Order Code RS22353
December 21, 2005

The Individuals with Disabilities Education Act (IDEA): *Schaffer v. Weast* Determines Party Seeking Relief Bears the Burden of Proof

name redacted
Legislative Attorney
American Law Division

Summary

The Individuals with Disabilities Education Act (IDEA) is the main federal program concerning the education of children with disabilities. It authorizes state and local aid for special education and related services for children with disabilities and contains detailed due process protections for children with disabilities and their parents. On December 3, 2004, President Bush signed "The Individuals with Disabilities Education Act Improvement Act" (P.L. 108-446), a major reauthorization and revision of IDEA. One issue which was not addressed in the reauthorization was whether the parents or the school bears the burden of proof in special education due process hearings. On November 14, 2005, the Supreme Court resolved a split in the circuits and held that the burden of proof in an administrative hearing challenging a child's individualized education program is on the party seeking the relief.

Statutory Provisions

The Individuals with Disabilities Education Act[1] is both a grants statute and a civil rights statute. It provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). One of the major ways FAPE is ensured is by the creation and implementation of an individualized education program (IEP). The IEP is the blueprint for the education and related services that the local educational agency (LEA) provides for a child with a disability, together with the goals, academic assessment

[1] 20 U.S.C. §1400 *et seq.* For a more detailed discussion of IDEA see CRS Report RL32716,*The Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446,* by (name redacted) and (name redacted).

procedures, and placement of the child.[2] The statute also contains detailed due process requirements to ensure the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.[3] However, the statute contains no specific provision relating to which party has the burden of proof in a due process hearing. Generally when a statute is silent about the burden of proof, the burden is placed on the party initiating the proceeding.[4] However, this is not an absolute rule and other factors such as policy considerations, convenience, and fairness may change the allocation of the burden of proof.[5]

Schaffer v. Weast

The Supreme Court in a 6-2 decision written by Justice O'Connor,[6] held that the burden of proof regarding an allegedly inadequate IEP in an IDEA due process hearing rests with the party seeking the relief. Justice Stevens filed a concurring opinion while Justices Ginsburg and Breyer dissented. The Supreme Court's decision clarified a split in the circuits on the issue.

Brian Schaffer, who was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) as well as other learning disabilities, had attended a private school until the seventh grade when his mother was told by that school that he should attend a school that could more adequately accommodate his disabilities. Brian's mother contacted the local public school and requested an evaluation to determine his eligibility for special education and also applied to another private school. The public school found Brian eligible for IDEA services and proposed an IEP which would give Brian 15.3 hours of special education and 45 minutes of speech therapy each week. Brian's parents requested a due process hearing alleging that the proposed IEP was inadequate due to Brian's need for smaller classes and more intensive services, and that he should be placed in a private school.

The administrative law judge (ALJ), observing that the evidence was close, assigned the burden of proof to the parents finding that deference was owed to educational professionals. Ultimately, the ALJ held that the parents had not met the burden of proof and upheld the school's proposed IEP. On appeal, the district court agreed with the parents regarding the burden of proof and remanded the case to the ALJ who then found that the public school had failed to prove the adequacy of the IEP. About this time the school district offered the parents a placement for Brian in a high school with a special learning center. The parents accepted this placement but the suit continued since the parents sought compensation for the private school tuition. Eventually the case came

---

[2] 20 U.S.C. §1414(d).

[3] For a more detailed discussion of the congressional intent behind the enactment of P.L. 94-142 see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by (name redacted). Report is archived, and available from author.

[4] J. STRONG, MCCORMICK ON EVIDENCE §337 (5th Ed. 1999).

[5] *Id.*

[6] Chief Justice Roberts took no part in the decision.

before the fourth circuit which found that there was no persuasive reason to depart from the normal rule of allocating the burden to the party seeking relief.[7] The Supreme Court granted *certiorari* to resolve the issue regarding the burden of proof.

The Supreme Court, in an opinion by Justice O'Connor, first observed that "absent some reason to believe that Congress intended otherwise,...we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief."[8] Justice O'Connor then examined various reasons advanced to support the argument that the burden of proof should be on the school system. First, the Court rejected the argument that the term "due process" in IDEA should be interpreted in its constitutional sense which would require the application of a balancing test. Second, it was argued that the Court should rely on the district court decisions of *Mills v. Board of Education*[9] and *Pennsylvania Association for Retarded Children v. Commonwealth*[10] which were used by the drafters of the original IDEA statute. Justice O'Connor rejected this argument accepting the reasoning of the Fourth Circuit that the fact that Congress incorporated a number of the procedural safeguards from these cases into the statute does not mean that Congress intended to adopt the ideas that it did not incorporate into the statute.

Third, placing the burden of proof on the schools, it was argued by the parents, would further IDEA's purposes by ensuring FAPE. The Supreme Court noted that assigning the burden of proof to school districts "might encourage schools to put more resources into preparing IEPs and presenting their evidence."[11] However, this argument was also rejected by the Court which stated that IDEA "is silent about whether marginal dollars should be allocated to litigation and administrative expenditures or to educational services."[12] The expense of litigating a due process complaint was noted and the Court observed that "Congress has also repeatedly amended the Act in order to reduce its administrative and litigation-related costs."[13] Examples of attempts to reduce these burdens where found in the new IDEA requirement in P.L. 108-446 for a resolution session[14] and the new findings concerning resolving differences in positive and constructive ways.[15] Justice O'Connor concluded that the parents "in effect ask this Court to assume that every IEP is invalid until the school district demonstrates that it is not. The Act does not support this conclusion."[16]

The Supreme Court noted that the most plausible argument advanced by the parents was that in the interest of fairness, the burden of proof should not be placed on a party

---

[7] 377 F.3d 449 (4th Cir. 2004).

[8] Slip op. at 8.

[9] 348 F.Supp. 866 (D.D.C. 1972).

[10] 334 F.Supp. 1257 (E.D.Pa. 1971).

[11] Slip op. at 9.

[12] *Id.*

[13] *Id.*

[14] 20 U.S.C. §1415(f)(1)(B).

[15] 20 U.S.C. §1400(c)(8)-(9).

[16] Slip op. at 9-10.

when the facts are "peculiarly within the knowledge of his adversary."[17] School districts were seen as having a "natural advantage" regarding the information but Justice O'Connor did not find this to be determinative since "Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them."[18] The Court noted that IDEA provides parents with the right to review records, to have an independent educational evaluation, to have details about options considered by the school district as well as disclosure of evaluations and recommendations, and to receive attorneys' fees in the discretion of a court if they prevail. Justice O'Connor concluded that "[t]hese protections ensure that the school bears no unique informational advantage."[19]

Finally, the Court observed that several states have laws or regulations which always place the burden of proof on the school district.[20] Although the Court noted the existence of these laws and regulations, the majority held that since there was no Maryland law or regulation relating to the burden of proof, it was not necessary to decide whether the allocation of the burden of proof should be left to the states.

Justice Stevens concurred in the opinion of the Court while Justice Ginsburg and Breyer wrote separate dissents. In his concurrence, Justice Stevens observed that he joined the majority's opinion not only for the reasons in Justice O'Connor's decision but also "because I believe that we should presume that public school officials are properly performing their difficult responsibilities under this important statute."[21]

Justice Ginsburg dissented from the Court's majority opinion. She agreed that ordinarily when the statute is silent, the burden of proof is on the person initiating the proceeding; however, she emphasized that other factors, such as policy considerations and fairness, may change the burden of proof. This was the situation in *Schaffer*, Justice Ginsburg argued. IDEA was described as imposing an affirmative obligation on public school systems who had greater expertise and thus were in a better position than parents to demonstrate the adequacy of the IEP. She opined that "[p]lacing the burden on the district to show that its plan measures up to the statutorily mandated 'free appropriate public education,'...will strengthen school officials' resolve to choose a course genuinely tailored to the child's individual needs."[22]

Justice Breyer dissented on different grounds. He found both the majority's and Justice Ginsberg's arguments to be reasonable but stated "My own view is that Congress took neither approach. It did not decide the 'burden of persuasion' question; instead it left

---

[17] Slip op. at 10, citing *United States v. New York, N.H. & H.R. Co.*, 355 U.S. 253, 256, n. 5 (1957).

[18] Slip op. at 10.

[19] Slip op. at 11,

[20] See e.g.., MINN. STAT. §125A.091, subd. 16 (2004); ALA. ADMIN. CODE tit. 4, §52.550(e)(9)(2003), cited in slip op. at 12.

[21] Justice Stevens, concurring at 1.

[22] Justice Ginsberg, dissenting at 3-4.

the matter to the States for decision."[23] Justice Breyer noted that IDEA was an exercise in "cooperative federalism" and that "respecting the States' right to decide this procedural matter here, where education is at issue, where expertise matters, and where costs are shared, is consistent with that cooperative approach."[24]

[23] Justice Breyer, dissenting at 3.

[24] *Id.* at 5.