SPECIAL EDUCATION LEGAL UPDATE

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This month's update identifies two recent court decisions that respectively address whether emails are student records and how student elopement may interact with extended school year (ESY). For related publications and special supplements, see **perryzirkel.com**

On November 26, 2025, the Nevada Supreme Court issued an officially published decision in *Clark County School District v. Eighth Judicial District Court of Nevada*. The issue was whether emails are student records under the Family Educational Rights and Privacy Act (FERPA), which is incorporated in the IDEA. In this case, the child was a special education student in the district, and the child's grandmother was his adoptive mother and legal guardian. After filing for a due process hearing to challenge the alleged inappropriate change in placement of the child, she requested access to his educational records. Believing that the documents that the school district provided in response to her request were incomplete and seeking them also for the child's dependency case in state court, the guardian specifically requested all emails mentioning her child that the district stored on its Google cloud server. The district refused. The guardian filed a motion in the dependency case for expedited production of the emails. The state court granted her motion, and the school district sought a writ of prohibition from the state's highest court. A panel of three members of the state supreme court ordered the lower court to determine which of the emails directly related to the child. The district sought reconsideration en banc, i.e., by the full membership of the state supreme court.	
The initial issue was whether this special writ procedure, which is reserved for cases in which the seeking party lacks an adequate and speedy legal remedy, was appropriate in this case.	The court ruled that it was appropriate because the lower court's order, which was upon joinder of the school district to the guardian's dependency case, was not a final decision and, thus, was not appealable to the state's intermediate, appellate court.
Both parties cited the U.S. Supreme Court's *Owasso* (2002) decision, which ruled that "educational records" under FERPA means student-identifiable information "maintained" by the institution.	Nevada's highest court interpreted *Owasso* to apply to "an institutional record stored in a designated place that is, typically, overseen by a designated individual responsible for maintaining such records" in contrast with (a) "materials informally created in the ordinary course of business …." and (b) records that only "*incidentally* … mention the student's name …."
Ultimately then, do emails that mention a student qualify as educational records, as the child's custodian requested in this case?	In this court's view, only those emails qualify that directly relate to the student and are deliberately stored by the district's records custodian; thus, the court vacated the lower court's order because the guardian's request was clearly much too broad.
This decision does not necessarily extend to other states, although a few courts in other jurisdictions have issued similar rulings. Moreover, this decision does not exclude all email, and it was a close case decided by a 4x3 vote. Finally, note that FERPA and the IDEA provide parents and guardians with the right of access (i.e., "inspect and review"), which does not necessarily extend to copies.	

On December 23, 2025, the Fifth Circuit Court of Appeals, which covers the states of Texas, Louisiana, and Mississippi, issued an officially published decision in *North East Independent School District v. I.M*. The child in this case was a fourth grader with autism, intellectual disabilities, and speech impairment. His communication is largely through gestures, facial expressions, and an iPad with a specialized communications app. His third-grade IEP included a special education class, speech and occupational therapy, elopement-avoidance software on his iPad, and an ESY program that was 2 weeks longer than the standard 3-week, half-day program. He had eloped during 18% of the 3-week program at the end of grade 2. During grade 3, he ran away for 40% of the school days until the spring break, with added regression directly thereafter. In response, the IEP team met to plan for grade 4 and disagreed about ESY. His parents sought full days for the entire summer, but the district members prevailed in limiting ESY to half-day sessions for 6 weeks, leaving a month-long break until the start of grade 4. His behavior regressed again, including elopements during 30% of the school days in the first 2 weeks and at least 20 toileting incidents during the first 6 weeks. Concerned with this regression even after short breaks and fearing for his life based on the elopements, his parents requested an IEP meeting to meaningfully address his elopements and toileting regression. The IEP team did not agree that the problems were attributable to school breaks, thus only responding with other revisions, such as a safety vest on the school bus and added behavior interventions. A few weeks later, in his most dangerous elopement to date, he escaped campus through an unlocked gate and ran into a busy road, only to be saved by bystanders. The IEP team met again, and the parents unsuccessfully requested more extensive ESY services not only for the summer but also after shorter school breaks. They filed for a due process hearing, and the hearing officer decided in their favor. The remedy was full-summer ESY services and a year-round voice-assisted communication device. After the federal district court affirmed, the school district appealed to the Fifth Circuit.	
First, challenging the lower court's ruling that its IEP failed to appropriately address elopement and toileting, the district argued that the child's IEP included a behavior intervention plan (BIP) that more generally effectuated progress for both these behaviors.	Puzzled by the district's stopping its systematic tracking of elopement, the court found the evidence nevertheless sufficient to show that the failure to extend ESY services to the final month of the summer and to other breaks caused regression for toileting and—"pos[ing] a grave, present danger—elopement.
Second, the district argued that the lower court's ruling was not in accord with previous Fifth Circuit decisions specific to substantive appropriateness, including the significant weight that they accorded to academic progress and BIPs.	To the contrary, the Fifth Circuit distinguished its previous district-favorable decisions except for their holistic analysis and found neatly fitting instead its *Boone* decision in light of the life-threatening elopement behaviors. The court also cited the *Endrew F*. "appropriately ambitious" factor for students who are not fully integrated and cannot achieve on grade level.
This otherwise weighty federal appeals court decision is tempered by (a) the rather relaxed standard of appellate review for lower court decisions, (b) the emphasis on the particular severity of the child's disability and his elopement behaviors, and (c) the failure to address limiting the remedy to the full summer period. Nevertheless, it merits careful attention for its effect on other behavior-focused cases and on the appropriateness of, as distinct from the eligibility for, ESY services, including the potential extension to non-summer breaks.	