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Related Services Under the Individuals With Disabilities Educational Act: Health Care Services for Students With Complex Health Care Needs

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I. INTRODUCTION

Students with complex health care needs are entering public schools in increasing numbers.[1] Traditionally, little consideration was given to the delivery of services to these children since they were not thought to be the responsibility of the school system.[2] However, advancements in medical technology and the principle of normalization have resulted in the influx of technology-dependent children into the schools.[3]

Medical science has extended the lives of these children. Without modern medical technology, many would not have lived to school age.[4] They, like their peers with disabilities, have moved to less restrictive environments.[5] Initially, children with intensive health care needs received education in segregated hospitals or pediatric care facilities and families were forced to choose between their children's medical and educational needs. Consequently, parents and other advocates pushed for a "normalizing" of their children's lives.

Eventually, parental pressure brought about funding changes. As parents advocated for family-centered care and more normal lives for their children, Medicaid and other types of "public assistance" amended policies which previously mandated only in-hospital treatment. Private insurers eagerly encouraged home care in an effort to reduce their costs.[6]

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1. Dick Sobsey & Ann W. Cox, *Integrating Health Care and Educational Programs, in* EDUCATING CHILDREN WITH MULTIPLE DISABILITIES 155 (Fred P. Orelove & Dick Sobsey eds., 1991).

2. Donna H. Lehr & Mary Jo Noonan, *Issues in the Education of Students with Complex Health Care Needs, in* PERSONS WITH PROFOUND DISABILITIES 139, 149 (Fredda Brown & Donna H. Lehr eds., 1989).

3. Sobsey & Cox, *supra* note 1, at 155.

4. Jerry Whitworth, *Special Education: Addressing Complex Health Care Needs,* CLEARING HOUSE, Nov.-Dec. 1993, at 68.

5. Donna H. Lehr & Pat McDaid, *Opening the Door Further: Integrating Students with Complex Health Care Needs*, FOCUS ON EXCEPTIONAL CHILDREN, February 1993, at 2.

6. *Id.* at 3.

For students receiving family-centered health care, the next step in the sequence to a less restrictive environment was the move from home to school.[7] As equipment became both compact and portable, increased mobility made participation in a regular classroom setting a reality for children with complex health care needs.[8] As these students entered the public school system questions arose pertaining to the types of health care services a school system was required to provide.

In 1975, Congress enacted the Individuals with Disabilities Education Act (IDEA), formerly the Education of All Handicapped Children Act (EAHCA), to deal with the inadequacies of state education programs in meeting the educational needs of children with disabilities.[9] Congressional findings indicated that the educational needs of the more than eight million children with disabilities in the United States were not sufficiently being met.[10] Further, the lack of appropriate services would result in children with disabilities being denied equality of educational opportunities.[11] The purpose of the IDEA is "to assure that all children with disabilities have available to them, . . . a free appropriate public education [(FAPE)] which emphasizes special education and related services designed to meet their unique needs."[12] Some disabled students require fairly sophisticated medical procedures, leaving school systems unsure as to whether they qualify as "related services," or whether they are so medical in nature that they are beyond a school's competence to provide.

This article examines the concept of providing health services as "related services" under the IDEA. It considers the distinction between "medical services" which schools are not required to provide and simple school health services. Specifically, it discusses differing views as to who should provide health services in the schools and reviews federal litigation concerning the limits on types of services schools might reasonably be asked to provide. The article focuses throughout on children who are dependent on medical technology, their influx into public schools,

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7. Sobsey & Cox, *supra* note 1, at 157.

8. *Id.*

9. Bonnie P. Tucker & Bruce A. Goldstein, LEGAL RIGHTS OF PERSONS WITH DISABILITIES: AN ANALYSIS OF FEDERAL LAW, 12:1 (1992).

10. 20 U.S.C.A. § 1400(b)(1), (b)(2) (West Supp. 1995).

11. 20 U.S.C.A. § 1400(b)(3) (West Supp. 1995).

12. 20 U.S.C.A. § 1400(c) (West Supp. 1995). While IDEA created substantive rights, it is also a grant statute. State educational agencies that wish to receive federal funding must comply with baseline standards set forth in IDEA. Currently all states comply with IDEA's specifications in order to receive federal funds. Laura F. Rothstein, DISABILITIES AND THE LAW, 91-92 (1992).

and the schools' necessary adjustment to these students' needs.

II. IDEA

The IDEA classifies children with disabilities as those who, because of certain conditions,[13] require special education and "related services."[14] Special education is "specially designed instruction . . . to meet the unique needs of a child with a education, while in others it may focus on specific skills. Precise definitions are difficult to formulate since special education is child-specific in character and there is no statutory definition of "specially designed instruction."[15] Special education services are provided in a variety of settings including the classroom, home and hospital.[16]

The Department of Education promulgated regulations to ensure that "children with disabilities receive a free appropriate public education [(FAPE)]."[17] A FAPE includes "special education and related services that are provided at public expense, under public supervision and direction and without charge."[18]

The vehicle by which a FAPE is provided is the Individualized Education Program (IEP).[19] The IEP is both a document and a process by which parents and educators collaborate to design an appropriate educational program for a disabled child.[20] The IEP records the child's present levels of performance and establishes the goals to be achieved during the school year. The IEP team specifically determines which "related services" the child requires.[21] "Related services" are those services which are necessary for the child to benefit from special education.[22] The IDEA defines these services as including:

> transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology,

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13. 20 U.S.C.A. § 1401 (a)(1)(A)(i) lists these conditions as: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities. (West Supp. 1995).

14. 20 U.S.C.A. § 1401(a)(1)(A)(ii) (West Supp. 1995).

15. Tucker & Goldstein, *supra* note 9, at 12:10.

16. *Id.*

17. 34 C.F.R. § 300.1 (1995).

18. 34 C.F.R. § 300.8(a) (1995).

19. Tucker & Goldstein, *supra* note 9, at 12:11.

20. *Id.* at 12:12.

21. *Id.*

22. 20 U.S.C.A. § 1401(a)(17) (West Supp. 1995).

> psychological services, physical and occupational therapy, recreation, . . . and medical services, *except that such medical services shall be for diagnostic and evaluation purposes only*) as may be required to assist a disabled child to benefit from special education, and includes the early identification and assessment of disabling conditions in children.[23]

The Department of Education regulations expand this definition of "related services" to include "school health services, social work services in schools and parent counseling and training."[24] These regulations also assert that "medical services" are those which are "provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services."[25] School health services, on the other hand, are defined as those that can be "provided by a qualified school nurse or other qualified person."[26]

III. CHALLENGES IN PROVIDING SERVICES

As mentioned above, when children with complex health care needs entered the school setting concerns arose over how to care for them in the classroom. Although school nursing services have long been a part of the American educational system, the nature of those services would of necessity change as schools are called upon to provide more intensive levels of services to a population of children with complex health care needs. The small numbers of health care providers in the schools means that health technicians and often untrained teachers, aides, and secretaries are providing health services to students. Clearly, debate over the issue of providing health care services at school continues.

A. Technology-Dependent Students and Their Needs

Students with complex health care needs "are those who require individualized health related interventions to enable participation in the educational process."[27] Complex health care needs in the school setting encompass several broad categories including chronic illness, special health needs and medically fragile

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23. 20 U.S.C.A. § 1401(a)(17) (West Supp. 1995) (emphasis added).
24. 34 C.F.R. § 300.16(a) (1995).
25. 34 C.F.R. § 300.16(b)(4) (1995).
26. 34 C.F.R. § 300.16 (b)(11) (1995).
27. UTAH STATE OFFICE OF EDUCATION, GUIDELINES FOR SERVING STUDENTS WITH SPECIAL HEALTH CARE NEEDS, 4 (1992).

children.[28] Medically fragile children are also referred to as technology-dependent or technology-assisted.[29] These are children who "use a medical technology . . . that compensates for the loss of normal use of a vital body function, and who require substantial daily skilled nursing care to avert death or further disability."[30] This technology includes the use of respirators, tracheostomy care, tube feeding, oxygen use and colostomy care. Nationwide, relatively few children with complex health care needs which fit within the definition of medically fragile or technology-dependent have entered our schools.[31]

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28. Jerry Whitworth, *Special Education: Addressing Complex Health Care Needs*, CLEARING HOUSE, Nov.-Dec. 1993, at 68. Chronic illness refers to conditions that interfere with a child's daily functioning for more than three months each year. The special health category includes students with mild or non-obvious health problems such as allergies, which may nevertheless interfere with the child's ability to learn. *Id.*

29. These terms are used interchangeably depending on who is speaking. Some dislike the term "medically fragile" because of it's frightening effect on school personnel. They note that the children are not ill but merely require a health care support to maintain normal health. Lehr & McDaid, *supra* note 5, at 2.

30. U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSISTANCE, TECHNOLOGY-DEPENDENT CHILDREN: HOSPITAL V. HOME CARE--A TECHNICAL MEMORANDUM, 13 (1987).

31. *Id.* at 31. In estimating the size of the population of children dependent on medical technology the Office of Technology Assistance (OTA) looked for characteristics which would distinguish this group from others. The primary identifiable trait of technology dependent children is their dependence on medical devices for life or health support. *Id.* at 16. The OTA was able to identify four groups of children:

> Group I: Children dependent at least part of each day on mechanical ventilation.
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> Group II: Children requiring prolonged intravenous administration of nutritional substances or drugs.
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> Group III: Children with daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, suctioning, oxygen support, or tube feeding.
>
> Group IV: Children with prolonged dependence on other medical devices that compensate for vital body functions who require daily or near-daily nursing care. This group includes:
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> -infants requiring apnea (cardiorespiratory) monitors,
> -children requiring renal dialysis as a consequence of chronic kidney failure, and
> -children requiring other medical devices such as urinary catheters or colostomy bags as well as substantial nursing care in connection with their disabilities. *Id.* at 17

The OTA estimates that 680 to 2,000 children each year in the United States fall within the Group I criteria for daily dependence on mechanical ventilators. The

B. Differing Views on Provision of Health Services.

This new group of technology-dependent students presents a new set of responsibilities for school districts.[32] Not all states have uniform guidelines for providing health care procedures at school. This lack of guidance has resulted in varying approaches within the individual states as local districts developed their own policies and procedures.[33]

Additionally, there is no consensus among educational professionals as to who should provide health services to students.[34] Proponents champion various approaches. Some endorse adoption of guidelines established by the Joint Task Force for the Management of Children With Special Health Care Needs and a separation of responsibilities between educators and health service providers.[35] Others encourage a transdisciplinary approach allowing teachers, parents, and nurses to make the decision together, while some advocate acting within the statutory bounds of a state's Nurse Practice Act, where it exists. Such acts regulate the procedures which a licensed nurse may perform or delegate.

1. Task Force guidelines

The Task Force guidelines would eliminate many of the transdisciplinary practices which are carried out in schools. Teachers would not perform tube feedings or catheterization, nor would they be permitted to dispense medication.[36] Obviously, compliance with these guidelines would necessitate a dramatic increase in the number of health care personnel in the schools. The major teachers associations support this view. They contend

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Group II statistics indicate that some 600 - 900 children require intravenous therapy. Group III children who depend on other respiratory or nutritional support number from 1,000 - 6,000. "The cumulative number of children in the above three groups is between approximately 2,300 and 17,000 technology dependent children per year." *Id.* at 31. When the definition of technology dependent is expanded to include kidney dialysis, apnea monitors, colostomy care and catheterization the upper bounds of the estimate numbers 100,000 children. *Id.*

32. Lehr & Noonan, *supra* note 2, at 147.

33. Sobsey & Cox, *supra* note 1, at 157.

34. Lehr & McDaid, *supra* note 5, at 5.

35. This joint task force is composed of representatives from five organizations including; the National Association of School Nurses, National Education Association Caucus of Educators of Exceptional Children, Council for Exceptional Children, American Academy of Pediatrics, and the American Federation of Teachers. Sobsey & Cox, *supra* note 1, at 158.

36. *Id.*

that if health related services are required, medical staff should be available to perform them. In the 1994 Hearings on the Reauthorization of the Individuals with Disabilities Education Act, representatives of the National Education Association (NEA) and the American Federation of Teachers (AFT) specifically addressed this issue.[37] Testimonies of both organizations affirmed their support of appropriate inclusion of students with special health care needs in school classrooms.[38]

The NEA testified that public schools needed to be staffed with qualified technical assistance including health care professionals in order to meet students' needs.[39] It noted that the federal government has not yet provided the full amount of funding promised in the IDEA to assist schools and that having policies without financial support would not be sufficient to deal with dangers to the safety of medically fragile children.[40] The AFT recommended an amendment to the IDEA prohibiting teachers and paraprofessionals from being required to perform medical services. They asserted that only qualified health care providers should perform medical procedures.[41] AFT addressed the problems that arise when these responsibilities fall upon teachers and aides due to a lack of school nursing services. Most notably, they emphasized that the role of the teacher is to educate, and performing these procedures takes away from that task.[42]

2. Transdisciplinary approach

Supporters of a transdisciplinary team approach denounce the guidelines as being too general and failing to focus on the circumstances of the individual student.[43] Under the Joint Task Force Guidelines, for instance, a teacher may feed a student orally but may not perform a tube feeding. Depending on the physical condition of the child in question, however, complicated training and techniques may be required to feed one child orally while tube feeding on another may present no difficulties.[44]

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37. *Hearing on the Reauthorization of the Individuals with Disabilities Education Act (IDEA): Before the House Subcommittee on Select Education and Civil Rights of the Committee on Education and Labor, House of Representatives*, 103rd Cong., 2d Sess. (1994).

38. *Id.* at 25, 98.

39. *Id.* at 98.

40. *Id.* at 99.

41. *Id.* at 23.

42. *Id.*

43. Sobsey & Cox, *supra* note 1, at 159.

44. *Id.*

A transdisciplinary team approach would allow the teachers, parents, and nurses who are most familiar with the child to determine how procedures should be administered to most effectively meet his or her needs. Additionally, some fear that adopting guidelines which require only medical personnel to perform health care procedures would result in students being assigned to schools where services are available rather than the least restrictive placement.[45] There are also concerns over whether the schedule of a busy health care provider rather than the optimum schedule for the student would prevail in the delivery of procedures.[46]

3. Nurse Practice Acts

Still, other views focus specifically on the health and safety matters involved in the administration of the procedures. The American Academy of Pediatrics Committee on School Health released a report in 1987 on the qualifications and utilization of nursing personnel delivering health services in the schools.[47] The committee stressed that the rapid and increasing demand on school nurses, due to the provision of specialized care like suctioning, tube feeding and ostomy care, required expertise. It expressed concern about the qualifications of persons presently providing services within the schools:

Some school districts have hired health aids and/or licensed vocational nurses to meet the school health needs of students and staff. These paraprofessionals are not equipped to recognize, assess, manage, or make appropriate referrals for the myriad of health problems now being handled in schools. If paraprofessionals are used to perform specialized caretaking procedures, the school physician or school nurse should determine competence, conduct in-service training, and then provide regular supervision and documentation of the paraprofessionals' competence.[48]

Many states have Nurse Practice Acts which govern the activities in which a licensed nurse may engage. These regulations affect the functioning of nurses with regard to providing health care procedures in the schools.[49] In some states, like Utah, the Nurse Practice Act allows a registered nurse to delegate certain

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45. *Id.*

46. *Id.*

47. Joseph R. Zanga, et al., *Qualifications and Utilization of Nursing Personnel Delivering Health Services in Schools*, 79 PEDIATRICS, April 1987, at 647.

48. *Id.* at 648.

49. Sobsey & Cox, *supra* note 1, at 180.

nursing interventions to other persons and to evaluate their performance of those interventions.[50] This would allow teachers and aides to provide some health care procedures in some instances. Accordingly, the Utah State Office of Education guidelines for serving students with special health care needs conform to the requirements of the Utah Nurse Practice Act. They recommend that school nurses perform or supervise health care procedures at school.[51] Additionally, it is within the school nurse's discretion to decide if the procedure requires nursing judgment, necessitating that it be performed by a licensed nurse, or if it may be delegated to an unlicensed health care provider.[52]

Practical concerns arise for nurses when they supervise non-medical personnel. Nurses may, for instance, be prohibited from training teachers to perform a procedure such as suctioning unless they assume supervisory responsibility. They may be hesitant to accept these responsibilities when they are only available for supervision one time per week.[53]

In each approach--Joint Task Force Guidelines, Transdisciplinary, and Nurse Practice Acts--there are "discrepancies between law, policy, and practice."[54] Much of this is due to a lack of awareness of Nurse Practice Acts and a lack of communication across the professional disciplines involved with planning for student needs. Presently, despite administrative regulations, many of the health care procedures students receive are provided by teachers and classroom aides rather than qualified health care providers.

IV. LITIGATION OVER THE SCOPE OF RELATED SERVICES

In addition to the question of who should provide health care procedures to students with complex health care needs, school districts, educators, nurses, and parents were unclear as to which "related services" schools were required to provide and what constituted a "medical service" exclusion. In *Irving Independent School District v. Tatro*, the United States Supreme Court unanimously held that clean intermittent catheterization (CIC) was a "related service" within the meaning of 20 U.S.C.A. §

50. UTAH CODE ANN. § 58-31-2(15)(g),(i) (1953 as amended).
51. UTAH STATE OFFICE OF EDUCATION, *supra* note 28, at 4.
52. *Id.*
53. Sobsey & Cox, *supra* note 1, at 180.
54. Lehr & Noonan, *supra* note 2, at 158.

1401(a)(17).[55] In this case, Amber Tatro, as a result of spina bifida, had orthopedic impairments and a neurogenic bladder requiring catheterization every few hours to avoid injury to her kidneys. CIC is a simple procedure that could be performed safely by a nurse or a layperson with little training.[56] The school district and Amber's parents anticipated that she would soon be able to perform the CIC herself.

The Supreme Court addressed two issues in *Tatro*. The first, was whether CIC was a "related service" under 20 U.S.C.A. § 1401(a)(17), which was necessary to assist Amber in benefitting from special education. Second, if CIC was considered a "related service," did it fall within the category of "medical services" not for diagnostic or evaluation purposes which the school was excused from providing?[57] The Court examined the definition of "related services" within the Department of Education regulations and noted that it encompassed "school health services."[58] School health services, in turn, were defined as those which are "provided by a qualified school nurse or other qualified person."[59] The Court reasoned that Congressional intent was to make public education both available and meaningful to children with disabilities.[60] It analogized CIC to a service such as transportation which was specifically mentioned in the act as a "related service" and concluded that "[s]ervices like CIC that permit a child to remain at school during the day are no less related to the effort to educate than are services that enable the child to reach, enter, or exit the school."[61] Moreover, the Court found that "medical services" are defined under the Department of Education regulations as "services provided by a licensed physician."[62] Since providing CIC did not require the presence of a physician, it was not an excludable "medical service." *Tatro*, in determining if a health care procedure qualifies as a "related service," appears to rely on the status of the person performing the service rather than the nature of the service involved.

The Court considered it reasonable for the Secretary of

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55. Irving Independent School District v. Tatro, 468 U.S. 883 (1984). Justices Brennan, Marshall, and Stevens dissented but only as to the matter of awarding attorney fees. They concurred in finding that the school was required to provide catheterization as a medical service.

56. *Id.*

57. *Id.* at 890.

58. *Id.* at 892.

59. *Id.*

60. *Id.* at 891 quoting Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 192 (1982).

61. *Id.*

62. *Id.* at 892.

Education to determine that Congress did not intend for schools to provide services which required a physician's presence.

> This definition of "medical services" is a reasonable interpretation of congressional intent. Although Congress devoted little discussion to the "medical services" exclusion, the Secretary could reasonably have concluded that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence. From this understanding of congressional purpose, the Secretary could reasonably have concluded that Congress intended to impose the obligation to provide school nursing services.[63]

The *Tatro* Court in an attempt to alleviate school district concerns stressed that there were limitations as to what was considered a "related service." It noted that "related services" need only be provided to those who qualified for special education under the Act. Additionally, the services had to be necessary to assist the child in benefitting from special education despite the fact that school personnel could easily provide them.[64] This meant that if the service was not necessary during the school day, the district was not obligated to provide it. The Court reaffirmed that procedures which needed to be performed by a physician were excluded.[65]

A. Post Tatro Litigation

Subsequent litigation has resulted in differing opinions among lower courts when health care services more complicated than catheterization were involved. Two years after *Tatro* was decided, the U.S. District Court for the Northern District of New York found that the extensive nursing services required by Melissa Detsel, which included the continual use of respirator assistance, oxygen supply, medication administered through a tube in her jejunum and performance of a "P,D, and C"[66] did not fall within the category of a "related service."[67] Melissa required continual nursing care at home and at school. Originally, Melissa's nursing care was paid for by the Department of Social Services, but they refused to pay for services once she started kindergarten. The

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63. *Id.*
64. *Id.* at 894.
65. *Id.*
66. Procedure requiring the ingestion of saline solution by the child into her lungs, the nurse striking her about the lungs for four minutes, and then suctioning out any mucus collected in the lungs. Detsel v. Bd. of Educ. of Auburn Enlarged City Sch. Dist., 637 F. Supp. 1022, 1024 (1986).
67. *Id.*

Board of Education likewise argued that it was not obligated to pay for Melissa's nursing services. An IEP developed for Melissa indicated a need for "related services" which included "appropriate school health services."[68]

The *Detsel* court also looked to the definitions set forth in the IDEA and the regulations in 34 C.F.R. §§ 300.13(a), and 300.13(b). It began with the two-step analysis used in *Tatro* and concluded that Melissa needed the services in order to attend school. Her need for services, however, did not automatically obligate the school board to provide them. This court rejected Melissa's argument that the services she needed fell within the classification of school health services that could be performed by someone other than a physician and were therefore not considered excludable "medical services."

It was agreed that Melissa's health needs required the attention of a nurse.[69] The district court reasoned that even though the services Melissa required were not clearly within the exclusion for "medical services" that needed to be performed by a physician, they surely were not the simple nursing procedures contemplated in *Tatro*. The court considered whether the procedures more closely resembled "related services" or whether they were more like medical procedures. It found them to be more medical in nature.[70] The *Detsel* court interpreted *Tatro* as holding that only simple school nursing services were not excludable "medical services." It felt that *Tatro* did not base the decision solely on the status of the person performing the services.

Similarly, in *Bevin H. v. Wright*, a U.S. District Court held that services provides to a seven-year-old disabled girl were so extensive that they were not "related services."[71] Bevin had multiple disabilities including "Robinow syndrome . . . severe broncho-pulmonary dysplasia, profound mental retardation, spastic quadriplegia, seizure disorder and hydrocephalus."[72] It was mandatory that a nurse be present while traveling to and from, as well as attending school. Additionally, Bevin required tracheostomy care, g-tube feedings, chest physical therapy, suctioning of mucous, and administration of a continual supply of oxygen.

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68. *Id.*

69. Both the school physician and Melissa's personal physician testified of the need for a nurse. Melissa's doctor testified "that the services of a school nurse would be inadequate." Detsel, at 1024.

70. *Id.* at 1027.

71. Bevin H. v. Wright, 666 F. Supp. 71 (W.D. Pa. 1987).

72. *Id.* at 72.

Bevin, like Melissa Detsel, argued that the provision of services should turn on the status of the health care provider and not the nature and extent of the services.[73] The district court, however, looked to a balancing of the interests involved. It considered the time, expense and life threatening conditions at issue. Because of the extensive involvement she required, "a school nurse or any other qualified person with responsibility for other children within the school could not safely care for Bevin."[74] The court distinguished the "private duty"[75] aspect of Bevin's care from situations such as *Tatro* which required only intermittent services. Although the court found that school districts were not required to "provide the best possible education without regard to expense,"[76] it was careful to note that expense was not the main consideration. The fact that the nature of the services were more akin to "medical services" was the primary ground for excluding them. A "related service" might involve a service or added personnel at considerable expense.[77]

In contrast, a Michigan Federal District Court in *Macomb County Intermediate School District v. Joshua S.* criticized the reasoning of *Detsel* and *Bevin H.* as ignoring both the conclusion in *Tatro* and the spirit of the regulations.[78] Joshua's case revolved around the issue of providing health care while on a school bus. His disabilities resulted in difficulties with positioning in his wheelchair and suctioning a tracheostomy tube during transport.

In *Joshua S.* the court rejected the balancing of factors relied on in *Bevin.* It determined that "the EAHCA, its legislative history, and its regulations are void of any suggestion that states are free to decide, on the basis of cost and effort required, which related services fall within the medical services exclusion."[79] The issue, according to the Michigan District Court, was not whether the "related services" were reasonable, but whether they were necessary to allow Joshua access to and benefit from special education. Since the school district had already determined the

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73. *Id.* at 74.
74. *Id.* at 75.
75. *Id.*
76. *Id.*
77. "Finally we do not intend to intimate that 'related services' are only those services which can be provided at low cost to the district or which can be performed by existing personnel. To the contrary, the states reap the benefit of federal monies and the Act presumes that compliance with its tenets may require special services or the hiring of additional personnel at considerable expense." *Bevin H.* at 75-76.
78. Macomb County Intermediate Sch. Dist. v. Joshua S., 715 F. Supp. 824, 826 (E.D. Mich. 1989).
79. *Id.* at 827.

appropriate placement for Joshua, they had to provide the "related services" necessary to provide him with meaningful access to it.[80] The court determined that under *Tatro* and the definition in 34 C.F.R. § 300.13(b)(4) the only medical services to be excluded were those that needed to be provided by a physician.

Joshua S., however, seems to be something of an anomaly because subsequent cases in other jurisdictions tend to utilize the reasoning of the *Detsel* and *Bevin H.* cases. More recent decisions such as *Granite School District v. Shannon M.* have concluded that *Tatro* did not "stand for the proposition that all health services performed by someone other than a licensed physician are related services under the Act regardless of the amount of care, expense, or burden on the school system and ultimately, on other school children."[81]

Shannon had congenital neuromuscular atrophy and severe scoliosis. She also had a tracheotomy tube which required suctioning and a nasogastric tube for receiving food. Shannon's condition required that someone be available to change her trach tube when suctioning was unsuccessful and to use an ambu bag to open her lungs if she was receiving insufficient oxygen. A licensed practical nurse at a cost of $30,000 per year was required to meet Shannon's needs.

The court in *Shannon M.* looked to the discussion in *Tatro* which referred to the Secretary of Education reasonably interpreting a congressional intent to relieve schools of providing unduly expensive services.[82] As in *Bevin H.* the cost of the services did not seem to be the deciding factor.[83] Here the court distinguished Shannon's need for constant nursing care from the intermittent care required by Amber Tatro. It was of the opinion that the *Tatro* court did consider the nature of the services required in reaching its conclusion. It interpreted *Tatro* as holding merely that "services which must be provided by a licensed physician, other than those which are diagnostic or evaluative, are excluded and that school nursing services of a simple nature are not excluded."[84] This court surmised that *Tatro* did not compel

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80. Unlike Melissa Detsel and Bevin H., Joshua was not eligible for homebound instruction under Michigan state regulations. *Id.* at 827.

81. Granite Sch. Dist. v. Shannon M., 787 F. Supp. 1020, 1026 (D. Ut. 1992).

82. *See* Tatro above.

83. Shannon requested a rehearing before the court based on a change in Medicaid reimbursement policies which could now cover the cost of private duty nursing services at school. The court agreed with the school district's position that the change in payment policy had no effect on determining what was a related service under IDEA. Shannon M. at 1020, n.2.

84. *Id.* at 1027.

schools to provide all types of "medical services" that could be performed without the presence of a physician.

Additionally, the court found Shannon's condition to be distinguishable from Joshua's. Shannon, unlike Joshua, did have homebound instruction available to her.[85] Although it was undisputed that Shannon would receive greater educational benefit by attending school with services in place, the law focused on whether the district furnished services adequate to confer some benefit. The court felt that a basic floor of opportunity had been provided to Shannon.[86]

V. CONCLUSION

Because of technological advancements students with complex health care needs will continue to enter the school system in increasing numbers. Qualified students are entitled to a FAPE and "related services" under the Individuals with Disabilities Education Act. These include health care services. Presently, there is no uniform approach to providing health care procedures to disabled students. Additionally, professionals disagree over the extent to which non-medical personnel should be involved in performing these procedures.

It appears from current case law that there is no clear line drawn to clarify when health services are so intensive that they fall within the category of excluded "medical services." Clearly, under *Tatro*, a simple procedure like catheterization, which is only provided intermittently and requires little expertise, would qualify as a "related service." Unless the Supreme Court is able to clarify in a subsequent case whether or not the definition of "related services" turns solely on the status of the health care provider, decisions will continue to be made on a case-by-case basis. The nature and extent of the services required and a balancing of all interests involved will continue to be the basis of those decisions. Paramount among these interests must be the rights of disabled children to receive a quality education in the least restrictive environment.

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85. *Id.* at 1028.
86. *Id.* at 1029.