INFO – GRAM

Legal Updates from Murphy, Lamere & Murphy, P.C.
For Municipalities, School Districts & Special Education Directors

Reimbursement Revisited...

Supreme Court Affirms Burlington Principles

In a long awaited decision, the United States Supreme Court considered a IDEA provision stating that a student seeking reimbursement for a unilateral private school placement was required to have "*previously received special education or related services*" from the local school district. In a 6-3 decision in *Forest Grove School District v. T.A.,* the Court reasoned that the purposes of IDEA would be thwarted if a student who was enrolled in the district, evaluated and twice not found eligible for special education was barred from seeking reimbursement because he had not actually received services from the district. At the administrative level, the student established that he did indeed have a disability that warranted special education services.

The Court's reasoning is based upon its conclusion that the language quoted above, added to the IDEA in 1997, did not fundamentally change the essentially equitable standards for reimbursement first articulated in *School Committee of Burlington v. Mass. Dept. of Education* in 1985. The Court noted that the district's failure to identify the student was a violation of its child find obligation, and thus denied the student a free appropriate public education. If the student were to be barred from claiming reimbursement because the district failed in its obligation to identify students requiring services—and therefore the student could not have previously received special education from the district—the very purpose of the IDEA would be undermined. The Court stated that the various parts of 20 U.S.C. s.1412(10)(C) are "best read as elucidative rather than exhaustive", thus leaving open other questions, such as whether a student who never attended or requested services or evaluations from a district would be successful in a reimbursement claim—and leaving intact the standard that reimbursement is an equitable remedy predicated on the conduct of the parties overall.

Practical Points...

- *Forest Grove* is not really a "game changer" for reimbursement cases. The student was known to the district for many years, and the decision largely rests on

the failure of the district to identify the student and provide him with necessary services.

- The specific steps taken by the district over the years to track the student's progress were not discussed in detail. However, this decision is a potent reminder to districts that data about student progress or lack thereof is the key to meeting the child find obligation in a timely manner.
- *Forest Grove* did not alter the fact that a parent seeking reimbursement has the burden of proof and that the law favors educating students in the least restrictive environment.
- However, remember that parents need not pick the perfect school in order to be successful in a reimbursement case. The school must have provided some benefit to the student, but need not meet the free appropriate standard applied to district placement offers.

Once again, *Forest Grove* reminds special educators that focus on objective data and individual student performance is the best way to effective case management—and minimizing the instances of unilateral placements and potential reimbursement claims.

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