

SPECIAL NEEDS HARD TIMES

Costly and emotional battles over what constitutes an appropriate public education pit the parents of special needs children against school administrators.

BY LISA DAVIS

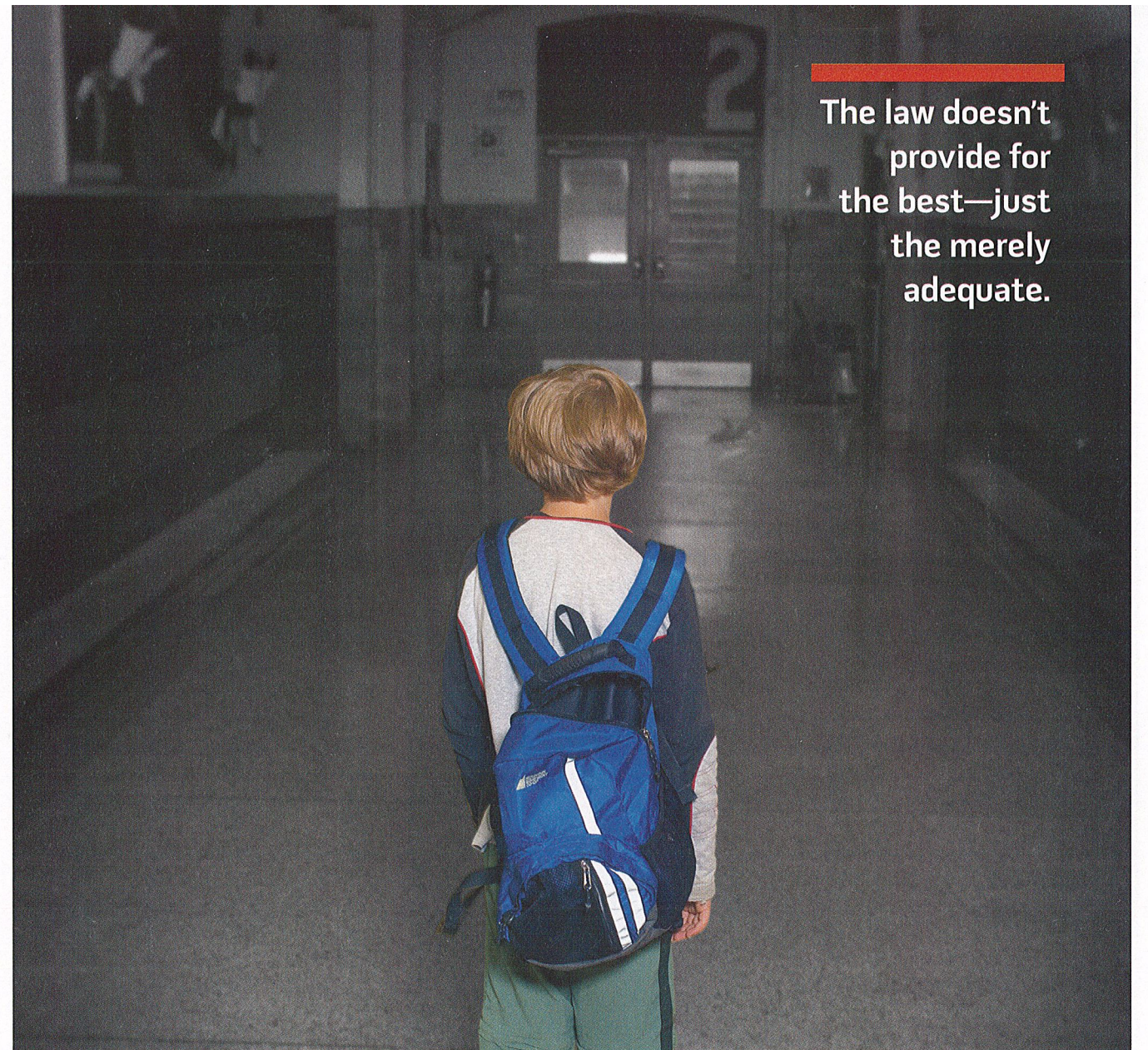
BENJAMIN SCHEID STARTED first grade in Gilroy in 2010 with the help of a classroom aide trained to work with children who, like Ben, have Asperger's syndrome.

Part of the autism spectrum of neurological disorders, Asperger's typically leaves children with limited language and communication skills, impaired physical coordination, and limited or inappropriate social and emotional responses. Even a seemingly simple social activ-

ity can be fraught with challenges. For instance, Ben had trouble at first understanding the playground game of tag. Children chasing and tagging each other not only made no sense to him, it frightened him as well—once he even bit another child. So Ben's aide, along with others, put together practice scenarios, first with a couple of adults and then with other children, to help the boy understand how to act appropriately.

Throughout that fall, Ben spent about 80 percent of his time in the mainstream first-grade classroom, and the rest in a small "safe room" away from other children and the busy class environment. Every day brought challenges, but Ben made progress and earned glowing reports. Because of his disorder, Ben sometimes strikes out at others or yells impulsively, and he is unable to calm or control himself when he gets upset. But his aide was good at

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picking up early cues and then redirecting Ben to avert a meltdown.

For this one-on-one assistance, the Gilroy Unified School District paid \$35,000 a year. But as state education funds continued to dry up, the district began looking for more cost-effective ways to provide the same service, and by the middle of first grade, Ben's contract aide was replaced by a district employee who, his mother, Katie Scheid, thought was not nearly as good. And then that person was in turn replaced by another.

During the months that followed, Ben spent less time in the classroom and more in the safe room. He grew less cooperative and had more aggressive outbursts, some of which escalated into major episodes. He was physically restrained more frequently. And sometimes when his mother drove him to school, he wouldn't get out of the car.

Relations between Ben's parents and the school administrators also deteriorated. School officials did not always

notify the Scheids promptly about incidents at school, and they did not always include the couple in making decisions about how to handle their son. Meetings between the parents and school administrators grew more contentious, and once in a while tempers flared.

So in May 2011 the Scheids hired a Santa Cruz attorney who specializes in special education law to represent them in their dealings with the school district. At lawyer Steven A. Greenburg's request, Ben received a full psychological and academic evaluation.

That August, school officials and the Scheids agreed that Ben would do better in another Gilroy school. But that meant moving him into a classroom with more severely disabled students, which inevitably would further erode the social and academic skills he had previously mastered. At home, Ben became increasingly dysfunctional as well.

With Greenburg's help, the Scheids tried unsuccessful-

photo by Brian Summers/First Light/Corbis

fully to find another appropriate school he could attend near their home. But in the end Ben was moved into a residential treatment facility in San Francisco, more than two hours away, at a cost of more than \$150,000 a year. The school district paid for most of it, and also reimbursed the Scheids for all the miles they had to travel to see their son and participate in his schooling.

In February, a federal civil rights investigation into Ben's case ended when the Gilroy Unified School District agreed to implement extensive training for its special education staff and review the cases of at least 20 other students who had been assisted by classroom aides.

SPECIAL EDUCATION LAW IS EXTRAORDINARILY emotional and extremely complicated. Plaintiffs attorneys represent parents who are desperate to secure an effective and appropriate education for their children from school districts that face the impossible task of meeting increasing requirements with dwindling resources.

Lawyers on both sides need to know as much about education policy and mental health disorders as they do about civil rights law. They also need to grapple with the implications of AB 114, a state law that took effect last year that transfers to the public schools nearly all of the responsibility for providing mental health services needed by any student under age 22.

Federal law is central to special education cases, as well. Back in 1975, Congress passed the Education for All Handicapped Children Act, predecessor to the Individuals with Disabilities Education Act, or IDEA—landmark legislation that requires schools to provide a “free appropriate public education” to all children with disabilities, and to provide it in the least restrictive environment possible.

Early on, this legislation was primarily concerned with physical disabilities. But in the decades to follow special education grew more complicated as consent decrees, civil rights regulations, and court decisions piled on.

The feds, however, never fully funded the expanding list of needs—not even by half. And as time went on, the cost of meeting those needs rose dramatically. Here in California, 680,000 children received some sort of special education in 2010, according to the state Department of Education. They required a range of services, including speech, language, and occupational

therapy as well as classroom aides, and students with severe mental disabilities had to be provided with services outside the school.

Sharp increases in the number of children diagnosed with autism have also hit the districts hard. According to a UC Davis study, the number of autistic children in California increased by more than 600 percent between 1990 and 2006. Whether that spike reflects more instances of the disorder or changes in the way it is diagnosed is the subject of fierce debate within medical circles.

When Ben Scheid was first diagnosed with Asperger's in preschool, he was assigned a specially trained aide. The district retained the same aide when Ben entered a half-day kindergarten program, and the plan was for him to stay paired with that aide into the first grade, when the school days would be longer.

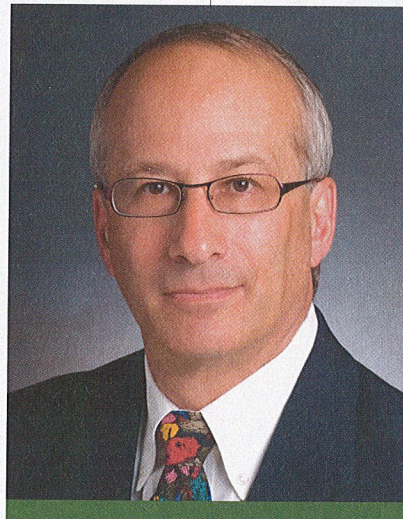
But it was not to be, and the loss of that relationship was very distressing to Ben. Matters only got worse when his second aide was replaced by yet another, and the Scheids then pressured the district to assign their son to someone with more specialized training. Katie Scheid felt somewhat conflicted about the last change, because although she wanted Ben to have the assistance he needed, she feared the better-trained aide would be taken away from another child who needed her even more. That fear, as it turned out, proved to be well founded.

“The day [the more experienced aide] came to see my son, the other child she had been working with had a full-blown meltdown,” Scheid recalls. “It was really a bad situation.”

After the Scheids hired Greenburg to represent them, he began attending school meetings with the family. The district then brought in its own lawyer, a development Greenburg welcomed. “The special ed bar is very small,” he explains. “Most of us know each other. I find that most attorneys really help to smooth the resolution along.”

Greenburg is well suited to this line of work. After obtaining a masters degree in teaching, he worked in a private clinic for children with developmental disabilities and eventually opened another one, all the while helping parents navigate the system. Then, in his early thirties, he decided he liked the law enough to change careers.

“This is very fulfilling work,” he says of his present job. “It's affirming work. I've had people buy me drinks in



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—ATTORNEY STEVEN A. GREENBURG



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Every child's special education services start with what's called an Individualized Education Program (IEP). The process involves bringing together all the parties involved in the child's education, including parents, teachers, school and/or special education administrators, and therapists. And out of that comes an official document, a road map for the child's schooling.

Of course, things don't always go smoothly. There can be disagreements over what services are needed, or the manner in which they are provided. And in some cases, services that have been agreed to either change or are never delivered—all of which are good reasons for a lawyer to get involved.

“I see myself as a problem solver,” Greenburg says. “That's the part I like. But I'm fully equipped to be adversarial when I need to be.”

When conflicts arise over a child's special education needs, they are handled within a discrete system of justice. Usually this begins when a complaint is filed with either the California Department of Education or the Office for Civil Rights in its federal counterpart. A state matter may escalate to a due process hearing before the Office of Administrative Hearings. But only rarely do these cases ever land in court.

In the Scheids' case, Greenburg filed a federal complaint against the school district after an incident in the safe room when Ben became so upset he started kicking and yelling. The Scheids alleged that Ben's behavior escalated to the point of requiring physical restraint because of interference by the principal. The district's internal investigation confirmed that when the principal ordered Ben to leave the safe room, he violated both Ben's IEP and the law.

In Orange County, Danielle Augustin is another attorney who represents special education plaintiffs. “Every family that comes into our office is in crisis,” she says, and sometimes, she adds, it's necessary to give parents time to vent.

Parenting a child with special needs can be overwhelming, and it often involves having to fight for things other parents take for granted. The horror stories are legion: There's the child who gets off the bus at an unsafe place; the one who sits, lost, in the back of a classroom, and others who languish for months without progress. The long and costly legal battles that follow can drive some families into poverty—and tear others apart.

Advocating for these children can easily become a sec-

ond career for parents. And if the parents themselves suffered from similar problems when they were growing up, setbacks can be even more painful.

All parents naturally want the best for their children. But the hard truth is that in special education the law doesn't provide for the best—just for the merely adequate.

And, for many of Augustin's clients, that's tough to swallow.

In her own legal career, Augustin started out as a prosecutor in the Orange County district attorney's office. But then a project came along that took her all over the county to teach parents, students, police, and school officials about the links between crimes and truancy. That's when she heard all sorts of stories about how unmet educational needs had led to the truancy problems she was so focused on.

And then Augustin's own son was diagnosed with an autism spectrum disorder.

“I'm educated; I'm an attorney,” she says. “And I didn't know how to navigate through this complicated system of assessments and IEPs and services in special education.”

In 2005 she and another attorney started their own firm (Augustin Egel-

see), which now handles juvenile law cases, mostly in Southern California.

PROPOSERS OF AB 114 SAY IT GIVES school districts more control over the cost and extent of services they are required to provide. For this school year, the state has again allocated \$351.2 million to districts for mental health services. Federal money brings the total in California to \$420 million—that is, about \$620 per special needs student. However, school districts have more limited access to MediCal payments than mental health agencies do. And while schools can choose the most efficient way of delivering special ed services, legally they can't eliminate them just to save money.

At the law firm of Fagen Friedman & Fulfroft in Oakland, Lenore A. Silverman, a former speech pathologist, sits on the other side of the table from lawyers like Greenburg and Augustin, representing school districts all over California. In one memorable case, she represented the San Francisco Unified School District in an action against a parent who had taken egregious advantage of the system, falsely claiming their child needed extra services that cost the district thousands of dollars. (The parent ultimately was convicted of 31 felony fraud counts.)

But cases like that, says Silverman, are rare. Far more often, she finds, these disputes amount to an honest difference of opinion over what children really need. She also says that when it comes to budget constraints, the teachers and counselors who work with special needs kids are every bit as frustrated as the parents.

In just the past three years, state legislators have cut \$18 billion from public school funding. For small or even medium-size districts, that means that the cost of accommodating even one or two severely disabled students can be devastating.

For Silverman's clients, problems often arise when an agreed-upon IEP isn't followed, usually because a staff member has been laid off or because the school is not able to recover after budget cuts. "When that occurs, parents have every right to file a complaint," she says.


On the other hand, Silverman sometimes finds herself in the unenviable position of having to present parents with information about their child that they may not want to hear. Schools, after all, are obliged to evaluate any student whom a teacher suspects has a disability. But parents must give their consent for such an assessment, and some don't want to participate in a process that could result in their child being branded with a stigmatizing diagnosis. In such cases, the school district can seek an administra-

tive hearing to force the parents' hand.

"Our district works very hard to resolve complaints," says Patrick Balucan, an attorney for the 600,000-student Los Angeles Unified School District, where as many as 200 special education-related issues may come up each month. "We only take cases [beyond mediation] that we think we will win," he adds.

AT LEAST TWICE A WEEK DURING THE school year, the Scheids commute from their home in Gilroy to the residential treatment facility in San Francisco where Ben now lives. Ben is learning to manage himself and building up the skills he'll need if he is to stay at home and attend a private school in San Jose, 30 minutes away. It is unlikely, though, that he will ever return to the public school district, and as long as he stays in school, he will probably be represented by an attorney.

Looking back on what she's been through, Katie Scheid recalls what another mother with kids in special education told her at a parents' night during Ben's first week of public school. "She told me all these things about what I should do to protect my son," Scheid says. "And one of the things she said was that I should get a lawyer.

"I thought she was crazy." 

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