

Understanding Extended School Year

“It [is] hard to imagine any autistic child who would not qualify for extended school year services.”¹

QUOTES DEFINING ESY STANDARDS FROM COURT DECISIONS



Indeed, even within the limited conditions which characterize the plaintiff class there is a wide divergence of educational characteristics. This divergence is reflected in the findings of the district court which note the variance among members of the plaintiff class in their degree of impairment, 476 F.Supp. at 588-90, their recovery time from regression, id. at 596-97, and the ability of their parents to provide programming, id. at 594-95.

We believe the inflexibility of the defendants' policy of refusing to provide more than 180 days of education to be incompatible with the Act's emphasis on the individual. Rather than ascertaining the reasonable educational needs of each child in light of reasonable educational goals, and establishing a reasonable program to attain those goals, the 180 day rule imposes with rigid certainty a program restriction which may be wholly inappropriate to the child's educational objectives. This, the Act will not permit.

Battle v. Pennsylvania, 629 F.2d 269 at 280 (3d Cir. (Pa.) 1980).



In ruling on the validity of the 180 day rule, this Court focused on the content to be given the phrase "free appropriate public education." We found in the Act's definition of "special education," one of the components of an appropriate education, an emphasis on meeting the "unique needs" of the handicapped child. Recognizing that "needs arise in (the) context of achieving certain ends, and surely there are certain ends, and not others, that are the concern of this legislation," we turned our inquiry to the goals of the education that states are required to provide under the Act. Although we found no explicit guidance in the Act, we found throughout the legislative history an express intent to "provide for that education which would leave these children, upon school's completion, as independent as possible from dependency on others, including the state, within the limits of the handicapping condition." 476 F.Supp. at 604. Coupled with our factual finding that "for some SPI and SED children, including the named plaintiffs, interruptions in programming, because of

¹ Quotation allegedly attributed to an attorney working exclusively for school systems and a national speaker for LRP Publications in its series of workshops, "***Building a Blueprint for Defensible Autism Programs.***"

regression and the length of time it takes to regain lost skills and behaviors, render it impossible or unlikely that they will attain that state of self-sufficiency that they could otherwise reasonably be expected to reach," Id. at 597, this legal conclusion led us to hold that the inflexible 180 day limitation on education violated the Act.

Armstrong v. Kline, 513 F.Supp. 425 at 426, (E.D.Pa. 1980)



FN12. The evidence showed that there was no common definition of the term regression. In addition to varying definitions, the evidence also showed that there is no common agreement as to what variables (forgetting, motivation, etc.) are masked by the term. The term will be used in this order to refer to a drop in a child's level of performance.

Georgia Association of Retarded Citizens v. McDaniel, 511 F.Supp. 1263 at 1288 (FN12), (N.D.Ga. 1981)



Most of the experts, including defendant KSCD's expert Christopher Matey, Low-Incidence Coordinator for the Greenhills-Forest Park Board of Education, agree that some type of summer program would be beneficial to Thomas Rettig. However, the issue is not whether it might be beneficial but whether a summer school program is a necessary component of an appropriate education for Tom. In the opinion of this Court, it would be appropriate if it would prevent significant regression of skills or *779 knowledge retained by Tom so as to seriously affect his progress toward self-sufficiency.

Rettig v. Kent City School Dist., 539 F.Supp. 768 at 778, 779, (N.D.Ohio 1981)



Plaintiff is also not entitled to year-round schooling without showing an irreparable loss of progress during summer months. See *Anderson v. Thompson*, 495 F.Supp. 1256, 1266 (E.D.Wis.1980). Plaintiff has not met her burden of showing such loss.

Bales v. Clarke, 523 F. Supp. 1366 at 1371 (E. D. Va. 1981)



Unfortunately, plaintiff's parents have failed to cooperate with the King George County Schools or with the Regional Center. Almost from the beginning, plaintiff's parents adopted an adversary relationship with the defendants. The atmosphere of a cooperative endeavor to seek the child's well-being was absent. There was instead an atmosphere of suspicion and mistrust with a decided emphasis on legal rights and entitlements at the forefront of the parents' approach. Counsel for plaintiff argues that the parents' constant complaints, criticism and intimidation led to improvements in plaintiff's education. But we will never know what a cooperative, constructive, appreciative attitude may have wrought.

Bales v. Clarke, 523 F. Supp. 1366 at 1372 (E. D. Va. 1981)



The provision of an extended school year for a handicapped child can be viewed in two possible ways. First, it could be viewed solely as a backstop to the specialized instruction which a handicapped child receives during the regular school year. This view would be consistent with a single and exclusive standard based on regression and recoupment. Alternatively, an extended school year could be regarded as one additional means of providing a handicapped child with specialized instruction in accordance with his individualized education program (IEP) under the EAHCA. Because the EAHCA and *Rowley* place so much emphasis on the individual evaluation of each handicapped child's needs, the latter view of an extended school year is the correct one. It is also the view underlying Judge Curtis' order.

Lee v. Thompson, EHLR DEC. 554:429 at 430 (D. C. Hi. 1983)



Plaintiffs originally filed this action in August 1980. On March 20, 1981, Judge Jesse Curtis granted summary judgment in plaintiffs' favor. Specifically, Judge Curtis ruled that the DOE, in determining whether a member of plaintiff class requires special education and related services for an extended school year, shall consider factors which include, but are not limited to, the following:

- a. nature of the handicapping condition;
- b. severity of the handicapping condition;
- c. areas of learning crucial to attaining the goal of self-sufficiency and independence from caretakers;
- d. extent of regression caused by interruption in educational programming; and
- e. rate of recoupment following interruption in educational programming.

Lee v. Thompson, EHLR DEC. 554:429 at 430 (D. C. Hi. 1983)



FN21. At trial, the plaintiffs presented evidence in support of their contention that handicapped children suffer educational regression during interruptions in programming which can have a substantial impact on their progress and on their potential for achieving any degree of independence. In support of this conclusion plaintiffs' expert witnesses testified that regression resulting from breaks in educational programming can result in the actual loss of skills previously required, or a lack of motivation to perform skills that a child retained. Furthermore, it was contended that regression can result in an increase in inappropriate behaviors and can affect motor and communication skills. One of the plaintiffs' leading expert witnesses, Lou Brown, who is a professor of special education at the University of Wisconsin, testified that limiting every handicapped child's education to the traditional 9 month school year deprives certain handicapped children of the opportunity to experience an appropriate education. Dr. Brown emphasized that not all handicapped children are in need of additional services; however, he stressed that this determination must be made on an individual basis. Dr. Brown identified certain learning characteristics of the severely handicapped which make it more likely that they will regress than the normal child. Dr. Brown stated that the severely handicapped are capable of learning fewer and lesser complicated skills. Furthermore, the handicapped have a greater difficulty acquiring

skills and are likely to lose a greater number of skills over time. Finally, it is difficult for them to transfer what they have learned. Dr. Brown also identified a number of variables that parents and educators should consider when determining whether a particular handicapped child should have educational programming in excess of the traditional school year. He suggested that the child's progress, behavioral and physical problems must be examined. In addition, the Doctor stated that the availability of alternative resources, the ability of a handicapped child to interact with non-handicapped children, the areas of the child's curriculum which need continuous attention, the degree of regression suffered by the child, and a child's vocational needs should all play a role in the determination of whether extended programming was appropriate, and if appropriate, the types of services that should be provided to the child. Finally, the Doctor stressed that economic concerns should also be taken into account; one of the goals for handicapped children is to allow them to become contributing members of society as opposed to dependent institutionalized adults.

Yaris v. Special School District of St. Louis County, 558 F. Supp. 545 at 551, FN 21 (D.C. Mo. 1983)



Mississippi's policy of refusing categorically to consider special education programs that extend beyond 180 days prevents state education employees from determining which children, if any, require year-round education programs. It is impossible for the state, parents or courts to tell which children need such programs if they are to obtain even the simple "benefit" required by the Act. Moreover, insofar as the 180-day limit is based on funding considerations, the state cannot know whether the lack of funds has a more severe impact on handicapped than nonhandicapped children if it does not first adequately assess the real needs of its handicapped children.

[2] We conclude that Mississippi's policy of refusing to consider or provide special education programs of a duration longer than 180 days is inconsistent with its obligations under the Act. Rigid rules like the 180-day limitation violate not only the Act's procedural command that each child receive individual consideration but also its substantive requirements that each child receive some benefit and that lack of funds not bear more heavily on handicapped than nonhandicapped children.

Crawford v. Pittman, 708 F.2d 1028 at 1035, (C.A.5 (Miss.) 1983)



“The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months.”

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1027 (C. A. 10 (Ok.) 1990); *Alamo Heights Independent School District v. State Board of Education*, 790 F.2d 1153 at 1158 (C.A. 5 (Tex.) 1986)



After trial, in 1984, the district court rendered its final judgment for Mrs. G. and Steven. The court found that the School District had a policy of denying summer services to handicapped children regardless of their needs and issued an injunction against the further implementation of such a policy. The district court also made the following finding of fact:

Without some kind of continuous, structured educational program during the summer months, Steven G. will regress in skills learned and knowledge gained in the previous 180-day academic year. Although the Court has insufficient evidence to conclude that Steven G. would definitely suffer severe regression after a summer without such a program, neither can it conclude that he would not and there is evidence that shows that Steven G. has suffered more than the loss of skills in isolated instances, and that he has required recoupment time of more than several weeks after summers without continuous, structured programming. A summer without continuous, structured programming would result in substantial regression of knowledge gained and skills learned, and, given the severity of Steven G.'s handicaps, this regression would be significant.

Alamo Heights Independent School District v. State Board of Education, 790 F.2d 1153 at **1157** (C.A. 5 (Tex.) 1986)



“Mrs. G. may be entitled to full reimbursement of her expenses for the 1981 summer when Steven was enrolled in the Learning Tree day care center. Such a program, although it might not have been adequate under the EAHCA, was better than no summer program at all. The Burlington rule is not so narrow as to permit reimbursement only when the interim placement chosen by the parents is found to be the exact proper placement required under the Act.”

Alamo Heights Independent School District v. State Board of Education, 790 F.2d 1153 at **1161** (C.A. 5 (Tex.) 1986)



[1] Pursuant to the provisions of the EAHCA, the School District is required to provide Steven with a "free appropriate public education." (FN3) That mandate includes "the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." (FN4) As we stated in *Crawford v. Pittman*, "The basic substantive standard under the Act, then, is that each IEP must be formulated to provide some educational benefit to the child," (FN5) in accordance with "the unique needs" (FN6) of that child. The some-educational-benefit standard does not mean that the requirements of the Act are satisfied so long as a handicapped child's progress, absent summer services, is not brought "to a virtual standstill." (FN7) Rather, if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the handicapped child may be entitled to year-round services. The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months. This is, of course, a general standard, but it must be applied to the individual by the ARD Committee in the same way that juries apply other general legal standards such as

negligence and reasonableness. (FN8) The issue is simply the application of the *Crawford* ruling to the situation of a particular handicapped child.

Alamo Heights Independent School District v. State Board of Education, 790 F.2d 1153 at 1158 (C.A. 5 (Tex.) 1986)



“A serious problem ... lies in defendants’ implicit suggestion that a child must first show regression before his parents may challenge the appropriateness of his education.... {W}e do not believe that Congress intended that courts present parents with the Hobson’s choice of allowing regression (hence proving their claim) or providing on their own what the child needs to make meaningful progress.”

Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 at 184 (3d Cir. 1988); *Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma*, 921 F.2d 1022 at 1027, 1028 (C. A. 10 (Okl.) 1990)



The amount of regression suffered by a child during the summer months, considered together with the amount of time required to recoup those lost skills when school resumes in the fall, is an important consideration in assessing an individual child's need for continuation of his or her structured educational program in the summer months. In *Alamo Heights*, the Fifth Circuit explained this "regression-recoupment" analysis, which plays an integral part in the case before us today:

As we stated in *Crawford v. Pittman* [708 F.2d 1028 (5th Cir.1983)], "The basic substantive standard under the Act, then, is that each IEP must be formulated to provide some educational benefit to the child," in accordance with "the unique needs" of that child. The some-educational-benefit standard does not mean that the requirements of the Act are satisfied so long as a handicapped child's progress, absent summer services, is not brought "to a virtual standstill." Rather, if a child will experience severe or substantial regression during the summer months in the absence of a summer program, the handicapped child may be entitled to year-round services. The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months.

790 F.2d at 1158 (citations omitted).

However, the regression-recoupment analysis is not the only measure used to determine the necessity of structured summer program. In addition to degree of regression and the time necessary for recoupment, courts have considered many factors important in their discussions of what constitutes an "appropriate" educational program under the Act. These include the degree of impairment and the ability of the child's parents to provide the educational structure at home, *Battle*, 629 F.2d at 280; the child's rate of progress, his or her behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with non-handicapped children, the areas of the child's curriculum which need continuous attention, and the child's vocational needs, *Yaris v. Special School Dist.*, 558 F.Supp. 545, 551 (E.D.Mo.1983), aff'd, 728 F.2d 1055 (8th Cir.1984); and whether the

requested service is "extraordinary" to the child's condition, as opposed to an integral part of a program for those with the child's condition. *Polk*, 853 F.2d at 182. In fact, the Third Circuit recently explicitly rejected using solely a regression analysis to determine the necessity of a summer program under the Act:

[A] serious problem ... lies in defendants' implicit suggestion that a child must first show regression before his parents may challenge the appropriateness of his education.... [W]e do not believe that Congress intended that courts present parents with the Hobson's choice of allowing regression (hence proving their claim) or providing on their own what their child needs to make meaningful progress.

Polk, 853 F.2d at 184.

In *Rowley*, the Supreme Court explicitly held that administrative and court review may not limit analysis of the appropriateness of the IEP to any single criterion. "We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." 458 U.S. at 202, 102 S.Ct. at 3049; see also *Yaris*, 558 F.Supp. at 558. This restraint is as applicable to a specific educational program element, such as whether a child should be provided a structured summer educational experience, as it is to a generalized issue such as the "adequacy of educational benefits conferred upon all children covered by the Act." *Rowley*, 458 U.S. at 202, 102 S.Ct. at 3049; see also *Crawford*, 708 F.2d at 1034 n. 28 (declining to state whether the "regression-recoupment syndrome" should be used as a test to narrow the class of children to whom a summer program must be offered).

We prefer to adopt the Fifth Circuit's broad premise, as articulated in *Alamo Heights*:

The issue is whether the benefits accrued to the child during the regular school year will be significantly jeopardized if he is not provided an educational program during the summer months. This is, of course, a general standard, but it must be applied to the individual by [those drafting and approving the IEP] in the same way that juries apply other general legal standards such as negligence and reasonableness.

790 F.2d at 1158. (FN3) The analysis of whether the child's level of achievement would be jeopardized by a summer break in his or her structured educational programming should proceed by applying not only retrospective data, such as past regression and rate of recoupment, but also should include predictive data, based on the opinion of professionals in consultation with the child's parents as well as circumstantial considerations of the child's individual situation at home and in his or her neighborhood and community.

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1027, 1028 (C. A. 10 (Okl.) 1990)



Turning to the case before us, a thorough review of the entire administrative record reveals it to be focused exclusively on a limited regression-recoupment analysis, which itself is vigorously disputed with opposing competent testimony and evidence. Because of the conflict in evidence concerning Natalie's past regression, other factors, including some or all of those discussed above, (FN9) should have been considered as part of the evaluation of whether Natalie's IEP is "appropriate" for her individual circumstances. However, there was scant factual development in the record from the administrative proceedings concerning

many aspects of Natalie's life. Because the record focuses so completely on only one component of Natalie's education, we do not have sufficient facts to make an informed disposition on the merits of this case, and we therefore express no opinion as to whether the Natalie's IEP is "appropriate" under the Act's mandate. We do hold, however, that those who conducted the administrative review, the administrative appeal, and the federal district court review of that administrative process erred by converting what should have been a multifaceted inquiry into application of a single, inflexible criterion.

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1030, 1031 (C. A. 10 (Okla.) 1990)



FN4. We are aware that at least one district court has limited the provision of summer educational programs to those children who can prove irreparable regression. In *Bales v. Clarke*, 523 F.Supp. 1366 (E.D.Va.1981), the court held that "[p]laintiff is ... not entitled to year-round schooling without showing an irreparable loss of progress during summer months." *Id.* at 1371. The *Bales* court relied on *Anderson v. Thompson*, 495 F.Supp. 1256, 1266 (E.D.Wis.1980), *aff'd*, 658 F.2d 1205 (7th Cir.1981) (*affirming district court denial of compensatory damages and attorney's fees*).

We disagree with the *Bales* court, not only in its holding under the Act, but also with its implication that *Anderson* supports its conclusion. In *Anderson*, a case involving a child whose diagnosis and proposed educational program were disputed, the district court, without citing any legal authority, declined to order the local school district to provide a summer program because the student's academic regression was not predicted to be more severe than that of a nonhandicapped student. *Id.* at 1266. Cf. *Rettig v. Kent City School Dist.*, 539 F.Supp. 768, 778-79 (N.D.Ohio 1981) (regression standard is appropriately applied; the child whose program was the subject of this case had displayed periods of regression year-round; "[I]f on the basis of a multi-faceted evaluation, a new IEP for [the child] called for summer school," the school must so provide with state funding) (*emphasis added*), *aff'd* in pertinent part and partially vacated on other grounds, 720 F.2d 463 (6th Cir.1983), *cert. denied*, 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984).

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1031 (C. A. 10 (Okla.) 1990)



FN9. The list of possible factors includes the degree of impairment, the degree of regression suffered by the child, the recovery time from this regression, the ability of the child's parents to provide the educational structure at home, the child's rate of progress, the child's behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with nonhandicapped children, the areas of the child's curriculum which need continuous attention, the child's vocational needs, and whether the requested service is extraordinary for the child's condition, as opposed to an integral part of a program for those with the child's condition. This list is not intended to be exhaustive, nor is it intended that each element would impact planning for each child's IEP.

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1031 (C. A. 10 (Okla.) 1990)



FN12. At the hearing, the hearing officer sustained the schools' objections to questions about whether any of the seven other children in Natalie's class at the CDC were attending summer programs. The schools' objections were based in part on the fact that the programs for other children were not relevant to Natalie's program, and in part that other students "are not even students this school district has any responsibility for." R. Vol. II, tr. at 103.

Under our holding today, it is clear that the question of what services are regionally available to a child with a particular handicap can be relevant to the evaluation of the schools' responsibility to provide a structured summer educational program. We trust that our intent to encourage broad information gathering during the evaluation process is clear, and that on remand, all relevant information will be included, in an attempt to achieve the balance of individual need and public resources which Congress envisioned.

Johnson v. Independent School District No. 4 of Bixby, Tulsa County, Oklahoma, 921 F.2d 1022 at 1031, 1032 (C. A. 10 (Okla.) 1990)



Regression, however, is not the only factor that is considered in determining whether extended year services are required to provide the student with an appropriate education. Other factors that are considered include: the amount of time needed for recoupment in the fall, the child's rate of progress, the child's behavioral or physical problems, the availability of alternative resources, the areas of the child's curriculum which need continuous attention, and the child's vocational needs. *Johnson v. Independent School District No. 4*, 921 F.2d 1022, 1027 (10th Cir. 1990).

With respect to the issue of recoupment, the evidence in this case indicates that the services provided to Danny by the Chesterfield County Public Schools are insufficient to compensate for the significant amount of regression that Danny experiences during the summer months when he is not being provided speech language therapy. Danny's regression during the summer, coupled with nominal recoupment, severely limits the educational benefits he receives from instruction during the regular school year. His rate of progress is minimized by the interplay of continuous regression and recoupment.

Moreover, Danny's behavioral problems are compounded by his severe language deficit. His inability to effectively communicate triggers unacceptable behavior. Therefore, it is critical that Danny be provided with continuous speech and communication services.

There are no alternative resources that are available to the public, free of charge, that will excuse Chesterfield County from its obligation to provide Danny with an appropriate education.

Finally, the evidence provided by expert witnesses indicates that for children who suffer from moderate to severe childhood autism, there is a small, but vital, window of opportunity in which they can effectively learn. Such period is generally between the ages of five and eight years old. Therefore, jointly considering the area of Danny's curriculum which needs

continuous attention and his vocational needs, the Court concludes that it is extremely important that at this critical stage of development, Danny receive uninterrupted speech language therapy. The provision of such services, or the lack thereof, will have a significant impact on Danny's vocational opportunities in the future. Thus, it is evident that to provide Daniel Lawyer with an appropriate free education, which will allow him to benefit educationally therefrom, it is necessary for Chesterfield County Schools to provide Danny with extended year services, including speech language therapy.

Lawyer v. Chesterfield County, 19 IDELR 904 at 907, 908; 1 ECLPR 297 (E. D. Va, 1993)



“Moreover, when ESY is appropriate, the Office of Special Education Programs has determined that least restrictive environment (“LRE”) requirements apply. EHA Ruling/Policy Letter, 213 IDEALR 255 (July 19, 1989).

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1427, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)



The Court finds that MCPS's disinclination to provide ESY as part of a FAPE has continued to this date. As admitted by the principal of Longview School (where children with severe and profound mental retardation are taught) "our students somewhat systematically have not been recommended for [ESY]," but rather have been encouraged to enroll in summer enrichment programs. These summer enrichment programs are neither IEP-based nor free. Moreover, a January 1993 memo from Fountain to county principals, containing the special education annual review procedures for that year, downplayed ESY in two dramatic ways. First, the "Sample Annual Review ARD Agenda" omitted any reference to ESY as a topic of discussion. Second, the procedures promote the avoidance of any ESY discussion at the school-based IEP meeting under the following directive:

Should parents have questions about [ESY] programming during the meeting, continue with decisions about the 93-94 program and refer summer program discussion to the field office supervisor/assistant supervisor of special education and pupil services.

(Fountain memo dated Jan. 15, 1993, Pl.'s Ex. 18.) Thus, parents of disabled children found themselves forced to fight the school bureaucracy for ESY or, if they could afford the cost, send their child to a nonindividualized summer enrichment program for which fees were charged. As the Supreme Court has stated, "The Act was intended to give handicapped children both an appropriate education and a free one; it should not be interpreted to defeat one or the other of those objectives." *School Comm. of Burlington, Mass. v. Department of Educ.*, 471 U.S. 359, 372, 105 S.Ct. 1996, 2004, 85 L.Ed.2d 385 (1985). MCPS cannot meet its legal obligation to provide a disabled child free ESY when appropriate by steering parents to an alternative that is neither individualized nor free.

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1428, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)



“Nearly 75% of all ESY decisions for the summer of 1992 were made after May 1, 1992. All denials of ESY occurred after that date and several as late as June 23, 1992. ... ¶) Generally, matters of timing are left to the school board’s discretion under 34 C.F.R. Sec. 300.343. That discretion is abused, however, when decisions are delayed for illegitimate purposes—such as to deny parents the ability to exercise their due process rights guaranteed under other sections of the regulations. Timely decision-making is critical to the integrity of the rights granted under the IDEA. In particular, unduly late decisions infringe upon parents’ rights to administrative review of IEP decisions within established timelines. See 34 C.F.R. Sec. 300.556 (giving parents a right to a due process hearing); *id.* Sec. 300.512 (setting a 45-day limit on the review process). ... ¶) The Court concludes that MCPS has violated IDEA by delaying many ESY decisions so long as to infringe the procedural rights of disabled students. The delays have, in effect, fostered the overall scheme of MCPS to minimize the availability of ESY to disabled children.

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1433, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)



“Plaintiffs claim that MCPS limits its analysis of ESY eligibility in individual cases to a regression-recoupment standard that violates the IDEA. In so claiming, they echo the 1989 decision of the HRB which found that MCPS ‘adhered to a single criterion of severe regression and limited recoupment and this standard in itself is too limiting.’ Any student evaluation that uses a single-criterion test to determine an appropriate educational program would violate the Act. 20 U.S.C. Sec. 1412(5) (Supp. 1994); *Hall*, 774 F.2d at 635. ... ¶) MCPS must, henceforth, use a correct standard for determining whether ESY will be made part of a disabled child’s IEP.

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1434, 1435, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)



“... a variety of nonregression-based factors – for example, “emerging skills” and “breakthrough opportunities” (as when a child is on the brink of learning to read) – can and should be incorporated into the eligibility analysis.”

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1435, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)



“The Fourth Circuit has stated that under the IDEA, placement is to follow the development of an individualized program and not vice versa. See *Spielberg*, 853 F.2d at 259. Under both Federal and (Maryland) State law, ESY is to be provided under a properly developed IEP, taking into account LRE.”

Christoph Reusch v. Dr. Hiawatha Fountain, 872 F.Supp 1421 at 1438, 97 Ed. Law Rep. 299, 8 A.D.D. 514 (D.C. Md., 1994)

Supporting Case Citations

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