

STUDENTS WITH ACQUIRED BRAIN INJURY: A LEGAL UPDATE

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Abstract: Representing a sequel to a similar case law snapshot in mid-2010, this article provides an updated overview of the judicial and administrative case law concerning students with traumatic and nontraumatic brain injury in the P–12 school context. The scope is limited to cases under the Individuals with Disabilities Education Act and the pair of disability-based civil rights statutes, Section 504 and the Americans with Disabilities Act. The cases include not only hearing/review officer and court decisions but also state education agency and Office for Civil Rights complaint investigation reports available in the national legal database, LRP’s SpecialEdConnection®. The analysis focuses on the frequency and outcomes of these published rulings, with the discussion extending to the empirical limitations and professional implications of the findings.

Acquired brain injury (ABI) generically encompasses both traumatic and nontraumatic brain injury (e.g., Savage & Wolcott, 1994). The express exclusion is for brain injuries that are “congenital or ... induced by birth trauma” (p. 4).

The pertinent professional literature continues to abound across fields, including special education, school psychology, social work, and pediatrics, although not necessarily within them (e.g., Smith & Canto, 2015). The foci of these various articles include characteristics and incidence (e.g., Blankenship & Canto, 2018), symptomology (e.g., Rees, 2016); instrumentation (e.g., Cohen et al., 2019; Lindsey, Hurley, Mozeiko, & Coelho, 2019); teacher training (e.g., Davies, Fox, Glang, Ettl, & Thomas, 2013; Ettl, Glang, Todis, & Davies, 2016), treatment (e.g., Kelly, Dunford, Forsyth, & Kavcic, 2019), and, especially, interventions (e.g., Canto & Eftaxas, 2018; Chavez-Arana et al., 2018; Davies, 2016; Jantz, Davies, & Bigler, 2014; Utley, Obiakor, & Obi, 2019) of ABI.

The coverage of the legal dimension of ABI in the K-12 context remains largely limited. For example, Glang et al. (2015) identified only a few state laws in their report of a 2012 survey of state directors of special education on supports and services for students with traumatic brain injury (TBI). Similarly, Cole and Cecka (2014) analyzed only a small sample of court decisions specific to employees with TBI, with only one case in the school context.

In the major exception, Zirkel (2011) outlined, as a framework, the pertinent legislative, regulatory, and agency policy interpretations under the Individuals with Disabilities Act (IDEA, 2017) and the related pair of civil rights laws—Section 504 of the Rehabilitation Act (2017) and the Americans with Disabilities Act (ADA, 2017). Based on an earlier explanation of the alternative decisional avenues (Zirkel & McGuire, 2010), Zirkel (2011) identified the two

administrative dispute resolution mechanisms—each state education agency’s (SEA’s) complaint investigation procedures under the IDEA and the corresponding Office for Civil Rights (OCR) complaint procedure under Section 504 and the ADA—and the two levels of adjudicative dispute resolution—the impartial hearing and the judicial appeals under these statutes. Within this framework, he next canvassed the adjudicative and administrative case law specific to students with ABI in the K–12 context. More specifically, he found a total of 53 cases from 1990 to mid-2010, with two thirds of the cases decided during the second half of the period. The distribution of the cases for the four forums was as follows: SEA complaint investigations – 2; OCR complaint investigations – 10; hearing and review officer decisions – 22; and court decisions – 19. Finally, he analyzed the outcomes of these cases in terms of the following broad issue categories: eligibility, including child find; free appropriate public education (FAPE), including placement and least restrictive environment; related services; discipline; compensatory education; reimbursement, including independent educational evaluations at public expense; adjudicative issues, such as statute of limitations; and legal bases other than the IDEA. The 53 cases yielded 79 issue category rulings, with the most frequent category being FAPE. The overall outcomes distribution of the issue category rulings was as follows: conclusively in favor of parents – 28% (n=22); intermediate, such as rulings for further proceedings – 14% (n=11); and conclusively in favor of districts – 58% (n=46) (Zirkel, 2011).

Scope and Method for Updated Case Law Analysis

The purpose of this article is to provide a follow-up analysis of the corresponding adjudicative and administrative decisions. The specific period was from mid-2010 to mid-2019.

The method was basically the same as the previous analysis (Zirkel, 2011) with a few refinements. First, the exclusions consisted of not only cases of congenital brain injuries (e.g., *Nicholas v. Norristown Area School District*, 2017) and hearing officer decisions superseded by a subsequent court decision for the same case within the same time period (e.g., *Warrior Run School District*, 2014), but also (a) rulings beyond those under the IDEA and Section 504/ADA, such as the Fourteenth Amendment (e.g., *A.M.C. v. School District of La Crosse*, 2018; *Mann v. Palmerton Area School District*, 2017; *Tristan v. Socorro Independent School District*, 2012), or state civil rights laws (e.g., *Trujillo v. Sacramento Unified School District*, 2018), and (b) adjudicative subcategories that seemed too marginal, such as a homogeneous cluster of approximately a dozen stay-put rulings for the same New York City advocacy group (e.g., *Navarro Carrilo v. New York City Department of Education*, 2019; *New York City Department of Education*, 2019) and interlocutory rulings (e.g., *Carr v. Department of Public Instruction*, 2018).

The second refinement consisted of the following changes to the issue categories: (a) relabelling the “eligibility” category to “identification” so as to more clearly encompass the overlapping but separable subcategory of child find; (b) subsuming related services within the FAPE category due to negligible frequency; (c) conflating compensatory education and reimbursement into a remedies category for more overall consistency, (d) providing dual categorization of the § 504/ADA-restricted category, and (e) adding a miscellaneous category as

a catchall for the relatively few other rulings.

The third refinement was to revise the outcome scale for the rulings in terms of conclusiveness. The result was three categories: P=conclusively in favor of the parent; Inc.=inconclusive; and S=conclusively in favor of the school district. An asterisk designated the conclusive outcomes that had a limited qualification, such as a voluntary resolution agreement for the OCR outcome or limited relief for a secondary issue in a court outcome.

Results of the Updated Case Law Analysis

As specifically identified in the Appendix, the total number of cases was 89 for the updated period from mid-2010 to mid-2019. The frequency distribution for each of the four forums was as follows: state complaint investigation procedures (CIP) decisions – 11; OCR decisions – 9; hearing/review officer (H/RO) decisions – 40; court decisions – 29. Because some of the decisions had more than one issue category ruling and it is the more precise unit of analysis for outcomes, Table I presents the outcomes distribution for each of the four forums in terms of the 106 issue category rulings. The first column includes the average ratio (r) of issue category rulings per decision, and the other three columns provide the percentage and number (n) for each of the aforementioned outcomes categories.

Table 1. Rulings Distribution for the Four Decisional Forums

	For Parent	Inconclusive	For District
CIP (n=11 decisions) (r = 1.1)	58% (n=7)	0	42% (n=5)
OCR (n=9 decisions) (r = 1.3)	75% (n=9) ^a	0	25% (n=3)
H/RO (n=40 decisions) (r = 1.1)	41% (n=18)	2% (n=1)	57% (n=25) ^b
Court (n=29 decisions) ^c (r = 1.3)	11% (n=4)	13% (n=5)	76% (n=29) ^d
TOTAL (r = 1.1)	36% (n=38)	6% (n=6)	58% (n=62)

Note. ^aincluding 7 voluntary resolution agreements; ^bincluding 1 qualified ruling; ^cincluding 13 § 504 rulings; ^dincluding 4 qualified rulings

Review of Table 1 reveals that the issue category rulings within the two investigative forums favored parents, whereas those in the two succeeding adjudicative forums predominated in favor of districts. Primarily attributable to the higher ratio of rulings to decisions and the particularly pro-district skew in the 29 court cases, the total outcomes distribution of rulings favored districts on approximately a 60%-40% average upon discounting the limited number of inconclusive and qualified rulings.

A supplementary view of the Appendix reveals that the ‘issues’ categories for the two administrative forums were primarily FAPE and to a lesser extent identification. The H/RO and

court cases yielded a wider variety of issue categories in addition to the predominance of FAPE, especially remedies and adjudicative issues. The respective statutory authorization limited the CIP and OCR rulings to the IDEA and Section 504/ADA, respectively. In contrast, in light of the more open-ended jurisdiction of the adjudicative forums, claims under Section 504/ADA arose in addition or alternative to those under IDEA at the court level, accounting for 13 of the 38 judicial rulings.

Table 2 shows the frequency and outcomes distribution for each of the issue categories.

Table 2. Rulings Distribution for the Various Issue Categories

	For Parent	Inconclusive	For District
Adjudicative (n=16)	6% (n=1)	25% (n=4)	69% (n=11) ^c
Identification (n=15)	47% (n=7) ^a	6% (n=1)	47% (n=7)
FAPE (n=55)	42% (n=23) ^b	2% (n=1)	56% (n=31) ^d
Remedies (n=11)	45% (n=5)	0% (n=0)	55% (n=6)
Misc. incl. Discipline (n=9)	22% (n=2)	0% (n=0)	78% (n=7)

Note. ^aincluding 1 voluntary resolution agreement; ^b including 6 voluntary resolution agreements;

^cincluding 1 qualified ruling; ^dincluding 4 qualified rulings

Table 2 shows that FAPE accounted for slightly more than half of the issue category rulings and that parents did not prevail in the majority of the rulings for any of these broad issue categories. The adjudicative category, which is largely attributable to the court forum, accounted for most of the inconclusive rulings, although the noted qualified rulings overlap with this intermediate-range outcome.

Interpretation and Implications of the Findings

In comparison to the predecessor analysis (Zirkel, 2011), the frequency of legal activity in the four decisional forums for students with ABI increased significantly, with a total of 89 cases for the most recent nine-year period compared to 54 cases for the previous 20-year period. This growth is attributable at least in part to the upward trajectory legal activity more generally under the IDEA and Section 504/ADA, but the available data concerning the corresponding overall activity are not sufficiently current and comprehensive for a sufficiently precise comparison (e.g., CADRE, 2018; Karanxha & Zirkel, 2014; Zirkel & Skidmore, 2014).

Within this increased total, the distribution among the four decisional forums remained skewed in favor of the adjudicative arena, although the frequency of traffic in the investigative avenues shifted notably from the OCR to the SEA complaint procedures avenue. Nevertheless, the increased but still limited share of state CIP decisions for the current period, which amounted to 12% as compared to 4% of the cases in the previous period, remains less than expected in light of the much lower costs and more favorable outcomes for parents in not only the ABI cases but also more generally (e.g., CADRE, 2018; Zirkel, 2017). The relative under-use of the CIP forum is likely due to lack of parental awareness of the cost-benefits of this avenue and its de-emphasis by parent attorneys, which is likely attributable in part to self-interest and in part to normative orientation in favor of the adjudicative process.

The overall outcomes distribution was similar to that for the previous period (Zirkel, 2011), although the proportion of inconclusive outcomes was moderately lower. For the conclusive outcomes categories, the overall 60-40 balances in favor of districts not only continued from the previous period but also aligned with the general pro-district pattern in special education litigation (e.g., Karanxha & Zirkel, 2014; Zirkel & Skidmore, 2014). Although the more general analyses are largely limited to the adjudicative arena, the H/RO and judicial forums predominate for the ABI rulings. Moreover, as Zirkel and Skidmore (2014, p. 540) explained, the units of analysis and the categories of outcomes are subject to imprecise and varying interpretations. Not to be ignored, the intermediate outcomes, including both the inconclusive and the qualified rulings may well be of practical significance to the parties in terms of leverage for not only settlements but also attorneys' fees. For example, in the New York case of *South Orange Central School District* (2019), the review officer ruled against the parents for all of their numerous FAPE claims except the limited one specific to counseling services. As a result, the review officer rejected the parents' request for prospective placement in a private school, various independent educational evaluations, compensatory education for several specified related services and 529 hours of 1:1 tutoring services; however, the review officer

ordered a total of 22.5 hours of compensatory education for missed counseling sessions. This relatively limited qualified gloss on an outcome otherwise conclusively in favor of the district represented not only an additional outlay of services to the student but also the basis for a potentially costly attorneys' fees award to the parents. Another source of imprecision is the skewing effect of mixed rulings for which only one party appealed, which more often was the parent. For example, in *A.C. v. Capistrano Unified School District* (2018), the H/RO ruling for child find was in favor of the parents, but their appeal was to the limited remedy and the FAPE issue. The selective reporting of the final decision, which was in favor of the district, contributed to the skew in the distribution at both of these successive levels.

Within the overall outcomes distribution, despite the methodological refinements here and variations more generally, three findings remain primary and consistent. First, the predominance of FAPE rulings is consistent with the results of the previous analysis (Zirkel, 2011) and the aforementioned more general outcomes analyses in special education litigation. The converse low incidence and even more parent-favorable outcomes for remedies aligns with other analyses (Zirkel, 2013; Zirkel & Skidmore, 2014) and is attributable to the screening and skewing effect of the prerequisite for compensatory education and tuition reimbursement of a denial of FAPE.

Second, the limited but notable frequency ($n=16$) of adjudicative rulings, such as stay-put, statute of limitations, and exhaustion of administrative remedies, are, as the Appendix shows, limited to the rulings by H/ROs (5 of 44 = 11%) and courts (11 of 38 = 29%). Moreover, the aforementioned exclusion of the homogeneous cluster of stay-put cases in New York, which would have considerably inflated these numbers, reflects the potential role of an advocacy organization with a particular interest. More generally, these highly technical but often significant issues reflect the increasing legalization of special education litigation, including the "judicialization" of the hearing and review officer systems (Connolly, Zirkel, & Mayes, in press).

Third and similarly consistent with the previous analysis, the rubric of ABI includes not only legal inconsistency between TBI and nTBI but also and more importantly the wide variety of individual differences within these imprecise legal categories. Thus, for both identification and FAPE cases, the rulings are inevitably fact-specific, defying over-generalization. For example, in *Hillsborough County School Board* (2014), the hearing officer concluded: "As this case plainly demonstrates, TBI is not a one-size-fits-all classification" (pp. 30–31).

The limitations of this empirical analysis include not only the inevitable imprecision of the classification of issues and outcomes in light of the blurry, often overlapping boundaries within, and the individualized nature of, the IDEA and Section 504/ADA, but also the imperfect representation of the total population of these ABI cases within the legal publication process. Moreover, even if one obtained the complete population of ABI decisions for each of the four forums of the IDEA and Section 504/ADA, it would miss the skewing effect of the much larger number of ABI cases resolved via abandonment or settlement prior to the final decisional stage (e.g., Zirkel & Holben, 2017).

Conclusion

Confirming the findings of the predecessor analysis, this updated snapshot of the ABI case law activity in the decisional dispute resolution mechanism under the IDEA and Section 504/ADA show that the adjudicative arena predominates in terms of parental choice but the investigative forums are more favorable in terms of parental outcomes. Similarly reflecting the more general trend of the case law under these federal disability laws, FAPE is the major issue, and adjudicative issues are a limited but not negligible transactional trade-off for the primary reliance on the successive H/RO and judicial avenues. A more intensive and qualitative analysis of the case law is a recommended area for follow-up research. The extension to other legal bases, as the partly overlapping and analogous analysis of student concussion cases (Zirkel, 2016) illustrates, is an additional line of further research. Such investigation will likely find that the nuances of ABI, as reflected in the evidence-based professional literature, are largely lost in the decision-making process of these legal forums due in part to their (a) emphasis on procedural matters, (b) lack of specialized expertise, and (c) congested level of activity. Another major contributing factor, as the final column in the Appendix reveals, is that often the ruling does not depend on the ABI status of the child due to either the purely procedural or adjudicative nature of the issue or the concomitance of additional disability diagnoses.

In sum, the conclusion repeats with reinforcement the ending of its predecessor (Zirkel, 2011): “This relatively comprehensive and current canvassing of the various sources of law specific to students with [ABI] in pre-K through grade 12 serves as a primer of special education law for parents, advocates, and school personnel with a special interest in these children” (pp. 38–39). Thus, it adds to the focused foundation for obtaining a more complete understanding of the issues and forums for decisional dispute resolution under the IDEA and Section 504/ADA for students with ABI specifically and students with disabilities more generally.

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6 voluntary resolution agreements;^cincluding 1 qualified ruling; ^dincluding 4 qualified rulings

Appendix: Compilation of Decisions and Issue Category Rulings for Each of the Four Alternative Forums

Case Name	Citation	Issue Category	Ruling	Comment
Complaint Investigation Procedures (CIP) Decisions (n=11)				
Seminole Cty. Sch. Dist.	114 LRP 9296 (Fla. SEA 2010)	FAPE	P	3,4-procedural
St. Cloud Indep. Sch. Dist. #742	110 LRP 40192 (Minn. SEA 2010)	FAPE	P	3,4-failure to implement and procedural (but only partial)
Rapid City Area Sch. Dist.	112 LRP 24614 (S.D. SEA 2010)	Identification	S	3,4-including child find
Anne Arundel Cty. Pub. Sch.	110 LRP 72199 (Md. SEA 2010)	FAPE	P	3,4-AT, ESY
Strongsville City Sch. Dist.	110 LRP 74236 (Ohio SEA 2010)	FAPE	S	3,4-various procedural FAPE issues
Brandywine Sch. Dist.	58 IDELR ¶ 119 (Del. SEA 2011)	FAPE	P	3,4-inter-district transfer of student w. IEP and absenteeism – marginal (Misc.)
In re Student with a Disability	113 LRP 8908 (S.D. SEA 2012)	Remedies	P	3,4-IEE reimbursement (failure to evaluate all suspected disabilities, including TBI due to concussions)
El Paso Cty. Sch. Dist. 3	60 IDELR ¶ 117 (Colo. SEA 2012)	Identification	P	3,4-delayed evaluation of child subsequently elig. as TBI
		FAPE	S	3,4-not predetermination or FTI (re bullying)
Lakeview Sch. Dist.	64 IDELR ¶ 89 (Mich. SEA 2013)	Identification	P	E,4-child find violation-district disregarded parent's request for an initial evaluation for TBI
Montgomery Cty. Pub.	115 LRP 24190	FAPE	S	3,4-IHP for post-concussive syndrome coordinated

Sch.	(Md. SEA 2015)			with IEP for OHI (ADD) adequately addressed TBI needs
Jefferson Cty. Sch. Dist. RE-1	118 LRP 28108 (Colo. SEA 2018)	Identification	S	3,4-504 plan sufficed here
Office of Civil Rights (OCR) Decisions (n=9)				
Fairfax Cty. (VA) Pub. Sch.	112 LRP 15741 (OCR 2011)	§ 504/ADA (FAPE)	P*	3,4-district voluntarily agreed to various remedies
Cabarrus Cty. (NC) Sch.	59 IDELR ¶ 113 (OCR 2012)	§ 504/ADA (Elig.)	P*	3,4-voluntarily agreed to evaluate child with TBI for possible 504 plan and compensatory education
Miami-Dade Cty. (FL) Pub. Sch.	60 IDELR ¶ 234 (OCR 2012)	§ 504/ADA (FAPE) ^{DC}	P*	3,4-partial child find-district voluntarily agreed to evaluate child with TBI for speech therapy services
Blue Eye (MO) R-V Sch. Dist.	113 LRP 52486 (OCR 2013)	§ 504/ADA (FAPE) ^{DC}	P*	3,4-district voluntarily agreed to resolve summer school exclusion w. various remedies – marginal (limited facts)
Tucson (AZ) Unified Sch. Dist.	114 LRP (OCR 2014)	§ 504/ADA (FAPE)	S	3,4-implementation of 504 plan
		§ 504/ADA (Misc.)	S	3,4-retaliation and intimidation
Dixon Cty. (TN) Sch. Dist.	115 LRP 37687 (OCR 2015)	§ 504/ADA (Elig.)	P	3,4-failure to evaluate 504-only student for IDEA elig.
		§ 504/ADA (Discip.)	P	3,4-Sat. school punishment for disability-related behavior
		§ 504/ADA (Misc.)	S	3,4-reward system for non-bathroom use – unfounded
Utica (MI) Cmty. Sch.	116 LRP 12081 (OCR 2015)	§ 504/ADA (FAPE) ^{DC}	P*	3,4-district voluntarily agreed to re-do IEP, incl. reevaluation and parent participation
Harmony (TX) Pub. Sch.	116 LRP 34809 (OCR 2016)	§ 504/ADA (FAPE) ^{DC}	P*	3,4-district voluntarily agreed to implement disputed accommodations/services – marginal (limited facts)

Traverse City (MI) Area Pub. Sch.	117 LRP 7907 (OCR 2016)	§ 504/ADA (FAPE) ^{DC}	P*	3,4-district voluntarily agreed to review and revise IEP for use of adaptive stroller (but other claims seemingly S)
Hearing and Review Officer (H/RO) Decisions (n=40)				
Garden Grove Unified Sch. Dist.	111 LRP 63908 (Cal. SEA 2010)	Adjudicative	S	3,4-stay-put
		FAPE	P	3,4-failure to implement full IEP → compensatory ed. plus transp. reimbursement
		FAPE	S	3,4-evaluation and related services
District of Columbia Pub. Sch.	111 LRP 18455 (D.C. SEA 2010)	FAPE	P	3,4-including transition services → prospective placement plus
District of Columbia Pub. Sch.	111 LRP 1703 (D.C. SEA 2010)	Identification	P	3,4-elig. with FAPE overlap → correct IEP and compensatory ed.
Chi. Pub. Sch. Dist. #299	111 LRP 50962 (Ill. SEA 2010)	FAPE	P	3,4-procedural FAPE → compensatory ed.
District of Columbia Pub. Sch.	111 LRP 26545 (D.C. SEA 2010)	Remedies	P	3,4-IEE at public expense
District of Columbia Pub. Sch.	111 LRP 20830 (D.C. SEA 2010)	Remedies	P	3,4-IEE at public expense
Newport-Mesa Unified Sch. Dist.	111 LRP 73203 (Cal. SEA 2010)	FAPE	S	3,4-regular diploma
Fanett-Metal Sch. Dist.	111 LRP 6384 (Pa. SEA 2010)	FAPE	P	3,4-insufficient evaluation and IEP → compensatory ed.
Reg'l Sch. Unit No. 16	111 LRP 39327 (Me. SEA 2011)	FAPE	S	3,4-substantive; marginal due to multiple disabilities
Los Angeles Unified Sch. Dist.	111 LRP 58052 (Cal. SEA 2011)	FAPE	P	3,4-parental participation and failure to implement → compensatory ed.
Des Moines Indep. Cnty. Sch. Dist.	114 LRP 28802 (Iowa SEA 2011)	FAPE	S	3,4-substantive and procedural

District of Columbia	113 LRP 18730 (D.C. SEA 2012)	FAPE	P	3,4-prospective placement; marginal case due to only one of many disabilities
Lakeshore Sch. Dist.	112 LRP 14671 (Wis. SEA 2012)	FAPE	S	
District of Columbia	112 LRP 30738 (D.C. SEA 2012)	Remedies	S	3,4-unproven need for compensatory ed.
Shenandoah Valley Sch. Dist.	112 LRP 18993 (Pa. SEA 2012)	Adjudicative	S	3,4-statute of limitations for prior period
		FAPE	P	3,4-residence/enrollment issue → compensatory ed.
Prince George's Cty. Sch. Bd.	112 LRP 49351 (Md. SEA 2012)	FAPE	S	3,4-including evaluation
Saddleback Valley Unified Sch. Dist.	112 LRP 26103 (Cal. SEA 2012)	FAPE	S	3,4-ESY – summers on each side of school year
		FAPE	P	3,4-LRE – school year → tuition/transp. reimbursement
N. St. Francois Cty. R-1 Sch. Dist.	59 IDELR ¶ 179 (Mo. SEA 2012) ^{RO}	FAPE	S	3,4-LRE (move from gen. ed. to sp. ed. science class)
Hillsborough Cty. Sch. Bd.	60 IDELR ¶ 145 (Fla. SEA 2012)	FAPE	S	3,4-denied reimbursement due to appropriate IEP (+untimely notice)
Dist. of Columbia Pub. Sch.	114 LRP 3890 (D.C. SEA 2013)	Identification	Inc.	3,4-violation of child find w. reluctance but dismissed compensatory ed. w/o prejudice pending elig. evaluation
Palm Beach Cty. Sch. Bd.	62 IDELR ¶ 307 (Fla. SEA 2013)	FAPE	S	3,4-low <i>Rowley</i> threshold and B/P on parents despite reduced services after TBI to student with SLD
Council Rock Sch. Dist.	114 LRP 25058 (Pa. SEA 2014)	FAPE	S	3,4-provided appropriate school accommodations to student with ED who experienced concussion
Propel Charter Sch.	114 LRP 41328 (Pa. SEA 2014)	FAPE	S	3,4-provided appropriate school accommodations to student with SLD who experienced concussion
E. Whittier Sch. Dist.	115 LRP 40940 (Cal. SEA 2015)	Remedies	S	3,4-IEE reimbursement - district's evaluation was appropriate incl. failure to assess TBI because

				internal (chemotherapy) – marginal
Jefferson Cty. Sch. Dist. R-1	67 IDELR ¶ 250 (Colo. SEA 2015)	Misc.	S	3,4-consent for evaluation (overriding parent’s many conditions) - reasonable
Mars Area Sch. Dist.	115 LRP 56455 (Pa. SEA 2015)	§ 504/ADA (Child Find/FAPE)	P	3,4-failure for timely 504 evaluation and 504 plan→ compensatory education
Solon City Sch. Dist.	116 LRP 32555 (Ohio SEA 2016)	Remedies	S	3,4-district’s evaluation was appropriate – thus, denied IEE at public expense
District of Columbia Pub. Sch.	118 LRP 11577 (D.C. SEA 2018)	FAPE	P	3,4-child find → tuition reimbursement
Mars Area Sch. Dist.	115 LRP 56455 (Pa. SEA 2015)	§ 504/ADA (Child Find/FAPE)	P	3,4-failure for timely 504 evaluation and 504 plan→ compensatory education
Eugene Sch. Dist. 4J	118 LRP 15830 (Or. SEA 2018)	Identification	P	3,4-concussion→TBI elig. – compensatory ed. (overlap w. FAPE)
District of Columbia Pub. Sch.	118 LRP 23090 (D.C. SEA 2018)	FAPE	P	3,4-substantive FAPE – though less relief than parent sought
Vilonia Sch. Dist.	72 IDELR ¶ 136 (Ark. SEA 2018)	Discipline	P	3,4-not requisite dangerousness for 45-day interim alternate educational setting
Dep’t of Pub. Instruction	118 LRP 40692 (Wis. SEA 2018)	Adjudicative	S	3,4-statute of limitations
Pittsburgh Sch. Dist.	73 IDELR ¶ 84 (Pa. SEA 2018)	FAPE	S	3,4-placement; marginal case – many disabilities
N.Y.C. Dep’t of Educ.	119 LRP 1573 (N.Y. SEA 2018) ^{RO}	Adjudicative	S	3,4-stay-put
N.Y.C. Dep’t of Educ.	119 LRP 4663 (N.Y. SEA 2019) ^{RO}	Adjudicative	S	3,4-stay-put
RSU #31/M.S.A.D. #31	119 LRP 12193 (Me. SEA 2019)	FAPE	P	3,4-child find violation → partial compensatory ed. services
S. Orange Cent. Sch.	119 LRP 15955	FAPE	S*	3,4-limited exception of compensatory ed. for

Dist.	(N.Y. SEA 2019)			missed counseling sessions
San Leandro Unified Sch. Dist.	119 LRP 18039 (Cal. SEA 2019)	Remedies	S	3,4-district's evaluation was appropriate – thus, denied IEE at public expense
Cornerstone Charter Acad., Inc.	119 LRP 22538 (N.C. SEA 2019)	Identification	S	3-child find; 4-lack of evidence for both TBI and special ed. need
Court Decisions (n=29)				
R.B. v. N.Y.C. Dep't of Educ.	57 IDELR ¶ 155 (S.D.N.Y. 2011)	Adjudicative	S	3,4-statute of limitations (reversing tuition reimbursement award)
N.P. v. E. Orange Bd. of Educ.	56 IDELR ¶ 49 (D.N.J. 2011)	FAPE	S	3,4-procedural violation w/o loss to student
M.B. v. Hamilton Se. Sch.	688 F.3d 851 (7th Cir. 2011)	FAPE	S	3,4-substantive FAPE
Alt v. Shirey	2012 WL 726579, <i>adopted</i> , 2012 WL 726593 (W.D. Pa. 2012)	§ 504/ADA (FAPE)	Inc.	3,4-denied dismissal of failure-to-accommodate claim (marginal – incidental to various other liability claims)
G.J. v. Muscogee Cty. Sch. Dist.	688 F.3d 1258 (11th Cir. 2012)	Misc.	S	3,4-consent for reevaluation – extensive conditions amounted to effective refusal
J.R. v. Cox-Cruey	61 IDELR ¶ 212 (E.D. Ky. 2013)	Adjudicative	S	3,4-stay-put: student aged out (and also untimely appeal to second tier – 65 IDELR ¶ 294 (E.D. Ky. 2015))
	65 IDELR ¶ 294 (E.D. Ky. 2015)	Adjudicative	S*	3,4-failure to exhaust (untimely at second tier)
Street v. District of Columbia	64 IDELR ¶ 140 (D.D.C. 2014)	§ 504/ADA ^{DC} (Adjudicative)	Inc.	3,4-failure to exhaust
Coleman v. Pottstown Sch. Dist.	581 F.App'x 141 (3d Cir. 2014)	FAPE	S	marginal (one of many disabilities)
Ripple v. Marble Falls	99 F. Supp. 3d 662	§ 504/ADA	S	3,4-return to play concussion case - lack of requisite

Indep. Sch. Dist.	(W.D. Tex. 2015)	(Misc.)		bad faith or gross misjudgment
L.M. v. Downingtown Area Sch. Dist.	65 IDELR ¶ 124 (E.D. Pa. 2015)	FAPE	S	marginal (largely other conditions)
Doe v. Bd. of Educ. of Washington Cty.	66 IDELR ¶ 5 (D. Md. 2015)	§ 504/ADA ^{DC} (Adjudicative)	Inc.	3,4-no need to exhaust
Perrin v. Warrior Run Sch. Dist.	66 IDELR ¶ 225, <i>adopted</i> , 66 IDELR ¶ 254 (M.D. Pa. 2015)	Identification	S	3,4-including child find and evaluation - two concussions
		§ 504/ADA (Elig.)	S	3,4-even assuming <i>arguendo</i> elig., lack of requisite intent
A.L. v. Jackson Cty. Sch. Bd.	635 F. App'x 774 (11th Cir. 2015)	FAPE	S	3,4-lack of participation attributable to parent
		Remedies	S	3,4-IEE reimb.-parent exceeded reasonable limits
		§ 504 (Adjudicative) ^{DC}	S	3,4-jurisdiction (e.g., exhaustion, waiver)
	652 F. App'x 795 (11th Cir. 2016)	Adjudicative	P	3,4-Rule 11 sanctions against P reversed due to lack of frivolousness (2015 FAPE ruling for S-above)
G.W. v. Boulder Valley Sch. Dist.	67 IDELR ¶ 112 (D. Colo. 2016)	Adjudicative	S	3-stay-put; 4-IEP specified out-of-state residential placement (despite mother's preference for in-state)
Ricci v. Beech Grove City Sch.	68 IDELR ¶ 67 (S.D. Ind. 2016)	FAPE	S*	4-but ordered tuition reimbursement for stay-put period
C.S. v. Montclair Bd. of Educ.	70 IDELR ¶ 206 (D.N.J. 2017)	FAPE	S	3-procedural & substantive; 4-denied tuition reimbursement
Doe v. Pleasant Valley Sch. Dist.	119 LRP 364 (S.D. Iowa 2017), <i>aff'd mem.</i> , 745 F. App'x 658 (8th Cir. 2018)	§ 504 (FAPE) ^{DC}	S	3,4-failure to follow IEE does not constitute requisite gross misjudgment or bad faith
Lincoln-Sudbury Reg'l Sch. Dist. v. Mr. W	71 IDELR ¶ 153 (D. Mass. 2018)	Identification	S	3-incl. child find (and parallel state law) - concussion
		§ 504/ADA(Elig.)	S	3-elig. (duration-concussion)
M.N. v. Sch. Bd. of	71 IDELR ¶ 170	FAPE	P	3,4-multiple disabilities—marginal

City of Va. Beach	(E.D. Va. 2018)	Remedies	P	3,4-tuition reimbursement - two years and stay-put
Trujillo v. Sacramento Unified Sch. Dist.	71 IDELR ¶ 213 (C.D. Cal. 2018)	§ 504/ADA (Misc.) ^{DC}	S	3,4-retaliation
Doe v. City of New Bedford	72 IDELR ¶ 18 (D. Mass. 2018)	§ 504/ADA (Misc.) ^{DC}	S	3,4-settlement agreement release
Tveter v. Derry Cooperative Sch. Dist.	72 IDELR ¶ 149 (D.N.H. 2018)	§ 504/ADA (Adjudicative) ^{DC}	Inc.	3,4-failure to exhaust; 4-possible liability of private school, not school district
Tuttle v. Cent. Kitsap Sch. Dist.	72 IDELR ¶ 242 (W.D. Wash. 2018)	Adjudicative	Inc.	3,4-denied district's motion of summary judgment re enforcement of settlement agreement
PlainsCapital Bank v. Keller Indep. Sch. Dist.	746 F. App'x 355 (5th Cir. 2018)	§ 504/ADA (FAPE) ^{DC}	S	3,4-lack of deliberate indifference (suicide liability case)
Carr v. New Glarus Sch. Dist.	73 IDELR ¶ 36 (W.D. Wis. 2018)	FAPE	S	3-including implementation issues; 4-denied reimb. for college calculus course (including untimely request)
A.C. v. Capistrano Unified Sch. Dist.	73 IDELR ¶ 94 (C.D. Cal. 2018)	FAPE	S*	3,4-effect limited to attorneys' fees and prospective placement due to stay-put for tuition reimbursement
		Remedies	P	3,4-transportation reimb. (via stay-put) - subject to records
Dennis v. Lubbock-Cooper Indep. Sch. Dist.	74 IDELR ¶ 18 (N.D. Tex. 2019)	FAPE	S*	3- <i>Andrew F.</i> ; 4-but reimbursement of IEE (incidental)
Ventura de Paulino v. N.Y.C. Dep't of Educ.	74 IDELR ¶ 40 (S.D.N.Y. 2019)	Adjudicative	S	3-stay-put
Morales v. Newport-Mesa Unified Sch. Dist.	768 F. App'x 717 (9th Cir. 2019)	Remedies	S	3-limited compensatory ed. (child find/FAPE)
		§ 504/ADA (FAPE)	S	3,4-lack of deliberate indifference

Note: ^{DC}=double-covered (i.e., § 504 claim for student with IEP); ^{RO}=review officer decision; *=qualified (i.e., semi-intermediate) rulings; acronyms:

ADDD=attention deficit disorder; AT=assistive technology; ED=emotional disturbance; ESY=extended school year; FAPE=free appropriate public education;

TI=failure to implement; IEE=independent educational evaluation; IEP=individualized education program; LRE=least restrictive environment; OHI=other health impairment; SLD=specific learning disability.