



# ATTORNEY'S CORNER

**By Jack Feldman**

**MONTH IN REVIEW: JANUARY 2026**

**[Read All About It!](#)**

***A Synopsis of Salient Updates and Cases in Special Education***

In this installment of the Attorney's Corner, we review the State Education Department's ("SED") legislative priorities in special education for 2026-2027, and Governor Hochul's proposal for SED to develop instructional best practices in math. Next, we review tuition reimbursement cases from a federal district court and SED's Office of State Review ("SRO"). In the first decision, the court found that the district failed to provide FAPE. In the second decision, the SRO found the district provided the child with FAPE in an in-district 12:1:1 special class.

***For purposes of clarity:***

- In New York State, the Supreme Court is the lowest level trial court of general jurisdiction. An appeal from the Supreme Court may be taken to the Appellate Division, and then to the Court of Appeals. The Appellate Division, Second Department' has jurisdiction over cases in Brooklyn, Queens, and Long Island.
- Federal claims are filed with federal district courts. An appeal may be taken to the Circuit Court of Appeals, and then to the U.S. Supreme Court. The Second Circuit Court of Appeal has jurisdiction over cases that arise in New York State.

**February 3, 2026**

- 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 with IDEA due process hearings, however, appeals of the 504 portion of any resulting decision go to court, while IDEA appeals go to the SRO.
- Parents may also file complaints for alleged violations of Section 504 of the Rehabilitation Act of 1973 (“Section 504”) with the U.S. Department of Education’s Office for Civil Rights (“OCR”), and may file complaints with SED for alleged violations of IDEA or Part 200 of the Commissioner’s Regulations.

## **NEW YORK STATE EDUCATION DEPARTMENT LEGISLATIVE PRIORITIES 2026-2027**

\*\*\*

### **BACKGROUND AND SALIENT FACTS:**

On December 4, 2025, SED released its legislative and budgetary priorities for the 2026-2027 school year. SED requested that the state legislature amend New York State Education Law to allow school districts to receive state aid for providing FAPE to disabled children until age 22. During the 2025 calendar year, the Appellate Division, Third Department upheld SED’s advisory opinion (#242) that districts owed FAPE until age 22 or receipt of a high school diploma, whichever occurs first. However, state law only provides aid up to the end of a student’s age 21 school year. SED did not put a price tag on this request for state funding, noting that the number of students affected is currently undetermined. SED noted that many of the students between the ages of 21 and 22 had services provided by the Office for People with Developmental Disabilities (“OPWDD”). As such, the state aid costs would be partially offset by the amount of the OPWDD costs.

SED also requested that the state legislature amend section 4410 of New York State Education Law to allow school districts to provide preschool special education services without needing prior approval from SED. This would remove the paperwork and administrative burden that districts face in filling preschool spots for their own in-district placements. According to SED, school districts find the pre-K application process to be overly burdensome since districts are responsible for providing FAPE, regardless of whether they receive state aid for it.

**February 3, 2026**

### **WHY YOU SHOULD CARE:**

SED's legislative priorities provide insight into upcoming changes to the law that SED will be seeking, and their impact on school districts. Last year, SED included a request in its legislative priorities for state aid to school districts to provide FAPE until age 22; the legislature said no. As such, SED's goal of eliminating administrative paperwork for school districts to make it easier for districts to open preschool programs, may be more likely to be enacted than its state aid proposal. As districts grapple with an increasing demand in preschool seats and classified preschoolers with disabilities, districts should consider whether they have the space, staffing, and resources to open their own preschool programs.

\*\*\*

## **NEW YORK STATE GOVERNOR'S OFFICE 2026-2027 BUDGET PROPOSALS**

### **BACKGROUND:**

As part of the 2026-2027 executive budget, Governor Hochul is proposing that SED create instructional best practices for school districts in teaching math. SED would also be required to provide guidance and resources for educators on teaching methodologies in math that align with state standards. CUNY and SUNY would be responsible for providing professional learning opportunities to educators across the state in districts with low math proficiency scores.

### **WHY YOU SHOULD CARE:**

The Governor's proposal is similar to last year's new law requiring SED to develop instructional best practices in literacy for preschool through third grade. As part of that law, SED required districts to attest by September 1, 2025 that their district's curriculum and instruction aligned with the instructional best practices for literacy established by SED. Details regarding the budget proposal will not be finalized until the state budget is passed into law, which is usually on or around April 1<sup>st</sup>. Given the prior attestation for literacy required by SED, if this proposal is adopted by the state legislature, districts may be required to provide a similar attestation to SED for math

\*\*\*

February 3, 2026

**SOUTHERN DISTRICT COURT OF NEW YORK (2025)**  
**L.S. v. HARRISON CENTRAL SCHOOL DISTRICT**  
**125 LRP 32420**

**BACKGROUND:**

In our September, 2024 edition of the Attorney’s Corner, we discussed Appeal No. 24-071. In that case, SED’s Office of State Review (“SRO”) found that the Harrison Central School District denied the student FAPE, but denied tuition reimbursement on the grounds that the Parents’ unilateral placement, The Windward School (“Windward”), was not appropriate to meet the student’s needs. The Parents subsequently appealed to the Southern District of New York. We revisit the SRO’s decision, and discuss the court’s decision on appeal.

**CSE RECOMMENDATIONS:**

L.S. was unilaterally placed at Windward for second grade. The parents signed the enrollment contract in April, 2021 and notified the district in August that they were rejecting the 2021-2022 IEP. That IEP recommended a general education classroom with resource room in a small group five times in a six-day cycle for 45 minutes; occupational therapy twice in a six-day cycle for 30 minutes; and individual counseling, once in a six-day cycle for 30 minutes. The CSE recommended two reading goals; one writing goal; two social-emotional goals; and three motor goals.

For the 2022-2023 school year, the CSE reviewed a private neuropsychological evaluation provided by the Parents, and changed its recommendation from a daily resource room program for one period a day, to an ICT classroom for four periods per day in core academic subjects. The CSE continued its recommendations for occupational therapy and counseling. The CSE also recommended four reading goals; two writing goals; two math goals; one social-emotional goal; and four motor goals.

**PROCEDURAL HISTORY:**

The Parents filed a due process complaint alleging that the district denied their child FAPE for the 2020-2021, 2021-2022, and 2022-2023 school years. The complaint alleged that the district failed to adequately evaluate the child; failed to develop an appropriate FBA and BIP; failed to develop appropriate goals; and failed to recommend appropriate related services. The Parents sought tuition reimbursement at Windward at the district’s expense.

At the conclusion of the hearing, the IHO found that the district denied FAPE for the 2021-2022 and 2022-2023 school years because it failed to evaluate the child in each area of suspected disability; the district failed to conduct an FBA to address the child’s behavior issues; and failed to recommend extended school year (“ESY”) services. The IHO also found that the IEP did not address the student’s reading,

**February 3, 2026**

writing, and math deficits; the CSE failed to develop goals for articulation, oral motor, and decoding skills; and failed to recommend multi-sensory phonics-based instruction. The IHO further found that Windward was appropriate to meet the student's needs, and that the equities favored tuition reimbursement for the Parents. The District appealed.

### **SRO DECISION:**

On appeal, the SRO reversed the IHO's decision granting tuition reimbursement. The SRO found that the CSE had sufficient evaluative material and data to develop the child's 2021-2022 IEP, and that such information did not indicate that the child needed speech language therapy. Next, the SRO determined that any failure by the district to conduct an FBA was not a deprivation of FAPE, because the CSE identified the student's negative behaviors on the IEP as anxiety and task avoidance. Those needs were addressed through the CSE's recommendations of social-emotional goals and weekly counseling. As such, the SRO determined that the district provided FAPE for 2021-2022.

The SRO upheld the IHO's determination that the district denied the child FAPE for 2022-2023. The SRO found that the CSE failed to recommend speech language therapy because the May, 2022 CSE reviewed an April, 2022 neuropsychological evaluation from the parents, which recommended speech language therapy. Additional information in the hearing record also demonstrated the need for speech language therapy due to phonological processing deficits. However, the SRO found that the Parents did not meet their burden of proving that Windward was an appropriate unilateral placement, as no one from Windward testified who taught or observed him at Windward. As such, tuition reimbursement was denied. The Parents appealed to federal court in the Southern District of New York.

### **SOUTHERN DISTRICT COURT'S DECISION: (2021-2022 SY)**

First, in reviewing the 2021-2022 school year claims, the court noted that any failure to conduct an FBA was not a denial of FAPE in this case. Here, the CSE recommended two social-emotional goals and counseling once in a six-day cycle for 30 minutes to address the student's anxiety that interfered with his completion of classwork. As such, the IEP adequately addressed the child's behaviors. Second, the court rejected the Parents' argument that the CSE failed to comprehensively evaluate the child with additional reading and math testing. The court noted that the CSE reviewed and considered psychological and educational evaluations; a social history; a MAP assessment, which is a computer based assessment in reading and math; teacher reports; and report cards. As such, the CSE had sufficient current evaluative information to develop the child's IEP.

Third, the court noted that the CSE did not have the Parents' private neuropsychological evaluation which had recommended speech language therapy at the time of the CSE meeting to develop the 2021-2022 school year IEP. The parents

**February 3, 2026**

also did not request a speech language evaluation or raise the issue at the CSE meeting. As such, any lack of speech language therapy on the IEP was not a deprivation of FAPE.

Fourth, the court rejected the Parents' argument that the lack of consideration for ESY programming was a denial of FAPE. Although there was no discussion of 12-month programming at the meeting, the Parents provided no evidence at the hearing that the student regressed during school breaks and therefore needed ESY programming. Fifth, the court found that the eight goals developed by the March, 2021 CSE, and the 10 goals developed by the September, 2021 CSE, were appropriate to meet the student's needs. As such, the court found that the district provided FAPE for 2021-2022.

### **SOUTHERN DISTRICT COURT'S DECISION: (2022-2023 SY)**

For the 2022-2023 school year, the court noted that the CSE failed to consider whether the child needed the reading methodology recommended by Windward called Preventing Academic Failure ("PAF"), based on Orton Gillingham. The recording of the CSE meeting and hearing record indicated that there was no discussion at the CSE meeting of recommending PAF or any other multi-sensory reading program. The court held that the failure to consider the PAF reading methodology or the need for a multi-sensory reading program constituted predetermination, even with the Parents active and meaningful participants at the CSE meeting. The court noted it was a denial of FAPE on this basis because the CSE failed to consider the child's reading needs in developing its programming recommendations.

Next, the court held that the CSE's recommendation of an ICT classroom was not appropriate. District staff testified at the hearing that the recommended ICT classroom only taught reading using a balanced literacy approach. However, the court found that the student needed a multi-sensory phonics-based reading program, as indicated by the Parents' private evaluator and Windward. As such, the court held that the ICT program was not appropriate to meet the student's needs.

Then the court reviewed whether the recommended reading goals were appropriate to address the student's needs, which included: reading a list of ten irregular words with accuracy; reading an instructional text orally with accuracy, appropriate rate, and expression at 80 words per minute with 95% accuracy; answering three inferential comprehension questions accurately after reading a text on his instructional level; and utilizing a decoding strategy to read ten words with digraphs, blends and suffixes accurately. The court credited the testimony of the Parents' private evaluator, Dr. Scalzo, who stated that the reading goals were not appropriate to address the child's dyslexia because they were not measurable, and did not specifically address the child's needs. The court did not cite any testimony from district witnesses as to the appropriateness of the goals, and noted that on appeal, the district did not address the question of the reading goals.

February 3, 2026

Finally, the court found that the CSE denied FAPE by failing to recommend speech language therapy to address the student's articulation deficits. The court rejected the district's argument that the articulation issues did not need to be addressed through special education services until medical intervention occurred. As such, the court found that the district denied FAPE for 2022-2023.

Regarding the appropriateness of Windward, the court reversed the SRO's finding that it was not appropriate. Instead, the court credited testimony and evidence that the student had made progress at Windward based on standardized test results in reading administered while at Windward. As such, the court awarded tuition reimbursement to the Parents.

### **WHY YOU SHOULD CARE:**

This case demonstrates the need for CSEs to thoroughly review all recommendations made by private evaluators and private schools at a CSE meeting. The CSE should determine whether the IEP addresses each area of need. Here, the failure to consider PAF or other multi-sensory reading methodology, instead of the balanced literacy approach in the ICT classroom, proved to be a denial of FAPE. Had the district recommended resource room to provide reading instruction or standalone specially designed reading, in addition to an ICT classroom, it would have been in a stronger position to defend its recommendations on appeal.

The court's decision also demonstrates the need to discuss each section of the IEP, including ESY services, regardless of whether it is recommended. Here, the failure to even discuss ESY services at the meeting could have been fatal if the parents had submitted regression data on the need for ESY services. Had the CSE briefly discussed ESY services at the meeting, and dismissed it based on a finding of no regression, the district would have built a stronger defense.

Further, the case shows that CSEs cannot disregard the recommendations of private evaluators without addressing them in some fashion in the student's IEP. Here, the CSE's decision not to recommend speech language therapy, as indicated by the private evaluator, and instead, take the position that the student's articulation needed to be addressed medically, proved fatal. The court's decision also indicates the need to have specific, measurable goals that address the student's needs, and for the CSE to thoroughly discuss the proposed goals at the meeting.

Finally, the case illustrates the low burden that parents must meet to prove that their unilateral placement is appropriate. Although no one from Windward who taught or observed the child testified, the Parents were able to meet their burden of proving Windward's appropriateness through progress reports and standardized test results. The court also rejected the SRO's reasoning that there was "little evidence of the specific supports provided to L.S. at Windward", noting that

**February 3, 2026**

such a legal standard “call[s] for too heavy a burden on Parents”. Instead, the court noted that the evidence proved that Windward provided instruction designed for children like L.S. who are not cognitively impaired, but have processing deficits, including dyslexia.

\*\*\*

**NEW YORK STATE EDUCATION DEPARTMENT  
OFFICE OF STATE REVIEW  
APPEAL NO. 25-137**

**BACKGROUND AND SALIENT FACTS:**

In April, 2022, the CSE in the Levittown school district held an annual review meeting to develop the student’s 2022-2023 IEP for third grade. The CSE recommended a 12:1:1 special class for core academic subjects; speech language therapy in a small group twice a week for 30 minutes; psychological counseling services once a week for 30 minutes in a small group and once a week for 30 minutes individually on a bi-weekly basis; occupational therapy twice a week for 30 minutes; physical therapy once a week for 30 minutes individually and once a week for 30 minutes in a small group 3:1; and individual parent counseling and training 20 times a year for 1 hour.

In June, 2022, the Parents obtained an IEE in the form of a private neuropsychological evaluation at the district’s expense, which was reviewed by the CSE in December, 2022. The December CSE continued to recommend its 12:1:1 special classroom with a 1:1 aide for the student’s epilepsy, one hour a week for behavior intervention services in the Parents’ home. At the December meeting, the Parents requested that the CSE place their child at West Hills Academy (“West Hills”). The CSE rejected that request because West Hills is not approved by SED for placement of children with special needs. On January 3, 2023, the Parents unilaterally placed their child at West Hills for the balance of the 2022-2023 school year.

In June, 2023, the CSE convened for an annual review meeting, and continued to recommend a substantially similar program to the one in the 2022-2023 IEP. The CSE changed its occupational therapy recommendation from a small group twice a week to once a week individually and once a week in a small group 3:1. The CSE also recommended ESY services consisting of three hours daily of specialized instruction.

February 3, 2026

### **PROCEDURAL HISTORY:**

The Parents filed for due process alleging a denial of FAPE for 2022-2023 and 2023-2024. The complaint alleged that the district's 12:1:1 special class was not appropriate to meet the student's needs. They also alleged that the district failed to: conduct an FBA; accurately develop the SPAMS; evaluate the student in each area of suspected disability; that the goals were not measurable; and the IEP lacked recommendations for assistive technology.

At the conclusion of the impartial hearing, which lasted 12 days, the IHO found that the district failed to provide FAPE for 2022-2023 and 2023-2024, and that West Hills was appropriate to meet the student's needs. Specifically, the IHO found that the consensus of evaluations indicated the student needed an ABA methodology, which the CSE failed to recommend. Therefore, the IHO awarded tuition reimbursement to the Parents. The district appealed.

### **SRO DECISION:**

The SRO first found that the CSE had sufficient evaluations and data to develop the child's IEP, which included a private neuropsychological evaluation; vision report; an FBA; a letter from a private psychiatrist; IEP progress report; iReady diagnostic reports; and an auditory processing evaluation. The SRO rejected the Parents' argument that additional testing was needed for a possible dyslexia diagnosis. The SRO reviewed the student's progress from the prior school year in his in-district placement, noting that the student made satisfactory progress on many goals, and on his report card, and was working to achieve grade level standards. The SRO noted further that the student improved on the iReady diagnostic scores in reading from an overall score of 387 in September, 2021 to a score of 416 in May, 2022. In math, the student improved on iReady from a score of 371 in September, 2021 to a score of 400 in June, 2022.

Next, the SRO rejected the Parents' argument that any failure by the district to develop a BIP was a denial of FAPE. The SRO noted that the district conducted an FBA, and recommended counseling twice a week to address the student's social-emotional and behavioral needs. The CSE also recommended social-emotional goals for the student to: maintain social exchanges on a conversational topic; to respond appropriately to social cues of peers; and to respond with a positive solution when a hypothetical situation evokes negative feelings. The CSE also recommended reminders and prompts to use coping skills practiced in school. As such, the district recommended appropriate behavioral supports to address the child's needs.

The SRO analyzed whether the recommended 12:1:1 special classroom was appropriate to meet the child's needs. The SRO noted that under the Commissioner's Regulations, the maximum special class size for a student whose management needs interfere with the instructional process shall not exceed 12 students. The SRO found the 12:1:1 special class to be appropriate given the child's

**February 3, 2026**

progress in the same class the prior school year. The SRO noted that since the CSE determined that its in-district 12:1:1 special class with related services was appropriate to meet the student's needs, it was not required to consider a private school placement as requested by the parents.

Finally, the SRO rejected the Parents' argument that the student needed an ABA placement. Neither the Parents' psychiatrist nor their advocate expressed a preference that the child needed an ABA classroom or that the child failed to make progress in the district because it was not an ABA classroom. The SRO noted further that the CSE recommended supports and strategies to address the child's behavioral needs including positive reinforcement, and behavior intervention services in the home. The CSE also had reports and evaluations indicating that the student made progress without the use of ABA methodology. As such, there was no clear consensus that the child required ABA to make progress. Having found that the district provided FAPE for 2022-2023 and 2023-2024, the SRO denied the Parents' request for tuition reimbursement.

**WHY YOU SHOULD CARE:**

This decision illustrates the need for districts to maintain good recordkeeping of a child's progress in their in-district program, including progress on goals, grades, work samples, in-class assessments, and evaluations. Here, the district's 12:1:1 special class was found by the SRO to be appropriate based on the evidence of the child's progress in that same placement the prior year. The weight of the district's data and evidence indicating progress also defeated the parents' claims that the student needed an ABA placement to make progress.

\*\*\*

**Jack Feldman is Managing Partner with Frazer & Feldman, LLP, a law firm in Westbury, New York that represents school districts.**

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

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

.....

**February 3, 2026**