



**National
Autism
Association
Conference**
November 8, 2007

Pre-Conference Law Day

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Lynne Arnold, MA

Mitchel Perlman, PhD

PRESENTERS

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Lynne Arnold, MA

Lynne Arnold is the meeting organizer for Talk About Curing Autism (TACA) of Visalia, CA and an Autism One and NAA Conference parent mentor. Through community activism and advocacy as well as conference presentations and mentoring, she helps parents to understand their child's rights to appropriate interventions and education. Lynne is the editor of *Autism: Asserting Your Child's Rights to a Special Education*, by David Sherman.

Mitchel Perlman, PhD

Dr. Perlman specializes in the assessment and treatment of children and adolescents who have specialized needs and/or who are involved in chaotic-intense-traumatic-critical- situations. Known for the comprehensiveness of his investigatory assessments (Psychodiagnostic, Psycho-educational, Neuro-Cognitive), he is often called on to be the impartial Independent Examiner in juvenile, family, civil, and special education proceedings.

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4) Review of Child's Unique Educational Needs.

- Review all reports by District assessors. The District must establish a basis for all conclusions and recommendations.

5) Discussion of student's present levels of academic and functional performance.

- Assessments should reveal for IEP discussion the present levels of academic and functional performance, also known as "present levels of performance."
- Present levels of performance will provide the baseline for all annual goals (and objectives—not all Districts use objectives), thus you cannot begin a discussion of goals without knowing your child's present levels of performance.

6) Discussion of Goals.

- Goals drive placement and services, therefore the more goals, the greater the service or the more intense the program needs to be for the child to achieve those goals in a year's period of time.
- Goals must be reasonable and objectively measurable; not subjective such as the following social/emotional goal: "Bobbie will express happiness 4 out of 5 times per week."

7) Offer of Placement and Services:

- Don't put the cart before the horse; if you haven't discussed goals, it's difficult if not impossible to determine an appropriate placement and services. Goals provide a foundation for the child's IEP placement and services. If the school District has (illegally) predetermined its IEP offer, ask the basis for the placement and level, frequency and duration of services they've offered.
- You do NOT need to agree to the IEP at the IEP meeting. In fact, don't sign consent to the IEP until you are certain

meeting or by requesting Prior Written Notice (see appendix).

11) Accommodations/ Modifications.

- Inquire which types of modifications and accommodations are appropriate given your child's unique needs.

12) Least Restrictive Environment (LRE).

- Your IEP meeting should contain a discussion regarding the extent, if at all, your child will be educated with their typically developing peers (non-special education peers). Each child, regardless of their disability, is entitled to daily interaction with and exposure to children without disabilities to the maximum extent possible. This is known as the Least Restrictive Environment or LRE.
- The more restrictive your child's learning environment, the less opportunity your child will have to learn from and interact with typically developing peers. The District is obligated to FIRST consider a regular education classroom with support services BEFORE considering placing a child in a more segregated setting, commonly called a Special Day Class (SDC).
- Before an offer outside of regular education is proposed, there should be a discussion regarding the full range of supplementary supports and services that could facilitate your child's placement in a general education classroom.
- Ask the District: "Why can't my child be in a general education setting with proper aide support and services?"

D. You've disagreed with their Assessment in writing and requested an IEE in writing, now what?

- Once parents have made a request, the District has a reasonable time in which to respond. Depending on your state, the interpretation of "reasonable time" may vary. You should similarly request in writing that the District provide you with the protocols for any tests they performed so that your assessor may review these protocols to ensure the District conducted their testing properly.

E. When the District agrees to fund the IEE:

- If the District chooses to fund the IEE, the District has a legal obligation to provide a list of suggested assessors. However, a parent is under no obligation to choose one of these assessors. The only requirement for an assessor conducting an IEE is that he or she be an assessor with sufficient expertise in the particular area to be assessed.
- Consult with an independent assessor regarding the tests previously conducted by the District, because if your independent assessor performs the same tests within a year or less of their prior administration, it may invalidate the results of the test.
- Once the assessment is completed, request (in writing) that the District hold an IEP meeting in which to consider the results of the IEE in relation to the child's placement and services.
- Make appropriate arrangements to ensure the attendance of your independent assessor at the IEP meeting at which their conclusions and recommendations will be shared with the IEP team.

F. The District did not agree to fund the IEE, what next?

- The District must either pay for the IEE, or file a Request for Due Process Hearing to prove the appropriateness of its own assessment. If the District attempts to do anything else, or fails to act at all, it is in violation of federal law.

G. Enforcing your right to an IEE:

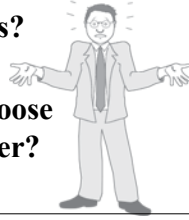
- The next step if the District has not agreed to fund the IEE and also has not filed a Request for Due process to defend their assessment as appropriate is to file a complaint through your state's complaint resolution process or CRP.
- You may choose to have your assessor begin the IEE even though the District has not yet agreed to fund the IEE after a reasonable time with no response from the District.
- Depending on your CRP investigator, the chances of you recovering the costs for the IEE are sometimes greater if the independent educational evaluation is already underway.



Genetically Engineered to Challenge My Parents

Covering ...

- Why Assess?
- How to Choose an Examiner?





Covering...

- What to Share With the Examiner?
- What is a *Gud* Examiner/Examination?

Why Assess ...

- Ammunition
- To Answer Questions



... to answer questions

- Why does my child ...
- What does my child ...

Why Assess ...

- Identify Problem Areas
- Differential Diagnosis
- Target Interventions



... target interventions

- Shot-gun Approach
- Firing Order



... target interventions

- Shot-gun Approach
- Firing Order
- Most Bang for the Buck



Why Assess ...

- Ammunition
- To Answer Questions
- ID Problem Areas
- Differential Dx
- Target Interventions
- Response to Intervention

Why Assess ...

- Response to Intervention

Why Assess ...

- Response to Intervention
- Major Change in Development

Normal Development

Covering ...

- Why Assess?
- How to Choose an Examiner?

Choosing an Examiner...

- Access Your Parent Network (in California – TACA)

Choosing an Examiner...

- Ammo: Ask Your Atty
- Needs: Ask 3 SpEd Attys

Choosing an Examiner...

- Intervention: Ask . 3 Special Ed Attorneys . Community Specialists

Choosing an Examiner...

- Clinics Remediating Processing Deficits
- SLPs & OTs
- ABA Agencies

Covering ...

- Why Assess?
- How to Choose an Examiner?
- What to Share With the Examiner?

What to Share...

- What ***YOU*** Want From the Evaluation. Be Clear!



What to Share...

- Going to Due Process



What to Share...

- Going to Due Process
- Shopping for a Diagnosis
- Question Diagnosis

What to Share...

- My Spouse is depleting our IRAs & home equity. Which remedies do we really need?

What to Share...

- I want a 1:1 Aide



What to Share...

- What ***YOU*** Want From the Evaluation.
- Stop the Clock!



Covering ...

- Why Assess?
- How to Choose an Examiner?
- What to Share With the Examiner?



The gud Evaluator and The gud Evaluation


The gud Evaluator ...

- ... as a Detective




The gud Evaluator ...

- as a Detective
- as a Scientist-Clinician




The gud Evaluator ...

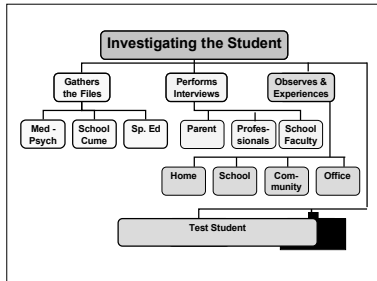
- as a Detective
- as a Scientist-Clinician
- as a Maverick



... as a Detective


- By Investigating the Student
- By Investigating the Data





Investigating the Data

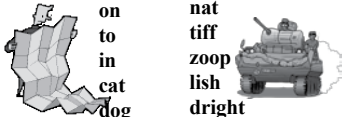
- Less Dependent on Test/Subtest Names
- Less Dependent on the Scores



Investigating the Data

Less Dependent on Subtest Names

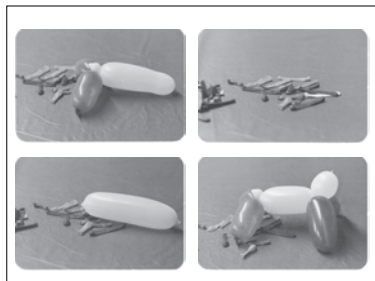
| | |
|------------------|-------------|
| Reading Decoding | Word Attack |
| on | nat |
| to | tiff |
| in | zoop |
| cat | lish |
| dog | driht |

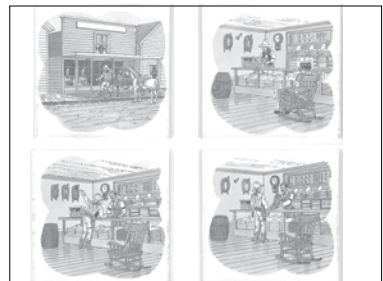


Investigating the Data

| | | |
|-------------|-------------|-------------|
| Mary | Toni | Bill |
| 24 | 24 | 24 |
| +17 | +17 | +17 |
| 41 | 14 | 7 |

Less Dependent on the Scores







the Scientist-Clinician understands that ...

THE BURDEN IS ON TEST USERS TO BE BETTER THAN THE TESTS THEY USE

... as a Scientist-Clinician

Must come to the Interpretive Task Armed

- With Research Knowledge
- With Theoretical Sophistication
- With Clinical Expertise



the Scientist-Clinician understands that ...

- Tests (including IQ tests) are **Samples of Behavior & are not Exhaustive.**
- Tests Assess Functioning Under **Fixed, Experimental Conditions.**



the Scientist-Clinician understands that ...

- Scores Should be Used as a **Helping Agent.**
- **Strict Adherence to the IQs** (e.g., Verbal, Performance, or Full Scale) **can be Entirely Misleading.**



the Scientist-Clinician

WISC-III

| Verbal IQ | 130 | Performance IQ | 85 |
|---------------|-----|-----------------|----|
| Information | 16 | Picture Comp | 7 |
| Similarities | 16 | Coding | 7 |
| Arithmetic | 16 | Picture Arrange | 7 |
| Vocabulary | 16 | Block Design | 7 |
| Comprehension | 16 | Object Assembly | 7 |



the Scientist-Clinician

WISC-III

| Verbal IQ | 130 | Performance IQ | 85 |
|---------------|-----|-----------------|----|
| Information | 17 | Picture Comp | 8 |
| Similarities | 17 | Coding | 2 |
| Arithmetic | 10 | Picture Arrange | 8 |
| Vocabulary | 19 | Block Design | 10 |
| Comprehension | 17 | Object Assembly | 7 |



the Scientist-Clinician understands that ...

- **If an Interpretive Approach Relies Strictly on One View, it is Doomed to Fail for Some Children.**
- **One Must Shift Among Interpretive Approaches to Find the Best Explanations for a Child's Profile.**

| Subtests | St Sc | %tile |
|----------------------------------|-------|-------|
| Visual Discrimination | | |
| Receptive Attention – CAS | 75 | 5% |
| Visual Matching – WJ-III | 85 | 16% |
| Matching Numbers – CAS | 80 | 9% |
| Planned Codes – CAS | 70 | 2% |
| Pair Cancellation – WJ-III | 65 | 1% |
| Number Detection – CAS | 75 | 5% |
| Visual Spatial Processing | | |
| Verbal-Spatial Relations – CAS | 120 | 91% |
| Figure Memory – CAS | 115 | 84% |
| Nonverbal Matrices – CAS | 130 | 98% |



The Examiner as a Maverick

An independent individual who does not go along with a group.

... as a Maverick

- It is not the examiner's assignment, responsibility, or intention to assist parent or district in *winning*.
- The examiner must not approach the assessment with any bias or investment in the results.
- The source of funding is entirely irrelevant to the outcome.
- While under direct-examination and cross-examination, the examiner must testify to his/her findings.



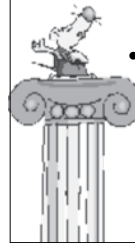
The gud Evaluation

The Files



The Files ...

- A Good Part of the Story has Already Been Told
- Told Incorrectly
- Told Incompletely



The Files ...

- Retelling the Story Can be Time-Consuming & Expensive

The Files

Academic - Special Ed
Previous Assessments
- protocols

- Mis-scoring
- Mis-administrations
- Raw scores of zero
- Scores/Tests not reported
- Discontinuous scores



The Files


IEP Notes
The School Psych reported ...
"behaviors were within the normal range"

The Files




SST meeting notes

The Files



- displayed impulsive behaviors;
- rushed through assignments;
- stated he was tired and that he did not want to work;
- sought attention inappropriately;
- chose not to follow rules, telling his teacher "no, no, no" repeatedly;
- acted-out when made to do an activity that he did not want to do; and
- acted-out when other students invaded his personal space.

The Files



Later that month the teacher penned a letter to mother explaining that in class, child "is still only working when he chooses and is still hitting/touching others. Time out is not working, because I cannot pick him up and put him there. Sorry."


The Files



"[Child] hit another student, made another student cry ... In the future, he may be suspended."

"[Child] kicked [another child] in the back and punched him in the chest."

The Files




Medical-Psychiatric Records

" Statements by two RNs that the profusion of psychotropic medications prescribed for the boys has not left enough time to determine how effective the medications really are before they are changed for another."

| Date | Psychiatric | | | | |
|---------|-------------|-----------|----------|-----------|-----------|
| | #1 | #2 | #3 | #4 | #5 |
| 10/1995 | | | | Clonadine | Dexedrine |
| 3/1996 | Pamelar | | | | Ritalin |
| 10/1996 | Pamelar | | | | |
| 11/1997 | Pamelar | Risperdal | | | |
| 4/1998 | Prozac | | | | |
| 2/1999 | Prozac | Risperdal | | | |
| 5/2000 | Prozac | Risperdal | | | |
| 12/2000 | Prozac | Risperdal | Denakote | | |

The Files




Academic Cum – Other Goodies

Communiqués Between Faculty School Nurse to School Principal

"She [mom] is now convinced that [child] is Bipolar, her other son has developed petit mal seizures, the family dog has Grand Mal seizures, etc., etc."


The Files



Academic Cum – Other Goodies

- 42-days earlier, the child was so out of control at a psych intake, the psychiatrist immediately hospitalized him.
- Son #2 was diagnosed with a seizure disorder 2-years earlier by his pediatrician, later confirmed by EEG.

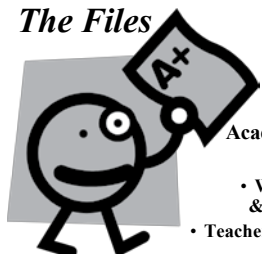
The Files



Academic Cum – Other Goodies

"[Dog's name] has been a patient of mine for 3 years. I initially saw [dog] because his epilepsy was worsening despite appropriate treatment with the anticonvulsant Phenobarbital. He was having multiple seizures frequently. ...Epilepsy is recognized as an inherited disorder in many breeds including the Labrador Retriever."

The Files



Academic Cum

- Grades
- Work Habits & Citizenship
- Teacher Narratives

Two Psychiatrists Blamed Family

- K - "Mary has great skills, but needs to change her attitude & become more cooperative."
- 1 - "Mary has excelled in both Math & Reading this qtr! WOW! Now, if we could only keep the talking down."
- 2 - "Mary tries to finish assignments too quickly! Capable of doing better if were more attentive. Needs to use time more wisely. Interested in doing her best and tries to please but could concentrate more on HER work rather than others."

The Files

Academic Cum – Other Goodies



Group-Administered Achievement Tests

Father Blamed Mother

- K - "We Have been working on Johnnie's self-control and listening skills"
- K - "We're working on more smiles and cooperation!"
- 1 - Group Testing Revealed Math Application = 82nd % compared to Math Computation = 1st%

The Interviews



- Parent
- Professionals
- School Faculty

The Interviews

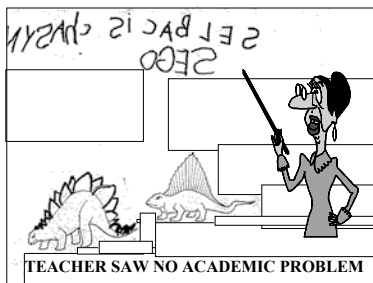


- Interventions – Parent Accommodations
- ABA
 - 3 to 4 hours of homework per night
 - Parent does work for/with child

The Interviews



- do not understand mental disorders
- do not understand processing nuances
- do not understand the etiology of the current behavior
- not necessarily good observers



Observations



Observations

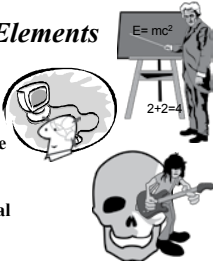


Becoming Derailed

"This is a graph showing the temperatures of the first ten days in August. What is the difference in temperature between the hottest and the coldest days?"



Essential Elements



- Neuro-Cognitive
- Academic
- Social-Emotional


Information Processing

INPUT MEDIATE STORE OUTPUT

- Verbal
- Visual
- Smell
- Taste
- Touch

Essential Elements

Neuro-Cognitive



- Attention
- Cognitive Flexibility
- Planning
- Abstract Reasoning

Executive Functioning

Information Processing


INPUT MEDIATE STORE OUTPUT

- Verbal
- Visual
- Smell
- Taste
- Touch

Executive Function →
← e.g., Attention

Essential Elements


Neuro-Cognitive



- Sequential – Simultaneous
- Crystallized – Fluid Intelligence
- Verbal – Visual
- Visual Spatial – Visual Discrimination

Essential Elements


Neuro-Cognitive



- Attention
- Planning
- Abstract Reasoning
- Cognitive Flexibility

Essential Elements


Neuro-Cognitive




- Processing Speed
- Fine-Motor (Planning, Precision, Speed)
- Memory & Learning
 - . Immediate
 - . Active
 - . Working
 - . Delayed (Short-term/Long-term)

Essential Elements

Neuro-Cognitive



- Language
 - . Receptive
 - . Expressive
 - . Supralinguistic
 - . Related to Reading



Genetically Engineered to Challenge My Parents

senior level behaviorist, if so, how many hours?

- What about "progress meetings?" How often will you meet with your child's behavioral aides/therapists/tutors, the supervisor of your behavior intervention program and/or other therapists or service providers to review your child's progress in the program or make appropriate adjustments to the program?

3. Present the recommendations of your assessor at an IEP meeting.

- Provide a copy of your assessor's report to the school District in advance of the IEP meeting.
- Ask the District if they are in agreement with the recommendations.
- If the District indicates they are not willing to adopt the recommendations, go over each recommendation and ask the basis for their disagreement.

4. Be prepared to file a due process complaint.

- Many Districts take the approach that the IEP is just the beginning of the negotiation and they will not change their IEP offer until you file a request for due process, or in some cases, unless you proceed through an entire due process hearing.
- Because due process is stressful and expensive, many school Districts count on the fact that most parents will do nothing further after that IEP meeting once the District has told them "NO."
- It's often helpful to make it clear that you are willing to take your request for behavioral services all the way to a due process hearing if necessary. REMEMBER, if you threaten due process, BE PREPARED to act. The school District may just call your bluff and if you're not prepared to at least file for due process, it's less likely the school District will take you seriously.

SESSION 5:

Building a Framework for Educationally Necessary Services

Overview of IDEA Basics

A. Substantive Protections. The IDEA requires:

1. All children with disabilities are to be given a free appropriate public education (FAPE).
2. Education and Related Services must be provided to children up to the age of 21.
3. Education includes academic as well as self-help and vocational skills.
4. Education must be provided in the "Least Restrictive Environment" (LRE).
5. Education must be individualized and appropriate to the child's needs.

B. Qualifying for Special Education as a Child with Autism. To qualify as a child with autism under the IDEA, the child must exhibit any combination of the following "autistic-like behaviors"

1. An inability to use oral language for appropriate communication
2. A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood
3. An obsession to maintain sameness
4. Extreme preoccupation with objects or inappropriate use of objects or both
5. Extreme resistance to controls
6. Displays peculiar motoric mannerisms and motility patterns
7. Self-stimulating, ritualistic behavior

for that child to obtain some educational benefit from that instruction. More recently, however, courts have pointed out that the *Rowley* standard dates back to 1982 – before the IDEA even existed. At that time, the Court interpreted a much older statute called the *Education for All Handicapped Children Act*. In the Ninth Circuit, for example, a case entitled *Adams v. Oregon*, 195 F.3d 1141 (9th Cir. 1999) insisted that children receiving a meaningful educational benefit. An even more recent case from a federal court in Washington (*J.L. v. Mercer Island Sch. Dist.*, 2006 WL 3628033 (W.D. Wash. 2006)) analyzed the difference between the *Rowley* “some” benefit standard and the *Adams* “meaningful” benefit standard. The *Mercer Island* case asserted that all decisions prior to the enactment of the IDEA were suspect. For now, however, *Rowley* remains the only Supreme Court decision regarding a standard for “appropriate.” It is therefore important to understand the “some” benefit standard. Two good measures to determine whether a child is receiving an appropriate education under this standard are:

- If the child is mainstreamed in a typically developing classroom, the child should be progressing through grades with a grade average of at least a “C;” or
- The second, and more common method, is if the child is meeting the annual goals as set forth in their IEP.
- However, in many cases children may meet the two above-referenced criteria and still not be receiving FAPE. For a number of reasons, such as inappropriate goals and objectives and differential grading, the program does not address the child’s specific areas of need.

E. Related Services

“Related Services” are defined as any service that is necessary to help a child benefit from her special education program. In other words, “to benefit from special education” generally means

that the service must assist the child in making progress toward accomplishing the goals set out in the IEP. Examples of Related Services include:

1. Transportation (to and from school or alternative placement from the child's home)
2. Speech-Language Pathology
3. Applied Behavior Analysis ("ABA") or Intensive Behavioral Intervention ("IBI")
4. Psychological services
5. Physical and Occupational Therapy
6. Recreation (including therapeutic)
7. Counseling services.

F. Mainstreaming, Integration, Full Inclusion and Least Restrictive Environment

Legal Development. Another fundamental principle of the IDEA is the requirement that children with disabilities receive their education among their peers without disabilities to the maximum extent appropriate. While the term "mainstreaming" is not found in the language of either the statute or its regulations, the statute uses the phrase Least Restrictive Environment ("LRE") to ensure that children with disabilities are educated alongside typical peers.

1. IDEA 2004 provides, in part, that each local educational agency must ensure that: "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."
2. Definitions.
 - a. "Mainstreaming" refers to placing students with disabilities into regular classrooms to do the same activities as typically developing peers. There



**Genetically Engineered to
Challenge My Parents**

Covering ...

- **Examiner's Recs**
- **Placement Decisions**
(from Examiner's Perspective)
- **Services**
(Remediation & Accommodations)

Examiner's Recs...

- **In developing each child's IEP, the IEP Team ... shall consider**
 - . the child's strengths;
 - . the child's academic, developmental, & functional needs;
 - . the parents' concerns for enhancing their child's education;
 - . the evaluation's results. 20 U.S.C. 1414(d)(3)(A)

Examiner's Recs...

- **The Examiner Should Address *some/most* of Those in the Report**

Examiner's Recs...

- **The Examiner Must Be Prepared to Defend the Recommendations**

Examiner's Recs...

**But the Examiner
Does Not
Need to Make
Recommendations Only
Relating to FAPE**

Examiner's Recs...

as if
This Were
My Child

Examiner's Recs...

- **Whether a Rec is FAPE
Is Rarely
Part of the Report**

Examiner's Recs...

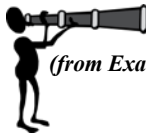
- **Whether a Rec is FAPE
Is Always Part of an IEP,
but Not Necessarily
Opined by the Examiner**

Examiner's Recs...

- Whether a Rec is FAPE
Is Always Part of a Due Process Hearing, and Almost Always Opined by the Examiner

Covering ...

- Examiner's Recs
- Placement Decisions



(from Examiner's Perspective)

Placement Decisions ...

- Present Levels
Drive Goals/Objectives
- Goals/Objectives
Drive Placement/Services



Placement Decisions ...

- Videos

Placement Decisions ...

- Before/After



Home/Community...

| October2005 | March 2006 | June 2006 |
|---|---|---|
| Jo attended aut-specific pre-K. By teacher reports & direct observations, Jo was aggressive, non-compliant, & he escaped. | Jo attended home program 40 hours per week and made great progress. | Jo attends a typical preschool 5 days/wk with ABA aide. |

Home/Community...

| October2005 | March 2006 | June 2006 |
|--|---|---|
| Jo could not sit at table for meal at home or in the community, without eloping. | Jo could sit at table for meal but required heavy verbal prompting. | With minimal prompting, Jo sits/participates at meals at home & with peers at school's lunch. |

Home/Community...

| October2005 | March 2006 | June 2006 |
|--|---|--|
| Jo was unable to be with parents in any store in parking lot without eloping. Jo would not respond to name when called or state desires. | For up to 30 min Jo was able to stay within 5' of parent in stores, and held adult's hand in the parking lot. | Same, but can also verbalize his desires and can wait for a desired object or activity for extended periods of time. |

Maladaptive Behaviors...

| October2005 | March 2006 | June 2006 |
|---|---|--|
| Jo engaged in non-compliance 19x/hour (home tx). Jo's teacher (autism class) reports his behaviors were unmanageable. | Jo engaged in non-compliance approximately 8x/hr in home therapy. | Jo engages in non-compliance less than 1x/hr in home therapy & reg-ed preschool. |

Self-Help...

| October 2005 | March 2006 | June 2006 |
|---|---|--|
| Jo could not go to the bathroom independently without playing with toilet, & could not wipe after a BM. | With verbal & gestural prompting, able to do those tasks. | Same, but totally independent in doing so. |

Social-Emotional...

| October 2005 | March 2006 | June 2006 |
|---|---|--|
| Jo could play with therapists for 5 minutes with full verbal prompting. | Jo could play with therapists for up to 45 minutes with minimal verbal prompting. | Jo engages in interactive play with peers at his typical preschool for 45 minutes with minimal verbal prompting from aide. |

Language...

| October 2005 | March 2006 | June 2006 |
|---|---|---|
| Jo could not respond to yes/no questions appropriately. | Jo could respond to yes/no questions appropriately for desires. | Jo can do all that & also to open-ended questions. Also, he has generalized all to across settings. |

Pre-Academic...

| October 2005 | March 2006 | June 2006 |
|---|--|---|
| Jo could identify 8 uppercase letters expressively. | Jo could identify 17 uppercase letters expressively. | Jo can identify 24 uppercase letters and 12 lowercase letters expressively. |

Fine Motor...

| October 2005 | March 2006 | June 2006 |
|---|--|---|
| Jo refused to copy a line, circle, or square. He bit the pencil, crayon, & markers, & ripped/ate paper. | Jo was able to copy a circle, & vertical & horizontal lines. | Jo can trace triangles, squares, and crosses, as well as draw a person with 7 features. |

Gross Motor...

| October 2005 | March 2006 | June 2006 |
|---|---------------------------|---|
| Could not ride a tricycle using pedals. | Able to pedal a tricycle. | Puts on helmet independently; without training wheels, pedals, steers, & brakes his 2-wheel bike. |

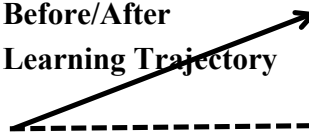
Placement Decisions ...

- Videos
- Before/After
- Learning Trajectory



Placement Decisions ...

- Videos
- Before/After
- Learning Trajectory



Learning Trajectory...

- Child's Capabilities?
- Capability = Trajectory?
- If "no", Why Not?
- If "yes", Since When?

Placement Decisions ...



- Videos
- Before/After
- Learning Trajectory
- Target Placement

Target Placement...

- Based on Testing, Can
 - . Child be Remediated
 - . Child be Accommodated

Rem/Acc...

- to Participate in Reg Ed?
- to Access Curriculum Standards Without Content Modifications?

Covering ...

- Examiner's Recs
- Placement Decisions
(from Examiner's Perspective)
- Services
(Remediation & Accommodations)

Services-Remediation ...

- ABA Home Program



ABA Home Program ...

- Mental Capacity
- Ability for Awareness



ABA Home Program ...

- Help Child Join by
 - . Eliminate Mal Behaviors
 - . Improving Attention
 - . Teach How to Interact

ABA Home Program ...

- Put on Track for Social Reinforcement



Services-Remediation...

- Speech
- OT
- PT-APE
- Processing



Processing...

- **Attention**

Processing - Attention...

**Attention is
not
a Unified Construct**

Processing - Attention...

- **Attention Involves
Several Key Elements
that Combine to Impact
the Effectiveness of Many
Cognitive Processes**

Processing - Attention...

- **Alertness**
- **Selective Focus**
- **Filtering**
- **Maintenance**

Processing - Attention...

- **Sound Therapies**
 - . **Samonas**
 - . **Therapeutic Listening**
 - . **Earobics**



Processing - Attention...

- **Movement Therapies**
 - . **Brain Gym**
 - . **Interactive Metronome**
 - . **Intercept**

Processing - Attention...

- **Others**
 - . **Fast ForWord**
 - . **PACE**

Processing...

- **Attention**
- **Dyslexia**



Processing - Dyslexia...

- **Classic Dyslexia**
- **Visual Dyslexia**



Processing - Dyslexia...

- **Classic Dyslexia**
 - . Phonemic Awareness
 - . Speed of Lexical Access

Processing - Dyslexia...

- **Classic Dyslexia**
 - . Lindamood-Bell Progs
 - . RAVE-O

Processing - Dyslexia...

- **Visual Dyslexia**
 - . Vision Therapy

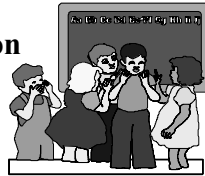


Services-Accommodation

***Essential Standards
vs
Standards***

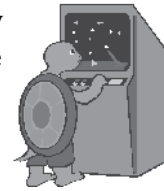
Services-Accommodation

**Aide
Consultation
Training**



Services-Accommodation

- **Technology**
 - . Hardware
 - . Software



Services-Accommodation

- **Word Processors**
- **Augmentative
Communication
Devices**
- **Scanning Pens**

Services-Accommodation

- **Wynn & Kurzweil**
- **Read:OutLoud
(grades 3 – 10)**

Services-Accommodation

- **Write:OutLoud** (gr 1 – 12)
- **Co:Writer** (gr 1 – 8)
- **DraftBuilder** (gr 3 – 12)

C. Understanding the District's obligations with respect to an IEP

1. Minimum components of an IEP

- A statement of the child's present levels of academic achievement and functional performance.
- A statement of measurable annual goals.
- A statement as to how the District will notify the student's parents about the student's progress toward meeting the annual goals as outlined in the IEP.
- A statement of the special education and related services, supplementary aids and program modifications based on peer-reviewed research to the extent practicable.
- A Statement of the extent, if any, to which the child will not participate with "nondisabled" children in the regular class.
- A statement regarding student's participation in any state or district wide assessments and any individual appropriate accommodations that are necessary to take the tests.
- A statement indicating the projected date for the beginning of the services and modifications described in subclause and the anticipated frequency, location, and duration of those services and modifications.

2. Following the terms of the last agreed upon and implemented IEP

- District must maintain your child's current program if there is a disagreement regarding the IEP. This is commonly called Stay Put if either the parent or the school has filed for due process.
- If your case is not in Due Process, you can enforce your child's right to keep the same services or program by filing a complaint through your State's Department of Education, using the Complaints Resolution Process (CRP).

separate invoice for your assessor(s)' attendance at the IEP meeting;

- d) Make your request for a changes to your child's IEP clear to the IEP Team;
- e) If the school district still won't agree to make changes to the child's IEP, even after your assessor has presented his/her IEE results and recommendations, then retain a special education attorney and file for due process.

E. Know When to Move On:

1. Use your time at the IEP wisely. Don't spend hours trying to convince the school district to "correct" its IEP. Make sure your request is accurately reflected on the IEP document and move on. In many cases, the worse the IEP offer, the stronger your Due Process case will be.
2. Use the IEP Meeting as a Fact-Finding Opportunity:
 - Ask lots of questions, but Don't Make Any Commitments:
 - Ask the school District to tell you more about their conclusions and recommendations.
 - Some examples of questions you may want to ask:
 - (i) What is their experience using or implementing the interventions the school district is suggesting?
 - (ii) How effective is the proposed intervention the school district is suggesting?
 - (iii) Is the intervention too complex to implement?
 - (iv) Has the teacher had training in this intervention?
 - (v) Is the intervention based on peer-reviewed research?

F. Always Electronically Record Your IEP meetings: Some states have specific rules about providing notice in advance when a parent or school district seeks to electronically record an IEP meeting. Check your state’s education code to determine if, when, and how you need to give notice.

G. Always Review the IEP Notes:

- Before you leave the IEP meeting, ask for a copy of the notes taken during the meeting and review them for accuracy. Remember, a school district official is taking the notes, so what is written may not be accurate or complete.
- If the IEP notes are not complete or inaccurate, ask the District to make corrections. If the District refuses, create your own “Comments” section and ask that your Comments be added to the IEP document. If the District refuses to include your comments, then send a letter and consider filling a compliance complaint with your state’s Department of Education.

2. BECOMING FAMILIAR WITH YOUR DISTRICT.

A. Talk to other parents in support groups about your District. By learning what other parents experienced during their IEP meetings, you can learn what to expect at your IEP meeting. Consider going with another parent to an IEP; both to provide support to that person and to learn more about the process.

B. Be familiar with the professionals the District is recommending assess your child. Talk to a special education attorney, parents and research the District’s website.

C. How Litigious is your District?

1. Use the Internet to research how many times your school district has been to due process and either won or lost.
2. Look for cases that may be similar to yours. If you’re asking for something similar to another parent on an issue

to review the assessments or the District's proposed goals in advance of the IEP. You need an opportunity to review any assessments or other documentation in advance of the IEP to prepare any questions. Get copies of district assessments, proposed goals or any other documents in advance of the IEP meeting and put your request in writing.

- 4. *It is 'our policy' to come to a conclusion at the end of the IEP regarding the offer of placement and services; therefore we need to know today whether you agree to our offer. It is 'District policy' that Parents have 48 hours to accept our offer.*

There is no requirement that you agree to an IEP offer at the IEP meeting. Seldom is it in your best interest to agree to an IEP the day of the meeting.

- 5. *You Do NOT need to take notes; we are taking notes that will reflect our discussion today.*

You must ALWAYS review any notes taken by the District staff and you should write "Parents Comments" page on an additional sheet (if necessary) that accurately conveys your statements and requests. Your comments must be included with the notes of the IEP.

- 6. *We can't offer that program and service, we simply lack the resources to do so.*

OR

It's not a matter of what the child needs; it's a matter of what the District can provide.

The District may either provide the placement or service necessary for your child to gain a meaningful educational benefit or open its checkbook and pay for a private program.

- 7. *Your child's needs would be best met in a special day class (SDC) with other students who have similar*

disabilities, rather than with an aide in the general education classroom (regardless of what your child's unique needs are).

The District has an obligation to provide an appropriate education in the least restrictive environment (LRE). Oftentimes, placing a child in a special day class greatly restricts the child's ability to learn from and interact with typical peers.

8. *There is no need to do an independent educational evaluation, we just assessed your child, and you don't want your child going through the stress of another assessment, do you?*

Often your Independent Educational Evaluation can make or break your case. It's imperative that you have an accurate description of your child's needs so you can make an informed decision regarding what placement and services your child requires to benefit from his education.

9. *If we determine eligibility under Autism or Autistic-like characteristics, your child will be labeled for life, and you don't want that, do you?*

Don't let this emotional appeal get the best of you. In order to receive services that will allow your child gain meaningful educational benefit, of course there will need to be a determination of eligibility, and of course his or her cumulative file will continue to have documentation that your child qualifies under the category of Autism.

10. *That option is not in our drop-down computer menu, therefore it is not available.*

The District is NOT limited to what is in their latest IEP computer program. The District must make an offer that is appropriate based on your child's unique needs. If it's not in the computer, then tell them to write it in by hand!

11. *It is or is not "OUR POLICY" to (fill in the blank). It is not "OUR POLICY" to assess a child without first*

conducting a Student Study Team (“SST”) meeting. “Our Policy” is to provide students with IEPs up to two hours of speech and language therapy per week. It is not “OUR POLICY” to fund private schools.

Anytime you hear this, ask whether the “policy” is based on state or federal law, and ask for the District to provide you a copy of the District “policy” and federal and/or state laws that support that policy. If the District “policy” is suspect, they generally will not be able to do so because there is often NO legal basis for their “policy.” Citing District policy as opposed to federal or state law is almost always suspect and could be based on District convenience or preference.

- 12. *We believe a two-week or summer break between services is important because sometimes kids “just need time off.”*

Refer to your independent assessor’s report to determine whether extended school year services are appropriate based on your child’s unique needs. Inquire as to what data the District has the supports their contention that your child will not regress during any break from services.

- 13. *Despite the fact that our (District) assessment has not been finished or provided to you (Parents) we consider this assessment complete and are using it as a basis for our offer.*

Do not allow the District to rely on assessment conclusions when you were not provided a copy of the report upon which their conclusions are based.

- 14. *We are done hearing from you now.*

If you hear this, ask the District if it is their position a parent does not have the right to meaningfully participate in an IEP meeting.

- 15. *If you choose not to accept our IEP offer and put your child in a private school, then the school district*

is no longer responsible to provide your child a Free Appropriate Public Education.

Parents who believe the school district's IEP offer is not a FAPE for their child always have the right to privately place their child in an appropriate program after giving notice to the district and thereafter seek reimbursement for the cost of that program from the District.

****Note**** The parent has the burden to demonstrate at a due process hearing that the District's program is NOT appropriate AND the program they selected for their child IS appropriate.

16. *Why don't you just try this program? You can always call another IEP.*

If it were that easy, parents wouldn't need special education attorneys. You can certainly call another IEP, but that doesn't mean the district will agree to change your child's placement or services.

Case Number 1

Ripley is a child with autism, age 7 who qualifies for special education services at City Unified School District ("CUSD"). CUSD recently convened an IEP meeting. Ripley is currently in a mild-to-moderate, non-categorical, special day class at a CUSD elementary school. Ripley also receives 10 hours per week of in-home Applied Behavior Analysis instruction by a non-public agency—Newt Autism Services, a 1:1 aide for 5 hours per day at school, occupational therapy for one hour per week in the clinic, two hours per week of speech and language therapy and one hour per week of social skills training. Parents' concerns at this IEP are Ripley's self-injurious behaviors. Ripley has begun biting his hand and hitting his head with much more frequency and intensity than is usually the case. Parents want an assessment to determine why Ripley is engaging in this behavior.

During the IEP, parents note that Ripley has had some of the same goals repeated for multiple years. The District indicates that the goals that are repeated are very challenging and Ripley has not mastered them yet, so until they are mastered, he should

receive the same goals again. Parents also state they are not sure some of the goals are objectively measurable.

CUSD special education teacher, Mr. Hudson, says he can't figure out why Ripley engages in self-injurious behavior and is confused because Mr. Hudson sees Ripley exhibit these behaviors both when he wants to avoid a task, but also behaves this way when he appears happy and is smiling. The occupational therapist, Ms. Bishop, says the self-injurious behavior could be sensory seeking and therefore a sensory integration issue. The school psychologist, Carter Burke, says since Ripley has recently changed prescription medication she is going to "wait and see" what happens with these behaviors.

CUSD recommended the same level of services and did not agree to do an assessment addressing his increase in self-injurious behaviors, instead of waiting to see what the effect is of his "new meds."

CUSD proposed to put Ripley in an Autism specific special day class ("SDC") with children identified as having more severe behavioral concerns. Parents are concerned that this is an even more restrictive environment than his current placement. District also proposed terminating his in-home ABA program since his autism SDC will provide a more "intensive environment" using "ABA methodologies." Newt Autism Services did not agree. Parents did not agree. Newt stated that even if the in-home program termination was appropriate, which they could NOT recommend at this time, a transition plan was necessary before stopping the program. Newt conveyed to the District that you should never abruptly terminate a program for a child with autism. District psychologist Burke disagrees and refuses to offer a transition plan as part of the District's IEP offer.

Selected Issues for Discussion:

1. The District proposes the same goal for a student that it had previously proposed for the past three years. The goal involved answering "Wh-" questions (who, what, where, when, why). Though Ripley made little to no progress, the District still refused to provide any service change to address the lack of anticipated progress over several years.
 - If a child is not meeting his or her goal,

necessary to have a transition plan if the ABA program were to be discontinued in favor of an “Autism SDC.” The District refused to offer a transition plan.

- In making its recommendation that a transition plan should be put into place, Newt was relying on its experiences working with children on the autism spectrum as well as peer reviewed research which demonstrates that children with Autism need continuity. Further, abruptly ending a service can be damaging to the child, and cause regression. A significant program change should always include gradual reduction of service as part of a transition plan.
5. With respect to Ripley’s increase in self-injurious behaviors, the District is on notice of an identified area of need that requires further assessment by qualified professionals. The District’s response unlawfully neglects determining the cause of the behaviors. District merely proposes to just place Ripley in a more restrictive environment.
- A District is required to identify and evaluate all areas of suspected need. If behaviors are occurring, a Functional Analysis Assessment (FAA) must be conducted and if necessary, a Behavior Intervention Plan (BIP) must be prepared to properly address these behaviors. The FAA should be completed before considering a change of placement.

Case Number 2

Luke is a 6 year old child living in Tattouine Unified School District (TUSD). Luke is eligible to receive special education and related services under the eligibility category of Autism. Luke also has expressive and receptive language delays. Luke is receiving Applied Behavior Analysis (ABA) instruction through the non-public agency, Kids Learning Center (“KLC”). KLC has been providing Luke’s ABA for almost 3 years through their contract with TUSD and also provides speech and language therapy to Luke.

KLC has just updated its assessment of Luke. Parents are concerned with some of the scores Luke received on his last assessment. KLC testing

indicates that the The Expressive Language Test (TELT) was administered on January 1, 2006, and May 1, 2007. When the TELT was administered in 1/06 Luke's score indicated his age equivalent for expressive language was four years and 3 months (4-3). When the TELT was re-administered this year, Luke's age equivalent score was four years and 9 months (4-9). The KLC report also states that there is a concern Luke might have some sort of an auditory processing disorder, but there has been no testing to rule out an auditory processing disorder.

During an IEP meeting, the KLC supervisor, Mr. Vadar says, "Luke is making good progress, as evidenced by his increased score on the TELT. I am very pleased." The District's administrative designee, Mr. Sith, agrees that Luke is making progress and offers the same program and services as the prior school year. Parents respond that they are having a hard time communicating with their son and tell the IEP Team that they expected to be better able to understand his speech after several years of speech therapy. They tell Mr. Sith they would like to further discuss his Luke's speech. In response, Mr. Sith indicates he has to attend another TUSD meeting. Mr. Sith then states the IEP will necessarily need to come to an end, but tells Parents, he is always available to discuss their concerns, so they can call him later if they wish.

Parents later send a letter to the District disagreeing with the KLC assessment and request an independent educational evaluation (IEE) in speech and language. Parents also request the District begin using a different agency to provide ABA and Speech services to Luke, specifically, Leia Autism Consultants (Leia). District says they do not have a contract with Leia and therefore will not agree to use that agency.

District agrees to fund the IEE and provides parents a list of experts: Boba Fett or Jabba T. Hut. Parent requests the IEE be performed by Han Solo or Lando Calrissian. Mr. Vadar tells the parents the District will only pay for the two "independent assessors" the District recommends. Parents relent and have Mr. Hut perform the assessment. Mr. Hut conducts testing, reviews the prior IEP goals and indicates that because Luke appears to be meeting his IEP goals, he recommends the same amount of speech and language services. No testing is done to rule out an auditory processing disorder.

- Once you, as Parents, have given the District a reason why you suspect that your child has an additional area of need that requires further assessment, the District has an obligation to investigate through assessment by qualified staff.

D. The District assessor has performed an assessment. The assessor has determined that your child meets the eligibility criteria and is eligible for speech and language therapy, for example. However, the assessor indicates that the amount of speech and language therapy sessions should be “in an amount to be determined by the IEP team.”

- Ask the assessor what his/her recommendation is. The assessor has the responsibility and professional duty to make a recommendation. The IEP team ultimately determines what placement and services is appropriate for your child, but it must necessarily rely on the assessor’s recommendations to do so.

2. PRESENT LEVELS OF PERFORMANCE (“PLOP”):

A. The District tells you that your child’s teachers will determine the present levels of performance after they begin working on the goals because, “We know you child needs a goal in this particular area, so we’ll give them the goal and let the teacher start working on the goal to develop the PLOP.”

- Progress on a goal is not truly measurable if you do not know what the starting point or baseline is for the goal at the time the goal is created.

B. “Obviously the baseline was zero, because we would not have given your child a goal in an area if he did not need it, or for a task he could already complete.”

- Make sure the baseline states at the time the goal is written what your child can do with respect to that particular goal.

C. The District tells you that the baseline is that Johnnie has delays in social pragmatics. The goal is: "Johnnie will walk up to a peer and greet the peer, ask the peer a question, ("Hi, How are you today?" Or "Hi, How was your weekend?") and stay near the peer long enough for the peer to respond in 8 of 10 attempts.

- There is no baseline because you do not know how many times he can currently walk up to a peer, greet, ask a question and wait for the peer to respond.

3. GOALS:

A. The District tells you at the IEP, "We do not need a task or skill for [fill in the area of need, such as reading comprehension] because our curriculum is specifically designed to address that area of need for all students."

- If you do not have goals in an area of need, you will not be able to measure whether your child is making any progress toward remediating that deficit.

B. The District tells you we do not need goals for [fill in the area of need, such as attention], because our accommodations in the classroom sufficiently address this area of need.

- Again, you will not be able to track progress in a deficit area if there is not a goal in that area.

C. The District tells you that the goals your private assessor drafted are far too challenging for your child and will likely result in your child becoming "too frustrated."

- Remember, the more goals, and the more challenging the goals are, the more services and the longer the duration of services need to allow your child to successfully accomplish that goal.
- Your child's goals must be written with high expectations for progress in mind.

4. PLACEMENT AND SERVICES:

A. The District tells you that its offer of placement and services "is all that's available in our District." Or the District tells you: "We have general education or special education classes as the ONLY two choices in our District. Since your child is not a good candidate for general education, she must therefore be placed in the special education class."

- This is an unlawful "cookie cutter" approach, a one-size fits all attempt to providing an education. The District's IEP offer MUST be tailored to meet your child's unique needs.
- If the District does not have the appropriate program for your child, then it MUST locate a program outside the District or in some cases, pay for a private program.

B. The District tells you that your child is eligible for special education and related services as a child with autism and as a result the District is recommending that she be placed in an "Autism Special Day Class."

- Inquire specifically what about your child's unique needs makes the Autism SDC "appropriate" in the District's opinion.
- Inquire what opportunities your child will have to learn from and interact with typical peers in this "Autism SDC. "

C. The District tells you that your child is "not severe enough to warrant the services and placement you are requesting." Or "Your child is too severe for the placement you are requesting." For example, "In our District, the children who have a 1:1 applied behavior analysis trained aides have much more severe behavioral issues, and although your child's behavioral incidents disrupt the class and she has difficulty remaining on task without redirection, she's just not severe enough to warrant the District providing an aide

- Is your District proposing a program to address your child’s maladaptive behavior that was developed by a staff member based on her “years of experience”?

G. If the child isn’t achieving his goals, is the level of service appropriate?

- Goals may be appropriate, but if the services intended to help the child achieve those goals aren’t sufficient in frequency, duration or amount, then the child may not achieve the goal in a year’s period of time.

District’s Evaluation

1. Present Levels of Performance drive Goals/ Objectives; Goals/ Objectives drive Placement/ Services. So, when the District assessed, did they do the necessary background work:
 - so they could derive accurate present levels,
 - from which they could develop appropriate Goals/ Objectives,
 - so that an appropriate placement and services could be offered?
2. If not, prove your child’s levels by bringing a video of your child to the IEP. Videos are much better than logbooks.
3. Translate the logbooks to visual images (graphs/ charts)

This Child or No Child

1. Is the District’s recommendation for their segregated autism-specific placement essentially automatic?
2. Is the denial of in-home intensive applied behavior analysis based on improper policy determination rather than on consideration of the child’s unique and individual needs?
3. Did the District predetermine placement, based on service availability and logistical convenience, that has nothing to do :
 - with child’s individual needs, or

placement in programs for students with severe disabilities.

Failing to Consider Out-of-District Placements

1. If the District fails to consider programs outside of the school environment, let them know that you recognize:
 - that some self-care and community adaptation skills can only be taught in natural environments;
 - that some can only be taught efficiently in these environments; and
 - that some need to be taught not only in table-top settings, but rapidly generalized to natural environments (i.e., efficient learning environments combined with generalization opportunities).
2. However, it is also your understanding that to make developmental and functional progress, a child needs to learn to navigate the real world. For a preschooler, the family needs to be an integral and well-informed part of your child's program.
3. Furthermore, make it known that despite Congress's recent reaffirmation that education is not just about academics and is not just about what happens at school, that the District continues to fail to consider needs for in-home programming, and to reject your request for this service. Furthermore, the District's denial is especially noteworthy in your situation, as the legislature has given special weight to the importance of the home as an environment of instruction.

Regarding quality of supervision:

Most of the time, the supervision offered by a District will reflect the availability of the teacher and District's behaviorist/specialist, in lieu of your child's needs. If you already have a program, and the District is recommending a different program without the same quality of supervision, your dissent should include the following:

- that your program uses trained behaviorists in lieu of aides;

Reports

1. OT, of course, raves about increase in VMI standard score
2. Teacher raves about increase in raw scores

Dialogue:

Atty: (to teacher) Did you see Jo's prior scores on the WJ-III?

Teacher: Yes

Atty: Did you have a chance to compare those scores like the OT did with the SIBS-R?

Teacher: Yes. His raw scores show increases in all areas.

Atty: He has 20-points or more drops in all of his standard scores. Don't you think that's significant? Do you have any thoughts about that?

Program Manager (PM) steps in to rescue teacher

Tactic One: Blame Parent

PM: Isn't mom picking up student early several days a week? You know if he doesn't attend a full day, he is missing out on significant instruction.

Atty: But we are replacing that with private speech, OT, and music, things targeted to remediate his principal areas of deficit.

PM: But you are comparing apples to oranges. You are complaining about academics while pulling him from an academic program.

Atty: (to teacher) Can you share with us all the academic goals on which you are working during the afternoons that he is pulled-out by parent?

Teacher: Well, on Mondays we are doing personal grooming, on Tuesdays we are doing our chores, and on Thursdays we are doing art.

Atty: So, I think that we are clearly doing better for him by pulling him out to target his weaknesses in language and in sensory, while not giving up any academic programming at all.

Tactic Two: Blame the Child

PM: But you forget, we couldn't even reach this child because of his dysregulation and emotional outbursts.

Atty: But he was worse three years ago, and at that time his WJ-III scores were 20+ points higher across the board. For the past three years, you have raved about how fabulous his progress has been in that regard. By YOUR data,

- he now comes to circle and group,
- he participates willingly,
- he attends for 15 minutes with minimal prompting, and
- he is down to no more than 3 meltdowns a week, from which he recovers in less than 6 minutes

Are you claiming that despite this massive improvement, the drop in scores is due to sensory dysregulation, which by YOUR data was significantly worse at the time he was tested to be academically higher?

Tactic Three: Blame the Test

PM: Ms. Atty, you know that this is just one test. We measure progress by multiple measures.

Atty: Yep, I know. But in EVERY objective measure, EVERY test you gave that tests academics, language, and social skills, Jo had significant drops in his objective measures: statistically significant drops. I'm trying to justify those significant drops with the claimed fabulous progress he is making in your program.

Psychologist (School Psych) to the rescue!

Psych: You have to realize that he has gotten older, by three years.

Atty: Yea, I'm aware of that, and I'm aware that the tests are normed for age: hence, we compare standard scores and not raw scores.

Psych: Well, if you look at the standard scores, they are all within the confidence level.

Atty: You've got to be joking! Let's just look at the first on the list, the 'Letter-Word Identification' subtest. Jo had a standard score of 104 three years ago. The 95% confidence level would have been plus/minus 5, I believe: about 99-109. Now he has a standard score of 80. So, I guess what you're saying is that we should all assume that 3 years ago, he really tested at the low end of the confidence level on EVERY measure and now he tested at the high end on EVERY measure, and as long as they are within an additional 5-10 standard score points difference, no biggy, right?

PM: Well, maybe what they are testing is not what is being taught in the class?

Atty: Well, the WJ-III tests reading, writing and arithmetic. If you aren't teaching those in the class, what the heck are you teaching?!?

Appendix: Selected CFRs

Independent Educational Evaluations

TITLE 34--EDUCATION

REHABILITATIVE SERVICES, DEPARTMENT OF
EDUCATION

PART 300_ASSISTANCE TO STATES FOR THE EDUCA-
TION OF CHILDREN WITH
DISABILITIES

Sec. 300.502 Independent educational evaluation.

(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415 <<http://www.specialed-connection.com/LrpSecStoryTool/servlet/GetReg?cite=20+USC+1415>> (b)(1) and (d)(2)(A))

Prior Written Notice:

TITLE 34--EDUCATION

REHABILITATIVE SERVICES, DEPARTMENT OF EDUCATION

PART 300_ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

Sec. 300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph

(b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include--

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be

obtained;

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and

the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be--

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415 <<http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetReg?cite=20+USC+1415>> (b)(3) and (4), 1415(c)(1), 1414(b)(1))

Appendix:

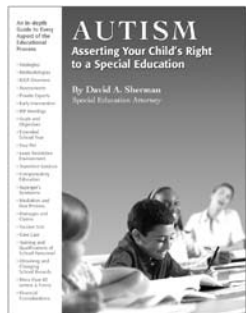
Acronyms

| | |
|----------------------------------|---|
| 504..... | Section 504 of the Rehabilitation Act |
| ADA | Americans with Disabilities Act |
| ADHD..... | Attention deficit hyperactivity disorder |
| Assistive Technology Device..... | Equipment used to maintain or improve the capabilities of a child with a disability |
| BD..... | Behavior Disordered |
| Behavior Plan..... | Plan of positive behavioral interventions that is part of an IEP for a child whose behaviors interfere with his/her learning or that of others |
| BIP | Behavior Intervention Plan |
| Case Law | Judicial opinions issued by a court |
| CDE..... | California Department of Education |
| DIS..... | Designated Instruction and Services |
| Disability | Under the ADA, an impairment that substantially affects one or more major life activities, record of having such impairment, or being regarded as having such an impairment |
| Discovery..... | Pre-trial process by which parties to a lawsuit exchange information with the other party |
| Due Process Hearing | Administrative hearing before an impartial hearing officer |
| Early Intervention | Special education and related services pursuant to the IDEA provided to children under the age of 5 years |
| ED..... | Emotionally Disturbed |
| EI..... | Early Intervention |
| ESY | Extended School Year |
| Expert Witness..... | Person called as a witness to testify because he/she has a recognized competence and expertise in a subject area |
| FAPE..... | Free Appropriate Public Education |
| FBA..... | Functional Behavior Assessment: process of identifying factors associated with the occurrence (and non-occurrence) of specific behaviors |
| FERPA | Family Educational Rights and Privacy Act. FERPA deals with confidentiality and access to student records |
| IDEA..... | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program |
| Inclusion..... | Educating children with special needs in regular education classrooms in their neighborhood schools |

| | |
|------------------------------------|--|
| IQ..... | Intelligence quotient. An IQ score is an artificial number that is used to indicate levels of mental development |
| LD..... | Learning Disabled |
| LEA..... | Local Education Agency |
| LRE..... | Least Restrictive Environment |
| Least Restrictive Environment | Concept of educating children with disabilities in an educational environment that exposes the child to children without disabilities to the maximum extent possible |
| Mainstreaming..... | Placing children with disabilities in regular education classrooms to the maximum extent possible |
| MDE..... | Multi-Disciplinary Evaluation |
| MR..... | Mentally Retarded |
| NCLB..... | No Child Left Behind |
| NPA..... | Non Public Agency |
| NPS..... | Non Public School |
| OAH..... | Office of Administrative Hearings |
| Occupational Therapy..... | Therapy to remediate motor skills |
| OHI..... | Other Health Impaired: a category of eligibility pursuant to the IDEA |
| OT..... | Occupational Therapy |
| Physical Therapy..... | Therapy to remediate gross motor skills |
| PT..... | Physical Therapy |
| Reasonable Accommodation..... | Adoption of a facility or program for a child with a disability that can be accomplished without undue administrative or financial burden |
| Related Services..... | Services provided pursuant to the IDEA to supplement special education, such as counseling services, occupational therapy, and physical therapy |
| Resource Room..... | Special education placement that is provided in conjunction with or as a supplement to a child's regular education program |
| Section 504..... | Part of the Rehabilitation Act of 1973 that provides that program recipients of federal financial assistance may not discriminate on the basis of a child's disability |
| SED..... | Seriously Emotionally Disturbed |
| SEHO..... | Special Education Hearing Office |
| Specially Designed Instruction ... | Modification or changes to the general curriculum instruction necessary to implement the goals, benchmarks, and objectives of a child's IEP |
| Special Education..... | Educational programs and placements provided pursuant to the IDEA |
| Transition Services..... | A component of the IDEA to facilitate movement from school to the workplace or high education |

Appendix:

Educating Children with Autism



The following categorization of excerpts from *Educating Children with Autism*, a report issued by the Committee on Educational Interventions for Children with Autism, National Research Council (Division of Behavioral and Social Sciences and Education) was provided by David A. Sherman and appears in his book, *Autism: Asserting Your Child's Right to a Special Education* (available at www.aboutautism.com). *Educating Children with Autism* can be downloaded for free or a hard copy can be purchased at <http://books.nap.edu/catalog/10017.html> or Amazon.com.

Accurate Assessment

Educating Children with Autism, "In general, the perspectives of various professionals are required as part of the diagnosis process. This may involve the efforts of special educators, general educators, psychologists, speech pathologists, occupational and physical therapists and physicians" (p. 23).

All of these professionals should have education, training and experience with autism. It is rare for a school District to have professionals in the various disciplines qualified in autism. "The level of expertise required for effective diagnosis and assessment may require the services of individuals, or a team of individuals *other than those usually available in a school setting*" (emphasis added, p. 26)

Definition of "education" (includes socialization)

Educating Children with Autism defines education as the "fostering of acquisition of skills or knowledge... including not only academic learning, but also *socialization*, adaptive skills, language and communication, and reduction of behavior problems—to assist a child to develop independence and personal responsibility." (*Educating Children with Autism* p. 12 emphasis added)

Early intervention

For young children with autism, the National Research Council's (NRC) *Educating Children with Autism*,

a study sponsored by the US Department of Education, recommends early intervention services of a minimum of 25 hours a week for 12 months a year.

"The consensus across programs is generally strong concerning the need for: early entry into an intervention program; active engagement in intensive instructional programming for the equivalent of one full school day, including services that may be offered in different sites, for a minimum of five days a week with full-year programming; use of planned teaching opportunities, organized around relatively brief periods of time for the youngest children (e.g., 15-20 minute intervals); and sufficient amounts of adult attention in one to one or very small group instruction to meet individualized goals." NRC *Educating Children with Autism*, p. 6, 219. There should be repeated planned teaching opportunities organized around brief periods of time for the youngest children in one-to-one or low student/teacher ratios, inclusion of a family component including parent training and low student to teacher ratio—no more than two to one.

The NCR also advises that the personnel who implement the program "need familiarity with autistic spectrum disorders and the range of possible outcomes and with the many methods that fit into best practices." The committee found that it is important for teachers and other professionals to have multiple exposures, opportunities to practice, and active involvement, as well as ongoing consultation, hands-on opportunities to practice skills, and building on the knowledge of teachers.

Extended School Year

Note that the National Research Council says the program should be for the full year. This does not mean 50 weeks, or that the longer holidays are excluded.

The NRC also advises that the service providers “need familiarity with autistic spectrum disorders and the range of possible outcomes and with the many methods that fit into best practices.” The committee goes on to recommend that it is important for teachers and other professionals to have multiple exposures, opportunities to practice, and active involvement, as well as ongoing consultation, hands-on opportunities to practice skills, and building on the knowledge of teachers.

Thus, the personnel who provide extended school year services should be qualified, just like the personnel who provide services during the regular school year.

Fewer than 10% of children with autism have appropriate services

Dr. Catherine Lord, the Committee Chairwoman of the National Research Council that published *Educating Children with Autism* said that “fewer than 10% of children with autism are getting the recommended level of therapy.” By using the strategies in this book and effective advocacy, you can put your child in the fewer than 10% of children with autism who have appropriate services.

Gilliam Autism Rating Scale and Autism Behavior Checklist

Both the GARS and the Autism Behavior Checklist (ABC) have been described as having “more questions regarding the degree to which their scores reflect accurate diagnosis,” according to the National Research Council (in *Educating Children with Autism*, p. 196). Parents have a right to approve the administration of specific tests and refuse others. There are discrepancies among experts regarding the usefulness of certain tests for children with ASD.

Integration of various methodologies needed to obtain appropriate education

In some cases, a child with autism needs an integration of several methodologies to obtain an appropriate education. For instance, the Picture Exchange Communication System (PECS) can be taught using principals of applied behavior analysis and discrete

trial training. Thus, teachers and parents of children with autism need to have knowledge of the various methodologies so that they can determine how to address the unique needs of the child. (*Educating Children with Autism*. P. 187, 225)

Intervention program should show progress within 2-3 months or different teaching approaches should be considered

In *Educating Children with Autism*, for instance, the National Research Council says, “Educators and clinicians could provide extremely useful data by documenting the effectiveness of intervention programs on a child-by-child basis. Based on the available research with this population, progress on language and communication goals should be evident within two to three months, or different teaching approaches should be considered. In order to determine whether an individual child is benefiting from a particular education program, measurement of that child’s progress using methods of single-subject design research are helpful.” (p. 64)

Need for teacher to be familiar with alternative sets of curricula and various methods of implementing them

According to the National Research Council, “The consensus across programs is generally strong concerning the need for: early entry into an intervention program, active engagement in intensive instructional programming for the equivalent of one full school day, including services that may be offered in different sites, for a minimum of five days a week with full year programming, use of planned teaching opportunities, organized around relatively brief periods of time for the youngest children (*e.g.*, 15-20 minutes intervals) and sufficient amounts of adult attention in one-to-one or very small group instruction to meet individualized goals.” (National Research Council, *Educating Children with Autism*, p. 6.)

Note that the National Research Council says the program should be for the full year. This does not mean 50 weeks, or that the longer holidays are excluded.

The NRC also advises that the service providers “need familiarity with autistic spectrum disorders and the range of possible outcomes and with the many methods that fit into best practices.” The committee goes on to recommend that it is important for teachers and other professionals to have multiple exposures, opportunities to practice, and active involvement, as well as ongoing

consultation, hands-on opportunities to practice skills, and building on the knowledge of teachers.

Thus, the personnel who provide extended school year services should be qualified, just like the personnel who provide services during the regular school year.

While there is little case law that addresses the training, education, and experience required to teach children with autism, the National Research Council (NRC), *Educating Children with Autism*, addresses the issue of education of teachers who work with children with autism. The NRC found that while many special education teachers and early intervention teachers may have received strong instruction in some aspects of autistic spectrum disorders, they may have received little or no instruction in other aspects.

The NRC goes on to say that *even if they have received solid training in general special education or special early intervention, they may have had little or no instruction about such important strategies as applied behavior analysis (ABA), the use of physical structure and visual systems in teaching, or appropriate use of alternate and complementary methods of communication, such as sign language or picture systems... Because these children have diverse needs and learn best in diverse contexts, most of well established comprehensive intervention programs use many different curricula to design highly individualized programs for students. The need to address many different goals requires that teachers be familiar with alternative sets of curricula and various methods of implementing them.* (NRC, *Educating Children with Autism* Chapter 14, Personnel Preparation, p. 186)

According to the NRC, a teacher must be able to identify an autistic child's needs and to use appropriate methods to address those needs. The NRC found that teachers cannot acquire these skills through classes

alone, but need to have experience with models or working classrooms and effective teachers (NRC p. 187). Additionally, teachers must be *familiar with theory and research concerning the best practices for children with autism, including methods of applied behavior analysis, naturalistic learning, assistive technology, socialization, communication, inclusion, adaptation of the environment, language interventions, assessment, and the effective use of data collection systems.* (NRC p. 225)

Educating Children with Autism, a study funded by the US Department of Education, often cited by hearing officers, determined that teachers cannot acquire the skills that they need through classes alone, but need experience with models or working classrooms, and effective teachers. They should be familiar with ABA, naturalistic learning, assistive technology, socialization, inclusion, adaptation of the environment, language intervention, assessment, and the effective use of data collection systems.

Progress of child? New teaching methods required?

In *Educating Children with Autism*, for instance, the National Research Council says, "Educators and clinicians could provide extremely useful data by documenting the effectiveness of intervention programs on a child-by-child basis. Based on the available research with this population, progress on language and communication goals should be evident within two to three months, or different teaching approaches should be considered. In order to determine whether an individual child is benefiting from a particular education program, measurement of that child's progress using methods of single-subject design research are helpful." (p. 64)

