

Welcome to the first installment of Mayerson, Muré & Hobbs' new series, **“WHAT MADE THE DIFFERENCE?”** which will examine a recent case that the firm won to identify the salient reason(s) why the case had a successful outcome.

# “WHAT MADE THE DIFFERENCE?”



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In special education cases seeking funding for a private program, a *successful* outcome normally does not turn on a single factor. Most often, the outcome depends primarily on making a solid record that documents a student's unique and evolving needs, shows why the public school program would have been inadequate—and explains why the program and resources of the student's private placement were “reasonably calculated” to address the student's unique needs.

In a recent case handled by our firm, the student's mother had to take an appeal to the State Review Office (SRO) in a situation where the cost of the student's school and his supplemental home-based services was at stake. To protect the student's privacy, we will refer to the student as “L.” The hearing officer had ruled for the New York City Department of Education (DOE). The SRO reversed the hearing officer's decision to rule for the student. Let's explore what made the difference.

## Understanding L's Unique Needs Beyond His Core Autism Diagnosis

L, a teenage boy diagnosed with autism spectrum disorder, exhibited significant behaviors that at times could become violent. Due to his age and size, safety was a critical concern—not only for L himself, but also for L's peers, educators, caregivers, and siblings. L had also experienced trauma, and as he entered puberty, his emotions and reactions were becoming more intense. If L's behaviors were to escalate, a residential placement would likely have become necessary. L's program was clearly at a critical juncture.

A key factor in this case was L's significant communication deficits. The evidence showed that L required behaviorally based, individualized, and intensive interventions to help him communicate, regulate his emotions, and remain safe across environments. In this connection, the evidence also demonstrated that L needed a small, supportive setting with instructors and therapists with whom he felt safe and comfortable.

## L's Highly Individualized Unilateral (Private) Program

L's school program was highly individualized. He received:

- Full-time 1:1 support
- Applied Behavior Analysis (ABA) as the primary instructional methodology
- A comprehensive behavior intervention plan
- Speech and Language Therapy (SLT)
- Occupational Therapy (OT)

L's program evolved over time. As L grew older, stronger, and more emotionally complex, L's school adjusted its supports accordingly. When his behaviors were under control, his program focused more heavily on academics. When they were not, staff met him where he was and emphasized foundational skills and behavioral regulation. The school's flexibility—and the documentation supporting it—demonstrated a clear understanding of the student's needs, while also showing that school-based services alone would be insufficient.

## Why L's Supplemental Home-Based ABA Was Essential

One of the most critical aspects of this case was demonstrating the need for L's 1:1 after school ABA therapy. In the last two or three years, obtaining funding relief for supplemental home-based services has become increasingly difficult, but here, as the State Review Officer concluded on appeal, the evidence clearly established that such services were necessary.

Importantly, the evidence demonstrated that the purpose of L's home-based ABA program was to prevent regression and maintain existing skills. Given the intensity of L's needs, even short periods without consistent support placed him at risk of regression, something that would have undermined the progress L was able to make in school. In addition, certain critical skills that were part of L's “activities of daily living” could only be meaningfully addressed in the home setting. The evidence showed that without consistency across environments, L's progress would stall and regress and an increase in L's maladaptive behaviors was likely.

By demonstrating that L's afterschool ABA program reinforced, complemented and supported the school program—rather than duplicating it—we were able to establish that both were essential components of a unified and necessary treatment approach. Another key factor was the strong communication and collaboration between the home and school teams, as well as the intensive parent training and counseling built into the program. These additional factors meant that L's parents, teachers and providers would all be on the “same page.”

### **Overcoming the Financial Responsibility Issue on Appeal**

On appeal, a significant issue arose under the third prong of the Burlington/Carter analysis (equities). The Impartial Hearing Officer had found that the New York City Department of Education was not required to fund the private program because there was no formal, written contract in place. The IHO concluded that L's mother did not have a financial obligation to pay for the program. This finding by the IHO was rejected by the SRO as exalting form over substance.

As the SRO recognized, the record established that L's mother had signed a program handbook clearly stating that she would be financially responsible for the cost of L's program if the DOE did not fund it. The costs of the program were also explicitly acknowledged in L's mother's affidavit and supported by her testimony. Moreover, the entirety of L's program was covered under pendency because of a prior pendency order that we had secured as L's counsel.

The SRO held that, when considered together, L's pendency coverage, the signed handbook, and L's mother's sworn testimony were sufficient to demonstrate the parent's financial responsibility to pay for the program. Under these circumstances, a separate formal contract was not required to establish that L's mother was obligated to pay for L's program and his providers.

### **The Difference That Led to Success On Appeal**

Ultimately, what made the difference in this case was a comprehensive, well-supported argument and a solid record establishing that:

- L's behaviors posed serious safety concerns
- L's trauma and puberty intensified emotional and behavioral challenges
- L's nonverbal status required specialized, non-traditional interventions
- L's needs were intensive, ongoing, and cross-environmental
- L's home-based ABA program was necessary to prevent regression and support the school program
- L's mother had demonstrated financial responsibility to pay for L's program and was at risk to pay if she did not win L's case

If there is one, overarching lesson to be learned from the L decision on appeal, it is that, in an abundance of caution, it is essential to build a record *as if* the case will have to go up on appeal. Such an approach is necessarily more difficult and time consuming, but as the SRO decision shows, it offers the best chance for a successful outcome.



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