

School District Must Reimburse for Failure to Provide Free Appropriate Public Education

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In *Forest Grove School District v. T.A.*, 129 S.Ct. 2484 (2009), the United States Supreme Court held parents of special education students may seek government reimbursement for private school tuition, even if they did not receive special education services in a public school.

T.A., a former student in the Forest Grove School District, was evaluated by a school psychologist in December of 2000. After interviewing the student, examining his records, and administering cognitive ability tests, the psychologist concluded T.A. did not need further testing for any learning disabilities or health impairments. Included in the psychologist's assessment was an evaluation of T.A. for attention deficit hyperactivity disorder (ADHD). The psychologist and two other district employees discussed the results of the evaluation with T.A.'s mother, and, in June 2001, the parties agreed T.A. did not qualify for special education services. The respondent's parents did not seek to review the decision made by the school. T.A. was able to complete his sophomore year at Forest Grove High School, but his problems worsened during his junior year. In February of 2003, T.A.'s parents and the school district discussed the possibility of the student completing an alternative degree program. The next month, after seeking private professional treatment, T.A. was diagnosed with ADHD and other learning disabilities. The private specialist advised the family that T.A. would benefit from a structured, residential learning environment. After such advice, T.A. was enrolled in a private academy that focused on educating special needs children. The tuition for the private school was \$5,200 per month.

Four days after enrolling T.A. in the private school, the parents hired a lawyer to give Forest Grove School District written notice of T.A.'s placement in the private school. In April of 2003, T.A.'s parents requested an administrative due process hearing regarding his eligibility for special education services. In June of 2003, Forest Grove hired a school psychologist to determine whether T.A. indeed had a disability that significantly impaired his educational performance. A multidisciplinary team assembled by Forest Grove concluded T.A. did not meet IDEA's disability criteria because his ADHD did not have a sufficiently significant adverse impact on his educational performance. Forest Grove declined to provide an individualized education program (IEP) for T.A., finding he was not eligible for special education services. As a result, T.A. stayed at the private school through his senior year of high school.

In January of 2004, the Office of Administrative Hearings for the State of Oregon determined that T.A. was disabled and eligible for special education under the Individuals with Disabilities Education Act (hereafter "IDEA"), 20 U.S.C.A. § 1400 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 *et seq.* The hearing officer ruled that T.A.'s private school placement was appropriate under IDEA because Forest Grove did not offer T.A. a free appropriate public education (hereafter "FAPE") and awarded reimbursement for the private school placement to T.A.'s parents.

The school district appealed the order in an Oregon federal district court arguing reimbursement was not appropriate because T.A. voluntarily withdrew from the school district, never received special education services while enrolled, and withdrew for reasons unrelated to his learning disability. The District Court accepted the hearing officer's findings of fact but set aside the reimbursement award after finding that the 1997 Amendments to IDEA bar reimbursement of private school tuition for students who have not "previously received special education and related services under the authority of the public agency."

On appeal, the U.S. Court of Appeals for the Ninth Circuit reversed and remanded the District Court's decision. The Ninth Circuit held that the Amendments do not pose a categorical bar to reimbursement when a

parent "unilaterally places in private school a child who has not previously received special education services through the public school." It reasoned that IDEA provided the courts broad discretion in order to achieve "equitable relief" for disabled students, including reimbursement for private school tuition.

Because the lower courts reached inconsistent results, the United States Supreme Court granted *certiorari*. The question before the Supreme Court was whether, under IDEA, a federal district court could order a school district to reimburse its former student for tuition at a private school when the student unilaterally withdrew from school, never received special education service while enrolled, and withdrew for reasons unrelated to his learning disability. The Forest Grove School District, with the support of school boards throughout the country, argued that a 1997 amendment to IDEA prohibited private school tuition reimbursement for students who did not receive special education services in a public school. However, the Supreme Court rejected this argument. "We conclude that IDEA authorizes reimbursement for the cost of private education services when a school district fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education or related services through the public school," Justice Stevens wrote in the majority opinion of the 6-3 ruling. The court stated that Forest Grove's interpretation would produce a result "bordering on the irrational," because such an interpretation would leave parents without relief in situations where a school district unreasonably denies a child access to special education services. Justice Stevens was joined in his opinion by Chief Justice Roberts and Justices Kennedy, Ginsburg, Breyer, and Alito.

The court relied on its decisions in *School Committee of Town of Burlington v. Department of Ed. of Massachusetts* and *Florence County School Dist. Four v. Carter*, 471 U.S. 359 (1985). In *Burlington*, the Supreme Court unanimously held that courts have the power to order school authorities to reimburse parents for their expenditures on private special education services for a child if a court ultimately determines that private placement is proper, even if the decision was made unilaterally by the parents to enroll the student in a private program. In that case, the court ultimately determined a private placement, rather than a proposed IEP, is proper under IDEA. Eight years later in the Supreme Court's unanimous decision in *Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993), the Court held that reimbursement may be appropriate even when a child is placed in a private school that has not been approved by the State..

The Court distinguished the *Forest Grove* case from *Burlington* and *Carter* in that this case does not concern the adequacy of the IEP but the school district's failure to provide an IEP at all. Also, unlike the children in *Burlington* and *Carter*, T.A. did not receive special education services from his school district. The Court found the differences between the two situations to be insignificant because the earlier decisions were based on the language and purpose of IDEA and not the particular facts of the cases. The Court reasoned, "[a] school district's failure to propose an IEP of any kind is at least as serious a violation of its responsibilities under IDEA as a failure to provide an adequate IEP."

Consistent with the decisions in *Burlington* and *Carter*, the Court concluded that IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a free appropriate public education and private school placement is appropriate, regardless of whether the child previously received special education services through the public school. The Court held that if a hearing officer or a court concludes a school district has failed to provide a FAPE, and the private placement was suitable, a it must consider all relevant factors, including the notice provided by the parents and the school district's opportunity for evaluating the child, in determining whether to order reimbursement for some or all of a child's education costs.