FACT SHEET

Supreme Court Rules on Nursing Services Under the IDEA

nysut A Union of Professionals
April 2012 No. 14
(Replaces BB 9-09)
Defining EXCELLENCE

On March 3, 1999, the Supreme Court ruled in *Cedar Rapids Community School District v. Garret F. (119SCt.992)* that an Iowa school district must provide health services to a "ventilator dependent" boy under the Individual with Disabilities Education Act (IDEA). The Supreme Court decided that the IDEA's definition of related services requires school districts to provide students with health services that are necessary for them to attend school, if these services can be provided by qualified individuals other than physicians. The following is background information on the court decision, its implications for New York State, and advice to local leaders.

Background Information

Garret F. is a teenager whose spinal column was severed in a motorcycle accident when he was four years old. Justice Stevens states that Garret's mental capacities were unaffected, though paralyzed from the neck down. He is able to speak, to control his motorized wheelchair through use of a puff and suck straw, and to operate a computer with a device that responds to head movements.

Garret attends regular classes; however, he is quadriplegic ventilation dependent and therefore, requires an individual to attend to certain physical needs while in school. He also needs assistance with urinary bladder catheterization, the suctioning of his tracheotomy, and providing food and drink, repositioning in his wheelchair, monitoring his blood pressure and someone familiar with his ventilator, if problems arise.

The Cedar Rapids Community School District declined to accept financial responsibility for the services Garret needs, believing that it was not legally obligated to provide continuous one-on-one nursing care. In its petition for certiorari, the District pointed out that some federal courts have not asked whether the requested health services must be provided by a physician, but instead have applied a multi-factor test that considers the nature and extent of the service at issue. Such factors include: "(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."

The Court rejected the District's multi-factor test as the characteristics are not supported by any "recognized source of legal authority." The Court further stated that the District offers no explanation why these characteristics make one service any more "medical" than another. The Court concluded that "this case is about whether meaningful access to public schools will be assured, not the level of education that a school must finance once access is attained. Under the statute, our precedent and the purposes of the IDEA, the district must fund such related services to help guarantee that students like Garret are integrated into the public schools."

Implications for New York State

Need to Examine Local Policy/Procedure on Provision of Nursing Services

In a March 1995 guidance memorandum entitled, *The Provision of Nursing, Tasks and Health-Related Activities in the School Setting for Students with Special Health Care Needs*, the State Education Department indicated that "although the public schools' responsibility to provide such services [school health services] is broad, it is not without limits." The State Education Department cited the decision of the United States Court of Appeals for the Second Circuit, Detsel v BOE, 820 F 2nd 587 [2nd Cir. 1987], in which the Second Circuit declined to order a school district to provide a child with a severe disability **constant** professional health care, as opposed to the intermittent care necessary to provide "clean intermittent catheterization" ordered by the United States Supreme Court in its prior decision in Irving Independent School District v Tatro, 468 US 883.

The memorandum further states that "in situations where the medical needs of the child are so extensive that they require private nursing arrangements, the district's obligation is simply to confirm that the RN or LPN assigned to the child is from an authorized nurses registry or other legally authorized entity."

In adopting the "bight-line[1] vs the multi-factor test," the Supreme Court concluded in Cedar Rapids that the required services, though extensive and complex, are necessary to afford the child "meaningful access to the public schools." This decision overturns the standard in New York State concerning **constant** versus **intermittent** care. School districts will need to examine their existing procedures concerning their legal obligation to provide health-related services to students in light of this Supreme Court decision.

Cost to School Districts

Although the number of students requiring extensive health care services may be small, the Supreme Court clearly indicated that the cost for such service rests with the local school district. School districts will need to examine available federal, state, and other resources to cover these special education costs. In addition to local tax-levy funds, the following are several possible funding sources:

- Medicaid – School districts have received Medicaid funds to support the cost of nursing services for eligible students under the Schools Supportive Health Services Program (SSHSP). School districts may continue to access Medicaid funding consistent with Federal regulations. For information regarding Medicaid reimbursement, see the New York State Education Department website at http://www.oms.nysed.gov/medicaid.
- IDEA Part B – Flow-through funds – A school district could use its Federal IDEA funds to support the provision of nursing services.
- State Aid – A school district could receive *Public Excess Cost Aid*, for the provision of school health services (nursing services) according to the student's (IEP) Individualized Education Program.

Provision of Nursing Tasks and Health-Related Activities by Qualified Personnel

A one-to-one teacher associate, who was also a licensed practical nurse, provided the service to Garret F. The Iowa State Board of Nursing ruled that the district's registered nurse may delegate Garret's care to a LPN.

The Cedar Rapids decision does not represent new requirements for school districts in relation to determining the qualified provider for nursing tasks and health-related activities. However, it serves as a reminder that school nurses are responsible for all nursing tasks performed within the school and, that the nurse should be responsible for determining whether delegation of a nursing task is proper, following a nursing assessment.

According to the State Education Department's March 1995 memorandum, when a registered nurse (RN) deems that a nursing task is one that may be delegated to a licensed practical nurse, the RN is required to develop an individualized plan of care, including a procedure to evaluate, revise and discontinue the plan, as appropriate. In addition, the RN must develop procedures to assure that individuals who are qualified and properly trained perform the nursing tasks in a safe manner.

Advice to Local Leaders

Local leaders should work with school administrators, the school nurse, and other appropriate school personnel to assure that nursing tasks and health-related activities, performed in all school-related settings, are provided only by qualified and properly trained individuals. Any question in this regard should be directed to the NYSUT Labor Relations Specialist.

School district obligations for students receiving constant care in school settings may need to be examined in light of this court decision. Local leaders and school administrators should examine existing district policies/guidelines to determine whether the service needed is one which the district is required to provide.

88900/DR/vp - NYSUT Research and Educational Services – 4/2012

[1] Services provided by a physician (other than for diagnostic and evaluation purposes) are subject to the medical services exclusion, but services that can be provided by a nurse or qualified lay person are not.