University of Baltimore Law Forum

Volume 24
Number 3 *Spring, 1994*

Article 13

1994

Recent Developments: Florence County School Dist. Four v. Carter: Parents May Be Reimbursed for the Cost of a Private School When a Public School Fails to Provide an Adequate Education under the Individuals with Disabilities Education Act

Paul J. Mantell

ceived, and is perceived, as hostile or abusive . . . there is no need for it also to be psychologically injurious." *Id.* Determining that the indices of an abusive work environment claim are case specific, the Court listed several factors to consider including the frequency of the discriminatory conduct, its severity, whether it was physically threatening or humiliating, and whether it unreasonably interfered with an employee's work performance. *Id.*

Although the district court found that Forklift's work environment was not abusive and Harris was not subjectively affected by the work environment, the Court felt that the district court's reliance on the incorrect standard may have influenced its determination. *Id.* This was supported by the fact that the district court reached this conclusion only after finding that Harris suffered no psychological injury. Therefore, the Court remanded the case for further proceedings consistent with its opinion.

Justice Scalia, in a concurring opinion, bemoaned the vague "abusiveness" standard and the potential litigation it would produce especially since a plaintiff need not demonstrate any injury. *Id.* at 372. Nonetheless, Scalia admitted that due to the vague statutory language of Title VII, the majority's standard was the only apparent alternative. Justice Ginsburg, in a separate concurring opinion, asserted that the inquiry should focus on whether the discriminatory conduct unreasonably interfered with the plaintiff's ability to perform his or her job. *Id.*

In *Harris*, the Supreme Court corrected a misinterpretation of the *Meritor* standard by the federal courts in abusive work environment cases. No longer can a court require a showing of psychological harm as a prerequisite to a claim for sexual harassment. By so holding, the Court has removed a major obstacle to plaintiffs seeking redress for such claims. Thus, Harris advances one of Title VII's main purposes: to prevent discrimination on the basis of sex with respect to the terms and conditions of employment.

- Nicholas C. DeMattheis Jr.

Florence County School Dist. Four v. Carter:

PARENTS MAY BE REIMBURSED FOR THE COST OF A PRIVATE SCHOOL WHEN A PUBLIC SCHOOL FAILS TO PROVIDE AN ADEQUATE EDUCATION UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Rejecting a school district's claims that the selected private school was not approved by the state and that reimbursement would be too burdensome, the Supreme Court, in a unanimous decision, held that a child's parents are not barred from reimbursement because of non-compliance with the Individuals with Disabilities Act ("IDEA"), 84 Stat. 175, *as amended*, 20 U.S.C. § 1401(a)(18) (1988 & Supp. IV). *Florence County School Dist. Four v. Carter*, 114 S. Ct. 361 (1993). Consequently, the Court declared that 20 U.S.C. § 1401(a)(18) does not apply to placements of children in private schools by their parents.

Shannon Carter was classified as learning disabled in 1985 while attending a school as a ninth grade student in Florence County School District Four. Shannon's parents ("the Carters") met with school officials to develop an individualized education program ("IEP"), as required under IDEA. Shannon's parents were dissatisfied with the IEP that was formulated and requested a hearing to challenge its appropriateness. Authorities on both the local and state levels rejected the parents' claim and concluded that the IEP was adequate. In September 1985, the Carters, without state approval, enrolled Shannon at the Trident Academy, a private school, from which she ultimately graduated in the spring of 1988.

The Carters filed suit in July 1986, claiming that the school district breached its duty under 20 U.S.C. § 1401(a)(18) by failing to provide Shannon with a "'free appropriate public education.'" *Id.* at 364 (quoting 20 U.S.C. § 1401(a)(18) (1988 & Supp. IV)). Shannon's parents also sought re-

imbursement for tuition and other costs incurred by Shannon's attendance at Trident. The district court ruled in favor of the Carters, holding that the school district's IEP was inadequate and that the education Shannon received at Trident substantially complied with the requirements of IDEA. The district court concluded that Shannon's parents were entitled to reimbursement of the costs they incurred in sending Shannon to Trident. *Id.*

"The Court of Appeals for the Fourth Circuit affirmed." *Id.* The court agreed that the school district's IEP was inappropriate, and rejected the district's argument that reimbursement is not proper when the parents choose a private school not approved by the state. *Id.* This ruling knowingly contradicted an earlier decision by the Court of Appeals for the Second Circuit. That court held that parental placement of a child in a private school is not proper under IDEA unless the school is state-approved. The Supreme Court granted certiorari "to resolve this conflict among the [c]ourts of [a]ppeals." *Id.*

The Supreme Court, at the start of its analysis, determined that two issues were settled. First, the school district's IEP was inappropriate under IDEA. Second, although Trident did not fully comply with the requirements of 20 U.S.C. § 1401(a)(18), the education provided to Shannon by Trident was otherwise proper under IDEA. *Id.* at 365. The Court stated that the question to be resolved was whether the Carters were entitled to reimbursement even though Trident "did not meet the [20 U.S.C.] § 1401(a)(18) definition of a 'free appropriate public education.'" *Id.*

The Court stated that 20 U.S.C. § 1401(a)(18)(A) requires that the public pay for and supervise education. In addition, the Court found that 20 U.S.C. § 1401(a)(18)(D) requires that IEP's "be designed 'by a representative of the local education agency.'" *Id.* (quoting 20 U.S.C. § 1401(a)(18)(D) (1988 & Supp. IV)). The Supreme Court determined that these requirements do not make sense with regard to parental placements. The Court indicated that the reason the Carters placed Shannon at Trident was because they disagreed with the school district's IEP. The Court further indicated that where private placement has been made over the school district's objection, "the private school education will not be under 'public supervision and direction.'" *Id.* (quoting 20 U.S.C. § 1401(a)(18)(A) (1988 & Supp. IV)). The Supreme Court stated that by applying 20 U.S.C. § 1401(a)(18) to parental placements, the parents' right to unilaterally remove a child from a public school would be effectively eliminated. *Id.*

The Court next explained that a private school's failure to meet state education requirements also does not bar reimbursement. Noting that the school district's emphasis on state standards was ironic given that the reason Shannon was removed from the public school was because the school's IEP was inadequate, the Court stated that it disagreed with the Court of Appeals for the Second Circuit, and emphasized that choosing a private school that was not approved by the state was "not itself a bar to reimbursement." *Id.* at 365-66.

The Court concluded its decision by rejecting the school district's argument that allowing reimbursement when parents choose any private school that provides an adequate education under IDEA will prove to be too costly. Essentially, the Court found that the financial burden on states and school districts that participate under IDEA was significant. *Id.* at 366. However, the Court indicated that reimbursements can be avoided by either "giv[ing] the child a free appropriate public education in a public setting, or plac[ing] the child in an appropriate private setting of the [s]tate's choice." *Id.* Finally, the Supreme Court emphasized that parents who unilaterally place a child in a private school while the review proceedings are pending, and without the consent of school officials, do so at their own financial risk. The Court stated that parents are entitled to reimbursement only if a federal court decides "that the public placement violated IDEA, and that the private school placement was proper under the Act." *Id.*

In summary, parents who unilaterally withdraw a child from a public school that provides an inappropriate education under IDEA and place the child in a private school that does not fully comply with the requirements under 20 U.S.C. § 1401(a)(18), but is otherwise proper under IDEA, may be reimbursed for the cost. In so holding, the Court took a step to improve the welfare of learning disabled children. This decision means that the parents of a learning disabled child, who cannot otherwise afford private education, may no longer be completely at the mercy of the public educational system. Parents who feel that their only alternative is to place their child in a private school stand a chance at being awarded the cost of the private education by a federal court.

- Paul Mantell