AUTISM ISSUES UNDER THE IDEA

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Issues concerning autism and autism spectrum disorders arise frequently in the disputes adjudicated by impartial hearing officers. This outline begins with the basic regulatory standards that apply to cases involving autism, then take up:

- Child-Find and Evaluation for Autism
- IDEA Eligibility Under the Autism Category
- Autism Programs
    - ABA
    - DIR – Floortime
    - Behavior Intervention
    - Assistive Technology
    - Least Restrictive Environment
- IEP Process and Related Issues
- Personnel and Staffing Issues
- Placement Issues
- Remedies in Autism Cases

Statute and Regulation Provisions

Under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482, children qualify as children with disabilities as set out in the statute, *id*. at 1401(3), and the regulations:

> ### 34 C.F.R. § 300.8 Child with a Disability
>
> (a) General. (1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

The regulations go on to define the autism category:

> . . .
>
> (c)(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
> (ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.
> (iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

New York's regulations pertaining to special education have a specific provision regarding programs for students with autism.

> 8 NYCRR § 200.13 – Educational programs for students with autism
>
> (a) The functioning levels of students with autism, based upon the criteria set forth in section 200.6(h)(2) of this Part, shall govern their individual or small group instruction.
> (1) The continuum of special education programs and services as described in section 200.6 of this Part shall be available to students with autism as needed.
> (2) The chronological age range of instructional groups serving students with autism shall not exceed 36 months for students under age 16 and shall not be limited for students 16 years of age or older.
> (3) The class size for such students shall be determined in accordance with section 200.6(f) and (h) of this Part, provided that the class size of special classrooms composed entirely of students with autism shall be in accordance with section 200.6(h)(4)(ii)(a) of this Part.
> (4) Instructional services shall be provided to meet the individual language needs of a student with autism.
> (5) To the maximum extent appropriate, instructional provisions shall be instituted for eventual inclusion of students with autism into resource room programs for students with combined disabilities or placement in a regular classroom.
> (6) In those instances where a student has been placed in programs containing students with other disabilities, or in a regular class placement, a special education teacher with a background in teaching students with

autism shall provide transitional support services in order to assure that the student's special education needs are being met.
(b) The length of the school day for students with autism shall be that set forth in section 175.5 of this Title.
(c) All school districts are required to furnish appropriate educational programs for students with autism from the date they become eligible for a free appropriate public education until they obtain a high school diploma, or until the end of the school year in which they attain their 21st birthday, whichever occurs first.
(d) Provision shall be made for parent counseling and training as defined in section 200.1(kk) of this Part for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.
(e) Upon application and justification to the commissioner, approval may be granted for variance from special class sizes and the chronological age ranges specified in subdivision (a) of this section.

The New York provision is noteworthy in that it provides for services for teachers in subsection (a)(6) for the benefit of students with autism. *See generally A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 539-40 (2d Cir. 2017) ("[S]chool districts are required by § 200.13(a)(6) to 'provide transitional support services,' *id.* § 200.13(a)(6), to an autistic student's special education teacher 'in order to assure that the student's special education needs are being met,' *id.* 'no matter the contents of the IEP,' and they thus 'remain accountable for their failure to do so,' permitting a parent of an aggrieved child to 'file a complaint at any time if they feel the[ir] [child is] not receiving this service.' *R.E.* [*v. New York City Dep't of Educ.*], 694 F.3d [167], at 191 [(2d Cir. 2012)] (citing N.Y. Comp. Codes R. & Regs. tit. 8, § 200.13(d))"). *R.E.* discussed the part of section 200.13 requiring parent counseling and training to support intervention activities at home. 694 F.3d at 191.[1]

Child-Find and Evaluation for Autism

Precedent regarding the adequacy of efforts to identify, locate, and evaluate children with autism defies easy categorization. The facts of individual cases are paramount in determining whether a parent's challenge to a school district's conduct merits relief. Cases decided in favor of the parent's position often emphasize failure to evaluate when there is reason to suspect an autistic condition. Cases decided in favor of the school district often stress the great lengths the school went to in evaluating the child, or the lack of any harm from mistakes in identification or evaluation.

Failure to Identify and Evaluate When There Is Reason to Suspect Autism

A district court case from New York illustrates a denial of appropriate education due to failure to act on the basis of evidence of autism when conducting the evaluation

[1] The definition of parent counseling and training is "assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program." 8 NYCRR § 200.1(kk).

and devising the educational program. *Y.A. v. New York City Dep't of Educ.*, No. 15-CV-05790, 2016 WL 5811843, 69 IDELR 76 (S.D.N.Y. Sept. 21, 2016), took up a number of issues concerning a challenge to the placement of a child with autism and other conditions in a 12:1:1 class during three school year years. Failure to provide notice and access to information about testing and evaluation permitted a challenge to the earlier of the IEPs. The court also held that that claims about the school system's failing to take into account the child's autism, which was said to prevent the child from obtaining the performance-level evaluation she needed, were not waived when due process complaint contended that defendant improperly failed to take into account medical diagnoses concerning several conditions other than autism. The court further held that a parent who struggled to speak and write in English required Russian translation and interpretation from the defendant, and that the failure to accommodate the parent significantly impeded the opportunity to participate in the IEP process, denying appropriate education. Most fundamentally, the court ruled that not considering an early diagnosis of autism when on actual or constructive notice of it denied the child appropriate education.

Two out-of-area cases also merit attention. In *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 67 IDELR 227 (9th Cir. 2016), *cert. denied,* 137 S. Ct. 1578 (2017), the court of appeals ruled that the district violated IDEA by failing to evaluate the child in all areas of suspected disability. The district did not make an assessment for autism, relying on an informal observation by a district staff member, despite the fact that the district had notice that the child displayed autism symptoms. The court also ruled that it was improper for the district to rely on another agency's assessment of a child without ensuring that the other agency complied with IDEA requirements. The court stressed that failure to assess the child for autism deprived the IEP team of important data about the child's developmental abilities and impeded its ability to recommend appropriate services, and also blocked the parents from participating fully in the IEP process. In *C.F. v. Delaware Cnty. Intermediate Unit*, No. 17-CV-1599, 2017 WL 4467498, 70 IDELR 250 (E.D. Pa. Oct. 6, 2017), a federal case from Pennsylvania, the court held that because the complaint of a parent of a child ultimately found to have an autism spectrum disorder who was being educated in a religious school was a child-find claim rather than one based on the equitable participation provisions of IDEA, a remedy might be ordered for an alleged failure to adequately evaluate the child. The court remanded the case for hearing.

Adequate Evaluation or Harmless Error

Three recent federal cases from New York reject parental challenges to school district identification and evaluations. In *C.M. v. New York City Dep't of Educ.*, No. 15 CIV. 6275, 2017 WL 607579, 69 IDELR 117 (S.D.N.Y. Feb. 14, 2017), which is discussed further below in connection with IEP processes, the court upheld a public school system IEP, reasoning that an alleged failure to fully evaluate the student, including the failure to conduct an functional behavioral assessment despite knowing that the student exhibited behaviors interfering with learning, did not deny appropriate education, when adequate information was available to the CSE about the student's behavioral needs. Similarly, in *J.E. v. Chappaqua Cent. Sch. Dist.*, No. 14-cv-3295, 2016 WL 3636677, 68

IDELR 48 (S.D.N.Y. June 28, 2016), *aff'd sub nom. C.E. v. Chappaqua Cent. Sch. Dist.*, 695 F. App'x 621, 70 IDELR 31 (2d Cir. 2017), the case of a child with autism and ADHD, the court rejected the parents' appeal of a decision that the school district's IEPs offered the student appropriate education. The court said that failure to generate a separate written FBA did not constitute a procedural violation when the behavioral intervention plan provided information that an FBA typically includes. The court also found the re-use of a behavior intervention plan from the year before was permissible under the circumstances. In *Y.D. v. New York City Dep't of Educ.*, No. 14 CV 1137-LTS, 2017 WL 1051129, 69 IDELR 178 (S.D.N.Y. Mar. 20, 2017), *appeal dismissed*, No. 17-1150 (2d Cir. Nov. 15, 2017), which involved a child with autism and Fragile X Syndrome, the court held that the school system's reliance on materials from a private school that contained occupational and speech progress reports and goals as a substitute for its own evaluations did not constitute a procedural violation. It further said that there was no violation in the failure to conduct a bilingual psychoeducational evaluation. The court also upheld the IEP substantively.

IDEA Eligibility Under the Autism Category

Two kinds of eligibility are relevant. In some cases, the question is whether the child, by reason of autism, falls into the set of individuals designated as beneficiaries of the IDEA. In others, the question is whether the specific category of autism is the appropriate classification for a child who might qualify for the protection of the law under another category.

A case of interest of the first type is *Lawrence Cnty. Sch. Dist. v. McDaniel*, No. 3:17-CV-00004, 2018 WL 1569484, 72 IDELR 8 (E.D. Ark. Mar. 30, 2018). There, a fifth grader with ADHD and autism spectrum disorder was being educated under a Section 504 plan. The student earned high grades and was recommended for a gifted-talented program. He had high test scores, with deficiencies only in writing. Nonetheless, he had challenges: tics, making noises, having difficulty interacting with peers, difficulties with impulse control, and problems with transitions in activities and observing boundaries. The court affirmed a hearing officer decision that the district failed to provide the student appropriate education when it failed to adequately evaluate him for special education. It ordered the district to engage a behavior analyst to conduct a functional behavioral assessment. The court reasoned that statements of school district personnel that the student did not need special education may not have been based on sufficient evaluations: "LCSD officials mistakenly assume that children with disabilities who perform well academically do not require special education. Although this position comports with common sense and is favored by this judge, it contravenes the IDEA's implementing regulations and guidance from the United States Department of Education. The applicable federal regulation expressly prohibits the use of 'any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.' 34 C.F.R. § 300.304(b)(2)." *Id.* at *5.

With regard to the second kind of eligibility, it may seem paradoxical that parents and school districts engage in pitched disputes about whether a child falls into a

particular disability category such as autism. After all, if the services offer the child appropriate education, it should not matter whether the child has one label or another, particularly if the chosen label does not risk stereotyping that would be worse than that which accompanies some other label. But there are instances in which having a specific label does matter. A number of states have specific autism programs that may allow for enhanced services, *e.g.*, Tex. Educ. Code Ann. § 29.026 (autism grant program for schools), and New York has the regulation quoted above setting out standards for autism services.

Nevertheless, court decisions generally find failure to identify a child as having autism to be at most harmless error if the services a school provides are appropriate for the child. A recent example is *MB v. City Sch. Dist. of New Rochelle*, No. 17-CV-1273, 2018 WL 1609266, 72 IDELR 12 (S.D.N.Y. Mar. 29, 2018). There, a student who was diagnosed with hydrocephalus, macrocephaly, epilepsy, cerebral palsy, and spastic dysplasia was placed in an ABA program in an 8:1+2 class from 2008-13, then after a reevaluation made the transition to middle school in 2013-14 in a 12:1+1 life skills program, again with ABA and related services. In the following two years, the program was continued and some services were added, though the parent's request for a 1:1 aide was rejected. Eventually, the parent obtained an independent evaluation recommending observation of the child for autism, and the evaluation committee at the school concluded that the child met the criteria for autism.

The court affirmed an SRO decision upholding the IEPs for all three school years. The court concluded that not evaluating the child for autism until late in the child's educational career was not a denial of appropriate education when the CSE developed IEPs that addressed child's individual needs, even if the correct underlying causes were never discovered. The court also said that the evidence did not show that a 1:1 aide was necessary, and that the evidence did show that the 12:1+1 life skills class used data-driven instruction consistent with ABA methodology. *See also Montgomery Cnty. Intermediate Unit No. 23 v. C.M.*, No. CV 17-1523, 2017 WL 4548022, 71 IDELR 11 (E.D. Pa. Oct. 12, 2017) (in case of child with autism, finding that if hearing officer made error in finding that initial classification of improper evaluation and classification of child as emotionally disturbed violated IDEA, error was harmless when hearing officer did not premise any relief on that violation); *Joanna S. v. South Kingstown Pub. Sch. Dist.*, No. CV 15-267 S, 2017 WL 1034528, 69 IDELR 179 (D.R.I. Mar. 17, 2017) (in case in which parent claimed that district misclassified student's disability as emotional disorder based on anxiety, rather than autism, holding that evidence did not show eligibility determination was incorrect; further ruling that parent did not show that alleged error affected student's educational services).

There are cases, however, where courts have stressed that the misclassification of a child as something other than autistic occurred and it had a negative impact on the services offered, denying appropriate education. *See, e.g., School Bd. of the City of Suffolk v. Rose*, 133 F. Supp. 3d 803, 66 IDELR 137 (E.D. Va. 2015) (affirming finding that autism rather than emotional disability was student's primary educational impairment, and IEP did not properly consider effect of autism spectrum disorder on educational performance).

Autism Programs

Under the IDEA, school districts enjoy some discretion as to educational methodology. On the other hand, decisions regarding programs for children with autism may be fundamental disputes over what constitutes appropriate education for a given child. Accordingly, the Second Circuit has declared:

> Although courts should generally defer to the state administrative hearing officers concerning matters of methodology, the SRO's failure to consider any of the evidence regarding the ABA methodology and its propriety for P.H. is more than an error in the analysis of proper educational methodology. It is a failure to consider highly significant evidence in the record. This is precisely the type of determination to which courts need not defer, particularly when the evidence has been carefully considered and found persuasive by an IHO.

M.H. v. New York City Dep't of Educ., 685 F.3d 217, 252, 59 IDELR 62 (2d Cir. 2012) (upholding parents' claim for reimbursement of program with significant amount of ABA services). Below are discussions of a number of programmatic issues in autism cases.

ABA

Applied Behavioral Analysis is the key example of an educational approach addressed specifically to autism, one that has found favor on the basis of the results it achieves with many children. One of the most frequently cited cases concerning the methodology is *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004), in which the court remanded a decision supporting the district's rejection of ABA services. The court emphasized the IDEA's goal of enabling children to obtain self-sufficiency and condemned any unofficial policy of always rejecting ABA services.

In addition to *M.H.* cited above, *A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 69 IDELR 51 (2d Cir. 2017), upheld an ABA program, rejecting an IEP that offered a 6:1:1 program but failed to call for continuing ABA services and 1:1 support did not provide appropriate education. *See also P.K. v. New York City Dep't of Educ.*, 819 F. Supp. 2d 90, 57 IDELR 139 (E.D.N.Y. 2011) (holding that termination of ABA therapy and other services denied child with autism appropriate education), *aff'd*, 526 F. App'x 135, 61 IDELR 96 (2d Cir. 2013); *R.K. v. New York City Dep't of Educ.*, No. 09–CV–4478, 2011 WL 1131492, 56 IDELR 168 (E.D.N.Y. Jan. 21, 2011) (finding that proposed program with limited 1:1 time and TEACCH methodology inadequate when evidence supported need for high levels of ABA and 1:1 time), *adopted*, 2011 WL 1131522, 56 IDELR 212 (E.D.N.Y. Mar. 28, 2011), *aff'd sub nom. R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 59 IDELR 241 (2d Cir. 2012).

One recent case emphasized a child's history of regression in a 6:1+2 class in rejecting the school system's proposed program offering a 6:1:1 class with a 1:1 behavior

management professional and some additional 1:1 related services, when the IEP did not provide for ABA therapy that had previously been offered the child. *W.S. v. City Sch. Dist. of N.Y.*, 188 F. Supp. 3d 293, 67 IDELR 242 (S.D.N.Y. 2016). *See also S.B. v. New York City Dep't of Educ.*, 174 F. Supp. 3d 798, 67 IDELR 140 (S.D.N.Y. 2016) (ordering reimbursement in case of child placed by parent in private school after independent evaluation recommended 1:1 ABA, who was offered 6:1:1 class but no 1:1 ABA instruction).

A federal court in New York has certified a class of children recommended for or attending non-public school programs in a systemic challenge to an alleged policy forbidding CSEs from recommending 1:1 instruction, ABA services, and extended school day, after-school, or home based services. *M.G. v. New York City Dep't of Educ.*, 162 F. Supp. 3d 216, 66 IDELR 276 (S.D.N.Y. 2016). In an additional case of interest, a federal court in California denied a motion to dismiss claims under Section 504, the ADA, and other provisions when the parents alleged that their nine-year-old with autism was prescribed 40 hours per week of ABA therapy, to be delivered by a trained ABA provider, but the school district refused to allow the ABA therapist, whose bill was being paid by insurance, to accompany the student during school. The court stated: "Without appropriate ABA therapy at school, Plaintiffs assert K.M. is unsafe because she does not have guidance on appropriate behaviors with peers, she has wandered off during school outings, she has ingested another child's medication, and has come home with unexplained bruises and a severe sunburn due to being left outside for hours." *K.M. v. Tehachapi Unified Sch. Dist.*, No. 1:17-CV-01431-LJO-JLT, 2018 WL 2096326, at *5, 72 IDELR 63 (E.D. Cal. May 7, 2018).

In other cases, courts have rejected requests for ABA services or enhanced amounts of ABA. An example is *J.S. v. New York City Dep't of Educ.*, No. 15CV355, 2017 WL 744590, 69 IDELR 153 (S.D.N.Y. Feb. 24, 2017), which involved a six-year-old child with autism. There the court affirmed an SRO decision relying on evidentiary determinations in favor of the school system's proposal of a 6:1:1 class, when the parent objected to the absence of any specific provision for ABA in the IEP, and alleged that the school was not capable of implementing the IEP that was offered. *See also M.L. v. New York City Dep't. of Educ.*, No. 13–CV–2314, 2015 WL 1439698, 65 IDELR 96 (E.D.N.Y. Mar. 27, 2015) (affirming administrative decision in favor of public school program over parent's objection to TEACCH methodology); *c.f. T.P. v. Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247, 51 IDELR 176 (2d Cir. 2009) (finding program with 10 hours per week of ABA and additional services to satisfy IDEA standards); *T.M. v. Quakertown Cmty. Sch. Dist.*, 251 F. Supp. 3d 792, 69 IDELR 276 (E.D. Pa. 2017) (relying on determinations of credibility of witnesses to affirming decision that strict adherence to ABA methodology was not required).

DIR – Floortime

An approach to education of children with autism that has emerged quite recently is termed "Developmental Individual-difference Relationship-based (DIR) – Floor Time." A particular private school offers this program, and some parents believe strongly that it is the only effective method of educating their children. A district court

upheld the position of the parent in *T.Y. v. New York City Dep't of Educ.*, 213 F. Supp. 3d 446, 68 IDELR 182 (E.D.N.Y. 2016). There, the court overturned an SRO decision and awarded tuition reimbursement in accordance with the decision of the IHO. In adopting a magistrate judge's recommendation, the court concluded that the SRO failed to consider evidence that the CSE was not willing to take into account the failure of methodologies other than DIR – Floor Time for the child with autism. The court also found no justification for a reduction in speech-language therapy. The court affirmed the IHO finding that the private school program was appropriate and the equities favored reimbursement.

In other situations, however, courts have rejected claims for reimbursement for the program. In *NB v. New York City Dep't of Educ.*, No. 15 Civ. 4948, 2016 WL 5816925, 68 IDELR 228 (S.D.N.Y. Sept. 29, 2017), *aff'd*, 711 F. App'x 29, 70 IDELR 245 (2d Cir. 2017), the court ruled that the child's IEP made sufficient accommodations for the child's allergies and sensory needs, and that the evidentiary record did not support the conclusion that the child needed DIR – Floortime to learn. The case collects a number of decisions involving the DIR – Floortime methodology. It also emphasizes that it would violate IDEA to have a blanket policy not to recommend any given methodology or placement. In an unpublished order, the Second Circuit affirmed, stating that the IEP, by adopting goals and language from the private school, made an implicit recommendation for the DIR – Floortime program, but that the SRO was reasonable in finding that it did not specifically demand DIR – Floortime. In another recent reimbursement case regarding a predominantly nonverbal child with an autistic spectrum disorder who attended the Rebecca School, a district court affirmed a decision in favor of the public school system, when the public schools offered a 6:1:1 year-long class and extensive related services. The court said that the IEP identified strategies, including occupational and speech-language therapy and a sensory diet program, previously used successfully by the private placement. It stressed that different options were considered, noted that the student performed many activities independently or in group settings, and declared that "there was no unequivocal evidence that the Student could not make sufficient progress in a context other than the 2:1 setting implemented by the Rebecca School, such as the recommended 6:1:1 program." *E.E. v. New York City Dep't of Educ.*, No. 17-CV-2411, 2018 WL 4636984, at *8, 73 IDELR 9 (S.D.N.Y. Sept. 26, 2018).

Behavior Intervention

Behavioral interventions are typically an important part of an educational program for a child with autism. The Supreme Court's decision in *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 69 IDELR 174 (U.S. Mar. 22, 2017), underlined that point when it vacated and remanded a Tenth Circuit decision that had applied a "merely more than de minimis" standard for determining what constituted appropriate education. The child in the case had autism, and the condition manifested itself in disruptive behavior as well as other impediments to learning. The Court relied on *Board of Education v. Rowley*, 458 U.S. 176 (1982), and said that the case embodied "a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the

child's circumstances." 137 S. Ct. at 998. The child's IEP must be "appropriately ambitious in light of his circumstances . . . every student should have the chance to meet challenging objectives"; the standard is "markedly more demanding than the 'merely more than *de minimis*' test applied by the Tenth Circuit." *Id*. at 1000.

Significantly, in describing Endrew's situation, Chief Justice Roberts emphasized that Endrew's behaviors, including that he would "scream in class, climb over furniture and other students, and occasionally run away from school [and had] severe fears of commonplace things like flies, spills, and public restrooms," were a barrier to his educational advancement. But the unilateral placement the parents found for him "developed a 'behavioral intervention plan' that identified Endrew's most problematic behaviors and set out particular strategies for addressing them. Firefly also added heft to Endrew's academic goals. . . . Within months, Endrew's behavior improved significantly, permitting him to make a degree of academic progress that had eluded him in public school." *Id*. at 996-97 (citation to record omitted).

On remand, the district court ruled that the school district's program did not meet the Supreme Court's standard for appropriate education, specifically stating that the minimal progress Endrew made before the private placement was affected by district's lack of success in providing him a program that adequately addressed his behavior. *Endrew F. v. Douglas Cnty. Sch. Dist. RE 1*, 290 F. Supp. 3d 1175, 1183, 71 IDELR 144 (D. Colo. 2018), *appeal dismissed*, No. 18-1089, 2018 WL 4360885 (10th Cir. Apr. 5, 2018); *see also A.M.*, *L.O.*, *C.M.*, and *J.E. v. New York City Dep't of Educ.*, discussed below in connection with IEP Process; *Paris Sch. Dist. v. A.H.*, No. 2:15-CV-02197, 2017 WL 1234151, 69 IDELR 243 (W.D. Ark. Apr. 3, 2017) (in case of student with autism, finding behavior plans for child's fourth grade year inadequate because they did not address behaviors other than noncompliance with directives, and ignored nuances of behaviors characteristic of autism).

A 1:1 aide may be required to help a student with autism. In *I.B. v. New York City Dep't of Educ.*, No.15-CV-01309-LTS, 2016 WL 1069679, 67 IDELR 113 (S.D.N.Y. Mar. 17, 2016), involving a child who was at the 2nd percentile in overall cognitive functioning who demonstrated an inability to attend to tasks without assistance and needed intense support, the court reversed an administrative decision that rejected a request for a 1:1 special education itinerant teacher. The court noted that the student made progress in the past with a 1:1 aide. *See also School Dist. of Phila. v. Williams*, No. CV 14-6238, 2016 WL 877841, 66 IDELR 214 (E.D. Pa. Mar. 7, 2016) (affirming determination that school district deprived student of appropriate education by, among other things, failing to provide 1:1 aide as specified on IEP).

In other instances, courts have rejected claims for 1:1 aides or other behavior services. An example is *M.T. v. New York City Dep't of Educ.*, 200 F. Supp. 3d 447, 68 IDELR 65 (S.D.N.Y. 2016), involving a child with Asperger's Syndrome and ADHD. The parent removed the student from a general education class with teacher support services and placed him at a private school, then the school system recommended placing him in a 12:1:1 specialized class at a community school with a temporary 1:1 transitional paraprofessional. The court affirmed SRO decisions against the parent, stating even if

the 1:1 paraprofessional were discontinued after four months, the IEP would still offer appropriate education. The court stressed that the student had average intelligence and said he would benefit from the general education curriculum.

Assistive Technology

The IDEA compels school districts to consider whether a child with a disability needs assistive technology devices and services. 20 U.S.C. § 1414(d)(3)(B)(v). Assistive technology might be especially valuable for students with autism who have difficulty communicating in conventional ways. *See, e.g.*, *School Dist. of Phila. v. Williams*, No. CV 14-6238, 2016 WL 877841, 66 IDELR 214 (E.D. Pa. Mar. 7, 2016) (in case of ninth-grade student with autism and speech-language impairment who was performing academically at level of second or third grader, affirming hearing officer decision that school district deprived child of appropriate education by not furnishing iPad or equivalent device as provided on IEP, in order to promote vocabulary improvement, learning to tell time, and communication in general). Nevertheless, some recent cases have rejected specific requests for assistive technology. For example, in *E.F. v. Newport Mesa Unified Sch. Dist.*, 726 F. App'x 535, 537, 71 IDELR 161 (9th Cir. 2018), the court opined that, "Although Plaintiffs presented evidence that children with autistic-like behaviors may begin using electronic AT devices as early as age three, evidence adduced at the administrative hearing also established that some foundational behavioral and communicative skills are necessary in order for children to use electronic AT devices successfully. Accordingly, we hold that Newport did not deny E.F. a FAPE by failing to assess him for an electronic AT device before February 2012."

In one case, a court rejected a request for additional assistive technology assessments when existing devices and services appeared to be working for the student, a nine-year-old with autism. *J.L. v. Manteca Unified Sch. Dist.*, No. 2:14-01842, 2016 WL 3277260, 68 IDELR 17 (E.D. Cal. June 14, 2016) (affirming decision that defendant did not need to conduct augmentative and alternative communication assessment, relying on evidence that school was already using picture exchange system and had no interest in iPad). In another case, the court relied in part on the student's use of assistive technology to uphold discontinuance of sign language services. *E.M. v. Lewisville Indep. Sch. Dist.*, No. 4:15-CV-00564, 2018 WL 1510668, 72 IDELR 22 (E.D. Tex. Mar. 27, 2018), *appeal filed*, No. 8-40409 (5th Cir. Apr. 24, 2018).

Least Restrictive Environment Issues

In many cases involving children with autism, parents wish to obtain one-on-one services, frequently from private providers, and school districts resist, citing the obligation to educate children with disabilities with children without disabilities to the maximum extent appropriate. In other cases, school districts wish to educate children with autistic conditions in self-contained settings for much or all of the school day, and the parents resist, citing the same provision. Several recent cases from outside New York consider disputes of these types. In a case of the first category, *Montgomery Cnty. Intermediate Unit No. 23 v. C.M.*, No. CV 17-1523, 2017 WL 4548022, 71 IDELR 11 (E.D. Pa. Oct. 12, 2017), which involved a young child with autism, the court ruled that

the child needed developmental preschool, placement in a mainstreamed educational setting was not proper, and compensatory education should be awarded. *But see M.T. v. New York City Dep't of Educ.*, 200 F. Supp. 3d 447, 68 IDELR 65 (S.D.N.Y. 2016) (discussed above) (denying parent's claim for private schooling of student with Asperger's Syndrome and ADHD, stressing that student had average intelligence and would benefit from general education curriculum).

In two cases of the second type, courts ruled in favor of parental arguments that their children with autism should be educated in general education programs with enhanced services to make the placements successful. In *A.B. v. Clear Creek Indep. Sch. Dist.*, No. 4:17-CV-2382, 2018 WL 4680564, 73 IDELR 3 (S.D. Tex. Sept. 28, 2018), *appeal filed*, No. 18-20714 (5th Cir. Oct. 23, 2018), concerning a ten-year-old third grade student, the court upheld a due process hearing decision that the district failed to provide the student with education in least restrictive environment. The court relied on the fact that the student made the most progress during a school year in the general education classroom with both in-class and resource room support. The court declared: "Despite CCISD's claims to the contrary, there is no overwhelming evidence in the record establishing that A.B. is so limited in function, or so demanding as a student, as to entirely absorb a teacher's time and create an undue burden, especially with a paraprofessional providing in-class and resource room support. . . . Also, in light of A.B.'s improved behavior, he is no longer disruptive in a disciplinary sense and has shown marked improvement such that he no longer exhibits task avoidance behaviors." *Id.* at *4. The court also emphasized that the placement proposed by the district would be with students with severe behavior issues, a particular problem when the student had made significant behavioral progress. In *School Dist. of Phila. v. Post*, 262 F. Supp. 3d 178, 70 IDELR 96 (E.D. Pa. 2017), which involved a young child with autism spectrum disorder, the court affirmed a hearing officer decision that the district's decision failed the least restrictive environment analysis by not giving adequate consideration to placing the child in a general education kindergarten class with supplemental aids and services. Instead, said the court, the district focused single-mindedly focusing on placing the child in its autistic support program solely due to his diagnosis. The court stressed that the child would benefit from the modeling of appropriate behavior by his classmates and there would be no negative effect on the other students. The court affirmed a compensatory education award for the period during which the child was removed from general education classes, and found that the school district also violated Section 504 and the ADA.

A private school placement for a child with autism may in some cases be a less restrictive setting than a public school program. For example, in *L.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 41 IDELR 206 (10th Cir. 2004), the Tenth Circuit sided with parents who requested that their child with autism continue to be placed in a private preschool class with nondisabled children with an aide, while receiving 35 to 40 hours per week of ABA services provided mostly at home. The court reasoned that the 1:1 services outside the school day permitted the child to thrive in a general education setting during the school day.

A final case of interest on the LRE topic is *R.E.B. v. Hawaii Dep't of Educ.*, 870 F.3d 1025, 70 IDELR 194 (9th Cir. 2017), which involved a child with autism whose parent challenged an IEP providing for transition from private school to a public school kindergarten. The court held that the defendant violated the IDEA by failing to address transition services for the move to public school and by failing to specify in the proposed IEP the child's least restrictive environment during regular and extended school year, stating: "J.B.'s IEP contained only the vague statement that J.B. would 'receive specialized instruction in the general education setting for Science and Social Studies activities as deemed appropriate by his Special Education teacher/Care Coordinator and General Education teacher.' This improperly delegated the determination of J.B.'s placement to teachers outside the IEP process. The language was also too vague to enable J.B. to use the IEP as a blueprint for enforcement." *Id.* at 1028. The validity of the decision is in doubt, however, because the opinion has been withdrawn and rehearing granted. 886 F.3d 1288, 118 LRP 12999 (9th Cir. 2018).

IEP Process and Related Issues

Many court decisions regarding services for children with autism hinge on whether the process used by the CSE or equivalent IEP team used proper procedures in arriving at the child's IEP, and whether the schools satisfactorily implemented the IEPs or could be expected to do so. A number of cases find the schools' processes so flawed as to deny parents participation rights or deny the child appropriate education. Others uphold school districts' actions.

Finding Denial of Participation Rights or Denial of Appropriate Education

The importance of developing an IEP in accordance with the evaluations pertaining to the child cannot be overstated. *A.M. v. New York City Dep't of Educ.*, 845 F.3d 523, 69 IDELR 51 (2d Cir. 2017), concerned a child with autism unilaterally placed by his parent in a private school with 1:1 applied behavioral analysis therapy. The court determined that the IEP proposed by the school system, which offered a student-teacher-paraprofessional ratio of 6:1:1 and did not require the use of ABA or any other specific methodology, did not provide appropriate education. With regard to the IEP process, the court said that the failure to follow the clear consensus of evaluative reports specifically finding a continued need for ABA and 1:1 support denied the child appropriate education. The court declared that prior case law established that rule: "[W]hen the reports and evaluative materials present at the CSE meeting yield a clear consensus, an IEP formulated for the child that fails to provide services consistent with that consensus is not reasonably calculated to enable the child to receive educational benefits, and the state's determination to the contrary is thus entitled to no deference because it is unsupported by a preponderance of the evidence. . . . This remains true whether the issue relates to the content, methodology, or delivery of instruction in a child's IEP." *Id.* at 543 (internal quotation marks and citation omitted).

Another recent Second Circuit case reinforces the point that programming has to follow the evaluations, and adds important observations regarding behavioral components of the IEP process. *L.O. v. New York City Dep't of Educ.*, 822 F.3d 95, 67

IDELR 225 (2d Cir. May 20, 2016), concerned a student with autism, obsessive compulsive disorder, mood disorder, and other conditions, whose parent challenged three IEPs dated December 2009, December 2010, and March 2011. The court of appeals ruled in favor of the parent, reasoning that there was no evidence that the CSE team reviewed any evaluative materials in developing relevant IEPs and stating, "[T]he burden rested with the DOE to demonstrate which evaluative materials were reviewed during each CSE meeting in reaching the terms of the IEPs." *Id.* at 110. The court also found error in approving a behavior plan that was not based on any functional behavioral assessment; one IEP did not include a behavioral intervention plan at all. The court ruled that although individual procedural errors did not deny appropriate education, the errors cumulatively did.

Two recent district court cases from New York also emphasize deficiencies in the development of the IEP. In *J.E. v. New York City Dep't of Educ.*, 229 F. Supp. 3d 223, 69 IDELR 93 (S.D.N.Y. 2017), the court reversed an SRO decision in favor of the school system, which had offered the child an IEP providing for a 6:1:1 classroom, various related services, and a 1:1 health paraprofessional. The court reasoned that the CSE did not meaningfully consider options more intensive than 6:1:1, which denied the parent the opportunity to participate meaningfully and denied appropriate education. The court also appeared skeptical of the substance of the IEP, noting the prior teacher's support for a more intensive ratio. In *S.Y. v. N.Y.C. Dept. of Educ.*, 210 F. Supp. 3d 556, 573, 68 IDELR 230 (S.D.N.Y. 2016), the school system offered a student with autism placement in a 6:1:1 program at a specialized public school. The court awarded tuition reimbursement for the student's continued attendance at a private school, holding that the failure to provide prior written notice of a change of placement to a 6:1:1 classroom without a 1:1 paraprofessional was a procedural violation that prejudiced the parents by not giving any reasoning for the rejection of the parents' proposal of an 8:1:3 program and for the change of educational placement. The court stated: "By leaving the Parents completely in the dark on a matter as fundamental as the reasoning behind R.Y.'s educational placement, the DOE significantly impeded the Parents' opportunity to participate in the decision making and, in turn, denied R.Y. a FAPE." *Id.* at 573.

Two recent out-of-jurisdiction cases uphold parents' positions with regard to the inadequacy of IEP processes. In *Somberg v. Utica Cmty. Schs.*, 908 F.3d 162, 118 LRP 45495 (6th Cir. 2018) the court upheld the district court's award of 1,200 hours of tutoring and one year of transition planning as compensatory education, plus attorneys' fees, as relief for a now 24-year-old student with autism spectrum disorder and other conditions. The student's 2012-13 IEP did not have measurable goals and called for half general education and half special education classes but he did not actually receive the general education promised, then, after his parent objected, he was taught individually in the principal's office and prevented from enrolling in the general education classes he selected. The court stated that the substantive violations in case did not require a showing of educational loss. *R.E.B. v. Hawaii Dep't of Educ.*, 870 F.3d 1025, 1028, 70 IDELR 194 (9th Cir. 2017), discussed above, also contained a holding that failure to specify applied behavioral analysis methodology on the IEP violated the IDEA because it was integral to the child's education. It should be noted that the opinion in the case has been withdrawn and rehearing granted. 886 F.3d 1288, 118 LRP 12999 (9th Cir. 2018)

A recent systemic case touching upon the process of determining whether a child is to receive ABA or other specific methodologies is *R.S. v. Board of Educ. Shenendehowa Cent. Sch. Dist.*, No. 117CV501LEKCFH, 2017 WL 6389710, 71 IDELR 85 (N.D.N.Y. Dec. 13, 2017), which alleged denial of appropriate education to a child with an autism spectrum disorder and sought declaratory and injunctive relief, compensatory damages for educational therapy, and legal fees. There the court denied a motion to dismiss IDEA claims against the state commissioner regarding an alleged policy of not requiring schools to list a specific methodology in the Management Needs section of IEPs. This was said to confer harm on students who require ABA methodology to meet their individual needs.

One unreported Second Circuit order deals with the sometimes-vexing problem of whether an IEP actually calls for specified amounts of ABA therapy or not. In *Toth v. New York City Dep't of Educ.*, 720 F. App'x 48, 71 IDELR 76 (2d Cir. 2018), the court looked both to the IEP originally at issue in the case and to a later IEP and reached the conclusion that the school system was decreasing or eliminating ABA therapy and so the parent's case could continue despite a challenge based on mootness.

Upholding Public School IEP Processes

Various cases uphold the conduct of school districts in the process of developing IEPs for children with autism, or at least find that errors committed were harmless. In *Mr. P v. West Hartford Bd. of Educ.*, 885 F.3d 735, 71 IDELR 207 (2d Cir. 2018), *cert. denied*, 139 S. Ct. 322 (Oct. 9, 2018), the Second Circuit, ruling on a case involving a student with high functioning autism spectrum disorder-Asperger's Syndrome, nonverbal learning disabilities, and a psychotic disorder, held that inaccurate and incomplete IEPs did not interfere with the student's educational progress or deny the parental participation rights, nor did the failure to provide a timely copy of one IEP call for relief. Moreover, the absence of a regular education teacher at one meeting, and failing to provide the qualifications of paraprofessionals did not constitute procedural violations under the facts of the case, nor did the cumulative effects of any procedural violations deny appropriate education or prevent parental participation. *See also M.M. v. New York City Dep't of Educ.*, 655 F. App'x 868, 68 IDELR 32 (2d Cir. 2016) (holding that failure to specify in IEP frequency, location, and duration of transition services and failure to conduct three-year evaluation did not deny student appropriate education; noting that SRO found that IEP's language concerning transitional services gave sufficient information for school to devise vocational program and that parent and student had ability to assess IEP).

Two recent federal district court cases from New York involving children with autism upheld the school system decision-making with regard to IEPs. In *J.S. v. New York City Dep't of Educ.*, No. 15CV355, 2017 WL 744590, 69 IDELR 153 (S.D.N.Y. Feb. 24, 2017), concerning a six-year-old, the court said that the presentation of a previously drafted IEP at the CSE meeting, as well as the recommendation of a 6:1:1 class at the specific public school three or four years in row did not support any argument that the school system improperly predetermined the program. The court reasoned that the

parents received the draft, and that the final IEP reflected comments made by the parent at the CSE meeting. The court also found no reversible error when the SRO ruled that the parents abandoned challenges to the IEP by not specifically identifying them. *C.M. v. New York City Dep't of Educ.*, No. 15 CIV. 6275, 2017 WL 607579, 69 IDELR 117 (S.D.N.Y. Feb. 14, 2017), concerned a student with autism spectrum disorder. There the court upheld an IEP providing for public schooling, reasoning that the parent's challenges to educational methodologies in the IEP were based on facts the parent was not aware of at time she rejected the public school placement offer and so should not be considered. The court also reasoned that the alleged failure to fully evaluate the student, including the failure to conduct an FBA despite knowing that the student exhibited significant behaviors interfering with learning, did not deny appropriate education. The court said enough information was available to the CSE regarding the student's needs.

An out-of-jurisdiction case upholding the school district's IEP process is *R.A. v. West Contra Costa Unified Sch. Dist.*, 696 F. App'x 171, 70 IDELR 88 (9th Cir. 2017), which concerned a 10-year-old with autism. The court held that a district did not deny the child appropriate education by not completing behavior and psychoeducational assessments, when the parent insisted on seeing and hearing the child during the assessments. The court also held that the district did not predetermine the child's placement. It said that offering the placement as a "take it or leave it" option would violate the IDEA, but said that in this case the district discussed the IEP and the placement with the parent at two meetings, and looked at various options.

Personnel and Staffing Issues

The New York regulation quoted early in these materials underlines the importance of having general educators who will be teaching children with autism receive adequate guidance on addressing the challenge to learning that the condition may present. In a recent out-of-jurisdiction decision involving a child with autism, a federal district court overturned a decision by a hearing officer that the teaching staff during the child's fourth grade year did not have adequate training, citing evidence that they were licensed and received some additional instruction. The court, however, affirmed the hearing officer's determination that the fifth-grade staff were not adequately trained. Some personnel could not recall training that related to the child's program and could not come up with any details about the training. *Paris Sch. Dist. v. A.H.*, No. 2:15-CV-02197, 2017 WL 1234151, 69 IDELR 243 (W.D. Ark. Apr. 3, 2017).

Placement Issues

The federal regulations require that parents play a significant role in the selection of the child's educational placement. *See* 20 U.S.C. § 1414(e) ("Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child."); 34 C.F.R. § 300.501 ("Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child."). The Second Circuit, however, has ruled

that "educational placement" does not refer to where the child is actually placed. In *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 191-192 (2d Cir. 2012), the court said:

> The parents also contend that the Department committed a procedural violation in each of these cases by failing to inform them of the exact school at which their child would be placed at the IEP meeting or in the final IEP. The Department's practice is to provide general placement information in the IEP, such as the staffing ratio and related services, and then convey to the parents a final notice of recommendation, or FNR identifying a specific school at a later date. The parents are then able to visit the placement before deciding whether to accept it. The parents argue that this practice violates 20 U.S.C. § 1414(e) [and] 34 C.F.R. § 300.501(c)(1). We have held, however, that the term "educational placement" refers " 'only to the general type of educational program in which a child is placed.' " *T.Y.* [*v. New York City Dep't of Educ.*], 584 F.3d [412,] at 419 [(2d Cir. 2009)]. "[T]he requirement that an IEP specify the 'location' does not mean that the IEP must specify a specific school site." *Id.* The Department may select the specific school without the advice of the parents so long as it conforms to the program offered in the IEP. *Id.* at 420 (internal citation and quotation marks omitted)

Various recent cases that concern children with autism apply the Second Circuit's interpretation of the regulation and provide further insights on how the courts approach placement decision issues. An example is *M.E. v. New York City Dep't of Educ.*, No. 15-CV-5306, 2018 WL 582601, 71 IDELR 125 (S.D.N.Y. Jan. 26, 2018), a case involving a student with an autism spectrum disorder and other disabilities, whose proposed IEP called for placement in a specialized class in a specialized school. The class was to have a 6:1+1 ratio, and there was to be 1:1 and 2:1 speech therapy and other services. The parents felt the staffing ratio was inadequate, and they objected to the proposed public school placement stating that "(1) there is no sensory gym; (2) there is no sensory program in place or qualified person to address K.E.'s sensory needs; (3) the school lunchroom was loud and rowdy; and (4) the proposed placement could not implement the IEP," but the court deferred to the SRO decision, which held that the staffing ratio was adequate, that the child's sensory needs sufficiently were addressed by the services in the IEP, and that the parents' objections to the placement were speculative and not supported by the hearing record. *Id.* at *11.

In *J.B. v. New York City Dep't of Educ.*, 242 F. Supp. 3d 186, 69 IDELR 184 (E.D.N.Y. 2017), the school system proposed to move a teenaged student with autism from a private school to a public school. The court held that that giving the parent the recommended school name and location and the telephone number and address of the person the parent could contact to arrange a visit was sufficient to provide notice and to enable the parent to participate in the development of the IEP. This was despite that parent's informing the CSE personnel four days later that she could not reach the designated person leaving for vacation. The court reasoned that parents do not have a right to visit an assigned placement before the school year, if they are given information about school sufficient to form a judgment about the placement process.

On the other hand, if the school district fails to identify a school that can actually provide the services in the child's IEP, the district denies the child appropriate education. *See N.W. v. District of Columbia*, 253 F. Supp. 3d 5, 70 IDELR 10 (D.D.C. 2017) (in case of student with autism spectrum disorder and other conditions, finding child was denied appropriate education because IEP lacked adequate supports for lunch and recess despite oral promises, and defendant failed to identify school that would be capable of implementing IEP).

Remedies in Autism Cases

Analysis of remedies in autism cases bears similarity to analysis of the topic in other cases. Many of the cases discussed above contain discussion of the proper remedy to be afforded for IDEA violations. A few cases of particular interest on the remedies topic might be identified, however. One recent district court case denied tuition reimbursement on the ground that the private school chosen by the parent for a child with autism did not provide appropriate education. In *R.H. v. Board of Educ. Saugerties Cent. Sch. Dist.*, No.1:16-CV-551, 2018 WL 2304740, 72 IDELR 58 (N.D.N.Y. May 21, 2018), *appeal filed*, Nos. 18-1852 (2d Cir. June 21, 2018), 18-1951 (2d Cir. June 29, 2018), involving a child with autism spectrum disorder and anxiety, the court affirmed an SRO decision against the parent, reasoning that the record included little objective evidence of progress at the private school, such as report cards, progress notes, standardized assessments, or samples of written work. Moreover, even though the student's attendance at school improved, there were indications of regression: an altercation with another student and refusal to complete assignments.

A frequently cited case in which the Second Circuit ruled that a parent's unilateral placement satisfied the appropriateness standard for reimbursement is *Frank G. v. Board of Education of Hyde Park*, 459 F.3d 356, 46 IDELR 33 (2d Cir. 2006). There the court declared that "parents are not barred from reimbursement where a private school they choose does not meet the IDEA definition of a free appropriate public education." *Id.* at 364. "Ultimately, the issue turns on whether a placement—public or private—is reasonably calculated to enable the child to receive educational benefits." *Id.* (quotation marks omitted). The court said that triers of fact should look at grades, test scores, and regular advancement as evidence of educational benefit, but that the totality of the circumstances had to be taken into account. "To qualify for reimbursement under the IDEA, parents need not show that a private placement furnishes every special service necessary to maximize their child's potential." *Id.* at 365. The court found that a parochial school placement at Upton Lake Christian School was appropriate and affirmed reimbursement. It noted that the Upton Lake teacher adapted her instruction to meet the student's needs, providing one-on-one time, creating a communications book for him, giving him extra time to complete work and allowing him to work free from distractions. He was also allowed to take tests orally. The student's grades increased dramatically in his time there and by the end his performance in standardized testing did as well. This is not to say that in order to qualify for reimbursement, the unilateral placement must be a success story. The fact that a student does not do well in the parentally chosen placement does not necessarily mean that it is inappropriate. *See*

C.B. v. New York City Dep't of Educ., No. 02 CV 4620, 2005 WL 1388964, 108 LRP 671 (E.D.N.Y. June 10, 2005).

Other issues have arisen with respect to relief in cases involving autism. A case involving complex calculations as to the amount of compensatory ABA services is *M.M. v. New York City Dep't of Educ.*, No. 15 Civ. 5846, 2017 WL 1194685, 69 IDELR 208 (S.D.N.Y. Mar. 30, 2017). A case discussing (but not resolving) the propriety of specific rates for reimbursement of autism services is *L.K. v. New York City Dep't of Educ.*, 674 F. App'x 100, 69 IDELR 90 (2d Cir. 2017). A case finding joint liability by a home school board and a magnet school board for providing compensatory education when a child with autism was denied services due to a placement impasse is *A. v. Hartford Bd. of Educ.*, Nos. 3:11-CV-01431-GWC, 3:11-CV-01381-GWC, 2016 WL 3950079, 68 IDELR 40 (D. Conn. July 19, 2016). A case found that a remedy of 60 days of 1:1 behaviorally trained aide services and a transition plan was sufficient for a district's failure to provide a functional behavioral assessment and additional services for a limited period is *K.M. v. Tehachapi Unified Sch. Dist.*, No. 115CV001835, 2017 WL 1348807, 69 IDELR 241 (E.D. Cal. Apr. 5, 2017), *appeal dismissed*, No. 17-15904 (9th Cir. Nov. 7, 2017).

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Additional Reference: Mark C. Weber, "Children with Intellectual Disabilities and Autism," *Special Education Law and Litigation Treatise* § 3.1(1)(4) (LRP Pubs. 4th ed. 2017).