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INDIVIDUALS WITH DISABILITIES EDUCATION ACT:  
“RELATED SERVICES” VERSUS “MEDICAL SERVICES?”

[*CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT V.  
GARRET F.*, 119 S. CT. 992 (1999)]

I. INTRODUCTION

Parents should not have to worry about whether their children will have access to public school education, but that is exactly the worry that parents of handicapped children face. The most recent studies show that approximately 1.75 million handicapped children have been denied a formal education and almost 2.5 million have received less than an adequate education.<sup>1</sup> These numbers illustrate the overwhelming burden some parents carry when attempting to educate their children.

Fortunately, for these children, one mother decided her child would not be deprived of his education; this was the mother of Garret F. She successfully fought for the rights guaranteed to her son under the Individuals with Disabilities Education Act (“IDEA”).

The purpose of the IDEA is to provide all handicapped children access to a public school education and to ensure that these children receive the special education and “related services” necessary to make their education meaningful.<sup>2</sup> In *Cedar Rapids Community School District v. Garret F.*,<sup>3</sup> the United States Supreme Court determined the scope of the “related services” provision under the IDEA. Specifically, *Garret F.* held that the Cedar Rapids Community School District was legally and financially responsible for supplying the multiple services that would enable Garret F., a ventilator-dependent student, to attend public school.<sup>4</sup>

Pursuant to the IDEA, all public schools receiving federal funding must supply “special education” and “related services” when educating handicapped children.<sup>5</sup> However, the scope of “related services” was

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1. Brief for Respondent at 18-19, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992 (1999) (No. 96-1793), available in WESTLAW at 1998 WL 541985.

2. 20 U.S.C. § 1400 (c) (1994), amended by 20 U.S.C. § 1400(d)(1)(A) (Supp. III 1997).

3. 119 S. Ct. 992 (1999), *aff’g* *Cedar Rapids Community Sch. Dist. v. Garret F.*, 106 F.3d 822 (8th Cir. 1997).

4. *Id.* at 1000.

5. *Id.* at 994.

never clearly defined by Congress, thus leading to the current controversy.<sup>6</sup> *Garret F.* settled this dispute by upholding the bright-line test promulgated in *Irving Independent School District v. Tatro*,<sup>7</sup> which provided that if a physician must supply a service, it is "medical" and therefore excluded.<sup>8</sup> Alternatively, if a nurse or other qualified layperson can perform a service the school must supply it.<sup>9</sup> Each individual state decides which services a physician must supply.<sup>10</sup> If the state requires a physician to perform the procedure, it is medical and excluded under the IDEA.<sup>11</sup>

*Garret F.* has entrenched a bright-line test that dictates that only those services that must be supplied by a physician will be withheld from handicapped children.<sup>12</sup> Schools cannot rely on a cost or multi-factor analysis when determining if a service is "related."<sup>13</sup> Instead schools must rely on the bright-line test.<sup>14</sup> In addition, any changes to the holding of *Garret F.* will have to come from Congress<sup>15</sup> or presumably from changes in the states' laws as to what services a physician must supply.<sup>16</sup>

## II. CASE DESCRIPTION

Garret F., a young boy, was paralyzed from the neck down in a motorcycle accident at the age of four.<sup>17</sup> Although a quadriplegic, Garret F. was mobile with the help of a motorized wheelchair and a "puff and suck straw."<sup>18</sup> Despite his limited mobility, Garret F. still possessed all of his mental faculties, allowing him to perform well in school.<sup>19</sup> Garret F.'s biggest need, at home or school, came from his dependency on his ventilator, which required "a responsible individual nearby to attend to certain physical needs . . . ."<sup>20</sup>

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6. *Id.*

7. 468 U.S. 883 (1984).

8. Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822, 825 (8th Cir. 1997).

9. *Id.* at 825.

10. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 887 (1984).

11. *Id.* For example, "[i]f psychotherapy is interpreted in your state as a medical service (i.e. administered by a licensed physician), this service would not be required." Brief for the United States as Amicus Curiae at 17-18, Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992 (No. 96-1793), available in WESTLAW at 1998 WL 541985 (citing Letter to Minsky, Educ. Handicap. L. Rep. 211:19, 20 (Apr. 7, 1978)).

12. Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992, 998 (1999).

13. *Id.*

14. *Id.*

15. *Id.*

16. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 887-88 (1984).

17. *Garret F.*, 119 S. Ct. at 994.

18. *Id.* A puff and suck straw is a mechanism that gives a child with no motor movement the ability to move. *Id.*

19. *Id.*

20. *Id.* The Administrative Law Judge found that Garret F.'s ventilator tube needed to be cleared periodically during the day. *Id.* at 994 n.2. This required "manual pumping of an air bag

At first, Garret F.'s family took care of his needs at school.<sup>21</sup> In 1993, the family requested that Cedar Rapids Community School District ("the District") begin caring for Garret F.'s needs while attending school.<sup>22</sup> However, the request was denied because the District believed that the IDEA did not require it to provide the care Garret F. required.<sup>23</sup> Pursuant to the IDEA, Garret F.'s mother requested an administrative hearing to determine if the District had to supply the services.<sup>24</sup>

The Administrative Law Judge ("ALJ") ruled in favor of Garret F.<sup>25</sup> The District appealed to the Federal District Court for the District of Iowa, which also ruled in favor of Garret F.<sup>26</sup> Once again the District appealed, this time to the Court of Appeals for the Eighth Circuit and again was unsuccessful.<sup>27</sup> The District made a final appeal to the Supreme Court of the United States and certiorari was granted.<sup>28</sup>

### III. BACKGROUND

#### A. IDEA-Legislative History

Prior to the enactment of the Education for All Handicapped Children Act in 1975, Congress found there were "more than eight million children with disabilities in the United States" and that "more than half of [these] children . . . [did] not receive appropriate educational

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attached to his tracheotomy tube" when the ventilator was being changed. *Id.*

21. *Id.* at 995. One of Garret F.'s aunts initially attended to his needs. However, when she could no longer perform the services, the family used money from the settlement that occurred after Garret F.'s motorcycle accident, the family insurance policy and any other resources they could find to help care for Garret F. at home and at school. *Id.* at 995-96.

22. *Id.* at 996.

23. *Id.*

24. *Id.* See Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822, 823 (8th Cir. 1997). The procedures that a school and parent must follow if a dispute arises concerning the care of a child are outlined in 20 U.S.C. § 1415. Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 887 n.1 (1984).

25. The Administrative Law Judge ("ALJ") noted that most of the services that Garret F. requested, including "urinary catheterization, food and drink, oxygen supplement positioning and suctioning," were already being provided to other students in the District. See *Garret F.*, 119 S. Ct. at 996 n.4. The ALJ's ruling was two-fold. First, he found that the IDEA required schools to provide services that would allow a handicapped child to be educated with other non-disabled children to the fullest extent possible. *Id.* at 996. Second, the ALJ "[distinguished] between 'school health services,' which are provided by a 'qualified school nurse or other qualified person,' and 'medical services,' which are provided by a licensed physician" and determined that Garret F.'s needs fell into the "school health services" category. *Id.* In sum, the school district was responsible, legally and financially, to supply the "related services" necessary for Garret F. to attend public school with other non-disabled students. *Id.*

26. *Id.* The IDEA allows an aggrieved party to appeal a decision from an ALJ to "any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy." 20 U.S.C. § 1415(e)(2) (1994), amended by 20 U.S.C. § 1415(i)(2)(A) (Supp. III 1997).

27. *Garret F.*, 119 S. Ct. at 996.

28. *Id.* at 997.

services . . . .”<sup>29</sup> These findings, along with the others found in 20 U.S.C. § 1400(b),<sup>30</sup> illustrate why the federal government intervened on behalf of the handicapped children to require states to provide the education that was lacking.

The first effort to educate the handicapped occurred in 1966 when Congress amended the Elementary and Secondary Education Act of 1965<sup>31</sup> (“1965 Act”). These amendments sought to assist “the States in the initiation, expansion, and improvement of programs and projects . . . for the education of the handicapped children.”<sup>32</sup> In 1970, the 1965 Act was repealed and replaced by the Education of the Handicapped Act (“the EHA”).<sup>33</sup> By passing the EHA, Congress further recognized that many handicapped children continued to be completely excluded from the public school system or just sat idly by in the classroom waiting for the opportunity to drop out.<sup>34</sup> “In 1974 Congress greatly increased federal funding for the education of the handicapped” and mandated that states develop a plan to assist the handicapped in achieving a full educational opportunity.<sup>35</sup> The following year, in 1975,

29. 20 U.S.C. §§ 1400(b)(1) & (3) (1994), amended by 20 U.S.C. §§ 1400(c)(2)(A)-(C) (Supp. III 1997).

30. 20 U.S.C. § 1400(b) (1994), amended by 20 U.S.C. § 1400(c) (Supp. III 1997). Specifically, Congress found:

. . . .  
(2) the special educational needs of such children are not being fully met;

. . . .  
(4) one million of the children with disabilities in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many children with disabilities throughout the United States participating in regular school programs whose disabilities prevent them from having a successful educational experience because their disabilities are undetected;

(6) because of lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local education agencies can and will provide effective special education and related services to meet the needs of children with disabilities;

(8) state and local educational agencies have a responsibility to provide education for all children with disabilities, but present financial resources are inadequate to meet the special educational needs of children with disabilities; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of children with disabilities in order to assure equal protection of the law.

*Id.*

31. Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 179-80 (1982). See Elementary and Secondary Education Act Amendments of 1966-1969, Pub. L. No. 89-750, 80 Stat. 1191 (1966).

32. *Rowley*, 458 U.S. at 180 (citing Elementary and Secondary Education Amendments of 1966-1969, Pub. L. No. 89-750, § 161, 80 Stat. 1204 (1966)).

33. Brief for the United States as Amicus Curiae at 9 n.6, Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992 (1999) (No. 96-1793), available in WESTLAW at 1998 WL 541989. See Education of the Handicapped Act of 1970, Pub. L. No. 91-230, 84 Stat. 121, §§ 601-05 (1970).

34. *Rowley*, 458 U.S. at 180.

35. *Id.*

Congress enacted the Education for All Handicapped Children Act ("the EAHCA").<sup>36</sup> The EAHCA "for the first time [tried to define] the terms 'special education' and 'related services.'"<sup>37</sup> The statute underwent superficial changes in 1990 when the name changed from the EAHCA to the Individuals with Disabilities Education Act ("the IDEA").<sup>38</sup> Finally, in 1997 the IDEA was "reauthorized and amended" by Congress.<sup>39</sup> The 1997 amendments pertained to the Individualized Education Program ("IEP") requirements and reflected Congress' continued effort to supply handicapped children with a beneficial education.<sup>40</sup>

### B. IDEA—Instructions on Use

No matter what the name, the IDEA and its predecessors had one common goal: to meaningfully educate handicapped children.<sup>41</sup> The federal government fulfilled this goal by supplying participating states with needed funding.<sup>42</sup> As a way of insuring that the states carried out the wishes of Congress, the federal government created stringent guidelines for the states to follow.<sup>43</sup> Each state is required to submit a plan that outlines "the goals, programs, and timetables under which the State intends to educate handicapped children . . ." and all plans are subject to the approval of the Secretary of Education.<sup>44</sup>

When a handicapped child seeks an education in the public school system, the school district must conduct an Individualized Education Program ("IEP").<sup>45</sup> An IEP is a written statement for each handicapped child that enters a public school.<sup>46</sup> This statement includes the types of services that a child must receive to make his or her education meaningful.<sup>47</sup> The IEP is reviewed annually by the school board, par-

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36. United States as Amicus Curiae at 9 n.6, *Garret F.* (No. 96-1793) (citing Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (1975)).

37. *Id.*

38. *Id.* (citing Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103 § 901 (1990)).

39. *Id.* (citing Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37 (1997)).

40. Tara L. Eyer, *Greater Expectations: How The 1997 IDEA Amendments Raise The Basic Floor Of Opportunity For Children With Disabilities*, 126 WEST'S EDUC. L. REP. 1, 15 (1998).

41. *Id.* at 2. See also 20 U.S.C. § 1400(c) (1994), amended by 20 U.S.C. § 1400(d) (Supp. III 1997).

42. Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 180 (1982). Since August 1998, all states have received funds under the IDEA. Brief for the United States as Amicus Curiae at 4 n.4, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992 (No. 96-1793), available in WESTLAW at 1998 WL 541989.

43. *Rowley*, 458 U.S. at 181.

44. *Id.*

45. 20 U.S.C. § 1414 (1994), amended by 20 U.S.C. § 1414(a)(1)(A) (Supp. III 1997).

46. 20 U.S.C. § 1401(a)(20) (1994), amended by 20 U.S.C. § 1414(d)(1)(A) (Supp. III 1997).

47. 20 U.S.C. § 1401(a)(20)(C) (1994), amended by 20 U.S.C. § 1414(d)(1)(A)(iii) (Supp. III 1997).

ents and others who determine the needs of the child.<sup>48</sup> After completion and implementation of an IEP, the state and the school must notify the parents or guardians of proposed changes.<sup>49</sup> If the parents or guardians disagree with the current IEP or any proposed changes, they are entitled to a due process hearing that begins at the administrative level.<sup>50</sup> If the parties are not satisfied after the administrative hearing, they may appeal to "any [s]tate court of competent jurisdiction or [to] a district court of the United States without regard to the amount in controversy."<sup>51</sup> This procedure allows the parents or guardians of a child to have an active role in the education of their child.<sup>52</sup>

### C. IDEA-B.G. (Before *Garret F.*)

*Garret F.* evolved due to the circuit courts' failure to adhere to principles established fourteen years earlier.<sup>53</sup> Special education is defined as "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including - (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education."<sup>54</sup> "Related services" are those that allow a handicapped child to attend and participate in school.<sup>55</sup> "Related services" are defined by ex-

48. 20 U.S.C. § 1401(a)(20)(F) (1994), amended by 20 U.S.C. § 1414(d)(4)(A)(i) (Supp. III 1997). The 1994 statute defines an IEP as:

[a] written statement for each child with a disability developed in any meeting by a representative of the local educational agency or an intermediate education unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall include:

(A) a statement of the present levels of educational performance of such child,  
 (B) a statement of annual goals, including short-term instructional objectives,  
 (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,  
 (D) a statement of the needed transition services for students beginning no later than age 16 and annually thereafter . . . including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting,  
 (E) the projected date for initiation and anticipated duration of such services, and  
 (F) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

20 U.S.C. § 1401(a)(20) (1994), amended by 20 U.S.C. § 1414(d)(1)(A) (Supp. III 1997).

49. Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982).

50. *Id.*

51. *Id.* at 183 (citing 20 U.S.C. § 1415 (e)(2) (1976) (current version at 20 U.S.C. § 1415 (e)(2)(A) (Supp. III 1997))).

52. *Id.* at 183 n.6.

53. Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992, 997 (1999) (identifying courts that have strayed from the holding in *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984)).

54. 20 U.S.C. § 1401(a)(16) (1994), amended by 20 U.S.C. § 1401(25) (Supp. III 1997).

55. See 20 U.S.C. § 1401(a)(17) (1994), amended by 20 U.S.C. § 1401(22) (Supp. III 1997). The 1994 statute states that

ample in 20 U.S.C. § 1401(17), but the definition expressly excludes “medical services” unless for diagnostic or evaluative purposes.<sup>56</sup> *Garret F.* focused on what is meant by the term “related services” and when such services would fall under the “medical service” exclusion.<sup>57</sup> The Court also recognized that the tension between “related services” and “medical services” was not an issue of first impression.<sup>58</sup> Thus, the Court had a platform from which to work.

A review of past Supreme Court decisions is imperative to understanding the significance of *Garret F.* In *Irving Independent School District v. Tatro*,<sup>59</sup> the Court began its analysis by examining the text of the IDEA and questioning if Tatro’s services were within the ambit of the statute.<sup>60</sup> Specifically, *Tatro* addressed whether clean intermittent catheterization (“CIC”) qualified as a supportive service.<sup>61</sup> The Court opined that it was obvious the service was supportive; without it, Tatro could not attend school.<sup>62</sup> Next, the Supreme Court had to determine if the CIC was excluded because it was medical, or rather, included as related.<sup>63</sup>

The *Tatro* Court began by reviewing *Board of Education of the Hendrick Hudson Central School District v. Rowley*.<sup>64</sup> *Rowley* emphasized that the IDEA’s purpose of supplying a free appropriate public education was to allow handicapped children meaningful access to public education.<sup>65</sup> *Rowley* recognized that a “related service” did not just provide access to school, but also encompassed those “[s]ervices . . . that

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[R]elated services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupation therapy services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes early identification and assessment of disabling conditions in children.

*Id.*

56. *Id.* For a child to receive assistance, he or she must be handicapped, the service must be one that needs to be administered during school hours and the service must be one that can be supplied “by a nurse or other qualified person, not a physician.” Brief for the United States as Amicus Curiae at 20, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992 (No. 96-1793) available in WESTLAW at 1998 WL 541989.

57. *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992, 997 (1999).

58. *Id.*

59. 468 U.S. 883 (1984).

60. *Tatro*, 468 U.S. at 889-90.

61. *Id.* at 890. Supportive services assist handicapped children in benefiting from special education. *Id.*

62. *Id.* at 890.

63. *Id.*

64. 458 U.S. 176 (1982), cited with approval in *Irving Independent School District v. Tatro*, 468 U.S. 883, 891 (1984).

65. *Tatro*, 468 U.S. at 891.

permit a child to remain at school during the day . . . .”<sup>66</sup> This reasoning led the *Tatro* court to find that CIC was not excluded as a “medical service” and to develop a bright-line test for determining when a service would be excluded as medical.<sup>67</sup>

The bright-line test came into existence due to the Supreme Court paying deference to a regulation written, but never passed, by the Department of Education’s Secretary.<sup>68</sup> The majority in *Tatro* explained that the Secretary of Education’s regulations “[were] entitled to deference”<sup>69</sup> because the IDEA “empowered [the Secretary] to issue such regulations as may be necessary to carry out the provisions of the [IDEA].”<sup>70</sup> The *Tatro* Court found that the Secretary meant to exclude only those services that must be supplied by a licensed physician.<sup>71</sup> If a school nurse or other qualified individual could perform the service, the school district must supply it.<sup>72</sup> This meant that schools must supply “related services” even if additional personnel, above and beyond those already employed, were needed.<sup>73</sup> The Court concluded that the Secretary’s interpretation was an acceptable explanation of Congress’ intent and an acceptable standard for schools to follow.<sup>74</sup>

Even with this seemingly clear-cut test established, the circuit courts perceived *Tatro* as creating a more flexible test, as evidenced by the decisions in *Neely v. Rutherford County School*<sup>75</sup> and *Detsel v. Board of Education of the Auburn Enlarged City School District*.<sup>76</sup> Both cases recognized *Tatro*, but instead of implementing its bright-line test found that it allowed an exclusion based on the cost and the extent of the services.<sup>77</sup> The circuit courts factually distinguished *Tatro* by finding

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66. *Id.*

67. *Id.* Simply put, the bright-line test states that if a nurse or other qualified person can supply a service, then it is a “related service.” *Id.* at 892. When a doctor must perform the service, then it is excluded because it is a “medical service” and “medical services” are not covered under the IDEA. *Id.*

68. *Id.* at 891-92.

69. *Id.* at 892.

70. *Id.* at 892 n.9.

71. *Id.* at 892. See 34 C.F.R. § 300.13(a), (b)(10) (1983) (defining “related services” as those including “school health services,” which are defined as those that can be supplied by the school nurse or other qualified person); see also 34 C.F.R. § 300.13(b)(4) (1983) (defining medical services as those supplied by a physician).

72. *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 892 (1984).

73. *Id.* at 893. The schools were already hiring “trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.” *Id.*

74. *Id.* The Court held that the findings of the Secretary did not prove to be unduly burdensome on the school districts since the school districts were not required to offer treatment by a physician or treatment in a hospital, which are the most costly. *Id.*

75. 68 F.3d 965 (6th Cir. 1995) (noting that the child required her tracheostomy tube to be suctioned while she attended school).

76. 820 F.2d 587 (2d Cir. 1987), *aff’g* 637 F. Supp. 1022 (N.D.N.Y. 1986) (acknowledging that the plaintiff, Detsel, required constant supervision during school hours due to her dependence on a respirator).

77. *Neely*, 68 F.3d at 971 (discussing *Tatro* and concluding that before finding that a service should be provided, the burden placed upon the school should be taken into consideration). See

that Tatro's services were not unduly burdensome because a regular school nurse could supply them.<sup>78</sup> Conversely, the constant care and supervision Neely and Detsel required were too costly and too burdensome for the school districts to absorb.<sup>79</sup>

The holdings of *Neely* and *Detsel* gave other circuit courts the needed rationale to accept an argument based on a multi-factored analysis that allowed school districts to exclude many services under the guise of "medical services."<sup>80</sup> For instance, the Western District of Pennsylvania found that although Congress had never truly defined a "related service," the services requested in *Bevin H. v. Wright* were more like those meant to be excluded.<sup>81</sup> Similarly, the Ninth Circuit and the Federal District Court of Utah looked at the "extent and nature of the services performed," not just at who was performing the service.<sup>82</sup> Lastly, the Federal District Court of New Jersey combined the previously mentioned rationale and stated that because the service appeared to be more medical and because it was so costly, the schools would not be required to supply it.<sup>83</sup>

The exclusion of services, and thus students, soon became the norm. There were, however, courts that found denying the services was a failure to "adhere to certain principles developed in *Tatro*."<sup>84</sup> In *Macomb County Intermediate School District v. Joshua S.*, the court concluded that *Tatro* explicitly created a bright-line test and excluded only

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*also Detsel*, 820 F.2d at 588, *aff'g Detsel v. Board of Educ. of the Auburn Enlarged City Sch. Dist.*, 637 F. Supp. 1022, 1027 (1986) (construing *Tatro* as finding that the "medical services" exclusion was a way to prevent schools from being strapped with excessive costs).

78. See *Neely*, 68 F.3d at 972; *Detsel*, 637 F. Supp. at 1027.

79. See *Neely*, 68 F.3d at 973; *Detsel*, 637 F. Supp. at 1027.

80. See *Clovis Unified Sch. Dist. v. California Office of Admin. Hearings*, 903 F.2d 635, 644 (9th Cir. 1987); *Fulginiti v. Roxbury Township Pub. Sch.*, 921 F. Supp. 1320, 1325 (D.N.J. 1996); *Granite Sch. Dist. v. Shannon M.*, 787 F. Supp. 1020, 1030 (D. Utah 1992); *Bevin H. v. Wright*, 666 F. Supp. 71, 75 (W.D. Pa 1987). See also *infra* notes 80-82.

81. *Bevin*, 666 F. Supp. at 75. Bevin was a severally handicapped child and required a nurse to attend to her tracheostomy tube, her gastrostomy tube and her supply of oxygen. *Id.* at 73. If Bevin was left unattended, there was a very real possibility that she may die if a mucous plug formed in her tracheostomy tube and was not cleared. *Id.*

82. See *Clovis Unified Sch. Dist.*, 903 F.2d at 644; *Shannon*, 787 F. Supp. at 1026. Michelle Shorey suffered from severe emotional distress due to a traumatic childhood and thus qualified for coverage under the IDEA. *Clovis Unified Sch. Dist.*, 903 F.2d at 639. Michelle's parents wanted the school district to cover the costs of her stay in a psychiatric hospital. *Id.* Shannon was a six-year old girl who suffered from multiple disabilities, was confined to a wheelchair and had a tracheostomy tube. *Shannon*, 787 F. Supp. at 1022. If Shannon did not receive constant supervision from a qualified individual, she would more than likely die when a mucous plug formed and was not cleared from her tracheostomy tube. *Id.*

83. *Fulginiti*, 921 F. Supp. at 1325. Carissa Fulginiti required constant supervision because she was born with severe and multiple disabilities. *Id.* at 1320. If Carissa was not given around the clock care, she would die if a mucous plug blocked her tracheostomy tube. *Id.* at 1321.

84. *Macomb County Intermediate Sch. Dist. v. Joshua S.*, 715 F. Supp. 824, 826 (E.D. Mich. 1989). Joshua suffered from severe and multiple disabilities that required special transportation to get to school. *Id.* at 824. The school district did not include this transportation in Joshua's IEP, which meant that the service would not be supplied. *Id.* at 825.

those services “provided by a licensed physician.”<sup>85</sup>

As a result of the division in the appellate courts, the scope of “related services,” as defined under the IDEA, was a question ripe to be answered. The United States Supreme Court decided *Garret F.* would provide the opportunity to settle the dispute.<sup>86</sup>

#### IV. ANALYSIS

##### A. Majority

All parties agreed that the services Garret F. required were supportive services because they were necessary for him to attend public school.<sup>87</sup> The disagreement surfaced as to how “related services” were to be defined and which services would be excluded as medical.<sup>88</sup>

The majority began its analysis by addressing the definition given to “medical services” in past cases.<sup>89</sup> The District asserted that the Court should consider the nature of the service that is requested, not just who is providing the service.<sup>90</sup> If the nature of the service was medical, the District proposed a multi-factored test to determine whether the service should be supplied.<sup>91</sup> The majority found no legal basis to support the District’s argument for a multi-factored test.<sup>92</sup> Furthermore, the District could offer no explanation as to why these factors would make “one service any more ‘medical’ than another.”<sup>93</sup> The rejection of the multi-factor test and the acceptance of the bright-line test meant that the Court would not, and the schools could not, consider such factors as cost, convenience or the addition of personnel when deciding if a service must be supplied. Furthermore, the majority opined that without any signs from Congress displaying its disagreement with

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85. *Id.* at 828. See also *Morton Community Unit Sch. Dist. No. 709 v. J.M.*, 152 F.3d 583 (7th Cir. 1998), *aff’g*, 986 F. Supp 1112 (C.D. Ill. 1997) (finding that the care plaintiff required for his multiple disabilities was covered under the “related services” provision of the IDEA); *Skelly v. Brookfield LaGrange Park Sch. Dist. 95*, 968 F. Supp 385 (N.D. Ill. 1997) (finding that the IDEA did require the defendant school district to supply the student with the care necessary to keep his tracheostomy tube from getting blocked).

86. *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992, 997 (1999).

87. *Id.* (citing *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 192 (1982) and reiterating the fact that the purpose of the IDEA is to allow meaningful access to a public school, not to guarantee a level of education once the access is obtained).

88. *Id.*

89. *Id.* at 997. The court specifically referred to *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984) and its finding that only those services supplied by a physician would be excluded as medical. *Id.*

90. *Id.* at 998 n.8.

91. *Id.* The District asked the court to consider such factors as: the continuity of the care, the ability of the school personnel to provide the care and the cost of the potential liability if something went wrong. Brief for Petitioner at 11, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992, 997 (1999) (no. 96-1793), available in WESTLAW at 1998 WL 375420.

92. *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992, 998 (1999).

93. *Id.*

*Tatro's* bright-line test, there was no reason for the Court to "depart from settled law."<sup>94</sup>

Next, the District argued that even after *Tatro* and its bright-line test, there was still an undue burden exemption regarding "related services."<sup>95</sup> The District's primary concern in supplying continuous one-on-one services to Garret F., and those students similarly situated, was that there would not be adequate resources to fund other students' education.<sup>96</sup> The Court rejected the cost or "undue burden exemption," based on the multi-factored test, stating:

The first two factors can be seen as examples of cost-based distinctions: intermittent care is often less expensive than continuous care, and the use of existing personnel is cheaper than hiring additional employees. The third factor—the cost of the service—would then encompass the first two. The relevance of the fourth factor is likewise related to cost because extra care may be necessary if potential consequences are especially serious.<sup>97</sup>

The Court acknowledged the financial concerns of the District but found that the IDEA did not use cost as a factor when defining "related services" and when excluding "medical services."<sup>98</sup> The Court reasoned that to allow an undue burden exemption<sup>99</sup> would be engaging in "judicial lawmaking without guidance from the Congress" and it would undermine the purposes for which the IDEA was created.<sup>100</sup> The holding of the majority serves to reinforce Congress' intent of helping the greatest number of handicapped children obtain access to public schools.

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94. *Id.*

95. *Id.* at 999.

96. *Id.* The District does receive additional funds for the care of handicapped children. In 1993-94, the District received \$63,000,000 for its 17,500 handicapped students. See Brief for Respondent at 6, *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992 (1999) (No. 96-1793), available in WESTLAW at 1998 WL 541985. States do have options as to where they can get the needed funding. One such option is through interagency agreements. Deborah Rebore & Perry A. Zirkel, *The Supreme Court's Latest Special Education Ruling: A Costly Decision?*, 135 WEST'S EDUC. L. REP. 331, 339 (1999). This allows the states to share the costs of educating a handicapped student with non-educational agencies such as Medicaid. *Id.* at 340. Another option for the schools, is to coordinate with the family's private insurer in an effort to share costs. *Id.* The final option for schools is to seek help from state education agencies. *Id.* Regardless of which of these options are chosen, there can be no cost imposed upon the family of the handicapped child. *Id.* Nevertheless, all these options, and the fact that there is not an overabundance of "technology-dependent students," will decrease "the likelihood that a district will have to shoulder significant costs as a result of *Garret F.*" *Id.* 340-41.

97. *Garret F.*, 119 S. Ct. at 999.

98. *Id.*

99. Because the dollars put toward the education of the handicapped will take away from the education of the general student and because schools do not have unlimited funds, Congress should examine the consequences of *Garret F.* "if it decides to revisit its original intent in passing the special education statute." Allan G. Osborne, Jr., Ed.D., *Supreme Court Rules That Schools Must Provide Full-Time Nursing Services For Medically Fragile Students*, 136 WEST'S EDUC. L. REP. 1, 14 (1999).

100. *Garret F.*, 119 S. Ct. at 999. The Congressional intent underlying the IDEA was "'to open the door of public education' to all qualified children." *Id.* (citing Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 192 (1982)).

*B. Dissent*

The dissent disagreed not only with the holding in the case at bar, but also with the holding in *Tatro*.<sup>101</sup> The dissenters opined that if *Tatro* was correctly decided, this present Court had no right to extend its holding because doing so violated the rules of statutory interpretation.<sup>102</sup>

First, the dissenting justices began by reflecting on *Tatro* and found that the holding contradicted the plain meaning rule.<sup>103</sup> The plain meaning rule prohibits a court from altering or interpreting a statute when Congressional intent is unambiguous.<sup>104</sup> The dissent stated that *Tatro* never addressed the statutory interpretation issue, but instead went directly to the regulations of the Secretary of the Department of Education.<sup>105</sup> If the plain meaning of the statute would have been considered in *Tatro*, the dissent reasoned that the *Tatro* Court would have realized its definition of “medical services” was inappropriate.<sup>106</sup>

The dissenting justices further argued that the *Tatro* Court erred by basing the definition of “medical services” on the provider of the service rather than looking to the actual service.<sup>107</sup> “Medical services” was meant to “encompass services that are ‘of, relating to, or concerned with the physicians or the practice of medicine,’” not just those services that must be supplied by a physician.<sup>108</sup> The dissenting justices articulated that the purpose of the IDEA is to allow handicapped children an opportunity to have a public education, not to supply them with “medical services.”<sup>109</sup>

Furthermore, the dissent found that Congress explicitly enumerated certain supportive services<sup>110</sup> that appeared “‘medical’ in nature,” but because Congress did not want them excluded, expressly provided

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101. *Id.* at 1000. The dissent believed that the holding in *Tatro* “cannot be squared” with the text of the IDEA, thereby, indicating that *Tatro* should not control. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* See *National Credit Union Admin. v. First Nat’l. Bank & Trust Co.*, 522 U.S. 479, 499-500 (1998).

105. *Garret F.*, 119 S. Ct. at 1001 (Thomas, J., dissenting).

106. *Id.*

107. *Id.*

108. *Id.* at 1000 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1402 (1986)). See also 38 U.S.C. § 1701(6) (1994), amended by 38 U.S.C. § 1701(6) (Supp. III 1997) (stating that the term “medical services” includes such services as “medical examination[s], treatment and rehabilitative services . . .”); 38 U.S.C. § 101(28) (1994) (stating “nursing home care” is accommodating those who need “nursing care and related medical services”); 26 U.S.C. § 213(d)(1) (1994), amended by 26 U.S.C. § 213(d)(1) (Supp. III 1997) (stating “medical care means amounts paid—for the diagnosis, cure, mitigation, treatment or prevention of disease”). The Court explained by analogy the difference between looking at the service and looking at the provider. It stated, “anything done to repair or service a car, no matter who does the work is, thought to fall into [the mechanical services] category.” *Garret F.*, 119 S. Ct. at 1000 (Thomas, J., dissenting).

109. *Garret F.*, 119 S. Ct. at 1001 (Thomas, J., dissenting).

110. *Id.* (finding that 20 U.S.C. § 1401(a)(17) (1994), amended by 20 U.S.C. § 1401 (22) (Supp. III 1997) specifically included “speech pathology, occupational therapy, and audiology as “related services”).

for their coverage in the statutory language.<sup>111</sup> Nursing services, Garret F.'s biggest need, were missing from this list of included services.<sup>112</sup> Therefore, the explicit language of the statute excluded the services Garret F. sought.<sup>113</sup>

Second, the dissent argued that *Tatro* was wrongly decided even if deference to the Department of Education's regulation was appropriate.<sup>114</sup> The Secretary proposed that "excluded medical services" were those "'services relating to the practice of medicine.'"<sup>115</sup> One year after the proposal, the *Tatro* Court interpreted the definition to only exclude those services that must be supplied by a physician.<sup>116</sup> The dissenting justices reasoned that the *Tatro* Court did not actually defer to the regulation but only speculated on "how a regulation might read if the Department of Education promulgated one."<sup>117</sup> The minority refused to defer to a regulation that never actually existed.<sup>118</sup>

Finally, the dissent addressed the District's argument that any statute enacted pursuant to the spending power of Congress, as was the IDEA, must be unambiguous.<sup>119</sup> Statutes passed pursuant to the Spending Clause must be unambiguous because they are the equivalent of a contract between the states and the federal government.<sup>120</sup> If a state is unaware of the meaning of certain terms, the state cannot legally accept the contract.<sup>121</sup> The dissenting justices explained that the IDEA was clear, until the holding of this case, as to what states must provide in order to receive federal funding.<sup>122</sup> Prior to *Garret F.*, it was understood that states had to provide an appropriate education by attempting to integrate the handicapped children into the public school system, yet the school districts need not provide "medical services."<sup>123</sup> Furthermore,

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111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 1001-02. See Brief for the United States as Amicus Curiae at 22-24, Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. (1999) (No. 96-1793) available in WESTLAW at 1998 WL 541989 for a discussion on how Congress ratified the Secretary's interpretation of "related services" and the bright-line test.

115. Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992, 1002 (Thomas, J., dissenting) (quoting 47 Fed. Reg. 33,838 (1982)).

116. *Id.*

117. *Id.*

118. *Id.* Furthermore, the dissenting justices found it inappropriate to defer to the litigation position that has been taken by the Department of Education because this position does not reflect the "agency's fair and considered judgment." *Id.* at 1002 n.3 (quoting *Auer v. Robbins*, 519 U.S. 452, 462 (1997)).

119. *Id.* at 1002.

120. *Id.*

121. *Id.* (citing *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

122. *Id.*

123. *Id.* at 1002-03. Although the main goal of the IDEA is to integrate handicapped children into a regular school setting, "[t]he Act expressly acknowledges that 'the nature or severity of the handicap [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.'" Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v.

the districts must "provide disabled children with health-related services that school nurses can perform as part of their normal duties."<sup>124</sup> If the services cannot be performed in such a manner they are excluded.<sup>125</sup> Any other interpretation, including that used by the majority, would place unknown burdens upon the states.<sup>126</sup> The dissenting justices opined that because of the majority's ruling, states, or rather their school districts, would now be faced with an unanticipated financial burden, in total disregard of the "principles of construction applicable to Spending Clause legislation."<sup>127</sup>

### C. The Future of IDEA

Predicting the future is a difficult, if not impossible, task. *Garret F.* made this task easier with its guarantee of greater access to public schools for handicapped children in the United States.<sup>128</sup> *Garret F.* makes it clear that school districts must educate and assimilate more handicapped children into public schools at their own expense, by allowing more services to be construed as "related."<sup>129</sup>

One must also remember what *Garret F.* does not guarantee: a level of education once access is obtained.<sup>130</sup>

Although *Garret F.* widened the door of access for handicapped children, others advocate a system that would go even further and guarantee a level of education.<sup>131</sup> One such individual is Tara L. Eyer, the author of *Greater Expectations*.<sup>132</sup> Eyer explicitly attacked the holding of *Board of Education of Hendrick Hudson Central School District v. Rowley*<sup>133</sup> and its limited effect of guaranteeing access to the public schools, but no level of education.<sup>134</sup> The laudable goals espoused in *Greater Expectations* are based on the 1997 amendments made to the

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Rowley, 458 U.S. 176, 181 n.4 (1982) (quoting 20 U.S.C. § 1412(5) (1976) (current version at 20 U.S.C. § 1412 (5)(A) (Supp. III 1997))).

124. Cedar Rapids Community Sch. Dist. v. Garret F., 119 S. Ct. 992, 1003 (Thomas, J., dissenting). The services supplied to Amber Tatro were services that school nurses were authorized to perform. *Id.* The dissent, quoting *Tatro*, stated, "[i]t would be strange indeed if Congress, in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped." *Id.* (quoting Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 893-94 (1984)). The services *Garret F.* needed, however, were not those typically supplied by the school nurse. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 1000.

129. *Id.*

130. *Id.*

131. Eyer, *supra* note 40, at 1.

132. *Id.*

133. 458 U.S. 176 (1982).

134. Eyer, *supra* note 40, at 1.

IDEA.<sup>135</sup> In that amendment, Congress changed IEP requirements, implicitly creating higher expectations for schools in the education of handicapped children.<sup>136</sup> Eyer did not advocate that all handicapped children in public schools be given the opportunity to reach their fullest potential.<sup>137</sup> Rather, she argued that if a child needs extra assistance to make his or her education more meaningful, the child should be afforded the opportunity.<sup>138</sup>

Furthermore, *Garret F.* will lead to greater social contribution by the handicapped. When an individual receives an education, even a remedial education, he or she typically has a better chance of becoming a productive and contributing member of society. Education allows an individual the opportunity to learn how to care for him or herself, personally and financially. If an individual does not receive at least a remedial or grade school education, the likelihood that they can take care of themselves decreases.

The alternate solution would be continually supporting these individuals with welfare or some other form of public assistance. This assistance is going to cost money, much more than would be needed if the individual had received an education and learned to either wholly or partially support his or her own needs. *Garret F.* will allow more handicapped persons to become positive, productive, tax-paying members of society and to contribute in a way they never could in the past.<sup>139</sup>

## V. CONCLUSION

The holding in *Garret F.* requires school districts to supply handicapped students with "meaningful access to the public schools," by supplying "related services."<sup>140</sup> If a nurse or other qualified individual can provide the service, it is a "related service."<sup>141</sup> The dissent in *Garret F.*,

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135. *Id.* at 15. See also 20 U.S.C. § 1414(d)(1)(A) (Supp. III 1997).

136. Eyer, *supra* note 40, at 15.

137. *Id.* at 18.

138. *Id.* Amy Rowley, the defendant in *Board of Education of Hendrick Hudson Center School District v. Rowley*, 458 U.S. 176 (1982) did quite well in school even with her disability, but some children do not fair as well and they need to be given greater resources. Eyer, *supra* note 40, at 18. Eyer's position is illustrated in *Fort Zumwalt School District v. Clynes*, 119 F.3d 607 (8th Cir. 1997). *Id.* at 10. Nicholas Clynes was in the third grade and could not "write a complete sentence." *Id.* Although Nicholas was receiving below average or failing grades, the school district, when rewriting Nicholas' IEP for the next year, decreased the time he was to spend "in the learning disabled classroom." *Id.*

139. Interview with Douglas R. Oelschlaeger, Counsel for Garret F. (1999). Neither Mr. Oelschlaeger nor I found any figures that compare the cost of sending a handicapped child to school per the IDEA and what it costs to care for the same child through other forms of welfare. However, I agree with Mr. Oelschlaeger's assumption that the cost would be more to care for the handicapped with other forms of welfare, at least with an education the child will have a chance to succeed.

140. *Cedar Rapids Community Sch. Dist. v. Garret F.*, 119 S. Ct. 992, 1000 (1999).

141. *Id.* at 997.

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and the circuit court decisions that *Garret F.* overturned, found that this test created too onerous of a burden for school districts.<sup>142</sup> However, others, including the majority in *Garret F.*, see it as a concept established by *Tatro* and one commensurate with the purpose of the IDEA.<sup>143</sup>

No one truly knows what the future will be like for handicapped children, but it is the opinion of this author that the more we do for them today the better off they, and society as a whole, will be tomorrow. Each person in this world has a talent that needs to be discovered and the holding of *Garret F.* will allow more children to discover their talents. By affirming the Eighth Circuit, the Supreme Court has guaranteed the qualified handicapped children of this country an opportunity to achieve academic success and to create a better tomorrow.

Matthew J. Schaefer†

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142. *Id.* at 1003.

143. *Id.* at 998.

† Dedicated to Maureen Elizabeth Baker, my niece and goddaughter, and James R. Schaefer, my father.