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STATE OF MINNESOTA

Office of the Attorney General

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SUBJECT : **Maximum Benefits**

This responds to your question regarding whether or not Minn. Stat. § 120.0111 (1994) requires Minnesota to provide maximum benefits to special education students. Minn. Stat. § 120.0111 states the following:

> The mission of public education in Minnesota, a system for lifelong learning, is to ensure individual academic achievement, an informed citizenry, and a highly productive work force. This system focuses on the learner, promotes and values diversity, provides participatory decision-making, ensures accountability, models democratic principles, creates and sustains a climate for change, provides personalized learning environments, encourages learners to reach their maximum potential, and integrates and coordinates human services for learners.

(Emphasis added).

There is also a Minnesota Rule which directly addresses the provision of special education services to students. It provides:

> Children and youth who are handicapped and who are eligible for special education services based on an appropriate individual assessment shall have access to free appropriate public education, as that term is defined by applicable law. The special education shall be suited to the pupil's individual needs including the special education based on an appropriate assessment and according to the IEP. School districts shall provide education suitable to pupils' individual needs. . . .

Minn. R. 3525.0300. (Emphasis added.)

As you know, the Individuals with Disabilities Education Act ("Act"), which is codified at 20 U.S.C. § 1400(a) et seq., requires states that receive federal funds to provide all handicapped children in their jurisdictions with a "free appropriate public education." In passing the Act, Congress established a minimum standard by which the provision of services to handicapped students would not be permitted to fall. See, Board of Educ. v. Rowley, 458 U.S. 176, 201 (1982). While the Act sets a federal minimum that states must comply with in providing services to handicapped children, it also gives the states "considerable freedom to structure educational programs that exceed this federal benchmark." See, New State Ice Co. v. Liebmann, 285 U.S. 262, 280, 311 (1932) (Brandeis, J., dissenting).

Courts have repeatedly interpreted state statutes as reflecting an intent to provide handicapped children with a level of educational services which surpasses that required by the Act. For example, a Massachusetts statute required that handicapped children be educated in order "to minimize the possibility of stigmatization and to assure the maximum possible development in the least restrictive environment." Mass. Gen. Laws Ann. ch. 71B, § 2 (West 1990). This statutory language was interpreted as imposing a higher standard than that imposed by the Act. David D. v. Dartmouth Sch. Comm., 775 F.2d 411, 423 (1st Cir. 1985), cert. denied, 475 U.S. 1140 (1986). Similarly, a Michigan statute which required the State Board of Education to adopt a state plan for special education services which "shall provide for the delivery of special educational programs and services designed to develop the maximum potential of every handicapped person" was found to require Michigan school districts to adhere to a more stringent standard than the federal one in providing an education to special education students. In Re Traverse Bay Area Intermediate Sch. District, Mich. case no. 82-0143 (Mich. State Education Agency, Aug. 9, 1982), reprinted in 3 EHLR (CRR) 504:140, 504:142 (1982). Other state statutes have also been judicially interpreted as setting an educational standard that exceeds the minimum standard imposed by the Act. See, e.g., Geis v. Bd. of Educ. of Parsippany-Troy Hills, 774 F.2d 575 (3rd Cir. 1985) (statute specified that "a local public school district must provide each handicapped pupil a special education program and services according to how the pupil can best achieve educational success."); Krichinsky v. Knox Cty. Schools, 17 EHLR 725 (E.D. Tenn. 1981) (state law which required special education services to maximize the capabilities of handicapped children adopts higher standard than threshold standard of the Act).[1] Finally, even where state statutes regarding the level of services that must be provided to special education students have not been litigated, other courts have postulated that some of these state statutes "appear to" impose higher educational standards for special education students than the standard articulated under the Act. See, In Re Conklin, 946 F.2d 306, at 320 (4th Cir. 1991), citing Ariz. Rev. Stat. Ann. 15-763 (1984) ("All handicapped children shall receive special education programming commensurate with their abilities and needs").

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1. A subsequent opinion, Doe v. Bd. of Educ. of Tallahoma City Schools, 9 F.3d 455 (6th Cir. 1993), cited Krichinsky and criticized the federal district judge's failure to reference Tennessee case law or legislative history in his statutory interpretation. The Doe court, while acknowledging that other circuits have found special education statutes to impose a higher standard than federal law, did not "find such a holding to be justified" in Doe. Id. at 458.

Some states have amended their special education statutes if there is uncertainty about whether these statutes provide for special education services beyond those required by the Act. For example, prior to 1982, the Iowa Legislature passed a statute that required school districts to make provisions for special education opportunities "sufficient to meet the needs and maximize the capabilities of children requiring special education." Iowa Code Ann. § 281.2 (West 1982). After the Iowa Supreme Court determined that, under state law, there must be equality of education for handicapped and non-handicapped children,[2] Buchholtz v. Iowa Dep't of Pub. Instruction, 315 N.W.2d 789 (Iowa 1982), the Iowa Legislature amended this statute to read as follows:

> It is the policy of this state to require school districts and state operated educational programs to provide or make provision, as an integral part of public education, for a free appropriate public education sufficient to meet the needs of all children requiring special education.

Iowa Code Ann. § 281.2 (West 1988).

Apparently following Iowa's lead, the Arkansas Legislature also modified its state code in an effort to limit its previously expansive standard relative to providing special education services. See generally, In Re Conklin, 946 F.2d at 320. In 1987, the Arkansas Code provided that school districts should be required to "maximize the capabilities of handicapped children." However, this language was subsequently amended to require school districts to provide "a free appropriate public education (FAPE)" for handicapped students. Ark. Stat. Ann. § 6-41-202(a)(1) (Supp. 1989).

The North Carolina Legislature passed a statute regarding education which is similar to Minn. Stat. § 120.0111. This North Carolina statute provides that it is "the policy of the state to ensure every child a fair and full opportunity to reach his full potential." N.C. Gen. Stat. § 115, C-106 (1990). Unlike most of the other state statutes referenced above -- and similar to the language found in Minn. Stat. § 120.0111 -- the North Carolina statute does not specifically address handicapped students. Instead, it emphasizes providing every child with an opportunity to reach his or her full potential. Nevertheless, North Carolina's statute has been interpreted as requiring the state to provide a level of educational services to handicapped children that surpasses the national minimum. Burke Cty. Bd. of Educ. v. Denton, 895 F.2d 973, 982-83 (4th Cir. 1990). The Denton court specifically noted that the "special education program must provide the child with an equal opportunity to learn if that is reasonably possible, assuring that the child has an opportunity to reach her full potential commensurate with the opportunities given other children." Id.

Significantly, the Denton case is not controlling in Minnesota. Additionally, there appear to be several weaknesses in the court's reasoning. The Denton court's analysis focuses more on equalizing the educational opportunities provided to special education students with

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2. Significantly, the court noted that whether "equality of education is actually realized depends on the nature of the handicap, availability of resources, and what effort is reasonable in the context of the individual case."

those opportunities given to non-special education students than with raising the educational threshold for all students. Further, in light of limited financial resources for education, it is simply untenable to provide "every child with a full and fair opportunity to reach his potential."

In those cases where state statutes have been interpreted as requiring the provision of special education services beyond those specified in the Act, courts have still determined that not all the services requested by the student/parents were justified. For example, in Barwacz v. Michigan Dep't of Educ., 674 F. Supp. 1296, 1306 (W.D. Mich. 1987), the court noted that the proper inquiry was whether the school district's proposed placement of the student was appropriate and not on the educational alternative the family preferred. Further, the court stated that even if the family's alternative was better for the student, it would not necessarily mean that the district's placement was inappropriate. Similarly, in Denton, 895 F.2d 973 (4th Cir. 1990), the court determined that neither the Act nor North Carolina's special education law required school boards to fund a residential placement when the student continued to make educational progress at school and without in-home special education and behavior management instruction. While noting that North Carolina "apparently does require more than the [Act]," the court stated that the "special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunities given to other children." Id. at 983. In sum, even in those states where statutes have been judicially interpreted as providing more special education services than the Act, the services which are ultimately rendered are usually not "optimal" but rather "appropriate."

In Scituate Sch. Comm. v. Robert B., 620 F. Supp. 1224, 1233 (D.C.R.I. 1985), aff'd, 795 F.2d 77, the court determined that Rhode Island's special education statute and regulations did not impose a higher standard than the Act in providing special education services. The court noted that although R.I.G.L. § 16-24-1 specified that special education shall be provided so that it "will best satisfy the needs of the handicapped child," it found that this language did not establish a substantive standard that displaced the federal one. Id. The court further stated that this statute was enacted prior to the Act, the special education regulations had almost identical language to the Act, and the special education regulations never set forth a level of services which must be provided to handicapped children. Id. Finally, the court emphasized the dearth of evidence indicating that the Rhode Island Legislature clearly created a standard "separate from and higher than" the federal one and the absence of state case law suggesting a higher standard. Id. at 1234.

CONCLUSION

Generally speaking, when state statutes contain language about maximizing the potential or capabilities of handicapped children, courts have interpreted this language as evidence of a state's intent to exceed the federal standard of education required under the Act. See generally, In Re Conklin, 946 F.2d at 318, 321 (4th Cir. 1991). However, even when courts have interpreted state statutes in this manner, they have occasionally indicated that special education services must be bound by considerations of what is feasible or reasonably cost-effective. See Geis, 774 F.2d at 579; Buchholtz, 315 N.W.2d at 793 (available funds and

reasonableness must be examined when determining appropriateness of special education services). Further, although a state's statutory language may indicate its objective to "maximize the potential/capabilities" of special education students, these statutes have generally been judicially interpreted as requiring appropriate -- rather than optimal -- special education services.

Minn. Stat. § 120.0111 provides that "public education in Minnesota . . . encourages learners to reach their maximum potential." While this statute does not explicitly refer to special education students, its language suggests that all students will be treated equally with regard to education. The statute does not reference any limitations on "encouraging learners to reach their maximum potential," despite limited educational dollars. As such, its stated objective is not attainable. The only analogous state statute is North Carolina's, which also fails to specifically mention special education students. Although the Fourth Circuit found that the special education standard set by North Carolina's statute exceeded the federal standard, the court's decision in Denton is not controlling here. Nevertheless, a reviewing court might follow the general trend and find that Minnesota's statute provides special education students with a higher level of services than that provided by the Act.[3] However, as indicated above, such an interpretation might not have a substantive effect on the level of special education services the State must provide.

Minn. Stat. § 120.0111 should also be analyzed in conjunction with Minn. R. 3525.0300, which specifically addresses special education. This rule contains identical language to the Act by requiring "free appropriate public education" for handicapped students who are eligible for special education. The rule further states that special education should be "suited to the pupil's individual needs." Significantly, the rule does not include any reference to "maximizing potential," in contrast to Minn. Stat. § 120.0111. Under Minn. Stat. § 645.26, subd. 1, when a general provision in a law conflicts with a special provision in the same or another law, the two shall be construed so the effect may be given to both. But if the conflict is irreconcilable, the special provision should prevail. Id. One way to construe these laws together is to read Minn. Stat. § 120.0111 as merely creating goals, not individual entitlements, whereas Minn. R. 3525.0300 provides a substantive right for students with disabilities. If, however, the two laws are conflicting, the provisions of Minn. R. 3525.0300 should prevail because the rule specifically addresses special education students while the statute simply incorporates them by reference.

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3. Although Minn. Stat. § 120.0111 does not specifically mention handicapped students, a reviewing court would likely note that it was enacted in 1991, almost 15 years after the precursor to the Act became law. Accordingly, a reviewing court might construe the statute as evincing a legislative intent to expand the Act.

Nevertheless, if the State wants to ensure that it will only be held to the federal standard in providing special education, the language in Minn. Stat. § 120.0111 should be amended so that it is identical to the language in the Act. It could replace the statutory language about maximizing the potential of learners with language which requires that a free appropriate education be provided to special education students. Of course, in so doing, it will draw attention to the current language in the statute.

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