Shipman & Goodwin LLP

School Law Alert

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SUPREME COURT: SPECIAL EDUCATION LAW PERMITS PARENTS WHOSE CHILDREN HAVE NEVER RECEIVED IN-DISTRICT SERVICES TO BE REIMBURSED FOR PRIVATE PLACEMENT

The Supreme Court of the United States has issued a ruling that will have important ramifications for school districts as they implement the Individuals with Disabilities Education Act ("IDEA"). In Forest Grove School District v. T.A., the Court re-affirmed that when a school district fails to provide a free appropriate public education ("FAPE"), parents may unilaterally place their children in a private school and seek reimbursement for the costs of the private school placement. The Court also held for the first time that parents whose children have never received special education services through a school district are eligible for an award of reimbursement for a private school placement from that school district.

In so holding, the Court found that the 1997 amendments to IDEA, which were in part intended to restrict eligibility for such reimbursement, did not prevent such parents from seeking to be reimbursed. The Court's decision resolves a split among the federal circuit courts regarding the issue.

This decision means that, when a Planning and Placement team ("PPT") determines that a child is not eligible for special education services under the IDEA, the parents of that child may unilaterally place their child in a private school setting and seek reimbursement for the private school placement. The decision also suggests that parents who are dissatisfied with a district's proposed initial individualized education program ("IEP") may unilaterally place their child in a private school and seek reimbursement for that placement, even though the child never received any services under the program offered by the school district.

The decision of the Court will have a practical impact on school districts as they engage in the initial evaluation and eligibility determination processes under the IDEA. First, we anticipate that there will be an increase in eligibility disputes concerning the outcomes of initial evaluations completed through the district's child find procedures. Eligibility disputes will have higher stakes, including the possibility that districts will have to pay for private school placements for students who have never even attended

public school. There will also likely be an increase in disputes concerning the initial IEP offered to a child who has been determined for the first time to be eligible for special education. In light of this Supreme Court decision, it is more important than ever that school districts ensure that they have consistent and sound procedures for conducting eligibility determinations and developing initial IEPs.

QUESTIONS OR ASSISTANCE?

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