

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 updated guidance from the State Education Department ("SED") on students who elope from or wander in school buildings, and how to address their needs. We also review two decisions from SED's Office of State Review ("SRO") analyzing whether the districts provided a free appropriate public education ("FAPE") in special education disputes. In the first decision, the SRO found the district provided FAPE by recommending a general education classroom with consultant teacher direct support services and specially designed reading instruction. In the second decision, the SRO found the district provided FAPE in a 15:1 special classroom, and denied tuition reimbursement. Finally, we review a report from the Center for Dispute Resolution in Special Education, analyzing nationwide trends in complaints to state education departments, and due process complaints.

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. The Second

Department has jurisdiction over cases in Brooklyn, Queens, and Long Island.

- 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 the 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 GUIDANCE ON ELOPING AND WANDERING STUDENTS

BACKGROUND AND SALIENT FACTS:

In September, 2025, the State Education Department (“SED”) released updated guidance related to student elopement and wandering in schools. SED’s guidance on this topic was last updated in 2014. SED strongly recommends that districts have protocols and procedures in place to prevent and respond to instances of student elopement and wandering in a school building. These protocols and procedures should be part of a school building-level emergency response plan. A district’s response protocols and procedures should include: training staff on awareness of and response to student elopement and wandering; notifying administrators; and communication protocols with local law enforcement; using a system-wide communication alert system; assigning staff for building and grounds

searches; providing law enforcement with access to floor plans and blueprints in the event of an emergency; and immediate parent notification. SED also recommends that: students with a tendency to elope or wander be identified in advance to building principals, hall monitors, school resource officers, and security guards. Districts should consider the installation of alarms on doors; and they should ensure that such students carry identification information.

The Committee on Special Education (“CSE”) or Committee on Preschool Special Education (“CPSE”) should recommend that a functional behavioral assessment (“FBA”) be conducted for students with disabilities who have a tendency to elope or wander. An FBA is an assessment for identifying the reasons behind, or other factors contributing to, a student’s behaviors that interfere with the student’s learning or that of others. The FBA should include findings derived from data collection. It should identify antecedents that trigger the eloping or wandering behavior. Staff should record time of day when the behavior occurs, and the consequences of such behavior. A Behavioral Intervention Plan (“BIP”) should be developed based on the results of the FBA to ensure proper supervision of the child. A BIP is a plan that is based on the results of the FBA and at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior. If a staff member observes or is aware of a student wandering or eloping, a district administrator should be promptly notified.

The CSE should describe the wandering or eloping behavior on a child’s IEP under the present levels of the social-emotional section, and in the management needs section. The CSE should recommend annual goals to address the behavior, which focus on safety, communication, social skills, and coping strategies to replace the elopement/ wandering.

WHY YOU SHOULD CARE:

SED’s guidance demonstrates the importance of CSEs recommending an FBA and developing a BIP to address the safety concerns of students with disabilities who wander or elope during the school day. Districts should ensure that those students receive appropriate supervision, such as a 1:1 or shared aide to ensure their safety and meet their needs. CSEs should also consider what supplementary aids, accommodations, and consultations are needed to address the child’s elopement, including behavior consultation.

**NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF STATE REVIEW
APPEAL NO. 25-042**

BACKGROUND:

In the 2021-2022 school year, the parents of a child residing in the Roslyn Union Free School District parentally placed their child at the Windward School for second grade. On February 20, 2022, the parents signed an enrollment contract with Windward for 2022-2023 for \$66,550 in annual tuition. The student was in a class of eight students for 2021-2022. On June 7, 2022, the CSE held an annual review meeting to develop the 2022-2023 IEP, recommending: a general education classroom with consultant teacher direct support services for one hour and 20 minutes daily; a 5:1 special class for reading; speech language therapy twice a week for 30 minutes in a small group and once a week for 30 minutes individually; occupational therapy once a week for 30 minutes; and access to a computer. The comments section of the IEP indicated that the student's general education classroom had a teaching assistant for the instructional day, although the classroom teaching assistant was not recommended on the student's IEP.

At the meeting, the CSE reviewed a classroom observation at Windward, a Windward teacher report and report card. The CSE also reviewed the parents' neuropsychological evaluation. The neuropsychological evaluation recommended that the student be placed in a classroom of no more than eight students, the same classroom ratio provided at Windward.

PROCEDURAL HISTORY:

In August, 2022, the parents sent the district a 10-day notice letter stating that they were rejecting the 2022-2023 IEP, and would be placing the child at Windward at the District's expense. Windward is not approved by SED for placement of children with special needs. In October, 2023, the parents filed for due process claiming a denial of a free appropriate public education ("FAPE"), and alleged that: the present levels of performance on the IEP were inaccurate because the results of a literacy evaluation was omitted; the CSE failed to conduct an FBA or address the student's interfering behaviors; the recommendation of a general education classroom was not appropriate; and that the 5:1 special class for reading was insufficient to support the student's reading needs.

An impartial hearing was held over four days, after which, the impartial hearing officer ("IHO") found that the district denied the child FAPE, that Windward was an appropriate unilateral placement to meet the child's needs, and

that equitable considerations favored the parents in awarding tuition reimbursement. Specifically, the IHO found that the recommended general education classroom did not provide the student with sufficient academic support to make progress, and that the CSE did not provide sufficient reading support to address the student's needs. The district appealed.

DECISION OF THE SRO:

On appeal, the SRO first credited the CSE with recommending a classroom teaching assistant in the student's general education classroom. The parents had argued at the hearing that since the teaching assistant was not recommended on the IEP, the CSE should not be credited with recommending it as part of its provision of FAPE. However, the SRO found that the omission of the teaching assistant in the IEP recommendations section was not a deprivation of FAPE because the CSE had noted its recommendation of the teaching assistant in the prior written notice letter and the summary page containing the IEP comments section, in addition to providing testimony about the service.

Next, the SRO credited testimony from the CSE Chairperson and special education teacher who explained why they recommended consultant teacher direct services as a way of providing more individualized attention for the student, instead of an ICT classroom in which the special education teacher works with students in small groups. The SRO found that contrary to the IHO's findings, the consultant teacher direct model provided the child with access to the general education classroom in the least restrictive environment. The SRO also found that the child would have received daily specialized reading, in the form of Wilson reading, to work on reading and writing goals. The SRO noted that the consultant teacher would have also worked on the reading and writing goals, as well as math goals.

The SRO ruled that the IHO was incorrect in determining the student would not have made progress in a specialized reading class using Wilson. The SRO noted that the student had made progress in AIS reading using Foundations, which is based on Wilson for specially designed reading. The SRO noted that the private evaluator did not explain why the student needed a special class of eight students or fewer, and why he could not make progress in a class with non-disabled peers. That opinion stood in contrast to testimony from district staff that the student benefited from access to non-disabled peers.

The SRO rejected the IHO's determination that the CSE failed to address the child's transition into the recommended general education placement. The SRO noted that the CSE recommended supplementary aids and accommodations to address the child's management needs consisting of: positive reinforcement; movement breaks; preferential seating near the source of instruction; visual cues;

supports for organizational skills; refocusing and redirection; teacher check-ins to check for understanding; and questions read during classwork activities. As such, the SRO found that the district provided FAPE, and denied the parents' request for tuition reimbursement.

WHY YOU SHOULD CARE:

This case illustrates a district's provision of FAPE through the recommendation of direct consultant teacher services and specialized reading. In some circumstances, districts may find that consultant teacher direct services are more appropriate to meet a child's needs, than an ICT classroom. The case also highlights the importance of recommending transition services in the form of supplementary aids and accommodations when considering the transition of a student from a private class of all disabled children into a general education environment.

Finally, in this case, the CSE correctly noted in the IEP comments section and the prior written notice letter that the student's general education classroom would include a teaching assistant. The effective drafting of the PWN and use of IEP comments helped the district receive credit for providing the teaching assistant in meeting its FAPE obligation. However, as best practice, we recommend that the IEP of each child who needs the support of a 1:1 classroom aide or teaching assistant include that recommendation on the child's IEP under recommended supplementary aids and accommodations. Having that recommendation on the IEP ensures that the district will be credited for the support in providing FAPE, rather than hoping you can convince an IHO or the SRO that the service was recommended.

NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF STATE REVIEW APPEAL NO. 25-064

BACKGROUND:

The CSE in the New York City Department of Education met in June, 2022 to develop a 2022-2023 IEP for a student classified with a disability. The meeting was attended by the parents, school psychologist, special education teacher, and the student's classroom teacher at the parents' private school, IVDU. The CSE recommended four periods per day of core academic subjects in a 15:1 special class for ELA, math, social studies, and science. The CSE also recommended: counseling

one time a week for 40 minutes individually; occupational therapy three times a week for 30 minutes individually; speech language therapy twice a week for 40 minutes individually and once a week for 40 minutes in a small group; and Special Education Teacher Support Services (“SETSS”) for five periods per week. SETSS is not on SED’s continuum of services, but in New York City, it is similar to resource room. The child’s IVDU teacher opined at the meeting that the 15:1 special class would be too large for the child, but the CSE proceeded with its recommendation. The parents tried contacting the recommended in-district placement to ask questions, but did not hear back from the school.

PROCEDURAL HISTORY:

On August 15, 2022, the parents sent the district a 10-day notice letter rejecting the district’s 2022-2023 IEP, and stating they were unilaterally placing their child at the IVDU school in Brooklyn at the District’s expense. In November, 2023, the parents filed for due process, alleging that the district denied their child FAPE for 2022-2023. Specifically, the parents’ complaint alleged that: the recommended 15:1 special class was too large to meet their child’s needs; the goals were not measurable; the CSE failed to recommend parent counseling and training; and the CSE failed to consider a private school placement. The impartial hearing lasted 13 days, and at its conclusion, the impartial hearing officer (“IHO”) found that the district provided FAPE for 2022-2023. The IHO found that the district’s recommended program of a 15:1 special class with SETSS, and related services was appropriate to meet the student’s needs. The parents appealed.

SRO DECISION:

On appeal, the parents alleged that the district denied their child FAPE because no general education teacher attended the CSE meeting. However, the SRO noted that a general education teacher is only required when a student participates in or may participate in the general education environment. Here, the student did not participate in a general education environment for the prior school year since the student was unilaterally placed at IVDU in a class of all disabled children. Further, the parents were not seeking a general education placement for their child for 2022-2023, nor did they seek such placement on appeal. Moreover, the SRO stated that even if the CSE was improperly composed without a general education teacher, it did not impede the parents’ decision-making process and was not a substantive deprivation of FAPE. The SRO also disregarded the parents’ argument that that the CSE was improperly composed without a speech language and occupational therapist at the meeting. Instead, the SRO found that the CSE had sufficient information about the student’s fine motor and speech needs based on progress reports available to the CSE.

Next, the SRO rejected the parents' argument that the CSE predetermined the outcome of the CSE meeting, pointing out that the IEP indicated that the CSE rejected a 12:1:1 special class because it did not have appropriate peer models. The SRO also noted that the IEP indicated that the parents participated in the CSE meeting, were asked about their concerns, and the CSE tried to address those concerns in their recommendations.

Third, the SRO found that the district's 15:1 special class recommendation with SETSS was appropriate to meet the student's needs. The SRO noted that a 15:1 special class is defined on the continuum of services as the maximum class size for students whose special needs consist primarily of the need for specialized instruction. The SRO found that the recommended 15:1 special class and related services would address the student's delays in reading, social skills, social-emotional functioning, fine and gross motor coordination, and speech language. The SRO stated that the recommended SETSS in a group of up to eight students would provide the student with pre-teaching and reteaching, and additional academic support in reading, writing, and math to understand the material in the 15:1 special class.

Fourth, the SRO rejected the parents' argument that the CSE failed to recommend parent counseling and training. The SRO noted that the child was not classified with autism, nor did the parents request parent counseling and training at the CSE meeting. The SRO stated that even if the CSE failed to recommend it, the absence of parent counseling and training on an IEP is not a substantive deprivation of FAPE.

Finally, the SRO rejected the parents' argument that any failure by the district to have their questions answered about the assigned placement was a violation of FAPE, as the child never attended the assigned placement, and there was no basis to conclude that the recommended placement could not implement the IEP. As such, the SRO found that the district provided FAPE, and denied the parents' claims for tuition reimbursement.

WHY YOU SHOULD CARE:

This case demonstrates the importance of resource room and related services to supplement the special class or ICT classroom recommended by the CSE. In this case, the SRO credited the CSE with recommending SETSS to work on pre-teaching and reteaching of concepts and skills in a group setting, which was a similar size to the instruction the student received in a special class at his private school. Further, the decision demonstrates the importance of writing a detailed prior written notice (PWN) letter, which explains the other program options considered by the CSE, and why they were rejected. For example, in this case, the CSE rejected a smaller class size because it did not have an appropriate peer group. Providing a detailed

rationale in the PWN will help the parents understand the CSE's recommendations, and for the district to justify its provision of FAPE in a hearing. Remember, the IHO will review the PWN when it is offered into evidence. The more detailed it is and the fact that you itemize all the things you did right, will give the IHO or SRO a clear picture of how the CSE functions generally, and how you developed the IEP in your case, in particular.

***CENTER FOR APPROPRIATE DISPUTE RESOLUTION
IN SPECIAL EDUCATION
TRENDS IN DISPUTE RESOLUTION UNDER IDEA
2013-14 to 2023-24***

BACKGROUND AND SALIENT FACTS:

In August, 2025, the Center for Appropriate Dispute Resolution in Special Education (CADRE) published a report analyzing dispute resolution trends in special education during the 2023-2024 school year. The report focused on complaints submitted by parents to state education departments (“state complaints”), and parents filing for due process against school districts. CADRE noted that from 2013 to 2019, the number of written state complaint remained relatively steady with an average of 5,267 complaints per year nationwide. However, since 2021, the number of state complaints has skyrocketed, with 8,154 complaints during 2022-2023, and 9,927 complaints during 2023-2024, representing nearly an 80% increase over the prior 10-year average of 5,537. CADRE found that of those complaints filed during 2023-2024, state education departments issued a finding against the district in 63% of those cases.

CADRE noted that the state of New York accounted for 68.2% of all due process complaints across the country, which skewed the national data. Most of those due process complaints were filed in New York City. Excluding New York, due process complaints increased nationally by 5.4% year over year, to 12,443

Finally, CADRE discussed early dispute resolution, including the use of mediation, to avoid costly and adversarial litigation. The authors of the report noted that the use of mediation has dropped from 30% in 2013 to 2019, to 21% of cases nationwide in 2023-2024, in part due to the failure to resolve the matters in mediation.

WHY YOU SHOULD CARE:

This report provides an interesting perspective on nationwide trends in special education disputes involving state complaints and due process complaints. Districts should make every effort to comply with proper procedures and compliance with IDEA and state regulations. Regular communication should be maintained with parents throughout the year on their child’s progress, particularly when parents disagree with the CSE’s recommendations. District administrators should always try to resolve special education disputes, where possible, before parents file state education department or due process complaints, so long as the district continues to provide FAPE to the child. CSE decisions should be based on data, and actual or anecdotal observations, with recommendations designed for the child to make progress. In the event that parents file a state complaint, special education administrators should be responsive to SED’s request for information, including production of CSE records, and other documents. The report further demonstrates the need for proper record keeping and recording data on a child’s progress. Finally, it highlights that in most tuition reimbursement claims filed by parents, mediation may not be a useful tool to resolve the dispute, requiring districts to proceed to an impartial hearing, or settle the matter.

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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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