

Independent Evaluations Under *Schaffer v. Weast*

Since the United States Supreme Court issued its decision in *Schaffer v. West*, 128 S.Ct. 528 (2005), many school districts have received requests from parents for independent educational evaluations (IEE) under the theory that the Court in *Schaffer* granted them an automatic right to such evaluations within the context of a due process hearing.

The Court in *Schaffer* granted *certiorari* to resolve the issue of which party bears the burden of persuasion at an administrative hearing assessing the appropriateness of an IEP. In its discussion, however, the Court referenced a parent's right to an independent evaluation as one way in which parents are on a more even footing with school districts in due process hearings. Many parents and parent attorneys have latched onto the Court's reference to a parent's right to an independent evaluation to support their claim that *Schaffer* created an automatic right to such an evaluation at public expense when parents file for due process. The Court in *Schaffer*, however, was not asked to, nor did it, decide any issues pertaining to a parent's entitlement to an independent evaluation at public expense. Thus, the Court established no precedent concerning entitlement to an IEE at public expense upon request of a due process hearing.

Rather, the Court in *Schaffer* merely pointed out, as *dicta*, that parents have the "right to an 'independent educational evaluation of the[ir] child.'" *Schaffer*, at 536, quoting 20 U.S.C. § 1415(b)(1). The Court further noted that the federal regulations clarify this entitlement and quoted 34 C.F.R. § 300.502(b)(1), which states that a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by [the school district.]" *Id.*, quoting 34 C.F.R. § 300.502(b)(1). Clearly, *Schaffer* recognized and re-affirmed the application of the IDEA's federal regulations, specifically 34 C.F.R. § 300.502.

Most hearing officers and appeals panels have thus far rejected arguments by parents that they are entitled to an automatic independent evaluation at public expense under *Schaffer*. Now, at least one federal court has also weighed in on the issue. *Blake B. v. Council Rock School District*, CV No. 06-1968, July 27, 2006. In *Blake B.*, the United States District Court for the Eastern District of Pennsylvania concluded, in a one page memorandum and order, that the Supreme Court in *Schaffer* did not alter in any way the law established by the federal regulations with respect to when an independent evaluation should be awarded at public expense, rejecting the parents' arguments to the contrary.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.