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Island parent wins case on autistic care

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A federal judge yesterday ordered the city and state to reimburse a Staten Island father who hired students to provide his 3-year-old autistic son with a form of therapy the state would not.

And, the court further ordered the state and city to provide the treatment, even though the government agencies argued that the therapy was inappropriate for the child.

The decision was the result of a lawsuit brought by Nicholas Malkentzos, a teacher in a junior high school in Brooklyn and a Grant City resident. Malkentzos filed his suit under the section of the federal Individuals with Disabilities Education Act that covers infants. It was, at the time of filing, only the second such suit ever to be brought.

After watching what he said was little to no change in his autistic boy take place under a state-provided program, Malkentzos took a different approach, following the advice of a pediatric neurologist and psychologist who specializes in autism.

Malkentzos set up a classroom in his home and hired college students to work with his child — who was not named in the lawsuit — in the only form of therapy that has a proven record with autistic children.

But the city and state refused to pay for the treatment, because Malkentzos did not use certified instructors. The catch was that the state had no instructors certified in this form of therapy, which is called Applied Behavior Analysis.

Judge Constance Baker Motley, in Manhattan federal court, ordered the agencies to pay about \$21,000 for the father's out-of-pocket costs over the past year and a half. The judge ruled that the form of treatment offered by the state, called structured play, not only was inadequate but might have been harmful to the child.

"This decision takes a major step forward for the parents of very young children with disabilities, who can now do what they know is best for their child, despite the intransigence of the city and state," said Victoria Kummer, an attorney who represented Malkentzos.

What made their case urgent, the lawyer said, was that in the treatment of autism, often an early start is essential for any chance of success. Ms. Kummer said the young boy in the case "is doing great" through his treatment.

Soon the boy will receive services through the state Department of Education, because of his age. The judge's decision left it clear that the city and state remain obligated to pay for this therapy under federal law.

Ms. Kummer, who is an attorney with Weil, Gotshal & Manges, provided the services to Malkentzos free of charge. The case was referred through the New York Lawyers for the Public Interest, a clearinghouse for public interest legal services in the city.

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