CHAPTER 11

Overview U. S. Supreme Court Cases

In this chapter, you will learn about decisions in eight special education cases decided by the United States Supreme Court.[1] You will also learn about a case that will be decided during the 2006-2007 term. The full text of the decisions is in Chapter 12. As you read, you will see how the issues have changed since the first Supreme Court decision in 1982.

Congress enacted Public Law 94-142 in 1975. The law, originally known as the Education of All Handicapped Children Act, is now the Individuals with Disabilities Education Act of 2004. The law requires public schools to provide a free, appropriate public education (FAPE) to children with disabilities at no cost to the child's parent.

After the law was enacted, courts began to issue different rulings about this term. As more cases were litigated, some courts decided that a "free appropriate public education" meant that the handicapped child was entitled to an education that would help the child become self-sufficient. Other courts decided that school districts were required "to maximize the potential of each handicapped child commensurate with the opportunity provided non-handicapped children."

When a parent or school appeals a case to the U. S. Supreme Court, they file a Petition for Certiorari. Out of several thousand of Petitions received each year, the Supreme Court grants cert in fewer than 100 cases. When the Supreme Court agrees to hear a case, the Court also determines the issue or "Question Presented."

In 1982, the U. S. Supreme Court agreed to hear its first special education case.

Free Appropriate Public Education (FAPE): *Bd. of Education v. Rowley* (1982)

Amy Rowley was a deaf child who attended school in the Hendrick Hudson Central School District in New York. When Amy entered first grade, her parents requested that the school provide a qualified sign-language interpreter in her academic classes. After consulting with various experts, the school refused to provide an interpreter because "Amy was achieving educationally, academically, and socially" without this assistance.

After losing at the due process and review levels, Amy's parents appealed to the U. S. District Court. The Court found that Amy "is a remarkably well adjusted child who . . . performs better than the average child in her class and is advancing easily from grade to grade."[2]

However, the Court also found that Amy "understands considerably less of what is going on in class than she would if she were not deaf" and "is not learning as much, or performing as well academically, as she would without her handicap." *Id*. The Court concluded that this disparity between Amy's achievement and her potential indicated that she was not receiving a "free appropriate public education" which was defined by that district court as "an opportunity to achieve her full potential commensurate with the opportunity provided to other children."

1 The cases included in this book are the most critical decisions issued by the U. S. Supreme Court. The Court has published other decisions. See *Smith v. Robinson*, 468 U.S. 992 (1984), *Dellmuth v. Muth*, 491 U.S. 223 (1989), *Zobrest v. Catalina Foothills Sch. District*, 509 U.S. 1 (1993), and *Bd. of Educ. Kiryas Joel Village School v. Grumet*, 512 U.S. 687 (1994). In some instances, Congress changed the statute after a decision. Other cases have had less impact on parents and schools.

2 *Rowley v. Bd. of Education*, 483 F. Supp. 528, 531 (SD NY 1980)

Id.

The school district appealed. The U. S. Court of Appeals for the Second Circuit affirmed the District Court's decision. The school district appealed to the U. S. Supreme Court.

Questions Presented by the Case

What is meant by the Act's requirement of a free appropriate public education?

What is the role of state and federal courts in exercising the review granted by Section 1415?

In *Rowley*, the Supreme Court described the requirements of a free appropriate public education as:

> providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP . . . if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

After reviewing the legislative history of Education of All Handicapped Children Act (now IDEA), the Court held:

> the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside . . . We conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the child.

The decision in *Rowley* clarified that children with disabilities were entitled to *access* to an education that provided *educational benefit*. They were not entitled to the "best" education, nor were they entitled to an education that would "maximize" their potential. Parents and school districts continue to disagree about what constitutes an appropriate special education program for a particular child.

When Health Services Are Necessary for FAPE: *Irving School District v. Tatro* (1984)

Amber Tatro was born with spina bifida. She had orthopedic and speech impairments and a neurogenic bladder. To prevent injury to her kidneys, Amber had to be catheterized every three or four hours by a procedure called "clean intermittent catheterization" (CIC). The procedure was described as "a simple one that may be performed in a few minutes by a layperson with less than an hour's training." Although the school agreed to provide special education for Amber, they refused to administer CIC because they viewed it as a medical service, not a "related service."

Initially, the U. S. District Court found that CIC was not a "related service" under the Education of All Handicapped Children Act (now IDEA) and that Section 504 of the Rehabilitation Act did not require "the setting up of government health care for people seeking to participate in federally funded programs."

The U. S. Court of Appeals reversed. It held that CIC was a "related service" because Amber could not attend school or benefit from special education without it. The case was remanded back to the District Court. The District Court held that because a nurse or other qualified person could administer CIC without engaging in the unauthorized practice of medicine, the procedure was not a "medical service" but was a "related service."

In 1984, Amber's case was appealed to the Supreme Court.

Questions Presented by the Case

Is 'medical treatment,' such as clean intermittent catheterization, a 'related service' required under the Education for All Handicapped Children Act and required to be provided to the minor Respondent?

Is a public school required to provide and perform medical treatment prescribed by the physician of a handicapped child by the Education of All Handicapped Children Act or the Rehabilitation Act of 1973?

The Court held that CIC is a "related service" under the Education of the Handicapped Act:

> CIC is a supportive service . . . required to assist a handicapped child to benefit from special education . . . without having CIC services available during the school day, Amber cannot attend school and benefit from special education.

Quoting their decision in *Rowley*, the Court held:

> As we have stated before, Congress sought primarily to make public education available to handicapped children and to make such access meaningful . . . .A service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned.

Tuition Reimbursement: *Burlington School Comm. v. Dept. of Ed* (1985)

Dissatisfied about their children's lack of progress in public school programs, parents began to remove their children from these programs and place their children into private special education programs. Some parents requested that their school districts reimburse them for the costs of the child's special education in private programs.

If the public school provides an appropriate educational program, parents are not entitled to reimbursement for a private placement. If the school district does not provide the child with an appropriate education, and the parent places the child into a private special education program where the child does receive an appropriate education, should the parent be reimbursed?

Some courts held that the date for reimbursement did not begin until after the case was litigated and won by the parents, a process that often took years and led to delaying tactics by school districts. Other courts held that reimbursement was retroactive to the date of placement, or the date of denial of an appropriate education. A split among Circuits emerged on this issue.

To resolve this split, the U.S. Supreme Court agreed to hear the case of Michael Panico.

Questions Presented by the Case

> Does the potential relief available under § 1415(e)(2) include reimbursement to parents for private school tuition and related expenses?
>
> Does § 1415(e)(3) bar such reimbursement to parents who reject a proposed IEP and place a child in a private school without the consent of local school authorities?

In *Burlington*, the legal issue was whether Michael Panico's parents could be reimbursed for his education at a private special education school on the state's list of approved schools from the initial date of placement. The Panico family and the Massachusetts Department of Education brought the suit against the Town of Burlington, Massachusetts.

In the unanimous decision, Justice Rehnquist held that the special education statutes were enacted to benefit handicapped children. He described the issues that parents face in deciding whether to remove their child from an inadequate public school program:

> parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement. If they choose the latter course, which conscientious parents who have adequate means and who are reasonably confident of their assessment normally would, it would be an empty victory several years later that they were right but that these expenditures could not in a proper case be reimbursed by the school officials.

> In a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear beyond cavil that 'appropriate' relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.

Discipline and Long-Term Expulsions: *Honig v. Doe* (1985)

In *Honig v. Doe*, the Supreme Court issued its first and only decision in a school discipline case, which was described as follows:

> The present dispute grows out of efforts of certain officials of the San Francisco Unified School District to expel two emotionally disturbed children from school indefinitely for violent and disruptive conduct related to their disabilities.

The Court described Respondent John Doe as:

> a socially and physically awkward 17 year old who experienced considerable difficulty controlling his impulses and anger . . . . Frustrating situations were an unfortunately prominent feature of Doe's school career: physical abnormalities, speech difficulties, and poor grooming habits made him the target of teasing and ridicule as early as the first grade . . . [his] social skills had deteriorated and he could tolerate only minor frustration before exploding.
>
> Respondent Jack Smith was identified as an emotionally disturbed child by the time he entered second grade . . . he had been physically and emotionally abused as an infant and young child . . . despite above average intelligence, he experienced academic and social problems . . . extreme hyperactivity and low self-esteem.

Questions Presented by the Case

> Do expulsions and indefinite suspensions of children for conduct related to their disabilities deprive them of their right to a free appropriate public education?
>
> Can a 'dangerousness exception' be made to the "stay-put" requirements in Section 1415?

Citing *Mills v. Board of Education of District of Columbia*,[3] and the legislative history of the law, the Supreme Court held:

> One of the evils Congress sought to remedy was the unilateral exclusion of disabled children by schools . . . one of the purposes of 1415(e)(3) was 'to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings.'
>
> [The law] . . . demonstrates a congressional intent to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. This Court will not rewrite the statute to infer a 'dangerousness' exception on the basis of obviousness or congressional inadvertence, since, in drafting the statute, Congress devoted close attention to *Mills* . . . thereby establishing that the omission of an emergency exception for dangerous students was intentional.

Although the Supreme Court issued a powerful pro-child decision in *Honig*, school officials continue to remove handicapped children from school for behaviors related to their disabilities.

Parental Choice and Educational Benefit: *Florence Co. School District IV v. Shannon Carter* (1993)

The Supreme Court agreed to review the Fourth Circuit's decision in *Florence County School District Four v.*

3 348 F. Supp. 866 (DC 1972)

Shannon Carter,[4] after a Court of Appeals ruling in a similar case created a split among circuits.

The Supreme Court found that:

> Shannon Carter was classified as learning disabled in 1985, while a ninth grade student . . . . School officials met with Shannon's parents to formulate an individualized education program (IEP) for Shannon . . . and established specific goals in reading and mathematics of four months progress for the entire school year. Shannon's parents were dissatisfied and requested a hearing to challenge the appropriateness of the IEP . . . . In the meantime, Shannon's parents placed her in Trident Academy, a private school specializing in educating children with disabilities . . . . Shannon graduated in the spring of 1988.

After a hearing officer and state review officer ruled against them, Shannon's parents filed suit in federal court, seeking reimbursement for her tuition and other costs incurred at Trident. The District Court ruled in the parents' favor and held that the school district's proposed educational program and achievement goals of the IEP were "wholly inadequate" and ordered Florence County to reimburse Shannon's parents for her education at Trident Academy.

Florence County appealed to the U. S. Court of Appeals for the Fourth Circuit, arguing that because Trident was a "self-contained school," it was not the least restrictive environment (LRE), and they should not have to pay for Shannon's education. Citing *Rowley*, the Court of Appeals held that since the school district had defaulted on its obligation to provide Shannon with a free, appropriate public education (FAPE), "the private school placement is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits." This ruling was in direct conflict with the Second Circuit's decision in *Tucker v. Bay Shore Union Free School District*[5] and created a "split among circuits." The Supreme Court agreed to hear the case and resolve the split.

Question Presented by the Case

> May a court order reimbursement for parents who withdrew their child from a public school that did not provide an appropriate education under the Individuals with Disabilities Education Act and put the child in a private school that is in substantial – but not complete – compliance with the Act?

In a unanimous opinion written by Justice Sandra Day O'Connor, the Supreme Court held that parents who withdraw their child from a public school that does not provide an appropriate education and enroll their child in a private school are entitled to reimbursement if the child receives an appropriate education at the private school. The Court also held that the requirement that public schools meet state standards does not apply when parents place their child in a private program because these requirements were not intended to apply to parental placements. Citing the Court of Appeals decision, Justice O'Connor wrote:

> Indeed the school district's emphasis on state standards is somewhat ironic . . . to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place.

Justice O'Connor responded to Florence County's "unreasonable burden on financially strapped schools" argument with this advice:

> Public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.

The decision in *Florence County School District IV v. Shannon Carter* opened the door to reimbursement for parents who developed special education programs tailored to the unique needs of their children, especially home-based Applied Behavioral Analysis (ABA) programs for young children with autism.

4 950 F. 2d 156 (4th Cir. 1991)

5 873 F. 2d 563 (2nd Cir. 1989)

When Nursing Services Are Necessary for FAPE: *Cedar Rapids v. Garret F.* (1999)

In *Cedar Rapids v. Garret F.*, the Supreme Court revisited the "*Tatro*" issue of related services.

> Respondent Garret F. is a friendly, creative, and intelligent young man. When Garret was four years old, his spinal column was severed in a motorcycle accident. Though paralyzed from the neck down, his mental capacities were unaffected. He is able to speak, to control his motorized wheelchair through use of a puff and suck straw, and to operate a computer with a device that responds to head movements.
>
> Garret is currently a student in the Cedar Rapids Community School District (District), he attends regular classes in a typical school program, and his academic performance has been a success. Garret is, however, ventilator dependent, and therefore requires a responsible individual nearby to attend to certain physical needs while he is in school.

Question Presented by the Case

> Do schools that receive federal funding under the Individuals with Disabilities Education Act have to pay for one-on-one nursing assistance for certain of their disabled students?

In a 7-to-2 decision, the Court held that if the services are "related" to keeping a disabled child in school and able to access educational opportunities available to other children, school districts that receive IDEA funds must provide these services. Justice Stevens wrote the majority opinion:

> This case is about whether meaningful access to the public schools will be assured, not the level of education that a school must finance once access is attained. It is undisputed that the services at issue must be provided if Garret is to remain in school.
>
> Under the statute, our precedent and the purposes of the IDEA, the district must fund such related services to help guarantee that students like Garret are integrated into the public school . . . Congress intended to open the door of public education to all qualified children and required participating states to educate handicapped children with non-handicapped children whenever possible.

Burden of Proof in Due Process Hearings: *Schaffer v. Weast* (2005)

The next two cases decided by the U. S. Supreme Court dealt with procedural issues at special education due process hearings. The first case focused on who had the burden of proof in due process hearings – the parents or the school.

Brian Schaffer had learning disabilities and speech-language impairments. From kindergarten through seventh grade, he attended a private school. When school officials advised Brian's parents that he needed a different school to meet his needs, his parents contacted their local public school system. When the school district offered a program that was not sufficiently intensive, the parents enrolled Brian in a private special education school and requested a due process hearing.

After a due process hearing, the Administrative Law Judge held that the parents bore the burden of persuasion and ruled for the school district. The parents appealed to the U. S. District Court. The Court reversed and remanded, concluding that the burden of persuasion is on the school district.

During this time, the public school offered Brian a placement in a high school that had a special learning center. The parents accepted, and Brian attended this program until he graduated from high school.

The case bounced between the U. S. District Court, the U. S. Court of Appeals for the Fourth Circuit, and the Administrative Law Judge on the burden of proof issue. Finally, the Supreme Court agreed to hear the case.

Question Presented by the Case

> At an administrative hearing assessing the appropriateness of an IEP, which party bears the burden of

persuasion – the parents or the school district?

In a 6-2 ruling, the Supreme Court held that the party that seeks relief (i.e., that wants to change the status quo by changing the IEP) bears the burden of proof. In the majority opinion, Justice O'Connor wrote:

> If parents believe their child's IEP is inappropriate, they may request an impartial due process hearing. 1415(f) The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, it is typically does, on the party seeking relief.

The case does not adversely affect States that already place the burden of proof on one party or the other. Justice O'Connor emphasized the limited nature of this decision:

> We hold no more than we must to resolve the case at hand: The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. In this case, the party is Brian, as represented by his parents. But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ.

Two Justices dissented from the majority. Justice Breyer believed that the case should be remanded back to Maryland to determine the issue.

Justice Ginsburg dissented because she was persuaded that "policy considerations, convenience, and fairness" call for assigning the burden of proof to the school district in this case. Citing the infamous *Deal v. Hamilton County Bd. of Ed.* case, in which a Tennessee school district spent over 2 million dollars on attorneys fees[6] in an effort to avoid providing services to a child with autism, she wrote:

> Understandably, school districts striving to balance their budgets, if "[left] to [their] own devices" will favor educational options that enable them to conserve resources. *Deal v. Hamilton County Bd. of Ed.*, 392 F. 3d 840, 864-865 (6th Cir. 2004)

Reimbursement for Expert Witness Fees: *Arlington v. Murphy* (2006)

The next case about procedural issues at due process hearings focused on reimbursement for costs incurred during litigation.

Pearl and Theodore Murphy requested that Arlington Central School District pay for their son Joseph's tuition at a private school that specialized in educating children with learning disabilities. A lay advocate represented the parents at a special education due process hearing. At other times, the lay advocate acted as an educational consultant.

The parents prevailed in the District Court and the U. S. Court of Appeals for the Second Circuit.

After the parents prevailed, they requested reimbursement for their attorneys' fees and costs. Their "costs" included $29,350 in fees for the lay advocate. The District Court reduced the award to $8,650 for the advocate's services, in part because she was not an attorney so the parents were not entitled to recover some of her expenses.

The school district appealed the award of costs to the lay advocate.

Question Presented by the Case

> Does the attorneys' fee-shifting provision authorize a court to award "expert" fees to the parents of a child with a disability who is a prevailing party under the IDEA?

In a 6-3 ruling, the majority held that parents who prevail in due process hearings are not entitled to recover fees paid to expert witnesses as part of their costs. The majority opinion by Justice Alito acknowledged that the legislative history of the Individuals with Disabilities Education Act supports the interpretation that "costs" includes reimbursement for expert witness fees. According to the Conference Committee Report issued when the IDEA was reauthorized:

6 "Henry Says County Schools Spent $2,280,000 On One Lawsuit" in *The Chattanoogan* (March 3, 2005) www.chattanoogan.com/articles/article_63389.asp (Retrieved October 8, 2006)

> The conferees intend that the term 'attorneys' fees as part of the costs include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found necessary for the preparation of the . . . case. H.R. Conf. Rep. No. 99-687 at 5.

Despite this clear, unambiguous language, the majority held:

> Whatever weight this legislative history would merit in another context, it is not sufficient here. Putting the legislative history aside, we see virtually no support for respondents' position.

Justice Breyer wrote a vigorous dissent:

> Members of Congress did make clear their intent by . . . approving a Conference Report that specified that "the term 'attorneys' fees as part of the costs" includes reasonable expenses of expert witnesses and reasonable costs of any test or evaluation . . . necessary for the preparation of the parent or guardian's case . . .
>
> There are two strong reasons for interpreting the statutory phrase to include the award of expert fees. First, that is what Congress said it intended by the phrase. Second, that interpretation furthers the IDEA's statutorily defined purposes.
>
> In this dissent, Justice Breyer expressed concerns that this ruling "will leave many parents and guardians 'without an expert with the firepower to match the opposition' . . . a far cry from the level playing field that Congress envisioned."

Parental Representation in Federal Court: *Jacob Winkelman, et. al. v. Parma City Sch. Bd.* (2007)

In 2005, the U. S. Court of Appeals for the Sixth Circuit held that IDEA does not grant parents the right to represent their child in federal court. Unless parents retain an attorney, the child's case will be dismissed. This decision caused a split among Circuits on the issue of parental representation.

The parents appealed to the U. S. Supreme Court. On October 27, 2006, the Supreme Court agreed to hear *Jacob Winkelman, et. al. v. Parma City School Board* and resolve this split among circuits.

Question Presented by the Case

> To what extent, if any, may a non-lawyer parent of a minor child with a disability proceed *pro se* in a federal court action brought pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*?

At the time ***Wrightslaw: Special Education Law, 2nd Edition*** went to press, briefs had not been filed and a date had not been set for oral argument. A decision is expected during the 2006-2007 term. The outcome of this case and the decision will be published on the Wrightslaw website.[7]

In Summation

In this chapter, you read the questions presented in eight special education cases decided by the U. S. Supreme Court and the question presented in a case that will be decided by the Court during the 2006-2007 term. The next chapter includes the full text of these decisions.

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7 Updates on *Winkelman v. Parma* and other cases that will be appealed to the U. S. Supreme Court are available at www.wrightslaw.com/news.htm