



## THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

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#### THE SUPREME COURT AND PARENT RIGHTS IN SPECIAL EDUCATION: NARROWING THE SCOPE OF IDEA

##### Overview

The intent of the Individuals with Disabilities Education Improvement Act (hereafter referred to by its short title, IDEA [2004]), is to: (1) provide free, appropriate, and meaningful educational opportunities (resulting in “meaningful educational benefit”) for all eligible children, (2) strengthen the role of families and parents to meaningfully participate in the special education of their children, and (3) ensure that the rights of eligible children and their parents are protected. From child find, to receipt of accurate and timely information, to eligibility, to IEP drafting, to placement, to final plan implementation, parents (biological or adoptive parent, including, where appropriate, a guardian ad item, or surrogate parent, or other person authorized to make educational decisions for the child) must be meaningfully involved and have an active voice in the special education of their child, at every step of the way. Vacca and Bosher (2003)

*Additional Sources of Parental Rights and Remedy.* While IDEA (2004) can be characterized as an enforceable civil rights act for children with educational disabilities, and as a procedural safeguard law for parents, the Rehabilitation Act of 1973, Section 504; the Family Educational Rights and Privacy Act [FERPA], the Americans with Disabilities Act [ADA]; and No Child Left Behind [NCLB] provide additional sources of rights and remedy. It must be clarified, however, that while such statutes may be appropriate to a specific situation, the general rule is that they cannot be used to expand the scope of rights, procedures, and remedies already available under IDEA (2004).

*FAPE and Placement Issues.* Where it can be demonstrated that a local public school system (LRE) is not providing a child with a free appropriate public education (FAPE), parents have the legal prerogative to send their child to another public school or to a private school program within or outside the state. It must be emphasized, that parents are expected to abide by and not ignore or circumvent the administrative and legal processes available under IDEA (2004). Moreover, while parents who unilaterally place their child in a private school program may be eligible for tuition and cost reimbursement, they cannot expect to be automatically reimbursed. When a dispute arises regarding tuition and costs, the question of financial responsibility is a matter to be determined by administrative process (mediation, due process hearing) and/or by judicial process (i.e., the

courts). Burlington School Committee v. Department of Education (1985) and Florence County School District v. Carter (1993)

*Attorney Fees and Costs.* Taking a special education case through the administrative and legal processes can be expensive. More often than not, parents must be prepared to expend their personal funds to pay for the specialized services of an attorney to represent their child's best interests and guide them through the technical maze.

Special education law allows for parents who prevail in either the administrative process of IDEA (2004), or in a court proceeding, to seek attorney fees. However, for purposes of eligibility to receive reasonable attorney fees and costs, parents must establish *prevailing party status* by showing: (1) the relationship between the parties was altered, (2) some benefit was realized on at least one significant issue in the case, and (3) the result of the formal action taken is enforceable. Attorney fees awards are made at the discretion of the court. 20 U.S.C. 1415 (e) (4), *et seq.* (2004) and J.H. v. Henrico County School Board (4th Cir. 2005)

### **Parent Rights and Recent Supreme Court Decisions**

Over the past three years, the United States Supreme Court has handed down three important parent rights decisions and, most recently, deadlocked in a 4-to-4 vote on another case. Each of the four cases has the potential to narrow the scope of rights guaranteed parents of children with educational disabilities. The purpose of this commentary is to: (1) briefly review these recent cases, and (2) suggest implications for local school board policy.

Schaffer v. Weast (2005). This Maryland case came to the United States Supreme Court from the United States Circuit Court of Appeals for the Fourth Circuit. Schaffer involved the parents of a student (Brian) enrolled in a private school. Prior to private school enrollment, Brian's parents had contacted the Montgomery County Public School System regarding their son's diagnosed disability. An IEP was developed for implementation in that public school system. Even though Brian's parents were involved in the development of Brian's IEP they rejected it.

Initially, Brian's parents unsuccessfully took their IEP issue and a request for tuition reimbursement to a due process hearing where an administrative judge ruled in favor of the school system. They next went into federal district court where, convinced that the burden of proof should have been placed on the school officials, the judge remanded the case back to the administrative judge. On remand the administrative judge held for the parents and ordered that Brian's parents be reimbursed for the private school tuition. On appeal to the Fourth Circuit the ruling was reversed. Schaffer v. Weast (4th Cir. 2005).

Certiorari was granted by the United States Supreme Court, at 125 S.Ct. 1300 (2005), where the Court was faced with the following question: Where parents of a child covered by IDEA (2004) are dissatisfied with their child's IEP and request an impartial due process hearing to challenge the appropriateness of the IEP, which party bears the burden of persuasion in that IDEA administrative hearing? In an opinion written by Justice O'Connor (Chief Justice Roberts did not take part in the consideration of or the decision in the case) the court focused on the "plain language" of the statute. Because IDEA (2004) is silent on the subject, the Court held, by a 6-to-2 vote, that "the burden lies, as it typically does, on the party seeking relief." In this case the parents bear that burden. The Fourth Circuit was affirmed. Schaffer v. Weast (2006)

*Arlington Central School District v. Murphy* (2006). A New York State case out of the United States Court of Appeals for the Second Circuit (2005), Arlington Central involved a private consultant/expert who had advised parents of a student covered by IDEA (2004). Plaintiff parents went (*pro se*) into a federal district court seeking reimbursement for tuition paid for their child's education at a private school. The parents prevailed at trial and requested that the fees for their consultant/expert be paid by the school system. Murphy v. Arlington Central School District Board of Education (S.D.N.Y. 2003) Subsequently, the district court's decision was appealed to the Second Circuit where the following narrow question was before the court: Whether a prevailing plaintiff may recover consultant/expert fees under the IDEA's fee shifting provision, 20 U.S.C. 1415 (i)(3)(B), which authorizes a court to award "costs?" The Second Circuit held that "expert fees are compensable as costs under IDEA." The lower court decision was affirmed. Arlington Central School District v. Murphy (2nd Cir. 2005)

Certiorari was granted by the United States Supreme Court, at 126 S.Ct. 978 (2005), where the Supreme Court was faced with the following issue: Is it possible for a prevailing party (in this case a parent whose child is covered under IDEA 2004) to recover fees paid to a non-attorney educational consultant? Decided on June 26, 2006, the Court said no and held that IDEA (2004) does not authorize, through the attorney fees provision, recovery of costs and fees paid to educational (non-attorney) consultant/experts who advise parents. Arlington Central School District v. Murphy (2006)

*Winkelman v. Parma City School District* (2007). An Ohio case out of the United States Court of Appeals for the Sixth Circuit, the Winkelman matter involved parents of an elementary school student with autism spectrum disorder and their unsuccessful attempts to gain reimbursement for their son's tuition at a private school. Eventually the parents filed suit in a federal district court where they appeared *pro se* (without an attorney). Unsuccessful at trial, they took their case on appeal to the Sixth Circuit Court where again they were without representation by an attorney. The appellate court dismissed the case and barred parents from future court action on their son's behalf unless they were represented by a lawyer. Winkelman v. Parma City School District (6th Cir. 2006)

Certiorari was granted by the United States Supreme Court, at 2006 U.S. LEXIS 1329 (2006), where the Court was faced with the following question: Does IDEA (2004) allow parents of an eligible child to *pro se* represent their child in a court of law? By a vote of 7-to-2 the Supreme Court held that "IDEA grants parents independent, enforceable rights, which are not limited to procedural and reimbursement-related matters but encompass the entitlement to a free appropriate public education for their child." Winkelman v. Parma City School District (2007) Thus, parents whose children are covered by IDEA (2004) have enforceable rights and can go into federal court without the representation of a lawyer.

*Board of Education of the City of New York v. Tom F.* (2007). Decided by the United States Circuit Court of Appeals for the Second Circuit, on appeal from the United States District Court for the Southern District of New York, the United States Supreme Court dead locked in a 4-to-4 vote (Justice Kennedy did not take part). Thus, the Second Circuit decision, at 193 Fed.Appx. 26 (2006), was affirmed.

The *Tom F.* case involved parents of a child with disabilities who sought reimbursement for private school tuition. In addition to the fact that the Supreme Court itself did not give us much information, what makes this case interesting is that the child had not previously been provided special education by the LRE (local public school system). And, even though this decision does not set precedent outside the Second Circuit, the point made in the decision is instructive elsewhere. In the Second Circuit's view, under IDEA (2004) parents still may be eligible for private school tuition reimbursement in situations where their child has not previously received special education and related services in a local public school system. New York City school officials

had argued that the IDEA (2004) requires parents to first give the public schools a chance to meet their child's needs prior to requesting reimbursement for private school tuition. Board of Education of the City of New York v. Tom F. (2007)

### **Policy Implications**

The fact that the United States Supreme Court handed down three decisions involving IDEA (2004), and affirmed another decision by a deadlock vote of 4-to-4, all within a narrow time frame, is significant. It therefore follows that the potential impact of these decisions on local public school board policy will be serious.

The following summary points have been gleaned from the Supreme Court decisions discussed above, and must be kept in mind when auditing existing school board policies and procedures and in drafting new ones:

- Parents of children eligible for special education under IDEA (2004) have enforceable rights (not limited to procedural rights) separate and independent from those of their eligible children.
- The “plain language” of IDEA (2004) is controlling.
- Parents of eligible children are expected to follow and not ignore or circumvent the administrative and legal processes and remedies available under IDEA (2004).
- Parents of eligible children bear the burden of proof (persuasion) in an administrative process where they are challenging the IEP or other aspect of their child's special education.
- Under IDEA parents have a right to go to court (*pro se*) and seek remedy without being represented by an attorney.
- Where they are the “prevailing party” in an administrative process or in a legal proceeding, parents can seek reimbursement of reasonable attorney fees and costs.
- Attorney fee awards are made at the sole discretion of the court.
- Non-attorney consultants who advise parents are not eligible for reimbursement of fees and costs under IDEA (2004).

It also should be stressed that at least one federal circuit (the Second Circuit) has held that a parent who unilaterally places their child with a disability in a private school, without first giving a local education agency (LRE) a chance to provide special education, is eligible for tuition reimbursement. This issue area is worth watching.

### **Resources Cited**

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Note: The views expressed in this commentary are those of the author.