SEVENTH CIRCUIT AND ILLINOIS COURT DECISIONS 1995 TO PRESENT UNDER THE IDEA AND § 504/ADA

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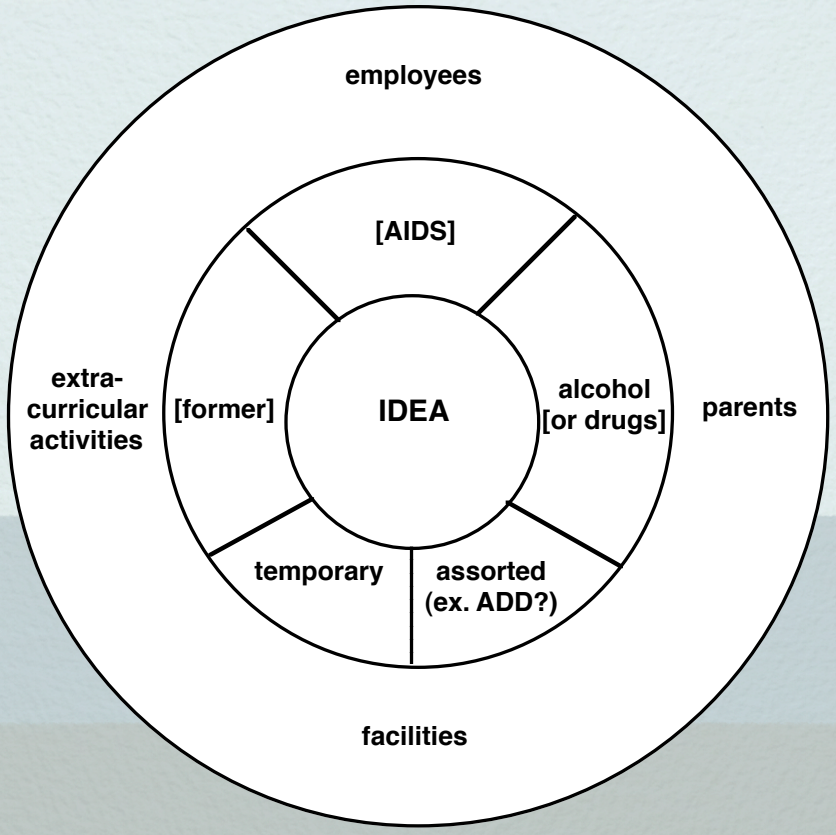

This annotated outline is a compilation of most of the officially and unofficially published[1] special education decisions[2] issued by the Seventh Circuit and the courts in Illinois starting in 1995[3] and ending with the compiling date of 3/01/12.[4] Because the primary intended use is for Illinois impartial hearing officers (IHOs), the coverage does not extend, however, to pertinent rulings that are no longer good law[5] and—with limited exceptions—to technical adjudicative issues, such as stay-put and statute of limitations.[6] Moreover, the coverage of the attorneys' fees cases is only illustrative rather than exhaustive, because they are so numerous[7] and not within the direct province of IHOs.[8]

The case entries are organized in approximate chronological order within common special education categories under the IDEA, starting with eligibility, FAPE, and LRE, and ending with

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[1] Thus, the scope extends beyond the decisions appearing in the official court reporters to those available in West's FEDERAL APPENDIX or LRP's INDIVIDUALS WITH DISABILITIES LAW REPORT (IDELR).

[2] The primary focus is the case law based on Individuals with Disabilities Education Act (IDEA) and Illinois state special education regulations. Although the coverage extends secondarily to student cases under Section 504 and the Americans with Disabilities Act (ADA), it does not extend to constitutional other issues arising in the special education context. See, e.g.**,** ***Jackson v. Indian Prairie Sch. Dist.*****, 653 F.3d 647 (7th Cir. 2011)** (rejecting § 1983 substantive due process claim of special education teacher).

[3] Although conveniently extending to more than a decade and a half, this compilation does not extend to earlier decisions in this jurisdiction, including various major ones. See, e.g., ***Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ.*****, 41 F.3d 1162 (7th Cir. 1994)** (upholding parents' residential placement for child with multiple disabilities); ***Bd. of Educ. of Cmty. Consol. Sch. Dist. No. 21 v. Illinois State Bd. of Educ.*****, 938 F.2d 712 (7th Cir. 1991)** (upholding permissibility to consider parents' hostility in determining appropriateness of district's proposed placement); ***Lachman v. Illinois State Bd. of Educ.*****, 852 F.3d 290 (7th Cir. 1988)** (upholding district's segregated placement and deaf-education methodology); *cf.* ***Dell v. Bd. of Educ.,*** **32 F.3d 1053 (7th Cir. 1994)**; ***Hunger v. Leininger*****, 15 F.3d 664 (7th Cir. 1994)** (technical adjudicative issues). For a corresponding compilation that extends to all of the other circuits, see PERRY A. ZIRKEL, A NATIONAL UPDATE OF THE CASE LAW 1998 TO PRESENT UNDER THE IDEA AND SECTION 504 (2011) (available at www.nasdse.org).

[4] Thus, any decisions in late 2011 not yet available in WestLaw or IDELR are not included. Conversely, two decisions issued and available in 2012 (*T.G.* and ***Jamie S.***) are included.

[5] See, e.g., Doe v. Bd. of Educ., 115 F.3d 1273 (7th Cir. 1997) (ruling under prior version of the IDEA that districts are not required to provide services to students with disabilities expelled for misconduct that is not a manifestation of their disability).

[6] See, e.g., ***Brown v. Bartholomew Consol. Sch. Corp.*****, 442 F.3d 588 (7th Cir. 2006)**; *Michael M. v. Bd. of Educ.*, 53 IDELR ¶ 21 (N.D. Ill. 2009) (mootness); ***John M. v. Bd. of Educ.*****, 502 F.3d 708 (7th Cir. 2007)**; ***Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*****, 400 F.3d 508 (7th Cir. 2005); *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.*****, 103 F.3d 545 (7th Cir. 1996)**; ***Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Illinois State Bd. of Educ.*****, 79 F.3d 654 (7th Cir. 1996)**; *Peter G. v. Chicago Pub. Sch. Dist. No. 299*, 36 IDELR ¶ 237 (N.D. Ill. 2002): *A.P. v. McGrew*, 28 IDELR 19 (N.D. Ill. 1998) (stay-put); *Brown v. City of Chicago Sch. Dist. 299*, 54 IDELR ¶ 220 (N.D. Ill. 2010) (statute of limitations); *Dominique L. v. Bd. of Educ.*, 56 IDELR ¶ 65 (N.D. Ill. 2011) (enforcement of IHO order); *C.S. v. Illinois State Bd. of Educ.*, 53 IDELR ¶ 227 (N.D. Ill. 2009) (exhaustion); *cf*. Corey H. v. Bd. of Educ., 534 F.3d 683 (7th Cir. 2008) (enforcement of class action suit).

[7] For published attorneys' fees decisions within one recent month alone, see, e.g., *Bd. of Educ. v. Walker*, 800 F. Supp. 2d 917 (N.D. Ill. 2011); *Judah M. v. Bd. of Educ.*, 798 F. Supp. 2d 942 (N.D. Ill. 2011). For unpublished cases since then, see, e.g., *C.W. v. Bd. of Educ*., 58 IDELR ¶ 98 (N.D. Ill. 2012); J.*F. v. Bd. of Educ*., 57 IDELR ¶ 138 (N.D. Ill 2011).

[8] However, although the primary intended audience consists of hearing officers, others are welcome to access this information.

decisions under Section 504 and the ADA.[9] Each entry consists of a standard citation, including the parallel cite in the Individuals with Disabilities Law Reports (IDELR), and a blurb that summarizes the major ruling(s). In addition, prefacing each citation is the outcome for the summarized ruling(s) in terms of these primary categories[10]: ***P*** = Parents won; ***S*** = School district won; **( )** = Inconclusive.[11]

Those entries representing decisions by the U.S. Supreme Court and Seventh Circuit are in bold typeface. For decisions that have rulings in more than one category, the second entry has an abbreviated citation ending with "*supra*" (literally meaning "above"), which is a cross reference to the complete citation in the earlier listing.[12] In addition, to keep the entries brief, the blurbs include the following acronyms:

ADHD = attention deficit hyperactivity disorder
AT = assistive technology
BIP = behavior intervention plan
ED = emotional disturbance
ESY = extended school year
FAPE = free appropriate public education
IEE = independent educational evaluation
IEP = individualized education program
IHO = impartial hearing officer
LRE = least restrictive environment
OCD = obsessive compulsive disorder
OHI = other health impairment
PEL = present educational level
PRR = peer-reviewed research
SLD = specific learning disabilities
SLI = speech or language impairment
TBI = traumatic brain injury

[9] These broad categories are inevitably imprecise due to not only overlapping content (e.g., FAPE and LRE) but also multiple issues. In particular, the tuition reimbursement rulings that ended at Step 1 (whether the district's proposed program was appropriate) are listed in the "Appropriate Education" (or FAPE) category, with a bracketed designation showing the overlap, whereas the cases that proceeded to the subsequent steps in the analysis are listed under "Tuition Reimbursement."

[10] Occasionally, the outcome is conclusive but mixed, i.e., partially in favor of each side. In such situations, the designation is "***P*/*S***."

[11] "Inconclusive" in this context refers to rulings, such as **(*P*)** = denial of the defendant's motion for dismissal or **(*S*)** = denying the parent's motion for summary judgment. Such court opinions preserve a final decision on the merits of the issue for further proceedings that did not subsequently appear as a published decision. Conversely, if a published decision at the trial court level is succeeded by an appellate decision that is published on specific to the same issue, only the final decision is included herein.

[12] Occasionally, the opposite term, "*infra*," appears to cross reference cases that are lower in the document.

This document is not intended as legal advice or thorough analysis. Listing these brief entries as merely a starting point, the author strongly encourages direct reading of the cited cases for careful verification of the citation and independent interpretation of the case contents. For readers who are not attorneys, consultation with competent counsel is recommended.

Finally, the author welcomes corrections as well as additions of any cases missing within the stated boundaries for the sake of more complete accuracy. Although the categories are not somewhat subjective and not mutually exclusive, here is an overview by way of a Table of Contents:

I. IDENTIFICATION

P *Mary P. v. Illinois State Bd. of Educ.*, 919 F. Supp. 1173, 24 IDELR 567 (N.D. Ill. 1996)[13]
- ruled that child with voice disorder whose academic performance was age appropriate is eligible as SLI if experts determine that it is so severe as to inhibit his ability or desire to communicate with his teachers or peers (thereby entitling the parents to reimbursement for speech therapy in this case)

S *St. Joseph-Ogden Cmty. High Sch. Dist. No. 305 v. Janet W.*, 49 IDELR ¶ 125 (C.D. Ill. 2008)
- ruled that high school student who had been depressed, had attempted suicide, and had isolated discipline incidents was not eligible as ED

S ***Loch v. Edwardsville Sch. Dist. No. 7*, 327 F. App'x 647, 52 IDELR ¶ 244 (7th Cir. 2009)**, *cert. denied*, 130 S. Ct. 90 (2010)
- upheld district's determination that student with diabetes and social anxiety disorder, who was on a 504 plan, did not qualify as OHI because the parents failed to meet their burden to show a need for special education—lack of medical evidence that her conditions justified her absenteeism

S ***Marshall Joint Sch. Dist. No. 2 v. C.D.*, 616 F.3d 632, 54 IDELR ¶ 307 (7th Cir. 2010)**[14]
- upheld district's position that third-grade student with Ehlers-Danlos Syndrome, who had an IEP as OHI, no longer had adverse effect nor needed special education

II. APPROPRIATE EDUCATION[15]

S *Bd. of Educ. v. Steven L.*, 898 F. Supp. 1252, 23 IDELR 36 (N.D. Ill. 1995)
- ruled that proposed IEP that reduced special education services for fifth grader with SLD was substantively appropriate

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[13] In a subsequent decision, the court amended its order to extend the period of reimbursement to almost a year earlier, which was half of the parents' requested extension. *Mary P. v. Illinois State Bd. of Educ.*, 934 F. Supp. 989 (N.D. Ill. 1997).

[14] The Seventh Circuit's opinion includes significant guidance to IHOs with regard to the weight of testimony of medical experts v. school personnel. 616 F.3d at 639-41. Moreover, this reversal of the trial court decision resulted in vacating the separate $89k attorneys' fee ruling that had been in favor of the parents. *Traci D. v. Marshall Joint Sch. Dist.*, 53 IDELR ¶ 225 (W.D. Wis. 2009).

[15] 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2):

> In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
>
> (i) Impeded the child's right to a FAPE;
>
> (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
>
> (iii) Caused a deprivation of educational benefit.

S ***Heather S. v. State of Wisconsin*, 125 F.3d 1045, 26 IDELR 870 (7th Cir. 1997)**
- upheld substantive appropriateness of the IEP for middle school child with disabilities, regardless of the classification, and rejected procedural delay in hearing/review officer decisions as a denial of FAPE under the circumstances of this case

S *Judith S. v. Bd. of Educ.*, 28 IDELR 728 (N.D. Ill. 1998)
- ruled that (a) the IEP for fifth grader with developmental disabilities provided FAPE in the LRE despite alleged procedural and substantive inadequacies, and (b) the parents were not entitled reimbursement for IEE where the parents did not "identify particular omissions in the school district's … evaluation and then show how these omissions prevented the district from developing an [appropriate IEP]"

P *Bd. of Educ. of New Trier High Sch. Dist. No. 223 v. Illinois State Bd. of Educ.*, 28 IDELR 1175 (N.D. Ill. 1998)
- ruled that district had committed numerous procedural violations and that the 15-year-old with multiple disabilities had received de minimis benefit

S *A.P. v. McGrew.*, 29 IDELR 238 (N.D. Ill. 1998)
- upheld appropriateness of IEP and proposed placement at non-neighborhood high school for 15-year-old with multiple disabilities

S *Heather S. v. Niles Twp. High Sch. Dist.*, 31 IDELR ¶ 137 (N.D. Ill. 1999)
- upheld procedural and substantive appropriateness of district's proposed placement for student with Cri du Chat syndrome [tuition reimbursement case]

S *Reed v. Lincoln Way Cmty. High Sch. Dist. No. 210*, 32 IDELR ¶ 197 (N.D. Ill. 2000)
- upheld substantive appropriateness of residential placement for 19 year old with multiple disabilities, with the primary classification of ED

S *M.T. v. Bd. of Educ.*, 33 IDELR ¶ 95 (N.D. Ill. 2000)
- upheld in-district placement of eleven-year-old child with multiple disabilities as FAPE in the LRE rather than the private day placement that the parent advocated

P *Kevin T. v. Elmhurst Cmty. High Sch. Dist. No. 302*, 36 IDELR ¶ 153 (N.D. Ill. 2002)
- ruled that district's failure to revise IEP for 19-year-old student with disabilities after a notable decrease in IQ and lack of reasonable progress and its various procedural violations—failing to consider or provide assistive technology, to permit his participation in state assessment tests, and to implement transition plan—amounted to denial of FAPE and that district's decision to graduate him based on credits rather than FAPE also violated IDEA

S *Peter G. v. Chicago Pub. Sch. Dist. No. 299*, 38 IDELR ¶ 94 (N.D. Ill. 2003)
- upheld procedural and substantive appropriateness of IEP for five-year-old child with Down Syndrome

P/S *Edwin K. v. Jackson*, 37 IDELR ¶ 63 (N.D. Ill. 2002)
- ruled that the district's procedural violations, including lack of a BIP, for a 10th grader with ED were not prejudicial and the district's proposed placement in an alternative school was substantively appropriate, but ordered compensatory education, IEE reimbursement, and incorporation of the IEE recommendations in the IEP due to district's failure to consider the IEE's identification of the student's learning disabilities

S ***Todd v. Duneland Sch. Corp.*, 299 F.3d 899, 37 IDELR ¶ 151 (7th Cir. 2002)**
- upheld substantive appropriateness of IEP for SLD student who evidenced improvement in grades and standardized test scores (and ESY denial based on regression standard) [tuition reimbursement case]

S ***Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist.*, 375 F.3d 603, 41 IDELR ¶ 146 (7th Cir. 2004)**
- upheld appropriateness of district's IEP for disruptive third grader with OHI, rejecting parents' argument that the IDEA had a substantive standard for a BIP and an implementation standard, beyond "good faith," for staff training

S *Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 46 IDELR ¶ 102 (C.D. Ill. 2006)
- ruled that the district's proposed IEP, which the placement of a student with SLD from a private school to a special education class with 10% mainstreaming and use of project Read constituted substantive FAPE in the LRE

S *Kerry M. v. Manhattan Sch. Dist. No. 114*, 46 IDELR ¶ 194 (N.D. Ill. 2006)
- ruled that district met its IDEA obligation to consider the IEE and its self-contained IEP for twin eighth graders with Rett Syndrome constituted substantive FAPE in the LRE

S *Andrew B. v. Bd. of Educ.*, 46 IDELR ¶ 225 (N.D. Ill. 2006)
- upheld the procedural and substantive appropriateness of IEP for high school student with cerebral palsy and the proper notification for his graduation

S *Schroll v. Bd. of Educ.*, 48 IDELR ¶ 105 (C.D. Ill. 2007)
- rejected parents' procedural, substantive, and implementation claims of denial of FAPE, even though district had not completely met any of the IEP goals for high school student with ADHD and dyslexia

S ***Hjortness v. Neenah Joint Sch. Dist.*, 507 F.3d 1060, 48 IDELR ¶ 119 (7th Cir. 2007)**, *cert. denied*, 554 U.S. 930 (2008)
- procedural errors, including alleged pre-determination for LRE, were not prejudicial and, despite lack of current PELs, the proposed IEP for gifted student with autism, AD/HD, and OCD was substantively appropriate in these particular circumstances [tuition reimbursement case]

P *Bd. of Educ. of Homewood Flossmoor Cmty. High Sch. Dist. No. 233 v. Illinois State Bd. of Educ.*, 50 IDELR ¶ 101 (N.D. Ill. 2008)
- ruled that the stay-put private school placement for ninth grader with multiple disabilities was—and the district's proposed more mainstreamed IEP was not—substantively appropriate

S *Richard Paul E. v. Plainfield Cmty. Consol. Sch. Dist. No. 220*, 52 IDELR ¶ 130 (N.D. Ill. 2009)
- upheld procedural and substantive appropriateness of district's IEP for 12-year old student with multiple disabilities

S *James D. v. Bd. of Educ.*, 642 F. Supp. 2d 804, 52 IDELR ¶ 281 (N.D. Ill. 2009)
- ruled that IEP of fourth grader with SLD and SLI provided FAPE in the LRE, rejecting alleged procedural violations (e.g., failure to consider IEE or allow evaluator to observe the class w/o student there) and substantive limited progress (e.g., declining percentiles) [tuition reimbursement case]

S *Jaccari J. v. Bd. of Educ.*, 690 F. Supp. 2d 687, 54 IDELR ¶ 53 (N.D. Ill. 2010)
- rejected parents' substantive FAPE challenge to IEP of fourth grader, concluding that purported regression in standard scores of achievement testing was commensurate with his limited cognitive abilities and use of Wilson trainer not certified by the company did not show requisite lack of qualification where the company allowed her to continue to conduct the training

S *M.L. v. Bourbonnais Sch. Dist. No. 53*, 54 IDELR ¶ 88 (C.D. Ill. 2010)
- upheld IHO's rulings that the district's evaluation was complete and that its IEP for third grader with autism was substantive appropriate

S *B.H. v. Joliet Sch. Dist. No. 86*, 54 IDELR ¶ 121 (N.D. Ill. 2010)
- ruled that the procedural violations in completing the evaluation of an elementary school student with ADHD (e.g., 7-day delay) were not prejudicial in terms of FAPE and the parents did not have the unilateral right to determine the time of the IEP meeting(s)

P *Bd. of Educ. of City of Chicago v. Illinois State Bd. of Educ.*, 741 F. Supp. 2d 920, 55 IDELR ¶ 133 (N.D. Ill. 2010)
- ruled that failure to implement the compensatory education provision of the IEP within the 10-day implementation timeline of the IDEA was within the IHO's authority to determine, without a hearing, as being a denial of FAPE

S *Brad K. v. Bd. of Educ.*, 787 F. Supp. 2d 734, 56 IDELR ¶ 197 (N.D. Ill. 2011)
- ruled, in upholding the appropriateness of the district's IEP, that the specification for "location" refers to type of appropriate environment, not specific school site[16] [tuition reimbursement case]

[16] The court in *Brad K*. distinguished a Seventh Circuit interpretation of "educational placement" to include physical location as limited to stay-put in the disciplinary context. ***Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.*, 103 F.3d 545, 548 (7th Cir. 1998).**

S *A.L. v. Chicago Pub. Sch. Dist. No. 299*, 57 IDELR ¶ 276 (N.D. Ill. 2011)
- ruled that parents failed to sustain their burden to prove that the IEP, including the AT and various other evaluations, for a child with moderate cognitive impairment was procedurally or substantively inappropriate

S ***M.B. v. Hamilton Se. Sch.*, 668 F.3d 851, 58 IDELR ¶ 92 (7th Cir. 2011)**
- upheld rejection of parents' child find and FAPE claim with regard to district's evaluation and proposed IEP, which provided half-day kindergarten and ESY services for a young child with TBI, concluding that the alleged procedural violations were either unproven (e.g., pre-determination) or harmless (e.g., absence of kindergarten teacher at the IEP team meeting) and that—based on the snapshot approach—the IEP was "likely to produce progress, not regression or trivial educational advancement"[17]

S *T.G. v. Midland Sch. Dist. No. 7*, 58 IDELR ¶ 104 (N.D. Ill. 2012)[18]
- upheld the IHO's rulings that 1) the grade 7-8 IEPs were appropriate substantively and—due to nonprejudicial effects—procedurally; 2) these IEPs were implemented properly; 3) the grade 9 IEPs lacked appropriate goals in reading and writing

III. MAINSTREAMING/LRE

S *Tarah P. v. Bd. of Educ.*, 22 IDELR 246 (N.D. Ill. 1995)
- ruled that the district's proposed placement of a kindergarten child with physical disabilities and visual impairment in a neighboring district was the LRE, with the child's individual needs for FAPE overriding the presumption for placement in the neighborhood school

S ***Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895, 25 IDELR ¶ 48 (7th Cir. 1996)**
- upheld appropriateness of district's proposed placement with IHO's mainstreaming revision [tuition reimbursement case]

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[17] Echoing previous Seventh opinions, the court commented as follows with regard to the evidence of the parents' private psychologist:

> [I]t is inappropriate to defer to the opinion of a single psychologist, particularly where that opinion is in conflict with the opinions of "teachers and other professionals." *See* Heather S., 125 F.3d at 1057 ("[T]he deference is to trained educators, not necessarily psychologists. While the latter certainly have a role to play, and can contribute meaningful insight to the evaluation of a student, the school district is required to bring a variety of persons familiar with a child's needs to an IEP meeting, including, specifically, teachers."); *see also* [Marshall,] 616 F.3d at 641 ("[Although] a physician's diagnosis and input on a child's medical condition is important and bears on the team's informed decision on a student's needs ..., a physician cannot simply prescribe special education....").

Id. at 862-63. In this opinion, the Seventh Circuit appears to have adopted the snapshot approach for determining substantive FAPE. *Id*. at 863.

[18] In an earlier ruling, the court rejected the parents' § 1983 retaliation claim. Although their claim was presumably premised on § 504 and/or the ADA, the court's disposition was based on defenses specific to § 1983. *T.G. v. Midland Sch. Dist.*, 55 IDELR ¶ 129 (C.D. Ill. 2010). Thus, this decision is not included in the "Section 504/ADA Issues" section *infra*.

P *Corey H. v. Bd. of Educ.,* 995 F. Supp. 900, 27 IDELR 713 (N.D. Ill. 1998)[19]
- ruled that SEA violated IDEA by inadequately monitoring LRE mandates as well as by having certification categories and financial incentives that tended toward segregation

P ***Bd. of Educ. of LaGrange Sch. Dist. No. 105 v. Ill. St. Bd. of Educ.*, 184 F.3d 912, 30 IDELR ¶ 891 (7th Cir. 1999)**
- ruled that district's two alternative proposed segregated placements for preschool child did not meet LRE mandate

P *Bd. of Educ. v. Jeff S.*, 184 F. Supp. 2d 790, 36 IDELR ¶ 93 (C.D. Ill. 2002)
- rejected segregated placement for hearing-impaired preschool child [tuition reimbursement case]

S *K.M. v. Consol. High Sch. Dist. No. 280*, 36 IDELR ¶ 208 (N.D. Ill. 2002)
- upheld district's proposed placement of 19-year-old student with multiple disabilities in life skills program in more distant high school rather than higher level program in neighborhood high school

S ***Beth B. v. Van Clay*, 282 F.3d 493, 36 IDELR ¶ 121 (7th Cir. 2002)**
- upheld full-time special education placement with reverse mainstreaming for severely physically and mentally challenged seven-grade student rather than parents' preferred and previously applicable inclusionary placement

S ***Sch. Dist. of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 37 IDELR ¶ 34 (7th Cir. 2002)**
- upheld homebound placement for disruptive student with autism (rather than 70% mainstreaming)

S *Kerry M. v. Manhattan Sch. Dist.*, 46 IDELR ¶ 194 (N.D. Ill. 2006)
- rejected parents' more integrated placement, reasoning that "the IDEA requires mainstreaming to the maximum extent appropriate not the maximum extent possible"

(***P***) *John M. v. Bd. of Educ.*, 450 F. Supp. 2d 880, 46 IDELR ¶ 951 (N.D. Ill. 2006)
- issued preliminary injunction against district because it offered the parents one inclusive option and one self-contained option without individualized assessment and programming

S ***Bd. of Educ. v. Ross*, 486 F.3d 267, 47 IDELR ¶ 241 (7th Cir. 2007)**[20]
- rejected procedural (e.g., pre-determination) and substantive (including LRE) challenges to mid-year change from mainstreamed placement to "multiple needs" program for 11th grader with Rett Syndrome

[19] This decision led to a remedial decree that third parties unsuccessfully sought to challenge in ***Reid L.*** (*infra*).

[20] For a decision where the Seventh Circuit applied claim preclusion to the parent's § 504 and ADA claims arising from the same set of facts, see ***Ross v. Bd. of Educ.*, 486 F.3d 279 (7th Cir. 2007)**.

S *Bd. of Educ. of Homewood Flossmoor Cmty. High Sch. Dist. No. 233 v. Ill. St. Bd. of Educ.*, 50 IDELR ¶ 101 (C.D. Ill. 2008)
- upheld private placement that district provided instead of parents' proposal to continue mainstreamed placement

S *Richard Paul E. v. Plainfield Cmty. Consol. Sch. Dist. No. 220*, 52 IDELR ¶ 130 (C.D. Ill. 2009)
- rejected parents' claim that private placement would be LRE, upholding instead the district's proposed segregated class placement that provided for mainstreaming opportunities in extracurricular activities

IV. RELATED SERVICES AND ASSISTIVE TECHNOLOGY

P *Bd. of Educ. of Dist. No. 130 Pub. Sch. v. Illinois State Bd. of Educ.*, 26 IDELR 724 (N.D. Ill. 1997)
- ruled that student with a disability voluntarily placed in a private school who receives special education services at a public school is entitled to transportation services to and from the public school

S ***Morton Cmty. Sch. Dist. v. J.M.*, 152 F.3d 583, 28 IDELR 614 (7th Cir. 1998)**[21]
- ruled that specialized nursing was part of the related services obligations rather than the medical services exclusion

P ***Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66, 29 IDELR 966 (1999)**
- specialized health care services that do not require a physician and are necessary for an IDEA-eligible student are related, not medical, services

S ***Butler v. Evans*, 225 F.3d 887, 33 IDELR ¶ 62 (7th Cir. 2000)**
- hospitalization due to involuntary commitment is not a related service under the IDEA

S ***Dale M. v. Bd. of Educ.*, 237 F.3d 813, 33 IDELR ¶ 266 (7th Cir. 2001)**
- confinement in a residential school is not a related service under the IDEA [tuition reimbursement case]

S *Aaron M. v. Yomtoob*, 38 IDELR ¶ 122 (N.D. Ill. 2003), *further proceedings*, 40 IDELR ¶ 65 (N.D. Ill. 2003)
- ruled that parents were entitled to 6, not 12, trips per year for parent training at their child's residential placement

[21] The Supreme Court's decision *in* ***Cedar Rapids Community School District v. Garret F.*** (*infra*) confirmed this Seventh Circuit ruling. For a similar earlier ruling that came to the same conclusion, see *Skelly v. Brookfield LaGrange Park Sch. Dist. No. 95*, 968 F. Supp. 385 (N.D. Ill. 1996).

S *Brett K. v. Momence Cmty. Unit Sch. Dist. No. 1*, 47 IDELR ¶ 257 (N.D. Ill. 2007)
- upheld the district's modified transportation for student with severe disabilities, including aide and harness, to private school rather than the individual transportation that the parents sought

P *M.L. v. Bourbonnais Sch. Dist. No. 53* (*supra*)
- upheld IHO's ruling that the child in this case, a third grader with autism, needed door-to-door transportation

V. DISCIPLINE ISSUES

P ***Rodiriecus v. John F.*, 90 F.3d 249, 24 IDELR 563 (7th Cir. 1996)**
- held that the IDEA's procedural protections do not protect a student from expulsion when the parent had not previously requested an evaluation for eligibility and the district did not have reason to suspect that the student may qualify under the IDEA (i.e., stay-put does not apply)[22]

P *Cmty. Consol. Sch. Dist. No. 93 v. John F.*, 33 IDELR ¶ 210 (N.D. Ill. 2000)
- ruled that interim disciplinary change in placement to instruction in the home in the wake of a disability-related Columbine-type threat was both a procedural and substantive denial of FAPE, warranting reimbursement of costs of therapeutic counseling

VI. ATTORNEYS' FEES

A. "PREVAILING"

S ***Bd. of Educ. v. Nathan R.*, 199 F.3d 377, 31 IDELR ¶ 182 (7th Cir. 2000)**
- parents were not prevailing party where interim relief was not merit-based

S *Joshua H. v. Lansing Pub. Sch.*, 161 F. Supp. 2d 888, 35 IDELR ¶ 180 (N.D. Ill. 2001)
- parents were not prevailing party where they obtained, via the hearing, no more than what the district had timely offered before the hearing

S ***Bingham v. New Berlin Sch. Dist.*, 550 F.3d 601, 51 IDELR ¶ 61 (7th Cir. 2008); *T.D. v. LaGrange Sch. Dist. No. 102*, 349 F.3d 469, 40 IDELR ¶ 32 (7th Cir. 2003)**
- rejected "catalyst theory" under IDEA, relying instead on the Supreme Court's ADA decision in *Buckhannon*[23]

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[22] For the subsequent, fine-tuned standards in such disciplinary situations, see 34 C.F.R. § 300.534.

[23] ***Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Serv.***, 531 U.S. 598 (2001) (ruling that attorneys' fee-shifting provisions of ADA and another federal statute require party to secure either a judgment on merits or court-ordered consent decree in order to qualify as "prevailing party").

P *John M. v. Bd. of Educ.,* 612 F. Supp. 2d 981, 52 IDELR ¶ 154 (N.D. Ill. 2009)
- parents prevailed, resulting in $45k in attorneys' fees, for obtaining qualitatively "significant" relief, although it amounted to only $6k of the $33k market value of the sought services

B. SCOPE

P *Dale M. v. Bd. of Educ.*, 29 F. Supp. 2d 925, 29 IDELR 600 (C.D. Ill. 1998)[24]
- upheld award for expert witness[25] but reduced award by approximately 50% due to undocumented expenses; excessive investigation, client-conferencing, and monitoring; and uncovered (here, OCR) hours

P/S *Benito M. v. Bd. of Educ.*, 544 F. Supp. 2d 713, 49 IDELR ¶ 221 (N.D. Ill. 2008)
- ruled that the IHO's decision for a one-year of services at a specific private therapeutic school was more favorable than the district's timely offer of settlement of two years of services at an unidentified private school, but reduced the requested amount of attorneys' fees by 15% due to the parents' limited success

P/S *Ryan M. v. Bd. of Educ.*, 731 F. Supp. 2d 776, 55 IDELR ¶ 8 (N.D. Ill. 2010)
- awarded $78k, rather than requested $95k, in attorneys' fees due to incomplete success and unsubstantiated or duplicative billing, but allowed prejudgment interest

P *Stephanie J. v. Bd. of Educ.*, 55 IDELR ¶ 14 (N.D. Ill. 2010)
- upheld including prejudgment interest in the attorneys' fees award

S ***Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 45 IDELR ¶ 267 (2006)**
- held that IDEA does not allow for prevailing parents to recover expert fees

P *Stephanie J. v. Bd. of Educ.*, 55 IDELR ¶ 14 (N.D. Ill. 2010)
- included in attorneys' fee award the time for monitoring and implementing the IHO's decision after the district did not comply on its own

P/S *Brenton H. v. Bd. of Educ.,* 57 IDELR ¶ 184 (N.D. Ill. 2011)
- ruled that IHO's orders exceeded district's timely offer of settlement but that the substantial but not absolute success (at most 7 of 9 issues) warranted 25% reduction of the requested amount (+ prejudgment interest)

[24] The Seventh Circuit independently held that the parents' attorney must return the fees to the district after the appeals court reversed the underlying decision. ***Dale M. v. Bd. of Educ.*, 282 F.3d 984 (7th Cir. 2002)**.

[25] The Supreme Court, in ***Arlington Central School District*** (*infra*) subsequently held that expert witness fees were not available under the IDEA.

VII. REMEDIES

A. TUITION REIMBURSEMENT[26]

P/S *Bd. of Educ. of Oak Park and River Forest High Sch. Dist. No. 200 v. Illinois State Bd. of Educ.*, 21 F. Supp. 2d 862, 29 IDELR 32 (N.D. Ill. 1998)
- limited reimbursement to tuition and related educational expenses, not room and board or transportation

P *K.Y. v. Maine Twp. High Sch. Dist. No. 207*, 28 IDELR 23 (N.D. Ill. 1998)
- upheld IHO's decision that, as a result of "red flag" child-find analysis, the high school student was eligible as ED; the district did not provide FAPE; the residential placement was appropriate; the costs of the residential placement were reasonable; and the state education department was liable for its share under state law, per the parties' settlement agreement

P/S *Bd. of Educ. of New Trier High Sch. Dist. No. 223* (*supra*)
- upheld reimbursement of various services, including consultant, but only at reasonable rates, plus compensatory education

(*P*) *T.H. v. Bd. of Educ.*, 29 IDELR 471 (N.D. Ill. 1998)
- ruled that district was responsible to "front" the funds necessary for continued private placement once a state-level administrative or judicial decision supports the appropriateness, subject to further review, in a unilateral placement case (i.e., it is stay-put for purposes of tuition reimbursement)

P *T.H. v. Bd. of Educ.,* 55 F. Supp. 2d 830, 30 IDELR 764 (N.D. Ill. 1999)
- in subsequent ruling on the merits in the same case, granted tuition reimbursement for autistic five-year-old where district's cross-categorical early childhood placement, w/o aide, did not provide FAPE and parents' home-based Lovaas placement was appropriate

S ***Linda W. v. Indiana Dep't of Educ.*, 200 F.3d 504, 32 IDELR ¶ 66 (7th Cir. 1999)**
- denied tuition reimbursement to parents where the district initially had failed to implement portions of the IEP but, after providing compensatory education, it implemented substantial or significant provisions of the IEP

S ***Patricia P. v. Bd. of Educ.*, 203 F.3d 462, 31 IDELR ¶ 211 (7th Cir. 2000)**
- denied tuition reimbursement where parents did not allow the district a reasonable opportunity to evaluate their child

[26] For the full flowchart-type framework, or multi-step test, see, e.g., Perry A. Zirkel, *Tuition and Related Reimbursement under the IDEA: A Checklist*, __ EDUC. L. REP. __ (2012).

P/S *Bd. of Educ. v. Mr. and Mrs. V.*, 32 IDELR ¶ 139 (N.D. Ill. 2000)
- ruled that the parents were entitled to reimbursement for reasonable transportation costs in addition to tuition but only, based on the review officer's decision, until the end of the school year—parent breached their duty to cooperate in formulating a revised IEP for the following year

S *Bd. of Educ. of Arlington Heights Sch. Dist. v. Illinois State Bd. of Educ.*, 35 IDELR ¶ 6 (N.D. Ill. 2001)
- denied tuition reimbursement largely based on determination that the unilateral residential placement (Elan) was not appropriate

P *Bd. of Educ. of City of Chicago v. Illinois State Bd. of Educ.*, 46 IDELR ¶ 219 (N.D. Ill. 2006)
- upheld IHO's order for tuition reimbursement for child with hearing impairment based on failure of district to propose a substantively appropriate IEP and the relaxed standards for appropriateness of the parents' private placement, including that it need not be state-approved or the LRE

(*P*) *Erin K. v. Naperville Sch. Dist. No. 202*, 53 IDELR ¶ 144 (N.D. Ill. 2009)
- ruled that the parents' failure to fulfill the timely notice provision for tuition reimbursement does not automatically preclude this remedy, depending on equitable consideration of all of the circumstances

(*P*) ***Forest Grove Sch. Dist. v. T.A.*, 129 S. Ct. 2484, 52 IDELR ¶ 151 (2009)**
- child's lack of previous enrollment in special education is not a categorical bar to tuition reimbursement, instead being one of the various equities

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

B. COMPENSATORY EDUCATION

(*P*) *Hernandez v. Bd. of Educ.*, 34 IDELR ¶ 231 (N.D. Ill. 2002)
- granted preliminary injunction for implementation of compensatory education services within practical realities in terms of time and safety

P *Kevin T. v. Elmhurst Cmty. High Sch. Dist. No. 302* (*supra*)
- granted, as compensatory education, continued private placement beyond age 21 for denial of FAPE before age 21

P ***Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798, 40 IDELR ¶ 175 (7th Cir. 2004)**
- upheld compensatory education, occupational therapy award for lack of licensed OT

(*P*)/*S* *John M. v. Evanston Twp. High Sch. Dist. No. 202*, 52 IDELR ¶ 73 (N.D. Ill 2009)
- ruled that parents' original FAPE claim were, after four years and with high school graduation imminent, moot but their claim for compensatory education for alleged violations of stay-put was not moot

(*P*) *Petrina W. v. City of Chicago Pub. Sch. Dist. No. 299*, 53 IDELR ¶ 259 (N.D. Ill. 2009)
- rejected IHO's conclusion, in the wake of determination that the district denied FAPE, that compensatory education claim was not ripe until the student reached the age of 21 and remanded for determination of the amount of compensatory education based on the qualitative approach

P/S *T.G. v. Midland Sch. Dist. No. 7* (*supra*)
- upheld IHO's order for two hours/week of multi-sensory reading instruction and one hour/week of written instruction for one year—deferential application of qualitative approach ("sufficiently detailed and reasonably calculated to provide [the student] with the benefits she should have received")

VIII. OTHER. IDEA-RELATED ISSUES

S ***Johnson v. Duneland Sch. Corp.*, 92 F.3d 554, 24 IDELR 693 (7th Cir. 1996)**
- ruled that school district has absolute right to three-year reevaluation (as ordered by IHO)

P/S ***Bd. of Educ. v. Kelly E.*, 207 F.3d 931, 32 IDELR ¶ 62 (7th Cir. 2000)**
- IDEA validly abrogated states' Am. XI immunity but it does not entitle a school district to any or all of a tuition reimbursement award from the state

(*P*) ***Navin v. Park Ridge Sch. Dist.*, 270 F.3d 1147, 35 IDELR ¶ 239 (7th Cir. 2001), *after remand*, 49 F. App'x 69 (7th Cir. 2003)**
- noncustodial parent has standing to file for a due process hearing unless the divorce decree expressly eliminates all rights in educational matters or custodial parent's exercise of decreed rights trumps it

S *Krista P. v. Manhattan Sch. Dist.*, 255 F. Supp. 2d 873, 38 IDELR ¶ 239 (N.D. Ill. 2003)
- rejected parents' claim for IEE at public expense, concluding that district's reevaluation the previous year was appropriate, that there was no need for another reevaluation at this time, and that the district did not violate its child-find obligation

S *In re D.D.*, 788 N.E.2d 10, 39 IDELR ¶ 68 (Ill. Ct. App. 2003); *see also Antioch Cmty. High Sch. Dist. 17 v. Bd. of Educ.*, 868 N.E.2d 1068 (Ill. Ct. App. 2007)
- ruled that juvenile court lacked authority to order school district to pay for educational component of out-of-state placement it ordered for delinquent student with a disability

S ***Reid L. v. Illinois State Bd. of Educ.*, 358 F.3d 511, 40 IDELR ¶ 177 (7th Cir. 2004)**
- held that students with disabilities outside Chicago and their teachers lacked standing to challenge state's new, cross categorical special education teacher certification rules adopted as result of *Corey H.* settlement agreement (antiquated categories w. inadequate training impermissibly permitted categorical segregation of students with disabilities)

(***P***) ***Disability Rights Wisconsin, Inc. v. State of Wisconsin Dep't of Pub. Instruction*, 463 F.3d 719, 46 IDELR ¶ 122 (7th Cir. 2006)**
- held that advocacy organization may obtain access for certain personally identifiable information about students with disabilities as part of its investigation of alleged violations of IDEA

S ***Schaffer v. Weast*, 546 U.S. 49, 44 IDELR ¶ 150 (2005)**
- ruled that the burden of proof (specifically, burden of persuasion) in a case challenging the appropriateness of an IEP is on the challenging party

(***P***) ***Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007)**
- parents may proceed *pro se* in federal court to enforce their independent rights under the IDEA

(***P***) *Kalbfleisch v. Columbia Cmty. Sch. Dist.*, 644 F. Supp. 2d 1084, 53 IDELR ¶ 12 (S.D. Ill. 2009), *further proceedings*, 53 IDELR ¶ 57 (Ill. Cir. Ct. 2009); *see also K.D. v. Villa Grove Cmty. Unit Sch. Dist.*, 936 N.E.2d 690, 55 IDELR ¶ 78 (Ill. Ct. App. 2010)
- after federal court rejected removal, state trial court granted preliminary injunction to child with autism to be accompanied by service dog based on Illinois state law specific to this issue[27]

S ***Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 58 IDELR ¶ 91 (7th Cir. 2012)**
- vacated class certification (for being fatally indefinite, lacking the required commonality, and improper in terms of Rule 23(a)(2)) and, thus, the liability and remedial/settlement orders in long-running class action litigation concerning child find

S *T.G. v. Midland Sch. Dist. No. 7* (*supra*)
- ruled that parents were not entitled to IEEs at public expense where the district's evaluations were appropriate or where the parents failed to provide due notice

[27] The newly amended regulations of the ADA have largely resolved the service animal school-access issue in favor of students with disabilities. For a preliminary injunction enforcing this regulation for a student with autism, see *C.C. v. Cypress Sch. Dist*., 56 IDELR ¶ 295 (C.D. Cal. 2011)

IX. SECTION 504/ADA ISSUES[28]

P/S ***Washington v. Indiana High Sch. Athletic Ass'n*, 181 F.3d 840, 31 IDELR ¶ 6 (7th Cir. 1999)**; *Bingham v. Oregon Sch. Activities Ass'n*, 60 F. Supp. 2d 411, 30 IDELR 20 (D. Or. 1999), *vacated as moot*, 35 IDELR ¶ 219 (9th Cir. 2001)
- majority view that enforcement of interscholastic rule that limited eligibility to eight consecutive semesters, without exceptions for disabled students, violates Sec. 504/ADA

S *Long v. Bd. of Educ.*, 167 F. Supp. 2d 988, 34 IDELR ¶ 232 (N.D. Ill. 2001)
- rejected restraining order for student dismissed from lacrosse and football teams for disability-related violations of code of conduct

S *J.D.P. v. Cherokee Cnty. Sch. Dist.*, 735 F. Supp. 2d 1348, 55 IDELR ¶ 44 (N.D. Ill. 2010)
- rejected § 504 failure-to-train money damages claim on behalf of child with autism and other disabilities (who had IEP plus, for after-school program, 504 plan)—deliberate indifference standard

S *Brown v. Dist. 299-Chicago Pub. Sch.*, 762 F. Supp. 2d 1076, 55 IDELR ¶ 283 (N.D. Ill. 2010)
- ruled that even if the failing grades of a high school student with SLD showed denial of access to education, the parents failed to provide evidence that they were attributable to the alleged denial of FAPE (via non-implementation)

S *Zachary M. v. Bd. of Educ.*, 57 IDELR ¶ 244 (N.D. Ill. 2011)
- issued summary judgment for district on the various § 504 claims of parents of graduated student with ADHD, including alleged retaliation (suspicious timing alone is not enough) and their requested remedies of grade recalculation (not available in the circumstances of this case) and money damages (due to lack of deliberate indifference)

[28] For a comprehensive source, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) (available from LRP Publications, www.lrp.com).