



## Summary of Judge Gorsuch’s Record on Students with Disabilities

Based on NEA’s review of his record, Judge Gorsuch has ruled against students with disabilities in 8 out of the 10 cases to come before him.<sup>1</sup> In the ninth case before him, though Judge Gorsuch technically sided with the student-plaintiff, he wrote a concurrence expressing his personal belief that the IDEA provides only limited rights to students with disabilities.<sup>2</sup>

1. *A.F. v. Espanola Public Schools*, 801 F.3d 1245 (10th Cir. 2015) (Gorsuch, J.): Judge Gorsuch held that a student who had mediated her IDEA claim could not pursue other civil rights disability claims in court.
2. *Thompson R2-J School District v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008) (Gorsuch, J.): Judge Gorsuch ruled that an autistic student did not have a right under the IDEA to an education that would provide him with intellectual, social, and emotional skills outside the classroom.
3. *Garcia v. Board of Education of Albuquerque Public Schools*, 520 F.3d 1116 (10th Cir. 2008) (Gorsuch, J.): Judge Gorsuch ruled that, despite the fact that the school district had violated the student’s IDEA rights, a student with behavioral disabilities did not have a right to relief because any relief would be largely futile in light of her own behavior.
4. *Jefferson County School District R-1 v. Elizabeth E.*, 702 F.3d 1227 (10th Cir. 2012) (Gorsuch, J., concurring): Judge Gorsuch concurred in this case, ultimately siding with the student. However, he wrote separately to express his belief that the IDEA is purely educational, and does not help students with disabilities in their “life challenges.”
5. *Muskrat v. Deer Creek Public Schools*, 715 F.3d 775 (10th Cir. 2013): Judge Gorsuch joined the decision, which ruled that placing a student with developmental disabilities in a timeout room at least 30 times, where that student showed increasing signs of physical distress, including vomiting, did not “shock the conscience” so as to violate the Constitution’s Due Process clause.
6. *Chavez v. New Mexico Public Education Department*, 621 F.3d 1275 (10th Cir. 2010): Judge Gorsuch joined the decision holding that the state did not have an obligation to remedy a local school district’s IDEA violation, even if the violations persisted for an “unconscionable time.”
7. *Miller v. Board of Education of Albuquerque Public Schools*, 565 F.3d 1232 (10th Cir. 2009): Judge Gorsuch joined the ruling that a student with reading disabilities, whose IDEA

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<sup>1</sup> The only case in which Judge Gorsuch sided with a student with disabilities unequivocally was *M.S. v. Utah School for the Deaf and Blind*, 822 F.3d 1128 (10th Cir. 2016) (Murphy, J.). Judge Gorsuch joined the majority opinion, ruling for the mother of a student, who was blind, hard of hearing, and autistic. The case involved an irreconcilable conflict of interest: the lower court had improperly delegated to the student’s IEP team the decision of where to place her—even after finding that the same members of that team had failed to provide her with a free appropriate public education under the IDEA.

<sup>2</sup> See *Jefferson County School District R-1 v. Elizabeth E.*, 702 F.3d 1227 (10th Cir. 2012) (Gorsuch, J., concurring), *infra*.

rights were violated, was not entitled to relief under either the ADA or § 504 of the Rehabilitation Act.

8. ***Couture v. Board of Education of Albuquerque Public Schools*, 535 F.3d 1243 (10th Cir. 2008)**: Judge Gorsuch joined the ruling, which held that putting a student with disabilities in a closet-like, windowless timeout room for at times nearly two hours was not “unreasonable” under the Fourth Amendment to the Constitution.
  9. ***Sytsema v. Academy School District No. 20*, 538 F.3d 1306 (10th Cir. 2008)**: Judge Gorsuch joined the ruling, which held that an autistic student was not deprived of a free appropriate public education, even though his IEP contained only vague generalization plans, and included a teaching method that was indisputably “ineffective” for him.
- Four patterns emerge:
    1. First, Judge Gorsuch has erected technical legal barriers against the legal claims of students with disabilities — barriers of the type that the Supreme Court has subsequently rejected unanimously.
    2. Second, Judge Gorsuch believes that students with disabilities are only owed an education that is barely more than *de minimis*, a view that has been rejected by other courts, and that the Supreme Court appears poised to reject as well.
    3. Third, Judge Gorsuch believes that the constitutional rights of students with disabilities are not violated even when such students are segregated and subjected to abusive confinement.
    4. Fourth, Judge Gorsuch believes in dismantling the power of administrative agencies to enforce regulatory protections, including those for students with disabilities.