

## 2011 Autism in Federal/State Courts: Case Summaries

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### Criminal Law

*State of Indiana v. J.S.*, 937 N.E.2d 831  
(Court of Appeals – Indiana 2010).

State filed petition alleging juvenile previously diagnosed with autism to be a delinquent child based upon various sex offenses allegedly committed by the juvenile. Appellate court upheld dismissal of the case based upon two competency evaluations that found juvenile lacked an understanding of the magnitude of the charges against him, lacked the ability to assist in his defense, and was unable to communicate effectively.

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### Civil Law

*Johnson v. Cantillo*, 74 A.D.3d 1724, 905 N.Y.S.2d 348,  
(Cal. Rptr.3d 2010).

Elementary school occupational therapist sued school district and parents of autistic child for injuries allegedly caused by classroom attack by child. Court held that parents could not be liable for negligent supervision of the child as they had no ability to control the child's behavior in her school classroom as parents had entrusted the school with the child's care and supervision in a class specifically designed for autistic students. Parents further could not be liable for a failure to warn of the child's aggressive tendencies as parents made school aware of such tendencies prior to child's placement.

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### State Disability Law

*Brian S. v. Delgado*, 2010 WL 2933624  
(Cal.App. 6 Dist. Jul 28, 2010) (No. H033935).

Claimant appealed the dismissal of his suit against several California state authorities for denial of services available under California's Lanterman Act which provides for various state-funded services to be provided to persons with certain qualified developmental disabilities. The Lanterman Act includes autism among its qualifying disabilities, and while claimant was diagnosed with Aspergers syndrome, he was determined not to be autistic. Appellate court upheld claimant's dismissal as it found Aspergers to be distinct from autism and therefore excluded from the Lanterman Act qualified disabilities.

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### State Disability Law

*K.D. v. Villa Grove Community Unit School District No. 302  
Board of Education*, 403 Ill.App.3d 1062, 936 N.E.2d 690 (4<sup>th</sup>  
District Ind. 2010).

Parents of autistic elementary school student filed suit for injunctive relief alleging school had violated Illinois school code in denying student use of a service dog. The dog in question aided the child by preventing him from running away, applying pressure to calm the child's tantrums, and generally calmed the child. Court found the dog was a "service animal" pursuant to Illinois school code.

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### Family Law

*Millotte v. Millotte*, 240 P.3d 1217 (Alaska, 2010).

In determining amount of child support payments following divorce of parents of autistic child, Supreme Court of Alaska found that costs of vitamins and other natural health supplements recommended by autism treatment center were qualifying "health care expenses" under Alaska law.

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### Family Law

*MacRae-Billwicz v. Billwicz*, 2010 WL 3269955  
(Fla.App. 2 Dist., Aug 20, 2010) (No. 2D07-5804).

Appellate court reversed trial court's decision concerning amount of child support payments to be made by husband. Appellate court found that trial court had erred by failing to consider the child's special needs, including behavioral therapy necessary to treat child's autism, in determining the amount of child support as required by state law.

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### Family Law

*In the Matter of HS and MS, Dept. of Human Services v. Sommerfield and  
Rocheferf*, 2010 WL 2219657 (Mich.App. Jun 03, 2010) (No. 394671).

In upholding the termination of parental rights, appellate court specifically cited (among other issues) parents' inability to meet the special needs of an autistic child, including the organizational ability to make and keep medical, speech, occupational, and physical therapy appointments.

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### Family Law

*Grant v. Arkansas Department of Human Services*, 2010 Ark. App.  
636, 2010 WL 3769280 (Ark.App. Sep 29, 2010) (No. CA10-303).

In reversing the termination of a mother's parental rights, appellate court found there was no credible evidence regarding the likelihood that the subject child would be adopted—one of several factors to consider in determining the child's best interest. In doing so, the appellate court noted the child suffered from autism which caused disruptive behavior, that no suitable foster homes had been identified within the mother's county of residence, and that the child's current foster parents had no interest in adopting the child.

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**IDEA**

*Independent School District No. 12 v. Minnesota Department of Education, 788 N.W.2d 907 (Minn. 2010).*

Parents of child diagnosed with an autism spectrum disorder requested school district supplementary aids and services they believed necessary for the child to participate in extracurricular and nonacademic activities including allowances for missed practices and games, adult supervision after activities until the child could be picked up, and access to a cell phone during activities. School district refused parents' request as it was not required for the education of the child. Supreme Court of Minnesota held that IDEA regulations contain no limitation that the extracurricular and nonacademic activities included in an Individual Education Plan be limited to those "required for the education" of the disabled students.

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**IDEA**

*Gwinnett County School District v. A.A., B.A., and D.A., 2010 WL 2838585 (N.D.Ga. Jul 16, 2010) (No. 1:09-cv-445-TWT).*

Parents of child diagnosed requested due process hearing against school district seeking compensation for violations of autistic child's rights under the IDEA due to district's failure to place child in proper educational programs. The child in question had initially been diagnosed with mild mental retardation and placed accordingly. Subsequently, the child was retested and diagnosed with autism and speech impairment. In partially reversing an administrative law judge's decision, the district court held that the school district could not be liable for the failure to provide a program for autism prior to the time a diagnosis of autism should reasonably have been made.

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**FMLA**

*Stroder v. United Parcel Service, Inc., 750 F.Supp.2d 582, (M.D.N.C., 2010).*

In denying employers motion for summary judgment on plaintiff's claims for violations of the Family Medical Leave Act, court found various factual issues existed including whether plaintiff's autistic child had experienced a period of incapacity, whether the child was receiving periodic treatments, and whether plaintiff was needed to care for the child as a result of a serious health condition. In so finding, the court noted that due to the child's behavioral issues he was unable to participate in a regular daycare program, the child was receiving bi-weekly evaluations in addition to medical and speech appointments, and that plaintiff's request for FMLA leave was based upon the need to care for the child until he could be placed into a special needs program provided by local school.

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