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The Cost of a Free Appropriate Public Education: Autism in Albuquerque

With the current rise in children diagnosed with autism, Tara Ford, co-founder and co-director of Pegasus Legal Services for Children¹ in Albuquerque, New Mexico, has found herself representing many families whose children are not receiving the free appropriate public education (hereinafter FAPE) children with disabilities are guaranteed under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Improvement Act (hereinafter the IDEA).² While Section 504 prohibits discrimination against children with disabilities in the school setting, the IDEA governs the special education services the school district must provide to children with disabilities.³ Children with autism are recognized as individuals with a disability under the IDEA⁴, and therefore, each school district is required to provide a FAPE to each child who has been diagnosed with autism.⁵ Ford currently has a proposed class action case against Albuquerque Public Schools (hereinafter APS) in federal court that involves ten named plaintiffs on behalf of APS children with autism, *Nelson v. Bd. of Educ. of Albuquerque Pub. Sch., N.M. Pub. Educ. Dep't*.⁶ The class action complaint claims “APS purposefully withholds public education from these students on the basis of disability throughout the school year by its ongoing failure to train and support the employees providing education to students with autism.”⁷

With the current prevalence and awareness of children with autism, illustrated through numerous, similar law suits that are being brought on behalf of children with autism across the

country⁸, a pressing concern for all school districts is how to reconcile the tension between compliance with the law laid out under the IDEA and the associated cost in providing children with autism a FAPE.⁹ The first part of this paper will provide an overview of autism and the relevant federal statutes that require a FAPE for children with disabilities. Then, part two will discuss the financial burden school districts face in implementing the IDEA for children who have been diagnosed with autism. Finally, part three of this paper will provide a three-tiered approach that school districts could adapt in order to better serve children with autism as required under the IDEA, while implementing best practices and rectifying financial concerns.

APS will be the school district discussed throughout the paper because of its size, it is the thirty-second largest school district in the country serving over 93,000 students,¹⁰ and because of the author's personal knowledge and experiences with this district.¹¹ However, the problems found within APS relating to the implementation of IDEA for children with autism is not an isolated issue, but rather, these are problems that the vast majority of school districts are facing. Therefore, the solution proposed is one that was designed with the intent of being adapted to any sized school district, urban or rural.

Part I. Autism, FAPE, and IDEA

Autism: Definition and Background

According to the Center for Disease Control (CDC), autism is just one of a group of disorders known as Autism Spectrum Disorders (ASD).¹² ASDs are development disabilities that cause substantial impairments in social interaction and communication, along with the presence of unusual behaviors and interests.¹³ The various ASDs include autistic disorder, pervasive developmental disorder, and Asperger syndrome.¹⁴ All of these disorders have some of the same or similar symptoms, but they differ in terms of when the symptoms start, how severe the symptoms are, and the nature of the symptoms.¹⁵ ASDs occur across all racial, ethnic,

and socioeconomic groups.¹⁶ Moreover, ASDs are four times more likely to occur in males than in females.¹⁷ Although it seems as if autism has become more prevalent in recent years, some of the earliest documented cases of autism-like behavior date back to the eighteenth century.¹⁸ Autism was not formally identified as a specific disorder until 1943 when Dr. Leo Kanner, a child psychiatrist, published a description of what he called “autistic disturbances of affective contact” based on his study of 11 children.¹⁹ In 2000, the National Institutes of Health estimated that autism affected 1 in 500 children, and a year later, the estimate increased to 1 in 250 children.²⁰ As of 2007, the CDC’s Autism and Developmental Disabilities Monitoring (ADDM) Network released data that found 1 in 150 8-year-old children had ASD.²¹

At Pegasus, Ford attributes a recent increase in the number of calls from parents of children with autism to three factors.²² First, a large number of children are currently being diagnosed with autism.²³ Not all children with autism are served through public education programs; thus, the data underestimates the number of children with autism. However, in 2006, 224,594 children aged six to twenty-one and 35,111 children aged three to five were served under the “autism” classification for special education services in the United States.²⁴ Second, there are evidenced-based practices about how to best educate children with autism that show great promise.²⁵ Parents are learning about these practices and are eager to advocate for the implementation of such practices for their child with autism. Finally, schools have not adequately trained their staffs or developed appropriate infrastructure to meet the needs of children with autism.²⁶

FAPE: Section 504 and IDEA

Section 504 of the Rehabilitation Act of 1973 requires a school district to provide a “free and appropriate public education” to all children with disabilities who are in a school district’s

jurisdiction, *regardless* of the nature or severity of a child's disability.²⁷ The United States Department of Education (ED) Section 504 regulation defines a person with a disability as "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."²⁸ Furthermore, under the IDEA, a child with a disability means a child that has been evaluated and determined as having one of thirteen specific disabilities, one of which is autism.²⁹

It should be clarified that the IDEA and Section 504 are separate pieces of legislation that have different criteria to be met by the states in order to receive federal funding. Whereas Section 504 is a civil rights statute requiring schools that receive federal financial assistance for educational purposes to not discriminate against children with disabilities, the IDEA is a federal law that regulates all special education services provided to children who are considered educationally disabled.³⁰ The major difference between Section 504 and the IDEA is the flexibility of procedures the school district must follow. If a child qualifies under Section 504 for a FAPE, there are fewer requirements the school district must satisfy to ensure that the child is not discriminated against in the public school, basically that the child is not denied participation in a public education or enjoyment of the benefits offered by public school programs because of the child's disability.³¹ However, if a child qualifies for a FAPE under the IDEA, there are more specific regulations, relating to the special education of the child from preschool through the age of 21, that the school district must comply with in order to receive federal funding.³² These statutes do not work in isolation; it is common for a child who qualifies for a FAPE under Section 504 to also qualify for a FAPE under the IDEA.

Under the IDEA, a child with a diagnosed disability is entitled to a FAPE in the least restrictive environment.³³ The most significant component in reaching a FAPE under the IDEA is the school district's creation of an Individual Educational Program (IEP) for each child who has been diagnosed with an educational disability.³⁴ The IEP must include a statement of the child's present academic achievement and functional performance, a statement of measurable annual academic and functional goals, a statement of the special education services, related services, supplementary aids, and supplementary services to be provided to the child, and a statement of the program modifications or supports for school personnel that will be provided for the child.³⁵ This is not an extensive list of what is required in each child's IEP, but it gives some perspective as to what is expected for each child with a disability under the IDEA. The individuals who make up an IEP team include the parents, a regular education teacher, a special education teacher, an administrative representative who knows about the curriculum and the availability of resources, and the child when appropriate. Once an IEP has been created, it should be reviewed periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved.³⁶ Although the school district receives some federal funding in providing a child with an educational disability a FAPE, the school district must often combine local, state, and federal funding to meet the IDEA requirements.

Part II. The Cost of Providing FAPE for Children with Autism

The main issues facing any school district in ensuring a FAPE for children who fall under the IDEA include a lack of funding to provide the necessary resources for children and a lack of resources in certain parts of a district, or in certain districts. APS provides education to over 93,000 students at 157 different schools.³⁷ Based on the nationwide statistic that one in every 150 children between the ages of 5 and 22 has autism, well over 600 children with autism should

attend APS.³⁸ However, according to APS school district officials, there are 348 autistic children at thirty-one various APS sites.³⁹ The reason for the disparity between the national statistic regarding children with autism and what APS school officials cite is most likely due to the fact that not all APS children with autism are being diagnosed, and not all children with autism are in fact enrolled in APS.

It is expensive to provide a student with autism all of the necessary resources so that his or her educational needs are met. According to a 2005 report by the United States Government Accountability Office (GAO) regarding special education and autism, the estimated annual average cost of education for a child with autism was \$18,800, whereas the estimated annual average cost of education for a special education child, in general, was \$12,500.⁴⁰ This is just the cost to educate a child with autism within a regular public school. However, there are specialized schools for children with autism available throughout the country for those children with autism who may not be able to function within the regular public school setting.⁴¹ The educational cost per child in such a specialized school setting is in excess of the average cost of educating a child with autism.⁴²

In September of 2007, ironically just a few weeks after the lawsuit against APS was filed by Ford, APS opened a public school, housed at the University of New Mexico Children's Psychiatric Hospital, specifically for children with autism.⁴³ This school served four fourth-grade children with autism. Instead of attending school for 180 days at six hours a day, these children were attending school for 260 days at four hours a day.⁴⁴ The contract between APS and the University of New Mexico for these educational services was a total of \$352,000, or \$88,000 per child.⁴⁵ Not only is this cost per child in excess of the \$18,800 figure provided by

the GAO to educate a child with autism, but to put this amount into even greater perspective, APS spent, on average, \$8,242 per child in the 2004-2005 school year.⁴⁶

The cost of educating one APS child with autism is equal to the amount of educating ten APS students who do not require special education services. The \$352,000 price tag for four students at the autism school in Albuquerque was 0.19% of APS's \$190 million special education budget.⁴⁷ However, those four students represent only about 0.004% of the over 93,000 APS students and only 0.022% of APS students who receive IEPs based on the IDEA.⁴⁸ The special education services and supports provided by APS and UNM for the four children with autism included a teacher, three mental health technicians, a nurse, a speech and language pathologist, a occupational therapist, a therapeutic recreation specialist, a psychologist, art and music teachers, and a pet therapy program.⁴⁹ While it is required that children with autism receive a FAPE, it is often the case that within the regular public schools there is not the funding available to provide an entire school of regular education students with *either* a music teacher *or* an art teacher.⁵⁰

It may seem as if the \$88,000 per child price tag is excessive, but there are other schools for children with autism throughout the country that have tuition set at about the same amount. For example, the Brooklyn Autism Center Academy in Brooklyn, New York, serves eight children between the ages of five and eleven.⁵¹ The annual tuition is \$85,000.⁵² This school is different from the school for children with autism in Albuquerque in that it is a private school. However, under the IDEA, the public school system is required to provide a FAPE, even if it means paying for a child's private school tuition if there is not a public school option suitable for the child, or if the parents, under certain circumstances, decide to place their child in a private school.⁵³ The bottom line is whether a child with autism is educated within a regular public

school or is educated in a school devoted to educating children with autism, the cost of providing such an education can become burdensome to the school district, especially as the number of students with autism increases.

Part III. Looking Forward: Best Practices and a Practical Solution

Best Practices

There has been a significant amount of studies done regarding best practices in educating children with autism. Although there is not one specific treatment for children with autism, most professionals agree that early intervention along with highly structured and specialized programs are essential for a child's success.⁵⁴ Applied behavior analysis (ABA) is the most widely known treatment for children with autism, and generally requires intensive, one-on-one child-teacher interaction for 40 hours a week.⁵⁵ The overall goal of the ABA technique is to reinforce desirable behaviors and to reduce undesirable ones.⁵⁶ Other best practices include inclusive learning⁵⁷ and the Treatment and Education of Autistic and Related Communication-Handicapped Children (TEACCH) method.⁵⁸

Studies and learning techniques relating to students with autism have not just benefited the autistic community, but have allowed greater insight into how all students develop and learn. For example, the science of teaching reading to students with learning disabilities actually broke down how students learn to read, which led to approaches that systemically taught the component skills of reading to students, leading to teachers who knew more about how to actually teach reading to all students.⁵⁹ In terms of the ABA, its techniques have been effective in helping other students who have significant cognitive impairments. The idea that big skills have component skills that can be sequentially taught in order to support mastery is a technique that can be applied to any child who is not mastering the skill alongside his or her peers.⁶⁰ In this regard the special education and disability research, although it may carry a significant cost,

benefits all children, and not just those children who receive an IEP. The more tools the school system has available, and the better quality of those tools, the better the educational outcomes should be for all students, regardless of whether the student is diagnosed with autism.

However, school districts must be thoughtful in how best to acquire the necessary tools to help students with autism, making sure that funding is not wasted and resources improperly allocated. If the school districts had a methodical and thoughtful process on how best to help students with autism, then the intended result would be less time spent on readdressing the same or similar issues and solutions that have already been discussed and implemented in prior autism cases. This in turn would cut down on some of the cost associated with providing a FAPE to children with autism. This is not to say that a cookie cutter approach is the answer to providing children with autism a FAPE, but rather, the services offered to a child with autism should already be somewhat in place. Furthermore, there should be a spectrum of services that the school district is ready and able to provide to any child with autism once the diagnosis has been made.

*A Spectrum of Services: A Three-Tiered Approach*⁶¹

In terms of a spectrum of services offered, there should be at least three different tiers of services a school district is ready and able to provide to a child with autism: a tier designed to allow a child with autism to remain in a regular education setting, a tier where a child with autism is able to attend either a classroom or a school specifically designed for educating children with autism, and a tier where a child with autism is able to attend a full-time residential and educational facility that will support all of his or her needs. By having a basic plan already in place, which can then be further modified to the individual child's special needs, the goal would be to cut down on the amount of time the child is not receiving a FAPE, while also cutting

down on the amount of resources and funding that is spent on trying to decide how to provide a FAPE for each child with autism. The amount of time and money spent on creating and implementing an IEP is substantial considering the various components to be included in the IEP and the various education professionals that must be present at each IEP meeting. Moreover, it is sometimes the case that the school or school district does not want to comply with an IEP, or will cut corners in implementing an IEP because of funding constraints.⁶² If there were district wide basic expectations on how to begin to provide a child with autism a FAPE, then not only would the school be held more accountable in providing the proper sources and support, but streamlining the process would hopefully cut down on the costs district-wide. Not only will having various tiers of supports and services in place to help this growing population allow for greater efficiency within the school district, but because autism is a spectrum disorder, this three-tiered approach will also allow for trial and error to see what services work best with each individual child. If a school district is able to easily move a child with autism from a regular education setting with an aide to a class that works specifically with autistic children to a public school that specializes in educating children with autism, then not only is the child going to benefit from a FAPE in a more timely manner, but the school district is not going to have to spend as much time recreating a new IEP every time the child's current IEP proves ineffective.

Tier One

The first tier of support and services should be designed to allow a student with autism to remain with his or her developing peers in a regular education classroom. The support and services for this tier would begin with training for the teacher who will be responsible for the child's education. All teachers should be trained to some extent on how to best teach children with autism, but additional training may be needed depending on the expertise of the teacher and

the individual child's diagnosed disabilities. The point behind the IDEA is not to simply place children without necessary support into a regular education class.⁶³ Rather, if the teacher does not have the necessary skills to properly teach a child with autism, the IDEA allows the IEP team to identify training that would help the teacher along with additional supports and services that would benefit the child with autism.

The overall goal of providing teachers with the necessary training is that if the teacher has the skills and support necessary to help a child with autism, then that teacher is going to be successful in educating not just the current child with autism, but all of his or her children. A benefit of providing teachers with additional autism training is that it is a cost that does not necessarily need to be paid out each time a new child with autism enters the teacher's classroom. Once a teacher has received the necessary training, he or she will be able to help other, future students with autism. Of course, there is always the possibility that new training may become available to the teacher or that the teacher may need even more training in the future. Nonetheless, with the sheer number of children with autism on the rise, providing teachers with the proper training to better serve children with autism should be an essential part of any school district's budget.

Tier Two

Even with supports and services provided in the classroom, some students with autism need a more specialized setting for either all or part of their education. The second tier of support and services would, depending on the number of students with autism in the school district, require either a classroom at each school be dedicated to educating children with autism, or a school within the district be designed specifically for educating children with autism. Within this level there are different solutions available depending upon both the child's and the

school district's needs. On one hand, there may be enough students at any given school that it would be most cost efficient to have a classroom devoted to educating children with autism rather than having to shuttle the children outside of their district. If there are not enough children with autism at each individual school, it might be more efficient to have a single school within the district that has one classroom devoted to educating children with autism. In the even larger school districts, an entire school devoted to educating children with autism may be the most cost-effective and efficient solution.

The overall goal with this tier of support and services is to provide educational opportunities to those children with autism who cannot function within the regular education classroom. The school district should always start with the presumption that children with autism remain with their normal developing peers to the extent possible with supports and services as needed. However, the school district must also realize that there comes a point where a regular education classroom may not be in the best interest of either the child with autism or the other children in classroom. This determination depends on numerous factors such as where the child with autism falls on the ASD spectrum, the child's personality, the teacher's willingness and capability to assist the child, and the resources available to the school district.

Tier Three

Finally, because some studies have shown that certain students with autism cannot distinguish between time spent at school and time spent outside of school, the third tier of support and services would be a residential center for children with autism. This level of intervention is extremely costly, estimated at over \$300,000 a year in some instances.⁶⁴ As a result, such an invasive amount of support and services should be reserved only for those

children with autism who cannot succeed in either the regular classroom setting with supports and services or in a specialized classroom or school for students with autism.

In an amicus brief in support of petitioners in *Luke P & Jeff P v. Thompson R2-J School District*, Gary Mayerson, director of Autism Speaks, spoke of such residential centers as more of a last resort. Mayerson stated that “without appropriate and effective teaching and intervention, autism ruins lives and destroys families...The only way for our society to avoid the social and financial cost of lifelong institutional care is to provide educational programming that is designed to meaningfully promote independence and self –sufficiency.”⁶⁵ It would be highly inefficient for the public school district to establish and run such facilities. Instead, the district should have funds set aside to pay privately-run residential centers to care for such children on a case-by-case basis. Due to the specificity of such residential centers, it may be the case that the student with autism needs to be sent out of his or her school district, or even his or her state, to attend such a facility.

Not only is cost a factor that needs to be considered when placing a child with autism in a full-time residential center, but another valid concern is whether or not the parents who have the child with autism, even in the most severe cases, would be willing to turn their child over to a residential facility. However, those are questions and concerns that would need to be addressed on an individual basis. The main purpose of having this highly invasive level of support and services is that it allows for flexibility in resolving the wide range of issues that children with autism face. It ultimately allows for a child with autism to have a FAPE, even if that education comes at a large financial cost and time commitment from the school district, the family, and the student.

Implementing the Three-Tiered Approach

In order for this three-tiered approach to be most efficient and effective, the first step is for the school district is to go through its current polices, procedures, and programs, deleting what has not proved effective in obtaining a FAPE for its children with autism. There is no reason to keep programs that are not based on good research and evidenced based practices. At this point, there are enough studies and findings to know what is at least valuable and not valuable in terms of making an educational impact on children with autism. Once the school district has removed its ineffective programs, the school district should not be afraid to try and discover new programs, policies, and procedures that may work best within the district.

With the current stimulus package under the Obama Administration comes the opportunity for short term funding regarding education.⁶⁶ The timing is right to start building support for students by training teachers and other school personnel in strong practices aimed at helping children with autism, bringing in professionals who can help districts assess their programs and restructure what is being offered, and implementing programs that will allow children with autism to succeed in an educational setting. All these goals should be able to be met while ensuring good funding is not being wasted on bad education.

Part IV. Conclusion

Implementing the IDEA for all children with autism is going to become increasingly difficult as more children are diagnosed with autism, and more parents are wanting what any parent wants, a good education for their child. This paper provided only one possible solution to one of the many issues that arise in attempting to provide a FAPE to children with autism, budgetary constraints. Just as each child with autism is unique, each school district and each school is going to have individual and unique hurdles to overcome to ensure that all children are

given a FAPE. Hopefully this paper will at least encourage an open and continuing dialogue regarding the balance between providing a FAPE to children with autism and being able to provide that level of an education in a financially efficient and responsible manner.

¹ Pegasus Legal Services for Children is a non-profit civil legal services agency that represents individual children and their caregivers on issues related to the legal needs of children, including special education legal issues. Tara Ford co-founded Pegasus with Liz McGrath in January of 2003.

² Email interview with Tara Ford, Co-Director, Pegasus Legal Services for Children, (Oct. 22, 2008) [hereinafter Ford]; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (2006); Individuals with Disabilities Education Improvement Act, Pub. L. No. 108-446, 118 Stat. 2647 (2004) (codified as amended at 20 U.S.C. §§ 1400-1482) (amending the IDEA). Although the 2004 revision renamed the legislation, this article will refer to it as the IDEA. *See* 20 U.S.C. § 1400(a) (“This chapter may be cited as the ‘Individuals with Disabilities Education Act.’”). The acronym FAPE is regularly used in place of “free appropriate public education” and will be used throughout the rest of this article.

³ 29 U.S.C. § 794(a)-(b); 20 U.S.C. §1400(c)(5).

⁴ 20 U.S.C. § 1401(3)(A)(i).

⁵ 20 U.S.C. § 1400(c)(3).

⁶ *Nelson v. Bd. of Educ. of Albuquerque Pub. Sch.*, N.M. Pub. Educ. Dep’t, No. CIV-07-1027 JCH/RHS (D. N.M. 2007) (this case is still pending).

⁷ First Amended Class Action Complaint for Injunctive Relief & Damages on Behalf of Children with Autism Based on Disability Discrimination, *Nelson v. Bd. of Educ. of Albuquerque Pub. Sch.*, N.M. Pub. Educ. Dep’t, No. CIV-07-1027 JCH/RHS (D. N.M. 2007).

⁸ *See Joshua A. v. Rocklin Unified School Dist.*, 559 F.3d 1036 (9th Cir. 2009) (parents of a child with autism brought action under IDEA alleging that the school district failed to provide a FAPE); *Thompson R2-J School Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143 (10th Cir. 2008) (School district brought suit under IDEA seeking review of agency decision that school district needed to reimburse parents for placement of their son in a private residential school). These cases illustrate that it is not just parents of children with autism that are bringing law suits against school districts, but also school districts seeking review of agency decisions regarding placement of children with autism.

⁹ *See Rachel Ratcliff Womack, Autism and the Individuals with Disabilities Education Act: Are Autistic Children Receiving Appropriate Treatment in our Schools?*, 34 TEX. TECH L. REV. 189, 226 (2002) (discussing the reluctance of school districts in implementing the ABA Lovaas-based

treatment for children with autism because of the high cost associated with the treatment, about \$12,000 to \$20,000 a year).

¹⁰ ANTHONY GAROFANO & JENNIFER SABLE, U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, CHARACTERISTICS OF THE 100 LARGEST PUBLIC ELEMENTARY AND SECONDARY SCHOOL DISTRICTS IN THE UNITED STATES: 2004-2005 A-4 (2008), *available at* <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2008335>.

¹¹ The author attended APS from kindergarten through high school.

¹² Centers for Disease Control and Prevention, *Autism Information Center*, <http://www.cdc.gov/ncbddd/autism/overview.htm> (last visited May 13, 2009); Although the CDC refers to Autism Spectrum Disorders, of which autism is only one of the disorders on the spectrum, the term autism will be used throughout the rest of this paper to refer to children who suffer from ASD

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Leo Kanner, *Autistic Disturbances of Affective Contact*, 2 NERVOUS CHILD 217 (1943).

²⁰ Brittney Johnson, *Some Key Dates in Autism History*, THE WASHINGTON POST, July 1, 2008, at HE05.

²¹ Autism and Developmental Disabilities Monitoring (ADDMM) Network, *Prevalence of the Autism Spectrum Disorders in Multiple Areas of the United States, Surveillance Years 2000 and 2002*, *available at* <http://www.cdc.gov/ncbddd/dd/addmprevalence.htm>.

²² Ford, *supra* note 1.

²³ *Id.*

²⁴ DATA TABLES FOR OSEP STATE-REPORTED DATA, NUMBER OF CHILDREN SERVED UNDER IDEA PART B BY DISABILITY AND AGE GROUP (2006), *available at* https://www.ideadata.org/arc_toc8.asp#partbCC.

²⁵ Ford, *supra* note 1.

²⁶ *Id.*

²⁷ 34 C.F.R. § 104.3 (2009); U.S. DEPARTMENT OF EDUCATION, FREE APPROPRIATE PUBLIC EDUCATION FOR STUDENTS WITH DISABILITIES: REQUIREMENTS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973, 1 (2007), *available at* <http://www.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>.

²⁸ 34 C.F.R. § 104.3.

²⁹ 20 U.S.C. § 1401(3)(A)(1); 34 C.F.R. § 300.8 (2009).

³⁰ Laurie U. deBettencourt, *Understanding the Differences Between IDEA and Section 504*, TEACHING EXCEPTIONAL CHILDREN, Jan.-Feb. 2002, at 16, 18.

³¹ *Id.* at 22.

³² *Id.* at 19, 22.

³³ 20 U.S.C. § 1412(a)(5).

³⁴ 20 U.S.C. § 1414.

³⁵ 20 U.S.C. § 1414(d)(1)(A).

³⁶ 20 U.S.C. § 1414(d)(1)(B).

³⁷ ANTHONY GAROFANO & JENNIFER SABLE, *supra* note 10.

³⁸ Autism and Developmental Disabilities Monitoring (ADDM) Network, *supra* note 21. The estimated number of 600 was reached by dividing 93,000 into 150.

³⁹ Susie Gran, *Albuquerque Public Schools Facility for Autistic Kids Doesn't Come Cheap*, Albuquerque Tribune, Jan. 18, 2008, *available at* <http://www.abqtrib.com/news/2008/jan/18/albuquerque-public-schools-facility-autistic-kids->.

⁴⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, U.S. GAO-05-220, SPECIAL EDUCATION: CHILDREN WITH AUTISM 28 (2005), *available at* <http://www.gao.gov/products/GAO-05-220> [hereinafter U.S. GAO REPORT].

⁴¹ Susie Gran, *supra* note 36; Amanda M. Fairbanks, *Tug of War Over Costs to Educate the Autistic*, N.Y. TIMES, Apr. 18, 2009 at A28.

⁴² Compare Susie Gran, *supra* note 36, and Amanda M. Fairbanks, *supra* note 38, with U.S. GAO REPORT, *supra* note 37, at 28.

⁴³ Susie Gran, *supra* note 36.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Compare U.S. GAO REPORT, *supra* note 37, at 28, with Common Core of Data for Albuquerque Public Schools, available at <http://nces.ed.gov/ccd/districtsearch/> (under District Name enter Albuquerque Public Schools, in the next screen, click on fiscal), (last visited May 13, 2009) [hereinafter Common Core of Data for APS].

⁴⁷ Susie Gran, *supra* note 36.

⁴⁸ ANTHONY GAROFANO & JENNIFER SABLE, *supra* note 10; Common Core of Data for APS, *supra* note 43, (under District Name enter Albuquerque Public Schools, in the next screen, scroll down to “District Details”).

⁴⁹ Susie Gran, *supra* note 36.

⁵⁰ 20 U.S.C. § 1400(c)(3); Having personally gone through APS from kindergarten through high school, I remember having either an art teacher or a music teacher on an irregular basis. It was often the Parent Teacher Association that would raise funds to acquire such “extras.”

⁵¹ Amanda M. Fairbanks, *supra* note 38.

⁵² *Id.*

⁵³ 20 U.S.C. § 1412(a)(10)

⁵⁴ DEP’T OF HEALTH & HUMAN SERVS., NAT’L INSTS. OF HEALTH, AUTISM SPECTRUM DISORDERS: PERVASIVE DEVELOPMENTAL DISORDERS 18 (2004), available at <http://www.nimh.nih.gov/health/publications/autism/index.shtml> [hereinafter DEP’T OF HEALTH].

⁵⁵ *Id.* at 19.

⁵⁶ *Id.*

⁵⁷ Jillian Badanes, *Learning with Autism*, THE WASHINGTON TIMES, May 13, 2009, available at <http://washingtontimes.com/news/2009/may/13/schools-fight-autism>.

⁵⁸ See generally Division TEACCH, available at <http://www.teacch.com/welcome.html>, (last visited May 13, 2009).

⁵⁹ Email interview with Tara Ford, Co-Director, Pegasus Legal Services for Children, (Apr. 27, 2009) [hereinafter Ford].

⁶⁰ *Id.*

⁶¹ This is the author's perspective on one possible solution to the funding issue in providing a student with autism a FAPE. The idea of a three-tiered approach evolved from independent research along with many thoughtful conversations with attorneys, teachers, and parents regarding this problem.

⁶² See Rachel Ratcliff Womack, *supra* note 9, at 227-29 (discussing the fact that when two educational programs meet the needs of a student with an educational disability, the needs of the child should be balanced with the need of the school district to provide resources to all the district's students with disabilities); In working at Pegasus Legal Services during the summer of 2008, I assisted on more than one court case against APS where it was clear that the school was not complying with a student's IEP.

⁶³ 20 U.S.C. § 1400(c)(2).

⁶⁴ Brief for *Amicus Curiae* Autism Speaks, in Support of Petitioners, Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, Luke P. & Jeff P. v. Thompson R2-J School District, 5 (No. 08-800).

⁶⁵ *Id.*

⁶⁶ Ford, *supra* note 54.