Order Code RS22465
June 30, 2006

The Individuals with Disabilities Education Act (IDEA): The Supreme Court Denies Expert Fees in *Arlington Central School District v. Murphy*

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Summary

The Individuals with Disabilities Education Act (IDEA) 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). It also contains detailed due process procedures, including a provision for attorneys' fees. The Supreme Court has examined various issues under IDEA,[1] and in *Arlington Central School District v. Murphy* held, in a decision authored by Justice Alito, that parents who prevail in a suit against a school district may not recover expert witness fees.

Background

The Individuals with Disabilities Education Act (IDEA)[2] 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). The statute also contains detailed due process provisions 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 Originally enacted in 1975, the Act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an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] The attorneys'

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[1] For an examination of these decisions, see CRS Report RL33444, *The Individuals with Disabilities Education Act (IDEA): Supreme Court Decisions*, by (name redacted).

[2] 20 U.S.C. §1400 et seq.

[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). IDEA has undergone several reauthorizations, including the most (continued...)

fees provisions were added in 1986 by the Handicapped Children's Protection Act, P.L. 99-372.[4]

Majority Opinion

Justice Alito wrote the majority opinion in *Arlington Central School District v. Murphy*, holding that IDEA does not authorize prevailing parents to recover fees they have paid to experts.[5] His opinion was joined by Chief Justice Roberts and Justices Scalia, Kennedy, and Thomas. Justice Ginsberg wrote a separate opinion concurring in part and concurring in the judgment. Justice Breyer filed a dissenting opinion joined by Justices Stevens and Souter.

The majority opinion first observed that the holding was "guided by the fact that Congress enacted the IDEA pursuant to the Spending Clause."[6] This was seen as significant because if Congress attaches conditions to a state's acceptance of funds, the conditions must be unambiguous and provide clear notice. The majority noted that IDEA must be viewed from the perspective of a state official deciding whether IDEA funds, and the obligation attached, should be accepted. "In other words, we must ask whether IDEA furnishes clear notice regarding the liability at issue in this case."[7]

To determine whether there is such "clear notice," Justice Alito then examined IDEA's statutory language, which states in relevant part: "in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs — (I) to a prevailing party who is the parent of a child with a disability...."[8] Although the parents had argued that the term "costs" would include the costs of experts, Justice Alito found this argument "flawed" because the term "costs" is a term of art that generally does not include expert fees.[9]

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[3] (...continued)
recent one that resulted in P.L. 108-446. For a discussion of this reauthorization, 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).

[4] Although the original act contained no specific provision for attorneys' fees, prevailing parties used section 505 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, or section 1988 of the Civil Rights Attorneys' Fees Award Act, 42 U.S.C. §1988, to seek fees. However, the Supreme Court in *Smith v. Robinson*, 468 U.S. 992 (1984), held that the only remedies for prevailing parties under IDEA were those contained in that statute. Congress enacted the Handicapped Children's Protection Act in response to the Court's decision. For a discussion of the current provisions relating to attorneys' fees, see CRS Report RS22055, *The Individuals with Disabilities Education Act (IDEA): Attorneys' Fees Provisions in P.L. 108-446*, by (name redacted).

[5] 548 U.S. __ (2006), 2006 U.S. LEXIS 5162 (June 26, 2006).

[6] *Id.* Slip op. at 3.

[7] *Id.* Slip op. at 4.

[8] 20 U.S.C. §1415(i)(3)(B).

[9] 548 U.S. __ (2006), 2006 U.S. LEXIS 5162 (June 26, 2006). Slip op. at 5.

The parents had argued that the Handicapped Children's Protection Act of 1986, which added attorneys' fees provisions to IDEA, supported their argument that expert fees were covered because it contained a provision requiring the General Accounting Office (GAO)[10] to collect data, including data for consultants. This argument was also found to be unconvincing, because the language directing the collection of data for consultants required the collection of the number of hours spent, not the amount of fees awarded.

Justice Alito concluded that the language of IDEA "overwhelmingly support(s) the conclusion that prevailing parents may not recover the costs of experts or consultants" and that "the terms of IDEA fail to provide the clear notice that would be needed to attach such a condition to a State's receipt of IDEA funds."[11]

The majority also rejected the final two arguments made by the parents: (1) that allowing expert fees supports the overarching goal of IDEA to provide a free appropriate public education (FAPE) to all children with disabilities and (2) that the legislative history of the Handicapped Children's Protection Act supports allowing expert fees. Justice Alito found that the goals of FAPE and of safeguarding the rights of parents were "too general to provide much support for respondents' reading of the terms of the IDEA. The IDEA obviously does not seek to promote these goals at the expense of all other considerations, including fiscal considerations."[12]

The conference committee report for P.L. 99-372 stated:

> The conferees intend that the term "attorneys' fees as part of the costs" include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the parent or guardian's case in the action or proceeding...[13]

Justice Alito found that this legislative history to be unconvincing and "simply not enough."[14] He concluded that

> Under these circumstances, where everything other than the legislative history overwhelmingly suggests that expert fees may not be recovered, the legislative history is simply not enough. In a Spending Clause case, the key is not what a majority of the Members of both Houses intend but what the States are clearly told regarding the conditions that go along with the acceptance of those funds. Here, in the face of the unambiguous text of the IDEA and the reasoning in *Crawford Fitting* and *Casey*, we

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[10] The General Accounting Office was renamed the Government Accountability Office by P.L. 108-271.

[11] 548 U.S.__ (2006). Slip op. at 8. The majority found further support for this conclusion in its analysis of *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 437 (1987), and *West Virginia University Hospital, Inc. v. Casey*, 499 U.S. 83 (1991).

[12] 548 U.S. __ (2006), 2006 U.S. LEXIS 5162 (June 26, 2006). Slip op. at 11.

[13] H.R. Conf. Rep. No. 99-687, at 5.

[14] 548 U.S. __ (2006), 2006 U.S. LEXIS 5162 (June 26, 2006). Slip op. at 12.

> cannot say that the legislative history on which respondents rely is sufficient to provide the requisite fair notice.[15]

Justice Ginsburg's Concurrence

Justice Ginsburg concurred in part with the majority opinion and concurred in the judgment of the Court. However, she took issue with the majority's reliance on the "clear notice" requirement for conditions placed on the receipt of federal funds. Justice Ginsburg distinguished the situation presented in *Pennhurst State School and Hospital v. Halderman*,[16] where the Court found that clear notice was required, from that in *Arlington Central School District.* The situation in *Pennhurst* was described as imposing a new programmatic obligation on the states, whereas that in *Arlington Central School District* was in a "lower key" and did not concern IDEA's education programs but the remedies available against a school district. Justice Ginsburg also emphasized that IDEA was enacted not only under the Spending Clause, but also under section 5 of the Fourteenth Amendment.

Dissenting Opinion

Justice Breyer, joined by Justices Stevens and Souter, dissented from the majority opinion stating that "[t]here are two strong reasons for interpreting the statutory phrase to include the award of expert fees. First, that is what Congress said it intended by the phrase. Second, that interpretation furthers the IDEA's statutorily defined purposes."[17] Justice Breyer examined the legislative history of the Handicapped Children's Protection Act, especially emphasizing the language in the conference report stating that the conferees intended to cover the fees of expert witnesses.[18] The dissent noted that every spending detail in a spending clause statute need not be spelled out and concluded that

> ...our ultimate judicial goal is to interpret language in light of the statute's purpose. Only by seeking that purpose can we avoid the substitution of judicial for legislative will. Only by reading language in its light can we maintain the democratic link between voters, legislators, statutes, and ultimate implementation, upon which the legitimacy of our constitutional system rests.[19]

Second, Justice Breyer found that IDEA's basic purpose, as illuminated by the FAPE and due process requirements, supported interpreting the provision's language to include expert costs. He emphasized the importance of keeping the goals of a program as a means of assessing language, noting that to do otherwise "is to risk a set of judicial

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[15] *Id.*

[16] 451 U.S. 1 (1981).

[17] 548 U.S. __ (2006). 2006 U.S. LEXIS 5162 (June 26, 2006). Justice Breyer's dissent at 2.

[18] H.R. Conf. Rep. No. 99-687, at 5, quoted *supra.*

[19] 548 U.S. __ (2006). 2006 U.S. LEXIS 5162 (June 26, 2006). Justice Breyer's dissent at 17.

interpretations that can prevent the program, overall, from achieving its basic objectives or that may well reduce a program in its details to incoherence."[20]

In conclusion, the dissent emphasized the importance of legislative history, observing that "[b]y disregarding a clear statement in a legislative report adopted without opposition in both Houses of Congress, the majority has reached a result no Member of Congress expected or overtly desired."[21] The lack of weight given to the overarching purpose of IDEA was described as undercutting the statute's purpose of providing a free and appropriate public education for all children with disabilities.

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[20] *Id.* at 11.

[21] *Id.* at 17.