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Schools-Public Schools: United States Supreme Court Adopts Bright-Line Test for Determining Whether a Requested Service Is a Required Related Service under the Individuals with Disabilities Education Act

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SCHOOLS-PUBLIC SCHOOLS: UNITED STATES SUPREME COURT ADOPTS "BRIGHT-LINE" TEST FOR DETERMINING WHETHER A REQUESTED SERVICE IS A REQUIRED "RELATED SERVICE" UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Cedar Rapids Community School District v. Garret F.
526 U.S. 66 (1999)

I. FACTS

When Garret F. was four years old, he sustained a severe spinal cord injury in a motorcycle accident and consequently was paralyzed from the neck down.[1] Because of Garret's paralysis, he was confined to a wheelchair, which he operated via a puff-and-suck straw.[2] While Garret's physical abilities were drastically affected by the accident, his mental capacities remained completely intact.[3]

In addition to being wheelchair-bound, Garret required a ventilator to assist with his breathing.[4] Since Garret is a paralyzed, ventilator-dependent child, he required the following services during school hours: urinary catheterization, suctioning of his tracheotomy tube, occasional positioning changes, monitoring of and assistance with his ventilator including any emergency situations, and assessment and observation for autonomic hyperreflexia.[5] Accompanied by a family member who assisted him with those physical needs, Garret entered the Cedar Rapids Community School District and participated in a regular classroom educational setting.[6]

While Garret was a kindergarten student, his eighteen-year-old aunt provided the physical care he required during school hours.[7] Thereafter, the family used settlement proceeds obtained from the accident, insurance coverage, and other resources to provide for a licensed practical nurse to attend to Garret's physical needs.[8] In 1993, Garret's mother

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1. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 69 (1999).
2. *See id.*
3. *See id.*
4. *See id.* A ventilator is a machine that assists with Garret's breathing, which Garret needs as an external aid to breathe for him. *See id.* at 69 n.2.
5. *See* Petitioner's Brief at 4, *Garret F.* (No. 96-1793). Autonomic hyperreflexia is a life-threatening condition that can occur in ventilator-dependent individuals, resulting from an uncontrollable visceral reaction to such things as anxiety or a full bladder; when it occurs, this condition requires immediate attention because it can result in a dysfunction of the body's vital signs. *See Garret F.*, 526 U.S. at 69 n.3.
6. *See id.* at 70.
7. *See id.*
8. *See id.*

petitioned for the Cedar Rapids Community School District to take responsibility for the costs of furnishing Garret's full-time attendant.[9] In denying the mother's request for such services, the school district stated that the requested services were "medical" in nature, which the school district believed it was not obligated to provide.[10]

Since Garret's enrollment in the school district, he has received the following services at no personal cost: an individualized educational plan written by a multi-disciplinary educational team, regular classroom instruction, services of an education associate to assist him with movement within the school and manipulation of his computer and texts, a specialized computer with a corresponding mouth-stick control and associated software, and special transportation to and from school.[11] The parties stipulated that the school district's least senior nurse earned $37,000 in 1994, and it would cost at least $27,000 to hire a nurse to provide Garret the care he needed during school hours.[12] Evidence also indicated that even if the school district allowed the hired assistant to perform both the education assistant's and the medical service attendant's responsibilities, the overall cost would still remain between $20,000 and $30,000 per year.[13] Finally, the school district argued that it only employed six full-time registered nurses, a staffing size that did not enable each school within the district to have a registered nurse on site at all times.[14]

After the school district's denial to provide the continuous services, Garret's mother requested a hearing before the Iowa Department of Education, which was presided over by an Administrative Law Judge (ALJ).[15] Garret's mother requested such a hearing, relying upon both the federal Individuals with Disabilities Education Act (IDEA) and Iowa state law to support her claim, yet most of the ALJ's discussion focused upon the federal statute.[16] The ALJ initially addressed the school

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9. *See id.*

10. *See* Petitioner's Brief at 6, *Garret F.* (No. 96-1793).

11. *See id.* at 4-5. The school district's educational associate was a licensed practical nurse; however, she was not hired to attend to Garret's health-related needs. *See id.* at 5. Rather, she simply provided for his school-related needs and was reimbursed only for these services at an annual wage of $9,500. *See id.*

12. *See id.* at 6. The school district argued that its school nurses do not routinely provide continuous one-on-one care for other students. *See id.* Instead, it described school nursing duties to include the following services: planning health service for children; attending meetings when children have health concerns; supervising and training of secretaries and other staff who administer medications, emergency first aid, and other intermittent care; providing health education in the classroom; insuring safety; and checking student shot records. *See id.*

13. *See id.* at 6-7.

14. *See id.* at 6. In addition, the school district was not providing continuous one-on-one care for any students enrolled within its jurisdiction. *See id.*

15. *See Garret F.*, 526 U.S. at 70.

16. *See id.*

district's argument surrounding the cost of providing such services to Garret by noting that there are no legally imposed spending limits placed upon school districts regarding a disabled student.[17] However, the ALJ also indicated that if the school district incurred a special education budget deficit by over-spending, it could obtain funds from the district cash reserve or from the state itself.[18] Therefore, the ALJ held that "the District has identified and weighted Garret for funding under state law."[19] This concluded the ALJ's analysis regarding the school district's argument that providing such "medical services" to Garret would be an excessive financial burden upon the school district.[20]

The ALJ then addressed the argument surrounding the burden that would be placed upon the school district if it were required to provide continuous nursing services to Garret.[21] In response, the ALJ held that even though the school district was not currently providing continuous one-on-one services to any particular student, most of the services required by Garret's condition were already being provided to other school district students in some capacity.[22] The ALJ also took note of the parties' disagreement over the licensure of the individual who administered the care to students requiring such services.[23] The ALJ further noted that those providing such care in other parts of the country ranged from non-licensed providers to fully licensed registered nurses.[24]

The ALJ explained that "federal law requires that children with a variety of health impairments be provided with 'special education and related services' when their disabilities adversely affect their academic performance."[25] The ALJ also determined "that applicable federal

17. *See* Respondent's Brief at 7, *Garret F.* (No. 96-1793).

18. *See id.*

19. *Id.* Based upon the ALJ's analysis of how the school district devises its special education budget, he concluded that Garret's special needs were incorporated because the school district did not place any limit upon expenditures for special education students in its fiscal plan. *See id.*

20. *See id.* at 7-8. The ALJ concluded that the IDEA required the school district to bear full financial responsibility for the care Garret required, regardless of the cost, because there was no spending limit in place pertaining to the administration of nursing services to a child under the IDEA. *See Garret F.*, 526 U.S. at 70.

21. *See Garret F.*, 526 U.S. at 70.

22. *See id.* at 70. The ALJ stated that other services being provided to other school district students included: urinary catheterization, food and drink, oxygen supplement positioning, and suctioning. *See id.* at 70 n.4.

23. *See id.* at 70-71.

24. *See id.* at 71. The Iowa Board of Nursing provided a declaratory ruling which stated that Garret's provider must be a licensed practitioner overseen by a registered nurse. *See* Petitioner's Brief at 7, *Garret F.* (No. 96-1793). However, the ALJ questioned this conclusion because while at home, Garret was attended by a licensed practical nurse without the supervision of a registered nurse. *See* Respondent's Brief at 3 n.2, *Garret F.* (No. 96-1793). Subsequently, the Iowa Board of Nursing revised its opinion, but the school district continued to maintain that it was obligated to provide a registered nurse to attend to Garret's physical needs. *See id.* at 3.

25. *Garret F.*, 526 U.S. at 71.

regulations distinguish between 'school health services,' which are provided by a 'qualified school nurse or other qualified person' and 'medical services,' which are provided by a licensed physician."[26] Furthermore, the ALJ held that the "medical services" exclusion available under the IDEA applies to those services that are for diagnostic or evaluation purposes.[27] Instead of making the distinction between "related services" and "medical services" based simply upon the title of the service administrator, the ALJ ruled that the distinction also rests upon particular services a physician is specifically trained to provide.[28] In concluding his opinion, the ALJ ruled that the IDEA "required the District to bear financial responsibility for all of the services in dispute, including the continuous nursing services."[29]

In reasoning that such services are within the IDEA's "related services" definition, the ALJ sided with the school district and found no legal authority for establishing a cost-based test in determining whether "related services" are required.[30] Afterwards, the school district challenged the ALJ's ruling in federal district court; however, the United States District Court for the Northern District of Iowa upheld the ALJ's ruling and granted summary judgment against the school district.[31]

The district court's decision was upheld by the Eighth Circuit Court of Appeals, which noted that as a recipient of federal funds under the IDEA, Iowa had a statutory duty to provide Garret with a "free appropriate public education."[32] Such education included services that were required to meet his physical needs, because they were supportive in nature and therefore not excluded under the "medical services" provision of the IDEA.[33] The court interpreted the United States Supreme Court's decision in *Irving Independent School District v. Tatro*[34] as providing a two-step analysis of the "related service" definition established in 20 U.S.C. § 1401(a)(17).[35] First, the court must

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

27. *See id.* (citing 20 U.S.C. § 1401(a)(17) (1994)). The term "related services" includes medical services "except that such medical services shall be for diagnostic and evaluation purposes only . . . ." 20 U.S.C. § 1401(a)(17). All references to the Unites States Code herein are to the 1994 version of the United States Code, which was in effect at the time the dispute arose in *Garret F.*

28. *See Garret F.*, 526 U.S. at 71.

29. *Id.*

30. *See id.* at 71 n.5.

31. *See id.* at 72.

32. Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822, 824 (8th Cir. 1997) (holding that continuous nursing service was a "related service" that the district was required to provide under the statutory requirements of the IDEA, because it was supportive and not excluded as a medical service), *aff'd*, 526 U.S. 66 (1999).

33. *See id.* at 825.

34. 468 U.S. 883 (1984).

35. *See Garret F.*, 106 F.3d at 824 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 890 (1984)).

determine if a service is a "supportive service[ ] . . . required to assist a child with a disability to benefit from special education."[36] If so, the court then proceeds to the second step and determines if the service meets the "medical service" exclusion.[37]

When it applied this two-step analysis to Garret's situation, the court of appeals determined that his services fell squarely within the "supportive services" definition, because without such assistance he would be unable to attend classes.[38] When the court applied the second step of the analysis to Garret's situation, it concluded that the *Tatro* case established a "bright-line" test.[39] Under such test, the court reasoned that the services of a physician, other than for diagnostic and evaluation purposes, are not required to be provided by a school district under the "medical services" component.[40] Yet, any services that can be provided in a school setting by either a licensed professional or layperson are clearly required to be provided by a school district under the "related services" provision.[41]

The school district then proceeded to petition for certiorari, challenging only the second step of the two-step analysis used to interpret the "related services" provision.[42] The school district asserted that some federal courts applied a multi-factor test that considered the nature and extent of the requested services instead of using a "bright-line" test in which the analysis was strictly dependent upon the nature of the provider.[43] However, the United States Supreme Court clearly adopted the "bright-line" test that the Fifth Circuit Court of Appeals enunciated in *Tatro*.[44] Therefore, the Supreme Court *held* that Garret's services were "related services," which the school district was required to provide, because they could be administered by personnel other than a physician.[45]

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36. *Id.*
37. *See id.* at 824-25.
38. *See id.* at 825.
39. *See id.* The medical services component within the "related services" definition requires the administration of medical services for diagnostic and evaluation purposes only. *See* 20 U.S.C. § 1401(a)(17) (1994); *see also Tatro*, 468 U.S. at 890.
40. *See Garret F.*, 106 F.3d at 825.
41. *See id.* (citing *Tatro*, 468 U.S. at 890-96).
42. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 72 (1999).
43. *See id.*
44. *See id.*
45. *See id.* at 73.

II. LEGAL BACKGROUND

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA),[46] thereby mandating that states provide "free appropriate public education" to all disabled children.[47] This Act was later renamed the Individuals with Disabilities Education Act (IDEA) in 1990.[48] Congress also established the Office of Special Education Programs within the Office of Special Education and Rehabilitative Services in the Department of Education.[49] This office was established to ensure the effective administration of the law; specifically, it charged the Secretary of the Department of Education with carrying out the provisions of the law by "issuing, amending, and revoking regulations implementing the IDEA."[50]

However, there was confusion and disagreement over the language included within the IDEA, which ultimately led to the application of two different tests when determining whether a requested service is a covered "related service" or an excluded "medical service" within the meaning of the IDEA.[51] This inconsistent interpretation stemmed from the Supreme Court's decision in *Irving Independent School District v. Tatro*.[52] Initially, some courts interpreted *Tatro* as stating that if a non-physician (nurse or layperson) could provide the service then it was a covered "related service," but if a physician was required for the service administration, then it was an excluded "medical service."[53] Yet other lower courts had interpreted *Tatro* as requiring an analysis of the nature and extent of the service in question.[54] If the service is "intermittent, simple, and cheap, then it is a covered related service, but if the service is

46. Pub. L. No. 94-142, 89 Stat. 773 (1975) (amending the Education of the Handicapped Act).

47. *See* Education for All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 773, 774 (1975); *see also* Alison Barkoff, Comment, *Revisiting De Jure Educational Segregation: Legal Barriers to School Attendance for Children with Special Health Care Needs*, 8 CORNELL J.L. & PUB. POL'Y 135, 139 (1998) (analyzing relevant special education law, including the IDEA, the two tests used to determine the related services provision of the IDEA, and the associated case law).

48. *See* Pub. L. No 102-119, 105 Stat. 587; *see also* Barkoff, *supra* note 47, at 141.

49. *See* 20 U.S.C. § 1402(a) (1994).

50. Barkoff, *supra* note 47, at 142.

51. *See* Barkoff, *supra* note 47, at 137.

52. 468 U.S. 883 (1984) (affirming a Fifth Circuit Court of Appeals ruling that because urinary catheterization of a student with spina bifida could be performed by a school nurse or other qualified personnel, it was a required related service under the IDEA and not excluded under the medical services exception).

53. *See* Barkoff, *supra* note 47, at 137. *See, e.g.*, Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822 (8th Cir. 1997), *aff'd* 526 U.S. 66 (1999); Skelly v. Brookfield LaGrange Park Sch. Dist. 95, 968 F. Supp. 385 (N.D. Ill. 1997); Macomb County Intermediate Sch. Dist. v. Joshua S., 715 F. Supp. 824 (E.D. Mich. 1989).

54. *See* Barkoff, *supra* note 47, at 137. *See, e.g.*, Neely v. Rutherford County Sch., 68 F.3d 965 (6th Cir. 1995); Detsel v. Board of Educ., 820 F.2d 587 (2d Cir. 1987); Granite Sch. Dist. v. Shannon M., 787 F. Supp. 1020 (D. Utah 1992).

constant, complex, and expensive then it is an excluded medical service."[55] The United States Supreme Court chose to resolve the fifteen years of inconsistency in the application of its *Tatro* decision by again addressing the related services question in *Cedar Rapids Community School District v. Garret F.*[56]

A. BACKGROUND ON THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

The IDEA was an "ambitious" effort by Congress to promote the educational interests of handicapped children.[57] The original legislation enacted by Congress pertaining to the education of handicapped children did not contain guidelines for state use of federally granted money.[58] Instead, the legislation was simply a grant intended to assist the states in the development and implementation of programs for educating handicapped children.[59] In 1974, Congress increased federal funding intending to require states to adopt "a goal of providing full educational opportunities to all handicapped children."[60] This interim legislation eventually led to the enactment of the Education for All Handicapped Children Act of 1975, a title that was later changed to the Individuals with Disabilities Education Act (IDEA).[61] The primary designated purpose of this legislation was to assure that all children with disabilities have a free appropriate public education.[62] In order to facilitate the inclusion of such special education services, the IDEA requires that the children have "related services" to meet their needs, that the rights of children and their parents are protected, and that the states are assisted in providing this special education.[63]

Qualification for federal financial assistance under the IDEA occurs when a participating state demonstrates that it has a policy in effect that assures all handicapped children the right to a free appropriate public

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55. Barkoff, *supra* note 47, at 137.

56. 526 U.S. 66 (1999).

57. *See* Board of Educ. v. Rowley, 458 U.S. 176, 179 (1982). Congress passed this legislation in response to its perception that handicapped children were either totally excluded from schools or were waiting until they were old enough to drop out of the educational system. *See id.*

58. *See id.* at 180. *Rowley* explains that Congress first addressed the problem of educating the handicapped in 1966 by amending the Elementary and Secondary Education Act of 1965. *See id.* at 179-80 (citing Pub. L. 89-750, § 161, 80 Stat. 1204 (1966)).

59. *See id.* at 180.

60. *Id.* (citing Pub. L. No. 93-380, 88 Stat. 579, 583 (1974)).

61. *See* Pub. L. No. 94-142, 89 Stat. 773, 774 (1975); *see also* Barkoff, *supra* note 47, at 139-41.

62. *See* 20 U.S.C. § 1400(c) (defining the purpose of the IDEA); *see also* Barkoff, *supra* note 47, at 141.

63. *See* Barkoff, *supra* note 47, at 141; *see also* 20 U.S.C. § 1400(c) (1994).

education.[64] The state must then submit this policy to the Secretary of Education through a state plan describing the manner in which the handicapped children will be educated.[65]

This "free appropriate education" should be tailored to meet the specific needs of each child and be clearly specified in an individualized educational program (IEP).[66] In addition to the formulation of a tailored IEP, the IDEA places extensive procedural requirements upon states receiving federal funds, ranging from requiring notification be given to parents or guardians pertaining to any change in the IEP to requiring state administrative hearings for any aggrieved party.[67] Therefore, even though the IDEA leaves to the states the responsibility for developing and executing the individual educational programs for handicapped children, the legislation imposes significant requirements that govern the execution of such responsibility.[68]

Since the adoption of this legislation, the law's language has been inconsistently interpretated.[69] The main problem stemmed from the judicial analysis used to determine the type and extent of nursing services that must be provided to disabled children.[70] The IDEA calls for school districts to provide "related services" to disabled children if needed to assist these children in benefiting from their public education.[71] The IDEA lists certain services that are "related" in nature, but this list is not considered to be exhaustive.[72] The only limitation placed

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64. *See* 20 U.S.C. § 1412(1) (1994) (stating that in order to qualify for assistance under this subchapter, a state must demonstrate that it "has in effect a policy that assures all children with disabilities the right to a free appropriate public education").

65. *See* 20 U.S.C. §§ 1412-1413 (1994).

66. *See* 20 U.S.C. § 1401(a)(18) (1994) (stating that the term "free appropriate public education" means "special education and related services that . . . are provided in conformity with the individualized education program").

67. *See* Board of Educ. v. Rowley, 458 U.S. 176, 182-83 (1982) (referring to 20 U.S.C. § 1401(a)(20) and describing the elements that should be included in an IEP). The term "individualized education program" refers to a written statement for each disabled child developed in any meeting by a representative of the local educational agency or unit qualified to meet the unique needs of children with disabilities. 20 U.S.C. § 1401(a)(20) (1994). This statement shall include present levels of educational performance of the child, annual goals, specific educational services to be provided, the extent to which the child will be able to participate in regular educational programs, any needed transition services for students beginning no later than age 16 and annually thereafter, the projected date for initiation and duration of such services, and objective criteria and evaluation procedures. *See id.*

68. *See Rowley*, 458 U.S. at 183.

69. *See*, Barkoff, *supra* note 47, at 135-36 (referring to the judicial inconsistency in determining the exact scope of the related services provision under the IDEA).

70. *See* Barkoff, *supra* note 47, at 137 (discussing the two different tests courts have used to analyze the related service provision: the nature/extent test and the physician/non-physician test).

71. *See* 20 U.S.C. § 1400(c) (1994) (defining the purpose of the IDEA).

72. *See generally* Allan Osborne, *Supreme Court Rules That Schools Must Provide Full-Time Nursing Services for Medically Fragile Students*, 136 EDUC. LAW REP. 1 (1999) (discussing the background of the IDEA, analyzing previous case law interpreting the related services provision, and providing a brief analysis of the *Garret F.* decision).

upon what can be considered a "related service" is that any "medical services" shall be for diagnostic and evaluation purposes only.[73]

Through the years, a gray area emerged in the interpretation of what is considered a "related service" within the meaning of the IDEA.[74] Originating from *Tatro*, the lower courts had developed two distinct tests in determining when such services were related in nature and therefore required under the IDEA.[75] However, there was also significant case law preceding *Tatro* which shows the development of this interpretative inconsistency among the federal circuits.[76]

B. CASE DEVELOPMENT AND INTERPRETATION OF THE IDEA

The first instance in which the United States Supreme Court was called upon to interpret a provision of the IDEA was the 1982 case of *Board of Education v. Rowley*.[77] In this decision, the Court discussed the historical development of the IDEA and held that a deaf child, progressing in a regular classroom setting without difficulty, did not require a sign language interpreter as a "related service."[78] The court further held that the IDEA did not impose any obligation upon the states that receive federal funding beyond the requirement that the handicapped children receive specialized education.[79]

In so holding, the Court clearly rejected the respondent's claim that the goal of the IDEA was to provide each handicapped child with an "equal educational opportunity."[80] Instead, the Court concluded by ruling that the "basic floor of opportunity" provided by the IDEA consisted of specialized education, including "related services" that were specifically tailored to meet the education of the handicapped child.[81]

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73. *See* 20 U.S.C. § 1401(a)(17) (1994). Such related services include transportation, speech and language pathology, audiology, psychological service, physical therapy, and social work services. *See id.*

74. *See* Osborne, *supra* note 72, at 1.

75. *See* Barkoff, *supra* note 47, at 137. *See generally* Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984).

76. *See* Allan Osborne, *Where Will the Supreme Court Draw the Line Between Medical and School Health Services Under the IDEA?*, 128 EDUC. LAW REP. 559, 560-61 (1998); *see also Tatro*, 468 U.S. at 890.

77. 458 U.S. 176 (1982).

78. *See generally* Board of Educ. v. Rowley, 458 U.S. 176 (1982). The Court agreed that an interpreter was not necessary because without assistance from a sign language interpreter, the student was performing better than most students. *See id.* at 210.

79. *See id.* at 198.

80. *See id.*

81. *See id.* at 200. The Court supported this view based upon a combined view of the congressional intention found via the legislative history and the language of the IDEA itself. *See id.* at 201 n.23. The Court further supported this view with language found in the associated senate report that concluded that handicapped children excluded from public education became dependents, thereby costing taxpayers billions; however with proper educational services, many of these individuals would

In 1984, the Court again addressed issues pertaining to the IDEA in *Tatro* when the Supreme Court addressed whether clean intermittent catheterization (CIC) constituted a "related service" within the IDEA's provisions, thereby requiring the school district to provide such services.[82] Amber Tatro was an eight-year-old child born with spina bifida, which resulted in orthopedic impairments, speech impairments, and a neurogenic bladder.[83] As a consequence of having a neurogenic bladder, Amber required CIC, a procedure involving the insertion of a catheter into the urethra to drain the urine stored in the bladder.[84] Since the procedure is fairly simple, only requiring an hour of training for a layperson, Amber's parents, babysitter, and teenage brother were trained to perform the technique.[85]

Due to Amber's special needs, an individualized education program was developed, which included provisions for special services such as physical and occupational therapy; however, no provisions were made for the school to perform the CIC during school hours.[86] The plaintiffs invoked the IDEA, arguing that since the state was receiving federal funding under the statute, it was consequently mandated to provide the child with a "free appropriate public education" including the appropriate "related services."[87]

The district court in *Tatro* concluded that CIC was not a "related service" under the IDEA "because it did not serve a need arising from the effort to educate."[88] However, the court of appeals reversed, holding that the CIC was a "related service" because unless provided, Amber would be denied the opportunity to attend and benefit from the special education.[89] Consequently, the court remanded the case for further proceedings consistent with its ruling.[90]

Upon remand, the school district emphasized the IDEA's provision, which states that "'medical services' could qualify as 'related services' only when they served the purpose of diagnosis or evaluation."[91] The

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increase their independence and consequently reduce their dependence on society. *See id.* (citing S. REP. NO. 94-168, at 9 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1425, 1433). Therefore, the Court concluded that the references in the legislative history indicated Congress' intention that the services provided to handicapped children be educationally beneficial despite the nature or severity of the handicap that child may have. *See id.*

82. *See* Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 890 (1984).

83. *See id.* at 885.

84. *See id.* This procedure must be performed every three to four hours to avoid kidney damage. *See id.*

85. *See id.* The Court also noted that in the future Amber could perform her own catheterization. *See id.*

86. *See id.* at 886.

87. *See id.* at 886 (citing 20 U.S.C. §§ 1401(17), 1412(1), 1414(a)(1)(C)(ii) (1982)).

88. *Id.* at 887.

89. *See id.*

90. *See id.*

91. *Id.* The district court observed that the procedure could be performed under Texas law by a

district court held that because the service did not require administration by a physician, a layperson could be trained to execute the procedure, the service was not a "medical service" within the meaning of the IDEA.[92] Instead, the service was characterized as a "related service" within the IDEA's provisions.[93] As a result, the school board was ordered to provide these "related services" during school hours.[94] After the court of appeals affirmed this decision, the United States Supreme Court granted certiorari.[95]

The issue addressed by the Supreme Court, in *Tatro*, was whether the IDEA required the school district to provide Amber with CIC services during the school day.[96] The *Tatro* Court analyzed the governing statute and concluded that districts receiving the federal funding were required to implement a policy assuring that handicapped children have a right to free appropriate public education, which is explicitly defined via the IDEA's statutory language as "special education and related services."[97] Therefore, the decision in *Tatro* hinged on whether Amber's CIC was a "related service" within the meaning of the IDEA.[98]

In analyzing this question, the Court determined that it must first decide whether CIC was a "supportive service" required by the IDEA to facilitate a handicapped child in benefiting from the special education provided.[99] Second, the Court determined that it must decide whether the CIC was excluded from this "supportive service" definition because it met the "medical service" exclusion, which required that the district only provide medical services for diagnosis or evaluation purposes.[100]

In applying the facts of Amber's situation, the Court held that her CIC was clearly a supportive service, because without such services she would be unable to attend school and benefit from the special education.[101] Furthermore, the Court explained that services enabling a child to attend school are no different than those services expressly stated in

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nurse or other qualified individual "without engaging in the unauthorized practice of medicine." *Id.*

92. *See id.*

93. *See id.*

94. *See id.* at 887-88.

95. *See id.* at 888.

96. *See id.* at 888-89. The Court also addressed whether the respondents could obtain relief under section 504 of the Rehabilitation Act in addition to relief obtained under the IDEA; however, the Court ruled that section 504 is inapplicable when remedial relief is obtainable under the IDEA. *See id.* at 895 (citing 29 U.S.C. § 794a (1994). Section 504 of the Rehabilitation Act authorizes the prevailing party in an action to recover attorney's fees, which the IDEA does not specifically outline. *See id.* at 888 (citing 29 U.S.C. § 794a (1994)).

97. *Id.* at 889 (citing 20 U.S.C. §§ 1401(18), 1412(1), 1414(a)(1)(C)(ii) (1982)).

98. *See id.* at 890.

99. *See id.*

100. *See id.*

101. *See id.* "A [supportive] service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned." *Id.* at 891.

the "related services" definition, such as transportation to and from the school building.[102]

Next, the Court in *Tatro* proceeded to the second step of its analysis by addressing the "medical services" exclusion provided within the Act.[103] As specified in 20 U.S.C. § 1401(a)(17), a school district is only required to provide medical services for the purposes of diagnosis or evaluation.[104] In interpreting this provision, the Court held that deference should be paid to the controlling regulations of the Department of Education.[105] Under these regulations, the term "related services" includes "school health services," which in turn is defined as "services provided by qualified school nurse or other qualified person."[106] "Medical services" are defined as "services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services."[107] In interpreting these statutes, the *Tatro* Court concluded that the only "medical services" required under the statutory language were services provided by a licensed physician for diagnosis of a child's handicapped condition.[108]

However, the school district indicated that CIC was a "medical service," even though it was not exclusively performed by a physician.[109] The school board based this view on Texas law, which confined CIC to "uses in accordance with a physician's prescription and under a physician's ultimate supervision."[110] In reviewing this argument, the Court ultimately concluded that such an interpretation was contradictory to the IDEA's language and legislative history.[111] The Court stated that the Department of Education's regulations defined "related services" to include school health related services, which were in turn defined as services that could be provided either by a school nurse or other qualified personnel.[112] The Court relied upon the fact that Congress

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102. *See id.*
103. *See id.*
104. *See id.* (citing 20 U.S.C. § 1401(a)(17) (1982)).
105. *See id.* at 891-92 (citing Blum v. Bacon, 457 U.S. 132, 141 (1982)).
106. *Id.* (quoting 34 C.F.R. § 300.13(a), (b)(10) (1983)).
107. *Id.* (quoting 34 C.F.R. § 300.13(b)(4)).
108. *See id.* at 891.
109. *See id.* at 893.
110. *Id.*
111. *See id.* at 893-94. The Court further noted several limitations that it indicated should minimize the burden the school district fears: first, to be entitled to related services, a child must be handicapped so as to require special education; second, only those services necessary for the child to benefit from special education are required; and third, only services that can be performed by a nurse or layperson are required, which excludes those services that must be performed by a physician. *See id.* at 894.
112. *See id.* at 892.

specifically excluded "medical services" in its definition of "related services"; the Court further supported this analysis with the Secretary of Education's "permissible construction" of the "medical service" exclusion, which limited the "medical services" exclusion to those services of a physician.[113]

Tatro was the first major decision by the Supreme Court addressing the "related services" language found within the IDEA.[114] Following this decision, additional cases interpreted the "related services" language and the Supreme Court's application.[115] That same year, in *Department of Education v. Katherine D.*,[116] the Ninth Circuit Court of Appeals held that a homebound program for a child suffering from cystic fibrosis was not within the "free appropriate public education" under the IDEA, because the state could provide the child with trained staff members to administer medical services needed in order for the child to attend regular public school.[117] The court of appeals held that the services the child required could clearly be provided by a trained layperson; consequently, it held that such services fell squarely within the requirements of the IDEA.[118]

In addition to *Katherine D.*, a subsequent opinion pertaining to the language of "related services" within the IDEA was *Detsel v. Board of Education*,[119] decided in 1986.[120] In *Detsel*, the plaintiff brought an action on behalf of her daughter Melissa, seeking relief under the Education of All Handicapped Children Act, a title amended to the IDEA in 1990.[121] Melissa suffered from severe disabilities and required an assistant to provide the services needed for her survival.[122]

The issue before the district court was whether the school district was required to furnish a nursing attendant to provide Melissa with the

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113. *See id.*

114. *See* Barkoff, *supra* note 47, at 136 (discussing the Supreme Court's initial consideration of the scope of the health-related services provision).

115. *See* Department of Educ. v. Katherine D., 727 F.2d 809, 815-16 (9th Cir. 1983).

116. 727 F.2d 809 (9th Cir. 1983).

117. *See Katherine D.*, 727 F.2d at 815-16.

118. *See id.* at 815 (citing 34 C.F.R. § 300.13(b)(10) (1982)). Because of her condition, the child had a tracheotomy tube, which was placed in her trachea to allow her to breathe and expel mucus secretions. *See id.* at 812. In order for the child to attend classes, the staff would need to be trained in administering her medication, suctioning her lungs, and reinserting her tracheotomy tube should it become dislodged. *See id.*

119. 637 F. Supp. 1022 (N.D.N.Y. 1986), *aff'd*, 820 F.2d 587 (2d Cir. 1987).

120. *See* Detsel v. Board of Educ., 637 F. Supp. 1022 (N.D.N.Y. 1986), *aff'd*, 820 F.2d 587 (2d Cir. 1987).

121. *See id.*

122. *See id.* at 1024. Such services included continuous respiratory assistance, monitoring of vital signs, administration of medication into the intestine, the ability to perform cardio-pulmonary resuscitation, and pulmonary therapy. *See id.*

necessary services that would enable her to attend classes.[123] As in *Tatro*, the controversy hinged upon the distinction between supportive or "related services" and "medical services" within the IDEA.[124] The defendants argued that the services were not a "related service" within the meaning of the IDEA because they were still medical in nature and therefore excluded under 20 U.S.C. § 1401(a)(17).[125] The defendants urged the court to ignore the language found in the Department of Education regulations, which excluded therapeutic services performed by a physician but required those services if they could be performed by a non-physician.[126] Instead of determining whether the service was required based upon the nature of the administrator, the defendants urged the court to consider the nature of the services.[127]

In addressing these arguments, the district court referred to the Supreme Court's position in *Tatro* and performed the two-step inquiry to determine whether such services were required.[128] First, the district court ruled that the services were "undoubtedly" supportive, because they would enable the child to remain in school.[129] However, the district court interpreted the Supreme Court's analysis in *Tatro* as considering the extent and nature of the services required.[130]

Since Melissa's required care was complicated and required skilled health professionals, the district court indicated that the *Tatro* decision had not considered such extensive circumstances and concluded that Congress intended to "spare the school from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence."[131] Noting that the services at issue in this case were not a simple procedure, such as the CIC at issue in *Tatro*, a procedure that could be self-performed, the court concluded that the services instead resembled the "medical services" specifically excluded by 20 U.S.C. § 1401(a)(17) of the EAHCA,[132] later renamed IDEA.

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123. *See id.* at 1025. There was a question pertaining to whether the services were "health services" that could be provided by a school nurse or whether they were services that could be excluded from the definition of related services by qualifying as "medical services" required for reasons other than diagnosis or evaluation. *See id.*

124. *See id.* at 1025-26.

125. *See id.* at 1025.

126. *See id.*

127. *See id.*

128. *See id.* at 1026 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984)).

129. *See id.* This is the first step of the analysis enunciated by the Supreme Court in *Tatro*. *See* 468 U.S. at 891.

130. *See* Detsel v. Board of Ed., 637 F. Supp. 1022, 1026 (N.D.N.Y. 1986), *aff'd*, 820 F.2d 587 (2d Cir. 1987). *See generally Tatro*, 468 U.S. 883.

131. *Detsel*, 637 F. Supp. at 1026 (quoting *Tatro*, 468 U.S. at 892).

132. *See id.* at 1027. The district court analyzed the dicta from *Tatro* and concluded that Congress did not intend to burden school districts with having to provide extensive medical services that were costly and complicated. *See id.* The district court interpreted the regulations governing 20

In its concluding remarks, the district court held that the IDEA did not require a school district to provide continuous in-school nursing care to a handicapped child.[133] The court relied upon Congress' concern in promulgating the "medical services" exclusion to avoid placing excessive costs and burdens of health care on the school district.[134] The application of "simple nursing services" did not burden the schools in the same manner that "medical services" or extensive and costly nursing services would; therefore, the district court held that 20 U.S.C. § 1401(a)(17) permits the exclusion of such burdensome continuous nursing services.[135] Even though the services at hand did not fulfill the "physician" requirement enunciated in 34 C.F.R. § 300.13(b)(4), "the exclusion of the disputed services is in keeping with its spirit."[136] The court reasoned that *Tatro* meant "simple" nursing services were not excluded as "medical service," but extensive and costly nursing services were excluded within the spirit of the language and the intent of Congress.[137]

Melissa's mother then appealed this ruling by the district court, but the appellate court concluded that the complaint was properly dismissed.[138] In her argument, Melissa's mother relied upon the previously discussed decision from *Katherine D.*, the Ninth Circuit Court of Appeals decision which ordered a school board to provide the requested nursing services.[139] In contrasting the facts in *Katherine D.*, the Second Circuit Court of Appeals stated that the former case required only intermittent care that did not demand the level of expertise needed to administer the services required by Melissa; therefore, the court reaffirmed the dismissal of her complaint.[140]

In 1995, *Neely v. Rutherford County School*[141] provided further interpretation of the IDEA by the Sixth Circuit Court of Appeals. Samantha Neely suffered from a condition that caused severe breathing difficulties resulting in reliance upon a tracheostomy to assist with her respiratory efforts.[142] Because of her condition, she required constant

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U.S.C. § 1401(a)(17) to mean that the provision of school nursing services did not fall within the medical services exclusion; rather, Congress decided to exclude "costly and complicated services." *Detsel*, 637 F. Supp. at 1027 (citing *Tatro*, 468 U.S. at 892).

133. *See id.*

134. *See id.*

135. *See id.*

136. *Id.*

137. *See id. See generally Tatro*, 468 U.S. 883.

138. *See* Detsel v. Board of Educ., 820 F.2d 587, 588 (2d Cir. 1987).

139. *See id.*

140. *See id.* The court of appeals' decision was only one page in length and concluded that the controlling factor in whether the services were required rested upon the fact that they were continuous services requiring administration by a trained professional versus intermittent services that could be provided by a trained layperson. *See id.*

141. 68 F.3d 965 (6th Cir. 1995).

142. *See* Neely v. Rutherford County Sch., 68 F.3d 965, 967 (6th Cir. 1995) (explaining that a tra

monitoring of her respiratory status, suctioning as frequently as every twenty minutes when suffering from a cold, and emergency breathing assistance with medical equipment designed to administer oxygen when needed.[143]

The Neelys petitioned the school board to provide a licensed professional, such as a registered nurse or respiratory care technician, to provide Samantha's care during the school year.[144] After agreeing to provide such services, the school board hired a nursing assistant, to which the family objected because they had requested a more highly trained provider.[145] The issue then became whether the district was required under the IDEA to provide a full-time nurse to attend to the child's needs during school hours.[146] The district court concluded that the requested services "were supportive services that the IDEA required . . . [which] were not medical services excluded under the Act."[147] Subsequently, Rutherford County School Board filed an appeal.[148]

The appellate court enunciated the issue as whether the requested services were a "related service" under 20 U.S.C. § 1401(a)(17) and determined that the analysis pattern set forth in *Tatro* was controlling.[149] However, the court held that *Tatro* is "subject to several interpretations."[150] First, it may be read as adopting a "bright-line" rule that requires any "medical service" that could be administered by a non-physician provider as outside the scope of the "medical services" exception.[151] This would result in the school board being required to furnish such services, because a non-physician could administer them.[152] However, the court noted that most jurisdictions have rejected "such a per se rule."[153] The Sixth Circuit Court of Appeals determined that the proper

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cheostomy is a procedure in which a hole is cut in the throat into which a tube is inserted to assist with breathing).

143. *See id.* The court explained that Samantha required a well-trained individual to handle emergency situations and to provide her with the needed attention her condition required. *See id.*

144. *See id.* at 968.

145. *See id.* Samantha's parents objected to the district hiring a nursing assistant because under Tennessee law, the requested care must be provided by a physician, registered practical nurse, licensed practical nurse, respiratory care specialist, the patient's relatives, or the patient herself. *See id.* at 970 (citing TENN. CODE. ANN. §§ 63-6-402, 63-6-410 (1982)).

146. *See id.* at 968.

147. *Id.*

148. *See id.*

149. *See id.* at 969 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 890 (1984)).

150. *Id.* at 970. *See generally Tatro*, 468 U.S. 883.

151. *See* Neely v. Rutherford County Sch., 68 F.3d 965, 970 (6th Cir. 1995); *see also* Macomb County Intermediate Sch. Dist. v. Joshua, 715 F. Supp. 824, 828 (E.D. Mich. 1989) (reading *Tatro* to stand for the proposition that all health services not performed by a licensed physician are related services required by the IDEA regardless of whether or not they are costly and burdensome).

152. *See Neely*, 68 F.3d at 967. This "bright-line" rule is also often referred to as the "physician/non-physician" test. *See* Barkoff, *supra* note 47, at 155 n.160.

153. *Neely*, 68 F.3d at 970; *see also* Granite Sch. Dist. v. Shannon, 787 F. Supp. 1020, 1027 (D. Utah 1992); Bevin H. v. Wright, 666 F. Supp. 71, 75 (W.D. Pa. 1987); Detsel v. Board. of Educ., 637 F. Supp. 1022, 1026-27 (N.D.N.Y. 1986) (reading *Tatro* to stand for services required by a physician

interpretation of *Tatro* was "that a school district is not required to provide every service which is 'medical in nature.'"[154]

Instead of focusing upon the financial cost of the requested services, the Sixth Circuit Court of Appeals focused upon the "inherently burdensome" nature of the care requested.[155] The court agreed that services characterized as "intensive," "time-consuming," "life-threatening," and "expensive" did not fall within the requirements of the IDEA.[156] In summary, the appellate court concluded that the district court was in error because, "[R]equiring a school to hire a licensed practical nurse to care for one child is 'inherently burdensome' and, undoubtedly, distinguishable from Tatro."[157]

In summary, these previous lower court decisions illustrate the development of a clear split among the circuits regarding the interpretation of the "related services" provision under the IDEA.[158] This split led to the Supreme Court granting certiorari to an Eighth Circuit Court of Appeals case, thereby giving the Court an opportunity to address the inconsistent application of its 1984 *Tatro* decision.[159]

III. ANALYSIS

In *Garret F.*, a seven-to-two decision authored by Justice Stevens, the United States Supreme Court affirmed the Eighth Circuit Court of Appeals' decision.[160] The Court addressed the two interpretations surrounding the "related services" provision, clearly adopted the bright-

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other than for diagnostic and evaluation purposes are excluded, but simple nursing procedures are not excluded), *aff'd*, 820 F.2d 587 (2d Cir. 1987).

154. *Neely*, 68 F.3d at 971. *See generally Tatro*, 468 U.S. 883.

155. *Neely*, 68 F.3d at 971. The court differentiated the care required in the case at hand, which required one-on-one services, with the intermittent care required in *Tatro*. *See id.* at 972.

156. *Id.* (citing *Wright*, 666 F. Supp. at 75).

157. *Id.* at 972. The court refused to address the financial issue of hiring a licensed practical nurse versus hiring a nursing assistant; instead, it based its reasoning upon the inherently burdensome nature of the services that the individual hired would provide. *See id.* The court held that the undue burden involved in this matter derived not from the salary of the professional hired to administer the care, but instead involved the extensive nature of the care that was required by the child. *See id.*

158. *See* Osborne, *supra* note 72, at 10. *See generally Tatro*, 468 U.S. 883.

159. *See* Osborne, *supra* note 72, at 10.

160. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 79 (1999). Justice Stevens delivered the majority opinion and was joined by Chief Justice Rehnquist, Justice O'Connor, Justice Scalia, Justice Souter, Justice Ginsburg, and Justice Breyer. *See id.* at 68-79. Justice Thomas filed a dissenting opinion, in which Justice Kennedy joined. *See id.* at 79-85.

line test, and abrogated the multi-factor analysis.[161] The Court *held* thatcontinuous nursing services were "related services" that the school district was required to provide under the IDEA.[162]

A. MAJORITY OPINION

The Supreme Court noted that the IDEA was enacted in part "to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs."[163] The Court explained that the IDEA authorizes federal funding for states providing disabled children with special education and necessary "related services."[164] The Court faced the issue of whether the definition of "related services" in 20 U.S.C. § 1401(a)(17) "require[d] a public school district in a participating State to provide a ventilator-dependent student with certain nursing services during school hours."[165]

The Court began its discussion of the pertinent language by stating that "the IDEA's definition of 'related services', our decision in . . . *Tatro* . . . and the overall statutory scheme all support the decision of the Court of Appeals."[166] Instead of restricting the applicability of the "related services" definition, the Court concluded that it should "broadly encompass" the supportive services needed by a child in order to allow the child to benefit from special education.[167] The Court agreed with both parties in asserting that there was no dispute that the requested

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161. *See id.* at 72-78.

162. *See id.* at 79. With this decision, the Court abrogated the test used in both *Neely* and *Detsel* because the analysis did not include the use of the "bright-line" test to determine whether nursing services were required under the related services provision. *See generally Garret F.*, 526 U.S. 66; Neely v. Rutherford County Sch., 68 F.3d 965, 967 (6th Cir. 1995); Detsel v. Board of Educ. 820 F.2d 587 (2d Cir. 1987).

163. *Garret F.*, 526 U.S. at 68 (citing 20 U.S.C. § 1400(c) (1994)).

164. *See id.* (citing 20 U.S.C. §§ 1401(a)(18), 1412(1) (1994)).

165. *Garret F.*, 526 U.S. at 68-69.

> The term "related services" means 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 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.

20 U.S.C. § 1401(a)(17) (1994). "Related services" was not defined at the time of the enactment of the Education of the Handicapped Act. *See Garret F.*, 526 U.S. at 69 n.1 (citing Education of the Handicapped Act, Pub. L. No. 91-230, 84 Stat. 175 (1970)). However, in 1975 Congress added the language at issue in this case, which has not been amended since its adoption. *See id.* (citing Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 4(a)(4), 89 Stat. 773, 775).

166. *Garret F.*, 526 U.S. at 73 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984)).

167. *Id.*

services were in fact "supportive," because without them the child would be unable to remain in school.[168]

Next, the Court noted that the definition of "related services" included only those "medical services" that are for diagnostic and evaluation purposes.[169] However, the Court relied upon a previous interpretation of this language given in its *Tatro* decision, which stated that "medical services" included only those services which must be provided by a physician.[170] Even though the Court referenced the cost of the services and the competence of school staff as justifications for distinguishing between physician services and services of others, the Court clearly reinforced the principle that there is an unmistakable line between the two.[171] The phrase "medical services" is expressly limited only to those services provided by a physician, and it does not encompass other "related services" that can be provided by a qualified school nurse or other qualified person.[172] The Court then supported this conclusion by stating that even though Garret's services are more extensive in nature, they are "no more 'medical' than was the care sought in *Tatro*."[173]

The Court completely rejected the school district's proposal of a multi-factor test that would have included consideration of the following elements: (1) whether the care was continuous or intermittent, (2) whether the school personnel currently in place could administer such care, (3) the cost of providing such services, and (4) potential consequences that could occur if the care was improperly administered.[174] In refusing to adopt such a test, the Court held that there is no legal authority to support such a proposition, preferring instead the "bright-line" test that clearly limits the "medical services" exception to those services provided by a physician.[175] The district's financial concerns in providing for such continuous one-on-one services would have been a factor had the Court adopted the proposed multi-factor analysis.[176] Instead, the

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168. *See id.* (indicating that Congress' intention was for the handicapped child to have meaningful access to public education).

169. *See id.* (citing 20 U.S.C. § 1401(a)(17)). The statute contains no further explanatory definition of "medical services" exempted from the coverage related services requirement. *See id.*

170. *See id.* at 73-74 (quoting *Tatro*, 468 U.S. at 892-94).

171. *See id.*

172. *See id.* The Court clearly adopted the plain meaning of the governing regulations setting forth the definition of medical services as those strictly provided by a physician. *See id.* at 75 n.6 (citing 34 C.F.R. § 300.13(b)(4) (1983)). Furthermore, the Secretary of Education advocated such an interpretation of this regulation and supported the affirmation of the Eighth Circuit Court of Appeals judgment. *See* Brief for the United States at 8-9, Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66 (1999) (No. 96-1793).

173. *Garret F.*, 526 U.S. at 75.

174. *See* Petitioner's Brief at 11, *Garret F.* (No. 96-1793).

175. *See Garret F.*, 526 U.S. at 75-76. The Court favors this standard because it is a "generally workable interpretation of the statute." *See id.* at 76.

176. *See id.* at 77. At oral argument the school district proposed that first the Court consider the

Court ruled that its role was not to analyze financial concerns, but rather to interpret existing law.[177] The Court specifically noted that neither the "related services" nor the excluded "medical services" definitions played a role in a cost analysis.[178] Therefore, including financial concerns in its analysis of the governing statutes would "require [the Court] to engage in judicial lawmaking without any guidance from Congress."[179]

The Court concluded by stating that the case at hand involved the assurance of meaningful access to public schools.[180] Consequently, in order for Garret to have such "meaningful access," the district must provide the necessary "related services" as prescribed under the statutory language, precedent, and the IDEA purposes.[181]

B. JUSTICE THOMAS' DISSENT

Justice Thomas, joined in his dissenting opinion by Justice Kennedy, concluded that the majority relied too heavily on its decision in *Tatro*.[182] He argued that the Court should not have adhered to the principles formulated in its *Tatro* decision because they could not be reconciled with the explicit language of the IDEA.[183] He disagreed with the majority's interpretation of the statutory language, arguing that their interpretation of the IDEA was contrary to Congress' intent by relying on the rules of statutory construction and he also addressed issues of federalism pertaining to Spending Clause legislation.[184]

First, Justice Thomas pointed out that the holding of *Tatro* was contrary to the plain meaning of the statutory language found in the IDEA; furthermore, he stated that the majority's reliance on the promulgated

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nature of the requested service (either "medical" or not); afterwards, if the service is medical then the district asserted that the multi-factor test should be applied to determine whether it is an excluded physician services or an included school nursing service. *See id.* at 76 n.8.

177. *See id.* at 77.

178. *See id.*

179. *Id.* In addition, the Court noted that an analysis of financial considerations would result in conflicts with the overall purpose of the IDEA. *See id.* The majority noted that the objections from the dissent regarding the Court's unanimous opinion in *Tatro* is 15 years too late. *See id.* at 78 n.10. The majority stated that the dissent cited unrelated provisions and offered a "circular" definition of "medical services." *Id.* Furthermore, the majority noted that the dissent relied upon the possibility that an application of this rule might result in the need for additional staffing; however, the majority noted that "an additional staffing need is generally not a sufficient objection for the requirements of [20 U.S.C.] § 1401(a)(17)." *Id.*

180. *See id.* at 79.

181. *See id.*

182. *See id.* at 79 (Thomas, J., dissenting). *See generally* Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984).

183. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 79. Justice Thomas said that the majority extended the *Tatro* decision too far, ignoring constitutionally mandated rules of construction. *See id.*

184. *See id.* at 79, 84.

regulations by the Department of Education was "misplaced."[185] Instead, he urged that the text of the IDEA expressly stated "that school districts are not required to provide "medical services," except for diagnostic and evaluation purposes."[186] Specifically, Justice Thomas questioned the majority's lack of explanation in reasoning that services which are medical in nature do not fall within the "medical services" exception.[187] For example, he noted that the majority rejected an interpretation of the term "medical services" that was consistent with usage in other components of the federal law.[188] Instead of focusing on the nature of the services, he stated that the majority incorrectly focused upon the provider of such services.[189]

Justice Thomas further concluded that such an encompassing interpretation of the IDEA was contrary to Congress' intent.[190] He stated that "Congress enacted IDEA to increase the *educational* opportunities available to disabled children, not to provide medical care for them."[191] To support his argument, Justice Thomas pointed to the language of the IDEA, noting that Congress decided to include supportive services that appeared medical in nature by expressly providing for them in the definition.[192]

Justice Thomas also attacked the majority ruling based upon special rules of statutory construction.[193] For example, in order for Congress to place conditions upon the receipt of federal funding, "it must do so

185. *See id.* at 80. Justice Thomas noted that the majority should have first asked whether the statutory language clearly showed Congress' intent before turning to the Department of Education's regulations, because if the intent is clear there should be no focus on the implementing regulations. *See id. See generally Tatro*, 468 U.S. 883.

186. *Garret F.*, 526 U.S. at 80 (citing 20 U.S.C. § 1401(a)(17) (1994)).

187. *See id.* at 81.

188. *See id.* Justice Thomas argued that the majority rejected the use of the term "medical services" that is otherwise consistent with its use in other areas of federal law, such as for federal income tax purposes. *See id.* He cites a definition of the term "medical services" found in the statute that includes not only medical examination but also rehabilitative services, preventive health services, and mental health services. *See id.* at 81 n.2 (citing 38 U.S.C. § 1701(6) (1994)).

189. *See id.* For example, Justice Thomas explained that the term "food service" is not thought of exclusively as being provided by a chef. *See id.*

190. *See id.* at 82.

191. *Id.* (citing 20 U.S.C. § 1400(c) (1994)).

192. *See id.* The statutory definition of related "services" specifically includes in its language services that appear medical in nature such as speech pathology, occupational therapy, and audiology. *See* 20 U.S.C. § 1401(a)(17) (1994).

193. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 82-83 (1999). Justice Thomas noted that the Department of Education never promulgated regulations defining the scope of the IDEA's medical services provision; instead it had only defined those medical services that are owed to handicapped children, not those that are not owed. *See id.* Justice Thomas argued that the majority in *Tatro* "extrapolated" from this regulation "that 'medical services' not owed under the statute are those 'services by a licensed physician' that serve other purposes." *Id.* at 83 (citing Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 892 n.10 (1984)). He contends that the majority did not defer to the regulation itself, but instead relied upon an inference drawn from it that speculates about how a "regulation might read if the Department of Education promulgated one." *Id.*

unambiguously."[194] He relied upon precedent holding that a state receiving federal funding must knowingly accept the term of the "contract"; otherwise, if Spending Clause legislation was interpreted broadly, the states would be "saddled" with unanticipated obligations.[195]

Instead of reading *Tatro* broadly, Justice Thomas proposed a more narrow reading that requires school districts to provide disabled children with health-related services, which can be provided by school nurses as part of their normal duties.[196] He reasoned that such a conservative reading is more consistent with the Court's "obligation to interpret Spending Clause legislation narrowly" and, therefore, avoids saddling the states with fiscal obligations not necessarily anticipated.[197]

In conclusion, Justice Thomas argued that full-time nursing services are "medical services," which should therefore be excluded under the IDEA's "medical services" provision.[198] He justified his arguments on two main premises: *Tatro* was wrongly decided, which in turn meant that the majority's rulings in that decision should not be further extended in *Garret F.*, and Congress enacted the IDEA pursuant to the Spending Clause, which therefore requires a narrow interpretation of the legislation's text.[199]

IV. IMPACT

In *Garret F.*, the United States Supreme Court settled the issue surrounding the extent and nature of "related services" that are required under the IDEA.[200] In so ruling, the Court clearly abrogated the continued use of a multi-factor test in determining whether services requested under the umbrella of the IDEA are required.[201] Instead of analyzing the decision of whether a school district is required to perform the requested services using a multi-factor analysis, including such elements as expenses or the inherently burdensome nature of the requested

194. *Id.* (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).

195. *See id.* (citing *Pennhurst*, 451 U.S. at 17). Justice Thomas cited the Court's previous ruling that the legitimacy of Congress' power to legislate under the Spending Clause must rest upon whether the state voluntarily and knowingly accepts the terms of the "contract" formed between the government and a state when it accepts federal funds. *See id.*

196. *See id.* at 84-85.

197. *Id.*

198. *See id.*

199. *See* Deborah Rebore & Perry Zirkel, *The Supreme Court's Latest Special Education Ruling: A Costly Decision?*, 135 EDUC. LAW REP. 331, 337 (1999) (explaining the dissenting opinion in *Garret F.*).

200. *See* Osborne, *supra* note 72, at 1-2.

201. *See* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66, 75 (1999). The Court held that the suggested multi-factor test is not supported by any "recognized source of legal authority." *Id.*

service, the decision must be based upon the nature of the provider.[202] If such services can be performed by a "qualified school nurse or other qualified person," then the school board must provide such services despite the potential cost, the extensive nature, and regardless of whether the services are medical in nature.[203] Because of the costs involved in providing such full-time nursing services, this decision will have "far-reaching implications for public school districts."[204]

School district officials and their representatives have already expressed concern regarding the costs that will be involved in providing such continuous nursing services.[205] There is disagreement among the courts as to whether or not such services place an excessive burden upon the school districts.[206] For example, such lower court decisions as *Detsel* and *Neely* determined that the costs would be too burdensome, yet the Supreme Court concluded in *Garret F.* that such services are not excessive as the law is currently written.[207] Some argue expenditures for continuous nursing services will reduce the amount of funds available for the remainder of the children, thus reducing the overall quality of education they receive.[208] Yet others argue it is unlikely that most school districts will feel any financial impact from this decision, because the number of children requiring such services is low.[209]

This potential impact is further illustrated by the petitioner's argument in *Garret F.* that the Supreme Court's decision will financially saddle the school district with an obligation which the current staff of school nurses cannot provide.[210] The school district argued that even if

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202. *See id.* at 76 & n.8. The Court stated that its endorsement of the physician bright-line test is "unmistakable." *See id.* at 74. The Court went on to say, "It is thus settled that the phrase 'medical services' . . . does not embrace all forms of care that might loosely be described as 'medical' in other contexts . . . ." *Id.* at 74-75. If the care required is intermittent and could be provided by the school nurse, courts have generally held that such services fall within the "related services" provision. *See* Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984); Department of Educ. 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) (holding that if the care is intermittent and can be administered by the school nurse, such services fall within the "related services" provision and requirements of the IDEA). *But see* Neely v. Rutherford County Sch. Dist., 68 F.3d 965 (6th Cir. 1995); Granite Sch. Dist. v. Shannon M., 787 F. Supp. 1020 (D. Utah 1992) (holding that where requested services are continuous in nature, the courts have held that the service was an excludable medical service under the IDEA); Detsel v. Board of Educ., 637 F. Supp. 1022 (N.D.N.Y. 1986), *aff'd* 820 F.2d 587 (2d Cir. 1987).

203. *See Garret F.*, 526 U.S. at 75 n.6 (quoting 34 C.F.R. § 300.13(b)(10) (1983)).

204. Osborne, *supra* note 72, at 2.

205. *See* Osborne, *supra* note 72, at 13.

206. *See* Osborne, *supra* note 72, at 13-14.

207. *See* Osborne, *supra* note 72, at 13-14. *See generally Neely*, 68 F.3d 965; *Detsel*, 637 F. Supp. 1022.

208. *See* Osborne, *supra* note 72, at 14.

209. *See* Rebore & Zirkel, *supra* note 199, at 338 (estimating that only 2,000 children under the age of 22 require such extensive services and stating that others estimate that the number is closer to 17,000).

210. *See* Petitioner's Brief at 6, Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66

the provider of Garret's services performed both his "medical services" and educational services that were previously being administered by an educational associate, the additional cost incurred by the school district would be between $20,000 to $30,000.[211] In enacting the IDEA in 1975, Congress made a commitment to provide participating states with "40% of the national average per pupil expenditure for each eligible child" that could be used to defray the costs of educating the disabled students.[212] However, funding for the program has not exceeded twelve percent.[213]

There may also be future issues and implications surrounding federalism and the Spending Clause, as Justice Thomas indicated in his dissenting opinion.[214] For example, the school district in *Garret F.* argued that if Congress intended to burden the states with providing expensive individualized nursing services, then such a requirement should come directly from Congress.[215] Some argue that a series of cases under the Spending Clause, including *Garret F.*, have afforded Congress greater authority at the expense of local education.[216] The argument is made that the proper result in *Garret F.*, consistent with federalism concerns, should have been to require school nurses to perform services consistent with their current normal duties.[217] This would have lightened the burden placed on schools and would have been consistent with Spending Clause jurisprudence, because the school districts would have been aware of exactly what they were "contracting" for when accepting federal funds.[218]

In North Dakota, the legislature has specifically stated that "State special education policies are directed to achieving the purposes set out

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(1999) (No. 96-1793).

211. *See id.* at 6-7. The district would be required to hire an additional staff member to provide Garret's services because the district currently has six full-time registered nurses who are fulfilling other duties. *See id.* at 6-7.

212. Brief for National School Boards Association at 26-27, *Garret F.* (No. 96-1793).

213. *See id.* at 27 (citing U.S. DEPARTMENT OF EDUCATION, JUSTIFICATION OF APPROPRIATIONS ESTIMATE TO CON-GRESS FISCAL YEAR 1993 (1992)).

214. *See Garret F.*, 526 U.S. at 83-84. Justice Thomas argued that in requiring states to provide such extensive services, the majority imposed a burden upon the states that Congress did not intend, thereby violating the Spending Clause. *See id.* at 84.

215. *See* Petitioner's Brief at 20, *Garret F.* (No. 96-1793). The school district supported this argument with evidence that the Supreme Court has repeatedly stated that if Congress intends to condition the receipt of federal funds, such conditions must be unambiguous. *See id.* (citing New York v. United States, 505 U.S. 144, 172 (1992); South Dakota v. Dole, 483 U.S. 203, 207 (1987); Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).

216. *See* Dennis Cariello, Note, *Federalism for the New Millennium: Accounting for the Values of Federalism*, 26 FORDHAM URB. L.J. 1493, 1552-53 (1999). Cariello argues that there is a current trend toward favoring congressional authority over the states, as evidenced by a series of recent cases under the Spending Clause that have afforded Congress greater authority. *See id.* at 1552. Such an increase in national authority, he states, has come at the expense of local concerns, including education. *See id.*

217. *See id.* at 1554.

218. *See id.* at 1553-54.

in the Individuals With Disabilities Education Act."[219] Furthermore, the North Dakota Century Code states that funding from the state, in addition to the federal funding supplied via the IDEA, is matched with local funds to achieve the goals and policies of the legislature.[220]

Section 15-59-02.1 of the North Dakota Century Code states the specific intent of the legislature and the relationship of the statute with the IDEA.[221] In conjunction with this chapter, the legislature also noted in section 15-59-05.2 of the North Dakota Century Code that interagency cooperative agreements will be used to provide education-related services to disabled students.[222] Therefore, in North Dakota, in addition to the federal funding provided via the IDEA, state agencies such as the state department of human services and the state department of health are affected by the ruling in *Garret F.*[223] This is just one example of the broad impact that the Supreme Court's ruling in *Garret F.* will have on the future of special education funding in North Dakota.

V. CONCLUSION

In *Garret F.*, the United States Supreme Court clearly adopted the "bright-line" test to determine whether such "related services" are required within the meaning of the IDEA.[224] With the abrogation of any multi-factor analysis in favor of a bright-line test, the Court ended fifteen years of inconsistent application of the IDEA's "related services" provision.[225]

Though the Court has resolved this interpretive issue, its decision will undoubtedly "have far-reaching implications for public school districts."[226] The debate has already ensued concerning where the funding will come from to support such continuous nursing services.[227] Other issues have surfaced pertaining to potential Spending Clause conflicts, as pointed out by Justice Thomas' dissent.[228] While more issues will possibly surface in the future, the Supreme Court has clearly resolved the split opinions among the circuit courts in firmly holding

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219. N.D. CENT. CODE § 15-59-02.1 (Supp. 1999).

220. *See id.*

221. *See id.* In addition to the provision of matching local funds, the statute provides a definition of related services, the development of an individualized education plan, other such services necessary to enable all student with a disability to a free appropriate public education. *See id.*

222. *See* N.D. CENT CODE § 15-59-05.2 (Supp. 1999).

223. *See id.*

224. *See generally* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66 (1999) (adopting "bright-line" test to determine whether requested services are required under the IDEA).

225. *See* Osborne, *supra* note 72, at 1-2.

226. Osborne, *supra* note 72, at 2.

227. *See* Osborne, *supra* note 76, at 569-70.

228. *See Garret F.*, 526 U.S. at 83-84.

that continuous nursing services are required within the provisions of the IDEA, thereby abrogating any multi-factor cost analysis.[229] As a result, children with disabilities who were previously precluded from attending public school due to the extensive nature of their disability are now afforded the opportunity to attend their local public school at the school district's expense.[230]

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229. *See id.* at 79.

230. *See* Rebore & Zirkel, *supra* note 199, at 341.

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