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COMMENTARY

New Law Places Burden Back on School Districts, Where It Belongs

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On Jan. 13, New Jersey took a step toward leveling the playing field for parents who disagree with their school districts' special education programming for their children.

On that date, Gov. Jon Corzine signed a bill that places the burden of proof and production on school districts to show that the proposed program meets the requirements of the Individuals with Disabilities Education Act.

From 1989 until 2005, New Jersey law recognized the inherent advantage of school districts under IDEA and placed the burden of proof on them in IDEA hearings.

In Lascari v. Board of Education, 116 N.J. 30 (1989), the New Jersey Supreme Court said that approach effectuated the broad remedial mandates of federal law. IDEA does not merely prohibit discrimination; it places an affirmative obligation on school districts to search out, identify, evaluate and program for all children with disabilities who need special education. In addition, allocating the burden to districts is consistent with the various procedural safeguards to parents, including right to counsel, advice of experts, presentation and cross-examination of witnesses, and a public hearing, the Court found.

School districts, reasoned the Lascari Court, were in a better position to meet those burdens than parents, who often do not have the same access to expertise needed to provide a child with appropriate services or to information about state and federal laws.

This changed in late 2005, when the U.S. Supreme Court held in Schaffer v. Weast, 546 U.S. 49, that the burden of proof fell on the party seeking relief. Therefore, when parents requested an administrative hearing under IDEA, they had the burden of demonstrating that the district had proposed an inappropriate program. Notably, however, the Schaffer Court also left open the possibility that state law might override the default rule and place the burden upon school districts.

The change in New Jersey law as a result of Schaffer significantly disadvantaged parents facing the often challenging task of enforcing their children's rights under IDEA. Schaffer also made it more difficult for parents to settle their disputes. School districts, unlike parents, have unfettered access to information about their proposed placement and have expert witnesses already in their employ. Parents cannot depose district employees prior to a hearing to see what they will say. Parents also often have limited knowledge of the educational system and teaching models and do not have access to experts.

In short, school districts have every informational advantage in this type of litigation. With all these factors in their favor, and knowing that parents bore the burden of proof after Schaffer, districts held all the cards and could refuse to settle on reasonable terms. Therefore, returning the burden to districts will help pave the way to encourage earlier resolution of disputes.

The new law rightly re-allocates the burden of proof and production to school districts. District employees designed the program being challenged and should have all the relevant data at hand and be able to articulate the rationale behind their proposal. Placing the burden of proof and production on parents, who often find the entire process frustrating and intimidating, time-consuming and emotional, was simply not consistent with the broad remedial mandate in IDEA. ■

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