INDIVIDUALS WITH DISABILITIES EDUCATION ACT: PUBLIC
SCHOOL APPLICATION OF PROVIDING FAPE IN THE
LEAST RESTRICTIVE ENVIRONMENT

by

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A DISSERTATION

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ABSTRACT

The purpose of this study was to investigate how courts deal with issues related to the broad definition of free appropriate public education (FAPE) as it pertains to the least restrictive environment (LRE) for the provision of special education services as legislated though the Individuals with Disabilities Education Act (IDEA). The Supreme Court and Courts of Appeal decisions briefed for this study attempt to provide a deeper understanding for administrators of what constitutes a free appropriate public LRE placement decisions for students with disabilities.

Due to the paucity of Supreme Court guidance, it is evident that no judicial decision establishes a legal precedent that governs every school district everywhere in the country. Instead, when the Courts of Appeal rule on an issue, it creates binding precedence for only those school districts within its boundaries. However, the decisions of these federal circuits do create guidance for other circuits faced with similar issues. While every case will not be controlling law for everyone, hopefully this study will provide useful information regarding trends so as to confer general guidance to school districts. Chapter 5 of this paper will highlight and codify this guidance.

The data were retrieved by analyzing relevant court cases from 2005 to 2010. Court cases reviewed began with *Schaffer v. Montgomery County Public Schools*, 126 S. Ct. 528 (2005) and ended with *School Bd. of Lee County, Fla. v. M.M.*, 348 Fed. Appx. 504 (11th Cir. 2009). The data were condensed and summarized through the cyclical act of coding. The process of coding and recoding allowed for the researcher to organize the data into meaningful segments. Initial categories were formed and then expanded and refined by reviewing the categorical database of
cases. Comparing, contrasting, and combining the codes generated categories, trends, themes, and concepts. These data were analyzed to develop guidelines for system and school administrators regarding the implementation of IDEA’s rules and regulations as they pertain to FAPE and LRE.

Data expanded over 6 years and included a total of 100 cases from all 11 circuits and the District of Columbia. Two cases were from the Supreme Court and 98 were from the Courts of Appeal level. The Ninth Circuit had the most cases at 20, while the Sixth Circuit had the fewest number of cases at 2. In 2005, 12 cases were appealed. In both 2006 and 2007, 18 cases were appealed; 2008 was not significantly different, with 19 appealed cases. Twenty-three cases were appealed in 2009 and only 10 cases were appealed in 2010.

While the purpose of this study was to examine LRE as it relates to FAPE, other trends emerged. The FAPE categories that emerged were prevailing party; parents and school districts as opposing parties; child-find, eligibility, and evaluation; procedural violations; instructional methodology; least restrictive environment; private school placement; and discipline/behavior. The non-FAPE categories that emerged were burden of proof, IDEA funding, statute of limitations, attorney’s fees, and access.

Students with disabilities must be educated with their general peers as much as possible, and this is considered their least restrictive environment. Because there are no clear-cut rules as to this provision, administrators and IEP teams must rely on the preponderance of educational and behavioral data and guidance from past court cases. As a result of this research project, hopefully clearer guidance for the provision of FAPE and LRE will be offered.
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CHAPTER 1

INTRODUCTION TO THE PROBLEM

Public School Administrators play a critical role in the implementation of the Individuals with Disabilities Education Act (IDEA). The IDEA is comprised of a detailed set of guidelines to ensure students with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). System-level and school-level administrators must exhibit leadership that is necessary to guide both general and special educators in the delivery of appropriate instruction to meet the diverse needs of students with disabilities. Yet, where these services are rendered and what constitutes an appropriate placement for an individual student has often proven to be very difficult issues for school districts. The placement issue has been the most controversial and one of the most frequently litigated IDEA requirements (Yell & Katsiyannis, 2004). A school district’s obligation to educate students with disabilities in the LRE has not changed since the original enactment of IDEA in 1975. The reauthorized 2004 Individuals with Disabilities Education Improvement Act (IDEIA) stated the following:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 USC 1412(a)(5); CFR 300.114(a)(2)(i)-(ii))

The 2006 IDEIA regulations add somewhat to the statutory LRE provision at 34 C.F.R. 114. The regulations require school districts to provide a “continuum of
alternative placements” that must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and provide supplementary services along with regular class placement. Specifically, students with disabilities should be educated with non-disabled peers, with the use of supplementary aids and services, if necessary, in the general education setting to the maximum extent appropriate.

Supplemental aids and services are to be provided to the student and are often critical in supporting the education of students with disabilities in regular classes. In 1997, IDEA first introduced the term supplemental aids and services. Needed aids and services are decided by an Individualized Education Planning (IEP) team on an individual student basis and could include, but are not limited to, supports to address environmental needs, levels of staff support, specialized equipment, pacing or presentation of instruction, assignment modifications, and/or testing adaptations (NDCCD, Retrieved 3/30/2011).

Individualized Education Planning teams are comprised of people who have knowledge of the student and can make educational decisions for the student. The team must include parents and teachers of the student eligible for special education services and someone to represent the Local Education Agency (LEA), which is defined as someone who can commit resources and services of the school district and who can also supervise special education services. School-based administrators typically serve in this role, exemplifying their need for having a strong working knowledge of IDEA, in order to guide the team in making reasonable decisions with regard to educational services for the student.
To further emphasize the LRE requirement, students with disabilities cannot be removed from the general education setting unless a satisfactory education in those settings cannot be achieved. There are times when students with disabilities need direct specialized clinical services, rendering a full inclusion placement inadequate. The IDEA regulations provide for a continuum of placements so that students may be educated in an appropriate least restrictive setting. If the IEP team decides that the general education setting is not the most appropriate LRE for the student, the team must include a statement in the IEP that provides “an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class” (34 CFR 300.320 (5)).

Statement of the Problem

School districts have an obligation to educate students with disabilities in the least restrictive environment to the maximum extent appropriate as mandated by IDEIA 2004 and the 2006 federal regulations. Placement decisions must be made on an individual basis and not based on a student’s eligibility category. These decisions cannot be made based on what is convenient for administrators nor can a school district’s economic standing be the sole deciding factor. In addition, while parents should be participating members of the IEP team, LRE placement decisions should not be based solely on parental request.

There are several issues resulting from the IDEIA LRE mandate. Individualized Education Planning teams must make LRE placement decisions that ensure a free appropriate public education to students. However, IEP teams need to know how to define the term “appropriate,” given that IDEIA does not specifically define the term. Least restrictive environment is also an ambiguous concept in IDEIA. How a team determines LRE for a student
is not clearly addressed in IDEIA. Thus, given the importance of FAPE and LRE in IDEIA, school districts must be able to have a strong working knowledge of these terms in order to train personnel in determining placements, which constitute the least restrictive environment for individual students with disabilities. IDEIA alone does not provide enough information for school districts to implement these mandates.

Significance of the Problem

It is essential that district-level and school-level administrators have a general knowledge of the regulations set forth by IDEIA. School systems not implementing the LRE mandate could result in a denial of the provision of FAPE to students with disabilities, which could negatively impact student progress. It could also negatively impact school funds, either through costly litigation or through a loss of federal IDEIA dollars.

The IDEIA does not define the term “appropriate” nor give direction for the implementation of LRE, so district-level and school-based administrators must understand case law standards related to student placement decisions. As instructional leaders, administrators must provide professional development to IEP teams with regard to LRE. Specifically, IEP teams need to understand how to make LRE placement decisions. While parents are important participating members of the IEP team, LRE placement decisions cannot be made solely on parental request. These decisions should be based on student need driven by IEP goals and objectives. Consideration should be given to the amount of services and the “specially designed instruction” that may be needed to fully implement the IEP. These methodologies are often universally designed; meaning this type of instruction would benefit all students, with or without disabilities, and could easily be implemented in the general education classroom. Both general
education and special education teachers may need training in appropriate methodologies for students with disabilities.

Statement of Purpose

The purpose of this research was to investigate how courts deal with issues related to the broad definition of free appropriate public education as it pertains to the LRE and for the provision of special education services, as legislated though the Individuals with Disabilities Education Act. The Supreme Court and Courts of appeal decisions briefed for this study attempt to provide a deeper understanding for administrators of what constitutes a free appropriate public education and the factors IEP teams should consider when making LRE placement decisions for students with disabilities.

Research Questions

1. What issues regarding Free Appropriate Public Education (FAPE) have the United States Supreme Court and U.S. Courts of appeal defined since the 2005 implementation of the 2004 reauthorized IDEA?

2. What were the outcomes of cases about FAPE brought under IDEA by the United States Supreme Court and US Courts of appeal?

3. What trends have developed in regard to the provision of FAPE through IDEA rulings since the 2005 implementation of the 2004 reauthorized IDEA?

4. What principles and procedures applicable for school administrators can be discerned from court cases brought under the IDEIA with regards to FAPE and student placement decisions?
Assumptions of the Study

In order to attain a purposeful application of study, the following assumptions should be considered:

1. Legal analysis was limited to consideration of the Individuals with Disabilities Education Improvement Act and its amendments.

2. The case brief method of analysis presented data that may be analyzed to discern principles that may be acknowledged by educational leaders in K-12 schools and institutions of higher education.

3. It was assumed that all court cases had been arbitrated in adherence to local, state, and federal laws.

4. It was assumed that West editors accurately identified court cases for the sampling in this study by use of Key Number Schools 148(2): Handicapped children and special services therefor; and 148(2.1): In general.

Limitations of the Study

When reviewing this research, readers should consider the following limitations, which had an impact on this study:

1. Case analyses were limited to those heard at the state and federal appellate court and United States Supreme Court levels.

2. The principles for school administrators, which were synthesized by the analyses of case law, were limited to those generated from court cases reviewed in this study.
Delimitations of the Study

When reviewing this research, readers should consider the following delimitations, which had an impact on this study:

1. The cases for this study were delimited to include cases identified by West editors for inclusion in its digests under the Key Number Schools, 148(2): Handicapped children and special services therefore; and 148(2.1): In general.

2. The cases embodied courts of appeal and Supreme Court legal action from 2005 through 2011 regarding Free Appropriate Public Education within K-12 educational institutions.

3. This study was not conducted from the perspective of an attorney, which is usually focused on finding “the” case to inform a present situation. This study was conducted by a public school administrator and is a form of qualitative research, using a collection of court cases to inform practice for school leaders.

Definition of Terms

The relevant legal and educational terms are defined below as they were used in this study:

Brief:

A written statement setting out the legal contentions of a party in litigation, especially on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them. (Black, 2009, p. 152)

Case law: “The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction” (Black, 2009, p. 244).

Certiorari: “An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review” (Black, 2009, p. 258).
Defendant: “A person sued in a civil proceeding or accused in a criminal proceeding” (Black, 2009, p. 482).

Free appropriate public education (FAPE):

special education and related services that: (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this [rule]; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of [the rules and regulations]. (34 CFR 300.17)

Holding: “The answer to a legal issue in an opinion; the result of the court’s application of one or more rules of law to the facts of the dispute” (Statsky & Wernet, 1997, p. 452).

Inclusion:

generally refers to a situation where the home base for the student with disabilities is the regular education classroom. The student either receives special education services in that classroom or the student is removed for short periods of time to receive special education services in a specialized environment. (Osborne, 1997, p. 1011)

Individualized education plan: “a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 300.320 through 300.324” and must include specified sections as defined by the Federal Rules and Regulations at 300.320 (34 CFR 300.320 (a)).

Least restrictive environment:

to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 (2)(i)(ii)

Mainstreaming: “used to connote a situation where the student’s home base is a special education class and the student is placed in the regular education setting for certain periods during the day” (Osborne, 1997, p. 1012(d)).
Plaintiff: “The party who brings a civil suit in a court of law” (Black 2009, p. 1267).

Precedent: “Preceding in time or order” (Black 2009, p 1295).

Remand: “To send (a case or claim) back to the court or tribunal from which it came for some further action” (Black 2009, p. 1407).

Special education: “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” that includes specified sections as defined by the Federal Rules and Regulations under section 300.39 (34 CFR 300.39).

Supplementary aids and services: “aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate” (34 CFR 300.42).

Writ: “A court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do a refrain from doing some specified act” (Black, 2009, p. 1747).

Organization of the Study

Chapter 1 introduced the study and included a discussion of the problem. A statement of purpose and the research questions were followed by the limitations of the study, assumptions, and definitions applicable to the study.

Chapter 2 presents a review of relevant literature regarding placement of special education students as it relates to LRE. Included in this chapter is also a historical overview of IDEIA and cases that have influenced policies and procedures of school districts.
Chapter 3 describes methodology and procedures engaged in this study followed by a description of the analysis process.

Chapter 4 presents briefs of the cases as outlined in the stated methodology in Chapter 3, as well as the analysis of data arising from those case briefs.

Chapter 5 provides answers to the research questions and offers administrative application, summary, conclusions, and recommendations for further research.
CHAPTER 2

LITERATURE REVIEW

President Gerald Ford first signed the Education for all Handicapped Children Act (EAHCA), or PL 94-142, into law in 1975. It required that every state that elects to receive federal assistance under the Act, provide all handicapped children the right to a “free appropriate public education” (hereinafter FAPE), and established detailed procedures for implementing that right. This Act was amended as EHA in 1986, and in 1990 as the Individuals with Disabilities Education Act (IDEA). The IDEA was reauthorized in 1996 and amended again in 2004 as the Individuals with Disabilities Education Improvement Act (IDEIA). See graph below for a clear visual description:

![Timeline of the life of EAHCA](image)

### Figure 1. Timeline of the life of EAHCA.

The IDEA does not give a clear and concise substantive definition as to what constitutes an “appropriate” education, nor do any of the previous versions of the Act. Thus, school districts have struggled with the term and how to provide children with an education that would be considered “appropriate.” Because the IDEA is somewhat ambiguous, one must consider supplementary sources, such as state rules, congressional reports, commentaries, and case law for
its interpretation (Julnes, 1994). Implementation of an appropriate education has been given to
individual education planning (IEP) teams who, as a part of FAPE, must consider student
placement in the least restrictive environment (hereinafter “LRE”) where individual students
should receive special education services unique to each student’s educational needs.

Resembling the ambiguity of what Congress considers “appropriate” in IDEA, LRE is
also a hazy concept. Though a continuum of services was built into the law from the beginning,
and there was an implied statutory requirement for LRE, the term LRE was first specifically
addressed in the 1996 Amendments to IDEA (Hazlekorn, 2004). Least restrictive environment
can generally be defined as the provision of special education services to students with
disabilities taking place in an environment with their typical peers as much as possible and the
removal of the student with a disability from the general classroom only when it is absolutely
necessary for the provision of those services (Osborne, 1990). Thus, IEP teams must consider
what is the LRE for each individual student and how much weight the team should give to LRE
in comparison with educational progress. The IEP teams must decide if they should opt for a
lesser restrictive placement for a student with a disability at the expense of some educational
gain. Also, the fact that people often use other terms interchangeably with LRE, such as
mainstreaming and inclusion when these terms actually have different meanings, can contribute
to an IEP team’s uncertainty as to an appropriate placement (Douvanis, 2002).

The primary purpose of this chapter is to examine the literature since the enactment of PL
94-142 or EAHCA in regard to how FAPE is defined and, in relation to FAPE, how IEP teams
decide what constitutes LRE for a student. Because Congress did not provide clear guidance for
implementing the somewhat vague “appropriateness” and LRE mandate in IDEA, states must
look to the courts to define LRE and what constitutes an “appropriate” education. The judiciary
has been at the forefront of shaping the course of LRE and since the enactment of EAHCA there has been an abundance of litigation regarding what constitutes FAPE and LRE. However, one must first have an understanding of the grassroots efforts of organizations made up of parents, educators, and legislators prior to EAHCA and a clear picture of past services available to children with disabilities to fully appreciate the execution and implementation of this Act.

Before EAHCA

History suggests the existence and recognition of persons with disabilities, though they were documented under descriptive labels such as subnormal, deviants, feeblemindedness, idiocy, insanity, and madness (Dorn, 1996; Hallahan, 1982; Smith, 1998; Yell, 1998). History also reveals the treatment of these individuals with examples of society trying to educate, integrate, or segregate these persons according to the moral fortitude of the culture at the relevant time.

Special Education is rooted in the early 19th century, when physicians such as Jean-Marc-Gaspard Itard, attempted to revolutionize the abusive and neglectful treatment of persons with disabilities. Itard began working with a child who was unsocialized and considered “wild” (Lieberman, 1982). The child, later named Victor, was found wandering in the forest and brought to Itard in Paris. By providing Victor “experience[s]” in a civilized setting, Itard believe he could normalize Victor. Itard set five goals for Victor and worked with him individually. He stated of the boy, “To be judged fairly, this young man must only be compared to himself.” Lieberman (1982) stated,

Itard’s work is nothing short of remarkable and profound. In its entirety it is a statement of all special educators for all time. Its timelessness removes it from the realm of historical curiosity and will forever project it toward contemporary brilliance. (p. 566)
The manner in which Itard worked with Victor foreshadows special education services of today. However, moving to this era of inclusion took many, many years and legal intervention.

During the 19th century, most children with mental disabilities were typically kept home or institutionalized where they were often neglected and abused. Schools did not have programs to meet their educational needs. Additionally, many schools were not physically accessible to children with physical disabilities. Gaining momentum from the civil rights movement began by African Americans, people with disabilities began demanding rights for equality and integration of all persons. The United States Supreme Court’s decision in *Brown v. Board of Education of Topeka, Kansas* (1954) required that, once a state determined to provide an education for one group of students, it was required by the Equal Protection Claus, to provide it to all students. Though this case was primarily about racial segregation, it was applicable to all children, including disabled and disadvantaged children. The court held that an education must be made accessible to all students equally. Just as Itard believed placing Victor in a “civilized” or “normal” setting would benefit Victor, Congress and the courts began taking this same stance. James Jeffers (1993), in his dissertation, *An Analysis of Selected Federal Court Decisions Regarding Special Education administration: Public Policy and Principles*, stated “while [*Brown v. Board of Education*] opened the door to an equal education for all students, it also opened the door to the idea of mainstreaming” (p. 27).

Though LRE doctrine was considered by the courts as early as 1966 (Wolf, n.d., p. 442), the first federal civil rights law for people with disabilities came in 1973 through The American Rehabilitation Act. The Rehabilitation Act of 1973 prohibited the discrimination of persons with disabilities in programs directed or funded by federal agencies (Dagley & Evans, 1995). This law
also applied to the hiring practices of any federal institution. Due to public schools receiving federal financial assistance, they were included in this ruling and court cases echoed this fact.

One such case is *Hairston v. Drosick* (1976). This case was a civil proceeding brought by the parents of a first grader, Trina Evet Hairston. According to the parents, Trina’s teacher at Gary Grade School, a regular public school, informed them that Trina could not attend class because of Trina’s physical condition caused by Spina Bifida. When Trina’s mother questioned school authorities, they agreed to allow Trina to attend only if her mother came with her to school every day. This was impossible for Mrs. Hairston, due to a lack of transportation and the fact she had another child to care for who was not school age. Additionally, Mrs. Hairston was caring for her terminally ill mother and providing secretarial work for her husband’s business. The Hairston’s filed suit against John Drosick, Jr., Superintendent of Schools for McDowell County, stating the school system was discriminating against their child by excluding her from her neighborhood school. They also alleged the school committed several due process errors, including failing to provide proper written notice or parental safe guards.

The school system claimed they gave Trina’s parents three placement options. Trina had the option of attending Gary Grade School if her mother came to school two or three times a day to care for her. The school system also offered for Trina to receive homebound school services. Another option was for Trina to attend Tidewater School for physically handicapped children; because of this option there was no denial of educational rights or discrimination.

The court found in favor of Trina’s parents and ordered Gary Grade School to allow Trina to attend the regular classroom immediately and stated that the school system was discriminating against Trina by not allowing her in the regular classroom setting. They concluded the following:
The exclusion of a minimally handicapped child from a regular public classroom situation without a bona fide educational reason is in violation of Title V of Public Law 93-112, ‘The Rehabilitation Act of 1973, 29 USC. 794’. Federal statute proscribes discrimination against handicapped individuals in any program receiving federal financial assistance. To deny to a handicapped child access to a regular public school classroom in receipt of federal financial assistance without compelling educational justification constitutes discrimination and a denial of the benefits of such program in violation of the statute. School officials must make every effort to include such children within the regular public classroom situation, even at great expense to the school system. (423 F. Supp. 180)

Furthermore, the court discussed the ramifications of students not being placed in the LRE on their own personal psyche and on society as a whole. They found the following:

The needless exclusion of these children who are able to function adequately from the regular classroom situation would be a great disservice to these children. A child’s chance in this society is through the educational process. A major goal of the educational process is the socialization process that takes place in the regular classroom, with the resulting capability to interact in a social way with one’s peers. It is therefore imperative that every child receive an education with his or her peers insofar as it is at all possible. This conclusion is further enforced by the critical importance of education in this society.

It is an educational fact that the maximum benefits to a child are received by placement in as normal environment as possible. The expert testimony established that placement of children in abnormal environments outside of peer situation imposes additional psychological and emotional handicaps upon children which, added to their existing handicaps causes them greater difficulties in future life. A child has to learn to interact in a social way with its peers and the denial of this opportunity during his minor years imposes added lifetime burdens upon a handicapped individual. (423 F. Supp. 180)

The Court was clear on why a student should be in a mainstream setting and school systems should make every effort, even “at great cost,” to place a student in the regular classroom. However, it did not give IEP teams much guidance on deciding what LRE is for each individual student because they did not explain what constitutes “maximum benefits.”
After EAHCA

Many of the early courts held that a segregated setting would supersede the mainstream mandate if the segregated setting were needed in order to provide an appropriate education and ruled in favor of specialized services against the LRE provision. Conversely, several courts ruled that some degree of academic quality could be sacrificed for the sake of providing socialization (Osborne, 1994). Most circuit courts of appeal have established “tests” to assess the appropriateness of a student’s placement, beginning with and adding to the Supreme Court’s reasoning and disposition in the landmark case *The Board of Education of Hendrik Hudson Central School District v. Rowley* (1982). The Supreme Court, however, has not heard any appeals on the LRE issue specifically, thus states must look to the interpretation of their own district courts, as well as the interpretation of their own circuit courts of appeal, in determining the meaning of LRE as it was ambiguously defined in IDEA.

The United States Supreme Court first addressed the definition of “free appropriate public education” in the case, *The Board of Education of Hendrick Hudson Central School District v. Rowley* (1982) and confirmed the importance of the LRE idea. The United States Supreme Court reversed the decision of the Court of Appeal for the Second Circuit, which affirmed a decision of the United States District Court for the Southern District of New York directing the school district to provide a sign-language interpreter in the classroom of Amy Rowley, an 8-year-old deaf child.

During the year before Amy began attending kindergarten at Furnace Woods School in Peekskill, New York, the school district and the family held a meeting to discuss her needs in regards to her education. Being that Amy was an excellent lip reader, they placed her in a regular class for a trial period in order to determine necessary supplemental services. Several members
of the school administration, including Amy’s teacher, attended a course in sign-language interpretation the summer before Amy began school. A teletype machine was placed in the principal’s office to facilitate communication with Amy’s parents, who were also deaf. At the end of the trial period, the school also provided an FM system to amplify words spoken by the teacher and other students.

In the fall of Amy’s first grade year, an IEP was prepared which continued her then current supports but added one-on-one tutoring by a tutor for the deaf for 1 hour each day. The Rowley’s agreed with the IEP but insisted that Amy also be provided a sign language interpreter for all of her academic classes. An interpreter had been assigned to Amy during her kindergarten year for a 2-week trial period and was found unnecessary for Amy’s educational progress. The school denied their request, as did the school district’s Committee on the Handicapped. The parents filed for and were granted a hearing before an independent examiner. The examiner agreed with the administrators’ determination that an interpreter was not necessary for Amy’s educational progress. The parents then appealed to the New York Commissioner of Education who affirmed the examiner’s decision.

The Rowleys then brought an action to the United States District Court for the Southern District of New York. Due to the disparity between Amy’s achievement and her potential, the court decided that she was not receiving a “free appropriate public education” (FAPE) and found in favor of the parents. The United States Courts of appeal for the Second Circuit affirmed the decision of the US District Court. The School District appealed to the US Supreme Court.

The findings of the US Supreme Court established a minimum federal standard through the conclusion that the “basic floor of [educational] opportunity” (Anthony, p. 867) is all that is required by EAHCA. This “basic floor” consists of access to specialized instruction and related...
services that are designed for each individual student and that students be provided educational benefits, whatever the nature or severity of their handicap. As defined by the EAHCA, a student is receiving FAPE if instruction is individualized and supportive services are sufficient to allow the student to receive educational benefit from the instruction. The statute does not address the level of education to be provided to handicapped children. Upon review of legislative history of the EAHCA, the Court concluded that the Act was imposed to “open the door of public education” to students who were handicapped rather than guarantee any educational outcomes.

Due to Congress attaching great importance to compliance with procedures in the preparation of the IEP and allowing much involvement by the parents, the Court found that if procedural requirements in the development of the IEP are met and the child is receiving educational benefit, then the State has complied with the obligations imposed by Congress. Although the Court did not define what level of educational outcomes would be considered beneficial in Rowley, it did emphasize the importance of compliance with the EAHCA’s LRE mandate and progress monitoring in the mainstream setting, specifically the monitoring of grades and the student’s promotion from grade to grade.

The Supreme Court further stated that they reject the notion that hearing officers or courts have the expertise to make decisions on sound educational policy over school authorities (McCarthy, n.d., p.5, 6). Thus, the court’s interpretation of EAHCA in Rowley lends to the suggestion that the court’s responsibility as it relates to reviewing cases based on the Act is to provide procedural review rather than a substantive review of a child’s education. The school system’s responsibility in terms of educational programming, as described by Maria Kilgore (2011), is “providing students with an individualized educational program (IEP) that is written
with the opportunity for student progress or growth in their individual needs while following procedural safeguards.”

While most districts accepted the Court’s finding regarding the term “appropriate” some were critical of the addition of terms lacking substantial definitions such as “meaningful” or “beneficial” as they relate to the quality of education for students with disabilities (Adams, n.d., p. 219; Anthony, n.d., p. 871). As a matter of point, three of the eight Justices who sat on the Rowley case disagreed with the findings by criticizing the minimal nature of the majority’s standard. Some believed that the Court failed to define FAPE any more clearly than previous litigation. The Court stated they were not attempting to establish “any one test for determining adequacy of educational benefits conferred upon all children covered by the Act.” Some states disagreed with the minimum standard imposed by the Court and took the liberty to impose higher standards on themselves by assuring maximum possible development of students with disabilities (O’Hara, n.d., p. 1040). Some believed that Congress’ intent of EAHCA was much broader than only providing for a “basic floor of opportunity” to children with disabilities. This is evidenced by the fact that every child eligible for special education services must have an individualized education plan (IEP) which must include specifically designed instruction at no cost to the parent and must meet the unique needs of the child with a disability.

Regardless of the controversial opinions of the Rowley findings EAHCA’s requirement of “related services” may have “eroded Rowley from within” (Zirkel, n.d., p. 3). Zirkel cited EAHCA when giving a definition of “related services” as:

Transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluative purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children. (Zirkel, pp. 3-4)
Furthermore, states may impose higher standards, requiring schools to comply with the given mandates (McCarthy, 1988, p. 454). These two points are further demonstrated in cases that followed Rowley.

In 1983, the Sixth Circuit Courts of appeal made clear its concern for students being placed in the mainstream setting (Wolf, p. 445) when it imposed a three-point test to determine if educational services provided to a student with disabilities met the FAPE requirement while considering LRE. The test, now termed The Ronker Test, was a result of Ronker v. Walter (1983). The three areas examined were comparison of educational benefits, the degree to which the student will disrupt the regular classroom and how much the placement would cost the district. The Eighth Circuit later used the Ronker Test in 1987 in AW v. Northwest R-1 School District and by the Fourth Circuit in Deries v. Fairfax County School Board (1989).

Around this same time, a group of advocates suggested a type of merger between special education and regular education, requiring the sharing the responsibility of educating students with disabilities. This movement, know as the Regular Education Initiative, sparked various methodologies such as team teaching and consultation models, (Osborne, 1990). The push for these LRE models were sparked because of the belief that segregated classes where students may make greater educational gains did not outweigh the stigmatism of being taught in separate classes. This caused a dilemma for the courts because finding a balance between the amounts of time spent in the general curriculum and appropriate educational gain requires educational expertise, and the courts did not feel qualified to base findings on educational methodology. However, cases with LRE disputes almost always have methodological implications. Thus courts made decisions based on congressional intent in EAHCA and the obligation of school districts to provide services in the general education setting to the maximum extent appropriate. When
deliberating the Roncker case, the court said that Congress had chosen to impose the difficult burden of deciding mainstreaming issues and that courts must “do their best to fulfill their duty” (Julnes, 1994).

Prior to 1989, courts primarily ruled that school districts should provide students some access to the general curriculum when it was apparent that an appropriate education program could be provided there or when the benefits of mainstreaming outweighed any loss of educational gain resulting from the LRE placement. The LRE mandate was clearly secondary to the provision of FAPE. However, after the 1989 case Daniel R.R., courts placed greater emphasis on the LRE provision (Osborne, 1997).

Daniel R.R. v. State Board of Education (1989) highlighted “the inherent simplicity of the LRE concept” (Bartlett & McLeod, 1998, p. 2). The Fifth Circuit Court of Appeal declined to follow the Sixth Circuit analysis. They stated that The Roncker Test was “too intrusive an inquiry into educational policy . . .” (Julnes, 1994, p. 792). It instead asked the question “Has the district taken steps to accommodate the child in the regular classroom?” and to then impose a three-step LRE test considering whether the child will receive educational benefit from the regular classroom, examining the child’s overall educational experience in the mainstreamed environment, and reviewing the effect the child has on the regular classroom. The Fifth Circuit also conceded that should the general curriculum need to be modified “beyond recognition” then the general classroom setting would no longer be appropriate (McCarthy, 1995). The Daniel R.R. test was later adopted by the Eleventh Circuit in Greer v. Rome City School (1991) with the added consideration of cost of programming to the district, thus creating a four-point test after the assumption that the district did take steps to accommodate the child in the regular classroom.
The Third Circuit followed suit in the *Oberti v. Board of Education of the Borough of Clementon School District* (1983), emphasizing that school districts have an “affirmative obligation” to consider general education placement with supplementary aids and services before exploring other more restrictive placements (Osborne, 1994). Although the kindergarten student in *Oberti* demonstrated significant disruptive behaviors when placed in the general curriculum, the court declared the child was not provided appropriate support in the general education class and that the child exhibited improvement in the 2 years since the case was first filed (McCarthy, 1995). The Third Circuit further found that the school district infringed on the student’s rights under Section 504 of the Rehabilitation Act of 1973 by denying the student reasonable accommodations necessary for him to participate in an inclusive education and by keeping him from the general education environment based solely on his disability. As in the Eleventh Circuit’s *Greer* (1991), the Third Circuit memorialized that schools must look beyond academic benefits when deciding LRE placement.

The Seventh Circuit examined appropriate methodology in regard to LRE placement in *Lachman v. Illinois State Board of Education* (1988). The school district argued for a more restrictive placement due to the type of methodology the educators felt was necessary for this particular hearing-impaired student. The Court agreed with the school district by holding that the district was responsible for determining appropriate methodology before determining placement and that parents did not have a right under EHA to decide which methodology should be used by the school district. Thus, the Lachman Test declared that methodology, as determined appropriate by the school district, precludes mainstreaming when it is absolutely necessary to provide special education and related services to a student with a disability.
Despite the trend toward inclusion at this time, courts would rule in favor of a segregated placement if the school district could demonstrate it had made a significant and genuine attempt to educate a student in an inclusive setting, but despite its best efforts, the student could not be successful or was disrupting the learning of others. In the 1989 case, Briggs v. Board of Education, the Second Circuit added that mainstreaming is not appropriate when the nature and severity of the student’s disability is such that education in a typical classroom cannot be achieved satisfactorily. The Second Circuit in Briggs criticized the district court “for substituting its judgment for that of school experts who, after careful consideration, had determined that a segregated program would best serve the student’s needs.” The Courts of appeal found no evidence to support the student’s needs could better be met in a lesser restrictive environment than in the self-contained placement that was determined most appropriate by the school district (Osborne, 1994, pp. 349, 545).

Another example of courts supporting the expertise of educators in cases regarding placement is when the Fourth Circuit Court of Appeal affirmed the district courts’ decisions in the aforementioned DeVries v. Fairfax County School Board (1989) and Barnett v. Fairfax County School Board (1991). In both cases, the Court held that the school district had complied with the LRE provision even though the students were placed in specific centralized programs. They held that state and local school officials were better qualified to make decisions concerning the setting where a particular service or method could be provided (Osborne, 1992, 1994). In addition to the parents filing suit under IDEA in the Barnett case, the parents also filed suit under Section 504. The court again found in favor of the school district, stating the district did not discriminate against the student because placement in the student’s neighborhood school would require a substantial program modification and this was not a reasonable accommodation for the
school district to implement (Dagley & Evans, 1995). Most courts have found in favor of the school district in cases involving parental preference of student placement in the neighborhood school versus placement in a centralized program. Courts have reasoned because the IEP requires centralized placement, the neighborhood school was not appropriate to meet the student’s needs (Osborne, 1997).

The Eleventh Circuit gave clear guidance in setting priorities that should be given consideration, in *Greer v. Rome City School District* (1991). Georgia’s Federal District Court demonstrated the significance of IEP teams making sure their records are clear in showing that they discussed and considered regular education placement with supplemental aids and services for all students with disabilities. It noted the “inherent tension” between IDEA’s mainstreaming mandate and meeting each child’s unique educational needs. It also recognized that neither they nor the Supreme Court had previously developed a way to evaluate LRE issues (Bartlett, 1992).

When Christy Greer, a child diagnosed with Downs Syndrome and speech and language disabilities, was 5 years old, her parents attempted to enroll her in a regular kindergarten program at Elm Street Elementary School in the Rome City School District, which was her neighborhood school. The school district asked to evaluate Christy so the parents decided to not enroll her. They enrolled her again in 1988 when Christy was 7 years old. The school district again asked to evaluate Christy and her parents again refused. The school district then filed administrative proceedings so they could evaluate. During this time, Christy attended the regular kindergarten class at Elm Street.

The hearing officer found in favor of the school district and the state hearing officer affirmed this decision. Christy was evaluated by the school district and was found eligible for special education services through moderately mentally handicapped and speech and language
programs. The evaluators recommended special education services to address these needs in a class that provide highly individualized instruction.

On January 23, 1989, an IEP meeting was held for Christy. The IEP developed by the school district proposed special education services in a self-contained special education classroom at Southeast Elementary School with speech services and interaction with typical peers during physical education, lunch, and music. Christy’s parents disagreed with the placement but asked for time to consider the recommended IEP. The meeting adjourned to be continued on February 8, 1989.

During that time, Christy’s parents obtained an independent evaluation, which had similar score results as the school district evaluation. The independent evaluators, however, noted concern over placing Christy in a self-contained class, stating that she needed typical peers as models to imitate. Christy’s parents presented the independent evaluation to the IEP committee on February 8. School officials reviewed the evaluation but did not suggest any changes to the proposed IEP. Christy’s parents recommended placement in a regular kindergarten classroom with some speech therapy services. The school district rejected this proposal and filed administrative proceedings. The regional hearing officer and the state hearing officer, on appeal, both found in favor of the school district. Christy’s parents then filed an action in district court. For the 1988-1989 and 1989-1990 school years, during the time of the administrative proceedings, Christy remained in the regular kindergarten class at Elem Street Elementary without any special education services other than speech therapy.

In district court, the special education director for the school district testified that the committee discussed placement with supplemental aids and services though it was not documented on the IEP or in the minutes of the meeting. She stated that Christy’s cognitive
functioning level was very clear and a severe impairment. Evidence presented that Christy had made academic progress during her two years in kindergarten and that Christy was not disruptive and did not require a “disproportionate amount of time” from the teacher. The district court found in favor of the Greers, stating that the school district could appropriately educate Christy in the regular kindergarten classroom with the use of supplemental aids and services, at least for the immediate future. The district court held that although the proposed IEP did offer a free appropriate public education, the self-contained placement was not in compliance with EAHCA because the school district did not consider placement for Christy in the least restrictive environment. The school district appealed to the Eleventh Circuit United States Court of Appeal.

The Eleventh Circuit affirmed the district court. It stated that the proposed IEP violated the LRE requirement because the officials only considered the two extreme positions presented. Though the Special Education Director testified that the IEP team did discuss general education placement with the provision of supplemental aids and services, they failed to note any such discussion in the IEP or the minutes of the meeting. As stated earlier, the Eleventh Circuit adopted the two-pronged Daniel R. Test, adding consideration of financial cost as first recognized in the Sixth Circuit’s Roncker Test.

A California federal district court coined The Holland Test, stating they were neither adopting the Roncker Test nor the Daniel R. Test. To implement The Holland Test, districts must answer the LRE provision through the “balancing” of information garnered from four factors. The Ninth Circuit Courts of appeal upheld the district court’s decision in Sacramento City Unified School District vs. Rachel H. (1994). The Court analyzed the following four factors: (1) The student’s educational benefits in the regular classroom with supplemental aids and services compared to educational benefits in the special education classroom; (2) The student’s non-
academic benefits of interaction with non-disabled peers, such as appropriate language and behavior models; (3) The effect of the child’s presence on the teacher and other children in the classroom; and (4) The cost of mainstreaming to the district. The court also rejected the school district’s argument that the general education teacher was not certified to teach special education; therefore, the general classroom was not appropriate for the student. They stated that this argument ran “directly counter to the congressional preference that children with disabilities be educated in regular classes with children who are not disabled” (Bartlett & McLeod, 1998, p. 5).

The Holland Test appeared to be a triumph for full inclusion models for students with disabilities. According to the Ninth Circuit, a student’s past failure in an inclusive setting could not be the only information considered by the IEP team when they were determining placement in the least restrictive setting. This was especially true if the school system could provide supplemental aids and services to make the inclusive placement successful. They also reasoned that even if the more secluded setting were considered to be “optimal,” the inclusive setting would be best if given the fact the student could be educated in accordance with the standard in IDEA, which is to provide an “appropriate” education.

To summarize the standard that emerged from these cases and others during this time, IEP teams must give consideration to the academic and nonacademic benefits to the student if they are placed in a general classroom versus a separate special education class. They are not, however, required to “modify the curriculum beyond recognition” (Osborne, 1998, p. 297). Furthermore, consideration may be given to the impact the student will have on the learning of other students. The costs, amount, and type of supplemental aids and services the student would need to be successful may also be considered.
Providing an appropriate education in the least restrictive environment was magnified in the 1997 amendments to IDEA. The amended statute, submitted first as a report from The Education Workforce Committee in the U.S. House of Representatives, required that a general education teacher be included as an IEP team member of any child receiving special education who might be placed in the general curriculum. The general teacher’s role was to provide input on appropriate accommodations and supplemental aids and services needed for the child to be successful in the general curriculum. Teachers in the general curriculum must then implement the accommodations as decided upon by the IEP team. This requirement was amplified when a general education history teacher failed to implement a ninth grade student’s IEP accommodations. The teacher was held personally liable and a trial jury awarded $15,000 in damages to the student’s parents (Doe v. Withers, 1993). After that decision, OSEP and OCR issued a joint statement that the employing school district has the legal responsibility for the implementation of IEPs and not individual teachers. Despite the question of where liability rests, “a school district is unlikely to suffer a regular teacher’s refusal to serve a child and thus jeopardize its own financial resources. More likely, the school would seek [termination of the] uncooperative teacher . . .” (Bartlett & McLeod, 1998, p. 7).

The 1997 amendments also required special educators to include additional components related to LRE placement in the IEP that were not explicitly required in the previous version of the Act. Specifically, IEP documentation must include a statement regarding the child’s present level of performance and how the child’s disability would impact his performance in the general curriculum, needed supplementary aids and services for the student to be involved and progress in the general curriculum, and a written explanation as to why the child will not participate in the
general class. Though LRE was strengthened by IDEA, IEP teams still needed to consider a continuum of services and separate classes for students was still, in some cases, an appropriate placement. This was demonstrated by the U.S. Supreme Court decision to deny certiorari in *Hartmann v. Loudoun County Board of Education* (1997).

Mark Hartmann was an 11-year-old student with autism. He was unable to speak, had fine motor difficulties, and was extremely aggressive and disruptive in the general classroom. Though he was provided a modified curriculum, a one-on-one paraprofessional, assistive technology and his teachers were provided training and help from consultants, Mark failed to progress in the general setting. The IEP team met and determined to place Mark in a more restrictive environment. Mark’s parents rejected the proposed IEP because they did not believe it complied with IDEA’s LRE requirements. The local hearing officer and state review officer upheld the decision of the IEP team. Mark’s parents filed suit in district court. The district reversed the review officer’s decisions and found in favor of Mark’s parents. The court stated the school did not do enough to support Mark in his regular class placement. The school district appealed to the Fourth Circuit, who reversed the district court’s decision stating it had “simply substituted its own judgment regarding Mark’s proper educational program for that of local school officials.” The appeals court also was critical that the district court did not consider the effects of Mark’s behavior on the children in the regular classroom.

While the Fourth Circuit did not cite any previous LRE tests established by other circuits, they did consider similar criteria. They considered Mark’s ability to grasp the general education curriculum, his educational benefits from general education placement as opposed to special education, the effects of his behavior on the overall functioning of the general education
classroom, and the use of appropriate supplementary aids and services. They also considered Mark’s mainstreaming opportunities as outlined by the proposed IEP (Osborne, 1998).

NCLB and IDEIA

Statutory language in the No Child Left Behind Act (NCLB), formerly known as the Elementary Secondary Education Act (ESEA), appeared to redefine what constitutes FAPE for students with disabilities. Considered to be standards-based educational reform, NCLB was signed into law in 2002 by President George Bush. It strongly encouraged educators to reach the same high standards with all students, including those with disabilities (Voltz’ & Collins, 2010). Through NCLB, legislation required schools to minimize the gap in achievement between students with and without disabilities. Along with NCLB, the 2004 reauthorized IDEA, now Individuals with Disabilities Education Improvement Act (IDEIA), placed greater emphasis on students having access to the general curriculum and to quality instruction. There was an increased emphasis on ensuring effective scientifically-based instruction, a rigorous curriculum, and high academic standards for all students. As a result, students with disabilities began spending larger quantities of time in the general education setting (Hardman & Dawson, 2008). This stress on the acquisition of high academic standards obligated IEP teams to view what was considered “appropriate” in a new light. The FAPE standard as expressed in Rowley appeared to be “outdated in light of the standards-based educational reform” (Daniel & Meinhardt, 2007, p. 535). The “basic floor of opportunity” was possibly no longer rigorous enough to meet the standards set forth in NCLB. Now schools would have to make adequate yearly progress as defined by absolute bars on standardized tests for subgroups of students, including those with disabilities.
The focus for students with disabilities changed to one of outcomes and progress versus one of process and procedures. In addition to the Federal Regulations, policy letters from the Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitation Services (OSERS) communicated this fact and the importance of LRE to local education agencies (LEAs). In its letter to Barbara Gantwerk (2003), OSEP stated “its monitoring efforts [would be focused] on those performance issues most closely related to improving results for children with disabilities and on those States most in need of improvement on those performance issues” (p. 2). In this same letter, OSEP also addressed LRE. The letter continued, “OSEP has found that a high percentage of children in separate programs is frequently an indicator of a lack of supports and services available in less restrictive placements and/or inappropriate procedures in making placement determinations for children with disabilities” (p. 2).

According to a comparison of the 1999 IDEA Regulations to the 2006 IDEIA Regulations, as compiled by The National Association of State Directors of Special Education (2007), the language for LRE became more defined, specific, and stringent. There were word changes: “shall” or “will” was changed to “must”; “students” was changed to “child”; and “test” was changed to “assessment.” The 1999 IDEA Regulations required “a continuum of alternative placements to meet the unique needs of each child with a disability” (Sec 300.130). The 2006 IDEIA Regulations added to that:

Each public agency must ensure that

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular
classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114).

The language in the 2006 regulations suggested that IEPs must now include a statement that measurable annual goals are designed to help the child make progress in the state content and proficiency standards to the extent that they are presented in the general education curriculum (Daniel & Meinhardt, 2007). While giving some flexibility as to the academic standards for those children with the most significant disabilities, their curriculum still had to be tied to general education standards.

Supplementary aids and services were required as part of the LRE mandate to ensure that schools made “good faith efforts” to educate children in less restrictive settings. Prior to a more restrictive setting being considered for a student, IEP teams must first consider if the less restrictive setting can be maintained with the use of supplementary aids and services (Yell & Katsiyannis, 2004). Student participation in extracurricular activities was similarly addressed by the 2006 Regulations. The 1999 Regulations stated, “each public agency shall ensure that each child with a disability participates with non-disabled children in those services and activities to the maximum extent appropriate to the needs of that child” (Sec. 300.553). The 2006 Regulations added the following: “The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child’s IEP Team to be appropriate and necessary for the child to participate in nonacademic settings” (34 CFR 300.117)

In addition, the 2006 Regulations addressed the way states fund special education, prohibiting states from setting up a funding system that encourages restrictive placements. Specifically, it stated the following:

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to
provide a child with a disability FAPE according to the unique needs of the child, as
described in the child’s IEP. (34 CFR 300.114 (b)(1)(ii))

IDEIA continues to define FAPE in broad, general terms but has included language that
stresses the importance of LRE. IDEIA continues to give LEAs the choice of determining what
specially designed methodology to use in the LRE to reach each child’s goals.

Conclusion

Due largely to the civil rights movement, which brought a consciousness of equality to
society, and the passage of EAHCA in 1975, efforts were directed in the 1970s and early 1980s
to bringing students with disabilities into public schools and other public educational settings for
the first time (Bartlett & McLeod, 1998). In the 1980s, judiciary decisions regarding LRE
placement assigned emphasis on individual needs of students and determined that those needs
were frequently not harmonious with the general education environment (Lake & Norlin, 2007).
Judicial decision in the early 1990s trended toward general education and building inclusionary
programs (Osborne, 1998). Specifically, courts found that general education placements were
essential to fulfill the IDEA’s LRE requirement. The majority of cases from the mid-1990s
seemed to set boundaries for LRE decisions. The emphasis was on unique needs of students, and
courts found educational progress to supersede LRE when both could not be attained in the same
placement. The late 1990s through early 2000s presented cases with decisions made based on the
of students with disabilities are so individualized, it makes sense that decisions regarding what
placement constitutes the LRE for a student are each based on their own facts as well” (p.22).
The central issue in placement decisions is the provision of FAPE, with LRE being one of
several components of an appropriate education (Osborne, 1992).
While there are certainly critics of this act, looking at the full historical lineage of the act gives one an appreciation of the fact this piece of legislation has had little substantial change in over 35 years and sets American Public Education apart from other countries.
CHAPTER 3

METHODOLOGY AND PROCEDURES

Introduction

In *An Elusive Science: The Troubling History of Education Research*, Ellen Condliffe Lagemann (2000), stated,

I am, of course, aware that many people would insist that education is not itself a discipline. Indeed, because it does not have distinctive methods or a clearly demarcated body of subject matter and is not seen as a tool for the analysis of other subject matters, I would tend to agree. Instead, I see education as a field of study and professional practice that is illuminated by a wide variety of disciplinary and multidisciplinary approaches.

The point I would make is simply this: to improve education in enduring ways, we will need to strengthen education research, and to do that, we must change the circumstances that have historically constrained the development of education study. (pp. xiv-xv)

This research study is an attempt “to improve education in enduring ways.” This is a qualitative research study based primarily in the review of case law that utilized a legal-historical research process. Source materials included decisions from the United States Supreme Court and the United States Courts of Appeal rendered after the 2005 implementation of the reauthorized Individuals with Disabilities Education Improvement Act of 2004. Final regulations were adopted by the U.S. Department of Education in August 2006. One hundred cases heard by the U.S. Courts of Appeals dealing with FAPE were briefed from the period 2005 through 2010. Through analysis of these cases, specific trends and patterns were identified, providing a deeper understanding of FAPE and student placement in the LRE to centralized and school level administrators responsible for implementing IDEA.
Research Questions

1. What issues regarding Free Appropriate Public Education (FAPE) have the United States Supreme Court and U.S. Courts of appeal defined since the 2005 implementation of the 2004 reauthorized IDEA?

2. What were the outcomes of cases about FAPE brought under IDEA by the United States Supreme Court and US Courts of appeal?

3. What trends have developed in regard to the provision of FAPE through IDEA rulings since the 2005 implementation of the 2004 reauthorized IDEA?

4. What principles and procedures applicable for school administrators can be discerned from court cases brought under the IDEA with regard to FAPE and student placement decisions?

Data Collection

Due to the great number of cases involving IDEA, a purposeful sample of court cases was analyzed. Source materials for this study included but were not limited to all cases heard by the United States Supreme Court and by the United States Courts of Appeal regarding FAPE after August, 2005, the federally mandated implementation year of the reauthorized IDEA of 2004. The majority of the research was conducted at The University of West Georgia’s library, Ingram Library, in Carrollton, Georgia. The researcher also utilized The University of Alabama’s Law library; The University of Alabama Education Library, McClure Library, at The University of Alabama in Tuscaloosa, Alabama; and the University of Georgia’s Law Library in Athens, Georgia. Data and research materials were collected from publications from publishers such as LRP and CASE. Web searches of GADOE and ED GOV produced documents that were
collected and analyzed. Computer applications such as Lexus Nexus and SMART were also used to obtain additional information associated with the topic.

Digests

West’s Education Law Digest System was used as the basis for gathering data regarding court cases involving IDEIA placement decisions. This digest system includes hundreds of legal issues relating to the field of education and categorizes them in a research-friendly manner. When the research began, West Law Digest presented more than a thousand cases involving student placement decisions since the enactment of EAHCA in 1976 under the Key Number Schools 148(2): Handicapped children and special services therefore, and 148 (2.1) In general.

Erlandson, Harris, Skipper, and Allen (1993), in their book Doing Naturalistic Inquiry, stated, “one would not consider all the books and magazine articles in a library as possible sources for documents or literature review tools. There must be some tacit and rational screening process involved” (p. 100). Following their advice, the researcher screened the cases and included only those cases heard by the United States Courts of Appeal and the United States Supreme Court because the most recent reauthorized IDEA was implemented by the states in 2005. Though most state’s IDEA procedures are written based on the 2006 Regulations, it seemed rational to begin with the cases heard after the date that states were expected to implement IDEA, which was in August 2005. A total of 104 cases were retrieved and copied from the University of West Georgia Ingram Library and The University of Alabama at Tuscaloosa Library. They were separated by Supreme Court cases and Courts of Appeal cases and arranged in ascending order by legal jurisdiction. The cases briefed served as the foundation for this research project.
Case Brief

In their book, *Case Analysis and Fundamentals of Legal Writing*, Statsky and Wernet (1995) provided a thumbnail structure for briefing cases. Each case in this study was briefed using this method, which included the following components:

1. Citation: “Identifying information that will enable you to find a law, or material about the law, in a law library” (p. 450).
2. Key Facts: “A fact that is essential to the court’s holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion” (p. 453).
3. In Issue: “Before the court for resolution. A specific legal question that is ready for resolution” (p. 452).
4. Holding: “The answer to a legal issue in an opinion. The result of the court’s application of one or more rules of law to the facts of the dispute” (p. 452).
5. Reasoning: “The explanation of why a court reached a particular holding for a particular issue” (p. 455).
6. Disposition: “whatever must happen in the litigation as a result of the holdings that the court made in the opinion” (p. 128).

Data Analysis

This qualitative study attempted to glean trends and patterns from data arising from law cases to improve administrators’ understanding and monitoring of the education of students’ with disabilities. As a result of the case briefing process, this researcher was able to gain a greater understanding of how the courts made sense of IDEIA and how schools should implement its
mandates. Tentative hypotheses were derived from the relationships drawn among categories and properties of the cases as they were compared and contrasted.

This analysis was possible due to the case briefs being converted to data. The data were condensed and summarized through the cyclical act of coding, which is “the transitional process between data collection and more extensive data analysis” (Saldana, 2009, p. 4). Coding allowed this researcher to filter through an overwhelming amount of information produced by the data and to focus on the most significant aspects of the data. The process of coding and recoding allowed for the researcher to organize the data into meaningful segments, “captur[ing] [the data’s] primary content and essence” (Saldana, 2009, p. 3). Initial categories were formed and then expanded by reviewing and re-reviewing the categorical database of cases. By comparing, contrasting, and combining the codes, the researcher was able to generate categories, trends, themes, and concepts (Creswell, 2007).

Following Saldana’s (2009) general criteria for making coding decisions as he described in his book, The Coding Manual for Qualitative Researchers, preliminary coding consisted of the following categories: legal jurisdiction, disposition, eligibility category of student, LRE test utilized, placement decision, economic considerations, discipline involved, fact(s) unique to case.

Through this constant comparative method of data analysis, as Merriam (1998) described in her book, Qualitative Research and Case Study Applications in Education, the researcher was able to determine similarities and differences among and between the eleven court circuits and the cases, themselves. Trends and patterns emerged as a result of the analysis. These trends and patterns were studied, revisited, and refined and discussed in depth in Chapter 4 of this dissertation. These trends provided guidance to administrators who write and monitor the
implementation of procedural guidelines and for those making IEP placement decisions for students with disabilities.

Summary

Through the case brief method of court decisions, emerging patterns and trends provided inference as to what constitutes FAPE and how to make LRE placement decisions. By extrapolating the data, the researcher was able to provide suggestions for public school administrators so as to guide their development and implementation of procedures and processes that ensure students with disabilities receive a free appropriate education and receive their special education services in the least restrictive environment. This will be discussed in greater detail in Chapter 4.

The provision of a free appropriate public education for students with disabilities is of great importance. The implications of not providing this mandate could result in undesirable ramifications such as a lack of educational progress for students and costly litigation for school districts. Part of providing FAPE is the consideration of LRE. Students with disabilities must be educated with their general peers as much as possible, and this is considered their least restrictive environment. Because there are no clear-cut rules as to this provision, administrators and IEP teams must rely on the preponderance of educational and behavioral data and guidance from past court cases. As a result of this research project, clearer guidance for the provision of FAPE and LRE is offered.
CHAPTER 4
DATA AND ANALYSIS

Data

Chapter 4 provides a detailed summary for 100 court cases regarding the provision of a Free Appropriate Public Education with an emphasis on least restrictive environment as defined by The Education of All Handicapped Children Act of 1973. This Act has been amended four times and is currently identified as the Individuals with Disabilities Education Improvement Act of 2004. Analysis of cases begins with United States Supreme Court appeals cases and ends with United States Courts of appeal for the 11th Circuit cases. The first case briefed is Schaffer Ex Rel. Schaffer v. Weast, 126 S. Ct. 528 (2005). The last case briefed is School Bd. of Lee County, Fla. v. M.M., 348 Fed. Appx. 504 (11th Cir. 2009). Each case’s citation determined where the specific case was located in the West Education Law Digest System under the topic of schools. The cases were analyzed using a “thumbnail brief,” which is an abridged version of the comprehensive brief structure described in Chapter 10 of Case Analysis and Fundamentals of Legal Writing, Fourth Edition, by William P. Statsky and R. John Wernet, Jr. (1995). Cases are documented first by Circuit then in chronological order by year. Each case presented provides the case’s citation and key facts followed by the issue(s) and holding(s). Finally, the reasoning for the court’s decision and its disposition is presented for each case.
Case Briefs

Case Briefs for Appeals to the Supreme Court

Citation: Schaffer Ex Rel. Schaffer v. Weast, 126 S. Ct. 528 (2005).

Key Facts: Parents of a child considered learning disabled filed for a due process hearing pursuant to the IDEA due to their disagreement with the IEP developed by the Montgomery County School District. Peter J. Messitte, J., for the United States District Court for the District of Maryland, reallocated initial burden of proof regarding adequacy of IEP to the school district and remanded to the ALJ. The school district appealed. The Administrative Law Judge held the petitioners bore the burden of persuasion and ruled in favor of the respondents. The District Court reversed this decision, stating the burden of persuasion was on the school district. The Fourth Circuit reversed the District Court’s decision, concluding the petitioners had offered no persuasive reason to depart from the normal rule of allocating the burden to the party seeking relief.

Issue: At issue is whether the petitioners or respondent is responsible for bearing the burden of persuasion in an administrative hearing challenging an IEP.

Holding: The United States Supreme Court affirmed the United States Courts of appeal for the Fourth Circuit. It held that under the IDEA the burden of proof in an administrative hearing challenging an IEP was placed upon the party seeking relief.

Reasoning: IDEA is silent on the issue of allocation of the burden of persuasion, thus the Supreme Court started with the ordinary default rule that plaintiffs bear the burden of persuasion with few exceptions. Without a reason to believe that Congress intended otherwise, the Supreme Court concluded that the party seeking relief would bear the burden of persuasion, where it usually falls.
Disposition: The Supreme Court affirmed the decision of the Fourth Circuit Courts of appeal that the burden of persuasion is the responsibility of plaintiffs in disputes through IDEA.

Citation: *Forest Grove School Dist. v. T. A.*, 129 S. Ct. 2484 (2009).

Key Facts: T.A. attended public school in the Forest Grove School District from kindergarten through second semester of his 11th grade year. When T.A. was in elementary and middle school, he experienced difficulty paying attention in class and completing assignments. Upon entering high school, T.A.’s mother contacted the school counselor due to these issues continuing. As a result, the school psychologist evaluated T.A. by reviewing his school records, completing an interview with T.A., and administering cognitive tests. She found that he did not need further testing for any learning disabilities or other health impairments, including ADHD. The school psychologist, two other school officials, and T.A.’s mother discussed the evaluation results and all concluded that T.A. did not need further testing.

In February of T.A.’s junior year, he was privately evaluated at his parent’s expense and diagnosed with ADHD and other disabilities related to learning and memory. His parents enrolled him in a private school that focused on educating children needing special education services. They then gave the school district written notice of private placement and filed for a due process hearing regarding T.A.’s eligibility for special education services. The school district evaluated T.A. and subsequently found him ineligible for special education services.

After hearing expert testimony and reviewing the records, the hearing officer found that T.A. was eligible for special education services because his ADHD adversely affected his educational performance and the school district failed to meet its obligations under IDEA. Because the school district did not offer T.A. a FAPE, the hearing officer ordered the district to reimburse T.A.’s parents for the cost of private school tuition.
The school district sought judicial review in District Court, arguing that the hearing officer should not have granted reimbursement. The District Court accepted the hearing officer’s findings of fact but set aside the reimbursement award after finding that the 1997 Amendments categorically barred reimbursement of private school tuition for students who have not received special education and related services by the public school.

T.A.’s parents appealed. The Courts of appeal for the Ninth Circuit reversed and remanded for further proceedings, noting that the 1997 Amendments did not address private school reimbursement and did not impose a categorical bar to reimbursement for private school tuition for a child who had not previously received special education services through the public school. The school district appealed to the United States Supreme Court.

The United States Supreme Court granted certiorari to determine whether IDEA establishes a categorical bar to private school tuition reimbursement for students who have not previously received special education services from the public school.

Issue: At issue is whether the school district is responsible for reimbursing private-school tuition of a student diagnosed with a learning disability who never received services from said school district.

Holding: The United States Supreme Court held that the 1997 Amendments to IDEA did not firmly bar reimbursement of private school tuition if a child had not previously received special education and related services through the public school, nullifying Greenland School Dist. v. Amy N. It held that IDEA authorized reimbursement of the cost of a child’s private special education services.

Reasoning: The United States Supreme Court cited Burlington, 471 U.S., at 370, 105 Sct. (1996), where it held that the IDEA Amendments do not impose a categorical bar to
reimbursement when a parent unilaterally places their child in private school, even if the child has not previously received special education services through the public school. In that case it found that IDEA gave the court broad discretion to grant relief as the court determines is appropriate. This decision was due in part to the fact that administrative and judicial review of a parent’s complaint could take years and Congress did not intend parents to accept an inadequate public school education pending adjudication of their claim or to bear the cost of private education if the court determined that the private placement was proper.

The school district’s argument that because 1412(a)(10)(C) only discusses reimbursement for children who have previously received special education services through the public school, IDEA only authorize reimbursement in that circumstance, was found to be unpersuasive. The Court found that the school district’s understanding of the Act is not supported by its text and context because the 1997 Amendments do not prohibit reimbursement under the circumstances of this case and the clause says nothing about the availability of reimbursement when a school district fails to provide FAPE. The Court stated that the clauses cited by the school district should not be read as exhaustive. The Court also found that the school district’s argument conflicts with IDEA’s child find requirement. Thus, when a court finds that a school district fails to provide a FAPE and the private placement is suitable, it must consider all relevant factors in the case, such as notice from the parents and opportunity of the school district to evaluate.

Disposition: The United States Supreme Court affirmed the judgment of The United States Courts of appeal for the Ninth Circuit.
Citation: Reid Ex Rel. Reid v. District of Columbia, 401 F3d 516 (D.C. Cir. 2005).

Key Facts: Mathew’s mother noticed that he had difficulty reading when Matthew was in second grade. She contacted the school counselor and the counselor refused to provide forms for requesting a disability evaluation. Mathew’s teacher recommended retention in the second grade. He moved to California and then returned 1 year later to D.C. At that time, Mathew’s test scores placed him in bottom one percent for reading comprehension and the bottom five percent for overall reading ability. Despite these scores, DCPS placed Mathew in a regular fourth grade class without testing him for a possible disability. After a year of failing grades, DCPS tested Mathew for a disability, found him eligible through IDEA and developed an IEP.

The IEP developed by DCPS retained Mathew in the fourth grade and provided special education 10 hours a week and language therapy for 1 hour a week. Mathew received accommodations while in the general classroom. Two years later, the IEP team increased Mathew’s time in a separate special education class to 17.5 hours per week. Despite this change, in November of Mathew’s sixth grade year, Mathew tested at the second grade level for reading, which was a year below what he tested six months earlier. His overall intellectual ability placed him in the ninth percentile for his age. The IEP team then decided to reduce his time for math and increase his time for reading. They also added counseling services.

Mathew’s mother disagreed with the IEP and filed for a due process hearing, arguing that Mathew required a full time special education program. The hearing officer agreed with Mathew’s mother and placed him at Accotink Academy, a full time special education program. Mathew’s mother also sought compensatory education and in a separate proceeding was granted this. Based on the evidence presented, this hearing officer granted Mathew 1 hour for each day
DCPS denied FAPE to Mathew, equaling 810 hours of compensatory education. He gave the IEP team authority to reduce or discontinue the compensatory services when Mathew no longer needed or was benefitting from the services. Mathew’s mother appealed to the United States District Court for the District of Columbia based on her disagreement with the amount of time of compensatory education services awarded by the hearing officer and the IEP team’s discretion to reduce or discontinue these services. The United States District Court for the District of Columbia granted summary judgment for the school district.

Issue: At issues is whether the district court abused its discretion in ordering, without explanation, tutoring in the amount of 1 hour for each day that Mathew failed to receive FAPE from DCPS.

Holding: The Courts of appeal held that: (1) the District Court owed little difference to the hearing officer’s determination as to the amount of compensatory services to be awarded to Matthew; (2) the District Court should have reviewed de novo hearing officer’s determination concerning delegation of authority to the IEP team; (3) de novo applied to District Court’s grant of summary judgment; (4) the District Court’s hour-per-day formula for determining the amount of compensatory services, and Matthew’s suggested one-to-one formula, were both inappropriate, and; (5) authority to reduce or discontinue compensatory services could not be delegated to the IEP team.

Reasoning: The United States Courts of appeal reasoned that the decision by the hearing officer to award Matthew 1-hour-a-day compensatory educational services for each day of the 4.5 years the school district denied a FAPE was neither supported by reasoning or evidence. The Court also reasoned that the hearing officer’s delegation to the IEP team of the decision to reduce
or discontinue compensatory services when they determined Matthew no longer needed it violated IDEA.

Disposition: The United States Courts of appeal for the District of Columbia Circuit affirmed in part and reversed in part and remanded the District Court’s summary judgment.

Citation: Branham v. Government of the District of Columbia, 427 F.3d. 7(D.C. Cir. 2005).

Key Facts: Terrance Branham, a learning disabled student, attended District of Columbia Public Schools (DCPS). In October 1999, Terrance was placed at the Prospect Learning Center, a full time special education facility. Terrance’s first IEP was written the following June. Two and a half years later, test scores indicated that Terrance had made very little progress while at Prospect Learning Center. School officials, along with Terrance’s mother, Irene Branham, met in January 2003 to develop a new IEP to better meet Terrance’s needs. Ms. Branham disagreed with the contents of the IEP.

Later that same month, Ms. Branham filed for a due process hearing, arguing that DCPS denied Terrance FAPE and sought a private-school placement and compensatory tutoring. The hearing officer found in favor of DCPS, citing that Terrance was receiving FAPE. Terrance later became too old to remain at Prospect and enrolled in a general education high school, Cardozo High School.

Ms. Branham brought suit in the United States District Court for the District of Columbia and filed a motion for summary judgment. DCPS missed the deadline for responding, thus the district court entered a default judgment in favor for the Branham’s. One week later, DCPS moved to vacate the judgment, stating they misunderstood the briefing schedule. The Branham’s argued that Terrance had already been accepted at High Road’s Upper School of Washington,
D.C. and that vacating the judgment would harm Terrance’s education. The following day, DCPS filed its motion opposing the grant of summary judgment, but did not address the proposed placement at High Road. The Branham’s asked the court to order DCPS to place Terrance at High Road and to provide transportation. The district court vacated the default judgment and considered the summary judgment motion on the merits.

The district court held a status conference on April 15, 2004, to fill in the gaps in the record. The court stated there was no information on record that led to the finding of ordering the relief that Terrance and his mother requested.

The Branham’s objected to the judge’s consideration of remanding the case so the hearing officer could get further evidence on Terrance’s academic progress. The Branham’s argued that the deficiencies in the record were a result of DCPS’s failure to evaluate Terrance. DCPS did not address if the placement at Prospect was appropriate or not, but stated that the record did not indicate such. The district court entered judgment for the Branham’s, stating that DCPS failed to show that Terrance’s IEP and his placement at Prospect were adequate to meet his educational needs and that the hearing officer’s conclusion had no support in the record. The district court awarded Terrance compensatory education in the form of individual tutoring for denial of FAPE and private placement at High Road School at DCPS’s expense. DCPS appealed the district court’s decision.

Issue: At issue is whether the United States District Court for the District of Columbia abused its discretion in ordering the DCPS to (1) provide Terrance with 4 years of remedial tutoring and (2) to pay for his attendance at a private school.

Holding: The United States Courts of appeal for the District of Columbia held that the lower court failed to make fact-findings needed to support remedial relief.
Reasoning: Both the Supreme Court and the Courts of appeal for the District of Columbia have previously held that district courts may order school districts to implement educational programs for disabled students only after finding that the programs are tailored to meet the students’ specific educational needs. This finding must be based on evidence of the record. The district court here made no such findings with respect to either the tuition or the private placement because the record is so barren of evidence that making such findings would have been impossible.

Disposition: The United States Courts of appeal reversed and remanded for the District Court for the District of Columbia to develop an evidentiary record and create an educational program designed to meet Terrance’s needs.

Citation: Lesesne Ex Rel. B.F. v. District of Columbia, 447 F. 3d. 828, (D.C. Cir. 2006).

Key Facts: B.F. was an intellectually disabled and marijuana dependent 16 year old who was referred by the Social Services Division of the Superior Court of the District of Columbia to DCPS for an initial evaluation through IDEA in the fall of 2003. Over the following four months DCPS attempted to evaluate B.F. but was unable to do so due to his truancy and his mother’s refusal to help with the situation. In February 2004, B.F. finally attended so that he could be tested but that same day was arrested for assaulting his girlfriend.

DCPS began planning B.F.’s IEP meeting even before the evaluation was complete. On February 10, 2004, prior to the evaluation being completed, Ms. Lesesne’s attorney contacted DCPS and requested an IEP meeting. DCPS communicated with Ms. Lesesne’s attorney about B.F.’s uncooperative behavior and the portions of the evaluation that were still not complete.

On February 11, 2004, Ms. Lesesne’s attorney filed for a due process hearing arguing that DCPS had made no attempt to provide FAPE for B.F. She requested a hearing officer’s
decision requiring DCPS to complete all necessary evaluations, develop an IEP, and provide B.F. with compensatory education.

While the due process hearing was pending, on February 24, 2004, DCPS faxed Ms. Lesesne’s attorney an invitation to the IEP meeting. Ms. Lesesne rejected all three dates by fax and that same day, DCPS suggested three more dates. Ms. Lesesne did not respond.

On March 19, 2004, the hearing officer dismissed the case with prejudice and denied Ms. Lesesne’s requests for relief stating that DCPS had made reasonable effort to evaluate B.F. and to schedule an IEP meeting.

On April 1, 2004, DCPS sent another invitation to an IEP meeting, which stated that this was the fourth and final invitation and that they would move forward with the meeting if they received no response. Ms. Lesesne did not respond and, on April 14, 2004, filed a complaint in District court repeating the same allegations as in the due process hearing, but adding the request for an alternative educational placement. She then filed two additional due process requests with a second hearing officer. At some point during this time, DCPS and Ms. Lesesne reached an agreement. B.F. was transferred to an alternative educational placement and DCPS created and implemented an interim IEP.

On July 26, 2005, the District Court entered summary judgment for DCPS stating that the record gave no indication that B.F.’s educational placement was inappropriate or that an IEP had not been created. The District Court held the case moot and stated that violations of IDEA’s procedural requirements were only actionable if they affected a student’s substantive rights. Because Ms. Lesesne failed to show that B.F. had been harmed by any procedural violations, the District Court granted summary judgment in favor of DCPS. Ms. Lesesne appealed.
Issue: At issue is whether the case is moot and whether the District Court inappropriately exercised “hypothetical jurisdiction” over the merits of Ms. Lesesne’s claim.

Holding: The United States Courts of appeal for the District of Columbia held that the mother’s claim was not rendered moot by the fact that DCPS did develop an IEP for B.F., where the mother demanded for compensatory education in addition to an IEP which was never decided by the district court and that the student’s substantive rights were not violated by any procedural errors by DCPS in developing the student’s IEP, prohibiting claim for compensatory education.

Reasoning: The United States Courts of appeal for the District of Columbia reasoned that because DCPS created an IEP, Ms. Lesesne’s demand for an IEP is moot. Ms. Lesesne asserted that the case is not moot because DCPS never created an IEP for B.F. DCPS submitted evidence documenting that an IEP was developed and produced two separate letters where Ms. Lesesne and her attorney acknowledged having received and reviewed the IEP.

Ms. Lesesne’s secondly asserted that the case is not moot because she requested a declaratory judgment that, along with her request for any other relief the Court deemed just, B.F. was entitled to receive compensatory education. The Courts of appeal did not agree with Ms. Lesesne’s reasoning but it reasoned that the first paragraph of the complaint contains a demand for compensatory education and because it does not appear that the parties addressed Ms. Lesesne’s demand, her complaint presented to the district court was not moot. Upon de novo review, The Courts of appeal concluded that Ms. Lesesne’s claims failed on the merits. Though DCPS failed to evaluate B.F. within the 120 days of the parent’s request, Ms. Lesesne did not show that any harm to B.F. resulted from that error. Only procedural violations of the IDEA that result in a loss of educational opportunity or seriously deprive parents of their participation are actionable.

Citation: Kingsmore Ex. Rel. v. District of Columbia, 466 F. 3d 118 (D.C. Cir. 2006).

Key Facts: Ms. Kingsmore, along with her daughter Hannah Lutz, moved to the District of Columbia in 2002. Hannah had a diagnosed mild disability, thus the DCPS prepared an IEP for Hannah. Ms. Kingsmore felt the IEP was inadequate and filed for a due process hearing. The hearing officer determined the IEP was appropriate and met the requirements of IDEA. Ms. Kingsmore appealed to the United States District Court for the District of Columbia. Upon appeal, she discovered the transcript for the due process hearing was incomplete. Ms. Kingsmore moved for summary judgment arguing that the record was so deficient that it prevented the court from providing any meaningful review. DCPS moved for summary judgment in their favor insisting that the transcript was sufficient.

The District Court granted Ms. Kingsmore’s motion and ordered DCPS to provide reimbursement for Hannah’s placement in a private school for the 2002-2003 and 2003-2004 school years. The District Court held that because DCPS did not provide the complete transcript of the due process hearing, they denied Ms. Kingsmore her right to adequately dispute the hearing officer’s decision and so denied Hannah FAPE.

Issue: At issue is whether DCPS, by not providing a complete transcript of the due process hearing, denied FAPE to Hannah.

Holding: The United States Courts of appeal for the District of Columbia held that the district court failed to determine whether DCPS’ procedural error of the IDEA violated Hannah’s substantive rights.
Reasoning: The United States Courts of appeal for the District of Columbia reasoned that the District Court’s decision did not consider whether the transcript violation caused substantive harm to Hannah. Instead, the decision contained only repeated statements of failure to provide a verbatim transcript with a substantive denial of FAPE. The Courts of appeal stated they failed to see how the transcript violation in this case could have caused substantive denial of FAPE.


Citation: Paolella v. District of Columbia, 210 Fed. Appx. 1 (D.C. Cir. 2006).

Key Facts: John, student, attended private school where he received additional tutoring services. DCPS developed an IEP placing John at a public school where he would receive special education services for part of the school day and psychological counseling. Mr. and Mrs. Paolella attended the IEP meeting where they requested John remain in the private school he was then attending and receive intensive special education services. After visiting the suggested public school, the parents voiced their disagreement with the DCPS placement because they were satisfied with the private school John was attending. They filed for a due process hearing. The hearing officer found in favor of DCPS. Mr. Paolella filed suit in District Court.

The United States District Court for the District of Columbia offered judgment in favor of DCPS stating that John’s parents had meaningful opportunity to participate and the placement suggested by DCPS was not predetermined. They also held the public school suggested by DCPS could adequately provide the IEP services and that instructional methodology and its implementation is the responsibility the school district. Mr. Paolella appealed the decision.

Issue: At issues is whether the District Court was erroneous in its findings of fact that Mr. Paolella had a meaningful opportunity to participate in the IEP and the placement suggested by
DCPS was not determined prior to the IEP meeting or whether the District Court’s conclusions were contrary to law.

Holding: The United States Courts of appeal for the District of Columbia held that Mr. Paolella had meaningful opportunity to participate in special education determinations made for his son and the public school where John was placed could provide his IEP services. They also held that the hearing officer was not biased.

Reasoning: The United States Courts of appeal for the District of Columbia reasoned that the record reflected the Paolellas had meaningful opportunity to participate in the IEP meeting. They were involved in the development of the IEP itself and informed DCPS that they wanted John to receive intensive special education services and that they prefer he remain in private school. Because the school district did not agree with the parents does not show that the parents did not participate meaningfully. Also, they reasoned there was no reason to overturn the district court’s decision not to credit the parent’s testimony that they had made the request of DCPS to consider the methodology used by the private school. The Courts of appeal reasoned that the Paolella’s own advocate, who was present at the hearing, could not recall this request having been made.

The Courts of appeal reasoned that the district court could properly conclude that DCPS’s designation of the public school conformed to IDEA’s requirement for a placement that would enable John to receive educational benefits. The public school was conducting a special education program with trained staff in a specifically allocated facility and the parents were assured that they would develop a transition plan for John to enter public school.

They further reasoned that the Hearing Officer was not biased and the father’s contention as such lacked merit. The Hearing Officer’s statements reflected impartiality, not bias, and her
assessment of the evidence did not indicate that she ruled on the basis of evidence that was not presented at the hearing.


*Case Briefs for Appeals to United States Courts of Appeal, First Circuit*

Citation: *Mr. I. Ex Rel, L.I. v. Maine School Administrative District No. 55*, 480 F.3d. 1 (1st Cir. 2007).

Key Facts: LI attended Cornish Elementary School in Maine until 2003. She performed well academically but began to experience sadness, anxiety and difficulty with peer relationships by the fourth grade. By fifth grade, her parents sought psychological counseling for LI and she began taking antidepressant medication. Her grades began dropping from high honors to honors. As the year progressed, LI began to show improvements in peer relationships and participating in class.

During the summer prior to sixth grade, LI asked her mom to either be home schooled or attend private school, where her older sister was attending. LI’s parents, however, continued to send her to public school. By September, LI began missing school and not completing assignments. At a meeting between school officials, LI, and her mother, LI’s teacher informed LI’s mother of her continued trouble relating to her peers and her refusal to complete assignments. LI’s mother noticed cuts and scratches on LI’s arms. The teacher suggested that LI might have injured herself during her bathroom breaks. LI’s teacher stated that LI was progressing academically. LI’s teacher and mother completed a contract for LI. The contract
allowed LI to study more advanced topics of her interest if she completed her assignments. LI refused to sign the contract. Later, in October, she over medicated herself in a suicide attempt.

Mr. and Mrs. I informed LI that she would not have to continue school at Cornish Elementary and would be able to enroll in the private school her sister attended. LI’s new counselor suspected LI had Asperger’s Syndrome and referred her for neuropsychological testing. Mr. and Mrs. I informed the school that she would not be returning, that they were considering a private school, and would be seeking reimbursement from the district for the cost of the private school placement.

A school district official explained the process for seeking reimbursement for private school. The official also stated that an evaluation team would be meeting at the end of the month. At that meeting, the team recommended 10 hours of tutoring outside of school while the testing was being completed.

The testing was completed early November and suggested that LI had Asperger’s Syndrome and adjustment disorder with depressed mood. The neuropsychologist also observed that LI displayed week adaptive skills and executive skills. She demonstrated poor pragmatic language skills. The neuropsychologist recommended a social skills coach and a therapist familiar with Asperger’s. In January a full speech and language evaluation was completed. The evaluator also noted poor social understanding deficits and recommended direct teaching of social skills.

Meanwhile, the district did not provide a tutor for LI, nor did they attempt to explain this. Ms. I began homeschooling. However, LI would not complete assignments and counselors recommended LI resume formal schooling.
LI began attending private school and began to improve and thrive there. The private school did not provide social skills or cognitive behavioral therapy as recommended by the evaluators.

When the evaluation team met to review the results of the evaluation, they accepted the findings of the tests but could not come to consensus as to LI’s eligibility for special education as defined by IDEA. They did find her eligible for services under the Rehabilitation Act and recommended several accommodations addressing her issues and direct instruction in social pragmatics, gifted, tutoring, and other instructional programming. Mr. and Ms. I. rejected the school district’s plan and their refusal to find LI eligible under IDEA. Mr. and Mrs. I. filed for due process, seeking reimbursement under IDEA for LI’s placement in private school.

The Due Process Hearing Officer determined that IDEA does not require a school district to provide special education services to address mental health issues that do not adversely impact academic performance. He determined that Maine Special Education Regulations are in line with IDEA, as well. Mr. and Mrs. I. then filed an action in district court where the case was referred to a magistrate judge. The magistrate judge’s findings lined up with the Due Process Hearing Officer’s finding.

The district court rejected the magistrate judge’s recommended decision. They concluded that LI’s disabilities did adversely affect her educational performance, as it is defined by Maine, in the areas of socialization and communication. They stated that the term “adversely affects” held no restrictions and that any negative effect should be sufficient to find eligibility under IDEA. The district court found that LI needed special education and related services due to her disability, finding that the school district had realized this need and had made recommendations for such. As to Mr. and Mrs. I’s request for reimbursement for private school placement, the
district court found that this placement was not “reasonably calculated to enable LI to receive educational benefits” and, thus, did not entitle them to reimbursement. The district court did not grant compensatory education.

The school district appealed the findings of the district court, stating that the district court’s findings were the result of legal error. The school district believed the district court did not understand the terms “adversely affects,” “educational performance,” and “special education” as they are defined in IDEA and Maine’s regulations.

Issue: At issue is whether the district court’s determination that L.I. qualifies as a child with a disability eligible for special education and related services under IDEA as a result of Asperger’s Syndrome was in error. Specifically, the broad definitions of the terms “educational performance” and “adversely affects” used by the district court is in question. Also at issue is the parents’ claim that they are entitled to reimbursement for unilaterally placing LI in private school.

Holding: The United States Courts of appeal for the First Circuit held that Asperger’s Syndrome could adversely impact L.I.’s educational performance under Maine regulation and IDEA, regardless of the fact she excelled academically. The Court held that social skills and pragmatic-language instruction met the definition of special education according to IDEA. The Court further held that L.I.’s parents’ unilateral private school placement was not appropriate under IDEA because the school did not offer special education services recommended for L.I. by educational expects and that L.I.’s need for compensatory education could be addressed during the development of the IEP.

Reasoning: The school districts made the argument that LI did not meet the definition of a child meeting the eligibility criteria under IDEA or Maine regulations due to there being no
adverse effect on her educational progress. This argument only took into account academic progress. IDEA and Maine’s regulations include non-academic areas, in addition to academic areas. The Courts of appeal found that IDEA entitles eligible children to services in the areas of or relating to academic, physical, emotional, or social growth. The district must provide special education and related services that meet the child’s unique needs and prepare them for employment, independent living and further education. They reasoned that the standard of IDEA eligibility is not limited to only performance that is graded.

The Courts of appeal further found that the “adversely affects educational performance” requirement is one factor in a list of eligibility factors to qualify a child with a disability under IDEA and due to this, the district court’s interpretation of “adversely affects” is overshadowed due to LI meeting all of the other factors. Further, The Courts of appeal rejected the school district’s use of the unabridged dictionary’s definition of “adversely.” They, instead, relied on Black’s law Dictionary that stated “adverse” as “acting against or in a contrary direction.” This means any negative effect on educational performance would be defined as adverse.

The Courts of appeal reasoned that LI’s parents were not entitled to reimbursement under IDEA for the unilateral placement of their daughter in private school because the placement did not provide any element of special education services in which the public school was deficient. They reasoned that the decision to reject public education in favor of enrolling LI in private school could not be reasonably calculated to enable LI to receive educational benefit because the private school did not offer any special education services.

Disposition: The United States Courts of appeal for the First Circuit affirmed the decision of the United States District Court for the District of Maine.
Citation: *C.G. Ex Rel. A.S. v. Five Town Community School*, 513 F.3d 279 (1st Cir. 2008).

Key Facts: A.S. was a 14 year old diagnosed with an emotional disability. Her parents met with the school district to request an evaluation for services under IDEA. They also requested that the school district pay for A.S. to attend in a private residential placement. Prior to the school district assessing the merits of this request, the parents placed A.S. unilaterally into a private residential placement located outside of Maine.

The school district did not hear from A.S. for over a year. During that time, A.S. enrolled in a residential private school in Maine and, upon leaving this placement, went without any formal schooling for two months.

In June of 2005, A.S.’s parents filed for a due process hearing under IDEA, which was delayed until the school district could complete an evaluation. The parents and the school district met in September 2005 and agreed to an independent evaluation, which was completed by Dr. Frank McCabe. When the school district received the completed evaluation report, a second meeting was scheduled for October 2005.

During the October 2005 meeting, the school district found A.S. eligible for services under IDEA and behaved developing an IEP. Placement options were discussed and the parents seemed interested in the proposed Zenith non-residential day program or any similar program. The school district faxed a partially completed proposed IEP to the parents six days later.

At the next meeting, October 20, 2005, the participants continued to discuss placement options. The school district described the meeting as “very contentious” and quickly came to an impasse, with the parents requesting a therapeutic residential setting and the school district recommending a non-residential public school placement. The meeting ended when the parents
announced they were sending A.S. to a out-of-state residential school and would seek
reimbursement for the costs they acquired. The IEP remained incomplete. The following week,
A.S.’s parents sent a letter to the school district noting their decision as discussed in the IEP
meeting.

The due process hearing resumed given the school district and the parents could not come
to consensus regarding A.S.’s school placement. The parents argued the school district’s
proposed IEP and refusal to place A.S. in a residential placement was a denial of FAPE under the
IDEA. The school district denied all accusations. The hearing officer found in favor of the school
district and the parents filed in district court. The district court upheld the hearing officer’s
findings and the parents appealed.

Issue: At issue is whether the school district failed to provide FAPE due to the proposed
IEP and their refusal to sanction a private residential placement for A.S.

Holding: The Courts of appeal for the First Circuit held that the IEP was not yet
complete; that the parents of A.S. obstructed the IEP process; and the least restrictive
environment for A.S. was a public nonresidential placement.

Reasoning: The Courts of appeal for the First Circuit reasoned that the IEP was not final
because the parents disrupted the IEP process and had they continued to cooperate by allowing
the school district to fill in the gaps, there would have been a completed IEP that provided A.S.
with a FAPE. The Courts of appeal further reasoned that the parents had a predisposition to A.S.
attending a private residential placement at the school district’s expense and did not seriously
consider the schools district’s proposal of A. S. attending a non-residential educational
placement.
With regards to educational placement, The Courts of appeal reasoned that given the school district’s evidence and the recommendations of the independent evaluator, the least restrictive environment would be the public non-residential school placement. They reasoned that they could not reject an adequate public school placement for an optimal private placement and that school districts are to provide a reasonable level of educational benefit to disabled children, not an optimal level.

Finally, they reasoned that though IDEA does allow for parental reimbursement for private residential placements, it is contingent upon the parents showing they have diligently pursued the provision of appropriate services from the public school system, and the school system failed to provide those services. Furthermore, the private placement must be a suitable alternative. In this situation, The Courts of appeal reasoned the parents made a unilateral choice to discontinue the collaborative EIP process and, thus, were precluded from obtaining reimbursement for private placement.

Disposition: The United States Courts of appeal for the First Circuit affirmed the decision of the United States District Court for the District of Maine.

Citation: Lessard v. Wilton Lyndeborough Coop. School Dist., 518 F.3d 18 (1st Cir. 2008).

Key Facts: Stephanie Lessard, a student diagnosed with moderate mental retardation, cognitive delays, speech impairments, a seizure disorder, scoliosis, a leg-length discrepancy, and partial paralysis of her left side, had been receiving educational day services at a New Hampshire facility which provided services for the Wilton-Lyndeborough Cooperative School District, since 2001. Beginning in April of 2004, the IEP team and Stephanie’s mother, Ms. Lessard, met four
times in an attempt to complete an appropriate IEP for Stephanie. In the interim, the school district continued to provide services in accordance with the 2003-2004 IEP.

At the April 16, 2004, IEP meeting, Ms. Lessard brought Dr. Kemper, a psycholinguist, to the meeting with her to explain to the IEP committee why the Linda-Mood-Bell Phoneme Processing System was the most effective way to teach literacy to Stephanie. The IEP declined to use this particular program because they were not familiar with it, but agreed to research it. At this same meeting, the school system offered a proposed IEP to Ms. Lessard. The IEP did not specifically address Stephanie’s behavior and only offered a one-page transition plan that ended abruptly in mid-sentence.

Ms. Lessard refused to sign the IEP and refused to clarify what portions of the IEP engendered her dissatisfaction. The school district offered to schedule another IEP meeting. A meeting was scheduled in October. The school system planned to complete the IEP and the parents stated that the IEP needed to be totally rewritten. Again, Ms. Lessard refused to sign the IEP or to state what portions of the IEP with which she disagreed.

In December, another meeting was scheduled in held with the same results as the October IEP meeting. The school District then invoked its right to a due process hearing.

The hearing took place over two days. The state hearing officer ruled that the December IEP held neither procedural nor substantive errors and ordered it placed into effect. He denied the parents’ cross-petition for compensatory education and other relief.

The Lessards then filed an action in the United States District Court for the District of New Hampshire. Their suit raised the same sustentative and procedural objections as heard in the due process hearing and sought compensatory education for the alleged denial of FAPE and added a claim that the administrative hearing violated the Lessards’ procedural due process
rights. The district court found no fault with the conduct of the administrative hearing, upheld the hearing officer’s findings and conclusions, and denied the Lessards’ requests for relief. The Lessards appealed to the United States First Circuit Courts of appeal.

Issue: At issue is whether the IEP for Stephanie provided FAPE; whether Stephanie is entitled to compensatory educational services for a denial of FAPE; and whether the parents’ due process rights were violated during the administrative hearing.

Holding: The United States Courts of appeal held that IDEA did not require a transition plan that was separate from the IEP and the Rowley standard applied to transition services. They held that educators were not required to provide a behavioral plan as part of the IEP and the school district did not violate its obligations as defined in the IEP. The Courts of appeal further held that the finding that Stephanie was making reasonable progress in reading under the IEP’s methodologies was not clear error and the finding that transition services portion of the IEP was adequate was not clear error.

Reasoning: The United States First Circuit Courts of appeal reasoned that IDEA does not require a stand-alone transition plan as part of the IEP. IDEA only requires that IEPs contain statements of transition services but does not require that those statements be articulated in a separate component of the IEP. The statutory provision implicitly acknowledges that transition services must be provided to disabled children who need them, in accordance with the Rowley standard. The Lessards, however, made no claim that the August IEP lacks sufficient transition services, thus the claim of transition plan error is rejected.

The Courts of appeal reasoned that the Lessards made no claim that the necessary disciplinary actions had failed to be implemented. IDEA only requires a behavioral plan when certain disciplinary actions are taken against a disabled child. The IEP team did consider the
need for a behavior plan but found it was not needed in order for Stephanie to receive FAPE, thus the district court did not err when finding that the absence of a BIP did not constitute a procedural error with the meaning of IDEA.

The Courts of appeal reasoned that even though an IEP must be in place at the beginning of the school year, the school system has no control over the lack of a signed IEP in cases where the parent refuses to sign the IEP. From the point of the August IEP, the record shows a consistent pattern in which the school district tried to identify the parents’ specific concerns and the parents refused to clarify their concerns.

Disposition: The United States First Circuit Courts of appeal affirmed the decision of the district court.

Citation: Lessard v. Wilton-Lyndeborough Coop. School Dist, 592 F.3d. 267 (1st Cir. 2010).

Key Facts: Stephanie, a 19-year-old student had attended school at the Crotched Mountain Rehabilitation Center (CMRC), a New Hampshire facility providing special education services to the Wilton-Lyndeborough Cooperative School District beginning in 2001. Though CMRC had a residential component to its program, Stephanie only attended during the day and was transported there by bus. She qualified for special education services under the categories of intellectually disabled, speech-language impaired, and orthopedic impaired and received these services since age three.

Due to Stephanie’s increased aggressive behaviors she exhibited at CMRC and on the bus, Stephanie’s parents, the Lessards, became dissatisfied with this placement. The IEP team met numerous times from April to September 2005, creating a seventy-seven page IEP to address Stephanie’s needs. Her parents disagreed with some parts of the plan including her continued
placement at CMRC. The Lessards’ requested that the IEP provide for a specific literacy program (LiPS) that would be delivered by an instructor experienced with the method. Dr. Robert Kemper, who performed a private pscholinguistic evaluation of Stephanie, recommended this program to the Lessards. Though the school system made some modifications to the IEP, including adding the LiPS program to be delivered by a speech therapist newly trained in the program and an alternative day program for Stephanie, her parents remained dissatisfied and requested a home-community based program with some life skills instruction being provided by an outside vendor. The school district did not agree.

The Lessards would not consent to the 2005-06 IEP, thus the 2004-05 IEP remained in effect due to IDEA’s “stay put” provision. The Lessards withdrew Stephanie from CMRC in late December 2005. The school district filed a request for a due process hearing to determine if the proposed IEP was appropriate to meet Stephanie’s needs. The hearing was held on March 13 and March 31, 2006, and in July 2006, the hearing officer upheld the school district’s proposed IEP, finding that Stephanie had received educational benefits from the programs provided in the 2004-2005 IEP and that it was reasonable to assume that progress would continue through the implementation of the 2005-2006 IEP. The hearing officer also found that the Lessards’ requirement of an individual with additional experience to provide the LiPS program was not sufficient to invalidate the LiPS program offered in the IEP. Additionally, the Lessards did not show that the multi-sensory approach being used at CMRC was inappropriate. The Lessards brought action to the district court for review of the hearing officer’s decision and asked for compensatory educational services for Stephanie. The district court upheld the hearing officer’s ruling, thus the Lessards appealed the decision to The United States Courts of appeal for the First Circuit.
Issue: At issue is whether the district court made a clear error in its decision with regards to findings of fact and de novo for its legal findings.

Holding: The Courts of appeal held that the IEP did not fail to provide appropriate literacy and transitional services, and that placement at a rehabilitation center was not too restrictive or harmful. The Court held that given the differential standard prevails, Stephanie was afforded FAPE in the least restrictive environment.

Reasoning: The United States Courts of appeal for the First Circuit reasoned that the standard of review of an agency’s educational plan is giving deferential to the educational authorities because they have primary responsibility for preparing the educational plan tailored to meet a student’s individual needs and for choosing the methodology most “reasonably calculated” to provide the student educational benefit. The United States Courts of appeal reasoned that the hearing officer’s conclusion and the district court’s agreement that the proposed IEP provided educational benefits was supported in the record by testimony from numerous therapists and coordinators who worked with Stephanie at CMRC. The Courts of appeal reasoned that the record supported the district court’s finding that the Lessards requirement for an instructor with additional experience implement the LiPS program was not sufficient to invalidate the program and that the Lessards had not demonstrated that the reading program used by CMRC was insufficient. The Court reasoned that though Stephanie might have benefited more if Dr. Kemper’s recommendations had been fully followed, that is not the test. The test of appropriateness depends on expert judgment, available options and indications of progress.

The Lessards argued that the IEP’s transitional services failed to offer Stephanie sufficient interaction with her community. The Court reasoned that a similar argument in a
previous case brought by the Lessards with regards to Stephanie’s 2004-2005 IEP, was rejected and that the proposed IEP offered even more transitional services that the 2004-2005 IEP.

The Lessards argued that the IEP failed to place Stephanie in the least restrictive environment. The Court reasoned that according to New Hampshire’s table of potential placement categories, full day placement in a special day school was less restrictive than all or a portion of the IEP being implemented at home.

In reference to the Lessard’s accusation that Stephanie’s behavior was becoming worse and that it was due to her placement at CMRC, the record indicates that CMRC had not been shown to be the cause of Stephanie’s behavior and her behavior was improving though behavioral issues did still exist.

Disposition: The United States Courts of appeal for the First Circuit affirmed the judgment of the United States District Court.

Case Briefs for Appeals to United States Courts of Appeal, Second Circuit

Citation: Cerra v. Pawling Cent. School Dist., 427 F. 3d 186 (2nd Cir. 2005).

Key Facts: Kathryn’s parents, the Cerras, enrolled her in Pawling High School in January 2001. She completed ninth grade in the general curriculum. Kathryn was evaluated in June, 2001 where she was found to have overall average intelligence, below level reading comprehension, and difficulty with verbal memory. On June 24, 2001, she was found eligible by the school district for special education services through the learning disabilities program. An IEP was developed for the summer of 2001, as required by IDEA. At the end of summer, an IEP was developed for the 2001-2002 school year, which called for general education with supplemental weekly consultant sessions by a special education teacher. The sessions consisted of small group
instruction with a teacher ratio of five students to one teacher. The IEP also provided for preferential seating and extended time for assignments and tests.

On October 23, 2001, the school district met and revised Kathryn’s IEP based on a private neuropsychological report. The report suggested Kathryn be placed in a specialized school for children with learning disabilities and that she receive psychotherapy to help with her emotional development. While the school district contended that Kathryn was progressing with the current supports in place, they agreed to increase Kathryn’s level of services to one-on-one tutoring and educational counseling, both to take place after school.

Kathryn only attended these afterschool services in November and early December. She elected to not attend from December to March, thus the school district conducted another meeting to address her services. Without amending the IEP, they determined to discontinue providing the afterschool services, and re-implemented the teacher consultant services. Kathryn received these services through most of May with the exception of a short period of time when her mother advised her to not attend due to a disagreement with the teacher. In addition, prior to the end of the school year, the district increased Kathryn’s services, providing one-on-one tutoring at lunch in order to help Kathryn pass the regents exam.

In June, the school district and Ms. Cerra met to review Kathryn’s progress and to develop an IEP for the 2002-2003 school year. Ms. Cerra expressed that she did not believe Kathryn was progressing as evidenced by her fourth quarter low passing grades. The district proposed that Kathryn receive resource services and attend a special reading class one period a day. They assured Ms. Cerra they would send home the proposed IEP prior to the beginning of school. Over the summer, the Cerras sent several letters requesting the IEP and profiles for the suggested reading class, which would identify other students in the class.
On August 19 and 20, the Cerras sent letters informing the school district they were enrolling Kathryn in private school and they requested a due process hearing. Additionally, they requested reimbursement for tuition, legal fees, and transportation associated with the private school. The school district responded that they had identified an impartial hearing officer but wanted the opportunity to meet prior to the hearing to review and consider the recommendations for the 2002-2003 IEP. The meeting was scheduled one day prior to school but the parents requested the meeting be moved to September 12. The school district mailed the IEP to the Cerras August 29.

The hearing began in September 2002, and ended in March 2003. The Cerras argued that they were not given the opportunity to meaningfully participate in the development of the IEP, were not provided the IEP in a timely manner, and the school district disregarded their requests for the special reading class profile. The further argued the curriculum at Landmark School met Kathryn’s educational needs. The impartial hearing officer found in favor of the school, stating the school district had not violated any IDEA procedural requirement and the proposed IEP offered FAPE. The hearing officer also found that the residential school, Landmark School, was not the least restrictive environment for Kathryn.

The Cerras then appealed to district court. The district court granted summary judgment to the Cerras, finding that the school district had failed to provide the parents with the requested documents and failing to provide the IEP in a timely manner. The district court also found that the IEP was substantively inadequate because it was not likely to produce progress nor provide meaningful benefit. The district court found that the hearing officer erred in determining whether the Landmark School was the least restrictive environment and awarded tuition reimbursement
and attorney’s fees and costs to the Cerras. The school district appealed to The United States courts of appeal for the Second Circuit.

Issue: At issues is whether the district court correctly applied the IDEA’s statutory and regulatory provisions to the facts of the case. Specifically, at issue is whether the school district violated procedural requirements of IDEA by failing to provide the IEP in a timely fashion, disregarded the parent’s requests for class profiles, and failed to provide the parents meaningful opportunity to participate in the development of the IEP. Also at issues is whether the IEP was substantively inadequate, failing to provide FAPE to Kathryn. Lastly, at issue is whether the Landmark School provides an appropriate education to Kathryn in the least restrictive environment.

Holding: The Courts of appeal held that the school district met the procedural guidelines as outlined in IDEA.

Reasoning: The Courts of appeal applied a three-step process to determine whether the parents were entitled to private school tuition reimbursement. They first examined evidence to determine if the school district complied with the procedures set forth in the IDEA by focusing on whether the Cerras had an adequate opportunity to participate in the development of Kathryn’s IEP. The Cerras had numerous opportunities to participate in meetings with respect to the identification, evaluation, and educational placement of Kathryn throughout the 2001-2002 school year and in preparation for the 2002-2003 school year. In regard to the argument the school district did not provide the IEP in a timely manner, The Courts of appeal reasoned that school districts must only ensure a child’s IEP is in effect by the beginning of the school year and that the parents are provided a copy. In addition, the school district was not obligated to provide student profiles for Kathryn’s special education classes because they did not yet exist.
and this type of record does not fall under the definition of “educational records” as these records contain information directly related to a specific student and are maintained by the school district. Given the school district provided the Cerras meaningful participation in the development of the IEP and they provided a copy of the IEP prior to the beginning of the school year, The Courts of appeal reasoned the school district had complied with the procedural guidelines under IDEA.

The second factor reviewed is whether the IEP developed was reasonably calculated to enable the child to receive educational benefits. The Courts of appeal reasoned that under *Rowley*, if this second factor were met then the school district would be in compliance with IDEA’s substantive requirements. The Courts of appeal reasoned that the IEP in place for Kathryn was likely to produce progress and afforded Kathryn with an opportunity for meaningful advancement. They reasoned that administrative agencies have special expertise in making judgments concerning student progress, thus deference is important when assessing an IEP’s substantive adequacy. Given that the hearing officer had expertise in assessing IEP’s, the Courts of appeal had no hesitancy in vacating the district court’s ruling in favor of the hearing officer’s finding.

The Courts of appeal finally reasoned that because the school district complied with the IDEA’s procedural and substantive requirements, they did not need to consider the third step in this process, which was determining if the private school placement was appropriate to meet Kathryn’s needs.

Disposition: The United States Courts of appeal for the Second Circuit reversed the judgment of the district court and remanded with instructions to enter judgment in favor of the school district.
Citation: *D.F. Ex rel. N.F. v. Ramapo Cent. School Dist.*, 430 F.3d 595 (2nd Cir. 2005).

Key Facts: N.F. was a child diagnosed with autism at an early age. When he was 4 years old, he entered school and was served through an IEP at a non-public, full-day preschool called “Prime Time.” According to his October 30, 2002 IEP, he was placed in a class of six students with two full-time teachers, one of whom was dedicated just to N.F. Through the Prime Time Program, N.F. received ABA therapy and supplemental student and parent programs. The IEP did not allow for home-based ABA therapy, for which the parents had requested.

On January 22, 2003, the IEP committee met to review N.F.’s needs. The IEP was amended to include additional recommendations by Prime Time’s staff and teachers. The parents of N.F. agreed that the IEP was appropriate with the exception that it did not include at-home ABA therapy to supplement the services he was receiving during the school day. This request was based on the recommendation of Dr. McCarton, a private specialist who had seen N.F. twice in August 2002.

On December 18, 2002, N.F.’s parents requested an impartial due process hearing, asserting the IEP did not provide FAPE. On April 15, 2003, the hearing officer concluded that at-home ABA therapy was not needed to ensure FAPE, thus the school district’s IEP met its obligations under IDEA. The State Review Officer agreed with the hearing officer. N.F.’s parents then filed in district court. The district court granted summary judgment to the parents, rejecting the State Review Officer’s finding that N.F. had made “meaningful progress” and ordered at least 10 hours of at-home ABA therapy weekly. The school district appealed.

Issue: At issue is whether the district court erroneously substituted its own judgment for that of the State Hearing Officer by finding the IEP of N.F. failed to provide FAPE because N.F. was not making “meaningful progress.” Specifically, at issue is whether the IEP should include
applied behavior analysis (ABA) therapy at home in order for N.F. to make “meaningful progress.”

Holding: The United States Courts of appeal for the 2nd Circuit held that the district court needed to determine whether retrospective evidence of N.F.’s progress or lack of progress could be considered in assessing substantive validity of the challenged IEP.

Reasoning: The United States Courts of appeal for the 2nd Circuit reasoned that they had not determined whether, and to what extent, retrospective evidence of a student’s progress should be considered in determining the validity of an IEP in which the student is currently enrolled. They reasoned that the First, Third, and Ninth circuits had addressed these questions, holding that inquiry into whether an IEP is valid is a necessary prospective analysis, and that consideration of proof of whether an IEP meaningfully contributed to the child’s education is not altogether proper. Thus, the Courts of appeal for the 2nd Circuit reasoned that the district court should have asked the question of whether the implemented program was appropriately designed and implemented so as to convey a meaningful benefit instead of judging a program in hindsight.

Disposition: Then Untied States Courts of appeal for the 2nd Circuit vacated and remanded the decision of the district court.

Citation: Frank G. v. Board of Educ. of Hyde Park, 459 F.3d. 356 (2nd Cir. 2006).

Key Facts: Anthony, the adopted child of Frank and Diane G., attended school from Kindergarten to fourth grade. During his fourth grade year, Anthony began to experience academic difficulties presumably due to the increasingly challenging academic requirements and the large class sizes. Anthony had previously been diagnosed with ADHD.

Anthony was evaluated at his parent’s request by the Hyde Park School District and found to be eligible for service through IDEA due to a learning disability. A private
neuropsychologist also evaluated Anthony and recommended he receive individualized attention in a small group setting. The school district developed an IEP recommending placement in a regular education class of 26 to 30 students at a public elementary school, The Smith School. They also recommended special education and related services including: direct consultant teacher services for math and organizational skills, a full-time aide, counseling, occupational therapy, a behavior modification program, and testing modifications.

On August 10, 2001, Diane G., Anthony’s mother, requested a due process hearing based on the fact she believed the IEP did not provide FAPE. She asked that Anthony receive services at Bishop Dunn Elementary School, the private school Anthony was attending at the time, because the Smith School’s class size was not appropriate for Anthony. The hearing took place between November 1 and December 13, 2001. In the meantime, Anthony’s parents enrolled him in a private school, Upton Lake Christian School, where he was placed in a class of 14 students.

Initially, the school district argued that Anthony’s placement at the Smith School was appropriate and that the unilateral placement at Upton Lake was not appropriate. After one of the school district’s own witnesses testified that the Smith School was not an appropriate placement due to the class size and the program it offered, the school district then agreed that the Smith School was not appropriate. The school district, however, defended that Upton Lake Christian School was equally inappropriate.

On February 22, 2002, the hearing officer found that the school district failed to provide FAPE to Anthony, agreeing with Anthony’s parents that he needed a small classroom setting. The hearing officer also agreed with the school district that Union Lake was not an appropriate placement due to Anthony’s lack of academic and social progress there. Thus, he found that the school district did not owe reimbursement to Anthony’s parents. He did rule that that the school
district should provide consultant teacher services, counseling, occupational therapy, and a one-to-one aide to Anthony at Upton Lake. This decision was based on evidence received through December 13, 2001.

Both parties filed for an administrative appeal to the State Review Officer. The state review officer upheld the hearing officer’s findings based on Anthony’s performance during first and second quarter at Upton Lake. On July 18th, 2003, Anthony’s parents filed in district court seeking reimbursement for tuition. The district court found that Upton Lake was an appropriate placement for Anthony based on additional evidence of Anthony’s progress, which included end-of-year grades and standardized testing. Though the district court was mindful that they should defer to the state review officer’s educational experience, they reasoned that the state review officer did not have the benefit of Anthony’s grades of the final two grading periods. The district court found in favor of the parents and awarded the parents reimbursement of attorney’s fees by the school district. The school district appealed the judgment of the district court.

Issue: At issue is whether the district court erred in awarding Anthony’s parent’s reimbursement for tuition and attorneys’ fees due to the finding that Anthony’s unilateral placement in private school was appropriate. Also at issue is whether reimbursement can only be awarded where a child has previously received special education and related services.

Holding: The United States Courts of appeal for the 2nd Circuit held that Anthony’s enrollment in private school was appropriate for his needs. They further held that IDEA did not preclude reimbursement even though Anthony had not previously received special education and related services.

Reasoning: The Unites States courts of appeal for the 2nd Circuit reasoned that Berger v. Medina City Sch. Dist. (2003) held that a unilateral placement by parents in a private school is
not appropriate under IDEA when it does not provide some element of special education services in which the public school was deficient. They reasoned that one of the school district’s witnesses, a teacher at Smith School, testified that a fifth grade class might not be best for Anthony, even with direct consultant teacher services and a one-to-one aide. She recommended, instead, a self-contained classroom of no more than nine students would be more beneficial to Anthony. The hearing officer and the state review officer agreed. They found the small class size offered at Upton Lake was one element of special education to meet Anthony’s needs. Also, Anthony’s teacher at Upton Lake altered her instruction to meet Anthony’s needs. Additionally, Anthony’s standardized test scores and his grades had greatly improved. The Courts of appeal found that this progress and the small class size and the program offered at Upton Lake is sufficient to support the district courts judgment that Anthony received an appropriate education.

Though the school district reasoned the statute states in order for parents to receive reimbursement for private placement, the student in question must first receive special education services in public school; the Courts of appeal reasoned that looking at the statue as a whole could only derive the intent of the statute. They reasoned that the language of the statute does not say that reimbursement for tuition to private school is only available to parents whose child had previously had special education services in public school, but that infers that a court can grant relief as it determines is appropriate to a child for whom the public school fails to provide FAPE. The Courts of appeal reasoned that the statute provides broad discretion to the court as to the type of relief that can be awarded.

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed the decision of the district court.

Citation: Mr. B. v. Bd. Of Educ., 201 Fed. Appx. 834 (2nd Cir. 2006).
Key Facts: Mr. and Mrs. B. appealed the judgment for the United States District Court that affirmed on a summary judgment motion a hearing officer’s determination that the IEP developed for M.B. for fifth and sixth grades by the school district was appropriate to meet M.B.’s educational needs. They also appealed the judgment that the Board was not liable for private school tuition.

Issue: At issue is whether the IEPs developed for M.B. were appropriate to meet his educational needs and if the school district was liable to the parents for reimbursement of private school tuition.

Holding: The United States Courts of appeal for the 2nd Circuit held that M.B.’s IEPs complied with procedural elements of the IDEA and were substantively appropriate to meet his needs thus M.B.’s parents were not entitled to reimbursement of private school tuition. The Courts of appeal held that Connecticut law did not limit issues that could be raised at due process hearings and remand was required to determine the correct amount of attorney fees awarded to the parents of M.B. using the lodestar method, whereby an attorney’s fee is derived by multiplying the number of hours spent on litigation by a reasonable hourly rate.

Reasoning: The United States Courts of appeal reasoned that the preponderance of the evidence supported the district court’s finding that the IEPs provided for the “basic floor of opportunity” and were in procedural compliance with the mandates of IDEA. The Courts of appeal further reasoned that because both IEPs for M.B. were in compliance and appropriate, the parents cannot, as a matter of law, be granted reimbursement for private school tuition.

The District Court found that the hearing officer awarded the parents around 10% of their attorney’s fees; however, the Courts of appeal reasoned that there was nothing in the record suggesting the hearing officer offered this award. Even if he did, reasoned the Court of Appeal,
this would have been inappropriate because the awarding of attorney’s fees is a district court function.

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed in part and vacated in part and remanded in part.

Citation: *Ex. Rel. V.D. v. New York City Bd. of Educ.*, 480 F.3d 138 (2nd Cir. 2007).

Key Facts: Preschool children filed a class action alleging that New York City Department of Education and New York State Education Department violated their rights under IDEA by failing to provide immediate educational services mandated by the IEPs. The United States District Court denied the plaintiff’s motion for preliminary injunction and they appealed.

Issue: At issues is whether the failure to immediately provide educational services as mandated by IEPs is a violation of IDEA.

Holding: The United States Courts of appeal held that failure to comply with deadlines established by state regulations for implementing IEPs did not, alone, violate IDEA.

Reasoning: The United States Courts of appeal reasoned that even if State regulations impose a 30-day time frame for IEP implementation, federal law would only be violated if the school failed to implement the IEP “as soon as possible” as required by IDEA. Furthermore, this state regulation is in direct conflict with federal law.

Disposition: The United States Courts of appeal for the 2nd Circuit vacated and remanded to district court and then denied the parent’s petition for rehearing the case.

Citation: *Bay Shore Union Free School Dist. v. Kain*, 485 F 3d. 730 (2nd Cir. 2007).

Key Facts: Seven-year old Ryan was a second grader at St. Patrick School. His teacher referred him to the District’s Committee on Special Education due to his extreme difficulty
following classroom routines and oral directions. A pediatric neurologist diagnosed Ryan with Attention Deficit Hyperactivity Disorder (ADHD).

The School District developed an IEP for Ryan that included testing accommodations, daily sessions in a Resource Room, and a one-to-one teacher’s aide. The district informed the parents that the IEP would be implemented at a public school within the district. Ryan’s parents disagreed with the IEP due to the need for Ryan to travel to a public school every day to receive this benefit. They filed for an impartial due process hearing.

The hearing officer found that in order for Ryan to receive FAPE, it would be reasonable for the school district to provide Ryan a one-to-one aide at St. Patrick. He further reasoned that requiring Ryan to travel every day to receive his IEP services would cause too much disruption to his school day. The school district appealed to New York State’s Review Officer, who dismissed the appeal. The school district then filed in district court which confirmed the Review Officer’s finding. The school district then appealed to The United States Courts of appeal for the 2nd Circuit.

Issue: At issue is whether Bay Shore Union Free School District must provide Ryan with a teacher’s aide during his classes at his current school, St. Patrick School, which is a private school.

Holding: The United States Courts of appeal held that the district court improperly assumed jurisdiction over this case.

Reasoning: The United States Courts of appeal reasoned that this case turns on New York Law as IDEA does not require the school district to provide special education services to Ryan at the private school. IDEA requires states to provide a “basic floor of meaningful, beneficial educational opportunity” but states may exceed the federal floor and enact their own laws and
regulations guaranteeing a higher level of services to students with disabilities. Thus, this issue cannot form the basis of federal jurisdiction. The determination of whether New York school law compels the school district to provide services to Ryan at his private school is best left to New York courts.

Disposition: The United States Courts of appeal for the 2nd Circuit vacated the decision of the district court.

Citation: *A.E. v. Westport Bd. of Educ.*, 251 Fed.Appx. 685 (2nd Cir. 2007).

Key Facts: A student’s parents disagreed with the hearing officer’s finding that the school district offered FAPE for the 2004-2005 school year. The parents then sued the school district in district court. The district court found in the school district’s favor. The parents appealed.

Issue: At issue is whether the school district’s proposed “draft” IEP is considered valid, whether the school district demonstrated procedural errors, and whether the proposed IEP provided educational benefits for the student.

Holding: The United States Courts of appeal for the 2nd Circuit held that there was sufficient evidence to establish that the IEP of the student enabled him to receive educational benefits.

Reasoning: The United States Courts of appeal first reasoned that the record showed there were several meetings between the school district and the parents where consensus of the draft IEP was attempted. The proper recourse was for the parents to file for due process if they disagreed with the contents of their child’s IEP, which they did. IDEA does not require consensus on all aspects of the IEP prior to it being considered valid. Therefore, the draft IEP was considered to be a valid document.
Second, regarding the parent’s claim of procedural errors, the Courts of appeal reasoned that the parents waived their challenges related to a request for an independent evaluation to be conducted and for a general education teacher and board council being present at the IEP meeting. These claims were waived because the parents failed to raise these issues either before or during the due process hearing.

Finally, the Courts of appeal reasoned that the district court’s finding that the offered IEP did provide FAPE because the district court gave “due weight” to the hearing officer who concluded the school district’s experts were more credible than the parent’s experts. The school district’s experts testified that the IEP was “reasonably calculated to enable the child to receive educational benefits.

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed the decision of the district court.

Citation: Cave v. East Meadow Union Free School Dist., 514 F.3d. 240 (2nd Cir. 2008).

Key Facts: John, Jr. was enrolled in W. Tresper Clarke High School in the East Meadow Union Free School District. He received IDEA services for a hearing impairment. His IEP provided for a sign language interpreter in all academic subjects, individual sessions with a teacher of the hearing-impaired, classroom note taker, a microphone system which allowed him to hear sound more clearly, a closed-caption device for videos, and preferential classroom seating.

In December 2006, John’s parents asked the school to allow John to bring his new service dog to school each day. They argued that the dog would alert John to emergency bells, to people calling his name, and generally enhance his socialization skills. The further claimed that the dog would increase John’s independence by limiting the impact of his hearing impairment. The
school officials denied this request, stating that the dog would be disruptive to John’s education since his class schedule would have to be changed to avoid the exposure of allergic students and teachers to the dog.

In December 2006, the school district’s Section 504 team met and determined that John was making progress under the provisions of his current IEP and did not need a service dog at school. The IEP team confirmed the findings of the Section 504 team and informed the parents of the administrative review process if they should disagree with the IEP team’s findings.

The parents did not ask for a due process hearing, but instead, in February 2007, filed a lawsuit against the school district, fifteen district officials, and high school employees in their official and individual capacities, alleging violations of the ADA, Section 504, and several New York statutes. The parents asked for a preliminary and permanent injunction directing school officials to allow John to be accompanied by his service dog while at school. They also asked for court expenses, attorneys’ fees, and $150,000,000 in compensatory and punitive damages.

After more than a four day hearing, the district court denied the motion for a preliminary injunction because the parents did not establish a reasonable possibility of success of the service dog based on evidence due to their failure to exhaust the administrative remedies available under the IDEA. John, Jr.’s parents appealed.

Issue: At issue is whether the District Court was correct in denying the parent’s motion for a preliminary injunction under the Americans with Disabilities Act of 1990. The injunction requested would have allowed John, Jr. entry to all school facilities, including his high school, while accompanied by his service dog.

Holding: The United States Courts of appeal held that the parents did not exhaust their efforts to resolve the issues under IDEA. The Courts of appeal further held the district court
lacked subject matter jurisdiction over the parent’s federal claims, which left no basis for supplemental jurisdiction over state-law claims.

Reasoning: The United States Courts of appeal reasoned that IDEA applies in this case, thus they would not allow the parents to proceed without exhausting their remedies under IDEA, which is to request an impartial due process hearing. The fact that the parents are seeking damages, a remedy unavailable under the IDEA, has no merit to the fact that administrative remedies must first be exhausted.

Disposition: The United States Courts of appeal for the 2nd Circuit remanded the case to the district court for dismissal of the case without prejudice. The Courts of appeal further denied the parent’s motion to certify the state law issues to the New York Courts of appeal.

Citation: *Somoza v. New York City Dept. of Educ.*, 538 F.3d 106 (2nd Cir. 2008).

Key Facts: Alba Somoza, a 23 year old, received IDEA services for multi-handicapping disabilities while attending school in New York City from the time she entered preschool till she exited high school at age 22. At such time, she filed suit against New York Department of Education for an alleged denial of FAPE for her entire public school career. As remedy, Ms. Somoza requested 2 years of compensatory education and an injunctive relief to prevent DOE from terminating the funding of her educational services.

The district court granted a preliminary injunction, which required DOE to continue funding Ms. Somoza’s education until the conclusion of the administrative appeals process. The DOE appealed.

Issue: At issue is whether the district court erred in granting an injunction requiring DOE to continue funding Ms. Somoza’s education at the age of twenty-three and if Ms. Somoza was denied FAPE during her attendance in public school.
Holding: The Courts of appeal held that the district court’s decision was an appealable order and that Ms. Somoza’s motion to dismiss the appeal is denied. Furthermore, The Courts of appeal held that the injunction entered by the district court is dissolved because the statute of limitations bars the Ms. Somoza’s claims.

Reasoning: The Courts of appeal reasoned that because Ms. Somoza’s claims were time barred under IDEA’s statute of limitations, the district court erred as a matter of law in agreeing to the injunction.

Disposition: The United States Courts of appeal for the 2nd Circuit reversed the decision of the district court and dissolved the injunction entered by the district court.

Citation: Fuentes v. Board of Educ. of City of New York, 540 F. 3d 145 (2nd Cir. 2008).

Key Facts: Matthew, a student with a genetic visual disorder, attended New York City public schools where he received special education services. Matthew’s father, Fuentes, who retained no custodial rights and was divorced from Matthew’s mother, requested further testing for additional services because he believed Matthew’s IEP services were inadequate. After reviewing the additional testing, the IEP committee determined that Matthew’s services were appropriate. Fuentes then requested a due process hearing, which was dismissed based on his custodial status. Fuentes filed suit in district court.

Fuentes alleged that he was denied his parental rights under IDEA. Specifically, he stated he was denied the right to review the school district’s written assessment of Matthew and that he was denied the right to file a due process hearing. The school district moved to dismiss the complaint because Fuentes was not the custodial parent and he failed to join a necessary party, Matthew’s mother, Karen Fuentes. The district court held that under state law Fuentes lacked
standing to bring the action because he was the non-custodial parent and held no right to make special education decisions for his child. Fuentes appealed this decision.

Issue: At issue is whether Fuentes, the non-custodial parent, has legal standing to bring action against the school system in relation to his child’s special education services.

Holding: The United States Courts of appeal held that question would be certified as to whether non-custodial parent retained the right of the child.

Reasoning: The United States Courts of appeal reasoned that the custody order’s silence in revoking his rights as a parent is not determinative in his favor as was demonstrated in Taylor, 313 F 3d at 777. They further reasoned that the language in the NYC DOE regulations state that IDEA rights do not apply to biological or adoptive parents who do not have legal standing to make educational decisions for their child.

Disposition: The United States Courts of appeal for the 2nd Circuit certified the question whether, under New York law, the natural and non-custodial parent retains the right to make educational decisions for their child where (1) the custodial parent is granted exclusive custody and (2) the divorce decree and custody order are silent as to the right to control such decisions.

Citation: P. Ex Rel. Mr. and Mrs. P. v. Newington Bd. of Ed., 546 F. 3d 111 (2nd Cir. 2008).

Key Facts: P., a student who had Down’s Syndrome, a hearing impairment, and other substantial disabilities, attended an elementary school in Connecticut where he received extensive special education services in the general curriculum. When P. was 8 years old, the school system’s behavior specialist informed P.’s parents that the gap between his general education peers was beginning to grow and would grow larger, thus making it difficult to keep P.
in the general classroom. P.’s mother disagreed, wanting her son in the general classroom as much as possible.

The IEP team met to develop P.’s IEP for the 2004-2005 school year. They suggested P. receive his special education services in a resource type setting 40% of the day, leaving him in the general classroom 60% of the day. They did not address his behavioral issues in his IEP. P’s parents requested P. be served in the general classroom 80% of the day and that a behavioral consultant be hired to help facilitate this request.

The school district retained a private evaluator to assess P. Her report stated that P’s behavior was “moderately serious” but suggested he spend the majority of the day in the general curriculum. She also recommended consultation with a teacher of the hearing-impaired and a program of literacy instruction. Around the same time, the Connecticut Children’s Medical Center (CCMC) evaluated P. and found he needed “pervasive” support due to his low adaptive behavior skills and communication needs. They did not conduct a functional behavior assessment (FBA) or an assistive technology (ATE) evaluation.

During the 2004-2005 school year, P.’s behavior improved but he demonstrated a limited attention span. He had to be removed from the general classroom three times for disruptive behavior. His second-grade teacher stated that there was also a special education teacher helping co-teach in her classroom most of his time P. was in the classroom. She recommended that P. receive some of his instruction in an individualized setting to ensure he received appropriate instruction without distractions.

In February and April 2005. The IEP team discussed the findings of the two previously mentioned private evaluations. They recommended an AT evaluation and FBA be completed but
did not come to consensus about the amount of time P. should spend in the general classroom. They agreed to meet again in June.

At the June IEP meeting, the team agreed to hire a behavior specialist that was mutually agreed upon by the parents and the school system. After a long discussion, the IEP team suggested that for the 2005-2006 school year that P. increase his time in the general curriculum from 60% of the school day to 74% of the school day and receive several classroom accommodations and supplemental services. P.’s parents disagreed with the proposed IEP and filed for due process to challenge both the 2004-2005 and 2005-2006 IEPs. In April 2006, the IEP team moved to place P. in the general curriculum 80% of the school day at the recommendation of Dr. Majure, the mutually agreed upon behavior specialist.

After hearing testimony, the hearing officer found that the 2004-2005 IEP did not comply with IDEA because the time P. spent in the general curriculum was left to the discretion of school authorities and because P.’s behavioral concerns were not appropriately addressed. As remedy the hearing officer required that he school district retain a behavior consultant with experience working with children with mental retardation in the general classroom. The hearing officer held that the school district had already complied with this holding by hiring Dr. Majure. The hearing officer found that the 2005-2006 IEP did comply with IDEA requirements.

P.’s parents filed suit in district court arguing that the 2005-2006 IEP did not meet the LRE requirement of IDEA and that the remedy for the 2004-2005 IEP was insufficient. The district court applied the two-pronged LRE test adopted by the 3rd circuit in Oberti v. Clementon School District (3rd Circuit, 1993). They held that the evidence supported the hearing officer’s ruling and affirmed his decision. They did award the parents partial attorneys’ fees and costs. P.’s parents appealed the district court’s decision.
Issue: At issue is whether the remedy for P.’s deficient 2004-2005 IEP was sufficient and whether P.’s 2005-2006 IEP placed him in the least restrictive environment as required by IDEA.

Holding: The United States Courts of appeal held that the student’s 2005-2006 IEP complied with IDEA’s LRE requirement and that the school district’s hiring of an inclusion consultant was an appropriate remedy for 2004-2005 IEP, which violated the LRE mandate.

Reasoning: The United States Courts of appeal reasoned that this case called upon them to adopt a standard by which courts in the 2nd circuit determined if schools met the LRE obligation of IDEA. They reasoned that by examining facts specific to this case, and considering whether education in the general classroom could be achieved if appropriate supplemental aids and services are included in his IEP, they could determine if P. had been placed in the LRE. They reasoned that by applying the Rowley test and Oberti analysis that the 2004-2005 IEP did not meet the LRE requirement and that the 2005-2006 IEP did meet the LRE requirement.

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed the decisions of the district court and the hearing officer.

Citation: A. C., M.C., v. Bd., Chappaqua Central School Dist., 553 F. 3d 165 (2nd Cir. 2009).

Key Facts: M.C., a student with Autism and other disabilities, attended Chappaqua public schools from preschool till fourth grade. He received special education services as directed by his IEP during this time. During the 2003-2004 school year, he was in a co-taught class in the general classroom, receiving services from a special education teacher for half of the day and from a program assistant for the remainder of the day. He was also provided with a one-on-one aide to help with his attention issues.
The IEP committee met several times to develop an acceptable IEP for M.C.’s fifth grade year. They determined that he would be in co-taught classes at a public middle school with progress checks every four to six weeks. The IEP also called for additional academic instruction, occupational and speech therapy, psychiatric and psychological services, and extended school year services in the summer. M.C.’s parents requested the IEP committee place M.C. at Eagle Hill, a private school for disabled children. The committee declined to do so and M.C.’s parents declined to accept the IEP, stating the IEP committee should have provided a functional behavioral assessment (FBA). M.C.’s parents enrolled him at Eagle Hill and requested a due process hearing to obtain reimbursement for tuition at Eagle Hill.

After testimony from both sides, the hearing officer ruled in favor of M.C.’s parents. He found that the school district should have conducted an FBA and that the one-on-one aide hindered M.C.’s development of independence. The hearing officer further found Eagle Hill was an appropriate placement and ordered the school district to reimburse the parents for the cost of tuition at Eagle Hill for the 2004-2005 school year.

Chappaqua appealed to the State Review Officer who reversed the hearing officer’s findings. The SRO found that Chappaqua assessed M.C.’s behavior and developed an appropriate IEP, which was reasonably calculated to all M.C. to receive educational benefits in the least restrictive environment. The SRO found that Chappaqua’s failure to conduct an FBA did not rise to the level of denying M.C. a free appropriate public education.

M.C.’s parents filed suit in district court. The district court granted them summary judgment on administrative review. The district court found that Chappaqua’s failure to conduct an FBA was a procedural violation of the IDEA; that the provision of a one-on-one aide made the IEP substantively inappropriate because it prompted a learned helplessness; and that Eagle
Hill was an appropriate placement. The district court awarded M.C.’s parents reimbursement for tuition and attorney’s fees. Chappaqua appealed.

Issue: At issue is whether Chappaqua’s failure to conduct an FBA resulted in a denial of FAPE for M.C. Also at issue is whether the IEP developed for M.C. was substantively inappropriate because it promoted “learned helplessness.”

Holding: The United States Courts of appeal held that the absence of a functional behavioral assessment with the IEP was not a procedural violation under IDEA and the IEP was not substantively deficient and in violation of the IDEA.

Reasoning: The United States Courts of appeal reasoned that Chappaqua satisfied the requirement to provide positive behavioral interventions and supports as outlined in IDEA and their decision to not conduct an FBA did not rise to the level of denying FAPE to M.C. They further reasoned the preponderance of evidence supported the SRO’s decision that the IEP adequately addressed M.C.’s behavioral needs and the failure to conduct an FBA did not decree the IEP legally inappropriate. The Courts of appeal reasoned that M.C. had made progress toward independence during 2003-2004 school year and 2004-2005 proposed IEP addressed moving M.C. toward independence. The IEP also addressed placement in the LRE.

Disposition: The United States Courts of appeal for the 2nd Circuit reversed the decision and remanded the case to the district court to find in favor of Chappaqua Central School District.

Citation: *T. P. Ex Rel S.P. v. Mamaroneck Union Free School*, 554 F. 3d 247 (2nd Cir. 2009).

Key Facts: S.P., a student with autism, attended preschool accompanied by an aide, 10 hours a week at Mamaroneck Union Free School District. He also received 35 hours of in-home ABA therapy, speech therapy, and occupational therapy as settlement for the preschool IEP. In
January 2004, the IEP team began considering S.P.’s transition into kindergarten. In an attempt to make appropriated decisions, the IEP team contracted with a behavioral consultant to evaluate S.P. and aid in making recommendations. The behavioral consultant recommended S.P. attend a special education kindergarten class and continue speech and occupational therapy. She did not recommend continued ABA therapy.

The IEP team met in June to develop the 2004-2005 IEP. The proposed IEP contained the recommendations of the behavioral consultant. After that meeting, S.P.’s parents provided a report prepared by the McCarton Center for Developmental Pediatrics, who had been retained by S.P.’s parents. In addition to the services outlined in the proposed IEP, the report recommended a full time personal aide, in-home and school based ABA therapy and increased time for private speech and occupational therapy. S.P.’s parents requested the IEP team meet to consider the McCarton report, which they did in July 2004. The school district’s consultant did not attend the IEP meeting but did alter her recommendations based on the McCarton report, agreeing to all of the recommendations but with fewer hours for each service.

At the IEP meeting, the parents requested the school district observe S.P. over the summer, consult with their in-home ABA therapists, and allow their in-home ABA therapists to attend school with S.P. the first week of school and provide training to S.P.'s teachers. The IEP team agreed to consult with S.P.’s therapists and allow them to attend school with S.P. to help with the transition to kindergarten but decided the school district’s consultant would provide any needed training to the staff.

S.P.’s parents disagreed with the IEP teams recommendations on the grounds that it was insufficient to provide FAPE. They notified the district that they would implement the in-home
ABA therapy and private speech and occupational therapy and asked for a hearing to be reimbursed for the cost of these services.

At the hearing, which began in January, S.P.’s parents stated their disapproval of the IEP for the following reasons: 1. The school district predetermined S.P.’s IEP by agreeing upon placement and developing goals and objectives prior to the July IEP meeting; 2. They determined goals and objectives after deciding placement; 3. They did not provide S.P. an appropriate transition to kindergarten. At the conclusion of the hearing, the hearing officer denied the parent’s acclaim for reimbursement. The parents appealed to the state review officer, who affirmed the decision of the hearing officer. The parents filed claim in district court.

The district court granted the parents summary judgment, stating the 2004-2005 IEP was substantively and procedurally deficient and awarded the parents reimbursement for the cost of additional services and attorneys’ fees. The district court found that Mamaroneck predetermined the amount of time it was willing to provide ABA services and made placement recommendations prior to completing the goals and objectives. They further found that Mamaroneck did not plan for an appropriate transition by not providing in-home ABA therapy and that S.P. had regressed in some areas. Mamaroneck appealed.

Issue: At issue is whether Mamaroneck Union Free School District failed to provide appropriate educational services through the proposed IEP for S.P.’s kindergarten year through a procedurally and substantively deficient IEP.

Holding: The United States Courts of appeal held that the school district complied with IDEA procedures and the IEP was substantively appropriate.

Reasoning: In response to the issue of Mamaroneck committing procedural violations during the development of the IEP, the United States Courts of appeal reasoned that
Mamaroneck’s consideration of educational programs for S.P. prior to the July IEP meeting was not a procedural violation of IDEA. They reasoned that even if there was discussion prior to the meeting, the parents were still allowed meaningful participation at the meeting. IDEA regulations allow school districts to develop a proposal or a response to a parent’s proposal that will be discussed at a later meeting, at which time the parents would be afforded an opportunity to meaningfully participate. Furthermore, the Courts of appeal reasoned that the parents did not prove that the school district did not have an open mind in considering their proposal at the IEP meeting. In contradiction, the school district did incorporate some of the parent’s suggestions into the IEP.

In response to the argument that the proposed IEP was substantively inadequate, the Courts of appeal noted that according to Rowley, a school district fulfills its obligations under IDEA if the IEP provides the student an opportunity to make progress greater than mere trivial advancement. Furthermore, a school district is not required to provide every special service necessary to maximize each student’s potential. The Courts of appeal reasoned that the school district provided for many supports and services to assist S.P. with his transition from a home-based program to a school-based program. They found that the district court did not defer appropriately to the decisions of the school experts on how best to transition S.P., and therefore concluded inappropriately that the IEP was substantively inadequate. The Courts of appeal also reasoned that S.P. had shown some progress, thus the school district’s IEP was supported by the record.

Disposition: The United States Courts of appeal for the Second Circuit reversed the decision of the district court and remanded the case to the district court to find in favor of the school district.
Citation: *H.C. v. Colton-Pierrepont Cent. School*, 341 Fed. Appx. 687 (2nd Cir. 2009).

Key Facts: The parent filed suit in district court alleging the school district violated IDEA. The district court vacated the decision of the state review officer. The district court remanded to the hearing officer, stating a new hearing should be held on the parent’s claims. The school district appealed.

Issue: At issue is whether the district court erred in remanding based on the conclusion that the hearing officer had the authority to enforce the May 2006 settlement agreement and whether they erred in vacating the state review officer’s decision.

Holding: The United States Courts of appeal held that the due process hearing heard by the hearing officer was not the proper vehicle to enforce a settlement agreement. They held the school district’s obligations to the student were not affected by a subsequent passage of an amendment to New York law. They further held that the district court was required to review the parent’s challenge rather than order remand.

Reasoning: The United States Courts of appeal reasoned that the hearing officer did not have the authority to enforce the settlement agreement between the parents and the school district. The matters of IDEA only pertain to identification, evaluation or educational placement of the child or the provision of FAPE. Whether or not an agreement between parties is upheld is not an IDEA matter, thus the hearing officer erred in making a decision regarding the settlement agreement. Given this, the Courts of appeal reasoned the district court erred in ordering remand based on this fact.

The Courts of appeal reasoned that the New York bill allowing non-public school children to receive IDEA services was passed in 2008 and was not retroactive, therefor, the
student’s claim to benefits for the 2006-2007 school year is mute. Given this, The United States Courts of appeal reasoned remand on this ground was unnecessary.

The Courts of appeal determined the district court should have reviewed the special review officer’s determination that the student’s IEP provided FAPE, giving due weight to the state agency’s determination. If the district court agrees with the special review officer, the question as to the effect of an inadequate IEP would be moot.

Disposition: The United States Courts of appeal for the 2nd Circuit vacated and remanded the district court’s judgment for further proceedings consistent with the Courts of appeal’ order.

Citation: KLA v. Windham Southeast Supervisory Union, 348 Fed. Appx. 604 (2nd Cir. 2009).

Key Facts: KLA’s parent’s, who were not attorney’s appealed their case to the Courts of appeal. They were proceeding pro se to ask the Courts of appeal to appeal the judgment of the district court denying KLA’s motion to reverse the hearing officer’s decision regarding allegations of violations of IDEA.

Issue: At issue is whether KLA can represent herself in this appeal.

Holding: The United States Courts of appeal held that IDEA did not allow unlicensed persons to represent anyone other than himself or herself. They further held that because K.L.A., an incompetent adult was named as the sole petitioner and asserted no claims on behalf of her parents, the court would defer consideration of appeal for 45 days pending possible appearance of counsel to represent her parents as next friends of K.L.A.

Reasoning: The Courts of appeal for the 2nd Circuit reasoned that although litigants in federal court have a statutory right to act as their own attorney, the statute does not permit
unlicensed laymen to represent anyone other than themselves. This exclusion extends to parents seeking to represent their child.

Disposition: The United States Courts of appeal for the 2nd Circuit declared that if counsel appeared within the next 45 days, they would proceed with briefing and argument before a new panel. If counsel did not appear, they would enter an order dismissing the appeal.

Citation: *T.Y. v. New York City Dept. of Educ.*, 584 F. 3d 412 (2nd Cir. 2009).

Key Facts: In May 2006, an IEP team met to develop an IEP for T.Y., a student with Autism and other developmental disabilities. The IEP placed T.Y. in a special education class where he would receive individualized speech and language therapy, individualized occupational and physical therapy, in addition to educational services and behavioral management techniques. He would also be provided a one-on-one crisis management paraprofessional. T.Y.’s IEP placed him in District 75 but did not address the specific school he would attend.

In the summer after the IEP meeting, T.Y.’s parents received a letter from the New York City Department of Education (NYCDOE) stipulating which school T.Y. had been placed. After visiting the school, T.Y.’s father disagreed with the school placement, finding it unsuitable. NYCDOE offered T.Y.’s parents another school but they also found it to be unsuitable and enrolled T.Y. in the Rebecca School, a private school for children with Autism. T.Y.’s parents notified NYCDOE they would seek reimbursement and requested an impartial hearing.

At the hearing, T.Y.’s parents alleged the IEP contained substantive and procedural violations that interfered with T.Y.’s right to a FAPE. They contended the IEP did not allow for enough speech therapy services nor did it provide parent training. They alleged that the IEP contained procedural violations because it did not include a specific school placement.
The hearing officer found in favor of NYCDOE on most points. He stated the parents were not harmed by the IEP not specifying T.Y.’s school placement since NYCDOE allowed the parents to observe at suggested sites prior to the placement being made. The hearing officer found that the IEP did not allow for enough speech therapy services and he increased the amount of speech therapy time in the IEP. However, the hearing officer noted that this issue alone was not enough to render the overall proposed program of NYCDOE was ineffective.

The parents appealed to the state review officer, who mostly agreed with the hearing officer’s findings. The only exception noted was the SRO found that parental counseling and training should have been specifically named in T.Y.’s IEP.

T.Y.’s parents filed suit in district court. The district court granted summary judgment to NYCDOE, deferring to the findings of the hearing officer and state review officer. T.Y.’s parents appealed.

Issue: At issues is whether the IEP violations constitute a denial of FAPE and render the T.Y.’s placement in private school appropriate.

Holding: The United States Courts of appeal held that the IEP was not procedurally deficient nor did it substantively violate IDEA.

Reasoning: The United States Courts of appeal reasoned that the opinions of the NYCDOE administrative officers were thorough and well reasoned and deserved deference. The Court agreed that the record indicated that the initial IEP lacked the required amount of speech and language services and parent training but concluded that the hearing officer and the state review officer appropriately corrected those errors. The court reasoned, therefore, the IEP, as a whole was not substantively deficient.
As to the parent’s allegation that the IEP was procedurally deficient, the Courts of appeal reasoned that while IDEA does require the parents be provided meaningful participation in the development of the IEP including educational placement, it does not require parental input as to the specific school those services would be rendered. The Courts of appeal further reasoned that this finding was substantiated by USDOE commentary to the 1997 amendments clarifying the meaning of “location.”

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed the decision of the district court.


Key Facts: Parents alleged the school district failed to provide their child, C.H. with FAPE and discriminated against him based on his disability, violating IDEA and the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. They brought suit against the school district in district court where the district was granted a motion for summary judgment. The parents appealed.

Issue: At issue is whether the district court erred in rejecting the parents IDEA claims based on the 2001-02 and 2002-03 school years because of the timeliness of the complaint. The district court held that the applicable time limit was 1 year while the parents insist that under the “catch-all” federal statute, the applicable time limit was 4 years. Also at issue was whether C.H. was denied FAPE due to his classroom placement, which the parents felt were inappropriate to meet his needs and if the parents were provided the opportunity to meaningful participation in the development of the IEP. At issue is whether C.H. was denied FAPE due to the school district omitting behavioral programming form C.H.’s IEPs. Furthermore, at issue is whether the district court dismissed their ADA and Section 504 of the Rehabilitation Act claims.
Holding: The Courts of appeal held that the 1-year statute of limitations applied to IDEA claims. They held that the school district did not deny C.H. FAPE by placing him in a class of 12 students rather than six and the school district did not deny C.H.’s parents meaningful participation in the development of his IEP.

Reasoning: The United States Courts of appeal reasoned that the State review Officer’s adoption of the 1-year period of limitation as specified in the New York Human Rights Law was appropriate as this state law is more closely analogous. The Courts of appeal also reasoned that the school district did provide C.H.’s parents with their Procedural Safeguards Notice, which clarified the 1-year complaint limitation.

The Courts of appeal reasoned, after a strictly limited review of the record, that the SRO had specialized knowledge in matters of education, thus the Court deferred to the SRO’s decision that C.H.’s educational placement was appropriate. The Court also reasoned that the testimony of an independent psychologist and data regarding students in the classroom requested by C.H.’s parents would not have constituted the least restrictive environment as required by IDEA.

The Courts of appeal found that the record reflected many conversations between the school district and C.H.’s parents, as well as C.H.’s parents’ participation in many meetings where the IEPs in questions were developed, thus they reasoned there was not denial of FAPE based on a lack of meaningful parental participation in the development of the IEP.

The Courts of appeal reasoned that C.H.’s parents’ claim that the school district did not address C.H.’s behavioral or transitional issues was without merit. They reasoned that his IEPs addressed C.H.’s behavioral and transitional needs, techniques his teachers could implement, and skills he should attain.
The courts of appeal reasoned that in order for the parent’s to support a claim of discrimination based on C.H.’s disability, his parents would have to show that C.H was a qualified individual with a disability; that the school district was subject to the relevant statute; and that C.H. was denied the opportunity to participate or benefit from the school district’s services, programs, or activities; or was otherwise discriminated against by the school district. The courts of appeal noted that C.H.’s parents produced no evidence of discrimination.

Disposition: The United States Courts of appeal for the 2nd Circuit affirmed the judgment of the district court and dismissed the parents’ claims of discrimination.

Case Briefs for Appeals to United States Courts of Appeal, Third Circuit

Citation: C.M. v. Board of Educ. Union County Reg’l, 128 Fed. Appx. 876 (3rd Cir. 2005).

Key Facts: CM. and R.M. brought civil rights action against Union County Board of Education, the county, and individual school personnel. CM. and R.M. cited their child’s rights with regards to IDEA, Rehabilitation Act, and Federal Educational Rights and Privacy Act (FERPA) were violated.

One alleged event happened on September 15, 1995. B.M.’s Child Study Team held an open house. The team members stayed in a resource room and discussed students and their IEPs with teachers as they stopped in on their planning period. The CST offered refreshments to the teachers. B.M. asked for a brownie when he first cam in to drop his things off that morning. His teacher said he could have a brownie but B.M. did not take one at that time. At lunch, B.M. returned to the classroom and took a brownie. His teacher, Ms. Riegel, jumped up and grabbed
B.M.’s arm then took the Brownie from him. He cursed and left the room. He suffered no physical injuries.

Other incidents were also cited. The District Court granted summary judgment for the school district and the plaintiffs appealed.

Issue: At issue is whether the District Court erred in it’s finding that since B.M. was not seeking compensatory education or other on going relief his claims under IDEA were moot. At issue is whether the District Court appropriately ruled in favor of the school district on the following: 1) the “brownie incident” claim; 2) substantive Due Process claims; 3) the appointing of Edelstein as custodian; and 4) its denial of specific discovery requests.

Holding: The Courts of appeal held that B.M.’s graduation from high school did not impact his section 1983 claim under IDEA and the three month gap between the time the parents filed their complaint and the alleged retaliatory incident of the school district was not so close as to be unusually suggestive of retaliatory motive. The Courts of appeal held that B.M.’s parents did not suffer injury and their right to privacy under the due process clause was not violated. It held that the parent’s right under the due process clause to educate B.M. as they saw fit was not violated. The Courts of appeal further held that the disclosure of B.M.’s records did not breach confidentiality nor did it violate his right to privacy.

Reasoning: The Courts of appeal reasoned that the 3rd Circuit had available a broader selection of remedies for section 1983 cases where the plaintiff is seeking reimbursement for IDEA violations, thus the District Court erred in citing Nathan R., a case from the 7th district, for their reasoning that B.M.’s claim of IDEA violations was moot. The Courts of appeal also reasoned that in Nathan R., he was seeking compensatory education, which was to be provided while he was in high school. Once he graduated high school, the remedy was no longer
applicable. In this case, B.M. is seeking monetary relief, which did not expire once he graduated high school. Although the Courts of appeal found that B.M.’s claims were not moot, they did not remand all of the claims. They reasoned that only those procedural violation of the IDEA which result in loss of educational opportunity or seriously deprive parents of meaningful participation in the IEP process are actionable. B.M. had the burden of establishing harm caused by the alleged IDEA violations, but the evidence does not support that he suffered educational loss. Evidence from the record also showed that parents actively participated in the development of B.M.’s IEP. The Court of Appeal reasoned that because the record does not suggest B.M.’s education was prejudiced by his school’s various procedural errors and there was an absence of injury, no damages were available to B.M. on his IDEA claims.

In the matter of the “brownie incident,” The Courts of appeal reasoned that in order for B.M. to claim retaliation, he must show he was engaged in a protected activity and that his teacher responded in retaliation due to the protected activity in which he was engaged. Because B.M. failed to raise a genuine issue as to whether there was a causal connection between B.M.’s lawsuit and his teacher’s actions, summary judgment was appropriate.

As to the issue regarding B.M.’s parents’ claims that their constitutional right to privacy had been violated when their addresses, ages, occupations, and educational histories were included on B.M’s school records, The Courts of appeal reasoned that the IDEA does not require that this kind of parental information should be kept confidential in this context. The only parental information protected by IDEA is financial records. Also, the insurance carrier was entitled to legal documents pursuant to the insurance agreement with Livingston. Furthermore, The Courts of appeal reasoned John Christiano did not have to wait until he formally engaged an attorney before he shared documents critical to his case, otherwise, his lawyer could not make an
informed decision. Finally, the disclosure of B.M.’s records to experts and to Dr. Mayer were permissible because IDEA specifically provides that certain qualified professionals may participate in the evaluation of disabled children, thus disclosures of B.M.’s records were not improper.

Finally, The Courts of appeal reasoned that the Magistrate Judge’s refusal to allow the parents to interrogate defendants after the original discovery deadline had passed was justified. This decision was at his discretion and sensible in light of the competing interests of justice and efficiency.

The United States Courts of appeal reasoned that the parents’ claim that they lost the right to educate their child lacked material fact.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed in part, vacated in part, and remanded to the District Court.

Citation: TP. Bd. of Educ. v. New Jersey, 417 F.3d. 368 (3rd Cir. 2005).

Key Facts: E.E. suffered from diabetes and Autism. She received services under IDEA. E.E.’s parents registered her with the New Jersey Division of Developmental Disabilities (DDD), a division of the State Department of Human Services. E.E. received specialized services from DDD, which were to help with developmental, social, personal, and/or physical issues and were to provide economic habilitation or rehabilitation for persons with disabilities.

E.E. was receiving services at the Eden Institute, a specialized school for children with Autism. E.E. engaged in self-injurious behaviors, and other severe type behaviors. E.E. was controlled at the Eden Institute, but did not do well outside of that environment. In order for E.E. to receive appropriate care at all times, her parents and the school district agreed that she should be placed at Allies, Inc., a residential facility.
E.E.’s parents requested that DDD fund this placement. DDD refused and E.E. was placed on a waiting list of person’s eligible for residential placement. The school district funded the placement at a cost of $235,367 for the 2003-2004 school year.

The school district filed action against the State of New Jersey alleging New Jersey should assume the cost of the placement. The District Court found that the school district does not have the right to file action under IDEA and granted New Jersey’s motion to dismiss. The school district appealed.

Issue: At issue is whether the school district has the right to bring suit against the State of New Jersey for the cost of placement under the IDEA.

Holding: The Courts of appeal held that IDEA did not provide the school district with a private right of action.

Reasoning: The Courts of appeal reasoned that IDEA provides federal monies to states and school districts for the purpose of meeting the educational needs of students with disabilities. This funding is contingent on state compliance with IDEA’s substantive and procedural requirements. While the school district in this case argued that the state is responsible for the provision of FAPE, New Jersey argued that the school district lacked standing due to the fact that it was a local education agency. The Courts of appeal reasoned that the language in IDEA strongly suggests that Congress intended private right of action to students with disabilities and their parents. Furthermore, the Courts of appeal reasoned, in Thompson v. Thompson the Supreme Court ruled that unless congressional intent can be inferred from the language of the statute otherwise, the implication of a private remedy does not exist.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the District Court’s judgment.
Citation: *Falzett v. Pocono Mountain School Dist.*, 152 Fed. Appx. 117 (3rd Cir. 2005).

Key Facts: Tiber Falzett developed a chronic illness and fatigue. Tiber’s parents withdrew him for private school, enrolled him in public school, and requested hospital homebound instruction. Tiber finished seventh with all A’s.

Tiber tried to attend school in the beginning of this eighth grade year but was still too sick to do so. His parents again requested homebound services. The school district agreed and began providing the services in October. Though he received French December through the end of the school year, the school district had difficulty finding a regular home instructor in his other four subjects. Ms. Kent, Tiber’s home bound instructor, attended sporadically due to her busy schedule. In addition, the teachers at Pocono failed to provide Tiber’s assignments to the homebound instructor in a timely manner.

In January, Mr. Miller, who never went to Tiber’s home, replaced Ms. Kent. In addition, Tiber’s French teacher missed many days due to personal reasons. Tiber’s parents hired their own private tutors for Tiber. Tiber’s parents did not allow the school district teachers to provide instruction when their private tutors were scheduled to be with Tiber. Also, Tiber’s parents refused to accept one particular instructor the school district sent to work with Tiber. The last day the school district provided instruction was on March 19. Tiber finished the eighth grade with straight A’s, won the school’s geography bee, qualified for Junior National Honor Society, and scored exceptionally well on his SSAT.

The school district offered to make up the hours missed during the summer but Tiber’s parents refused. They filed for due process, asking for reimbursement for the private tutors and for Tiber’s high school tuition. The hearing officer found that Tiber did not qualify for special education services through IDEA, which was affirmed by the administrative appeals panel.
Tiber’s parents filed in District Court. The District Court disagreed with the administrative officers in regards to Tiber not qualifying as a disabled student under IDEA. However, the District Court did find that Pocono School District did provide Tiber meaningful educational benefit, and therefore provided FAPE. Tiber’s parents appealed the finding that Pocono provided Tiber with FAPE and Pocono cross-appealed the holding that Tiber qualified as a student with a disability under IDEA.

Issue: At issue is whether Tiber was provided FAPE his eighth grade year.

Holding: The courts of appeal held that the District Court did not err in, assuming that Tiber had a disability and was entitled to FAPE under IDEA, that substantial evidence in the record supported the finding that the school district provided FAPE and was not liable for violations of ADA, the Rehabilitation Act, or Section 1983.

Reasoning: The Courts of appeal reasoned that under IDEA, a disabled student must receive meaningful educational benefit considering the student’s potential. According to Rowley, a student’s grades can contribute to the decision as to whether he received meaningful benefit or not. Tiber’s grades and test scores indicated he maintained his academic abilities and his SSAT scores indicated he was making progress. The Courts of appeal also reasoned that Tiber’s parents were responsible for him missing many hours of instruction provided by the school district.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the decision of the District Court.

Citation: Lauren W. Ex Rel. Jean W. v. Deflaminis, 480 F. 3d 259 (3rd Cir. 2007).

Key Facts: Lauren was a student with disabilities who qualified for services under IDEA. She attended private school until she was 10 years old, when she enrolled in public school at Radnor Middle School. She attended Radnor Middle School for sixth and seventh grades but
because her parents disagreed with the school district’s proposed IEP, she enrolled in private school. Lauren attended Hill Top Preparatory School her eighth grade year.

Lauren’s parents requested a due process hearing, seeking reimbursement for tuition for Hill Top Preparatory School Lauren’s eighth grade year. Instead of going to the hearing, Lauren’s parents and the school district reached a settlement agreement. Under the agreement the school district agreed to pay Lauren’s private school tuition for her eighth grade year and her parent’s attorney’s fees. In exchange, Lauren’s parents agreed to waive the district’s obligation of providing FAPE for Lauren’s eighth grade year and waived all of their federal and state claims relating to Lauren’s placement through her eighth grade year. The school district paid Lauren’s eighth grade tuition in November of her ninth grade year.

Lauren’s parents again sought reimbursement for private school tuition for Lauren’s ninth grade year. The school board approved the reimbursement but the school district and the parents could not come to an agreement as to the terms of the reimbursement. The school district was seeking the same terms as the 1999-2000 school year. Specifically, Lauren’s parents asked that Lauren be provided related services to help her meet her educational needs. The school district did not accept this agreement. In the meantime, Lauren began 10th grade.

At the end of Lauren’s 10th grade year, the school district proposed an IEP, which placed Lauren back in public school in a Bridge program. The parents disagreed with the proposed IEP and sought a due process hearing. The school district refused payment pursuant to the hearing and Lauren’s parents filed suit in district court petitioning for Hill Top to be considered “stay put” placement. The district court required the school district to fund Lauren’s placement at Hill Top until they resolved the dispute.
After hearing extensive testimony over five days, the hearing officer determined that the 2000 settlement agreement barred any claims that pre-dated that agreement. He also determined the school district was responsible for Laurent’s private school placement for her eighth and ninth grade years. He determined that the proposed IEP for Lauren’s 11th grade year was appropriate and that Lauren was not entitled to related services or compensatory education for the time she spent in private school. Both parties appealed. The Pennsylvania Special Education Appeals Panel affirmed the hearing officer’s decisions.

Lauren’s parents filed suit in District Court on the following claims: I. seeking review of the administrative decision; II. declaratory judgment regarding Lauren’s placement; III. damages under Section 1983 for the District’s alleged retaliation; IV. damages for retaliation in violation of section 504; and V. claims pursuant to Section 504 for the school district’s violation of its “child find” duty.

The District Court found in favor of the school district on counts I, III, IV and V and dismissed Count II. They upheld the administration decision. They threw out Count II of the plaintiff’s claims because the court had already granted relief in this area and Lauren no longer attended Hill Top. The District Court found in favor of Lauren’s parent’s on the school district’s counter claim. Both parties appealed and cross-appealed all decisions with the exception of Count II.

Issue: At issue is whether the school district retaliated against Lauren’s parents. Also at issue is whether the school district should provide compensatory education and related services to Lauren. At issue is whether the school district should reimburse Lauren’s parents for a private evaluation. Finally, at issue is whether the school district’s failure to pay Lauren’s parent’s attorney’s fees was reason to void the settlement agreement and whether Lauren’s parents should
not have been paid for Lauren’s private tuition after the date Lauren should have returned to public school.

Holding: The Courts of appeal held that the school district’s refusal to pay for unilateral placement of Lauren in a non-approved private school unless her parents waived specific IDEA rights did not support the parent’s retaliation claim. The Courts of appeal held that evidence from the record did not warrant the school district to provide compensatory education, related services, or reimbursement to the parents for a private evaluation. The Courts of appeal held that the school district’s failure to pay fees to parent’s for their attorney prior to the settlement agreement, was not grounds to withdraw the settlement agreement. Finally, the Courts of appeal held that Lauren’s parents were not unjustly supplemented for private school tuition after the date the hearing officer set for Lauren’s return to public school.

Reasoning: The Courts of appeal held that the school district’s refusal to pay for Lauren’s placement in a non-approved private school unless the parents waived their IDEA rights did not support the claim that the school district was retaliating against Lauren’s parents. There was no proof that the reason for refusal went beyond the school district’s attempt to protect the district against future possible claims due to a placement in a school in which the district had no supervision.

The Courts of appeal reasoned the school district did not fail to provide FAPE to Lauren and, therefore, compensatory education was unnecessary. They further reasoned the private school provided social and psychological services to Lauren and she continued making gains in those areas during her enrollment in private school. The school district was not required to provide Lauren with related services in public school because she was provided FAPE at her private school.
With respect to the school district’s claim that they should not owe tuition for Lauren’s private placement because Hill Top was not an appropriate placement, the Courts of appeal reasoned that a private school’s failure to meet state education standards is not a bar to reimbursement. The Court deferred to the administrative officers decision through fact finding that Hill Top was an appropriate placement.

Finally, the Courts of appeal reasoned that it would not be inequitable for Lauren’s parents to retain the benefits of the tuition paid by the school district beyond what was ruled as appropriate by the administrative officers or the district court.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the judgment of the District Court on all counts.

Citation: Allen v. Susquehanna TP. School Dist., 233 Fed. Appx. 149 (3rd Cir. 2007).

Key Facts: Jaquan Rakeen Allen was placed in foster care with his biological aunt and her husband. Mr. and Mrs. Allen eventually adopted Jaquan and placed him at Thomas E. Holtzman Elementary School. Jaquan received special education services under an IEP for an emotional disability. When he first started school at Holtzman Elementary School, he required full-time emotional support but had made improvements and had been reduced to a resource level support.

When Jaquan was 11 years old, he and another student attended class in a trailer right outside of the main school building. When it was time to return to the main building, the boys decided to leave the school grounds. A student who knew the boys planed to leave, told the boys’ teacher. School officials and the police searched for the boys and were unable to find them until 6:00 p.m. when Jaquan was struck and killed by a car while attempting to cross the Interstate.
The Allen’s sued the school district. The District Court granted summary judgment in favor of the school district on all claims. The Allen’s appealed.

Issue: At issue is whether the school district had a special relationship with Jaquan so as to eradicate parental oversight. At issue is whether the school district held an affirmative duty to prevent Jaquan from running away and whether the school district’s failure to provide Jaquan with an escort between classes violated IDEA.

Holding: The Courts of appeal held that the school district did not have a special relationship with Jaquan despite the state’s compulsory school attendance. The Courts of appeal held that the district did not have affirmative duty to prevent Jaquan from running away from school and the school district’s failure to provide Jaquan with an escort from class to class did not violate IDEA.

Reasoning: The Courts of appeal reasoned that Jaquan’s parents remained the primary caretakers of Jaquan and Jaquan was not deprived to access sources of help, thus the school did not have a special relationship with Jaquan. Furthermore, the Court reasoned there was no evidence to support that the school district physically restrained Jaquan or prevented him from taking care of himself, thus as a matter of law the special relationship exception does not apply in this case.

With respect to the Allen’s argument that the school district willfully disregarded Jaquan’s safety by allowing him to go from classroom to classroom without an escort, the Courts of appeal reasoned that the evidence did not support that Jaquan required that level of monitoring as part of his special education services or that his parents ever requested that as part of his IEP. In fact, Jaquan was not considered a flight-risk by his parents because they allowed him to move
freely through the neighborhood. The school district cannot willfully disregard Jaquan’s safety by not providing an escort if the school is not aware that Jaquan needed one.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the judgment of the District Court.

Citation: Andrew M. v. Del. County Office of Mental Health, 490 F. 3d 337 (3rd Cir. 2007).

Key Facts: Mr. and Mrs. M. had fraternal twin boys in 2000. When they were 2 years of age, both boys displayed significant developmental delays including speech and communication delays. Delaware County Office of Mental Health and Mental Retardation (County) found the boys eligible for early intervention services in accordance with Part C of IDEA, and developed an Individualized Family Service Plan for each boy. After providing in-home speech services, the County team determined services could better be rendered in a classroom-based program and placed the boys in a center for special needs children run by the Cerebral Palsy Association of Delaware County (CADES).

As part of their plan, both boys used a picture exchange program (PECS) in order to communicate. Both boys received PECS year-round services. When the boys were 3, Ms. M. requested the boys attend a two-week PECS summer camp. The County denied this request but the Ms sent the boys at their own expense.

Around that same time, Ms. M. requested the boys receive services in an environment with non-disabled peers. She found a facility, St. Faith’s, where the boys could benefit from a typical classroom setting. The County denied the request stating they could not provide services to St. Faith’s because they did not have a contract to do so. The Ms enrolled the twins at St. Faith’s at their own expense and the County did not provide the twins early intervention services
between January and June 2003. The Ms requested services from the County on several occasions and the County observed the twins a couple of times during the period from January to June. In June, the County offered 1 hour of speech services twice a week at St. Faith’s. Ms. M. agreed and the boys began receiving SI services at St. Faith’s.

In July, the Ms requested a new PECS therapist in replacement for Ms. Glassberg. During the transitional time, the Ms claim the boys did not receive PECS services in accordance to the IFSP. The Ms filed two different due process claims against the County seeking compensation for the boys’ attendance at PECS camp. The hearing officer determined that PECS camp was not necessary and the boys were making appropriate progress under their IFSPs as written. The Ms appealed and in addition to seeking compensation for the twins’ attendance to PECS summer camp, they also made a claim for compensation for the missing PECS service hours from January to June.

The District Court found ruled that the County erred in failing to fund the camp for one of the twins but not the other. As to the missing PECS hours, the District Court found that he Ms had not exhausted their administrative remedies and dismissed the claim without prejudice.

The Ms then filed due process seeking compensatory education for the PECS hours missed during the transition time between therapists and for the twins not being provided early intervention services in their “natural environment” for the first five months they attended St. Faith’s. The Ms also made a claim under the Rehabilitation Act. They submitted all evidence by May 28, 2005 to the hearing officer. The County did not submit any information. The hearing officer made findings for each separate brother. Both were determined to have been deprived of PECS services and both were awarded compensatory education. The hearing officer found that St. Faith was the LRE for the twins and, therefore, awarded the Ms tuition reimbursement but did
not award compensatory education. The hearing officer did not address Ms’ Rehabilitation Act claim and the County did not appeal the decisions of the hearing officer.

The County paid the reimbursement for tuition as ordered by the hearing officer but did not provide the awarded compensatory education services for the hours of missed PECS services because the Ms and the County could not come to agreement as to how those hours should be remedied. The County also refused to pay the Ms attorney’s fees as requested via letter from the Ms. Thus, the Ms filed a complaint to the District Court. The Ms asked the District Court for attorney’s fees under Rehabilitation Act, the Americans with Disabilities Act and section 1983. They also asked for compensatory education services for the five months the twins spent at St. Faith’s without services listed on the IFSP. Additionally, the Ms asked for attorney’s fees under Rehabilitation Act. Both parties filed cross-motions for summary judgment. The District Court found in favor of the Ms’, including their argument that the twins should have received compensatory education for the five months they went without services. The District Court also awarded the Ms attorney’s fees under the Rehabilitation Act, awarding fees only for the action brought to District Court but not at the administrative level. The District Court did not hold the County liable under Section 1983. The County appealed.

Issue: At issue is whether the District Court erred when it put the burden of proof on the County to prove that services continued while the twins were at St. Faith’s and if the District Court improperly found that the services were not provided in the twins’ natural environment.

Holding: The Courts of appeal held that the party seeking relief under Part C of IDEA is responsible with burden of persuasion. The Court held that preschool was a type of natural environment of infants and toddlers addressed by IDEA and the county violated IDEA by failing
to provide twin brother with developmental delays early intervention services at preschool. The Court also held that the county did not violate the Rehabilitation Act.

Reasoning: The Courts of appeal reasoned that Part C of IDEA does not contain any indication of which party bears the burden of proof when a claim is bought and there is no relevant case law under Part C to use as a guide. The Court then looked to Part B of IDEA for relevant case law. The Supreme Court decision in Schaffer v. Weast (2005) clearly holds that the burden of proof lies with the party seeking relief. The Courts of appeal reasoned that there was no reason that the burden of proof would lie with a different party under Part C. Also, the Courts of appeal reasoned that a District Court must give due weight to the finding made by the administrative officers. The facts in administrative hearings are to be considered correct and if not, the Court is to explain otherwise why they are not correct.

The Courts of appeal reasoned that IDEA regulations stipulate that a child’s “natural environment” is a setting that is normal for the child’s age peers who have no disabilities. Given that the IFSP calls for a placement in a structured environment that provides a balance of adult direction and child-centered activities with modifications to maximize communication and interaction with peers and adults, a preschool placement would be considered as the twin’s natural environment. Placement at St. Faith’s could be considered as the twins’ natural environment.

The District Court found that because the Ms had proved an IDEA violation, then they had also proved a violation of the Rehabilitation Act. The Courts of appeal ruled that the District court was incorrect in this finding because children who are under the age of three, who are covered by Part C of the IDEA, are not entitled to FAPE under Part B. The Court reasoned when an agency violates Part C of the IDEA, it does not use disability as the basis of a denial of
something to a child for which he is entitled. In this case, the reason the M twins’ did not receive appropriate services was not because they were disabled, as could be the case under Part B of IDEA, but because the County misunderstood the concept of natural environment. Therefore, the Courts of appeal reasoned, because the Ms did not establish a violation of the Rehabilitation Act and because attorney’s fees are not available under Part C of the IDEA, the District Court erred when granting them attorney’s fees.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the District Court’s summary judgment on the IDEA claim and reversed its decision of summary judgment on the Rehabilitation Act claim.

Citation: Cumberland Regional v. Freehold Regional, 293 Fed. Appx. 900 (3rd Cir. 2008).

Key Facts: L.G. lived with her parents until 1997 when, at age 14, she was placed in a residential setting at the Bancroft School in Haddonfield, New Jersey. L.G. suffered from mental retardation, myasthenia gravis, impulse control disorder, and unspecified psychotic disorder, organic and mental disorder, oppositional defiant disorder, complex seizure disorder, mixed specific developmental disorder, and motor control disturbance. Because L.G. lived in Freehold at that time, the educational component of her placement was the responsibility of Freehold Regional School District. Under the terms of a settlement reached in 1998, L.G.’s father contributed $14,500 a year to the cost of the placement and Freehold paid the remainder.

In 2001, Bancroft School discharged L.G. from its residential program and Freehold did not offer an alternative placement. L.G.’s father placed her in residential program at a children’s hospital in New Kent, Virginia. His insurance company paid the hospital bills for a time, but after they ceased paying, L.G’s father filed due process requesting that Freehold assume
financial responsibility for his daughter’s new educational placement. During the course of the proceedings, Freehold learned that L.G.’s parents had been divorced since 2001 and her mother lived in the Cumberland Regional High School District. L.G.’s parents shared joint legal and physical custody. As a result, Freehold served Cumberland with a third party due process petition in which it sought contribution for half of L.G. educational costs since 2000. Cumberland maintained it had no responsibility because L.G. had never physically lived within its boundaries.

After the hearing, the ALJ held that L.G. had no clear home address and that the two schools should equally share the cost of providing LG. with FAPE until she turned age 21, when she would no longer qualify for educational services. The District Court supported the ALJ’s decision. The District Court granted summary judgment in favor of Freehold School District.

Issue: At issue is whether two New Jersey school districts must share the costs associated with providing FAPE to a disabled child whose divorced parents share joint legal and physical custody.

Holding: The Courts of appeal held that the two New Jersey school districts were required to share the costs associated with providing FAPE to L.G.

Reasoning: The Courts of appeal reasoned that typically the school district in which a student lives is responsible for providing FAPE under IDEA. However, a student’s residence is not clear when the parents share joint custody and live in different school districts. The Supreme Court addressed a similar situation in Summerville Board of Education v. Manville Board of Education (2001), as noted by the ALJ and the District Court in this case. The rule form Summerville was that children from divorced parents who share legal and physical custody may have two legal residences for purpose of allocating the cost of their education.
Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the decision of the Administrative Law Judge and the District Court.

Citation: Richard S. v. Washington School Dist., 334 Fed. Appx. 508 (3rd Cir. 2009).

Key Facts: In 1994, the school district evaluated Richard S. for ADHD, then a 2nd grader. While they found Richard did possibly have ADHD, they did not find a discrepancy between his ability and achievement and did not find him eligible for special education services. Richard did well in school till his seventh and eighth grade years when his academic performance declined. He was also frequently absent and did not always turn in assignments.

In 2001, Richard’s parent’s requested another evaluation. Richard was diagnosed with ADHD and a math disorder as a result of the evaluation. The school district developed several successive IEPs for Richard but his performance continued to decline and he withdrew from school in September, 2004. Richard’s parents filed for due process. Richard’s parents claimed the Wissahickon School District failed to identify Richard as a child with a disability in a timely manner and therefore did not provide FAPE after he had been diagnosed. The administrative hearing officer found in favor of the parents on the identification issue but found in favor of the school district on the post-diagnosis issue. He awarded Richard compensatory education for the 1999-2000 and 2000-2001 school years. Richard’s parents appealed, asking for compensatory education for 2002-2003 and 2003-2004 school years in addition to the 2 previous years and the school district appealed having to provide compensatory education for the 1999-2000 and 2000-2001 school years.

The District Court found both issues against the appellants and granted a motion of summary judgment on the administrative record. Richard’s parents and the school district appealed.
Issue: At issues is whether the school district failed to provide FAPE when it did not meet its child-find obligations and whether the school district’s IEPs were calculated to provide Richard a meaningful educational benefit.

Holding: The Courts of appeal held that the District Court did not err in finding the school district did not violate its child-find obligations during Richard’s seventh and eighth grade years and did not err in finding that the school districts IEPs were reasonably calculated to provide Richard a meaningful educational benefit.

Reasoning: The Courts of appeal reasoned that the district court did not appear to err in the finding against the fact that the school district should have known Richard was a child with a disability by 1999. The Court reasoned that there was evidence in the record indicating that Richard was an average student who was making meaningful progress, but whose increasing difficulty in school was attributable to low motivation and frequent absences and a failure to complete home work. Therefore, no clear error existed in the District Court’s decision to credit the hearing officer’s finding that the school district did not violate its child find obligations during Richard’s seventh and eighth grade school years.

The Courts of appeal reasoned that while it was clear that Richard continued to struggle in school, the record was also clear that Richard refused to accept recommended support services. The school district sought the assistance of a psychiatrist in 2003, who evaluated Richard and concluded that a primary component of his disability was resistance to treatment. Therefore, reasoned the Courts of appeal, the finding that the IEPs developed by the school district were reasonably calculated to provide Richard a meaningful educational benefit was not in error.
Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the judgment of the District Court.

Citation: Mary T. v. School Dist. of Philadelphia, 575 F.3d 235 (3rd Cir. 2009).

Key Facts: Courtney suffered from learning disabilities, speech and language impairments, ADHD, and other mental health disorders. Due to the nature of her disabilities, the school district funded private school placements for Courtney beginning when she entered kindergarten in 1993. In the fall of 2001, Courtney’s behaviors escalated and, as a result, she was briefly hospitalized. In 2002 she was evaluated and found to have a variety of educational and emotional needs. Courtney’s parents unilaterally placed her in a residential facility, the Rancho Valmora School. This school specialized in treating adolescents with educational, emotional, and behavioral problems. Courtney made progress at the school and was discharged. She returned to Philadelphia in June 2003 and was placed at the Pathway school for the 2003-2004 school year. She did very well both academically and behaviorally that school year but beginning of the following school year, her emotional condition began to deteriorate and Pathway School could no longer meet her needs. In December 2004, Courtney’s parents placed her back at Rancho Valmora. Courtney’s condition continued to decline. She demonstrated psychotic events, severe anger problems, the abuse of chemical substances, and self-injurious behaviors. At the end of April, Rancho Vlamora could no longer meet Courtney’s needs. She was then placed at Menniger Clinic, a psychiatric hospital in Texas for a short time. They dismissed her less than a month later due to her severe behaviors. Courtney’s parents then enrolled her in Supervised LifeStyles (SLS), was a long-term psychiatric residential treatment center in New York. While SLS was licensed by the New York State Office of Mental Health and was accredited with a
national organization for the accreditation of rehabilitation facilities, it did not have any educational accreditation nor any other school affiliation.

While at SLS, Courtney required one-on-one round the clock care and spent most of her time in intensive individual and group psychotherapy. The school district asked to conduct a neuropsychological evaluation in June 2005 but Courtney’s parents stated she was not stable enough to undergo the evaluation. Also, her educational plan from Rancho Valmora could not be implemented due to her emotional state. The focus of SLS was on Courtney’s safety and emotional well-being.

The school district was able to conduct an evaluation in October 2005 and recommended adaptive and vocational skills instruction. An IEP team met in November and developed an educational plan, which provided for 3 hours a week of one-to-one tutoring in language arts, reading, and math with a remedial and vocational focus. In December 2005, Courtney was transferred from acute care to post acute care and continued treatment at SLS until her discharge in July 2006.

In December 2005, Courtney’s parents requested a due process hearing seeking reimbursement for tuition reimbursement for Rancho Valmora and SLS and, if denied reimbursement, compensatory education for the time she was attending those schools, and an independent evaluation at the school system’s expense. The school system agreed to pay for Courtney’s time at Rancho Valmora but not for SLS. They argued that SLS was a medical placement, not an educational one. At the conclusion of the hearing, the hearing officer faulted the school district for no developing an IEP in June 2005 and for not providing education services to Courtney when she was at SLS. He disagreed that Courtney’s placement at SLS was medical in nature as opposed to educational, stating that her medical needs kept her from having
her educational needs met. He determined that SLS was an appropriate placement. He awarded tuition reimbursement for Courtney’s stay at SLS from May 2005 through January 2006.

The school district appealed to the State Appeals Panel, who reversed the decision of the hearing officer. The Panel found that Courtney’s placement at SLS was due to her severe psychiatric condition and, therefore, she received medically based services during her first four months stay there. They reversed the award of tuition reimbursement to Courtney for her time at SLS. Courtney appealed to Federal District Court.

The District Court separated Courtney’s time at SLS into two sections. Her stay in the acute care ward defined the first section. The District Court argued that during this time, Courtney was receiving medical services for the purpose of stabilizing her medical condition, not for educational purposes. The second period of time, when Courtney began receiving educational services from the school district, the medical care she was receiving from SLS would be considered related services, thus, the District Court reasoned the school district owed tuition reimbursement for that time period. The District Court denied compensatory education, reasoning that the school district conducted an evaluation and developed an IEP for Courtney within a reasonable amount of time. The parents and the school district appealed.

Issue: At issue is whether SLS was an appropriate placement for Courtney or if the services she received from SLS could be considered related services and whether the school district should have paid tuition reimbursement to Courtney’s parents for the time she was there. At issue is whether Courtney was deprived of FAPE by the school district for purposes of tuition reimbursement or for compensatory educational services.

Holding: The Courts of appeal held that Courtney was not entitled to tuition reimbursement or compensatory services for the time she was at SLS.
Reasoning: The Courts of appeal reasoned that only residential facilities that provide special education qualify for reimbursement under IDEA and that if placement in a residential program is necessary to provide special education and related services to a child with a disability, the program must be at no cost to parents. The Courts of appeal reasoned that even though SLS used behavior management techniques comparable to that of a school program, the relevant consideration is not the techniques the residential placement uses but rather the goal to be achieved by using the techniques. They reasoned that SLS used these techniques to manage Courtney’s medical condition, not meet her educational needs. Furthermore, SLS was not accredited to be an education facility nor did it employ on-site educators. Courtney’s enrollment in SLS was due to her medical condition, not by her need for special education services. The Court reasoned that Courtney required medical intervention, including psychiatric treatment and drug therapies to address her underlying medical condition and this was far beyond the scope of the school district’s responsibility.

The Courts of appeal reasoned that while IDEA requires school districts to pay for some medical services as a related service; the costs of SLS were limited by this mandate. IDEA states that medical services are covered if they are for diagnostic and evaluation purposes only. Though Courtney’s parents argue that in Irving Independent School District v. Tatro (1984) the school district had to provide medical services to an eight year old girl; in determining this the Supreme Court considered two things. First they considered whether the medical procedure was a supportive service that enabled the child to benefit from special education and secondly, whether the medical procedure was a medical service that allowed the child to remain at school during the day, providing her with meaningful access to her education. The Supreme Court further reasoned that the federal regulation excluded the services of a physician or hospital services as a
provisional requirement of school systems. For all of these reasons, The Courts of appeal reasoned Courtney’s parents were not entitled to reimbursement of tuition of SLS and because SLS was not determined to be an appropriate placement, the Court found they did not need to address whether the school district provided FAPE for tuition reimbursement purposes.

As to Courtney’s parents claim that the school district should offer compensatory education services if tuition reimbursement was not awarded, the Courts of appeal reasoned that the school district began providing one-on-one tutoring to Courtney the day Courtney’s parents notified the school district that she was well enough to be evaluated. The school district conducted an evaluation and developed an IEP, which considered a continuum of services. The IEP also included a plan to increase her instructional services as her medical condition improved. As a result, the Court reasoned that the school district did provide Courtney with a floor of opportunity in which to make educational progress. Thus, the Court reasoned Courtney was not denied a FAPE.

Disposition: The Untied States Courts of appeal for the 3rd Circuit affirmed in part and reversed in part the decisions of the District Court.

Citation: P.P. Ex Rel. Michael P. v. West Chester School, 585 F.3d 727 (3rd Cir. 2009).

Key Facts: Patrick attended a parochial school when he entered kindergarten till 2005, when in fourth grade he enrolled at the Benchmark School, a private school for students with disabilities. Patrick’s mother alleged she requested an evaluation from the public school district in early 2003. The school district contended they did not receive any such notice. Patrick’s parents had him privately evaluated in June of 2003. Dr. Burke, the private evaluator, found he had difficulties with reading, reading comprehension, written expression, and visual motor integration. He received Title 1 and vision therapy services through his second grade year.
In 2004, during Patrick’s third grade year, his parents wrote a letter directly to the school district requesting an evaluation and informing the school district that Dr. Levisohn, a private evaluator, would be evaluating Patrick for special education services in December 2004. The district’s school psychologist sent Patrick’s parents a Release of Records form and a Parent Input form in an effort to begin gather information prior to issuing a Permission to Evaluate form which would start the timeline to complete the evaluation. Patrick’s parents completed the forms and returned them to the school district along with a copy of Dr. Burke’s evaluation of Patrick.

In December, the school district issued release of records to Dr. Levisohn and the counselor at St. Max. In January 2005, the school district held a Child Study Team to determine if a Permission to Evaluate form was warranted. The team sent the form in February 2005 but suggested they not sign it until the school district received Dr. Levisohn’s evaluation information, which it received in April 2005. Dr. Levishon found Patrick eligible for special education services for Learning Disabilities and Gifted. The school district then sent a revised PET, which the parents signed and returned, and the school district began evaluating Patrick in early June 2005. The school district completed testing in July 2005 and sent Patrick’s parents a preliminary evaluation report. In August, Patrick’s parents notified the district that they disagreed with the evaluation report because it failed to identify Patrick as having a math computation learning disability and did not include assessments for Patrick’s social and emotional functioning. Patrick’s parents also informed the school district that they would be sending Patrick to the Benchmark school for the 2005-2006 school year since the school district would not provide an IEP until after the beginning of the school year.

However, the school district did prepare an IEP prior to the beginning of school. In September, the school district sent Patrick’s parents an invitation to participate in the
development of the IEP. At that meeting they presented the parents with a revised Evaluation Report and a proposed IEP. The IEP was extensive, including keyboard skills, gifted enrollment, small group direct instruction for Language Arts, Math and Gifted, and it included Occupational Therapy as a related service. Patrick’s parents did not approve the IEP.

In October 1995, Patrick’s parents filed due process claiming the school district did not meet it’s child find obligation and denied FAPE. They requested the school district provide compensatory education, payment for an Independent Educational Evaluation (IEE) and for the two previous IEEs, reimbursement for vision therapy, and tuition reimbursement for Patrick’s time at Benchmark. The hearing officer only allowed claims after October 2003 due to IDEA’s 2-year statute of limitations. She concluded the school district did meet its child find obligations and that the parents were not entitled to compensatory education between October 2003 and May 2005, nor were they entitled for tuition reimbursement or vision therapy. The hearing officer did award Patrick compensatory education for the period from May 2005 to June 2005, stating that the school district should have been more prompt evaluating Patrick so that his parents could have enrolled him in school the last six weeks of his fourth grade year to receive FAPE. Both the school district and the parents appealed. The appeals panel upheld the hearing officer’s decision with the exception of the award of compensatory education. The panel held that a student who is placed in private school unilaterally by their parents do not have a right to compensatory education services. The parents appealed to the District Court and added a Section 1983 claim.

The District Court granted summary judgment for the school district on the parent’s Section 1983 claims because Section 1983 is not an available remedy for violations of IDEA or the Rehabilitation Act, because both statutes have comprehensive remedies unto themselves. The District Court also applied the 2-year statute of limitation, barring any claims prior to October
2003. The District Court concluded that the school district did not violate its child find obligations and that Patrick’s parents were not entitled to compensatory education or tuition reimbursement. The school district requested the District Court apply IDEA’s statute of limitation to the Section 504 claims, but the District Court applied Pennsylvania’s 2-year personal injury statute of limitations instead. Patrick’s parents appealed.

Issue: At issue is whether the District Court erred in applying Pennsylvania’s 2-year personal injury statute of limitations to the plaintiff’s Section 504 claims instead of IDEA’s statute of limitations. At issue is whether the school district satisfied its obligations under IDEA for child find in its identification and evaluation of Patrick.

Holding: The Courts of appeal held that the Section 504 of the Rehabilitation Act was under the IDEA’s 2-year statute of limitations. The Court held that Patrick was not entitled to compensatory education and that the school district satisfied its child find obligations. The Court held that the school district met FAPE when it developed an IEP and Education Report for Patrick and his parents were not entitled to reimbursement for any of the Independent Educational Evaluations for which they contracted.

Reasoning: The Courts of appeal reasoned that the IDEA and Section 504 of the Rehabilitation Act do similar statutory work. In addition, the Supreme Court gave guidance in this area, stating that state statutes of limitations are to be used unless they frustrate or significantly interfere with federal policies. The Courts of appeal reasoned that in this case the state statute of limitations could frustrate federal policy and IDEA’s limitations period is a better fit for education claims made under the Rehabilitation Act than the personal injury statute of limitations.
The Courts of appeal reasoned that there was no evidence that Rita, Patrick’s mother, contacted the school district and initiated the evaluation process in January of 2003. She could not provide a copy of the letter she claims she sent to the school district and many district employees testified that they had no record of having a conversation with Rita even though meticulous records of non-public school referrals had been kept. Therefore, the Courts of appeal reasoned they would only consider claims after the date the school district had record of the parent’s request for an evaluation of Patrick.

The Court concluded that the District Court used appropriate reasoning that the school district took an unduly long time to complete its evaluation of Patrick but the evaluation was appropriate and a procedural violation alone cannot support a compensatory education award. The Courts of appeal further reasoned that while the delay was unfortunate, the record did not demonstrate that it had any impact on the parent’s decision to leave Patrick at St. Max for the 2004-2005 school year.

The Courts of appeal reasoned that the school district’s evaluation of Patrick was comprehensive and the IEP offered to him was reasonably calculated to provide a meaningful educational benefit, thus the school district met IDEA’s FAPE requirements. As to the parent’s request for compensatory education services, the Courts of appeal reasoned that compensatory education is not an appropriate remedy for a procedural violation of IDEA and not available when a student has been unilaterally enrolled in private school.

The Courts of appeal reasoned that the school district was not responsible for reimbursement for the 2003 and 2005 IEEs because they took place or were scheduled prior to the school district’s evaluation of Patrick.
Disposition: The United States Courts of appeal for the 3rd Circuit reversed the District Court’s ruling with respect to the statute of limitations but affirmed its order granting summary judgment to the school district.

Citation: Chambers v. School Dist. Philadelphia Bd. of Educ., 587 F. 3d 176 (3rd Cir. 2009).

Key Facts: When Ferren Chambers was 2, she was evaluated and found to have Dandy-Walker syndrome, a congenital brain malformation. Prior to kindergarten, she was also evaluated by the school district and diagnosed with mental retardation. As a result, she was placed in a Life Skills program at Farrell School. Mr. Chambers, Ferren’s father, challenged her classification as mentally retarded and her subsequent placement. In a due process hearing, Ferren was ruled to be autistic. The school district then placed her at Greenfield Elementary School in a program for autistic students.

After several evaluations, a medical professional evaluated Ferren and recommended private school placement. The school district disagreed. The Chambers requested a due process hearing. The school district misplaced the hearing request, thus the hearing was unduly delayed. The appeals panel ordered the school district to place Ferren in private placement, and, as a result, the school district placed Ferren at the Wordsworth Academy. The Chambers then filed for a due process hearing requesting speech, physical, and occupational therapies. The parties entered into settlement agreements and the school district agreed to provide those services. However, the school district did not follow through and the Chambers filed a complaint with the Pennsylvania Bureau of Special Education, which issued a report outlining the school district’s failure to provide those services. The school district then agreed to pay for Ferren’s speech, physical and occupational therapies. After several complaints were filed and hearings held, the
school district was ordered to put $209,000 in a trust for Ferren’s benefit. The school district also agreed to place Ferren at the Davidson School, a private school, and fund that placement till the 2009-2010 school year.

In May 2005, the Chambers filed a complaint against the school district in District Court alleging the school district denied Ferren FAPE, therefore violating IDEA, ADA, and Section 504. They also alleged the failure to provide FAPE resulted in a deprivation of their due process rights and sought relief under Section 1983. The school district moved for summary judgment. The District Court granted the school district’s motion and dismissed all of the Chamber’s claims. The District Court held that compensatory damages are not available under IDEA, that Section 1983 provides no remedy for violations of IDEA or the RA, and that the RA claim could be treated the same as the ADA claim. The District Court further held that the Chambers had waived their ADA and RA claims.

The District Court found that the Chambers failed to present evidence that the school district intentionally interfered with the parent-child relationship and to identify a protected property interest or demonstrate any deprivation of that interest. Finally, the District Court determined that the Chambers had presented no evidence to sustain such a claim. The Chambers appealed.

Issue: At issue is whether the school district failed to provide Ferren with FAPE and if her parents can be awarded damages on Ferren’s behalf and on their own behalf.

Holding: The Chambers waived their right to seek attorney fees and other expenses under IDEA and a fact issue precluded summary judgment on claims with regards to the Americans with Disabilities Act and Rehabilitation Act.
Reasoning: The Courts of appeal reasoned that IDEA does not create joint rights in parents; however, the Supreme Court has found that parents do have enforceable rights at the administrative level; thus, the parents could assert those rights in federal court. Therefore, the Courts of appeal reasoned parents have substantive rights under IDEA that may be enforced by prosecuting claims brought under that statute. The Courts of appeal found the District Court erred in determining that the Chambers do not have standing to pursue their IDEA claim.

The Court reasoned that IDEA does not limit the type of relief a court may order as long as that relief is “appropriate.” In *School Committee of the Town of Burlington v. Department of Education of Massachusetts* (1985), the Supreme Court held that parents could seek relief through IDEA for out-of-pocket expenses that the school district “should have paid all along and would have borne in the first instance had it developed a proper IEP.” The Court reasoned that every circuit since the *Burlington* case has addressed this issue and held that compensatory and punitive damages are not available under IDEA. Given this and considering the language and structure of the IDEA, the Courts of appeal reasoned that compensatory and punitive damages are not an available remedy under the IDEA.

In reply to the Chambers request for attorney’s fees, evaluation costs and travel expense, the Courts of appeal reasoned that the Chambers waived their right to this request because they never asked before the District Court for any damages other than compensatory damages.

The Court reasoned summary judgment was not appropriate because the record contained a factual dispute about whether the school district provided Ferren with FAPE. Thus, the District Court erred by dismissing the Chambers’ RA and ADA claims.

In regards to the Chambers’ substantive due process claim on Ferren’s behalf, the Courts of appeal reasoned the Chambers failed to identify policies or customs of the school district on
the basis of which a reasonable person could suppose liability. Summary judgment for a non-moving party may not rest on mere allegations. The Court reasoned that while the school district frequently failed to fulfill commitments it made with respect to Ferren’s education, the record does not support that the school district’s policy was to ignore the responsibilities imposed by the IDEA. Furthermore, the Chambers’ procedural due process claim is not actionable under section 1983 because it fails as a matter of law. The Court reasoned the record did not support the Chambers’ claim that the school district intentionally misplaced their hearing request or that the school district exhibited recklessness or gross negligence by misplacing or failing to forward the request. The record implied the school district only made an error in failing to forward the Chambers’ hearing request.

Finally, regarding the Chambers’ complaint that the school district violated Ferren’s rights under the Equal Protection Clause of the Constitution by intentionally discriminating against disabled students such as Ferren, the Court reasoned that the Chambers fell far short of their burden of establishing that the school district purposefully treated Ferren differently from students in similar situations.

Disposition: The United States Courts of appeal for the 3rd Circuit vacated and remanded the portion of the District Court’s decision regarding their erroneous finding that the Chambers waived two of the statutory claims asserted on Ferren’s behalf. The rest of the District Court’s decision was affirmed.

Citation: Anello v. Indian River School Dist., 355 Fed. Appx. 594 (3rd Cir. 2009).

Key Facts: G.A. was deemed eligible for instruction under Section 504 of the Rehabilitation Act, but ineligible under IDEA. Prior to 3rd grade, G.A., along with her parents, moved to the Indian River School District. The Anellos and the school district determined that
G.A. would continue to receive her Section 504 classroom modifications as established in New York. Then, in June 2004, Indian River determined that G.A. did have a learning disability under IDEA in reading comprehension. The school district developed an IEP to address G.A.’s disability and convened a meeting with the Anellos. They disagreed with Indian River’s findings and placed G.A. in Lighthouse Christian School, a private school, in August 2004 and filed for due process. The Anellos claimed the school district failed to follow Delaware’s child find obligations because they were on notice that G.A. needed an initial evaluation when the Anellos enrolled her at Indian River in the Fall of 2003. They contend that if Indian River had convened an Instructional Support Team to evaluate G.A., as defined in the Administrative Manual for Special Education Services (AMSES), they would have identified G.A. as a student with a disability eligible for services under IDEA in 2003.

Issue: At issue is whether the Indian River School District failed to follow Delaware’s “child find” regulations and if the school district was on notice that G.A. needed an initial evaluation upon her arrival in the Fall of 2003.

Holding: The Courts of appeal held that the G.A.’s IEP was adequate under IDEA and, although there were procedural deficiencies, they did not significantly impede G.A.’s parents’ an opportunity to participate in the IEP process, nor did it deprive G.A. of educational benefits.

Reasoning: The Courts of appeal was not persuaded by the Anellos’ “child find” allegations. The Court reasoned that the evidence available did not establish that the 504 plan had failed or that the Indian River violated IDEA. Prior to February 3, G.A.’s grades were improving, thus the school district could not know she would later fail the third grade or the state standardized test. In addition, the record established that the curriculum was tailored to meet
In response to the Anellos’ claim that G.A.’s IEP was inadequate because it did not address math or writing, the Court reasoned that the school psychologist found that G.A. only had a discrepancy in reading comprehension and thus an IDEA disability in reading comprehension, not math or writing. As to the Anellos’ claim that the IEP contained procedural violations, specifically, that it did not contain G.A.’s present levels of performance, the Court reasoned that they did not show how the procedural errors impeded G.A.’s right to FAPE, significantly impeded their opportunity to participate in the decision making process, or caused a deprivation of G.A.’s educational benefits. The Court further reasoned that because the school district drafted an IEP that was adequate to provide FAPE to G.A., the Anellos were not entitled to reimbursement for tuition costs.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the judgment of the District Court.

Citation: *D.S. v. Bayonne Bd. of Educ.*, 602 F. 3d. 553 (3rd Cir. 2010).

Key Facts: At 6 years old, D.S. began to have epileptic seizures due to brain tumors. Part of his treatment was the use of large quantities of anti-epileptic medicine. D.S.’s condition and treatment placed severe limits on his cognitive abilities and he scored in the mentally retarded range on IQ tests. D.S. attended public school in the Bayonne School District in the second grade. After repeating the second grade, Bayonne found D.S. eligible for special education under IDEA through the Other Health Impaired classification. He received special education services in third grade then had brain surgery in 2001 and again in 2003. D.S.’s seizures completely stopped following the 2003 operation and his condition improved. When D. S. entered the ninth
grade during the 2006-2007 school year, the school district placed D.S. in a self-contained special education program, completely separate from the general student population.

D.S.’s parents were unsatisfied with this placement recommendation and, in April 2006, retained Dr. Maria DiDonato, a private neuropsychologist, to evaluate D.S. She determined that D.S. had an IQ score of 81, which is in the low average range of intelligence. His academic scores ranged from a 4.2 grade level to a 7.2 grade level. Emotionally, D.S. displayed signs of withdrawal, problems with attitude towards school and teachers, and internalization of problems causing feelings of depression and inadequacy. Based on her evaluations, Dr. DiDonato recommended several instructional strategies and accommodations for his learning. She referred, D.S. to a speech-language pathologist, Inna Levine of Robert Wood Johnson University Hospital. Ms. Levine examined D.S. in May 2006 and determined his strengths and weaknesses in a variety of linguistic tasks. She recommended pull-out speech therapy that addressed his weaknesses and “life skills” to help prepare D.S. for post-school career planning. In October 2006, D.S.’s parents had him evaluation by an Audiologist, Lorraine Sgarlato-Inducci. Based on her evaluations, she concluded D.S. had a weakness in central auditory processing and made several instructional recommendations based on her findings.

D.S.’s parents sent four letters sharing reports from the private evaluations and requesting to meet with the IEP team at D.S.’s school to incorporate their recommendations. The school district did not respond till November 2006. They IEP team then met with the parents and summarized the reports of the private evaluations. The teachers addressed D.S.’s present levels of performance and then suggested several instructional modifications and accommodations. D.S.’s parents refused to sign the IEP because they believed it failed to address D.S.’s
educational needs, but they did not challenge the IEP through mediation or at a due process hearing.

D.S.’s parents continued to consult with private evaluators throughout the 2006-2007 school year. The school district allowed Dr. DiDonato to observe D.S. in class. Based on her observation, she issued a report stating the pace and level of instruction was inappropriate for D.S. and that the IEP was inadequate to meet his educational needs. She recommended placing D.S. in a school for students with learning disabilities. After receiving Dr. DiDonato’s report in March 2007, D.S.’s parents filed for due process seeking placement for D.S. at the Bayonne School at the school district’s expense.

After initiating the hearings, D.S.’s parents consulted with Dr. Brooks, a licensed speech and language pathologist and clinical neuropsychologist, who reviewed D.S.’s medical and educational records, including the private reports and recommendations. She concurred with the private evaluators and recommended a structured, intensive reading program, social skills training, and pragmatic language instruction. She found that Bayonne had provided minimal educational services to D.S. throughout his educational career.

In May 2007, the school district had D.S. evaluated by learning consultant Lucy Hackley and school psychologist Mary Beth Wilkinson. Based on their evaluations, D.S. scored slightly lower on their standardized tests than he had 1 year ago. They also indicated that D.S. had a very negative self-image. Despite this decrease in standardized test scores, D.S.’s grade point averaged increased over his grade point averages from the previous 4 years.

At the hearing, the difference in D.S.’s standardized test scores and his grade point average became a focal point. There were two different testimonies, one from the school district that standardized scores are not the most reliable indicator of academic progress and one from
D.S.’s parents’ experts that grades are not the most reliable indicator of academic progress because they are subjective. The ALJ also noted that the school district did not incorporate any of the recommendations of the private evaluators into the 2006 IEP. At the conclusion of the hearing, the ALJ found that Bayonne had failed to address D.S.’s educational needs through his IEP and, thus, failed to provide FAPE. He ordered D.S. be placed at the Banyan School at the school district’s expense.

D.S.’s parents filed claim in District Court seeking reimbursement for attorney’s fees and costs incurred in the due process hearing. The school district countered with it’s own claim requesting the District Court reverse the findings of the ALJ. The District Court concluded that Bayonne School District had provided D.S. with an education that met federal requirements and denied D.S.’s parents’ request for reimbursement. The District Court then reversed the decision of the ALJ on the basis that the ALJ over-relied on D.S.’s standardized test scores and did not give enough weight to his grades. The Court further found that D.S.’s teachers were incorporating some of the private evaluators’ recommendations into D.S.’s instruction. D.S.’s parents appealed.

Issue: At issue is whether Bayonne School District provided D.S. with FAPE and whether they met the substantial procedural requirements of IDEA.

Holding: The Courts of appeal held that the school district substantially complied with IDEA’s procedural requirements and there were no grounds based on any procedural errors in the IEP for granting D.S.’s parents relief. The Court held that the District Court failed to give due weight to the ALJ’s findings in support of his conclusion that the IEP was inappropriate; and, according to the record, there was no basis in the record for overturning the ALJ’s finding that D.S.’s ninth grade IEP was not reasonably calculated to enable him to receive a meaningful
educational benefit. Finally, the Court held that it would reinstate the ALJ’s decision, but the determination of the exact relief to be awarded to D.S.’s parents would be left to the District Court on remand.

Reasoning: The Courts of appeal held that a procedural violation is actionable under IDEA only if it results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits. In this case, in spite of the fact that Bayonne was initially unresponsive to D.S.’s parents request for an IEP meeting, the parents were provided an opportunity to meaningfully participate in the development of D.S.’s ninth grade IEP. The fact they did not agree with the IEP does not equate to a lack of meaningful participation. Thus, the Court reasoned Bayonne substantially satisfied IDEA’s procedural requirements.

With regards to the District Court’s finding that the presence of generalized instructions in the IEP contradicts the ALJ’s factual conclusions, the Court reasoned that a reviewing court is obliged to consider the facts of the record as correct and the facts of the record were in order for D.S.’s IEP to be reasonable calculated to enable D.S. to receive a meaningful education, it needed to include specific remedial techniques proposed by the teachers and evaluators who worked with him. The IEP failed to incorporate these techniques.

In regards to the District Court’s finding that D.S. received meaningful academic progress because he received high grades during his ninth grade year, in Rowley the Supreme Court addressed the limited significance of grade-to-grade advancement in which the mainstreaming preference of IDEA had been met and the handicapped child who was the focus of the case, was performing above average in the regular classrooms of a public school system. Thus, this led the Courts of appeal to reason that when the mainstreaming preference has not
been met so that high grades are achieved in classes with only special education students set apart from the regular classes of a public school system, the grades are of less significance than grades obtained in regular classrooms.

The Court reasoned that the District Court’s contradictory determination was clearly erroneous because they did not point to nontestimonial evidence that undermined the ALJ’s conclusions and if the District court had given the ALJ’s determination due weight, then there was no basis in the record for overturning that determination.

Disposition: The United States Courts of appeal for the 3rd Circuit reversed the decision of the District Court and remanded the case back to the District Court to find the precise relief to be given to D.S.’s parents.

Citation: C.H. v. Cape Henlopen School Dist., F.3d. 59 (3rd Cir. 2010).

Key Facts: C.H. was identified as a child with a disability under IDEA. He was diagnosed with dyslexia, dysgraphia, and a severe language disorder. In addition, it was possible that he also had Attention Deficit Hyperactivity Disorder and a central auditory processing disorder. C.H.’s parents unilaterally placed him in private school in 2002 and again in 2004. Both times the parents sought reimbursement from the school district for private school tuition and both times the school district opposed reimbursement. For the 2005-2006 school year, the school district agreed to pay for C.H.’s private school placement at the Gow School for 1 year in exchange for a signed agreement by the parents stating the private school placement was the sole decision of the parents and that the district was under no obligation to monitor C.H.’s performance or develop an IEP for him while he was enrolled at the Gow School.

During that school year, the parents discussed with the school district C.H.’s possible return to public school for the following school year and the need to develop an IEP for C.H. The
parents never definitively placed C.H. back in public school and had again enrolled him in March 2006 at the Gow School for the upcoming school year. Despite the uncertainty of C.H.’s return to public school, the Henlopen School District determined that C.H. should be evaluated and an IEP developed in the event he did return. In May 2006, the school district sent permission to evaluate form to the parents. The parents returned the permission, but did not check the appropriate box authorizing the evaluation. The school district notified the parents of the oversight and the parents sent proper authorization on July 6, 2006. The school psychologist completed her evaluation and the report by August 15, 2006.

On August 18, 2006 the school district sent notice of an IEP meeting to C.H.’s parents. The meeting was to be held August 22. Though the school district did not give 10 days notice as required by IDEA, C.H.’s mother signed a written waiver of the notice requirement and attended the meeting. The EIP team found C.H. still eligible for special education services and reviewed the psychologist’s findings. The meeting was adjourned prior to completing the IEP and the district tried to reschedule a continuation of the meeting. C.H.’s mother indicated that she would be unable to meet until after the start of the school year so the school district scheduled the meeting for September 11, 2006, five days after the start of school. C.H.’s mother tentatively scheduled the meeting. The district did not send written notice of the continuation of the meeting. C.H. did not attend school on the first day of public school and, instead, had enrolled in the Gow School. The parents did not notify the school district in advance of placing C.H. in private school or that they intended to seek reimbursement for his tuition.

On September 8, 2006, the parents filed for a due process hearing. Despite the hearing request, the school district intended to continue with the scheduled September 11 IEP meeting. The district invited a representative from the Gow School to participate in the meeting. The
morning of the meeting, the representative from the Gow School notified the school district that they did not plan on attending because C.H.’s mother would not be attending. Later, the parents informed the school district that they would not participate in any IEP meetings in light of their due process complaint. They also refused to give the school district permission to conduct a speech and language evaluation of C.H., which was necessary to develop his IEP.

In the hearing, the parents raised the complaints that the school district failed to provide an IEP for the 2006-2007 school year by the first day of school, the district failed to give the parents the required ten-day notice of the scheduled IEP meeting, and the school district failed to provide a speech and language evaluation necessary to develop an IEP. The parents also alleged the school district failed to review and consider the appropriate documentation of C.H.’s performance as part of his psychological evaluation. As remedy, the parents sought reimbursement for the cost of tuition at the Gow School for the 2006-2007 school year. At the conclusion of the hearing, the hearing panel found that all of the parents’ claims failed under the IDEA because the alleged deficiencies did not deprive C.H. of FAPE. The parents filed claim in District Court. The District Court granted summary judgment to the school district and denied summary judgment to the parents, citing the same reasoning of the hearing panel. The District Court also noted the Parents’ conduct in delaying and then refusing to participate in the scheduled IEP meetings was a substantial contributing factor to any delays in the IEP development. The parents appealed.

Issue: At issue is whether the alleged procedural violations of the IDEA warrant an award of tuition reimbursement for C.H.’s private school and whether the conduct of the hearing panel violated the parent’s rights to due process.
Holding: The Courts of appeal held that the school district’s failure to comply with the procedural requirements of IDEA did not impede C.H.’s right to FAPE or cause a deprivation of his educational benefits. The Court held that IDEA’s “stay-put” provision did not excuse C.H.’s parents from continuing to meet with the school district to continue the IEP development.

Reasoning: The Courts of appeal reasoned that procedural violations of the IDEA do not merit tuition reimbursement absent a showing of substantive harm, and that unreasonable parent conduct warrants equitable reduction of an award under IDEA. The Court reasoned that the district’s failure to have an IEP in place on the first day of the 2006-2007 school year violated a mandate of IDEA. The Court reasoned that in acknowledging that a procedural violation occurred, it must then determine whether, under the circumstances, the violation impeded C.H.’s right to FAPE or caused a deprivation of educational benefits to C.H. The Court reasoned that although C.H.’s IEP was not developed by the first day of school, the school district demonstrated consistent willingness to evaluate C.H. and to develop an IEP prior to the 2006-2007 school year beginning. The Court reasoned that the parents delayed the continuation of the IEP meeting and then terminated the process by filing a due process request. The Court reasoned that it declined to hold the school district liable for procedural violations that are the result of uncooperative parents. Further, the Court reasoned that there was a lack of evidence that C.H. would have suffered an educational loss by the failure of the school district to have an IEP in place by the first day of school, thus reimbursement on that basis was denied.

The Courts of appeal reasoned that the school district’s failure to timely notify the parents of IEP meetings did not significantly impeded the parent’s opportunity to participate in the decision making process of the IEP. The Court reasoned that C.H.’s mother signed a written waiver of ten-day notice of IEP meeting and that she attended the meeting. C.H.’s mother was
present when the second meeting was scheduled and that she did not attend the meeting because she had filed for a due process hearing. The Court concluded that the parents were an impediment to their own participation in the evaluation of C.H.’s disabilities and the development of his IEP. Therefore, the Court reasoned the school district’s failure to notify the parents with ten-days of the IEP meeting did not rise to the level of substantive harm.

Finally, the Court reasoned that even when a school district is found to be in violation of IDEA, IDEA directs that an award of private tuition may be reduced or denied under a variety of circumstances. The Court found that there was no question that the C.H.’s parents’ conduct in delaying the continuation of the IEP meeting and not agreeing to the speech language evaluation substantially precluded any possibility that the school district could develop an IEP in a timely manner.

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the decision of the District Court.

Citation: Ferren C. v. School Dist. of Philadelphia, 612 F. 3d. 712 (3rd Cir. 2010).

Key Facts: When Ferren Chambers was 2, she was evaluated and found to have Dandy-Walker syndrome, a congenital brain malformation. Prior to kindergarten, she was also evaluated by the school district and diagnosed with mental retardation. As a result, she was placed in a Life Skills program at Farrell School. Mr. Chambers, Ferren’s father, challenged her classification as mentally retarded and her subsequent placement. In a due process hearing, Ferren was ruled to be autistic. The school district then placed her at Greenfield Elementary School in a program for autistic students.

After several evaluations, a medical professional evaluated Ferren and recommended private school placement. The school district disagreed. The Chambers requested a due process
hearing. The school district misplaced the hearing request, thus the hearing was unduly delayed. The appeals panel ordered the school district to place Ferren in private placement, and, as a result, the school district placed Ferren at the Wordsworth Academy. The Chambers then filed for a due process hearing requesting speech, physical, and occupational therapies. The parties entered into settlement agreements and the school district agreed to provide those services. However, the school district did not follow through and the Chambers filed a complaint with the Pennsylvania Bureau of Special Education, which issued a report outlining the school district’s failure to provide those services. The school district then agreed to pay for Ferren’s speech, physical and occupational therapies. After several complaints were filed and hearings held, the school district was ordered to put $209,000 in a trust for Ferren’s benefit. The school district also agreed to place Ferren at the Elwyn-Davidson School, a private school, and fund that placement till the 2009-2010 school year.

When Ferren turned 21 years of age, the school district refused to continue serving as Ferren’s LEA and helping Elwyn in the development of her IEP. The Elwyn-Davidson School would only continue educating Ferren if the school district continued serving as her LEA and helping with IEP development. The school district argued that, while they agreed to continue paying for compensatory education for Ferren through the trust fund previously established, they were not obligated to serve as her LEA or to develop IEPs because IDEA did not extend to students past their twenty-first birthday. Ferren’s parents filed for due process.

The hearing officer agreed with the school district and the Chambers appealed to the state appeals panel. The appeals panel upheld the hearing officer’s decision. The Chambers then filed claim in District Court. The District Court reversed the decision of the appeals court. The District Court ordered the school district to continue serving as Ferren’s LEA and to provide her with
annual IEPs for the duration of her 3 years of compensatory education. The District Court acknowledged that Ferren no longer had a right to FAPE due to her age; however, she was still eligible for equitable relief under IDEA. The District Court determined that the statutory age bar did not limit available relief to money. This Court concluded that it had the power to order the school district to provide Ferren with annual IEPs and to serve as her LEA for the duration for her compensatory education. They found that the equitable award was appropriate to further the purposes of IDEA in light of the facts of Ferren’s case.

Issue: At issue is whether the compensatory education awarded to Ferren by the District Court was permissible under IDEA.

Holding: The Courts of appeal held that the District Court had the power to award non-monetary equitable relief and that the award was appropriate under IDEA based on the specific facts of this case.

Reasoning: The Courts of appeal reasoned that a court may grant compensatory education through its equitable power under IDEA. The Court reasoned that the Supreme Court did not limit courts’ discretion in granting equitable relief under IDEA. The Courts of appeal reasoned that in School Committee of the Town of Burlington v. Department of Education of Massachusetts (1985), the Supreme Court held that courts had the power to order school authorities to reimburse parents for their expenditures on private special education services or any services as deemed appropriate under the IDEA if it furthers the purposes of the Act. The Courts of appeal reasoned that Ferren’s specialized education at Elwyn-Davidson School addressed her unique needs and that the equitable relief would further ensure that she received her educational rights under IDEA. They further reasoned that any additional litigation over the
The adequacy of the awarded compensatory education could be minimized if the school district “simply complied with the requirements of IDEA.”

Disposition: The United States Courts of appeal for the 3rd Circuit affirmed the decision of the District Court.

Case Briefs for Appeals to United States Courts of Appeal, Fourth Circuit

Citation: County Sch. Bd. of Henrico v. Z.P. ex rel. R.P., 399 F. 3d 298 (4th Cir. 2005).

Key Facts: Z.P. was diagnosed at the age of 2 with severe autism. He had significant communication deficits, was non-verbal, easily frustrated, and demonstrated disruptive and self-stimming behaviors. Before he was 3 years old, Z.P.’s parents enrolled him at a private school, The Faison School, where he received Applied Behavioral Analysis (ABA) and Discrete Trial Therapy (DTT). He received 30 hours of one-on-one instruction each week and in-home ABA methods. While at Faison, Z.P. made progress in some areas and little progress in other areas.

In October 2001, the school board identified Z.P. as eligible for special education and developed an IEP for the 2001-2002 school year. Z.P.’s parents rejected the proposed IEP and kept Z.P. at Faison for the remainder of that school year. In the summer of 2002, the school district evaluated Z.P. through observations at Faison and testing, to determine his present level of performance. The school district met with the parents to develop an IEP for the 2002-2003 school year. The proposed IEP placed Z.P. in the pre-school autism class at Twin Hickory Elementary School where he would receive TEACCH methods of instruction in a small group setting. He would also receive occupational and speech therapy three times a week. In addition, Z.P.’s parents requested that he be provided with a full time aide. The IEP team neither rejected nor accepted the request. Z.P.’s parents did not accept the IEP primarily due to the class size at
Twin Hickory and the amount of one-on-one instruction he would receive as dictated by the IEP so they filed for a due process hearing.

After hearing extensive testimony and personally observing Z.P at the Faison School, the hearing officer concluded that the 2002-2003 proposed IEP was not appropriate and did not provide FAPE. He held that the IEP did not offer enough one-on-one instruction and Twin Hickory’s class size would interfere with Z.P.’s educational progress. The hearing officer found that the Faison School was an appropriate placement for Z.P and that the school district was obligated to pay for the cost of Z.P.’s placement there for the 2002-2003 school year. The school board filed in district court seeking review of the hearing officer’s determination.

The District Court reviewed the evidence presented. The District Court found that the hearing officer’s methods of fact finding were so different from what was considered typical fact finding, that his findings were entitled no weight. The District Court found that the hearing officer improperly accepted the testimony of the parent’s witnesses over the testimony of the school district’s witnesses. The District Court concluded that the school district’s witnesses should have been given “great weight” because the fourth circuit has repeatedly found that reviewing courts should not second guess the educational judgments of school employees. The District Court rejected the hearing officer’s judgment and granted summary judgment to the school district. Z.P.’s parents appealed.

Issue: At issues is whether the district court failed to give proper deference to the hearing officer’s factual findings and legal conclusions.

Holding: The Courts of appeal held that the District Court failed to give due weight to the state administrative hearing officer’s findings and appropriate remedy was remanded to the District Court.
Reasoning: The Courts of appeal reasoned that when a District Court is not going to hold the facts to prima facie correctness, it is required to explain why. After giving the administrative fact-findings such due weight, the district court then is free to decide the case on the preponderance of the evidence. The Court reasoned that the District Court misapplied these standards.

Disposition: The United States Courts of appeal for the 4th Circuit reversed remanded the decision of the District Court with instructions to review the appropriateness of Z.P.’s proposed IEP.

Citation: Shaw v. Weast, 242 Fed.Appx. 77 (4th Cir. 2007).

Key Facts: D.A. qualifies for special education services under IDEA for emotional and behavioral disabilities. The Montgomery County Public Schools (MCPS) held an IEP meeting where D.A.’s parents, the Avjians, requested placement in a therapeutic, residential school. Their private psychologist testified that this type of placement was the only placement that could meet D.A.’s needs. MCPS explained to D.A.’s parents that John L.Gildner Regional Institute for Children and Adolescents (RICA) had a residential program but that D.A. would have to meet RICA’s eligibility criteria for placement. The Avjians had the impression that the IEP team agreed with their request; however, MCPS recommended a private day school both at the meeting and in writing in the IEP. D.A.’s parents did not object and signed the IEP. Financing for either type of placement was never discussed.

D.A. interviewed and was accepted into RICA as a residential student in the Fall of 2002. In November, D.A.’s parents received a bill from Maryland State Department of Health and Mental Hygiene (DHMH) for the cost D.A.’s residential placement. D.A.’s parents disputed the charges, stating that MCPS should pay for the residential services as part of D.A.’s FAPE.
In March, D.A.’s parents requested mediation and a due process hearing stating there was a difference in what was written in the IEP and what was decided on at the IEP meeting. They further alleged they were never told they would be liable for the residential costs of D.A.’s placement and that MCPS failed to provide D.A. FAPE because they did not provide residential placement. The request for mediation was denied and in June 2003, an ALJ heard their claim through a due process hearing. MCPS testified that D.A. did not need residential placement for educational purposes and that D.A.’s parents did not reject the written IEP.

The ALJ concluded that the IEP correctly reflected what was decided at the IEP meeting and that MCPS’ failure to explain to the Avjians that they would be responsible for the residential part of the placement did not constitute a due process violation.

The Avjians filed in District Court. They asked to depose MCPS’ representative, George Moore, and were granted the deposition. The District Court, however, refused to use the deposition testimony as additional evidence. The District Court concluded that MCPS complied with all procedures in the IDEA and that D.A. was not denied FAPE. The court further found that D.A.’s residential treatment costs were the responsibility of the Avjians. The District Court granted summary judgment to MCPS. The Avjians appealed.

Issue: At issue is whether the school district’s failure to fully fund D.A.’s placement denied her FAPE and whether the ALJ erred in failing to consider evidence. Also at issue is whether the Avjians’ due process rights were violated.

Holding: The Courts of appeal held that the District Court was correct in accepting the ALJ’s factual findings and the District Court did not abuse its discretion in declining to consider the parent’s additional testimony. The Courts of appeal held that the written IEP superseded any verbal representations made to the parents regarding D.A.’s placement and that the IEP team was
not required to consider the student’s non-educational needs or to discuss financial matters with D.A.’s parents.

Reasoning: The Courts of appeal found that the District Court did not err in accepting the findings of the ALJ. The Court reasoned that documents, letters and witness testimony on record supported the ALJ’s findings. The ALJ found MCPS’s testimonies credible and, the Court reasoned, there was no evidence in the record to suggest differently.

In regards to MCPS’s witness’s deposition not being used, the Court reasoned that allowing additional evidence is left to the discretion of the trial court and that court must be careful not to allow such evidence to change the character of the hearing. The ALJ refused to let the Avjians question MCPS’s witness in the areas of instructions from his superiors, quality assurance issues and experiences of the average family. Additionally, these issues were not addressed in the deposition.

The Avjians alleged MCPS did not provide FAPE by not paying for D.A.’s residential placement. The Court reasoned that the written IEP clearly stated that D.A. did not need residential treatment to meet her educational needs and D.A.’s parents indicated their agreement by signing the IEP. The Court reasoned that considering comments made during the IEP process would undermine the importance of a written IEP as required by IDEA.

The Avjians contended that MCPS did not properly consider D.A.’s non-educational needs in addition to his educational needs. The Court reasoned that IDEA does not state that IEP teams should evaluate or make recommendations for the non-educational needs of students. The Court reasoned that IDEA only held IEP teams to consider the educational needs of children.

Disposition: The United States Courts of appeal of the 4th Circuit affirmed the decision of the District Court.
Citation: *J.P. ex rel. Peterson v. County School Bd. Hanover*, 516 F.3d 254 (4th Cir. 2008).

Key Facts: J.P. was diagnosed as a child with Autism prior to his second birthday. He began school at in 2001 as a first grader at Battlefield Park Elementary School. He was served through their special education program. His parents were unhappy with his progress and placed him in Spiritos School, a private school that provided services students with Autism.

Spiritos used the ABA methodology and J.P. made significant gains. In 2004, J.P.’s parents enrolled him back in public school where he was placed at Rural Point Elementary School in a self-contained special education class. The IEP provided for discrete trial methodology when deemed appropriate by his instructional personnel and a one-on-one aide who would receive training by a Certified Behavior Analyst. The parents agreed with the IEP, however they became concerned about J.P.’s progress. The school district contended that J.P. was making progress and developed the 2005 IEP very similarly to the 2004 IEP. J.P.’s parents rejected the 2005 IEP and asked for placement at a private school that specialized in autism at the school district’s expense. The school district rejected their request. The parents then placed J.P. at the Dominion School and filed a due process hearing to determine whether the 2005 IEP provided J.P. with FAPE.

The hearing officer considered the evidence then found that the 2004 and proposed 2005 IEPs provided J.P. with FAPE. He found that J.P. made more than minimal progress under the 2004 IEP. The hearing officer rejected the parent’s request for reimbursement for the cost of tuition at the Dominion School. J.P.’s parents filed suit in District Court. The District Court gave no deference to the hearing officer’s findings of fact, reasoning that they were not regularly made. The District Court held that J.P. made no progress at Rural Point under the 2004 IEP and...
reasoned that the 2005 IEP would be inappropriate. The District Court concluded that the Dominion School was an appropriate placement for J.P. and ordered the school district to reimburse the parents for the cost of tuition. The school district appealed.

Issue: At issue is whether the 2004 and 2005 IEPs were appropriate to provide FAPE to J.P. and, if not, if the Dominion School was an appropriate placement for J.P. Also at issue is whether the hearing officer’s opinion in this case was so deficient as to warrant the district court’s rejection of the hearing officer’s factual findings.

Holding: The Courts of appeal held that the deficiencies in the administrative proceedings did not support the District Court’s conclusion that the hearing officer’s factual findings were not regularly made; and the District Court erred by not relying on the credibility findings of the hearing officer. The Court found that the hearing officer’s decision was sufficiently detailed to warrant deference.

Reasoning: The Courts of appeal reasoned that there was nothing in the record suggesting that the hearing officer’s process in resolving this case was not ordinary. The hearing officer conducted a proper hearing allowing both parties to present evidence and make arguments and the hearing officer, by all indications, resolved the factual questions in a normal way without abdicating his responsibility to decide the case. Furthermore, the Court reasoned that the hearing officer’s determination that all the witnesses were credible was proper. The Court reasoned that his statement reflected the view that he believed all witnesses were telling the truth as they believed it and that he was required to decided whether he found the school district’s evidence or the parent’s evidence to be more persuasive.

The Courts of appeal reasoned that the hearing officer’s opinion was sufficiently detailed in explaining the basis for his resolution of the parents’ claims. The Court reasoned that the level
of detail and explanation demanded by the district court exceeded the level of detail required by IDEA. The hearing officer’s opinion also satisfied Virginia’s requirements for written opinions.

Disposition: The United States Courts of appeal for the 4th Circuit vacated the decision of the District Court and remanded for reconsideration of the question of the adequacy of the 2005 IEP. The Courts of appeal also vacated and remanded the district court’s order awarding attorney fees to J.P.’s parents.

Citation: M.S. ex rel. Simchick v. Fairfax County School Bd., 553 F. 3d 315 (4th Cir. 2009).

Key Facts: M.S. was a student with mental retardation and severe autism. He displayed severe communication deficits, having both verbal and motor dyspraxia. He had limited ability to speak and used some sign language. He displayed severe deficits with short-term memory and had auditory processing delays. His IQ measured between 37 and 41.

M.S. was enrolled in public school for 6 years where he made little progress. He had an IEP for each year of his enrollment, but only made progress on his IEP goals 1 year. In December 2001, M.S.’s parents initiated a due process hearing, seeking placement at Lindamood-Bell Center, a private facility focusing on communication. The school district agreed to pay for twelve weeks of Lindamood-Bell, if M.S. returned to public school at the end of the twelve weeks. The parents declined.

At the conclusion of the hearing, the school district agreed that M.S. suffered from multiple disabilities, including autism, and scheduled an IEP meeting to develop an IEP for the 2002-2003 school year. At the meeting, M.S.’s parents requested placement at the Lindamood-Bell Center and the school district rejected their request. The school district recommended an IEP similar to those of the preceding 6 years. The IEP did not provide for any one-on-one
instruction and only provided for 2 hours a week of speech therapy. The parents rejected the IEP and informed the school district that they intended to enroll M.S. at Lindamood-Bell. At the parent’s request, the school district prepared additional IEPs from 2002 to 2005, all of which provided for work readiness and social skills. None guaranteed any one-on-one instruction.

Prior to enrolling M.S. in Lindamood-Bell, his parents contacted three different private schools. Two denied M.S. enrollment and the third had no room. M.S.’s parents enrolled him at Lindamood-Bell, funded private speech and physical therapy, funded private sign language lessons, and provided vocational training in grass cutting. They implemented and maintained this plan from 2002 to 2006, paying all associated costs.

During this time, M.S. made significant progress and this was noted in each of his IEP’s developed by the school district. M.S.’s parents also sent the school district many letters asking for reimbursement for Lindamood-Bell and the other therapies they had employed. Finally, they filed for due process, seeking reimbursement. After hearing several days of testimony, the hearing officer found that Lindamood-Bell was an inappropriate placement and that three of his IEPs, from 2002 to 2005, were invalid under IDEA. Because the hearing officer found that M.S. needed group instruction and peer interaction, in addition to one-on-one instruction, he awarded no reimbursement to M.S.’s parents. Both parties filed in District Court. The District Court upheld the hearing officer’s findings. M.S.’s parents appealed.

Issue: At issues is whether the District Court should considered each IEP separately and should have provided M.S.’s parents reimbursement for the private placement at Lindamood-Bell and whether the 2005-2006 was appropriate for M.S. to receive FAPE.

Holding: The Courts of appeal held that the District Court failed to evaluate the parental placement on a year-by-year basis, failed to properly consider M.S.’s progress, and failed to
consider the private school’s restrictive nature. The Court held that the IEP provided M.S. with FAPE.

Reasoning: The Courts of appeal reasoned that the District Court should have evaluated each IEP independently instead of considering the placement at Lindamood-Bell in its entirety. The Court reasoned that because the District Court found M.S.’s IEPs violated IDEA, it could have awarded reimbursement if it found any year of instruction at Lindamood-Bell to be reasonably calculated to provide some educational benefit to M.S. The Court reasoned the District Court should have considered whether some partial reimbursement was appropriate for any given year. The Court gave great deference to the hearing officer and District Court’s decision that Lindamood-Bell did not provide M.S. with life skills, vocational training, or group instruction, but it reasoned that the possibility that the one-on-one instruction provided by Lindamood-Bell warranted some reimbursement if found it provided some educational benefit for M.S.

The Court reasoned that in some situations evidence of actual progress may be relevant to a determination of whether a challenged IEP was reasonably calculated to confer educational benefits. In this case, the Court reasoned that they agreed with the decision of the hearing officer and the District Court, which followed precedent. The Court reasoned that it was correct to consider M.S.’s progress as measured by standardized tests, but only as one factor. The court also had to consider the least restrictive environment requirement in the IDEA. The Court reasoned that schools must place disabled students in the LRE to achieve a FAPE and this was not only a praiseworthy act, but also a requirement of IDEA. Thus, a disabled child should participate in the same activities as nondisabled children to the maximum extent appropriate. The Court reasoned that the Lindamood-Bell placement was highly restrictive by IDEA standards and
the District Court’s consideration of Lindamood-Bell’s restrictive nature was proper. The Court further reasoned that parents seeking an alternative placement may not be subject to the same mainstreaming requirements as a school board, however IDEA’s LRE mandate must remain a consideration that bears upon a parent’s choice of an alternative placement and should be considered in a court’s determination if that placement is appropriate.

In response to the District Court’s finding that the 2005-2006 IEP was adequate to provide M.S. with FAPE, the Courts of appeal reasoned that the IEP must be calculated to confer some educational benefit on a disabled child. Under this standard, the Court found that the District Court did not err in it’s finding.

Disposition: The United States Courts of appeal for the 4th Circuit affirmed the District Court’s finding that the 2005-2006 IEP was appropriate. The Courts of appeal vacated the District Court’s denial of reimbursement for the parental placement and remanded for further proceedings.

Citation: Schaffer ex rel. Schaffer v. Weast, 554 F.ed 470 (4th Cir. 2009).

Key Facts: Brian Schaffer had academic difficulties at the private school where he was enrolled, Green Acres School. Green Acres informed Mr. and Mrs. Schaffer that they could no longer meet Brian’s educational needs. The Schaffer’s contacted MCPS and requested that Brian be placed in a special education program for his eighth grade year. The IEP committee evaluated and found Brian eligible for special education. After two meetings and consideration of MCPS’ evaluations and the Schaffer’s private evaluations, MCPS determined that Brian had a learning disability and proposed an IEP. The IEP placed Brian at Herbert Hoover Middle School in a combined program including an inclusion and resource models. The Schaffer’s objected to the proposed IEP because the class sizes at Herbert Hoover were too large to meet Brian’s needs.
MCPS offered to place Brian at Robert Frost Middle School under the same IEP but with smaller class sizes. The Schaffer’s objected and placed Brian at a private school, McLean School, and filed for due process, seeking private school tuition and expenses.

After a three day hearing, the ALJ assigned the burden of proof to the Schaffers and held that Brian’s eighth grade IEP was reasonably calculated to provide with FAPE. The Schaffers then filed suit in District Court. The District Court reversed and remanded finding that the ALJ should have assigned the burden of proof to MCPS. A series of remands and appeals followed. However, the Supreme Court eventually held that the Schaffers had the burden of proof in the due process hearing because they were the party seeding relief. The Supreme Court then remanded the case for a decision on the merits under the correct burden of proof.

Before the District Court could render a decision, the Schaffers moved to introduce additional evidence. The evidence included letters between the Schaffers and MCPS in 2000 and transcripts of an IEP meeting in 2000 and the IEP created in 2000 for Brian’s 10th grade year. The evidence showed that MCPS had proposed an IEP placing Brian in the Secondary Learning Center at Walter Johnson High School where he would attend small special education classes. This IEP also stated that Brian’s academic difficulties were due to auditory processing and memory deficits. The Schaffers contended that the language in this IEP indicated that Brian’s eighth grade IEP was inadequate. The District Court accepted the additional evidence and allowed MCPS to offer additional evidence in rebuttal. MCPS contended that the tenth grade IEP was based on information that they did not have when the eighth grade IEP was developed. They further presented that Brian graduated from Walter Johnson in 2003 with a 3.4 grade point average in his final term. Both parties moved for summary judgment.
The District Court discussed the Schaffers’ evidence in light of relevant case law and decided that it would not attach weight to it when assessing the adequacy of Brian’s eighth grade IEP. The District Court granted deference to the ALJ’s original decision and held that the eighth-grade IEP was sufficient under IDEA and granted summary judgment in favor of MCPS in a bench ruling. The Schaffers appealed.

Issue: At issue is whether the District Court erred by refusing to consider the Schaffer’s evidence regarding Brian’s tenth-grade IEP proposed by MCPS and whether this evidence was admissible under the language of the IDEA. Also at issue is whether Brian’s eighth-grade IEP failed to provide FAPE to Brian.

Holding: The Courts of appeal held that additional post-hearing evidence of Brian’s tenth-grade IEP was not dispositive of whether his eighth-grade IEP was inadequate under IDEA and the eight-grade IEP offered Brian FAPE as required by IDEA.

Reasoning: The Courts of appeal reasoned that the District Court did hear the Schaffer’s evidence and properly exercised its discretion to discount the evidence because the evidence promoted a hindsight-based review that would have conflicted with the structure and purpose of the IDEA. The Court reasoned the Schaffers failed to convince the District Court that their additional evidence should determine the merits of the case and the District Court acted well within its discretion by declining to use the Schaffer’s evidence. The Courts of appeal reasoned that district courts have the discretion to tailor their proceedings and to limit the introduction of additional evidence under the IDEA. The Court reasoned that post-hearing evidence risks diminishing the role of administrative proceedings under IDEA. The Court further reasoned that IDEA requires school districts to reevaluate children’s disabilities periodically and to review and revise IEPs on an annual basis recognizing that children change over time. IDEA affirmatively
requires school districts to create and analyze new information, which could become evidence for limitless litigation if district courts were obligated to give significant weight to the latest evidence whenever it arose. The Court reasoned that perpetual litigation due to new evidence would force school districts to budget already scarce resources to the already substantial costs of IDEA litigation, a concern recognized by the Supreme Court.

With regards to the issue of Brian’s eighth grade IEP providing FAPE, the Courts of appeal reasoned the ALJ’s findings in the first hearing were entitled to due weight and the District Court properly deferred to those findings. MCPS’s well-qualified witnesses testified that the eighth grade IEP was appropriate. The ALJ found that the eighth grade IEP appropriately addressed Brian’s existing auditory processing problem. The Court reasoned that the ALJ’s findings were correct and there was no reason to overturn his findings based on the evidence available at the time. Furthermore, the Court reasoned, the IEP does not have to provide the best possible education; it only needed some educational benefit or a basic floor of opportunity.

Disposition: The United States Courts of appeal for the 4th Circuit affirmed the decision of the District Court.

Citation: Shaw v. Weast, 364 Fed. Appx. 47 (4th Cir. 2010).

Key Facts: E.S. was adopted at the age of four from an orphanage in the Philippines. As a young child she was severely malnourished. After her adoption, she lived in Maryland. She suffered with severe disabilities including emotional disturbance, hearing impairment, speech and language impairment, and learning disabilities. She also was diagnosed as bipolar, clinical depression, and post traumatic stress disorder.

When E.S. was in seventh grade, she exhibited increased social and emotional issues, suicidal tendencies, and clinical depression. Her IEP team determined that the LRE for E.S. was
placement in a private special education day school and, consequently, at the beginning of eighth grade she was placed in the Foundation School.

For a few years, E.S. did well at the Foundation School and made educational progress. However, during the 2003-2004 school year, she began to again struggle with depression and was hospitalized for suicidal ideations. In April 2004, E.S.’s IEP team met to develop her IEP for the 2004-2005 school year. They took into account her recent issues and developed objectives to address her audiological, emotional, academic, and other needs. They again determined the LRE to be a private day placement and determined that she should continue at the Foundation School.

E.S.’s issues worsened during the 2004-2005 school year. She began engaging in self-mutilation and became increasingly oppositional and disrespectful with staff. An FBA was conducted and the IEP team met to address E.S.’s continued behavioral issues. In April 2005, E.S. was hospitalized and released in less than a month. After her release, she did not return to the Foundation School. The IEP team again met to determine if the Foundation School was still the LRE and most appropriate placement. They contended that she should continue in a separate day school since her issues were mainly mental health related, improvable by medication, and again recommended the Foundation School. E.S. requested that she not be placed at the Foundation School and her parents submitted a recommendation from her psychiatrist and a psychologist for placement in a residential facility. While the IEP team considered this information, they recommended that The Foundation School should serve as E.S.’s interim placement. A school district psychologist reviewed the private recommendations and concluded that she should be placed in a therapeutic school setting for students with serious emotional issues but that a residential placement was not necessary to further E.S.’s education. The school district agreed.
that it would look for another day placement to comply with E.S.’s request to not return to The Foundation School.

In November 2005, E.S.’s parents notified the school district that E.S. would not return to day school and again requested residential placement. Around the same time, E.S. tried to kill herself. She stopped attending the Foundation School. Her parents requested an IEP meeting, but the school district declined stating there was no new information to consider. In December, E.S. again tried to kill herself and was hospitalized for psychiatric treatment.

In January 2006, E.S.’s parents placed her in a residential treatment facility in Massachusetts, the Chamberlain School. In March 2006, E.S.’s parents requested mediation and a due process hearing, seeking reimbursement for the cost of sending E.S. to the Chamberlain School. After an unsuccessful mediation, an administrative hearing took place. The ALJ concluded that E.S.’s parents failed to establish that E.S.’s placement at the Foundation School did not provide FAPE in the LRE for E.S. or that she did not receive educational benefits while enrolled there. E.S.’s parents filed suit in District Court. The District Court granted summary judgment for the school district and E.S.’s parents appealed.

Issue: At issue is whether E.S.’s IEP was legally deficient because of its failure to name a specific permanent placement for E.S. and whether the ALJ and District Court properly concluded that a private day school provided E.S. with FAPE and that she did not require a residential placement under IDEA.

Holding: The Courts of appeal held that the IEP was not deficient because if it’s failure to name a specific permanent placement for E.S. The Court held that E.S. received FAPE from a private day program and that she did not require a residential placement under IDEA.
Reasoning: In regards to E.S.’s parents’ complaint that the 2005 IEP was deficient because it failed to name a specific placement for E.S., the Courts of appeal reasoned that the IEP stated that the Foundation School would serve as E.S.’s interim placement while her parents explored other day schools proposed by the school district. The school district believed that the Foundation School provided FAPE to E.S., but suggested these optional private day placements in an attempt to accommodate E.S. request to change schools. The Foundation School provided all the necessary services listed in E.S.’s IEP, and even though it was listed in the IEP as an interim placement, it had been E.S.’s school for years, was the placement through multiple IEP meetings, and was sufficient to satisfy IDEA requirements.

In regards to E.S.’s parents’ contention that a day program was not enough to provide E.S. with FAPE, the Courts of appeal reasoned that the school district may be required to fund residential placements if the educational benefits which can be provided through residential care are essential for the student to make any educational progress at all, then residential care is required under IDEA. IDEA does not authorize residential care merely to enhance an otherwise sufficient day program. If residential placement is necessitated by medical, social, or emotional problems that are segregable from the learning process, then the LEA need not fund the residential placement. The Court reasoned that E.S.’s parents’ requested residential placement primarily to address E.S.’s safety needs as a result of her mental health issues and not as a result of her educational needs. Further, the Court reasoned that the fact E.S.’s emotional and mental needs required a certain level of care beyond that provided by the Foundation School did not necessitate that the school district fund that extra care when it could adequately address her educational needs separately. The Court reasoned that IDEA requires students receive FAPE in the LRE and the Foundation offered such an environment.
Disposition: The United States Courts of appeal for the 4th Circuit affirmed the decision of the District Court.

Case Briefs for Appeals to United States Courts of Appeal, Fifth Circuit

Citation: Logwood v. Louisiana Dept. of Educ., 197 Fed. Appx. 302 (5th Cir. 2006).

Key Facts: Raymond Logwood was a high school student at West Monroe High School (WMHS) who was bound to a wheelchair. He asserted that he was denied access to the Family and Consumer Science classroom because he had to take a different route than his non-disabled peers and that he was denied access to the auditorium stage because it was not handicapped accessible. He claimed the school district violated Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. He also claimed that because he was unable to get to his classroom, he was denied FAPE, a violation of IDEA. The District Court granted summary judgment in favor of the school district and Raymond appealed.

Issue: At issue is whether the District Court erred in its finding that Raymond was not denied access to the classroom or auditorium stage at WMHS.

Holding: The Courts of appeal found that Raymond was not denied access to the Family Consumer Science classroom or to the auditorium stage at WMHS.

Reasoning: The Courts of appeal reasoned that Raymond was not denied access to the classroom because he was provided an aide and an acceptable alternate route to reach the classroom. Taking the alternate route did not affect Raymond’s ability to receive educational benefits under his IEP and therefore, did not deny him FAPE. The Court further reasoned that Raymond was not denied access to the auditorium stage even though it was not wheelchair accessible. When Raymond was participating in the drama club, he did not audition for any plays
and did not engage in any activity that required him to be on stage. If he had, the activity would have been moved to the handicapped-accessible gymnasium, which had happened in the past. Consequently, the Court reasoned Raymond was not denied an educational benefit and, therefore, received FAPE.

Disposition: The United States Courts of appeal for the 5th Circuit affirmed the decision of the District Court.

Citation: *Alvin Independent v. A.D. Ex Rel. Patricia F.*, 503 F.3d. 378 (5th Cir. 2007).

Key Facts: A.D. was a student at Alvin Independent School District. He was diagnosed with Attention Deficit Hyperactivity Disorder, for which he was medicated. When he was three he participated in the district’s Early Childhood and Preschool Program for Children with Disabilities for speech difficulties. He was reevaluated in third grade and determined to be no longer eligible for the special education services. A.D. did well academically for the rest of his elementary years.

Beginning in seventh grade, A. D. began to display behavioral issues and had numerous discipline referrals. He was assigned to in-school suspension several times and was placed in the “At Risk” program at Alvin Junior High. When A.D. was in eighth grade, he had to deal with the death of his younger brother and he developed a strained relationship with his stepfather. He also began abusing alcohol. He also was charged with theft of property and robbery of a school sponsored concession stand. Despite these issues, A.D. continued to make educational progress, passing state standardized tests and eighth grade.

In May, while awaiting the disciplinary hearing for theft, A.D.’s mom requested a due process hearing alleging that the school district had violated A.D.’s right to FAPE by failing to identify, evaluate, and place A.D. as a child with a disability. In response to the hearing request,
the school district conducted a full independent evaluation and requested information from A.D.’s physicians. The school district found that A.D.’s ADHD did not keep him from making academic or social progress and his academic scores were in the average range. Prior to completing the report, the school district did not receive information from A.D.’s treating physicians. One month later, the school district received the medical information from the doctor who recommended special education services for A.D. They also received a report from Dr. Rasheed, a new privately obtained psychiatrist, who recommended special education. As a result, A.D.’s mother disagreed with the school district’s evaluation and requested an IEE. The school district declined and initiated a due process hearing.

The hearing officer, after reviewing the records and hearing testimony, concluded A.D. was eligible for special education services as a child with a disability and that AISD failed to provide him with FAPE. The hearing officer concluded that AISD’s evaluation was incomplete because a licensed physician was not part of the evaluating committee and that A.D. was entitled to an IEE. AISD appealed the decision. The District Court granted AISD’s motion for summary judgment and denied A.D.’s motion, finding that he did not need special education and related services due to his ADHD and was not a child with a disability under IDEA. A.D.’s mother appealed.

Issue: At issue is whether the school district failed to identify A.D. as a child with a disability and failed to place him in special education.

Holding: The Courts of appeal held that A.D. was not a child with a disability under the IDEA and therefore was not eligible for special education services.

Reasoning: The Courts of appeal reasoned that only certain students with disabilities are eligible for benefits under IDEA. To qualify for those benefits a student must both have a
qualifying disability and need special education services. Furthermore, a school district must conduct a comprehensive evaluation following IDEA’s statutorily prescribed standards. The Court reasoned that A.D. did satisfy the first prong because AHDH is considered a qualifying disability under other health impairment eligibility. The court reasoned, however, that A.D. did not qualify under the second prong because he did not need special education services because his educational performance was adequate without it.

Disposition: The United States Courts of appeal for the 5th Circuit affirmed the decision of the district court.

Citation: Richardson Independent School Dist. v. Michael Z, 580 F. 3d. 286 (5th Cir. 2009).

Key Facts: Leah was a child diagnosed with attention deficit disorder, oppositional defiant disorder, bipolar disorder, autism, separation anxiety disorder, and pervasive developmental disorder. She attended many private schools until fifth grade, when she enrolled in public school at the Richardson Independent School District in 1999. She qualified for special education services and received these services as defined by her IEP. In Texas, the IEP is developed in conjunction with the parents by the Admission, Review, and Dismissal Committee (ARD Committee).

In seventh grade, Leah was placed in a Behavior Adjustment class at Westwood Junior High School. During her eighth grade year, Leah’s performed academically well below that of her same age peers. Over the summer after eighth grade and continuing into ninth grade, Leah made substantial regression both academically and behaviorally. In November of ninth grade, Leah left school grounds and was placed on homebound for four days prior to the winter break at her psychiatrist’s recommendation. When she returned to school in January, she was placed in a
different Behavior Adjustment Class, but by mid-January Leah’s behavior escalated. In February, she left class unsupervised and was caught in the bathroom engaging in sexual activities. Her psychiatrist recommended she remain home until an alternate placement could be found and the school district agreed. In March, Leah was transferred to a different high school within the school district and placed in a similar behavioral class as she attending at WJHS. The teacher assigned to Leah’s new class was a long-term substitute teacher who had little knowledge about Leah’s need, testifying was not provided Leah’s IEP while she was in her class. Leah remained in that class for only two weeks during which her disruptive behaviors continued.

In March, Leah scratched her father and her psychiatrist recommended Leah be placed in a psychiatric facility. Leah’s parents enrolled her in the Texas NeuroRehab Center in April. They did not notify the district at this time. While there, Leah attended the University Charter School, a public charter school. Leah’s behavioral issues continued. These issues were attributed to Leah testing her limits in the restrictive placement, frequent changes made with her mediations, and rapid and cyclical changes in her mood bad behavior. Leah slowly began to make progress due to the structured environment, medication, and intensive counseling and therapy sessions. She was discharged from TNRC November 12, 2004.

In July 2004, prior to her release from TNRC, Leah’s parents filed a request for a due process hearing seeking reimbursement for her placement at TNRC. The hearing officer found in favor of the parents and awarded $56,000 for reimbursement. The school district appealed. The District Court agreed with the hearing officer, and awarded the parents $54,714.40 for room and board, comprehensive therapy, nursing services, and neurological diagnostics. The District Court also awarded $36,000 to the parents for attorneys’ fees and costs. The school district appealed.
Issue: At issue is whether the hearing officer and district court erred in its decision that Leah’s 2004 IEP was inappropriate and that the alternative placement was appropriate under IDEA.

Holding: The Courts of appeal held that Leah’s 2004 IEP was inappropriate. The Court also held that in order for a residential placement to be appropriate under IDEA the placement must be essential for the disabled child to receive a meaningful educational benefit and primarily oriented toward enabling the child to obtain an education. The District Court failed in determining whether Leah’s treatment at the private residential facility was primarily oriented toward enabling her to receive a meaningful educational benefit.

Reasoning: The Courts of appeal reasoned that because Leah’s parents did not challenge the school district’s procedural compliance with IDEA, the Court focused on whether the June 2004 IEP was reasonably calculated to enable Leah to receive educational benefits. In making this determination, the Court reasoned that four factors relevant to the determination of whether an IEP is reasonably calculated to provide meaningful educational benefits was established in a previous appeals case, Michael F. (1995). However, the Court did not specify how these factors must be weighed. The District Court, in addressing the four factors from Michael F. reasoned that there was a reasonable doubt that Leah’s IEP was implemented in a collaborative fashion or that she made any actual progress under the June 2004 IEP. The District Court also found her previous IEPs substantially the same, lacking evidence that she had made progress from year to year. The Courts of appeal reasoned that the District Court did not err in it’s application of the Michael F. test.

The Courts of appeal agreed with the District Court in its reasoning that the June 2004 IEP did not confer any educational benefit upon Leah at all. They reasoned that there was a
documented pattern of regression over a significant period of time under similar IEPs and a documented inability to keep Leah in the classroom, therefore, the Court reasoned any IEP substantially similar to the previous ones would fail. For the reasoning above, the Court held that the IEP calling for placement in public school was inappropriate under IDEA.

The Courts of appeal reasoned that in order to receive reimbursement for unilateral private placement, the parents must show that the private placement is proper under IDEA. The Court reasoned that IDEA empowers a court to award parents for their expenditures on private special education for a child if the court ultimately determined that the placement rather than the proposed IEP is proper under IDEA. The private placement does not have to be the exact proper placement required under IDEA, thus the District Court did not err in determining that reimbursement was permitted if Leah’s placement was otherwise proper under IDEA. However, the Courts of appeal reasoned that the district court applied the incorrect test for determining when a private placement is proper under IDEA. Though there have been tests adopted by the third and seventh circuit for determining whether a child’s placement in a residential facility is appropriate under the IDEA, the Courts of appeal reasoned that these tests did not account for issues specific to this case, hence, it developed a test for the purpose of determining whether a child’s placement in a residential setting is appropriate under IDEA. The Court reasoned that a two-pronged test was most appropriate: 1) the placement must be essential in order for the disabled child to receive a meaningful educational benefit, and 2) the placement must be primarily oriented toward enabling the child to obtain an education. Because this test was not available at the time the District Court made it’s determination, the Courts of appeal reasoned the District Court did not address the second prong of the test. Accordingly, they found the district court erred by not considering the issue. Consequently, while the District Court did not abuse its
discretion by awarding reimbursement despite the lack of notice, the awarded reimbursement was premature at this time.

Disposition: The United States Courts of appeal for the 5th Circuit vacated the District Court’s order granting reimbursement and remanded for proceedings consistent with the new test for determining if a residential placement is appropriate under IDEA.

Citation: *Houston Independent School v. V.P. Ex Rel. Juan P.*, 582 F.3d 576 (5th Cir. 2009).

Key Facts: V.P. was served through special education when she was 4 years old in the preschool program at Garden Oaks Elementary in the Houston Independent School District. V.P. qualified under IDEA for speech and auditory disabilities. During that year, V.P. was granted a transfer to attend Wainwright Elementary School where her mother was employed. V.P. spent the remainder of the 2001-2002 school year in a regular education pre-kindergarten class at Wainwright Elementary.

In October 2002 of V.P.’s kindergarten year, the ARD met to develop an IEP for V.P. She received 2 hours a week of speech therapy and modifications in the regular kindergarten class as defined by her IEP. In the February 2002, V.P. obtained hearing aids. In May, the ARD committee met to develop an IEP for the following school year. They determined that V.P. qualified for hearing impaired services in addition to speech therapy. She continued receiving 2 hours a week speech therapy, along with additional modifications for the regular classroom to address her hearing impaired needs. She was also provided an F.M. system the last week of her kindergarten year.

In October 2003, V.P.’s mother and classroom teacher requested the ARD committee meet due to their concerns with V.P.’s academic progress. The ARD committee met and added
additional services to the regular classroom and requested further testing for V.P. After the additional testing was completed in January, the ARD committee met to review the results and V.P.’s IEP. They added more accommodations in the regular classroom and developed goals to address her language and listening skills. She was provided direct services 1 hour a week from an itinerant teacher for the auditory-impaired. The committee also provided computer software as to address V.P.’s auditory-processing weakness. At that time the committee requested a new speech and language evaluation.

The ARD committee met in May 2004 to develop an IEP for the remainder of that school year and for V.P.’s second grade year. They developed similar IEPs as the one V.P. was then being served under. Her mother disagreed with the IEP recommendations and requested the school district place V.P. in private school. The committee held a “recess meeting” to resolve the situation, but V.P.’s mother decided to withdraw her one week before the end of the 2003-2004 school year.

In September 2004, V.P. was enrolled by her parents in a kindergarten/first grade class at Parish School, a private school for children with language-learning disabilities. At Parish, V.P. received instruction in a small group setting with a teacher and an assistant teacher. She received language services from the Carruth Center and 10 hours of group speech therapy. She received phonemic awareness training, auditory memory training, and gap-detection training through a computer program. V. P. remained at the Parish School through third grade.

In August 2004, V.P.’s parents requested a due process hearing. They alleged that the school district failed to provide V.P. with FAPE and failed to develop an appropriate IEP. The hearing officer agreed with the parents and determined that Parish School was an appropriate placement. The hearing officer awarded V.P.’s parents reimbursement for private school tuition.
for her second grade year. The school district filed suit in District Court. V.V.’s parents answered and counterclaimed for reimbursement for tuition for V.P.’s third grade year at Parish. The District Court granted partial summary judgment in V.P.’s favor. The Court awarded the parents tuition reimbursement for V.P.’s second grade year for the school district’s denial of FAPE, however, The Court did not award V.P.’s parents tuition reimbursement for her third grade year so her parent’s appealed.

Issue: At issue is whether the school district failed to provide FAPE to V.P. and whether private school tuition reimbursement and attorney’s fees should be awarded to the parents.

Holding: The Courts of appeal held that the IEP was not appropriate under IDEA. The Court further held that the costs of V.P.’s third grade year at Parish School that elapsed during pendency of the judicial review were reimbursable to the parent and the parents were entitled to costs of that year even though they failed to formally plead entitlement to those costs.

Reasoning: The Courts of appeal reasoned that V.P.’s IEPs were not specific enough to meet her needs nor did her IEPs address all of her needs. Specifically, the IEPs did not address auditory processing deficits. The Court also reasoned that V.P.’s IEPs did not meet LRE because they did not provide enough supplementary services for her to be successful in the general education classroom. The Court reasoned that it was not concerned with whether V.P. was mainstreamed to the maximum extent possible, but whether V.P. was mainstreamed beyond her capabilities. The Court reasoned that though the school district was trying to educate V.P. in her general classroom, she was not receiving meaning educational benefit from this placement, thus not receiving FAPE. Moreover, the Court reasoned that V.P.’s teachers did not receive enough training in order to effectively provided V.P. with an adequate education. The Court reasoned that the Parish School was an appropriate placement that met all of V.P.’s educational needs.
Disposition: The Courts of appeal for the Fifth Circuit affirmed the 2004-2005 private placement tuition reimbursement to V.P.’s parents and reversed and remanded as to the payment of the 2005-2006 private placement tuition reimbursement. The Court also remanded V.P.’s request for attorney’s fees to the District Court.

Citation: *R.H. v. Plano Independent School Dist.*, 607 F.3d 1003 (5th Cir. 2010).

Key Facts: At age two, R.H. was eligible and received services for speech and occupational therapy through Texas’s Early Intervention Program. In June 2004, when R.H. was three, he began attending TLC, a private preschool. In December of that year, R.H.’s parents met with the school district for an ARD meeting. It was determined that R.H. qualified for IDEA services due to suspected autism and a speech impairment. The ARD committee developed an IEP and recommended placement in a part-time class (“Beaty”) that had both neuro-typical peers and peers with disabilities. At Beaty, R.H. would receive supplemental services and weekly speech therapy sessions. R.H.’s parents agreed to the IEP and he was enrolled in January 2005.

In the Spring 2005 a teacher conference was held with R. H.’s parents. They expressed concerns that he was showing behavioral regression and wanted him to receive summer services. After receiving no response from the school district they removed R.H. from Beaty and enrolled him back in TLC. They also obtained private speech and occupational therapy for R.H. At the end of the summer, the school district and R.H.’s parents held another meeting to discuss his IEP but could not come to an agreement. Several other meetings took place after that with the school district attempting to compromise with the parents on length of services.

R.H.’s parents filed for a due process hearing. They alleged that the school district failed to consider the continuum of services, failed to offer a FAPE, failed to place R.H. in the LRE, and failed to provide him with extended school year services. R.H.’s parents requested tuition
reimbursement for TLC and the private speech and occupational services from May 2005 up to the hearing date of April 2006. They also requested the school district continue to pay until he entered kindergarten in 2008. The hearing officer found in favor of the school district on all counts except for their failure to provide extended school year services. The hearing officer did not award the parents’ reimbursement, however, because they did not provide proper notice to the school district of their intent to enroll R.H. at TLC as required by IDEA. R.H.’s parents sued and both parties moved for summary judgment after agreeing that the administrative record was correct. The magistrate judge issued a report and recommendation in of affirming the hearing officer’s ruling. The District Court adopted the recommendation of the magistrate judge. R.H.’s parents appealed.

Issue: At issue is whether R.H.’s IEP provided FAPE and if he was receiving services in the LRE. Also at issue is whether the school district failed to follow certain procedural requirements of the IDEA.

Holding: The Courts of appeal held that the parents failed to show that R.H.’s IEP was not implemented in the LRE. The Court held that R.H.’s IEP provided academic and non-academic benefits. The Court further held that R.H.’s parents were not entitled to reimbursement for private summer preschool tuition because they did not give proper notice to the school district that R.H. would be enrolled at the private preschool during that time period.

Reasoning: The Courts of appeal first addressed the parents’ claims regarding the school district’s alleged failure to comply with certain IDEA procedural requirements. R. H.’s parents claimed that the school district failed to consider the harmful effects of placing R.H. at Beaty when they developed his IEP. The Courts of appeal reasoned that regulation no longer existed and because the claim was inadequately briefed, it was waived. As to the parents’ claim that the
school district did not offer an explanation of the extent to which R.H. would not participate with nondisabled children, the Court reasoned that the record did not support that claim. The IEP contained a standard section entitled “Committee Justification for Removal from the General Education” where the explanation was recorded. Finally, the parents’ claimed the school district did not consider placing R.H. in “regular” education, which violated a procedural requirement of IDEA to consider the full continuum of services and to place students in the LRE. The Court reasoned that this claim is in line with the parents’ substantive claims and would be considered in line with those claims.

As to the substantive claims, in determining whether the IEP was reasonably calculated to provide an appropriate education the Court used the four factors identified in Michael F. The parents’ claimed that Daniel R. was more appropriate than Michael F., but the Court reasoned that Daniel R guided the second factor of Michael F. The parents’ claimed that the school district did not offer a mainstreamed public preschool classroom, thus the district should have began it’s placement consideration with private preschool placement. The Court reasoned that the IDEA makes removal to a private school placement the exception, not the default. It reasoned that IDEA was designed primarily to bring disabled students into the public education system and to ensure them FAPE. They reasoned that because of this, Courts should be cautious before finding that a school district should place a child outside of public school. They reasoned that the IEP met all four requirements of Michael F.

Disposition: The United States Courts of appeal affirmed the decision of the District Court.
Key Facts: David began attending Orange City School District when he was in fifth grade. Earlier, David had been diagnosed as learning disabled and as having a speech language deficit. He came to the school district with an IEP that had been completed by his former school district. Orange City implemented the IEP as written and David made sufficient progress during his fifth grade year in school. In April, the IEP team met to develop an IEP for David’s sixth grade school year. The team made some changes to his IEP and his mother, a special education teacher with a masters degree, attended the IEP meeting and agreed with the changes.

In October of David’s sixth grade year, he began experiencing discipline problems. The IEP team met and amended his IEP to address these issues. He was placed in a social skills group (MPASS), which was a special education class. Ms. Nack was unhappy with this placement. Due to absences and suspension from school, David attended school infrequently. The IEP team met to discuss this issue and again amended his IEP. However, the changes did not impact his attendance issues.

In April, David was hospitalized due to suicidal threats that he attributed to problems at school. Mrs. Nack considered home schooling during this time with assistance from Orange City. Despite these issues, at the end of sixth grade David scored proficient on all Ohio standardized tests. The IEP team began meeting to develop and IEP, which they did over three meetings. The team determined David’s LRE to be placement in the MPASS classroom for seventh grade. Ms. Nack disagreed with the EIP and filed for a due process hearing.

The hearing officer found that David’s fifth and sixth grade IEPs provided FAPE. He found, however, that the seventh grade IEP did not provide FAPE because it did not offer
psychotherapy on a weekly basis. On appeal, the State Level Review Officer found that the seventh grade IEP did provide FAPE, thus finding completely in the favor of Orange City School District. Mrs. Nack filed suit in District Court, which upheld the finding of the State Level Review Officer that all of David’s IEPs offered David FAPE. Mrs. Nack appealed.

Issue: At issue is whether Orange City School District procedurally violated IDEA by predetermining a particular program without regard for David’s individual needs and whether all of David’s IEPs at Orange City failed to procedurally comply with IDEA. At issue is whether Mrs. Nack was given adequate notice with regard to David’s seventh grade IEP and whether David’s sixth and seventh grade IEPs were reasonably calculated to provide David with educational benefits.

Holding: The Courts of appeal held that David’s IEP was not predetermined and it was reasonably calculated to provide FAPE. The Court held that the lack of baseline data of David’s future progress did not substantially harm him. The Court held that the school district was only entitled to partial costs and attorney fees related to David’s failure to include in joint appendix portions of record.

Reasoning: The Courts of appeal reasoned that only if a procedural violation has resulted in substantive harm and thus constitutes a denial of FAPE, may relief be granted. With regards to the IEP being predetermined, the Court reasoned that the IEP was developed over three meetings and Mrs. Nack participated in all three meetings. Though Mrs. Nack disagreed with the placement, this did not show that the school district predetermined this placement.

Mrs. Nack alleged that the sixth grade IEP did not provide enough information regarding David’s present levels of performance and he did not receive weekly assignment sheets as outlined his IEP. The Courts of appeal agreed with the State Level Review Officer’s reasoning
that the school district did commit these procedural violations, however these procedural errors did not result in a loss of educational opportunity for David or infringe on Mrs. Nack’s opportunity to participate in the IEP process, thus there was nothing to connect these violations to a loss of FAPE for David.

Mrs. Nack claims that the school district did not provide adequate notice for the sixth grade IEP. The Court reasoned that the record showed that the IEP did document the other options considered and why they were not appropriate.

As to alleged substantive violations of the IEP, the Court reasoned that the record indicated a tremendous effort by the school district to tailor its educational offerings to David’s needs. The Court reasoned that all of his IEPs contained detailed plans for his education in a variety of settings and included numerous accommodations and notes areas where he would receive individualized instruction. The Court reasoned that IDEA does not guarantee success; it only requires a school to provide sufficient specialized services so that the student benefits from his education. In conclusion, the Court reasoned that the fact that the IEP team did not adopt all of Mrs. Nack’s recommendations did not result in a deficient IEP.

The school district requested attorney’s fees and costs for Mrs. Nack not filing the joint appendix. The Court reasoned that though Mrs. Nack’s attorney should have complied with this requirement, the school district would only be awarded partial fees for copy costs due to the lack of civility on both parties.

Disposition: The United States Courts of appeal for the Sixth Circuit affirmed the decision of the District Court.

Citation: Board of Educ. of Fayette County, Ky. v. L.M., 478 F. 3d 307 (6th Cir. 2007).
Key Facts: T.D. entered kindergarten in the Fayette County School District in 1998. During that year, he experienced difficulties with behavior, social skills and beginning language skills. While he met expectations at the end of kindergarten, he experienced academic and behavioral difficulties for the next 3 years. In third grade, his teacher requested reading assistance for T.D. and discussed a referral for an IDEA evaluation with her principal but never made a referral. In September of his fourth grade year, T.D.’s guardian notified the school district that his medical doctor had diagnosed him with ADHD. In November of that same year, his principal referred T.D. for an IDEA evaluation. In February, the IEP Committee determined the referral was appropriate and by April completed a full evaluation. The IEP Committee met in May and determined T.D. was eligible for services under IDEA for ADHD and other disabilities. They held several meetings that same month to develop an IEP. T.D.’s guardian was unhappy with the IEP and the timing of T.D.’s referral for special education and requested a due process hearing.

The hearing officer found that the school district failed to identify T.D. as a child with a disability when he was in second grade, thus failed to provide FAPE in third and fourth grades. The hearing officer also found that the school district’s failure to provide ESY in the summer after T.D.’s third grade year was a denial of FAPE. The hearing officer awarded T.D. 125 hours of compensatory education, consisting of one-on-one instruction in the area of reading and language skills and extra hours to cover the ESY time T.D. lost for the summer after his third grade year. In addition, the hearing officer ordered the school district to invite T.D.’s private psychologist to IEP meetings and to pay for her attendance.

The school district appealed to the Appeals Board, which agreed with the hearing officer’s findings but changed the remedy. The Appeals Board ordered T.D.’s IEP committee to
determine a plan for providing T.D. with compensatory education services and to meet as required to review and modify the plan at least once a year. The IEP Committee was charged with determining when the award was fulfilled. The school district filed an action in Federal District Court challenging the decisions that T.D. was entitled to ESY instruction for the summer of 2003 and the fact that the school district had to pay for T.D.’s private psychologist to attend IEP Committee meetings. T.D. and his guardian had eleven counterclaims. The District Court upheld the Appeals Board’s decision in its entirety. T.D. and his guardian appealed.

Issue: At issue is whether the school district denied a FAPE to T.D. during first and second grade and the summer after second grade. Also at issue is whether the limited nature of the compensatory education award with respect to T.D.’s first and second grade years denied T.D. meaningful relief.

Holding: The Courts of appeal held that the school district provided a basic floor of educational opportunity through T.D.’s second grade year. The Court held that extended school year services were not warranted after T.D.’s third grade year and that the decision regarding compensatory education could not be left to the IEP team.

Reasoning: By adopting the standard that was first articulated in Clay T. v. Walton County School District (1997), the Courts of appeal reasoned that the claimant must show that the school district overlooked clear signs of a disability and were negligent in failing to order testing or that there was not a rational justification for not deciding to evaluate. The Court reasoned that the school district provided a basic floor of educational opportunity to T.D. in kindergarten and first grade through the interventions it put in place to address T.D.’s deficits. They reasoned that these interventions were moderately successful and that he did not start to fall significantly below grade level until the middle of his second grade year. The Court reasoned
that nothing in the record indicated that the school district either overlooked clear signs of a
disability before T.D. entered second grade and there was a rational justification for failing to
evaluate him prior to that time.

With regards to T.D. not being offered ESY the summer after third grade, the Courts of
appeal reasoned that a claimant must show that an ESY is necessary to permit the child to benefit
from his instruction. The Court reasoned that T.D. failed to provide evidence that the Extended
School Services he received in the summer of 2002 were inappropriate or insufficient to meet his
needs.

In regards to the District Court’s award of compensatory education to T.D., the Courts of
appeal reasoned that an award of compensatory education is an equitable remedy that a court can
grant as it finds appropriate. An appropriate award should be designed to ensure that the student
is appropriately educated within the meaning of IDEA. The Court further reasoned that while the
IEP team must monitor T.D.’s progress and coordinate compensatory services with his current
EIP, a delegation that permits the team to reduce or terminate his awarded amount of
compensatory education exceeds the statute’s bounds.

Disposition: The Unites States Courts of appeal for the Sixth Circuit affirmed the
judgment of the District Court with regards to the School District’s violation of IDEA, but
reversed the District Court’s compensatory education award and remanded the case with
instructions to have the appropriate administrative body develop a remedy that complied with
IDEA.
Case Briefs for Appeals to United States Courts of Appeal, Seventh Circuit

Citation: Casey K. v. St. Anne Comm. High Sch. Dist. No. 302, 400 F.3d 508 (7th Cir. 2005).

Key Facts: Casey K., an eighth grade student in the St. Anne Elementary School, a public school in St. Anne, Illinois. He had a severe reading disability and his parents did not think the school could provide FAPE to Casey. They unilaterally enrolled Casey in a private school that specialized in reading disabilities and filed for due process, seeking reimbursement for tuition costs. Prior to the hearing, the parties settled, agreeing that Casey could remain in the private school setting until May, at which time he would become the responsibility of the St. Anne Community High School District. Though the elementary school and the high school were only three blocks apart, they were their own separate school district, and thus each a distinct legal entity.

On the date the elementary school’s IEP expired, the high school drafted an IEP that placed Casey back in public school. Casey’s parents disagreed with the proposed IEP and filed for due process. They argued that until the issue was resolved that Casey should remain in private school at the high school’s expense pursuant to the stay put provision. The district court ruled that stay put was the private school placement and the school district appealed.

Issue: At issue is whether Casey’s private school placement as part of the settlement of the elementary school district is stay-put or if the placement as denoted in the IEP written by the high school district is stay-put.

Reasoning: The Court reasoned that the decision of the state that the elementary school and the high school, which served the same pool of kids, should be deemed to constitute separate school districts had no impact on the stay-put provision in IDEA. The Court reasoned that the school
district agreed that if both the elementary school and the high school were in the same school
district, Casey would be entitled to stay-put in the private school placement. The court reasoned
that the break between eighth and ninth grade, or between any other grades, is a reason to make
temporary continuation of the previous educational placement inappropriate.

Disposition: The United States Courts of appeal for the 7th Circuit affirmed the decision
of the district court. St. Anne Community High School appealed to the Supreme Court but the
submitted petition for writ of certiorari to the United States Courts of appeal for the Seventh
Circuit was denied.

Citation: Bd. of Educ. of TP. High School Dist., 211 v. Ross, 486 F.3d 267 (7th Cir.
2007).

Key Facts: Lindsey suffered from Rett Syndrome, but experienced milder symptoms than
most girls diagnosed with Rett Syndrome. She was nonverbal and suffered from apraxia. Her
cognition at her chronological age of a high school student was estimated between 7 and 12
years. Due to Rett Syndrome, her hands would get locked together and she would need
assistance unlocking them. She also engaged in loud vocalizations that lasted from a few seconds
to over a minute. She engaged in self-injurious behaviors and sometime hit others.

In elementary and middle school, Lindsey received special education services in a
mainstream setting. When she entered high school, she was placed in five regular classes and
received extensive assistance from her one-on-one special education teacher and teacher’s aide,
who accompanied her during the day. The school provided a room for Lindsey to go to when
she needed to be separated from the other students, which was necessary on occasion. One of
those times was when she head-butted two staff members causing nasal fractures in both. After
that incident, she was removed from the high school. The following summer, Lindsey’s parents
had her evaluated privately. The private specialist in Alabama recommended continued monitoring. Around the same time, the school district conducted a multidisciplinary review of Lindsey’s case. The review concluded that her behavior was interfering with her ability to learn and recommended she be placed in a full time special education setting outside of her home high school.

The school district held an IEP meeting to discuss her placement for her sophomore year and to suggest the self-contained placement. Lindsey’s parents disagreed with the placement and indicated they wanted her to remain in her home high school. They filed a due process hearing and invoked the “stay put” provision. The court granted a temporary restraining order but the parents decided to keep Lindsey at home rather than place her in the special education setting.

In an agreement between the parents and the school district, Lindsey was allowed to reenter high school in the spring of her sophomore year. She had a shortened day, her own teacher and her own paraprofessional. Lindsey attended school for 35 days. According to her teacher’s logs she spent most of her time separated from the general class due to vocalizations and self-injurious behavior. She did make some functional growth but very little academic growth. Over the summer, the school district hired a new teacher and teacher’s aide for Lindsey. Her parents believed this would be a blow to Lindsey because she had established a great report with her previous teacher and teacher’s aide.

In the fall of Lindsey’s junior year, the IEP team met to develop an IEP and to discuss placement for Lindsey. The team agreed to accept the parent’s plan to place Lindsey in the general classroom for the full day at her home high school. By November, her behavior had deteriorated, she suffered from medical problems, and her motor skills seemed worse. The IEP team met and determined that Lindsey should be placed in a multiple needs program at a
different high school. Lindsey’s parents opposed the placement and the District filed an emergency motion to permit the move for Lindsey. Lindsey’s parents filed a request for a due process hearing.

After hearing 42 days of testimony, the hearing officer determined that the school district’s placement was appropriate. Lindsey’s parents appealed the decision to District Court. The District Court also found in favor of the school district. Lindsey’s parents then filed an appeal.

Issue: At issue is whether Lindsey’s parents were provided a meaningful opportunity to participate in the IEP meeting held in November of Lindsey’s junior year. At issue is whether the school district violated IDEA by not creating a transition plan. Finally, at issue is whether the school district’s proposed placement was considered the LRE.

Holding: The Courts of appeal held that the District Court did not err in finding that Lindsey’s parents had meaningful opportunity to participate in development and review of Lindsey’s IEPs. The Court held that the school district’s failure to include more specific transition plans in Lindsey’s IEP did not result in a denial of FAPE. Finally, the Court held the school district did not violate IDEA’s LRE provision.

Reasoning: With regard to the parents’ allegation that the school district predetermined placement for Lindsey without allowing the parents to have meaningful input in that decision, the Courts of appeal reasoned that the minutes in the IEP meeting merely demonstrated the school district’s concern for Lindsey but they agreed to implement whatever plan was written.

The parents claim that prior to the November IEP meeting, the Superintendent made the statement that the school district intended to change Lindsey’s placement by removing her from her home high school. The Courts of appeal reasoned that the Director of Special Education
testified that the Superintendent did not make that statement. The District Court found the Director to be credible. The Courts of appeal reasoned it had no reason to question the District Court’s decision.

The parents claimed that the fact that the school district was prepared to file an induction if the parents and the school district could not come to consensus at the conclusion of the November IEP meeting was evidence of a predetermined placement of Lindsey. The Courts of appeal reasoned that the administrative officers were not required to read anything disreputable into the school district’s decision to be ready for an adverse outcome to the IEP meeting, thus reasoning this decision did not constitute a predetermination. Overall, the school district did allow the parents meaningful opportunity to participate in all of Lindsey’s IEP meetings.

Lindsey’s parents claimed that the school district failed to include a transition plan in the IEP and failed to consider all supplementary aids and service that could be used at her home high school, thus failing to educate her in the LRE. The Courts of appeal reasoned that the school district should have made clear that the IEP goals were taking the place of her transition plan and that this was a procedural flaw. However, the Court reasoned that only if the procedural flaw resulted in a loss of educational opportunity would it constitute a denial of FAPE. In this case, Lindsey was not in a position to benefit from an elaborate transition plan, thus the absence of a transition plan did not constitute a denial of FAPE.

With regards to the parent’s LRE argument, the Courts of appeal reasoned that it had declined to adopt any sort of multi-factor test for assessing whether a child may remain in the regular school as other circuit courts have. The Court reasoned that in the past it has held that it is not enough to show that a student is obtaining some benefit, no matter how minimal, at the mainstream school in order to prove that the school district’s removal of the student violated the
LRE requirement. Instead, it had to decide if Lindsey’s education in the conventional school was satisfactory and if not whether reasonable measures would have made it so. The Court reasoned that the District Court came to a rational conclusion that Lindsey’s proposed IEP did place her in the LRE. The Court reasoned Lindsey was not making meaningful progress at her home high school and any progress she did make, happened when she was pulled out of her regular English class. The Court also reasoned that Lindsey’s ability to interact with her peers was minimal and her behavior was disruptive. Furthermore, all school district specialists testified that they thought she could not learn satisfactorily in the environment of her home high school.

Disposition: The United States Courts of appeal for the Seventh Circuit affirmed the decision of the District Court.

Citation: John M. V. Board of Educ. Evanston TP. High Sch., 502 F.3d 708 (7th Cir. 2007).

Key Facts: John, a student with Down’s Syndrome, was eligible for and received special education services. When he was in middle school he received co-teaching through his IEP. In the Spring 2005, John’s parents and the school district met to write his IEP for his ninth grade year in high school. The proposed IEP included 215 minutes a week of special education services. The proposed IEP also included observations in his general education classes and speech, occupational, physical and social work therapies. The IEP did not include co-teaching services or “Circle of Friends” social skills training, both of which John’s parents felt were beneficial to him. Because his parents did not agree with the proposed IEP, they filed for due process. The hearing officer concluded that the school district had complied with the requirements of IDEA and the requirements of the stay-put placement. John’s parents filed suit in district court. While the action was pending, they filed a motion for a preliminary injunction to
enforce stay-put in order to maintain the provisions of the middle school IEP and a motion to present additional evidence. The District Court addressed the merits of the proposed high school IEP and determined that the school district only offered to mainstream John without a co-teacher or to place him in a separate special education classroom. The District Court then determined that the school district “defaulted” John into a special education classroom because his disability prevented him from participating in the mainstream classes. The District Court vacated the hearing officer’s decision because the high school IEP did not offer John a FAPE and it entered a preliminary injunction that required the school district to provide John with an education based on its proposed high school IEP with additional features specified by the court. The school district appealed to the 7th Circuit Courts of appeal and filed a motion to stay the district court’s decision pending the appeal.

Issue: At issue is whether the District Court erred when it vacated the hearing officer’s decision on the merits while ruling on John’s motion for preliminary injunction to enforce the stay-put provision of IDEA; and at issue is whether the District Court erred in holding that co-teaching was required as part of John’s stay-put provision.

Holding: The Courts of appeal held that the District Court erred in sua sponte vacating the hearing officer’s finding on merits while ruling on the student’s motion for preliminary injunction. The Court held that when determining on remand if co-teaching was part of stay-put placement, the District Court would be required to start with the IEP that governed the student’s middle school education. Finally, the Court held that the school district did not waive its argument that it would be impossible to implement co-teaching in high school.
Reasoning: The Courts of appeal reasoned that the preliminary injunction could not stand in its present form because it addressed matters beyond the stay-put provision and it did not apply the correct standards when it did address the stay-put provision.

Disposition: The United States Courts of appeal for the 7th Circuit reversed the District Court’s decision and remanded for further proceedings consistent with the Courts of appeal’ opinion.

Citation: Bd. of Ed. of Ottawa Tp. High School v. Spellings, 517 F.3d 922 (7th Cir. 2008).

Key Facts: Some parents and two school districts believed that the No Child Left Behind Act (NCLB) conflicted with IDEA and asked the District Court for a declaratory judgment that NCLB must yield to IDEA. The District Court judge declined to reach the merits, however, and ruled instead that the plaintiffs lacked standing because both statutes were voluntary programs and the school district could solve any problem by turning down the federal money and avoiding their obligations.

Issue: At issue is whether the No Child Left Behind Act Conflicted with IDEA.

Holding: The Courts of appeal held that IDEA did not supplant provisions of the No Child Left Behind Act.

Reasoning: The Courts of appeal reasoned that the District Court’s judgment was not appropriate because the decision to participate in NCLB and IDEA was made at the state level rather than the local level and parents lacked any option to participate or not. Furthermore, both of these federal statutes require jurisdictions to opt in or out for a year or more at a time. A school district may decline a sub-grant from the state and thus avoid most obligations under NCLB but once a district receives the grant it must comply with all of the program’s requirements.
The Court reasoned that fears about what the future may hold differ from the ongoing or imminent loss that the Supreme Court requires. The fact that the two school districts have met the targets set by NCLB make their injury hypothetical. The Court reasoned that the school districts do have standing, however, because there is a cost to the school district’s budget. The Court reasoned that a remand is unnecessary because the plaintiffs’ claim is too weak to justify continued litigation.

Disposition: The United States Courts of appeal for the 7th Circuit modified and affirmed the decision of the District Court.

Case Briefs for Appeals to United States Courts of Appeal, Eighth Circuit

Citation: Fitzgerald v. Camdenton R-III School Dist., 439 F.3d 773 (8th Cir. 2006).

Key Facts: S.F. attended public school for several years. During that time, the school district determined that S.F. may have a disability due to behavioral issues and academic performance and sought to evaluate S.F. under IDEA. S.F.’s parents refused to consent to an evaluation and withdrew S.F. and provided an education at home for him. S.F.’s parents also had him privately evaluated and provided special education services to him through private sources.

The school district initiated a due process hearing under the child find provisions of IDEA. The three person hearing panel found in favor of the school district ruling that S.F. should be evaluated as soon as practical. S.F.’s parents then sued in District Court appealing the hearing panel’s decision and sought declaratory and injunctive relief. The District Court granted summary judgment to the school district holding that the school district could evaluate S.F. The parents appealed due to their belief that the District Court misinterpreted IDEA and that its decision was unconstitutional.
Issue: At issue is whether the school district could evaluate S.F. without parental consent under the initial evaluation and child find provisions of IDEA.

Holding: The Courts of appeal held that the school district could not force S.F. to be evaluated under IDEA to determine whether he needed special services.

Reasoning: the Courts of appeal reasoned that IDEA does not require school districts to provide services to private school students and private school students have no individual right under IDEA to special education services. The Court further reasoned that IDEA allows parents to decline services and waive all benefits under IDEA. When parents choose to waive their child’s right to services, school districts may not override the parents’ wishes. Finally, the Court reasoned that IDEA’s requirements for evaluating a child is to provide appropriate special education services if the child is eligible for those services. The evaluation is pointless when parents refuse consent, privately educate the child and expressly waive all benefits under IDEA.

Disposition: The United States Courts of appeal for the 8th Circuit reversed the decision of the District Court and remanded for further proceedings.

Citation: M.P. Ex Rel. K. v. Independent School Dist., 439 F.3d 865 (8th Cir. 2006).

Key Facts: M.P.’s parents initiated an action against his former school district alleging the school district violated IDEA and Section 504 of the Rehabilitation Act. The cause of the action was the school nurse’s disclosure that M.P. was schizophrenic. This disclosure allegedly caused other students to verbally and physically harasses M.P. The District Court granted the school district’s motion for summary judgment on all claims. The court dismissed the IDEA claim because M.P. failed to exhaust his administrative remedies by enrolling in a school district out the school district in questions. The court dismissed the Rehabilitation Act claim because M.P. did not present any evidence that the nurse acted in bad faith. M.P. appealed to the 8th
Circuit Courts of appeal. The Court affirmed the District Court’s finding with respect to the IDEA claim but remanded the case with respect to the Rehabilitation Act claim for the District Court to determine whether the school district had acted in bad faith or with gross misjudgment when it failed to take appropriate action to protect MP.’s academic and safety after the disclosure. The school district filed a motion to dismiss pursuant to Federal Rules of Civil Procedure and for lack of subject matter jurisdiction over M.P.’s remaining Rehabilitation Act claim. The school district also filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. The District Court granted the school district’s motion to dismiss instead of following the orders of the Courts of appeal to allow M.P. to present his Section 504 claimed. M.P. appealed the District Court’s decision.

Issue: At issue is whether M.P. must exhaust administrative remedies prior to suing under Section 504 of the Rehabilitation Act and if he can sue for damages under the Act for violation of his Section 504 rights.

Holding: The Courts of appeal held that M.P. has a right of action for damages under Section 504.

Reasoning: The Courts of appeal reasoned that even when a plaintiff’s IDEA claim fails or lack of jurisdiction, a Section 504 claim may still be considered. The school district’s alleged failure to protect M.P. from unlawful discrimination on the basis of his disability is unrelated to the IEP process.

Disposition: The Unites States Courts of appeal for the 8th Circuit reversed the district court’s findings and remanded for proceedings consistent with the Courts of appeal finding.

Citation: Bradley Ex. Rel. Bradley v. Arkansas Dept. of Educ., 443 F.3d. 965 (8th Cir. 2006).
Key Facts: At a young age, David was diagnosed with Autism. When he entered school, he was qualified for and received special education services. While in elementary school, David received some instruction in the general education classroom and some in a resource type setting. He had an aide during transition periods. When David was in seventh grade, he needed to transition from class to class on his own so the school district reduced the time his aide spent with him. David became anxious about coming to school so David’s father, Thomas Bradley, began attending school with his son, at times staying all day.

Over the next 2 years, Mr. Bradley filed for numerous due process hearings over evaluations, training, and the contents if David’s IEPs. Some were brought to District Court and appealed. Other issues included a newspaper article about the conflict between the Bradley’s and the school district, Mr. Bradley being arrested for intimidation of the superintendent of schools and Mr. Bradley being legally restrained from going to David’s school.

In February 1998, Mr. Bradley submitted a report form a psychologist that diagnosed David with school phobia. Mr. Bradley asked for David to be educated at home. The school district disagreed and the IEP team did not feel that homebound schooling was in David’s best interest or that it was the LRE. The district asked for additional information including the opportunity to get a second professional opinion at the school district’s expense. The Bradleys did not honor those requests and the school district filed truancy charges against Mr. Bradley. Mr. Bradley was forced to return David to school and to allow the school district to evaluate David. The school district’s psychologist agreed with the Bradley’s psychologist, thus the school district agreed to homebound instruction for David. The school district allowed Mr. Bradley to participate in the interviews of the homebound teacher.
In a consolidated lawsuit, the District Court held that none of the defendants violated federal law. The Bradleys appealed, raising issues under IDEA and Section 504 of the Rehabilitation Act.

Issue: At issue is whether the school district violated IDEA in its handling of David’s education and whether David’s IEPs were reasonably calculated to enable David to receive educational benefits. Also at issue is whether the school district retaliated against David’s parents in violation of Section 504 of the Rehabilitation Act. Finally, at issues is whether the ADE violated IDEA or Section 1983.

Holding: The Courts of appeal held that the District Court did not err in its factual finding crediting the school district expert’s opinion that David’s standardized test scores showed he made educational progress. The Court held that David’s IEPs were reasonably calculated to enable him to receive educational benefits and they were not inappropriate because of his parents’ perception that the teacher and staff were inadequately trained. The Court held that the parents failed to satisfy a causal connection requirement for retaliation claim under Section 504 of Rehabilitation Act and ADE did not violate IDEA or Section 1983.

Reasoning: The Courts of appeal reasoned that there was not clear error of fact in the school district expert’s testimony that David’s test scores showed he made educational progress. Though he did not perform well, he did perform consistently. These scores are not based on the raw number of correct answers, but, they are compared to students across the country who took the same test at the same age, thus he demonstrated learning at the same pace as his peers because his scores were consistent.

In response to the Bradley’s IEP argument, the Courts of appeal reasoned that the standard to judge whether an IEP was appropriate under IDEA is whether it offered instruction
and supportive services reasonably calculated to provide some educational benefit to the student for whom it was designed. The Court reasoned the record indicated the school district was sincere in its efforts not just to provide some educational benefit to David, but to develop IEPs that would give David superior educational benefit. Many of the Bradleys’ suggestions were incorporated into David’s IEPs and David showed educational benefit. As to the Bradleys’ allegation that David’s IEPs were not implemented as written, the Court reasoned the record revealed that the persons responsible for implementing David’s IEPs made every effort to provide the services called for.

The Bradleys alleged that district staff was not adequately trained. The Court reasoned that the record reflected the school district provided considerable training of David’s teachers, aides, and even his fellow students. IDEA does not require that parental preferences be implemented, so long as the IEP is reasonably calculated to provide some educational benefit.

As to the Section 504 claims, the Court reasoned that to make a case of retaliation under Section 504, the Bradleys must show they were engaged in a protected activity and the school district took some adverse action and one is in relation to the other. The Court reasoned that the Bradleys did not show any adverse action was taken in response to protected activity.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the decision of the District Court to dismiss all of David’s parents’ claims.

Citation: Pachl v. Seagreen, 453 F.3d. 1064 (8th Cir. 2006).

Key Facts: Sarah was a child with multiple disabilities including epilepsy, Dandy Walker syndrome, autism, scoliosis, and bilateral hearing loss. She was educated in a public school in Minnesota and received special education services under IDEA.
When Sarah was in elementary school, she was in a mainstream setting for most of her school day. In 2003, when Sarah entered middle school, the IEP team determined that she should spend part of the day in a center-based program, STARS, where she could learn functional skills and made the placement on an interim basis. Sarah’s parents disagreed with this decision and asked that their private expert, Dr. Alice Udvari-Solner, observe Sarah. The school district agreed.

After Dr. Solner made several observations, she made recommendations regarding Sarah’s placement. She stated Sarah’s educational needs could be met by spending the majority of her school day in general education classes with supplemental aids and services. Dr. Solner stated that Sarah should not spend any time in the STARS classroom. She believed that it provided limited age appropriate interaction and that the tasks were non-functional and of little use to Sarah. She also criticized the mainstream time as lacking effective inclusive practice.

In March, the school district proposed a new IEP that included some of Dr. Solner’s recommendations. The proposed IEP increased Sarah’s time in the mainstream classroom but still provided time for Sarah in the STARS program, which was in line with what the school district’s expert recommended. Sarah’s parents rejected the new IEP because they did not think the STARS program was Sarah’s LRE placement. The school district requested a due process hearing to help resolve the conflicts.

After hearing testimonies from both sides and reviewing the evidence, the hearing officer found the IEP did meet the LRE mandate of IDEA and that the school district was not required to pay for ESY for Sarah in a private setting. The Pachls then filed suit against the school district in District Court. The District Court concluded that the hearing officer did not err when finding that the school district proved that the combination of mainstream and STARS
learning environments would provide Sarah a meaningful education in the LRE. The District Court also found that the parties had agreed that the school district would pay the tuition cost of Sarah’s private ESY services and rejected the Pachl’s allegations that the hearing officer had committed procedural violations during the administrative hearing. The Pachls appealed.

Issue: At issue is whether the school district violated the LRE mandate in IDEA by not allowing Sarah to spend 100% of her day in the mainstream environment. Also at issue is whether the State Department of Education neglected its duties to monitor the school district’s implementation of IDEA.

Holding: The Courts of appeal held that the District Court’s comparison of segregated and integrated settings was relevant to dispute. The Court held that evidence supported placing Sarah in the mainstream setting for 70% of the school day as written in the IEP. The Court held that Sarah failed to allege the specific manner in which the Department of Education neglected its duties to monitor the school district.

Reasoning: The Courts of appeal reasoned that IDEA requires students be educated with non-disabled peers to the maximum extent appropriate. The Court endorsed *Roncker v. Walter* (1983) in which the 6th Circuit Court held that a student should be separated from her peers only if the services that make the segregated placement superior cannot be provided in a non-segregated setting. The Court reasoned that the statutory language in IDEA significantly qualified the mainstream requirement by stating that it should be implemented to the maximum extent appropriate and that it is irrelevant where education in the mainstream environment could not be achieved satisfactorily. The Court reasoned that removing a child from the mainstream setting is permitted when the child would not benefit from the mainstream setting or when any marginal benefits received from mainstreaming are far outweighed by the benefits gained from
services provided in the segregated setting. The Court reasoned that the District Court considered at length whether Sarah could be educated satisfactorily in a mainstream setting with supplemental aids and services and found that she would not benefit from that setting. The District Court did not err in this decision or the finding that though full inclusion would allow Sarah to be among her peers it would not allow her to learn with them. The Court reasoned that the District Court did not err in giving due weight to the views of the school district on matters of sound educational policy that the IEP provided the LRE for Sarah’s education. The Court reasoned that the evidence supported that the proposed IEP educated Sarah in the LRE.

In regards to the Pachls claim that the State Department of Education neglected its duties to monitor the school district’s implementation of IDEA, the Court reasoned that state educational agencies may be responsible for violations of the IDEA when the state agency in some way failed to comply with its duty to assure the IDEA’s substantive requirements were implemented. The Court reasoned that the Pachls failed to articulate a specific manner in which they believed the DOE neglected its duties to monitor the school district, thus they dismissed their claim against the Minnesota Department of Education.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the decision of the District Court.

Citation: Stinger v. St. James R-I School Dist., 446 F.3d 799 (8th Cir. 2006).

Key Facts: Geoffrey was a student who received special education services for Autism under an IEP in the St. James School District. In October 2003, Geoffrey was suspended for six days due to disciplinary reasons. His principal had recommended a longer suspension, placement in alternative school, and a loss of credits, but the IEP team intervened and the longer
suspension was withdrawn with no change in Geoffrey’s credits or placement. The school district board upheld the six day suspension.

After that incident, Geoffrey’s mother filed a compliant in District Court and listed 13 claims. The District Court found that eight of the thirteen claims were not properly brought under IDEA. Of the remaining five claims, the District Court determined that Geoffrey’s mother failed to state a claim upon which relief could be granted because she only pled conclusions with no specific facts. Geoffrey’s mother appealed that relief could be granted for her claims of a denial of FAPE and severe persistent and pervasive sexual harassment and other harassment.

Issue: At issue is whether Geoffrey’s mother’s allegations of harassment and denial of FAPE state a claim under IDEA.

Holding: The Courts of appeal held that the student and mother failed to state cause of action for denial of educational benefits or for violation of written notice. The Court held that the district’s failure to comply with the mother’s request for audio recording of the hearing was harmless error.

Reasoning: The Courts of appeal reasoned that Geoffrey’s mother did not state a claim under IDEA because she did not plead any connection between the harassment allegations and her separate statement that Geoffrey was denied FAPE. Furthermore, Geoffrey’s mother did not allege any facts that the harassment deprived access to the basic educational benefits of FAPE. The Decision and Order she constructed stated that there was no suggestion that Geoffrey did not receive the services identified in his IEP.

Geoffrey’s mother claimed that the school district did not give written notice of Mr. Bailey’s suggestion for a longer suspension, placement in an alternative school and possible loss of credits. The Court reasoned that IDEA requires prior written notice of any proposed initiation
or change in the evaluation or educational placement of the child but that Geoffrey’s mother did not allege facts sufficient to state this claim. The record supported that she received notice of the IEP meeting, that she attended, and that she had meaningful participation.

At the hearing Geoffrey’s mother requested an audiotape recording of the hearing. The Court reasoned that because an audio recording is included as an electronic verbatim record under IDEA, the school district should have complied with Geoffrey’s mother’s request. However, she received a written verbatim record by a certified court reporter and never alleged that it was inaccurate. The Court reasoned that the failure of the school district to provide the audio recording was harmless error.

Disposition: The Courts of appeal for the 8th Circuit affirmed the decision of the District Court.

Citation: T.F. v. Special School Dist. St. Louis Co., 449 F.3d. 816 (8th Cir. 2006).

Key Facts: S.F. attended public school though the fourth grade where he received special education services through an IEP. He was diagnosed with a pervasive developmental disorder, oppositional defiant disorder, obsessive compulsive disorder, and attention deficit hyperactivity disorder. He began demonstrating severe behavior problems in the third grade which continued into the fourth grade. His teacher recommended placement in the fifth grade but his parents withdrew his and enrolled him in private school, the Churchill School. He did well at Churchill in the fifth grade but his behavior deteriorated in the sixth grade. His parents then enrolled S.F. in another private school, the Metropolitan School, for seventh grade.

In seventh grade, S.F.’s academic performance was adequate but his behavioral issues continued. The Metropolitan School told S.F.’s parents that he should attend another school for eighth grade but would allow him to attend first semester until his parents found a suitable
placement. S.F.’s parents sought services form the public school district. The school district provided homebound services during second semester of S.F.’s eighth grade year. His teacher reported that he was well behaved and made academic progress.

In 2002, the school district reevaluated S.F. and began to develop an IEP for his ninth grade year. His parents argued that S.F. needed a full-time residential setting in order to receive FAPE. The school district disagreed so the patents filed for a due process hearing. In May 2002, the school district presented the proposed IEP which called for 14 hours a week in Project Achieve, located in S.F.’s local public high school, and 12 hours a week at Epworth Center, a private facility. The IEP also documented time for language therapy, social work, and psychological counseling.

S.F.’s parents were still not happy with the proposed IEP and enrolled S.F. in a full time residential program at Pathways School. He was there from June till November 2002. Pathways then decided it was not a good fit due to S.F.’s lack of progress and negative interactions with other students. His parents then enrolled him in the Chamberlain School, a private residential facility in Massachusetts. In February, S.F.’s parents amended their due process hearing to include reimbursement for tuition and other expenses at Churchill, Metropolitan, Pathways, and Chamberlain.

The three-person hearing panel found in favor of the school district. They denied relief for placement at Churchill and Metropolitan on the ground that the school district was providing FAPE when S.F withdrew. They denied relief for placement at Pathways and chamberlain on the ground that the May 2002 IEP provided S.F. FAPE. The family appealed this decision.

Issue: At issue is whether the May 2002 IEP provided S.F. FAPE.
Holding: The Courts of appeal held that S.F.’s IEP was sufficient to meet his unique needs.

Reasoning: The Courts of appeal reasoned that it must defer to the judgment of educational experts as long as S.F. received some educational benefit and was educated with his non-disabled peers to the maximum extent possible. The Court reasoned that in *Evans v. Dist. No. 17* (1988), the Court concluded that children should be mainstreamed if at all possible and residential placements should be resorted to only if the mainstreaming attempts failed or were plainly untenable. IDEA mandates an appropriate education for students with disabilities but it does not require a school district to provide a child with a specific educational placement that parents prefer. The Court reasoned that the May 2002 IEP offered unique services tailored to meet S.F.’s needs. They Court reasoned that this placement may not have satisfied S.F.’s parents, but it satisfied the requirements of IDEA.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the judgment of the District Court.

Citation: *Reinholdson Ex. Rel. v. School Bd.*, 187 Fed. Appx. 672 (8th Cir. 2006).

Key Facts: When Mahesh was in sixth grade, his parents disagreed with the school district’s proposed IEP. The school district and Mahesh’s parents both filed for a due process hearing. One of the issues was the school district failed to develop a timely ESY program for Mahesh. Both parties agreed that Mahesh qualified for ESY services. The hearing officer held the hearing from May 8 through May 16th. The school district proposed ESY services on May 17th. The hearing officer denied Mahesh’s request for ESY relief because the school district intended to offer ESY services and his parents had not cooperated in discussing ESY issues. Mahesh’s parents filed suit in District Court. The District Court found in favor of the school
district stating that IDEA does not prescribe the time in which the school district must present an ESY proposal. Mahesh’s parents appealed the District Court’s denial of ESY relief because he was no longer attending school in the school district.

Issue: At issues is whether the school district’s unreasonable delay in developing an ESY program denied Mahesh FAPE.

Holding: The Courts of appeal held that IDEA did not require the school district to propose ESY at least 105 days before the end of the school year.

Reasoning: The Courts of appeal rejected Mahesh’s parents’ argument that IDEA should be construed as requiring the school district to propose an ESY program at least 105 days before the end of the school year. The Courts of appeal reasoned that it agreed with the reasons noted in the District Court’s Memorandum Opinion and order dated August 2, 2005.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the decision of the District Court.

Citation: M.Y. Ex. Rel., J.Y. v. Special School Dist. No. 1, 544 F.3d 885 (8th Cir. 2008).

Key Facts: M.Y. was a student who qualified for and received special education services under IDEA. She attended public school. The school district developed an IEP in May 2005 along with M.Y.’s parents. The IEP stated that M.Y. did not qualify for ESY or related services; however, the school district would provide special transportation to M.Y during the school year. It also stated that she would be required to use general education transportation when traveling to and from a general education activity such as a field trip or dance. M.Y.’s parents agreed with the proposed IEP’s provisions.

In June, M.Y.’s parents received notice that M.Y. would be required to use general education transportation for summer school, which began on Monday, June 20, 2005. Isse was
assigned as the bus driver for the route that took M.Y. home from summer school. He had worked for the school district since 2000. The school district had never received complaints about Isse and he had passed all drug screenings and criminal background checks.

When returning home from summer school on June 23, 2005, Isse allegedly engaged in inappropriate sexual conduct with M.Y. Her parents filed a complaint with the Minneapolis Police Department and the school district’s Department of Transportation Services. The school district filed a Maltreatment of Minors report with the Minnesota Department of Education and suspended Isse until the completion of the investigation. On July 5, 2006, the Minnesota Department of Education issued a determination that there was enough evidence to show that Isse had sexually abused M.Y. and the school district terminated his employment.

Issue: At issue is whether the school district denied M.Y. FAPE by not providing special transportation to and from general education summer school and at issue is whether the school district deprived M.Y. of meaningful access to summer school by failing to provide her with special transportation.

Holding: The Courts of appeal held that the school district’s decision to not provide special transportation to M.Y. to and from summer school did not deny M.Y. FAPE or constitute disability discrimination under the Rehabilitation Act. The Court held the school district did not maintain a custom or policy of denying special education transportation to and from summer school.

Reasoning: The Courts of appeal reasoned that in order to state a claim under section 504 in the context of education of handicapped children, parents must show that the school district acted in bad faith or with gross misjudgment by departing substantially from accepted professional judgment, practice or standard. The Court reasoned that there was no evidence in
the record that the school district acted in bad faith or displayed gross misjudgment in denying M.Y. special education transportation. The school district’s decision fully complied with the terms of M.Y.’s IEP, which stated that M.Y. was not eligible for ESY and related services such as transportation. Furthermore, the Court reasoned that the record contained no written school district policies pertaining to summer school transportation and was void of any evidence regarding how other students with disabilities were transported to and from summer school.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the judgment of the District Court.

Citation: C.N. v. Willmar Public Schools, Dist. No. 347, 591 F.3d 624 (8th Cir. 2010).

Key Facts: C.N. was a student with a communication disorder and attention deficit hyperactivity disorder. She attended public school where she received special education services through an IEP. Her IEP included a behavior intervention plan (BIP) that allowed the use of restraint holds and seclusion when C.N. exhibited defined behaviors. Due to continued behavioral problems, the school district and C.N.’s mother agreed to an assessment by an outside evaluator. After the evaluation the school district revised C.N.’s IEP and BIP to incorporate some of the recommendations from the outside evaluator and transferred C.N. to Lincoln Elementary, another school within the school district. Though C.N.’s mother did not agree with the use of seclusion or restraint, the BIP continued to authorize these procedures. While C.N. attended school at Lincoln Elementary, the IEP team met many times to adjust her IEP.

While attending Lincoln, C.N.’s special education teacher recorded any use of restraints or seclusion with C.N. in a communication log she kept for her students. During C.N.’s time at Lincoln, it was reported to the Minnesota Department of Education that C.N.’s special education teacher mistreated C.N. The Maltreatment of Minors Division conducted an evaluation into these
allegations and concluded that the special education teacher violated a number of C.N.’s rights as a child with a disability and also maltreated C.N. by denying her access to the restroom. The school district conducted its own investigation and attributed the bathroom incident to a lapse in judgment. C.N.’s special education teacher was never disciplined by the school district but had no further contact with C.N. C.N.’s mother requested she be notified if the special education teacher returned to the school but was informed by the District Superintended that she had no obligation to provide that information. C.N.’s mother subsequently withdrew C.N. and placed her in a private school in Atwater, Minnesota for the remainder of the third grade year. At the beginning of her fourth grade year, C.B. enrolled in the Atwater public school district and C.N.’s mother requested a due process hearing against the Willmar School District.

The ALJ grated the school district’s motion to dismiss the hearing request for lack of jurisdiction because C.N. was no longer enrolled in the district and had transferred without requesting a hearing against the district. C.N.’s mother appealed the ruling to the District Court. She asserted claims under IDEA, Section 504 of the Rehabilitation Act and section 1983 for violations of the Fourth and Fourteenth Amendments. The District Court concluded the IDEA claim failed using the same reasoning as the ALJ and the other federal claims failed for failure to state a claim. C.N.’s mother appealed.

Issue: At issue is whether the District Court erred in dismissing C.N.’s IDEA claims against the school district.

Holding: The Courts of appeal held that C.N. failed to exhaust her administrative remedies by requesting a due process hearing before transferring to another school district precluded IDEA claim. The Court held that the special education teacher’s use of restraints and
seclusion did not violate C.N.’s Fourth Amendment right to be free from unreasonable seizures and the Court held that C.N.’s allegations did not state substantive due process violations.

Reasoning: The Courts of appeal reasoned that the hearing process is in place to ensure that a disabled child’s educational needs are being met by the student’s school district. The purpose of the hearing is to challenge an aspect of the child’s education and to allow the school district the opportunity to address the alleged problem. Therefore, the Court reasoned, that the hearing should be held in the district currently responsible for assuring that an appropriate program is provided. The Court reasoned that under these circumstances, C.N.’s IDEA claims fail.

With regards to C.N.’s Fourth amendment claim, the Court reasoned that the IEP authorized the use of restraints and seclusion and an authorized professional’s actions, specifically the special education teacher, were reasonable because the actions did not depart from the accepted professional judgment, practice, or standards of the school district. As to the Fourteenth Amendment claim, the Court reasoned that C.N.’s complaint did not state a viable substantive due process claim. Some of the abuse allegation did not identify C.N. as the victim of the alleged mistreatment. The allegations were vague and did not provide the Appellees with fair notice of the nature of C.N.’s claims and the grounds upon which those claims rested, nor did they plausibly establish C.N.’s entitlement to any relief.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the judgment of the District Court.

Citation: Lathrop R-II School Dist. v. Gray, 611 F.3d 419 (8th Cir. 2010).

Key Facts: In Fall 2000, D.G. enrolled in the school district as a fourth grader. Prior to his enrollment he attended school in Putnam County and received special education services
under IDEA as a student with autism. His last IEP from Putnam stated D.G. had weaknesses in reading comprehension, social skills, and behavior. Because D.G. was one of the first children with autism to enroll in the school district, the Special Education Director and other district employees participated in autism training. D.G.’s IEP placed him in special education classes 65% of his school day and some time in regular education.

D.G.’s assigned special education teacher described D.G. as exhibiting severe behaviors that impeded his learning. He bit his finger when he was in regular education classes, made loud out bursts, and recited movies. He also began to exhibit sexual behavior at school. His Occupational Therapist attempted to address his sexual behaviors and the district hired Marilyn Stubbs, an autism behavior specialist, to conduct an FBA and develop a BIP. The school district implemented her suggested strategies.

In May 2002, the IEP team met to discuss D.G.’s progress. They determined he needed ESY and determined to reevaluate him in the fall. They hired an outside psychologist to evaluate D.G. The IEP team met several times that fall to discuss the reevaluation and to develop his IEP. His IEP for 2002-2003 included D.G.’s progress on his IEP goals and included new goals and objectives. In addition, it discussed his disruptive behaviors and included a BIP with strategies to address problems and a sensory diet to limit inappropriate behaviors.

D.G.’s 2003-2004 IEP included updated goals, objectives, a BIP and a modified sensory diet. It included a separate list of OT goals and speech language therapy. There was conflicting information regarding D.G.’s progress on his behavior goals. However he did make progress on many of the goals in his 2002 and 2003 IEP goals.

In January 2004, D.G.’s parents requested a due process hearing alleging the school district denied D.G. FAPE for failing to develop an appropriate IEP for the 2002-2003 and 2003-
3004 school years and for failing to provide adequate prior written notice. They also claimed the school district limited their participation during the IEP meetings for these two school years. The parents sought reimbursement for services they obtained and compensatory education and related services. They requested the school district place D.G. in Partners in Behavioral Milestones (PBM), an independent academy for student with disabilities like D.G.’s. The school district rejected the request because it was not the LRE.

In August 2005, the hearing panel rendered its decision. The panel determined that the IEPs in question were deficient because they lacked baseline data and inadequately addressed D.G.’s behaviors and social skill deficits. The hearing panel ruled against the parents on their complaints regarding participation and notice and denied their request for reimbursement. The panel ruled that D.G. should be placed in a state approved agency for students with autism.

The school district filed suit in District Court challenging the hearing panel’s decision. The District Court remanded the case because the hearing panel placed the burden of proof on the school district. The District Court cited Shaffer v. Weast (2005) where the Supreme Court held that the burden of proof lies with the party challenging the IEP. On remand, the hearing panel upheld their previous decision in its entirety. The school district appealed to District Court again, asking for summary judgment or judgment on the administrative record. The District Court granted the school district summary judgment and the parents’ appealed.

Issue: At issues is whether D.G.’s 2002-2003 and 2003-2004 IEPs were procedurally flawed because they lacked baseline data. At issue is whether the IEPs were deficient because they did not sufficiently address D.G.’s behavioral issues.

Holding: The Courts of appeal held that the IEP complied with IDEA and any technical violation of the notice requirement did not violate IDEA.
Reasoning: The Courts of appeal reasoned that because D.G.’s parents did not establish an IDEA violation, their arguments regarding appropriate relief were moot, including their reimbursement request. The Court reasoned that IDEA does not mandate specific data. It does require a statement of the child’s present levels of performance and a statement of measurable goals. A preponderance of the evidence suggested that the IEPs in question contained detailed present levels of performance and benchmarks. The Court further reasoned it would compel a school district to put more in its IEPs than is required by law.

With regards to D.G.’s parent’s complaint regarding the IEPs not adequately addressing D.G.’s behavioral issues, the Court reasoned the IDEA does not require an IEP to create specific goals to address behavior. If a behavior impacts a child’s learning, the IEP team need only consider strategies, including positive behavioral interventions, strategies, and supports to address the specified behaviors. The Court reasoned that both of the IEPs in question suggest many strategies to address D.G.’s behaviors and included an elaborate BIP. Also, both IEPs contained a sensory diet with strategies for keeping D.G. on task and preventing disruptions. The Court reasoned that the school district made a good faith effort to help D.G. achieve the educational goals outline in his IEP and to enable D.G. to decrease disruptive behaviors.

Disposition: The United States Courts of appeal for the 8th Circuit affirmed the judgment of the District Court.

Case Briefs for Appeals to United States Courts of Appeal, Ninth Circuit

Citation: Blanchard v. Morton School Dist., 420 F. 3d. 918 (9th Cir. 2005).

Key Facts: Ms. Blanchard’s son received special education services under IDEA by the Morton School District. Ms. Blanchard filed several due process administrative hearings against
the school district for failure to provide FAPE. In 2000, an administrative law judge found that the school district had not implemented Ms. Blanchard’s son’s IEP and, thus, failed to provide FAPE. The judge ordered the school district to implement the IEP and provide compensatory education. Ms. Blanchard filed four additional hearings against the school district for the purpose of modifying the plan.

In 2002, Ms. Blanchard filed a complaint against the school district asking for money damages for alleged emotional distress caused by the school district’s conduct in providing special education services to her son under IDEA. She alleged that the school district caused her emotional distress due to the district’s deliberate indifference and violation of rights as well as reimbursement for the income she lost as a result of pursuing her son’s remedies under IDEA. The school district moved to dismiss her claim. The District Court granted the school district’s motion to dismiss due to Ms. Blanchard failing to exhaust her administrative remedies under IDEA. Ms. Blanchard appealed.

Issue: At issue is whether Ms. Blanchard exhausted her administrative remedies under IDEA.

Holding: The Courts of appeal held that there is no procedural barrier to Ms. Blanchard’s claim that the school district’s actions with regards to providing her son FAPE caused her to incur damages for emotional distress.

Reasoning: The Courts of appeal reasoned that IDEA provides remedies for educational services for disabled children and exhaustion of administrative remedies is required when a plaintiff is seeking relief that is available under IDEA. IDEA does not provide remedy for Ms. Blanchard’s claims of personal emotional distress caused by the school district.
Disposition: The United States Courts of appeal for the 9th Circuit reversed the District Court’s ruling and remanded the case for further proceedings.

Citation: *Ford v. Long Beach Unified School Dist.*, 461 F.3d. 1087 (9th Cir. 2006).

Key Facts: Whitney was a student in Long Beach Unified School District who received special education services under IDEA for anxiety, memory, writing, and math. IN 1999, Whitney was placed in a residential treatment facility located in Utah. This placement was documented in her IEP following an agreement between the school district and her parents. Later, the residential treatment center suggested that Whitney return to her residence in Southern California. In May 2000, the IEP team, along with Whitney’s parents, agreed to Whitney’s return. They determined she would receive academic instruction at home through the school district’s hospital homebound program and services from Lindamood-Bell Learning Processes, a private organization that provided specialized instruction.

Prior to Whitney beginning the services as outlined in her IEP, the school district determined that Lindamood-Bell services were not necessary and determined that Whitney should return to the residential treatment facility. Whitney’s parents, the Fords, disagreed with the placement and filed for due process hearing. The hearing officer issued an order mandating the school district comply with the agreement reached between the Fords and the school district at Whitney’s May 31, 2000 IEP meeting. The school district filed a motion for a temporary restraining order in state court to challenge the hearing officer’s decision. The state court granted the school district’s motion and ordered Whitney’s return to the residential treatment facility. The Fords appealed and the parties reached a settlement agreement on April 17, 2001. That agreement abolished the state court order if the school district would fund the original services
decided upon in the May 2000 IEP meeting and would reimburse the Fords for various costs incurred by Whitney’s education.

In 2003, the school district stopped Whitney from enrolling in a local high school. As a result, Mr. Ford filed a second due process hearing. The parties settled in August 2003, determining that Whitney would be enrolled at a local high school and would receive math instruction from Lindamood-Bell. The school district also agreed to reimburse Whitney’s parents for their visits to see Whitney when she was placed at the residential treatment facility. In April 2004, Mr. Ford filed a complaint in District Court seeking to recover other additional fees associated with the settlements between the Fords and the school district. The school district filed a motion to dismiss for failure to state a claim. The district court dismissed the complaint and the parents appealed.

Issue: At issue is whether attorney fees could be recovered by the child’s mother/attorney.

Holding: The Courts of appeal held that the IDEA does not authorize attorneys’ fees.

Reasoning: The Courts of appeal reasoned that while the language of IDEA does provide for an award of reasonable attorneys’ fees, the Supreme Court, in *Kay v. Ehrler* (1991), concluded that an attorney appearing *pro se* was not entitled to fees under Section 1988. The Court reasoned that it would interpret IDEA consistently with Section 1988. It reasoned that a child represented by his or her parents did not benefit form the objective judgment of an independent third party. As a result, the Fords were not entitled to attorney’s fees because Whitney’s legal counsel was also her mother.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the judgment of the District Court.
Citation: Arizona State Bd. v. U.S. Dept. of Educ., 464 F. 3d. 1003 (9th Cir. 2006).

Key Facts: In 2003, the Department’s Office of Inspector General audited the Arizona Department of Education’s practice of awarding federal funds. The Department determined that ADE had improperly awarded ESEA and IDEA funds to charter schools that were for-profit schools. The Arizona State Board for Charter Schools and other for-profit charter schools petitioned the Department to reconsider its determination. Failing in this endeavor, they sought review in district court. The District Court determined that in order to be eligible for federal funds, charter schools must be nonprofit. The Arizona State Board for Charter Schools appealed.

Issue: At issues is whether for-profit charter schools are eligible for federal funding under IDEA and ESEA.

Holding: The Courts of appeal held that for-profit charter schools were ineligible for federal funding under IDEA and ESEA.

Reasoning: The Courts of appeal reasoned that under IDEA and ESEA schools are defined as non-profit institutions. While the statutes do state “including charter schools,” it is referring to non-profit schools “such as” charter schools. Therefore, if a school is for-profit, it cannot be awarded federal monies under IDEA or ESEA.

Disposition: The United States Courts of appeal for the 9th circuit affirmed the decision of the District Court.

Citation: Park, Ex Rel. Park v. Anaheim Union High School, 464 F. 3d. 1025 (9th Cir. 2006).

Key Facts: Joseph attended school in the Greater Anaheim public school district and received special education services for cri du chat, a genetic defect. Due to this disability, Joseph had developmental delays, deficient cognitive ability, poor muscle tone, speech and language
delays, gross and fine motor issues, as well as other physical and mental disabilities. His IQ was below 70 and his family’s primary language was Korean.

When Joseph was around 11 years old, the school district met and recommended he receive an audiology assessment. As a result, an audiologist administered the HEAR Kit test but received inconsistent results because of a buildup of earwax in Joseph’s ear canal. The school district informed Joseph’s mother that it was her responsibility to have the earwax removed so that the assessment could be completed. This never happened and the assessment was never completed. Joseph was also administered a vision assessment. While Joseph’s parents believed that Joseph had double vision and optic nerve damage, the conclusion based on the vision assessment was that Joseph’s vision was not interfering with his education.

The IEP team recommended Joseph be placed in a special education school for the 2001-2002 extended school year and 2002-2003 school year. Joseph’s parents disagreed with the recommendations and placed Joseph in a summer camp instead of the extended school year. Joseph’s mother also requested several assessments, which were administered by the school district over the summer and into the fall. There were no further attempts to administer the audiological or vision assessments.

Joseph’s parents requested a due process hearing and, as a result of mediation, Joseph was put in an interim placement in a special day class at Lexington Junior High School. The school district also conducted a FBA and proposed a BIP that Joseph’s mother contested. In the meantime, the hearing took place and the hearing officer concluded the school district conducted appropriate assessments but denied Joseph FAPE for the 2001-2002 school year because they failed to make a clear written offer. The hearing officer also found that the school district denied Joseph FAPE for because they failed to implement the IEP in a timely manner and failed to
include self-help goals. The Hearing officer ruled the school district must provide compensatory
education to Joseph’s teachers for Joseph’s benefit and the school district prevailed on every
issue but the provision of FAPE for extended school year.

Both the school district and Joseph’s parents filed cross motions in District Court for
summary judgment. At the conclusion of the hearing, the District Court ruled that Joseph was
not educationally harmed by any of the alleged violations of IDEA’s procedural safeguards, the
IEP implemented in November 2002 did not deny Joseph FAPE, and compensatory education
services were properly awarded directly to the school teachers. The Court further held that the
school district is not required to pay attorney’s fees to Joseph’s parents for the costs of the due
process hearing. Joseph’s parents appealed.

Issue: At issue is whether the school district failed to undertake a medical exam in order
to complete the audiology assessment and if the school district failed to fully assess Joseph’s
suspected vision disorder. At issue is whether the school district failed to consult or invite
persons most knowledgeable about Joseph to assist in the development of the IEP or failed to
consult the IEP team in the development a BIP. Also at issue is whether the school district failed
to evaluate Joseph in his primary language. At issue is whether Joseph received appropriate
supplementary services to allow Joseph to meet his educational goals.

Holding: The Courts of appeal held that the school district did not violate procedural
requirements of IDEA by notifying the mother that it was her responsibility to remove ear wax
from her child’s ear in order for the hearing test to be completed. The school district did not
violate procedural requirements of IDEA by not assessing if the child had double vision or optic
nerve damage. The Court held that the school district did not violate IDEA in its assessment of
the child’s behavior, recommendation of a BIP or development of an IEP. The school district did
not violate IDEA by not providing related services or by failing to assess the child in Korean language. The Court held the hearing officer’s determinations were entitled to due weight. The Court also held that the district court abused its discretion in concluding the child and mother were not the prevailing party.

Reasoning: The Courts of appeal reasoned that the school district fulfilled its duty by notifying Joseph’s mother that it was her obligation to remove the ear wax as a condition for completing the test and that the school district was not obligated to assess double vision or optic nerve damage if it does not affect a child’s educational needs. Because the school district found that Joseph’s vision was not hindering his education, there was no procedural violation.

The Court reasoned that the school district had all the necessary participants in the IEP planning meetings and was not required to invite every person who was knowledgeable about Joseph. The Court further reasoned the hearing officer largely approved of the school district’s proposed IEP with supplemented goals.

The Court reasoned that IDEA states that a child should be evaluated in their native language unless it is clearly not feasible to do so. Joseph’s mother consented to the assessment plan, which included that Joseph would be evaluated in English along with a Korean interpreter for the verbal portions of the assessment. The hearing officer concluded that Korean cues would have disturbed the validity of the test, thus native language administration of test was not feasible.

As to the issue of the school district failing to provide supplementary services, the Court reasoned that given the hearing officer’s findings should be awarded due weight and the evidence did not conclusively demonstrate supplemental service as necessary to ensure Joseph received “some educational benefit,” there was no substantive violation of the IDEA.
The Court reasoned that compensatory education services could be awarded as appropriate equitable relief and the District Court had discretion on how to provide for the relief. It further reasoned that there was no obligation to provide a day-for-day compensation for time missed.

Finally, the Court reasoned that the District Court abused its discretion in concluding that Joseph’s parents were not the prevailing party and that given the narrow discretion a District Court has to deny fees in claims brought under IDEA, the District Court’s decision ignored the letter and spirit of the law’s purpose of allowing attorney’s fees in cases where the parents have been forced to litigate against school districts to obtain all of what IDEA requires.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed in part, reversed in part, and remanded in part the decision of the District Court.

Citation: P.N. v. Seattle School Dist. No. 1, 474 F.3d. 1165 (9th Cir. 2007).

Key Facts: P.N. repeatedly asked the Seattle School District to evaluate her child for a learning disability due to his difficulty in school. The school district refused. P.N then obtained a private psychological evaluation and enrolled her son in private school. In March 2003, P.N. hired an attorney to represent her as she attempted to recover the costs of the private psychological evaluation and her child’s private school tuition.

After much correspondence between P.N.’s attorney and school district personnel, the school district agreed to fund P.N.’s child’s private school for the summer of 2003 and for part of the 2003-2004 school year, but did not agree to pay tuition from March to June 2004 or for the private evaluation. In November 2003, P.N. filed for a due process hearing under IDEA. In January 2004, P.N. and the school district entered into a settlement agreement. The terms of the agreement were that the school district would reimburse P.N. for the costs associated with her
child’s psychological evaluation and attendance at the private school. The settlement agreement reserved any issue of attorneys’ fees and costs. At P.N.’s request, the due process hearing proceedings were dismissed.

In February 2004, P.N. filed an action for the recovery of attorneys’ fees and costs under IDEA. The District Court denied P.N.’s summary judgment motion. P.N. appealed.

Issue: At issue is whether the parent can recoup her attorney’s fees under IDEA even though she resolved her differences through a settlement agreement.

Holding: The Courts of appeal held that the parent was not a prevailing party entitled to recover attorney fees under IDEA.

Reasoning: The Courts of appeal reasoned that P.N. was not entitled to attorney’s fees due to reasons that were consistent with its own precedent and its sister circuit’s decisions. The Court reasoned that the definition of “prevailing party” as defined by the Supreme Court in Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of health & Human Res. (2001) as it pertains to IDEA’s attorney’s fees provision requires that there be a judicial sanction of the settlement agreement. The Court reasoned that there was no judicial sanction of the settlement agreement in this case.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: Van Duyn Ex Rel. Van Duyn v. Baker School Dist. 5J, 502 F.3d 811 (9th Cir. 2007).

Key Facts: Christopher was a severely autistic child who received extensive special education services while in elementary school. In February 2001, the IEP team, including Christopher’s mother, developed an IEP for Christopher’s transition to middle school.
Christopher’s 6th grade IEP stated he would work on language arts 6-7 hours a week, math 8-10 hours a week, and adaptive PE 3-4 hours a week. His IEP also included a BIP. The BIP was not implemented by the school district as written.

The IEP also stated that all instruction would be presented at Christopher’s level and placed him in a “self-contained” special education room. He typically received one-on-one instruction from his personal aide and some instruction from his two main teachers. The IEP called for an autism specialist to visit the classroom and for his aide to receive state autism training. She did not receive state training but did attend local training and consulted with others who had worked with Christopher in the past. Though the middle school measured his progress quarterly, the report cards did not track the IEP as well as the elementary school report cards did. According to testimonies of school district staff and progress reports, Christopher improved in most areas of his IEP but regressed in reading.

In September 2001, Christopher’s parents filed a request for a due process hearing alleging the school district had completely failed to provide specific services as outlined in the IEP and materially failed to implement other IEP provisions. Following the hearing, the ALJ found that the school district had failed to implement the IEP with regard to Christopher’s math goals because he was not being given math instruction for the specified time in the IEP. The ALJ ordered the school district to provide Christopher with the average of 5 hours per week of instruction in math that he did not receive. In all other areas, the ALF ruled in favor of the school district. Christopher’s parents appealed the decision to the District Court. The District Court concluded that the school district had complied with the ALJ’s order and that there had been no failure to implement a substantial provision of the IEP. They further found that Christopher’s
parents were not entitled to attorney’s fees because they were not the prevailing party.

Christopher’s parents appealed.

Issue: At issue is whether the school district’s failure to fully implement Christopher’s IEP as written is a denial of FAPE and if Christopher’s parents should be awarded attorney’s fees.

Holding: The Courts of appeal held that the school district’s failure to implement Christopher’s IEP did not constitute IDEA procedural violations. They also held that the services the school district were providing were not materially different from the services stated in the IEP, with the exception of the math instruction provided prior to the ALJ’s order. Furthermore, the Court held that because Christopher’s parents partially prevailed in the administrative proceeding, they were entitled to partial attorney’s fees but not for his mother’s legal services.

Reasoning: Christopher’s parents alleged that the school district changed the IEP because they did not implement all parts of the IEP. The Court reasoned that there was no evidence in the record that the school district ever attempted to change Christopher’s IEP and there were no concrete proposals to change the IEP. There was no testimony or documentary evidence that the school district decided to revise the IEP in secret. Furthermore, stating that the IEP was “changed” because parts of it were not implemented is not language that is supported by IDEA.

The Court reasoned that no standard for assessing an IEP’s implementation had been articulated so it examined IDEA and decisions of other courts. The Court reasoned that IDEA’s language counsels against making minor implementation failures actionable given that special education and related services need only be provided in conformity with the IEP. The court reasoned there was no statutory requirement to prefect adherence to the IEP, nor any reason to view minor implementation failures as denials of FAPE. The Court reasoned that in Rowley the
Supreme Court found that procedural flaws in an IEP’s formulation did not automatically violate the IDEA, but only did so when the violation resulted in the child not being able to receive educational benefits. Furthermore, the 5th and 8th Circuits both determined that FAPE would only be denied if the school district failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit. The Court therefore reasoned that the school district’s failure to implement all parts of the IEP did not result in a lack of educational benefit for Christopher, the provision of FAPE was not violated.

With regard to Christopher’s parents’ request for attorney’s fees, the Court reasoned that because the parents were the prevailing party to the extent that the ALJ ruled in Christopher’s favor regarding the amount of math instruction he was due, the parents were entitled to a portion of their attorney’s fees.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed in part and reversed in part and remanded the decision of the District Court.

Citation: R.B. Ex Rel. F. B. v. Napa Valley Unified School, 496 F.3d. 932 (9th Cir. 2007).

Key Facts: R.B. was born in 1991 to a mother who had abused illegal drugs while pregnant. R.B. exhibited delayed visual maturation, irritability, and delayed motor skills as a result of drug exposure. R.B.’s natural father molested R.B. when she was two, for which R.B. required a year of play therapy due to self-mutilation and inappropriate displays of affection. Both of R.B.’s parents were incarcerated and a schoolteacher, F.B, adopted R.B. When R.B. was 3 years old, a psychologist diagnosed her with ADHD, Reactive Attachment Disorder and Post Traumatic Stress Disorder.

Due to R.B.s’ classroom behavior, R.B. was expelled from three different preschool programs. F.B. placed R.B. with the school district and she was deemed eligible for special
education services. The school district developed an IEP for R.B and, at the appropriate time, placed her into a regular kindergarten class with resource support. In first grade, the school district found R.B. to be no longer eligible for special education services. They determined she did qualify for Section 504 services and developed a behavior plan for her. F.B. agreed to these changes after a private psychologist conducted an evaluation that confirmed the school district’s conclusion.

Throughout elementary school, R.B. excelled academically but had some issues behaviorally. She slammed a student’s head into a computer monitor in second grade and was suspended in third, fourth, and fifth grades for violent acts toward other students. She often refused to take her ADHD medication and was restrained by law enforcement on a couple of occasions. The school district implemented a BIP at the end of fifth grade, which seemed to remedy her behavior.

In Spring 2002, F.B. met with an educational consultant who referred R.B. to a private psychologist. After an evaluation, the psychologist recommended residential placement for R.B. On July 15, 2002, F.B. notified the school district in writing that she intended to place R.B. in a residential treatment facility and expected the school district to reimburse her for the placement. F.B. placed R.B. at Intermountain Residential Treatment Facility where she exhibited controlling and physically aggressive behavior toward staff and students.

On August 6, 2002, F.B. requested an impartial due process hearing. The school district evaluated R.B. while she was at Intermountain and concluded she was not eligible for special education services. In January 2003, the school district convened an IEP team who concluded R.B. was not eligible for special education benefits. The IEP team was comprised of a special education teacher who also served as Director of Special Education for the district, a principal,
the district psychologists, attorney for the district, F.B. and her attorney. F.B. appealed. The hearing officer of the California Special Education Hearing Office found for the school district, concluding that R.B. did not meet the IDEA’s standard for a child with a severe emotional disturbance. The hearing officer also concluded that any procedural violation in the composition of the IEP team did not constitute any deprivation of educational opportunities. F.B. filed a complaint in the Northern District of California. The district court granted the school district’s motion for summary judgment and denied F.B.’s cross-motion. The District Court found for the school district and F.B. appealed.

Issue: At issue is whether the school district violated IDEA by not having all required members of the IEP team in attendance when determining if R.B. was eligible for special education services and if this violation caused a denial of FAPE.

Holding: The Courts of appeal held that the school district’s inclusion of a teacher, who taught R.B. 6 years prior, in the IEP meeting, did not violate IDEA. The Court held that the school district’s inclusion of a special education teacher who had never taught R.B. in his IEP meeting was an IDEA procedural error, however, this violation did not result in a loss of FAPE.

Reasoning: The Courts of appeal reasoned that IDEA required the IEP team to be comprised of one regular education teacher of the child and one special education teacher, or where appropriate, one special education provider of the child. As to the complaint that the general education teacher who attended the meeting was not the current teacher of R.B., the Court reasoned that IDEA no longer required the presence of the student’s current regular education teacher and that IDEA gave the school district more discretion in selecting the regular education teacher who would attend as an IEP team member. As to the complaint that the special education teacher selected did not meet the requirements of IDEA, the Court concluded that the
special education teacher who attended R.B.’s meeting did not satisfy the requirements of IDEA because she never had been nor would be his special education teacher if R.B. were to be eligible for special education services. The Court further reasoned that the school district’s failure to include a special education teacher or provider on the IEP team who actually taught R.B. was a procedural violation of IDEA. However, the Court reasoned that because R.B. did not qualify under IDEA, this procedural violation did not constitute a denial of FAPE.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: Termine v. William S. Hart Union High Sch., 249 Fed.Appx. 583 (9th Cir. 2007).

Key Facts: The school district appealed the District Court’s finding that affirmed in part and reversed in part the decision of the hearing Officer. The District Court found that the school district failed to properly implement Aja’s IEP after she enrolled in October 2001. As a result, the District Court found that Aja was denied FAPE from the period between October 2001 and July 2002. Aja’s parents appealed the District Court’s decision to not designate the private school that Aja was attending as the “stay put” placement.

Issue: At issue is whether the school district denied Aja FAPE by improperly implementing the IEP and whether the District Court erred by not appointing the private placement as “stay put.”

Holding: The Courts of appeal held that the school district denied Aja FAPE and, as a result, the school district was required to reimburse a portion of Aja’s private school tuition. The Court also held that the District Court’s failure to designate the private school as “stay put” placement was proper.
Reasoning: The Court found that there were three distinct subsequent periods that the school district failed to properly implement Aja’s IEP. The first period, from October 3 through October 18, was the first. The Courts of appeal reasoned that the school district was required to immediately provide an interim placement for a period not to exceed 30 days. The school district failed to offer an interim placement until October 18th, thus Aja was denied FAPE for the first period. The Court reasoned that Aja was denied FAPE for the second period, from October 18th to November 2nd, because the school district failed to implement Aja’s interim placement to the same extent possible within existing resources as the Glendale IEP. The Glendale IEP provided for Aja to spend no time in general education, but the school district’s IEP placed Aja in general education 32% of her time. From November 2nd to July 3rd, the third period, the school district was required to conduct an IEP meeting to make a final placement offer to Aja. The school district failed to do so, thus the Court reasoned Aja was denied FAPE for this period as well.

The Court reasoned that the District Court did not err in finding that the school district should only reimburse a portion of Aja’s tuition for the private placement. The Court reasoned that Aja’s mother was uncooperative to the point of delaying Aja’s assessment and final IEP meeting to properly place Aja, and the court has a right to deny or reduce tuition reimbursement if the court finds that a parent acted unreasonably.

The Court found that the District Court did not err in not declining to designate the private placement as Aja’s “stay put.” The Court reasoned that while the private placement was an appropriate placement, it was not the only placement that would have satisfied California Education Code and serve as an appropriate “stay put.”

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.
Citation: *Blanchard v. Morton School Dist.*, 509 F.3d 934 (9th Cir. 2007).

Key Facts: Ms. Blanchard, an attorney, represented her son with Autism against the school district in a previous IDEA case and was successful. The Courts of appeal remanded the case back to the District Court for proceedings regarding reimbursement for Ms. Blanchard’s own emotional distress incurred while litigating for her son’s IDEA rights. On remand, the District Court entered summary judgment for the school district reasoning that Ms. Blanchard’s claim was not recognized under either title II of the ADA or Section 504 of the Rehabilitation Act because Ms. Blanchard was not a qualified individual with a disability. The District Court also held that Ms. Blanchard had no individual rights under IDEA and that the enforcement scheme of IDEA did not contemplate the damages she sought. After the District Court’s judgment, however, the Supreme Court held that parents do have individually enforceable substantive rights under IDEA in *Winkelman ex rel. Winkelman v. Parma City School Dist.*, (2007). Specifically, the Supreme Court ruled that parents do have a right to seek remedies under IDEA when they appear pro se for their child seeking FAPE as guaranteed under IDEA. Thus, Ms. Blanchard appealed the District Court’s findings.

Issue: At issue is whether Ms. Blanchard is entitled to damages for emotional distress resulting from the enforcement of her child’s educational rights under Section 1983, ADA, and the Rehabilitation Act.

Holding: The Courts of appeal held that Section 1983 did not create cause of action for money damages on part of a parent. The Court held that while the parent did have standing to seek damages under ADA or the Rehabilitation Act, she was not entitled to damages for lost profits under either Act.
Reasoning: The Courts of appeal reasoned that Section 1983 does not in itself create any right under federal law. It only provides remedies for violations of federal rights where a federal statute creates an individually enforceable right in the class of beneficiaries to which it belongs. The Supreme Court reasoned that the Supreme Court has held that IDEA was the exclusive means of remedying violations of the rights is guaranteed. After that finding, Congress amended the statute to include the Handicapped Children’s Protection Act of 1986. The Circuits were split on whether Congress intended the IDEA rights to be enforceable under section 1983. The First, Third, Fourth, and Tenth Circuits have held that Congress did not intend for IDEA rights to be reinforceable under section 1983 and the Second and Seventh Circuits have held that Congress did intend so. The Eighth Circuit has holdings going both ways. The Courts of appeal for the 9th Circuit reasoned that the Third Circuit persuaded the 9th Circuit with it’s reasoning in *A.W. v. Jersey City Pub. School* (2007) and, thus reasoned that section 1983 claims are precluded from the violation of rights under IDEA. Regarding Ms. Blanchard’s claims under section 504 of the Rehabilitation Act of 1973, the Court reasoned that the Supreme Court has ruled that a parent of a child with a disability has a particular and personal interest in preventing discrimination against their child, Therefore, the Court reasoned, that while Ms. Blanchard could seek damages under IDEA, Ms. Blanchard is not entitled to damages under IDEA because she abandoned that claim by failing to raise it in her brief on appeal.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: *Mendoza v. Yorba Linda Unified School Dist.*, 278 Fed. Appx. 737 (9th Cir. 2008).
Key Facts: Samuel Mendoza attended school in the Yorba Linda Unified School District. He claimed that the school district denied him FAPE because they failed to evaluate his learning disabilities. He claimed they failed to provide him educational, social-emotional, mental health, and behavioral services and failed to design an IEP tailored to his needs. The ALJ and the District Court found in favor of the school district, holding that Samuel’s claims held no merit. Samuel appealed.

Issue: At issue is whether the school district denied Samuel FAPE by

Holding: The Courts of appeal held that Samuel was not denied FAPE by the school district.

Reasoning: The Courts of appeal reasoned that the school district performed the required reassessment for Samuel but failed to administer the test as instructed in the test manual. Due to this violation, the ALJ awarded Samuel an appropriate remedy. The Court reasoned that Samuel did not establish that the school district failed to evaluate him in any area suspected to negatively impact his education. The Court reasoned that Samuel was placed in several special education classes as described in his IEP. The Court reasoned that Samuel’s mother attended the IEP meetings that determined his placement. Also, Samuel made educational progress. The Court reasoned that no evidence was presented that demonstrated that Samuel needed any emotional or behavioral intervention services. The Court finally reasoned that Samuel’s final IEP fully addressed his education program and provided appropriate goals in his identified areas of need.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: *N.B. v. Hellgate Elementary School Dist.*, 541 F.3d 1202 (9th Cir. 2008).
Key Facts: C.B. was almost 3 years old when he was examined by Dr. Gold and found to have autistic tendencies. Dr. Gold recommended speech therapy. At the time, C.B.’s parents lived in New Jersey. In June 2003 the school district in which they resided developed an IEP for C.B. to be implemented July 1 to September 2003 for the 2003-2004 school year. The IEP called for 12.5 hours of special instruction, group speech language therapy two times a week for 30 minutes and individual speech therapy two times a week for 30 minutes.

In the summer of 2003, C.B. and his family moved to Montana and he enrolled in a public elementary school. In August 2003, C.B.’s parents met with the Special Education Director and discussed Dr. Gold’s evaluation. The elementary school adopted and implemented the IEP developed in New Jersey, but soon decided the plan was not benefitting C.B. They reduced his speech therapy time. In the mean time, C.B.’s parents enrolled him in a private preschool program because they were concerned about autism.

In September 2003, C.B.’s elementary school met to develop a new IEP for C.B. The team stated they did not have enough information about C.B.’s educational needs to write specific IEP goals and objectives for him. They did not discuss Dr. Gold’s evaluation, though they all had copies and had read it prior to the IEP meeting. The team recommended an evaluation including classroom observations for six weeks and recorded this plan in a “diagnostic IEP.”

In November 2003, the school district held an IEP meeting to develop an IEP to replace the diagnostic IEP. The parents expressed their concern about autism and the team recommended C.B.’s parents take him to Missoula Child Development Center (CDC) where he could get a free autism evaluation. The parents followed through and in March, CDC identified C.B. as exhibiting behaviors consistent with Autism. The school district held an IEP to discuss this
information and began incrementally increasing C.B.’s preschool instruction time to more than 12 hours per week.

In May 2004, the IEP team met to develop an IEP for C.B. for the following school year. They determined that C.B. was not eligible for ESY services for the 2002-2003 school year. C.B.’s parents disagreed, refused to sign the IEP and did not enroll C.B. in the school district in September 2004. C.B.’s parents filed for a due process hearing in September 2004. The hearing officer found in favor of the school district and C.B.’s parents filed a complaint with the District Court of Montana in May 2005. The District Court affirmed the hearing officer’s order and the parent appealed.

Issue: At issue is whether the diagnostic IEP developed by the school district was valid and whether the school district failed to meet its obligation to evaluate C.B. in all areas of suspected disability. At issues is also whether the school district denied C.B. his substantive rights under IDEA by denying C.B. ESY.

Holding: The Courts of appeal held that the school district’s failure to evaluate C.B. in all areas of suspected disability was a procedural error that resulted in a denial of C.B.’s FAPE. The Court held that the District Court correctly applied the regression/recoupment standard when determining if C.B. was eligible to receive ESY and the hearing officer reasonably relied on testimony of school district personnel in determining that C.B. did not require ESY services. The Court held that the District Court’s error in referring to outdated “some educational benefit” standard was harmless.

Reasoning: The Courts of appeal reasoned that a child must be tested in all areas of suspected disability and this includes gathering information to assist in developing the child’s IEP and information related to enabling the child to be included in the LRE. IDEA identifies the
local educational agency responsible for administering the comprehensive evaluation in all areas of suspected disability. The Court reasoned that the fact that the school district suggested C.B.’s parents obtain an evaluation from the CDC and that the school district failed to procure the evaluation shows that the school district was mindful that an autism evaluation was necessary and that it did not fulfill its statutory obligations by conducting the evaluation. The Court reasoned that the school district couldn’t abdicate its affirmative duties under IDEA. The Court reasoned that because the school district lacked the evaluative information that C.B. had autism spectrum disorder, it was not possible for the IEP team to develop a plan reasonably calculated to provide C.B. with a meaningful educational benefit through out the 2003-2004 school year and therefore, C.B. was denied FAPE and his parents were entitled to the costs of the services they incurred during the 2003-2004 school year and their associated legal fees.

The Courts of appeal reasoned that the District Court did not err in finding that C.B. did not qualify for ESY according to the regression/recoupment standard. The Court reasoned that ESY services are only necessary when the educational gains a child makes during the regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. The Court reasoned that though IDEA does not specify factors to be considered in determining entitlement to ESY, Montana Office of Public Instruction identified a variety of factors to be used in determining whether regression/recoupment of skills required ESY. The school district correctly applied those factors, thus the hearing officer and the District Court did not err in their findings.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the District Court’s decision that the school district properly denied C.B. ESY services. The Courts of appeal vacated the part of the District Court’s finding that the school district fulfilled its procedural
requirements under IDEA in developing the IEPs for the 2003-2004 school year. Upon remand, the Courts of appeal instructed the district court to calculate the costs incurred by C.B.’s parents for the 2003-2004 school year for providing alternative educational services and their legal fees.

Citation: J.G. v. Douglas County School Dist., 552 F.3d 786 (9th Cir. 2008).

Key Facts: In May 2003, a mother took her twin boys to a free screening for disabilities at the Brain Power Community Learning Center. The Center referred the twins to the public school district because the school district had a program for developmentally delayed children. After visiting the school district’s child-find office, the mother completed a questionnaire for each of her children. The school district confirmed receipt of both questionnaires on May 7, 2003. Because the mother did not receive notice of evaluation she obtained a private evaluation from the Center and the twins began receiving special education services one week later from The Center. On August 15, 2003, the school district notified the mother that it would conduct evaluations for the twins on June 20th. The mother asked for the evaluation to be conducted earlier, but that did not happen. The school district began evaluating the twins for in June but concluded that the twins’ lack of responses indicated that the twins were developmentally delayed. The evaluator scheduled more individualized testing for August 15, 2003. On that date, the school district conducted an assessment of each twin and held an assessment meeting. The school district presented the twins’ mother with her IDEA parental rights and she signed a “Parent Consent to Evaluate” form.

On August 25th the school district held an IEP meeting and found the twins eligible for services. The mother attended the meeting with a binder labeled “Autism” and the school psychologist asked if she was concerned about the twins being autistic. She responded that the Center thought the twins were autistic but they wee not sure. The twins began attending the
school district’s TEDDY program and they continued to receive services at The Center. On September 25, 2003, the school psychologist began assessing the twins for autism. On October 1, the parents sent a letter to the school district stating the Center had evaluated the twins for autism. The letter requested payment for The Center’s services.

On October 7, 2003, the school district asked the parents to release the records from the Center but they refused. The twins’ mother did agree to bring staff from the Center to a meeting. At the October 8th meeting, the Center staff shared some data but the parents refused to share further information unless the school district paid for it. After completing her evaluations, the school psychologist determined both children to be autistic. The school district began working on a revised IEP.

In the meantime, the special education teacher informed the mother that she might not be able to implement the new IEP, but became comfortable with the proposed IEP after she learned she would receive more training. On October 13, the parents removed the twins from the TEDDY program and expressed concerns about new behavior problems the twins were exhibiting. The parents again asked the school district to pay for the twins to attend the Center.

By November 4th, the school district had found both boys eligible for autism services and proposed new IEPs that added time for discrete trial training, extended school year, and functional behavior analysis at the twins’ home and school. The twins’ mother was informed that the district had contracted with two private behavior analysts for support in implementing the discrete trial training program. The parents rejected the school district’s proposed IEPs and requested the Center’s Discrete Trial Teacher to continue working with the twins. The school district had considered hiring her but she did not have early childhood authorization and was reluctant to work for the school district except in a supervisory role. The school district wrote a
letter to the parents informing them of the FAPE services and rejecting their request for payment for the Center. The parents stopped sending the twins to the Center due to the cost and kept the twins home with no services.

On December 4th, the parents filed for due process. The hearing officer found that the school district committed procedural violations by not evaluating the twins in a timely manner and concluded that the school district should reimburse the parents for services between August 13th and August 25th. The school district appealed. The State Review Officer adopted all of the hearing officer’s findings of fact but reversed her decision awarding the compensation. The State Review Officer concluded that the district had denied the twins FAPE when it did not provide the parents with a notice of proposal to evaluate and notice of procedural safeguards on May 7th. They ordered the school district to compensate the parents fifty percent of the cost for obtaining the Center’s evaluation. The parent’s appealed to District Court and added the allegation that the school district discriminated against the twins by violating section 504 of the Rehabilitation Act of 1973 for segregating the twins. The District Court affirmed the State Review Officer’s decision and granted the school district’s motion for summary judgment on the discrimination claim. The parents appealed.

Issue: At issues is whether the district court abused its discretion in reducing their award by fifty percent for equitable reasons and abused its discretion by not awarding them the costs of services. At issue is whether the August 2003 and the October/November IEPs were adequate to provide FAPE. Also at issues is whether the school district discriminated against the children by segregating them into a preschool for developmentally delayed children.

Holding: The Courts of appeal held that the District Court abused its discretion by awarding fifty percent of the cost for the twins’ private evaluation and the school district’s
evaluation complied with IDEA procedures. The Court held that the delay between the school district providing notice of its intent to evaluate the twins and the date the twins began receiving services was reasonable. The Court held that the school district had adequate resources to implement the IEP. Finally, the Court held that the parents did not exhaust their claim under the Rehabilitation Act that the school district’s placement of the twins was discriminatory.

Reasoning: The Courts of appeal reasoned that the parents did not receive appropriate notice of the school district’s intent to evaluate the twins. They then had their children privately evaluated, which was reasonable given they were not informed that the school district would conduct evaluations of their children. The court reasoned that even thought the parents did not share their private evaluation results with the school district, the school district had an obligation to conduct its own evaluation. Thus, it would be improper to reduce the parents’ compensation for the private evaluation when it did not harm the school district.

The Court reasoned that the school district violated IDEA when it did not provide the parents their notice of the procedural safeguards of IDEA. However, those safeguards only notify parents about a pending evaluation. The school district must provide services only after they have determined that a child is eligible to receive services. Therefore, the Court reasoned that it would not be appropriate to compensate the parents for services before the school district had determined the twins were eligible for services. The Court reasoned that even though the parents claimed the twins needed services, this had no bearing on the procedural requirement that was violated by the school district.

The Court reasoned that IDEA, DOE, and OSEP require school districts to conduct evaluations in a reasonable time. IDEA allows states to establish their own procedures under IDEAs significant requirements. Nevada imposes a forty-five day timeline from the date consent
for evaluation is signed to the day eligibility is determined. The Court reasoned that the school
district did delay one-month but this was essential in order to gain rapport with the children, thus
the delay was not reasonable. The Court reasoned that administrative delays needed to promote
effective test results should not render the school district’s actions unreasonable. The Court
reasoned that because the school district could not immediately administer an autism evaluation,
the August evaluations qualified as initial evaluations under IDEA. The Court reasoned that the
school district took the necessary time to conduct the needed assessments and then began
addressing the needed additional services for the twins after the autism evaluation.

The court reasoned that the August IEPs were appropriate to provide educational benefit
and were based on the testing that could be conducted at that time. Though the IEPs lacked
individualization between the twins, the testing conducted only displayed one difference between
the twins. Thus, the lack of individualization was to be expected. Furthermore, the Court
reasoned, the school district planed to conduct more evaluations as soon as it could do so
effectively.

The Court reasoned that the school district did have personnel capable of implementing
the October and November IEPs. The school district contracted two private behavior analysts for
support in implementing discrete trial training and other trained personnel to perform functional
behavior analysis a the twins’ home and at school. The Court reasoned that the parents did not
allow the school district to provide these services.

The Court reasoned that the parents added a claim of discrimination under the
Rehabilitation Act for the first time in District Court. The Court reasoned that the parents went
through the administrative process but did not argue that the school district discriminated against
the twins by segregating them in the TEDDY program. The Court reasoned that the parents did
not properly present this claim to the District Court and the school district had no notice that the parents considered the twins’ placement discriminatory. The Court reasoned that the District Court should have dismissed this claim without prejudice for lack of jurisdiction.

Disposition: The United States Courts of appeal for the 9th Circuit reversed the District Court’s decision to reduce the reimbursement for the private evaluation and vacated the District Court’s decision regarding the Rehabilitation Act claims and remanded with instruction that the District Court dismiss that claim without prejudice. The Court affirmed the District Court’s decision on all other IDEA claims.

Citation: *L.M. v. Capistrano Unified School Dist.*, 556 F.3d 900 (9th Cir 2009).

Key Facts: L.M. was diagnosed with autism when he was 2.5 years old. He began receiving early intervention services from the Regional Center of Orange County in August 2004. He received speech and occupational therapies. He also received in-home behavioral services from a private organization, Autism Comprehensive Educational Services (ACES). In December 2004, L.M.’s parents began paying ACES for additional hours of one-on-one services, eventually working up to 25 hours of services a week.

In November 2004, L.M.’s parents met with the school district to begin discussing L.M.’s transition to the school district upon his third birthday. The school district conducted several observations of L.M. during his in-home education services and in January 2005, held an IEP meeting to discuss L.M.’s assessment results and to develop an IEP. The school district offered to place L.M. in the Palisades Elementary School, provide individual behavior instruction for 4 hours a week, speech therapy for 1 hour a week and occupational therapy for 30 minutes a week. They also offered to provide extended school year services. L.M.’s parents participated in the meeting but did not indicate whether they accepted the school district’s proposed IEP. They
visited the school twice. The asked for their private psychologist to be able to observe the program for 90 minutes, but the school district limited her to 20-minute increments due to a district policy. She only observed one 20-minute session and never returned for additional observations. After L.M. turned three on January 2005, he did not enroll in the school district and his parents continued to fund one-on-one private services from ACES.

In February and March 2005, the school district psychologist attempted to contact L.M.’s parents to discuss the proposed IEP. L.M.’s parents never responded and filed for a due process hearing alleging the school district did not offer FAPE through their proposed IEP. The school district then sent a letter to L.M.’s parents offering additional services. In June, the IEP team met again with L.M.’s parents. L.M.’s father, Samuel, asked questions regarding the research behind the school district’s proposed program. The school district felt interrogated and did not answer Samuel’s questions. When school district staff attempted to redirect the conversation to areas specific to L.M., Samuel objected stating that the last 2 minutes of the meeting should be used to discuss the school district’s topics. In September 2005, L.M.’s parents enrolled him in the Center for Autism and Related Disorders Program.

At the hearing, the Administrative Law Judge (ALJ) who served as the hearing officer focused on whether the school district offered L.M. FAPE in the LRE from January 22, 2005, through April 7, 2005; from April 7, 2005, through June 7, 2005; and from June 7, 2005, through February 2006. Lastly she focused on whether L.M. was entitled to reimbursement for the services funded by his parents and/or his prospective placement. The ALJ concluded the school district failed to offer L.M. FAPE from January 22, 2005, to April 7, 2005, because the amount of time of offered speech services was not clearly delineated and because the proposed IEP lacked an individualized transition plan. The ALJ found that he school district failed to offer
L.M. FAPE in the LRE during from April 7, 2005, to June 7, 2005, because the revised IEP still failed to offer an appropriate amount of time for speech services. Due to these procedural violations, the ALJ ordered the school district to reimburse L.M.’s parents for the cost of providing in-home services from January 22, 2005, to April 7, 2005 and for speech therapy form January 22, 2005, to July 22, 2005, and from the beginning of the 2005-2006 school year until the date of the ALJ’s decision filed March 28, 2006. The ALJ determined that the school district violated California Education Code when it limited L.M.’s parents’ private psychologist to 20-minute observation periods; however, the ALJ determined this violation to be harmless because it did not contribute the denial of FAPE. The ALJ also reasoned that 70 more minutes of observations wound not have likely affected the weight given the testimony of the private psychologist. The ALJ did not find that L.M.’s parents should receive reimbursement fo the costs of in-home care after April 7, 2005, or that L.M. was entitled to prospective placement with his current providers since the school district’s most current proposed IEP offered FAPE.

L.M.’s parents filed in District Court primarily due to the ALJ’s finding of harmlessness with regards to the school districts’ 20-minute limitation on observational time by the parents’ private psychologist. The District Court found that the limitation was a procedural violation of IDEA because it deprived the parents to their right to meaningful participation in the IEP process. The District Court ordered the school district to reimburse L.M.’s parents for the cost of all in-home services from January 22, 2005, until the date of the properly prepared IEP. The District Court remanded the case to the ALJ for a determination on the reimbursement amount and the school district appealed.
Issue: At issue is whether the school district restricted the parents’ right to participate in the development of the IEP of their child, L.M. by limiting their classroom observation time to 20 minutes.

Holding: The Courts of appeal held that the District Court failed to consider whether limiting L.M.’s parents’ classroom observational opportunities to 20 minutes was harmless because the parents had a full opportunity to participate in the process to develop an IEP for L.M. The Court held there was no evidence to support a finding that L.M.’s parents’ right to participate was significantly affected.

Reasoning: The Courts of appeal reasoned that California Education Code provided that if a public education agency observed a student as part of conducting an assessment then an equal opportunity should be provided for an independent educational assessment for the parents with regard to observation of the proposed educational placement. The Court reasoned their clear precedent was a procedural violation may be harmless and the consideration must be given to whether the procedural error resulted in a loss of educational opportunity for the student or significantly restricted the parents’ participation in the IEP process. The Court reasoned that the parents failed to present any evidence that undermined the ALJ’s credibility of findings nor did they offer up any evidence that they could have found had they received more classroom observation time. The Court reasoned that the District Court misconstrued the ALJ’s finding and filed to properly apply the harmless error analysis required by the Ninth Circuit’s precedent that not all procedural flaws result in the denial of a FAPE.

The Court reasoned that L.M.’s private placement did not qualify under the ‘stay-put” provision because the District Court made no determination to imply that L.M.’s private program
was an appropriate placement. Thus, the “stay-put” provision did not apply and the District Court properly denied the parent’s motion.

Disposition: The United States Courts of appeal for the 9th Circuit reversed the District Court’s order requiring the school district to reimburse L.M.’s parents for the cost of in-home services and vacated its subsequent award of attorney’s fees to L.M.’s parents as the prevailing party. The Court affirmed the District Court’s denial of a “stay put” order requiring the school district to reimburse L.M.’s parents for continuing educational expenses beyond that covered in its original order.

Citation: Joshua Ex Rel. Jorge v. Rocklin Unified, 319 Fed.Appx. 692 (9th Cir. 2009).

Key Facts: Joshua A’s parents filed action alleging the school district did not provide him with FAPE. The ALJ and the District Court both granted judgment for the school district and the parents appealed.

Issue: At issues is whether the school district’s IEP was appropriate to provide FAPE. Also at issue is whether the school district violated the procedural requirements of IDEA by failing to incorporate all of the goals suggested by Joshua’s private provider and failing to include one of Joshua’s private school teachers in his IEP meetings.

Holding: The Courts of appeal held that the District Court appropriately gave due weight to the ALJ’s opinion. The Court held that the school district’s proposed IEP was valid and it provided meaningful benefit. The Court held that the alleged procedural violations did not violate IDEA.

Reasoning: The Courts of appeal reasoned that IDEA does not require that any state adhere to any specific educational methodology. IDEA only requires that the LEA’s educational plan provide specialized instruction supported by services that are necessary to permit the
student to benefit from instruction. The Court reasoned that Joshua’s IEP was valid under IDEA because it was effectively tailored to Joshua’s unique needs, was supervised and administered by qualified personnel, and it implemented a program based on accepted principles in the field of autism education. Furthermore, the methodology used by the school district conformed to best practices in the field and was effectively used to educate autistic children with similar conditions.

The Courts of appeal reasoned that none of the alleged procedural violations resulted in the loss of educational opportunity or seriously infringed on the parent’s opportunity to participate in the IEP process not did they cause a deprivation of educational benefits. The Court also reasoned that Joshua’s IEP Rowley’s standard of meaningful benefit because it was calculated to provide some educational benefits for Joshua. As to the allegation that the methodology used by the school district was not based on peer-reviewed research, the Court reasoned that both Adams and Deal found that an eclectic approach similar to the proposed plan met the IDEA’s substantive requirements because the eclectic approach was based on peer-reviewed research to the extent practicable.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: A.G. v. Placentia-Yorba Linda Unified Scho., 320 Fed.Appx. 519 (9th Cir. 2009).

Key Facts: A.G.’s parents sued the school district because they did not include A.G.’s current special education teacher in his May 14, 2004, IEP meeting. They included a person who had taught A.G. in the past. The ALJ and District Court found in favor of the school district and A.G.’s parents appealed.
Issue: At issues is whether the school district should have included A.G.’s current special education teacher in his IEP meeting.

Holding: The Courts of appeal held that the IEP meeting in question was procedurally valid.

Reasoning: The Courts of appeal reasoned that IDEA’s provision that at least one special education teacher or provider of the student should be present in the IEP meeting, was interpreted by this court in R.B. v. Napa alley Unified School District (2007). Under Napa Valley, an IEP team meeting is procedurally valid as long as it includes a special education teacher or provider who has actually taught the student. In this case, it was undisputed that a teacher who had taught the student was present. The Court reasoned that even though they agreed with the parents that it would be difficult to comply with IDEA’s emphasis on the student’s present level of performance without a current teacher of the child being present in the IEP meeting, Napa Valley bound them to conclude the IEP team was appropriately formed.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: S.J. v. Issaquah School Dist. No. 411, 326 Fed. Appx. 423 (9th Cir. 2009).

Key Facts: S.J. attended school in the Issaquah School District through sixth grade. At that point, S.J.’s parents unilaterally placed him in private school because the parents and school district could not agree on an IEP for S.J. S.J.’s parents then filed for due process. The hearing was held and the hearing officer granted some, though not all, of the relief that S.J.’s parents were seeking. The parents filed a complaint in district court, which was timely under Federal Rules of Civil Procedure 3 and 6. S.J. then attempted to serve all defendants. Issaquah moved to dismiss to complaint on the grounds that the statute of limitations had run because S.J. had failed
to serve the defendants in a timely manner. The district court agreed that S.J.’s failure to meet the service requirement of the borrowed statute of limitations deprived it of jurisdiction and did not reach the issue of timely notification to the defendants. S.J. appealed.

Issue: At issue is whether in an action under federal law where there is no federal statute of limitations, does a federal court defer to the state’s time period for service of process as well as for filing suit.

Holding: The Courts of appeal held a federal court borrowing a state’s time period for filing suit brought under federal law should not also borrow the state’s time limits for serving the complaint.

Reasoning: The Court reasoned that Congress had not instituted a federal statute of limitations governing IDEA claims at the time of this action. Because of this the courts considering such claims would borrow the most closely comparable state statute of limitations that did not undermine the policies of IDEA. The Court referenced the Supreme Court decision in *Walker v. Armco Steel Corp.*, 446 US 740 (1980). The High Court held that when an action is commenced for purposes of the statute of limitations differs depending upon whether the action is based on state or federal law. When the underlying cause of action is based on federal law and it is necessary to borrow a limitations period from another federal statute, the action is not barred if it has been commenced in compliance with Rule 3 within the borrowed limitations period regardless of the borrowed statute’s services requirements.

Disposition: The United States Courts of appeal for the 9th Circuit reversed the decision of the District Court.

Citation: *Ashland School Dist. v. Parents of Student E.H.*, 587 F.3d 1175 (9th Cir. 2009).
Key Facts: E.H. first experienced emotional problems when he was in the third grade. He also began exhibiting difficulty with peer interactions and developed migraine headaches. By the time he was in fifth grade, his headaches became so severe that E.H.’s parents hospitalized E.H. His physician determined that E.H. suffered from anxiety and depression and that the headaches, while having a medical origin, were triggered by psychological factors.

The school district identified E.H. as eligible for special education services and developed an IEP, which was implemented during E.H.’s second year in fifth grade. E.H. showed some improvement. During his sixth grade and the first two trimesters of seventh grade, E.H. performed well academically and participated in a program for gifted and talented children. During seventh grade, however, E.H. became depressed and suicidal and began suffering from frequent migraines that ultimately required hospitalization.

During eighth grade, E.H. attended one class a day in regular middle school and spent the remainder of the day in an alternative educational program. Near the end of E.H.’s eighth grade year, the school district held an IEP meeting to develop a plan to transition E.H. to high school the following school year. Over the summer, E.H. was hospitalized twice for suicide attempts and his treating physician and therapists recommended residential treatment to address his persistent emotional and medical problems.

In September, the school district met to develop a new IEP. E.H.’s parents expressed that they wanted to enroll E.H. in the alternative setting he attended the previous year. The school district disagreed due to their inability to closely monitor E.H. in that program. The parents did not disagree with the IEP but did inform the school district that they were seeking an appropriate residential facility for E.H.
In late November, E.H.’s emotional problems began intensifying. The IEP team, including E.H.’s parents, agreed that homebound services were most appropriate. The school district did not develop a new IEP because they thought the homebound placement would be temporary. In December, E.H. was again hospitalized for suicide attempts and for threatening to injure his family members. He was able to return to school for a short period of time, but was then transferred by his parents to a private out-of-state residential treatment facility. E.H.’s parents never expressed any dissatisfaction with the IEPs developed by the school district.

Seven months after E.H. had been placed in a residential treatment facility, E.H.’s parents sent a letter to the school district that outlined their discontent with the educational services the school district had provided to E.H. and requested the school district reimburse the parent for the costs of E.H.’s residential treatment placement. In response, the school district held an IEP meeting and developed a new IEP. E.H.’s parents’ rejected the IEP and filed for a due process hearing.

The hearing officer concluded that the IEPs that the school district offered in September 2004 and December 2005 did not provide E.H. with FAPE. The hearing officer concluded that the residential treatment facility did provide FAPE and, therefore was the appropriate placement. The hearing officer found the parents had removed E.H. without notifying the school district of their concerns and this action permitted the hearing officer to deny or to reduce the amount of reimbursement.

The hearing officer determined that the school district should reimburse the parents for half of the cost incurred by the parents for the residential treatment facility E.H. attended prior to September 18, 2004, and all of the costs after September 2004. He determined that the parents did not satisfy the notice requirement, but did inform the school district that they were seeking
residential placement. The school district argued that they thought the placement was for medical reasons, not educational reasons. The hearing officer discounted this reasoning because he found that E.H.’s medical problems and educational problems were interwoven. The hearing officer determined that E.H.’s failure to complain about any the EIPs was in the school district’s favor, but the impact was tempered by the school district’s failure to offer an appropriate IEP. The hearing officer also found that the parents’ failure to notify the school district of their dissatisfaction of the IEPs was understandable given the school district did not notify the parents of their potential responsibility to pay for residential placement.

The school district appealed to District Court. The District Court reversed the hearing officer’s total award of reimbursement. The District Court found in favor of the school district for several reasons. First the Court cited the high cost of the residential placement; secondly, the court noted the parents failure to adhere to the statutorily required notice requirement; and lastly, the nature of E.H.’s condition was medically based and not educationally based. The parents appealed.

Issue: At issue is whether the district court abused its power by reversing the hearing officer’s award of reimbursement. At issue is whether the district court completely explained their opinion, satisfying the standard of review and that the hearing officer’s conclusions must be given deference. At issue is whether the parents’ failure to provide notice to the school district that they were unsatisfied with the IEP should be held harmless. Finally, at issue is whether E.H.’s placement in the residential treatment facility was necessitated by medical or educational needs.

Holding: The Courts of appeal held that the District Court adequately responded to the state hearing officer’s conclusions before reaching its own conclusions. The Court held that the
District Court was within its discretion when it denied reimbursement to the parents due to the high cost of the residential placement, the fact the parents did not provide the school district with proper notice, and for not considering the school district’s failure to notify the parents of their potential obligation to fund a residential placement. The Courts of appeal held that the District Court was within its discretion to conclude that E.H.’s residential placement was necessitated by medical concerns rather than by educational concerns. The Court held that the District Court was within its discretion in reversing the hearing officer’s order and denying E.H.’s parents’ request for reimbursement as interim relief under IDEA’s stay-put provision.

Reasoning: The Courts of appeal reasoned that the District Court did not address the September and December IEPs’ failure to provide FAPE because the school district did not appeal the hearing officer’s decision regarding the adequacy of these IEPs. Furthermore, the parents participated in the December IEP process as a means to seek reimbursement, not to help the school district develop an appropriate IEP. Thus, the Court reasoned that it was satisfied with the District Court’s indirect response to the hearing officer’s conclusions.

The Court disagreed with the parents’ argument that it must give deference to the hearing officer’s conclusions. The Court reasoned that though it could not substitute its own notions of sound educational policy for those of the school authorities, they did not review the hearing officer’s conclusions for abuse of discretion. Instead, the Court reasoned its focus was on the review of the District Court’s decision. The Court reasoned that parents are entitled to reimbursement for private school expenses only if a federal court concludes both the public placement violated IDEA and the private school placement was proper under IDEA. Even then, the Court reasoned that courts retain discretion to reduce the amount of reimbursement if
warranted, such as if the parents failed to give the school district proper notice of their intent to enroll E.H. in private school.

The Court reasoned that the school district complied with IDEA’s requirement of parental notice by providing the parents with a twenty-two page document that explained the parent’s rights. The Court reasoned that, even thought the parents argued that the school district should have reminded them of their rights, the Court could require no more that IDEA.

In regards to the parents claim that the District Court improperly considered the high cost of residential treatment when it denied their request for reimbursement, the Courts of appeal reasoned that although sometimes IDEA requires a school district to pay for a child’s private education, the cost of E.H.’s residential treatment isn’t necessarily irrelevant to the District Court’s decision to withhold reimbursement. IDEA requires a school district to fund reasonable, non-medical expenses associated with a residential placement. The Court reasoned that much of the cost for a residential placement is directed to medical expenses, and E.H.’s care was dedicated to medical care unrelated to his educational needs.

Disposition: The United States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Citation: J.L. v. Mercer Island School Dist., 592 F.3d 938 (9th Cir. 2010).

Key Facts: K.L. diagnosed by her school district as having a learning disability when she was in first grade. In second and third grades, the school district served K.L. primarily in the general curriculum with accommodations. She also received resource services for reading and writing. At her parent’s expense, K.L. attended a private school in forth and fifth grades. The private school served children with reading and writing difficulties. K. L. returned to the school district in sixth grade where she was reevaluated and determined to remain eligible for special
education services. She again was provided specialized instruction in reading, writing and math in a resource room and provided accommodations while she was in the general classroom setting. She passed all of her classes in sixth grade with the lowest grade being a B+. She received the same services in seventh grade and received all passing grades. For eighth grade, K.L.’s IEP provided for 750 minutes of resource instruction in the areas of reading, writing, math and study skills. Her accommodations remained the same. In January 2003 of K.L.’s eighth grade year, her mother contacted the school district regarding K.L.’s language arts class. K.L.’s mother stated that K.L. thought the class was “boring,” “stupid” and too “hard.” Also, K.L. did not like having to answer in front of her classmates. In response to K.L.’s mother’s concerns, K.L.’s language arts teacher changed her teaching style to help increase her classroom participation and self-confidence.

K.L. made all passing grades in eighth grade but scored in the second percentile of eighth graders on a standardized test of basic skills. Though she progressed on all of her IEP objectives she did meet all of her IEP objectives. The school district reevaluated K.L. at the end of eighth grade. She showed overall improvement in math and regression in numerical operations. One of her teachers reported that K.L. performed better in class than she did on her testing. She felt this was due to K.L.’s tendency to get frustrated on tests and her propensity to give-up. The IEP team met to district the reevaluation and then met to develop an IEP for ninth grade.

During first semester of ninth grade, K.L. performed well academically, earned good grades, participated in athletics, and enjoyed an active social life. In March, K.L. missed three weeks of school due to an illness. When she returned to school she was less motivated, turned in only half her algebra homework and her test grades decreased. At K.L.’s request her IEP team returned her to special education math and provided her with another resource period. Her
parents hired a private educational consultant and began researching private schools for K.L. By
the end of ninth grade, K.L. made all passing grades and met all of her math and study skills IEP
objectives. She did not meet two of her reading objectives or any of her writing objectives.
K.L.’s IEP team determined that K.L. had a very successful year but they did not know that her
mother completed most of K.L.’s homework.

At the beginning of K.L.’s 10th grade year, her IEP team met and recommended 972
minutes of specialized instruction in reading, writing, math, study skills and transitions. The IEP
team provided most of the same accommodations as her previous IEPs, adding access to books
on tape. Her transition plan stated she wanted to attend a community or technical college. At this
meeting, K.L.’s parents notified the school district for the first time that they were dissatisfied
with K.L.’s ninth grade education and stated they were looking at other options. On the same
day, K.L.’s parents applied to Landmark School, a private residential school for learning
disabled students.

The day after the IEP meeting, the school district emailed K.L.’s parents to schedule
another IEP meeting to address their concerns with the proposed IEP. Though they received the
email, they did not respond. K.L.’s case manager from the school district spoke with K.L.’s
mother and offered a more restrictive reading placement. K.L.’s mother rejected the offer.

In June 2004, K.L.’s parents sent a letter to the school district requesting a private
independent evaluation at the school district’s expense. They requested that Dr. Deborah Hill
complete the evaluation. The school district eventually agreed and sent a letter to the parents
requesting their consent for Children’s Hospital Regional Medical Center to perform an IEE for
K.L. K.L.’s parents did not respond.
In July, Dr. Hill completed her evaluation finding that KL needed an intensive approach to remedy her disability. She stated no public school in Washington could provide FAPE and recommended K.L. attend Landmark School. In August, K.L.’s parents informed the school district that they were enrolling K.L. in Landmark and requested reimbursement for the cost of tuition. In response, the school district sent another consent form for Children’s Hospital to evaluate K.L., and in late August, K.L.’s parents denied consent. They indicated that they would only allow the school district to review records. Furthermore, K.L.’s parents declared they could not provide consent without a written description of the evaluation procedures to be conducted and the purpose of testing to make sure the school district did not duplicate tests. They also put the school district on notice that they had obtained an attorney.

In early September, the school district sent K.L.’s parents a third consent for an IEE and scheduled and IEP meeting. At that meeting, the school district presented a proposed IEP to address K.L.’s deficit areas. The team made changes at the IEP meeting to address Dr. Hill’s recommendation. The team rejected Landmark as an appropriate placement due to the curriculum not addressing her deficient areas and segregating K.L for her typically developing peers. The parents informed the school district that K.L. would not re-enroll in the school district.

In October, K.L.’s parents finally consented to the school district’s request for an IEE and Children’s Hospital completed an evaluation in November. The IEE reports agreed with the school district’s proposed IEP. In March the IEP team met to discuss the school district’s proposed IEP for eleventh grade. The school district declined to name a particular teaching methodology to be used by all teachers because its experts recommended several effective programs. The IEP team again rejected Landmark as being an appropriate placement.
In June 2005, K.L.’s parents filed a due process hearing seeking reimbursement of K.L.’s Landmark School tuition and expenses. The school district again tried to compromise with K.L.’s parents to no avail. K.L. completed high school at Landmark. After an eleven day hearing, the ALJ found in favor of the school district, concluding the school district provided FAPE to K.L. as required by Rowley and denied K.L.’s parents reimbursement for tuition. K.L.’s parents filed suit in District Court.

The District Court concluded that the 1997 amendments to IDEA sought to supersede the educational benefit standard set by Rowley, with the new FAPE standard being focused on transition services. The District Court remanded the ALJ to determine whether Landmark was an appropriate placement and to determine relief based on the new FAPE standard. On remand, the ALJ determined Landmark to be an appropriate placement and awarded reimbursement for tuition for tenth and eleventh grades. The ALJ reduced the amount of reimbursement for K.L.’s 10th grade year due to the parents delaying the school district’s IEE. Both parties appealed to District Court. The District Court upheld the ALJ’s findings, with the exception of ordering the school district to pay full tuition for all 3 years of K.L.’s placement at Landmark and to pay for K.L.’s parents’ attorney’s fees. The school district appealed.

Issue: At issue is whether the District Court erred in failing to use the Rowley standard when determining if the school district’s IEP offered FAPE or whether the District Court erred in determining the school district committed a procedural violation with regards to transition services. At issues is whether the school district committed a procedural violation of IDEA by conducting a pre-meeting by not specifying the teaching methodologies to be used, or the number of minutes of instruction in K.L.’s IEP.
Holding: The Courts of appeal held that the Supreme Court’s *Rowley* decision continued to be the FAPE standard. The Court held that the District Court lacked subject matter jurisdiction to consider the unexhausted claim that the school district committed a procedural violation of IDEA with regards to transition services. The Court held that the school district did not commit a procedural violation of the IDEA in its pre-meeting meeting. The school district did not commit procedural violation of IDEA by not specifying teaching methodologies or the minutes of instruction in K.L.’s IEP.

Reasoning: The Courts of appeal reasoned that the 1982 *Rowley* case was the seminal decision regarding the scope of FAPE when the Supreme Court concluded that states must provide a “basic floor of opportunity” to students with disabilities and not a “potential-maximizing education.” The Courts of appeal reasoned that since *Rowley*, Congress had reauthorized IDEA four times (at the time of this case) and, thought Congress had added numerous new findings, it did not indicate disapproval with *Rowley* nor did it change the definition of FAPE. The Courts of appeal reasoned that the District Court did not point to any authority that supported its position that Congress’ intent in IDEA evolved over time to supersede *Rowley*. Even with the addition of transition services, courts have continued to apply the Rowley standard in cases and if Congress wanted to change the *Rowley* standard, it would have expressed a clear intent to do so. Therefore, the Court reasoned that *Rowley* was still the FAPE standard as set forth by the Supreme Court.

The Court reasoned that there was no evidence to support that the school district predetermined K.L.’s IEP at the pre-meeting. The parents actively participated in the IEP process and the school district changed parts of its proposed IEP based on the recommendation of the parents.
The Court reasoned that although the school district should specify a teaching methodology for some student, for other students the IEP did not need to address the instructional method to be used because it is not necessary to enable the student to receive FAPE. The Court reasoned that the teachers needed flexibility in teaching methodologies because there was not one single method that would always be effective.

The Court reasoned that while some IEPs require a specific amount of time each service would be employed, for K.L. this was not appropriate. Because her accommodations were all access-based modifications, meaning she had unlimited access to each accommodation, the IEP’s “lump-sum” amount of time was appropriate. Furthermore, even if the school district did commit a procedural violation by failing to specify minutes, it did not result in a loss of an educational opportunity or seriously infringe on the parents’ opportunity to participate in the IEP process.

Disposition: The United States Courts of appeal for the 9th Circuit reversed the District Court’s conclusion that the school district committed procedural violations of the IDEA that resulted in a denial of FAPE. The Courts of appeal remanded to the District Court to review the ALJ’s determination that the school district provided K.L with educational benefit as required by *Rowley*.

Citation: *N.D. Ex. Rel. Guard. Ad Litem v. HI Dept. of Educ.*, 600 F.3d 1104 (9th Cir. 2010).

Key Facts: The State of Hawaii was in a financial crisis and decided to shut down the public schools for seventeen Fridays during the 2009-2010 school year, constituting a reduction in instructional days by ten percent. Hawaii negotiated an agreement regarding the closings for 2009-2010 and 2010-2011 school years with the state teachers union. As a result of the furloughs, N.D. requested a due process hearing on October 19, 2009 alleging that the furloughs
would impact his IEP. Along with his request, N.D. requested the stay-put provision of IDEA. Hawaii implemented the furloughs.

N.D. filed suit in District Court, along with nine other children, alleging that the furlough of the teachers and shut down of the public schools violated his rights under IDEA. He alleged that as part of his due process hearing, he had the right to stay in his then educational placement. He moved for a temporary injunction of the furloughs, which was denied by the District Court on October 22, 2009. As part of the hearing, Hawaii submitted evidence that it was making efforts to provide students with disabilities alternative services consistent with their IEPs. N.D. appealed the denial of his motion for a preliminary injunction.

Issue: At issues is whether district wide school closings and teacher furlough days constituted a change in placement triggering a stay-put provision. Also at issue is whether N.D. should have named the teacher union as party in his suit.

Holding: The Courts of appeal held that the teachers’ union was not a necessary party to this action. The Court held that the students were not required to exhaust administrative remedies before seeking enforcement of stay-put provision and the motion for an injunction was subject to a balancing test. The Court held the students were likely to suffer irreparable harm in absence of preliminary injunction, however, the system-wide teacher furloughs and concurrent shut down of public schools was not a change in educational placement triggering the stay-put provision.

Reasoning: The Courts of appeal reasoned that the interest of the teacher union was not affected and complete relief could be granted without it. The Court also reasoned that N.D.’s exhaustion of remedies was not required because it would be futile and would offer inadequate relief if the agency had adopted a policy or pursued a practice of general applicability that was contrary to law. Thus, the exhaustion of administrative remedies was not required because of the
time-sensitive nature of N.D.’s right to remain in her educational placement. The Court reasoned that “current educational placement” is a difficult term to define and without a definition in IDEA or any binding precedent, the Court reasoned the it must find the interpretation which could most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested. Congress’ overarching purpose of the “stay-put” provision was to prevent the isolation and exclusion of children with disabilities and to provide them with a classroom setting similar to non-disabled children as possible. Thus, the Court concluded that under IDEA a change in educational placement related to whether the student is moved from one type of program to another type of program. Given this definition, Hawaii’s teacher furloughs and concurrent shut down of public schools was not considered a change in the educational placement of N.D. or the other disabled children.

As to the N.D.’s argument that the furloughs would cause a reduction in time for her IEP services, the Court reasoned that four day weeks created by the furloughs were no different than the four day weeks resulting from federal and state holidays and do not constitute changes in N.D.’s educational placement.

Disposition: The Untied States Courts of appeal for the 9th Circuit affirmed the decision of the District Court.

Case Briefs for Appeals to United States Courts of Appeal, Tenth Circuit

Citation: L.C. v. Utah State Bd. of Educ., 125 Fed. Appx 252 (10th Cir. 2005).

Key Facts: N.C. was a child with disabilities, including spastic colon, anxiety, and epilepsy. He received special education services through an IEP. In the summer after his fifth grade year, his IEP team met several times to develop an IEP for N.C. for the upcoming school
year. They considered information from several sources and developed an IEP that exposed him to the general curriculum but that did not hold him to the same standards. The IEP also allowed for the alteration of instruction and product completion.

In October of N.C.’s sixth grade year, the IEP team met to address N.C.’s mother’s concerns regarding N.C.’s increased anxiety. They discussed and revised accommodations, including eliminating homework and writing goals. They immediately implemented the revised accommodations but did not update the IEP until March. Occasionally, N.C.’s teachers would send home homework. The school informed the mother that she could note on the homework that N.C. did not have to complete homework if it was ever sent home. Teachers would also send home work samples of work that was being completed in the general classroom. N.C.’s mother would mistakenly identify this work as homework. In March, the school district altered N.C.’s services by providing him with special education in a majority of his classes.

In April, N.C. was evaluated for speech, language, and hearing by Primary Children’s Medical Center (PCMC), where he received private psychiatric services. The evaluation results showed that N.C. had difficulty with receptive and expressive language skills. His IEP team had already developed an IEP for N.C.’s seventh grade IEP when the results were received. The team did not conduct further testing nor provide N.C. with speech therapy.

Prior to N.C.’s return to school, the IEP team met with PCMC’s staff to develop a transition plan for N.C. They did not alter his goals and objective but did offer to provide a quiet place for N.C. after he experienced anxiety. In the fall of N.C.’s seventh grade year, a team of professionals met with N.C. to evaluate him to see if he would benefit from assistive technology. They determined that a text to speak program would be appropriate. The particular program was updated in the middle of the school year, so he did not complete all of the recommended
tutorials. In the meantime, he showed a preference for keyboard-based word processing
programs and was able to type sufficiently enough for this to work for him. His IEP also allowed
for him to work under “grade contracts” but the school district was unable to produce any of
these at the due process hearing.

In April, N.C.’s parents withdrew him from the school district and enrolled him in
Special Educational Programming Service (SEPS), a private school. N.C. seemed to do well at
SEPS. During his eighth grade year at SEPS, N.C.’s mother requested a due process hearing
alleging that the school district failed to comply with IDEA. Due to the school district and the
parents having difficulty agreeing on a hearing officer, the hearing was delayed till the spring of
N.C.’s eighth grade year. After the hearing, the hearing officer found in favor of the school
district. N.C.’s parents then sued the school district, along with other co-defendants, in district
court. District Court found that the school district provided FAPE, found that the hearing officer
was not biased, and found that all defendants are entitled to Eleventh Amendment immunity. The
District Court entered summary judgment for the school district. The parents appealed.

Issue: At issue is whether the school district violated N.C.’s rights under IDEA by failing
to provide FAPE, by selecting a biased hearing officer, or by holding the hearing in an untimely
fashion.

Holding: The Courts of appeal held that the school district provided specialized
instruction and related services that were individually designed to provide educational benefit
and complied with the substantive requirements of IDEA. The Court held that the administrative
hearing on the parents’ claims complied with the procedural requirements of IDEA.

Reasoning: The Courts of appeal reasoned that N.C. was adequately accommodated in
the area of written expression. The Court reasoned that N.C.’s IEP had writing goals that were
updated. He was provided an assistive technology evaluation and, based on the evaluation, provided assistive technology and devices. The Court reasoned that IDEA’s standard was that school districts must make a good faith effort to help students achieve goals and objectives in their IEPs. The Court reasoned that the school district made more than a good faith effort and, therefore, agreed with the district court’s finding in this area.

With regards to N.C.’s parents’ argument that the school district did not follow up on the private speech evaluation, the Court reasoned that according to Rowley, the Supreme Court did not require school districts to maximize the student’s potential and IDEA did not promote the provision of every special service necessary to maximize the student’s potential. Furthermore, at the beginning of N.C.’s sixth grade year, his parent’s refused to allow the school district to evaluate N.C. in the area of speech.

The Court reasoned that N.C.’s IEP was properly implemented even though he was occasionally assigned homework and the grade contracts were not produced at the due process hearing. The Court reasoned that the school district’s deviations from the IEP do not amount to a clear failure in satisfying the IEP. Even though the IEP team met and implemented discussed accommodations three months prior to memorializing them in the IEP, the Court reasoned that failure to write down accommodations immediately does not constitute a violation of IDEA. Furthermore, N.C.’s parents did not cite any authority suggesting otherwise.

Finally, the Court reasoned that even though N.C. made progress at SEPS that does not demonstrate whether the public school provided FAPE. The Court reasoned that in O’Toole v. Olathe Dist. Schs. Unified Sch. Dist. (1998) the court stated that “an IEP is not inadequate simply because the parents show that a child makes better progress in a different program.” The Court reasoned that the school district provided N.C. with an education that complied with IDEA.
As to the parents’ allegation that the hearing officer was no impartial, the Court reasoned that a hearing officer shall at a minimum not be an employee of the State educational agency or the local educational agency involved in the education or care of the child; or a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing. The Court reasoned that the parents’ innuendoes did not constitute a substantial reason to compel the Court to conclude that the hearing officer was biased.

Disposition: The United States Courts of appeal for the 10th Circuit affirmed the decision of the District Court.

Citation: Ellenberg v. New Mexico Military Institute, 478 F. 3d 1262 (10th Cir. 2007).

Key Facts: S.E. exhibited behavioral issues while living with her mother so she moved to New Mexico to live with her father and stepmother, Mr. and Mrs. Ellenberg. While there, her behaviors intensified and she began to abuse illegal drugs. When the Ellenbergs enrolled her in public high school, they requested she be closely monitored but did not ask for her to receive special education services. Soon after her enrollment, S.E. stole her parents’ car and credit card. Due to this, the Ellenbergs filed charges against S.E. The judge rendered a “Waiver of Time Limitation,” under which all charges against S.E. would be dropped if she adhered to the conditions outlined by the court. One of the conditions was placement in a residential treatment program. S.E. began attending Casa de Corazon (CdC), a treatment facility in Taos, New Mexico. She was also evaluated by the Taos Municipal School District and found to be eligible for special education services on the basis of an emotional disability. The IEP recommended a regular high school diploma tract for S.E. and included a behavior intervention plan. The IEP also recommended residential treatment in which CdC was identified as her least restrictive
environment. The IEP was to be reviewed within 1 year or at the time of S.E.’s discharge from CdC.

Prior to S.E.’s anticipated discharge from CdC, she applied to a military school, NMMI for the fall 2003 semester. She disclosed that she had behavioral difficulties, that she was receiving treatment and medication for those difficulties, and that she had shown improvement in that area. In June 2003 NMMI notified the Ellenbergs that S.E. was not accepted for enrollment for the fall semester, but would be considered for spring semester if she demonstrated appropriate behaviors in a regular classroom environment.

The Ellenbergs filed for a due process hearing against NMMI based on the fact that NMMI’s refusal to provide S.E. with FAPE violated her rights under IDEA and section 504 of the Rehabilitation Act. NMMI contested that it was not a public school or agency and thus was not bound by IDEA or section 504. The hearing officer found against NMMI on the jurisdictional question, but ruled in their favor because S.E. was not otherwise qualified to attend NMMI. Both parties filed administrative appeals. The appeals officer stated the Ellenbergs’ claim bordered on being insubstantial and frivolous.

The Ellenbergs then filed a civil action in federal court against NMMI. Although the district court noted that there were “exhaustion concerns” due to the Ellenbergs failing to obtain an IEP from an LEA, the district court proceeded to address the merits. The Court rejected the IDEA claim finding that nothing within the IDEA’s provisions supported the claims of the parents that special education is a service that must be provided wherever the student chooses to attend school. The court also granted summary judgment to NMMI on the section 504 claims finding that if the state satisfied its obligations under the IDEA it was not required to do more under the ADA or the RA. The Ellenbergs appealed.
Issue: At issue is whether NMMI’s failure to offer educational services to disabled children caused its denial of her application and whether NMMI was required to provide S.E with a FAPE because she is entitled to an education in the least restrictive environment, which the parents believed was NMMI.

Holding: The Courts of appeal held that Mr. and Mrs. Ellenberg failed to exhaust their administrative remedies under IDEA and that Mr. and Mrs. Ellenberg were precluded from bringing claims under the ADA and the RA because they have failed to exhaust their IDEA administrative remedies.

Reasoning: The Courts of appeal reasoned that the Ellenbergs misunderstood the IDEA as a statute with a limitless number of substantive rights. The Court reasoned that IDEA is a spending statute that imposes regulations on the states to provide certain benefits in exchange for federal funds. It further reasoned that IDEA is not an antidiscrimination act, as verified by *Rowley*.

The Court found that the Ellenbergs’ claims ultimately failed because they did not exhaust their administrative remedies before filing a lawsuit against NMMI. The Court reasoned that Congress required that parents first turn to IDEA’s administrative framework to resolve any conflicts. The Court stated that those with experience in educating children should have the opportunity to overcome the consequences of educational shortfalls. The Court further reasoned that the Ellenbergs first did not obtain an IEP from S.E.’s LEA and that they unilaterally determined that NMMI was S.E.’s LRE. The Ellenbergs did not request a change to S.E.’s then current IEP. Her IEP at that time found that CdC was the LRE. Furthermore, the Court reasoned that Congress delegated authority to implement IDEA to the states, not to students. According to *Lachman v. Ill. State Bd. of Educ.*, (1988), *Rowley*, and *Springdale Sch. Dist. No. 50 v. Grace*,
(1982), parents are given a right to participate in the placement decision, states retain the primary responsibility for determining the education to be afforded to the disabled child, including proper educational placement. Parents may challenge a state’s proposed IEP, but courts must defer to the state’s proposal if that plan is reasonably calculated to provide the child with a FAPE in the LRE, even if the parent believes a different placement would maximize a child’s educational potential.

The Court reasoned that the IEP was the “centerpiece” of IDEA’s educational delivery system and that it would be impossible to determine a child’s LRE without having a current IEP in place. In determining whether an educational placement is a child’s LRE, the courts look to (1) whether education in the regular classroom with the use of supplemental aids and services can be achieved satisfactorily and (2) if not, the school district has mainstreamed the child to the maximum extent appropriate, as outlined in *L.B. v. Nebo Sch Dist.*, (2004), and *Murray v. Montrose County Sch. Dist.*, (1995). Without a current IEP, the Court reasoned that neither the district court nor the Courts of appeal had a factual record adequate to determine if NMMI is appropriate for S.E.

The Court reasoned that the district court erred in dismissing the ADA and RA claims because even if the Ellenbergs conceded that New Mexico fully satisfied its IDEA obligations with respect to S.E., they could still pursue claims under ADA and RA on the grounds that S.E. was precluded from receiving a state benefit provided to her non-disabled peers.

Disposition: The Untied States Courts of appeal for the 10th Circuit reversed the IDEA findings of the District Court and remanded with instructions to dismiss the claim for lack of jurisdiction. The Courts of appeal reversed the ADA and section 504 findings and remanded for reconsideration of the motion of summary judgment.
Citation: *Garcia v. Board of Educ.*, Albuquerque Public Schools, 520 F.3d 1116 (10th Cir. 2008).

Key Facts: When Myisha was in fifth grade, she was evaluated and determined to qualify for special education services under the learning disability category. Though the school district implemented an IEP, Myisha’s educational performance began to decline by the time she entered middle school. Myisha also began to display significant disciplinary problems that escalated as she entered high school in the Fall 2002.

Myisha entered ninth grade at West Mesa High School. Her IEP documented her prior behavioral and academic difficulties and outlined various initiatives to help Myisha in these areas. During Fall Semester, Myisha frequently skipped class and did not do well when she attended class. She also began to abuse drugs and alcohol. In December 2002, she was arrested for attacking her mother and brother. As a result, she spent Spring Semester at the Bernalillo County Juvenile Detention Center (JDC) and the Mesilla Valley Residential Treatment Center. The JDC developed a one-page interim IEP. This IEP did not meet all of the requirements of IDEA but the JDC and the school district intended that the IEP be employed for the short time she would be assigned to JDC.

After her release from JDC, Myisha returned to West Mesa High School. The school district did not review or revise her IEP prior to the start of school and did not update her IEP for most of the Fall Semester. The school district explained this was due to faulty data entry of their student information system. She was, however, enrolled in courses consisting almost entirely of special education services for Fall Term. Myisha continued to exhibit serious disciplinary problems and excessive absences during Fall Semester. On December 9, 2003, she was
suspended for the remainder of the term for fighting at school. Myisha did not attend any of her final examinations and failed all of her Fall 2003 classes.

On December 12, the school district decided to convene an IEP meeting. They attempted to include Myisha’s mother, Ms. Garcia, but she did not respond to the school district’s many attempts to contact her. They met and developed an IEP without Ms. Garcia. Myisha did not attend school at all during the remainder of that school year and was reported to have moved to another area within the school district. By the time Ms. Garcia requested a transfer, it was too late in the semester for Myisha to earn any credits towards graduation and she did not attend any school during Spring Semester 2004.

In April 2004, Ms. Garcia filed for a due process hearing on the claims that the 2002-2003 IEP was inadequate and there was no IEP in place for the 2003-2004 school year until December. The hearing officer found that the school district failed to implement some parts of the May 2002 IEP, that the school district failed to have a new IEP in place by the beginning of school in Fall 2003, and that the school district failed to ensure that teachers implemented an IEP during Fall 2003. However, the hearing officer ruled in favor of the school district because these irregularities did not result in a denial of access to a FAPE. Furthermore, the hearing officer held that the school district could not provide FAPE to a student who was not present to receive it. On appeal to an administrative hearing, the administrative appeal officer (AAO) found that the school district failed to provide Myisha access to FAPE in Fall 2003. The AAO ordered the school district to evaluate Myisha and to develop a reading program for her based on the findings of the evaluation.

Myisha enrolled at Del Norte High School for the 2004-2005 school year. Before school began, the school district evaluated Myisha and developed an IEP based on the evaluation. That
school year, Myisha attended school consistently and displayed a much-improved attitude. She did well in every class and achieved a 4.0 grade point average for the year.

The school district developed an IEP for the 2005-2006 school year. During that year, however, Myisha again began skipping class and using drugs and alcohol. Myisha’s mother kicked her out of the family’s home. Myisha enrolled at Highland High School for the 2006-2007 school year. In the meantime, Myisha’s mother filed suit in federal court, claiming the AAO should have found further violations of IDEA and that the compensatory education awarded by the AAO was insufficient. The school district sought reversal of the AAO’s order. The district court ruled in favor of the school district on all counts. The court reasoned that it was Myisha’s own behavior rather than the school district’s procedural deficiencies that caused any loss of educational opportunity in Fall 2003. Furthermore, the District Court held that Myisha failed to use the educational opportunities provided to her by the school district. Ms. Garcia appealed. The school district raised the question of mootness because there was no active controversy due to the fact Myisha had not returned and did not want to return to school.

Issue: At issue is whether the appeal was moot and whether the school district failed to provide FAPE by failing to develop and implement an IEP in Fall 2003.

Holding: The Courts of appeal held that the action was not moot and that the district Court did not abuse its discretion in denying remedy based on equitable considerations.

Reasoning: The Courts of appeal reasoned that the case was not moot because if Ms. Garcia’s allegations were true, then Myisha suffered a deprivation of FAPE for Fall 2003 Semester. Congress has authorized the federal courts to remedy this kind of injury. The court reasoned that the school district’s argument was more a prediction that Myisha was unlikely to take full advantage of any awards and less about the existence of a live controversy.
Furthermore, Myisha is statutorily eligible to receive IDEA benefits and she seeks compensatory relief rather than prospective relief.

On appeal, Myisha’s mother limited her allegations of a denial of FAPE to Fall 2003. The Court reasoned that a Rowley analysis would include whether the school district’s procedural failure resulted in a denial of FAPE. First, Ms. Garcia argues that the IEP is the primary vehicle that Congress created to deliver FAPE to children, thus the absence of an IEP during Fall 2003 constitutes a per se denial of FAPE. The Court reasoned that in this case the school district failed to update Myisha’s IEP under the mandates of IDEA, but the school district did provide Myisha with a full curriculum of special education classes. The court reasoned that it was unclear whether any additional services would have been provided if the IEP had been revised.

Secondly, Ms. Garcia argues that even though Myisha’s behavior hindered her acquisition of an education, this could not excuse the school district’s obligation to provide her IDEA services. The Court reasoned that the school district’s obligation under IDEA could not be determined by considering the possibilities of what could have happened but rather by considering what did happen. This case produced evidence that indicated that regardless of the school district’s action, Myisha’s attitude toward school and her bad habits would have prevented her from receiving any educational benefits.

As to Ms. Garcia’s request for relief for the school district’s procedural errors, the Court reasoned that schools have limited resources earmarked for the provision of special education services for children and these resources would not have been effectively allocated if expended on a student who failed to use the educational opportunities provided to her and who avoided school altogether. Despite the fact that FAPE was available to Myisha, she did not regularly attend school Fall 2005 semester. On these facts, the Court reasoned it could not find that the
district court abused its discretion and that the district court’s decision fell within the broad
parameters of the discretion Congress gave to it.

Disposition: The United States Courts of appeal for the 10th Circuit affirmed the decision
of the district court.

Citation: Couture v. Board of Educ. of Albuquerque Pub. Sch., 535 F.3d 1243 (10th Cir.
2008).

Key Facts: M.C. demonstrated behavioral difficulties in kindergarten and at the
beginning of first grade. The Albuquerque public School (APS) system found M.C. to be
eligible for special education services for an emotional behavioral disability. In October 2002,
M.C.’s mother, Ms. Couture, met with the IEP team at APS and developed an IEP and Behavior
Intervention Plan (BIP) for M.C. The BIP included the establishment of clear rules with
consistent implementation of consequences, daily home/school communication, supervised time
out, and therapeutic de-escalation techniques. Ms. Couture agreed with the recommendations and
signed the IEP and permission for placement.

M.C. received his special education services in a classroom with a total of eight students.
Despite one-on-one attention from a paraprofessional, positive reinforcement, and other best
practice behavioral techniques, he continued to display extremely aggressive and violent
behaviors. As a result, he would receive supervised time-out, as outlined in his BIP. M.C. had to
remain calm and quiet for 5 minutes in order to be released from the timeout room. At times, his
behavior would improve in the time-out room, but often his behavior grew worse. He would
scream, kick, and throw himself against the door.

Ms. Couture received daily reports regarding the timeout room, but all details were not
communicated. Ms. Couture visited the timeout room, which complied with standards set forth
by APS. Ms. Couture described the room as small, carpeted, empty with no padding on the walls. The small window in the door was covered with black construction paper.

Ms. Couture filed a due process hearing against APS due to alleged violations of IDES, Section 504 of the Rehabilitation Act, and Title II of the ADA. She alleged that the APS failed to find M.C. as a student with a learning disability, failed to document the decision not to classify him as such and failed to provide special education consistent with the needs of a child with a learning disability. She also alleged that APS was over reliant on timeouts and physical restraints.

The hearing officer limited the evidence to that pertinent to compensatory relief because Ms. Couture was moving out of the APS district. After a three-day hearing, the hearing officer found no evidence to support Ms. Couture’s claims, denied all of her clams and dismissed them with prejudice.

On appeal to Federal District Court of New Mexico, Ms. Couture added several claims against Ms. Brady, M.C.’s classroom teacher, in her individual capacity. Ms. Couture claimed that M.C. was denied his Fourth Amendment right to be free from unreasonable seizures, and failure to provide M.C. his procedural and substantive due process rights; She made these same claims against the school principal and psychologist. The defendants moved for summary judgment on qualified immunity grounds. The district court denied summary judgment on all but the substantive due process claim, stating that, if true, Ms. Couture’s claims against Ms. Brady would demonstrate that Ms. Brady violated M.C.’s established rights when she seized him and placed him an closet-like timeout room without proper procedures. The plaintiffs filed an interlocutory appeal to the 10th Circuit Courts of appeal.

Issue: At issue is whether a seizure was reasonable under the Fourth Amendment.
Holding: The Courts of appeal held that the repeated use of a timeout room did not violate the Fourth Amendment and that is was justified for the student’s refusal to complete his school work. The Court held that lengthy timeouts were reasonably related to the school’s objective of behavior modification and that placement in timeout did not implicate procedural due process requirements.

Reasoning: The Courts of appeal reasoned that the Fourth Amendment to the United States Constitution protects the rights of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures and is understood to apply within the school setting. However, the requirement that police have probable cause does not apply to the school setting because this would unduly interfere with the school’s ability to swift and informal disciplinary procedures as needed. A seizure in the school setting need only be justified as reasonably related in scope to the circumstances, which justified the interference in the first place.

The Court reasoned that the first step in determining if an unreasonable seizure took place is to determine if a reasonable person believed he was not free to leave. However, in schools, the Court must think of this differently because students are not generally allowed to come and go at will. The Court reasoned that a seizure in a school would be defined as the limitation on the student’s freedom of movement must significantly exceed that inherent in everyday compulsory attendance. The Court reasoned that though M.C. was subject to greater restrictions than most students, that the seizures were not unreasonable. The Court found that context is critical to the analysis of reasonableness. The Court found that the Fourth Amendment did not empower federal courts to displace educational authorities regarding pedagogical norms.
The Court reasoned that while they were sympathetic to Ms. Couture’s concern over repeated use of timeout room, they could not find a Fourth Amendment violation. The Court reasoned that M.C.’s behavior was impossible to control, especially while the teachers were trying to teach and control other students. The Court reasoned that the teachers were confronted with disruptive, violent, and aggressive behaviors that were only eventually decreased with medication. The Court reasoned that temporarily removing M.C. for threats he posed to the emotional, psychological and physical safety of other students and teachers was eminently reasonable. The teachers’ response was particularly reasonable given that the timeouts were prescribed in M.C.’s IEP, which was developed in consultation with M.C.’s mother.

The Court reasoned that though there was some factual dispute over the basis of some of M.C.’s timeouts, that the seizures were still justified at its inception when M.C. refused to complete work. It was not unreasonable for M.C. to receive a 5-minute timeout when he refused to do his schoolwork.

Disposition: The United States Courts of appeal for the 10th Circuit reversed and remanded the findings of the District Court.

Citation: *Sytsema Ex Rel. Sytsema v. Academy School Dist.*, 538 F.3d 1306 (10th Cir. 2008).

Key Facts: Nicholas was diagnosed with Autism when he was 2.5 years old. He received in-home services from Resources for Young Children and Families until his third birthday, at which time the responsibility for complying with IDEA requirements shifted to his local public school.

Nicholas’ parents, the Sytsemas, met with the IEP team from Academy School District in May 2001 to develop an IEP for the 2001-2002 school year. The recommendations from the
district were based on an assessment that they had conducted. They recommended more than 10 hours of services per week, most of which would be rendered in an integrated preschool classroom. The remaining time would be served through direct speech and language services.

Nicholas’ parents rejected the IEP because they believed that the proposed placement would not be beneficial to Nicholas. They also provided letters from private practitioners that supported their belief. The district met again with the Sytsemas in August 2001 and discussed increasing Nicholas’ time to 20 hours a week. The district did not amend the IEP to reflect the time change. The Sytsemas again rejected the draft IEP and continued Nicholas’ in-home services at their own expense.

In October 2002, the district met with the Sytsemas to develop an IEP for Nicholas for the 2002-2003 school year. Based on their evaluations, the district proposed 25 hours of services a week. Twenty hours of services would be provided in an integrated classroom and 5 hours of one-on-one discrete trial training. The district finalized the IEP. The Sytsemas did not agree to or sign this IEP. They continued in-home services at their own expense and added 9 hours per week of a private preschool placement with the help of an aide. This was also at the Sytsemas’ expense.

In November 2002, the Sytsemas filed a due process hearing and requested reimbursement for Nicholas’ educational expenses for the 2001-2002 and 2002-2003 school years. The hearing officer denied the Sytsemas reimbursement because he determined that the 2001 IEP and the 2002 IEP were appropriate and that the district did not deny Nicholas FAPE. The Sytsemas appealed to the ALJ, who affirmed the hearing officer’s findings and conclusions.

The Sytsemas filed a civil action in United States District Court against the school district. After reviewing the administrative record, the district court reversed the ALJ’s finding
regarding the 2001 IEP. The court held that the 2001 IEP was procedurally deficient because it was never presented to the Sytsemas in its final form. The court ordered the school district to reimburse the Sytsemas for their educational expenses for the 2001-2002 school year. The district court affirmed the ALJ’s findings for the 2002-2003 school year. The Sytsemas appealed the court’s finding regarding the 2002 IEP and the school district appealed the court’s finding regarding the 2001 school year.

Issue: At issue is whether the school district provided FAPE to Nicholas. Specifically, at issue is whether the fact that the school district offered a 2001 IEP to the Sytsemas in draft form and not in final form caused substantive harm to Nicholas. Also at issue is whether the final IEP for the 2002-2003 school year was reasonably calculated to provide FAPE to Nicholas.

Holding: The Courts of appeal held that the school district’s failure to provide Nicholas with a finalized IEP did not substantively harm Nicholas and that the district court should only consider the written IEP in determining whether the draft was substantively defective. The Court held that the IEP did not deny Nicholas FAPE.

Reasoning: The Courts of appeal for the Tenth Circuit reasoned that IDEA provides for reimbursement for procedural violations only if the violation effectively denied the student a FAPE. The Court reasoned that, though the 10th Circuit had not yet had a case in which they considered the effect of the parents’ conduct in the development of the IEP, two of their sister circuits had. In a similar case, the Fourth Circuit considered whether IDEA entitled a student to reimbursement for a procedural violation similar to the one at issue. In MM ex rel. DM, the parents opted out of the development of the IEP prior to the IEP team finalizing the IEP. In determining the parent’s request for reimbursement for the cost of in-home services, the Fourth Circuit first noted that the process to develop the IEP allowed the parents complete participation.
The Fourth Circuit then noted that there was nothing in the record to indicate that the parents would have accepted any IEP that did not include reimbursement for in-home instruction. Finally, the Fourth Circuit determined that the parents’ lack of cooperation impacted the IEP development and that the absence of a finalized IEP did not result in the student losing any educational opportunities.

The Court also reasoned that the Seventh Circuit reached a similar verdict in the case Hjortness ex rel. Hjortness v. Neenah Joint Sch. Dist. (2007). In this case the parents refused to discuss any options other than placing their son as a residential student at a private school. So, the school district drafted the IEP without the parents’ participation.

The Court found that the Sytsemas’ decision to provide in-home services for Nicholas precluded them from meaningfully participating in the complete IEP process. Thus, the Court concluded that the lack of a final IEP did not substantively harm Nicholas.

The Court further reasoned that because the district court found a procedural violation with the 2001 IEP, it did not determine whether the draft 2001 IEP was substantively defective in denying Nicholas a FAPE. The Court reasoned that the district court should consider only the written portion of the IEP, not verbal offers from the district, because IDEA specifically defines an IEP as a written document.

With regards to the 2002 IEP, the Court reasoned that the record indicated that the IEP incorporated several teaching techniques and provided adequate generalization services that would provide Nicholas with some educational benefit. The Court reasoned that the 2002 IEP provided for FAPE, thus the Sytsemas were not entitled to reimbursement.

Disposition: The United States Courts of appeal for the 10th Circuit affirmed the court’s decision to deny reimbursement expenses to the Sytsemas for the 2002-2003 school year,
reversed the court’s decision granting reimbursement to the Sytsemas for their expenses for the 2001-2002 school year, and remanded for the consideration of whether the written draft IEP from 2001 denied Nicholas FAPE.

Citation: Thompson R2-J School v. Luke P., Ex Rel. Jeff P., 540 F. 3d 1143 (10th Cir. 2008).

Key Facts: Luke, a child diagnosed with Autism, attended Niwot Elementary School in Colorado for kindergarten and first grade where he received special education services from Ms. Wilson, a special education teacher. Though Luke made significant gains on his goals, he still had difficulty generalizing what he had learned. This was reinforced by the discrepancies on adaptive behavior measures between those that were completed at school and those that were completed at home.


Luke, however, was not progressing appropriately at home. His skills at school had not generalized into the home setting and Luke displayed severe behavioral issues at home. Luke’s parents began researching residential treatment facilities for children with Autism. They discovered the Boston Higashi School (BHS). Luke’s parents, along with Ms. Wilson, visited BHS and completed an admission application. Luke’s parents also asked Ms. Wilson and Ms. Osaki, a private occupational therapist, to observe Luke in his present school setting. Ms. Osaki noted that it appeared that Luke had made little progress on his goals and that he had great
difficulty generalizing skills taught in one environment to natural daily living routines. She also expressed that the staff at his school was unknowingly reinforcing some of his behavioral issues. Ms. Osaki did note that Luke was improving and that since Kindergarten, Luke had made good progress in all areas of development. Ms. Wilson administered the Autism Diagnostic Observation Schedule test. She reported that he had regressed on some of the skills that he had previously mastered.

Luke’s family filed for due process claiming that Luke’s IEP failed to provide FAPE and that a residential placement was necessary for Luke. Luke’s parents also claimed that they should be reimbursed for Luke’s education expenses at BHS. The impartial hearing officer held in favor of the family, finding that Luke had made some progress but he was not able to apply this progress because he could not generalize. The hearing officer held that the school district should reimburse Luke’s family for the residential treatment facility because this placement was necessary for the provision of FAPE. The school district appealed to the Colorado Office of Administrative Courts. The Administrative Law Judge agreed with the hearing officer. The school district then brought suit in federal district court. The district court agreed with the former administrative decisions. The school district appealed.

Issue: At issue is whether Luke’s IEP met FAPE requirements and if Luke’s parents should be reimbursed for their unilateral placement of Luke in a private residential school.

Holding: The Courts of appeal held that the IEP was reasonably calculated to enable Luke to make progress toward his goals and objectives and, thus, provided FAPE.

Reasoning: The Court reasoned that according to K.B. v. Nebo (2004), in order for Luke’s parents to obtain reimbursement for his private school placement his parents must show that the school district violated IDEA and that the education provided to Luke in the private
school placement was reasonably calculated to enable him to receive educational benefits. They also reasoned that according to 10th Circuit precedent, Luke’s parents could show an IDEA violation in one of two ways. They could either show that the school district failed to provide Luke with FAPE or, secondly, they could show that despite the provision of FAPE, the school district failed to provide that education to the maximum extent appropriate in the LRE. The Court reasoned that Luke’s parents limited themselves to proving that the school district failed to provide FAPE and the burden of proof rested with them.

In order to prove that he school district did or did not provide FAPE, the Court reasoned that precedent has been set by Rowley (1982) and Garcia (2008), which both stated that the defining answer was if the IEP was reasonably calculated to provide educational benefits, then the school district had provided FAPE. Furthermore, the Court reasoned that IDEA left the decision of educational methodology most suitable to the student’s needs to the local educational agencies in cooperation wit the parents of the child.

Luke’s parents maintained that the IEP in questions did not provide for generalization of the skills he had learned in school and that if a child could not generalize what he had learned, then the learned skill was useless. The school district maintained that IDEA did not hold LEAs to that standard. The school district cited cases from the First and Eleventh Circuits that IDEA only requires some progress towards his goals. The Court reasoned that, though generalization was an important skill, they agreed with the school district. The Court reasoned that Congress did not provide a guarantee of self-sufficiency for all disabled persons in IDEA. The Court reasoned that in Rowley the Supreme Court rejected the idea that “self-sufficiency” is the substantive standard, which Congress imposed on the States. Instead, Congress mandated that the States provide individual education programs for eligible students but then left the content of the programs to
the LEA and the parents. The Court reasoned that Congress guaranteed access and opportunity to students with disabilities, not outcomes.

Disposition: The United States Courts of appeal for the 10th Circuit reversed the findings of the district court and remanded for further proceedings consistent with Courts of appeal opinions.

Citation: Miller Ex Rel. S.M. v. Bd. of Educ. Albuquerque Pub. Sch., 565 F. 3d 1232 (10th Cir. 2009).

Key Facts: S.M. qualified for and received special education services for a reading disability when he was in first grade. He then attended private school for a number of years till he reenrolled in public school when he was entering the sixth grade. His sixth grade IEP called for S.M. to attend two regular education classes, band and physical education. His remaining classes were provided in a resource special education classroom. He received reading instruction that employed the Orton-Gillingham method and had access to Kurzweil, a computer program that read aloud scanned texts. For seventh grade, S.M. was served in a resource setting for two periods, an inclusion math class, and other regular education classes. After three weeks, he was removed at his parents’ request. The revised IEP placed S.M. in a self-contained classroom with a team teaching approach. His revised IEP also held that S.M. would receive books-on-tape and other modifications. In March, S.M.’s parents provided private reading instruction from an Academic Language Therapy Therapist and they instructed the school to no longer provide reading instruction. S.M.’s parents also purchased WYNN software, a computer program that scans texts and reads them aloud.

At the beginning of eighth grade, S.M. was placed in a self-contained classroom. When the new IEP was developed, he was placed in regular education for social studies, math,
literature, and two electives. His remaining classes were in a resource room. His resource special education teacher was not certified to teach special education and used an alternate reading program. APS was put on notice that S.M.’s parents were rejecting the reading instruction provided by the school district. S.M.’s parents asked that their private tutor be able to provide reading instruction during the school day but APS refused their request.

In October of S.M.’s eighth grade year, his parents filed for a due process hearing alleging that APS did not provide FAPE to S.M. for sixth, seventh, and eighth grades. The hearing officer found that S.M.’s parents did not prove that he was not served in the LRE or that the reading instruction was not reasonably calculated to provide meaningful benefits. The hearing officer did find that APS did not provide FAPE for S.M.’s eighth grade year because his special education teacher was not qualified to teach reading. The hearing officer held that this was a denial of FAPE because placement with this teacher was not reasonably calculated to provide meaningful educational benefit for S.M.. APS was ordered to reimburse S.M.’s parents for the cost of the WYNN software and required that a laptop be provided to S.M. to accommodate the Kurzweil and WYNN programs. The hearing officer held APS liable for the costs of the private reading tutor for S.M.’s eighth grade year or until APS could comply with the terms of the hearing officer’s decision.

APS appealed to the Administrative Appeal Officer (AAO) and S.M.’s parents cross-appealed. The AAP agreed with the hearing officer but found that S.M. had been denied FAPE in seventh and eighth grade due to APS not complying with the provisions of the IEP. Specifically, they did not provide books-on-tape or Kurzweil as outlined in both the seventh and eighth grade IEPs. The AAO added that APS must reimburse S.M.’s parents for the private reading instruction he received in seventh grade in addition to eighth grade private reading instruction.
and the WYNN program. APS filed for a preliminary injunction in federal court due to their belief that the AAO had improperly chosen between reading methodologies by ordering compensation for private reading instruction even though an appropriate reading methodology was offered through APS. The district court denied the preliminary injunction based on IDEA’s “stay put” provision. S.M.’s parents filed a civil action in federal court seeking partial review and modification of the AAO’s decision under IDEA. S.M.’s parents voluntarily dismissed the damages portion of their discrimination claims. Both parties filed several other motions. The district court rejected all of S.M.’s parent’s claims on the merits and affirmed the AAO on all grounds. The district court found that S.M.’s parents were not entitled to attorney’s fees and costs for the civil action because they had not prevailed, however the court did award attorney’s fees and costs in connection with the administrative proceedings. Following the district court’s decision, S.M.’s parents filed an appeal.

Issue: At issue is whether S.M. received appropriate findings and remedy during the administrative due process hearing for the failure of the Albuquerque Public School District (APS) to provide appropriate reading instruction and accommodations for S.M. Specifically, at issue is whether the same issue is subject to discrimination claims under the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Also at issue is whether APS should be able to amend its answer to assert a counterclaim relating to the appropriateness of particular educational expenses that it was ordered to pay in the administrative proceedings.

Holding: The Courts of appeal held that the district court did not abuse its discretion in in refusing to hear evidence regarding alleged systemic dysfunction in the delivery of recorded books to S.M. or in awarding S.M.’s parents attorney fees and costs for administrative phase of the case. The Court held that the fact that Administrative Appeal officer determined that the
school district denied S.M. FAPE did not obligate the court to find that the school district violated ADA or the Rehabilitation Act. The Court held that S.M.’s parents could not be awarded attorney fees and costs for the separate injunction suit nor with respect to the courts of appeal action. Finally, the Court held that the school district’s cross-appeal was moot.

Reasoning: Ms. Miller, S.M.’s mother, argued that the district court and the administrative officers erred in refusing to hear additional evidence regarding systemic dysfunction in the delivery of books-on-tape to students. The Court reasoned that even if APS was not providing books-on-tape to its students with learning disabilities that would not prove the inadequacy of the remedy in this case. The court agreed with the district court and administrative officers that the Kurzweil system replaced the need for books-on-tape, thus IDEA was not violated. The Court reasoned that the only relevant matter in this case was S.M.’s relief. Ms. Miller asserted that APS could not and would not comply with the relief S.M. had been awarded. The Court reasoned that if APS did not provide the necessary services, Ms. Miller could return to court to enforce the awarded relief. Furthermore, the Court reasoned that they were confident that the overwhelming majority of school districts would meet their obligations under IDEA.

With regards to Ms. Miller’s argument that APS violated S.M.’s discrimination claims, the Court reasoned that Ms. Miller failed to make an adequate showing of all of the essential elements of these claims. Because of this failure, the discrimination claims cannot win under summary judgment. Furthermore, the Court reasoned, a denial of FAPE under IDEA does not automatically establish a violation of section 504.

With regards to Ms. Miller’s argument that APS did not provide an adequate amount to cover her attorney’s fees, the Court reasoned that it had previously relied on the “degree of
success” analysis in reviewing IDEA claims, as had most of the other circuits. Therefore, the
district court did not err in determining Ms. Miller’s awarded attorney’s fees by noting that she
had sought far more that she gained and that she did not prevail on her central contention.

As to the school districts cross-appeal, the Court reasoned that the counter-claim would
have presented the same argument as APD’s separate lawsuit that the court formerly dismissed
for lack of jurisdiction. The Court reasoned that APS could not postpone or avoid compliance
with the awarded reimbursement to the Millers based on the fact that litigation was still pending.

Disposition: The United States Courts of appeal for the 10th Circuit affirmed the findings
of the district court and dismissed the school district’s cross-appeal.

Citation: Ellenberg v. New Mexico Military Institute, 572 F. 3d 815 (10th Cir. 2009).

Key Facts: Sarah Ellenberg sued the New Mexico Military Institute (NMMI), a college
preparatory school in a military setting, alleging that by denying her admission, NMMI violated
IDEA, Section 504 of the Rehabilitation Act, and ADA. The district court held that Sarah could
not establish a prima facie discrimination claim under Section 504 and the ADA just because she
was eligible for services through IDEA. Sarah appealed.

Issue: At issue is whether Sarah’s eligibility under IDEA automatically makes her
eligible under section 504 of the Rehabilitation Act and American Disability Act.

Holding: The United States Courts of appeal held that Sarah’s eligibility for special
education and having an IEP under IDEA did not automatically make her a qualified
handicapped person eligible for protection under the Rehabilitation Act or make her a qualified
individual with a disability under ADA.

Reasoning: The Courts of appeal reasoned that Sarah’s failure to provide evidence that
her disability substantially impaired a major life activity was the downfall to her prima facie case
under Section 504 and the ADA. The Court reasoned that Section 504 did not precisely define eligibility under IDEA. Section 504 has separate regulations that describe eligible disabled individuals as qualified handicapped persons. The Court reasoned that a disabled student under IDEA may not be substantially limited in the major life activity of learning. IDEA disabilities that merit an IEP range from minimal to serious and may or may not impact a major life activity, thus it is possible to be eligible under one and not the other. The Court further reasoned that IDEA and Section 504 have separate purposes. IDEA provides relief from inappropriate educational placement decisions and Section 504 provides relief from discrimination. Finally, the Court reasoned that the ADA’s definition of a disability mirrored that of Section 504 so their analysis of Sarah’s ADA claim was the same as it was for Section 504.

Disposition: The United States Courts of appeal for the 10th Circuit affirmed the decision of the district court.

Case Briefs for Appeals to United States Courts of Appeal, Eleventh Circuit

Citation: M.T.V. v. Dekalb County School Dist., 446 F. 3d 1153 (11th Cir. 2006).

Key Facts: Though cognitively gifted, M.T.V. was diagnosed with several neurological disabilities and attention deficit disorder. He was eligible for and receiving special education services through speech and language in the DeKalb County School System. His parents also expressed concerns regarding M.T.V.’s motor functioning and had him privately evaluated. They learned he had significant motor difficulties and requested an IEP meeting to discuss adding services to improve his motor skills.

After this request, M.T.V.’s parents allege the school district began retaliating, coercing, and intimidating them. The claimed the school district only held IEP meetings after school and
that they put time limits on the meetings, requiring M.T.V.’s parents to attend multiple meetings and miss work. M.T.V.’s parents allege the school district brought school administrators and attorneys to IEP meetings who would harass and scream at them.

M.T.V.’s parents filed formal complaints and law suits against the school district. M.T.V. was then privately diagnosed with a vision impairment and his parents asked that the school provide vision therapy as a related service under IDEA. The school district refused and M.T.V.’s parents began providing the therapy at their own expense. The school district denied their request for reimbursement and M.T.V.’s parents filed for a due process hearing. The IEP team then determined that M.T.V. remained eligible for speech and language services but determined a reevaluation was necessary to continue services for his motor issues under Other Health Impairment eligibility. He had made significant improvements since he first began receiving these services. The parents then claim that the school district devised a plan to perform countless needless and intrusive evaluations and would not give their consent for a reevaluation. The school district then requested a due process hearing to enforce its right to evaluate M.T.V. by an expert of its choice. The ALJ ruled in favor of the school district. M.T.V.’s parents filed a complaint against the school district seeking injunctive relief and damages for retaliation in violation of the ADA, Section 504, IDEA, the First Amendment and Section 1983. They also appealed the ALJ’s decision requiring M.T.V.’s parents to consent to the school district’s reevaluation. The district court dismissed M.T.V.’s parents’ discrimination claims because they did not exhaust their administrative remedies and the court affirmed the ALJ’s findings. M.T.V.’s parents appealed.
Issue: At issues is whether M.T.V.’s parents had to exhaust their administrative remedies for their discrimination claims and whether they had to consent for the school district to reevaluate M.T.V. for continued eligibility for Other Health Impaired services.

Holding: The Courts of appeal held that M.T.V.’s retaliation claims were subject to administrative exhaustion requirements and M.T.V.’s parents did not exhaust their administrative remedies nor establish that they were excused from doing so. The Court held that IDEA gave the school district the right to reevaluate M.T.V. by experts of its choice, thus the district court correctly affirmed the ALJ’s order requiring M.T.V. to submit to the school district’s reevaluation in order to remain eligible for special education services sue to another health impairment.

Reasoning: The Courts of appeal reasoned that IDEA allows plaintiffs to seek remedies available under the Constitution; however, IDEA also subjects these claims to an exhaustion requirement. Claims brought under IDEA must be exhausted in state administrative proceedings even if the plaintiff is invoked a different statute. The Court reasoned that IDEA has a broad complaint provision, which affords parents the opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the student or the provision of FAPE. Because M.T.V.’s parent’s claims of retaliation and discrimination clearly relate to his education, these claims fell under the exhaustion requirement.

With regard to M.T.V.’s parent’s refusal to consent to an evaluation, the Court reasoned that IDEA required LEAs to subsequent evaluation if conditions warranted a reevaluation or if the child’s parent or teacher requested a reevaluation, but at least once every 3 years. Therefore, if M.T.V.’s parents wanted him to receive services under IDEA, they had to allow the school district to reevaluate and they could not force the school district to rely on an independent
evaluation. The Court reasoned that, for these reasons, the school district was entitled to reevaluate M.T.V. by an expert of its choice.

Disposition: The United States Courts of appeal for the 11th Circuit affirmed the findings of the district court.

Citation: Draper v. Atlanta Independent School System, 518 F.3d 1275 (11th Cir. 2008).

Key Facts: Jarron Draper entered Atlanta Public Schools when he was in second grade and immediately displayed delays in his academics, specifically in phonemic awareness, reading and writing. His teachers recommended he be evaluated due to these struggles in February 1995, November 1996, February 1997, and October 1997. Finally, when Jarron was 11 years old, the school district evaluate him and found him eligible for special education services through the mildly intellectually disabled category. He was placed in a self-contained setting where he received a functional curriculum that would lead to a special education diploma. Jarron was kept in that placement by the IEP team until he was in ninth grade. In April of his ninth grade year, he was reevaluated. The school psychologist recommended further testing due to discrepancies in subtest scores which suggested that the evaluation did not accurately reflect Jarron’s intellectual potential.

In July 2003, the school district reevaluated Jarron and found that he had been mislabeled as MID, but that he had a specific learning disability with an IQ of 82. The evaluation also revealed that Jarron was still reading at a third grade level and that his reading level had not improved since April 2002. The IEP team met several times throughout the summer of 2003 and Ms. Draper requested private school and one-on-one tutoring for Jarron. The school district did not take any action on this request.
Finally, in September 2003, the school system changed Jarron’s eligibility category from MID to SLD and recommended 1.5 hours of speech tutoring a week. In October 2003, the IEP team amended its recommendation to provide Jarron with 19.5 hours a week general education and 10 hours a week of special education. The school district determined this placement as appropriate even though a witness from the school district stated that a student would need to be reading on a sixth grade level in order to be successful in the general curriculum at the high school level. His IEP included use of the Lexia program, a computer program to help improve Jarron’s reading ability, but he was not provided the Lexia program. In November, after mediation, the school district agreed to provide the Lexia program but despite the agreement the school district did not implement the Lexia program until December 9, 2003. By January he had only received 2.5 hours of instruction with the Lexia program.

In May 2004, the Lindamood-Bell Center evaluated Jarron. They recommended an intensive sensory cognitive training at the rate of 6 hours daily for a total of 360 hours. Jarron’s IEP team recommended the Lexia program for the summer despite Jarrons’s family requesting private reading services.

That same summer, the school district referred Jarron to Dr. Judy Wolman for an independent psychological evaluation. She established that Jarrons’s skills were severely discrepant from his potential and concluded that he suffered from a specific learning disability. She recommended intensive multi-sensory training to address his academic deficits. Instead, the school district again recommended the Lexia program. In the mean time, Jarron had failed his language arts class and was failing the second semester of algebra.

Jarron’s family requested a due process hearing at the suggestion of the Georgia Department of Education. At this time, Jarron was 18 years old and in the 11th grade. The ALJ
heard three days of testimony. The school system retained Dr. Barry Bogan as an expert witness. He had never met Jarron and on cross-examination he established he did not know Jarron’s age or correct reading level. He did testify that the school district had provided Jarron with an adequate education. Jarron had several experts to testify on his behalf, including Dr. Judy Wolman. All of his experts had spent extensive time with Jarron. They testified that the Lexia program was not appropriate to meet Jarron’s needs. Furthermore, Jarron’s experts testified that the school district should have known prior to 2003 that they had misdiagnosed him as MID and that they were unable to provide him with an appropriate education. Jarron testified on his behalf. He stated that he was not provided with Lexia instruction as the school district alleged. He stated that his tutor spent much of his time surfing the web during their sessions. The ALJ found in favor of Jarron and offered him a choice of compensatory remedies. The first was extensive special education services to be provided by the school district and the second was private school tuition not to exceed $15,000 a year until June of 2009. Both parties filed suit in district court.

While the case was under review in district court, Jarron chose the second choice and was placed in private school at the Cottage School. The school district moved to stay the enforcement of the order of the ALJ but the district court ruled that the private school placement was enforceable while the dispute was pending. The district court ruled for Jarron in part and for the school district in part. The district court agreed that the school district failed to provide FAPE but did acknowledge the statute of limitations. The district court increased the amount of time the school district would have to provide compensatory services and awarded Jarron full tuition at the Cottage School with no monetary cap. The school district appealed.
Issue: At issue is whether the district court abused its discretion by awarding Jarron compensatory services by placing him in a private school for the school district’s violations of IDEA.

Holding: The Courts of appeal held that the district court was free to determine appropriate relief for Jarron and was not barred by the findings of the ALJ from awarding placement of Jarron in private school. The Court held that the cooperative process established by IDEA between parents and schools did not bar the district court from providing the parents appropriate relief that included a unilateral choice regarding Jarron’s education and the district court did not abuse its discretion by awarding Jarron compensatory education in the form of placement at private school for 5 years or until he obtained his high school diploma. Finally, the Court held that the district court did not err in finding that Jarron’s parents should not have known that he had been misdiagnosed prior to receiving the results of his reevaluation.

Reasoning: The Courts of appeal reasoned that according to Burlington (2002), IDEA requires appropriate relief in light of the purpose of IDEA. The Court reasoned that the district court did not award Jarron a placement in a public school as an option as did the ALJ. The district court awarded Jarron placement in a private school. The Court reasoned that the Supreme Court explained that IDEA supported that education would be provided where possible in regular public schools but IDEA also provides for placement in private school at public expense where this is not possible. The court reasoned that according to Loren F. (2003) when a public school fails to provide FAPE in a timely manner, placement in a private school may be appropriate.

The Court reasoned that the statute of limitations would not be applied to the time Jarron was inappropriately placed due to an evaluation that was not comprehensive in nature. The Court reasoned that substantial evidence supported the finding that Jarron’s family did not know
enough to realize that Jarron had been injured by a misdiagnosis and inappropriate placement by the school district. The Court reasoned the school district failed to modify Jarron’s educational setting for several months after the evaluation established that his placement was not appropriate then the school district knowingly placed Jarron in classes in which he could not be successful and failed to address his reading deficiency for half of the school year. Therefore, the Court reasoned, the district court did not err in finding that the school district failed to provide FAPE.

Disposition: The United States Courts of appeal for the 11th Circuit affirmed the judgment of the district court.

Citation: School Bd. of Lee County, Fla. v. M.M., 348 Fed. Appx. 504 (11th Cir. 2009).

Key Facts: M.M. was a student at Three Oaks Elementary School (TOES) where he received special education services in a regular education classroom. He was identified as a student with SLD, speech and language impairments, ADHD, and microcephaly. Dr. Posey was his principal at TOES.

While M.M. was in kindergarten he displayed severe behavioral issues. The IEP team met in February 2003 and developed an IEP to address these issues. Despite implementing the IEP and meeting several times M.M.’s behavioral issues continued. In December 2003, the IEP team met and informed M.M.’s parents that he could be removed from TOES and placed in a Varying Exceptionalities program at another school. The parents disagreed with this suggestion and asked for additional time for them to seek medical advice and to research the Varying Exceptionalities programs offered at various schools in the district. In February 2004, M.M. began taking medication for his ADHD. The IEP team met and completed the IEP it had started in December. The team noted that there had been little change in M.M.’s behavior and made the recommendation for him to be placed at another school in the Varying Exceptionalities program.
In March 2004, M.M.’s parents requested a due process hearing to challenge the February 2004 IEP placement. After requesting the hearing, M.M. continued to attend TOES due to the stay-put provision. In the meantime, M.M.’s ADHD medication went into effect and his behavior greatly improved. As a result, the IEP team met in April to amend the IEP to recommend continued placement at TOES. The parents did not request a due process hearing challenging the April 2004 IEP but claim they did not agree to it. They also did not withdraw their existing request for a due process hearing. The April 2004 IEP went into effect without contest.

In May 2004, the ALJ began the due process hearing. After three days, he recessed at the request of the parties who asked for an opportunity to resolve their differences. The parties entered into a partial settlement agreement but did not put this agreement into evidence. In June, the hearing began again. The ALJ considered whether the 2003 IEP provided FAPE to MM. and if the February 2004 IEP, which had never been implemented, would have provided FAPE. The ALJ found that there were several procedural violations. He also found that there were several services that the IEP should have included. However, the ALJ did not order the school district to take any action, because these violations and omissions did not result in a denial of FAPE. Both the parents and the school district filed suit in district court and the court combined the two lawsuits.

The district court referred the matter to a magistrate judge who issued a report and recommendation. He found that the school district did substantially comply with the procedures set forth in the IDEA and that the 2003 and February 2004 IEPs were reasonably calculated to provide educational benefits. He recommended the factual findings of the ALJ be vacated and the judgment be entered in favor of the school board. Though the parents objected to the
magistrate judge’s recommendation, the district court accepted them fully and found that the IEPs at issue provided M.M. with FAPE and dismissed the parent’s claims. The court then directed the parents to file an amended complaint to clarify the remaining cases of action which allege due process violations, discrimination, malicious prosecution, and breach of contract. After receiving the amended complaint, the district court found it to be futile and reviewed the original complaint. The district court found them to be without merit and dismissed them. The district court’s final ruling was in favor of the school district on all counts of the original complaint and the parents appealed.

Issue: At issues is whether the district court erred in substituting its judgment for the ALJ’s findings of fact and finding that there was no denial of FAPE. Also at issue is whether the district court erred in dismissing the parents; claims of discrimination, malicious prosecution, and breach of contract as they originally pleaded.

Holding: The Courts of appeal held that the district court applied appropriate standard of review and gave appropriate consideration to the ALJ’s findings. The Court held that the district court did not err in finding that the IEP provided M.M. with FAPE. The Court held that the district court did not err in dismissing M.M.’s parents’ claims of retaliation and breach of the settlement agreement because M.M.’s parents failed to exhaust their administrative remedies as required by IDEA and having dismissed all federal causes of action, the district court would decline to exercise supplemental jurisdiction over malicious prosecution cause of action, choosing instead to dismiss it without prejudice.

Reasoning: With regards to the parent’s argument that the district court erred by implementing its analysis for that of the ALJ, the Courts of appeal reasoned that under IDEA, a district court conducts an entirely de novo review of the ALJ’s findings and has the discretion to
determine the level of deference it will give to the ALJ’s findings. The Court reasoned that in this case the district court applied the appropriate standard of review and gave consideration to the ALJ’s findings in an appropriate manner.

As to the parent’s claim that the district court should not have found that the 2003 and the February 2004 IEP met FAPE, the Court reasoned that while the ALJ and the district court found procedural deficiencies in both IEPs, they both concluded that these violations did not infringe on the parents’ opportunity to participate in the IEP development or result in a denial of FAPE. After a review of the administrative record, the Court reasoned that the IEPs were calculated to provide educational benefits to M.M. at the time they were written and the parents had the opportunity to meaningfully participate in the development of the IEPs.

As to the parents’ other claims, the Court reasoned that the parent’s had not exhausted their administrative remedies prior to filing a civil action seeking relief and according to M.T.V. (2008) even if a plaintiff invoked claims under a different statute, if the claims were asserting the rights of a disabled child pursuant to IDEA, administrative remedies must first be exhausted.

The parents assert that the district court erred in dismissing their claim of malicious prosecution against Dr. Posey because Dr. Posey, the principal of TOES, intentionally provoked an encounter with M.M.’s mother and then thereafter initiated a criminal complaint against J.M. The Court reasoned that the district court was without authority to consider the merits of this non-IDEA claim because at the time the case was still in the pleadings stage thus this cause of action was not ready for consideration on the merits.

Disposition: The United States Courts of appeal for the 11th Circuit affirmed all claims with the exception of the claims regarding malicious prosecution. The Court vacated this claim and remanded for further proceedings consistent with their opinion.
Analysis of Cases

The purpose of this research was to investigate issues related to the Free Appropriate Public Education and Least Restrictive Environment provisions under the IDEA. The data were retrieved by analyzing relevant court cases from 2005 to 2010. Court cases reviewed began with *Schaffer v. Montgomery County Public Schools*, 126 S. Ct. 528 (2005) and ended with *School Bd. of Lee County, Fla. v. M.M.* (2009). The data were condensed and summarized through the cyclical act of coding. Coding allowed for a filtration of a large amount of information produced by the data and helped narrow the focus to the most significant aspects of the data. The process of coding and recoding allowed the researcher to organize the data into meaningful segments. Initial categories were formed and then expanded and refined by reviewing the categorical database of cases. Comparing, contrasting, and combining the codes generated categories, trends, themes, and concepts. These data were analyzed to develop guidelines for system and school administrators regarding the implementation of IDEA rules and regulations as they pertain to FAPE and LRE.

Data was drawn from over 6 years and included a total of 100 cases from all 11 circuits and the District of Columbia Circuit. Two cases were from the Supreme Court and 98 were from the Courts of Appeal level. The Ninth Circuit had the most appealed cases at 20, while the Sixth Circuit had the fewest number of appealed cases at 2. The other circuits had the following number of cases appealed during the 6-year span: 17 from the Second Circuit; 15 from the Third Circuit; 10 from the Eighth Circuit; 8 from the Tenth Circuit; 7 from the Fourth Circuit; 5 from each of the District of Columbia Circuit, Fifth Circuit, and Seventh Circuit; 4 from the First Circuit; and 3 from the Eleventh Circuit (see Figure 2).
In 2005, 12 cases were appealed. In both 2006 and 2007, 18 cases were appealed; 2008 was not significantly different, with 19 appealed cases. Twenty-three cases were appealed in 2009 and only 10 cases were appealed in 2010 (see Figure 3).

Initially, nine categories were developed for the cases briefed. These categories included the following: prevailing party, disability type, LRE test referenced, placement of the student,
funding issues, related services, behavior/discipline, attorney’s fees and content unique to each case. The categories were then reviewed, compared, and contrasted. Based on these findings, the cases were sorted into three groups: parent as prevailing party, school district as prevailing party, and other party. The other party category was comprised of cases that were not between parents and school districts. Information unique to each case was then compared in each grouping, which led to the emergence of obvious classifications. These classifications were color-coded based on seven primary categories, which emerged from the sorted data set. The color-coded categories were sorted into two groups: FAPE issues and non-FAPE issues. The FAPE categories discussed more thoroughly in this chapter are prevailing party; parents and school districts as opposing parties; child-find, eligibility, and evaluation; procedural violations; instructional methodology; least restrictive environment; private school placement; and discipline/behavior. The non-FAPE categories discussed in this chapter more thoroughly are burden of proof; IDEA funding; statute of limitations; attorney’s fees; and access (see Appendix A for color-coded database of cases).

**Prevailing Party**

In federal cases based on IDEA the party who is determined to be the prevailing party is important because that party may be entitled to the recovery of attorney’s fees and costs in addition to whatever remedies the court finds to be necessary in providing FAPE to the student in question. Surprisingly, the provision of special education services by the school district is not a prerequisite to parents prevailing in costly law suits. In *Forest Grove School Dist. v. T.A.* (2009), the United States Supreme Court cited *Burlington* (1996), where it held that the IDEA Amendments do not impose a categorical bar to reimbursement when a parent unilaterally places their child in private school, even if the child has not previously received special education...
services through the public school. In that case the court found that IDEA gave the court broad discretion to grant relief as the court determined was appropriate.

The prevailing party, however, may not recover any expert fees or costs that parents or school districts may have incurred during the litigation process. One example of this is in *Arlington Central School District Board v. Murphy* (2006). The parents prevailed against a school district in obtaining private school reimbursement for their disabled child. As part of their claim for fees the parents sought reimbursement for the money they had spent for an educational consultant. Specifically, the parents argued that IDEA’s fee shifting provisions should be read as open-ended, thereby including the fees of not only attorneys, but also those fees incurred in the hiring of experts. The Supreme Court observed that not only did the language of IDEA fail to permit the recovery of the expert fees but the Court held that the specific terminology expressed in the IDEA statute—‘‘costs’’ as opposed to ‘‘expenses’’—is considered a term of art, and that unless expressly provided for by statute, it ordinarily would not include expert’s fees.

Along with this exclusion, the costs of attorney’s fees of the prevailing party, the costs of attorney’s fees for the opposite party and costly IDEA remedies can add up to be a great expense. The great expense of litigation may be an indication of why, of the cases analyzed in this study, only 13% were brought by school districts against parents. Even if the school district disagrees with the remedy requested by the parents, often the remedy requested may be a more reasonable expense to incur by a school district rather than taking the gamble of winning in federal court.

*Parents and School Districts as Opposing Parties*

An overwhelming majority of the cases analyzed (94%) were between public school districts and parents of students with disabilities. Of those cases, most (86%) were brought by
parents against public school districts. As previously stated, school districts appealed to federal court in only 13% of the cases.

In 66 of the 94 cases (more than 70%), the prevailing party was the school district. The parents prevailed in (17.8%) of the cases. In 8 of the cases, the judge found in part for both parties and in 3 of the cases the judge did not find for either party, remanding the full decision back to the district court. Although there were overlapping issues in the cases analyzed, there were distinct trends that emerged from the case information. The majority of the cases derived from the following FAPE issues: Child-find, eligibility and evaluation; procedural violations; instructional methodology; LRE; Private School Placement; and Discipline/Behavior. Cases that did not fit neatly into one of these categories are discussed under “Other.”

Child-find, eligibility, and evaluation. Twelve cases in this study discuss the issue of child-find, evaluation and eligibility under IDEA. Child-find can be defined as follows:

A continuous process of public awareness activities, screening and evaluation designed to locate, identify, and refer as early as possible all young children with disabilities and their families who are in need of Early Intervention Program (Part C) or Preschool Special Education (Part B/619) services of the [IDEA]. (www.childfindidea.org; retrieved 1-10-13)

Before a school district evaluates a child with a suspected disability, the child’s parents must give their consent for the evaluation. Prior to the 2004 revisions of IDEA, school districts had the obligation of filing for due process against a parent who did not consent to the evaluation of their child. According to the 2004 IDEA revisions, school districts have no recourse for evaluating a child whose parents do not consent. The courts reinforce this IDEA change. In Fitzgerald v. Camdenton R-III School Dist. (2006), the school district initiated a due process hearing under the child find provisions of IDEA in order to evaluate a child whose parents would
not consent to the evaluation. In the meantime, the parents withdrew their child to home-school him. The three-person hearing panel found in favor of the school district, ruling that the student should be evaluated as soon as practical. The parents then sued in District Court, appealing the hearing panel’s decision and sought declaratory and injunctive relief. The District Court granted summary judgment to the school district, holding that the school district could evaluate the student. The parents appealed due to their belief that the District Court misinterpreted IDEA and that its decision was unconstitutional. The Courts of appeal for the Eighth Circuit reasoned that IDEA allows parents to decline services and waive all benefits under IDEA. When parents choose to waive their child’s right to services, school districts may not override the parents’ wishes. The Court reasoned that IDEA’s purpose for evaluating a child is to provide appropriate special education services if the child is eligible for those services. The evaluation is pointless when parents refuse consent, privately educate the child and expressly waive all benefits under IDEA.

For students whose parents do consent to evaluations, IDEA has specific rules for conducting evaluations and determining eligibility of students. When a referral for an evaluation is made, a comprehensive evaluation should be conducted by a multidisciplinary evaluation team. A team approach is essential beginning with collecting information and defining specific areas of concern through interventions in the general curriculum. The team may consist of a psychologist, speech-language pathologist, occupational or physical therapist, audiologist, special education teacher, the student’s parents and others as appropriate for the needed evaluation. The team is responsible for assessing the student in all areas related to any suspected disability and in any other areas deemed relevant.
In terms of the IDEA eligibility category of the students either represented or referenced in the cases in this study, eighteen percent of the cases either did not specify the disability type or it was not applicable in the case. The largest percentage of the cases (23%) involved students eligible under the Autism category. The other categories break down as follows: 17% were eligible under specific learning disabilities category; 13% were considered emotional/behavioral disordered; 11% were eligible for services under the intellectual disabilities category; 7% were either other health impaired or orthopedically impaired; 6% had multiple disabilities; and hearing impairment, visual impairments and significantly developmentally delayed rounded out the rest of the cases at 5%.

Students determined to meet the criteria under any of the categorical disabilities listed in IDEA and whose educational performances were adversely affected by their disabilities, are eligible for special education services beginning at age 3 through the age of 21. Adversely, FAPE is not afforded to students who are not eligible under IDEA for special education services as codified by the Ninth Circuit Court in *R.B. ex rel F.B. v. Nappa Valley Unified School District* 5J (2007).

In *Alvin Independent v. A.D. ex rel Patricia F.* (2007) the Fifth Circuit gave a two-prong test for eligibility. The Court reasoned that only certain students with disabilities are eligible for benefits under IDEA and to qualify for those benefits a student must first have a qualifying disability and, secondly, need special education services. The Third Circuit went a step further in *Richard S. v. Washington School Dist.* (2009), by finding that the student must not only need or could possibly benefit from special education services but the student’s academic difficulty must be attributed to his or her qualifying disability. In this case, the Courts of appeal reasoned that the student displayed increasing difficulty in school but this difficulty was attributable to low
motivation, frequent absences, and a failure to complete homework. Therefore, no clear error existed in the district court’s decision to credit the hearing officer’s finding that the school district did not violate its child find obligations during the student’s seventh and eighth grade school years.

School districts must take into account the whole child, which is more than academic progress, when evaluating a child for IDEA eligibility. In Mr. I. ex Rel. L.I. v. Me. Sch. Admn. Dist. No 55 (2007), the school district made the argument that the student in question did not meet the eligibility criteria under IDEA or under Maine regulations due to there being no adverse affect on her educational progress. This argument only took into account academic progress. The First Circuit Courts of appeal reasoned that IDEA and Maine’s regulations included non-academic areas, in addition to academic areas. The Court found that IDEA entitles eligible children to services in the areas of or relating to academic, physical, emotional, or social growth. The district must provide special education and related services that meet the child’s unique needs and prepare them for employment, independent living and further education. The Court reasoned that the standard of IDEA eligibility is not limited to only performance that is graded.

Another example that demonstrates that students must be evaluated in all areas of suspected disability is N.B. v. Hellgate Elementary School Dist. (2008). The Courts of appeal for the Ninth Circuit reasoned that a child must be tested in all areas of suspected disability and this includes gathering information to assist in developing the child’s IEP and information related to enabling the child to be included in the LRE. IDEA identifies the local educational agency responsible for administering the comprehensive evaluation in all areas of suspected disability. The Court reasoned that the fact that the school district suggested the student’s parents obtain an evaluation from a private provider and that the school district failed to procure the evaluation
showed that the school district was mindful that an autism evaluation was necessary and that the school district did not fulfill its statutory obligations of conducting the evaluation. The Court reasoned that the school district couldn’t abdicate its affirmative duties under IDEA. The Court reasoned that because the school district lacked the evaluative information that the student had autism spectrum disorder, it was not possible for the IEP team to develop a plan reasonably calculated to provide the student with a meaningful educational benefit throughout the school year and therefore the student was denied FAPE and his parents were entitled to the costs of the services they incurred during the 2003-2004 school year and their associated legal fees. This case also reinforces the fact that schools are obligated by the child-find provision in IDEA to evaluate students with suspected disabilities.

In addition to students receiving a comprehensive evaluation, school districts must adhere to specific evaluation guidelines unless following a particular guideline is obviously not reasonable. Evaluators must use the latest edition of the test, adhere to the evaluation manual, evaluate in the student’s native language, and evaluate in a timely manner.

In Lauren W. ex rel. Jean W. v. DeFlaminis (2007), the Courts of appeal for the Third Circuit addressed evaluating a child in his or her native language. The Court reasoned that IDEA states that a child should be evaluated in the native language unless it is clearly not feasible to do so. In this case, the student’s mother consented to the assessment plan, which included that the student would be evaluated in English along with a Korean interpreter for the verbal portions of the assessment. The hearing officer concluded that Korean cues would have disturbed the validity of the test, thus native language administration of the entire test was not feasible.

In regard to students being evaluated in a timely manner, IDEA allows each state to establish their own procedure under IDEA’s significant requirements. For example, Georgia
allows 60 days from the date of signed consent for evaluation to the date of the determination of eligibility. Nevada imposes only 45 days for the same process. In *JG v. Douglas County Dist.* (2008), the Ninth Circuit Courts of appeal reasoned that IDEA, DOE, and OSEP require school districts to conduct evaluations in a reasonable time. The Court reasoned that the school district in this case did delay one month past Nevada’s 45 day rule, but this was essential in order for the examiner to gain rapport with the twins being evaluated, thus the delay was not unreasonable. The Court reasoned that administrative delays needed to promote effective test results should not render the school district’s actions unreasonable. The Court reasoned that the school district took the necessary time to conduct the needed assessments and then began addressing the needed additional services for the twins after the autism evaluation.

While the Court allowed “extra” time for the school district to evaluate in the case above, in two cases analyzed in this study which were brought against the school district for failing to evaluate in a timely manner, one resulted in a remand to the district court to determine appropriate compensatory services and the other resulted in private school placement for the student at public expense for the student. This information leads to the conclusion that school districts should evaluate within the given timelines unless it is absolutely not appropriate to do so. The reason(s) for exercising more time than allowed should be clearly documented.

In many of the cases reviewed, the parents filed suit under IDEA and Section 504 of the Rehabilitation Act. While the two statutes are similar, it is important to note that the courts have been consistent in their findings that students eligible for services under one are not necessarily eligible under the other. Findings from cases from the Third and Tenth Circuits corroborate that, though a student may be eligible for special education services according to IDEA rules, the
student is not automatically eligible under section 504; and transversely, a student eligible under section 504 is not necessarily eligible under IDEA.

**Procedural violations.** IDEA has clearly outlined procedures that must be adhered to by LEAs. School district administrators should ensure due process compliance as it relates to requirements of the IDEA as codified in 20 U.S.C. 1400 et seq., its regulations promulgated in 34 C.F.R. Parts 300 and 301, the rules of the state in which the school district lies, and their local School Board of Education Policies. Violations in IDEA procedures could result in a state losing their IDEA funds or could result in costly remedies and court costs if the procedural violation causes a student to be denied FAPE. Thus, states receiving IDEA funds typically place a strong emphasis on LEA’s compliance with IDEA procedures. There are several cases where the parents alleged that their child was denied FAPE due to the school district violating IDEA’s procedural requirements. In all of the cases won by the school district, the Courts of appeal found that even if the school district had committed procedural violations, these violations did not result in a loss of FAPE to the student.

Two Circuits, the Second and the Ninth, examined procedural violations as they relate to IEP implementation. Both circuits held that failure to comply with deadlines established by state regulations for implementing IEPs did not alone violate IDEA. Specifically, in *Van Duyn ex rel. VanDuyn v. Baker School Dist. 5J* (2007), the Courts of appeal for the Ninth Circuit examined IDEA and decisions of other courts. The Court reasoned that IDEA’s language counsels against making minor implementation failures actionable given that special education and related services need only be provided in conformity with the IEP. The court reasoned there was no statutory requirement to perfect adherence to the IEP, nor any reason to view minor
implementation failures as denials of FAPE. The Court reasoned that in *Rowley* the Supreme Court found that procedural flaws in an IEP’s formulation did not automatically violate the IDEA, but only did so when the violation resulted in the child not being able to receive educational benefits. The Ninth Circuit further reasoned that in prior cases the Fifth and Eighth Circuits both determined that FAPE would only be denied if the school district failed to implement an essential element of the IEP that was necessary for the child to receive an educational benefit. Therefore, in this case, the Court held that the school district’s failure to implement all parts of the IEP did not result in a lack of educational benefit for the student and that the provision of FAPE was not violated.

The Eleventh Circuit had similar findings in *School Bd. of Lee County, Fla. v. M. M.* (2009). The Court reasoned that while the ALJ and the district court found procedural deficiencies in both IEPs, they both concluded that these violations did not infringe on the parents’ opportunity to participate in the IEP development or result in a denial of FAPE. After a review of the administrative record, the Court affirmed the district court and ALJ’s findings, reasoning that the IEPs were calculated to provide educational benefit to the student at the time they were written and the parents had the opportunity to meaningfully participate in the development of the IEPs.

The Ninth Circuit, in *L.M. v. Capistrano Unified School Dist* (2008), reasoned that California Education Code provided that, if a public education agency observed a student as part of conducting an assessment, then an equal opportunity should be provided for an independent educational assessment for the parents with regard to observation of the proposed educational placement. Though the school district did not allow the parents to observe an equal amount of time, the Court reasoned the Ninth Circuit precedent was for any procedural violation that may
be harmless, consideration must be given to whether the procedural error resulted in a loss of educational opportunity for the student or significantly restricted the parents’ participation in the IEP process. In this case, the Court reasoned that the parents failed to present any evidence that undermined the ALJ’s credibility of findings nor did they offer up any evidence that they could have found had they received more classroom observation time. The Court reasoned that the District Court failed to properly apply the harmless error analysis required by the Ninth Circuit’s precedent that not all procedural flaws result in the denial of a FAPE.

The Ninth Circuit continued this trend in *J.L. v. Mercer Island School Dist.* (2010). The Courts of appeal reasoned that procedural violations of the IDEA do not merit tuition reimbursement absent a showing of substantive harm. The Court reasoned that the district’s failure to have an IEP in place on the first day of the 2006-2007 school year violated a mandate of IDEA. The Court reasoned that, in acknowledging that a procedural violation occurred, it must then determine whether, under the circumstances, the violation impeded the student’s right to FAPE or caused a deprivation of educational benefits to the student. The Court reasoned that although the IEP was not developed by the first day of school, the school district demonstrated consistent willingness to evaluate the student and to develop an IEP prior to the beginning of the 2006-2007 school year.

The Courts of appeal reasoned that the school district’s failure to timely notify the parents of IEP meetings did not significantly impede the parent’s opportunity to participate in the decision making process of the IEP. The Court reasoned that the student’s mother signed a written waiver of 10-day notice of the IEP meeting and that she attended the meeting. Therefore, the Court reasoned the school district’s failure to notify the parents within ten days of the IEP meeting did not rise to the level of substantive harm.
This case also helped define a trend that when the school system and parents have an adversarial relationship such that precludes the school district from following the regulations set forth by IDEA, the courts may consider the parents’ negative attitude and behavior as a determinant in the outcome in the case. The Court reasoned that the parents delayed the continuation of the IEP meeting and then terminated the process by filing a due process request. The Court declined to hold the school district liable for procedural violations that were the result of uncooperative parents. Further, the Court reasoned that there was a lack of evidence that the student would have suffered an educational loss by the failure of the school district to have an IEP in place by the first day of school, thus reimbursement on that basis was denied.

In *Sytsema v. Academy School District No. 20* (2008), the Courts of appeal for the Tenth Circuit also addressed the impact of parent’s behavior on the IEP process. The Court reasoned that IDEA provides for reimbursement for procedural violations only if the violation effectively denied the student a FAPE. The Court reasoned that, though the Tenth Circuit had not yet had a case in which they considered the effect of the parents’ conduct in the development of the IEP, two of their sister circuits had. In a similar case, the Fourth Circuit considered whether IDEA entitled a student to reimbursement for a procedural violation similar to the one at issue. The parents opted out of the development of the IEP prior to the IEP team finalizing the IEP. In determining the parent’s request for reimbursement for the cost of in-home services, the Fourth Circuit first noted that the process to develop the IEP allowed the parents complete participation. The Fourth Circuit then noted that there was nothing in the record to indicate that the parents would have accepted any IEP that did not include reimbursement for in-home instruction. Finally, the Fourth Circuit determined that the parents’ lack of cooperation impacted the IEP
development and that the absence of a finalized IEP did not result in the student losing any educational opportunities.

The Courts of appeal for the Tenth Circuit also reasoned that the Seventh Circuit reached a similar verdict in the case *Hjortness ex rel. Hjortness v. Neenah Joint Sch. Dist.* (2007). In this case the parents refused to discuss any options other than placing their son as a residential student at a private school. So, the school district drafted the IEP without the parents’ participation.

The Tenth Circuit Court found that the parents’ decision to provide in-home services for their child precluded them from meaningfully participating in the complete IEP process. Thus, the Court concluded that the lack of a final IEP did not substantively harm the student. The Court further reasoned that because the district court found a procedural violation with the 2001 IEP, it did not determine whether the draft 2001 IEP was substantively defective in denying the student a FAPE. The Court reasoned that the district court should consider only the written portion of the IEP, not verbal offers from the district, because IDEA specifically defines an IEP as a written document.

Procedures and processes for implementing IDEA regulations and state rules is imperative. School districts must ensure that these procedures are cascaded to the teacher level, as they are typically the ones implementing these procedures. It is also imperative that the school district work to maintain good working relations with parents, as conveyed in the cases above.

*Instructional methodology.* The diverse needs of students with disabilities and the challenges of providing appropriate educational services in both general education settings and resource settings places unique demands on LEA’s. IDEA defines FAPE in broad, general terms.
It does not mandate specific educational methods but mandates that “special education and supplementary aids and services [should be] based on peer-reviewed research, to the extent practicable . . . which will advance the student toward attaining the annual goals as outlined in the IEP” (34 CFR 300.320(a)(4)-(i)). While, the courts have determined that the method of teaching is typically left to the discretion of school districts, schools must be able to demonstrate that the methodology used is providing educational benefit and meaningful progress for the student receiving special education services. In this study, the courts did not take a blanket approach to determining if the methodology was appropriate. In other words, the courts did not reason that a methodology was appropriate just because a school district had determined to use it. In the methodology cases reviewed in this study where the courts found in favor of the school district, there was a clear trend that the school districts were able to succinctly define what method of instruction they were using with a student, why they were using that particular methodology, and how the instruction was designed to address the specific weaknesses of the student in question. Parents of students with Autism brought most of the cases that had instructional methodology as the primary issue. This trend lends itself to the idea that a school district needs to keep abreast of the instructional research for all students with disabilities, especially those with autism.

The First Circuit examined methodology in Lessard v. Wilton Lyndeborough Coop. School Dist. (2010). In this case, the parents alleged that the instructional methodology implemented by the school district was inadequate. They requested a specific methodology be used to teach their child who had multiple disabilities. The Court reasoned that the standard of review of an agency’s educational plan is giving deference to the educational authorities because they have primary responsibility for preparing the educational plan tailored to meet a student’s
individual needs and for choosing the methodology most “reasonably calculated” to provide the
student educational benefit. The Court reasoned that the hearing officer’s conclusion and the
district court’s agreement that the proposed IEP provided educational benefits was supported in
the record by testimony from numerous therapists and coordinators who worked with the student.
The Court further reasoned that the record supported the district court’s finding that the parent’s
requirement for an instructor with additional experience to implement the requested program was
not sufficient to invalidate the program and that the parents had not demonstrated that the
reading program used by the school district was insufficient. The Court reasoned that though the
student may have benefited more if the parent’s private provider’s recommendations had been
fully followed, this was not the test. The test of appropriateness depends on expert judgment,
available options and indications of progress.

The Courts of appeal for the Second, Fourth, and Ninth Circuits all addressed
instructional methodology specific to students with Autism. All three had similar findings. In
_D.F. Ex Rel. N.F. v. Ramapo Cent. School Dist._ (2005), the Second Circuit Courts of appeal
addressed the issue of whether the IEP should include applied behavior analysis (ABA) therapy
at home, as insisted upon by the parents, in order for the student to make “meaningful progress.”
The United States Courts of appeal for the Second Circuit reasoned that they had not determined
whether, and to what extent, retrospective evidence of a student’s progress should be considered
in determining the validity of an IEP in which the student is currently enrolled. They reasoned
that the First, Third, and Ninth Circuits had addressed these questions, holding that inquiry in to
whether an IEP is valid is a necessary prospective analysis, and that consideration of proof of
whether an IEP meaningfully contributed to the child’s education is not altogether proper. Thus,
the Courts of appeal for the Second Circuit reasoned that the district court should have asked the
question of whether the program implemented by the school district was appropriately designed so as to convey a meaningful benefit instead of judging a program in hindsight.

In response to the argument that the proposed IEP was substantively inadequate, according to the findings in *T.P. Ex Rel S.P. v. Mamaroneck Union Free School* (2009), the Second Circuit noted that according to *Rowley*, a school district fulfills its obligations under IDEA if the IEP provides the student an opportunity to make progress greater than mere trivial advancement. Furthermore, a school district is not required to provide every special service necessary to maximize each student’s potential. The Courts of appeal reasoned that the school district provided for many supports and services to assist the student with his transition from a home-based program to a school-based program. They found that the district court did not defer appropriately to the decisions of the school experts on how best to transition the student and therefore concluded inappropriately that the IEP was substantively inadequate. The Courts of appeal also reasoned that the student had shown some progress, thus the school district’s IEP was supported by the record.

In *Joshua ex rel. Jorge v. Rocklin Unified* (2009), the Ninth Circuit reasoned that IDEA does not require that any state adhere to any specific educational methodology. IDEA only requires that the LEA’s educational plan provide specialized instruction supported by services that are necessary to permit the student to benefit from instruction. The Court reasoned that the student’s IEP was valid under IDEA because it was effectively tailored to the student’s unique needs, was supervised and administered by qualified personnel, and it implemented a program based on accepted principles in the field of autism education. Furthermore, the methodology used by the school district conformed to best practices in the field and was effectively used to educate autistic children with similar conditions. The Court also reasoned that the student’s IEP
met Rowley’s standard of meaningful benefit because it was calculated to provide some educational benefits. As to the allegation that the methodology used by the school district was not based on peer-reviewed research, the Court reasoned that experts in the field of Autism found that an eclectic approach similar to the school district’s proposed plan met IDEA’s substantive requirements because the eclectic approach was based on peer-reviewed research to the extent practicable.

The findings in this case provide a good model for school districts to follow when ensuring that a student is receiving appropriate instruction. First, school districts should provide peer-reviewed research based methods to teach students with disabilities and provide adequate training in those methods to make certain that teachers providing instruction are highly qualified to do so. In order to do this, school districts need to keep abreast of specialized instruction research in the field of special education for the disability types of the students they serve. Furthermore, it was interesting that the court specifically addressed the student’s parents in their findings. The court stated, “[We are] conscious that the parents of Joshua A. want to do everything possible for their son and that they may feel deeply frustrated by the decisions of persons not as familiar as they are with their son’s needs and aptitudes. In the context of public education and public funding such deep personal feelings, deserving as they are of great respect, do not have a decisive role in determining the outcome in a court of law.” (p. 672). This “note” reminds school districts that when they are making decisions for student’s there is a great deal of parental emotion entwined in those decisions. School districts should make every effort in including parents in the decision making process and remain professional and empathetic when communicating with parents about their children.
Least restrictive environment. LRE was the primary focus in nine Courts of appeal cases where the school district was the prevailing party and five Courts of appeal cases where the parents were the prevailing party. As stated in chapter 2, the requirement for IEP teams to consider a continuum of services was built into EHCA from its beginning and there was an implied statutory requirement for LRE. The term “LRE” was first specifically addressed in the 1996 Amendments to IDEIA (Hazlekorn, 2004). In *N.B. v. Hellgate Elementary School Dist.* (2008), which has previously been reviewed, the Courts of appeal for the Ninth Circuit reasoned that the public school assessment team must gather information to assist in developing the child’s IEP and information related to enabling the child to be included in the LRE as part of the initial evaluation. Thus when determining the placement of students with disabilities, school districts must consider the least restrictive environment provisions of IDEA. IDEA requires that

> each public agency must ensure that – (i) To the maximum extent appropriate, children with disabilities including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature of severity of the disability is such that the education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 (a)(2)(i)-(ii))

In the cases reviewed regarding LRE, the courts continued the trend to weigh educational benefits against educational placement, giving more consideration to educational benefits. Another trend that continued was the application of appropriate supplemental aids and services in order to keep students in their LRE. One clear message the courts sent regarding LRE is that the unique facts in each case and the individual needs of the student in question are most relevant when determining LRE. The vast majority of cases reviewed ruled in favor of placements other than full time general education as satisfying the LRE. This is in line with the history of LRE cases since the 1997 amendments involving this same topic.
While all Circuit Courts still reference *Rowley* as the standard for educational progress and meaningful educational benefit, many Circuits have, in addition to Rowley, either developed their own LRE test or adopted an LRE test previously established by other Circuits, such as the Third Circuit’s *Oberti* standard. The 2006 IDEA regulations and guidelines are most comparable to the *Oberti* standard, which includes the following LRE considerations: (1) Whether the student’s IEP can be implemented in the general classroom with the use of supplemental aids and supports. (2) Whether the placement in the general classroom will result in any potential harmful effect on the student or on the quality of services that he needs. (3) Whether the IEP must include positive behavioral interventions and supports in the case of a student whose behavior impedes the student’s learning or that of others.

*Oberti.* As a result of *P. Ex Rel. Mr. and Mrs. P. v. Newington Bd. of Ed.* (2008), the Courts of appeal adopted a standard by which courts in the Second Circuit determined if schools met the LRE obligation of IDEA. The Court reasoned that by examining facts specific to this case, and considering whether education in the general classroom could be achieved if appropriate supplemental aids and services are included in the student’s IEP, they could determine if the student had been placed in the LRE. The Court reasoned that by applying the *Rowley* test and *Oberti* analysis that the student’s 2004-2005 IEP did not meet the LRE requirement, but the 2005-2006 IEP did meet the LRE requirement.

education, which violated a procedural requirement of IDEA to consider the full continuum of services and to place students in the LRE. The Courts of appeal for the Fifth Circuit reasoned that in determining whether the IEP was reasonably calculated to provide an appropriate education the Court used the four factors identified in Michael F. The parents’ claimed that Daniel R. was more appropriate than Michael F., but the Court reasoned that Daniel R. guided the second factor of Michael F. The four factors of Michael F. that were reviewed were: (1) Is the program individualized on the basis of the student's assessment and performance; (2) is the program administered in the least restrictive environment; (3) are the services provided in a coordinated and collaborative manner by the key “stakeholders”; and (4) are positive academic and non-academic benefits demonstrated?

The parents’ claimed that the school district did not offer a mainstreamed public preschool classroom, thus the district should have begun its placement consideration with private preschool placement. The Court reasoned that the IDEA makes removal to a private school placement the exception, not the default. It reasoned that IDEA was designed primarily to bring disabled students into the public education system and to ensure them FAPE. They reasoned that because of this, Courts should be cautious before finding that a school district should place a child outside of public school. They reasoned that the IEP met all four requirements of Michael F.

The Fifth Circuit also used the Michael F. standard in Richardson Independent School Dist. v. Michael Z. (2009). But they added a weight standard to the four areas considered. The Court of Appeal for the Fifth Circuit focused on whether the IEP was reasonably calculated to enable the student to receive educational benefits. In making this determination, the Court reasoned that four factors relevant to the determination of whether an IEP is reasonably
calculated to provide meaningful educational benefits was established in a previous appeals case, *Michael F.* (1995). However, the Court did not specify how these factors must be weighed. The District Court, in addressing the four factors from *Michael F.* reasoned that there was a reasonable doubt that the student’s IEP was implemented in a collaborative fashion or that she made any actual progress under the IEP. The District Court also found her previous IEPs substantially the same, lacking evidence that she had made progress from year to year. The Courts of appeal reasoned that the District Court did not err in its application of the *Michael F.* test.

The Courts of appeal agreed with the District Court in its reasoning that the IEP did not confer any educational benefit upon the student at all. They reasoned that there was a documented pattern of regression over a significant period of time under similar IEPs and a documented inability to keep the student in the classroom, therefore, the Court reasoned any IEP substantially similar to the previous ones would fail. For the reasoning above, the Court held that the IEP calling for placement in public school was inappropriate under IDEA.

*Roncker.* The *Roncker* test was endorsed by the Courts of appeal of the Eighth Circuit in *Pachl v. Seagren* (2006). The *Roncker* test was first established by the Sixth Circuit Court as a result of *Roncker v. Walter* (1983), in which the Sixth Circuit Court held that a student should be separated from her peers only if the services that made the segregated placement superior could not be provided in a non-segregated setting. The Courts of appeal for the Eighth circuit further reasoned that the statutory language in IDEA significantly qualified the mainstream requirement by stating that it should be implemented to the maximum extent appropriate and that it is irrelevant where education in the mainstream environment could not be achieved satisfactorily.
The Court reasoned that removing a child from the mainstream setting is permitted when the child would not benefit from the mainstream setting or when any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services provided in the segregated setting.

*Lachman and Nebo.* The Courts of appeal for the Tenth Circuit referred to *Lachman* (1988), *Rowley, Springdale* (1982), *Nebo* (2004), and *Murray* (1995) when addressing LRE in *Ellenberg v. New Mexico Military Institute* (2007). The parents in this case did not first obtain an IEP from their child’s LEA. The Court reasoned that because of this the parents unilaterally determined that New Mexico Military Institute (NMIM) was their child’s LRE. The Court reasoned that Congress delegated authority to the states to implement IDEA, not to students. According to *Lachman v. Ill. State Bd. of Educ.*, (1988), *Rowley*, and *Springdale Sch. Dist. No. 50 v. Grace*, (1982), parents are given a right to participate in the placement decision, but states retain the primary responsibility for determining the education to be afforded to the disabled child, including proper educational placement. Parents may challenge a state’s proposed IEP, but courts must defer to the state’s proposal to determine if that plan is reasonably calculated to provide the child with a FAPE in the LRE, even if the parent believes a different placement would maximize a child’s educational potential. The Court reasoned that the IEP was the “centerpiece” of IDEA’s educational delivery system and that it would be impossible to determine a child’s LRE without having a current IEP in place. In determining whether an educational placement is a child’s LRE the courts look to (1) whether education in the regular classroom with the use of supplemental aids and services can be achieved satisfactorily and (2) if not, has the school district mainstreamed the child to the maximum extent appropriate, as outlined in *L.B. v. Nebo Sch Dist.*, (2004), and *Murray v. Montrose County Sch. Dist*, (1995).
The Court of Appeal for the Seventh Circuit declined to adopt any sort of multi-factor test for assessing whether a child may remain in the regular school as other circuit courts had. In *Bd. of Educ. of TP. High School Dist., 211 v. Ross* (2007), the parent of a disabled student argued that by placing their daughter in a special school, the school district was not complying with IDEA’s LRE mandate. The Court reasoned that in the past it had held that it was not enough to show that a student was obtaining some benefit, no matter how minimal, at the mainstream school in order to prove that the school district’s removal of the student violated the LRE requirement. Instead, it had to decide if the student’s education in the conventional school was satisfactory and if not whether reasonable measures would have made it so. The Court reasoned the student in this case was not making meaningful progress at her home high school and any progress she did make, happened when she was pulled out of her regular English class. The Court also reasoned that the student’s ability to interact with her peers was minimal and her behavior was disruptive. Furthermore, all school district specialists testified that they thought she could not learn satisfactorily in the environment of her home high school. The Court reasoned that the District Court came to a rational conclusion in this case in determining that the proposed IEP did place the student in the LRE.

School districts may question the appropriateness of a student’s unilateral placement in private school as it relates to LRE. However, the courts have said that parents are not held to the same standards as public school districts. In the case of *M.S. ex rel. Simchick v. Fairfax County School Bd.* (2009), the Courts of appeal for the Fourth Circuit addressed LRE and referenced *Rowley* and the Act itself. The findings of the Court were in part for the parent and in part for the school district. In this case the Court reasoned that schools must place disabled students in the LRE to achieve FAPE and this was not only a praiseworthy act, but also a requirement of IDEA.
Thus, a disabled child should participate in the same activities as nondisabled children to the maximum extent appropriate. The Court reasoned that the private placement selected by the parents was highly restrictive by IDEA standards and the District Court’s consideration of this placement’s restrictive nature was proper. The Court further reasoned that parents seeking an alternative placement may not necessarily be subject to the same mainstreaming requirements as a school board, but IDEA’s LRE mandate must remain a consideration that bears upon a parent’s choice of an alternative placement and should be considered in a court’s determination if that placement is appropriate.

LRE is not always the general classroom, as previously demonstrated in some of the cases reviewed in this section. The case of *Houston Independent School v. V.P. Ex rel. Juan P.* (2009) further confirms this fact. In this case, the Courts of appeal for the Fifth Circuit reasoned that the student’s IEPs did not meet LRE because it did not provide enough supplementary services for her to be successful in the general education classroom. The court reasoned that it was not concerned with whether the student was mainstreamed to the maximum extent possible, but whether she was mainstreamed beyond her capabilities. The Court reasoned that though the school district was trying to educate the student in her general classroom, she was not receiving meaningful educational benefits from this placement, thus she was not receiving FAPE. In this case the parent was awarded reimbursement for private school placement.

*Residential placement as the LRE.* In some situations, the LRE for a student may not include any mainstreaming at all. In fact, for some students, the LRE may be placement in a separate school, such as a residential school. Residential placement of students is considered the more restrictive environment in the continuum of services. The Courts of Appeal across circuits
have consistently found that residential placement would be the least restrictive environment for students only if it is necessary for a student to receive meaningful educational benefits and the same could not be accomplished in a less restrictive environment. Furthermore, the Courts have found that school districts must consider the educational needs of the child and that school districts are not responsible for the medical needs of a student.

The Fourth Circuit addressed the issue of when a residential placement, the more restrictive environment for a student, would be considered the LRE in several cases. In *Shaw v. Weast* (2010), the parents of a student with severe disabilities who was placed in a private special education day school requested residential placement for their daughter, the most restrictive environment in the continuum of special education services. In regards to the parents’ contention that a day program was not enough to provide their daughter with FAPE, the Courts of appeal reasoned that the school district may be required to fund residential placements if the educational benefits which can be provided through residential care are essential for the student to make any educational progress at all. In this situation, residential care would be required by IDEA. IDEA does not authorize residential care merely to enhance an otherwise sufficient day program. If residential placement is necessitated by medical, social, or emotional problems that are segregable from the learning process, then the LEA need not fund the residential placement. The Court reasoned that the parents’ requested residential placement primarily to address their daughter’s safety needs as a result of her mental health issues and not as a result of her educational needs. Further, the Court reasoned that the fact the student’s emotional and mental needs required a certain level of care beyond that provided by the day program, it did not necessitate that the school district fund that extra care when it could adequately address her
educational needs separately. The Court reasoned that IDEA requires students receive FAPE in the LRE and, for this case, the day program was such an environment.

The Fourth Circuit again held that IEP teams must only consider educational needs of students in *Avjian v. Weast* (2007). In this case, the parents alleged the school district did not provide FAPE by not paying for the student’s residential placement. The Court reasoned that the written IEP clearly stated that the student did not need residential treatment to meet her educational needs and the student’s parents indicated their agreement by signing the IEP. The Court reasoned that considering comments made during the IEP process would undermine the importance of a written IEP as required by IDEA. The parents further contended that the school district did not properly consider their child’s non-educational needs in addition to his educational needs. The Court reasoned that IDEA does not state that IEP teams should evaluate or make recommendations for the non-educational needs of students. The Court reasoned that IDEA only required IEP teams to consider the educational needs of children.

The Ninth Circuit held similar findings in *Ashland School Dist. v. Parents of Student E.H.* (2009). In regards to the parent’s claim that the District Court improperly considered the high cost of residential treatment when it denied their request for reimbursement, the Courts of appeal reasoned that although IDEA sometimes requires a school district to pay for a child’s private education, the cost of this student’s residential treatment isn’t necessarily irrelevant to the District Court’s decision to withhold reimbursement. IDEA requires a school district to fund reasonable, non-medical expenses associated with a residential placement. The Court reasoned that much of the cost for a residential placement is directed to medical expenses, and the student’s care was dedicated to medical care unrelated to his educational needs.
T.F. v. Special School Dist. St. Louis Co. (2006) was another case involving the question of residential placement being the LRE. In this case the Court of Appeal for the Eighth Circuit reasoned that it must defer to the judgment of educational experts as long as the student received some educational benefit and was educated with his non-disabled peers to the maximum extent possible. The Court reasoned that in Evans v. Dist. No. 17 (1988), the Court concluded that children should be mainstreamed if at all possible and residential placements should be resorted to only if the mainstreaming attempts failed or were plainly untenable. IDEA mandates an appropriate education for students with disabilities but it does not require a school district to provide a child with a specific educational placement that parents prefer. The Court reasoned that the student’s IEP offered unique services tailored to meet his needs. The Court reasoned that this placement may not have satisfied the student’s parents, but it satisfied the requirements of IDEA.

In another residential case from the First Circuit Court of Appeal, the court ruled that the standard for schools is to determine the most appropriate placement, not necessarily the optimal placement of students. In C.G. ex Rel. A.S. v. Five Town Community School (2008), the Court reasoned that the IEP was not final because the parents disrupted the IEP process and had they continued to cooperate by allowing the school district to fill in the gaps, there would have been a completed IEP that provided the student with a FAPE. The Court of Appeal further reasoned that the parents had a predisposition to their child attending a private residential placement at the school district’s expense and did not seriously consider the schools district’s proposal of the student attending a non-residential educational placement. With regards to educational placement, the Court of Appeal reasoned that, given the school district’s evidence and the recommendations of the independent evaluator, the least restrictive environment would be the public non-residential school placement. They held that they could not reject an adequate public
school placement for an optimal private placement and that school districts are to provide a reasonable level of educational benefit to disabled children, not an optimal level.

In *Richardson Independent School Dist. v. Michael Z.* (2009). The Courts of appeal for the Fifth Circuit reasoned that though there had been tests adopted by the Third and Seventh Circuit for determining whether a child’s placement in a residential facility was appropriate under the IDEA, the Courts of appeal reasoned that these tests did not account for issues specific to this case, hence, it developed a test for the purpose of determining whether a child’s placement in a residential setting is appropriate under IDEA. The Court reasoned that a two-pronged test was most appropriate: (1) the placement must be essential in order for the disabled child to receive a meaningful educational benefit, and (2) the placement must be primarily oriented toward enabling the child to obtain an education.

Again, in all cases reviewed, regardless of the level of restriction from or inclusion in the general curriculum, there is a common theme that the unique facts in each situation and each student’s individual needs drive the LRE decision. Also, supplemental aids and service must be a consideration in keeping students in the LRE. Furthermore, IEP teams must decide if the placement considered is in line with the child’s educational needs, and not necessarily the child’s medical needs.

*Private school placement.* IDEA states that if a school system is unable or unwilling to provide FAPE or provide services in a student’s LRE, a student may be placed in a private setting at the LEA’s expense. Primarily, the Courts continue to use the *Rowley* standard to determine the provision of FAPE. LRE can also be a consideration in a FAPE determination if the private school placement is an appropriate remedy. Out of the 100 cases reviewed, 53%
included private school placement as an issue. Of those cases, the Court found in favor of public school placement 58% of the time. The Court awarded private school placement 26% of the time and for partial private school services 15% of the time.

The trends that emerged for the private school placement cases lend guidance to public school districts. School districts must make sure that all of their staff receives proper training in teaching the students with the defined conditions, make sure the IEP addresses all of the student’s needs, and that it is implemented in the least restrictive environment.

As previously discussed under LRE, in *Houston Independent School v. V.P. Ex rel. Juan P.* (2009), the Court of Appeal for the Fifth Circuit reasoned that the student’s IEPs were not specific enough to meet her needs nor did her IEPs address all of her needs. Specifically, the IEPs did not address auditory processing deficits. The Court also reasoned that the student’s IEPs did not meet LRE because they did not provide enough supplementary services for her to be successful in the general education classroom. Moreover, the Court reasoned that the public school district teachers did not receive enough training in order to effectively provide the student with an adequate education. The Court reasoned that the private school where the parents had unilaterally placed their daughter was an appropriate placement because it met all of her educational needs. The Court awarded the parent’s reimbursement for the cost of tuition.

According to the Tenth Circuit, LRE is a consideration in the determination if private school placement is appropriate and if parents should be reimbursed for private school tuition. In *Thompson R2-J School District v. Luke P.* (2008), the Court of Appeal for the Tenth Circuit reasoned that according to Tenth Circuit precedent parents could show an IDEA violation in one of two ways. They could either show that the school district failed to provide FAPE or they could show that despite the provision of FAPE, the school district failed to provide that education to
the maximum extent appropriate in the LRE. With respect to private school placement, the Court reasoned in this case that according to *K.B. v. Nebo* (2004), in order for the student’s parents to obtain reimbursement for his private school placement, his parents must show that the school district violated IDEA and that the education provided to the student in the private school placement was reasonably calculated to enable him to receive educational benefits.

The Tenth Circuit Court of Appeal addressed educational benefits in *L.C. v. Utah State Bd. of Educ.* (2010). In this case, the court held that IDEA’s standard was that school districts must make a good faith effort to help students achieve goals and objectives in their IEPs. The Court reasoned that according to *Rowley*, the Supreme Court did not require school districts to maximize the student’s potential and IDEA did not promote the provision of every special service necessary to maximize the student’s potential. The Court reasoned that the school district’s deviations from the IEP did not amount to a clear failure in satisfying the IEP. Even though the IEP team met and implemented verbally discussed accommodations three months prior to memorializing them in the IEP, the Court reasoned that failure to write down accommodations immediately does not constitute a violation of IDEA. Finally, the Court reasoned that the fact the student made progress in his private school setting does not demonstrate whether the public school provided FAPE. The Court referenced *O’Toole v. Olathe Dist. Schs. Unified Sch. Dist.* (1998), where that court stated that “an IEP is not inadequate simply because the parents show that a child makes better progress in a different program.”

In *Mr. B. v. East Granby Bd. of Educ.* (2006), the Court of Appeal for the Second Circuit addressed a student’s parental request for reimbursement for private school tuition. The Court reasoned that the preponderance of the evidence supported the district court’s finding that the student’s IEPs provided for the “basic floor of opportunity” and were in procedural compliance
with the mandates of IDEA. The Court of Appeal further reasoned that because both IEPs were in compliance and appropriate, the parents could not, as a matter of law, be granted reimbursement for private school tuition.

In *Cerra v. Pawling Cent. School Dist.* (2005), the Second Circuit considered more than the “basic floor of opportunity” when determining if private school placement was necessary. The Court of Appeal for the Second Circuit applied a three-step process to determine whether the parents were entitled to private school tuition reimbursement. They first examined evidence to determine if the school district complied with the procedures set forth in the IDEA, by focusing on whether the parents had an adequate opportunity to participate in the development of the student’s IEP. The second factor reviewed was whether the IEP developed was reasonably calculated to enable the child to receive educational benefits. The Court of Appeal reasoned that under *Rowley*, if this second factor were met then the school district would be in compliance with IDEA’s substantive requirements. The Court of Appeal finally reasoned that because the school district complied with the IDEA’s procedural and substantive requirements, they did not need to consider the third step in this process, which was determining if the private school placement was appropriate to meet the student’s needs.

In *County Sch. Bd. Of Henrico v. Z.P. ex rel R.P.* (2005), the Court of Appeal for the Fourth Circuit determined that private school placement was appropriate. This case was specific to the methodology of instruction and number of hours of direct services. After hearing extensive testimony and personally observing the student at the private school placement, the hearing officer concluded that the 2002-2003 proposed IEP was not appropriate and did not provide FAPE. He held that the IEP did not offer enough one-on-one instruction and the school district’s class size would interfere with the student’s educational progress. The hearing officer found that
the private school placement where the parents enrolled their son, was an appropriate placement for the student and that the school district was obligated to pay for the cost of his placement there for the 2002-2003 school year. The school board filed in district court where the judge reversed the hearing officer’s findings. The parents appealed. The Courts of appeal held that the district court did not give due weight to the hearing officer’s findings and reversed the district court’s decision.

In Frank G. v. Board of Educ. of Hyde Park (2006), the IEP was found to be inappropriate, though it was never implemented prior to the parents unilaterally placing their child in private school. Furthermore, the school district’s own witness testified against the school district’s recommended placement, thus private placement was awarded by the court. The Court of Appeal for Second Circuit reasoned that one of the school district’s witnesses testified that a fifth grade class might not be best for the student in question, even with direct consultant teacher services and a one-to-one aide. She recommended, instead, a self-contained classroom of no more than nine students would be more beneficial. The hearing officer and the state review officer agreed. They found the small class size offered at the private school was one element of special education to meet the student’s needs. Also, the student’s teacher at the private school altered her instruction to meet the student’s needs. Additionally, the student’s standardized test scores and grades had greatly improved in the private placement. The Court of Appeal found that this progress, small class size and the program offered in the private placement was sufficient to support the district court’s judgment that the private placement was appropriate.

Though the school district in this case reasoned the statute states that in order for parents to receive reimbursement for private placement, the student in question must first receive special education services in public school; the Court of Appeal reasoned that looking at the statute as a
whole could only derive the intent of the statute. They reasoned that the language of the statute
does not say that reimbursement for tuition to private school to be only available to parents
whose child had previously had special education services in public school, but infers that a court
can grant relief as it determines is appropriate to a child for whom the public school fails to
provide FAPE. The Court of Appeal reasoned that the statute provides broad discretion to the
court as to the type of relief that can be awarded.

**Discipline/behavior.** Twenty-four cases (24%) noted discipline or extreme behavioral
difficulties as either the primary issue or one of several issues. Even when a child is extremely
disruptive, LRE and FAPE must still be provided. In the cases reviewed, most school districts
had a behavior intervention plan in place for the student and had implemented other
supplemental aids and services in order to keep the student in the LRE. The courts have
consistently held that as long as the IEP addresses what discipline is appropriate for the student,
that the discipline can be administered.

In *A.C., M.C. v. Bd. Chappaqua Central School Dist.* (2009), the Courts of appeal for the
Second Circuit reasoned that the school district satisfied the requirement to provide positive
behavioral interventions and supports as outlined in IDEA and their decision to not conduct an
FBA did not rise to the level of denying FAPE to M.C. They further reasoned the preponderance
of evidence supported the SRO’s decision that the IEP adequately addressed M.C.’s behavioral
needs and the failure to conduct an FBA did not render the IEP legally inappropriate. The Courts
of appeal reasoned that M.C. had made progress toward independence during the 2003-2004
school year and that the 2004-2005 proposed IEP addressed moving M.C. toward independence.
The IEP also addressed placement in the LRE.
The Tenth Circuit addressed the issue of the school district’s responsibility when a student will not accept services. In *Garcia v. Board of Educ. Albuquerque Public Schools* (2008), the student stopped coming to school. When she was at school, her behavior was extremely disruptive. She failed to complete assignments, attend class regularly, or complete homework. The parent argued that even though her daughter’s behavior hindered her acquisition of an education, this should not excuse the school district’s obligation to provide her IDEA services. The Court reasoned that the school district’s obligation under IDEA could not be determined by considering the possibilities of what could have happened but rather by considering what did happen. This case produced evidence that indicated that regardless of the school district’s action, the student’s attitude toward school and her bad habits would have prevented her from receiving any educational benefits.

As to the mother’s request for relief due to the school district’s procedural errors, the Court reasoned that schools have limited resources earmarked for the provision of special education services for children and these resources would not have been effectively allocated if expended on a student who failed to use the educational opportunities provided to her and who avoided school altogether. Despite the fact that FAPE was available to the student, she did not regularly attend school. On these facts, the Court reasoned it could not find that the district court abused its discretion and that the district court’s decision to find in favor of the school district fell within the broad parameters of the discretion Congress gave to it.

At times, a student’s behaviors can be so violent as to cause harm to the student or to other people. In these cases schools may use restraint techniques or seclusion rooms. Two cases, *Couture v. Board of Educ. of Albuquerque Pub. Sch. (2008)* and *C.N. v. Willmar Public Schools, Dist. No. 347 (2010)* dealt with seclusion and restraint. In both cases, the Court held that the use
of seclusion and restraint for disruptive students was permissible if it was reasonable and addressed in the IEP.

Since the publication of these cases, the US Government Accountability Office (GAO) testified before the Education and Labor Committee in the U.S. House of Representatives regarding the abuse of restraint and seclusion. As a result, then Secretary of State, Arnie Duncan, published a letter to all states encouraging them to develop and/or revise their policies and guidance for the use of seclusion and restraint to ensure that “every student in every school . . . is safe and protected from being unnecessarily or inappropriately restrained and secluded.”

Other Issues

There were some cases that did not fit neatly into the FAPE categories, but emerged as trends from the cases analyzed. They were coded as “other” and involved the following: burden of proof, IDEA funding, statute of limitations, attorney fees, access, affirmative action, harassment, and stay-put.

Burden of proof. The question of who bears the burden of proof in challenging IEPs in court is important because it could well determine the final outcome in close cases. Language in IDEA does not specifically assign the burden of proof and up until 2005 it was a controversial question. *Schaffer v. Montgomery County Public Schools* (2005) went all the way to the Supreme Court. The primary issue presented was the delegation of burden of proof regarding adequacy of the student’s IEP. The Supreme Court held that the party seeking relief would bear the burden of persuasion. The Supreme Court’s decision in this case was cited by the district court in *Lathrop R-H School Dist. v. Gray* (2010). The district court remanded the decision of the state hearing
officer because the burden of proof was shifted to the school district even though they were not the party seeking relief. The case was eventually appealed back to the Court of Appeal for the Eighth Circuit on other issues.

*IDEA funding.* IDEA is a funding statute. The federal government allocates funds to the states to assist in implementing the requirements of IDEA. When providing services to students with disabilities, the LEAs can consider services that are reasonable in terms of cost as long as FAPE is being provided. Six percent of the cases refer to the cost of special education in relation to the services being provided. Two of those are discussed below.

The Tenth Circuit addressed limited funding in *Garcia v. Board of Educ., Albuquerque Public Schools* (2008). This case produced evidence that indicated that regardless of the school district’s action, the student’s attitude toward school and her bad habits would have prevented her from receiving any educational benefits. The Court reasoned that schools have limited resources earmarked for the provision of special education services for children and these resources would not have been effectively allocated if expended on a student who failed to use the educational opportunities provided to her and who avoided school altogether.

In *Ashland School Dist. v. Parents of Student E.H.* (2009), the Ninth Circuit Court of Appeal addressed the cost of residential placement. In regards to the parents claim that the District Court improperly considered the high cost of residential treatment when it denied their request for reimbursement, the Courts of appeal reasoned that although sometimes IDEA requires a school district to pay for a child’s private education, the cost of the student’s residential treatment was not necessarily irrelevant to the District Court’s decision to withhold reimbursement. IDEA requires a school district to fund reasonable, non-medical expenses
associated with a residential placement. The Court reasoned that much of the cost for a residential placement is directed to medical expenses, and the student’s care was dedicated to medical care unrelated to his educational needs.

Statute of limitations. IDEA lacks specific statutes of limitations. When statute of limitations is in question, federal courts may borrow the most appropriate or analogous statute of limitations from state courts. When determining the appropriate statute of limitation under IDEA, the court weighs the parental concern regarding participation, the school’s interest in quick resolution of disputes, and the significance of the student receiving an appropriate education (Gerstein & Gerstein, 2004). In P.P. ex rel. Michael P. v. West Chester School (2009), the Court addressed the statute of limitations. With respect to the statute of limitations, at issue was whether the district court erred in applying Pennsylvania’s 2-year personal injury statute of limitations to the plaintiff’s Section 504 claims instead of IDEA’s statute of limitations. In this case the Court of Appeal for the Third Circuit reasoned that the IDEA and Section 504 of the Rehabilitation Act do similar statutory work. In addition, the Supreme Court gave guidance in this area, stating that state statutes of limitations are to be used unless they frustrate or significantly interfere with federal policies. The Court of Appeal reasoned that in this case the state statute of limitations could frustrate federal policy and IDEA’s limitations period is a better fit for education claims made under the Rehabilitation Act than the personal injury statute of limitations. This reasoning was in line with the Ninth Circuit’s reasoning in S.J. v. Issaquah School Dist. No. 411 (2009), which was discussed under the section Parents as prevailing party.

Another case involving the statute of limitations was heard by the Second Circuit in Somoza v. New York City Dept of Education (2008). In this case the Court reasoned that Ms.
Somoza, who was twenty-three at the time, could not have injunctive relief because her claims were time barred under IDEA’s statute of limitations.

**Attorneys’ fees.** In many of the cases reviewed, the request for attorney’s fees was at issue. The prevailing party in a due process hearing may recover attorney’s fees only by filing suit in district court. The cases reviewed in this research study were limited to the Courts of Appeal and Supreme Court cases. Most of the cases either remanded this decision back to the district court or held that there was no harm in the school district’s violations, thus attorney’s fees were not granted.

In *Ford v. Long Beach Unified School Dist.* (2006), the parent of the student filing suit served as the attorney of the student and asked to recoup her fees. The Ninth Circuit held that parents who represent their child in IDEA claims cannot recoup attorney’s fees. Another case, *P.N. v. Seattle School Dist. No. 1* (2007), stated that because there was a settlement agreement between the parties, attorney’s fees could not be awarded unless the settlement is by a judge’s orders. In *Chambers v. School Dist. Philadelphia Bd. of Educ.* (2009), the Third Circuit reasoned that the District Court did not err in finding that the school district should only reimburse a portion of the student’s tuition for the private placement. The Court reasoned that the student’s mother was uncooperative to the point of delaying the student’s assessment and final IEP meeting to properly place the student, and the court had a right to deny or reduce tuition reimbursement if the court finds that a parent acted unreasonably. Two cases where the parents were the prevailing party were involving emotional distress of the parents. In both cases the Court remanded to the District Court to determine the amount of the award.
In *Nack ex rel. Nack v. Orange City School Dist. (2006)*, both the school district and the parent requested attorney’s fees. The Court of Appeal reasoned that only if a procedural violation resulted in substantive harm and thus constituted a denial of FAPE, may relief be granted. The Court reasoned that IDEA does not guarantee success; it only requires a school to provide sufficient specialized services so that the student benefits from his education. In conclusion, the Court reasoned that the fact that the IEP team did not adopt all of Mrs. Nack’s recommendations did not result in a deficient IEP. The school district requested attorney’s fees and costs for Mrs. Nack not filing the joint appendix. The Court reasoned that though Mrs. Nack’s attorney should have complied with this requirement, the school district would only be awarded partial fees for copy costs due to the lack of civility on both parties.

In *Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J (2007)*, the student’s mother was a lawyer and assisted with the case. With regard to the parents’ request for attorney’s fees, the Court reasoned that because the parents were the prevailing party to the extent that the ALJ ruled in the student’s favor regarding the amount of math instruction he was due, the parents were entitled to a portion of their attorney’s fees. The student’s mother, however, was not entitled to reimbursement for her legal services.

*Access.* Access, in IDEA terms, can be considered in two very different concepts. The first is that student with disabilities have “access” to the general curriculum in the least restrictive environment. This concept was alluded to in this research study under the subheading “Least Restrictive Environment.” The second access concept is with regards to a student’s ability to access the physical school building. While Section 504 of the Rehabilitation Act guarantees access to all persons considered disabled, under IDEA, if access is denied, then the student has
not been provided FAPE. Two cases addressed the issue of access. At issue in *M.Y. Ex. Rel., J.Y. v. Special School Dist. No. 1* (2008) was whether the school district denied the student FAPE by not providing special transportation to and from general education summer school, thus depriving her of meaningful access to summer school. The Court of Appeal for the Eighth Circuit reasoned that in order to state a claim under Section 504 in the context of education of handicapped children, parents must show that the school district acted in bad faith or with gross misjudgment by departing substantially from accepted professional judgment, practice or standard. The Court reasoned that there was no evidence in the record that the school district acted in bad faith or displayed gross misjudgment in denying the student’s special education transportation. The school district’s decision fully complied with the terms of the student’s IEP, which stated that the student was not eligible for extended school year and related services such as transportation. Furthermore, the record contained no written school district policies pertaining to summer school transportation and was void of any evidence regarding how other students with disabilities were transported to and from summer school. Therefore, the student was not denied access to summer school even though the school district did not provide transportation.

The second case regarding access was *Logwood v. Louisiana Dept of Educ.* (2006). In this case the student had limited access to the auditorium stage at school. The Court reasoned that access was not denied because the school had a plan in place for students with disabilities who participated in drama club. They simply moved the performance so that all could have access.
Other Parties

While an overwhelming number of the cases analyzed were between parents and school districts, six cases analyzed involved other parties. One case, *Lawrence TP. Bd. of Educ. v. New Jersey* (2005), was brought by the school district against the State of New Jersey. The school district argued that the state should pay for residential placements of students. The judge ruled that the school district had no prevailing right of action and dismissed the case.

The State of Hawaii was sued by a student’s Guardian Ad. Litem, *N.D. ex rel. Guard. Ad. Litem v. HI Dept of Educ.* (2010), due to the state reducing the number of instructional days in all of its public schools. N.D.’s argument was that the reduction of instructional days constituted a change in placement and triggered the stay-put provision of IDEA. In this case, the judge ruled that the system-wide teacher furloughs and concurrent shut down of public schools was not a change in educational placement triggering the stay-put provision. The Courts of appeal stated that Congress’ overarching purpose of the “stay-put” provision was to prevent the isolation and exclusion of children with disabilities and to provide them with a classroom setting similar to non-disabled children as possible. Thus, the Court defined stay-put under IDEA as a change in educational placement related to whether the student was moved from one type of program to another type of program.

In another case, *Cumberland Regional v. Freehold Regional* (2008), one school district sued a neighboring school district due to a residency dispute. The judge ruled that both were equally responsible for FAPE for the student in question because the mother of the disabled child lived in one district and the father lived in another district and the parents shared joint physical custody of the child. Another case involved the Arizona State Board for Charter Schools. This organization brought suit against the US DOE because for-profit charter schools could not
receive IDEA funds. The judge ruled in favor of the USDOE, stating that for-profit charter schools were not entitled to IDEA funds.

In *Andrew M. v. Del. County Office of Mental Health* (2007), Andrew’s parents sued Delaware County Office of Mental Health and Mental Retardation, who was responsible for early intervention services at the time of the suit. The Courts of appeal addressed the issues of “burden of proof” and LRE. The Court held that the party seeking relief under Part C of IDEA is responsible with burden of persuasion. The Court further held that preschool was a type of natural environment for infants and toddlers addressed by IDEA and the county violated IDEA by failing to provide twin brothers with developmental delay early intervention services at preschool. This is important because it denotes that LRE is not limited to school age students but must be considered and provided for all children eligible under IDEA, including preschool aged children.

Finally, in *Bd. of Ed. of Ottawa Tp. High School v. Spellings* (2008), parents along with two school districts asked the Court for a declaratory judgment that NCLB must yield to IDEA because the plaintiffs believed that the No Child Left Behind Act (NCLB) conflicted with IDEA. The Courts of appeal held that IDEA did not supplant provisions of the No Child Left Behind Act because they were not in conflict with one another.

**Summary**

Upon completion of this analysis, it is evident that with the exception of the paucity of Supreme Court guidance, no judicial decision establishes a legal precedent that governs every school district everywhere in the country. Instead, when the Court of Appeal rules on an issue, it creates binding precedence for only those school districts within its boundaries. However, the
decisions of these federal circuits do create persuasive guidance for other circuits faced with similar issues. While every case will not be controlling law for everyone, hopefully this analysis has provided useful information regarding trends so as to confer general guidance to school districts. Chapter five of this paper will highlight and codify this guidance. A list of the federal circuits and the states they encompass is included as Appendix B.

Also, while the purpose of this analysis was to examine FAPE and LRE as it relates to FAPE, other trends emerged and are listed. This is not an exhaustive list of information that can be gleaned from the cases, nor does it include commentaries from other sources, but hopefully provides insight on topics most relevant and practical to school districts. Furthermore, school districts should not over-generalize the relevance of a decision summarized in Chapter 4 to a particular dispute. Different facts can lead to different legal results. School districts are encouraged to confer with legal counsel for guidance about any decision cited in this paper and its possible impact on a dispute in a particular school district.
CHAPTER 5
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this research was to investigate how courts deal with issues related to the broad definition of free appropriate public education as it pertains to the least restrictive environment for the provision of special education services as legislated through the Individuals with Disabilities Education Act. The Supreme Court and Courts of Appeal decisions briefed for this study attempt to provide a deeper understanding for administrators of what constitutes a free appropriate public education and the factors IEP teams should consider when making LRE placement decisions for students with disabilities.

Summary

The following questions guided the data collection and analysis:

1. What issues regarding Free Appropriate Public Education (FAPE) have the United States Supreme Court and U.S. Courts of appeal defined since the 2005 implementation of the 2004 reauthorized IDEA?

   School districts have an obligation to provide FAPE and to educate students with disabilities in the least restrictive environment to the maximum extent appropriate as mandated by IDEA 2004 and the 2006 federal regulations. The Courts indicate that placement decisions must be made on an individual basis and not based on a student’s eligibility category. These decisions cannot be made based on what is convenient for administrators nor can a school
district’s economic standing be the sole deciding factor. In addition, while parents should be participating members of the IEP team, LRE placement decisions should not be based solely on parental request.

There are several issues the courts address regarding IDEA’s mandates. IEP teams must make LRE placement decisions that ensure a free appropriate public education to students. However, IEP teams need to know how to define the term “appropriate” given that IDEA does not specifically define the term. LRE is also an ambiguous concept in IDEA. How a team determines LRE for a student is not clearly addressed in IDEA. Thus, given the importance of FAPE and LRE in IDEA, school districts must be able to have a strong working knowledge of these terms in order to train personnel in determining placements, which constitute the least restrictive environment for individual students with disabilities. IDEA alone does not provide enough information for school districts to implement these mandates, thus school districts must look to the courts for guidance.

2. What were the outcomes of FAPE cases brought under IDEA by the United States Supreme Court and US Courts of appeal?

An overwhelming majority of the cases analyzed (94%) were between public school districts and parents of students with disabilities. Of those cases, most (86%) were brought by parents against public school districts. Only 13 of the 94 cases (13%) were appealed by the school district against parents of students with disabilities. Six cases involved other parties. In 66 of the 94 cases (more than 70%), the prevailing party was the school district. The parents prevailed in only 17 (17.8%) of the cases. In 8 of the cases, the judge found in part for both parties and in 3 of the cases the judge did not find for either party, remanding the full decision back to the district court.
Twelve cases discussed the issue of child-find and eligibility under IDEA. In terms of the IDEA eligibility category of the students either represented or referenced in the cases in this study, 18% of the cases either did not specify the disability type or it was not applicable in the case. The largest percentage of the cases, 23%, involved students eligible under the Autism category. The other categories were as follows: 17% were eligible under specific learning disabilities category; 13% were considered emotional/behavioral disordered; 11% were eligible for services under the intellectual disabilities category; 7% were either other health impaired or orthopedically impaired; 6% had multiple disabilities; hearing impairment, visual impairments, and significantly developmentally delayed rounded out the rest of the cases at 5% each.

There were several cases where the parents alleged that their child was denied FAPE due to the school district violating IDEA’s procedural requirements. In all of the cases won by the school district, the Courts of Appeal found that even if the school district had committed procedural violations, these violations did not result in a loss of FAPE.

Of the 17 cases where the parents were the prevailing party, 5 were specific to the LRE placement of students. In 3 of these cases the Court found that the placements were not restrictive enough. In 2 cases the Court found that the placements were too restrictive. Out of the 100 cases reviewed, 53% included private school placement as an issue. Of those cases, the Court found in favor of public school placement 58% of the time. The Court awarded private school placement 26% of the time and for partial private school services 15% of the time.

Twenty-four cases (24%) noted discipline or extreme behavioral difficulties as either the primary issue or one of several issues. Even when a child was extremely disruptive LRE and FAPE were still an expectation. In these cases, most school districts had a behavior intervention plan in place for the student and had implemented other supplemental aids and services in order
to keep the student in the LRE. The courts have consistently held that as long as the IEP addressed what discipline was appropriate for the student, that the discipline could be administered. Six percent of the cases referred to the cost of special education in relation to the services being provided.

3. What trends have developed in regard to the provision of FAPE through IDEA rulings since the 2005 implementation of the 2004 reauthorized IDEA?

Initially, nine categories were developed for the cases briefed. These categories included the following: prevailing party, disability type, LRE test referenced, and placement of the student, funding issues, related services, behavior/discipline, attorney’s fees and content unique to each case. These categories were then reviewed, compared and contrasted. Based on these findings, the cases were sorted into three groups: parent as prevailing party, school district as prevailing party, and other party. The other party category was comprised of cases that did not have either a parent or a school district as a party to the case. Information unique to each case was then compared in each grouping, which led to the emergence of obvious classifications. These classifications were color-coded based on seven primary categories, which emerged from the sorted data set. The color-coded categories were sorted into two groups: FAPE issues and non-FAPE issues. The FAPE categories that emerged were: prevailing party; parents and school districts as opposing parties; child-find, eligibility, and evaluation; procedural violations; instructional methodology; least restrictive environment; private school placement; and discipline/behavior. The non-FAPE categories that emerged were: burden of proof; IDEA funding; statute of limitations; attorney’s fees; and access.

Although there were overlapping issues in the cases analyzed, there were distinct trends that emerged from the case information. The majority of the cases derived from the following
FAPE issues: Child-find, eligibility and evaluation; procedural violations; instructional methodology; LRE; Private School Placement; and Discipline/Behavior. Cases that did not fit neatly into one of these categories are discussed under “Other.” There were some cases that did not fit appropriately into the FAPE categories, but emerged as trends from the cases analyzed. They were coded as “other” and involved the following: burden of proof; IDEA funding; statute of limitations; attorney fees; access; affirmative action; harassment; and stay-put.

With regard to child-find, the courts declared that a team approach is essential beginning with collecting information and defining specific areas of concern through interventions in the general curriculum. The team may consist of a psychologist, speech-language pathologist, occupational or physical therapist, audiologist, special education teacher, the student’s parents and others as appropriate for the needed evaluation. The team is responsible for assessing the student in all areas related to any suspected disability and in any other areas deemed relevant. School districts must take into account the whole child, which is more than academic progress, when evaluating a child for IDEA eligibility. Furthermore, the student must be evaluated in a timely manner. While the courts have allowed “extra” time for school districts to evaluate, in two cases analyzed in this study which were brought against the school district for failing to evaluate in a timely manner, one resulted in a remand to the district court to determine appropriate compensatory services and the other resulted in private school placement for the student at public expense for the student. This information leads to the conclusion that school districts should evaluate within the given timelines unless it is absolutely not appropriate to do so. The reason(s) for exercising more time than allowed should be clearly documented.

IDEA has clearly outlined procedures that must be adhered to by LEAs. School district administrators should ensure due process compliance as it relates to requirements of the IDEA as
codified in 20 U.S.C. 1400 et seq., its regulations promulgated in 34 C.F.R. Parts 300 and 301, the rules of the state in which the school district lies, and their local School Board of Education Policies. Violations in IDEA procedures could result in a state losing their IDEA funds or could result in costly remedies and court costs if the procedural violation causes a student to be denied FAPE. Thus, states receiving IDEA funds typically place a strong emphasis on the LEA’s compliance with IDEA procedures. There are several cases where the parents alleged that their child was denied FAPE due to the school district violating IDEA’s procedural requirements. In all of the cases won by the school district, the Courts of Appeal found that even if the school district had committed procedural violations, these violations did not result in a loss of FAPE to the student.

The diverse needs of students with disabilities and the challenges of providing appropriate educational services in both general education settings and resource settings places unique demands on LEA’s. IDEA defines FAPE in broad, general terms. It does not mandate specific educational methods but mandates that “special education and supplementary aids and services [should be] based on peer-reviewed research, to the extent practicable . . . which will advance the student toward attaining the annual goals as outlined in the IEP” (34 CFR 300.320(a)(4)-(i)). While, the courts have determined that the method of teaching is typically left to the discretion of school districts, schools must be able to demonstrate that the methodology used is providing educational benefit and meaningful progress for the student receiving special education services. In this study, the courts did not take a blanket approach to determining if the methodology was appropriate. In other words, the courts did not reason that a methodology was appropriate just because a school district had determined to use it. In the methodology cases reviewed in this study, where the courts found in favor of the school district, there was a clear
trend that the school districts were able to succinctly define what method of instruction they were using with a student, why they were using that particular methodology, and how the instruction was designed to address the specific weaknesses of the student in question. Parents of students with autism brought most of the cases that had instructional methodology as the primary issue. This trend lends itself to the idea that a school district needs to keep abreast of the instructional research for all students with disabilities, especially those with autism.

LRE was the primary focus in nine Courts of Appeal cases where the school district was the prevailing party and five Courts of Appeal cases where the parents were the prevailing party. As stated in chapter 2, the requirement for IEP teams to consider a continuum of services was built into EHCA from its beginning and there was an implied statutory requirement for LRE. In the cases reviewed regarding LRE, the courts continued the trend to weigh educational benefits against educational placement, giving more consideration to educational benefits. Another trend that continued was the application of appropriate supplemental aids and services in order to keep students in their LRE. One clear message the courts sent regarding LRE was that the unique facts in each case and the individual needs of the student in question were most relevant when determining LRE. The vast majority of cases reviewed ruled in favor of placements other than full time general education as satisfying the LRE. This is in line with the history of LRE cases since the 1997 amendments involving this same topic. While all Circuit Courts still reference *Rowley* as the standard for educational progress and meaningful educational benefit, many Circuits have, in addition to *Rowley*, either developed their own LRE test or adopted an LRE test previously established by other Circuits.

In some situations, the LRE for a student may not include any mainstreaming at all. In fact, for some students, the LRE may be placement in a separate school, such as a residential
school. Residential placement of students is considered a more restrictive environment in the continuum of services. The Courts of Appeal across circuits have consistently found that residential placement would be the least restrictive environment for students only if it is necessary for a student to receive meaningful educational benefits and the same could not be accomplished in a less restrictive environment. Furthermore, the Courts have found that school districts must consider the educational needs of the child and that school districts are not responsible for the medical needs of the student unless those needs pertain to their educational progress. IDEA states that if a school system is unable or unwilling to provide FAPE or provide services in a student’s LRE, a student may be placed in a private setting at the LEA’s expense. Primarily, the Courts continue to use the Rowley standard to determine the provision of FAPE. LRE can also be a consideration in a FAPE determination if the private school placement is an appropriate remedy. Out of the 100 cases reviewed, 53% included private school placement as an issue. Of those cases, the Court found in favor of public school placement 58% of the time. The Court awarded private school placement 26% of the time and for partial private school services 15% of the time.

The trends that emerge for the private school placement cases lend guidance to public school districts. School districts must make sure that all of their staff receives proper training in teaching the students with the defined conditions, make sure the IEP addresses all of the student’s needs, and that it is implemented in the least restrictive environment.

Twenty-four cases (24%) noted discipline or extreme behavioral difficulties as either the primary issue or one of several issues. Even when a child is extremely disruptive LRE and FAPE must still be provided. In the cases reviewed, most school districts had a behavior intervention plan in place for the student and had implemented other supplemental aids and services in order
to keep the student in the LRE. The courts have consistently held that as long as the IEP addresses what discipline is appropriate for the student, that the discipline can be administered.

Upon completion of this analysis, it is evident that with the exception of the paucity of Supreme Court guidance, no judicial decision establishes a legal precedent that governs every school district everywhere in the country. Instead, when the Courts of Appeal rule on an issue, it creates binding precedence for only those school districts within their own boundaries. However, the decisions of these federal circuits do create guidance for other circuits faced with similar issues. While every case will not be controlling law for everyone, hopefully this analysis has provided useful information regarding trends so as to confer general guidance to school districts.

4. What principles and procedures applicable for school administrators can be discerned from court cases brought under the IDEA with regards to FAPE and student placement decisions?

District level and school level administrators having a general knowledge of the regulations set forth by IDEA is essential. School systems not implementing the LRE mandate could result in a denial of the provision of FAPE to students with disabilities, which could negatively impact student progress. It could also negatively impact school funds, either through costly litigation or through a loss of federal IDEA dollars.

IDEA does not define the term “appropriate” nor give direction for the implementation of LRE, so district level and school based administrators must understand case law standards related to student placement decisions. As instructional leaders, administrators must provide professional development to IEP teams with regard to FAPE and LRE. Specifically, IEP teams need, to understand how to make LRE placement decisions. These decisions should be based on student need driven by IEP goals and objectives. Consideration should be given to the amount of
services and the “specially designed instruction” that may be needed to fully implement the IEP. These methodologies are often universally designed; meaning, this type of instruction would benefit all students with or without disabilities and could easily be implemented in the general education classroom. Both general education and special education teachers may need training in appropriate methodologies for students with disabilities.

Guiding Principles

The following 42 principles were developed from an overview of the case briefs. Themes of the principles were reflective of conclusions drawn from the cases analyzed and should guide the actions of school leadership and personnel regarding the implementation of IDEA as it relates to LRE and FAPE for public school students.

Prevailing Party

1. The party seeking relief under IDEA is responsible with burden of persuasion and the court may consider parental or school district hostility as a factor in ruling on placement disputes. School districts should always be professional when dealing with parents, especially when the situation is highly emotional (Andrew M. v. Del. County Office of Mental Health, 2007; Chambers v. School Dist. Philadelphia Bd. Of Educ., 2009; J.L. v. Mercer Island School Dist., 2010; Schaffer v. Montgomery County Public Schools, 2005)
Child-find, Evaluation, and Eligibility


3. Though a student may be eligible for special education services according to IDEA rules, this does not automatically make the student eligible under section 504; and transversely, a student eligible under section 504 is not necessarily eligible under IDEA (*Anello v. Indian River School Dist*, 2009).

4. Parents can decline services and waive all benefits under IDEA. When parents choose to waive their child’s right to services, school districts may not override the parents’ wishes (*Fitzgerld v. Camdenton R-III School Dist.*, 2006).

5. Only certain students with disabilities are eligible for benefits under IDEA and to qualify for those benefits a student must first have a qualifying disability and, secondly, need special education services (*Alvin Independent v. A.D. ex rel Patricia F.*, 2007).

6. A student must not only need or could possibly benefit from special education services but the student’s academic difficulty must be attributed to his or her qualifying disability. However, school districts must take into account more than academic progress when evaluating a child for IDEA eligibility (*Mr. I. ex Rel. L.I. v. Me. Sch Admn. Dist. No 55, 2007; Richard S. v. Washington School Dist.*, 2009).

7. Students must be evaluated in all areas of suspected disability, in a timely manner as defined by the school district’s state’s rules and in their native language, unless it is clearly not feasible to do so (*JG v. Douglas County Dist Lauren, 2008; N.B. v. Hellgate Elementary School Dist.*, 2008; *W. ex rel. Jean W. v. Deffaminis, 2007).
8. If a school district observes a student as part of conducting an assessment then an equal opportunity should be provided for an independent educational assessment for the parents (L.M. v. Capistrano Unified School Dist, 2008).

**Prevailing Party**

9. While IDEA procedures are important, there are only serious ramifications for procedural violations if they lead to a denial of FAPE for a student with disabilities (Van Duyn ex rel. VanDuyn v. Baker School Dist. 5J, 2007).


11. School districts should afford parents sufficient opportunity to participate in the IEP development of their child’s IEP (School Bd. of Lee County, Fla. v. M. M., 2009).

12. IEPs should be documented in writing, not verbal offers from the district, because IDEA specifically defines an IEP as a written document (Hjortness ex rel. Hjortness v. Neenah Joint Sch. Dist., 2007).

13. The focus of IEP teams should be on the individual unique needs of students (Joshua ex rel. Jorge v. Rocklin Unified, 2009).

**Instructional Methodology**

14. IDEA does not require that any state adhere to any specific educational methodology (Joshua ex rel. Jorge v. Rocklin Unified, 2009).

15. The standard of review of a school district’s educational plan is giving deferential to the educational authorities because they have primary responsibility for preparing the
educational plan tailored to meet a student’s individual needs and for choosing the methodology most “reasonably calculated” to provide the student educational benefit (Lessard v. Wilton Lyndeborough Coop. School Dist., 2010).


17. The methodology implemented by the school district should be appropriately designed so as to convey a meaningful benefit (D.F. Ex Rel. N.F. v. Ramapo Cent. School Dist., 2005).

18. A school district is not required to provide every special service necessary to maximize each student’s potential (T.P. Ex Rel S.P. v. Mamaroneck Union Free School, 2009).

19. Methodology used by the school district should be based on peer-reviewed research, conform to best practices in the field, and effectively have been used to educate students with similar conditions to the child in question (Joshua ex rel. Jorge v. Rocklin Unified, 2009).

20. School districts should provide enough training to teachers in order for them to effectively provided students with disabilities with an adequate education (Houston Independent School v. V.P. Ex rel. Juan P., 2009).

Least Restrictive Environment


22. School districts must consider the full continuum of services and place students in the LRE (R.H. v. Plano Independent School Dist., 2010). 356
23. Though parents are given a right to participate in the placement decision, school
districts retain the primary responsibility for determining the education to be afforded to the
disabled child, including proper educational placement (Lessard v. Wilton Lyndborough Coop.

24. Sufficient efforts should be made to educate students with disabilities in regular
classes with appropriate supplementary aids and services (P. Ex Rel. Mr. and Mrs. P. v.
Newington Bd. of Ed., 2008).

25. The standard for schools is to determine the most appropriate placement, not
necessarily the optimal placement of students (C.G. Ex Rel. A.S. v. Five Town Community
School, 2008).

26. Removing a child from the mainstream setting is permitted when the child would not
benefit from the mainstream setting or when any marginal benefits received from mainstreaming
are far outweighed by the benefits gained from services provided in the segregated setting (Pachl

27. Students with disabilities should participate in the same activities as nondisabled
students to the maximum extent appropriate (M.S. ex rel. Simchick v. Fairfax County School Bd.,
2009).

28. School districts must document a pattern of progression over a significant period of
time under a student’s IEPs and document efforts made to keep the student in the general

29. IEP teams should attempt behavior modification techniques and strategies with
students with behavioral disabilities prior to removing them to a more restrictive placement
30. IEP teams should consider both academic and nonacademic factors in deciding the LRE for students with disabilities (R.H. v. Plano Independent School Dist., 2010).

31. Though parents seeking an alternative placement may not necessarily be subject to the same mainstreaming requirements as a school district, IDEA’s LRE mandate must remain a consideration that bears upon a parent’s choice of an alternative placement (M.S. ex rel. Simchick v. Fairfax County School Bd., 2009).

32. Prior to removing a student to a more restrictive placement, school districts should consider whether a student’s education in the general classroom is satisfactory and, if not, whether there are reasonable measures that will make it so (Bd. of Educ. of T.P. School Dist., 211 v. Ross, 2007).

33. Students should be separated from their peers only if the services that make the segregated placement superior cannot be provided in a non-segregated setting (Pachl v. Seagren, 2006).

34. While costs may be a consideration in deciding whether a placement or intervention is appropriate, this should only be a small factor in the final decision of the provision of services (Ashland School Dist. v. Parents of Student E.H., 2009).

35. School districts may be required to fund residential placements if the educational benefits which can be provided through residential care are essential for the student to make any educational progress at all (Shaw v. Weast, 2010).

36. Residential placements should be resorted to only if mainstreaming attempts failed or were plainly unsustainable (T.F. v. Special School Dist. St. Louis Co., 2006).
**FAPE and Private School Placement**


38. For a parent to unilaterally place a student in private school at the public school district’s expense, the parent must show that the school district failed to provide FAPE and that the private placement is reasonably calculated to enable the student to receive educational benefits (*Thompson R2-J School District v. Luke P.*, 2008).

39. An IEP is not proven to be inadequate simply because the parents can show that a child makes better progress in a different program (*L.C. v. Utah State Bd. of Educ.*, 2010).

40. If a school district complies with the procedures set forth in the IDEA and develops an IEP reasonably calculated to enable the child to receive educational benefits, then the parents cannot be reimbursed for unilateral private school placement of their child (*Cerra v. Pawling Cent. School Dist.*, 2005).

**Discipline/Behavior**

41. If a student’s behavior is so aggressive as to require the student to be physically restrained, the IEP should indicate such (*Couture v. Board of Educ. of Albuquerque Pub. Sch.*, 2008; *C.N. v. Willmar Public Schools, Dist. No. 347*, 2010).

42. A school district is obligated to provide behavioral services and implement measures to shape a student’s behavior; however, the student must be willing to accept the modifications (*Garcia v. Board of Educ. Albuquerque Public SchoolsI*, 2008).
Conclusion

IDEA does not give a clear and concise substantive definition as to what constitutes an “appropriate” education, nor do any of the previous versions of the Act. Thus, school districts have struggled with the term and how to provide children with an education that would be considered “appropriate.” Because IDEA is somewhat ambiguous, one must consider supplementary sources, such as state rules, congressional reports, commentaries, and case law for its interpretation (Julnes, 1994). Implementation of an appropriate education has been given to individual education planning (IEP) teams who, as a part of FAPE, must consider student placement in the least restrictive environment where individual students should receive special education services unique to each student’s educational needs.

Because there is a limited amount of money to fund the implementation of IDEA, school districts must budget carefully, making sure money is spent where it can make the biggest impact. Given the economic conditions across the nation, many school districts have had to allocate the majority of federal IDEA funds into personnel costs. In doing this, the amount of funds school districts have for professional development could be inadequate. In reviewing and analyzing the previous cases in this study, it is apparent that though IDEA procedures are important, there are serious ramifications of violating IDEA procedures only if there is a direct result in a denial of FAPE. If school districts shift the focus from procedural training to providing professional learning in the area of how to implement specialized clinical instruction, then there is a greater likelihood that FAPE will be provided, regardless of procedural issues. To impact the largest number of students, the school districts should direct training in universal design of instruction for all teachers. Universal design of instruction is the application of instructional methods and
strategies that were designed to support the learning of students with disabilities but are useful to all students. An example of this is thinking maps or graphic organizers.

Through the case brief method of court decisions, emerging patterns and trends provided inference to what constitutes FAPE and how to make LRE placement decisions. By extrapolating the data, the researcher was able to provide suggestions for public school administrators so as to guide their development and implementation of procedures and processes that ensure students with disabilities receive a free appropriate education and receive their special education services in the least restrictive environment.

The provision of a free appropriate public education for students with disabilities is of great importance. The implications of not providing this mandate could result in undesirable ramifications such as a lack of educational progress for students and costly litigation for school districts. Part of providing FAPE is the consideration of LRE. Students with disabilities must be educated with their general peers as much as possible, and this is considered their least restrictive environment. Because there are no clear-cut rules as to this provision, administrators and IEP teams must rely on the preponderance of educational and behavioral data and guidance from past court cases. As a result of this research project, clearer guidance for the provision of FAPE and LRE was offered.

Recommendations for Further Study

1. Based on the findings and conclusions of this study, the following recommendations are made regarding further study:

2. Research should be conducted on cases from 2011 to present to determine whether the trends identified in this study remain relevant.
3. Research should be conducted to examine local school district procedures and processes in within the States regarding the implementation of IDEA regulations.

4. Research should be conducted to determine the level of knowledge and understanding of school administrators and faculty regarding the provisions of IDEA regulations.

5. Research should be conducted to determine the outcomes within the States of State Department Complaints and Due Process Claims that are not appealed to federal courts.

6. Research should be conducted to examine the impact of the Common Core Curriculum on the provision of LRE for students with disabilities.
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McCarthy, M. (N.D.). The handicapped child’s right to an appropriate educational program. 7 Ed. Law Rep. [1].


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Zirkel, P. (N.D.). Appropriate education and related services for handicapped students: giving back with one hand what was taken away with the other? 22*Ed. Law Rep.* [1].
APPENDIX A

COLOR CODED DATABASE OF CASES
<table>
<thead>
<tr>
<th>Circuit</th>
<th>Date</th>
<th>Case</th>
<th>Unique to the case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>2007</td>
<td>Mr. I. Ex Rel. L.I. v. Me. Sch. Admn. Dist. No. 55</td>
<td>Private school did not offer sped services</td>
</tr>
<tr>
<td>3rd</td>
<td>2007</td>
<td>Lauren W. ex rel. Jean W. v. Deflaminis</td>
<td>Complicated case surrounding settlement agreement of parties prior to litigation</td>
</tr>
<tr>
<td>4th</td>
<td>2009</td>
<td>M.S. ex rel. Simchick v. Fairfax County School Bd.</td>
<td>Parental placement must consider LRE</td>
</tr>
<tr>
<td>9th</td>
<td>2006</td>
<td>Park v. Anaheim Union High School District</td>
<td>Assessment, FAPE, Placement</td>
</tr>
<tr>
<td>9th</td>
<td>2007</td>
<td>Termine v. William S. Hart Union High School District</td>
<td>Partial tuition reimbursement was ordered b/c the parent was uncooperative. Interim placement IEP</td>
</tr>
<tr>
<td>9th</td>
<td>2008</td>
<td>N.B. Hellgate Elementary School Dist</td>
<td>ESY standard was applied correctly. Transfer student.</td>
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<td>System contracted with BCBA for DTT.</td>
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<td>Parent participation in IEP process and timeliness of giving IEP to parents was at issue</td>
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<td>P. Ex Rel. Mr. and Mrs. P. v. Newington Bd. Of Ed.</td>
<td>LRE - established an LRE test for 2nd circuit - OBERTI</td>
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<td>Home schooled student (not a good case)</td>
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<td>Falzett v. Pocono Mountain School Dist</td>
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<td>Allen v. Susquehanna TP. School Dist.</td>
<td>Student was killed after running away from school. School was not held liable.</td>
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<tr>
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<td>Richard S. v. Washington School Dist.</td>
<td>Record was clear that academic issues were outside of the child's disability.</td>
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<td>Mary T. v. School Dist. Of Philadelphia</td>
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<td>3rd</td>
<td>P.P. ex rel. Michael P. v. west Chester School</td>
<td>statute of limitations and importance of exceptional record keeping</td>
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<td>Anello v. Indian River School Dist.</td>
<td>504 does not equal IDEA eligibility</td>
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<td>C.H. v. Cape Henlopen School Dist.</td>
<td>Parents' conduct precluded IEP team from developing IEP by first day of school.</td>
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<tr>
<td>4th 2007</td>
<td>Avjian v. Weast</td>
<td>IEP team must consider educational needs of students.</td>
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<td>4th 2008</td>
<td>J.P. ex rel. Peterson v. County School Bd. Hanover</td>
<td>Parent wanted ABA.</td>
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<tr>
<td>4th 2009</td>
<td>Shaffer ex rel. Schaffer v. Weast</td>
<td>After a supreme court case; did not allow new evidence - harsh on parents.</td>
<td></td>
</tr>
<tr>
<td>4th 2010</td>
<td>Shaw v. Weast</td>
<td>Good indicators on when LRE is residential setting. Medical vs. educational.</td>
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<td>5th 2006</td>
<td>Logwood v. Louisiana Dept. of Educ.</td>
<td>Have a plan when access is limited.</td>
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<td>5th 2007</td>
<td>Alvin Independent v. A.D. ex rel Patricia F.</td>
<td>Two prong test for eligibility: 1 have a disability 2. need special ed services.</td>
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<tr>
<td>7th 2007</td>
<td>Bd. of Ed. of Township High School District v. Ross v. Illinois State BOE</td>
<td>7th Cir has not adopted LRE test. This case gives LRE reasoning.</td>
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<tr>
<td>7th 2007</td>
<td>John M. v. BOE of Evanston TownshipHigh School District 202</td>
<td>Parents want co-teaching. Case more about stay-put than LRE.</td>
<td></td>
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<tr>
<td>8th 2006</td>
<td>Pachl v. Seagren</td>
<td>Parents argued that 100% of the day in gen ed was LRE. Court disagreed.</td>
<td></td>
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<tr>
<td>Year</td>
<td>Case</td>
<td>Decision</td>
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<tr>
<td>8th</td>
<td>2006 Reinholdson Ex Rel., v. School Bd.</td>
<td>There is no mandate in IDEA for when ESY must be determined</td>
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<tr>
<td>8th</td>
<td>2008 M.Y. Ex Rel., J.Y. v. Special School Dist. No. 1</td>
<td>District must act in bad faith or display gross misjudgment to violate section 504</td>
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<td>8th</td>
<td>2010 C.N. v. Willmar public Schools, Dist. No. 347</td>
<td>Seclusion and restraint ok because the IEP stated it could be used.</td>
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<tr>
<td>8th</td>
<td>2010 Lathrop R-H School Dist. V. Gray</td>
<td>Burden of proof, BIP, AU student</td>
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<td>9th</td>
<td>2006 Ford v. Long Beach Unified School Dist.</td>
<td>Parents who represent their child in IDEA claim can not get attorneys' fees.</td>
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<td>9th</td>
<td>2007 P.N. v. Seattle School Dist. No. 1</td>
<td>Attorney's fees cannot be awarded unless the settlement is by a judge's order.</td>
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<td>9th</td>
<td>2007 Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J</td>
<td>IEP implementation failure may not constitute a denial of FAPE. Must look at educational benefit.</td>
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<tr>
<td>9th</td>
<td>2007 R.B. ex rel. F. B. v. Napa Valley Unified School District</td>
<td>FAPE is not afforded to those who are not eligible</td>
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<tr>
<td>9th</td>
<td>2008 Mendoza v. Placentia Yorba Linda Unified School District</td>
<td>Student made educational progress</td>
<td></td>
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<tr>
<td>9th</td>
<td>2009 Joshua ex rel. Jorge v. Rocklin Unified</td>
<td>Still used Rowley standard but added accepted practices in the field of AU.</td>
<td></td>
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<tr>
<td>9th</td>
<td>2009 A.G. v. Placentia-Yorba Linda Unified Sch</td>
<td>At least one sped teacher who has taught the child must attend the IEP meeting</td>
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<tr>
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<td>2009 Ashland School Dist. V. Parents of Student E.H.</td>
<td>Importance of providing appropriate notice for schools and parents</td>
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<td>2010 J.L. v. Mercer Island School Dist.</td>
<td>Rowley is still the standard by which courts decide FAPE</td>
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<tr>
<td>Date</td>
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<td>Summary</td>
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<td>10th</td>
<td>2005</td>
<td>L.C. v. Utah State Bd. of Educ.</td>
<td>School district’s deviations from the IEP do not amount to a clear failure in satisfying the IEP.</td>
</tr>
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<td>Ellenberg v. New Mexico Military Institute</td>
<td>Must have an IEP to determine LRE and ADA and RA claims can be filed regardless if IDEA</td>
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<td>Garcia v. Board, Educ., Albuquerque Public Schools</td>
<td>Student must accept services in order to receive them - funds are limited</td>
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<td>10th</td>
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<td>Couture v. Board of Educ. Of Albuquerque Pub. Sch.</td>
<td>Use of a locked timeout room was reasonable given the student's behavior.</td>
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<td>10th</td>
<td>2008</td>
<td>Sytsema v. Academy School District No. 20</td>
<td>though the district only offered a draft IEP this did not constitute a substantive denial of FAPE</td>
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<td>10th</td>
<td>2008</td>
<td>Thompson R2-J School District v. Luke P.</td>
<td>Schools are responsible for progress at school not at home. IDEA guarantees opportunity and access, not outcomes.</td>
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<td>10th</td>
<td>2009</td>
<td>Ellenberg v. New Mexico Military Institute</td>
<td>Military school did not discriminate on basis of IDEA, ADA, 504 for not admitting IDEA eligible student.</td>
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<tr>
<td>11th</td>
<td>2009</td>
<td>School Bd. of Lee County, Fla. V. M.M.</td>
<td>Cited M.T.V.; FAPE was provided. Always correct your mistakes when you find them. Procedural violation did not constitute a denial of FAPE.</td>
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<tr>
<td>11th</td>
<td>2006</td>
<td>M.T.V. v. Dekalb County School Dist.</td>
<td>school has a right to evaluate and to non rely on private evaluations</td>
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<td>Reid v. District of Columbia</td>
<td>School did not show progress</td>
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<td>2006</td>
<td>Frank G. v. Board of Educ. Of Hyde Park</td>
<td>Never had IEP services in public school; schools' own witness testified against placement.</td>
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<tr>
<td>Year</td>
<td>Circuit</td>
<td>Date</td>
<td>Case Name</td>
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<td>3rd</td>
<td>2007</td>
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<td>Students should be served in their natural environment and can't recoup attorney’s fees under Part C</td>
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<td>County Sch. Bd. of Henrico v. Z.P. ex rel. R.P.</td>
<td>Methodology and hours of direct instruction</td>
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<td>Richardson Independent School Dist. V. Michael Z.</td>
<td>5th circuit developed new test for residential placement.</td>
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<td>Houston Independent School v. V.P. Ex rel. Juan P.</td>
<td>When LRE is not general education placement.</td>
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<td>6th</td>
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<td>Board of Educ. Of Fayette County, KY. V. L.M.</td>
<td>Offered compensatory for failure to provide child-find but upheld early interventions prior to evaluating</td>
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<td>8th</td>
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<td>Fitzgearld v. Camdenton R-III School Dist.</td>
<td>Child find is not enforceable if parents refuse consent and waive rights to IDEA</td>
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<td>9th</td>
<td>2009</td>
<td>Forest Grove School Dist v. T.A.</td>
<td>Child was found ineligible through school system evaluation. Private testing found him eligible. School failed to provide FAPE</td>
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### Non-FAPE Issues

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<td>Draper v. Atlanta Independent School System</td>
<td>Repeated IDEA violations. Incorrect placement (SC class) and incorrect diagnosis resulted in private school placement eventually.</td>
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<td>Cave v. East Meadow Union Free School Dist.</td>
<td>Case dismissed due to parent's failure to exhaust administrative remedies</td>
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<td>Kla v. Windham Southeast Supervisory Union</td>
<td>Unlicensed person cannot represent</td>
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<td>Arizona State Board for Charter Schools v. US DOE</td>
<td>Charter schools must be non profit in order to receive federal funding</td>
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<td>2005</td>
<td>St. Anne Community High School Dist. No. 302 v. Norman K.</td>
<td>Student moved from one district to another - same state - stay put was private placement.</td>
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<td>Cumberland Regional v. Freehold Regional</td>
<td>Two school districts had to share the cost of educating a student</td>
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<td>9th</td>
<td>2005</td>
<td>Blanchard v. Morton School Dist.</td>
<td>Parent did not have to exhaust administrative remedies under IDEA for personal distress claim.</td>
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APPENDIX B

TABLE OF FEDERAL CIRCUIT COURTS
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<td>Tenth Circuit</td>
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<tr>
<td>D.C. Circuit</td>
<td>District of Columbia</td>
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