

LEGAL ISSUES RELATED TO SPECIAL EDUCATION DISCIPLINE
IN PUBLIC SCHOOLS

by

THOMAS A. HOWELL

DAVID DAGLEY, COMMITTEE CHAIR
JUDY GIESEN
NEIL HYCHE
RICHARD RICE
STEPHEN TOMLINSON

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ABSTRACT

The Individuals with Disabilities Education Act is the federal law, which defines within its provisions, the way students are disciplined in school. Schools must follow the procedures as set forth by these statutes. Decisions made by the administrator and/or the IEP team regarding the disposition of the student must meet the guidelines as set forth by IDEA and the state administrative code for that particular state.

Because discipline has long been an important concern of administrators, teachers, and parents, it is not surprising that courts and legislators have addressed issues regarding the use of disciplinary procedures with students in public schools. In fact, the law has been an important force in the development of how we use discipline in public schools. Understanding the legal restraints and requirements that guide school personnel when disciplining students is important for teachers and administrators.

Through the analysis of court cases, this study provides insight into the legal issues, outcomes, trends, and guidelines before the courts in the area of special education discipline and informs education leaders to help them make prudent decisions. This qualitative, descriptive study involves 132 court cases identified through *West's Education Law Digest* and *West's Education Law Reporter* over a 37-year time period from 1975-2011. Cases are analyzed using the format outlined by Starsky and Wernet in their book, *Case Analysis and Fundamentals of Legal Writing, 4th Edition*, and are divided into 10 issues: Placement, FAPE, Exhaustion of Administrative Remedies, Stay-Put, Suspension, Seclusion/Restraint, Manifestation, Expulsion, Corporal Punishment, and Due Process Hearing. From the research, 16 guidelines are

established in order to help enlighten educators regarding special education discipline. It is the author's hope that these guidelines will foster an understanding of the critical need for school administrators to be aware of the law with respect to disciplining students with disabilities.

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CHAPTER 1

INTRODUCTION

Edward Doe, age 12, lives with his three siblings and his mother in Smalltown, Alabama. Since starting school, Edward has been enrolled as a special education student in the Emotional Disability (ED) classification. Edward was re-evaluated in April 2004 and the Individualized Education Program (IEP) team made note of several inappropriate behaviors. They documented that Edward was defiant to his teachers, refused to obey adult authority, and fought with other students. A Behavior Intervention Plan (BIP) was developed for the next school year 2004-2005, and became part of his new IEP. During the first semester of 2004-2005, the IEP appeared to result in an improvement in his attitude toward his teachers but not in his initiating fights with other students, especially on the school bus and in other not closely supervised school activities. It was suggested by school personnel that he should be picked up early by his parent after school to help prevent fights during a time that was less supervised. The parent cooperated with the school request. Edward was suspended by an administrator pending a Manifestation Determination (MD) meeting on January 12th for beating up a smaller student. The Manifestation Determination meeting was held on February 11th. An attorney accompanied the parent to the meeting. Not all other IEP members were in attendance. During the meeting, the parent explained that Edward was taking medication for impulsiveness. No specifics were provided. She also mentioned how difficult it was to raise an ED child alone in a crowded, single parent home. Although she did not produce any documentation from a doctor, she indicated that

Edward could not control his behavior even with medication. Previously, the parent had requested the principal to arrange for Edward's physician to attend the meeting. The principal was unable to meet the request due to his being too busy. The principal felt that Edward selectively picked the weakest victims to bully, those he thought he could overpower. This latest fight, it was determined by the IEP team, was not a manifestation of his disability. The mother disagreed. The IEP team placed him in an alternative school, with his mother objecting. The parent filed for a due process hearing. (Zirkel, 2006)

This is a scenario that can be duplicated all over the country with subtle changes. With each situation, there are difficult decisions to be made by the IEP team and the school administrator. What does the law say is the correct procedure in disciplining a student? What decisions can an IEP team make? What decisions can a school administrator make? Can an administrator or an IEP team make a decision without the parents' approval? What recourse does a parent have when they feel the decision is wrong for their child? Are all students, disabled and non-disabled, entitled to certain rights before they can be excluded from public school for any period of time for disciplinary reasons? (Weatherly, 2007)

The Individuals with Disabilities Education Act is the federal law, which defines within its provisions, the way students are disciplined in school. Schools must follow the procedures as set forth by these statutes. Decisions made by the administrator and/or the IEP team regarding the disposition of the student must meet the guidelines as set forth by IDEA and the state administrative code for that particular state.

This study attempted to dissect the law as it pertains to discipline in schools. It is the author's hope that special educators and administrators might get a better understanding of the law and what they must do in making decisions involving student discipline in their schools.

Statement of the Problem

The Individuals with Disabilities Education Act (IDEA) requires states and schools to follow appropriate procedures when implementing discipline to a student with an IEP. Procedural rights are made available to parents of students with disabilities, as well as to the school. This gives the parents the voice to help in the administration of discipline of the children. Many times administrators and teachers are unclear as to what the exact procedure is when a student is in need of discipline or they are not sure what they can and cannot do under the law. How many days can a student with a disability be suspended? Can a special education student be sent to the alternative school? Can a student with a disability be expelled? What if the student has a weapon, does this change how a student is disciplined? These situations and many others are of strong concern to educators across the country. This paper examined what the Individuals with Disabilities Education Act says in dealing with the discipline of special education students and what the courts have ruled in regard to the IDEA and discipline.

Significance of the Study

In school districts across the country, educators have the difficult job of dealing with student discipline. That in itself is a continuous problem that is taxing, to say the least. Add to this the problems associated with disciplining a student with a disability and you have a narrow focus associated with the Individuals with Disabilities Education Act, federal regulations and state regulations, and case law that constricts the decision-making process. The IDEA amendments of 1997 and 2004 attempted to balance the approach to student discipline. This approach sought to reflect the need for safe and orderly schools, while preventing the termination of a free, appropriate public education for students with disabilities (Pacer, 2007). Procedures

must be followed and there is a limit to what can be done to and for a special education student. Administrators sometimes feel their hands are tied when it comes to adequately dealing with problematic behavior. They feel as though the student has too many rights and therefore is exempt from the rules that govern the rest of the student body. Administrators need to know how to navigate through the regulations in order to legally administer proper discipline to misbehaving students with a disability. Hopefully, this study will make the IDEA more clear and will provide insight into the legal issues, outcomes, and trends before courts in the area of discipline. This will ultimately give school personnel the knowledge necessary to prevent legal liabilities.

Statement of Purpose

The purpose of this research was to study court cases about student discipline for students receiving services under the IDEA. This paper fully explored both the procedural aspects of IDEA discipline and the decisions that are made when schools discipline a student with a disability. Educators need to be fully aware of the law as it pertains to discipline in their schools. They need to know what is allowed by law when disciplining a student in their school and they should be fully knowledgeable of the procedures that must be followed in disciplining that student. In order to avoid legal problems and to minimize the possibility of due process hearings, school leaders should be knowledgeable of federal and state regulations and current case law.

Research Questions

1. What issues occurred in court cases about discipline of students receiving services under IDEA?
2. What were the outcomes in court cases about discipline of students receiving services under IDEA?
3. What trends can be noted in court cases about discipline of students receiving services under IDEA?
4. What legal principles for school administrators may be discerned from court cases about discipline of students receiving services under IDEA?

Limitations and Assumptions

This study was limited to cases about discipline and the Individuals with Disabilities Education Act in K-12 schools documented in *West's Education Law Reporter* and *West's Education Law Digest* adjudicated in the time period 1975-2011. Cases used in this study were limited to those taken from the United States Supreme Court, federal district courts, and federal appellate courts. The researcher is an educator and not an attorney, consequently the study was developed through the viewpoint of a qualitative researcher rather than a litigator.

This study was based on the following assumptions:

1. It was assumed that the cases summarized in this paper have been adjudicated in accordance with existing federal laws.
2. Court cases having a significant impact on the area of public school special education discipline were reported in the West Law reporter system.

3. Results of state court cases involving special education discipline were resolved around the same issues and conclusions as those filed in federal court to the extent that to fully vet state cases would be redundant and unnecessary.

4. The cases summarized in this paper represent the totality of litigation between the years of 1975 and 2011 in the area of public school special education discipline.

5. The result of this analysis of case briefs will be principles for school administrators and school personnel to follow in implementing school special education discipline policies in a legally-defensible manner.

Definitions

During the course of this paper the author used a variety of terms associated with administering discipline to special needs students.

The legal and educational terms included within this study are defined below:

Adjudication: “The formal giving or pronouncing a judgment or decree in a case; also the judgment given” (Black, 1979, p. 39).

Appeal: “Resort to a superior (i.e., appellate) court to review the decision of an inferior (i.e., trial) court or administrative agency” (Black, 1979, p. 88).

Appellant: “The party bringing an appeal” (Statsky & Wernet, 1995, p. 48).

Appellate courts: A court, usually consisting of more than one judge, which reviews the decisions and results of trial courts at the request of a party. Appellate courts issue written decisions, which collectively constitute case law or the common law (Statsky & Wernet, 1995, p. 48).

Appellee: “The party against whom an appeal is brought” (Statsky & Wernet, 1995, p. 48).

Brief: “A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting counsel’s position” (Black, 1979, p. 174).

Case brief: “A summary of the essential components of an opinion” (Statsky & Wernet, 1995, p. 450).

Case law: “The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law” (Black, 1979, p. 196).

Citation: “(Also called a ‘cite’) . . . the identifying information that enables you to find a law or other document in a law library” (Statsky & Wernet, 1995, p. 24).

Consent:

means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). (Alabama Administrative Code, 2007, p. 489)

Defendant: “The litigant against whom the case is brought” (Statsky & Wernet, 1995, p. 11).

Disposition: “Act of disposing; transferring to the care or possession of another” (Black, 1979, p. 423).

Due process clause:

Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. (Black, 1979, p. 449)

Educational performance: “academic, social/emotional, and/or communication skills”.

(AAC, 2007, p. 489)

Equal protection clause:

That provision in 14th Amendment to U.S. Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. “Equal protection” clause of Federal Constitution requires that persons under like circumstances be given equal protection in the enjoyment of personal rights and the prevention of redress of wrongs. (Black, 1979, p. 481)

Evaluation: “procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs” (AAC, 2007, p. 489).

Evidence:

Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc. for the purpose of inducing belief in the minds of the court or injury as to their contention. (Black, 1979, p. 498)

Fact: “Any information concerning a person, thing, or occurrence that is obtained through the senses” (Statsky & Wernet. 1995, p. 73).

Federal courts: “The federal court system consists of two basic kinds of courts: courts of original jurisdiction (trial courts)--the United States District Court--and appellate courts--The United States Courts of Appeals (Statsky & Wernet, 1995, p. 19).

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) meets the standards of the SEA,

including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State; and (d) are provided in conformity with an individualized education program (IEP) and its requirements. (AAC, 2007. pp. 489-490)

Holding: “A conclusion of law reached by a court in an opinion” Statsky & Wernet, 1995, p. 73).

IDEA: the Individuals with Disabilities Education Act, as amended (AAC, 2007, p. 490).

Individualized Education Program (IEP): “a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the rules set forth by the AAC (AAC, 2007, p. 490).

Jurisdiction: “It is the authority by which courts and judicial officers take cognizance of and decide cases. . . . Power and authority of a court to hear and determine a judicial proceeding” (Black, 1979, p. 766).

Legal reasoning: “The explanation of why a court reached a particular holding for a particular issue (Statsky & Wernet, 1995, p. 455).

Litigation: “The process by which the parties to a dispute have the controversy resolved by a court” (Statsky & Wernet, 1995, p. 9).

Local Education Agency (LEA):

(a) a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Educational service agencies and other public institutions or agencies. The term includes: 1. An educational service agency; and 2. Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as LEA under State law. (AAC, 2007, p. 490)

Opinion: “A court’s written explanation of its conclusion (also called its holding). The court tells us how and why it applied primary authority (i.e., the rules of law) and perhaps secondary authority to the facts before it to resolve the legal dispute.” (Statsky & Wernet, 1979, p. 5)

Plaintiff: “The litigant bringing the dispute to court” (Statsky & Wernet, 1995, p. 11).

Policy: “The function or purpose. The most important part of a court’s reasoning in interpreting statutory language. Policy considerations permeate and dominate all the other techniques for identifying legislative intent” (Statsky & Wernet, 1995, pp. 152, 116).

Precedent: “A prior opinion that provides guidance to the court in deciding a current case” (Statsky & Wernet, 1995, p. 7).

Public agency:

includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. (AAC, 2007, p. 491)

Rational basis test: “An appellate court will not second-guess the legislature as to the wisdom or rationality of a particular statute. The same test may be applied when a court is reviewing a decision of an administrative body because of the expertise of such body” (Black, 1979, p. 1136).

Statutes: “A law passed by the legislature declaring, commanding, or prohibiting something” (Statsky & Wernet, 1995, p. 5).

Summary judgment: “A judgment rendered without a trial because there was no dispute between the parties on any of the material facts” (Statsky & Wernet, 1995, p. 456).

Overview of the Study

Chapter 1 of this study is an introduction to the study. Chapter 1 includes a statement of the problem, significance of the study, purpose of the study, research questions, assumptions, limitations, definitions, and organization of the study or overview.

Chapter 2 contains a review of literature on the subject of student discipline and the Individuals with Disabilities Education Act in K-12 schools. The literature review includes the history of the IDEA as it relates to student discipline, major provisions of the IDEA relative to student discipline, and litigation history of the IDEA as it relates to student discipline.

Chapter 3 gives a description of the methodology and procedures utilized in the study. This section includes a brief introduction, research design, research questions, instrumentation, case briefs, and case analysis.

Chapter 4 includes briefs of cases and the analysis of the cases.

Chapter 5 contains the summary, conclusions, and guidelines for school districts with regard to student discipline and recommendations for further study.

CHAPTER 2

LITERATURE REVIEW

Introduction

Maintaining safety and discipline in public schools in America should be one the strongest concerns of parents, school officials, and policymakers. A balance must be made between the needs of the school and its inhabitants and the needs of the individual student (NASP, 2002). Everyone expects schools to be free from violence and run in an orderly way. The local school districts set standards for how discipline and safety is handled in their schools. At times, one might question whether there seems to be a double standard in the enforcement of discipline in relation to regular education students and students with disabilities. Outside of the regulations for student discipline for all students in a school district, there are rules for disciplining special education students. “IDEA is the primary federal law addressing the unique educational needs of children with disabilities” (GAO, 2001). The protections of the IDEA regarding discipline are designed to accomplish prevention of subjective decision-making that leads to abuses of the rights of students with disabilities by school administrators (Wrightslaw, 2007). As a result of IDEA, students with disabilities aged 3 through 21 receive educational services. A free, appropriate public education was mandated by Congress through the Education of All Handicapped Children Act (EAHCA) in 1975 for all children with disabilities. Required, also, for students with disabilities were due process rights, individualized educational programs, and least restrictive environment placement. The IDEA has been renamed, amended, and revised in 1990, 1997, and most recently 2004.

The IDEA includes in the definition of childhood disabilities several physical, emotional, and mental conditions. The IDEA defines a child with a disability as “a child with mental retardation; hearing, speech, or language impairments; visual impairments; orthopedic impairments; serious emotional disturbance; autism; traumatic brain injury; other health impairments; or specific learning disabilities, who for this reason, needs special education and related services” (GAO, 2001).

The implementation of discipline-related policies in schools has been mandated for state and local school districts by federal law, through provisions of the Individuals with Disabilities Education Act (IDEA).

IDEA requires that eligible children with disabilities have available to them a free, appropriate public education that provides for special education and related services to address their educational needs in the least restrictive environment. The act also requires schools to follow certain procedures when they make a change in a student’s educational placement because of his or her behavior. (GAO, 2001)

To make certain that educational services are not withheld from disruptive and unruly students who have a disability, a set of procedures are put in place. Federal law requires procedural protections for students with disabilities. In the school year 1997-1998, there were nearly 6 million students ages 3 through 21 that were classified under the IDEA as having a disability that qualified them to receive special educational services. Conducting a school with a learning environment and maintaining school safety are major concerns of principals and teachers. This was especially the case when the U.S. Department of Education issued proposed regulations putting into place the IDEA amendments of 1997. These concerns centered on the regulations dealing with the 10 school-day limit on suspensions and the “stay put” provision. When dealing with misconduct, school officials felt this would limit what they could do to maintain discipline in the classroom. This is the case even though most evidence shows that

schools are still providing services to children who misbehave and are removed from campus. This is primarily due to the protections of IDEA. Regular education students who are removed in similar circumstances are not given these opportunities; therefore, many in the educational community perceive a double standard in the way children are treated when they are disciplined. This raises a fairness issue in the way students are disciplined in public schools. In spite of the fairness issue, “special education students who are involved in serious misconduct are being disciplined in generally a similar manner to regular education students. The Individuals with Disabilities Education Act plays a limited role in affecting schools’ ability to properly discipline students.” (GAO, 2001)

By design, the school administrator is given more flexibility in disciplining physically dangerous children through the amendments to IDEA 2004 (Adams, 2006). School personnel must navigate carefully through the confusing maze of IDEA regulations, constitutional law, and state law (Horton, 1999). What about the day-to-day misconduct that disrupts the learning environment? What is the school administrator to do? School administrators must follow federal and state law and regulations concerning students with disabilities, and many times they seem to be walking a tightrope when making decisions that come across their desk every day. It is tough enough meeting the challenges of unruly kids and demanding parents on a regular basis, but to wade through the regulations and risk litigation if they make the wrong decision can be very stressful. The question arises regarding what the courts have said in terms of IDEA and discipline. This paper attempted to examine case law in relation to this area of special education.

All schools need rules to function properly. When we discuss discipline in schools, we are referring to procedures that teachers use to maintain a classroom climate that promotes learning (Walker, Colvin, & Ramsey, 1995). As educators, we might believe that whatever we

use to manage misbehavior relative to techniques is discipline (Curwin & Mendler, 1988; Walker, 1995). Discipline involves more than just using procedures to control student misbehavior; it is also a means to teach students about the effects of their behavior on others and to help them learn to control and manage their own behavior (Yell, Rozalski, & Drasgow, 2001). Discipline should maintain an effective classroom environment and positively affect the lives of students in that classroom.

Because discipline has long been an important concern of administrators, teachers, and parents, it is not surprising that courts and legislators have addressed issues regarding the use of disciplinary procedures with students in public schools. In fact, the law has been an important force in the development of how we use discipline in public schools. Understanding the legal restraints and requirements that guide school personnel when disciplining students is important for teachers and administrators.

Controversial and confusing is one way school officials might describe the use of disciplinary procedures involving students with disabilities. Until recently there had been no specific federal guidelines that addressed the discipline of students with disabilities, in spite of the fact that the IDEA and the federal regulations that implemented the laws were very detailed (Hartwig & Reusch, 2000). Teachers and administrators were uncertain about the most appropriate disciplinary procedures due to the lack of regulatory and statutory guidance. A body of case law has been formed from a number of judicial decisions addressing this issue. When comparing disciplinary actions of students with disabilities and those without disabilities, those with disabilities are governed by a different set of limitations and rules, according to case law (Tucker, Goldstein, & Sorenson, 1993). Maloney (1994) suggested that teachers, administrators, and school board members needed to acknowledge that a dual standard of discipline exists

between students with and without disabilities and that for administrators to claim that all students were disciplined equally and, thus, that there is no dual discipline standard would not be convincing in court. Students with disabilities do have special protections against certain types of disciplinary procedures.

Federal legislation, in the form of the IDEA Amendments of 1997, finally addressed the subject of disciplining students with disabilities. When Congress began drafting these amendments they solicited testimony from school teachers and administrators about the difficulties they faced when disciplining special needs students. To address the discipline issues, Congress included a section in the IDEA that attempted to ease these problems. What Congress tried to do was apply an even hand in the task school officials had in protecting students with disabilities and their right to receive a free and appropriate public education (FAPE) and their ability to keep schools safe and productive as a learning environment.

Discipline in Public Schools

In order for schools to operate at their best, in terms of both efficiency and effectiveness, they need policies to regulate student conduct. If students break the rules of the school they attend they should be held responsible. The result being violators will be disciplined when they are held accountable to the rules. The courts have given administrators and teachers a great deal of flexibility to maintain behavior because they know how important it is to have students behave in the correct way. Because of this latitude, the courts have been very supportive of schools to use discipline to manage the behavior of students (Yell, 2006).

The concept of *in loco parentis* is an English common-law term for “in the place of the parent.” School officials are given control and responsibility of the children by the parents.

Originating from this concept of *in loco parentis* is the recognition by the courts of the importance of school authority over student behavior (Alexander & Alexander, 2002). Teachers and administrators in public schools have the authority to discipline, correct, and guide as well as teach children in order to accomplish educational objectives.

School administrators and teachers are obligated to maintain a learning environment at school that is effective and orderly by disciplining students in a way that is wise and reasonable. They work within federal and state laws and regulations to achieve control of students in the school. This does not mean that school officials represent fully the place of parents in dealing with their child in the course of a school day, as some might consider the meaning of *in loco parentis*. Teachers and administrators “have the duty to see that school order is maintained by requiring students to obey reasonable rules and commands and to respect the rights of others” (Yell, 2006, p. 379).

Students with and without disabilities have certain rights under the Due Process clause of the 5th and 14th amendments to the U. S. Constitution, when it comes to discipline issues. In the day-to-day exercise of school discipline, the school’s responsibility of maintaining good student behavior and order limit the due process protections given to students. The legal community, as a result, has had to manage a balance between the interests of the schools and the needs and rights of the students.

Procedural due process and substantive due process are the general areas of rights afforded students. When discussing discipline, procedural rights refer to the fairness of the procedures and methods used by school officials. Substantive due process involves protecting student rights from violation by school administrators and teachers and the reasonableness of the disciplinary processes (Valente & Valente, 2005). Broad authority is given to school officials to

maintain discipline and order in the schools by establishing procedures and rules. There is no right to due process if the student cannot show that he or she was deprived of a liberty or property interest. According to a federal district court in Tennessee, “teachers should be free to impose minor forms of classroom discipline, such as admonishing students, requiring special assignments, restricting without being subjected to strictures of due process” (*Dickens v. Johnson County Board of Education*, 1987, p. 157).

To meet these requirements, school systems should take some important actions. These actions should include (1) putting school-wide discipline procedures and policies in place that are both appropriate and reasonable, (2) when using discipline procedures, students should be afforded due process rights, and (3) administering discipline in a non-discriminatory way. It is the responsibility of school leaders to regulate student behavior by developing rules. This is necessary to maintain discipline and to operate efficiently and effectively. Students should clearly know which behaviors are acceptable and which behaviors are prohibited. If students violate reasonable school rules by behaving in ways that are prohibited, they will be held accountable. The implication is that students who break the rules are subject to disciplinary consequences. This is what student accountability to rules encompasses (Yell et al., 2001).

School leaders feel that it is more likely students will conduct themselves appropriately and not engage in the prohibited behaviors if they know what types of behavior are prohibited and what the consequences are of engaging in these prohibited behaviors. The courts generally have been on the side of school leaders and have given them authority in writing rules that govern student conduct at the school as they look at the issue of school-wide discipline policies (Yell, Katsiyannis, Bradley, & Rozalski, 2000).

When school leaders put together policies that deal with student conduct, they should develop rules that are clear enough to allow students to distinguish permissible from prohibited behavior. Rules should not be too vague or general so that students do not have a clear understanding of them. This could result in the violation of students' rights. School leaders need to be careful that the rules and the consequences of bad behavior are rational and generally reflect a school-related purpose. Courts may, in fact, decide that a rule is legally invalid if it is vague enough students may not understand what behaviors are prohibited. School rules should be school-related, clear, and communicated well to the students. School leaders should focus on the school's educational purpose when punishing or prohibiting student behavior.

When students violate school rules, school leaders have been given, by the courts, authority to impose reasonable consequences. These consequences need to be fair and rational. Consequences may be legally invalid if they are unsuitable and excessive to the circumstances of the disciplinary infraction. In order for school administrators and teachers to achieve compliance with the rules of the schools, they must use means that are reasonable. Reasonableness in the educational setting is denoted by disciplinary procedures that are fair and rational. Restraints and penalties used by school officials must not be excessive or unnecessary (Hartwig & Reusch, 2000).

Because education is a vital part of a student's future success, due process standards should be included in student disciplinary actions that result in suspension and/or expulsion. Sorenson (1993) stated that ensuring that school officials' disciplinary decisions are made fairly is the purpose of due process procedures. The full range of protections, such as cross-examination of witnesses and representation by counsel are examples of the full range of protections given to people who are involved in formal trials, but are not required in due process

procedures in school settings (Sorenson, 1993). Impartiality, notice, and hearing are basic protections included in due process procedures.

The United States Supreme Court in *Goss v. Lopez* (1975; hereafter *Goss*) outlined the due process procedures that must be available to all students in schools. In this particular case, nine high school students were suspended from school. Whether these nine students were denied due process protections under the 14th Amendment was the issue to be determined. It was decided that in cases of suspension students had at least minimal due process protections. The Supreme Court explained that the state may not withdraw the right to an education on the grounds that misconduct had occurred. The Court held that students had a property interest to a public education protected by the 14th Amendment and states are required to recognize that fact. The Court made this decision while observing that schools had broad authority to control student behavior through writing and implementing disciplinary rules. As required by the 14th Amendment, education may not be taken away without following due process procedures. The higher court disagreed with the argument of the school that a 10-day suspension was only a minor and temporary interference with the students' education and stated that the suspension was a "serious event in the life of the suspended child." The imposition of the 10-day suspension, therefore, must include "the fundamental requisite of due process of law . . . the opportunity to be heard" (*Grannis v. Ordean*, 1914).

In a school setting, the opportunity to be heard is the right to notice and hearing, which requires that charges be presented and the students have the opportunity to tell their side of the story (Yudof, Kirp, & Levin, 1992). Due process protections protect students from unfair or mistaken exclusion. They will not shield them from suspensions that are administered properly. In *Goss*, the Court recognized that suspension is valuable and necessary to keep order in schools,

recognizing the need for immediate action that is effective for discipline. School personnel should not have the power to unilaterally act on discipline issues without notice and hearing requirements, the Court felt, even though this might be somewhat cumbersome in terms of hearing requirements on every suspension case. The Court held that when students are suspended for 10 days or less, the school needs only to give them oral or written notice of the charges, an explanation of the reasons for the suspension, and an opportunity to present their case.

This does not mean there is a delay between the time notice is given and the time of a student's hearing. The school official could informally discuss the misconduct with students immediately after the behavior occurs and give them an opportunity to present their version of the facts. The disciplinary action should take place after the notice and hearing in this type of situation. A student could immediately be removed and the notice and hearing could follow as soon as possible, if the behavior of the student posed a danger to other students or teachers or threatened the academic environment. If this scenario were to occur, notice of disciplinary hearings should follow within 24 hours and the hearing be held within 72 hours. According to the Court in *Goss*, expulsions and suspensions of greater than 10 days require more extensive and formal due process procedures. The basic due process protections addressed in *Goss* apply solely to short suspensions of 10 days or less. Due process protections must be afforded to students in short- and long-term suspensions. Short-term suspensions include formal or informal meetings, written or oral notice of charges, and an opportunity to respond to the charges. Long-term suspensions and expulsions require a formal meeting, written notice specifying the charges, notice of evidence, witnesses, and substance of testimony, the hearing (advance notice of time, place, and procedures), the right to confront witnesses and present their own witnesses, a written

or taped record of the proceedings and the right to appeal. When necessary, it is within the school's power to remove from the school dangerous students. Also, a due process hearing is not required for brief in-school sanctions.

Courts have given schools great authority in developing rules and regulations governing student behavior. This power is not absolute. Regulation developed by the school must not violate constitutional principles when they are developed. Usually, this requires school officials to be reasonable in regulating student behavior. Rules must have a school-related and rational purpose, and the school must devise reasonable means to achieve compliance with the rule, and not prohibit or punish conduct that has no adverse effect on public education. They should not use disciplinary restraints or penalties that are excessive or unnecessary for the benefit of school purposes (Hartwig & Reusch, 2000). Reasonableness essentially means that procedures must be rational and fair and not excessive or unsuitable for the educational setting.

Rules should not be vague or general but sufficiently clear and specific to assist students to see the difference between permissible and proscribed behavior so as not to result in a violation of students' rights. Specific and definitive school rules provide students with information regarding behavioral expectations.

The Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act, which can be traced to the Civil Rights legislation of the 1960s, is a federal education grant program enacted in 1975 to improve educational opportunities for students with disabilities. Typically, the statute is expected to be reauthorized every 5 years. The most recent reauthorization occurred in 2004.

The IDEA is considered to be the federal government's first major effort to intervene and influence public education at the state and local level. Parents and advocacy groups were pivotal in bringing about change for students with disabilities and tirelessly developing the IDEA. Parents led the way in seeking educational rights for their children in many ways. During the early part of the 20th century, parental advocacy indicated a societal shift in the climate of the country. Parents had a tremendous impact on legislation that centered on disability rights (Yell, 2006). In the late 1950s and early 1960s, the federal government led early efforts to effectively deal with the problems in education for students with disabilities. Through the Education of Mentally Retarded Children Act of 1958, funds were provided to train teachers of children with mental retardation. Congress passed the Training of Professional Personnel Act of 1959, to help train leaders to educate children with mental retardation (Yell, 2006). The Civil Rights Act, enacted by Congress in 1964, required racial desegregation of public schools. The following year, Congress passed the Elementary and Secondary Education Act of 1965, providing more funds to local and state school districts, designed to help students with a huge array of grant programs. According to Yell, the *Brown* decision was important for students with disabilities because the concept of equal opportunity was applicable to them as well as to students of minority background. Sixteen years after the *Brown* decision, two seminal federal district court cases applied the concept of equal opportunity to children with disabilities. The two landmark decisions in which action was brought against state statutes and policies that excluded students with disabilities were *Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania* (1972) and *Mills v. Board of Education of the District of Columbia* (1972) (Yell, 2006,)

Due to poverty, race, or other factors, these first programs focused mainly on providing monetary help to students who had been denied access to educational opportunities. Under the Civil Rights Act and the ESEA and as a condition to receive federal financial assistance, the federal government required school districts and states to follow specific rules and adopt certain policies. In return, states received a new type of education funding related to increased educational opportunities and improving academic performance for the targeted populations.

During this same period, Congress enacted a patchwork of programs, many within the ESEA, to specifically assist students with disabilities. In 1966, Congress established the first large federal education grant program for students with disabilities. The purpose of this program was to assist states “in the initiation, expansion and improvement of programs and projects . . . for the education of handicapped children” (Pub. L. 89-750, 80 Stat. 1204). The program was later repealed and replaced with the Education of the Handicapped Act of 1970 (Pub. L. 91-230, 84 Stat. 175). In 1969, Congress passed the Children with Specific Learning Disabilities Act, a grant program funding support services for covered students.

Drawing on these prior successful efforts, disability rights advocates began to lobby Congress in the early 1970s for comprehensive legislation to protect people with disabilities. By 1973, Congress passed the Rehabilitation Act, the first significant piece of legislation designed to ensure equal opportunity and access for people with disabilities to activities supported with federal funds. Section 504 of the Rehabilitation Act prohibited discrimination against qualified individuals with disabilities in any program or activity receiving federal financial assistance. This prohibition covered all education programs that received federal grant money, and it represented the first serious national commitment to end systemic discrimination against students with disabilities. Section 504 also placed the first affirmative obligation on covered educational

institutions to include students with disabilities in educational opportunities, including the requirement that necessary supports, such as accommodations, be provided to ensure access.

Following enactment of Section 504, Congress observed that even with the access provisions mandated by the Rehabilitation Act, more than 1 million students with disabilities “were being totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out’” (H.R. Rep. No. 94-332, p. 2 (1975)). To address this problem, Congress replaced the Education of the Handicapped Act of 1970, enacting in 1975 the first incarnation of the IDEA, sweeping new legislation then known as the Education for all Handicapped Children Act. (The law was renamed the Individuals With Disabilities Education Act in 1990.)

Through the EAHCA, Congress introduced a series of radical reforms designed to bring students with disabilities, formerly excluded from the public education system, into the education mainstream. The federal government presented the states with a deal. In return for a federal commitment to fund a significant portion of services for children with disabilities, the states would provide a free and appropriate public education to all qualified students with disabilities. While the meaning of the term FAPE will be discussed at great length in subsequent chapters, briefly it meant (and still means) a student’s individual needs. FAPE also required that, to the greatest extent appropriate, students with disabilities be educated in general education settings, alongside non-disabled students.

To ensure that schools, districts, and states complied with the responsibility to provide a FAPE, the EAHCA provided students with disabilities and their parents a right to privately enforce the law. If parents of a disabled student believed their child was not receiving a FAPE, the parents could seek to resolve their complaints through an impartial due process hearing. If

the parents were not satisfied with the outcome of the due process hearing, the law granted them the right to have a state or federal court review that decision. Significantly, the EAHCA in a later reauthorization also granted parents the right to recover their attorney's fees if a school district failed to comply with the requirements of the law.

The EAHCA, subsequently known as the IDEA, relied on the premise that educational decisions should be in the hands of the experts: the educators. Educators charged with the development of a student's individualized education program were supposed to set the standard and the meaning of a FAPE based on each child's individual needs. Yet, parents had the right to challenge every decision made by educators regarding the identification, evaluation, placement of, and services for their child. In the years following the IDEA's initial enactment, this model resulted in increasingly frequent conflicts between districts and parents. As a result of regular judicial intervention and interpretation of the IDEA, the meaning of a FAPE was constantly in flux.

During the 1980s, courts struggled to define the nature of the right to a free appropriate public education. Several cases interpreting the meaning of a FAPE reached the Supreme Court during the 1980s and 1990s. The most significant of these cases is the landmark decision *Board of Education of Henrick Hudson Central School District v. Rowley* (1982). In *Rowley*, the Court ruled that the law did not require school districts to provide educational programs that maximized the potential of students with disabilities. Instead, the Court ruled that FAPE mandated instruction that was designed to ensure:

- the child benefits educationally from the instruction;
- the instruction meets the state’s educational standards and approximates the grade levels used in the state’s regular education standards; and
- the education program is reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

By taking this approach, the Court tried to distance the role of courts from interfering with educational decisions for students with disabilities. The *Rowley* standard has governed the IDEA jurisprudence since that time. Implementing the *Rowley* standard, however, resulted in more litigation than from any other federal education law in history.

The 1980s also witnessed the growth of the standards-based reform movement. In 1983, the National Commission on Excellence in Education issued a report titled “A Nation at Risk” that caused the education community to reassess its objectives for education. The report found that even though American students performed well at basic levels on national and international tests, they lagged behind their counterparts in other nations at proficient and advanced levels of achievement.

This report contributed to a growing consensus in the education field that existing approaches to education policy missed the larger picture: the overall improvement of academic achievement of all American students. State and local programs began to institute important reforms supporting the use of common academic standards to promote the overall academic achievement of America’s students. States and local school districts also focused on instilling a system of greater accountability, one that would require schools to demonstrate that students were achieving at expected levels.

By 1988, this movement began to influence federal education policy in the year Congress passed the Hawkins-Stafford School Improvement Amendments to the ESEA. The amendments provided the first version of an accountability system in a federal education grant program by requiring states to set academic standards for children receiving services under the ESEA. Growing concern over the low achievement of America's students prompted President George H. W. Bush to bring the nation's governors together at an education summit in 1989. The governor's summit developed a national agenda for education that called for the systematic restructuring of American education in two major ways: establishing standards for achievement and developing assessment systems to measure achievement.

The summit agenda acted as a catalyst for further reforms at the federal level. In 1994, Congress reauthorized the ESEA through the Improving America's Schools Act. The IASA required states to set core academic standards for students in reading and math, and required states to develop assessment systems designed to measure how well children met the challenging state student performance standards. To ensure effective implementation of reforms, the IASA made federal funding contingent on the improved academic performance of the students served by the law. Theoretically, failure of the students to perform would bring genuine negative consequences for the schools and districts, such as reductions in funding and potential school restructuring

In the 1990s, the standards-based education reform movement also reached the IDEA system. The major themes of the 1997 IDEA reauthorization were improving results for special education students, making districts accountable for the students' academic improvement, and encouraging high expectations for students with disabilities.

Following the 1997 IDEA reauthorization, Congress again attempted to find an effective way to implement standards-based reform. The educational achievement results under the IASA were lackluster, possibly due to lax enforcement of federal standards. The IASA's enforcement mechanisms were seldom applied and the academic performance of America's students continued to be mediocre when compared to other industrialized nations.

The continuing low performance of America's schools brought education reforms center stage to the political debate in 1999. President George W. Bush's 2000 campaign pledged to introduce "Texas-style" accountability on a national scale. Within days of taking office, Bush delivered a plan to Congress describing his vision for large-scale education reform. After a year of heated debate on Capitol Hill, Congress passed the No Child Left Behind Act of 2001, which President Bush signed into law on Jan. 8, 2002.

The NCLB builds on the core standards-based reform concepts of its predecessors, including core academic standards assessment systems, to ensure accountability for schools. Yet the NCLB went beyond these concepts and added a truly impressive system of enforcement measures requiring schools to produce educational results from students. The NCLB system involves regular testing of students against state-defined standards of achievement. The goal of this system is that each school will improve the performance of its students so that eventually schools bring all students to a high level of achievement and resulting in "no child left behind."

Schools must demonstrate a steady increase in level of student achievement to make acceptable progress. Failure of schools to meet these levels over a period of years entails a progression of increasingly serious consequences. These standards of achievement apply to all students, but a school's ability to make acceptable progress is contingent on the achievement

results of subgroups of students: economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.

If students within a school or students within each of the subgroups do not make adequate progress after a set period of time, the schools must first offer all students the right to transfer to another school and then offer certain students tutoring services. If schools continue to fail after these measures are implemented, they face increasingly severe consequences leading to eventual restructuring--that is, a new curriculum implemented, new administration installed, or the school could be transformed into a charter school.

The role of students with disabilities is critical to the successful implementation of the NCLB. Students with disabilities are one of the identified “subgroups” in the NCLB, and the successful achievement of students with disabilities plays a large factor in any school’s ability to meet the standards of achievement under the law. If students with disabilities do not make adequate progress on academic assessments, the school also can face the adverse consequences described above. If sufficient numbers of students with disabilities do not participate in state and district assessments, the school also can face adverse enforcement measures. Given this prominent role in the NCLB, a central theme of the 2003 and 2004 reauthorization process was to align the systems so that students with disabilities can reach the achievement goals in the NCLB.

The IDEA dramatically transformed a public education system formerly unresponsive to the needs of students with disabilities. According to a 2001 report, 6.5 million students with disabilities were being served under the IDEA. Some 96% of students with disabilities were placed in regular school buildings and millions of infants and toddlers received early intervention services (U.S. Department of Education, 2001). Despite these successes, compliance with the

law had not been without problems. The IDEA special education system imposed many challenges and costs for hard-pressed school systems. The procedurally driven nature of the special education system placed immense administrative burdens on school districts. The IDEA's due process hearing provisions introduced an adversarial system of litigation into the daily operation of schools and districts that presented significant costs without necessarily guaranteeing a correct result.

At the classroom level, schools and teachers had to learn to instruct disabled students in integrated settings. School districts had to recruit and train qualified teachers to ensure that students received instruction by competent personnel and had to provide a whole new level of support services for students with disabilities. Dwindling financial resources and personnel shortages, together with large numbers of students identified for services, left states and districts struggling with the challenge of providing a FAPE to students with disabilities.

Recognizing the significant problems experienced by schools implementing the IDEA, in October 2001 President Bush established the Commission on Excellence in Special Education to study issues related to the implementation of the IDEA. On July 1, 2002, the commission delivered its report, setting out its recommendations for the reauthorization. The commission made several important findings that provided a basis for the major reforms in the 2004 reauthorization. The commission found the following:

- Educators and policymakers continued to think of special education and regular education as separate programs, resulting in children with disabilities often not being treated as children who were general education students with special instruction needs, and creating incentives for misidentification and academic isolation.

- Research on special education needs enhanced rigor and the long-term coordination necessary to support the needs of children, educators and parents. In addition, the system did not always embrace or implement evidence-based practices once established.
- While the IDEA was generally providing basic legal safeguards and access for children with disabilities, the current system often placed compliance with complex regulations above results.
- Children with disabilities require highly qualified teachers. Teachers, parents, and education officials desired better preparation, support and professional development related to the needs of children, educators and parents. In addition, the system did not always embrace or implement evidence-based practices once established.
- The system used an antiquated model that waited for a child to fail before he or she received appropriate instruction methods. More emphasis needed to be placed on using methods of prevention and intervention.
- Many of the methods of identifying children with disabilities lacked validity. As a result, thousands of children were misidentified every year, while many others were not identified early enough or at all.
- A culture of procedural compliance often developed from the pressures of litigation, diverting much energy from the public schools' first mission of educating every child.
- When a child failed to make progress in special education, parents did not have adequate options and recourse. Parents had their child's best interests in mind, but they often did not feel they were empowered when the system failed them.

- The focus on compliance and bureaucratic imperatives, instead of academic achievement and social outcomes, failed too many children with disabilities. Too few successfully graduated from high school or transitioned to full employment and postsecondary opportunities, despite provisions in the IDEA providing for transition services. Parents wanted an education system that was results-oriented and focused on the child's needs – in school and beyond.

Aims of 2004 Reauthorization

The Individuals with Disabilities Education Improvement Act of 2004 represented Congress' bipartisan effort to address the IDEA's system problems and to align the IDEA with the NCLB. There were sharp differences between the House version of the bill (H.R. 1350) and the Senate version (S. 1248), particularly on the issues of funding for IDEA, discipline, due process and providing flexibility to local school districts. The House bill was passed in April 2003. The Senate version of the bill passed the Senate floor in November 2003.

After the House and Senate passed their versions of the legislation, the reauthorization process was stalled in a conference committee for more than a year. The parties refused to negotiate due to sharp differences between the two bills. Negotiations finally moved forward in the fall of 2004. After the November 2004 presidential election, the conference committee resolved its long-standing differences and compromised on disputed issues. The end result was a law that retained the basic structure for delivery of special education and related services to students with disabilities. The bill significantly altered the fiscal and administrative requirements with an aim to increase accountability.

2006 Part B Regulations

The vast majority of the IDEA's detailed requirements are found in the federal regulations implementing Part B of the act. These can be found in volume 34 of the Code of Federal Regulations, Part 300. Part B grants services for children with disabilities primarily in preschool, elementary and secondary schools.

The 2004 statute mandated that the secretary of the U.S. Department of Education issue regulations on the act, consistent with a prescribed public notice and comment process. Following the 2004 reauthorization, the department published a formal notice on Dec. 29, 2004, requesting advice and recommendations on IDEA regulatory issues and announcing a series of seven public meetings. These meetings were held in January and February 2005, to solicit further input and suggestions from the public. ED received over 6,000 public comments in response to its published notice and at the various public meetings.

These comments were reviewed and considered in developing proposed regulations. The agency issued proposed IDEA Part B regulations on June 21, 2005, and announced another series of seven public meetings to be held throughout the country. This public comment period culminated in the development of final regulations, which the department officially released on August 14, 2006. These new federal regulations took effect on October 13, 2006.

Discipline and the IDEA

Parents, teachers, and administrators have long felt that discipline is an important concern. The use of disciplinary procedures with students in public schools has been addressed by the courts and legislatures throughout the country. How we discipline has been affected by the law, which has been an important force in our school policy. Administrators and teachers

have been uncertain how to discipline because of this lack of guidance in statutory and regulatory law. There is a body of case law, however, that has been created that has addressed discipline, as a result of judicial decisions. What is found in case law is that, usually, discipline of students with disabilities are subject to different rules and limitations than with regular education students (Tucker et al., 1993). Teachers, administrators, and school board members should understand there is a dual standard of discipline in public schools for students with and without disabilities. Maloney (1994) argued that administrators would have a hard time convincing the court that they treated students equally when it came to discipline. This is due to the fact that students with disabilities do, actually, have special protections as they apply to certain types of disciplinary procedures. This dual standard only exists, however, when disciplinary procedures may result in a change of placement. The determination of what constitutes a change of placement under the IDEA is critical. Under the IDEA, changes of placement cannot be made without following the procedural requirements of the law.

IDEA Amendments of 1997

In the IDEA Amendments of 1997, federal legislation addressed the subject of disciplining students with disabilities. Teachers and administrators testified before Congress about the difficulties in disciplining students with disabilities. As a result of the information gathered by Congress, discipline issues were addressed in a specific section of the new IDEA. This was all in an effort by Congress to help school administrators and teachers maintain a balance between their responsibility to make sure students with disabilities receive a free and appropriate public education and to ensure the safety of all children and that schools are conducive to learning (Yell, 2006; see H.R. Rep. 105-95, p. 108 (1997)). Despite many years of

effort to achieve this balance, educators, both inside and out of the special education world, frequently question the efficacy of the system. According to the Office of Special Education Programs (OSEP) of the Department of Education (Senate Report, 1997), the goals of the disciplinary provisions of IDEA 1997 were as follows: (1) all students, including students with disabilities, deserve safe, well-disciplined schools and orderly learning environments; (2) teachers and school administrators should have the tools they need to assist them in preventing misconduct and discipline problems and to address those problems, if they arise; (3) there must be a balanced approach to the issue of discipline of students with disabilities that reflects the need for orderly and safe schools and the need to protect the right of students with disabilities to a free appropriate public education (FAPE); and (4) students have the right to an appropriately developed IEP with well-designed behavior intervention strategies.

In IDEA 1997, Congress sought to expand the authority of school officials to protect the safety of all children by maintaining orderly, drug-free, and disciplined school environments, while ensuring that the essential rights and protections for students with disabilities were protected (Yell, 2006). In writing the discipline provisions, Congress sought to help school officials and IEP teams (a) respond appropriately when students with disabilities exhibit serious problem behavior and (b) appropriately address problem behavior in the IEP process (Yell et al., 2000). In the Individuals with Disabilities Education Improvement Act of 2004, Congress sought to give school districts more authority when disciplining students with disabilities.

IDEA 2004

In IDEA 2004, Congress made significant changes in four areas. First, the law now allows school personnel to consider any unique circumstances on a case-by-case basis when

determining when they consider changing a student's placement when the student has violated a code of student conduct. According to Richards and Martin (2005), this language allows a school administrator to consider any unique circumstances when deciding to seek a long-term disciplinary removal. Furthermore, the authors assert that this language may be a response to school districts' zero tolerance policies in which administrators are required to take specified actions in certain circumstances. Second, Congress altered the manifestation requirement. Third, Congress identified a behavior that can lead to a 45-day removal. Finally, the stay-put rule was modified in disciplinary situations.

It is important that school personnel are aware of the law and regulations and are able to effectively implement their provisions. Three major points underlie the disciplinary changes of IDEA 1997 and IDEA 2004. First, the law emphasizes the use of positive behavioral interventions, supports, and services for students with disabilities who exhibit problem behaviors. The purpose of positive programming is to teach appropriate behaviors that increase the likelihood of a student's success in school and in post-school life, rather than merely using punishment-based programming to eliminate inappropriate behavior. These procedures must be included in students' IEPs when appropriate. Second, school officials may discipline a student with disabilities in the same manner as they discipline students without disabilities, with a few exceptions. A school's regular disciplinary procedures can be used with students with IEPs as long as they (a) are used with non-disabled students and students with disabilities (i.e., the procedures are not discriminatory), (b) do not result in a unilateral change in a student's placement (i.e., suspension in excess of 10 cumulative school days that constitutes a pattern of exclusion, change of educational placement made by school personnel and not the IEP team,

suspension for 10 consecutive days, and expulsions from school) and (c) do not result in the cessation of educational services.

Third, discipline should be addressed through the IEP process. Yell et al. (2000) predicted that school districts were most likely to violate the disciplinary provisions of the IDEA by (a) failing to address problem behavior and discipline in the IEP process and (b) not following the behavioral plans and disciplinary procedures indicated in a student's IEP and in the IDEA (e.g., a principal unilaterally expels a student with disabilities rather than adhering to the discipline plan in the IEP).

An additional advantage of addressing discipline through the IEP process is that if school personnel and parents can arrive at solutions to a student's discipline problems through this process (e.g., changing a student's placement to an alternative school rather than moving to expel him or her), there is no need to invoke the disciplinary provisions of IDEA 1997.

There are several major changes in IDEA 1997 and IDEA 2004. The IDEA requires that if a student with disabilities exhibits problem behaviors that impede his or her learning or the learning of others, then the student's IEP shall consider "strategies, including positive behavioral interventions, strategies, and supports to address that behavior" (IDEA, 20 U.S.C. 1414 (d) (3) (B) (i)). Comments to the federal regulations indicate that if a student has a history of problem behavior, or if such behaviors can be readily anticipated, then the student's IEP must address that behavior (IDEA Regulations, 34 C.F.R. 300 Appendix A question 39). This requirement applies to all students in special education, regardless of their disability category.

Neither the IDEA nor the regulations indicate what behaviors should be addressed in the IEP. The lack of specificity is consistent with the IDEA's philosophy of allowing IEP teams to make individualized decisions for each student (Gorn, 1999). It is up to the IEP team to

determine which behaviors are significant enough to require interventions formally written into the IEP. Drasgow, Yell, Bradley, and Shriner (1999) inferred from previous hearings and court cases that these problem behaviors may include (a) disruptive behaviors that distract teachers from teaching and students from learning, (b) noncompliance, (c) verbal and physical abuse, (d) property destruction, and (e) aggression toward students or staff.

These problem behaviors should be addressed in the following manner. First, when a student exhibits problem behavior, the IEP team must determine if the behavior impedes his or her learning or other students' learning. Second, if the team decides that the problem behavior does not interfere with the students' learning, they must conduct an assessment of the behavior. Third, the IEP team must develop a plan based on the information gained from the assessment to reduce problem behaviors and increase socially acceptable behaviors.

The results of the team's decisions must be included in the IEP. This means that the IEP of a student with serious problem behaviors must include the information from the assessment in the present levels of performance section of the IEP. Because educational needs must be addressed by developing appropriate special education programming, the IEP must also include (a) measurable goals and objectives and (b) special education and related services that address the problem behavior. Moreover, if the student's behavioral program involves modifications to the general education classroom, these modifications must be included in the IEP. When an IEP team addresses a student's problem behavior, the needs of the individual student are of paramount importance in determining the behavior strategies that are appropriate for inclusion in the child's IEP (OSEP Questions and Answers, 1999).

If an IEP team fails to address a student's problem behaviors in the IEP, then that failure may deprive the student of a FAPE (Drasgow et al., 1999). This could result in legal actions

against the offending school district. Failure to include positive behavioral supports and interventions in the IEPs of students who exhibit significant problem behaviors would constitute a denial of the free appropriate public education (IDEA Regulations, Appendix B, Question 38).

Functional Behavior Assessment and Behavior Intervention Plan

The IDEA encourages, and sometimes demands, that IEP teams address problem behaviors by conducting functional behavioral assessments (FBAs) and by developing education programming based on the results of the assessment (Drasgow & Yell, 2002). An FBA is a process that searches for an explanation of the purpose behind a problem behavior (OSEP Questions and Answers, 1999). Although the U.S. Department of Education has not defined an FBA, it is reasonable to assume Congress intended that the term be consistent with the meaning in the professional literature (Drasgow et al., 1999; Gorn, 1999). FBA is a process to gather information about factors that reliably predict and maintain problem behavior in order to develop more effective intervention plans (Horner & Carr, 1997; O'Neill et al., 1997). In essence, an FBA is used to develop an understanding of the cause and purpose of problem behavior (Drasgow et al., 1999).

The law intends that an FBA should be part of the process of addressing problem behavior. Moreover, the purpose of an FBA, or any special education assessment, is not merely to determine eligibility. Rather, its purpose is to determine the educational needs of students with disabilities and then to develop effective programming to meet those needs.

The IDEA does not detail the components of an FBA. Neither did the U.S. Department of Education include additional information on FBAs in the final regulations. This means that the composition of FBAs is left to states, school districts, and IEP teams. According to OSEP, a

definition was not offered in the IDEA Regulations because IEP teams need to handle each individual case according to the circumstances raised in that particular case (OSEP, 1999).

The decision to conduct an FBA, therefore, is left up to the professional judgment of the IEP team. In certain situations, though, an IEP team must conduct an FBA. These situations are when a student in special education is suspended for more than 10 days or placed in an interim alternative educational setting (IAES).

The IDEA requires that the IEP team must meet and conduct or revise an FBA and BIP within 10 business days from when a student is (a) first removed for more than 10 school days in a school year, (b) removed in a manner that constitutes a change in placement, or (c) placed in IAES for a weapons or a drug offense. In such situations, the IEP team must convene to conduct an FBA and develop a BIP. Martin (1999) suggested, however, that IEP teams should conduct an FBA if a student is approaching 10 cumulative days of suspension rather than waiting until the 10-day limit has been reached.

For subsequent removals of a student who already has an FBA and BIP, the IEP team members can individually review the BIP and its implementation. The review of the student's behavior may take place without a meeting unless one or more of the team members believe that the plan (or its implementation) needs modification (IDEA Regulations, 34 C.F.R. 300.520). The regulations did not intend that school personnel develop behavioral interventions within 10 days of removing a student from the current placement. Instead, the regulations are intended to require that public schools expeditiously conduct the FBA. Moreover, the regulations ensure that the IEP team develops appropriate behavioral interventions based on the assessment. Those interventions must then be implemented as quickly as possible.

The purpose of conducting an FBA is to develop educational programming that is related to the cause and purpose of the problem behaviors. The IDEA Amendments of 1997 (hereafter IDEA 1997) refer to specific programming to address problem behavior as BIP. In IDEA 2004, the term BIP was dropped for “Behavioral Intervention services and modifications” (IDEA, 20 U.S.C. 1415 (k) (D) (ii)).

The IEP team develops a BIP based on the FBA. The IDEA does not provide details about the composition of the plan beyond indicating that the plan has to be individualized to meet the needs of different students in different educational environments. The U.S. Department of Education also refused to define a BIP. Congress and the Department apparently expected that the term *behavioral intervention plan* had a commonly understood meaning in special education (Gorn, 1999).

The behavior change program should emphasize multiple strategies that include teaching pro-social behaviors. The key component of the plan is using positive behavioral interventions that do not rely on coercion or punishment for behavior change (Dunlap & Koegel, 1999).

When an IEP addresses behavior, the process for developing and writing the IEP is the same as would be for academics. First, the need for behavioral programming will be addressed in the present levels of educational performance. Second, measurable behavioral goals will be listed in the annual goal section along with the procedures that will be used to measure a student’s progress toward the goals and the method for reporting a student’s progress to his or her parents. Third, the behavioral programming will be addressed.

Suspensions

Despite the presence of positive behavioral intervention and support plans, Congress recognized that school officials still needed clarification of which disciplinary procedures could be used when students with disabilities exhibit serious misbehavior. Most discipline procedures used with students in public schools are permitted under the IDEA (e.g., time-out, in-school suspension). When the student misconduct is serious enough to warrant suspension or expulsion, however, the strictures of the IDEA must be followed.

Most types of disciplinary procedures that are used as part of a school-wide discipline plan may be used with students in special education. The exceptions are procedures that result in a student being suspended, expelled from school, or having his or her placement change.

The IDEA authorizes school officials (i.e., building-level administrators) to unilaterally suspend students with disabilities, or place students in an alternative educational program on a short-term basis, to the same extent that such suspensions or removals are used with students without disabilities. According to the U.S. Department of Education, the reason that school officials may make such decisions unilaterally (i.e., acting by themselves) is because maintaining safety and order in the school environment may sometimes require that students with disabilities be removed from the school environment immediately. To react quickly to such situations, the building level administrator can remove a student with disabilities from school without having to convene an IEP team, conduct a manifestation determination, or seek permission to do so from a student's parents. School officials, however, must afford a student his or her due process rights (i.e., oral or written notice of the charges, an explanation of the evidence that supports the charges, and an opportunity to present his or side of the story).

The IDEA does not establish a specific limitation on the number of days in a school year that students with disabilities can be suspended from school. As a result of this lack of information in the statute and regulations, a great deal of confusion exists regarding the number of days that students with disabilities can be suspended without violating the IDEA. Students with disabilities may be removed from school for up to 10 cumulative or consecutive school days as long as such suspensions are used with non-disabled students as well.

School officials must keep two critical points in mind when using short-term suspensions. First, 10 consecutive days is the upper limit on out-of-school suspensions. If a suspension exceeds this limit, it becomes a change of placement. In this situation, if school officials do not follow the IDEA's change of placement procedures (e.g., written notice to the student's parents, convening the IEP team), the suspension is a violation of the law.

Second, when the total number of days that a student has been suspended equals 10 or more cumulative days in a school year, educational services must be provided. At this point the IEP team has to meet for a number of reasons. The team must determine what services will be provided and where, and conduct an FBA and develop a BIP. If an FBA and BIP are already a part of the IEP, they must be reviewed. Third, the IEP team must address the change of placement issue. In other words, the team must examine the previous suspensions to see if they amounted to a unilateral change of placement. Finally, the team should conduct a manifestation determination.

If the manifestation determination finds that the misconduct was related to a student's disability, he or she cannot be suspended more than 10 consecutive days. If the misconduct was not related to a student's disability, he or she may be suspended for more than 10 consecutive

days. Of course, the district must continue to provide educational services to the suspended student and his or her parents can challenge the decision of no relationship.

Educational services must be provided after the 10th cumulative day of removal. For example, if a student is suspended for 10 cumulative days in the fall semester and is then suspended for 3 more days in the spring term, educational services must be provided from the first day in which cumulative suspensions exceed 10 days or, in this case, the first day of suspension in the spring. School officials may implement additional short-term suspensions for separate incidents of misconduct, as long as they provide educational services to the suspended student. Although not directly addressed in the IDEA, if a student is suspended for fewer than 10 days, a school district is not required to continue educational services (IDEA Regulations, 34 C.F.R. 300.121 (d) (1)). School officials in consultation with the student's special education teacher should determine the content of the educational services, if the suspensions equals less than 10 cumulative days.

When suspensions exceed 10 cumulative days, the IEP team must determine educational services. The educational services provided to students must allow them to (a) progress in the general education curriculum, (b) receive special education and related services, and (c) advance toward achieving their IEP goals.

Because of limits on the number of days in which a student with disabilities may be removed from the school setting, school officials should use out-of-school suspensions judiciously and in emergency situations. Moreover, school personnel should keep thorough records of the number of days in which students with disabilities are removed from schools for disciplinary reasons so they do not inadvertently violate IDEA provisions.

The frequency and number of short-term removals, if they are excessive, may be indicative of a defective IEP. Martin (1999) asserted that the greater the number of short-term disciplinary removals, the greater the likelihood that a hearing officer will find that the behavior portion of the IEP is inappropriate and a deprivation of the student's right to a FAPE. Indeed, if a student is approaching 10 cumulative days of suspension, the IEP team should be convened to review the student's behavioral plans, conduct a functional behavioral assessment, and develop or review the student's BIP. Martin (1999) also suggested that the IEP team should also conduct a manifestation determination prior to the 11th day of accumulated short-term removals.

A long-term suspension of more than 10 consecutive days is a change of placement under IDEA 1997. Because such a suspension is a change of placement, the school district must follow IDEA's change of placement procedures. This means that a school district must provide the parents of the suspended student with written notice prior to initiating the change. The purpose of such a notice is to give the parents an opportunity to object if they disagree with the placement change. The written notice should include an explanation of the applicable procedural safeguards (OSEP Questions and Answers, 1999). If a student's parents object to the change of placement, the school district may not suspend the student beyond the 10 consecutive days. The only exception to this rule is when the IEP conducts a manifestation determination and decides the student's misconduct is not related to his or her disability.

A series of short-term suspensions may also become a change of placement. The question of when disciplinary removals amount to a change of placement, however, can only be determined by a student's IEP team. To determine if a series of short-term suspensions have become a change in placement, an IEP team must determine the circumstances surrounding the suspension, including (a) the length of each removal, (b) the total amount of time the student is

removed, and (c) the proximity of the removals to one another (IDEA Regulations, 300.520, Note 1). Nevertheless, neither IDEA 1997 nor the regulations provide clear guidance as to when repeated short-term suspensions of fewer than 10 school days amount to a change of placement. Ultimately, this question will be answered by due process hearing officers and judges. The decision to classify a series of suspensions as a change in placement can only be decided on a case-by-case basis. It is important, therefore, that when a series of short-term suspensions amount to more than 10 cumulative school days, the IEP team be convened to determine whether these suspensions may be a change in placement.

Removal of a student for fewer than 10 cumulative school days probably will not amount to a change in placement. Similarly, if a series of short-term suspensions of not more than 10 days each are used for separate incidences of misbehavior, they probably will not be a change of placement, as long as the suspensions do not create a pattern of exclusion. However, school officials must not assess repeated short-term suspensions as a means of avoiding the change of placement procedures required when using long-term suspensions. According to Gorn (1999), subterfuge of this nature, if detected, will invariably result in a finding that a school district violated procedural requirements of the IDEA.

Gorn (1999) reviewed decisions from the U.S. Department of Education's Office of Civil Rights (OCR) regarding when accumulated short-term suspensions become a change of placement. She listed eight decisions from 1990 to 1997 in which OCR decided that multiple suspensions leading to between 13 and 31 days of removal were significant changes of placement and thus violated the law. However, OCR also decided that a district's removal of a student on two separate occasions resulting in a total of 15 days of removal and another district's removal of a student on five separate occasions for a total of 38 days of removal did not result in

a change of placement. It should be noted that OCR decisions only address violations of Section 504 and not of the IDEA. Nonetheless, because the rules regarding disciplinary removals are similar under Section 504 and IDEA 1997, these decisions are useful indicators of when multiple suspensions may become a change of placement.

Finally, state law regarding suspensions of students with disabilities should be consulted because some states put a ceiling on the number of days that students with disabilities can be suspended during a school year. If state law allows fewer days of suspension than does IDEA 1997, then school officials must adhere to the state guidelines.

Placement

The case law clearly indicates that schools may not unilaterally change the placement of a student with disabilities. If the school proposes a change in placement, and the proposal is contested by the student's parents, the stay-put provision comes into play and the student cannot be removed from the then-current educational placement. The only exception is when a student brings a weapon to school or uses, possesses, or sells illegal drugs. In such situations, school officials may immediately and unilaterally move a student to an interim alternative educational setting.

The determination of what constitutes a change of placement is important to understanding the limits of discipline under the IDEA (Tucker & Goldstein, 1992). Minor changes in the student's educational program that do not involve a change in the general nature of the program do not constitute a change in placement. A change in the educational program that substantially or significantly affects the delivery of education to a student constitutes a change in placement and is not permissible. Any suspension of more than 10 days constitutes a

change. The 10-day rule became the federal norm with the IDEA 1997. Indefinite suspensions or expulsions in excess of 10 days, therefore, constitute a change in placement. In a 1988 memorandum, OCR issued a policy statement indicating that a series of suspensions cumulatively totaling more than 10 days would constitute a change of placement if the result was a pattern of exclusions that effectively changed a student's placement. The Office of Special Education Programs (OSEP) of the U.S. Department of Education issued a statement regarding short-term suspensions that adopted the OCR interpretation of short-term suspensions and change of placement (OSEP Memorandum 95-16, 1995). A 1989 OCR memorandum clarified the factors to consider in determining whether a series of suspensions would constitute a pattern of exclusions; these factors include the length of each suspension, the proximity of the suspensions to each other, and the total amount of time the student is excluded from school.

Long-term suspensions and expulsions qualify as a change of placement. A federal district court in Connecticut held that expulsion was a unilateral change of placement inconsistent with the IDEA (*Stuart v. Nappi*, 1978). Because expelling a student with disabilities would result in a placement change, the procedural safeguards of the IDEA would automatically be triggered. The U.S. Courts of Appeals for the Fourth Circuit, in *Prince William County School Board v. Malone* (1985); for the Fifth Circuit, in *S-1 v. Turlington* (1981); for the Sixth Circuit, in *Kaelin v. Grubbs* (1982); and for the Ninth Circuit, in *Doe v. Maher* (1986) reached similar conclusions. Not all courts, however, have agreed with this interpretation. The U.S. Court of Appeals for the Eleventh Circuit, in *Victoria L. v. District School Board* (1984), held that a school district could--unilaterally, if necessary--transfer a dangerous student to a more restrictive setting. The question was settled in 1988, when the U.S. Supreme Court issued a ruling in *Honig v. Doe* (1988).

Honig v. Doe (1988; hereafter *Honig*) involved the proposed expulsion of two students with emotional disabilities from the San Francisco public school system. Both students, following separate behavior incidents, had been suspended from school and recommended for expulsion. In accordance with California law, the suspensions were continued indefinitely while the expulsion proceedings were being held. Attorneys for the students filed a joint lawsuit in federal district court. The district court issued an injunction that prevented the school district from suspending any student with disabilities for misbehavior causally related to the student's disability. The school district appealed. The U.S. Court of Appeals for the Ninth Circuit, in *Doe v. Maher* (1986), held that expulsion is a change in placement, triggering the procedural safeguards of the law. The California superintendent of public instruction, Bill Honig, filed a petition of certiorari with the U.S. Supreme Court. One of the issues raised on appeal concerned the stay-put provision. Honig contended that the circuit court's interpretation of the rule--that no student with a disability could be excluded from school during the pendency of the administrative review regardless of the danger presented by the student--was untenable. A literal reading of this provision, according to Honig, would require schools to return potentially violent and dangerous students to the classroom, a situation Congress could not have intended.

On January 20, 1988, the U.S. Supreme Court issued a ruling in the case renamed *Honig v. Doe*. Justice Brennan, writing for the majority, rejected Honig's argument that Congress did not intend to deny schools the authority to remove dangerous and disruptive students from the school environment. Stating that Congress had intended to strip schools of their unilateral authority to exclude students with disabilities from school, the high court declined to read a dangerousness exception into the law. The Court ruled that during the pendency of any review

meetings, the student must remain in the then-current placement unless school officials and parents agreed otherwise. Expulsion, the Court held, constituted a change in placement.

The Court noted that this decision regarding the stay-put provision did not leave educators “hamstrung.” While the ruling would not allow a school to change a student’s placement during proceedings, it did not preclude the use of a school’s normal disciplinary procedures for dealing with students with disabilities. Such normal procedures included time-outs, the use of study carrels, detention, restriction of privileges, and suspension for up to 10 days. These procedures would allow the prompt removal of dangerous students. During the 10-day period, school officials could initiate an individualized education program (IEP) meeting and “seek to persuade the child’s parents to agree to an interim placement” (Honig, 1988, p. 605). If a student was truly “dangerous” and the parents refused to agree to a change, school officials, according to the high court, could immediately seek the aid of the courts. When seeking the aid of the courts, the burden of proof would rest upon the school to demonstrate that going through the IDEA’s procedural mechanisms (i.e., due process hearing) would be futile and that in the current placement the student was “substantially likely” to present a danger to others. The stay-put provision, therefore, does not preempt the authority of the courts from granting an injunction to temporarily remove the student from the school. In effect, the court did read a dangerousness exemption into the stay-put rule; however, this determination could only be made by a judge and not by school officials.

The IDEA does not establish a specific limitation on the number of days in a school year that students with disabilities can be suspended from school for disciplinary reasons. Thus, the law offers no clear answer as to the number of days a student can be suspended before schools change a student’s placement by using long-term suspensions. Neither is there an absolute limit

on the number of school days students with disabilities can be removed from their current placement in a school year (OSEP Questions and Answers, 1999). Suspensions over 10 days in length require that the suspended student receive appropriate educational services. Furthermore, the IEP team must be convened to conduct an FBA, develop or revise a BIP, and conduct a manifestation determination.

School officials may unilaterally exclude a student with disabilities from school for up to 45 school days without regard to whether the misbehavior was a manifestation of the student's disability if the student (a) brings, possesses, or acquires a weapon at school, on school premises, or at a school function (e.g., school dances, class trips, extracurricular activities); (b) knowingly possesses, uses, or sells illegal drugs, or sells a controlled substance at school, on school premises, or at a school function; or (c) has inflicted serious bodily injury to another person while at school, on school premises, or at a school function (IDEA, 20 USC 1415(k) (1)). A weapon is defined as a "weapon, device, instrument, material, or substance . . . that is used for, or is readily capable of, causing death or serious bodily injury" (IDEA, 20 U.S.C. 615 (k) (10) (D)). A controlled substance refers to a legally prescribed medication (e.g., Ritalin) that is illegally sold by a student. *Serious bodily injury* refers to any physical injury that results in risk of death, physical pain, disfigurement, or loss or impairment of a bodily function. In the event of such exclusions, students must be placed in an appropriate IAES.

IDEA 2004 requires that within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school, the parents, and relevant members of the IEP team (as determined by the parent and school administrator) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents.

The purpose of this review is to gather information necessary to conduct the manifestation determination. The reasoning behind the manifestation determination is that students should not be denied special education services because of misbehavior that could be anticipated as a result of their disabilities (Dagley, McGuire, & Evans, 1994; Tucker et al., 1993).

The manifestation determination is a hearing to ascertain if a student's misbehavior was caused by or was related to the student's disability (Dagley et al., 1994; Hartwig & Reusch, 2000; Senate Report, 1997). The purpose of the manifestation determination is to decide if (a) the student's misconduct was caused by or had a direct and substantial relationship to the student's disability or (b) the student's misconduct was the direct result of the school district's failure to implement the IEP.

This manifestation determination may not be made by administrators or school officials who lack the necessary expertise to make special education placement decisions (*S-I v. Turlington*, 1981). Courts have consistently held that these decisions may not be made using normal school procedures for disciplining students without disabilities (Guernsey & Klare, 1993); that is, school boards, members of school boards, administrators acting unilaterally, or any one school representative may not make the manifestation determination (OSEP Memorandum 95-16, 1995).

If the determination is made that the disability was not related to the misbehavior and that the IEP is appropriate, the student can be disciplined as any other nondisabled student would be disciplined. For example, the student could be placed on a long-term suspension, expelled, or placed in an interim alternative educational setting (IAES). Students must continue to receive

educational services. That is, they must continue to work on their IEP goals and on the general curriculum, although in a different setting. The actual IAES is determined by the IEP team.

If the team determines that a relationship between behavior and disability exists or that a student's IEP is not appropriate, the student may not be expelled, although school officials will still be able to initiate change-of-placement procedures. The standard specifies that if a relationship exists between a student's misbehavior and the school's failure to provide or properly implement the IEP or placement, the IEP team must include that the misbehavior was a manifestation of the student's disability. In such a situation, the student's IEP team must conduct an FBA and implement a BIP for the student, or review the BIP if one was already in place. Also, the student must be returned to the setting from which he or she was removed, unless the IEP team and the parents agree to a change in placement when they develop the new BIP.

Although numerous cases have referred to the manifestation determination, the courts have offered little guidance to schools regarding standards for making this determination. As Dagley, McGuire, and Evans (1994) remarked, "a careful reading of court cases implicating the relationship test creates the suspicion that no one really knows how to conduct the relationship test" (p. 326). In the IDEA Amendments of 1997, Congress provided guidance to IEP teams in conducting manifestation determinations.

When conducting the test, the IEP team shall consider the behavior subject to the disciplinary action and relevant information, including evaluation and diagnostic results and the student's IEP and placement. Moreover, all decisions must be based on an individualized inquiry informed by up-to-date evaluation data. Team members responsible for collecting and interpreting the data should be qualified and knowledgeable regarding the student, the

misbehavior, and the disability. Moreover, the data used to inform the decision-making process should be recent and collected from a variety of sources. Data collection procedures should include review of records of past behavioral incidences, interviews, direct observation, behavior rating scales, and standardized instruments. Finally, the team must consider any other relevant information supplied by the student's parents.

In conducting the manifestation determination, the team should first look to the appropriateness and implementation of a student's IEP and placement. Furthermore, the supplementary aids and services and any behavior strategies that were provided in the IEP must have been implemented as written. If the IEP is inappropriate or is not being implemented as written, the determination is essentially over because such problems indicate the presence of a causal relationship between the misbehavior and the disability. The IEP team should then attempt to answer the following question to assess the relationship between misconduct and disability: Was the misconduct caused by the disability, or was there a direct and substantial relationship between the misconduct and the disability? A direct and substantial relationship is a rigorous standard to meet.

Courts have clearly indicated what will not constitute proper lines of inquiry in the manifestation determination. First, the determination must be independent of a student's disability classification. The *Turlington* court noted that a causal relationship between misconduct and behavior can occur in any disability area, not just in students with behavioral disabilities; that is, the test should be conducted when suspending or expelling any student protected by the IDEA, regardless of the student's disability classification. Second, the manifestation determination is not an inquiry into whether a student knew the difference between right and wrong. According to the Fifth Circuit Court in *Turlington*, determining whether

students are capable of understanding rules or regulations or right from wrong is not tantamount to determining that the student's misconduct was or was not a manifestation of the disability.

If school personnel decide there is no relationship between the behavior and the disability and expel a student, the burden of proof will be placed on the school district to prove there is no relationship. Hartog-Rapp (1985) argued that if the school district is questioned regarding a decision of expulsion, it must prove that there is no causal relationship. Sorenson (1993) contended, however, that if an appropriate group of knowledgeable persons follows appropriate procedures in conducting the manifestation determination, the decision will probably be upheld in the appeals process. Recent rulings by OCR (Hopewell (VA) Public Schools, 1994) and the Texas Department of Education (Beaumont Independent School District, 1994) upheld school districts' expulsion of students with disabilities for bringing weapons to school. The IEP teams in both cases found no relationship between the behavior and disability, which supports this contention. In conducting the determination, it is important that teams keep thorough documentation of the process.

The IDEA requires that a FAPE must be made available to all eligible students with disabilities, even those who have been suspended or expelled from school (IDEA, 20 U.S.C. 1412 (a) (1)). According to the regulations (IDEA Regulations, 34 C.F.R. 300.520 (a) (1) (ii)) and Department of Education guidance (OSEP Questions and Answers, 1999), when a student is suspended in excess of 10 cumulative days in a school year, the school district must continue to provide a FAPE. This means that on the 11th cumulative day of a student's removal from school, educational services must begin. These services are provided in an IAES (IDEA, 20 U.S.C. 1415 (k) (3)).

The IDEA describes three specific circumstances when an IAES may be used for disciplinary purposes. First, an IAES may be used for a short-term disciplinary removal from school for 10 days or less. School officials may unilaterally impose a short-term suspension on a student with a disability for less than 10 consecutive days for violating school rules and for additional removals for not more than 10 consecutive days in a school year for separate incidences of misconduct, as long as these removals do not constitute a change of placement. After 10 days of removal in a school year, educational services must be provided to suspended children. An alternative to out-of-school suspension is placement in an IAES. There is not an absolute limit on the total number of short-term placements in an IAES, as long as FAPE is provided and the proximity and pattern of removal does not constitute a change in placement (Telzrow & Naidu, 2000). Second, an IAES may be used in situations when a student with disabilities is removed from school for a longer term (e.g., long-term suspension, expulsion). Third, an IAES placement can be ordered by a hearing officer.

When a student is placed in an IAES for a short-term disciplinary removal, school officials, in consultation with the student's special education teacher, can determine the content of his or her educational programming (IDEA Regulations, 34 C.F.R. 121 (3) (1)). In such short-term removals, it is not required, therefore, that the IEP team determines the services. For a long-term removal in an IAES, however, the student's IEP team must determine the setting and services that will be offered. In both situations, the IAES must (a) allow the student to continue to participate in the general curriculum, although in a different setting; (b) provide the services necessary to allow the student to meet his or her goals from the IEP; and (c) include services designed to keep the misbehavior from reoccurring. Additionally, the school must continue to receive the special education services, supplementary aids and services, program modifications,

and related services listed in the IEP, including the interventions to address the student's problem behavior.

Although the use of homebound instruction or tutoring as an IAES is not specifically prohibited by IDEA 1997, homebound placements are problematic (Katsiyannis & Maag, 1998). This is because school districts must continue to provide the services listed in a student's IEP while he or she is in the IAES. For example, if a student receives related services such as counseling, physical therapy, or speech, these services must be part of the student's program in the IAES. Clearly, providing these services in a homebound setting would be difficult. Furthermore, a comment in the proposed regulations suggests that a homebound placement will usually be appropriate for a limited number of students, such as those who are medically fragile and not able to participate in a school setting (IDEA Regulations, 34 C.F.R. 300.551, Note 1). In answer to a series of questions regarding discipline, the Office of Special Education and Rehabilitative Services (OSERS) noted that in most circumstances homebound instruction is inappropriate as a disciplinary measure; however, the final decision regarding placement must be determined on a case-by-case basis (Yell, 2006). Gorn (1999) noted that in hearings, it will be up to school districts to justify homebound placements. If districts have in-school suspension programs or alternative schools, and instead opt for placing a student in a homebound setting, it may be difficult to justify to a hearing officer the use of the more restrictive homebound setting. Finally, in one state-level hearing, a school's use of a homebound placement was overturned when the hearing review officer ruled that the homebound placement was inappropriate because it failed to provide the services that previously were included in a student's IEP (Board of Education of the Akron Central School District, 1998).

Telzrow and Naidu (2000) suggested that for short-term IAES placements, schools should develop and use in-school suspension programs as their IAESs. Using such programs for an IAES means that students continue to work on their individualized goals and objectives and receive the special education, related services, and behavioral programming that are required by their IEPs. These authors also suggested that school districts consider the use of alternative programs or schools for long-term IAES placements, as long as these programs include the academic and behavioral programming and parental involvement as required in a student's IEP.

The procedural safeguards of the IDEA allow parents who wish to contest a school's special education decisions regarding their child to request a due process hearing. The purpose of a due process hearing is to allow an impartial third party (i.e., the due process hearing officer) to hear both sides of a dispute, examine the issues in relation to the law, and then settle the dispute by imposing a solution on the parties involved. If a parent disagrees with the interim placement or the manifestation determination, or if the school wants to remove a student to a new placement, either party may request a due process hearing. At his or her discretion, the hearing officer can choose to send the student back to his or her current placement or order a change in placement to an IAES for 45 school days if the student is likely to injure others or him or herself.

When parents disagree with a change in placement proposed by a school district, the IDEA's stay-put provision prohibits the district from unilaterally changing placement. This provision states that, "During the pendency of any proceedings . . . unless the [school] and the parents . . . otherwise agree, the child shall remain in the then current placement of such child" (IDEA, 20 U.S.C. 1415 (e) (3)). The purpose of the stay-put provision is to continue students in their current placement (i.e., their placement before the dispute arose) until the dispute is

resolved. The stay-put provision effectively operates to limit the actions of the school district (Tucker et al., 1993). The court in *Zvi D. v. Ambach* (1982) stated that the stay-put procedures operated as an automatic preliminary injunction because a request for a hearing automatically requires that schools maintain a student's placement. It is only permissible to move a student during the pendency of a hearing when the parents and school agree on an interim change of placement.

IDEA 2004 significantly altered the stay-put rule. First, school officials may move a student to an interim alternative educational setting (IAES) for no more than 45 school days for the aforementioned infractions. If a parent objects to this placement change and requests a due process hearing, the stay-put rule would normally function to keep a student in the previous placement during the hearing. With the new language in IDEA 2004, the stay-put placement is the IAES; that is, a student will remain in that setting during the pendency of the hearing.

If school personnel maintain that a student with disabilities is dangerous to other students if he or she remains in the current placement, the school district may request an expedited hearing to challenge the continued placement. The hearing officer may change a student's placement to an interim alternative setting for 45 days school days if school officials convince the hearing officer that the student, in the current placement, is very likely to injure him- or herself or others. In making this decision, the hearing officer will consider whether the school has made reasonable efforts to minimize the risk of harm in the student's current placement and if the current placement enables the student to continue to participate in the general education curriculum.

IDEA 2004 provides protections for students with disabilities who have not been determined to be eligible for services under the IDEA and who violated a code of student

conduct. If a student's parents assert that their child is protected by the IDEA, the student will only be protected by the law if the school had knowledge that the child had an IDEA disability before the behavior incident that precipitated the disciplinary action.

For a school to be determined to have prior knowledge, school personnel must have known of or suspected that the child had a disability because the parent expressed a concern in writing to school administrative or supervisory personnel or to the child's teacher that the child had a disability and needed special education services. Additionally, if the parents referred their child for special education evaluation, a school will be determined to have prior knowledge. Finally, if the child's teacher or other school personnel had expressed specific concerns about the child's behavior directly to the special education director or to other supervisory personnel, the school will be deemed to have prior knowledge. In such situations, students may be protected under the IDEA even if they are not currently eligible. The only exception to this rule is if the child's parent refused to consent to an evaluation that the school sought. If the school had no prior knowledge of a possible disability, the school may discipline the child who exhibited similar problem behavior. If a parent of a child who is being disciplined requests an evaluation for special education during the disciplinary period, the school must conduct the evaluation in an expected manner.

In a memorandum, OSEP took the position that students not previously identified as eligible under the IDEA could not invoke the stay-put provision to avoid disciplinary sanctions such as expulsion (OSEP Memorandum 95-16, 1995). In situations in which a request for an evaluation or due process hearing was made following a disciplinary suspension or expulsion, school districts were not obligated to reinstate students to in-school status during the pendency of

the evaluation or hearing. The stay-put setting in such situations would be the out-of-school placement.

In an important ruling, the U.S. Court of Appeals for the Seventh Circuit upheld the OSEP position regarding students' avoiding discipline by invoking the procedural protections of the IDEA. In *Rodriguez L. v. Waukegan School District* (1996), the circuit court held that a student in general education could not avoid expulsion by claiming protection under the IDEA unless school district officials knew or reasonably should have known that the student had a disability. The court held that

If the stay-out provision is automatically applied to every student who files an application for special education, then an avenue will be open for disruptive, non-disabled students to forestall any attempts at routine discipline by simply requesting a disability evaluation and demanding to "stay-put," thus disrupting the educational goals of an already overburdened...public school system...However,...there may arise circumstances where a truly disabled child, who has not as yet been identified by the school...or has been misidentified, is improperly denied appropriate public education. In those situations, the stay-put provision is necessary to keep the student in school until a hearing officer has resolved the dispute. (562)

In this case, the court believed that the school district had no reason to suspect that the student had a disability, even though he had a poor academic record and a history of disciplinary contacts. That the student may have had a disability had never been suggested until he was recommended for expulsion.

Additionally, the Seventh Circuit Court offered guidance to other courts in determining if school officials should have known that a student had a disability and was therefore entitled to the procedural protections of the IDEA. Courts should weigh the following four factors in making such decisions: (a) the likelihood that the student will succeed on the merits of his or her claim; (b) the irreparability of the harm to the student if the stay-put provision is not invoked; (c) the relative harm to the student in comparison to the harm to the district; and (d) the public

interest. Furthermore, students must show they reasonably would have been found eligible for special education through the IDEA's administrative procedures.

If the parents refuse to agree to a change of placement, however, and the school is convinced that the student is truly dangerous, school officials can request an injunction or temporary restraining order (TRO) from a hearing officer to remove the student from the school environment. A TRO issued to remove a dangerous student with disabilities from school has been frequently referred to as a *Honig* injunction. When an injunction is issued, schools may use the time when a student is not in school to determine if a change of placement is needed or to conduct a manifestation determination.

In *Honig*, the Supreme Court stated that any action brought by a school district to obtain a TRO will carry a presumption in favor of a student's current educational placement. School officials can only overcome this preference by "showing that maintaining [the] child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others" (p. 606). Prior to the IDEA Amendments of 1997, *Honig* injunctions could only be granted by courts, but now such injunctions can be granted by hearing officers. School officials must convince a hearing officer that unless a student is removed from the current placement, the student is dangerous and substantially likely to injure himself or others. Additionally, school officials must prove that reasonable steps have been taken to minimize the risk of harm in the current setting: that the current IEP is appropriate; that the interim setting allows the student to participate in the general education curriculum, although in a different setting; and that the student can continue to work on IEP goals. Furthermore, the school must demonstrate these factors with substantial evidence, which the IDEA defines as being beyond a preponderance of the evidence (IDEA Amendments, 1997). The substantial evidence requirement would seem to

be a difficult threshold to meet. Nevertheless, in a number of post-*Honig* rulings schools have been granted discipline-related TROs.

In *Texas Independent School District v. Jorstad* (1990), a school was granted a TRO after parents refused a change in placement. The student, classified as seriously emotionally disturbed (SED), was placed in a regular classroom with an individual aide and resource room services. Following a number of serious behavioral problems in the classroom, the student's IEP team met to change the student's placement to a more restrictive setting. The student had been physically aggressive to the teacher and other students and had attempted to escape the classroom by jumping from a second-story window. All school personnel working with the student believed that he was an extreme danger to himself and others. The parents did not agree with the more restrictive placement, and neither did the boy's psychologist, who believed placement in a more restrictive setting would cause a regression in his social skills. The parent requested an administrative hearing. The case went before the federal district court for the Southern District of Texas.

The federal court, citing the stay-put rule, held that only under limited circumstances could a school change the placement of a student during the pendency of a due process hearing. A change of placement would only be permitted if the school could show that maintaining a student in the current placement was substantially likely to result in injury to the student or others in the environment. The court concluded that in this situation the student would not suffer any realistic harm by being placed in the more restrictive setting pending completion of the administrative hearing. However, the court viewed the potential for harm to others as substantial. Thus, a TRO was issued and the school district was allowed to change the student's placement.

In *Light v. Parkway School District* (1994), the U.S. Court of Appeals for the Eighth Circuit established a two-part test for determining the appropriateness of removing a disruptive student with disabilities from school. In its ruling, the court interpreted the U.S. Supreme Court's decision in *Honig v. Doe*. The court laid out circumstances under which a school can seek an injunction to remove a disruptive student. The case involved a 13-year-old girl, Lauren Light, with moderate mental retardation, autism, and a history of aggressiveness toward students and staff. The student was enrolled in a self-contained classroom with full integration in art, physical education, and computer education. A full-time aide and special education teacher were assigned to the student during the school day. Despite the presence of the aide, special education teacher, regular classroom teacher, and a consultant selected by the girl's parents, Lauren's aggressiveness escalated. The parents of other students in the class began to complain that Lauren's behavior was disrupting the educational environment and creating a dangerous situation. The IEP team met and recommended a change in placement. The girl's parents requested a due process hearing, thereby invoking the stay-put rule. Before the due process hearing was held, Lauren hit a student. She was suspended from school for 10 days.

Following the suspension, the Lights sued in federal court, contending that Lauren had been denied due process. The school district also went to court to seek an injunction to remove Lauren as a substantial risk to herself and others. The federal district court granted the injunction. The Lights appealed to the Eighth Circuit Court, contending that the school had to prove that Lauren was truly dangerous before the school could remove her. They also stated that under *Honig*, the school could only remove a student who intended to injure another student.

The court, citing the records kept by the school regarding Lauren's behavior, asserted that students do not actually have to cause harm before a school may remove them' rather, students

only have to be substantially likely to cause harm. The court pointed to the school district's record of efforts to modify Lauren's behavior as an attempt to accommodate the student. Finally, the court established a two-part test to determine the appropriateness of a student removal. First, the school must determine and show that the student is substantially likely to cause injury. Second, the school must show that it has done all that it reasonably can to reduce the risk of injury and to modify a student's behavior. If a school can prove these two points, it will be issued a temporary injunction to remove a student from school.

School personnel may report to police a crime committed by a student with a disability who is protected by the IDEA. Moreover, law enforcement and judicial authorities can exercise their authority under the law when confronted with a crime committed by a student who is in special education. Furthermore, the school personnel can transmit copies of all the student's special education and disciplinary records to law enforcement.

In *Honig*, the U.S. Supreme Court ruled that typical disciplinary procedures—those that are often used for establishing school discipline, such as restriction of privileges, detention, and removal of students to study carrels—may be used with students with disabilities. Such disciplinary procedures do not change placement and are generally not restricted by the courts. A significant restriction exists, however, against certain types of discipline that may result in a unilateral change in placement. To clarify which disciplinary practices are legal and which are not, disciplinary procedures may be placed into one of three categories: permitted, controlled, and prohibited (Yell, Cline, & Bradley, 1995; Yell & Peterson, 1995). Permitted disciplinary procedures include those practices that are part of a school district's disciplinary plan and are commonly used with all students. These procedures are unobtrusive and do not result in a change of placement or the denial of the right to a FAPE. Such procedures include verbal

reprimands, warnings, contingent observation (a form of time-out where the student is briefly removed to a location where he or she can observe but not participate in an activity), exclusionary time-out, response cost (the removal of points or privileges when a student misbehaves), detention, and the temporary delay or withdrawal of goods, services, or activities (e.g., recess, lunch). As long as these procedures do not interfere significantly with the student's IEP goals and are not applied in a discriminatory manner, they are permitted. In general, if the disciplining of a student with disabilities does not result in a change of placement, the methods of discipline available to school are the same for all students (Guernsey & Klare, 1993). In the case of emergency situations, procedures such as physical restraint or immediate suspension are permissible.

Controlled procedures are those interventions that the courts have held to be permissible as long as they are used appropriately. The difficulty with these practices is that if they are used in an inappropriate manner, they can result in interference with IEP goals or objectives or in a unilateral change in placement. Controlled procedures include disciplinary techniques such as seclusion/isolation time-out, in-school suspension, and out-of-school suspension.

Time-out is a disciplinary procedure frequently used by teachers of students with disabilities. Time-out generally involves placing a student in a less reinforcing environment for a period of time following inappropriate behavior. A type of time-out that should be classified as a controlled procedure is seclusion/isolation time-out. (Yell, 1994): The student, contingent on misbehavior, is required to leave the classroom and enter a separate time-out room for a brief period.

In-school suspension (ISS) programs require the suspended student to serve the suspension period in the school, usually in a classroom isolated from schoolmates. During ISS,

the student works on appropriate educational activities with material provided by the teacher. Several advantages of using ISS are that (a) it avoids the possibility of the suspended student roaming the community unsupervised; (b) the student being disciplined is segregated from the general school population; and (c) the student continues to receive an education during the suspension period (Yell, 1990).

Despite the fact that ISS programs remove students with disabilities from their classrooms, the courts have not considered them either long-term suspensions, expulsions, or changes of placement as long as the programs are comparable to the educational program regularly offered to students (Gorn, 1999). Schools, however, must not use ISS as a de facto long-term suspension or expulsion. In such cases, ISS may be viewed as an illegal change of placement.

Out-of-school suspension generally refers to a short-term exclusion from school for a specified period of time, accompanied by a cessation of educational services. Numerous cases have ruled on the use of out-of-school suspension with students with disabilities. According to the courts, expulsion and indefinite out-of-school suspensions are changes in placement and cannot be made unilaterally even in cases where students present a danger to themselves or others. Courts have stated, however, that schools can use short-term suspensions of up to 10 days. Suspension from transportation to school, unless alternative means of transportation are available, should be treated as part of the 10 days (Mobile County (AL) School District, 1991). Sorenson (1993) suggests that schools adopt a 10-day suspension policy. The IDEA Amendments of 1997 specifically allow school officials to suspend students with disabilities for up to 10 school days. Suspensions for longer than 10 days constitute a change of placement

under the IDEA, and if a student's parents do not agree to a change in placement, the IDEA procedural safeguards must be followed.

Time-out, in-school suspension, and out-of-school suspension are permitted if used appropriately. Basic due process rights, such as notice and hearing, must be given to students prior to the use of suspension. It is important in using such procedures that schools not abuse or overuse them, as these could be interpreted as unilateral changes of placement or discriminatory by the courts.

Disciplinary procedures that result in a unilateral change in placement are prohibited. Thus, expulsions (i.e., the exclusion from school for an indefinite period of time) and long-term suspensions are illegal if made without following the IDEA's procedural safeguards. In many states, corporal punishment is illegal and, therefore, a prohibited procedure.

If the IEP team determines that a student's misbehavior and his or her disability are not related, long-term suspensions and expulsions are legal. However, even when no relationship is found and an expulsion is made in accordance with procedural rules, there cannot be a complete cessation of educational services. If the IEP team determines that the misbehavior and disability are related, long-term suspensions and expulsions are not legal.

Attempts to bypass the suspension and expulsion rules have not been looked upon favorably by the courts or administrative agencies. OCR has stated that a series of suspensions cumulatively totaling more than 10 days constitutes a change of placement if the results create a pattern of exclusion (OCR Memorandum, 1988). Serial and indefinite suspensions, therefore, are prohibited. A series of five suspensions totaling 22 days over a school year was found to be a pattern of exclusions that created a significant change of placement for a student with disabilities (*Cobb County (GA) School District*, 1993). In *Big Beaver Falls Area School District v. Jackson*

(1993), a Pennsylvania court ruled that a school district, in violation of the IDEA and state law, had effectively suspended a student by continually assigning her to ISS. Rather than serve the ISS, the student was allowed to leave school, which she usually did. According to the court, the school continually assigned the ISS knowing that the student would leave school; therefore, the action amounted to a de facto expulsion in violation of the IDEA.

One of the most controversial disciplinary procedures is corporal punishment. Courts have heard many challenges to the use of this type of disciplinary action in schools. In 1977 the U.S. Supreme Court, in *Ingraham v. Wright*, held that corporal punishment in public schools was a routine disciplinary procedure not proscribed by constitutional law. The U.S. Court of Appeals for the Fourth Circuit, in *Hall v. Tawney* (1980), stated that brutal, demeaning, or harmful corporal punishment would be a violation of a student's substantive due process rights. The court applied the standard of reasonableness in holding that corporal punishment that is reasonable is legitimate, but if it is not reasonable (e.g., excessive) it is illegal.

Many states have made the use of corporal punishment illegal. Furthermore, in states where corporal punishment is not prohibited, many local school districts proscribe its use. In many schools throughout the country, therefore, corporal punishment is illegal. According to Weber (2002), even in states where corporal punishment is legal, its use might be a violation of Section 504 and the IDEA.

A topic that has received a great deal of attention recently is the issue of school officials' authority in disciplining students with disabilities who bring weapons to school. The Gun-Free Schools Act (GFSA), which was enacted as part of the Goals 2000: Educate America Act (20 U.S.C. 5801 *et seq.*), essentially required school districts to expel any student who brings a gun to school. According to the statutory language,

No assistance may be provided to any local educational agency under this Act unless such agency has in effect a policy requiring the expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to school under the jurisdiction of the agency except such policy may allow the chief administering officer of the agency to modify such expulsion requirement for a student on a case-by-case basis. (Gun-Free Schools Act, 20 U.S.C.S. 3351(a)(1))

A policy guidance statement issued by the U.S. Department of Education stated that the FAPE and stay-put requirements of the IDEA prohibited the automatic removal of any student with a disability for disability-related misbehavior (Gun-Free Schools Act Guidance, 1995). This position appeared to be at odds with the expulsion requirement of the GFSA. According to the statement, no conflict between the laws existed because administrators were allowed to consider discipline on a case-by-case basis; therefore, administrators could take the laws affecting students with disabilities into account. Congress sought to alter this apparent discrepancy with the Jeffords amendment to the IDEA (IDEA, 20 U.S.C. 1415 (e) (3)). This amendment allowed schools to immediately and unilaterally remove students with disabilities who bring guns to school to an interim alternative setting for up to 45 days. The primary effect of the law was to modify the stay-put provision of the IDEA. During the 45-day period, the school and parents may decide on a permanent placement. The school may also convene a team to conduct a manifestation determination. If the result of the determination is that the misbehavior was not a manifestation of the disability, a student may be expelled or receive a long-term suspension. If parents request a due process hearing to contest the placement in the interim setting or an expulsion, the school may keep the student in the alternative placement during the pendency of the hearing.

From the body of case law on discipline, as well as the IDEA 1997 and 2004, several important school district responsibilities can be extrapolated. School districts should develop policies and procedures for ensuring that school maintain safe and orderly environments where

teachers can teach and students can learn. Procedures for disciplining students to maintain safety and order, to reduce misbehavior, and to teach appropriate behavior are essential. Such policies must clearly delineate behavioral expectations of students and the consequences for not conforming to these expectations. If the consequences include suspension and expulsion, all students are entitled to basic due process rights before exclusion occurs. For suspensions of 10 days or less, students must be afforded oral or written notice of the charges and the opportunity to respond to these charges. For suspensions in excess of 10 days, in addition to a notice and hearing, students must be provided with the opportunity for a more formal hearing process. When students present a danger to themselves or others, they can be removed from the school immediately, with notice and hearing to follow. When students violate the law, the legal authorities should be informed (Maloney, 1994).

Schools should also develop policies regarding search and seizure of students and property. Such policies should include statements addressing the diminished right of student privacy in school lockers and on school property.

It is extremely important that school administrators, teachers, and other personnel understand the district's disciplinary policies and procedures. Steps should also be taken to ensure that parents have access to, and understand, information in the school district's discipline policy. Methods to ensure parental access include mailing discipline policy brochures to district parents and having teachers explain the procedures in parent-teacher conferences.

Courts have repeatedly held that students with disabilities are not immune from a school's normal disciplinary procedures. Students with disabilities, however, have special protections against any procedures that result in a unilateral change of placement. Expulsions and long-term or indefinite suspensions are changes in placement and cannot be made without

following the procedural safeguards of the IDEA or Section 504. If a school decides to use long-term suspension or expulsion, the IEP team must meet to determine the relationship between the behavior and the student's disability. A school district cannot expel a student on the basis of misbehavior caused by the disability.

Because of these protections, it is crucial that school officials know which students are classified as having disabilities under the IDEA and Section 504. A disciplinary meeting may involve many issues and concerns. Two issues that must be resolved in the meeting concern the appropriateness of the IEP and the manifestation determination (Cline, 1994).

Students with disabilities who have a tendency to misbehave must have behavior goals and objectives and a disciplinary plan included in their IEP (Hartwig, Robertshaw, & Reusch, 1991; Senate Report, 1997). This requirement, which applies to all students in special education regardless of their disability category, was included in the IDEA Amendments of 1997. The plan must be based on a functional behavioral assessment and should cover strategies, including proactive positive behavioral interventions and supports, to address the behavior problems. Additionally, because these elements would be discussed at an IEP meeting, the plan would have an increased probability of success because of parental support and participation. The intervention plan would also be less likely to be legally challenged and more likely to meet legal muster if challenged.

The discipline plan for each student should delineate expected behaviors, inappropriate behaviors, and positive and negative consequences for the behaviors (Hartwig & Reusch, 2000). The disciplinary process that will be followed, including intervention techniques, should be outlined in the plan. The plan should also include procedures for dealing with a behavioral crisis.

Behavior intervention plans must be based on legitimate disciplinary procedures. To ensure that procedures are used reasonably, schools should use disciplinary methods in accordance with the principle of hierarchical application. According to Braaten, Simpson, Rosell, and Reilly (1988), this principle requires that school officials use more intrusive disciplinary procedures (e.g., in-school suspension) only after less intrusive procedures (e.g., warnings and reprimands) have failed.

Maloney (1994) contends that in the law, “if it isn’t written down, it didn’t happen” (P. 4). In disciplining students with disabilities, therefore, it is critical to keep written records of all discussions and of all disciplinary actions taken. An examination of court cases and administrative rulings in disciplinary matters indicates that in many instances, decisions turned on the quality of the school’s records. For example, in *Cole v. Greenfield-Central Community Schools* (1986), *Dickens v. Johnson County Board of Education* (1987), and *Hayes v. Unified School District No. 377* (1987), the thoroughness of the schools’ record keeping played a significant part in the court’s decisions in favor of the schools. In *Oberti v. Board of Education of the Borough of Clementon School District* (1993), the court decided against the school district, partly because no behavior intervention plan to improve the student’s behavior in the regular classroom was included in the IEP. Although the school district maintained that it did have a behavior intervention plan, because it was not written down, it did not exist in the eyes of the court.

Records on emergency disciplinary actions are also important. Such records should contain an adequate description of the incident and disciplinary action taken, as well as the signatures of witnesses present. Finally, it is important that teachers evaluate the effectiveness of disciplinary procedures used. There are a number of reasons for collecting data on an ongoing

basis. To make decisions about whether an intervention is reducing target behaviors, teachers need data collected during the course of the intervention. If formative data are not collected, teachers will not know with certainty if a given procedure is achieving the desired results. Teachers are accountable to supervisors and parents, and data collection is useful for accountability purposes. From a legal standpoint, it is imperative that teachers collect such data. Anecdotal information is not readily accepted by courts, but data-driven decisions certainly are viewed much more favorably.

Specific guidelines regarding the discipline of students with disabilities were not written into federal law (e.g., the IDEA, Section 504) until the IDEA Amendments of 1997. Prior to that time, school districts had to operate on guidelines extrapolated from the decisions of administrative agencies (e.g., OSEP, OCR) and case law. Students with disabilities are not immune from a school's disciplinary procedure. Schools may use procedures such as reprimands, detention, restriction of privileges, response cost, in-school suspension (if the student's education is continued), and out-of-school suspensions (10 days or less) as long as the procedures are not abused or applied in a discriminatory manner. Disciplinary procedures that effectively change a student's placement are, however, not legal if not done in accordance with the procedural safeguards afforded students with disabilities by the IDEA and Section 504. Such procedures include suspension (if over 10 days) and expulsion.

When determining whether or not to use a long-term suspension or expulsion, the school must convene the student's IEP team and other qualified personnel to determine the relationship between the student's misbehavior and the disability. If there is a relationship, the student cannot be expelled. If the team determines that no relationship exists, the student may be expelled.

Even when an expulsion follows a determination of no relationship and is done in accordance with procedural safeguards, there cannot be a complete cessation of educational services.

A school district cannot unilaterally exclude a student with disabilities from school, regardless of the degree of danger or disruption. School districts may go to court, however, to obtain a temporary restraining order to have the student removed from school. The school will bear the burden of proof when attempting to get a TRO. If students with disabilities bring weapons to school or use, possess, or sell illegal drugs, school officials may unilaterally remove them to an interim alternative setting for 45 school days. During this time the IEP team should meet to consider appropriate actions.

Disciplining students with disabilities is a complex issue. In addition to observing the due process rights that protect all students, administrators and teachers must be aware of the additional safeguards afforded students with disabilities by the IDEA. In using disciplinary procedures with students with disabilities, educators should be aware of state and local policies regarding discipline, develop and inform parents of school discipline policies, and continuously evaluate the effectiveness of disciplinary procedures. When disciplinary procedures are used, proper documentation is critical. Teachers must collect formative data to determine if the procedures are having the desired effect on student behavior. Finally, disciplinary procedures should be used reasonably and for legitimate educational purposes; they must not compromise a student's FAPE or be applied in a discriminatory manner.

CHAPTER 3
METHODOLOGY
Research Design

This study was a document-based, qualitative study. The researcher conducted research using a legal-historical orientation. The scope of the research was from 1975 to 2011, which adequately provided a substantial number of cases for comparison and may help determine trends in the area of student discipline and the IDEA. This may, in turn, provide insight into the future of these issues. The researcher utilized information in the study from cases involving the United States Supreme Court, the United States Court of Appeals, and the United States Federal District Court.

Research Materials

The materials used in this study encompassed legal cases that included issues in special education discipline for the years 1975-2011. The years selected were chosen to reflect cases that began occurring after the enactment of the Education for All Handicapped Act (1975) which was changed the Individuals with Disabilities Act in 1990. The literature review, the Individuals with Disabilities Act, and the court cases briefed in this research serve as the foundation of this study.

Research Questions

1. What issues occurred in court cases about discipline of students receiving services under IDEA?
2. What were the outcomes in court cases about discipline of students receiving services under IDEA?
3. What trends can be noted in court cases about discipline of students receiving services under IDEA?
4. What legal principles for school administrators may be discerned from court cases about discipline of students receiving services under IDEA?

Methodology

In order to conduct this document-based, legal-historical study, the researcher analyzed legal cases related to discipline of special education students in public schools. To locate these cases, the researcher used a law digest to facilitate the search. In particular, the *West Education Law Digest* sorts cases from the United States Judicial system by topics and identifies these topics by a key number. For the purpose of this study, all cases categorized by the West Education Law Digest contained in Key Number Schools 148, Pupils, with Descriptors, Nature of right to instruction, (1) in general; (2) Handicapped children and special services; (3) Mental or emotional handicap, learning disabilities; Key Number 154, Assignment or admission to particular schools; (2) Handicapped children; (3) Home care and residential placement; (4) Private school and out-of-state placement; Key Number 155.5, Handicapped children, proceedings to enforce rights; (1) in general; (2) Judicial review and intervention; (3) Exhaustion of remedies; (4) Evidence; (5) Judgment and relief; damages, injunction, and costs; Key Number

169, Control of pupils and discipline in general; Key Number 169.5, Searches and seizures; Key Number 170, Rules; Key Number 172, Reasonableness and Validity; Key Number 174, Punishment; Key Number 176, Corporal Punishment; Key Number 177, Expulsion and suspension. The cases were analyzed for trends in the courts' decisions. Data for this research consisted of court cases from the *West Education Law Digest* and the *West Education Law Reporter*. These covered Federal cases involving education. The *Reporter* provided the complete cases and the *Digest* provided a brief outline of the cases. Cases were cross-referenced between the *Digest* and the *Reporter* by topic. The researcher attempted to analyze the reasons for the decisions made by the courts.

There is only a brief summary of each decision in the *West Education Law Digest*. The researcher obtained the full text of the identified cases from the bound volumes of the West Law Reporter in the stacks in the Bound Library in the Law School at The University of Alabama in Tuscaloosa.

Data Collection

Data for this research consisted of court cases from the *West Education Law Digest* and the *West Education Law Reporter*. These covered Federal cases involving education. The *Reporter* provided the complete cases and the *Digest* provided a brief outline of the cases. Cases were cross-referenced between the *Digest* and the *Reporter* by topic. Using the *West Education Law Digest*, data were collected by first developing a list of relevant case law regarding the discipline of special education students in public schools. Once the list was developed, full reporting of the cases was obtained from the bound copies of the Education Law Reporter

located in the Bounds Law Library at The University of Alabama in Tuscaloosa. The researcher attempted to analyze the reasons for the decisions made by the courts.

Case Brief Method

The case brief method is an analytical summary of opinion that helps clarify what the case means and provides notes on the opinion allowing you to later refer to the case without having to go back and reread the entire case when you need information regarding that case (Statsky & Wernet, 1995). A case briefing format used in this research, suggested by Statsky and Wernet (1995), allowed for a complete exploration of important information. For the purpose of this study, the researcher included the following elements from the format:

1. Citation: “Where can the case be found? Provide a full citation to the case you are briefing (e.g., the volume of the reporter, the page on which the case begins)” (p. 41).
2. Key Facts:” What are the facts of the case? Specifically, state the facts that were very important or key to the holding(s) reached by this court.” (p. 41).
3. Issues: “What are the questions of law now before the court? Provide a comprehensive statement of each issue by making specific reference to the language of the rule of law in controversy (e.g., a statute) along with important facts that raise this controversy.” (p. 41).
4. Holdings: “What are this court’s answers to the issues? If you have stated each issue comprehensively, the holding can be a simple YES or NO response.” (p. 41).
5. Reasoning: “Why did the court answer the issues the way it did? State the reasons for each holding” (p. 41).
6. Disposition: “What order did this court enter as a result of its holdings? State the procedural consequences of the court’s resolution of the issue(s)” (p. 41).

Data Analysis

For this qualitative document-based legal-historical study, case law regarding the discipline of special education students in public schools was analyzed for trends in the opinions rendered by the courts. Analysis means organizing and interrogating data in ways that allow researchers to see patterns, identify themes, discover relationships, develop explanations, make interpretations, mount critiques, or generate theories.

A holistic approach was a useful form of analysis for this type of study (Creswell, 2007). In this approach, the researcher examines the case or cases, provides a description of each, extracts themes from the data, and presents interpretations or assertions that can apply to the whole.

The researcher analyzed the court cases to identify answers to the research questions. The rules of law utilized in making the court decisions were examined. The outcomes of the cases and important facts regarding those cases were studied. These cases were treated as interviews. It is in the reasoning behind the courts' decisions that the researcher gained insight to aid school administrators dealing with the issue on a practical basis.

By engaging in this process, issues began to emerge. Cases were sorted by the issues that were the most common in the case briefs and cited in the analysis. Cases that were not cited under the most frequent issues were listed in Appendix D. The issues and the disposition of the cases led to the development of guiding principles for school administrators.

CHAPTER 4

CASE BRIEFS AND ANALYSES

Introduction

Within this chapter an analysis was made of federal cases involving the issue of discipline as it relates to the Individuals with Disabilities Education Act. Cases were described using a process identified by Statsky and Wernet from their book *Case Analysis and Fundamentals of Legal Writing* (1995). Cases were presented in chronological order from the *Stuart v. Nappi* (1978) case through the *M.G. ex rel, L.G. v. Caldwell-West Caldwell Board of Education* (2011) case. There were no special education discipline cases in federal court until 1978. These cases were selected from a 37-year timespan from 1975, when a free, appropriate public education was mandated by Congress through the All Handicapped Children Act (EHA) in 1975, for all children with disabilities, through 2011. Information on each case will include a citation, key facts, issues, holding, reasoning, and the disposition of the court.

Case Briefs

1978

Citation: *Stuart v. Nappi*, 443 F. Supp. 1235 (D. Comm. 1978).

Key Facts: A high school student, Stuart, with a history of behavior problems, limited intelligence, and with complex learning disabilities, was suspended from school. She was involved in several school disturbances. The superintendent recommended that she be expelled. She contested that recommendation and requested a hearing. She sought a review of her special

education program. She also sought a preliminary injunction of the expulsion hearing to be held by the Danbury Board of Education, claiming she was denied civil rights afforded her by the (EHA) Handicapped Act.

Issue: Are students covered by special education law subject to the same disciplinary policies, regulations, rules, and punishments (e.g., suspension or expulsion from school) as are their age appropriate peers?

Holding: The court held that the Danbury Board of Education could not conduct a hearing to expel the student/plaintiff. The court did not hold, however, that handicapped children were immune from school discipline.

Reasoning: The court felt that the Handicapped Children Act prescribed a procedure for transferring disruptive children. The court stated there was a conflict between the disciplinary procedures of the school district and the procedures of the Handicapped Children Act. The court relied on a comment contained in 45 C.F.R. s121a:

“While the placement may not be changed (after a complaint proceeding has been initiated), this does not preclude a school from using its normal procedures for dealing with children who are endangering themselves or others. The court interpreted this regulation and the Handicapped Children Act as prohibiting disciplinary measures which effectively change a handicapped child’s placement. It was also reasoned that the “right to an education in the least restrictive environment may be circumvented if schools are permitted to expel handicapped children.” The court concluded, therefore, that the “use of expulsion proceedings as a means of changing the placement of a disruptive handicapped child contravenes the procedures of the Handicapped Children Act.” Conversely, or in addition, the court who reasoned that students with disabilities are not immune from a school’s disciplinary process. They were not entitled to

participate in school programs when the education of other children is impaired by their behavior. What can the school do? The court stated that school officials can take disciplinary measures swiftly, such as suspension against disruptive handicapped children. Also, the school, in the form of a committee for special education, can request a change in placement. These students should have demonstrated that in disrupting the education of other children, their present placement is inappropriate. This shows that the Handicapped Act offers schools short and long term methods for dealing with behavioral problems of children with disabilities.

Disposition: The United States District Court ordered the Danbury Board of Education to require an immediate PPT review of plaintiffs' special education program and preliminarily enjoined from conducting a hearing to expel her. The court also ordered any changes in her placement must be effectuated through the proper special education procedures until the final resolution of plaintiff's claims.

1979

Citation: *Doe v. Koger*, 480 F. Supp. 225 (N.D. Ind. 1979).

Key Facts: A mildly mentally handicapped student, Dennis Doe, was attending John Young School in October of 1978. On the 18th of October the principal of the school suspended Dennis for disciplinary reasons and recommended that Dennis be expelled for the remainder of the school year. An expulsion hearing was held and on December 5, 1978 Dennis was formally expelled for the rest of the school year. Dennis and his mother's attorney appealed the decision to expel. Pending further proceedings, Dennis was placed in an interim educational program. On January 3, 1979, Dennis returned to school for the remainder of the school year.

Issue: Can a school district suspend or expel a special education student just like any regular education student? What if the student's behavior is a manifestation of the student's disability?

Holding: The court held that the language of the Handicapped Children Act and the accompanying regulations indicated clearly that the Act was intended to limit a school's right to expel handicapped students.

Reasoning: The court noted that neither the U.S. Code 20,415 on Procedural Safeguards nor any of the accompanying regulations provide for the expulsion of handicapped students. Additionally, schools were not to expel students whose handicaps caused them to be disruptive. Instead, schools were to appropriately place these students in a more restrictive environment.

Disposition: The United States District Court concluded that a handicapped child could not be expelled if his handicap caused his disruptive behavior. Plaintiff's motion for an order certifying a class was denied. The plaintiff's motion for partial summary judgment was granted in part and denied in part. The defendant's alternative motions to dismiss, for summary judgment, or for a stay were denied.

Citation: *Sherry v. New York State Education Dept.*, 479 F. Supp. 1328 (W.D. N.Y. 1979).

Key Facts: A 14-year-old student, Deloween Sherry, legally blind and deaf, suffering from a brain damage and an emotional disorder with a history of abuse was enrolled at the New York State School for the Blind in Batavia, New York. She was hospitalized for medical treatment as a result of injuries resulting from her self-abusive behavior. The superintendent of the school notified the mother that the school did not have sufficient staff to supervise her daughter and a return to the residential program at the school would be impossible until her

condition changed or more staff was hired. The letter indicated that without a better student-to-staff ratio; the school could not provide the degree of supervision required to prevent Deloween from seriously hurting herself. A meeting was held later at the Olean City School District High School, the district in which the family resided and is considered the local education agency. At this meeting the superintendent of the School for the Blind stated if the mother insisted on returning Deloween to the School for the Blind, then the school would suspend her and a suspension hearing would be provided upon request. The Olean City School District arranged a temporary program to assist the mother with Deloween's behavior. The local LEA then determined it could not meet Deloween's needs through an Alternative Education Program and concluded that most appropriate program available was at the School for the Blind. The local LEA recommended Deloween return to the day program until she could return to the residential program. The school system discontinued its program of assistance to Mrs. Sherry.

Mrs. Sherry requested that her daughter be reinstated in the residential program of the School for the Blind. She also requested procedural protections provided by the Handicapped Act. The School for the Blind, consequently, suspended Deloween. Injunctive and declaratory relief was commenced seeking reinstatement of Deloween in the educational program at the School for the Blind. About a week later the Superintendent of the School for the Blind notified Mrs. Sherry that additional personnel had been authorized for the school and that Deloween's suspension would be revoked. Deloween returned to her residential program at the School for the Blind. Additional circumstances relative to this case include a hearing that Mrs. Sherry and Deloween were entitled to at the time of the suspension and they were not afforded due process protections. The defendants made a motion to discuss the action and the plaintiff made a cross-motion for summary judgment.

Issue: The court was faced primarily with the question of jurisdiction and mootness. The parent's sought injunctive and declaratory relief because of the suspension of their child with a disability from the state school for the blind. The defendant's sought a motion to dismiss due to the fact that the suspension had been lifted and the student reinstated at the School for the Blind. The plaintiff made a procedural claim under the Education of the Handicapped Act and the Fourteenth Amendment. The Handicapped Act claim provides procedural safeguards to parents and children with respect to FAPE. The State Education Department contended that the court lacked jurisdiction over the student's claim.

Holding: The District Court held that they had jurisdiction of the claim from the parents and the claim was not moot even though the student had been reinstated. The court held that no change of placement had occurred by reason of her suspension from the school for the blind when it was done on a short-term basis. However, the court held that when the suspension became an indefinite period, the student's educational placement had been changed under the ACT. This triggered statutory procedural safeguards. No hearing or other safeguards under the EAHA were necessary. The court also held that the suspension of the student from the school for the blind until it appeared to be in the best interests of the child and the school to revoke the suspension was unlawful under the Rehabilitation Act.

Reasoning: There was significant likelihood that the problem could repeat itself; therefore, the issue was not moot. No change of placement had occurred by reason of her suspension from the school for the blind when it was done on a short-term basis but when the suspension became an indefinite period, the student's educational placement had been changed under the ACT. This triggered statutory procedural safeguards. No hearing or other safeguards under the EAHA were necessary. The excuse of lack of staff is not a good enough reason to not

provide FAPE. Also, the student's suspension was unlawful according to the meaning of Section 504 of the Rehabilitation Act.

Disposition: The United States District Court denied the New York Education Department's motion to dismiss. Plaintiff's motion for summary judgment was granted insofar as the court declared the school system's failure to provide the procedural safeguards and suspend the student was unlawful within the meaning of Section 504. The school system was directed to establish procedures that are consistent with Section 504.

1981

Citation: *S – 1 v. Turlington*, 635 F. 2d. 342 (5th Cir. 1981).

Key Facts: Seven special education students were expelled from Clewiston High School in Hendry County, Florida during the 1977-1978 school year for alleged misconduct. They were expelled for the remainder of the year and the next year 1978-1979, as well. The students were given procedural safeguards as required by *Goss v. Lopez* (1975). All of the students, with the exception of S-1, were not given hearings to determine if their behavior was a manifestation of their disability. S-1 was determined by the superintendent of Henry County Schools to not be emotionally disturbed and, therefore, his misconduct was not a manifestation of his disability. Plaintiffs S-7 and S-9 were not under expulsion orders. The superintendent rejected both students' request for a due process hearing and offered to discuss, in conference, the appropriateness of their IEPs. The plaintiffs alleged that under the Education for all Handicapped Children Act (EHA) and section 504 of the Rehabilitation Act of 1973, their rights had been violated. They sought relief compelling local and state officials to provide them with

educational services and procedural rights required by the EHA, section 504, and their implementing regulations.

Issue: At issue is whether an expulsion is a change in educational placement thereby invoking the procedural protections of the EHA and section 504. Also, at issue is whether the EHA, section 504, and their implementing regulations contemplate a dual system of discipline for handicapped and non-handicapped students. An additional issue is whether the burden of raising the question, whether a student's misconduct is a manifestation of the student's disability, is with the student or the state and/or local officials. The two last issues are whether the EHA and its implementing regulations required the local defendants to Grant S-7 and S-9 due process hearings and whether the trial judge properly entered the preliminary injunction against the state defendants.

Holding: The trial court found that the right to a free and appropriate public education was provided for all disabled students through the Education for all Handicapped Children Act. The expelled students were found to be denied this right in violation of the EHA. The court also decided that under the EHA and section 504, disabled students could not be expelled for misconduct related to their disability. The court held that no determination was ever made of the relationship between disabilities and their behavioral problems in the case of S-2, S-3, S-4, S-5, S-6, and S-8. The court determined that the superintendent's determination with regard to S-1 was insufficient under section 504 and the EHA.

Reasoning: The Appeals Court felt that expulsion was a change in placement and only a trained and specialized group could make this decision according to the educational placement procedures of the EHA and section 504.

Disposition: The U.S. Court of Appeals for the Fifth Circuit affirmed.

1982

Citation: *Board of Education of City of Peoria, Sch. Dist. 150 v. Ill. State Bd. Of Ed.*, 531 F. Supp. 148, 2 Ed. Law Rep. 1032, C.D. Ill., Feb. 04, 1982 (No. 81-1125).

Key Facts: David Buckley, a 17-year-old student with a learning disability, was suspended 5 days for verbally abusing a teacher. On November 17, 1980, the incident took place in a mainstreamed class as a part of a prevocational work-study program. In this class, David took exception to a teacher's decision to place him in detention after class that day with others for disrupting class. The Impartial Hearing Officer decided that David had violated school policy, determined that the student's act was not perpetrated by his handicap, that he assumed the blame, that his parents did not ask for an available review of the suspension, and that it should not be expunged from his record. The State order reversed the hearing officer's decision and directed that the suspension be withdrawn and expunged from his student records.

Issue: At issue is whether discipline resulting in a short-term suspension is considered the same as expulsion or termination of educational services.

Holding: The United States District Court of Illinois held that the evidence overwhelmingly supports of plaintiff's action, as found by the Impartial Hearing Officer. The Court held that the decision of the Impartial Hearing Officer be reinstated.

Reasoning: The Court felt that the student consciously challenged the teacher's authority in an intolerable manner without justification. The evidence clearly establishes the student verbally abused his instructor. The assertions in the briefs, as well as the Superintendent's decision, requiring some finding that a handicapped student is dangerous before any disciplinary suspension, all rest on regulations relating to expulsion or termination of educational services; and as has been demonstrated, this is simply not such a case.

Disposition: The decision of the State Board of Education and the State Superintendent of Education was reversed by the United States District Court. The Court reinstated the decision of the Impartial Hearing Officer as the law of this case.

Citation: *Kaelin v. Grubbs*, 682 F.2d. 595 (6th Cir. 1982).

Key Facts: A 15-year-old ninth grade student named Michael Kaelin at the Walton-Verona Public Schools during the 1978-1979 academic year had been identified as a student with a disability since Kindergarten. His IEP indicated that Michael would be placed in an Educable Mentally Handicapped (EMH) classroom. During the 1978-1979 school year, Michael defied his teacher and refused to complete a classroom assignment. He also destroyed one of the teacher's coffee cups and a worksheet. The student also attacked the teacher by kicking, pushing, and hitting. Michael was suspended from school the next day. A hearing was conducted and did not address the relationship between Michael's handicap and his disruptive behavior. It was determined by the Board that Michael had violated Board Policy and was expelled from school for the remainder of the 1978-1979 school year.

Issue: The sole issue on appeal is whether an expulsion from school is a "change of placement" within the meaning of the Education for All-Handicapped Children Act, 20 USC.1401 et seq.

Holding: The U.S. District Court for the Eastern District of Kentucky held that an expulsion from school is a "change of placement." Agreed and affirmed by U.S. Court of Appeals, Sixth Circuit.

Reasoning: Michael was expelled without receiving the procedural protections afforded by the Handicapped Children Act and Section 504's implementing regulations. The relationship between Michael's disruptive behavior and his handicap were not addressed by the Board. The

AARC was not convened before or during the expulsion hearing. The Exceptional Children Bureau and the State Superintendent refused Michael's request to convene the AARC following his expulsion. The defendants claimed that expulsion was not a change of placement. Michael claimed that expulsion did constitute a change of placement. Within the meaning of the HCA, the sole issue on this appeal is whether expulsion is a change of placement. The argument that it is not a change of placement ignores a well-reasoned opinion from the Fifth Circuit.

Disposition: The United States Court of Appeals, Sixth Circuit, agreed and affirmed.

1983

Citation: *Cain v. Yukon Public Schools, Dist. I-27*, 556 F. Supp. 605, 9 Ed. Law Rep. 865, affirmed 775 F. 2d. 15, 28 Ed. Law Rep. 34.

Key Facts: Parents of Mark Cain appealed a due process ruling and a District Court's ruling in favor of the school district with regard to their request that the school district pay for the tuition of their mentally retarded and emotionally disturbed child in a private school. Mark Cain was an 18-year-old student with a disability in the Yukon Public Schools who was repeatedly suspended for disruptive emotional outbursts. Eventually, the school determined that other arrangements needed to be made because of mark's behavior. The parents and school could not agree on placement after several meetings. The parents requested a due process hearing and, subsequently, enrolled Mark in the Brown School 3 days later. The parents rejected all offers the school made and requested the school district pay for the tuition at the Brown School. The request was refused. The Due Process Hearing resulted in a decision adverse to the Cains. An appeal followed, but relief was denied. The appeal to the U.S. District Court resulted. The case was appealed to the Tenth Circuit Court of Appeals after losing in District Court.

Issue: At issue is whether parents have a right, absent an agreement with the educational authorities, to elect unilaterally to place their child in a private school and recover the tuition costs. The EAHCA prohibits any change in a child's current placement once a due process proceeding under the Act has been initiated. The school district was not required to pay for education of mentally retarded and emotionally disturbed child in a private school where child's parents had enrolled him in the school after a due process proceeding under the EAHCA had been initiated, and where the child's individual educational program was still in effect, since enrollment of the child in private school was contrary to law and barred parents' claims for the cost of tuition. School did not discriminate against mentally retarded and emotionally disturbed child since the child was receiving FAPE when the parents enrolled him in the private school.

Holding: The District Court held that Mark Cain was receiving a free appropriate public education; therefore, the defendants were under no obligation to pay for his education in a private school. The Tenth Circuit Court of Appeals agreed.

Reasoning: The defendants substantially complied with the procedures set forth in the Act. Mark Cain's IEP was developed within the Act's procedures, and was reasonably calculated to enable him to receive educational benefits. Defendants provided Mark Cain with a free appropriate public education. Plaintiffs are not entitled to relief under 29 U.S.C. 794. Plaintiffs are not entitled to an award of attorney's fees.

Disposition: Judgment was entered in favor of the defendants and against the plaintiffs on their cause of action. Each party was instructed to bear their own costs. The decision of the District Court was appealed to the Tenth Circuit Court of Appeals. The Tenth Circuit affirmed.

1984

Citation: *Lamont X v. Quisenberry*, 606 F. Supp. 809, 24 Ed. Law Rep. 772.

Key Facts: Del and Lamont are severely behaviorally handicapped children who live at The Children's Home of Butler County. This case arose under the Education for All Handicapped Children Act. On motion of severely behaviorally handicapped students for preliminary injunction, prohibiting school and school officials from preventing them from returning to classroom pending outcome of certain statutory proceedings. Prior to the 1984-1985 school year, Del and Lamont were placed in an S.B.H. classroom which, although provided by the school, was located on the grounds of The Children's Home. During the school year, each student was involved in several episodes of disruptive or violent behavior. The students were removed from the classroom and services were provided 1 hour per day using tutors at The Children's Home.

Issue: The issues raised in the motion for preliminary injunction and associated papers are twofold. First, was the August, 1983 modification of plaintiffs' individualized education programs (IEPs) a "change in placement" as that term is used in the law. Second, if a change in placement occurred, were defendants justified in removing plaintiffs from the classroom for reasons of public or plaintiffs' own safety?

Holding: The court held that the plaintiffs, by demonstrating that they had been subjected to a change in placement which was not approved by their guardians and had not yet been vindicated by administrative mechanisms, had established that they were entitled to injunctive relief. The court also held that the nature of the disciplinary infractions committed by the students were not so severe as to, in effect, constitute an equitable defense to issuance of injunction mandating a return to the classroom. And lastly, the court held that an injunction

would be issued prohibiting defendants from preventing the students from returning to the classroom.

Reasoning: The court reasoned that an expulsion for disciplinary reason is a change in placement for purposes of the Education of All Handicapped Children Act. Also, taking a student from the classroom and instead providing home-based tutoring constitutes a change in placement. Substantial programmatic modification which occurred with respect to severely behaviorally handicapped children when they were prevented from returning to the classroom after engaging in disruptive behavior constituted a “change in placement.” Severely behaviorally handicapped students, by demonstrating that they had been subjected to a change in placement which had not been approved by the guardian and had not yet been vindicated by administrative mechanisms, had established that they were entitled to return to the classroom, absent equitable factors sufficient to defeat that entitlement.

Disposition: Preliminary injunction granted. The United States District Court requested that the school and the home compromise on the best way to serve the children.

Citation: *School Bd. Of Prince William County, Va. V. Malone*, 662 F. Supp. 978, 40 Ed. Law Rep. 740, affirmed 762 F. 2d. 1210, 25 Ed. Law Rep. 141.

Key Facts: Jerry Malone was a 14-year-old handicapped child who had charges against him relating to the distribution of drugs at school. Jerry was enrolled at Prince William County Schools in a self-contained learning disability classroom. He had an IEP which all agreed was appropriate. His learning disability manifested itself by a severe difficulty in comprehension and analysis of what he sees, reads, and is told, and difficulty in the organization of spoken and written language. Jerry’s parents felt an expulsion was a change of placement, which triggers the procedural and review protections of the EAHCA. The Virginia Department of Education

Hearing Officer had determined that Jerry's involvement in the sale of drugs was related to his handicapping condition. Previously, the school system's Rippon Local Screening Committee had determined that there was no causal relationship. Jerry was suspended from school and placed on furlough, with the parents' consent. The school principal recommended Jerry to be expelled. After a hearing, the school board voted to expel Jerry. The Malones appealed resulting in the favorable decision for them by Virginia Board of Education. The school board then sought and remained through court proceedings.

Issue: Has the state complied with the procedures of the EAHCA? Is the individualized educational program developed through the Acts' procedures reasonably calculated to enable the child to receive educational benefits? The school board argued on appeal that the expulsion of a handicapped child is not reviewable under the provisions of the EAHCA, that handicapped children are not absolutely immune from expulsion, and that Jerry's involvement in the distribution of drugs was not caused by his learning disability.

Holding: The Appeals Court held that expulsion of handicapped child was not appropriate under the Education for All Handicapped Children Act. The Appeals Court Judge held that expulsion of a handicapped student from school was subject to review in the federal court under provisions of the Education for All Handicapped Children Act and that the expulsion was unlawful because the behavior for which he was expelled was caused by his handicap.

Reasoning: Expulsion of a disabled child from school for distributing drugs was not appropriate under the Education for All Handicapped Children Act where no alternative was considered and behavior of the child was caused by his handicapping condition, and that the infraction stemmed from the learning disability is established to the court's satisfaction by at

least a preponderance of the evidence. The court felt there were alternatives for discipline other than expulsion. A more restrictive placement could have been explored.

Disposition: The District Court found in favor of the child and parents. The United States Court of Appeals, Fourth Circuit, affirmed. Later, the parents sought and received attorneys' fees from plaintiff. The court ruled in their favor.

Citation: *Victoria L. v. District School Board*, 741 F. 2d. 369 (11th Cir. 1984).

Key Facts: Victoria L., a student with a disability as defined by the Education of the Handicapped Act and the Rehabilitation Act, sought action under that act against her school system, claiming she was transferred to an alternative learning center which violated her right to attend a publicly funded special education placement appropriate for her disability. Victoria, although she was exhibiting behavior considered dangerous, during the pendency of the proceedings, asked for a preliminary injunction so she could attend the high school. She was denied relief by the United District Court for the middle District of Florida.

Issue: The student, Victoria, felt that the school district violated her right to a publicly financed appropriate special education guaranteed by the Education of the Handicapped Act and its implementing regulations. She alleged the school district discriminated against her on the basis of her handicap in violation of the Fourteenth Amendment and 504 of the Rehabilitation Act of 1973 and its implementing regulations, and violated procedural rights guaranteed by EHA, the regulations and the due process clause of the Fourteenth Amendment.

Holding: The Court of Appeals held that the Rehabilitation Act arguments would not be addressed, since the Education of the Handicapped Act provided exclusive avenue for asserting equal protection claim to publicly financed special education. The court also stated the district judge did not commit an error in basing his decision upon the unopposed evidence and the entire

record of administrative proceedings was fully admissible. The district court was not required to determine de novo whether special education student was receiving was appropriate. The student had no right to direct lay representation in the administrative proceedings. The school board was not shown to have violated student's procedural rights to remain in the high school during pendency of the action. Evidence failed to show that proposed placement was in any way inappropriate.

Reasoning: Since Education of the Handicapped Act provides exclusive avenue through which a plaintiff may assert equal protection claim to publicly financed special education, and since due process allegations consisted of statement of conclusion that defendants violated the Fourteenth Amendment by failing to comply with the procedural provisions of the Act, case did not require any separate analysis of protections offered student by other statutes and the Constitution.

Disposition: United States Court of Appeals, Eleventh Circuit, affirmed the district court's decision.

1986

Citation: *Cole v. Greenfield Central Community Schools*, 657 F. Supp. 56 (S.D. Ind. 1986), 39 Ed. Law Rep. 124.

Key Facts: Christopher Bruce Cole was a student in the Greenfield-Central School System. He was emotionally disturbed, hyperactive, and considered to have an emotional handicap. Bruce was a substantial behavior problem and very disruptive. He had academic problems and did not interact well with other students. His teacher and the school administrator used several disciplinary plans that included paddling, isolation in the class, not allowed to attend

a class field trip, and taping his mouth shut during class. The parents brought action against the school system and the administrator and teacher claiming they violated Bruce's due process and equal protection rights as a result of the discipline.

Issue: At issue is whether the school system violated the student's due process and equal protection rights by disciplining him.

Holding: The District Court held that the discipline techniques used by the school to correct the student's behavior did not violate the student's due process, and equal protection rights.

Reasoning: It was reasoned by the court that children are not immune from the school's process nor are they entitled to participate in programs when their behavior impairs the education of other children in the program. Because of this, Bruce is not entitled to any unique exemptions or protections from a school's normal disciplinary procedures because of his handicap. Corporal punishment was considered by the court to be clearly not excessive given the plaintiff's precipitating conduct and was well within the school administrator's common law privilege. The court concluded that isolation seating is a relatively harmless disciplining technique and that such punishment was warranted given the plaintiff's behavior. The taping incidents were deemed to be symbolic, demonstrative disciplinary techniques designed to remind the student to remain quiet. This was considered to not exceed the bounds of common law privilege to discipline her students.

As to the Equal Protection clause, the court determined that there was a rational basis for their conduct in this case. Bruce received the same punishment as any other child who engaged in such conduct would receive. A teacher and a principal are entitled to substantial discretion in handling the day-to-day crisis in schools.

Disposition: The United States District Court entered judgment in favor of the Greenfield Central Community Schools and against the plaintiff Christopher Bruce Cole.

Citation: *Doe v. Maher*, 793 F.2d. 1470 (9th Cir. 1986), 33 Ed. Law Rep. 124.

Key Facts: John Doe and Jack Smith are two emotionally handicapped students in the San Francisco Unified School District who were placed in different schools that were deemed appropriate for their development. Both students behaved inappropriately and were suspended and eventually recommended for expulsion. The students sought relief in District Court because their counsel objected to the use of the procedures on the grounds that they violated the EAHCA.

Issue: At issue is whether a student with a disability can be expelled for discipline issues when the behavior is a manifestation of their disability. Also at issue is whether a student with a disability can be suspended while the expulsion hearings are ongoing.

Holding: The United States District Court awarded declaratory and injunctive relief but denied monetary recovery. The U. S. Court of Appeals held that the EAHCA prohibits expulsion of disabled students when the behavior is a manifestation of their disability and the student with a disability may be expelled where the behavior is not a manifestation of their disability. The Appeals Court also held that the student with a disability may be suspended during pendency of expulsion proceedings.

Reasoning: The EAHCA prohibits the expulsion of a student with a disability for misbehavior that is a manifestation of his disability. Even though it is not written in the Act, it is implied from history, purpose, terms, and accompanying regulations. If the disabled student's misbehavior is not a manifestation of his disability, the student can be expelled without compliance with mandates of EAHCA. When this occurs, the school district may cease providing all educational services.

Disposition: The District Court found in favor of the plaintiffs. The United States Court of Appeals, Ninth Circuit, affirmed in part, reversed in part, and modified in part.

1987

Citation: *Doe v. Rockingham School Board*, 658 F. Supp. 403, 39 Ed. Law Reporter 590, (W.D. Va. 1987).

Key Facts: John Doe was an 8-year-old learning disabled third grade student at Bridgewater Elementary School. He was a disciplinary problem and had been involved in a series of incidents, which were disruptive and violent. The student was suspended for 35 days for a disruptive act but returned to school after a parent-superintendent phone call. After another disruptive incident in which John, Jr. was involved, he was again suspended. The School Board refused to hear the matter until the next School Board Meeting. This meeting would be held almost a month later. The student was tested and found to have a learning disability. With this knowledge the school system refused to reinstate John, Jr. From this meeting, the record shows that the parents were told to consider homebound instruction. The record also shows the parents did not respond to this suggestion. There was some debate as to whether this conversation actually took place. While it is disputable regarding the homebound discussion, there was no dispute regarding the school system's refusal to consider lifting the suspension until the board meeting. A hearing was conducted and court issued a restraining order to force John, Jr.'s readmission to school. John, Jr. was reinstated to Pleasant Valley Elementary School pursuant to a decision of the IEP Committee. The student was subsequently placed in homebound services program pending the development of an IEP. All parties were in apparent agreement.

Issue: The issue is whether leaving a student with a disability under a disciplinary suspension during the pendency of administrative proceedings violated both the legislative language and intent of the stay-put rule found in the EACA.

Holding: The District Court held that the school board and superintendent violated the student's procedural due process right by failing to provide a prompt hearing. In addition, the superintendent and school board failed to provide the disabled student with a notice of rights and to comply with the formal procedures mandated by the EAHCA and were not permitted to leave the student under disciplinary suspension during pendency of administrative proceedings. Finally, the student was not required further to pursue administrative remedies in order to state a claim under the Act.

Reasoning: While a continuing disciplinary suspension may be appropriate in other cases, the school system did not show that the suspension of John, Jr. was of educational benefit to him. They also did not engage formal procedures that are required by the EAHCA to inform the student of his rights under the Act. Once they knew of the student's eligibility for Special Education services, their refusal to reinstate John, Jr. to school triggered the full procedural remedies of the EAHCA.

Disposition: The United States District Court granted summary judgment in favor of the student and awarded reasonable attorney's fees.

1988

Citation: *Certiorari granted in part Honig v. Doe*, 107 S. Ct. 1284, 479 U.S. 1084, 94 L.Ed. 2d. 142, 37 Ed. Law Rep. 460, affirmed as modified 108 S. Ct. 592, 484 U.S. 305, 98 L. Ed. 2d. 686, 43 Ed. Law Rep. 857.

Key Facts: Doe and Smith were students with an emotionally disturbed disability who were suspended indefinitely for disruptive and violent behavior related to their disabilities. They were suspended until their expulsion proceedings were completed by the San Francisco Unified School District. They were unsuccessful contesting the actions against them with the school district and Doe filed suit in Federal District Court with Smith joining. They alleged that the suspension and proposed expulsion violated the EHA and sought injunctive relief against the school district and the State Superintendent of Public Instruction. The court entered summary judgment for the students and issued a permanent injunction. The U. S. Court of Appeals affirmed with slight modifications. The case was appealed to the U. S. Supreme Court and was affirmed.

Issue: Can a school district suspend a student with a disability from school indefinitely pending completion of expulsion proceedings?

Holding: The United States Supreme Court held that a student could be suspended for a period of 10 days. If a student is suspended for more than 10 days it will trigger the Due Process Clause of the 14th Amendment.

Reasoning: The Supreme Court in its opinion reasoned that as a condition of receiving federal funding, school districts are required to ensure that all students with disabilities have a “free and appropriate public education” within their jurisdictions. Procedural safeguards are designed within the Act to ensure parental participation in the decision making process. Also, designed within the EAHCA, are procedures for administrative and judicial review of any decisions in which the parents might disagree. One of those safeguards is the “stay-put” provision. This provision basically says that a disabled student will remain in their current educational placement until the completion of any review proceedings, unless the parents and the

local or state school agencies agree. The Court decided that with all of this in mind, local or state school authorities may unilaterally exclude students with disabilities from the classroom because of disruptive or dangerous behavior out of their disabilities. The Court also decided the issue of whether a District Court may order a State to provide educational services directly to a disabled student when the local agency fails to do so.

Disposition: The U. S. District Court entered summary judgment for the disabled students. U. S. Court of Appeals affirmed with slight modifications and petition was filed for writ of certiorari. The United State Supreme Court affirmed.

Citation: *Wise v. Pea Ridge School*, 855 F2d. 560, 48 Ed. Law Rep. 1098.

Key Facts: Daniel Wise is a regular education student who misbehaved and was paddled by the coach at school. The student's father took Daniel to the doctor for treatment for the paddling. The father also notified the police regarding the paddling. No criminal charges were filed. Michael Decker is a special education student attending the same school. Michael was tardy seven times and was placed in the SAC classroom for 3 days of in-school suspension. Michael's Special Education Committee determined that the school district's disciplinary policies would not adversely affect Michael's education. The parents of these two boys approached the District Court for summary judgment. The District Court ruled in favor of the school district. The parents then filed an appeal with the U. S. Appeals Court.

Issue: The issue is whether the use of disciplinary actions by the Pea Ridge School District violated student's due process rights.

Holding: The U. S. Court of Appeals held that when the coach used corporal punishment to discipline him it did not violate the regular education student's substantive due process rights.

The Appeals Court also held that the special education student's substantive due process rights were not violated when the school placed him on in-school suspension.

Reasoning: The students submitted several affidavits by other parties to show that other students were abused by the discipline policies of the school district. The Court felt that these students could not use previous incidents of alleged excessive corporal punishment in order to attach their claims into a constitutional violation. These students' claims should stand on their own merits. Since the students' rights were not violated this evidence of alleged previous abuse was not properly before the court.

Disposition: The U. S. District Court granted motion for summary judgment for defendants. The U. S. Court of Appeals, Eighth Circuit, affirmed.

1989

Citation: *Board of Education of Township High School District No. 211 v. Corral*, 441 EHLR Dec. 390 (N.D. Ill. 1989).

Key Facts: Garrett Corral was a 17-year-old autistic and behavior-disordered student who attended Palatine High School in the mildly mentally impaired program. Garrett also lived in a residential facility. Garrett's behavior became more threatening and disruptive at the school. The district removed Garrett from his placement and held a conference to determine alternate placements. The district recommended a private school that served the residents of the facility in which Garrett lived. Garrett's parents agreed to this placement for the summer and the next school year, however, they wished for Garrett to remain at the present school the remainder of the present year. Because the school district felt that Garrett was a danger to himself and others,

the district sought an injunction prohibiting Garrett from returning to Palatine High School for the remainder of the year.

Issue: At issue is whether the school district will be irreparably harmed without injunction, or will have adequate remedy at law, whether injury to district outweighs injury to the student if an injunction is granted, and whether the injunction will serve the public interest.

Holding: The U. S. District Court held for the School District.

Reasoning: The Court reasoned that where the conduct of a 17-year-old male student who possess physical strength and is autistic with a behavioral disorder causes danger to himself and others created by his return to school, this outweighs the inconvenience to the disabled student by mid-year change of placement.

Disposition: The United States District Court granted the Motion for Preliminary Injunction and the student was enjoined from attending Palatine High School until such time as this action is disposed of on the merits.

Citation: *Board of Education of Township No. 211 v. Linda Kurtz Imig*, 16 EHLR Dec. 17 (N.D. Ill. 1989).

Key Facts: Shane Kurtz was a student with a disability at Schaumburg High School. Shane became a physical danger to other students and staff at the high school. The school district filed a Complaint For Injunctive Relief. The school district enjoined the parent from sending Shane to school until the conclusion of the special education dispute-resolution process or until Shane ceases to be dangerous and/or disruptive. The school district claimed that it had two alternate special education placement options available to Shane. One placement would be an alternate public high school and the other placement would be Homebound Services.

Issue: The issue is whether there is irreparable injury to the school district, if there is a lack of adequate remedy at law, a likelihood of success on the merits, a balancing of harms, and the public interest.

Holding: The United States District Court held for the Board of Education of Township High School District Number 211.

Reasoning: Because of the small amount of evidence presented for the disabled student, the court felt that the school board would be successful on the merits. Based on this credible evidence the court felt that allowing the student to attend his high school was very likely to result in injury to other individuals.

Disposition: The U. S. District Court enjoined the student from attending his high school until the conclusion of a pending special education due process hearing and ordered the school board to provide the student 10 hours per week of homebound instruction in the interim.

Citation: *Hayes v. Unified School District No. 377*, 669 F. Supp. 1519, 42 Ed. Law Rep. 164, reversed 877 F. 2d. 809, 54 Ed. Law Rep. 450(10th Cir.).

Key Facts: Dennis and Sally Hayes were two students who were placed in the PSA (Personal/Social Adjustment Program). Their mother signed a form agreeing to this placement. During the year, both students were disruptive and were disciplined by being placed in a small room (three by five feet). At least one of the parents knew of the existence of these rooms and was aware of the hearing procedures, if they had issues with the school policies. The parents chose not to seek remedy through the administrative hearing procedure and instead, brought state law claims.

Issue: At issue is whether the parents' claims were properly before the court or whether the parents were required to first exhaust their administrative remedies under the EAHCA.

Holding: The District Court held that remedies provided by the EAHCA were not exclusive means by which students could bring action. The U. S. Court of Appeals held that in-class discipline fell within purview of the EAHCA, and student's parents were required to exhaust administrative remedies before bringing a suit to court.

Reasoning: When a complaint arises with the status of a disabled student, the EAHCA provides for procedures to resolve these complaints. These complaints should be resolved at an impartial due process hearing. An appeal should be held at the state level, if needed. School officials used the time-out rooms to keep students at school, to allow them a cool down period, and to separate those with bad behavior from the rest of the students in order to maintain order. Because the disciplinary measures that the parents are complaining about are in the purview of the EAHCA, the parents are required to present their complaints concerning these disciplinary actions according to the procedures as set forth by the EAHCA. The Appeals Court reasons that the parents failed to exhaust their administrative remedies as required under the EAHCA.

Disposition: The United States Court of Appeals, Tenth Circuit, reversed and remanded with instructions to dismiss for lack of jurisdiction.

Citation: *Ramon by Ramon v. Soto*, 916 F2d. 1377, 63 Ed. Law Rep. 492.

Key Facts: Raymond Ramon and Ruben Ventura were students attending Phoenix Indian High School. They were sent home after breaking into the school kitchen to make ham and cheese sandwiches. They were, according to the complaint, not told they were being suspended and were not given notice of the charges against them or an opportunity for a hearing. The students accused the school district of harassment, intimidation, and physical abuse. The students sought declaratory judgment and preliminary and permanent injunctions prohibiting the school district from going forward with any disciplinary actions against the students until

procedural protections required under the appropriate regulations and the Fifth Amendment had been afforded. One student, Ruben Ventura, was a student with a disability.

Issue: For the purpose of this study, only the case involving the student with the disability was examined. The issue is whether the school system violated certain provisions of the Education of the Handicapped Act with regarding to its disciplining a student with a disability, Ruben Ventura.

Holding: The Court held that the Secretary of the Interior is directed to enforce a separate body of rules governing Indian children who attend schools operated by the BIA.

Reasoning: With regard to the student with a disability the EAHCA did not apply to Ventura because the school he attended was operated by the Department of the Interior. The EAHCA distinguishes between schools under the control of state, intermediate, or local educational agencies, and schools operated for Indian children by the Bureau of Indian Affairs.

Disposition: The United States Court of Appeals, Ninth Circuit, denied the petition for a rehearing and the opinion filed was ordered amended. The Appeals Court vacated the district court's denial of attorneys' fees and remanded for determination of the two remaining issues.

1990

Citation: *Carey on Behalf of Carey v. Maine School Administrative District No. 17*, 754 F. Supp. 906, 65 Ed. Law Rep. 725.

Key Facts: Craig Carey was adopted by Nelson and Faye Carey when he was four years old. Before being settled with his current parents he was place in several foster care homes after having been the victim of child abuse by his biological parents. After stints as residential and public schools and with varied behaviors, both "average" and at times "disruptive" in which

Craig was given time-outs for his inappropriate behavior, Craig, in the eighth grade, was involved in the incident at hand. Craig returned a test paper to his teacher with the word “DIE” on it, written dozens of times. The parents were notified and agreed to seek professional help for Craig, which was unsuccessful. The school sought help on behalf of the parents from the Maine Medical Center. The Crisis Unit determined that Craig was not a danger to himself or to others around him, and released him to his parents care. Without his parents knowing, Craig brought his father’s 45 caliber semi-automatic handgun and a loaded ammunition clip to school in his book bag. The school administration suspended Craig for 10 days pending expulsion. The school board voted to expel Craig from Oxford Hills Junior High School. After a few months, Craig’s parents petitioned the school for Craig’s reinstatement. The Board felt that Craig should not go back to a regular school, but instead should have his expulsion lifted, be given an “indefinite suspension,” and be assigned home tutoring along with a program that addressed socialization. A month after these proceedings, Craig apparently attempted suicide. He was hospitalized and a Pupil Evaluation team determined that Craig should be placed in a residential setting with a therapeutic mental health component. Craig was placed in the Pike School in New Hampshire and was suspended before the year was complete for “health and safety reasons.” He was then placed in the Franklin Academy in Maine, his placement at the time of the complaint before the court. In March of that year, the parents brought a complaint before the Court which asserted that the school system deprived Craig of his constitutional and statutory rights by expelling him from Oxford Hills Junior High School. Their complaint charged that Craig’s procedural due process rights guaranteed in the Fourteenth Amendment were violated by the manner in which they expelled him. They also charged that the school system failed to adhere to

the substantive mandates of state law with the expulsion and violated the Education for All Handicapped Children Act by expelling him for behavior attributable to his disability.

Issue: At issue is whether the school system deprived Craig Carey of his constitutional and statutory rights by expelling him from school and, in the process, inflicted tortuous injury on the student and his parents.

Holding: The U. S. District Court held that the hearing process did not violate the student's procedural due process rights. The court also held that the plaintiffs failed to exhaust administrative remedies under the Education of All Handicapped Children Act and the court lacked jurisdiction to consider the plaintiff's state law claims for intentional infliction of emotional distress.

Reasoning: The school has a right to exclude a student who brought a gun and ammunition to school. It is the school district's responsibility of safeguarding and educating children. There needed to be a balance between the interests of the student and the school. The student was not denied due process at the expulsion hearing on the grounds that he was denied notice of charges or the evidence against him or any of the required minimum requirements which must be present. The student at the expulsion hearing was not prejudiced by fact that his parents were not given opportunity to cross-examine students whose statements were used at the hearing. Parents whose children bring weapons to school need to exhaust all remedies under the EAHCA prior to bringing a civil action in court.

Disposition: The student's complaint was dismissed. The school system's motion for summary judgment was granted by the United States District Court.

Citation: *Chris D. v. Montgomery County Board of Education*, 16 IDELR 1183 (Ala. 1990).

Key Facts: Chris D. was a 12-year-old boy in the sixth grade in the Montgomery County public school system diagnosed with an emotionally conflicted disability. During his placement at Bear Elementary School, Chris special support while attending regular education classes. His behavior became disruptive and violent. The police were called in to intervene on at least one occasion. The parent's became distrustful of the school administration because of their methods of discipline. As a result of these issues, Chris's mother requested Chris be placed in a residential school. School officials persuaded Chris's mother to return Chris to Bear Elementary School and attend a special education class for the full day. Chris continued to display severe emotional and social behaviors. The police were again called to help handle him. Once again the mother requested residential placement and the school refused to make any changes in his placement at Bear. The mother sought administrative review and after that proved to be unsuccessful, she filed this lawsuit. After other occasions in which Chris became so violent that he was cuffed by the police, the school and the mother sought an injunction pending the outcome of this litigation. The U.S. Magistrate recommended that the court issue a preliminary injunction embodying a compromise plan that would require the school board to provide Chris with academic instruction in his home for a minimum of 6 hours a day. The mother objected. The school system then proposed a plan under which Chris would receive individual instruction in a room in a school system administrative building, but away from other school children. The magistrate issued a supplemental report agreeing with Chris's mother and recommended that, pending disposition of the lawsuit, the school board should be required to place Chris in a residential school. The magistrate also concluded that the Davis Learning center was inappropriate for Chris, as well. The school board objected to this supplemental recommendation.

Issue: At issue is what relief the court should afford since the parties had agreed that his present placement was inappropriate.

Holding: The court held for the student and determined that the student required both a behavior management program and an opportunity to develop socialization skills. The court also held that a residential program was the best place to address these needs.

Reasoning: Even if the district had proposed homebound services, the least restrictive environment according to the EHA was a residential placement. A preferable educational environment was a school program within a residential setting as opposed to a non-school program at home. The school board's alternative proposals for homebound instruction or individual instruction in an administrative building were inappropriate because they would not give Chris the opportunity to make educational progress, because both were more restrictive environments than residential placement, and because neither offers an opportunity for Chris to return to the restrictive environment of a regular classroom setting.

Disposition: The U. S. District Court ordered that the student be placed in a full-time residential program immediately.

Citation: *Fee v. Herndon*, 900 F2d. 804, cert. denied, 499 U.S. 908 (1990).

Key Facts: Tracy Fee, a sixth grade special education student at the Dickinson Independent School District, became disruptive during class and was disciplined with corporal punishment. The principal administered the corporal punishment and the parents felt that he beat their child too excessively. The student was sent to a psychiatric rehabilitation center for several months primarily the parents contend because of the corporal punishment administered by the principal. The parents alleged that they also incurred large medical bills because of this hospitalization. Tracy had a history of aggressive behavioral problems and attended special

classes for emotionally handicapped children at the Dickinson school. The principal administered three licks with the paddle on the buttocks of the student to serve as punishment for his behavior during a history class. The school administration contended that the use of corporal punishment was consented to by the mother, Nancy Fee, through a special education consent form. School officials also contended that if there were physical injuries, it was due to the student's self-inflicted behavior during the discipline when he thrashed about on the floor.

Issue: The complaint by the parents raised allegations of gross negligence, negligence, and excessive force with respect to the teacher and the principal. At issue is whether the defendants violated the student's substantive due process rights under the Fourteenth Amendment.

Holding: The court held that since Texas has civil and criminal laws in place to proscribe educators from abusing their students and provides adequate post-punishment relief in favor of students, no substantive due process concerns are implicated because no arbitrary state action exists.

Reasoning: The Fees failed to state an actionable negligence claim against the teacher under existing Texas law. Only an excessive-force cause of action with respect to the school's principal remained.

Disposition: The district court remanded the residual tort action to state court. The United States Court of Appeals, Fifth Circuit, affirmed the dismissal of section 1983 claims asserted against all defendants.

Citation: *Texas City Independent School District v. Jorstad*, 752 F. Supp. 231 (S.D. Tex. 1990).

Key Facts: John Jorstad was a 13-year-old student with a disability who was identified as having a speech disability, learning disabled, and emotionally disturbed. John was diagnosed as manifesting a psychotic disorder and often shows noncompliant and maladaptive behaviors. After numerous incidents of dangerous, disruptive, and violent behavior the school district sought an injunction from the Court to prohibit John from attending the regular education environment as proscribed in his Individual Education program adopted by the school district and the parents and be placed in a behavior modification class or home care.

Issue: The issue is whether the school district can seek and receive injunctive relief from the Federal District Courts during the pendency of the resolution of administrative review of educational plans.

Holding: The District Court held that the student would be prohibited from attending regular classes. The Court also ordered that he be limited to participating in a behavioral management class or home care, at his parents' election.

Reasoning: In spite of the *Honig* case before the Supreme Court, which basically creates a presumption in favor of the child's current placement, schools can seek injunctive relief. The school district can successfully overcome this presumption by showing that "maintaining the child in his or her current placement is substantial likely to result in injury to either himself or herself, or to others."

Disposition: The United States District Court ordered that the student be enjoined from returning to John Jorstad as a student in the general curriculum of Block Middle School. The Court also ordered that John be placed in the behavioral modification class of Blocker Middle School or the home study program at the election of the parents. This placement would continue until the completion of administrative review.

Citation: *Waterman by Waterman v. Marquette Alger Intermediate School District*, 739 F. Supp. 361, 61 Ed. Law Rep. 561.

Key Facts: Six Pineview School special education students allegedly were disciplined inappropriately during the 1986-1987 and 1987-1988 school years. This discipline included alleged bodily humiliation, repeated physical assault, and withholding food and medicine. Dompierre and Fields were the teachers who administered the punishment. Myefski, Schaefer, and Miller were the supervisors who allegedly adopted the policies that allowed the teachers to act. These educators were employed by the Marquette-Alger Intermediate School District. State criminal prosecution against Dompierre was formed based on the issue of this discipline. The students sought declaratory and injunctive relief, compensatory damages, and costs and attorneys' fees.

Issue: At issue is whether the plaintiff can assert cause of action under the Education of the Handicapped Act (EHA), section 504 of the Rehabilitation Act of 1973, and section one of the Ku Klux or Civil Rights Act of 1871, and Michigan Tort law. The plaintiffs sought declaratory and injunctive relief, compensatory damages, costs and attorney's fees. The matter was before the court on the defendants' motions to dismiss for failure to state a claim upon which relief may be granted, or in the alternative, for summary judgment.

Holding: The District Court held that monetary damages were not recoverable under the EHA, none of the plaintiffs' claims could go forward until they had exhausted EHA administrative process, school district and Michigan Department of Education erred in concluding they had no concurrent EHA jurisdiction over child abuse allegations which arose in the context of classroom discipline, and despite error of Department of Education dismissing

complaints, appropriate remedy was returned to school district for exhaustion of administrative remedies.

Reasoning: The court reasoned that monetary damages are not recoverable by the plaintiff, bringing suit to vindicate rights conferred by the EHA. EHA plaintiffs must exhaust their adequate and available state and local administrative remedies before seeking relief in state and federal court. The court said that Congress has determined that the agency charged with developing and instituting a child's IEP must be given the first opportunity to address matters relating to that educational program. In this case, the discipline of this child in the classroom was a matter that relates to the public education of a handicapped child and that therefore falls within the scope of the EHA

Disposition: The United States District Court granted motions in part and denied in part and claims were remanded.

1991

Citation: *A.E. v. School District No. 25 of Adair County, Oklahoma*, 436 F2d. 472, 936 F2d. 472, 68 Ed. Law Rep. 278 (1991).

Key Facts: A.E. was a student in the Stillwell, Oklahoma, Public Schools that, it was agreed, was learning disabled in math. A.E. also had problems behaviorally with respect to impulse control, excessive anxiety, and peer interaction while in school. She was suspended from school in the fall of 1987 for disruptions in class, use of inappropriate language, theft, fighting, tardiness, and smoking. It was determined by the school that these behaviors were not a manifestation of her disability. A.E. cut herself on the arm, in a suicidal gesture, when she reacted to the suspension. She was admitted to the children's Medical Center psychiatric unit

and diagnosed with conduct disorder. It was recommended by the psychologist to remain in a homebound program until the next fall when she could be placed in a class for seriously emotionally disturbed students and then slowly returned to regular class. In the fall of the next year, A.E.'s parents requested that the school district develop an IEP for their child and classify her as seriously emotionally disturbed rather than learning disabled. The IEP team determined that A.E. was not covered by the Act and the student's behavioral problems were not related to her learning disability. An IEP was prepared to assist A.E. with her progress in the mainstream classroom even though the team had determined that she was not handicapped within the scope of the Act. When the parents received this determination they requested a due process hearing. The Hearing Officer concluded that A.E. was not emotionally disturbed and was properly determined to be learning disabled in mathematics. This decision was appealed. The Appeal Officer agreed that A.E. was not emotionally disturbed. The United States District Court for the Eastern District of Oklahoma affirmed.

Issue: At issue is whether the trial court improperly admitted and considered expert testimony, whether the student, A.E., was seriously emotionally disturbed, and whether Congress intended to exclude children who were socially maladjusted, but not seriously emotionally disturbed, from coverage under the Act.

Holding: The District Court held for the defendant, Stilwell Public Schools.

Reasoning: For a child to be socially maladjusted is not by itself conclusive evidence that he or she is seriously emotionally disturbed. The evidence in this case, with expert testimony, clearly supported the District Court's decision that A.E. was not seriously emotionally disturbed within the purview of the Act. The testimony supported the finding that A.E. suffered from a conduct disorder, but was not seriously emotionally disturbed within the federal

definition. The school district made every effort to assure that the student was educated in the least restrictive environment possible. They developed an IEP to meet her need in terms of her learning disability in math.

Disposition: The United States Court of Appeals, Tenth Circuit, affirmed the decision of the district court in favor of Defendant-Appellee Stilwell Public Schools.

Citation: *Binghamton City School District v. Botgna*, 1991 W.L. 29985 (N.D. N.Y. 1991), 17 EHLR 677.

Key Facts: Ray Botgna was a 9-year-old third grade student at the Roosevelt Elementary School in the Binghamton City School District. Rory first enrolled as a kindergarten student in the fall of 1986. He was determined to need special help early on in his first couple of years. His initial eligibility determination found him to be Learning Disabled. He was placed in a first grade regular education class with specially designed instruction and related services. Some of those related services were for addressing behavior issues. During the course of this year he exhibited behavior problems such as tearing up papers, erasing the blackboard, pulling displays off the wall, and being disruptive. The school district committee met to possibly change his classification to “emotionally disturbed.” Rory’s parents disagreed with this and the meeting was adjourned. Several meetings were conducted but each time the parents were against evaluating Rory for possible change in classification. When the school sent the matter to the District Committee on Special Education in May of 1990, Rory’s parents applied to the United States District Court for a temporary restraining order and received an order for the parents to assemble information for the District CSE. At the same time as this TRO, the parents requested an impartial hearing concerning the use by the District of a previous evaluation. This triggered the “stay-put” provision of IDEA and precluded the District CSE from changing Rory’s

classification and placement. Because of this, Rory began the next school year in a regular third grade classroom. Rory continued to be disruptive and aggressive. The District held a review and determined that a change needed to be made in Rory's placement and program. The CSE met and determined that Rory's placement be changed to a more restrictive environment to meet his behavioral needs. He would also continue to receive related services. The parents requested an impartial hearing to review Rory's change in placement, once again affecting the stay-put" provision of the IDEA. The School District applied to the District Court for a TRO and preliminary injunction permitting the District to place Rory in a more restrictive classroom setting. The court granted this request. Rory's parents removed him from the Binghampton School District and placed him in a parochial school in early January rather than allowing him to be placed in the Option II program, which was a more restrictive environment.

Issue: At issue is whether Rory was a danger to himself and to others in his class and whether, in balancing the hardships to the parties, there was a more appropriate interim placement for Rory than a more restrictive environment, pending resolution of the administrative process.

Holding: The United States District Court held for the school district.

Reasoning: The court found, in reviewing the evidentiary record, that there was substantial evidence to indicate that the child was likely to harm himself or others in the current placement. The court also determined that the proposed educational placement for Rory would be appropriate to his educational and behavioral needs pending the resolution of the due process hearing. The court rejected the parents' contention that temporary placement in a regular education classroom at a parochial school would be better suited to Rory's needs. The court authorized the District to place Rory in the special education classroom until the completion of the administrative process.

Disposition: The United States District Court granted the school district's motion for an injunction allowing it to place Rory in its Option II program pending the outcome of the administrative proceedings.

Citation: *Fuhrman v. East Hanover Board*, (1991) 993 F2d. 1031.

Key Facts: Garrett Fuhrmann was an 8-year-old student with a disability in the East Hanover School District who exhibited developmental problems as early as 1 year old. The District provided G.F. with specially designed instruction and appropriate related services to meet G.F.'s speech and occupational therapy needs. G.F. made slow progress this first year according to accounts. While those who worked with G.F. from the District during the year testified that G.F. made significant progress during the year 40 of the 41 goals and objectives were not fully accomplished. Serious behavioral problems also remained. The parents hired a behavioral therapist at the end of the first school year to work with G.F. The student seemed to respond very quickly to this method in a positive way. Based on this new methods and the progress that was made the parents requested that G.F. be placed in the behavioral oriented program in the District for the full day beginning in the summer. The school district denied the request stating that G.F.'s current program was appropriate and also the summer program was only for those students in which might suffer from regression. The parents pulled G.F. out of East Hanover and place him in the State Street School at their own expense. He remained there for the next year and his progress was considerably more dramatic than the previous year. He was reported to have accomplished approximately 42 or 43 of 50 goals set for that period. For the next year, East Hanover recommended that G.F. be placed in the Morris Union Jointure School. The parents kept him at the State School. The parents sought relief for the alleged violations of the IDEA by the East Hanover District in District Court.

Issue: At issue is whether the student, G.F., a student with a disability, received proper educational placement in accordance with the Individuals with Disabilities Act.

Holding: The Court of Appeals held that East Hanover complied with the procedural requirements of the IDEA and the federal and state regulations issued by them. Also, they held that the placement recommended by East Hanover for the school years 1989-1990 and 1990-1991 were “appropriate” in that they were sufficient to confer some educational benefit on G.F. and meet his individual needs.

Reasoning: The Court felt that G.F.’s placements for the school years 1989-90 and 1990-91 were appropriate within the meaning and terms of the Act, because they were reasonably calculated to enable G.F. to receive educational benefits and meet his individual needs.

Disposition: The United States Court of Appeals, Third Circuit, affirmed the judgment of the district court.

Citation: *Valerie J. v. Derry Cooperative School District*, 771 F. Supp. 483 (D. N.H. 1991).

Key Facts: Casey J. was a 12-year-old student with a disability at the Derry School District. His mother brought an action against the school district alleging violations of the Individuals with Disabilities Act. Casey was described as having attention deficit disorder and other learning disabilities. He was disruptive and a distraction for other students. Casey was prescribed to take Ritalin to help him focus and calm down in class. The school system suspended Casey for 20 days, during which time he received home tutoring, ordered easement days, and instructed Casey to take Ritalin as a precondition to going to school. Casey was seen by several experts, recruited by both parents and the school system over the course of the next couple of years. After the suspension, a hearing officer ruled that Casey should go back to

school due to the suspension being a violation of the stay put provision. He also ruled that easement days were also a violation but the overall IEP was appropriate. The parents brought this action because of their feeling this arrangement for Casey was a violation of the IDEA.

Issue: At issue is whether the school district had failed to provide educationally handicapped student with an appropriate education.

Holding: The district court held that Casey was entitled to compensatory education for at least seven and one-half months after he graduated from high school or turned 21, whichever comes later, upon determination that the school district had failed to provide educationally handicapped student with appropriate education for that period of time.

Reasoning: The issues in this case must first be presented to an administrative hearing officer. The school district could not include that a student should be medicated without his parents' consent. The district should have convened the IEP committee to review whether the student should be transferred to the regular education classroom.

Disposition: The United States District Court ruled in favor of the parent's and ordered compensatory education for the student.

Citation: *Waechter v. School District No. 1030*, 773 F. Supp. 1005 (W.D. Mich., 1991), 70 Ed. Law Rep. 500.

Key Facts: Michael Waechter was a student with a congenital heart defect and an orthopedic and learning disability at School District No. 14-030 of Casopolis, Michigan. His parents brought an action against the school district to recover for the death of their son who was required to run 350 yards in less than 2 minutes as punishment for talking with another classmate while in line. The parents allege violations of their son's civil rights protected by the United States Constitution and the Federal Rehabilitation Act of 1973. The parents believed that all

school personnel should have known about their son's condition. The school employees are accused of concealing circumstances of the death. The school district filed a motion to dismiss.

Issue: At issue is whether there is a claim for violation of substantive due process and whether the school system employees were protected by qualified immunity.

Holding: The District Court held that the allegations stated a claim for violation of substantive due process, defendants were not protected by qualified immunity, and no damages could be recovered for alleged discrimination on basis of a handicap.

Reasoning: The court considered that a mere lack of care cannot trigger a violation of constitutional proportions. Actions must be deliberate in nature in order to deprive an individual of life, liberty, or property without due process.

Disposition: The United States District Court granted the motion in part and denied in part. It is denied as to the plaintiffs' claim of a substantive due process violation. It is granted as to plaintiffs' procedural due process, handicap discrimination, right of access to courts, and dependent state law claims.

1992

Citation: *Metropolitan School District v. Davila*, 770 F. Supp. 1331 (S.D. Ind. 1991), rev'd, 969 F2d. 485 (7th Cir. 1992), cert. denied 507 U.S. 949.

Key Facts: The Metropolitan School District of Wane Township in Marion County, Indiana brought a suit alleging a rule written by Robert Davila, the Assistant Secretary of the Office of Special Education and Rehabilitative Services in the U.S. Department of Education, which interpreted Part B of the IDEA to require states to provide educational services to disabled children who were expelled for reasons unrelated to their disability. In this case, the District

Court granted summary judgment in favor of the school district and the plaintiff class and held that the rule was legislative.

Issue: At issue is whether the Office of Special Education Services of the United States Department of Education could by letter inform state educational agencies to follow what OSERS interpreted to be the proper procedures regarding serving special education students who are expelled or suspended from school for reasons other than a manifestation of their disability.

Holding: The district court held that a letter purporting to interpret part B of the Individuals with Disabilities Education Act was a legislative ruling subject to the notice and comment procedures of the Administrative Procedure Act. The appeals court held pre-enforcement judicial review was appropriate the rule was interpretive and exempt from notice and comment procedures of APA.

Reasoning: The letter advising the state education official interpreting Part B of the IDEA to require states to continue to provide educational services to disabled children who were expelled or suspended for reasons unrelated to their disability, was an interpretive rule that did not trigger notice and comment requirements of the APA. This was not a change in policy. The IDEA's requirement to continue to provide educational services to disabled children who were expelled or suspended for an extended period of time for reasons unrelated to their disability was appropriate.

Disposition: The United States Court of Appeals, Seventh Circuit, reversed and remanded for entry of summary judgment in favor of Davila and the Department of Education.

Citation: *Cohen v. School District of Philadelphia*, 18 IDELR 911 (E.D. Pa. 1992).

Key Facts: Clifford Walker, a student with a learning disability at Frankford High School in Philadelphia, Pennsylvania violently assaulted a general education student, Todd

Cohen, in the hallway. The attack was sudden and without provocation. Cohen sued the school district and claimed the school district's policy of integrating students with disabilities into the regular education environment violated his due process rights.

Issue: At issue is whether Todd Cohen was deprived of rights, privileges, and immunities secured to him by the Due Process Clause of Fifth and Fourteenth Amendments to the Constitution of the United States.

Holding: The United States District Court for the Eastern District of Pennsylvania held for the school district.

Reasoning: The district court found no authority to assume that a school district's policy of placing disruptive or potentially violent students in regular education settings is unconstitutional. Also, in the absence of prior knowledge on the part of the school district that the special education student in this case had previously exhibited aggressive tendencies or violent behavior, the school district's failure to prevent the attack did not rise to a level of a constitutional violation for which the school district could be held liable. The court granted summary judgment for the school district.

Disposition: The United States District Court of the Eastern District of Pennsylvania granted summary judgment for the School District of Philadelphia and against the plaintiff Todd Cohen.

Citation: *Hacienda La Puente Unified School District of Los Angeles v. Honig*, 976 F2d. 487 (9th Cir. 1992).

Key Facts: B.C. was a general education seventh grade student in Mesa Robles Junior High School in the Hacienda La Puente Unified School District of Los Angeles. Previous years of schooling showed a troubling trend with regards to academic success and behavioral issues.

B.C.'s mother expressed concerns to school administration. The school committee convened and B.C. received counseling. After repeated meetings and conferences, the parent requested special education evaluation resulting in the school district concluding that B.C. did not qualify for special education. Parents obtained an independent evaluation, which showed that B.C. needed specialized assistance. While these proceedings were taking place, B.C. was suspended pending expulsion for frightening another student with a starter's pistol. A month later the HLPUSD expelled B.C. for an indefinite period of time by the Los Angeles Board of Education. B.C.'s parents' attorney requested a hearing regarding B.C.'s eligibility for special education and whether his acts of behavior were a manifestation of a disability. The California Special Education Hearing Officer presiding over the hearing concluded that B.C. was indeed handicapped by a serious emotional disturbance and the actions which caused his expulsion from school were a manifestation of his disability. He concluded that the decision to expel B.C. violated the student's protections under the IDEA. The hearing officer reinstated B.C. to Mesa Robles Junior High School and ordered to district to provide FAPE as entitled under the IDEA. The school district challenged the hearing officer's decision in California Superior Court, which was removed to federal court. The school district challenged the hearing officer's jurisdiction and opposed the claim for attorney's fees.

Issue: At issue is whether the state can serve as an arbiter in hearings related to eligibility of students as related to the IDEA or conduct state administrative proceedings to consider complaints.

Holding: The district court dismissed the school district's complaint that the hearing officer lacked jurisdiction over the matter and awarded attorney's fees incurred in the course of the proceedings. The U.S. Court of Appeals affirmed.

Reasoning: The appeals court rejected the school district's argument regarding the hearing officer's lack of jurisdiction. The court felt that the IDEA and accompanying federal regulations, as well as California law, make plain that, even though not previously identified as disabled, the student's alleged disability may be raised in an IDEA administrative due process hearing. The court also stated that states participating in IDEA should entertain complaints "respecting any matter relating to the identification . . . of a child." The court also reasoned that if issues were found concerning the detection of disabilities to be outside the scope of IDEA "due process hearings," school districts could easily circumvent the statute's strictures by refusing to identify students as disabled. The court also cited the Supreme Court, in affirming their decision, stating that in passing the IDEA, "Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school."

Disposition: The United States Court of Appeals, Ninth Circuit, agreed with the district court's conclusion that the California Special Education Hearing Officer had jurisdiction to hear B.C.'s complaint, and the parents were entitled to their attorney's fees for the administrative proceeding, B.C.'s parents are also entitled to an additional fee award for defending this appeal in an amount to be determined by the district court on remand. The judgment of the district court was affirmed and the case was remanded for assessment of attorney fees and costs.

1993

Citation: *Deborah v. Leonard*, 21 IDELR 979 (D. Mass. 1993).

Key Facts: Jason V. was a general education 17-year-old student in the tenth grade at Lynn Vocational Technical High School in the Lynn Public Schools. Jason was suspended from

school when he stabbed another student. His parents requested a hearing to determine whether Jason was eligible for special education services. He was diagnosed with Attention Deficit Disorder but was not found to need special education services. The parents appealed this decision and requested an independent evaluator. Before all evaluations could take place, Jason was expelled from school permanently. Jason's parents appealed this decision to the State Department of Education's Board of Special Education Appeals. The hearing officer decided that Jason was protected under federal and state special education statutes and had the right to remain in school in the Lynn Vocational Technical High School until the conclusion of the appeal. The school district refused to comply with the order. The parents sought an injunction in U.S. District Court to enforce the hearing officer's decision.

Issue: At issue is whether Jason V. should be allowed to return to school while suspended or expelled, while a determination was made as to whether he was eligible for special education services.

Holding: The U.S. District Court held for the school district stating that that the student's proper "stay-put" placement was his educational placement during the pendency of the special needs determination proceedings-that of a suspended student in the district's public school system.

Reasoning: The district reasoned that if the "stay-put" placement was his suspended status at home, the hearing officer's order that the student be returned to school was set aside and the district was only required to educate the student in the public school system, which included placement at another school facility or home-bound schooling, pending the final determination of his special needs evaluation.

Disposition: The United States District Court held for the defendants and an injunction was issued to educate Jason V. pending the final determination of his special education eligibility under the IDEA.

Citation: *Dorothy J. v. Little Rock School District*, 7 F3d. 729 (8th Cir. 1993).

Key Facts: Louis C. was a student with a disability at Hall High School who sexually assaulted and raped another handicapped student, Brian B., while in class. These two students attended this school as a part of a community based instruction program that sought to teach life skills to educable mentally retarded students. The school district knew of Louis' violent history and sexual behavior and took no action to prevent Louis from attacking Brian in the school shower. The complaint by Brian's parents asserts that Brian's constitutional rights to personal integrity and security were violated.

Issue: At issue is whether a school district or other state agencies have a constitutional duty to protect students even with the knowledge that other students in the school are potentially violent.

Holding: The district court dismissed the complaint, concluding that the defendants had no constitutional duty to protect Brian from this act of violence by a private party. The United States Court of Appeals held that state-mandated school attendance did not impose a constitutional duty on the state to protect students and school district's knowledge of assaulting student's violent tendencies did not make it constitutionally liable. The court also held that the mother failed to state 1983 claim against the foster care agency and the DHS.

Reasoning: It is the state's affirmative act of restraining an individual's freedom to act on his own behalf, not the individual's own limitations that give rise to a constitutional duty to protect. The fact that a public high school student was mentally retarded did not give rise to a

constitutional duty on the part of the school district to protect him from sexual attack of another student in the program for educable mentally retarded students at the high school, where the state did not involuntarily place the student in the program.

Disposition: The United States Court of Appeals, Eighth Circuit, affirmed the decision of the District Court.

Citation: *Hunter v. Carbondale Area School District*, 829 F.Supp. 714 (M.D. Pa. 1993).

Key Facts: David Hadden was a 12-year-old seventh grade student with a disability at the Carbondale Area Junior-Senior High School in Carbondale, Pennsylvania. David's IEP stated that he was placed in a "Secondary/Part-time" Program for learning disabled students and only took regular classes in music, gym, and home economics. David participated in a fight and was placed in detention after school the following day. While there, David got into another fight with students in detention. When the students completed their time in detention, a chase followed with David fleeing down the halls and out of the school away from the other students. He was chased to a nearby stream where he fell in and drowned.

Issue: At issue is whether the conduct of the school district violated the student's civil rights under section 1983, his Fourteenth Amendment rights under the United States Constitution, and also other rights set forth under the Pennsylvania Constitution and other state and federal laws.

Holding: The district court held that the school's authority over a student with a disability during the school day could not be said to create a type of physical custody necessary to constitute a "special relationship" for section 1983 purposes. The court also held that placing the special education student in a detention with other regular education students did not create a danger for the purposes of section 1983.

Reasoning: The Due Process Clause does not impose an affirmative duty upon the state to protect its citizens. There is nothing in the language of the Due Process Clause of the Fourteenth Amendment that requires a state to protect the life, liberty, and property of its citizens against harm by private actors. It is not phrased as an assurance of certain minimal levels of safety.

Disposition: The United States District Court granted the school district's motion to dismiss the parent's amended complaint in its entirety.

Citation: *Oberti v. Board of Education of the Borough of Clementon School District*, 995 F.2d 1204 (3rd Cir. 1993).

Key Facts: Raphael Oberti was an 8-year-old child with Down's Syndrome in the Clementon School District in New Jersey. The school district's Child Study Team recommended to Raphael's parents that he be placed in self-contained special education class in another school district. The parents visited several of the recommended classes and rejected them. A compromise between the parents and the district put Raphael in a developmental kindergarten class for half a day and the other half was spent in a self-contained special education class in another district. While Raphael showed academic progress he began to display serious behavioral issues. Attempts were made to modify the curriculum, by the teacher, to address these behavior problems. An additional aide was added to assist with Raphael. This did little to resolve his behavior. The report from the self-contained class was that Raphael did not have these issues there. By the end of the year, the Child Study Team proposed to place Raphael in a self-contained special education class for the educable mentally retarded. This class did not exist in his school district so Raphael would have to travel to a different district. This decision was made because of these serious behavior problems and the belief that Raphael would not benefit

from a regular education classroom. The parents rejected this decision and requested that Raphael be placed in a regular education classroom in the Clementon Elementary School. The school district refused and the parents requested a due process hearing. Both parties agreed to mediation. Through this process they agreed to placement in a self-contained special education class in another school district for the next year. The parents agreed to this if the other school district would explore mainstreaming Raphael in their school and future consideration would be given to placing Raphael in Clementon Elementary School. At Winslow, the new school, Raphael gradually began to improve behaviorally. He became toilet trained and his disruptiveness subsided. He also made academic progress. The parents were, however, concerned that Raphael had no interaction with regular education students and there seemed to be no effort to mainstream him. In the middle of the year, the parents brought another due process complaint requesting once again that Raphael be placed in a regular education setting in his neighborhood elementary school. The hearing was held and the Administrative Law Judge affirmed the district's decision that the self-contained special education class in Winslow was the "least restrictive environment" for Raphael. It was concluded that Raphael was not ready for mainstreaming and the placement was in compliance with the IDEA. The parents sought relief in United States District Court.

Issue: At issue for the Court of Appeals is whether the District Court erred in holding that the school district failed to comply with IDEA's mainstreaming requirement.

Holding: The District Court held that the School District failed to comply with IDEA. The United States Court of Appeals, Third Circuit affirmed the decision of the district court that the school district failed to comply with IDEA and affirmed the district court's order that the school district design an appropriate education plan for Raphael Oberti in accordance with the

IDEA. The court remanded for further proceedings consistent with the opinion and rendered no decision regarding section 504 of the Rehabilitation Act.

Reasoning: The IDEA's mainstreaming requirements prohibit a school district from placing a student with a disability outside of a regular education classroom if educating a student in a regular education classroom, with supplementary aides and services, can be achieved satisfactorily. Also, if placement outside of a regular education classroom is necessary for the child to receive educational benefit, the school may still be violating the IDEA if it has not made sufficient efforts to include the student in school programs with nondisabled peers whenever possible. The court reasoned that the school district bears the burden of proving compliance with the mainstreaming requirement of the IDEA.

Disposition: The United States Court of Appeals, Third Circuit, affirmed the district court's decision.

Citation: *Pihl v. Mass. Dept. of Education*, (CA 1, 1993) 9 F3d. 184.

Key Facts: Karl Pihl was a 16-year-old emotionally disturbed and retarded student who suffered profound hearing loss and speech deficiencies. Karl was placed in the Perkins School for the Blind, which was a multi-handicapped residential program with a program for deaf students. His placement was terminated due to aggressive behavior. He was then placed in the Lighthouse School, a private day facility, temporarily until a permanent appropriate placement could be found. The parents became dissatisfied with this program and removed Karl from the school and hired 24-hour a day attendant care for Karl. The school system held his place at the Lighthouse while continuing to search for a permanent residential program. When Karl turned 19 years old his parents requested a due process hearing and claimed that Karl was not receiving the services he was required to receive by law. The parents agreed with the school district

requiring the district to provide interim services to Karl while a residential placement was sought. Later after other hearings, the Massachusetts Board of Education was joined as a party. The parents sought an order to create a program in the district for Karl since none could be found. A program was eventually found for Karl and the BSEA ruled that the program was appropriate for Karl and the school district should prepare an IEP for Karl reflecting this placement. The parents filed a complaint with the District Court claiming that Karl had never been provided with an appropriate IEP or any education for at least two years. They felt the Brown School placement was inappropriate and a violation of state law and sought an injunction requiring the school district to provide an appropriate education in the least restrictive setting as close as possible to home and an injunction requiring a compensatory education.

Issue: At issue is whether the IDEA empowers courts to grant remedy in the form of compensatory education to disabled students who are beyond statutory age of entitlement for special education services.

Holding: The United States District Court dismissed parents claim. The United States Court of Appeals reversed and held that the IDEA empowers courts to grant remedy in the form of compensatory education to disabled students who are beyond statutory age of entitlement for special education services and parents claim for relief under the Act in the form of compensatory education as a remedy for past deprivation during the time the student was eligible, regardless of the student's eligibility for current or future services under the Act.

Reasoning: The IDEA empowers courts to grant a remedy in the form of compensatory education to disabled students who are beyond the statutory age of entitlement for special education services. Under ordinary circumstances, parties must exhaust administrative remedies

under the IDEA before initiating court action. In certain cases, they may bypass administrative processes to seek judicial relief.

Disposition: The United States Court of Appeals, First Circuit, reversed the District Courts decision and remanded for determination of the merits of the claim.

Citation: *Swift v. Rapides Parish Schools*, (1993 CA5) 812 F. Supp. 666.

Key Facts: David Swift was a 12-year-old student classified as Behavior Disordered/Emotionally Disturbed. He was categorized by the school district as non-categorical preschool handicapped when he began school as a 4-year-old. He was initially placed in a class with other such students at the School Board's Intervention Center. Over the course of the next several years David had many evaluations by psychiatrists, LSU Medical Center appraisal teams, and other professional behaviorists who all recommended a residential placement for David due to his serious aggressive behavior. The school district maintained through all of the evaluations, IEP meetings, and due process hearings that David's placement should remain in the school district with all the related services that he needed. The parents filed complaints with OCR and The U.S. Department of Education. The OCR, after deliberations, concluded the school district was compliant with Section 504. The last due process hearing officer concluded residential placement was necessary for David to receive a free appropriate public education. The school district appealed to the Louisiana Department of Education and the state level review panel reversed the hearing officer's decision. The Swift's filed suit with the United States District Court.

Issue: At issue is whether the State has complied with the procedural requirements under the Act and is the child's IEP "reasonably calculated to enable the child to receive educational

benefits?” Is David’s placement in a self-contained ED/BD classroom on a regular public school campus is reasonably calculated to enable David to receive educational benefit?

Holding: The United States District Court held that, although the student might do better in a residential placement, he was receiving meaningful educational benefit in his current placement.

Reasoning: The concern for enhancing the disabled student’s ability to obtain educational benefit must be balanced with concerns about limited public resources, the need to provide basic educational opportunities to disabled and able-bodied children alike, the concern to serve the disabled child in the environment which is least restrictive of the child’s liberty. The Act does not mandate that every child with a disability receive optimal services. What it does require is “that appropriate educational services be delivered in the least restrictive environment available, with a preference for mainstreaming when possible.” The Act does not require the School Board to maximize David’s potential.

Disposition: The United States District Court rendered judgment in favor of the Rapides Parish Public School System. All claims by the plaintiff were dismissed.

1994

Citation: *Clyde K. v. Puyallup School District*, 35 F3d. 1396 (1994).

Key Facts: Ryan K. was a 15-year-old student in the Puyallup School District with Tourette’s Syndrome and Attention Deficit Hyperactivity Disorder (ADHD). Ryan received special education services while mainstreaming in regular education schools. Ryan’s behavior problems increased while in Ballou Junior High School exhibiting behaviors such as name-calling, profanity, insulting teachers, refusing to follow directions, and kicking and hitting

classroom furniture. Ryan was also involved with several violent confrontations for which time he was suspended several times. He was removed from school by emergency expulsion for assaulting a school staff member. Ryan's parents agreed with school officials that for safety reasons Ryan should not remain at school. The district suggested placing Ryan in an off-campus, self-contained program (STARS) on an interim basis until he could be safely reintegrated into regular school programs. Ryan's parents agreed, at first, but changed their minds. They requested a due process hearing and subsequently, rejected the school district's placement in STARS until a new IEP could be developed for Ryan. Efforts to develop an IEP were unsuccessful and Ryan's parents demanded that Ryan be allowed to return to his original junior high school the remainder of the year. The due process hearing was held during the summer and the administrative law judge ruled that the school fully complied with the IDEA. The parents appealed to the District Court. The District Court affirmed the ALJ's decision.

Issue: At issue is whether the school district violated the IDEA's procedural requirements by failing to draft a new IEP before attempting to move the student to a new placement. Also, an issue is whether there were substantive violations of the IDEA in terms of the student's appropriate stay-put placement during the pendency of the proceedings. The final issue is whether the district violated the IDEA's least restrictive environment requirements by placing the student in a self-contained classroom rather than mainstreaming him.

Holding: The District Court held that the administrative law judge's decision concluding the school district complied with the IDEA was affirmed. The United States Court of Appeals held for the school district and affirmed the District Court's decision.

Reasoning: The court reasoned that since the primary goals and objectives of Ryan's IEP could be achieved in the proposed placement, the school was not obligated to draft a new IEP

prior to making its recommendation. As to the “stay-put” provision, which provides that during the pendency of any proceedings under the IDEA, “the child shall remain in the then current educational placement.” The court concluded that Ryan’s placement was the STARS program. As for the parents contention that Ryan’s least restrictive environment should be a mainstream classroom rather than the STARS classroom, the court, after applying a four-part test, determined that the STARS program was Ryan’s least restrictive environment for reasons that include: Ryan no longer received educational benefit from mainstream placement, his behavior prevented him from learning, his academic achievement declined while mainstreamed, and a personal aide would make no meaningful difference, given the severity of his behavioral issues. The court went on to say that the district court’s finding that Ryan’s behavioral problems interfered with the ability of other students to learn. The court reasoned that disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer appropriate. While school officials have a statutory duty to ensure that disabled students receive an appropriate education, they are not required to sit on their hands when a disabled student’s behavioral problems prevent both him and those around him from learning.

Disposition: The United State Court of Appeals, Ninth Circuit, affirmed the District Court decision.

Citation: *Doe v. Manning*, 21 IDELR 357 (W.D. VA 1994).

Key Facts: Jane Doe was a 13-year-old general education student at Prospect Heights Middle School in Orange County, Virginia. Jane was admitted to a hospital by her parent and diagnosed with having schizoaffective disorder with severe depression. When she was released from the hospital she returned to school and was suspended for the remainder of the school year for handling a loaded gun. Jane was placed on homebound instruction. The parent sought a

preliminary injunction, which would reinstate Jane to her pre-suspension educational status pending a determination of the student's IDEA eligibility.

Issue: At issue is whether the court should grant a preliminary injunction on behalf of the student against the school district in terms of the school putting the student back into school from which she was suspended and serving her there until a decision could be made regarding her eligibility. At that time she would have an IEP developed to appropriately meet her needs. The parent claims both substantive and procedural violations of the IDEA.

Holding: The United States District Court held for the parent and ordered the school district to provide the student with a tutor in a location outside the school but not in the student's home until it was determined the student was eligible for special education and an IEP could be developed.

Reasoning: The risk of harm to the student, if she were deprived of a structured learning environment, outweighed the risk to the safety of the school setting or interference with its administration. The school system did not know until later that the student might have a disability. There were no facts to suggest with any clarity that the possible disability was the cause of the student's act of misconduct. There was, however, a likelihood of success on the student's due process claim. This was due to the school district's failure to provide an adequate post-suspension hearing within 72 hours of the suspension. Also, there was support for the issuance of the injunction in order to prevent continued deterioration of the student's emotional and educational well-being. Because the parent did not dispute the conduct of the child and its seriousness, the court was unwilling to readmit the student to her pre-suspension status. The court ordered the school to provide the student with professional tutorials outside of the school and the student's home until an appropriate IEP was completed.

Disposition: The United States District Court granted the motion for a preliminary injunction and ordered the school district to provide a tutor for Jane until eligibility could be determined and an IEP could be developed.

Citation: *Light v. Parkway School District*, 21 IDELR 933 (8th Cir. 1994).

Key Facts: Lauren Light was a 13-year-old student with multiple mental disabilities. She had been diagnosed with behavior disorder, conduct disorder, pervasive developmental disorder, mild to moderate mental retardation, autism, language impairment, and organic brain syndrome. Lauren was prone to unpredictable, impulsive, and aggressive behavior. She was known to be defiant, easily frustrated, impulsive, irritable, and easily distracted. She kicked others, bit others, hit others, and threw objects. Lauren was enrolled at Parkway Central Middle School, Chesterfield, Missouri. She was in a self-contained classroom for students with mental disabilities. She had a full time aide and a full time special education teacher assigned to her throughout the school day. Everyone who worked with Lauren was specially trained. She received many types of educational opportunities and after-school activities. Lauren exhibited a steady stream of aggressive and disruptive behaviors. She would average 11 to 19 aggressive acts per week for the 2 years preceding her suspension. Of all of these incidents, about 30 required the attention of the school nurse. These actions by Lauren had a negative effect on the educational progress of Lauren and the other students in her class. It was requested that Lauren be removed from her art class due to the distractions she caused. The parents objected and requested an administrative hearing. Her parents also invoked the “stay-put” provision of the IDEA. The hearing took place to hear the school district’s conclusion that Lauren should be moved to a self-contained classroom for children with autism in another school district. Her parents disagreed with this change in placement and exercised their procedural due process rights

under federal and Missouri law. Later, in the same art class, Lauren assaulted another special education student. The school district held an informal hearing that same day. The parents did not attend. Lauren was suspended for 10 days for her behavior. The parents brought an action the district court seeking to have the suspension lifted because they believe that Lauren was not afforded due process.

Issue: At issue is whether the Supreme Court's holding in *Honig v. Doe* requires a district court to find that a child is not only "substantially likely to cause injury" but also "truly dangerous" before sanctioning a transfer, and whether a school district must make a reasonable accommodation of the child's disability before it can change her placement.

Holding: The District Court initially held that Lauren had been denied due process and granted the Light's motion for a temporary restraining order. Later, after additional testimony, they changed their decision and vacated the temporary restraining order and instead granted the school district's motion for an injunction removing Lauren from Parkway Central Middle School. The United States Court of Appeals, Eighth Circuit, held that the district court erred by refusing to consider whether Lauren Light's disabilities had been reasonably accommodated. Based on this independent review, the Court of Appeals concluded that a reasonable accommodation was made, and the court affirmed the district court's order that Lauren Light be removed from her current placement.

Reasoning: The District Court reasoned that maintaining Lauren in her current placement was substantially likely to result in injury either to herself or to others. The Appeals Court held that the District Court acted properly when stating that Lauren's behavior would likely result in injury to herself or to others. A school district's seeking to remove a dangerous child with a disability from their current educational placement must show that maintaining the child in that

placement is substantially likely to result in injury either to himself or herself, or to others, and that the school district has done all that it reasonably can to reduce the risk that the child will cause injury. Where injury remains substantially likely despite the reasonable efforts of the school district to accommodate the child's disabilities, the district court may issue an injunction ordering that the child's placement be changed pending the outcome of the administrative review process.

Disposition: The United States Court of Appeals, Eighth Circuit, affirmed.

Citation: *Manchester School District v. Charles M.F.*, 21 IDELR 732 (D. N.H. 1994).

Key Facts: Charles F. was a student with a disability in the Boston Public School System. He was identified with a serious emotional disturbance and a learning disability. Charles was suspended several times for various behavioral problems and he kicked a teacher, which later resulted in a juvenile action. Charles has also been hospitalized for his behavior. The school district and Charles' parent were unable to agree regarding his classification and his appropriate school year and summer programs. The parent requested a due process hearing and placed Charles in a psychiatric institution. The hearing officer found that the residential placement at Brattleboro Retreat was appropriate and provided educational, diagnostic, and evaluative services. The district appealed the due process decision with the district court and the parents counterclaimed for compensatory damages and attorney's fees under the IDEA.

Issue: At issue is whether Charles should be secondarily identified as learning disabled. Also, an issue is whether the summer placement offered by the school district was appropriate and compliant with the IDEA. Lastly, an issue is whether Charles' placement at Brattleboro Retreat was appropriate.

Holding: The District Court held for the parent. The court declined to address which party bore the burden of proof at the administrative hearing on the grounds that the evidence supported the findings of the hearing officer.

Reasoning: The school district violated the IDEA by not offering an IEP for the summer before July of the summer in question and its program of 3.5 hours per day in an emotionally disabled self-contained classroom supplemented by home tutoring did not prevent him from regressing. The day program the school district proposed for the next year was also not sufficient. The court felt that the summer program that Charles was involved in during this dispute was designed to improve his social and behavioral skills. This program did not include educational classes. The court felt that the parent was entitled to reimbursement for expenses incurred by sending Charles to this facility. It was determined that there was sufficient evidence to support the 24-hour residential placement, which focused on behavior management for the school year. Evidence also was clear that Charles should be identified as both Severe Emotional Disturbance (SED) and Learning Disabled (LD). The court determined that suspensions totaling more than 10 days denied FAPE for Charles. The parent's request for monetary damages because of this FAPE issue was denied. Summary judgment was also denied on the parent's Section 504, ADA, and Section 1983 claims.

Disposition: The United States District Court affirmed the hearing officer's decision reimbursing the parents for the costs incurred at Brattleboro Retreat, placing the student in a 24-hour residential facility focusing on behavior management, and identifying Charles as both emotionally disturbed and learning disabled. Summary judgment was denied for the school district.

Citation: *M.P. v. Governing Board of the Grossmont Union School District*, 21 IDELR 639 (S.D. Cal. 1994).

Key Facts: A 17-year-old general education student at El Capitan High School in San Diego County, California was suspended from school for possession of a gun on school grounds. The student requested an evaluation for special education. The results of that evaluation showed that the student did not have a disability. A due process hearing was requested by the student to review this decision and the student also attempted to return to school but was not admitted. The student sought a restraining order from the court to restrain the district from excluding him from school. The district sought an order from the court that would prevent the student from returning to school.

Issue: At issue is whether the “stay-put” provision of the IDEA was in effect so that the student could return to the school even though he had been suspended and was not a student with a disability when he was suspended.

Holding: The United States District Court held for the student. The court held that the “stay-put” provision of the IDEA precludes the judicial evaluation of the plaintiff’s likelihood of success of the merits. The court also felt there was no evidence to support a finding that the student likely would injure himself.

Reasoning: The court reasoned that the “stay-put” provision of the IDEA applied whether or not a child had previously been diagnosed as having disabilities and there was no language in the IDEA, which contemplated the misuse of the statute to avoid school-imposed discipline. The court believed it did not have the authority to consider the merits of the student’s claim that he was disabled. The court did not agree with the school district’s contention that the

student was too dangerous to return to school. This refusal was dependent on a psychologist's report that said the student's impulsivity was not likely to result in danger to himself or others.

Disposition: The United States District Court granted the student's motion for a temporary restraining order. The district could not exclude the student from attending El Capitan High School. The court also denied the school district's motion for a temporary restraining order.

Citation: *Parents of Student W. v. Puyallup School District*, 93 Ed. Law Rep. 547 (1994).

Key Facts: Student W. was a beginning seventh grader in the Puyallup School District and was assessed for special education services at the request of his parents. He was determined to have a learning disability in math and was enrolled at the Kalles Junior High. He also received behavior specialist services due to the fact that he had frequent behavior issues. Over the course of the next several years, Student W. transferred in and out of the Puyallup School District and was served in special education and, at times, the parents refused special education services. Student W. continued to exhibit behavior issues. At no time during any of these transfers did Student W.'s parents request an assessment or special education classes. During the eighth grade, Student w. was suspended for 13 days. He served only 3 days due to an appeal by the family's lawyer. He was suspended again later for the balance of the year. After this suspension, the parents learned their son was still eligible for special education and requested an assessment and implementation of the student's IEP of the previous year until the reassessment was completed. The student's long-term suspension was lifted. After this time he was suspended two more times that year, once for 5 days and once for 4 days, totaling 11 days that spring to be suspended. During this time, the parents notified the District that their son had Attention Deficit Hyperactivity Disorder ("ADHD"). The District's special education director

determined that Student W. was eligible for special education and recommended a self-contained special education placement. A short term IEP was developed for the remainder of the year and a subsequent IEP was developed for the next year. The parents had concerns about the second IEP and refused to sign. They requested a hearing to hash out their differences. By the hearing date the parents and District agreed to placement in the new IEP. On the second day of the hearing, the District moved to dismiss based on the failure of the state claim. The hearing judge determined he lacked the authority to grant the requested relief and dismissed the appeal. The parties met in the fall and developed a new IEP before the start of the school year. The parents filed suit in district court seeking an injunction precluding the imposition of the District's Suspension Guidelines on Student W. and an award of one and one-half years of compensatory education.

Issue: At issue is whether the district could impose special education suspension guidelines according to the IDEA and whether compensatory education of one and one-half years for the student was appropriate to make up for past failures to provide special education.

Holding: The District Court granted the District's motion for summary judgment, holding that the suspension guidelines were not unlawful as written, and Student W. was not entitled to an award of compensatory education.

Reasoning: The parents did not raise material issues of fact either in their briefs or at oral argument, and therefore the court's review turned on the application of the law. A suspension may create a "change in placement," and by terms of the IDEA, a change in placement can only occur with the consent of the parents, or after written notice, and the opportunity for a hearing. Not all suspensions constitute a prohibited "change in placement." Where a student poses a threat to the safety of others, school officials may temporarily suspend the student for up to 10

school days. The Supreme Court made no finding about the total number of short-term suspensions per semester or per year which were permissible. As far as compensatory education, there is no contractual remedy. Compensatory education is an equitable remedy, part of the court's resources in crafting "appropriate relief." There was no showing that a general award of unspecified one and one-half years of compensatory education was appropriate.

Disposition: The United States Court of Appeals, Ninth Circuit, affirmed the District Court decision.

1995

Citation: *Clinton Co. R-III School District v. C.J.K.*, 896 F. Supp. 948 (W.D. Mo. 1995).

Key Facts: Isaac was a student with a disability in the Clinton County R-III School. The student had repeatedly threatened school officials and was known to throw and violently push furniture. His teachers were afraid of him because he frequently exploded in anger while at school. The school district wanted to change Isaac's educational placement and brought an action seeking short-term relief from the statutory "stay-put" provision.

Issue: At issue is whether to grant short-term relief to the school district from the statutory "stay-put" requirement. The statute states that a student with a disability should remain in the educational setting last agreed to by the school and the parents.

Holding: The District Court held for the student concluding that they would not apply an exception to the statutory "stay-put" provision, requiring handicapped student to remain in the last agreed educational setting pending an administrative review of the proposed change of placement, unless the student posed a 5% danger of material personal injury or some appreciable danger of serious personal injury, and there was insufficient evidence to establish that the student

posed 5% danger of material personal injury or some appreciable danger of serious personal injury.

Reasoning: The District Court reasoned that the Supreme Court had stated a narrow exception to the “stay-put” requirement. Schools systems should determine that the current placement is “substantially likely to result in injury either to himself or to others. Also clear was that there can be no change in the placement until completion of administrative review unless there is a substantial chance of personal injury. Danger of personal injury must not only be likely but must be “substantially” likely. The court concluded that although the student presented a danger of causing some material physical injury that may be five to ten times that of an average boy his age, but that such danger probably does not reach the 5% possibility during the coming school year.

Disposition: The United States District Court denied relief to the school district and judgment was entered in favor of the student.

Citation: *Eric J. v. Huntsville City Board of Education*, 22 IDELR 858 (N.D. Ala. 1995).

Key Facts: Eric J. was a 14-year-old student with a disability enrolled in the Huntsville City School system. Eric had a learning disability, speech and language impairments, and Attention Hyperactivity Disorder. Eric during the course of the year had been suspended several times for inappropriate behavior. The suspensions made Eric miss 12 days of school, 5 of which were consecutive days. Eric’s parents requested a due process hearing to argue that Eric was denied a Free Appropriate Public Education because he did not have an appropriate behavior plan in place and he was not appropriately served with special education services while he was away from school on suspension. The due process hearing officer ruled in favor of the school district on both counts. The parents then approached the U.S District Court for a remedy.

Issue: At issue is whether the school district violated Eric's right to FAPE as set forth by the IDEA when they did not serve him during short-term suspensions and for failing to develop and implement an appropriate behavior management plan.

Holding: The United States District Court held for the school district and recommended that the parents' request for relief be denied.

Reasoning: Expert witnesses helped the judge determine that the school district's behavior plan for Eric was appropriate and was designed to confer an educational benefit. The school district did violate the student's right to FAPE during suspensions, because the court felt there was no authority to support obligating the school district to continue educational services during short-term suspensions. This was true even if the behavior was a manifestation of the student's disability. The short-term suspensions were warranted, the court felt, because of the "unique needs" of the student. Therefore, the school district did not violate the IDEA.

Disposition: The United States District Court denied the parents' request for relief of the due process hearing officer's decision. The court also recommended that the parent's request for attorney's fees be denied.

Citation: *F.N. v. Board of Education of Sachem Central School District*, 894 F. Supp. 605 (E.D. N.Y. 1995).

Key Facts: F.N. was 16-year-old tenth grade general education student enrolled in the Sachem Central School District in Holbrook, New York. The student was suspended for 5 days during the spring semester for inappropriate sexual behavior directed at a female teacher. F.N. was referred for evaluation to determine if he had a disability and was placed on Homebound Services with a tutor until the evaluations were completed. The parents claimed that they were not made aware of their rights with regard to the IDEA and the Rehabilitation Act. The school

district alleged that they had apprised the plaintiffs of their rights under the IDEA. The parents objected to the continued suspension and had F.N. evaluated by outside psychiatrists. These private evaluators determined that F.N. was not a danger to anyone and should be allowed to return to school. Later, one of the doctors maintained that F.N. should be considered emotionally disturbed and allowed to return to school. The school CSE met with the parents and informed them that in their evaluations they did not classify F.N. as having a handicap and was not in need of special services. The parents demanded an impartial hearing. The school district allege that the parents refused to attend the superintendent's hearing and instead threatened to bring a suit if their son was not allowed back in school. The action was taken to U.S. District Court alleging that the student was deprived of his rights to due process with regard to his disciplinary suspension from regular classes and his identification and evaluation as a disabled student. The parents asked for relief by way of a preliminary injunction from the court to return F.N. to the regular classroom placement.

Issue: The issue is whether the school district denied the student due process rights according to the Individuals with Disabilities Act and the Rehabilitation Act in connection with his disciplinary suspension from school and his identification and evaluation as a disabled student.

Holding: The United States District Court held that the student's motion for preliminary injunction and temporary restraining order were denied. The court held that the school district did not deprive the student the right to an education without due process. The court additionally held that the student failed to exhaust his administrative remedies and therefore prevented a judicial remedy under the IDEA and the Rehabilitation Act.

Reasoning: The notice and hearing provided by the school district comported with the process that is due under the Fourteenth Amendment. The school district also conducted the required evaluations and a resulting determination was made by the district that the student was not handicapped. There were difficulties with the home instruction which caused the court concern, but the school district made assurances that instruction would continue until the end of the school term. The school district was willing to discuss with the parents whether the suspension would continue but the parents refused to attend. The parents did not demonstrate that there were serious questions concerning the merits of their due process claim and whether they were likely to succeed on the merits. And even though the parents claim that F.N. has a disability, no such determination has been made by the school. The plaintiffs argued for the “stay-put” provision in order to return F.N. to class. The school district maintained that F.N.’s “stay-put” placement was his continued suspension with home instruction because that was his educational placement when it was determined that he should be evaluated to determine whether he had a disability. The IDEA says that state and federal courts have jurisdiction to hear from final decisions of the state education agency. The parents in this case still had two levels of review available to them before they could seek relief in federal court. Actions involving the IDEA must adhere to the exhaustion requirement. The also includes actions involving the Rehabilitation Act.

Disposition: The United States District Court denied the order of a temporary restraining order and preliminary injunction with regard to the student’s claim that the school district deprived him of a public education in violation of the Fourteenth Amendment. The court also ordered that the student’s claims regarding the IDEA and the Rehabilitation Act are dismissed on the ground that the plaintiffs failed to exhaust the required administrative remedies.

Citation: *Glen III by and through Glen II v. Charlotte Michlenburg School Board of Education*, 903 F. Supp. 918, 1995 WL 590602.

Key Facts: Glen III was a student diagnosed with Attention Deficit Hyperactivity Disorder at McClintock Middle School in Charlotte, North Carolina. Glen was found to possess a gun clip and live bullets at school and was suspended for 10 days. The school committee met to determine if Glen's behavior was a manifestation of his disability. They decided that it was not and Glen became subject to regular disciplinary proceedings. An additional hearing took place with the parents to once again determine the relationship of the behavior and the student's ADHD. The committee again found there was no relationship. He was placed on ESS (External School Suspension) and assigned to a program in another school for a period of 60 days. Later he would be evaluated to determine if he could return to his home school. The parents appealed and the decision was upheld. A new IEP was developed and there was no complaint regarding the IEP from the parents. Glen never attended the school district placement school and was enrolled in Dore Academy by the parents. The parents sought relief from the U.S. District Court seeking damages for Glen's private school tuition and other relief.

Issue: At issue is whether Glen's rights were violated in regards to an education in North Carolina, whether the school district failed to provide an adequate alternative education, whether the school district violated North Carolina's statutory declarations of protection, whether the school district denied the student's rights to due process and equal protection under the Fifth and Fourteenth Amendments, whether the school district violated the Civil Rights Act, whether the student's rights as guaranteed by the Rehabilitation Act of 1973 were violated, and whether Glen's ADA rights were violated.

Holding: The district court held the ADA did not apply to this action, the only way the student could make a claim was through the IDEA, the student's attempt to go around the IDEA and administrative procedures through the Rehabilitation Act claim conflicted with the IDEA, there was no evidence that state statutes were violated, the "stay-put" provision of the IDEA was not violated by the temporary suspension, 1983 claims were redundant, and the student failed to exhaust all state administrative remedies and therefore was not eligible to seek relief under the IDEA in district court.

Reasoning: The plaintiffs' complaint never mentions the IDEA. Where the IDEA is available to a student with a disability asserting a right to FAPE, based on the IDEA or the Equal Protection Clause of the Fourteenth Amendment, the IDEA is the exclusive avenue through which the student and his parents or guardian can pursue their claim. The plaintiffs did not exhaust their administrative remedies through the IDEA.

Disposition: The United States District Court ordered that the school district's Motion for Summary Judgment be granted.

Citation: *J.B. v. Independent School District No. 191*, 21 IDELR 1157 (W.D. Wis. 1995).

Key Facts: J.B. was a 12-year-old general education student in the Burnsville Independent School District. J.B. had previously been eligible for Speech and Language services but had been dismissed. J.B. was suspended and eventually expelled from school when he traded marijuana for a cell phone and passed an army knife to another student during class. J.B. was not receiving special education services at the time of this incident although he was thought to exhibit traits of a student with ADHD (Attention Deficit/Hyperactivity Disorder) and his parents were advised to get him evaluated using a private agency. Before his expulsion the district

determined that his potential ADHD, which had been by this time evident in his evaluations, was not related to his behavior in this incident. J.B.'s parents requested a due process hearing. The school district sought legal action in the state court to obtain relief from the "stay-put" provision of the IDEA. They were initially successful in obtaining a Temporary Restraining Order to keep J.B. from coming to school. And the school district was ordered to provide J.B. with homebound services or placement in an agreed alternative. The student and parents refused each of these options. J.B. sought injunctive relief in federal district court to prevent his removal from school under Title II of the ADA. He claimed he was discriminated against by the school district because of the district's "Zero Tolerance" policy for drugs and weapons. The school district wanted to extend the Temporary Restraining Order until all of the student's medical examinations were complete.

Issue: At issue was whether the school district's "Zero Tolerance" policy for drugs and weapons discriminated against the student. Another issue before the court was the district's desire to extend the TRO until the completion of the student's medical examinations due to his behavior.

Holding: The claims of the district's motion for TRO were initially granted and the student's motion was denied. After the decision in *Light v. Parkway*, 21 IDELR 933, the court reconsidered its decision and held that the student substantially prevailed.

Reasoning: The district court felt the student could assert the privilege of protection under the IDEA, even though he had not been completely evaluated and determined as disabled according to the IDEA at the time of the disciplinary proceedings. The court believed the student had a right to challenge the correctness of the determination through due process and therefore, rejected the school district's claim that the IDEA's "stay-put" provision did not apply.

The court decided that the school district did not meet either prong of the two-pronged analysis as set forth by the *Light v. Parkway* case, in terms of the merits of their request. The district did not take reasonable steps to mitigate the risk of harm and did not establish that the student's presence at school would produce a likelihood of harm to himself or others. The district was not entitled to equitable relief from the stay-put provision. As for the student's ADA claim, the court felt that the student could not in likelihood be successful in establishing a causal connection between his behavior and his potential ADHD.

Disposition: The United States District Court ordered the student's Motion for Preliminary Injunction be denied, the Independent School District's Motion for Extension of Temporary Restraining Order was denied, and the previous ruling of the TRO was dissolved.

Citation: *Jeffrey S. v. School Board of Riverdale School District*, 21 IDELR 1164 (W.D. Wis. 1995).

Key Facts: Jeffrey Steldt was a student in the Riverdale School District. Jeffrey had been served as a student with an emotional disturbance with an IEP in each of the school districts he was enrolled in through the ninth grade. At that point Jeffrey's mother met with school officials and removed Jeffrey from special education. He began his tenth grade school year in general education. In the fall of that year Jeffrey committed a series of violent acts, including assaulting students, teachers, and administrators. He was suspended and an expulsion hearing was scheduled. The school district maintained at the hearing that they did not believe either that Jeffrey was a student with a disability or that his conduct was related to his disability. The school district expelled Jeffrey. The parents disagreed and sought a due process hearing. While the student is expelled he will receive 4 hours a week of homebound instruction.

Issue: At issue is whether the student was disabled and entitled to a due process hearing before his expulsion from school for committing violent and assaultive acts.

Holding: The United States District Court held that even though the parent removed Jeffrey from special education, he had at least a chance of succeeding in his claim of being disabled and entitled to a due process hearing. Also, the court held that the student would suffer harm that was severe and irreparable if a preliminary injunction was not provided. The court also felt that the harm asserted by the school district was overstated.

Reasoning: The student had at least a modest chance of succeeding in his contention that he had a disability under the IDEA and entitled to a due process hearing regarding the merits of the expulsion. The purpose being to determine whether a preliminary injunction against the expulsion should occur despite the fact that Jeffrey's parents removed him from special education and experts determined that Jeffrey was not a student with a disability at that time. Jeffrey's teachers had advised his parents against removing Jeffrey from special education classes and doctors found him to have a disorder resulting in explosive and disruptive behavior. The school assertion that it would be dangerous for Jeffrey to be allowed to return to school appeared to the court to be overstated. The school district had the option of returning to court to seek an injunction against the child's return to school if they believed he was likely to injure himself or others. The court felt the IDEA was clear regarding expulsion being of irreparable harm to students, to their parents, and to the community.

Disposition: The United States District Court granted a motion for a Preliminary Injunction for the student.

Citation: *School Board of Hillsborough Co. v. Student 26493257X*, 23 IDELR 93 (M.D. Fla. 1995).

Key Facts: Christian Ragusa was a 17-year-old student with autism in the Hillsborough County School District. In his class with other autistic children, Christian began exhibiting aggressive and disruptive behavior. The school district worked to analyze the situation involving his behavior. They hired a one-to-one aide and modified his schedule. They also revised his behavior plan with the help of a consultant. Christian's behavior got worse and he became more dangerous. An IEP Team was scheduled to talk about his placement. His parents were unable to attend. The meeting was postponed to a later time, but in the interim, the district secured a temporary restraining order and a preliminary injunction, which enjoined the student from attending the school. They were also authorized to place him at a facility for exceptional children. The parents were not in agreement. Both the parents and the school district filed cross-motions for summary judgment.

Issue: At issue is whether the parents were entitled to a pre-suit notice and participation meeting before the school district could pursue its suit for injunctive relief. Also at issue is whether circumstances warranted the issuance of injunctive relief for the school district. Lastly, at issue is whether the parents could amend their counterclaim to secure alternative sources for damages.

Holding: The District Court held for the school board and rejected the parents' arguments that they were entitled to a notice and participation of parents and special educators who were knowledgeable about the student before the school board was allowed to file its suit for injunctive relief.

Reasoning: The court felt the school board's request for injunctive relief was authorized by *Honig v. Doe*. They also felt that the parents' demands would frustrate that relief and exhaustion of remedies would have been futile. Additionally, the parents' motion to amend their

counterclaim to add additional causes of action was also futile and untimely. The parents were thought to use this just in case they were denied damages under the IDEA. The court stated case law prevented the use of general remedies provisions of other federal statutes to expand the scope of remedies available under the IDEA. The parents presented no good reason for moving to add new causes of action at such a late stage in the case.

Disposition: The United States District Court denied the parents' Motion for Summary Judgment, granted the school district's Motion for Summary Judgment, directed the Clerk to enter judgment in favor of the school district, and denied the parents' Motion to Amend their Counterclaims.

1996

Citation: *Board of Education of Community High School District No. 218, Cook County, Ill. V. Illinois State Board of Education*, 103 F3d. 545, 1996 WL 732282.

Key Facts: J.B. was a student with an emotionally disturbed identification in the Cook County School District. J.B. was a sexually aggressive minor who appealed a preliminary injunction from the district court, which concerned where J.B. was to be housed and educated pending the outcome of the school district's suit. J.B. had attended Kid's Peace, a Pennsylvania based facility specializing in treating students with sexually aggressive behavior. The school district worked out a financial plan and an IEP for J.B. while he stayed at Kid's Peace. When J.B. reached high school the district assumed financial responsibility for him. The school district became concerned about the cost of this facility and notified J.B.'s parents of their intention to reevaluate his IEP and his placement. At this point the parent invoked the "stay-put" provision of the IDEA to keep J.B. at Kid's Peace and sought a hearing. The parents won on both counts

at the hearing and J.B. was allowed to stay at Kid's Peace. The school district filed suit in district court to argue that J.B.'s treatment at Kid's Peace was more about management of his mental condition than education. They wanted the expense to be lifted off of them and onto the mental health agency. J.B. became too old for Kid's Peace and was eligible for a more costly Kid's Peace program and the school district refused to pay for it. The parents found an alternative program called Interventions. Interventions served J.B. for a short while and then announced that J.B. was no longer welcome in their facility. And that he was too much of a threat to the other students. Interventions agreed to keep J.B. until the parents found a new placement. The parents filed a motion with the district court for a preliminary injunction to enforce the stay-put provision and order the school district to work with them to locate a new facility for J.B. The district court placed the burden to find a replacement facility on the school district. The district court became frustrated that the school district did not make an effort to find a new facility for J.B. The district court ordered that J.B. be in a private placement found by the parents and the school district would pay for it. If an appropriate placement were to be found, the school district could repetition the court. The school district immediately appealed the injunction rather than try to find an appropriate facility.

Issue: At issue is whether the school district is obligated to pay the cost of placement in a private facility while a long term placement could be found. Also whether J.B. could stay-put at his existing placement while a new facility could be found.

Holding: The United States Court of Appeals held for the plaintiffs and affirmed the district court's decision to sustain the preliminary injunction which ordered that J.B. be placed in a private facility found by the parents at the school district's expense.

Reasoning: The stay-put provision requires that a student stay in his same educational placement pending the outcome of any proceedings brought to the court, unless the school district and the parents agree otherwise. The preliminary injunction is authorized by statute if it allows J.B. to remain in his “educational placement.” J.B. has been expelled but the parents do not challenge his expulsion. What is challenged is the power of the court and the parents, rather than the power of the school district, to effect the student’s placement. J.B. is a student with a disability and the statute guarantees that he and his parents be able to rely on an uninterrupted education during a contest between the school board and the parents. The court rejected as irrelevant whether J.B.’s treatment was motivated by his disability or his education when determining stay-put provisions. The school district may not use this dispute over funding when determining where J.B. was to reside while the trial was being prepared. Until all determinations were finalized in court, the school district was responsible for the educational cost for J.B. at Kid’s Peace.

Disposition: The United States Court of Appeals, Seventh Circuit, affirmed the injunction of the district court.

Citation: *Rodiricus L. v. Waukegan School District*, 24 IDELR 563 (7th Cir. 1996).

Key Facts: Rodiricus L. was a 12-year-old general education student in the Waukegan School District. He was enrolled in the seventh grade after his mother was granted custody after a year in a residential facility that he was placed in following conviction of a robbery. In school, Rodiricus had several discipline issues and each time was sent to an alternative learning center for a day. Rodiricus confessed to taking school keys and stealing from the school after hours. He was suspended from school by the principal for 10 days and recommended for expulsion. A Department of Children and Family Services caseworker contacted the school board and told

them that Rodiriecus may have an emotional disability and should undergo a special education case study according to the IDEA. Later, Rodiriecus' attorney requested a due process hearing and demanded the student be allowed to remain in school until the conclusion of the hearing. The school district complied with the request to evaluate the student for the due process hearing but in the meantime, they expelled Rodiriecus from the school district's regular education program for the remainder of the year. After this decision by the school district, Rodiriecus filed suit in district court seeking a preliminary injunction to force the school district to allow the student to return to school according to the IDEA. The student asserted that under the IDEA, while he was being evaluated for special education purposes, the school district was prohibited from expelling him from school. The court issued a temporary restraining order ordering the district to allow the student to return to school. The court denied the district's motion to dissolve the restraining order. The school district held a conference and evaluated Rodiriecus and determined that he was not disabled and did not require special education services. Despite this information from the school district that Rodiriecus did not qualify for special education services, the district court issued a preliminary injunction ruling that the IDEA required that while Rodiriecus was pursuing administrative remedies to determine whether he was eligible for special education, the school district was barred from expelling him from school. The school district appealed the decision to the United States Court of Appeals.

Issue: At issue is whether the district court's decision was correct to grant a preliminary injunction allowing a student without a disability to "stay-put" in his school while evaluations took place to determine his IDEA status.

Holding: The U.S. Court of Appeals held for the school district and reversed the district court's decision for a preliminary injunction which would have allowed the student to return to school.

Reasoning: If the stay-put provision is automatically applied to every student who files an application for special education, then an avenue will be open for disruptive, non-disabled students to stop any attempts at routine discipline by simply requesting a disability evaluation and demanding to "stay-put." This would disrupt the educational goals of a public school system that is already over-burdened and at times chaotic. In this case, the statute is not definitive as to whether it applies to students such as Rodiriecus who have not been diagnosed as having a disability. The appeals court felt it would be wise to look at the traditional factors in deciding whether or not to grant a preliminary injunction. The court felt that before a court invokes the IDEA placement protection provision, petitioners must reasonably demonstrate that school officials knew of, or should have known of, a student's genuine disability. It is apparent that the school officials in this case had neither knowledge nor reasonable suspicions to base a rational decision that the student was in fact disabled. The parent never requested a special education evaluation. No one ever proposed that Rodiriecus may need special education services. Only when he was presented with expulsion for his acts of burglary did the student's guardian seek an evaluation and injunction to force the school district to allow Rodiriecus to remain in school. There is nothing in the record to indicate that Rodiriecus requires any special education. Until the expulsion proceedings, there was no request for an IEP or any form of special education. The IDEA was not designed to act as a shield to protect a disruptive child from routine and appropriate school discipline.

Disposition: The United States Court of Appeals, Seventh Circuit, reversed the stay-put order of the district court and remanded the case back to the district court for proceedings consistent with the opinion.

Citation: *Rasmus v. State of Arizona*, 24 IDELR 824 (D. Ariz. 1996).

Key Facts: Charles Rasmus was an eighth grade student with Attention Deficit Disorder and diagnosed with an emotional disability in the Paradise Valley Unified School District No. 69 in Arizona. Charles had a history of discipline problems. He was referred from Sunrise Middle School to the Roadrunner School, a school for emotionally disable students. Charles was sent to the alternative classroom at the school for inappropriate behavior, one day, and began arguing with another student. It escalated to the point that the teacher placed Charles in the “time-out” room. Charles went into the room for 10 minutes to cool down voluntarily. He was told to remove his shoes and empty his pockets before he entered the “time-out” room. The teacher closed the door and locked it behind Charles. Charles was well behaved the rest of the day and finished the year with perfect attendance. When Charles’ parents found out about the “time-out” room they were not pleased. They called the Fire Department to request a safety inspection of the closet. The Fire Marshall inspected the room and found the locks to be a violation of the fire code. The school removed the locks. The parents also requested an investigation from the Arizona Department of Education regarding the “time-out” room. The Department found that the school was in compliance with existing laws and regulations. The parents sued the school district in District Court as a result of the disciplinary incident in which the student, who suffered from ADD, was briefly confined in the “time-out” room.

Issue: At issue was whether Charles’ placement in the “time-out” room violated the student’s Fourth and Fourteenth Amendment rights. Also at issue was whether the student had

made a claim under the Americans With Disabilities Act. Also at issue was whether the individual defendants were entitled to qualified immunity. Finally, at issue was whether the summary judgment was appropriate in the Plaintiffs' state law claims.

Holding: The District Court held that there were issues of fact that precluded summary judgment on the Fourth Amendment claim as to whether the student was seized and whether the seizure was reasonable. The court also held that any violation of the student's property and liberty interests were de minimis, so that the due process procedures were not invoked. In addition, the substantive due process claim was precluded because the Fourth Amendment placed explicit limitations on the type of government conduct challenged. Additionally, there was no violation of the Americans with Disabilities Act. The court also held that individual defendants were entitled to qualified immunity. The court held that there was no false imprisonment. Lastly, the court held that the parties in the case would be required to file a joint brief in support of a position that the Eleventh Amendment did not apply.

Reasoning: As to the seizure issue of the Fourth Amendment, an encounter becomes a seizure when its circumstances become so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he does not respond. The school district contends that Charles voluntarily entered the room and, therefore, was not seized within the meaning of the Fourth Amendment. Charles says that the teacher intimidated him and made him feel that if he did not go into the room the teacher would drag him in there. As for the reasonable issue of the Fourth Amendment, the school district contends that Charles' seizure was reasonable under the circumstances. A search is reasonable if it is justified at its inception and was reasonably related in scope to the circumstances which justified the interference in the first place. A seizure is reasonable in its scope when the measures adopted are reasonably related to the

objectives of the seizure and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. The court found that AZ-TAS provided admissible evidence from which a reasonable fact finder could conclude that the school district's placement of Charles in a locked room was "excessively intrusive" in light of his age and emotional disability. Therefore, placing Charles in a locked room was considered an unreasonable response to his behavioral problems. As to the Fourteenth Amendment claim, the court agreed with the school district that Charles restriction in the time-out room and subsequent loss of class time was only for 10 minutes. The school district's restriction of his property rights was de minimis. Also, the violation of his liberty interests was also de minimis. Charles was not harmed, restrained, or suffered any pain. He went into the room willingly and without protest. He suffered no trauma. Therefore, the school district was entitled to summary judgment on the parents' procedural due process claims. In terms of the parents' substantive due process claim, previous precedent precluded the claim because the Fourth Amendment places explicit limitations on the type of government conduct challenged. The school district won summary judgment on this claim, as well. In regard to the Americans With Disabilities Act claim by the parents, the court found that Charles was not denied any service or program or denied any benefit as a result of his behavior. The court felt the parents failed to state a claim for relief under the ADA. With respect to qualified immunity, in light of the absence of clearly established law, the court felt that Charles' teacher could have objectively believed that his conduct was lawful under the circumstances. The school administrators also could have reasonably believed that their policies and conduct were lawful. Their conduct was not so offensive that they should have recognized that it violated constitutional law. The court found that all three individuals were entitled to qualified immunity.

Disposition: The District Court granted in part and denying in part the Defendants' Motion for Summary Judgment.

Citation: *Taylor v. Corinth Public School District*, 23 IDELR 1054 (N.D. Miss. 1996).

Key Facts: Donald Taylor was a 14-year-old emotionally handicapped student in the Corinth Public School System. Donald, over the course of his educational experience, spent time in several placements including regular school, an alternative school, and residential placement. He was characterized as "out of control" even though he had a behavior plan. Because of these behavioral issues, the school district felt that Donald should be placed in a self-contained classroom at the sheriff's office. Donald's parent refused and requested a due process hearing. The hearing officer agreed with and upheld the school district's placement decision. The hearing officer added provisions to the placement which included: a minimum of 10 hours per week of instruction, a maximum of 45 days in this placement, transportation arrangements for the student, a behavior plan, a therapy plan, a transition plan, and a psychiatric evaluation. The parent appealed this decision and sought an injunction from the district court pending the appeals hearing.

Issue: The issue is whether the court should provide the parents with preliminary injunction to order the school to allow the student to stay-put at the alternative school instead of placing him at the sheriff's office for educational services pending the appeals hearing.

Holding: The court held for the Corinth Public School District denying the parent's request for a preliminary injunctive relief.

Reasoning: The court felt that the parents were probably not going to be successful based on the merits of the claim. The school district's actions were did not constitute a procedural violation of the IDEA. There were exceptions to the stay-put provision and the court recognized

that when students are a danger to themselves or to others in their current placement, a change of placement may be warranted. The court stated that the school district tried several placement options but had little success. The school district also offered the detention center as only a temporary placement with the counseling and individual attention he needed. The actions by the school district, the court felt, were intended to be an incentive for better behavior from the student. The student's potential danger to others outweighed any harm he might experience by this placement, the court reasoned, which served the public interest. Public interest was also served by implementing the IDEA's remedial provisions and fostering a safe school environment.

Disposition: The United States District Court denied the parent's Motion for a Preliminary Injunction.

1997

Citation: *Doe v. Board of Education of Oak Park River Forest High School District 200*, 115 3d. 1273, cert. denied 118 S. Ct. 564.

Key Facts: John Doe was a 13-year-old freshman student with a learning disability at the Oak Park & River Forest High School. John, along with other students were recipients of school regulations which covered the use of illegal substances and also received copies of rules regulating the use of illegal substances in connection with participation in sports. John admitted he was in attendance when these rules were covered. John was found to be in possession of a pipe and marijuana at a dance sponsored by the school. He was suspended for 10 days and eventually expelled for the remainder of the fall semester. John Doe's family requested a due process hearing. The student's parents believed that the school district's assertion that John's

conduct was not a manifestation of his disability was inaccurate. The level I hearing officer upheld the school board's decision that the behavior was unrelated to his disability. The level II hearing officer reversed and stated that the school district's failure to stay John's placement or provide alternative educational services had violated John's due process and IDEA rights. The parents filed a complaint in district court claiming the expulsion violated John's Fourteenth Amendment right to due process as well as other constitutional and statutory rights. One of these complaints alleged violations of the IDEA. The school district moved for summary judgment for all counts except the IDEA count and was granted by the court. The district determined that the school district afforded John adequate due process. The school district filed a counter claim on the Level II hearing officer's decision. Both parties filed cross motions for summary judgment on the IDEA count. The district court granted summary judgment for the school district on both issues. The district court found that the school district was not required by the IDEA to continue to provide educational services to a student who has been expelled for reasons unrelated to his disability. The student's behavior made him forfeit his right to FAPE required by the IDEA. The court also said that the school district was not obligated by the IDEA to stay John's placement during the due process hearings if there was no relationship between the misconduct, which caused this process, and the student's exceptionality. The parents appealed the decision.

Issue: The issue is whether the school district satisfied the requirements of the IDEA in expelling John Doe and not providing alternative services.

Holding: The Appeals Court held for the school district.

Reasoning: The Appeals Court agreed with the reasoning of both the Ninth and Fourth Circuits on the issue of not providing alternate services when a student is expelled for conduct that is not a manifestation of their disability. The cases the parents brought to argue their claim

did not lead to a contrary result. The court felt that the rationale and result of the Ninth Circuit's opinion in the Maher case and the Fourth Circuit's opinion in the Riley case were more persuasive. The court also felt that the "stay-put" provision of the IDEA was not implicated.

Disposition: The United States Appeals Court, Seventh Circuit, affirmed the district court's decision.

Citation: *Magyar by and through Magyar v. Tucson Unified School District*, 958 F. Supp. 1423.

Key Facts: Jeremy Magyar was a 15-year-old student with an emotional disability at Secrist Middle School in the Tucson Unified School District. Jeremy gave a knife to another student at school. The student told the school administrator that the knife belonged to Jeremy. Jeremy confessed he brought it to school but could not answer why he brought it to school. Jeremy was suspended from school and arrested by the local police department. A school committee met to determine if Jeremy's conduct was related to his disability. Jeremy and his dad were not invited to the meeting. A disciplinary hearing was conducted and the hearing officer decided to extend Jeremy's suspension to 175 days and recommend Jeremy for expulsion. An IEP meeting was not held before the proceedings and educational services were never provided during the 175-day suspension. Jeremy was subsequently expelled for 1 year. Jeremy's dad requested a due process hearing. Jeremy attended Home Quest, a private non-profit alternative day school program, paid for by the County Juvenile Court system the rest of the school year. He later was referred for enrollment by the court system to Vision Quest, a 24-hour residential program.

Issue: At issue is whether the school district can rightfully expel a student with a disability for behavior that is unrelated to the disability and whether a school district must provide the disabled student educational services during the expulsion period.

Holding: The District Court held that the 10-day suspension did not constitute a change of placement, the expulsion did constitute a change in placement, the school district did not provide educational services during the expulsion, students with disabilities are entitled to educational services under the IDEA when they are under long-term suspension or expulsion regardless of the relationship of suspensions or expulsions to their disabilities, the school district violated the “stay-put” provision of the IDEA, the Gun-Free Schools Act did not permit or require the student’s expulsion without adherence to IDEA’s procedural safeguards, the school district violated the IDEA’s procedural safeguards and FAPE requirement when it failed to provide educational services to the student during the court ordered placement in a residential treatment facility, the student was entitled to compensatory education, and the notice given to the parent following the manifestation hearing was inadequate under the IDEA.

Reasoning: The court reasoned that the suspension of a student with a disability for more than 10 days or the expulsion of a student constituted a “change in placement” under the IDEA and therefore require procedural protections. A 10-day suspension for bringing a knife to school did not constitute a “change in placement.” A long-term suspension of 175 days constituted a “change in placement,” which required a change in the IEP. The court found that based on facts unique to this case and the Supreme Court’s guidance in *Honig*, all students with disabilities were entitled to individualized educational services when they are suspended long term or expelled from the regular setting. They reasoned that disabled students have special needs that must be met.

Disposition: The District Court granted the student’s Motion for Summary Judgment and the school district’s cross Motion for Summary Judgment was denied.

Citation: *School Board of Pinellas County, Fla. v. J.M. by and through L.M.*, 957 F. Supp. 1252.

Key Facts: J. M. was a 12-year-old autistic student at Osceola Middle School in Pinellas County, Florida. J. M. exhibited behavior problems from the beginning of his enrollment. His behavior became violent toward other students and staff members. As the year progressed he improved slightly but still was a danger to assault those around him. He was known to touch others in inappropriate ways as well. He was evaluated and determined to possess the potential to strike out in an unpredictable manner. The school district wanted to remove J. M. and place him back into his previous placement, the Stephens Center, which was more restricted for the safety of everyone at Osceola Middle School. J. M.’s parents disagreed with the judgment that J. M. should be removed from OMS. She felt his behavior could be controlled. She requested a due process hearing. The school district sought an injunction with the district court enjoining the enforcement of the “stay-put” provision of the IDEA for a term of 45 days so that J. M. could be transferred to the Stephens Center. The school district also sought an order directing J. M.’s placement at the Stephens Center.

Issue: The issue is whether the school district should be allowed a Preliminary Injunction allowing the temporary placement of a student with a disability in a more restrictive setting for 45 days while an administrative due process hearing is conducted.

Holding: The court held that the school district established that it was substantially likely to prevail on the merits of its claim that the student was likely to injure others if he was left in his current placement and other preliminary injunction factors also favored the school district.

Reasoning: The court reasoned that the threatened injury outweighed the harm to the student caused by the injunction. The student would not be denied education but would receive FAPE in a more restrictive environment.

Disposition: The United States District Court granted the school district's Motion for a Preliminary Injunction.

Citation: *Robert H., et al., Plaintiffs v. Nixa R-2 School District, et al., Defendants*, No. 94-3496-CV-S-RGC, 26 IDELR 564 (U.S. District Court, W.D. Missouri).

Key Facts: Robert H. was a student with an emotional/behavioral disability at Nixa R-II High School in Christian County, Missouri. Due to Robert's misbehavior at lunch he was put in a time-out room for several minutes. Later his parents requested and received a change in rooms to a different teacher because they felt that Robert was not doing well academically and emotionally in Mr. Woods' class. He also was afraid of Mr. Woods. As a result of good behavior and completing homework assignments, Robert's class and Mr. Woods' class went on a field trip. Robert was not allowed to attend because he did not turn in his homework. He had to remain in the office until both classes returned about an hour later. This field trip came about a month after Robert was evaluated and diagnosed as severely emotionally disturbed suffering from severe depression with psychotic symptoms. In the spring of the school year Robert was admitted and remained for treatment in a psychiatric hospital. He received homebound instruction for the remainder of the school year. The parents requested a due process hearing 1 year later with two issues. The parents claim the school district did not provide FAPE and discriminated against him when they locked Robert in a time-out room. They claimed that this issue caused Robert to need hospitalization and homebound services the remainder of the year. Also, the parents felt Robert was not provided FAPE and discriminated against by refusing to

allow him to go on the field trip. The hearing officer ruled in favor of the school district on both issues. Robert's parents appealed the officer's decision to a State Level Review. The State Level Review Officer reversed the due process hearing officer's decision on the IDEA claim in regards to Issue I and affirmed the decision on Issue II. Robert's parents took the issue to District Court.

Issue: At issue is whether the student with a disability was denied FAPE and discriminated against under the IDEA, section 504, the ADA, and 42 U.S.C. 1983.

Holding: The United States District Court held for the school district.

Reasoning: The Court felt the Hearing Panel's decision was correct in all respects even though the SLRO reversed their decision. The court decided that more weight should be given to the Hearing Panel's decision because they were able to make credibility determinations that the SLRO was not able to make. Even though placement in the time-out room and loss of lunchroom privileges for 20 minutes, were not in the IEP and discipline plan for Robert, the Court was not convinced that Mr. Wood's placing Robert in the time-out room amounted to a denial of FAPE. The Court did not believe that it was Congress's intent for the courts to substitute their judgment for the judgment of school officials regarding disciplinary actions. In regard to the field trip denying FAPE and, consequently, the IDEA, the Court agreed with the Hearing Panel's and the SLRO's decision. The school district encouraged the use of field trips as incentives and privileges for non-disabled and disabled students to earn. Robert did not meet the requirements even though he had the opportunity to do so. His parents were aware of this fact. The district's actions did not violate the IDEA.

Disposition: The United States District Court ordered in favor of the school district on the IDEA claim and dismissed the ADA, 1983, and 504 claims.

1998

Citation: *Doe v. Board of Education of the Elyria City Schools*, 28 IDELR 286 (6th Cir. 1998).

Key Facts: John S. Doe was an eighth grade regular education student in the Elyria City School District of Elyria, Ohio. Upon entering the seventh grade John showed unusual behavior problems. Beginning with the seventh grade and through the eighth John began exhibiting behaviors that affected his academic success. He was given a behavior management plan in the seventh grade and after further intervention meetings John was referred for psychological evaluations. The school recommended that John be evaluated for special education services. During the process of completing the evaluation, John brought a plastic toy gun to school and became defiant. He was suspended and later was expelled. The parents were not in favor of expelling John while he was being evaluated for special education. A meeting was requested by the parents with the school district to ask for a due process hearing. Both parties agreed to allow John back in school and John never served the remainder of his expulsion. Both parties also agreed that John would undergo a multi-factored evaluation. John was later diagnosed with a severe behavioral disability. He was placed in the school's SBH program and provided with an IEP. The parents were not successful in appealing the expulsion and filed suit in district court. The district court granted the school district's motion, finding that Doe had failed to exhaust his administrative remedies.

Issue: At issue is whether the parents had failed to exhaust their administrative remedies under the IDEA when they claimed the school district violated the IDEA, the Rehabilitation Act, Section 1983, and procedural due process when it expelled their son.

Holding: The Appeals Court held for the school district. The Court rejected the parents' claim that the district court erred in concluding that they failed to exhaust IDEA administrative remedies.

Reasoning: The parents failed to file a written request for a hearing, which stated the issues in dispute. Also, the Court concluded that no procedural due process violations occurred. It was determined that the parent's should not have tape recorded the expulsion hearing or cross-examined the district's witnesses. The Court also stated that the student received notice of the expulsion hearing. A violation of procedural due process did not occur when the parents were not given an opportunity to appeal the denial of their request for a due process hearing. The state procedural remedies were adequate. The Court also found that the stay-put rule did not apply in this case. At the time of the expulsion, the student had not yet been identified as eligible for special education.

Disposition: The United States Court of Appeals, Sixth Circuit, affirmed the District Court's decision.

Citation: *Gadsden City Board of Education v. B.P.*, 3 F. Supp. 2d. 1299, 1998 WL 230949.

Key Facts: Two students, B.P. and L.H., with intellectual disabilities in the Gadsden City School District were suspended following a violent episode at school, which required them to be removed from class by the police. The school district suspended both students for 3 days. The school district requested from the state court a Temporary Restraining Order (TRO), a preliminary injunction, and a final injunction authorizing the district to suspend or remove B.P. and L.H. from school. The TRO was granted by the state court judge and a hearing date was set for preliminary injunction. Before the court hearing, a meeting occurred between the school

district and the students' guardians and an agreement was made prohibiting the students from returning to any school in the district. Despite this agreement, the guardians moved the case to District Court based on federal jurisdiction and filed an objection to the school district's demand for injunctive relief.

Issue: At issue is whether the district court should consider the case after the parents and the school district made an agreement that could make the issue moot. Also at issue is whether the school district could bring the case to court without exhausting administrative remedies under the IDEA.

Holding: The District Court held that, without first exhausting administrative remedies, the case could be brought directly to court. This is due to the potential violence that may occur by the students. Also, the court held that they would consider the question whether the school district could seek relief in court without exhausting the administrative remedies under the IDEA despite the mutual agreement between the parents and the school district, which caused the issue to be moot for a short time.

Reasoning: The district court was persuaded that the case before it might occur again and not be subject for review. It appears that the students in this case are incapable of controlling their aggressive and violent behavior and, therefore, likely to repeat their behavior and be a substantial risk for harm. Therefore, there is a reasonable expectation that the students would again be subjected by the school district to stop them from attending school. The exhaustion issue is therefore likely to come up again in this case. As for the exhaustion requirement the court was not able to find any legal precedent that directly focuses on this point. The court concluded that exhaustion is not necessarily a requirement under the 1997 amendments to the IDEA. The court reasoned this decision was based on the position taken by OSEP, the fact that

an expedited governmental hearing may be futile, and also, based on the plain language of the expedited hearing provision.

Disposition: The District Court denied the school districts motion to moot the action and upheld the preliminary injunction indefinitely.

1999

Citation: *Padilla v. School District No. 1, Denver, CO.*, 35 F. Supp. 2d 1260 (U.S. District Ct. D. Co. 1999).

Key Facts: Shayne Padilla was an 11-year-old student with developmental and mental disabilities in the Denver County and City School District. Over the course of her time within the school district, Shayne was moved to multiple schools by the district and several IEPs were developed which should have included a Behavior Plan that was never written or implemented. The student was known to “act-out” when there was a change in her environment and other cues. On one of these episodes Shayne’s caregivers placed her in the stroller--used to transport her around school--restrained her with a seat belt, and placed her in the storage closet for a time-out. No one was supervising Shayne when she was toppled to the floor causing her to hit her head suffering a skull fracture. Shayne’s parents brought a suit to the District Court claiming Shayne’s rights were violated under the ADA and a claim that Shayne was deprived of her federal statutory right to FAPE under the IDEA.

Issue: At issue is whether the parent had exhausted all administrative remedies before taking the issue to court, whether compensatory damages are available under the IDEA, and whether individual lawsuits were allowable under the IDEA.

Holding: The U.S. District Court held that the exhaustion of administrative remedies was excused as futile. The court held that general damages were available under the law (1983) when a party sues for violations of the IDEA. The court held that individual liability suits were allowable under the IDEA. Lastly, the court held that the school nurse was entitled to qualified immunity, but all of the remaining individual defendants were not.

Reasoning: The exhaustion of the student's administrative remedies under the IDEA was found to be futile. The court reasoned that the student had been denied a due process hearing on the grounds that the hearing officer did not have the authority to grant relief. There is the ability to sue for violations of the IDEA and receive general damages. The court reasoned that the "plain language" of the IDEA left remedies under the law to the court's discretion; therefore, a court may order appropriate relief, including money damages. The court also felt the IDEA allows individual liability suits. The acts of the special education teacher and paraprofessional aide in placing the student in the storage closet unsupervised were in direct contravention of the student's IEP and therefore they were not entitled to qualified immunity.

Disposition: The United States District Court granted in part and denied in part the school district's motion to dismiss. The Court granted the school district's motion to dismiss with respect to the claim against Ms. Boggs, the school nurse, but denied the school district's motion to dismiss in all other respects.

2000

Citation: *Board of Education of Oak Park v. Nathan R., ex. rel. Richard R.*, 199 F. 3d. 377, cert. denied *Nathan R. v. Board of Education of Oak Park River Forest High School District* 200, 121 S. Ct. 65.

Key Facts: Nathan R. was a student with a behavior disorder in the Oak Park & River Forest High School District in Illinois. Nathan was receiving special education services when he was caught with marijuana at school. He was suspended and later expelled. Nathan's parents appealed to a Level I administrative hearing officer. The hearing officer concluded that Nathan's possession of marijuana was not a manifestation of his disability. He also concluded that the school must provide services for Nathan while he was expelled. Later, a Level II administrative hearing officer affirmed the decision. This decision was appealed to district court by the school district which contended that they were not obligated to provide services for Nathan during his expulsion. The district court decided that the school district did not need to provide services for Nathan during his expulsion. Also, Nathan's parents cross-claimed for attorneys' fees, claiming their invocation of "stay-put" entitled them to an award. The district court denied the parents the award holding that they were not the prevailing party.

Issue: The issue is whether the school was obligated to provide special education services to the student during his expulsion and whether the parents are entitled to attorneys' fees for the invocation of stay-put placement.

Holding: The United States District Court on the issue of providing services to Nathan during expulsion held that it was moot because the student had graduated from high school. On the issue of attorneys' fees the court held that parents were not the prevailing parties and were not entitled to the fees.

Reasoning: The Circuit court reasoned that the issue of whether the school was obligated to provide educational services to Nathan during his expulsion was moot because he graduated from high school. As to the awarding of attorneys' fees, the circuit court reasoned they could make the decision from the invocation of the stay-put placement because that claim is related

solely to the administrative proceedings. Any other decision would go to the merits of the action which were moot. The parents argued that the Level I and II hearing officers granted the emergency order for stay-put placement and because Nathan stayed in school and graduated they are the prevailing party. The circuit considered this a “de facto” win and did not rise to the level of an enforceable judgment, consent decree, or settlement that materially alters the relationship between the parties. The relief was only interim in nature and does not qualify for attorneys’ fees.

Disposition: The United States District Court vacated as moot the merits of the case with respect to the school obligation to provide services during expulsion. The denial of summary judgment for the parents on the issue of attorneys’ fees was affirmed. The school could recover its costs in the court. Affirmed in part; vacated and remanded in part.

Citation: *Brown ex. rel. Brown v. Ramsey*, 121 F. Supp. 2d 911, affirmed 10 Fed. App. 131.

Key Facts: Daniel Brown was a first grade student with Asperger’s Syndrome at the Aberdeen Elementary School in Hampton, Virginia. As a part of Daniel’s IEP and as a part of the usual classroom discipline, teachers in Daniels class would use restraint to resolve issues involving students who were a threat of harm to themselves or others. In this case, Daniel’s teachers restrained him on several occasions for his behavior by crossing his arms and hold him from the back until he calmed down, a procedure they were trained to do. Daniel’s parents brought an action against eleven defendants, including his two teachers, of the Hampton City Schools, claiming Daniel’s federal civil rights were violated as a result of the teachers’ allegedly abusive conduct. The district court hearing the case held for the school district and granted summary judgment.

Issue: The issue is whether the teachers' use of the "basket hold" as a method of restraint, violated the student's substantive due process rights.

Holding: The District Court held that the teachers' restraint of the student, by placing him in a "basket hold," did not violate his substantive due process rights. The Appeals Court found no reversible error and affirmed the district court's decision.

Reasoning: In analyzing the issues, the district court used the Fourth Circuit's *Hall* standard, which stated that "the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." The court reasoned that the threshold for establishing a constitutional tort for excessive corporal punishment is a high one. Citing several cases of precedent, the court reasoned that this case did not rise to the standard set forth in *Hall*. The court stated that the alleged actions of the teachers in this case were anything other than a disciplinary measure within the sound discretion of the teacher. The court also stated, "the standards for establishing a constitutional injury are far higher and the parents have failed to meet the exacting standards as stated by the Fourth Circuit in *Hall*. Schools and school teachers not only have a duty not to employ unconscionable restraints against individual students, but they also have a duty to educate other students within a class setting and to cure disruptive behavior that would deny the educational opportunities of other students. Otherwise, schools cannot function at all."

Disposition: The District Court granted summary judgment for the teachers. The remaining counts were dismissed with prejudice. The United States Court of Appeals, Fourth Circuit, affirmed the district court's decision.

Citation: *Colvin v. Lowndes County*, 32 IDELR 32 (N.D. Miss. 2000).

Key Facts: Johnathan Colvin was a general education student whose parents believed had ADD or ADHD. He began to have increased difficulty in school around the fourth and fifth grades. One day Johnathan brought a Swiss-army knife to school. He was suspended for 9 days pending expulsion. A Hearing was conducted and the hearing officer recommended that Johnathan be expelled for 1 year and further recommended that Johnathan expulsion be suspended except for 1 day and that when the student returned after 1 day he and his parents would be reminded that any other violation of the school's rules and regulations would result in Johnathan serving the entire year of expulsion. The school board elected to enforce the Zero-Tolerance Policy and overruled the hearing officer and approved expulsion of Johnathan from the Lowndes County School System for a period of 1 year. The parents sought relief from the District Court.

Issue: The issue is whether the school district violated the student's due process rights and violated the IDEA when they expelled him for bringing a Swiss-army knife to school.

Holding: The United States District Court held for the parent and found that the school district violated the IDEA and the student's due process rights.

Reasoning: The parents had asked the school district to evaluate Johnathan. This was established even though the parents did not show that Johnathan had a disability and was protected by the stay-put provision. When Johnathan was enrolled in the school district, his parents indicated that he had ADD and was taking Ritalin. Teachers commented on the student's poor academic performance and lack of concentration. This led the court to believe the school district knew or should have known that Johnathan had a suspected disability. The court felt that the school district failed to consider the specific circumstances of the case before Johnathan was

expelled. The school district applied the zero-tolerance policy without reviewing the facts of the case. Based on the guiding principles of the Fifth Circuit's decision in *Lee*, the court decided that the case should be remanded back to the school board with directions.

Disposition: The United States District Court ordered the matter to be remanded back to the school board for full reconsideration under the appropriate standard and reinstated the student back to the school district to be evaluated for a disability within the IDEA.

Citation: *Community Consolidated School District #93 v. John F.*, (IL) (N.D. Tex. 2000).

Key Facts: John F. was a 15-year-old student with a behavior disorder at the Stratford Junior High School in Illinois. John F. had a history of behavior that indicated he did not like school and showed through difficulty with his peers that he was having social adjustment issues as well. John F. was evaluated by a psychiatrist and determined to need counseling to help him cope with self-esteem, coping skills, and social skills. Three days after the Columbine incident, John discussed with another student regarding joining a hate club, dedicated to hating another student. John also discussed the black market and who could get guns. After an investigation, the school called John's parents and asked them to pick him up. They were told that John could not return to school until a doctor cleared him to return and that it was safe for him to return. A manifestation determination meeting was held and determined that John's behavior in this incident was related to his disability. Another hearing was held and the hearing officer agreed with the school district regarding John's suspension. John was placed on homebound tutoring and provided with social work therapy. Later, the parents requested a formal due process hearing. The hearing officer ruled in favor of the parents and ordered the school district to pay the cost of counseling services. The officer found that the school district failed to provide John

with FAPE in his LRE after removing him from school. The school district sought relief from District Court.

Issue: The issue is whether the school district violated the IDEA and failed to offer FAPE to John while he was homebound. The issue is also whether the school district should pay for counseling to John while he was at home.

Holding: The District Court held for the parents denying the school district's motion for summary judgment and granted the parents' cross motion for summary judgment.

Reasoning: It was reasoned that several procedural errors were made by the school district to deprive John of FAPE under the IDEA. John's parents were entitled to a notice that the school district would consider a change in his placement at earlier hearings so they could prepare for those meetings. It was also reasoned that the school district found that John's violation was a manifestation of his disability and should have amended his IEP and behavior plan. If the school district decided that John's placement was not meeting his needs, it should have considered several other options. Lastly, it was reasoned that homebound tutoring was not a legal placement under the IDEA and his parents' agreement to this option was not truly an agreement because they were not presented with any other options. The district had no right to remove John as a disciplinary consequence of offenses involving drugs and weapons. The procedures the district followed after the parents objected to their son's placement were confusing. The school district failed to clearly explain the parents' procedural rights to due process.

Disposition: The United States District Court affirmed the Hearing Officer's decision that the school district violated the IDEA. Judgment was entered in favor of the parents for reimbursement for private counseling for John F. The school district's claim was dismissed.

Citation: *Covington v. Knox Co. (TN)*, 205 F3d. 912 (6th Cir. 2000).

Key Facts: David Jason Covington was a student with a disability at the Knoxville Adaptive Education Center. He was identified with multiple mental and emotional disabilities. On several occasions Jason was placed into a time-out room for disciplinary reasons. He would be locked in the room sometimes for extended periods that resulted in his missing lunch and bathroom breaks. Jason's parents objected to this disciplinary measure even though it was part of his IEP, to the school district and, subsequently, requested a due process hearing. The record showed that the school district extended the length of time the due process hearing would take place. In the meantime, Jason's parents sought relief in District Court. They claimed violations of Jason's Fourth, Fifth, and Fourteenth Amendment rights. There were no IDEA claims. The District Court found that the Covingtons were required to exhaust their administrative remedies under the IDEA. The court reasoned that the time-out room was a disciplinary measure in the IEP and, therefore, were a matter of the IDEA. The District Court granted the school system's motion for summary judgment and dismissed the case. Jason's parents filed a motion that stated the District Court's decision violated Jason's equal protection rights. The court denied that motion. Jason's parents appealed to the U.S. Court of Appeals arguing that the school district violated Jason's substantive due process rights under the Fourteenth Amendment.

Issue: The issue is whether the school district violated Jason's substantive due process rights under the Fourteenth Amendment. Additionally, the issue is whether exhausting administrative remedies would violate Jason's Seventh Amendment right to trial by jury.

Holding: The District Court held for the school district contending that the parents had not exhausted their administrative remedies under the IDEA. The Appeals Court held for the parents and reversed the lower court's decision and remanded for further proceedings.

Reasoning: The Appeals Court reasoned that exhaustion would be futile in this case. The Court expressed no opinion whether this case fell within the IDEA or whether the parents must utilize the state's administrative process before filing in court. The Circuit did not reach the parents' equal protection or Seventh Amendment claims. The Circuit Court also disagreed with the lower court that the parents' damages claim alone excused them from exhausting their remedies under the IDEA. The Court contended that most courts required plaintiffs seeking money damages to exhaust administrative remedies under the IDEA even if money damages are unavailable under the IDEA. The Court said that they, the Sixth Circuit, and the Supreme Court have ruled that exhaustion was not required under the IDEA in some circumstances. One of those circumstances is when it would be futile or inadequate to protect the plaintiff's rights. Also, if the plaintiffs were not given full notice of their procedural rights under the IDEA. The Court held that in the unique circumstances of this case, in which the student had already graduated, his injuries are in the past, and therefore money damages are the only remedy that can make him whole.

Disposition: The United States Court of Appeals, Sixth Circuit, reversed the district court's decision and remanded for further proceedings.

Citation: *J.C. v. Regional School District No. 10*, 115 F. Supp. 2d 297, D. Conn. September 28, 2000 (No. 3; 99 cv0873 (GLG)).

Key Facts: J.C. was a regular education tenth grade student in the Regional School District in Connecticut. J.C. was evaluated and determined to not have a disability when he was in the seventh grade. His parents did not give contest to that decision. Later, in the tenth grade J.C. was suspended pending expulsion for using a sharp instrument to damage a bus seat. J.C.'s parents requested a due process hearing to contest the decision of the evaluation team's previous

decision that J.C. was not eligible for special education. His parents also requested that J.C. be allowed to return to school and be evaluated for special education eligibility. The school district reinstated J.C. to school and started the evaluation process. J.C. was determined to have a disability under the “Other Health Impaired” exceptionality. The incident on the bus was judged to be a manifestation of his disability. J.C.’s parents withdrew their request for a due process hearing. They also demanded reimbursement for attorney’s fees. The school district refused. J.C.’s parents sought relief from the District Court.

Issue: The issues were whether the parents were the prevailing party in the administrative proceeding and therefore eligible for an award of attorney’s fees and costs under the IDEA and, if so, the amount of those attorney’s fees.

Holding: The District Court held that the student was the prevailing party and entitled to recover reasonable attorney fees.

Reasoning: The court was not convinced that the school complied with all of the parents’ requests for J.C. simply because they requested them. The Court believed the school district guided their actions in response to the parents’ lawsuit. Also, because of the cancellation of the expulsion hearing due to the evaluation process for J.C., the court could not say that the parents sought to raise an issue that was not first raised in the eligibility meeting and so the court felt the parents’ due process hearing request was not premature. The Court determined that the school district knew or should have known that J.C. was a child with a disability before the violation occurred and, therefore, J.C. was entitled to the protections afforded by the IDEA. For these reasons, the Court determined the parents to be the prevailing party.

Disposition: The United States District Court granted the parents' motion for summary judgment and denied the school district's cross-motion. The Court awarded the parents attorney's fees and costs.

Citation: *LIH v. New York City Board of Education*, 33 IDELR 1 (E.D.N.Y. 2000).

Key Facts: This case was brought by a group of students with disabilities in the New York City School District in the state of New York. They challenged the school district's new disciplinary policy governing suspensions. This new policy only affected those attending summer school and had few procedural safeguards to protect students with disabilities. The new policy gave administrators the ability to suspend students without providing the students the opportunity to appeal the decisions. This new policy also did not have a process to determine if a violation was a manifestation of a student's disability. The school district asserted that summer school was optional and they were not responsible to the procedural protections of the IDEA. The parents of several special education students brought a claim in District Court claiming that this new policy violated their children's rights under the IDEA and other federal statutes.

Issue: The issue is whether the school district's policy regarding summer school deprived students with disabilities of their rights under the IDEA, the Fourteenth Amendment, and Section 504 of the Rehabilitation Act.

Holding: The District Court held for the class, disagreeing that summer school was optional and holding that the procedural safeguards of the IDEA applied equally to summer school.

Reasoning: The Court reasoned that it was without contradiction that the rules set by the school district did not meet the minimum requirements of the IDEA. The district did not feel compelled to follow the stricter protections of the IDEA because they felt that summer school

was purely voluntary and extracurricular. Contrary to this position, the court contended that Congress intended the protections of IDEA to extend to every “school day.” The court stated that summer school qualified under this definition. The Court went on to say that summer school for special education students who struggle educationally, is very important to their ability to receive FAPE.

Disposition: The United States District Court granted the students’ Motion for a Preliminary Injunction preventing the school district from implementing their suspension policy for summer school.

Citation: *Randy M. v. Texas City ISD*, 32 IDELR 168(S.D. TX. 2000).

Key Facts: Randy M. was a 13-year-old special education student in the Texas Independent School District. Randy was placed in the Alternative Learning center for violating the school district’s code of conduct. He and another male student ripped the break-away wind pants off a female student exposing that student’s underwear. A hearing was conducted to determine if Randy’s behavior in this violation was a manifestation of his disability. The committee determined that it was not a manifestation of his disability. The parents did not take advantage of the committee’s offer to give the parents an opportunity to gather and present evidence that Randy had a previously unrecognized disability. They also failed to take advantage of the administrative procedures for review of the hearing officer’s decision. They instead, withdrew Randy from school and then reenrolled him after filing the federal litigation.

Issue: The issue is whether the school district violated Randy M.’s constitutional rights and inappropriately placed him in an alternative educational setting for violation of school rules.

Holding: The District Court held for the school district denying the parents request for a mandatory injunction and upheld the alternative placement.

Reasoning: The court reasoned that the school district acted appropriately in taking the action they took, which was considered “stern and aggressive remedial action.” The court held that the parents did not exhaust their administrative remedies under the IDEA and appeal the hearing officers decision to the next level. The court felt the school district made good efforts to allow the parents to present evidence of an unidentified disability, which may have influenced his behavior. The parents did not take full advantage of this opportunity. The Court felt there was no evidence that actions taken by the school district were inappropriate or they denied the student of his constitutional rights to due process.

Disposition: The United States District Court denied the parents application for Mandatory Injunction. Within other instructions, the Court dismissed the parents’ claims with prejudice.

Citation: *Richland School District v. Thomas P. by Linda P.*, 32 IDELR 233 (W.D. WI. 2000).

Key Facts: Thomas P. was a student with a learning disability in the Richland School District in Wisconsin. Thomas was involved in a vandalism spree with a group of other children. The school district sought to expel him. The district conducted a manifestation determination meeting to determine if the crime was a manifestation of his disability. The district decided that it was not and voted to expel him. Thomas’ parents appealed the determination decision and had him evaluated by a psychologist. The psychologist believed that his disability led to his involvement in the vandalism incident. The parents requested a due process hearing and the ALJ set aside the expulsion. The school district sought relief in district court.

Issue: The issue was whether the school district met the burden of proof that the student’s disciplinary violation was not a manifestation of his disability.

Holding: The District Court held for the parent concluding the school district failed to prove that the student's actions were not a manifestation of his disability.

Reasoning: The court reasoned that the school district failed to prove that the student's actions were not a manifestation of his disability. The administrative law judge considered the student's ADD and dysthymia diagnosis, although this diagnosis came after the manifestation determination meeting. This was allowed under the IDEA. The ALJ considered the parent's expert testimony credible and the school district did not rebut it. The burden was on the school district to prove the disability was not a manifestation of the student's disability. Based on this, the ALJ's decision in favor of the parent was proper according to the court.

Disposition: The United States District Court denied the motion of the school district for summary judgment. The Court affirmed the Administrative Law Judge's decision that reversed the school district's manifestation determination.

2001

Citation: *Farrin v. Maine School Administrator District No. 59*, 35 IDELR 189 (D. Ct. Me. 2001).

Key Facts: Jacob Farrin was an eighth grade student with a learning disability in the Maine School Administrative District No. 59 in Maine. Over the course of several years when Jacob's IEP was developed concerns were raised over his learning issues but never addressed behavioral issues. In fact, his parents described his impulsive behavior and poor judgment to be a problem exclusively to outside the school. Jacob brought marijuana to school and admitted to bringing it to school to the principal. He was immediately suspended for 10 days. The district expelled Jacob and a manifestation review was scheduled shortly thereafter. Jacob's parents

requested a due process hearing to contest the expulsion. The parents did not attend the manifestation review because they thought it was illegal. The district determined that the drug-selling incident was not related to Jacob's disability. The PET developed an "expulsion IEP" for Jacob after the manifestation review. A due process hearing was conducted and Jacob was returned to school which was his "stay-put" placement after serving 45 days of the expulsion. The hearing officer found that the manifestation review did not have to be held before the expulsion hearing. The hearing officer also concluded that FAPE was not affected by the delayed manifestation meeting. Also, there was no credible connection between the infraction and Jacob's disability. The "expulsion IEP" provided FAPE according to the hearing officer and the "stay-put" provisions of the IDEA did not apply to the student's first 45 days. Jacob's parents sought relief from the district court to appeal the decision of the hearing officer.

Issue: At issue is whether the school district was obligated to conduct a manifestation determination review before the school board meeting in which the decision was made to expel the student.

Holding: The District Court held that the school district was not obligated to conduct its manifestation review before the board meeting at which a decision was made to expel the student. Also, a 2-day delay in holding the review was harmless and did not warrant annulment of the expulsion. Also, the court held that the district's failure to consider in the manifestation review the results of behavioral tests, which indicated impulsivity, was harmless. In addition, evidence supported the hearing officer's finding that the student's behavior was not related to his disability. The court also held that the IEP developed during his expulsion was adequate and the failure of the district to give the parents proper notice before the expulsion vote was not fatal. The failure to conduct a functional behavior assessment was also harmless. The hiring of an

outside consultant to compile information necessary for the FBA was appropriate. And lastly, the district's failure to suspend the student under the IDEA's 45-day suspension rule for drug offenders was harmless.

Reasoning: The court reasoned that Jacob's parents were not able to show that his "impulsivity" problem would necessarily be related to his decision to sell marijuana. The school argued successfully that Jacob knew and understood the rules at school. They contended that his selling of marijuana took place over an extended period of time and involved many individual decisions. Also, with respect to his IEP during expulsion, he would be excluded from P.E., computers, and art but this would not keep him from graduating or progressing in the curriculum.

Disposition: The United States District Court affirmed the hearing officer's findings. The court also ordered the parties to proceed with a functional behavioral assessment of Jacob as soon as practicable.

Citation: *Harris v. Robinson*, 273 F3d. 927, 159 Ed. Law Rep. 533.

Key Facts: Ricky Harris was a 10-year-old mildly retarded student in the Independent School District No. 49 of Leflore County, Oklahoma. Ms. Robinson was Ricky's teacher and disciplined Ricky one day when she felt he had stopped up the toilet with paper. She confronted the boys who were laughing about it and enquired as to who did it. They said Ricky did it and she asked him the same thing and he said "yes" he did it. She made him clean out the paper from the toilet without the use of gloves or a plunger. Ricky's parents called the principal the next day to complain. They felt that there was a misunderstanding and that Ricky said he did not actually stop up the toilet. The principal apologized to the parents, who wanted the teacher fired, and promised to reprimand the teacher. Ricky was withdrawn from the school by his parents and home schooled after this incident. Ricky's parents claimed that the teacher's actions were "so

excessive, demeaning, and inhumane as to be a substantive violation of his Fourteenth Amendment Due Process rights.” His parents took the matter to District Court. The district court granted summary judgment in favor of the teacher and the school district. Ricky’s parents appealed that decision to the United States Court of Appeals.

Issue: The issue is whether Ricky was deprived of his constitutional rights when his teacher, Ms. Robinson, made him clean out a toilet with his bare hands.

Holding: The District Court held in favor of the teacher, Ms. Robinson, and the school district and granted summary judgment. The Appeals Court affirmed this decision.

Reasoning: The Circuit Court reasoned that Ricky’s injuries did not rise to the conscience shocking level. The teacher’s actions were not excessively cruel resulting in Ricky being subject to “appreciable pain.” The court contended that her actions were not “inspired by malice or sadism” and at most she showed poor judgment. The court also reasoned that even if Ricky had a substantive due process claim, his teacher would still be entitled to qualified immunity. Because there are no Supreme Court or Tenth Circuit opinions on this matter and a clearly established weight of authority from other courts that show similar facts, the circuit felt they could not establish a substantive due process violation.

Disposition: The United States Court of Appeals, Tenth Circuit, affirmed the decision of the District Court.

Citation: *Timothy B. ex. rel. J.B. v. Neshaminy School District*, 153 F. Supp. 2d 621, 156 Ed. Law Rep. 181.

Key Facts: Timothy B. was a student with Tourette’s Syndrome and, therefore, a student with a disability in the Neshaminy School District. Timothy made threatening remarks to the school administrator and was suspended for the remainder of the school year. No manifestation

determination meeting was held to determine if this behavior was related to his disability. Timothy's parents requested a due process hearing. The school district did not attend the meeting. The hearing officer ordered the student to be placed in an out of district education placement and should be provided a one-on-one instructional aide. The school district never followed these orders. The parents sought relief in district court.

Issue: At issue is whether the court should dismiss the student's contention that continuing with administrative proceedings would be futile and whether the school district violated the student's rights under the IDEA and the Rehabilitation Act.

Holding: The court held that the student argued successfully that continued attempts to proceed with administrative remedies would be futile and further argued that there were violations of the IDEA and the Rehabilitation Act. These violations were due to being suspended from school for the year without a hearing to determine if his actions were a manifestation of his disability because of threatening remarks made to the school administrator.

Reasoning: The court accepted the allegations of the student's complaint as true and concluded that he stated claims for which relief could be granted. In terms of exhausting administrative remedies, the court concluded that "where recourse to the IDEA's administrative proceedings would be futile or inadequate, the exhaustion requirement is excused." The student satisfactorily alleged that further attempts to proceed with administrative remedies would be futile. The court also sufficiently argued claims to 1983 and 504. He successfully alleged that the school district deprived him of rights under the IDEA, 1983, and 504. Based on the success of these arguments, the student survived the school district's motion to dismiss.

Disposition: The United States District Court denied the school district's motion to dismiss.

2002

Citation: *J.O. ex. rel. C.O. v. Orange Tp. Board of Education*, 287 F3d. 267, 2002 WL 561344, 164 Ed. Law Rep. 44, CA. 3 (NJ), April 16, 2002 (No. 01-3690).

Key Facts: C.O. was a 15-year-old regular education student at Orange High School in New Jersey. He had not been evaluated for eligibility prior to this case but neither parties, and the District Court disputed that C.O. was eligible. During the school year of this case, C.O. was suspended several times and was absent for an extended period of time. While C.O. was suspended, the school district filed a motion for emergency relief with the New Jersey DOE. C.O.'s mother filed a cross-petition seeking to force the school district to provide relief for C.O. The case went to an Administrative Law Judge (ALJ) and the ALJ denied the school district's motion in its entirety and granted the parent's requests except for the costs of the proceedings. The parent appealed to District Court which denied the parent's application for fees, concluding the relief they attained was not the "permanent resolution of the merits of any of the parent's claims."

Issue: The issue is whether the school district should pay attorney's fees and costs for an administrative proceeding conducted under the IDEA.

Holding: The District Court denied the parent's request for attorney's fees. The Appeals Court affirmed the decision of the District Court.

Reasoning: The court reasoned the parent who achieves a "favorable interim relief may be entitled to prevailing party attorney's fees as long as the interim relief granted derived from some determination on the merits. The court reasoned that the District Court neither erred nor abused its discretion in denying the award of fees in this case."

Disposition: The United States Court of Appeals, Third Circuit, affirmed the decision of the District Court denying the parent's attorneys' fees.

Citation: *Joshua S. v. School Board of Indian River County*, 37 IDELR 218 (M.D. Fla. 2002).

Key Facts: Joshua S. was a 13-year-old emotionally handicapped student at Oslo Middle School in the Indian River County School District. Due to disciplinary incidents Joshua was suspended several times and, in this case, was taken into custody at school by the Sheriff's Department. These behaviors increased in intensity and Joshua's mother requested a manifestation determination meeting. The results of the meeting produced a decision that these behaviors were a result of Joshua's disability. Joshua's parents requested a due process hearing. In the meeting it was decided that Joshua would receive an academic and psychosocial evaluation. An evaluation was done and a meeting took place and all parties agreed the behavior plan already used would be continued. The due process hearing was pending when the parent's sought relief in district court.

Issue: At issue was whether the school district suspending Joshua for multiple instances constituted a significant change in placement violating the student's procedural and substantive due process rights under the IDEA. The parents argued that Joshua's repeated removals and exclusions from school were a change in placement without due process, Joshua's referral to Law enforcement was a change in placement without due process, the school district's failure to conduct manifestation determination reviews was a violation of due process, and the school district's failure to provide FAPE was a violation.

Holding: The District Court held for the school district and agreed with the ALJ's determination that the suspensions did not constitute a change in placement.

Reasoning: The court reasoned that there was no evidence that students without disabilities would not have been suspended for the same behaviors. The court also reasoned that no obligation existed for the district to conduct manifestation determination reviews because the student's placement never changed. The court found that the school district did violate a procedural provision by not providing special education records to law enforcement officials when he was referred them, but there did not appear to be any impact on Joshua's ability to receive educational benefit. The court also reasoned that the IEPs developed for Joshua offered FAPE.

Disposition: The United States District Court denied the parents Motion for Judgment against the school district.

Citation: *Mr. & Mrs. R. v. West Haven Board of Education*, 36 IDELR 211 (D.C. Comm. 2002).

Key Facts: S.R. was a general education 12th grade student in the West Haven School District in Connecticut. S.R. violated the student code of conduct. A hearing was conducted and based upon the evidence the hearing officer determined that S.R. was not entitled to special education services. S.R.s' parents turned to District Court for relief asking that the court reinstate S.R. in school using the "stay-put" provision of the IDEA. The parents contended that the school knew or should have known that S.R. had a disability.

Issue: The issue is whether the "stay-put" provision of the IDEA applied to S.R. and whether the school district had knowledge that the student had a disability under the IDEA and was entitled to special education services.

Holding: The court held for the school district that they had no knowledge that S.R. had a disability before the misconduct that led to the expulsion.

Reasoning: The court reasoned that because there was no evidence to support the parents' claims that the school district had knowledge that S.R. had a disability before the misconduct that led to his expulsion. S.R. was, therefore, not entitled to the protections of the IDEA's stay-put provision.

Disposition: The United States District denied the parents' Motion for Preliminary Injunction and the application for Temporary Restraining Order.

Citation: *S.W. v. Holbrook Public Schools*, 221 F2d. 222, (D. Mass. 2002).

Key Facts: S.W. was a ninth grade general education student at the Junior-Senior High School in the Holbrook Public School District. It was documented that before the drug incident that S.W. was struggling academically. The second year of enrollment, S.W. was suspended for allegedly selling or giving another student drugs. Initially, S.W. denied the allegations. An expulsion hearing was set and based on the evidence S.W. was expelled from school. She was advised that she could come back to school at the beginning of the next school year provided she passed a drug test and completed a drug treatment program. This expulsion was appealed to the superintendent by her parents. A hearing was held and the expulsion decision was upheld. S.W.'s parents filed a request for a hearing before the Massachusetts DOE, Bureau of Special Education Appeals to argue that S.W. had a disability and the school district knew it when they expelled her violating protections that should have been afforded her under the IDEA. The hearing was held and an evaluation was begun to determine eligibility for special education for S.W. The eligibility team determined that S.W. did not have a disability as defined under the IDEA. Based on this information, the school district requested that the hearing officer to dismiss the proceedings. The parents argued that this decision of eligibility was appealable and in the interim S.W. should "stay-put" as a student in the Junior-Senior High School. The hearing

officer agreed with the school district and dismissed the proceedings. The student brought the action to the district court challenging the propriety of the hearing officer's decision and the actions taken by the school district. In the fall of the next year, the school district notified the court that S.W. was readmitted to the Junior-Senior High school and attending classes. The school district felt that the student had met the conditions for re-admittance set forth by the expulsion letter.

Issue: At issue is whether the school district violated the student's rights under the IDEA, the Rehabilitation Act, and the due process guarantees of the Fourteenth Amendment by not allowing her to stay in school while it was determined whether she had a learning disability making her eligible for IDEA protections.

Holding: The District Court held that the complaint failed to state a claim for a violation of due process. The court held that the complaint failed to state a claim for a violation of the Rehabilitation Act. Lastly, the court held that the complaint alleged a violation of the student's "stay-put" rights under the IDEA.

Reasoning: The court reasoned that if a school does not know if a student has a disability before that student violates a rule that causes disciplinary measures the school district may decide where that student should be placed while the eligibility evaluation is conducted. The student does not have a "stay-put" right in this circumstance. If the school district did know that the student had a disability, then that student should stay put at Junior-Senior High School while a manifestation determination took place. The court reasoned that the school district should have known that S.W. had a disability based on the evidence. The fact that the eligibility decision, of the school district that S.W. did not have a disability, was still pending made the decision not final. Therefore the stay-put provision was in effect until "all proceedings" were complete.

When the evaluations were conducted was also of significance. These evaluations were conducted after the incident and expulsion, not before. Concluding after the incident that a child has no disability would run counter to the IDEA's intention of preventing school districts from acting unilaterally to change a student's placement. Additionally, because S.W. was re-enrolled in school, the district considered the "stay-put" issue moot. The issue became whether the student was entitled to some other form of relief. The court did not feel that it should make a decision on this issue at this time. The court reasoned that the district's motion for dismissal of the action based on the student not exhausting their administrative remedies was without merit. The "stay-put" issue was finally resolved by the BSEA dismissing this complaint. The court reasoned that the student's allegations did not state a claim under the Rehabilitation Act because the student must allege that the school acted with "bad faith or gross misjudgment." They were unable to do so. The court also stated that the facts of the case did not establish a violation of the due process clause of the constitution because the district gave written notification of the expulsion hearing and all charges against the student were given and a full opportunity to be heard by the student was given.

Disposition: The United States District Court denied the school district's motion to dismiss. The court denied the State DOE's and local school district's motion for judgment on the pleadings as to the first cause of the action in the complaint. The court granted the second and third causes of action stated in the complaint (the Rehabilitation Act and due process claims). The court denied the student's motion for a preliminary injunction as moot and denied the student's motion for judgment on the pleadings.

Citation: *Wilson v. Fairfax County School Board*, 38 IDELR 39 (E.D. Va. 2002).

Key Facts: Adam Wilson was a 12-year-old sixth grade with emotional disabilities at the Louis Archer Elementary School. Adam also attended regular classes and was participating in the gifted program. Adam had several issues with behavior while in the fifth and sixth grades. In a computer class, Adam and another student posted what may be considered a death threat to another student. As a result of the incident, Adam was suspended for 10 days pending expulsion. A manifestation determination meeting by the MDR was held to determine whether Adam's disability was the cause of his misconduct. The MDR determined that his behavior in this incident was not a manifestation of his disability. The school district held a disciplinary hearing and upheld the 10-day suspension but postpones the expulsion and reassigned Adam to the Gifted Program in another school which offered an identical program, gifted and special education) to his previous school. The student was returned to his original school a week later but not allowed to have contact with other students in the gifted program. Adam's parents requested a due process hearing claiming the transfer to another school violated the IDEA's maintenance of placement provision. An administrative hearing took place and the hearing officer decided that change was appropriate, based on all the testimony and evidence, and was not a change in placement prohibited by the IDEA. The parents sought relief in district court.

Issue: The issue is whether transferring the student from his school to another school, while his parents appealed the manifestation determination's decision that Adam's behavior was not related to his disability, violated the stay-put provision of the IDEA.

Holding: The District Court held for the school district and rejected the parents' claims that the change of schools was a change in placement.

Reasoning: In rejecting the parents' argument that the new school was a change in placement, the court reasoned that the IDEA's change of placement provision focused on the

educational program and not the actual physical location of the services. Also, the court felt that the hearing officer's decision that Adam returning to his previous school would impact the students' educational environment in a negative way. Students at the new school would not know about Adam's behavioral issues.

Disposition: The United States District Court denied the student's motion for judgment to reverse the decision of the hearing officer's decision that the transfer to another school was not a change in placement.

2003

Citation: *CJN v. Minneapolis Public Schools*, 323 F3d. 630 (U.S. Ct. App. 8th Cir. 2003).

Key Facts: CJN was an 11-year-old student with lesions in his brain and a long history of psychiatric illness who attended the Minneapolis Public Schools, Special School District No. 1. The student had a history of behavioral difficulties but progressed academically at an average rate. CJN's behavior became more violent and aggressive toward others and he was a danger to himself as well. The school district held an IEP meeting and it was decided that CJN would attend another elementary school and day treatment facility. After another incident, it was mutually decided that CJN would receive instruction at home. The mother then unilaterally decided to enroll CJN in as private school that worked with disabled children. The mother then filed a complaint with the Minnesota Department of Children, Families and Learning contending the school was not offering her son FAPE under the IDEA. She sought reimbursement for the private school tuition. An independent hearing officer determined that CJN had not received FAPE since the second grade. He also ordered placement at the private school CJN had been

attending and the school district to pay for it. On appeal, a state hearing officer reviewed this decision and reversed it saying that the school district had provided FAPE under the IDEA. The matter was appealed to the United States District Court. The District Court affirmed the HRO's decision. The parents appealed to the United States Court of Appeals.

Issue: The issue is whether the student received a free appropriate public education (FAPE) in his third grade year as required by the IDEA.

Holding: The District Court held that the school district provided FAPE. The United States Court of Appeals held that the district court was not required to defer to the hearing officer's determination that CJN had not received FAPE; the evidence of CJN's progress academically was relevant to deciding whether CJN was receiving FAPE; CJN was not denied FAPE due to the lack of more positive behavioral reinforcements; and no agreement to change CJN's "stay-put" school placement resulted under existing state law, and so he was not entitled to remain at the different school pending appeal.

Reasoning: The Appeals court reasoned that the district court did not err in giving "due weight" to the HRO's conclusion. The court also reasoned that the district court did not err in determining that the school district provided CJN with a FAPE in his third-grade year and denying CJN's mother's request for tuition reimbursement. Because there were students who were not disabled at the elementary school the school district placed CJN, the district court did not err in failing to order CJN to the private school as his placement. Since the HRO denied private placement, there was no agreement to change the stay-put placement, therefore, the district court did not err in holding that there was no agreement. The court also reasoned that evidence pointed to CJN's behavior problems were being controlled so that he made academic progress.

Disposition: The United States Court of Appeals, Eighth Circuit, affirmed the decision of the District Court.

2004

Citation: *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F3d. 603, (United States Court of Appeals, 7th Circuit 2004).

Key Facts: Alex R. was a special education student with Landau-Kleffner Syndrome. Alex attended the German Valley Grade School through the second grade. Alex began exhibiting aggressive behaviors during his third grade year that caused a disruption. During these disruptive episodes, the school district developed a Functional Behavior Assessment and Behavior Intervention Plan for Alex and reviewed and amended his IEP to monitor his behavior. The school district also hired outside consultants to develop a plan for Alex's behavior and educational plan. His aggressive behavior became more frequent and more violent. He was suspended on several occasions and was a flight risk that ran from school and put himself in danger. While at school he was a danger to everybody. The district assigned Alex to another school, Mary Morgan Elementary School, which was more individualized for students with behavioral disorders. His aggressive behavior only increased. Alex's mother initiated administrative proceedings with the Illinois State Board of Education claiming that the school district failed to comply with IDEA. A hearing was conducted and the hearing officer held that the school district did violate its obligation to educate Alex in the LRE. She ordered the school district to provide extensive relief including hiring consultants who would manage Alex's public education. She also required the school district to "develop a disability awareness and sensitivity curriculum and begin teaching this curriculum to every class within the district from

kindergarten to 12th grade by the second semester of the 2002-2003 school year.” She also ordered Alex returned to the regular-education classroom. The school district sought relief in District Court seeking a reversal of the hearing officer’s decision. The District Court dealt primarily with the issue of whether the school district was unreasonable in the IEP it developed and in carrying it out during the school year in question. The court concluded that the hearing officer’s determination was contrary to the preponderance of the evidence and reversed the administrative order. The parent appealed this decision to the Appeals Court.

Issue: The issue is whether the school district was unreasonable in its development and implementation of Alex’s IEP.

Holding: The District Court held in favor of the school district overruling the hearing officer’s decision. The Court of Appeals held that the District Court was correct in entry of judgment in favor of the Forestville Valley, Illinois Community Unit School District #221.

Reasoning: The Appeals Court reasoned that the school district did not act unreasonably given the circumstances it faced. The Court felt that the school district “took a thoughtful, measured approach to Alex’s education.” The Court also stated that the hearing officer substituted her judgment for that of the school administrators. The Court felt that the school administrators were not unreasonable. “The district acted reasonably in attempting to deal with an increasingly difficult situation affecting not only Alex but other students as well.” The Appeals Court did not see a clear error in the District Court’s finding that Alex’s IEPs were “reasonably calculated to enable the child to receive educational benefit.” The Appeals Court stated, “the district court correctly focused on whether the District provided Alex with adequate IEPs and, in deciding that question, properly took into account the different aspects of Alex’s disability, including his outbursts in the classroom. Because the district court relied on extensive

evidence beyond the administrative record, it was obligated to give the administrative decision significantly less deference. As the district court committed no clear error of fact in concluding that Alex's IEPs were valid and that "the District took a thoughtful, measured approach to Alex's education" (and not an approach marked by bad faith)."

Disposition: The United States Court of Appeals, Seventh Circuit, affirmed the district court's decision.

Citation: *A.W. v. Fairfax County Schools*, 372 F3d. 674, 41 IDELR 119 (United States Court of Appeals, 4th Circuit, 2004).

Key Facts: A.W. was a sixth-grade with an emotional disability in the Fairfax County School District. A.W.'s behavior became disruptive. He was accused of threatening another student using school computers. He was suspended for two weeks pending expulsion. A Manifestation Determination Review was conducted to determine the extent to discipline A.W. The committee concluded that his disability did not prevent him from understanding that his actions violated school rules or behaving appropriately. A FCSB administrator rejected the expulsion recommendation and directed that A.W. be transferred to the Gifted Program at another district school for the remainder of the year. Despite this order, A.W. returned to his original school at the end of his suspension. He was separated from his class and was assigned to an empty room. A.W.'s parents requested a due process hearing. The officer returned A.W. to his original school. Later the due process officer concluded that the school district could transfer A.W. to a nearby school. He completed his sixth grade there. When the parents were unsuccessful in enrolling A.W. in the junior high school he would have likely attended if not for the transfer, they filed a complaint in district court. The district court granted judgment in favor of the school district. A.W. and his parents appealed.

Issue: The issues are whether A.W.'s midyear transfer by the school district violated the "stay-put" provision of the IDEA, as the due process review was still proceeding and whether the MDR committee allowing the school district to discipline A.W. in the same manner as any non-disabled student was a violation of his rights under the IDEA.

Holding: The District Court held for the school district concluding that they did not violate A.W.'s "stay-put" rights under the IDEA. The Appeals Court held that the District Court was correct in their decision and held in favor of the school district.

Reasoning: The Appeals Court reasoned that specific location where a student is being educated is not controlling in a decision involving education placement. The MDR committee's evaluation was appropriate given the nature of A.W.'s disability.

Disposition: The United States Court of Appeals, Fourth Circuit, affirmed the District Court's decision.

Citation: *Colon v. Colonial Intermediate Unit 20*, 43 IDELR 163 (M.D. PA. 2004).

Key Facts: Brandon Colon was a student with a serious emotional disability at the Colonial Intermediate Unit 20 in the Pocono Mountain School District in Pennsylvania. His new IEP did not include a Behavior Plan. Brandon exhibited serious behaviors that included violent outbursts and self-injury, which resulted in restraints by school personnel. A psychiatric evaluation was conducted and it was concluded that he needed to transfer to a partial hospital program to meet his needs. During his stay in this program he continue to exhibit aggressive and violent behaviors. His parents contend that he was punished inappropriately for these behaviors. These punishments included restraints, time-out sessions for up to an entire day, and depriving him of benefits such as hot lunches and bathroom privileges. Midway through the school year, Brandon was discharged from the program and assigned to "homebound" placement. Brandon's

parents believed this to be in violation of the IDEA. They should have been given notice, the opportunity to participate in the IEP meeting, to object to changes, and to maintain Brandon in his last placement until due process hearing and appeals. The parents claimed that the school district should have known Brandon's rights under the IDEA. They also claimed that Brandon was subjected to punishment for behaviors that were a manifestation of his disability. They claimed violations under the IDEA, 504 of the Rehabilitation Act, and the ADA. A due process hearing was conducted and an appeal was made by the district to a Special Education Appeals Panel. A Settlement Agreement and Release was made by the parents and the school district. Brandon's parents sought relief in District Court and sued the hospital executive director and two employees in the program alleging discrimination in violation of the ADA and Section 504.

Issue: The issue is whether the school district and the intermediate unit (CIU) violated Brandon's IDEA rights when they hospitalized him to address his academic, behavioral, and emotional needs.

Holding: The District Court held that the parents should be allowed to maintain their claims against the IU. The court also held that the IU could be liable under the IDEA. The judge did not allow the ADA and 504 claims against the director and employees.

Reasoning: The court reasoned that the parents should be allowed to maintain their claims against the IU because the settlement agreement specifically stated that: "By signing this agreement, parents do not waive any claims they might otherwise have against . . . any entity other than the [the school district]." The court also reasoned that the IU could be liable under the IDEA if it did not provide educational benefit to the student. The judge did not allow the ADA and 504 claims against the director and employees to go forward stating that these laws did not allow claims against individuals.

Disposition: The United States District Court granted in part and denied in part the school district's motion to dismiss the parent's complaint against them and Mickley. The district court also granted in part and denied in part the motion to dismiss the complaint against Karpen.

Citation: *Flores v. School Board of DeSoto Parish*, 116 Fed. Appx. 504, 194 Ed. Law Rep. 137.

Key Facts: Kevin Flores was a special education student in the DeSoto Parish School District. Kevin was serving detention and was caught in the bathroom by his teacher for allegedly taking his time getting back to class. The teacher felt that Kevin was less than obedient and physically disciplined Kevin by allegedly throwing him against a wall and choking him. When the student's parent and the sheriff came to the school later, the teacher and another teacher denied that the incident took place. The principal recommended that Kevin be expelled. The hearing officer gave Kevin the choice, given the evidence, to either be expelled or attend the Alternative School. He chose the Alternative School. The parent sought relief in District Court contending that Kevin's Fourth and Fourteenth Amendment rights were violated. The parents also claimed that Kevin's IDEA rights were violated. The District Court dismissed with prejudice the parents' federal constitutional claims and dismissed without prejudice the parents' IDEA claims for failure to exhaust their administrative remedies under the IDEA.

Issue: At issue is whether the school district violated the student's Fourth and Fourteenth Amendment rights and whether the parent exhausted her administrative remedies under the IDEA.

Holding: The Appeals Court held that the allegations made by the mother failed to state claims under the Fourth or Fourteenth Amendment and the parent did not exhaust all administrative remedies required by the IDEA.

Reasoning: The Appeals Court reasoned that the parents contended that the teacher's acts should not be considered corporal punishment but a use of excessive force that violates the student's Fourth Amendment rights. The magistrate judge decided on the assumption that the teacher's actions constituted corporal punishment. Given the Circuit's prohibition against constitutional claims for corporal punishment, the special constitutional status of students, and the fact that the momentary "seizure" complaint in this case was not the type of detention or physical restraint normally associated with Fourth Amendment claims, the Circuit declined to recognize the parents' Fourth Amendment claim. If the acts of the teacher are characterized as corporal punishment, these acts would not support a substantive due process claim. Corporal punishment is described by the Supreme Court as force that a teacher "reasonably believes to be necessary for a child's proper control, training, or education." The Court reasoned that the teacher's actions in this case can be properly characterized as corporal punishment and held that the parents' did not state a substantive due process claim under the Fourteenth Amendment. The Court also decided that the parent failed to show that she should not be required to exhaust administrative remedies before bringing this suit in federal court.

Disposition: The United States Court of Appeals, Fifth Circuit, affirmed the District Court's decision granting the school district's motion to dismiss and denying the parent's motions for costs and attorney fees.

Citation: *McNulty v. Board of Education of Calvert County*, 41 IDELR 209 (D. MD. 2004).

Key Facts: Ryan McNulty was a high school student with ADHD in the Calvert County School District in Maryland. After several disciplinary issues and a placement to an alternative setting, Ryan's parents filed suit to seek relief from the district court.

Issue: The issue is whether the school district violated the student's ADA and Section 504 rights by discriminating on the basis of disability and retaliation.

Holding: The court held for the school district in dismissing the student's claim that the school district violated the student's Section 504 and ADA rights.

Reasoning: The court reasoned that the school officials were immune to litigation under the Eleventh Amendment and dismissed claims against them in their official capacity. The court also felt school officials were not personally liable for damages under the ADA or Section 504. Sovereign immunity didn't apply to the Section 1983-based equal protection and due process claims against school officials in their personal capacities. The court determined that those claims were based on an alleged denial of FAPE and should have been brought under the IDEA, which does not permit recovery of money damages.

Disposition: The United States District Court granted the school district's motion to dismiss.

Citation: *Valentino C., et al. v. School District of Philadelphia, et al*, 40 IDELR 208 (D. E.D. Penn.)

Key Facts: Valentino C. was a 14-year-old student with multiple disabilities in the School District of Philadelphia. Valentino assaulted a teacher and was taken to the office and subsequently arrested by the police. He was held for several hours but was not charged and returned to school the next day. On another occasion, the security guard at the school struck Valentino on the head while the student was standing in the hall. A due process hearing was

conducted. It was agreed that Valentino would be re-evaluated and the parents and district agreed to a new IEP. Later, the parents filed suit in District Court claiming that the school district violated Valentino's rights under the IDEA.

Issue: The issue is whether the school district violated the student's IDEA rights by not following the "stay-put" provision. Also at issue is whether the school district should have sent Valentino's records to the police.

Holding: The District Court held for the school district on the parent's claim that the school district violated Valentino's IDEA rights by not following the "stay-put" provision. The court also held that the school district was not obligated to forward the student's records to the police. The court held that the school district, the teacher, and the security guard were immune under state law from the parents' state claims of intentional and negligent emotional distress and false imprisonment.

Reasoning: The court reasoned that calling the police did not constitute a change in placement and the district was not obligated to conduct an administrative hearing before reporting the student to the police. Because there was no change in placement, there was no violation of the stay-put provision of the IDEA. The failure to forward records to the police was not prejudicial, because there were no educational or disciplinary changes after the student's release from jail. The district argued that the parents had not exhausted their administrative remedies. The court decided that the failure to implement the student's IEP "renders the exhaustion of administrative remedies futile." The court felt the IEP had not been properly implemented.

Disposition: The United States District Court granted the school district's motion for summary judgment in part and denied in part.

2005

Citation: *A.B. by Baez v. Seminole County School Board*, 44 IDELR 245 (M.D. Fla. 2005).

Key Facts: A.B. was a middle school student with Autism at the Indian Trials Middle School in the Seminole County School District. A.B.'s mother claimed that the teacher, Kathleen Mary Garrett, physically abused her son and other disabled children over the course of several years. This was in response to what the teacher considered behavior that needed to be disciplined. The abuse described by A.B.'s parent and other parents were shocking and unprofessional. Garrett was eventually suspended from her job and arrested on multiple felony counts of child abuse and torture. A.B.'s parent sought relief in District Court against the school district and Garrett claiming violations of A.B.'s constitutional rights.

Issue: At issue is whether the school district and teacher violated the student's rights under the Rehabilitation Act and the Fourteenth Amendment and whether the teacher and district conspired to conceal complaints against Garrett's abuse of her students in violation of Section 1983.

Holding: The court held for the teacher on two counts and held for the student on all other claims.

Reasoning: The court reasoned that the teacher could not be sued for violations of the student's rights under the Rehabilitation Act in her individual capacity and the district and teacher could not be sued for conspiracy because the teacher was an employee of the district. The court also reasoned that the injuries were a result of the teacher's actions and were serious enough to support an action for violation of his substantive due process rights under the Fourteenth Amendment.

Disposition: The United States District Court granted the teacher's motion to dismiss on Counts 4 and 5 and denied the teacher's motion in all other respects.

Citation: *Alex G. by Dr. Steven G. v. Davis Joint Unified School District*, 44 IDELR 130 (E.D. Cal. 2005).

Key Facts: Alex was a third grade student with Autism in the Davis Joint Unified School District. Alex had an IEP, which included a Behavior Intervention Plan to address Alex's outbursts and violent tendencies. As a part of this plan school personnel were allowed to use physical restraint. Later, Alex's parents withdrew consent for restraint. Alex's behavior problems continued and he was suspended on the first day of school for 3 days. On other incidents restraint was used to bring Alex under control. Alex's parents requested a due process hearing to resolve a dispute with the school district over Alex's special education services and his placement. During the process, Alex again had a serious incident of aggressive behavior that required another suspension. His parents pulled Alex out of school until the issue of due process was completed. A settlement agreement was made between the school district and the parents for provision of special education services for the school year. The agreement included working with outside consultants to develop an FBA and BIP, and a comprehensive academic assessment. In return, the parents released all IDEA claims up to the date of the settlement. When Alex returned to school he became more aggressive and was pulled out of regular education class for the majority of the day. The district tried to follow the consultant's suggestions but to no avail. An IEP meeting was held to discuss the FBA, BIP, and academic assessment. Training was held for staff on behavior modification methodologies. The school district filed a TRO against Alex in Superior Court. They sought to transfer Alex to the Patwin Behavior Learning center for children with behavior problems. The court granted the TRO.

Later, the court modified its ruling to state that Alex was prohibited from returning to Valley Oak. It vacated the portion of the TRO ordering Alex to attend Patwin. The parents requested another due process hearing challenging the district implementation of the settlement agreement. The hearing officer found favor on some issues with the school district and some with the parents. The parents filed for relief with the District Court.

Issue: The issues are whether the school district violated the student's constitutional rights by physically restraining him and obtaining a temporary restraining order to change his placement to the alternative school.

Holding: The Court held that the school district did not retaliate or discriminate against Alex when they restrained him and they got a temporary restraining order to change his placement to the alternative school.

Reasoning: The Court reasoned that the evidence showed that his teachers believed that Alex was going to hurt himself or others when he jumped across wet tabletops and therefore physically restrained him even though they had a written agreement with the parents that they were not to use physical restraints. The Court also reasoned that the evidence also showed that the school district tried to implement the outside consultants' recommendations that were part of the written agreement. The Court felt it was not in "bad faith, deliberate indifference, or gross misjudgment" to seek the TRO to change Alex's placement but actually the district acted "reasonably and in good faith to resolve a difficult situation posed by a disruptive and violent student."

Disposition: The United States District Court granted the school district's motion to dismiss the student's claims of retaliation and discrimination under the Section 504 of the Rehabilitation Act.

Citation: *Board of Education of Township High School District No. 211 v. Michael R. and Diane R. ex rel. Lindsey R.*, 44 IDELR 36 (N.D. Ill. 2005).

Key Facts: Lindsey R. was an 18-year-old student with Rhett Syndrome. Lindsey's behavior became worse over time in the general education classroom. It was eventually determined that the appropriate placement for Lindsey was a self-contained classroom. This offered Lindsey a more advanced behavioral plan and opportunities in a more restrictive environment. Up to this time, Lindsey's outbursts and self-injurious actions would precipitate her being removed for large portions of time from her mainstream setting. Her parents tried very hard to keep her in this inclusive placement. She injured several staff members while being mainstreamed. An Independent Hearing Officer determined that the District's placement was appropriate. The parents appealed the IHO's decision to the court asking them to overturn the decision. The parents also filed a cross-claim against the Illinois State BOE claiming violations of the ADA, IDEA, and Section 504 of the Rehabilitation Act.

Issue: At issue is whether the school district violated Lindsey's substantive due process rights when they failed to meet the requirements of the IEP. Also at issue is whether the district violated the student's rights by denying the parents the opportunity to participate in the development of Lindsey's IEP and the IEP did not provide educational benefit.

Holding: The United States District Court held that the school district complied with the procedural and substantive requirements of the IDEA.

Reasoning: The Court reasoned that the school district deviations did no harm. The Court implemented an IEP that was reasonably calculated to provide Lindsey with educational benefit. The court also reasoned that the district offered the student extended school year

services that were rejected by her parents. Lindsey was not progressing sufficiently and therefore a transition plan was inappropriate for her IEP.

Disposition: The United States District Court granted the school district's motion for summary judgment and denied the parents' motion for summary judgment. The Court entered judgment in favor of the school district and the third party defendant, the Illinois State BOE, and against the parents.

Citation: *Doe v. Aguilar*, 400 F. Supp. 2d. 922, 205 Ed. Law Rep. 310 affirmed 197 Fed. Appx. 296, 214 Ed. Law Rep. 1027.

Key Facts: Sarah Doe was a 14-year-old special education student at Thomas Edison High School. After being involved in a discipline issue, Sarah was suspended. Sarah left school without permission and with a person who did not have permission to pick her up at school. She was later found by police with a man alleged to have committed sexual abuse. Sarah's mother filed suit in Court against the school district and the vice-principal. The district court held for the vice-principal granting his motion for summary judgment claiming he was immune from suit. The parent appealed to the Court of Appeals.

Issue: The issue is whether the vice-principal had qualified immunity from the student's federal claims. Also at issue is whether the vice-principal was immune from the student's state law negligence claims.

Holding: The United States Court of Appeals affirmed the decision of the District Court and held that the student failed to allege cognizable violation of substantive due process against vice principal and the vice-principal had professional immunity from the student's state law negligence claims.

Reasoning: The Court of Appeals reasoned that the law does not impose liability where no recognized duty has been breached. Susan and her parents failed to show the facts supported a recognized theory of recovery and the facts defeated a claim of immunity from suit.

Disposition: The United States Court of Appeals, Fifth Circuit, affirmed the District Court decision and granted the vice-principal's motion of summary judgment.

Citation: *Escambia Co. Board of Education v. Benton*, 44 IDELR 272 (S.D. Ala. 2005).

Key Facts: Jarred Benton was a 12-year-old student with Autism at W.S. Neal Elementary School in the Escambia County School District. Jarred had been exhibiting inappropriate and aggressive behaviors that resulted in self-injury. Jarred's parents requested a due process hearing claiming the district had not evaluated and identified Jarred as a student with a disability, had not prepared an IEP, and had failed to provide a behavior plan for him. The district also requested a due process hearing claiming the parents were obstructing the district's attempts to provide educational services for Jarred. The Hearing Officer held almost entirely for the student and his parents and against the school district. The IHO spent considerable time examining the behavior of the student, who was exceptionally disruptive in the hearing. The IHO determined that the school district had improperly written Jarred's IEPs and therefore violated his right to FAPE. Also, the district's failure to conduct a FBA and develop a BIP compromised Jarred's right to a FAPE. The school district appealed the IHO's decision to the District Court claiming the IHO had erred in their decision.

Issue: At issue is whether the school district provided the student with a free, appropriate public education under the IDEA.

Holding: The United States District Court held for the student and failed to reverse the administrative decision of the due process hearing officer. The Court rejected all of the school district arguments and found that the record supported all of the IHO's conclusions.

Reasoning: The Court reasoned that the school district had adequate notice of the student's claims prior to the hearing. The Court felt the school district bore the burden of proof to show its IEP was providing educational benefit and was effective. This burden of proof was by Alabama regulation that was in effect at the time of the hearing. The Court found the school district was on sufficient notice that the IEP's legal adequacy was being challenged. The Court agreed with the IHO that a FBA and BIP should have been conducted by the school district. The Court rejected the school district's argument that there was no need to address behaviors that were a manifestation of Jarred's disability.

Disposition: The United States District Court denied the school district Motion of Summary Judgment or, in the Alternative, Judgment on the Administrative Record. The Administrative Decision was affirmed and the instant appeal was dismissed. The school district's Motion to Supplement was granted.

Citation: *R.J. by Ron J. and Cindy J. v. McKinney Independent School District*, 45 IDELR 9 (E.D. Tex. 2005).

Key Facts: R.J. was a sixth grade student with ADHD, Dyslexia, Central Auditory Processing Disorder, and oral and written expressive language disorder in the McKinney Independent School District. R.J. had frequent disciplinary issues at school. R.J.'s mother requested an evaluation under the IDEA. Before the evaluation, R.J. set fire to a piece of toilet paper in the bathroom at school. He was arrested and taken to a juvenile detention facility. His parents withdrew R.J. from the school district. R.J.'s parents received notice that He was being

recommended for expulsion pending the results of the 504 committee's decision of whether R.J.'s behavior was a manifestation of his disability. The expulsion hearing was rescheduled and the 504 hearing was to take place afterward. R.J.'s parents objected to this schedule. They also claimed that the request for IDEA evaluation occurred before the incident. The hearing officer found that R.J. had committed arson and should be expelled to the Collins County Juvenile Justice Alternative Education program and the parents should contact the Special education Director to schedule a manifestation determination hearing. The parents appealed this decision and requested that the manifestation hearing be conducted before the appeal took place. The district scheduled the manifestation hearing contingent upon the parents consenting to a full evaluation for special education. R.J.'s parents declined and requested a Special Education Due Process Hearing. The Hearing Officer held that R.J. was entitled to a manifestation hearing, R.J. should immediately be made available for special education evaluation, and the school district could not expel R.J. for behavior that was a manifestation of his disability. The parents claim they never had any intentions of returning R.J. to his school and they never consented to an evaluation. The district responded that the parents were not complying with the hearing officer's decision and they would proceed with expulsion. The parents sought relief in district court.

Issue: The issue is whether the hearing officer made the correct decision and whether the hearing officer and assistant principal violated R.J.'s rights under Section 504 of the Rehabilitation Act and Section 1983.

Holding: The United States District Court held for the parents allowing their claims of violation of the IDEA and Fourteenth Amendments.

Reasoning: The Court Reasoned that the parents had adequately stated facts to show that the student's IDEA and due process rights may have been violated. After dismissing all claims

against the hearing officer, it found the parents did not have to exhaust their administrative remedies by pursuing their Section 1983 claims against the assistant principal at the administrative hearing.

Disposition: The United States District Court recommended that the hearing officer's Motion to Dismiss be granted and all claims against him be dismissed with prejudice. It also recommended that the assistant principal's Motion to Dismiss be denied. Also, the court recommended that the Defendants' Motion to Limit Scope of Trial be granted only with respect to the IDEA appeal.

Citation: *Waln v. Todd County School District*, 44 IDELR 131 (D.S.D. 2005).

Key Facts: Levi Waln was a 15-year-old with an undisclosed 504 disability. He was involved in a fight at school and was suspended for the remainder of the year. The parents appealed the suspension and a hearing was scheduled. The school board referred the decision of the appeal back to the superintendent who had made the initial suspension decision. His suspension was rescinded because the manifestation hearing had not taken place and Waln was put back in school. He had been suspended for 31 days. Waln's parents sought relief in court.

Issue: The issue is whether the school district violated the student constitutional right to a public education when they suspended him for the rest of the semester and not following due process procedures.

Holding: The United States District Court held for the parents and found that the school district's immediate suspension of the student and the principal's letter to the parents informing them that Waln would be suspended the rest of the year violated his rights.

Reasoning: The Court reasoned that despite a statute in South Dakota requiring that long-term suspensions would require a hearing, the school district did not inform by notice to the

parents that the student was entitled to appeal. After the appeal by the parents, the school district did not stay the suspension until the appeal was decided. The court also felt that the student was not adequately able to tell his side of the story after the fight. He was not allowed to confront witnesses and was not provided notice of his due process rights.

Disposition: The United States District Court granted the parents' Motion for Summary Judgment. The Court denied the school district's Motion to Dismiss.

2006

Citation: *A.P. v. Pemberton Township Board of Education*, 45 IDELR 244 (D. N.J. 2006).

Key Facts: A.P. was a student with multiple disabilities in the Pemberton Township School District. A.P. was suspended for 10 days from school for drug use. A manifestation hearing was conducted and it was determined that the drug use was not related to her disability. A.P. completed her suspension and was caught later smoking marijuana at school and was suspended for 20 days. A.P. requested a due process hearing to return to school and an injunction preventing the school district from suspending A.P. from school for drug use in the future. The ALJ ordered A.P. to be allowed to return to school and the district to develop behavioral assessment plan and psychological evaluation. The ALJ felt that the student should be allowed back in school because there was manifestation determination. The ALJ denied the student's request for a restraining order to keep the school district from suspending in the future. The student filed for relief in Court seeking attorney fees and costs. The school district filed a counter claim requesting a reversal of the ALJ's decision.

Issue: At issue is whether the school district was in violation of the IDEA by not conducting a manifestation determination hearing within 10 days of the suspension. Also at issue is whether the school district caused harm or deprived educational benefit by failing to conduct the manifestation determination hearing within 10 days of the suspension.

Holding: The Court held for the school district by overturning an administrative law judge's decision that the school district had in error suspended A.P., a student with a disability, for drug use in school.

Reasoning: The Court reasoned that the ALJ's decision regarding the manifestation determination was wrong. The Court felt the school district had another 25 days in which they could have held the meeting under the IDEA. They also reasoned that the school district's actions did not cause harm or a deprivation of educational benefit to the student.

Disposition: The United States District Court granted the school district's Motion for Summary Judgment and reversed the administrative law judge's decision.

Citation: *Disability Rights Wisconsin, Inc. v. State of Wisconsin Department of Public Instruction*, 46 IDELR 122 (7th Cir. 2006).

Key Facts: Abraham Lincoln Elementary School was a school in Monroe, Wisconsin. Lincoln had two seclusion rooms for special education students who become unruly. They are placed in these time-out rooms if their IEP allows it. The parents of a student with a disability at the school complained about the seclusion rooms to the Disability Rights Wisconsin, Inc. (DRW). This was the first report submitted to the DRW regarding this school's seclusion room. A television station reported the use of this issue and the Department of Public Instruction began an investigation. The investigation concluded that the room violated a number of state and federal laws. The report did not name the children that were punished using this room. The

DRW began an investigation and obtained a copy of the DPI report. They asked DPI for the names of the children. DPI did not provide the students' names. The DRW filed with the District Court seeking release of the names. The District Court denied the DRW's request. DRW appealed the Court of Appeals.

Issue: At issue is whether and to what extent the State of Wisconsin Department of Public Instruction (DPI) must disclose records uncovered in its investigation into the use of "time-out" or seclusion rooms for disciplining students in a Wisconsin school to Disability Rights Wisconsin, Inc. (DRW). The broader issue deals with the scope of state protection and advocacy agencies' rights to records when the agencies have reason to believe that citizens they are charged with protecting are being abused or neglected.

Holding: The Appeals Court held that the DRW failed to show that it had exhausted the available administrative remedies, which was an issue that merited no further consideration since DPI expressly abandoned it in oral argument.

Reasoning: The Court reasoned that the relevant statutes required DRW to know the names of students who may have been placed in seclusion rooms or at least try to obtain permission from their legal representatives to access the records. The Court of Appeals also reasoned that the DRW failed to show that it had exhausted the available administrative remedies.

Disposition: The United States Court of Appeals, Seventh Circuit, vacated the decision of the district court and remanded for further proceedings consistent with the opinion. Each side would bear its own costs.

Citation: *Doe v. State of Nevada*, 46 IDELR 124 (D. Nev. 2006).

Key Facts: A 3-year-old preschool student with autism attended the Betsy Rhodes Elementary School located in Las Vegas, Nevada. The student was enrolled in the Kids Intensive Delivery of Services (“KIDS”) program, a full-day program for autistic program. The parents alleged that the preschool teacher and a teacher’s aide assaulted their son. They claim that the school employees violated their son’s substantive due process rights by twisting his arm behind their back, throwing him against a wall, grabbing his wrists and forcing him to strike himself in the head. The parents requested a due process hearing concerning the preschooler’s placement and preventing aversive interventions. They also requested reimbursement for expenses. The issue was taken to district court.

Issue: The issue is whether the school instructors violated the student’s substantive due process rights by violently assaulting him.

Holding: The Court held for the parent stating the evidence supported the parents’ claim. The court also allowed the parents to supplement the record with reports that could lead to establishing a denial of a FAPE. The court held for the school district by granting summary judgment on the parents’ 504 and ADA claims.

Reasoning: The Court reasoned that when the facts were viewed in the light most favorable to the parents, the allegations supported their claims. The court reasoned that the facts could show that the instructors “acted with malice and applied a disproportionate amount of force that caused a severe injury to the student.” In granting summary judgment for the school district, the court cited a lack of evidence that the district acted with deliberate indifference.

Disposition: The United States District Court granted summary judgment for the school district on the parents’ 504 and ADA claims. The Court granted the Motion of Summary Judgment for Cravish and LiSanti in part. The court denied Cravish and LiSanti’s Motion to

Partially Dismiss in one action. The Court denied the defendants' Motion for Judgment on the parents' first claim and permitted the parents to supplement the administrative record. The Court granted exclusion of expert testimony on several witnesses.

Citation: *Jacobelli by Jacobelli v. Nouvin Area School District*, 45 IDELR 216 (W.D. Pa. 2006).

Key Facts: Adam was a kindergarten student in the Nouvin Area School District in Pennsylvania. Adam was evaluated for "learning and adjustment" and a speech and language evaluation. The school district issued a decision that Adam was not in need of special education. He was determined later to have ADHD by the Westmoreland Hospital and put on medication. In the third grade Adam was evaluate again after he exhibited behavior which affected his academic performance. He was identified as needing speech and language services. He continued through the sixth grade in special education under SLI. The parents filed a complaint with the Pennsylvania BOE alleging that the school district failed to properly identify Adam as a student who needed special education services between kindergarten and the third grade. The BSE ruled in favor of the parents and ordered the school district to offer compensatory education. When Adam entered the seventh grade he was suspended for 3 days for talking to another student about bringing a gun and shooting other students and himself. His parents agreed to seek mental health for Adam. The school district informed the parents that Adam would be recommended for expulsion. The parents were given the option of proceeding with expulsion or withdrawing Adam and enrolling him in an alternative setting. His parents withdrew Adam and enrolled him in an alternative placement. The school district and the parents came to an agreement that Adam could return to Nouvin if evaluations from a psychologist or psychiatrist met certain conditions. The school district would also pay for

transportation and expenses at the alternative school. At the time of the agreement, the school district knew Adam was a child with a disability. After several changes in Adam's IEP and placement the parents filed a lawsuit in District Court.

Issue: The issue is whether the school district violated the student's rights under Section 1983 of the Civil Rights Act, the IDEA, the Rehabilitation Act, and Title II of the ADA.

Holding: The Court held for the parents stating that they could have their day in court. The court did dismiss the claims against the private school and its teachers. The court denied the school district's request for summary judgment.

Reasoning: The Court reasoned that the school district, after having been ordered to offer compensatory education to Adam, got the parents' approval to remove him to another placement before they fulfilled the BSE's order. The court reasoned that those involved in the disciplinary hearing after Adam threatened to bring a gun to school, were possibly intentional in their disregard to the IDEA's procedural safeguards. The court reasoned that the statute of limitations could not begin running until he reached the age of majority. The parents were not required to exhaust IDEA remedies because they were asking for monetary damages not available under the IDEA. The parents withdrew Adam from the school district without being informed of their rights.

Disposition: The United States District Court granted the private school's motions for summary judgment. The private schools were dismissed from the action. The court granted the school district's motion for summary judgment with regard to the claim for punitive damages. In all other respects, the school district's motions were denied.

Citation: *Mallory v. Knox County School District*, 46 IDELR 276 (E.D. Tenn. 2006).

Key Facts: BLM was a special education student in the Knox County School System. She attended Spring Hill Elementary School. She was restrained for inappropriate conduct. This restraint was in accordance with the school district's Therapeutic Crisis Intervention A Crisis Prevention and Management System and administered by a trained and certified staff member. The school district and the Office of Civil Rights reviewed the restraint given in this case and determined that it was in accordance with its practices and procedures. The parents did not feel the same way and sought a remedy in district court.

Issue: The issue was whether the injuries to the student alleged by the parents could be addressed through the IDEA's administrative remedies and procedures.

Holding: The Court held for the school district deciding that the claims involved disciplinary practices under the IDEA; therefore the parents of the student should have exhausted their administrative remedies before filing suit in court.

Reasoning: The Court reasoned that the exhaustion requirement did not depend on the demand for money damages or the label attached to the complaint. The Court gave reference to this while the parents sought compensatory and punitive damages for the school district's "abuse" of their child. The key issue in this case, the court reasoned, was whether the injuries to the student alleged by the parents could be addressed through the IDEA's administrative remedies and procedures. "The parents numerous allegations address the child's IEP, the treatment of the child as a special education student, and the District's alleged failures in dealing with the education and educational environment for the child," the judge wrote. He concluded the allegations made by the parents were well within the umbrella of the IDEA.

Disposition: The United States District Court granted motions to dismiss with prejudice by the school district and school. For all other defendants the case was dismissed without prejudice for failure to exhaust administrative remedies.

Citation: *Plumby v. Northeast Independent School District*, 46 IDELR 126 (W.D. Tex. 2006).

Key Facts: Maxwell Plumby was a special education student with ADHD at Lee High School in the Northeast Independent School District. Maxwell was improving and the school district and parents agreed in a settlement during a due process hearing to remove Maxwell from special education and place him in the regular program. While in the regular program Maxwell became disruptive and was recommended for expulsion. After the expulsion hearing, the parents requested a review by the Administrative Review Committee (“ARC”). The Arc heard the appeal and affirmed the expulsion with some modifications. The parents then filed for a due process hearing before the Texas Education Agency (TEA”). The issue was whether the student qualified as a disabled student under the IDEA. The due process hearing was postponed and the parents filed for relief in court.

Issue: At issue is whether the school district had “knowledge” of the student’s disability prior to his recommended expulsion and whether the parents failed to exhaust their administrative remedies under the IDEA.

Holding: The Court held for the school district and granted their motion to dismiss and denied the parents’ request for a preliminary injunction.

Reasoning: The court reasoned that because the parents agreed to remove Maxwell from special education they could not obtain a stay-put injunction to prevent his expulsion for inappropriate conduct at school. The court said that the school district did not have knowledge

of the disability if the student was evaluated and it was determined that he did not have a disability. Maxwell was once considered a student with a disability. At the due process hearing Maxwell's parents agreed that he would no longer need special education services and would be put in a regular classroom. When this happened, the court reasoned, Maxwell "lost the procedural protections afforded to children with disabilities under the IDEA" and the parent could not seek a stay-put injunction without exhausting their administrative remedies.

Disposition: The United States District Court denied the parents' application for a preliminary injunction. The school district's motion to dismiss for lack of subject matter jurisdiction was granted.

Citation: *School Board of Independent School District No. 11 v. Renollett*, 440 F.3d 1007, 45 IDELR 117 (8th Cir. 2006).

Key Facts: Josh was a 14-year-old student with a disability at Anoka High School in the Independent School District No. 11, Anoka-Hennepin, Minnesota. Josh was identified with a variety of disorders including an unspecified behavior disorder, microcephaly, mental impairment, sensory deficits, and severe oral apraxia/dyspraxia. Josh's parents were not content with the district's IEP for Josh and requested a due process hearing. The parents and the school district entered into a settlement and developed Josh's IEP for the upcoming year which included a written behavior plan. The plan included significant changes to the behavior plan. Later the parents requested that the due process hearing be reopened. The hearing officer decided the school district provided Josh with FAPE in all areas except speech and occupational therapy and awarded compensatory education. Josh appealed the IHO's decision to the Hearing Review Officer (HRO). The HRO adopted the findings of the IHO on some issues but decided that the school district did not provide FAPE. The HRO believed the behavior plan should be in writing.

The HRO felt that the school district had not used regulated behavioral interventions. The HRO also felt that Josh had not made progress on his IEP goals. The school district appealed to the District Court. The district court overturned the HRO's decision and decided that the school district did provide FAPE to Josh except for speech and occupational therapy. Josh appealed the decision of the district court.

Issue: The issue is whether the school district failed to follow the procedural and substantive requirements of the IDEA and whether the school district provided FAPE to Josh.

Holding: The Appeals Court held that the District Court was right when it decided that the school district offered FAPE to a high school student with a disability.

Reasoning: The district court held that the school district's placement decision in mainstream classes for one period per day was the LRE for him. The lower court also concluded that Josh received FAPE. The U.S. Appeals Court concluded that any procedural irregularities related to the student's behavior intervention plan did not deny him FAPE. No law requires the behavior plan has to be in writing according the appeals court. The court felt the school district staff responded to behavior incidents with set procedures and documented everything. The staff used manual restraint, mechanical restraint, time out with seclusion, and temporary withdrawal or delay of meals. Because the interventions did not amount to conditional procedures, the appeals court concluded that no emergency IEP meeting was required. The district also showed that Josh made improvement toward his objectives and goals, and provided Josh with meaningful educational benefit. The Appeals Court also decided that the school district complied with other Minnesota state laws.

Disposition: The United States Court of Appeals, Eighth Circuit, affirmed the District Court's decision.

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Citation: *Coleman v. Newburgh Enlarged City School District*, 503 F.3d. 198, 225 Ed. Law Rep. 168.

Key Facts: Coleman was a student with a disability who went to school in the Newburgh Enlarged City School District. Coleman was involved in an altercation with another student at school. He was arrested and suspended for 5 days pending a disciplinary hearing. The hearing determined that Coleman was responsible for an altercation at school that had to be controlled by the police department. After the hearing the school district extended the suspension another 5 days. The suspension was pending the outcome of a manifestation determination hearing to determine if the behavior was related to Coleman's disability. The result of the hearing was that Coleman's conduct was not as a result of his disability. A number of administrative remedies were available for Coleman but were never pursued. In the disciplinary hearing, the school district recommended that Coleman be suspended the remainder of the year. He would be given the opportunity to receive home tutoring and instruction and could return to school next year if needed for graduation. He would be in probation status. The student's parents sued the school system in state court. The school district removed the action to federal court. The school district argued the district court did not have subject matter jurisdiction because Coleman did not exhaust all available administrative remedies. The district court felt it did have jurisdiction because exhaustion would have been futile and granted the student's motion for a preliminary injunction. The court ordered Coleman to be immediately reinstated in his school. The school district appealed to the Court of Appeals.

Issue: The issue is whether the student should have been excused from exhausting his administrative remedies under the IDEA and allowed to go directly into federal court so that he could enjoin the school district's disciplinary action without missing graduation.

Holding: The Appeals Court held that the exhaustion of remedies was not futile, the court could review exhaustion determination on appeal of award of attorney fees, and the school district did not waive the challenge to the IDEA exhaustion requirement. The fee award was reversed.

Reasoning: The Court of Appeals reasoned that prior cases did not raise any doubt as to precedent that federal courts lack subject matter jurisdiction over IDEA claims that are not exhausted and that do not meet one of the exceptions to the statute's exhaustion requirement. The Court agreed that the student is not entitled to attorneys' fees because he failed to exhaust his administrative remedies. The student filed his suit in court before his manifestation hearing. The Court also reasoned that the district court did not possess subject matter jurisdiction over the student's claims and should have dismissed his suit at the beginning.

Disposition: The United States Court of Appeals, Second Circuit, reversed the decision of the district court and disallowed the attorney fees for the student.

Citation: *John G. v. Northeastern Ed. Inter. Unit 19*, 490 F. Supp. 2d 565, 221 Ed. Law Rep. 675, on reconsideration 2007 WL 2844828.

Key Facts: JMG was an autistic student in the Northeastern Educational Intermediate Unit 19, in the School District of Abington Heights' in Pennsylvania. JMG's special education teacher over the course of her tenure at NEIU subjected her students to aversive disciplinary techniques which were determined to be "deliberate activities designed to establish a negative association with a specific behavior." She used restraints to punish or abuses students. No IEP

during this time met to address this use of restraints. The special education teacher also used physical force to discipline students including slapping them. JMG's began to exhibit developmental regression which included behaviors that were, the parents claim, as result of the abusive actions of the teacher. Paraprofessionals working in the classroom during this time witnessed these aversive techniques and reported them to their administrators. No action was taken by the school administrators to stop the special education teacher. Instead, the school district promoted protecting the teacher and not reporting her to the police or taking action to stop her or remove her from class. The para-pros were accused by the school district of "breaking the code of silence" and were transferred out of the district and determined to exhibit behavior that had negatively affected the work environment of the teaching staff. They were not believed and, or worse, ignored. The parents brought this action to the U.S. District Court claiming the school district, the school, and the teacher violated the student's right to FAPE under the IDEA, due process rights under the IDEA, the right to due process and equal protection under the Fourteenth Amendment, and tort claims of negligence, assault and battery, breach of fiduciary duty, and infliction of emotional distress under state tort law.

Issue: The issue is whether the school district, the school, and the special education teacher violated the student's constitutional right to FAPE under the IDEA and violated the student's Fourteenth Amendment right to due process and equal protection.

Holding: The District Court held that the futility exception to the IDEA exhaustion requirement applied in this case, the denial of FAPE did not give rise to a substantive due process claim, the complaint held an equal protection claim, the teacher's acts of corporal punishment against the students could reasonably be considered outrageous and extreme and having been performed intentionally so as to give rise to a claim of intentional infliction of

emotional distress, there was a fiduciary relationship between the teacher and her students, the school district and the school were immune from state-law tort claims and punitive damages claim, and the complaint adequately alleged the supervisory school staff committed acts of willful misconduct and so gave their official immunity.

Reasoning: The Court reasoned that with respect to administrative exhaustion the parents were requesting relief that was unavailable through the IDEA administrative process, the IDEA eligibility was not an issue, and the relevant facts might be developed through standard discovery procedures and so denied the motion to dismiss to exhaust administrative remedies. The parent's did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. Although the teacher slapping a student once or hitting them in the chest was not enough the "shock the conscience," the repeated administration of injuries to JMG were sufficiently shocking to the conscience. With respect to equal protect claims, the parents contended that the teacher repeatedly discriminated against JMG and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school, were sufficient to survive the motion to dismiss. The school district and school violated JMG's protected rights while implementing an official policy, custom, or practice.

Disposition: The United States District Court granted motions in part and denied in part. The Court granted the defendants motion to dismiss in part and denied in part as follows: granted as to procedural due process claim, granted as to substantial due process claim as to FAPE, denied as to substantive due process claim as to student's bodily integrity, and denied as to equal protection claim. As to the teacher's motion to dismiss the court granted in part and denied in part as follows: granted as to two counts, and denied as to six counts. As defendants Northeastern Education Institute Unit 19's and the School District of Abington Heights' motions

to dismiss they are granted in part and denied in part as follows: granted on 6 counts based on state tort law, denied on 2 counts. As to the other identified defendants the motion to dismiss was granted in part and denied in part as follows: granted on three counts and denied on six counts.

Citation: *Lauren P. by David and Ann Marie P. v. Wissahicken School District*, 48 IDELR 99 (E.D. Pa. 2007).

Key Facts: Lauren P. was a 19-year-old student with a disability in the Wissahicken School District in Pennsylvania. Lauren had ADHD and a learning disability in reading, written expression, and math. Lauren's IEPs did not include behavior intervention plans even though problems she had with her school work were related to her disability. Lauren's parents pulled her out of public school and placed her in Delaware Valley Friends School, a private school for students with disabilities. Lauren's parent then requested a due process hearing seeking compensatory education and tuition reimbursement. The hearing officer denied the parents on both issues. The parents then appealed to the Pennsylvania Special Education Appeals Panel. The hearing officer awarded the parents compensatory education but denied them reimbursement. The parents sought relief in federal district court.

Issue: The issue is whether the school district provided FAPE when it did not develop a behavior intervention plan (BIP) as a part of the student's IEP. The issue is also whether the school district violated the student's rights under 504 and Section 1983.

Holding: The Court held for the student stating the school district did not provide FAPE when the school failed to provide a behavior intervention plan in the student's IEP. The court awarded compensatory education and reimbursement for the period of the IEP that did not have a behavior plan in 2003.

Reasoning: The Appeals Panel “concluded that Lauren’s tenth grade IEP required a behavior management plan that shaped the desired behaviors and used positive reinforcement rather than the negative consequences provided and the District should have known that the program it was providing was not effective.” The Appeals panel felt the private school placement was not reasonably calculated to provide the student with educational benefit and, therefore, denied reimbursement. The District Court reasoned that because the facts showed the school district should have known the IEP it developed was not providing the student with an appropriate education the school district must provide compensatory education. On the reimbursement issue, the court reasoned that although the IEP at the private school also did not have a BIP and did not provide Lauren with an appropriate education, it concluded that the private school program was reasonably calculated to confer educational benefit. It was not held to the same standard as the public school and the court awarded reimbursement for the parents. As to the Section 504 claim, the court reasoned the school district did not provide Lauren with an appropriate education and so the court granted relief for the parents on their 504 claim just like the IDEA claim. In regard to the Section 1983 claim, the court reasoned that there is no remedy available under Section 1983 for violations of the IDEA and Section 504 and held in favor of the school district.

Disposition: The United States District Court ordered the school district to provide the student compensatory education plus tuition reimbursement for private school. The Court granted the school district’s motion for summary judgment on the student’s Section 1983 claims.

Citation: *Preschooler II v. Clark County School Board of Trustees*, 479 F. 3d. 1175, 217 Ed. Law Rep. 51.

Key Facts: Preschooler II was a 4-year-old child with tuberous sclerosis and autism enrolled in the Kids Intensive Delivery of Services (KIDS) at the Betsy Rhodes School in Clark County, Nevada. The program was staffed with one teacher who allegedly physically abused Preschooler II on repeated occasions. The teacher allegedly slapped the child repeatedly and slammed the child into a chair. The teacher also was accused of forcing the child to walk from the bus without shoes as a form of punishment for taking them off on the bus. There were incidents when Preschooler was found to have bruises on the arms and inner thighs. The teacher was accused of abusing Preschooler II and was placed on administrative leave. Administrative proceedings to remedy the situation were unsuccessful and the parents filed suit in federal court.

Issue: The issue is whether the school personnel, state, school district, and school board violated the student's rights under the ADA, the Rehabilitation Act, and the IDEA.

Holding: The Appeals court held for the student by denying the qualified immunity of the school district on the beating and slamming issues and held for the school district allowing qualified immunity in regard to the shoeless walks, scratches, and bruises claims.

Reasoning: The consequences of the teacher's force against the student were analyzed under the "reasonableness" rubric of the Fourth Amendment, although historically the courts have applied substantive due process analysis under the Fourteenth Amendment's "shock the conscience" test. The teacher's alleged "disciplinary" actions against the child were unreasonable in light of the child's age and disability and the context of the events. These actions, therefore, violated the Fourth Amendment's prohibition of the use of excessive force against public school children. The Court felt the teacher's alleged conduct was disturbing and "bears no reasonable relation to the need." There was no need in this situation for he claimed excessive force. On the other hand, the court reasoned that the unexplained bruises and scratches

did not rise to the level of recognized constitutional violations. Making the child walk from the bus shoeless was not unreasonable in the court's view. The Court reasoned that from the perspective of the constitutional prohibition of excessive physical abuse against public school students, and being sensitive to students with disabilities, no reasonable special education teacher would believe that it is lawful to force a seriously disabled student at four years of age to beat himself or to violently throw or slam him. The law doesn't allow it. The Court reasoned that the school officials' alleged acts and omissions established they are liable for the violation of Preschooler II's constitutional rights because they demonstrated disregard of their responsibilities in hiring, training, supervising, disciplining, and reporting abuses committed by the teacher. The teacher's actions should have been known by a reasonable special education official. Failure to address the actions of the teacher was grounds for liability.

Disposition: The United States Court of Appeals, Ninth Circuit, affirmed the district court's denial of qualified immunity on the head beating and slamming claims. The Appeals Court reversed the district court's denial of qualified immunity on the unexplained bruises, scratches, and shoeless walks claims and remanded for further proceedings.

Citation: *San Raphael Elementary School District v. California Special Education Hearing Office*, 47 IDELR 259 (N.D. Cal. 2007).

Key Facts: AK was a 13-year-old student with autism who attended San Rafael Elementary School. AK was placed in a residential facility by his parents as a result of an ongoing disagreement with the school district. AK over the course of his school experience had exhibited aggressive and threatening behaviors, including threats to kill people and destroy places or things. He did this at home and school. AK had been placed by the school district in a private facility a couple of years earlier as a result of an IEP team's decision. The parents were

satisfied and happy with this placement. AK's behavior began to get worse at home during this time but not at school. The IEP team agreed to place AK in Therapeutic After School Care. A program designed to address socialization and recreational needs. AK attended this with little success. After several violent and disturbing incidents, AK was taken out of the TASC program by mutual consent. A home aid worker was hired by the parents to work with AK. The aide was abused and battered by AK over the period he worked with him. AK's academic as well as behavioral decline caused AK's mother to request an IEP meeting to revise the IEP. The school district and AK's parents disagreed over the right course of action. The contentious part of the discussion was over the goals and objectives for AK's behavior and adaptive skills. AK's parents stated that they believed that the only way to generalize across settings was through a residential placement. The school district felt it could not control AK's behavior outside the classroom and would not agree to making AK's IEP goals and objectives applicable across home and community settings. The school district offered a non-residential placement specializing in the education of students with behavioral needs. The parents maintained they felt a residential placement would be better for AK and rejected the placement offer by the school district. They enrolled AK in a residential facility. The school district initiated a due process hearing. The hearing officer held for the student and found the only way to provide FAPE would be for the school district to provide "24-hour-per-day residential placement" that was designed to address behaviors in the school environment and then generalize his behavior-related skills outside the school setting. The school district filed suit in District Court against the California Special Education Hearing Officer claiming they cannot control what happens outside of the school setting and so they should not be held responsible for implementing goals and objectives outside the classroom and regular school hours.

Issue: The issue is whether the school district should be responsible for implementing goals and objectives addressing behavior and academics outside the classroom and regular school hours.

Holding: The Court agreed with the school district stating that the school district is not responsible for ensuring that the student translates behavior skills learned in the classroom to the home or community settings.

Reasoning: The Court did not believe that the IDEA required that behavior problems of a student outside of the school to be addressed by the school district. This is particularly true when the student is progressing educationally in the classroom. The behavioral goals are addressed through the IEP only to the extent that those problems affect the student's educational progress. The Appeals Court has held in previous rulings that "generalization across settings is not required to show an educational benefit" and that anything "more than making measurable and adequate gains in the classroom, is not required by the IDEA." The Court reasoned that the school district's offer to place AK in the private school program, Spectrum, was an appropriate response to AK's behavioral problems. The school district was not required to ensure that a student takes behavioral skills he learns at school into the home. The school district is only required to ensure that the student's IEP is "reasonably calculated to provide educational benefits" The Court felt the school district did in this case.

Disposition: The United States District Court granted the school district's motion for summary judgment. The Court denied AK's motion for summary judgment. AK's was not entitled to reimbursement. Because the Court granted the school district's motion, AK's request for reimbursement and the school district's evidentiary objections were moot and denied. The

Court did not need to address whether, under *Schaffer v. Weast*, the hearing officer placed the burden of proof on the school district.

Citation: *Vicky M. v. Northeastern Ed. Int. Unit 19*, 486 F. Supp. 2d. 437, 220 Ed. Law Rep. 547, on reconsideration 2007 WL 284428.

Key Facts: AJM was student with autism at Northeastern Educational Intermediate Unit 19 in the School District of Abington Heights in Pennsylvania. AJM was enrolled in the Special Education Autistic Support Division. During the course of her duties the autistic support teacher, Wzorek, employed over a period of time the use of aversive techniques. The actions were “deliberate activities designed to establish a negative association with a specific behavior.” She used the actions to redirect her students, including AJM’s, behavior. She struck AJM on the arms and legs which caused bruising, screamed in his face, squeezing and crushing his arms which caused bruising, and stomping on his insteps. She also used restraints on her autistic students to punish or abuse them. No IEP meetings were conducted to address these types of restraints. AJM’s behavior began to change to a more regressive conduct. There was clear evidence of abuse on the student’s body. Two aides in the room with the teacher were witnesses to these actions and brought them to the attention of school administration. The teacher was eventually transferred and so were the aides. The aides were not supported by school administration for speaking up on behalf of the children. They were accused of “breaking the code of silence.” AJM’s parents filed suit in court against the teacher, the administration, the school, and the school district.

Issue: The issue is whether the school district, the school, and the special education teacher violated the student’s constitutional right to FAPE under the IDEA and violated the student’s Fourteenth Amendment right to due process and equal protection.

Holding: “The Court held that the parent’s failure to exhaust administrative remedies under the IDEA before bringing Section 1983 action for money damages was excused on the basis of futility exception. The complaint stated substantive due process claim to the extent that it alleged a violation for failure to protect the student’s bodily integrity. The complaint stated an equal protection claim and a Section 1983 claim. The complaint stated claims against the autistic support teacher under Pennsylvania law for the common law torts of assault and battery, intentional infliction of emotional distress, and breach of fiduciary duty, not for negligence. The school district and intermediate unit were “local agencies” within the meaning of Political Subdivision Tort Claims Act (PSTCA) and could not be held liable for punitive damages. The complaint sufficiently pled that the supervisor defendants committed acts of willful misconduct, forfeiting their official immunity under PSTCA. The autistic support teacher’s alleged abusive acts were outside the scope of her employment and her employers could not be held vicariously liable therefore. The complaint failed to state a cause of action for civil conspiracy. The dismissal of punitive damages counts against the autistic support teacher and supervisor defendants was inappropriate.

Reasoning: The Court reasoned that with respect to administrative exhaustion the parents were requesting relief that was unavailable through the IDEA administrative process, the IDEA eligibility was not an issue, and the relevant facts might be developed through standard discovery procedures and so denied the motion to dismiss to exhaust administrative remedies. The parent’s did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. Although the teacher slapping a student once or hitting them in the chest was not enough the “shock the conscience,” the repeated administration of injuries to AJM were sufficiently shocking to the conscience. With respect to equal protect claims, the parents contended that the

teacher repeatedly discriminated against AJM and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school, were sufficient to survive the motion to dismiss. The school district and school violated AJM's protected rights while implementing an official policy, custom, or practice.

Disposition: The United States District Court granted in part and denied in part the school district's motion to dismiss. The Court granted the school district's motion to dismiss as to the Procedural Due Process claim and the Substantive Due Process claim with regard to FAPE. The Court denied the school district's motion to dismiss as to the Substantive Due Process claim as it related to the school district's failure to protect the student from bodily integrity and as to the Equal Protection claim. The Court also granted and denied several counts with regard to the teacher, administrators, and the school.

Citation: *Joseph M. v. Northeastern Ed. Intermediate Unit 19*, 516 F.Supp.2d 424, 226 Ed. Law Rep. 734, on reconsideration 2007 WL 2845004 (M.D.Pa. 2007).

Key Facts: BM was an autistic student in the Northeastern Educational Intermediate Unit 19, in the School District of Abington Heights' in Pennsylvania. BM's special education teacher over the course of her tenure at NEIU subjected her students to aversive disciplinary techniques, which were determined to be "deliberate activities designed to establish a negative association with a specific behavior." She used restraints to punish or abuses students. The teacher strapped BM to a Rifton Chair with duct tape around his legs, punished him by depriving him of "Picture Exchange System" which was BM's main means of communicating his needs (including bathroom use and hunger), backhanding him in the face causing blood to come out of his nose, pinching him leaving bruises, hitting him leaving cuts on his face, legs, back, and pelvis, and stepping on BM's insteps causing bruising to his feet. No IEP during this time met to address

this use of restraints. The special education teacher also used physical force to discipline students including slapping them. BM's began to exhibit developmental regression which included behaviors that were, the parents claim, as result of the abusive actions of the teacher. Paraprofessionals working in the classroom during this time witnessed these aversive techniques and reported them to their administrators. No action was taken by the school administrators to stop the special education teacher. Instead, the school district promoted protecting the teacher and not reporting her to the police or taking action to stop her or remove her from class. The para-pros were accused by the school district of "breaking the code of silence" and were transferred out of the district and determined to exhibit behavior that had negatively affected the work environment of the teaching staff. They were not believed and, or worse, ignored. The parents brought this action to the U.S. District Court claiming the school district, the school, and the teacher violated the student's right to FAPE under the IDEA, due process rights under the IDEA, the right to due process and equal protection under the Fourteenth Amendment, and tort claims of negligence, assault and battery, breach of fiduciary duty, and infliction of emotional distress under state tort law.

Issue: The issue is whether the school district, the school, and the special education teacher violated the student's constitutional right to FAPE under the IDEA and violated the student's Fourteenth Amendment right to due process and equal protection,

Holding: The District Court held that the futility exception to the IDEA exhaustion requirement applied in this case, the denial of FAPE did not give rise to a substantive due process claim, the complaint held an equal protection claim, the teacher's acts of corporal punishment against the students could reasonably be considered outrageous and extreme and having been performed intentionally so as to give rise to a claim of intentional infliction of

emotional distress, there was a fiduciary relationship between the teacher and her students, the school district and the school were immune from state-law tort claims and punitive damages claim, and the complaint adequately alleged the supervisory school staff committed acts of willful misconduct and so gave their official immunity.

Reasoning: The Court reasoned that with respect to administrative exhaustion the parents were requesting relief that was unavailable through the IDEA administrative process, the IDEA eligibility was not an issue, and the relevant facts might be developed through standard discovery procedures and so denied the motion to dismiss to exhaust administrative remedies. The parent's did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. With respect to equal protect claims, the parents contended that the teacher repeatedly discriminated against JMG and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school were sufficient to survive the motion to dismiss. The school district and school violated BM's protected rights while implementing an official policy, custom, or practice.

Disposition: The United States District Court granted motions in part and denied in part. The Court granted the defendants motion to dismiss in part and denied in part as follows: granted as to procedural due process claim, granted as to substantial due process claim as to FAPE, denied as to substantive due process claim as to student's bodily integrity, and denied as to equal protection claim. As to the teacher's motion to dismiss the court granted in part and denied in part as follows: granted as to two counts, and denied as to six counts. As defendants Northeastern Education Institute Unit 19's and the School District of Abington Heights' motions to dismiss they are granted in part and denied in part as follows: granted on 6 counts based on state tort law, denied on two counts. As to the other identified defendants the motion to dismiss

was granted in part and denied in part as follows: granted on three counts and denied on 6 counts.

Citation: *Hinson ex rel. N.H. v. Merritt Educational Center*, 521 F.Supp.2d 22, 227 Ed. Law Rep. 777 (D.D.C. 2007).

Key Facts: N.H. was a 12-year-old student with multiple disabilities in the areas of health impaired and emotional disturbed attending Merritt Education Center in the District of Columbia. N.H.'s parent alleged that her child had not received FAPE. A settlement was reached to evaluate N.H., develop an IEP, and issue a notice of placement. The parent claims the evaluation was not completed and the student suffered several academic and behavioral problems and was hospitalized in a mental hospital. The parent contends that N.H. was "suspended several times or sent home without proper interventions." An IEP was developed but the parent contended that it was not appropriate nor was the placement decision. A due process hearing was requested by the parent. The hearing officer held for the school. The parent appealed the hearing officer's decision to District Court.

Issue: The issue is whether the school violated the student's rights under the Section 1983, Section 1985, the ADA, Section 504 of the Rehabilitation Act, and due process.

Holding: The Court held that the mother failed to state a Section 1983 claim, a Section 1985 claim, Section 504 of the Rehabilitation Act, the ADA, and due process claim. The court held that the school was a "nonsuable entity" and the mayor was entitled to dismissal from the suit.

Reasoning: The Court reasoned that the parent's complaint failed the test to make out a Section 1983 claim. The parent did not allege any exceptional circumstances or demonstrate why the normal remedies offered under the IDEA were inadequate to compensate N.H. for the

harm he suffered. The parent's complaint must "include some factual basis for the allegation of a municipal policy or custom." The parent contended their complaint includes violations of the IDEA by not conducting a manifestation determination hearing or provide appropriate interventions before suspending N.H. The court felt that this claim did not accurately describe the accusations. The parent failed to state a claim for Section 1983 the court reasoned. The court also reasoned that the parent did not include any proof of conspiracy and so failed to state a claim for Section 1985. The Rehabilitation Act was intended to bar employment discrimination and is inapplicable in this action. Claims should be made under the IDEA. More than a case for the denial of FAPE must be shown. The Court also reasoned that the parent's complaint was "devoid of any allegation that could be construed as suggesting bad faith or gross misjudgment on the part of the school." As to the ADA claim, the ADA addresses discrimination "by reason of" a disability and the parent's claim is devoid of allegations that N.H. was discriminated against on the basis of his disability. The Court reasoned that the parent was bringing a complaint under the procedural due process clause of the Fifth Amendment. The parent never specified any liberty or property interest of which N.H. was allegedly deprived or explained fully to the court exactly which liberty or property interest the parent believes was at issue. The court also reasoned that the parent did not allege facts that demonstrated that N.H. may have been deprived of procedural due process. The Court felt the parent and student received the process due to them under the IDEA. The parent also does not identify the clause of the Fifth Amendment alleged was violated and the court concluded that the parent failed to state a claim under the Fifth Amendment.

Disposition: The United States District Court granted the school's Motion for Partial Dismissal. The Court found that the parent and student failed to state claims to Section 1983 and

1985, Section 504 of the Rehabilitation Act, the ADA, and the Fifth Amendment. The Court dismissed those claims as well as the Educational Center and the Mayor.

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Citation: *A.W. ex rel. Wilson v. Fairfax County Schools*, 548 F.Supp.2d 219, 233 Ed. Law Rep. 166 (E.D.Va. 2008).

Key Facts: A.W. was an 18-year-old high school senior with a disability (Asperger's Syndrome) at the James Madison High School. A.W. was suspended for using his cell phone camera to take pictures of a female classmate in an inappropriate way. A.W. was suspended for 10 days after an investigation for sexual harassment. He was on probation for other disciplinary incidents at the time of this charge. A manifestation hearing was conducted to determine if the conduct was related to his disability. The decision of the hearing review was that the incident was not related to his disability. Another hearing was conducted before the superintendent's hearing officer who determined that the A.W. should be suspended for 18 days and transferred to another school. Interim education was made available after the 10 days were up. The parents refused this service. The parents appealed to the school board. They unanimously upheld the hearing officer's decision. The parents filed suit in District Court.

Issue: The issue is whether the student is required to exhaust all administrative remedies available under the IDEA. The issue is also whether if exhaustion has been satisfied.

Holding: The Court held that the student was required to exhaust administrative remedies afforded under the IDEA.

Reasoning: The Court reasoned that the student brought his claim under the ADA and Title V of the Rehabilitation Act and was required to exhaust administrative remedies available

under the IDEA when relief is sought under the IDEA. The student had not exhausted administrative remedies because the due process hearing officer had not made a final decision.

Disposition: The United States District Court granted the school district's motion to dismiss and ordered the student's complaint dismissed without prejudice.

Citation: *C.A. ex rel. G.A. v. Morgan County Board of Education*, 577 F.Supp.2d. 886, 238 Ed. Law Rep. 295.

Key Facts: C.A. was a 12-year-old student with a disability attending Morgan County Middle School in West Liberty, Kentucky. C.A. was behaving inappropriately and was paddled by the principal in the classroom. Permission had been given to the school to administer corporal punishment when needed. The paddling resulted in the skin showing whelps "across both cheeks of her butt." The parents took C.A. to the Kentucky Cabinet for Health and family Services where it was determined that abuse had occurred. The Commonwealth of Kentucky's attorney presented a criminal charge a grand jury which did not return an indictment. The parent's then filed suit in District Court.

Issue: The issue is whether the school district through its personnel violated C.A.'s rights under Section 1983 claiming excessive force, specifically her Fourteenth Amendment rights.

Holding: The Court held that The Section 1983 claims against individual school personnel in their official duties were redundant; individual school employees were entitled to qualified immunity from liability in their personal capacity; liability could not be placed on the superintendent under the supervisory liability theory, the teacher could not be held liable for failing to intervene when witnessing a paddling, and the school board could not be held liable for failing to train school employees. The Court refrained from addressing state claims.

Reasoning: The Court reasoned that the claims of the parent were redundant and because a claim against an individual in their official capacity is a claim against their employer, the Morgan County Board of Education. Previous cases permitted local governments to be sued directly for damages and declaratory or injunctive relief; therefore, “there is no longer a need to bring official-capacity actions against local government officials.” As to the prosecution of the individual members, the court reasoned that the parents had not demonstrated a violation of a constitutional right. The court felt it “was not a violation of clearly established right.” The court did not see the whelps on the student to rise to the level of a severe injury and did not “shock the conscience.” The parents did not offer any evidence to indicate that the actions of the defendants were “inspired by malice or sadism,” but were merely careless or unwise in their excess of zeal. Therefore, the court reasoned that the paddling did not violate the student’s substantive due process rights.

Disposition: The United States District Court granted the school district’s Motion for Summary Judgment for the Section 1983 claims and dismissed them with prejudice. The Court denied the school district’s Motion for Summary Judgment for state law claims and dismissed them without prejudice. The Court denied the student’s Motion for Summary Judgment and dismissed those claims without prejudice.

Citation: *Centennial School District v. Phil L. ex rel. Matthew L.*, 559 F.Supp.2d 634, 235 Ed. Law Rep. 199, amended on denial of reconsideration 2008 WL 3539886 (E.D.Pa. 2008).

Key Facts: Matthew L. was a student with ADHD in the Centennial School District. Matthew was determined to be a student not eligible for special education and related services after an evaluation was conducted. Matthew was suspended for causing a bomb scare at school by writing a threatening message on the bathroom wall. At the pre-expulsion hearing the school

district refused the parents' request for a manifestation determination hearing. They did, however, agree to a second evaluation for Matthew. Again, they did not find that Matthew was eligible for special education and related services. Before the expulsion hearing, Matthew's parents withdrew him from school district and enrolled him in a private school. Matthew was expelled from the school district. Before the expulsion, Mathew's parents requested a due process hearing under the IDEA. His parents demanded compensatory education for the last two years and tuition reimbursement. The due process hearing officer ruled that Matthew was not a student with a learning disability, was not eligible for tuition reimbursement, and was not eligible for compensatory education due to a denial of FAPE. The district and the parents filed an appeal of the hearing officer's decision to the District Court.

Issue: The issue is whether the school district violated the student's rights under the Rehabilitation Act by expelling him without conducting a manifestation hearing.

Holding: The Court held that the Rehabilitation Act did not require a manifestation hearing to determine if the conduct was related the student's disability like it would under the IDEA and the parents of the student did not exhaust their administrative remedies.

Reasoning: The Court reasoned that because the parents failed to exhaust their administrative remedies in making their claim, they were barred from seeking judicial review of the hearing officer's order upholding the school district's action. Because of the alleged failure of the school district to hold a manifestation hearing, the parents were required to exhaust their administrative remedies before bringing a claim before the court.

Disposition: The United States District Court granted the school district Motion to dismiss the counterclaim in part and denied in part. The motion to dismiss was granted in the portion of the counterclaim seeking an order declaring that the student's due process rights under

the Rehabilitation Act were violated by the school district's failure to afford him a Section 504 hearing much like a manifestation hearing. The parents failed to exhaust administrative remedies in their counterclaim.

Citation: *Couture v. Board of Education of Albuquerque Public Schools*, 535 F.Supp.3d 1243, 235 Ed. Law Rep. 721 (10th Cir. 2008).

Key Facts: M.C. was a 6-year-old student with a severe emotional disability at Governor Bent Elementary School. M.C. exhibited repeated outbursts and threatened others and he was often placed in a supervised time-out room until he calmed down and could come back to class. His was a part of his "behavior management system" in his IEP. A Due Process Hearing was requested by M.C.'s parents claiming a denial of FAPE. The Hearing Officer concluded that FAPE was provided by the school district and there was no evidence of seclusion or discrimination. M.C.'s parent brought suit under Section 1983 to the District Court claiming a violation of M.C.'s constitutional rights. The District Court denied the school district and employee's motion contending they were entitled to qualified immunity. The case was appealed to the United States Court of Appeals, Tenth Circuit. The parents argued that the use of the time-out room violated the student's Fourth Amendment right against unreasonable search and seizures and his Fourteenth Amendment right to procedural and substantive due process.

Issue: The issue is whether the school district and school personnel violated the student's Fourth and Fourteenth Amendment rights by placing him in a time-out room when he exhibited violent outbursts.

Holding: The Appeals Court held that the Fourth Amendment was not violated with the repeated use of the time-out room for punishment for student misbehavior; student's refusal to do school work was a good enough reason to be placed in the time-out room; lengthy time-outs

were reasonably related to the school's objective of behavior modification; and placement in the time-out room did not implicate procedural due process requirements.

Reasoning: The Appeals Court reasoned that "to qualify as a seizure on the context of a school setting, the limitation on the student's freedom of movement must significantly exceed that inherent in every day, compulsory attendance." The court felt it need not resolve this issue because the time-outs were not unreasonable. The teachers were faced with a behavior problem that was almost impossible to resolve. When M.C. refused to do any of his school work, it was not unreasonable for the educators to send him to a time-out room for 5 minutes hoping that he would cooperate in the future. With the violent behavior exhibited by the student, it was not unreasonable for the educators to continue to detain M.C., chiefly because they had a fear that was understandable due to his past behavior. "Pedagogical misjudgments do not . . . expose teachers to liability under the Fourth Amendment." The Appeals Court respected the teachers' choice unless their method is definitely unreasonable or blatantly not tailored to meeting the student's needs. The court reasoned that the time-out room discipline was "unreasonable" under the Fourth Amendment. The court should not make the teacher's job harder by imposing personal liability when their teaching methods do not succeed. The Court was reluctant to limit a teacher's ability to manage her classroom by requiring her to give the student a "hearing" of some form every time a time-out was used for discipline. This, the court believed, would be an undue burden that should not be imposed unless the use of time-outs became the same as a lengthy school suspension.

Disposition: The United States Appeals Court, Tenth Circuit, reversed the District Court's decision to deny qualified immunity to the teacher, administrator, and the psychologist and remanded for dismissal on the Fourth and Fourteenth Amendment.

Citation: *District of Columbia v. Doe*, 573 F.Supp.2d 57, 237 Ed. Law Rep. 650 (D.D.C. 2008).

Key Facts: John Doe was a sixth grade student with a disability at Janney Elementary School. John misbehaved in class which was his third infraction that year. John was suspended for 54 days. A Manifestation Determination Review (MDR) was conducted and concluded that John's conduct was not related to his disability. The MDR recommended that John be suspended and placed in an alternative school setting. The student requested a Disciplinary Hearing to appeal this decision. The Student Disciplinary Hearing Officer ordered the "stay-put" provision for John to stay at Janney while a decision was being made. The decision was that the student's behavior was not a manifestation of his disability. The SDHO also reduced the suspension to 10 days. The school appealed to the superintendent's office and the assistant superintendent imposed a 45-day suspension. Both the school district and the parents appealed the hearing officer's decision to the district court. The court ordered a due process hearing which decided that the DCPS had met its burden with substantial evidence that the student's behavior was not a manifestation of his disability. The hearing officer reduced the suspension to 11 days. The officer concluded the student was not a danger to himself or others and did not need a change in placement.

Issue: The issue is whether the DCPS denied the student a FAPE by suspending him for 45 days.

Holding: The Court held that the "controversy was capable of repetition, yet evading review, and thus fell within an exception to the mootness doctrine" and the hearing officer of the District of Columbia Public Schools (DCPS) exceeded his authority under the IDEA.

Reasoning: The parents contend that the appeal from the hearing officer's decision is moot because the school district can no longer enforce the suspension because John no longer attends Janney Elementary. One exception to the mootness doctrine is for actions "capable of repetition yet evading review." The events since the lawsuit was originally filed have so transpired that the controversy has ended. So the reasoning is that if the HOD were to be reversed, the school district could no longer enforce the longer suspension because the student does not attend the Janney Elementary school. There is also a reasonable expectation that the school district will be confronted with this issue again. If the court failed to clarify the law in this case, the school district could be subjected to repeated erroneous legal decisions. So the court decided that this controversy to be "capable of repetition, yet evading review." As to the hearing officer's decision, the superintendent is the final decision-maker with respect to disciplinary decisions for non-disabled students. The hearing officer exceeded the scope of his authority when he reduced the assistant superintendent's suspension.

Disposition: The United States District Court granted the school district's Motion for Summary Judgment and denied the parent's Motion for Summary Judgment.

Citation: *D.L. v. Waukee Community School District*, 578 F.Supp.2d 1178, 238 Ed. Law Rep. 681 (S.D.Iowa 2008).

Key Facts: I.L. was a student with disability in the Waukee Community School District that exhibited aggressive behaviors from age 2 through kindergarten. A new IEP developed for I.L. provided no behavior support plan indicating it was not necessary. I.L. then began having serious behavioral issues. She was transferred to a new program without parent input. A new IEP was developed and shortly thereafter teacher began using "time-out" as a method to get I.L. under control. The parents objected and requested an administrative hearing. The hearing

officer provided educational remedies favorable to the parents. The school district appealed to the District Court.

Issue: The issue is whether the school district violated the student rights under the IDEA, substantive and procedural due process rights under Section 1983, equal protection under Section 1983, violation of the Rehabilitation Act, disability discrimination under Iowa state law, assault and battery, false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence-bystander, and intentional infliction of emotional distress-bystander.

Holding: The Court held that the parents' recovery was limited under the IDEA to injunctive relief and related costs; claims brought under Section 1983 were not precluded by claims brought under the Rehabilitation Act; the parents stated *Monell* claim against the school district; and the parents stated claim under the Rehabilitation Act.

Reasoning: The Court reasoned that the Section 1983 claims were not precluded by claims brought under the Rehabilitation Act because preclusion would have undermined congressional intent to preserve rights under the IDEA. Remedies under the IDEA were unavailable as to past medical expenses, physical and mental pain and suffering, and loss of enjoyment of life. They were limited by statute to injunction, reimbursement of costs of private enrollment, and reasonable attorney fees. The school district failed to adequately train and negligently trained individuals responsible for the reported conduct. The court reasoned that the exhaustion requirement of the IDEA was non-jurisdictional. Under state law, there was no duty to avoid causing emotional harm to another. Also, exceptions to general duty of care to avoid causing emotional harm to another exists as to bystander liability and direct victims of emotional distress.

Disposition: The United States District Court denied the school district's Motion to Dismiss with respect to Counts II, III, IV, VI, VII, and VIII; and granted in part and denied in part, with respect to Counts X and XI.

Citation: *Hill v. Sharber*, 544 F.Supp.2d. 670, 232 Ed. Law Rep. 200.

Key Facts: Ky Hill was a special education student at Franklin High School in Williamson County, Tennessee. A random drug sweep of the school parking lot with canines showed that there was a hit on one of the cars. The student, Ky Hill, was found to have alcohol in his car and was cited by the sheriff's department and the school initiated disciplinary measures. A manifestation Determination Hearing was conducted and it was decided that the conduct was not related to Ky's disability. Ky and his parents did not appeal this decision. He was placed in an Alternative School and suspended from extracurricular activities. He went to the Alternative school for one month and was suspended from the hockey team. He then returned to classes.

Issue: The issue is whether the student's rights were violated under the Fourth Amendment's search and seizure protections, the IDEA, the Fourteenth Amendment's procedural and substantive due process and equal protection rights, conspiracy, and violations of a variety of state law provisions.

Holding: The Court held that the search was not subject to the provisions of the Tennessee School Security Act (TSSA), the student did not have a reasonable expectation, there was probable cause to search the vehicle, there was probable cause to search the duffle bag in the car, there was no unreasonable seizure when the student was handcuffed during the search of the car, it was not excessive force to handcuff the student during the search of the car, there was not

violation of the student's Fourteenth Amendment rights, and the court declined to exercise supplemental jurisdiction over the student's state law claims.

Reasoning: The Court reasoned that a search or seizure can be unreasonable if done without a search warrant which generally demands probable cause. This may not be required in some cases for it to be constitutional. In a school setting it depends on whether the situation is reasonable given all the facts. To decide if a search is considered reasonable on school grounds, the court has to decide if it was justified in its inception and then if the search was reasonably related to the scope of the search. The search of the student's car after the police dog alerted a positive response was not subject to the TSSA requirements. The court also reasoned that school officials were not involved in the planning of this random sweep of the school parking lot and the ensuing search of the car. The student did not have a reasonable expectation of privacy in the school parking lot where he parked his car and so the sweep by the sheriff's department did not violate the Fourth Amendment. It was also decided that the dog sniff did not constitute a Fourth Amendment search. The search of the car and the duffle bag was supported by probable cause since the drug dog made the alert. The handcuffing of the student did not constitute unreasonable seizure under the Fourth Amendment because he was cuffed for only 10 minutes and it was for the safety of himself and the deputies. If the seizure represents a limited intrusion, handcuffing may be permissible. The student would have had to demonstrate physical injury by the handcuffing and the deputies would have to not respond to the complaints of the student. The manifestation hearing was not a violation of the IDEA because it was as a result of the search of the student's car and because the sweep of the parking lot and search of the vehicle did not violate the student's Fourth Amendment rights. The student's discipline by the school was consistent with the treatment of all other students at the school and so the student failed to show

an equal protection claim. The finding of alcohol and subsequent suspension and placement in the alternative school was not a violation of the student's Fourteenth Amendment substantive due process rights because it broke the school policy regarding those issues. The student's procedural due process rights under the Fourteenth Amendment because the school gave the student and parents the notice and opportunity to be heard.

Disposition: The United States District Court granted the Director of Schools and Sheriff's Motion for Summary Judgment. The Court granted the two deputies Motion for Summary Judgment.

Citation: *M.G. v. Crisfield*, 547 F.Supp.2d 399, 233 Ed. Law Rep. 109 (D.N.J. 2008).

Key Facts: A.G. was a student in the third grade at the Mt. Horeb School, which was an elementary school in the Warren Township, New Jersey. Previously, the school had met a determined that A.G. was not a student with a disability and not eligible for special education and related services. A.G. was suspended from school and, subsequently, suspended indefinitely. The parents claim they were denied due process rights. A.G. was not allowed to return to the school and missed a couple of weeks of instruction. Later, the school began to provide 5 hours a day of home instruction. The parents of A.G. allege that the superintendent (Crisfield) of the school district informed that parents that A.G. needed to be classified as special education under the IDEA and accept services. A.G. would then be placed in another school district in a special education program. The parents did not agree to this classification or placement. The school district did not allow the student back into the district and the student was out of school for over a year. Another meeting took place between the parents and the superintendent in which the school leader said that A.G. would not have to be classified as special education but would go to another school district and be assigned a one on one aide. This

was the same school mentioned earlier by the superintendent. The parents again resisted. The parents filed suit in district court bringing claims of violations of the student's constitutional rights.

Issue: The issue was whether the school district violates the student's procedural and substantive due process rights, equal protection rights and privacy rights under the Fourteenth Amendment. Also, an issue was whether the school district violated the student's right under Section 504 of the Rehabilitation Act. There were other state claims as well.

Holding: The Court held that the allegations were not sufficient to plead a cause of action for equal protection, allegations that failed to specify the student's behavior or allege arbitrary action did not state a claim for violation of the substantive due process in indefinitely suspending the student, M.G.'s parents were not required to exhaust state administrative remedies on the federal claims, the exhaustion of administrative remedies under the IDEA was not required with respect to procedural due process claims, M.G.'s parents were not required to exhaust administrative remedies on the claim that M.G. was thought to be disabled in violation of the Rehabilitation Act, and the Rehabilitation Act regarding the lack of manifestation determination following the student's suspension was barred by failure to exhaust IDEA administrative remedies.

Reasoning: The court reasoned that the allegations by the parents that school officials violated the student's equal protection rights when they suspended him indefinitely and tried to coerce the parents to agree to a special education classification did not provide adequate notice of how Equal Protection Clause was violated. The court said that "to state a claim for relief, it was not sufficient to allege mere elements of a cause of action; instead the complaint must allege facts suggestive of the proscribed conduct." The court reasoned that there was no fundamental

right to education protected under the federal constitutional. The allegation that the school district indefinitely suspended the student without written notice of reasons was not sufficient to state a claim for substantive due process violations absent additional allegations that specified the student's behavior and pled that the school officials acted arbitrarily or without rational basis in imposing suspension for that behavior. The court felt that the parent did not have to exhaust administrative remedies with respect to the Rehabilitation Act. The doctrine of primary jurisdiction did not apply to the parents' federal claims against the school district for violations of procedural and substantive due process and the rehabilitation Act. The parents could not circumvent the IDEA's exhaustion requirement by hiding them in claims seeking the same relief that would be available under the IDEA as claims under the Rehabilitation Act or Section 1983. These claims were subject to administrative exhaustion under the IDEA. The school board was insulated from liability for past violations of the IDEA requirement that a child be provided with appropriate public education by parents' refusal of offer of special education and related services to their child under the IDEA. The section of the IDEA that provided protection in the form of placement in an alternative setting for students with disabilities subjected to disciplinary measures had no application to the student's indefinite suspension, where the school offered and parents refused identification and services under the IDEA. The refusal of the parents for IDEA identification and services, with the consequence that the school district was not liable under the IDEA for failure to provide special education in the past, "did not by itself bar application of the IDEA's exhaustion of administrative remedies requirement to Rehabilitation Act discrimination claims. If the parents consistently denied IDEA identification they would not be held to the exhaustion requirement under the IDEA before they could sue the school district. The parents could not get relief or denial of these procedures through the IDEA process. When the parents

refused IDEA identification that did not bar them from making a claim under the Rehabilitation Act by allegedly regarding the student as disabled and barring him from attending general education classes in the school district for that reason. The offer of special education services did not mean that the right to be free from discrimination due to a perceived disability had not been violated.

Disposition: The United States District Court dismissed the student's Section 1983 substantive due process, right to privacy, and equal protections claims and claims based on unspecified state laws and regulations. The court dismissed the student's Section 504 claim based on the school district's failure to provide a manifestation determination for a lack of subject matter jurisdiction. The court granted the school district's Motion to Dismiss for punitive damages by the student. The court denied the school district's Motion to Dismiss the Section 1983 procedural due process and Section 504 "regarded as" claims for lack of subject matter jurisdiction. The court denied the school district's Motion to Dismiss the student's Section 504 "regarded as" claim for failure to state a claim. The Court found that the student's opposition briefing failed to address the matter of the "thorough and efficient education" clause of state law for lack of subject matter jurisdiction. The court granted the school district 30 days to address the court's jurisdiction over this state constitutional claim or it will be dismissed.

Citation: *M.M. by and through her parent and natural guardian, L.R., Plaintiff-Appellee v. Special School District No. 1, et.al., Defendants-Appellants*, 512 F.3d 455, 227 Ed. Law Rep. 455 (8th Cir. 2008).

Key Facts: M.M. was an elementary school student with a disability at Franklin Middle School in the Minnesota's Special School District No. 1. M.M. had shown serious behavioral issues during her time at Franklin, including bringing a knife to school, fighting, kicking,

punching, and other outbursts. After the knife incident, M.M. was recommended for expulsion. Instead, the school district placed M.M. in the Lucy Laney Community School. A behavior plan under a newly revised evaluation set behavior goals addressing many of the student's behavioral issues. Later that year, M.M. was suspended for fighting and the IEP team determined that Lucy Laney was not the appropriate placement. She was transferred to Olson Middle School. Reports showed academic improvement but insufficient progress on her behavioral goals. An Administrative Law Judge (ALJ) awarded the student compensatory educational services under the IDEA. The student brought an action against the school district in district court seeking costs and attorney fees. The district court awarded costs and attorney fees to the student. The school district appealed.

Issue: The issue is whether the school district violated the student's rights under the IDEA's procedural and substantive due process provisions. The issue is also whether the school district denied the student with a disability FAPE and "stay-put" rights under the IDEA.

Holding: The Appeals Court held that the District Court was bound by precedent in the *Renollet* case which held that it was "error to assign burden of persuasion to Minnesota school district in action to enforce IDEA's procedural and substantive requirements," the school district was not responsible for any failure to revise the IEP, the school district did not deny FAPE to the student in suspending and transferring her, the stay-put provision was not violated with several short term suspensions, IDEA regulations were not violated when educational services were not provided by the school district during her suspensions, and the school district did not deny FAPE to the student when they proposed she be placed in a program with a high number of boys in relation to girls.

Reasoning: The Appeals Court reasoned that the *Schaffer v. Weast* case, the burden of proof in IDEA proceedings is on the party seeking relief if the state law is silent as to which party bears the burden. The Eighth Circuit in the *Renollet* case decide “that it was in error to assign burden of persuasion to Minnesota school district inaction to enforce IDEA’s procedural and substantive requirements, in an IDEA case, even though they were decided after the child’s due process hearing.” The ALJ was not deprived of jurisdiction to hear IDEA claims against the school district. The school district was not responsible to revise the IEP during the school under the IDEA and the parent did not request a due process hearing. The school district has met its obligation if the IEP is “reasonably calculated to enable the child to receive educational benefits.” The IEP need not be designed to maximize a student’s potential. The school district did not deny FAPE to student in violation of the IDEA in spite of the lengthy suspensions and transferring her to other schools. M.M. made progress academically and behaviorally. The court reasoned that the school district does not violate the IDEA because the student failed to achieve the IEP program’s behavioral goals when the student’s primary exceptionality is a behavior disorder. The court further reasoned that the series of short-term suspensions totaling more than 10 days did not constitute a change in the student’s placement without parental consent in violation of the IDEA’s stay-put requirement. The parties had agreed that a change in placement was needed. “Only their failure to agree on interim change, combined with school district’s stay-put obligations, had left the child in a setting that was not successfully controlling her dangerous misbehavior.” A pattern of suspensions is not a unilateral change of placement in violation of the IDEA when a school district and parent agree that a student with a behavioral disability needs a change of placement but cannot agree on an alternative. If the student continues to behave in a way that is dangerous to themselves or to others, a school district has the authority under the

IDEA to use suspensions of less than 10 days as long as the discipline is consistent with normal school policies and the stay-put IEP. The court reasoned that the school district did not deny FAPE by proposing M.M. be placed in a school with a high ratio of boys to girls.

Disposition: The United States Court of Appeals, Eighth Circuit, reversed the district court's decision.

Citation: *P.K. ex rel. P.K. v. Bedford Central School District*, 569 F.Supp.2d 371 (S.D.N.Y. 2008).

Key Facts: P.K. was a student with an emotional disturbance and eligible for special education in the Bedford Central School District. As P.K.'s behavioral and emotional difficulties increased he was placed in several different programs within the school district and was hospitalized for mental issues and substance abuse. The parents claimed the appropriate placement should be a residential placement and that P.K. could not stay home and attend school with success. The school district offered a variety of placements, including the KEA program, in the district and revised the IEP numerous times to show P.K. could succeed with their plan. All through this extended debate that covered a few years, P.K. displayed several incidents of aggressive and violent outbursts, accompanied by extended and excessive bouts with alcohol and drugs. The parents requested a due process hearing seeking tuition reimbursement for the private residential facility in which they placed P.K. The IHO denied the parent's request for tuition reimbursement, finding that the KEA program was appropriate to P.K.'s needs during the time periods in question and that Wisdom Ranch and Ascent, two private residential facilities of the parents' choosing, were inappropriate. The SRO affirmed this decision. P.K.'s parents filed for relief with the district court.

Issue: The issue is whether the school district denied the student FAPE under the IDEA.

Holding: The Court held that the school district did not deny the parents their right to participate in the development of an IEP, the school district did not base an IEP on out of date documents, and the IEP was substantively adequate.

Reasoning: The court felt that residential placements were considerably more restrictive than the “mainstreaming” that the IDEA prefers. The parents needed to demonstrate that the school district’s proposed IEP was inappropriate and the residential placement is appropriate. The IEP needed to be procedurally correct and the plan had to be reasonably calculated to enable the student to receive educational benefits. The court reasoned that due weight must be given to administrative decisions. The court felt the school district did not deny the parents the opportunity to participate in the development of the student’s IEP and the school district was working with the most recent information regarding the student. The school district is not obligated to provide the student with every special service necessary to maximize each student’s disability. Courts cannot choose between the views of competing experts on matters of education policy or substitute its judgment for that of the experts. The court must look at objective evidence when looking at whether a student has regressed or progressed under the IEP that is being challenged. Passing grades, or passing from grade to grade, are generally used as indicators of progress in an IEP. The IEP used for a student with emotional disturbance and substance abuse were substantively adequate even without a residential placement. This precludes the parents from reimbursement under the IDEA for the costs of this private facility. The court reasoned that even though the residential facility could more appropriately deal with the substance abuse of the student, that issue was not the responsibility of the school district.

Disposition: The United States District Court affirmed the decision of the New York State Review Officer. The Court granted the school district’s Motion for Summary Judgment.

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Citation: *Dean v. School District of the City of Niagara Falls, N.Y.*, 615 F.Supp.2d 63, 245 Ed. Law Rep. 145 (W.D.N.Y. 2009).

Key Facts: J.D.J. was a student at the Niagara Middle School in the City of Niagara Falls School District in Niagara Falls, New York. J.D.J. had an IQ of 141, took honors classes at Niagara Falls Elementary School, and a math class at the University at Buffalo. J.D.J. was diagnosed with Asperger's Syndrome, Oppositional Defiant Disorder, and some symptoms of separation anxiety. The student was given an accommodation Plan under Section 504 of the Rehabilitation Act. He was given an accommodation of a shortened school day and other minor accommodations. The 504 compliance officer recommended to the parents that J.D.J. be "classified as a student with a disability that substantially limits one or more major life activities. A meeting was held at the school with administrators, teachers, and parents to discuss J.D.J.'s behavior. The school district informed the parent later that J.D.J. would no longer be allowed to attend school until he was evaluated by his doctor and went for blood work. The principal acknowledged that J.D.J. suffers from Asperger's Syndrome and was bipolar, and expressed her opinion that the school district was "not equipped with the personnel to help J.D.J. cope with our learning environment." She believed that J.D.J.'s medical issues were severe enough to warrant another placement and requested medical home teaching. The parents requested a special education evaluation. After J.D.J. returned to school from the Niagara Falls Medical Center a meeting of all stakeholders took place to discuss an adjustment to J.D.J.'s Section 504 Plan based on J.D.J.'s approximately 7-week expulsion. J.D.J. was known to have hysterical outbursts and episodes characterized by catatonic states and blank stares. He also would drop to the floor and would hit his head. J.D.J. received no educational services while he was expelled nor was he

given a hearing or advised of any procedural rights prior to being expelled. The school informed the parents' attorney that J.D.J. was recommended that he be classified as a student with a disability. J.D.J.'s parents were informed by the school district that as a home schooled student, he would not be entitled to special education services under the IDEA. The parents sought relief in district court.

Issue: The issue is whether the school district violated the student's rights under the Fourteenth Amendment, IDEA, and state law and denied the student FAPE.

Holding: The Court held for the parents denying the school district's Motion for Summary Judgment. The school district's objections and Cross-Motion for Summary judgment were denied.

Reasoning: The Court reasoned that the IDEA's exhaustion requirement applies where the parents seek relief under other federal statutes, when relief was also available under the IDEA. The exhaustion requirement under the IDEA will be excused where the parents were not notified of their rights under the IDEA. The parents and the student in this case were excused from administrative exhaustion requirement for the claim that the student was denied his right to FAPE, in violation of the IDEA, where the school district failed to notice to parent and student of their rights under the IDEA. The Fourteenth Amendment does not entitle the student to a FAPE, but prohibits deprivations of life, liberty, or property, and property interests protected by that Amendment. Claims are subject to exhaustion where the parents allege a Fourteenth Amendment due process violation claim on violations of the IDEA for which relief under the IDEA is obtainable. The court reasoned that administrative exhaustion requirement does not apply to alleged due process violations brought under Section 1983.

Disposition: The United States District Court denied the school district's Motion for Summary Judgment.

Citation: *G.C. v. School Board of Seminole County, Florida*, 639 F.Supp.2d 1295 (M.D.Fla. 2009).

Key Facts: G.C. was a special education student with Pervasive Developmental Delay and ADD at South Seminole Middle School in Florida. The complaint states that the student was physically, emotionally, and psychologically abused by his teacher. The complaint also states that the student witnessed the abuse of his classmates. The student allegedly received emotional trauma from these incidents. The teacher was arrested and prosecuted for abusing her students. The parents claim that the school district knew about the teacher's record of abuse and did nothing about it. G.C. was known to be impulsive and difficult to handle. He was known to engage in destructive behavior while at school and was known to walk on top of desks when sent there for punishment. He was also known "to scream, stomp, and verbally lash out and will curse." G.C.'s behaviors increased in aggressiveness. The only admissible evidence of abuse was the bruises on his knees and testimony from the teacher's aide. There was no evidence that the teacher caused this bruising. The teacher was also known to yell at G.C. at the bus stop intended to be instructive and not a put down according to the teacher. No one recalls any profanity in the presence of G.C. The teacher used restraints on several occasions with G.C. This was for various behavioral issues with G.C. especially because he was a "runner." The parent brought a claim to district court.

Issue: The issue is whether the teacher violated the student's rights under Section 1983 claiming that she deprived him of his "constitutional civil rights and his Fourteenth Amendment

due process liberty interest.” The issue is also whether the school district violated the student’s rights under Section 1983 for negligent hiring, supervision, and retention.

Holding: The Court held that “the limited incidents of physical restraint used on the student by the teacher did not result in an injury which rose to a level which shocked the conscience” and the student’s seeing other students in his class allegedly being abused did not rise to the level of “shocks the conscience” standard that is required to claim Section 1983 due process claim.

Reasoning: The court reasoned that a teacher using inappropriate language toward a student did not amount to a violation of the student’s substantive due process rights under Section 1983. “Verbal abuse is not a constitutional violation.” To claim a substantive due process claim for physical abuse a student must prove that a school teacher “intentionally used an amount of force that was obviously excessive under the circumstances and the force used presented a reasonably foreseeable risk of serious bodily injury.” The court examines the following factors: “the need for the application of corporal punishment, the relationship between the need and amount of punishment administered, and the extent of the injury inflicted.” The court reasoned that the autistic child’s developmental disability should be taken into account when considering whether the teacher’s punishment and the injury the child received “shocked the court’s conscience.” This would establish a due process claim under Section 1983. The amount of restraints mentioned in this case did not result in an injury which shocked the court’s conscience. There was a lack of evidence that the student witnessed any abuse by the teacher against any other student. This also did not shock the court’s conscience. The court also reasoned that the Fourteenth Amendment was not meant to be used through Section 1983 to convert state tort claims into federal causes of action. To place a liability on a school district the

student must show that their constitutional rights were violated, that the district had a policy that constituted a deliberate indifference to that constitutional right, and the policy caused the violation. The student in this case failed to establish a violation of the constitution when the teacher's alleged physical abuse of him and his classmates. Therefore, the Section 1983 liability on the school district was rejected.

Disposition: The United States District Court granted the teacher's Motion for Summary Judgment. The Court granted in part the school district's Motion for Summary Judgment. The Court granted Summary Judgment on Count I and denied without prejudice Count III. The Court declined to exercise supplemental jurisdiction over the remaining state law claim in Count III. The Court dismissed without prejudice that claim to refile it in state court. All other pending motions were denied as moot.

Citation: *L. ex. rel. Mr. F. v. North Haven Board of Education*, 624 F.Supp. 2d 163, 246 Ed. Law Rep. 795 (D. Conn. 2009).

Key Facts: L. was a 9-year-old student with Downs Syndrome in the North Haven School District. L. had global delays in communication, gross and fine motor skills, memory processing, short-term memory processing, and cognitive limitations. She also exhibited many behavioral issues that set this case in motion. She was evaluated and re-evaluated several times by multiple agencies and psychiatrists that agreed basically that L. had severe behavioral and emotional issues that required a behavior plan. L.'s IEP was amended to attempt new plans to address the significant misbehaviors that resulted in L. not being allowed to remain in the general education classroom. She caused a disruption to the classroom that hindered the other students from learning. L.'s parents objected to the crisis intervention plan suggested by the school district. This was particularly true of the provision that caused the school to call the parents to

take her home when L. misbehaved. The parents also did not agree to the time-out room for L. The PPT met to determine if the episodes of aggressive and violent misbehavior were a manifestation of her disability. The PPT agreed that the misbehavior was not a result of the school's failure to implement the IEP. The school district declined the parents' request for an IEE. Meeting again later the PPT agreed for the STAR team to conduct a follow-up evaluation. In the meantime, the parents agreed to implement only the proactive parts of the behavior plan and not the time-out components until the STAR evaluation could be completed. The PPT adopted the interim behavior plan on the parents' request. Several additional revisions occurred with L.'s IEP and behavior plans. Teachers and support staff made changes over the objections of the parents. During all of these modifications to the IEP and behavior plans, L.'s behavior continued to intensify. The school district eventually recommended that L. be placed in an alternative out-of-district program. The PPT also recommended an interim, homebound instruction program. A due process hearing was requested and the Hearing Officer rejected the parents' claims relating to procedural violations of the IDEA. She also concluded that the 10-day suspensions were permissible. The Hearing Officer also rejected the parents' substantive challenges that L. had not received a FAPE. The written record did not support the parents' claims that the PPT had not considered whether to place L. in regular classes. The Hearing Officer blamed the parents for the behavior plans not working concluding that they rejected the ACES Behavior Plan, which she described as an appropriate plan. The Hearing Officer rejected the parents' claims that L.'s misconduct was a result of the school district's suspending her. The Hearing Officer concluded that the plan proposed by the school district and rejected by the parents "would have provided L. with a FAPE in an appropriate setting." The HO concluded

that the school district's recommendation for the student to attend an out-of-district private, state approved special education program offered a FAPE in the LRE under the IDEA.

Issue: The issue is whether the Hearing Officer correctly determined that the IEP adopted by the school district at the PPT meeting provided the student with FAPE.

Holding: The Court held that in the second academic school year there were no procedural inadequacies that denied the student of a FAPE, for both subject academic years the student was provided a FAPE in the LRE, and a Hearing Officer did not lack jurisdiction to order PPT to consider out-of-district placement for the student.

Reasoning: The court reasoned that due deference should be given a hearing officer's decision because the courts lack specialized knowledge and experience involving questions on educational policy. The court decides if the school district complied with the procedural requirements of the IDEA and if the IEP was "reasonably calculated to enable the child to receive educational benefits." The court realizes that every error the school system makes under the IDEA is a denial of FAPE. Only if the error impeded the student's right to FAPE and the opportunity for the parent's to participate in the decision making is there a denial of FAPE. The court felt there were not procedural problems in the IEP year in question that would deprive the student a FAPE. There was no evidence presented by the parents to prove their child's placement was changed prior to the PPT meeting. The IDEA does not offer any specific level of educational benefits under the IDEA. The court determined that the IEP was appropriate for the child although he student was not placed in a general education classroom for more than 80% of the day. The percentage of how long the student should stay in the general education environment was made on the basis of the student's individual needs. The school district could not be blamed for deficiencies in the behavior plan because the parents would not accept the

time-out room. The court reasoned that the hearing officer did not make an error when she ruled that the IEP was appropriate and the plan could not be implemented because the student's behavior kept her from the regular education classroom. Even with the support of all the stakeholders and a Behavior Intervention Plan, the student's misbehavior escalated. Amending the IEP and pursuing an out-of-district placement would provide FAPE in the least restrictive environment for the student.

Disposition: The United States District Court affirmed the Hearing Officer's order. The Court denied the parents' motion for summary judgment and granted the school district's cross-motion for summary judgment.

Citation: *M.S.-G v. Lenape Reg. High School District*, 306 Fed.Appx. 772 (3rd Cir. 2009).

Key Facts: M.S.-G. was a special education high school student in the Lenape Regional High School District in New Jersey. The student requested a due process hearing with the New Jersey Office of Special Education Programs requesting relief under the IDEA. The student in his complaint addressed several issues for which he did not state a reason. The issues were a suspension, a return to his current placement after the suspension, no description of his IEP or his current placement, no facts concerning remedies, and no facts regarding the psychiatric evaluation request. The ALJ encouraged the parties to communicate and make an effort to resolve their differences. Eight days later the due process hearing took place again. The student's allegations were much the same as before with a few additions. He actually submitted facts regarding the suspension, his placement, and the remedies had a slightly different wording. The ALJ dismissed the second petition by the student for failure to sufficiently state a claim. The letter provided by the student still failed to provide all the facts that would satisfy a finding.

The student appealed the Hearing Officer's decision to the district court. The district court held for the school district and dismissed the student's claim. The student appealed to the Third Circuit.

Issue: The issue is whether the school district violated the student's rights under the IDEA, the Rehabilitation Act, and state law.

Holding: The District Court dismissed the claims of the student. The Appeals Court held that the student failed to satisfy the pleading requirement of the IDEA.

Reasoning: The student in his complaint addressed several issues for which he did not state a reason. The issues were a suspension, a return to his current placement after the suspension, no description of his IEP or his current placement, facts concerning remedies, and facts regarding the psychiatric evaluation request. The ALJ encouraged the parties to communicate and make an effort to resolve their differences. Eight days later the due process hearing took place again. The student's allegations were much the same as before with a few additions. He actually submitted facts regarding the suspension, his placement in this new petition and the remedies had a slightly different wording. The ALJ dismissed the second petition by the student for failure to sufficiently state a claim. The letter provided by the student still failed to provide all the facts that would satisfy a finding.

Disposition: The United States Court of Appeals, Third Circuit, affirmed the judgment of the District Court.

Citation: *Pohorecki v. Anthony Wayne Local School District*, 637 F.Supp.2d 547 (N.D. Ohio 2009).

Key Facts: J.C. was a student in the second grade with ADD, ADHD, and absence seizures in the Anthony Wayne Local School District in Ohio when the school district conducted

an evaluation and determined that J.C. was eligible for special education under the “emotional disturbance” exceptionality. He exhibited misbehavior, obstinacy, and inattentiveness. During his eighth grade year, J.C.’s parents proposed the idea that J.C. had Asperger’s Syndrome. The IEP met to discuss this issue. J.C.’s parent filed a due process hearing to contest the IEP. The parties agreed to a settlement and the school district conducted a multi-factored evaluation (MFE). A doctor was consulted and a FBA and BIP were developed. When all evaluations were complete the IEP team met and determined that J.C. would most appropriately continue with the “emotional disturbance” category. The new IEP for the following year was not agreed to by the parents due to its placement of J.C. in the regular education classroom rather than a special education classroom. J.C. was removed from the school district for the rest of the year due to “stress and anxiety.” A new IEP was developed to address this home instruction. The parents filed a second due process hearing. The hearing officer concluded they had no jurisdiction over the question of whether the IEP provided a FAPE. The Hearing Officer ruled in favor of the school district on the remaining issues. The parents appealed the decision to the SLRO. The SLRO upheld the hearing officer’s decision and found the school district did offer J.C. a FAPE. The parents then appealed to the district court.

Issue: The issue is whether the school district violated the student’s rights under the IDEA in denying a FAPE and whether the student was entitled to compensatory services.

Holding: The Court held that the challenge to an IEP replaced with another IEP before the school year in this case was moot, the BIP provided a FAPE, the classification of the student as a child with “emotional disturbance” was reasonable, and the district was not required to afford a student a one-on-one aide, speech therapy, and occupational therapy to provide the requisite FAPE.

Reasoning: The court reasoned that the court should give deference to administrative decisions but is obligated to re-examine the evidence. In IDEA cases, the burden of proof is on the party who initiates a due process hearing challenging the IEP. If the parent claims a denial of FAPE and challenges the appropriateness of the IDEA but fails to meet the burden of proof, the parent is barred from obtaining reimbursement. The court reasoned that the IEP was not reviewable and the IEP was never implemented. The student did not “suffer negative consequences as a result of the mere proposal of the IEP.” The hearing officer only had to review the behavior plan when the plan was added to an existing IEP. The Behavior Intervention Plan developed according to the settlement agreement provided a FAPE. The court said the parent could not raise new claims on the appeal of the adequacy of the IEP. There was no requirement that an IEP include specific data points from a multi-factored evaluation (MFE). The school district’s classification of the child as “emotional disturbance” was reasonable. The parent claimed the student had Asperger’s Syndrome and should be labeled as having “Autism” or Other Health Impaired.” There was insufficient evidence to conclude otherwise. The court also reasoned that the school was not required to offer a student a one-on-one aide, speech therapy, and occupational therapy to provide a FAPE in order to provide “meaningful educational benefit.”

Disposition: The United States District Court declined to order services of compensatory education and determined that the student was provided a FAPE under the IDEA.

Citation: *Richardson Independence School District v. Michael Z.*, 580 F.3d 286, 249 Ed. Law Rep. 34.

Key Facts: Leah Z. was student with autism, oppositional defiance disorder, polar disorder, separation anxiety, and pervasive developmental disorder. Leah enrolled in the

Richardson Independent School District in the fifth grade. Leah was qualified for special education and an IEP was developed for her. In junior high school her behavioral and academic difficulties increased. Over the course of the next few years, Leah's IEP was revisited to address these issues. Leah began displaying inappropriate behaviors, which were a violation of the school code of conduct including running away from school. Upon being caught by the police on one of these incidents, the psychiatrist recommended homebound instruction. Her behaviors turned for the worse when she returned to school. Her psychiatrist recommended she remain home until an alternate placement could be found. The school district agreed. Later that year, Leah was transferred to another high school by the district. This placement was inappropriate due to these issues: the teacher was long-term substitute not certified to teach in Texas, the teacher was not given a copy of Leah's IEP, and no one explained to the teacher Leah's problem with fleeing from class. After an incident at home, Leah's parents placed her in a psychiatric facility, the Texas NeuroRehab Center (TNRC), without notice to the school district. Her inappropriate behavior in the facility continued causing her to be restrained or placed in locked confinement. With medication, counseling, and therapy sessions causing some improvement, the TNRC discharged Leah in around seven months. It was recommended that she receive one-on-one supervision and special education classes to prevent future behavior problems. Leah's parents requested an ARD Committee Meeting to request that Leah be placed at the TNRC. The committee determined that the RISD could provide Leah with a FAPE and denied the private residential placement. The parents then requested an administrative due process hearing claiming that the RISD failed to provide Leah with a FAPE and requested reimbursement for her stay at the TNRC. The hearing officer agreed with the parents and awarded \$56,000. The district

court upheld this decision and awarded \$54, 714.40 in reimbursements and \$36,768.20 in attorney fees and costs. The school district appealed to the Fifth Circuit.

Issue: The issue is whether the IEP was appropriate and the alternate placement was appropriate under the IDEA.

Holding: The Appeals Court held that the IEP in regard to the public school was appropriate, under the IDEA. For a residential placement to be appropriate for the purposes of reimbursement, “the placement must be essential in order 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 to determine whether the student’s private residential facility treatment enabled her to “receive a meaningful educational benefit.”

Reasoning: The Appeals Court reasoned that for a residential placement to be appropriate under the IDEA, the placement must be essential in order for the disabled child to receive a meaningful educational benefit and primarily oriented toward enabling the child to obtain an education. The law does not require a school district to maximize a student’s potential but must confer some educational benefit. The Fifth Circuit reasoned that the district court erred in this finding.

Disposition: The United States Court of Appeals, Fifth Circuit, vacated the district court’s decision granting reimbursement and remanded for proceedings consistent with the opinion.

Citation: *S.J. v. Issaquah School Dist. No. 411*, 326 Fed.Appx.423, 247 Ed. Law Rep. 38.

Key Facts: S.J. was a student with a disability in the Issaquah School District. S.J had exhibited explosive behavior. In developing his IEP a part of the behavior plan included making

sure that S.J. took his medications to relieve these outbursts. The parents disagreed with the contents of the IEP and sought an administrative hearing challenging the educational program offered by the school district. The ALJ ruled in favor of the school district affirming the rights of the student to a FAPE under the IDEA. The case was appealed to the district court which affirmed the ALJ's decision. The parents appealed to the Ninth Circuit.

Issue: The issue is whether the school district's IEP was adequate, the student was entitled to reimbursement, the provision allowing medication to be dispensed was constitutional, and was a procedural defect with the IDEA when the private school personnel were not involved in the initial development.

Holding: The Appeals Court held that the school district offered a FAPE, the student was entitled to reimbursement under the IDEA for private placement, the provision of the behavior plan that allowed the school to administer medication to the student did not violate the student's Constitutional rights under the IDEA or state law, when personnel from the private school were allowed to participate in an IEP meeting, those IEPs were not defective, and the district court did not abuse its discretion in awarding only partial attorney fees.

Reasoning: The Appeals Court would not examine the parents' contention that the 1997 IDEA had changed the "basic floor of opportunity standard for IEPs," where the parents did not raise an argument before the ALJ or district court. The court reasoned that the IEP provided a FAPE to the student under the IDEA even though some pages of the IEP were blank. The court felt there was no prejudice in having blank pages. The court reasoned that the student was not entitled to reimbursement for private placement when he did not give the school district notice of his intended private placement and did not provide the school district an opportunity to address his objections to his IEP. The behavior plan that included language to address the taking of

medication did not violate the constitution under the IDEA or state law. The parents knew there was difficulty in getting S.J. to take his meds and this failure to take the meds contributed to his explosive outbursts. The parents also agreed that the school district should administer the meds and so obtained a doctor's permission for the school district to administer these meds. The Appeals Court reasoned that the defect to the IEP caused by the absence of private school personnel was cured by their inclusion in a subsequent IEP meeting.

Disposition: The United States Appeals Court, Ninth Circuit, affirmed the district court's decision denying the student's relief on his challenges to the school district's IEPs and granting the student only partial attorney fees.

Citation: *Springfield School Committee v. Doe*, 623 F.Supp.2d 150, 246 Ed. Law Rep. 780 (D. Mass. 2009).

Key Facts: Quetzal was an eighth grade student with a disability in the Springfield Public School system. Quetzal had issues with attention, concentration, poor academic performance, and significant behavioral and discipline issues. He was disruptive in all school settings. Quetzal had an IEP with a behavior plan. Later the student moved out of Springfield to a nearby school district where he was excessively absent from school. No action was taken to address this absenteeism from the school district. An IEP team meeting revised the IEP to include placement in a partial inclusion social/emotional/behavioral support program in the high school. The school did not address with the parent or the student his attendance problems. An administrative hearing was conducted by the BSEA and it concluded that the school committee had an affirmative duty to address the student's chronic absenteeism and their failure to do resulted in a failure to provide a FAPE. The hearing officer ordered the school committee to provide special education services during the summer to make up for the days he missed. The

school committee had previously offered to do this for the student. The school committee sought relief in district court.

Issue: The issue is whether the school committee had an affirmative duty to respond to the student's excessive absences and whether the student was entitled to attorney fees.

Holding: The court held that there was an affirmative duty for the school committee to address the student's excessive absenteeism, the student was not entitled to attorney fees that he incurred at the administrative level but was entitled to fees on appeal.

Reasoning: The court reasoned that it should give deference to the decisions of school authorities. The argument by the school committee that the BSEA improperly awarded compensatory services was because the compensatory relief ordered was the very proposal made by the committee to resolve the case. The court also reasoned that the school committee had an affirmative duty to respond to excessive absenteeism by the student under the IEP. Its failure to do so, denied the student a FAPE as one of the goals of the IEP was to improve school responsibility. The student was not entitled to an award of attorney fees as a prevailing party under the IDEA for fees generated during the administrative hearing because the education surrogate parent (ESP) failed to bill the trial court for his efforts before the BSEA and the school committee had made a settlement offer to the student 11 days prior to the scheduled BSEA hearing, and an offer was eventually adopted by the BSEA. The student was entitled to attorney fees for costs incurred during the appeals process, which had found the school district in violation of its duty.

Disposition: The United States District Court denied the student's motion for summary judgment, allowed the Massachusetts Bureau of Special Education Appeals' motion for summary

judgment, and allowed the student's motion on the substantive issues in part with respect to attorney fees.

Citation: *T.Y. v. New York City Dept. Of Education, Region 4*, 584 F.3d 412, 249 Ed. Law Rep. 742.

Key Facts: T.Y. was a student with a disability in the New York City Department of Education. T.Y. had significant developmental delays and a severe language disorder as a result of his autism. T.Y. also exhibited misbehaviors such as biting and pulling hair, which was addressed by providing a one-on-one aide. T.Y.'s IEP described his specialized program but did not indicate which specific school. The school district offered more than one school to the parents, which they found unsuitable. T.Y.'s parents enrolled the child in a private school for autistic children and sought reimbursement from the school district. A request for an administrative hearing was made by the parents. The IHO denied most of the parents' claims including that the IEP was procedurally deficient because it did not name the specific school of placement. The parents appealed to the SRO. The SRO agreed with the IHO's findings. T.Y.'s parents filed suit in district court seeking review of the administrative determinations.

Issue: The issue is whether the school district provided the student a FAPE and whether the IEP is deficient if it does not specify the school of placement.

Holding: The Appeals Court held that the IEP did not substantively violate the IDEA and the IEP was not procedurally deficient under the IDEA.

Reasoning: The Appeals Court reasoned that the court must give deference to the decisions of administrative proceedings. The district court's error in characterizing the New York City Department of Education's summary judgment statement as a necessary requirement under local rule was harmless because the court conducted an independent review and carefully

reviewed the record. The student's IEP to address his delays and language disorder did not substantively violate the IDEA by allegedly depriving the student of a FAPE and for failing to provide a FBA or BIP, since the IEP authorized a full time one-on-one aide to provide assistance as well as parent training. The location of services in the IDEA does not mean that the IEP must specify a specific school site but refers to a type of environment. In this case, the student's IEP that supposedly denied the parents participation in the process of development by failing to specify what particular school their child would attend was not procedurally deficient under the IDEA because the "location" means the general type of environment that services would be provided.

Disposition: The United States Court of Appeals, Second Circuit, affirmed the judgment of the district court.

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Citation: *C.N. v. Willmar Public Schools, District No. 347*, 591 F.3d 624, 252 Ed. Law Rep. 106 (8th Cir. 2010).

Key Facts: C.N. was a special education student with Autism Spectrum Disorder in the fourth grade at the Atwater Public School District when this action commenced. Previously C.N. attended school in the Willmar Public Schools from kindergarten to the third grade. While she was there C.N. had communication and hyperactivity issues. Her IEP included a behavior plan, which authorized the use of seclusion and restraint. C.N. was evaluated by an outside evaluator and C.N.'s IEP and BIP were revised. Although the outside evaluator did not recommend restraint or seclusion and particularly recommended against seclusion, the BIP continued to authorize their use to target behaviors. C.N.'s parents objected to their continued inclusion in the

behavior plan. During the time that C.N. was in her class at Lincoln Elementary School the teachers were alleged to have used techniques improperly and excessively and mistreated C.N. The child claimed that the restraints “choked her” and “hurt her very much.” Later the teacher was reported by the paraprofessional in the classroom for mistreatment of C.N. This was the third allegation made about the teacher. The parent heard of the allegations and filed a complaint with the MDE’s Accountability and Compliance Division. The MDE concluded that the teacher violated several of the student’s rights as a disabled student. The school district placed the teacher on leave and conducted its own investigation. The school district found evidence that the teacher denied C.N. access to the restroom. The teacher was never disciplined by the school district because the teacher claimed the incident was a lapse in judgment. The teacher returned to the classroom but left a few days later and never had further contact with C.N. The parent withdrew C.N. from Lincoln and enrolled her in a private school for the remainder of the year. The next year she returned to Atwater public school district. The parents requested an administrative hearing and challenged the adequacy of the educational services provided by the school district. The ALJ granted the school district’s motion to dismiss for lack of jurisdiction since the mother removed the student to another district without requesting a hearing. The parents appealed to the district court. The district court concluded the student’s IDEA claim failed as a matter of law because she did not request a hearing on her claims against the school district. The district court also dismissed the remaining federal claims. The decision was appealed to the Eighth Circuit.

Issue: The issue is whether the school district provided adequate educational services and violated the student’s rights under the Rehabilitations Act and the Fourth and Fourteenth Amendments.

Holding: The Appeals Court held that by moving to another school district before asking for a due process hearing the student failed to exhaust administrative remedies under the IDEA, the use of seclusion and restraints by the teacher did not violate the student's Fourth Amendment right to be free from unreasonable seizures, and the allegations did not state a substantive due process violation.

Reasoning: The Appeals court reasoned that the use of restraint and seclusion by the teacher on disabled students did not violate the students' Fourth Amendment right to be free from unreasonable seizures. The allegations by a disabled a "student that a teacher mistreated an unidentified disabled student in a variety of ways, and that teacher used restraints, seclusion, and verbal and physical abuse against student, and verbal and physical abuse against student, did not state claim against the teacher for violation of substantive due process rights, absent specific facts about the alleged abuse, including dates and other circumstances." The parents IDEA claim failed as a matter of law because she did not request a hearing on her claims against the school district until after she removed the student from the district.

Disposition: The United States Appeals Court, Eighth Circuit, affirmed the district court's decision to dismiss the action by the student.

Citation: *JGS v. Titusville Area School District*, 737 F.Supp.2d 449, 263 Ed. Law Rep. 653 (W.D.Pa. 2010).

Key Facts: JGS was an autistic student in the Titusville Area School District. JGS had a record of loud profane screaming, verbal and physical outbursts, threats of force and violence, and suggestions of his intent to physically harm other students and personnel. These outbursts also included physically aggressive behavior. On one of these occasions JGS began screaming obscenities at the class. The aide placed her hand over his mouth. The child claims she made

him ingest liquid soap. The aide claims that liquid soap may have been on her hands from repeated use but she did not put any on her hands to force it in the child's mouth. The aide physically restrained JGS while the other kids were removed for their safety. The student's parents claim that this incident caused regression socially and educationally. They also contend that he reacts violently toward women because of the incident. The parents brought an action to the district court.

Issue: The issue is whether the school district violated the student's the Fourteenth Amendment's substantive due process rights.

Holding: The Court held that the aide did not cause serious physical injury, the aide had a pedagogical objective, and the aide did not act for the purpose of causing harm.

Reasoning: The court reasoned that in order for there to be a substantive due process violation in a school corporal punishment case, the conduct must be characterized as arbitrary or conscience shocking. The teacher's action of forcing the autistic student to ingest liquid hand sanitizer did not violate the student's Fourteenth Amendment due process rights because the student did not suffer any physical injury. The court reasoned that the teacher had a pedagogical objective when this incident occurred and so she did not violate the student's Fourteenth Amendment substantive due process rights because the student was standing up and screaming obscenities and threats at other students and staff during class time. The student had threatened to kill or injure other students, had previously stabbed a fellow student with a pencil.

Disposition: The United States District Court granted the school district's Motion for Summary Judgment and dismissed the student's claim.

Citation: *Payne v. Peninsula School District*, 598 F.3d 1123, 255 Ed. Law Rep. 456, rehearing overruled (9th Cir. 2010).

Key Facts: D.P. was student with moderate autism attended Artondale Elementary School in the Peninsula School District. D.P. exhibited a resistance to school work, had difficulties staying on task, and was impulsive with inappropriate responses to his environment. The school district addressed his behavior using interventions that included the use of time-outs in a “safe room.” The use of the room by the teacher is the issue in this case. D.P. was locked in the room on several occasions due to his behavior. On some of these occasions D.P. removed his clothing and urinated and defecated on himself. He helped his teacher clean up the mess. D.P. began to exhibit behaviors and experience emotional setbacks. The teacher defended her use of the safe room as an appropriate way to deal with D.P.’s outbursts. The parents did not agree with the use the safe room and requested mediation. An agreement was made to transfer D.P. to another school. Later the parents were unhappy with the services that D.P. received. The parents never sought a due process hearing. They filed a complaint in the district court. The district court found that it lacked subject matter jurisdiction over the parent’s federal claims because the parent failed to exhaust her administrative remedies before coming to federal court. The parent appealed to the Ninth Circuit.

Issue: The issue is whether the student’s rights were violated under the IDEA when the teacher placed the student in a “safe room.”

Holding: The Appeals Court held that the mother was required to exhaust administrative remedies under the IDEA before she bring suit against the Peninsula School District.

Reasoning: The district court reasoned that it lacked subject matter jurisdiction over the parent’s federal claims because the parent failed to exhaust her administrative remedies under the IDEA. The appeals court reasoned that the mother was required to exhaust administrative

remedies before she could bring a suit claiming negligence, outrage, and Section 1983 violations against the school district, the school, and school personnel.

Disposition: The United States Court of Appeals, Ninth Circuit, affirmed the decision of the district court decision to dismiss the parent's claims against the school district.

Citation: *T.W. ex rel. Wilson v. School Board of Seminole County, Fla.*, 610 F.3d 588, 258 Ed. Law Rep. 481 (11th Cir. 2010).

Key Facts: T.W. was a student with autism in the Seminole County school system. T.W. had previously been diagnosed with separation anxiety disorder, major depressive disorder, dysthymic disorder, receptive expressive language disorder, and pervasive developmental disorder. In the previous school system T.W. had exhibited a multitude of inappropriate behaviors and outbursts that caused him to be restrained and removed from the classroom on numerous occasions. At 14 years old T.W. moved to the enrolled an autism class in the present Seminole County school district in Orlando, Florida. Garrett, the teacher for the autism classroom, had a history of abusive behavior towards her students. She was transferred to South Seminole, which was where T.W. enrolled. Garrett "picked and nagged" at T.W. She would often restrain her students after she did something to upset or anger them. Garrett also failed to protect her students from harm. She used physical force on T.W. on five separate occasions. She had been trained and was certified on physical restraint and crisis prevention intervention. As a result of these issues in the classroom, T.W. regressed and had trouble sleeping, developed trust issues, started urinating all over the place, cried to and from school, and refused to close doors. His anger increased and his adaptive functioning decreased. The aides in the room reported these five incidents and the physical abuse that occurred to T.W. at the hands of Garrett to the principal after an incident involving another student in class. Garrett was suspended with

pay and was asked to leave the school grounds. Florida's child abuse hotline was called to report the allegations. The police arrested Garrett on charges of child abuse. The jury returned a verdict of guilty on one of four counts, but the court withheld adjudication. An investigation revealed that Garrett was involved in masochistic or sadistic sexual behavior outside the classroom and the Professional Standards Division seized her computers and found images that proved her involvement. T.W.'s mother filed a complaint against Garrett and the school district in district court. Her complaint was threefold: First, Garrett and the school board violated T.W.'s right under the Due Process Clause of the Fourteenth Amendment "to be free from unnecessary and unreasonable force or intentional, reckless or deliberate indifferent or psychological harm; second, the school district discriminated against T.W. on the basis of his disability, in violation of section 504 of the Rehabilitation Act; third, the school district negligently hired, supervised, or retained Garrett, in violation of Florida law. The district court granted the school board and Garrett's motion for summary judgment against all claims. The district court granted the motion as to the federal claims and declined to exercise supplemental jurisdiction over claims under state law. The district court did not decide whether Garrett was entitled to qualified immunity. T.W. and his mother appealed to the Eleventh Circuit.

Issue: The issue is whether the school district and teacher violated the student's constitutional rights under the Due Process Clause and discriminated against the student on the basis of his disability in violation of the Rehabilitation Act. The issue is whether a teacher violated a disabled student's right to be free from excessive corporal punishment or discriminated against the student solely by reason of his disability, in violation of federal statute, when the teacher physically and verbally abused the student on several occasions.

Holding: The Appeals Court held that the use of corporal punishment on the student by the teacher was not obviously excessive, the teacher's inappropriate restraint of the student was not totally unrelated to the need for use of corporal punishment, the teacher's pinning of the student's arms behind his back while she was leading the student to cool down room was capable of being construed as an attempt to restore, maintain discipline, or protect the student from self-injurious behavior, the teacher's restraint of the student after he refused to stop scratching an insect bite that was "red and raw looking" was capable of being construed as an attempt to restore order, maintain discipline, or protect the student from self-injurious behavior, the teacher's restraining of the student after he refused to follow her instructions and swung his hands at her was capable of being construed as an attempt to restore order, maintain discipline, or protect student from self-injurious behavior, the teacher's use of force in various incidents had been related to the student's disruptive or self-injurious conduct and was for the purpose of discipline, and was "corporal punishment" and did not violate the student's substantive due process rights, and the teacher's restraining of the student only after he refused to cool down in the classroom, called her names, and threatened to have her arrested was capable of being construed as an attempt to restore order, maintain discipline, or protect the student from self-injurious behavior.

Reasoning: The Appeals Court reasoned that the teacher's use of force in restraining him was not egregious and shocking to the conscience as required to violate the student's substantive due process rights. Only the most egregious governmental acts can be said to be arbitrary in the constitutional sense. Excessive corporal punishment may be actionable under the Due Process Clause when it becomes arbitrary, egregious, and conscience-shocking behavior. The teacher's use of force with T.W. in several incidents had been related to conduct that was self-injurious or

disruptive and discipline was its main purpose. “Corporal punishment was therefore used for the purpose of substantive due process civil rights claim, because the teacher stated to the student that she would release him if calmed down. The tripping incident, in which the teacher allegedly tripped the student, without more, did not violate the student’s substantive due process civil rights. The teacher’s use of corporal punishment against the student, in restraining him after he did not follow instructions could be considered an attempt by the teacher to restore order, maintain discipline, or protect the student from injuring himself or others. This was not considered by the appeals court to be egregious, arbitrary, and conscience shocking so as to violate the student’s substantive due process rights. This same reasoning applies to each of these situations: restraining the student when he refused to stop scratching an insect bite and pinning the student’s arms behind his back while leading him to the cool down room. The teacher’s abusive behavior towards the students did not affect the determination of whether the circumstances provided the teacher with a reason to use corporal punishment, and therefore, on substantive due process claim whether the force used was excessive. The court further reasoned that the use of corporal punishment by the teacher was not obviously excessive and not a violation of the student’s rights because he student only suffered minor injuries. When the teacher restrained the student for engaging in disruptive behavior, reasonable indifference did not exist to state that teacher abused the student solely because of his disability. The school district could not be vicariously liable under the theory of respondent superior. The Appeals Court depends on cases that deal with the ADA and the Rehabilitation Act interchangeably because the same standards govern discrimination claims under both statutes.

Disposition: The United States Court of Appeals, Eleventh Circuit, affirmed the district court’s decision to grant summary judgment for the school district and the teacher.

2011

Citation: *M.G. ex rel. LG v. Caldwell-West Caldwell Board of Education*, 804 F.Supp.2d 305, 275 Ed. Law Rep. 145 (D.N.J. 2011).

Key Facts: MG was a student diagnosed with Autism Spectrum Disorder with possible Asperger's Disorder and ADHD in the Caldwell-West Caldwell Public School District. MG attended two separate schools in the Caldwell-West Caldwell School District. He began in the Harrison School and transferred to Wilson Elementary. In both schools, MG exhibited aggressive behaviors that were a danger to himself and others in his class. MG's IEP was revised on several occasions and a behavior plan was developed particularly when his behaviors began escalating at the Wilson Elementary School. Wilson Elementary is the school where the restraint and isolating techniques were used for controlling these aggressive outbursts. The school staff also used positive reinforcement and ignoring techniques. MG's parent never agreed to these techniques and eventually transferred MG to another school district. MG's parents never requested a due process hearing and never sought compensatory education. They filed suit, claiming violations of their child's constitutional rights in New Jersey state court, which was eventually moved to federal district court.

Issue: The issue is whether the school district violated the student's rights under the IDEA, the Rehabilitation Act, the Fourth Amendment, the Fourteenth Amendment, and state law by engaging in tortious conduct.

Holding: The court held that the parents failed to satisfy the futility exception to the exhaustion requirement under the IDEA. Section 1983 action for damages could not be pursued by the parents to remedy the alleged violation of the Rehabilitation Act. The IDEA, the Fourth Amendment, or substantive due process was not violated by the teacher when she held the

student with a bear hug and put her hands on his shoulders, the policy of “restraining and isolating an autistic student who was repeatedly endangering himself and others around him was rationally related to the legitimate purpose of protecting him and others, therefore no equal protection violation occurred.”

Reasoning: The court reasoned that MG’s parents failed to satisfy the futility exception under the IDEA because although the parents presented facts suggesting MG’s educational plan was inadequate under the IDEA, they did not present facts suggesting the state of New Jersey’s administrative procedures could not resolve the shortcomings of MG’s education. The court contended that administrative remedies must be exhausted under the Rehabilitation Act against the school district on MG’s behalf. The court also contended that a Section 1983 claim was not an available remedy for violations of right created by the IDEA. With reference to the “bear hug” of the student by the teacher, “if the constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process.” The substantive due process clause of the Fourteenth Amendment “protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them. The conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.” When the teacher held the autistic student in a bear hug in an attempt to keep him from hurting himself or others, this did not violate the Fourth Amendment or substantive due process because the teacher had an appropriate pedagogical reason for restraining the student with force. The force the teacher used was no greater than necessary and done in a good faith effort to maintain discipline and not to harm the student intentionally. For the purposes of equal protection a

government policy treating disabled people differently from non-disabled people is subject to a rational-basis review. The school policy of isolating and restraining the autistic student, who often endangered himself and others around him, was rationally related to the legitimate purpose of protecting the student and others.

Disposition: The United States District Court granted summary judgment to the school district on all federal claims and dismissed all state claims.

Analysis of Case Briefs

The purpose of this research is to study court cases about student discipline for students receiving services under the IDEA. Case briefs in this chapter reveal that 132 federal court cases were analyzed. Of these cases, 85 cases were litigated in United States District Court, 46 were held in the United States Court of Appeals, and 1 special education discipline case was tried in the United States Supreme Court. Generally, without reference to the issues, the primary litigants were students with their parents against local school systems. Two cases, one in U.S. District Court and one in the Seventh Circuit, involved private disability rights agencies and state boards of education. Seventy-seven cases were held in favor of the school districts, 36 cases were found in favor of the students/parents, and 17 cases were found with a mixed judgment. To further breakdown these cases, the U. S. District Court ruled in favor of the students/parents in 26 cases and ruled in favor of the school districts in 45 cases. In cases appearing before the U. S. Court of Appeals, the student/parents prevailed in 10 cases and the school districts won in 32 cases. There were 15 U. S. District Court cases and 2 U. S. Appeals Court cases that were split decisions. The one case that was decided in the U. S. Supreme Court was decided in favor of the student.

An analysis of the cases revealed 13 categories or issues regarding the use of discipline with special needs students in public schools that were the subject of litigation in U. S. Federal Courts. Most cases contained more than one issue. Table one shows the categories of issues that are found throughout the cases. The issues are listed and the cases in which that category can be found are indicated on the table along with the total number of cases in each category.

Table 1

Issues Emerging from Federal Court Cases

Issue	Case number	Total Cases
Compensatory Education	28, 37, 44, 57, 97, 103, 111, 117, 123	9
Corporal Punishment	11, 15, 22, 84, 102, 104, 106, 107, 110, 120, 129, 131	12
Due Process Hearing	4, 5, 7, 11, 26, 32, 36, 37, 38, 39, 41, 42, 43, 44, 46, 49, 50, 53, 55, 56, 58, 59, 60, 63, 66, 67, 68, 71, 72, 74, 76, 78, 79, 81, 82, 83, 86, 88, 91, 92, 94, 96, 99, 100, 103, 105, 108, 109, 111, 112, 113, 114, 118, 121, 122, 123, 124, 125, 126, 127	60
Exhaustion of Administrative Remedies	18, 20, 24, 37, 47, 48, 60, 61, 62, 67, 70, 74, 78, 84, 86, 92, 95, 97, 98, 99, 101, 103, 106, 107, 109, 111, 116, 119, 128, 130, 132	31
Expulsion	1, 2, 4, 6, 8, 9, 12, 14, 20, 30, 32, 33, 39, 49, 50, 53, 59, 57, 60, 63, 65, 68, 71, 72, 77, 78, 79, 82, 84, 92, 97, 99, 111, 117, 119	35
FAPE	3, 4, 7, 10, 14, 28, 30, 32, 38, 42, 46, 48, 57, 58, 59, 62, 66, 69, 72, 76, 80, 81, 83, 85, 89, 91, 96, 100, 102, 103, 105, 106, 107, 108, 111, 112, 113, 117, 118, 119, 121, 123, 124, 125, 126, 127	46
Identification	25, 32, 42, 47, 50, 97, 116, 119	8
Manifestation	2, 4, 5, 6, 9, 12, 20, 25, 30, 32, 48, 49, 56, 57, 66, 68, 70, 71, 72, 74, 76, 78, 82, 83, 92, 94, 101, 108, 109, 111, 113, 115, 116, 121	36
Placement	1, 2, 3, 4, 6, 7, 8, 9, 10, 14, 16, 17, 18, 21, 23, 26, 27, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 49, 50, 51, 52, 55, 56, 57, 58, 59, 63, 66, 70, 72, 74, 76, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 96, 97, 99, 100, 103, 105, 108, 109, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 126, 127	73
Qualified Immunity	29, 54, 61, 73, 90, 104, 110, 112	8
Seclusion/Restraint	11, 18, 54, 59, 62, 64, 67, 83, 88, 95, 98, 100, 102, 106, 107, 112, 114, 120, 121, 124, 128, 130, 131, 132	24

(table continues)

Issue	Case number	Total Cases
Stay-Put	8, 10, 12, 13, 14, 23, 26, 28, 33, 39, 40, 41, 43, 45, 47, 48, 49, 52, 53, 55, 56, 57, 58, 60, 63, 65, 72, 77, 78, 79, 86, 99, 113, 117	34
Suspension	1, 2, 3, 5, 7, 9, 12, 13, 14, 15, 19, 20, 25, 28, 30, 32, 33, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 53, 56, 57, 60, 61, 63, 65, 66, 68, 69, 72, 74, 75, 76, 78, 79, 81, 82, 88, 90, 93, 94, 97, 101, 108, 109, 111, 113, 115, 116, 117, 121, 122	62

Emerging from these cases are categories that are the primary issue or one of the primary issues in the case. It is important to school administrators and special education teachers that there be an awareness of these categories of litigation so as to avoid due process hearings and lawsuits from parents and students in regard to these common categories. Public school administrators need to know the law (IDEA) as it pertains to the discipline of special education students in order to handle the day-to-day behavior and disciplining of these students. Figure 1 shows the 10 most frequent categories in the cases analyzed. The categories are ranked in order from most frequently found in cases to least frequently found in cases in which the category was a primary issue in the case. The categories are placement, FAPE, exhaustion of administrative remedies, stay-put, suspension, seclusion/restraint, expulsion, manifestation, corporal punishment, and due process hearing. A case may include more than one category or issue. For the purpose of this analysis one case was selected for each category in order not to duplicate cases. The following is an analysis of each of the cases in their primary categories listed in order of most frequently found as shown in Figure 1.

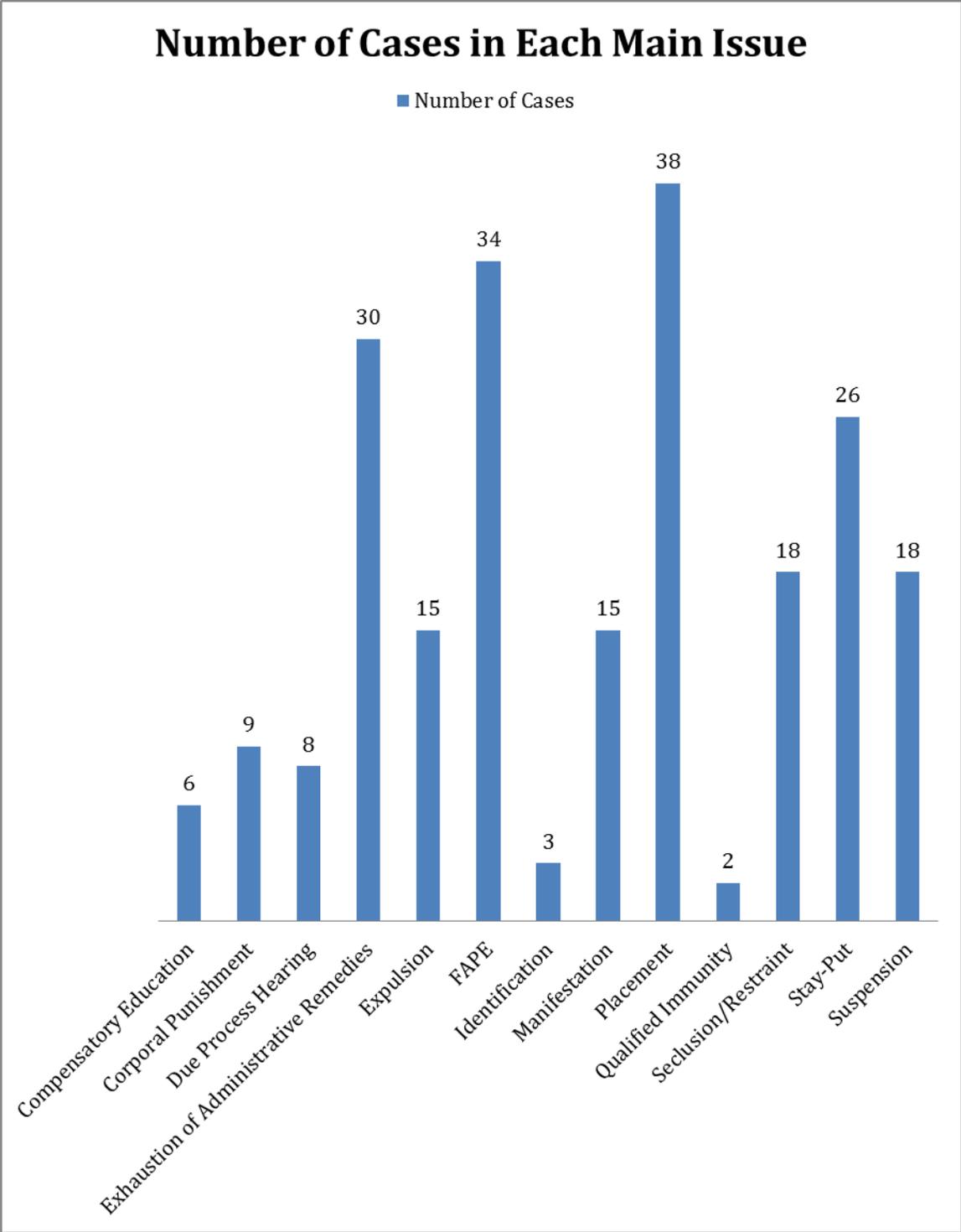


Figure 1. Frequency of main issues in federal court cases.

Placement

Placement or Change in Placement is the category with the largest number of cases. There were 73 total cases of the 132 that had placement as an issue. This issue is the most prevalent of all issues analyzed in regard to litigation. Placement is where the child should be served their specially designed instruction. If the student is involved in a disciplinary issue, school personnel need to know what options they have in moving the student to another location. There were 38 cases in which placement was one of the main issues. Of these cases, 15 cases in which placement was the primary issue follow.

S – I v. Turlington, 635 F. 2d. 342 (5th Cir. 1981). In this case special education students were suspended and expelled for misconduct. The issue in the case was whether an expulsion is a change in educational placement thereby invoking the procedural protections of the EHA and section 504 and whether the EHA, section 504, and their implementing regulations contemplate a dual system of discipline for handicapped and non-handicapped students. The trial court found that the right to a FAPE was provided for all disabled students through the EAHCA. The expelled students were found to have been denied this right in violation of the EHA. The Appeals Court felt that expulsion was a change in placement.

Kaelin v. Grubbs, 682 F.2d. 595 (6th Cir. 1982). A student with a disability was suspended and expelled from school for misconduct. The sole issue on appeal is whether an expulsion from school is a “change of placement” within the meaning of the Education for All-Handicapped Children Act. The U.S. District Court held that an expulsion from school was a “change of placement.” The student was expelled without receiving the procedural protections afforded by the Handicapped Children Act and Section 504’s implementing regulations. The relationship between Michael’s disruptive behavior and his handicap were not addressed by the

Board. The AARC was not convened before or during the expulsion hearing. The Exceptional Children Bureau and the State Superintendent refused Michael's request to convene the AARC following his expulsion. The school district claimed that expulsion was not a change of placement. Michael claimed that expulsion did constitute a change of placement. The Appeals Court stated that the argument that it is not a change of placement ignores a well-reasoned opinion from the Fifth Circuit.

Cain v. Yukon Public Schools, Dist. I-27, 556 F. Supp. 605, 9 Ed. Law Rep. 865, affirmed 775 F. 2d. 15, 28 Ed. Law Rep. 34. Parents of Mark Cain appealed a due process ruling and a District Court's ruling in favor of the school district with regard to their request that the school district pay for the tuition on a private school of their mentally retarded and emotionally disturbed child who was repeatedly suspended for disruptive emotional outbursts. The case was appealed to the Tenth Circuit Court of Appeals after losing in District Court. At issue was whether parents have a right, absent an agreement with the educational authorities, to elect unilaterally to place their child in a private school and recover the tuition costs. The school district was not required to pay for education of mentally retarded and emotionally disturbed child in a private school where child's parents had enrolled him in the school after a due process proceeding under the EAHCA had been initiated.

Lamont X v. Quisenberry, 606 F. Supp. 809, 24 Ed. Law Rep. 772. Two severely behaviorally disabled students sought a motion in district court for preliminary injunction, prohibiting school and school officials from preventing them from returning to classroom at the Children's Home (STBH classroom) pending the outcome of certain statutory proceedings. During the school year, each student was involved in several episodes of disruptive or violent behavior. The students were removed from the classroom and services were provided 1 hour per

day using tutors at The Children's Home. The issues in this case were whether the IEP modifications a "change in placement" and were defendants justified in removing plaintiffs from the classroom for reasons of public or plaintiffs' own safety? The court held that the plaintiffs, by demonstrating that they had been subjected to a change in placement, which was not approved by their guardians and had not yet been vindicated by administrative mechanisms, had established that they were entitled to injunctive relief. The court also held that the nature of the disciplinary infractions committed by the students were not so severe as to, in effect, constitute an equitable defense to issuance of injunction mandating a return to the classroom. And lastly, the court held that an injunction would be issued prohibiting defendants from preventing the students from returning to the classroom. The court reasoned that an expulsion for disciplinary reason is a change in placement for purposes of the Education of All Handicapped Children Act. Also, taking a student from the classroom and instead providing home-based tutoring constitutes a change in placement. Substantial programmatic modification which occurred with respect to severely behaviorally handicapped children when they were prevented from returning to the classroom after engaging in disruptive behavior constituted a "change in placement."

Board of Education of Township High School District No. 211 v. Corral, 441 EHLR Dec. 390 (N.D. Ill. 1989). A student with a disability lived in a residential facility. After the student's behavior became more threatening and disruptive at the school, the district removed him from his placement and held a conference to determine alternate placements. The district recommended a private school that served the residents of the facility in which the student lived. His parents agreed to this placement for the summer and the next school year, however, they wished for him to remain at the present school the remainder of the present year. Because the school district felt the student was a danger to himself and others, the district sought an

injunction prohibiting him from returning to the High School for the remainder of the year. The issue is whether the school district will be irreparably harmed without injunction, or will have adequate remedy at law, whether injury to district outweighs injury to the student if an injunction is granted, and whether the injunction will serve the public interest. The U. S. District Court agreed with the School District. The Court reasoned that where the conduct of a student who possess physical strength and is autistic with a behavioral disorder causes danger to himself and others created by his return to school, this outweighs the inconvenience to the disabled student by mid-year change of placement.

Victoria L. v. District School Board, 741 F. 2d. 369 (11th Cir. 1984). A student with a disability sought action against her school system, claiming she was transferred to an alternative learning center, which violated her right to attend a publicly funded special education placement appropriate for her disability. Victoria, although she was exhibiting behavior considered dangerous, during the pendency of the proceedings, asked for a preliminary injunction so she could attend the high school. She was denied relief by the U.S. District Court. The school board was not shown to have violated student's procedural rights to remain in the high school during pendency of the action. Evidence failed to show that proposed placement was in any way inappropriate.

Board of Education of Township No. 211 v. Linda Kurtz Imig, 16 EHLR Dec. 17 (N.D. Ill. 1989). A student with a disability became a physical danger to other students and staff at the high school. The school district sought injunctive relief enjoining the parent from sending the student to school until the conclusion of the special education dispute-resolution process or until he ceased to be dangerous and/or disruptive. The school district claimed that it had two placement options. One placement would be an alternate public high school and the other

placement would be Homebound Services. The issue was whether there is irreparable injury to the school district, if there was a lack of adequate remedy at law, a likelihood of success on the merits, a balancing of harms, and the public interest. The U. S. District Court agreed with the school district. The court felt that allowing the student to attend his high school was very likely to result in injury to other individuals.

Chris D. v. Montgomery County Board of Education, 16 IDELR 1183 (Ala. 1990). A student with an emotionally conflicted disability became disruptive and violent. The police were called in to intervene on at least one occasion. The parent's became distrustful of the school administration because of their methods of discipline. As a result of these issues, the student's mother requested he be placed in a residential school. School officials persuaded the student's mother to return him to school and attend a special education class for the full day. The student continued to display severe emotional and social behaviors. The police were again called to help handle him. Once again the mother requested residential placement and the school refused to make any changes in his placement at school. The mother sought administrative review and after that proved to be unsuccessful, she filed suit. After other occasions in which the student became so violent that he was cuffed by the police, the school and the mother sought an injunction pending the outcome of this litigation. The U.S. Magistrate recommended that the court issue a preliminary injunction embodying a compromise plan that would require the school board to provide the student with academic instruction in his home for a minimum of 6 hours a day. The mother objected. The school system then proposed a plan under which he would receive individual instruction in a room in a school system administrative building, but away from other school children. The magistrate issued a supplemental report agreeing with the mother and recommended that, pending disposition of the lawsuit, the school board should be required to

place the students in a residential school. The magistrate also concluded that a learning center was inappropriate for the student, as well. The school board objected to this supplemental recommendation. The issue is what relief the court should afford since the parties had agreed that his present placement was inappropriate. The court held that a residential program was the best place to address these needs. The least restrictive environment according to the EHA was a residential placement. The school board's alternative proposals for homebound instruction or individual instruction in an administrative building were inappropriate because they would not give Chris the opportunity to make educational progress, because both were more restrictive environments than residential placement, and because neither offers an opportunity for Chris to return to the restrictive environment of a regular classroom setting.

Fuhrman v. East Hanover Board, (1991) 993 F2d. 1031. A student with a disability, who exhibited developmental problems, was provided with specially designed instruction and appropriate related services to meet his speech and occupational therapy needs. He made progress but had serious behavioral problems. The parents requested that the student be placed in the behavioral oriented program in the District for the full day beginning in the summer. The school district denied the request stating that the student's current program was appropriate. The parents pulled him out and placed him in another school with some success at their own expense. The school district recommended another placement. The parents kept him at the State School. The parents sought relief for the alleged violations of the IDEA in District Court. The issue is whether the student received proper educational placement in accordance under the IDEA. The Court of Appeals held that the placement was "appropriate" in that they were reasonably calculated to receive educational benefits and meet the student's individual needs.

Clyde K. v. Puyallup School District, (1994) 35 F3d. 1396. A student with a disability received special education services while mainstreaming in regular education schools. The student's behavior problems increase and he was suspended several times. He was removed from school by emergency expulsion for assaulting a school staff member. His parents agreed with school officials that for safety reasons he should not remain at school. The district suggested placing the student in an off-campus, self-contained program (STARS) on an interim basis until he could be safely reintegrated into regular school programs. His parents agreed, at first, but changed their minds. They requested a due process hearing and subsequently, rejected the school district's placement in STARS until a new IEP could be developed. Efforts to develop an IEP were unsuccessful and the student's parents demanded that he be allowed to return to his original junior high school the remainder of the year. It was determined by the ALJ in due process that the school fully complied with the IDEA. The parents appealed to the District Court. The District Court affirmed the ALJ's decision. An issue is whether the school district violated the IDEA's procedural requirements by failing to draft a new IEP before attempting to move the student to a new placement. Also, an issue is whether there were substantive violations of the IDEA in terms of the student's appropriate stay-put placement during the pendency of the proceedings. The final issue is whether the district violated the IDEA's least restrictive environment requirements by placing the student in a self-contained classroom rather than mainstreaming him. The District Court held that the administrative law judge's decision concluding the school district complied with the IDEA was affirmed. The United States Court of Appeals held for the school district and affirmed the District Court's decision. The court reasoned that since the primary goals and objectives of Ryan's IEP could be achieved in the proposed placement, the school was not obligated to draft a new IEP prior to

making its recommendation. As to the “stay-put” provision, which provides that during the pendency of any proceedings under the IDEA, “the child shall remain in the then current educational placement.” The court concluded that Ryan’s placement was the STARS program. As for the parents contention that Ryan’s least restrictive environment should be a mainstream classroom rather than the STARS classroom, the court, after applying a four-part test, determined that the STARS program was Ryan’s least restrictive environment for reasons that include: Ryan no longer received educational benefit from mainstream placement, his behavior prevented him from learning, his academic achievement declined while mainstreamed, and a personal aide would make no meaningful difference, given the severity of his behavioral issues. The court went on to say that the district court’s finding that Ryan’s behavioral problems interfered with the ability of other students to learn. The court reasoned that disruptive behavior that significantly impairs the education of other students strongly suggests a mainstream placement is no longer appropriate. While school officials have a statutory duty to ensure that disabled students receive an appropriate education, they are not required to sit on their hands when a disabled student’s behavioral problems prevent both him and those around him from learning.

Light v. Parkway School District, 21 IDELR 933 (8th Cir. 1994). A student with multiple mental disabilities and behavior problems who exhibited a steady stream of aggressive and disruptive behaviors preceding her suspension. These actions by the student had a negative effect on her educational progress and the other students in her class. It was requested that the student be removed from her art class due to the distractions she caused and placed in a self-contained classroom for children with autism in another school district. The parents objected and requested an administrative hearing. Her parents also invoked the “stay-put” provision of the IDEA. Her parents disagreed with this change in placement and exercised their procedural

due process rights. Later, in the same art class, the student assaulted another special education student. The school district held an informal hearing that same day. The parents did not attend. The student was suspended for 10-days for her behavior. The parents brought an action the district court seeking to have the suspension lifted because they believe she was not afforded due process. At issue is whether the Supreme Court's holding in *Honig v. Doe* requires a district court to find that a child is not only "substantially likely to cause injury" but also "truly dangerous" before sanctioning a transfer, and whether a school district must make a reasonable accommodation of the child's disability before it can change her placement. The court granted the school district's motion for an injunction removing the student from school. The Court of Appeals, Eighth Circuit, held that the district court erred by refusing to consider whether Lauren Light's disabilities had been reasonably accommodated. Based on this independent review, the Court of Appeals concluded that a reasonable accommodation was made, and the court affirmed the district court's order that the student be removed from her current placement. The Appeals Court held that the District Court acted properly when stating that the student's behavior would likely result in injury to herself or to others. A school district's seeking to remove a dangerous child with a disability from their current educational placement must show that maintaining the child in that placement is substantially likely to result in injury either to himself or herself, or to others, and that the school district has done all that it reasonably can to reduce the risk that the child will cause injury. Where injury remains substantially likely despite the reasonable efforts of the school district to accommodate the child's disabilities, the district court may issue an injunction ordering that the child's placement be changed pending the outcome of the administrative review process.

School Board of Hillsborough Co. v. Student, 26493257X, 23 IDELR 93 (M.D. Fla. 1995). A student with autism began exhibiting aggressive and disruptive behavior. The school district worked to analyze the situation involving his behavior. An IEP Team was scheduled to talk about his placement. The school district secured a temporary restraining order and a preliminary injunction, which enjoined the student from attending the school. They were also authorized to place him at a facility for exceptional children. The parents were not in agreement. Both the parents and the school district filed cross-motions for summary judgment. The issue is whether the parents were entitled to a pre-suit notice and participation meeting before the school district could pursue its suit for injunctive relief. Also at issue is whether circumstances warranted the issuance of injunctive relief for the school district. Lastly, at issue is whether the parents could amend their counterclaim to secure alternative sources for damages. The District Court held for the school board and rejected the parents' arguments that they were entitled to a notice and participation of parents and special educators who were knowledgeable about the student before the school board was allowed to file its suit for injunctive relief. The court felt the school board's request for injunctive relief was authorized by *Honig v. Doe*.

School Board of Pinellas County, Fla. v. J.M. by and through L.M., 957 F. Supp. 1252. An autistic student exhibited violent behavior behaviors. The school district sought to place him back into his previous placement, which was more restricted for the safety of everyone. The student's parents disagreed and requested a due process hearing. The school district sought an injunction with the district court enjoining the enforcement of the "stay-put" provision of the IDEA for a term of 45 days and an order directing the student's placement at another school. The issue is whether the school district should be allowed a Preliminary Injunction allowing the temporary placement of a student with a disability in a more restrictive setting for 45 days while

an administrative due process hearing is conducted. The court held that the school district established that it was substantially likely to prevail on the merits of its claim that the student was likely to injure others if he was left in his current placement and other preliminary injunction factors also favored the school district. The court reasoned that the threatened injury outweighed the harm to the student caused by the injunction. The student would not be denied education but would receive FAPE in a more restrictive environment.

Randy M. v. Texas City ISD, 32 IDELR 168(S.D. TX. 2000). A special education student was placed in the Alternative Learning center for violating the school district's code of conduct. A hearing was conducted to determine if the behavior was a manifestation of his disability. The committee determined that it was not a manifestation of his disability. The parents failed to take advantage of the administrative procedures for review of the hearing officer's decision. They instead, withdrew the student from school and enrolled him after filing the federal litigation. The issue is whether the school district violated the student's constitutional rights and inappropriately placed him in an alternative educational setting for violation of school rules. The District Court agreed with the school district denying the parents request for a mandatory injunction and upheld the alternative placement. The court reasoned that the school district acted appropriately in taking the action they took, which was considered "stern and aggressive remedial action." The court held that the parents did not exhaust their administrative remedies under the IDEA and appeal the hearing officer's decision to the next level. The court felt the school district made good efforts to allow the parents to present evidence of an unidentified disability, which may have influenced his behavior. The parents did not take full advantage of this opportunity. The Court felt there was no evidence that actions taken by the school district were inappropriate or they denied the student of his constitutional rights to due process.

Wilson v. Fairfax County School Board, 38 IDELR 39 (E.D. Va. 2002). A student with emotional disabilities attended regular and had several issues with behavior including posting what was considered a death threat to another student. He was suspended for 10 days pending expulsion. A manifestation determination meeting was held to determine whether the student's disability was the cause of his misconduct. It was determined that his behavior in this incident was not a manifestation of his disability. The school district held a disciplinary hearing and upheld the 10-day suspension but postponed the expulsion and reassigned the student to another school which offered an identical program to his previous school. The student was returned to his original school a week later but not allowed to have contact with other students. The parents requested a due process hearing claiming the transfer to another school violated the IDEA's maintenance of placement provision. An administrative hearing took place and the hearing officer decided that change was appropriate, based on all the testimony and evidence, and was not a change in placement prohibited by the IDEA. The parents sought relief in district court. The issue is whether transferring the student from his school to another school, while his parents appealed the manifestation determination's decision that Adam's behavior was not related to his disability, violated the stay-put provision of the IDEA. The District Court held for the school district and rejected the parents' claims that the change of schools was a change in placement. In rejecting the parents' argument that the new school was a change in placement, the court reasoned that the IDEA's change of placement provision focused on the educational program and not the actual physical location of the services. Also, the court felt that the hearing officer's decision that Adam returning to his previous school would impact the students' educational environment in a negative way.

Analysis: Placement Issues

In each of the cases in this group, the primary issue was the question of what the courts view as a change in placement in school disciplinary situations for special education students. Each of these placement cases involve special education students who have violated school disciplinary policies or were a serious disruptive or dangerous behavior problem. In the former situations, suspensions and or expulsions were shown by the courts to be a “change in placement.” And because of being identified as a “change in placement,” procedural protections under the IDEA were afforded the special education students. The courts have said that the IDEA requires that short-term suspensions of special education students can be treated the same as regular education suspensions. Long term suspensions and expulsions, however, are considered a “change in placement.” Placement decisions at this point are made by the IEP team, of which, the parent is a part and must agree for the change in placement. If the parent does not agree, they must follow the procedures set by the IDEA to receive relief. In the other cases, the issue involved behavior that was considered dangerous to the safety of the student with a disability and/or the other students and staff in the school. The court consistently decided in favor of the school district to give them latitude to change the placement of a child to better meet the special needs of the disabled student and to secure the safety of the staff and other students. The courts have been reluctant to overrule the decisions of school personnel when deciding what constitutes a Free Appropriate Public Education (FAPE). The placement decisions of school districts have been upheld when the student was determined by the court to be receiving services that “are reasonably calculated to enable the student to receive educational benefit” (Cain v. Yukon Public Schools, Fuhrman v. East Hanover Board, 1991). There have been cases that the court felt the removal was considered inappropriate for the student (Victoria L. v. District School

Board). The courts have also stated that students who possess the physical strength and cause a danger to himself and others created by his return to school can be moved to another placement (*BOE of Township v. Corral*, 1989). Students that are truly dangerous and substantially likely to cause injury can be removed from the classroom and placed in another school or classroom (*Light v. Parkway School District*, 1994). The court has said the threat of harm from a violent special education student outweighed the harm to the special education student's FAPE.

FAPE

The next most common issue is FAPE or free appropriate public education. FAPE was found in 46 of the 132 cases involving special education discipline in federal court. As one case suggested the court realizes that every error the school system makes under the IDEA is a denial of FAPE. It is a pretty broad issue but as it pertains to special education discipline, 38 cases were mainly concerned with FAPE. Of those 38 cases, 19 in which FAPE is the primary issue are as follows:

Swift v. Rapides Parish Schools, 1993 CA5) 812 F. Supp. 666. A student classified as Behavior Disordered/Emotionally Disturbed was recommended for a residential placement due to his serious aggressive behavior. The school district maintained David's placement should remain in the school district. The issue in this case was whether the IEP and subsequent placement decision reasonably calculated to enable the student to receive educational benefit? The U. S. District Court held that, although the student might do better in a residential placement, he was receiving meaningful educational benefit in his current placement. The concern for enhancing the disabled student's ability to obtain educational benefit must be balanced with concerns about limited public resources, the need to provide basic educational

opportunities to disabled and able-bodied children alike, the concern to serve the disabled child in the environment which is least restrictive of the child's liberty. There is no requirement that every child with a disability receive optimal services. What is required is "appropriate educational services be delivered in the least restrictive environment available, with a preference for mainstreaming when possible." The IDEA does not require schools to maximize a student's potential.

Eric J. v. Huntsville City Board of Education, 22 IDELR 858 (N.D. Ala. 1995). A student with a disability was suspended several times for inappropriate behavior. His parents argued that he was denied a FAPE because he did not have an appropriate behavior plan in place and he was not appropriately served with special education services while he was away from school on suspension. The issue was whether the school district violated student's right to FAPE under the IDEA when they did not serve him during short-term suspensions and for failing to develop and implement an appropriate behavior management plan. The U. S. District Court agreed with the school district. The school district did violate the student's right to FAPE during suspensions, because the court felt there was no authority to support obligating the school district to continue educational services during short-term suspensions. This was true even if the behavior was a manifestation of the student's disability. The short-term suspensions were warranted, the court felt, because of the "unique needs" of the student. Therefore, the school district did not violate the IDEA.

Robert H., et al., Plaintiffs v. Nixa R-2 School District, et al., Defendants, No. 94-3496-CV-S-RGC, 26 IDELR 564 (U.S. District Court, W.D. Missouri). A student with an emotional/behavioral disability was put in a time-out room for several minutes and was not allowed to attend a field trip. The parents claimed the school district did not provide FAPE and

discriminated against him when they locked Robert in a time-out room and their son was not provided FAPE and discriminated against by refusing to allow him to go on the field trip. The issue was whether the student with a disability was denied FAPE and discriminated against under the IDEA. The U. S. District Court agreed with the school district. Even though placement in the time-out room and loss of lunchroom privileges for 20 minutes, were not in the IEP and discipline plan for the student, the Court was not convinced that the teacher's placing the student in the time-out room amounted to a denial of FAPE. The Court did not believe that it was Congress's intent for the courts to substitute their judgment for the judgment of school officials regarding disciplinary actions. In regard to the field trip denying FAPE and, consequently, the IDEA, the Court agreed with the Hearing Panel's and the SLRO's decision. The student did not meet the requirements even though he had the opportunity to do so. His parents were aware of this fact. The district's actions did not violate the IDEA.

Community Consolidated School District #93 v. John F., (IL) (N.D. Tex. 2000). A student with a behavior disorder was suspended for discussing a hate club, the black market, and who could get guns. The issue was whether the school district violated the IDEA and failed to offer FAPE to John while he was homebound. The issue is also whether the school district should pay for counseling to John while he was at home. The District Court agreed with the parents denying the school district's motion for summary judgment and granted the parents' cross motion for summary judgment. The court felt that several procedural errors were made by the school district to deprive John of FAPE under the IDEA. John's parents were entitled to a notice that the school district would consider a change in his placement at earlier hearings so they could prepare for those meetings. The school district found that John's violation was a manifestation of his disability and should have amended his IEP and behavior plan. If the school

district decided that John's placement was not meeting his needs, it should have considered several other options. Homebound tutoring was not a legal placement under the IDEA and his parents' agreement to this option was not truly an agreement because they were not presented with other options. The district had no right to remove John as a disciplinary consequence of offenses involving drugs and weapons. The procedures the district followed after the parents objected to their son's placement were confusing. The school district failed to clearly explain the parents' procedural rights to due process.

LIH v. New York City Board of Education, 33 IDELR 1 (E.D.N.Y. 2000). This case was brought by a group of students with disabilities who challenged the school district's new disciplinary policy governing suspensions. This new policy only affected those attending summer school and had few procedural safeguards to protect students with disabilities. The new policy gave administrators the ability to suspend students without providing the students the opportunity to appeal the decisions. This new policy also did not have a process to determine if a violation was a manifestation of a student's disability. The school district asserted that summer school was optional and they were not responsible to the procedural protections of the IDEA. The issue was whether the school district's policy regarding summer school deprived students with disabilities of their rights under the IDEA. The District Court disagreed that summer school was optional and held that the procedural safeguards of the IDEA applied equally to summer school. The Court reasoned that it was without contradiction that the rules set by the school district did not meet the minimum requirements of the IDEA. The district did not feel compelled to follow the stricter protections of the IDEA because they felt that summer school was purely voluntary and extracurricular. Contrary this position, the court contended that Congress intended the protections of IDEA to extend to every "school day." The court stated that summer school

qualified under this definition. The Court went on to say that summer school for special education students who struggle educationally, is very important to their ability to receive FAPE.

CJN v. Minneapolis Public Schools, 323 F3d. 630 (U.S. Ct. App. 8th Cir. 2003). A student with lesions in his brain and a long history of psychiatric illness had a history of behavioral difficulties and became more violent and aggressive toward others and he was a danger to himself as well. The school district held an IEP meeting and it was decided that the student would attend another elementary school and day treatment facility. After another incident, it was mutually decided that the student would receive instruction at home. The mother contended the school was not offering her son FAPE under the IDEA. The issue was whether the student received a free appropriate public education (FAPE) in his third grade year as required by the IDEA. The Appeals Court stated that the district court did not err in giving “due weight” to the HRO’s conclusion. The court also reasoned that the district court did not err in determining that the school district provided the student with a FAPE in his third grade year and denying his mother’s request for tuition reimbursement. Because there were students who were not disabled at the elementary school the school district placed the student, the district court did not err in failing to order him to the private school as his placement. Since the HRO denied private placement, there was no agreement to change the stay-put placement, therefore, the district court did not err in holding that there was no agreement. The court also felt that evidence pointed to the student’s behavior problems were being controlled so that he made academic progress.

Alex R. v. Forrestville Valley Community Unit School District #221, 375 F3d. 603 (United States Court of Appeals, 7th Circuit 2004). A special education student began exhibiting aggressive behaviors that caused a disruption. He was suspended on several occasions and was a

flight risk that ran from school and put himself in danger. The issue was whether the school district was unreasonable in its development and implementation of Alex's IEP. The District Court held in favor of the school district overruling the hearing officer's decision. The Court of Appeals agreed with the District Court in favor school district. The Appeals Court reasoned that the school district did not act unreasonably given the circumstances it faced. The Court felt that the school district "took a thoughtful, measured approach to Alex's education." The Court also stated that the hearing officer substituted her judgment for that of the school administrators. The Court felt that the school administrators were not unreasonable. "The district acted reasonably in attempting to deal with an increasingly difficult situation affecting not only Alex but other students as well." The Appeals Court did not see a clear error in the District Court's finding that Alex's IEPs were "reasonably calculated to enable the child to receive educational benefit."

Colon v. Colonel Intermediate Unit 20, 43 IDELR 163 (M.D. PA. 2004). A student with a serious emotional disability who exhibited serious behaviors that included violent outbursts and self-injury, which resulted in restraints by school personnel. Midway through the school year, Brandon was discharged from the program and assigned to "homebound" placement. Brandon's parents believed this to be in violation of the IDEA. The issue was whether the school district and the intermediate unit (CIU) violated Brandon's IDEA rights when they hospitalized him to address his academic, behavioral, and emotional needs. The District Court held that the parents should be allowed to maintain their claims against the IU. The court also held that the IU could be liable under the IDEA. The court reasoned that the parents should be allowed to maintain their claims against the IU because the settlement agreement specifically stated that: "By signing this agreement, parents do not waive any claims they might otherwise have against . . . any entity

other than the [the school district].” The court also reasoned that the IU could be liable under the IDEA if it did not provide educational benefit to the student.

Board of Education of Township High School District No. 211 v. Michael R. and Diane R. ex rel. Lindsey R., 44 IDELR 36 (N.D. Ill. 2005). A student with a disability whose behavior became worse over time in the general education classroom was eventually placed in a self-contained classroom. At issue is whether the school district violated Lindsey’s substantive due process rights when they failed to meet the requirements of the IEP. The issue was whether the district violated the student’s rights by denying the parents the opportunity to participate in the development of Lindsey’s IEP and the IEP did not provide educational benefit. The United States District Court held that the school district complied with the procedural and substantive requirements of the IDEA. The Court reasoned that the school district deviations did no harm. The district implemented an IEP that was reasonably calculated to provide Lindsey with educational benefit.

Escambia Co. Board of Education v. Benton, 44 IDELR 272 (S.D. Ala. 2005). A student with Autism exhibited inappropriate and aggressive behaviors that resulted in self-injury. The district’s failure to conduct a FBA and develop a BIP compromised the student’s right to a FAPE. The school district appealed the IHO’s decision to the District Court claiming the IHO had erred in their decision. At issue is whether the school district provided the student with a free, appropriate public education under the IDEA. The United States District Court held for the student and failed to reverse the administrative decision of the due process hearing officer. The Court rejected all of the school district arguments and found that the record supported all of the IHO’s conclusions. The Court reasoned that the school district had adequate notice of the student’s claims prior to the hearing. The Court felt the school district bore the burden of proof

to show its IEP was providing educational benefit and was effective. This burden of proof was by Alabama regulation that was in effect at the time of the hearing. The Court found the school district was on sufficient notice that the IEP's legal adequacy was being challenged. The Court agreed with the IHO that a FBA and BIP should have been conducted by the school district. The Court rejected the school district's argument that there was no need to address behaviors that were a manifestation of the student's disability.

John G. v. Northeastern Ed. Inter. Unit 19, 490 F. Supp. 2d 565, 221 Ed. Law Rep. 675, on reconsideration 2007 WL 2844828. An autistic student was subjected to aversive disciplinary techniques. The teacher used restraints to punish or abuses students. No IEP during this time met to address this use of restraints. The special education teacher also used physical force to discipline students including slapping them. The issue was whether the school district, the school, and the special education teacher violated the student's constitutional right to FAPE under the IDEA and violated the student's Fourteenth Amendment right to due process and equal protection. The District Court held that the futility exception to the IDEA exhaustion requirement applied in this case, the denial of FAPE did not give rise to a substantive due process claim. The parent's did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. Although the teacher slapping a student once or hitting them in the chest was not enough the "shock the conscience," the repeated administration of injuries to the student were sufficiently shocking to the conscience. With respect to equal protect claims, the parents contended that the teacher repeatedly discriminated against the student and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school, were sufficient to survive the motion to dismiss. The school

district and school violated the student's protected rights while implementing an official policy, custom, or practice.

San Raphael Elementary School District v. California Special Education Hearing Office, 47 IDELR 259 (N.D. Cal. 2007). A student with autism was placed in a residential facility by his parents as a result of an ongoing disagreement with the school district. As a result of aggressive and threatening behaviors, including threats to kill people and destroy places or things. He was placed by the school district in a private facility a couple of years earlier as a result of an IEP team's decision. The issue was whether the school district should be responsible for implementing goals and objectives addressing behavior and academics outside the classroom and regular school hours. The Court agreed with the school district stating that the school district is not responsible for ensuring that the student translates behavior skills learned in the classroom to the home or community settings. The Court did not believe that the IDEA required that behavior problems of a student outside of the school to be addressed by the school district. This is particularly true when the student is progressing educationally in the classroom. The behavioral goals are addressed through the IEP only to the extent that those problems affect the student's educational progress. The Appeals Court has held in previous rulings that "generalization across settings is not required to show an educational benefit" and that anything "more than making measurable and adequate gains in the classroom, is not required by the IDEA." The Court reasoned that the school district's offer to place the student in the private school program, Spectrum, was an appropriate response to the student's behavioral problems. The school district was not required to ensure that a student takes behavioral skills he learns at school into the home. The school district is only required to ensure that the student's IEP is "reasonably calculated to provide educational benefits."

Vicky M. v. Northeastern Ed. Int. Unit 19, 486 F. Supp. 2d. 437, 220 Ed. Law Rep. 547, on reconsideration 2007 WL 284428. An autistic student was subjected to aversive disciplinary techniques. The teacher used restraints to punish or abuses students. No IEP during this time met to address this use of restraints. The special education teacher also used physical force to discipline students including slapping them. The issue was whether the school district, the school, and the special education teacher violated the student's constitutional right to FAPE under the IDEA and violated the student's Fourteenth Amendment right to due process and equal protection. The District Court held that the futility exception to the IDEA exhaustion requirement applied in this case, the denial of FAPE did not give rise to a substantive due process claim. The parent's did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. Although the teacher slapping a student once or hitting them in the chest was not enough the "shock the conscience," the repeated administration of injuries to the student were sufficiently shocking to the conscience. With respect to equal protect claims, the parents contended that the teacher repeatedly discriminated against the student and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school, were sufficient to survive the motion to dismiss. The school district and school violated the student's protected rights while implementing an official policy, custom, or practice.

Joseph M. v. Northeastern Ed. Intermediate Unit 19, 516 F.Supp.2d 424, 226 Ed. Law Rep. 734, on reconsideration 2007 WL 2845004 (M.D.Pa. 2007). An autistic student was subjected to aversive disciplinary techniques. The teacher used restraints to punish or abuses students. No IEP during this time met to address this use of restraints. The special education teacher also used physical force to discipline students including slapping them. The issue was

whether the school district, the school, and the special education teacher violated the student's constitutional right to FAPE under the IDEA and violated the student's Fourteenth Amendment right to due process and equal protection. The District Court held that the futility exception to the IDEA exhaustion requirement applied in this case, the denial of FAPE did not give rise to a substantive due process claim. The parent's did not allege any procedural inadequacies in regard to FAPE so the court dismissed this claim. Although the teacher slapping a student once or hitting them in the chest was not enough the "shock the conscience," the repeated administration of injuries to the student were sufficiently shocking to the conscience. With respect to equal protect claims, the parents contended that the teacher repeatedly discriminated against the student and other autistic children the class but not against other children in the class. The court felt the allegations against the school district and the school, were sufficient to survive the motion to dismiss. The school district and school violated the student's protected rights while implementing an official policy, custom, or practice.

M.M. by and through her parent and natural guardian, L.R., Plaintiff-Appellee v. Special School District No. 1, et.al., Defendants-Appellants, 512 F.3d 455, 227 Ed. Law Rep. 455 (8th Cir. 2008). A student with a disability had shown serious behavioral issues, including bringing a knife to school, fighting, kicking, punching, and other outbursts. After the knife incident, the student was recommended for expulsion. Instead, the school district placed the student in another school. Later that year, M.M. was suspended for fighting and the IEP team determined that Lucy Laney was not the appropriate placement. The issue was whether the school district denied the student with a disability FAPE and "stay-put" rights under the IDEA. The Appeals Court held that the school district did not deny FAPE to the student in suspending and transferring her, the stay-put provision was not violated with several short term suspensions,

IDEA regulations were not violated when educational services were not provided by the school district during her suspensions, and the school district did not deny FAPE to the student when they proposed she be placed in a program with a high number of boys in relation to girls. The school district has met its obligation if the IEP is “reasonably calculated to enable the child to receive educational benefits.” The IEP need not be designed to maximize a student’s potential. The school district did not deny FAPE to student in violation of the IDEA in spite of the lengthy suspensions and transferring her to other schools. The court stated that the school district does not violate the IDEA because the student failed to achieve the IEP program’s behavioral goals when the student’s primary exceptionality is a behavior disorder. The court reasoned that the school district did not deny FAPE by proposing the student be placed in a school with a high ratio of boys to girls.

P.K. ex rel. P.K. v. Bedford Central School District, 569 F.Supp.2d 371 (S.D.N.Y. 2008). A student with an emotional disturbance was placed in several different programs within the school district and was hospitalized for mental issues and substance abuse. The issue was whether the school district denied the student FAPE under the IDEA. The Court held that the school district did not deny the parents their right to participate in the development of an IEP, the school district did not base an IEP on out of date documents, and the IEP was substantively adequate. The court felt that residential placements were considerably more restrictive than the “mainstreaming” that the IDEA prefers. The parents needed to demonstrate that the school district’s proposed IEP was inappropriate and the residential placement is appropriate. The IEP needed to be procedurally correct and the plan had to be reasonably calculated to enable the student to receive educational benefits. The court reasoned that due weight must be given to administrative decisions. The court felt the school district did not deny the parents the

opportunity to participate in the development of the student's IEP and the school district was working with the most recent information regarding the student. The school district is not obligated to provide the student with every special service necessary to maximize each student's disability. Courts cannot choose between the views of competing experts on matters of education policy or substitute its judgment for that of the experts. The court must look at objective evidence when looking at whether a student has regressed or progressed under the IEP that is being challenged. Passing grades, or passing from grade to grade, are generally used as indicators of progress in an IEP. The court reasoned that even though the residential facility could more appropriately deal with the substance abuse of the student, that issue was not the responsibility of the school district.

Pohorecki v. Anthony Wayne Local School District, 637 F.Supp.2d 547 (N.D. Ohio 2009). A student with an "emotional disturbance" exceptionality exhibited misbehavior, obstinacy, and inattentiveness. The issue was whether the school district violated the student's rights under the IDEA in denying a FAPE and whether the student was entitled to compensatory services. The Court held that the challenge to an IEP replaced with another IEP before the school year in this case was moot, the BIP provided a FAPE, the classification of the student as a child with "emotional disturbance" was reasonable, and the district was not required to afford a student a one-on-one aide, speech therapy, and occupational therapy to provide the requisite FAPE. The court reasoned that the court should give deference to administrative decisions but is obligated to re-examine the evidence. In IDEA cases, the burden of proof is on the party who initiates a due process hearing challenging the IEP. If the parent claims a denial of FAPE and challenges the appropriateness of the IDEA but fails to meet the burden of proof, the parent is barred from obtaining reimbursement. The court reasoned that the IEP was not reviewable and

the IEP was never implemented. The Behavior Intervention Plan developed according to the settlement agreement provided a FAPE. The court also reasoned that the school was not required to offer a student a one-on-one aide, speech therapy, and occupational therapy to provide a FAPE in order to provide “meaningful educational benefit.”

Richardson Independence School District v. Michael Z., 580 F.3d 286, 249 Ed. Law Rep.

34. A student with autism exhibited oppositional defiance disorder, polar disorder, separation anxiety, and pervasive developmental disorder. There was a difference of opinion between the school and the parents regarding the appropriate placement of the student. The issue was whether the IEP was appropriate and the alternate placement was appropriate under the IDEA. The Appeals Court held that the IEP in regard to the public school was appropriate, under the IDEA. For a residential placement to be appropriate for the purposes of reimbursement, “the placement must be essential in order 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 to determine whether the student’s private residential facility treatment enabled her to “receive a meaningful educational benefit.” The Appeals Court reasoned that for a residential placement to be appropriate under the IDEA, the placement must be essential in order for the disabled child to receive a meaningful educational benefit and primarily oriented toward enabling the child to obtain an education. The law does not require a school district to maximize a student’s potential but must confer some educational benefit. The Fifth Circuit reasoned that the district court erred in this finding.

S.J. v. Issaquah School Dist. No. 411, 326 Fed.Appx.423, 247 Ed. Law Rep. 38. A student with a disability exhibited explosive behavior. The parents disagreed with the contents of the IEP and sought an administrative hearing challenging the educational program offered by

the school district. The issue was whether the school district's IEP was adequate. The Appeals Court held that the school district offered a FAPE, the provision of the behavior plan that allowed the school to administer medication to the student did not violate the student's constitutional rights under the IDEA or state law, and when personnel from the private school were allowed to participate in an IEP meeting, those IEPs were not defective. The court reasoned that the IEP provided a FAPE to the student under the IDEA even though some pages of the IEP were blank. The court felt there was no prejudice in having blank pages. The behavior plan that included language to address the taking of medication did not violate the constitution under the IDEA or state law.

Springfield School Committee v. Doe, 623 F.Supp.2d 150, 246 Ed. Law Rep. 780 (D. Mass. 2009). A student with a disability had issues with attention, concentration, poor academic performance, and significant behavioral and discipline issues. The issue is whether the school committee had an affirmative duty to respond to the student's excessive absences. The court held that there was an affirmative duty for the school committee to address the student's excessive absenteeism. The court reasoned that it should give deference to the decisions of school authorities. The argument by the school committee that the BSEA improperly awarded compensatory services was because the compensatory relief ordered was the very proposal made by the committee to resolve the case. The court also reasoned that the school committee had an affirmative duty to respond to excessive absenteeism by the student under the IEP. Its failure to do so, denied the student a FAPE as one of the goals of the IEP was to improve school responsibility.

Analysis: FAPE Issues

In each of the cases in this group, the primary issue was the question of what the courts view as a FAPE in school disciplinary situations for special education students. The courts have determined that even though in some placements and services students might do better, there is no requirement in the IDEA that every child with a disability receives optimal services. What the IDEA does require is “appropriate educational services be delivered in the least restrictive environment available, with a preference for mainstreaming when possible.” This court also went on to say that “the concern for enhancing the disabled student’s ability to obtain educational benefit must be balanced with concerns about limited public resources, the need to provide basic educational opportunities to disabled and able-bodied children alike, the concern to serve the disabled child in the environment which is least restrictive of the child’s liberty” (*Swift v. Rapides Parrish Schools*, 1993). Short-term suspensions were found to not violate FAPE because there was no authority to support obligating the school district to continue educational services (*Eric J. v. Huntsville City Board of Education*, 1995). The court determined that a student who was put in time-out and not allowed to go on a field trip with the class was not denied FAPE. In terms of the field trip, the court said the student did not meet the requirements to go, even though he had the opportunity to do so. The time-out room did was not a denial of FAPE. The court felt that Congress did not intend for the courts to substitute their judgment for the judgment of school officials regarding disciplinary actions (*Robert H., et al. v. Nixa R-2 School District*). The courts have ruled in favor of parents and students in FAPE cases. The court sided with the parents when a student who made statements regarding hate and guns was suspended and placed on homebound. The court said the school district made several procedural errors and, therefore, deprived the student of FAPE. The district erred by not following the

procedural protections of the IDEA in regard to amending his IEP, his behavior plan, placement in homebound, and failing to clearly explain to the parents their rights under the IDEA (*Community Consolidated School District #93 v. John F.*, 2000). In another case, the court sided with students in maintaining that the district did not follow the procedural safeguards of the IDEA when they used a different set of rules for summer school (*LIH v. New York City BOE*, 2000). The courts have stated that in many cases the court given deference to school districts with regard to FAPE if the student is making academic progress and getting educational benefit (*CJN v. Minneapolis Public Schools*, 2003; *Alex R. v. Forrestville Valley Community Unit School District*, 2004; *Colon v. Colonel Intermediate Unit 20*, 2004). In an Alabama case, the court sided with the parents and the IHO stating the school district bore the burden of proof to show that the IEP was providing educational benefit and was effective. This burden of proof was by Alabama regulation (*Escambia Co. BOE v. Benton*, 2005). When parents brought action against a teacher and school for disciplinary techniques that the parents considered inappropriate, the court said the denial of FAPE did not give rise to a substantive due process claim under the IDEA. The parents were requesting relief that was unavailable through the IDEA administrative process (*John G. v. Northeastern Ed. Inter. Unit 19*, 2007).

Exhaustion of Administrative Remedies

The third most frequent issue is exhaustion of administrative remedies. There were 31 total cases of the 132 in which exhaustion of administrative remedies was an issue. This occurs when a litigant attempts to seek a court remedy before completing all the procedural steps outlined in the IDEA or Individuals with Disabilities Education Act. Many times a parent might otherwise prevail had they not skipped these procedural components. Of the 31 cases in which

this issue is found, 30 of them showed that exhaustion of administrative remedies was one of the main issues in the case. Of these cases, 13 cases are reviewed as the primary issue in the case.

Hayes v. Unified School District No. 377, 669 F. Supp. 1519, 42 Ed. Law Rep. 164, reversed 877 F. 2d. 809, 54 Ed. Law Rep. 450(10th Cir.). Two students with disabilities were disruptive and were disciplined by being placed in a small room (3' x 5'). At issue was whether the parents' claims were properly before the court or whether the parents were required to first exhaust their administrative remedies under the EAHCA. The Appeals Court held that in-class discipline fell within purview of the EAHCA, and student's parents were required to exhaust administrative remedies before bringing a suit to court. When a complaint arises with the status of a disabled student, the EAHCA provides for procedures to resolve these complaints. These complaints should be resolved at an impartial due process hearing. An appeal should be held at the state level, if needed. School officials used the time-out rooms to keep students at school, to allow them a cool down period, and to separate those with bad behavior from the rest of the students in order to maintain order. Because the disciplinary measures that the parents are complaining about are in the purview of the EAHCA, the parents are required to present their complaints concerning these disciplinary actions according to the procedures as set forth by the EAHCA. The Appeals Court stated that the parents failed to exhaust their administrative remedies as required under the EAHCA.

Carey on Behalf of Carey v. Maine School Administrative District No. 17, 754 F. Supp. 906, 65 Ed. Law Rep. 725. A student with a disability known for his disruptive behavior was suspended and expelled for bringing a handgun to school. The issue was whether the school system deprived the student of his constitutional and statutory rights by expelling him from school and, in the process, inflicted tortuous injury on the student and his parents. The District

Court held that the hearing process did not violate the student's procedural due process rights. The court also held that the plaintiffs failed to exhaust administrative remedies under the Education of All Handicapped Children Act. The school has a right to exclude a student who brought a gun and ammunition to school. It is the school district's responsibility of safeguarding and educating children. There needed to be a balance between the interests of the student and the school. The student was not denied due process at the expulsion hearing on the grounds that he was denied notice of charges or the evidence against him or any of the required minimum requirements which must be present. Parents whose children bring weapons to school need to exhaust all remedies under the EAHCA prior to bringing a civil action in court.

Waterman by Waterman v. Marquette Alger Intermediate School District, 739 F. Supp. 361, 61 Ed. Law Rep. 561. Six special education students allegedly were disciplined inappropriately. This discipline included alleged bodily humiliation, repeated physical assault, and withholding food and medicine. The issue was whether the students could assert cause of action under the Education of the Handicapped Act (EHA). The District Court held that none of the plaintiffs' claims could go forward until they had exhausted EHA administrative process and despite error of Department of Education dismissing complaints, appropriate remedy was returned to school district for exhaustion of administrative remedies. EHA plaintiffs must exhaust their adequate and available state and local administrative remedies before seeking relief in state and federal court. The court said that Congress has determined that the agency charged with developing and instituting a child's IEP must be given the first opportunity to address matters relating to that educational program. In this case, the discipline of this child in the classroom was a matter that relates to the public education of a handicapped child and that therefore falls within the scope of the EHA

Glen III by and through Glen II v. Charlotte Michlenburg School Board of Education, 903 F. Supp. 918, 1995 WL 590602. A student diagnosed with Attention Deficit Hyperactivity Disorder was found to possess a gun clip and live bullets at school and was suspended for 10 days. An additional hearing took place with the parents to once again determine the relationship of the behavior and the student's ADHD. He was placed on ESS (External School Suspension) and assigned to a program in another school for a period of 60 days. The issue was whether the student's rights were violated in regards to an education in North Carolina, whether the school district failed to provide an adequate alternative education and whether the school district denied the student's rights to due process and equal protection under the Fifth and Fourteenth Amendments. The district court held, the only way the student could make a claim was through the IDEA, the student's attempt to go around the IDEA and administrative procedures through the Rehabilitation Act claim conflicted with the IDEA, there was no evidence that state statutes were violated, the "stay-put" provision of the IDEA was not violated by the temporary suspension, and the student failed to exhaust all state administrative remedies and therefore was not eligible to seek relief under the IDEA in district court. The plaintiff's complaint never mentions the IDEA. Where the IDEA is available to a student with a disability asserting a right to FAPE, based on the IDEA or the Equal Protection Clause of the Fourteenth Amendment, the IDEA is the exclusive avenue through which the student and his parents or guardian can pursue their claim. The plaintiffs did not exhaust their administrative remedies through the IDEA.

Doe v. Board of Education of the Elyria City Schools, 28 IDELR 286 (6th Cir. 1998). John A regular education student showed unusual behavior problems. During the process of completing the evaluation, John brought a plastic toy gun to school and became defiant. He was suspended and later was expelled. The issue was whether the parents had failed to exhaust their

administrative remedies under the IDEA when they claimed the school district violated the IDEA, the Rehabilitation Act, Section 1983, and procedural due process when it expelled their son. The Appeals Court held for the school district. The Court rejected the parents' claim that the district court erred in concluding that they failed to exhaust IDEA administrative remedies. The parents failed to file a written request for a hearing, which stated the issues in dispute. Also, the Court concluded that no procedural due process violations occurred. The Court also stated that the student received notice of the expulsion hearing. A violation of procedural due process did not occur when the parents were not given an opportunity to appeal the denial of their request for a due process hearing. The Court also found that the stay-put rule did not apply in this case. At the time of the expulsion, the student had not yet been identified as eligible for special education.

Gadsden City Board of Education v. B.P., 3 F. Supp. 2d. 1299, 1998 WL 230949. Two students with intellectual disabilities were suspended following a violent episode at school, which required them to be removed from class by the police. The issue was whether the district court should consider the case after the parents and the school district made an agreement that could make the issue moot and whether the school district could bring the case to court without exhausting administrative remedies under the IDEA. The District Court held that, without first exhausting administrative remedies, the case could be brought directly to court, because the potential violence that may occur by the students. Also, the court held that they would consider the question whether the school district could seek relief in court without exhausting the administrative remedies under the IDEA despite the mutual agreement between the parents and the school district, which caused the issue to be moot for a short time. The district court was persuaded that the case before it might occur again and not be subject for review. It appears that

the students in this case are incapable of controlling their aggressive and violent behavior and, therefore, likely to repeat their behavior and be a substantial risk for harm. Therefore, there is a reasonable expectation that the students would again be subjected by the school district to stop them from attending school. The exhaustion issue is therefore likely to come up again in this case. As for the exhaustion requirement the court was not able to find any legal precedent that directly focuses on this point. The court concluded that exhaustion is not necessarily a requirement under the 1997 amendments to the IDEA. The court reasoned this decision was based on the position taken by OSEP, the fact that an expedited governmental hearing may be futile, and also, based on the plain language of the expedited hearing provision.

Padilla v. School District No. 1, Denver, CO., 35 F. Supp. 2d 1260 (U.S. District Ct. D. Co. 1999). A student with developmental and mental disabilities was known to “act-out” when there was a change in her environment and other cues. On one of these episodes Shayne’s caregivers placed her in the stroller, used to transport her around school, restrained her with a seat belt, and placed her in the storage closet for a time-out. No one was supervising Shayne when she was toppled to the floor causing her to hit her head suffering a skull fracture. The issue was whether the parent had exhausted all administrative remedies before taking the issue to court. The District Court held that the exhaustion of administrative remedies was excused as futile. The court reasoned that the student had been denied a due process hearing on the grounds that the hearing officer did not have the authority to grant relief. There is the ability to sue for violations of the IDEA and receive general damages. The court reasoned that the “plain language” of the IDEA left remedies under the law to the court’s discretion; therefore, a court may order appropriate relief, including money damages. The acts of the special education teacher and paraprofessional aide in placing the student in the storage closet unsupervised were

in direct contravention of the student's IEP and therefore they were not entitled to qualified immunity.

Covington v. Knox Co. (TN), 205 F3d. 912 (6th Cir. 2000). A student with a disability on several occasions was placed into a time-out room for disciplinary reasons. Jason's parents objected to this disciplinary measure. The District Court found that the parents were required to exhaust their administrative remedies under the IDEA. The court reasoned that the time-out room was a disciplinary measure in the IEP and, therefore, were a matter of the IDEA. The issue was whether the school district violated the student's substantive due process rights under the Fourteenth Amendment and whether exhausting administrative remedies would violate the student's Seventh Amendment right to trial by jury. The Appeals Court held for the parents and reversed the lower court's decision and remanded for further proceedings. The Appeals Court reasoned that exhaustion would be futile in this case. The Circuit Court also disagreed with the lower court that the parents' damages claim alone excused them from exhausting their remedies under the IDEA. The Court contended that most courts required plaintiffs seeking money damages to exhaust administrative remedies under the IDEA even if money damages are unavailable under the IDEA. The Court said that they, the Sixth Circuit, and the Supreme Court have ruled that exhaustion was not required under the IDEA in some circumstances. One of those circumstances is when it would be futile or inadequate to protect the plaintiff's rights. Also, if the plaintiffs were not given full notice of their procedural rights under the IDEA. The Court held that in the unique circumstances of this case, in which the student had already graduated, his injuries are in the past, and therefore money damages are the only remedy that can make him whole.

Mallory v. Knox County School District, 46 IDELR 276 (E.D. Tenn. 2006). A special education student was restrained for inappropriate conduct. The parents did not agree. The issue was whether the injuries to the student alleged by the parents could be addressed through the IDEA's administrative remedies and procedures. The Court held for the school district deciding that the claims involved disciplinary practices under the IDEA; therefore the parents of the student should have exhausted their administrative remedies before filing suit in court. The Court reasoned that the exhaustion requirement did not depend on the demand for money damages or the label attached to the complaint. The key issue in this case, the court reasoned, was whether the injuries to the student alleged by the parents could be addressed through the IDEA's administrative remedies and procedures. "The parents numerous allegations address the child's IEP, the treatment of the child as a special education student, and the District's alleged failures in dealing with the education and educational environment for the child," the judge wrote. He concluded the allegations made by the parents were well within the umbrella of the IDEA.

Coleman v. Newburgh Enlarged City School District, 503 F.3d. 198, 225 Ed. Law Rep. 168. A student with a disability, involved in an altercation with another student at school, was arrested and suspended for 5 days pending a disciplinary hearing. The issue on appeal was whether the student should have been excused from exhausting his administrative remedies under the IDEA and allowed to go directly into federal court so that he could enjoin the school district's disciplinary action without missing graduation. The Appeals Court held that the exhaustion of remedies was not futile, the court could review exhaustion determination on appeal of award of attorney fees, and the school district did not waive the challenge to the IDEA exhaustion requirement. The fee award was reversed. The Court of Appeals reasoned that prior

cases did not raise any doubt as to precedent that federal courts lack subject matter jurisdiction over IDEA claims that are not exhausted and that do not meet one of the exceptions to the statute's exhaustion requirement. The Court agreed that the student is not entitled to attorneys' fees because he failed to exhaust his administrative remedies. The student filed his suit in court before his manifestation hearing. The Court also reasoned that the district court did not possess subject matter jurisdiction over the student's claims and should have dismissed his suit at the beginning.

A.W. ex rel. Wilson v. Fairfax County Schools, 548 F.Supp.2d 219, 233 Ed. Law Rep. 166 (E.D.Va. 2008). A student with a disability was suspended for using his cell phone camera to take pictures of a female classmate in an inappropriate way. A.W. was suspended for 10 days after an investigation for sexual harassment. The issue was whether the student is required to exhaust all administrative remedies available under the IDEA. The issue is also whether if exhaustion has been satisfied. The Court held that the student was required to exhaust administrative remedies afforded under the IDEA. The Court reasoned that the student brought his claim under the ADA and Title V of the Rehabilitation Act and was required to exhaust administrative remedies available under the IDEA when relief is sought under the IDEA. The student had not exhausted administrative remedies because the due process hearing officer had not made a final decision.

Centennial School District v. Phil L. ex rel. Matthew L., 559 F.Supp.2d 634, 235 Ed. Law Rep. 199, amended on denial of reconsideration 2008 WL 3539886 (E.D.Pa. 2008). A student with ADHD and determined to be a student not eligible for special education and related services after an evaluation was conducted. Matthew was suspended for causing a bomb scare at school. Matthew was expelled from the school district. The issue was whether the school district violated

the student's rights under the Rehabilitation Act by expelling him without conducting a manifestation hearing. The Court held that the Rehabilitation Act did not require a manifestation hearing to determine if the conduct was related to the student's disability like it would under the IDEA and the parents of the student did not exhaust their administrative remedies. The Court reasoned that because the parents failed to exhaust their administrative remedies in making their claim, they were barred from seeking judicial review of the hearing officer's order upholding the school district's action. Because of the alleged failure of the school district to hold a manifestation hearing, the parents were required to exhaust their administrative remedies before bringing a claim before the court.

Dean v. School District of the City of Niagara Falls, N.Y., 615 F.Supp.2d 63, 245 Ed. Law Rep. 145 (W.D.N.Y. 2009). A student was diagnosed with Asperger's Syndrome, Oppositional Defiant Disorder, and some symptoms of separation anxiety. He was expelled for outbursts of behavior. The school informed the parents' attorney that the student was being recommended to be classified as a student with disability and as a home schooled student he would not be entitled to special education services under the IDEA. The issue is whether the school district violated the student's rights under the Fourteenth Amendment, IDEA, and state law and denied the student FAPE. The Court agreed with the parents. The Court reasoned that the IDEA's exhaustion requirement applies where the parents seek relief under other federal statutes, when relief was also available under the IDEA. The exhaustion requirement under the IDEA will be excused where the parents were not notified of their rights under the IDEA. The parents and the student in this case were excused from administrative exhaustion requirement for the claim that the student was denied his right to FAPE, in violation of the IDEA, where the school district failed to notify to parent and student of their rights under the IDEA. The

Fourteenth Amendment does not entitle the student to a FAPE, but prohibits deprivations of life, liberty, or property, and property interests protected by that Amendment. Claims are subject to exhaustion where the parents allege a Fourteenth Amendment due process violation claim on violations of the IDEA for which relief under the IDEA is obtainable. The court reasoned that administrative exhaustion requirement does not apply to alleged due process violations brought under Section 1983.

M.G. ex rel. LG v. Caldwell-West Caldwell Board of Education, 804 F.Supp.2d 305, 275 Ed. Law Rep. 145 (D.N.J. 2011). A student diagnosed with Autism Spectrum Disorder exhibited aggressive behaviors that were a danger to himself and others in his class. Restraint and isolating techniques were used for controlling these aggressive outbursts in the school. The issue was whether the school district violated the student's rights under the IDEA, the Rehabilitation Act, the Fourth Amendment, the Fourteenth Amendment, and state law by engaging in tortuous conduct. The court held that the parents failed to satisfy the futility exception to the exhaustion requirement under the IDEA. The court reasoned that the student's parents failed to satisfy the futility exception under the IDEA because although the parents presented facts suggesting his educational plan was inadequate under the IDEA, they did not present facts suggesting the state of New Jersey's administrative procedures could not resolve the shortcomings of the student's education. The court contended that administrative remedies must be exhausted under the Rehabilitation Act against the school district on the student's behalf.

Analysis: Exhaustion of Administrative Remedies Issues

In each of the cases in this group, the primary issue was the question of what the courts view as exhaustion of administrative remedies in school disciplinary situations for special

education students. The courts have consistently maintained the need for litigants to follow the procedural requirements of the IDEA when bringing a complaint. Many cases have been decided on the exhaustion of administrative remedies issue. The student or parent may have a legitimate grievance but may not get the result they hoped for in court simply for not following the procedures for making complaints found in the IDEA. Bringing a case to court before requesting a due process hearing is a common mistake. A parent brought action in court to seek relief from the school's use of a time-out room with her child. The Tenth Circuit said that in-class discipline fell within the purview of the EAHCA and the student's parents were required to exhaust administrative remedies before bringing a suit to court (*Hayes v. Unified School District No. 377*). A disruptive child brought a gun to school and was suspended and expelled. The parent sought relief in court for reinstatement. The court held that the parents failed to exhaust administrative remedies under the EAHCA. Parents whose children bring weapons to school need to exhaust all remedies under the EAHCA prior to bringing a civil action in court (*Carey v. Maine School Admin. District No. 17*). In a discipline case which alleged physical assault, bodily humiliation, and other inappropriate discipline by the teacher, the court said the parents must exhaust their administrative remedies before seeking relief in state and federal court. The court said that Congress has determined that the agency charged with developing and instituting a child's IEP must be given the first opportunity to address matters relating to that educational program (*Waterman v. Marquette Alger Intermediate School District*). It is clear from the remaining cases that the school district is safest when it follows the procedures as prescribed under the IDEA. If the court can make a connection with the educational plan by the school district with the IDEA, the parents are obligated to follow the procedural requirements of the

IDEA. Parents do not succeed many times in court because they do not follow the appropriate process under the IDEA.

Stay-Put

The fourth most frequent issue in special education discipline cases is “stay-put.” There were 34 cases of the 132 that involved “stay-put” as an issue. This issue primarily involves the placement of a student in his or her placement at the time of the procedural process for placement or eligibility. In other words, the student “stays-put” until the process is completed. Many times this is an area of deep concern for both parents and school personnel for many reasons. These reasons were raised in the cases reviewed. There were 26 cases in which “stay-put” was a main issue in the case. Of these cases, 16 cases were reviewed and analyzed.

Doe v. Rockingham School Board, 658 F. Supp. 403, 39 Ed. Law Reporter 590, (W.D. Va. 1987). A student with a disability had disciplinary issues and was suspended. The issue was whether leaving a student with a disability under a disciplinary suspension during the pendency of administrative proceedings violated both the legislative language and intent of the stay-put rule found in the EACHA. The District Court held that the school board and superintendent violated the student’s procedural due process right by failing to provide a prompt hearing. In addition, the superintendent and school board failed to provide the disabled student with a notice of rights and to comply with the formal procedures mandated by the EAHCA and were not permitted to leave the student under disciplinary suspension during pendency of administrative proceedings. Finally, the student was not required further to pursue administrative remedies in order to state a claim under the Act. While a continuing disciplinary suspension may be appropriate in other cases, the school system did not show that the suspension of John, Jr. was of

educational benefit to him. Once they knew of the student's eligibility for Special Education services, their refusal to reinstate John, Jr. to school triggered the full procedural remedies of the EAHCA.

Certiorari granted in part Honig v. Doe, 107 S. Ct. 1284, 479 U.S. 1084, 94 L.Ed. 2d. 142, 37 Ed. Law Rep. 460, affirmed as modified 108 S. Ct. 592, 484 U.S. 305, 98 L. Ed. 2d. 686, 43 Ed. Law Rep. 857. Two students with an emotionally disturbed disability were suspended indefinitely for disruptive and violent behavior related to their disabilities. They were suspended until their expulsion proceedings were completed. The issue was can a school district suspend a student with a disability from school indefinitely pending completion of expulsion proceedings? The United States Supreme Court held that a student could be suspended for a period of 10 days. If a student is suspended for more than 10 days it will trigger the Due Process Clause of the 14th Amendment. The Supreme Court in its opinion reasoned that as a condition of receiving federal funding, school districts are required to ensure that all students with disabilities have a "free and appropriate public education" within their jurisdictions. Procedural safeguards are designed within the Act to ensure parental participation in the decision making process. Also, designed within the EAHCA, are procedures for administrative and judicial review of any decisions in which the parents might disagree. One of those safeguards is the "stay-put" provision. This provision basically says that a disabled student will remain in their current educational placement until the completion of any review proceedings, unless the parents and the local or state school agencies agree.

Texas City Independent School District v. Jorstad, 752 F. Supp. 231 (S.D. Tex. 1990). An old student with a disability was diagnosed as manifesting a psychotic disorder and often showed noncompliant and maladaptive behaviors. After numerous incidents of dangerous,

disruptive, and violent behavior the school district sought an injunction from the Court to prohibit John from attending the regular education environment. The issue was whether the school district can seek and receive injunctive relief from the Federal District Courts during the pendency of the resolution of administrative review of educational plans. The District Court held that the student would be prohibited from attending regular classes. The Court also ordered that he be limited to participating in a behavioral management class or home care, at his parents' election. In spite of the *Honig* case before the Supreme Court, which basically creates a presumption in favor of the child's current placement, schools can seek injunctive relief. The school district can successfully overcome this presumption by showing that "maintaining the child in his or her current placement is substantial likely to result in injury to either himself or herself, or to others."

Binghamton City School District v. Botgna, 1991 W.L. 29985 (N.D. N.Y. 1991), 17 EHLR 677. A student with a disability exhibited behavior problems. There was a difference of opinion between the school district and the student's parents regarding the student's classification and placement. The issue was whether the student was a danger to himself and to others in his class and whether, in balancing the hardships to the parties, there was a more appropriate interim placement for Rory than a more restrictive environment, pending resolution of the administrative process. The United States District Court held for the school district. The court found, in reviewing the evidentiary record, that there was substantial evidence to indicate that the child was likely to harm himself or others in the current placement. The court also determined that the proposed educational placement for student would be appropriate to his educational and behavioral needs pending the resolution of the due process hearing. The court rejected the parents' contention that temporary placement in a regular education classroom at a

parochial school would be better suited to student's needs. The court authorized the District to place the student in the special education classroom until the completion of the administrative process.

Deborah v. Leonard, 21 IDELR 979 (D. Mass. 1993). A general education student was suspended from school when he stabbed another student. At issue is whether the student should be allowed to return to school while suspended or expelled, while a determination was made as to whether he was eligible for special education services. The U.S. District Court held for the school district stating that that the student's proper "stay-put" placement was his educational placement during the pendency of the special needs determination proceedings-that of a suspended student in the district's public school system. The district reasoned that if the "stay-put" placement was his suspended status at home, the hearing officer's order that the student be returned to school was set aside and the district was only required to educate the student in the public school system, which included placement at another school facility or home-bound schooling, pending the final determination of his special needs evaluation.

Doe v. Manning, 21 IDELR 357 (W.D. VA 1994). A general education student was admitted to a hospital by her parent and diagnosed with having schizoaffective disorder with severe depression. When she was released from the hospital she returned to school and was suspended for the remainder of the school year for handling a loaded gun. Jane was placed on homebound instruction. The issue was whether the court should grant a preliminary injunction on behalf of the student against the school district in terms of the school putting the student back into school from which she was suspended and serving her there until a decision could be made regarding her eligibility. The District Court held for the parent and ordered the school district to provide the student with a tutor in a location outside the school but not in the student's home

until it was determined the student was eligible for special education and an IEP could be developed. The risk of harm to the student, if she were deprived of a structured learning environment, outweighed the risk to the safety of the school setting or interference with its administration. The school system didn't know until later that the student might have a disability. There were no facts to suggest with any clarity that the possible disability was the cause of the student's act of misconduct. Because the parent did not dispute the conduct of the child and its seriousness, the court was unwilling to readmit the student to her pre-suspension status. The court ordered the school to provide the student with professional tutorials outside of the school and the student's home until an appropriate IEP was completed.

M.P. v. Governing Board of the Grossmont Union School District, 21 IDELR 639 (S.D. Cal. 1994). A general education student was suspended from school for possession of a gun on school grounds. The student requested an evaluation for special education. The issue was whether the "stay-put" provision of the IDEA was in effect so that the student could return to the school even though he had been suspended and was not a student with a disability when he was suspended. The United States District Court held for the student. The court held that the "stay-put" provision of the IDEA precludes the judicial evaluation of the plaintiff's likelihood of success of the merits. The court also felt there was no evidence to support a finding that the student likely would injure himself. The court reasoned that the "stay-put" provision of the IDEA applied whether or not a child had previously been diagnosed as having disabilities and there was no language in the IDEA, which contemplated the misuse of the statute to avoid school-imposed discipline. The court believed it did not have the authority to consider the merits of the student's claim that he was disabled. The court did not agree with the school district's contention that the student was too dangerous to return to school. This refusal was dependent on

a psychologist's report that said the student's impulsivity was not likely to result in danger to himself or others.

Clinton Co. R-III School District v. C.J.K., 896 F. Supp. 948 (W.D. Mo. 1995). A student with a disability, due to repeatedly threatening school officials and being known to throw and violently push furniture, was considered for a change of placement by the school district. The district brought an action seeking short-term relief from the statutory "stay-put" provision. The issue was whether to grant short-term relief to the school district from the statutory "stay-put" requirement. The statute states that a student with a disability should remain in the educational setting last agreed to by the school and the parents. The District Court held for the student concluding that they would not apply an exception to the statutory "stay-put" provision, requiring handicapped student to remain in the last agreed educational setting pending an administrative review of the proposed change of placement, unless the student posed a 5% danger of material personal injury or some appreciable danger of serious personal injury, and there was insufficient evidence to establish that the student posed 5% danger of material personal injury or some appreciable danger of serious personal injury. The District Court reasoned that the Supreme Court had stated a narrow exception to the "stay-put" requirement. Schools systems should determine that the current placement is "substantially likely to result in injury either to himself or to others. Also clear was that there can be no change in the placement until completion of administrative review unless there is a substantial chance of personal injury. Danger of personal injury must not only be likely but must be "substantially" likely. The court concluded that although the student presented a danger of causing some material physical injury that may be five to ten times that of an average boy his age, but that such danger probably does not reach the 5% possibility during the coming school year.

J.B. v. Independent School District No. 191, 21 IDELR 1157 (W.D. Wis. 1995). A general education student was suspended and eventually expelled from school when he traded marijuana for a cell phone and passed an army knife to another student during class. The issue was whether the school district's "Zero Tolerance" policy for drugs and weapons discriminated against the student. Another issue before the court was the district's desire to extend the TRO until the completion of the student's medical examinations due to his behavior. The claims of the district's motion for TRO were initially granted and the student's motion was denied. After the decision in *Light v. Parkway*, the court reconsidered its decision and held that the student substantially prevailed. The district court felt the student could assert the privilege of protection under the IDEA, even though he had not been completely evaluated and determined as disabled according to the IDEA at the time of the disciplinary proceedings. The court believed the student had a right to challenge the correctness of the determination through due process and therefore, rejected the school district's claim that the IDEA's "stay-put" provision did not apply. The district did not take reasonable steps to mitigate the risk of harm and did not establish that the student's presence at school would produce a likelihood of harm to himself or others. The district was not entitled to equitable relief from the stay-put provision.

Board of Education of Community High School District No. 218, Cook County, Ill. v. Illinois State Board of Education, 103 F3d. 545, 1996 WL 732282. A student with an emotionally disturbed identification was a sexually aggressive minor who appealed a preliminary injunction from the district court, which concerned where J.B. was to be housed and educated pending the outcome of the school district's suit. The issue was whether the student could stay-put at his existing placement while a new facility could be found. The United States Court of Appeals held for the plaintiffs and affirmed the district court's decision to sustain the preliminary

injunction which ordered that the student placed in a private facility found by the parents at the school district's expense. The stay-put provision requires that a student stay in his same educational placement pending the outcome of any proceedings brought to the court, unless the school district and the parents agree otherwise. The preliminary injunction is authorized by statute if it allows the student to remain in his "educational placement." The student had been expelled but the parents do not challenge his expulsion. What is challenged is the power of the court and the parents, rather than the power of the school district, to effect the student's placement. The school district may not use this dispute over funding when determining where the student was to reside while the trial was being prepared. Until all determinations were finalized in court, the school district was responsible for the educational cost for the student.

Rodriecus L. v. Waukegan School District, 24 IDELR 563 (7th Cir. 1996). A general education student who confessed to taking school keys and stealing from the school after hours was suspended from school by the principal for 10 days and recommended for expulsion. The issue was whether the district court's decision was correct to grant a preliminary injunction allowing a student without a disability to "stay-put" in his school while evaluations took place to determine his IDEA status. The Appeals Court held for the school district and reversed the district court's decision for a preliminary injunction, which would have allowed the student to return to school. If the stay-put provision is automatically applied to every student who files an application for special education, then an avenue will be open for disruptive, non-disabled students to stop any attempts at routine discipline by simply requesting a disability evaluation and demanding to "stay-put." This would disrupt the educational goals of a public school system that is already over-burdened and at times chaotic. In this case, the statute is not definitive as to whether it applies to students who have not been diagnosed as having a disability. The appeals

court felt it would be wise to look at the traditional factors in deciding whether or not to grant a preliminary injunction. The court felt that before a court invokes the IDEA placement protection provision, petitioners must reasonably demonstrate that school officials knew of, or should have known of, a student's genuine disability. It is apparent that the school officials in this case had neither knowledge nor reasonable suspicions to base a rational decision that the student was in fact disabled. The parent never requested a special education evaluation. No one ever proposed that the student might need special education services. Only when he was presented with expulsion for his acts of burglary did the student's guardian seek an evaluation and injunction to force the school district to allow the student to remain in school. There is nothing in the record to indicate that requires any special education. Until the expulsion proceedings, there was no request for an IEP or any form of special education. The IDEA was not designed to act as a shield to protect a disruptive child from routine and appropriate school discipline.

Taylor v. Corinth Public School District, 23 IDELR 1054 (N.D. Miss. 1996). A student with a disability was characterized as "out of control" even though he had a behavior plan and because of these behavioral issues, the school district felt that the student should be placed in a self-contained classroom at the sheriff's office. The student's parents refused. The issue was whether the court should provide the parents with preliminary injunction to order the school to allow the student to stay-put at the alternative school instead of placing him at the sheriff's office for educational services pending the appeals hearing. The court held for the Corinth Public School District denying the parent's request for a preliminary injunctive relief. The school district's actions were did not constitute a procedural violation of the IDEA. There were exceptions to the stay-put provision and the court recognized that when students are a danger to themselves or to others in their current placement, a change of placement might be warranted.

The actions by the school district, the court felt, were intended to be an incentive for better behavior from the student. The student's potential danger to others outweighed any harm he might experience by this placement, the court reasoned, which served the public interest. Public interest was also served by implementing the IDEA's remedial provisions and fostering a safe school environment.

Mr. & Mrs. R. v. West Haven Board of Education, 36 IDELR 211 (D.C. Comm. 2002).

A general education student violated the student code of conduct. The issue was whether the "stay-put" provision of the IDEA applied to the student and whether the school district had knowledge that the student had a disability under the IDEA and was entitled to special education services. The court held for the school district that they had no knowledge that the student had a disability before the misconduct that led to the expulsion. The court reasoned that because there was no evidence to support the parents' claims that the school district had knowledge that the student had a disability before the misconduct that led to his expulsion. The student was, therefore, not entitled to the protections of the IDEA's stay-put provision.

S.W. v. Holbrook Public Schools, 221 F2d. 222, (D. Mass. 2002). A general education student was suspended for allegedly selling or giving another student drugs. The issue was whether the school district violated the student's rights under the IDEA, the Rehabilitation Act, and the due process guarantees of the Fourteenth Amendment by not allowing her to stay in school while it was determined whether she had a learning disability making her eligible for IDEA protections. The court held that the complaint alleged a violation of the student's "stay-put" rights under the IDEA. The court reasoned that if a school does not know if a student has a disability before that student violates a rule that causes disciplinary measures the school district may decide where that student should be placed while the eligibility evaluation is conducted.

The student does not have a “stay-put” right in this circumstance. If the school district did know that the student had a disability, then that student should stay put at their school while a manifestation determination took place. The court reasoned that the school district should have known that the student had a disability based on the evidence. The fact that the eligibility decision, of the school district that the student did not have a disability was still pending, made the decision not final. Therefore, the stay-put provision was in effect until “all proceedings” were complete. When the evaluations were conducted was also of significance. These evaluations were conducted after the incident and expulsion, not before. Concluding after the incident that a child has no disability would run counter to the IDEA’s intention of preventing school districts from acting unilaterally to change a student’s placement. Additionally, because the student was re-enrolled in school, the district considered the “stay-put” issue moot. The issue became whether the student was entitled to some other form of relief. The “stay-put” issue was finally resolved by the BSEA dismissing this complaint.

A.W. v. Fairfax County Schools, 372 F3d. 674, 41 IDELR 119 (United States Court of Appeals, 4th Circuit, 2004). A student with an emotional disability became disruptive. He was accused of threatening another student using school computers and was suspended for two weeks pending expulsion. The issues were whether the student’s midyear transfer by the school district violated the “stay-put” provision of the IDEA, as the due process review was still proceeding and whether the MDR committee allowing the school district to discipline the student in the same manner as any non-disabled student was a violation of his rights under the IDEA. The District Court held for the school district concluding that they did not violate the student’s “stay-put” rights under the IDEA. The Appeals Court held that the District Court was correct in their decision and held in favor of the school district. The Appeals Court reasoned that specific

location where a student is being educated is not controlling in a decision involving education placement. The MDR committee's evaluation was appropriate given the nature of the student's disability.

Valentino C., et al. v. School District of Philadelphia, et al, 40 IDELR 208 (D. E.D. Penn.) A student with multiple disabilities assaulted a teacher and was taken to the office and subsequently arrested by the police. He was held for several hours but was not charged and returned to school the next day. On another occasion, the security guard at the school struck Valentino on the head while the student was standing in the hall. The issue was whether the school district violated the student's IDEA rights by not following the "stay-put" provision. The District Court held for the school district on the parent's claim that the school district violated Valentino's IDEA rights by not following the "stay-put" provision. The court reasoned that calling the police did not constitute a change in placement and the district was not obligated to conduct an administrative hearing before reporting the student to the police. Because there was no change in placement, there was no violation of the stay-put provision of the IDEA.

Analysis: Stay-Put Issues

In each of the cases in this group, the primary issue was the question of what the courts view as stay-put in school disciplinary situations for special education students. When disciplining a student, many times there is disagreement about where that student should be placed for their educational services while the administrative proceedings play out. In one case, the court held that the school district violated the student's procedural due process rights and were not permitted to leave a disruptive and violent general education student under disciplinary suspension during the pendency of the administrative proceedings. Once the school district

knew that the student was eligible for special education services, their refusal to reinstate the student to school triggered the full procedural remedies of the EAHCA (*Doe v. Rockingham School Board*, 1987). In a landmark case that is the only special education discipline case to appear before the United States Supreme Court, a disruptive and violent student was suspended and expelled. The Supreme Court held that a student with a disability can be suspended for a period of 10 days. If he is suspended for more than 10 days it triggers the due process clause of the Fourteenth Amendment. The court said that school districts are required to provide FAPE to students with disabilities. All parties are required to follow the prescribed procedural safeguards found in the EAHCA. One of those safeguards is the “stay-put” provision. This provision states that a student will remain in their current educational placement until the completion of any review proceedings, unless the parents and the school agency agree (*Honig v. Doe*). On the other hand, when students are a danger to themselves or others do schools have the ability to seek injunctive relief in the courts to keep those students out of their school? The courts have ruled that they do. In a case involving a violent student, the school district sought injunctive relief from the court during the pendency of the administrative process. The district court held that the student would be prevented from attending regular classes. In spite of the *Honig* case, which created a presumption in favor of the child’s current placement, the court said that schools can seek injunctive relief and can successfully overcome this presumption by showing that “maintaining the child in his or her current placement is substantially likely to result in injury to either himself or herself, or to others” (*Texas City Independent School District v. Jorstad*, 1990). Other cases have been held in favor of the school district when deciding what to do with a student that is disruptive and or dangerous to the educational environment (*Binghamton City School District v. Botgna*, 1991). There are a number of cases where a regular education student

is disruptive and is suspended or expelled and then requests a referral for special education. In these cases, where does the student go while the eligibility process is ongoing? In a case just like this the court determined that the student's proper "stay-put" placement was the educational placement during the pendency of the special education determination proceedings—that of a suspended student in the district's public school system. If the "stay-put" placement was the suspended status at home, the school district was only required to educate the student in the public school system, homebound or other facility, pending the final determination of the evaluation (*Deborah v. Leonard*, 1993). Other courts have sided with the student in "stay-put" cases. The court ordered a school district to provide the student with a tutor in a location outside the school but not in the student's home until it was determined the student was eligible for special education. The court felt the risk of harm to the student outweighed the risk to the safety of the school setting. In this case, the court was unwilling to readmit the student to her pre-suspension status because the parent did not dispute the conduct of the student and its seriousness (*Doe v. Manning*, 1994). The court ruled in favor of a general education student in another case where the student brought a gun to school and was suspended. The student sought a special education evaluation and attempted to return to school while the evaluation was ongoing. The court sided with the student stating that there was not any evidence to support a finding that the student would likely injure himself. The "stay-put" provision applied whether or not a student had previously been diagnosed as having disabilities and there was no language in the IDEA, which contemplated the misuse of the statute to avoid school-imposed discipline. The court did not agree with the school district's contention that the student was too dangerous to return to school. This was based on a psychologist's report that said the student's impulsivity was not likely to result in danger to himself or others (*M.P. v. Governing Board of the*

Grossmont Union School District, 1994). Another court held for the student in a “stay-put” proceeding and placed a measure to use when determining the percent of danger to consider when deciding “stay-put” for a student. The court said that unless the student posed a 5% danger of material personal injury and there was insufficient evidence to establish that the student posed a 5% danger of personal injury, the student is required to remain in the last agreed educational setting pending an administrative review of the proposed change of placement. Although the student presented a danger of causing some material physical injury that may be five to ten times that of an average boy his age, such danger probably does not reach the 5% possibility during the school year (*Clinton Co. R-III School District v. C.J.K.*, 1995). Another general education student was suspended and expelled for bringing drugs to school. Because of the *Light v. Parkway* decision, the court in this case held that the student substantially prevailed and asserted the privilege of protection under the IDEA, even though he had not been completely evaluated and determined to have a disability under the IDEA at the time of the disciplinary proceedings. The court rejected the school district’s argument that the “stay-put” provision did not apply (*J.B. v. Independent School District No. 191*, 1995). A general education student was suspended and expelled after a robbery. The Seventh Circuit reversed the district court decision and held for the school district when the student was granted an injunction to return to school during a special education evaluation. The court stated that if the stay-put provision was automatically applied to every student who files an application for special education, then the avenue will be open for disruptive, non-disabled students to stop any attempts at routine discipline by simply requesting a disability evaluation and demanding to “stay-put.” This, the court felt, would disrupt the educational goals of a public school system that is already over-burdened and at times chaotic (*Rodriecus L. v. Waukegan School District*, 1996). In a related case, the general education

student violated the school discipline code and was determined not be entitled to special education services. The court said there was no evidence to support the parent's claims that the school district had knowledge that the student had a disability before the misconduct that led to the expulsion and was not entitled to the protections of the IDEA's stay-put provision (*Mr. and Mrs. R. v. West Haven Board of Education*, 2002). Similarly, a regular education student was expelled for selling drugs at school and requested a special education evaluation. The court ruled against her saying that if the school does not know if a student has a disability before that student violates a rule that causes disciplinary measures the school may decide where the student should be placed while the eligibility evaluation is conducted. The student does not have a stay-put right in this circumstance. If the school did know, the student should stay-put in the placement when the violation occurred while the manifestation determination took place. In this case, the court felt the school should have known the student had a disability and therefore the student would stay-put until all proceedings were complete. The court said the IDEA intended to prevent schools from unilaterally changing a student's placement (*S.W. v. Holbrook Public Schools*, 2002). The court also has ruled that calling the police when a student with a disability is disruptive does not constitute a change in placement and the school district is not obligated to hold an administrative hearing before calling the police (*Valentino C., et al. v. School District of Philadelphia, et al.*).

Suspension

The next most frequent issue is suspension. There were 62 cases of the 132 federal court cases reviewed that involved suspension as an issue. These suspensions were short-term and long-term out-of-school suspensions of special education students. Of these cases, there were 18

cases that involved suspension as one of the main issues. Suspension was one of the primary issues in the 6 cases reviewed here.

Sherry v. New York State Education Dept., 479 F. Supp. 1328 (W.D. N.Y. 1979). A student with a disability was hospitalized for medical treatment as a result of injuries resulting from her self-abusive behavior and later suspended. The issue was whether the child could be suspended without a hearing. The District Court held that they had jurisdiction of the claim from the parents and the claim was not moot even though the student had been reinstated. The court held that no change of placement had occurred by reason of her suspension from the school for the blind when it was done on a short-term basis. However, the court held that when the suspension became an indefinite period, the student's educational placement had been changed under the ACT. This triggered statutory procedural safeguards. No hearing or other safeguards under the EAHA were necessary. The court also held that the suspension of the student from the school for the blind until it appeared to be in the best interests of the child and the school to revoke the suspension was unlawful under the Rehabilitation Act. No change of placement had occurred by reason of her suspension from the school for the blind when it was done on a short-term basis but when the suspension became an indefinite period, the student's educational placement had been changed under the ACT. This triggered statutory procedural safeguards. No hearing or other safeguards under the EAHA were necessary. The excuse of lack of staff is not a good enough reason to not provide FAPE.

Board of Education of City of Peoria, Sch. Dist. 150 v. Ill. State Bd. Of Ed., 531 F. Supp. 148, 2 Ed. Law Rep. 1032, C.D. Ill., Feb. 04, 1982 (No. 81-1125). A student with a learning disability was suspended 5 days for verbally abusing a teacher. The issue was whether discipline resulting in a short-term suspension is considered the same as expulsion or termination of

educational services. The District Court held that the evidence overwhelmingly supports of school district's action, as found by the Impartial Hearing Officer. The Court held that the decision of the Impartial Hearing Officer be reinstated. The Court felt that the student consciously challenged the teacher's authority in an intolerable manner without justification. The evidence clearly establishes the student verbally abused his instructor. The assertions in the briefs, as well as the Superintendent's decision, requiring some finding that a handicapped student is dangerous before any disciplinary suspension, all rest on regulations relating to expulsion or termination of educational services; and as has been demonstrated, this is simply not such a case.

Joshua S. v. School Board of Indian River County, 37 IDELR 218 (M.D. Fla. 2002). A student with a disability was suspended several times and, in this case, was taken into custody at school by the Sheriff's Department. The issue was whether the school district suspending Joshua for multiple instances constituted a significant change in placement violating the student's procedural and substantive due process rights under the IDEA. The parents argued that Joshua's repeated removals and exclusions from school were a change in placement without due process, Joshua's referral to Law enforcement was a change in placement without due process, the school district's failure to conduct manifestation determination reviews was a violation of due process, and the school district's failure to provide FAPE was a violation. The District Court held for the school district and agreed with the ALJ's determination that the suspensions did not constitute a change in placement. The court reasoned that there was no evidence that students without disabilities would not have been suspended for the same behaviors. The court also reasoned that no obligation existed for the district to conduct manifestation determination reviews because the student's placement never changed.

Waln v. Todd County School District, 44 IDELR 131 (D.S.D. 2005). A student with a disability was involved in a fight at school and was suspended for the remainder of the year. The issue was whether the school district violated the student constitutional right to a public education when they suspended him for the rest of the semester and not following due process procedures. The District Court held for the parents and found that the school district's immediate suspension of the student and the principal's letter to the parents informing them that the student would be suspended the rest of the year violated his rights. The Court reasoned that despite a statute in South Dakota requiring that long-term suspensions would require a hearing, the school district did not inform by notice to the parents that the student was entitled to appeal. After the appeal by the parents, the school district did not stay the suspension until the appeal was decided. The court also felt that the student was not adequately able to tell his side of the story after the fight. He was not allowed to confront witnesses and was not provided notice of his due process rights.

M.G. v. Crisfield, 547 F.Supp.2d 399, 233 Ed. Law Rep. 109 (D.N.J. 2008). A general education student had previously been determined to not be a student with a disability and not eligible for special education. The student was suspended from school and, subsequently, suspended indefinitely. The issue was whether the school district violates the student's procedural and substantive due process rights, equal protection rights and privacy rights under the Fourteenth Amendment. The court reasoned that the allegations by the parents that school officials violated the student's equal protection rights when they suspended him indefinitely and tried to coerce the parents to agree to a special education classification did not provide adequate notice of how Equal Protection Clause was violated. The court said that "to state a claim for relief, it was not sufficient to allege mere elements of a cause of action; instead the complaint

must allege facts suggestive of the proscribed conduct.” The court reasoned that there was no fundamental right to education protected under the federal constitutional. The allegation that the school district indefinitely suspended the student without written notice of reasons was not sufficient to state a claim for substantive due process violations absent additional allegations that specified the student’s behavior and pled that the school officials acted arbitrarily or without rational basis in imposing suspension for that behavior. The section of the IDEA that provided protection in the form of placement in an alternative setting for students with disabilities subjected to disciplinary measures had no application to the student’s indefinite suspension, where the school offered and parents refused identification and services under the IDEA.

M.S.-G v. Lenape Reg. High School District, 306 Fed.Appx. 772 (3rd Cir. 2009). A special education student was suspended from school. The issue was whether the school district violated the student’s rights under the IDEA, the Rehabilitation Act, and state law. The District Court dismissed the claims of the student. The Appeals Court held that the student failed to satisfy the pleading requirement of the IDEA. The student in his complaint addressed several issues for which he did not state a reason. The issues were a suspension, a return to his current placement after the suspension, no description of his IEP or his current placement, facts concerning remedies, and facts regarding the psychiatric evaluation request.

Analysis: Suspension Issues

In each of the cases in this group, the primary issue was the question of what the courts view as suspension in school disciplinary situations for special education students. Suspending students with disabilities is an issue of concern for school administrators. Some would argue that special education students who break the rules need to face similar consequences as their regular

education classmates. The question is can student with disabilities be suspended just the same as general education students? In a case involving a student with an emotional disorder and self-abusive issues, the school district suspended her without a hearing because it felt it could not adequately provide supervision for the behaviors she exhibited. The court said that there was no change of placement by reason of her suspension when it was done on a short-term basis but when the suspension was for an indefinite period the educational placement had been changed under the EAHA. This triggered statutory safeguards. No hearing or other safeguards were necessary when suspensions are short term (*Sherry v. New York State Education Dept.*, 1979). In a case in which a city board of education took on the state board of education regarding the states reversal of an IHO's decision for the city BOE, the city BOE prevailed. A student with a disability was suspended for 5 days for verbally abusing a teacher and the court considered whether discipline resulting in a short-term suspension was considered the same as expulsion or termination of educational services. The court determined that it was not case. The assertions in this case requiring some finding that a handicapped student was dangerous before any disciplinary suspension, all rest on regulations relating to expulsion or termination of educational services (*Board of Education of City of Peoria, Sch. Dist. 150 v. Ill. State Bd. of Ed.*). In a case, in which, a special education student was suspended on several occasions, the ALJ determined that suspensions in this case did not constitute a change in placement. The court said that there was no reason to believe that regular education students would not have been suspended for the same behaviors and, because the student's placement never changed, there was no obligation to conduct a manifestation determination review (*Joshua S. v. School Board of Indian River County*, 2002). When a student with a disability was in a fight and suspended for the rest of the year, the court considered whether the school violated the student's constitutional right to FAPE

when they suspended him for the rest of the year and not following due process procedures. The court said the student's rights were violated when they suspended him for the rest of the year without a hearing and due process procedures (*Waln v. Todd County School District*, 2005). In a case involving a general education student suspended indefinitely and had previously been evaluated and determined to not have a disability, the court said there was no fundamental right to education protected under the federal constitution. The section of the IDEA that provided protection in the form of placement in an alternative setting for students with disabilities subjected to disciplinary measures had no application to the student's indefinite suspension, because the school offered and the parents refused identification and services under the IDEA (*M.G. v. Crisfield*, 2008).

Seclusion/Restraint

The sixth most common issue in federal court special education discipline cases is seclusion and restraint. There were 24 cases of the 132 federal court cases that involved seclusion and restraint as an issue. Seclusion and restraint can involve "time-out" rooms or physical restraint of a student. Just what does the court say about these issues? There were 18 cases in which seclusion/restraint was a main issue in the case. The primary issue was reviewed in 10 cases.

Rasmus v. State of Arizona, 24 IDELR 824 (D. Ariz. 1996). A student with Attention Deficit Disorder and diagnosed with an emotional disability was placed in a "time-out" room. The issue was whether the student's placement in the "time-out" room violated the student's Fourth and Fourteenth Amendment rights. As to the seizure issue of the Fourth Amendment, an encounter becomes a seizure when its circumstances become so intimidating as to demonstrate

that a reasonable person would have believed he was not free to leave if he does not respond. A search is reasonable if it is justified at its inception and was reasonably related in scope to the circumstances which justified the interference in the first place. A seizure is reasonable in its scope when the measures adopted are reasonably related to the objectives of the seizure and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. The court found that the school district's placement of Charles in a locked room was "excessively intrusive" in light of his age and emotional disability. Therefore, placing Charles in a locked room was considered an unreasonable response to his behavioral problems. As to the Fourteenth Amendment claim, the court agreed with the school district that Charles restriction in the time-out room and subsequent loss of class time was only for 10 minutes. Charles was not harmed, restrained, or suffered any pain. He went into the room willingly and without protest. He suffered no trauma. Therefore, the school district was entitled to summary judgment on the parents' procedural due process claims. The school administrators also could have reasonably believed that their policies and conduct were lawful. Their conduct was not so offensive that they should have recognized that it violated constitutional law.

Brown ex. rel. Brown v. Ramsey, 121 F. Supp. 2d 911, affirmed 10 Fed. App. 131. A student with Asperger's Syndrome was restrained on several occasions for his behavior by crossing his arms and holding him from the back until he calmed down. The issue was whether the teachers' use of the "basket hold" as a method of restraint, violated the student's substantive due process rights. The Appeals Court found no reversible error and affirmed the district court's decision. In analyzing the issues, the district court used the Fourth Circuit's *Hall* standard which stated that "the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented,

and was so inspired by malice or sadism or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience.” The court reasoned that the threshold for establishing a constitutional tort for excessive corporal punishment is a high one. Citing several cases of precedent, the court reasoned that this case did not rise to the standard set forth in *Hall*. The court stated that the alleged actions of the teachers in this case were anything other than a disciplinary measure within the sound discretion of the teacher. The court also stated, “the standards for establishing a constitutional injury are far higher and the parents have failed to meet the exacting standards as stated by the Fourth Circuit in *Hall*. Schools and school teachers not only have a duty not to employ unconscionable restraints against individual students, but they also have a duty to educate other students within a class setting and to cure disruptive behavior that would deny the educational opportunities of other students. Otherwise, schools cannot function at all.”

Alex G. by Dr. Steven G. v. Davis Joint Unified School District, 44 IDELR 130 (E.D. Cal. 2005). A student with Autism exhibited outbursts and violent tendencies. As a part of this plan school personnel were allowed to use physical restraint. The student’s parents withdrew consent for restraint. The student was suspended on several occasions and on other incidents restraint was used to bring the student under control. The issues were whether the school district violated the student’s constitutional rights by physically restraining him and obtaining a temporary restraining order to change his placement to the alternative school. The Court held that the school district did not retaliate or discriminate against the student when they restrained him and they got a temporary restraining order to change his placement to the alternative school. The Court reasoned that the evidence showed that his teachers believed that the student was going to hurt himself or others when he jumped across wet tabletops and therefore physically restrained

him even though they had a written agreement with the parents that they were not to use physical restraints. The Court also reasoned that the evidence also showed that the school district tried to implement the outside consultants' recommendations that were part of the written agreement. The Court felt it was not in "bad faith, deliberate indifference, or gross misjudgment" to seek the TRO to change the student's placement but actually the district acted "reasonably and in good faith to resolve a difficult situation posed by a disruptive and violent student."

Disability Rights Wisconsin, Inc. v. State of Wisconsin Department of Public Instruction, 46 IDELR 122 (7th Cir. 2006). A school had two seclusion rooms for special education students who become unruly. They are placed in these time-out rooms if their IEP allows it. The parents of a student with a disability at the school complained about the seclusion rooms to the Disability Rights Wisconsin, Inc. (DRW). The DRW began an investigation. They asked DPI for the names of the children. DPI did not provide the students' names. The District Court denied the DRW's request. DRW appealed the Court of Appeals. At issue was whether and to what extent the State of Wisconsin Department of Public Instruction (DPI) must disclose records uncovered in its investigation into the use of "time-out" or seclusion rooms for disciplining students in a Wisconsin school to Disability Rights Wisconsin, Inc. (DRW). The broader issue deals with the scope of state protection and advocacy agencies' rights to records when the agencies have reason to believe that citizens they are charged with protecting are being abused or neglected. The Appeals Court held that the DRW failed to show that it had exhausted the available administrative remedies, which was an issue that merited no further consideration since DPI expressly abandoned it in oral argument. The Court reasoned that the relevant statutes required DRW to know the names of students who may have been placed in seclusion rooms or at least try to obtain permission from their legal representatives to access the records. The Court of

Appeals also reasoned that the DRW failed to show that it had exhausted the available administrative remedies.

School Board of Independent School District No. 11 v. Renollett, 440 F.3d 1007, 45 IDELR 117 (8th Cir. 2006). A student with a disability had parents that were not content with the school district's IEP. The issue was whether the school district failed to follow the procedural and substantive requirements of the IDEA and whether the school district provided FAPE to Josh. The Appeals Court held that the District Court was right when it decided that the school district offered FAPE to a high school student with a disability. The Appeals Court concluded that any procedural irregularities related to the student's behavior intervention plan did not deny him FAPE. No law requires that the behavior plan has to be in writing according the appeals court. The court felt the school district staff responded to behavior incidents with set procedures and documented everything. The staff used manual restraint, mechanical restraint, time out with seclusion, and temporary withdrawal or delay of meals. Because the interventions did not amount to conditional procedures, the appeals court concluded that no emergency IEP meeting was required. The district also showed that Josh made improvement toward his objectives and goals, and provided Josh with meaningful educational benefit.

Couture v. Board of Education of Albuquerque Public Schools, 535 F.Supp.3d 1243, 235 Ed. Law Rep. 721 (10th Cir. 2008). A student with a severe emotional disability exhibited repeated outbursts and threatened others and he was often placed in a supervised time-out room until he calmed down and could come back to class. The issue was whether the school district and school personnel violated the student's Fourth and Fourteenth Amendment rights by placing him in a time-out room when he exhibited violent outbursts. The Appeals Court held that the Fourth Amendment was not violated with the repeated use of the time-out room for punishment

for student misbehavior; student's refusal to do school work was a good enough reason to be placed in the time-out room; lengthy time-outs were reasonably related to the school's objective of behavior modification; and placement in the time-out room did not implicate procedural due process requirements. The Appeals Court reasoned that "to qualify as a seizure on the context of a school setting, the limitation on the student's freedom of movement must significantly exceed that inherent in every day, compulsory attendance." The court did not feel it needed to resolve this issue because the time-outs were not unreasonable. The teachers were faced with a behavior problem that was almost impossible to resolve. When M.C. refused to do any of his school work, it was not unreasonable for the educators to send him to a time-out room for 5 minutes hoping that he would cooperate in the future. With the violent behavior exhibited by the student, it was not unreasonable for the educators to continue to detain M.C., chiefly because they had a fear that was understandable due to his past behavior. The Appeals Court respected the teachers' choice unless their method is definitely unreasonable or blatantly not tailored to meeting the student's needs. The court should not make the teacher's job harder by imposing personal liability when their teaching methods do not succeed. The Court was reluctant to limit a teacher's ability to manage her classroom by requiring her to give the student a "hearing" of some form every time a time-out was used for discipline. This, the court believed, would be an undue burden that should not be imposed unless the use of time-outs became the same as a lengthy school suspension.

D.L. v. Waukee Community School District, 578 F.Supp.2d 1178, 238 Ed. Law Rep. 681 (S.D.Iowa 2008). A student with disability exhibited aggressive behaviors was transferred to a new program without parent input. A new IEP was developed and shortly thereafter teacher began using "time-out" as a method to get the student under control. The issue was whether the

school district violated the student rights under the IDEA, substantive and procedural due process rights under Section 1983, equal protection under Section 1983, and a violation of the Rehabilitation Act. The Court held that the parents' recovery was limited under the IDEA to injunctive relief and related costs. The Court reasoned that the Section 1983 claims were not precluded by claims brought under the Rehabilitation Act because preclusion would have undermined congressional intent to preserve rights under the IDEA. Remedies under the IDEA were unavailable as to past medical expenses, physical and mental pain and suffering, and loss of enjoyment of life. They were limited by statute to injunction, reimbursement of costs of private enrollment, and reasonable attorney fees. The school district failed to adequately train and negligently trained individuals responsible for the reported conduct.

G.C. v. School Board of Seminole County, Florida, 639 F.Supp.2d 1295 (M.D.Fla. 2009).

A special education student with Pervasive Developmental Delay and ADD was physically, emotionally, and psychologically abused by his teacher. The student was known to be impulsive and difficult to handle. The issue was whether the teacher violated the student's rights under Section 1983 claiming that she deprived him of his "constitutional civil rights and his Fourteenth Amendment due process liberty interest." The issue was also whether the school district violated the student's rights under Section 1983 for negligent hiring, supervision, and retention. The Court held that "the limited incidents of physical restraint used on the student by the teacher did not result in an injury which rose to a level which shocked the conscience" and the student's seeing other students in his class allegedly being abused did not rise to the level of "shocks the conscience" standard that is required to claim Section 1983 due process claim. To claim a substantive due process claim for physical abuse a student must prove that a school teacher "intentionally used an amount of force that was obviously excessive under the circumstances and

the force used presented a reasonably foreseeable risk of serious bodily injury.” The court examines the following factors: “the need for the application of corporal punishment, the relationship between the need and amount of punishment administered, and the extent of the injury inflicted.” The court reasoned that the autistic child’s developmental disability should be taken into account when considering whether the teacher’s punishment and the injury the child received “shocked the court’s conscience.” The amount of restraints mentioned in this case did not result in an injury, which shocked the court’s conscience. To place a liability on a school district the student must show that their constitutional rights were violated, that the district had a policy that constituted a deliberate indifference to that constitutional right, and the policy caused the violation. The student in this case failed to establish a violation of the constitution when the teacher’s alleged physical abuse of him and his classmates. Therefore, the Section 1983 liability on the school district was rejected.

C.N. v. Willmar Public Schools, District No. 347, 591 F.3d 624, 252 Ed. Law Rep. 106 (8th Cir. 2010). A special education student with Autism Spectrum Disorder had communication and hyperactivity issues. Her IEP included a behavior plan, which authorized the use of seclusion and restraint. The student’s parents objected to their continued inclusion in the behavior plan. The issue was whether the school district provided adequate educational services and violated the student’s rights under the Rehabilitations Act and the Fourth and Fourteenth Amendments. The Appeals Court held that by moving to another school district before asking for a due process hearing the student failed to exhaust administrative remedies under the IDEA, the use of seclusion and restraints by the teacher did not violate the student’s Fourth Amendment right to be free from unreasonable seizures, and the allegations did not state a substantive due process violation. The Appeals court reasoned that the use of restraint and seclusion by the

teacher on disabled students did not violate the students' Fourth Amendment right to be free from unreasonable seizures. The allegations by a disabled a "student that a teacher mistreated an unidentified disabled student in a variety of ways, and that teacher used restraints, seclusion, and verbal and physical abuse against student, and verbal and physical abuse against student, did not state claim against the teacher for violation of substantive due process rights, absent specific facts about the alleged abuse, including dates and other circumstances." The parents IDEA claim failed as a matter of law because she did not request a hearing on her claims against the school district until after she removed the student from the district.

Payne v. Peninsula School District, 598 F.3d 1123, 255 Ed. Law Rep. 456, rehearing overruled (9th Cir. 2010). A student with moderate autism exhibited a resistance to school work, had difficulties staying on task, and was impulsive with inappropriate responses to his environment. The school district addressed his behavior using interventions that included the use of time-outs in a "safe room." The issue was whether the student's rights were violated under the IDEA when the teacher placed the student in a "safe room." The Appeals Court held that the mother was required to exhaust administrative remedies under the IDEA before she bring suit against the school district. The district court reasoned that it lacked subject matter jurisdiction over the parent's federal claims because the parent failed to exhaust her administrative remedies under the IDEA. The appeals court reasoned that the mother was required to exhaust administrative remedies before she could bring a suit claiming negligence, outrage, and Section 1983 violations against the school district, the school, and school personnel.

Analysis: Seclusion/Restraint Issues

In each of the cases in this group, the primary issue was the question of what the courts view as seclusion/restraint in school disciplinary situations for special education students. The courts have agreed that the educational plans for students are best created and implemented by the educators in schools and give latitude to well-constructed plans for education and discipline. This includes seclusion and restraint as a tool for getting students under control. In a case in Arizona, a student with a disability was placed in a “time-out” room for disciplinary reasons. The court said that an encounter becomes a seizure when its circumstances become so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he does not respond. A search is reasonable if it is justified at its inception and was reasonably related in scope to the circumstances, which justified the interference in the first place. The court said the placement of the student in a locked room was “excessively intrusive” in light of his age and emotional disability and was unreasonable response to his behavioral problems. The time he was in the room was not excessive and he was not harmed or suffered any pain. The school administrators could have reasonably believed that their policies and conduct were lawful and not so offensive that they should have recognized that it violated constitutional law (*Rasmus v. State of Arizona*, 1996). When a special education student was restrained the parents sought relief in court. The court used the Fourth Circuit’s *Hall* standard which stated “the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking the conscience.” This case did not rise to this standard. The court said that “school teachers and administrators not only have a duty to

educate other students within a class setting and to sure disruptive behavior that would deny the educational opportunities of other students. Otherwise, schools cannot function at all” (*Brown ex. rel. Brown v. Ramsey*). In another case involving restraint, a student was restrained on several occasions and suspended. The court in this case said the school district did not retaliate or discriminate against the student when they restrained him. The teachers thought he was going to hurt himself or others when he jumped across tabletops. The district acted reasonably and in good faith to resolve a difficult situation posed by a disruptive and violent child (*Alex G. v. Davis Joint Unified School District*, 2005). In a case involving a student with multiple disorders, the parents brought suit for a denial of FAPE. The Eighth Circuit said that any irregularities related to the student’s behavior plan did not deny him FAPE. The staff used manual restraint, mechanical restraint, and time-out with seclusion. The school responded to behavior incidents with set procedures and documented everything. The student was provided meaningful educational benefit (*School Board of Independent School District No. 11 v. Renollett*, 2006). The court held that the Fourth Amendment was not violated when the school placed a student with a disability in a time-out room when he exhibited violent outbursts. When the student refused to do school work was a good enough reason to be placed in the time-out room. Lengthy time-outs were reasonably related to the school’s objective of behavior modification and did not implicate procedural due process requirements. The court felt that “to qualify as a seizure on the context of a school setting, the limitation on the student’s freedom of movement must significantly exceed that inherent in every day, compulsory attendance.” The court should not make the teacher’s job harder by imposing personal liability when their teaching methods do not succeed. There was reluctance on the part of the court to limit a teacher’s ability to manage her classroom by requiring her to give the student a “hearing” of some form every time a time-out

was used for discipline. This would be an undue burden that should not be imposed unless the use of time-outs became the same as a lengthy school suspension (*Couture v. Board of Education of Albuquerque Public Schools*, 2008). In a case in which time-out was used, the court gave the parents limited recovery under the IDEA for, among other reasons, the school district failed to adequately train and negligently trained individuals responsible for the reported conduct (*D.L. v. Waukee Community School District*, 2008). Another case involved a special education student who was allegedly physically, emotionally, and psychologically abused by his teacher. He was restrained on several occasions. The court held that “the limited incidents of physical restraint used on the student by the teacher did not result in an injury which rose to a level which shocked the conscience.” The court said that the autistic child’s developmental disability should be taken into account when considering whether the teacher’s punishment and the injury the child received “shocked the court’s conscience.” The court said to claim a substantive due process claim for physical abuse a student must prove that a school teacher “intentionally used an amount of force that was obviously excessive under the circumstances and the force used presented a reasonably foreseeable risk of serious bodily injury” (*G.C. v. School Board of Seminole County, Florida*, 2009).

Expulsion

There were 35 cases in which expulsion was an issue. Expulsion of a student from school for any length of time is a serious and profound way to treat a student. Many steps should be taken by a school system to get to the point of expelling a child from school. The superintendent or head of the school system usually recommends to the board of education in an expulsion proceeding. The action by the board is the normal requirement for expelling a student

from public school. There were 15 cases in this study in which expulsion was a main issue. Of these cases, 5 were selected for review as a primary issue in this analysis.

Stuart v. Nappi, 443 F. Supp. 1235 (D. Comm. 1978). A special education with a history of behavior problems was suspended from school. The superintendent recommended that she be expelled. The issue was whether students covered by special education law are subject to the same disciplinary policies, regulations, rules, and punishments (e.g., suspension or expulsion from school) as are their age appropriate peers. The court held that the school district could not conduct a hearing to expel the student/plaintiff. The court did not agree that handicapped children were immune from school discipline. The court felt that the Handicapped Children Act prescribed a procedure for transferring disruptive children. The court stated there was a conflict between the disciplinary procedures of the school district and the procedures of the Handicapped Children Act. The court concluded, therefore, that the “use of expulsion proceedings as a means of changing the placement of a disruptive handicapped child contravenes the procedures of the Handicapped Children Act.” Additionally, the court reasoned that students with disabilities are not immune from a school’s disciplinary process. They were not entitled to participate in school programs when the education of other children is impaired by their behavior. The court stated that school officials can take disciplinary measures swiftly, such as suspension against disruptive handicapped children. The school can request a change in placement. These students should have demonstrated that in disrupting the education of other children, their present placement is inappropriate. This shows that the Handicapped Act offers schools short and long term methods for dealing with behavioral problems of children with disabilities.

Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979). A mildly mentally handicapped student was suspended for disciplinary reasons and recommended that Dennis be expelled for the

remainder of the school year. The issue was whether a school district can suspend or expel a special education student just like any regular education student. What if the student's behavior is a manifestation of the student's disability? The court held that the language of the Handicapped Children Act and the accompanying regulations indicated clearly that the Act was intended to limit a school's right to expel handicapped students. Schools were not to expel students whose handicaps caused them to be disruptive. Instead, schools were to appropriately place these students in a more restrictive environment.

Magyar by and through Magyar v. Tucson Unified School District, 958 F. Supp. 1423. A student with an emotional disability gave a knife to another student at school and was suspended from school and arrested by the local police department. The student was expelled for 1 year. At issue was whether the school district can rightfully expel a student with a disability for behavior that is unrelated to the disability and whether a school district must provide the disabled student educational services during the expulsion period. The court stated that the suspension of a student with a disability for more than 10 days or the expulsion of a student constituted a "change in placement" under the IDEA and therefore require procedural protections. A 10-day suspension for bringing a knife to school did not constitute a "change in placement." A long term suspension of 175 days constituted a "change in placement" which required a change in the IEP. The court found that based on facts unique to this case and the Supreme Court's guidance in *Honig*, all students with disabilities were entitled to individualized educational services when they are suspended long term or expelled from the regular setting. They reasoned that disabled students have special needs that must be met.

Board of Education of Oak Park v. Nathan R., ex. rel. Richard R., 199 F. 3d. 377, cert. denied *Nathan R. v. Board of Education of Oak Park River Forest High School District* 200, 121

S. Ct. 65. A student with a behavior disorder was caught with marijuana at school. He was suspended and later expelled. The issue was whether the school was obligated to provide special education services to the student during his expulsion. The United States District Court on the issue of providing services to Nathan during expulsion held that it was moot because the student had graduated from high school.

Colvin v. Lowndes County, 32 IDELR 32 (N.D. Miss. 2000). A general education student brought a Swiss-army knife to school and was suspended for 9 days pending expulsion. The school board approved the expulsion of the student for a period of 1 year. The issue was whether the school district violated the student's due process rights and violated the IDEA when they expelled him for bringing a Swiss-army knife to school. The United States District Court held for the parent and found that the school district violated the IDEA and the student's due process rights. The parents had asked the school district to evaluate the student. This was established even though the parents did not show that the student had a disability and was protected by the stay-put provision. When the student was enrolled in the school district, his parents indicated that he had ADD and was taking Ritalin. Teachers commented on the student's poor academic performance and lack of concentration. This led the court to believe the school district knew or should have known that student had a suspected disability. The court felt that the school district failed to consider the specific circumstances of the case before the student was expelled.

Analysis: Expulsion Issues

In each of the cases in this group, the primary issue was the question of what the courts view as expulsion in school disciplinary situations for special education students. Students with disabilities are expelled from school at times. The issue is very similar to suspension in how a

school district goes about providing FAPE and still removing the student from the classroom. In a case where a student with a disability is expelled, the court stated that students with disabilities are not immune from a school's disciplinary process. The court said the "use of expulsion proceedings as a means of changing placement of a disruptive handicapped child contravenes the procedures of the Handicapped Children Act." The court felt that these disruptive students were not entitled to participate in school programs when the education of other children is impaired by their behavior. By disrupting the education of other children, these children show their placement is inappropriate. The EAHA offered schools short and long term methods for dealing with behavioral problems of children with disabilities (*Stuart v. Nappi*, 1978). The courts have held that the EAHA's regulations were intended to limit a school's right to expel handicapped students. Schools were not to expel students whose handicaps caused them to be disruptive. Instead, schools should appropriately place these students in a more restrictive environment (*Doe v. Koger*, 1979). Courts have also ruled that the expulsion of a student constituted a "change in placement" under the IDEA and, because of this, require procedural protections. An expulsion would require a change in the IEP. Based on the Supreme Court's guidance in *Honig*, all students with disabilities were entitled to Individualized educational services when they are expelled from the regular setting (*Magyar v. Tucson Unified School District*). In a case involving a general education student, the student was expelled for bringing a knife to school. The court sided with the parents that the school district violated the student's due process rights and the IDEA. The court felt the school district knew or should have known that the student had a disability (*Colvin v. Lowndes County*, 2000).

Manifestation

In the review of cases, manifestation was the next most common. There were 36 cases in which manifestation was an issue. This issue involves the determination of whether a student's actions are related to their disability. This is a very important component when deciding the fate of a student when they break the code of conduct. The courts have been pretty clear in regard to this issue. There were 15 cases in which manifestation was a main issue. A review of 7 of those cases follows:

School Bd. Of Prince William County, Va. V. Malone, 662 F. Supp. 978, 40 Ed. Law Rep. 740, affirmed 762 F. 2d. 1210, 25 Ed. Law Rep. 141. A handicapped child had charges against him relating to the distribution of drugs at school and was suspended then expelled from school. The issue is whether the state complied with the procedures of the EAHCA and the IEP developed through the Acts' procedures reasonably calculated to enable the child to receive educational benefits. The Appeals Court held that expulsion of handicapped child was not appropriate under the Education for All Handicapped Children Act. The Appeals Court Judge held that expulsion of a handicapped student from school was subject to review in the federal court under provisions of the Education for All Handicapped Children Act and that the expulsion was unlawful because the behavior for which he was expelled was caused by his handicap. Expulsion of a disabled child from school for distributing drugs was not appropriate under the Education for All Handicapped Children Act where no alternative was considered and behavior of the child was caused by his handicapping condition, and that the infraction stemmed from the learning disability is established to the court's satisfaction by at least a preponderance of the evidence. The court felt there were alternatives for discipline other than expulsion. A more restrictive placement could have been explored.

Doe v. Maher, 793 F.2d. 1470 (9th Cir. 1986), 33 Ed. Law Rep. 124. Two emotionally handicapped students were suspended and eventually recommended for expulsion. The issue was whether a student with a disability can be expelled for discipline issues when the behavior is a manifestation of their disability and whether a student with a disability can be suspended while the expulsion hearings are ongoing. The United States District Court awarded declaratory and injunctive relief but denied monetary recovery. The U. S. Court of Appeals held that the EAHCA prohibits expulsion of disabled students when the behavior is a manifestation of their disability and the student with a disability may be expelled where the behavior is not a manifestation of their disability. The Appeals Court also held that the student with a disability may be suspended during pendency of expulsion proceedings. The EAHCA prohibits the expulsion of a student with a disability for misbehavior that is a manifestation of his disability. If the disabled student's misbehavior is not a manifestation of his disability, the student can be expelled without compliance with mandates of EAHCA. When this occurs, the school district may cease providing all educational services.

Doe v. Board of Education of Oak Park River Forest High School District 200, 115 3d. 1273, cert. denied 118 S. Ct. 564. A student with a learning disability was found to be in possession of a pipe and marijuana at a dance sponsored by the school. He was suspended for 10 days and eventually expelled for the remainder of the fall semester. The issue was whether the school district satisfied the requirements of the IDEA in expelling John Doe and not providing alternative services. The Appeals Court agreed with the reasoning of both the Ninth and Fourth Circuits on the issue of not providing alternate services when a student is expelled for conduct that is not a manifestation of their disability. The cases the parents brought to argue their claim did not lead to a contrary result. The court felt that the rationale and result of the Ninth Circuit's

opinion in the Maher case and the Fourth Circuit's opinion in the Riley case were more persuasive.

Richland School District v. Thomas P. by Linda P., 32 IDELR 233 (W.D. WI. 2000). A student with a learning disability was involved in a vandalism spree with a group of other children and was expelled from school. The issue was whether the school district met the burden of proof that the student's disciplinary violation was not a manifestation of his disability. The District Court held for the parent concluding the school district failed to prove that the student's actions were not a manifestation of his disability. The court reasoned that the school district failed to prove that the student's actions were not a manifestation of his disability. The administrative law judge considered the student's ADD and dysthymia diagnosis, although this diagnosis came after the manifestation determination meeting. This was allowed under the IDEA. The ALJ considered the parent's expert testimony credible and the school district did not rebut it. The burden was on the school district to prove the disability was not a manifestation of the student's disability. Based on this, the ALJ's decision in favor of the parent was proper according to the court.

Farrin v. Maine School Administrator District No. 59, 35 IDELR 189 (D. Ct. Me. 2001). A student with a learning disability brought marijuana to school and admitted to bringing it to school to the principal. He was immediately suspended for 10 days and then expelled. The issue was whether the school district was obligated to conduct a manifestation determination review before the school board meeting in which the decision was made to expel the student. The District Court held that the school district was not obligated to conduct its manifestation review before the board meeting at which a decision was made to expel the student. Also, a 2-day delay in holding the review was harmless and did not warrant annulment of the expulsion. Also, the

court held that the district's failure to consider in the manifestation review the results of behavioral tests, which indicated impulsivity, was harmless. In addition, evidence supported the hearing officer's finding that the student's behavior was not related to his disability. The court also held that the IEP developed during his expulsion was adequate and the failure of the district to give the parents proper notice before the expulsion vote was not fatal. The failure to conduct a functional behavior assessment was also harmless. The hiring of an outside consultant to compile information necessary for the FBA was appropriate. And lastly, the district's failure to suspend the student under the IDEA's 45-day suspension rule for drug offenders was harmless. The court reasoned that Jacob's parents were not able to show that his "impulsivity" problem would necessarily be related to his decision to sell marijuana. The school argued successfully that Jacob knew and understood the rules at school. They contended that his selling of marijuana took place over an extended period of time and involved many individual decisions.

Timothy B. ex. rel. J.B. v. Neshaminy School District, 153 F. Supp. 2d 621, 156 Ed. Law Rep. 181. A student with a disability made threatening remarks to the school administrator and was suspended for the remainder of the school year. The issue was whether the court should dismiss the student's contention that continuing with administrative proceedings would be futile and whether the school district violated the student's rights under the IDEA and the Rehabilitation Act. In terms of exhausting administrative remedies, the court concluded that "where recourse to the IDEA's administrative proceedings would be futile or inadequate, the exhaustion requirement is excused." The student satisfactorily alleged that further attempts to proceed with administrative remedies would be futile.

R.J. by Ron J. and Cindy J. v. McKinney Independent School District, 45 IDELR 9 (E.D. Tex. 2005). A student with a disability had frequent disciplinary issues at school. The student

set fire to a piece of toilet paper in the bathroom at school. He was arrested and taken to a juvenile detention facility. Later he was recommended for expulsion. The issue was whether the hearing officer made the correct decision and whether the hearing officer and assistant principal violated the student's rights under Section 504 of the Rehabilitation Act and Section 1983. The United States District Court held for the parents allowing their claims of violation of the IDEA and Fourteenth Amendments. The Court Reasoned that the parents had adequately stated facts to show that the student's IDEA and due process rights may have been violated. After dismissing all claims against the hearing officer, it found the parents did not have to exhaust their administrative remedies by pursuing their Section 1983 claims against the assistant principal at the administrative hearing.

A.P. v. Pemberton Township Board of Education, 45 IDELR 244 (D. N.J. 2006). A student with multiple disabilities was suspended for 10 days from school for drug use. The issue was whether the school district was in violation of the IDEA by not conducting a manifestation determination hearing within 10 days of the suspension and whether the school district caused harm or deprived educational benefit by failing to conduct the manifestation determination hearing within 10 days of the suspension. The Court held for the school district by overturning an administrative law judge's decision that the school district had in error suspended the student for drug use in school. The Court reasoned that the ALJ's decision regarding the manifestation determination was wrong. The Court felt the school district had another 25 days in which they could have held the meeting under the IDEA. They also reasoned that the school district's actions did not cause harm or a deprivation of educational benefit to the student.

Analysis: Manifestation Issues

In each of the cases in this group, the primary issue was the question of what the courts view as manifestation in school disciplinary situations for special education students. A manifestation review is required to determine whether a behavior that warrants long-term suspensions and expulsions is related to a student's disability. The courts have shown that when a student's behavior is a manifestation of their disability then that student cannot be expelled. The court has said that there should be more restrictive placement options and alternatives for discipline other than expulsion (*School Board of Prince William County, Va. V. Malone*). The court has also said that while a student with a disability cannot be expelled for a behavior related to their disability, they could be expelled if the behavior is not related to their disability. And the student can be suspended during the pendency of the expulsion hearings. The court goes on to say that the school district may cease providing educational services during this expulsion (*Doe v. Maher*, 1986). As to this issue of not providing educational services during an expulsion, the Ninth Circuit's *Maher* case and Fourth Circuit's *Riley* case have stated that when a student is expelled for conduct that is not a manifestation of their disability the school district is not obligated to provide alternate services. The student's behavior made him forfeit his right to FAPE required by the IDEA and "stay-put" placement during the due process hearings if there was no relationship between the misconduct, which caused the process, and the student's exceptionality (*Doe v. Board of Education of Oak Park River Forest High School District 200*). When determining whether the behavior is not related to the student's disability, the court has placed the burden of proof on the school district (*Richland School District v. Thomas P.*, 2000). Another expulsion case involved the order in which the expulsion hearing took place and that of the manifestation hearing. The expulsion hearing was conducted before the manifestation

hearing and the courts said the school district was not obligated to conduct the manifestation review before the expulsion hearing (*Farrin v. Maine School Administrator District No. 59*, 2001). There are times that the school district fails to follow the procedural mandates of the IDEA. If no manifestation determination hearing is conducted and the student is suspended long term or expelled, the parents may go directly to court arguing that the exhaustion requirement is futile under the IDEA. The court has said “where recourse to the IDEA’s administrative proceedings would be futile or inadequate, the exhaustion requirement is excused” (*Timothy B. ex. rel. J.B. v. Neshaminy School District*).

Corporal Punishment

The ninth most frequent primary issue in this analysis was corporal punishment. There were 12 cases involving corporal punishment. Corporal punishment typically refers to the paddling of a student with no more than “3 licks” with a wooden paddle on the buttocks. The definition may also include other forms of discipline other than using a paddle to strike a child. This analysis will look at both forms of corporal punishment. Many states have banned the use of corporal punishment. This analysis includes 8 cases in which corporal punishment was a main issue. There were 6 cases in which it was a primary issue. Those cases are analyzed here.

Fee v. Herndon, 900 F2d. 804, cert. denied, 499 U.S. 908 (1990). A special education student became disruptive during class and was disciplined with corporal punishment. The issue was whether the defendants violated the student’s substantive due process rights under the Fourteenth Amendment. The court held that since Texas has civil and criminal laws in place to proscribe educators from abusing their students and provides adequate post-punishment relief in

favor of students, no substantive due process concerns are implicated because no arbitrary state action exists.

Flores v. School Board of DeSoto Parish, 116 Fed. Appx. 504, 194 Ed. Law Rep. 137. A special education student was serving detention and was caught in the bathroom by his teacher for allegedly taking his time getting back to class. The teacher felt that Kevin was less than obedient and physically disciplined Kevin by allegedly throwing him against a wall and choking him. The issue was whether the school district violated the student's Fourth and Fourteenth Amendment rights. The Appeals Court held that the allegations made by the mother failed to state claims under the Fourth or Fourteenth Amendment and the parent did not exhaust all administrative remedies required by the IDEA. The Appeals Court reasoned that the parents contended that the teacher's acts should not be considered corporal punishment but a use of excessive force that violates the student's Fourth Amendment rights. The magistrate judge decided on the assumption that the teacher's actions constituted corporal punishment. Given the Circuit's prohibition against constitutional claims for corporal punishment, the special constitutional status of students, and the fact that the momentary "seizure" complaint in this case was not the type of detention or physical restraint normally associated with Fourth Amendment claims, the Circuit declined to recognize the parents' Fourth Amendment claim. If the acts of the teacher are characterized as corporal punishment, these acts would not support a substantive due process claim. Corporal punishment is described by the Supreme Court as force that a teacher "reasonably believes to be necessary for a child's proper control, training, or education." The Court reasoned that the teacher's actions in this case can be properly characterized as corporal punishment and held that the parents' did not state a substantive due process claim under the Fourteenth Amendment.

Doe v. State of Nevada, 46 IDELR 124 (D. Nev. 2006). A student with autism was allegedly assaulted by the teacher and aide at school. The issue was whether the school instructors violated the student's substantive due process rights by violently assaulting him. The Court held for the parent stating the evidence supported the parents' claim. The Court reasoned that when the facts were viewed in the light most favorable to the parents, the allegations supported their claims. The court reasoned that the facts could show that the instructors "acted with malice and applied a disproportionate amount of force that caused a severe injury to the student."

C.A. ex rel. G.A. v. Morgan County Board of Education, 577 F.Supp.2d. 886, 238 Ed. Law Rep. 295. A student with a disability was behaving inappropriately and was paddled by the principal in the classroom. The issue was whether the school district through its personnel violated C.A.'s rights under Section 1983 claiming excessive force, specifically her Fourteenth Amendment rights. The Court held that The Section 1983 claims against individual school personnel in their official duties were redundant; individual school employees were entitled to qualified immunity from liability in their personal capacity; liability could not be placed on the superintendent under the supervisory liability theory, the teacher could not be held liable for failing to intervene when witnessing a paddling, and the school board could not be held liable for failing to train school employees. Previous cases permitted local governments to be sued directly for damages and declaratory or injunctive relief; therefore, "there is no longer a need to bring official-capacity actions against local government officials." As to the prosecution of the individual members, the court reasoned that the parents had not demonstrated a violation of a constitutional right. The court did not see the whelps on the student to rise to the level of a severe injury and did not "shock the conscience." The parents did not offer any evidence to

indicate that the actions of the defendants were “inspired by malice or sadism,” but were merely careless or unwise in their excess of zeal. Therefore, the court reasoned that the paddling did not violate the student’s substantive due process rights.

JGS v. Titusville Area School District, 737 F.Supp.2d 449, 263 Ed. Law Rep. 653 (W.D.Pa. 2010). An autistic student screamed obscenities at the class and an aide placed her hand over his mouth. The aide physically restrained JGS while the other kids were removed for their safety. The issue was whether the school district violated the student’s the Fourteenth Amendment’s substantive due process rights. The Court held that the aide did not cause serious physical injury, the aide had a pedagogical objective, and the aide did not act for the purpose of causing harm. The court reasoned that in order for there to be a substantive due process violation in a school corporal punishment case, the conduct must be characterized as arbitrary, or conscience shocking. The court reasoned that the teacher had a pedagogical objective when this incident occurred and so she did not violate the student’s Fourteenth Amendment substantive due process rights because the student was standing up and screaming obscenities and threats at other students and staff during class time. The student had threatened to kill or injure other students, had previously stabbed a fellow student with a pencil.

T.W. ex rel. Wilson v. School Board of Seminole County, Fla., 610 F.3d 588, 258 Ed. Law Rep. 481 (11th Cir. 2010). A student with autism exhibited a multitude of inappropriate behaviors and outbursts that caused him to be restrained and removed from the classroom on numerous occasions. She would often restrain her students after she did something to upset or anger them. She used physical force on T.W. on five separate occasions. The issue was whether a teacher violated a disabled student’s right to be free from excessive corporal punishment or discriminated against the student solely by reason of his disability, in violation of federal statute,

when the teacher physically and verbally abused the student on several occasions. The Appeals Court held that the use of corporal punishment on the student by the teacher was not obviously excessive, the teacher's inappropriate restraint of the student was not totally unrelated to the need for use of corporal punishment, the teacher's pinning of the student's arms behind his back while she was leading the student to cool down room was capable of being construed as an attempt to restore, maintain discipline, or protect the student from self-injurious behavior, the teacher's restraint of the student after he refused to stop scratching an insect bite that was "red and raw looking" was capable of being construed as an attempt to restore order, maintain discipline, or protect the student from self-injurious behavior, the teacher's restraining of the student after he refused to follow her instructions and swung his hands at her was capable of being construed as an attempt to restore order, maintain discipline, or protect student from self-injurious behavior, the teacher's use of force in various incidents had been related to the student's disruptive or self-injurious conduct and was for the purpose of discipline, and was "corporal punishment" and did not violate the student's substantive due process rights, and the teacher's restraining of the student only after he refused to cool down in the classroom, called her names, and threatened to have her arrested was capable of being construed as an attempt to restore order, maintain discipline, or protect the student from self-injurious behavior. The Appeals Court reasoned that the teacher's use of force in restraining him was not egregious and shocking to the conscience as required to violate the student's substantive due process rights. Excessive corporal punishment may be actionable under the Due Process Clause when it becomes arbitrary, egregious, and conscience-shocking behavior. The teacher's use of force with T.W. in several incidents had been related to conduct that was self-injurious or disruptive and discipline was its main purpose. "Corporal punishment was therefore used for the purpose of substantive due process civil rights

claim, because the teacher stated to the student that she would release him if calmed down. The teacher's use of corporal punishment against the student, in restraining him after he did not follow instructions could be considered an attempt by the teacher to restore order, maintain discipline, or protect the student from injuring himself or others. This was not considered by the appeals court to be egregious, arbitrary, and conscience shocking so as to violate the student's substantive due process rights. This same reasoning applies to each of these situations: restraining the student when he refused to stop scratching an insect bite and pinning the student's arms behind his back while leading him to the cool down room. The teacher's abusive behavior towards the students did not affect the determination of whether the circumstances provided the teacher with a reason to use corporal punishment, and therefore, on substantive due process claim whether the force used was excessive. The court further reasoned that the use of corporal punishment by the teacher was not obviously excessive and not a violation of the student's rights because he student only suffered minor injuries. The Appeals Court depends on cases that deal with the ADA and the Rehabilitation Act interchangeably because the same standards govern discrimination claims under both statutes.

Analysis: Corporal Punishment Issues

In each of the cases in this group, the primary issue was the question of what the courts view as corporal punishment in school disciplinary situations for special education students. The definition of corporal punishment may look different to the courts than what it looks like to the non-legal world. A paddling is usually considered the method used by educators to discipline students in states and local districts that still use it. Corporal punishment can also look like physical force used to generate a desired behavior from those in authority to their students in an

educational setting. The courts have dealt with both kinds of corporal punishment. When corporal punishment is used, parents and students typically argue that their substantive due process rights under the Fourteenth Amendment are being violated. Courts have been generally on the side of school districts when it comes to corporal punishment.

In a case when a special education student was paddled at school, the parents complained there were physical injuries and raised allegations of negligence and excessive force and violations of the student's Fourteenth Amendment rights. The court in this case held that since there were state laws in place to proscribe educators from abusing students, no substantive due process concerns were implicated because no arbitrary state action existed. In an excessive force case that involved a teacher allegedly choked a student and threw him against a wall, the parents argued that this action should not be considered corporal punishment but the use of force that violated the student's Fourteenth Amendment rights. The judge ruled that it was corporal punishment. The court failed to recognize the parent's Fourth Amendment claim. If the acts of the teacher are characterized as corporal punishment, these acts would not support a substantive due process claim. Corporal punishment is described by the Supreme Court as force that a teacher "reasonably believes to be necessary for a child's proper control, training, or education" (*Flores v. School Board of Desoto Parish*). In another case of force used to discipline a special education student, the court held for the parents' in claiming that the teacher assaulted their child. The court stated the evidence supported the claim and the instructors "acted with malice and applied a disproportionate amount of force that caused a severe injury to the student" (*Doe v. State of Nevada*, 2006). In another Fourteenth Amendment case a student with a disability was paddled and the discipline caused whelps on the skin. The court said in this case that school personnel in their official duties were entitled to qualified immunity from liability in their

personal capacity. The court also contended that the superintendent, teacher who witnessed the paddling, and the school board could not be held liable. The court also did not see the whelps on the student to rise to the level of severe injury and did not “shock the conscience.” There was no evidence of malice or sadism, though perhaps the instructor was “careless or unwise in their excess of zeal.”

The paddling did not violate the student’s substantive due process rights (*C.A. ex rel. v. Morgan County Board of Education*). The was an unusual case involving a special education student who was restrained by an aide that had liquid soap on her hands as she placed them over the mouth of the student. The claim was that she forced the student to ingest the soap. The parents claimed a Fourteenth Amendment violation. The court said the aide did not cause serious physical injury and had a pedagogical objective when she restrained the student. She did not act for the purpose of causing harm. The corporal punishment must be characterized as arbitrary, or conscience shocking for there to be a substantive due process violation (*JGS v. Titusville Area School District*, 2010). In an alleged abuse case, the teacher used force to restrain the special education student on numerous occasions. The Eleventh Circuit said the use of corporal punishment on the student by the teacher was not obviously excessive and the teacher’s inappropriate restraint of the student was not totally unrelated to the need for use of corporal punishment and can be construed to be an attempt to restore order and maintain discipline, or protect the student or others from harm. These acts did not violate the student’s substantive due process rights and was not egregious and shocking to the conscience (*T.W. ex rel. Wilson v. School Board of Seminole County, Fla.*, 2010).

Due Process Hearing

The last of the top 10 most common issues in special education discipline cases in federal court is due process hearing. There were 60 cases in which a due process hearing was an issue. A due process hearing is one of the procedural components of the IDEA that a parent or school system must utilize to bring a complaint. It can be found in conjunction with all of the other issues depending on the case. There were 9 cases reviewed in which due process hearing was a main issue. Of these cases, there were 4 cases that were analyzed.

Hacienda La Puente Unified School District of Los Angeles v. Honig, 976 F2d. 487 (9th Cir. 1992). After a Hearing Officer reinstated an expelled regular education student, the school district challenged the IHO's decision and jurisdiction in court. The issue was whether the state can serve as an arbiter in hearings related to eligibility of students as related to the IDEA or conduct state administrative proceedings to consider complaints. The district court dismissed the school district's complaint that the hearing officer lacked jurisdiction over the matter and awarded attorney's fees incurred in the course of the proceedings. The U.S. Court of Appeals affirmed. The appeals court rejected the school district's argument regarding the hearing officer's lack of jurisdiction. The court felt that the IDEA and accompanying federal regulations make it clear that, even though not previously identified as disabled, the student's alleged disability may be raised in an IDEA administrative due process hearing. The court also stated that states participating in IDEA should entertain complaints "respecting any matter relating to the identification . . . of a child." The court also reasoned that if issues were found concerning the detection of disabilities to be outside the scope of IDEA "due process hearings," school districts could easily circumvent the statute's strictures by refusing to identify students as disabled. The court also cited the Supreme Court, in affirming their decision, stating that in

passing the IDEA, “Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school.”

J.C. v. Regional School District No. 10, 115 F. Supp. 2d 297, D. Conn. September 28, 2000 (No. 3; 99 cv0873 (GLG)). A regular education student, evaluated and determined to not have a disability, was suspended pending expulsion for using a sharp instrument to damage a bus seat. The issues were whether the parents were the prevailing party in the administrative proceeding and therefore eligible for an award of attorney’s fees and costs under the IDEA and, if so, the amount of those attorney’s fees. The District Court held that the student was the prevailing party and entitled to recover reasonable attorney fees. The court was not convinced that the school complied with all of the parents’ requests for the student simply because they requested them. The Court believed the school district guided their actions in response to the parents’ lawsuit. Also, because of the cancellation of the expulsion hearing due to the evaluation process for the student, the court could not say that the parents sought to raise an issue that was not first raised in the eligibility meeting and so the court felt the parents’ due process hearing request was not premature. The Court determined that the school district knew or should have known that student was a child with a disability before the violation occurred and, therefore, the student was entitled to the protections afforded by the IDEA. For these reasons, the Court determined the parents to be the prevailing party.

L. ex. rel. Mr. F. v. North Haven Board of Education, 624 F.Supp. 2d 163, 246 Ed. Law Rep. 795 (D. Conn. 2009). A student with Downs Syndrome exhibited many behavioral and emotional issues caused a disruption to the classroom that hindered the other students from learning. The issue was whether the Hearing Officer correctly determined that the IEP adopted

by the school district at the PPT meeting provided the student with FAPE. A Hearing Officer did not lack jurisdiction to order PPT to consider out-of-district placement for the student. The court reasoned that due deference should be given a hearing officer's decision because the courts lack specialized knowledge and experience involving questions on educational policy. The court reasoned that the hearing officer did not make an error when she ruled that the IEP was appropriate and the plan could not be implemented because the student's behavior kept her from the regular education classroom.

Analysis: Due Process Hearing Issues

In each of the cases in this group, the primary issue was the question of what the courts view as a due process hearing in school disciplinary situations for special education students. A due process hearing is one of the procedural components of the IDEA that a parent or school system may request to bring a complaint. There are a few cases that the due process hearing was a major issue. In one case the hearing officer for the due process hearing reinstated an expelled general education student. The school district appealed. The Ninth Circuit was clear stating that a student can bring a complaint even though they were not previously identified as disabled. The court also said that if issues were found concerning the detection of disabilities to be outside the scope of IDEA "due process hearings," school districts could easily circumvent the statute's strictures by refusing to identify students as disabled. The Supreme Court has said that "Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school" (*Hacienda La Puente Unified School District of Los Angeles v. Honig*, 1992). In another case involving an expelled general education student, the parents requested a due process hearing to

contest the decision that the student was not eligible for special education services. The court said in this case that because of the cancellation of the expulsion hearing due to the evaluation process for the student, the court could not say that the parents sought to raise an issue that was not first raised in the eligibility meeting and so the court felt the parent's due process hearing request was not premature. The school district knew or should have known that the student had a disability and, therefore, was entitled to the protections afforded by the IDEA (*J.C. v. Regional School District No. 10*, 2000). The question of whether a hearing officer has jurisdiction was part of another case involving a student with a disability that had severe behavioral issues. The Hearing Officer rejected the parents' complaints and ruled in favor of the school district that the plan for the student provided FAPE. The court said the Hearing Officer did not lack jurisdiction to order the school committee to consider out-of-state placement for the student and due deference should be given a hearing officer's decision because the courts lack specialized knowledge and experience involving questions on educational policy (*L. ex rel. Mr. F. v. North Haven Board of Education*, 2009).

Other Issues

There were three other issues that were revealed through the review of cases. They were compensatory education, identification, and qualified immunity. Compensatory education was found in 9 cases, with 6 of them being the primary issue. Identification was found in 8 cases, with 6 being the primary issue. Qualified immunity was found in 8 cases, with 2 of them being the primary issue.

Compensatory Education. Valerie J. v. Derey Cooperative School District, 771 F. Supp. 483 (D. N.H. 1991). A student with a disability was disruptive and a distraction for other students and was suspended. The issue was whether the school district had failed to provide educationally handicapped student with an appropriate education. The district court held that Casey was entitled to compensatory education for at least seven and one-half months after he graduated from high school or turned 21, whichever comes later, upon determination that the school district had failed to provide educationally handicapped student with appropriate education for that period of time. The district should have convened the IEP committee to review whether the student should be transferred to the regular education classroom.

Pihl v. Mass. Dept. of Education (CA 1, 1993) 9 F3d. 184. An emotionally disturbed and retarded student's residential placement was terminated due to aggressive behavior. The issue was whether the IDEA empowers courts to grant remedy in the form of compensatory education to disabled students who are beyond statutory age of entitlement for special education services. The United States District Court dismissed parents claim. The United States Court of Appeals reversed and held that the IDEA empowers courts to grant remedy in the form of compensatory education to disabled students who are beyond statutory age of entitlement for special education services and parents claim for relief under the Act in the form of compensatory education as a remedy for past deprivation during the time the student was eligible, regardless of the student's eligibility for current or future services under the Act. The IDEA empowers courts to grant a remedy in the form of compensatory education to disabled students who are beyond the statutory age of entitlement for special education services. Under ordinary circumstances, parties must exhaust administrative remedies under the IDEA before initiating court action. In certain cases, they may bypass administrative processes to seek judicial relief.

Parents of Student W. v. Puyallup School District, 93 Ed. Law Rep. 547(1994). A student with a disability had behavioral issues and was suspended on multiple occasions. At issue is whether the district could impose special education suspension guidelines according to the IDEA and whether compensatory education of one and one-half years for the student was appropriate to make up for past failures to provide special education. The District Court granted the District's motion for summary judgment, holding that the suspension guidelines were not unlawful as written, and Student W. was not entitled to an award of compensatory education. A suspension may create a "change in placement," and by terms of the IDEA, a change in placement can only occur with the consent of the parents, or after written notice, and the opportunity for a hearing. The Supreme Court made no finding about the total number of short-term suspensions per semester or per year which were permissible. As far as compensatory education, there is no contractual remedy. Compensatory education is an equitable remedy, part of the court's resources in crafting "appropriate relief." There was no showing that a general award of unspecified one and one-half years of compensatory education was appropriate.

Jacobelli by Jacobelli v. Nouvin Area School District, 45 IDELR 216 (W.D. Pa. 2006). A general education student was identified as needing speech and language services. He was later suspended for talking to another student about bringing a gun to school and shooting other students and himself. He was recommended for expulsion. The issue was whether the school district violated the student's rights under Section 1983 of the Civil Rights Act, the IDEA, the Rehabilitation Act, and Title II of the ADA. The Court reasoned that the school district, after having been ordered to offer compensatory education to Adam, got the parents' approval to remove him to another placement before they fulfilled the BSE's order. The court reasoned that those involved in the disciplinary hearing after Adam threatened to bring a gun to school, were

possibly intentional in their disregard to the IDEA's procedural safeguards. The court reasoned that the statute of limitations could not begin running until he reached the age of majority. The parents were not required to exhaust IDEA remedies because they were asking for monetary damages not available under the IDEA.

Identification. A.E. v. School District No. 25 of Adair County, Oklahoma (1991) 436 F2d. 472, 936 F2d. 472, 68 Ed. Law Rep. 278. A student with a disability had problems behaviorally with respect to impulse control, excessive anxiety, and peer interaction while in school and suspended from school. The issue was whether the trial court improperly admitted and considered expert testimony, whether the student, A.E., was seriously emotionally disturbed, and whether Congress intended to exclude children who were socially maladjusted, but not seriously emotionally disturbed, from coverage under the Act. The District Court held for the school district. For a child to be socially maladjusted is not by itself conclusive evidence that he or she is seriously emotionally disturbed. The evidence in this case, with expert testimony, clearly supported the District Court's decision that A.E. was not seriously emotionally disturbed within the purview of the Act. The testimony supported the finding that A.E suffered from a conduct disorder, but was not seriously emotionally disturbed within the federal definition. The school district made every effort to assure that the student was educated in the least restrictive environment possible. They developed an IEP to meet her need in terms of her learning disability in math.

Manchester School District v. Charles M.F., 21 IDELR 732 (D. N.H. 1994). A student identified with a serious emotional disturbance and a learning disability, was suspended several times for various behavioral problems. The issue was whether Charles should be secondarily identified as learning disabled and whether the summer placement offered by the school district

was appropriate and compliant with the IDEA. The District Court agreed with the parent, declining to address which party bore the burden of proof at the administrative hearing on the grounds that the evidence supported the findings of the hearing officer. Evidence was clear that the student should be identified as both Severe Emotional Disturbance (SED) and Learning Disabled (LD).

F.N. v. Board of Education of Sachem Central School District, 894 F. Supp. 605 (E.D. N.Y. 1995). A general education student was suspended and referred for evaluation to determine if he had a disability. The issue was whether the school district denied the student due process rights according to the Individuals with Disabilities Act and the Rehabilitation Act in connection with his disciplinary suspension from school and his identification and evaluation as a disabled student. The court held that the school district did not deprive the student the right to an education without due process. The school district conducted the required evaluations and a determination was made by the district, that the student was not handicapped. And even though the parents claim that the student had a disability, no such determination had been made by the school. The school district maintained that F.N.'s "stay-put" placement was his continued suspension with home instruction because that was his educational placement when it was determined that he should be evaluated to determine whether he had a disability.

Jeffrey S. v. School Board of Riverdale School District, 21 IDELR 1164 (W.D. Wis. 1995). A student with an emotional disturbance was suspended and expelled from school. The issue was whether the student was disabled and entitled to a due process hearing before his expulsion from school for committing violent and assaultive acts. The District Court held that even though the parent removed Jeffrey from special education, he had at least a chance of succeeding in his claim of being disabled and entitled to a due process hearing. The student had

at least a modest chance of succeeding in his contention that he had a disability under the IDEA and entitled to a due process hearing regarding the merits of the expulsion. The purpose being to determine whether a preliminary injunction against the expulsion should occur despite the fact that Jeffrey's parents removed him from special education and experts determined that Jeffrey was not a student with a disability at that time. Jeffrey's teachers had advised his parents against removing Jeffrey from special education classes and doctors found him to have a disorder resulting in explosive and disruptive behavior.

Plumby v. Northeast Independent School District, 46 IDELR 126 (W.D. Tex. 2006). A special education student with ADHD was improving and the school district and parents agreed in a settlement during a due process hearing to remove Maxwell from special education and place him in the regular program. While in the regular program Maxwell became disruptive and was recommended for expulsion. The issue was whether the student qualified as a disabled student under the IDEA and whether the school district had "knowledge" of the student's disability prior to his recommended expulsion and whether the parents failed to exhaust their administrative remedies under the IDEA. The Court held for the school district and granted their motion to dismiss and denied the parents' request for a preliminary injunction. The court reasoned that because the parents agreed to remove Maxwell from special education they could not obtain a stay-put injunction to prevent his expulsion for inappropriate conduct at school. The court said that the school district did not have knowledge of the disability if the student was evaluated and it was determined that he did not have a disability. Maxwell was once considered a student with a disability. At the due process hearing Maxwell's parents agreed that he would no longer need special education services and would be put in a regular classroom. When this happened, the court reasoned, Maxwell "lost the procedural protections afforded to children with

disabilities under the IDEA” and the parent could not seek a stay-put injunction without exhausting their administrative remedies.

Qualified immunity. Doe v. Aguilar, 400 F. Supp. 2d. 922, 205 Ed. Law Rep. 310 affirmed 197 Fed. Appx. 296, 214 Ed. Law Rep. 1027. A special education student was involved in a discipline issue and was suspended. The issue was whether the vice-principal had qualified immunity from the student’s federal claims and whether the vice-principal was immune from the student’s state law negligence claims. The Appeals Court affirmed the decision of the District Court and held that the student failed to allege cognizable violation of substantive due process against vice principal and the vice-principal had professional immunity from the student’s state law negligence claims. The Court of Appeals reasoned that the law does not impose liability where no recognized duty has been breached. Susan and her parents failed to show the facts supported a recognized theory of recovery and the facts defeated a claim of immunity from suit.

Preschooler II v. Clark County School Board of Trustees, 479 F. 3d. 1175, 217 Ed. Law Rep. 51. A child with a disability was allegedly physically abused the teacher on several occasions. The issue was whether the school personnel, state, school district, and school board violated the student’s rights under the ADA, the Rehabilitation Act, and the IDEA. The Appeals court held for the student by denying the qualified immunity of the school district on the beating and slamming issues and held for the school district allowing qualified immunity in regard to the shoeless walks, scratches, and bruises claims. The consequences of the teacher’s force against the student were analyzed under the “reasonableness” rubric of the Fourth Amendment, although historically the courts have applied substantive due process analysis under the Fourteenth Amendment’s “shock the conscience” test. The teacher’s alleged “disciplinary” actions against the child were unreasonable in light of the child’s age and disability and the context of the

events. These actions, therefore, violated the Fourth Amendment's prohibition of the use of excessive force against public school children. The Court felt the teacher's alleged conduct was disturbing and "bears no reasonable relation to the need." There was no need in this situation for he claimed excessive force. On the other hand, the court reasoned that the unexplained bruises and scratches did not rise to the level of recognized constitutional violations. Making the child walk from the bus shoeless was not unreasonable in the court's view. The Court reasoned that from the perspective of the constitutional prohibition of excessive physical abuse against public school students, and being sensitive to students with disabilities, no reasonable special education teacher would believe that it is lawful to force a seriously disabled student at 4 years of age to beat himself or to violently throw or slam him. The Court felt that the school officials' alleged acts and omissions established they are liable for the violation of the student's constitutional rights because they demonstrated disregard of their responsibilities in hiring, training, supervising, disciplining, and reporting abuses committed by the teacher. The teacher's actions should have been known by a reasonable special education official. Failure to address the actions of the teacher was grounds for liability.

CHAPTER 5

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of this research was to study court cases about student discipline for students receiving services under the IDEA. This study encompassed legal cases that included issues in special education discipline for the years 1975-2011. The years selected were chosen to reflect cases that began occurring after the enactment of the Education for All Handicapped Act (1975). Research showed there were no special education discipline cases in federal court until 1978. This paper explored both the procedural aspects of IDEA discipline and the decisions that are made when schools discipline a student with a disability. Educators need to be fully aware of the law as it pertains to discipline in their schools and fully knowledgeable of the procedures that must be followed in disciplining that student. In order to avoid legal problems and to minimize the possibility of due process hearings school leaders should be knowledgeable of federal and state regulations and current case law.

Summary

The following research questions guided the data collection and analysis:

1. What issues occurred in court cases about discipline of students receiving services under IDEA?
2. What were the outcomes in court cases about discipline of students receiving services under IDEA?

3. What trends can be noted in court cases about discipline of students receiving services under IDEA?

4. What legal principles for school administrators may be discerned from court cases about discipline of students receiving services under IDEA?

Research Question 1 asked, what issues occurred in court cases about discipline of students receiving services under IDEA? The primary issues regarding student discipline include the following:

1. Placement: In each of the cases in this group, the primary issue was the question of what the courts view as a change in placement in school disciplinary situations for special education students. The cases reflecting this issue were *S – 1 v. Turlington*; *Kaelin v. Grubbs*; *Cain v. Yukon Public Schools, Dist. I-27*; *Lamont X v. Quisenberry*; *Board of Education of Township High School District No. 211 v. Corral*; *Victoria L. v. District School Board*; *Board of Education of Township No. 211 v. Linda Kurtz Imig*; *Chris D. v. Montgomery County Board of Education*; *Fuhrman v. East Hanover Board*; *Clyde K. v. Puyallup School District*; *Light v. Parkway School District*; *School Board of Hillsborough Co. v. Student 26493257X*; *School Board of Pinellas County, Fla. v. J.M. by and through L.M.*; *Randy M. v. Texas City ISD*; *Wilson v. Fairfax County School Board*.

2. FAPE: In each of the cases in this group, the primary issue was the question of what the courts view as a FAPE in school disciplinary situations for special education students. The cases reflecting this issue were *Swift v. Rapides Parish Schools*; *Eric J. v. Huntsville City Board of Education*; *Robert H., et al., Plaintiffs v. Nixa R-2 School District*; *Community Consolidated School District #93 v. John F.*; *LIH v. New York City Board of Education*; *CJN v. Minneapolis Public Schools*; *Alex R. v. Forrestville Valley Community Unit School District #221*; *Colon v.*

Colonel Intermediate Unit 20; Board of Education of Township High School District No. 211 v. Michael R. and Diane R. ex rel. Lindsey R.; Escambia Co. Board of Education v. Benton; John G. v. Northeastern Ed. Inter. Unit 19; San Raphael Elementary School District v. California Special Education Hearing Office; Vicky M. v. Northeastern Ed. Int. Unit 19; Joseph M. v. Northeastern Ed. Intermediate Unit 19; M.M. by and through her parent and natural guardian, L.R.; Plaintiff-Appellee v. Special School District No. 1, et.al.; Defendants-Appellants, P.K. ex rel. P.K. v. Bedford Central School District; Pohorecki v. Anthony Wayne Local School District; Richardson Independence School District v. Michael Z.; S.J. v. Issaquah School Dist. No. 411; Springfield School Committee v. Doe.

3. Exhaustion of Administrative Remedies: In each of the cases in this group, the primary issue was the question of what the courts view as exhaustion of administrative remedies in school disciplinary situations for special education students. The cases reflecting this issue were *Hayes v. Unified School District no. 377; Carey on Behalf of Carey v. Maine School Administrative District No. 17; Waterman by Waterman v. Marquette Alger Intermediate School District; Glen III by and through Glen II v. Charlotte Michlenburg School Board of Education; Doe v. Board of Education of the Elyria City Schools; Doe v. Board of Education of the Elyria City Schools; Gadsden City Board of Education v. B.P.; Padilla v. School District No. 1; Covington v. Knox Co. (TN); Mallory v. Knox County School District; Coleman v. Newburgh Enlarged City School District; A.W. ex rel. Wilson v. Fairfax County Schools; Centennial School District v. Phil L. ex rel. Matthew L.; Dean v. School District of the City of Niagara Falls; M.G. ex rel. LG v. Caldwell-West Caldwell Board of Education.*

4. Stay-Put: In each of the cases in this group, the primary issue was the question of what the courts view as stay-put in school disciplinary situations for special education students.

The cases reflecting this issue were *Doe v. Rockingham School Board*; *Certiorari granted in part Honig v. Doe*; *Texas City Independent School District v. Jorstad*; *Binghamton City School District v. Botgna*; *Deborah v. Leonard*; *Doe v. Manning*; *M.P. v. Governing Board of the Grossmont Union School District*; *Clinton Co. R-III School District v. C.J.K.*; *J.B. v. Independent School District No. 191*; *Board of Education of Community High School District No. 218*; *Cook County, Ill. v. Illinois State Board of Education*; *Rodriecus L. v. Waukegan School District*; *Taylor v. Corinth Public School District*; *Mr. & Mrs. R. v. West Haven Board of Education*; *S.W. v. Holbrook Public Schools*; *A.W. v. Fairfax County Schools*; *Valentino C., et al. v. School District of Philadelphia*.

5. Suspension: In each of the cases in this group, the primary issue was the question of what the courts view as suspension in school disciplinary situations for special education students. The cases reflecting this issue were *Sherry v. New York State Education Dept.*; *Board of Education of City of Peoria, Sch. Dist. 150 v. Ill. State Bd. Of Ed.*; *Joshua S. v. School Board of Indian River County*; *Waln v. Todd County School District*; *M.G. v. Crisfield*; *M.S.-G v. Lenape Reg. High School District*.

6. Seclusion/Restraint: In each of the cases in this group, the primary issue was the question of what the courts view as seclusion/restraint in school disciplinary situations for special education students. The cases reflecting this issue were *Rasmus v. State of Arizona*; *Brown ex. rel. Brown v. Ramsey*; *Alex G. by Dr. Steven G. v. Davis Joint Unified School District*; *Disability Rights Wisconsin, Inc. v. State of Wisconsin Department of Public Instruction*; *School Board of Independent School District No. 11 v. Renollett*; *Couture v. Board of Education of Albuquerque Public Schools*; *D.L. v. Waukee Community School District*; *G.C. v. School Board*

of Seminole County, Florida; C.N. v. Willmar Public Schools; Payne v. Peninsula School District.

7. Expulsion: In each of the cases in this group, the primary issue was the question of what the courts view as expulsion in school disciplinary situations for special education students. The cases reflecting this issue were *Stuart v. Nappi; Doe v. Koger; Magyar by and through Magyar v. Tucson Unified School District; Board of Education of Oak Park v. Nathan R., ex. rel. Richard R.; Colvin v. Lowndes County.*

8. Manifestation Determination: In each of the cases in this group, the primary issue was the question of what the courts view as manifestation in school disciplinary situations for special education students. The cases reflecting this issue were *School Bd. Of Prince William County, Va. v. Malone; Doe v. Maher; Doe v. Board of Education of Oak Park River Forest High School District; Richland School District v. Thomas P. by Linda P.; Farrin v. Maine School Administrator District No. 59; Timothy B. ex. rel. J.B. v. Neshaminy School District; R.J. by Ron J. and Cindy J. v. McKinney Independent School District; A.P. v. Pemberton Township Board of Education.*

9. Corporal Punishment: In each of the cases in this group, the primary issue was the question of what the courts view as corporal punishment in school disciplinary situations for special education students. The cases reflecting this issue were *Fee v. Herndon; Flores v. School Board of DeSoto Parish; Doe v. State of Nevada; C.A. ex rel. G.A. v. Morgan County Board of Education; JGS v. Titusville Area School District; T.W. ex rel. Wilson v. School Board of Seminole County, Fla.*

10. Due Process Hearing: In each of the cases in this group, the primary issue was the question of what the courts view as a due process hearing in school disciplinary situations for

special education students. The cases reflecting this issue were *Hacienda La Puente Unified School District of Los Angeles v. Honig*; *J.C. v. Regional School District No. 10*; *L. ex. rel. Mr. F. v. North Haven Board of Education*.

Research Question 2 asked, what were the outcomes in court cases about discipline of students receiving services under IDEA? The job school officials have is a very difficult one. They must balance the needs of special education students and the safety of general education students and school staff. The discipline of special education students is controversial and causes some to say that there is a dual system of discipline that limits the consequences that school officials can use in regard to school discipline. School administrators should understand that, except for the change in placement options of discipline, special education students can be disciplined just like general education students. Long-term suspensions and expulsions are the discipline options that cause the most controversy. The use of appropriate disciplinary measures is the desired result. In order for school officials to make the right decisions every day, they must be informed of the law (IDEA) and what they can and cannot do when handing down discipline. It is also important for them to know the procedural safeguards so as to not violate the constitutional rights given to special education students under the IDEA. Principals need to understand what procedures must be followed to bring the desired effect when disciplining students with disabilities.

Everyone wants a safe school environment for our children to learn and grow. School officials are under stress every day to protect the students and staff from outside dangers and also the possibility of problems within the school. Students can be a danger to each other and the school staff. To help administrators balance dual priorities, an attempt was made in this study to

review cases that would help school administrators to know the main issues in special education discipline and to use this information to make good solid decisions for their students.

The analysis of cases showed 10 issues which were the most frequent and important to the special education discipline litigation in federal court. Placement or Change in Placement was the category with the largest number of cases. There were 73 total cases of the 132 that had placement as an issue and 38 in which it was the main issue. Placement is where the child should be served their specially designed instruction. Each of these placement cases involved special education students who had violated school disciplinary policies or were a serious disruptive or dangerous behavior problem. In the former situations, suspensions and or expulsions were shown by the courts to be a “change in placement.” And because of being identified as a “change in placement,” procedural protections under the IDEA were afforded the special education students. The courts have said that the IDEA requires that short-term suspensions of special education students can be treated the same as regular education suspensions. Long-term suspensions and expulsions, however, are considered a “change in placement.” Placement decisions at this point are made by the IEP team, of which, the parent is a part and must agree for the change in placement. If the parent does not agree, they must follow the procedures set by the IDEA to receive relief. In the other cases, the issue involved behavior that was considered dangerous to the safety of the student with a disability and/or the other students and staff in the school. The courts have consistently decided in favor of school districts to give them latitude to change the placement of a child to better meet the special needs of the disabled student and to secure the safety of the staff and other students. The courts have been reluctant to overrule the decisions of school personnel when deciding what constitutes a Free Appropriate Public Education (FAPE).

The second issue reviewed as most frequent was FAPE or free appropriate public education. FAPE was found in 46 of the 132 cases involving special education discipline in federal court and 38 in which it was one of the main issues. Every error the school system makes under the IDEA is a denial of FAPE. The courts have determined that even though in some placements and services students might do better, there is no requirement in the IDEA that every child with a disability receives optimal services. What the IDEA does require is “appropriate educational services be delivered in the least restrictive environment available, with a preference for mainstreaming when possible.”

The third most frequent issue was exhaustion of administrative remedies. There were 31 total cases of the 132 in which exhaustion of administrative remedies was an issue and 30 in which it was the main issue. This occurs when a litigant attempts to seek a court remedy before completing all the procedural steps outlined in the IDEA or Individuals with Disabilities Education Act. Many times a parent might otherwise prevail had they not skipped these procedural components. The courts have consistently maintained the need for litigants to follow the procedural requirements of the IDEA when bringing a complaint. Many cases have been decided on the exhaustion of administrative remedies issue. The student or parent may have a legitimate grievance but may not get the result they hoped for in court simply for not following the procedures for making complaints found in the IDEA. Bringing a case to court before requesting a due process hearing is a common mistake. It is clear that the school district is safest when it follows the procedures as prescribed under the IDEA. If the court can make a connection with the educational plan by the school district with the IDEA, the parents are obligated to follow the procedural requirements of the IDEA. Parents do not succeed many times in court because they do not follow the appropriate process under the IDEA.

The fourth most frequent issue in special education discipline cases was “stay-put.” There were 34 cases of the 132 that involved “stay-put” as an issue and 26 cases in which it was the main issue. Stay-put primarily involves the placement of a student in his or her placement at the time of the procedural process for placement or eligibility. In other words, the student “stays-put” until the process is completed. Many times this is an area of deep concern for both parents and school personnel for many reasons. When disciplining a student, many times there is disagreement about where that student should be placed for their educational services while the administrative proceedings play out. The next most frequent issue was suspension. There were 62 cases of the 132 federal court cases reviewed that involved suspension as an issue and 18 in which it was the main issue. These suspensions were short-term and long-term out-of-school suspensions of special education students. Suspending students with disabilities is an issue of concern for school administrators. Some might argue that special education students who break the rules need to face similar consequences as their regular education classmates. Can a student with disabilities be suspended just the same as general education students? The answer is yes and no. Yes they can be suspended like everyone else for 10 days or less with no educational services provided. After, 10 days they must be provided procedural safeguards.

The sixth most common issue in federal court special education discipline cases is seclusion and restraint. There were 24 cases of the 132 federal court cases that involved seclusion and restraint as an issue and 18 cases in which it was the main issue. Seclusion and restraint can involve “time-out” rooms or physical restraint of a student. The courts have agreed that the educational plans for students are best created and implemented by the educators in schools and give latitude to well-constructed plans for education and discipline. This includes seclusion and restraint as a tool for getting students under control.

The next issue was expulsion. There were 35 cases in which expulsion was an issue and 15 cases in which it was the main issue. Expulsion is very similar to suspension in how a school district goes about providing FAPE and still removing the student from the classroom. The court has both stated that students with disabilities are not immune from a school's disciplinary process and the "use of expulsion proceedings as a means of changing placement of a disruptive handicapped child contravenes the procedures of the Handicapped Children Act." This is a contradiction and is more of a placement issue. The court felt that disruptive students were not entitled to participate in school programs when the education of other children was impaired by their behavior and by disrupting the education of other children, these children show their placement is inappropriate. The courts have held that the EAHA's regulations were intended to limit a school's right to expel handicapped students. Schools were not to expel students whose handicaps caused them to be disruptive. Instead, schools should appropriately place these students in a more restrictive environment. Courts have also ruled that the expulsion of a student constituted a "change in placement" under the IDEA and, because of this, require procedural protections. An expulsion would require a change in the IEP. Based on the Supreme Court's guidance in *Honig*, all students with disabilities were entitled to individualized educational services when they are expelled from the regular setting.

In the review of cases, manifestation was the next most common. There were 36 cases in which manifestation was an issue and 15 cases in which it was the main issue. Manifestation involves the determination of whether a student's actions are related to his or her disability. This is a very important component when deciding the fate of a student when they break the code of conduct. The courts have been pretty clear in regard to this issue. A manifestation review is required to determine whether a behavior that warrants long-term suspensions and expulsions is

related to a student's disability. The courts have shown that when a student's behavior is a manifestation of their disability, then that student cannot be expelled. The court has said that there should be more restrictive placement options and alternatives for discipline other than expulsion. While a student with a disability cannot be expelled for a behavior related to their disability, they could be expelled if the behavior is not related to their disability. And the student can be suspended during the pendency of the expulsion hearings. The school district may cease providing educational services during this expulsion. As to this issue of not providing educational services during an expulsion, the Ninth Circuit's *Maher* case and Fourth Circuit's *Riley* case have stated that when a student is expelled for conduct that is not a manifestation of their disability the school district is not obligated to provide alternate services. The student's behavior made him forfeit his right to FAPE required by the IDEA and "stay-put" placement during the due process hearings if there was no relationship between the misconduct, which caused the process, and the student's exceptionality. When determining whether the behavior is not related to the student's disability, the court has placed the burden of proof on the school district.

The ninth most frequent primary issue in this analysis was corporal punishment. There were 12 cases involving corporal punishment and 8 cases in which it was the main issue. Corporal punishment typically refers to the paddling of a student with no more than "3 licks" with a wooden paddle on the buttocks. The definition may also include other forms of discipline other than using a paddle to strike a child. This analysis will look at both forms of corporal punishment. The definition of corporal punishment may look different to the courts than what it looks like to the non-legal world. Corporal punishment can also look like physical force used to generate a desired behavior from those in authority to their students in an educational setting.

The courts have dealt with both kinds of corporal punishment. When corporal punishment is used, parents and students typically argue that their substantive due process rights under the Fourteenth Amendment are being violated. Courts have been generally on the side of school districts when it comes to corporal punishment. Corporal punishment is described by the Supreme Court as force that a teacher “reasonably believes to be necessary for a child’s proper control, training, or education.”

The last of the top 10 most common issues in special education discipline cases in federal court was due process hearing. There were 60 cases in which a due process hearing was an issue and 9 in which it was a main issue. A due process hearing is one of the procedural components of the IDEA that a parent or school system must utilize to bring a complaint. It can be found in conjunction with all of the other issues depending on the case.

This study examined federal court cases to determine the major issues that school officials must be aware of when disciplining students with disabilities. The case analysis showed the major issues were placement, FAPE, exhaustion of administrative remedies, stay-put, suspension, seclusion/restraint, expulsion, manifestation, corporal punishment, and due process. The courts have sided with school districts in the majority of these cases, primarily because the courts have been reluctant to tell educators what they should be doing when it came to providing educational benefits to the students. They felt educators were the experts and should make those decisions they believed to be reasonably calculated. Parents and students have prevailed to the extent that the courts believed the schools have violated the constitutional rights of students and acted in a way that was not reasonable to educate and discipline students. The courts have consistently said that the Congress was clear in that they wanted to restrict the ability of schools to unilaterally exclude students with disabilities from school. School administrators are faced

with discipline decisions every day that impact the safety and education of all of their stakeholders. There is a need for these administrators to balance the needs of the individual with the needs of the entire school district.

Research Question 3 asked what trends can be noted in court cases about discipline of students receiving services under IDEA.

The trends that have shown to be the most discernable in special education discipline are primarily involved with placement. The courts have been clear that a child with a disability cannot be excluded from receiving a FAPE in public schools when the behavior that triggered the suspension or expulsion was a manifestation of the student's disability. The concept behind these protections is that they ensure that all students receive a FAPE and that school officials cannot use discipline as a means to limit or prohibit students from receiving an education. Closely related to this issue of FAPE in regard to special education discipline is a trend toward general education students being disciplined with long-term suspensions or expulsion and using Child Find to get back into school. The courts have heard cases that caused schools to put a student back into the school attended during the misbehavior (stay-put) while the special education evaluation took place. This occurs even when a student ends up not being eligible for special education. The child cannot be expelled if he is a student with a disability and the behavior is a manifestation of the student's disability.

Research Question 4 asked, what legal principles for school administrators may be discerned from court cases about discipline of students receiving services under IDEA?

School administrators and teachers are faced with a host of issues with regard to disciplining special education students. The best way to make appropriate decisions when disciplining students with disabilities is to be fully informed and not ignorant of the law. Students with disabilities can receive the same discipline as other general education students

except for discipline that involves suspensions of longer than 10 days and expulsions. These protections are in place to guarantee that students are not punished for their disability. It does not give them free reign to behave as they chose. It helps identify disruptive behaviors that are or are not caused by the disability and ensures that both are dealt with appropriately. The important thing is to follow procedure as prescribed by the IDEA when administering discipline and when a change of placement is an issue the school district must be mindful of the procedural safeguards available to students. The review of the cases in this study helped establish legal principles school administrators may use in the area of discipline that will assist them in handing out the appropriate consequences for student misbehavior that will hold up under due process and litigation. The legal principles and procedures are based on the fundamental rights of the disabled student guaranteed under the IDEA. The principles reflect the trends in the courts in disciplining disabled public school students.

Legal Principles and Procedures

The following principles were developed from an overview of the 132 case briefs included in this analysis. Themes of the principles developed were drawn from the conclusions of the case analysis.

1. Expulsions and suspensions of more than 10 days are considered a change in placement and trigger the procedural protections of the IDEA. This change in placement must be made by the IEP and agreed to by the parents (*Honig v. Doe*, 1988).

2. Suspensions of less than 10 days can be treated like any other general education suspension, even when the behavior is a manifestation of the student's disability. No hearing or other safeguards are necessary (*Sherry v. New York State Education Dept.*, 1979).

3. Before a school can recommend a change in placement, a manifestation committee hearing must be held to determine whether the student's behavior is related to the student's disability. The burden of proof is with the school district (*School Board of Prince William County, Va. v. Malone*, 1984).

4. A student with a disability cannot be expelled or receive a long-term suspension for any behavior that is a manifestation of their disability (*Doe v. Maher*, 1986).

5. A student with a disability expelled for behavior that is not related to their disability is entitled to individualized educational services (*Swift v. Rapides Parish Schools*, 1993).

6. If it is determined by the IEP team that the behavior is not related to the student's disability, the student may be disciplined like any other student (*Doe v. Board of Education of Oak Park River Forest High School District 200*, 1997).

7. During any suspension that is over 10 days, the student must continue to receive FAPE (*Eric J. v. Huntsville City Board of Education*, 1995).

8. There is no requirement in the IDEA that every child with a disability receives optimal services, even though in some placements and services students might do better (*CJN v. Minneapolis Public Schools*, 2003).

9. A time-out room is not a denial of FAPE. Use of a time-out room should be limited and addressed in the IEP (*Rasmus v. State of Arizona*, 1995).

10. School districts, parents, and students must exhaust all administrative remedies afforded under the IDEA in order to successfully bring a complaint for a violation of the IDEA (*Hayes v. Unified School District no. 377*, 1989).

11. In “stay-put,” a student will remain in their current educational placement until the completion of any review proceedings, unless the parents and the school agency agree (*Honig v. Doe*, 1988).

12. In “stay-put” situations, injunctive relief can be sought by the school district if the placement is likely to result in injury to the student or others (*Honig v. Doe*, 1988).

13. If the “stay-put” placement is at home, the student must still be served specially designed instruction to meet the FAPE requirement (*Honig v. Doe*, 1988).

14. A special education student can be administered corporal punishment if it is permissible according to state law and local district policy. The use of corporal punishment must meet the Fourth Circuit’s *Hall* standard (*C.A. ex rel. v. Morgan County Board of Education*, 2008).

15. Restraints of special education students are permissible. The *Hall* standard and appropriate training for staff are strongly advised (*Brown ex rel. Brown v. Ramsey*, 2000).

16. When administering discipline to a student with a disability, school officials should know that even though an IEP team makes a decision, the parent must agree or they can request a due process hearing (*Hacienda La Puente Unified School District of Los Angeles v. Honig*, 1992).

Conclusion

An analysis of the case law from federal court cases related to special education has affected school administration in several ways. The first would be the way school administrators suspend students with disabilities. If the suspension is less than 10 days it is not a change in placement and the student can be treated like any regular education student. A suspension longer than 10 days constitutes a change in placement and triggers the procedural safeguards of the

IDEA (*Honig v. Doe*). The decision making at that point becomes a matter for the IEP team. The placement decisions of school districts have been upheld when the student was determined by the court to be receiving services that “are reasonably calculated to enable the student to receive educational benefit” (*Cain v. Yukon Public Schools, Fuhrman v. East Hanover Board*, 1991). Students that are truly dangerous and substantially likely to cause injury can be removed from the classroom and placed in another school or classroom (*Light v. Parkway School District*, 1994). The court has said the threat of harm from a violent special education student outweighed the harm to the special education student’s FAPE.

The courts have determined that even though in some placements and services students might do better, there is no requirement in the IDEA that every child with a disability receives optimal services. What the IDEA does require is “appropriate educational services be delivered in the least restrictive environment available, with a preference for mainstreaming when possible.” This court also went on to say that

the concern for enhancing the disabled student’s ability to obtain educational benefit must be balanced with concerns about limited public resources, the need to provide basic educational opportunities to disabled and able-bodied children alike, the concern to serve the disabled child in the environment which is least restrictive of the child’s liberty.” (*Swift v. Rapides Parrish Schools*, 1993)

The court felt that Congress did not intend for the courts to substitute their judgment for the judgment of school officials regarding disciplinary actions (*Robert H., et al. v. Nixa R-2 School District*). School districts violate FAPE many times when they fail to follow the procedural processes and protections of the IDEA (*Community Consolidated School District #93 v. John F.*, 2000; *LIH v. New York City BOE*, 2000).

The student or parent may have a legitimate grievance but may not get the result they hoped for in court simply for not following the procedures for making complaints found in the

IDEA. Bringing a case to court before requesting a due process hearing is a common mistake. They must exhaust all legal administrative remedies, which are provided under the IDEA (*Hayes v. Unified School District no. 377*).

When disciplining a student, many times there is disagreement about where that student should be placed for his or her educational services while the administrative proceedings play out. In a landmark case that is the only special education discipline case to appear before the United States Supreme Court, a disruptive and violent student was suspended and expelled. The Supreme Court held that a student with a disability can be suspended for a period of 10 days. If he is suspended for more than 10 days it triggers the due process clause of the Fourteenth Amendment. The court said that school districts are required to provide FAPE to students with disabilities. All parties are required to follow the prescribed procedural safeguards found in the EAHCA. One of those safeguards is the “stay-put” provision. This provision states that a student will remain in his or her current educational placement until the completion of any review proceedings, unless the parents and the school agency agree (*Honig v. Doe*). On the other hand, when students are a danger to themselves or others do schools have the ability to seek injunctive relief in the courts to keep those students out of their school? The courts have ruled that they do. In spite of the *Honig* case, which created a presumption in favor of the child’s current placement, the court said that schools can seek injunctive relief and can successfully overcome this presumption by showing that “maintaining the child in his or her current placement is substantially likely to result in injury to either himself or herself, or to others” (*Texas City Independent School District v. Jorstad*, 1990). Many cases recently have involved general education students who are expelled from school and then seek the protections of the IDEA by claiming a disability. The Seventh Circuit reversed the district court decision and held

for the school district when the student was granted an injunction to return to school during a special education evaluation. The court stated that if the stay-put provision was automatically applied to every student who files an application for special education, then the avenue will be open for disruptive, non-disabled students to stop any attempts at routine discipline by simply requesting a disability evaluation and demanding to “stay-put.” This, the court felt, would disrupt the educational goals of a public school system that is already overburdened and at times chaotic (*Rodriguez L. v. Waukegan School District*, 1996).

Suspending students with disabilities is an issue of concern for school administrators. Some might argue that special education students who break the rules need to face similar consequences as their regular education classmates. The question is can students with disabilities be suspended just the same as general education students? The answer is yes, for the first 10 days of suspension. There is no change of placement by reason of a suspension when it is done on a short-term basis but when a suspension is for an indefinite period the educational placement is changed under the EAHA. This triggers statutory safeguards. No hearing or other safeguards are necessary when suspensions are short term (*Sherry v. New York State Education Dept.*, 1979).

Seclusion and restraint can involve “time-out” rooms or physical restraint of a student. The courts have agreed that the educational plans for students are best created and implemented by the educators in schools and give latitude to well-constructed plans for education and discipline. This includes seclusion and restraint as a tool for getting students under control. The court said that an encounter becomes a seizure when its circumstances become so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he does not respond (*Rasmus v. State of Arizona*, 1996). Lengthy timeouts were reasonably related to the

school's objective of behavior modification and did not implicate procedural due process requirements. The court felt that "to qualify as a seizure on the context of a school setting, the limitation on the student's freedom of movement must significantly exceed that inherent in everyday, compulsory attendance." The court should not make the teacher's job harder by imposing personal liability when their teaching methods do not succeed. There was reluctance by the court to limit a teacher's ability to manage her classroom by requiring her to give the student a "hearing" of some form every time a time-out was used for discipline. This would be an undue burden that should not be imposed unless the use of time-outs became the same as a lengthy school suspension (*Couture v. Board of Education of Albuquerque Public Schools*, 2008).

Expulsion of a student from school for any length of time is a serious and profound way to treat a student. Many steps should be taken by a school system to get to the point of expelling a child from school. Students with disabilities are expelled from school at times. The issue is very similar to suspension in how a school district goes about providing FAPE and still removing the student from the classroom. In cases where a student with a disability is expelled, the court has stated that students with disabilities are not immune from a school's disciplinary process. "The use of expulsion proceedings as a means of changing placement of a disruptive handicapped child contravenes the procedures of the Handicapped Children Act." Disruptive students are not entitled to participate in school programs when the education of other children is impaired by their behavior. By disrupting the education of other children, these children show their placement is inappropriate. The EHA offered schools short- and long-term methods for dealing with behavioral problems of children with disabilities (*Stuart v. Nappi*, 1978). The courts have held that the EHA's regulations were intended to limit a school's right to expel

handicapped students. Schools were not to expel students whose handicaps caused them to be disruptive. Instead, schools should appropriately place these students in a more restrictive environment (*Doe v. Koger*, 1979).

A manifestation review is required to determine whether a behavior that warrants long-term suspensions and expulsions is related to a student's disability. The courts have shown that when a student's behavior is a manifestation of their disability then that student cannot be expelled. The court has said that there should be more restrictive placement options and alternatives for discipline other than expulsion (*School Board of Prince William County, Va. V. Malone*). The court has also said that while a student with a disability cannot be expelled for a behavior related to their disability, they could be expelled if the behavior is not related to their disability. And the student can be suspended during the pendency of the expulsion hearings. The school district may cease providing educational services during this expulsion (*Doe v. Maher*, 1986). The Ninth Circuit's *Maher* case and Fourth Circuit's *Riley* case have stated that when a student is expelled for conduct that is not a manifestation of their disability the school district is not obligated to provide alternate services. The student's behavior made him forfeit his right to FAPE required by the IDEA and "stay-put" placement during the due process hearings if there was no relationship between the misconduct, which caused the process, and the student's exceptionality (*Doe v. Board of Education of Oak Park River Forest High School District*, 2000). When determining whether the behavior is not related to the student's disability, the court has placed the burden of proof on the school district (*Richland School District v. Thomas P.*, 2000).

Corporal punishment typically refers to the paddling of a student with no more than "3 licks" with a wooden paddle on the buttocks. The definition may also include other forms of

discipline other than using a paddle to strike a child. Corporal punishment is described by the Supreme Court as force that a teacher “reasonably believes to be necessary for a child’s proper control, training, or education” (*Flores v. School Board of Desoto Parish*). Corporal punishment must be characterized as arbitrary, or conscience shocking for there to be a substantive due process violation (*JGS v. Titusville Area School District*, 2010).

A due process hearing is one of the procedural components of the IDEA that a parent or school system must utilize to bring a complaint. It can be found in conjunction with all of the other issues depending on the case. If issues are found concerning the detection of disabilities to be outside the scope of IDEA “due process hearings,” school districts could easily circumvent the statute’s strictures by refusing to identify students as disabled. The Supreme Court has said that “Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school” (*Hacienda La Puente Unified School District of Los Angeles v. Honig*, 1992).

Attorney’s fees have been shown through the courts to be a major decision maker for school districts in terms of how they proceed with special education discipline cases. It can be a very expensive undertaking to proceed through the litigation process. Many times school districts will give in to parental demands before the process goes too far in order to keep costs down. The debate should be what is in the best interest of the student but unfortunately many times the decision may come down to what the costs would be to pursue an argument.

Several issues have been reviewed in this study that impact these administrative decisions. Other issues may emerge in the coming years that may change how school officials make these crucial decisions. It is incumbent for school administrators to stay abreast of current legal actions and federal law to appropriately determine the discipline they administer to their

students with disabilities. This understanding and awareness of legal trends in special education discipline from case law should provide decision makers with the tools to better serve their stakeholders.

Recommendations for Further Study

Based on the findings and conclusions of this study, the following recommendations are made regarding further study:

1. Research should be conducted to examine the federal and state court's awarding of attorney's fees in special education discipline cases and if there is a difference with respect to the state or region of the country.
2. Research should be conducted to examine local and state policies that determine the practices of school administrators with regard to special education discipline.
3. Research should be conducted to determine why special education discipline cases were moved from state courts to federal courts.
4. Research should be conducted to examine the difference in special education discipline practices in each of the states to determine the differences in the implementation of IDEA procedural protections.
5. Research should be conducted to determine how well informed school administrators are in relation to the legal issues surrounding special education discipline.
6. Research should be conducted to determine the effects of short-term suspension, long-term suspension, corporal punishment, seclusion/restraint, and other forms of discipline on the behavior of special education students.

7. Research should be conducted on the socio-economic, cultural, educational, mental health, and intellectual abilities of parents of special education students as it relates to discipline cases that are in the courts.

8. Research should be done to determine the differences between rural and urban special education discipline cases in federal and state courts.

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APPENDIX A
CASES WITHIN THE FEDERAL JUDICIAL SYSTEM

CASE

FEDERAL COURT

1978

1. Stuart v. Nappi District Court

1979

2. Doe v. Koger District Court

3. Sherry v. New York State Education Dept. District Court

1981

4. S – 1 v. Turlington Appellate Court – 5th Circuit

1982

5. Board of Education of City of Peoria District Court

6. Kaelin v. Grubbs Appellate Court – 6th Circuit

1983

7. Cain v. Yukon Public Schools Appellate Court – 10th Circuit

1984

8. Lamont X v. Quisenberry District Court

9. School Bd. Of Prince William County, Va. v. Malone Appellate Court – 4th Circuit

10. Victoria L. v. District School Board Appellate Court – 11th Circuit

1986

11. Cole v. Greenfield Central Community Schools District Court

12. Doe v. Maher Appellate Court – 9th Circuit

1987

13. Doe v. Rockingham School Board District Court

1988

14. Honig v. Doe U. S. Supreme Court
15. Wise v. Pea Ridge School Appellate Court – 8th Circuit
1989
16. Board of Ed. of Township H. S. Dist. No. 211 v. Corral District Court
17. Board of Ed. of Township H. S. Dist. No. 211 v. Linda Kurtz Imig District Court
18. Hayes v. Unified School District no. 377 Appellate Court – 10th Circuit
19. Ramon by Ramon v. Soto Appellate Court – 9th Circuit
1990
20. Carey on Behalf of Carey v. Maine Sch. Admin. Dist. No. 17 District Court
21. Chris D. v. Montgomery County Board of Education District Court
22. Fee v. Herndon Appellate Court – 5th Circuit
23. Texas City Independent School District v. Jorstad District Court
24. Waterman by Waterman v. Marquette Alger Inter. Sch. District District Court
1991
25. A.E. v. School District No. 25 of Adair County Appellate Court – 10th Circuit
26. Binghamton City School District v. Botgna District Court
27. Fuhrman v. East Hanover Board Appellate Court – 3rd Circuit
District Court
28. Valerie J. v. Derey Cooperative School District District Court
29. Waechter v. School District No. 1030 District Court
1992
30. Metropolitan School District v. Davila Appellate Court – 7th Circuit
31. Cohen v. School District of Philadelphia District Court

32. Hacienda La Puente USD of L.A. v. Honig 1993	Appellate Court – 9 th Circuit
33. Deborah v. Leonard	District Court
34. Dorothy J. v. Little Rock School District	Appellate Court – 8 th Circuit
35. Hunter v. Carbondale Area School District	District Court
36. Oberti v. BOE of the Borough of Clementon SD	Appellate Court – 3 rd Circuit
37. Pihl v. Mass. Dept. of Education	Appellate Court – 1 st Circuit
38. Swift v. Rapides Parish Schools 1994	District Court
39. Clyde K. v. Puyallup School District	Appellate Court – 9 th Circuit
40. Doe v. Manning	District Court
41. Light v. Parkway School District	Appellate Court – 8 th Circuit
42. Manchester School District v. Charles M.F.	District Court
43. M.P. v. Governing Board of the Grossmont Union School District	District Court
44. Parents of Student W. v. Puyallup School District 1995	Appellate Court – 9 th Circuit
45. Clinton Co. R-III School District v. C.J.K.	District Court
46. Eric J. v. Huntsville City Board of Education	District Court
47. F.N. v. Board of Education of Sachem Central School District	District Court
48. Glen III by and through Glen II v. Charlotte Michlenburg Sch. BOE	District Court
49. J.B. v. Independent School District No. 191	District Court
50. Jeffrey S. v. School Board of Riverdale School District	District Court

51. School Board of Hillsborough Co. v. Student 26493257X District Court
52. BOE of Comm. HS Dist. No. 218 v. Il State BOE Appellate Court – 7th Circuit
53. Rodiriecus L. v. Waukegan School District Appellate Court – 7th Circuit
54. Rasmus v. State of Arizona District Court
55. Taylor v. Corinth Public School District District Court
- 1997
56. Doe v. BOE of Oak Park River Forest HS Dist. 200 Appellate Court – 7th Circuit
57. Magyar by and through Magyar v. Tuscon Unified School District District Court
58. School Board of Pinellas County, Fla. v. J.M. by and through L.M. District Court
59. Robert H., et al., Plaintiffs v. Nixa R-2 SD, et al., Defendants District Court
- 1998
60. Doe v. Board of Education of the Elyria City Schools Appellate Court – 6th Circuit
61. Gadsden City Board of Education v. B.P. District Court
- 1999
62. Padilla v. School District No. 1, Denver, CO. District Court
- 2000
63. Board of Education of Oak Park v. Nathan R., ex. rel. Richard R. District Court
64. Brown ex. rel. Brown v. Ramsey Appellate Court – 4th Circuit
65. Colvin v. Lowndes County District Court
66. Community Consolidated School District #93 v. John F. District Court
67. Covington v. Knox Co. (TN) Appellate Court – 6th Circuit
68. J.C. v. Regional School District No. 10 District Court
69. LIH v. New York City Board of Education District Court

70. Randy M. v. Texas City ISD	District Court
71. Richland School District v. Thomas P. by Linda P. 2001	District Court
72. Farrin v. Maine School Administrator District No. 59	District Court
73. Harris v. Robinson	Appellate Court – 10 th Circuit
74. Timothy B. ex. rel. J.B. v. Neshaminy School District 2002	District Court
75. J.O. ex. rel. C.O. v. Orange Tp. Board of Education	Appellate Court – 3 rd Circuit
76. Joshua S. v. School Board of Indian River County	District Court
77. Mr. & Mrs. R. v. West Haven Board of Education	District Court
78. S.W. v. Holbrook Public Schools	District Court
79. Wilson v. Fairfax County School Board 2003	District Court
80. CJN v. Minneapolis Public Schools 2004	Appellate Court – 8 th Circuit
81. Alex R. v. Forrestville Valley Comm. USD #221	Appellate Court – 7 th Circuit
82. A.W. v. Fairfax County Schools	Appellate Court – 4 th Circuit
83. Colon v. Colonel Intermediate Unit 20	District Court
84. Flores v. School Board of DeSoto Parish District Court	Appellate Court – 5 th Circuit
85. McNulty v. Board of Education of Calvert County	District Court
86. Valentino C., et al. v. School District of Philadelphia. 2005	District Court

87. A.B. by Baez v. Seminole County School Board	District Court
88. Alex G. by Dr. Steven G. v. Davis Joint USD	District Court
89. BOE of Township HS Dist. No. 211 v. Michael R. and Diane R.	District Court
90. Doe v. Aguilar	Appellate Court – 5 th Circuit
91. Escambia Co. Board of Education v. Benton	District Court
92. R.J. by Ron J. and Cindy J. v. McKinney ISD	District Court
93. Waln v. Todd County SD	District Court
2006	
94. A.P. v. Pemberton Township Board of Education	District Court
95. DRW Inc. v. State of WS Dept. of Public Inst.	Appellate Court – 7 th Circuit
96. Doe v. State of Nevada	District Court
97. Jacobelli by Jacobelli v. Nouvin Area School District	District Court
98. Mallory v. Knox County School District	District Court
99. Plumby v. Northeast Independent School District	District Court
100. School Board of ISD No. 11 v. Renollett	Appellate Court – 8 th Circuit
2007	
101. Coleman v. Newburgh Enlarged City SD	Appellate Court – 2 nd Circuit
102. John G. v. Northeastern Ed. Inter. Unit 19	District Court
103. Lauren P. by David and Ann Marie P. v. Wissahicken SD	District Court
104. Preschooler II v. Clark Co. Sch. Board of Trustees	Appellate Court – 9 th Circuit
105. San Raphael Elementary SD v. California SPED Hearing Office	District Court
106. Vicky M. v. Northeastern Ed. Int. Unit 19	District Court
107. Joseph M. v. Northeastern Ed. Intermediate Unit 19	District Court

108. Hinson ex rel. N.H. v. Merritt Educational Center	District Court
2008	
109. A.W. ex rel. Wilson v. Fairfax County Schools	District Court
110. C.A. ex rel. G.A. v. Morgan County Board of Education	District Court
111. Centennial School District v. Phil L. ex rel. Matthew L.	District Court
112. Couture v. BOE of Albuquerque Public Schools	Appellate Court – 10 th Circuit
113. District of Columbia v. Doe	District Court
114. D.L. v. Waukee Community School District	District Court
115. Hill v. Sharber	District Court
116. M.G. v. Crisfield	District Court
117. M.M. v. Special SD No. 1	Appellate Court – 8 th Circuit
118. P.K. ex rel. P.K. v. Bedford Centr5al School District	District Court
2009	
119. Dean v. School District of the City of Niagara Falls	District Court
120. G.C. v. School Board of Seminole County, Florida	District Court
121. L. ex. rel. Mr. F. v. North Haven Board of Education	District Court
122. M.S.-G v. Lenape Reg. High School District	Appellate Court – 3 rd Circuit
123. Pohorecki v. Anthony Wayne Local School District	District Court
124. Richardson ISD v. Michael Z.	Appellate Court – 5 th Circuit
125. S.J. v. Issaquah School Dist. No. 411	Appellate Court – 9 th Circuit
126. Springfield School Committee v. Doe	District Court
127. T.Y. v. NYC Dept. Of Education, Region 4	Appellate Court – 2 nd Circuit
2010	

128. C.N. v. Willmar Public Schools, District No. 347 Appellate Court – 8th Circuit
129. JGS v. Titusville Area School District District Court
130. Payne v. Peninsula School District Appellate Court – 9th Circuit
131. T.W. ex rel. Wilson v. SB of Seminole Co., Fla. Appellate Court – 11th Circuit
- 2011
132. M.G. ex rel. LG v. Caldwell-West Caldwell Board of Education District Court

APPENDIX B
APPELLATE COURT CASES

<u>Circuit</u>	<u>Year of Case</u>	<u>Total</u>
First	1993	1
Second	2007, 2009	2
Third	1991, 1993, 2002, 2009	4
Fourth	1984, 2000, 2004	3
Fifth	1981, 1990, 2004, 2005, 2009	5
Sixth	1982, 1998, 2000	3
Seventh	1992, 1995, 1995, 1997, 2004, 2006	6
Eighth	1988, 1993, 1994, 2003, 2006, 2008, 2010	7
Ninth	1986, 1989, 1992, 1994, 1994, 2007, 2009, 2010	8
Tenth	1983, 1989, 1991, 2001, 2008	5
Eleventh	1984, 2010	<u>2</u>
		46

APPENDIX C

CASES WITHIN THE FEDERAL JUDICIAL SYSTEM WITH RULING

CASE	Favor
1978	
1. Stuart v. Nappi	Student
1979	
2. Doe v. Koger	Student
3. Sherry v. New York State Education Dept.	Student
1981	
4. S – 1 v. Turlington	Student
1982	
5. Board of Education of City of Peoria	School District
6. Kaelin v. Grubbs	Student
1983	
7. Cain v. Yukon Public Schools	School District
1984	
8. Lamont X v. Quisenberry	Student
9. School Bd. Of Prince William County, Va. v. Malone	Student
10. Victoria L. v. District School Board	School District
1986	
11. Cole v. Greenfield Central Community Schools	School District
12. Doe v. Maher	Both

1987

13. Doe v. Rockingham School Board Student

1988

14. Honig v. Doe Student

15. Wise v. Pea Ridge School School District

1989

16. BOE of Township H. S. Dist. No. 211 v. Corral School District

17. BOE of Township H. S. Dist. No. 211 v. Linda Kurtz Imig School District

18. Hayes v. Unified School District no. 377 School District

19. Ramon by Ramon v. Soto Student

1990

20. Carey on Behalf of Carey v. Maine Sch. Admin. Dist. No. 17 School District

21. Chris D. v. Montgomery County Board of Education Student

22. Fee v. Herndon School District

23. Texas City Independent School District v. Jorstad School District

24. Waterman by Waterman v. Marquette Alger ISD Both

1991

25. A.E. v. School District No. 25 of Adair County School District

26. Binghamton City School District v. Botgna School District

27. Fuhrman v. East Hanover Board School District

28. Valerie J. v. Derey Cooperative School District Student

29. Waechter v. School District No. 1030	Both
1992	
30. Metropolitan School District v. Davila	Both
31. Cohen v. School District of Philadelphia	School District
32. Hacienda La Puente USD of L.A. v. Honig	Both
1993	
33. Deborah v. Leonard	School District
34. Dorothy J. v. Little Rock School District	School District
35. Hunter v. Carbondale Area School District	School District
36. Oberti v. BOE of the Borough of Clementon SD	Student
37. Pihl v. Mass. Dept. of Education	Student
38. Swift v. Rapides Parish Schools	School District
1994	
39. Clyde K. v. Puyallup School District	School District
40. Doe v. Manning	Student
41. Light v. Parkway School District	School District
42. Manchester School District v. Charles M.F.	Student
43. M.P. v. Governing Board of the Grossmont Union School District	Student
44. Parents of Student W. v. Puyallup School District	School District

1995

- | | |
|--|-----------------|
| 45. Clinton Co. R-III School District v. C.J.K. | Student |
| 46. Eric J. v. Huntsville City Board of Education | School District |
| 47. F.N. v. Board of Education of Sachem Central School District | School District |
| 48. Glen III v. Charlotte Michlenburg Sch. BOE | School District |
| 49. J.B. v. Independent School District No. 191 | Student |
| 50. Jeffrey S. v. School Board of Riverdale School District | Student |
| 51. School Board of Hillsborough Co. v. Student 26493257X | School District |
| 52. BOE of Comm. HS Dist. No. 218 v. Il State BOE | Student |
| 53. Rodiriecus L. v. Waukegan School District | School District |
| 54. Rasmus v. State of Arizona | Both |
| 55. Taylor v. Corinth Public School District | School District |

1997

- | | |
|--|-----------------|
| 56. Doe v. BOE of Oak Park River Forest HS Dist. 200 | School District |
| 57. Magyar by and through Magyar v. Tuscon Unified School District | Student |
| 58. School Board of Pinellas County, Fla. v. J.M. | School District |
| 59. Robert H., et al., Plaintiffs v. Nixa R-2 SD, et al., Defendants | School District |

1998

- | | |
|--|-----------------|
| 60. Doe v. Board of Education of the Elyria City Schools | School District |
| 61. Gadsden City Board of Education v. B.P. | Student |

1999

62. Padilla v. School District No. 1, Denver, CO.	Both
2000	
63. Board of Education of Oak Park v. Nathan R.	School District
64. Brown ex. rel. Brown v. Ramsey	School District
65. Colvin v. Lowndes County	Student
66. Community Consolidated School District #93 v. John F.	Student
67. Covington v. Knox Co. (TN)	Student
68. J.C. v. Regional School District No. 10	Student
69. LIH v. New York City Board of Education	Student
70. Randy M. v. Texas City ISD	School District
71. Richland School District v. Thomas P. by Linda P.	Student
2001	
72. Farrin v. Maine School Administrator District No. 59	School District
73. Harris v. Robinson	School District
74. Timothy B. ex. rel. J.B. v. Neshaminy School District	Student
2002	
75. J.O. ex. rel. C.O. v. Orange Tp. Board of Education	School District
76. Joshua S. v. School Board of Indian River County	School District
77. Mr. & Mrs. R. v. West Haven Board of Education	School District
78. S.W. v. Holbrook Public Schools	Both
79. Wilson v. Fairfax County School Board	School District

2003

80. CJN v. Minneapolis Public Schools School District

2004

81. Alex R. v. Forrestville Valley Comm. USD #221 School District

82. A.W. v. Fairfax County Schools School District

83. Colon v. Colonel Intermediate Unit 20 Both

84. Flores v. School Board of DeSoto Parish School District

85. McNulty v. Board of Education of Calvert County School District

86. Valentino C., et al. v. School District of Philadelphia. School District

2005

87. A.B. by Baez v. Seminole County School Board Both

88. Alex G. by Dr. Steven G. v. Davis Joint USD School District

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93. Waln v. Todd County SD Student

2006

94. A.P. v. Pemberton Township Board of Education School District

95. DRW Inc. v. State of WS Dept. of Public Inst. Wisc. Dept. of Instr.

96. Doe v. State of Nevada Both

97. Jacobelli by Jacobelli v. Nouvin Area School District	Both
98. Mallory v. Knox County School District	School District
99. Plumby v. Northeast Independent School District	School District
100. School Board of ISD No. 11 v. Renollett	School District
2007	
101. Coleman v. Newburgh Enlarged City SD	School District
102. John G. v. Northeastern Ed. Inter. Unit 19	Both
103. Lauren P. by David and Ann Marie P. v. Wissahicken SD	Both
104. Preschooler II v. Clark Co. Sch. Board of Trustees	Both
105. San Raphael Elem. SD v. California SPED Hearing Office	School District
106. Vicky M. v. Northeastern Ed. Int. Unit 19	Both
107. Joseph M. v. Northeastern Ed. Intermediate Unit 19	Both
108. Hinson ex rel. N.H. v. Merritt Educational Center	School District
2008	
109. A.W. ex rel. Wilson v. Fairfax County Schools	School District
110. C.A. ex rel. G.A. v. Morgan County Board of Education	Both
111. Centennial School District v. Phil L. ex rel. Matthew L.	School District
112. Couture v. BOE of Albuquerque Public Schools	School District
113. District of Columbia v. Doe	School District
114. D.L. v. Waukee Community School District	Both
115. Hill v. Sharber	School District

116. M.G. v. Crisfield	Both
117. M.M. v. Special SD No. 1	School District
118. P.K. ex rel. P.K. v. Bedford Central School District 2009	School District
119. Dean v. School District of the City of Niagara Falls	Student
120. G.C. v. School Board of Seminole County, Florida	School District
121. L. ex. rel. Mr. F. v. North Haven Board of Education	School District
122. M.S.-G v. Lenape Reg. High School District	School District
123. Pohorecki v. Anthony Wayne Local School District	School District
124. Richardson ISD v. Michael Z.	School District
125. S.J. v. Issaquah School Dist. No. 411	School District
126. Springfield School Committee v. Doe	Both
127. T.Y. v. NYC Dept. Of Education, Region 4 2010	School District
128. C.N. v. Willmar Public Schools, District No. 347	School District
129. JGS v. Titusville Area School District	School District
130. Payne v. Peninsula School District	School District
131. T.W. ex rel. Wilson v. SB of Seminole Co., Fla. 2011	School District
132. M.G. ex rel. LG v. Caldwell-West Caldwell BOE	School District

APPENDIX D

CASES BRIEFED BUT NOT USED IN THE ANALYSIS

Ramon by Ramon v. Soto
Valerie J. v. Derey Cooperative School District
Waechter v. School District No.1030
Metropolitan SD v. Davila
Cohen v. School District of Philadelphia
Dorothy J. v. Little Rock SD
Hunter v. Carbondale Area School District
Oberti v. BOE of the Borough of Clementon SD
Pihl v. Mass. DOE
Manchester SD v. Charles M.F.
Parents of Student W. v. Puyallup School District
F.N. v. BOE of Sachem Central School District
Jeffrey S. v. School Board of Riverdale School District
Harris v. Robinson
J.O. ex. rel. C.O. v. Orange Tp. BOE
McNulty v. BOE of Calvert County
A.B. by Baez v. Seminole Co. School Board
Doe v. Aguilar
Jacobelli v. Nouvin Area SD
Mallory v. Knox Co. SD
Plumby v. Northeast ISD
School Board of ISD No. 11 v. Renollett
Lamar v. Wissachicken SD
Preschooler II v. Clark Co. School Board of Trustees
Hinson ex. rel. N.H. v. Merritt Education Center
District of Columbia v. Doe
Hill v. Sharber
T.Y. v. NYCDOE, Region 4

APPENDIX E
IRB APPROVAL

Office for Research
Institutional Review Board for the
Protection of Human Subjects

THE UNIVERSITY OF
ALABAMA

R E S E A R C H

December 10, 2012

Thomas Howell
ELPTS
College of Education
The University of Alabama

Re: IRB Requirement for Dissertation Research Paper

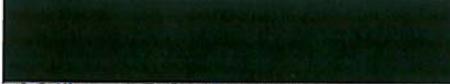
Mr. Howell:

This letter comes as a response to your communication received December 7, 2012. According to the Office for Human Research Protection (OHRP) under policy 45 CFR 46.101 the proposed work is not human subjects research.

Because the work is not considered human subjects research, it does not require IRB approval and is therefore excluded from review by the IRB.

If you have any questions or if I can be of further assistance please do not hesitate to contact me.

Sincerely,



Carpanato T. Myles, MSM, CIM
Director of Research Compliance & Research Compliance Officer
Office of Research Compliance
The University of Alabama



358 Rose Administration Building
Box 870127
Tuscaloosa, Alabama 35487-0127
(205) 348-8461
FAX (205) 348-7189
TOLL FREE (877) 820-3066