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***Cedar Rapids Community School District v. Garret F.:* The Individuals with Disabilities Education Act and Related Services**

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Summary

The Supreme Court in *Cedar Rapids Community School District v. Garret F.* held that the related services provision in the Individuals with Disabilities Education Act (IDEA) required the provision of certain supportive services for a ventilator dependent child despite arguments from the school district concerning the costs of the services. Relying on a previous Supreme Court decision, *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), the Court in a seven to two decision continued to support the "bright line" rule stating that only medical services which must be provided by a physician are not required to be supplied by the school districts. This decision has been hailed by disability advocates as a substantial victory for families of children with disabilities while the Court's dissent noted that the decision "blindsides unwary states with fiscal obligations they could not have anticipated."

The Court's decision has increased interest in IDEA funding. Amendments have been offered to S. 280, the Education Flexibility Partnership Act of 1999 to increase IDEA funding.

Background

IDEA, 20 U.S.C. §§1400 *et seq.*, provides federal funding to States and localities for the education of children with disabilities and conditions the receipt of these funds on the provision of a free appropriate public education which emphasizes special education and related services for these children. The law defines "related services" as "...transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services

shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education...."¹

The Supreme Court dealt with the interpretation of "medical services" in *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984). In *Tatro* the Court examined the regulations on medical services which stated that medical services referred only to services that must be performed by a medical doctor and could not be performed by school health services. Finding the regulations a reasonable interpretation of the statute, the Court held that clean intermittent catheterization (CIC), a service that is usually performed by a nurse, was not excluded. The Court stated: "By limiting the 'medical services' exclusion to the services of physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision." At 892-893.

The courts of appeals which have decided cases since *Tatro* have not always applied the "bright line" distinction between medical doctors and other service providers. Several have used other factors such as the nature and extent of the services² and it was to resolve this issue that the Supreme Court granted certiorari in *Cedar Rapids*.

Cedar Rapids Community School District v. Garret F.

Majority Opinion.

Garret F. is paralyzed from the neck down as a result of a motorcycle accident when he was four years old but retains his mental capacities, is able to speak and was described by the Supreme Court as "a friendly, creative, and intelligent young man." Slip op. at 2. Although his family arranged for his physical care during the school day by a combination of settlement proceeds, insurance money, and family volunteers, eventually they requested the school to accept financial responsibility for his health care services during the school day. The school denied the request. An administrative law judge (ALJ) ordered that the services be provided; the district court upheld the ALJ's ruling and granted summary judgment. The court of appeals affirmed and the school district appealed to the Supreme Court. The Supreme Court, in a majority opinion written by Justice Stevens, held that IDEA requires a state receiving funds under the statute to provide Garret F, a ventilator-dependent student, with certain nursing services during school hours.

In arriving at its conclusion, the majority found that IDEA's statutory definition of related services, the *Tatro* decision, and "the overall statutory scheme" all support its interpretation. Slip op. at 6. The Court noted that the school district had argued that the combined and continuous character of the required care eliminated the need to provide such care. The school district proposed a test where the outcome in a particular case would depend on a series of factors such as whether the care was continuous or intermittent, whether existing school health personnel can provide the service, the cost of the service, and the potential consequences if the service is not properly performed. Rejecting this test, Justice Stevens observed that it was not supported by any recognized

¹ 20 U.S.C. §1401(a)(22).

² See *e.g.*, *Neely v. Rutherford County School*, 68 F.3d 965 (6th Cir. 1995), *cert. denied*, 517 U.S. 981 (1987); *Detsel v. Board of Ed. of Auburn Enlarged City School Dist.*, 820 F.2d 587 (2d Cir. 1987), *cert. denied*, 484 U.S. 981 (1987).

source of legal authority and that there was no indication concerning why these factors made one service more medical than another.

The Supreme Court also dealt specifically with the concerns the school district raised regarding the financial cost of the provision of these services. Although Justice Stevens noted that the school district may have "legitimate financial concerns", the solution proposed was seen as "judicial lawmaking without any guidance from Congress" and a solution that would not comport with the purposes of IDEA. Slip op. At 11. Although IDEA was not seen as requiring schools to maximize the potential of disabled students and the potential financial burdens may be relevant to interpreting IDEA, the overarching purpose of IDEA was seen as "to open the door of public education to all qualified children." Justice Stevens concluded that "this case is about whether meaningful access to the public schools will be assured, not the level of education that a school must finance once access is attained." Slip op. At 12.

Dissenting Opinion.

Justice Thomas wrote a dissenting opinion that was joined by Justice Kennedy arguing that the Court should not adhere to its previous decision in *Tatro* and even if it did the dissent argued that the majority's opinion expanded on *Tatro* and ignored "constitutionally mandated rules of construction applicable to legislation enacted pursuant to Congress' spending power." More specifically, the dissent argued that the Department of Education's regulations were not entitled to deference since the statute was clear. More importantly, in the dissent's view, was the fact that the majority focused on the provider of the services rather than the services themselves. This was seen as contrary to a correct statutory interpretation of IDEA. From a constitutional perspective, the dissent observed that when Congress places conditions upon the receipt of federal funds, it must do so unambiguously and that the majority "turns this Spending Clause presumption on its head."

Implications of *Cedar Rapids*

The decision in *Cedar Rapids* was praised by disabilities advocates as "a victory for school aged children and adolescents with disabilities across the United States"³ and as "a significant improvement for children with disabilities who have medical needs..."⁴ However, the superintendent of the Cedar Rapids Community School District where Garret F. is enrolled stated: "This is a landmark case that's going to have a tremendous effect nationwide It will drive up the costs of public education substantially."⁵ Similarly, the National School Boards Association said that providing in-school nurses for the 17,000 medically fragile children in the United States would cost an extra \$500 million

³ "NAPAS Applauds U.S. Supreme Court's Decision in Support of Garret F.; Decision is a Victory for Students with Disabilities," PR Newswire Association (March 3, 1999)(quoting Curtis L. Decker, Executive Director of the National Association of Protection & Advocacy Systems, NAPAS).

⁴ Doug Cumming, "Disability Advocates Hail Ruling; But Costs of In-School Nurse Care Worry Some," *The Atlanta Journal and Constitution* 01D (March 4, 1999).

⁵ Joyce Price and Andrea Billups, "Schools Must Pay Disabled's Care Costs; Nurse Services not Medical," *The Washington Times* A-1 (March 4, 1999).

each year.⁶ However, some have argued that these projected costs are exaggerated. "The predictions about financial ruin from this case are overblown and, in most cases, these services are already being provided."⁷

The Supreme Court's decision in *Cedar Rapids* is certain to engender debate about how to fund services for children with disabilities. Judy Heumann, Assistant Secretary of Education for Special Education and Rehabilitative Services, has noted that state and local school boards should look to Medicaid as well as Department of Education state grants to help.⁸ Increased funding for IDEA has also become an issue⁹ and amendments have been offered to S. 280, 106th Congress, Education Flexibility Partnership Act of 1999 to increase IDEA funding.¹⁰

⁶ David Savage and Richard Colvin, "Court Says Schools Must Pay Nursing Costs for Disabled," *The Los Angeles Times* A-1 (March 4, 1999).

⁷ *Id.* Quoting Joan Tellefsen, Executive Director of Team Advocates for Special Kids.

⁸ Richard Carelli, "Schools Must Provide Nursing Care, Court Rules," *The Legal Intelligencer* 4 (March 4, 1999).

⁹ For a discussion of IDEA funding see Apling, "Individuals with Disabilities Education Act: Full Funding of State Formula," CRS Report 97-433.

¹⁰ S. Amdt. 36, To Honor the Federal Commitment to fund Part B of the Individuals with Disabilities Education Act (Sen. Jeffords); S. Amdt. No. 37, to Authorize Additional Appropriations to Carry out Part B of the Individuals with Disabilities Education Act (Sen. Jeffords). For a detailed discussion of the ED-FLEX legislation see Riddle, "Federal Elementary and Secondary Education Programs: ED-FLEX and Other Forms of Flexibility," CRS Report 98-676.

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