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Health and Medical Services for Children with Disabilities

Presented by:
Thomas N. Shorter
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
Madison, WI 53703
Direct: (608) 284-2239
tshorter@gklaw.com

Thomas N. Shorter



Thomas N. Shorter is a shareholder in the Education Practice Group in the Madison, Wisconsin office of Godfrey & Kahn, S.C. Tom represents educational institutions, providing counsel in special education (IDEA and Section 504), privacy (HIPAA, FERPA), labor and employment, and regulatory matters such as collective bargaining, FMLA compliance, discrimination issues and discipline and discharge. His education clients include public and private K-12 educational institutions.

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Learning Objectives

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- Review of Cedar Rapids and Tatro decisions issued by the U.S. Supreme Court
- Discussion of “Bright Line Test”
- Review applicable laws and regulations
- Differentiate between “health services” and “medical services”

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INTRODUCTION

The number of students with serious health care needs in public schools is on the rise, and the growth in numbers can be expected to increase.

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Look how far we've come ...

- *State v. Board of Educ. of City of Antigo*,
(WI Supreme Court).
 - An action to compel the reinstatement of the child to the public schools of the City of Antigo.

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RELEVANT LAWS AND GUIDANCE

- *Individuals With Disabilities Education Act (IDEA)*
 - “free appropriate public education”
 - defined as special education and related services

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RELEVANT LAWS AND GUIDANCE

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- Regulations define “related services” to include:
 - “Medical services for diagnostic or evaluation purposes”
 - “School health services and school nurse services”
 - Not required to provide “medical services”

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RELEVANT LAWS AND GUIDANCE

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- ***Rehabilitation Act of 1973 (Section 504) Regulations***
 - provide reasonable accommodations and related aids and services to students with disabilities
 - if the services are necessary for a student with a disability to effectively participate in the educational program

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CASE LAW

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- U.S. Supreme Court Case Law
 - *Irving Independent Sch. Dist. v. Tatro*
 - *Cedar Rapids Community Sch. Dist. v. Garret F.*

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CASE LAW

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- The test that emerged from the *Tatro* and *Garret F.* cases is:
 - **BRIGHT LINE TEST:** *If the service being requested can be provided by someone who has been trained to provide the service and is not the type of service that can only be provided by a licensed physician, the service being requested is a related service that must be provided by the District at no cost to the parents*
 - reiterated by the U.S. Department of Education in its regulatory guidance

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CASE LAW

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- Examples of health services that must be provided by school districts
 - » suctioning a student's tracheostomy tube
 - » monitoring and suctioning a portable ventilator system
 - » applying ointment to a student's eyes who cannot close his eyes
 - » clean intermittent catheterization

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CASE LAW

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- » routine checking of external components of a surgically implanted device
- » “Teachers and related services providers can be taught to first check the externally worn speech processor to make sure it is turned on, the volume and sensitivity settings are correct, and the cable is connected, in much the same manner as they are taught to make sure a hearing aid is properly functioning. To allow a child to sit in a classroom when the child's hearing aid or cochlear implant is not functioning is to effectively exclude the child from receiving an appropriate education. Therefore, we believe it is important to clarify that a public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of hearing aids.” Commentary from Education Department, 71 Fed. Reg. 46571 (2006).

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CASE LAW

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- Examples of health services that need not be provided by a school district
 - » optimization (e.g., mapping) a surgically implanted medical device
 - » *See* 34 C.F.R. 300.34(b).

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CASE LAW

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- » maintenance of a surgically implanted medical device;
- » programming of a surgically implanted medical device; or
- » replacement of a surgically implanted medical device.
- » *See* 34 C.F.R. 300.113(b)(2).

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CASE LAW

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- Recent case law
 - *Petit, et al. v. U.S. Dep't of Educ.* (D.D.C. 2008)
 - Service at issue: Cochlear implant mapping

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- *Petit, et al. v. U.S. Dep't of Educ.* (D.D.C. 2010)
 - Service at issue: Cochlear implant mapping
 - *Note – Case was appealed on 2/11/2011 to U.S. District Court of Appeals for the District of Columbia. Currently in briefing stage (as of 10/10/2011).*

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- Other Case Law
 - *River Forest Sch. Dist. No. 90 v. ISBE* (N.D. Ill. Apr. 17, 1996)
 - Service at issue: Therapy received by a 9-year-old student with multiple disabilities at rehabilitation facilities where his parents unilaterally placed him following brain surgery

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- *Butler v. Evans* (7th Cir. 2000)
 - Service at issue: Placement in a psychiatric hospital

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- *Kerry M. v. Manhattan Sch. Dist.* (N.D. Ill. Sept. 29, 2006)
 - Service at issue: Medical equipment

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- *John A. v. Bd. of Educ. for Howard County* (Md. 2007)
 - Service at issue: Requiring a school to abide by physician's medical directives and administer prescribed medication to the child during the school day

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CASE LAW

- *C.N., by Newman v. Los Angeles Unified Sch. Dist.* (C.D. Cal. Oct. 9, 2008)
 - Service at issue: The administration of feedings through the “G-tube plunge” method vs. the “G-tube gravity” method

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SPECIFIC EXAMPLES

- Cochlear Implants?
- Independent Medical Evaluation?
- Medication?

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SPECIFIC EXAMPLES



- Excess Dosage?
- Condition Receipt of Services on Administration of Medication?
- Diabetes?

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SPECIFIC EXAMPLES



- Bus Transport?
- DNR Order?
- A/V Monitoring?
- Nutritional Services?
- Psychotherapy?

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SPECIFIC EXAMPLES

- Remember!
 - Neither the continuous nature of a service, its high cost, or the fact that additional personnel will need to be hired to provide it renders a service “medical”

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SPECIFIC EXAMPLES

- Services may be required on the way to and from school, not just at school
- When addressing the failure to provide a related medical service, courts have not been persuaded by the excuse that the service was not specifically listed on a student’s IEP

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SPECIFIC EXAMPLES



- Should a nursing care plan be incorporated into the child's IEP?
- Be mindful of changing medical technology and implications with standards set forth in *Garret and Tatro*

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Questions?



Thomas N. Shorter
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One East Main Street, Suite 500
Madison, WI 53703
Direct: (608) 284-2239
tshorter@gklaw.com

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