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NEWS

\$6.7 Million Settlement in Special Education CaseBy **Katie D. Fletcher**

An autistic child and his parents agreed to a settlement amount of \$6.7 million in their six-year long administrative and legal battle with the Manhattan Beach Unified School District (“School District”) and the California Department of Education (“CDE”).¹

District Court Judge Gary Allen Fees approved the record settlement amount, which represents payment to the child and his parents for the School District and CDE’s failure to appropriately educate the child for more than five years.²

“This lawsuit could have been avoided and millions of dollars could have been saved had the Manhattan Beach USD and the CDE simply complied with clearly established statutes and regulations,”³ said Steven Wyner, attorney for the family.

Under the Individuals with Disabilities Education Act (“IDEA”), the School District is required to provide students with disabilities a “free appropriate public education.”⁴ The federal government funds the IDEA in an effort to support the education of disabled children.⁵ In order to receive the federal funding, states and local educational agencies must have in place statutory polices and procedures that ensure identification and

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Grand View Elementary School in Manhattan Beach, CA. The Manhattan Beach Unified School District failed to provide adequate education for one of its disabled students.

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claims are misplaced. These groups believe that the pressure to get AZT out on the market as well as the research and development costs that went into the production of AZT may justify its high price. “AZT was rushed through FDA approval in record setting time, at a pace that has yet to be equaled,” said Martin Delaney, founding director of Project Inform.¹⁸ “The production methods for making AZT at that time were relatively primitive and required some bizarre and expensive raw materials.”¹⁹ Delaney also went on to say, “AZT is by no means a drug that stands out from the pack because of pricing.”²⁰

Many generic versions of common AIDS drugs may cost between 200 and 300 percent less than their American-made brand name counterparts.²¹ For instance, the cost of treating an AIDS patient with patented drugs can cost between \$10,000 and \$15,000 per year, but a similar generic brand regime can cost \$1 per day.²² Despite the fact that drug companies such as GSK have cut the prices of AIDS drugs sold to African nations, critics argue that the drugs are still not being sold as cheaply as generic versions produced in countries such as India, Thailand and Brazil.²³

The average cost of a drug combination therapy taken by AIDS patients in the United States is \$14,000 per year.²⁴ GSK currently controls 40% of the AIDS drug market in the United States and profits from the sale of the company’s worldwide sale of AIDS drugs are estimated to run in excess of \$2 billion each year.²⁵

¹ *Glaxo’s Patent Protection of First AIDS Drug, AZT ends; AHF Blasts Glaxo’s & Drug Industry’s Greed*, PR Newswire, Sept. 17, 2205, <http://www.prnewswire.co.uk/cgi/news/release?id=153887>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *GSK Loses Another Key Round in AIDS Healthcare Foundation’s AZT Patent Piracy Case*, PR Newswire (May 3, 2004), <http://www.prnewswire.co.uk/cgi/news/release?id=122068>.

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evaluation of disabled students and creation and implementation of an Individualized Educational Program (“IEP”) for each disabled child.⁶

Judge Feess’ opinion stated, “as of the preparation of this memorandum and order the [School] District has still not done what it has been repeatedly ordered to do - compensate [the child] for the District’s past failure to provide him with an adequate education, and to develop an IEP to meet his present and future educational needs.”⁷

The Application for Court Approval of Minor’s Compromise states that the failure to provide services required by federal and state law “resulted in permanent damage to [the student’s] academic, physical and social/emotional well-being, and has impaired his ability to function at the level at which he could have reasonably been expected to function.”⁸

The inability of a school district to provide for a disabled child is not an isolated incident. A family in Fairfield, California is currently having nearly identical issues with their school district.⁹ “The most important result from this case is the alerting of other parents to be on the watch and that there are other avenues a parent can take to ensure the needs of their child are being met,”¹⁰ said Marcy Tiffany, attorney for the family.

The IDEA provides rights to parents to participate in the child’s educational plan and to receive an impartial hearing to resolve any disputes.¹¹ If parents feel their special needs child is not receiving the education they are owed they can request a due process hearing.¹² If unsatisfied with the result, the IDEA allows parents to file suit in any state or federal court.¹³

This was the procedure followed by the Manhattan Beach family. Neither the due process hearing nor complaints to the CDE prompted the School District to provide the federally mandated appropriate education for the child.¹⁴ The School District’s defense focused on the parents not consenting to the offers made by the District.¹⁵ Finding the offers lacking the appropriate education their son required, the parents requested educational and socialization services, including compensatory services, all of which were legally due to the child.¹⁶ A Special Master at

the expense of the School District is now educating the child.¹⁷

In accepting the settlement agreement, the School District stated it takes very seriously its legal obligation to this student and the District’s entire special needs community.¹⁸ The School District has already taken action to improve special education programs and services.¹⁹ The School District, CDE, and Alliance of Schools for Cooperative Insurance Programs, and the Schools Excess Liability Fund will pay the settlement amount.²⁰

¹ Wrightslaw, *Federal Judge Approves Record \$6.7 Million Settlement in Special Ed Case*, <http://www.wrightslaw.com/nltr/05/al.0819.porter.htm>. (last visited Apr. 17, 2006).

² Press Release, Wyner & Tiffany, *Federal Judge Approves Record \$6.7 Million Settlement in Special Education Case* (Aug. 18, 2005), <http://www.wrightslaw.com/news/05/पोर्ट.प्र.रिलीज.पैरेंट.pdf>.

³ *Id.*

⁴ 20 U.S.C. § 1400(d)(1)(A) (2005).

⁵ 20 U.S.C. § 1400(d).

⁶ *Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1066 (9th Cir. 2002).

⁷ *Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, CV 00-8402 GAF, 1, 3 (C.D. CA 2004).

⁸ Application for Court Approval of Minor’s Compromise, *Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, CV 00-8402 GAF, 7 (C.D. CA 2004).

⁹ Interview with Marcy Tiffany, Attorney, Wyner & Tiffany, in Torrance, Cal. (Oct. 10, 2005).

¹⁰ *Id.*

¹¹ 20 U.S.C. § 1415(b)(6) (2005).

¹² 20 U.S.C. § 1415(f).

¹³ 20 U.S.C. § 1415(i)(2)(A).

¹⁴ Porter, *supra* note 6.

¹⁵ *Id.* at 4.

¹⁶ Interview, *supra* note 9.

¹⁷ Press Release, Manhattan Beach Unified School District, Manhattan Beach Unified School District Statement Regarding Porter Settlement (Aug. 17, 2005).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*