

Special Education Update

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Clients are increasingly requesting our assistance in connection with planning for families with adults or children who have special needs. In many instances, we are called upon to draft a special needs trust which can significantly improve the quality of life for an individual with disabilities. A special needs trust can be set up by a parent, grandparent or any one else who wants to provide for a loved one with special needs. If done properly, the assets held by a special needs trust will not disqualify the individual for government assistance programs. Moreover, these funds can be used to purchase items which are not covered by government assistance programs but which can enhance the life of the special needs beneficiary.

Access to appropriate education is also one of the biggest issues families of special needs children face. In this column, I would like to discuss a recent Supreme Court case which held that parents who demand changes to their children's special education programs have the burden of proving these programs inadequate. In *Schaffer v. Weast*, the Supreme Court of the United States considered the case of a Maryland family that challenged the special education program designed for their son who had learning disabilities and speech/language impairments. Under the Individuals with Disabilities Education Act (IDEA), school districts must create an individualized education program (IEP) for each child with disabilities. The school district generated an IEP offering to place the child in one of two selected middle schools. The parents disagreed with the proposed arrangement, believing that their child needed smaller classes and more intensive services. The parents enrolled the child in a private school. Under the IDEA, the parents can request an impartial due process hearing if they want to challenge the IEP as inappropriate. The parents in this case requested such a hearing to challenge the IEP and to ask for compensation for the child's private education.

As enacted, the IDEA is silent as to which party bears the burden of proof at this hearing. Typically, the burden of proof rests with the party seeking relief, in this case, the parents. An administrative law judge conducted the hearing and held that the parents bore the burden of proof, and ruled in favor of the school district. The United States District Court reversed and remanded, concluding that the school district bore the burden of proof. A divided panel of the United States Court of Appeals for the Fourth Circuit reversed the District Court, concluding that the parents did not offer a good reason to deviate from the normal rule of having the party seeking relief bear the burden of proof.

The parents argued that putting the burden of proof on school districts would further the IDEA's purpose because that would help ensure that children receive a free appropriate public education. The Supreme Court said that, in effect, the parents were asking "the Court to assume that every IEP is invalid unless the school district demonstrates that it is not." The Court concluded that the IDEA did not support this conclusion, stating that although school districts have a "natural advantage" with respect to information and expertise, Congress required them to share this information with parents and to safeguard the parents' procedural rights. The Court held that the burden of proof in an

administrative hearing challenging an IEP lies with the party seeking relief, whether the party seeking relief is the parents, as in this case, or the school district, if the school district challenges an IEP.

Parents will now have to be more zealous in their advocacy efforts for their special needs children as a result of this case. However, with proper preparation and determination it is still possible to get the appropriate services that your child needs.