

**SPECIAL EDUCATION LEGAL UPDATE**  
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**January 2025**

This month's update identifies two recent court decisions that respectively revisit (a) the IDEA's oft-overlooked state complaint process and (b) Section 504/ADA in relation to a child with misophonia. For previous monthly updates and related publications, see [perryzirkel.com](http://perryzirkel.com)

**On November 4, 2024, the Minnesota Court of Appeals issued an unofficially published decision in *Complaint Decision File 23-043C*, which concerned a school district challenge to an IDEA state complaint decision. After an investigation in response to the complaint of a parent of a child with disabilities, the Minnesota Department of Education issued a report finding that the local school district violated the IDEA in its announcement about an upcoming parent-teacher conference day that would provide for asynchronous remote instruction to the students. More specifically, the announcement notified all middle-school parents at the start of the 2022–23 school year that October 8 would be an asynchronous instruction e-learning day to facilitate the parent-teacher conferences. The identified violation was the failure to include, as appropriate, in these children's IEPs a provision describing how the special education and related services would be delivered during the planned distance learning. The corrective action would be to specify in the notice to parents their right to meet with their child's IEP team to discuss the planned online instruction for their child. Inasmuch as Minnesota is one of the minority of states that allow for judicial appeals of IDEA state complaint decisions, the district brought this appeal.**

First, the district argued that the Department's decision was without basis in the IDEA and corollary state law.	Roundly rejecting this argument, the court concluded that the district's notice violated two IDEA regulations.
Second, the district argued that even if the notice violated relevant regulation, it was a technical violation w/o loss to the child.	Disagreeing, the court concluded that because the district violated the parents' rights, the violation was not a harmless technical violation.
Third, the district alternatively contended that the Department's investigation was fundamentally flawed by not extending to interviews of the other parents and their IEP implementers.	Also rejecting this challenge, the court concluded that the blanket nature of the announcement and the lack of factual dispute about its impact made such interviews unnecessary in this case.
This case serves as a reminder of the differences between the adjudicative process, which is the usual focus of attention to IDEA legal developments, and the state complaint process, which is, for example, (a) investigative, (b) not appealable to court in the most states, (c) not necessarily limited to parent complainants or the individual child, and (d) stricter about procedural compliance.	

**On December 13, 2024, a federal district court in Tennessee issued an unofficially published decision in *Doe v. Knox County Board of Education*, which was on remand from a Sixth Circuit Court of Appeals decision summarized in my [February 2023 monthly update](#). The student in this case had a diagnosis of misophonia, which for her was a hypersensitivity to the everyday sounds of eating food and chewing gum that caused fear and anxiety, resulting in escape/avoidance actions and recurring migraines. She attended a STEM magnet high school, which left the issue of eating food and chewing gum to the discretion of each teacher on a class-by-class basis. The reasons were (a) the school's college-like culture, which emphasizes individualized teaching methods, (b) its particular facility, which does not have a cafeteria; and (c) the school's wide 9-county service area, which includes students who have long days due to transportation time. The school provided her with a 504 plan, which included preferential seating, use of noise-cancelling headphones, testing in isolation, and a "break" system. Although the teachers in about 6 of her 8 classes informally banned food and gum, she still missed a significant amount of instruction due to her condition. She and her parents sought a formal ban on food and gum in all her classes. They filed a lawsuit predicated primarily on Section 504 and the Americans with Disabilities Act (ADA) and secondarily on various other federal non-IDEA bases. The federal district court dismissed their lawsuit for failing to exhaust a due process hearing under the IDEA, but the Sixth Circuit ruled that the exhaustion requirement did not apply and sent the case back to the district court to decide the merits of their various claims. The school district filed a motion for summary judgment, which would end the case prior to the trial stage.**

The parents' first Sec. 504/ADA claim was that the school engaged in intentional disability discrimination.	The court ruled that the parents failed to provide sufficient direct or indirect evidence for a reasonable jury to reasonably find intentional discrimination based on the student's disability.
Their alternative Sec. 504/ADA claim was that (a) their requested accommodation was reasonable and (b) the school's neutral policy, with the offered 504 plan, was not.	Here, the court ruled that the particular circumstances presented a sufficient factual question for a jury to determine whether the parents' proposed policy was a reasonable accommodation or, instead, a fundamental alteration of the school's program.
Their additional Sec. 504/ADA claims were for retaliation based on their disability advocacy and disability-based harassment of their daughter.	The court ruled that the parents failed to establish a jury question for the requisite elements of either a Sec. 504/ADA retaliation claim (e.g., causal connection) or a disability-based harassment claim (e.g., deliberate indifference).
The parents also raised federal civil liability rights claims based on alleged violations of the Constitution or federal legislation.	The court roundly rejected these Sec. 1983 claims, including 1st Amendment expression (retaliation) and 14th Amendment equal protection (discrimination), for various reasons.
The only claim that survived for a possible trial (or settlement) was the reasonable accommodation issue under Sec. 504/ADA. As a result, in the absence of intentional discrimination (including deliberate indifference), if the parties proceed to complete a trial in this case, they do not qualify for money damages. Instead, the only judicial remedy available to them is injunctive relief (e.g., a court order that is retrospective for compensatory education or, if applicable, tuition reimbursement) and/or a court order that is purely prospective (i.e., for their requested accommodation), and any resulting attorneys' fees recovery. The lesson for others is to be careful about accurately identifying students under Sec. 504/ADA and, for those that are deemed eligible, providing accommodations that are reasonable.	