

Avoid challenges when social, behavioral disabilities don't meet special ed criteria

The IDEA does not define "educational performance," so determining a child's eligibility for special education is based on academics -- unless state law provides otherwise.

In *A.J. by C.L.J. and C.J. v. Board of Education, East Islip Union Free School District*, [53 IDELR 327](#) (E.D.N.Y. 2010), a court ruled that a New York district did not deny FAPE to a kindergartner with Asperger syndrome because his above-average academic progress showed his disability didn't affect his educational performance.

Because New York law does not define educational performance, the court here relied on the 2d Circuit Court's rulings in *Mr. and Mrs. N.C. v. Bedford Central School District*, [51 IDELR 149](#) (2d Cir. 2008, *unpublished*), and *C.B. ex rel. Z.G. v. Department of Education of the City of New York*, [52 IDELR 121](#) (2d Cir. 2009, *unpublished*). Both held that academics are the principal, if only, measure of educational performance.

In addition to understanding how your state defines educational performance, take these steps to avoid challenges when a student's disability-related social and behavioral problems don't warrant special ed eligibility:

- **Address student's needs within RTI framework:** Tailor a plan with accommodations, supports and interventions to address the student's social and behavioral needs, said school attorney [Bennett Rodick](#) of [Hodges, Loizzi, Eisenhammer, Rodick & Kohn](#) in Arlington Heights, Ill. Set measurable goals and objectives to determine the student's progress.

For a student with autism, for example, behavioral RTI might include verbal and nonverbal prompting, encouraging social interaction, and weakening resistance to environmental changes by introducing subtle changes regularly, said school attorney [Alisia St. Florian](#) of [Murphy, Hesse, Toomey & Lehane, LLP](#) in Quincy, Mass.

- **Monitor progress:** Document current behavior, set goals for improvement, and then measure progress weekly, Rodick said.

"Document everything," he said. "You want a data-driven process to base your judgments on."

Observe how the child responds to various topics and participates in different activities to ascertain what interests him and what settings he appears most comfortable in. Encourage other teachers and staff members to contribute their observations to provide a comprehensive data profile of the child's behavior at different times and in different settings during the school day.

"The best evidence is what the child is actually doing in school," Rodick said.

- **Adjust interventions:** Through progress monitoring and observation, determine if the child is meeting his goals. The data should make an empirical case for staying the RTI course, tweaking it, or referring the child to special education, Rodick said.

Look for patterns in your data that might indicate which people, places and things most stimulate the student. Adjust interventions and instructional techniques based on this information.

For instance, if a student with autism demonstrates an interest in insects, tap into that by staging an activity on insects in the setting -- entire class, small group, one-on-one -- most likely to result in the student's engagement with his peers.

- **Share data with parents:** Go through this information with parents, explaining what it means and how it determined your proposed plan to address their child's needs. Discuss the strategies you are pursuing and things they can do at home to augment these efforts. Stress the importance of their role in the plan's success -- by appealing to them as collaborators, Rodick said, you can gain their trust and avoid challenges.

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