



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 the State Education Department's ("SED") updated special education guidance for parents entitled, *A Parent's Guide*, and discuss its importance. We also examine a report from the Center for Democracy and Technology on the use of artificial intelligence in developing IEPs and 504 plans. Next, we review a report and recommendations from the New York State Dyslexia and Dysgraphia Task Force. Finally, we examine a decision from State Education Department's Office of State Review, which denied a parent's claim for reimbursement of equitable services because the parents failed to submit a timely request for such services.

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 Appellate Division, 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 IHO decision go directly 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
SPECIAL EDUCATION IN NEW YORK STATE FOR
PRESCHOOL AND SCHOOL-AGE STUDENTS WITH
DISABILITIES: A PARENT’S GUIDE (2025)**

BACKGROUND AND SALIENT FACTS:

In November, 2025, the State Education Department (“SED”) released an updated handbook for parents of students with disabilities entitled: ***Special Education in New York State for Preschool and School-Age Students with Disabilities, A Parent’s Guide*** (“handbook”). The handbook provides parents with a broad overview of the special education process in New York, and discusses their due process rights under federal and state law.

Under New York State Education Law, the Committee on Special Education (“CSE”) is required to provide parents with a copy of the handbook for each child that has been referred for an initial evaluation to determine eligibility for special education services. The handbook should be provided to those parents “as soon as practicable” after the initial referral is made to the CSE.

In addition, districts are required to notify every parent of their right to seek a referral and evaluation of their child for special education services upon their child's enrollment or attendance in the district. This applies to every parent, regardless of whether their child is disabled. This requirement may be satisfied by providing the parents with a notice containing: (1) a link to SED's website containing a copy of the handbook; and (2) the name and contact information for the district's CSE Chairperson or other person responsible for processing initial referrals to the CSE.

Both handbook requirements under New York State Education Law are in addition to existing requirements for districts to provide parents with a procedural safeguards notice, which details their due process rights under the Individuals with Disabilities Education Act ("IDEA"). The procedural safeguards notice was updated in May, 2024, as discussed in our May 17, 2024 client memorandum.

WHY YOU SHOULD CARE:

Districts should strive to comply with the state law by providing a copy of this updated handbook to parents upon an initial referral to the CSE. Districts should also provide all parents registering their child in the district with a website link to SED's handbook, along with contact information for the CSE Chairperson. CSE Chairs should maintain a record of the date the parent handbook was provided to the parents after the initial referral, and the method by which it was provided, such as email, mail, or hand delivered. Registrar's offices should also include a website link to the handbook, along with the CSE Chairperson's contact information, in registration materials provided to parents.

CENTER FOR DEMOCRACY & TECHNOLOGY THE USE OF GENERATIVE AI TO DEVELOP IEPs FOR STUDENTS WITH DISABILITIES

BACKGROUND AND SALIENT FACTS:

According to an October, 2025 report from the Center for Democracy and Technology ("CDT"), 57% of teachers reported using Artificial Intelligence ("AI") to develop an IEP or 504 plan during the 2024-2025 school year. That represented an 18-point increase from 39% during the 2023-2024 school year. There was an 11-point increase from 19% to 30% in using AI to summarize the

content of an IEP or 504 plan, and an 8-point increase from 23% to 31% in using AI to identify trends in student progress, and help in determining goals. The use of AI includes publicly available platforms such as Gemini, ChatGPT, Copilot, and AI platforms specifically designed for school districts such as Playground IEP and MagicSchool AI.

The benefits of using AI in special education include being able to create an IEP template with little prompting, giving educators more time to spend teaching children instead of developing IEPs. Research cited by the report indicated that teachers may save as much as six weeks of time over the course of the school year by using AI to generate IEPs. The use of AI may also result in clear, concise, and understandable language used in an IEP, instead of terms that only clinicians use in the field.

The risks include the development of goals that resemble the use of a goal bank, which are not individualized to a specific child's needs. Inputting personally identifiable information ("PII") about a specific child into AI also violates FERPA and IDEA if there is not a fully executed contract between the district and vendor specifying the terms of its use. FERPA only permits school districts to disclose PII to contractors who are under the direct control of the district related to the maintenance and use of the educational record. That does not apply to inputting PII into a publicly-available third party AI platform.

In addition, AI platforms are subject to hallucinations in which they make up information or provide inaccurate information. Further, CDT notes that people have an "automation bias", which means teachers and administrators are more likely to agree with the results of an AI platform, even after they have reviewed the AI-generated content with errors. Finally, CDT notes that AI models may display a bias based on disability, race, or gender.

CDT recommends that: district staff refrain from inputting a child's PII into publicly available AI platforms that don't have a contractual relationship with the district; exercise caution when using AI vendors; and for districts to provide guidance and training to teachers on responsible and ethical use of AI in the IEP process. CDT also recommends that districts consult their compliance officers and school attorneys regarding the potential legal risks of using AI. Districts should also have policies regarding the use of AI in the development of IEPs, including requiring a human being review every IEP before they are finalized; and enabling teachers to exchange ideas on best practices of using AI in the IEP development process.

WHY YOU SHOULD CARE:

The CDT report serves as an eye opener of the 18-percentage point jump in teachers using AI to develop IEPs. As the study points out, a majority of teachers polled during 2024-2025 acknowledged using AI to develop an IEP or 504 plan. As the use of AI becomes easier and more prevalent, districts should proceed with caution when using the technology in developing IEPs. Generic goals that are not specific to a child's needs or measurable as written as the result of AI is a denial of FAPE, which cannot be blamed on AI to avoid liability. Further, inputting PII into third party AI platforms violates IDEA and FERPA.

Finally, attorneys have been disciplined for using AI in legal briefs, which yield inaccurate or wrong information, including court cases that do not exist. On several occasions, judges have sanctioned attorneys for using AI-generated fictitious court cases, or citing court cases that are completely at odds with the proposition being cited. District staff that use AI run the risk of inaccurate information being created and inserted into a child's IEP. District staff should avoid using AI to develop IEPs, ensuring that each IEP is individualized. While there are no reported cases challenging AI-generated IEPs, we encourage you not to be the first. Instead, until the technology allows for individuality, limit the use of AI to clerical tasks.

NEW YORK STATE DYSLEXIA AND DYSGRAPHIA TASK FORCE: REPORT AND RECOMMENDATIONS DECEMBER 2024

BACKGROUND AND SALIENT FACTS:

In December, 2024, the New York State Dyslexia and Dysgraphia Task Force published a report containing research about dyslexia and dysgraphia, and recommendations for addressing them. The Task Force was established pursuant to a law signed by the governor in February, 2024. The Task Force consisted of 49 members, which met seven times from May to December, 2024, and conducted three public hearings. Dyslexia is a specific learning disability characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. Dysgraphia is a specific learning disability that affects how easily children acquire written language and how well they use written language to express their thoughts.

The report notes that there are four purposes for administering assessments for dyslexia and dysgraphia: universal screening; intervention planning; progress monitoring; and diagnostic evaluation. Universal screening is used to determine a student's risk for reading difficulty and the need for intervention. Intervention planning is used to make data-based decisions for instruction that is informed by the testing results. Progress monitoring is used to determine whether a child's progress is adequate or if different or additional interventions are required. Diagnostic evaluation is used to identify a child's individual learning strengths and weaknesses, and the likely source of their academic needs, to determine if the child has a learning disability.

The Task Force developed the following 14 recommendations:

SED should adopt updated definitions of dyslexia and dysgraphia;

A state level policy position should be created related to dyslexia and dysgraphia;

SED should create a Center for Dyslexia and Dysgraphia;

SED should collect data to develop best practices for serving students with dyslexia, dysgraphia, and other learning disabilities;

The Board of Regents should develop standards for teacher preparation programs and certifications for dyslexia and dysgraphia;

Districts should implement universal screening in grades K-5 in reading and writing;

Districts should screen at-risk students who have reading and writing challenges;

SED should develop guidance for districts to screen students for dyslexia and dysgraphia;

The Commissioner's Regulations should be amended to require districts to notify parents if a child meets the screening criteria for dyslexia or dysgraphia;

SED should collaborate with other state agencies to improve access to diagnostic evaluations;

SED should disseminate information about learning disabilities to increase awareness;

SED should develop a framework to serve students with dyslexia or dysgraphia;

SED should create guidance on these disabilities for professional development;
and

Additional state funding should be allocated for screening and services.

SED and the state legislature have started to implement some of the Task Force's recommendations. On December 11, 2025, Governor Hochul signed a bill into law establishing the Center for Dyslexia and Dysgraphia, as recommended by the Task Force (Chapter 615 of 2025). The Center is responsible for issuing policies and practices regarding dyslexia and dysgraphia, including publication of a handbook within two years. The handbook should include information about universal screening policies, procedures, and best practices; classroom instruction and interventions based on the science of reading; professional development opportunities; and screening modification for English Language Learners.

WHY YOU SHOULD CARE:

The report from the Task Force provides special education directors and staff with an understanding of the current research in the fields of dyslexia and dysgraphia. The Task Force's recommendations enable districts to prepare for what lies ahead in likely regulatory changes from the Commissioner, and anticipated guidance from SED. Districts should review their current screening policies for dyslexia and dysgraphia, and determine what changes, if any, should be made. The assessments are an important tool for districts to use to identify students with learning disabilities and refer them to the CSE under IDEA's child find obligation. Districts should take steps to identify and place emphasis on measuring weaknesses and deficits in students with dyslexia and dysgraphia.

NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF STATE REVIEW APPEAL NO. 25-293

BACKGROUND AND SALIENT FACTS

In August, 2022 the New York City Department of Education ("DOE")'s CSE met with the parents to develop an IESP for the 2022-2023 school year. The parents had indicated that they were parentally placing the child in a private school

for 2022-2023, and only seeking equitable services from the DOE as the district of location. The CSE recommended five periods per week of Special Education Teacher Support Services (“SETSS”), which in New York City is similar to resource room on the continuum of services. The CSE also recommended speech language therapy individually twice a week for 30 minutes. The speech language services and SETSS were recommended to be provided in bilingual English-Yiddish language. The DOE failed to implement the student’s 2022-2023 IESP. The CSE also failed to develop an IESP for the child for the 2023-2024 school year.

On August 27, 2023, the parents’ advocate submitted a 10-day notice letter to the DOE stating that the DOE failed to implement the child’s 2022-2024 IESP, and failed to develop an IESP for 2023-2025. The parents stated that they were unilaterally obtaining a private service provider to render special education instruction, and would be seeking reimbursement from the DOE. On September 1, 2023, the parents signed a contract with a tutoring agency for services at \$175 an hour.

PROCEDURAL HISTORY:

In November, 2024, the parents filed for due process alleging that the DOE failed to provide their child with FAPE for 2023-2024 by failing to develop an IESP and failing to provide equitable services. The parents requested that the hearing officer order the DOE to reimburse them for the tutoring services they unilaterally obtained. In its response, the DOE raised as an affirmative defense that the parents failed to provide written notice to the DOE requesting equitable services by June 1st as required by New York State Education Law. The DOE also raised the issue in their opening statement at the hearing.

In the impartial hearing officer’s (“IHO”) decision, the IHO found that the DOE failed to provide the child with FAPE for 2023-2024. The IHO disregarded the DOE’s June 1st affirmative defense, stating that the DOE did not present evidence that it did not receive the parents’ June 1st letter requesting equitable services. The IHO then found that the parents did not prove that the tutor from the agency was appropriate for the child to make progress. However, the IHO ordered the DOE to fund 180 hours of SETSS and 36 hours of bilingual speech language therapy at up to \$125 per hour. The DOE appealed.

STATE REVIEW OFFICER DECISION:

The DOE did not dispute that it failed to provide FAPE for 2023-2024, but argued that the parents failed to submit timely notice by June 1, 2023, requesting equitable services for 2023-2024. The SRO noted that the parents had submitted, at the hearing, a form signed by the parents on May

30, 2023 seeking equitable services. However, the form did not include an address or salutation, nor did the parents submit any evidence that it was ever sent to the DOE. The DOE further argued that since the parents failed to attend the impartial hearing, the DOE could not cross examine the parents regarding the date or method by which their form was allegedly sent to the DOE, seeking equitable services.

The SRO first noted that the parents failed to submit an Answer on appeal. The SRO also found that the parents failed to meet their burden of proving they submitted the IESP services request to the DOE by June 1st. As such, the SRO reversed the IHO's decision, which had ordered the DOE to provide compensatory services, and sustained the DOE's appeal.

WHY YOU SHOULD CARE:

This SRO decision highlights the choice that the school district of location has when parents fail to request equitable services by June 1st, or fail to submit a timely request for services by June 1st. In such a situation, the district of location has the right to deny a parents' request for services, which is a valid affirmative defense that the SRO has repeatedly upheld. School districts should consult with board counsel as to whether they ever choose to waive their June 1st affirmative defense and still provide equitable services, or deny services based on untimeliness.

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Daniel Levin and Liza Blaszczyk, are Associates with Frazer & Feldman, LLP. They provided research, writing and assistance.

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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