Playing Doctor: Discerning What Medical Services School Districts Must Provide to Disabled Children under Cedar Rapids Community School District v. Garret F.

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I. INTRODUCTION

Three sixteen-year-old girls, having just watched the San Saba Panthers lose their second district football game, pulled onto Farm Road 1480 and nosed the old Chevy towards home. Just as they pulled onto the farm road, a speeding truck veered across the road’s dividing line, smashing head-on into the Chevy. The three girls did not lose their lives, but each suffered significant injuries. Rebecca’s spinal cord injuries left her a quadriplegic requiring someone to re-position her every hour, to administer food and drink, and to care for her bathroom needs. Amy’s injuries were more severe, leaving her dependent upon a ventilator and somewhat mentally incapacitated due to minor brain damage. The ventilator must be tested routinely which then necessitates someone providing Amy oxygen through the use of an ambu bag. Her diminished mental capacity and ventilator dependency restricts her ability to move about freely. Megan suffered the greatest injuries. Her cerebral damage severely affects her cognitive abilities as well as restricting her ability to communicate. She is mobile

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only through the assistance of another, and in order to breathe, Megan, like Amy, depends on a ventilator.

One year after the accident, all three girls re-enrolled in San Saba High School. Although the school district’s superintendent wanted to help the girls by enrolling them in classes, his school budget simply could not provide for two to three separate attendants/teachers to care for the children. Amy needs a trained nurse at a cost of about thirty thousand dollars; two more attendants hired solely for Megan and Rebecca would, at a minimum, cost twenty-five thousand dollars each. The school district offered to enroll the girls in classes but refused to provide the continuous one-on-one care each required. Three weeks later, the superintendent received a letter from an attorney representing the three girls, and a hearing was set for the next month. The question to be addressed was this: Does federal law, namely the Individuals with Disabilities Education Act of 1975, ("IDEA"), mandate that the school district shoulder the added eighty thousand dollar burden of educating Rebecca, Amy, and Megan, or does the excessive financial burden and cost allow the district some other alternative?

II. THE HISTORICAL BACKGROUND OF THE EDUCATION OF DISABLED CHILDREN

Appropriate education for children with disabilities reflects yet another example of the clash between high-minded ideals and stark reality. Historically, America’s public schools largely have failed to provide disabled children with many educational opportunities.1 Up until the mid-twentieth century, state courts and legislatures determined the extent to which children with disabilities received an education.2 However, in 1965 the educational needs of over eight million children with disabilities coupled with the lack of appropriate resources needed to alleviate such needs spurred Congress to take action.3 With the enactment of the IDEA,

2See Department of Pub. Welfare v. Haas, 154 N.E. 2d 265, 270 (Ill. 1958) (holding that state compulsory education did not require the state to provide a free public education to children with mental impairments); Beatie v. Board of Educ., 172 N.W. 153, 155 (Wisc. 1919) (excluding a capable child from a public education because of a speech impediment, facial contortions, and uncontrollable drooling); Watson v. City of Cambridge, 32 N.E. 864, 865 (Mass. 1893) (expelling a child from public school because the child was “weak in the mind”).
Congress directly addressed the inadequacies of state education programs. The purpose of IDEA is "to assure that all children with disabilities have available to them, . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." The IDEA applies to varying rights and obligations concerning disabled children. One particularly ambiguous area concerns the medical/health rights and obligations provided under the IDEA.

Many disabled children require sophisticated and/or continuous medical assistance, leaving school districts and courts nationwide unsure as to whether they must provide such medical attention under the "related services" provision of the IDEA. The United States Supreme Court addressed the issue in Irving Independent School District v. Tatro. In considering whether a public school must provide intermittent catheterization for an eight-year-old child with spina bifida, the Court employed a two step analysis. First, the Court determined that the catheterization procedure was a "related service" because it was "required to assist a handicapped child benefit from special education." Moreover, because the intermittent catheterization could be performed by someone other than a doctor, the Court held that no medical exclusion applied to relieve the school district of its obligation to provide the service.

Despite this decision, subsequent lower court cases have used varying standards in determining what medical/health services they were required

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6See Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883, 892 (1984) (utilizing a physician-based test to determine that a child's requested health services must be provided by the school district); Neely v. Rutherford County Sch., 68 F.3d 965, 971 (6th Cir. 1995), rev'd, 851 F. Supp. 888 (M.D. Tenn. 1994) (holding that a school district is not required to provide every service that is medical in nature); Clovis United Sch. Dist. v. California Office of Admin. Hearings, 903 F.2d 635, 644 (9th Cir. 1990) (per curiam) (concluding that Tatro's physician-based test was arbitrary and instead considered the extent and nature of the services performed); Tice v. Botetourt County Sch. Bd., 908 F.2d 1200, 1209 (4th Cir. 1990) (remanding the case to the district court to consider the nature and purpose of the services rather than the identity of the service provider); Timothy W. v. Rochester New Hampshire Sch. Dist., 875 F.2d 954, 962 (1st Cir.), cert. denied, 493 U.S. 983 (1989) (relying on the IDEA's legislative intent and plain meaning as opposed to physician-based test).
8See id. at 890.
9Id.
10See id. at 892.
to provide to disabled children, as well as what analysis to employ in regard to interpretation of the IDEA.11

To address this inconsistency, the United States Supreme Court in March of 1999 handed down Cedar Rapids Community School District v. Garret F.12 In Garret, the Court relied heavily on Tatro in determining that congressional intent to provide disabled children with free appropriate education extended the responsibilities of the public schools in the realm of medical services.13 The Court found that "related services" stemmed from a congressional desire to "enable a disabled child to remain in school during the day [and to] provide the student with "the meaningful access to education that Congress envisioned."14 The burden of providing enhanced and sophisticated health services creates a very real and practical dilemma. The Court recognized this dilemma in Garret, saying that "[t]he District may have legitimate financial concerns, but our role in this dispute is to interpret existing law."15

Garret signals a strong step towards providing disabled children with meaningful educational opportunities. Many disabled children cannot function within a school room atmosphere without specific health related attention. The Supreme Court has interpreted the relevant IDEA provisions so as to require schools to meet many of those special needs.16 Such an interpretation, however, may adversely affect the nation’s schools as many school districts lack the financial capability necessary to render specific, sophisticated and/or continuous health services. This Article will discuss the history of Congressional efforts to integrate disabled children into the nation’s schools in Part II, present Garret and its rule in Part III, and explore the potential consequences of the Garret decision in Parts IV and V.

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11See Neely v. Rutherford County Sch., 68 F.3d 965, 971 (6th Cir. 1995), rev'd, 851 F. Supp. 888 (M.D. Tenn. 1994) (holding that a school district is not required to provide every service that is medical in nature); Clovis Unified Sch. Dist. v. California Office of Admin. Hearings, 903 F.2d 635, 644 (9th Cir. 1990) (per curiam) (concluding that Tatro's physician-based test was arbitrary and instead looking to the extent and nature of the services performed); Tice v. Botetourt County Sch. Bd., 908 F.2d 1200, 1209 (4th Cir. 1990) (remanding the case to the district court to consider the nature and purpose of the services rather than the identity of the service provider); Timothy W. v. Rochester New Hampshire Sch. Dist., 875 F.2d 954, 962 (1st Cir.), cert. denied, 493 U.S. 983 (1989) (relying on the IDEA's legislative intent and plain meaning as opposed to physician-based test).


13Id. at 997-99.

14Id. at 997 (quoting Tatro, 468 U.S. at 891).

15Id. at 999.

16See id. at 1000.
A. History and Requirements of IDEA

The federal government’s involvement in procuring certain rights for disabled children, although only recent, was marked most significantly in 1958 with the appropriation of funds for the training of teachers of the mentally retarded.17 Seven years later, in an effort to address the disparate opportunities available to disabled children, Congress drafted the Elementary and Secondary Education Act ("ESEA").18 The ESEA provided federal funding to bolster educational programs for both low income children and children with "special educational needs."19 Despite this attempt to increase educational opportunities, Congress found existing programs were largely ineffective and, in 1966, amended ESEA by establishing a grant program so as to increase state participation.20

In 1970, Congress repealed ESEA and replaced it with the Education of the Handicapped Act ("EHA").21 This new legislation both broadened the scope of the repealed ESEA and consolidated all educational programs for disabled children into one statute to improve educational programs for disabled children.22 Despite Congress’s increased efforts in encouraging state development of special education programs, the lack of specific guidelines for the use of federal funds resulted in continued inadequacies.23 Congress has since then asserted greater effort in assuring every disabled child a right to an education. This increased prerogative is embodied in the IDEA, the current legislation addressing the educational needs of the disabled.24

In order to receive federal funding under the IDEA, a participating state must provide every child classified with a disability a "free appropriate

19Id.
public education."25 The state must submit a detailed plan to the Secretary of Education setting forth certain policies and procedures designed to guarantee a free appropriate public education.26 In general, a free appropriate public education consists of a special educational curriculum and related services that allow disabled children the opportunity of a free education.27 All fifty states currently receive funding and therefore must comply with the IDEA.28

The Department of Education further specified which responsibilities a school must shoulder to ensure that children with disabilities receive a free appropriate public education, or ("FAPE").29 To provide a FAPE, parents and educators collaborate to design an Individual Educational Program ("IEP"), which records the child's present levels of performance and formulates goals to be achieved during the school year.30 This IEP must specifically denote which "related services" the child requires.31 "Related services" are those services that are necessary for the child to benefit from special education.32 These services are defined in the IDEA as including:

- transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation . . . [and] counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education.33

Furthermore, the regulations set out by the Department of Education also address the requirements found in "related services."34 Two particularly important regulations address the health services that must be provided and those medical services that a school district is not required to

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30 See 20 U.S.C. § 1401(a)(20) (1994). The IEP is a document that is created as a result of a meeting that includes a representative of the local school district, the teacher, the parents or guardian, and when appropriate, the disabled child. See § 1414(a)(5).
31 See id.
33 Id.
tender. The regulations assert that "medical services" are those that 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." Similarly, the regulations define school health services as those that can be "provided by a qualified school nurse or other qualified person."

Although Congress has significantly impacted the way in which public schools educate children with disabilities through the IDEA and subsequent regulations, the IDEA only sets out basic parameters. This has left the courts to resolve the ambiguities in the statute and its regulatory scheme.

B. Disparity in the Interpretation of Related Services

Students with complex health care needs, the schools they attend, their parents, nurses, and teachers have been uncertain as to which "related services" schools are required to provide and what constitutes a "medical service" exclusion. The nation's lower courts have formulated a number of tests and approaches in ad hoc fashions, creating fragmented results from state to state. The United States Supreme Court finally addressed the ambiguities posed by the "related services" provision in the IDEA in Irving Independent School District v. Tatro.

The eight-year-old respondent in Tatro suffered from a defect called spina bifida, which prevented her from emptying her bladder voluntarily. As a result, she needed to be catheterized every three to four hours to avoid injuries to her kidneys. This simple procedure, which is capable of

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37See Tokarcik v. Forest Hills Sch. Dist., 665 F.2d. 443, 455-59 (3rd Cir. 1981), cert denied, 458 U.S. 1121 (1982) (considering different factors such as the capacity of personnel involved in rendering the service, the amount of time required for the service, and the expenditure of funds in determining what related services were due to handicapped children); McKenzie v. Jefferson, 566 F. Supp. 404, 412 (D.D.C. 1983) (upholding school district's refusal to pay for emotionally disturbed child's outpatient services finding that the purpose of child's hospitalization is not related to her education); Darlene L. v. Illinois St. Bd. of Ed., 568 F. Supp. 1340, 1343-46 (N.D. Ill. 1983) (holding that because psychiatric treatment was not included in the list of related services, the school was not required to provide the service); Papacoda v. Connecticut, 528 F. Supp. 68, 72 (D. Conn. 1981) (concluding that therapy for an emotionally disturbed child did not constitute a medical service because it was not provided by a physician, thereby qualifying as a related service).
39See id. at 885.
40See id.
performance by a layperson with less than an hour's training, is known as clean intermittent catheterization ("CIC"). The school district's program to educate the child made no provision for school personnel to administer CIC. The child, through her mother, brought suit to determine whether the school district must administer CIC.

In an opinion authored by Chief Justice Burger, the Supreme Court employed a two-step analysis in an effort to determine whether the EHA required the Irving Independent School District to administer CIC. Recognizing congressional intent to provide a "free appropriate public education" to all handicapped children, the Court first considered whether CIC was required to assist a handicapped child to benefit from special education. A "free appropriate public education" as stated in the EHA is defined as "special education and related services." The Court found that in order for the eight-year-old petitioner to attain the benefit of a special education, the administration of CIC by the school was necessary and therefore qualified as a related service.

The second inquiry addressed by the Court considered whether CIC constituted a "medical service," thereby exempting the school from having to provide CIC. The Court agreed with a regulation promulgated by the Secretary of Education that defined medical services as "services provided by a licensed physician." Acknowledging that CIC could be performed easily by a lay person with minimal training and that it did not require

41See id.
42See id. at 886.
43See id.
44See id. at 888-89.
45Id. at 889 (quoting 20 U.S.C. § 1412(1) (1975)).
46See id. at 890.
47Id. at 889 (quoting 20 U.S.C. § 1401(18)(1975)). Specifically, the "special education and related services" must:

have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the state educational agency, (C) include appropriate preschool, elementary, or secondary school education in the state involved, and (D) are provided in conformity with the individualized education program required under section 1414(a)(3) of this title.

48See Tatro, 468 U.S. at 891.
49Id. at 891-92 (quoting 20 U.S.C. § 1401(17) (1975)).
50Id. at 892 (quoting 34 C.F.R. § 300.24(b)(4)(1983)).
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performance by a licensed physician, the Court held that CIC was a related service that was not an excluded medical service.51

Despite the Supreme Court's ruling in Tatro, a divergence among the nation's lower courts emerged regarding what medical/health services a school district would be required to render.52

In Neely v. Rutherford County School, for example, the Sixth Circuit utilized an undue burden test in finding that the health services required by a seven-year-old with severe breathing difficulties constituted such a heavy economic burden that the school district was not compelled by the IDEA to provide such services.53 Although the court recognized the objective of the IDEA to guarantee handicapped children the substantive right to a free appropriate education,54 the court found that it was appropriate to consider the risk and liability factors of a school district in deciding whether a service that is medical in nature is subject to medical exclusion under the IDEA.55

The Neely court, therefore, distinguished the Supreme Court's ruling in Tatro.56 In Neely, the court held that the health services required by the student in Tatro could be provided by someone other than a nurse and, consequently, were not unduly expensive.57 The court in Neely concluded "the better interpretation of Tatro to be that a school district is not required to provide every service which is 'medical in nature.'"58 This interpretation of Tatro allows a court to balance the cost and the liability risk of the necessary health service in order to determine whether a school district must provide such services. By adopting this interpretation of the

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51See id. at 895.
52See Neely v. Rutherford County Sch., 68 F.3d 965, 971 (6th Cir. 1995), rev'g, 851 F. Supp. 888 (M.D. Tenn. 1994) (holding that a school district is not required to provide every service that is medical in nature); Clovis Unified Sch. Dist. v. California Office of Admin. Hearings, 903 F.2d 635, 643-44 (9th Cir. 1990) (per curiam) (rejecting a rigid licensed physician test as arbitrary and instead looking to the extent and nature of the services performed); Tice v. Botetourt County Sch. Bd., 908 F.2d 1200, 1208-09 (4th Cir. 1990) (remanding the case to the district court to consider the nature and purpose of the services rather than the identity of the service provider); Timothy W. v. Rochester New Hampshire Sch. Dist., 875 F.2d 954 (1st Cir.); cert. denied, 493 U.S. 983 (1989) (relying on the IDEA's legislative intent and plain meaning as opposed to physician-based test); MaComb County Intermediate Sch. Dist. v. Joshua S., 715 F. Supp. 824, 827-28 (E.D. Mich. 1989) (adhering to the physician-based test of Tatro to determine what related services the school district must provide).
5368 F.3d 965, 973 (6th Cir. 1995).
54See id. at 969.
55See id. at 971.
56See id. at 970-71.
57Id. at 971.
58Id. (emphasis added).
IDEA and *Tatro*, the *Neely* court seemingly rejected the physician-based test utilized by the Supreme Court in *Tatro*. The *Neely* decision did not represent an isolated departure from the *Tatro* holding. The majority of circuit courts, in fact, ignored the physician-based test utilized in *Tatro*, opting instead for some form of cost-based analysis.  

*Detsel v. Board of Education of Auburn* provides another example evincing both the departure from *Tatro* as well as the variance among the lower courts regarding how to determine whether or not a school district must extend medical/health services to a disabled child. The physical ailments of the seven-year-old girl in *Detsel* were more severe than the dysfunctional bladder of the child in *Tatro*. The girl, Melissa, required constant respirator assistance, administration of medication through a tube in her jejunum, the ingestion of a saline solution into her lungs, subsequent striking about her lungs and suctioning of mucus, and a care-taker adept at cardiopulmonary resuscitation.

In determining whether the school district had to provide those services, the district court first concluded that the medical services Melissa needed were "related services." Without these services, Melissa would be unable to attend school during the day. The court then stated that qualification as a related service did not compel the school board to provide such services. In other words, the health service in question may constitute a medical service specifically excluded by Section 1401 (17).

The court then held that whether a supportive service is a medical service is a matter of the nature and extent of the service requested. Claiming that the Supreme Court clearly considered the nature and extent of the medical/health services at issue in *Tatro*, the *Detsel* court rejected the contention that *Tatro* embraced the physician-based test of medical service. This interpretation contradicted the Secretary of Education's ruling which linked excluded medical services with services that are performed by a licensed physician, as opposed to a school nurse or some

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59 *See supra* note 52.
61 *See id.* at 1024.
62 *See id.* at 1026.
63 *See id.*
64 *See id.*
65 *See id.*
66 *See id.*
67 *Id.*
other qualified person. The petitioner in Detsel argued that this regulation essentially coupled medical services, (those services that school districts are exempt from having to provide), with the status of the person performing the task. Even though the Detsel court cited the Supreme Court’s support for the Secretary of Education’s interpretation, the Detsel court nevertheless claimed that “[i]t is clear that the Supreme Court considered the extent and nature of the service performed in the Tatro decision.” In conclusion, the court held that while the services Melissa needed did not necessitate performance by a licenced physician, they were nevertheless excluded because they more closely resembled medical services than those ordinarily performed by a school nurse.

Despite Tatro’s expressed support of the physician-based test as articulated by the Secretary of Education, subsequent lower court cases have evinced a disparate interpretation of the medical service exclusion. Both the Detsel and the Neely decisions aptly illustrate this phenomenon.

III. THE RENEWED BURDEN: CEDAR RAPIDS V. GARRET

In the wake of the Court’s own 1984 decision in Tatro and the subsequent divergence among the lower courts interpreting Tatro, the Supreme Court once again granted certiorari to determine what related services a disabled child was due to receive under the IDEA.

In 1987, Garret Frey was severely injured in a motorcycle accident at the age of four. Although Garret’s mental capabilities were unaffected, injury to his spinal cord left him a quadriplegic and ventilator dependent. Ventilator dependent means that, to breathe, Garret relies on external aid, an electronic ventilator. When the ventilator requires maintenance, a person manually pumps an air bag, (ambu bag), attached to Garret’s tracheotomy. A motorized wheel chair controlled by a puff and suck

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69637 F. Supp. at 1025.
70Id. at 1026.
71See id. at 1027.
73See supra note 11.
75See id.
76See Petitioner's Brief at 3, Garret F. (No. 96-173).
straw enables Garret mobility. He also is able to operate a computer using head movements.

Garret began kindergarten in the Cedar Rapids Community School District in 1988. Pursuant to an agreement between Garret’s parents and the school district, Garret’s family provided the medical attention Garret required during the school day. Such medical attention was extensive as Garret’s health demanded the aid of a personal attendant within hearing distance at all times. Garret needed urinary bladder catheterization about once a day, suctioning of his tracheotomy as needed, food and drink on a regular schedule, repositioning, ambu bag administration if the ventilator malfunctioned, ventilator setting checks, observation for respiratory distress or autonomic hyperreflexia, and bowel disimpactation in cases of hyperreflexia.

In kindergarten, Garret’s eighteen-year-old aunt, despite having no formal medical training, administered these services. From the first to the fourth grades, Garret’s parents paid for a licensed practical nurse (“LPN”) to care for their child. Similarly, on week-nights an LPN cared for Garret, checking him every two hours as he slept.

In 1993, when Garret started fifth grade, Garret’s mother, Charlene, requested that the school district provide for Garret’s health needs while he was at school. When the school district refused, Charlene, pursuant to the IDEA, administratively challenged the school district’s denial. Cedar Rapids School District initially refused the medical assistance requested by Garret’s mother and continued to deny such an obligation, maintaining that the IDEA does not require continuous one-on-one nursing services. Such exclusive and immediate care appeared too expensive for public schools to provide.

See Garret F., ___U.S.___, 119 S. Ct. at 995.

See id.

See Respondent’s Brief at 3, Garret F. (No. 96-173).

See id. at 4.

See id. at 4; See also Petitioner’s Brief at 4, Garret F. (No. 96-173) (describing autonomic hyperreflexia as a life threatening abnormal response of the autonomic nervous system that can occur in a ventilator-dependent individual, resulting in elevated blood pressure and demanding immediate treatment. Garret has experienced several episodes of autonomic hyperreflexia).

See id. at 2 n.1.

See id. at 2.

See id. at 6.

See Garret F., ___U.S.___, 119 S. Ct. at 996.

See id.
The administrative judge found that the IDEA created the opportunity for health impaired children to receive “special education and related services” when their disabilities adversely affect their academic opportunities. The administrative judge further noted that federal regulations “distinguish 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.” The administrative judge found that the district must provide the former, but need not provide the latter unless those medical services were for diagnostic or evaluation purposes as stated in section 1401(a)(17). After a hearing, the administrative judge found that the school district had to both reimburse the Garret’s family for the 1993-94 school year and provide for Garret’s further medical/health needs while he was at school.

Both parties filed motions for summary judgment in the district court for the Northern District of Iowa, and the court granted summary judgment in favor of Garret. The school district appealed, and the Eighth Circuit affirmed the trial court’s decision by finding that the school district was required to administer the medical/health services necessary to allow Garret to attend school. The court relied heavily on the Supreme Court’s ruling in Tatro by employing the two part analysis utilized in Tatro and by adhering to Tatro’s distinction between a medical service that a school must provide and a medical service it does not have to provide. Ultimately, the court held that because the services needed by the handicapped student can be provided by a school nurse or lay person as opposed to a licensed physician, the IDEA compels the school district to provide such services. The Eighth Circuit claimed that this physician versus school nurse dichotomy was a bright-line test established by the Tatro court and that the fragmented decisions of other lower courts reflected their erroneous reliance on the dicta in Tatro.

In a seven-two opinion authored by Justice Stevens, the Supreme Court affirmed the Eighth Circuit’s finding that Garret Frey was entitled to the

81See id.
82Id. (quoting 34 C.F.R. § 300.24(b)(4), (b)(12) (1998)).
83See id. at 996.
84See id.
85See id.
86See Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822, 824 (8th Cir. 1997).
87See id. at 824-25.
88See id.
89See id. at 825.
supportive services necessary to ensure his free appropriate education under the IDEA.\textsuperscript{97}

The Court initially noted that the legislature's purpose in enacting the IDEA was to ensure that children with disabilities receive a "free appropriate public education" despite their special needs.\textsuperscript{98} The two step analysis established by the Court in \textit{Tatro} was again utilized to determine what medical/health services the school must render in order to provide a child such an education.\textsuperscript{99}

The Court found that the first step of the \textit{Tatro} analysis was easily satisfied.\textsuperscript{100} The health assistance Garret needed involved services that would enable a disabled child access to public education and therefore qualify as a related service.\textsuperscript{101} The second step addressed whether Garret's health needs constituted "medical services," thereby absolving the school from providing these services.\textsuperscript{102} The Court affirmed the status-based interpretation it established in \textit{Tatro}, stating that excluded medical services are those services that are performed by a physician.\textsuperscript{103} Although Garret's needs require continuous one-on-one personal attention, such care can readily be given by a school nurse or other qualified person.\textsuperscript{104} The Court further supported this interpretation of excluded medical services by citing that the Secretary of Education had previously concluded that medical services referred to services that must be performed by a licensed physician.\textsuperscript{105} Finally, the majority addressed the validity of cost-based, multi-factor tests proposed by some lower courts.\textsuperscript{106} The Court referred to the text of the IDEA in concluding that no IDEA provision supports such a multi-factor interpretation\textsuperscript{107} and that the Court would not engage in judicial lawmakers.\textsuperscript{108} Despite the Court's rejection of a cost-based, multi-factor test, the Court recognized the very real possibility that its holding

\textsuperscript{97}See Garret F., ___ U.S. __, 119 S. Ct. at 1000.
\textsuperscript{98}See id. at 995.
\textsuperscript{99}See id. at 997-98.
\textsuperscript{100}See id. at 997.
\textsuperscript{101}See id.
\textsuperscript{102}See id. at 997-98.
\textsuperscript{103}See id.
\textsuperscript{104}See id. at 998.
\textsuperscript{105}See id. at 997-98.
\textsuperscript{106}See id. at 998.
\textsuperscript{107}See id.
\textsuperscript{108}See id. at 999.
might adversely affect the financial stability of the nation’s public schools.\textsuperscript{10}

IV. ANALYSIS OF RELATED SERVICES AND THE MEDICAL SERVICES EXCLUSION IN LIGHT OF GARRET

Despite the increased financial burden the Garret holding will certainly engender, the Supreme Court correctly interpreted congressional intent to increase the chances for handicapped children to experience a free public education. Historically, congressional efforts to provide free public education to handicapped children has been minimally effectuated through a painfully slow evolution.\textsuperscript{11} As is evident by the enactment of increasingly specific statutes, the several states have been reluctant to provide sufficient opportunities to handicapped children.\textsuperscript{12} Instead, the states have sought to avoid much of the necessary expense required to provide better opportunities. The IDEA provides the most opportunity and developed rights that such children have enjoyed to date. Nevertheless, inherent ambiguities in the IDEA resulted in lower courts dissipating the opportunities and rights Congress intended to confer.

Garret’s physician-based test reflects both the Court’s desire to effectuate the articulated purposes of the IDEA and to alleviate the disparate treatment of disabled students throughout the nation. When lower courts in future controversies try to determine whether a disabled child is entitled to certain medical/health services, Garret presents a very high burden for a school district to overcome, thus promoting nationwide uniformity. Such an effect is not solely a result of the physician-based test itself. The test, although purportedly a bright-line test,\textsuperscript{13} remains somewhat unclear. The significance of the physician test rests primarily in the higher standard the test represents, not the clarity of the test itself.

The higher standard is exemplified by contrasting the facts in Garret with those of Tatro. The continuous one-on-one nursing services that Garret needed contrast sharply with the unsophisticated CIC process at issue in Tatro.\textsuperscript{14} Garret ensures that previous lower court reliance on the “nature and extent” of the medical/health service or the “medical nature” of

\textsuperscript{10}\textsuperscript{10}See id.

\textsuperscript{11}\textsuperscript{11}See supra note 1.

\textsuperscript{12}\textsuperscript{12}See Cedar Rapids Community Sch. Dist. v. Garret F., 106 F.3d 822, 825 (8th Cir. 1997).

\textsuperscript{13}\textsuperscript{13}See Garret F., ___ U.S. ___, 119 S. Ct. at 999.

the service will no longer be vehicles by which the courts absolve the level of services to which a disabled child is entitled.

Not only does the Garret holding promote uniformity among the nation’s lower courts by raising the level of medical/health care due a disabled child, Garret reflects the Court’s intention to give full deference to the congressional purpose of educating children.\footnote{Garret F., ___ U.S. __, 119 S. Ct. at 995.} The Court’s adherence to the express language of the IDEA and the policy behind the Act is reflected in several instances. In both Garret and Tatro, the Court began its analysis by re-stating the policy as defined by Congress for the IDEA.\footnote{Id. at 997; Tatro, 468 U.S. at 889 (1984).} In Garret, for example, the Court claimed that “‘Congress sought primarily to make public education available to handicapped children’ and ‘to make such access meaningful.’”\footnote{Garret F., ___ U.S. ____, 119 S. Ct. at 997 (quoting Board of Educ. of Hendrick Hudson Central Sch. Dist., Westchester County v. Rowley, 458 U.S. 176, 192 (1982)).} Congress sought to extend the rights and opportunities of handicapped children through the IDEA.\footnote{See 20 U.S.C. § 1400(d) (Supp. III. 1997).} The Garret court rightly effectuated that intent.

Despite the vigorous dedication to educating handicapped children exhibited by both the Supreme Court and Congress, others raise an eyebrow of practicality, wondering how increased expenses will be absorbed by the nation’s schools. Despite this valid concern, neither the IDEA nor the Court’s 1984 holding in Tatro ever permitted a cost-based analysis to determine what medical/health services a school must provide. Even so, numerous lower courts have relied on cost factors in determining what rights a disabled child gets to enjoy. Cost-based factors are an invalid consideration under the IDEA.\footnote{Part of the definition of a free appropriate education is special education and related services that “have been provided at public expense, under public supervision and direction, and without charge.” 20 U.S.C. § 1401 (8) (A) (Supp. III. 1997).} In fact, the express language of the IDEA specifies that special education must be provided “at no cost to parents.”\footnote{20 U.S.C. § 1401(25). The regulations define “at no cost” as “all specially designed instruction . . . provided without charge,” with the exception of incidental fees that are usually charged to parents of non-disabled children as part of the curriculum. 34 C.F.R. § 300.26 (b)(1) (1999).} In Garret, the Court rightly avoids consideration of the possible financial ramifications confining its analysis to the purpose and language of the IDEA.\footnote{See Garret F., ___ U.S. ____119 S. Ct. at 999.}
Despite its refusal to utilize cost-type factors in analyzing the IDEA, the Court did recognize that their interpretation of the IDEA levies an increased financial burden upon school districts. In dicta, the Court stated that “[t]he District may have legitimate financial concerns, but our role in this dispute is to interpret existing law.” Furthermore, the Court argued that to adopt a multi-factor test would be to engage in judicial law making, thereby infringing on the doctrine of separation of powers.

While it is now too soon after Garret to accurately estimate the impact of the financial burden imposed by the decision, some evidence nevertheless exists. Some advocates claim that the decision will increase the educational opportunities of more than eight million disabled children. Specifically, some eight thousand children are dependent on ventilators, feeding tubes, and other medical aid for survival. Furthermore, a Senate committee estimated that, on average, a handicapped child is twice as expensive to educate as a non-handicapped child.

In light of the impending expense that many schools will be forced to shoulder, Congress must reconsider the funding mechanism now in place. Congress initially intended to fund a significant portion of the total excess cost of special education, offering to, in effect, reimburse forty percent of the expenses incurred in complying with the IDEA. Federal funding, however, did not rise over fifteen percent of the total cost of special education, and appropriations were far less than authorized under the act. This financial strain will eventually force Congress to make one of two choices. Congress must either modify the policy rights and opportunities

121See id.
122See id.
123See 20 U.S.C. § 1400(b)(1) (1994) (finding by Congress that as of 1994, there were more than eight million children with disabilities in the United States).
124The congressional Office of Technology Assessment (OTA) estimated that in any given year there are between 680 and 2,000 children 21 years old and under who receive ventilator assistance. See United States Congress, Office of Technology Assessment, Technology-Dependent Children: Hospital v. Home Care: A Technical Memorandum 20-21 (1987).
126See id.
now available to disabled children, or Congress must restructure the financial mechanism now supporting the nation’s public schools.\textsuperscript{129}

The ambiguous language used in enacting the IDEA relieved the legislature of the unsavory task of defining what medical/health services a school district must provide and placed the onus upon the nation’s courts. The \textit{Garret} Court has boldly responded, allowing disabled children much greater access to free public education despite the attendant costs. The burden has shifted back to Congress to allocate more monies, or at the very least, provide the financial support originally promised when the IDEA was passed. Hopefully, Congress will not now falter, but will instead make the necessary sacrifices to promote the program and policy it created years ago.

\textbf{V. CONCLUSION}

Rebecca, Amy and Megan, prior to the Court’s ruling in \textit{Garret}, might not have received the continuous health services they needed in order to go back to school. A Texas court could easily have relied on the Fifth Circuit’s analysis in \textit{Alamo Heights Independent School District v. Stephen G.}\textsuperscript{130} There, the court considered the expense and effect on other children to determine whether services were due.\textsuperscript{131} For example, an estimated eighty thousand dollar expense coupled with a resulting decrease of monies available to educate non-disabled children would likely color a court’s judgment as to which services the school must provide. \textit{Garret}, however, eliminates such factors. Because \textit{Garret} expressly rejected the consideration of cost-based distinctions,\textsuperscript{132} a Texas court adjudicating Rebecca, Amy and Megan’s request for health services ultimately would be restricted to the two-step process of \textit{Garret} and \textit{Tatro}.

All three girls satisfy the related service prong as the medical/health services they need, if provided, would allow the girls the benefit of special education. The second prong of the inquiry asks whether the services

\textsuperscript{129}As part of the 1997 amendment process, Judd Gregg, a Republican Senator from New Hampshire, introduced, but then withdrew, an amendment that would have mandated increasing IDEA appropriations by about one billion dollars each year until the federal government pays the forty percent that was ideally anticipated when the law was enacted. See Joetta L. Sack, \textit{House, Senate Easily Approve Spec. Ed. Bill}, EDUC. WK., May 21, 1997, at 1, 27.

\textsuperscript{130}\textsuperscript{130}790 F.2d 1153, (5th Cir. 1986).

\textsuperscript{131}See id. at 1160.

needed must be performed by a licensed physician.133 Although there is some room for advocacy in this inquiry, a court would likely cite the continuous one-on-one health services at issue in Garret as illustrative of services that do not require a physician. In short, Garret allows the Texas court little discretion. Rebecca, Amy and Megan are entitled by the letter of the IDEA and its interpretation in Garret, to continuous one-on-one nursing services while at school. Congress has determined that the nation has a vested interest in educating children like Rebecca, Amy and Megan. The vehicle with which to provide such education is in place, and Congress must now take the final step; it must increase the available funding.

133 See id. at 997.