

Special education: Public schools pressed to pay for private schooling

U.S. Supreme Court ruling puts onus on districts to cover tuition, but private-school rush unlikely



Teacher Brooke Doppelt leads her class in an art project at Hyde Park Day School, a private school in Chicago for children with learning disabilities. Tuition runs \$33,200 a year at the school, which offers intensive instruction and a 5-1 student/teacher ratio. (Tribune photo by Terrence Antonio James / September 2, 2009)

By Bonnie Miller Rubin Tribune Reporter

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With a new school year upon us, the long-simmering issue of how best to accommodate special education students has been pushed to the forefront by a major **U.S. Supreme Court** ruling.

Parents of students with special needs have the right to seek reimbursement from their districts for private school tuition, even if they did not first try their public school's special education programs, according to the recent ruling.

"This is an extremely important decision," said Matthew Cohen, a Chicago attorney who specializes in disability law. "It makes it clear that school districts ... may be held legally liable for placements that the parents make on their own."

The practical effect on districts is unclear. Some educators fear the ruling will strain already cash-strapped districts and pit parents against one another as they clash over scarce resources. But it's unlikely parents will flock to private schools because they have to pay the cost, then seek reimbursement.

Still, schools should take seriously their obligations to provide services provided under the federal Individuals With Disabilities Education Act (IDEA), state officials say. Students are entitled to a "free and appropriate public education" under the law, and districts must pick up the tab for private schooling but only if the district's efforts to meet a child's needs have failed.

Special ed students receive a wide range of interventions, depending on their diagnosis. Help could be as relatively simple as speech therapy or more involved as a one-on-one aide in class or, most expensive, enrollment at a therapeutic boarding school.

Already in Illinois, 9,563 special education students attend private schools at taxpayers' expense -- more than \$180 million in 2007-08, according to the Illinois State Board of Education. **Chicago Public Schools** is not included in the total.

That number could rise in response to the Supreme Court ruling in June in favor of an **Oregon** teen whose parents decided to take him out of the public system. The boy -- identified only as T.A. -- had struggled since kindergarten and was diagnosed with attention-deficit hyperactivity disorder by a specialist who recommended a more structured classroom environment. The school denied services, insisting that his learning problems were not severe enough.

In response, his parents placed him in a private school, and then sought to recoup the \$65,000 annual tuition, waging a five-year battle against the Forest Grove, Ore., district.

Naomi Gittins, deputy general counsel for the National Association of School Boards, said the ability to go around a public school district undermines the collaborative relationship between parents and schools.

"It's too easy to say, 'I'm out of here,' "she said.

Others argue that reimbursing parents who have not given public school services a fair chance -- or, as in the Oregon case, who removed their child before he was identified as disabled -- would impose an unfair financial burden, diverting funds from both special and regular education programs.

The federal government funds only 20 percent of IDEA; the remainder comes from state and local sources.

"Where do you draw the line when class size is getting bigger and you only have X number of dollars? When you can educate five kids for the cost of one special ed kid?" asked Mark Friedman, recently retired superintendent of the **Libertyville** Public Schools. "The community is not happy when we have dwindling resources, when there are 28 students in a class and we're spending \$100,000 for one kid."

"That feeling is out there. I have heard it, I have felt it ... and this kind of ruling can create an even bigger divide," Friedman said.

But some special education advocates and parents hailed the court ruling, citing frustration with getting services they believe children need.

Attorney Cohen, author of "A Guide to Special Education Advocacy," said parents encounter roadblocks from foot-dragging on testing to overly narrow criteria to determine eligibility.

The result can be a child stuck in a cycle of relentless failure, said Pamela Adelman, director of the Hyde Park Day School, which serves 94 youngsters with learning disabilities.

"It can have a devastating impact on self-esteem and behavior," she said.

Tuition for most of her students, which is \$33,200 a year, is paid by their parents. Her school offers intensive instruction and a 5-1 student/teacher ratio -- a model that would be very difficult for a public school to match, she said.

But even with the Supreme Court ruling, don't expect a wave of families to head for the public school exits, experts say.

Parents would have to pay for tuition and attorneys, then appeal to the state to try to force unwilling districts to pick up the bill.

Only about 6 percent of cases go to a full-blown hearing. Of those, families prevail only about one-third of the time, according to the State Board of Education.

In light of the decision, Illinois will provide more training to hearing officers and emphasize to school administrators the need to be vigilant about evaluating and identifying children's problems in a timely manner, according to Beth Hanselman of the state board.

"I do think that districts are looking out for all students," she said. "They are aware of the high stakes and accountability -- and they're taking this very seriously."

brubin@tribune.com

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