

**Special  
Education  
Year in Review  
2024**



**Ryan L. Everhart and Madeline G.  
Cook**

*October 10, 2024*

---

HODGSON RUSS

# Disclaimer



This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation. No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

All copyrightable text and graphics, the selection, arrangement, and presentation of these materials (including information in the public domain), are ©2023 Hodgson Russ LLP. All rights reserved. Permission is granted to download and print these materials for the purpose of viewing, reading, and retaining for reference. Any other copying, distribution, retransmission, or modification of these materials, whether in electronic or hard copy form, without the express prior written permission of Hodgson Russ LLP, is strictly prohibited.



## Special Education Statistics

- 1976-1977 School Year: 3.6 Million students
  - 8% of the Overall Student Population
  - Approximately 1 to 2 students per classroom
- 2021-2022 School Year: 7.7 Million students
  - 15% of the Overall Student Population
  - Approximately 3 to 5 students per classroom
- In New York State . . .
  - 20.5% of the Overall Student Population
  - Approximately 4 to 6 students per classroom



## Special Education Statistics

- U.S. Department of Education Office for Civil Rights saw a 144% increase in K-12 related complaints since 2021.
  - 2021 Complaints: 5,200
  - 2023 Complaints: 12,700
- Many of these complaints related to the pandemic, specifically access to remote learning services for students with disabilities.
- Increased burdens and a lack of federal funding makes it more difficult for the office to handle these complaints.

# Significant Changes on the State Level



## New Procedural Safeguards Notice

Substantive changes to the updated Procedural Safeguards Notice include:

- The addition of a section concerning accelerated relief.
- Removal of the prohibition of attorney fees for special education mediation.
- Highlighting special education mediation as a dispute resolution option.
- The change in hours of alternative instruction at the elementary and secondary level.



# Significant Changes on the State Level

## New Procedural Safeguards Notice

As a reminder, the *Procedural Safeguards Notice* must be provided to parents of a student with a disability at a minimum of one time per year and upon:

- Initial referral or parental request for evaluation;
- Request by a parent;
- The first filing of a due process complaint notice to request mediation or an impartial due process hearing;
- A decision to impose a suspension or removal that constitutes a disciplinary change in placement; and
- Receipt of a parent's first State complaint in a school year



# Significant Changes on the State Level

## Impartial Hearing Reporting System

As of August 14, 2024, Impartial Hearing Officers, and NOT School Districts, are required to enter 30-day extensions of time into the IHRS

SED is also offering school districts training on how to use the IHRS

- last session is **October 23, 2024** from 1-4 pm

# Significant Changes on the State Level



## Changes to Section 200.5 Relating to Non-Public Students

Amendments clarify the scope of parental rights to due process hearings for parentally placed nonpublic school students

### May 2024 Amendment

- Parents should not be required to file a due process complaint to obtain payment for IESP services the district did not directly provide.
- Parents deserve to be made whole through direct and timely reimbursement for IESP services not implemented by the district.

# Significant Changes on the State Level



## Changes to Section 200.5 Relating to Non-Public Students (Cont.)

### July 2024 Emergency Amendment:

- Parents or school district may not file a due process complaint regarding disputes over whether a rate charged by a service provider is consistent with the program in a student's IESP or aligned with the current market rate for such services.
- Districts may file a complaint only to:
  - Challenge the propriety of a provider's rate that *exceeds* the market rate; or
  - To challenge the licensure status of the provider.



# Significant Changes on the Federal Level

## Changes to Title IX Obligations for Special Education Students

### Section 106.8(e) of the Final Proposed Regulations

- Title IX Coordinator must consult with one or more members of a student's IEP or Section 504 team if a complainant or respondent in a Title IX complaint is an elementary or secondary education student with a disability
- Consultation is meant for Title IX Coordinator and member(s) of the IEP or 504 team to determine how to comply with all relevant special education laws and determine how to provide for the appropriate accommodations.



# Significant Changes on the Federal Level

## Changes to Title IX Obligations for Special Education Students

### Section 106.44(g)(6) of the Final Proposed Regulations

- Implemented in accordance with the 106.8(e) changes.
- Schools must require their Title IX Coordinators to consult with one or more member of the IEP or Section 504 team.
- Title IX Coordinator is obligated to consult with at least one member of the student's IEP or 504 team when implementing supportive measures concerning elementary or secondary education students with disabilities.

# Significant Changes on the Federal Level



We are still waiting on updated 504 Regulations!!!!





# Case Law Updates

Developments since *Perez v. Sturgis*:

*F.B. v. Francis Howell Sch. Dist.* (8<sup>th</sup> Cir. 2023)

- Former student with autism did not have to exhaust administrative remedies under the IDEA prior to seeking compensatory damages under Title II or Section 504.
- Granted student a second chance to argue he is entitled to compensatory damages after unlawful use of restraint and seclusion.
- *Perez* clarified the exhaustion requirement does not apply to lawsuits, even those premised on the denial of FAPE, that seek a remedy unavailable under the IDEA.



## Case Law Updates

*Powell v. Sch. Bd. of Volusia Cnty. Fla.* (11<sup>th</sup> Cir. 2023)

- Districts that secured a dismissal of a Section 504 or ADA Claim for money damages on exhaustion grounds within the last year may have to defend those claims again.
- 11<sup>th</sup> Circuit judges stated *Perez* changed original law and allowed the parents to raise money damages argument on appeal.
- Supreme Court in *Perez* held that the IDEA exhaustion requirement does not apply to claims for money damages brought under other statutes.



## Case Law Updates

*A.S. v. Mamaroneck Union Free Sch. Dist.* (S.D.N.Y. 2024)

- Court dismissed parents' Section 504 and Title II claims of intentional discrimination against their student with ADHD and oppositional defiant disorder.
- Parents failed to establish the district improperly excluded the student from its programs, services, and activities due to a disability.
- The district made good-faith efforts to address the student's needs, held constant IEP meetings, frequently communicated with the parents, repeatedly adjusted the student's BIP, and proposed placement in a therapeutic private school.
- Although denial of FAPE may lead to an IDEA action, it may not always lead to a Section 504 or Title II action.



## Case Law Updates

*Lartigue v. Northside Indep. Sch. Dist.* (5th Cir. 2024)

- Court ruled a district may not use its satisfaction of FAPE obligations to circumvent liability under Title II of the ADA.
- District failed to provide closed-captioning services for the student to participate in debate competitions.
- The standard in an ADA claim is not whether the district adhered to the IEP or satisfied the students FAPE, but whether the district provided reasonable accommodations to the student.
- Fry does not bar non-IDEA FAPE requirements entirely; students must seek relief in a due process hearing before suing in court.



# Case Law Updates

## Independent Student Evaluations

*Alex W. v. Poudre Sch. Dist.* (10<sup>th</sup> Cir. 2024)

- Court held a district is not responsible to pay for an independent evaluation the parents allowed their child to receive months after the district's initial evaluation.
- Once the district grants and fulfills a parent's request for an IEE, the district has no further obligation to respond to or consider additional requests arising out of the same evaluation.
- Parents are entitled to only one publicly funded IEE for each evaluation conducted by their child's district with which they disagree.



# Case Law Updates

## Compensatory Education Services

### *Bird v. Banks* (S.D.N.Y. 2023)

- The court recognized that compensatory education can be awarded as *prospective relief* in some instances.
- However, the court also made clear that prospective compensatory education is only appropriate where the parent can identify the student's lingering educational deficits. The court reasoned that compensatory education is intended only to put the student in the place he or she would be in but for the district's denial of FAPE.



# Case Law Updates

## Tuition Reimbursement

*Hempfield v. S.C.* (E.D.Pa. 2024)

- Districts may be responsible for any out-of-pocket tuition incurred by parents who unilaterally place their students in another public school to obtain IEP-mandated services.
- A Pennsylvania district was required to reimburse parents when it failed to implement portions of their student's IEP due to staffing shortages, requiring the parents to place the student unilaterally into another neighboring public school district in order to obtain FAPE.



# Case Law Updates

## Length of Services

*Osseo Area Sch. v. A.J.T.* (8<sup>th</sup> Cir. 2024)

- The Eighth Circuit recently ruled that a Minnesota public school district denied FAPE to a student when it refused to provide necessary services into the evening hours and shortened the student's school days as a result.
- A student who was unable to attend classes in the morning due to a seizure disorder was entitled to full instruction, even if the district was required to provide instruction into the evening hours to achieve FAPE.



# Case Law Updates

## Managing Parent Behavior

*Neske v. N.Y.C. Dept. of Educ.* (2d Cir. 2023)

- Parents were denied tuition reimbursement for their child’s unilateral, private placement due to their “uncooperative behavior” and engaging in “delay tactics” around their appeal.
- The Court held that the parents’ repeated cancelling of CSE meetings, other attempts to delay the creation of the student’s IEP, and participation in a broader effort of other parents to move students from one placement to another, together amounted to a showing of bad faith.



## Case Law Updates

### *Appeals of V.F.-G.*, Decision No. 18,414 (2024)

- A district placed communication and visitation restrictions on a parent with a long history of violating the district's code of conduct, including at least one incident of disorderly conduct on school grounds and frequent emails to the district that accused the district's employees of kidnapping, trafficking, and abusing children.
- Court held that limiting the parent's communications with district staff to a weekly email with the deputy superintendent and banning the parent from school property without written permission were "reasonably and narrowly limited in scope" in view of the conduct.



# Case Law Updates

## Telepresence Robots

*Doe v. Regional Sch. Unit 21*, (D. Me. 2024).

- Court held the District did not violate 504 and Title II by denying the parents request for their child with anxiety to use a telepresence robot to remotely access instruction.
- Parents failed to plausibly establish the robot was a reasonable accommodation for their child's disability and that the District's denial prevented their child from participating in school services and programs.
- District found it was more plausible for the student to overcome anxiety through reacclimating the student into the classroom environment without the aid of a telepresence robot.

# Questions?



HODGSON RUSS  
**Contact Us**



**Ryan L. Everhart**

Partner

716.848.1718

[reverhar@hodgsonruss.com](mailto:reverhar@hodgsonruss.com)



**Madeline G. Cook**

Associate

716.848.1691

[mcook@hodgsonruss.com](mailto:mcook@hodgsonruss.com)

# Understanding IDEA and 504: Disciplinary Considerations for Students with Disabilities



**Andrew J. Freedman, Lindsay A.  
Menasco and Asia R. Evans**

*October 10, 2024*



HODGSON RUSS  
**Disclaimer**

This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation. No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

All copyrightable text and graphics, the selection, arrangement, and presentation of these materials (including information in the public domain), are ©2023 Hodgson Russ LLP. All rights reserved. Permission is granted to download and print these materials for the purpose of viewing, reading, and retaining for reference. Any other copying, distribution, retransmission, or modification of these materials, whether in electronic or hard copy form, without the express prior written permission of Hodgson Russ LLP, is strictly prohibited.



# Agenda

- Introduction
  - Hypothetical – Individual Group Discussion
- Common Pitfalls
- Code of Conduct Violations
- Imposing Discipline
  - Student disciplinary process
- Questions?



## Introduction

- Schools have an obligation to address behaviors related to a student's disability through appropriate individual services, such as behavioral supports.
- If the discipline results in a change of placement (removal of 10 days or more in the school year), then the school team must conduct a manifestation determination review (MDR) to ensure the student is not being disciplined for conduct which is directly and substantially related to their disability.
  - Regardless of whether the student is classified under the IDEA or Section 504!
- If a manifestation is found, then the team must consider whether the placement continues to be appropriate, or, if there should be a change to the student's services, supports, or educational setting to prevent recurrence.



## Disciplinary Change in Placement

- Applies to students with disabilities and students presumed to have a disability.
- Disciplinary Change in Placement:
  - 10 days or longer; or
  - A series of short-term suspensions that constitute a “pattern.”
    - **Cumulative** to 10 days of out of school suspension
    - Behavior is substantially similar
    - Additional factors such a length and proximity



## Students Presumed to Have a Disability

- Who are presumed to have a disability?
  - Parent expresses concern in writing to a teacher or administrator;
  - Parent has requested an evaluation of the student; or
  - Teacher or other school personnel expresses concerns about a specific pattern of behavior.
- **Exceptions:**
  - Parent has refused consent to evaluation of student.
  - Parent has refused special education services for the student.
  - Student was referred to CSE and determined to not be a student with a disability.



## Exceptions to Disciplinary Change in Placement Rule

- Manifestation team determines that the student's behavior was not a manifestation of the student's disability.
- Placement of a student in an Interim Alternative Educational Setting (IAES) for certain behavior related to inflicting serious bodily injury, weapons, drugs, or risk of harm to the student or others.
  - Appropriate IAES placement to be determined by the CSE.
  - Finding of manifestation does not preclude Superintendent or Hearing Officer from ordering an IAES placement.



## What Constitutes a Suspension?

- Occurs when a student with a disability is removed for any portion of the day for disciplinary reasons from that student's current educational placement.
  - Includes in-school suspensions and when a school district suggests a child go home early, or otherwise "stay home" to cool down, get rest, etc.



## Expedited Due Process Hearings

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



## Charter Schools and Special Education

- The school district of residence is responsible for applying for federal IDEA funds for special education services provided to resident students enrolled in a charter school.
- Charter school students receive special education services in accordance with the IEP recommended by the CSE of the school district of residence.
- Charter schools are required to have student disciplinary procedures in place that are consistent with due process and federal laws/regulations governing placement of students with disabilities.
- School district of residence schedules and conducts MDR with participation of charter school personnel.

# Hypothetical



- Daniel is a 12-year-old student classified as a student with a disability (Autism) and receives special education and related services in Limited Resources Central School District in New York.
- He is mainstreamed for most of his classes and has been performing well academically. Recently, he has been misbehaving in class by taunting his classmates, embarrassing them and kicking their chairs. Daniel has not previously been suspended for his misconduct.
- The CSE convened for Daniel's annual review about a week ago. During that meeting, Daniel's parents requested that Daniel be placed in a more restrictive setting because of his unpredictable behavior. However, the CSE did not change his program and placement at that time.



## Hypothetical – Cont’d.

- Just the other day, on Thursday, October 3, Daniel kicked a student’s chair in class, and the student fell and hit her head.
- Daniel was suspended by the principal for five school days (through October 10).
- The District convened a Superintendent’s hearing on October 10 at which time Daniel was found guilty of the charged misconduct.
- Because the District contemplated suspending Daniel for an additional 20 days and considering the parents’ argument that his misconduct was related to his disability, the District scheduled an MDR for Friday, October 18.

# Hypothetical - Individual Group Discussion



- Did the MDR team schedule a timely MDR?
  - When should the MDR occur? Prior to the disciplinary hearing or after?
- At what point during the disciplinary process should the school district provide the parent(s) with Prior Written Notice and a copy of the Procedural Safeguards Notice?
- Regardless of the timing of the MDR meeting, who should be included on the “manifestation team?”
- What factors must be reviewed during the MDR meeting?
- What questions must be answered by the manifestation team at the MDR meeting?
- Do you believe Daniel’s conduct is a manifestation of his Disability?

# MDR Factors to Consider and Determination



- Was the conduct in question the direct result of the school district's failure to implement the IEP?

OR

- Was the conduct in question caused by, or did it have a direct and substantial relationship to the student's disability?
- If "YES" to either question, then the behavior was a manifestation of the student's disability and the CSE or 504 team must:
  - Conduct a functional behavioral assessment (FBA) (unless already conducted); and
  - Implement a behavioral intervention plan (BIP) (or review an existing BIP and modify it if necessary to address the behavior).

# MDR Factors to Consider and Determination



- If “NO” to both questions, then the behavior was not a manifestation of the student’s disability.
- During the first 10 days of suspension in the school year, the student may be disciplined and receive services to the same extent as a student without a disability.
- The student must be returned to the placement from which they were removed:
  - Except for removals for drugs, weapons or serious bodily injury; or
  - Unless the school district and parent agree to a change in placement as part of a modification to the BIP.

# MDR Factors to Consider and Determination



- If the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate steps to remedy those deficiencies.
- Beginning on the 11th day of suspension in a school year (and any subsequent suspensions), the student must receive a free appropriate public education (i.e., services necessary to enable the student to continue to participate in the general education curriculum and to progress toward their IEP goals) although in another setting.
- Since the suspension constituted a disciplinary change in placement, the CSE determines interim alternative educational setting and services. The student must receive, as appropriate, an FBA, behavioral intervention services and modifications designed to address the behavior violation, so it does not recur.



## Common Pitfalls

- Convening the MDR before the guilt phase;
- Subjecting students with disabilities to different treatment based on their disability (i.e., subjective discipline);
- Failing to hold MDR for students classified under Section 504;
- Failing to (timely) provide PWN or PSN to parent(s);
- Failing to include in-school suspension days within the 10-day period for purposes of convening an MDR;
- Failure to include sending a child home early on school day(s) for misbehavior or to “cool down” within the 10-day period for purposes of convening an MDR.

# Questions?



HODGSON RUSS  
**Contact Us**



**Andrew J. Freedman**

Partner

716.848.1332

[afredma@hodgsonruss.com](mailto:afredma@hodgsonruss.com)



**Lindsay A. Menasco**

Partner

716.848.1214

[lmenasco@hodgsonruss.com](mailto:lmenasco@hodgsonruss.com)



**Asia R. Evans**

Associate

716.848.1543

[aevans@hodgsonruss.com](mailto:aevans@hodgsonruss.com)