Discipline of Students with Disabilities: A Judicial Update

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Discipline of students with disabilities continues to be a “hot” legal issue based on the intersection of the competing interests of the zero-reject and the zero-tolerance philosophies, respectively. The focus of the professional literature to date has been on the suspension/expulsion, or “removal,” provisions of the Individuals with Disabilities Act (IDEA), most recently in terms of its 2004 amendments, 2006 regulations, and related litigation. In contrast, other forms of discipline of students with disabilities, such as restraints, and pertinent legal limits, such as Section 504 and the Americans with Disabilities Act (ADA), have received limited attention. A notable exception was an annotated outline of the case law as of 2003.

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2 “Discipline” is used generically herein, whether intended as punishment, protection, or for other purposes. On the other hand, this compilation does not extend to the case law concerning functional behavioral assessments and behavior intervention plans or relatively minor forms of discipline, such as detentions or field trip exclusions.


This article provides a selective update of the 2003 annotated outline, being limited to the pertinent published court decisions for the various major forms of discipline, other than suspensions and expulsions, of students with disabilities under the Constitution, the IDEA, Section 504 and the ADA, and state laws for teacher discipline (e.g., termination or child abuse/neglect). Although the focus is the case law for the intervening five years, this annotated outline also includes previous court decisions missed in the earlier article.

Various prefatory caveats and clarifications once again are warranted. First, the categories serve as useful organizers, but they neither particularly precise nor mutually exclusive. For example, the categories of restraints and corporal punishment notably overlap with each other; thus, the placement of a particular case in either of these two categories is only approximate. However, repetitions of a case are limited to those

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5 “Published” in this compilation refers to not only officially published court opinions but also those appearing in West’s Federal Appendix (Fed. Appx.) and LRP’s Individuals with Disabilities Education Law Report (IDELR).

6 This compilation does not include corresponding cases where the plaintiff student was not claimed to have a disability. See, e.g., Doe v. State of Hawaii Dep’t of Educ., 334 F.3d 906 (9th Cir. 2003); Golden v. Anders, 324 F.3d 650 (8th Cir. 2003) (restraints); Dickens v. Johnson County Bd. of Educ., 661 F. Supp. 155 (E.D. Tenn. 1987) (time-out).

7 The earlier article included hearing/review officer decisions and OCR letters of findings as well as suspensions/expulsions, but this update focuses on the most significant sources and areas, respectively. For readers interested in the lower, administrative rulings, see, e.g., Waukee Cmty. Sch. Dist., 48 IDELR ¶ 26 (Iowa SEA 2007); Raytown C-2 Sch. Dist., 39 IDELR ¶ 149 (Mo. SEA 2003) (restraint and time-out); Jefferson Parish Pub. Sch. Sys., 48 IDELR ¶ 266 (La. SEA 2007); Maine Sch. Admin. Dist. No. 6, 46 IDELR ¶ 239 (Me. SEA 2006); McCracken County (KY) Sch. Dist., 18 IDELR 482 (OCR 1991) (time-out); Greater Albany Sch. Dist., 49 IDELR ¶ 6 (Or. SEA 2007); In re Student with a Disability, 39 IDELR ¶ 200 (Vt. SEA 2003); Mukliteo Sch. Dist., 43 IDELR ¶ 231 (Wash. SEA 2005); Knox County Sch. Dist., 47 IDELR ¶ 140 (OCR 2006); Wright (Elementary) Sch. Dist., 38 IDELR ¶ 272 (OCR 2003) (restraint); In re Student with a Disability, 41 IDELR ¶ 115 (Wis. SEA 2003) (aversives).


9 See, e.g., UTAH ADMIN CODE r.277-608-2 (2006) (references to physical restraint and corporal punishment w/o distinction).
instances where the facts clearly extended to more than one of the other categories of discipline. Second, the blurbs for each case are purposely brief; the reader is advised to read the entire case, with legal counsel where necessary, to arrive at a full understanding of the holding. Third, the format, which is designed to show a macro view of the trends within each category, includes the following further abbreviated features:

1) Each category starts in bold typeface with not only a heading but also a summary statement of the overall trend for said category. The summary statement is different from the one in the previous article only to the extent that these updated entries change the cumulative effect in direction or degree to warrant a modification.\(^{10}\) The case entries are listed in chronological order within each category. The relatively few repetitions are cited with the “\textit{supra}” cross reference.

2) Each case is prefaced by a symbol designating the outcome\(^{11}\) as follows:

- \(S\) = relevant ruling in favor of school district
- \(P\) = relevant ruling in favor of plaintiff-parent or -student (or plaintiff-teacher)\(^{12}\)
- ( ) = an inconclusive outcome (e.g., denial of a summary judgment)

3) The blurbs include the following acronyms:

- ADA = Americans with Disabilities Act
- AD/HD = Attention Deficit/Hyperactivity Disorder
- Am. IV = Fourth Amendment
- Am. VIII = Eighth Amendment (cruel and unusual punishment clause)
- Am. XIV = Fourteenth Amendment
- BIP = behavior intervention plan

\(^{10}\) In the notable absence of pertinent published court decisions since the 2003 outline for “electric shock” and “noxious substances,” those categories have been folded herein into the final catchall category of “other aversives.”

\(^{11}\) The outcome is limited to the discipline issue(s) and the school defendant(s), thereby excluding other parts of the decision.

\(^{12}\) As an exception, the symbol “\(T\)” is used for the relatively few cases where the successful plaintiff was a teacher.”
4) Finally, conforming to the format of the previous article and tracking the frequency of the primary special education statute, the case citations and blurbs are italicized where the basis was, at least in part, the IDEA.

One overall conclusion is that, contrary to a common conception, the majority of the pertinent published cases are based largely or entirely on grounds other than the IDEA, such as § 504, § 1983 constitutional claims, and state law. Second, although the outcomes vary, as is typical of the individualized, fact-based nature of special education, the overall outcome pattern favors school districts to a wider degree than one might expect. This pattern is in line with the continuing recent judicial trend to avoid “constitutionalizing” public school matters, including discipline.13 Thus, despite the philosophical aversion of various special educators and their organizations to aversives, these federal cases largely leave such matters, except in egregious circumstances, to the professional discretion of school authorities. Third, the other exception, which has not played a role in most of these cases, is the relatively few states that provide specific

13 See, e.g., Perry A. Zirkel, Constitutionalizing “Detentions,” 86 PHI DELTA KAPPAN 639 (2005); Perry A. Zirkel & Ivan L. Gluckman, Constitutionalizing Corporal Punishment, 67 PRINCIPAL 60 (1988); Perry A. Zirkel & Ivan L. Gluckman, The Constitution and the Curriculum, 68 PRINCIPAL 60 (1988). The barriers to liability under the various federal civil rights statutes include the exhaustion doctrine, the preemption of § 1983 for IDEA and § 504 cases, the shocks-the-conscience standard for Am. XIV SDP, the qualified immunity for school officials, and the hurdles in establishing municipal, or district, liability in § 1983 suits.
strictures in their regular education or special education laws\textsuperscript{14} beyond the brief encouragement of the IDEA to use positive interventions.\textsuperscript{15} Finally, the colloquial abbreviated designation of “O.K.” herein means legal permissibility, which should not be confused with either a legal requirement or a professional recommendation. The prevailing view of best practice—presumably incorporated in local policy if not state law—provides a clearly different picture within the broad latitude of the federal legal minimum delineated by these published court decisions.

**Corporal Punishment – O.K. where allowed under state law and either in IEP or otherwise carefully limited**

\textit{S} Gonzales v. Brown, 768 F. Supp. 2d 581 (S.D. Tex. 1991) – granted summary judgment for defendant district in § 1983 constitutional tort suit due to lack of evidence of policy or custom of abuse, including but extending beyond corporal punishment, of students with disabilities


\textit{S} Corey H. v. Cape Henlopen Sch. Dist., 286 F. Supp. 2d 380 (D. Del. 2003) – teacher’s alleged shoving student with disability out the door and holding him against the wall did not constitute change in placement, or hostile environment, under IDEA

\textit{(P)} McCormick v. Waukegan Sch. Dist. No. 60, 374 F.3d 564 (7th Cir. 2004) – exhaustion requirement did not apply to parent’ IDEA compensatory-damages claim for alleged physical and emotional abuse of their child with a disability because the child had graduated


\textsuperscript{15} \textit{See, e.g.,} Letter to Trader, 48 IDELR ¶ 47 (OSEP 2006) (“Whether to allow IEP teams to consider the use of aversive behavioral intervention is a decision left to each state”). The 2006 regulations of the IDEA only slightly strengthened the emphasis on positive interventions, while subtly but cumulatively weakening the removal protections overall. \textit{See supra} Zirkel, note 1, at 448 n.18.
(P) cf. Teague v. Texas City Indep. Sch. Dist., 348 F. Supp. 2d 785 (S.D. Tex. 2004) – denied motion to dismiss parents’ Am. IV claim that strip-search w/o opportunity to contact her parents highly traumatized a child with MR

S Flores v. Sch. Bd., 116 Fed. Appx. 504 (5th Cir. 2004) – summarily denied § 1983 (Am. IV seizure + Am. XIV SDP) and, due to failure to exhaust, IDEA claims arising from incident in which teacher allegedly threw student with disabilities against the wall, placed his hands around student's neck, and began to choke him while threatening further bodily harm

(P) A.B. v. Seminole County Sch. Bd., 44 IDELR ¶ 245 (M.D. Fla. 2005), further proceedings, 47 IDELR ¶ (M.D. Fla. 2006) – dismissed § 504 and conspiracy claims against teacher but charges of physical abuse of student with autism, including slapping and choking him, were sufficiently serious to preserve the § 1983 SDP claim for further proceedings

(P) Doe v. State of Nevada Dep’t of Educ., 46 IDELR ¶ 124 (D. Nevada 2006) – summarily denied parents’ tort and § 504/ADA claims but preserved for trial their Am. XIV SDP claim based on allegation that preschool teacher and teacher’s aide twisted the arm of three-year-old child with autism, lifted him, threw him toward a wall, grabbed his wrists, and forced him to strike himself in the head 10-12 times

16 Hagen v. Indep. Sch. Dist. No. I-004, 157 P.3d 738 (Okla. 2007) – affirmed trial court’s determination that district failed to prove that special education teacher’s slapping the cheek of sixth grade student with disability constituted physical abuse under the state’s teacher termination statute

S Austin B. v. Escondido Union Sch. Dist., 57 Cal. Rptr. 454 (Ct. App. 2007) – affirmed trial court’s posttrial judgment, with attorneys’ fees, for defendant district where two preschool students with autism claimed battery, negligence, and violation of state civil rights statutes in wake of their teacher’s instructional touching, including deep pressure techniques and sample pinch

S Edwards v. County Bd. of Educ., 48 IDELR ¶ 153 (S.D. Ga. 2007) – summarily rejected § 1983 SDP claims of two unrelated five-year-old girls with developmental delays in the wake of teacher’s unacceptable but not egregious infliction of minor arm bruises and denial of bathroom privileges


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16 See supra note 12.
(P) Roe v. State of Nevada, 49 IDELR ¶ 68 (D. Nev. 2007); see also Preschooler II v. Clark County Bd. of Educ., 479 F.3d 1175 (9th Cir. 2007) – refused to dismiss § 1983 SDP/Am. IV, § 504, and ADA claims where special education teacher allegedly slapped and “slammed” preschool student with autism

Restraints – O.K. within prudent limitations (e.g., as specified in the IEP), and generally less latitude where the restraint is mechanical than physical


S/(P) Albert v. Harford Pub. Sch., 38 IDELR ¶ 38 (D. Md. 2003) – dismissed various state common law claims (e.g., defamation and fraud) for failing to establish requisite factual elements and dismissed § 504/ADA retaliation/discrimination claims against individual defendants in their personal but not official capacities in case arising out of alleged repeated physical restraints w/o a BIP

S CJN v. Minneapolis Pub. Sch., 323 F.3d 630 (8th Cir. 2003) – upheld appropriateness of IEP for a third grader with ED despite increasing use of restraints

S Doe v. State of Hawaii, 351 F. Supp. 2d 998 (D. Hawaii 2004) – summarily rejected § 504 suit school officials who taped child’s head to a tree for five minutes w/o knowing or having reason to know that the student had a disability (in this case, AD/HD)—also rejected, on immunity grounds, § 1983 and tort claims

(P) Meers v. Medley, 168 S.W.3d 406 (Ky. Ct. App. 2004) – ruled that parents need not exhaust IDEA administrative remedies in their suit under § 1983 (unspecified basis) and state law that special education teacher abused, including having engaged in unnecessary physical restraint of, two students with disabilities

S Hayenga v. Nampa Sch. Dist. No. 131, 123 Fed. Appx. 783 (9th Cir. 2005) – affirmed summary judgment for district that it was not negligent, after summoning police officer, in failing to intervene with forcible restraint, including handcuffing and injury, of student with development disabilities

17 This ruling warrants re-examination in light of the subsequent Third Circuit precedent in A.W. v. Jersey City Schools, 486 F.3d 791 (3d Cir. 2007).
S  Pigford v. Jackson Pub. Sch. Dist., 910 So.2d 575 (Miss. Ct. App. 2005) – ruled that teacher aide’s allegedly injurious restraint of student with autism in an effort to protect him upon his out-of-control anxiety attack did not constitute willful or wanton conduct to waive immunity under the state’s tort claims act

S  Alex G. v. Bd. of Trustees, 387 F. Supp. 2d 1119 (E.D. Cal. 2005) – dismissed parents’ § 504 claim for money damages for teachers’ use of restraints to stop second-grade student with disabilities from sliding on table tops – unknown to teachers, parents had withdrawn consent to use restraints

(T)  State of Florida v. Christie, 939 So.2d 1078 (Fla. Dist. Ct. App. 2005) – reversed dismissal, ruling that teacher’s failure to intervene when teacher aide bound students with disabilities to blackboard and desks with tape could constitute child neglect under Florida’s statute

S(P)  Colon v. Colonial Intermediate Unit No. 20, 443 F. Supp. 2d 659 (M.D. Pa. 2006) – dismissed IDEA but not § 1983 IDEA money-damage claims (w/o exhaustion) against teacher for use of passive restraints and day-long time-out of student with ED


S  DeKalb County Sch. Dist. v. J.W.M., 445 F. Supp. 2d 1371 (N.D. Ga. 2006) – dismissed IDEA and Am. VIII challenges to alleged physical restraint (and food deprivation) of student with autism for failure to exhaust and clear contrary precedent, respectively

S  Lyons v. Illinois Dep’t of Children & Family Serv., 858 N.E.2d 542 (Ill. Ct. App. 2006) – held that assistant teacher’s restraint of student with ED, resulting in bump on child’s head, did not constitute child abuse under Illinois law

S  Mallory v. Knox County Sch. Dist., 46 IDELR ¶ 276 (E.D. Tenn. 2006) – dismissed § 1983 (unspecified provision in Constitution) and state law claims for money damages arising from alleged restraint of elementary school student with disability for failure to exhaust IDEA administrative remedies

S  Damian J. v. Sch. Dist., 49 IDELR ¶ 161 (E.D. Pa. 2007) – district’s three uses of physical restraint to protect student with disability or others from harm did not violate IDEA or state special education regulations

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18 Id.

S(P) John G. v. Northeastern Educ. Intermediate Unit 19, 490 F. Supp. 2d 565 (M.D. Pa. 2007), on reconsideration, 49 IDELR ¶ 157 (M.D. Pa. 2008) – in companion case to Joseph G. cluster (supra), same teacher’s alleged repeated restraints and other abuse of another child with autism stated claim under IDEA money damages (w/o need for exhaustion), intentional infliction of emotional distress, § 1983 EP—but not SDP, and breach of fiduciary relationship—but subsequently partially expanded to include § 504 claim against the LEA, not the teacher

S A.D. v. Nelson, 48 IDELR ¶ 150 (N.D. Ind. 2007) – dismissed § 1983 (Am. IV seizure + XIV SDP) and ADA claims against district and special education teacher arising from allegedly placing nonverbal student with a mobility impairment in a harness and isolating him in a bathroom stall


S(P) W.E.T. v. Mitchell, 49 IDELR ¶ 130 (M.D.N.C. 2008) – dismissed § 1983 (Am. SIV SDP + Am IV seizure) claims against special needs therapist in her official, but not individual capacity arising from alleged forceful and malicious taping shut the mouth of a ten-year-old student with asthma and cerebral palsy

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(P) Koehler v. Juniata County Sch. Dist., 50 IDELR ¶ __ (M.D. Pa. 2008) – rejected dismissal of contractual indemnification claim and § 1983 SDP joint liability claim against nonprofit entities that provided private IEP placement for student with autism and that allegedly restrained the child in a “thermally-insulated camouflage jumpsuit with the zipper pinned and duct taped shut to prevent him from escaping” from a locked, overheated, barren room

Time Out (or Seclusion/Isolation) – O.K. if within IEP or other accepted bounds

S CIN v. Minneapolis Pub. Sch. (supra) – upheld appropriateness of IEP for a third grader with ED despite emergency use of time-outs

S Sch. Bd. v. Renollett, 440 F.3d 1007 (8th Cir. 2006) – ruled that escorting the fourteen-year-old student with multiple disabilities, when necessary, to special room to help him calm down did not violate the IDEA or the state special education law, which required emergency IEP meeting for “time out procedures for seclusion”

S(P) Colon v. Colonial Intermediate Unit No. 20 (supra) – dismissed IDEA but not § 1983 IDEA money-damage claims (w/o exhaustion) against teacher for use of passive restraints and day-long time-out (w/o lunch or bathroom break) of student with ED

S Melissa S. v. Sch. Dist., 183 Fed. Appx. 184 (3d Cir. 2006) – ruled that district’s use of time-out area in response to frequent disruptive outbursts of sixteen-year-old student with disabilities did not violate IDEA

(P) cf. Disability Rights Wisconsin, Inc. v. State of Wisconsin Dep’t of Pub. Instruction, 463 F.3d 719 (7th Cir. 2006); see also Connecticut Office of Protection & Advocacy for Persons with Disabilities v. Hartford Bd. of Educ., 464 F.3d 229 (2d Cir. 2006) (interviews and observations re use of restraints and seclusion) – held that federal laws allows advocacy organization to obtain access to certain personally identifiable information about students with disabilities as part of its IDEA investigation of use of seclusion rooms for discipline of students with disabilities

S Payne v. Peninsula Sch. Dist., 47 IDELR ¶ 35 (W.D. Wash. 2007) – dismissed, based on failure to exhaust IDEA administrative remedies, parent’ § 1983 money damages claim arising from alleged locking of seven-year-old student with developmental disabilities in a 63’-by-68” “safe room on a regular basis as a disciplinary measure

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20 Id.
A.C. v. Indep. Sch. Dist. No. 152, 48 IDELR ¶ 5 (D. Minn. 2007) – denied dismissal pending further investigation of the facts whether parents needed to exhaust IDEA administrative remedies for § 1983 claim arising from alleged confinement of twenty-year-old student with autism in a 70.5-square-foot “storage closet” for up to six hours per day

A.D. v. Nelson (supra) – dismissed § 1983 (Am. IV seizure + XIV SDP) and ADA claims against district and special education teacher arising from allegedly placing nonverbal student with a mobility impairment in a harness and isolating him in a bathroom stall

Koehler v. Juniata County Sch. Dist. (supra) – rejected dismissal of contractual indemnification claim and § 1983 SDP joint liability claim against nonprofit entities that provided private IEP placement for student with autism and that allegedly restrained the child in a “thermally-insulated camouflage jumpsuit with the zipper pinned and duct taped shut to prevent him from escaping” from a locked, overheated, barren room

Other Aversives


Alleyne v. New York St. Dep’t of Educ., 516 F.3d 96 (2d Cir. 2008) – vacated and remanded preliminary injunction, based on IDEA, against state regulation for out-of-state residential schools’ use of “aversive interventions,” including skin shocks, restraints, and contingent food programs, after positive interventions, in the IEP, and with committee safeguards


Although the boundary line is not bright, we did not include cases in which the plaintiff-parents characterized the action as the use of “aversives,” but it was not a technique not usually associated with this term in the school context. See, e.g., Valentino C. v. Sch. Dist., 40 IDELR ¶ 208 (E.D. Pa. 2004).