



School Law *Bullet*

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John E. Freund, III, Chair of Education Law Practice Group
Kristine M. Roddick, Chair of Special Education Section

To: Public Education Clients and Friends

By: Lucas J. Repka and John E. Freund, Esquires

Third Circuit Pinches the Tuition Reimbursement Penny *Here's Our Bulletproof Analysis*

Recently, the United States Supreme Court in Forest Grove School District v. T.A. No. 08-305, June 22, 2009 held that private school tuition reimbursement could be awarded despite the absence of notification of withdrawal of prior special education identification. The Third Circuit Court of Appeals decision in Mary Courtney T., et al. v. School District of Philadelphia, No. 08-2676, July 31, 2009, provides reassurance that public funds will not be available for private tuition unless the private placement provides appropriate special education services.

The Facts

A student who is a resident of the School District of Philadelphia suffers from a variety of learning, speech, attention and mental health disorders. Because of her evolving educational needs, the student was placed in a number of educational and medical placements through her academic career.

After several unsuccessful placements, the student's parents unilaterally enrolled her in Supervised LifeStyles (SLS), which is a long-term psychiatric residential treatment center in New York. While SLS is licensed by the New York State Office of Mental Health and is accredited with a national organization for the accreditation of rehabilitation facilities, it does not have any educational accreditation and has no onsite school, special education teachers or school affiliation.

After being discharged from SLS, the parents, on behalf of the student, sued the school district for tuition reimbursement and/or compensatory education, for the time period in which the student was privately placed at SLS. In concluding the

parents were not entitled to tuition reimbursement and/or compensatory education, the Court determined that: (i) SLS was not an appropriate educational placement under the IDEA; (ii) SLS was not a related service required to be provided by the School District; and, (iii) the School District did not deny the student FAPE.

What is An Appropriate Placement

Under the IDEA, parents who believe that a public school is not providing FAPE to a student may unilaterally remove their disabled student from that school, place him or her in another school, and seek tuition reimbursement for the cost of the alternate placement. However, a court may only order tuition reimbursement if the school district failed to provide FAPE and the private placement is appropriate.

In examining the appropriateness of the student's private placement in SLS, the Court acknowledged that it is required to consider "whether full-time placement may be considered necessary for educational purposes, or whether the residen-

tial placement is a response to medical, social or emotional problems that are segregable from the learning process. If the placement was required by the former, the school was obligated to bear the cost; if the placement is necessitated by the latter, the cost of the placement is the responsibility of the parents or social service agencies."

In other words, when faced with a request for tuition reimbursement, a Court must determine "whether residential placement is part and parcel of a specially designed instruction to meet the unique needs of a handicapped child."

This inquiry is important as only those residential facilities that provide special education qualify the parents of a student for tuition reimbursement under the IDEA. (See 34 C.F.R. §300.104.)

Recognizing, in a broad sense, that all programs can be construed as educational in nature, the Court instructed that it must "assess the link between

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the supportive service or educational placement and the child's learning needs" to assess the education nature of the programs provided. In expressly rejecting the parents' argument that the use of similar modalities employed by schools is not determinative of the service provided, the Court held that "the relevant consideration is not the tool the institution uses, but rather the substantive goal sought to be achieved through the use of that tool."

Further, upon examining the programs provided by SLS to the student, the Court determined that they were: (i) predominantly designed to make the student aware of her medical condition and how to respond to it; (ii) an outgrowth of her medical needs and necessary to teach the student how to regulate her condition, but were neither intended nor designed to be responsive to the child's distinct learning needs; and, (iii) not necessitated by a need for special education, but by a need to address her acute medical condition. As a result, the Court concluded that the programs were far beyond the capacity and responsibility of the School District, and, therefore, SLS was not an appropriate placement that would qualify for tuition reimbursement under the IDEA.

Related Services

Next, the parents argued that the programs provided by SLS were related services subject to tuition reimbursement under the IDEA. While acknowledging that school districts are required to pay for some medical services as related services of special education, the Court properly noted that the IDEA restricts qualifying medical services to those necessary for diagnostic and evaluation purposes only. In addition, the Court cited the federal regulations to the IDEA, which limit related services to "those services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." In determining what constitutes a related service, the Court held that a related service enables a handicapped child to remain at school during the day and must not be a medical service beyond the capacity of a school nurse.

Upon examining the programs and services provided by SLS, the Court determined that SLS is far more similar to a hospital than a school or even a residential educational facility, and provided services well beyond those services provided by a school nurse. Thus, the Court concluded that SLS's programs are excluded medical services, which by definition are not related services to special education under the IDEA, and, therefore, the parents were not entitled to tuition reimbursement.

Compensatory Education

Lastly, the Court determined that the School District did not deny the student FAPE during her enrollment in SLS entitling her to compensatory education under the IDEA. In so holding, the Court noted that the School District attempted to reevaluate the student's needs and develop a new IEP, but was thwarted by the student's acute medical condition. As such, the School District, acting through the IEP team and based on the recommendations from the medical team at SLS, opted to forego evaluation and creation of a new IEP until the student was sufficiently stable, which the parents agreed to.

The Court also noted that the School District, as soon as it was informed of the student's stabilized condition, immediately began providing tutors for Math and English and conducted an evaluation within five days, which culminated in a new IEP less than one month later. As such, the Court concluded that it could not fault the School District for the delay in developing a new IEP or for failing to provide what would have been an empty procedural protection because the student's medical providers expressly stated that the student was not sufficiently stable to receive educational services.

As a result, the Court concluded that the School District provided FAPE to the student, and, therefore, she was not entitled to compensatory education for the time period she was enrolled at SLS.

KING, SPRY, HERMAN,

FREUND & FAUL, LLC

One West Broad Street, Suite 700

Bethlehem, PA 18018

Phone: 610-332-0390 • Fax: 610-332-0314

www.kingspry.com

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Education Law Practice Group

John E. Freund, III, Education Chair •

jef@kingspry.com

Donald F. Spry, II • dfs@kingspry.com

Domenic P. Sbrocchi • dps@kingspry.com

Jeffrey T. Tucker • jtucker@kingspry.com

Glenna M. Hazeltine •

ghazeltine@kingspry.com

Kevin C. Reid • kcr@kingspry.com

Ellen C. Schurdak • ecs@kingspry.com

Kristine Roddick, Special Education Chair •

kmarakovits@kingspry.com

Rebecca A. Young • ryoung@kingspry.com

Deirdre J. Kamber • dkamber@kingspry.com

Jessica F. Moyer • jmoyer@kingspry.com

Lucas J. Repka • lrepka@kingspry.com

Erin D. Gilsbach • egilsbach@kingspry.com

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