Hypothetical Vignette Presented
The facts: The state provides limited support to children with special needs above that provided for all children ($7,000 per pupil). A family moves into a poor, rural community and requests appropriate programs for two children, ages 5 and 6, with severe physical and mental disabilities. The cost per child will be over $100,000, primarily due to health care. The services will have to be provided for several years, as neither child's health is likely to improve. The district refuses to pay, claiming undue hardship. Following unsuccessful administrative review, the parents sue the district under the IDEA seeking a free appropriate public education (FAPE) for their children.
Your thoughts, please: Are the parents likely to win the suit?

Sample Response (note, this is not a perfect response but this is a good example of what is expected. For the record, this response received an A).

Issue

The question of this case is whether the parents will win this lawsuit, requesting a Free Appropriate Public Education (FAPE) for their two mentally and physically disabled children, ages 5 and 6. The district the children are now in is a poor, rural district, and refuses to pay the children's nearly $200,000 services, which are primarily due to healthcare. The district claims undue hardship.

Rules

Two case laws have made groundbreaking decisions in regards to children with disabilities and special needs. The *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania,* 343. F. Supp. 279 (E.D. Pa. 1972) and *Mills v. Board of Education of the District of Columbia,* 348 F. Supp. 866 (D.D.C. 1972) together created the current doctrine which states that all school aged children with disabilities must be provided with a free and adequate public education (FAPE). In 1990, the Education for All Handicapped Children Act (EAHCA) was renamed the Individuals with Disabilities Act (IDEA). The Americans with Disabilities Act (ADA) was also passed in 1990. These are the two principal statutes, which play a role in the protection of children with disabilities. The IDEA requires that schools provide a FAPE to all students with

disabilities. However, the ADA and §504 of the Rehabilitation Act of 1973 only require nondiscrimination and the provision of reasonable accommodations (Dayton, 2012). Determining what are reasonable accommodations becomes very complex, and each case is independent of the next. In the case of Amy Rowley (*Board of Education v. Rowley*, 458 U.S. 176 (1982)), Amy was just beginning kindergarten, and was eligible to receive assistance from the Education of the Handicapped Act. Amy's parents decided to enroll her in regular classes, and also let her use a hearing aid during class. Amy completed her kindergarten year with no difficulty and moved up to first grade. At the beginning of her first grade year, an individualized education program (IEP) was developed for Amy reporting that she would still use her hearing aid, but also receive special instruction from a tutor and speech therapist, and Amy's parents requested a sign language interpreter in Amy's classes. After a two-week trial period with the interpreter, the school decided that Amy did not need the interpreter's services. Amy's parents demanded a hearing, and claimed that denying their daughter a sign language interpreter was a violation of a FAPE. The U.S. Supreme Court ultimately decided that Amy was in fact receiving a FAPE, and the case was reversed and remanded. This case set the grounds for what a FAPE truly is, which is that the state is not required to maximize the full potential of each disabled child, they are just required to provide a free education in which each child can make passing grades and advance from grade to grade.

In *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), the line between services to be required by school officials and doctors was discussed. The parents of an 8 year-old daughter with spina bifida requested that school personnel perform a clean intermittent catheterization (CIC) on their daughter every three to four

hours, to prevent injury to the child's kidneys. This procedure was quick, does not require medical expertise, and can be learned by school personnel within an hour of training. The Supreme Court ruled that the CIC service was the minimum service necessary for the girl to attend school, and since it could be completed without a medical expert or physician, the court rule that the child should receive the CIC from school personnel. The *Tatro* test is now the determining factor of deciding how and what services to provide to children with special needs. Under the *Tatro* test, services to the student must be provided if, "The supportive services are necessary for the child to benefit from special education; and The services are not excluded as medical services that would require the services of a physician for other than diagnostic or evaluation purposes".

In the case of *Cedar Rapids v. Garret F.*, 526 U.S. 66 (1999), parents of a wheelchair-bound, ventilator-dependent boy requested one-on-one nursing care for the child. The Court utilized the *Tatro* test and ruled 7-2 in favor of the parents, stating that regardless of the expenses, the services did not need to be performed by a doctor and the services were necessary for the boy to benefit from special education.

Application

In the case of the 5 and 6 year old physically and mentally disabled children, the *Rowley* case, the *Garret F.* case, and the *Tatro* test should all be applied. The district is denying the services to the family because of undue hardship, meaning that there would be significant, unwanted expenses that would build up in this district. Looking at the case of Amy Rowley, she was denied a sign language instructor, because it was unnecessary for her in order to make passing grades and move up to the next grade level.

However, in the cases of *Tatro* and *Garret F.*, their services could not be denied, because they could be performed by a school nurse or other trained school personnel, without a physician. Also, the services being provided to *Tatro* and *Garret F.* were required in order for them to attend school and benefit from special education program. Their services were required in order to have received a FAPE.

Conclusion

Will the parents win their case and receive services for their children? If the healthcare services being requested must be performed by a physician, I don't believe the parents will win. However, if the services can be provided to the children by trained school personnel or by a school nurse, I believe the parents will win. Under the *Tatro* test, if the services are necessary to benefit from special education, and are not excluded as medical services, the parents will win and receive the services, regardless of the expense.

References

Dayton, J. (2012). Disability Law. In *Education Law: Principles, Policies, and Practice*. Charleston, SC: Wisdom Builder's Press.

The *Pennsylvania Association for Retarded Children (PARC) v. Pennsylvania,* 343. F. Supp. 279 (E.D. Pa. 1972)

Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972)

Rehabilitation Act of 1973 §504

Board of Education v. Rowley, 458 U.S. 176 (1982)

Irving Independent School District v. Tatro, 468 U.S. 883 (1984)

Cedar Rapids v. Garret F., 526 U.S. 66 (1999)