

case, the inclusion into the law of specific language to this effect is now being touted to scare parents into not pursuing due process, even when warranted. The IDEA 2004 change and now the Supreme Court decision will no doubt discourage parents from pursuing impartial hearings when they believe their children are not receiving appropriate services. Additionally, school districts will now have less incentive to consider and act on parent concerns and resolve disputes prior to impartial hearings.

The IDEA and the rights of parents under IDEA are extremely complex. Parents are frequently confused and unsure of what their rights and those of their children are under the law. Having to now shoulder the “burden of proof” muddies the legal waters even further for parents. As an organization that assists parents in understanding their rights and in working with them to ensure appropriate educational services are provided to their children, LDANYS know that it takes a tremendous amount of time, energy, courage and money for parents to challenge their child’s school system when they believe adequate services are not being provided. While many parents may have the desire and motivation to mount this challenge, many do not have the financial resources. Previously, lack of financial resources was not an automatic obstacle barring parents from pursuing their legal rights. However, with the Supreme Court decision in Schaffer v Weast being implemented by the New York State Education Department, many parents will feel the risk is too great and be forced to accept sub-standard educational services for their children.

Recommendations:

The New York State legislature has already recognized the importance of protecting parental rights under IDEA by surpassing the minimum standards set by federal law on numerous occasions. The state now has before it another opportunity to ensure parental rights will not be diminished through federal actions by enacting a statute reaffirming New York’s longstanding practice of creating a level playing field between school districts and parents by placing the burden of proof on school districts. Ten states including Alabama, Alaska, Connecticut, Washington D.C., Delaware, Georgia, Illinois, Kentucky, Minnesota and West Virginia have similar statutes in place already. New York State must continue to be a leader in protecting the rights of parents and their children with disabilities to receive a free and appropriate education and not regress by allowing the course prescribed by Schaffer v Weast to become the law of the land in New York.