made of ADHD and evaluation indicated child had specific learning disability as shown by severe discrepancy between cognitive ability and reading comprehension nearly two years before district ultimately found child eligible for special education under specific learning disability category; deferring to hearing panel as to content of IEP; stating that tuition reimbursement was not justified in light of failure to provide notice to school district of intention to place child despite argument that child would suffer serious emotional harm when IEP addressed child's anxiety related to school and was alleviated by change in medication)

S.H. v. New York City Dep't of Educ., No. 09-CV-6072 PGG, 2011 WL 609885 (S.D.N.Y. Feb. 18, 2011) (holding that although school district conceded that it failed to offer appropriate education to high school child with learning disabilities, hearing officer and review officer decisions denying tuition reimbursement would be affirmed on ground that residential placement was overly restrictive setting for child performing at or above grade level)

Covington v. Yuba City Unified Sch. Dist., 780 F. Supp. 2d 1014 (E.D. Cal. Feb. 7, 2011) (in case of student with emotional disturbance and specific learning disability, affirming determination of hearing officer that school district's insufficient response to child's deteriorating behavior constituted denial of appropriate education, but also affirming determination that parents were not entitled to reimbursement for unilateral placement at school with no credentialed special education teachers and with curriculum failing to meet state standards, also lacking individualized instruction in areas of need and no staff trained in behavioral interventions)

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Reimbursement for Related Services

A.G. v. District of Columbia, 794 F. Supp. 2d 133 (D.D.C. July 1, 2011) (overturning hearing officer decision barring reimbursement for wraparound services including counseling, social work, psychological services, and parent counseling obtained when child was undergoing transition from residential placement but when school district did not provide IEP, and later provided IEP without needed services; agreeing with hearing officer's conclusion that parents did not need to place district on notice that they were obtaining and paying for private services, and holding that decision of hearing officer to deny reimbursement when parents failed to submit invoices or other evidence should be overturned in light of equitable considerations and ambiguities of hearing officer's statements; allowing submission of evidence of payments)

Compensatory Education

Ferren C. v. School Dist. of Phila., 612 F.3d 712 (3d Cir. July 13, 2010) (when $200,000 trust fund had been created for provision of compensatory education over period of three years following end of student's ordinary age eligibility in resolution of past special education disputes, holding that district court had power to require school district to continue to serve as LEA for student and have responsibility to reevaluate her and revise IEPs as appropriate during three year period)

B.H. v. West Clermont Bd. of Educ., 788 F. Supp. 2d 682 (S.D. Ohio Apr. 26, 2011) (upholding hearing officer's award of two years of services from agency employing ABA techniques in light of two years of inappropriate behavioral interventions in public school placement, which led to child's behavioral regression; rejecting least restrictive environment argument; also upholding award of two years of remedial speech and occupational therapies)

Millay v. Surry Sch. Dep't, No. 1:07-cv-00178-JAW, 2011 WL 1122132 (D. Me. Mar. 24, 2011) (magistrate judge recommendation) (recommending 126 weeks of compensatory educational services to be provided after end of child's age-eligibility for special education, with calculation based on duration of deprivation of appropriate education and reasonableness of parent's conduct; rejecting parent's proposal to have district establish fund for her to purchase compensatory services), *adopted*, 2011 WL 1989923, 2111131 (D. Me. May 23, 2011)

Other Remedies Issues

Mr. A. v. New York City Dep't of Educ., 769 F. Supp. 2d 403 (S.D.N.Y. Feb. 1, 2011) (overturning state review officer decision and holding that when school district failed to provide student appropriate education, parents enrolled child in private school, equities favored award of costs of tuition, but parents due to lack of resources did not make tuition payments but incurred legal obligation to do so, court would order district to make retroactive tuition payment directly to private school)

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