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Special Education Law Bulletin

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Attorneys' Fees

Mother wins based on district's failure to exhaust – court awards attorneys' fees

Citation: *Traverse Bay Area Intermediate School Dist. v. Michigan Dept. of Educ., 2008 WL 2397631 (W.D. Mich. 2008)*

A U.S. District Court in Michigan recently granted a request for attorneys' fees by the mother of a student with disabilities who claimed she was the "prevailing party" under the Individuals with Disabilities Education Act (IDEA) based on the court's earlier decision to dismiss two claims brought by a school district against the mother for the district's failure to exhaust administrative remedies. Although the mother did not prevail on the merits of the IDEA claim, the court concluded that she had prevailed on a significant issue in litigation that changed the legal relationship of the parties.

S.G. was the mother of an autistic child who received special education under the IDEA from the Traverse Bay Area Intermediate School District. Because S.G. felt that her daughter's individualized education program (IEP) was not meeting certain medical needs of her daughter, she initiated a due process hearing. Before the hearing, however, the district and S.G. reached a settlement agreement, which S.G. accepted through counsel. S.G. then asked the hearing officer to incorporate the settlement into his dismissal order for the purpose of creating prevailing part status so that S.G. would be eligible for an attorneys' fee award.

The hearing officer declined to incorporate the settlement into his dismissal order and S.G. filed for state level review of the administrative decision. The school district then initiated a law suit in federal court, alleging among other things, breach of contract and breach of settlement claims against S.G. The district also sought an order from the court to enjoin S.G. from violating the terms of the settlement by not making her daughter available for evaluations and services, and asked the court to appoint a guardian ad litum for S.G.'s daughter. S.G. asked the court to dismiss because administrative proceedings were ongoing.

> *A court has discretion to make an attorneys' fee award to the "prevailing party" in an IDEA case where "prevailing party" is defined as a party that has succeeded on any significant issue in litigation, achieving some of the benefits sought, such that there is an alteration to the legal relationship of the parties involved.*

Shortly thereafter, the court then granted S.G.'s request to dismiss the district's lawsuit, and the state level review officer separately concluded that the settlement terms were appropriate for S.G.'s daughters and that the settlement should have been incorporated into the dismissal order. Although the court later reversed the hearing officer's decision, granting the district

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judgment without a trial, S.G. had been successful in having the breach of contract and settlement claims and the request for a court order dismissed. Based on these successes, S.G. sought an award of attorneys' fees as the "prevailing party."

Under the IDEA, there is a fee-shifting provision that allows parents to recover attorneys' fees in certain situations. A court has discretion to make an attorneys' fee award to the "prevailing party" in an IDEA case where "prevailing party" is defined as a party that has succeeded on any significant issue in litigation, achieving some of the benefits sought, such that there is an alteration to the legal relationship of the parties involved. A "de minimis" or purely technical victory does not give a person prevailing party status.

Breach of settlement and contract

The district argued that by failing to make her daughter available for evaluations and services, S.G. had breached the settlement and contract the parties had agreed to. The district also argued that S.G. was not the "prevailing party" in the sense required by the IDEA for an attorneys' fee award because she had not achieved victory on the merits of the case; rather, the court had dismissed for lack of jurisdiction because the district had failed to exhaust administrative remedies available under the IDEA. The court disagreed with the district's argument. It held that because S.G. obtained the relief she sought – dismissal of the claims – and because this victory changed the legal relationship of the parties, this meant that she had prevailed on a "significant issue" in litigation and was the "prevailing party for IDEA purposes on these claims.

Request for injunctive relief

As to the district's request for injunctive relief, including an order that S.G. follow the terms of the settlement or that the court appoint a guardian ad litum for S.G.'s daughter, the court held that although it had denied the district's requests, "any victories that S.G. received as a result of the District's failure to obtain injunctive relief were precisely the type of de minimis victories that fail to justify an award of attorneys' fees." This was because the requests were "rendered moot" when the court dismissed the district's other claims and because the court decided in its dismissal that it would not enjoin the state level review officer from completing his review of the earlier administrative decision.

Based on these conclusions, the court awarded S.G. attorneys' fees in the amount requested for the breach of settlement and contract claims, but not for the other claims. The court eventually awarded S.G. $9,922.50.

In determining whether an hourly rate is reasonable, a court will look to the rates "prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." Although the court noted that $225 was more than the district's lawyer charged an hour, based on affidavits submitted on the lawyer's behalf by other attorneys in the community, the court concluded that $225 was reasonable.

Editor's Note:
The IDEA requires that attorneys' fee awards must be reasonable, meaning that the hours that the attorney claims were spent working on the issues and the hourly rate must be reasonable. In the above case, the judge looked to the attorney's calculation of the total hours worked on the case, and the hours spent working specifically on the breach of settlement and contract claims. Finding the number of hours worked – 44.1 – reasonable, the court then looked to whether the attorney's hourly rate of $225 was reasonable.

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You Be the Judge

Can family recover costs related to hospitalization, prescription costs, travel, and psychiatric care for student?

The facts

A student with disabilities lived with his family in Hawaii and was eligible for special education services under the Individuals with Disabilities Education Act (IDEA). In an earlier lawsuit in which the superintendent of Hawaii Public Schools in her official capacity and the state Department of Education were defendants, the court determined that student had been denied a free appropriate public education (FAPE) and ordered the department of education to place the student in a private residential school and to provide him with extended year services through a summer program.

The student's family filed a motion for reimbursement of educational expenses amounting to more than $220,000, including costs for a hospitalization, travel costs for the student and the parents to both the residential facility and to the summer program, prescription costs, and psychiatric charges.

The department of education argued that the expenses were not eligible for reimbursement under the IDEA or had been incurred by the parents after the end of the official school year.

The dilemma

Was the state department of education responsible for costs relating to the hospitalization, medication, transportation, and psychiatric care of a child, and did the state retain responsibility for these costs even after the school year had ended and the family had relocated to another state?

Continued on page 8.

Grant Alert

Qwest for Education supports preK-12 education programs

The Qwest Foundation helps to support preK-12 education programs through its Qwest for Education grant program. The Qwest Foundation is focused on making grants in the communities that Qwest serves, generating high impact and measurable results through community-based programs in the area of preK-12 education.

The geographic area of interest is Qwest's 14 state region, which includes Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Oregon and Washington.

Around the Nation

Maryland

Program helps move children with Asperger's to general education

Facing an increasing number of students diagnosed with autism and Asperger's, seven years ago, the school district in Montgomery County launched a program focused on helping students who had average or above-average intelligence – but who suffered from the varying behavioral disabilities common to children with autism – take part in the general education classroom and make academic and social strides.

Students with Asperger's are often academically gifted and capable of performing well in school; however, the behavioral and social interaction issues that plague these children often see them sequestered to special education classrooms where they are not challenged academically.

In Montgomery County, several schools have developed a special program to help these students in particular become part of the mainstream and make the academic gains they are capable of making.

The Asperger's program involves two teachers and four aides serving a class of up to 15 students. During classes the teachers focus on two main objectives: 1) to help students recognize and deal with the manifestations of their disorders; and 2) to ensure that the students are in the regular education classroom as much as is appropriate for each student.

Asperger's can be found at the more mild end of the autism spectrum. Most people diagnosed with autism manifest a variety of disorders, which can include impairment in social interaction and communication. Hans As-

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perger, the doctor whom the disorder is named for, was a Viennese physician who first diagnosed the disorder. He called his patients "little professors" based on the fact that they had the ability to perform well academically, but had trouble in classes as they were prone to outbursts, unable to read the body language of teachers and other students, and often uncomfortable in large groups of students.

The program in Montgomery County focuses on helping students work their way through small, self-contained classrooms to the regular classroom, offering a range of support services, including one-on-one help in the classroom, special education help, and social skills training.

Source: *The Washington Post*

New Jersey

Students lobby for disability awareness curriculum

Several students from Morris County have taken on an important job: The students are lobbying state lawmakers to make adjustments to the state's curriculum requirements that would place disability awareness lessons on the required list for schools in the state.

According to Allegra Stout, one of the teens leading the lobbying effort, there is a lack of acceptance of students with disabilities or with special needs meaning that thy are often bullied or rejected. Stout believes a big part of the problem is that most students just don't understand disabilities.

As a way to combat this and make schools a more welcoming place for disabled students, Stout and a group of teens has asked that disability awareness be required in all public schools for grades K-12.

The Qwest for Education grant program looks to fund programs that:

- effectively use technology to improve preK-12 public school instruction;
- promote innovative models to strengthen preK-12 public school education;
- improve the skills and leadership of educators and parents; and
- promote innovative early childhood education programs.

The foundation does not fund direct grants or scholarships to individuals, political organizations, sectarian religious activities, capital campaigns, private foundations, general operating funds for single-disease heath groups, goodwill advertising, or organizations that receive 3% or more of their funds from United Way.

Grant awards range from $500 and up. The geographic area of interest is Qwest's 14 state region, which includes Minnesota, North Dakota, South Dakota, Iowa, Nebraska, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Oregon and Washington.

Grant applications are accepted on a rolling basis, and grant application cover letters should provide a brief synopsis of how the grant will be used and a description of the organization applying.

More info online…

To find out more and to link to the application, visit http://www.qwest.com/about/company/community/foundation/investing.html.

Charter Schools

Charter school claims SEA is necessary party to special ed lawsuit

Citation: *S.S. v. Howard Road Academy*, 2008 WL 2514057 (D.D.C.)

The U.S. District Court for the District of Columbia recently denied a charter school's request to dismiss an Individuals with Disabilities Education Improvement Act (IDEIA) claim for compensatory education brought by the parent of a child with a disability, finding that the parent had not failed to state a claim and that her claim was not moot simply because her child was now attending a private institution paid for by the District of Columbia Public Schools (DCPS). The court also concluded that DCPS was not a necessary party to the lawsuit.

S.S. was in seventh grade at the Howard Road Academy, a charter school that serves as its own local education agency (LEA) under the IDEIA. S.S. had attended the charter school since fourth grade. At some time, S.S. was diagnosed with a language-based learning disorder and a reading disorder and in February 2007, the school developed a individualized education plan (IEP) for S.S. that provided him with 17 hours of specialized instruction each week, one hour of speech and language therapy, and one hour of counseling.

In August 2007, S.S.'s mother filed a due process complaint requesting an administrative hearing. She alleged that the school had denied S.S. a free appropriate public education (FAPE) and requested placement in a full time special education program and compensatory education, arguing that the charter school was failing to provide the services outlined in S.S.'s IEP. The charter school sent a referral package to DCPC requesting full time special education placement for S.S. In the District of Columbia, when a charter school is unable to provide a child with a disability with appropriate services, the school must appeal to DCPS in its role as designee for the state education agency (SEA) for assistance.

Although DCPS did not respond, the charter school did not follow up prior to the administrative hearing, and when the hearing was held in October 2007, the district tied to join DCPS as a party to the hearing. The hearing officer denied this request, finding DCPS was not a necessary party because S.S.'s mother was

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not making any allegations against DCPS. The hearing officer concluded however that S.S.'s mother had failed to meet her burden of proof on any of the issues presented and dismissed the case without prejudice.

In the District of Columbia, when a charter school is unable to provide a child with a disability with appropriate services, the school must appeal to DCPS in its role as designee for the state education agency (SEA) for assistance.

Thereafter, S.S.'s mother sent letters to the charter school and DCPS notifying them of her intention to enroll S.S. in a private school and seek reimbursement. DCPS responded that it was willing to pay for the placement at the private school and S.S. began attending the private school in February 2008.

S.S.'s mother then sued the charter school under the IDEIA, alleging that it had failed to provide S.S. with a FAPE, requesting a judgment overturning the hearing officer's decision and an order that the school must provide S.S. with compensatory education. She also asked for an attorneys' fee award. The charter school asked the court to dismiss the case, arguing that S.S.'s mother failed to state a claim for relief under the IDEIA and that the case was moot in any case because S.S. was not attending a private school as his mother had requested. The charter school also argued that DCPS was a necessary party to the suit.

Failure to state claim

The charter school claimed that as an LEA, it fulfilled its obligation under the IDEIA by referring S.S. to DCPS, the SEA, requesting a full time educational placement for S.S. The court found this argument without merit, noting that just because the school asserted a defense against liability did not mean that S.S.'s mother failed to state a claim.

Moreover, the court noted, S.S.'s mother's claims were far broader than the school acknowledged. She claimed that the charter school failed to provide S.S. with a FAPE between August 2005 and August 2007, so even if the school did fulfill its obligation to refer S.S. to DCPS upon S.S.'s mother's request for a full time private placement, that did not "alleviate them of their responsibility for his education for the previous two years." Therefore, the request for dismissal was denied.

Moot claim

The charter school argued next that the lawsuit was moot because S.S. was now receiving special education in a full time private placement. This argument ignored the request for compensatory education, however. S.S.'s mother's request for equitable relief to remedy past harm was not resolved when DCPS agreed to pay for S.S.'s private placement and therefore, the claim for compensatory education was not appropriate for dismissal.

DCPS as party

Finally, the charter school argued that the case should be dismissed because DCPS was a necessary party to it because S.S. was now enrolled in a private school funded by DCPS, meaning any compensatory education plan would necessarily have to include DCPS. The court disagreed, holding that all that was at stake in the suit was whether S.S. was denied a FAPE at the charter school, and if so, whether he would benefit from compensatory education services to remedy this past harm. The claims of an IDEIA violation were made solely against the charter school, and the court would have no authority to join DCPS to the lawsuit. Therefore, DCPS was not a necessary party to the suit.

According to Richard Vespucci, a spokesman for the state Department of Education, the teens' lobbying efforts has caught more than just the legislature's attention. The department plans to include some of the suggestions from the students in the state's academic standards.

Stout and her fellow lobbyists have asked lawmakers to require schools to dedicate two weeks each year to disability history and awareness, tailoring lessons to individual age groups. Among other things, the curriculum would include the history of treatment for disabilities, the disability rights movement; empathy and problem-solving skills to help children better relate to those with disabilities, and lessons on the many types of disabilities. The students have also proposed more peer-mentoring for students with disabilities.

West Virginia was the first state to mandate disability awareness education in its schools in 2006, and several states have followed suit, including Florida, North Carolina, Idaho, and Washington. Lawmakers in New York and Illinois are also considering the requirement.

Source: *The Star Ledger*

From the Hill

ADA updates would include more stringent requirements

Under a proposal by the Bush administration to update and rewrite federal standards for the enforcement of the Americans With Disabilities Act (ADA), the law would have more stringent requirements, more protections for disabled veterans, and provisions relating to the aging population in the country.

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The ADA was passed with bipartisan support in 1990, enforcing rules related to the rights of people with disabilities. Among other things, the law provides a right to access for people with disabilities and the right not to be discriminated against because of a disability.

The White House approved the proposal in May after reviewing it for five months. Under the proposal, millions of businesses and state and local government agencies would see new requirements, ranging from the height of retail counters and the placement of light switches to the types of ramps necessary for access to buildings and other venues. The law would also clarify certain things, including that certain species of animals, including monkeys, could not be used as "service animals."

The Justice Department has said that it still receives a high volume of complaints with respect to disability discrimination, and census bureau estimates put the number of Americans with disabilities at over 50 million.

Among other things, the proposal would:

- require courts to provide a lift of ramp to ensure access for people in wheel chairs to get into the witness stand;
- require auditoriums to make adjustments to allow wheelchair users to "participate fully and equally" in events held in the auditorium;
- require sports stadiums with seating capacities above 25,000 to provide safety and emergency information by posing messages on scoreboards and video monitors to alert the deaf and hard of hearing to any emergency;
- require theaters to provide a specified number of seats for wheelchair users, including at least five such seats in a 300-seat theater, that give equivalent or better than average viewing angles;
- require that light switches in hotel rooms be no more than 48 inches

Resource Alert

ED offers new booklet to help parents understand reform measures of NCLB & IDEA

The Office of Special Education and Rehabilitation Services (OSERS), part of the U.S. Department of Education, recently announced the publication of a resource for schools and parents called "Learning Opportunities for Your Child Through Alternate Assessments." The booklet is meant to introduce parents to the "big ideas" in the education reform measures taken under No Child Left Behind (NCLB) and the Individuals with Disabilities Education Act (IDEA). The booklet also provides parents with information on working to help their children obtain the benefits of these programs.

The booklet is meant to introduce parents to the "big ideas" in the education reform measures taken under No Child Left Behind (NCLB) and the Individuals with Disabilities Education Act (IDEA).

More info online…

Share this research with parents to make sure they can take a meaningful and thoughtful part in their children's educations. The booklet can be downloaded at http://www.ed.gov/parents/needs/speced/learning/index.html.

CEC offers webinars on various topics

The Council for Exceptional Children (CEC), an international professional organization focusing on special education issues, offers various trainings, courses, and resources for special education teachers. In a webinar scheduled for September 25, presenters John Castellani and Tara Jeffs, walk though the best technology-based practices for teaching history and enhancing literacy and written language in inclusive classrooms. The webinar will offer:

- practical ideas on helping students with disabilities access the general curriculum;
- helpful tips on ways that young students with disabilities can participate in daily activities and develop functional skills; and
- a discussion on integrating technology into the general education classroom to offer individualized instruction and to aid special education students in learning core content.

The webinar will run from 4pm to 5:45 pm.

This and other development resources are available on the CEC's website for a fee. Visit http://www.cec.sped.org/AM/Template.cfm?Section=Professional_Development to find out more.

Special Education Funding

Parents challenge state's special ed funding formula

Citation: *CG v. Pennsylvania Dept. of Educ.*, 2008 WL 542969 (M.D.Pa.)

A federal district court in Pennsylvania recently denied Pennsylvania Department of Education's request to dismiss a lawsuit brought by parents of children with disabilities challenging the method under which special education funds are delivered in the state. The court concluded that the parents had standing to file suit and were not required by the Individuals with Disabilities Education Act

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(IDEA) to exhaust administrative remedies because they sought to remedy a perceived systemic deficiency in the state's funding formula rather than individualized relief for their children.

Consistent with IDEA requirements, the state of Pennsylvania provided funding to local school districts for special education services on an annual basis. According to the parents of disabled students in the Lancaster and Reading School Districts, the statute under which the state provided the special education funding implemented a "funding formula" that required the Department of Education to allocate special education funds based on a school district's overall average daily membership rather than on the school district's specific special education numbers and needs. The parents argued that this funding method violated all special education students' right to free appropriate public education (FAPE) guaranteed under the IDEA.

The parents also claimed that three other features of the state's special education funding plan limited a school district's ability to provide students with FAPE.

1) First, the funding statute required that no school district could receive less special education funding than it did the prior year, thus locking in inequities inherent in the system, according to the parents.
2) Second, the parents claimed that the funding plan encouraged districts to place students in segregated "approved private schools" – violating the IDEA's least restrictive environment requirement – by funding tuition subsidies through a separate statute.
3) Finally, the parents argued that because many special education students in the districts also required bilingual education, the formula's failure to account for this need denied children FAPE.

In their lawsuit, the parents asked for an injunction to require the Secretary of Education to abandon the state's funding formula and to distribute special education funds based on the actual number of special education students in each district. The department of education asked the court to dismiss on several grounds, including based on its contention that the parents lacked standing to sue, and that, in any case, the parents were required to exhaust the IDEA's administrative remedies before bringing suit in state or federal court under the IDEA's exhaustion requirement.

Standing

To satisfy standing requirements, a person must show that they have suffered an injury in fact, that there is a causal connection between the injury and the defendant's actions, and that it is likely that the injury would be redressed by a favorable decision. The court addressed each of these factors in turn in deciding whether the parents had standing, finally concluding that the parents met all three constitutional standing requirements.

The department of education argued that the parents were required to pursue administrative remedies before suing in court because they needed to first establish through the administrative process that the students were actually being denied FAPE.

The parents alleged that the funding formula was causing school districts to be unable to provide students with FAPE, and moreover, providing incentives for school districts to identify fewer students as eligible for special education or determine that students should be placed in restrictive private settings. Because these alleged injuries were supported by "concrete and particularized" examples, rather than conjectured or hypothetical situations, the court concluded the parents had alleged injuries in fact. The court noted moreover that the injuries were "fairly traceable" to the funding

high, down from the current maximum height of 54 inches;

- require hotels to allow people with disabilities to reserve accessible rooms and honor reservations to the same degree as other room reservations are honored;
- require that at least 25% of the railing space at fishing piers be no more than 34 inches high;
- require that at least half of the holes at miniature golf courses be accessible to people using wheelchairs;
- require swimming pools with perimeters of more than 300 feet to have two accessible means of entry; and
- require new playgrounds to have slides, swings, and other equipment accessible to children in wheelchairs.

The Department of Justice has estimated that the cost of the requirements will be $23 billion, but has said that the value of the benefits would exceed the cost, specifically noting that the Iraq war has created a new generation of people with disabilities.

The proposed updates to the law would provide a safe harbor for small businesses so that the businesses would meet the requirements of the law if, in the prior year, they spent at least 1% of their gross revenues to remove barriers to access for people with disabilities.

In the category of service animals, the proposed rules would define a service animal as, "any dog or other common domestic animal individually trained to do work or perform tasks" for someone with a physical or mental disability. Under this definition, certain more exotic types of animals would not qualify as service animals, including monkeys, reptiles, rabbits, ferrets, rodents, and most farm animals.

Source: *International Herald Tribune*

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formula because, although school districts managed their special education budgets, the parents argued that the state's formula "play[ed] a major role in whether FAPE [was] provided." Finally, the court concluded that, "at least on the face of the complaint," the parents had established that the injuries could be redressed by a favorable decision because they contended that sufficient funding would improve access to needed resources, allowing districts to provide FAPE. Therefore, the parents had standing.

Exhaustion requirement

The IDEA's exhaustion requirement provides that, generally, a person seeking relief under the IDEA must exhaust all administrative remedies before filing suit in state or federal court. There are certain exceptions to this requirement, including when exhaustion would be futile or inadequate. The department of education argued that the parents were required to pursue administrative remedies before suing in court because they needed to first establish through the administrative process that the students were actually being denied FAPE.

The court rejected this contention. Instead, it favored the parents' argument that exhaustion here would have been futile or inadequate because the due process hearings held under the IDEA could not have provided the form of system-wide injunctive relief they were seeking as such reform was beyond the authority of an administrative hearing officer. The parents, the court noted, were not seeking "individualized relief for their children," rather, they were asking for injunctive and declaratory relief to remedy a "systemic deficiency in the state's funding formula that ha[d] indirectly deprived their children of FAPE." The parents were not required to pursue administrative remedies under the IDEA before filing suit.

You Be the Judge

Continued from page 3.

Can family recover costs related to hospitalization, prescription costs, travel, and psychiatric care for student?

The judgment call

The court determined that the student's family was entitled to reimbursement amounting to more than $180,000 for travel expenses and psychiatric care that were incurred prior to the end of the private school's school year, which lasted almost two months longer than the state's school year. The court concluded however that certain costs were not recoverable by the family, including the costs for hospitalization, prescription costs, and certain expenses incurred after the private school program had ended.

Hospitalization

With respect to the student's hospitalization, the court disagreed with the family that these expenses were recoverable as residential placement costs. Because the costs were related to the student's hospitalization rather than his "residential placement" at a private school, the family did not have a right to recover these costs. The family also failed show any reason why they should be awarded reimbursement for prescription costs incurred during the hospitalization, and the court accordingly found these expenses ineligible.

Transportation costs

The student's family requested reimbursement for travel costs incurred transporting their son to the summer program, travel costs to the private residential school in order for the parents to take part in the therapeutic program there, and travel costs for the student to make home visits. With respect to the summer program, the court noted that the "placement" in the summer program necessarily included the student's tuition fees and his transportation to the program, and therefore, these transportation costs were eligible for reimbursement. Similarly, the costs incurred with respect to the private placement were also encompassed in the placement at a private residential program.

Psychiatric costs

Under the IDEA, a state may be required to pay not only for a child's special education services but also for "related services," which include "supportive services (including … psychological services … 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." Based on this language, the expenses related to psychiatric charges incurred by the family during the school year were eligible for reimbursement. The prescription costs, however, were not eligible because the family failed to show that the prescription costs were for "diagnostic and evaluation purposes only" as required by the law.

School year

Finally, the court concluded that the school year for the student was the full school year at the residential program, including extended year services, and not the official school year for general education students in the state. Therefore, the state was responsible for costs through July 28 rather than June 7, as it argued.

This scenario is based on *Christopher B. ex rel. Joanne B. v. Hamamoto, 2008 WL 2465725 (D. Haw. 2008).*

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