

Autism Society of British Columbia

Autism...a part of our world, not a world apart



F.E.A.T. of B.C.

Families for Early Autism Treatment of British Columbia

Dedicated to "Medically Necessary" autism treatment

The ASBC and FEAT of BC are pleased to be able to provide you with the following summary of the recent BC Supreme Court Hewko judgment relating to a child with autism within the Abbotsford School District. This judgment is seen as a key precedent in education and school law in British Columbia. Our organizations urge you to distribute this information widely amongst your Board and staff.

If you have any questions please feel free to contact FEAT of BC at 604-534-6956 or the ASBC at 604-434-0880

School Districts have to Hire Aides with Child-Specific Training for Autistic Students B.C. Supreme Court Rules

In November 2006 Madam Justice Koenigsberg ruled that the Abbotsford School District breached its duty to consult and accommodate when it repeatedly failed to provide a classroom aide who was capable of demonstrating instructional control of a student with autism, Darren Hewko.

In this groundbreaking precedent, the Judge set out a number of steps that all School Districts must follow in order to meet their duty to consult with parents of children with special needs:

- Before any decision is made regarding the placement of a child within the school system and the persons who will have the responsibility to implement an IEP, the parents must be consulted.

- The depth of consultation and the concomitant obligations for the parties to accommodate the requirements of the other will vary with the known need of a child's requirement for a modified curriculum.
- All necessary information in regard to either parties' position on a proper placement and IEP must be provided in a timely way so that each will have an opportunity to express their interests and concerns and sufficient time to ensure that their representations are seriously considered and wherever possible demonstrably integrated into the proposed plan.
- Each party to the consultation has an obligation to provide timely information and an obligation to make whatever accommodations are necessary to effect an educational program which is in the best interests of the child.
- ...
- The bottom-line requirement for each side in a meaningful consultation is to be able to demonstrate that the proposal put forward can produce instructional control of the child.

The Judge found that there is a lack of training and expertise in Intensive Behaviour Intervention/Applied Behaviour Analysis (IBI/ABA) in School Districts and that as a result Districts may have to hire persons from students' home-based ABA/IBI therapy teams in order to meet their duty to accommodate autistic students. The Judge continued:

Reasonable accommodation is an integral part of the duty to consult. Reasonable accommodation in this case involves providing the best available teaching staff for Darren Hewko in school. In Darren's case, as in that of all children, special needs or not, the best teaching staff are persons who can demonstrate instructional control of him. Any consultation with Darren's parents must include an accommodation of his home-based program – at least until instructional control is gained and maintained of him in the school setting.

... I find that the school board failed to discharge its consultation obligation by failing “... to ensure that [the plaintiffs’] representations were seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action...” . Most importantly, the District through its proposals and by failing to seriously accommodate the Hewkos home-based program, failed to demonstrate it could produce instructional control of Darren.

The Judge held that:

- There is a serious gap in the “expertise” of educators in the area of effective learning systems for children with autism.
- There is no evidence that ABA-IBI is not, at this time, the most tested and effective learning system for many children with autism.
- Learning “on the job” is obviously no substitute for having basic training.
- What is required to provide access to an education for Darren Hewko (and other students with autism) is strict adherence to an ABA based learning system and the availability of ABA-IBI programming and teaching assistants trained to carry it out.
- The parental/student appeal procedure set out under section 11 of the *School Act* is not an absolute bar to a subsequent hearing on the merits in the Courts.
- In the *Hewko* case, a reasonable apprehension of bias resulted from the way the section 11 appeal had been prepared and conducted and as a result the decision of the Trustees (upholding the District position) was of no legal effect whatsoever.

This important case, *Hewko v. B.C.*, 2006 BCSC 1638, will remain a key precedent in education and school law in British Columbia. The decision was not appealed by any of the parties.

School Trustees, District Administrators and Special Education Staff and others are urged to read this case and learn more about the details of the duty to consult and accommodate students with autism.

The full Reasons for Judgment in *Hewko v. B.C.* can be accessed at:

www.courts.gov.bc.ca/jdb-txt/sc/06/16/2006bcsc1638err1.htm