



**U.S. Supreme Court to Decide *Forest Grove v. T.A.*:
Parents Should Win, But Bazelon Center Opposes
Therapeutic Boarding Schools**

On April 28, 2009, the Supreme Court will hear argument in the case of *Forest Grove v. T.A.*, No. 08-305. The issue before the Court is whether parents may require a school system to reimburse them for their child's private school tuition under the Individuals with Disabilities Education Act (IDEA)¹ when the school system had not previously recognized the child's need for special education.² In the case before the Supreme Court, the parent is seeking reimbursement for tuition at a private "therapeutic boarding school," Mount Bachelor Academy.

The Bazelon Center believes that the Supreme Court should rule in favor of the parents. An interpretation of the IDEA that would prohibit parents from seeking tuition reimbursement would be particularly unjust in circumstances, such as the one here, in which the school district had wrongly denied services for the student.

However, we strongly question the wisdom of placing children in facilities like Mount Bachelor Academy. In our view, public dollars should not be spent on restrictive, costly residential placements like Mount Bachelor Academy. Research shows such placements do not meet children's needs. Moreover, substantial numbers of children have been abused at therapeutic boarding schools, resulting in their serious injury and even death. Instead, public money should be invested in services that have been shown to be effective in supporting children in their own homes, schools, and communities. Community-based services are more effective and less costly, and they ensure that students are served in the "least restrictive environment," as required by the IDEA.³

¹ Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

² *Forest Grove School District v. T.A.*, Petition for a Writ of Certiorari, 2008 WL 4143110 (Sept. 3, 2008).

³ The IDEA mandates that "[t]o the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children from the regular educational environment only occurs when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5).

Factual Background

The parents in this case withdrew their child from public school during his junior year of high school and enrolled him in a private “therapeutic boarding school,” Mount Bachelor Academy. Although, the child, T.A., had difficulties paying attention in class, completing work, and later, with depression and substance abuse, the school district found him ineligible for special education under the IDEA.⁴ A private psychologist diagnosed T.A. with Attention Deficit Hyperactivity Disorder (ADHD), depression, and substance abuse and recommended that he be placed in a residential program. T.A.’s parents withdrew him from school, sent him to a “wilderness therapy” program, and then enrolled him in Mount Bachelor Academy, from which T.A. eventually graduated. T.A.’s parents initiated a due process hearing seeking reimbursement for the tuition they paid to Mount Bachelor Academy.⁵

The Hearing Officer ruled in favor of the parents, finding that the school district should have offered special education to T.A., and ordered the district to reimburse the parents for the cost of Mount Bachelor Academy. The U.S. District Court reversed the ruling, which was then reinstated by the U.S. Court of Appeals for the Ninth Circuit.⁶ The school district appealed to the Supreme Court, which agreed to hear the case.⁷

Therapeutic Boarding Schools Are Not Effective in Meeting Children’s Needs

A therapeutic boarding school is a type of residential treatment center that markets itself to parents of children with challenging behavior. The overwhelming consensus of children’s mental health experts, including the United States Surgeon General, is that residential treatment centers are ineffective.⁸ The primary reasons are summarized below.

- *Detrimental Effects of Group Placements:* Placing children with behavioral problems together in group settings has detrimental effects. Research shows that it fosters negative peer influence, escalates undesirable behavior, and creates opportunities for peers to learn new anti-social behaviors.⁹ The Surgeon General found that residential treatment centers are ineffective largely because “association with delinquent or deviant peers is a major risk for later behavioral problems.”¹⁰
- *Failure to Address Problems in the Child’s Home and Community Environment:* Residential treatment centers, by their nature, remove children from their own homes,

⁴ *Forest Grove School District v. T.A.*, 523 F.3d 1078, 1081-82 (9th Cir. 2008).

⁵ *Id.* at 1082-83.

⁶ *Id.* at 1085-89.

⁷ *Forest Grove School District v. T.A.*, 129 S. Ct. 987 (Jan. 16, 2009).

⁸ *See, e.g.*, U.S. Department of Health and Human Services, “Mental Health: A Report of the Surgeon General” (1999) (hereinafter “Surgeon General’s Report on Mental Health”), at 169-171, available at <http://www.surgeongeneral.gov/library/mentalhealth/home.html>.

⁹ *See, e.g.*, Bazelon Center for Mental Health Law, “The Detrimental Effects of Group Placements/Services for Youth with Behavioral Health Problems” and articles cited within, available at <http://www.bazelon.org/pdf/Deviant-Peer-Influences-Fact-Sheet.pdf> (hereinafter “Bazelon Group Placements Factsheet”).

¹⁰ Surgeon General’s Report on Mental Health at 170.

schools, and communities. Children do not develop the skills they need to be successful upon their return to their families, neighborhoods, and schools. Also, most facilities do not provide family therapy and even when they do, families often cannot participate because the child is so distant from home.¹¹ As a result, gains that a child makes in residential treatment tend not to be sustained, and most children who leave residential treatment facilities end up being readmitted to another treatment facility or arrested.¹²

- *Little or Inappropriate Mental Health Services:* Many residential treatment centers offer little to no mental health treatment or use highly inappropriate treatment. Centers that are not licensed as mental health treatment facilities, including most therapeutic boarding schools, sometimes do not even have clinical staff. “Therapeutic” interventions are often provided by inexperienced staff members with no formal clinical training. Individualized treatment planning is generally not provided, and reports of over-medication of youth are widespread.¹³ Children spend far less time with mental health professionals in residential treatment centers than they would if provided services in an appropriate community-based setting.¹⁴
- *Substandard Educational Programs:* Many residential treatment centers cannot meet youth’s educational needs. Youth often do not receive instruction from qualified teachers, including certified special education teachers, and educational materials often do not meet state standards. “Independent study” often substitutes for real education, and some facilities even withhold education as punishment. College admission departments do not recognize diplomas from many programs.¹⁵

Moreover, residential treatment centers are extremely expensive, typically costing \$30,000 to \$80,000 per year. Mount Bachelor Academy currently charges costs almost \$80,000 a

¹¹ In contrast to most residential treatment programs, short-term (30 days or less) residential programs that are in the child’s own community, have significant family involvement, and do intensive individualized planning with the goal of quickly reintegrating the child back into his own home may serve a useful function for children in serious crisis.

¹² See, e.g. Bazelon Group Placements Factsheet and articles cited within; Surgeon General’s Report at 171.

¹³ See, e.g., Testimony at October 10, 2007 hearing on “Cases of Child Neglect and Abuse at Private Residential Treatment Facilities” before the Committee on Education & Labor, U.S. House of Representatives, testimony available at <http://edlabor.house.gov/hearings/2007/10/cases-of-child-neglect-and-abu.shtml> (hereinafter “Oct. 2007 Hearing Testimony”); Robert Friedman, et al., “Unlicensed Residential Programs: The Next Challenge in Protecting Youth,” *American Journal of Orthopsychiatry*, Vol. 76, No. 3, 295-303 (2006) (hereinafter “Unlicensed Residential Programs”), at 297; Bazelon Center for Mental Health Law, “Fact Sheet: Children in Residential Treatment Centers” and articles cited within, available at <http://www.bazelon.org/issues/children/factsheets/rtc.pdf> (hereinafter “Bazelon RTC Factsheet”).

¹⁴ See, e.g., Bazelon RTC Factsheet.

¹⁵ See, e.g., Oct. 2007 Hearing Testimony.

year in tuition.¹⁶ For-profit companies running some of these facilities – like Aspen Education Group – make huge profits.¹⁷

The questionable practice of using residential treatment centers distorts – and undermines – our nation’s efforts to address children’s mental health. Nearly a quarter of the national expenditure on children’s mental health is spent on residential treatment centers, although they serve only a relatively small percentage of treated children.¹⁸

Abuse and Neglect in Residential Treatment Centers

The substantial number of reports of incidents of abuse, neglect, and even death at residential treatment centers is alarming. Families, former residents, mental health experts, and the media have repeatedly questioned the safety of residential treatment centers.¹⁹ The United States Government Accountability Office (GAO) has reported on abuse and neglect at residential treatment centers and on the lack of oversight and regulation of these facilities.²⁰ Congress recently held hearings²¹ and legislation has been proposed to address persistent mistreatment.²²

The GAO examined “thousands of allegations of abuse, some of which involved death, at residential treatment programs . . . between the years 1990 and 2007,” as well as ten representative cases in which adolescents died (including one involving the same “wilderness therapy program” that T.A. attended prior to his enrollment at Mount Bachelor Academy).²³ A

¹⁶ Mount Bachelor Academy current charges \$6,400 per month in tuition plus an enrollment fee of \$2,200. <http://www.mtba.com/admissions.html>. At the time T.A. attended, monthly tuition was \$5,200 per month. *Forest Grove School District*, 523 F.3d at 1083.

¹⁷ “Unlicensed Residential Programs,” at 297; “A Business Built on the Trouble of Teenagers,” *New York Times* (Aug. 17, 2005) (describing profits of Aspen Educational Group), available at http://www.nytimes.com/2005/08/17/business/17teen.html?_r=1&ex=1281931200.

¹⁸ Surgeon General’s Report on Mental Health, at 169.

¹⁹ See, e.g., “Unlicensed Residential Programs” (academic article expressing concerns by mental health experts); <http://astart.fmhi.usf.edu/> (website of Alliance for the Safe, Therapeutic, & Appropriate Use of Residential Treatment, an alliance of leaders in psychology, psychiatry, nursing, mental health law, policy and family advocacy concerned about abuses in residential treatment programs); <http://www.caica.org/> (website of Coalition Against Institutionalized Child Abuse, collecting information and media articles on incidents of death and abuse at residential treatment facilities, as well as stories from families and former participants about residential treatment programs); www.cafety.org (website of Community Alliance for the Ethical Treatment of Youth); <http://fornits.com/phpbb/viewforum.php?f=67&sid=4df0e61785b233b8ef57682911bc3714> (blog where families and former attendees share their information about residential treatment programs).

²⁰ See United States Government Accountability Office, “Residential Treatment Programs: Concerns Regarding Abuse and Death in Certain Programs for Troubled Youth,” GAO-08-146T (Oct. 2007), available at <http://www.gao.gov/new.items/d08146t.pdf> (hereinafter “GAO Report on Abuse and Death”); United States Government Accountability Office, “Residential Facilities: Improved Data and Enhanced Oversight Would Help Safeguard the Well-Being of Youth With Behavioral and Emotional Challenges,” GAO-08-346 (May 2008), available at <http://www.gao.gov/new.items/d08346.pdf> (hereinafter “GAO Report on Data and Oversight”).

²¹ October 10, 2007 hearing on “Cases of Child Neglect and Abuse at Private Residential Treatment Facilities” before the Committee on Education & Labor, U.S. House of Representatives, testimony available at <http://edlabor.house.gov/hearings/2007/10/cases-of-child-neglect-and-abu.shtml>.

²² *Stop Child Abuse in Residential Programs for Teens Act of 2009* (H.R. 911) (passed by U.S. House of Representatives on Feb. 23, 2009) details available at <http://edlabor.house.gov/blog/2009/02/the-stop-child-abuse-in-reside.shtml>.

²³ See GAO Report on Abuse and Death at 3, 12-34.

survey conducted by mental health researchers of more than 700 children and their families identified concerns about abuse and neglect in 85 different programs located in 23 states. More than half of the identified programs were self-described “therapeutic boarding schools.”²⁴ Websites contain allegations about countless incidents of abuse, and even death, at residential treatment centers, including incidents at Mount Bachelor Academy and some of the sixty-plus other facilities run by its parent company, Aspen Education Group.²⁵

Underlying problems include:

- *Inappropriate Discipline Techniques:* Many residential treatment programs employ severe and inappropriate disciplinary techniques.²⁶ Seclusion and restraint is used frequently as a punishment for rule violations and negative attitudes, including dangerous practices such as placing children in isolation for long periods and forcing children into painful and dangerous restraints. Some programs deprive children of food, sleep, and shelter for breaking rules or not showing sufficient progress.²⁷
- *Medical Neglect:* Many facilities do not have adequate medical staff, and health problems often go unrecognized and untreated, in some cases leading to death.²⁸ Medications are often administered without supervision by trained personnel.²⁹
- *Restricted Communication.* Many programs prohibit participants’ contact with their families or monitor all communication.³⁰ Children similarly lack access to child protection and advocacy hotlines.³¹
- *Lack of Monitoring and Regulation:* Many facilities operate under the government’s radar. The GAO conducted a 50-state review of licensing and monitoring of residential treatment centers and determined that certain types of residential facilities – most significantly “therapeutic boarding schools” – are often exempted from licensing

²⁴ See Testimony of Dr. Allison Pinto, a licensed child psychologist and professor from the Louis de la Parte Florida Medical Health Institute at the University of South Florida, available at <http://edlabor.house.gov/testimony/101007AllisonPintoTestimony.pdf> (hereinafter Pinto Testimony).

²⁵ See, e.g., <http://www.caica.org/>; <http://fornits.com/phpbb/viewforum.php?f=67&sid=4df0e61785b233b8ef57682911bc3714>. See <http://www.aspeneducation.com/> for list of facilities and programs run by Aspen Education Group.

²⁶ In describing “therapeutic boarding schools,” which are also known as “academies,” GAO noted that “[t]hese programs often enroll youth whose parents force them to attend against their will . . . [and] can include fences and other security measures to ensure that youth do not leave without permission” and that they often employ some of the same “strict discipline and regime” of “bootcamp programs.” GAO Report on Abuse and Death, at 8-10.

²⁷ See, e.g., Pinto Testimony; “Unlicensed Residential Programs,” at 298. These uses of seclusion and restraint would be illegal in licensed psychiatric residential treatment facility, where such practices can only be used if the child is an immediate danger to self or others and can only be imposed by trained individuals. See Children’s Health Act of 2000, P.L. No. 106-310, described at <http://www.bazelon.org/issues/restraintandseclusion/moresources/children.htm>.

²⁸ See, e.g., Pinto Testimony; GAO Report on Abuse and Death, at 3, 13.

²⁹ *Id.*

³⁰ See, e.g., Pinto Testimony; “Unlicensed Residential Programs,” at 298.

³¹ See, e.g., *id.*; “Unlicensed Residential Programs,” at 298.

requirements, even if they receive federal funding.³² Even when monitoring of residential programs occurs, important aspects, such as the quality of educational programming and the use of psychotropic medications, are often not included.³³ The GAO found the lack of sufficient oversight and regulation caused significant underreporting of abuse, maltreatment, and death.³⁴

Community-Based Supports Are More Effective and Less Costly than Residential Treatment Centers

Community-based services are more effective in meeting children's needs. Virtually all children with challenging mental health needs – including children who have been in psychiatric hospitals, residential treatment centers, or involved in the juvenile justice or child welfare systems – can be supported in the community with services that are designed to meet their individualized needs. Community-based services may include wraparound services, therapeutic foster care, mobile crisis services, and intensive case management. Study after study has found better outcomes for children served through these interventions than through residential treatment. For example, a recent study by the federal government shows that children and youth with serious mental health needs make substantial improvements through community-based services, including that they:³⁵

- Were hospitalized less often,
- Had fewer arrests and stays in detention,
- Sustained their mental health improvements,
- Had less suicidal behavior, and
- Had better school attendance and achievement.

Randomized clinical trials of intensive community-based services, like wraparound services and therapeutic foster care, have similarly shown their superiority over residential placement.³⁶

Intensive community-based services not only have better outcomes but also cost less than residential treatment.³⁷ The Surgeon General has embraced the effectiveness of community based services, both in his Report on Mental Health and his Report on Youth Violence.³⁸

³² GAO Report on Data and Oversight, at 20.

³³ *Id.* at 4.

³⁴ *Id.* at 3, 5, 11-18.

³⁵ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2005 Key Outcomes, available at http://www.samhsa.gov/samhsa_news/VolumeXIV_3/article11.htm.

³⁶ *See, e.g.*, Bruns, Eric and Janet Walker, "Wraparound – Key information, evidence and endorsements," (May 2007), available at <http://www.rtc.pdx.edu/nwi/PDF/pbWraparoundEvidenceRecognition.pdf>; Surgeon General's Report on Mental Health at 176-77 (describing outcomes of randomized controlled studies of therapeutic foster care).

³⁷ *See, e.g.*, Kamradt, Bruce "Wraparound Milwaukee: Aiding youth with mental health needs," *Juvenile Justice Bulletin*, 7(1), 14-23 (2000) (children served through wraparound program achieved better outcomes while cost of care decreased by one-third); Surgeon General's Report on Mental Health, at 177 (therapeutic foster care costs half that of residential treatment placements for the same period of time); Aos, Steve, et al, "The Comparative Costs and Benefits of Programs to

Intensive community-based interventions are often provided in school settings. These interventions are most successful when coupled with a school-wide approach called “positive behavioral support” (PBS),³⁹ which has been widely embraced by education authorities including the U.S. Department of Education.⁴⁰ By providing these interventions, school districts can meet the needs of children with challenging behaviors while serving them in the “least restrictive environment.”⁴¹

Conclusion

The *Forest Grove* case presents an occasion for rethinking our nation’s failed investment in residential treatment. Instead of funding ineffective placements in which abuse and maltreatment is a significant risk, public funds should be spent on community-based services that successfully support children in their own homes, schools, and communities.

The Bazelon Center (www.bazelon.org) is the leading national legal-advocacy organization representing people with mental disabilities. It promotes laws and policies that can enable people with psychiatric or developmental disabilities to exercise their life choices and access the resources they need to participate fully in their communities.

Reduce Crime,” Washington State Institute for Public Policy (May 2001), available at <http://www.wsipp.wa.gov/pub.asp?docid=01-05-1201> (therapeutic foster care saved taxpayers more than \$20,000 in subsequent criminal justice costs for each program participant).

³⁸ Surgeon General’s Report on Mental Health at 175-76; U.S. Department of Health and Human Services, “Youth Violence: A Report of the Surgeon General” (2000), at 110-115, available at <http://www.surgeongeneral.gov/library/youthviolence/>.

³⁹ For more information about PBS, see Bazelon Center for Mental Health Law, “Way To Go: School Success for Children with Mental Health Needs,” available at <http://www.bazelon.org/newsroom/archive/2006/6-7-6-WayToGo.html>.

⁴⁰ See, e.g., 20 U.S.C. § (c)(5)(F); U.S. Department of Education’s Office of Special Education Programs’ Technical Assistance Center on Positive Behavioral Interventions and Supports, www.pbis.org.

⁴¹ 20 U.S.C. § 1412(a)(5).