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## DISABILITY DISCRIMINATION AND ACCOMMODATIONS BEYOND IDEA

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## I. INTRODUCTION

IDEA protects the educational rights of students with disabilities, but IDEA is not the only law protecting those with disabilities. Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Minnesota Human Rights Act all provide some overlapping, and some distinct, protections for students with disabilities.

## II. ANTI-DISCRIMINATION LAWS/ LEGAL PROCESS

### A. Federal Law

A. Title II of the ADA prohibits discrimination on the basis of disability in the provision of government services, programs, and activities. *See* 42 U.S.C. § § 12131-12132.

B. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination and harassment on the basis of disability. 29 U.S.C. § 794.

### B. State Law

NOTE: These materials and the corresponding presentation are meant to inform you of interesting and important legal developments. While current as of the date of presentation, the information that is provided may be superseded by court decisions, legislative amendments, rule changes, and opinions issued by bodies interpreting the area of law. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts addressed in this outline or discussed in the presentation, you should consult with your legal counsel.
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A. The Minnesota Human Rights Act ("MHRA") prohibits discrimination and harassment based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age in employment and educational settings, among other things. Minn. Stat. § 363A.01 et seq. The MHRA protects students:

a. "It is unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any education institution, or the services rendered thereby to any person because of … disability or to fail to ensure physical and program access for disabled persons." Minn. Stat. § 363A.13, subd. 1.

b. "It is an unfair discriminatory practice to exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of … disability." Minn. Stat. § 363A.13, subd. 2.

c. It is also generally considered discriminatory to seek information concerning a student's protected characteristics as part of the application or admission process. In some cases, certain information may be collected but only if it is collected to evaluate the effectiveness of recruitment, admissions, and educational policies. The information must also be maintained separately from a student's application. Minn. Stat. § 363A.13, subd. 3 & 4.

d. The Minnesota Court of Appeals clarified that the education section of the MHRA is interpreted more broadly than the employment section, at least with respect to gender identity. *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d 553 (Minn. App. 2020).

**C. Exhaustion of Administrative Remedies.** Generally, when a parent/student sues a school district for something related to a student's disability, they must first have gone through a due process hearing. In the past few years, this requirement has been narrowed significantly by U.S. Supreme Court decisions.

A. ***Fry v. Napoleon Community Schools***, 580 U.S. 154 (2017). Fry involved parents who claimed the school district violated both Section 504 and Title II of the ADA when it refused to allow their child to be accompanied by her service dog at school. The Supreme Court determined that students may bring lawsuits under statutes other than IDEA, as long as the lawsuit is not seeking a determination that the school failed to provide FAPE.

The determination of whether a lawsuit is seeking a determination related to FAPE is not based solely on how the claims are characterized. Instead, courts are to look at two questions: First, whether the plaintiff could have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school, and, second, whether an adult at the school could have pressed essentially the same grievance. If the answer to both is "yes" then the complaint is truly about disability discrimination. If the answer to either question is "no," then there needs to be further analysis to determine whether exhaustion is required.

In this case, if another entity (such as a public library or city hall) prohibited the student from being accompanied by her service animal, the student could bring a discrimination claim against that entity. And, if the school prohibited an adult from being accompanied by their service animal in attending an event at school, that adult could bring a claim against the school. Thus, the claims here were not about FAPE and the family was not required to first request a due process hearing.

B. ***Perez v. Sturgis Public Schools***, 598 U.S. 142 (2023). Several years later, *Perez* clarified that the consideration of exhaustion of remedies also includes the damages requested, not just the nature of the claims. The Court held that if the lawsuit seeks remedies that are not available under IDEA, then parents are not required to first request a due process hearing.

Generally, the primary remedies available under the IDEA are compensatory education (which are backward looking) and revisions to an IEP (which are forward looking). In discrimination lawsuits, the most common remedy sought is compensatory *damages*, which is an amount of money designed to address whatever harm was experienced. In other words, rather than being tied to the loss of a specific amount/type of educational services, damages seek an arbitrary number the plaintiff believes will compensate them for the discrimination.

C. **Impact.** These cases matter because they expand the opportunities for families to bring claims related to students with disabilities in school but are less well-defined and structured than IDEA claims. Schools know they need to track progress and draft appropriately ambitious IEPs. But it may be more difficult to show how a student's disability was factored into non-FAPE-related decisions.

D. **Overlapping Laws.** In general, courts apply the same law to disability-related claims under the ADA and Section 504. Similarly, courts interpreting the MHRA routinely borrow from federal laws that have similar purposes to the MHRA.

## III. IDEA and Title II of the ADA

**A. Elements of an ADA Discrimination Claim.** To state a claim for a violation of Title II of the ADA, a plaintiff must allege:

A. That they are a qualified individual with a disability

B. That they were either excluded from participation in or denied the benefits of some public entity's services, programs, or activities or was otherwise discriminated against; and

C. That such exclusion, denial of benefits, or discrimination was by reason of their disability. *Toledo v. Sanchez*, 454 F.3d 24 (1st Cir. 2006).

**B. Elements of an ADA Failure to Accommodate Claim.** To state a claim for failure to accommodate, a plaintiff must establish the elements of a disability discrimination claim plus the following:

1. The school had knowledge of a disability;

2. The student requested accommodations or assistance for their disability;

3. The school did not make a good faith effort to assist the student in accessing accommodations; and

4. The student could could have been reasonably accommodated but for the school's failure.

B. The ADA imposes a "but-for" causation standard for liability. *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1077 (11th Cir. 1997).

## IV. Unique ADA Requirements: Service Animals.

### A. Americans with Disabilities Act

1. **What is a service animal?** Service animals, also known as assistance animals, are defined as dogs or miniature horses that have been individually trained to do work or perform tasks for an individual with a disability. The work or task the animal has been trained to perform must be directly related to the person's disability.

2. **How does a service animal differ from an emotional support animal (ESA)?**

| **Service Animal** | **ESA** |
|---|---|
| Dog or miniature horse | Can be any animal |
| Allowed in public spaces, including schools, pursuant to Americans with Disabilities Act (ADA) | Allowed in certain public spaces based on federal law, but not required to be allowed in schools |
| Trained to perform specific work or tasks to mitigate a person's disability or effects of disability | Presence or contact with individual ameliorates person's disability or effects of disability |

**Key distinction is training.** *If a dog has been trained to respond to signs of anxiety by interrupting behaviors like skin picking, leg bouncing, or nail biting, it is likely a service animal. If a person with anxiety finds that petting their dog stops them from engaging in those same behaviors, it is more likely an ESA.*

3. **Where are service animals allowed?** Under the ADA, public spaces generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is allowed to go, including buildings with a "no pets allowed" policy.

    a. Generally, a service animal is allowed everywhere the handler is, including on transportation, in the lunch line, in science labs, shop class, etc.

    b. In limited circumstances, public health laws may override the ADA with respect to service animal access. For example, a service animal must be allowed on a pool deck in any areas its handler may access, but the service animal does not have the right to swim in the pool.

    c. Parents and other guests with service animals must also be permitted to access school facilities to the same extent as parents/guests without service animals.

    d. A school is not required to allow service animals if doing so would "fundamentally alter" the nature of the services provided by the school. This exception is very narrow and would only apply in unusual circumstances.

4. **What questions can a school ask about a service animal?** In general, only two questions can be asked about a service animal: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's

disability, require medical documentation, require a special identification card or training documentation, or ask that the dog demonstrate its ability to perform the work or task. If an IEP team is considering whether or not to add a service animal to an IEP under IDEA, then additional inquiries may be necessary to determine what educational needs the dog serves.

5. **Are service dogs required to be trained by specific organizations?** Service dogs are not required to be trained or certified by an accredited organization, although parents and students may volunteer that the dog has been placed by such an organization. However, in addition to such legitimate organizations, there are others that sell certifications without formal training and service dog vests and patches are readily available to purchase online. For students, the school's observations of the dog's ability to complete work or tasks will be helpful in determining whether the dog is a service animal.

6. **Who's in charge of the dog at school?** At all times, a service animal must be under the control of its "handler." This means that the service animal must be harnessed, leashed, or tethered, unless the individual's disability prevents using these devices or these devices interfere with the service animal's safe, effective performance of tasks. If using these devices or these devices interfere with the service animal's safe, effective performance of tasks then the individual must maintain control of the animal through voice, signal, or other effective controls.

    a. A handler is the person in charge of care and supervision of the service dog. Typically, the person with a disability supported by the dog is considered the handler. However, if that person is unable to care for and supervise the dog, another person may be considered the handler.

    b. Schools are not required to provide care and supervision for service animals. In other words, under the ADA, the school is not required to serve as the handler for a service dog. There may be some limited circumstances in which the school must provide support for a service animal, such as where a student cannot receive a free appropriate public education without support for use of the service dog.

7. **Can a school remove a service dog?** A school can ask an individual with a disability or a handler to remove a service animal if (1) the animal is out of control and the handler does not take effective action to control it; or (2) the animal is not housebroken (i.e. has multiple accidents at school). 28 C.F.R. § 35.136(b). "Control" means the dog is under effective means of

control (such as leash, tether, voice command) and does not wander away from its handler, and the service animal does not bark repeatedly or make other vocalizations, unless the barking or vocalizations are part of the animal's trained tasks (such as barking as an alert to a visually impaired person). U.S. Dep't of Justice Office of Civil Rights, *Frequently Asked Questions about Service Animals and the ADA* (Feb. 28, 2020), at Q27. One bark or vocalization, without more, does not render the dog out of control. *Id*. Enforcement agencies will also look at whether the animal has been provoked into barking.

8. **Can a school prohibit a service animal if there are students with allergies in the building/ classroom?** No, an individual has a right to bring their service dog to school regardless of other students' allergies. Schools should consider whether mitigating measures for students or staff with allergies are necessary based on where the dog will be and severity of the allergies. Any such measures are the school's responsibility, not the responsibility of the student bringing the dog.

**B.** **Service Animals and IDEA.** IDEA is silent with respect to service animals. The most conservative approach is to hold an IEP team meeting to determine whether the student requires access to the service animal in order to receive FAPE.

1. Only in extraordinarily rare cases will a service animal be necessary for FAPE. In most cases, the service dog will be one option for meeting the student's disability-related needs, but the school team will also have other ways to meet those needs. If the school was providing FAPE before the animal was paired with the student and the student's needs have not significantly changed, it is unlikely that the animal is necessary for FAPE.

2. Parents and students may argue that the service animal is the student's preferred tool or the best tool for meeting a specific need. However, a school is not required to provide a preferred intervention or even the "best" intervention if the school has other reasonable methods of meeting the student's needs.

3. If the school district has not provided or proposed services that meet the same need as the service animal, the district should propose such services via prior written notice.

**C.** ***Kimball Area Public Schools, Independent School District No. 739 v. I.R.M. by and through his parent, L.M.,*** No. 23-CV-2637 (NEB/LIB), 2025 WL 1172007 (D. Minn. 2025)

1. **Facts.** The student qualified for special education and related services under a primary disability category of Autism Spectrum Disorder. Among other supports, student's IEP provided him with 1:1 paraprofessional support at all times while in school. Outside of school, student used a service dog to assist him by preventing elopement, by interrupting and redirecting student when student's sensory issues were triggered by events or objects in his environment, and by assisting student with transitions. The parent requested a meeting with district staff ahead of the 2022-2023 school year to discuss the prospect of student's service dog attending school with him. The school's principal initially expressed no concerns about the dog's presence. However, after meeting with the parent, the district informed parent that the dog could only attend school if the family provided a handler. The parent responded by contending that student's 1:1 paraprofessional could serve as the dog's handler, but the district refused based on district policy that included language from the ADA regulations stating service animals must be under the control of a handler.

   The parent subsequently requested three accommodations from district staff: holding the dog's leash while student transitioned through the school, tethering and untethering the dog from the student when necessary (such as for gym class or to use the restroom), and prompting student to cue the dog with commands as needed. The district denied the parent's request. Shortly after, the parent began attending school with the student as the dog's handler.

   The parent then requested that student's IEP be amended to include the aforementioned accommodations. The district convened two IEP meetings to consider the parent's request but ultimately declined.

   The district then completed a re-revaluation of student and subsequently proposed a new IEP that also did not include accommodations related to the service dog. The parent objected to the IEP and filed a due process complaint. Following the hearing, the ALJ found that the use of the service dog was required for the district to provide student with a FAPE, that a handler for student's service dog was a "related service" as described by 34 C.F.R. § 300.34, and that student's proposed IEP did not provide student with a FAPE. The district appealed the decision to federal court.

2. **Issue.** Did the Administrative Law Judge err in deciding that (1) access to student's service dog was part of a FAPE, (2) a handler for the service dog was a "related service" as described by 34 C.F.R. § 300.34, and (3) student's proposed IEP did not provide student with a FAPE?

3. **Decision:** The federal district court reversed the ALJ's decision, finding that the proposed IEP, which did not include accommodations related to the dog, was appropriate. With respect to the service dog, the court determined, based on the evidence in the record which predominantly indicated that the assistance provided by the dog to the student at school was minimal at best and the dog's presence in school was distracting to the student at times, the dog was not necessary to support the student, particularly because the minimal supports provided by the dog could be provided by district staff.

4. **Implications.** A district is not required to tailor the IEP to parental preferences. A district's responsibility is to develop and implement an IEP that is reasonably calculated to provide FAPE.

   A district's determinations with respect to educational programming are owned significant deference by reviewing courts: "This Court will not substitute its "own notions of sound educational policy for those of the school authorities." When a district makes determinations about a student's needs based on the experience of its staff members and observation of the student, and develops an IEP reasonably calculated to assist the student in making progress based on these assessments, a court will most often uphold the plan.

**D. Recommendations for Service Animal Requests.** In general, schools cannot refuse service animal requests if the service animal meets all the requirements of the ADA. In this case (and others involving young students or those with significant cognitive impairments), the service animal could not be under the student's "control" and the student needed an additional adult to direct the service animal.

1. If the student is in control of the service animal (with or without minimal assistance for the student), or parents provide a handler to be in control of the service animal, the ADA requires the school to allow the service animal. This is separate from any IEP accommodations and should not be documented as an accommodation or support in the IEP (although it may be referenced as something parentally-provided that a student can access).

2. If the student is not capable of controlling the service animal and parents refuse to provide a handler, the IEP team should consider whether the service animal is **necessary** for the student to receive FAPE. This would require a very unique set of circumstances because the student's accommodations, modifications, and services should be sufficient to provide FAPE without the service animal.

3. If the parent is providing a handler, the district generally cannot require that the handler be a specific person. The district can only require that the handler meet the same requirements that apply to volunteers or other non-employee adults who will be around students in the school building for an extended period of time, such as a background check.

## V. IDEA and Section 504 of the Rehabilitation Act of 1973

**A. Elements of Section 504 Claim.** In order to establish a violation of Section 504 of the Rehabilitation Act, a plaintiff must be able to prove that they:

1. are a qualified individual with a disability;

2. were denied the benefits of a program or activity of a public entity receiving federal funds; and

3. were discriminated against based on their disability. *Timothy H. v. Cedar Rapids Cmty. Sch. Dist.*, 178 F.3d 968, 971 (8th Cir. 1999).

**B. *A.J.T. v. Osseo Area Schools,*** 605 U.S. 335 (2025)

1. **Facts.** A.J.T. ("Student") is a teenage girl with a rare form of epilepsy that severely limits her physical and cognitive functioning. She suffers from seizures that are so frequent in the mornings that she cannot attend school before noon, though she is alert and able to learn from noon until 6 p.m. For the first few years of her schooling, school officials accommodated the Student's condition by permitting her to avoid morning activities and instead receive evening instruction. When the Student's family moved to Minnesota in 2015, the school district denied her parents' requests to include evening instruction in her IEP. Her parents filed an IDEA complaint with the Minnesota Department of Education, alleging that the school's refusal to provide afterhours instruction denied the Student a free appropriate public education. An Administrative Law Judge determined that the school district had violated the IDEA and ordered the school to provide compensatory education and evening instruction. Federal courts subsequently affirmed the decision.

   The Student and her parents then sued under the ADA and Section 504, requesting a permanent injunction, reimbursement for certain costs, and compensatory damages. The District Court granted summary judgment for the school, and the Eighth Circuit affirmed. In so holding, the Eighth Circuit stated that a school district's failure to provide a reasonable accommodation was not enough to state a prima facie case of discrimination

under *Monahan v. Nebraska*, 687 F.2d 1164, which requires a plaintiff to prove conduct by school officials rising to the level of bad faith or gross misjudgment. The parents then appealed to the U.S. Supreme Court.

2. **Holding.** The Supreme Court held that the "bad faith or gross misjudgment" was an inappropriate standard for assessing disability discrimination liability in the context of special education services.
The Supreme Court's rationale was that, in any other context, a plaintiff is not required to show "bad faith or gross misjudgment" to establish disability discrimination liability and there is no legal reason for having this additional requirement in the context of special education. *Id.*
The test for whether a school has discriminated against a student based on their disability is the same as for other disability discrimination claims, such as those by employees. That means students must show: 1) they are a qualified individual with a disability; 2) they were denied a benefit or equal access to something provided by the school; and 3) their disability was the cause of the denial. In effect, this removed the requirement to show wrongful intent to demonstrate disability discrimination.

3. **Deliberate Indifference for Damages.** While the Court modified the standard with respect to establishing a violation of Section 504/ the ADA, parents and students must still provide evidence of intent to receive damages. To obtain compensatory damages, courts generally require a showing of intentional discrimination, which most circuits find satisfied by "deliberate indifference" – a standard requiring only a showing that the defendant disregarded a strong likelihood that the challenged action would violate federally protected rights.

4. **Burden Shifting Analysis.** The elements of a disability discrimination claim require a plaintiff to show they (1) have a disability within the meaning of the ADA; (2) are a qualified individual under the ADA, meaning they are eligible to access a school's education and programs; and (3) that they suffered an adverse action because of their disability. If a student can establish those elements, the school district can show that it had a legitimate, nondiscriminatory basis for the allegedly discriminatory act. Then the student must show that the district's reasons are pretext for illegal discrimination.

## VI. Unique Section 504 Requirements: Nonacademic and Extracurricular Activities

**A.** Section 504 applies to all programs of a school district, including district-provided childcare, community education, after-school activities, etc.

**B.** If the district provides child care, the district must offer accommodations that are reasonable and necessary to provide a student with an equal opportunity to participate in a program.

**C.** Schools are not obligated to provide accommodations that would fundamentally alter a program or place an undue burden on the school.

1. To determine whether a burden is undue, courts consider: 1) the nature and cost of the action; 2) the financial resources of the site involved, the number of persons employed at the site, the effect on expenses and resources, legitimate safety requirements that are necessary for safe operation, or the impact otherwise of the action upon the operation of the site; 3) the geographic separateness, and the administrative and financial relationship of the site to the corporation; 4) if applicable, the overall financial resources of the parent corporation and the number of facilities; and 5) if applicable, the type of operation of the parent corporation. *Id*.

2. Alternatively, a district does not have to provide an accommodation if making the modification would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

a. **Does a 1:1 aide fundamentally alter a childcare program?**

According to the OCR, "providing additional supervision in a daycare program, such as a one-to-one aide, will not ordinarily change the fundamental nature of a program that is designed to provide supervision for children," and providing additional supervision will not ordinarily constitute an undue burden. *Evesham Twp. Sch. Dist.* (OCR Aug. 12, 2011). In *Evesham*, the parents requested an aide as a reasonable accommodation in a childcare program, which the district denied on the grounds that it would fundamentally alter the program and constitute an undue financial burden. The OCR disagreed, finding that the district had not properly documented the cost of this aid or analyzed its overall financial resources and the financial resources of the childcare program before determining that providing the aide would be an undue financial burden. The OCR stated that a district's decision that a proposed accommodation would fundamentally alter the program must be made by the head of the public entity or his/her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

b. **Does providing nursing services fundamentally alter a childcare program?**

A Minnesota case addressed the claims of a student with diabetes who had requested two accommodations. *A.P. ex rel. Peterson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 538 F.Supp.2d 1125 (D. Minn. 2008). The student's parents requested that district childcare staff be trained to operate the student's blood-glucose meter and insulin pump, and be trained to administer glucagon injections in the event of a hypoglycemic emergency. The court held that it was likely reasonable to train staff to operate the student's blood-glucose meter and insulin pump. However, with respect to glucagon injections, which require a multi-step process of mixing liquid and powder before administering the injection, the district argued that a school nurse was required to administer the injection and this requested accommodation would require the district to hire a nurse to be on site at every childcare program that served a diabetic child. The court held that it was possible this accommodation could fundamentally alter the child care program or impose an undue burden on the school district, but the court did not decide the issue because there were fact issues that needed to be developed.

**D**. If an accommodation is necessary, the district cannot charge the child with a disability more than it charges children without disabilities. For example, if a district normally charges $100 per week for each child for after-school care, it can only charge a student with a disability $100 per week.

## E. OCR Complaint Decision #05-19-1104, *Roseville Area Schools*

### 1. Facts.

The student was in fourth grade and eligible for special education for ASD. He participated in a before and after-school care program offered by the district. For the school year at issue in the complaint, the student was placed in a self-contained classroom for students with Communication Interaction Disorders.

There are no admission criteria for the childcare program. The program has a discipline policy that allows it to indefinitely suspend any student who engages in inappropriate or harmful behavior. The student received several suspensions for unsafe behavior, included physical aggression and inappropriate language. The program attempted to accommodate him by providing multiple prompts before transitions, limiting peer interaction, and access to a sensory room. The program also assigned him a 1:1 support person, which curtailed some of his behaviors.

The parents requested that the support person be added to the student's IEP. The district refused, asserting that it was required to make reasonable modifications to the program to allow the student's participation, but it was not required to draft an IEP with provisions specifically related to the childcare program. The student was eventually removed from the program after he hit a staff member with a flashlight and refused to deescalate.

**2. Holding.**

The district's attempts to accommodate the student's disability were sufficient to demonstrate compliance with Section 504. Requiring the district to make any additional accommodations would essentially have required the district to create a different childcare program, which is not required. Since the student was not able to participate in the program even after the district provided equal access, he was appropriately removed from the program.

**3. Note on *Centennial*.**

In its decision, the OCR noted that the *Centennial* decision, as a Minnesota Supreme Court case interpreting IDEA, was not relevant to the OCR's determination regarding whether the district discriminated against the student on the basis of disability as prohibited by Section 504. The OCR generally does not attempt to determine whether IEP team decisions were properly made. Had the MDE reviewed this case, the MDE likely would have found that the district violated IDEA by not including accommodations for the childcare program in the student's IEP similar to the complaint decision discussed on pages 13-14. The MDE, however, may have agreed with the OCR's decision that the student was appropriately removed from the program given that the student was not able to participate in the program even after the district provided accommodations.

## VII. IDEA and the MHRA

### A. *S.A.S. ex rel W.S. v. Hibbing Public Schools*, 2007 WL 1322337 (Minn. App. 2017).

1. **Facts.** Student had an ADHD diagnosis and received special education services. Student's parents filed a complaint with the Minnesota Department of Human Rights (MDHR) claiming that law enforcement aided and abetted the school district in denying services to student and initiating criminal charges against student without probable cause. MDHR found that probable cause for the parents' discrimination claim existed and affirmed those findings on appeal. Student and his parents then filed a lawsuit in federal court for violations of IDEA, the ADA, Section 504, and

violations of state law, including the MHRA. The district court dismissed the case, holding that the settlement agreement that they entered into on his IDEA claims ended the administrative process and precluded student from satisfying the exhaustion requirement. In addition, the court concluded that it did not have jurisdiction over the state law claims. As a result, the plaintiffs filed a new suit in state court.

2. **Procedural Posture.** The school district moved for summary judgment, and the district court granted its motion. The plaintiffs then appealed to the Minnesota Court of Appeals.

3. **Issue.** Whether decisions by the federal court dismissing the plaintiffs' federal claims under IDEA precluded the plaintiffs' claims under the MHRA.

4. **Holding.** The Minnesota Court of Appeals held the plaintiffs failed to establish a genuine issue of material fact for trial. Student claimed the district discriminated against him by disciplining him for behaviors related to his disability and by not following the disciplinary steps in his special education plan. More specifically, student asserted that he was arrested for crimes when officers had no probable cause and "for which no other non-disabled student had ever been arrested." The court noted that the federal court had found there was testimony directly in opposition to the plaintiffs' allegations: a police officer testified that he regularly arrested other students for similar behavior. Ultimately, the court determined that student only presented unsupported allegations of discriminatory conduct.

B. ***Goeden v. Minnesota State High School League*, No. A21-0014, 2021 WL 3611458 (Minn. App. 2021).**

1. **Facts.** The plaintiff was a high school student who sought to continue participating in extracurricular athletics governed by the Minnesota State High School League ("MSHSL"). The plaintiff had been diagnosed with "mixed receptive/expressive language disorder" and had been on an IEP since second grade. Due to the plaintiff's learning disability, he was required to repeat the seventh grade. Plaintiff had begun playing extracurricular sports governed by the MSHSL during his first year enrolled in seventh grade. The MSHSL bylaws state students are only eligible to play league-sponsored events for twelve semesters (or six years), beginning with the student's initial entrance in seventh grade. Plaintiff wanted to continue playing MSHSL sports during his senior year, but because he had repeated the seventh grade, he needed an exception from this bylaw. The MSHSL declined to grant an exception, and the plaintiff sued under the

MHRA. The court granted a temporary injuncting restricting the MSHSL from enforcing the bylaw against the plaintiff. The MSHSL appealed the temporary injunction, but by the time the Minnesota Court of Appeals heard the case, the court determined it was moot because the plaintiff had graduated .

C. ***A.K.B., by and through Silva v. Independent School District 194*, No. 19-cv-2421 (SRN/KMM), 2020 WL 1470971 (D. Minn. 2020).**

1. **Facts.** Student had a history of severe asthma and related breathing problems. The district was aware of the accommodations student. required, including close respiratory monitoring and excuses from class during asthma exacerbations, and student used the accommodations frequently. The district was provided medical direction from student's pulmonologist for responding to asthma episodes. Among those instructions was an instruction to monitor student until she reached her normal baseline in regards to her breathing and heartrate.
On April 16, 2019, student went to the nurse's office due to asthma exacerbation and was given an inhaler. Even though her heart rate remained dangerously high, staff sent her back to P.E. class. While in P.E., the student's asthma exacerbation worsened to the point that her airway closed, and because she could not breathe, she passed out. Student suffered thirty minutes of oxygen deprivation, resulting in permanent brain damage that left her in a permanent vegetative state.

2. **Procedural Posture.** The student's parent filed a due process hearing request and special education complaint on the student's behalf against the district through the Minnesota Department of Education. The ALJ dismissed plaintiffs' complaint, noting that a due process hearing was unnecessary because the plaintiffs were not seeking a remedy under IDEA. Plaintiffs then filed a lawsuit in federal court claiming violations of the ADA, Section 504 of the Rehabilitation Act, and MHRA. The district filed a motion to dismiss claiming the court did not have subject matter jurisdiction because the plaintiffs had not exhausted their administrative remedies and claiming that the plaintiffs had failed to state a claim.

3. **Holding.** The court held that exhaustion of IDEA's administrative procedures and remedies was not required because the relief sought by the plaintiffs was unavailable under IDEA. The court noted that, because of the present condition of the child, there were no available remedies under the IDEA. The court further explained that, even if the plaintiffs were required to exhaust administrative remedies, they did so by filing their due process hearing complaint, which was dismissed on its merits by the ALJ.

Moreover, the court determined that this case fell under the narrow exception in which administrative exhaustion would not apply because requiring administrative exhaustion would be futile based on the student's persistent vegetative state.

In regards to the plaintiffs' claims under the ADA, Section 504 of the Rehabilitation Act, and MHRA, the court denied the district's motion to dismiss, finding that the plaintiffs had properly alleged a cause of action. The court noted that the complaint set forth sufficient facts to show the school district had actual notice of A.K.B.'s disability and required accommodations and that the district acted with deliberate indifference when it failed to implement the accommodations. Moreover, the court found that the plaintiffs did not need to allege that any school official's conduct rose to the level of bad faith or gross misjudgment.