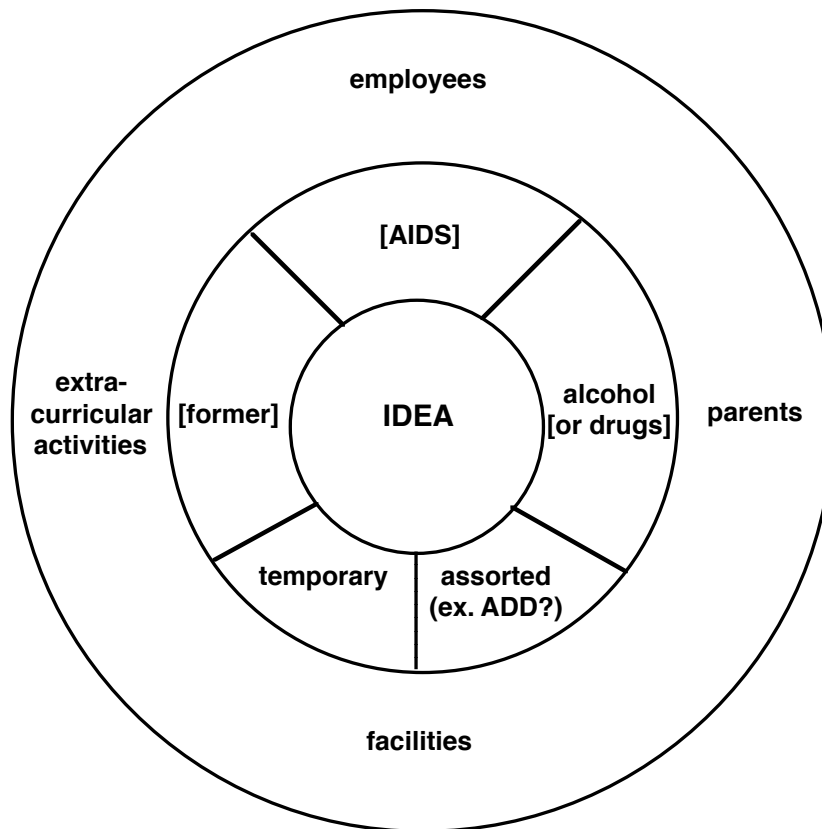


NATIONAL UPDATE OF CASE LAW UNDER THE IDEA AND § 504/A.D.A.¹

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Notes:

- **P** = Parent won; **S** = School district won; () = Inconclusive
- supra = cross reference to earlier full citation
- Court decisions in the Sixth Circuit and Tennessee are in **bold font**.
- The selective court decisions that are not officially published are in smaller font.
- Court decisions or component concepts for initial discussion are highlighted in yellow.
- Decisions for particular attention are in shaded in grey.
- The acronyms are listed in a glossary on the last page of this document

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

I. IDENTIFICATION (INCLUDING CHILD FIND)

- S** Leigh Ann H. v. Riesel Indep. Sch. Dist., 18 F.4th 788, 80 IDELR ¶ 3 (5th Cir. 2021)
- rejected **child find** claim based on implicitly district-deferential analysis, including lack of showing of connection between behavior and ED criteria
- S** Crofts v. Issaquah Sch. Dist. No. 411, 22 F.4th 1048, 80 IDELR ¶ 61 (9th Cir. 2022)
- concluded that initial evaluation determining SLD was appropriate even though it did not specifically instead target **dyslexia**
- S** Ja.B. v. Wilson Cnty Sch. Sys., 2022 WL 326273 (M.D. Tenn. Feb. 2, 2022) (R&R)
- upheld ALJ's ruling that district's use of RTI and a 504 plan for middle school child hospitalized for rage disorder (and subsequently determined to qualify as ED) did not violate **child find** before and after disenrollment in light of only 3 months in the district and the parents' general request for support that did not reasonably amount to request for a special education evaluation [compensatory education and tuition reimbursement case]
- S** J.M. v. Summit City Bd. of Educ., 39 F.4th 126, 81 IDELR ¶ 91 (3d Cir. 2022)
- ruled that district did not violate **child find** for SLD, autism, or OHI (ADHD) due to no reason to suspect need for special education—proactive district interventions, including **RTI**, with due consideration of private diagnoses
- S** Minnetonka Pub. Schs. v. M.L.K., 42 F.4th 847, 81 IDELR ¶ 123 (8th Cir. 2022)
- ruled that reevaluation's failure to identify student's **dyslexia** and ADHD in addition to his previously identified **autism** classification did not amount to denial of FAPE in this case
- S** Heather B. v. Houston Indep. Sch. Dist., 81 IDELR ¶ 241 (5th Cir. 2021)
- ruled that district of residence did not have reasonable suspicion until one of its administrators received an email from parent of student in private school in neighboring district requesting special education services and proactively took the steps for an evaluation within a month, thus not violating **child find**

II. APPROPRIATE EDUCATION (INCLUDING ESY)²

- S** Leigh Ann. H. v. Riesel Indep. Sch. Dist. (*supra*)
- upholding substantive appropriateness of two successive IEPs of high school student with SLD based on “capacious” interpretation of “special education” (here applying to special education teacher’s consulting services to general ed teachers for various adaptations) and relaxed approach to transition services
- S** Capistrano Unified Sch. Dist. v. S.W., 21 F.4th 1125, 80 IDELR ¶ 31 (9th Cir. 2021)
- ruled that IEP goals for first grader with autism were adequate, including that they were measurable; IEP team considered recommendations of parents’ experts; and districts are not required to develop an IEP for a child in private school in the absence of parental request [tuition reimbursement case]
- S** Crofts v. Issaquah Sch. Dist. No. 411 (*supra*)
- upheld substantive appropriateness of IEP for second grader with dyslexia based on the child’s progress with the multisensory reading program even though it was not specifically the Orton-Gillingham methodology that the parent requested
- S** Lamar Consol. Indep. Sch. Dist. v. J.T., 577 F. Supp. 3d 599, 80 IDELR ¶ 73 (S.D. Tex. 2021)
- ruled that district failed to implement the IEP, including the BIP, but it engaged in remedial efforts and, more importantly, met the Andrew F. standard for FAPE for the proper measuring frame of a year, not a semester
- S** G.D. v. Swampscott Pub. Schs., 27 F.4th 1, 80 IDELR ¶ 149 (1st Cir. 2022)
- upheld proposed IEP, which moved second grader with severe dyslexia from partial inclusion placement to substantially separate language-based classroom based on slow gains, as meeting Andrew F. individual-circumstances standard, including the LRE preference [tuition reimbursement case]
- S** C.M. v. Rutherford Cnty. Schs., __ F. Supp. 3d __, 80 IDELR ¶ 239 (M.D. Tenn. 2022)
- rejected predetermination claim on behalf of high school student with dyslexia but postponed substantive FAPE ruling for his IEP pending mediation

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

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

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

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

- S** **G.A. v. Williamson Cnty. Bd. of Educ., ___ F. Supp. 3d ___, 80 IDELR ¶ 255 (M.D. Tenn. 2022)**
- rejected parent’s various nuanced procedural claims, including **predetermination**, and supposedly substantive claims, including goals and counseling, for student with **autism** and ED under **Andrew F.** [tuition reimbursement case]
- S** **Minnetonka Pub. Schs. v. M.L.K. (supra)**
- IEP for student with **autism** met **Andrew F.** standard, including for his reading and attentional needs despite not identifying him with diagnoses of **dyslexia** and ADHD
- P** **Falmouth Sch. Dep’t v. Doe, 44 F.4th 23, 81 IDELR ¶ 151 (1st Cir. 2022)**
- upheld ruling that two of district’s IEPs for complex child with **dyslexia** and ADHD did not meet the **Andrew F.** standard by failing to provide reading program specially designed to address the child’s specific orthographic processing deficits [tuition reimbursement case]
- P/[S]** **Doe v. Newton Pub. Schs., 48 F.4th 42, 81 IDELR ¶ 211 (1st Cir. 2022)**
- upheld rulings that (a) district’s first proposed IEP, which was 80% in general education, was not sufficient in light of the severe mental health needs and very recent crisis of high school student with **autism** but (b) the next two IEPs, which were for private day placement in grade 12, were sufficiently therapeutic except they did not take into consideration the disruptive effect of changing the child from his residential placement [tuition reimbursement case]
- S** **C.K. v. Sylvania City Sch. Dist., 81 IDELR ¶ 212 (6th Cir. 2022)**
- ruled that IEP for fourth grader with SLD (**dyslexia**) and autism that did not include the intensive Lindamood Bell services that the parents’ expert recommended and that the parents then arranged for on a tutoring basis met the **Andrew F.** standard, which does not require gap-closing or grade-level performance
- S** **Heather B. v. Houston Indep. Sch. Dist. (supra)**
- denied FAPE claim for IEP not being ready at the start of the school year because the delay was largely attributable to the parents’ tardiness (in addition to a hurricane)
- S** **G.S. v. Clarksville Montgomery Cnty. Sch. Sys., 81 IDELR ¶ 245 (M.D. Tenn. 2022)**
- upheld ALJ decision that district’s proposed IEPs for middle school student with SLD (**dyslexia**) were procedurally and substantively appropriate, including the reliance on reading fluency measures of progress in reading and the failure to conduct a complete AT assessment [tuition reimbursement case]
- S** **A.M. v. Wallingford-Swarthmore Sch. Dist., ___ F. Supp. 3d ___, 81 IDELR ¶ 246 (E.D. Pa. 2022)**
- ruled that proposed IEP for ninth grader with SLD (writing) was “appropriately ambitious” and that procedural violations (assistive technology evaluation and transition goals) did not result in loss to the student or the parents [tuition reimbursement case]

P/S **A.W. v. Loudon Cnty. Sch. Dist., 81 IDELR ¶ 281 (E.D. Tenn. 2022)**

- ruled that district's failure to include the parent at the IEP meeting (with its forged cover-up) significantly infringed on the parent's opportunity for participation as did the district's holding out the special education teacher as properly certified, but rejected the other alleged procedural violations (e.g., progress monitoring data) and upheld the ALJ's rulings that the IEPs were substantively appropriate

II. MAINSTREAMING/LRE

S H.W. v. Comal Indep. Sch. Dist., 32 F.4th 454, 81 IDELR ¶ 2 (5th Cir. 2022)

- ruled that blended program for third grader with ID and other disabilities, as the next step in a progression of placements that started primarily in general education and successively included increased inclusion support and segregated component, met the Daniel R.R. multi-factor test and, on a holistic approach contrary to L.H., the embedded Andrew F. standard

S J.P. v. Belton Sch. Dist. No. 124, 40 F.4th 887, 81 IDELR ¶ 124 (8th Cir. 2022)

- upheld change in placement for student with multiple disabilities from completely segregated class in the district to nearby state school for severe disabilities based on comparable benefits LRE analysis – “the IDEA does not ... sacrific[e] a student's access to a FAPE to have him in a more integrated setting”

IV. RELATED SERVICES (INCLUDING ASSISTIVE TECHNOLOGY)

S Hills & Dales Child Development Ctr. v. Iowa Dep't of Educ., 968 N.W.3d 238, 80 IDELR ¶ 1 (Iowa 2021)

- ruled that the IEP team has the authority to determine whether to grant an excuse for an outside provision of ABA therapy by a private agency upon a physician's order

P/S Elmira City Sch. Dist. v. N.Y. State Educ. Dep't, 166 N.Y.S.3d 710, 80 IDELR ¶ 294 (App. Div. 2022)

- ruled that district denied FAPE for the period that it was unable to find a 1:1 registered nurse required by the child's IEP (but not for the prior period when the parties were not able to finalize this IEP provision) and that the district's proposal to provide residential placement for this purpose was overly restrictive, entitling the child to compensatory education

V. DISCIPLINE ISSUES

S Leigh Ann. H. v. Riesel Indep. Sch. Dist. (supra)

- upholding manifestation determination despite procedural violation due to lack of substantive harm (re-done opportunity within a month and progress in alternative setting)

VI. ATTORNEYS' FEES

- P** D.S. v. Knox Cnty., 80 IDELR ¶ 257 (E.D. Tenn. 2022)
- awarded parents modest reduction from \$155k to \$139k for three-year tuition reimbursement award totaling \$23k
- S** Pocono Mountain Sch. Dist. v. T.D., ___ F. Supp. 3d ___, 80 IDELR ¶ 280 (M.D. Pa. 2022)
- awarded parents—based on reasonable rates, partial success, excessive entries—\$127k rather than the \$627k requested for attorneys' fees

VII. REMEDIES

A. TUITION REIMBURSEMENT

- P** D.S. v. Knox Cnty. (supra)
- rejected, based on L.H. and stay-put, the district's claim that the remedy of tuition reimbursement ends with the ALJ's order despite its appeal
- P/S** Patrick G. v. Harrison Sch. Dist. No. 2, 40 F.4th 1186, 81 IDELR ¶ 125 (10th Cir. 2022)
- ruled that the substantive and stay-put claims are moot, but the reimbursement and attorney's fees claims are not – "The upshot of our holdings in Steven R.F. and Nathan M. is that an IDEA claim is capable of repetition in the mootness context only when an asserted IDEA violation involves an ongoing legal controversy that our decision may actually resolve."
- S** R.G. v. N.Y.C. Dep't of Educ., 585 F. Supp. 3d 524, 81 IDELR ¶ 84 (S.D.N.Y. 2022)
- upheld, based on balance of the **equities**, denial of the two months of tuition reimbursement at issue
- P** Falmouth Sch. Dep't v. Doe (supra)
- upheld full reimbursement based the unilateral placement's provision of some element of the special education services missing from the public alternative so that the placement is reasonably calculated to enable the child to receive educational benefit regardless of LRE
- P/S** Doe v. Newton Pub. Schs. (supra)
- upheld reimbursement award for the three years of tuition without the travel and boarding costs of the unilateral residential placement, because student needed therapeutic but not residential placement (thus, unreasonable as matter of the **equities**)

B. COMPENSATORY EDUCATION³

- S** Johnson v. Charlotte-Mecklenburg Schs. Bd. of Educ., 20 F.4th 835, 80 IDELR ¶ 33 (4th Cir. 2021)
- ruled that parents' request for compensatory education in her due process hearing complaint but lacking in her subsequent complaint to court rendered this relief moot
- S** A.W. v. Loudon Cnty. Sch. Dist. (*supra*)
- upheld, in the wake of the parental-participation violations, the ALJ's denial of compensatory education to the student and his prospective remedial orders for training and checklist confirmation for hiring properly certified teachers

C. OTHER REMEDIES (INCLUDING IEE REIMBURSEMENT)⁴

[None]

VIII. OTHER IDEA ISSUES

- P/S** A.W. v. Princeton Pub. Schs. Bd. of Educ., 80 IDELR ¶ 169 (3d Cir. 2022)
- upheld, based on "knowing and voluntary" factors, enforceability of broad releases in settlement agreement that included prospective waivers of liability, with the limited exception of their application to anti-discrimination claims
- (S)** Martinez v. Newsom, 46 F.4th 865, 81 IDELR ¶ 181 (9th Cir. 2021); Brach v. Newsom, 38 F.4th 6, 81 IDELR ¶ 62 (9th Cir. 2022) (mootness – dramatically changed conditions)
- rejected IDEA, § 504, and 14th Amendment challenges to statewide COVID-19 change to distance learning due to lack of exhaustion – narrow scope of "systemic" exception
- S** K.M. v. Adams, 81 IDELR ¶ 214 (2d Cir. 2022)
- affirmed dismissal of nation-wide class action kitchen-sink challenge to COVID-19 distance learning against other defendants on grounds of jurisdiction/mootness and against NYC defendant on grounds of lack of exhaustion

³ For the latest treatment, see Perry A. Zirkel, "Compensatory Education under the IDEA: The Next Annotated Update of the Law," West's Education Law Reporter, 2020, v. 376, pp. 850–863. For the difference between the quantitative and qualitative approaches, see, e.g., Perry A. Zirkel, "The Two Competing Approaching for Calculating Compensatory Education under the IDEA: An Update," West's Education Law Reporter, 2017, v. 339, pp. 10–22 (available at perry.zirkel.com).

⁴ For a useful checklist of IHO analysis of IEEs at public expense, see Perry A. Zirkel, "Independent Educational Evaluation Reimbursement: The Latest Update," West's Education Law Reporter, 2022, v. 402, pp. 23–40 (available at perry.zirkel.com).

- S** Luo v. Owen J. Roberts Sch. Dist., 81 IDELR ¶ 272 (3d Cir. 2022)
- upheld ruling that money damages are not available under the IDEA via § 1983 regardless of whether the claim is based on the IDEA legislation or its regulations, while also finding no basis for the pro se parent’s abuse of process and civil conspiracy (which both included the district’s attorneys) and warning him about sanctions for any further inappropriate language in his pleadings
- S** Special Educ. Complaint 22-027C, __ N.W.2d __, 82 IDELR ¶ 11 (Minn. Ct. App. 2022)⁵
- reversed state complaint decision that interpreted the requirement for districts to “provide” all their eligible students with special education and related services as meaning to “receive” these services, ruling instead the district fulfilled its obligation by making FAPE available after the **COVID-19** closure upon parents refusal to send their child back to school upon resumption of in-person instruction with a mask and their refusal of the various district proposals for instruction in the home
- S** Hernandez v. Grisham, 82 IDELR ¶ __ (10th Cir. 2022)
- affirmed dismissal of plaintiffs’ IDEA claim (as well as their constitutional challenges to state’s **COVID-19** distance learning) based on “woefully inadequate briefing,” thus declining to address not only mootness but also the merits (including the district court’s conclusions that the that remote instruction violated Andrew F. for the only plaintiff-child with a disability, said approach did not violate LRE, and the OSEP/OSERS guidance was not entitled to deference)

N.B. On October 3, 2022, the Supreme Court granted certiorari to review the scope of exhaustion in a § 504/ADA claim for money damages for a student with an IEP (Perez v. Sturgis Pub. Schs.).

IX. SECTION 504/ADA ISSUES

- (P)** R.K. v. Lee, 568 F. Supp. 3d 895, 80 IDELR ¶ 43 (M.D. Tenn. 2021); G.S. v. Lee, 558 F. Supp. 3d 601, 79 IDELR ¶ 159 (W.D. Tenn. 2021)⁶
- granted TRO under § 504/ADA for students with disabilities against governor’s executive order requiring parental opt-out for any school district masking mandate during **COVID-19**
- S** Reinoehl v. St. Joseph Cnty. Health Dep’t, 181 N.E.3d 341, 80 IDELR ¶ 51 (Ind. Ct. App. 2021)
- dismissed § 504/ADA challenge to order to switch back to partial remote instruction due to **COVID-19** on behalf of two children with 504 plans – failure to show intentional discrimination and lack of reasonable accommodation

⁵ In their separate multi-pronged pro se suit for money damages, the federal district court issued a dismissal based on threshold adjudicative grounds, including failure to timely appeal this IDEA ruling. Skaro v. Waconia Pub. Schs., 82 IDELR ¶ __ (D. Minn. 2022).

⁶ These cases ended with dismissal based on lack of standing (R.K. v. Lee, __ F.4th __ (6th Cir. 2022)) and mootness (G.S. v. Lee, 81 IDELR ¶ 49 (W.D. Tenn. 2022)).

- (P) ARC of Iowa v. Reynolds, 24 F.4th 1162, 80 IDELR ¶ 91 (8th Cir. 2022), vacated as moot, 33 F.4th 1042 (8th Cir. 2022)
- modifying preliminary injunction, based on § 504/ADA, against governor’s order prohibiting school districts from mandating masks during COVID-19, limiting the relief to the schools and districts attended by the plaintiff students – vacated due to dramatically changed conditions
- S Disability Rights S.C. v. McMaster, 24 F.4th 893, 80 IDELR ¶ 92 (4th Cir. 2022)
- vacating preliminary injunction, based on § 504/ADA, against governor’s order prohibiting school districts from mandating masks during COVID-19 – lack of standing (including conclusion that order allows for district exceptions)
- P M.F. v. N.Y.C. Dep’t of Educ., 582 F. Supp. 3d 49, 80 IDELR ¶ 96 (S.D.N.Y. 2022)
- ruled that school district’s limited provisions for medication to students with diabetes on field trips and school buses were insufficient to qualify as a reasonable accommodation under § 504/ADA
- (P/S) Doe 1 v. Upper Saint Clair Sch. Dist., 581 F. Supp. 3d 711, 80 IDELR ¶ 104 (W.D. Pa. 2022); Doe v. N. Allegheny Sch. Dist., 580 F. Supp. 3d 140, 81 IDELR ¶ 79 (W.D. Pa. 2022), vacated as moot, 2022 WL 2951467 (3d Cir. Mar. 9, 2022)
- denied preliminary injunction for § 504/ADA challenge to school district change from universal to optional masking during COVID-19 – alternative grounds of standing (lack of concrete risk due to alternative mitigation measures), exhaustion (Fry criteria), and unreasonable accommodation (as compared to available alternatives)
- (P) Doe 1 v. Perkiomen Valley Sch. Dist., 585 F. Supp. 3d 668, 80 IDELR ¶ 182 (E.D. Pa. 2022)⁷
- granted preliminary injunction for § 504/ADA challenge to school district change from universal to optional masking during COVID-19 – exception from exhaustion and requested reinstatement of universal masking is reasonable accommodation
- S Goe v. Zucker, 43 F.4th 19, 81 IDELR ¶ 122 (2d Cir. 2022)
- affirmed § 504 (and 14th Amendment) challenge to tightened medical exemption for vaccine mandates generally – lack of causal element (“solely by reason of disability”)
- S E.T. v. Paxton, 41 F.4th 709, 81 IDELR ¶ 126 (5th Cir. 2022)
- vacated lower court’s preliminary injunction, based on § 504/ADA, against governor’s ban of district mask mandates during COVID-19 – students’ alleged increased risk of suffering complications from contracting COVID-19 was not an injury in fact that could support Article III standing

⁷ The court subsequently dissolved the preliminary injunction based on updated CDC guidance. Doe 1 v. Perkiomen Valley Sch. Dist., 80 IDELR ¶ 182 (E.D. Pa. 2022).

- S** D.M. v. Or. Scholastic Activities Ass’n, ___ F. Supp. 3d ___, 81 IDELR ¶ 215 (D. Or. 2022)
- denied TRO to student with 504 plan who sought exemption from interscholastic athletic organization’s 8-semester rule that included an express disability exemption for students with IDEA IEPs

Glossary of Acronyms and Abbreviations

ABA	applied behavior analysis
ADA	Americans with Disabilities Act
ADHD	attention deficit hyperactivity disorder
ALJ	administrative law judge
AT	assistive technology
BIP	behavior intervention plan
ED	emotional disturbance
ESY	extended school year
FAPE	free appropriate public education
ID	intellectual disabilities
IDEA	Individuals with Disabilities Education Act
IEE	independent educational evaluation
IEP	individualized education program
IHO	impartial hearing officer
LRE	least restrictive environment
OHI	other health impairment
RTI	response to intervention
§ 504	Section 504 of the Rehabilitation Act
SLD	specific learning disability
<u>supra</u>	cross reference to earlier, full citation
TRO	temporary restraining order

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