U.S. Supreme Court on IDEA Parental Rights: What Advocates Need to Know

Parents of children with disabilities may sue *pro se* to enforce the federal statutory right to a free appropriate public education for their children, the U.S. Supreme Court held last May in *Winkelman v. Parma City School District*, 127 S. Ct. 1994 (2007). The right is guaranteed by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq*.

The case was brought by an Ohio couple who disputed the school placement proposed for their autistic son and sought reimbursement for their private school expenses. They sued under the IDEA provision allowing "any party aggrieved" by an administrative decision to sue (20 U.S.C. § 1415(i)(2)(A)), only to have the Sixth Circuit order their appeal dismissed unless they engaged an attorney.

In a 7-to-2 decision by Justice Kennedy, the Supreme Court, holding that "without question, the parent of a child with a disability has a particular and personal interest in fulfilling 'our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities,'" reversed the Sixth Circuit. Thus, the Court held, such parents may sue on their own behalf, without an attorney, to secure a free appropriate public education for their children. Because it held that parents had enforceable IDEA rights of their own, the Court did not reach the issue of whether the long-standing common-law rule that *pro se* litigants may represent only themselves should be modified.

The case is significant for several reasons. First, in the Second, Third, Sixth, Seventh, and Eleventh Circuits, which had barred unrepresented parents from prosecuting IDEA actions (or allowed them to enforce only procedural rights), the decision restores the parents' ability to secure their child's education under the IDEA, even if they cannot find or afford attorneys. (The opinion cites these cases at 127 S. Ct. 1999.) Second, the decision, on the one hand, removes a tool from the arsenal of increasingly aggressive school districts, which had on occasion sought dismissal of actions solely because the family lacked counsel, effectively guaranteeing a school district victory in every case without representation. (See, e.g., *DK v. Huntington Beach Unified School District*, 428 F. Supp. 2d 1088 (C.D. Cal. 2006) (denying motion to dismiss).)

On the other hand, the decision may ease pressure for courts to appoint counsel for children whose parents cannot afford attorneys. Such appointments are available (though discretionary) under the federal indigent litigant statute, 28 U.S.C. § 1915, and arguably under Federal Rule of Civil Procedure 17(c), which requires the court to appoint a guardian ad litem or "make such other order as it deems proper" to protect children and incompetents. Although seeking a discretionary appointment of counsel remains worthwhile, particularly where parents are likely to be especially ineffective *pro se*, the argument is perhaps less compelling now to some courts, given that the alternative to appointed counsel is not a complete bar to proceeding.

And, third, parents' increased ability to represent themselves carries some risk, because of the IDEA's two-way fee-shifting provision, which allows an award of fees against a parent "if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation" (20 U.S.C. § 1415(i)(3)(B)(III)). Now that the number of *pro se* IDEA cases can be expected to rise, requests for fees by districts under this provision may also increase.

Advocates should also be aware of two decisions in the previous term in which the Court ruled against parents seeking relief under the IDEA: *Schaffer v. Weast*, 126 S. Ct. 528 (2005), and *Arlington Central School District v. Murphy*, 126 S. Ct. 2455 (2006). The issue in *Schaffer* was which of the parties—the parents or the school district—bore the burden of persuasion in an IDEA due process hearing. Finding the IDEA silent on the question, the Court invoked the "normal rule" that the party seeking relief, in this case the parents, bore the burden. In *Arlington* the issue was whether the IDEA's fee-shifting provision authorized reimbursement of fees that the parents had incurred for an educational expert. Finding that the statute provided only for attorney fees, the Court rejected the parents' claim. (For a more extensive discussion of these cases, see Gary F. Smith et al., *The 2005–2006 U.S. Supreme Court Decisions on Access to the Federal Courts: The First Term of the John Roberts Era*, 40 Clearinghouse Review 394 (Nov.–Dec. 2006).)

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