SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that respectively illustrate specialized ADA and IDEA issues. For related publications and special supplements, see **perryzirkel.com**

<table>
<tr><td colspan="2">On August 19, 2025, the Ninth Circuit Court of Appeals issued an unofficially published decision in D.M. v. Oregon School Activities Association, addressing the disability-discrimination challenge of a high school athlete's challenge to the state's interscholastic athletic association eligibility rule. The student in this case, who was starting his senior year, had a 504 plan for diagnoses that included ADHD, oppositional defiance disorder, and post-traumatic stress disorder. He was on the football team, which served for him as a motivational force for academic and behavioral advancement in school. Having attended a residential program, where he repeated tenth grade and played football, he had used his four years of eligibility upon enrolling in the district and completing his eleventh grade. As a result, he sought a waiver of the association's "eight-semester rule," which included an express exemption for students with IEPs (but not for those with 504 plans). The association denied his fifth-year hardship appeal. He quickly filed in federal court for an emergency temporary restraining order under the Americans with Disabilities Act (ADA), claiming that the requested waiver was a reasonable accommodation. The federal judge ruled against him, concluding that he failed to show the requisite likelihood of success on the merits of his claim. Two months later, the judge also denied his motion for a preliminary injunction. Although the football season was over, the student persisted in his lawsuit to seek the remaining potential remedy of money damages. Two years later the same judge issued a summary (i.e., pretrial when no genuine issue of material fact) judgment for the athletic association. Undaunted, the student appealed the court's decision to the Ninth Circuit. As is customary, a panel of three members of the appellate court made the decision.</td></tr>
<tr><td>First, the legal counsel on behalf of the plaintiff-student argued that the determination whether the requested waiver was a reasonable accommodation (in contrast with a fundamental alteration) requires a fact-specific individualized inquiry, thus reversing the summary judgment and moving to the trial stage.</td><td>The majority agreed, concluding that genuine issues of material fact remained as to whether in these specific circumstances the requested waiver was a reasonable accommodation and whether his disabilities were the "but-for" cause of his athletic ineligibility status, thus preserving the matter for a trial. The dissent disagreed on the alternative ground of the plaintiff's failure to show deliberate indifference, which is required for money damages under the ADA.</td></tr>
<tr><td>Second, the plaintiff argued for reassignment to a different judge for the sought-for trial.</td><td>The three appellate judges unanimously ruled that in the absence here of proof of personal bias, the requested reassignment was not warranted.</td></tr>
<tr><td colspan="2">Unless resulting in a settlement, this case is far from over, with the immediate alternatives being a decision either on reconsideration by the full Ninth Circuit or, more likely, via trial on remand to the lower court. Moreover, the issue more generally is unsettled, with two other circuits previously upholding the eight-semester rule without exemptions and a lower court in the Ninth Circuit establishing this interscholastic athletic association's exemption for students with IEPs.</td></tr>
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On April 21, 2025, a federal district court in Tennessee issued an unpublished decision in *William A. v. Clarksville/ Montgomery County School District*, addressing implementation of the remedy that it ordered in its decision summarized in the June 2024 update. In that earlier decision, the court upheld a hearing officer's compensatory education award of 888 hours of dyslexia tutoring in the Wilson system, except that it removed the requirement for the tutor to be a "reading interventionist." Next, the plaintiff-parent filed a motion with the court, seeking to modify the hearing officer's order by specifically requiring the tutoring to be provided by the Dyslexia Center of Clarksville, which had previously served the student. The court denied the motion, reasoning that it could not conclude "at this stage" that the defendant-district was not capable of providing the specified Wilson-reading remedy. The court added this proviso: "If [the district] does prove to be wholly incapable of providing Wilson Reading and Language System instruction with its own personnel in a timely manner, then it will … have to look to an outside vendor." The court also clarified that the tutoring should be 5 hourly sessions per week insofar as reasonably possible. The Sixth Circuit affirmed this decision. Next, the parents filed another motion with the lower court, contending that the district had failed to provide the ordered instruction "competently or expeditiously" and seeking an order to either convert the 888 hours into a compensatory education fund or have the defendant-district pay a private tutor directly.	
The first reason that the parent gave for their latest request was that the district delayed the start of the instruction until a year after the hearing officer's order and two months after the court's affirmance.	Rejecting this basis and avoiding the finger-pointing as to which side was not sufficiently cooperative, the court concluded that "even if that gap caused the [student] harm and violated this Court's order, the plaintiff has not argued that such harm would be remedied by the specific relief he seeks."
The second reason was that the district's tutor was merely trained, not certified, in the Wilson system.	In rejection, the court concluded that neither its order nor the hearing officer's original award required certification, and no new evidence requires it.
Third, the parent contended that the district's tutor failed to follow the Wilson System and otherwise lacks foundational literacy-teaching knowledge.	The court found the third contention insufficient to justify the requested revision, because even if the tutor's instruction were deficient, "the district could cure this deficiency with a replacement tutor."
The fourth basis was that the student had regressed in his reading skills during the tutoring.	Again, finding the basis insufficient, the court found that evidence showed initial regression but then significant progress during the 133 tutoring hours to date.
The final reason was that the tutoring had averaged 6.5 hours per month compared to 5 hours per week.	Without determining who was responsible for this lack of consistency and frequency, the court decided to order 5 hours per week on a set schedule.
This latest decision in the case of a student who graduated from high school with a 3.4 GPA and the inability to read illustrates the difficulty of the writing enforceable remedial orders that resolve the matter without becoming the subject of further costly litigation disputes between the parties. Given the congested schedule and generalist nature of federal courts, it also suggests that the state complaint process may have been a more effective alternative to address enforcement issues of the hearing officer's remedial orders.	