SPECIAL EDUCATION LEGAL UPDATE

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April 2026

This month's update identifies two recent decisions that respectively illustrate the fuzzy "need prong" for special education eligibility under the IDEA and the relatively rare legal appearance of counteractions to IDEA and Section 504/ADA protection, here extending to "anti-SLAPP" laws. For related publications and special supplements, see **perryzirkel.com**

On March 26, 2026, a federal district court in Texas issued an unofficially published decision in *Sarah J. v. Austin Independent School District*. In this case, student S.T. became ill at the start of grade 9. On September 29, his parents informed the school that the diagnosis was mononucleosis, which he previously had in grades 5 and 7. On October 4, the district put him on a waitlist for a general education homebound instructor. On October 26, the parents received and notified the district of a revised diagnosis, which was chronic fatigue syndrome (CFS). The district provided him with a 504 plan based on CFS and dysgraphia. The homebound services belatedly started on February 9 and continued for the rest of the school year whenever he was unable to attend school. Due to this 4-month delay, his grades and course completion suffered despite being given the opportunity to make up his assignments and tests after the school year ended. Meanwhile, on March 9, his parents formally requested an eligibility evaluation under the IDEA. The district did not take action until August 4 to obtain their written consent, which the parents provided on August 7. In grade 10, S.T. only attended the first two weeks before becoming too ill to continue attendance. On October 17, based on the timely-completed evaluation, the IEP team concluded that S.T. was not eligible under the IDEA but recommended continuing the Section 504 accommodations, including extra time, reduced assignments, and breaks as needed. In immediate response, the parents requested, and the district agreed to, an independent educational evaluation (IEE) at public expense. On November 2, the parents submitted the physician's CFS report, which recommended shortened school days, frequent rest breaks, access to the nurse's office, and the ability to go home if symptoms worsened. On December 14, the physician issued an updated report, prescribing home confinement for the next six months. By then, S.T. was sleeping about 18 hours per day and tired quickly during instruction. On April 14, the IEE report was issued, recommending IDEA eligibility under other health impairment (based on CFS) and specific learning disability (based on dysgraphia). Soon thereafter, the IEP team met, discussed the IEE report, and decided that the instructional recommendations could be implemented through the Section 504 accommodations and homebound services rather than an IEP. On June 6, the parents filed for an IDEA due process hearing. On April 14 (of S.T.'s grade 11), the hearing officer ruled that S.T. was eligible under the IDEA based on CFS but not dysgraphia. The parties appealed.

Focusing on the second prong for eligibility, the district argued that S.T. only needed accommodations, not special education.	Rejecting this claim, the court agreed with the hearing officer that the district's reduction of instructional time and adjustment of its implementation to accommodate S.T.'s severe CFS amounted to adaptation of the delivery of instruction, per the definition of "specially designed instruction" in the IDEA regulations.
Although this decision also had a reasonable-time Child Find issue, its ruling for the boundaries between special education and responsive general education, including Section 504, is a reminder of this inevitably gray rather than black-and-white area of law.	

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<tr><td colspan="2">D was a fourth grader with an IEP in a public elementary school in Massachusetts. According to his parents, other students in his mainstreamed classroom, including T, regularly bullied him. At times his behavior became dysregulated, most recently causing the classroom to be evacuated. On the next school day, the teacher sent an email to all the parents except Mr. & Mrs. D, reporting the incident and inviting those with questions to contact him or the principal. Later that day, the parents of classmate T emailed a letter to the school principal, the superintendent, and the school board, with copies to the classroom teacher and the parents of four other students in the same classroom who—according to a P.S. in their letter—shared their concerns. The Ts' letter asked the school officials to address the allegedly disruptive behavior by a specific, but unnamed, student in their son's class. The identified behaviors included obscene language, racist remarks, bullying other students, and endangering school property. The prompt actions they demanded included implementation of the school's code of discipline and appropriate support for the teacher. Referring to the recent classroom evacuation, they expressed support of the "least restrictive environment" but questioned its application when the other students "are REMOVED from their classroom." Upon learning of the letter and inferring that it referred to their son, Mr. and Mrs. D filed suit in state court, claiming that Mr. & Mrs. T were liable for defamation, infliction of emotional distress, and violation of D's right to FAPE under the IDEA. The Ts moved for dismissal based on Massachusetts' anti-Strategic Litigation Against Public Participation (SLAPP) statute, which protects petitions of public concern against meritless lawsuits. Approximately two thirds of states have anti-SLAPP laws. Although they vary somewhat in their scope and strength, they generally provide for expedited dismissal and shifted attorneys' fees. Under the Massachusetts statute and its subsequent case law, to obtain dismissal, the Ts needed to show that (1) their claims were based entirely on their protected petitioning activity and (2) the Ds had failed to show that their petitioning activity was "devoid of any factual support or any arguable basis in law." Finding that the T's had met these two criteria, the trial judge granted their dismissal motion. The D's filed an appeal to the state's intermediate, appellate court. On February 26, 2026, said court issued its officially published decision in Doe v. Thorell.</td></tr>
<tr><td>For criterion #1, the Ts argued that the P.S. in the letter, which reported that the Ds first communicated their concerns with other parents, did not constitute protected (i.e., public) petitioning.</td><td>The appellate court rejected this argument, concluding that the pre-mailing discussion, the mailed result, and the cc'ing to the other parents qualified for one of the five alternate categories in the anti-SLAPP law's definition of protected "petitions" per applicable case law—"any statement reasonably likely to enlist public participation in an effort to effect … consideration [by a governmental body]."</td></tr>
<tr><td>For criterion #2, the Ts argued that the Ds' lawsuit relied on hearsay and lacked information from anyone with personal knowledge of events in the classroom.</td><td>Disagreeing, the appellate court reasoned that the applicable case law did not exclude all hearsay and that the information from the teacher, the Ds' son, and the children of the other four parents were based on personal knowledge of the classroom event; thus, the Ds failed to show that the Ts' letter was frivolous.</td></tr>
<tr><td colspan="2">This case is of interest for two reasons. First, it extends educators' legal literacy to an introductory awareness of anti-SLAPP statutes and provides an example of their application in the school context. Second and more generally, it illustrates the occasional case law expression of the backlash-type perception that prevails among some parents and other individuals that is counter to the direction and protection of the IDEA and Section 504.</td></tr>
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