

**Forest Grove School Dist. v. T.A**  
**August 20, 2009**

United States Supreme Court Orders Reimbursement for Private Special Education Services Regardless of Whether a Child Previously Received Special-Education Services Through the Public School System  
July 8, 2009

The United States Supreme Court on June 22, 2009, ruled in *Forest Grove School District v. T.A.* (hereafter abbreviated as *Forest Grove*) that parents should be reimbursed for private special education services concerning a child who had not previously received special education services or an Individualized Education Program (IEP) from his school district.

How was this decision reached? The answer is found in the history and concept of a Free Appropriate Public Education (FAPE). The congressional act known as Education for All Handicapped Children Act (EAHCA) became the Individuals with Disabilities Education Act (IDEA) in 1975. This act created the right for all children to receive a FAPE. The goal of IDEA is to provide a FAPE to all disabled children: to prepare them for “further education, employment, and independent living.” In order to provide this, an IEP must be created. The IEP outlines what services and accommodations will be provided to the student, as well as information about the student’s abilities. The most accurate and useful IEP may involve experts in the diagnosis, management and treatment of physical, mental, and developmental disabilities, as well as experts well-versed in the evolving social science of special education.

In 1985, the Supreme Court case of *School Committee of the Town of Burlington v. Department of Education of Massachusetts* (hereafter abbreviated as *Burlington*) dealt with a somewhat similar, yet different, case than *Forest Grove*. In *Burlington*, a young man had an IEP that was deemed to be inadequate, therefore the high court ruled that the parents should be reimbursed for private special education costs of the former public education student. In 1997, IDEA received amendments, including granting courts authority to order reimbursement for private special education services when a school district does not provide a FAPE. Despite the amendments, it was unclear what would be done regarding private education reimbursement in a case where a student had not yet received special education services because he/she did not have an IEP.

The *Forest Grove* case involves a young man who was evaluated by his public school system and found not to qualify for special education services, thus an IEP was not created. His parents took him to a private specialist who diagnosed ADHD and other learning disabilities. The private specialist recommended a “structured, residential learning environment”, and his parents then placed him in a private school. They then informed the school district of their son’s school placement, and requested a due process hearing for special education services eligibility. The school district’s evaluation determined that the respondent was not eligible for special education services and an IEP was not provided. The school declined to pay, the administrative hearing officer sided with the parents, the District Court set aside the award – holding that the amendments (1997) to IDEA barred reimbursement unless the child previously received special education under the public school’s authority. The Ninth Circuit reversed the decision and granted reimbursement and the school district appealed to the Supreme Court.

The recognition of a disability in a public school student confers rights to services that become articulated in the IEP. The Supreme Court has determined that the disabled student’s right to a FAPE will not be deprived on the basis of either an inadequate or absent IEP.

**News/Event:** *Forest Grove School District v. T.A.* was argued on April 28, 2009 and decided June 22, 2009 in favor of a student found to have a disability.

**Analysis:** *Forest Grove School District v. T.A.* clarifies an ambiguity that arose from the 1997 Amendments to IDEA. The Supreme Court held that the 1997 Amendments do not bar

reimbursement for private special education services when a public school system fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child has received prior special education services or a public school generated IEP.

**Application:** It can be expected that public school systems will be providing increased services to children whose parents adequately demonstrate their child's disability and need for a specific, appropriate IEP. When a FAPE is not available within a public school system, reimbursement will be provided for private school education and services. Forensic psychiatrists, psychologists, and educational specialists will expect to see some increase in the number of evaluations at the request of both parents and school systems across the country. This will likely increase the number of requests for forensic evaluations related to childhood disability and educational services. This ruling will encourage parents to remove their children from the public school system when they believe a FAPE is not being provided, after acquiring a private evaluation and an IEP.

The Supreme Court may rule one day on how much due process is required when IEPs generated by the public school system differ from those generated by experts, hired by parents who disagree with the quality of the public school's IEP. The case of Forest Grove demonstrates what the Supreme Court thinks of the situation where the parents have a privately generated IEP for their child, and the school has declined to provide an IEP for a student who was noted by teachers to have a learning disability. Attorneys who represent students and their parents in educational matters found encouragement in the Forest Grove decision.

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