ELEVENTH CIRCUIT AND FLORIDA COURT DECISIONS 1995 TO PRESENT
UNDER THE IDEA AND § 504/ADA

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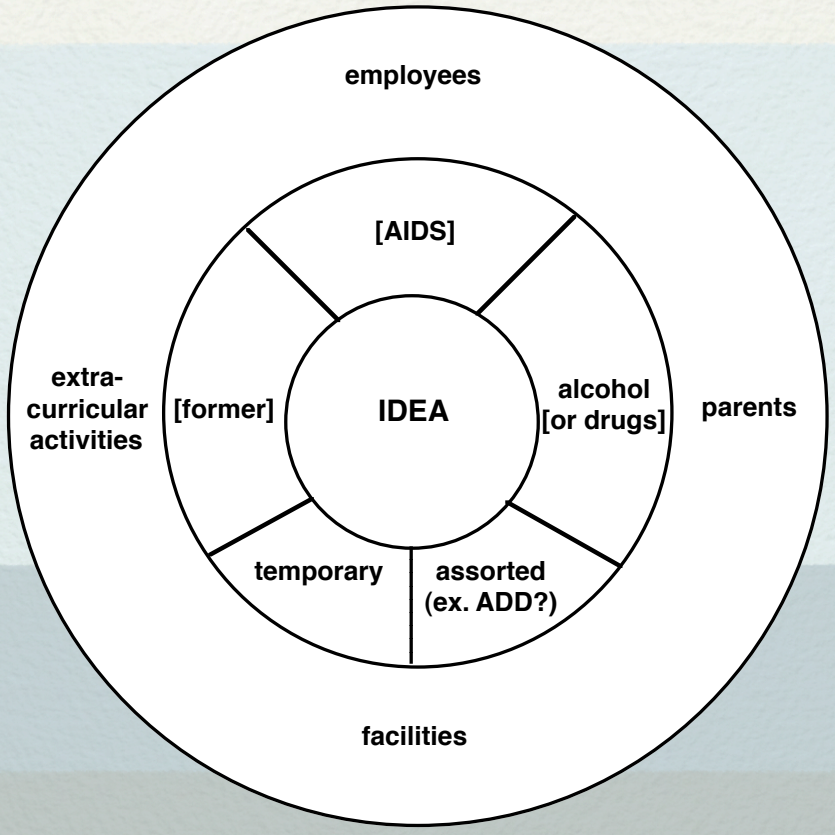

This annotated outline is a compilation of most of the officially and unofficially published[1] special education decisions[2] issued by the U.S Supreme Court, the Eleventh Circuit, and the courts in Florida starting in 1995[3] and ending with the compiling date of 1/25/13.[4] The coverage does not extend to pertinent rulings that are no longer good law[5] and—with limited exceptions—those specific to overly technical adjudicative issues, which largely are not specific to the IDEA or § 504/ADA.[6] The author welcomes suggestions of any additional court decisions within these boundaries.

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 in West's FEDERAL APPENDIX or LRP's INDIVIDUALS WITH DISABILITIES LAW REPORT (IDELR). The only cases included from LRP's electronic-only database are those that had summary affirmances reported in IDELR or West's reporters. The only case that only had a WL citation was *Steven H. v. Duval County School Board*, which was included herein for its illustration of disability harassment claims.

[2] The primary focus is the case law based on Individuals with Disabilities Education Act (IDEA) and Florida state special education regulations. Although the coverage extends secondarily to student cases under § 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA), it does not extend—except for illustrative exhaustion cases—to constitutional other issues arising in the special education context. See, e.g., Worthington v. Elmore Cnty. Sch. Bd., 160 F. App'x 177 (11th Cir. 2005) (rejecting § 1983 substantive due process claim for peer's sexual assault of special education student); T.W. v. Sch. Bd. of Seminole Cnty., 610 F.3d 588 (11th Cir. 2010); S.S. v. Princeton House Charter Sch., 60 IDELR ¶ 13 (M.D. Fla. 2012); Hatfield v. Sch. Dist. of Sarasota Cnty., 56 IDELR ¶ 7 (M.D. Fla. 2011) (concerning § 1983 claims for physical abuse by special education personnel). For Seminole County's cluster of physical abuse cases attributable to a single teacher, see Perry A. Zirkel & Caitlin Lyons, *Restraining the Use of Restraints for Students with Disabilities*, 10 CONN. PUB. INT. L.J. 323, 347 (2011). Similarly, it does not include negligence cases on behalf of students with disabilities. See, e.g., Cruz v. Broward Cnty Sch. Bd., 800 So.2d 213 (Fla. 2001).

[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., Greer v. Rome City Sch. Dist., 950 F.2d 688 (11th Cir. 1991); JSK v. Sch. Bd. of Hendry Cnty., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Bd. of Educ., 915 F.2d 651 (11th Cir. 1990); Rogers v. Bennett, 873 F.2d 1387 (11th Cir. 1989); Ass'n for Retarded Citizens v. Teague, 830 F.2d 158 (11th Cir. 1987); Manecke v. Sch. Bd. of Pinellas Cnty., 762 F.2d 912 (11th Cir. 1985); Powell v. Defore, 699 F.2d 1078 (11th Cir. 1983); Hendry Cnty. Sch. Bd. v. Kujawski, 498 So.2d 566 (Fla. Dist. Ct. App. 19862). For a corresponding compilation that extends to all of the other circuits but is limited to published court decisions, see PERRY A. ZIRKEL, A NATIONAL UPDATE OF THE CASE LAW 1998 TO PRESENT UNDER THE IDEA AND SECTION 504 (2012) (available at www.nasdse.org).

[4] Thus, any decisions in late 2012 not yet available in WestLaw or IDELR are not included.

[5] See, e.g., Devine v. Indian River Cnty. Sch. Bd., 121 F.3d 576 (11th Cir. 1997) (parents' right to proceed *pro se*); Zipperer v. Sch. Bd. of Seminole Cnty., 111 F.3d 847 (11th Cir. 1997) (statute of limitations prior to IDEA 2004); Sch. Bd. of Putnam Cnty. v. Roderick, 593 So.2d 1174 (Fla. Dist. Ct. App. 1992) (choice for state court review).

[6] See, e.g., R.L. v. Miami-Dade Cnty. Sch. Bd., 55 IDELR ¶ 259 (M.D. Fla. 2010) (expert testimony); S.B. v. Florida Sch. for the Deaf & Blind, 54 IDELR ¶ 99 (M.D. Fla. 2010); Polk Cnty. Sch. Bd. v. Sammons, 47 IDELR ¶ 62 (M.D. Fla. 2007) (removal); L.M.P. v. Sch. Bd. of Broward Cnty., 53 IDELR ¶ 49 (S.D. Fla. 2009) (discovery); Boatright v. Sch. Bd. of Polk Cnty., , 52 IDELR ¶ 101 (M.D. Fla. 2009) (tolling of statute of limitations for filing for judicial review); T.R. v. St. Johns Cnty Sch. Dist., 50 IDELR ¶ 254 (M.D. Fla. 2008) (Rule 11 sanctions); Whitehead v. Sch. Bd. for Hillsborough Cnty., 918 F Supp. 1396 (M.D. Fla. 1996) (qualified immunity); M.C.G. v. Hillsborough Cnty. Sch. Bd., 927 So.2d 224 (Fla. Dist. Ct. App. 2006) (collateral estoppel); J.C. v. Sch. Bd. of Orange Cnty., 668 So.2d 693 (Fla. Dist. Ct. App. 1996) (venue).

decisions under § 504 and the ADA.[7] 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[8]: ***P*** = Parents won; ***S*** = School district won; **( )** = Inconclusive.[9]

Those entries representing decisions by the U.S. Supreme Court and Eleventh Circuit are in bold typeface. Cases with separate decisions are cited independently in each category. In contrast, for a decision that has 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.[10] The signal "*cf.*" at the start of a citation indicates that the court decision is partially but not directly on point. In addition, to keep the entries brief, the blurbs include the following acronyms:

ADHD = attention deficit hyperactivity disorder
BIP = behavior intervention plan
ED = emotional disturbance
ESY = extended school year
FAPE = free appropriate public education
ID = intellectual disabilities
IEE = independent educational evaluation
IEP = individualized education program
IHO = impartial hearing officer
LRE = least restrictive environment
ODD = oppositional defiant disorder
OT = occupational therapy
SLD = specific learning disabilities
S/L = speech and language

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[7] 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."

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

[9] "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.

[10] 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 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

S ***C.J. v. Indian River Cnty. Sch. Bd.*, 107 F. App'x 893, 41 IDELR ¶ 120 (11th Cir. 2004)**

- ruled that student diagnosed with bipolar disorder and ODD was not eligible as ED because her behavior problems did not affect her educational performance

(*P*) *cf. M.H. v. Nassau Cnty. Sch. Bd.,* 918 So.2d 316, 44 IDELR ¶ 165 (Fla. Dist. Ct. App. 2005)

- ruled that district had a Child Find obligation to pursue consent and provide procedural safeguards notice for full evaluation of child with ADHD and Tourette Syndrome who had a 504 plan that was unsuccessful—here parent initially revoked consent for part of the evaluation but then ambiguously appeared to withdraw that partial revocation

II. APPROPRIATE EDUCATION

S ***Weiss v. Sch. Bd. of Hillsborough Cnty. Sch. Bd.*, 141 F.3d 990, 28 IDELR 443 (11th Cir. 1998)**

- upheld substantive appropriateness of interim IEP for child with autism and rejected various alleged procedural violations as not prejudicial to this substantive finding

S *Mandy S. v. Fulton Cnty. Sch. Dist.*, 205 F. Supp. 2d 1358, 31 IDELR ¶ 79 (N.D. Ga. 2000), ***aff'd mem.*, 273 F.3d 114 (11th Cir. 2001)**

- concluded that district's IEPs, including transition plans, were "substantially" in compliance with procedural requirements and met substantive standards of IDEA

S ***Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 34 IDELR ¶ 203 (11th Cir. 2001)**

- upheld appropriateness of district's specialized day program for child with autism rather than parents' unilateral residential placement based on adequate gains in school even if not in the home setting [tuition reimbursement case]

S ***Sch. Bd. of Collier Cnty. v. K.C.*, 285 F.3d 977, 36 IDELR ¶ 122 (11th Cir. 2002)**

- upheld appropriateness of district's proposed IEP for student with SLD where key stakeholders implemented it in collaborative manner and its procedural deficiencies did not impact FAPE

S ***M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 45 IDELR ¶ 1 (11th Cir. 2006)**

- parents claim that a particular approach (here, auditory verbal method) was "the best and most desirable method" does not state a claim under IDEA

S ***L.G. v. Sch. Bd. of Palm Beach Cnty.*, 255 F. App'x 360, 48 IDELR ¶ 271 (11th Cir. 2007)**

- upheld district's placement of student with ED at day, rather than residential, school based on meaningful gains in the classroom regardless of elsewhere (citing *Devine*) [tuition reimbursement case]

P *Sch. Bd. of Lee Cnty. v. E.S.*, 561 F. Supp. 2d 1282, 49 IDELR ¶ 251 (M.D. Fla. 2008)

- ruled that child with autism was entitled to remain in residential placement (although not necessarily Heartspring), rejecting, due to child's need for consistency, district's proposed transfer to in-state day program

S *DeKalb Cnty. Sch. Dist. v. J.M.*, 111 LRP 24485 (N.D. Ga. 2008)**, *aff'd*, 329 F. App'x 906, 53 IDELR ¶ 4 (11th Cir. 2009)**

- ruled that parents failed to sustain their burden to prove that the district denied the student with developmental disabilities FAPE, including ESY—concluding that the IEP met substantive standard regardless of procedural violations of failing to provide parent training and autism evaluation

S ***Sch. Bd. of Lee Cnty. v. M.M.*, 348 F. App'x 504, 53 IDELR ¶ 142 (11th Cir. 2009)**

- ruled that the various procedural violations in developing the IEP and its deficiencies prior to the behavior-improving effects of medication did not result in substantive denial of FAPE for first-grade child with multiple disabilities

S *Lewellyn v. Sarasota Cnty. Sch. Bd.*, 53 IDELR ¶ 288 (M.D. Fla. 2009), ***aff'd mem.*, 442 F. App'x 446, 57 IDELR ¶ 181 (11th Cir. 2011)**, *cert. denied*, 133 S. Ct. 634 (2012)

- ruled that the district met the substantive standard for FAPE for both of the parents' children

S *T.M. v. Gwinnett Cnty. Sch. Bd.*, 111 LRP 73091 (N.D. Ga. 2010), ***aff'd mem.*, 57 IDELR ¶ 272 (11th Cir. 2011)**[11]

- ruled that district met procedural standards for FAPE and the proposed IEP for child with autism and speech impairment met the *Cypress-Fairbanks* four-factor test of substantive appropriateness

S ***G.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 58 IDELR ¶ 61 (11th Cir. 2012)**

- upheld the district court's ruling, which was that parents' extensive conditions to their consent for reevaluation of their child with autism and brain injuries amounted to a refusal, and its remedy, which was an order for a reevaluation with specified reasonable conditions—also found that parents failed to prove that the other procedural violations, beyond those intertwined with the parents' rejected reevaluation claim, impacted the substantive side of the child's FAPE

[11] Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997). In its brief, per curiam affirmance, the Eleventh Circuit relied on *Rowley*, clarifying that "[w]e need not decide today whether the *Cypress-Fairbanks* test is the only one to be employed in IEP inquiries."

III. MAINSTREAMING/LRE

S ***Michael P. v. Indian River Cnty. Sch. Bd.*, 48 F. App'x 326, 37 IDELR ¶ 186 (11th Cir. 2002)**

- upheld, based on *Greer/Daniel R.R.* test, district's proposed placement of child with ID in special education school rather than parents' proposed placement in special education class in a regular school

IV. RELATED SERVICES AND ASSISTIVE TECHNOLOGY

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 ***Donald B. v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 117 F.3d 1371, 26 IDELR 414 (11th Cir. 1997)**

- ruled that a child is entitled to transportation under the IDEA if necessary for the child to benefit from special education even though the child has no ambulatory impairment that directly causes a "unique need" for some form of specialized transport, but this child did not meet this broader test

V. DISCIPLINE ISSUES

(*S*) *Sch. Bd. of Pinellas Cnty. v. J.M.*, 957 F. Supp. 1252, 25 IDELR 748 (M.D. Fla. 1997); *see also Sch. Bd. of Hillsborough Cnty. v. Student*, 26493257X, 23 IDELR 93 (M.D. Fla. 1995)

- granted *Honig* preliminary injunction for 45-day change in placement from mainstream middle school for student with autism substantially likely to injure others

S *State v. T.O.*, 729 So.2d 295 (Fla. Dist. Ct. App. 1999)

- ruled, briefly, that procedural safeguard protections under state regulations for discipline of students with disabilities do not apply to juvenile delinquency proceedings

S *Jane Parent v. Osceola Cnty. Sch. Bd.*, 59 F. Supp. 2d 1243, 32 IDELR ¶ 144 (M.D. Fla. 1999)

- ruled that 1) student's placement at alterative school in wake of expulsion for attacking another student with a box cutter was, despite limited extracurricular activities and lack of certified special education reading teacher, FAPE in the LRE, and 2) procedural violations in manifestation determination were nonprejudicial procedural violations

S *Joshua S. v. Sch. Bd. of Indian River Cnty.*, 37 IDELR ¶ 218 (S.D. Fla. 2002)
- ruled that series of four removals of 23-year-old student with ED for 26 days within approximately half of a school year, with "a manifest [sic] determination and IEP meetings . . . after . . . the conclusion of the second and fourth suspensions" did not amount to a change in placement and that the failure to send the student's records upon referrals to law enforcement authorities was a procedural violation that did not deny FAPE

VI. ATTORNEYS' FEES

A. ELIGIBILITY

(*P*) *W.R. v. Sch. Bd. of Osceola Cnty.*, 726 So.2d 801, 29 IDELR ¶ 790 (Fla. Dist. Ct. App. 1999)
- state courts have concurrent jurisdiction to award attorneys' fees under the IDEA

S *Whitehead. v. Sch. Bd. of Hillsborough Cnty.,* 932 F. Supp. 1393, 24 IDELR 538 (M.D. Fla. 1996)
- even if IHO awarded attorneys' fees and state DOAH reversed the award, the parents have no claim against the state; it was not a party to the case at the hearing level

B. "PREVAILING"

S ***Robert v. Cobb Cnty. Sch. Dist.*, 279 F. App'x 798, 50 IDELR ¶ 62 (11th Cir. 2008)**
- parents did not qualify as prevailing parties for attorneys' fees based on their victory at due process hearing re stay-put order and enforcement of settlement agreement because the first was not merit-based and the second was state law breach of contract claim

S *D.R. v. Florida State Bd. of Educ.*, 57 IDELR ¶ 40 (S.D. Fla. 2011)
- ruled, based on *Buckhannon*,[12] that the a consent decree not signed by the IHO does not entitle the parents to attorneys' fees (without addressing whether they would be if the IHO had signed the consent decree)

C. SCOPE

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

[12] ***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").

S *L.J. v. Broward Cnty. Sch. Bd.*, 49 IDELR ¶ 216 (S.D. Fla. 2008)
- ruled that parents failed to show what part of their limited success was attributable to the attorney who withdrew after first 4 of 26 days of the impartial hearing

VII. REMEDIES

A. TUITION REIMBURSEMENT

P ***Walker Cnty. Sch. Dist. v. Bennett*, 203 F.3d 1293, 31 IDELR ¶ 239 (11th Cir. 2000)**
- upheld tuition reimbursement for private placement for student with autism, declining to hear additional evidence and pointing out deficiencies in IEP, including lack of BIP, OT and ESY

(*P*) ***Loren F. v. Atlanta Indep. Sch. Dist.*, 349 F.3d 1309, 40 IDELR ¶ 34 (11th Cir. 2003)**
- reversed and remanded denial of tuition reimbursement, requiring fact-finding as to parents' alleged unreasonableness and systematic multi-step tuition reimbursement analysis

P *DeKalb Cnty. Sch. Dist. v. M.T.V.*, 413 F. Supp. 2d 1322, 45 IDELR ¶ 30 (N.D. Ga. 2005)**, *aff'd*, 164 F. App'x 900, 45 IDELR ¶ 30 (11th Cir. 2006)**
- upheld reimbursement for costs of vision therapy based on evidence that student had blurred and double vision that affected his reading

(*P*) ***Forest Grove Sch. Dist. v. T.A.*, 129 S. Ct. 2484, 52 IDELR ¶ 151 (2009)**; *see also L.S. v. Sch. Bd. of Broward Cnty.*, 48 IDELR ¶ 251 (S.D. Fla. 2007)
- 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*) ***L.M.P. v. Florida Dep't of Educ.*, 345 F. App'x 428, 53 IDELR ¶ 70 (11th Cir. 2009)**
- upheld dismissal of claim that Florida IHOs lack authority to award tuition reimbursement because this parent of children with triplets had not obtained the prerequisite FAPE ruling—but dicta that *Forest Grove* clarified this authority under IDEA[13]

(*P*) *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 55 IDELR ¶ 261 (S.D. Fla. 2010)
- ruled that the reimbursement remedy is not limited to private school tuition

[13] Of additional possible relevance, see FLA. STAT. § 1003.571(1) (2009) (requiring the state board of education to comply with the IDEA). *See generally* Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the IDEA: An Update*, 31 NAT'L ASS'N OF ADMIN. L. JUDICIARY 1 (2011).

B. COMPENSATORY EDUCATION

(*P/S*) *Sch. Bd. of Osceola Cnty. v. M.L.,* 30 IDELR 655 (M.D. Fla. 2007), ***aff'd mem.*, 281 F.3d 1285 (11th Cir. 2001)**
- vacated IHO's vague compensatory education order as too ill-defined to be unenforceable and, based on parties' continued mutual intractability, appointed special master for appropriate relief for denial of FAPE

P ***Draper v. Atlanta Indep. Sch. Dist.*, 518 F.3d 1275, 49 IDELR ¶ 211 (11th Cir. 2008)**
- upheld, as compensatory education (under *Reid* qualitative standard), approximately five years of private school placement at its full cost ($34,000 per year plus any increases to $38,000 per year) based on denial of FAPE to student with dyslexia for three years

C. TORT-TYPE DAMAGES

S ***Ortega v. Bibb Cnty. Sch. Dist.*, 397 F.3d 1321, 42 IDELR ¶ 200 (11th Cir. 2005);** *L.M.P. v. Sch. Bd.*, 516 F. Supp. 2d 1305, 48 IDELR ¶ 249 (S.D. Fla. 2007) (no individual liability via §§ 1983 or 1985)
- no compensatory damages under IDEA

S *Sch. Bd. of Manatee Cnty. v. L.H.*, 666 F. Supp. 2d 1285, 53 IDELR ¶ 124 (M.D. Fla. 2009); *Sammons v. Polk Cnty. Sch. Bd.*, 49 IDELR ¶ 69 (M.D. Fla. 2007)
- ruled that § 1983 is not available to seek relief under the IDEA[14]

VIII. ADJUDICATIVE ISSUES[15]

(*P*) *B.A. v. Sch. Bd. for Charlotte Cnty.*, 27 IDELR 1035 (M.D. Fla. 1998)
- ruled that § 1983 provides injunctive relief to enforce an IHO decision (here, ordering the district to hire a qualified sign-language interpreter) and that the stay-put provision was not applicable as a defense from doing so

(*S*) *Radcliff v. Sch. Bd. of Hillsborough Cnty.*, 38 F. Supp. 2d 994, 29 IDELR 1050 (M.D. Fla. 1999)
- ruled that exhaustion applies to parents' IDEA claim for immediate IEP meeting

(*S*) ***Babicz v. Sch. Bd. of Broward Cnty.*, 135 F.3d 1420, 27 IDELR 724 (11th Cir. 1998)**
- ruled that exhaustion applied to claims of retaliation and failure to implement 504 plan (see footnote 10 of the opinion for its confusing rationale)

[14] In an earlier decision during the period of this compilation, the Eleventh Circuit ruled that the district did not have the requisite policy or custom for school board liability under § 1983 (for the alleged failure to provide records and an impartial hearing upon parents' request). ***K.M. v. Sch. Bd. of Lee Cnty.*, 150 F. App'x 953 (11th Cir. 2005).**

[15] This section is not entirely exhaustive. See *supra* note 5.

(*P*) *Sch. Bd. of Martin Cnty. v. A.S.*, 727 So.2d 1071, 29 IDELR 964 (Fla. Dist. Ct. App. 1999)
- reversed IHO's various remedies as beyond his authority after concluding that the district's IEP was appropriate

(*P*) *S.T. v. Sch. Bd. of Seminole Cnty.*, 783 So.2d 1231, 34 IDELR ¶ 230 (Fla. Dist. Ct. App. 2001)
- ruled that IHO's, under Florida statutes, do not have authority to conduct discovery

P/S *Sch. Bd. of Lee Cnty. v. S.W.*, 789 So.2d 1162, 35 IDELR ¶ 2 (Fla. Dist. Ct. App. 2001)
- upheld IHO's order for district to specify measurement of progress on annual goals; revised IHO's order for transition planning to track the applicable IDEA provision; and reversed IHO's order for qualified S/L therapist as *sua sponte* and without factual foundation

(*P*) *Sch. Bd. of Lee Cnty. v. M.C.*, 796 So.2d 581, 35 IDELR ¶ 273 (Fla. Dist. Ct. App. 2001)
- court, not IHO, has jurisdiction for breach of settlement agreement

(*S*) *Bishop v. Martin Cnty. Sch. Bd.,* 41 IDELR ¶ 177 (M.D. Fla. 2004)
- ruled that the exhaustion requirement applies to implementation, not just the contents, of an IEP

(*S*) *J.D. v. Manatee Cnty. Sch. Bd.,* 340 F. Supp. 2d 1316, 42 IDELR ¶ 32 (M.D. Fla. 2004)
- ruled that IHO's decision that child was eligible under the IDEA was not subject to stay-put

S ***Sammons v. Polk Cnty. Sch. Bd.*, 165 F. App'x 750, 45 IDELR ¶ 29 (11th Cir. 2006)**
- ruled that a request for mediation, as compared with filing for an impartial hearing, does not trigger stay-put

(*P*) *Sammons v. Polk Cnty. Sch. Bd.*, 46 IDELR ¶ 283 (M.D. Fla. 2006)
- ruled that claim for compensatory education is not moot upon the student's graduation

(*S*) ***J.P. v. Cherokee Cnty. Bd. of Educ.*, 218 F. App'x 911, 47 IDELR ¶ 123 (11th Cir. 2007); *N.B. v. Alachua Cnty. Sch. Bd.*, 84 F.3d 1376, 24 IDELR 270 (11th Cir. 1997);** *cf. Phillips v. Hillsborough Cnty. Sch. Dist.,* 52 IDELR ¶ 224 (M.D. Fla. 2009) (§ 1983 claims for disability and race discrimination)
- ruled that exhaustion applies to claim for money damages for IDEA student

(*P*) *L.M.P. v. Sch. Bd.*, 516 F. Supp. 2d 1294, 48 IDELR ¶ 249 (S.D. Fla. 2007)
- class action under IDEA that school board had policy against 1:1 ABA therapy fit within exceptions to exhaustion doctrine

(*P*)/*S* *Hughes v. Dist. Sch. Bd. of Collier Cnty.*, 48 IDELR ¶ 215 (M.D. Fla. 2007)[16]
- IHO's dismissal of first hearing based on mootness fulfills exhaustion requirement at least for mootness, but parents did not meet 30-day statute of limitations for judicial review of second hearing decision on separate issue (court rejected their relation-back attempt via amended complaint)

(*S*) ***CP v. Leon Cnty. Sch. Bd.*, 483 F.3d 1151, 47 IDELR ¶ 212 (11th Cir. 2007)**[17]
- ruled that school board's continuation of the educational placement, without changing the IEP, of student with ED who had been in jail was not violation of stay-put where the parents did not agree to the district's proposals for an interim placement

S *Hughes v. Dist. Sch. Bd. of Collier Cnty.*, 53 IDELR ¶ 6 (M.D. Fla. 2009)
- ruled that § 1983 may not be used to remedy alleged IDEA, § 504, or ADA violations

(*P*) ***Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007)**; *cf. Dunn-Fischer v. Dist. Sch. Bd. of Collier Cnty.*, 56 IDELR ¶ 166 (M.D. Fla. 2011) (not for the IDEA rights of their child)[18]
- parents may proceed *pro se* (i.e., without legal counsel) in federal court to enforce their independent rights under the IDEA

(*S*) ***Sch. Bd. of Lee Cnty. v. M.M.* (*supra*); *M.T.V. v. DeKalb Cnty. Sch. Dist.*, 446 F.3d 1153, 45 IDELR ¶ 177 (11th Cir. 2006)**
- ruled that exhaustion applies to § 504 retaliation claim for IDEA student or the parents

(*P*) *Broaders v. Polk Cnty. Sch. Bd.*, 57 IDELR ¶ 17, *adopted*, 57 IDELR ¶ 46 (M.D. Fla. 2011)
- ruled that exhaustion does not apply to constitutional claims on behalf of IDEA child where the parents do not affirmatively allege any IDEA claims and their claims do not relate to the identification, evaluation, or educational placement of the child

(*S*) *L.M. v. Pinellas Cnty. Sch. Bd.*, 54 IDELR ¶ 227 (M.D. Fla. 2010); *Hill v. Sch. Bd. for Pinellas Cnty.*, 954 F. Supp. 251, 25 IDELR 429 (M.D. Fla. 1997)
- ruled that change in location of the child under the same IEP was not a change in placement, thus not entitled to stay-put injunction

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[16] In further proceedings, a magistrate judge recommended remanding the service dog issue to the IHO based on the student's likely move back to Florida. *Hughes v. Dist. Sch. Bd. of Collier Cnty.*, 51 IDELR ¶ 130 (M.D. Fla. 2008).

[17] This opinion replaced one issued the previous year, which is at 466 F.3d 1318 (11th Cir. 2006).

[18] For a decision dismissing without prejudice the IDEA suit of a pro se parent who, without bad faith or willful disobedience, had neither amended her complaint to make her own claims nor obtained an attorney for the claims on behalf of her child, see *Schroeder v. Seminole County Board of Education*, 2012 WL 3711942 (M.D. Fla. Aug. 28, 2012); *cf.* Rohn v. Palm Beach Cnty. Sch. Bd., 2012 WL 6652940 (S.D. Fla. Dec. 21, 2012) (dismissing rambling pro se complaint that, shotgun-like, included vague IDEA and Section 504 claims).

(*P*) *Dunn-Fischer v. Dist. Sch. Bd. of Collier Cnty.*, 57 IDELR ¶ 230, *adopted*, 57 IDELR 258 (M.D. Fla. 2011)
- ruled that requested relief of tuition reimbursement is not moot after parents' move their residence out-of-state (although the costs of the move are not recoverable)

(*P*) *McNeal v. Duval Cnty. Sch. Bd.*, 58 IDELR ¶ 7 (S.D. Fla. 2011)
- ruled that district's denial of parents' request for impartial hearing for a § 504 retaliation claim either fulfilled the exhaustion requirement or excused it

IX. OTHER. IDEA-RELATED ISSUES

(*P*) *E.W. v. Sch. Bd. of Miami-Dade Cnty.*, 307 F. Supp. 2d 1363, 40 IDELR ¶ 257 (S.D. Fla. 2004)
- ruled that child who had never enrolled in public school was only entitled to service plan requirements of IDEA, as determined by state complaint procedure, not by IHO

S ***D.P. v. Sch. Bd. of Broward Cnty.*, 483 F.3d 725, 47 IDELR ¶ 181 (11th Cir. 2007)**, *cert. denied*, 128 S. Ct. 1080 (2008)[19]
- ruled that "stay-put" applies in transitioning from an IFSP to an IEP

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

S ***M.T.V. v. DeKalb Cnty. Sch. Dist.* (*supra*)**
- ruled that school district has right to reevaluation with expert of its choice (rather than evaluator of parents' choice)

S *P.T. v. Jefferson Cnty. Bd. of Educ.*, 106 LRP 40276 (N.D. Ala. 2000), ***aff'd mem.*, 189 F. App'x 858, 46 IDELR ¶ 3 (11th Cir. 2001)**
- ruled that autism specialist's observation and use of school bus harness, both without parental consent, did not violate the IDEA and the non-implemented IEE was attributable to the parents' action

S ***G.J. v. Muscogee Cnty. Sch. Dist.* (*supra*)**
- ruled that parents are not entitled to an IEE at public expense prior to the district's (re)evaluation

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

[19] For the more recent and largely confirming IDEA regulation, see **34 C.F.R. § 300.518(c)** (stay-put does not apply except, if district determines child is eligible, for services not in dispute).

X. SECTION 504/ADA ISSUES[20]

(*P*) *Whitehead. v. Sch. Bd. of Hillsborough Cnty.*, 918 F. Supp. 1515, 24 IDELR 21 (M.D. Fla. 1996)
- § 504 entitled parents to jury trial and, upon proof of intentional discrimination (including retaliation), money damages

S *Student with a Disability v. Palm Beach Cnty. Sch. Bd.*, 31 IDELR ¶ 209 (S.D. Fla. 1999)
- ruled that parents have not shown that § 504 provides for a disparate impact claim and that, even so, they failed to show that the district's policy for behavior support services and criminal referrals here established a prima facie case for such a claim

S *Steven H. v. Duval Cnty. Sch. Bd.*, 2001 WL 36341690 (M.D. Fla. May 8, 2001)
- parents failed to prove disability connection for § 504 disability harassment claim (against teachers)

S *C.P v. Leon Cnty. Sch. Bd.*, 44 IDELR ¶ 62 (N.D. Fla. 2005); *E.W. v. Sch. Bd. of Miami-Dade Cnty.* (*supra*)
- § 504 FAPE-related claim requires proof of bad faith or gross misjudgment

(*P*) *L.M.P. v. Sch. Bd. of Broward Cnty.* (*supra*)[21]
- preserved for trial whether district's alleged policy predetermining segregated placement of triplets with autism violated § 504, including requisite proof of intentional discrimination

S *Lewellyn v. Sarasota Cnty. Sch. Bd.* (*supra*)
- parents' § 504/ADA retaliation claim failed for lack of causal connection

(*P*) *J.P.M. v. Palm Beach Cnty. Sch. Bd.*, 877 F. Supp. 2d 1309, 59 IDELR ¶ 102 (S.D. Fla. 2012)
- preserved for trial, re possible deliberate indifference, § 504 liability claim of parent of student with autism allegedly subject to physical restraint 89 times (27 prone) in 14 months for aggressive and self-injurious behaviors

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[20] For the overlapping issue of exhaustion, see *supra* "Adjudicative Issues." For a comprehensive source on § 504/ADA, see PERRY ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) (available from LRP Publications, www.lrp.com).

[21] This ruling was part of the earlier of the aforementioned pair of federal district court decisions in 2007 (see *supra* "Adjudicative Issues"), which is at 516 F. Supp. 2d 1294, 48 IDELR ¶ 249.