SPECIAL EDUCATION LEGAL UPDATE

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This month's update provides (a) quick summaries of current legal developments under the IDEA and Section 504, and, on the next page (b) a recent court decision specific to "504-only" students (i.e., those not also covered by the IDEA.) For previous monthly updates and related publications under these federal laws, see **perryzirkel.com**

- On January 17, 2025, the U.S. Supreme Court agreed to hear the parents' appeal of the Eighth Circuit Court of Appeals decision concerning the standard for money damages under Section 504 and the Americans with Disabilities Act (ADA). As summarized in the April 2024 update, the Eighth Circuit issued two decisions on the same day, one specific to the parents' IDEA claim and the other specific to their Section 504/ADA claim. In the first, the appeals court upheld a lower court's IDEA ruling that the defendant district denied FAPE to a child with a rare form of epilepsy by refusing to provide instruction to make up for the shortened school day necessitated by the child's frequent morning seizures. The remedy included compensatory education and in-home instruction. In the second, the appellate court upheld the lower court's Section 504/ADA ruling that the parents were not additionally entitled to money damages because they had not proven that the district's refusal amounted to bad faith or gross misjudgment. The Supreme Court will decide, as a general rule, whether bad faith/gross misjudgment or some other, perhaps less heightened standard applies to money damages in student Section 504/ADA cases.

- On February 3, 2025, the Sixth Circuit Court of Appeals issued an officially published (and, thus, precedentially weighty) decision in *William A. v. Clarksville-Montgomery County School System* that affirmed the lower court's decision reported in the June 2024 update. More specifically, this federal court of appeals, which encompasses the four states from Michigan down to Tennessee, upheld the lower court's ruling that the defendant school district denied FAPE under the IDEA to a student, who had dyslexia and with proper instruction could learn to read, and yet graduated with a 3.4 GPA *without* learning to read. In addition to the issue of the reading method, a notable feature of this case was the district's use of AI software (specifically, ChatGPT and Grammarly), which the court characterized as "workarounds for reading." The appellate court also upheld the compensatory education award of 888 hours of dyslexia instruction. Next, the school district faces the lower court's determination of attorneys' fees, for which the parents have requested $267k.

- On February 27, 2025, *West's Education Law Reporter* published "Due Process Hearing Decisions under the IDEA: A Follow-Up Outcomes Analysis with and without New York." This analysis of due process hearing decisions for the most recently available four-year period reveals that for the nation as a whole, the outcomes, according to a three-category scale (for parents, mixed, and for districts), are strongly skewed toward parents at an even more pronounced level than during the previous six-year period; however, when the outlier jurisdiction of New York is excluded, the outcomes are moderately skewed in favor of districts, but with significantly less mixed decisions than in the previous six-year period.

On February 25, 2025, a federal district court in Florida issued an unpublished decision in *Wisniewski v. Sunset Elementary School*, addressing the Section 504 claims of the parents of second grader with a severe peanut allergy. The parents' allegations were as follows:

> **The child always carries an Epi-Pen to avoid the potentially fatal effects of anaphylaxis. The school officials knew about their child's allergy since she started school in kindergarten. The school's handbook describes the school as "peanut allergies/peanut-free." The child is at risk of exposure to peanut allergens because school officials often allow outside food for birthdays and other such celebrations and cannot guarantee that the school cafeteria is devoid of cross-contamination from peanut products. During the start of grade 2 (2023–2024), the school administrators attempted to place the child alone at a peanut-free table in the school cafeteria to minimize risk. Her parents objected, seeking alternative accommodations, such as an individualized safety plan and protocols for a truly peanut-free school. The school responded five months later by issuing a 504 plan for which the school denied their requests for their participation and for the participation of the school nurse. The plan contained five accommodations, including disallowing peanut products in the child's classroom, reminding students in the class to wash their hands after lunch, and providing the school cafeteria menus in advance to her parents. The plan lacked most of the parents' requested accommodations, which school administrators denied with "hostility and veiled threats." Two months later, another student sat across from the student in the school cafeteria with a peanut butter and jelly sandwich, thus putting her at direct risk. On another occasion, she accidentally dropped her lunch from home on the ground and went hungry for the day due to the risk of cross-contamination in the cafeteria food.**

In April 2024, the parents filed suit in federal court for various forms of relief, including a revised 504 plan and money damages. The named defendants, which were the elementary school and the school board, filed a motion for dismissal. For ruling on this early pretrial motion, it is well-established that courts accept the allegations as facts, with ambiguities interpreted in the light most favorable to the plaintiffs (because granting the motion precludes further court proceedings, including a judge or jury determining the facts based on sworn statements and other admissible evidence).

First, the dismissal motion contended that, under state law, the school board, representing the district, was the only entity subject to suit.	The court agreed, dismissing the elementary school as a defendant in this lawsuit.
Second, without disputing whether the child was eligible under Section 504/ADA, the school board argued that they had provided her with reasonable accommodations.	Rejecting this argument, the court concluded, based on the allegations, that the district's response to the parents' requested accommodations was "unreasonable, untimely, and insufficient."
Third, the school board asserted that the plaintiff-parents failed to show deliberate indifference, which is required for money damages.	The court ruled: "At this early stage of the litigation, Plaintiffs adequately alleged facts to show deliberate indifference."
Fourth, the school board contended that the plaintiffs did not assert sufficient facts to establish retaliation under Section 504/ADA.	Agreeing, the court concluded that the parents had not sufficiently alleged the retaliation requisites of adverse action and causal link.

If this case is not settled, the parents may or may not lose at the subsequent stages of summary judgment before trial or the verdict at the end of a trial. Yet, it serves as a reminder of the need to establish defensible procedures for determining eligibility under Section 504 and, if the student is eligible, that the 504 plan meets the applicable procedural, substantive, and implementation standards for appropriateness. For example, did the child receive reasonable accommodations for meaningful access to the school program?