

ATTORNEY'S CORNER

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A Synopsis of Salient Updates and Cases in Special Education

In this installment of the Attorney's Corner, we review a presentation from the State Education Department ("SED") on inclusion classes for preschoolers with disabilities, a legal standard articulated by the U.S. Supreme Court on Section 504 claims against school districts, and two decisions from SED's Office of State Review ("SRO") analyzing whether the district provided FAPE where parents filed for due process seeking tuition reimbursement at private schools.

For purposes of clarity:

- In New York State, the Supreme Court is the lowest level trial court of general jurisdiction. An appeal from the Supreme Court may be taken to the Appellate Division, and then to the Court of Appeals.
- Federal claims are filed with federal district courts. An appeal may be taken to the Circuit Court of Appeals, and then to the U.S. Supreme Court. The Second Circuit Court of Appeal has jurisdiction over cases that arise in New York State.
- Claims brought under the Individuals with Disabilities Education Act ("IDEA") are heard by an impartial hearing officer, from which an appeal may be taken to the SRO, and then to New York State Supreme Court or

Federal District Court. Parents may also join 504 claims using IDEA due process, however, appeals of the 504 portion of any resulting decision go to court rather than the SRO.

- Parents may also file complaints for alleged violations of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) with the U.S. Department of Education’s Office for Civil Rights (“OCR”), and may file complaints with SED for alleged violations of IDEA or Part 200 of the Commissioner’s Regulations.

NEW YORK STATE EDUCATION DEPARTMENT INCLUSION IN PRE-KINDERGARTEN: BEST PRACTICES FROM THE FIELD

BACKGROUND AND SALIENT FACTS:

In May, 2025, the State Education Department (“SED”) released a webinar and PowerPoint on best practices for inclusion in pre-kindergarten placements. SED noted that there were 80,000 preschoolers with disabilities, of which 23,208 preschoolers with disabilities were enrolled in state-funded universal pre-kindergarten programs during the 2023-2024 school year. Of those 23,208 UPK students, 12.9% were in a full-day special class in an integrated setting (“SCIS”), 1.6% were in a half-day SCIS, 27.6% of students received a Special Education Itinerant Teacher (SEIT) and Related Services, and 56.4% of students only received related services. A SCIS is defined as a preschool class with both disabled and non-disabled students. The class is co-taught by a special education and general education teacher, along with two class paraprofessionals. In total, 47.2% of preschoolers with disabilities were in classes with typical students. SED’s goal for the 2024-2025 school year was for 50% of preschoolers with disabilities to be placed in a class with typical peers.

SED explained that the purpose of pre-Kindergarten integrated settings is to expose students to a learning environment and work on the requisite social skills to be successful in and out of the classroom. Its SED’s stated belief that high quality inclusion at preschool results in higher probability of academic achievement, social skills, and career earnings. The inclusion classes with typical children who serve as role models enable disabled youngsters to gain independence and social skills with greater potential for discontinuation of the need for special education services compared with disabled students in seclusion classes.

SED's presentation acknowledged the shortages in pre-K providers. It discussed alternative ways in which districts may implement IEP services, including contracts with county hospitals for speech providers, and having school based occupational and physical therapy providers pick up student cases if they have room in their schedule. Districts can also contract with neighboring districts that may have room in their UPK programs.

WHY YOU SHOULD CARE:

As the statewide trend continues the expansion of UPK programming, districts should think about their long-term plans for implementing UPK classes and servicing preschoolers with disabilities. The shortage of preschool providers will require districts to continue to think creatively to implement IEPs to make the best use of district staff, funding, and the use of outside agencies for programming.

U.S. SUPREME COURT A.J.T. v. OSSEO AREA SCHOOLS SECTION 504 LEGAL STANDARD

BACKGROUND AND PROCEDURAL HISTORY:

On June 12, 2025, the U.S. Supreme Court issued a decision in *A.J.T. v. Osseo Area Schools*, involving the legal standard for discrimination cases brought by parents of children with disabilities under Section 504 of the Rehabilitation of 1973 ("Section 504"). In a unanimous decision, the Court found that parents of children with disabilities are only required to prove that their school district acted with deliberate indifference, rather than the higher standard of "bad faith or gross misjudgment" as some Circuit Courts of Appeals have applied, including the Second Circuit Court of Appeals, which has jurisdiction over Section 504 cases in New York.

A.J.T. was a high school student in Minnesota who had a rare form of epilepsy, which limited her physical and cognitive functioning. Her frequent seizures in the morning prevented her from attending school before noon. Her parents' repeated requests were denied for the district's Committee on Special Education (CSE) to include the accommodation of evening instruction on her IEP. As a result, A.J.T. received only 4.25 hours of daily instruction instead of the typical 6.5 hour school day her non-disabled peers received. The parents filed for due process against the school district under the Individuals with Disabilities Education Act ("IDEA"). An administrative hearing officer found a denial of a free appropriate public education, and ordered the district to provide compensatory services and evening instruction.

The parents then sued the district in federal court under Section 504 and the Americans with Disabilities Act (“ADA”), requesting compensatory monetary damages, a remedy that cannot be awarded under IDEA. The federal district court and Eight Circuit Court of Appeals found that the district’s failure to provide a reasonable accommodation for evening instruction did not rise to the level of bad faith or gross misjudgment, and they granted judgment in favor of the district. The parents appealed the decision to the U.S. Supreme Court.

U.S. SUPREME COURT DECISION:

The U.S. Supreme Court first noted that there was a split among the Circuit Courts of Appeals throughout the country, with some courts applying the “bad faith or gross misjudgment” standard for discrimination under Section 504 and the ADA against school districts, while other courts used a “deliberate indifference” standard. The Court noted that while both legal standards require a showing of intentional discrimination by the district, the deliberate indifference standard does not require a showing of personal ill will or animosity toward the disabled student. Instead, the parents must only prove that the district disregarded a strong likelihood that the challenged action would result in a violation of federally protected rights.

In the Court’s decision, it held that Section 504 and ADA claims brought by parents against school districts should be held to the same legal standard as discrimination claims against other entities, the deliberate indifference standard. As such, the Court remanded the decision for further review by the lower court.

WHY YOU SHOULD CARE:

This decision lowers the threshold for parents who file for due process against school districts under Section 504. Although most litigation involving parents of disabled children will continue to be filed under IDEA because it has a lower legal standard than 504 claims, districts should be prepared to defend 504 claims in impartial hearings.

Districts are reminded that students with disabilities under Section 504 and IDEA are entitled to access field trips and extracurricular activities, and cannot be excluded from such activities by reason of their disability. For example, if a student needs certain prescribed medication in order to attend a district sponsored activity, districts should ensure that a school nurse is available to attend. In the alternative, parents can be asked to volunteer to attend the activity with their child so that they can administer the medication. Parents should be told that their participation under these circumstances is purely voluntary. Their child’s participation cannot be conditioned upon the Parent’s participation.

Generally, disabled students cannot be excluded from district activities for behavior reasons if their behavior is related to their disability. In such situations, districts may need to provide additional staff or other accommodations so that the child has access to the activity equal to their non-disabled peers.

Finally, districts are reminded that under Section 504, parents may pursue the district's appeal process for challenging a 504 decision, or they can file for due process to obtain an impartial hearing. Districts should review their 504 policies and ensure they are detailed and up to date with their current practices.

**NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF STATE REVIEW
APPEAL NO. 24-639**

BACKGROUND AND SALIENT FACTS:

The Irvington Union Free School District's CSE met with the parents in April, 2022 for an annual review meeting to develop their child's 2022-2023 IEP. The student was diagnosed with ADHD, dyslexia, dysgraphia, generalized anxiety disorder, and social phobia. The CSE classified the student with an Other Health Impairment and recommended an Integrated Co-Teaching ("ICT") classroom for three hours per day; and speech language therapy for once a week for 30 minutes in a small group. The CSE also recommended supplementary aids and accommodations, including: pacing, checks for understanding, preferential seating, editing checklist and graphic organizers for writing, support for organizational skills, refocusing and redirection, and tasks broken down. The CSE also recommended a counseling consultation.

The parents subsequently obtained a private neuropsychological evaluation and provided it to the CSE on August 22, 2022. On September 4, 2022, the parents sent the district a ten-day notice letter indicating their intent to unilaterally place the student at the Windward school in White Plains, and to seek tuition reimbursement from the district for a denial of FAPE. On September 16th, the CSE reconvened for a requested review in response to the ten-day notice letter, and to review the parents' neuropsychological evaluation. The September 16th CSE added specially designed reading four times per week for 42 minutes in a small group, and counseling once a week for 30 minutes in a small group. The CSE also added: movement breaks; a positive reinforcement plan; special paper models and examples; and supports for school personnel consisting of two team meetings per year with the parents, and two consultations per month with a literacy consultant. Finally, the CSE recommended an assistive technology evaluation.

In May, 2023, the CSE met for an annual review meeting to develop the student's 2023-2024 IEP. The CSE continued the same ICT recommendation with related services of speech, specially designed reading, and counseling, and added resource room every other day in a small 5:1 group. The CSE also added occupational therapy once a week in a small group, and a speech language consultation once per month for 30 minutes. The student continued to attend Windward for the 2023-2024 school year.

PROCEDURAL HISTORY:

In November, 2023, the parents filed for due process, alleging a denial of FAPE for the 2022-2023 and 2023-2024 school years, and sought tuition reimbursement at Windward. At the conclusion of the hearing, the impartial hearing officer ("IHO") found that the district failed to provide FAPE because the CSE failed to evaluate the student in all areas of suspected disability, and that the recommended program was inappropriate to meet the student's reading, writing, and social-emotional needs. The IHO found that the Windward school was appropriate to meet the student's needs and awarded tuition reimbursement.

SRO DECISION:

The district appealed the decision. First, the SRO found that the CSE had sufficient evaluative information about the student's disability, which included review of a private neuropsychological evaluation, input from the student's teachers and providers at Windward, and the student's functional levels in reading, writing, and social-emotional development.

Next, the SRO reviewed the IHO's finding that the CSE failed to recommend specially designed writing instruction. The SRO noted that to address the student's writing needs, the CSE recommended three hours daily of an ICT classroom, pacing to allow the student to slow down and check his work, editing checklists to improve grammar, punctuation, and spelling, graphic organizers to organize and expand the student's thoughts, movement breaks for refocusing, enlarged graph paper, and a literacy consultation to support integration of research based reading intervention strategies in the student's classroom. The CSE also recommended an annual goal for spelling. As such, the SRO found that the CSE recommended an appropriate program and supports to address the student's writing needs.

Further, the SRO reviewed the IHO's finding that the CSE did not appropriately address the student's social-emotional deficits. The SRO noted that counseling had previously been discontinued by the district because the student no longer needed it, but the September, 2022 CSE added counseling once a week for 30 minutes in a small group in response to the student struggling to manage his emotions and feeling easily overwhelmed. The SRO noted that the CSE recommended two annual social-emotional goals for the student to increase

flexibility in thinking by identifying three positive outcomes from accepting academic support, and to demonstrate improved self-esteem with three personal strengths. As such, the SRO found that the CSE appropriately addressed the student's social-emotional needs.

Regarding the parents' 2023-2024 allegations, the SRO found that the CSE appropriately addressed the student's reading, writing, and social-emotional needs with the same recommendations cited above. As such, the SRO reversed the IHO's decision, and found that the district provided FAPE for both school years.

WHY YOU SHOULD CARE:

This case demonstrates the importance of CSEs recommending supplementary aids and accommodations to bolster its program recommendations. Here, the SRO credited the CSE with recommending several supplementary aids to address the student's writing needs, including graphic organizers and an editing checklist. The SRO also credited the CSE with recommending accommodations to address the student's writing deficits, including breaks for refocusing the student's attention, and pacing to help the student self-correct errors. Moreover, this decision also demonstrates the importance of CSEs recommending supports for school personnel, as the SRO credited the CSE with its literacy consultation recommendation to provide classroom strategies in reading and writing for the student. These two areas of a student's program recommendation, which are often overlooked by CSEs, can make a difference at the hearing or on appeal in determining whether the district provided FAPE.

NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF STATE REVIEW APPEAL NO. 24-644

BACKGROUND AND SALIENT FACTS:

The Clarkstown Central School District's CSE met for an annual review meeting in June, 2021 to develop the student's 2021-2022 IEP. The CSE reviewed the results of its reevaluation, which included a psychoeducational, occupational therapy, and speech language evaluations, a classroom observation, and social history. The CSE also reviewed the results of the parents' private auditory processing evaluation. The CSE recommended an ICT classroom for core academic subjects, a 12:1 special classroom for study skills every other day,

occupational therapy once a week for 30 minutes individually, and specialized reading three times in a six-day cycle.. The CSE also recommended supplementary aids and accommodations consisting of: checking for understanding; preferential seating; copy of class notes; graphic organizers; reteaching of materials; and use of a calculator. The CSE also recommended assistive technology consisting of a laptop with speech to text software. In addition, the CSE recommended extended school year services consisting of two hours per week of reading instruction in a small group.

On June 21, 2021, the parents sent the CSE a private psychoeducational evaluation, and then sent the district a ten-day notice letter on June 29th indicating their intention to unilaterally place the student at Eagle Hill Academy for the 2021-2022 school year, and to seek tuition reimbursement. The CSE reconvened in November, 2021 to review the parents' psychoeducational evaluation, and offered to add counseling to the IEP. The parents declined, stating that the student didn't need it. The student attended Eagle Hill for the 2021-2022 school year.

The CSE met in May, 2022 for an annual review to develop the 2022-2023 IEP. The CSE recommended an ICT classroom for social studies and science, a 15:1 special class for English Language Arts and math, occupational therapy once a week for 30 minutes individually, an occupational therapy consultation indirect once a week for 30 minutes between the student's provider and his teachers, and similar supplementary aids and accommodations to the 2021-2022 IEP. The CSE recommended goals to address the student's needs in study skills, reading, writing, math, and motor skills.

In June, 2022, the parents sent the district another ten-day notice letter indicating their intention to place the student at Eagle Hill for the 2022-2023 school year, and to seek tuition reimbursement.

PROCEDURAL HISTORY:

In June, 2023 the parents filed for due process alleging a denial of FAPE for the 2021-2022 and 2022-2023 school years. Their complaint alleged that the CSE's recommended program, placement, and goals were inappropriate, and that the parents were denied a meaningful opportunity to participate in the decision-making process. At the conclusion of the hearing, the IHO found that the CSE's recommended program was inappropriate to meet the student's needs for both school years, and ordered tuition reimbursement to the parents for Eagle Hill. The IHO also found that the CSE predetermined the outcome of the meeting.

SRO'S DECISION:

The district appealed the IHO's decision. First, the SRO reviewed the testimony from the district's general education teacher, who testified that the student had made academic progress the prior year in the recommended ICT

classroom. The student's resource room teacher testified that the student had achieved his 2020-2021 goals in reading and writing, and was near grade level in reading according to Fountas and Pinnell benchmark assessments.

Next, the SRO reversed the IHO's finding that the CSE predetermined the outcome of the meeting. The SRO noted that predetermination does not arise merely by the CSE continuing the same program recommendation from the prior year. Instead, the key inquiry is whether the CSE considered input from the parents and had an open mind as to changes that may be needed to the IEP. The SRO noted that the CSE Chairperson had projected a draft IEP for all attendees to view as IEP changes were made during the meeting.

The SRO found that the goals recommended by the CSE were appropriate, as they addressed the student's areas of need in reading, writing, and fine motor, and aligned with the identified needs in the standardized testing. The SRO noted that the CSE addressed the student's ADHD by recommending refocusing and redirection, reteaching, and checking for understanding, to address the student's management needs. The SRO rejected the parents' allegation that the IEP failed to include a specific reading methodology as there was no evidence put forth by the parents that a specific reading methodology was required for the student to make progress.

Regarding the 2022-2023 school year claims, the SRO found that the recommended 15:1 special class, occupational therapy, and supplementary aids and accommodations were appropriate to meet the student's needs. The SRO credited the testimony of the school psychologist who explained that the CSE removed the specialized reading recommendation because specialized reading was embedded in the 15:1 special class. Further, the psychologist testified that the CSE changed the student's program from ICT to a 15:1 special classroom to take into consideration the small class size the student had at Eagle Hill. As such, the SRO found that the district provided FAPE, and denied the parents' request for tuition reimbursement.

WHY YOU SHOULD CARE:

This case demonstrates the importance of having updated data, assessments, and evaluations to support the CSE's recommendations. Here, the CSE had updated testing from the reevaluation, and data from the student's teachers and providers, which supported their testimony that the student had made progress in the recommended ICT classroom the prior year. Further, district staff credibly explained that they changed the student's program to a more restrictive setting to take into account the smaller class size at the student's private school. As such, the district was able to prevail in defending its provision of FAPE. Finally, the decision demonstrates the importance of recommending

supplementary aids and accommodations to address a student's management needs as the CSE did in this case to address the student's ADHD.

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This publication is intended to provide general information and is not meant to be relied upon as legal advice. If you have questions about anything discussed, we urge you to contact your school attorney.

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