



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 11 1999

Honorable David Camp
House of Representatives
Washington, DC 20515-2204

Dear Mr. Camp:

This is in response to your letter dated April 7, 1999, written to Secretary of Education Richard W. Riley, on behalf of your constituent, Mr. Lyle Spalding, Superintendent of C.O.O.R. Intermediate School District, Roscommon, Michigan, regarding the recent decision of the U.S. Supreme Court in Cedar Rapids Community School District v. Garret F. (decided Mar. 3, 1999). In the Cedar Rapids case, the Supreme Court concluded that the Individuals with Disabilities Education Act (IDEA) requires the District to provide Garret Frey with the nursing services he requires during school hours, since these services are "school health services," and not the types of "medical services that are excluded from the Act's coverage." This recent Supreme Court decision is consistent with the interpretation of the law first enumerated by the Supreme Court in its earlier decision in Irving Independent School District v. Tatro, 468 U.S. 881 (1984).

In a letter written to you, your constituent has expressed a number of concerns about the impact of the Cedar Rapids decision, on both the C.O.O.R. Intermediate School District as well as other school districts in Michigan. A primary concern to your constituent is how school districts will meet what he regards as the increased costs of providing the services prompting the Cedar Rapids case, including the costs of resulting litigation against school districts for negligent acts or omissions of their employees administering those services. Consequently, your constituent proposes that the statute be amended to exclude from coverage the types of services at issue in Cedar Rapids. Your constituent also requests that Congress act to fully fund IDEA at the 40 percent level projected in the law. He believes that fully funding IDEA is essential to assist States in providing services consistent with the Court's decision.

The decision in Cedar Rapids does not set forth new requirements under the IDEA. Since 1977 the IDEA regulations have defined "medical services" excluded from coverage as those "services provided by a licensed physician" except where the physician is providing services that are diagnostic and evaluation services.

34 CFR §300.24(b)(4). In Cedar Rapids, the Supreme Court reaffirmed the position it took in a 1984 case, Irving Independent School District v. Tatro, that the Department's regulatory interpretation of the medical services exclusion is reasonable and under the IDEA, children with disabilities are entitled to receive, at no cost to themselves or their families, the related services, including health services that can be provided at school by non-physicians, that are necessary to allow them access to public education with their nondisabled peers. The Department believes that the Supreme Court's decisions, in both Tatro and Cedar Rapids, are consistent with the primary purpose of the IDEA, "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs... " 20 U.S.C. §1401(d)(1)(A). Therefore, the Department does not believe that any amendments to IDEA's definition of "medical services" are needed.

The IDEA has provisions designed to help school districts provide special education and related services, including health services. In each State there must be mechanisms such as interagency agreements that require non-educational agencies, such as Medicaid, to provide and pay for the special education and related services that they are otherwise responsible for. These interagency agreements must also include reimbursement procedures so that the schools get paid if they provide a service that another agency covers. In addition, States can use a portion of the IDEA grant to help districts pay for high cost children. States and school districts can also use a portion of their IDEA grants to set up and run coordinated services systems designed to improve results for all children, including children with disabilities.

Please also note that the number of children across the country who require the type of one-on-one attention that Garret Frey requires is, by all available estimates, small. In addition, the cost of hiring health personnel will vary depending on the level of licensure required by state law. To obtain information about Michigan law relevant to these matters, your constituent may wish to contact the Michigan Department of Education for additional guidance. Several States also have adopted legislative initiatives that permit a variety of appropriately trained health care providers to provide services, such as those at issue in the Cedar Rapids decision, to facilitate greater independent living, as well as to contain costs.

IDEA authorizes payments to assist States in carrying out their responsibilities. IDEA Part B has received large congressionally

driven increases in the past several years. The Department's 1999 budget request maintained the Federal contribution at approximately 9 percent of the excess costs of serving more than 6 million children with disabilities, approximately \$710 per child. IDEA does not refer to 40 percent of the excess costs of educating children with disabilities; rather, it refers to up to 40 percent of the average per pupil expenditures in public elementary and secondary schools in the United States. The 40 percent establishes a maximum amount a State may receive under Part B of IDEA, which is an amount equal to the number of children with disabilities it is serving multiplied by 40 percent of the average per pupil expenditure. In other words, this provision establishes a ceiling on the amount of funding that may be provided to States. However, funding IDEA at a level equal to 40 percent of the average per pupil expenditure would represent about 47 percent of the discretionary funds in the Department's entire budget request for FY 1999, or about 39 percent of the total Education budget request for FY 1999.

This Administration continues to support increases in federal funding of the IDEA. However, regardless of the level of federal funding available to States to assist with protecting children's constitutional right to a free appropriate public education, States should be taking advantage of all flexibility in establishing, and accessing existing, state and federal programs to support the cost of special education and related services.

Your constituent is encouraged to contact officials of the Michigan Department of Education for further assistance. Should he wish to do so, he can contact the named official at the following address and telephone number:

Dr. Jacquelyn J. Thompson
Director
Special Education Services
Michigan Department of Education
P.O. Box 30008, 608 West Allegan Street
Lansing, Michigan 48909-7508
Telephone: (517) 373-9433

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I hope that you find this explanation helpful in responding to your constituent. If this office can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of the Office of Special Education Programs at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,

Judith E. Heumann

cc: Dr. Jacquelyn J. Thompson
Michigan Department of
Education