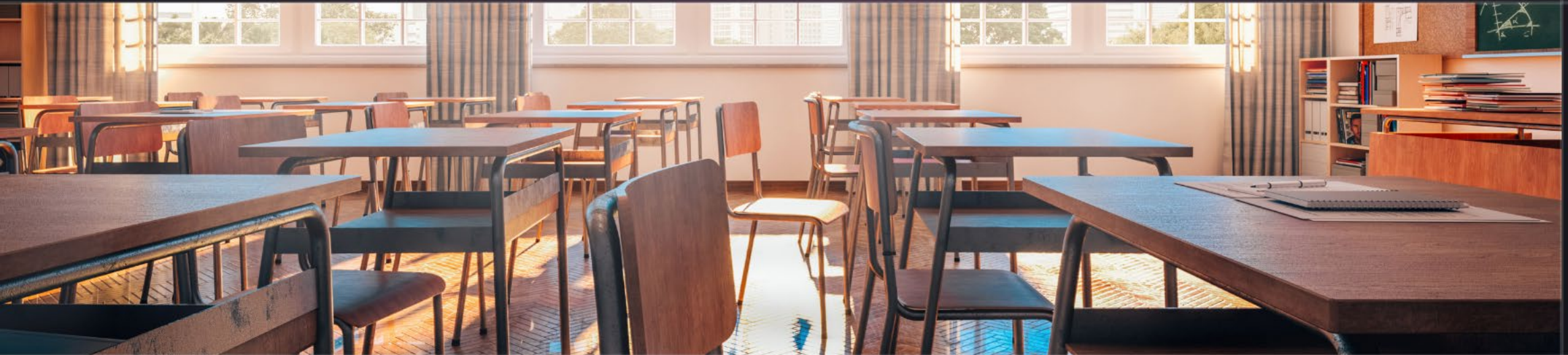


Hodgson Russ



School Client Conference

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Resolving Complex Issues In Student Discipline

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Agenda

- Notice Requirements for Short-Term Suspensions
 - Providing Notice
 - Continuing Danger or Threat Exception
 - Informal Conferences
- Considerations in Long-Term Suspensions
 - Witnesses
 - Pleas
 - Disciplinary Penalties
- Settlement Agreements
- Addressing Off-Campus Misconduct



Notice Requirements For Short-term Suspensions



PROVIDING NOTICE

- Districts must immediately notify parents *in writing* that the student may be suspended from school.
- Notice to parents must:
 - Describe the incident
 - Provide the length of the proposed suspension
 - Inform the parent of the right to request an informal conference, and
 - Inform the parent of the right of the pupil and parent to question complaining witnesses at the informal conference.
- *Appeal of Student with a Disability, Dec. No. 17,845 (2020)* (failure to provide proper notice resulted in annulment and expungement of student record).



PROVIDING NOTICE

- Notice may be delivered by:
 - Personal delivery
 - In the event that the notice cannot be delivered to the Parent at home, it is sufficient if the Principal delivers the written notice when the Parent arrives at school for the informal conference, provided that the Parent is given an opportunity to read the notice and actually reads it. *See Appeal of J.Y. and C.Y.*, Dec. No. 17,403 (2018).
 - Express mail or an equivalent means reasonably calculated to ensure receipt within 24 hours
- Notice is deemed insufficient if:
 - Sent by regular or certified mail. *See Appeal of a Student with a Disability*, Dec. No. 15,124 (2004).
 - Orally communicated. *See Appeal of Student Suspected of Having a Disability*, Dec. No. 14,722 (2002).
 - However, telephone notice can be used to supplement the written notice.



CONTINUING DANGER OR THREAT OF DISRUPTION

- *Appeal of Student with a Disability*, Dec. No. 17,988 (2021).
 - District’s failure to include determination of continuing danger or threat in notice of suspension precluded it from relying on it.
 - The District could not claim the student’s presence at school posed a continuing danger or threat of disruption after it had informed district residents there was no credible threat.
- *Appeal of B.M. and P.M.*, Dec. No. 18,249 (2023) (could not rely on ‘continuing danger or threat of disruption’ exception when conduct occurred two weeks prior).
- *Appeal of D.D.*, Dec. No. 18,545 (2025) (despite District’s entitlement to immediately suspend the student as a continuing danger because of the distribution of marijuana, its failure to provide written notice as soon as reasonably practicable deemed its efforts insufficient).
 - This case is notable because the Commissioner indicated that an elementary student distributing edible marijuana is a valid basis to constitute a continuing danger or threat of disruption



THE INFORMAL CONFERENCE

- The Principal must be present at the informal conference.
 - If the Principal is absent from the building, the Superintendent or the Board can designate an Assistant Principal (or other administrator) as the Acting Principal, who can then serve as the Principal at the informal conference. *See Appeal of C.A., Dec. No. 18,493 (2024)*
- The pupil and parent have the right to question complaining witnesses to the incident at the conference in the presence of the Principal.
 - The complaining witness should be the person who observed the misconduct and reported it, whether that be a student or staff member; it is not necessarily whomever investigated the misconduct after it was reported
- The Principal has the authority to terminate or reduce the suspension after the informal conference.



THE INFORMAL CONFERENCE

- Notice and opportunity for informal conference shall take place before the proposed suspension unless the student is deemed a:
 - Continuing danger to persons or property.
 - Ongoing threat of disruption to the academic process.
- Failure to provide the informal conference before the suspension results in expungement from the student' record. *See Appeal of Student with a Disability*, Dec. No. 16,814 (2015) (it was improper for the Principal to conduct an informal conference three minutes after the start of the first period on the proposed day of suspension).
- Failure to provide an informal conference deprives the student of having the principal review the matter and impose the suspension. *See Appeal of T.H.*, Dec. No. 17,049 (2017).



Considerations In Long-term Suspensions



EVIDENTIARY CONSIDERATIONS

- To prove its case and impose a long-term suspension upon a student, the District needs competent and substantial evidence that the student engaged in the charged misconduct.
- Hearsay evidence is admissible but best practice is it should not be relied on to prove the essential elements of the charges.
- There is no formal discovery in student disciplinary hearings. *See Appel of A.B.*, Dec. No. 17,172 (2017).



WITNESSES

- The best witnesses are those who personally observed the misconduct. Those witnesses should be prepared to testify by the person presenting the case.
 - Note: in your witness preparation, make sure the witness is prepared to answer questions about such preparation meetings, as opposing counsel will sometimes try to make an issue of same.
- If the witnesses are students, the District should inform their parents.
- Witnesses should be made aware that they are subject to cross-examination by the accused.
- Student witnesses and parents may be concerned about retaliation. Ensure your clients talk with parents about what to do if the accused acts or attempts to retaliate.
- Always make sure witnesses are not present in the hearing outside of their testimony to avoid claims of biased testimony.
- If a witness refuses to appear, either the attorney or the hearing officer could issue a subpoena to compel that witness to attend. However, it is on whomever requested the subpoena to ensure compliance by the witness with same.



WITNESS STATEMENTS IN LIEU OF LIVE TESTIMONY

- As a general rule, districts are not permitted to use witness statements in lieu of any live testimony because it deprives the student from cross examining that witness.
 - *Appeal of Parker*, Dec. No. 13,351 (1995) (playing back a victim’s tape recording in lieu of live testimony was insufficient).
- However, there are limited exceptions to this general rule.
 - *D.F. v. Bd. of Educ. of Syosset Cent. Sch. Dist.*, 386 F.Supp.2d 119 (2005) (District’s interest in protecting the identity of student witnesses against possible retaliation from a potentially violent student may overcome a student’s right to question witnesses against him or her).
 - *Appeal of C.M.*, Dec. No. 16,583 (2014) (Jewish students had legitimate fear of retaliation if testified against students who participated in “Kick a Jew” Day).
 - *Appeal of a Student with a Disability*, Dec. No. 17,297 (2017) (six students who witnessed the student hitting the classmate in the face with a snowball/ice did not have to provide live testimony because of the student’s evident propensity for violence).



ENTERING A PLEA

- GUILTY PLEA
 - Student pleads Guilty to the conduct described in the charge.
 - District provides background information about the conduct for the record (usually from the charges notice).
 - Consideration of disciplinary record for penalty purposes.
- NOT GUILTY PLEA
 - Student pleads Not Guilty.
 - District presents its case, consisting of evidence against the accused.
 - Student presents his or her evidence.
 - Hearing Officer then determines guilt and moves to penalty phase if necessary.
- NO CONTEST PLEA
 - *Appeal of N.C.*, Dec. No. 17,417 (2018) (Petitioner’s challenge to the underlying facts of the disciplinary charges dismissed because the Student knowingly, voluntarily, and intelligently entered a “no contest” plea).



DISCIPLINARY PENALTIES

- A disciplinary penalty is appropriate if *proportionate* to the severity of the offense involved.
 - Consider whether the proposed penalty is so excessive as to warrant substitution of the Commissioner of Education’s judgment for that of the school board.
 - *Appeal of E.R.*, Dec. No. 18,309 (2023) (out-of-school suspension was “shocking to the conscience” after hearing officer failed to appropriately consider student testimony).
- Districts may not impose a harsher penalty on a student merely because the student does not cooperate with their investigation of an incident and does not admit guilt.
 - BUT districts may impose a harsher penalty for certain types of misconduct, such as a greater penalty for drugs than for tobacco or alcohol misconduct.
- Commissioner has held that school districts do not have the ability to suspend Pre-Kindergarten students out-of-school. Instead, the Commissioner notes that “[i]t may be necessary to remove UPK students from the classroom environment as a last resort in extraordinary circumstances where there is a determination of a serious safety threat However, any such removal should be extremely limited in time—and should not be considered a punishment.” (internal and external citations omitted). *See Appeal of B.B. and H.B.*, Dec. No. 18,528 (2024)



LENGTH OF DISCIPLINARY PENALTIES

- In recent years, there appears to be pushback against exceedingly long out-of-school suspensions from the Commissioner, as well as suspensions that do not take into account attempts to help the student learn to assume and accept responsibility for their behavior.
- Generally, suspensions of 9 months or longer will draw more scrutiny from the Commissioner in Section 310 appeals.
- The analysis for determining whether a penalty is shocking to the conscience considers “the nature of a student's offense, their age and developmental level, prior disciplinary history (if any), the extent to which suspension is necessary to ensure the safety of the school community, the extent to which the district has attempted to help the student learn to assume and accept responsibility for their behavior, and other equitable factors.” See Appeal of E.F., Dec. No. 18,494 (2024).
- Commissioner criticized a school district for suspending a student for 5 days for drawing a swastika where the student averred he was not aware of its meaning. Appeal of C.A., Dec. No. 18,493 (2024) (“It is unclear what respondent expected student A to learn about the swastika by staying at home for five days.”)
- Commissioner overturned an 8-month suspension for a student who had shared a video on social media of another student threatening to bring a gun to a homecoming game. See Appeal of E.F., Dec. No. 18,494 (2024).
 - As part of finding that the penalty was excessive, the Commissioner cited the school district’s failure to provide “contextual evidence concerning the video’s creation and distribution.” Specifically, “[t]he district presented no evidence as to how the student came into possession of the video, his motive in posting it, or the audience with whom it was shared.”
 - Commissioner further noted as part of her finding that the penalty was excessive that “there is no evidence that the district attempted to help the student learn to assume and accept responsibility for his behavior.”



CONDITIONAL RETURN

- As a general rule, school districts are prohibited from imposing counseling or similar requirements on students as part of a disciplinary penalty.
- However, Education Law § 3214(3)(e) permits Districts to condition a student’s early return on the student’s voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable.
- School districts also have the option to enter an “Early Admission Agreement” in which the student agrees to certain conditions in exchange for early return to school.
- If an early return is conditioned on counseling, the Commissioner has held that the District must ensure that a cost-free option is available to families who that would pose a financial hardship for. *Appeal of A.W.*, Dec. No. 18,256 (2023) (“While respondent indicates that it ‘provided a referral list to petitioner of mental health providers [who] offer[ed] affordable and/or free services,’ petitioner nevertheless asserts that obtaining these counseling services ‘created a financial hardship’ for his family. Requiring a parent to secure and pay for such services raises substantial equity concerns. As such, school districts must ensure that a cost-free option—including direct delivery by school personnel—is available to families under such circumstances.”)



Settlement Agreements



SETTLEMENT AGREEMENTS

- Districts are permitted to utilize settlement agreements to resolve superintendent’s hearings.
- Such agreements must be voluntary, knowing, and intelligent.
- The District must provide the student and parents with a written document clearly and concisely stating all rights to be waived, as well as the consequences of waiving such rights. *Appeal of R.G.*, Dec. No. 16,370 (2012).
 - However, if such document is provided, having an oral settlement agreement put formally on-the-record itself is likely sufficient to constitute a written settlement agreement.



SETTLEMENT AGREEMENTS

- Attorneys should be careful when meeting with families off-the-record to discuss a settlement, particularly when they are not represented by counsel
 - Be mindful of the imbalance of power regarding the law
 - Never try to pressure a parent or student to accept a settlement
 - Always give the family an opportunity to discuss the settlement in private (and you can always give them the option to adjourn and reconvene on a different day, provided they agree to keep the student out-of-school during the adjournment)
 - Always inform the family prior to making a settlement offer that they always have the right to consult with an attorney or advocate of their choice



Addressing Off-Campus Misconduct



ADDRESSING OFF-CAMPUS MISCONDUCT

- *Appeal of R.W. and C.W.*, Dec. No. 18,529 (sustaining appeal finding that student did not engage in off-campus physical altercation)
 - “While respondent was justified in investigating this incident, once it learned the student did not participate in the altercation – and, in fact, sought to provide aid to her friend – its decision to pursue discipline was indefensible.”
- *Appeal of A.R. and S.R.*, Dec. No. 14,477 (2000) (email threat sent to other students from home computer found to have a direct impact on school operations such that discipline was appropriate)



ADDRESSING OFF-CAMPUS MISCONDUCT

- *Appeal of A.F. and T.P.*, Dec. No. 16, 997 (2016) (Appeal sustained because Commissioner found that there was no disruption warranting discipline when students received and watched a video of two students engaged in sexual activity on their cell phones)
 - Students did not solicit, transmit, show or display the video – no misconduct committed by simply receiving video
- *Appeal of P.M. and E.M.*, Dec. No. 18,549 (2025) (Appeal sustained because District had no evidence demonstrating that the off-campus misconduct caused any disruption)
 - Student who created AI nude images of female students did not send, display, or otherwise distribute the photos
 - “[District] was required to prove the foreseeability that three images, created at home and since deleted, would come to the attention of school authorities – which it did not.” (internal citations omitted).



ADDRESSING OFF-CAMPUS MISCONDUCT

- *Wisniewki v. Bd. of Educ. of Weedsport*, 494 F.3d 34 (2d Cir. 2007)
 - Student used an instant messaging icon of a **drawing of a gun firing a bullet at a person's head and words calling for the killing of the student's teacher**. The icon was sent to 15 individuals, some of whom were the student's classmates, and was viewable for 3 weeks. After the icon was brought to the teacher's attention, the teacher was permitted to stop teaching the student, and the student was given a semester-long suspension
 - Even if the icon depicting and calling for the killing of the student's teacher could be viewed as an expression of opinion within the meaning of Tinker, **it crossed the boundary of protected speech and constituted student conduct that posed a reasonably foreseeable risk of coming to the attention of school authorities and materially and substantially disrupting the work and discipline of the school**. The court noted that a student's off-campus conduct can create a foreseeable risk of substantial disruption within a school
 - First Amendment did not bar discipline



ADDRESSING OFF-CAMPUS MISCONDUCT

- *B.L. v. Mahoney Area School District*, 141 S. Ct. 2038 (2021).
 - While public schools may have a special interest in regulating some off-campus student speech, the special interests offered by the school are not sufficient to overcome the student’s interest in free expression in this case.
 - Supreme Court found the student’s posts did not cause “substantial disruption” at school or within the cheerleading squad.
 - Affirmed the Third Circuit’s judgment that the District violated the student’s First Amendment rights when it suspended her from the cheerleading squad for one year.



Questions?



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Parental Rights at School: The *Mahmoud* Ruling and Curriculum Opt-outs

2026 School Client Conference



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Agenda

- *Mahmoud v. Taylor*
- Opt-Outs in New York State
- Best Practices for Selecting Curriculum



Mahmoud v. Taylor



Mahmoud v. Taylor – FACTS

- Montgomery County, Maryland introduced “LGBTQ+-inclusive” books into its curriculum because the School Board believed that the books and reading materials currently included in the English Language Arts curriculum was not representative of the diverse students and families in Montgomery County.
- The Board selected 13 “LGBTQ+-inclusive” texts for use in the English Language Arts curriculum from pre-K through 12th grade.
- The Board selected these books from a list titled the “Critical Selection Repertoire” and pursued materials that would elicit the following discussion questions:
 - “Is heteronormativity reinforced or disrupted?”
 - “Is cisnormativity reinforced or disrupted?”
 - “Are power hierarchies that uphold the dominant culture reinforced or disrupted?”

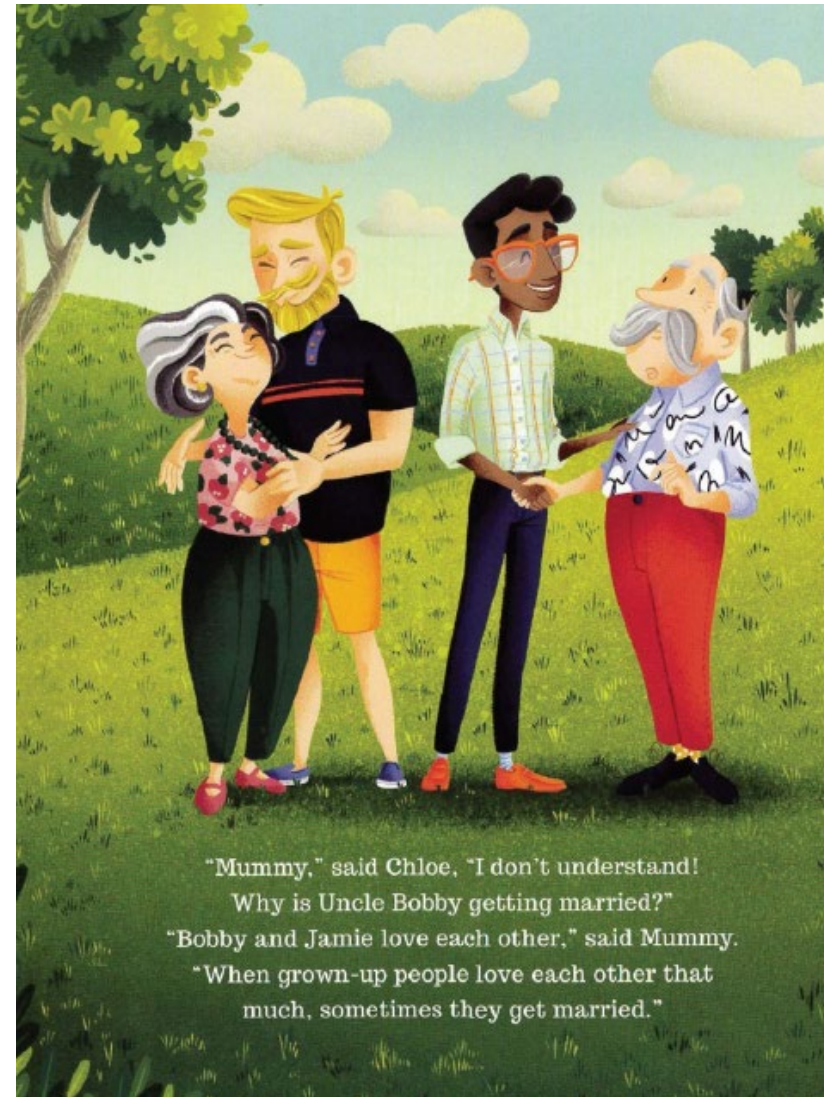


Mahmoud v. Taylor – **BOOKS AT ISSUE**

- Five storybooks promoting themes such as same-sex marriage, gender fluidity, and transgender identity were at issue in this case:
 - Intersection Allies
 - Prince & Knight
 - Love Violet
 - Born Ready: The True Story of a Boy Named Penelope
 - Uncle Bobby's Wedding

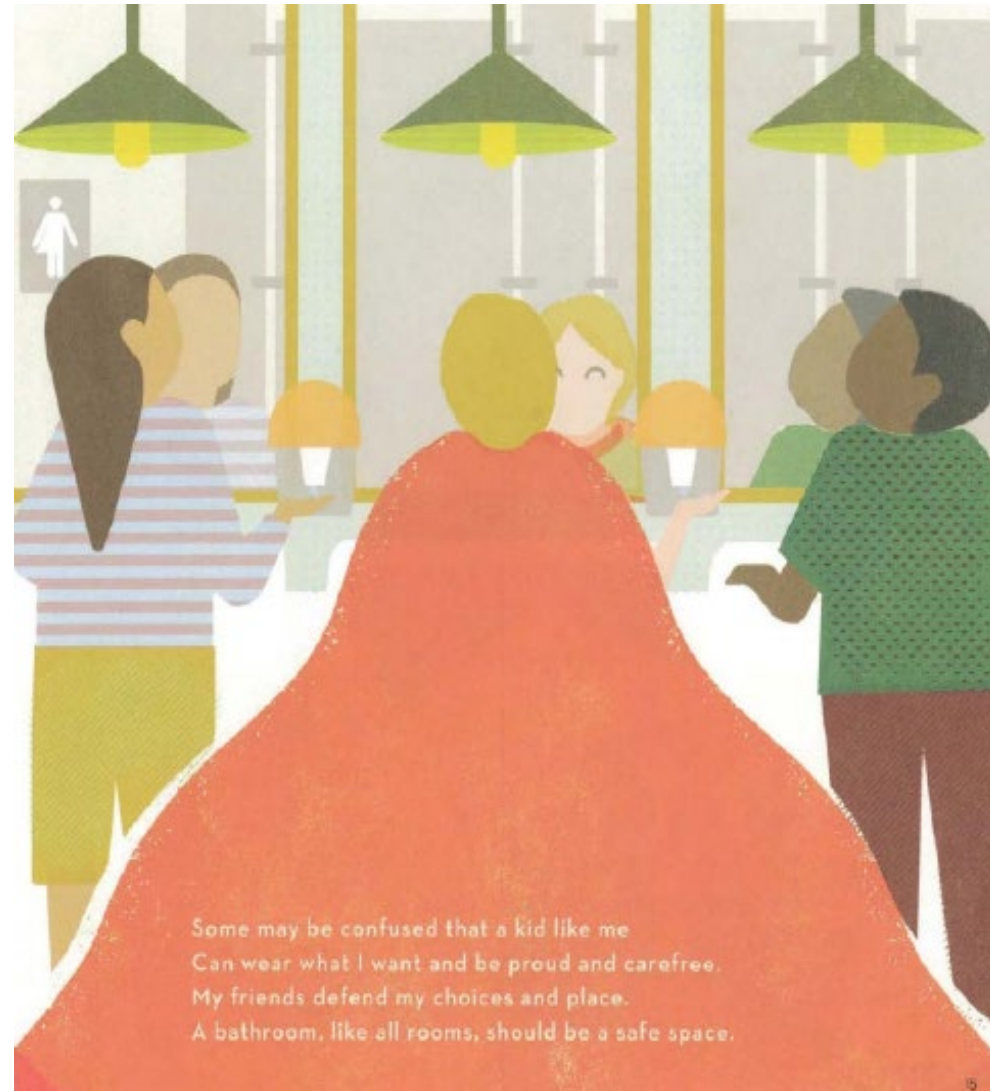


Uncle Bobby's Wedding





Intersection Allies





Prince & Knight





Born Ready: The True Story of a Boy Named Penelope





Mahmoud v. Taylor – FACTS

- Teachers were **required** to use these books in their curriculum to help teach about LGBTQ+ inclusivity and question the boundaries of gender and sexuality norms.
- The Board offered teachers guidance on how best to “disrupt either-or thinking” and respond to student or parent objections by strongly affirming the School’s commitment to teaching and accepting LGBTQ+ inclusivity.
- Initially, the Board granted parents the right to opt their children out of instruction involving these books if so requested.
- However, the Board later rescinded opt-out rights and stopped notifying parents about when and how the books would be used.



Mahmoud v. Taylor – FACTS

- Parents, ranging from diverse religious backgrounds including Muslim, Catholic, and Orthodox Christian, claimed that the Board’s new curriculum undermines their religious beliefs about marriage, sexuality, and gender.
- Parents argued that mandatory exposure to these books burdens their First Amendment right to free religious exercise.
- As a result of this new policy and the objections made by some parents, some parents withdrew children from public school at significant financial cost.



Mahmoud v. Taylor – LEGAL ANALYSIS

- The Parents’ claim was denied in both the federal District Court and the Circuit Court.
 - District Court denied the parents’ preliminary injunction.
 - The Fourth Circuit affirmed the District Court’s decision, requiring proof of coercion.
- The Supreme Court chose to hear the case and ultimately reversed the decisions of the lower courts.
- Court relied heavily on *Wisconsin v. Yoder* (1972)
 - *Yoder* recognized a parents’ right to direct the religious upbringing and lifestyle of their children. The Court determined that compulsory education beyond 8th grade burdened the Amish way of life.
 - The Court in *Yoder* held that the government cannot impose an education or curriculum that poses “a very real threat of undermining” a parents’ right to direct the lifestyle and religious upbringing of their children.



Mahmoud v. Taylor – LEGAL ANALYSIS

- Applying the reasoning in *Yoder*, as well as the test of ***strict scrutiny***, the Court found in *Mahmoud* that parents continue to have a constitutional right to direct the religious upbringing of their children.
 - Strict Scrutiny Test: Is the policy or government action *narrowly tailored* to a compelling governmental interest?
 - According the Court, the Board’s new policy on LGBTQ-Inclusivity was not a compelling governmental interest and the Board’s policy itself was not narrowly tailored to that compelling governmental interest.



Mahmoud v. Taylor – LEGAL ANALYSIS

- The Court stated that instruction using these books was not “mere exposure” but conduct that “substantially interferes” with religious development.
 - According to the Court, public schools exert “great authority and coercive power” over children
 - Teachers were *required* to reinforce these views and correct dissenting children.
 - The storybooks were to be taught as “normative,” presenting contested views on marriage and gender as positive and labeling contrary views as “hurtful.”
- As such, this mandate creates “substantial interference” with a parents’ ability to raise children in their faith which is like the findings in *Yoder*.
- Thus, the Court held that conditioning free public education on surrendering religious beliefs violates the First Amendment.



Mahmoud v. Taylor – LEGAL ANALYSIS

- The Board for Montgomery County claimed that it had a compelling interest in preventing disruption and stigma and thus needed to implement this LGBTQ-inclusive curriculum into its K-12 English Language Arts curriculum.
- The Court rejected this argument and pointed to the fact that the Board allows opt-outs for other topics, including sex education.
- Since the school exhibited no compelling interest shown and since their policy was not narrowly tailored to that compelling interest, the Board’s no-opt-out policy combined with mandatory LGBTQ+ instruction was deemed ***unconstitutional***.



Mahmoud v. Taylor – IMPLICATIONS

– Immediate Requirements:

- School districts must **notify parents in advance** when such materials are used.
- Must provide **opt-out rights** for parents and students.
- Must arrange alternative instruction or supervision for opt-out students.

– Broader Impact:

- Opt-outs may now be required for *any* content conflicting with a parent or child’s religious beliefs, not limited to LGBTQ+ topics.
- Parents gain greater control over classroom content affecting religious values.

– State Response:

- NYSED recently reaffirmed a school district’s authority over curriculum but urged schools to be more transparent and show sincere respect for religious diversity.
- NYSED also reemphasized its continued commitment to equity and inclusion for all students, including students in the LGBTQ+ community.



Opt-Outs in New York State



Opt-Outs in New York State

- Historically, parents have had no right to broadly excuse their children from curriculum selected by the board of education merely because they disagree with what is taught.
- Mere exposure to ideas or points of view with which a parent disagrees, or finds offensive due to their own religious views, is insufficient to excuse a child from the curriculum
- Respect for religious beliefs may be maintained in other ways allowing for specific carveouts where necessary.



Opt-Outs in New York State

- New York State has allowed parents to opt their child out of school curriculum only in *narrow* circumstances:
 - Study of health and hygiene that conflicts with religion
 - Performance or witnessing of animal dissections
 - Methods of prevention of HIV/AIDS
 - Physical education
- New York State has specifically defined areas of the curriculum from which parents may opt their child out and such exceptions currently do not broadly extend a parents opt-out right to other areas of the curriculum.
- However, in the wake of *Mahmoud*, parents may have greater ability to opt their child out of the curriculum for religious reasons if they do not agree with what is being taught.



Best Practices for Curriculum Selection



Best Practices for Curriculum Selection

- It is of paramount importance for New York State school boards to prescribe a course of study that ensures the greatest educational outcomes for all students, while also considering parental and other community stakeholder perspectives or beliefs in light of *Mahmoud*.
- Ultimately, New York school districts maintain control over curriculum selection but, with the recent developments at the federal level, school district may be required to consider parental rights, opt-out options, or parental input into what is being taught in schools.
- NYSED has not yet released any guidance on how school districts should comply with these competing interests from the state and federal levels.
- Thus, school districts and boards of education should employ the following best practices to achieve the best possible academic outcomes for their students and to avoid potential litigation like in *Mahmoud*.



1 – Comply with State and Federal Laws

- New York State school boards bear ultimate responsibility for ensuring their district’s educational program adheres to all current learning standards and updated policies.
- Section 1709 of the Education law grants New York State school boards the power to “prescribe the course of study” and approve appropriate textbooks and corresponding instructional materials best suited for their schools.
- The New York Board of Regents prescribes the appropriate learning standards all boards must adhere to when selecting instructional materials. Compliance with these standards is enforced through the Commissioner’s Regulations.



1 – Comply with State and Federal Laws

- At the federal level, the Trump administration has opposed the use of any public resources targeted at diversity, equity and inclusion (DEI) and has issued executive orders to end such programs.
- With the *Mahmoud* ruling, the Supreme Court has ultimately returned some control over a child’s learning experience to the parents so that the parents maintain their ability to direct their child’s religious upbringings.
- This could ultimately create a surge in opt-outs for various other topics in the curriculum carrying significant implications.
- However, New York State school districts, as directed by NYSED, still must ensure instructional materials incorporate diverse perspectives, use non-discriminatory language, and provide tools for critical thinking.



2 – Practice Open and Transparent Decision-Making

- In a brief statement following the *Mahmoud* decision, NYSED stated that school districts are “encouraged to maintain clear and transparent communication with families about curriculum and instructional materials.”
- Establishing a practice of open and transparent decision-making can help reduce the likelihood of public scrutiny.
- A district’s school board may include former teachers or administrators, but the board should look beyond itself for expertise when evaluating curriculum and materials.
- School communities are comprised of individuals with varying perspectives such as teachers, administrators, content-area experts, and other community members, who can bring rich and diverse perspectives to the curriculum selection and review process.



2 – Practice Open and Transparent Decision-Making

- When considering updates in the school’s educational program, school districts can host public forums or listening sessions to better understand community expectations and give a voice to those who otherwise would not have had one.
- This open and transparent process allows school districts a unique opportunity to clearly communicate the reasoning behind certain instructional decisions.
- Most importantly, remaining transparent allows boards to illustrate how selected educational programs comply with state learning standards and foster academic achievement.
- Practicing open and transparent decision-making does not guarantee an absence of criticism, but it can reduce the likelihood of ill-informed criticism and ensure that the discussion is not confined to a few passionate citizens.



3 – Document, Retain, and Reference Everything

- Good recordkeeping is essential in school governance and a school district’s best defense to a possible legal challenge or community backlash regarding the selection of its educational program is the proverbial “paper trail.”
- All districts are encouraged to maintain a diligent documentation practice to best protect and defend its ultimate decision to implement a particular educational program.
- Developing this practice ensures the appropriate information is readily available if a board’s selected instructional program is challenged or questioned by the public or other interest groups.
- Some examples of information that should be documented and retained include research findings relied upon, memos explaining the board’s reasoning for its selection, and communications by and between relevant individuals participating in the curriculum selection process.



Key Takeaways

- The curriculum selection process has a direct and significant impact on student achievement.
- Arguably, selecting suitable instructional materials may be one of the most consequential decisions a school district will have to make.
- To avoid implementing inadequate educational programs, districts are encouraged to educate all relevant personnel on relevant laws, policies, and standards, encourage open, transparent, and considerate dialogue, and document all relevant information.
- By following these best practices, school districts can successfully navigate the complex task of curriculum selection, provide quality academic outcomes for students, respect the rights of parents to direct their child's upbringing, and maintain the integrity of our public education system.



Thank you.



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Determining Service Animal Access in Schools

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Agenda

- What is a Service Animal?
 - Definition
 - Differentiating from Support Animals
- Overview of Applicable Laws
 - Discussion of Federal and State Laws
 - Key Legal Proceedings
- The Request Process
 - Walkthrough of a sample request protocol
 - Other service animal considerations
- Test Your Knowledge!



What is a Service Animal?

- Americans with Disabilities Act- Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.
 - 28 C.F.R. §36.104
- New York Civil Rights Law – Any dog under the control, consistent with federal regulations implementing the Americans with Disabilities Act, of the person using or training it.
 - Extends the definition of service animal specifically to guide dogs and hearing dogs.
 - N.Y. Civil Rights L. §47-b(4) – (7)
- NOTE: In addition to dogs, the ADA contains a specific provision recognizing that miniature horses may serve as service animals.
 - To be classified as “miniature” the horse must:
 - Be within the height range of 24 – 34 inches; and
 - Weigh somewhere between 70 – 100 lbs.
 - 28 C.F.R. §36.302(c)(9)



Types of Service Animals

Type of Dog	Typical Support Tasks	Diagnosis Frequently Paired With
Guide Dog	Navigate spaces, avoid obstacles, stop at curbs	Visual impairments
Hearing Dog	Alert handler to sounds such as alarms, doorbells, and voices	Hearing impairments
Medical Alert Dog	Detect seizures, blood sugar changes, and heart rate issues	Epilepsy, diabetes, or cardiac conditions
Mobility Dog	Open doors, retrieve items, provide balance support	Cerebral Palsy, Muscular Dystrophy, and physical disabilities limiting movement
Autism Service Dog	Interrupt repetitive behaviors, prevent wandering, and provide calming pressure	Autism spectrum disorder
Facilitated Dog	Support therapy or educational sessions with adult guidance	Developmental delays, speech/language issues
Protection Dog	Alert to environmental risks and personal safety	Rarely recommended for children RARELY QUALIFY AS SERVICE ANIMALS



Differentiating Between Other Support Animals

Emotional Support Animals:

- No official legal definition.
- Americans with Disabilities Network:
 - “While Emotional Support Animals or Comfort Animals are often used as part of a medical treatment plan as therapy animals, they are not considered service animals under the ADA. These support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias, but do not have special training to perform tasks that assist people with disabilities.”



Differentiating Between Other Support Animals

Therapy Dog

- No definition at the national level.
- New York State definition:
 - “[A]ny dog that is trained to aid the emotional and physical health of patients in hospitals, nursing homes, retirement homes and other settings and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose, and does not qualify under federal or state law or regulations as a service dog.”
- N.Y. Agriculture and Markets L §108



Support Animals: A Quick Guide

Type of Dog	Is the dog task-trained?	Does the dog have public rights access?	Does this classification require certification?
Service Dog	Yes	Yes	No, but inquiries into what task/service the dog is trained to perform are permitted
Emotional Support Animal	No	No	Letter from licensed mental health provider
Therapy Animal	No	No	Trained and certified by professional organizations



Governing Law: ADA

Titles II and III of the Americans with Disabilities Act (ADA)

- Both public and private schools are required to allow individuals to be accompanied by a “service animal” under either Title II (government entities) or Title III (places of public accommodation) of the ADA, depending on the school’s classification.
- If it is not clear whether an animal is a service animal, the government entity or place of public accommodation may only ask:
 - Is the animal required because of a disability; and
 - What work or task is the animal trained to perform?
- NOTE: the ADA, as a federal law, will override any conflicting state or local statutes, including any that narrow the definition of service animal.



Governing Law: Section 504

Section 504 of the Rehabilitation Act of 1973

- “No otherwise qualified individual with a disability in the United States, . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”
- The Office of Civil Rights (OCR) enforces the provisions of Section 504 for programs and activities that receive federal funds and assistance in the education sphere.
- Section 504 regulations have been interpreted to require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability.
 - Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs in a manner that is as adequate as that with which the needs of nondisabled students are met.



Governing Law: IDEA

The Individuals with Disabilities Education Act (IDEA)

- Protects school children aged 3 to 21 who qualify for special education and related services under 1 of the 13 disability categories set forth in the law;
- Requires the student receive an Individual Education Plan (“IEP”) that meets the needs of the student, which in turn allows them to receive free appropriate public education (FAPE) in the least restrictive environment;
- Students protected under this act are entitled to receive services that allow them to make appropriate progress in light of the circumstances.
 - *Andrew F. V. Douglas County School District (2017)*
- Only students with a qualified disability will be able to request a service animal as an accommodation under this law.
 - 20 C.F.R. §§1401 - 1412



Exceptions to Service Animal Access

- A place of public accommodation or an entity of the federal/state/local government does not need to allow a service animal if the dog’s presence would “fundamentally alter the nature of the goods, services, programs or activities provided to the public.”
 - 28 C.F.R. §36.302(a)
- A place of public accommodation may ask an individual with a disability to remove a service animal from the premises under the following circumstances:
 - The animal is out of control and the animal’s handler does not take effective action to control it; or
 - The animal is not housebroken.
 - 28 C.F.R. §36.302(c)(2)
- While a place of public accommodation may remove or request the removal of a service animal under one of the above conditions, the place of public accommodation must still give the individual with a disability the opportunity to obtain goods/services on the premises.
 - 28 C.F.R. §36.302(c)(3)



Key Decision: *Fry v. Napoleon*

Facts:

- Fry attended schools in the Napoleon School District.
- Fry had cerebral palsy and received services under IDEA pursuant to her IEP.
- Fry and her family requested that her service dog, Wonder, accompany Fry to school.
 - Wonder had been trained to perform tasks such as retrieving dropped items, opening and closing doors, helping Fry with balance and assisting Fry to take off her coat.
- Napoleon allowed a “30-day trial” but ultimately denied the family’s request to have the service dog accompany Fry.



Key Decision: *Fry v. Napoleon*

Issue Presented to the Court:

- Whether a party must exhaust IDEA complaint procedures prior to suing in federal court under Section 504 and the ADA.

Court Findings:

- Test - “whether the gravamen of a complaint against a school concerns the denial of a FAPE or instead concerns disability-based discrimination.”
 - Gravamen – the crux or essentials of the complaint.
- Essentially need to ask whether this is a complaint about the educational services offered (IDEA) or disability discrimination (Section 504 and the ADA).



Key Decision: *Fry v. Napoleon*

Court Findings (Cont.):

- Hypothetical questions to guide discussion:
 - Could the individual bring the same claim if the alleged conduct occurred at a public facility that was not a school?
 - Could an adult at the school have presented essentially the same grievance?
 - If the answer to these questions is yes, then apply Section 504 and ADA principles of law.
 - If the answer to these questions is no, then apply IDEA principles of law.



Gates-Chili DOJ Settlement

- The U.S. Department of Justice initiated proceedings against Gates-Chili CSD following a complaint by a family that the district denied their child with disabilities equal access by putting conditions on the use of the child’s service animal in school.
 - Gates-Chili conditioned the use of the child’s service animal on the parent providing a full-time dog handler.
 - No evidence that the child could not control the service dog.
 - While the settlement precludes an official finding of law, DOJ officials noted that the district had been violating the ADA for years by “limiting [children's] use of [their] service dogs based on unfounded assumptions and generalizations about [their] disabilities.”



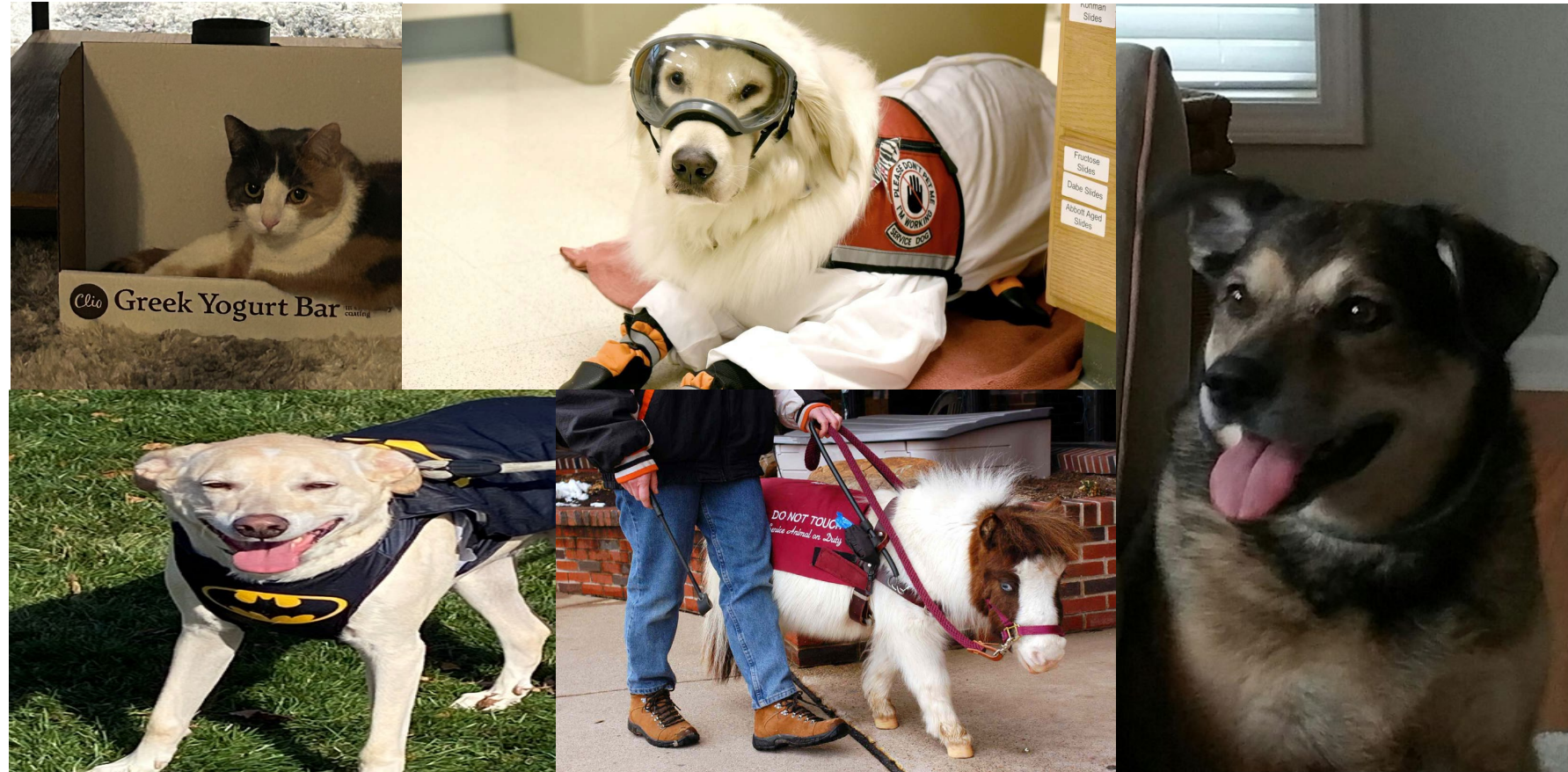
Gates-Chili DOJ Settlement

Terms and Penalties in the Settlement:

- Gates-Chili CSD had to revise its Service Animal Policy and conduct staff trainings on the new policy and its implications.
- The District also agreed to provide “reasonable modifications” to facilitate the use of a service dog by a student with a disability.
 - Sample modifications:
 - Helping a student tether and untether their service animal;
 - Assisting a student to get water for the service dog; and
 - Prompting a student to issue commands for a service dog.
- The District also had to “make the wronged mother of the student whole” by paying her \$42,000 for out-of-pocket expenses and damages for emotional distress.



A Quick Animal Break





The Request Process

- So, you get a request from a student's family to have their service dog accompany them to school, now what?
 - **Evaluate each request on a case-by-case basis!**
 - Create protocol and guidelines for how the District will receive and respond to service animal requests.
 - All requests for service animal accompaniment from a parent or student should be forwarded to one designee who will then inform either the administrator responsible for special education (IDEA) or Section 504 compliance, depending on the basis for the request.



The Request Process

Step 1:

- Determine what law the request was made under:
 - Does the student have an IEP, if yes, this request falls under IDEA.
 - If not, consider this a Section 504 or ADA request.

Step 2:

- Form an evaluation team that will meet with the family to consider the request and all relevant information regarding the request.
 - If it is a request under IDEA, the team should consist of the student's IEP team, any other individuals with specialized knowledge of the student's disability and, if possible, an individual with knowledge of the training and capabilities of the service animal.
 - If it is a Section 504/ADA request, the team should consist of the student's Section 504 team, any other individuals with specialized knowledge of the student's disability, the District's facilities manager, and if possible, an individual with knowledge of the training and capabilities of the service animal.



The Request Process

Step 3:

- Schedule a meeting between the evaluation team and the student’s family.
 - Ideally, this meeting should be held within a reasonable time after the request was made.
 - i.e. within 2 weeks.

Step 4:

- Hold the meeting.
 - At this meeting, the team will conduct a factfinding inquiry to aid in its determination of whether or not to accommodate the request.



The Request Process

At the Meeting:

- Determine whether the animal in question meets the definition of a service animal.
 - Remember, there are only 2 questions that you can ask!
 - (1) is the animal required because of a disability?
 - (2) what work or task(s) has the animal been trained to perform for the individual with the disability?



The Request Process

At the Meeting:

- Consider whether allowing the student's use of the service animal at school is required.
 - 2 theories:
 - (1) The use is a required or necessary accommodation under the ADA;
 - (2) The student's use of a service animal at school is a necessary accommodation to provide a free appropriate education (FAPE) to the student under IDEA or Section 504.



The Request Process

Step 5:

- Make a final determination
 - The District must provide the parents with results of the determination under the ADA, IDEA and Section 504 as applicable, as well as a notice of rights.



Considerations for Service Animals in Schools

- Is the student able to effectively handle the service animal?
 - To avoid liability, districts must ensure they have evidence that the student is not able to effectively handle the service animal on their own or have the family admit that this is the case.
 - If the student is not able to effectively handle the service animal, this does not mean the request is denied.
 - Instead, discuss with the family that they have the option to hire a handler.
 - Barring unique circumstances, the district should not be responsible for bearing the costs of the handler, as long as they provide accommodation for the service animal and did not wrongfully require the presence of a handler.
- NOTE: Districts may not require that a service animal wear a vest identifying themselves.



Considerations for Service Animals in Schools

- Will any students with allergies be exposed to the service animal?
 - The presence of a student with allergies does not give a district cause to reject a service animal accommodation request.
 - The district should refer to allergy records and provide notice to students regarding the presence of a service animal so that administration may work to accommodate those with allergies.



Considerations for Service Animals in Schools

- If a student with allergies will be exposed to the service animal, consider implementing one or more of the following precautions:
 - Adopting a targeted and more frequent cleaning schedule that includes vacuuming the room the service animal was present in as soon as the animal leaves;
 - Allowing the student with a service animal to leave class 2-3 minutes early to get to their next classroom so that there is limited hallway crossover/exposure;
 - If possible, grant students with allergies the option to change their classroom/class schedule; and/or
 - Providing the school nurse with allergy medication for students.



Considerations for Service Animals in Schools

What happens if the service animal misbehaves?

- In the most extreme cases, schools can deny access to the service animal.
 - The ADA permits denial of a service animal where the animal poses a direct threat to others, is out of control and not managed by its handler, or if its presence would fundamentally alter the nature of the services provided by the school.
- Denial of a service animal does not legitimize any denial of the student from access to FAPE.



Considerations for Service Animals in Schools

Removing a Service Animal from School:

- Prior to removing or requesting the removal of a service animal a district should:
 - Document all misbehaviors including the act, frequency and disruption to the classroom; and
 - Provide notice to the student and their family that continued misbehavior from the service animal will result in it being denied access.



Test Your Knowledge: Emily & Fluffy

- Emily is a high school student at City High located in City Central School District. Emily is a great student, but recently she has become more reserved and has been reluctant to speak in classes even when called on by her teachers. Emily and her parents come into your office explaining that Emily has been suffering from anxiety attacks and that they would like for her dog, Fluffy, to accompany her as an emotional support animal.
- Do you have to comply with this request?



Test Your Knowledge: Emily & Fluffy (Cont.)

- Let's assume that you deny the request to have the animal accompany Emily. In response, Emily's parents buy a service animal vest and a service animal certificate with Fluffy's name on it from an online outlet store.
- Emily and her parents return to your office asserting that Fluffy is a "service animal" and that you must now accommodate their request.
- Given your skepticism about Fluffy's service animal qualifications you want to investigate. What can you ask Emily or her parents about Fluffy's qualifications?
- What should you do with this renewed request?



Test Your Knowledge: Tommy's Troubles

- Tommy is a fifth-grade student attending Small Town Elementary. Tommy has cerebral palsy. Small Town Central School District has worked with Tommy's family to develop an IEP to ensure Tommy receives proper education in the least restrictive environment possible. Recently, Tommy's family dog received training to work as a service animal assisting Tommy with various tasks. Tommy's family has requested that the dog accompany Tommy to his fifth-grade classroom. To support their request, Tommy's family provided training certifications from "Good Boy! Service Animal School."
- Tommy's classmate Ally has severe allergies, constantly sneezing and breaking out in a rash if she is exposed to dog fur. Ally's family has learned of the request to bring a dog in the classroom and vehemently opposes the idea citing concerns about their daughter's health.
- What do you do?



Test Your Knowledge: Tommy's Troubles Continue

- Same set of facts as the previous hypothetical but now let's assume that you find a solution that allows the service dog to accompany Tommy. However, the dog has had trouble behaving in the classroom. Some of the dog's misbehavior includes chewing on the pencils of Tommy's deskmate, frequently urinating on the carpet and trying to eat the class pet, Sammy the squirrel.
- On occasions where the service dog has been especially disruptive, Tommy's teacher has sent Tommy and his dog into the hallway until the dog calmed down.
- Can the district deny the service dog access to the school on the basis that it is out of control?
- Would your answer change if it was discovered that the owner of "Good Boy! Service Animal School" was facing legal action relating to business fraud and had been issuing service animal certificates without actually training the dogs?



Test Your Knowledge: Holly and the Handler

- Holly is a middle school student at Hodgson Middle School located in the Hodgson School District. Holly has diagnosed autism and the district has worked with her family to develop and implement an IEP so that Holly can receive an effective education. Holly has recently had an uptick in the frequency and severity of her symptoms, which has impacted her learning while also causing disruptions in the classroom.
- To curb these new developments, Holly’s parents adopted a service animal that was trained to stop repetitive behaviors and provide calming pressure by leaning against it’s owner during a particularly bad episode. The service dog’s presence was a significant help to Holly at home and therefore, Holly’s parents wanted to send the dog to school with Holly.
- Holly’s parents come into your office and formally make this request, however they note that given Holly’s age and condition she needs assistance in handling the service dog. Holly’s parents request that the district pay for a handler who will accompany Holly and the dog to school.
- Is the district required to accommodate this request?
 - If no, what services must the district provide to avoid violating the governing law?

A Reward for Making it Through the Hypotheticals





Questions?



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Frequently Asked Questions in Special Education Law: Solving Common Dilemmas

2026 School Client Conference



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Question #1:
The Parents of X.X. refused to sign consent.
How do I respond to this?



Consent under the IDEA

- General Rule under Section 200.5(b): School is required to make ***reasonable efforts*** to obtain written informed consent of the parent and maintain ***detailed written record*** of its attempts
- There are various types of consent required under the IDEA, at various stages of the CSE/IEP process
- **Initial consent**– consent to the initial evaluations to determine whether the student is eligible under the IDEA



Consent under the IDEA

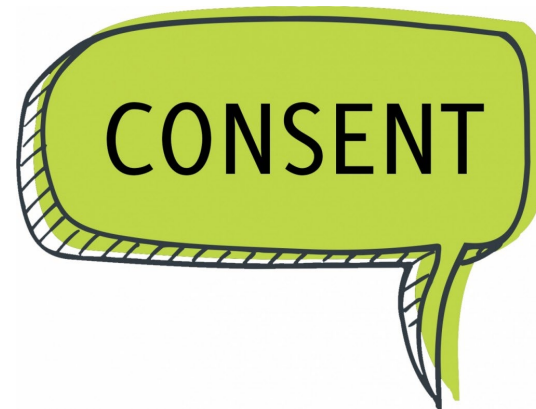
- **Consent to Start Special Education Services-** once an IEP is developed for a newly classified student, must get consent to start the special education services and instruction.
- **Consent for Evaluations during Re-evaluation-** if new or updated evaluations are needed during re-evaluation, must obtain consent.





Initial Consent

- Starts the 60-day process to conduct initial evaluation of the student.
- If parent balks at signing initial consent, the District must give the parent to attend an ***informal conference*** with CSE members or professionals most familiar with the proposed evaluations.
 - Parent is given opportunity to ask questions about proposed evaluations.





Initial Consent

- If parent refuses to attend informal conference, or continues to refuse consent after the conference, the District *may* pursue the initial evaluation by initiating a due process proceeding.
- If the District chooses to not commence a hearing to pursue consent for initial evaluation, it will not be deemed to violate its obligation to locate, identify and evaluation a student under the IDEA.



Consent to Start Special Education Services and Instruction

- Once a student is classified under the IDEA (and an IEP developed), the District must obtain consent from the Parent for the ***initial provision*** of special education services and instruction.
- If Parent refuses consent or fails to respond, the District ***shall not*** provide the special education services and instruction.
- Cannot file a due process hearing to seek consent for initial provision.



Consent for Re-Evaluation

- Don't need consent to perform a Re-Evaluation- need consent to perform any ***new or updated*** evaluations as part of the re-evaluation process.
- If evaluations are 3 years old or older, should consider updated evaluations.
- If Parent refuses to consent to new or updated evaluations during Re-Evaluation, District ***may*** consider filing an impartial due process hearing.





Consent for Re-Evaluation

- If the District chooses to not commence a hearing to pursue consent for initial evaluation, it will not be deemed to violate its obligation to locate, identify and evaluation a student under the IDEA.
- **Records Review-** For a Re-Evaluation, CSE can simply perform a “records review” of existing information, data, and documents, and use such information to determine whether the student continued to be eligible under the IDEA.



Revocation of Consent

- A Parent may, at any time, **revoke consent** for the continued provision of special education service and instruction.
- Any revocation must be in writing.
- If a Parent revokes consent, a District is **prohibited** from providing special education services and instruction to the student.

REVOKED



Revocation of Consent

- The District cannot commence a due process hearing to challenge the Parent's revocation of consent.
- The District cannot be found to violate FAPE when a Parent revokes consent.
- The District is not required to convene the CSE or develop an IEP.
- The District is not required to amend the student's education records to remove references to special education.



Question #2:
The Parents of X.X. requested an Independent Educational Evaluation at Public Expense.
How Do I respond?



Independent Educational Evaluations (“IEEs”)

- An IEE is a parental due process right to obtain a “second opinion” at public expense.
- The right to an IEE applies when a parent **disagrees** with a district evaluation.
 - This presupposes that the District conducted an evaluation.
- When receiving an IEE request, a District has a right to ask the Parent to articulate why he/she disagrees with the District’s evaluation.
 - Parent is not required to give an answer.
- District is required to give parent information on where to get an IEE.



Independent Educational Evaluations (“IEEs”)

- The District has only two formal options to respond to an IEE request *without unnecessary delay*:
 - Grant the request;
 - Commence a due process hearing to deny the request.





Independent Educational Evaluations (“IEEs”)

- The District can impose several conditions/requirements when granting a request.
 - The IEE must be conducted in the same manner (and using the same criteria) as a District evaluation. This includes:
 - Evaluator qualifications;
 - Location of evaluations;
 - Cost of evaluation.





Independent Educational Evaluations (“IEEs”)

- Districts should maintain an IEE policy that specifies the criteria required for an IEE to be approved.
- Districts should maintain a list of independent evaluators in the Western New York area who are available to perform IEEs.





**Question #3:
Parents want X.X. classified under the IDEA, not
Section 504**



Section 504 v. IDEA

- Section 504 and the IDEA are separate and distinct laws concerning the education of students with disabilities.
- Section 504 is primarily concerned with supports and accommodations in the general education environment- IDEA is more extensive, with more restrictive placement options.
- Generally speaking, if a student can be adequately supported with a Section 504 plan (versus an IEP), 504 classification is preferable.





Section 504 v. IDEA

- Administratively, Districts should keep Section 504 and IDEA separate and distinct- do not intermingle terminology, processes.
- 504 programs are typically administered at the building level, whereas IDEA is administrated by a centralized Special Education Office.



Question #4:

X.X. became escalated and destroyed school property/ injured staff. How should the District respond to this incident?



Responses to Significant Behaviors

- The District may discipline students with disabilities for aggression/violence.
 - For longer-term suspensions or patterns of suspensions, must conduct a manifestation determination.
- For younger students (pre-k and K), discipline is more difficult to impose. The Commissioner of Education is against disciplining students at these grade levels. See *Appeal of B.B.*, 63 Educ. Dept. Rep., Decision No. 18, 528 (2024) (Discipline of pre-k student ***inherently shocks the conscience***”).





Responses to Significant Behaviors

- When maladaptive behaviors are regularly affecting the student and classroom, the District should make arrangements for a functional behavioral assessment and behavior intervention plan (FBA/BIP).
- A more restrictive placement should only be considered after an FBA/BIP has been developed, implemented, and proven ineffective in the lesser restrictive setting.





Response to Significant Behaviors

- If the student is a danger to himself or others, consider commencing a “***dangerousness hearing***” as opposed to disciplining student.
 - Section 201.8.
 - An IHO in an expedited hearing may order a change in placement of a student with a disability to an appropriate IAES for not more than 45 school days if the IHO determines that the current educational setting is “***substantially likely to result in injury to the student or others.***”



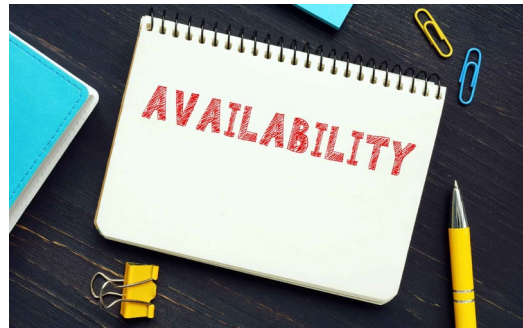
Question #5:

After several behavioral incidents and an ineffective FBA/BIP, the CSE decides (and the parents agree) that X.X. needs to be placed in a more restrictive setting in a day program and/or BOCES. However, after canvassing all appropriate placement options, there are no available spots. What to do?



Lack of Placement Availability

- Very common scenario
- Most important response is to be transparent with the parent. Let them know of your efforts to search for and secure a spot in a more restrictive placement.
- Keep strong documentation of your search. Document what agencies you contacted, what their responses were, and schedule periodic callbacks
- Be creative with your search. Look at neighboring school districts and BOCES.





Lack of Placement Availability

- What do you do with the student while searching for the placement?
 - Keep the student in the prior placement with supportive services, behavior management
 - Agree with the parent to a temporary alternative placement
 - Agree with the parent to some form of “home instruction”
 - Can be at home, library, at school
 - Clarify that it is temporary pending placement





Thank you.



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