

**Issue/Holding:** IDEA authorizes reimbursement for private special education services when a public school fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education services through the public school.

**Rule:** Relying on *School Comm. Of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 370 (1985), the Supreme Court came to the conclusion in *Forest Grove*, that parents are not required to go to the school for the offer of FAPE first. The Court held in *Burlington* that where a public school fails to provide a child with FAPE and the parents place the child in an appropriate private school without the school district's consent, a court may require the district to reimburse the parents for the cost of the private school.

Subsequently, the IDEA Amendments of 1997 were passed by Congress. Section 1412(a)(10)(C)(ii) states that a "court or hearing officer may require a [a public] agency to reimburse the parents for the cost of [private-school] enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available" and where the child has "previously received special education and related services under the authority of [the] agency." This section is ambiguous as to whether or not prior special education services to the child by the public school district are required for the child's parents to receive reimbursement for the cost of an appropriate private school placement.

**Facts/Application:** The respondent (student) attended public school in the same district from Kindergarten through the winter of his junior year of high school. From Kindergarten through the 8<sup>th</sup> grade, teachers noticed he had trouble paying attention in class and completing assignments. In high school, his difficulties increased. During student's freshman year, his mother contacted the school to discuss student's challenges. At the end of the school year, student was interviewed, given cognitive ability tests, and his records were reviewed. The psychologist concluded that student did not need further testing for learning disabilities or other health impairments, including ADHD. Student's parents did not seek review of that decision (though a hearing examiner later found that the District's evaluation was legally inadequate since it did not address all areas of suspected disability including ADHD). Student struggled through, but completed, sophomore year. In March of student's junior year, parents sought private professional advice and student was diagnosed with ADHD and a number of disabilities related to learning and memory. Following the diagnosis, student's parents enrolled him in a private school that focused on educating children with special needs.

A hearing officer later found that the parents should receive reimbursement for the cost of the private school. The school district took it to district court where the reimbursement award was set aside, finding that the 1997 Amendments bar reimbursement of private-school tuition for students who have not received prior special education services from the public school district. The Ninth Circuit Court of Appeals reversed and remanded.

Certiorari was granted and the Supreme Court reasoned that the 1997 Amendments did not change the meaning, or holding, in *Burlington* that gives courts the authority to require reimbursement for the cost of private school when a school district fails to provide a FAPE. The purpose of the 1997 Amendments was to not only emphasize improvement in student performance, but to ensure that disabled children gain a quality public education. Prohibiting parents of children, in private school placements, from reimbursement when the child has been inappropriately denied an IEP immunizes a district's refusal to find a child eligible for services no matter how erroneous, and is inconsistent with the intent of the 1997 Amendments. Additionally, allowing reimbursement regardless of whether the child received previous special education services would not create a substantial financial burden. To win reimbursement, the parents must prove not only that the public placement violated IDEA but that the private school placement was proper. The Court also notes that private school placement at public expense is quite small, citing to Brief for National

Disability Rights Network et al. as *Amici Curiae* 13-14. Moreover, the litigation process may take several years and child should not be deprived of an appropriate placement while the case is going on.