

# THIS JUST IN...

BY  
*Jim Walsh*

DEVELOPMENTS IN SPECIAL EDUCATION LAW

DEC 2009 | NO. 237

## FOREST GROVE REVISITED: SCHOOL WINS

In June of this year the U.S. Supreme Court ruled in favor of parents in a case seeking reimbursement for a private, residential school. But the Court's decision was very limited—it only held that the parents were not *precluded* from seeking reimbursement due to the fact that the student had never received special education services. The Supreme Court remanded the case back to the federal district court for further consideration of the parent's request for tuition reimbursement. On December 8, 2009, the district court ruled in favor of the school district: reimbursement denied. Thus the school district lost a battle but won the war, and all of us can learn from the federal court's decision.

**Background.** It takes a long time for a dispute to go from IEP Team meeting, to hearing, to court, to appellate court, to Supreme Court and back to court. This case dates back to the spring of 2003 when the parents of a student identified as T.A. sought advice about the troubling behavior of their teenaged son. The boy had admitted to his parents that he was regularly using marijuana. There were times when he was so doped up that he could not get out of bed, or speak. He had made over \$1,000 worth of telephone calls to sex talk lines, scanned porn sites on the internet and ran away from home. Any parent would be concerned.

The parents met with Dr. Fulop, who diagnosed T.A. as having ADHD, a dysthymic disorder and some learning

problems. The doctor recommended that the boy should attend Mt. Bachelor Academy (MBA) a residential program in Prineville, Oregon. One week later, in March of 2003, the parents enrolled T.A. at MBA, which charged a monthly tuition of \$5200. One week after that, the parents hired a lawyer.

In April, 2003, the parents requested a special education hearing. T.A. had never been identified as eligible for special education. The school conducted an evaluation of the student in 2001 after his first year of high school, but found him ineligible. The parents agreed with that decision. Two years later his out-of-school behaviors were escalating out of control, but no one had suggested a need for special education.

However, when the parents requested a hearing in 2003, the school conducted a second evaluation. Again, the school's IEP Team concluded that T.A. was not eligible for special education services. The school also considered 504, but kept T.A. out of that program also.

The parents did not challenge the school's decision about T.A. in 2001, but in 2003 they did. They requested a special education due process hearing, asserting that T.A. did in fact qualify for services and was being deprived of a free appropriate public education. They sought reimbursement of the tuition they were paying to MBA.

**The Legal Proceedings.** The hearing officer ruled in favor of the parents in 2003.

ON DECEMBER 8, 2009,  
THE DISTRICT COURT  
RULED IN FAVOR  
OF THE SCHOOL  
DISTRICT:  
REIMBURSEMENT  
DENIED. THUS THE  
SCHOOL DISTRICT  
LOST A BATTLE BUT  
WON THE WAR,  
AND ALL OF US CAN  
LEARN FROM THE  
FEDERAL COURT'S  
DECISION.

WALSH, ANDERSON,  
BROWN, ALDRIDGE  
& GALLEGOS, P.C.  
ATTORNEYS AT LAW

T.A. graduated from MBA with a high school diploma in 2004. In 2005 the federal district court reversed the hearing officer's decision, ruling that the parents were not entitled to tuition reimbursement. In 2008, the 9<sup>th</sup> Circuit reversed that decision, and then the case got national attention because it was accepted for review by the Supreme Court. The Supreme Court issued its ruling on June 22, 2009 and we wrote it up in *This Just In* #231, June, 2009. The Supreme Court's decision was very narrow, dealing only with a single argument made by the school district. The district argued that T.A.'s parents were automatically and forever precluded from recovering tuition because T.A. had never received special education services from a public school. The Supreme Court rejected that argument, thus keeping the case alive. T.A.'s parents could recover the costs of tuition if they could prove that they were entitled to it. But they still had to prove that.

That's why the case went back to the federal district court in Oregon. This month the court issued that decision in favor of the school district: T.A.'s parents were eligible to recover tuition reimbursement, but they were not entitled to it. Why? The court held that "the equities do not support reimbursement in this case." That's legalese for "it just would not be fair."

The court cited several reasons in support of its conclusion, but highlighted one reason as "decisive." The court noted that the parents "appear to have enrolled T.A. in MBA not because of any disability recognized by the IDEA but because of his drug abuse and behavioral problems." The application at MBA, filled out by the father, listed "inappropriate behavior, depression, opposition, drug use, runaway." The court observed that it was significant that "ADHD and trouble with school work were not among the reasons listed."

**Singing Our Song.** This federal court judge reads from the same songbook as educators do. He noted that "the District's responsibility under the IDEA is to remedy the learning related symptoms of a disability, not to treat

the underlying disability." Schools are not responsible for treating a student's underlying disability: "That responsibility rests with the parents and medical professionals."

The final paragraph of the judge's order is all about money, which is the elephant in the room in much of special education litigation. A school official had testified that anywhere from 285 to 570 students in the district had ADHD. The judge then took the \$5200/month tuition figure and multiplied it by 285 and 570. The result: if all those kids were residentially placed at MBA the district would be spending from twenty to forty percent of its total budget on 5-10% of the students. The judge observed that "the IDEA makes no provision for taking into account the proportional impact of this unfunded federal program. Nor did the Ninth Circuit or the Supreme Court indicate that I should take this into account in my analysis and I have not done so. I include this information merely to demonstrate that decisions, such as the one in this case, can have potentially devastating real world implications."

**The Practical Effect.** The Supreme Court's decision got all the attention, but this decision is more important and relevant for day-to-day educators. It remains very difficult for parents to obtain tuition reimbursement, and especially so when the student has never been served by the special education department. We are not surprised to see the school district prevail in this one, and we do not expect to see a lot of "Forest Grove" type cases in the future.

As an interesting footnote to all this, Mt. Bachelor Academy was temporarily shut down by the State of Oregon on November 6, 2009 due to allegations of child abuse and neglect. The Aspen Education Group, which operates MBA, permanently shut the school down three days later.

The case of *Forest Grove School District v. T.A.* was decided by the federal district court in Oregon on December 8, 2009. It can be found at 109 LRP 77164.

**FOR MORE INFORMATION** on retainer programs or the firm, please write to P.O. Box 2156, Austin, TX 78768, visit our website at [www.WalshAnderson.com](http://www.WalshAnderson.com) or call us at 512-454-6864.

THIS JUST IN is published monthly by Walsh, Anderson, Brown, Aldridge & Gallegos, P.C., a law firm with a practice emphasizing the legal representation of Texas independent school districts, junior colleges and universities. THIS JUST IN is provided as a service under the firm's Retainer Agreements for school districts and special education co-ops.

This publication is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

©2009, Walsh, Anderson, Brown, Aldridge & Gallegos, P.C. All rights reserved. Reproduction of all or part of this publication requires permission from the editor.