

## Ensuring that Your Child's Assessors, Teachers, and Aides Have Appropriate Education, Training and Experience in Your child's disability

From the book, "*Your child's disability: Asserting Your Child's Rights to a Special Education* by David Sherman" <http://www.aboutyour child's disabilitylaw.com/>

### Sample Chapter 12

The Congress, in enacting the IDEA, found that "over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by (e) supporting high-quality, intensive professional development for personnel..." 20 USC Section 1400(c)(5) (E).

The education, training and experience of the people who are educating your autistic child can be critical to your child's progress and development. Yet, this is an area that is often not addressed by the parents of such a child - at least until they have had a few bad experiences with personnel who do not have sufficient education, training or experience in your child's disability to properly educate their child.

Federal Law Requires Your Child's Teachers, Aides and Other Service Providers Be Educated, Trained, and/or Experienced in Your child's disability. It is well established by case law that parents do not have the right to insist that a particular teacher educate, or not be allowed to educate their child, (except in perhaps extreme situations where the teacher has been abusive to the child.) However, parents do have the right to insist that teachers and other personnel, who are qualified and knowledgeable about your child's disability, assess and educate their child.

#### Assessments

34 C.F.R. Section 300.532(c)(ii) states that any standardized tests that are given to a child be "administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests." The code also provides that if the person conducting has qualifications that vary from Section 300.532 (c)(ii), this must be stated in you child's evaluation report.

An assessment must be performed by an expert who is knowledgeable about your child's disability. *Union School District v. Smith* 15 F. 3rd 1519 (9th Cir. 1994) (Check your state law, some state statutes, require that the assessor must be competent in the area of the disability that is being assessed. (See for instance California Ed Code Section 56320 (g)).

In fact, it is critical that an expert, who is knowledgeable about your child's disability, make the assessment of such a child. Misdiagnoses can be made by inexperienced or unqualified personnel as some of the characteristics of your child's disability can be similar to other disabilities. A misdiagnosis is likely to lead to a program that is not appropriate.

For instance, a child that I represented was assessed by a school psychologist who had little experience with your child's disability. The psychologist diagnosed the child as having ADD. It was years before the child was correctly diagnosed with your child's disability and was provided with an appropriate program and some compensatory education. We will never know how much ground was lost that can never be recovered.

Before the educational agency, such as your school district, assesses your child, write to the school and request a statement detailing the education, training and experience of the assessor in your child's disability. (See Letters section of this book or you can download the letter from [www.AboutYour child's disabilityLaw.com](http://www.AboutYour child's disabilityLaw.com))

If the person that the school district nominates to perform the evaluation is not qualified, write to the school and request that the school hire a private assessor. If the school's assessor is not competent, you can have an independent assessment done at school expense. 34 CFR 300.502(b). (See chapter in this

book on assessments for information and the Letters section of this book for a sample letter that you can download from AboutYour child's disabilityLaw.com) If you make a request for an independent assessment, the school must provide it at the school's expense unless they take you to due process and win their case.

The IDEA also provides that the IEP team must include "an individual who can interpret the instructional implications of evaluation results..." 20 USC Section 1414(d) 1(B)(v).

After your child has had an assessment and before the IEP, if you are not sure that the person who will be there to interpret the instructional implications of the evaluation results is qualified, write to the school and ask what the education, experience and training of the person attending the IEP is in your child's disability. If the school district does not have a qualified person who will attend the IEP, make a written request that the school district hire a qualified private your child's disability expert to attend the IEP, interpret the test results and recommend a program. Better yet, if you can afford it, pay your own expert to come to the IEP and explain to the IEP team what an appropriate program should be and why.

Training, Education and Experience of Personnel Who Will Provide an Your child's disability Program to Your Child Typical situations

A parent is finally able to get the school to agree that her autistic son should have a one- on-one aide for his home program. The IEP provides that the aide will provide in-home discreet trial training. When the aide shows up at the house, the parent finds that the aide has a high school diploma, but does not have any experience or education in your child's disability or discreet trial training. The IEP provides that once every other week for two hours, the aide is supposed to meet with a school psychologist to receive one hour of instruction in your child's disability.

A high functioning autistic child is placed in a special day class with a teacher who is a certified special education teacher, but who has no training or experience in your child's disability. The school tells the parent that this is all that is required by the law.

Such a girl is placed in the county your child's disability program class that has one teacher and two aides for seven autistic children. When the parent asks about the qualifications of the teacher, the parent is told by the school district that she has a special education certificate and that she is, therefore, qualified to teach the class.

These are all common situations that have come up in the author's special education practice. How can you, as a parent, force the school to divulge the qualifications of the teacher or aide, and force the school to provide qualified personnel? What training and experience should the teachers and aides, who are educating an autistic child, have?

The President's Commission on Excellence in Special Education, A New ERA: Revitalizing Special Education for Children and Their Families, found that, "Children with disabilities require HIGHLY QUALIFIED TEACHERS." (Emphasis was not added.)

The federal law, 20 U.S.C., Section 1413(a)(3), provides that the local education agency (your school) shall ensure that all personnel necessary to carry out (the IDEA) are appropriately and adequately prepared, consistent with the requirements of Section 20 USC Section 1453(c)(3)(D)

The Law Says that All Regular Education Teachers, Special Education Teachers, Aides, and Other Service Providers Must Have the Skills and Knowledge Necessary to Meet the Needs of Your Child. Section 1453(c) (3)(D) concerns grants to states, and how the funds will be used. It specifically requires a state to address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services), have the skills and knowledge necessary to meet the needs of children with disabilities . . ."

The Federal IDEA Regulations, 34 C.F.R. Section 300.135 provides that "the state must have in effect, consistent with the purposes of this part and with Section 635(a)(8) of the Act, a comprehensive system of personnel development that - is designed to insure an adequate supply of qualified special education, regular education and related services personnel . . ."

Qualified personnel are defined in 34 C.F.R. Section 300.23, 34 C.F.R. Section 303.510-12. "Qualified personnel" means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration or other comparable requirement that apply in the area in which the individuals are providing special education or related services. (Authority: 20 USC Section 1221(e)(3). ("SEA" is a "state educational agency.")

Regarding the use of paraprofessionals and assistants, 34 C.F.R 300.136(f) provides that "A State may allow paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under Part B of this Act."

Physical therapists and occupational therapists must have graduated from an accredited school. (5 C.C.R. Section 3051; 5 C.C.R. Section 3001(y). 5 C.C.R. Section 3051.6).

While the law is very clear that such a child must have an appropriate education, and that the personnel should be appropriately and adequately prepared, there is little authority on what the terms "appropriately prepared" mean. There are many cases that address what is an appropriate education, but there are very few cases that directly speak to the issue of specifically what training, education and experience that the teachers, aides and other service providers should have to be considered qualified to assess and teach such a child.

A California case held that an aide who had not been specifically and appropriately trained to work with children with Autistic Disorders was not qualified and the services that the aide provided were not appropriate. In a California case, *Student v. Palos Verdes Peninsula USD*, #1073 (2002), the Hearing Officer found that the district hired an aide who had taught elementary school outside the country, but had not been specifically and appropriately trained to work with children with autistic disorder, and that therefore, the aide was not qualified. The Hearing Officer also found that since the aide was not qualified, the service was inappropriate. (The Palos Verdes case can be found at the California Department of Education web site: > [http://www.otan.us/seho\\_search/](http://www.otan.us/seho_search/) sehosearch.taf

In *Independent School District No. 318 24 IDELR 1096, 24 LRP 3934 (Minn. 1996)*, the hearing officer found that the school had the paraprofessional trained in ABA but not in Lovaas which the student was using in his home based program. The hearing officer further held that although "hearing officers generally do not have the authority to order the employment of specific individuals, as opposed to other qualified individuals. However, it is readily apparent that the training of an aide must be appropriate to the program being offered." (P.28) The hearing officer ordered that the training should "include Lovaas-based training so that the Student's program will be implemented in a manner which is consistent and predictable to him." P. 29.

Another case that addressed qualifications of personnel is *California Redlands Unified School District, No. SN 621-95 EC233 A* three year old student had implant surgery for hearing loss and was found to have delayed speech and language skills. When the student was placed in a special day class for the communicatively impaired, the student filed for due process. The hearing officer found that the district did not present persuasive evidence that its personnel had sufficient training and experience educating students with cochlear implants to evaluate their needs or design appropriate instructional programs.

*Evans v. Bd. of Education Rhinebeck Central School District, 930 F.Supp. 83 (S.D. NY, 1996)* also addressed training of an instructor in special education. The Evans case involved a child with dyslexia. In determining that the program that the school provided was not appropriate, the judge pointed out that the "instructor was not qualified to teach adolescents or to instruct, or otherwise consult with teachers as to

work with (the student) using the approach he requires."

While there is little case law that addresses training, education and experience, the National Research Council (NRC), in *Educating Children with Your child's disability* (funded by the US Department of Education) addresses the issue of educating teachers who work with autistic children. The NRC found that while many special education teachers and early intervention teachers may have received strong instruction in some aspects of autistic spectrum disorders, they may have received little or no instruction in other aspects.

Even if they have received solid training in general special education or special early intervention, they may have had little or no instruction about such important strategies as applied behavior analysis (ABA), the use of physical structure and visual systems in teaching, or appropriate use of alternate and complementary methods of communication, such as sign language or picture systems." (NRC, *Educating Children with Your child's disability* Chapter 14, Personnel Preparation, P.186.) The NRC book (which Hearing Officers sometimes cite as authority in due process decisions) can be downloaded or a hard copy can be ordered at the National Academies Press at <http://www.nap.edu/books/0309072697/html/290.html>

A Study Funded by the US Department of Education, Often Cited by Hearing Officers, Determined that Teachers Cannot Acquire the Skills that They Need Through Classes Alone, but Need Experience with Models or Working Classrooms, and Effective Teachers, and Be Familiar with ABA, Naturalistic Learning, Assistive Technology, Socialization, Inclusion, Adaptation of the Environment, Language Intervention, Assessment, and the Effective Use of Data Collection Systems.

According to the NRC, a teacher must be able to identify such a child's needs and use appropriate methods to address those needs. The NRC found that teachers cannot acquire these skills through classes alone, but need to have experience with models or working classrooms and effective teachers. (NRC P.187) Additionally, teachers must be "familiar with theory and research concerning the best practices for children with your child's disability, including methods of applied behavior analysis, naturalistic learning, assistive technology, socialization, communication, inclusion, adaptation of the environment, language interventions, assessment, and the effective use of data collection systems." (NRC P. 225)

The NCR also advises that the personnel who provide the services for autistic children "need familiarity with autistic spectrum disorders and the range of possible outcomes and with the many methods that fit into best practices." The committee found that it is important for teachers and other professionals have multiple exposures, opportunities to practice, and active involvement as well as ongoing consultation, hands on opportunities to practice skills, and building on the knowledge of teachers.

Does your child's teachers have education, training or experience in ABA, naturalistic learning, assistive technology, socialization, communication, inclusion, adaptation of the environment, language interventions, assessment and the effective use of data collection systems? Does your child's instructor use physical structure and visual systems in teaching and know how to use methods of communication such as sign language or picture systems?

Finally, a section of the IDEA that a parent can cite to obtain training for a teacher is 20 U.S.C. Section 1414 (d)(1)(A)(iii) and 34 C.F.R. Section 300.347(a)(3) which provide that an IEP must include "a statement of the program modifications or supports that will be provided for the child . . ." This support should be to assist the teacher in meeting the unique needs of the child.

According to federal law, a parent can make a request in an IEP or in a letter to the school, for information as to what the school will provide to the teacher in the way of supports that address the specific and unique needs of the child. (See Letters section of this book or download the letter at

www.aboutyour child's disabilitylaw.com.) The parent may also wish to request training to be provided to the teacher. The training can be in the methodologies that serve the unique needs of the child.

### Disclosure of Qualifications of Personnel Teaching or Providing Services

Another issue that comes up frequently is whether the parent has the right to know the qualifications of the personnel when the parent is offered a placement and services in an IEP. It is common for a school district to refuse to provide this necessary information. However, since the IDEA makes the parent an equal member of the IEP team, and the statutes give the right to the parent to "informed consent" to the IEP, it makes no sense that a school district could refuse to provide the parent with critical information about the proposed program, such as the qualifications of the personnel. Under 34 C.F.R. 300.500(b)(1) consent means that the parent has been informed of all information relevant to the activity for which consent is sought . . ." Thus, the parent is entitled to be informed as to all the relevant information so that the parent can determine whether to consent to the IEP. A parent is clearly not "informed" if the parent is ignorant about the education, training and experience of the personnel who will be implementing your child's disability program.

As the hearing officer found in Gwinnett County School System, 4 ECLRP 98, 419, 429 (SEA Georgia 1999), "the parents were not able to access the information that they needed to make an informed decision and could not, therefore, give their "informed consent." (See Letters section of this book for a sample letter to the school.)

### No Child Left Behind

Another statute that sets forth requirements for the education and training of teachers is a section of the No Child Left Behind law. The language is fairly specific and the statute gives you, as a parent, the right to request "information regarding the professional qualifications of the student's classroom teachers." The statute also provides that aides have education and training. The problem with the No Child Left Behind statute is that it is a dog with a bark but no bite. That is, the language of the statute provides for specific education and training of teachers and aides, but the statute does not give parents any direct method of enforcing the statute when educational agency does not comply.

Any member of the public may request an attestation from the educational agency, such as a school district. However, the statute does not address what a member of the public can do if the school district attests that they have complied with the statute when, in fact, they have not. Further, there is no direct remedy for a parent, even if the school district admits that it is not complying with the law. The statute does, however, provide parents with a specific right to request and obtain information regarding the qualifications of teachers and aides.

#### No Child Left Behind, Part A. Sec 1111 6) PARENTS RIGHT-TO-KNOW-QUALIFICATIONS-

At the beginning of each school year, a local educational agency that receives funds under this part shall notify the parents of each student attending any school receiving funds under this part that the parents may request, and the agency will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

- Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.
- Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived.
- The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.
- Whether the child is provided services by paraprofessionals and, if so, their qualifications.

ADDITIONAL INFORMATION- In addition to the information that parents may request under subparagraph (A), a school that receives funds under this part shall provide to each individual parent- Information on the level of achievement of the parent's child in each of the State academic assessments as required under this part; and

Timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by a teacher who is not highly qualified.

#### Paraprofessionals NO CHILD LEFT BEHIND

All paraprofessionals working in a program supported with funds under No Child Left Behind shall have - completed at least 2 years of study at an institution of higher education;\* Obtained an associate's (or higher) degree; or \* Met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or Knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(1) IN GENERAL- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired after the date of enactment of the No Child Left Behind Act on January 2, 2002 and working in a program supported with funds under this part shall have -

- completed at least 2 years of study of post secondary education; or
- obtained an associate's (or higher) degree; or
- met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment -
- knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
- knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

CLARIFICATION- The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1)(C).

EXISTING PARAPROFESSIONALS- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before the date of enactment of the No Child Left Behind Act of 2001, and working in a program supported with funds under this part shall, not later than 4 years after the date of enactment satisfy the requirements of subsection (c).

#### EXCEPTIONS FOR TRANSLATION AND PARENTAL INVOLVEMENT ACTIVITIES-

Subsections (c) and (d) shall not apply to a paraprofessional - Who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under this part by acting as a translator; or whose duties consist solely of conducting parental involvement activities consistent with section 1118.

GENERAL REQUIREMENT FOR ALL PARAPROFESSIONALS- Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals' hiring date, have earned a secondary school diploma or its recognized equivalent.

DUTIES OF PARAPROFESSIONALS- IN GENERAL- Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

RESPONSIBILITIES PARAPROFESSIONALS MAY BE ASSIGNED- A paraprofessional described in paragraph (1) may be assigned - to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher; to assist with classroom management, such as organizing instructional and other materials; to provide assistance in a computer laboratory; to conduct parental involvement activities; to provide support in a library or media

center; to act as a translator; or to provide instructional services to students in accordance with paragraph (3).

**ADDITIONAL LIMITATIONS-** A paraprofessional described in paragraph (1) - may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with section 1119; and may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

**USE OF FUNDS-** A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.

**VERIFICATION OF COMPLIANCE- IN GENERAL-** In verifying compliance with this section, each local educational agency, at a minimum, shall require that the principal of each school operating a program under section 1114 or 1115 attest annually in writing as to whether such school is in compliance with the requirements of this section.

**AVAILABILITY OF INFORMATION-** Copies of attestations under paragraph (1) shall be maintained at each school operating a program under Section 1114 or 1115 and at the main office of the local educational agency; and shall be available to any member of the general public on request **NOTE:** To determine whether your school district received Title 1 funds, you can go to the Internet and log on to the URL below. One parent informed me that the school district told her that they did not accept Title 1 funds. When she looked up the name of the school on the web site below, she found that the school district had received more than \$1,000,000 in Title 1 funds.

<http://edworkforce.house.gov/issues/107th/education/nclb/titleinnumbers9402.pdf>

If your school district received Title 1 funds, write to the school asking for the attestations signed by the principal that show that the school is complying with the No Child Left Behind Statute. (See Letter Section of this book.)

#### Obtaining Information on Education, Training and Experience Regarding School Personnel

The statutes and case law do not directly address whether you, as a parent have the right to specific information as to the education, training and experience of the child's teachers and aides. However, logic dictates that since you, as a parent, are an active member of the IEP team, you should have the right to be provided with knowledge of the education, training, and experience of the persons implementing the program, before you can make a determination as to whether the program is appropriate for your child. In other words, for a program to be appropriate, the persons teaching the program must have appropriate education, training and/or

> experience to apply the program to the child. As part of the IEP team, you have every right to request and be provided with information as to the qualifications of those who are teaching or providing services for your child.

Sometimes, a school district will respond to a question about the qualifications of the teachers or service providers with a statement such as "The teacher is certified in special education. That is all that is needed." "Certification is not a direct analog for qualification, and data do not indicate that certification necessarily provides a qualified teacher." President's Commission on Excellence in Special Education Report: A New Era: Revitalizing Special Education for Children and Their Families" 7/1/02. If the school district takes this position, you can point out that the "President's Commission on Excellence in Special Education Report: A New Era: Revitalizing Special Education for Children and Their Families" July 1, 2002, in Section 6, Teacher and Administrator Preparation, Training and Retention, found that "Certification is not a direct analog for qualification, and data do not indicate that certification necessarily

provides a qualified teacher." See here. Further, the No Child Left Behind Statute requires the school to provide the parent with the qualifications of teachers and aides.

You can also tell the school that the authorities on your child's disability would not support the statement that a teacher who is certified in special education is automatically qualified to teach autistic children. The National Research Council, for instance, states that a certification does not automatically qualify a teacher to provide an appropriate education to such a child. (NRC, *Educating Children with Your child's disability*, P.186 - 190.)

Parents should also be provided with information as to the qualifications of the personnel who will be implementing the IEP program so that they can give informed consent to the IEP. Under 34 C.F.R. 300.500(b)(1) consent means that the parent has been informed of all information relevant to the activity for which consent is sought . . ." How can a parent give informed consent to an IEP if the parent does not know if the teachers and other service providers have the education, training and experience to implement the IEP? By implication, the school district must provide the parent with information as to the qualifications of the personnel so that the parent can consider whether to give consent to the IEP.

If you have doubts as to whether or not the teacher who will be administering the your child's disability program to your child is qualified, it is recommended that you write to the school district with the questions set forth in the chapter in this book on how to respond to an offer of placement or put them in a parent attachment to the IEP and send the form letter that is set forth in the Sample Letters section of this book.