



## You Be the Judge - Answers Courtesy of *Early Childhood Report*

### 1. **YOU BE THE JUDGE: Does child need isolated setting to benefit from ABA therapy?**

A child with autism received one-to-one ABA services in a therapeutic clinic. Shortly before the child's third birthday, the district conducted an IEP meeting. After discussing the child's needs and current levels of performance, the IEP team proposed a one-to-one ABA program in a preschool special education classroom.

The parents claimed that their son would be unable to learn with other children in the room. They noted that the child benefited from the clinic's practice of working with children in isolation. The district argued that the proposed IEP met the child's unique needs, and would ease his eventual transition to a school environment.

#### **Did the district violate the IDEA by proposing a school-based placement?**

**A. No.** A clinical setting is not appropriate unless a child has failed to make progress in a school environment.

**B. Yes.** The child benefited from the one-to-one services he received in isolation.

**C. No.** The parents failed to show that the district's proposed placement was inappropriate.

#### **Answer: The IHO ruled C.**

The proposed IEP offered the child FAPE in the least restrictive environment. (*In re Student with a Disability*, [6 ECLPR 16](#) (SEA WV 2008).)

A proposed IEP does not have to replicate the services offered in a private program in order to be appropriate. Rather, the question is whether the IEP meets the child's unique needs and is reasonably calculated to provide an educational benefit.

Unlike the private program in which the child received one-to-one services in an isolated room, the district planned to deliver one-to-one ABA services in a classroom setting. The IHO pointed out that in addition to offering nearly identical ABA services, the district's program was far less restrictive than the private program.

"The student would be exposed to public school routines and be able to participate in school-based activities in the program offered at [the district's] school," the IHO wrote. Because the district offered the child FAPE in the LRE, the parents could not recover the cost of the private ABA program.

A. is incorrect. The IDEA's preference for mainstreaming must be balanced against each child's unique needs.

B. is incorrect. The benefits of the private program had no bearing on whether the proposed IEP was appropriate.

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### 2. YOU BE THE JUDGE: Was preschooler entitled to transportation as related service?

Parents of an IDEA-eligible preschool student who attended a half-day program and received speech-language therapy at a district elementary school invoked their right to due process when the district refused to provide the child with bus transportation.

Although the district had offered to provide transportation the previous year, the parents had declined because they were able to provide the service themselves. And although the district offered to provide the preschooler with transportation for the 2005-06 school year, it withdrew the offer after changing its policy. It ceased offering transportation to preschoolers, regardless of disability, due to the new funding constraints of Head Start.

But for the 2005-06 school year, both parents worked at jobs that prevented them from transporting the child at either noon (when the half-day educational services provided to the child twice a week ended) or at 2:50 p.m. (when the available extended care ended). In addition, a family friend who had previously provided transportation to the child was unable to do so after November 2005.

#### **Was the district required to transport the preschooler to speech-language therapy?**

**A) No.** Because the district had stopped providing transportation services to all preschoolers, it was not required to transport the preschooler unless her disability prevented her from using the same types of transportation that were available to students without disabilities.

**B) No.** The IDEA does not create any obligation on districts to provide transportation to preschoolers, regardless of their disabilities.

**C) Yes.** Because the district had offered transportation services initially, it could not then revoke that offer and refuse to provide the services.

**D) Yes.** The student was unable to access her educational program without the transportation services and, therefore, the district was required to provide them as a related service.

#### **Answer: The hearing officer decided D.**

In *Mountain BOCES*, [45 IDELR 83](#) (SEA CO 2005), an impartial hearing officer ordered a district to provide bus transportation to a preschool student, despite its institution of a new policy that denied transportation to all preschoolers, whether or not they had a disability.

Due to the parents' work schedules and their inability to find alternate transportation for the student, the IHO found the district would deny the child access to her program by refusing to provide transportation. Although the district argued that its policy did not discriminate against students with disabilities because all preschoolers were subject to the policy, the IHO stated that was not enough. Here, the child needed transportation in order to receive FAPE.

The district incorrectly interpreted IDEA regulations at [34 CFR 300.24](#) to mean that it was only required to provide transportation where the child's disability prevented the use of the same transportation offered to children without disabilities. The IHO asserted that the clear language of [34 CFR 300.24](#) mandated transportation services to provide access to educational benefit.

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### 3. YOU BE THE JUDGE: Is public school classroom appropriate for a preschooler with cochlear implants?

After identifying a 3-year-old student as eligible for special education services, a district developed an IEP that included placement in its Head Start program -- the only preschool program that the district provided. The student's parents objected to the proposed placement. Concerned that the student would not have appropriate speech and language models in a class that included children with special needs, the parents sought to have the student placed in a private school with "typically developing peers."

The parents requested a due process hearing. They presented testimony from three audiologists, all of whom recommended that the student be placed in a classroom with typically developing children. The audiologists opined that the student needed to be exposed to certain language levels to obtain an educational benefit, and expressed concern that the student would not receive such a benefit in a public school class. According to the district's experts, however, the student would receive more individual attention in the public classroom because the teacher had two aides. The district's experts also pointed out that several students in the private school class had speech impairments.

Although the parents did not dispute the goals set forth in the student's IEP, they argued that placement in a public school classroom would deny the student FAPE. They maintained that a private classroom was the LRE because the proposed program was a "hybrid 50-50 mix with the local Head Start children." The district contended that the student would receive educational benefits in the public school classroom, even though its program included children with special needs.

#### **Does the student's placement in the public preschool program amount to a denial of FAPE?**

**A) No.** The fact that several students in the private school program had speech impairments showed it was not superior to the district's proposed placement.

**B) Yes.** The audiologists' testimony demonstrated the proposed program would not expose the student to the advanced language needed for her development.

**C) No.** The proposed program was adequate because it exposed the student to typically developing peers.

**D) Yes.** The district's proposal amounted to placement in a special education classroom, which was contrary to her developmental needs.

#### **Answer: The administrative law judge decided C.**

The district's program offered the student sufficient interaction with typically developing peers even though it included children with special needs. (*Roane County Sch. System*, [45 IDELR 173](#) (SEA TN 2006)).

If a district does not offer pre-kindergarten programs for children without disabilities, it does not need to create such a program to satisfy the IDEA's requirements for LRE. Districts can satisfy the IDEA through a number of alternative methods, such as providing participation opportunities in programs like Head Start, placing students with disabilities in private preschool programs or locating classes for students with disabilities in regular elementary schools.

The Administrative Law Judge explained that the district did not need to place the student in a regular classroom environment in order to satisfy IDEA requirements.



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"The parents' dispute with the [district's] program is not whether it offers typically developing peers, but whether it offers [100 percent] typically developing peers," the judge wrote. Noting that the IDEA did not require the district to provide such a program, the Judge denied the parents' request for private school placement.

**A) is incorrect.** Whether a proposed placement is the LRE for a student depends on the merits of the district's program, not the superiority of a private program.

**B) is incorrect.** The district did not need to ensure that all of the students in its preschool program were typically developing peers, but only that the student would be exposed to age-appropriate language and conversations with classmates.

**D) is incorrect.** A regular education classroom does not become a special education classroom merely because it includes students with special needs. If it did, the Judge noted, mainstreaming would be impossible.

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