



Special Education Bulletin

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Please note: Each *Special Education Bulletin* will contain a list of abbreviations commonly used in the field of special education.

LIST OF ABBREVIATIONS FOR SPECIAL EDUCATION BULLETIN

ADA	Americans with Disabilities Act
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
AH	Auditorily Handicapped
ALJ	Administrative Law Judge
CH	Communication Handicapped
CST	Child Study Team
DDD	Division of Developmental Disabilities
DHS	Department of Human Services
DYFS	Division of Youth and Family Services
ED	Emotionally Disturbed
EDT	Eligible for Day Training
EMR	Educable Mentally Retarded
FAPE	Free and Appropriate Public Education
IDEA	Individuals with Disability Education Act
IEP	Individualized Education Program
LDTC	Learning Disabilities Teacher Consultant
LRE	Least Restrictive Environment
MH	Multiply Handicapped
MR	Mentally Retarded
NI	Neurologically Impaired
OAL	Office of Administrative Law
OT	Occupational Therapy
PAC	Pupil Assistance Committee
PI	Perceptually Impaired
PT	Physical Therapy
§504	Federal Rehabilitation Act
SM	Socially Maladjusted
TMR	Trainable Mentally Retarded
VH	Visually Handicapped

Parent's Transportation Complaints Rejected

M.C., on behalf of B.S., Petitioner, v. Glassboro Board of Education, Respondent, EDS #8697-03 (April 26, 2004).

The parent of an autistic child sought to compel the board to utilize a private bus service, rather than district transportation. She complained that the bus driver failed to aggressively pursue vehicles that passed the bus when its red lights were flashing. The mother also complained that the bus driver failed to wait long enough for her child, who suffered from incontinence.

The district transportation director testified that bus drivers did attempt to get license plate numbers, but often were only able to get partial information. Moreover, unless the bus driver could identify the driver, the cases were dismissed in municipal court. Thus, the district often notified the police of the information and sought their assistance, rather than going directly to court.

The mother also complained that, because of her child's condition, the bus should wait longer. The director stated that on one occasion, the bus waited for four to five minutes, but there was no indication that the child was going to come out of the house. No occupant appeared to indicate a problem, and the bus driver proceeded, assuming the child was not attending school that day.

The director had advised the mother that, if there is a problem, the mother should contact the dispatcher, or signal the bus driver when she arrives at the house. He did note that the bus driver may have to leave to pick up other children, but could pick up the child on a return trip. Petitioner argued that the suggestions were not reasonable.

The ALJ noted that many of the mother's complaints also involved social conditions in

her neighborhood, that neither the district nor the bus driver could address. The bus driver and district had acted appropriately, and there was no violation of the child's IEP. Therefore, the matter was dismissed. The ALJ noted that the district had implemented certain recommendations during the pendency of that matter, in order to improve the situation. Although the petitioner rejected these recommendations, the district did implement them. The fact that improvements were made did not mean that the IEP was not appropriate.

Drug Dealing Not a Manifestation of Disability

S.V., on behalf of S.V., Petitioner, v. East Brunswick Township Board of Education, Respondent, EDS #2172-04 and EDS #2260-04 (consolidated) (May 5, 2004).

S.V., a male tenth grader, is classified as Other Health Impaired because of ADD, central auditory processing disorder, and Tourette's syndrome. In February 2004, the police notified school officials that S.V. had been arrested for selling marijuana to an undercover officer at a local fast food restaurant. The incident was the third one in the course of the investigation; all transactions involved a gram or less of the drug. The district suspended S.V. for nine days and his father filed a due process petition contesting the suspension. S.V. was also sent for drug testing, which was negative.

District administration determined that the suspension should continue beyond nine days. The CST met and made a manifestation determination that the conduct was not related to S.V.'s disability. The father filed another due process petition, and S.V. returned to school after nine days. The board then filed a request for emergent relief seeking to place S.V. in an interim educational setting. In early April 2004, an ALJ denied the district's request. The board then held a hearing and decided to suspend S.V. for the remainder of the year, and

place him in an alternative placement. The father filed another due process petition.

The ALJ upheld the CST's determination that the behavior was not a manifestation of the child's disability. There is a three-part test to determine if the behavior is not related to the disability: (1) the child's IEP and placement were appropriate; (2) the disability did not impair the ability to understand the impact and consequences of his behavior; and (3) the disability did not impair his ability to control the behavior. The ALJ found the test was met, stressing that S.V.'s actions in selling drugs on three separate occasions showed planned, rather than impulsive, behavior. The ALJ noted that the appropriateness of the discipline must be considered as a regular education matter before the Commissioner of Education, and therefore, that matter was assigned an EDU docket number.

Two-Year Suspension/ Expulsion for Drug Offenses Not Reasonable

M.T., on behalf of G.T., Petitioner, v. Ewing Township Board of Education, Respondent, EDS #1042-03 (May 6, 2004).

In contrast to the case above, an ALJ ordered a fifteen-year old student, G.T., readmitted after one year of a two-year suspension. In September 2003, G.T., who was classified as having a learning disability, was found at school with six bags of marijuana and a box cutter, used for cutting the drug. The CST held a manifestation hearing and determined that G.T.'s offenses were not related to his learning disability. The board suspended him for the remainder of the school year, and the entire 2004-2005 school year. He was placed on home instruction, pending an alternative placement. G.T. pled guilty to municipal court charges. A due process petition was filed.

The school psychologist testified that G.T. had made good progress as a student and had only a few minor disciplinary issues. G.T. admitted to him that he had fallen in with some problem kids. M.T., the boy's grandmother, had agreed to home instruction, but was not happy with any of the proposed alternative placements, so home tutoring had continued. The grandmother stated that only one placement had been offered which she found "depressing," and that the district had not facilitated other placements.

The principal testified that he had been notified of a "drug ring" at his school, and four students, including G.T., were involved. He recommended a two-year suspension because of the box cutter. The principal felt that G.T. should not be returned to school yet because it would send a bad message to other students. The principal acknowledged that the school did not have set guidelines for long-term suspensions and expulsions.

The ALJ noted that, if this case had arisen under the general education laws, the burden would be on the petitioner to show that the district had acted arbitrarily and capriciously. However, this case arose under the IDEA, and therefore, the burden was on the district to show, by a preponderance of the credible evidence, that the action is appropriate. Here, the student had never been a problem student. Therefore, the ALJ continued the suspension through the end of the school year, but ordered that he be readmitted at the start of the 2004-05 school year. He also ordered one hour of psychological counseling per week, for eight weeks.

Parochial School Tuition Awarded Where District Refused to Develop IEP Before Child Physically Started School in District

A.Z., on behalf of M.Z., Petitioner, v. Mahwah Township Board of Education, EDS #09972-03 (July 2, 2004).

A.Z. filed a due process petition, requesting that the district be required to pay for M.Z.'s placement at St. Paul's school, and provide him with the necessary OT and PT. A.Z. alleged several violations of the IDEA and the failure to offer M.Z. a FAPE.

In March 2000, the district held an IEP conference and found M.Z. was not eligible for preschool special education services. When M.Z. entered kindergarten in the district, he was eligible for speech/language services. He needed PT, and was found to have ADHD, fine and visual motor coordination disorder, issues with gross motor skills, low-normal muscle tone, C/L and articulation deficits. In June 2002, M.Z. was classified as Other Health Impaired. The district planned to place him in first grade, with pullout resources and speech/language, OT and PT. The parents declined to sign the IEP, and discussed having M.Z. repeat kindergarten at St. Paul's. The mother claimed the IEP meeting was rushed, and lacked discussion of certain issues.

Over the summer, the mother attempted to reach the LDTC and director of special services. The parents unilaterally enrolled the child in kindergarten at St. Paul's. In January 2003, petitioner requested nonpublic school services. In March 2003, the Bergen County Special Services (BCSS) CST developed an evaluation plan. The evaluation found M.Z. to be more immature than a typical child of his age, and that he exhibited certain weaknesses. BCSS and the parents agreed upon an Individual Service Program (ISP), which found M.Z. eligible for special education and related services. M.Z. was to continue in regular education with speech therapy, OT and PT. BCSS staff recommended to the mother that, since a full range of special services was not

available through the county, she should contact the school district.

On June 2, 2003, A.Z. sent a letter to the elementary school stating that her son would be entering first grade at the school in September 2003, and that she wanted to meet with the CST to discuss his placement. The principal left a message for A.Z., stating that the mother had to register M.Z. before they would discuss his needs. On June 5, 2003, A.Z. went to the school, filled out the registration form and provided copies of her driver's license and her son's birth certificate.

On June 18, A.Z. gave the CST social worker all evaluation reports and the ISP from BCSS. The social worker said BCSS was responsible for OT and PT. A.Z. explained that M.Z. was returning to public school, and that she wanted to meet with the CST. A.Z. claimed that the social worker said she would schedule a meeting before the end of the school year. That same day, A.Z. wrote to the board's director of special services and to BCSS asking which entity was responsible for OT and PT.

The director advised A.Z. that, if she registered her son in the district, he would receive services through an IEP developed by the district. If he returned to St. Paul's, the board would not provide OT or PT.

On August 11, 2003, A.Z. wrote to the school principal stating that she had registered her son in June, and requested a meeting with the CST which did not take place. Two days later, the district's new director of special services wrote that the services set forth in the ISP from BCSS would be followed. She also stated that a meeting would be held during the first month of school to review the IEP. On August 18, 2003, the mother advised the district that her son would continue at St. Paul's, and subsequently, advised the director that she would seek reimbursement. She also requested that the district provide M.Z. with OT and PT. The district denied these requests.

The mother maintained that the district's failure to convene an IEP meeting and develop an IEP before school began denied her son a FAPE. The board argued that a new IEP was not necessary because the child had an ISP. Additionally, it argued that enrollment in school meant actual attendance.

The ALJ held that the ISP developed by BCSS did not constitute an IEP, as an ISP does not contain many of the elements found in an IEP. The mother had provided all evaluations and information in June 2003. This was not a matter where a child was transferring from another district with an existing IEP. The ALJ concluded that there was "simply no reason" to delay the development of the IEP in this matter. He noted that, where there is no IEP, a meeting must be held within 30 days to develop an IEP; this did not occur in this case. A district must respond to a parent in writing, within 20 days, if a parent seeks to initiate or change classification, placement, evaluation or other matters.

In rejecting the board's argument that the mother was only inquiring regarding enrollment, the ALJ found that A.Z. had done much more than merely make an inquiry. She had followed all directives of the board, including filling out the registration form and providing appropriate identification. Nothing in the IDEA or the special education laws or regulations of New Jersey require actual attendance before a child may receive the benefits of the IDEA. Furthermore, it was clear from the mother's actions that she intended to enroll her child in the public school.

The ALJ concluded that the district had the summer of 2003 to prepare the IEP, but did not do so. He stated that *N.J.A.C. 6A:14-3.7(a)* requires an IEP before special education and related services can be provided, and that *N.J.A.C. 6A:14-3.7(a)1* provides that a district must have an IEP in place at the start of each

school year for a special education student. Thus, the district denied M.Z. a FAPE, and the parents had the unilateral right to place the child in private school, where the tuition was \$2,730. The ALJ found the placement was appropriate.

Placement of Autistic Child in Program Without DTT/ABA Inappropriate

S.A., on behalf of G.A., Petitioner, v. Delanco Township Board of Education, Respondent, EDS #2059-04 (July 16, 2004).

G.A. was born in January 2001, and was diagnosed as autistic in July 2003. He exhibited behaviors including biting, running in circles, spinning, smearing soft substances, including feces, removing clothing and eloping. In October 2003, he was examined by a doctor at Children's Seashore House, who recommended: (1) an increase to 15 hours per week of ABA (Applied Behavior Analysis); (2) at age three, placement in a self-contained autism support classroom, with five to eight children, and a one-on-one aide; and (3) placement in a daycare/preschool setting with non-special needs children for modeling purposes.

The district evaluated G.A. and found him eligible for special education. The IEP placed G.A. at Burlington County Special Services School (BCSSS) in a half-day preschool program, where he would receive speech therapy three times per week, and OT twice per week. G.A. would also have a one-on-one aide. When he signed the IEP, S.A. noted that both of the child's doctors had recommended intensive DTT (Discrete Trial Training), and a full-day program, and that "we accept this IEP at this time, but need to focus on these two issues." G.A. later testified that he signed the IEP because he was told he could not appeal it unless there was an existing, signed IEP.

The head of the CST, a case manager who drafted the IEP, had little experience or training in dealing with autistic children. The IEP did not address some of G.A.'s issues that were described above, and there was no behavior modification plan. The case manager claimed that such a plan could only be developed after G.A. had started school and had been observed. The IEP did not provide for ABA/DTT training. The case manager believed that G.A. was too young for a full-day program, especially since he had never been away from his mother.

The father testified that he spoke to G.A.'s proposed teacher at BCSSS, who knew nothing about DTT. No other teachers at BCSSS had DTT training. The mother testified that she had been providing G.A. with ABA/DTT therapy, under professional guidance. She was concerned about security at BCSSS because of G.A.'s elopement issues.

Both sides called experts; both agreed that G.A. needed an ABA/DTT program. The parent's expert recommended a full-day program, with at least ten hours of one-on-one DTT. The district's expert stated that staff at BCSSS, who were not trained in dealing with autistic children, could be trained and were seasoned at working with special education students. The parents' expert wanted their son placed at the Yale School or Bancroft.

The ALJ noted that a district does not have to maximize a child's educational opportunities, but must provide some level of opportunity. He noted that a district must provide a "Ford, not a Mercedes." The district argued that the petitioner was seeking a Mercedes education. The ALJ stated the real issue was whether the BCSSS placement was a Ford.

Noting that he found neither expert compelling, the ALJ found that the parties agreed upon many issues, including the need for ABA/DTT. Therefore, he found that any IEP that did not include ABA/DTT by trained staff would not constitute a FAPE. The BCSSS

placement did not meet this requirement. Willingness of the staff to undergo the training, which would take at least 2.5 months, would deprive G.A. of services. Even after training, "G.A. would become a guinea pig" for the inexperienced staff. Additionally, the ALJ agreed with the parents' expert that the room was too small and contained too many students and distractions. The ALJ also agreed with the expert that a behavior consultant should oversee G.A.'s program. Thus, the ALJ concluded that the BCSSS program did not equal a "Ford."

The ALJ did agree with the district's expert that a half-day program would be appropriate for a period of six months, until the child transitioned to the school setting. G.A.'s own mother expressed concern about a full-day program. The ALJ felt the board's expert showed "good sense" to be reasonable. Therefore, he ordered a half day program, unless there was no appropriate half day program grounded in ABA/DTT. The ALJ noted that the board's argument that it was only required to provide ten hours of programming was incorrect. Rather, the relevant regulation, *N.J.A.C. 6A:14-4.1(d)(1)* provides that a preschool disabled program must provide a minimum of ten hours of student instruction.

The ALJ did not order placement at a particular place, but stated that, if the child did end up at Yale or Bancroft and, therefore, received a "Mercedes" education, the board had only itself to blame as it had six months to address the needs of G.A. He stated that the board "sat on its hands and watched as G.A.'s life slipped by."

The ALJ did reject petitioner's argument that the IEP did not contain measurable goals and objectives. Additionally, the ALJ agreed with the district's expert that the behavior modification plan should be drafted after the school has the opportunity to observe the child and develop data, but it must be done within four months of the commencement of the child's program.

Academically Successful Learning Disabled Student Not Entitled to Tutoring for Passed Classes or In-class Support

J.J., on behalf of J.J., Petitioner, v. Rumson-Fair Haven Regional High School Board of Education, Respondent, EDS #4368-04 (August 16, 2004).

J.J., the petitioner, is the stepmother of J.J., a 15-year-old student classified as having a mild-to-moderate specific learning disability. Initially, she sought in-class support for the stepson in biology. Just before the hearing, which started after J.J. had completed ninth grade, she sought home tutoring in biology and geometry, in-class support for science, math, English and foreign language classes, books on tape for summer reading, all high school text books, and a tape reading machine for use at home until graduation. The board contended that it was providing a FAPE, and that the IEP for 2004-05 did include in-class support in four academic subjects.

The stepmother felt that, although J.J. had passed ninth-grade biology and geometry, he had not retained what he would need to know for college and the SATs. Therefore, she sought 40 hours of home tutoring from certified teachers prior to October 15, 2004. She also sought in-class support for all academic classes. The current IEP proposed a tenth-grade program with in-class support for math, science, English and Spanish. The stepmother argued that these classes were modified, and that she wanted him to have more difficult classes with in-class support.

J.J.'s case manager testified that J.J. had done well in ninth grade, passing two high-level courses, biology and geometry. He performed well in his other courses that followed the standard curriculum, but were smaller in class

size and had an individualized pace of instruction delivered by special education teachers. J.J. also attended a daily study skills class, one period per day, which was in a small group setting.

James Parker, J.J.'s biology teacher also testified, stating that J.J. struggled the first part of the year, but improved his performance. Parker did not believe in-class support would have helped the student, but rather, he needed to improve his study and review skills. Parker testified that he followed the IEP, and gave special attention to J.J.'s lab group. Parker felt J.J. would be successful in college biology, but in a course geared for non-science majors; however, tutoring at this point for a course taken at least three years from now would not be useful.

The superintendent testified that the books on tape for the next school year were ordered, but that they had just received the request for the summer reading on tape. The district would provide J.J. with a tape player unless a specialized machine were necessary, and then it would have to be determined if it were necessary for J.J.'s IEP. Both the teacher and case manager were unsure if the books on tape would help until they were actually tried.

The ALJ stated that it was clear that the stepmother was seeking the best education possible for J.J., but that a district is not obligated to meet this standard. J.J.'s ninth-grade record showed that he passed all his classes, some with very good grades. Therefore, the district provided J.J. with a meaningful educational benefit. There was no obligation to provide him with tutoring for a class he already passed. As petitioner did not request the summer reading tapes until two days before the hearing, the district was only to provide them if the books "are conveniently available." If a specialized tape machine is necessary to play the books on tape, then the district must conduct an appropriate evaluation to determine whether the books and tape machine are a necessary related service.