

## ***Schaffer v. Weast: Is the Supreme Court's Decision Applicable to Due Process Hearings Involving Gifted Students?***

*By Michael J. Connolly*

By now, most everyone involved in the education of disabled children is well aware of the decision by United States Supreme Court in *Schaffer v. Weast*, 126 S.Ct. 528 (2005), shifting the burden of proof in special education due process hearings under the Individuals with Disabilities Education Act (IDEA) to the party who initiates the hearing, typically parents. The decision in *Schaffer*, however, raises the question of whether the burden of proof is similarly shifted to the party initiating a hearing involving a student identified only as “mentally gifted.”

The classification of “mentally gifted” and the rights associated with such a label are purely a creation of state law, and not a federal mandate. As such, the applicability of the Supreme Court’s decision in *Schaffer* to gifted hearings in Pennsylvania is, at the moment, arguable. Although at least one Pennsylvania Special Education Appeals Panel, in *In re: D.D., a Student in the North Penn School District*, No. 1737 (June 16, 2006), seemingly concluded that the burden of proof in gifted cases rests exclusively with school districts despite the Supreme Court’s decision, we believe that the debate over who bears the burden of proof in gifted cases is far from settled.

In order to understand the applicability of *Schaffer* to cases involving gifted students, it is necessary to discuss the rationale for the Court’s opinion in *Schaffer*, which is best described as a “common sense approach.” Essentially, the Supreme Court noted that, in the absence of a statutory provision to the contrary, the ordinary default rule is to place the burden of proof on the plaintiff (i.e., the party initiating the lawsuit or hearing). As such, the Supreme Court held that the party seeking relief bears the burden of proof. In other words, the Supreme Court simply reiterated the basic common law principle that where a statute is otherwise silent, the party bringing a claim in a case rightfully bears the burden of proof.

It is important to recognize that much of the procedures guiding current Chapter 16 gifted hearings evolved from, and mirrored, the special education procedural requirements of Chapter 14, as at one time both gifted and special education hearings were subject to Chapter 14 requirements. Prior to *Schaffer*, based upon Third Circuit case law, the burden of proof under Chapter 14 / IDEA cases was almost always borne by school districts in Pennsylvania. Despite the absence of statute or case law dictating a similar burden requirement in gifted matters, in practice the same burden of proof applicable to Chapter 14 cases was also applied to Chapter 16 cases. In other words, there is seemingly no basis other than tradition to keep the burden solely on school districts in gifted hearings.

Given that Chapter 16 mirrors Chapter 14 and the IDEA regarding administrative proceedings, as well as its silence as to which party bears the burden of proof, it logically follows that the procedural guidance provided in *Schaffer* likewise properly extends to gifted cases.

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