

well, through the assistance of the attendant or through S.M.'s own imaginative ability to 'talk' to the hearing and vice versa." The ALJ goes on to reflect, however, that, without the capacity to communicate with his fellow students, S.M. would experience an "obstacle to socialization, and, therefore, to friendship and interaction."

## The issue: expertise of the aide

The bus ride was approximately 15 minutes each way. The Director of Special Services for Southern Regional "admonished the aide to take with her a pad and pencil to assist in communicating in writing with S.M. given her lack of experience in signing." The aide was receiving on-going training from S.M.'s teacher of the deaf, an expert in using and teaching ASL. The teacher estimated that the aide would reach "intermediate" level in six months. Testimony was offered that "the ability to obtain a proficient aide in ASL to be used exclusively for a 15-minute bus ride and return totaling 30 minutes approximately per day is, if not impossible, impracticable."

## The ALJ's conclusions

The ALJ concluded that the aide is proficient enough in ASL to address basic safety issues so as to fulfill the responsibility to provide a Free Appropriate Public Education. Moreover, given the testimony about the aide's on-going training, the likelihood of her reaching a level of competency within six months, and the extensive efforts made to recruit a more experienced ASL aide to accompany S.M. on the bus, the ALJ imposed "part of the solution" on the parents. He stressed that there needed to be cooperation from S.M. and his parents, to give the aide the opportunity to interact with the boy. He urged the district to continue its efforts to find a more proficient signer, and to consider volunteers (such as retired ASL signers).

**Note:** *The ALJ was properly far more concerned about a basic level of safety than issues around socialization. S.M. was provided with mainstream instruction for the greater part of his schedule, although he was accompanied by his teacher of the deaf (who also served as his ASL signer) throughout the day for on-on-one instruction. She also accompanied him to lunch and various extracurricular*

## Issues Resound around Deaf and Non-Communicative Students

- Consider the issues when a non-communicative student is in danger. Where a non-communicative child "lacked the capacity to help herself once she was restrained by the harness that secured her to the bus seat," the independent unit's actions which contributed to her death could be found to be "deliberately indifferent to foreseeable consequences." *Susavage v. Bucks County Schools Intermediate Unit No. 22*, 36 IDELR 32, U.S. Dist. Ct., E.D. Pennsylvania, (January 25, 2002). Consider, also, possible inability to call out for help when in harm's way from any source.
- In a recent case, the court held that adjustment of a student's cochlear implant was itself a related service, and transportation to the audiologist for this purpose was a necessary related service. *Stratham School Dist. v. Beth and David P.*, 38 IDELR 121, U.S. Dist. Ct., New Hampshire (February 5, 2003).

*activities, such as bowling. We might expect more emphasis on the socialization issue if (1) it was an IEP goal, and (2), even more important, if school bus transportation was his primary opportunity to be with his non-disabled peers.*

Also noteworthy is the fact that a previous New Jersey ALJ had refused to hire a bus aide for T.N., a profoundly deaf pre-school child who rode a van to school. She was the sole passenger one way, and shared the van with two other passengers on her return home. This ALJ noted that the parents' request for an aide was based on unfounded apprehension about what would happen if T.N. became ill on the van, or the driver became ill, or there was an accident. Expert testimony on behalf of the school district indicated she exhibited no behavioral problems, and had no history of serious and/or recurrent illnesses. He also noted that the driver had been trained in signing, and could communicate effectively with the girl. *L.N. on Behalf of T.N. v. Tinton Falls Bd. of Ed.*, NJ, 1997. 