Did You Know?

Special Education Programs Can Fund School Health Services for "Medically Dependent Children" and Some Will Qualify As Assistive Technology (AT) Services

The Individuals with Disabilities Education Act (IDEA) defines ñmedical servicesòas those ñprovided by a licensed physician to determine a childôs medically related disability.ò 34 CFR 300.34(b)(5). It limits ñmedical servicesòto diagnosis and evaluation. 20 USC 1401(22). The regulations also include ñschool health services and school nurse servicesò. School nurse services are services provided by a qualified school nurse; school health services may be provided by either a qualified school nurse or other qualified person. 34 CFR 300.34(c)(13). Therefore, according to the regulations, a physicianôs services must be limited to evaluations and diagnoses, while medical types of services by non-physicians, such as nurses and trained laypersons are permitted.

This regulatory scheme was upheld by the Supreme Court in *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883 (1984). Amber Tatro needed clean intermittent catheterization (CIC), a simple procedure that can be performed by a layperson, every three to four hours. The Court ruled that CIC is a permissible ñrelated serviceòfor students with disabilities because it "enables a handicapped child to remain at school during the day.ò To determine whether a medically related service is permissible as a "school health service" or excluded as a "medical service," the Court stated the service must be required to be performed during the school day and able to be performed by someone other than a physician. It rejected the district's concern about increased liability if it performed this service as not relevant to whether CIC is a related service.

The Supreme Court reaffirmed *Tatro* in *Cedar Rapids Community Sch. Dist. v. Garret F*, 526 U.S. 66 (1999), ordering a school district to provide a ventilator-dependent student with one-to-one school health services. Garret was described as paralyzed from the neck down, operating a motorized wheelchair through a puff and suck straw, and operating a computer with a device that responds to head movements. He was ventilator dependent for breathing and required health-related help during the school day: to assist with CIC, suctioning his tracheotomy tube, getting him into a reclining position for five minutes every hour, and manually pumping an air bag for him to breathe while his electric ventilator was being maintained. The school district refused to pay for this service, stating it was not required to provide continuous one-on-one nursing care.

The Supreme Court reaffirmed the use of its two-part test developed in *Tatro* (i.e., whether the service must be performed during the school day and whether it will be provided by a non-physician). It was conceded that Garret required the requested services during the school day in order to be able to attend school and that the services did not need to be performed by a physician. Therefore, the Court affirmed the responsibility of the school district to provide the services.

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Finally, the Court noted that schools "cannot limit educational access simply by pointing to the limitations of existing staff." "[T]he IDEA requires school districts to hire specially trained personnel to meet disabled student needs." A U.S. Department of Education policy letter reinforces this principle:

> IDEA does not provide parents a specific right to be informed of the qualifications of individuals providing services to their children. If, however, an IEP team determines that it is necessary for the individual providing special education or related services to a child with a disability to have specific training, experience and/or knowledge in order for the child to receive [a free appropriate public education], then it would be appropriate for the team to include those specifications in the child's IEP. Letter to Dickman, 37 IDELR 284 (OSEP 4/2/02).

The 2006 regulations are consistent with *Garret F*. School districts must perform routine checks of the external components of a device, monitor and maintain medical devices that are necessary for health and safety of a child (including breathing, nutrition, or operation of other bodily functions). The school is responsible while the child is being transported to and from school, and when the child is at school. 34 CFR 300.34(b)(2). Additionally, districts must ensure that the external components of surgically implanted medical devices are functioning properly. However, it is ñnot responsible for the post-surgical maintenance, programming, or replacement of a medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).ò 34 CFR 300.113.

Most, if not all, of the school health services described in *Tatro* and *Garret F.* will also meet the definitions of AT services from the AT Act and IDEA regulations. Since most of the devices or items in question, e.g., the catheters, traecheotomy tube, ventilator, and air bag for breathing would meet the AT device definition (20 USC 3002(a)(3); 34 CFR 300.5), the CIC, suctioning, manually pumping, and ventilator monitoring, will meet the definition of AT service, as they ñdirectly assistòAmber or Garret in ñuse of an [AT] device.ò 29 USC 3002(a)(4); 34 CFR 300.6. This not only provides additional legal support for the requirement that the school district provide those services, it will also open the door for the Protection and Advocacy for AT (PAAT) program to work on these issues under that grant.

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