



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

December 2005

To: Impartial Hearing Officers
District Superintendents
Superintendents
Superintendents of State-Operated and State-Supported Schools
Presidents of Boards of Education
SETRC Project Directors and Professional Development Specialists
Commissioner's Advisory Panel for Special Education Services
Individuals and Organizations Interested in the Education of Students with Disabilities

From: Kathy A. Ahearn

Subject: Schaffer v. Weast, No. 04-698 ___ U.S. ___, ___ S.Ct. ___, 2005 WL 3028015 (November 14, 2005)

This memorandum provides guidance regarding the recent United States Supreme Court decision in Schaffer v. Weast, concerning the burden of proof in an impartial hearing held to assess the appropriateness of an individualized education program ("IEP") under the Individuals With Disabilities Education Act ("IDEA").

What the Decision Says

The IDEA (20 U.S.C. §1415(f)) and New York State Education Law §4404(1)(a) provide for an impartial hearing to resolve a dispute between a parent and a school district regarding the provision of a free appropriate public education ("FAPE") to a student with a disability. On November 14, 2005, the United States Supreme Court held in Schaffer v. Weast, in an opinion written by Justice O'Connor and joined by five other justices, that "The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." The Schaffer decision thus reverses the longstanding rule in New York State articulated in Walczak v. Florida Union Free School District, 142 F. 3d 119, 122 (2nd Cir. 1998) that, "school authorities have the burden of supporting the proposed IEP." Justice O'Connor wrote that it is improper for the courts "to assume that every IEP is invalid until the school district demonstrates that it is not." While the party seeking relief is typically the parents, in some cases it may instead be the school district. For example, if the school district commences a hearing to override the parents' refusal to consent to an evaluation, the burden of persuading the Independent Hearing Office ("IHO") rests with the district. The Court rejected arguments that placing the burden on the party seeking relief will work against parents. Justice O'Connor acknowledged that school districts have a "natural advantage" in information and expertise over parents, but she also found that the IDEA gives parents

many procedural protections (e.g., right to review records, right to an independent education evaluation, etc.) which operate to level the playing field between parents and school officials.¹

What the Decision Means In New York

The Supreme Court's decision in Schaffer v. Weast has the effect of shifting the burden of proof in New York from the school district to the party challenging the IEP. The Court in Schaffer v. Weast did not decide whether states may, if they wish, override the default rule and place the burden on the school district by State statute or regulation. The Court did not reach that issue because Maryland, the State whose process was challenged, did not have an explicit statute or regulation assigning the burden of proof to either party. New York similarly has no statute or regulation that allocates the burden of proof. Accordingly, Schaffer must be followed in New York in the absence of a statute or regulation that sets forth which party has the burden of proof.

Applicability of the Decision

IHOs should allocate the burden of proof on the moving party in all hearings commenced on or after November 14, 2005, the date of the decision. To protect the rights of all parties to proceedings already begun on that date and assure fundamental fairness, the presiding hearing officer should immediately contact counsel to the parties in writing and inquire whether either party requests to submit additional evidence in light of Schaffer. The State Education Department will consider any such request made in writing and granted by the IHO to constitute a valid extension under law of the statutorily imposed timeframes for hearings.

The Schaffer v. Weast decision is available on the website for the United States Supreme Court (www.supremecourtus.gov).

¹ The Court's decision only addressed "burden of persuasion." It did not discuss the concept of "burden of production," i.e., the order of case presentation in a hearing. Typically, the party with the burden of persuasion presents his/her case first, but this order is not required by Schaffer.