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

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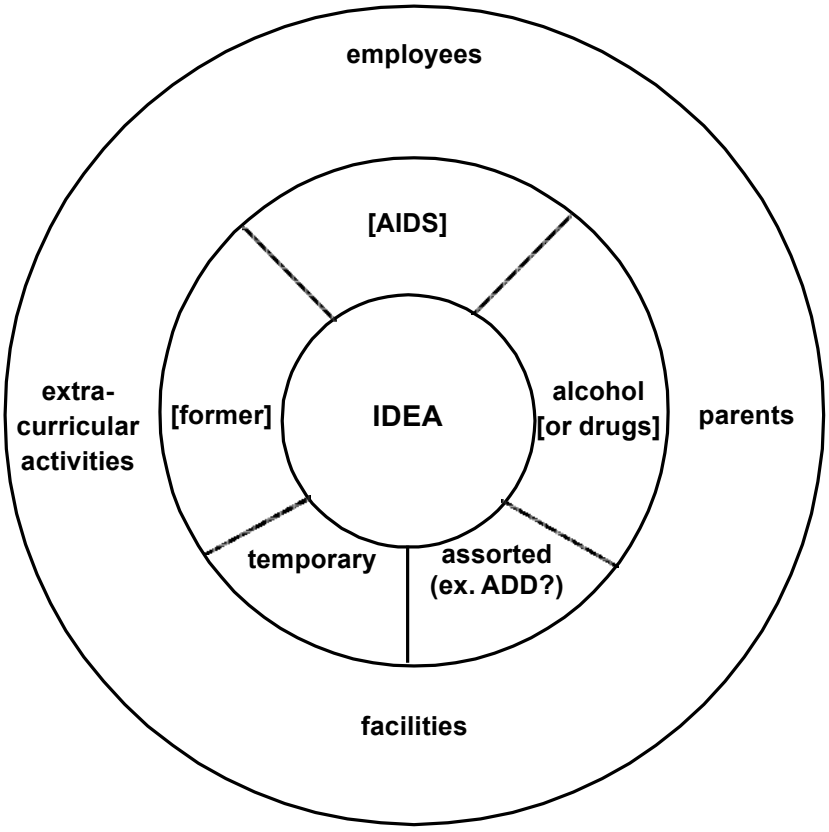

This annotated outline is a compilation of most of the officially and unofficially published[1] special education decisions[2] issued by the U.S Supreme Court, the Eleventh Circuit, and the courts in Georgia starting in 1995[3] and ending with the compiling date of 4/1/16[4]; the additions since the last version are highlighted in yellow. 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

[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. 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 (2014) (available at www.nasdse.org).

[2] The primary focus is the case law based on Individuals with Disabilities Education Act (IDEA) and Georgia 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 other federal issues arising in the special education context. See, e.g., Hatfield v. O'Neill, 534 F. App'x 838 (11th Cir. 2013); Worthington v. Elmore Cnty. Sch. Bd., 160 F. App'x 177 (11th Cir. 2005); Spivey v. Elliott, 41 F.3d 1497 (11th Cir. 1995) (rejecting § 1983 substantive due process claim for peer's sexual assault of special education student); Mahone v. Ben Hill Cnty. Sch. Sys., 377 F. App'x 913 (11th Cir. 2010); Peterson v. Baker, 504 F.3d 1331 (11th Cir. 2007); Edwards v. Cnty. Bd. of Educ., 48 IDELR ¶ 153 (S.D. Ga. 2007) (rejecting § 1983 substantive due process claim based on staff abuse of child with disability); King v. Pioneer Educ. Serv. Agency, 688 S.E.2d 7 (Ga. Ct. App. 2009) (rejecting various § 1983 liability claims on behalf of student with disabilities who committed suicide in the wake of time-out room). Similarly, it does not include state common law cases on behalf of students with disabilities. See, e.g., Robinson v. Smith, 65 IDELR¶ 292 (M.D. Ga. 2015); Chisolm v. Tippens, 658 S.E.2d 147 (Ga. Ct. App. 2009).

[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); Drew P. v. Clarke Cnty. Sch. Dist., 877 F.2d 927 (11th Cir. 1989); 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).

[4] Thus, any decisions in late 2015 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*); Cory D. v. Burke Cnty. Sch. Dist., 285 F.3d 1294 (11th Cir. 2002); Zipperer v. Sch. Bd. of Seminole Cnty., 111 F.3d 847 (11th Cir. 1997) (statute of limitations prior to IDEA 2004).

§ 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 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

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[6] See, e.g., Castillo v. Sch. Bd. of Broward Cnty., __ F. App'x __ (11th Cir. 2016); Laura A. v. Limestone Cnty. Bd. of Educ., 610 F. App'x 835 (11th Cir. 2015); A.L. v. Jackson Cnty. Sch. Bd., 543 F. App'x 1002 (11th Cir. 2013); Davis v. Douglas Cnty. Sch. Sys., 64 IDELR ¶ 302 (N.D. Ga. 2015); DeKalb Cnty. Sch. Dist. v. J.V.M., 445 F. Supp. 2d 1371 (N.D. Ga. 2006); Doe v. Walker Cnty. Bd. of Educ., 26 IDELR 1118 (N.D. Ga. 1997) (exhaustion); Lillian B. v. Gwinnett Cnty. Sch. Dist., __ F. App'x __ (11th Cir. 2015) (class actions); C.B. v. Bd. of Sch. Comm'rs, 261 F. App'x 192 (11th Cir. 2009) (preliminary injunction); Ga. State Dep't of Educ. v. Derrick C., 314 F.3d 545 (11th Cir. 2002); Jenkins v. Butts, 984 F. Supp. 2d 1368 (M.D. Ga. 2013); Gwinnett Cnty. Sch. Dist. v. A.A., 54 IDELR ¶ 316 (N.D. Ga. 2010) (limitations periods); Cobb Cnty. Sch. Dist. v. C.A., 67 IDELR ¶ 7 (N.D. Ga. 2016) (shotgun pleadings); Atlanta Indep. Sch. Sys., 56 IDELR ¶ 206 (N.D. Ga. 2011); Gwinnett Cnty. Sch. Dist. v. A.A., 54 IDELR ¶ 317 (N.D. Ga. 2010); Gwinnett Cnty. Sch. Dist. v. J.B., 398 F. Supp. 2d 1245 (N.D. Ga. 2005) (additional evidence); Aaron v. Gwinnett Cnty. Sch. Dist., 64 IDELR ¶ 16 (N.D. Ga. 2014) (service of process).

[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.

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:

ADA = Americans with Disabilities Act
ADHD = attention deficit hyperactivity disorder
BIP = behavior intervention plan
ED = emotional disturbance
ESY = extended school year
FAPE = free appropriate public education
FBA = functional behavioral assessment
ID = intellectual disabilities
IEE = independent educational evaluation
IEP = individualized education program
IFSP = individualized family service plan
IHO = impartial hearing officer
LEA = local education agency
LRE = least restrictive environment
ODD = oppositional defiant disorder
OT = occupational therapy
SEA = state education agency
SLD = specific learning disabilities
SLT = speech and language therapy
TBI = traumatic brain injury

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:

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

I. IDENTIFICATION

S *Clay T. v. Walton Cnty. Sch. Dist.*, 952 F. Supp. 817, 25 IDELR 409 (M.D. Ga. 1997)
- rejected child find claim of elementary school student who had continuing academic and behavioral difficulties, concluding that district did not fail this applicable standard: "school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate" [tuition reimbursement case]

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

II. APPROPRIATE EDUCATION

S *Rebecca S. v. Clarke Cnty. Sch. Dist.*, 22 IDELR 884 (M.D. Ga. 1995)
- ruled that proposed IEP for 13-year-old student with autism met the floor-based substantive standard for FAPE despite increasingly intolerable behavior at home, thus not reaching the issue of the appropriateness of the out-of-state residential placement [tuition reimbursement case]

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 (borrowing Fifth Circuit's four-part test)

S *W.C. v. Cobb Cnty. Sch. Dist.*, 407 F. Supp. 2d 1351, 44 IDELR ¶ 273 (N.D. Ga. 2005)

- ruled that proposed sixth-grade placement of student with Asperger disorder and ADHD in self-contained class met the substantive standard for FAPE based on academic and behavioral progress [tuition reimbursement case]

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 *K.C. v. Fulton Cnty. Sch. Dist.*, 46 IDELR ¶ 39 (N.D. Ga. 2006)

- rejected various alleged procedural violations, including access to purported student records, and ruled that the IEP's for child with ADHD met the substantive standard for FAPE despite remaining behind peers [tuition reimbursement case]

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]

S *K.S. v. DeKalb Cnty. Sch. Dist.*, 2008 WL 8478768 (N.D. Ga. May 28, 2008)

- ruled that proposed placement for high school student with ED met substantive standard for FAPE [tuition reimbursement case]

S *M.W. v. Clarke Cnty. Sch. Dist.*, 51 IDELR ¶ 63 (M.D. Ga. 2008)

- ruled that proposed placement of preschool child with autism in self-contained class that provide ABA therapy met applicable procedural and substantive standards for FAPE [tuition reimbursement case]

S *B.F. v. Fulton Cnty. Sch. Dist.*, 51 IDELR ¶ 76 (N.D. Ga. 2008)

- affirmed IHO's decision that proposed placement for student with Asperger disorder and various other diagnoses met substantive standard for FAPE [tuition reimbursement case]

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 *A.B. v. Clarke Cnty. Sch. Dist.*, 52 IDELR ¶ 99 (M.D. Ga. 2008), ***aff'd*, 372 F. App'x 61, 54 IDELR ¶ 146 (11th Cir. 2010)**[11]
- ruled that district's continued placement in the same self-contained class of another special education student who had sexually harassed this student did not violate this student's right to FAPE or stay-put

S *R.H. v. Fayette Cnty. Sch. Dist.*, 53 IDELR ¶ 86 (N.D. Ga. 2009)
- ruled that proposed in-district placement met substantive standard for FAPE despite severe behavioral problems at home due to reactive attachment disorder, thus not necessitating residential placement [tuition reimbursement case]

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.*, 447 F. App'x 128, 57 IDELR ¶ 272 (11th Cir. 2011)**
- 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[12]

[11] For a subsequent, largely unsuccessful § 504 claim ruling in this case, see A.B. v. Clarke Cnty. Sch. Dist., 52 IDELR ¶ 259 (N.D. Ga. 2009).

[12] 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."

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

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

S ***Stamps v. Gwinnett Cnty. Sch. Dist.*, 481 F. App'x 470, 59 IDELR ¶ 1 (11th Cir. 2012),** *cert. denied*, 133 S. Ct. 576 (2012)

- ruled that proposed in-school placement, rather than homebound instruction, for three siblings with genetic neurological disorders met substantive standard for FAPE in the LRE

S ***K.A. v. Fulton Cnty. Sch. Dist.*, 741 F.3d 1195, 62 IDELR ¶ 161 (11th Cir. 2013)**

- ruled that district may amend the IEP at duly conducted IEP meeting even if the parent objects (and even with a deficient notice if not prejudicial to the parents)

P ***R.L. v. Miami Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 63 IDELR ¶ 182 (11th Cir. 2014)**

- ruled that district denied FAPE for high school student with developmental and digestive disorders not only substantively (e.g., IEP shortcomings for stress management and reading comprehension) but also procedurally (specifically, predetermination for not evidencing open mind receptive and responsive to parents' position) [tuition reimbursement and compensatory education case]

P ***Blount Cnty. Bd. of Educ. v. Bowens*, 762 F.3d 1242, 63 IDELR ¶ 243 (11th Cir. 2014)**

- upheld ruling, in case of child with autism upon transitioning from Part H (early intervention), that district offered "inadequate option[s] and [attempted to] wash its hands of its obligations" by acquiescing to the private placement [tuition reimbursement case]

P ***Jefferson Cnty. Bd. of Educ. v. Lolita S.,* 581 F. App'x 760, 64 IDELR ¶ 34 (11th Cir. 2014)**

- ruled that IEP for teenager with SLD was not substantively appropriate in terms of reading and transition skills [compensatory education case]

P ***Phyllene W. v. Huntsville City Sch. Bd.*, 630 F. App'x 917, 66 IDELR ¶ 179 (11th Cir. 2015)**

- ruled that district's failure to reevaluate hearing impairment of student with SLD (dyslexia) upon reasonably suspecting hearing loss, based on recent surgeries and parent's statements beyond statute of limitations, was a prejudicial procedural violation that denied the child FAPE

S ***A.L. v. Jackson Cnty. Sch. Bd.*, __ F. App'x __, 66 IDELR ¶ 271 (11th Cir. 2015)**

- ruled that parent's absence from the IEP process resulted from her own actions—district had provided multiple attempts to include her and proceeded due to concern for student with TBI, not due to convenience of other such administrative concerns (distinguishing *Doug C.*, which is not binding here)

S ***S.M. v. Gwinnett Cnty. Sch. Dist.*, __ F. App'x __, 67 IDELR ¶ __ (11th Cir. 2016)**

- rejected predetermination and change-in-placement claims and upheld placement of student in special classes for reading, writing, and math as FAPE in the LRE

III. MAINSTREAMING/LRE

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

- upheld 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 based on *Greer*/*Daniel R.R.* test

S *M.W. v. Clarke Cnty. Sch. Dist.* (*supra*)

- ruled that self-contained preschool class that provided ABA therapy was the LRE for this child with autism

P *Cobb Cnty. Sch. Dist. v. A.V.*, 961 F. Supp. 2d 1252, 61 IDELR ¶ 242 (N.D. Ga. 2013)

- ruled, based on *Greer*/*Daniel R.R.* test, that district's placement of student with SLD and S/L impairment in four special ed classes, rather than co-taught general education classes with appropriate supplemental aids and services, violated LRE [tuition reimbursement case]

S ***A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 F. App'x 790, 62 IDELR ¶ 253 (11th Cir.)**, *cert. denied*, 135 S. Ct. 78 (2014)
- rejected pro se parent's proposed placement of student with severe autism in the home rather than in a specialized classroom based on the statutory preference for integration, including social benefits, and the district's ability to provide the special diet for the child

S ***A.L. v. Jackson Cnty. Sch. Bd.* (*supra*)**
- ruled that ESY program for student with TBI in alternative school met LRE requirement, without deciding whether the LRE requirement applied to ESY

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

P *Oconee Cnty. Sch. Dist. v. A.B.*, 65 IDELR ¶ 297 (M.D. Ga. 2015)
- ruled that district's failure to provide trained aide on bus to administer emergency medication for child with seizure disorder for trips of more than five minutes was denial of FAPE in terms of adequate health services, thereby upholding IHO's equitable remedy of half reimbursement of parent's transportation costs and conditional procedure for transportation/medication

V. ATTORNEYS' FEES

A. ELIGIBILITY

(*P*) *Matthew V. v. DeKalb Cnty. Sch. Dist.*, 244 F. Supp. 2d 1331, 38 IDELR ¶ 181 (N.D. Ga. 2003)
- ruled that IDEA does not bar recovery of fees of parent-attorney upon prevailing

B. "PREVAILING"

S *Matthew V. v. DeKalb Cnty. Sch. Dist.* (*supra*)
- ruled that IHO's referencing of district's voluntary payment for IEE did not qualify the parent for prevailing status under *Buckhannon*

S ***Robert K. 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 *R.W. v. Ga. Dep't of Educ.*, 48 IDELR ¶ 279 (N.D. Ga. 2007), *aff'd*, **353 F. App'x 222, 53 IDELR ¶ 2009 (11th Cir. 2009)**
- ruled that state defendants were entitled to attorneys' fees award against parent's counsel for filing frivolous claims against them

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

P/S *Bryan Cnty. Sch. Dist. v. M.W.*, 48 IDELR ¶ 128 (S.D. Ga. 2007)
- ruled that district was entitled to 33% reduction in attorneys' fees based on limited degree of success of plaintiff-parents

P/S *Oconee Cnty. Sch. Dist. v. A.B.*, 66 IDELR ¶ 274 (M.D. Ga. 2016)
- reduced attorneys' fees award from requested $275K to $184K based on hourly rate of $350 rather than $500[13]

[13] The opening paragraph of the court's opinion is a quotable commentary on attorney adversariness that is contrary to the interests of the child and the taxpayers.

VI. 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

S *W.C. v. Cobb Cnty. Sch. Dist.* (*supra*)
- ruled that private placement of child with Asperger disorder and ADHD was not appropriate based on LRE, staff qualifications, and school methodology despite parents' perception of child's academic and behavioral progress

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

S *M.W. v. Clarke Cnty. Sch. Dist.* (*supra*)
- ruled that private preschool was not appropriate for this child with autism

(*P*) ***Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 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*) ***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[14]

[14] *See generally* Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the IDEA: An Update*, 31 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1 (2011).

S *Atlanta Indep. Sch. Sys. v. S.F.*, 740 F. Supp. 2d 1335, 55 IDELR ¶ 97 (N.D. Ga. 2010)
- ruled that parents who received reimbursement based on stay-put effect of IHO's decision in their favor are not required to pay back the reimbursed amount upon reversal of IHO's decision

P *Cobb Cnty. Sch. Dist. v. A.V.* (*supra*)
- ruled that private placement, where approximately one third of the students were nondisabled, met the substantive standard for FAPE and that 50% reimbursement was equitably appropriate where both sides were equally at fault, including vision therapy (but not sensory integration therapy) as a related service for this child

P ***R.L. v. Miami Dade Cnty. Sch. Bd.* (*supra*)**
- upheld full reimbursement for 1) to parents for home-based 1:1 program for high school student with autism under the specific circumstances (e.g., certified special education teacher) despite shortcomings in socialization, and 2) to Medicaid for OT and SLT (not medical in nature regardless of label)—including revisitation of predetermination in determining the equities

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 enforceable 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)**, *cert. denied*, 562 U.S. 937 (2010)
- 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

S ***R.L. v. Miami Dade Cnty. Sch. Bd.* (*supra*)**
- upheld denial of compensatory education based on equitable factor of parents' failure to consider less restrictive unilateral placement

C. TORT-TYPE DAMAGES

S ***Ortega v. Bibb Cnty. Sch. Dist.*, 397 F.3d 1321, 42 IDELR ¶ 200 (11th Cir. 2005); *cf*. *K.A. v. Fulton Cnty. Sch. Dist.* (*supra*)**
- no compensatory damages under IDEA

VII. ADJUDICATIVE ISSUES[15]

(*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)

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 ***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

(*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)**
- ruled that exhaustion applies to claim for money damages for IDEA student

(*S*) ***CP v. Leon Cnty. Sch. Bd.*, 483 F.3d 1151, 47 IDELR ¶ 212 (11th Cir. 2007)**[16]
- 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

(***P***) ***Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 47 IDELR ¶ 281 (2007)**;
- parents may proceed *pro se* (i.e., without legal counsel) in federal court to enforce their independent rights under the IDEA

S ***D.P. v. Sch. Bd. of Broward Cnty.*, 483 F.3d 725, 47 IDELR ¶ 181 (11th Cir. 2007)**, *cert. denied*, 552 U.S. 1142 (2008)[17]
- ruled that "stay-put" applies in transitioning from an IFSP to an IEP

(*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

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[15] This section is not entirely exhaustive. See *supra* note 6 and accompanying text.

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

[17] 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).

(*P*) *Atlanta Indep. Sch. Sys. v. S.F.*, 56 IDELR ¶ 66 (N.D. Ga. 2011)
- ruled that parents met IDEA exhaustion requirement for alternative § 504/ADA claims via impartial hearing on same issues and evidence w/o specifically alleging § 504 and ADA causes of action

(*S*) ***Driessen v. Miami-Dade Cnty. Sch. Bd.*, 504 F. App'x 864, 60 IDELR ¶ 122 (11th Cir. 2013)**
- ruled that to whatever extent that the plaintiff did not waive her claim of an incomplete record upon judicial appeal, it failed for lack of exhaustion at the IHO level

S ***Driessen v. Miami-Dade Cnty. Sch. Bd.*, 520 F. App'x 912, 61 IDELR ¶ 95 (11th Cir. 2013); *see also Driessen v. Lockman*, 518 F. App'x 809, 61 IDELR ¶ 61 (11th Cir. 2013)**
- upheld *sua sponte* dismissal for frivolousness where parent lacked standing as having legal guardianship of her children

S ***T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 65 IDELR ¶ 254 (11th Cir. 2015)**
- ruled that issue of IEE at public expense was moot based on futility after three years since the district's challenged evaluation

VIII. OTHER. IDEA-RELATED ISSUES

(*P*) *Kyle K. v. Baldwin Cnty. Sch. Dist.*, 22 IDELR 37 (N.D. Ga. 1995)
- preserved for further proceedings possible responsibility of SEA based on insufficient evidence that LEAs were not able to provide FAPE for the child (under then applicable provision of IDEA)

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 ***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 *A.A. v. Houston Cnty. Sch. Dist.*, 45 IDELR ¶ 214 (M.D. Ga. 2006)
- ruled that district representatives' contacting child's physician when parent and parent's attorney refused to provide relevant medical information did not violate IDEA regulations

S *R.H. v. Fayette Cnty. Sch. Dist.* (*supra*)
- ruled that parent did not qualify for IEE reimbursement in the absence of a timely request or district evaluation

(*P*) *D.H. v. Lowndes Cnty. Sch. Dist.*, 57 IDELR ¶ 162 (M.D. Ga. 2011)
- ruled that parents' enrollment of child with disabilities in on-line charter school does not preclude their right to pursue a FAPE claim for compensatory or reimbursement relief

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.*, 701 F.3d 691, 60 IDELR ¶ 30 (11th Cir. 2012)**
- upheld the validity of the IDEA regulation providing for IEEs at public expense

P ***Jefferson Cnty. Bd. of Educ. v. Lolita S.* (*supra*)**
- upheld reimbursement of IEE where district did not file for impartial hearing to show that its evaluation was appropriate

S ***A.L. v. Jackson Cnty. Sch. Bd.* (*supra*)**
- upheld denial of IEE at public expense where district made one available within reasonable cost and distance limits, but parent "sabotaged" the process

P *Cobb Cnty. Sch. Dist.* v. D.B., 66 IDELR ¶ 134 (N.D. Ga. 2015)
- ruled that FBA that did not sufficiently identify the functions of the child's learning-impeding behaviors was not appropriate, thus entitling parents to reimbursement for their IEE

IX. SECTION 504/ADA ISSUES[18]

S *Crisp Cnty. Sch. Dist. v. Pheil*, 498 S.E.2d 134, 27 IDELR ¶ 1033 (Ga. Ct. App. 1983)
- summarily rejected § 504 liability suit on behalf of high school student who died from fall on school stairway where district was aware of the student's allergies and headaches but was not on notice of their limitation on walking

S *K.C. v. Fulton Cnty. Sch. Dist.* (*supra*)
- summarily rejected § 504 liability based on lack of intentional, or bad faith, discrimination

S *J.D.P. v. Cherokee Cnty. Sch. Dist*., 735 F. Supp. 2d 1348, 55 IDELR ¶ 44 (N.D. Ga. 2010)
- summarily rejected § 504/ADA liability suit based on alleged inadequate training of special education personnel in implementing behavioral provisions of 504 plan – lack of deliberate indifference

S *M.G. v. St. Lucie Cnty. Sch. Bd*., 61 IDELR ¶ 37 (S.D. Fla. 2013), ***aff'd*, 741 F.3d 1260, 62 IDELR ¶ 222 (11th Cir. 2014)**
- summarily rejected parent's § 504/ADA liability claim based on alleged peer sexual molestation of child with disability due to lack of specific factual foundation for discrimination

S ***Long v. Murray Cnty. Sch. Dist.*, 522 F. App'x 576, 61 IDELR ¶ 122 (11th Cir. 2013)**
- rejected § 504 liability suit filed on behalf of student with Asperger syndrome who committed suicide allegedly as a result of disability-based peer harassment—lack of deliberate indifference

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