IDEA Decisions from the U.S. Court of Appeals for the Seventh Circuit

I. NO NEED TO PROVIDE SERVICES

K.R. v. Anderson Community School Corporation, 81 F.3d 673 (7th Cir. 1996).

The parents of K.R., a multiply handicapped student requiring a full-time assistant, unilaterally enrolled her in a private school even though they were told the school district would not provide an educational assistant if she attended the private school. The district court held that the public school was obligated to provide the service and issued a permanent injunction and declaratory judgment in favor of K.R. The appellate court reversed, holding that children attending private schools are governed by different regulations than those in public schools. As such, schools are responsible for the provisions of special education related services, but only to the extent consistent with the number of disabled private school children in the State. Where the public schools provide the necessary service at a public institution and give the disabled student a genuine opportunity to participate, the public school has discharged its obligation. Therefore, the court concluded that the IDEA and its regulations do not require a public school to make comparable provisions for a disabled student voluntarily attending private school.

Doe v. Board of Education of Oak Park & River Forest High School District 200, 115 F.3d 1273 (7th Cir. 1997).

A thirteen year-old freshman was accused of being in

possession of a pipe and a small amount of marijuana at a freshman dance. The student was identified as a special education student due to his learning disability. The student was suspended for 10 days and then expelled from school. The Level I hearing officer upheld the school boardâ□□s decision and the Level II hearing officer reversed the decision concluding the failure to provide services violated the studentâ□□s due process and IDEA rights. The district court held that the school was not required to provide services because the student was expelled for reasons unrelated to his disability, thus forfeiting the student's right to the â□□free appropriate public educationâ□□ required by IDEA. The appellate court affirmed the district court decision concluding that the IDEA does not manifest an intent, either expressly or impliedly, to shield special education students from the normal consequences of their misconduct if that misconduct has nothing to do with their disabilities. The studentâ□□s decision to bring marijuana to the dance was calculated rather than impulsive. (NOTE: The 1997 reauthorization of IDEA now mandates that expelled students must continue to receive their IEP services during the length of their expulsion.)

II. THE â□□STAY PUTâ□□ PROVISION

Board of Education of Oak Park & River Forest High School District 200 v. Illinois State Board of Education, 79 F.3d 654 (7th Cir. 1996).

The parents of a twenty year-old non-verbal student with severe autism and mental retardation filed suit three weeks before the studentâ□□s twenty-first birthday claiming his current â□□life skillsâ□□ program was inadequate. The court granted the student a year of compensatory education in a new program at the school districtâ□□s expense. Two years past his twenty-first birthday, the student was still receiving compensatory education. The appellate court held that the â□□stay putâ□□ provision ceases to operate when a child

reaches the age of twenty-one. However, while compensatory education is a benefit that may extend beyond the age of 21, allowing the stay put provision to operate beyond the age of 21 would enable parents to obtain unentitled benefits for their children simply by filing a claim for compensatory education on the eve of the childâ□□s 21st birthday. Therefore, the appellate court agreed with the school district that the stay put provision does not operate in favor of an individual who has reached his or her twenty-first birthday. The order directing the school district to â□□stay putâ□□ was reversed.

Rodiriecus L. v. Waukegan School District No. 60, 90 F.3d 249 (7th Cir. 1996).

Rodiriecus, a student not enrolled in special education, was suspended and then expelled from school for stealing the master key of the school and robbing the classrooms. His case worker requested a case study evaluation and filed a request for a due process hearing. The district court ordered a preliminary injunction against the school to bar them from expelling the student during the testing because the â□□stay putâ□□ provision should apply to all children who request a disability evaluation. At the due process hearings, the Level I and Level II hearing officers held that the student was not disabled and therefore did not qualify for special education services. On appeal from the district court order, the appellate court held that if the â□□stay putâ□□ provision is automatically applied to every student who files an application for special education, then the avenue will be open for disruptive, non-disabled students to forestall any attempts at routine discipline by simply requesting a disability evaluation. Before a court can grant a preliminary injunction petitioners must reasonably demonstrate that school officials knew, or should have known of, a studentâ□□s genuine disability. Only when Rodiriecus was to be expelled did the guardian seek an evaluation. Therefore, the appellate court

reversed the injunction and remanded the decision to the district court.

III. REQUIREMENT TO FIND A NEW PLACEMENT

Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education, 938 F.2d 712 (7th Cir. 1991).

The parents of a fifteen-year old student with behavior disabilities refused to consent to the schoolâ□□s recommended placement of a more restrictive setting at Jack London School, a private day school. The school district filed a request for a due process hearing. The Level I hearing officer ordered the student placed at Jack London until Arden Shores, a private residential school could accommodate the student at the publicâ□□s expense. The Level II hearing officer agreed that the student needed a more restrictive program, but disagreed that he required a private day school. Therefore, the hearing officer ordered the school district to find a new placement within 30 days. The district court then entered summary judgment affirming the Level II hearing officerâ□□s order. Again the school district appealed. The appellate court held that the district court correctly found that the parentâ□□s negative attitudes were severe enough to prohibit any attempt to educate the student at Jack London and that the IEP ordered by the Level II hearing officer is the least restrictive placement of educational benefit to the student. The judgment of the district court was affirmed.

Rheinstrom v. Lincolnwood Board of Education, 1995 U.S. App. LEXIS 10781 (7th Cir. 1995).

A child with special behavioral needs was recommended to be removed from a self-contained classroom for children with emotional disorders and placed in a therapeutic day school. The studentâ□□s father requested a due process hearing. The Level I hearing officer held that the therapeutic setting was

appropriate because the childâ□□s behavior was regressing and the public school was not an appropriate placement for him. The Level II hearing officer concluded that the therapeutic day school was the appropriate placement. The district court upheld the Level I and Level II hearing officerâ□□s decisions and granted summary judgment to the Board of Education. After a review of the record the appellate court affirmed the lower courtâ□□s decision.

> **Board of Education of Community High School District No. 218 v. Illinois State Board of Education**, 103 F.3d 545 (7th Cir. 1996).

An emotionally disturbed, sexually aggressive minor was placed by his parents in a residential program paid for by the school district. When the student reached high school the school district wanted to reevaluate the current placement due to the cost and the parents sought an administrative hearing to invoke the â□□stay putâ□□ provision. The parents prevailed at both the Level I and Level II hearings. During this time the student was transferred to a new program. A few months later the student was asked to leave the program because he was a threat to the other students. Although the program allowed him to remain until a new placement could be found, the district court ordered the school district to find a suitable placement for the student. The district court then ordered the student returned back to his original placement because the school district was unable to secure an appropriate placement. The appellate court held that the school districtâ□□s failure to produce any placement alternatives left the district court with no other schools to evaluate or weigh against the current placement and therefore no hearing was necessary. Until the cost shifting is decided at trial or through a settlement, the school district is financially responsible for the studentâ□□s education. The injunction issued by the district court for â□□stay putâ□□ was affirmed.

IV. ATTORNEY FEES & REIMBURSEMENTS

Anderson v. Thompson, 658 F.2d 1205 (7th Cir. 1981).

The parents of a child with exceptional needs refused to accept the placement suggested by the Level I hearing officer and appealed the case to the State Superintendent of Instruction. The parents refused to accept the placement offered by the State Superintendent and sent their daughter to a private school. The parents then requested attorneyâ□□s fees. Although the district court found the parents to be the prevailing party it did not permit them to recover attorneyâ□□s fees because attorneyâ□□s fees were not specifically authorized by the Education For All Handicapped Childrenâ□□s Act (â□□EAHCAâ□□). The appellate court affirmed the district courtâ□□s ruling holding that the EAHCA does not itself provide for attorneyâ□□s fees and the parents cannot rely on section 1983 as a conduit to attorneyâ□□s fees under section 1988.

Doe v. Koger, 710 F.2d 1209 (7th Cir. 1983).

The mother of a special education student expelled from school brought suit to recover attorneyâ□□s fees. The district court and then the appellate court both held that a claim for attorneyâ□□s fees under section 1983 is not a valid claim because the EAHCA does not provide for attorneyâ□□s fees and cannot be utilized for attorneyâ□□s fees under section 1988. Judgment affirmed.

Benner v. Negley, 725 F.2d 446 (7th Cir. 1984).

A child with multiple handicaps was removed from her special education program and unilaterally enrolled in a residential placement by her parents. The school district filed suit claiming they were entitled to attorneyâ□□s fees because the childâ□□s parents had acted in bad faith by removing their daughter after the administrative procedures to determine an appropriate placement had begun. The district court held that the parents had acted in bad faith but nevertheless denied

attorneyâ□□s fees to the defendants. The appellate court reversed, holding that while the district court had authority to award attorney's fees to prevailing parties upon finding that the suit was brought in bad faith, the district court's finding that plaintiffs had acted in bad faith was erroneous. Thus, defendants were not entitled to attorney fees.

Parks v. Pavkovic, 753 F.2d 1397 (7th Cir. 1985).

The parents of a nineteen year with disabilities brought suit to recover reimbursement for their sonâ□□s living expenses at a residential facility. The parents won their appeal and the state was required to pay the sonâ□□s bills. While the suit was pending the son was moved to another facility and the parents were again required to pay part of his expenses. A hearing officer ordered the state to pay the entire bill in the future and reimburse the parents for money already paid. The district court granted a preliminary injunction to keep the child at the facility pending the suit and issued a permanent injunction barring the state from deducting any amount from the childâ□□s living expenses until he turns 21. A few months later the district court ordered the state to reimburse the parents for living expenses for the last four years. The appellate court affirmed the preliminary injunction and instructed the state to pay the future bills for living expenses. However, the appellate court reversed the decision granting reimbursement of the parentsâ□□ overpayments beyond what was necessary to keep the child from being expelled from the institution.

Gary A. v. New Trier High School, 796 F.2d 940 (7th Cir. 1986).

The parents of a child placed in a residential facility sought reimbursement for money the district refused to pay before a rule not allowing therapeutic services to be a covered expense was redrafted allowing funds for counseling and therapeutic services. The parents brought suit against the state, State

Board of Education, the school district, as well as other employees. The district court granted summary judgment and awarded attorneyâ□□s fees to the parents. On appeal, the appellate court held that the parents had not shown that the state statute supported their claim, nor that the state consented to suits for damages and waived its constitutional immunity. The court held that the local defendants (the school district) had no constitutional immunity and reversed the judgment as to the state defendants and affirmed as to the local defendants.

State of Illinois v. Bowen, 808 F.2d 571 (7th Cir. 1986).

The Secretary of the United States Department of Health and Human Services filed suit against the State of Illinois claiming the Department was denied reimbursement for monies expended in the special education programs for the state under Title XX of the Social Security Act. The district court granted summary judgment for the Secretary. After carefully considering all of the statesâ□□ claims, the district court held that the arguments were without merit. The appellate court affirmed that the district court was correct in finding Illinois ineligible for reimbursement because the three schools in question were generally available to the residents of Illinois. Illinoisâ□□ basic argument was that every new academic year is a new placement, however, the court disagreed and held that monies are available for a second placement only if the first one has ended by the individual being discharged because further services were unnecessary. Illinois argued that summer vacations separate placements but the appellate court disagreed determining that something other than summer break is necessary before a new placement is eligible for reimbursement. The appellate court held that the State of Illinois had failed to present any evidence that persuaded the court to hold that the commencement of each school year must be considered a new placement. The judgment of the district court granting summary judgment was affirmed.

Tonya K. v. Board of Education of The City of Chicago, 847 F.2d 1243 (7th Cir. 1988).

A class action suit was settled and both parties agreed to wait to determine the appropriate relief for the children until the Supreme Court made a decision regarding attorneyâ□□s fees. After the court handed down its decision the request for attorneyâ□□s fees was dropped. Two years later the Handicapped Childrenâ□□s Protection Act was passed, and the parents asked the district court to reinstate the request for attorneyâ□□s fees. The court granted the request even though two years had passed. The children were awarded attorneyâ□□s fees to be split between the Board of Education and the State of Illinois. Both appealed. The Seventh Circuit held that because the parties had agreed to wait for the Supreme Court outcome and a short-term outcome would be favorable for the defendants and a long-term outcome was favorable for the plaintiffs. Either the children were going to lose the fees because the motion was resolved too late to invoke the Supreme Court decision but too soon for the 1986 Amendments, or the defendants were going to lose the benefit of their window of opportunity.

Note: *This case became the guide by which others were decided: Any case pending as of July 4, 1984 under the EAHCA in which the litigates were prevailing were eligible for attorneyâ□□s fees under the Handicapped Childrenâ□□s Protection Act of 1986.*

Max M. v. New Trier High School, 859 F.2d 1297 (7th Cir. 1988).

Max M. sought attorneyâ□□s fees based on the passing of the Handicapped Childrenâ□□s Protection Act (â□□HCPAâ□□). His case was pending on July 4, 1984 and was not resolved until March of 1986. The Act was passed in August 1986 as an amendment to the Education for All Handicapped Children Act. The district court awarded Max attorneyâ□□s fees and the

school district appealed on the grounds that the HCPA amendment was unconstitutional and inapplicable. The school district argued that Max had not filed his request within 90 days of the judgment, in compliance with Local Rule 46. Max argued that it was impossible to have met the 90 day rule as the HCPA amendment had not yet been passed. The district court held that although the time frame should be shortened to facilitate intelligent decisions about appeals, the 90 day rule governed. The district court reduced the amount of fees Max had been awarded to reflect the lack of success on other issues. The decision was affirmed by the Seventh Circuit.

Brown v. Griggsville Community Unit School District No. 4, 12 F.3d 681 (7th Cir. 1993).

The parents of a disabled child filed a request for a due process hearing when they were told their child would be transferred to a new school the following year. Before the hearing could take place the school board held a review and agreed to let the child remain in his current school, prompting the parents to withdraw their due process request. The parents then filed a request for attorneyâ□□s fees. The district court granted summary judgment for the school district on the grounds that while the parents obtained what they wanted, they were not the prevailing party within the meaning of the statute. While other courts have agreed that section 1415(e)(4) of IDEA should encompass legal services rendered at the first or second stage of due process hearings, even if there is no third judicial stage, the Seventh Circuit affirmed the district court and held that the review would have taken place whether or not there had been a request for a hearing and the results would have been the same. Based on the childâ□□s improvement the board had decided to change its position, not because it faced a lawsuit.

Family & Childrenâ□□s Center, Inc. v. School City of Mishawaka, 13 F.3d 1052 (7th Cir. 1994).

The Family and Childrenâ□□s Center (â□□FCCâ□□) brought suit under the IDEA for third-party standing to advocate the rights of children with disabilities who had been placed in their care by court order or by state welfare agencies. The district court held that the FCC did not have standing to bring a claim under IDEA because they were not the "parents, guardians, or surrogate parents" of the children as required by IDEA to have standing. The appellate court reversed, holding that FCC met the Article III requirements for standing by demonstrating there was an immediate threat of injury fairly traceable to the school corporationâ□□s conduct, that a favorable federal court decision would likely redress or remedy. The record showed that FCC had exhausted its state remedies before filing this suit and thus Section 1415 grants a right of action to FCC on behalf of the children with disabilities.

Hunger v. Leininger, 15 F.3d 664 (7th Cir. 1994).

The father of a child with a neurological disorder filed a request for a due process hearing. The hearing officer ordered the school to provide counseling services as well as occupational and physical therapy in the home to help prepare for the childâ□□s return to school. The Level II hearing officer affirmed the order. The district judge refused to issue an injunction to prevent the school from terminating the home bound services. The judge also granted summary judgment in favor of the school even though they had not requested it. The judge did award attorneyâ□□s fees to the father. The father then brought this action in the appellate court for additional attorneyâ□□s fees. Although the appellate court determined that the Individual Educational Plan (â□□IEPâ□□) was valid, it reversed the award of attorneyâ□□s fees because the child was not the prevailing party on most of the issues.

McCartney C. v. Herrin Community Unit School District No. 4, 21 F.3d 173 (7th Cir. 1994).

The parents of a child with special needs filed a request for attorneyâ□□s fees following a favorable decision by a Level II hearing officer. The school district had the right to bring suit as the party aggrieved by the decision to set aside the verdict. No time frame for this action was established. The parents filed their request for fees 184 days after the receiving the Level II decision, and the district court awarded attorneyâ□□s fees. The school district appealed, claiming the request was time barred. Although both sides agreed that 120 days was the correct time limit in which to file suit, the appellate court determined that the 120 days does not run until the 120 days the school district has to challenge the Level II decision has elapsed without suit being filed, or until 120 days from when the Level II decision becomes final.

Dell v. Board of Education, Township High School District 113, 32 F.3d 1053 (7th Cir. 1994).

The parents of a student with a disability sought reimbursement for an independent case study evaluation (â□□ICSEâ□□) they obtained. The school district requested a Level I due process hearing and the hearing officer awarded only partial reimbursement for the ICSE. The Level II hearing officer affirmed the Level I decision. The parents then brought suit in state court, appealing the hearing decisions, and seeking attorneyâ□□s fees. The school district removed the case to federal court, where the court dismissed the case as untimely. On appeal, the Seventh Circuit held that 120 days was the appropriate statute of limitations for the judicial review of reimbursement disputes and dismissed the request for reimbursement. The circuit court held that the 120 days to claim attorneyâ□□s fees does not run until the judicial decision upholding the Level II decision becomes final and remanded the attorneyâ□□s fees issue to the district court for redetermination.

Das v. McHenry School District # 15, 1994 U.S. App. LEXIS

31435 (7th Cir. 1994).

The parents of an eleven year-old developmentally disabled child was awarded attorneys fees by the district court and the school district appealed. Although the district court held for the school on three of five issues presented, the court found the parents to be the prevailing party because of the increase in services obtained and awarded them attorneyâ□□s fees. On appeal to the Seventh Circuit supported the school district claims that they had prevailed on most of the issues and should have been the prevailing party. However, the appellate court found that the increase of services ordered by the hearing officer were exactly what the parents wanted and therefore they were the prevailing party and the award of attorneys fees was just.

Board of Education of Murphysboro Unit School District No. 186 v. Illinois State Board of Education, 41 F.3d 1162 (7th Cir. 1994).

The parents of a child with multiple disabilities disagreed with the school districtâ□□s proposed placement and sought a private residential facility placement. The parents filed a due process request in order to determine the appropriate placement. The Level I hearing officer found the IEP did not meet IDEA requirements and ordered the school district to hold an MDC within 10 days to change the IEP and revisit the placement issue. He also ordered the school district to pay one fourth of a 1991 evaluation the parents had obtained. The Level II hearing officer ordered the child placed at the private residential facility requested by the parents and the school district was ordered to reimburse the parents for the full cost of the 1991 evaluation they obtained. Next, the district court held against the school district, finding both IEPs failed to provide an appropriate education and awarded the private placement. On appeal the circuit court affirmed the district courtâ□□s decision holding the IEPs to be invalid and awarding the private school placement. However, the

appellate court also held that parents are entitled to reimbursement for only one publicly funded evaluation for each school district evaluation with which the parents disagree, therefore remanding the decision to the district court to determine whether reimbursement for a 1992 evaluation obtained by the parents should be awarded. Finally, the appellate court also held that the parents were prevailing parties and entitled to attorneyâ□□s fees and costs.

Reed v. Mokena School District No. 59, 41 F.3d 1153 (7th Cir. 1994).

The mother of a disabled child filed an administrative action under IDEA challenging the proposed method of educating her daughter. After the school district offered to implement the educational program she desired, the mother dropped her suit. The mother then filed an IDEA suit in federal district court for attorneyâ□□s fees and costs. The district court held that her request was time barred and she appealed. The Seventh Circuit court held that the correct amount of time to file is within 120 days. The mother waited 149 days, therefore the district court was correct in determining the action was time barred.

Patrick G. v. City of Chicago School District Number 299, 1994 U.S. Dist. LEXIS 18156 (7th Cir. 1994).

The father of a child with cerebral palsy requested a due process hearing because he believed his daughterâ□□s IEP was not providing an appropriate education. The Level I hearing officer agreed that the IEP was not providing an appropriate education and ordered the school district to revise it. The father then filed in federal district court to collect attorneyâ□□s fees and costs. The school district did not contest that the father was the prevailing party, but did question the amount he requested. The court agreed with the school district that the request for fees was excessive and reduced the request for document review by 10 hours. The

court also reduced the requested fees for the time period before the filing of the hearing request by 25 hours and deducted 12 hours from the time spent receiving and examining documents. After reviewing the billing invoice the court deducted another 48 hours from the request. The amount of time billed by the law clerk was also reduced by 9 hours. The father was awarded $19,739.76, a reduction of $17,300.00.

Rosemary B. v. Board of Education of Community High School District No. 155, 52 F.3d 156 (7th Cir. 1995).

After several requests for hearings and a successful settlement with the school board regarding her disabled sonâ□□s IEP, his mother filed a complaint for attorneyâ□□s fees in federal court. The School Board moved for summary judgment on the grounds that the request was not timely. The district court granted the Board summary judgment. The Seventh Circuit held that any claim the plaintiff might have to attorneyâ□□s fees depends on her asserting that time did not begin to run against her action until November 25, 1993, 120 days before the plaintiff filed her attorneyâ□□s fees complaint. Where in the instant case, no hearing occurred, the clock began to run once the party had a factual basis to believe she had achieved the relief she requested through some kind of settlement. Because all three dates fell over 200 days before she filed her attorneyâ□□s fees claim, the motherâ□□s claim collapsed no matter what event triggered the running of the statute of limitations.

Powers v. Indiana Department of Education, 61 F.3d 552 (7th Cir. 1995).

The father of a disabled child brought a claim to recover attorneyâ□□s fees incurred while challenging the educational placement proposed for his daughter. The Indiana Department of Education denied the fatherâ□□s request for attorneyâ□□s fees, prompting him to file suit in Federal court. The request for attorneyâ□□s fees was filed in June 1993 and both

parties sought summary judgment. The court granted summary judgment to the Department because the attorney had waited seven and a half months to file the request. Indiana law mandated that an appeal be filed within 30 days of the decision and even if the state followed the 120 day rule established by the Seventh Circuit, the request was still time barred. This court held that the time allowed began to run when the Department denied the request for fees.

Charlie F. v. Board of Education of Skokie School District 68, 98 F.3d 989 (7th Cir. 1996).

The parents of a disabled child filed a suit claiming damages for the way their child was treated by his teacher and classmates. The district court dismissed the federal claims for lack of subject-matter jurisdiction. The appellate court answered the question, is the relief Charlie is seeking available under the IDEA? The appellate court held that damages are not â□□relief available underâ□□ IDEA. The relief available is defined as â□□relief for the events, conditions, or consequences of which the person complains, not necessarily relief of the kind the person prefers.â□□ Although IDEA requires a school district to provide not only education but also â□□related services", Charlieâ□□s parents believed his educational program was appropriate and did not want any additional related services, they only wanted damages for the way he was treated. The appellate court remanded the case to the district court with instructions to dismiss for failure to use the IDEAâ□□s administrative remedies.

Monticello School District No. 25 v. Brock L., 102 F.3d 895 (7th Cir. 1996).

The parents of a child with Attention Deficit Hyperactivity Disorder unilaterally enrolled him in a private residential placement and filed a request for a Level I due process hearing because they were unhappy with his proposed IEP. While the Level I hearing officer determined that the IEP did

not provide a FAPE, she also found that the private school was not the LRE for the child. The hearing officer ordered the school district to revise the IEP, maintain the private school placement through the first semester of the upcoming school year, and reimburse the parents for the cost of the first semester. The school district filed an appeal requesting the Level II officer reverse the order. The Level II officer found that the school district was required to reimburse the parents for the semester of school. On appeal, the district court affirmed the Level I and Level II hearing officerâ□□s decision, but denied the parentâ□□s counterclaim that the school district violated Section 504 and Sections 1983 and 1988. The court reasoned that the parents failed to state a claim that the school district had acted in â□□bad faithâ□□ because it was reasonable to expect the new IEP to be in place by January so as to only reimburse the parents for the first semester of school. Although the parents were the prevailing party they were unable to show that the district court abused its discretion in denying them attorneyâ□□s fees.

Jodlowski v. Valley View Community Unit School District #365-U, 109 F.3d 1250 (7th Cir. 1997).

After the parents of a fourteen year-old child with special needs refused to give consent for a reevaluation, the school district filed for a due process hearing. The hearing officer ordered a complete reevaluation be conducted by independent personnel mutually chosen by the parents and the school with the school covering the cost. The parents then filed a petition to recover attorneyâ□□s fees and costs. The district court granted the parents motion for summary judgment and awarded them a reduced amount of fees. The school district appealed the decision. The Seventh Circuit held that the parents were not the prevailing party because the school district obtained what they had initially requested, a complete case study evaluation and because the parents did not prevail on the issue of who would perform the evaluation.

Thus the parents did not qualify as â□□prevailing partiesâ□□ within the meaning of the IDEA and are ineligible to receive attorneyâ□□s fees.

Patricia P. v. Board of Educ. of Oak Park,203 F.3d 462 (7th Cir. 2001).

The parents of a student with a history of emotional and behavior problems filed suit for reimbursement of private schooling costs. The district court granted summary judgment for the school district. On appeal, the Seventh Circuit affirmed the district courtâ□□s opinion and held that the parent did not make the child available for evaluation by school district and was therefore not entitled to reimbursement despite the appropriateness of the private placement. The court stated that the parents must allow the school district it's own opportunity to evaluate the student and they cannot force the school to rely solely on an independent evaluation.

Edie F. ex rel. Casey F. v. River Falls School Dist.243 F.3d 329 (7th Cir. 2001).

The parents of learning disabled high school student and the school district repeatedly revised the studentâ□□s individual educational plans in hopes of encouraging him to do better. Despite their best efforts, the plans were unsuccessful. The parents brought suit to recover attorney fees against the school district following a settlement agreement. The parents claimed they were entitled to attorneys fees as prevailing parties because they had received what they had wanted, an independent educational evaluation ("IEE"), through the settlement agreement. In addition, the new IEE prompted the school district to make certain modifications in a new IEP. The Seventh Circuit held that while the IEE was used to "confirm" the IEP, there were no modifications to the plan that could not have been achieved voluntarily. Moreover, the parentâ□□s demands were not causally linked to the result

achieved therefore they could not form basis for awarding parents attorney fees as prevailing parties under IDEA.

Linda W. v. Indiana Dept. of Educ. 200 F.3d 504 (7th Cir. 1999).

The parentâ□□s of a dyslexic student disagreed with the IEP plan developed by the child's public school. A hearing officer concluded that the district must provide the student with help from specialists and summer compensatory education for his delayed start but that the student was not entitled to summer education as a norm. After receiving this decision the parents unilaterally placed the child in a private school and initiated litigation seeking to compel the district to pay for his new school. The court held that the inadequacy of an educational plan does not necessarily entitle the student's parents to reimbursement for their placement, because the parents were also required to "persuade a district court to exercise its discretion to provide reimbursement." In this case the court held that the parents had not met this burden and the district court did not abuse its discretion in denying reimbursement, based on its' belief that the modifications to the IEP would provide FAPE in the LRE. Furthermore the court held that the Parents were not prevailing parties because they obtained only a small portion of relief they were seeking, despite their procedural victory. The Appellant court affirmed the district courtâ□□s holding that the parents were neither entitled to reimbursement for placement of student in private school nor entitled to attorney fees.

Board of Educ. of LaGrange School Dist. No. 105 v. Illinois State Bd. of Educ. 184 F.3d 912 (7th Cir. 1999).

A child with Down Syndrome was evaluated and determined to be eligible for special education programs in his home school district when he turned three. The District did not have a program for non-disabled students and prepared an IEP recommending placement in a program limited to disabled

students. The parents rejected the placement and requested a program in the School District that would include nondisabled students or access to similar programs in neighboring districts. The IEP team then recommended a state-funded “At-Risk” program, which the parents also rejected. The parents unilaterally placed the child in a private preschool and filed for due process. At the Level I Due Process Hearing, the School District was ordered to pay the costs for the private pre-school. The Level II hearing officer ruled that neither the first placement nor the At-Risk program provided the student with a FAPE because neither placement was the “least restrictive environment.” The Level II officer ordered the School District to pay for the private schooling. The School District appealed. The district court ruled in the parentâ□□s favor and held that the School District had failed to provide a FAPE in the LRE and affirmed the award of private pre-school costs. The Appellant court affirmed the opinion of the District court also concluding that neither program offered by the School District provided the student with a free appropriate public education and ordered reimbursement for the cost of his private pre-school.

Butler v. Evans,225 F.3d 887 (7th Cir. 2000).

A child diagnosed with severe schizophrenia had difficulty in a regular school. The local school authorities held an IEP meeting and agreed that the student’s condition required a residential placement for educational purposes. An IEP, designed to target basic academic skills and social behavior, included special classes in a private or public residential education facility. The IEP assumed the student would not be hospitalized and was ready for an educational placement. Before the local school and the Indiana Department of Education could process this placement, the studentâ□□s condition forced her to be committed to a psychiatric hospital for several months. After the student was released from the hospital, she was placed in a residential educational

facility. Her parents sought reimbursement from the state for the costs of the studentâ□□s hospitalization. The Seventh Circuit affirmed the district court's denial of the parentâ□□s reimbursement claim since the hospitalization did not result from delays by the State of Indiana in processing the placement, nor did the hospital care constitute "related services" reimbursable under IDEA.

Dale M. ex rel. Alice M. v. Board of Educ. of Bradley-Bourbonnais High School Dist. No. 307 237 F.3d 813 (7th Cir. 2001).

A student who had multiple disciplinary problems including disrupting classes, truancy and drug use was examined by a psychologist diagnosed the student with a "conduct disorder". Although, the district recommended a therapeutic day school, the student's parents unilaterally placed him in a residential school. The parents demanded that the school district pay for the school but the school district refused. The due process hearing officer ordered reimbursement, but the reviewing officer reversed. The District Court reversed, ordered reimbursement and also awarded attorney fees. The Seventh Circuit held that the district's payment of the previous judgment did not moot the claim. The Seventh Circuit found that the residential school was a jail substitute. Since the placement was â□□custodial in natureâ□□ the district had no obligation to reimburse for the studentâ□□s residential school.

V. FREE APPROPRIATE PUBLIC EDUCATION (â□□FAPEâ□□)

Timms v. Metropolitan School District of Wabash County, Indiana, 722 F.2d 1310 (7th Cir. 1983).

The mother of a severely disabled child requested a due process hearing to obtain an appropriate program for her daughter because she was not attending school for a full day. The hearing officer determined that the childâ□□s IEP failed

to state why her instruction should be less than a full-day and ordered her placed in a full-day program. The school board sought review of the order. The Commission on General Education of the Indiana State Board of Education agreed with the hearing officer and remanded the case for an evaluation and to develop a new IEP. The hearing officer was also to make a report on the progress by May 1, 1980. Before the report was made, the parents filed suit to recover equitable and monetary relief. The district court issued a partial judgment denying all monetary relief on the ground that there was adequate justification for the shortened program. On appeal the Seventh Circuit court held that the parents failed to exhaust their administrative remedies before filing for judicial review, therefore their case was moot. The decision of the district court was affirmed.

> **Lachman v. Illinois Board of Education**, 852 F.2d 290 (7th Cir. 1988).

The parents of a profoundly deaf child requested a due process hearing when they did not agree with the proposed IEP for their sonâ□□s kindergarten year. The Level I and Level II hearing officers upheld the school districtâ□□s recommended placement for the child. The parents then filed suit on their sonâ□□s behalf claiming the proposed IEP denied their child a free appropriate public education. The district court held that the school district had provided a FAPE to the child and that they were not required to provide a separate educational opportunity for the child. The district court dismissed parent's complaint. On appeal, the Seventh Circuit held the proposed IEP was based upon an accepted, proven methodology for teaching primary children who are profoundly deaf. The court also held that the IEP did provide a FAPE to the maximum extent appropriate.

> **Heather S. v. State of Wisconsin**, 125 F.3d 1045 (7th Cir. 1997).

The parents of a child with special needs filed a request for due process when they disagreed with the school districtâ□□s proposed placement. After a new evaluation was conducted the school district still found the proposed placement to be appropriate. The parents withdrew their daughter from school three days before the final briefing in the due process matter was due and enrolled her in a private school. The parents did not notify the school district that she was enrolled in a private school until they requested the school district provide transportation to this school. The parents then filed another request for due process regarding the district's refusal to provide transportation. The school district refused to appoint a new hearing officer because they felt that the previous officer had jurisdiction over the case. The Department of Education concurred with the school district and consolidated the issues. The hearing officer issued his findings among which he determined that the districts recommended placement in self-contained placement was appropriate. On appeal the reviewing officer held that the Level I hearing officer erred, and ordered the student placed in a difference school district placement. Ultimately the Seventh Circuit held that the childâ□□s parents would have withdrawn her from the school regardless of the outcome of the due process hearings, thus the court could not conclude that the child had been denied a FAPE.

VI. OTHER MISCELLANEOUS ISSUES

Adashunas v. Negley, 626 F.2d 600 (7th Cir. 1980).

A child who was denied placement in special education brought suit to be identified and enrolled in special education classes by his school district. The child was determined learning disabled and immediately placed in special education. Shortly thereafter, the district court entered its order, finding the defendants were entitled to summary judgment under both the EAHCA and the Rehabilitation Act because the child had been placed in special education,

causing his claim to become moot. As such the district court allowed the child to pursue his claim for compensation, but denied his claims for injunctive and declaratory relief. On appeal the Seventh Circuit denied the childâ□□s claim for relief because he was no longer part of the class that was entitled to relief under the Rehabilitation Act. The child was now identified as learning disabled and in a special education program and therefore outside the class which was entitled to compensation.

> **Brookhart v. Illinois Board of Education**, 697 F.2d 179 (7th Cir. 1983).

Fourteen handicapped students brought suit challenging the Peoria, Illinois, School Districts' requirement that they pass a Minimal Competency Test in order to receive their diploma. After an administrative hearing, the State Superintendent of Education issued an order awarding the students their diplomas, and changing the test requirements for them. Specifically, the school was ordered to make reasonable modifications to the competency test and provide adequate notice and preparation for students regarding the test. The school district appealed to the district court which held there was no due process violation and reversed the order to issue the diplomas. On appeal, the appellate court held that the year to a year and a half notice that was given in light of the studentsâ□□ overwhelming lack of exposure to the goals and objectives of the test is constitutionally inadequate notice. In this case it was unlikely the students could return to school without undue hardship and therefore the school district could not require those students to pass the test as a prerequisite for a diploma.

> **Metropolitan School District of Wayne Township v. Davila**, 969 F.2d 485 (7th Cir. 1992).

On appeal the United States Department of Education, challenged the district courtâ□□s grant of summary judgment

against it, in favor of the School District. The district court held that a letter purporting to interpret part B of the IDEA was a legislative ruling subject to the notice and comment procedures of the Administrative Procedure Act. The appellate court reversed, holding that the letter articulated the Office of Special Education and Rehabilitative Services (â□□OSERSâ□□) construction of IDEA, and is only an interpretive rule that does not trigger the APAâ□□s notice and comment requirements. The School District only challenged OSERSâ□□ authority to issue its interpretation, not the interpretation itself. The court did not believe that the provision of the IDEA that delegates rule making authority to the Department of Education requires OSERS to promulgate its interpretation of the Act through notice and comment.

Baxter v. Vigo County School Corporation, 26 F.3d 728 (7th Cir. 1994).

The Baxters, parents of a child with disabilities, appealed the dismissal of a civil rights claim under Section 1983. The Baxters alleged they attempted to protest grades, racism, and other unspecified school policies by dressing their daughter in T-shirts expressing their feelings. The parents claimed the principal and the school corporation denied their daughterâ□□s civil rights when they prevented her from wearing the shirts. The Seventh Circuit held that the parents failed to identify any unconstitutional policy or custom on the part of the school and failed to state any facts that would support the existence of a policy or custom on which to base their claims. The claims that the school district and the principal denied the child her rights were dismissed because both were entitled to qualified governmental immunity.

Board of Education of Downers Grove Grade School District No. 58 v. Christine L., 89 F.3d 464 (7th Cir. 1996).

The parents of a child who was placed in special education in third grade were unhappy when the childâ□□s special education

time was reduced in fifth grade. The parents requested a due process hearing and both the Level I and Level II hearing officers found for the parents and invoked â□□stay putâ□□ until a future IEP could be developed. The district court reversed the hearing officerâ□□s opinions, agreeing with the school district that a modified educational plan met the childâ□□s needs, however this decision was not made until the child was about to enter eighth grade. The parents appealed the district courts ruling. The appellate court held that the child and his parents were without â□□an actual injury traceable to the defendant that could be redressed by a favorable judicial decision.â□□ The court held they had no remedy available because judgment either way would not effect the childâ□□s fifth grade IEP, and the case was moot.

> **Johnson v. Duneland School Corporation**, 92 F.3d 554 (7th Cir. 1996).

The parents of a disabled child filed a request for a due process hearing because they did not agree with the school district that their son required a three-year reevaluation and because they did not agree on the amount of time he should spend in school. The hearing officer ordered a reevaluation be conducted within seven days. The evaluation was not conducted and the parents appealed the order. The Indiana Board of Special Education Appeals upheld the order. The district court held that the school districtâ□□s right to conduct a three year reevaluation was not limited by parental consent and the schoolâ□□s right to conduct the evaluation was absolute.

> **Marie O., Gabriel C., and Kyle G. v. Jim Edgar**, 131 F.3d 610 (7th Cir. 1997).

Three children with disabilities filed a class action against the State of Illinois claiming a waiting list requirement was out of compliance with Part H of the IDEA. The children requested a declaration that Illinoisâ□□ failure to provide

all eligible infants with early intervention services was a violation of their rights. The district court granted the childrenâ□□s requested relief and granted detailed injunctive relief designed to bring Illinois into â□□meaningful complianceâ□□ with the Act. On appeal, the State claimed the childrenâ□□s action was barred by the Eleventh amendment, but the Seventh Circuit held that it was not. Furthermore, the court held that the language of Part H is mandatory and clear, and thus creates rights enforceable by individuals.

Morton Community Unit School Dist. No. 709 v. J.M. ,152 F.3d 583 (7th Cir. 1998)

A 14-year-old student required a tracheotomy tube (enabling him to breathe through an opening cut into his windpipe, rather than through his nose or mouth) with the intermittent aid of a portable ventilator system that required continuous monitoring and adjustments. He could not close his eyes and required an application of ointment to his eyes every hour to prevent corneal abrasions. He had limited mobility but had learning disabilities and difficulty in speaking because of the tracheotomy tube. To function and survive at school required either one of his parents or a nurse to devote their full undivided attention to the student. The Court of Appeals affirmed the District courtâ□□s decision requiring services for the technology dependent student were “related services” which school district had to provide at its own expense under IDEA.