

or others or making the individual competent to stand trial. Thus, provided that the state interest meets the overriding justification requirement, the Maryland statute can provide the statutory authorization for involuntary medication.

Discussion

In this case, the Court of Appeals of Maryland sought to reconcile an individual’s due process right to refuse psychotropic medications with a state’s interest in providing such medications for reasons it considers justified. Their reasoning underscored the importance of the due process right to refuse psychotropic medications while also acknowledging that there may be certain overriding justifications in which the state’s interest may outweigh that right to refuse. They comprehensively reviewed the precedents established by significant cases such as *Harper*, *Riggins*, and *Sell* to analyze the Maryland statute at issue, HG § 10-708(g), and concluded that it is constitutional, provided that the State present appropriate justification. As the Court stated, “For a pretrial detainee like Mr. Allmond, *Riggins* and *Sell* approve the State interests in preventing harm to the individual or others and in making the individual competent to stand trial” (*Allmond*, p 73). We agree with the court that the State’s proposed justifications, which include providing medical care for those in its custody, obligations under the Americans with Disabilities Act, and optimizing its use of resources, are not appropriate justifications to override an individual’s right to refuse psychotropic medications. A rationale provided by the state must be examined with the framework of *Riggins* and *Sell*, and the state is not permitted to use any justification it may deem appropriate. In this context, the state’s proposed justifications fail to establish the necessary overriding justification to provide involuntary psychotropic medication to an individual in a mental health facility.

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Eligibility for Special Education Services Under the Individuals with Disabilities Education Act

Ijeoma Jennifer Njoku, MD
Fellow in Forensic Psychiatry

Clarence Watson, JD, MD
Director of Forensic Psychiatry Fellowship

Department of Psychiatry
Perelman School of Medicine
University of Pennsylvania
Philadelphia, PA

District Court Errs in Decision to Disqualify an A Student from Receiving Special Education Services Under the Individuals with Disability Education Act

In *Doe v. Cape Elizabeth School District*, 832 F.3d 69 (1st Cir. 2016), the parents of a middle school student receiving special education for a reading disability challenged an administrative officer’s determination that the student was no longer eligible for services under the Individuals with Disability Education Act (IDEA) because of the student’s excellent overall academic record. The United States District Court for the District of Maine affirmed the determination of ineligibility and the parents appealed to the Court of Appeals for the First Circuit.

Facts of the Case

In preschool, Jane Doe struggled with reading and learning to talk. During the second grade, Jane’s Individualized Education Program (IEP) team concluded that Jane suffered from a reading fluency deficiency, a special learning disability (SLD), and was eligible for special education services under the IDEA. Jane’s special education program focused on improving her reading skills, and over the course of several academic years, Jane’s reading skills, academic grades, and standardized test scores improved. During the seventh grade in March 2012, Jane’s IEP team terminated her special education instruction because she had been performing well academically. Jane’s parents expressed concern that she could regress academically without the special education program. Consequently, the IEP team administered monthly reading-fluency probes to monitor Jane’s reading fluency.

In January 2013, the IEP team concluded that Jane no longer qualified as a student with an SLD and no longer needed special education because of her adequate reading fluency and overall academic performance in the absence of educational interventions. In reaching its conclusion, the IEP team considered Jane’s excellent academic record of straight-A grades and her state standardized test scores. The IEP team also considered Jane’s average to above-average

scores on specific reading skills tests, such as TOWRE-2 (Test of Word Reading Efficiency), WRMT-III (Woodcock Reading Mastery Tests), GORT-5 (Gray Oral Reading Test), and TOC (Test of Orthographic Competence).

Jane's parents disagreed with the IEP team's decision and sought independent evaluations from an educational consultant and a neuropsychologist. The neuropsychologist administered testing that revealed Jane's low performance on the reading rate component of the Nelson Denny Test. The educational consultant administered many of the same tests administered by the IEP team; however, Jane scored considerably lower on the TOWRE-2 than on her first attempt. Jane's scores on the GORT-5 and WRMT-III were comparable with her previous scores. Jane also scored in the very low range on an additional reading test, the Symbolic Imagery Test.

In May 2013, the IEP team reconsidered Jane's eligibility status in light of the independent evaluation results. The IEP team again determined that Jane was ineligible because of her adequate academic performance and that she did not have an SLD. Consequently, Jane's parents sought an administrative review of the IEP team's ineligibility determination, as permitted under IDEA provisions. The administrative hearing officer considered Jane's excellent grades, classroom performance, standardized test results, input from her teachers and parents, and reading fluency test results, and concluded that Jane did not have an SLD.

Jane's parents then sued the school district and submitted additional evidence, including an affidavit outlining Jane's continued reading difficulties and the independent reading fluency test results. Jane's parents argued that the independent reading fluency test results were more reflective of Jane's reading deficiency than the test results considered by the administrative hearing officer. The district court noted that the hearing officer gave "scant consideration" to the reading fluency tests, but ultimately adopted the officer's findings. The district court did not consider the additional evidence offered by Jane's parents and affirmed the administrative hearing officer's decision.

On appeal to the First Circuit, Jane's parents argued that the district court erred in considering Jane's overall academic performance because the presence of a reading fluency deficiency alone could qualify Jane for IDEA services. Further, they argued

that a reading fluency deficiency could only be measured by tests specifically designed to detect that deficiency and that overall academic performance could not be used for that purpose. Finally, they argued that the court did not properly consider the additional evidence offered to make an independent determination of Jane's deficiency and instead, relied heavily on the administrative officer's decision.

Ruling and Reasoning

The Court of Appeals for the First Circuit ruled that the district court erred in relying on Jane's overall academic performance without assessing how her academic achievements related to her reading fluency skills. Accordingly, the district court's decision was vacated and remanded. The court noted Jane's excellent academic record along with her average to below-average scores on reading fluency tests. However, the court reasoned that just as no single measure could support a reading fluency deficit finding, no single measure, including academic performance, could undermine a reading fluency deficit finding when other measures are present supporting the finding.

The court emphasized the contradiction in Jane's overall academic performance versus performance on specific reading assessments and noted the risk that overall academic performance could mask a learning disability. The court pointed out that academic performance is multifaceted and can be influenced by high intelligence, hard work, devoted parents, and academic accommodations. Conversely, the reading fluency tests were administered to specifically determine Jane's reading fluency skills. The court pointed out that generalized academic measures must have a high probative value to outweigh specific disability measures when identifying the presence or absence of a learning disability. The court noted that eligibility inquiries in these cases must consider tests that actually assess the deficiency at hand and that parties should have the opportunity to prove, through expert testimony and other relevant evidence, the nexus between general academic measures and a student's particular deficiency. Accordingly, the appellate court remanded the case to the district court to weigh whether components of Jane's general academic performance fairly reflected her reading fluency skills and could counteract the negative results from the specific reading fluency tests.

The circuit court also found that the district court failed to make an independent judgment of Jane's special education eligibility by not considering the additional evidence submitted by her parents, including the independent reading fluency assessments. The circuit court viewed the lower court's heavy reliance on the administrative hearing officer's decision as affording excessive deference to the officer, who did not consider the additional evidence and as failing to reach an independent determination regarding eligibility based on the available evidence, as required in IDEA cases.

Discussion

In the *Doe* case, the court addressed the critical problem of the proper assessment of a learning disability in the context of excellent academic performance and whether significant academic improvement alone can disqualify a student, who had a diagnosed disability, from receiving special education services. Under the IDEA, states receiving federal funds are required to provide special education services to children with disabilities. A child's eligibility under the IDEA is determined by a two-step inquiry: first, does the child have a qualifying disorder or disability? Second, does the child with the qualifying disorder need special education services as a result of the disorder?

In this case, the administrative hearing officer and the district court overemphasized the student's excellent academic record when considering the first step of the eligibility inquiry. The district court, relying on the administrative officer's findings, essentially viewed the student's academic performance as evidence that a disability no longer existed. In doing so, the district court set aside negative results of specific disability assessments in favor of evidence of academic achievement. Consequently, the district court did not reach the second step of the inquiry, because it did not recognize existence of Jane's learning disorder.

The appellate court's analysis in the case centered on the improper weight afforded to the student's overall academic record in the face of conflicting specific disability assessments. The appellate court recognized that overall academic achievement is broad, multifactorial, and nonspecific and that many protective factors may mask a qualifying learning disability. In other words, a student could excel academically, with hard work and parental involvement,

despite the presence of a qualifying disability. The court emphasized the importance of considering indicators and measures that specifically address the particular disability in question.

The appellate court addressed the question of the proper selection of assessment measures, to determine the presence or absence of a particular disorder. As in other areas where the presence of a disability may be challenged, litigation over the proper use of specific clinical indicators and assessment tools measuring the presence or absence of the disorder should be expected. As indicated by the appellate court in this case, the admission of expert evidence and testimony in similar cases is likely necessary to resolve conflicting clinical details placing the presence of a learning disability in question.

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Government Management of Accompanied Minors Held in the Custody of Immigration Authorities

James A. Armontrout, MD
Fellow in Forensic Psychiatry

John R. Chamberlain, MD
Clinical Professor of Psychiatry

Department of Psychiatry
University of California, San Francisco
San Francisco, CA

Accompanied Minors Who Are Held in Immigration Proceedings Are Entitled to the Protections Outlined in the 1997 Settlement of *Reno v. Flores*

In *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016), Jenny Lisette Flores brought an action against Immigration and Customs Enforcement (ICE) related to their practice of detaining accompanied minors who are held in deportation proceedings in secure, unlicensed facilities. Ms. Flores argued that this detention violated a 1997 settlement from *Reno v. Flores*, 507 U.S. 292 (1993) (the Settlement). Ms. Flores based her assertion on the facts that the Immigration and Customs Enforcement (ICE) had adopted a no-release policy and confined children in secure, unlicensed facilities. In its response, the government argued that only unaccompanied minors were covered