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U.S. SUPREME COURT RULES INDIVIDUALS WITH DISABILITIES ACT (“IDEA”) PERMITS PARENTS’ CLAIMS FOR REIMBURSEMENT

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FOREST GROVE SCHOOL DISTRICT v. T.A., 109 LRP 36046 (U.S. 2009)

By a vote of six to three, the United States Supreme Court ruled that the Individuals with Disabilities Act (“IDEA”) permits parents’ claims for reimbursement for unilateral placements in private special education schools if the public school district fails to offer a free, appropriate public education (“FAPE”), even if the student never received special education services in the public school district. While this ruling may at first glance appear to open the proverbial Pandora’s box to unilateral placement cases, the ruling does not alter the parent’s burden of proof and therefore is not as detrimental to school districts as might initially appear.

The facts in Forest Grove can be summarized as follows: during the student’s freshman year in high school, the school psychologist conducted an evaluation. Finding that there was no need for further testing to assess for the presence of learning disabilities or other health impairments such as ADHD, school personnel met with the parent and determined that the student was not eligible to receive special education services. Parents, disagreeing with this determination, enrolled their son in a private special education school and filed an administrative due process hearing request. The hearing officer found that the school district’s finding of no eligibility was improper, that the student’s diagnosis of ADHD did affect his ability to make effective progress and that the private placement was appropriate to meet the student’s needs. With that, the hearing officer ordered the school district to reimburse the parents for the cost of the tuition at the private school. On appeal, the District Court set aside the award of reimbursement, holding that the 1997 Amendments to the IDEA bar an award of tuition reimbursement for a student who had not “previously received special education and related services under the authority of a public agency.” 20 U.S.C. § 1412 (a)(10)(C)(ii). The Ninth Circuit Court of Appeals reversed the District Court’s ruling, holding that students who had never received services through a public school had the same right to receive tuition reimbursement as students who had previously received services, citing the “appropriate relief” provision of the IDEA. 20 U.S.C. § 1415(i)(2)(C) which states that a court

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“...shall grant such relief as the court determines is appropriate.” The United States Supreme Court granted *certiorari* because of the inconsistent results reached on this issue by various circuit courts.

In affirming the Ninth Circuit Court of Appeals, the majority opinion in Forest Grove based its analysis on the two leading cases decided by the Court on the issue of tuition reimbursement, School Comm. of Burlington v. Department of Educ. of Massachusetts, 471 U.S. 359 (1985) and Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993). In both these cases, the Court held that parents were entitled to tuition reimbursement where the IEPs proposed by the school districts failed to provide a FAPE. The difference between these cases and Forest Grove is that in Forest Grove the school district had not offered any IEP at all. Rejecting the argument that the language in the 1997 Amendments to the IDEA, “previously received special education or related services under the [school’s] authority,” 20 U.S.C. § 1412 (a)(10)(C)(ii), bars reimbursement for students who had not previously received special education services through the public school, the Court reasoned that this reading of the Amendments would essentially reward school districts for ignoring their child find obligations. In other words, the Court concluded, if a school district fails to offer a student any IEP at all, it will effectively immunize itself from a claim for tuition reimbursement because the student would not previously have received services. Where no IEP is at least as egregious as an inadequate IEP, the Court reasoned, this conclusion cannot have been the intent of the Legislature in enacting the Amendments whose stated purpose was “to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education.” S. Rep. No. 105-17, p. 3 (1997).

Addressing the concern that this ruling will have the effect of encouraging parents to place their children in private school and seek reimbursement, the Court cautions that reimbursement will only be awarded, under the IDEA, if the parent is able to meet his burden of persuasion and show by a preponderance of the evidence that the program and services offered by the school district did not provide a FAPE and that the private placement chosen by the parent is appropriate to meet the student’s needs. Additionally, the Court notes the equities based limitations on reimbursement provided for within the IDEA.

Therefore, while on first read the Court’s ruling may appear to widen the circumstances under which private school reimbursement will be allowed, a closer analysis should put those fears to rest. When a parent unilaterally places a student in a private school with the intention of seeking reimbursement from the school district he



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does so at his own risk. He will bear the burden of proof to show that the services offered by the school district were inappropriate and to show that the private school selected by the parent is appropriate. Only if both of these prongs are proven, will the parent be entitled to tuition reimbursement. From this point of view, the decision in Forest Grove does not change anything. The only thing that districts need to be mindful of in the wake of Forest Grove is that if a district finds a student not eligible for services and the parent subsequently makes a unilateral placement, the district needs to stand ready to defend its finding of no eligibility or else face the possibility of reimbursing for the private school tuition.

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