



ATTORNEY'S CORNER

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MONTH IN REVIEW: AUGUST 2025

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A Synopsis of Salient Updates and Cases in Special Education

In this installment of the Attorney's Corner, we review two court decisions from the New York State Appellate Division, Third Department, which upheld SED's determination that districts are required to provide a free appropriate public education ("FAPE"), until age 22 or receipt of a high school diploma, whichever comes first. The decision has significant financial and legal implications for districts in New York. Next, we review the State Education Department's ("SED") Portrait of a Graduate presentation, including SED's announced change in graduation pathways, and we discuss its impact on classified students in New York. Third, we review a decision from the SED's Office of State Review ("SRO") finding that a district provided FAPE in its 8:1:4 special class that used ABA principles. Finally, we review a court filing by the U.S. Department of Education's Office for Civil Rights ("OCR") on its dismissal rate of discrimination claims during President Trump's administration.

For purposes of clarity:

- In New York State, the Supreme Court is the lowest level trial court of general jurisdiction. An appeal from the Supreme Court may be taken to the Appellate Division, and then to the Court of Appeals. The Second

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

- Federal claims are filed with federal district courts. An appeal may be taken to the Circuit Court of Appeals, and then to the U.S. Supreme Court. The Second Circuit Court of Appeal has jurisdiction over cases that arise in New York State.
- Claims brought under the Individuals with Disabilities Education Act (“IDEA”) are heard by an impartial hearing officer, from which an appeal may be taken to the SRO, and then to the New York State Supreme Court or Federal District Court. Parents may also join 504 claims using IDEA due process, however, appeals of the 504 portion of any resulting decision go to court rather than the SRO.
- Parents may also file complaints for alleged violations of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) with the U.S. Department of Education’s Office for Civil Rights (“OCR”), and may file complaints with SED for alleged violations of IDEA or Part 200 of the Commissioner’s Regulations.

**NEW YORK STATE APPELLATE DIVISION
THIRD DEPARTMENT
MAHOPAC CSD v. NYSED &
KATONAH-LEWISBORO UFSD v. NYSED**

BACKGROUND AND SALIENT FACTS:

On July 17, 2025, the New York State Appellate Division, Third Department, issued two decisions related to the age in which districts are required to provide a free appropriate public education (“FAPE”) under IDEA and state law. Under New York State law, districts are required to provide FAPE to students with disabilities until the end of the school year in which they turn the age of 21, or receipt of a high school diploma, whichever comes first. However, in 2023, SED issued an Opinion of Counsel (No. 242), which stated that districts should provide FAPE until age 22 in accordance with a Second Circuit Court of Appeals decision involving Connecticut state law in *A.R. v. Connecticut State Board of Education*. SED warned districts that if they fail to provide FAPE until age 22, they risk parents being awarded compensatory services.

Two school districts, the Katonah-Lewisboro Union Free School District, and the Mahopac Central School District, challenged SED’s interpretation of that

court decision, and terminated FAPE for disabled children in their district at the end of the school year in which they reached their 21st birthday, instead of age 22. Parents in each district challenged those decisions by filing complaints with SED alleging the districts denied their children FAPE, and seeking compensatory services.

PROCEDURAL HISTORY:

SED found that Mahopac and Katonah-Lewisboro violated IDEA and state law by not providing FAPE until age 22. SED ordered that the districts provide compensatory services and reconvene the CSE to ensure provision of FAPE until age 22. The two districts appealed. In two decisions from the New York State Supreme Court, Albany County, a judge reversed SED's interpretation, finding that it was inconsistent with current state law, which terminates FAPE at the end of the school year in which children reached the age of 21. SED appealed both decisions.

DECISION FROM THE APPELLATE DIVISION:

In unanimous decisions by the court in both cases, the Appellate Division, Third Department, which has jurisdiction over lawsuits against SED, held that the districts were required to provide FAPE until age 22 in accordance with SED's advisory opinion. The court noted that SED has broad authority to examine state and federal law, including court cases interpreting such laws. SED did just that in issuing its advisory opinion based on the federal appeals court decision in *A.R.* Therefore, the Appellate Division ruled that SED's interpretation requiring the provision of FAPE until age 22 was not arbitrary and capricious, because it had a rational basis in law. New York provides free GED courses to non-disabled students age 16 years of age and older. As such, the court reversed the decisions from the State Supreme Court, and found in favor of SED. It is unclear at this time whether the district will appeal the decision to the New York Court of Appeals, New York State's highest court.

WHY YOU SHOULD CARE:

The decisions from the Appellate Division pose a significant financial and legal problem for school districts as they grapple with the fallout. Although districts are required to provide FAPE until age 22, the provisions for state aid only apply until the end of the age 21 school year, representing an unfunded mandate to school districts. If districts refuse to comply with SED's advisory opinion, parents who challenge those decisions will likely prevail if they file for due process. The hearing would cost the district compensatory services and prevailing party legal fees for the parents, in addition to the district paying for a court reporter, hearing officer, and its own legal fees. Further, in the event that parents challenge a district's refusal to comply by filing a complaint with SED, districts will face an unfavorable decision from SED and the potential loss of state aid or removal of a board member in accordance with Section 306 of New York State Education Law. District staff should consult with the Board's counsel for any questions regarding this issue.

NEW YORK STATE EDUCATION DEPARTMENT PORTRAIT OF A GRADUATE

BACKGROUND AND PROCEDURAL HISTORY:

On July 14, 2025, the Board of Regents approved the *Portrait of a Graduate*, which creates a new framework for diploma pathways in New York in the future. It does not change current graduation requirements for the 2025-2026 school year. SED is working to transform the following four areas: (1) adopting the New York State Portrait of a Graduate for learning standards; (2) redefining course credit requirements; (3) no longer requiring passage of Regents exams in order to obtain a diploma; and (4) moving to one uniform diploma for all students.

Currently, there are three diploma types that graduating high school students can receive: a local diploma; Regents diploma; or Regents diploma with advanced designation. SED's goal is to create one diploma for all students with different seals for areas of student concentration by the Fall, 2027, including an advanced designation to recognize high achieving students. Students would still be required to take the Regents exams, but passage of Regents examinations would not be required to obtain a high school diploma. The changes to the diploma requirements come from SED's *Blue Ribbon Commission on Graduation Measures*.¹

SED's *Frequently Asked Questions* notes that under its new diploma framework, students with disabilities and English Language Learners are provided flexibility to demonstrate their understanding and skills in the manner most aligned with their personal strengths and abilities, rather than tying achievement to passage of the Regents exams. SED's guidance also noted that the Regents assessment requirements was the primary barrier that kept students with disabilities from earning a high school diploma. Previously, classified students with IEPs could obtain a local diploma through the superintendent's determination, by demonstrating proficiency in the learning standards of a particular subject, including passing the course. Students with disabilities also could obtain a diploma through a safety net option in which a student did not pass the Regents exam, but scored high enough to be included in the safety net for obtaining a diploma. Otherwise, students with disabilities were limited to one of two certifications, the Skills and Achievement Commencement Credential ("SACC") or the Career Development and Occupational Studies ("CDOS") Commencement Credential.

¹ N.Y. State Educ. Dep't, *Blue Ribbon Commission on Graduation Measures* (2023), available at: [New York State Blue Ribbon Commission on Graduation Measures Report](#)

WHY YOU SHOULD CARE:

The approval by the Board of Regents of its Portrait of a Graduate indicates that earning a high school diploma will no longer be linked to passage of the Regents exams. That may make it easier for classified students to graduate with a diploma by showing proof of having obtained the requisite skills to graduate through alternative pathways, instead of needing to earn passing grades on the Regents exams. It may also mean that some students with disabilities will spend less time to complete high school to fulfill graduation requirements. Changing the diploma pathways may also provide students with the necessary skills for trade or vocational careers instead of focusing on college enrollment.

NEW YORK STATE EDUCATION DEPARTMENT OFFICE OF STATE REVIEW APPEAL NO. 24-605

BACKGROUND :

During the 2021-2022 school year, the CSE for the Massapequa school district placed an autistic student with significant needs in its 8:1:4 special class with speech language therapy, occupational therapy, physical therapy, parent counseling and training, community-based parent training, and home-based behavioral intervention services. In April, 2022, the CSE held an annual review meeting and continued to recommend placement for the child in the District's 8:1:4 special class, along with the recommended related services.

In June, 2022, the Parents sent the district a 10-day notice letter indicating their rejection of the 2022-2023 IEP, and their intention to unilaterally place the student at the Elija School, a 1:1 ABA program, for 2022-2023. The District also developed a BIP to address the student's eloping behavior.

PROCEDURAL HISTORY:

In October, 2022, the parents filed for due process, alleging that the CSE's recommended program failed to provide FAPE, that the student regressed in the same program the prior year. That the district predetermined the outcome of the CSE meeting by recommending the same program, and that the evaluative information did not support the CSE's placement recommendation. The parents also alleged that the BIP and goals were inappropriate to meet the student's needs

At the hearing, the District presented testimony from a Board Certified Behavior Analyst ("BCBA"), the student's classroom teacher, speech provider, occupational therapist, and school psychologist. The student's teacher and BCBA

explained how the 8:1:4 special class used ABA principles in its instruction, and that the classroom used visual schedules, breaks, token boards, and visuals for coping strategies and communication, reinforcement and clear language.

The parents' advocate testified that she observed the student at home and in his classroom in the District's program, and stated that she disagreed that the program used ABA supports and that in her opinion, the student did not make progress. The parents' advocate further testified that the 8:1:4 class used an eclectic style of teaching, which the District's BCBA contradicted, stating that the special class was an ABA style classroom.

At the end of the hearing, the impartial hearing officer ("IHO") found that the CSE's recommendations provided FAPE, that the Elija school was not appropriate to meet the student's needs, and that equitable considerations did not weigh in the parents' favor. As such, the IHO denied the parents' request for tuition reimbursement. The parents appealed the decision to the SRO.

SRO DECISION:

First, the SRO found that the parents and their consultants actively participated in the CSE meetings. As such, the parents were not denied a meaningful opportunity to participate in the decision-making process. The SRO also rejected the parents' claims of predetermination, noting that the parents' active participation in the CSE meetings undermined their claim of predetermination. The SRO further noted that the CSE cannot be compelled to recommend a non-SED approved private school in order to provide the student with FAPE. As such, the CSE correctly denied the parents' request for placement at the Elija School.

Next, the SRO found that the CSE considered the parents' private evaluations and reports, which recommended a 1:1 ABA program, but was not required to adopt their recommendations. The SRO noted that the CSE had information from the student's teachers and providers that demonstrated the student was advancing from grade to grade making academic progress in his 8:1:4 special class, and thus, did not need a 1:1 ABA program to make progress. The SRO also gave deference to the opinions and testimony of the District staff who taught the child over the parents' privately hired consultants

Third, the SRO dismissed the parents' allegations regarding the FBA and BIP being deficient or faulty. The SRO noted that there were some discrepancies between the identified targeted behavior in the FBA compared with the raw data taken, as the identified behavior did not mention that the student was jumping up and down with high intensity and leaving the designated work area. However, the SRO noted that such discrepancies did not render the FBA upon which the BIP was developed to be inappropriate. As such, the SRO dismissed the parents' allegation.

Finally, the SRO ruled that the District's 8:1:4 special class was appropriate to meet the student's needs. The SRO found that the 8:1:4 special class was the least restrictive environment in which the child could make progress, and therefore the child did not need a 1:1 ABA program. The hearing evidence showed that the student made progress the prior year in his 8:1:4 special class, particularly his IEP progress report, which indicated that the student achieved 26 of his 32 annual goals. The District's BCBA testified that although the 8:1:4 classroom was not a strict ABA classroom, it was based on the principles of ABA, the staff was trained on the use of ABA principles, including the use of calm-down areas, having visuals for coping, visual schedules, token boards, and use of reinforcement strategies. The SRO concluded that since the student made progress in his 8:1:4 special class, the CSE was not obligated to consider placement in a smaller class, such as the 1:1 class the parents requested. As such, the SRO dismissed the parents' complaint, and denied their request for tuition reimbursement at Elija.

WHY YOU SHOULD CARE:

This case demonstrates the importance of district staff documenting a student's progress throughout the year, including on IEP progress reports. The final IEP progress report should not only indicate whether a student had achieved the annual goal, but quantify with data how close the student came to achieving the goal, or how far above the annual goal the student reached after its mastery. Once again, an SRO decision highlights the importance of taking actual data, rather than simply relying on anecdotal information provided by teachers or related service providers. An IEP progress report is viewed as much more reliable when expressed in actual percentages rather than relying on vague terms like "student is making progress", the "student is expected to achieve the goal by the end of the year", or "student has made some progress but is not expected to achieve the goal." In classes that use ABA strategies, a well kept program book will often provide all the data you need to record progress in percentages. For non-ABA programs, data may be more challenging to collect, but its not a good excuse to rely exclusively on teachers' anecdotal accounts.

The decision also demonstrates that when students make progress in a district program, CSEs can reject a parents' request for a smaller class or private school placement. Finally, the decision demonstrates that a District's special class can be considered an ABA program through its use of ABA principles and strategies, without being a 1:1 ABA placement.

U.S. SUPREME COURT MCMAHON v. NEW YORK (2025)

BACKGROUND AND SALIENT FACTS:

On July 14, 2025, the U.S. Supreme Court issued a stay of a decision entered by the U.S. District Court for the District of Massachusetts, in which the district court had issued a preliminary injunction preventing the U.S. Department of Education (“DOE”) from laying off thousands of employees. These employees were laid off as a result of President Trump’s executive order to begin closing the DOE. Nevertheless, the stay issued by the U.S. Supreme Court ensured that the DOE could continue its reduction in force, uninterrupted.

Prior to that decision, the DOE’s Chief of Staff, Rachel Oglesby submitted a declaration to the District Court in Massachusetts on July 1st regarding the work of the DOE’s Office for Civil Rights (“OCR”) over the past several months. Her Declaration noted that over a three month span from March 11, 2025 through June 27, 2025, OCR received 4,833 complaints, it opened 309 cases for investigation, dismissed 3,424 complaints in accordance with its Case Processing Manual, resolved 96 complaints after concluding there was insufficient evidence to find that the complaint was substantiated, and resolved 290 complaints with voluntary resolution agreements or OCR-conducted mediation.

In contrast, during the last three months of President Biden’s administration between November, 2024 and January, 2025, OCR dismissed 2,527 complaints, opened 674 complaints for investigation, and resolved 595 complaints through mediation or voluntary resolution. OCR’s current results compared with those of the prior administration, indicate a higher dismissal rate and fewer investigations being pursued by OCR in 2025.

WHY YOU SHOULD CARE:

Under Section 504, parents can challenge the district’s provision of FAPE or lack of access to 504 accommodations by filing for due process or filing a complaint through the district’s 504 grievance procedure. The reduction in staffing at the DOE, coupled with the higher dismissal rate of complaints will likely lead to OCR resolving fewer complaints filed by parents under Section 504 of the Rehabilitation Act of 1973. Given its staffing reduction, in the event that OCR does open an investigation, it may take longer to complete its fact finding to determine whether a claim should be substantiated given its staff reduction. As a result, this may lead to more parents filing for due process under Section 504 in order to timely pursue their claims.

Districts should ensure that their 504 policies are up to date on the process and procedure for impartial hearings. Districts should also provide training to administrators and staff who chair and serve on Section 504 Committees to ensure that students are not being discriminated against on the basis of disability. This

includes providing access to field trips and after-school activities, in which the district may need to provide additional accommodations.

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This publication is intended to provide general information and is not meant to be relied upon as legal advice. If you have questions about anything discussed, we urge you to contact your school attorney.

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