

**Utah Institute on Special Education Law
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**Health & Medical Services for
Children with Disabilities**

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Learning Objectives

- Review of Cedar Rapids and Tatro decisions issued by the U.S. Supreme Court
- Discussion of “Bright Line Test”
- Review applicable laws and regulations
- Differentiate between “health services” and “medical services”

3

INTRODUCTION

The number of students with serious health care needs in public schools is on the rise, and the growth in numbers can be expected to increase.

4

Look how far we've come ...

- ***State v. Board of Educ. of City of Antigo,***
(WI Supreme Court).
 - An action to compel the reinstatement of the child to the public schools of the City of Antigo.

5

**RELEVANT LAWS AND
GUIDANCE**

- ***Individuals With Disabilities Education Act***
(IDEA)
 - “free appropriate public education”
 - defined as special education and related services

6

RELEVANT LAWS AND GUIDANCE



– Regulations define “related services” to include:

- “Medical services for diagnostic or evaluation purposes”
- “School health services and school nurse services”
- Not required to provide “medical services”

7

RELEVANT LAWS AND GUIDANCE



- ***Rehabilitation Act of 1973 (Section 504) Regulations***
 - provide reasonable accommodations and related aids and services to students with disabilities
 - if the services are necessary for a student with a disability to effectively participate in the educational program

8

RELEVANT LAWS AND GUIDANCE

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- ADA Amendments Act of 2008
 - “mental or physical impairment”
 - “substantially limits”
 - “major life activity”

9

CASE LAW

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- U.S. Supreme Court Case Law
 - *Irving Independent Sch. Dist. v. Tatro*
 - *Cedar Rapids Community Sch. Dist. v. Garret F.*

10

CASE LAW



- The test that emerged from the *Tatro* and *Garret F.* cases is:
 - ***BRIGHT LINE TEST:*** *If the service being requested can be provided by someone who has been trained to provide the service and is not the type of service that can only be provided by a licensed physician, the service being requested is a related service that must be provided by the District at no cost to the parents*
 - reiterated by the U.S. Department of Education in its regulatory guidance

11

CASE LAW



- Examples of health services that must be provided by school districts
 - » suctioning a student's tracheostomy tube
 - » monitoring and suctioning a portable ventilator system

12

CASE LAW

- » applying ointment to a student's eyes who cannot close his eyes
- » clean intermittent catheterization
- » routine checking of external components of a surgically implanted device

13

CASE LAW

- Examples of health services that need not be provided by a school district
 - » optimization (e.g., mapping) a surgically implanted medical device

14

CASE LAW

- » maintenance of a surgically implanted medical device
- » replacement of a surgically implanted medical device

15

CASE LAW

- Recent case law
 - *Petit, et al. v. U.S. Dep't of Educ.* (D.D.C. 2008)
 - Service at issue: Cochlear implant mapping

16

CASE LAW

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- *Petit, et al. v. U.S. Dep't of Educ.* (D.D.C. 2010)
 - Service at issue: Cochlear implant mapping

17

CASE LAW

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- Other Case Law
 - *River Forest Sch. Dist. No. 90 v. ISBE* (N.D. Ill. Apr. 17, 1996)
 - Service at issue: Therapy received by a 9-year-old student with multiple disabilities at rehabilitation facilities where his parents unilaterally placed him following brain surgery

18

CASE LAW



- *Butler v. Evans* (7th Cir. 2000)
 - Service at issue: Placement in a psychiatric hospital

19

CASE LAW



- *Kerry M. v. Manhattan Sch. Dist.* (N.D. Ill. Sept. 29, 2006)
 - Service at issue: Medical equipment

20

CASE LAW



- *John A. v. Bd. of Educ. for Howard County* (Md. 2007)
 - Service at issue: Requiring a school to abide by physician’s medical directives and administer prescribed medication to the child during the school day

21

CASE LAW



- *C.N., by Newman v. Los Angeles Unified Sch. Dist.* (C.D. Cal. Oct. 9, 2008)
 - Service at issue: The administration of feedings through the “G-tube plunge” method vs. the “G-tube gravity” method

22

CASE LAW

- *Loch v. Edwardsville Sch. Dist.* (7th Cir. 2009)
 - Service at issue: Courses at a community college

23

SPECIFIC EXAMPLES

- Cochlear Implants?
- Independent Medical Evaluation?
- Medication?

24

SPECIFIC EXAMPLES

- Excess Dosage?
- Condition Receipt of Services on Administration of Medication?
- Diabetes?

25

SPECIFIC EXAMPLES

- Bus Transport?
- DNR Order?
- A/V Monitoring?
- Nutritional Services?
- Psychotherapy?

26

SPECIFIC EXAMPLES

- Remember!
 - Neither the continuous nature of a service, its high cost, or the fact that additional personnel will need to be hired to provide it renders a service “medical”

27

SPECIFIC EXAMPLES

- Services may be required on the way to and from school, not just at school
- When addressing the failure to provide a related medical service, courts have not been persuaded by the excuse that the service was not specifically listed on a student’s IEP

28

SPECIFIC EXAMPLES



- Should a nursing care plan be incorporated into the child's IEP?
- Be mindful of changing medical technology and implications with standards set forth in *Garret and Tatro*

29

Questions?



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30