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By the EdLawGroup at Lindabury

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## Recent Decisions May Extend BOE's Obligation to Pay for Programs for Disabled Students

### *Supreme Court Ruling Requires NYC BOE to Pay for Private Special Ed*

By Jennifer A. Osborne, Esq.

In an October 2007 decision, the United States Supreme Court in *New York City Board of Education v. Tom F., on Behalf of Gilbert F., a Minor Child*, affirmed a lower court ruling requiring the New York City Board of Education to reimburse a wealthy businessman for private special education for his son. The Supreme Court justices split 4-4 on the case, thereby permitting the lower court ruling to remain in place. The split, however, means the decision is not precedential in New Jersey.

Prior to enrolling G.F. in the New York City public schools, his parents concluded that the city's public school special education programs were inadequate and unable to meet G.F.'s needs. G.F. was not diagnosed with learning disabilities until after his private school enrollment.

Citing federal law, G.F.'s parents argued that they had the right to challenge inappropriate special education proposals and obtain reimbursement for the costs of placement in private school. Conversely, the city argued that federal law requires parents to first enroll their children in the public school program before transferring to private school and seeking reimbursement.

The 4-4 split by Supreme Court Justices, with Justice Kennedy abstaining, required the lower court's decision to stand. As a result, the New York City Board of Education must reimburse G.F.'s parents for the educational costs resulting from his private school education.

### *ALJ Ruling Requires BOE to Fund Aide in After-School Program*

By Sergio D. Simoes, Esq.

In *K.G. and J.G. v. Morris Board of Education*, an Administrative Law Judge (ALJ) recently considered the issue of whether a school district is required to provide an aide for an autistic child for an after-school program that operates as a not for profit enterprise fund. It was held that even where an after-school program is not (cont'd ►)

dependent of a school district, the after-school program is required to provide equal and meaningful access to disabled students.

Petitioners in K.G. are the parents of a nine-year-old autistic student in the Morris County School district who was enrolled in the Sunset Program, which provides after-school care to children. Because the program was not tailored to disabled students, the Sunset Program requires an aide to accompany disabled students. At the parent's request, the district provided a 1-to-1 aide for the child but only for one hour of the three-hour Sunset Program. When it provided the aide, the district emphasized that the aide was to assist in the child's transition to the program through December 2006. Consequently, the child's parents privately funded the additional two hours per day to provide an aide for the program during the 2006-2007 school year.

The parents filed an administrative action seeking a 1-to-1 aide for the full three-hour program at the expense of the district and for reimbursement of past expenses for the aide. The parents claimed that by not providing an aide for the full duration of the after-school program, the district violated New Jersey laws requiring a district to modify programs offered to children so that disabled children can participate. The district asserted that the Sunset Program is a private program independent from the school district and therefore should not be obligated to pay for the cost of the aide.

The ALJ reviewed the federal Individuals With Disabilities Act, 20 U.S.C.A. 1412, and concluded that school districts receiving federal funds are required to provide disabled students with a free appropriate education, a standard which is satisfied when schools "design educational instruction specifically designed to meet the unique needs of the handicapped child." The

ALJ also determined that "where a qualified handicapped child applies to enroll in a non-educational program, a school district need not develop a special day care or recreation program designed to meet the needs of the provision of a free and appropriate public education. However, where a voluntary program is offered, on a free or tuition basis, handicapped children may not be categorically excluded. They must be offered meaningful and equal access to that program. The same benefit must be offered meaningfully at the same cost to handicapped and non-handicapped persons."

In this case, the ALJ found that the Sunset Program was part of the school district in that its letterhead said "Morris School District Community School" and provided a detailed description of the Sunset program; the Morris School District had the program on its website; and the Morris School District Board passed funding resolutions for the program. As a result, the ALJ held that the district must provide meaningful and equal access to programs offered to all children if the program is unable to support disabled children. Moreover, the ALJ held that even though a handicapped child is provided with a free and appropriate education, if the district is a public entity receiving federal funds, which was the case here, it must comply with federal laws requiring full participation of both disabled and non-disabled students in the programs offered. Thus, the district was required to pay the full cost for a 1-to-1 aide.



*The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the Education Law Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*

