

AUTISM'S INTERPLAY WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Julie R. Woods

Autism is one of the most predominant disorders affecting children today, with the rate of diagnosis of 1 in 110 children (up from an estimated 1 in 166 just one year ago). Autism is more common than pediatric cancer, diabetes, and AIDS combined.

As awareness of the disorder has grown over the last thirty years, public policy has responded. The Individuals with Disabilities Education Act (IDEA) now specifically includes autism as a disability entitling a student to federal protection.

For practitioners, it is important to gain an overview of autism, IDEA, and the interplay between the two issues involving key legal concepts such as protections afforded by the act to such students, mainstreaming, and policy.

Ultimately, mainstream inclusion of students with autism stands to benefit U.S. classrooms by increasing an early appreciation for a diversity of ideas that will arm all students to contribute to global society.

WHAT IS AUTISM?

Autism is considered a spectrum disorder—Autism Spectrum Disorder (ASD)—because diagnosis is based upon any combination of the varied symptoms within its range, or “spectrum.”

Autism is a complex neurobiological disorder, meaning it is an impairment in the growth or development of the brain or central nervous system caused by unknown biological factors. Although it is a permanent condition, it is typically diagnosed during childhood because the disorder shows itself in delayed or lacking development of communication skills, social interactions, behavior, and learning.

In 1991, Congress amended IDEA to include autism as one of the enumerated disabilities entitled to federal protection. The definition of autism in the Code of Federal Regulations (C.F.R.) used by most legislatures and courts is: “a develop-

mental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance.” 34 C.F.R. §§ 300.8(c)(1)(i), (iii) (2006).

The C.F.R. definition continues: “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.”

Typical symptoms marking the disorder may include a combination of:

BEHAVIORAL IMPAIRMENTS

- Understanding, interpreting, and predicting actions, emotions, and thoughts with customary social cues
- Engaging and interacting with others
- Difficulty relating to others
- Repetitive or restrictive behaviors
- The need for a constant environment

COMMUNICATION IMPAIRMENTS

- Delay in language development
- Parroting speech (repeating what others say)
- Difficulty expressing oneself verbally or with intonation
- Nonverbal communication such as odd facial expressions, movements, and gestures that don’t accurately reflect an intended message

PHYSICAL IMPAIRMENTS

- Repetitive or restrictive behaviors and routines
- Idiosyncratic physical movements
- Hypersensitivity of any of the five senses to environmental factors

MENTAL IMPAIRMENTS

- Depression and anxiety in response to being misunderstood
- Presence of some degree of mental retardation
- Seizures or benign tumors that grow in the brain

In the spectrum of autism, an individual's symptoms may vary from mild to severe, independence can be from high functionality to severe impairment, and intelligence level may range from gifted to severe mental retardation. There is no cure for autism, but early detection and treatment of symptoms improve a person's education and functionality levels.

GENERAL OUTLINE OF IDEA

The Individuals with Disabilities Education Act is a federal spending program. Schools receive funds to provide students with disabilities access to an equalized education, comparable to students without disabilities. Students and their parents may recover under the act by showing that a school district failed to provide the child with an appropriate education or bear the costs thereof.

The act ensures that all children with disabilities be provided a free appropriate public education (FAPE). A FAPE utilizes special education and related services designed to meet the students' unique needs and prepare them for further education, employment, and independent living. A FAPE is a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200 (1982).

Special education and related services must be formulated for each disabled student in an individualized education plan (IEP). An IEP is an annual written agreement between the parent or guardian and a team of the child's educators, administrators, specialists, and psychologists. The plan outlines the student's progress, measurable yearly goals, and the means for achieving those goals in light of the disability's effect on the child's education. The IEP specifically lists the extent of the child's segregation, accommodation, special education, and related services.

An IEP need only be reasonably calculated to confer "some educational benefit" upon the child. *Rowley* at 200. A child's educational progress is measured by slight advancement, and the school has no legal obligation to maximize

the learning potential of students with disabilities.

Parents can obtain private services if a school is unable to offer the accommodations necessary for the student with the disability to achieve a sufficient education. Privately funded services will be reimbursed by the state so long as they are essential to attaining some educational benefit and are not in excess of what the act requires *de minimis* to achieve a FAPE.

A school district will prevail if it is found that the IEP was designed and implemented to mainstream a student with autism and to achieve educational potential by considering the child's special needs.

MAINSTREAMING

To be an appropriate education, an IEP must be implemented in the least restrictive environment (LRE). This means that a child with a disability will be educated in mainstream classrooms and participate in recess and extracurricular activities with other students to the maximum extent appropriate. The environment must be age appropriate and the curriculum may be modified to ensure that students with disabilities are educated "to the greatest extent possible . . . together with children who are not disabled, in the same school the disabled child would attend if the child were not disabled." *Carlisle Area Sch. v. Scott P. by & Through Bess P.*, 62 F.3d 520, 535 (3d Cir. 1995). Only when the nature or severity of autism prohibits a FAPE from being achieved will a student be placed into a more segregated environment. Segregation may include special classes, separate schooling, or other removal.

Integrating a student with a disability is not required when inappropriate. The court will consider such factors as whether the child is receiving academic benefits from inclusion in the regular class, the educational progress requires significant instruction outside the classroom, and the child requires separate schooling in several academic or recreational areas. Ultimately, when autism is so severe that the student cannot function in a regular classroom with-



out disrupting education to himself or others, integration is inappropriate. Appropriateness is usually determined by a process of trial and error.

While mainstreaming is preferred, it is not guaranteed and is improper in some circumstances. For example, one court found a child with autism was appropriately segregated from a mainstream classroom because the student was disruptive and lacked academic progress in a mixed environment. *Hartmann v. Loudoun County Board of Education*, 118 F.3d 996, 1012 (4th Cir. 1997). In comparison, another court held complete removal of the child to a special school was appropriate. *Alex G. v. Board of Trustees of Davis Joint Unified School District*, 387 F. Supp. 2d 1119, 1127 (E.D. Cal. 2005).

WHICH STUDENTS WITH AUTISM QUALIFY FOR IDEA PROTECTION?

A child diagnosed with autism is protected by IDEA only if the symptoms impair the child's educational performance to below satisfactory level. Despite medical diagnosis, certain students with autism may not fall within the protections of IDEA if the disability does not negatively affect education and the child receives a FAPE without special education and related services.

For example, Congress states that a child with autism is not protected if the primary reason for adverse effect on educational performance is emotional disturbance rather than neurological dysfunction. This policy marries the spectrum of the disability's symptoms and the purpose behind Congress enacting IDEA to equalize education for those students disadvantaged by disability.

Nevertheless, a student with autism can achieve academic success independently, despite the fact that the child will still qualify for special education and related services if the disorder impairs other areas closely associated with education.

To illustrate, a child with Asperger's (a type of mild, highly functional autism marked by concrete, literal thinking and eccentricities) who excels academically and exhibits excellent behavior is entitled to special education services under IDEA if the child has other unhealthy behaviors and social problems.

However, while the court explicitly considers adverse effects upon "non-academic areas," speech problems alone

do not qualify a student with autism who is academically succeeding to receive protection under the act.

IDEA BENEFITS STUDENTS ON AND OFF THE REPORT CARD

Courts have found that the policy of integration benefits students with and without autism. In *L.B. v. Nebo School District*, the district moved to transfer a highly functional student with autism to a special education preschool, despite the child's success in the regular classroom with the use of an aide and intensive behavioral program. 379 F.3d 966, 978 (10th Cir. 2004).

Instead, the court found several greater reasons for keeping the plaintiff in the public school and utilizing specialized instruction. First, the child was the most academically advanced in her mainstream classroom, and the students in the segregated environment functioned at a considerably lower level that would have in turn impeded the plaintiff's academic benefit.

Second, the integrated classroom had improved the student's social skills and was conducive to improving her behavioral and relational needs. Third, the plaintiff's behavioral problems were not disruptive in the regular classroom. Ultimately, the court held removal of the plaintiff from the mainstream classroom a violation of IDEA.

IDEA's emphasis on integration is policy that will benefit the cohesion of students with autism and society. With slow submersion into varied sensory experiences and social interactions, students with autism become acclimated to the daily struggles they will encounter beyond the school-yard gate.

As the student with autism benefits, so do the other students in the mainstream classroom. The modern education of students includes lessons of acceptance and understanding, as a diversity of ideas and differences develop our nation's students to enter a global society.

Julie R. Woods earned her J.D. from University of Notre Dame Law School in 2010 after attaining two bachelor's degrees at University of Southern California. She may be reached at julierwoods@yahoo.com.