



Special Education Bulletin

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summary

Board ordered to reimburse tuition for unilateral placement of twelfth grade dyslexic student at residential institution (page 3). Emergent relief denied to special education student who sought to graduate with his class; student failed to complete 130 credits (page 4). ALJ denies parents' petition requesting out-of-district placement in private school that uses Wilson Method of reading (page 5). Board ordered to pay all costs for out-of-district extended school year placement (page 6). Child under three years old diagnosed with severe speech apraxia not eligible for special education and related services (page 8). ALJ denies parents' request for out-of-district placement at sectarian school for child with autism (page 9). District properly placed child with Down Syndrome in multiply disabled class (page 10).

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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

Petition Seeking Private School Placement Denied

S.C., on Behalf of D.C., Petitioner, v. Montgomery Township Board of Education, Respondent, EDS #8797-03 (May 17, 2004).

The parents requested a due process hearing seeking to change their son's placement as well as reimbursement for tuition and transportation costs for unilaterally placing D.C. at the Bridge Academy (Bridge). D.C. is a special education student who was classified as "other health impaired" in third grade. This classification was based upon D.C.'s non-verbal learning disorder, attention deficit disorder, and auditory processing impairments.

The parties have had previous litigation. The district had prepared an IEP for the 1999-2000 school year, which called for placement in a district school. The parents did not accept the proposed IEP and unilaterally placed D.C. at the Newgrange School (Newgrange). The administrative law judge (ALJ) determined that the district was not providing an FAPE and ordered reimbursement as well as continued placement at Newgrange. This decision was affirmed in district court.

Following the above determination, D.C. attended Newgrange for about four years. An expert witness for the petitioner testified that D.C. exhibited strong academic progress. In the spring of 2003, Newgrange decided to bring in a new director/principal. In the school's view, it was making its staff more professional and improving its standards. The school's decision to make this personnel change became the cause of concern to parents, including petitioner. The parents' group decided to form a new school, Bridge, with the former Newgrange principal serving as its principal.

Even though D.C.'s parents were concerned about the changes at Newgrange, they agreed to a new IEP which called for D.C.'s placement at Newgrange. The parents did not advise the district at the IEP meeting that it had any concerns. Just a few weeks following the IEP meeting, the parents sought to have D.C.'s placement changed to Bridge. Over the summer, D.C.'s parents learned of additional staff changes at Newgrange.

In early September, D.C.'s parents decided to send him to Bridge. Almost all of the teachers who had been employed at Newgrange were now employed at Bridge. The new director of Newgrange did acknowledge that there had been a significant number of staff changes, but that the school could fully implement the IEP. District representatives visited Newgrange and the visit confirmed that the district would be able to implement the IEP.

By early October, Bridge was approved by the Department of Education. The district did send representatives to review the program. After the visit, the district denied the parents' request for a change in placement. In the district's opinion, Newgrange was able to fully implement the IEP. In addition, Bridge lacked some of the necessary facilities and resources to implement the IEP. Despite the district's objection, the parents placed D.C. at Bridge.

The ALJ concluded that the district had offered the petitioner an appropriate IEP, and thus, the petitioners were not entitled to tuition reimbursement for the unilateral placement. The ALJ reasoned that the IDEA requires that the district board must provide an FAPE for its students in the LRE. In addition, such students should only be removed from the regular education environment when the nature and severity of their disability are so severe that such education in regular classes with the use of supplementary aids and services cannot be accomplished.

The specific placement provided must guarantee a basic floor of opportunity of access to specialized instruction and related services which are designed to provide the necessary educational benefit to each child. The appropriate standard as enunciated by the Third Circuit Court of Appeals is that the IEP must offer the opportunity for significant learning and meaningful educational benefit.

At a due process hearing, the parent has the burden of raising the issue of whether the IEP is appropriate. The district then has the burden of proving that it has provided the student with an appropriate IEP. Should the parent choose to unilaterally place a student in a program other than that which was prescribed in the IEP, the parents have the burden of proving that the program they have chosen for the student is appropriate. The parents must be able to offer evidence concerning the child's special education needs, current school performance, as well as the nature of the services the child is receiving at the unilateral placement.

The ALJ emphasized that the parents were not claiming that the IEP offered by the district was inappropriate. The parents were only requesting a change in placement due to staff changes at Newgrange.

The ALJ concluded that the district's placement was appropriate. Thus, there is no reason to consider whether the unilateral placement was appropriate. The district's witnesses were both credible and experienced; they offered the opinion that the Newgrange placement was appropriate. On the other hand, the parents had no direct knowledge with which to gauge how Newgrange would perform with the staff changes. Parents do not have the right to choose their child's teachers.

The ALJ further held that the IEP which the district developed for the 2003-04 school year provided D.C. with an appropriate placement as it was designed to meet his individual needs and confer a meaningful educational benefit.

Accordingly, the petitioners failed to demonstrate that they were entitled to reimbursement of tuition costs incurred for the unilateral placement at Bridge. The parents' petition was denied and dismissed.

Petitioner's Claim for Compensatory Education Denied

W.W., on Behalf of J.W., Petitioner, v. Boards of Education of Maywood, Hackensack and Paterson (State Operated), Respondents, EDS #9976-03 (May 28, 2004).

The petitioner requested a due process hearing seeking a residential placement and compensatory education for his daughter. J.W. is a 19-year-old girl who is eligible for special education and related services. She has Down's Syndrome and moderate to severe mental retardation. Her classification is multiply disabled. J.W. resides in Maywood, and has been enrolled in the Maywood Public Schools since 1987, and then in the Hackensack High School District. The petitioner, W.W., is J.W.'s father and he is solely responsible for J.W.'s welfare and financial support. W.W. has custody of J.W. under a 1995 divorce decree. Although W.W. owns the Maywood house, he moved out of the house and now resides in Paterson. W.W. hired caretakers to permit J.W. to continue to reside in the Maywood home.

In or about February 2002, J.W.'s behavior became increasingly aggressive and disruptive. As a result, the Hackensack CST, placed her on home instruction. In April 2003, J.W. was placed in Wayne High School, but the placement was changed back to home instruction due to J.W.'s disruptive behavior. Home instruction continued until November 8, 2003. Commencing on or about November 8,

2003, J.W. was placed in respite care temporarily by the DDD. At the petitioner's unilateral request, J.W. has been accepted into the Bancroft NeuroHealth Program pending a funding commitment. While this proceeding has been pending, the petitioner initiated guardianship proceedings to be appointed guardian ad litem for J.W. for the purpose of this litigation.

The administrative law judge(ALJ) noted that the following issues needed to be determined. Since the petitioner is not residing with his daughter, which school district is responsible for providing J.W. with an FAPE? Whether a residential placement as requested by the petitioner is required to address J.W.'s educational needs? Is J.W. entitled to any compensatory education?

With regard to the issue of domicile, the ALJ concluded that the domicile of the student is in Paterson, and thus, Paterson is responsible for J.W.'s current educational needs. The ALJ reasoned that J.W. is not capable of establishing her own domicile because she has Down's Syndrome, and severe mental retardation. Thus, her father's domicile is determinative. The father testified that the sole reason that he maintains the residence in Maywood is to provide his daughter with a place to live. He indicated that neither he, nor his current wife, has any intention of returning to live in Maywood. W.W.'s stated intent to never resume living in Maywood, coupled with the fact that he has not resided there for the past five years, means that his domicile is Paterson.

With respect to J.W.'s educational needs, the ALJ concluded that neither home instruction nor a residential placement was appropriate. The evidence submitted by Hackensack indicated that J.W. would most likely flourish in a highly structured program that included supervision and a behavioral management component. There were periods of time when J.W. performed well while on home instruction.

In September 2003, J.W. was not doing well with home instruction. She appeared to be distressed. She had also become very physical with the caretakers. In or about October, the father had advised the home instructor that he was going to put J.W. in a residential placement. J.W. requires a behavior modification program during the entire day to manage her conduct. A group setting for the behavior modification is preferred to one-on-one instruction. The psychiatrist, who recommended a change from a day placement, did not claim that a residential placement was the only appropriate alternative for J.W. The psychiatrist did note that home instruction is not an appropriate educational setting for J.W.

The ALJ noted that, based upon the evidence, home instruction would not confer a meaningful educational benefit. In addition, the petitioner did not offer sufficient evidence to support the need to place J.W. in a residential setting. Thus, J.W.'s current educational needs will most likely be best addressed in a highly structured day placement with close supervision and a strong behavioral management component.

With regard to the claim for compensatory education, the ALJ noted that Hackensack was diligent and conscientious in providing J.W. with an FAPE. After J.W. had been placed on home instruction in early 2002, Hackensack continued to try to find an appropriate day placement but did not have success. Hackensack did not continue looking for a day placement after the placement at Wayne High School was not successful, because Mrs. W. indicated that they would agree to continue home instruction and not to continue seeking a day placement. Accordingly, the ALJ concluded that J.W. was not entitled to compensatory education.

Student Ordered Declassified Because Divorced Parents Did Not Mutually Consent to the Classification

F.C., on Behalf of D.C., a Minor Child, Petitioner, v. Rockaway Township Board of Education, Respondent, and J.C., Intervenor, EDS #11128-04 (January 12, 2005).

The central issue in this proceeding is which of the child's parents is entitled to consent to the special education classification under the IDEA, when divorced parents share legal custody. More specifically, here, is the father's standing to challenge the mother's decision to consent to a classification.

The father filed a request for emergent relief opposing the classification. The father failed to join the mother in the proceeding, and the Office of Administrative Law (OAL) directed that he is to be given notice as well as an opportunity to be heard. The emergent relief application was denied. Rather than proceed directly to a hearing on the merits, the OAL ordered that a hearing be conducted on the preliminary issue of standing.

The petitioner is a nine-year-old fourth grader whose parents divorced in 1993. According to the parents' settlement agreement/divorce decree, they share joint legal custody. The mother is designated as the primary residential custodian. The child sleeps in the mother's house week nights. On Tuesdays and Thursdays, the father has his son after school until 8:00 p.m. The parents alternate weekends and, for the most part, rotate holidays.

The mother became concerned about her son's problems in reading comprehension and written expression. She requested a CST evaluation. In September 2004, the CST

notified the mother that her son was eligible for special education and that he was "specific learning disabled." The CST recommended placement in a pull-out resource program with speech therapy in a group setting. The mother gave the district written consent for her son to be in this placement.

The father arranged for a private assessment of the child. These assessments concluded that the child belongs in the district's regular education program. The divorce settlement provides that the parents will consult and confer with each other with a view toward adopting and following a harmonious policy on all matters of major importance regarding the child's health, safety and welfare. In addition, major decisions, including choice and location of special education, should be considered, discussed in depth, and agreed to by both parents, bearing in mind their custodial arrangement. There is no provision for a course of action in the event that the parents disagree.

The father had filed a motion in the Family Part and OAL was prepared to defer to any decision made in that forum. The matrimonial judge denied the father's request for an order requiring the mother to withdraw her consent for special education. The family judge stated that "the judgment of divorce speaks for itself."

The administrative law judge (ALJ) concluded that the father had standing to initiate this proceeding and that, under the divorce settlement, both parents must agree to provide special education services to their son. The ALJ reasoned that the IDEA emphasizes participation of parents in developing a child's educational program. For example, parents are guaranteed minimum procedural safeguards such as notice of proposed changes in a child's educational placement. The parties agree that the father has a right to his child's student information to communicate with staff and to participate in CST meetings.

In this proceeding, the district argues that, regardless, as the primary custodial parent, the mother has the right to make major decisions affecting the child's education. The mother was not contesting the father's legal standing to challenge their son's classification, but noted that she accepts the CST's placement and classification.

Under *N.J.A.C.* 6A:14-3.3, school staff and agencies may refer a child for evaluation. If a district does not have parental consent, it must request a due process hearing for permission to perform an initial evaluation or a reevaluation. *N.J.A.C.* 6A:14-2.3(b). As employed in both the state and federal regulations, the definition of parent includes the natural or adoptive parent as well as any legal guardian or surrogate properly appointed to represent the child's interests. In New Jersey, a parent's rights must be terminated by a court of appropriate jurisdiction, otherwise, a parent retains all of his/her rights under the special education regulations. Accordingly, the father has standing to challenge the board's action as the Family Part has not terminated the father's parental rights.

Thus, if the divorce decree awards physical custody to the mother and specifically provides that the mother will have the ultimate authority regarding educational decisions, then the father's request for relief could be denied. New Jersey court decisions, such as *Pascale v. Pascale*, 140 N.J.583 (1995), reflect a strong preference for the custodial parent when former spouses are unable to agree on a major life decision affecting the child.

In the instant case, the agreement provides for a more traditional custody arrangement as opposed to joint physical custody. The father has generous parenting time, but the child sleeps at his mother's house every school night. The settlement identifies the mother as the primary residential custodian. However, the agreement clearly mandates that both parents must agree on choice and location of special

education. The ALJ further noted, "[d]espite serious misgivings about the wisdom of this arrangement, the OAL lacks jurisdiction to substitute a better agreement for that which the parties themselves have negotiated. Only the Family Part can modify this agreement."

The ALJ declared the mother's unilateral consent invalid. The district must immediately return the child to his regular mainstream classes. The ALJ ordered that the mother can return to the Family Part to seek further clarification, or to seek an amendment to the divorce decree. If the district has determined that petitioner needs to be classified, it can file an application for a special education hearing. Local school districts have an obligation under the "child find" provisions of the IDEA to identify, locate and evaluate children with disabilities within their districts. In addition, the district has the obligation to implement an appropriate IEP. Thus, the district cannot absolve itself of the obligation to provide necessary services to a learning-disabled child by shifting the obligation to the parent. The ALJ ordered that the child be returned to his mainstream classroom and the district was to provide the supportive services needed to enable the child to make up missed work.

Student's Emergent Application Challenging District's Decision Not to Permit Student to Attend Graduation Denied

J.M., Petitioner, v. Cherry Hill Board of Education, Respondent, EDS #4333-04 (June 8, 2004).

The petitioner appealed from the district's decision not to permit him to attend his high

school graduation ceremony on June 15, 2004. He was classified as emotionally disturbed. On June 3, the petitioner requested that the matter be considered as an application for emergent relief as graduation was quickly approaching.

The petitioner has had a difficult young life. He was adopted by his aunt in 2001. J.M. was born in Harlem, New York; his mother used drugs during the pregnancy. He does not know where his father is living. His mother died of cancer in 1991. During the years when J.M. resided with his mother, he was exposed to pornography, sexual acts, deviancy and drug abuse. He and his sister were described as neglected, hungry and dirty. In 2001, DYFS intervened with respect to J.M. as a result of two incidents.

J.M. became a student in Cherry Hill West in 2001. During the 2002-03 school year, due to his aggressive behavior toward his peers, the CST recommended that he be placed on home instruction until a psychiatric evaluation could be performed together with updates on social and psychological assessments. J.H. remained on home instruction for the balance of the 2002-03 school year.

The psychiatric examination report listed some of the incidents which led the district to the conclusion that J.M. should be evaluated. He pushed a female student down whom he said kept coming after him. He took a book from a teacher in a belligerent manner. He misjudged the actions of a fellow student which a teacher regarded as horse play, and assaulted that student by threatening him with a dumbbell.

The report further stated that J.M. always minimizes and rationalizes his behavior. He appears to have no feelings of guilt or remorse. He presents an undercurrent of depression. J.M. has a personality disorder which impedes his ability to adapt and utilize good judgment. The report emphasized that safety has to be considered a priority. J.M. does not perceive that he has mental deficiencies.

In September 2003, J.M. was at the Camden Day/Residential Treatment Center. His education services were provided by the Juvenile Justice Commission. His IEP had provided that he should be placed at the Burlington County Special Services District when he was discharged. J.M. was placed at the Lumberton Campus. In March 2004, J.M. was thought to have been making terroristic threats to a staff member. He was also attempting to provoke a staff member and disrupt the educational environment. He was suspended for ten days and was placed on home instruction. The IEP which specified home instruction also included a handwritten statement that J.M. would not be permitted to participate in any school activities including graduation. J.M. was 18 years old and consented to the implementation of this IEP.

The principal of Burlington County Special Services District testified for the respondent. He explained that the Lumberton program is specifically designed to work with students with behavioral and learning disabilities. The witness described an incident in which J.M. accidentally spilled some pudding on the floor; the witness gave J.M. some napkins to clean up the spill. J.M. refused to clean it up and used foul language. When a teaching assistant also asked J.M. to clean up the spill, J.M. threatened the teaching assistant by backing the teaching assistant against a wall. The principal had to position himself between the teaching assistant and J.M. The teaching assistant also verified the events described by the principal.

The respondent's special education director's certification noted that it is unusual that the Burlington County placement did not work for a child with this type of disability. The student is a significant risk for explosive behavior. J.M. does not seem able to control his outbursts. J.M. will likely graduate, and the district does not lightly prevent a student from participating in graduation. But, the district must be mindful of the safety of students and

staff and the potential for J.M. to disrupt the occasion for everyone. Participation in the graduation ceremony is difficult even under the best of circumstances. It is hot and the ceremony is lengthy.

The administrative law judge (ALJ) denied the petitioner's application for emergent relief as well as the due process petition. The ALJ reasoned that there is no right to attend graduation. It is a privilege and school districts have the obligation to protect the safety of its students, staff and all persons in attendance. The petitioner's desire to end his high school years on a positive note does not rise to the level of creating irreparable harm if he is unable to attend. The receipt of his diploma could represent the positive note that he seeks. The evidence supports the district's decision not to permit this student to attend graduation. The pudding incident highlights the district's legitimate concern that something which should be considered a nonevent could escalate into a confrontation. The ALJ found the district's witnesses to be credible. The ALJ ordered the petition dismissed.

Eighteen-Year-Old Student Who Returned to New Jersey with His Mother Is Eligible for Special Education

D.O., on Behalf of J.O., Petitioner, v. New Milford Board of Education, Respondent, EDS #1503-05 (February 28, 2005).

The petitioner is J.O.'s mother; J.O. is an 18-year-old male. J.O.'s parents were married in Dumont, New Jersey. Sometime thereafter, the couple moved to Ireland where J.O. was

born in 1986. In 1989, when the family returned to New Jersey, J.O. was referred to the Dumont CST for intensive preschool assistance. J.O. was identified as having developmental delays in cognitive, social and emotional development as well as speech and language development. Not long after J.O. was evaluated, the family returned to Ireland. J.O.'s evaluation in Ireland revealed that he manifested "a pervasive developmental delay associated with autism." J.O. was placed at the Holy Family Special School. In Ireland, the responsibility to provide special education services is shared by the Ireland Health Board and the Department of Education and Science. J.O. remained at this school until the 2002-03 school year, and he had already reached age 18. There is no evidence that, prior to returning to the United States, J.O. completed primary school. In addition, a letter from J.O.'s principal in Ireland stated that had J.O. remained in Ireland, he would have been entitled to at least three more years of free schooling at the secondary level.

When the petitioner relocated with her son to West Milford, she advised the district that J.O. needed special education. After 30 days had passed, the petitioner made a second request. The board recommended a placement at the Ridgefield High School. Before J.O. actually began attending, the petitioner learned that the district's counsel had given an opinion that J.O. had completed his education in Ireland and was not entitled to a FAPE. On January 3, 2005, the superintendent advised the petitioner by letter that J.O. was not legally entitled to a FAPE. The superintendent stated that had J.O. remained in Ireland his education would have focused upon living skills. The superintendent suggested that J.O. might be entitled to services offered by DDD.

The administrative law judge (ALJ) concluded that J.O. did not complete his education in Ireland, and that he is entitled to a FAPE in the respondent school district. The

ALJ also ruled that J.O.'s mother can legally represent J.O. in the proceedings. The ALJ reasoned that the board's argument that the mother does not have standing to bring the instant action is without merit. J.O. is developmentally disabled and manifests characteristics of autism; he is dependent on his mother for his daily needs. J.O. provided a written statement that he wanted his mother to represent his interests in this matter. J.O. is clearly not emancipated even though he has reached 18 years of age. Rather, he is an adult student in need of special education. The ALJ further concluded that, under an IDEA claim, *N.J.A.C. 1:6A-5.1* gives every party the right to be accompanied and advised by individuals with special knowledge concerning the party's educational needs. The petitioner certainly has special knowledge regarding her son's educational needs.

The ALJ was also not persuaded by the board's argument that in Ireland J.O. received all of the education to which he would be entitled in New Jersey. *N.J.A.C. 6A:14-2.1* stipulates that, until a child receives a high school diploma, a student with a disability between age 16 and 21, who voluntarily leaves a public school program, is entitled to re-enroll at any time up to and including the school year of his/her 21st birthday. J.O. did not receive a terminal degree of any kind in Ireland, and would have received three more years of education.

The ALJ ordered the respondent to complete its evaluation and prepare an appropriate program. The respondent must also place J.O. in an appropriate program pending the completion of the evaluation. Finally, the CST must consider compensatory education in its identification of J.O.'s present needs for failure of the board to immediately provide J.O. with a FAPE.

Petitioner's Claim for Compensatory Education Denied as District Offered Student a FAPE

S.K., on Behalf of P.K., Petitioner, v. Parsippany-Troy Hills Township Board of Education, Respondent, EDS #11739-03 (June 23, 2004).

The petitioner requested a due process hearing seeking reimbursement for tutoring and related services that the petitioner arranged for her daughter. The issue is whether the respondent school district provided P.K. with a FAPE. P.K. was born in 1993; when she was about eight years old, she was classified as multiply disabled with Asperger Syndrome and ADHD. She has superior intellectual ability, some learning deficits, and social skills difficulties.

In September 2002, P.K. was entering the fifth grade at the East Lake School. After an incident which occurred the first week of school, P.K. refused to come to school. P.K.'s therapist, Dr. Sandy Bushberg, advised the school that P.K. was emotionally distraught and suggested that P.K. be placed on home instruction for the entire school year. The CST disagreed because home instruction is not the LRE. At the petitioner's suggestion, the district considered the SAGE Day School. P.K. began attending SAGE in October 2002. The parents withdrew the due process petition they had pending at that time.

SAGE's program is designed for emotionally fragile children who are experiencing difficulty in public school. There are students at SAGE with school avoidance issues as well as anxiety and depression. The program is both academic and therapeutic. As of September 2003, SAGE had about 58 students.

P.K. was placed in the sixth grade at SAGE due to her superior intelligence. While P.K. was in attendance, the class increased from two to four students. There was one teacher and one associate teacher assigned to this class. Students receive two individual and group therapy sessions each week. They also receive one family therapy session each week. The therapy emphasized the improvement of social skills. P.K. finished the year with a B+ average and was scheduled to return in the fall of 2003.

The petitioner became unhappy with staff changes at SAGE and was concerned about the lack of mainstream opportunities. She requested that P.K. be placed at the Brookline Middle School (BMS) for the fall of 2003. The CST structured a program of partial inclusion. P.K. would attend SAGE for the majority of the day and take two classes at BMS in the afternoon. P.K. enjoyed her middle school science class taught by Mr. Bajor. After only two weeks of partial inclusion, the petitioner requested full inclusion. The CST was concerned that it needed more time to evaluate how P.K. was doing with partial inclusion and about the loss of the therapeutic aspects of the program. To address this concern, the petitioner assured the CST that P.K. would have regular therapy sessions with her own therapist, Dr. Bushberg.

At the October IEP meeting, which followed the request for full inclusion, P.K. was represented by an attorney. The CST wanted to place P.K. in the science teacher's team, but the petitioner wanted P.K. to be placed on another team. P.K. was placed in honors classes for math and English. These classes have 24 students each. P.K. was to have the support of the guidance counselor, the CST and the student assistance counselor. P.K.'s regular education program was to include extra time breaks when needed, breaking down assignments, frequent praise and repeating and clarifying directions. P.K.'s exemption from physical education was to continue.

Dr. Bushberg advised petitioner that he would be closing his practice. The petitioner did not notify the district concerning this development until the end of November. The full inclusion program started on October 20, 2003. In early November, P.K. began being absent from school on a regular basis. After switching to the full time inclusion program, P.K. attended school only 11 days between October 20 and December 4, 2003. The lack of attendance was identified as a school refusal issue.

The CST attempted to meet with the petitioner in early December to discuss the attendance issue. The petitioner could not attend a meeting scheduled for December 12. On December 22, the district held an IEP meeting without the parent as she could not attend the meeting. The psychologist recommended a placement for P.K. in small classes with motivated students. If such a placement was not possible, he recommended home instruction. The CST advised the petitioner that it did not have a placement that could accommodate P.K. in small honors classes. Therefore, the CST would recommend home instruction. The day after home instruction commenced in January 2004, the petitioner faxed a letter to the district refusing home instruction. The district made new arrangements, and in February, the petitioners refused home instruction once again. The petitioner then arranged for private tutoring, social skills classes and physical therapy. The petitioner also had her daughter tutored to enable P.K. to obtain a high score on the private school entrance exams.

The principal of SAGE testified that he was confident that P.K. would do extremely well at SAGE. P.K. had been an A-B student when she was at SAGE for the 2002-03 school year. The principal observed P.K. during the year that she attended school and also had the opportunity to discuss P.K.'s progress with staff. At the beginning of P.K.'s year at SAGE, she had a

tendency to hide in the bathroom. Over the course of the year, she interacted more with other students. Others on the staff also noted that P.K.'s school phobia had been greatly diminished.

The petitioner did not believe SAGE was an appropriate placement. The children who attended school there were all emotionally disturbed and not very smart. The mother did not like the individual therapy, and after a few sessions, refused to attend the family therapy. The mother conceded that P.K. had progressed well socially through the course of the year, however, this was not due to the program at SAGE.

The home instruction offered by the district did not meet her child's needs. The mother thought there was a conflict of interest for the teachers hired by the district to teach what was needed on home instruction and the requirements of the district as their employer. Thus, the petitioner refused the home instruction and made different arrangements.

The administrative law judge (ALJ) concluded that the district was prepared to provide home instruction that would have conferred a meaningful benefit on a temporary basis until a more appropriate placement could be found. Thus, the parent was not entitled to reimbursement as compensatory education for the arrangements she had made unilaterally.

The ALJ reasoned that the IDEA requires that classified children be given more than a trivial education benefit, and the IEP did so. The ALJ commented on the petitioner's single-minded dedication, but, noted that often it seems that she is unable to process information provided by others who are trying to help.

The ALJ found the respondent's witnesses to be extremely credible. The mother's testimony was conclusory. For example, while her daughter attended SAGE, the mother insisted that P.K. was in a class of slow learners which was not the case.

The ALJ found that SAGE provided P.K. with a FAPE. P.K. only attended the inclusion program with all the built-in support for 11 days. P.K. clearly lacked the regular therapeutic support. The mother did not wish the district to provide this support and this made it much more difficult for the district to set up the structure to permit a smooth transition. Regardless of the foregoing, the ALJ concluded that the IEP developed by the district on October 17, 2003, the district offered P.K. the opportunity to obtain significant learning and a meaningful benefit in relationship to her potential.

In order to be entitled to compensatory education and receive reimbursement for a private tutor, the private school testing tutor, the Linda Mood Bell session, and the physical therapy, petitioner has to prove that the district failed to provide an appropriate IEP. The parent is free to reject the special education services offered by the district, but she is not entitled to have the district pay for the services she chose. P.K. was not successful in the mainstream setting without a therapeutic component. Accordingly, the judge ordered the parties to have an IEP meeting to consider an appropriate placement that will address both P.K.'s educational and therapeutic needs. The ALJ denied the petition and ordered the parties to have an IEP meeting within 30 days following the date of decision.

*address all comments and questions to
NJASA's Legal Department at www.njasa.net*