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Supreme Court to Special Ed Parties: It's Your Move, It's Your Burden

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In a 6-2 decision written by retiring Supreme Court Justice Sandra Day O'Connor, the Supreme Court on Monday ruled that the "burden of persuasion" in cases under the federal special education law is on the party contending that a special ed student's education plan fails to meet the child's needs.

The case, Schaffer v Weast, involved Brian Schaffer, a student with learning disabilities and speech impairments. He attended private elementary school but enrolled in a public middle school where his parents became promptly dissatisfied with class size and services. They withdrew Brian from public school, enrolled him in a different private school and went to hearing over their demand for reimbursement for the private school costs. Following several lower rulings—from administrative hearing officers to lower federal courts—the case reached the Supreme Court which concluded that unless there was a good reason to conclude that Congress intended otherwise, the burden of proof or persuasion should be on the moving party.

Usually, the Court acknowledged, that party is a parent who is unhappy with the program provided or offered by the school district. However, the burden would not always, or necessarily, fall on the parent—a school district that sought a hearing over parental objections to changes in a student's program would carry the burden to persuade the hearing officer that the district's position was preferred; similarly, a district that wanted to evaluate a child over the parent's objection would carry the burden.

Child advocacy groups expressed disappointment in the decision, speculating that the ruling will benefit school districts and put families that can't afford attorneys or other professional advocates at a disadvantage. The National School Boards Association, on the other hand, lauded the decision and said it would allow districts to "spend the money and resources on educating children, not [on] legal proceedings."

As a practical matter, the decision signals that school districts should continue to marshal their strongest facts and most persuasive evidence, no matter which side "officially" carries the burden of persuasion or proof. Administrative hearing officers may—Supreme Court decision notwithstanding—retain some sympathy for parents of special education students. Indeed, they may believe, like the Federal Court judge whose dissenting opinion was quoted at length by Supreme Court Justice Ruth Bader Ginsberg, that "the party with the 'bigger guns' also has better access to information, greater expertise, and an affirmative obligation to provide the contested services."

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