

## **A Costly Education**

By Mary Ellen Egan | Apr 9, 2007 | from Forbes.com

The recent spike in autism diagnoses has school districts spending ever more time and money fending off special ed disputes. Steven Wyner spends the bulk of his days sitting behind his 14-foot-long custom-made desk fielding calls from anxious parents. Twelve years earlier he left his lucrative career as a tax attorney to practice special education law. He had grown attracted to the specialty after fighting for his learning-disabled child. He worked out of his home for a couple of years, but as he won case after case against southern California school districts, he could afford to move out of his home office and partner with another lawyer.

Two years ago Wyner hit the jackpot. He'd represented a grade-school autistic student who sued the Manhattan Beach Unified School District and the California Department of Education for failing to provide him with an appropriate education, including extra reading instruction. In August 2005, after six years of legal wrangling, the parties agreed to a \$6.7 million settlement, including \$2.4 million for a family trust. Wyner's firm took home \$1.6 million. He now has a partner, two lawyers and three paralegals and says he has more business than he can handle.

The number of kids diagnosed as autistic has risen from 1 in 2,500 in the 1980s to 1 in 150 now. Why? Various environmental influences have been offered up as possible causes, but the evidence for these theories is thin. Dr. Edward Ritvo, professor emeritus at UCLA's medical school and one of the psychiatrists who wrote the original definition of autism for the Diagnostic and Statistical Manual of Mental Disorders, explains the phenomenon in a very different way. "Two things have happened," he says. "We've broadened the definition of autism, and we have a whole cadre of people looking for these kids." The broader definition includes kids with Asperger's syndrome, which means they are socially maladroit. The narrower definition has the ones unable to function in jobs or school at all.

Whatever the cause, the explosion in autism diagnoses has been a boon to lawyers who represent parents dissatisfied with the level of education their autistic kids are getting. Usually well-off, these parents don't hesitate to hire a lawyer to seek extra services or private school tuition. New York City's education department hired ten additional lawyers to focus on disputes over special ed, including the education of autistic students. In Los Angeles, which has seen a sixfold increase in autistic children in the last three years, the bill to reimburse parents' attorneys came to \$3.3 million last year.

Little wonder that lawyers are moving into the field. "It's one of the fastest-growing segments of the law," says Diane Pappas, associate general counsel for the Los Angeles school district. "In the late 1990s we had only about 10 or 12 firms that dealt with special education, and now it's over 70."

The suits arise out of a 1975 federal law declaring that every child is entitled to a "free, appropriate education," regardless of ability. That means that kids with learning problems such as dyslexia, speech difficulties or autism are entitled to have their public school systems pay for special services.

So, what's "appropriate"? With help from a lawyer, a school district might be persuaded to pay for one-on-one behavioral therapy, afterschool programs, an individual classroom aide or even horseback riding. And if the public schools aren't doing enough, the parents might send a child to a private school and send the bill to the school district. In New York, sending a child to a private school for autistic children can cost up to \$100,000 per year.

In 2004 the autistic daughter of Marvin and Suzette Josif, then 4 years old, was accepted at the New York Child Learning Institute, a private school in Queens, N.Y. "They only take 25 students, and they can stay in the school until they are 21 years old, so it was like winning the lottery," says Suzette Josif.

It was rather like that. After initially insisting that the Josifs' daughter would get an appropriate education in a city special-ed class, the New York City Board of Education and the state were persuaded to cough up the \$50,000 in annual tuition for the private school. The private, but not the public, school provides an intense form of therapy known as applied behavior analysis. "It cost us a fortune and a tremendous amount of time to fight this," says Suzette Josif. "But I knew that with the right program and the right teachers, she will succeed."

Steven Wyner's client, Deborah Porter, asked the Manhattan Beach district (south of Santa Monica) to give her fourth-grade son extra reading instruction and work on his socializing skills. (He would later be

diagnosed with autism.) She won an administrative ruling requiring the district to provide them. But a year later, after the district failed to act, she sued Manhattan Beach in federal court. Five years later Porter, the district and the California Department of Education settled the case for \$6.7 million. "No amount of money can compensate for the school district's deliberate failure to provide an appropriate education at a crucial point in our son's life," she says.

Parents can make their own cases for special treatment but usually hire lawyers if they are going after a big-ticket item like private school tuition. A typical fee is \$3,000 for a case settled prior to a hearing and between \$5,000 and \$15,000 if it goes to a hearing. In New York City the number of hearing requests for all special-education disputes (autism cases are not separately tabulated) has jumped by a third since 2000, to 4,794 in 2006. Under the federal law parents can recover attorney fees from their school district if they win hearings, but not if they settle.

"When you have more kids diagnosed with certain disabilities, you see more suits," says Neal McCluskey, an education analyst with the Cato Institute, a think tank. McCluskey likens the recent rise in autism cases to the spike in attention deficit disorder ten years ago. "Better-off parents are savvy enough to learn how to work the system. They find the doctors to make these diagnoses, and they can afford to hire attorneys to challenge the districts," he says.

The Josifs hired Neal Rosenberg, a Manhattan lawyer. Another of his clients is Thomas Freston, founder of MTV, who received \$60 million in severance when he left the network last year. Freston is contesting a federal law that says that a child has to attend a public school first before a parent can sue for private school tuition reimbursement. New York City paid for part of two years at a private school for Freston's son, who is learning disabled. Freston is seeking full payment for three years of partial tuition, at \$25,000 each. Freston won a federal appeals court decision, and now the city is appealing to the Supreme Court. "This isn't a financial issue, it's a moral one," says Rosenberg.

"No one begrudges parents who can afford to send their children to private school," says Michael Best, general counsel for the New York City schools. But he says the district can provide the same services as offered by the private school.

While lamenting the lawsuits, school districts blame the federal government for not coughing up enough money. "When the federal government created the [1975 law], it said it would pay for 40% of schools' special education budgets. In reality, it's closer to 15%," says Patricia Addison, director of special education for Fairfax County, Va. Still, the feds have increased spending on special ed by 68% over the last five years, to \$10.6 billion. With autism diagnoses continuing to rise--Fairfax saw an 84% increase in the number of students with autism from 2003 to 2006--the lawyers will have plenty of homework in years to come.

Is there a solution to this? Washington, D.C.'s school district has experimented with caps on the amount it will reimburse parents for their legal bills. After lifting the cap in 2001, the city saw the number of requested hearings skyrocket by 20% in one year. In 2003 Congress (which has a constitutional right to meddle in the city's affairs) reinstated a new cap (it's now \$4,000 per case), and attorney fees dropped by 30%. The school district brags that in fiscal year 2003 the \$4.5 million it saved with the cap was enough to pay for 550 new classroom seats at 50 schools to serve special ed kids.

### **By the Numbers – Autism Spike**

The number of autistic children in U.S. public schools:

1992	15,580
2005	193,637

Sources: CDC; U.S. Department of Education.  
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