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**COVID-19 AND STUDENTS WITH DISABILITIES: A SNAPSHOT OF THE LEGAL ACTIVITY TO DATE<sup>a1</sup>**

The COVID-19 pandemic, which resulted in the closure of public schools in March 2020 and the return from remote to in-person instruction for varying periods depending on the state and locality, would appear to be a fertile field for legal activity under the Individuals with Disabilities Education Act (IDEA) and the pair of civil rights acts--Section 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA).<sup>1</sup> Added to the unprecedented systemic challenges, the special and varying needs of students with disabilities posed a particular problem for their parents as well as their teachers. The COVID-19 guidance issued by the federal agencies that administer these disability laws--the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) and, within it, the Office for Special Education Programs (OSEP) for the IDEA and the Office for Civil Rights (OCR) for § 504/ADA--provided school districts with only limited latitude in applying the regulatory requirements of these statutes, such as the central obligation for a free appropriate public education (FAPE).<sup>2</sup> The individualized requirements and alternative dispute resolution mechanisms of the IDEA and § 504/ADA, including decisional administrative avenues for adjudication and investigation,<sup>3</sup> provide the special leverage and outlets for legal activity concerning these problems.

The purpose of this relatively short article is to provide an overview of the legal activity resulting from the pandemic in these investigative and adjudicative forums, with particular attention to culminating court decisions. In general, neither the frequency nor the outcomes of the decisional legal activity to date has come close to the potential boom and boon for parent-plaintiffs that one might expect.

\*2 The two overall parts of this article concisely canvass the legal activity for the investigative and adjudicative avenues, under the IDEA and § 504/ADA with culminating and more intensive attention to judicial rulings. More specifically, the successive sections provide an illustrative sampling of the decisions for the IDEA state complaint procedure, the corresponding OCR complaint resolution process, the IDEA impartial hearing process, and, finally, the courts.

**I. Investigative Avenue****A. IDEA State Complaint Procedure<sup>4</sup>**

The IDEA's state complaint process provides a generally more convenient and favorable mechanism than its corresponding administrative adjudicative avenue.<sup>5</sup> The various specific differences include a primarily but not exclusively procedural orientation, a shorter limitations period, and the availability of judicial appeal in only a minority of states.<sup>6</sup> The frequency trend is inevitably imprecise largely due to the wide variance not only among the states but also in the issue of the complaint, which may be pandemic-specific in limited or incidental part. Nevertheless, the number appears to be lower than the immediate pre-pandemic level appears.<sup>7</sup>

The outcomes trend for the state complaint decisions for the pandemic period appears to approximate that of the pre-pandemic period. The most common issue concerns the failure-to-implement (FTI) dimension of FAPE,<sup>8</sup> with the majority of rulings in favor of the parents but with limited remedial relief.<sup>9</sup> The vast majority of the remaining issues were a variety of alleged procedural violations, with similar preponderantly parent-favorable rulings \*3 but more shallow relief.<sup>10</sup> Finally, despite both federal and state guidance and a few state laws for compensatory (i.e., recovery) services for learning losses,<sup>11</sup> the state complaint decisions addressing this issue have been relatively negligible.<sup>12</sup>

Due to the one-year limitations period for filing and the sixty-day period for issuance of the decision, with limited variance attributable to state laws and extensions,<sup>13</sup> the COVID-19 legal activity in this forum has almost entirely ended.

## **B. § 504/ADA OCR Complaint Resolution Process**

The legal activity for the corresponding investigative process under the broader coverage of § 504 and the ADA has been similarly limited in frequency and outcomes, although not as decisionally obvious due in part to the emphasis on voluntary resolutions in OCR case processing<sup>14</sup> and less extensive reporting in the primary commercial database.<sup>15</sup> Some of the cases focus on students with IEPs, because the broader coverage of § 504 and the ADA includes them, whereas others focus on students with 504 plans, who are sometimes referred to as “504-only” to show that they are not also covered by the IDEA.<sup>16</sup>

The most frequent issue has been ADA accessibility of school district websites and online services during the pandemic period, which all resulted in reported voluntary remediation.<sup>17</sup> The other, less frequent issues ranged from evaluations and virtual instruction during the pandemic<sup>18</sup> to the transition in returning to full in-person instruction,<sup>19</sup> including \*4 continuing the virtual option for medically vulnerable students with disabilities,<sup>20</sup> with most of them ending in voluntary resolution agreements. OCR also used its enforcement authority to launch investigations into four large education agencies, resulting in system-wide resolution agreements in two of them.<sup>21</sup>

## **II. Adjudicative Avenue**

### **A. IDEA Due Process Hearings<sup>22</sup>**

In part due to their primary role in the IDEA's prolonged adjudication process,<sup>23</sup> the hearing and review officer decisions arising from the pandemic period have not yet effectively ended. Nevertheless, the pattern is relatively clear. The most frequent issue is the FTI category of FAPE, with the outcomes predominantly in favor of parents.<sup>24</sup> The predominance was less pronounced than for the corresponding investigative avenue,<sup>25</sup> but the remedy tended to be more solid.<sup>26</sup> The remaining issues included substantive FAPE<sup>27</sup> and a \*5 variety of procedural disputes.<sup>28</sup> Yet, as in the IDEA state complaint forum,<sup>29</sup> very few due process decisions were specific to recovery services.<sup>30</sup>

Depending on the jurisdiction, most school districts returned to full in-person instruction at least two years ago. Thus, except for the relatively few remaining districts and the occasional temporary return to virtual learning for surged infection rates or medically compromised students with disabilities and the various sources of limited leeway in the two-year limitation period for filing for due process hearings,<sup>31</sup> the line of hearing and review officer decisions has largely faded out.

### **C. Court Decisions**

The court rulings specific to students with disabilities as a result of the COVID-19 pandemic have been rather anticlimactic due to the “ponderous” process of litigation under the IDEA,<sup>32</sup> including exhaustion of the majority of § 504 and ADA claims on behalf of students with IEPs.<sup>33</sup> Although various cases are still in the litigation pipeline, the bulk of the rulings were based on the purely adjudicative rulings at successive stages, such as standing,<sup>34</sup> exhaustion,<sup>35</sup> stay-put,<sup>36</sup> and mootness.<sup>37</sup> As a result, only a limited residue of court rulings have been on the merits of individual claims for FAPE under the IDEA, with mixed \*6 outcomes.<sup>38</sup> In contrast, numerous § 504/ADA claims focused on system-wide policies for or against universal masking during the post-return to in-person schooling, largely with preliminary success for the plaintiff-parents and eventual dissolution based on changed circumstances.<sup>39</sup>

## \*7 Conclusion

The unprecedented COVID-19 situation, which resulted in the replacement of in-person instruction with virtual instruction for varying significant periods, did not result in particular precedents for students with disabilities.<sup>40</sup> Rather than a boom in legal activity, the results in both the adjudicative and investigative avenues under the IDEA and § 504/ADA have been generally lower in frequency and only moderately more favorable to the plaintiff parents than the pre-pandemic levels.<sup>41</sup> The reasons for these findings are subject to further research but reflect the limits of law.<sup>42</sup> The ponderous process of IDEA adjudication has yielded one basic precedent: the obligation of FAPE continues to the greatest extent possible.<sup>43</sup> With the limited exceptions of appellate activity for the limited cluster of rulings on the merits and the continuation of any pending litigation that has not yet reached a decision, this snapshot is a retrospective rather than an episode in a movie series. Although additionally possible, the residual issues of recovery services<sup>44</sup> and long COVID<sup>45</sup> under the IDEA and § 504/ADA are unlikely to generate more than brief legal postscripts.

## Footnotes

- <sup>a1</sup> *Education Law Into Practice* is a special section of the Education Law Reporter sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 410 Educ. L. Rep. 1 (April 27, 2023).
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- <sup>1</sup> For the citations and contours of these statutory frameworks, see Perry A. Zirkel, *An Updated Comprehensive Comparison of the IDEA and Section 504/ADA*, 342 Educ. L. Rep. 886 (2017).
- <sup>2</sup> E.g., U.S. Dep’t of Educ., Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus 2019 Outbreak, at A-1, 76 IDELR ¶ 77 (Mar. 12, 2020), <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf> (interpreting the FAPE requirement to apply “to the greatest extent possible” and, thus, obligating school districts to “make every effort to provide [it].”). For the extensive remaining guidance, see <https://www.ed.gov/coronavirus/program-information#speeed> (under subheading “special education & rehabilitative services”). Available on their websites, various state education agencies have issued additional guidance).
- <sup>3</sup> See, e.g., Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Students with Disabilities*, 23 J. Special Educ. Leadership 100 (2010) (tracing the alternative avenues of due process hearings and state complaint procedures under the IDEA and impartial hearings and the OCR complaint resolution process under § 504/ADA).

- 4 34 C.F.R. §§ 300.151-300.153 (2021).
- 5 *See, e.g.*, Perry A. Zirkel, *A Comparison of the IDEA's Dispute Resolution Processes--Complaint Procedures and Impartial Hearings: An Update*, 369 Educ. L. Rep. 550 (2019) (comparing the various features of these two decisional administrative dispute resolution avenues).
- 6 *Id.* at 553-54; *see also* Perry A. Zirkel, *State Laws and Guidance for Complaint Procedures under the Individuals with Disabilities Education Act*, 368 Educ. L. Rep. 24 (2019).
- 7 Although the available data does not yet extend beyond the 2020-21 school year, the trend to that point is relatively consistent, and the limitations period for complaints is only one year, with the average period for decisions being less than three months. CADRE, IDEA Dispute Resolution Data Summary for U.S. and Outlying Areas: 2010-11 to 2020-2021 (2022), <https://www.cadeworks.org/resources/cadre-materials/2020-21-dr-data-summary-national> (reporting lower level of overall filings and decisions for 2020-21 school year than previous years); Perry A. Zirkel & Natalie Jones, *Due process Hearing and Written State Complaint Activity for COVID-19 Issues: A Six-Month Snapshot 9* (2020), <https://www.cadeworks.org/resources/cadre-materials-literature-article/due-process-hearing-and-written-state-complaint> (reporting generally lower levels of COVID-19 filings and decisions after six months).
- 8 For the basic dimensions of FAPE, *see* Perry A. Zirkel, *An Adjudicative Checklist of the Criteria of the Four Dimensions of FAPE under the IDEA*, 346 Educ. L. Rep. 18 (2017) (providing the criteria for procedural, substantive, FTI, and capable of implementing the IEP categories of FAPE).
- 9 *E.g., compare* Acad. for Urb. Scholars, 122 LRP 3290 (Ohio SEA 2022) (ordering memo to staff); Portland Pub. Sch. Dist., 78 IDELR ¶ 119 (Or. SEA 2020) (ordering training); In re Student with a Disability, 121 LRP 30360 (Wis. SEA 2021); Mounds View Pub. Sch. Dist., 121 LRP 13716 (Minn. SEA 2021); Greater Clark Cnty Schs., 121 LRP 1675 (Ind. SEA 2020); In re Student with a Disability, 120 LRP 29567 (Wis. SEA 2020); Beech Grove City Schs., 120 LRP 24255 (Ind. SEA 2020) (delegating to IEP team to determine compensatory education); In re Student with a Disability, 121 LRP 19244 (Me. SEA 2021); Bedford City Sch. Dist., 121 LRP 11937 (Ohio SEA 2021); Clark Cnty. Sch. Dist., 121 LRP 1636 (ordering compensatory education), *with* S. Madison Cmty. Sch. Corp., 122 LRP 13604 (Ind. SEA 2022); Worthington Pub. Sch. Dist., 121 LRP 3716 (Minn. SEA 2020); Toledo Pub. Sch., 121 LRP 1495 (Ohio SEA 2020); Denver Pub. Sch. Dist., 120 LRP 29273 (Colo. SEA 2020) (finding no FTI violation).
- 10 *E.g., compare* In re Student with a Disability, 121 LRP 39804 (Wis. SEA 2021) (shortened school day w/o IEP meeting → delegation to IEP team to determine compensatory education); Wadsworth City Schs., 121 LRP 38410 (Ohio SEA 2021) (lack of IEP meeting upon parental request for struggling student → conditional IEP meeting); Greenwood Cmty. Sch. Corp., 121 LRP 19201 (Ind. SEA 2021) (prior written notice and IEP meeting violations → training); Nw. Local Sch. Dist., 121 LRP 6033 (Ohio SEA 2020) (child find violation → policy memo); *cf.* Douglas Cnty. Sch. Dist., 78 IDELR ¶ 201 (Colo. SEA 2020) (evaluation consent violation but no denial of FAPE), *with* In re Student with a Disability, 121 LRP 37519 (N.D. SEA 2021) (prior written notice--no violation); Rocori Pub. Sch. Dist., 121 LRP 19229 (Minn. SEA 2021) (child find--no violation).
- 11 *See, e.g.*, Perry A. Zirkel, *The Pending Post-Pandemic Issue of "Compensatory Services,"* 50 *Communiqué* 8, 9 (May-June 2022) (summarizing federal guidance); Perry A. Zirkel, *COVID-19 Confusion: Compensatory Services and Compensatory Education*, 30 *S. Cal. Rev. L. & Soc. Just.* 391, 397-402 (2021) (canvassing state guidance); N.J. Stat. Ann. § 18A:46-1.3; Tex. Educ. Code Ann. § 29.0052; Or. Admin. R. 581-015-2229 (state laws).
- 12 *E.g.*, In re Student with a Disability, 81 IDELR ¶ 236 (Del. SEA 2022) (ordering IEP team to meet and determine recovery services in addition to training for special education personnel); In re Student with a Disability, 121 LRP 39798 (Wis. SEA 2021) (ordering IEP team to meet to consider whether child needed recovery services).

- 13 *Supra* note 6 and accompanying text.
- 14 OCR Case Processing Manual, at § 302 (2022), [www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html](http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html)
- 15 The referenced database is LRP's SpecialEdConnection®, which includes the Individuals with Disabilities Education Law Report (IDELR).
- 16 *See, e.g.*, Perry A. Zirkel & Gina L. Gullo, *Public School Rates of 504-Only Students in K-12 Schools: The Next Update*, 387 *Educ. L. Rep.* 1 (2021); Perry A. Zirkel & Gina L. Gullo, *School District Rates of 504-Only Students in K-12 Schools: The Next Update*, 385 *Educ. L. Rep.* 24 (2021); Perry A. Zirkel & Gina L. Gullo, *State Rates of 504-Only Students in K-12 Schools: The Next Update*, 385 *Educ. L. Rep.* 14 (2021).
- 17 *E.g.*, Stephenville Indep. Sch. Dist., 121 LRP 14175 (OCR 2021); Seminole Cnty. Pub. Schs., 121 LRP 14172 (OCR 2021); W. Maricopa Educ. Ctr., 121 LRP 14185 (OCR 2021); Leander Indep. Sch. Dist., 121 LRP 18399 (OCR 2021); Haverford Twp. Sch. Dist., 121 LRP 12448 (OCR 2020); Tree of Life Int'l Charter Sch., 121 LRP 5508 (OCR 2020); Upper Arlington City Sch. Dist., 121 LRP 8635 (OCR 2020); Chippewa Valley Schs., 121 LRP 8631 (OCR 2020).
- 18 *E.g.*, Troy Sch. Dist., 122 LRP 3417 (OCR 2021); Deming Pub. Schs., 80 IDELR ¶ 113 (OCR 2021); Auburn City Sch. Dist., 121 LRP 21849 (OCR 2021); Rockingham Cnty. Pub. Schs., 78 IDELR ¶ 47 (OCR 2020); Va. Beach City Pub. Schs., 120 LRP 40940 (OCR 2020); San Mateo-Foster City Elementary Sch. Dist., 78 IDELR ¶ 48 (OCR 2020) (agreeing to 504 team meeting to determine whether the student needs compensatory education services for possible FTI violation during specified pandemic period). *But cf.* Teton Cnty. Sch. Dist., 78 IDELR ¶ 78 (OCR 2020) (determining insufficient evidence of child find violation).
- 19 *E.g.*, Riverview Sch. Dist., 81 IDELR ¶ 113 (OCR 2022) (agreeing to 504 team meeting to determine whether delay was disparate treatment and, if so, whether it amounted to denial of FAPE and required compensatory education services). *But cf.* E. Penn Sch. Dist., 79 IDELR ¶ 236 (OCR 2021) (determining that district had legitimate, nondiscriminatory reason for denying temporary mask exemption to student with medical disability)
- 20 *E.g.*, Sch. Dist. 45, 122 LRP 9436 (OCR 2022) (agreeing to (a) revision in district policies and related training of district personnel and (b) reevaluation of the student including determination of any needed compensatory education services); Dwight Common Sch. Dist., 122 LRP 3182 (OCR 2021) (agreeing to training and 504 team meeting to determine and remedy possible FTI violation during hybrid instruction).
- 21 Fairfax Cnty. Pub. Schs., 82 IDELR ¶ 71 (OCR 2022); L.A. Unified Sch. Dist., 81 IDELR ¶ 24 (OCR 2022).
- 22 34 C.F.R. §§ 300.507-300.515 (2021).
- 23 *See, e.g.*, Diane M. Holben & Perry A. Zirkel, *Due Process Hearing Decisions under the Individuals with Disabilities Education Act: Justice Delayed*, 73 *Admin. L. Rev.* 833 (2021) (finding a national average of 200 days for non-expedited decisions). Approximately seven states have a two-tiered system, which adds the period for the review officer stage of administrative adjudication under the IDEA. Jennifer Connolly et al., *State Due Process Hearing Systems under the IDEA: An Update*, 30 *J. Disability Pol'y Stud.* 156, 158 (2019).
- 24 *E.g.*, compare Centralia Elementary Sch. Dist., 122 LRP 18611 (Cal. SEA 2022); Bellflower Unified Sch. Dist., 81 IDELR ¶ 207 (Cal. SEA 2022); *In re Student with a Disability*, 122 LRP 20916 (Conn. SEA 2022); Bristol/Warren Reg'l Sch. Dist., 121 LRP 32537 (R.I. SEA 2021); Ventura Unified Sch. Dist., 121 LRP 33787 (Cal. SEA 2021); Upper Merion Sch. Dist., 121 LRP 20233 (Pa. SEA 2021); Russellville Sch. Dist., 121 LRP 26137 (Ark. SEA 2021); Clark Cnty. Sch. Dist., 78 IDELR ¶ 86 (Nev. SEA 2020); District of

Columbia Pub. Schs., 78 IDELR ¶ 55 (D.C. SEA 2020); Shoreline Sch. Dist., 78 IDELR ¶ 89 (Wash. SEA 2020); Georgetown Indep. Sch. Dist., 121 LRP 3995 (Tex. SEA 2020); L.A. Unified Sch. Dist., 77 IDELR ¶ 116 (Cal. SEA 2020) (all resulting in compensatory education or reimbursement awards), *with* Miami-Dade Cnty. Sch. Bd., 123 LRP 4753 (Fla. SEA 2022); Stanislaus Union Sch. Dist., 122 LRP 26564 (Cal. SEA 2022); L.A. Unified Sch. Dist., 122 LRP 22191 (Cal. SEA 2022); Hesperia Unified Sch. Dist., 81 IDELR ¶ 240 (Cal. SEA 2022); Bd. of Educ. of Harrison Sch. Dist., 121 LRP 36581 (N.Y. SEA 2021); Hutto Indep. Sch. Dist., 121 LRP 13473 (Tex. SEA 2021); Glendale Unified Sch. Dist., 121 LRP 18304 (Cal. SEA 2021); District of Columbia Pub. Schs., 78 IDELR ¶ 240 (D.C. SEA 2020).

25 *Supra* note 9 and accompanying text; *cf. supra* note 18 and accompanying text (corresponding OCR investigations).

26 The difference appeared to be largely attributable to adjudicators' more extensive reliance on the materiality standard for FTI, which originated in *Van Duyn v. Baker School District* 5J, 502 F.3d 811, 821-22, 225 Educ. L. Rep. 136 (9th Cir. 2007), and adjudicators' non-delegation tendency, which is at least partially rooted in *Reid v. District of Columbia*, 401 F.3d 516, 526-27, 196 Educ. L. Rep. 402 (D.C. Cir. 2005).

27 *E.g., compare* Enterprise Elementary Sch. Dist., 122 LRP 4067 (Cal. SEA 2022); Florence Cnty. Sch. Dist., 121 LRP 10625 (S.C. SEA 2021) (ordering compensatory education); District of Columbia Pub. Schs., 78 IDELR ¶ 240 (D.C. SEA 2020) (ordering amended IEP), *with* Belchertown Pub. Schs., 122 LRP 18621 (Mass. SEA 2022); Cherry Hill Twp. Sch. Dist., LRP (N.J. SEA 2022); Madera Unified Sch. Dist., 121 LRP 8607 (Cal. SEA 2022); Rialto Unified Sch. Dist., 121 LRP 32567 (Cal. SEA 2021); Hampshire Reg'l Sch. Dist., 121 LRP 18232 (Mass. SEA 2021); Atkins Sch. Dist., 78 IDELR ¶ 56 (Ark. SEA 2020).

28 *E.g.,* Ewing Twp. Bd. of Educ., 121 LRP 34338 (N.J. SEA 2021) (overriding lack of parental consent for evaluation); Enfield Bd. of Educ., 121 LRP 32237 (Conn. SEA 2021) (finding district's evaluation with pandemic protocols was procedurally appropriate); Dennis-Yarmouth Reg'l Sch. Dist., 121 LRP 23176 (Mass. SEA 2021) (ordering private placement as compensatory education as a result of multiple prejudicial procedural violations); Vision Acad. Charter Sch., 121 LRP 30353 (Pa. SEA 2021) (ordering compensatory education for child find violation); Special Sch. Dist. of St. Louis Cnty., 121 LRP 15324 (Mo. SEA 2021); Springfield Pub. Schs., 121 LRP 10647 (Mass. SEA 2021) (finding no prejudicial procedural violations); District of Columbia Pub. Schs., 121 LRP 3824 (D.C. SEA 2020) (finding records access and evaluation timeline violations).

29 *Supra* notes 11-12 and accompanying text.

30 Beverly Hills Unified Sch. Dist., 122 LRP 1505 (Cal. SEA 2021) (concluding that failure of IEP team to meet to determine recovery services was not a violation in absence of significant difficulties with distance learning beyond those typically experience with new modality); *cf. In re Student with a Disability*, 122 LRP 871 (DoDEA 2021) (similar conclusion upon credible testimony of student's progress during distance learning).

31 *See, e.g.,* Andrew M.I. Lee & Perry A. Zirkel, *State Laws for Due Process Hearings under the Individuals with Disabilities Education Act III: The pre-hearing stage*, 40 J. Nat'l Ass'n Admin. L. Judiciary 1, 12-13 (2021) (finding only one state with longer limitations period and seven states with shorter limitations period than two-years); Perry A. Zirkel, *The Statute of Limitations for an Impartial Hearing under the IDEA: A Guiding Checklist*, 363 Educ. L. Rep. 483 (2019) (tracing the potentially expansive effect of the triggering KOSHK date and the two narrow exceptions for the two-year limitations period).

32 *Honig v. Doe*, 484 U.S. 305, 322 (1988) (*citing* *Burlington Sch. Comm. v. Mass. Dep't of Educ.*, 471 U.S. 359, 370 (1985)).

33 *See, e.g.,* Perry A. Zirkel, *The Meaning of Perez v. Sturgis Public Schools: Neither Exhausting Nor Exhaustive*, 409 Educ. L. Rep. 606 (2023) (tracing the additional exception of money damages claims under the Supreme Court's decision in *Perez v. Sturgis Public Schools*, 143 S. Ct. 859 (2023)); Perry A. Zirkel, *Post-Fry Exhaustion under the IDEA*, 381 Educ. L. Rep. 1 (2020) (finding an

approximate 9:1 ratio in favor of exhaustion in the federal appellate courts for the 3.5-year period after the Supreme Court's decision in *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017)).

- 34 *E.g.*, *Simpson-Vlach v. Mich. Dep't of Educ.*, \_\_\_ F. Supp. 3d \_\_\_, \_\_\_ Educ. L. Rep. \_\_\_ (E.D. Mich. 2022).
- 35 *E.g.*, *Z.Q. v. N.Y.C. Dep't of Educ.*, 82 IDELR ¶ 147 (2d Cir. 2023); *K.M. v. Adams*, 81 IDELR ¶ 214 (2d Cir. 2022); *Simmons v. Pritzker*, 82 IDELR ¶ 5 (N.D. Ill. 2022); *N.R. v. Del Mar Unified Sch. Dist.*, 81 IDELR ¶ 222 (S.D. Cal. 2022); *Roe v. Baker*, \_\_\_ F. Supp. 3d \_\_\_, \_\_\_ Educ. L. Rep. \_\_\_ (D. Mass. 2022); *Bills v. Va. Dep't of Educ.*, \_\_\_ F. Supp. 3d \_\_\_, \_\_\_ Educ. L. Rep. \_\_\_ (E.D. Va. 2022); *Carmona v. N.J. Dep't of Educ.*, 81 IDELR ¶ 200 (D.N.J. 2022); *Borishkevich v. Springfield Pub. Schs. Bd. of Educ.*, 541 F. Supp. 3d 969, 398 Educ. L. Rep. 299 (W.D. Mo. 2021); *Hayes v. DeSantis*, 561 F. Supp. 3d 1187, 402 Educ. L. Rep. 170 (S.D. Fla. 2021).
- 36 *E.g.*, *S.C. v. Lincoln Cnty. Sch. Dist.*, 16 F.4th 587, 395 Educ. L. Rep. 921 (9th Cir. 2021); *E.E. v. Norris Cnty. Sch. Dist.*, 4 F.4th 866, 392 Educ. L. Rep. 597 (9th Cir. 2021); *Killoran v. Westhampton Beach Sch. Dist.*, 80 IDELR ¶ 265 (E.D.N.Y. 2022); *Round Rock Indep. Sch. Dist. v. Amy M.*, 540 F. Supp. 3d 679, 398 Educ. L. Rep. 114 (W.D. Tex. 2021); *C.M. v. Jara*, 78 IDELR ¶ 20 (D. Nev. 2020); *Lain v. Pleasanton Unified Sch. Dist.*, 77 IDELR ¶ 184 (N.D. Cal. 2020); *E.M.C. v. Ventura Unified Sch. Dist.*, 78 IDELR ¶ 21 (C.D. Cal. 2020); *J.C. v. Fernandez*, 77 IDELR ¶ 15 (D. Guam 2020).
- 37 *E.g.*, *J.B. v. Bonita Unified Sch. Dist.*, 81 IDELR ¶ 228 (C.D. Cal. 2022); *see also infra* note 39.
- 38 *E.g.*, *Abigail P. v. Old Forge Sch. Dist.*, 82 IDELR ¶ 227 (E.D. Pa. 2023) (ruling that district's virtual instruction for student with severe disabilities did not violate substantive standard for FAPE); *Connor J. v. Kennett Consol. Sch. Dist.*, 82 IDELR ¶ 159 (E.D. Pa. 2023) (awarded compensatory education for denial of substantive FAPE based on lack of aide during virtual instruction); *A.D. v. Upper Merion Sch. Dist.*, 82 IDELR ¶ 31 (E.D. Pa. 2022) (awarding limited compensatory education for partial denial of substantive FAPE during virtual instruction); *M.P. v. N.Y.C. Dep't of Educ.*, 81 IDELR ¶ 216 (S.D.N.Y. 2022) (granting partial reimbursement for private school's remote program when rest of school returned to in-person instruction); *Aja N. v. Upper Merion Sch. Dist.*, 81 IDELR ¶ 198 (E.D. Pa. 2022) (upholding compensatory education award for denial of FAPE during virtual instruction); *White v. District of Columbia*, 80 IDELR ¶ 284 (D.D.C. 2022) (finding FTI violation for lack of laptop and hotspot and remanding for determination of compensatory education); *Rabel v. New Glarus Sch. Dist.*, 79 IDELR ¶ 71 (E.D. Wis. 2021) (ruling that district's proposed placement in private school's synchronous virtual program was FAPE in the LRE); *Charles H. v. District of Columbia*, 79 IDELR ¶ 14 (D.D.C. 2021), *further proceedings*, 80 IDELR ¶ 163 (D.D.C. 2022) (granting preliminary injunction for FTI FAPE claim of incarcerated students with disabilities and resulting contempt order); *Hernandez v. Grisham*, 494 F. Supp. 3d 1044, 1149-50, 388 Educ. L. Rep. 746 (D.N.M. 2020), *further proceedings*, 508 F. Supp. 3d 893, 973, 1001, 391 Educ. L. Rep. 207 (D.N.M. 2020), *dismissed on other grounds*, 82 IDELR ¶ 52 (10th Cir. 2022) (granting preliminary injunction for substantive FAPE, not LRE, claim for single student with disabilities and subsequently determining that the issue was moot); *cf. Special Educ. Complaint 22-027C*, 981 N.W.2d 201, 409 Educ. L. Rep. 329 (Minn. Ct. App. 2022) (reversing state complaint decision for compensatory education based on interpretation of state statutory requirement for "provid[ing]" FAPE).
- 39 *E.g.*, *ARC of Iowa v. Reynolds*, 24 F.4th 1162, 399 Educ. L. Rep. 524 (8th Cir. 2022), *vacated as moot*, 33 F.4th 1042, 402 Educ. L. Rep. 120 (8th Cir. 2022); *Doe 1 v. Perkiomen Valley Sch. Dist.*, 585 F. Supp. 3d 668, 407 Educ. L. Rep. 695 (E.D. Pa. 2022), *dissolved*, 80 IDELR ¶ 182 (E.D. Pa. 2022); *Doe 1 v. Upper Saint Clair Sch. Dist.*, 581 F. Supp. 3d 711, 406 Educ. L. Rep. 823 (W.D. Pa. 2022), *vacated as moot*, 82 IDELR ¶ 104 (3d Cir. 2023); *Disability Rights S.C. v. McMaster*, 79 IDELR ¶ 223 (D.S.C. 2021), *vacated for lack of standing*, 24 F.4th 893, 399 Educ. L. Rep. 482 (2022); *R.K. v. Lee*, 575 F. Supp. 3d 957, 405 Educ. L. Rep. 214 (M.D. Tenn. 2021), *vacated for lack of standing*, 53 F.4th 995, 409 Educ. L. Rep. 57 (6th Cir. 2022); *G.S. v. Lee*, 558 F. Supp. 3d 601, 401 Educ. L. Rep. 758 (W.D. Tenn. 2021), *dismissed for mootness*, 81 IDELR ¶ 49 (W.D. Tenn. 2022); *E.T. v. Morath*, 80 IDELR ¶ 18 (W.D. Tex. 2021), *vacated for lack of standing sub nom. E.T. v. Paxton*, 41 F.4th 709, 405 Educ. L. Rep. 634 (5th Cir. 2022); *cf. Doe v. Franklin Square Union Free Sch. Dist.*, 82 IDELR ¶ \_\_\_ (S.D.N.Y. 2023) (*dismissing* § 504/ADA claim based on meshed mask being reasonable accommodation); *Donohue v. Hochul*, 2022 WL 673636 (S.D.N.Y. Mar. 7, 2022) (*dismissing* IDEA and § 504/ADA claims against mandatory masking). *But cf. L.E. v. Superintendent of Cobb Cnty. Sch. Dist.*, 55 F.4th 1296 (11th Cir. 2022) (reversing and remanding for further proceedings denial of preliminary injunction for medically vulnerable students with disabilities under § 504/ADA against mandatory masking and other pandemic safety procedures upon return to in-person instruction); *Seaman*

v. Va., 593 F. Supp. 3d 293, 409 Educ. L. Rep. 69 (W.D. Va. 2022) (granting preliminary injunction against shift to parent-optional masking but only to extent of requiring consideration of reasonable modification under § 504/ADA); *Douglas Cnty. Sch. Dist. RE-1 v. Douglas Cnty. Dep't of Health*, 568 F. Supp. 3d 1158, 403 Educ. L. Rep. 654 (D. Colo. 2021) (granting TRO under § 504/ADA against prohibition of universal masking).

- 40 In contrast to legal precedents, the major practical and pedagogical precedent in the K-12 context was the institutionalization of virtual delivery as applied to not only future school closures for various reasons but also ongoing programs related to instruction in the home under the IDEA and homebound instruction or home schooling under state laws.
- 41 Within overall pattern, the FTI category of FAPE became particularly frequent and the outcomes of the FTI and substantive FAPE claims were more parent-favorable to a relatively moderate extent. For an example of the comparable pre-pandemic levels, see Perry A. Zirkel, *The Two Dispute Decisional Processes under the Individuals with Disabilities Education Act: An Empirical Comparison*, 16 Conn. Pub. Int. L.J. 169, 179-83 (2017).
- 42 Conversely, subject to further research, the proactive problem-solving process at the local level and the corresponding settlement process at the prospect or in the wake of filing may have been frequent and fulfilling.
- 43 *Supra* note 38. This overall conclusion conforms to the original federal guidance (*supra* note 2), although the majority of the court decisions did not expressly determine its persuasiveness and the interpretation of the requisite extent varied. Moreover, this cluster of court rulings have been limited thus far to unpublished decisions at the federal district court level. In contrast, § 504/ADA proved to be a surprisingly more prominent basis for legal activity, although the OCR outcomes did not qualify as legal precedent in its customary sense, and the plaintiff-favorable court rulings largely evaporated due to the longer period for litigation completion than infection mitigation (*supra* notes 17-21, 39).
- 44 *Supra* notes 11-12, 30 and accompanying text.
- 45 See, e.g., Perry A. Zirkel, Jean M. Adams, & John M. Muniz, K-12 students with long COVID: The legal requirements of IDEA and § 504, National COVID Conference: What We Know and Don't Know about Pediatric Long-COVID (Apr. 23, 2023), <https://twu.edu/woodcock-institute/national-covid-conference/>

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