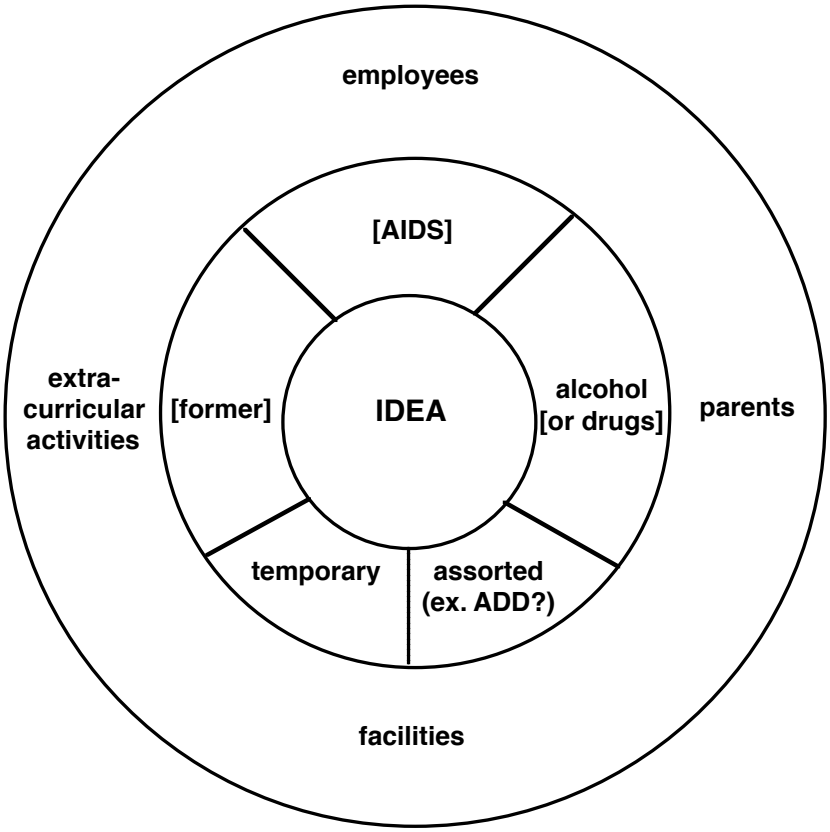
YEAR OR TWO IN REVIEW: NATIONAL UPDATE OF CASE LAW UNDER THE IDEA AND § 504/ADA[1]

Perry A. Zirkel
University Professor of Education and Law
Lehigh University
111 Research Drive
Bethlehem, PA 18015
(tel. 610/758-3239)
perry.zirkel@lehigh.edu



PRESENTATION FOR NEW YORK IHO WEBINAR – JANUARY 2013

- ***P*** = Parent won; ***S*** = School district won; **( )** = Inconclusive
- Court decisions or component concepts for initial discussion are highlighted in yellow.
- U.S. Supreme Court, Second Circuit, and New York decisions are in **bold** typeface.
- Decisions for special attention are designated with grey and, in particular, aqua shading.

[1]A long version of the Zirkel National Update dating back to 1998 is available as a free download at www.nasdse.org (in the "Publications" section). The version specific to Second Circuit and New York decisions since 1995 is available on the IHO website. The coverage in all three of these documents is limited to officially published decisions (and those in the Federal Appendix).

I. IDENTIFICATION

P Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024, 56 IDELR ¶ 2 (8th Cir. 2011)
- ruled that student with ADHD and bipolar disorder was eligible as OHI and ED with adverse effect on educational performance based in part on child's failing standardized test required for promotion

S **W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142, 56 IDELR ¶ 230 (S.D.N.Y. 2011)**
- ruled that the child was not eligible as ED because his academic downturn was due to social maladjustment, including conduct disorder and truancy [tuition reimbursement case]

S **P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516, 56 IDELR ¶ 252 (E.D.N.Y. 2011)**
- ruled that the child did not qualify as ED (and alternatively that the parents' unilateral placement was not appropriate) [tuition reimbursement case]

P G.D v. Wissahickon Sch. Dist., 832 F. Supp. 2d 455, 56 IDELR ¶ 294 (E.D. Pa. 2011)
- ruled that fatally skewed initial eligibility evaluation of child with ADHD who belatedly received an IEP amounted to denial of FAPE, entitling student to compensatory education

(*P*) E.M. v. Pajaro Valley Unified Sch. Dist., 652 F.3d 999, 57 IDELR ¶ 1 (9th Cir. 2011)
- remanded to determine whether bilingual child was eligible, based on IEE,[2] as SLD and whether the child's auditory processing disorder qualified him as OHI[3]

(*P*) Michael P. v. Dep't of Educ., State of Hawaii, 656 F.3d 1057, 57 IDELR ¶ 123 (9th Cir. 2011)
- after ruling that requiring exclusive reliance on the severe discrepancy model of identifying SLD violated the IDEA, remanded to determine whether student was eligible as SLD and, if so, whether the private tutoring and placement were appropriate so as to entitle the parents to reimbursement

S H.M. v. Haddon Heights Bd. of Educ., 822 F. Supp. 2d 489, 57 IDELR ¶ 186 (D.N.J. 2011)
- ruled that student identified as SLD in basic reading and math computation but declassified upon the triennial reevaluation was not eligible—based on larger picture, including teacher observations and other testing—as SLD in overall reading fluency despite tested weakness in oral reading fluency

S C.M. v. Dep't of Educ., State of Hawaii, 476 F. App'x 674, 58 IDELR ¶ 151 (9th Cir. 2012)
- ruled that student with ADHD and CAPD was not eligible as SLD or OHI

S D.G. v. Flour Bluff Indep. Sch. Dist., 481 F. App'x 887, 59 IDELR ¶ 2 (5th Cir. 2012)
- vacated lower court ruling of child find violation (with compensatory education and attorneys' fees) where the student was not eligible for special education

---

[2] This additional evidence arose after the IHO's decision, here causing a remand to the trial court for consideration. For a similar situation in a FAPE case that resulted in a remand to the IHO, see Taylor v. Dist. of Columbia, 700 F. Supp. 2d 105, 56 IDELR ¶ 128 (D.D.C. 2011).

[3] In an unpublished decision upon remand, the court concluded that the child was not eligible as SLD or OHI. E.M. v. Pajaro Valley Unified Sch. Dist., 58 IDELR ¶ 187 (E.D. Cal. 2012).

S D.K. v. Abington. Sch. Dist., 696 F.3d 233, 59 IDELR ¶ 271 (3d Cir. 2012)
- rejected parent's child find and inappropriate evaluation claims for elementary school child with ADHD (and both auditory processing and sensory stimulation diagnoses) who was ultimately, upon a second evaluation, determined to be eligible as OHI [compensatory education case]

P Lauren G. v. W. Chester Area Sch. Dist., __ F. Supp. 2d __, 60 IDELR ¶ 4 (E.D. Pa. 2012)
- upheld parents' child find claim under IDEA (and § 504), concluding that the student's psychiatric hospitalizations and failing grades provided reason to suspect disability, and determined that the child was eligible as ED (rejecting the district's claim that the duration had not been a long period)

II. APPROPRIATE EDUCATION (INCLUDING ESY)[4]

S **E.Z.-L. v. New York City Dep't of Educ., 763 F. Supp. 2d 584, 56 IDELR ¶ 10 (S.D.N.Y. 2011)**[5]
- upheld appropriateness of district's proposed IEP, including placement (which is not "bricks and mortar"), of child with autism, both procedurally (specifically, parental participation and FBA-BIP) and substantively (specifically, omission of parent training/counseling and transition plan, contrary to state law requirement, was not fatal where the district provided such services as needed) [tuition reimbursement case]

S R.P. v. Prescott Unified Sch. Dist., 631 F.3d 1117, 56 IDELR ¶ 31 (9th Cir. 2011)
- rejected claims of parent of child with autism that IEP team lacked autism expert (not required), IEP was cut-and-paste from previous year's with increase (meaningful changes), methods were not PRR (district discretion + parents' expert), goals were subjective (objectively measureable), and child did not make meaningful progress (slow and scattered but significant)

S R.R. v. Manheim Twp. Sch. Dist., 412 F. App'x 544, 56 IDELR ¶ 63 (3d Cir. 2011)
- upheld procedural and substantive appropriateness of IEP for middle school student with SLD and SLI, rejecting parent's principal claim on appeal that the district failed to provide timely comprehensive language evaluation—no proof that it was needed [tuition reimbursement case]

---

[4] 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.

As a separate matter, this category overlaps with the Tuition Reimbursement section. Decisions at the first, appropriateness step are listed in this section with a bracketed cross-reference. Decisions beyond this step are listed in the Tuition Reimbursement section, with "supra" (i.e., above) as the cross-reference for cases that have rulings in both sections. As a result, these two categories separately represent skewed outcome distributions in favor and against districts, respectively.

[5] The Second Circuit affirmed this decision upon consolidating it with two other cases. See R.E. v. New York City Dep't of Educ. (infra).

S J.J. v. Dist. of Columbia, 768 F. Supp. 2d 214, 56 IDELR ¶ 93 (D.D.C. 2011)
- ruled that district's failure to timely convene multi-disciplinary team eligibility meeting did not constitute a denial of FAPE where the behavior of the parent and the parent's counsel caused much of the delay

S James M. v. State of Hawaii Dep't of Educ., 803 F. Supp. 2d 1150, 56 IDELR ¶ 100 (D. Hawaii 2011)
- ruled that district provided reasonable participation measures for parent who did not attend IEP meeting and that the IEP for the child with dysarthia and hypotonia met the substantive standard for FAPE [tuition reimbursement case]

P/S Long v. Dist. of Columbia, 780 F. Supp. 2d 49, 56 IDELR ¶ 122 (D.D.C. 2011)
- upheld appropriateness of IEP and placement but ruled that district earlier denied FAPE by not providing comprehensive evaluation for three years after being put on notice of an IEE that concluded that child was SLD and also needed FBA-BIP—remanded to hearing officer for determination of compensatory education under qualitative approach

P Wilson v. Dist. of Columbia, 745 F. Supp. 2d 700, 56 IDELR ¶ 125 (D.D.C. 2011)
- ruled that district denied FAPE by not having transportation ready for eligible student until three weeks after a four-week ESY program

S E.J. v. San Carlos Elementary Sch. Dist., 803 F. Supp. 2d 1024, 56 IDELR ¶ 159 (N.D. Cal. 2011)
- rejected child-find claim and upheld appropriateness of non-static IEP for child with Asperger syndrome and anxiety disorder

P Sumter Cnty. Sch. Dist. v. Heffernan, 642 F.3d 478, 56 IDELR ¶ 186 (4th Cir. 2011)
- held that the child's gains and district's rectifying measures were insufficient to avoid the denial of FAPE from the district's failure to implement a material portion of the IEP of a child with autism, which was the 15 hours/week of ABA therapy, and that the parent's unilateral home placement was appropriate (with LRE not applying) [tuition reimbursement case]

S S.M. v. State of Hawaii Dep't of Educ., 808 F. Supp. 2d 1269, 56 IDELR ¶ 193 (D. Hawaii 2011)
- ruling that IEP for student with autism did not have to specify the qualifications of the service provider or the methodology and that the subsequent changes, including adding a transition plan and autism consultant teacher services, did not render the original version defective because they promptly resulted from information that the parent disclosed only belatedly [tuition reimbursement case]

S Brad K. v. Bd. of Educ., 787 F. Supp. 2d 734, 56 IDELR ¶ 197 (N.D. Ill. 2011)
- upheld procedural and substantive appropriateness of proposed mainstreamed IEP for kindergarten child with developmental disabilities, including ruling the IEP requirement to specify "location" does not necessitate the specific school site [tuition reimbursement case]

S Mahoney v. Carlsbad Unified Sch. Dist., 430 F. App'x 562, 56 IDELR ¶ 217 (9th Cir. 2011)
- rejected various alleged procedural claims as either not violations (e.g., SLI therapist as IEP member who "actually taught" student) or harmless (e.g., not providing parent with initial draft of IEP goals)

P B.H. v. W. Clermont Bd. of Educ., 788 F. Supp. 2d 682, 56 IDELR ¶ 226 (S.D. Ohio 2011)
- ruled that district denied FAPE to child with multiple disabilities, including autism, via 1) failing to consider IEEs for SLT and OT (pre-determination, thus violating parent's right of meaningful participation, 2) failing to provide these needed services, and 3) providing ineffective (including punitive and lack of PRR) behavioral services

(P) **T.K. v. New York City Dep't of Educ., 779 F. Supp. 2d 289, 56 IDELR ¶ 228 (S.D.N.Y. 2011)**
- rejected parents' pre-determination claim but remanded the case for further proceedings on their bullying claim, ruling that "under IDEA the question to be asked is whether school personnel was deliberately indifferent to, or failed to take reasonable steps to prevent bullying that substantially restricted a child with learning disabilities[6] in her educational opportunities" [tuition reimbursement case]

P **Bd. of Educ. v. Schaefer, 923 N.Y.S.2d 579, 56 IDELR ¶ 234 (App. Div. 2011)**
- upheld denial of FAPE based on district significantly impeding parents' opportunity to participate in IEP meetings

(*S*) Lorenzen v. Montgomery Cnty. Bd. of Educ., 403 F. App'x 832, 56 IDELR ¶ 245 (4th Cir. 2011)
- vacated and remanded summary judgment, which had been in favor of the parents, concluding that there was a genuine issue of material fact as to whether the school board had changed the recommended placement of child with autism based on the child's individual needs [tuition reimbursement case]

S Fort Osage R-1 Sch. Dist. v. Sims, 641 F.3d 996, 56 IDELR ¶ 282 (8th Cir. 2011)
- ruled that district's failure to diagnose the child's autism did not amount to a denial of FAPE where the district's IEP met the substantive standard for FAPE, including addressing his unique needs, and the parents failed to prove their pre-determination claim [tuition reimbursement case]

P New Milford Bd. of Educ. v. C.R., 431 F. App'x 157, 56 IDELR ¶ 283 (3d Cir. 2011)
- upheld ruling that district's private school program for child with autism did not provide for a meaningful benefit because he additionally required an after-school ABA program [tuition reimbursement case]

(*P*) Swope v. Cent. York Sch. Dist., 796 F. Supp 2d 592, 56 IDELR ¶ 286 (M.D. Pa. 2011)
- denied dismissal of parents' denial of FAPE claim on behalf of eleventh-grader on IEP who left district two years earlier, pending factual determination of when parent "knew or should have known" of the alleged violations

[6] In this case, the IEP team had reclassified the child from autism to SLD.

S **C.T. v. Croton-Harmon Union Free Sch. Dist., 812 F. Supp. 2d 420, 57 IDELR ¶ 37 (S.D.N.Y. 2011)**
- ruled that 1) absence of private school special ed representatives on the IEP team and lack of an FBA were not prejudicial, 2) the mainstreamed IEP met the Rowley substantive standard, and 3) the student, classified as ED, no longer needed the residential placement [tuition reimbursement case]

S K.E. v. Indep. Sch. Dist. No. 15, 647 F.3d 795, 57 IDELR ¶ 61 (8th Cir. 2011)
- upheld, in a 2-to-1 decision substantive appropriateness of IEP for student with OHI (ADHD + personality disorder) and rejected challenges that 1) district failed to consider private evaluations (including partial incorporation), 2) denied parent opportunity for meaningful participation (where parent truncated it), and 3) various alleged procedural IEP deficiencies (in light of child's progress, including cohesive BIP)

S **A.L. v. New York City Dep't of Educ., 812 F. Supp. 2d 492, 57 IDELR ¶ 69 (E.D.N.Y. 2011)**
- rejected parent's various procedural and substantive claims of denial of FAPE for student with autism, including parental participation, FBA-BIP, and transition plan [tuition reimbursement case]

S Tindell v. Evansville-Vanderburgh Sch. Corp., 805 F. Supp. 2d 630, 57 IDELR ¶ 71 (S.D. Ind. 2011)
- lack of timely transition plan was not a denial of FAPE where the student received appropriate transition (in his residential placement)

S K.C. v. Nazareth Area Sch. Dist., 806 F. Supp. 2d 806, 57 IDELR ¶ 92 (E.D. Pa. 2011)
- upheld both the appropriateness of the postsecondary transition services and other IEP services for 20-year-old student with multiple disabilities and the hearing officer's attribution of delay in receipt of IEP services to the parents' conduct

P K.I. v. Montgomery Pub. Sch., 805 F. Supp. 2d 1283, 57 IDELR ¶ 93 (M.D. Ala. 2011)
- rejected proposed IEP and placement of student with rare and severe muscular condition due to failure to evaluate her cognitive functioning and her ability to use assistive technology

S Park Hill Sch. Dist. v. Dass, 655 F.3d 752, 57 IDELR ¶ 121 (8th Cir. 2011)
- ruled that the respective IEPs for twins with autism were substantively appropriate despite the absence of BIP and transition plan [tuition reimbursement case]

S **B.O. v. Cold Spring Harbor Cent. Sch. Dist., 807 F. Supp. 2d 130, 57 IDELR ¶ 130 (E.D.N.Y. 2011)**
- upheld procedural and substantive appropriateness of district's proposed IEP for student with SLD, cautioning the IHO that the deference to school authorities that Rowley prescribes only applies at the court level [tuition reimbursement case]

S Rodrigues v. Fort Lee Bd. of Educ., 458 F. App'x 124, 57 IDELR ¶ 152 (3d Cir. 2011)
- rejected procedural violations—lack of measurable objectives and "imperfect" transition plan—as not resulting in loss of educational opportunity

P Moorestown Twp. Bd. of Educ. v. S.D., 811 F. Supp. 2d 1057, 57 IDELR ¶ 158 (D.N.J. 2011); see also I.H. v. Cumberland Valley Sch. Dist., 842 F. Supp. 2d 762, 58 IDELR ¶ 94 (M.D. Pa. 2012) (student enrolled in cyber charter school)
- ruled that district of residence's refusal, upon the parents' request, to evaluate and offer IEP to student that it knew had a disability based on his enrollment in an out-of-district private school was a denial of FAPE

(*S*) Poway Unified Sch. Dist. v. Cheng, 821 F. Supp. 2d 1197, 57 IDELR ¶ 189 (S.D. Cal. 2011)
- remanded IHO's decision that had applied a "potential-maximizing" rather than "some benefit," substantive standard for FAPE in requiring parents' chosen transcription service rather than the IEP's specified transcription service for student with hearing impairment

S D.R. v. Dep't of Educ., Hawaii, 827 F. Supp. 2d 1161, 57 IDELR ¶ 217 (D. Hawaii 2011)
- rejected claim that lack of evaluation for auditory processing disorder, submucous cleft palate and behavior for student with SLI rendered her proposed IEP inappropriate where there was no reason to suspect these issues [tuition reimbursement case]

S C.H. v. Nw. Indep. Sch. Dist., 815 F. Supp. 2d 977, 57 IDELR ¶ 225 (E.D. Tex. 2011)
- discontinuation of dyslexia services (under state law) did not deny FAPE where district provided replacement services and child made reasonable progress in reading

S J.E. v. Boyertown Area Sch. Dist., 452 F. App'x 172, 57 IDELR ¶ 273 (3d Cir. 2011)
- ruled that the proposed, 51-page IEP for an in-district placement for the student with Asperger Disorder and SLD was substantively appropriate, rejecting the parents' arguments that the return from the private placement did not sufficiently consider the risk of bullying and the sensitivity to loud noise [tuition reimbursement case]

S G.S. v. Cranbury Twp. Bd. of Educ., 450 F. App'x 197, 57 IDELR ¶ 274 (3d Cir. 2011)
- rejected parents' various pro se challenges—including PRR (deferring to hearing officer's determination their expert and IEE were not persuasive)—to substantive appropriateness of district's proposed IEP for high school student with PDD and other disabilities [tuition reimbursement case]

S K.D. v. Dep't of Educ., State of Hawaii, 665 F.3d 1110, 58 IDELR ¶ 2 (9th Cir. 2011)[7]
- upheld appropriateness of proposed IEP for child with autism, rejecting procedural challenges (specifically, pre-determination and holding IEP meetings, after repeated attempts, without parents present) and substantive challenges (e.g., goals, assessment, and—school rather than classroom—"actual placement") [tuition reimbursement case]

P **J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635, 58 IDELR ¶ 16 (S.D.N.Y. 2011)**
- ruled, inter alia, that the district's proposed placement was not appropriate even though the parties agreed that the IEP was appropriate [tuition reimbursement case]

[7] In an unpublished decision, the Ninth Circuit subsequently vacated this ruling as moot in light of Hawaii's change in state law. N.D. State of Hawaii Dep't of Educ., 58 IDELR ¶ 121 (9th Cir. 2012).

P/S Madeline P. v. Anchorage Sch. Dist., 265 P.3d 308, 58 IDELR ¶ 17 (Alaska 2011)
- ruled that district's failure to provide written prior notice before 1) temporary move in location of writing instruction for child with SLD from regular to resource room and 2) amending the IEP as to the location of the writing instruction, where parent knew about these changes and where the child continued to progress, did not result in loss of educational opportunity for parental participation, but failure to follow the IEP between the return of the teacher from leave (which was the justification for the temporary move) and the amendment of the IEP was a material failure, not minor discrepancy (citing Van Duyn), thus entitling the child to 15 hours of compensatory education

(*S*) Dep't of Educ., State of Hawaii v. M.F., 840 F. Supp. 2d 1215, 58 IDELR ¶ 34 (D. Hawaii 2011)[8]
- ruled that district had continuing obligation to propose offer of FAPE for child with multiple disabilities during unilateral placement after parents provided only oral notice and district did not provide them with procedural safeguards notice, but that this procedural violation was not a denial of FAPE unless it resulted in loss of educational benefit or parental opportunity [tuition reimbursement and compensatory education case]

S J.K. v. Council Rock Sch. Dist., 833 F. Supp. 2d 436, 58 IDELR ¶ 43 (E.D. Pa. 2011)
- ruled that IEP for return of student with SLD from private school to public middle or high school was appropriate [tuition reimbursement case]

S G.J. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 58 IDELR ¶ 61 (11th Cir. 2012)
- upheld the district court's ruling, which was that parents' extensive conditions to their consent for reevaluation of their child with autism and brain injuries amounted to a refusal, and its remedy, which was an order for a reevaluation with specified reasonable conditions—also found that parents failed to prove that the other procedural violations, beyond those intertwined with the parents' rejected reevaluation claim, impacted the substantive side of the child's FAPE

S Ruffin v. Houston Indep. Sch. Dist., 459 F. App'x 358, 58 IDELR ¶ 63 (5th Cir. 2012)
- rejected alleged procedural violations as unproven and upheld substantive appropriateness of IEP for student with ED in self-contained class for all but approx. 7 hours per week based on Cypress-Fairbanks four-factor test ("1. the program is individualized on the basis of the student's assessment and performance; 2. the program is administered in the [LRE]; 3. the services are provided in a coordinated and collaborative manner by the key 'stakeholders'; and 4. positive academic and non-academic benefits are demonstrated")

S **B.P. v. New York City Dep't of Educ., 841 F. Supp. 2d 605, 58 IDELR ¶ 74 (E.D.N.Y. 2012)**
- upheld procedural and substantive appropriateness of IEP for student with SLD [tuition reimbursement case]

[8] In an unpublished decision, the Third Circuit recently ruled that a district does not have a continuing obligation to conduct a triennial reevaluation and offer a new IEP to a unilaterally placed student in the absence of the parent's initiating action. See D.P. v. Council Rock Sch. Dist. (infra).

S M.B. v. Hamilton Se. Sch., 668 F.3d 851, 58 IDELR ¶ 92 (7th Cir. 2011)
- upheld rejection of parents' child find and FAPE claim with regard to district's evaluation and proposed IEP, which provided half-day kindergarten and ESY services for a young child with TBI, concluding that the alleged procedural violations were either unproven (e.g., predetermination) or harmless (e.g., absence of kindergarten teacher at the IEP team meeting) and that—based on the snapshot approach—the IEP was "likely to produce progress, not regression or trivial educational advancement"

P/S T.G. v. Midland Sch. Dist., 848 F. Supp. 2d 902, 58 IDELR ¶ 104 (C.D. Ill. 2012)
- upheld substantive and procedural formulation and the implementation of the IEP for grades 7-9 except for reading/writing and vocational components in grade 9 [compensatory education case]

S Savoy v. Dist. of Columbia, 844 F. Supp. 2d 23, 58 IDELR ¶ 129 (D.D.C. 2012)
- upheld hearing officer's rulings that 1) the district need not consider private placements when it has an appropriate public placement, 2) district's provision of the specified services and structure were not a substantial departure from IEP's specification of separate school, and 3) its provision of 27.6 rather than the specified 28.5 hours did not meet the prevailing "substantial or significant" standard for failure-to-implement claims

S Nalu Y. v. Dep't of Educ., State of Hawaii, 858 F. Supp. 2d 1127, 58 IDELR ¶ 154 (D.D.C. 2012)
- upheld district's rejection of autism classification for elementary student with SLI/OHI who was afraid of school and the PELs and goals of his IEP

S Smith v. Dist. of Columbia, 846 F. Supp. 2d 197, 58 IDELR ¶ 155 (D.D.C. 2012)
- upheld hearing officer's ruling that the district met the substantive "floor of opportunity" standard for FAPE based on concrete progress according to testing and teacher (when measured against the child's potential for growth (though generally well less than a year) and extensive although not optimal services—thus, failure to provide laptop and software at home was not denial of FAPE in this case

S G.D. v. Torrance Unified Sch. Dist., 857 F. Supp. 2d 953, 58 IDELR ¶ 156 (C.D. Cal. 2012)
- ruled that IEP that did not have separate behavioral goals/services and that discontinued five weekly hours of home-based behavior services for student with autism met the substantive standard for FAPE

S D.B. v. Esposito, 675 F.3d 26, 58 IDELR ¶ 181 (1st Cir. 2012)
- upheld appropriateness of child with multiple disabilities, concluding that the meaningful benefit standard may be applied w/o a determination of the child's potential where this determination is infeasible (e.g., due to severely impaired capacity for communication)

S J.W. v. Governing Bd. of E. Whittier City Sch. Dist., 473 F. App'x 531, 58 IDELR ¶ 211 (9th Cir. 2012)
- upheld substantive appropriateness of the IEP and the IHO's determination that special ed director's brief conversation with speech provider for minor revision of one of the IEP goals was not procedural violation that deprived parents of meaningful opportunity for participation

S M.D. v. Hawaii Dep't of Educ., 864 F. Supp. 2d 993, 58 IDELR ¶ 221 (D. Hawaii 2012)
- upheld substantive appropriateness (including implementation) and procedural appropriateness (parent participation) of district's proposed IEP for fourth-grade child with autism [tuition reimbursement case]

S D.P. v. Council Rock Sch. Dist., 482 F. App'x 669, 58 IDELR ¶ 243 (3d Cir. 2012)
- upheld determination that the IEP for a student with autism was appropriate for the second half of the 2008-09 school year (with the appropriateness of the first half of the year unchallenged upon appeal), ruling that district was not obligated to update the IEP based on events in December 2008 [tuition reimbursement case]

S Ridley Sch. Dist. v. M.R., 680 F.3d 260, 58 IDELR ¶ 271 (3d Cir. 2012)
- rejected child find claim, concluding that district should have "reasonable time" to reevaluate the student in grade 1 after evaluation determined that she was ineligible at the end of kindergarten and upheld the IEP, after the district's reevaluation determined that the child was eligible as SLD—procedural violations (e.g., absence of statement of special education in the IEP) are not actionable in the absence of resulting educational loss, and the standard for PRR is reasonable, not optimal [compensatory education and tuition reimbursement]

S Stamps v. Gwinnett Cnty. Sch. Dist, 481 F. App'x 470, 59 IDELR ¶ 1 (11th Cir. 2012), cert. denied, 133 S. Ct. 576 (2012)
- ruled that proposed in-school placement, rather than homebound instruction, for three siblings with genetic neurological disorders met substantive standard for FAPE in the LRE

S **M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 59 IDELR ¶ 36 (E.D.N.Y. 2012)**
- upheld procedural and substantive appropriateness of district's proposed IEP for nine-year-old with autism, ADHD, and Tourette syndrome [tuition reimbursement case]

S I.M. v. Northampton Pub. Sch., 869 F. Supp. 2d 174, 59 IDELR ¶ 38 (D. Mass. 2012)
- upheld placement of student with multiple disabilities in residential school for the blind

P Carrie I. v. Dep't of Educ., State of Hawaii, 869 F. Supp. 2d 1225, 59 IDELR ¶ 46 (D. Hawaii 2012)
- ruled that procedural violations, including failure to provide transition assessments and services for 18-year-old with autism, resulted in loss of educational opportunities

S Sebastian M. v. King Philip Reg'l Sch. Dist., 685 F.3d 79, 59 IDELR ¶ 61 (1st Cir. 2012)
- upheld appropriateness of district's program for student with multiple disabilities despite lack of transition plan in IEP where district provided transition planning, transition content in IEP and actual transition services [tuition reimbursement case]

P/S **E.S. v. Katonah-Lewisboro Sch. Dist., 742 F. Supp. 2d 417, 55 IDELR ¶ 130 (S.D.N.Y. 2010), aff'd, __ F. App'x __, 59 IDELR ¶ 63 (2d Cir. 2012)**
- upheld appropriateness of first, but not second, of two successive IEPs for student with schizoaffective disorder and borderline intellectual functioning, concluding that the second IEP did not sufficiently take into account the progress data from the first year of the child's unilateral placement [tuition reimbursement case]

P Woods v. Northport Pub. Sch., __ F. App'x __, 59 IDELR ¶ 64 (6th Cir. 2012)
- after a 32-day IHO proceedings with more than 7,000 pages of testimony concerning the IEPs in grades 1-3 for a child with autism and cerebral palsy, upheld the rulings that 1) the second-grade IEP amounted to a substantive denial of FAPE due to substantial lack of implementation plus lack of meaningful benefit in relation to child's potential; 2) the third-grade IEP represented procedural denial of meaningful parental participation due to a) failure to provide access to test protocols to parents' expert and b) development of goals/objectives outside of parents' presence plus substantive denial of FAPE due to reduction of services resulting in lack of meaningful benefit

S L.G. v. Fair Lawn Bd. of Educ., __ F. App'x __, 59 IDELR ¶ 65 (3d Cir. 2012)
- rejected parents' claim that meeting of district personnel without them prior to the IEP meeting constituted predetermination where they had opportunity for meaningful participation at the IEP meeting for preschool child with autism [tuition reimbursement case]

S S.H. v. Fairfax Cnty. Bd. of Educ., __ F. Supp. 2d __, 59 IDELR ¶ 73 (E.D. Va. 2012)
- ruled that increasingly intensive services student with SLD in grades 5-8 constituted FAPE in the LRE [tuition reimbursement case]

P Ravenswood City Sch. Dist. v. J.S., 870 F. Supp. 2d 780, 59 IDELR ¶ 77 (N.D. Cal. 2012)
- upheld with deference to her thorough and careful decision the IHO's ruling that the limitations period extended to three years due to misrepresentation and that the three years of IEPs were procedurally and substantively inappropriate

P Anchorage Sch. Dist. v. M.P., 689 F.3d 1047, 59 IDELR ¶ 91 (9th Cir. 2012)
- ruled that district failed to meet the substantive standard for FAPE for third grader with autism "by relying on an outdated IEP to measure [the child's] academic and functional performance and provide educational benefits to [the child]" and that the parents' active dissidence did not excuse the district from its affirmative obligation to provide FAPE

P D.B. v. Gloucester Twp. Sch. Dist., 751 F. Supp. 2d 764, 55 IDELR ¶ 224 (D.N.J. 2010), aff'd, __F. App'x__, 59 IDELR ¶ 92 (3d Cir. 2012)
- ruled that the district denied FAPE via pre-determination (i.e., arrived at "definitive conclusions on [the child's] placement without parental input, failed to incorporate any suggestions of the parents or discuss with the parents the prospective placements, and in some instances even failed to listen to the concerns of the parents"), thereby depriving the parents of an opportunity for meaningful participation in the IEP process (per se approach?)

S C.C. v. Fairfax Cnty. Bd. of Educ., __ F. Supp. 2d __, 59 IDELR ¶ 95 (E.D. Va. 2012)
- upheld district's proposed placement for student with multiple disabilities in small self-contained class for core academic classes met substantive standard for FAPE [tuition reimbursement case]

S Johnson v. Dist. of Columbia, 873 F. Supp. 2d 382, 59 IDELR ¶ 101 (D.D.C. 2012)
- ruled that failure to provide the student with ESY was not substantive denial of FAPE and parent's failure to participate in one of two IEP meetings for this determination was not a procedural denial of FAPE—plus not failure to implement material part of IEP

S Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390, 59 IDELR ¶ 121 (5th Cir. 2012)
- ruled that IEP for gifted child with ADHD and SLD in written expression met the substantive standard for FAPE despite particular NCLB and other standardized test results—Rowley benefit standard applies to educational benefit holistically, not specifically related to the child's disability [tuition reimbursement case]

S **E.W.K. v. Bd. of Educ., __ F. Supp. 2d __, 59 IDELR ¶ 166 (S.D.N.Y. 2012)**
- upheld substantive appropriateness of IEPs for middle-school student with SLD based on evidence of progress despite lack of specialized reading program, refusing to speculate on the impact of private tutoring in reading [tuition reimbursement case]

P/S S.H. v. Plano Indep Sch. Dist., __ F. App'x __, 59 IDELR ¶ 183 (5th Cir. 2012)
- ruled that IEP for child with autism met Rowley reasonably-calculated standard w/o actual progress and that procedural violation in terms of lack of general education teacher on IEP team did not result in educational loss, but concluded that parent was entitled to reimbursement for ESY based on reasonable expectation of regression that cannot be recouped within a reasonable period of time (per Texas regulations)

S Y.B. v. Bd. of Educ. of Prince George's Cnty., __ F. Supp. 2d __, 59 IDELR ¶ 222 (D. Md. 2012)
- ruled that IEP and proposed placement of high school student with ED was substantively appropriate [tuition reimbursement case]

P/S **R.E. v. New York City Dep't of Educ., 694 F.3d 167, 59 IDELR ¶ 241 (2d Cir. 2012)**
- adopting the snapshot approach but not strict four-corners rule and differentiating between serious (FBA) and minor (parent counseling) procedural violations based on state standards for FAPE analysis, reached mixed outcomes in three consolidated cases concerning students with autism (two for district and one in favor of the parent, including tuition reimbursement)

S S.A. v. Weast, __ F. Supp. 2d __, 59 IDELR ¶ 243 (D. Md. 2012)
- ruled, with high deference to IHO, that IEPs for student with SLD (dyslexia and ADHD) were procedurally and substantively appropriate [tuition reimbursement case]

***P*/(*S*)** Aaron P. v. State of Hawaii, Dep't of Educ., __ F. Supp. 2d __, 59 IDELR ¶ 256 (D. Hawaii 2012)
- ruled that first of two IEPs was not appropriate for child with autism but remanded the appropriateness of the second IEP's appropriateness (in terms of placement and implementation) for application of the proper standard

P Coventry Pub. Sch. v. Rachel J., __ F. Supp. 2d __, 59 IDELR ¶ 277 (D.R.I. 2012)
- ruled that IEP for student with emotional and learning disabilities was not substantively appropriate due to failure to address his behavioral needs [tuition reimbursement case]

(*P*)/*S* Nickerson-Reti v. Lexington Pub. Sch., __ F. Supp. 2d __, 59 IDELR ¶ 282 (D. Mass. 2012)
- upheld procedural and substantive appropriateness of district's private day-school placement of high school student with multiple disabilities but reversed dismissal with prejudice for failure to prosecute prior claims

S H.D. v. Cent. Bucks Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 275 (E.D. Pa. 2012)
- ruled that IEP that increased the behavioral aspect and that changed the child's placement from an itinerant learning support class in the neighborhood school to an itinerant emotional support class in another district school amounted to substantive FAPE in the LRE

S A.B. v. Franklin Twp. Cmty. Sch. Corp., __ F. Supp. 2d __, 59 IDELR ¶ 278 (S.D. Ind. 2012)
- ruled that other IEP team members' statements prior to the meeting that the child with autism could be educated satisfactorily in a district school did not amount to pre-determination [tuition reimbursement case]

S **T.M. v. Cornwall Cent. Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 286 (S.D.N.Y. 2012)**
- ruled that the absence of a FBA/BIP did not amount to denial of FAPE in this case and that the IEP's segregated ESY program for a child with autism mainstreamed during the school year was not a violation of the IDEA, because a district that does not operate a mainstream educational program during the summer months is not obligated to create one simply to satisfy the LRE requirements of the IDEA (citing the Third Circuit's decision in *T.R. v. Kingwood School District*) [tuition reimbursement case]

S Red Clay Consol. Sch. Dist. v. T.S., __ F. Supp. 2d __, 59 IDELR ¶ 287 (D. Del. 2012)
- ruled that actual progress is not the standard for FAPE under the snapshot approach and that the IEP for this seventh grader with multiple disabilities was FAPE in the LRE despite the IEP's lack of baseline historical data, an FBA/BIP, and full integration of his voice output device

S **R.C. v. Byram Hills Sch. Dist., __ F. Supp. 2d __, 60 IDELR ¶ 35 (S.D.N.Y. 2012)**
- upheld appropriateness of proposed consecutive one-year IEPs, which initially provided 8:1:1 for math and language arts, one period of resource room, and a 3:1 aide for general education in addition to various related services (48 goals total) and which during the second year increased the special ed class size to 12:1 and removed the aide, for 14-year-old student with SLD—no prejudicial procedural violations (e.g., lack of BIP and, in light of LRE preference, class size); failure to implement resource room in year one every sixth day and providing 45-minute rather than 60-minute resource room periods each was de minimis (i.e., not material failure); and substantively at the requisite non-ideal level [tuition reimbursement case]

P Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E., __ F.3d __, 60 IDELR ¶ __ (10th Cir. 2012)
- ruled that child with ED was entitled to reimbursement, at Step 2, for the residential placement under" straightforward application" of IDEA for accredited education facility plus mental health support as related services

III. RELATED SERVICES

S Petit v. U.S. Dep't of Educ., 675 F.3d 769, 58 IDELR ¶ 241 (D.C. Cir. 2012)
- upheld 2006 IDEA regulation that cochlear implant mapping is not a related service

IV. MAINSTREAMING/LRE

S Lebron v. N. Penn. Sch. Dist., 769 F. Supp. 2d 788, 56 IDELR ¶ 72 (E.D. Pa. 2011)
- rejected, in upholding the appropriateness of an IEP that provided regular kindergarten services for a child with autism plus supplemental services in an autistic support class at a different school, applicability of LRE because district did not remove the child from the general education program

S Barron v. S. Dakota Bd. of Regents, 655 F.3d 787, 57 IDELR ¶ 122 (8th Cir. 2011)
- rejected parents' claim that closing of the state school for the deaf violated FAPE and LRE, commenting that the "[t]he IDEA's integrated-classroom preference makes no exception for deaf students" and that "the state is not required to make available 'the best possible option'"

S L.G. v. Fair Lawn Bd. of Educ. (supra)
- upheld, via global application of Oberti that focused on substantive appropriateness (i.e., meaningful benefit), proposed continued placement of child with autism in specialized ASD preschool program, which included 1:1 ABA services for half of the time and limited reverse-inclusion component, in comparison to parents' unilateral placement of the child in an inclusive preschool [tuition reimbursement case]

V. DISCIPLINE ISSUES

(*S*) Jefferson Cnty. Bd. of Educ. v. S.B., 788 F. Supp. 2d 1347, 56 IDELR ¶ 300 (N.D. Ala. 2011)
- ruled, in context akin to a preliminary injunction, that the IDEA did not require district to treat student with a disability (who had been expelled for gun possession after a determination that this conduct was not a manifestation of his disability) differently from nondisabled students who were not allowed to 1) return to the same school for a semester after the expulsion and 2) participate in graduation ceremony

P Fisher v. Friendship Pub. Charter Sch., __ F. Supp. 2d __, 58 IDELR ¶ 287 (D.D.C. 2012)
- district violated IDEA by not providing FAPE, via an alternative placement, to a student with OHI (ADHD) expelled for use of marijuana that was not a manifestation of his disability

VI. ATTORNEYS' FEES

P Ector Cnty. Indep. Sch. Dist. v. VB, 420 F. App'x 338, 56 IDELR ¶ 151 (5th Cir. 2011)
- district court did not abuse its discretion in determining that parents' refusal to attend IEP meeting to resolve their complaint did not unduly protract the proceedings, thus not warranting reduction in their $39k attorneys' fees award

S McCrary v. Dist. of Columbia, 791 F. Supp. 2d 191, 56 IDELR ¶ 291 (D.D.C. 2011)
- prevailing status for an award of attorneys' fees (in the D.C. Circuit) requires not only an adjudicative change in the parties' legal relationship, but also adjudicative relief

P/S Bridges Pub. Charter Sch. v. Barrie, 796 F. Supp. 2d 39, 57 IDELR ¶ 3 (D.D.C. 2011); cf. Alief Indep. Sch. Dist. v. C.C., 655 F.3d 412, 57 IDELR ¶ 151 (5th Cir. 2011) (district's filing does not require dismissal)
- rare exception to continued reluctance of courts to grant district's attorneys' fees claim against parent's attorney based on frivolousness

(*P/S*) Walker v. Dist. of Columbia, 798 F. Supp. 2d 48, 57 IDELR ¶ 41 (D.D.C. 2011); see also M.R. v. Dist. of Columbia, 841 F. Supp. 2d 262, 58 IDELR ¶ 102 (D.D.C. 2012) (none for private settlement)
- private settlement does not, but IHO-approved settlement does, trigger attorney's fees

S Rooths v. Dist. of Columbia, 802 F. Supp. 2d 56 (D.D.C. 2011)
- substantially reduced attorneys' fees from requested amount for five attorneys, including approximately halving of their requested hourly rates (e.g., $557-$569 for attorney with 11 years of litigation experience)

(*P*) E.D. v. Newburyport Pub. Sch., 654 F.3d 140, 57 IDELR ¶ 91 (1st Cir. 2011)
- parents' move out of state after obtaining hearing officer's decision in favor of tuition reimbursement does not render their attorneys' fees claim moot

S Woods v. Northport Pub. Sch. (supra)
- upheld limiting award to pre-settlement hours amounting to $25k in attorneys' fees because although the parents were substantially justified in rejecting the settlement due to its failure to include attorneys' fees, the limitation was reasonable in light of the parents' limited success of the overly long and contentious administrative proceeding

P/S **J.G. v. Kiryas Joel Union Free Sch. Dist., 843 F. Supp. 2d 394, 59 IDELR ¶ 79 (S.D.N.Y. 2012)**
- ruled that parents, who sought tuition reimbursement and won on LRE issue at Step 1 but lost overall based on Step 2, were not prevailing party but that their motion for attorneys' fees was not frivolous; thus, neither party was entitled to attorneys' fees

P/S **E.S. v. Katonah-Lewisboro Sch. Dist., 796 F. Supp. 2d 421, 56 IDELR ¶ 231 (S.D.N.Y. 2010), aff'd, __ F. App'x __, 59 IDELR ¶ 63 (2d Cir. 2012)**
- reduced requested total from $289k to $157k based on unreasonable rates and unreasonable billing, but not for obtaining only one of two years of requested tuition reimbursement

S W.V. v. Encinitas Union Sch. Dist., __ F.R.D. __, 59 IDELR ¶ 289 (S.D. Cal. 2012)
- granted district's motion for Rule 11 sanctions of $2,500 against parent for pursuing IDEA case in bad faith (i.e., despite terms of the parties' settlement)

VII. REMEDIES

A. TUITION REIMBURSEMENT[9]

S Indianapolis Pub. Sch. v. M.B., 771 F. Supp. 2d 928, 56 IDELR ¶ 8 (S.D. Ind. 2011)
- denied tuition reimbursement where the unilateral private placement did not provide special education services although the child showed progress

P **E.Z.- v. L. v. New York City Dep't of Educ. (supra)**
- rejected defendant district's unjust enrichment counterclaim, upon tuition reimbursement decision in its favor, for recoupment of tuition paid during stay-put, "given that both binding and nonbinding case law is to the contrary"

S Covington v. Yuba City Unified Sch. Dist., 780 F. Supp. 2d 1014, 56 IDELR ¶ 37 (E.D. Cal. 2011)
- although ruled that district's IEP was not appropriate, denied tuition reimbursement on alternative grounds—inappropriateness of the parents' unilateral placement and their lack of timely notice

P **Mr. A. v. New York City Dep't of Educ., 769 F. Supp. 2d 403, 56 IDELR ¶ 42 (S.D.N.Y. 2011)**
- upheld tuition payment relief to parents who met the three-part test for reimbursement but had not paid the tuition due to inability to afford it

P C.B. v. Garden Grove Unified Sch. Dist., 635 F.3d 1155, 56 IDELR ¶ 121 (9th Cir. 2011), cert. denied, 132 S. Ct. 500 (2011)
- upheld, as equitable, full reimbursement for private program that met many, but not all of the educational needs of child with autism and ADHD

S Forest Grove v. T.A., 638 F.3d 1234, 56 IDELR ¶ 185 (9th Cir. 2011), cert. denied, 132 S. Ct. 1145 (2012)
- on remand from Supreme Court, denied tuition reimbursement based on the equities (lack of timely notice and, more significantly, reason for the unilateral placement)

S C.B. v. Special Sch. Dist. No 1, 636 F.3d 981, 56 IDELR ¶ 187 (8th Cir. 2011)
- LRE does not apply to unilateral parental placements in tuition reimbursement cases

S **J.G. v. Kiryas-Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 56 IDELR ¶ 200 (S.D.N.Y. 2011)**
- held that district's self-contained program was too restrictive for five-year-old with multiple disabilities but the unilateral placement at orthodox religious school was also inappropriate (e.g., staff training and curriculum)

[9] See, e.g., Perry A. Zirkel, Tuition and Related Reimbursement: A Decisional Checklist, 282 EDUC. L. REP. 785 (2012).

S **Davis v. Wappingers Cent. Sch. Dist., 772 F. Supp. 2d 500 (S.D.N.Y. 2011), aff'd, 431 F. App'x 12, 56 IDELR ¶ 248 (2d Cir. 2011);** cf. **R.S. v. Lakeland Cent. Sch. Dist., 471 F. App'x 77, 59 IDELR ¶ 32 (2d Cir. 2012)**
- denied tuition reimbursement because—although the district's proposed IEP was procedurally and substantively deficient—the private school program was not appropriate (based on lack of progress and, thus, not purely prospective evidence)

(*P*) A.G. v. Dist. of Columbia, 794 F. Supp. 2d 133, 57 IDELR ¶ 9 (D.D.C. 2011)
- ruled that IHO must allow the parent flexible opportunity to present costs for reimbursement

S **Weaver v. Millbrook Cent. Sch. Dist., 812 F. Supp. 2d 514, 57 IDELR ¶ 126 (S.D.N.Y. 2011)**
- upheld, with due deference, review officer's determination that parent's private placement was not appropriate

P/S **W.M. v. Lakeland Cent. Sch. Dist., 783 F. Supp. 2d 497, 57 IDELR ¶ 137 (S.D.N.Y. 2011)**
- granted partial tuition reimbursement based on balancing of the equities

P **P.K. v. New York City Dep't of Educ., 819 F. Supp. 2d 90, 57 IDELR ¶ 139 (E.D.N.Y. 2011)**
- upheld direct retroactive payment of tuition after finding that the proposed IEP for preschool child with autism lacked sufficient specially designed instruction (1:1 ABA) and related services (speech therapy and parent training per state regulation) and that the parent's unilateral placement was appropriate

P Moorestown Twp. Bd. of Educ. (supra)
- pro-rated tuition reimbursement as of the date the district knew it should have provided an IEP

P/S **J.S. v. Scarsdale Union Free Sch. Dist. (supra)**
- reduced tuition reimbursement by 75% based on detailed balancing of the equities, including parent's lack of timely notice (after ruling that the district's proposed placement was not, and parent's unilateral placement was, appropriate)

S G.R. v. Dallas Sch. Dist., 823 F. Supp. 2d 1120, 57 IDELR ¶ 223 (D. Or. 2011)
- denied tuition reimbursement where the unilateral residential placement was not (and the district's proposal was) appropriate

(*S*) Dep't of Educ., State of Hawaii v. M.F. (supra)
- remanded for determination of tuition reimbursement, if any, depending on the equities including lack of timely written notice and unreasonable or excessive costs

S M.B. v. Hamilton Se. Sch. (supra)
- concluded that parents' reliance on the general information and good reputation of the unilateral placement (Lindamood Bell Center) and the successful performance of the child upon moving to another district was insufficient to prove appropriateness at the second step of tuition reimbursement analysis

S N.T. v. Dist of Columbia, 839 F. Supp. 2d 29, 58 IDELR ¶ 69 (D.D.C. 2012)
- denied tuition reimbursement where district could provide an appropriate placement and the unilateral placement, in comparison, was not the LRE

S T.B. v. St. Joseph Sch. Dist., 677 F.3d 844, 58 IDELR ¶ 242 (8th Cir. 2012)
- denied tuition reimbursement where basis of parent's FAPE challenge was the district's failure to develop IEPs after the unilateral placement of the child with autism in a home-based program and, alternatively, their home-based program was not reasonably calculated to meet the child's educational needs (per department of mental health waiver that the program would not supplant district's special education services)

P Ka.D. v. Nest, 475 F. App'x 658, 58 IDELR ¶ 244 (9th Cir. 2012)
- upheld tuition reimbursement for child with autism, concluding that the district's placement in the general education class was a denial of FAPE in the LRE and that the unilateral placement in a private school was appropriate

P **M.H. v. New York City Dep't of Educ., 685 F.3d 217, 59 IDELR ¶ 62 (2d Cir. 2012)**
- upheld $80,000 tuition reimbursement for kindergarten child with autism based on finding that child needed extensive 1:1 discrete-trial ABA services, which district's proposed 6:1 placement did not provide and which conformed to LRE consideration for the parent's unilateral private placement—deference to IHO rather than review officer where "more thorough and careful reasoning"

P Fisher v. Friendship Pub. Charter Sch. (supra)
- ruled that timely notice requirement does not apply to district denial of FAPE in the wake of an expulsion

P **E.S. v. Katonah-Lewisboro Sch. Dist. (supra)**
- upheld reimbursement for second year based on progress in private school (and equitable considerations)

P Anchorage Sch. Dist. v. M.P. (supra)
- upheld reimbursement for tutoring expenses for uncooperative, actively litigious parents when district's failure to proceed with IEP process was equally or more inequitable

P/S S.H. v. Plano Indep. Sch. Dist. (supra)
- upheld substantial reduction of tuition reimbursement to a few ESY weeks based on effects of state dual enrollment law and corrective IEP

P **R.E. v. New York City Dep't of Educ. (supra)**
- granted tuition reimbursement based on all three steps, including justifiable excusal for late notice, for student with autism

P Coventry Pub. Sch. v. Rachel J. (supra)
- ruled that out-of-state residential, therapeutic placement was appropriate for student with emotional and learning disabilities in tuition reimbursement context

P Aaron P. v. State of Hawaii, Dep't of Educ. (supra)
- upheld appropriateness of autism-specific unilateral placement and non-reduction of tuition reimbursement based on parental conduct (i.e., not unreasonable or in bad faith)

(*P*) Upper Freehold Reg'l Bd. of Educ. v. T.W., __ F. App'x __, 59 IDELR ¶ 215 (3d Cir. 2012)
- ruled that impasse after parents' active participation was not grounds for equitable reduction of tuition reimbursement (distinguishing Cape Henlopen), remanding for multi-step determination of whether parents were entitled to this requested remedy

S **T.M. v. Kingston City Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 254 (N.D.N.Y. 2012)**
- ruled that parent was not entitled to tuition reimbursement where 1) student earned, though had not received, high school diploma at the time of the unilateral placement (thus, no longer eligible) and 2) the parents withheld the previous private school's transcript, which unreasonably prevented determination of the student's graduation status

S Lauren G. v. W. Chester Area Sch. Dist. (supra)
- denied tuition reimbursement under IDEA based on equitable considerations—parents' failure to cooperate for timely evaluation (but granted it under § 504 infra)

P Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E., __ F.3d __, 60 IDELR ¶ __ (10th Cir. 2012)
- ruled that child with ED was entitled to reimbursement, at Step 2, for the residential placement under" straightforward application" of IDEA for accredited education facility plus mental health support as related services

B. COMPENSATORY EDUCATION[10]

S Gill v. Dist. of Columbia, 751 F. Supp. 2d 104, 55 IDELR ¶ 191 (D.D.C. 2010), further proceedings, 770 F. Supp. 2d 112, 56 IDELR ¶ 129 (D.D.C. 2011)
- after IHO found denial of FAPE but refused compensatory education based on parents' failure to provide sufficient factual foundation, court allowed parent limited opportunity via its authority to hear additional evidence; however, the additional evidence was "sketchy and patently insufficient"

P B.H. v. W. Clermont Bd. of Educ. (supra)
- upheld two years of PT and OT and two of three years of private placement as compensatory education

S **French v. New York State Educ. Dep't, 476 F. App'x 468, 57 IDELR ¶ 241 (2d Cir. 2011)**
- rejected compensatory education where gross denial of FAPE was due to parent's obstructionist actions rather than district's procedural violations

(*S*) Dep't of Educ., State of Hawaii v. M.F. (supra)
- remanded to apply the equities to compensatory education (not only tuition reimbursement)

P Brooks v. Dist. of Columbia, 841 F. Supp. 2d 253, 58 IDELR ¶ 103 (D.D.C. 2012)
- ruled that the obligation to provide compensatory education continues, rather than is moot, upon the student's graduation

[10] See, e.g., Perry A. Zirkel, The Two Competing Approaching for Calculating Compensatory Education under the IDEA, 257 EDUC. L. REP. 55 (2010); Perry A. Zirkel, Compensatory Education: An Annotated Update of the Law, 251 EDUC. L. REP. 501 (2010).

P T.G. v. Midland Sch. Dist., (supra)
- upheld specified reading/writing services, including order for evaluator, under deferential qualitative approach

P Woods v. Northport Pub. Sch. (supra)
- upheld 758-hour compensatory education award for two-year denial of FAPE (12 hours for each of 64 weeks of denial) for the child to "reasonably recover" in light of potentially closing window of opportunity, plus upheld requirement that the delivery be via a teacher with autism certification due to this provision in the IEP

P Ravenswood City Sch. Dist. v. J.S. (supra)
- upheld, as compensatory education, placement at unapproved private school for three years, including summers, and 600 hours of tutoring for three-year denial of FAPE

P Cousins v. Dist. of Columbia, __ F. Supp. 2d __, 59 IDELR ¶ 125 (D.D.C. 2012)
- reversed IHO's award of no compensatory education, concluding instead that the experts had provided sufficient evidence for each of the Reid factors for the qualitative approach

(*P*) D.F. v. Collingswood Borough Bd. of Educ., 694 F.3d 488, 59 IDELR ¶ 211 (3d Cir. 2012)
- ruled that move out of state does not moot the issue of compensatory education, but remanded the matter to determine whether denial of FAPE and, if so, amount of compensatory education

(*P*) L.R.L. v. Dist. of Columbia, __ F. Supp. 2d __, 59 IDELR ¶ 273 (D.D.C. 2012)
- ruled that student moving to another district does not moot the claim for compensatory education against the original district

C. TORT-TYPE DAMAGES

S C.O. v. Portland Pub. Sch., 679 F.3d 1162, 58 IDELR ¶ 272 (9th Cir. 2012), cert. denied, __ S. Ct. __ (2013)
- compensatory damages, even on a nominal basis, are not available under the IDEA

D. OTHER REMEDIES (INCLUDING IEE REIMBURSEMENT)[11]

S/P J.P. v. Anchorage Sch. Dist., 260 P.3d 285, 57 IDELR ¶ 169 (Alaska 2011)
- for child ultimately determined to be ineligible (because, although SLD, he did not need special education), upheld IEE reimbursement, based on child find where district delayed its evaluation and relied on the parent's IEE but rejected tutoring reimbursement (due to non-eligibility)

[11] For a useful checklist concerning IEEs at public expense, see Perry A. Zirkel, *Independent Educational Evaluation Reimbursement: A Checklist*, 231 EDUC. L. REP. 21 (2012).

S Nelson v. Dist. of Columbia, 811 F. Supp. 2d 508, 57 IDELR ¶ 192 (D.D.C. 2011)
- reversed and remanded the parts of the IHO's private placement order, in wake of denial of FAPE, that 1) effectively eliminated the district's representative on the IEP team, 2) required sufficient services/supports for student to graduate, and 3) effectively limited the team's duties to revise the IEP annually or as otherwise needed, and to change the placement of the student in accordance with LRE

S Council Rock Sch. Dist. v. Bolick, 462 F. App'x 212, 58 IDELR ¶ 122 (3d Cir. 2012)
- ruled that parents were not entitled to reimbursement of their IEE where the district's evaluation had been appropriate

VIII. OTHER, IDEA ISSUES

P DL v. Dist. of Columbia, 845 F. Supp. 2d 1, 57 IDELR ¶ 279 (D.D.C. 2012)
- ruled in class action case that district failed to provide proper transition from Part C to Part B and violated child find and FAPE for children ages 3-5

S **Bryant v. New York State Educ. Dep't, 692 F.3d 202, 59 IDELR ¶ 151 (2d Cir. 2012)**
- ruled that state regulation banning aversives did not violate the IDEA, § 504, or the Fourteenth Amendment (due process and equal protection clauses)

S CG v. Pennsylvania Dep't of Educ., __ F. Supp. 2d __, 59 IDELR ¶ 192 (M.D. Pa. 2012)
- ruled that state's funding formula for special education did not violate IDEA, EOAA, or § 504

S D.K. v. Abington. Sch. Dist. (supra)
- strictly construed the IDEA statute of limitations' exceptions and rejected the alternative of equitable tolling

P Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 60 IDELR ¶ 30 (11th Cir. 2012)
- upheld the validity of the IDEA regulation providing for IEEs at public expense

P/S Lauren G. v. W. Chester Area Sch. Dist. (supra)
- applied the IDEA's statute of limitations period in relation to when parents knew or had reason to know of the "injury"

VI. SECTION 504/ADA ISSUES[12]

(***P***) Ms. H. v. Montgomery Cnty. Bd. of Educ., 784 F. Supp. 2d 1247, 56 IDELR ¶ 268 (M.D. Ala. 2011)
- preserved for trial whether district's purported failure to evaluate and update student's 504 plan constituted deliberate indifference, which is the standard for money damages under § 504 in the Eleventh Circuit

(***P***)/***S*** Centennial Sch. Dist. v. Phil L., 799 F. Supp. 2d 473, 56 IDELR ¶ 289 (E.D. Pa. 2011)
- ruled that student with ADHD was, pre-ADAAA and contrary to the district's evaluation, eligible under § 504 before but not after taking medication and that compensatory education was available for this period if the parents' proved that the lack of a 504 plan, despite informal accommodations, constituted a denial of FAPE under § 504

S Dutkevitch v. Pa. Cyber Charter Sch., 439 F. App'x 177, 57 IDELR ¶ 32 (3d Cir. 2011)
- upheld dismissal of parent's § 504/ADA claim for money damages against school district and V-T school, because their respective decisions not to recommend or admit the student, who had an IEP, was not based on his disability

S Doe v. Big Walnut Sch. Dist. Bd. of Educ., 837 F. Supp. 2d 742, 57 IDELR ¶ 74 (S.D. Ohio 2011)
- rejected ADA (and 14th Amendment substantive due process) claim of parent on behalf of student with a disability who had been the target of bullying—lack of deliberate indifference

S Chambers v. Sch. Dist., 827 F. Supp. 2d 409, 57 IDELR ¶ 216 (E.D. Pa. 2011)
- ruled that intentional discrimination (i.e., deliberate indifference) is required for money damages—distinct from other remedies—under § 504 or the ADA

S A.C. v. Shelby Cnty. Bd. of Educ., 824 F. Supp. 2d 784, 57 IDELR ¶ 289 (W.D. Tenn. 2011)
- rejected § 504 retaliation claims of parent who filed OCR complaint on behalf of elementary school child with peanut allergy, diabetes, and learning problems—the various acts were either not adverse (e.g., consideration of homebound services and report of suspected medical abuse); not causally connected (e.g., accidental voicemail); or legitimate and nondiscriminatory (e.g., recommended evaluation for SLD)

(P) A.B. v. Adams-Arapahoe 28J Sch. Dist., 831 F. Supp. 2d 1226, 58 IDELR ¶ 14 (D. Colo. 2011)
- preserved for trial § 504 money damages claim as whether district's use of restraint chair constituted discrimination and, if so, whether district was deliberately indifferent to its use

---

[12] For a comprehensive source, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011)(available from LRP Publications, www.lrp.com or tel. 800-341-7874). One of the new developments is the amended ADA regulations that largely resolved the service animal school-access issue in favor of students with disabilities. For a preliminary injunction enforcing this ADA regulation for a student with autism, see C.C. v. Cypress Sch. Dist., 56 IDELR ¶ 295 (C.D. Cal. 2011). Another notable development is—on remand from the previously reported Ninth Circuit decision in 2010—the federal district court denied the plaintiff-parents motion for summary judgment, preserving for further proceedings whether the district had engaged in deliberate indifference. Mark H. v. Hamamoto, __ F. Supp. 2d __ (D. Hawaii 2012), reconsideration denied, 58 IDELR ¶ 222 (D. Hawaii 2012).

S **A.M. v. New York City Dep't of Educ., 840 F. Supp. 2d 660, 58 IDELR ¶ 67 (E.D.N.Y. 2012)**
- ruled that requested accommodation of heating up the homemade food of student with diabetes was preferential, not necessary, for meaningful access to lunch, and in any event the district was not deliberately indifferent—also rejected retaliation claim for lack of evidence and § 504 procedural claims based on harmless error approach

S Weidow v. Scranton Sch Dist., 460 F. App'x 181, 58 IDELR ¶ 93 (3d Cir. 2012)
- rejected disability-harassment claim of former student with bipolar disorder for failure to prove its substantial limitation on social interaction (pre-ADAAA)

(*P*) I.H. v. Cumberland Valley Sch. Dist. (supra)
- expert witness fees are available to prevailing parents under § 504

(*S*) R.N. v. Cape Girardeau 63 Sch. Dist., 858 F. Supp. 2d 1025, 58 IDELR ¶ 193 (E.D. Mo. 2012)
- granted district's motion for summary judgment for § 504/ADA suit by student in wheelchair for Perthes Disease of the hip, which healed within 2-3 years, because student had failed to exhaust hearing under IDEA (although no IEP) and/or his impairment was not permanent or sufficiently long-term

S D.B. v. Esposito (supra)
- ruled that § 504 has additional FAPE element of "disability-based animus," thus not being coextensive with IDEA FAPE claim, and that § 504, like the ADA, provides for an independent retaliation claim—parent failed to prove either one in this case

S M.R. v. Ridley Sch. Dist. (supra)
- ruled that 504 plan for child with food allergies (as well as SLD) provided reasonable accommodations and that parent's request to be allowed to prepare snacks for the entire class that met her dietary needs was a substantial modification, which is beyond Section 504's scope

(*P*) Sher v. Upper Moreland Sch. Dist., 481 F. App'x 762, 58 IDELR ¶ 273 (3d Cir. 2012)
- vacated and remanded denial of dismissal of parents' § 504 claim for money damages for discriminatory discipline--sufficient exhaustion and coverage

(*P*) **Preston v. Hilton Cent. Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 99 (W.D.N.Y. 2012)**
- denied dismissal of parents' § 504 claim that district officials were deliberately indifferent to continuing disability-based peer harassment

(*P*) J.P.M. v. Palm Beach Cnty. Sch. Bd., __ F. Supp. 2d __, 59 IDELR ¶ 102 (S.D. Fla. 2012)
- preserved for trial, re possible deliberate indifference, § 504 liability claim of parent of student with autism allegedly subject to physical restraints 89 times (27 prone) in 14 months for aggressive and self-injurious behaviors

(*P*) R.K. v. Bd. of Educ. of Scott Cnty., __ F. App'x __, 59 IDELR ¶ 152 (6th Cir. 2012)
- remanded for a factual record, via discovery, as to whether district's offer to provide nursing services, including insulin pump monitoring, to kindergarten child with Type I diabetes in another—rather than the parents' requested neighborhood school—was based on an individualized assessment (per the § 504 evaluation regulation)

S I.A. v. Seguin Indep. Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 133 (W.D. Tex. 2012)
- dismissed ADA accessibility § 504 accommodation claims of student with paraplegia for lack of deliberate indifference

(*P*) Nixon v. Greenup Cnty. Sch. Dist., __ F. Supp. 2d __, 59 IDELR ¶ 215 (E.D. Ky. 2012)
- denied summary judgment based on factual issue whether incomplete implementation of § 504 plan for second grader with diabetes constituted deliberate indifference—same for retaliation claim

P Lauren G. v. W. Chester Area Sch. Dist. (supra)
- granted tuition reimbursement under § 504 for residential placement in the wake of child find and eligibility violations, using the statute of limitation cut-off as a significant equitable consideration (and while denying the same relief under the IDEA for other equitable considerations)