Education, Special Needs, and Medical Exclusions: A Good "IDEA"?

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Congress has enacted legislation intended to ensure that school children with disabilities have related services that enable them to take full advantage of their education. The legislation has had several iterations,[1] culminating in Title 20 § 1400 *et. seq.*, the Individuals with Disabilities Education Act (IDEA). Acknowledging that children with disabilities are often multiply handicapped, the IDEA provides for a variety of auxiliary services,[2] but does not provide for medical services that can be administered only by a physician. Thus, school-based health services are covered, a matter that was seemingly settled in the U.S. Supreme Court's 1984 decision, *Irving Independent School District v. Tatro*[3] (see below). The services are then incorporated into the student's Individualized Education Plan (IEP).

The scope of covered health services was further defined in the recent U.S. Supreme Court decision, *Cedar Rapids Community School District v. Garret F.*,[4] on *certiorari* from the Eight Circuit Court of Appeals. The respondent is an Iowa child with a spinal cord injury sustained at age four in a motorcycle accident. He is on a ventilator and requires a skilled attendant. His mother, Charlene F., acting as next friend, brought suit against the school district, which argued that it need not fund health needs of this nature. This article discusses the details of the case, the basis for the decision, and the issues surrounding the disabled in schools.

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The *Tatro* Precedent

The most cited case on the IDEA is *Irving Independent School District v. Tatro*.[3] In this 1984 U.S. Supreme Court decision, the Court considered whether Amber Tatro's need for intermittent bladder catheterization fell within the "related services" provision of the Education of the Handicapped Act. Amber, who was 3.5 years old when the litigation commenced and 8 at the time of the decision, was born with spina bifida and suffered from orthopedic and speech impairments and a neurogenic bladder. The latter condition required assistance in emptying her bladder every three to four hours, which would thus occur during school time.

The Court held that the procedure was indeed covered and was not excluded as a "medical service." The procedure in question could be performed by any layperson with minimal training. Moreover, since Amber could not attend classes without the procedure, the state of Texas could not bar her. As long as the procedure was performed without the presence of a doctor, the IDEA's legal requirements would be satisfied.

The *Garret B.* Litigation

This case turns on the interpretation of what should be construed as *medical* services. Garret has been adapting to quadriplegia since a motorcycle accident at age four. His mind was not affected, and he has been a successful student. However, his motor abilities are limited to the use of a straw-operated (puff and suck) wheelchair and a head movement-activated computer. Additionally, he has been de-

pendent on a ventilator, requiring the presence of an attendant at all times, lest he be uncoupled from it.

From kindergarten through fourth grade, his family took care of his personal needs during the school day, largely from the proceeds of the accident case. Then in 1993, Garret's mother asked the Cedar Rapids school district to cover the cost of the one-on-one attendant, saying this care was necessary to carrying out the education program. The school district refused, asserting that the care was beyond the scope of its responsibility.

Garret's mother brought the matter before an Administrative Law Judge (ALJ), who agreed with her position. The ALJ interpreted the IDEA as requiring the school to fund related services, with medical services not requiring a physician included. That is, the meaning of "medical" was broader than denoting only physicians' services. The school district took the matter to court. Their position was that they were not obligated to provide on-site medical services, because the IDEA only requires such services for diagnostic purposes, not for health care. Thus, they rejected the ALJ's construal of the IDEA. Attending a child on a ventilator, in their view, would clearly be medical under their reading of the IDEA. They relied on the *Tatro* precedent, arguing that a bright-line test had been established.

The respondent, Garret, argued that the *Tatro* test excluded on-site medical services that could only be provided by a physician. Since Garret's needs were supportive (nursing-type or even lay care), he should be covered by the IDEA. The federal court agreed, granting summary judgment against the school district. The Eighth Circuit Court of Appeals affirmed the ruling,[5] citing the two-step analysis of the "related services" definition in *Tatro*. The analysis asks first whether the requested services are "supportive" and then whether they are excluded as "medical." Garret prevailed on both steps. The school district petitioned the Supreme Court for *certiorari*, challenging the second step only. Their view was that excluded medical services should encompass some non-physician services, such as those required by Garret. Moreover, they argued that including the procedures sought by Garret would place an undue burden on the school district's budget.

The Supreme Court decided seven-to-two in favor of Garret. The majority opinion noted that the school district could not reasonably argue that any of the specific procedures were excluded, since they are also given to students in other circumstances. That is, the services requested were reasonably supportive in nature. The school district had asked for a multifactor test: weighing intensity and cost, whether school personnel could provide the service, and the consequences of its not being properly performed. The Supreme Court saw no reason to adopt a new analysis. Moreover, the majority could not comment on the "undue burden" argument, since it was a matter of local economics, not constitutional law. Ultimately, the justices ruled that, to keep Garret in school, the district must provide the required related services.

Dissenting Justice Thomas, with Justice Kennedy concurring, wrote that *Tatro* should not be adhered to, because it cannot be squared with the text of the IDEA. The intent of Congress in enacting the IDEA, he said, was to increase educational opportunities, not medical care. Even if *Tatro* had been correctly decided, it was still not the explicit intent of Congress to obligate schools to spend federal funds as liberally as the *Garret F.* majority would have them do.

Related Cases

The following cases illustrate a variety of applications of the IDEA to post-Tatro situations. In 1990, the U.S. Ninth Circuit Court of Appeals took up the question of the needs of a student who was in a psychiatric hospital, *Clovis Unified School District v. California Office of Administrative Hearings.*[6] Again, the question concerned "medical" versus "related" services. The child, Michelle Shorey, age 10 at the time of the appeal, had been adopted at four and a half as an abused and neglected child. The child developed destructive behavior that continued after adoption. She required hospitalization, which narrowed the options for adequate education. The school district opted for a non-hospital placement that cost $100,000 less than the hospital-based tutoring Michelle's parents chose. An administrative hearing was held, granting Michelle's request for the 1985–1986 school year. The Clovis school district brought the matter to federal district court in California's eastern district, arguing that hospitalization was for medical, not educational, reasons, relieving them of the obligation to fund it. They were unsuccessful in overturning Michelle's hospital funding order. The court of appeals heard arguments, the most prominent of which was on related service versus medical exclusion. The court cited *Tatro* as helpful but not

dispositive, noting that both parties here believed they would prevail under a *Tatro* analysis. The decision, going in favor of the school district, illustrated how various types of medical treatment could be construed as "supportive" to the education process, rejecting the idea that "supportiveness" *per se* would be a good test. Moreover, the court did not side with Michelle on the medical exclusion issue, saying that a program aimed at curing an illness is *medical*, whether or not a physician performed all or some of its components. The decision cited a New York case in which intensive life support services, even though provided by a nonphysician, were not covered.[7] Therefore, the issue of medical exclusion does not reside either in the domain of whether a licensed physician performs the services or in whether the illness in question is mental or physical. Rather, services intended to cure an illness are not to be paid by the school district. These services are not intended primarily to aid the child in receiving special education. Prior to *Tatro*, the U.S. Supreme Court in the 1982 *Pennhurst*[8] decision had given a rationale for why Congress did not include hospitalization as a related service; to do so would be an ambiguous imposition of conditions on federal grant moneys.

With a fact pattern similar to that of *Garret F.*, *Neely v. Rutherford County School*[9] deals with a child whose needs include regular tracheostomy suctioning during the school day. The child, Samantha Neely, suffered from congenital central hypoventilation syndrome, had a tracheostomy in place, and required regular suctioning by a trained caregiver. The family requested that the school provide a nurse or respiratory care professional; the school incorporated the care plan into Samantha's IEP. However, the school supplied only a nursing assistant, prompting the Neelys to bring the matter before an ALJ. The ALJ determined that the requested service was "medical" and thus excluded from the school's obligations under the IDEA. The Neelys sued in federal district court, which found that the services were "supportive," reversing the ALJ's decision. Rutherford County appealed. The U.S. Court of Appeals reasoned that, since Samantha's services are medical in nature, burdensome, and expensive, her case is distinguished from *Tatro* and falls within the medical services exclusion. Thus, the district court was reversed.

Two 1997 U.S. Court of Appeals decisions also went in favor of the school districts. In *Cypress-Fairbanks Independent School District v. Michael F.*,[10] the boy in question suffered from Tourette's syndrome, previously diagnosed as attention deficit-hyperactivity disorder. The IEP included mainstream education with a behavioral plan that included time-out. Michael's behavior, however, was grossly inappropriate and not readily controllable. Despite psychiatric intervention and medication changes, the problem worsened; Michael became frankly dangerous. Eventually his parents took him out of his Texas public school and transferred him to a private facility in Utah. They asked the school district to fund the private schooling and were rejected. Pursuant to the IDEA, the parents asked for a hearing, and they prevailed. The school district appealed to the U.S. District Court, where the hearing officer was reversed. At the appeals level, the court found the school district's IEP to be appropriate, thus denying Michael's parents reimbursement for the placement. The second case, *Donald B. v. Board of School Commissioners of Mobile County, Alabama*,[11] involves a boy with speech impairment. The issue was whether the school district was required to transport Donald three blocks for speech therapy, or alternately, to send a speech therapist to his private school. Since speech therapy is a legitimate "related service," it would be covered by the IDEA. However, since the transportation need was not due to the handicap itself, the district court rejected Donald's claim, citing a 1989 Sixth Circuit case.[12]

Finally, a 1998 decision from Illinois[13] came while the Supreme Court was deciding *Garret B.* J.M. is a teenager who, like Garret B., breathes through a tracheostomy and requires intermittently a ventilator and suctioning. There are additional physical needs that require that either his parents or a nurse be present at all times. The only way J.M. can attend school is with an attendant; therefore, his parents asked that the school district pay about $20,000 a year for the services. The parents argued that the attendant services are not subject to the medical exclusions of the IDEA. The school district took the position that, under the IDEA, only traditional school nursing services would be included. The court found both of these positions to be "extreme," rejecting the boy's "the sky's the limit" argument and the school district's "undue burden" defense. Further, it appeared genuinely troubled by a lack of guidance in precedents. Ultimately, it supported the hearing officer's finding that the services requested did not

Table 1 Medical Inclusions and Exclusions Under the IDEA

Related Service (reference)	IDEA Status	Rationale of Decision
Intermittent bladder catheterization for a child with spina bifida (3)	Included	Procedure can be done by a nonmedical person and for nondisabled students
Full-time one-to-one attendant for ventilator-dependent quadriplegic (4, 5)	Included	Procedure can be done by a nonmedical person and is not an undue financial burden
Private psychiatric hospitalization for destructive behavior (6)	Excluded	Hospitalization is being used to treat a medical condition, not just to facilitate education
Intensive life-support services (7)	Excluded	An undue burden on the school's budget; not pertinent to IEP
Tracheostomy suctioning for central hypoventilation syndrome (9)	Excluded	Undue burden on school due to intensity of service
Tourette's syndrome; destructive behavior (10)	Excluded	Medical treatment is for a medical condition primarily
Speech therapy (11)	Excluded	Transportation not essential to keeping the child in school
Tracheostomy suctioning for severe congenital defects (12)	Included	Procedure can be done by a nonmedical person

cross the line into the medical services excluded by the IDEA.

Comment

The case of Garret F. is an affirmation of the federal government's commitment to upholding the right of students with disabilities to enjoy educational opportunities available to the nondisabled. Schools are not expected to provide medical care *per se* to the student (beyond ordinary school nursing and diagnostic tests). Rather, they must fund services that enable the student to partake of an appropriate education program. Operationally, then, the IDEA pushes the hand of the school district to fund services related to acquiring the education, while excluding those services related only to the health domain. Table 1 summarizes the kinds of services that fall on one side or the other of the IDEA medical exclusions.

It appears that, despite obvious legislative intent, the interpretation of the IDEA is subjective, if not capricious. The most likely battleground would be at the administrative law hearing level. However, the matters are serious enough to have gotten the attention of the Supreme Court on at least two occasions. Who, then, is covered by the IDEA, and who is not? The question was not settled conclusively in *Tatro*, and the two-step algorithm for IDEA eligibility still stumbles on the question of related versus medical services. Where there is a quasi-medical procedure not requiring physician services—and not costly!—the courts have been consistent in granting rights to the student.[3,4,13] On the other hand, weighing the total burden on the school district, similar services in other cases have been excluded as crossing a line into the medical domain.[9]

What apparently gives the courts more trouble than forcing the school to spend money are cases in which the disability in question is psychiatric. Thus in *Clovis* and *Michael F.*, we see that, where the child cannot be maintained in the local school, the court may reject the IEP if the placement appears extravagant. Money aside, the operational principle seems to hinge on how the psychiatric illness is causally related to the education program. That is, if the child needs mental health services to partake of school, the IDEA covers it. If, on the other hand, the child requires education while being hospitalized for a serious psychiatric condition, coverage is capricious.

Psychiatrists who contribute to IEPs will benefit from attending to trends in the interpretation of the IDEA. The child with psychiatric disability is most likely to prevail when the "least extravagant alternative" is used. Children with physical needs will also win the day if the procedures in question appear to be more personal care than medical procedure. There will remain ambiguity and subjectivity in the adjudication of borderline cases, although *Garret F.* clarifies the largest of the issues. Yes, the IDEA is a good idea. It will not go far enough for everyone, but it stands out as an affirmative model of compassion and an attempt to defeat the stigmatization of disabled children.

References

1. The original version was the Education of the Handicapped Act, 84 Stat. 175. It was amended in 1975 to include a definition of "related services," as the Education for All Handicapped Children

Act of 1975, § 4(a)(4), 89 Stat. 775. The modifications thereafter culminated in the 1994 version of the IDEA, Title 20 of the United States Code, especially §§ 1400 and 1401(a)(17) (now 22). This version was in effect at the time of the *Garret F.* litigation.

2. 20 U.S.C. § 1401(a)(17) states: "The term 'related services' meanstransportation, 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, and includes the early identification and assessment of disabling conditions in children."
3. Irving Independent School District v. Tatro, 468 U.S. 883 (1984)
4. Cedar Rapids Community School District v. Garret F., *ex rel.* Charlene F., 526 U.S. 66 (1999)
5. Cedar Rapids Community School Dist. v. Garret F., 106 F.3d 822 (8th Cir. 1997)
6. Clovis Unified School Dist. v. California Office of Administrative Hearings, 903 F.2d 635 (9th Cir. 1990)
7. Detsel v. Board of Educ. of Auburn, 637 F. Supp. 1022 (N.D.N.Y. 1986), aff'd, 820 F.2d 587 (2d Cir.), cert. denied, 484 U.S. 981 (1987)
8. Pennhurst State School v. Halderman, 451 U.S. 1 (1982)
9. Neely v. Rutherford County School, 68 F.3d 965 (6th Cir. 1995)
10. Cypress-Fairbanks Independent School District v. Michael F, by next friend Mr. and Mrs. Barry F, 118 F.3d 245 (5th Cir 1997)
11. Donald B., By and Through Christine B. v. Board of School Commissioners of Mobile County, Ala. 117 F.3d 1371 (11th Cir. 1997)
12. McNair v. Oak Hills Local School Dist., 872 F.2d 153 (6th Cir. 1989)
13. Morton Community Unit School Dist. No. 709 v. J.M., 152 F.3d 583 (7th Cir. 1998)