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In This Issue

- Lessons From A Recent Case

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Lessons From A Recent Court Case

Relatively few court opinions addressing the IDEA are significant because they state important new legal principles of broad application. Most of the time, a court's conclusions are specific to the facts of the case at hand. After 30 years or so of court decisions interpreting the IDEA, given any set of facts, you generally can find a case that will support your position. You also can generally find a case that will not support your position.

Even though a court decision might not state an important new legal principle, it may still be useful as a teaching tool. We think a recent court case, *Draper v. Atlanta Public School District*, is that kind of case. We also think it's good to learn from someone else's bad experience rather than your own.

Some Facts:

Jarron Draper started in the Atlanta Public Schools (APS) as a seven-year-old in the second grade in 1994. He could not read, was writing at a kindergarten level, and did not know the sounds of the alphabet. Through October 1997, on four different occasions, his teachers recommended that he be tested to determine the cause of his academic struggles. Jarron was eventually evaluated in June 1998, and concluded to have an IQ score of 63. Despite evidence that he was dyslexic, such as writing letters, numbers and words backwards, Jarron was identified as a child with a mild intellectual disability. He was placed in the most restrictive environment, a self-contained classroom that provided a functional curriculum.

APS failed to conduct the then-required three-year reevaluation. In 2003, after further testing, it was determined that Jarron's full-scale IQ was 82 and that he was not intellectually disabled, but had a learning disability. Although testing showed that he was still reading at a third-grade reading level, Jarron was placed in a regular education class APS agreed, after mediation, to use the Lexia reading program. Later, despite evidence that Jarron was not benefiting from the Lexia program, APS refused to consider any other reading programs.

After a due process hearing, the hearing officer found that APS had failed to provide FAPE during three school years because it had failed to properly teach Jarron to read. As part of his findings, the hearing officer concluded that APS had misdiagnosed Jarron in 1998, finding it "incredulous that anyone, let alone trained professionals, could have deemed Jarron mentally retarded as late as 2003." The hearing officer also noted that the hearing transcript "cannot possibly capture the air of disdain and tone of contempt that the APS officials showed" at the hearing.

Finding for Jarron, the hearing officer awarded, in part, compensatory services in the form of a private placement of Jarron's choice for three years or until he received a high school diploma. Both the federal district court and court of appeals affirmed the award.

Some Lessons:

Although the decision to award compensatory services in the form of a private placement is somewhat novel and poses interesting legal issues, we want to focus on aspects of the decisions that are more directly relevant to the every day life of a special educator.

Proper Evaluation And Eligibility Determination Is Critical

It is sometimes said in the special education world that diagnosis does not determine services. Though that may be true, the decisions in *Draper* show the importance of proper evaluation as it relates to the services a student receives.

The federal district court in *Draper* upheld the hearing officer's finding that Jarron had been misdiagnosed, noting that APS had failed to conduct a comprehensive evaluation, including a failure to obtain information regarding Jarron's functional behavior outside of school. The court found the failure particularly significant because there was significant evidence that Jarron was dyslexic. As the hearing officer and court saw it, the improper evaluation led to a misdiagnosis, which then led to an improper placement in a classroom with a functional curriculum.

With that, a few reminders about requirements for evaluations under the IDEA:

- A variety of assessment tools and strategies must be used, including information provided by the parent.
- A single measure or assessment should not be used as the sole criterion for determining eligibility or an appropriate education program.
- A child must be assessed in all areas related to the suspected disability.
- The evaluation must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the child's disability category.
- Bottom line, evaluation isn't just about determining eligibility, it is also about gathering information that will assist in determining the content of a child's IEP. You must truly understand a child's educational disability in order to provide FAPE.

Methodology/IEP Review And Revision

As due process and court decisions acknowledge, unless a student's IEP team determines that a particular methodology is necessary for the student to receive FAPE, the choice of methodology to be used when providing special education services is for a school district to make. A problem for the APS was that it continued to use the same methodology despite evidence over a long period of time that it was not working.

As you implement IEPs, remember that the IDEA's IEP review/revision provision does not require only an annual review/revision. The requirement is that a school district ensures that the district "[r]eviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved" and revise the IEP, as appropriate, to address any lack of expected progress toward annual goals. Missouri State Plan at 50-51.

A review of an IEP because of lack of expected progress ought to cause school staff to consider the methods that are being used to implement the IEP. If the school district decides to continue using the same methods in the face of lack of expected progress, someone needs to be able to explain why different results could reasonably be expected or why the choice of methodology is not the reason for the lack of progress.

Stay On The High Road

One of the things we tell school staff when preparing for a due process hearing is that we want the hearing panel to like us (or, at least like us better than the other side). You don't want a hearing panel to refer to an "air of disdain and tone of contempt" demonstrated by school officials. It was abundantly clear that the hearing officer in *Draper* was not going to bestow a congeniality award on the APS officials.

We think it's worth noting that it isn't just behavior during a hearing that may be important to a hearing panel. The manner in which school officials interacted with the parents prior to the hearing will also help form a hearing panel's opinion about the school officials. While we understand that it may sometimes be a challenge, it is critically important that parents be treated with proper respect and that their concerns and requests be addressed appropriately. As someone said, "Politeness costs nothing, but gains everything."

Thought of the Month

The aim of education should be to teach us how to think, rather than what to think - to improve our minds, so as to enable us to think for ourselves, rather than to load the memory with thoughts of other men.
Bill Beattie

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