



Educating Children with Autism: Q & A with Dr. Lisa Spano, Ph.D.

Publication:

Special Services Update - March 2021

Riker Danzig Counsel Teresa L. Moore, who leads our School Law Practice, engaged Lisa Spano, Ph.D., Psy.D., BCBA-D, of MG Behavioral Consulting, LLC in a wide-ranging conversation about important considerations for parents of children with autism regarding their education. We are delighted to share Dr. Spano's insights below.

Teresa Moore: Dr. Spano, according to a major published academic study, 31.4 out of every 1,000 children in New Jersey (with 4.3 times as many boys than girls) are diagnosed with autism spectrum disorder. What is the responsibility of school districts to help these children?

Dr. Lisa Spano: The first thing the district must do is to identify those children and use a Child Study Team ("CST") to devise an Individual Education Plan ("IEP") for each child. It is important that the CST include parents as part of the IEP team to identify goals, treatments, and services for each child.

Individualized Education Plans (IEPs)

TM: At what age must the IEP be created?

LS: An IEP can be created as early as age 3. Intensive, early, and quality intervention for children on the spectrum is essential.

TM: What must the IEP contain?

LS: The IEP is a contract between the school district and the parents that must set out observable and measurable goals for each child in the areas of academics, behavior, social-emotional, life skills, vocational, and any goals pertaining to related services such as speech, occupational therapy, physical therapy, counseling, feeding therapy,

and vision therapy. Each of these goals should be designed to be achievable in one year's time.

TM: Dr. Spano, how can a parent insure that the IEP is appropriate for, and does enough for, their child?

LS: That is a good question. Parents can, and should, attend IEP meetings, ask questions, and identify any concerns. Parents can ask to observe the district's proposed classroom for their child. Additionally, parents can invite any person that is familiar with the child to an IEP meeting. These can include professionals that have evaluated and/or provided direct services to the child and a lay advocate or lawyer that is knowledgeable about the special education laws.

Services for Children on the Autistic Spectrum

TM: Are there generally accepted types of things school districts should do for all children on the spectrum?

LS: Yes, all school districts should provide evidence-based treatments to children on the spectrum. This means that skills are assessed and progress is tracked on an ongoing basis. If a child makes minimal to no progress on any one objective, treatment changes need to be made in a timely fashion, typically, within two to three weeks. As far as types of treatment, every child on the spectrum is different and needs different treatment. For example, approximately one third of children on the spectrum have intellectual development issues. The intellectual development of the remaining children range from low to extraordinarily high. It makes no sense to treat all those children similarly. Some of the children have social adaptability issues, while some do not. In terms of social adaptability, it is often necessary to have small group pull-out sessions both with other children who have the same condition and other children who are solely in general education. Some of the children need speech therapy and some do not. The same is true of occupational therapy for fine motor skills (which is a very common problem for children on the spectrum), physical therapy for large motor skills, and every other service.

TM: Dr. Spano, if a child is on the spectrum and would benefit from having a full-time aide to keep the child focused and on task, must the school district provide an aide, and what happens if the district says it is too expensive to provide an aide ?

LS: That is also an excellent question. Many children on the spectrum need a well-trained aide for many reasons. Aides can be needed to provide direct services to the child in the form of discrete trial instruction, some aides collect data on behavior goals, and others are responsible to help keep the child focused and on task. As long as the aide is necessary to help the child achieve educational benefit and progress year to year, the district must provide the aide. I have learned that there is nothing in the Federal and State laws allowing the school district to argue that it is too expensive to provide an aide. School districts have been ordered to pay over \$100,000 a year for a student's out-of-district placement when needed; the cost of an aide pales in comparison. The law, as you know, places the

responsibility on the school district to make sure every child receives an appropriate education in the least restrictive environment; cost to the district is not a factor.

TM: Dr. Spano, if a child has severe autism, can his parents place him in a private, out-of-district school that specializes in educating children with autism?

LS: Yes, parents can unilaterally place their child in a specialized, out-of-district program, but they need to notify their school district first. It would be a very rare district—if indeed, there are any—which have enough specialized programs to provide educational benefit to every child with autism. Parents have won these cases when the district does not have an appropriate program for their child. Under the guidance of a special education lawyer, parents can hire experts in areas pertaining to their child such as a behaviorist, psychologist, speech therapist, etc. to evaluate the services provided to the child in the new placement and the child's progress in this new placement. Parents can request a district to reimburse them for tuition costs and to include the child's out-of-district placement in the child's IEP. It is strongly recommended, however, that parents should consult a special education lawyer before unilaterally placing their child so that they can maximize their chances of obtaining tuition reimbursement.

TM: Dr. Spano, tell us about self-contained classrooms for children on the spectrum.

LS: Self-contained classrooms for children on the spectrum can provide specialized instruction in a small classroom setting. All self-contained classes in school districts include a special education teacher and many of these classes will include 1:1 or 2:1 student-to-adult ratios. Self-contained classrooms that use Applied Behavior Analysis will include data collection procedures to determine progress and many of these classes will offer techniques associated with ABA such as discrete trial instruction, visual schedules, and token economy systems. Many self-contained classrooms will have infused services such as speech and social skills instruction as well as community-based instruction, access to a life skills room, vocational training, and parent support. District staff need to ensure that students in self-contained classrooms have access to structured interactions with general education peers when deemed appropriate for the student. These are only some of the services that are associated with self-contained classrooms.

Dispute Resolution

TM: How do differences between the school district, parents, and private experts factor in all of this?

LS: While all school districts must utilize evidence-based treatment, districts have a right to adopt different theories in how to educate children. For example, some districts utilize Applied Behavioral Analysis (ABA), pioneered by Dr. Lovas, while others use Greenspan Floor Time techniques. Treatments that are deemed appropriate are those that demonstrate progress for the student. If parents believe that an IEP that is offered to their child is not appropriate, parents can challenge the IEP in a petition to the New Jersey Department of

Education. An administrative law judge will look at whether the IEP was designed to provide the child with meaningful educational benefit.

After the First IEP

TM: We have talked about the child's initial IEP and how it must set out goals for the child and strategies that the district will pursue to achieve the goals. What happens next?

LS: The IEP must be re-examined every year. The district's child study team must measure how the child has progressed or regressed. What the school district cannot do is to routinely repeat the first year's IEP. Indeed, that is often a sign that the district is not working hard enough to individualize a child's services. Teachers and related service professionals write about the student's "present levels" and discuss areas of progression and areas that need improvement in order to determine what is working and what is not working, and then plan accordingly.

TM: Dr. Spano, how is a parent—who often has a job and one or more other children—cope with a school district and a child study team that specializes in this area and may have financial pressures not to grant the wishes of every parent?

LS: Every parent that I currently work with has retained an attorney that has expertise in special education law. As you are well aware, there are many very specific federal and state statutes and regulations, as well as cases, that it would not be possible for a general practice attorney to do an adequate job. Fortunately, there are many times in the life of a dispute between a parent (with the parent's attorney) and the district that a settlement usually occurs. In my experience, a great majority of cases that go to an administrative law judge do settle before a trial. As we both know, administrative law judges are well-trained to settle these disputes. Equally fortunately, in many of these cases, payment of the parents' legal fees by the school district is at least discussed. In sum, there are numerous difficult decisions parents face when a school district appears unwilling to accommodate a child's needs, and guidance from an experienced lawyer is often required.

TM: Does the fact that school boards face financial pressures as a result of COVID change their responsibilities to children?

LS: No.

TM: Speaking of COVID, Dr. Spano, if a child did not receive the services he or she was entitled to in the past year due to the lack of in-person education, is the child entitled to receive compensatory services?

LS: The answer is yes, provided that the student did not make progress or showed regression in any of the goals. Observations and testing can be completed to determine progress in any area. For example, educational testing,

academic assessments, and grades can help to determine if the child has made progress towards academic goals. A behavior evaluation can help to determine progress towards target behaviors in a student's behavior intervention plan or even an increase in any inappropriate social behaviors such as aggression, stereotypical behaviors, or non-compliant behaviors at home or at school. Speech therapists can help to determine progress towards speech goals.

TM: Dr. Spano, we have just skimmed the surface of how parents can cope with a school district charged with educating children who are on the autism spectrum. To end on an optimistic note, I know that throughout your career, you have dealt with hundreds of such children. Could you tell us what the outcome has usually been?

LS: With hard work by both the parents and the districts, I have seen a majority of cases come to a settlement agreement and an overwhelming percentage of children gain an improvement in the quality of their lives. I am more than willing to share my experience with any parent who would like to discuss how to achieve beneficial results for their children.

If you have questions on the topics covered in this *Special Services Update* or any other special education topic, please contact a member of our School Law Practice:

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