SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent decisions that illustrate issues that are both current and recurrent under the IDEA and Section 504, respectively. For related publications and special supplements, see **perryzirkel.com**

On September 8, 2026, a federal district court in Tennessee issued an officially published decision in *N.H. v. Memphis-Shelby County Schools,* addressing the child find and FAPE claims of parents of a child with dyslexia. During kindergarten, the school district evaluated the child under the Tennessee law that is one of the few state laws that provide IEPs for giftedness. The evaluation, which included a composite IQ of 129 (nonverbal 143 and verbal 109) and a basic reading achievement score of 79, determined that he qualified for an IEP solely as intellectually gifted. In first grade, the district also provided him with response to intervention (RTI) services of 1:1 reading support. During second grade, he performed at or above grade level in teacher diagnostic tests in English Language Arts, I-Ready/Fastbridge screeners, and the state's proficiency assessments. At the parents' request in April of that year, the district administered a screener that found he had characteristics of dyslexia. Early in the third grade, at the parents' insistence, the district conducted an eligibility evaluation to determine whether he qualified for special education under the classification of specific learning disability (SLD). Although the school psychologist, who had training in dyslexia, recommended that he did not qualify as SLD in the absence of (a) sufficiently severe characteristics of dyslexia and (b) sufficiently indicative RTI services under the state's required approach for SLD, the IEP team ultimately concluded that he was eligible for special education services as SLD. On November 1, the team's proposed IEP included small-group, research-based specially designed instruction in reading but not specifically Orton-Gillingham (O-G) methodology, which the parents had requested. On December 1, after providing the requisite notice to the district, the parents unilaterally placed the student in a private school specializing in O-G. They subsequently filed for a due process hearing, seeking tuition reimbursement, but the hearing officer ultimately ruled in favor of the district. The parents filed an appeal in federal court.	
First, the parents claimed that the district violated its child find obligation by not evaluating their son sooner in light of his persistent struggles in reading as evidenced, for example, by RTI services in 1st grade and the dyslexia screener results in 2nd grade.	Based on testimony of not only the district's school psychologist and speech therapist but also the private school's director, the court rejected the parents' claim based on the difficulty of identifying dyslexia and SLD early in light of the masking effect that accounted for the child's grade level progress in reading.
Second, the parents claimed that the IEP was not substantively appropriate because it lacked dyslexia-specific methodology.	Citing *Endrew F.* and lower court case law concerning methodology, the court concluded that the IEP was substantively appropriate.
Third, the parents' alleged that the IEP lacked sufficient specificity as to the specially designed instruction, thus violating the IDEA's procedural requirements for FAPE.	The court also rejected this claim, concluding that even if this was a violation, the parents' immediate unilateral placement obviated the requisite resulting loss in either student benefit or parent participation.
In short, this case illustrates the complexities of not only dual exceptionality but also dyslexia identification/interventions.	

On September 2, 2026, a federal district court in Illinois issued an unofficially published decision in *Merkel v. Galva CUSD Board of Education,* addressing various issues for a 504-only student. In eighth grade, the student sustained two separate concussions, cumulatively resulting in long term symptoms, including severe anxiety, poor ocular mobility, and reduced binocular vision. The school provided her with a 504 plan based on diagnoses of visual-vestibular integration dysfunction, visual processing impairments, chronic migraines, and sleep disturbances that collectively limited reading and concentration to a substantial extent. The 504 plan included extra testing time, reduced classroom assignments, enlarged reading materials, limited videos/films, offered breaks in each class, and an individual tutor. Although the student graduated with a 4.0 GPA as co-valedictorian, her parents filed a disability discrimination lawsuit in federal court under Section 504 and the Americans with Disabilities Act (ADA). Their discrimination claims included repeated shortfalls in implementing her 504 plan, including classroom teachers' negative reactions rather than affirmative adherence and the failure to select her for the National Honor Society (based on the leadership criterion). They sought compensatory damages for (a) emotional distress resulting in panic symptoms, fatigue, nausea, depression, and self-harm and (b) educational losses, such as having to drop an agriculture course because the teacher continuously played loud music in class, and reduced ability to pursue other educational and extracurricular activities due to the extra time and energy caused by the shortfalls in the implementation of her 504 plan. The defendants moved for summary judgment, which is after pretrial discovery proceedings, such as depositions.	
The plaintiff-parents identified the superintendent and high school principal as defendants in addition to the school district.	The court eliminated them as defendants because Section 504 and the ADA only apply to the institutional entity, not its individual personnel.
The first substantive § 504/ADA claim that the court identified was failure to accommodate based primarily on shortfalls in the implementation of the 504 plan.	Citing the prevailing standard in its jurisdiction, the court ruled that the evidence was sufficient for a jury to determine whether the shortfalls effectively denied the plaintiff the benefit of a public education.
The second substantive claim that the court identified was disparate treatment based on several separate incidents, such as her rejection for membership in the National Honor Society.	The court granted summary judgment to the district for this claim, ruling that no reasonable jury could conclude that the student's disability caused any of these actions.
The third substantive claim that the court identified was retaliation against the student for her self-advocacy.	The court also ruled in favor of the district on this claim ultimately due to lack of causal connection to her protected activity.
The final substantive § 504/ADA claim that the court identified was hostile learning environment.	Denying the district motion, the court found sufficient evidence of the elements of a hostile environment claim for a jury determination.
The defendant-district's ultimate argument in support of summary judgment was that the relief sought was not available under § 504 and the ADA.	In partial rejection, the court reasoned that although § 504/ADA do not provide compensatory damages for emotional distress, they do for at least one category of requested relief—loss of educational opportunity.
This decision illustrates the various theories of liability for money damages under § 504/ADA for students with disabilities, which include those with IEPs as well as those with 504 plans. Here, the parents are likely to receive limited compensatory damages (and attorneys' fees) via a settlement, although if this case goes to trial, the outcome could go either way on the surviving two claims of (a) accommodation/implementation and (b) hostile learning environment.	