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Recent Developments: John A. v. Bd. of Educ. for Howard County: The Maryland Office of Administrative Hearings May Hear Disputes Regarding "Related Services" Not Explicitly Included in Individualized Education Plans, but Lacks Subject Matter Jurisdiction over Disputes Not Relating to Special Education Matters under the Individuals with Disabilities Education Act and Related Maryland Law

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RECENT DEVELOPMENT

JOHN A. V. BD. OF EDUC. FOR HOWARD COUNTY: THE MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS MAY HEAR DISPUTES REGARDING "RELATED SERVICES" NOT EXPLICITLY INCLUDED IN INDIVIDUALIZED EDUCATION PLANS, BUT LACKS SUBJECT MATTER JURISDICTION OVER DISPUTES NOT RELATING TO SPECIAL EDUCATION MATTERS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND RELATED MARYLAND LAW.

By: Dorothy Hae Eun Min

The Court of Appeals of Maryland held that it is not necessary for the related service of an Individualized Education Plan ("IEP") to be explicitly included in the documented plan in order for the parent of a disabled child to bring a due process complaint. *John A. v. Bd. of Educ. for Howard County*, 400 Md. 363, 929 A.2d 136, 155 (2007). However, if the dispute lacks a special education matter, an administrative law judge ("ALJ") may dismiss the complaint for lack of subject matter jurisdiction under the Individuals with Disabilities Education Act ("IDEA") and related Maryland law. *Id.* at 390, 929 A.2d at 152.

From 2002-2004, John A.'s daughter, A.A., attended Rockburn Elementary School ("Rockburn") in Howard County, Maryland, where she qualified as a disabled child pursuant to IDEA. In October 2002, A.A.'s parents ("the parents") developed an IEP with educational and medical professionals. The parents also signed a release form for A.A.'s medical records that required authorization prior to any contact with A.A.'s psychiatrist. During the 2002-2003 school year, Howard County Public Schools ("HCPS") authorized A.A.'s school nurse to administer two medications. In August 2003, A.A.'s psychiatrist added a third medication. Teachers and health personnel noticed that A.A. acted lethargic and drowsy in class. In October 2003, A.A.'s school nurse contacted A.A.'s psychiatrist to inform him of the symptoms A.A. exhibited. The school nurse also indicated that some situations might necessitate withholding the medications. When the parents received notice of this exchange, they instructed A.A.'s

psychiatrist to provide no further information to the school. The parents reiterated their desire to protect their daughter's privacy absent their prior consent or a medical emergency.

Subsequently, A.A.'s psychiatrist instructed the school nurse to continue administering the same three medications according to his orders. On November 25, 2003, the health services manager of HCPS explained to A.A.'s psychiatrist that no one wanted to change the medications, but that HCPS needed more guidance from the psychiatrist to ensure A.A.'s safety. After the Maryland Board of Nursing advised that automatic administration of these medications without direct communication with the child's psychiatrist was improper, HCPS decided that it would not administer A.A.'s medications after December 2, 2003. HCPS presented the parents with the option of personally administering A.A.'s medications to her during school. The parents insisted that the school nurse administer A.A.'s medications as previously agreed. HCPS refused.

The parents filed a due process complaint on June 9, 2004, with the Maryland Office of Administrative Hearings ("OAH"), asserting that HCPS's refusal to administer A.A.'s medications violated A.A.'s right to a Free Appropriate Public Education ("FAPE"). The ALJ ruled that the parents' complaint contained no special education dispute and thus fell outside the jurisdiction of OAH. The parents petitioned the Circuit Court for Howard County for judicial review. The circuit court affirmed the decision of the ALJ. The parents then appealed the decision to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland issued a writ of certiorari to consider this case.

The Court first considered whether an IEP must explicitly include a "related service" for the parent of a disabled child to bring a due process complaint. *John A.*, 400 Md. at 382, 929 A.2d at 148. Relying on precedent from the United States Supreme Court, the Court of Appeals of Maryland rejected HCPS's contention that it had no obligations for a service not explicitly listed in the child's IEP. *Id.* at 384, 929 A.2d at 148-49. The Court determined that an IEP is not a legally binding contract and does not require all provisions to be within the four corners of the document. *Id.* at 385, 929 A.2d at 149. An IEP can be modified so that it is "reasonably calculated to enable the child to receive educational benefits." *John A.*, 400 Md. at 385, 929 A.2d at 149 (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207 (1982)).

Furthermore, the Court of Appeals examined the two-step test set forth in *Irving Indep. Sch. Dist. v. Tatro* to determine whether a

disabled child is entitled to a "related service." *John A.*, 400 Md. at 384, 929 A.2d at 149 (citing *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 890 (1984)). The first step of the related service test involved a determination of whether the supportive service was required for a disabled child to benefit from special education. *John A.*, 400 Md. at 384, 929 A.2d at 149. Second, if the medical service required a purpose other than diagnosis and evaluation, the service would be excluded from the IEP. *Id.* at 384, 929 A.2d at 149. In *Tatro*, for instance, the Supreme Court mandated the board of education to modify the child's IEP because the child needed the provision of a clean intermittent catheterization to remain in class and benefit from her IEP. *Id.* at 384, 929 A.2d at 149 (citing *Tatro*, 468 U.S. at 890).

In the instant case, the Court of Appeals determined that A.A. satisfied the *Tatro* test because A.A. required the prescribed medications to function in her classroom in accordance with her IEP. *John A.*, 400 Md. at 386, 929 A.2d at 150. Also, since the administration of her medications required no direct attention by a physician, the Court held that denying the "related service" to A.A. would violate the goals of the IDEA. *Id.* at 386-87, 929 A.2d at 150.

The second issue was whether the ALJ had the power under the IDEA and related Maryland law to dismiss the complaint for lack of subject matter jurisdiction. *Id.* at 389, 929 A.2d at 151-52. The Court began by reviewing the legislative purpose of the IDEA. *Id.* at 387, 929 A.2d at 150. The IDEA was created to provide an outlet for parents to file complaints with the OAH that sufficiently related to specific categories of special education. *Id.* at 388-89, 929 A.2d at 151. To arise under the IDEA, a dispute must pertain to the identification, evaluation and placement of a disabled child, or the provision of a FAPE to that child. *Id.* at 390, 929 A.2d at 152.

The parents argued that the administration of A.A.'s medications qualified as a special education matter, because it was a "related service" in her IEP. *Id.* at 390, 929 A.2d at 152. HCPS insisted that it never flatly refused to administer A.A.'s medications, but rather merely requested further clarification from A.A.'s psychiatrist because of concerns regarding blind administration of A.A.'s medications. *Id.* at 391, 929 A.2d at 152-53. Ultimately, the Court of Appeals of Maryland ruled that the parents' claim fell outside the ALJ's jurisdiction because the Court determined the dispute was one of medical treatment, not special education. *Id.* at 390, 929 A.2d at 152. As a result, the ALJ lacked the subject matter jurisdiction to hear the case. *Id.* at 390, 929 A.2d at 152.

The Court declined to widen the scope of due process claims under the IDEA to allow the parents' claim to move forward. *Id.* at 392, 929 A.2d at 153. The Court recognized the danger of allowing a minimally-related IDEA claim to proceed in an administrative hearing. *Id.* at 392, 929 A.2d at 153.

In *John A.*, the Court of Appeals of Maryland pointed out the importance of clarifying ambiguities associated with the provision of "related services" in IEPs. Schools must provide related services that a disabled child needs in order to benefit from their IEP. However, if a school district minimally provides a "related service," it is not required to incur additional liability to provide that service. Parents of a disabled child in Maryland should know that, in court, their child's right to privacy may be secondary to a school official's concern regarding potential medical risks to that child.