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Limited Resources and Unlimited Expectations

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I. KEY STATUTES FOR STUDENTS WITH DISABILITIES.

A. Individuals with Disabilities Education Act ("IDEA"). The IDEA protects children and adolescents in their schooling. The IDEA offers federal funds to States in exchange for an agreement to provide a free appropriate public education ("FAPE") to children with certain disabilities. The FAPE obligation guarantees IDEA-qualifying students "individually tailored educational services." The services are provided pursuant to an individualized education program ("IEP").

B. Section 504 of the Rehabilitation Act of 1973 ("Section 504"). Section 504 is an antidiscrimination law that protects adults and children with disabilities in public schools, schools that receive federal funds, and other settings from disability discrimination. The statute "promise[s] non-discriminatory access to public institutions." Pursuant to Section 504, some students are entitled to a 504 Plan.

C. Overlap. While there is "some overlap in coverage" between IDEA and Section 504, the statutes have different purposes and create different obligations.

See Fry v. Napoleon Cmty. Sch., 580 U.S. 154 (2017).

II. THE KEY REQUIREMENTS.

A. IDEA's FAPE Requirement.

1. IDEA requires that school districts provide a FAPE to all students with disabilities. 20 U.S.C. § 1400(d)(1)(A).

2. A student receives a FAPE if the student's IEP is "reasonably calculated to enable [the] child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017). What "appropriate" progress looks like will vary from child to child. *Id.*

3. IDEA's FAPE requirement does not obligate a school to "maximize a student's potential or provide the best possible education at public expense." *Albright ex rel. Doe v. Mountain Home Sch. Dist.*, 926 F.3d 942, 950 (8th Cir. 2019) (quotation omitted).

B. "Reasonable" Modifications pursuant to Section 504.

1. "[C]ourts have interpreted § 504 as demanding certain 'reasonable' modifications to existing practices in order to 'accommodate' persons with disabilities." *Fry*, 580 U.S. at 160.

2. A regulation implementing Title II of the Americans with Disabilities Act ("ADA")—another antidiscrimination statute that applies to school districts—similarly requires "a public entity to make 'reasonable modifications' to its 'policies, practices, or procedures' when necessary to avoid [disability] discrimination." *Fry*, 580 U.S. at 159-60.

3. Courts have held that "'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial,' or that would constitute 'fundamental alteration[s] in the nature of a program'" are not reasonable. *See Alexander v. Choate*, 469 U.S. 287 300 n.20 (1985) (internal citations omitted).

III. ARTIFICIAL INTELLIGENCE ("A.I." or "AI").

A. Overview of A.I.

1. Definition. In November 2024, the Office for Civil Rights ("OCR") defined A.I. as meaning "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments."

2. Types. Some types of A.I. include:

   a. Generative A.I. is a type of A.I. that is designed to create new content that resembles the example content it was trained upon. To do so, generative A.I. "trains" on data to recognize underlying patterns and characteristics. With that training, it can generate fresh output that is like the content it was trained upon. Generative A.I. models can produce different types of content including text, audio, and images.

   b. Chatbot is a software application or web interface that aims to mimic human conversation through text or voice interactions.

B. Potential Benefits and Opportunities with A.I.

The following is a non-exhaustive list of the potential opportunities associated with the incorporation of A.I.

1. Automation and Efficiency: A.I. can automate repetitive tasks, thereby increasing efficiency, reducing human error, and allowing individuals to focus on more complex and creative responsibilities.

2. Data Analysis and Insights: A.I. can process vast amounts of data quickly and accurately, providing valuable insights that can inform decision-making and strategy development.

3. Innovation and Creativity: A.I. can be an idea generator. A.I. can aid in the development of new ideas and approaches to different tasks.

4. Cost Reduction: By streamlining processes and increasing efficiency, A.I. can help reduce operational costs and optimize resource allocation within organizations.

5. Personalized Learning: A.I. may be able to tailor educational experiences to individual students' needs and learning styles thereby enhancing the overall learning process.

C. Potential Concerns and Risks with A.I. The following is a non-exhaustive list of the potential concerns and risks associated with A.I.

1. Data Privacy and Security. A.I. systems rely on collecting and analyzing large amounts of data, including data provided by users through prompts. There should not be an expectation of privacy when using A.I. systems generally. Do not upload or otherwise disclose private data through the service. For example, private data should never be included in prompts or otherwise uploaded. Once content is uploaded, the user has, by the nature of the platform, given some level of permission to use that content.

2. Inaccurate and Harmful Information. Do not assume A.I.-generated content is accurate. Instead, the content should be independently verified. A.I. can generate "hallucinations." A "hallucination" in the context of A.I. is a generated response that is factually incorrect, nonsensical, or fabricated.

3. Inequity in Access and Digital Literacy: The introduction of A.I. tools may exacerbate disparities in access, disadvantaging those with limited access to such technology or digital literacy.

4. Lack of Expertise. Computer generated material cannot replace a special educator's personal knowledge of a student or special education expertise. *See* Office of Educ. Tech., *Artificial Intelligence and the Future of Teaching and Learning*: *Insights and Recommendations* (DE 2023).

5. Trust and Transparency. The use of A.I. can create issues with trust and transparency.

D. Guidance on the Use of A.I. in Schools.

1. Minnesota Department of Education's ("MDE") Guidance. In July 2024, MDE issued guidance on A.I. titled *Artificial Intelligence in Education*.

   a. Guiding Principles. MDE's guiding principles on A.I. are as follows:

i. "Vision and Values." "A school's use of AI should serve the school's "mission, vision, and values."

ii. "Center People." "People, not machines should be at the center of decision-making, and educators, students and families should retain their agency as the primary decision-makers."

iii. "Advance Equity." "Technology innovations should advance equitable access and opportunity . . . . Equity in AI involves ensuring fair access to technology and acknowledging the potential presence of biased data within AI systems."

iv. "Ensure Safety, Ethics, and Effectiveness." "Data privacy, security and content appropriateness should be primary considerations when adopting new technology."

v. "Continuous Improvement." "Decision-makers need to understand how AI models work so they can anticipate limitations, problems, and risks. Leaders should create a culture of continual evaluation and innovation to be ready to respond to future technology innovations and disruptions."

b. Considerations. When selecting an AI tool to use with a student, a teacher should consider whether it is age appropriate, the value it brings to teaching and learning, and the unintended consequences and the impacts on the learning environment. The teacher should also consider what is "our collective vision of a desirable and achievable educational system that leverages automation to advance learning while protecting and centering human agency."

2. Office for Civil Rights ("OCR") Guidance. In November 2024, OCR issued guidance titled *Avoiding the Discriminatory Use of Artificial Intelligence*. The guidance has since been formally rescinded. The paragraphs on discrimination below are from that guidance.

a. AI as Discrimination. The use of AI by schools, including for instructional and school safety purposes, can "create or contribute to discrimination" that is prohibited by federal civil rights laws.

b. Examples. OCR likely would have a reason to open an investigation if it received complaints with the below allegations

and, depending upon the facts and circumstances, could determine that the school district engaged in discrimination.

i. A school district allows schools to use a generative A.I. tool to write Section 504 Plans. "The school district does not have any policies regarding how to use the tool" or "review what the AI produces." One school uses "the tool to create Section 504 Plans for all students with diabetes" and the school "staff do not review or modify the generated Section 504 Plans" prior to implementing them. Parents of the students with diabetes complain "that their students' Section 504 Plans' provisions look almost identical and, in some cases, do not match the specific needs of their children." The school district defers to the school's decision on how to use AI and does not investigate further.

ii. A school district uses a software program that relies on past students' IEPs to draft current students' IEPs. The software inputs include all the data on IEPs, including race. "Historically, more Black students with disabilities in the district had IEPs that included more hours of special education instruction in a separate setting and educational placements that were more restrictive than other students. Most of the IEPs for Black students that are generated by the software recommend more special education services in separate settings and would result in placements in restrictive educational environments, but the IEPs that the software generates for white students with similar disability-related needs recommends more integrated instruction and would result placements in less restrictive educational environments." Even after a special education teacher complains, the school district continues the practice because it has a teacher shortage and thus, does not have the staff to draft and review IEPs.

3. April 23, 2025 Executive Order. On April 23, 2025, the President issued an executive order titled *Advancing Artificial Intelligence Education for American Youth*. The executive order announced that "[i]t is the policy of the United States to promote AI literacy and proficiency among Americans by promoting the appropriate integration of AI into education, providing comprehensive AI training for educators, and fostering early exposure to AI concepts and technology to develop an AI-ready workforce and the next generation of American Al innovators."

4. The United States Department of Education's ("ED") Guidance. On July 22, 2025, the ED provided guidance on the integration of A.I. in school districts, as well as other entities. Dear Colleague Letter, 125 LRP 21297 (ED 2025).

   a. Use of AI. The Department advised that "AI may be used across key educational functions" and that "such uses are allowable under existing federal education programs, provided they align with applicable statutory and regulatory requirements." In fact, the DE "encourages grantees to explore how AI can enhance teaching and learning, expand access, and support educators, without replacing the critical role they play."

   b. Permissible Uses. The DE advised that, among other uses, federal education funds may be used to "[d]evelop or procure AI-powered instructional tools that adapt to learner needs in real time," "[e]xpand access to high-quality, personalized learning materials," and [t]rain educators, providers, and families to use AI tools effectively and responsibly."

   c. Principles for Use. The DE expects school districts to "apply sound judgment and partner with researchers, educators, and communities to ensure the effective, safe, and ethical deployment of AI." The DE further set forth the following principles for "all AI-related educational initiatives:"

      i. "Educator-led." AI should be used to "support" educators. AI does not replace educators' "critical role."

      ii. "Ethical." Educators "should help students navigate AI to be able to evaluate the validity of AI outputs, to understand the appropriate use of AI in the context of social media, to learn with - rather than exclusively from - AI, and to leverage the promise of AI to be contributing members of a free society."

      iii. "Accessible." "AI tools or systems should be accessible for those who require digital accessibility accommodations," including for individuals with disabilities.

      iv. "Transparent and explainable." Interested parties, "especially parents, should understand how systems function and

participate meaningfully in decisions about the adoption and deployment of new technologies."

v. "Data-protective." AI systems "must comply with federal privacy laws including the Family Educational Rights and Privacy Act."

5. MDE's Language Access Plan Guide. In November 2025, MDE issued a Language Access Plan Guide.

a. Minnesota Statutes, Section 123B.32.

"Language access plan required. Starting in the 2025-2026 school year, during a regularly scheduled public board hearing, a school board must adopt a language access plan that specifies the district's process and procedures to render effective language assistance to students and adults who communicate in a language other than English or require additional assistance due to a disability. The language access plan must be available to the public and included in the school's handbook."

"Plan requirements. The language access plan must include how the district and its schools will use trained or certified spoken language interpreters for communication related to academic outcomes, progress, determinations, and placement of students in specialized programs and services, such as special education and related individualized education programs under section 125A.08; ensure meaningful participation in the individualized education program process by families where the family speaks a language other than English or has a disability themselves; how families and communities will be notified of their rights under this plan; and a process to appeal the accommodations of the access plan if needs are not met."

"Regular review. The board must review the plan every two years and update the plan as appropriate."

b. MDE Guidance.

"Can I use computer-generated translations? No. Studies have shown that computer-generated translations such as

> Google Translate are only 58 percent accurate. That means 42 percent of the information it produces is incorrect. Western European languages have the highest rate of accuracy at 74 percent, but Google Translate is only 45 percent accurate with African languages. The Department of Justice, in its January 2015 'Dear Colleagues' letter, specifically warned against sole reliance on computer-generated translations, noting that 'translations that are inaccurate are inconsistent with the school district's obligation to communicate effectively with [limited English proficient] parents.'"

E. *William A. ex rel. E.A. v. Clarksville-Montgomery Cty. Sch. Sys.*, 127 F.4th 656 (6th Cir. 2025).

1. Facts. The student had a diagnosis of dyslexia and qualified for special education services pursuant to the IDEA. The student was capable of learning how to read. The student's IEPs, however, did not target teaching the student to read.

   Instead, the student's IEPs gave the student "workarounds in reading" that "simply did the work for him." The student's IEPs either provided for or allowed the student to use a "host of accommodations" to "mask[] his inability to read." For instance, to write a paper, the student " would first dictate his topic into a document using speech-to-text software," "then would paste the written words into an AI software like ChatGPT" and "the AI software would generate a paper on that topic," and finally the student "would run that paper through another software program like Grammarly, so that it reflected an appropriate writing style."

   The student ultimately "graduated from high school with a 3.4 grade-point average." The student graduated "without being able to read or even to spell his own name."

2. Issues. Did the school provide the student a FAPE?

3. Holding. The Sixth Circuit held that the school denied the student a FAPE and affirmed the district court's determination that the student was "entitled to 888 hours of compensatory education to help him learn to read." The Sixth Circuit held that, "when a child is capable of learning to read, and his IEP does not aim to help him overcome his particular obstacles to doing so, that IEP does not provide him the [FAPE] to which

he is entitled." As the Sixth Circuit explained, the point of a FAPE "is not simply to complete assignments."

F. *H.P. v. Bd. Educ. City Chicago*, 385 F. Supp. 3d 623 (N.D. Ill. 2019).

1. Allegations. The school district did "not have a policy or practice of providing written translations of IEP process documents" to limited English proficient ("LEP") parents nor did it "provide independent interpreters for LEP parents at IEP and other special education meetings." As a result, some LEP parents of students with disabilities alleged that they were not provided translations of special education documents nor provided qualified interpreters. In fact, requests for translation and interpretation services were denied even though the school district knew the parents needed the services.

   The parent of one student was forced "to use web-based translation services, such as Google Translate, in an attempt to understand the documents" and to write letters to the school district regarding her child's educational programming. At another student's IEP team meeting, the educators "used Google Translate to communicate" with the parent.

   As a result, LEP parents were unable to effectively communicate their opinions and did not understand what was happening at IEP meetings. LEP parents also had struggles effectively communicating with the school district outside of the meetings. In addition, LEP parents consented to proposals that they did not understand and, consequently, their children's services were changed or other actions were taken.

2. Issues.

   a. Did the families sufficiently plead a denial of FAPE claim under the IDEA?

   b. Did the families sufficiently plead a national origin discrimination claim under Title VI?

3. Holding.

   a. IDEA. The district court held that the families sufficiently plead an IDEA claim. Specifically, the families sufficiently alleged that the school district "did not provide translations of vital documents or competent interpreters" to LEP parents and that "the lack of translation and interpretation significantly impeded the [LEP

parents] participation in the IEP process and caused additional harms to the [students]."

b. Title VI. The district court held that families sufficiently plead a Title VI claim. Specifically, the district court held the families' allegations that the LEP parents were not provided the needed translation and interpretation services even though the school district knew the services were needed resulted in those parents not having the "ability to meaningfully participate in the IEP process" to "the same extent as parents who read and speak English proficiently." The district court concluded that the allegations "suggest intentional discrimination."

IV. METHODOLOGY AND PERSONNEL.

A. Methodology.

1. Types of Methodologies. There are many programs to educate students with disabilities. For instance, "ABA therapy is just one methodology used to address the needs of children with ASD . . . ." *Dear Colleague Letter*, 66 IDELR 21 (OSEP 2015). In fact, "autism experts have a variety of opinions about which type of program is best." *Gill v. Columbia 93 Sch. Dist.*, 217 F.3d 1027, 1038 (8th Cir. 2000).

2. Selection of a Methodology.

a. Selection of a Methodology. Whether a student with a disability needs a specific methodology is an IEP team decision and depends on the needs of the individual child. *See Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities*, 71 Fed. Reg. 46,540, 46,665 (Dep't of Educ. Aug. 14, 2006). For "many children," a specific methodology—such as ABA therapy—is not needed to provide a FAPE and thus, the IEP would "not need to address a specific approach." *See Letter to Wilson*, 37 IDELR 96 (OSEP 2002) (stating such is true under Part C of IDEA); *Letter to Anonymous*, 49 IDELR 258 (OSEP 2007) (same). In that case, the educators can select the methodology as long as the student is being provided a FAPE in the least restrictive environment ("LRE"). *E.S. v. Indep. Sch. Dist., No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); *Gill*, 217 F.3d at 1038.

b. Specific method. In "some cases," a student's unique needs may require a "particular methodology or instructional approach" and in such a situation the IEP team must propose an IEP or serve the student with an IEP that provides the particular methodology or instructional approach. *See Letter to Wilson*, 37 IDELR 96 (OSEP 2002) (stating such is true under Part C of IDEA); *Letter to Anonymous*, 49 IDELR 258 (OSEP 2007) (same); *see also A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 545 (2d Cir. 2017) (holding a school district "was bound, at a minimum, to require some level of ABA support in a 1:1 classroom setting").

c. Disability Category. "The IDEA does not dictate the services or accommodations to be provided to individual children based solely on the disability category in which the child has been classified, or the specific condition underlying the child's disability classification." OSERS, *Dear Colleague: Dyslexia Guidance* 1 (Oct. 23, 2015), https://sites.ed.gov/idea/idea-files/osep-dear-colleague-letter-on-ideaiep-terms/.

3. Court's Review of Methodology Selection. "Federal courts must defer to the judgment of education experts who craft and review a child's IEP so long as the child receives [a FAPE] and is educated alongside his [] classmates [without disabilities] to the maximum extent possible." *Gill*, 217 F.3d at 1038.

B. Providers.

1. Selection of Providers. The school district can select the providers as long as the student is being provided a FAPE in the LRE. *Slama ex rel. Slama v. Indep. Sch. Dist. No. 2580*, 259 F. Supp. 2d 880, 884-886 (D. Minn. 2003); *see also Gill*, 217 F.3d at 1038. Furthermore, if a school district can provide a student a FAPE with its employees, the school district is not required to utilize the services of an outside provider regardless of whether the parent requests such or the outside provider is more equipped than school district employees to serve the student. The Minnesota federal district court explicitly held such in *Slama*, 259 F. Supp. 2d 880. In that case, a school district refused to allow a parent's preferred outside provider to be a student's personal care attendant ("PCA") without a clear reason beyond the outside provider not being a school district employee. *Id.* at 885. Instead, the school district selected a school district employed educational assistant. *Id.* at 881. The court held that the school district did not deny the student a FAPE. *Id.* at 886. The court reasoned that the school district's obligation was only to assign a PCA who was capable of

providing the student a FAPE and that, while the preferred outside provider may have been the "best," the preferred outside provider was not necessary for the student to receive a FAPE. *Id.* at 885; *see also id.* at 882.

2. Staff Shortages. Staff shortages do not lessen a school district's obligation to provide students with disabilities a FAPE. *See, e.g.*, *Special Educ. Compl. 23-130C*, 123 LRP 21873 (Minn. SEA 2023).

C. Responding to Parents' Requests for Specific Methodologies or Providers.

1. When a parent requests a specific methodology or provider for a student with a disability, the school must consider the request. In selecting the methodology or provider, the school must select a methodology or provider that provides the student a FAPE in the LRE.

2. Allowing parents to select their children's curriculum would result in school districts having "to provide more than one method . . . for different students whose parents had differing preferences." *See E.S.*, 135 F.3d at 569.

D. *Minnetonka Pub. Schs. v. M.L.K. ex rel. S.K.*, 42 F.4th 847 (8th Cir. 2022).

1. Background Information. The Student qualified for special education under the ASD criteria. The evaluations identified both significant attention and reading deficits although they did not label those needs as "ADHD" and "dyslexia." In response to those needs, the District developed IEPs with goals for those needs, attention modifications, and reading instruction with researched based, explicit, multi-sensory, phonics-based reading curriculums. Over the years, the District continuously increased special education services. The District, however, did not always acquiesce to the parent's demands. For instance, the District did not provide WRS instruction as early as the parent wanted. The Student made progress in attention and reading but was not reading at grade level at the time of the due process hearing.

2. Question. Did the District comply with IDEA?

3. Holding. The Eighth Circuit held that the District complied with IDEA.

   a. No Guarantee of Specific Results. The Court concluded that the IEPs were reasonably calculated to allow the Student to make appropriate progress in light of the Student's individual

circumstances. Specifically, the Court held that the District set and continuously updated "achievable, measurable goals," tried new reading curricula, and continuously increased special education services. In this case, despite the fact that the Student was not reading at grade level, the Court found that the Student had made progress. It held that the law does not "require specific results" and "looks for improvement, not mastery."

b. Reading Curriculum. Once the Court determined that the District had provided the Student with a FAPE, the District was not required to provide the parents' requested method of instruction. The District considered and then initially denied the Parents' request for instruction using WRS. The school advised that the Student was not a good candidate for WRS instruction at the time because he "lacked the attentional stamina" the longer lessons required. The Court noted that the District did subsequently provide WRS instruction for the Student. Finding that the Student had made progress in attending to instruction and in reading as well as in all other goal areas, the Court held that the District fulfilled its obligations under the IDEA.

V. PARTICULAR SCHOOLS.

A. Legal Principles.

1. School Selection. Pursuant to IDEA's regulations, "[u]nless the IEP of a child with a disability requires some other arrangement, the child [must be] educated in the school that he or she would attend if nondisabled." 34 C.F.R. § 300.116(c).

B. *Thompson ex rel. M.C. v. Lakeville Area Schs.*, No. 24-CV-3717 (KMM/TNL), 2024 WL 4441769 (D. Minn. Oct. 8, 2024).

1. Facts. A student with a disability completed elementary school. The parent requested that the school district establish a developmental cognitive disability ("DCD") classroom at every middle school so that that the student, as well as other students with disabilities, could attend their neighborhood school. The school district declined the request to establish the DCD classroom at the student's neighborhood school not for discriminatory reasons but because it was "unworkable for a variety of reasons." The school district also declined the request to assign the student to his neighborhood school based on an individualized assessment

of his educational needs and the educator's reasoned decision that a different school with a DCD classroom best met the student's needs.

2. Issue. Did the school district discriminate against the student based on his disability in violation of State and federal anti-discrimination laws when it declined to establish a DCD program at the student's neighborhood school and assigned the student to a different school with a DCD program?

3. Holding. The Court, in part, denied the plaintiff's motion for preliminary injunction because the plaintiff was unlikely to succeed on the merits of her claims. The Court held that plaintiff is unlikely to demonstrate that the school district denied the student the benefits of its programs or services, that the school district discriminated against the student based on his disability, or that the school district acted in bad faith or with gross misjudgment. The Court reasoned that only reasonable accommodations are required by law and that there is no support for the proposition that the school district was required to "alter the entire model through which it provides special education services" so that it can provide all necessary special education services to each student with a disability at their neighborhood school. The Court further reasoned that the plaintiff cited no legal support for the conclusion that a school district engages in disability discrimination by assigning a student with a disability to a school other than the student's neighborhood school after concluding that the selected school best serves the student's needs.

VI. INSTRUCTION OUTSIDE THE "REGULAR" SCHOOL DAY.

A. Legal Principles.

1. Shortening the "Regular" School Day. For IDEA-eligible students, use the IEP process to shorten a student's school day. A student's school day should only be shortened to meet a student's individual needs.

2. Instruction Outside of the "Regular" School Day. IDEA's FAPE requirement obligates a school district to educate a student outside the "regular hours of the school day" if it is necessary to provide the student a FAPE. *Osseo Area Sch. v. A.J.T. ex rel. A.T.*, 96 F.4th 1062, 1066 (8th Cir. 2024).

B. *A.J.T. v. Osseo Area Schools*.

1. Facts. A.J.T. has a form of epilepsy. A.J.T. did not attend school until noon. Pursuant to her IEP, A.J.T. received intensive special education

from noon until after the school day at 4:15 p.m. A.J.T.'s parents made requests for A.J.T. to receive additional evening instruction, but the District denied the requests.

2. Issue.

   a. Did the District deny A.J.T. a FAPE in violation of the IDEA?

   b. Did the District engage in disability discrimination in violation of Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II of the Americans with Disabilities Act ("Title II")?

3. IDEA Holding. The panel held that the school district denied the student a FAPE.

   a. The panel held that IDEA's FAPE requirement obligates a school district to educate a student outside the "regular hours of the school day" if it is necessary to provide the student a FAPE.

   b. The panel held that A.J.T. made "only slight progress in a few areas" over a period spanning multiple school years. For instance, A.J.T. did not meet her annual IEP goals from 2016 to 2020. The panel held that the progress was *de minimis* and that the level of progress was "predictable" and "strong evidence" that the school district denied A.J.T. a FAPE.

   c. The panel found that "toileting ability" is "essential" for A.J.T. to live a "healthy and dignified life" and that the District "remov[ing] her toileting goal for lack of time in the short day" for a period violated its obligation to provide a FAPE.

   d. The panel held that the school district denying the evening instruction was a "purely administrative decision" and that "its choice to prioritize its administrative concerns had a negative impact on A.J.T.'s learning." The panel further held that A.J.T. "would have made more progress with evening instruction."

4. Section 504 and ADA Case.

   a. Eighth Circuit's Holding. The Eighth Circuit panel held that the District could not be held liable for disability discrimination. The Eighth Circuit panel held that the law of the circuit requires plaintiffs to prove that school officials acted with bad faith or gross

misjudgment when bringing Section 504 and ADA claims based on educational services for a student with a disability. The panel held that A.J.T. had failed to make such a showing. The school district met with the parents, updated A.J.T.'s IEP each year, provided the student a "variety of services" including intensive one-on-one instruction, extended A.J.T.'s school day so that she could safely leave school, and offered 16 three-hour sessions at home each summer. The panel concluded that, regardless of whether the school district complied with Section 504 and the ADA, the bad faith or gross misjudgment standard was not met. The entire Eighth Circuit declined to review the decision or, in other words, declined *en banc* review.

b. Nicole Reaves for the U.S., as Amicus Curiae. "[O]ne thing I would just point out is . . . just because after-hours education is required under the IDEA does not mean that that's a required reasonable accommodation under Title II and Section 504." *See* U.S. Tr., Ct Dkt. No. 24-249 (Oral Arg. Apr. 28, 2025), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/24-249_4fci.pdf.

c. Supreme Court's Holding. In a "narrow" holding that did not address whether the District engaged in discrimination, the Court held—in agreement with both parties—that ADA and Section 504 disability discrimination "claims based on educational services should be subject to the same standards that apply in other disability discrimination contexts." The Court declined to make holdings on other issues, such as what the particular intent standard is for such claims. A two-Justice concurring opinion, however, noted that the District's undecided arguments on the particular intent standard "may have a point" and that in a future case those Justices "would be willing to address" the "important" and "serious arguments" raised by the District. The concurrence further instructed the lower courts to "carefully consider whether the existing standards comport with the Constitution and the underlying statutory text."

VII. "BEYOND SCHOOL:" EXCESSIVE ABSENCES, SEPARATE SCHOOLING, AND RESIDENTIAL PLACEMENT.

A. Least Restrictive Environment ("LRE").

1. LRE Requirement. The LRE requirement obligates school districts to educate students with disabilities, to the maximum extent appropriate, with children who do not have disabilities. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2). As such, the following should be true: "special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A). For instance, one-to-one ABA therapy from a private provider will likely be considered more restrictive than small group instruction at a school in the school district. *See Mark A. v. Grant Wood Area Educ. Agency*, 795 F.2d 52, 53 (8th Cir. 1986); *Grant v. Indep. Sch. Dist. No. 11*, 2005 WL 1539805, at *10 (D. Minn. June 30, 2005).

2. Continuum of Alternative Placements. "The IDEA implementing regulations therefore provide for a continuum of alternative placements—instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions to ensure a school district can meet the needs of children with disabilities for special education and related services." *J.P. ex rel. Ogden v. Belton Sch. Dist. No. 124*, 40 F.4th 887, 890 (8th Cir. 2022) (citing 34 C.F.R. § 300.115) (internal citation marks).

3. Placement Decision. "The IDEA does not allow a school to place a child in a less restrictive environment in which he or she makes little or no progress towards appropriate educational goals." *J.P.*, 40 F.4th at 890. Instead, "[i]t is appropriate under the IDEA to place a student in a less integrated setting when the [student with a disability] would not benefit from mainstreaming, when any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services which could not feasibly be provided in the non-segregated setting, and when the [student with a disability] is a disruptive force in the non-segregated setting." *Id.* at 892 (internal citation marks and citations omitted).

4. Residential Programs.

a. IDEA Regulation. "If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 34 C.F.R. § 300.104.

b. Eighth Circuit.

i. The "IDEA requires that a state pay for a disabled student's residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement. . . . If the problem prevents a disabled child from receiving educational benefit, then it should not matter that the problem is not cognitive in nature or that it causes the child even more trouble outside the classroom than within it. What should control our decision is not whether the problem itself is 'educational' or 'non-educational,' but whether it needs to be addressed in order for the child to learn." *Indep. Sch. Dist. No. 284 v. A.C. ex rel. C.C.*, 258 F.3d 769, 774-77 (8th Cir. 2001).

ii. The Eighth Circuit, however, also held that it is "unlikely that Congress meant for the IDEA to require states to provide a home away from home for students who simply make bad choices, even if those choices cause them to fail in school." *A.C.*, 258 F.3d at 775.

iii. Reason. "The reason for this rule is straightforward: if a residential placement is educationally necessary because of a student's disability, and the state does not provide it, then the state's IEP is not 'reasonably calculated to enable the child to receive educational benefits' as required by *Rowley*." *A.C.*, 258 F.3d at 774.

B. *Ind. Sch. Dist. 283 v. E.M.D.H.*, 960 F.3d 1073 (8th Cir. 2020).

1. Facts. In eighth grade, a general education student was chronically absent, admitted to a day treatment program, and diagnosed with depression and generalized anxiety disorder. School staff knew about the student's "mental health issues" and admission to the day treatment program. A teacher further raised concerns to other educators. The student, however, was not referred to an intervention team because her grades were "excellent when she attended school."

In ninth grade, the student's attendance was again "irregular." In the second half of the year, the student's parents requested that the school district conduct a special education evaluation for the student and the school district agreed.

In tenth grade, the evaluation was completed. The evaluation concluded that the student did not qualify for special education.

2. Issue. Did the school district meet its child-find obligations?

3. Holding. The Eighth Circuit concluded that the school district violated its child-find obligations because it was aware no later than the spring of the student's eighth grade school year that the student had "stopped attending school because of her anxiety" and did not act on the information. The Eighth Circuit further held that the student was eligible for special education because her mental health issues "appear to have directly impacted her attendance at school," which "inhibited her progress in the general curriculum."

4. Takeaways.

   a. A school district's IDEA "child find" obligations are triggered where there are significant absences, a reason to believe the absences are linked to an IDEA-eligible disability, and a need for services due to the disability.

   b. A school district's IDEA "child find" obligation can be triggered by a student's excessive absences even if the student excels when the student attends school.

C. *J. S. ex rel. P.S. v. Keystone Oaks Sch. Dist.*, No. CV 18-1713, 2020 WL 1532316 (W.D. Pa. Mar. 31, 2020).

1. Facts: The Student engaged in escalating "inappropriate" conduct directed at a specific female student. The Student told the principal that no one could "have" the female student if he cannot "have" her and that he would light anyone on fire who became romantically involved with her. The principal reported that the Student was "angry" during the meeting except when "speaking of the harm to others" at which time he was "happy." After this meeting, the Student received a psychiatric evaluation and was provisionally diagnosed with an unspecified schizophrenia spectrum/other psychotic spectrum disorder. The Student's

treatment plan recommended "partial hospitalization." The Student's mother informed the school that the Student's provisional diagnosis was "psychosis" and the District was informed of the recommendation.

The Student's IEP was amended and the Student was placed an "approved private school program which was funded by the District" and included the needed "mental health services." The Student fully returned to the school after a year and a few months.

2. Issue: Did the District provide a FAPE in the LRE?

3. Holding: The District provided the Student a FAPE in the LRE. The facts "support a finding that at the time of his placement, [the Student] could not receive an appropriate education in an environment less restrictive than the" separate learning environment. While the Student attended the separate learning environment, "it was appropriate that he would not be included in programs at the District with nondisabled children so that he would not be a danger to himself or others."

D. *Indep. Sch. Dist. No. 284 v. A.C. ex rel. C.C.*, 258 F.3d 769 (8th Cir. 2001).

1. Facts: The Student qualified for special education services due to "emotional and behavioral disorders." The Student's "school-related problems included classroom disruption, profanity, insubordination, and truancy." Attempts to educate the Student "at an off-campus day center for troubled kids" and "self-contained classrooms for students with emotional and behavioral problems" were not successful. An independent evaluator diagnosed her with a "conduct disorder" and "strongly recommended that [the Student] be placed in a secure facility, largely to prevent truancy, and predicted that, after a course of treatment, [the Student] would probably be able to return to the classroom." By the end of her tenth-grade year, the Student "had completed only nine of the 32 credits required for graduation, although she is of average intelligence and has no learning disability."

The Student's "treating psychologist, her IEE evaluator, her old district's school psychologist, her mother, and both state hearing officers all have reached the conclusion that a residential placement is necessary in order for [the Student] to get an education. . . . Of all the educators whose views of the matter appear in the record, the only one that does not recommend a residential placement is the school district that is being asked to pay for it."

2. Issue. Whether a residential placement is educationally necessary?

3. Holding. A residential placement is educationally necessary.

   a. The Student's "abnormal emotional conditions prevent[ed her] from choosing normal responses to normal situations." Specifically, while the Student may not have been "irresistibly compelled to cut school," "her truancy and defiance of authority result from a genuine emotional disturbance rather than from a purely moral failing."

   b. The Student's "behavior problems" also were not "separable from the learning process." As the Eighth Circuit held, this "is not a case where the correction of behavioral and emotional problems is merely desirable in order to improve a student's performance." The Student's "truancy and disruptiveness had substantially prevented her from receiving educational benefit."

   c. "The only question here is whether she should go home at night or remain in a special institution twenty-four hours a day. Because the preponderance of the evidence shows that she will not receive educational benefit in the less restrictive setting, the statute's preference is overcome here."

E. ***Springer v. Fairfax Cnty. Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998)**.

1. Facts. "Prior to his eleventh grade year, [the Student] had made steady educational progress, advancing from grade to grade on schedule." "In the eleventh grade [the Student] stopped attending classes, regularly used drugs and alcohol, and engaged in other criminal activities. The precipitous drop in [the Student's] grades at this time appears to be directly attributable to his truancy, drug and alcohol use, and delinquent behavior rather than to any emotional disturbance." In fact, no fewer than three psychologists examined the Student and "each independently concluded that he was not seriously emotionally disturbed."

2. Holding. "Particularly given the paucity of evidence that Edward suffered any sort of emotional disorder, it can hardly be said that the record directs a finding that a serious emotional disturbance adversely affected his educational performance. Edward's delinquent behavior appears to be the primary cause of his troubles." As such, the Court affirmed the lower court's decision that the Student was not a student with a disability and that his parents were not entitled to tuition reimbursement.

VIII. CARE AND TREATMENT.

A. State Laws. States can have laws relevant to care and treatment for students.

B. Minnesota's Care and Treatment Laws.

1. Legal Provisions.

a. For purposes of Minnesota Rules, part 3525.2325, "pupils and regular education students placed in the following facilities by someone other than the district are considered to be placed for care and treatment: chemical dependency and other substance abuse treatment centers; shelter care facilities; home, due to accident or illness; hospitals; day treatment centers; correctional facilities; residential treatment centers; and mental health programs." Minn. R. 3525.2325, subp. 1.

b. "The district in which the facility is located must provide regular education, special education, or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility, or in the student's home for care and treatment. Education services must be provided to a pupil or regular education student who is:

i. prevented from attending the pupil's or student's normal school site for 15 consecutive school days; or

ii. predicted to be absent from the normal school site for 15 consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or other court-appointed authority; or

iii. health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent school days."

Minn. R. 3525.2325, subp. 1.

c. "The responsibility for special instruction and services for a child with a disability temporarily placed in another district for care and treatment shall be determined in the following manner:

i. When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment program and an appropriate educational program for the child. . . . The resident district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

ii. When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program; and must bill the district of the child's residence for the actual cost of providing the program, as outlined in section 125A.11, [with limited exceptions].

iii. The district of residence shall pay tuition and other program costs, not including transportation costs, to the district providing the instruction and services. . . . Transportation costs must be paid by the district responsible for providing the transportation and the state must pay transportation aid to that district."

Minn. Stat. § 125A.15; *see also* Minn. Stat. § 125A.515, subd. 3 ("The district in which the children's residential facility is located must provide education services, including special education if eligible, to all students placed in a facility.").

d. Students "who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, and placed at home or in facilities not licensed by the Departments of Corrections or Human Services are entitled to regular and special education services consistent with this section or Minnesota Rules, part 3525.2325. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center." Minn. Stat. § 125A.515, subd. 10.

2. Decisions.

a. In *Anoka-Hennepin Independent School District #011*, 107 LRP 60653 (Minn. SEA 2007), the student's doctor recommended that the student receive homebound education for the last 18 school days of the school year because of his anxiety. Therefore, the district was required to provide him services pursuant to Minnesota Rules, part 3525.2325.

b. In *Northfield Public Sch. Dist.*, 109 LRP 59359 (Minn. SEA 2008), MDE held that, pursuant to Minn. R. 3525.2325, "homebound instruction" was required to be provided if a student was absent for 15 consecutive days "due to being placed at home, due to … illness." The student missed 10 consecutive days one month followed by additional absences in the subsequent months due to anxiety. After the "majority" of the student's absences, the student's psychologist opined that the student needed a "more therapeutic school placement" but did not opine that the student had "a need for homebound." MDE determined that the school district did not violate Minn. R. 3525.2325 by not providing homebound services during the periods that the student's disability prevented him from attending school because the school district was unable to predict that the student would be prevented from attending school for 15 consecutive days due to being placed at home, due to illness.

c. In *St. Paul Independent School District #625*, 109 LRP 35701 (Minn. SEA 2006), the student had a "history of missing in excess of 20 school days per school year related to anxiety" that the District was aware of by the end of the 2003-04 school year and his IEPs during the 2004-05 "all addressed the Student's anxiety" so that he "could attend school on a regular basis." "Accordingly, the District should have predicted that the Student's disability would negatively impact his school attendance resulting in 15 or more intermittent absences and should have addressed how the Student would receive his IEP services during those absences."

"[B]y the time the Complainant requested homebound services on May 24, 2005, the Student had missed 12 intermittent school days due to his OHD (10 in May), and the Student's IEP team knew, or should have known, that it was likely he would miss three or more school days by the end of the school year due to his OHD and its

impact on his inability to attend school. At that point, the District's failure to address the provision of the Student's IEP services during his absences from school, including 10 days in May 2005, resulted in educational harm to the Student" and the Student is "entitled to compensatory educational services."

By the end of November 2005, the Student had missed 12 full school days during the 2005-06 school year. "At that point, given the District's knowledge that the Student's disability impacted his school attendance, the Student's IEP team should have predicted that he would be absent 15 or more intermittent school days by the end of the 2005-06 school year. The District should have scheduled an IEP team to address the Student's sporadic attendance and to determine how to provide the Student's IEP services during absences."

"By the end of January 2006, the Student had missed 24 full school days and 16 partial days. It is reasonable to assume that the Student suffered educational harm when he was then absent for the majority of the instructional time in February 2006" and the "Student is entitled to compensatory services."

In sum, regarding Minnesota's care and treatment laws, the District was found to have "violated Minn. R. 3525.2325 when it failed to provide regular and specialized instruction to the Student based upon his predicted and actual absences of 15 intermittent school days or more during the 2004-05 and 2005-06 school years."