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2025 Special Education Year in Review

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Agenda

- Updates on FAPE Obligations – FAPE 22
- Special Education Exemptions under the Distraction Free Cellphone Ban
- Higher Burdens of Proof: *A.J.T. v. Osseo*
- Deference to State Agencies: *Ferreria*
- Waiver of June 1 Deadline



Updates to FAPE Obligations



Background

- In July 2023, NYSED issued a memorandum advising school districts to provide special education services to some students with disabilities through age 22.
- NYSED's guidance was based on *A.R. v. Connecticut State Bd. of Educ.*, a 2nd Circuit Court of Appeals decision holding that Connecticut must make available a FAPE until age 22 for students with disabilities who had not received a high school diploma.



NYSED Formal Opinion

- NYSED embraced the 2d Circuit decision as applicable to New York State.
- Explained that NY law defining eligibility for special education is “materially indistinguishable” from Connecticut law.
- Therefore, NYSED Counsel concluded that *A.R.* decision requires NY public schools to provide special education and related services to resident students with disabilities at least until their 22nd birthday.



2024 Albany County Court Ruling

- On March 8, 2024, in *Katonah-Lewisboro Union Free School District v. Betty Rosa, et. al.*, the New York State Supreme Court in Albany County ruled that the Second Circuit's decision in *A.R.* was contrary to New York's Education Law and, as a result, should not be followed in New York.
- The Albany County Supreme Court ruled that in New York State, students with disabilities are entitled to a FAPE until the conclusion of the school year in which they turn 21, as opposed to until their 22nd birthday.



2025 Albany County Court Ruling

- On March 10, 2025, in *Mahopac Central School District v. Betty Rosa, et. al.*, the New York State Supreme Court in Albany County ruled that NYSED lacks jurisdiction to enforce the “FAPE 22” rule.
 - NYSED may only enforce NY Education Law and, by extension, may not enforce the common law rule created by the Second Circuit.
- Decision addressed NYSED’s **lack of authority** to enforce Second Circuit’s *A.R.* decision, not its applicability to impartial hearings.
- NYSED appealed both decisions to the Appellate Division, Third Department, which then reversed.



2025 Third Department Ruling

- In *Mahopac*, the Third Department ruled that the Commissioner of Education and NYSED have **broad authority** to enforce all laws relating to the state’s educational system and execute all educational policies.
- NYSED has authority to ensure compliance with federal and state law, as well as court decisions interpreting such law, and to advise schools accordingly.
 - The Third Department ruled that NYSED’s actions were not arbitrary and capricious. Rather, NYSED acted within its authority by enforcing the court-created FAPE 22 rule.



2025 Ruling by the Third Department

- The Third Department’s ruling in Katonah-Lewisboro cross-referenced the *Mahopac* decision and noted that the underlying facts were not meaningfully different.
- Therefore, students with disabilities in New York are entitled to a FAPE until their 22nd birthday.



Updated NYSED Opinion of Counsel

- Following the Third Department's decision, NYSED issued an updated Opinion of Counsel Memo on August 14, 2025
- This opinion confirmed NYSED's position that a public school is obliged to provide FAPE to students who have not received a high school diploma through to the age of 22.
- NOTE: Any decision not to follow this obligation, which is imposed by the interaction of State and federal law, will be considered ***willful*** within the meaning of Education Law § 306.



Special Education Exemptions under the Cellphone Ban



Cellphone Policy

- Governor Hochul and the New York State Legislature recently reached an agreement on a “bell-to-bell” smartphone ban in schools.
- This new legislation applies to all public school districts, charter schools and Boards of Cooperative Educational Services (BOCES).
- Each school must have an internet-enabled device policy.
- The law prohibits students from using smartphones and other internet-enabled devices on school grounds for the entire school day (from “bell-to-bell”).



Cellphone Policy

- “*School day*” is defined as “the entirety of every instructional day...during all instructional time and non-instructional time, including but not limited to homeroom periods, lunch, recess, study halls, and passing time.”
- “*School grounds*” is defined as in or on or within any building, structure, athletic playing field, playground, or land contained within the real property boundary line of a district elementary, intermediate, junior high, vocational, or high school, a charter school, or BOCES facility.



Cellphone Policy

Not an absolute prohibition:

- Students will still have access to internet-enabled devices officially provided by the school, such as laptops or tablets, for classroom instruction.
- Students may be allowed to carry simple phones that cannot access the internet but can send text messages and make phone calls (e.g., flip phones).
- Additionally, schools will be required to give parents a way to contact their children during the school day if necessary.



Cellphone Policy

- The following students may still attend school with a smartphone or other internet-enabled device:
 - Students who require access to an internet-enabled device to manage a medical condition.
 - Students who need the device for purposes of translation.
 - Students who need the device for purposes of family caregiving.
 - Students who may need their device in the event of an emergency.
 - Students with IEPs (or Section 504 plans) that mandate access to their device.



Cellphone Policy

Examples of appropriate cell phone use for students with IEPs/Section 504 plans include:

- For adjusting cochlear implants or bone conduction devices;
- For continuous monitoring of blood glucose levels;
- For monitoring pulmonary function and oxygen saturation levels.



Pediatric Guidance on Cellphones

- The New York State Chapter of the American Academy of Pediatrics issued a Guidance for Pediatric Providers to better understand and address the new cell phone ban with their patients.
- The Guidance states that “[c]arrying a cellphone at school will be an **extreme** and **rare occurrence** for **significant medical needs**.”



Pediatric Guidance on Cellphones

- Mental health concerns, such as anxiety or depression, generally are **NOT** a basis for a cell phone use exemption.
 - The Guidance advocates that children & teens are better positioned to learn other coping skills to handle mental health issues when they do not have access to a personal cell phone and receive appropriate medical care.



Higher Burden of Proof: *A.J.T. v. Osseo*



***A.J.T. v. Osseo* – Factual Background**

- A.J.T., a Minnesota student with epilepsy, experienced severe seizures that prevented her from attending school before noon.
- Student's parents requested that the district provide her with after-hours instruction to ensure she received the same amount of instructional time received by other students.
- The District denied the parents' repeated requests for this accommodation.



A.J.T. v. Osseo – Procedural Posture

- A.J.T., through her parents, first filed (and won) a due process complaint under the IDEA.
- The parents then sued the District for disability discrimination in federal District Court under Section 504 and the ADA.
- The District Court agreed with the district because A.J.T. had not shown that the school district acted in **bad faith or gross misjudgment**.
- The 8th Circuit Court of Appeals upheld the decision.



A.J.T. v. Osseo – Procedural Posture

- The Supreme Court disagreed and ruled that students with disabilities do not have to meet a higher standard of “bad faith” or “gross misjudgment” to hold school districts accountable for disability discrimination.
- The Supreme Court stated that the lower **deliberate indifference** standard, which is applied in non-education-related Section 504 and Title II ADA claims, should apply to claims involving students with disabilities.



A.J.T. v. Osseo – Implications

- The application of a “deliberate indifference” standard for disability discrimination claims will still be a high hurdle for parents to clear.
- To prove that the school district acted with deliberate indifference, a parent must establish that the district ***intentionally*** disregarded a student’s educational needs.
 - This requires a parent to prove that the district knew a particular service would aid in a student’s educational achievement, but instead willingly chose not to provide these services.



***A.J.T. v. Osseo* – Implications**

- When read in conjunction with the Supreme Court’s decision in *Perez v. Sturgis*, 598 U.S. 142 (2023), parents will be incentivized to file federal claims under Section 504 and the ADA.
 - Do not have to exhaust administrative remedies under the IDEA;
 - Have broader flexibility to assert claims under the ADA and Section 504;
 - Can seek a wider range of relief/remedies.



***A.J.T. v. Osseo* – Implications**

- The net result of the *Osseo* and *Perez* cases is that parents will be more likely to initiate legal actions under Section 504 and the ADA and seek greater damages as relief.
- To avoid any potential liability, school districts should ensure that each decision regarding the provision of special education services is well documented and explained.
- By showing reasonable care and thought for its decisions, school districts should be able to successfully fend off claims of deliberate indifference under Section 504 and the ADA.



Deference to State Agencies: *Ferreria v. Aviles-Ramos*



Tuition Reimbursement Analysis

When determining whether a Parent is entitled to reimbursement for placement of his or her student into a private educational setting, Courts follow the *Burlington/Carter* test which analyses:

1. Whether the district failed to offer or provide the student with a FAPE
2. Whether the private educational services obtained by the parents were appropriate to their child's needs and
3. Any relevant **equitable considerations** that may be appropriate to fashion relief.



Equitable Considerations

With respect to the equitable considerations prong of the *Burlington/Carter* test, the following will be considered when contemplating the denial or acceptance of a parent's reimbursement claim:

- Timely notice of disagreement with placement
- Ensuring child is available for necessary evaluations
- Whether child's poor academic performance was due to parent's refusal to accept recommended services
- Whether withdrawal from the public school was justified
- Scholarships or financial aid from the private school
- Fraud or collusion by the parent or the private school.



***Ferreria v. Aviles-Ramos* - Facts**

- In *Ferreira v. Aviles-Ramos*, parents had placed their student who suffered from cerebral palsy, epilepsy, and a brain injury, in a private school and sought and received tuition reimbursement for the 2017-2018 and the 2018-2019 school years.
- At the start of the 2019-2020 school year, the parents again sought tuition reimbursement for the same private school.
- However, the District denied reimbursement because of the parents' failure to participate in the District's CSE meetings and the parents' efforts to impede the IEP development process.
- After a hearing, the Impartial Hearing Officer affirmed the District's decision



Ferreria v. Aviles-Ramos - Appeal

- On appeal to the State Review Office, the SRO agreed with the IHO and denied tuition reimbursement because of the parents' actions.
- The parents then appealed to the federal district court, but the district court also agreed with the IHO and SROs decisions to deny tuition reimbursement.
- At each stage of these proceedings, the IHO, SRO, and district court each found that equitable factors weighed in favor of denying the parent's request for reimbursement.



Ferreria v. Aviles-Ramos - Appeal

- The parents then appealed the district court's decision to the Second Circuit.
- On appeal, although the Second Circuit agreed with the district court's decision, the Court stated that judicial deference to administrative decisions regarding equitable balancing was inappropriate.
- The Second Circuit noted that courts are particularly situated to use broad discretion regarding equitable balancing.



***Ferreria* Implications**

- As such, a district court is not required to defer to the state administrative agency's conclusion.
- Instead, higher courts will look to ensure lower district courts have independently evaluated whether equitable factors disfavor reimbursement when analyzing a claim for tuition reimbursement under the IDEA.
- IHO and SRO opinions may be afforded less deference



Waiver of June 1 Deadline



N.Y. Education Law § 3602-c(2)(a)

- “Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent or person in parental relation of any such student.”
- “In the case of education for students with disabilities, such a request shall be filed with the trustees or board of education of the school district of location **on or before the first of June preceding the school year** for which the request is made.”



SRO Decision No. 24-384

- In September 2023, a parent of a student with a disability unilaterally obtained special education itinerant teacher (SEIT) services and speech-language therapy from EDopt LLC, a private provider, for the remainder of the 2023-2024 school year.
- The parents alleged that the New York City Department of Education failed to provide mandated special education services to their child.
- EDopt was the only private provider willing to provide such services at the DOEs standard rates. The student received services from EDopt from October 2023 to May 2024.



SRO Decision No. 24-384

- In May 2024, the parents filed a due process hearing to seek reimbursement for these services.
- The parents claimed the DOE failed to implement an appropriate educational program for their child.
- The Impartial Hearing Officer found that the DOE was not obligated to reimburse the parents for any services provided prior to April 19, 2024, because the parents had failed to submit a written request for dual enrollment by the statutorily defined **June 1 deadline**.



SRO Decision No. 24-384

- However, the IHO ruled that the DOE waived its right to invoke the June 1 defense for the period of services rendered after April 19, 2024, by convening a CSE meeting to develop the student's ISEP.
- Thus, the IHO ordered partial reimbursement for services rendered after April 19 through June 30 only. In turn, both the parents and the DOE appealed this decision to the SRO.



SRO Decision No. 24-384

- On appeal to the State Review Office, the SRO reversed the IHOs decision in favor of the DOE.
- Since the DOE never actually provided services to the student, the SRO concluded that the DOE had not waived its June 1 defense by merely convening and implementing an ISEP.
- The SRO emphasized that developing an IESP does not constitute a clear and unmistakable waiver of statutory rights.
- Thus, the SRO found that the parent was not entitled to reimbursement for any portion of the school year.



SRO Decision No. 24-384

- The June 1 deadline is a strict deadline that school districts must be careful to enforce. Any actions by a school district to **provide** special education instruction and services after a parent fails to meet the June 1 deadline can be considered a waiver of such defense.
- However, Appeal No. 24-384 gives the school district the ability to at minimum conduct a CSE or CPSE meeting and still maintain later on the defense that a parent failed to request services and instruction by June 1.



Q&A



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Mastering CSE Meetings – Strategies for Success

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Generally: Preparing for and Running an Effective CSE Meeting

- Focus on:
 - Preparation;
 - Clear communication; and
 - Collaboration among all attendees.

- Key Practices Include:
 - Leading with empathy and professionalism;
 - Being open to feedback but grounded in data;
 - Gathering all necessary information prior to meeting;
 - Establishing a collaborative tone; and
 - Ensuring every participant, especially the student and parent, feels heard and respected.



Before the Meeting

- *Create and Share a Clear Agenda.*
 - This can allow all participants to provide their input and helps keep the meeting focused and productive.
- *Gather and Review all Documents.*
 - Current IEP, progress reports, evaluations and recent assessments should be compiled and reviewed.
- *Seek Input from Parents/Guardians.*
 - Reach out to parents/guardians prior to meeting to gather observations, concerns and goals for their child.



Sample: CSE Meeting Checklist

- Parent Input
- Math Teacher Input
- Science Teacher Input
- English Teacher Input
- Social Studies Teacher Input
- Elective Teacher Input
- Level 1 Assessment: Teacher & Student
- Level 1 Assessment: Parent
- High School Transcript
- Report Card/ Progress Report
- Attendance Record
- Annual Goals Progress Report
- Reading/Math Assessment
- Classroom Observation
- Student Work Samples
- IEP Draft





Before the Meeting

– *Preparation v. Predetermination*

- Always demonstrate that you **considered** the parents' position (and that of their outside evaluators) to avoid claims of “predetermination.”
- Be careful what you say/write to avoid claims of predetermination.
- Do not dismiss the Parent's concerns out of hand and thoroughly review any documents that they bring with them, even if you believe they present little value.

– *Pre-CSE Meeting*

- Hold team meetings without parents to better prepare. These meetings are usually considered to be “preparatory activities...to develop a proposal or response that will be discussed at a later meeting.” See 34 C.F.R. 300.501(b)(3).



Before the Meeting

– *IEP Development – Driving Questions*

- Did the CSE obtain a comprehensive individual evaluation of the student in all areas of the suspected disability?
- Does the CSE have sufficient information about the student's response to instruction in the general education environment?
- Is all evaluation information and prereferral information considered and discussed at the meeting?
- Does the CSE have information about the general education curriculum, context, services and assessments to support decision making to make meaningful recommendations for each student?
- Does the CSE understand the unique nature of the student's disability and consider that information in making its recommendations?
- Do the members of the CSE understand the process and expectations and their roles, including the information about the student, evaluations, curricula and State and district-wide assessment that they are expected to bring to the Committee discussions?
- Are the parent's concerns and the student's strengths, preferences and interests evident in the IEP?



Before the Meeting

– *Draft IEP*

- Can provide a guideline for discussions during the CSE meeting. However, the CSE must be vigilant in emphasizing that the IEP is a **draft** and thus is open to revisions and changes.
 - The SRO has expressly permitted the development of draft goals prior to the CSE meeting. *See Application of a Child with a Disability*, Appeal No. 01-028.
 - *Application of a Student with a Disability*, Appeal No. 14-067: “Districts may prepare reports and come with pre-formed opinions regarding the best course of action for the student as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.”



Before the Meeting

- *Scheduling with Non-Responsive or Adversarial Parents*
 - Offer several alternative dates when seeking to schedule a CSE meeting. The dates should be at different times and days of the week.
 - Don't send open ended letters.
 - “Three strikes and you are out!”
 - If a parent cancels or fails to attend three CSE meetings, the CSE may proceed without the parent.

Maybe the Armor
was a bit much, But
John knew there
was going to be an
Epic battle at the
IEP meeting today.

Spouses, Kids and Special Needs aren't issued in a Seabag?

som^{ee}cards
user card





During the Meeting

- *Start with Introductions*
 - Begin on time and ask everyone to introduce themselves. State the meeting's purpose and, if necessary, review basic etiquette, such as using "I" statements and listening respectfully.
- *Maintain a Collaborative and Positive Tone*
 - Highlight the student's strengths before discussing areas of need.
 - Lead with empathy and focus on what is working well. Parents know the reason for the meeting is a deficit!
- *Facilitate the Reporting Process*
 - Go through the agenda systematically. Allow teachers and providers to report on the student's progress and effectiveness of current strategies.
- *Parent Participation*
 - Avoid jargon to explain evaluation results, goals, and legal requirements.
 - Watch for body language that indicates confusion and offer clarifications.



During the Meeting

- *Make sure you sufficiently review the existing IEP and any new information*
 - Don't gloss over the PLEPs and Goals.
 - Review Progress Monitoring and any New Evaluations.
- *Do not excuse CSE members easily and/or liberally*
 - Although the regulations allow you to excuse CSE members from a meeting with the parent's consent, try to do this sparingly.
- *How to handle "rogue" CSE members*
 - Get their opinions ahead of time
 - Be careful with body language if they disagree with the CSE- Don't overtly react!!!
 - Question them- utilize other CSE members to present case to the contrary.



During the Meeting

- *Prioritize Parent (and Student) Input*
 - Demonstrate a willingness to compromise, even if they are unwilling to do the same.
 - Stay focused on the goals and data.
 - Come to a mutual agreement on an appropriate placement by doing the following:
 - Discuss and validate parent concerns,
 - Repeat parent concerns/prompt further explanation,
 - Thoroughly document parent input,
 - Focus on outcomes,
 - Use data to support your recommendation, and
 - Conduct a trial.
- *End with a Clear Action Plan*
 - Outline specific next steps and create tangible action plan.



Managing Tension/De-Escalation with Adversarial Parents

Unfortunately, some parents view a CSE meeting as a battleground and approach the meeting in such manner. Try to diffuse and de-escalate...

- *Prevention and De-Escalation Conflict Prior to Meeting:*
 - Lead with empathy,
 - Focus on the student,
 - Emphasize shared goal,
 - Ask parent for input in advance,
 - Create positive communication history, and
 - Create a welcoming atmosphere in meeting room.



Managing Tension/De-Escalation with Adversarial Parents

- *Managing Tension During the Meeting*
 - Begin with positive statements,
 - Actively listen to understand (let parents speak without interruption),
 - Acknowledge emotions but focus on data,
 - Use “I” statements (to sound less accusatory and defensive),
 - Avoid a power struggle (focus on collaborative problem-solving),
 - Address inappropriate behavior calmly:
 - Address the behavior and provide options such as taking a break, documenting a disagreement, or rescheduling.
 - If you anticipate a hostile meeting, have an administrator attend to help mediate.
- Document key points/decisions.
 - Take detailed notes during the meeting.
 - When consensus cannot be reached, “Agree to Disagree.”



Managing Tension/De-Escalation with Adversarial Parents

- *Ensuring a Collaborative Path After the Meeting*
 - Commit to ongoing communication.
 - Provide regular updates on the student's progress to reinforce a collaborative partnership.
 - Reflect and regroup.
 - Debrief with colleagues or supervisors to share insights and seek support.
 - Use what was learned to plan for future interactions.



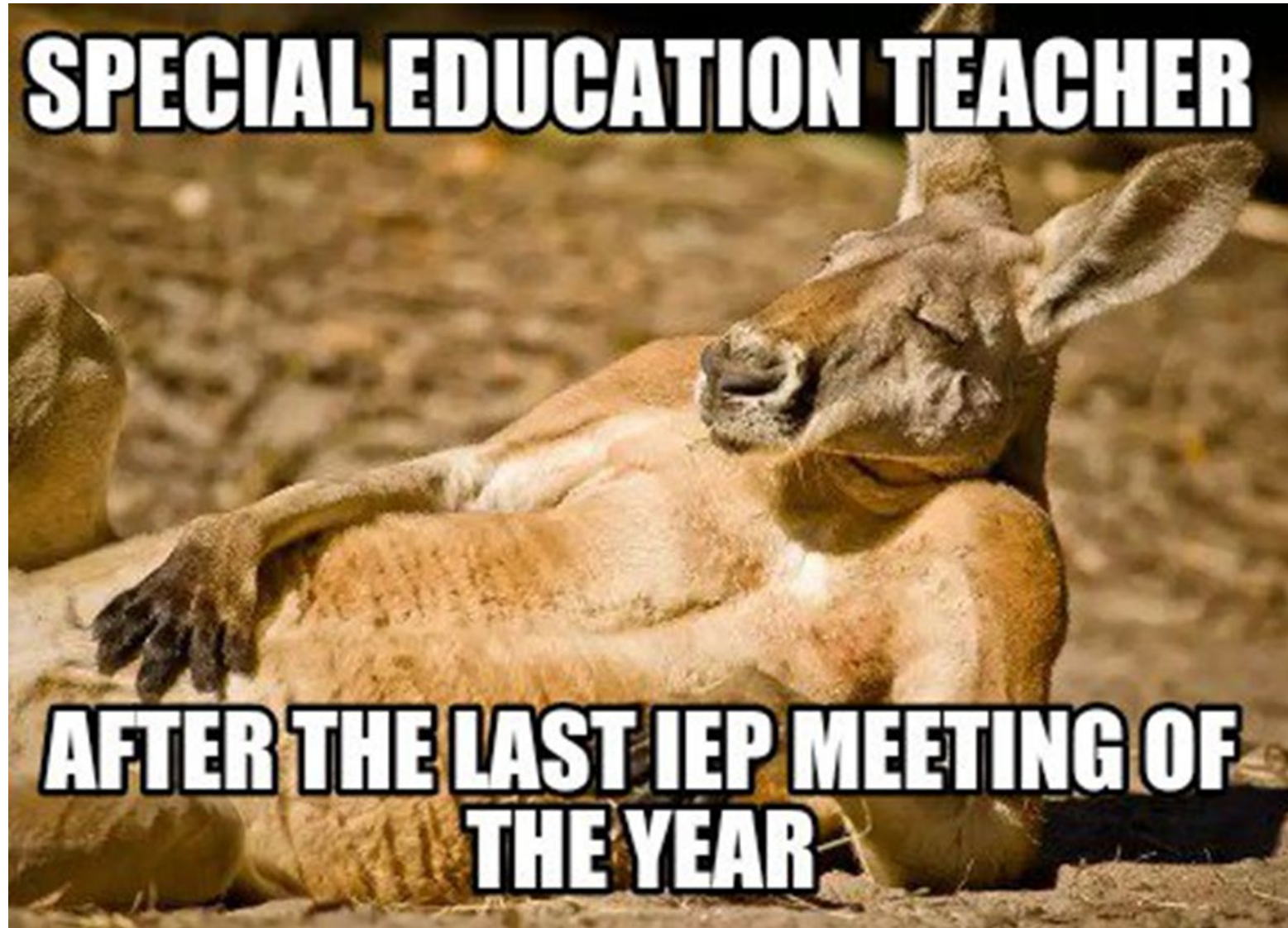
After the Meeting

- Make sure you follow through!!!
- Prior Written Notice
 - Prepare a meaningful PWN that identifies how the program will be changed, and the options considered when making decisions.
- Progress Monitoring
 - Make sure that teachers, service providers, etc. are carefully creating and accumulating data that will demonstrate the student's progress (or lack of).
- Keep lines of communication open with the Parent.



Practical Tips

- If a parent is angry, don't ignore it.
 - Don't take feedback personally and try to provide information or context that they may not have had initially as quickly as you can.
- Don't make promises.
 - When a parent gets upset about something, it may be tempting to promise that things will get better. But some things may be out of your control. Let the parent know you will find out what can be done to remedy the situation – so you don't "break" a promise.
- Be careful what you put in writing.
 - When responding to angry parents, keep it cordial and brief. Always offer to meet in person to further discuss. Send email after.
- Come to meetings prepared.
- Listen first, talk second.
- If the meeting is not productive, end it!





Q&A



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Navigating Student Discipline: MDR and Pattern Determinations

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Agenda

- Introduction
- Applicable Legal Framework
 - IDEA
 - Section 504
 - New York State Education Law and Regulations of the Commissioner of Education
- Manifestation Determination Review (MDR)
 - Timing, procedures, and outcomes
 - Pattern Determinations – What to consider? Who makes them?
- Brief review of recent State Review Office (SRO) Decisions



Applicable Legal Framework

- **IDEA**

- Provides rules and protections for eligible students and those suspected to have a disability where a student engages in misconduct.

- **Section 504**

- Contains general prohibition on discriminating against a student because of disability, which has been interpreted by the courts as prohibiting discipline where there is a nexus between the behavior at issue and the student's disability.

- **New York State Education Law Section 3214**

- Provides protections for eligible students and those suspected to have a disability if suspension or removal is proposed for longer than 10 consecutive school days or, upon a pattern of shorter removals that, when combined, exceed 10 days and demonstrate a pattern of behavior.

- **Commissioner's regulations [Part 201]**

- Mandates MDR to determine whether a student's behavior that led to disciplinary action is a manifestation of their disability.



Suspension

- A suspension of a student with a disability occurs when the student is removed from his or her current educational placement for **any** portion of the day due to disciplinary reasons.
- This includes:
 - In-school suspensions
 - Suggesting a child go home early
 - Suggesting a student stay home to cool down, get rest, etc.



Disciplinary Change in Placement

- A suspension or removal of a student with a disability or a student *presumed* to have a disability constitutes a **disciplinary change in placement** if the student is:
 - Suspended for a period of 10 days or longer, or
 - Subjected to a series of short suspensions or removals that constitute a **pattern** because:
 - The removals cumulate to more than 10 school days in a school year,
 - The student's behavior is substantially similar to behavior in previous incidents.



Manifestation Determination Review (MDR)

- What is it?
 - Review of the relationship between a student's disability and the behavior that is subject to disciplinary action.
- When should it be conducted?
 - If a disciplinary change in placement is contemplated.
- What is its purpose?
 - To determine whether the conduct in question was:
 - Caused by or had a direct and substantial relationship with the student's disability.
 - The direct result of the school's failure to implement the student's IEP.



MDR: Practical Points

(1) MDR must not *precede* a Superintendent's Hearing

- Appeal of M.W. (Dec. No. 18,068) – conducting the MDR prior to the fact-finding phase of a student discipline hearing “presupposes a student’s guilt.”

(2) There is no “reset” of the clock.

- The District has 10 days of disciplinary removal for the school year.
- After you reach the 11th day, any time you consider disciplinary action or removal, you must conduct another MDR **BEFORE** implementing a suspension or removal.

(3) If a parent and the District agree to change the child’s placement after a violation of the Code of Conduct, but not as a result of hearing, then it is not considered a change of placement.



Disciplinary Change in Placement – What Constitutes a Pattern?

- “...because the student's behavior is **substantially similar** to the student's behavior in previous incidents that resulted in the series of removals; and because of such additional factors as the **length of each suspension or removal**, the **total amount of time** the student has been removed and the **proximity** of the suspensions or removals to one another.



Disciplinary Change in Placement – Who Makes the Pattern Determination?

- The **school district** determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- This determination is subject to review through due process and judicial proceedings.



Exceptions to Disciplinary Change in Placement Rules

- A student with a disability may be suspended for a period that would normally constitute a disciplinary change in placement if:
 - Student's behavior is **not** a manifestation of the student's disability,
 - Involves the placement of the student into an Interim Alternative Educational Setting resulting from behavior involving infliction of serious bodily injury to another, weapons, or illegal drugs or controlled substances (45-day exception).
- School personnel *may* consider any other unique Code of Conduct violations, on a case-by-case basis, that might permit a change in the student's educational placement.



Interim Alternative Educational Setting (IAES)

- IAES is a temporary educational placement (other than the student's current placement) at the time the behavior occurred.
- CSE determines the IAES (including location and services).
- Student may be placed in an IAES for **up to 45 days** (exclusive of vacations, holidays and summer break) per offense relating to serious bodily injury, illegal drugs, controlled substances or weapons.



IAES, Cont'd

Dangerous Removals by an IHO

- An IHO, in an expedited due process hearing, may order a change in placement of a student with a disability to an IAES for not more than 45 school days, if the IHO determines that maintaining the current placement of the student is substantially likely to result in injury to the student or others.
- Student remains in the IAES pending the decision of the IHO or until expiration of the relevant 45-day time period.



Students Presumed to Have a Disability

- A student is presumed to have a disability whenever his or her:
 - Parent expresses concerns, in writing, to a teacher or administrator about the student,
 - Parent requests an evaluation of the student; or
 - Teachers or other school personnel expresses concerns about a specific pattern of behavior directly to the Director of Special Education or other supervisory personnel.
- A student is **NOT** presumed to have a disability if his or her:
 - Parent has refused consent to evaluation.
 - Parent has refused special education services.
 - CSE determined student did not have a disability.



Students with Section 504 Plans

- An “evaluation” (*i.e.*, manifestation determination), consists of a two-step process:
- **STEP 1:** Section 504 team determines whether the behavior in question was caused by or has a direct and substantial relationship to the student’s disability.
 - The 504 team consists of a group of persons knowledgeable about the student and the meaning of the evaluation data.
 - The school must provide the Section 504 team with relevant information from a variety of sources sufficient to enable the team to determine if the student’s behavior is based on his/her disability and the school must ensure the information is documented and carefully considered.



Students with Section 504 Plans

This information could include, for example:

- Any previous evaluations of the student regarding disability-based behavior;
- The student's Section 504 plan (including any behavioral supports the student needs), any updates to the plan, and information about whether the current Section 504 plan is being implemented with fidelity;
- Psychological or medical evaluation data related to the behavior at issue;
- Relevant information provided by the student's parents;
- Academic records;
- Relevant discipline records, including information on whether previous disciplinary actions led to changes in behavior, and incident reports; and
- Relevant teacher notes, observations, and data collected about the behavior.



Students with Section 504 Plans

- To be useful in determining whether the behavior is based on the student's disability, these materials should be relevant to the behavior at issue and recent enough to provide the Section 504 team an accurate understanding of the student's current behavior.



Students with Section 504 Plans

- **STEP 2:** The school's next step depends on whether the behavior for which the school proposed discipline is determined to be based on disability.
 - When the behavior is based on disability the school is prohibited from carrying out any discipline that would exclude the student on the basis of disability.
 - This could be a reason to suspect that the student's placement may be inappropriate, and they may need additional or different services, such as behavioral supports, or may need a change in educational setting to ensure FAPE.
 - Alternatively, the team must consider whether additional or different services/supports would enable student to remain in current placement.



MDR Procedures

– PARENTAL NOTICE

- Prior to imposing a suspension or removal that constitutes a disciplinary change in placement, the parent must be provided:
 - Prior Written Notice of the decision, and
 - Copy of the Procedural Safeguards Notice
- Provide written notification of the MDR meeting, informing the parent of:
 - Purpose of the meeting
 - Names of expected attendees
 - Right to have relevant members of CSE participate at parent's request.



MDR Procedures

– CONVENING THE MDR TEAM

- Prior to imposing a suspension or removal that constitutes a disciplinary change in placement, the parent must be provided:
 - Prior Written Notice of the decision, and
 - Copy of the Procedural Safeguards Notice
- Provide written notification of the MDR meeting, informing the parent of:
 - Purpose of the meeting
 - Names of expected attendees
 - Right to have relevant members of CSE participate at parent's request.



MDR Procedures

– CONDUCTING THE REVIEW

- The manifestation team must review all relevant information in the student's file including:
 - The IEP,
 - Teacher observations,
 - Any other relevant information provided by the school district or the parents.
- **NOTE:** This should not be a 5-minute meeting!



MDR Procedures

– MAKING THE DETERMINATION

- The manifestation team must answer each of the following questions to determine whether there is a manifestation, or nexus, between the student's disability and the behavior:
 - Was the conduct in question caused by, or did it have a ***direct and substantial relationship*** to the student's disability?
 - Was the conduct in question the direct result of the school district's ***failure to implement the IEP?***
- **NOTE**: The team should focus on how the disability actually affects the student; not just the disability's official diagnostic name. For example, simply having a diagnosis of ADHD does not automatically excuse misbehavior. Look beyond the label!



MDR Procedures

– MANIFESTATION FOUND

- If the MDR answers YES to either of the two questions, then the behavior *was* a manifestation of the student's disability and:
 - The CSE must conduct an FBA (if one has not already been done) and (update or create) a BIP.
 - Student must be returned to their original placement except if doing so would be dangerous or the parents and district agree otherwise.
 - If manifestation found because of district's failure to implement the IEP, the district must take steps to remedy its failures.



MDR Procedures

– NO MANIFESTATION FOUND

- If the MDR answers NO to both questions, then the behavior *was not* a manifestation of the student's disability.
- When no manifestation is found:
 - The district may apply the same disciplinary procedures to the student as it would to a student without disabilities.
 - Student may receive an FBA or BIP as appropriate, and other services to help correct or modify the behaviors to ensure they do not recur.



MDR Procedures

EXPEDITED DUE PROCESS HEARING

- An expedited due process hearing may be requested under the following circumstances:
 - Parent disagrees with the MDR outcome,
 - District seeks to place student in IAES because maintaining current placement is “dangerous,” or
 - Parent challenges the District’s IAES placement.
- Upon receipt of a request for an expedited hearing, the school district must immediately appoint an IHO.



Recent SRO Decisions



SRO Decision No. 16-041

- Student exhibited a history of aggressive behaviors and elopement.
- School repeatedly asked parents to pick student up from school due to his unsafe behaviors.
- Parents filed due process complaint alleging the district improperly suspended without MDR.
- IHO stated that because the student was sent home or encouraged to remain home between 15 and 20 times, this effectively constituted a disciplinary change in placement.
- Since the regulations define suspension or removal broadly, the SRO determined an MDR should have occurred, and the district's actions were improper.



SRO Decision No. 23-040

- 8th-Grade student with anxiety and autism brought a knife to school with intent to harm others and destroy the school.
- Superintendent removed the student from school out of a concern for the school's safety.
- Parents filed a due process complaint challenging:
 - The team's determination that the behavior was not a manifestation of his disability, and
 - The team's failure to appropriately consider evidence not yet before it, namely hospital reports that were forthcoming.



SRO Decision No. 23-040

- The SRO found that the MDR team properly considered all relevant evidence presented and made its determination within the appropriate timeframe. If the MDR team waited for the evidence, it could not have been timely conducted.
- SRO found the MDR to be procedurally valid.
- In addition, SRO found that the parents failed to offer any additional evidence that the student's behavior was directly related to his disability to find manifestation.



SRO Decision No. 24-471

- MDR team found series of suspensions were not a manifestation of student's disability and the student was suspended for the rest of the school year.
- Parents filed a due process complaint challenging the validity of the MDR.
- SRO found the District exhibited several flaws in its MDR process, namely its failure to adequately consider the student's disability or treatment plan adopted from her prior school district.
- Therefore, the District inaccurately determined that the student's behavior was not a manifestation of her disability.



SRO Decision No. 24-471

- MDR team must consider the totality of the evaluative information available at the time of the determination including:
 - The IEP,
 - The student's needs,
 - The services meant to address those needs, and
 - All other relevant information reviewed.
- In this case, the SRO believed the MDR focused too heavily on the student's symptoms of her disability rather than the interaction between the disability and the behavior as a whole.



Final Takeaways

- The team must consider the how the disability manifests itself in the specific student in question and not based upon a “typical” manifestation of the disability at issue.
- The team must review the relevant information about the student’s behavior and disability, however, that does not require every member of the team to look at every piece of information.
- MDR should be conducted after guilt phase of Superintendent’s hearing so as not to predetermine guilt.
- An “evaluation” is required for students with Section 504 plans prior to disciplinary change in placement.
- Take care to ensure a thoughtful and deliberate meeting to discuss these important issues; it should not be a 5-minute meeting.



Q&A



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