

# Paraprofessional Services for Students with Disabilities: A Legal Analysis of Issues

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*Concomitant with the increase in the number of paraprofessionals assisting students with disabilities is the emergence of legal issues pertaining to the need, selection, responsibilities, preparation, and supervision of those paraprofessionals. The purpose of this article is to provide a legal analysis of administrative and judicial decisions concerning these issues and to propose guidelines for ensuring appropriate paraprofessional involvement in the educational programs for students with disabilities.*

**DESCRIPTORS:** paraprofessionals, Individuals with Disabilities Act (IDEA), law and policy

The provision of paraprofessional services to students with disabilities has been recognized as an essential component in ensuring a free and appropriate education. Full- and part-time paraprofessionals are used to assist students with disabilities in home- and center-based facilities, special education classrooms, and general education environments. The number of paraprofessionals involved in the education of students with disabilities continues to increase, a trend attributed to both student and teacher needs (Giangreco, Edelman, Luiselli, & MacFarland, 1997). Pickett, Likins, and Wallace (2003) suggested one important trend leading to an increase in paraprofessional employment involved efforts to serve greater number of children with disabilities in inclusive settings.

Several legal issues have emerged concerning the provision of paraprofessional services. In addition to disputes regarding the need, selection, and qualifications of paraprofessionals working with students with disabilities (Katsiyannis, Hodge, & Lanford, 2000), recent controversies have involved the responsibilities of paraprofessionals as well as the adequacy of paraprofessional supervision and training. The purpose of this article is to provide a legal analysis of administrative and judicial decisions concerning these issues and to propose guidelines for ensuring appropriate paraprofessional involvement in the educational programs for students with disabilities.

## A Review of Recent Decisions and Case Law Addressing Paraprofessional Services

The LRP Education Research Library was accessed on-line to review the cases involving paraprofessional services between the 1997 reauthorization of Individuals with Disabilities Education Act (IDEA) and the current 2004 reauthorization (Individuals with Disabilities Education Improvement Act [IDEIA]). The selection of this time period permits a timely analysis of administrative decisions and case law with legal references or citations to only the 1997 Act. The LRP database includes decisions from state-level administrative due-process hearings as well as decisions from district courts, appellate courts, and the Supreme Court that are published in the *Individuals with Disabilities Education Law Report (IDELR)* (1992–2005). The topical index of “aides/paraprofessionals” was searched, and the author conducted an independent search using keyword parameters of “paraprofessionals,” “paraeducators,” “aides,” “personnel,” and “nursing services.” Administrative decisions, as well as district court and circuit court decisions, were included in the analysis. If a decision from a lower court was appealed, only the decision from the highest court was included in the analysis. Cases were reviewed and categorized by the author as addressing paraprofessional need, the selection and qualifications of paraprofessionals, responsibilities of paraprofessionals, and/or the training and supervision of paraprofessionals. Three cases addressed more than one area and were included in each discussion section. A total of 47 cases and rulings were analyzed. The cases are arranged chronologically.

### *Establishing the Need for Paraprofessional Services*

The need for paraprofessional services is determined in response to the question that guides the determination of all special education and related services available under the IDEA: Are the services necessary to provide the individual with a free, appropriate public education (FAPE)? The IDEA requires that students with disabilities be provided an appropriate program to meet their unique needs [20 U.S.C. § 1400(d)]. The Supreme Court in *Hendrick Hudson District Board of*

Table 1  
Establishing the Need for Paraprofessional Services

| Case   | S Data  | Issue  | Decision   |
|--|---|--|--|
| Lake Travis Independent School District, 4 ECLPR 500 (SEA TX 2003)     | 5-year-old M w/PDD  | P argued that S capable of full inclusion but only with supplemental services of 1:1 “shadow” aide trained in ABA methodologies. SD argued S did not need shadow aide and could receive FAPE without one. SD proposed student spend ½ of day in general education classroom with 22 peers, teacher w/out training/experience in autism, without 1:1 aide. Another third of day was in general education with classroom aide, and last third “pull out” for math and language arts. | For P: S cannot reasonably benefit from instruction without 1:1 support. SD’s assertion that S would become dependent on aide was not supported, and teacher without training/experience was not capable of meeting S’s needs. Classroom aide would not be able to provide 1:1 support for S in inclusive setting. |
| South River Board of Education, 39 IDELR 88 (SEA NJ 2003)              | 8-year-old M w/SLD  | P sought provision of personal aide during all academic and unstructured periods of day. SD had agreed only to provide aide during unstructured times.   | For P: SD failed to present reasonable assurance that S can be provided with a meaningful education “unless he is immediately provided with a personal classroom aide who is sufficiently qualified and trained to identify and handle the types of problems and behavioral concerns”.                             |
| Harris County School System, 26 IDELR 193 (SEA GA 1997)                | 11-year-old M with ADD & dyslexia served as SLD               | P requested full-time paraprofessional in special education classroom and to help in regular education classes.  | For SD: parents did not show that IEP could only be implemented or student appropriately served by hiring a full-time paraprofessional   |
| Killeen Independent School District, 39 IDELR 21, (SEA TX 2003)        | 10-year-old M w/autism/Aspergers                              | P requested full autism-trained aide to assist S in regular classes. SD argued that S did exceptionally well in regular classes; well enough that S did not require an aide.   | For SD: P did not demonstrate that S needed a classroom aide to receive an educational benefit for academic, behavioral, or other reasons.   |
| Menlo Park City Elementary School District, 36 IDELR 230 (SEA CA 2002) | 9-year-old F w/SI District                                    | P claimed daughter needed her 1:1 aide during winter and spring school breaks to prevent regression. SD argued that no evidence supported the need for 1:1 assistance during breaks in the school year as the S did not experience regression  | For SD: District offer to provide 1:1 aide during regular school year and the extended school year was appropriate. Evidence did not support the need for a 1:1 aide during breaks in the academic year.   |
| Limestone County Board of Education, 31 IDELR 122 (SEA AL 1999)        | 7-year-old F with multiple disabilities, including VI and PD. | P requested full-time aide to accompany S to regular education (½ hour visits several times per week) due to VI. Aide would help S know what was going on. SD argued that purpose of the visits to regular education was for socialization, and an aide who “shadows” the S will interfere with peer relationships. SD intended to provide a “peer buddy” to assist the S.   | For SD: Aide accompanying the child to regular education would be counterproductive for socialization purposes.  |
| Waterbury Board of Education, 37 IDELR 262 (SEA CT 2002)               | 8-year-old M w/ADHD   | P requested that 1:1 aide be assigned to S to address behavior issues resulting in suspensions. SD provided an aide when the classroom teacher deemed it necessary. Most behavioral incidents occurred with classroom aide present.  | For SD: 1:1 aide not the solution to S’s behavior problems. Aide may stigmatize S and create unnecessary dependency. S would be better served with an analysis of behavior “triggers” and modifications to behavior plan.  |

Table 1—Continued

| Case  | S Data  | Issue   | Decision   |
|---|---|---|--|
| Pell City Board of Education, 38 IDELR 253 (SEA AL 2003)            | 13-year-old M w/MD, ADHD and conduct disorder                                       | P contended S's deteriorating behavior necessitated services of 1:1 aide at beginning of school year. Failure to provide aide denied FAPE and resulted in more restrictive placements. SD insisted behavior had been addressed in appropriate manner. Although more restrictive settings were required, S's behavior improved. SD was reluctant to supply 1:1 aide as constant assistance would be restrictive. | For SD: SD decision not to provide 1:1 aide at beginning of year did not violate FAPE obligation. S made more-than-minimal progress academically and behaviorally. SD worked diligently to meet S's needs: consulted with psychiatrists and psychological counselors for BIP, rewards and positive feedback for good behavior, transition plans, option to go to office when S losing control, frequent contact with S's mother. Only when these efforts failed was 1:1 aide assigned. Such progression required by LRE mandate. |
| Molly L. v. Lower Merion School District, 36 IDELR 182 (ED PA 2002) | 8-year-old F w/asthma, gross motor difficulties, sensitivity to sensory stimulation | SD's 504 plan stated a classroom aide would be available to S throughout school day to intervene on an as-needed basis. P objected to the plan, stating aide was not "educationally appropriate" since it would restrict S's ability to develop coping skills.  | For SD: provision of aide who intervenes on an as-needed basis serves the dual purpose of allowing S freedom to develop coping skills while also ensuring S's safety.  |
| Conecuh County School Board, 27 IDELR 112 (AL SEA 1997)             | 11-year-old F with MD, OHI & SLI  | IEP team decided to discontinue one-to-one aide due to S's overdependence on aide providing 1:1 attention. P believed without aide S would be deprived of person necessary to enable her to progress. P had "prescription" for aide from rehabilitation facility.   | For the SD: Self-sufficiency is focus, full time person would foster excessive dependence. S had access to aide in special education class, but not regular classes (successful in one; not progressing in other). Absence of aide did not deny FAPE.  |
| Connally Independent School District, 34 IDELR 309 (SEA TX 2001)    | 14-year-old M w/autism and SI   | IEP team proposed S's BIP to include provision that S's need for continuous supervision by aide be evaluated on an ongoing basis after the first 6 weeks of school. SD goal was to provide appropriate level of independence based on improvement in S's behavior. P argued that without continuous supervision from aide, S will be removed from general education classes as behavior becomes a problem       | For SD: P failed to prove that BIP which proposed evaluating the need for continuous supervision by aide be evaluated on an ongoing basis was inappropriate.   |
| Montgomery County Public Schools, 27 IDELR 658 (SEA MD 1997)        | 12-year-old M with multiple disabilities  | P requested 1:1 aide as S's academics and behavior deteriorated. SD argued S did receive 1:1 from aides currently assigned to classroom. autism program with 5 students, one teacher and two aides.   | For P: evidence "unequivocally shows S need the related services of 1:1 aide to make even rudimentary educational progress." Classroom aides do not watch over or work with S individually or specifically on consistent basis.  |
| Watson Chapel School District, 34 IDELR 51 (SEA AK 2000)            | 9-year-old M with multiple disabilities   | SD proposed S be provided one-to-one instruction for 60% of the instructional day, provided by either the teacher or the aide assigned to the classroom. P argued that S required a full-time aide to assist in class and around campus.  | For P: S needs an aide as a related service to benefit from his special education services. However, to foster independence, S does not need the aide in all situations. IEP team should determine specific expectations for S in various situations and determine when to use the aide.   |

Table 1—Continued

| Case   | S Data                                   | Issue   | Decision   |
|--|--|---|--|
| Malden Public Schools, 42 IDELR 73 (SEA MA 2004)             | 11-year-old F w/ADHD                     | P asserted SD must provide a 1:1 associate because that was what S had received in former school. SD maintained that in previous school, individual support was due to fact S was only IEP student integrated. At new school, the classroom aide assisted several students. | For SD: 1:1 aide and classroom aide denote two distinct job responsibilities. Both the IEP document and the actual provision of aide services demonstrated the appropriateness of a classroom aide and not a 1:1 aide. |
| Jackson County Board of Education, 38 IDELR 83 (SEA AL 2002) | 5 <sup>th</sup> -grade F w/SLD           | P argued that daughter is entitled to aide dedicated solely to her for safety and FAPE. P requested greater care and attention in addition to more 1:1 services. SD maintained that “on-call” aides were able to meet the needs of the S.                                   | For SD: Decision to use shared “on-call” aides did not constitute a denial of FAPE for S. S made significant educational progress and gains in independence.   |
| Elmore County Board of Education, 37 IDELR 230 (SEA AL 2002) | 7-year-old F w/Cornelia Delange Syndrome | P argued that 1:1 aide was needed exclusively by daughter for safety. SD argued that IEP called for paraprofessional assistance as needed and not 1:1 aide. Aide could adequately serve both S and another child.   | For SD: S’s safety would not be threatened if aide assisted another S and that S’s needs could be met by continuing and extraordinary supervision.   |

*Note.* M = male; F = female; P = parent; SD = school district; S = student; ADD/ADHD = attention-deficit-hyperactivity disorder; SLD/LD = specific learning disability; MD = mental disability; OHI = other health impaired; SLI/SI = speech-language impairment; VI = visual impairment; PDD = pervasive developmental disorder; BIP = behavior intervention plan; FAPE = free, appropriate education; ABA = applied behavior analysis; PD = physical disability.

*Education v. Rowley* (1982) defined an appropriate education as one that provides a child “access to specialized instruction and related services which are individually designed to provide educational benefit” (p. 3048). The IDEA also requires that children be educated in the least restrictive environment [20 U.S.C. 1412(a)(5)(A)]. Subsequent decisions clarified that educational benefit is not limited to academic gains but may also include nonacademic profits such as improved social interaction and personal esteem (e.g., *Sacramento City Unified School District, Board of Education v. Rachel H. by Robert Holland*, 1994). The determinative question becomes “Are the services necessary to provide the individual with academic or non-academic benefit?” The benefits provided by the services must be more than trivial or *de minimus* (*Polk v. Central Susquehanna Intermediate Unit 16*, 1988) but need not be “optimal” or “maximum” (*Rowley*, 1982, p. 3046).

Table 1 describes administrative and judicial decisions addressing the need for paraprofessional support for students with disabilities. Several decisions rely on the *criterion of benefit* in determining the need for paraprofessional services. For example, parents in *Lake Travis Independent School District* (2003) argued that full inclusion could be realized only with a 1:1 aide; the school district countered that the teacher and classroom aide could meet the student’s needs. The hearing officer ruled that the student could not reasonably benefit from instruction without 1:1 support. In *South River*

*Board of Education* (2003), the parents sought provision of a personal aide during all academic and unstructured periods of the day. The administrative law judge (ALJ) found that the school district failed to provide assurance that the student could be provided with a meaningful education without a personal classroom aide. Similar decisions were issued in *Harris County School System* (1997) (finding that the parents failed to show that the IEP could be implemented or the student appropriately served only by hiring a full-time paraprofessional) and *Killeen Independent School District* (2003) (finding parents did not show that the student needed a classroom aide to receive an educational benefit for academic, behavioral, or other reasons). The parents in *Menlo Park City Elementary School District* (2002) requested that their daughter’s 1:1 aide be continued during winter and spring school breaks to prevent regression. The hearing officer determined that the student had not evidenced regression and that she would be able to benefit during the regular school year and the extended school year without providing the 1:1 aide during breaks. Each of these decisions addressed the need for paraprofessional support to achieve meaningful educational benefit.

Non-academic benefits were also considered in decisions addressing the need for paraprofessional services. In several decisions, paraprofessional services were viewed as detrimental to achieving social benefits. For example, in *Limestone County Board of Education*

(1999), the parent had requested a full-time aide to accompany the student to regular education classrooms. The school district argued that because the purpose of the visits to regular education was for socialization, an aide would interfere with peer relationships. The school district intended to provide a “peer buddy” to assist in the regular classroom. The hearing officer agreed that an aide accompanying the child to regular education would be counterproductive to building social interactions. Another hearing officer in *Waterbury Board of Education* (2002) similarly concluded that a 1:1 aide may be stigmatizing to the student and create unnecessary dependence. Because the student’s behavior problems occurred in the presence of a classroom aide, the hearing officer concluded that a 1:1 was “not the solution” to behavior problems; rather, an analysis of the behavior “triggers” and modifications to his behavior plan were advised. The parent in *Pell City Board of Education* (2003) argued that the school district’s failure to provide a 1:1 aide at the beginning of the school year resulted in a more restrictive placement midyear. The school district countered that the student was making “more-than-minimal” academic and behavioral progress without a 1:1 associate and that to supply a 1:1 aide constantly would be restrictive. The hearing officer agreed that the provision of a 1:1 aide prior to trying other efforts (e.g., contact with parent, implementing a positive behavioral plan, options to go to the office to cool down) would be inconsistent with the least restrictive environment mandate. It was the parent in *Molly L. v. Lower Merion School District* (2002) who resisted the assignment of a classroom aide, arguing that the aide would restrict the student’s ability to develop coping skills. Because the aide was to provide services on an “as-needed” basis, the district court judge determined the plan would ensure safety and allow the student freedom to develop coping skills. For these decisions, the potential for paraprofessional support to limit social benefits was a critical factor in determining the need for 1:1 services. School district decisions to discontinue or reduce paraprofessional services to facilitate student independence were also upheld if such decisions did not result in a denial of a free, appropriate public education (FAPE)—see *Conecuh County School Board* (1997) (finding that a full-time person would foster excessive dependence, whereas absence of an aide would not deny FAPE) and *Connally Independent School District* (2001) (finding that gradual reduction of supervision by the aide was appropriate).

Other decisions addressing the need for paraprofessional services were focused on whether the student required a 1:1 paraprofessional or if a classroom-based aide would enable the student to meaningfully benefit from the educational program. In *Montgomery County Public Schools* (1997) the parents argued that the classroom aides were insufficient and resulted in academic

and behavioral deterioration. The ALJ determined that the student needed a 1:1 aide “to make even rudimentary educational progress” and that the classroom aides could not work individually with the student on a consistent basis. The parents in *Watson Chapel School District* (2000) charged that a classroom aide and teacher would not be sufficient in meeting their son’s needs and that a full-time aide was required. Although the hearing officer determined that an aide was necessary for the student to benefit from his special education services, the student did not require the aide at all times. The IEP team was ordered to determine specific expectations for the student in various contexts and determine when the assistance of the aide was required. Although a student had previously received 1:1 services and her parents asserted individualized support was necessary, a hearing officer in *Malden Public Schools* (2004) found that the services provided based on the student’s needs demonstrated the appropriateness of a classroom aide and not a 1:1 aide. The services of a paraprofessional could be shared, providing that the students jointly served receive FAPE. A hearing officer in *Jackson County Board of Education* (2002) concluded that the decision to use a shared “on-call” aide for a student with learning disabilities did not constitute a denial of FAPE for the student, who made significant educational progress and gains in independence. Similarly, in *Elmore County Board of Education* (2002), the parent argued that a 1:1 aide was necessary for safety and assistance. The hearing officer concluded that the student’s needs would be met and her safety would not be threatened if the aide assisted another student.

These decisions suggest that if a student was able to benefit meaningfully from the educational program without the provision of a paraprofessional, requests for 1:1 support were denied. Conversely, other decisions held that students required such services to benefit educationally. If the provision of a paraprofessional had a negative impact on potential social benefits, requests for 1:1 assistance were denied, whereas the provision of classroom aides on an “as-needed” basis was supported.

### ***Selection and Qualifications of Paraprofessionals***

The administrative decisions and case law presented in Table 2 addressed the selection and qualifications of paraprofessionals assigned to assist students with disabilities. The majority of the decisions in Table 2 were administrative ( $N = 11$ ), with one district court decision and one circuit court decision. Students involved in the cases represented all age groups, including preschool ( $N = 3$ ), elementary school ( $N = 3$ ), middle school ( $N = 4$ ), and high school ( $N = 3$ ). Males and females were equally represented (six and seven respectively).

The decisions clearly conclude that the selection and retention of paraprofessionals is an administrative func-

Table 2  
The Selection and Qualifications of Paraprofessionals

| Case   | S Data   | Issue   | Decision   |
|--|--|---|--|
| Freeport School<br>District 145, 34<br>IDELR 104 (SEA IL<br>2000)            | 11 ½-year-old F<br>with OHI<br>(nutritional and<br>physical needs)               | P requested change in aide since the rapport necessary for S to communicate her medical needs is not present". SD countered that aide is "exemplary employee" and that personnel issues are at the SD's discretion.   | For SD: Selection and retention of aide is administrative function unless selection or retention deprives S of FAPE or poses a danger to S's health, safety or welfare. S's aide did not interfere with implementation of IEP and was not a danger to S. SD has discretion to choose as long as aide is qualified and adequate.  |
| Bangor School<br>Department, 36<br>IDELR 192 (SEA<br>ME 2002)                | 6 <sup>th</sup> -grade M w/MD  | P argued that change from single 1:1 aide to several educational assistants was a significant change in the IEP which denied S FAPE. P alleged they did not receive notice of that change. SD argued that S would benefit from working with various assistants and not become dependent.  | For SD: S would benefit from proposed IEP with various assistants. S's lack of progress was due to factors other than a single 1:1 assistant (e.g., transfer and transition to new school). The SD did not terminate or change the amount or frequency of support services, therefore no written prior notice was required.      |
| Los Angeles Unified<br>School District, 28<br>IDELR 324 (SEA<br>CA 1998)     | 16-year-old F with<br>cerebral palsy/PD  | P charged S's aides failed to assist her, and S would perform better academically if she had a different aide (current aides talked during class, did not understand subject matter, did not take adequate notes, not fluent in English). SD argued S was provided several aides; no obligation to provide best possible aide.  | For SD: S was performing well academically, so SD has no obligation to furnish "best possible" aide. However, S also needed assistance at lunch and with toileting, so SD ordered to hire permanent aide capable of meeting all S's needs.   |
| Gerber Union<br>Elementary School<br>District, 26 IDELR<br>199 (SEA CA 1997) | 12-year-old M<br>w/SED   | P sought to compel the district to provide the 1:1 services of an aide specifically named in an interim IEP. SD argued aide was not adequate to provide the services the S needed, but would provide another trained adult with S at all times.   | For P: The aide explicitly named on the IEP was an integral part of the IEP and continued services were necessary to ensure the stability of S's program.  |
| Clovis Unified School<br>District, 36 IDELR<br>201 (SEA CA 2001)             | 4-year-old M<br>w/autism.  | P alleged instructional assistants were unfamiliar with concepts and terminology of the home-based autism services (e.g., prompting hierarchy, mass trialing, random rotation, fading of tasks, generalization). SD stated aides were trained and continue on-the-job training on discrete trail training prompting, and facilitating interactions by both the special education teacher and school psychologist. | For SD: the instructional assistants were adequately trained to appropriately implement S's educational program.   |
| Dublin Unified School<br>District, 37 IDELR<br>22 (SEA CA 2002)              | 14-year-old M<br>w/OHI<br>(Tourette's<br>Syndrome and<br>Asperger's<br>Syndrome) | P argued that aide must be male to "blend in better" with S's peers. Given his socialization needs, male aide would facilitate peer interaction. Female aide could not accompany S into restroom. SD argued that current aide was able to meet S's needs, facilitate transitions, and support academic work.  | For SD: Despite his dislike for aide, S was receiving educational benefit. S was able to work civilly with aide and she did not create a more restrictive environment for the S. Although assignment of different aide might be better for S, current aide was able to meet needs and S was benefiting from educational program. |

Table 2—Continued

| Case   | S Data   | Issue   | Decision   |
|--|--|---|--|
| Vidor Independent School District, 27 IDELR 679 (SEA TX 1998)                            | 6-year-old F w/PD  | P sought assignment of new aide charging the aide was not implementing IEP. SD offered to consider the P input, but would ultimately select which aide was assigned.  | For SD: Aide currently assigned to the student was appropriate, not a danger to the student and was implementing the student's IEP. Selection of an aide left to the discretion of district officials unless the chosen aide would deny the student a FAPE.  |
| Hingham Public Schools, 33 IDELR 292 (SEA MA 2000)                                       | 5-year-old F w/Angelman Syndrome, a neurological disorder resulting in severe learning difficulties and seizure disorders. | P argued that S's IEP called for 1:1 aide with professional status and experience but assigned aide did not have those credentials. S's doctor recommended that due to S's severe learning problems, aide must have Master's degree and experience to maximize learning. SD stated that proposed aide is committed and relates well to S, thus meeting the professional status requirements. S is benefiting from current aide, so Master's and experience not necessary. | For P: Since IEP called for aide with professional credential, SD failed to comply and provide agreed-upon services. Although S would not require an aide with professional qualifications as long as supervising teacher is experienced, since IEP specified such credentials, the aide must meet those specifications.   |
| Slama v. Independent School District No. 2580, 39 IDELR 3 (DC MN 2003)                   | 17-year-old F (disability not provided)  | P argued that SD's decision to replace P-preferred aide with district-employed assistant denied FAPE by failing to provide aide services specified in IEP. P contended that the original statement in IEP that P had chosen aide bound SD to continue same aide. P asserted such change required notice, which was not received. SD   | For SD: IEP required SD provide S with aide, not the P-preferred aide. No notice required since choice of aide was not "substantial or significant" component of IEP. Reference in IEP of P choosing aide was reference to a collateral agreement, not an agreed-upon stipulation concerning IEP services. SD not required to find aide with equal or better qualified than P-preferred aide, only aide capable of assisting S to provide FAPE. S did not require specific aide in order to receive FAPE |
| Gellerman v. Calaveras Unified School District, 37 IDELR 125 (9 <sup>th</sup> Cir. 2002) | 13-year-old M w/autism   | P argued aide must be familiar with son and home program. Lovaas consultant recommended aide be familiar with child. SD stated that the aide selected met several consultant recommendations included in IEP, including training in behavior analysis and coordination of home training. SD-selected aide had 13 years experience, including one year with child with autism.   | For SD: Aide selected by SD reasonable calculated to ensure S would receive educational benefit. Neither the IEP nor substantive requirements of IDEA required the service provider to be certified in AV therapy.   |
| Brevard County School Board, 41 IDELR 288 (SEA FL 2004)                                  | 4-year-old F w/HI  | P requested SD provide S with certified AV (auditory-verbal) therapist. SD proposed IEP with 2 hrs. per week of AV therapy by speech-language pathologist trained to provide AV therapy.  | For SD: S would receive educational benefit from SD's trained therapist. Neither federal nor state law required the service provider to be certified.  |

tion unless the appointment or retention of a paraprofessional deprives the student of FAPE or poses a danger to the student's health, safety, or welfare. For example, in *Freeport School District 145* (2000), the parent requested a change in her daughter's aide because the rapport necessary for the child to communi-

cate her medical needs was absent. The school district countered that personnel appointments are the district's discretion, and that the district-selected aide was "exemplary." The hearing officer concluded that the district-selected paraprofessional did not interfere with the implementation of the IEP and was not a danger to

Table 2—Continued

| Case  | S Data                                      | Issue  | Decision   |
|---|---|--|--|
| Sioux City Community School District, and Western Hills Area Education Agency (AEA 12), 104 LRP 10804 (SEA IA 2003) | 7-year-old M w/autism                       | P argued that changing son’s aide was change in a material provision of IEP requiring notice and that IEP specified that change in aide would be determined by IEP team. SD argued that the decision to transfer aide (S’s mother) to another assignment was a personnel decision related to the breakdown in confidence and communication between the regular class teacher and the aide. | For SD (in part): Process of aide replacement specified in IEP was followed by the school district, though P’s chose not to participate. Notice of intent to change aide was provided to P’s and school district has authority to select appropriate personnel to implement IEP. |
| Board of Education of the Harrison Central School District, 41 IDELR 285 (SEA NY 2004)                              | 6-year-old F w/ MD, ADHD and cerebral palsy | P requested SD provide S with personal aide to communicate in sign language to her. SD proposed IEP where special education teacher would sign plus incorporate additional approaches to address her communication needs.  | For SD: IEP called for “an adult” to communicate with the student in sign language, and special education teacher could fulfill that role. S also needed additional communication opportunities other than signing.  |

Note. M = male; F = female; P = parent; SD = school district; S = student; ADD/ADHD = attention-deficit-hyperactivity disorder; MD = mental disability; OHI = other health impaired; HI = hearing impairment; SED = serious emotional disturbance; PD = physical disability; FAPE = free, appropriate public education.

the student. Therefore, the school district had discretion to assign, providing the paraprofessional was qualified and adequate. The *Bangor School Department* (2002) decision clarified that a change in paraprofessionals was not a change in placement requiring procedural safeguards of notice, but rather at the discretion of the district providing (1) the child would receive FAPE and (2) the change was in personnel only and did not change or terminate the amount or frequency of the paraprofessional support services. Similar conclusions were reached in *Los Angeles Unified School District* (1998) (finding the student was receiving FAPE, so the school district had no obligation to furnish the “best possible aide”), *Clovis Unified School District* (2001) (finding the paraprofessionals were adequately trained to implement the IEP for a 4-year-old child with autism), *Dublin Unified School District* (2002) (finding that although the student disliked his aide, he was receiving FAPE and educational benefit), *Vidor Independent School District* (1998) (denying parents the right to select the aide because such assignments were an administrative function of the district), and *Slama v. Independent School District No. 2580* (2003) (finding that the IEP required the school district to provide an aide, not the parent-preferred aide, because the student did not require a specific aide to receive FAPE).

A second important conclusion from the decisions was that unless particular credentials or qualifications are specified on the IEP, the district maintains discretion in the employment and assignment of paraprofessionals. The Ninth Circuit Court of Appeals opined that a student with autism would receive educational benefit with the assistance of an aide selected by the school district (*Gellerman v. Calaveras Unified School District*,

2002). The parent argued that the aide must be familiar with the child and his Lovaas-based home program. The school district-selected paraprofessional had received training in behavior analysis and coordinated services with the home program. The Ninth Circuit concluded that neither the IEP nor substantive requirements of IDEA required the school district to assign an aide who had previously worked with the student. Similar decisions were reached in *Brevard County School Board* (2004) (denying parent request for a certified auditory-verbal aide because neither federal or state law required service provider to be certified in AV therapy), *Sioux City Community School District and Western Hills Area Education Agency* (2003) (finding that the school district followed IEP specifications concerning replacement of the student’s aide, though the parents chose not to participate in the replacement process), and *Board of Education of the Harrison Central School District* (2004) (finding that the adult listed in the IEP to assign to the student could be a special education teacher and not the personal aide requested by the parents). Conversely, in *Hingham Public Schools* (2000), a child’s IEP called for a 1:1 aide with professional status and experience. Although the school district argued that the student was benefiting from the services of the district-preferred aide, the hearing officer determined that the school district failed to comply and provide the agreed-upon services. Because the IEP specified certain credentials, the paraprofessional assigned to the student must meet those specifications. In *Gerber Union Elementary School District* (1997), the school district agreed to provide a full-time, 1:1 aide, who was specifically named on an interim IEP. When the district subsequently reduced the amount of time

the aide spent with the student, the parent sought to compel the district to provide full-time services of the named aide. The hearing officer determined that because the IEP explicitly named the 1:1 aide, that person had become an integral part of the IEP and her services were necessary to ensure the stability of the student's educational program. These decisions highlight that the discretionary authority of a school district on personnel issues is not absolute and does not override the obligation to provide the agreed-upon services specified in the IEP.

The review of cases addressing the selection and qualifications of paraprofessionals led to two important conclusions. First, the selection of paraprofessionals is an administrative prerogative unless the selection deprives the student of FAPE or has an impact on the student's welfare or safety. School districts are not required to furnish the "best possible" aide (*Los Angeles Unified School District*, 1998) but rather must ensure that the student will benefit from the educational program planned. School districts were able to defeat parental assertions of inadequacy by establishing the qualifications of the supervising teacher (*Board of Education of the Harrison Central School District*, 2004), the efforts to train the paraprofessional (*Clovis Unified School District*, 2001), or the provision of FAPE in benefit to the student (*Gellerman v. Calaveras Unified School District*, 2002). Second, if particular credentials are required, those qualifications must be specified on the IEP. The district will maintain discretion for the assignment of paraprofessionals unless particular credentials or qualifications are specified on the IEP.

### ***Responsibilities of Paraprofessionals***

Table 3 presents cases addressing the responsibilities of paraprofessionals. Although paraprofessionals provide academic and behavioral assistance to ensure FAPE (e.g., earlier cases *South River Board of Education*, 2003; *Lake Travis Independent School District*, 2003; see Table 1), the legal responsibility for planning, implementing, and monitoring a student's IEP remains with the IEP team. Paraprofessionals may not serve as the sole designer, deliverer, or evaluator of a student's program. A recent decision from Iowa addressed this issue. In *Linn-Mar Community School District* (2004), parents alleged that the district failed to provide FAPE and requested that their son be placed in an out-of-district day school. The ALJ ruled that the student's program was inappropriate because the student was isolated with his 1:1 aide the majority of the day, with little involvement by certified school personnel: "By virtue of the provision of a 1:1 aide over the three years in question, direct provision of special education services were diminished. The services of an associate may not replace special education services identified in the IEP. The educational and behavioral plans require development, implementation and evaluation by a trained

professional." The services of a paraprofessional must be supplemental supports. Special education and related services must be planned and monitored by certified professionals.

In addition to academic and behavioral assistance, paraprofessionals have also been responsible for student safety. In *Manalansan v. Board of Education of Baltimore City* (2001), the parent demanded a 1:1 aide be assigned to her son for safety reasons due to his balance problems. The school district argued they had made good-faith efforts to hire temporary contract employees, who were often late or absent or left early. The district court determined that the provision of an aide for safety was a significant, mandatory element of the student's IEP and that the school district must provide the agreed-upon services to the student. In the *Elmore County Board of Education* (2002) (see Table 1) case presented earlier, a "split aide" would provide services to a 7-year-old student with Cornelia Delange syndrome to ensure her safety. Similarly, the *Jackson County Board of Education* (2002) (see Table 1) case held that a shared "on-call" aide would be able to meet the fifth-grader's need for safety. Similar safety duties were required in *Del Norte County Unified School District* (2000) (refusing to order a second aide to ensure a student's safety at school) and *Mobile County Board of Education* (2001) (finding the school district must provide safe transportation through the assignment of a bus aide).

Several cases highlight the importance of having certain school health services provided by qualified persons, whereas others clarified that certain health services must be provided only by licensed practical nurses (LPNs) and registered nurses (RNs) or by individuals under the supervision of LPNs or RNs. In *Skelly v. Brookfield LaGrange Park School District 95* (1997), the parent of a 4-year-old requested the school district provide a 1:1 aide to accompany the child to and from school to suction his tracheotomy tube as needed. Although the school district argued that such services were beyond the scope of obligations, the district court concluded that a paraprofessional must be used to provide such services. A similar decision was reached in *Kevin G. v. Cranston School Committee* (1997). In *San Francisco Unified School District* (2002), the decision specified that aides under the supervision of a qualified nurse may evaluate seizures, administer and monitor medication, and administer ventilation intervention if needed. In *Olympia School District* (2003), multiple aides were responsible for addressing a student's health needs, including toileting. In a later case, the parent of a 6-year-old with physical disabilities argued that a 1:1 nurse was required to monitor him and to provide suctioning of oral secretion as needed (*San Diego Unified School District*, 2004). The school district had prepared a special education teacher and three paraprofessionals to address the student's needs. A hearing officer con-

Table 3  
The Delegation of Responsibilities to Paraprofessionals

| Case  | S Data   | Issue  | Decision  |
|---|--|--|---|
| Linn-Mar Community School District, 41 IDELR 24 (SEA IA 2004)                   | 19-year-old M w/autism   | P charged that SD failed to provide FAPE and requested S be placed in out-of-district day school. SD argued that a variety of placements had been attempted to address P's concerns and that current placement offered FAPE.   | For P: By virtue of the provision of a 1:1 aide over the three years in question, direct provision of special education services were diminished. The services of an associate may not replace special education services identified in the IEP. The educational and behavioral plans require development, implementation and evaluation by a trained professional. |
| Manalansan v. Board of Education of Baltimore City, 35 IDELR 122 (DC MD 2001)   | 7-year-old M w/OHI (cerebral palsy, hydrocephalus, and a seizure disorder)   | P alleged IEP provision calling for 1:1 aide was not implemented following involuntary school transfer. Temporary contract employees hired were late, absent, and left early, placing student at risk before and after school for injury due to balance problems. SD maintained they showed a "good faith" effort to provide services and had "discretion" in implementing methodology of the IEP. | For P: The provision of an aide is a significant element of S's IEP and providing aide in accordance with IEP is mandatory, not discretionary. While S is not entitled to a particular aide, the services of an aide must be provided in accordance with his IEP. SD is bound by IDEA to provide the agree-upon services of the IEP.                                |
| Del Norte County Unified School District, 33 IDELR 50 (SEA CA 2000)             | 18-year-old S with PD (Leigh's Disease: muscular and skeletal deterioration) | P requested two aides be assigned to student since social interaction was a strong motivator for S. Two assistants were needed during transfers from bus, adjustment of braces and toileting. SD provided one assistant throughout the day and five different aides had been trained to work with S as 1:1. Second assistant not necessary and would be a more restrictive environment.            | For SD: Student did not require a second assistant to benefit from his instructional program and would make the S's environment more restrictive than necessary.  |
| Mobile County Board of Education, 34 IDELR 164 (SEA AL 2001)                    | 16-year-old M w/MD   | P alleged S suffered physical injuries due to inadequate protection by the SD. S was attacked and injured by three S's riding the bus. SD insisted that aide not furnished in order to foster greater independence of S by having him ride the bus without adult accompanying.   | For P: Concomitant to responsibility to provide transportation to permit children to attend appropriate special education programs is the obligation to provide a safe environment for S's transported. An aide should have been assigned to accompany the S.   |
| Skelly v. Brookfield LaGrange Park School District 95 (ND IL 1997)              | 4-year-old M w/ Pelizaeus-Merzbacher Leukodystrophy                          | P requested SD provided 1:1 aide to accompany S on bus to and from school to suction tracheotomy tube as needed. SD argued such services beyond the scope of obligations.  | For P: Provision of aide to perform any necessary suctioning of tracheotomy tube was not an excluded medical service under the IDEA. S required aide on bus, not LPN or RN.   |
| Kevin G., v. Cranston School Committee, 27 IDELR 32 (1 <sup>st</sup> Cir. 1997) | 11-year-old M w/PD   | P requested son be placed in neighborhood school and that full-time aide be reassigned to that school. S required nursing services for tracheal tube breathing. SD maintained it had obligation to provide FAPE in school closest to home.   | For SD: A full-time nurse was assigned to the student's current school, and reassignment was not necessary since the district offered the S FAPE in the non-neighborhood school   |

Table 3—Continued

| Case   | S Data                                  | Issue  | Decision  |
|--|---|--|---|
| San Francisco Unified School District, 5 ECLPR 377 (SEA CA 2002)               | 3 ½-year-old M w/multiple disabilities. | P requested that SD address S's health care needs involving management of seizures. SD argued prolonged seizures were "medical emergencies" beyond the scope of their obligations  | For P: SD must provide health services, and aides under the supervision of qualified nurse may evaluate seizures, administer and monitor medication, and administer ventilation intervention if needed. |
| Olympia School District, 103 LRP 38306 (SEA WA 2003).                          | 16-year-old F w/MD                      | P asserted S not receiving adequate school health services addressing toileting since multiple aides assigned. SD argued that IEP did not call for 1:1 aide.   | For SD: No evidence to support a conclusion that multiple assistants were inappropriate in provision of services  |
| San Diego Unified School District, 41 IDELR 195 (SEA CA 2004)                  | 6-year-old M w/PD                       | P argued that son was medically fragile child who requires constant monitoring and frequent suctioning of his oral secretions by a one-to-one nurse to safely participate in his school program. SD contended that special education teacher and 3 aides could safely meet S needs.            | For SD: S needs could be met "by a trained and dedicated one-to-one qualified special education technician supervised by a full-time school nurse".   |
| Cedar Rapids Community School District v. Garret F., 29 IDELR 966 (S.Ct. 1999) | 17-year-old M w/PD                      | P requested that SD provide medical services including catheterization, suctioning of his tracheotomy tube, monitoring his ventilator, ambu-bagging, assistance with food and drink, and positioning. SD argued these services were "medical" and not the responsibility of the SD to provide. | For P: SD obligated to provide health services as related services, since they could be provided by personnel other than a physician.   |

Note. M = male; F = female; P = parent; SD = school district; S = student; MD = mental disability; OHI = other health impaired; PD = physical disability; LPN = licensed practical nurse; RN = registered nurse.

cluded that the student's needs could be met by "by a trained and dedicated one-to-one qualified special education technician supervised by a full-time school nurse." In *Cedar Rapids Community School District v. Garret F.* (1999), a representative of the State Board of Nursing ruled that the health-related services for a 17-year-old student could be delegated to nonlicensed personnel, but only if a supervising licensed RN was the same building. The school district, however, argued that such services were medical services and excluded as a school district's obligation. The Supreme Court clarified that if the health services could be provided by personnel other than a physician, the school district must assume responsibility for providing those services.

The review of administrative and court decisions concerning the responsibilities of paraprofessionals revealed that aides under the supervision of qualified nurses may provide health-related services for students with disabilities. Paraprofessionals may also have responsibilities including academic and behavioral assistance, as well as safety and student health support. Importantly, all duties of paraprofessionals must be under the supervision of credentialed, qualified professionals. The following section presents cases addressing the adequacy of paraprofessional training and supervision.

### **Training and Supervision of Paraprofessionals**

Paraprofessionals must be adequately trained and supervised in the performance of their duties. Table 4 presents several decisions that addressed the adequacy of paraprofessional training to provide IEP services to students with autism, behavior disorders, cerebral palsy, communication disorders, and health needs. In *Moorestown Township Board of Education* (2003), an ALJ ruled that the district-assigned aide could meet the IEP specifications concerning training in Asperger's and specific types of assistance to the student. A hearing officer in *Board of Education of the City of New York* (1998) concluded that the teacher, paraprofessional, related service personnel, and classmates must receive training on the student's Tourette syndrome, ADHD, and obsessive-compulsive disorder. An aide for a student with cerebral palsy had received on-the-job training from the student's former aide, physical therapist, and communication specialist in *Board of Education of the Oakridge Public Schools* (2003). The hearing officer concluded that the aide was capable of performing the duties set forth on the IEP. In *Independent School District No. 11, Anoka-Hennepin* (2001), the parent argued that a change in paraprofessionals deprived the student of FAPE because they were not

Table 4  
The Training and Supervision of Paraprofessionals

| Case  | S Data   | Issue   | Decision   |
|---|--|---|--|
| Moorestown Township Board of Education, 38 IDELR 139 (SEA NJ 2003)  | 1 <sup>st</sup> grade M with autism/Aspergers      | P requested a 1:1 aide fully trained in autism/Asperger's Syndrome. IEP specified aide would be trained in Asperger's and assist S throughout day. SD argued that current aide assigned could provide duties specified in the IEP and was receiving additional training in autism/Aspergers.  | For SD: Aide assigned to S capable of meeting child's needs. By arranging for additional training, the SD showed a good faith effort to meet S's needs.  |
| Board of Education of the City of New York, 28 IDELR (SEA NY 1998)  | 8-year-old M w/OHI, Tourette's Syndrome, and ADHD. | P contended IEP inadequate due to failure to train S's teacher, paraprofessional, classmates and other school personnel. SD argued IEP as proposed was appropriate.   | For P: SD must provide training for S's teacher, paraprofessional, related service providers, & classmates. Initial and "update" training to be provided as necessary.   |
| Board of Education of the Oakridge Public Schools, 40 IDELR 274 (SEA MI 2003)                                       | 9-year-old F w/OHI (cerebral palsy)                | P complained that paraprofessional interfered with S's health and safety on 4 days by leaving her unattended for 15 minutes, strapping S's feet to wheelchair, and lacking current first aid training. SD maintained aide had received on-the-job training to assist S by former aide, physical therapist, communication specialist | For SD: Aide capable of appropriately performing duties set forth in IEP and has performed satisfactorily. S is making educational progress. Foot strapping was ill-advised, but not abusive. Aide's qualifications and experience met or exceeded standards of state and district.                                    |
| Independent School District No. 11, Anoka-Hennepin, 36 IDELR 81 (SEA MN 2001)                                       | 10-year-old M w/autism                             | P argued that change in paraprofessionals deprived S of FAPE since they were not properly trained in use of DynaVox/ DynaMyte communication devices. SD maintained substitute aides were properly trained and supervised.   | For SD: S made progress despite change in staff. Substitute aides received sufficient training to implement IEP. SD has discretion to determine who will provide programs of special education. A change in aide was within the province of SD and not subject to discussion by IEP team.                              |
| Southern Regional Board of Education, 38 IDELR 110 (SEA NJ 2002)  | 13-year-old M w/HI                                 | P requested a bus aide fluent in American Sign Language. SD argued that aide knew enough ASL to address basic safety issues required on the bus.  | For SD: Aide trained by district proficient to assist student on bus.  |
| Silsbee Independent School District, 25 IDELR 1023 (SEA TX 1997)  | 7-year-old M w/PD                                  | SD argued that training staff in resuscitation technique and seizure was "medical training" not required under the IDEA. P argued that such training necessary to provide "related services", and that full-time nurse must be available at all times.  | For P: Staff training in resuscitation and seizure management is related services to assist S in benefiting from special education instruction.  |
| Stenger v. Stanwood School District, 30 IDELR 945 (WA Ct. Appeals, 1999)  | Middle-school M w/MD and BD                        | Two instructional aides filed suit against district of injuries sustained while working with S. SD argued adequate training had been provided to the aides  | For the aides: A triable issue as district's efforts were inadequate and constituted willful disregard.  |
| Sioux City Community School District, and Western Hills Area Education Agency (AEA 12), 104 LRP 10804 (SEA IA 2003) | 7-year-old M w/autism                              | P charged that the SD failed to monitor and enforce the provisions of IEP concerning regular classroom supports. SD argued that the paraprofessional—the S's mother—was monitoring progress.  | For P (in part): Paraprofessionals must "work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services" and "not serve as a substitute for appropriately authorized professional personnel" |

Note. M = male; F = female; P = parent; SD = school district; S = student; ADD/ADHD = attention-deficit-hyperactivity disorder; MD = mental disability; OHI = other health impaired; BD = behavioral disorder; HI = hearing impaired; PD = physical disability.

properly trained in the use of communication devices (i.e., DynaVox/DynaMyte). The school district claimed the aides had been trained before working with the student. The hearing officer concluded that the paraprofessionals were sufficiently trained to implement the IEP and provide FAPE, documented by the student's progress and benefits. Without a threat to the child's FAPE, a change in aide was within the province of the school district and not subject to discussion or determination by the IEP team: "School districts have the discretion to determine who will provide students with their program of special education and are not required to seek parental input when a staffing decision is made (36 IDELR 81)." An ALJ in *Southern Regional Board of Education* (2002) held that the district-provided aide had received sufficient training in American Sign Language to accompany a student on a bus to and from school. In *Silsbee Independent School District* (1997), the school district argued that training staff in resuscitation techniques and seizure management for a student with physical disabilities was "medical training" not required under the IDEA. A hearing officer concluded that such training was not medical, but rather a related service that must be provided to the student to benefit from his special education program. Without adequate training, paraprofessionals themselves may be in danger of injury, creating additional liability to schools (*Stenger v. Starwood School District*, 1999). In each of these cases, the sufficiency of training was the determinative factor.

In addition to adequate training, paraprofessionals must be adequately supervised. In *Sioux City Community School District* (2003), the parent of a 7-year-old child with autism served as his paraprofessional. In that role, she became concerned that the district was not monitoring or enforcing the provision of his IEP concerning regular classroom supports. Because the student was in an inclusive classroom the entire day, the only person consistently monitoring the program was the associate. The ALJ ruled that paraprofessionals must "work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services" and "not serve as a substitute for appropriately authorized professional personnel (104 LRP 10804)."

These decisions show not only the diverse duties assigned to paraprofessionals, but also the need for adequate training to perform those duties. Several parental requests for specific or credentialed paraprofessionals were denied (*Independent School District No. 11*, 2001; *Moorestown Township Board of Education*, 2003) if school districts were able to justify the sufficiency of the paraprofessional's training. Trained paraprofessionals must also be adequately supervised by credentialed, qualified professionals.

## Discussion

Based on the analysis of administrative and court decisions, several policy implications may be identified. The determination of the need for paraprofessional support rests with the IEP team, and the proposed recommendations are addressed to those local teams. The selection of paraprofessionals is similarly a school-district responsibility, and the discussion centers on the potential benefits of IEP team-selected paraprofessionals, as well as the assignment of support-only roles. However, the delegation of responsibilities and the training and supervision of paraprofessionals are based on local and state standards, necessitating a discussion of both local implementation issues as well as broader public policy issues.

### *Determining the Need for Paraprofessional Services*

The analysis of cases revealed that 1:1 paraprofessional assistance was ordered if necessary for a student to benefit meaningfully from his or her educational program. However, if the provision of a paraprofessional had a negative impact on potential social benefits, requests for 1:1 assistance were denied. Several decisions found that the provision of classroom aides on an "as-needed" basis was more beneficial than 1:1 continuous support.

The majority of cases presented in Table 1 were administrative decisions ( $N = 15$ ), with only one district court decision. Various types of disabilities were represented in the cases, including learning disabilities, attention-deficit disabilities, and speech-language impairments. However, in the four cases substantiating the need for a 1:1 paraprofessional, three of the students had severe or multiple disabilities. Although the school districts argued that classroom-based aides would be sufficient, the decisions substantiated the need for 1:1 assistance. The hearing officers in *Montgomery County Public Schools* (1997) and *Watson Chapel School District* (2000) determined that both students with multiple disabilities required 1:1 assistance, not a classroom aide, whereas a 5-year-old with pervasive developmental disabilities required a 1:1 paraprofessional in *Lake Travis Independent School District* (2003). Those students with multiple disabilities required 1:1 support to receive academic and non-academic benefit.

In determining a student's need for paraprofessional services, IEP teams must ask "Are the services necessary to provide the individual with academic or non-academic benefit?" Giangreco, Broer, and Edelman (1999) offer several criteria to guide collaborative IEP team decision making. The team must first identify the reasons why paraprofessional supports are being considered based on the student's needs. A focus on needs rather than student characteristics will facilitate a match between needs and the person to provide services to meet those needs. Instead of basing provision on categories or characteristics, the team looks at a

student's need and determines what personnel can best meet those needs. IEP teams must determine the needs of the student in relation to the classroom environment, and then plan the where, when, and how of paraprofessional support (Mueller & Murphy, 2001). Plans for increased independence and social interaction must also be developed. These plans are included in the paraprofessional training discussion below.

The IEP team must also determine the nature of paraprofessional assistance necessary to meet the student's needs and achieve the student's goals. The analysis revealed that IEP teams must discuss the intensity of services required. The student may require 1:1 assistance frequently throughout the school day, or may require only intermittent support. Importantly, the nature of the assistance may affect the student's educational program. For example, close proximity of the paraprofessional is associated with high levels of academic engagement by students with disabilities (Werts, Zigmond, & Leeper, 2001). However, 1:1 assistance and the close proximity of the paraprofessional have resulted in fewer teacher-initiated interactions and less teacher engagement compared with program-based paraprofessional delivery (Giangreco et al., 1997; Giangreco, Broer, & Edleman, 2001; Young, Simpson, Myles, & Kamps, 1997). The IEP must specify if the student is to receive 1:1 assistance full time or on an as-needed basis.

The need for careful scrutiny of the assignment of paraprofessionals has been recognized in the professional literature (Freschi, 1999; Marks, Schrader, & Levine, 1999). The team should consider alternatives to paraprofessional assignment, such as natural peer, school, and classroom supports. Such consideration will minimize the potential for unintended harmful effects of paraprofessional assignments, including interference with teacher and peer interactions and loss of personal control (Giangreco, Edelman, Luiselli, & MacFarland, 1997). The IEP team is required to discuss and consider a full range of supplemental aids and services to support a child's education in the least restrictive environment (*Greer v. Rome City School District*, 1992). The analysis of cases revealed a reluctance to assign 1:1 paraprofessionals if other supports such as a behavior plan (e.g., *Waterbury Board of Education*, 2002; *Pell City Board of Education*, 2003) could be successful. Etscheidt and Bartlett (1999) offered a four-step approach to determine supplemental aids and services, based on a discussion of several ecological dimensions. Constructions in the instructional (e.g., learning structures, assistive technology), physical (e.g., room arrangement, mobility plans), social-behavioral (e.g., peer support, class-wide approaches), and collaborative dimensions (e.g., coteaching, teacher training) may facilitate inclusive placements in ways other than the provision of a paraprofessional. Although the question "Does the student need a paraprofessional to assist him or her?" (p.

171) is an inquiry within the collaborative dimension, such assistance is only one of numerous supports for IEP teams to explore. By considering alternative supports to address the educational needs of students with disabilities, paraprofessional assignment may be viewed as one, not the only, option available (Giangreco, Edelman, & Broer, 2003). A variety of supplemental aids and services must be considered to enable students with disabilities to be educated with nondisabled children [20 U.S.C. § 1404(29)].

### ***Selection and Qualifications of Paraprofessionals***

The analysis of judicial and administrative decisions suggested that if particular credentials are required for the provision of paraprofessional services, those qualifications must be specified on the IEP. The district will maintain discretion for the assignment of paraprofessionals unless the selection would deny a child FAPE or affect the child's welfare.

Although the analysis of administrative decisions and case law confirmed that the employment of personnel is an administrative function, involving teachers in the selection of paraprofessionals may be an important step to improving teacher supervision of the paraprofessional. However, teachers have reported that often they were not involved with the selection or hiring of paraprofessionals they supervised (French, 2001). Teacher involvement in the selection process may assist in defining student or classroom duties and clarifying boundaries to guide the interaction between the paraprofessional and parents (Chopra & French, 2004). Both duties and interactions would be monitored by the teacher. Although not a legal requirement, it seems reasonable to invite teachers to help select the individuals with whom they will be closely working and supervising.

Involving parents in the selection process may enhance the quality of parent-professional interactions essential for effective programs. The value of teacher-parent collaboration is well documented (e.g., Pugach & Johnson, 1995; Springate & Stegelin, 1999; Wheeler & Richey, 2005). When possible, a teacher-parent consensus on the selection of the paraprofessional may contribute to highly effective paraprofessional services.

Although the analysis revealed that paraprofessionals were assigned a variety of responsibilities including academic (*Los Angeles Unified School District*, 1998), therapeutic (*Brevard County School Board*, 2004), and medical (*Freeport School District*, 2000), a growing number of paraprofessionals are assigned duties for which they are not qualified (Millsap, Moss, & Gamse, 1993). This overextension in duties for which the paraprofessional is not qualified may have a negative impact on the quality of the student's program. Paraprofessionals reported that instruction was their primary goal, yet they, along with their administrators and supervising teachers, reported a lack of academic qualifications

for those instructional roles (Giangreco, Broer, & Edelman, 2002). The authors ask if expanding a support service model that is highly reliant on unqualified professionals may be “inadvertently developing or perpetuating a double standard whereby students without disabilities receive instruction primarily or exclusively from certified educators, whereas some students with disabilities receive their instruction primarily or exclusively from paraprofessionals” (p. 62). Paraprofessionals must be qualified to provide the agreed-upon services. As indicated in the case analysis, the school district must establish the adequacy of training efforts to ensure students are benefiting from the IEP. Further, paraprofessionals may not be delegated responsibilities for which they are not qualified. Often the least-qualified personnel are in the position of providing the majority of instruction and related services to students presenting the most complex learning challenges (Brown, Farrington, Knight, Ross, & Ziegler, 1999). Additionally, paraprofessionals must be delegated only those responsibilities for which they are adequately trained.

### ***Delegation of Responsibilities to Paraprofessionals***

For the majority of cases addressing the responsibilities of paraprofessionals, the major issue concerned the provision of school health services to students with significant medical needs. Questions centered on the paraprofessional assignment to assist with tracheotomy tube suctioning (*Skelly v. Brookfield LaGrange Park School District 95*, 1997; *San Diego Unified School District*, 2004), ventilator monitoring, Ambu-bagging, and positioning assistance (*Cedar Rapids Community School District v. Garret F.*, 1999), and administration and monitoring of medication (*San Francisco Unified School District*, 2002).

Decisions regarding which duties are assigned to paraprofessionals must be guided by legal and ethical considerations, as well as the preferences of the student, the parent, the teacher, and the paraprofessional (Ashbaker & Morgan, 1999). The responsibilities delegated to paraprofessionals need to come from at least two sources: state and local standards and the needs of teachers and students (Hilton & Gerlach, 1997).

Many researchers have clarified that paraprofessionals should support a student's educational program but must not be expected to assume full or independent responsibility for the student's IEP (French, 1998; Giangreco & Doyle, 2002; Marks et al., 1999; Riggs & Mueller, 2001). Many professional organizations have clarified this support-only role. For example, the National Joint Committee on Learning Disabilities (1999) published a position paper addressing the use of paraprofessionals serving students with learning disabilities. The document clarifies that the decision to delegate duties to paraprofessionals may be made only by fully qualified professionals who have determined that the

quality of service will not be compromised. Certain tasks may be delegated to paraprofessionals, but the legal and ethical responsibility for all services remains with the qualified teacher or service provider. Supervisors who fail to provide appropriate supervision of paraprofessionals may be in violation of their profession's code of ethics. The document lists activities that may not be delegated to paraprofessionals, including assuming sole responsibility for instruction or provision of services; serving as a substitute for the qualified professional in meetings, documents, or communications; writing or modifying instructional plans; and disclosing educational, clinical, or confidential information unless designated by the qualified professional. In reviewing other professional guidelines and research, Pickett et al. (2003) extended this list to include diagnosing learner needs, planning individualized/personalized programs, aligning curriculum with instructional strategies, planning lessons, and assessing learning outcomes. Clearly the planning and monitoring of instruction remains the responsibility of the credentialed, certified professional.

Paraprofessionals are often delegated duties that would extend beyond the support-only role. Paraprofessionals reported responsibility for a wide range of duties, including behavioral support, lesson engagement, and adaptation or modification of curriculum (Downing, Ryndak, & Clark, 2000). The paraprofessionals had a high level of responsibility and independence for these duties but expressed concern regarding their qualifications to carry out those duties. The authors concluded that the practice of assigning the least-trained member of an IEP team to spend the greatest amount of time with a student was questionable. Marks, Schrader, and Levine (1999) earlier found that paraprofessionals assumed primary responsibility for managing the academic and behavioral needs of students in general education settings. Paraprofessionals accepted this high level of responsibility to ensure that the student and general education teacher had a positive inclusion experience. The authors suggested that having paraprofessionals assume sole responsibility for inclusion was not an acceptable practice because it negated the importance of shared and collaborative decision making. Paraprofessionals have also reported concerns about inadequate training to support students with severe behavioral and physical disabilities, as well as expectation to “take over” whole classrooms when teachers are called out (Goessling, 1998).

Teachers may relinquish instruction to paraprofessionals who they believe have special training to work with students with disabilities (Giangreco, 2003). Indicators that professionals may have delegated too much responsibility to paraprofessionals include the teacher being less familiar with the student than the paraprofessionals; the teacher deferring important curricular, instructional, and management decisions to the paraprofessional; or the teacher's relationship with the fam-

ily being less developed than that of the paraprofessional (Giangreco et al., 1999). An additional indicator is when the absence of the paraprofessional creates a crisis because other school personnel cannot assist the student. The authors concluded that students with disabilities who are taught primarily by paraprofessionals and who have limited access to qualified personnel may be in danger of receive inadequate education.

Roles of paraprofessionals must be explicitly and individually clarified by IEP teams to ensure congruence between the skills of the paraprofessional, the needs of the student, and the roles of all team members (Demchak & Morgan, 1998; Giangreco, Edelman, Broer, & Doyle, 2001; Welch, Richards, Okada, Richards, & Prescott, 1995). In delegating responsibilities to paraprofessionals, French (2001) recommended that teachers give specific information regarding the scope, goals, time frame, and monitoring plans to the paraprofessionals. Role clarity and shared expectations will result in paraprofessionals feeling appreciated and respected (Giangreco, Edelman, & Broer, 2001). Assignments must ensure that paraprofessionals' duties are appropriate to their positions as support staff (Millsap et al., 1993). Paraprofessionals may assist in data collection, material development, or implementation of teacher-designed activities. For example, the paraprofessional may observe and record the occurrence of social interactions or class participation in general education settings. Observational data would be useful in evaluating the child's progress toward IEP goals. The paraprofessional may prepare preteaching or priming materials (Koegel, Koegel, Frea, & Green-Hopkins, 2003) to increase the child's participation and independence. These materials may be presented to the child by the paraprofessional, providing the teacher supervises both the development and the delivery of the materials. However, an extension of responsibilities beyond the support-only role may have a negative impact on a student's educational program and fail to meet the school's legal obligation to supervise the provision of a FAPE for students with disabilities [20 U.S.C. § 1413(g)(3)(D)]. Of particular concern is the delegation of invasive medical and health-related procedures to paraprofessionals.

### ***Delegation of Invasive Procedures for Students With Special Health Care Needs***

The obligation to provide FAPE in the least restrictive environment requires careful planning for students with severe disabilities, including those with special health care needs. As revealed in the analysis, paraprofessionals are often responsible for providing health services, including invasive procedures (e.g., urinary catheterization, colostomy/ileostomy care, gastrostomy feedings). In 1992, The Denver Federation of Paraprofessionals filed a grievance with the Denver Public Schools concerning the delegation of invasive proce-

dures for students with special health needs. According to Fordyce (1995), the paraprofessionals were aggrieved on several grounds: lack of preparation for the invasive duties, absence of choice to accept or reject the responsibilities, the illegal nature of the delegation of nursing tasks because the Colorado Nurse Practice Act contained no provisions regarding delegation, failure to compensate for additional work, and exposure to liability. The grievance resulted in changes to both the Nurse Practice Act and to policies for Denver Public Schools. The Nurse Practice Act was changed to allow nurses in child care, school, and other settings to train, supervise, monitor, and evaluate designated procedures on site with students. Denver Public Schools now provide for initial and ongoing training regarding invasive procedures, voluntary participation by the paraprofessional, monthly stipends depending on the number and type of procedures performed, and paraprofessional input to planning and documentation of the child's health plan.

When providing health care in schools, state medical and nurse practice acts must be reviewed to identify delegation regulations (Hertel, 1994). Although legislation may legally permit delegation to other trained personnel, the nurse still retains responsibility and liability concerning performance of delegated duties and must judge whether a trained, nonmedical person may safely and competently provide those duties (Long, 1994). Such delegation may include the administration of medication. Safe delegation of duties to paraprofessionals is addressed by the National Association for School Nurses (2002). The standards call for assessment data and needs to be documented in the Individualized Family Service Plan (IFSP) or IEP and delegation of health care duties based on state criteria of the nurse practice act. However, the nurse does not delegate responsibility for ongoing assessment or evaluation of the quality and effect of health intervention.

Duties delegated to paraprofessionals must be supplementary and not supplant the special education or related services specified in the IEP. An overextension or overreliance on paraprofessional support may result in denial of FAPE. The paraprofessional may assist with instruction, data collection, safety, or student health under the supervision of credentialed, certified professionals.

### ***Supervision and Training of Paraprofessionals***

The analysis of administrative decisions and case law revealed both the need to train paraprofessionals adequately for assigned duties and the need for those paraprofessionals to be supervised adequately by credentialed, qualified professionals. Approximately 290,000 of the 525,000 paraprofessionals currently used in full-time positions nationwide are serving children and youths with disabilities (Pickett et al., 2003). Concomitant with the increase in the number of paraprofessionals is an increased awareness to address issues

concerning the preparation and supervision of paraprofessionals. Recent federal legislation requires higher standards and improved supervision for paraprofessionals.

Amendments to the Elementary and Secondary Education Act in 2001 created the No Child Left Behind (NCLB) Act. Provisions in several Titles throughout the law address the employment criteria and supervision of paraprofessionals. Paraprofessionals used before January 8, 2001, must have a high school diploma or equivalent [20 U.S.C. § 1119(1)(d)] and those used after January 8, 2002 in Title I programs must complete at least 2 years of study at an institution of higher education, obtain an associate degree or higher before employment, or meet a rigorous standard of quality demonstrated through a formal state or local assessment of knowledge in reading, writing, and mathematics [20 U.S.C. § 1119(1)(c)(1)]. The duties of the paraprofessional must be clearly specified, and “paraprofessionals may not provide any instructional service to students unless they work under the direct supervision of a teacher” [20 U.S.C. § 1119(1)(g)(3)(A)]. Teachers must prepare the lessons, plan the instructional support activities the paraprofessional implements, and evaluate student performance. Likins (2003) reported that many school principals and district directors are concerned that they will lose paraprofessionals due to the NCLB requirements. Paraprofessionals cite the time and cost of training, the required assessment of their knowledge, and low salary levels as primary reasons for considering leaving their positions. Many states have developed paraprofessional standards and training programs in response to this legislation (e.g., the Iowa Model for Paraprofessional Development; NREL, 1999). Other training initiatives have focused on certain student needs (e.g., Backus & Cichoski-Kelly, 2001; Kotkin, 1995; Parsons & Reid, 1999).

The Individuals with Disabilities Act was reauthorized in 2004 and similarly addressed the preparation and supervision of paraprofessionals. Qualifications for paraprofessionals must be consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services [20 U.S.C. § 1412(a)(14)(B)(i)]. The certification or licensure for the paraprofessionals may not be waived on an emergency, temporary, or provisional basis [20 U.S.C. § 1412(a)(14)(B)(ii)]. Paraprofessionals may assist in the provision of special education or related services only if they are appropriately trained and supervised [20 U.S.C. § 1412(a)(14)(B)(iii)]. States may impose additional standards or restrictions than those identified in federal statutes. Administrators and teachers should be aware of state regulations concerning the employment of paraprofessionals (French, 1999).

The inadequacy of training for paraprofessionals is

self-evident. Interviews with paraprofessionals working in inclusive settings indicated that they spent the majority of their time providing direct instruction to students, yet they lack adequate training for the specific responsibilities of their jobs (Riggs & Mueller, 2001). Paraprofessionals have identified the highest perceived need for training to include knowledge of specific disabilities, behavior management, communication, learning styles, and issues in inclusion (Riggs, 2001). Paraprofessionals working in early intervention and early childhood special education identified additional areas of child development, family involvement, and best service delivery practices as training needs (Killoran, Templeman, Peters, & Udell, 2001). On-the-job training for paraprofessionals is the norm in most states (Carroll, 2001).

Given the concern that the assignment of a paraprofessional can have a negative impact on social interactions and result in adult dependency (Giangreco, Broer, & Edelman, 1999), paraprofessional training should include strategies to facilitate social interaction with teachers and peers. For example, peer expectancies (DiSalvo & Oswald, 2002) have increased the social interactions of students with autism. Paraprofessionals could be trained to prepare typically developing peers for interactions with a student with autism. Paraprofessionals could be trained in implementing other strategies to increase social interaction, including prompting, social stories, and self-monitoring (McConnell, 2002). Importantly, the teacher would need to supervise the development, implementation, and evaluation of these interventions.

The training needs of paraprofessionals will expand as rapidly as innovations in education. For example, the use of assistive technology continues to increase (Zabala et al., 2000), and paraprofessionals will need specific training in using voice synthesizers, touch-sensitive keyboards, and other assistive technology devices (Wadsworth & Knight, 1996). The IDEA requires IEP teams to consider whether the child requires assistive technology devices and services [20 U.S.C. § 1414(d)(3)(B)(v)] and includes training and technical assistance for technology devices [20 U.S.C. § 1402(2)]. Also, child-specific training will be needed to ensure that individualized health procedure administrations (e.g., colostomy/ileostomy care) are addressed (Lehr & Greene, 2002). Although parents are often the “expert” sole trainers of school personnel, medical personnel “competent in training others” should also be involved in initial and ongoing training and monitoring (Lehr & Greene, 2002).

As clearly shown in the analysis of cases, paraprofessionals must be supervised in their delegated responsibilities. Instructional services to students may be provided by paraprofessionals only under the direct supervision of fully qualified teachers, because the legal and ethical responsibility for student instruction remains

with qualified teachers (NREL, 1999). Surveyed teachers were able to identify several competencies required for adequately supervising paraprofessionals, including planning and scheduling, communication, instructional support, modeling for paraprofessionals, and management of paraprofessionals (Wallace, Shin, Bartholomay, & Stahl, 2001). However, these teachers were not observed as often showing these competencies. French (2001) surveyed teacher supervision practices and found that the majority of teachers interviewed did not plan for the paraprofessional, and those who did plan transmitted their plans orally. Student goals and the purpose of activities were not included in plans, nor were specifications for how paraprofessionals were to document student progress. The author concluded that the lack of a written plan, specification of goals, or documentation of student performance would hinder the teacher in ensuring the academic welfare of students. Special education teachers reported that they had no pre-service or in-service preparation for supervising with paraprofessionals (Drecktrah, 2000). The reported reluctance of teachers to supervise paraprofessionals (French, 1998) may be due to the inadequacy of their supervision training.

Guidelines for working with paraprofessionals emphasize the importance of teacher-planned and teacher-supervised activities, including “teacher-planned instruction under direct supervision of such persons” and “implementing behavior management plans developed by the teacher” (Center on Disability and Community Inclusion, 2004). Yet many paraprofessionals provide extensive services to students but fail to document student progress or have limited interaction with the teacher. As the ALJ in *Sioux City Community School District and Western Hills Area Education Agency* (2003) concluded, the paraprofessional may be “involved in data collection; (however) the responsibility to monitor the implementation of the IEP falls first to the special education teacher and ultimately to (the school district and state agency)” (104 LRP 10804).

### **Potential Liability for Both Teacher and Paraprofessional**

When paraprofessionals are assigned supervision, a potential for tort liability for injury exists. Cases of pupil injury have traditionally held both teacher and teacher aide to a greater “standard of care” than is normally required in other personal relationships (Alexander & Alexander, 2001). Importantly, a teacher or principal is not liable for the negligent acts of a properly appointed and qualified paraprofessional. However, if a teacher or principal assigned duties “*for which the aide is not qualified*” or that extend beyond the scope of employment, the supervisor may be liable for negligent acts by the aide (Alexander & Alexander, 2001, p. 575, italics added). All members of a student’s IEP team, as well as paraprofessionals assisting in the delivery of ser-

vices, must be aware of safety issues, potential problems, and required supervisory issues (Yell, 2002). For example, the teacher in *Allen v. Crawford* (1993) was not liable for negligence when her aide struck a student in the bathroom because it was determined that the teacher exercised ordinary care and there was no evidence that increased supervision could have prevented the injury. Similarly, in *Tomlinson v. Board of Education of the City of Elmira* (1992), parents alleged negligent supervision by having only one classroom aide monitor two different classes, resulting in injury to a student. The Supreme Court of New York held that there was no convincing evidence that the defendants were negligent or acted improperly, and that the lack of supervision was not the proximate cause of the injuries.

Although the literature is filled with statements suggesting that paraprofessionals work under the direction and supervision of qualified professionals, self-report data suggest that paraprofessionals operate independently and autonomously, isolated from direction and supervision. As the analysis of administrative and court decisions indicated, adequate training and supervision of paraprofessionals will ensure compliance with both the procedural and substantive requirements of the IDEA. Provisions concerning personnel [20 U.S.C. § 1413(a)(3)] and FAPE [20 U.S.C. § 1412(a)(1)(A)] outline those specific requirements. Although the IDEA and NCLB mandate supervision and training for paraprofessionals, IEP teams must develop child-specific plans for initial and ongoing training as well as plans for paraprofessional supervision. Such plans will enhance the quality of services to students while reducing the potential for litigation and liability.

## **Summary and Recommendations**

IEP teams must decide whether paraprofessional services are necessary for a student to meaningfully benefit from the special education program designed. If particular credentials for a paraprofessional are required, those qualifications must be specified on the IEP. The nature of the services (e.g., 1:1 or as-needed) must also be stated.

If the IEP determines that paraprofessional support is necessary to ensure FAPE, the selection of a qualified paraprofessional should be a collaborative decision of the team, if possible. Although selection of personnel is an administrative function, soliciting teacher and parent input may enhance the quality of student services and the supervision of the paraprofessional. As appropriate, students may be included in IEP team decisions regarding paraprofessional support to explore the perspectives of students as well as the role of self-determination in program decisions (Giangreco, Edelman, Broer, & Doyle, 2001).

Once assigned, the IEP team must plan for child-specific training for delegated duties. The duties of the

paraprofessional must be clearly described and monitored. Including paraprofessionals in IEP meetings might assist in clarifying duties and address parents' requests for better communication with those associates (French & Chopra, 1999; Werts, Harris, Tillery, & Roark, 2004). Appropriate duties might involve the implementation of team-planned instruction, the collection of data to assess team-determined goals, or interventions for student safety or health care. The responsibility for progress monitoring of special education or related services remains with the IEP team. Teachers must delegate support-only duties and supervise the paraprofessionals to ensure that expected student outcomes are attained. Documentation of satisfactory academic and social outcomes of students assisted by paraprofessionals has not been demonstrated (Giangreco & Doyle, 2002; Jones & Bender, 1993; Salzberg & Morgan, 1995). One of the few investigations examining student outcomes concluded that paraprofessionals were not as effective as teachers and did not improve student performance (Gerber, Finn, Achilles, & Boyd-Zaharias, 2001). Increased attention to the progress monitoring requirements of the IDEA [20 U.S.C. § 1414(d)(1)(A)(viii)] would provide essential student outcome data and facilitate adequate supervision of paraprofessionals.

Many students with disabilities will need the services of paraprofessionals to receive FAPE. However, in determining the need for paraprofessional assistance, IEP teams must explore a variety of supplemental aids and services other than the provision of a paraprofessional to meet a student's needs and facilitate inclusion. Too often, the assignment of a paraprofessional is the only option offered: "mandating a paraprofessional and nothing else" (*Board of Education of the City of New York*, 1998). Often IEP teams are "inheriting recommendations for paraprofessional supports from sending schools" (Giangreco, Broer, & Edelman, 2002, p. 56) without a renewed discussion about the current needs of the student. In addition to concerns regarding the interference effects of paraprofessional support, failure to explore other options may circumvent the need to identify systemic changes that will support the inclusion of students with disabilities. The assignment of paraprofessionals may inhibit, prevent, or excuse change efforts (Brown et al., 1999). The delegation of duties for which paraprofessionals are not qualified may be an artifact of a resistance to construct classrooms capable of meeting the diverse needs of all children.

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