BRIGHT “IDEA” OR MISSING THE MARK?: THE THIRD CIRCUIT
RESTRICTS REIMBURSEMENT FOR RESIDENTIAL
PLACEMENT UNDER THE INDIVIDUALS WITH
DISABILITIES EDUCATION ACT

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“There is no doubt that many children benefit from placements at
exclusive residential facilities . . . . At the same time, many of those
placements . . . cost more than $100,000 per student per year. Given
the stakes, few educational decisions are as significant as whether a
public school district must pay for a private residential placement.”

I. INTRODUCTION: COUNTING THE COSTS OF A FREE EDUCATION

The Individuals with Disabilities Education Act (IDEA) has a clear
goal: to provide handicapped students with the right to an education ca-
tered to their particular needs and disabilities.2 While the goal of the
IDEA is clear, disagreement between parents and school districts over ap-
propriate education services demonstrates the practical complications the
IDEA creates.3 Specific difficulties arise when parents unilaterally pursue

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1. Mark Walsh, Supreme Court Declines Appeal on IDEA Residential Placements,
law/2013/06/supreme_court_acts_on_appeal_o.html (quoting appellate brief
filed by former United States Solicitor General Neal K. Katyal). Katyal filed a
petition with the United States Supreme Court seeking review of a Tenth Circuit
decision granting reimbursement for unilateral residential placement. See Petition
Roxanne B., 702 F.3d 1227 (10th Cir. 2012) (No. 12-1175), 2013 WL 1247971
[hereinafter Petition for a Writ of Certiorari], cert. denied, 133 S. Ct. 2857 (2013).

2. See Ann K. Wooster, Annotation, What Constitutes Services That Must Be Pro-
vided by Federally Assisted Schools Under the Individuals with Disabilities Education Act
purpose of IDEA, as interpreted by the courts, was to remedy the condition of the
more than half of all handicapped children in the United States who were not
receiving an education appropriate to their needs.”).

3. See Thomas A. Mayes & Perry A. Zirkel, State Educational Agencies and Special
between parents of children with disabilities and school officials regarding the spe-
residential placement to ensure an adequate education for their child.\(^4\) Such challenges surface not only due to the financial hardship that residential tuition places on school districts, but also due to the complexity of students’ disabilities.\(^5\)

Despite multiple references to difficulties interpreting the IDEA and its practical ramifications, the Third Circuit has been credited with defining and clarifying proper remedies under the IDEA.\(^6\) Notably, the Third Circuit has developed the oldest and most popularly adopted test for evaluating the appropriateness of reimbursement for residential placements.\(^7\) Yet, over time, the Third Circuit has reformed its analysis of unilateral residential placements when identifying which placements are entitled to reimbursement.\(^8\) Recently, the Third Circuit narrowed its once permissive approach to residential placement reimbursement in *Munir v. Pottsville Area School District*,\(^9\) where the court denied reimbursement for the placement of an emotionally disturbed student in a residential facility. The notable decision in *Munir* is representative of an overarching transformation from the Third Circuit’s once broad treatment of qualifying residential...

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4. See Ralph D. Mawdsley, *Applying the Forest Grove Balancing Test to Parent Reimbursement for Placement in Residential Medical Facilities*, 253 EDUC. L. REP. 521, 527 (2010) (“When parents choose to place their children in residential facilities, the issue of school district reimbursement involves a more complex analysis of educational benefits and medical services under the IDEA.”).

5. See Laura Rothstein & Julia Irzyk, *Disabilities and the Law* § 2:27 (4th ed. 2013) (“Providing educational services to a student in a residential facility by the public school agency can be logistically problematic.”). Students who require residential placement due to the compilation of educational, physical, and mental disabilities create tremendous difficulties for courts in their efforts to evaluate reimbursement for such placements under the IDEA. See Dixie Snow Hufner, *Special Education Residential Placements for Students with Severe Emotional Disturbances: The Implications of Recent Ninth Circuit Cases*, 67 EDUC. L. REP. 397, 398 (1991) (designating cases “in which the student is severely emotionally disturbed and placed . . . in a psychiatric treatment center that offers both extensive medical and special education services,” as “among the most difficult cases” under IDEA).


7. See Mawdsley, supra note 4, at 527 (describing Third Circuit’s test as “oldest” test); see also Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., 702 F.3d 1227, 1233–34 (10th Cir. 2012) (“The Third Circuit approach has been followed, to varying degrees, by the First, Second, Fourth, Sixth, Eighth, Ninth, Eleventh, and D.C. Circuits.”) (footnote omitted), cert. denied, 133 S. Ct. 2857 (2013).


9. 723 F.3d 425 (5d Cir. 2013).
placements to a more restrictive view of which services qualify for reimbursement.10

This Casebrief discusses the Third Circuit’s preferred analysis of reimbursement requests for residential placements and serves as a guide to practitioners litigating reimbursement disputes.11 Part II of this Casebrief traces the history of the IDEA, from the recognition of educational inequalities requiring legislative action to the present understanding of proper residential placements.12 Part III discusses the Third Circuit’s recent decision in Munir, focusing on the juxtaposition of the Circuit’s broad interpretation of reimbursement entitlement in early cases and the comparatively narrow approach the court employed in Munir.13 Part IV considers implications of the Third Circuit’s departure from its once inclusive methodology, taking into account the goals of the IDEA.14 Finally, Part V provides recommendations for practitioners in light of the court’s decision in Munir.15 Ultimately, this Casebrief highlights the Third Circuit’s abandonment of its original analysis of residential placements in exchange for an alternatively strict standard controlling reimbursement.16 Despite the Third Circuit’s insistence that its holding in Munir is merely a continuation of the court’s usual reimbursement analysis, this Casebrief recognizes the transformation in the Third Circuit’s standard and seeks to

10. See Appellant’s Opening Brief at 30, Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., 702 F.3d 1227 (10th Cir. 2012) (No. 11-1334), 2011 WL 4438392 (describing “unmistakable trend among the federal circuits [moving] away from the ‘inextricably intertwined’ test toward the principle that when mental illness . . . requires treatment in and of itself, parents must look to resources other than educators and educational funding”); id. at 33 (referring to Mary T. as evidence that “the Third Circuit itself” has departed from understanding of inextricably intertwined explained in Kruelle (citing Mary T. v. Sch. Dist. of Phila., 575 F.3d 235, 244–46 (3d Cir. 2009))).

11. For a discussion of the Third Circuit’s considerations, see infra notes 100–10 and accompanying text.

12. For a discussion of background on the IDEA and judicial interpretations of reimbursement, see infra notes 18–81 and accompanying text.

13. For a discussion of the evolution of the Third Circuit’s treatment of unilateral residential placements for reimbursement purposes, see infra notes 100–10 and accompanying text.

14. For a discussion of the potential consequences of the Third Circuit’s transformative analysis of residential placement services, see infra notes 111–53 and accompanying text.

15. For a discussion of practitioner suggestions, see infra notes 154–76 and accompanying text. For closing comments, see infra notes 177–82 and accompanying text.

guide practitioners in response to the court’s new reimbursement assessment methodology.17

II. BACKGROUND: A HISTORY LESSON ON THE IDEA AND CIRCUIT COURT ASSESSMENTS

The high stakes in residential placement reimbursement disputes demonstrate the IDEA’s significance in the area of special education law.18 Yet, circuit courts’ inconsistent interpretations of appropriate residential placements under the IDEA force parents to navigate a complicated system when requesting reimbursement.19 This section provides a brief overview of the influences that prompted the IDEA’s creation and traces efforts by circuit courts to incorporate Congress’s goals into varying tests to analyze reimbursement claims.20 In the absence of congruency in the interpretation of services provided under the IDEA, this section also discusses motive for placement, which many courts have incorporated into their reimbursement analyses.21

A. Congress’s Not-So-New “IDEA”

Congress developed the IDEA in 1990, serving as a milestone in efforts to transform educational opportunities for handicapped students.22 The IDEA expresses Congress’s intention “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their

17. For a discussion of the changes in the Third Circuit’s reimbursement analysis and implications of such changes, see infra notes 111–53 and accompanying text.

18. See Walsh, supra note 1 (referring to importance of reimbursement disputes).

19. See Petition for a Writ of Certiorari, supra note 1, at 2–3 (commenting on varying court views on entitlement to reimbursement under IDEA).

20. For a discussion of the tests developed by the Third, Seventh, Fifth, and Tenth Circuits, see infra notes 31–62 and accompanying text.

21. For a discussion of cases considering motive for placement, see infra notes 63–81 and accompanying text.

22. See LaDonna L. Boeckman, Bestowing the Key to Public Education: The Effects of Judicial Determinations of the Individuals with Disabilities Education Act on Disabled and Nondisabled Students, 46 DRAKE L. REV. 855, 865 (1998) (tracing history of IDEA’s development). In 1965, Congress enacted the Elementary and Secondary Education Act (ESEA), requiring public school districts to “meet the educational needs of educationally deprived children in economically disadvantaged locations.” See Wooster, supra note 2, § 2[a]. While intended as a response to disabled students’ “total exclusion from the classroom,” the ESEA failed to provide sufficient educational opportunities to disabled children and was subsequently replaced by the Education of the Handicapped Act (EHA) in 1970. See id. As part of amendments to the EHA in 1990, Congress renamed EHA the IDEA and “revamped” the educational program. See id.
unique needs . . . .”23 The IDEA requires that a state receiving federal education funding provide a “free appropriate public education” (FAPE) to qualifying children with disabilities.24 To provide a FAPE, school districts must develop an “individualized education program” (IEP) for qualifying students that outlines individualized goals and current academic achievement levels.25 School districts satisfy FAPE obligations by designing an IEP “reasonably calculated” to allow the particular student to receive “meaningful educational benefits in light of the student’s intellectual potential.”26

Under the IDEA, parents who believe that a public school district is not providing a FAPE for their qualifying child may unilaterally place that child in an alternative private school and then seek reimbursement from the school district for the tuition costs.27 Parents are entitled to reim-


24. See id. § 1412(a)(1) (containing FAPE requirement).

25. See id. § 1414(d) (describing school district obligations).


The IDEA’s “broad purpose of providing children with disabilities a FAPE,” combined with the potential lack of adequate public education programs to address a disabled student’s particular needs, have been credited as the reasons behind permitting disabled students to receive a proper private education at the school district’s expense. See Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 238 (2009); see also Carter, 510 U.S. at 12 (noting IDEA enables courts “to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act.” (quoting Burlington, 471 U.S. at 369) (internal quotation marks omitted)). Nonetheless, while the IDEA provides par-
bursement for such alternative private placements only if the student’s public school district failed to provide the child with a FAPE and the new placement is deemed appropriate. In certain instances, parents consider alternative placement in a private residential facility as necessary for their child to obtain educational benefits not otherwise available through public school. Should a court determine that residential placement is necessary to provide a child with an appropriate education, the school district must pay all placement costs, including non-medical care and room and board.

B. Setting the Curve: Competing Circuit Tests to Determine “Appropriate” Residential Placement

While parents are reimbursed for a child’s enrollment in an appropriate alternative placement, complications arise when a residential facility combines both educational and mental health services. Placement in residential facilities is to be at no cost to parents only “[i]f placement in a public or private residential program is necessary to provide special education and related services to a [child with a disability], the program, including non-medical care and room and board, must be at no cost to the parents of the child.” (quoting 34 C.F.R. § 300.302 (2006)) (internal quotation marks omitted)).

28. See Mary T., 575 F.3d at 242 (“A court may grant tuition reimbursement if the School District failed to provide the required FAPE and the parents sought an appropriate private placement.”); see also Carter, 510 U.S. at 15 (noting parents “are entitled to reimbursement only if a federal court concludes both that the public placement violated IDEA and that the private school placement was proper under the Act”). In Carter, the Supreme Court additionally confirmed that courts are entitled to incorporate equitable considerations into their reimbursement examinations. See id. at 16 (“Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.”).

29. See, e.g., Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 694 (3d Cir. 1981) (referring to “consistency of programming and environment” offered at residential placement as “critical” to handicapped child’s “ability to learn” due to complexity of disabilities).

30. See Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings, 903 F.2d 635, 638 (9th Cir. 1990) (recognizing school districts are required to provide residential placements when necessary). The Clovis court referred to inclusion of “residential schools” in the EHA’s definition of elementary and secondary schools as evidence of school district responsibility for residential placements. See id. (citing 20 U.S.C. § 1401(a)(9)–(10)). The Clovis court also referred to Congress’s explanation in “pertinent regulations.” See id. (“[I]f placement in a public or private residential program is necessary to provide special education and related services to a [child with a disability], the program, including non-medical care and room and board, must be at no cost to the parents of the child.” (quoting 34 C.F.R. § 300.302 (2006)) (internal quotation marks omitted)).

31. See Petition for a Writ of Certiorari, supra note 1, at 2–3 (“The circuits have struggled for years to delineate the boundaries of school districts’ obligation to provide their students with a free appropriate public education in cases where the child’s mental health needs require the child to be placed at a residential facility.”).
tion and related services . . .” 32 Still, federal courts of appeals are split regarding the proper test to determine whether a child’s placement is appropriate for reimbursement purposes. 33 As the IDEA explicitly exempts school districts from paying for medical expenses, 34 the proper test used to evaluate residential placements should differentiate between placements that qualify as “special education” or “related service” as opposed to a “medical service.” 35

The Third Circuit developed the “inextricably intertwined test” in Kruelle v. New Castle County School District. 36 In Kruelle, the court adopted the view that residential placement may be necessary for educational purposes when the placement is part of a “specially designed instruction to meet the unique needs of a handicapped child.” 37 In holding that a severely handicapped child was entitled to residential placement, the Third Circuit referred to the student’s medical, emotional, and educational needs as inextricably intertwined. 38

32. 34 C.F.R. § 300.104 (2006) (listing requirements for reimbursement for residential placement); see also 20 U.S.C. § 1412(10). “Related services” referred to in the IDEA have a broad definition, including “‘medical services’ to the extent that they are ‘for diagnostic and evaluation purposes only.’” Mawdsley, supra note 4, at 524 (quoting 20 U.S.C. § 1401(26)(A)).

33. See Mawdsley, supra note 4, at 327 (“Federal courts of appeal, in the absence of direction from the Supreme Court, have designed three separate tests to use in assessing whether parent residential placements can be considered to be appropriate for purposes of reimbursement.”).

34. For a discussion of the categories of services that the IDEA allows reimbursement for, see infra note 35.

35. See, e.g., Clovis, 903 F.2d at 638 (noting need to determine whether student’s placement was “related service” or “medical service” in order to establish whether reimbursement is owed). The IDEA’s definition of “related services” provides an exemption for “medical services,” rendering them not entitled to reimbursement under the IDEA. See 20 U.S.C. § 1401(17). Still, the IDEA also provides no definition of medical services or guidance on how courts should differentiate such medical services from related services. See Clovis, 903 F.2d at 638.

36. 642 F.2d 687 (3d Cir. 1981); see also Huefner, supra note 5, at 398 (discussing “unseverability test” developed in Kruelle).

37. See Kruelle, 642 F.2d at 694 (quoting 20 U.S.C. § 1401(6)) (internal quotation marks omitted) (describing court’s central inquiry).

38. See id. at 687; see also Huefner, supra note 5, at 398 (describing inextricably intertwined test). Huefner points to the court’s opinion in Kruelle as an instance where the court invoked “the unseverability of medical, emotional, and educational needs” in order to justify free residential placement for a student with severe disabilities. See id.

The court’s reimbursement analysis in Kruelle focused only on whether the services the child was receiving in the residential facility satisfied the IDEA’s definition of “special education” services. See Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B., 702 F.3d 1227, 1237 (10th Cir. 2012), cert. denied, 133 S. Ct. 2857 (2013). The court did not alternatively analyze whether the services would fit under the category of “related services,” for which the IDEA also entitles reimbursement. See id. (addressing Kruelle court’s silence “as to the scope of the term ‘related services’”). Nevertheless, in subsequent cases considering whether to adopt the test developed in Kruelle, courts often “conflate the two statutory provisions.” See id. (citing Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 298
In *Kruelle*, the court considered the appropriateness of residential placement for Paul Kruelle, a thirteen-year-old suffering from cerebral palsy and extreme physical, mental, and emotional infirmities. While the school district alleged that Paul’s residential placement was necessary “for reasons of medical and domiciliary care, not for educational purposes,” the court recognized that the reach of educational instruction is “necessarily broad” to effectively address the specialized needs of severely handicapped children like Paul. Therefore, when a student’s medical and educational needs cannot be segregated, residential placement is appropriate, even when non-academic services are necessary.

39. See *Kruelle*, 642 F.2d at 688–89 (describing Paul’s emotional and physical problems). The court described Paul as “profoundly retarded” with “the social skills of a six month old child” and an I.Q. “well below thirty.” *Id.* at 688. Paul is unable to walk, dress, or eat without the assistance of an aid, is not toilet trained, does not speak, and has an “extremely low” “receptive communication” level. *See id.* at 688–89. Further, Paul has a “history of emotional problems” which lead to “choking and self-induced vomiting when experiencing stress.” *Id.* at 689 (internal quotation marks omitted).

40. See *id.* at 693; see also *Vander Malle v. Ambach*, 667 F. Supp. 1015, 1038 (S.D.N.Y. 1987) (“Because Congress intended to provide education for all children ‘regardless of the severity of their handicaps,’ education within the meaning of the Act must necessarily be broadly interpreted.” (citation omitted) (quoting 20 U.S.C. § 1412(2)(C))). The Third Circuit based its creation of the inextricably intertwined test on its understanding of Congress’s intentions when passing the IDEA. See *Kruelle*, 642 F.2d at 690–91 (discussing reasons behind IDEA’s passage). Specifically, the court noted that Congress recognized the “broad range of special needs presented by [children with disabilities], the lack of agreement within the medical and educational professions on what constitutes an appropriate education, and the tradition of state and local control over educational matters . . . .” *Id.* at 691.

41. See *Huefner*, supra note 5, at 398 (commenting on court’s interpretation in *Kruelle*). Huefner explained the court’s understanding that “[f]or some, the need for extensive special education and related services is inextricably intertwined with their physical and mental health needs, with the latter needs contributing heavily to the educational needs.” *Id.* The court’s holding suggested a distinction between cases where a student’s special education and health needs are inextricably intertwined, versus those cases where medical issues are severable from educational needs. See *Kruelle*, 642 F.2d at 693. In the former case, the provision of mental or physical health treatment is necessary for particular students to experience any educational benefit. See, e.g., Jefferson Cnty. Bd. of Educ. v. Breen, 853 F.2d 853 (11th Cir. 1988) (ordering reimbursement for placement in residential facility that provided both psychiatric and educational services); Clevenger v. Oak Ridge Sch. Bd., 744 F.2d 514 (6th Cir. 1984) (same); B.G. ex rel. F.G. v. Cranford Bd. of Educ., 702 F. Supp. 1140 (D.N.J. 1988), supplemented, 702 F. Supp. 1158 (D.N.J. 1988) (same); Papacoda v. Connecticut, 528 F. Supp. 68 (D. Conn. 1981) (same). Alternatively, in “severable” cases, the disabled students at hand are capable of receiving special educational benefits through the provision of academic services in a non-residential setting. See *Huefner*, supra note 5, at 398. While the student’s particular disabilities may also require separate medical residential treatment for emotional, behavioral, mental, or physical problems, such issues are considered secondary to educational needs. See, e.g., Burke Cnty. Bd. of Educ. v. Denton ex rel. Denton, 895 F.2d 973 (4th Cir. 1990) (denying reimburs-
Ultimately, the *Kruelle* court found Paul’s “social, emotional, medical and educational problems to be so intertwined ‘that realistically it is not possible for the court to perform the Solomon-like task of separating them.’” 42 Thus, Paul’s combination of emotional, mental, educational, and physical issues manifested the need for a residential setting to provide the consistency and structure necessary for any level of learning.43 Although Paul’s residential services would include non-educational treatment in light of his medical needs, the court held that such services are still covered under the IDEA, noting “[w]here basic self-help and social skills such as toilet training, dressing, feeding and communication are lacking, formal education begins at that point.”44

In *Dale M. ex rel. Alice M v. Board of Education of Bradley–Bourbonnais High School District No. 307*,45 the Seventh Circuit rejected the Third Circuit’s inextricably intertwined test, instead choosing to evaluate the appropriateness of residential placements based on the primary purpose of the placement.46 Concerned that the inextricably intertwined test would lead to overly inclusive coverage under the IDEA, the majority in *Dale M.* instead held that a residential facility is appropriate for placement only when it is considered “primarily educational.”47 Unlike the Third Circuit’s broad definition of “support services,” the Seventh Circuit’s “primary-ment for residential placement due to severability of emotional and educational needs); *Cain v. Yukon Pub. Schs.*, Dist. 1-27, 775 F.2d 15 (10th Cir. 1985) (same); *Matthews ex rel. Matthews v. Davis*, 742 F.2d 825 (4th Cir. 1984) (same); *Hall ex rel. Allread v. Freeman*, 700 F. Supp. 1106 (N.D. Ga. 1987) (same); *Garrick B. ex rel. Gary B. v. Curwensville Area Sch. Dist.*, 669 F. Supp. 705 (M.D. Pa. 1987) (same); *Ahern v. Keene*, 593 F. Supp. 902 (D. Del. 1984) (same).

42. *Kruelle*, 642 F.2d at 694 (quoting *North v. D.C. Bd. of Educ.*, 471 F. Supp. 136, 141 (D.D.C. 1979)). The *Kruelle* court drew from past cases that “actually collapsed the distinction by declaring the impossibility of separating emotional and educational needs in complex cases,” and applied similar logic to the case at hand. See *id.* at 693 (citing *North*, 471 F. Supp. at 141); see also *Huefner, supra* note 5, at 398 (describing “the now well accepted view” developed in *North* and *Kruelle* that emotional and behavioral goals must sometimes accompany academic goals in effort to achieve overarching educational progress).

43. *See Kruelle*, 642 F.2d at 694. (“[H]ere, consistency of programming and environment is critical to Paul’s ability to learn, for the absence of a structured environment contributes to Paul’s choking and vomiting which, in turn, interferes fundamentally with his ability to learn.”).

44. *See id.* at 693 (quoting *Battle v. Pennsylvania*, 629 F.2d 269, 275 (3d Cir. 1980)) (internal quotation marks omitted).

45. 237 F.3d at 817; *see also Mawdsley, supra* note 4, at 529 ("[W]here a student’s problems are not primarily educational so that they can be said to interfere with the acquisition of an education, a school district has no obligation to provide, and thus no obligation to reimburse parents for, a placement whose sole function is to keep a student out of jail."). The Seventh Circuit’s test provides that reimbursement for placement in a residential setting merely for
rilly oriented” test significantly restricts the reach of reimbursement for “related services” under the IDEA. While the Third Circuit’s inextricably intertwined test enables courts to consider how the combination of all services in a residential facility will impact a child’s overall ability to learn, the Seventh Circuit’s primarily oriented test alternatively restricts courts’ focus to only those services directly educational in nature.

In Richardson Independent School District v. Michael Z., the Fifth Circuit also rejected the Third Circuit’s inextricably intertwined test and developed an alternative test to assess residential placement for reimbursement purposes. The test consists of two parts: 1) the placement must be “essential in order for the disabled child to receive a meaningful educational benefit”; and 2) the placement must be “primarily oriented toward ena-
bling the child to obtain an education.” 52 This test, incorporating “amalgamated elements of Kruelle and Dale M.” is a “very restrictive test” for analyzing residential placements. 53 When practically applied, the test reduces parents’ opportunities to obtain reimbursement for unilateral residential placements. 54 Similar to the Seventh Circuit’s treatment of the Kruelle test in Dale M., the Fifth Circuit in Michael Z. rejected the inextricably intertwined standard based on concerns regarding its overly inclusive results. 55

52. See id. (enumerating Fifth Circuit’s test for reimbursement). The court differentiated its test from the Third Circuit’s test. See id. at 500 (“Unlike Kruelle, this test does not make the reimbursement determination contingent on a court’s ability to conduct the arguably impossible task of segregating a child’s medical, social, emotional, and educational problems.”). The first prong of the test eliminates a school district’s duty to pay for residential placement if the student in question would be able “to receive an educational benefit without the residential placement.” See id. The second prong incorporates the test articulated by the Seventh Circuit in Dale M., “asking whether the particular treatments that the private facility provided were primarily oriented towards enabling the child to receive a meaningful educational benefit.” Id.

53. Mawdsley, supra note 4, at 527; see also id. at 527–31 (comparing tests developed by Third, Seventh, and Fifth Circuits).

54. See Ralph D. Mawdsley, Post-Forest Grove Parental Reimbursement for Private School Placements: What About Parents Who Cannot Afford the Cost of Such Placements?, 292 EDUC. L. REP. 1, 13 (2013) (“In effect, at least in the Fifth Circuit, it is not sufficient for parents seeking reimbursement to prove that their child needed residential placement; the parents must produce evidence that their child’s treatment at their placement choice ‘was primarily oriented toward . . . enabling her to receive a meaningful educational benefit.’” (quoting Michael Z., 580 F.3d at 301)); see also Jose L. Martín, Modern Issues in Cases of Reimbursement for Unilateral Private Placements Under the IDEA, Presentation at the 2011 Tri-State Regional Special Education Law Conference 7 (Nov. 3, 2011), available at http://www.ksde.org/Portals/0/SES/legal/conf11/02b-Martin-UnilateralPlacements.pdf (“[T]his opinion significantly reduces the potential reimbursement parents can recover in most residential placement situations involving students with psychiatric needs.” (referring to Michael Z., 580 F.3d 286)).

55. See Michael Z., 580 F.3d at 299–300 (rejecting application of inextricably intertwined test). The Fifth Circuit ultimately reversed the lower court’s reimbursement award of $56,600 to the parents for the tuition costs of placing their daughter, Leah Z., in a residential facility. See id. at 291, 301. While the district court originally applied the inextricably intertwined test and found the placement appropriate under the IDEA, on appeal, the Firth Circuit Court of Appeals criticized the Third Circuit’s test as overreaching. See id. at 299 (noting Kruelle expands school district liability beyond that required by IDEA). The Fifth Circuit found that any services that affect a student’s ability to “physically or psychologically receive an education” are potentially encompassed under the “broad language” of Kruelle. See id. (“Undoubtedly, it is difficult to conceive of a disabled child, particularly a child with mental disabilities, whose medical, social, or emotional problems would have no effect on the child’s ability to learn and would therefore be segregable from the learning process.”). The Fifth Circuit’s alternative test attempted to limit the reach of reimbursement entitlement available under Kruelle through a standard that more accurately reflects the intention of the IDEA drafters. See id. at 303 (Prado, J., concurring) (“This is a necessary limitation on Kruelle’s potentially expansive scope, as Kruelle asks only whether the placement is necessary.”).
In *Jefferson County School District R-I v. Elizabeth E. ex rel. Roxanne B.*, the Tenth Circuit rejected all of the aforementioned tests, alternatively developing its own four-point statutory test based on the plain language of the IDEA. The creation of yet another test to analyze the appropriateness of unilateral placements expanded the disparities in federal circuit courts’ responses to reimbursement claims. The Tenth Circuit claimed that its “straightforward application of the Act’s text,” escapes the shortcomings of the inextricably intertwined test and the Seventh and Fifth Circuits’ primarily oriented standards. While recognizing that the creation of the tests formulated by the Seventh and Fifth Circuits sought to prevent the expansion of school district liability beyond the parameters of the IDEA, the *Elizabeth E.* court recognized risks that arise following the Fifth and Seventh Circuits’ dispositive consideration of whether placements are primarily oriented towards education. Specifically, the Tenth Circuit noted that there is not a clear indication that only those placements with services primarily addressing academic issues will best serve a child’s educational needs. Rather, the court anticipated the possibility of residen-

56. 702 F.3d 1227 (10th Cir. 2012), *cert. denied*, 133 S. Ct. 2857 (2013).

57. *See id.* at 1236–37 (describing alternative test through which to examine residential placements). The Tenth Circuit’s test considers: (1) “whether the school district provided or made a FAPE available to the disabled child in a timely manner,” (2) “whether the private placement is a state-accredited elementary or secondary school,” (3) “whether the private placement provides . . . specially designed instruction . . . to meet the unique needs of a child with a disability,” and (4) whether any additional services the private placement provides beyond instruction can be characterized as “related services” under the Act. *Id.* (second alteration in original) (citations omitted) (internal quotation marks omitted).

In *Elizabeth E.*, the court evaluated the unilateral placement of student, Elizabeth E., in Innercept, a residential facility. *See id.* at 1231. Although the Tenth Circuit acknowledged that Elizabeth’s placement satisfied the requirements for reimbursement under the Third Circuit, the Seventh Circuit, and the Fifth Circuit tests, the court did not adopt any of these evaluation approaches. *See id.* at 1236. Instead, the Tenth Circuit created its own test. *See id.* at 1236–37.


59. *See Elizabeth E.*, 702 F.3d at 1237–38 (comparing Tenth Circuit’s test with Third, Seventh, and Fifth Circuits’ tests). Specifically, the Tenth Circuit noted that its plain language test “dispenses with the need to fully dissect the amorphous, judicially crafted ‘primarily oriented’ standard of the Fifth and Seventh Circuits.” *Id.* at 1238.

60. *See id.* (“Unquestionably, the genesis of the ‘primarily oriented’ test is a concern with expanding school district liability beyond the requirements of the IDEA.”). While the Tenth Circuit acknowledged the purpose of the Fifth and Seventh Circuits’ rejection of the inextricably intertwined test, the court also designated “the ‘primarily oriented’ requirement” that the two circuits embraced as simultaneously “over-inclusive and under-inclusive.” *See id.*

61. *See id.* (“[I]t is not at all clear that determining whether a placement is ‘primarily oriented toward enabling a child to obtain an education’ sheds any light on the question of whether a placement provides specially designed instruction to meet a child’s unique needs . . . . ”).
tial placement services that enabled “a child to receive a meaningful education” while not generally being “‘primarily oriented’ toward educational goals.”

C. Beyond the Final Exam: Motive as an Additional Consideration When Evaluating Residential Placement

In addition to the use of varying circuit court tests, some courts consider motive for placement when determining whether residential placement is eligible for reimbursement. While the Third Circuit did not explicitly discuss motive for placement in *Kruelle*, even courts in circuits that have adopted the inextricably intertwined test nonetheless consider motive in their reimbursement analyses. Courts’ incorporation of motive into reimbursement evaluations has resulted in a series of reimbursement denials when an event “unrelated to education” prompts a child’s placement.

In *Clovis Unified School District v. California Office of Administrative Hearings*, the Ninth Circuit’s consideration of motive for placement further limited the potential for reimbursement permitted under the *Kruelle* test. The *Clovis* court ultimately held that the parents of Michelle Sorey, a handicapped student, were not entitled to reimbursement for Michelle’s hospital stay following “an ‘acute’ psychiatric crisis.”

62. See id. (expanding on Tenth Circuit’s criticism of primarily oriented requirements adopted by Fifth and Seventh Circuits).

63. See Doty, supra note 27, at 263 (“Closely connected with the issue of eligibility is the issue of motive for the private placement.”); see also Huefner, supra note 5, at 399 n.13 (describing cases where courts “ruled that hospitalization for psychiatric reasons was essentially a medical placement and not an educational placement, even when special education services were provided on site” (citing Tice *ex rel. Tice v. Botetourt Cnty. Sch. Bd.*, 908 F.2d 1200, 1209 (4th Cir. 1990); McKenzie *v. Jefferson*, 566 F. Supp. 404, 412 (D.D.C. 1983))).

64. For a discussion of the consideration of motive in a Third Circuit case and a Ninth Circuit case, see infra notes 66–81 and accompanying text.

65. See Doty, supra note 27, at 264 (“[N]umerous courts and hearing officers have denied reimbursement where the placement was made for reasons unrelated to education.”).

66. 903 F.2d 635 (9th Cir. 1990).

67. See Richardson Indep. Sch. Dist. *v. Michael Z.*, 580 F.3d 286, 299 (5th Cir. 2009) (“Some courts applying the *Kruelle* test appear to have recognized the breadth of the ‘inextricably intertwined’ inquiry and have attempted to limit its application.” (citing *Clovis*, 903 F.2d at 643)); see also *Clovis*, 903 F.2d at 645 (reversing district court’s determination that hospitalization entitled parents to reimbursement because child “was hospitalized primarily for medical, i.e. psychiatric, reasons”); David C. Donohue, Note, *Clovis Unified School District v. California Office of Administrative Hearings: Restricting Related Services Under the Individuals with Disabilities Education Act*, 8 J. CONTEMP. HEALTH L. & POL’Y 407, 420–21 (1992) (describing *Clovis* court’s holding as having “formulated a new test which considerably restricts the related services that a school district must supply for a student with a disability”).

68. See *Clovis*, 903 F.2d at 645 (noting reason for Michelle’s placement). Although the court acknowledged that Michelle’s need for some form of residential
explicitly conditioned its holding on the conclusion that Michelle’s placement was motivated by medical needs, the court cited Kruelle when describing its analysis.69

In reaching its holding, the court rejected the parents’ theory that placements such as Michelle’s, which provide services “supportive” of special education, escape exclusion from reimbursement as medical services.70 Instead, the majority pointed to various factors indicating the treatment provided was not primarily used to aid Michelle in benefiting from special education.71 Such factors included the psychiatric motivation for hospitalization, the “intensity” of the psychotherapy services provided, the high cost of the placement, the “characterization” of the facility, and the lack of educational services built in to the placement.72 The court placement was undisputed, the court denied reimbursement for Michelle’s hospitalization. See id.

69. See id. at 638 (“Because we find that Michelle was hospitalized for medical, rather than educational purposes, we reverse the orders of the District Court.”). The court articulated the focus of its evaluation as deciding whether Michelle’s placement was “necessary for educational purposes, or . . . a response to medical, social, or emotional problems that is necessary quite apart from the learning process.” Id. at 643 (citing Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 693 (3d Cir. 1981)).

While the Clovis court cited Kruelle when describing the analysis used to determine the appropriateness of placement, the Clovis court unequivocally rejected consideration of the intertwining of medical and educational issues as referred to in Vander Malle. See id. at 643 (rejecting “line of reasoning” that requires state responsibility for all placement costs when child’s “medical, social or emotional problems that require hospitalization create or are intertwined with the educational problem” (quoting Vander Malle v. Ambach, 667 F. Supp. 1015, 1039 (S.D.N.Y. 1987)) (internal quotation marks omitted)). Despite the Clovis court’s differentiation between Kruelle and Vander Malle, the court in Vander Malle both cited Kruelle and adopted the Kruelle court’s analysis when evaluating school districts’ responsibility for reimbursement. See Vander Malle, 667 F. Supp. at 1039 (citing Kruelle, 642 F.2d at 693).

70. See Clovis, 903 F.2d at 643 (rejecting parents’ argument that relevant question to determine reimbursement is “whether the placement is supportive of a handicapped child’s education”). The court noted that “mere ‘supportiveness’ is too broad a criterion” to establish services as necessary and therefore entitled to reimbursement. See id. As “[a]ll medical services are arguably ‘supportive’ of a handicapped child’s education,” the court identified “supportiveness” as an overly inclusive standard contravening the IDEA’s “explicit exclusion of medical services.” See id.

71. See Donohue, supra note 67, at 424 (“The court’s test necessitates that the placement be primarily for special education reasons.”). For a discussion of the factors assessed by the court, see infra note 72 and accompanying text.

72. See Clovis, 903 F.2d at 645 (enumerating factors in favor of denying reimbursement for Michelle’s placement). The court noted that Michelle’s daily receipt of “intensive psychotherapy” demonstrated that services provided “appear ‘medical’ in that they address a medical crisis.” Id. The opinion also pointed to “the high cost of her placement” due to the facility’s status as a “medical facility, requiring a staff of licensed physicians, a high staff to patient ratio, and other services which would not be available or required at a placement in an educational institution.” Id. The court additionally reiterated the need for “educational programs for handicapped children” to “meet education standards of the State educa-
held that the aforementioned factors were evidence that Michelle’s placement was primarily motivated by health purposes rather than education purposes.\footnote{See Clovis, 903 F.2d at 645 (pointing to medical reasons as underlying cause of Michelle’s placement).}

The Third Circuit also incorporated motive as a determinative factor in its reimbursement evaluation in 2009, when it decided \textit{Mary T. v. School District of Philadelphia}.\footnote{575 F.3d 235, 245 (3d Cir. 2009) (noting minor Courtney’s placement in residential facility “was necessitated, not by a need for special education, but by a need to address Courtney’s acute medical condition”).} In \textit{Mary T.}, parents sought reimbursement for the residential placement of their daughter Courtney, a special education student who suffered from various mental and emotional disorders.\footnote{See id. at 238–39 (describing Courtney’s learning disabilities and mental disabilities).} Courtney’s parents placed her in Supervised LifeStyles (SLS), a residential psychiatric facility, following the “deteriorat[ion]” of her mental state.\footnote{See id. at 246 (pointing to Courtney’s “deteriorat[ing]” condition as evidence that her placement was in response to her need for “emergency intervention and stabilization”). Once enrolled in SLS, Courtney participated in various programs and therapy sessions, prompting her parents to request reimbursement from Courtney’s school district for placement costs. See id. at 244–45. Her parents argued that Courtney’s participation in SLS’s “token economy program,” which enables students to “earn ‘dollars’ for good behavior to be spent for various rewards” was cognizant of the nature of services “offered in public schools.” See id. at 244. Courtney’s parents also pointed to the facility’s provision of “group therapies,” “Life Skills Training,” and “psychoeducational skills groups” as further evidence of the educational services Courtney received from residential placement in light of her “limited” capacity. See id. at 244–45. Further, the parents pointed to Courtney’s unique disabilities as evidence that she was “not capable of receiving traditional academic instruction.” See id. at 243. The services that SLS provided to Courtney in her placement therefore necessarily “focused on behavior modification and her emotional wellness” in order to enable Courtney to receive the educational benefits that the IDEA guarantees her. See id. Framing their argument in harmony with the inextricably intertwined test, Courtney’s parents argued that “her medical and educational needs were not sev- erable under . . . Kruelle . . . thereby requiring the School District to reimburse Plaintiffs for Courtney’s tuition at SLS.” Id.}


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Third Circuit focused particularly on services SLS provided to Courtney, such as a mood disorders group, anxiety disorders group, psychological skills group, life skills training group, and medication group, claiming such services were primarily “designed to make her aware of her medical condition and how to respond to it.”

Further, the Mary T. court noted SLS’s accreditation by the New York State Office of Mental Health as evidence of the program’s predominate purpose of “address[ing] medical, rather than educational, conditions.” Ultimately, the holding revealed that Courtney’s medical and educational needs were severable, distinguishing the case from Kruelle. Therefore, the court denied reimbursement to Courtney’s parents, demonstrating one of the first signs of the Third Circuit’s shift toward restrictive treatment of reimbursement requests.

III. F LUNKING ITS OWN TEST OR KEEPING UP WITH THE  CLASS? T HE  THIRD CIRCUIT’S DECISION IN MUNIR

In Munir, the Third Circuit again addressed the boundaries of reimbursement entitlement under the IDEA. The court considered whether a student’s placement in a residential facility that provided psychological treatment and education services qualified for reimbursement. Though the court compared the placement to those in previous Third Circuit cases and a Ninth Circuit case, the court integrated the medically-induced motive for placement into its analysis and subsequently denied reimbursement. This holding not only mirrors the alternative evaluations embraced by other circuit courts, but it is also representative of the Third Circuit’s general transition toward restrictive treatment of reimbursement claims.

Circuit in Mary T. as having “effectively reversed, while purporting to distinguish, decades of analysis under the principles of [Kruelle]”). Compare Mary T., 575 F.3d at 245 (identifying medical cause for Courtney’s placement), with Brief for Appellant at 55–56, Munir v. Pottsville Area Sch. Dist., 723 F.3d 423 (3d Cir. 2013) (No. 12-3008), 2012 WL 6813033 [hereinafter Brief for Appellant] (noting insignificance of reason for placement under Kruelle).

78. See Mary T., 575 F.3d at 245 (pointing to medical nature of treatment).
79. See id. (noting medical accreditation of residential facility).
80. See id. at 246 (“The present case is clearly distinguishable from Kruelle.”).
81. See id. at 248–49 (denying parents’ request for reimbursement).
82. See Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 425–26 (3d Cir. 2013) (framing case as inquiry regarding coverage for services under IDEA).
83. See id. at 426 (describing Munir’s efforts to obtain reimbursement for son’s placement).
84. See id. at 431–32 (differentiating minor O.M.’s placement from Paul’s placement in Kruelle); see also id. at 429 (crediting medical emergency as prompting O.M.’s residential placement). The Munir court specifically compared the facts at hand with the cases of Mary T. and Clovis, even though Clovis is a Ninth Circuit case. See id. at 432–34.
85. Compare Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 300 (5th Cir. 2009) (explaining treatment at residential facility must be “primarily oriented
A. The Road to Residential Placement: Facts and Background of Munir

Munir stems from a parent’s challenge to the Pottsville Area School District’s denial of reimbursement for a student’s residential placement. Parent and appellant, Muhammad Munir (Munir), unilaterally placed his minor son, O.M., in two private facilities following O.M.’s multiple suicide attempts. The school district previously evaluated O.M. for a learning disability but determined O.M. was not eligible for learning disability services or emotional disturbance services. Although O.M. passed his public school classes, he continued to display suicidal behavior, requiring multiple hospitalizations and warranting requests for district involvement.

Following one of O.M.’s hospital stays in November 2008, the school district created a “Rehabilitation Act § 504 plan” for O.M. However, the school district did not create an IEP for O.M. After another suicide threat and subsequent hospitalization in January 2009, O.M.’s parents enrolled him at Wediko Children’s Services (Wediko), without formal approval from O.M.’s school district. While enrolled in Wediko, O.M. continues to display suicidal behavior, prompting a renewed legal challenge.

towards educational improvement” in order to be eligible for reimbursement), and Dale M. ex rel. Alice M. v. Bd. of Educ. of Bradley–Bourbonnais High Sch. Dist. No. 307, 237 F.3d 813, 817 (7th Cir. 2001) (denying reimbursement due to placement’s primary purpose of confinement), with Munir, 723 F.3d at 431–32 (commenting on facility’s primary focus on mental health treatment).

86. See Munir, 723 F.3d at 426 (providing procedural history of case).
87. See id. at 426–28 (enumerating O.M.’s seven separate hospitalizations between 2005 and 2009 for suicide threats and attempts).
88. See id. at 426–27 (describing school district’s previous testing of O.M.).
89. See id. at 427 (“O.M. returned to Pottsville in the fall of 2005 and performed well academically for three years.”). But see id. (“He initially decided to take honors math classes, but began struggling academically and dropped them.”). The court referred to O.M.’s average academic performance to dispel assertions that “O.M.’s condition was affecting his ability to learn at that time.” See id. at 429. Nevertheless, O.M.’s suicidal tendencies continued, and following O.M.’s hospitalization in early September 2008, O.M.’s parents requested an IEP for their son. See id. at 427.
90. See id. (describing school district’s response).
91. See id. (noting school district’s failure to create IEP). For a discussion of school districts’ obligation to create appropriate IEPs in order to satisfy FAPE obligations under the IDEA, see supra notes 24–26 and accompanying text.
92. See Munir, 723 F.3d at 428 (describing O.M.’s placement). Wediko Children’s Services, where O.M. remained for the rest of the school year, is a private therapeutic residential treatment center in New Hampshire.
received daily individual and group therapies, which included training in social skills, emotional regulation, stress management, and conflict resolution.\textsuperscript{93} Wediko also offered a full school day with a curriculum that met New Hampshire’s educational standards.\textsuperscript{94} After two to three weeks at Wediko, O.M. was able to attend small educational classes and “debriefing periods” that the facility offered.\textsuperscript{95}

Following Wediko’s involvement, O.M.’s original school district re-evaluated O.M.’s need for an IEP and offered new services in response to his educational needs.\textsuperscript{96} O.M.’s parents nevertheless rejected the school district’s proposed IEP because it did not provide O.M. with small classes or the same types of counseling services he was receiving at Wediko.\textsuperscript{97} Alternatively, O.M.’s parents decided to have their son complete the 2008–2009 school year at Wediko and then enrolled O.M. in The Phelps School (Phelps) for the following school year.\textsuperscript{98} In August 2009, Munir initiated efforts to obtain school district financial support for O.M.’s placements in Wediko and Phelps, ultimately leading to a court of appeals challenge for tuition reimbursement totaling $68,752.61.\textsuperscript{99}

B. The Third Circuit’s Analysis on Who Should Foot the Bill for O.M.’s “Free” Education

The Third Circuit held Munir was not entitled to reimbursement for O.M.’s placements in either facility, because both placements failed to

\begin{itemize}
\item \textsuperscript{93} See id. (describing O.M.’s treatment while enrolled at Wediko).
\item \textsuperscript{94} See id. (expanding on Wediko’s offerings).
\item \textsuperscript{95} See id. (reporting O.M.’s participation in classes at Wediko). The classes were graded on a pass-fail basis, and there were three debriefing periods included in every school day used to assess how well O.M. was maintaining control of his thoughts, mood, and anxiety. See id.
\item \textsuperscript{96} See id. (discussing school district’s response to O.M.’s placement at Wediko). While O.M. was enrolled in Wediko, the facility conducted a series of cognitive and academic achievement tests on him in February 2009, to evaluate his “social-emotional functioning.” See id. Wediko then contacted O.M.’s original school district to recommend an IEP for him and provided the school district with its findings and recommendations. See id. In May 2009, the school district finally offered an IEP for O.M., and in September 2009, it added a cognitive-behavioral curriculum for students experiencing anxiety and depression, which included psychological services and increased social work services. See id.
\item \textsuperscript{97} See id. (explaining Munir’s rejection of proposed IEP).
\item \textsuperscript{98} See id. (describing O.M.’s subsequent placement in The Phelps School).
\item \textsuperscript{99} See Munir, 723 F.3d at 428–29, 431 (tracing efforts to obtain reimbursement for O.M.’s placements).
\end{itemize}
To qualify for reimbursement, Munir was required to establish that: (1) the school district failed to provide O.M. with a FAPE, and (2) O.M.’s new placements were appropriate. The first prong of the test was not satisfied for O.M.’s placement in Phelps, because O.M.’s school district had created a proper IEP before he was transferred to the private facility. Additionally, although O.M.’s transfer to Wediko satisfied the first prong of the reimbursement test, the court determined that Wediko was not an “appropriate” placement, thereby failing the second prong.

The court of appeals affirmed the district court’s holding that Wediko did not constitute an appropriate placement, as the “primary purpose” of O.M.’s enrollment at the facility was the treatment of his mental health issues, as opposed to educational needs. The Third Circuit referred to the mental health motive for O.M.’s placement as evidence contradicting the educational claim for reimbursement. Additionally, the court viewed the involvement of a clinical psychologist in formulating O.M.’s

100. See id. at 430–31, 434 (upholding district court’s reimbursement denials for both of O.M.’s residential placements). In evaluating Munir’s request for reimbursement, the Third Circuit considered the two-prong test prescribed by the IDEA. See id. at 430 (“To be entitled to reimbursement, Munir must show that the School District failed to provide O.M. with a FAPE and that the alternative private placement was appropriate.”).


102. See Munir, 723 F.3d at 430 (rejecting reimbursement request for O.M.’s enrollment at Phelps). The court held that the school district created an IEP for O.M. that was reasonably calculated to meet his educational needs and thus proper for FAPE purposes. See id. at 430–31; see also id at 434 (“In designing O.M.’s IEPs, the School District took into account Wediko’s evaluation of O.M. and ‘incorporated virtually all of the Wediko recommendations.’” (quoting Munir v. Pottsville Area Sch. Dist., No. 3:10-cv-0855, 2012 WL 2194543, at *9 (M.D. Pa. June 14, 2012))). As the IEP was in place before O.M. was enrolled at Phelps, and as the administration of such an IEP fulfilled the school district’s duty to provide a FAPE under the IDEA, Munir was not entitled to reimbursement for the Phelps placement because the school district did not fail to provide a FAPE. See id.

In considering reimbursement for O.M.’s placement in Wediko, the court acknowledged that the absence of an IEP at the time of O.M.’s enrollment satisfied the first prong of the reimbursement requirements under the IDEA. See id. at 430. Thus, while the school district had provided O.M. with a FAPE before he had enrolled at Phelps, the district had not similarly provided the requisite education before O.M. enrolled in Wediko. See id.

103. See id. at 430–31 (detailing court’s analysis of O.M.’s placement at Wediko).

104. See id. at 429 (weighing evidence suggesting that “the primary purpose of that placement was the provision of mental health treatment rather than provision of special education,” in finding against Munir).

105. See id. (reiterating comments made by O.M.’s hearing officer that his placement was result of “a medical/mental health crisis that required immediate treatment”). The court further pointed to testimony from O.M.’s father and witnesses from Wediko to support reimbursement denial due to O.M.’s health-based motives for placement. See id. (“This finding was supported by the testimony of O.M.’s father and witnesses from Wediko, who ‘emphasized that Student needed
treatment plan as indicative that Wediko’s services “were not focused primarily on education.”106 Rather, the court identified the educational benefits that O.M. undisputedly received during his time at Wediko as merely “incidental,” thereby rendering reimbursement improper.107

In its analysis, the Third Circuit cited Kruelle, acknowledging that a school district may be responsible for a residential placement when a child with disabilities requires a highly structured environment to obtain any level of educational benefits.108 Nevertheless, the Third Circuit distinguished O.M.’s placement from Paul Kruelle’s, because O.M.’s placement provided only an “incidental educational benefit” arising from “twenty-four-hour supervision for medical, social, or emotional reasons.”109 The court noted that O.M.’s needs did not parallel Paul Kruelle’s needs for a highly structured environment to obtain any level of educational benefits; alternatively, O.M.’s need for a private environment stemmed from medical reasons only.110

IV. TAKING A PEEK AT THE ANSWER KEY: DISCUSSING IMPLICATIONS OF THE THIRD CIRCUIT’S NEW REIMBURSEMENT ANALYSIS

The Third Circuit’s analysis in Munir is a departure from its once broad interpretation of reimbursement entitlement and is instead in line with an overarching trend in favor of restricting school district financial responsibility for unilateral placements.111 The specific focus on motive in the Third Circuit’s new reimbursement standard threatens results that contradict the purpose of the IDEA and ignore the nature of complex physical, mental, and emotional disabilities.112 Furthermore, the Third Circuit’s failure to clarify its shift away from the inextricably intertwined

to attend Wediko in order to keep him safe from the effects of his depression, which led to suicide threats and gestures when he was living at home.”).

106. See id. (supporting determination that placement’s primary purpose was medical in nature).

107. See id. at 430 (adopting lower court’s observation).

108. See id. at 431 (citing Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 693 (3d Cir. 1981)). The court questioned whether the particular placement was “necessary to provide special education and related services.” See id. (quoting 34 C.F.R. § 300.104 (2006)) (internal quotation marks omitted).

109. See id. at 432 (distinguishing residential placement qualifying for reimbursement from placement that alternatively provides mostly medical treatment).

110. See id. (classifying O.M.’s educational benefits as “incidental” to his overall medical treatment).


112. For a discussion of the potential consequences of the Third Circuit’s incorporation of motive into its reimbursement analysis, see infra notes 121–24, 144–46, 150–53 and accompanying text.
test it established in \textit{Kruelle} threatens to create confusion for practitioners seeking to present cases in line with the court’s preferences.\footnote{For a discussion of the difficulties for practitioners created by the Third Circuit’s failure to expressly clarify its new reimbursement standard, see infra notes 141–43, 147–49 and accompanying text.}

This section first addresses how the \textit{Munir} court’s reimbursement evaluation incorporated factors and concerns not present in the Third Circuit’s original development of the \textit{Kruelle} inextricably intertwined test.\footnote{For a discussion of the evolution of the Third Circuit’s reimbursement standard exemplified by \textit{Munir}, see infra notes 117–32 and accompanying text.} Next, this section addresses the Third Circuit’s failure to distinguish \textit{Munir} from cases like \textit{Mary T.} and \textit{Clovis}, further revealing the court’s abandonment of the inextricably intertwined test in exchange for a new standard that incorporates the reimbursement tests of other circuits.\footnote{For a discussion of the Third Circuit’s missed opportunity to distinguish \textit{Munir} from \textit{Mary T.} and \textit{Clovis}, see infra notes 133–46 and accompanying text.} Finally, this section addresses the consequences of the Third Circuit’s new reimbursement standard in light of the court’s failure to expressly recognize its departure from the original inextricably intertwined test.\footnote{For a discussion of the consequences of the Third Circuit’s new reimbursement standard, see infra notes 147–53 and accompanying text.}

A. \textit{New Test, New Focus}

The Third Circuit’s holding in \textit{Munir} exemplified the court’s incorporation of new priorities and factors into its reimbursement analysis.\footnote{For a discussion of the changes in the Third Circuit’s priorities in \textit{Munir}, see infra notes 118–32 and accompanying text.} The court’s evaluation notably rejected indications that O.M.’s emotional and learning disabilities were intertwined and ignored the simultaneous academic and psychological treatment that O.M. received at Wediko.\footnote{\textit{See Munir v. Pottsville Area Sch. Dist.}, 723 F.3d 423, 433 (3d Cir. 2013) (“Unlike the students in \textit{Mary T.} and \textit{Clovis}, O.M. was placed at a facility that did offer an educational component.”). \textit{But see id.} (“O.M.’s participation in some educational programs at Wediko does not conclusively establish that the purpose of his placement there was educational.”).} Rather, the opinion extensively focused on the medically-induced motive for O.M.’s placement, contradicting other courts’ descriptions of the Third Circuit’s overly inclusive construal of proper residential placements.\footnote{Compare \textit{id.} at 434 (“Because O.M.’s parents have not shown that they placed O.M. at Wediko in order to meet his specialized educational needs, the District Court correctly determined that they are not entitled to reimbursement.”), \textit{with Petition for a Writ of Certiorari, supra} note 1, at 13 (describing “extraordinarily broad test for residential placements” utilized by courts adopting standard developed in \textit{Kruelle}).}

Overlooking the indisputable academic offerings Wediko provided, the Third Circuit’s determination turned on the reasoning that Wediko’s offerings “were directed primarily at the child’s medical or emotional
needs . . . "120 Thus, while the Third Circuit’s opinion resolves concerns for over-inclusivity of eligible services under the IDEA, it also eliminated any redress for Munir despite the school district’s complete lack of an IEP for O.M.121 Such a result fails to satisfy the IDEA’s “broad purpose” of providing a FAPE to qualifying children.122 Alternatively, the court’s denial of reimbursement, despite the district’s failure to create an appropriate IEP, exemplifies a handicapped student’s exclusion from the public education system: the same outcome Congress intended to avoid with the passage of the IDEA.123 Ultimately, the narrow definition of “appropriate” placement the court employed effectively required Munir to pay for the district’s abandonment of its IDEA obligations.124

Furthermore, the Munir opinion stressed O.M.’s satisfactory grades in public school as evidence that his educational needs were already adequately addressed without residential placement.125 Yet, the Third Circuit failed to reflect on the amount of school that O.M. missed due to hospitalizations following his suicide threats and attempts.126 Had the court acknowledged that O.M.’s placement sought to resolve emotional disabilities that directly prevented educational progress in light of forced absences, Munir’s request for reimbursement would have been grounded in a clear educational purpose for his son’s residential placement.127

Moreover, the court overlooked O.M.’s overall success and improvement while partaking in Wediko’s programming.128 The services that

120. See Munir, 723 F.3d at 432 (drawing on references to primary purpose of placement from Mary T. and Clovis).
121. See Kessler, supra note 16 (“The court’s opinion treats the district’s obligations under IDEA leniently by failing to address the lack of a proposed IEP between 2005 and 2009.”).
123. See Kruelle v. New Castle Cnty. Sch. Dist., 642 F.2d 687, 691 (3d Cir. 1981) (describing IDEA’s goal to establish “the personal independence and enhance the productive capacities of handicapped citizens”).
124. See Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass., 471 U.S. 359, 370 (1985) (“If that were the case, the child’s right to a free appropriate public education, the parents’ right to participate fully in developing a proper IEP, and all of the procedural safeguards would be less than complete.”).
125. See Munir, 723 F.3d at 433–34 (“O.M. was an above-average student at Pottsville, who had no serious problem with attendance and socialized well with other students.”).
126. See Brief for Appellant, supra note 77, at 45, 54 (pointing to O.M.’s hospital stays that “caused him to miss school” and “[h]is daily trips to the guidance office, and leaving early from school several times” as evidence that O.M.’s emotional issues adversely affected his attendance and education).
127. See id. at 54 (describing Munir’s attempt to show educational purpose for placement, as facility could remedy attendance problems stemming from O.M.’s emotional issues).
128. See id. at 52 (“The record suggests that it is residing at the private school that is the key to the absence of suicide threats, gestures and attempts since January 2009 . . . .” (alteration in original) (quoting Hearing Officer Opinion) (internal quotation marks omitted)).
O.M. received at Wediko enabled his transfer to a less-intensive environment and eventual placement back into classes with his peer age group.\footnote{129} Thus, Wediko’s dual mental health and academic program conveyed a “meaningful benefit” to O.M. in the form of control over his suicidal thoughts and tendencies.\footnote{130} O.M.’s increased control following his enrollment in Wediko enabled him to miss less school, which translated to an undoubtedly meaningful benefit for his education.\footnote{131} Yet, the Third Circuit’s analysis focused on the medical emergency that induced O.M.’s placement rather than the educational services he received at Wediko or his resulting academic success from the placement.\footnote{132}

### B. Dodging the Opportunity to Distinguish

The Third Circuit’s decision in *Munir* also restricted entitlement to reimbursement by rejecting the opportunity to distinguish the case from *Mary T.* and *Clovis*.\footnote{133} Instead, the Third Circuit pointed to both cases as evidence that Munir was not entitled to reimbursement for his unilateral placement of O.M.\footnote{134} While the *Munir* court drew on similarities between *Mary T.* and *Clovis* with the case at hand, a number of factual distinctions afforded the Third Circuit the ability to distinguish *Munir* from the cases where courts denied requests for reimbursement.\footnote{135}

First, both residential facilities at issue in *Mary T.* and *Clovis* were psychiatric facilities without educational affiliation.\footnote{136} The minor educational services offered at the respective facilities do not compare to Wediko’s extensive educational programming.\footnote{137} Wediko’s provision of

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129. See id. at 55 (describing O.M.’s progress at Wediko).
130. See id. (highlighting O.M.’s mental health milestones that led to academic success).
131. See id. (commenting on end of O.M.’s suicide attempts following his enrollment at Wediko).
133. See id. at 433 (noting Wediko provides an “educational component” unlike programs in *Mary T.* and *Clovis* where facilities did not have school affiliation or educational accreditation). But see id. (explaining that while facilities’ failure to offer educational programs “may be strong evidence that the child was placed there to meet his medical or emotional needs,” existence of educational program alone is not conclusive evidence that placement in such facility is for educational purposes).
134. See id. at 432–34 (comparing facts of *Munir* to facts in *Mary T.* and *Clovis*).
135. For a discussion of the distinctions between *Munir* and *Mary T.* and *Clovis*, see infra notes 136–43 and accompanying text.
136. See Brief for Appellant, supra note 77, at 52 (noting that Courtney’s placement in *Mary T.* “was not at a school; she was in a mental health rehabilitation facility”).
debriefing sessions between classes provided O.M. with the opportunity to discuss his progress controlling his anxieties and thoughts during his instruction and classes. These sessions exhibited a program that quite literally intertwined O.M.’s emotional treatment with academic resources. Such programming suggests the educational services O.M. received at Wediko were not merely “incidental” benefits, but rather, part of an intentional plan to address his overlapping academic and psychological challenges.

Instead of distinguishing O.M.’s placement in Wediko from the residential placements in *Mary T.* and *Clovis*, the Third Circuit incorporated those courts’ consideration of motive for placement into its analysis in *Munir*. The *Munir* court’s repeated references to the medically-oriented primary purposes of Wediko also echo components of the primarily oriented tests that other circuits created in place of the inextricably intertwined test. Thus, the Third Circuit’s reference to reimbursement as contingent on a facility’s primary focus on education blurs the line between the inextricably intertwined test and the Fifth and Seventh Circuits’ primarily oriented tests. This opinion not only demonstrates the Third Circuit’s transition from its original reimbursement standard, but also re-

138. See *Munir*, 723 F.3d at 428 (explaining O.M.’s debriefing sessions).
139. See id. (describing Wediko’s combination of classes and debriefing sessions).
140. See Brief for Appellant, *supra* note 77, at 53 (arguing O.M.’s educational and psychological treatments were combined because emotional disturbance and academic issues “were not severable”).
141. See *supra* notes 69, 76–81, 119–20 and accompanying text (discussing focus on motive for placement in *Clovis*, *Mary T.*, and *Munir* respectively).
142. For a discussion of courts’ attention to the primary orientation of treatment in residential placements in *Munir*, *Dale M.*, and *Michael Z.*, see *supra* note 85 and accompanying text.

In *Kruelle*, the Third Circuit demonstrated an understanding of the “necessarily broad” reach of proper educational services anticipated in the IDEA, which often made it impossible to distinguish treatment as either health-based or education-based. See *Kruelle v. New Castle Cnty. Sch. Dist.*, 642 F.2d 687, 693 (3d Cir. 1981) (“Where basic self-help and social skills such as toilet training, dressing, feeding and communication are lacking, formal education begins at that point.” (quoting *Battle v. Pennsylvania*, 629 F.2d 269 (3d Cir. 1980)) (internal quotation marks omitted)). The Fifth and Seventh Circuits alternatively envisioned a dichotomy of “appropriate” and excludable treatment and conditioned reimbursement on services’ appearance as “primarily oriented” towards education. See, e.g., *Dale M. ex rel. Alice M. v. Bd. of Educ. of Bradley–Bourbonnais High Sch. Dist. No. 307*, 237 F.3d 813, 817 (7th Cir. 2001) (drawing distinction “between services primarily oriented toward enabling a disabled child to obtain an education and services oriented more toward enabling the child to engage in noneducational activities”). But, as the Tenth Circuit observed when it refused to adopt a primarily oriented standard, limiting reimbursement to those programs with a strict focus on education overlooks the potential of residential placements that enable a student “to receive a meaningful education” while not generally being “primarily oriented toward educational goals.” See *Jefferson Cnty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1238 (10th Cir. 2012), *cert. denied*, 133 S. Ct. 2857 (2013).
fects the resulting lack of clarity for practitioners attempting to adhere to the circuit’s new methodology.143

The Third Circuit’s departure from the Kruelle test, as exemplified by Munir, suggests that simply demonstrating a child’s inextricably intertwined health-based and learning disabilities is no longer adequate to obtain reimbursement for residential placement.144 Munir instead establishes an education-based primary purpose of placement as an additional requirement that parents seeking reimbursement must meet.145 Thus, the Third Circuit’s holding requires an evolution of practitioners’ approach to reimbursement cases.146

C. Consequences of the Third Circuit’s New Normal in Reimbursement Cases

Despite the absence of motive as a relevant factor when the Third Circuit developed the Kruelle test, in Munir, the court consistently emphasized that O.M.’s placement was triggered by the onset of a mental health emergency.147 While the court’s decision to adapt its initial Kruelle standard is not problematic in and of itself, the court’s failure to clarify its departure from its original analysis threatens significant confusion for practitioners.148 Without express recognition of the transition away from the inextricably intertwined test, practitioners lack sufficient guidance on

143. See Martín, supra note 54, at 7–8 (noting similarities between Third Circuit and Fifth Circuit consideration of primary purpose of residential placements). In summarizing the Third Circuit’s evaluation of the appropriateness of residential placement in Mary T., Martín commented on the court’s consideration of Courtney’s placement in a “medically-oriented” facility. See id. at 7. Martín compared the court’s acknowledgement that Courtney’s placement was “not primarily oriented at enabling the child to receive an education” to the Fifth Circuit’s use of the “primarily oriented” test. See id. Martín explained, “[t]hus, one could argue that the Third and Fifth Circuit are not that far off in their respective analyses, although they certainly use different wording and structure their ‘tests’ in different ways.” Id. at 8.

144. For a discussion of changes in the Third Circuit’s analysis in Munir, when compared with its analysis in Kruelle, see infra note 147 and accompanying text.

145. See Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 429 (3d Cir. 2013) (denying reimbursement because O.M.’s placement was result of “medical/mental health crisis that required immediate treatment” (internal quotation marks omitted)).

146. For practitioner tips in response to the Third Circuits’ new reimbursement standard, see infra notes 154–76 and accompanying text.

147. See Munir, 723 F.3d at 432 (exemplifying Third Circuit’s emphasis on motive for placement). But see Petition for a Writ of Certiorari, supra note 1, at 13–14 (describing inextricably intertwined test as mandating “public school districts to fund a residential placement as long as the placement confers some educational benefits—regardless of the reason for the placement”).

148. See Munir, 723 F.3d at 431–32 (referring to court’s analysis in its Kruelle decision). Despite the Munir court’s references to the Third Circuit’s definition of appropriate residential services developed in Kruelle, the Munir court also referred to the health emergency that prompted O.M.’s placement, although no such consideration for motive was originally provided in Kruelle. See id. at 433.
the proper arguments that should be made in accordance with the Third Circuit’s new reimbursement analysis.149

Additionally, the incorporation of motive into the Third Circuit’s reimbursement analysis following Munir effectively prevents reimbursement for all future Third Circuit residential placements that follow a health-based emergency.150 The Munir holding disregards the interconnectivity between a child’s disability and ability to achieve educational goals by stipulating that all treatment initiated by a health emergency is not appropriate for reimbursement purposes.151 Therefore, the Third Circuit’s dispositive consideration of motive for placement ignores overlapping disabilities that require treatment even in the immediate aftermath of a health emergency.152 Despite the possibility of a coincidental medical emergency spurring residential placement for a student that already required such placement, the dispositive treatment of motive for placement would automatically render the placement inappropriate for reimbursement purposes.153

V. HOW TO SCORE EXTRA CREDIT IN THIRD CIRCUIT REIMBURSEMENT CASES: RECOMMENDATIONS FOR PRACTITIONERS

Reimbursement debates impose significant costs on all parties involved.154 Therefore, counsel for school districts and parents alike can benefit from adjusting their litigation strategies in light of the holdings of recent reimbursement cases.155 Further, recognizing the time, energy, and resources expended on reimbursement legal battles, attorneys should

149. See id. at 431–32 (referencing Kruele, but providing no description of factors incorporated into Third Circuit’s current reimbursement analysis that were not similarly included in Kruele). For a discussion of changes in Munir when compared with the Third Circuit’s analysis in Kruele, see supra note 147 and accompanying text.

150. See Doty, supra note 27, at 263 (noting connection between “motive for the private placement” and eligibility for reimbursement). Doty refers to a number of cases where reimbursement was denied because placement was a result of “medical or psychiatric” reasons, “family conflict, drug abuse, or delinquent behavior.” See id. at 264.

151. See Munir, 723 F.3d at 433 (denying reimbursement for O.M.’s placement at Wediko because his placement “was prompted by a medical emergency”).

152. See id. (holding placement at Wediko was inappropriate under IDEA despite district court’s recognition that O.M. “undoubtedly benefitted” from facility’s educational program).

153. For a discussion of the ramifications of the Third Circuit’s dispositive consideration of motive, see supra notes 150–52 and accompanying text.

154. See Mayes & Zirkel, supra note 3, at 62 (“The stakes in such lawsuits are extraordinarily high, with effects that reach beyond the immediate parties.”).

155. Telephone Interview with Marion M. Walsh, Attorney, Littman Krooks LLP (Feb. 17, 2014) (advocating for increased negotiations between all parties in reimbursement disputes to reduce significant litigation costs).
recommend negotiations between parents and the school district before final placement decisions are made.156

A. Tips for Parents on Acing the Race to Reimbursement

When fighting for unilateral residential placement reimbursement, parents have a difficult task in convincing courts that the placement is “appropriate” under the IDEA.157 Showing academic progress and psychological growth is important to demonstrate the success of residential treatment, but as Munir indicated, progress alone will not always lead to reimbursement.158 One special education attorney suggests presenting testimony to portray that the particular placement is “individually tailored for the student’s specific needs.”159 Features such as licensed teacher-employees, strong monitoring, use of proven methodologies, counseling specific to academic challenges, educational accreditation, and solid educational programming are also all ideal factors to highlight in any residential placement.160

Frustration often accompanies representing parents in reimbursement disputes based on school districts’ tendencies to mislabel disabilities as medical in nature when unfamiliar with the complexities of emotional disturbances.161 One special education attorney explains that parents of students with passing grades and high cognitive levels often face an uphill battle, even when initially requesting IDEA services, due to misconceptions regarding the manifestation of learning disabilities.162 Furthermore, school districts sometimes fail to comprehend that even those disabilities that appear medical in nature are potentially covered under the IDEA due

156. See id. (describing “success stories” where parties reached settlement, allocated funds to education rather than litigation).
157. See id. (noting burden is on parents to convince courts that placement is appropriate).
158. Compare Brief for Appellant, supra note 77, at 55 (“The obvious answer to the question of whether O.M.’s emotional disturbance was severable from his academic needs is that once O.M. was at Wediko, his emotional state immediately improved.”), and Telephone Interview with Marion M. Walsh, supra note 155 (pointing to progress as important factor when fighting for reimbursement), with Munir v. Pottsville Area Sch. Dist., 723 F.3d 423, 433 (3d Cir. 2013) (“[A]ny educational benefit he received from the Wediko placement was incidental.”).
159. Telephone Interview with Marion M. Walsh, supra note 155 (explaining that relating methods treatment facility provides to particularities of students’ emotional issues helps demonstrate that placement was strategically selected to address child’s needs).
160. See id. (providing suggestions for parents bringing reimbursement suits).
161. See id. (tracing challenges of reimbursement claims). Walsh pointed to anorexia as a disorder that school districts often do not know how to address. See id. She explained that districts will automatically label anorexia as a medical disorder, overlooking the impact it may have by preventing students from attending class. See id.
162. See id. (commenting on school districts’ limited understanding regarding reality of intertwined medical and educational disabilities).
to the adverse impact on attendance that such issues create for students. 163

In light of the misunderstandings surrounding the existence of learning disabilities, settlement negotiations before unilateral placement offer parents’ attorneys the opportunity to clarify the realities of students’ learning needs and capabilities. 164 Such negotiations may enable parents to reach an agreement through which their child’s school district agrees to provide the student with additional services, potentially preventing the need for residential placement altogether. 165 Even if negotiations cannot avoid the need for residential placement, parents’ efforts to work with their child’s school district before a medical emergency occurs avoid labeling the placement as medically motivated if necessary after a health-based occurrence. 166 Pre-placement negotiations also save parents litigation costs and redirect school district funding to be used on better means, such as training school personnel to identify disabilities earlier. 167

B. Instructions on an A+ Defense for School Districts

Counsel for school districts should attempt to establish a “bright line” division between medical treatment and academic services provided in residential facilities. 168 Even if a residential facility is accredited by an educational agency, school districts can highlight involvement of medical staff in creating and executing the program as evidence that a program is primarily medical in scope. 169 Further, school districts’ counsel should emphasize any disparities in psychological versus educational services offered and attempt to isolate psychological breakdowns as out-of-school occurrences, thereby rendering them unconnected to academic progress. 170

Reimbursement cases under the IDEA pose financial strains on school districts, even if the court does not ultimately order reimburse-
ment. Therefore, attorneys representing school districts should instruct their clients to take proactive measures prior to having to defend reimbursement claims. \(^{172}\) Efforts to address parents’ claims of public education shortcomings may help to mitigate the potential for lofty reimbursement awards. \(^{173}\) One commentator suggests that school districts propose IEP reevaluation immediately upon notice of parent interest in unilateral placement. \(^{174}\) Incorporating objective consultants into efforts to evaluate the success of current IEPs or special education services allows school districts to demonstrate their efforts to fulfill FAPE requirements. \(^{175}\) Further, if parents continue to seek unilateral placement after reevaluation attempts, school districts have a basis for arguing that parents failed to cooperate in the “collaborative, interactive approach envisioned by the IDEA.” \(^{176}\)

VI. THE THIRD CIRCUIT’S GRADUATION TO A NEW REIMBURSEMENT ANALYSIS

Commenters once credited the Third Circuit with leading the charge in developing a reimbursement standard cognizant of the complicated reality for students with severe disabilities and intertwined academic challenges. \(^{177}\) Yet, opinions such as \textit{Munir} reveal the court’s imposition of additional barriers that parents must now overcome to qualify for reimbursement for residential placements. \(^{178}\) Critics will disagree on whether the Third Circuit’s transition to a narrow interpretation of proper placement represents a necessary response to an overly burdensome test or an ill-advised shift requiring parents to shoulder the costs regularly reserved for school districts. \(^{179}\)

\(^{171}\) See Doty, \textit{supra} note 27, at 250 (describing “demands for private residential care” as “disastrous regardless of the outcome” due to “time, money, and human capital” schools must dispose of when fighting requests).

\(^{172}\) See Martín, \textit{supra} note 54, at 23 (warning against school district inaction following private placement).

\(^{173}\) See id. (identifying correlation between school districts’ “fail[ure] to respond proportionately to the challenges presented by the student’s needs” and reimbursement awards for unilateral placement).

\(^{174}\) See id. (encouraging school districts to duplicate “program strengths” of residential placements parents are interested in and to “incorporate similar services or interventions into the student’s IEP”).

\(^{175}\) See id. (enumerating steps that both help to avoid unilateral placement and also defend school districts should reimbursement case arise).

\(^{176}\) See id. (recommending school districts “document any instances of lack of cooperation on the part of parents in the IEP development and revision process”).

\(^{177}\) See Zirkel, \textit{supra} note 6, at 881 (describing Third Circuit’s positive reputation for IDEA interpretation).

\(^{178}\) See Kessler, \textit{supra} note 16 (identifying new standard to qualify for reimbursement under \textit{Munir}).

\(^{179}\) Compare Richardson Indep. Sch. Dist. v. Michael Z., 580 F.3d 286, 299 (5th Cir. 2009) (disapproving of inextricably intertwined test as overly broad), with Kessler, \textit{supra} note 16 (criticizing narrow interpretation adopted in \textit{Munir}).
Regardless, the court’s opinion in *Munir* has made it clear that the Third Circuit’s analysis of residential placements has transformed from its initial creation of the inextricably intertwined test in *Kruelle*. The Third Circuit’s notable incorporation of motive into its reimbursement analysis demonstrates the need for attorneys to recognize the dispositive outcome that results when a unilateral placement follows a medical emergency. While the new reimbursement standard raises challenges for practitioners in light of the Third Circuit’s failure to admit to the significant transformation of its original reimbursement analysis, recognizing the clear departure from *Kruelle* will better enable attorneys to advise clients and prepare for trial.

180. *See* Appellant’s Reply Brief, *supra* note 8, at 5 (arguing that “the test applied by the Third Circuit, as it revisited *Kruelle*” in subsequent cases, no longer requires school districts to shoulder the costs “where mental illness affects education”).

181. For a discussion of the Third Circuit’s incorporation of motive for placement as a dispositive factor in its reimbursement analysis, see *supra* notes 150–53 and accompanying text.

182. For a discussion of litigation recommendations, see *supra* notes 154–76 and accompanying text.