



# Who Is Watching?

When Gaps in Supervision and Training Lead to Abuse at School

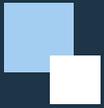
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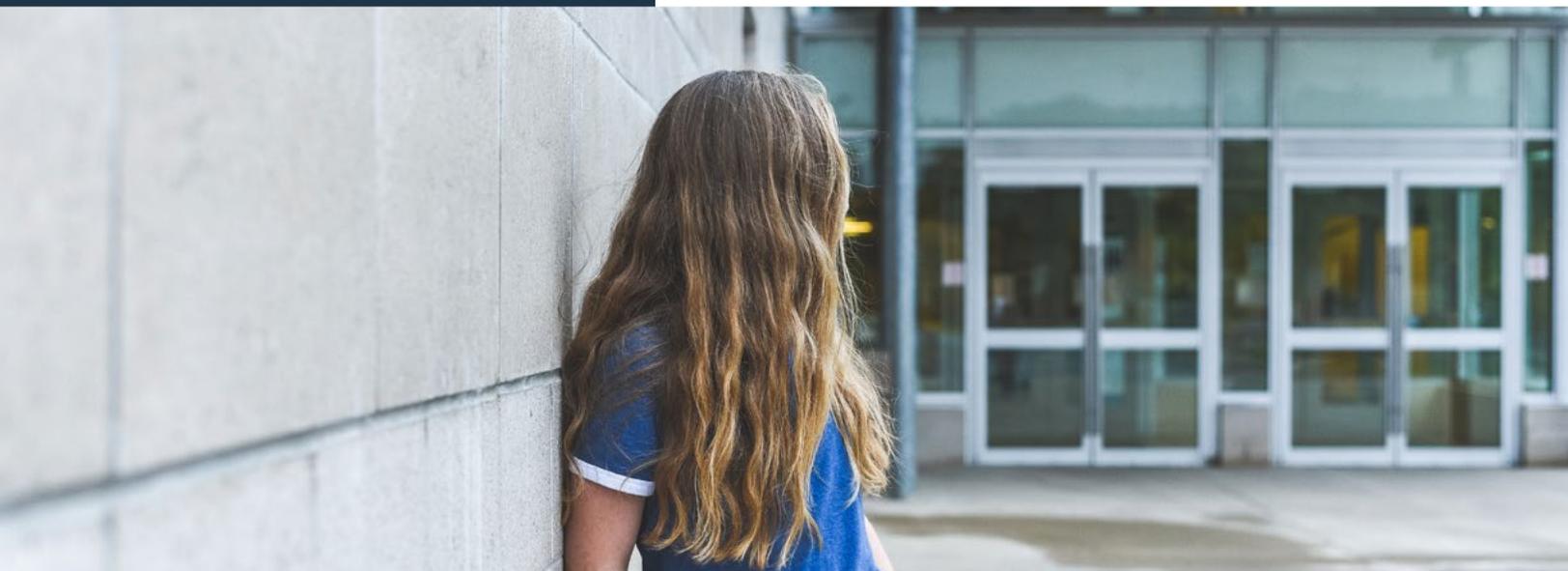


## Who Is Watching?



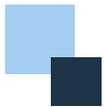
The stories sometimes start with an unexplained injury: rug burns, bruising around the wrists or even a broken bone. Others might include a sexual assault after two children were left unsupervised. Parents' minds invariably jump to questions: What happened? Where did this new behavior (such as inappropriate touching) come from? Why is my child acting differently?

In many cases, children do not have answers. For special-needs children who qualify for individualized education plans (IEPs), communicating abuse at school can be even more difficult. One statistic is particularly troubling: Children with disabilities are three times more likely to be victims of sexual abuse.<sup>1</sup>



Frequently, abuse or harm to a student isn't perpetrated by a teacher, coach or teacher's aide. When teachers/aides are spread too thin or do not have appropriate qualifications or training, the gap in supervision may allow **children to bully or abuse one another.**

In this white paper, we provide an overview of special-needs education in Southern California. We address some of the problems and what might be done to fix them.



## From IEP To School Placement

When children are identified for additional services in Mendocino and Riverside counties, their families sit down with a counselor, a teacher and an administrator. An IEP becomes a road map for addressing a child's behavioral, educational and social needs.

In California, these children have the right to free appropriate public education (FAPE) in the

least restrictive environment until the age of 22 in most cases. This means it is not necessary to rush a child with Down syndrome through the grade levels.

Neighborhood schools may not have the necessary staff or services to teach more than one or two students with special needs. As a result, these kids may have to attend school out of the area with long commutes.



## When Tragic Events Are Required To Prompt Policy Changes

Transportation is one area where supervision can be inadequate. Students assigned one-on-one help at school may not receive the same attention on the bus.

When ratios are 10-to-1, a child may not be properly buckled into a required harness. In one case, a scuffle caused a distraction, and while this was happening, a little boy got out of his seat, opened the emergency door and jumped. Another boy involved in a similar incident died. The school district then amended its busing policy to require students on IEPs to sit in front of aides.

That is just **on the way** to school. What happens when these kids arrive at school?



## A Growing Number Of Nonpublic Schools

For one thing, the school may not be a public school. Many privately-owned companies have stepped in to provide intensive therapeutic and academic services for special-needs students. These **nonpublic schools** claim a goal of returning students to the public system, but they are also operated for profit.

For example, Bright Futures is a nonpublic school that operates several campuses providing services to severely disabled students. Each of its students has special needs. In Riverside County, Bright Futures is one of eight nonpublic schools serving special-needs students.

Earlier this year, investigative reporters<sup>2</sup> uncovered troubling patterns related to lack of training and negligent staff at Bright Futures. In one case, two students were left unsupervised, and the boy, who had a pattern of harassing the girl, allegedly raped her. Another child was allegedly teased about his appearance by a teacher's aide. One day, the student, who was diagnosed with autism and bipolar disorder, couldn't control his frustration. He rushed out of the school and was hit by a car.

Some issues appear to stem from people hired as special education and teacher's aides. Often, an education degree or experience working with special-needs individuals is not required.



## What Qualifications And Training Are Required?

Children may be assigned a 1:1 aide to work toward achieving IEP goals. What qualifications are required for these positions?

A review of one posting for a special education 1:1 aide required applicants to have a high school diploma. College experience or a bachelor's degree was preferred. Building relationships with students and families and a willingness to attend trainings were the only other requirements. The pay range was listed as \$27,000 to \$38,000.

With these sorts of requirements and pay, those working in these positions tend to be young and often still in college.

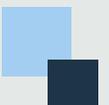
## Advocating For A Student During The IEP Process

Parental participation in the IEP process must be **meaningful**.

There is a recognition that parents/guardians surely know the student best, regardless of any expertise.<sup>3</sup>

In a federal case from the 6th U.S. Circuit Court of Appeals (a persuasive precedent for families in California, which is in the 9th U.S. Circuit Court of Appeals' jurisdiction), a family of a child with Down syndrome successfully argued that segregating their son in a separate school violated his right to a free appropriate public education (FAPE) in the least restrictive environment (LRE).<sup>4</sup> In that case, a private Montessori school allowed the student to remain in a regular education classroom and make progress toward IEP goals.

The court ordered the school district to reimburse the family for the cost of tuition.



## Warning Signs That Something Is Wrong

Whether the school is public or private, there are warning signs of unsafe conditions for special-needs children. Unexplained bruises, cuts or bumps are immediate causes for alarm.

Other symptoms are harder to address, especially in nonverbal children, but may include:

	<b>Inappropriate new behavior at home</b> , such as grabbing themselves or someone else where they should not
	<b>Withdrawing and not reciprocating affection</b> as usual
	<b>Outbursts and other behavioral changes</b> such as loss of appetite or trouble falling asleep
	<b>Depression</b>



## Steps Parents Can Take

It can be hard to link a change in behavior with abuse or bullying at school. Here are some steps parents can take when concerns arise.

	<p><b>First, share concerns with a doctor or counselor.</b> A child who might have experienced trauma must be evaluated. A regional resource center can offer local referrals if needed.</p>
	<p><b>Second, complain, in writing,</b> to everyone who helped put together an IEP. Then document every action from phone calls with a counselor to meeting with a principal, and take notes describing what occurs.</p>
	<p><b>Third, talk with other parents about what is happening.</b> This is one way to uncover troubling patterns. Other parents might have similar concerns. Their children may have mentioned seeing inappropriate behavior at school.</p>

**Then, it is crucial to speak with an attorney** who has handled similar cases. A parent's intuition is often correct, but it may require an investigation to uncover what happened and the causes.



## What Are the Legal Remedies?

Schools that know a student's behavioral or physical disabilities may pose a risk to themselves or others have a duty to provide supervision appropriate to that child's condition. Determinations of whether a school provided an appropriate IEP and supervision will vary case by case. This analysis can affect liability.

Once a parent has an indication that something is happening at school, it is important to seek legal guidance. It is possible to sue the school district, but the

statute of limitations (amount of time to bring a case) is limited. A lawyer needs time to investigate what happened, from a review of the IEP to whether anything was removed from the plan or why a request might have been refused.

Even though there are challenges in litigating cases after disabled victims have suffered harm or abuse<sup>5</sup>, relief is available. Bringing concerns to the attention of school districts can also lead to broader changes in policy and training.



## Policy Changes May Be Part of the Solution

Keeping special-needs students in regular classrooms instead of isolating them in separate classes/schools can eliminate one contributing factor in abuse cases.<sup>6</sup> Working on social inclusion and respect for those with differing abilities may limit the “othering” and ostracization that frequently occurs.

Offering sex education to special-needs students could help them recognize and fend off unwanted advances.<sup>7</sup> It could provide a tool for these students to develop relationships with other children and better express feelings and read social cues.

Training staff on how to identify harassment and assault is also crucial. If a special-needs student complains of being **bugged** or **bothered** by other students, it is important to ask more open-ended questions to find out what is happening.<sup>8</sup>

Bothering could mean cruel name calling, requests for sexual favors, threats or actual sexual assault. Without digging, it can be easy to gloss over concerns.

Fully funding the Individuals with Disabilities Education Act (IDEA) would be another way to provide needed resources for school districts.<sup>9</sup> Since the law was passed in 1975, Congress has not allocated the funds needed to meet the full commitment. This means that states and local districts are often left with funding shortages, especially in low-income areas. Critical services that could be beneficial to special-needs students then get cut. Allocating more funds could mean more qualified teachers and paraprofessionals and better training on how to reduce and respond to allegations of abuse.



## Do Not Go It Alone

More can be done within our communities to ensure that special-needs children receive the educational opportunities to which they are entitled. When these students endure abuse or harassment, whether on the way to school or during the school day, there are legal remedies. Speak with an attorney who will ensure that your concerns are heard.





## Christa Ramey

**Selected to Super Lawyers  
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My dream to become a district attorney started to change while I worked for a large personal injury law firm during law school. Being able to achieve justice for those injured due to the negligence of others was rewarding. This became my true calling. I have exclusively represented plaintiffs (the injured) in civil matters ever since. While I cannot change what happened, **I can fight for justice** and a more certain future for my clients.

As a principal attorney at Ramey Law, P.C., I handle serious personal injury, medical

malpractice and wrongful death cases. In recent years, I have represented more clients who have suffered injury or abuse while at school or on the way to school. This complicated area of the law is unforgiving of mistakes, especially when it comes to the amount of time to file a claim. Whenever an injury (whether physical or psychological) has occurred at school, I can help navigate the system to obtain the best possible outcome.

I am dedicated to representing families that have been affected by physical abuse and bullying in the Los Angeles Unified School District. My focus is to find the right solution for each young person, including special-needs students, along with the resources to move forward from incidents of sexual assault, undue punishment and related injuries or harm caused by lack of supervision.

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## Sources

<sup>1</sup>Smith, Nancy, Harrell, Sandra, Sexual Abuse of Children with Disabilities: A National Snapshot, Vera Institute of Justice, Issue Brief, March 2013 accessed at [http://www.ncdsv.org/images/Vera\\_Sexual-abuse-of-children-with-disabilities-national-snapshot\\_3-2013.pdf](http://www.ncdsv.org/images/Vera_Sexual-abuse-of-children-with-disabilities-national-snapshot_3-2013.pdf)

<sup>2</sup>Hong, Joseph, Parents allege harmful neglect at special education school. Administrators say safety is priority, Palm Springs Desert Sun, Jan. 18, 2019 accessed at <https://www.desertsun.com/story/news/education/2019/01/18/parents-allege-harmful-neglect-nonpublic-special-education-school/2587235002/>

<sup>3</sup>Parents can participate in meetings to identify, evaluate and determine an appropriate educational placement. See 34 C.F.R. Sec. 300.501 (detailing the scope of parent participation in the IEP process, which underlines that parents often know best.)

<sup>4</sup>L.H. v. Hamilton County Department of Education, Case Nos. 17-5989; 18-5086, 2018 WL 3966517 (6th Cir. Aug. 20, 2018) <http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0176p-06.pdf> & See L.H. v. Hamilton Cnty. Dep't of Educ., 356 F. Supp. 3d 713 (E.D. Tenn. 2019) (awarding plaintiff's attorney fees)

<sup>5</sup>See Oquendo, Daniel, Failing the Most Vulnerable Among Us: The Lack of Redress of Children with Disabilities, 63 N.Y.L. Sch. L. Rev. 61 (2018-2019) (detailing evidentiary issues that may arise in litigation along with proposed solutions)

<sup>6</sup>Krohn, Jesse, Sexual Harassment, Sexual Assault, and Students With Special Needs: Crafting an Effective Response for Schools, Penn Law: Legal Scholarship Repository (2014) accessed at: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1163&context=jlasc>

<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Oquendo



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