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Cedar Rapids Community School District v. Garret F.: A High Price for Equal Education

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I. INTRODUCTION

Through the Individuals with Disabilities and Education Act [hereinafter IDEA], Congress provides federal funding to states whose schools comply with federal regulations in providing "free appropriate public education" to disabled students.[1] However, it is the schools that have been forced to pay more money out of their own pockets in order to meet the needs of the growing number of handicapped students over the twenty-five years since Congress began using its spending power to compel schools to provide these educational opportunities to disabled students.[2] Despite promising to provide forty percent of the funding for special education programs, federal funding has paid for only twelve percent of the total bill, estimated to be $4.3 billion.[3] Not only are states not getting the money promised for compliance, but the scope of related services the schools must provide has recently been greatly expanded by the Supreme Court to include full-time, one-on-one nursing care to students if it is deemed necessary for their attendance.[4]

Prior to the Supreme Court's decision in *Cedar Rapids Community School District v. Garret F.*,[5] a split existed in the jurisdictions over whether or not schools were required to provide continuous nursing services to students in order to qualify for the receipt of federal funding.[6] The question arose out of the language of the IDEA, which stated that while schools were required to provide disabled students with "related services," "medical services" did not have to be provided; however, the statute did not define the term "medical services."[7] Some jurisdictions were classifying full-time, one-on-one nursing care as a "medical

1. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 889 (1984) (citing 20 U.S.C. § 1412(1) (1983)).
2. *See National Center for Education Statistics: Answers to Frequently Asked Questions* (lastmodified Mar. 13, 2000), *at* http://nces.ed.gov/edfin/faqs/speced1.asp.
3. 145 CONG. REC. H764 (daily ed. Feb. 24, 1999) (statement of Rep. Norwood).
4. *See generally* Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66 (1999).
5. *Id.*
6. *See* Neely v. Rutherford County Sch., 68 F.3d 965, 970 (6th Cir. 1995).
7. *Garret F.*, 526 U.S. at 68 n.1 (citing 20 U.S.C. § 1401(a)(17) (1994)). There is no separate definition for the term "medical services." But, the definition for "related services" includes "medical services, except that such medical services shall be for diagnostic and evaluation purposes only." *Id.* (quoting 20 U.S.C. § 1401(a)(17) (1994)).

service" that the schools were not required to provide.[8] Other jurisdictions did not classify the care as a "medical service" but as a "related service," which the school districts were required to provide.[9]

The Supreme Court first attempted to clarify the scope of the "medical services" exception in *Irving Independent School District v. Tatro*.[10] In *Tatro*, the Supreme Court stated that "medical services" are only those for which a licensed physician is required; any service that can be provided by anyone other than a licensed physician is included as a "related service" and school districts are required to provide that service.[11] Following this decision, some lower courts interpreted this as a bright-line rule and followed the physician/non-physician distinction.[12] On the other hand, some courts adopted an undue burden test that considered the nature of the service required instead of who provided the service.[13] In *Garret F.*, the Supreme Court asserted that *Tatro* had established a bright-line rule and decided seven to two that the school district was required to pay for the full-time, one-on-one nursing services necessary for a student to attend school.[14]

This Note will explore the legislative and common law history of the education of disabled students leading up to the decision in *Garret F.*, the Supreme Court decision itself, and possible legal effects the decision may have in the future. Part II of this Note discusses the legislative history and case law interpreting the Individuals with Disabilities Education Act.[15] Part III presents the facts and procedural history of *Garret F.*,[16] while Part IV analyzes the majority and dissenting opinions of the case.[17] Next, Part V discusses the possible impacts of *Garret F.* on the IDEA, the congressional use of the spending power, and the schools themselves.[18] Finally, Part VI concludes the Note.[19]

II. HISTORICAL BACKGROUND

A. The History of the IDEA

1. Legislative Beginnings

8. *See Neely*, 68 F.3d at 973.
9. *See* Morton Cmty. Unit Sch. Dist. No. 709 v. J.M., 986 F. Supp. 1112, 1125-26 (C.D. Ill. 1997).
10. 468 U.S. 883 (1984).
11. *Id.* at 890-92 (citing 34 C.F.R. § 300.13(b)(4) (1983)).
12. *See* Skelly v. Brookfield Lagrange Park Sch. Dist. 95, 968 F. Supp. 385, 393 (N.D. Ill. 1997).
13. *See J.M.*, 986 F. Supp. at 1122.
14. *See generally* Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66 (1999).
15. *See infra* notes 20-84 and accompanying text.
16. *See infra* notes 85-99 and accompanying text.
17. *See infra* notes 100-128 and accompanying text.
18. *See infra* notes 129-170 and accompanying text.
19. *See infra* notes 171-174 and accompanying text.

The first time the Supreme Court recognized that equal access to public education was, in fact, constitutionally mandated came not in the context of education of the handicapped, but in *Brown v. Board of Education*,[20] which determined the constitutionality of school segregation by race.[21] In this 1954 case, the Supreme Court held that, under the Equal Protection Clause of the Fourteenth Amendment, "a state which has undertaken to provide the opportunity of education must do so 'to all on equal terms.'"[22]

2. Early Legislation

However, handicapped children's equal access to education was not specifically addressed by Congress until 1966.[23] That year, Congress amended the Elementary and Secondary Education Act to provide grants "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children."[24] Then, recognizing that the need for improved education of the handicapped was not being met, Congress repealed the amendment and enacted the Education of the Handicapped Act in 1970.[25]

Nevertheless, two federal court cases within the next two years called attention to the fact that the 1970 Act was inadequate and led to the enactment of more successful legislation.[26] Both *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*[27] and *Mills v. Board of Education of*

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20. 347 U.S. 483, 493 (1954).

21. *See id.* at 488; *see also* Kathryn M. Coates, Comment, *The Education for all Handicapped Children Act Since 1975*, 69 MARQ. L. REV. 51, 52 (1985).

22. Coates, *supra* note 21, at 52-53 (quoting *Brown*, 347 U.S. at 493).

23. Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 179-80 (1982); *see also* Coates, *supra* note 21, at 53-55.

24. *Rowley*, 458 U.S. at 180 (quoting Pub. L. 89-750, § 161, 80 Stat. 1191, 1204 (1966)).

25. *Id.* Similar to the 1966 Amendment, the Education of the Handicapped Act made financial grants available to states in order to improve programs to educate handicapped children but did contain any guidelines for using the money. *Id; see also* S. REP. NO. 94-168, at 5 (1975); H.R. REP. NO. 94-332, at 2-3 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1425 (the main purpose of the grants was to stimulate development of resources and training of educators).

26. *Rowley*, 458 U.S. at 192 (citing S. REP. NO. 94-168, at 6 (1975)). Following those cases, thirty-six additional lawsuits were filed. Coates, *supra* note 21, at 55 (citing S. GOLDBERG, SPECIAL EDUCATION LAW 2 (1982); R. MARTIN, EDUCATING HANDICAPPED CHILDREN 11-13 (1979)).

27. 334 F. Supp. 1257 (E.D. Pa. 1971). The district court enjoined the school district from applying Pennsylvania statute provisions in ways that "postpone[d] or in any way [denied] to any mentally retarded child access to a free public program of education and training." *Id.* at 1258.

District of Columbia[28] held "that handicapped children must be given access to an adequate, publicly supported education."[29]

Congress first responded to these suits by enacting section 504 of the Rehabilitation Act of 1973,[30] which made any discrimination based on handicap in any program, including public education, illegal.[31] Yet, this was just a baby step toward the ultimate Act. The second step came the following year when Congress passed the Education of the Handicapped Amendments of 1974[32] as an interim measure to increase funding.[33]

3. Modern Legislation

The major action by Congress occurred one year later in the enactment of the Education of All Handicapped Children Act of 1975.[34] Although there have been several amendments, the Act is still in force today,[35] operating under the title of the Individuals with Disabilities Education Act [IDEA].[36]

The purpose of the IDEA was to "assure handicapped children a 'free appropriate public education'"[37] by distributing funds to schools in states that followed the Act's guidelines in providing education and "related services" to handicapped children.[38] However, the term "related services," was not defined, so the Act was amended in 1975[39] to define "related services" as:

> transportation, 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

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28. 348 F. Supp. 866 (D.C. 1972). The district court agreed that the seven children claiming that they had been excluded from D.C. public schools and therefore denied public education, were entitled to relief. *Id.* at 868-73. The court ordered that "[t]he District of Columbia . . . provide to each child of school age a free and suitable publicly-supported education regardless of the degree of the child's mental, physical or emotional disability or impairment." *Id.* at 878.

29. *Rowley*, 458 U.S. at 193.

30. Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (1973) (codified at 29 U.S.C. § 794 (1972)).

31. Coates, *supra* note 21, at 56.

32. Pub. L. No. 93-380, §§ 611-21, 88 Stat. 484, 579 (1974).

33. *See* Donald W. Keim, Legislative Note, *The Education of All Handicapped Children Act of 1975*, 10 U. MICH. J.L. REFORM 110, 119-20 (1976); *see also* Pub. L. 93-380, 88 Stat. 484, 583 (1974).

34. Pub. L. No. 94-142, 89 Stat. 774 (1975) (codified as amended at 20 U.S.C. §§ 1400-61 (1982)); *see also* Keim, *supra* note 33, at 120.

35. *See* Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 68 n.1 (1999).

36. *See id.*

37. Coates, *supra* note 21, at 57; *see also* S. REP. NO. 94-168, at 13, *reprinted in* 1975 U.S.C.C.A.N. 1425, 1437.

38. Michael S. Treppa, *The Education For All Handicapped Children Act: Trends and Problems with the "Related Services" Provision*, 18 GOLDEN GATE U. L. REV. 427, 431-32 (1988) (citing Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1400-1461 (1982))); *see also* Keim, *supra* note 33, at 120-28 (major provisions and workings of the IDEA).

39. *See Garret F.*, 526 U.S. at 68 n.1.

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.[40]

Despite the amendment, courts still had problems interpreting and applying the term "related services" in determining whether or not a school district was required to provide a specific service, particularly when the requested service involved continuous or one-on-one nursing care.[41]

B. Case Law Interpreting the IDEA

1. Irving Independent School District v. Tatro[42]

The Supreme Court first established a test for determining whether or not a required service is "related" under the IDEA in *Irving Independent School District v. Tatro.*[43] In *Tatro*, eight- year-old Amber Tatro suffered from spina bifida and needed a procedure called clean intermittent catheterization [hereinafter CIC][44] to be performed every three to four hours.[45] The question before the Court was whether or not the school district was required to provide this procedure as a "related service" to Amber under the IDEA.[46] In determining that the CIC procedure Amber required was a "related service," the Supreme Court found that it was not excluded as a medical service.[47] Because "medical services" were not defined in IDEA, the Supreme Court looked to Department of Education regulations,[48] which defined "medical services" as "services provided by a licensed physician."[49]

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40. *Id.* (quoting 20 U.S.C. § 1401(a)(17) (1994)).
41. Treppa, *supra* note 38, at 432.
42. 468 U.S. 883 (1984).
43. Treppa, *supra* note 38, at 432.
44. The CIC procedure involves "the insertion of a catheter into the urethra to drain the bladder." *Tatro*, 468 U.S. at 885. The CIC is not a difficult procedure and all of Amber's family members, who were not trained medical professionals, could perform it. *Id.*
45. *Id.* at 885.
46. *Id.* at 885-86. The Court used a two-part test in determining whether or not a service was a "related service" under the IDEA. *Id.* at 890. First, the Court determined whether or not the requested service was "supportive" under the Act. A service is supportive if it is "required to assist a child with a disability to benefit from special education." *Id.* at 889-90 (quoting 20 U.S.C. § 1401(17) (1983)). If it is supportive, then, the court must decide whether it is a "related service," which the school district would be required to provide, or if it is excluded as a "medical service." *Id.* at 890 (citing 20 U.S.C. § 1401(17) (1983)).
47. *Id.* at 894-95. Congress explicitly excluded "medical services," except for diagnosis and evaluation, from the "related services" schools are required to provide. 20 U.S.C. § 1401(17) (1983).
48. *Tatro*, 468 U.S. at 890-92.
49. 34 C.F.R. § 300.13(b)(4) (1983).

Despite the decision by the Court, the application of *Tatro* has been anything but consistent. In applying *Tatro* to cases where continuous nursing services are requested, the jurisdictions were split as to whether schools were required to provide the services under the IDEA's "related services" provision or if that type of service was excluded as a "medical service."[50] While the majority of jurisdictions interpreted the *Tatro* holding as an undue burden test instead of a *per se* rule,[51] other jurisdictions interpreted the holding as establishing a bright-line rule, stating that a service would not be excluded as a "medical service" unless it was necessary to be performed by a physician.[52]

2. Cases That Rejected a Bright-line Rule in Favor of an Undue Burden Test[53]

a. Neely v. Rutherford County School[54]

Samantha Neely was a seven-year-old with Congenital Central Hypoventilation Syndrome, and because of this rare disease, she had a tracheotomy tube to help her breathe.[55] In order for her to attend school, Samantha needed a trained individual to accompany her and make sure the tube did not become blocked; this included making sure that the tracheotomy tube was in the correct position and suctioning the tube free of mucus.[56] If the tube became dislodged or blocked and her breathing ceased, she would immediately need air

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50. Neely v. Rutherford County Sch., 68 F.3d 965, 970-71 (6th Cir. 1995); *see also infra* notes 53-84 and accompanying text.

51. *Neely*, 68 F.3d at 970. While the *Tatro* holding clearly stated that services which "must be performed by a physician" are not required, the following statement in its analysis led to the split in interpretations. *Id* (citing *Tatro*, 468 U.S. at 892). The Court asserted that it was reasonable for the Secretary of Education to conclude that the medical services exclusion "was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence." *Id.* (quoting *Tatro*, 468 U.S. at 892).

52. *Id.*

53. *See* Detsel v. Bd. of Educ. of the Auburn Enlarged City Sch. Dist., 820 F.2d 587 (2d Cir. 1987), *cert. denied*, 484 U.S. 981 (1987) (holding that the school district was not required to provide a full-time trained person to monitor and assist one student throughout the whole day); Bevin H. v. Wright, 666 F. Supp. 71 (W.D. Pa. 1987) (holding that the school did not have to hire a nurse to care for one student who needed constant monitoring to prevent formation of a life-threatening mucus plug in his tracheotomy tube because the "private duty" rendered it unduly burdensome and that "to place that burden on the school district in the guise of 'related services' does not appear to be consistent with the spirit of the Act and the regulations"); Ellison v. Bd. of Educ. of the Three Village Cent. Sch. Dist., 189 A.D.2d 518 (N.Y. App. Div. 1993) (holding that the services requested (tracheotomy suctioning, urinary catheterization, and AMBU bagging) were more like medical services than nursing services, so the school district was not required to provide them).

54. 68 F.3d 965 (6th Cir. 1995).

55. *Id.* at 967.

56. *Id.* The tube could easily become dislodged by any movements, including adjusting her clothing or coughing. *Id.* In addition, Samantha was unable to "expel throat, mouth, and nose secretions," which was why regular suctioning was required to prevent blockage. *Id.*

pumped artificially into her lungs through a procedure called AMBU bagging to prevent potential brain damage or even death.[57] At first, Samantha's parents attended to her at school. Then, upon her parents' request, a school-hired attendant provided the necessary care. Because her parents believed the attendant was not qualified,[58] they asked the school district for a respiratory care professional; their request was denied.[59]

The Sixth Circuit agreed that the school district was not required to pay for the continuous, full-time care of a student.[60] The court found that even though the services did not need to be performed by a licensed physician, they were "medical" under the IDEA;[61] therefore, as they were not for diagnostic or evaluative purposes, they were not included in the "related services" the school district was required to provide.[62] In addition, *Tatro* was interpreted as requiring the courts to "measure the burden on the school district to provide the requested care and to require the school to provide the service if the burden was not excessive."[63] Accordingly, the *Neely* court determined that the nature of the care requested rendered it unduly burdensome.[64]

b. Granite School District v. Shannon M.[65]

Similar to Samantha Neely, Shannon M. was a child who required a trained nurse to be with her at all times during school in order to provide constant tracheotomy tube suctioning to prevent a mucus plug, and, in case one should occur, break up the clog or perform AMBU bagging.[66] The court, in holding that

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57. *Id.*

58. The attendant was a certified as a nursing assistant. *Id.* at 968.

59. *Id.* at 968. This request was denied by an administrative law judge [hereinafter ALJ] at a hearing before the Tennessee Department of Education, but the ALJ was reversed by the district court and the request was granted. *Id.* The district court found that the services Samantha required were not "medical services" and therefore were not excluded from the "related services" the IDEA required the school district to provide. *Id.*

60. *Id.* at 971-73.

61. *Id.*

62. *Id.* at 969-70. Following the *Tatro* two-part test, the court determined that while the services were supportive because Samantha could not benefit from education without them, they were excluded from the required "related services" under the "medical services" exclusion. *Id.*

63. *Id.* at 971; *see also supra* note 51.

64. *Neely*, 68 F.3d at 971. The court contrasted the constant care Neely required with the intermittent care Tatro required and also pointed out the fact that Neely could have life-threatening problems throughout the day. *Id.* at 972. Additionally, the court clearly stated that the financial cost was not a factor in its decision. *Id.*

65. 787 F. Supp. 1020 (D. Utah 1992).

66. *See id.* at 1022. The court focused on the level of care required, not just who provided the care. *See id; see also* Fulginiti v. Roxbury Township Pub. Sch., 921 F. Supp. 1320 (D.N.J. 1996) (holding that the nature of the care required by student who needed constant monitoring of her tracheotomy tube to

the district was not required to pay for full-time nursing care for Shannon, concluded that "the 'licensed physician' distinction [was] inadequate as the sole criterion for determining when services fall under the medical exclusion from liability" and rejected *Tatro's* narrow interpretation of medical exclusions.[67]

3. Cases that Followed a Bright-line Rule[68]

a. Skelly v. Brookfield Lagrange Park School District 95[69]

As in *Neely* and *Shannon M.*, the child in this case, four-year-old Eddie Skelly, required tracheotomy suctioning to keep the tube clear for breathing.[70] In this case, Eddie did not need one-on-one nursing services; the school that he attended was for the disabled and was staffed to provide services such as these to the students.[71] However, on the way to and from school, Eddie needed to have the service available, and, as he was the only student in the school van, a private attendant was required for the two trips.[72]

In *Skelly*, the court disagreed with the holding in *Neely*[73] and found *Tatro* mandated the following bright-line rule:[74] unless a licensed physician was required to perform the supportive service, a service could not be excluded from "related services" as a "medical service," and the school district must provide it.[75] The court held that the school district had to pay for the provision of all services required by a student during transportation to and from school[76] because these services could be provided by any trained individual and not just one who was medically licensed.[77]

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prevent clogs, not the cost, put it under the medical exclusions category).

67. *Shannon M.*, 787 F. Supp. at 1026-28 (comparing the present case with Max M. v. Thompson, 592 F. Supp. 1437 (N.D. Ill. 1984); Detsel v. Bd. of Educ. of Auburn, 820 F.2d 587 (2d Cir. 1987); Bevin H. v. Wright, 666 F. Supp. 71 (W.D. Pa. 1987), and contrasting it factually with Dep't of Educ., State of Haw. v. Katherine D., 727 F.2d 809 (9th Cir. 1983); Macomb County Intermediate Sch. Dist. v. Joshua S., 715 F. Supp. 824 (E.D. Mich. 1989)).

68. *See also Joshua S.*, 715 F. Supp. at 827 (holding that district had to provide monitoring during transport of student to and from school, as a physician was not required to perform the services).

69. 968 F. Supp. 385 (N.D. Ill. 1997).

70. *Id.* at 386.

71. *Id.* at 387.

72. *Id.*

73. *See id.* at 392-93. The court dismissed the Sixth Circuit undue burden test because it relied on dicta in *Tatro*. *See id.* at 393.

74. *See id.* at 392-93. In this 1997 case, the court relied on the Eighth Circuit's reasoning in *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 106 F.3d 822 (8th Cir. 1997), *aff'd*, 526 U.S. 66 (1999).

75. In addition, the court stated that it "decline[d] to apply the burden test here because this court believes that a bright-line test is not only appropriate legally, but is necessary according to public policy in order to further the efficient and proper use of public funds earmarked for education." *Skelly*, 968 F. Supp at 394.

76. *Id.* at 396.

77. *Id.* at 389.

b. Morton Community Unit School District No. 709 v. J.M.[78]

J.M., a fourteen-year-old student suffering from several serious physical impairments,[79] required a variety of services including the suctioning of airways, the application of eye ointment, and the monitoring of life support equipment–services, which the school district believed it was not required to provide under the IDEA.[80] However, similar to the district court in *Skelly*,[81] this court interpreted *Tatro* as a bright-line rule that distinguished between care which required a physician and care which did not require a physician[82] and dismissed the undue burden test used by the majority of jurisdictions as dicta in *Tatro*.[83] Thus, the court determined that despite the constant care required, the services were "related services" that the school district was required to provide J.M.[84]

III. FACTS AND PROCEDURAL HISTORY OF THE CASE

A. Facts of the Case

Respondent Garret F. was injured in a motorcycle accident when he was four years old.[85] As a result of this accident, which severed his spinal column and left him paralyzed from the neck down, Garret F. was ventilator-dependent.[86] Despite his physical impairments, none of his injuries adversely affected his mental capacities and he continued to perform successfully in school.[87] When Garret F. first began attending school, either a family member or a private nurse attended to him.[88] However, in 1993, Garret F.'s mother asked the school district to pay for the one-on-one nursing services her son required during the school day.[89] The

78. 986 F. Supp. 1112 (C.D. Ill. 1997).
79. J.M. suffered from Noonan's Syndrome, chronic fibrotic lung disease, cystic hygroma, and corneal abrasions. *Id.* at 1115.
80. *Id.*
81. *See id.* at 1119-23. The court relied on the analyses of both Cedar Rapids Cmty. Sch. Dist. v. Garret F., 106 F.3d 822 (8th Cir. 1997), *aff'd*, 526 U.S. 66 (1999) and *Skelly*, 968 F. Supp. 385.
82. *Morton*, 986 F. Supp. at 1122.
83. *Id.* at 1123.
84. *Id.* at 1125-26. In other words, because the services did not require a licensed physician, they were not excluded as "medical services." *Id.*
85. Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S., 66, 69 (1999).
86. *Id.*
87. *Id.*
88. *Id.* at 70.
89. *Id.*

requested services included: urinary bladder catheterization, suctioning of his tracheotomy tube, adjusting his position in the wheelchair, AMBU bagging, and maintaining the functioning of the ventilator.[90] Believing "it was not legally obligated to provide continuous one-on-one nursing services," the school district refused to provide them.[91]

B. Procedural History

In accordance with both the IDEA and Iowa law, and at the request of Garret F.'s mother, a hearing was held before the Iowa Department of Education.[92] The ALJ who presided over the case ruled that the school district had to pay for all "related services."[93] These "related services" included all school health services provided by a "qualified school nurse or other qualified person" that did not fall under the medical services exception–those which must be performed by a licensed physician.[94] None of Garret F.'s services required a licensed physician to perform them;[95] therefore, the ALJ found that the school district was obligated to pay for Garret F.'s required services.[96]

The school district appealed to the Federal District Court, but summary judgement was granted in favor of Garret F.[97] The school district lost once again in the Court of Appeals, as the Eighth Circuit affirmed the ALJ and District Court rulings.[98] Finally, the school district appealed to the Supreme Court, and the Supreme Court granted the writ of certiorari.[99]

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90. *Id.* at 69 n.3. Also, because of the possibility that Garret F. could experience autonomic hyperreflexia, "an uncontrolled visceral reaction to anxiety or a full bladder," he required someone to be nearby to perform emergency procedures. *Id.*

91. *Id.* at 70.

92. *Id.*

93. *Id.* at 71.

94. *Id.* (citing 34 C.F.R. §§ 300.16(a), (b)(4), (b)(11) (1998)).

95. *Id.* Additionally, the ALJ found that most of the services Garret F. requested, including urinary catheterization, feeding, positioning, and tracheotomy suctioning, were already being provided to other students at the school by the school nursing staff. *Id.* at 71 n.4.

96. *Id.* at 71.

97. *Id.* at 72.

98. *Id.* The Court of Appeals based its decision on the Supreme Court's two-step analysis in order to determine whether or not the services requested fell within the statute's "related services" provision. *Id.* (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984)). The Court of Appeals answered the first question, "whether the requested services are included within the phrase 'supportive services,'" in the affirmative because there was no way for Garret F. to attend school without them. The court answered the second question, "whether the services are excluded as 'medical services,'" in the negative because under *Tatro*, the excluded "medical services" are those that can only be provided by a physician for reasons other than diagnosis and evaluation, and Petitioner failed to prove Respondent's needs required a physician. *Id.* at 72 (citing Cedar Rapids Cmty. Sch. Dist. v. Garret F., 106 F.3d 822, 824-25 (8th Cir. 1997), *aff'd*, 526 U.S. 66 (1999)).

99. *Garret F.*, 106 F.3d 822, *cert. granted*, 523 U.S. 1117 (1998), *aff'd*, 526 U.S. 66 (1999). Petitioner challenged the Court of Appeals' finding on the second question of the *Tatro* analysis. *Garret F.*, 526 U.S. at 72.

IV. ANALYSIS OF OPINIONS

A. The Majority Opinion

Justice Stevens delivered the opinion of the Court.[100] In the opinion, he answered the question of "whether the definition of 'related services' . . . require[d] a public school district in a participating State to provide a ventilator-dependent student with certain nursing services during school hours" in the affirmative.[101] After briefly introducing the IDEA and the facts of the case,[102] the majority agreed with the Eighth Circuit that *Tatro* was controlling and did in fact supply a bright-line rule.[103]

In *Tatro*, the Court relied on the Secretary of Education's definition of "medical services," instead of other definitions of medical services used by Congress, to define the category of excluded services.[104] According to the Secretary of Education, for the purposes of the IDEA, "medical services" are exclusively those performed by a licensed physician.[105] Therefore, all other services which are found to be necessary in order for the student to attend school are required to be provided to the student as a "related service."[106] While the Court in *Garret F.* acknowledged that it had discussed other factors in the *Tatro* decision, Justice Stevens maintained that the test was in fact bright-line.[107]

Thereafter, the Court did not hesitate to strike down the school district's proposed alternative test which factored in the "continuous character of the requested services."[108] Because the school district failed to provide enough support

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100. *Id.* at 67. Justice Stevens' opinion was joined by Chief Justice Rehnquist and Justices O'Conner, Scalia, Souter, Ginsburg and Breyer. *Id.*

101. *Id.* at 68-69, 79.

102. *See id.*

103. *See id.* at 73.

104. *Id.* at 74-75 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 892-94 (1984)). The Court specifically rejected the income tax deduction definition of medical care found in the Federal Income Tax Code. *Id.* (citing 26 U.S.C. § 213(d)(1) (1994 & Supp. 1996). In that context, medical care is defined as "amounts paid . . . for the diagnosis, cure, mitigation, treatment, or prevention of disease." *Id.* at 81 n.2 (Thomas, J., dissenting) (quoting 26 U.S.C. § 213(d)(1) (1994 & Supp. 1996).

105. *Id.* at 74 n.6 (citing *Tatro*, 468 U.S. at 892-93 (quoting 34 C.F.R. § 300.13(b)(4) (1983))).

106. *Id.* at 73-74.

107. *Id.* at 74. In addition to the licensed physician distinction, the Court in *Tatro* "referenced the likely cost of the services and the competence of school staff." *Id.* (citing *Tatro,* 468 U.S. at 892-94).

108. The school district proposed a test to the Court that "depend[ed] upon a series of factors, such as [1] whether the care is continuous or intermittent, [2] whether existing school health personnel can provide the service, [3] the cost of the service, and [4] the potential consequences if the service is not properly performed." *Id.* at 75 (citing Brief for Petitioner at 11).

for the new test, the Court found no reason to depart from the settled law found in *Tatro*.[109]

Furthermore, Justice Stevens specifically rejected any interpretations by courts that factored in either the nature[110] or the cost of the care, or that utilized any kind of undue burden test.[111] Because of the importance of "'open[ing] the door of public education' to all qualified children," the Court dismissed the school district's concerns about the financial burdens that the provision of continuous, one-on-one nursing care might impose.[112] Additionally, Justice Stevens firmly stated that any other interpretation would involve "judicial lawmaking without any guidance from Congress."[113]

B. The Dissenting Opinion

Justice Thomas wrote the dissenting opinion.[114] He found several grounds for disagreeing with the majority and for reversing the Eighth Circuit decision.[115] First, the dissent argued that Congress' intent is clear on the face of the statute; therefore, the Court erred in blindly following *Tatro* and looking at the Department of Education Regulations for the definition of "medical services."[116] Second, the dissent argued that even if the holding in *Tatro* was correct, it would not be controlling in this case because it would be an unconstitutional application of Congress' spending power.[117]

Justice Thomas faulted the Court in *Tatro* for looking outside the text of IDEA for the definition of "medical services" stating: when "Congress has 'directly spoken to the precise question at issue' . . . [and] the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[118] The dissent contended that the intent of Congress to exclude any type of medical service which was not for diagnostic or evaluation purposes was unambiguous for two reasons.[119] First, Congress gave no indication that a narrower interpretation of the term than was

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109. *See id.* at 75-76. The Court rejected the test because it was "not supported by any recognized source of legal authority." Specifically, the factors could not be found in the text of either the statute or regulations. *Id.* at 75.

110. *Id.* at 76 n.8.

111. *Id.* at 76-77.

112. *Id.* at 78 (quoting Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 192 (1982)).

113. *Id.* at 77.

114. *Id.* at 79 (Thomas, J., dissenting). Justice Kennedy joined the dissenting opinion. *Id.* (Thomas, J., dissenting).

115. *See id.* (Thomas, J., dissenting).

116. *Id.* at 80 (Thomas, J., dissenting) (citing Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co., 522 U.S. 479, 499-500 (1998)).

117. *Id.* at 83-84 (Thomas, J., dissenting).

118. *Id.* at 80 (Thomas, J., dissenting) (quoting *Nat'l Credit Union*, 522 U.S. at 499-500 (1998)).

119. *See id.* at 80-82 (Thomas, J., dissenting).

used in other legislative acts was required.[120] Second, Congress explicitly included a list of "medical services" that were medical in nature, but did not require a physician, in order to keep them from being excluded; it would not make sense for Congress to have specifically included those services if they intended an interpretation that would not exclude them.[121] Therefore, instead of looking for the definition in the agency regulation, the Court should have looked only at the text of IDEA.[122]

In addition, Justice Thomas argued that because *Tatro* mandated an unconstitutional application of Congress' spending power, it should not be controlling in *Garret F.*[123] In order for the legislation to be a legitimate exercise of Congress' power, the state must knowingly and voluntarily accept the terms of the legislation.[124] Therefore, the statute must be narrowly interpreted "in order to avoid saddling the States with obligations that they did not anticipate."[125] Justice Thomas contended that "[t]he majority's approach in this case turns this Spending

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120. *Id.* at 81 n.2 (Thomas, J., dissenting). For example, for veteran's benefits, medical services includes: "medical examination[s], treatment and rehabilitative services . . . surgical services, dental services, . . . optometric and podiatric services, . . . preventative health services, . . . [and any] consultation[s], professional counseling, training, and mental health services" that might be necessary. *Id.* (Thomas, J., dissenting) (quoting 38 U.S.C. § 1701(6) (1994 & Supp. 1996)); *see also supra* note 7.

121. *Id.* at 82 (Thomas, J., dissenting). The dissent pointed out:

> [W]here Congress decided to require a supportive service-including speech pathology, occupational therapy, and audiology-that appears 'medical' in nature, it took care to do so explicitly. Congress specified these services precisely because it recognized that they would otherwise fall under the broad 'medical services' exclusion. . . . Congress could have, but chose not to, include 'nursing services' in this list.

Id. (Thomas, J., dissenting) (citing 20 U.S.C. § 1401(a)(17) (1994)).

122. *Id.* at 80-82 (Thomas, J., dissenting). The dissent also argued that, even if the Department of Education's regulations could be considered because the definition of "medical services" was open to other reasonable interpretations, any deference to that regulation was inappropriate. *Id.* at 82-83 (Thomas, J., dissenting). This is because the definition of the term in the regulations was adopted for the purpose of delineating those services owed to the handicapped, while the one and only attempted interpretation of "medical services" for exclusion was never adopted. *Id.* at 82 (Thomas, J., dissenting).

123. *Id.* at 83-84 (Thomas J., dissenting); *see also* U.S. CONST. art. I, § 8, cl. 1. Because the Act was enacted pursuant to Congress' spending power, it was important that the language of the statute be unambiguous, as it was subject to special rules of construction. *See Garret F.*, 526 U.S. at 83 (Thomas, J., dissenting) (citations omitted). According to *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1 (1981), in using its spending power, "Congress must express clearly its intent to impose conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." *Id.* at 24.

124. *Id.* at 17. The Court compared the enactment of legislation under the spending power to the formation of a contract. *Id.* Therefore, the states must knowingly and voluntary accept the terms, which they can only do if the conditions on which the money is to be granted are unambiguous. *Id.* (citing Steward Mach. Co. v. Davis, 301 U.S. 548 (1937)).

125. *Garret F.*, 526 U.S. at 84 (Thomas, J., dissenting); *see also infra* notes 148-157 and accompanying text.

Clause presumption on its head."[126] He argued that Congress intended to require the States to provide an "appropriate" education, instead of an education that "maximize[d] the potential of disabled students," and that Congress attempted to limit the financial burdens imposed on the states;[127] however, the majority's holding in *Garret F.* "blindsides unwary States with fiscal obligations that they could not have anticipated" and therefore, is an unconstitutional application of the spending power.[128]

V. IMPACT

A. Amending the IDEA

If Congress does not like the Court's interpretation of "medical services" in *Garret F.*, it is free to amend the IDEA to define "medical services" within the Act; in fact, Congress has done just that in response to Supreme Court rulings twice since the enactment of the IDEA.[129] After *Smith v. Robinson*,[130] in which the Supreme Court refused to recognize an express private right of action in the IDEA and denied an award of attorney's fees,[131] Congress amended the Act in 1986[132] to "reaffirm . . . the viability of section 504, 42 U.S.C. § 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children."[133] The amendment was clearly an adverse reaction to the holding, as Congress "acted swiftly, decisively, and with uncharacteristic clarity to correct what it viewed as

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126. *Garret F.*, 526 U.S. at 84 (Thomas, J., dissenting).

127. *Id.* (Thomas, J., dissenting) (citing 20 U.S.C. § 1400(c) (1994); Bd. Of Educ. Of the Hendrick Hudson Cent. Sch. Dist. V. Rowley, 458 U.S. 176, 202 (1982).

128. *Garret F.*, 526 U.S. at 85 (Thomas, J., dissenting).

129. *See* Deborah Rebore & Perry A. Zirkel, *The Supreme Court's Latest Special Education Ruling: A Costly Decision?*, 135 ED. LAW REP. 331, 341 n.84 (1999).

130. 468 U.S. 992 (1984).

131. *Id.* at 994-95. The Supreme Court held that EHA [IDEA] was the "exclusive avenue through which the child and his parents . . . can pursue their claim." *Id.* at 1013. The Court reasoned that the comprehensiveness of the EHA prevented the plaintiffs from asserting a § 1983 claim. *Id.* at 1009-13. In this case, petitioners appealed a First Circuit decision that reversed their award of attorney's fees. *Id.* at 994-95. While petitioners had asserted claims under the Education of the Handicapped Act [IDEA], the Rehabilitation Act of 1973, and the Due Process and Equal Protection Clauses, the First Circuit found that they were not entitle to attorney's fees because the proceeding was, "in essence," to enforce the EHA, which did not provide for awards of attorney's fees. *Id.* The Supreme Court agreed that because the awarding of attorney's fees was specifically omitted by Congress, parties in a suit primarily brought and decided under the EHA could not recover attorney's fees. *Id.* at 1020-21 (citing 20 U.S.C. § 1400(b)(8), (9) (1983); 121 CONG. REC. 19,501 (1975) (remarks of Sen. Dole); 121 CONG. REC. 37,025 (1975) (remarks of Rep. Perkins); S. REP. NO. 94-168, at 81 (1975)).

132. Mrs. W. v. Tirozzi, 832 F.2d 748, 754-55 (2d Cir. 1987). Section 3 of the Handicapped Children's Protection Act of 1986, which added to 20 U.S.C. § 1415(f): "Effect on other laws: Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973 . . . or other Federal statutes protecting the rights of handicapped children and youth . . . ." *Id.* at 754 (quoting 20 U.S.C. § 1415(f)(Supp. 1987)).

133. *Tirozzi*, 832 F.2d at 754-55 (quoting H.R. REP. NO. 99-296, at 4 (1985)).

a judicial misinterpretation of its intent."[134]

The second time Congress amended the IDEA in response to a Supreme Court ruling was after the Court allowed Pennsylvania to invoke Eleventh Amendment immunity in *Dellmuth v. Muth.*[135] In response to the Committee's determination "that the Supreme Court [in *Dellmuth*] misinterpreted Congressional intent,"[136] Congress amended the IDEA in 1990 to specifically abrogate states' Eleventh Amendment immunity in the manner directed by the Supreme Court.[137] The Act now states that "[a] State shall not be immune under the Eleventh Amendment to the Constitution of the United States from suit in Federal Court for a violation of this chapter."[138]

In *Garret F.*, the Supreme Court merely reaffirmed the *Tatro* definition of "medical services" found in the Department of Education's regulations.[139] In that definition, the determination of whether or not a service was "medical" depended on the provider: if a licensed physician provided the service it was "medical."[140] However, that is not the definition of "medical services" used in other federal statutes;[141] Congress, if it believes the Court's definition to be either too narrow or altogether incorrect, could amend the IDEA to include a definition such as the one in the income tax code.[142] Congress could also choose to look to the lower courts' opinions on the issue for guidance. The lower courts that chose not to follow the *Tatro* bright-line rule used definitions that focused on the nature of the service and the burden it placed on the school district instead of the provider of the service.[143]

If Congress does believe the Supreme Court misinterpreted the Act, it is likely

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134. *Id.* at 755 (quoting Fontenot v. La. Bd. of Elementary and Secondary Educ., 805 F.2d 1222, 1223 (5th Cir. 1986)(citations omitted)); *see also* Bd. of Educ. of E. Windsor Reg'l Sch. Dist. v. Diamond, 808 F.2d 987, 994-95 (3d Cir. 1986).

135. 491 U.S. 223 (1989). In *Dellmuth*, the respondents brought a private suit against the school district and the state secretary of education for declaratory and injunctive relief, reimbursement of past private school tuition, and attorney's fees. *Id.* at 226. Both the district court and the Third Circuit Court of Appeals, in deciding in favor of the respondent, found that the EHA [IDEA] abrogated Pennsylvania's Eleventh Amendment immunity. *Id.* at 226-27 (citing Muth v. Central Bucks Sch. Dist., 839 F.2d 113 (3d Cir. 1988)). However, the Supreme Court reversed and held that immunity was not abrogated because the "statutory language of the EHA [did] not evince an unmistakably clear intention to abrogate the States' constitutionally secured immunity from the suit." *Id.* at 232.

136. Doe v. Alfred, 906 F. Supp. 1092, 1096 n.6 (S.D.W.V. 1995) (quoting H.REP. NO. 101-544, at 12 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1723, 1734).

137. *Dellmuth*, 491 U.S. at 227-28. In addition, the Court stated that in order to abrogate, Congress must make its "intention unmistakably clear in the language of the statute." *Id.*

138. 20 U.S.C. § 1403(a) (1994 & Supp. 1998).

139. Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 73-74 (1999).

140. 34 C.F.R. § 300.13(b)(4) (1983); *see also* Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 892-94 (1984).

141. *See supra* note 7.

142. *See supra* note 7; *see also supra* note 120.

143. *See supra* notes 53-67 and accompanying text.

that it will speak in the immediate future, as it has done in the past.[144] If Congress does amend the IDEA in order to expand the definition of "medical services," this would limit the number of services that the states are required to provide in a manner similar to the lower courts' decisions in cases such as *Neely v. Rutherford County School*[145] and *Granite School District v. Shannon M.*[146] Additionally, an amendment would eliminate the continuous one-on-one nursing provision mandated by *Garret F.*[147]

B. Spending Power Implications

As suggested by the dissent in *Garret F.*, an act of Congress enacted pursuant to the spending power of the States is subject to special rules of construction.[148] In *Pennhurst State School and Hospital v. Halderman*,[149] the Court stated that "[t]he crucial inquiry . . . is not whether a State would knowingly undertake that obligation, but whether Congress spoke so clearly that we can fairly say that the State could make an informed choice."[150] Because the States, by looking at the IDEA on its face, could not ascertain the scope of services they would be required to provide, it is reasonable to conclude that the States could not, in fact, make an informed choice.

The Court in *Pennhurst* stated, "[t]hough Congress' power to legislate under the spending power is broad, it does not include surprising participating States with post acceptance or 'retroactive' conditions."[151] Therefore, there are two reasons why the *Garret F.* holding could be considered unacceptable under *Pennhurst*. First, the definition of "medical services" excluded from "related services" used by the Court was neither part of the Act's text, nor was it expressly referred to by the Act.[152] Second, the Act provided no indication that the term was to be interpreted any differently in this Act than it had been in any other federal acts.[153]

However, this broad interpretation could lead to a reluctance by the States to accept the terms of future federal regulations enacted under the spending power

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144. Both the 1986 and 1990 Amendments to the IDEA were added within one year of the Supreme Court catalyst decisions. *See generally supra* notes 129-138 and accompanying text.

145. 68 F.3d 965 (6th Cir. 1995).

146. 787 F. Supp. 1020 (D. Utah 1992).

147. *See supra* notes 123-28 and accompanying text.

148. *See* Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 83 (1999) (Thomas, J., dissenting) (citing Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 190 n.11 (1982)).

149. 451 U.S. 1 (1981).

150. *Id.* at 25.

151. *Id.*

152. *Garret F.*, 526 U.S. at 68 n.1 (citing 20 U.S.C. § 1401(a)(17) (1994)). However, the Act did provide generalized notice that any part of the act may be subject to regulations promulgated by the Secretary of Education when it explicitly "empower[ed] [the Secretary of Education] to issue such regulations as may be necessary to carry out the provisions of the Act." Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 892 (1984) (citing 20 U.S.C. § 1417(b) (1983)).

153. *See supra* note 120.

if they believe there is a risk that the Court will continue to broadly interpret the statutes and "saddl[e] them with unexpected expenses"[154] instead of declaring the ambiguous legislation unconstitutional.[155] The present reading "disregards the constitutionally mandated principles of construction applicable to Spending Clause legislation and blindsides unwary States with fiscal obligations that they could not have anticipated;"[156] a more acceptable interpretation under *Pennhurst* would be one similar to that suggested by Justice Thomas in his dissent to *Garret F.*[157]

C. *Effects on School Districts*

1. Providing Additional Services

Under the holding in *Garret F.*, parents of students who had or could have requested payment for one-on-one nursing services will now be successful in getting such services.[158] This will affect a large percentage of school districts because the majority of jurisdictions had refused to follow *Tatro*. Thus, the districts had been denying students' requests for full-time nursing services even if a physician was not required.[159] According to the National School Boards Association, providing the nursing services mandated in *Garret F.* could cost school districts an extra $500 million.[160] While this burden would not be so great if the school districts were actually being subsidized with forty percent of the necessary funds that Congress promised, the school districts actually only receive about twelve percent.[161]

The decision in *Garret F.* has already affected the outcome of one case. *Farmers Insurance Exchange v. South Lyon Community Schools*[162] was decided five months after the Supreme Court handed down the *Garret F.* decision. In this case, the plaintiff was the insurance company of Benjamin Smith, a student who was left paralyzed and dependent on a tracheotomy tube and ventilator following

154. *Garret F.*, 526 U.S. at 84 (Thomas, J., dissenting).
155. *See Pennhurst*, 451 U.S. at 17 (citing Steward Mach. Co. v. Davis, 301 U.S. 548 (1937)).
156. *Garret F.*, 526 U.S. at 85 (Thomas, J., dissenting).
157. The dissent recommended the following narrow reading of *Tatro*, which would still be consistent with spending clause: "Department of Education regulations require districts to provide disabled children with health-related services that school nurses can perform as part of their normal duties." *Id.* at 84-85.
158. *See id.* at 79.
159. *See* Neely v. Rutherford County Sch., 68 F.3d 965, 970 (6th Cir. 1995).
160. David G. Savage & Richard Lee Colvin, *Court Says Schools Must Pay Nursing Costs for Disabled Law*, L.A. TIMES, March 4, 1999, at A1.
161. 145 CONG. REC. H764 (daily ed. Feb. 24, 1999) (statement of Rep. Norwood).
162. 602 N.W.2d 588 (Mich. 1999).

a bike accident.[163] Benjamin required full-time nursing care and monitoring in order to attend school, but the services did not require a medical doctor to perform them.[164] Therefore, the school district, arguing that it was not required to pay for all services performed by a non-licensed physician, refused to reimburse Benjamin's insurance company.[165] However, the *Garret F.* decision settled the question for the Court of Appeals of Michigan, and it subsequently found that the school district was responsible for providing the "related services" performed by a non-licensed physician which Benjamin required in order to attend school.[166]

2. Future Litigation

In *Fulginiti v. Roxbury Township Public Schools,*[167] a case decided before *Garret F.*, the district court held that the school district was not required to pay for the full-time nursing services required by a young student with severe disabilities in order for him to attend school because, while a licensed physician was not required, the services were medical in nature.[168]

However, one of the parents' arguments brought to light an interesting point. The parents contended that the estimated cost of providing the services, $56,000 per year, was too high, and that the court should "require the Board to 'shop around' in search of a lesser-priced alternative."[169] In response to this, the court suggested the following hypothetical: "[a] less expensive service is provided to the child–an untoward catastrophic event occurs involving the health of the child and the quality of such 'cheaper' service–distraught parents may seek to blame-by-suit the Board for unreasonably providing such 'cheaper assistance.'"[170]

Because schools will have to finance more care provided by a non-physician following *Garret F.*, they may begin to comparison shop for care providers in an effort to cut costs. This could lead to more litigation if something happens to the child while under the care of a "cheaper" provider. Thus, this pre-*Garret F.*

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163. *Id.* at 590.

164. *Id.* at 590-91. Services Benjamin required included: monitoring his "alignment in his wheelchair and the settings and operation of his ventilator," administering antibiotics and spasm medication, feeding him, catheterizing him, and suctioning his tracheotomy tube. *Id.*

165. *Id.* at 591.

166. *Id.* at 593-94. In upholding the district court's declaratory judgement ordering the defendant to reimburse the plaintiff for Benjamin's expenses during his time at school and transportation to and from school, the Court of Appeals stated, "the Supreme Court has conclusively determined that the nursing services required by Benjamin are 'related services' that the IDEA requires defendant to provide . . . ." *Id.* at 594.

167. 921 F. Supp. 1320 (D.N.J. 1996).

168. *Id.* at 1321-26. Eight year old Carissa Fulginiti had a severely dysfunctional central nervous system which limited her abilities to communicate, swallow, and move. She required continuous monitoring and suctioning of her tracheotomy tube in order to prevent a her air passages from becoming clogged, in which case she could no longer breathe. *Id.* at 1321. The court noted that the services did not require a medical professional and that her parents, who are not medically trained, were capable of providing the service. *Id.*

169. *Id.* at 1325.

170. *Id.* at 1326.

hypothetical could become a costly post-*Garret F.* reality as school districts, who previously had been denying the provision of full-time nursing services, try to stretch already sparse funding to pay for these additional services.

VI. CONCLUSION

The Supreme Court's decision in *Garret F.* settled a fifteen year split in jurisdictions.[171] The lower courts now know that the *Tatro* decision did, in fact, mandate the application of a bright-line rule, and not an undue burden test.[172] Additionally, school districts are now aware that they are required to provide continuous, one-on-one nursing services to students who need them in order to attend school–as long as long as the performance of the services does not require a licensed physician.[173]

However, it is too soon to know what the ramifications of this decision will be. Congress could amend the IDEA to include a definition of "medical services" and effectively reverse the Supreme Court's decision if they do not feel the Court correctly interpreted the Act. If Congress does not act, school districts will have no choice but to furnish students with these services, whatever the cost.[174]

KRISTIE HARDING[175]

171. *See* Neely v. Rutherford County Sch., 68 F.3d 965, 970 (6th Cir. 1995).
172. *See* Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66, 75-79 (1999).
173. *See id.*
174. *See id.*
175. J.D. Candidate, 2001.