

SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent decisions that respectively reflect the difficulties that parents of students with disabilities may face in the world of special education litigation. For related publications and special supplements, see perryzirkel.com

On July 1, 2026, the federal district court in Utah issued an unofficially published decision in *Deverall v. Jordan School District*. This case concerns a nonverbal middle school child with complex medical and developmental needs. In grade 7, his placement was in a “functional academics” class for special education students with lower cognitive levels. A board certified behavior analyst (BCBA), who was a staff member on his IEP team, reviewed his behavior intervention plan (BIP) and trained the paraprofessionals in his classroom; however, she left toward the end of the school year. Limited attempts at integration were unsuccessful. His parent was actively involved during the year, which included four IEP meetings in the second semester and special attention to his toileting and behavioral problems. In grade 8, these difficulties intensified despite monthly meetings and extra training. At a December IEP meeting, the district agreed, per the parent's request, to contract with an outside BCBA. At further meetings in January, the IEP team proposed changing the child's placement to a special district school for students with significant multiple disabilities. At the parent's insistence, the team agreed to postpone the decision until ascertaining the effects of the BCBA's revisions to the BIP and the accepted changes he proposed for the IEP. However, in response to the parent's request for a registered behavior technician (RBT) to implement the BIP, the other team members concluded that the continued training of the full-time paraprofessional support for the child was appropriate. After monthly reviews, which included two other outside BCBAs, the IEP team met in April and May, finally concluding, despite the parent's dissent, that the placement at the special school was appropriate for the child. The parent filed for a due process hearing, which resulted in a decision in favor of the district. The parent filed for this judicial appeal.

The parent claimed that in grade 8 the January IEP's failure to provide for a BCBA or RBT to implement the IEP amounted to a substantive denial of FAPE.

Disagreeing, the court concluded that the IEP's training and support provisions were sufficiently “[BCBA]-like” and that the team's determination to not include an RBT was “reasonable.”

The parent also argued that the district engaged in predetermination of the placement change to the district's special school, including that its shorter school day was less than the minutes specified in the IEP.

Although finding that the placement process was not beyond question, the team's overall focus on meeting the child's needs and its responsiveness to the parent's concerns did not amount to the “willful[] recalcitrant[ce]” or brute-force retrofitting standards for predetermination.

This case illustrates (1) the increased visible role of BCBAs and RBTs in the litigation concerning the development and implementation of IEPs, especially during the upswing of behavioral issues in recent years, and (2) the continuing difference between the prevailing procedural and substantive FAPE standards of the courts and the higher expectations of parents and their specialized experts.

On June 23, 2026, a federal district court in Ohio issued an unofficially published decision in *Thomas v. Beachwood City School District Board of Education*. Mrs. T. was a passionate participant in the education of her child with an IEP. For example, she was the founder of a local special education PTA to promote inclusion. In June 2025, she filed a state complaint alleging that the school district failed to engage in “inclusive extracurricular and mental health planning.” The following month she filed complaints with the district’s human resources department, claiming that school administrators had engaged in harassment and retaliation against her. In September, in response to purported complaints from staff members that she had sent them harassing and threatening communications, the district’s superintendent directed the IT department to block all her future emails to the child’s teachers and re-route them to him, the director of pupil services, and to the principal of her child’s school. When she pointed out to the school board that it lacked a policy authorizing such communication protocols, the board president responded that these matters were within the superintendent’s discretionary authority. After allegedly filing complaints with state and federal education agencies to challenge the “communication ban,” she filed suit in federal court on a pro se basis (i.e., without attorney representation). She claimed (1) denial of FAPE by preventing her meaningful participation in her child’s education under the IDEA; (2) discrimination against her child under Section 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA) by “restricting parental participation, failing to provide equal access to extracurricular programs, and ignoring accommodation needs”; (3) retaliation under § 504 and the ADA; and (4) violation of the First Amendment in that the “communication protocol unlawfully restricts [her] right to petition and communicate with public officials about [her child’s] education.” The district responded to the lawsuit with a motion for dismissal.

The district argued that the IDEA FAPE claim must be dismissed due to the parent’s failure to meet the exhaustion requirement to first obtain a due process hearing decision before seeking judicial relief.	The court dismissed the IDEA FAPE claim due to not only the exhaustion requirement, but also (a) as a pro se litigant, the parent cannot represent her child’s interests, and (b) the IDEA’s procedural safeguards do not include “a right for parents to directly email teachers.”
The district challenged the parent’s standing in court for the § 504/ADA claim of discrimination against the child.	The court agreed on the same basis that applied to the IDEA claim regarding pro se litigants in federal court.
The district argued that the parent failed to meet the exhaustion requirements for the § 504/ADA claim alleging retaliation for protected disability advocacy.	The court agreed based on Sixth Circuit precedent but alternatively ruled that the cause for the communication ban was her excessive emails to teachers, not her state complaint 2.5 months earlier.
The district argued that prevailing case law has rejected parents’ First Amendment challenges to such school communication protocols.	The court again agreed, citing the various previous judicial decisions with particular attention to the lack of the requisite causal connection between the communication restriction and her petitioning activity.
Although one lesson of this case is that school communication protocols for parents are legally permissible if reasonable, viewpoint neutral, and not violative of the IDEA or § 504/ADA, the larger and more generalizable lesson of this case is the extreme disadvantage faced by pro se parents in federal court litigation on behalf of students with disabilities.	