SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent decisions of the Eleventh Circuit Court of Appeals, which covers Alabama, Florida, and Georgia, under the IDEA and Section 504, respectively. For related publications and special supplements, see **perryzirkel.com**

On February 19, 2026, the Eleventh Circuit Court of Appeals issued an officially published decision in *C.B. v. Henry School District*, primarily addressing the least restrictive environment (LRE) claims of the parents of a fourth grader with Down syndrome. The IEP placed the student in general education classes for art, music, and physical education; general education classes with paraprofessional support for science and social studies; and a resource class for language arts and math. The resource class was a small-group instructional setting for students with disabilities. A special education teacher taught the class, which included no nondisabled students. During the second semester, the IEP team met to develop the IEP for fifth grade. At the meeting, the special education teacher explained that the student made fluctuating progress at a first-grade level, but without reaching any of his benchmarks. She gave her opinion that the class was no longer appropriate for him in comparison to another available special education class for language arts and math, which included visual supports, assistive technology, and a curriculum more tailored to his needs although including students who were more impaired than those in the resource class. Despite objections at the meeting from the student's parents and their attorney, the team determined that the fifth-grade IEP would include the other special education class for these two subjects. The parents filed for a due process hearing, with their primary claim being that this change violated LRE under the IDEA. After a five-day hearing, the hearing officer ruled in favor of the school district. The parents appealed to the federal district court, which affirmed the hearing officer's decision. The parent sought reversal by the Eleventh Circuit.	
The parents argued that the resource class was the LRE for the student because it was closer to a "regular" educational environment.	The court rejected this argument, ruling that both the IDEA's LRE provision and the two-step analysis adopted in that jurisdiction and the majority of other federal circuits applied only to a placement choice between a regular and special education class, not between two different special education classes.
The parents alternatively argued that the overlapping substantive standard for FAPE under *Endrew F.* favored the resource class.	Disagreeing, the court concluded that *Endrew F.* did not address this situation, but even if it did, the district was entitled to deference for its cogent explanation justifying the other special education class as meeting the reasonably-calculated standard for appropriate progress under the circumstances.
Although preserving for further proceedings the more limited issue of whether the district violated the IDEA in changing the student to alternative assessment for state proficiency, the Eleventh Circuit's primary ruling on LRE illustrated the arguably increased tendency of the current federal judiciary to limit their interpretations to the letter, as opposed to the spirit, of the law.	

On February 12, 2026, the Eleventh Circuit Court of Appeals issued an unofficially published decision in *Bryant v. Calvary Christian School*, which included a ruling under Section 504 of the Rehabilitation Act. In this case, the parents enrolled their child for sixth grade in the "discovery program" of a private parochial school. The program was designed to serve students with learning differences. The parents provided the school with a clinical psychologist's report that included a diagnosis of their child with autism and ADHD along with recommended accommodations. Although some participants in the discovery program had IEPs or 504 plans, the school provided him with a student support plan based on the psychologist's recommended accommodations. In seventh grade, the student began to struggle despite the new teacher's implementation of his support plan. In September, when she directed him to stop playing a game on his laptop, he slammed down the cover with noisy force. In October, he threw a pencil in the direction of classmates. The program director suspended him for three days and recommended that the parents arrange for applied behavioral analysis (ABA) therapy for him and evaluation for medication. Both he and his parents perceived racial hostility on the part of the other students and the staff of the program. Upon returning from his suspension, the student threw a school-provided calculator against the wall in the classroom. As a result, in December of grade 7 the headmaster of the school notified that the student would not be allowed to return to in-person instruction unless he completed ABA therapy at another school or in another classroom setting. His parents arranged for a behavioral analyst to provide him with ABA therapy while he attended virtual classes at her clinic. The behavioral analyst subsequently provided the parents with an evaluation report with recommendations for continued ABA therapy. In February, the parents and the behavior analyst met with the school's headmaster, reviewed the report, and proposed the student's return to in-person instruction with the parents' provision of a behavioral assistant to accompany the student and provide training to his teacher(s) to implement his therapy plan. The headmaster repeated his previously stated pre-condition that the student attend a public school or other classroom setting to show he would be successful with said therapy. The parents enrolled the student at Sylvan Learning Center for the rest of grade 7, where he received good grades and no significant disciplinary violations. However, the headmaster ultimately decided not to allow the student's reenrollment, asserting that the proposed arrangement constituted a substantial modification to its program. The parents filed suit in federal district court, including Section 504 along with racial discrimination claims that are not the focus of this update. The court granted the school's pretrial motion for summary judgment, whereupon the parents appealed to the Eleventh Circuit.	
The parents asserted that a reasonable jury could find that their child met the Section 504 definition of disability.	The Eleventh Circuit agreed based on the unchallenged diagnoses of autism and ADHD and their arguably substantial limitation, without mitigating measures, on one or more major life activities including concentration.
Given such disability status, the parents argued that their proposed arrangement, which was cost free to the school, was a reasonable accommodation.	Disagreeing and thus ultimately affirming the Section 504 ruling for the school, the Eleventh Circuit concluded that the proposed arrangement, including the shadowing ABA support assistant for an indefinite period of time, amounted instead to a "substantial modification" of the school's program.
Although the difference between private and public schools is evident in the actions of its representatives, the interesting relevant parts of the Eleventh Circuit's legal analysis apply as well to public schools: (1) the courts are liberal about Section 504 disability status at the pretrial stage because the allegations are accepted in the light most favorable to the plaintiff; and (2) the Eleventh Circuit relied on the limits of "reasonable accommodation" in the case law rather than the lesser obligation of private schools in the Section 504 regulations.	