



# How to Deal With School Anxiety When the School Does Not Cooperate

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Many parents of children receiving services in school find that their children suffer from school anxiety, school phobia, school avoidance, or school refusal. These conditions may result from bullying, failure to achieve academically or socially as much as expected or desired in school, or from their disabling conditions themselves. There have been 92 cases in New Jersey, most of them relatively recent, in which administrative law judges (“ALJs”) had to determine whether children suffering from school anxiety and similar conditions should be given tuition from their local school districts in order to attend private schools, or be given other accommodations to help them handle their challenges.

D.A. and P.A. on behalf of D.A. v. Livingston Board of Education is a 2017 case highlighting how seriously ALJs treat school anxiety. In eighth grade D.A. was “becoming more withdrawn.” According to the opinion, “It was at this time that [D.A.’s mother] and her husband started inquiring and looking at out-of-district schools. In April 2015, she told the case manager that she was now looking at Winston and Craig Schools. By August, D.A. appeared “very anxious about attending the main high school,” but “the district made no changes in D.A.’s IEP. . . .” D.A. “started to receive home instruction in the Fall of 2015”; unfortunately, he was “miserable getting home instruction.” D.A. was placed at Craig School in December 2015. The District had suggested by that time that D.A. be educated at “the Monmouth Court Campus [in Livingston], a small program designed for students that have problems with larger school settings.” The judge explained that “A Monmouth Court student can mainstream back into the high school if the student, parents, and teachers agree.”

The ALJ had to decide if D.A. and his parents should be reimbursed for the tuition at Craig School for the part of the 2014-2015 school year he spent at Craig School, 2015-2016, and 2016-2017. Although the District had

presented six highly-credentialed witnesses, none of whose testimony was criticized by the ALJ, the parents prevailed. The ALJ stressed, “Since attending Craig, D.A. does not need emotional counseling as much as he did before, he is no longer anxious about school, he is no longer withdrawn, is happier and more relaxed.”

The D.A. case demonstrates that school anxiety can lead to parents’ ability to place a child in a private school setting—even in the face of a seemingly benign placement by the public school—and obtain tuition reimbursement if the private school setting can alleviate the school anxiety.

M.P. and I.P. on behalf of S.P. v. Millburn Township Board of Education (2015) is similar. S.P. experienced school anxiety, leading to absenteeism, as well as emotional disturbance, possible bi-polarity, and ADHD. When “S.P. experienced more difficulty with completion of his homework, . . . he became school-avoidant.” As a result, the child study team placed S.P. at a local therapeutic day school in the eighth grade. While S.P. began relatively well at the day school, eventually he became anxious and his performance in school declined, leading his parents to unilaterally place him in a residential school. The ALJ was called upon to decide if the school district should be made to pay for S.P.’s tuition at the residential placement.

The ALJ found for the parents, partially because the School District had characterized S.P. as “emotionally stable,” but that reference did not “accurately reflect [the parents’ psychiatrist’s] views as to S.P.” As the ALJ explained, “there [was] no evidence that S.P. [was] no longer emotionally disturbed.” Accordingly, the ALJ found that the IEP did not “accurately and completely describe S.P.’s disabilities” and that the therapeutic day school “could not be able to deal with S.P.’s emotional issues.” As for the residential placement, “S.P. has made substantial progress [there] in regard to the emotional issues and [it] has conferred meaningful benefit.” The ALJ decided that the school district had to pay S.P.’s tuition at the private residential placement.

D.A. and M.P. both stand for the proposition that school districts can be made to pay for the cost of residential placements chosen by parents if there is debilitating school anxiety caused by the student’s learning difficulties and/or their disabling conditions. The same result can occur if the school anxiety results from bullying. In J.S. and V.S. on behalf of A.S. v. Teaneck Board of Education (2015). A.S., who had a “severe learning disability in math,” had been bullied by two female students, beginning in the sixth grade and continuing through middle school. As the ALJ explained, “the assaults occurred in the school, the bathrooms, classrooms, and anywhere else that did not have cameras.” Not surprisingly, A.S. developed severe, almost suicidal, anxiety. The District placed A.S. in a therapeutic day school, where her progress was only minimal. Accordingly, her parents took her out and placed A.S. in a therapeutic residential facility. As the ALJ put it, “A.S. has progressed at New Haven [the residential facility]. . . She no longer has nightmares. . . she is optimistic about school. . . She will have her high school degree.” The ALJ thus ruled that the District had to pay A.S.’s tuition bills at New Haven.

The J.S. case is instructive in that the ALJ listed several factors to be addressed in these types of cases: 1) steps the district took to avoid a residential placement; 2) which placement, residential or in-district, is better educationally; 3) the effects inclusion may have on other students; 4) the child's physical and emotional problems; 5) whether the child's problems were interfering with her education; 6) what the professionals thought was appropriate; 7) whether the child has unrealized potential that could only be maximized in a residential placement; 8) what did past experience indicate was preferential; and 9) whether the placement was primarily for educational needs.

A similar case is L.B. on behalf of J.B. v. Roselle Borough Board of Education (2018). J.B. came to court in his late teens, and his parents argued that the School District had denied him a free, appropriate education ("FAPE") for several years. J.B. had several learning deficiencies, was subject to epileptic seizures, and experienced anxiety, possibly caused by school bullying. Other students hit him, called him names, threw his belongings into the garbage, and tried to steal his bicycle. (The District argued that the last incident was not "school bullying" since it occurred on a weekend.) The ALJ found that J.B. had "generalized anxiety disorders," was "emotionally disturbed," and needed "consistent emotional support throughout the school day." Accordingly, the ALJ found that J.B. should be educated at the New Roads School of Somerset.

Not all school anxiety and school avoidance cases concern disputes over placement in other schools, residential or day. Many cases concern a parental desire to have a school-anxious or school-avoidant child educated at home rather than in the local public school. That desire would seem, at first glance, to contravene New Jersey Administrative Code 6A:32-8.3(b), which stipulates that "for school attendance purposes" a student must be "under the guidance and direction of a teacher," for a minimum of four hours in a day, as well as federal and State law which mandates that children with disabilities be educated in the "least restrictive environment." On the other hand, the Administrative Code section cited above can be relaxed when dealing with an IEP which takes into account an individual student's particular needs and abilities, and the "least restrictive environment" requirement refers to the least restrictive environment for a specific student, given his or her needs and abilities. If a student is not likely to go to a school on account of his or her school phobia, home instruction—given via some combination of video platform, Facetime, telephone calls, and in-person tutoring by a teacher employed by the school district—would actually be education offered in the least restrictive environment.

If you have any questions about this issue or any related Special Services issues, please contact [Teresa Moore](#) or any member of our [Special Education Practice Group](#).

## **Attorneys:**

Teresa L. Moore · James S. Rothschild, Jr. · Fiona E. Cousland · ☒Desiree McDonald

**Practice:**

Special Education Law

Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey 07962-1981 • t: 973.538.0800 f: 973.538.1984  
50 West State Street, Suite 1010, Trenton, New Jersey 08608-1220 • t: 609.396.2121 f: 609.396.4578  
500 Fifth Avenue, New York, New York 10110 • t: 212.302.6574 f: 212.302.6628  
[www.riker.com](http://www.riker.com)