



# *Special Education Bulletin*

February 2005

Vol. 11 , No. 1

## **summary**

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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

## **Board Ordered to Reimburse Tuition for Unilateral Placement of Twelfth-Grade Dyslexic Student at Residential Institution**

*F.S., Petitioner, v. Bergenfield Board of Education, Respondent,*  
EDS No. 5879-03 (April 24, 2004).

F.S. was born on May 2, 1984, and was about to enter his senior year in the district's high school when the litigation started. At the end of second grade, it was determined that F.S. was eligible for special education and related services. Although F.S. had the intellectual ability to learn, and had an I.Q. score of 109, he experienced difficulty with decoding and encoding skills. At that time, he was classified as PI due to his dyslexia. Subsequently, in the fifth grade, due to a change in federal regulations, his classification changed to Specific Learning Disability.

From the third grade through the tenth grade, the district placed F.S. in a resource center for reading, and he was mainstreamed in all other subjects. In the eleventh grade, the district continued the same approach and did not offer him any specific reading program for the first half of the year; it failed to include any remedial program to address his writing and spelling deficiencies. Furthermore, there were no reading, writing or spelling goals in his IEP.

F.S.'s parents requested an independent evaluation to determine if F.S. needed remediation for reading, writing and spelling. In September 2001, the evaluation was conducted and confirmed that F.S.'s reading, spelling and writing skills were at the level of a nine year old; at the time, F.S. was 17.5 years

old. F.S.'s parents then provided him with a tutor at their own expense, and helped him on a daily basis with his assignments.

F.S.'s IEP for the 2002-03 school year, which was his senior year, consisted of all mainstream classes, except for reading, which was provided in a resource support center. F.S.'s parents then unilaterally placed him at the Kildonan School, which is a residential facility. They then filed a due process petition seeking a determination that the placement was appropriate and requesting reimbursement for tuition.

The ALJ framed the issue as whether the program offered to F.S. was designed to confer a meaningful educational benefit. The district argued that the IEP was appropriate in that it conferred more than a trivial or *de minimus* educational benefit to F.S. F.S. and his parents countered that the IEP was deficient because it lacked any statement of his present levels of performance, thereby making measurement of progress impossible.

The testimony at the hearing revealed that F.S.'s reading test scores remained essentially the same from the beginning of the third grade through the eleventh grade. From the district's perspective, since he made enough progress to keep up with comparative norms, F.S. had made more than *de minimus* progress even though he was consistently placing in the third percentile.

The ALJ accorded greater weight to F.S.'s two expert witnesses' testimony, than to the district's witnesses, due to their experience with dyslexia. F.S.'s expert witnesses testified that a student with dyslexia can be taught how to read if the reading program is administered in a structured, sequential manner. In their opinion, by the eleventh grade, he needed the most intensive approach in order to learn to read, and that compensatory techniques alone would not

enable him to function in everyday life. F.S.'s reading programs in the district were multi-sensory, but he was presented with several different types. This was problematic because consistency in approach is important in dealing with dyslexia.

Based on the testimony regarding the variety of reading programs which were administered to F.S., the ALJ found that F.S. only made *de minimus* progress in reading, writing and spelling. The ALJ found that F.S.'s IEP failed to include baseline data in order to understand his progress toward stated goals. Furthermore, the ALJ found that F.S. had a significant gap between his cognitive abilities and reading ability, and that the goals in the IEP were inadequate to remediate F.S.'s encoding and decoding weaknesses. Therefore, the district failed to establish that the IEP was designed to confer F.S. with a meaningful educational benefit.

With regard to the issue of the propriety of the unilateral placement, the ALJ explained that, in order for parents to be entitled to reimbursement, they must demonstrate not only that the district's program was inappropriate, but that the child is receiving an educational benefit from the unilateral placement. In this case, the evidence showed that Kildonan offers an integrated, comprehensive, multi-sensory program that F.S. requires. At Kildonan, F.S. has a whole period devoted to reading and expression, and receives additional tutoring in the evening. F.S. testified that he feels he made progress because he can read faster and more smoothly. The ALJ rejected the district's argument as conclusory, that F.S. could have made as much progress if he remained in the district. Based on the foregoing, the ALJ concluded that the residential placement was appropriate, and ordered the board to reimburse F.S.'s parents for all costs incurred for the placement.

## **Emergent Relief Denied to Special Education Student Who Sought to Graduate with His Class; Student Failed to Complete 130 Credits**

*L.B. on Behalf of A.B., Petitioner, v. Hackettstown Board of Education, Respondent*, EDS No. 6657-03 (June 18, 2004).

A.B. is an eighteen-year-old, twelfth-grade special education student. During the first semester of the school year, A.B. receive a failing grade for "Family Science," which is worth 2.5 credits. A.B. was permitted to make up the failing grade by completing a senior project. However, A.B. failed to complete the senior project by June 1, 2004. The high school graduation ceremony was scheduled for June 18, 2004, and students must complete 130 credits in order to graduate.

On June 18, 2004, A.B.'s mother, L.B., made a request for emergent relief so that A.B. could graduate that day. The issue presented was whether A.B. has satisfied the graduation requirements.

At the hearing, L.B. argued that, since A.B. is a special education student, he should only be required to complete 110 credits to graduate. She contended that the district failed to provide him with an appropriate IEP, a transition program, and an exit program. L.B. testified that she did not sign the current IEP or agree to the current program. She maintained that she had no knowledge that A.B. might be eligible for certain related services and that A.B. could have requested a waiver of the 130-credit graduation requirement.

The district maintained that the issue is not whether A.B. had an appropriate IEP, but whether he has satisfied the graduation requirements. The high school principal testified that A.B. failed an elective course in December 2003, but was permitted to make up the course through a senior project to earn 2.5 credits in order to graduate. However, A.B. failed to complete the project. The district will permit A.B. to earn the credits by attending summer school, and when he completes the credits he will receive his diploma and may participate in the next scheduled graduation ceremony. The principal also testified that A.B. was not exempt from the 130-credit requirement.

Based on the testimony presented, the ALJ determined that A.B. failed to demonstrate that irreparable harm would result if he was denied an order to graduate on June 18, 2004. In fact, the board would permit him to graduate after he fulfills all credit requirements. The ALJ found that permitting A.B. to participate in the graduation ceremony that day would cause the district greater harm than it would cause A.B., because it undermines the board's policies. The ALJ therefore denied the application for emergent relief.

## **ALJ Denies Parents' Petition Requesting Out-of-District Placement in Private School that Uses Wilson Method of Reading**

*J.F. and T.F., on Behalf of T.F., Petitioners, v. South Hunterdon Regional High School Board of Education, Respondent, EDS No. 6657-03 (June 21, 2004).*

T.F. is a seventh-grade student at South Hunterdon Regional High School (high school), and is classified as MH. In March 2003, while T.F. was still in the sixth grade, the IEP team met with his parents to discuss T.F.'s difficulties with reading and writing. At that time, T.F.'s parents indicated that they were considering a private placement.

On August 14, 2003, the IEP team met again with T.F.'s parents to discuss his IEP for the seventh grade. Prior to the meeting, T.F.'s parents forwarded a copy of an evaluation from the Lewis Clinic for Educational Therapy. The Lewis Clinic evaluation recommended many strategies such as a structured learning environment and extra time for tests. The CST incorporated these recommendations into the proposed IEP. At the IEP meeting, T.F.'s parents were not interested in him continuing at the high school and the meeting concluded with them stating that they were going to place him at the Lewis School.

The August 2003 IEP was subsequently mailed to Mr. and Mrs. F. The IEP provided for T.F. to attend regular education classes for physical education, and special area classes in art, music, computers, and family and consumer science. He was to be accompanied by an instructional aide for the special area classes. He was to receive individual instruction in the Wilson Reading Program three times per week. He was to be in the resource center for reading, math and language arts, and was to have regular education classes with in-class support for science and social studies.

Mr. and Mrs. F. then informed the CST that they would be filing for due process. However, they agreed to have the proposed IEP implemented during the pendency of the litigation. On August 29, 2003, T.F.'s parents filed a due process petition. However, the hearing did not commence until December 19, 2003, and was not completed until February 10, 2004.

At the hearing, three witnesses testified for the district—the school psychologist, the social worker, and T.F.’s reading teacher. The school psychologist offered her professional opinion that T.F. was making academic progress, and that his high school program is appropriate to meet his needs. The school social worker testified that the IEP team met with T.F.’s parents in November 2003, and proposed the resource room for T.F.’s social studies and science, and an increase in his Wilson Reading Program from three times per week to five times per week. While T.F.’s parents agreed to the increase in the Wilson Program, they wanted to consider the resource room suggestion.

T.F.’s reading teacher explained that the Wilson Program is a multi-sensory, phonically based approach to decoding reading that divides words into six types. T.F. receives instruction from her in a one-to-one setting. She testified that, since the beginning of the school year, T.F. had completed books one and two of twelve, and was beginning book three. Although T.F.’s progress was slow, his progress in the Wilson Program has been very good. The teacher hoped by the end of the school year T.F. would complete book six, which would represent an average rate of progress. She testified that students in book six, on average, test out on the fifth or sixth-grade reading level. She also testified that she expected T.F. to complete the Wilson Program in two years.

Two witnesses testified for T.F.—his mother, J.F., and a psychologist named Dr. Norman Weistuch. J.F. testified that T.F. has tried more than one medication for focus. Shortly after he began taking Ritalin, T.F. had seizures and the medication was immediately discontinued. Since that time, T.F. has taken Depakote for his seizures; this medication makes him groggy. At the end of the sixth grade, she and her husband

believed that they needed to make other arrangements for T.F. because he was so far behind. She testified that she did not believe the high school was providing a FAPE, and believed that it did not have the resources to do so.

Dr. Weistuch, based solely on a review of available documentation, opined that the high school was not providing a FAPE. He testified that, although T.F. wants to be in mainstream classes and fit in, T.F. needed a self-contained program. He also testified that T.F. needed to have the Wilson Program provided throughout the day, and not just five times per week. He also opined that another placement, the Cambridge School, has a program that can meet his needs because all the teachers are trained in the Wilson Program.

Based on the evidence and testimony presented, the ALJ found that T.F.’s IEP was thorough, complete, and describes the rationale for T.F.’s placement in the LRE. The ALJ found that the IEP included all of the modifications, supplementary aides and services that T.F. needed for the regular and special education classrooms. The ALJ also found that T.F. has been making meaningful progress in his placement. Therefore, the ALJ found in favor of the high school and ordered the petition dismissed.

## **Board Ordered to Pay All Costs for Out-of-District Extended School Year Placement**

*C.R., on Behalf of A.O., Petitioner, v. Millville Board of Education, Respondent, EDS No. 4604-04 (June 29, 2004).*

A.O. is sixteen years old and legally blind. During the 2003-04 school year, A.O. attended the district-operated Silver Run School. During the negotiations of A.O.'s IEP, the parties agreed that A.O. needed some extended school year (ESY) program. The board offered A.O. a six-week enrichment program to be held at the Silver Run School which included two 45-minute sessions of Braille instruction per week, and one 30-minute session of PT per week. A.O.'s mother, C.R., rejected the board's proposal and requested placement at the Maryland School for the Blind (MSB).

Subsequently, C.R. filed a petition for emergent relief. The ALJ denied the application for emergent relief, and a plenary hearing was then held. The parties agreed that the testimony taken at the emergency hearing would be incorporated into the record.

Dr. Diane Wormsley, an expert in the field of special education for the blind, testified on A.O.'s behalf. Dr. Wormsley testified that she was concerned that A.O. would regress if she was not provided with an appropriate ESY, particularly in the areas of Braille, orientation and mobility, socialization and independent living skills. She testified that A.O. requires a full-time teacher of the visually impaired; ideally a teacher who is visually impaired. She also testified that A.O. requires extensive contact with other visually impaired students her own age; these students will be peer role models and without such contact regression was probable.

Ruth Ann Hynson, who is the Outreach Coordinator for the MSB program, testified that MSB offers an integrated program in which A.P. will spend the entire day learning daily living skills. All teachers are certified teachers of the visually impaired, and students are grouped by age.

The board offered no expert to rebut Dr. Wormsley's testimony. However, it offered the testimony of Cecilia Ojoawo, a certified teacher of the visually impaired, who herself is visually impaired. Ms. Ojoawo had no high school teaching experience, and concurred with Dr. Wormsley that A.O. needed to practice Braille all the time in order to prevent regression.

Dr. Terry Tracey, the school psychologist and A.O.'s case manager, also testified for the board. However, he has no expertise in educating the visually impaired. His testimony was limited to describing the proposed program for A.O. The program offered by the board included Braille instruction, PT, and possibly orientation and mobility training offered through the Commission for the Blind. The class would include cognitively, non-visually impaired students. The class would be taught by a regular certified teacher with Ms. Ojoawo serving as an aide.

Since Dr. Wormsley was the only expert who testified, the ALJ found that, in order to provide A.O. a FAPE, she needed a program which will provide full-time teachers of the visually impaired, and a program which will afford her extensive contact with her peers. The ALJ explained that A.O. is not entitled to the best possible program, but one which affords her a "basic floor of opportunity." In this case, the basic floor of opportunity is a program which will prevent regression, and the ALJ found that the board's program, despite its best efforts, does not provide this basic floor of opportunity. On the other hand, the MSB program fulfills the requirements delineated by Dr. Wormsley. Therefore, the ALJ concluded that A.O. should be enrolled in MSB for its ESY program, and ordered the board to pay tuition, transportation and any other cost necessary to facilitate A.O.'s attendance in the program.

## **Child under Three Years Old with Severe Speech Apraxia Not Eligible for Special Education and Related Services**

*Jo.H. and A.H., on Behalf of Ju.H.,  
Petitioner, v. Hopewell Valley  
Regional Board of Education,  
Respondent, EDS No. 6464-04  
(August 27, 2004).*

Ju.H. was born on December 28, 2001, and at the time the litigation began he was two years and eight months old. Ju.H. has been diagnosed with severe speech apraxia. Early intervention was recommended by the Childrens Hospital of Philadelphia. He receives home-based speech language therapy (SLT) provided by the Early Intervention Project-Child Program of Mercer County. His parents pay for private SLT at the Princeton Language Center, and Ju.H. also attends a preschool for typically developing peers at Toddlers Village Learning Center (TVLC).

In the spring of 2004, Ju.H. was evaluated by the CST at the Mercer County Special Services District. The purpose of the evaluation was to prepare for Ju.H.'s transition from the early intervention program to the local school district's preschool disabled program. The CST completed its evaluation on May 13, 2004, and the draft IEP was presented to Ju.H.'s father, Jo.H., at an IEP meeting on June 17, 2004.

The IEP proposed placing Ju.H. in a self-contained preschool disabled classroom. Jo.H. did not like the idea of his son being in a self-contained room rather than in a mainstreamed setting. At the meeting, he was asked whether he agreed with the IEP and said "no," and the meeting was concluded by the CST.

On June 30, 2004, Jo.H. met with the district's case manager. He explained that he wanted an integrated program for his son, and requested that Ju.H. be placed at TVLC. He requested that she authorize the out-of-district placement beginning in September 2004.

On July 19, 2004, the case manager contacted Jo.H. to advise that the out-of-district placement would not be authorized. On July 27, 2004, Jo.H. contacted the district's director of special services and asked that the district consider his son's extraordinary circumstances. The director advised that the district did not have any obligation to provide preschool disabled services to children under three.

On August 12, 2004, Mr. and Mrs. H. filed a petition requesting a placement in TVLC's preschool disabled program. It was treated as an emergent application based on the fact that TVLC was making enrollment decisions.

The ALJ explained that a due process hearing was not required in this matter because the case involves an eligibility determination rather than a placement decision. The ALJ further explained that, pursuant to 34 *C.F.R.* §300.121 and *N.J.A.C.* 6A:14-1.1(d), each board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities ages three through 21. In defining student age, *N.J.A.C.* 6A:14-1.3 states that "'age three' means attainment of the third birthday." The Department of Health and Senior Services in collaboration with the Department of Human Services and Education provide early intervention programs for children between birth and age three.

The ALJ stated that there is no obligation under the IDEA for a school district to provide services to a child who has not attained age three. Therefore, the ALJ ordered the petition

dismissed as moot since the issue of the appropriate placement will not be justiciable until Ju.H. turns three.

## **ALJ Denies Parents' Request for Out-of-District Placement at Sectarian School for Child with Autism**

*J.B. and H.B., on Behalf of N.B., Petitioners, v. West Orange Board of Education, Respondent, EDS No. 7166-04 (August 4, 2004).*

At age three, N.B. was determined to be eligible for special education and related services. He was diagnosed with Asperger Syndrome which is considered a mild form of autism. Children with Asperger Syndrome have difficulty with social skills and behavior; they have difficulty with improvisational language and tend to understand words by their literal meaning.

N.B. was first placed in the district's preschool disabled program. He was in a learning/language disabilities class through kindergarten. He began first grade in September 2002. He was placed in a regular education class with an aide. He also received OT and speech therapy (ST). He continued with the same placement in second grade.

In April 2004, the IEP team proposed that N.B. be placed in a regular education class for the third grade, and that he be provided an aide who was shared with one other child. He would receive ST for 30 minutes, twice per week, OT for 30 minutes twice per week, and counseling for 30 minutes once per week. N.B.'s mother

signed the IEP. Nevertheless, on May 27, 2004, N.B.'s parents filed a petition requesting an out-of-district placement in the Sinai Special Needs Institute (SSNI) which offers a highly specialized, intensive and structured program.

At the hearing, three witnesses testified on behalf of the board—the director of student support services, the school psychologist/case manager, and N.B.'s second grade teacher. The director of student support services testified that the district has 800 special education students, 43 of whom are in the autistic spectrum, and of those, 11 have Asperger Syndrome. All of the students with Asperger Syndrome have in-district placements. The director testified that N.B. will receive an appropriate education in a mainstream classroom. She testified that he is currently within his grade level academically, and his social skills have grown. She also testified that SSNI is not approved for special education.

The school psychologist testified that N.B. is receiving good grades, and is behaving well with his peers. In the TerraNova test, N.B. scored on the average range overall despite a weakness in reading comprehension. She believed that N.B. should be placed in a regular education classroom, and that he is doing well with the support of the aide. She provides N.B. with counseling, and he also receives social skills training in a lunch group with one or two other children.

N.B.'s second-grade teacher testified that he received As and Bs on his report card, and does very well in math. She testified that N.B. has progressed socially and interacts well with his peers. She indicated that he did break some school rules including calling out in class and yelling in the hallway. She opined that he received a meaningful educational benefit from his program, and that he did not need a more restrictive environment.

Two witnesses testified on N.B.'s behalf—his mother, H.B., and Dr. Jed E. Baker, a psychologist and expert in autistic spectrum disorders. H.B. testified that she visited SSNI twice in February or March 2004, and was convinced that it was a better placement for N.B. In a self-contained class, N.B. would receive praise for his work and would not feel left behind. SSNI is a religious Jewish school, and H.B. would like to have N.B. be with children who celebrate the same holidays. She believed that 30 minutes of social skills training in the IEP is insufficient, and that N.B. needs to spend hours during the school day learning social skills.

Dr. Baker testified that N.B. has no friends and has difficulty forming friendships with children his own age. Although N.B. is articulate, he has difficulty holding conversations. He has difficulty with noise and refuses to play with more than one child at a time. Dr. Baker testified that N.B. needs a program that will help him with his social skills; the program should be at least 30 minutes per week with daily reinforcement. The program also has to encourage him to interact with other children, and there needs to be peer sensitivity training to prevent teasing. He testified that a smaller, quieter class may be helpful to N.B. academically.

The ALJ explained that the board is required to educate disabled students in the LRE, and to the maximum extent appropriate, educate them with children who are not disabled. Pursuant to *N.J.A.C. 6A:14-4.2(a)(2)*, a student should only be removed from his/her regular class when the nature or severity of the disability is such that educating him/her in the regular class with supplementary aids and services cannot be achieved satisfactorily.

In this case, N.B. has advanced from grade to grade and received A's and B's on his report card. His current IEP now includes a social

skills component. The board's witnesses opined that N.B. is receiving an appropriate education in the regular classroom with the use of aids. In contrast, Dr. Baker could not express an opinion as to whether placement in the regular class is appropriate because he did not see N.B. in that setting. In addition, Dr. Baker could not express an opinion as to the propriety of the placement at SSNI because he did not observe the school. Moreover, a placement at SSNI would violate *N.J.A.C. 6A:14-6.5(b)(7)* which requires nonpublic schools to provide services which are nonsectarian. Based on the foregoing, the ALJ concluded that N.B.'s IEP and placement are reasonably calculated to provide a FAPE. Therefore, he ordered the petition dismissed.

## **District Properly Placed Child with Down Syndrome in Multiply Disabled Class**

*K.G., on Behalf of V.G., Petitioner,  
v. Jefferson Township Board of  
Education, Respondent, EDS No.  
5214-04 (August 30, 2004).*

V.G. is seven years old, and was diagnosed with Down Syndrome shortly after his birth. He began receiving intervention services when he was three months old. He was evaluated by the CST just prior to his third birthday; he was found eligible for the district's preschool disabled program. V.G.'s mother, K.G., requested that V.G. be placed in a regular preschool program five days per week. As a result of mediation, K.G. agreed to have V.G. attend the preschool disabled program five mornings per week, and the regular preschool program two afternoons per week, plus related services.

At his five-year-old evaluation, the CST recommended that V.G. be placed in the multiply disabled (MD) kindergarten class. K.G. disagreed, and again as a result of mediation, V.G. attended regular kindergarten in the morning and the MD class in the afternoon. Since June of 2000, V.G. has had ten IEPs, and there have been several mediations and due process petitions filed.

At K.G.'s request, an inclusion specialist from the University of Medicine and Dentistry of New Jersey made three visits to V.G.'s class to observe and make recommendations. As a result, the specialist made a number of suggestions to help V.G. succeed in a mainstream setting.

For the 2003-04 school year, the board recommended that V.G. be placed in a MD class. The CST believed that a self-contained classroom with mainstreaming for specials would accelerate his communication skills, and teach him classroom skills he needed. Nonetheless, the board acceded to Mr. and Mrs. G.'s request that he be placed in a regular first grade class. He was given in-class support and therapy.

On March 18, 2004, the CST met with Mr. and Mrs. G. to discuss the IEP for the 2004-05 school year. The CST recommended that V.G. be placed in a MD class with mainstreaming for specials. The CST believed that the work in a typical second grade class would be so far above V.G.'s level of performance that he would be completely frustrated and lost. Mr. and Mrs. G. rejected the proposed placement, and on April 5, 2004, Mrs. G. filed a due process petition.

The ALJ explained that the IDEA requires disabled students to be educated in the LRE; to the maximum extent possible, they should be educated with non-disabled students. Students should only be educated in special classes when

the nature or severity of the disability is such that educating them in a regular class cannot be achieved satisfactorily.

Citing *Oberti v. Board of Education of Clementon*, 995 F.2d 1204 (3d Cir. 1993), the ALJ explained that there is a two-part test for determining whether a school district can place a child in a special class: (1) whether educating the child in a regular class, with the use of supplementary aids and services, can be achieved satisfactorily; and (2) whether the school has mainstreamed the child to the maximum extent possible. In reaching a conclusion as to the first part of the test, the court should consider the steps the district has taken to try to include the child in the regular classroom, a comparison of the benefits between educating the child in the regular classroom versus the special classroom, and the possible negative effect the child's inclusion will have on the other children in the regular classroom.

In this case, the evidence presented to the ALJ indicated that V.G. was receiving speech therapy, OT and PT outside the regular classroom. The ALJ accepted the speech therapist's testimony that it would be disruptive to the class and distracting for V.G. for her to give in-class support. V.G. also had an aide. The school psychologist unsuccessfully attempted behavior modification. An outside consultant, who was contacted as to behavior modification recommendations, found the present placement inappropriate. All professionals testified that V.G. needs a preschool-type of classroom atmosphere, where the teaching is demonstrative and repetitious. Based on this evidence, the ALJ concluded that educating V.G. in a regular class cannot be achieved satisfactorily.

The ALJ then compared the benefits V.G. would receive in a regular education class

versus the benefits of being in a segregated special education class. One of the chief benefits V.G. would receive from mainstreaming is patterning himself after the actions of his peers. V.G.'s tantrums and avoidant behavior are more prevalent in the regular class setting as opposed to when he was in a separate class for speech. Moreover, V.G. was not able to establish any type of positive relationships with his classmates. V.G.'s behavior is also having a negative effect on the other children in the class. On the other hand, the MD class would provide teaching through repetition and reinforcement. The MD class would have five children with a special education teacher, an aide, and additional

rotating staff; in this setting V.G.'s behavior could be better controlled. V.G. has also developed relationships with the children in MD class.

The ALJ explained that the district's proposed IEP would provide mainstreaming for V.G. for all specials, assemblies, lunch and field trips, where appropriate. This will provide him with the opportunity to have exposure to his typical peers without being subjected to an academic program that is inappropriate for his academic level. Based on the testimony and evidence presented, the ALJ concluded that the district's placement of V.G. in a MD class will provide him with a FAPE.

**address all comments and questions to**

Maria M. Lepore  
Melissa R. Vance  
Beth L. Finkelstein  
Andrew Babiak  
Association Counsel