

**THE DAUBERT CASE IS NOT APPLICABLE TO
THE ISSUE NOW BEFORE THE COURT.**

Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786 (1993) is a case which deals with expert testimony as it relates to scientific methodology. In the case at bar, the LINKS TO LANGUAGE program is a communication program - it is how D.C. communicates. It is not and has never been offered as a science. In fact, teaching and education is not a science, but in fact an art. It is for D.C. a mode of communication as sign language would be for a hearing-impaired child - no more, no less. It is for D.C. the language of education. He cannot understand at this time any other language, and attempting to educate D.C. using an alternative method would not only be ineffective, but would serve to frustrate him and cause him to demonstrate inappropriate behavior. More problematic for the district is that it has in the past embraced LINKS to the extent that they not only hired a full-time speech and language person, but attempted to train that individual, and still to this day pay for LINKS as a related service. How could they have expended so much of public funds on a program that they now disavow? An enormous amount of literature and information was supplied to Petitioner before LINKS was embraced by it. The best that can be said is that they do not now believe that it was effective for D.C.

**PLAINTIFFS ARE ENTITLED TO SUMMARY
JUDGMENT.**

The standard governing a Motion for Summary Judgment is well established. In order to prevail, the movant must establish that "there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56 (c)* All evidence submitted must be viewed in a light most favorable to the party opposing the Motion. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)

As prior District Courts have noted, once the party seeking summary judgment has pointed out to the Court the absence of a fact issue:

"Its opponent must do more than simply show that there is some metaphysical doubt as to the material facts ... in the language of the Rule, the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial' ... where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Id.* 475 U.S. at 586-87 (emphasis in original, citations and footnotes omitted)

Pittman v. LaFontaine, 756 F.Supp. 834 (D.N.J. 1991) In *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986), the Supreme Court said:

"One of the principle purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think that it should be interpreted in a way that allows it to accomplish this purpose."

Judged against this standard, no "genuine issue for trial" exists, and this matter is ripe for summary disposition.