
Editor's Note

The following describes an important recent Supreme Court decision that students who have suspected disabilities are entitled to an appropriate evaluation.

Recent Supreme Court Decision Sends a Message to Schools: Timely and Appropriate Evaluations and Eligibility Decisions are Required by IDEA

Matt Cohen, J.D.

A recent US Supreme Court decision, *Forest Grove School District, Forest Grove School District v. T. A.* (08-305) decided June 22, 2009, has sent a strong message that school districts have significant responsibility not only to those students with disabilities that are already eligible for special education, but also to students that have suspected disabilities that should have been receiving special education. In the *Forest Grove* case, the student, T.A. struggled throughout elementary school. In high school, the parents sought an evaluation from the school. Based on a review of the records and IQ test, the school concluded that the student did not have a disability, though it did not do any specific testing for AD/HD or learning disabilities, despite indicators that T.A. might have problems in those areas. T.A.'s problems continued to deteriorate and his parents again unsuccessfully sought help from the school district in his junior year. As a result of the school's refusal to take action, the parents obtained outside evaluations that diagnosed him as having AD/HD and learning disabilities and recommended that he be placed in a highly specialized residential school. Shortly after placing T.A. in a special residential school, the parent's requested a due process hearing. In response the school conducted an evaluation. While recognizing that he had AD/HD, the school still maintained that it did not sufficiently impact his educational performance to warrant special education.

After a due process hearing, in which the parents prevailed, the federal district court ruled that the family was not entitled to reimbursement, because T.A. was not enrolled in special education and therefore was not governed by the rules for reimbursement of parental unilateral placements under the IDEA. The Ninth Circuit Court of Appeals reversed the district court's decision and the Supreme Court affirmed the Circuit Court's Decision.

The Supreme Court wrote that precluding reimbursement to parents that are forced to place their children in private programs because the child has not been properly determined eligible for special education: *is at odds with IDEA's remedial purpose of "ensuring that all children with disabilities have available to them a Free Appropriate Public Education that emphasizes special education . . . designed to meet their unique needs."* . . . *"and it would produce a rule bordering in irrational by providing a remedy when a school offers a child inadequate special-education services but learning parents remediless when the school unreasonably denies access to such services altogether..."*

The District's claims that imposing responsibility to private placements under these circumstances would be financially burdensome and would motivate parents to seek such reimbursement that were rejected by the Court noting that these arguments.

The court argued that schools *are also unpersuasive in light of the restrictions on reimbursement awards identified in Burlington and the fact that parents unilaterally change their child's placement at their own financial risk.* See, e.g. *Carter*, 510 U.S., at 15. Pp15-16.

The T.A. decision is of enormous importance in that it highlights the school district's responsibility to engage in timely and appropriate evaluation and to make decisions about eligibility that are correct. Had the Court supported the District's position, it would have given school districts a strong incentive to avoid identifying children with disabilities and conducting appropriate evaluations, for there would have been little or no accountability for the failure to do so. The IDEA requires districts to engage in Child Find for all children suspected of having disabilities that reside in or attend private schools in the district. Children with disabilities that are not always readily apparent or who require specialized evaluation are often not evaluated or evaluated and determined ineligible. This problem may become even more pronounced with the introduction of *Response to Intervention* programs intended to provide services within regular education to children suspected of having learning disabilities prior to conducting evaluations to determine the need for special education. The T.A. decision

sends a strong warning to schools that failure to timely and appropriately evaluate children suspected of having disabilities is a violation of IDEA and places the district at legal and financial peril.

Source: LDA Scope: *Learning Disabilities Association of Illinois, Inc. Vol. 43*, Number 1, p. 6.

Note: Mathew Cohen, co-founder of the law firm Monahan and Cohen, is well-known for his work in special-education law. His new book, *A Guide to Special Education Advocacy: What Every Parent, Clinician and Advocate Needs to Know*, is available through his website www.monahancohen.com

Overview of the Articles in this Issue

Volume 16, Number 3 of *Learning Disabilities: A Multidisciplinary Journal* reports on several important topics related to learning disabilities.

An Exploratory Study in Self-Reported School-Wide Response to Intervention Reading Practices by Juliette R. Weston, Christina M. Curran, David J. Majsterek, and Debra J. Prigge describes outcomes of a self-report study on first-year steps that selected elementary schools in Washington State took in implementing early reading Response to Intervention (RTI) pilot models.

Life as a Married Couple with Learning Disabilities: Rewards and Challenges Times Two by Frances Yuan follows eleven married couples with learning disabilities as they move into independent adult living. Their challenges and successes are documented. The relationship potential of this population of individuals with learning disabilities is explored and insights and advice about issues of relevance are offered.

The Impact of Calculator Type and Instructional Exposure for Students with a Disability: A Pilot Study by Emily C. Bouck shows the influence of different types of calculators on the mathematical performance of students with and without disabilities. The calculator types were: a four-function calculator, a graphing calculator with instructional exposure, and a graphic calculator without instructional exposure.

Engaging Students with Disabilities in the Learning Process through Handheld Technology by Elissa Wolfe Poel explores the use of handheld technology (Personal Digital Assistants PDAs) with students with disabilities in elementary and middle school settings. The study shows that K-12 students increased their time on task, submitted more assignments, worked independently, and posed few questions to their teachers.

Commentary on Forest Grove School District v. T.A. by Candace Cortiella, Nancy Mather, Lawrence Diller, and Sam Goldstein is a commentary of the recent Supreme Court decision on the Forest Gove School District v. T.A. described by Matt Cohen in the Editors Note for this issue.

Announcement

Learning Disabilities: A Multidisciplinary Journal is adding a feature on relevant books. You are welcome to submit books for review or to submit complete reviews to the attention of the editors. Jean Lokerson has taken over responsibility for editing the book reviews.

Janet W. Lerner
Frank Kline
Co-editors