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Circular Letter: C-9

TO: Superintendents of Schools
Directors of Special Education
Local Boards of Education

FROM: Dr. Betty J. Sternberg
Commissioner of Education

DATE: February 22, 2006

SUBJECT: Supreme Court Decision, *Schaffer v. Weast*, 546 U.S. _____, No. 04-698 (US 2005)

On November 14, 2005, the United States Supreme Court issued a decision in the above referenced case in which the court addressed the issue of the burden of proof in cases brought under the due process procedures of the Individuals with Disabilities Education Act (IDEA). In the decision, the Court determined by a 6-2 vote (Justice Roberts recused himself from deliberations as his former law firm had represented the school district) that the IDEA was silent on the issue of which party in a due process hearing had the burden of proof in the event that the evidence presented by both parties did not allow the hearing officer to determine which party prevailed on the evidence. As stated by the Court, the burden of proof determines "which party loses if the evidence is closely balanced." Because the IDEA is silent, the justices determined that a "default" rule should apply, meaning that in the event the law is silent, one defers to common practice in which the burden of proof is on the party who files for the hearing. The Court declined to find that any public policy issues should impact their decision, such as the school district being in a better position to argue the appropriateness of the IEP offered. The Court also declined to answer the question of whether the IDEA allowed the states to establish their own rules regarding the burden of proof as that question was not presented to the Justices.

As you may be aware, Connecticut has a burden of proof standard in the state regulations at Section 10-76d-14(a): "The party who filed for due process has the burden of going forward with the evidence. In all cases, however, the public agency has the burden of proving the appropriateness of the child's program or placement, or of the program or placement proposed by the public agency. This burden shall be met by a preponderance of the evidence, except for hearings conducted pursuant to 34 CFR Section 300.521."

I am not seeking to revise the state regulation to conform to the ruling in the *Schaffer* case. As the IDEA leaves to the states the management of the hearing system and the law itself is silent on the burden of proof, the standard in Connecticut articulates a valid state policy that school districts are in a better position to defend the appropriateness of an IEP. Districts are in control of following the procedural requirements of the IDEA and of planning and offering an IEP which provides a child with an opportunity to derive meaningful educational benefit, the two criteria courts look at to determine whether an IEP is appropriate.

It would be appropriate for parties seeking to change the state standard to address their concerns to the General Assembly. The legislative process lends itself to a more thorough review of the issues involved in adopting the *Schaffer* ruling and has the benefit of being able to attract widespread public input into this decision.

If you have any questions, please contact Attorney Theresa C. DeFrancis at (860) 713-6933.

BJS:tcd