

SEEKING JUSTICE FOR **THE CHILDREN LEFT BEHIND:**

CALIFORNIA'S TOP SPECIAL EDUCATION LAW FIRM

School Districts sent home 7.1 million Special Ed. Students in the U.S. a year ago without the support they were required to have. "We forced California to admit that", says James Daniel Peters III the Executive Director of the Special Education Law Division of the Law Offices of Sheila C. Bayne. James and his team fought tirelessly to prove that California had done injustice to their special needs students, and they won. "Now Students throughout the Country can obtain compensatory educational Services", shares James.

Below, we hear from James where he expands on the work he put in to ensure every child got access to the education they rightly deserved during a period where, unfortunately, those who need extra care are often left behind.



What has the impact been on families and caregivers with homeschooling children with special needs?

COVID-19 has been a disaster for all students. However, for special needs students and their families, it has been devastating. Exacerbated by the fact experts knew and Federal Law had safeguards in place in the event something catastrophic ever took place, yet they still failed to follow through with those safeguards. Federal Law dictated and the Californian Governor mirrored that law that these children need a variety of services from trained experts just to be able to keep making progress in their education. When they were sent home to virtual distance learning, they lost their access to those services and the experts who provided them. Instead, districts expected parents who never had training in things like providing speech and language services, physical therapy service and occupational therapy services, to keep these children moving forward. They couldn't, not only did they not have the training, but they lacked the equipment; some had jobs they couldn't abandon, some had multiple children each of whom needed full-time attention to be able to learn. Because of this, these students not only stopped making progress, but they also began to regress, leaving parents struggling financially and emotionally to deal with the situation. The shame of this is that the state intended the districts to make sure this didn't happen and intended the districts continue to provide roughly equivalent services and accommodations as needed. Sadly, the districts by and large didn't.

What further care and attention do these parents and caregivers need?

It depends on the child. Each child has what is called an Individual Education Plan where the district itself identifies the services the student needs to be able to make progress. What the parents need are those services. Moreover, the California legislature recognised that many of these students could not

benefit from a Distant Learning model online environment. Students require an intensive educational program and services to compensate students who struggle every day trying to learn. Many students require behavioural, ABA, occupational therapy, speech & language supports that help children with moderate to severe disabilities learn. Parents need support including for home programs. Most of all, parents need the districts to decide to work with them to get through this rather than shoving them off until the pandemic is over and disregarding parental concerns and request.

You recently worked on a class action suit on behalf of all special need students in the state of California for the District's failures to offer or provide a FAPE to Students since the closure of schools per the Governor's order. What made you take on this case?

It is inconceivable how School Districts sent students with disabilities to learn from home without providing the necessary supports needed to address their disabilities knowing it violated

therapy, or how to teach their children with maladaptive behaviours or licensed to provide these in-person services - not to mention in California alone there was more than \$1.5 billion funding set aside to help special needs students, and most parents saw no evidence of those funds being trickled down to their special needs children.

Parents were struggling and suicides were increasing, and students were not receiving the services they needed. Students with special needs were falling through the cracks. They were losing critical years of education which will set them back throughout their lives. These families were pleading for help and no one was reacting. After six months, little had happened. So, we looked at how to help and we sued. We sued every district in the state, all 977, not because we wanted to, but because we had to!

What challenges did you face throughout working on this case?

Typically, when you sue a governmental agency, the pace tends to be very slow. Even when it's determined to be on a fast track. Students with special needs

Rich families are served alongside poor families. Our staff has no idea who has the ability to pay or has not paid, which is the way it should be.

Federal and State Law. However, they did. Students were knowingly sent home to virtual learning without assessment of their conditions to appropriately address the accommodations needed in the distant learning model of education. Instead, they dumped all responsibility on the parents. Parents who are not trained in special education, speech therapy, physical

required immediate action. Schools had already been closed and special need students were regressing at alarming rates, experiencing frustration, behaviours, outbursts, self-inflicting injuries, a complete inability to understand why they had no school or services they relied upon their entire life. Special needs children lives revolve around routines. An

understanding of what will come next and how things are supposed to be. When school districts failed to address all of these areas prior to sending them home and the districts failed to inform parents, the law required that school districts fix their failures. This sent parents and students into a world of confusion with no remedy in sight.

Add to the fact that the Governor of California and the heads of State have more attorneys than most large corporations, which generally puts legal matters off until after they leave office.

Many of us had never filed a summons that ran 147 pages before. Another was that the state superintendent of instruction and most of the districts wanted to fight rather than solve this problem, or should I say "stall" with the understanding most law firms will run out of funds or legal expertise to push a case to the 9th Circuit or Supreme Court.

How did you overcome them?

The Superintendent of Public Instruction and his attorneys, as well as the school district's attorney's assessment of our law firm, was quite inaccurate. They were unaware our law firm had a bottomless pot to pursue this case. They were unaware of just how good we are.

With support from special needs families, combined with the determination of our attorneys and entire staff, the Superintendent of Public Instruction attorneys did not take into account support from special education students crosses into all aspects of all people, regardless of race, income, religion, sex, political affiliation. Disabilities affect everyone and everyone has felt the pain of our children that could have and should have been addressed when schools were closed. We established that Federal and State law requires services in a student's IEP should and could have been provided by the many people who have and can continue to do so safely.

The Governor's attorneys turned out to be a lot smarter, and wiser than the State Superintendent of Instruction. They realised we were not seeking



monetary damages for the students; we were seeking compensatory services to address the year services that were not provided. We were seeking the services the students were already promised by federal laws. We were seeking the basic education that distant virtual learning was not able to provide our children. We were seeking justice for children who struggle every day to do the things most of us take for granted.

We anticipated this case would end up before the 9th Circuit one way or another – if not the Supreme Court – but more importantly, we knew the law, and we knew it is on the side of these students. As a result, the Governor signed a Settlement agreement and agreed to make public Special Needs children in accordance with federal and state law should have received the services in their IEP'S.

What was the reaction across the board?

When the Governor signed a Settlement agreement and publicly stated: "None of the executive orders or public health directives issued in California in response to the COVID-19 pandemic purports to waive the IDEA, which entitles eligible children with disabilities to special education and related services through an IEP."

The reaction was instant and overwhelmingly supportive from all over the country. Our office has been receiving fifty calls a day. The heart-breaking stories of everyday American families, struggling to save their children, seeking any and all assistance. Due to COVID-19, we offered to assist those who were unable to pay with no initial retainer.

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California Governor Newsom absolutely did the right thing. He knew what Federal and State law required – it required that these vulnerable children be protected – and he stepped up and made that clear. That was the legal thing to do, and it was the right thing to do. As a result, many of the parents suddenly realised they did have rights and that their districts should not have just abandoned them, and they're starting to demand those rights. For example, we are aware of a child with autism who is getting less than 20 minutes of virtual contact a week. We've seen IEPs where the district lays out the services that are needed and then only agrees to offer them once the pandemic is over. These aren't isolated, these are commonplace. All over the state, people are starting to demand what is right. It

is only the districts that continue to stall.

This was the bigger picture we were looking for. The California Governor Settlement and acknowledgement of federal laws have reinforced our law firms' statement to everyone across the country. State law must mirror federal law. Special Education students from all over America now know federal law requires that schools implementing distance learning must deliver services required under IEPs, including in-person services. Further, students who regressed are also entitled to compensatory services. It's the law!

This has shaken the governors from across the country and the news is spreading quickly. Our law firm receives calls from across the country seeking information on how to pursue the school districts. We are

preparing for the Supreme Court case if required.

What areas of the Disabilities Education Act do district officials commonly fail to comply with?

There are many I could speak of, but I think the biggest issue is that the law requires completion of due process hearing in 45 days from filing. California Office of Administrative Hearings takes approximately 6-8 months to provide a decision. The amount of time it takes to get the districts to do the right thing is far too long. Districts should listen to parents. They are vested in their student's education. Districts should provide appropriate services and programs, but they can drag this process out for whole



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preparing and assisting parents and law firms in obtaining compensatory services, as well as additional educational services to assist students in obtaining appropriate educational services and programs.

How will this result impact those you represented?

I think what is happening is helping our clients and students across the U.S. tremendously. It is giving them hope and it is giving them the courage to stand up to their districts, and we are helping them obtain the services to which they are entitled, one family at a time. We anticipate the 9th Circuit agrees with us and we can get that same help for all of California's 800,000 special needs students in one shot and the 7.1 million students in America. However, we are

school years and sometimes more, all of which is lost time for students with special needs. These students struggle enough to keep up with their peers.

How is the disparity between those with special needs handled by the Californian government? What more needs to be done?

The state largely lets the districts handle this individually. More diligent oversight would be helpful, as would quicker evaluations, and maybe a presumption that children referred for assessment should receive special needs services until proven otherwise. In the meantime, it's really up to firms like ours to step in when special needs children are denied their rights.



JAMES' TIPS ON BECOMING THE BEST LAWYER YOU CAN BE

Many strive to be the best, however only a chosen few can be considered one of the best. How you get there can vary. My belief, in order to get there: you must accomplish the following points.

1 YOU MUST MASTER A SPECIFIC CRAFT, OR HAVE TEAM MEMBERS WHO HAVE

The State of California like other States must mirror Federal laws. Most attorneys who represent students in due process hearings are clueless of District Court local rules. Combine that with the large number of cases in which ALJ's error. Then consider the 9th Cir., where only a small number of attorneys have appeared before. How can you possibly be the best law firm or attorney if you can't even see the case to fruition?

3 YOU MUST HAVE A BURNING DESIRE, MISSION, PASSION, OR SOMETHING TO ACHIEVE; IF YOUR PASSION IS MONETARY BASED, YOU WILL FAIL

Regardless to if your case is Special Education or another area of law, you most likely will come to a fork in the road where a case will cost you quite more if you continue to move forward rather than cutting your losses and quitting while you're ahead. If you have a burning desire, or passion for a cause like Tom Gilhool - an advocate for the rights of people with disabilities - Former Chief Counsel of the Public Interest Law Center, or Andrew Young - Martin Luther King's attorney. You push through what appears like insurmountable barriers, injunctions, or bad rulings by unknowledgeable, or unwilling judges. That's where you find the success that rises above the norm. You have to have a case ruled against you, in order to appeal the case to greatness.

5 BE TOUGH, WITH HEART

You must be aggressive, tough, confident, and take no prisoners, yet kind and caring enough to give the last dollar in your pocket to a man with a sign standing on a corner needing money for food.

My firm and I have a clear reputation for being tough, aggressive, and confident due to our success. If you're a client and you want to win but not ruffle anyone's feathers, we won't take your case because that's not who we are. We fight very hard for the students we represent. We take no prisoners; if the teacher is a really nice guy, but sides with the administrator and states that special needs children should not be educated with typical kids, our attorneys will drill him on the witness stand like a drill sergeant to an out of shape basic trainee until he tells the truth. We seek the truth for the student and families we represent.

2 DON'T BE AFRAID TO FAIL

It does not end there. From the Kansas University Law, Professor Bill Koski prevailed on his special education case at the Supreme Court. After the tenth Cir. ruled against him, Gorski the Supreme Court Justice which ruled against Koski, indicated he had to rule against him as a matter of law. Yet the Supreme Court made the correct decision. The problem was never with the case, it was with the law. It required a Judge strong enough to address it at the lower level. Or as in Bill Koski's case (A law professor and friend at Stanford) losing, until The Supreme Court ruling. Clearly, you can't be the best or the finest without being qualified, and ready to take your case where you have to in order to prevail. In other words, you can't be afraid to fail and not be disturbed or stopped if a court errors and rules against you.

4 YOU MUST GENUINELY CARE ABOUT YOUR CLIENT

You cannot solely care for the money or the fame your cases will bring you. If you're a 'take the money and run attorney', the community will quickly recognise that and will not return nor refer. If when you prevail you don't feel deeply happy for your client more so than the money, then you lack the heart it takes to be great.

6 SEEK HELP WHEN NEEDED

You must be aware of the fact no man or woman makes it to the top by themselves, or without help.

7 SHARE YOUR SUCCESS

You can't stay on top if you don't share the wealth and show appreciation with those who got you there. You must have family or friends to enjoy and share the experience of being the finest or best Law Firm or Attorney.



I am **James Daniel Peters III** the Executive Director of the Special Education Law Division of the Law Offices of Sheila C. Bayne. We are an aggressive law firm. We are one of the best, if not, the best special education law firms.

I have testified before Congress regarding special education. I am considered one of the top legal minds regarding special education. I have special knowledge of Autism, Educational Law, Autism services, and work with many of the top Educational Consultants, Psychologists, and Professors from around the country. I am the former National Development Coordinator for TASH. I have advised Congressional members, Governors, U.S. Senators and White House Cabinet members regarding disabilities.

I work closely with Democrats, Republicans, Governors, U.S. Senators, and White House Cabinet Members, and maintain very close professional and personal relationships with the top psychologists and professors of Special Education, like Dr Wayne Sailor from Kansas University, and Dr Lou Brown, from the University of Wisconsin Madison. This allows me to have first-hand information about the distress of special education students across America.

As a National Civil Rights advocate for individuals with disabilities today and, as a former National Development Coordinator, I addressed disability awareness throughout the United States.

"I learned educating students with special needs is not like a Civil Rights movement It is a Civil Rights movement." I am a spokesperson for State and Federal policy efforts with the goal of promoting progressive disability policy and increasing staff and legislator recognition of the needs of individuals with disabilities.

I personally got into this because my own son, who is autistic and was kicked out of school because he ate m & m candies when students were supposed to count them in kindergarten. The Federal Court ruled in our favour (Ocean View V. Jimmy Peters).



Deborah S. Reisdorph is another leading senior Partner of the law firm, Deborah who has been practising law for more than 26 years and is licensed in California, New York, and before the United States Supreme Court. She appears to be the nicest, sweetest, lady one has ever met until she enters a courtroom. At such a point, she destroys opposing counsel's case, makes them question if they have a case, destroying them like the lioness she is. She worked in the District Attorney's Office in Johnson County, Kansas. She gained significant trial and litigation experience with juries, bench trials, arbitrations, and mediations. Deborah teaches and educates students, teachers and parents through the non-profit organization she founded in 2011, BARE Bully Awareness Resistance Education, Inc.

We are known as "The MOD Squad" "Masterfully Opposing Districts." One white, One Black, One Woman.



Andrew Price a senior Partner is an attorney with 20 plus years. He is one of the former top attorneys for the U.S. Government (classified), acting both as a litigator and general counsel. Andrew is admitted in Colorado, Washington D.C. and West Virginia (inactive). As a litigator, Mr Price has successfully litigated hundreds of complex matters. His expertise is in Special Education Law, Federal, Constitutional law and IDEA specifically. His experience involves work at the trial and appellate levels in both state and federal courts, as well as agency appeals, with a number of appearances before state supreme courts and federal circuit courts and the GAO. Andrew managed after ten years of appellate work to overturn the life sentence of a young man wrongfully convicted. We never give up. We have yet to find anyone who knows more about Federal and Constitutional law. When he sleeps, he dreams about how we are going to establish to the Supreme Court that education has to be a constitutional right. Andrew is a perfectionist.

Law Offices of Sheila C. Bayne

We are a group of people known as having the inner drive to help special needs kids get the services they need and to which they are entitled from California's school districts. We are people who will stay up late at night and on weekends thinking, reading, preparing and learning about the little girl with down syndrome who needs therapy, the little boy with autism whose entire life can be improved with just a little help a district is refusing to provide. We work for the strong dads who break down in tears when their kids finally get the help they need, the loving moms who call us months after their cases are over just to tell us how their kids are doing, and the kids, the district gave up on, who come back to tell us how their first year of law school went.

And since this is what drives us, we strive to be the best. We have put together a team of expert litigators who have mastered this area of law and who have no fear of being tough and aggressive or of ruffling feathers and who never lose sight of who we are doing this for.