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No Bar to Reimbursement for Private Special Ed for Students Who Had No Previous Special Ed Services in District

By Anthony P. Sciarrillo

In its June 22, 2009, decision in *Forest Grove School District v. T.A.* (557 U.S. ___ 2009), the Supreme Court held that the 1997 Amendments to the Individuals with Disabilities Act (IDEA) authorize reimbursement for private special education services when a public school district fails to provide a “free appropriate public education” (FAPE) and the private school placement is appropriate, *whether or not* the child previously received special education services through the public school. In a 6-3 decision, the Court affirmed the Ninth Circuit and opined that the 1997 Amendments do not impose a categorical bar to reimbursement for private special education services when a child has not previously received special education services within the public school district.

Facts of the Case

In *Forest Grove*, T.A. attended public schools in the District through his junior year of high school. He had trouble paying attention in class and completing his assignments. His parents requested that T.A. be evaluated for learning disabilities since his difficulties with his school work were ongoing and escalated when he reached high school. Although a school psychologist evaluated T.A., the public school found that he did not qualify for special education services. Two years later, when T.A. was in his third year of high school, his difficulties with school work worsened and his parents sought private professional advice. T.A. was diagnosed privately with ADHD and other disabilities relating to learning and memory. The private specialist also found that T.A. would learn best in a structured, residential learning environment. His parents then enrolled him at a private school that focuses on educating children with learning disabilities.

Several days after enrolling their son in private school, T.A.’s parents gave the public school district written notice of their son’s private school placement and requested a due process hearing. The school district again determined that T.A. did not meet (*cont’d* ➔)

IDEA's disability criteria because his ADHD did not have a sufficiently adverse impact on his school performance. The school district concluded that T.A. was not eligible for special education services and declined to provide him with an individualized education program (IEP).

Two months later, the administrative review process continued, and a hearing officer concluded that T.A.'s ADHD did adversely affect his school performance and the public school district had failed to provide him with a FAPE. Therefore, his private school placement was appropriate and his parents were entitled to reimbursement for the cost of T.A.'s education.

The school district sought judicial review of the decision and the trial court held that the Amendments categorically barred reimbursement of private school tuition for students who had not received special education services previously. The Court of Appeals for the Ninth Circuit reversed the trial court's decision. The Supreme Court ultimately granted *certiorari* to review the decision.

The Supreme Court's Decision

The Supreme Court concluded that the Amendments made no change to the purpose of IDEA or the text of §1415(i)(2)(C)(iii). In two previous decisions, *Burlington v. Dept. of Ed. Of Mass.* (471 U.S. 359 (1985)) and *Florence County School Dist. Four v. Carter* (510 U.S. 7 (1993)), the Supreme Court held that §1415(i)(2)(C)(iii) gives courts the authority to reimburse parents for private special education services when the district does not provide the child with a FAPE and the private school placement is appropriate.

Although the student in *Forest Grove* had not previously received special education services through the public school, the Court held that the reasoning of *Burlington* and *Carter* still applies. It noted that there has been no indication from Congress that it intended to repeal the specific provision or overrule the Supreme Court cases that had previously authorized reimbursement to parents for private special education services in certain circumstances. The Court's interpretation of the statute gives parents remedies when a child has been completely denied needed special education services by the public school.

No Heavy Financial Burden on School Districts

The Court rejected the School District's arguments that the Court's interpretation will impose a heavy financial burden on public schools and encourage parents to enroll their children in private schools without first attempting to work with the public school district to provide services to the student. The Court stated that the restrictions on reimbursement identified in *Burlington* continue to apply and if parents remove their child to a private school placement without first working with the public school district to develop an appropriate special education plan for their child, they do so at their own financial risk.



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 EdLaw Group at edlawgroup@lindabury.com.

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

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