

Autism: A Review of the Law and Implications for Special Education

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EDL 542

November 26, 2010

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Abstract

The Federal Government passed the Education of all Handicapped Children's Act of 1975 and it has been subsequently reauthorized as the Individuals with Disability Education Act in 1990 continued to be reauthorized as IDEA 1997 and IDEA 2004 the debate has ensued about what constitutes and Free and Appropriate Education in the United States of America.

Autism is an incredibly complex disorder which affects verbal, non-verbal and societal interaction. IDEA recognized Autism as a specifically covered disability in 1990. The prevalence of Autism has been steadily increasing and now there are 60,000 diagnosed cases in New York State. This paper attempts to review eleven legal cases where Autism and the law have intersected and to discuss the legal and educational implications of those decisions.

Autism: A Review of the Law and the Implications for Special Education

In 1970 public schools in the United States educated only one in five children and certain states had laws excluding certain students including those who were blind, emotionally disturbed and mentally retarded. (History of IDEA, US Office of Special Education, 2000). Before the enactment of Public Law 94-142 in 1975 state institutions were home to at least 200,000 individuals. (History of IDEA, 2000). In 1975 Public Law 94-142 mandated that all children and adults with disabilities between the age of 3 and 21 were required to receive a free and appropriate education, an individualized education plan and an education in the least restrictive environment.

Implicit in the law were four key points to improve how children with disabilities were identified and educated, to evaluate the success of these efforts, and to provide due process protections for children and families. In addition, the law authorized financial incentives to enable states and localities to comply with Public Law 94-142 (History of IDEA, 2000)

Public Law 94-142 was later amended in 1983, 1986 and again in 1990 and was subsequently renamed as the Individuals with Disabilities Education Act (IDEA) and has been reauthorized in 1997 and again in 2004. IDEA's strong preference for educating students with disabilities in regular classes with appropriate aids and supports, is found in the statute at 20 U. S. C. §1412 (5) (B) and is implemented by the Department's regulations at 34 CFR §§300.550-300.556. (US Department of Education, 2010)

Individual with Disabilities Education Act (IDEA) which replaced the Education of the Handicapped Act (EHA, P.L. 94-142) and the law was amended in 1986 to include Public Law 99-457 which established the Individual Family Services Plan and mandated that states provides programs and services from birth that provide special services for young children with disabilities. (History of IDEA, 2000) The IFSP is developed with a coordinator for a child who is eligible under Part C of IDEA. Part C coverage is very important to children suffering from Autism as early intervention is key to the process.

In 2004 Congress reauthorized the IDEA and it was signed into law by President George Bush. The new act aligned the IDEA with the No Child Left Behind Act of 2001. Among its new requirements is that all teachers including special education teachers be highly qualified. That is they must have a bachelors degree and be certified in special education. All educational programs must be research based and states must ensure that performance goals and indicators are in place for special education students. States are required to develop alternate assessments that are the aligned with the State's challenging academic content standards and challenging student academic achievement standards. The states that have developed and implemented for alternate assessments must provide alternate assessments that measure the achievement of children with disabilities against those standards. (US Department of Education, 2007)

To enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life; to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;(US Department of Education, Section 631)

Soon after the Public 94-142 law was enacted there have been an unending series of due process proceedings to define what constitutes a Free and Appropriate Education. (IDEA, U.S.C. § 1401(9)). Congress never defined what constitutes a Free and Appropriate Education in the law. It left that definition to the courts and it has been a subject that has been fraught with due process proceedings. It is the process by which schools and parents design an individual educational plan for a student. Congress deliberately did not define FAPE because they thought that each case would be unique and that the definition of a FAPE would limit the original intent of the law. (Yell & Drasgow, 2000)

Autism is an incredibly complex disorder which affects verbal, non-verbal and societal interaction. IDEA recognized Autism as a specifically covered disability in 1990. (Seligman, 2005) Typically children with Autism are not diagnosed until after they reach 15 to 18 months. There is no scientific test for Autism either. The diagnosis is based on the recognition of behavior and characteristics of the disorder. (Seligman, 2005). Children with Autism and usually require services prior to age 3 are covered under Part C of IDEA. Under the best circumstance clinicians in early intervention programs support families and children until age three whereupon they are thrust into the Special Education System. (Feinberg & Vacca, 2000) Thus families who have children diagnosed with Autism find themselves contending with two different systems and having to deal with two differing sets of language to describe their child and his/her care. The prevalence of Autism has been steadily increasing and now there are 60,000 diagnosed cases in New York State. According to the Center for Disease Control in 2007 there are now 1 in 150 children has an Autism Spectrum Disorder. While this is probably due to better diagnostic techniques it has created a new area of intervention that is constantly being redefined by research and implications for schools, teachers and administrators is constantly being redefined by the

court systems. Add to this the societal costs for each individual diagnosed with Autism Spectrum Disorder will equal approximately 3.2 million dollars. (National Autism Center, 2009) How much of that will fall to individual school districts is not known at this time. The New York State Department of Health Early Intervention Program served 3,922 infants and toddlers diagnosed with Autism Spectrum Disorder and that is double what they served five years ago. The New York State Department of Health believes that they are reaching nearly 70% of the children affected with ASD but that leaves a large number unreported who are not receiving services under age three unless the parents report it. (New York State Interagency Task Force on Autism, 2010). In any case school systems will likely receive more students that are on the spectrum along with more requests for services for those children and how will they provide a free and appropriate public education in the least restrictive environment will be a matter of much debate. Evidence indicates that the earlier children are diagnosed with ASD and the earlier intervention is begun the better the prognosis for minimizing the symptoms and the impact on their lives. (New York State Interagency Task Force on Autism, 2010)

Due to the fact that Autism is a pervasive developmental disorder services frequently need to be provided in an extended school year format (ESY) which has been debated in the courts too. There can be no doubt that Autism and ASD in general will continue to increase the strain on school systems to provide a free and appropriate education for students in their care and jurisdiction. The State of New York's leadership in this area will help to lessen the impact on local school districts but that will still not preclude those districts and their administrative teams from being able to provide Individual Education Plans that provide a Free and Appropriate Public Education in the least restrictive environment for those students affected by Autism Spectrum Disorder.

Underlying most of the casework surrounding Least Restrictive Environment (LRE) and free and appropriate education (FAPE) that impacts heavily on the education of children with Autism is the landmark case of *Rowley v. Board of Education* (Board of Education of the Hendrick Hudson Central School District, Westchester County, et al., Petitioners v. Amy Rowley, 1982). Amy Rowley was a young lady who was deaf and prior to her arrival at Furnace Woods Elementary School which is part of the Hendrick Hudson School District the staff prepared. Members of the school administration attended classes for sign language interpretation and a teletype machine was placed in the school office so the school could communicate with Amy's parents who were also deaf. As required by law an IEP was created and Amy was originally placed in kindergarten and outfitted with an FM radio hearing aid and a sign language interpreter. After two weeks the interpreter reported that Amy really did not need the services of an interpreter. The administrators also concluded that Amy did not need the services of the interpreter in her first grade classroom after consultation with the sign language interpreter and the school's Committee on Special Education. However, her parents insisted that Amy receive an interpreter. Their request was denied. Her parents then requested an impartial hearing and the impartial hearing officer reached the same conclusion as the school district. The examiners decision was reaffirmed by the Commissioner of Education for the State of New York. (*Board of Education of Hendrick Hudson School District v. Amy Rowley, 1982*) Amy's parents continued to object and thus the case made it the United States Supreme Court. The implications of the Rowley case continue to have implications today. The original legislation of 20 U. S. C. § 1401 specified only that schools and institutions must provide a free and appropriate education but failed to add any definition to what was written. In the Supreme Court decision the justices stated that the Act (P.L. 94-142) represents an ambitious federal effort to promote the education

of handicapped children. (Board of Education of the Hendrick Hudson Central School District, Westchester County, et al., Petitioners v. Amy Rowley, 1982) The court however upheld the decision of the administrators and the school district of Hendrick Hudson. In making it's determination the court ruled: " Special education, as referred to in this definition, means "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." § 1401(16)". (Board of Education of the Hendrick Hudson Central School District, Westchester County, et al., Petitioners v. Amy Rowley, 1982). Amy's parents insistence that she receive a sign language interpreter was an effort on their part to ensure that she received the best possible instruction. However, the court ruled that her education as provided by the Furnace Woods Elementary School met the spirit of the law. In the Rowley case the Supreme Court set a principle of deference to the local school district's expertise and teaching methodology. (Seligman, 2005). Though Rowley dealt with a young lady who was deaf, the case set a legal precedent for what defined a free and appropriate public education and further it set a precedent for a time that school administration knew best how to provide that education.

Autism and Special Education Law Case Review

Amanda J. v. Clark County Sch. Dist. and Nevada Department of Education

Amanda J. a young lady born in 1991 and lived with her family and resided in the Clark County School District in Las Vegas, Nevada. She was first seen in a special clinic when she was two years old on January 18, 1994. She was evaluated by a psychologist at the special children's clinic. The psychologist found her moderately low in communication skills and adequate in socialization and motor skills. It was recommended that she be placed in the school district's

“Early Childhood Program” prior to her third birthday so that she could be evaluated for special education and to promote her language based needs. (Amanda J. v. Clark County School District, 2001) Her mother spoke with the school district authorities and reported that Amanda exhibited these classic Autism symptoms of toe walking, spinning, did not play with toys appropriately and had severe temper tantrums. (Amanda J. v. Clark County School District, 2001) In addition to that the Clark County School District team evaluating Amanda recorded that she qualified as autistic under the Childhood Autism Rating Scale. They would not however disclose their findings to Amanda’s mother and designed an IEP which attempted to address some of Amanda’s needs but without identifying her as autistic and without providing Amanda’s mother with anything more than a two page summary of their findings. She was instead classified as developmentally delayed. Subsequently Amanda and her family moved to California in late 1995. Soon after moving Amanda was placed in an interim setting in a pre-school in California. Her records were transferred from Nevada to California. After reviewing her records the pre-school in California determined that Amanda was properly placed. First Steps Pre-school in California too misidentified Amanda. (Amanda J. v. Clark County School District, 2001) That same day Amanda’s uncle a pediatrician recommended the Amanda be evaluated by the staff at the University of California at Davis because of characteristics denoting autism. Amanda was diagnosed as autistic for the first time in early January 1996 and her mother consented to a second opinion which had an identical determination. One day prior to the results of the second opinion Amanda’s mother had her evaluated by the American River Speech and Hearing Associates who diagnosed her with a severe speech and hearing delay. She began a program of six months of intensive speech therapy. American River did not diagnose Amanda as autistic either. On April 16, 1996 Amanda’s parents requested an IEP review and among the rest of the

finding saw for the first time that Clark County Nevada had determined their daughter was severely autistic one year prior and had not disclosed that to her parents. On April 24, 1996 Amanda was evaluated by Dr. Byrna Siegel. Dr. Siegel confirmed that Amanda was severely autistic and recommended special preschool classes focusing on her language delays. On July 1, 1996 began funding Amanda's home intervention program. Soon after that Amanda's parents filed for a due process hearing in Nevada. (Amanda J. v. Clark County School District, 2001)

One of the implications here and fundamental to the procedural safeguards in IDEA 2004 is to ensure that the parent is included in the process of developing the IEP. 20 U.S.C. § 1415(b)(1)(A). "Parents have the right to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child." 20 U.S.C. § 1415(b)(1)(E). Of equal importance the court decided that Amanda had the right to more than "Meaningful access to public education rather than to guarantee any particular outcome." (Board of Education of the Hendrick Hudson Central School District, Westchester County, et al., *Petitioners v. Amy Rowley*, 1982)

On July 1, 1996, Alta Regional Center began funding Amanda's home intervention program. On October 17, 1996, another IEP meeting was held in California when Amanda's parents unilaterally decided to remove Amanda from the early intervention program so that she could visit a kindergarten class in another school district. A December 9, 1996 psychological report indicated that Amanda was progressing well in her academic skills, but still required considerable support from her teachers. On June 4, 1997, the IEP team met again and decided that Amanda should be placed in a regular kindergarten class, with additional individual speech therapy. (Amanda J. v. Clark County School District, 2001)

Amanda's parents requested a due process hearing in Nevada on October 24, 1997, to

resolve whether Amanda had been correctly identified and whether she had received a FAPE. A due process hearing was held March 30-31, 1998.

The Hearing Officer concluded that Amanda had been misidentified as developmentally delayed and had therefore been denied a FAPE. On June 28, 1998, the State Review Officer reversed, overturning the credibility determinations of the hearing officer, concluding that Amanda's parents had been informed of the tests suggesting a diagnosis of autism. The SRO did not reach the procedural violations found by the hearing officer. Amanda's family challenged the SRO's decisions in federal court. Construing this case as an appeal from an adverse administrative decision, the district court deferred to the factual and legal conclusions of the SRO and found that Amanda had neither been misdiagnosed nor denied a FAPE. It, like the SRO, did not address the procedural violations found by the hearing officer. Amanda timely appealed.

(Amanda J. v. Clark County School District, 2001)

Zachary Deal v. Ooltewah Elementary School

In 1997 when Zachary Deal was three years old the school system and Zachary's parents worked together to develop an individual education plan (IEP) for Zachary which was his first. Zachary attended a pre-school comprehensive development class at Ooltewah Elementary School. While Zachary was attending Ooltewah Elementary his parents began teaching him at home using a program developed by the Center for Autism and Related Disorders (CARD). The program was based on the ABA program developed by Dr. Ivar Lovaas from the University of California at Los Angeles. The CARD program consists of "one-to-one" behavioral analysis and relies heavily on structured teaching and comprehensive data collection and analysis. At the end of the school year in May 1998, the IEP team met to consider and extended school year (ESY) for Zachary. Zachary's parents were sure that he was making exceptional progress with the

CARD program they had been using in their home which they were funding. The Deal's requested that the school district fund a forty-hour per week program that would be in their home for the extended school year so that Zachary could continue to make progress as well as provide year round speech therapy. The school system refused to fund the parents program and refused to provide the parents with data on the efficacy of the school's approach to teaching autistic children. Instead the parties agreed to three forty-five minute speech therapy sessions per week in an extended school year setting.

In October 1998 the IEP committee met again to determine Zachary's 1998-1999 IEP which was a 95 page document. The IEP provided thirty-five hours per week of special education instruction with many explicit goals. Zachary was to receive related services including speech therapy and physical therapy. The Deal's filed a 'minority report' requesting that the school fund their in-home applied behavioral analysis program (ABA). The school convened IEP meetings in November 1998, December 1998, January 1999, February 1999 and March 1999 to discuss his progress and the Deal's concerns. Zachary only attended the school provided program 16% of the time. In May 1999 the Deals requested that a 43 hour per week ESY placement which would be one-on-one ABA (Lovaas Institute, 2005) and five hours of speech. The school could not document any regression that Zachary would suffer in his skills without the ESY and so refused to provide any ESY Services.

The IEP team met twice in August 1999 and to develop an IEP for Zachary for the 1999-2000 school year. The school's program roughly paralleled the services that the Deal's sought but in their own "tailor-made" ABA program and not the actual ABA program with trained personnel. In addition the school placed Zachary in a regular kindergarten class three time per week for fifteen minutes each session. He would have lunch with a regular kindergarten class

and his time with kindergarten class would increase as he showed signs of tolerating it. The school's proposal also included speech and language therapy. In September 1999 the Deal's enrolled Zachary at a private pre-school that they paid for themselves. Zachary attended the school for three hours a day for two days per week and had a personal aide that the Deal's paid for. On September 7, 1999 the Deal's informed the school that they rejected the IEP developed for Zachary and that they wanted him to spend more time in a regular education class and they wanted the school to pay for the CARD program that they were conducting in their home. (Deal v. Hamilton County Board of Education, 1997) On September 16, 1999 the Deal's requested a due process hearing. In August 2000 an IEP was developed for Zachary for the 2000-2001 school year and it was nearly identical to the previous year. The school would place him in a regular education classroom in Westview Elementary School. He would receive related services of speech therapy and occupational therapy. The Deal's once again refused the IEP and continued to insist that the school system pay for their private ABA program for Zachary.

The Administrative Law Judge hearing which the Deal's had requested on September 16, 1999 began on March 15, 2000 and concluded on February 13, 2001. It included twenty-seven days of testimony and included twenty, fact and expert witnesses. The ALJ reviewed tens of thousands of exhibits and personally observed Zachary in a number of settings. (Zachary Deal v. Hamilton County Board of Education, 1997)

The school system violated the procedural requirement of IDEA by refusing to consider the "Lovaas Style ABA." (Lovaas Institute, 2005) The school system also violated IDEA by refusing to have regular education teacher attend IEP meetings. These two procedural violations in themselves constituted the denial of a free and appropriate public education. The School system substantively violated IDEA by refusing to provide a proven or even describable method

of educating autistic children. The judge also decided that the school systems failure to offer Zachary a “Lovaas style” program violated Zachary's right to a FAPE and his parent were to be reimbursed for the cost of that thirty hour per week program. (Zachary Deal v. Hamilton County Board of Education, 2004)

The implications from Deal v. Hamilton County Board of Education is that it demonstrated a new standard not found in the Supreme Court's decision in Rowley v. Board of Education and that deference was not paid to the local school administration and that is primarily due to the numerous incidences of a violation of the procedural safeguards of IDEA by the local school district. Hamilton County acted out of self interest and ignorance and it cost them dearly.

The evidence reveals that the School System, and its representatives, had pre-decided not to offer Zachary intensive ABA services regardless of any evidence concerning Zachary’s individual needs and the effectiveness of his private program. This predetermination amounted to a procedural violation of the IDEA. Because it effectively deprived Zachary’s parents of meaningful participation in the IEP process, the predetermination caused substantive harm and therefore deprived Zachary of a FAPE.”(Deal v. Hamilton County Board of Education, 1997)

G. v. Fort Bragg Dependent Schools

The student in this case simply named “G” is the dependent child of an United States Air Force Sergeant stationed at Pope Air Force Base in North Carolina. He was attending the Fort Bragg Dependent School System. He was born in 1992 and first enrolled at Fort Bragg Dependent Schools in 1994-1995 when he was approximately two and half years old. He was correctly identified by the school as a child with autism and was considered disabled under IDEA. His first IEP was created when he was still on an Individual Family Service Plan (IFSP).

At the end of the 1995-1996 school year G's mother became concerned that he did not seem to be making any progress in school. She attended a conference on the Lovaas Method. Following some research on her own she determined that her son would benefit from the Lovaas method (G. v. Fort Bragg Dependent Schools, 2003). G's mother spoke to the teachers and school district of Fort Bragg Dependent Schools and told them that she thought the Lovaas (Lovaas Institute, 2005) methodology held great promise for her son. In May 1996 when a new IEP was being developed for G and it contained none of her recommendations or requests and instead looked very similar to the IEP of 1995-1996. The proposed IEP contained no Lovaas techniques. G's mother rejected the IEP and she and her husband did some fundraising and provided a Lovaas method for G in their home at a cost of \$37,000 per year. In October of 1996 the Lovaas consultant who had been working with G wrote a proposal to continue services at his home. Because of his absence from Fort Bragg Dependent School system he was administratively withdrawn from the school by school authorities. In November 1996 G's parents wrote a letter to the school requesting \$19,000 in funding to continue the Lovaas method in their home. No response came from the school and G continued to make progress so that in the Summer of 1997 when an IEP was being drafted for the 1997-1998 school year which contained elements of the Lovaas methodology, but not the actual Lovaas method with a certified trainer/teacher. G's mother again rejected the IEP and on May 16, 1997 requested a due process hearing in a letter to the school. In the letter she alleged that Fort Bragg Dependent School System had failed to provide G a free and appropriate public education. (G. v. Fort Bragg Dependent Schools, 2003)

After the due process hearing the impartial hearing officer concluded the Fort Bragg Dependent School System had failed to provide G an free and appropriate public education for the 1994-1995, 1995-1996 and 1996-1997 under IDEA and ordered the school district to

reimburse G's parents for all they had spent since they began to pay for the Lovaas method in their home in the summer of 1996. A sum the IHO determined to be \$30,000 (G. v. Fort Bragg Dependent Schools, 2003). The IHO also stipulated that the school had to fund the Lovaas method in G's home through the end of the 1999 school year. The Fort Bragg Dependent School system appealed the decision and won some concessions. The appeal board found that the impartial hearing officer had erred in granting relief to G's parents for the year's 1994-1996 because they had raised no issue with the IEP at that time and the appeal also reduced the monetary value of the settlement of the IEP in 1997 to \$11,117.06 due to the fact that G's parents did not raise their claim on the IEP until November 1996. (G. v. Fort Bragg Dependent Schools, 2003)

Neither the Appeal Board nor the district court addressed FBDS's (Fort Bragg Dependent School District's) ability to implement the April 1997 IEP as proposed (that is, absent a Lovaas-certified consultant's involvement) or provided an independent assessment of the educational benefit G would receive from that IEP. This is thus an unusual case in that, even after the conclusion of the administrative process and a trial of the issues in the district court, none of the decisions below reflect a thorough assessment of the evidence under the proper standard — that is, whether the April 1997 IEP, as proposed, was “reasonably calculated to provide educational benefit” to G. (G. v. Fort Bragg Dependent Schools, 2003)

In G. v. Fort Bragg Dependent Schools the Court addressed the rights of children who attend Department of Defense schools; FAPE & educational benefit; procedural safeguards and notice by parents; methodology issues; reimbursement for a home-based Lovaas program; compensatory education for failure to provide FAPE; prevailing party status & attorneys fees. (Wright, 2010)

L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education

K.B., is a student placed in a special school called Park View where there are many disabled students. Parents L.B. And J.B., object and state their daughter would be better suited in another school which is private but offers less restrictive environment. Nebo offers to increase the ratio of typical children to address the appellants concerns. But the parents persist in their desire to have their daughter included in mainstream private pre-school where she will be with regular students. To do that however, the young lady requires more intensive ABA therapy and a personal aide. Both the parents and the school, hereafter referred to as Nebo agree that K.B. can benefit from the ABA method but they offer a more restrictive environment at the Park View School and 15 hours per week of the ABA technique along with speech and physical therapy. The parents insist that all of their daughters IEP goals cannot be met in such a situation and continue her placement in the private school along with 40 hours per week of the ABA methodology and a personal aide. The parents eventually requested an administrative due process hearing to recover the cost of their investment in the ABA therapy and the private school. Hearing officers preside over due process hearings and there appeared to be a conflict of interest between the hearing officer and his wife's employer. The record showed that there appeared to be prejudice on the part of hearing officers toward school districts at that time between the years 1998 and 2000. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004) The hearing officer for this particular session is Dr. Steven B.

Hirase who is incidentally related to a woman who works for the school district in which the Park View School is. The hearing officer insists that this is not reason to recuse himself. The parents moved to disqualify Dr. Hirase but he overruled them. Dr. Hirase concluded that the IEP for K.B., their daughter for the years 1998-1999 and 1999-2000 is a free and appropriate public education in the least restrictive environment. The parents then filed a motion in United States District Court for the District of Utah seeking review of the decision and alleging, inter-alia, both procedural and substantive violations of IDEA. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004)

The substantive IDEA claim was premised on the theory that K.B. was denied a FAPE in a least restrictive environment. The procedural IDEA claim was premised on the theory that K.B. was denied an impartial hearing because Hirase was biased. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004)

The district court ruled on behalf of Mt. Nebo, it also ruled the Dr. Hirase was not biased. The case was remanded to the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit after hearing all the arguments. The IDEA sets up an unique standard for a federal court's review of the administrative due process hearing. 20 U.S.C. § 1415(i)(2). The Federal Court essentially does not accept the hearing officers findings as prima facie and essentially re-tries the case and in this case overturned some of the ruling of the district court. The Tenth Circuit concurred with the lower court that the hearing officer met the minimum qualifications of an impartial hearing officer and so found for the school district and the circuit court. However, the Tenth Circuit took a much different look at K.B.'s least restrictive environment which they decided the following.

An abundance of the evidence shows that the academic benefits which K.B. derived from the mainstream classroom are greater than those she would have received in Park View's classroom. Despite the hearing officer's contrary conclusion, the evidence shows that K.B. was succeeding in the mainstream classroom with the assistance of her aide and intensive ABA program. The record shows that K.B. was the most academically advanced child in her mainstream classroom. On the other hand, although Park View's teacher adjusted her teaching to cater to various skill levels, Park View's students functioned at a considerably lower level than K.B. Thus, K.B. benefitted academically much more from her regular classroom than she would have from Park View's hybrid classroom. This factor strongly favors a conclusion that Park View was not the least restrictive environment for K.B. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004)

Likewise, the non-academic benefits of K.B.'s mainstream classroom outweigh the non-academic benefits she could have received at Park View. K.B.'s primary needs involved improving her social skills. A preponderance of the evidence shows that the mainstream classroom provided K.B. With appropriate role models, had a more balanced gender ratio, and was generally better suited to meet K.B.'s behavioral and social needs than was Park View's hybrid classroom. Thus, this factor strongly weighs in favor of a conclusion that Park View was not K.B.'s least restrictive environment. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004)

Finally, although she had some behavioral problems such as tantruming, K.B. Was not disruptive in the regular classroom. Thus, this factor also weighs in favor of a conclusion that Park View was not the LRE for K.B. Because a preponderance of the evidence shows

that the LRE factors weigh in Appellants' favor, this court concludes that K.B. Was denied an education in a least restrictive environment.

Nebo thereby violated the IDEA and the district court improperly granted judgment to Nebo. Instead, the court should have granted judgment to Appellants on the ground that Nebo violated the LRE requirement of IDEA. K.B.'s parents are entitled to reimbursement for the reasonable cost of the services provided to K.B. In support of her mainstream preschool education. (L.B., and J.B., on behalf of K.B., Plaintiffs-Appellants, v. Nebo School District; Nebo Board of Education, 2004)

Asbury v. Special School District of St. Louis

Daniel Asbury, was a six year old with autism. Settlement for the Special School District of St. Louis. St. Louis had no early intervention program for children with autism and instead placed them in a Special School District. After two years in this program his parents Michael and Kathryn Asbury did their own research and determined that only way Daniel could recover from autism was through an ABA program like they had researched. They concluded that the St. Louis Special School district was incapable of educating their son and they sued the school district for research and determined that the only way for Daniel to make educational progress to use the program they had learned about from Dr. Ivar Lovaas. (Lovaas Institue, 2005) Using their own funds they set up a program in their home to educate Daniel using this methodology.

They created an in-home school and community integration program based on the research of Dr. Lovaas. (Lovaas Institue, 2005) The Asbury's provided Daniel, special education at home and they subsequently sued the St. Louis Special School District and received \$133,000 award to cover the cost of educating Daniel in their home. Their suit named both Section 504 and

IDEA and St. Louis Special School district denied any wrong doing in the matter but settled the monetary reward. (Daniel Asbury v. St. Louis Special School District, 1998)

Mark Hartmann v. Loudoun County School Board

Mark Hartman was born in Illinois and spent his preschool years in various programs there for disabled children. He spent his kindergarten year in school half time in a self-contained classroom for autistic children and half time in a regular classroom in Butterfield Elementary in Lombard, Illinois. (Mark Hartman v. Loudoun County Board of Education, 1998) In first grade Mark received speech and occupational therapy but otherwise he was included in a regular education classroom. At the end of his first grade year his family moved to Loudoun County, Virginia where Mark was enrolled in Ashburn Elementary School. Based on Mark's IEP from Illinois he was placed in a regular education classroom in Ashburn Elementary. Loudoun County sought to fully include Mark by hiring a full-time aide to assist him and his teacher took Autism training. They also put him in a smaller class with more independent children. Both Mark's teacher, Diane Johnson and her aide received extensive autism training. Both Johnson and Mark's aide received training in facilitate communication a special procedure specifically to address autistic children. Mary Kearney, Loudoun County, Director of Special Education. Kearney provide special autism training for the Ashburn Elementary staff to facilitate the inclusion process. Mark's curriculum was continually modified to ensure that it met his unique needs.

Mark engaged in daily episodes of loud screeching, biting, hitting and removing his clothing (Mark Hartman v. Loudoun County Board of Education, 1998) and at the end of one year his IEP team met again and determined that he was not making satisfactory progress. In May 1994, Mark's IEP team decided to place Mark in a special class at Leesburg Elementary that was specifically designed for autistic children. Leesburg was a regular elementary school that included the autistic classroom and it was setup that way to facilitate interaction between the autism class and regular education students. Under the IEP Mark was only to be in the special classroom for academic instruction and speech therapy. He was to join his regular education classroom for art, music, physical education, library and recess. (Mark Hartman v. Loudoun County Board of Education, 1998) The IEP stipulated that as Mark's ability to handle the regular education classroom that he would be included more and more. His parents refused to accept the IEP. The Hartmans claimed that the IEP failed to comply with the mainstreaming provision of IDEA. The county initiated a due process hearing and the results of that hearing substantiated the position that Mark was not making adequate progress in the regular education classroom. They found that Mark's behavior was disruptive and despite the best efforts of the county Mark was receiving no educational benefit. The impartial hearing officer agreed with the findings. The Hartman's challenged the hearing officers findings in federal court and eventually the district court overturned the hearing officers findings. While all these proceeding were underway Mark remained in the regular education classroom at Ashburn Elementary. The district court determined that Mark could make satisfactory progress in a regular education classroom and that the fault lie with the school in not trying hard enough to include Mark.

The IDEA embodies important principles governing the relationship between local school authorities and a reviewing district court. Although section 1415(e)(2) provides district courts

with authority to grant "appropriate" relief based on a preponderance of the evidence, 20 U.S.C. § 1415(e)(2), that section "is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." (Board of Education of Hendrick Hudson Central Sch. Dist. v. Rowley, 1982). Absent some statutory infraction, the task of education belongs to the educators who have been charged by society with that critical task.

These principles reflect the IDEA's recognition that federal courts cannot run local schools. Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment. Rather it establishes a "basic floor of opportunity" for every handicapped child. (Board of Education of Hendrick Hudson Central Sch. Dist. v. Rowley, 1982) States must provide specialized instruction and related services "sufficient to confer some educational benefit upon the handicapped child," *id.* at 200, but the Act does not require "the furnishing of every special service necessary to maximize each handicapped child's potential," *id.* at 199. (Mark Hartmann v. Loudoun County School Board, 1998)

In this same vein, the IDEA's mainstreaming provision establishes a presumption, not an inflexible federal mandate. (Mark Hartmann v. Loudoun County School Board, 1998)

Key finding in this decision is the last sentence that the IDEA's mainstreaming decision establishes a presumption not an inflexible federal mandate. In this case Mark Hartman was judged be better educated in a more restrictive environment. The IDEA encourages mainstreaming, but only to the extent that it does not prevent a child from receiving educational benefit. The evidence in this case demonstrates that Mark Hartmann was not making academic

progress in a regular education classroom despite the provision of adequate supplementary aids and services.

Jacob Winkelman v. Parma City School District

Jacob Winkelman was a six year old child with autism that had been enrolled at a private school in Parma, Ohio. The local public school of record for Jacob developed an IEP which recommended placement in the Pleasant Valley Elementary School which is part of the Parma Central School District. Jacob's parents wanted him to remain in the private school setting they had arranged. The parents disagreed with this placement alleging that it did not provide their son with a free and appropriate public education as guaranteed under IDEA. The parents sought review and also sought to provide their own legal representation. The hearing officer and the district court ruled that they could not be their own counsel. They did obtain some legal assistance, but they essentially sought to represent themselves. Their complain sought administrative relief for the IEP and remuneration for the expense of educating Jacob in a private school. (Winkelman ex rel. Winkelman v. Parma City School Dist., 127 S. Ct. 1994 - Supreme Court 2007). The district court found for the school and stipulating that Jacob had received a FAPE. His parents appealed the decision and acted on their own behalf. The court of appeals ruled that they could must employ legal counsel. They also stipulated that the rights of the student under IDEA did not apply to the parents of that student.

The Supreme Court ruled in 2007 that the Winkleman's did in fact have the right to represent themselves and that a FAPE had been denied because the Parma Central School District IEP team had not allowed the parents to be fully a part of the process by not designing an IEP that was agreeable to all parties.

The Court of Appeals erred when it dismissed the Winkelmanns' appeal for lack of counsel. Parents enjoy rights under IDEA; and they are, as a result, entitled to prosecute IDEA claims on their own behalf. The decision by Congress to grant parents these rights was consistent with the purpose of IDEA and fully in accord with our social and legal traditions. It is beyond dispute that the relationship between a parent and child is sufficient to support a legally cognizable interest in the education of one's child; and, what is more, Congress has found that "the education of children with disabilities can be made more effective by ... strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home." § 1400(c)(5) (*Winkelman ex rel. Winkelman v. Parma City School Dist.*, 127 S. Ct. 1994 - Supreme Court 2007).

N.B. and C.B. v. Hellgate Elementary School District

C.B. came to Hellgate Elementary in Missoula, Montana in September 2003 from Sparta Township in New Jersey. His parents alleged C.B. did not receive a free and appropriate education as stipulated under IDEA 2004. In January 2003 C.B. was examined by a physician, Dr. Arnold Gold in New Jersey who specified that C.B. appeared to be suffering developmental delays associated with autism. In June 2003 the Sparta School District designed an IEP for C.B. When his family moved to Missoula, Montana in the later summer of 2003 his parents enrolled him in Hellgate Elementary School and hand delivered his IEP and medical evaluation to the special education director. Hellgate adopted the IEP designed by Sparta in August 2003. When Hellgate observed that C.B. was not benefitting from the program. His speech pathologist at

Hellgate believed that the speech therapy was causing C.B. to shutdown. In September of 2003 his parents enrolled C.B. in the Co-Teach program which is designed for children suffering from Autism. In September 2003, Hellgate convened the IEP committee to re-evaluate C.B.'s IEP. The IEP team had read Dr. Gold's evaluation but did not discuss it at the meeting. In addition to that they stipulated that they would develop a diagnostic IEP for C.B. and that while they evaluated this course of action C.B. and they reduced his services. When the committee was reconvened to re-write C.B.'s IEP it was decided to replace the diagnostic IEP. During the meeting C.B.'s parents suggested that C.B. might be autistic. The Hellgate IEP committee referred C.B.'s parents to the Missoula Child Developmental Center autism testing clinic which returned a diagnosis of autism.

In March 2004 the special education committee reconvened and increased C.B.'s pre-school instruction time from 5 to 12.5 hours by May 24, 2004. In May 2004 C.B.'s IEP team reconvened to develop C.B.'s IEP for the 2004-2005 school year. C.B.'s parents wanted an extended school year placement for C.B. and the Hellgate IEP committee refused. C.B.'s parents initiated a due process hearing. The hearing officer found for the school district and denied N.B.'s claim for relief. The appellants filed for relief in the district court and the district court upheld the hearing officers finding. The parents filed an appeal in District court. Because of a stipulation in IDEA the case must be hear "de novo" and this time the district court determined that a FAPE had been denied and it stemmed from substantive denial of procedural safeguards. Hellgate did not have anybody qualified to evaluate C.B. for autism but it erred by referring the parents to the CDC in Missoula. The school should have arranged for the test and paid for the test.

Similar to the circumstances in Amanda J., without evaluative information that C.B. has autism spectrum disorder, it was not possible for the IEP team to develop a plan reasonably calculated to provide C.B. with a meaningful educational benefit throughout

the 2003-04 school year. Because of this procedural error, Appellants are entitled to the costs of the services that they incurred during the 2003-04 school year and associated legal fees. (Morelaw, 2008)

However the court did not grant the appellants claim that C.B.'s rights to an extended school year program had been violated. The court did conclude that Hellgate violated C.B.'s procedural rights under IDEA by failing to evaluate her. (N.B. and C.B. v. Hellgate Elementary School District, 2008)

Appellants contend that C.B.'s IEPs were not developed in compliance with the IDEA procedural requirements because: (1) the diagnostic IEP was not valid; and (2) Hellgate failed to meet its obligation to evaluate C.B. in all areas of suspected disability. As explained below, we are persuaded that the district court erred in determining that Hellgate complied with the procedural requirements of the IDEA. We conclude that Hellgate's failure to meet its obligation to evaluate C.B. in all areas of suspected disability, including whether he is autistic, was a procedural error that denied C.B. a FAPE. Thus, this court need not reach the question whether the diagnostic IEP was valid." (N.B. and C.B. v. Hellgate Elementary School District, 2008)

Stefan Jaynes v. Newport News School Board

Stefan Jaynes was diagnosed with autism at age two and his parents following the advice of a pediatric neurologist sought to enroll him in Paces which is a program specifically designed for autistic children. In order to gain entry to the program the Stefan and his parents must obtain a referral from a local public school system. (Stefan Jaynes v. Newport News School Board, 2001) The parents contact the Newport News Public Schools. Mrs. Jaynes signed a consent to

testing form but was never advised of the procedural safeguard contained in IDEA. In February 1994 an IEP is developed for Stefan. His parents receive a notice of the IEP meeting but do not attend. Although the IEP team is aware of the pediatric neurologist recommendation for Stefan they specify a different intervention for him in PEEP which is "Program for Educating Exceptional Preschoolers." The school did not inquire about the parents' absence from the IEP meeting nor did they inform them that an IEP had been created and three months elapsed between the creation of the IEP when it was eventually implemented with two weeks remaining in the school year. In addition to that although the parents eventually signed the IEP they were not made aware of their rights to a due process hearing. The parents repeatedly contacted the school and requested for the IEP to be carried out but one was not. Newport News held a new IEP meeting in October 1995 and Stefan's parents did attend that meeting, but this new IEP did not contain many of the items from the previous IEP and some of services Stefan was to receive had been reduced.

Although Mrs. Jaynes signed the October 1995 IEP the school district later changed the IEP without informing her. The Jaynes were dissatisfied with the PEEP program and determined in January 1996 that Stefan was not making progress. They withdrew him from the public school and enrolled him in a private Lovaas Applied Behavioral Analysis program. In late 1996 the parents learn that they have the right to appeal IEP placements in due process hearings and they request such a hearing alleging that Newport News committed denied a FAPE both substantively and procedurally. (*Stefan Jaynes v. Newport News School Board*, 2001).

The local hearing officer found that Newport failed to follow the procedures outlined in IDEA and because they had pursued a pattern of behavior not in keeping with the substance of IDEA he ordered the district to pay the parent \$117,979.78 for expenses they had incurred

educating their son. Newport appealed and the SRO reduced the award. The parents sought reinstatement of the full amount in the district court. The district court reinstated the award but limited the amount only as far back as July 1, 1995 which is in keeping with the Virginia Statute of Limitations.

TP ex rel SP v. Mamaroneck Union Free School District, 554 F. 3d 247 – Court of Appeals, 2nd Circuit

S.P. is an autistic student educated in the Mamaroneck Union Free School District. The parents objected to the school's provision of special education services for their son which they said violated his right to a free and appropriate public education. S.P.'s parents believed that he need more service than were stipulated in his IEP. They sought an administrative hearing to obtain reimbursement for expenses they had incurred in the education of their son and which they deemed necessary. The impartial hearing officer ruled against as did the New York State SRO. S.P.'s parents then pursued their claim in the district court for the Southern District of New York. The district court held that Mamaroneck had substantively and procedurally violated IDEA and awarded them reimbursement along with attorney fees and costs.

The parents objected to the IEP on the ground that it was insufficient to provide a free appropriate public education to S.P. They therefore supplemented the IEP with at-home services, including 25 hours of ABA therapy and five hours of individual speech therapy per week, and requested an administrative hearing to obtain reimbursement from Mamaroneck for the cost of these services. (P ex rel SP v. Mamaroneck Union Free School District, 554 F. 3d 247 - Court of Appeals, 2nd Circuit 2009)

Independent School Dist. v. Minnesota. Department of Education

An interesting and recent case involves 5th grade student who wanted to be able to play on the volleyball team at Independent School District. The school held that since volleyball is an after-school activity that they were in no way liable to include supplementary aids and services on the student's IEP. The parents filed a complaint with the Minnesota Department of Education. (Independent School District, No. 12 v. Minnesota Department of Education, 2010). The Minnesota Supreme Court over-ruled the school and stated that the young lady's rights under IDEA 2004 had been violated and that there was no language in IDEA that did not include the after school activities as part of a free and appropriate public education.

The Minnesota Supreme Court turned to the IDEA to determine if a limit was placed on the nature of after-school activities and no such limit exists. They specifically looked at three IDEA regulations: 34 C.F.R. §§ 300.320, 300.107, and 300.117 (2010).

The first regulation, section 300.320, was promulgated pursuant to 20 U.S.C. § 1414(d)(1)(A), and defines the required contents of an IEP. Nearly verbatim to its statutory counterpart, section 300.320 states that an IEP must include: (4) [a] statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child . . . (ii) [t]o be involved in and make progress in the general education curriculum . . . and to participate in extracurricular and other nonacademic activities.

The second regulation, section 300.107 includes the following language (b) Nonacademic and extracurricular services and activities may include counseling services, athletics,

transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals and services for such participation. (Independent School District, No. 12 v. Minnesota Department of Education, 2010)

The third regulation also does not limit the activities of the child. Section 300.117 states: In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (Independent School District, No. 12 v. Minnesota Department of Education, 2010)

Implications for Education

In all the cases discussed in this paper it is easy to see that the IDEA and its interpretation continues to evolve. IDEA can be compromised in two ways either statutorily or procedurally. Add to that the new regulations contained in federal law No Child Left Behind (NCLB) adds another layer of complexity to an incredibly nuanced legal landscape. In contrast to the substantive provisions of IDEA, the statute sets out a highly detailed set of processes for evaluation, IEP meetings, and for resolution of disputes over a child's IEP. (Seligman, 2005) From the Supreme Court's conservative interpretation of what constituted a free and appropriate education in 1982 (School Board of Hendrick Hudson Central School District v. Amy Rowley, 1982). In Rowley the court left the power to decide what was appropriate to the local school

administration. Subsequent cases and especially those discussed in this paper have apparently overturned that particular interpretation of the law.

In contrast to FAPE the Supreme Court has yet to rule on what constitutes a least restrictive environment (LRE). (Seligman, 2005) By the time *Amanda J. v. Clark County School District* is decided the court sides with parents who seek a more prescriptive program in Lovaas rather than opting for a school created program that attempts to mirror Lovaas. In some fashion the courts are moving actually promoting a more restrictive environment at least with respect to Autism cases by allowing parents to educate their children in extended school day and extended school year programs in their homes. There is an implication in some of this that a private school setting as long as it provides a more prescriptive ABA or Lovaas style program is preferable to a fully included setting in a public school. With the exception of *Hartman* the appellants all won their cases by simple persistence. That is encouraging for students and parents who seek relief under IDEA but the process itself can be debilitating.

Zachary Deal v. Hamilton County Department of Education is a tremendous example of a educational agency which refused to admit and accept that ABA and Lovaas have a long track record of success. A 27 day court battle must have cost them a great deal of money, time and incredible ill will. In the end the judge determined that Hamilton County was merely trying to save money. (Mayerson, 2010). In 1999 the Surgeon General of the United States said that Lovaas-ABA represented the best possible solution for children with Autism. (Mayerson, 2010)

The city of St. Louis and the Special School District was an interesting case of an entity that had no plan to include students with Autism and had placed them in a restrictive environment. Enter the parents of Daniel Asbury who research Lovaas and ABA and institute a program in their home for their son Daniel and then seek due process from the Special School

District and settle for \$100,000 for the Lovaas/ABA program and \$33,000 for legal fees. Of particular interest in this case is that Lovaas was being used in other states successfully and with a proven record of success. The State Education Department of Missouri failed to notify parents that Lovaas therapy was available and implied in that position is incompetence and apparent indifference to the rights of disabled children. It is difficult to imagine that such a case could happen at this point in time.

It is enlightening to see that in Winkelman's case parents are actually able to act in their own behalf although it would seem prudent to employ good counsel. It is worth noting too that in nearly all cases the school district's lost because they neglected to follow the procedural safeguards as spelled out in IDEA. In some cases it was apparent that some schools did this with malice and others were simply due to complexity of the law and/or the incompetence of the school administration. In *Stefan Haynes v. Newport News* there is ample evidence procedural violations that were apparently a series of missteps by the school district. In other cases like *Amanda J., G v. Fort Bragg Dependent School District* and *Deal v. Hamilton County* there seemed to have been a willingness on the part of school districts to believe that they knew best how to provide a free and appropriate education to all of their students. *Amanda J., Deal v. Hamilton County* and *G v. Fort Bragg* were all cases that were rife with procedural violations which cost those school districts in court. The IDEA has very specific procedures which must be followed. Public school district's cannot afford to take lightly the legal responsibilities which include both knowledge of the statutes and adherence to the procedural safeguards spelled out in the law.

The case of *N.B. and C.B. v. Hellgate Elementary School District* was yet another case similar to *Amanda J.* where the school district chose to ignore suspected Autism and paid a price.

If a student moves into a district from another state or another area and there are any indications in that student's record that they were tested for Autism then it behooves the local school district to treat such a case as possible autism.

The Independent School District v. Minnesota Department of Education is a very interesting case especially since it was decided in October 2010. It clearly demonstrates that a school district must be aware of the statutory rights of students with a disability. In this case it seems that the school district merely assumed that since volleyball is an extracurricular activity that it was not necessary to include it in the IEP. It is obvious from reading the record of the court that the court followed the letter of the law in IDEA.

The Regulations of the Commissioner of Education in New York State are very specific regarding the education of children with Autism and ASD disorders.

Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined in paragraph (4) of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied. (New York State Education Department, 2009)

The Regulations of the Commissioner of Education (2009) in New York State also spell out exactly how a student with Autism is to be educated in New York State in Section 200.13;

“To the maximum extent appropriate, instructional provisions shall be instituted for eventual inclusion of students with autism into resource room programs for students with combined disabilities or placement in a regular classroom.” (p. 156) On the same page of the Regulations of the Commissioner of Education (2009) it states: “All school districts are required to furnish appropriate educational programs for students with autism from the date they become eligible for a free appropriate public education until they obtain a high school diploma, or until the end of the school year in which they attain their 21st birthday, whichever occurs first.” (p. 156)

In *TP ex rel SP v. Mamaroneck Union Free School District* the parents were seeking what seems to be spelled out in the Regulations of the Commissioner of Education in New York State. “All school districts are required to furnish appropriate educational programs for students with autism.” (New York State Education Department, 2009) . The school district's program was apparently unsatisfactory to the court and the way they interpreted IDEA. Although *Rowley* is still a reference point in determining a FAPE the courts appear to have become much more liberal in their interpretation of special education and how it is to meet the unique needs of students. The courts no longer defer to the local school district's expertise.

Implications for schools now include the much stricter statutory provisions of IDEA 2004 and one of its central principles that federal funds will only support educational procedures and strategies that are supported by scientifically based research. Therefore it will be nearly impossible for school districts to design programs that look like Lovaas or ABA and that interpretation of the law seems to be apparent in the *TP ex rel SP v. Mamaroneck*. It is becoming increasingly apparent that schools must implement research based methodologies given the prescriptive nature of the statutes in IDEA 2004. Equally important for schools is the awareness of and compliance with the procedural safeguards in IDEA.

The implications for school district who care for children with Autism are many and given its pervasive nature and the rapid growth of the incidence of Autism and Asperger Syndrome. Given that many children are diagnosed with autism as toddlers, their special educational needs begin at the earliest point of their interaction with the state's programs. Moreover, because autism is a life-long biological disorder of development the educational needs of autistic children may continue until they "age out" of IDEA's coverage at age 22 or upon graduation. In addition, today a far higher percentage of persons with autism are living at home with a parent or guardian than two decades ago, when institutionalization was common. (Seligman, 2005)

There are of course ample regulations throughout both the language of IDEA 2004 and The Regulations of the Commissioner. It behooves school districts to hire highly qualified educational administrators and to make every effort to keep up to date with the latest legal opinions and interpretations of the courts.

The New York State Early Intervention program is key to providing families with children with Autism and ASD special help. The New York State Department of Health with funding from the federal Maternal Child Health Bureau of the Health Resources and Services Administration is working with New York State's pediatricians to improve and increase screening for Autism Spectrum Disorders. (New York ACTS, 2010)

In conclusion it seems wise that school districts and special education committees would be on notice to keep an open mind and to the maximum extent possible they should avail themselves of every opportunity to learn as much as they can about IDEA and Autism.

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