

2026 Special Education Conference



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Special Education: Year in Review

2026 Special Education Conference

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Agenda

- NYSED Guidance on ABA services
- FAPE 22 Update
- School District Discretion to Choose Special Class Options
- Retroactive Discipline of Student after Revocation of Consent
- Fallout from the Sturgis Ruling
- The Use of Assistive Technology and AI to supplement Special Education Instruction



NYSED Guidance on Applied Behavioral Analysis



NYSED Memorandum on ABA Services

- In September 2026, NYSED issued fiscal and programmatic guidance regarding the provision of ABA Services.
- NY Educ. Law sec. 8801- ABA is the “design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant social improvements in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.”



NYSED Memorandum on ABA Services

- To provide ABA services, a person must be a licensed Behavioral Analyst (“LBA”) or certified Behavior Analyst Assistant (“CBAA”).
- Licensure requirements are exempted for persons employed by school districts, charter schools, school age approved special education programs, etc. N.Y. Educ. Law sec. 8807(2).
- Non-licensed individuals are permitted to collect basic information and data and conduct informal observations for the purpose of developing an ABA plan.



NYSED Memorandum on ABA Services

- NYSED states that “non-licensed individuals (e.g. classroom teacher, teaching assistant or other members of multidisciplinary team) are permitted to implement behavioral supports and instructional strategies that may contain aspects of ABA as part of a classroom methodology.”
 - Includes token economy systems, explicit instruction, behavior tracking and data collection, functional behavioral assessments and behavior intervention plans.
 - Schools cannot get reimbursement for these activities by non-licensed personnel.



NYSED Memorandum on ABA Services

- If ABA services are being provided by licensed personnel (LBA or CBAA), such services must be considered a “***related service***” under the Commissioner regulations.
- In these circumstances, ABA must be “appropriately documented on the student’s IEP as a related service.”
- Schools can claim reimbursement for ABA related services via STAC when it is provided by a licensed individual.



SED Memorandum on ABA Services

- If a licensed personnel (LBA or CBAA) conducts an FBA and/or develops a BIP, the time to conduct the evaluation and develop, implement and monitor the BIP is reimbursable through STAC.

- If a CSE determines that a student needs a 1:1 aide/assistant, this must be listed on the IEP under “Supplementary Aids and Service and Program Modification.” It should not be listed as a related service.
 - The reasons why a student would need a 1:1 aide/assistant should be described in the PLEPs
 - While 1:1 personnel may implement behavioral strategies and assist with data collection, their services may only be reimbursed at the 1:1 aide rate. No additional ABA reimbursement is permitted.



NYSED Memorandum on ABA Services

- If provided as a related service, SED warns that ABA services are only designed to help a student benefit from the special education placement and/or to access the general education environment.
- ABA cannot be used to “replace a student’s primary instruction. The student must be assigned a teacher of record and cannot receive related services as their sole educational program (i.e. ABA cannot be provided for the entirety of the school day in lieu of specially designed instruction).”



NYSED Guidance on Applied Behavioral Analysis



Appeals in Mahopac and Katonah-Lewisboro

- On May 29, 2025, the Appellate Division, Third Department ruled that students with disabilities in New York should be entitled to a FAPE until their 22nd birthday.
- In essence, the Third Department fully endorsed NYSED’s 2023 formal opinion of counsel and the Second Circuit, Court of Appeals decision in A.R. v. Connecticut St. Bd of Educ.
- This decision confirmed NYSED’s broad authority to interpret and enforce state and federal law, as well as court decisions, and advise local school districts accordingly.
- NYSED issued an “Opinion of Counsel” on August 14, 2025 confirming the age 22 requirement and stating that any noncompliance would be considered “willful” under Educ. Law sec. 306.



New York State Court of Appeals Grants Leave to Appeal

- On April 21, 2026, the New York State Court of Appeals granted leave to appeal in both Katonah-Lewisboro and Mahopac.
- A litigant has a right to appeal to the Court of Appeals only under limited circumstances (e.g., when the case involves constitutional issues or when two appellate division judges issue a dissenting opinion). There was no right to appeal to the Court of Appeals in Katonah-Lewisboro and Mahopac.



New York State Court of Appeals Grants Leave to Appeal

- The Court of Appeals has discretion to consider other cases, but this does not happen often. The Court of Appeals exercised this discretion by granting leave to appeal in both *Katonah-Lewisboro* and *Mahopac*.
- The Court of Appeals has invited qualified and interested parties to submit *amicus curiae* briefs in support of their respective positions.
- The Court of Appeals is expected to issue its decision next year.



Cruz V. Banks: How To Handle A Student Who Meets Criteria For Several Special Education Class Options



What if a Student Meets the Eligibility Criteria for More than One Special Class Option?

- In Cruz v. Banks, the parent of a student who has cerebral palsy, a visual impairment, a seizure disorder, and scoliosis, challenged the CSE's recommended placement of the student in a 12:1+3 special class.
- The CSE had previously placed the student in a 6:1+1 special class but determined that the 12:1+3 special class option was more appropriate for the student. The parent disagreed with the CSE's recommendation and argued that the 6:1+1 special class option remained appropriate for the student.



What if a Student Meets the Eligibility Criteria for More than One Special Class Option? Cont.

- Following an impartial hearing, the IHO ruled for the district, specifically finding that the 12:1+3 special class option was appropriate for the student. On appeal, the State Review Officer ruled for the district.
- The SRO determined that the student had both “highly intensive” management needs and “severe multiple disabilities”. As a result, the student met the eligibility criteria for both the 6:1+1 and 12:1+3 special class options. The SRO therefore ruled that it was appropriate for the CSE to have recommended the 12:1+3 special class option for the student.



What if a Student Meets the Eligibility Criteria for More than One Special Class Option? Cont.

- The parent appealed the SRO's decision to federal court. In essence, the parent argued that whenever a student meets the eligibility criteria for placement in a 6:1+1, 8:1+1 or 12:1+1 special class, as well as in a 12:1+3 special class, the least restrictive option should be required.



What if a Student Meets the Eligibility Criteria for More than One Special Class Option? Cont.

- The parent’s appeal eventually reached the United States Court of Appeals for the Second Circuit, which has jurisdiction over New York. The Second Circuit recognized that this appeal would be determined by a question of New York law. The Second Circuit therefore certified the following question for review by the highest court in New York, the New York State Court of Appeals:
- When a student is covered by more than one class size regulation under [8 NYCRR 200.6 (h) (4)], do the varying restrictions serve as distinct requirements that must be independently fulfilled or as a list of class size options from which the DOE may pick? *Cruz v. Banks*, 134 F.4th 687, 698-699 (2d Cir 2025).



What if a Student Meets the Eligibility Criteria for More than One Special Class Option? Cont.

- In other words, when a student meets the eligibility criteria for more than one special class option, is the placement selection entirely within the CSE’s discretion or should one placement option be given priority over another?
- The Court of Appeals determined that when these circumstances arise, i.e., when a student meets the eligibility criteria for more than one special class option, it is entirely within the CSE’s discretion to select the placement option “that would best serve [the] student’s individual needs.” *Cruz v. Banks*, 126 LRP 3907 (Feb. 17, 2026).



What if a Student Meets the Eligibility Criteria for More than One Special Class Option? Cont.

- The Court of Appeals based its decision on a number of factors including the plain text of the relevant statutes and the regulatory history. The Court also noted that this decision will allow “a CSE to exercise its knowledge and expertise” while making decisions and recommendations in the best interest of students.



Retroactive Discipline Of Student After Parent Revocation Of Consent



Appeal of A.P., from action of the Board of Education of the Harrison Central School District, 66 Ed Dept Rep. Dec. No 18,790 (2026)

FACTS

- Student attended the District schools and had been found eligible for services by the District CSE beginning in June of 2024.
- On May 15, 2025, the student was involved in a physical altercation with a classmate. That same day, the student attempted to board a school bus during dismissal without permission.
- The District held a discipline hearing where the student pled no contest.
- Following the Disciplinary hearing, a manifestation determination review was held and the MDR team concluded that the physical altercation was a manifestation of the student's disability.



Appeal of A.P., from action of the Board of Education of the Harrison Central School District, 66 Ed Dept Rep. Dec. No 18,790 (2026)

- As a result, the student received only a short suspension for the bus incident.
- On August 15, the parent revoked her consent for A.P. to receive special education services in the District.
- On September 9, the superintendent notified A.P.'s parents by letter that it would reconvene the May 2025 hearing to adjudicate the discipline for the physical altercation since the student was no longer receiving special education services.
- Recommended that the student be suspended for the entirety of the 2025-26 school year.



Appeal of A.P., from action of the Board of Education of the Harrison Central School District, 66 Ed Dept Rep. Dec. No 18,790 (2026)

- The Parent appealed the suspension to the Commissioner of Education.
- The Commissioner sustained the appeal in part.
 - Ordered the District to expunge the long-term suspension that resulted from the October disciplinary hearing.
 - All other claims were dismissed as untimely.



Appeal of A.P., from action of the Board of Education of the Harrison Central School District, 66 Ed Dept Rep. Dec. No 18,790 (2026)

REASONING

- The Commissioner noted that: A school district considering a disciplinary change in placement for a student with a disability must conduct a manifestation determination review, and where a team has already found the underlying conduct to be a manifestation of the student's disability, the district's procedural options are constrained by federal and state law
- Where manifestation is found, absent special circumstances or an agreement between the parent and the district, the student must return to their prior placement.
- Revocation of consent for special education services is not retroactive.



Implications

- Once an MDR team makes a determination, that decision cannot later be altered
 - Districts cannot try a student for a second time regarding the same conduct, even if the student's special education services change in the interim
- Parental revocation of consent to special education services is not retroactive and does not reopen or unwind prior manifestation determinations or the protections attached to incidents that occurred while the student was still receiving services.
- Best practice: Districts should carefully track the specific incident(s) each manifestation determination covers, avoid initiating new disciplinary proceedings on incidents already subject to a favorable manifestation finding, and treat any change in a student's special education status prospectively only, not as a basis to revisit past manifestation findings or discipline.



3 Years Later: The Impact of *STURGIS*



Exhaustion of Administrative Relief Under the IDEA

- Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023) expanded the ability of parents to sue school district under Section 504 and the ADA without having to follow the guardrails of the IDEA.
 - No requirement to exhaust administrative remedies under the IDEA
 - Expanded ability to seek relief under Section 504 and the ADA
 - Parents are incentivized to bypass the IDEA and file claims under Section 504 and the ADA



Post-Strugis Case Law

- **Kiraka v. Success Academy Charter School**, 24-CV-02354 (S.D.N.Y. 2026)
- Facts
 - A kindergartner demonstrated significant maladaptive behavior in the classroom, which prompted suspicion of a disability.
 - As a result of his behaviors, the student was subjected to disciplinary action.
 - The parents opposed the discipline, arguing that it was related to a disability, and claiming that the school failed to identify the student as a “student with a disability” and afford him his due process rights.



Kiraka v. Success Academy Charter School, 24-CV-02354 (S.D.N.Y. 2026)

LEGAL PROCEEDINGS

- The Parents filed a federal court action in the Southern District of New York alleging disability discrimination under Section 504 and the ADA as well as denial of FAPE under the IDEA.
- The School District moved to dismiss the complaint for failure to exhaust administrative remedies under the IDEA, among other affirmative defenses.
 - argued that the claims are rooted in the IDEA, and as such, the parents are required to pursue their claims under the IDEA.



Kiraka v. Success Academy Charter School, 24-CV-02354 (S.D.N.Y. 2026)

COURT HOLDINGS

- The Court ruled that the parents may proceed with their claims under Section 504 and the ADA
 - Unlike the IDEA which only has relief available for the denial of FAPE, Section 504 and the ADA address discriminatory conduct in ways unrelated to FAPE.
 - Where the gravamen of a complaint addresses disability-based discrimination instead of the denial of a FAPE, Section 504 and ADA claims are not subject to IDEA exhaustion requirements.
- The Court did, however, dismiss the specific denial of FAPE claims for failure to exhaust administrative remedies.



Rose D. v. Sandy Creek Central School District, 126 LRP 17971 (N.D.N.Y. 2026)

FACTS

- The parents of a 10-year-old nonverbal autistic child sued the school district for discriminating against their son on the basis of his disability.
 - Parent had made multiple requests for ABA therapy which were denied by the District.
 - Used physician letters to support their request.
- The child had a history of “aggressive behaviors, toileting accidents, and emotional dysregulation.”
 - Frequency of aggressive behaviors had increased from 384 incidents per month to 1,258 per month.
 - Classroom aides had made 200+ pages of journal entries reflecting student’s self-injury, staff injury, aggression, extensive toilet play, and intentional urination incidents.



Rose D. v. Sandy Creek Central School District, 126 LRP 17971 (N.D.N.Y. 2026)

- The parents filed a complaint in federal district court alleging discrimination against their child in violation of the ADA and Section 504. Claimed that the denial of ABA services was discrimination against the student.
- The District moved to dismiss the complaint for failure to state a claim for which relief can be granted.



Rose D. v. Sandy Creek Central School District, 126 LRP 17971 (N.D.N.Y. 2026)

- The Court found discrimination based on the District’s failure to reasonably accommodate (ABA therapy).
 - Based on the pleadings, the Court was asked to evaluate whether ABA therapy was a request for reasonable accommodation or a request for additional or substantive benefits.
 - The Court reasoned that ABA was a reasonable accommodation because the child could not obtain meaningful access to his IEP services as they were currently provided.
 - Also noted that the District failed to provide an alternative accommodation
- The Court ruled that the parents may proceed with their claims under Section 504 and the ADA.



Key Takeaways

- Parents are incentivized to file disputes under Section 504 and ADA, and avoid pleading claims under the IDEA. The federal courts are allowing Parent to do this.
- The unfortunate end result is more litigation in federal court with demands for greater relief.
- While schools cannot avoid being sued, it can limit its liability by showing reasonable care and thought for its decisions. School districts should ensure that each decision regarding the provision of special education services is well documented and explained. This will help schools successfully fend off claims of deliberate indifference under Section 504 and the ADA.



The Use of Assistive Technology And AI to Supplement Special Education Instruction

How will technology impact a district's obligation to provide FAPE?



William A. v. Clarksville-Montgomery County School Systems, 127 F.4th 656 (6th Cir. 2025)

- William A. is a child in Tennessee with a reading-based learning disability.
 - He had regularly progressed from grade to grade with a 3.0+ GPA.
 - Tested below the tenth percentile in reading fluency annually.
- In High School, the CSE added more accommodations to his IEP including the use of technology that read aloud to William.
- In eleventh grade, William's parents retained a reading specialist to help teach him to read, the parents and the specialist requested that the program be incorporated into William's IEP. The School declined.



William A. v. Clarksville-Montgomery County School Systems, 127 F.4th 656 (6th Cir. 2025)

- William’s parents filed a due process complaint under the IDEA, alleging that the District failed to adequately address the student’s reading needs.
- The IHO ruled that the District had denied William FAPE and ordered **888 hours** of dyslexia tutoring from a trained reading interventionist.
- The District appealed to the Sixth Circuit, citing William’s good grades and advancement from “grade to grade” in a general education setting as proof that he received a FAPE



William A. v. Clarksville-Montgomery County School Systems, 127 F.4th 656 (6th Cir. 2025)

- The Sixth Circuit affirmed the District Court's ruling that the District denied William a FAPE and further upheld the remedies issued by the District Court.
- The Court attributed his good grades and work product to the host of accommodations that were provided to William.

“William would first dictate his topic into a document using speech-to-text software. He would then paste the written words into an AI software like ChatGPT. Next, the AI software would generate a paper on the topic, which William would paste back into his own document. Finally, William would run that paper through another software program like Grammarly, so it reflected an appropriate writing style.” All of this was further enabled by 24 extra hours to complete assignments.



William A. v. Clarksville-Montgomery County School Systems, 127 F.4th 656 (6th Cir. 2025)

- The Court cited Endrew F. to note that grade advancement does not alone equate to FAPE.
- When a child is capable of learning to read, and his IEP does not aim to help him overcome his particular obstacles to doing so, that IEP does not provide him the “free appropriate public education” to which he is entitled.
- The Court warned that AI supports should not supplant direct instruction and efforts to learn the underlying curriculum- “[T]he point of a FAPE under the IDEA is not simply to complete assignments.”



Key Takeaways

- Technology based accommodations can be a helpful tool, but shouldn't be used to mask a student's underlying disability.
- As technology continues to advance rapidly, Districts will need to carefully consider what they utilize to supplement education. Districts must carefully evaluate any adverse side effects that may arise through the use of assistive technology to avoid hefty judgments.
- Unfortunately, any decision a District makes will not please everyone, but the best practice is to ensure all technology policies are sound and based in logic/guidance provided by relevant outlets such as the DOE, NYSED, etc.
- Serves as a reminder that IEPs must be designed to provide a student with education that allows them to develop relevant skills in reading, writing and mathematics, not just finding ways to progress the child through accommodations and assistive technology.



Questions?



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Strategies For Your Most Common CSE Dilemmas

Special Education Conference

October 8, 2026

PRESENTED BY:

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Before Meeting

- Preparation v. Predetermination
 - Always demonstrate that you considered the parent's position and the views of outside evaluators (if applicable) to avoid a claim of "predetermination."
 - Be careful with spoken and written language that could support a predetermination claim.
 - Do not dismiss the parent's concerns. Thoroughly review any documents the parent brings, even if they appear to have limited value.



Before Meeting Cont.

- Language approach
 - Avoid language that could support a predetermination claim.
 - Use pAvoid: “The CSE has finalized the IEP and is presenting it to you today.”
 - process-focused language:
 - “The team discussed four possible placements, and we will explore each one today.”
 - “The chair asked the parents about alternatives they would like the team to consider.”





Before Meeting Cont.

- Holding a pre-meeting
 - Districts may hold team meetings without parents to prepare for CSE meetings. These meetings are generally considered “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 Meeting Cont.

- Drafting an IEP
 - The SRO has expressly permitted development of draft goals before the CSE meeting. See Application of a Child with a Disability, Appeal No. 01-028.
 - A draft IEP may guide discussion, but the CSE must emphasize that it is a draft and remains open to revision.
 - 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 Meeting Cont.

- Scheduling with nonresponsive or adversarial parents.
 - Begin scheduling process well in advance of any deadlines.
 - Offer several alternative dates at different times and on different days of the week. Do not send open-ended letters.
 - There is no automatic “three strikes” rule. A CSE may proceed without the parent only after documented efforts to secure participation.
 - A parent’s failure to respond or refusal to attend must be carefully documented.



Recent 2nd Circuit Case

- Rivas v. Samuels, 126 LRP 28661 (2d Cir. Sept 11, 2026)
- Facts:
- An unpublished September 11, 2026, Second Circuit decision affirming summary judgment for the New York City Department of Education.
- The parent challenged the IEP for her son, a student with multiple severe disabilities, including traumatic brain injury and cystic fibrosis.
- She alleged the various issues but most important to this topic, is that the mother claimed that the District met without her.
 - According to District records, the District contacted the parent to discuss availability and had already rescheduled the meeting once upon parental request.
 - The District also had evidence that the mother cancelled the rescheduled meeting and only provided one day notice of such cancellation.
 - Even after this cancellation, the District made further attempts to contact the mother by phone before proceeding with the CSE meeting.



Recent 2nd Circuit Case, Cont.

- Rivas v. Samuels, 126 LRP 28661 (2d Cir. Sept 11, 2026)
- Court Holding:
- The Second Circuit affirmed judgment for the NYC DOE on the denial of participation matter.
- The Court's opinion noted that a district may proceed without the parent when it took steps to ensure an opportunity to participate but could not convince the parent to attend.
 - The scheduling accommodations and follow-up calls satisfied.
 - 34 C.F.R. § 300.322.



Recent 2nd Circuit Case, Cont.

- Rivas v. Samuels, 126 LRP 28661 (2d Cir. Sept 11, 2026)
- Implications:
- Document every scheduling accommodation:
 - Dates offered;
 - A parent-requested reschedule;
 - When notice was provided;
 - Cancellation and how early or late it occurred with respect to the meeting; and
 - Each follow-up attempt.
- Do not treat silence as permission to proceed. The district must affirmatively try to convince the parent to attend.
- Maintain a written communication log:
 - Emails, call logs, and letters.
 - The court relied on documentation, not general assurances or testimony.



During the Meeting

- Parent participation
 - The CSE should demonstrate a willingness to compromise with parents, even when parents are unwilling to do the same.
 - Work toward agreement on an appropriate placement by doing the following:
 - Discuss and validate parent concerns.
 - Repeat parent concerns and prompt further explanation.
 - Thoroughly document parent input.
 - Focus on outcomes.
 - Use data to support the recommendation.
 - Consider a trial.

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 Cont.

- Dealing with difficult parents (aggressive and/or monopolizing)
 - Every school district has parents who view the CSE as a battleground and approach the meeting in that manner. It is important to defuse the situation.
 - Respond with patience and professionalism.
 - Set an agenda with reasonable time limits.
 - Remind participants of expectations contained in the Code of Conduct.



During the Meeting Cont.

- Try not to escalate situations that may already be tense:
 - Take a break or recess.
 - Stick to the agenda and keep the conversation grounded in data.
 - Use the “parking lot” technique.
 - Remain objective; do not overreact.
 - Consider inviting a facilitator or advocate to the meeting.
 - Be careful to review all necessary information at the meeting and don’t let a difficult parent derail the process.
 - When consensus cannot be reached: “We have to agree to disagree.”



During the Meeting Cont.

- Make sure to review the existing IEP and all new information.
 - Do not gloss over present levels of educational performance (PLEPs) or goals.
 - Review progress-monitoring data and all new evaluations.
- Do not excuse CSE members routinely or liberally.
 - Although regulations allow a CSE member to be excused with the parent's consent, use this option sparingly.
- How to handle “rogue” CSE members:
 - Ask for their opinions in advance.
 - If they disagree with the CSE, be mindful of body language—do not react overtly.
 - Ask questions and use other CSE members to present contrary data.



During the Meeting Cont.

- Addressing all Matters to Ensure Adequate Participation
- R.C. v. Garden City Union Free School District, 833 F.Supp.3d 197
- Facts:
 - The parents sought review after the SRO reversed an IHO's findings of a Child Find violation, a denial of meaningful participation, and entitlement to compensatory relief.
 - With regard to the denial of meaningful participation, the complaint alleged that at the May 2022 CSE meeting, the father asked about compensatory services.
 - The school psychologist said the topic was outside what she could discuss.
 - During the hearing, the psychologist admitted there was no "fulsome discussion."



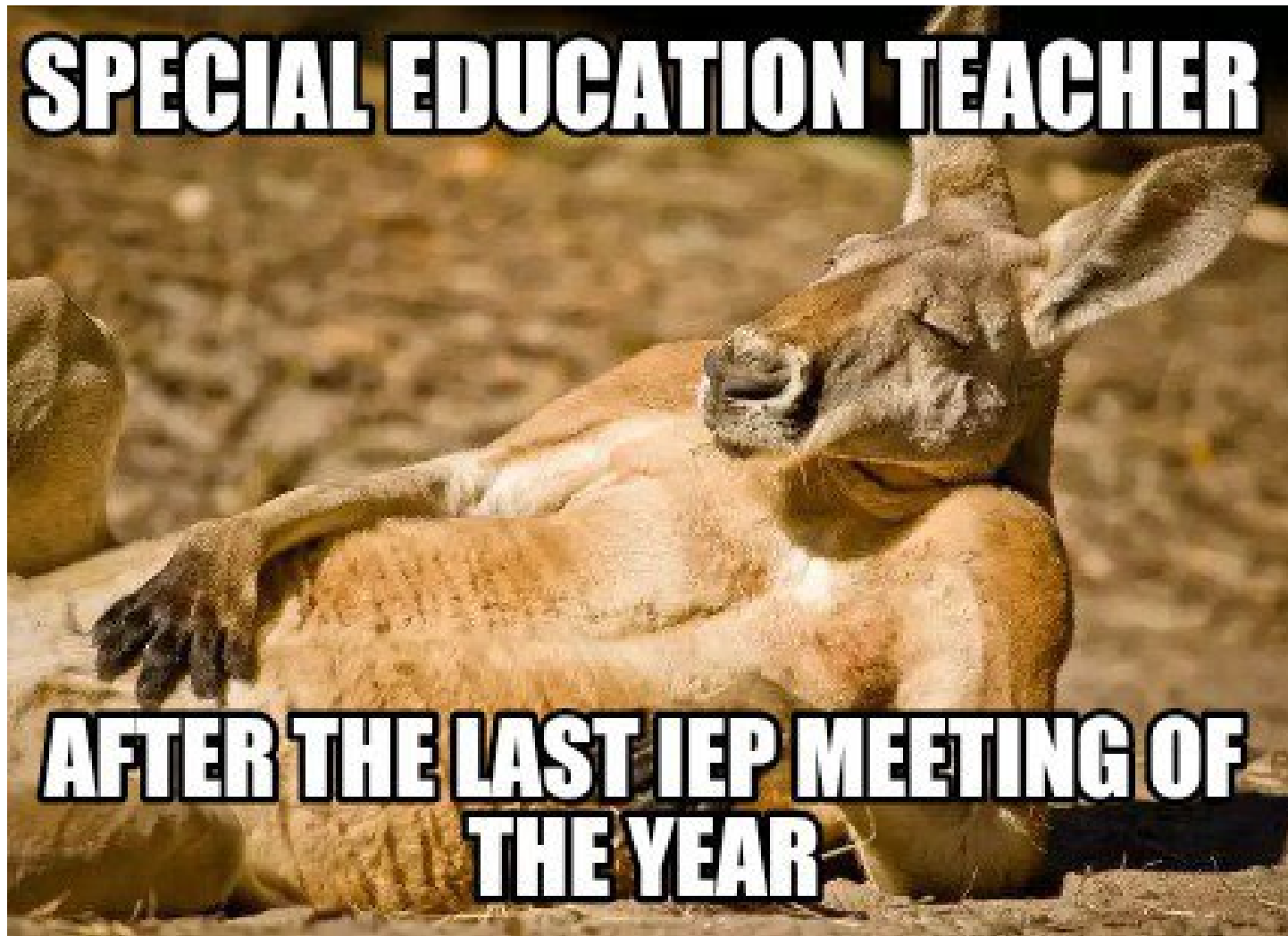
During the Meeting Cont.

- R.C. v. Garden City Union Free School District, 833 F.Supp.3d 197
- Holding:
- The court reinstated the participation violation because the SRO relied on a single footnote and ignored the psychologist's admission that compensatory services were not meaningfully discussed.
- Because it found a procedural denial of FAPE, the court did not reach the IEP's substantive adequacy.
- Since the court already ordered 240 hours of compensatory education, the participation violation did not lead to a heftier award, however Districts should be wary that absent a child find claim a participation violation could result in larger damages.



During the Meeting Cont.

- R.C. v. Garden City Union Free School District, 833 F.Supp.3d 197
- Implications:
- Meaningful participation means engaging with parent concerns on the record.
 - This does not mean you have to agree with the parent.
- Pay specific attention to comments regarding compensatory services or other substantive requests, to ensure they are addressed on the record.
 - Discussing and rejecting a request with reasons is safer than ignoring it.
- Calling it “outside the scope” invites a participation claim.
 - The CSE will have to balance addressing all substantive parent concerns and keeping the meeting on track in a manner that allows for the team to make meaningful progress.





After the Meeting

- Make sure you follow through on any promises made during the meeting.
- Draft and send Prior written notice
 - Prepare a meaningful PWN that identifies the issues discussed at the meeting and the options considered in reaching the decisions.
- Progress monitoring
 - Ensure that teachers and service providers carefully create and maintain data showing the student's progress—or lack of progress.
- Keep lines of communication open with the parent.



After the Meeting, Cont.

- T.C. on behalf of I.M. v. William Floyd Union Free School District, 774 F.Supp.3d 583
- Facts:
 - The parent challenged an SRO decision reversing a favorable IHO ruling on I.M.’s 2021–2022 IEP and sought tuition reimbursement for a unilateral placement at the Vincent Smith School (VSS).
 - The IHO had found, among other things, a procedural violation because the district did not specify the exact location for I.M.’s specialized reading services.
 - At the May 2021 CSE meeting, which the parent attended, the team discussed providing specialized reading services after school.
 - The May 2021 IEP identified “home” as the location for summer specialized reading services.
 - The Prior Written Notice stated that individualized reading instruction would be at home and group instruction at school.
 - VSS staff later testified that after-school reading instruction would fatigue I.M., but the record did not show that this concern was raised at the CSE meeting or otherwise communicated to the district at the time.



After the Meeting, Cont.

- T.C. on behalf of I.M. v. William Floyd Union Free School District, 774 F.Supp.3d 583
- Holding:
- The SRO agreed that failure to specify a service location can be a procedural violation, but found no procedural inadequacy here after thoroughly reviewing the record.
- The IEP’s “home” and afterschool details, together with the Prior Written Notice, showed that the parent had been informed where the reading services would occur.
- Even assuming that greater specificity about service location was procedurally required, the omission did not deny FAPE.
- A procedural violation rises to a FAPE denial only if it impedes the child’s right to FAPE, significantly impedes parent participation, or causes a deprivation of educational benefit.
- The parent did not show that the fatigue concern was raised at the CSE meeting or communicated when the services were selected.
 - An unraised concern cannot satisfy the IDEAs standards.



After the Meeting

- T.C. on behalf of I.M. v. William Floyd Union Free School District, 774 F.Supp.3d 583
- Curing Procedural Errors After the CSE Meeting:
- If an IEP leaves information vague or generic, specify the missing detail in the Prior Written Notice or a supplemental written communication.
 - In T.C., the PWN was decisive in resolving the IEP's ambiguity and led to no violation.
- When a parent or provider raises a concern after the meeting (ex. fatigue from service timing) document it immediately and where appropriate consider reconvening the CSE or issuing a written response.
 - If the first time an issue appears is in a complaint, it will be harder to prove and leave more discretion for IHOs.
- Cure gaps in an IEP or PWN through an amendment or written clarification rather than verbally.
 - A stitch in time saves nine, don't just hope that a parent doesn't notice a mistake.
- Prompt written clarification of an ambiguous or incomplete IEP term is stronger than a retroactive explanation at hearing.



Questions?



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Student Placements in the Principle of Least Restrictive Environment

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The History of LRE

- In enacting the IDEA (and its predecessors), “Congress was concerned about the apparently widespread practice of relegating handicapped children to private institutions or warehousing them in special class.”
- It was common to place a disabled student into a separate facility where they were not seen nor heard.

The History of LRE

- Private Institute for the Feeble Minded
- Institute for Imbeciles





The Principle of LRE

- New Principle under the IDEA:
 - SWD are to be educated with nondisabled students to the maximum extent appropriate.
 - Includes students in public or private institutions or other care facilities.
 - Special classes, separate schooling, or other removal of SWD from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactory.
 - 34 CFR 300.114(a)(2)



The Principle of LRE, Cont.

- 8 NYCRR 200.1(cc)
 - LRE is defined as the placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved.



The Principle of LRE, Cont.

- 8 NYCRR 200.1(cc)
 - The placement of an individual student with a disability in the least restrictive environment shall
 - Provide the special education needed by the Student;
 - Provide for education “to the maximum extent appropriate to the needs of the student” with other students who do not have disabilities; and
 - Be as close as possible to the student’s home.



The Principle of LRE, Cont.

- References to LRE are throughout the NYS regulations:
 - 200.2(b)- Board of Education must adopt LRE policy;
 - 200.1(bbb)- supplementary aides and services;
 - 200.4(d)(3)(vii)(g)- 1:1 aides may be used for LRE.



The Special Education Continuum

- LRE is necessarily tied to the development and implementation of the continuum of special education
- New York's Continuum of Services is found in section 200.6
 - 200.6(a)(1): To provide LRE, “specially designed instruction and supplementary services may be provided in the regular class, including, as appropriate, providing related services, resource room programs and special class programs within the general education classroom.”



The Special Education Continuum, Cont.

- In class supports:
 - Transitional support services;
 - Consultant teacher services – direct and indirect;
 - Related services;
 - Resource room services – to supplement regular or special class instruction;



The Special Education Continuum, Cont.

- Outside of the regular classroom placements
 - Special classes;
 - In District;
 - BOCES;
 - Agency based day programs;
 - Home and Hospital;
 - Residential.



The Courts and LRE

- The Federal Courts have widely adopted the principle of LRE
 - Oberti v. Bd. Of Educ., 995 F.2d 1204, 1216 (3rd Cir 1983)
 - The IDEA has a “strong congressional preference” for integrating students with disabilities
 - P. v. Newington Bd. Of Educ. 546 F.3d 111 (2d. Cir. 2008);
 - Two year challenge of whether school was properly mainstreaming student with Down’s Syndrome- was in regular education class for 60-75% of time



The Courts and LRE, Cont.

- Newington (cont'd)
 - “While mainstreaming is an important objective, we are mindful that the presumption in favor of mainstreaming must be weighed against the importance of providing a [FAPE].”
 - “Where the nature or severity of the handicap is such that education in regular education classes cannot be achieved satisfactorily, mainstreaming is inappropriate.”
 - Court must engage in a “flexible, fact specific analysis”



The Courts and LRE, Cont.

- Newington (cont'd)
 - The Second Circuit joined the 3rd, 5th, 9th and 10th Circuits in adopting the Oberti standard for LRE:
 - Whether education in the regular classroom, with the use of supplementary aides and services, can be achieved satisfactorily;
 - If placement outside the regular classroom is necessary for child to benefit educationally, whether student has been mainstreamed to the maximum extent appropriate



The Courts and LRE, Cont.

- Newington (cont'd)
 - There are several factors to consider when determining the first prong (i.e. whether student can be educated in regular class with aides and supports):
 - Has the school made reasonable efforts to accommodate the child in a regular classroom?
 - How do the educational benefits to the child in the regular class, with supplementary aids and services, compare to the benefits provided in a special education class?
 - What the possible negative effects of the inclusion of the child on the other students in the class?



The Courts and LRE, Cont.

- What is a “reasonable” accommodation, service or aide in the regular education classroom?
 - Modification of material may be appropriate, but if modification is so extensive that it is no longer recognizable, it may not be proper
 - Behavior plans and modification programs;
 - 1:1 aides



The Courts and LRE, Cont.

- Factors to NOT consider when applying the Newington test:
 - It is not required that the student be able to learn at approximately the same level as the nondisabled classmates.
 - The likelihood that the student will make greater academic progress in the special education classroom, in and of itself, is not sufficient. *Oberti*, supra
 - How does *Endrew F.* affect this?
 - Should schools pursue a more restrictive placement to secure “more meaningful” progress?



Other Considerations

- Extended School Year
 - LRE applies to summer placements to the same extent as school year placements
 - Schools must ensure that they offer a range of educational settings available for ESY programs. If a school district does not offer a mainstream ESY program, it should consider a private summer program or a program offered by another public entity. *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145 (2nd Cir 2014)
 - Notwithstanding, a school district is not required to create a summer program for the sole purpose of satisfying LRE. *San Francisco United Sch. Dist.*, 53 IDELR 31 (SEA Ca. 2009).



Other Considerations, Cont.

- Nonacademic Settings
 - LRE applies nonacademic and extracurricular services and activities, including meals, recess periods, and nonacademic and extracurricular services and activities, each public agency must ensure that each [SWD] participates with nondisabled children . . . To the maximum extent appropriate to the needs of that child.
 - The public agency must ensure that each [SWD] has the supplementary aids and services determined by [the CSE] to be appropriate and necessary for the child to participate in nonacademic settings.
- 34 CFR 300.117



Other Considerations, Cont.

- Transportation
 - In the comments section of the IDEA regulations, the Education Department states “it is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements...unless the IEP team decides otherwise.”
- Safety is a primary factor



LRE: Best Practices

- Develop a robust selection of placements, accommodations, services, aides
 - Use BOCES and other school districts as sources
 - Assistive Technology
- Strictly Follow the Continuum!!
- Be Flexible!! Consider dividing student's day into different settings (e.g self contained for Math and ELA, general ed for other subjects, specials, recess, lunch).
- Use the test articulated in Newington as a guideline
 - When considering a more restrictive placement, ask whether you have exhausted all appropriate modifications, accommodations, services, supports in the existing placement
 - FBA/BIPs
 - 1:1 aides



LRE: Best Practices

- If recommending a more restrictive placement, make sure you have data and documentation to support it
 - Be careful with the “disruption to other students” consideration
- Carefully write the IEP and Prior Written Notice
 - LRE statement
 - Options considered and rejected



Questions?



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