



The Individuals With Disabilities Education Act (IDEA) has spawned much litigation in which parents of children with disabilities and school districts disagree over the content of a student's special education (Huefner, 2002; Yell, 2006). The majority of this litigation has occurred in the federal district courts. The federal court system consists of more than 100 U.S. District Courts, 13 U.S. Courts of Appeals, and the U.S. Supreme Court. The most significant of these federal courts is the

U.S. Supreme Court. Supreme Court rulings are of tremendous importance because they establish the legal standard for, and must be followed throughout, the entire country (Huefner; Yell). In the 30 years since the passage of the IDEA, from 1975 to 2005, the Supreme Court had only heard seven cases (*Board of Education v.*

Rowley, 1982; *Burlington School Committee v. Department of Education of Massachusetts*, 1985; *Cedar Rapids Community School District v. Garret F.*, 1999; *Florence County School District v. Carter*, 1993; *Honig v. Doe*, 1988; *Irving Independent School District v. Tatro*, 1984; *Smith v. Robinson*, 1984) that directly involved students with disabilities and the IDEA. In the period from 2005 to 2007, the Supreme Court heard four cases on special education and issued rulings in three of these cases. This represents a significant increase in the special education cases heard by the high court. These rulings are of great importance to students with disabilities, their parents, and school districts. Moreover, the three rulings all addressed the procedural rights of parents. In this article, we review these decisions. We first provide a brief synopsis of the procedural rights that the

Parental involvement has been one of the cornerstones of the IDEA.

The U.S. Supreme Court and Special Education: 2005 to 2007

Mitchell L. Yell | Joseph B. Ryan

Michael E. Rozalski | Antonis Katsiyannis

IDEA provides to parents. Second, we review the three rulings and briefly explain the fourth case in which the high court did not issue a ruling. Third, we address the implications of these cases for educators and parents.

An Overview of Due Process Rights

IDEA extends procedural and substantive educational rights to students with disabilities. These rights have been crucial in ensuring that students with disabilities receive a free appropriate public education (FAPE). One of the most important of these rights is the requirement that the parents of students with disabilities be meaningfully involved in the special education process. In fact, parental involvement has been one of the cornerstones of the IDEA. To ensure that parents are equal participants, Congress included an extensive system of procedural safeguards in the law (see Figure 1). For example, the parents must be given the opportunity

Figure 1. Procedural Safeguards Under IDEA

1. Independent educational evaluation
2. Prior written notice
3. Parental consent
4. Access to educational records
5. The opportunity to present and resolve complaints, including
 - (a) the time period in which to make a complaint
 - (b) the opportunity for the agency to resolve the complaint
 - (c) the availability of mediation
6. The child's placement during pendency of due process proceedings
7. Procedures for students who are subject to placement in an interim alternative educational setting
8. Requirements for unilateral placement by parents of children in private schools at public expense
9. Due process hearings, including requirements for disclosure of evaluation results and recommendations
10. State-level appeals (if applicable in that state)
11. Civil actions (e.g., suits in state or federal court), including the time period in which to file such actions
12. Attorneys' fees (20 U.S.C. §1415 [d] [2])

to participate in all meetings in which their child's identification, evaluation, program, or placement is discussed.

Another of the procedural safeguards available to parents is the right to a due process hearing. When there is a disagreement between a school and the parents on matters concerning a student's identification, evaluation, placement, or FAPE, parents may file for an impartial due process hearing (schools also have this right). A *due process hearing* is a formal hearing in which both parties have the right to subpoena, examine, and cross-examine witnesses. Both parties may be represented by an attorney and have the right to examine the other party's evidence. The hearing is conducted by an impartial hearing officer who listens to the respective sides, applies the facts of the case to the law, and renders a ruling, which if not appealed, is final. Some states have a two-tier hearing process in which a hearing officer's decision may be appealed to a state-level administrative review and then to a court. In other states with a one-tier administrative hearing process, the hearing officer's decision may be appealed directly to a court.

Parents or school district personnel may file an appeal of a state-level administrative hearing (and in some cases a local administrative hearing) to a state or federal court. In most cases, appeals are filed with the federal courts because the IDEA is a federal law. In situations in which parents have prevailed in a court action, the courts have the authority to grant a number of different remedies or relief to the parents. The most common of these remedies is an *injunction*, in which a school district is ordered to take a specific action to comply with the IDEA or stop a practice that is in violation of the IDEA. Two additional types of remedies are *compensatory education*, in which a student's entitlement to a FAPE is extended beyond the normal age limit of 21 or beyond the school year in extended school year services, and *reimbursement*, in which parents who prevail in actions against a school district may be reimbursed for tuition and other costs incurred in placing

their child in a school where he or she could receive a FAPE. Parents can also collect attorneys' fees when they prevail in civil actions brought under the IDEA. These procedural issues have been the subject of much litigation.

hearings, an important issue because many school districts and parents across the nation face the dilemma of who carries the burden of persuasion when arguing that an IEP is adequate or not for a given child.

Another of the procedural safeguards available to parents is the right to a due process hearing.

Supreme Court Decisions

Several recent Supreme Court rulings have provided further clarification and guidance to the field of special education concerning the parental rights when parents challenge school districts in a due process hearing. These rulings were in the following cases: *Schaffer v. Weast, Superintendent, Montgomery County Public Schools* (2005), *Arlington Central School District Board of Education v. Murphy* (2006), and *Winkelman v. Parma City School District* (2007). The high court also heard the case, *Board of Education of the City School District of the City of New York v. Tom F.* (2007). The Supreme Court did not issue a ruling in this case because Justice Kennedy recused (i.e., withdrew) himself from the case and the court split on a 4-to-4 vote. The Court did not identify how the justices voted.

Schaffer v. Weast

Although the IDEA allows parents who challenge their child's individualized education program (IEP) to request an impartial due process hearing, the law does not specify which party bears the burden of persuasion at that hearing. After both sides have presented their evidence in a due process hearing, the party that has the burden of persuasion must have convinced the hearing officer of their case in order to prevail. If they fail to persuade the hearing officer of the correctness of their claim, they will lose.

On November 14, 2005, the Supreme Court issued a ruling in *Schaffer v. Weast*. This case addressed the question of which party has the burden of persuasion in due process

The case involved Brian Schaffer, a student with learning disabilities and a speech and language impairment. Because of these disabilities, Brian struggled in the private school that he attended from prekindergarten through seventh grade. In 1997, private school officials informed Brian's parents that he needed a school placement that could better serve his special needs. The following year, Brian's parents sought placement for Brian with the Montgomery County Public School system (MCPS). Brian's parents believed, however, that the middle school placement offered Brian by the MCPS lacked the smaller classes and intensive services that he needed. They enrolled him, therefore, in another private school and initiated a due process hearing seeking compensation from MCPS for their private school expenses. The due process hearing officer determined that the evidence presented by the parties at the hearing was equally compelling; therefore, his ruling would depend on which party bore the burden of persuasion. After deciding that the burden belonged to the parents because they challenged the IEP, the hearing officer found in favor of the school district holding that the Schaffers had not proven their case. After a long and complicated series of proceedings, the case was heard by the U.S. Supreme Court.

The Supreme Court ruled the burden of persuasion for due process hearings should be placed on whichever party is seeking relief; that is, the party who filed for the due process hearing. In the majority opinion, Justice Sandra Day O'Connor wrote

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, that party is Brian (Schaffer), 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 (a due process hearing officer) (*Schaffer v. Weast*, p. 2004).

This ruling is consistent with other forms of case law where the party seeking relief almost always bears the burden of persuasion.

The Court stated that if the burden of persuasion always fell on school districts, this would in effect declare every IEP developed to be invalid until a school district could demonstrate that it was not. As a result, this would place an unreasonable burden on school districts and would likely result in their devoting additional resources (funding and manpower) to perform administrative functions of developing IEPs and presenting their evidence. This would be in direct contrast to recent amendments (the IDEA Amendments of 1997 and the Individuals With Disabilities Education Improvement Act of 2004) in which Congress sought to reduce the administrative burdens and litigation-related costs associated with special education.

The implications of this decision vary according to the judicial circuit in which a parent who goes to a hearing or court resides. This is because there had been a split in the circuits, in which some assigned the burden of proof to parents and others assigned the burden to school districts. States in the fourth, fifth, sixth, and tenth circuits (Colorado, Kansas, Louisiana, Maryland, Michigan, Mississippi, Oklahoma, New Mexico, North Carolina, Ohio, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming) have been operated under the rule that the party challenging an IEP, (i.e., the parent) would bear the burden of persuasion. Similarly, some states (Ala-

bama, Alaska, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Minnesota, West Virginia, and including Washington, D.C.) had state statute or state regulation that assigned the burden of persuasion to the party bringing the action. The states in these jurisdictions were not affected by the Supreme Court's ruling because they already assigned the burden of persuasion to the challenging party. However, if plaintiffs live in one of the circuits that assigned the burden of proof to the school district, (Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Iowa, Maine, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin), the burden of proof has changed following the *Schaffer* ruling. Following the ruling in *Schaffer v. Weast*, due process hearing officers in all states must assign the burden of persuasion to the party seeking relief. In most cases this party will be a student's parents.

Regardless of who is affected or not affected based on geography, the ruling does not reduce the responsibility of schools to provide FAPE, nor is it likely to reduce administrative and judicial proceedings in special education. To the contrary, schools must provide appropriate and meaningful programming to students in special education.

Arlington Central School District Board of Education v. Murphy

In June 2006, the Supreme Court ruled on *Arlington Central School District Board of Education v. Murphy*. In this case, the parents of a child with a disability sought tuition reimbursement for a private school placement under IDEA. Pearl and Theodore Murphy, the parents of Joseph Murphy, brought an action in which they asked that the Arlington Central School District (ACSD) pay for their son's private school tuition. The district court ruled in favor of the Murphys (*Murphy v. Arlington Central School District Board of Education*, 2000) and the U.S. Court of Appeals for the Second Circuit

affirmed the decision (*Murphy v. Arlington Central School District Board of Education*, 2005).

After the affirmation by the Second Circuit, the Murphys sought fees for services rendered by an educational consultant during the proceedings. Because IDEA requires public schools to provide a FAPE and includes a provision that awards attorneys' fees and costs to the prevailing party in a law suit (IDEA, 20 U.S.C. §1415[i][3][B]), the Murphys believed they were entitled to have these expenses covered as well. The school district argued that the parents should not be awarded the fees of the consultant because the consultant's training and court presentation did not qualify her as an expert. Additionally, the school district stated that the district court should deny or substantially reduce the amount of the consultant's fees because IDEA did not allow lay advocates to recover attorney fees.

In July 2003, the district court ruled that the Murphys could recover \$8,650 in fees for expert consulting services but not for legal consultation provided by their educational consultant because she did not have formal training in courtroom practice and procedure. The school district appealed the district court ruling. The ruling, however, was affirmed by the U.S. Court of Appeals for the Second Circuit. The school district appealed to the U.S. Supreme Court.

On June 26, 2006, the Supreme Court issued a ruling in the case. In a 6-to-3 vote, the Supreme Court reversed the Second Circuit's ruling. In the opinion of the Court, which was delivered by Justice Alito, the Court found that the IDEA does not allow reimbursement for experts' fees because only attorneys' fees are mentioned in the language of the law.

According to Wright (2007), the effect of this case on the rights of parents may not be too significant for three reasons. First, parents request special education due process hearings because they want to obtain an appropriate special education program for their child, not because they expect to be reimbursed for fees paid to consult-

ants or lay attorneys. Second, because of the number of special education cases that are litigated every year, very few parents will actually be affected. Wright noted that approximately 3,000 due process hearings are held annually and of these hearings, only 10% (i.e., approximately 300 per year) are appealed to Court. Parents prevail in about 43% of these cases so the number of parents who prevail, and, thus, the number of parents who are in a position to recover fees from a school district, is only about 150 parents per year. Third, it is unlikely that parents will fail to take the necessary steps to prepare for hearings or litigation, which often includes hiring a consultant, because they do not expect to recover fees for their expert witness.

As with the Schaffer case, the ruling in *Arlington v. Murphy* does not reduce the responsibility of schools to provide FAPE, nor is it likely to reduce administrative and judicial proceedings in special education. School districts still have an affirmative duty to provide students with disabilities an education that meets their unique educational needs.

Winkelman v. Parma City School District

In 2007, the Supreme Court issued a ruling on the case of *Winkelman v. Parma City School District*. Jacob Winkelman was a child with autism spectrum disorder. He was eligible for services under the IDEA. Although Jacob's parents, Jeff and Sandee, worked with the school district to develop his IEP, they believed that their child's IEP did not adequately meet his educational needs. Therefore, the Winkelmans filed for a due process hearing alleging that the school district failed to provide Jacob with FAPE. Their claim was rejected by both the local hearing officer and the state-level review officer.

Next, they appealed the ruling by the review officer to a district court claiming that Jacob had not been provided with FAPE, that his IEP was deficient, and that the school district had violated procedures mandated by IDEA. Pending the resolution of these

challenges, Jacob was enrolled in a private school at his parents' expense. They filed in district court without the aid of counsel. They sought (a) reversal of the administrative decision, (b) reimbursement for the cost of Jacob's attendance at the private school, and (c) payment of their attorney's fees. The district court ruled in favor of the school district stating that Jacob had received a FAPE. The Winkelmans then filed an appeal with the U.S. Court of Appeals for the Sixth Circuit. On September 20, 2005, the circuit court ruled that Jeff and Sandee Winkleman were not allowed to represent Jacob; rather, they needed an attorney. The court also ruled that the IDEA does not grant parents the right to represent their child in federal court because the FAPE mandate only grants rights to a child and not to his or her parents. (After this decision, the Cleveland Bar Association initiated an investigation into whether Jacob's parents were engaged in the unauthorized practice of law. If the Winkelmans had been found to have practiced law without a license, they could have been fined \$10,000.)

Jeff and Sandee Winkleman then filed an appeal with the U.S. Supreme Court. Before deciding to hear the case, the high court invited the Solicitor General to submit a brief detailing the position of the administration. The Solicitor General's brief asserted that the Sixth Circuit Court's ruling that barred parents from representing their children in civil actions under the IDEA was inconsistent with the language and purpose of IDEA. In the brief, the Solicitor General also asserted that the purpose of the procedural safeguards of the IDEA was to encourage parental involvement in their child's special education so that a child would receive a FAPE. He also noted that the IDEA sought to ensure that the rights of children with disabilities and their parents were protected. The Solicitor General requested that the Supreme Court hear the case because of the need to ensure that IDEA was applied in a uniform manner and also to resolve the split among the circuit courts with respect to parents repre-

senting their children with disabilities in court in IDEA-related actions. The U.S. Supreme Court agreed to hear *Winkelman v. Parma City School District* on October 12, 2006.

On May 21, 2007, the U.S. Supreme Court issued a ruling in the case. Justice Kennedy wrote the opinion of the court in the unanimous ruling. Ultimately, the Court ruled that the IDEA grants parents independent, enforceable rights, which are not limited to procedural and reimbursement-related matters, but encompass the entitlement to a FAPE for their child. The Court found that the IDEA affords parents enforceable rights throughout the development of the IEP and in the early administrative stage of due process. Thus, the Supreme Court overturned the Circuit Court in ruling that barring parents of the right to represent their children in IDEA-related cases in the federal courts would be inconsistent with the intent of the IDEA. The Court believed this finding was further supported by wording within IDEA that states one of its purposes is to ensure the rights of children with disabilities and parents of such children are protected. The majority opinion noted that it is without question that a parent of a child with a disability has a particular and personal interest to ensure their child receives (a) equality of opportunity, (b) full participation, (c) independent living, and (d) economic self-sufficiency. Therefore, the Court ruled IDEA includes provisions conveying rights to parents as well as to their children, for if this was not the case, the potential for injustice would be great.

The Supreme Court's ruling in *Winkelman v. Parma City School District* will probably be considered one of the most important of the U.S. Supreme Court's special education rulings. This is because the high court essentially expanded the definition of a FAPE by ruling that (a) the IDEA mandates parental involvement, (b) parents have enforceable rights under the law, and (c) parental participation in the special education process is crucial to ensuring that children with disabilities receive a FAPE. The Court also noted a central purpose of the parental protec-

tions under the IDEA is to facilitate the provision of a FAPE through parental involvement in the IEP process. In the language of the court's opinion:

We conclude IDEA grants independent, enforceable rights. These rights, which are not limited to certain procedural and reimbursement-related matters, encompass the entitlement to a free appropriate public education for the parents' child. (p. 2005)

Board of Education of the City School District of the City of New York v. Tom F.

In October 2007, the Supreme Court ruled on *Board of Education of the City School District of the City of New York v. Tom F.* (hereafter Tom F.). In this case, Tom Freston, the father of a child with a disability, sought tuition reimbursement for a private school placement. When Tom's son, Gilbert, was 8, he was diagnosed with a learning disability under IDEA. The New York City schools offered to allow Gilbert to enroll in the Upper East Side's Lower Laboratory School for Gifted Education. However, Tom Freston believed the placement was inappropriate and placed his son in the Stephen Gaynor School, a private school. He later won tuition reimbursement after several administrative hearings and an appeals board proceeding where he successfully argued that the district was unable to provide an appropriate educational program.

After 2 years of paying for the private school tuition, the district developed an IEP that placed Gilbert in a public school special education classroom. Mr. Freston was unconvinced, however, that the IEP provided a FAPE, and Gilbert continued to attend the private school. Mr. Freston filed for a due process hearing. The impartial due process hearing officer ruled that the district did not provide an appropriate program and granted the private school tuition reimbursement request. The school district appealed, but the hearing officer's decision was affirmed by a state review officer.

The New York City Board of Education then sued in federal court, claim-

ing that Mr. Freston was not entitled to private school reimbursement because Gilbert was never enrolled in a public school and the district did not have the opportunity to provide appropriate services. The U.S. District Court agreed with the New York City Board of Education and reversed the decision of the hearing and state review officers, indicating that IDEA clearly states the parents can enroll a child in a private school and seek reimbursement for "a child with a disability, who previously received special education and related services under the authority of a public agency" (20 U.S.C. § 1412[a][10][C][iii]). The District Court held that IDEA does not require a school district to reimburse a parent for private school tuition if the child has never been enrolled in public school.

Mr. Freston filed an appeal on behalf of his son. In 2006, the U.S. Court of Appeals for the Second Circuit vacated the district court decision and remanded the case back to the district court. The Second Circuit reasoned that IDEA was not intended to require parents to enroll a student in an inappropriate public school program before they were eligible for private school reimbursement. The school filed an appeal with the U.S. Supreme Court.

whether parents must first attempt a public school placement prior to placing their child in a private school to receive a FAPE.

Summary of the Cases

What do we make of this flurry of special education rulings in the U.S. Supreme Court? Moreover, what can we draw from these disparate rulings; two of which were somewhat pro-school district (*Schaffer v. West* and *Arlington v. Murphy*) and one which was strongly pro-parent (*Winkelman v. Parma*)?

We believe that ultimately the Supreme Court's ruling in *Schaffer v. West* will have little effect on the schools that serve students with disabilities, the students themselves, or their parents. This is because the majority of states already had assigned the burden of persuasion to parties challenging an IEP. Thus, the decision changes the burden of persuasion in only a handful of states.

The high court's ruling in *Arlington v. Murphy* prohibits parents from being reimbursed for use of expert witnesses; nonetheless, this decision will have little effect on school districts or parents. It is doubtful that this decision will result in parents not hiring experts in situations in which they are challeng-

Schools must ensure that parents are involved in their children's special education identification, assessment, programming, and placement.

On October 10, 2007, the Supreme Court issued a ruling in the case. Justice Kennedy recused himself from the case and the other justices voted 4-to-4 on the case. The decision by the Supreme Court is, in effect, a nullity; the decision simply affirmed the ruling of the Second Circuit Court of Appeals. Because the tie vote affirms the Second Circuit Court ruling, rather than establishing a national precedent, the decision is only binding in New York, Connecticut, and Vermont—the jurisdiction of the Second Circuit Court. It is clear that the justices were split on

ing a school district's IEP. Parents in such situations are trying to improve the educational opportunities offered to their child; they typically are not hiring experts because they know if they prevail in a due process hearing, the experts' fees will be paid. Moreover, parents who go to a due process hearing or court take a risk when they hire attorneys and experts because if they do not prevail in the hearing, then none of the fees will be reimbursable.

The Supreme Court's ruling in *Winkelman v. Parma* is very important to school districts, students with dis-

abilities, and their parents. Although on its face, the Supreme Court ruled that parents of children with disabilities served under the IDEA may represent themselves or their children in court, the implications of the decision go far beyond the question the court answered (Wright, 2007). Their ruling not only affirmed the crucial importance of meaningful parent involvement in developing a student's FAPE, it also refined the definition of FAPE (Wright). In effect, the Court held that the IDEA confers rights on children with disabilities and their parents.

Principles From the Supreme Court Rulings: 2005 to 2007

These Supreme Court rulings, especially the decision in *Winkelman v. Parma*, require that school districts include parents in all aspects of their children's special education programming. Moreover, school districts must ensure that their student's IEPs confer meaningful educational benefit. The following are important principles that teachers and administrators need to understand and follow to ensure that they are in compliance with the IDEA and deliver special education programs that confer meaning educational benefit.

Principle 1: Ensure that parents are meaningfully involved in the development of their children's special education program.

The history of parent-professional relationships in special education has not always been a positive one (Heward, 2006; Turnbull, Turnbull, Erwin, & Soodak, 2006). Today, however, parent involvement is an important element in the development of special education programs (Heward; Turnbull et al.; Yell, 2006). In fact, parental involvement was a critical element in the original Education for All Handicapped Children Act of 1975, and each subsequent reauthorization has strengthened and extended the importance of parent participation in the special education process (ERIC/OSEP, 2001). The Supreme Court cases heard from 2005 to 2007 affirmed the importance of meaningfully involving the parents of students with disabilities in decisions

regarding their children's special education programs. The Supreme Court's ruling in *Winkelman v. Parma* is especially important because it extends the independent and enforceable FAPE right to the parents of students in special education. Schools must ensure that parents are involved in their children's special education identification, assessment, programming, and placement. School district officials should consider having staff members (e.g., counselors) assume the role of facilitator when school-based teams are making important decisions regarding a student's program of special education. The facilitator would be responsible for contacting parents and preparing them for meetings.

Principle 2: Ensure that teachers and administrators understand their responsibilities under the FAPE requirements of IDEA.

IDEA is a complex law, and special educators, administrators, and teacher trainers have to understand that special education programs must meet the FAPE requirements. To ensure that public schools fulfill these obligations, special educators must (a) conduct relevant assessments of students, which provide information to teachers on a student's unique academic and functional needs and how best to address those needs; (b) develop meaningful educational programs for students based on the assessment, which consists of special education and related services grounded in research-based practices; (c) generate measurable annual goals that will be used to monitor a student's academic and functional progress; and (d) monitor the student's progress by collecting data on his or her growth toward those goals, and make instructional changes when necessary (Yell, Katsiyannis, & Hazelkorn, 2007).

With the reauthorizations of 1997 and 2004, the FAPE standard has shifted from providing access to educational services to providing *meaningful and measurable* programs for students with disabilities (Yell et al., 2006). The IDEA now requires research-based programs, progress monitoring, and real

results for students with disabilities. Clearly, this will require changes in the ways that school teams develop IEPs and may influence courts on how they view and assess FAPE. We believe that schools districts will now be held to this higher FAPE standard when providing educational services for students with disabilities. Educators must be prepared to meet this challenge.

Principle 3: Ensure that special education teachers understand how to develop educationally meaningful and legally sound IEPs.

To ensure that IEPs are educationally meaningful and legally correct, special educators must be able to conduct assessments that address all of a student's instructional needs, so that the IEP can be developed. Standardized, norm-referenced tests, which are useful measures for eligibility determination, are not appropriate for making a fine-tuned analysis of a student's academic and functional needs. To gather such information, criterion-referenced tests, curriculum-based measures, curriculum-based assessments, and direct observation data are more useful.

Special educators must be able to take this information and develop meaningful special education programs. The Individuals With Disabilities Education Improvement Act now requires that special education services be based on peer-reviewed research. This means that IEP team members will need to be familiar with the research regarding special education programming that meets individual students needs. Additionally, the law requires that students' IEPs include measurable annual goals and methods to measure student progress toward these goals. Teachers must know how to collect data to monitor students' progress toward their goals and make adjustments to instruction based on the data. IEPs that are based on inadequate assessments, contain goals that are not individualized or appropriate, and have no progress-monitoring component most likely will not meet the requirements of IDEA. Moreover, even if a student's IEP contains measurable

Unfortunately, there is a huge gap between what we know works from research-based instructional practices and what actually is taught in many classrooms.

goals, the special education program will not provide a FAPE if the goals are not systematically and frequently monitored and instructional adjustments made if the data show that a student is not progressing.

Principle 4: Ensure that special education administrators and teachers receive meaningful and sustained inservice training programs in new research-based practices and other developments in special education.

School district administrators must ensure that their special education teachers and related service providers have the necessary skills and tools to meet the new requirements of IDEA. Unfortunately, there is a huge gap between what we know works from research-based instructional practices and what actually is taught in many classrooms (Yell, 2006). This means that teacher trainers and school district administrators need to structure preservice and inservice training activities to ensure that teachers become fluent in research-based practices. In addition, they should know how to access research through peer-reviewed literature. Moreover, because research in the field of special education is actively growing, administrators must develop mechanisms to ensure that teachers receive regular and frequent inservice training experiences in the latest research-based strategies and interventions. Teachers also will need training in developing measurable annual goals and collecting data to monitor student progress toward these goals.

Conclusions

The two terms of the Supreme Court from 2005 to 2007 resulted in three rulings in special education. These rulings, which addressed aspects of the procedural safeguard requirements of the IDEA, are now the law of the land and apply to all states and school dis-

tricts. Although two of the cases have been viewed as pro-school and one as pro-parent (Wright, 2007), they all emphasize the important roles that parents must play in the development of special education programs for their children. School districts must take their obligations to parents very seriously and must make positive and proactive efforts to include parents in decision making. In situations where parents are not involved in a meaningful manner, the law provides avenues for parents to contest their children's programs. As Justice Kennedy noted in the ruling in *Winkelman v. Parma*: "The IDEA takes pain to ensure that the rights of children with disabilities and parents of such children are protected" (p. 2006).

References

- Arlington Central School District Board of Education v. Murphy, 548 U.S. 291 (2006).
- Board of Education of the City School District of the City of New York v. Tom F.128 S.Ct. 17 (2007).
- Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982).
- Burlington School Committee v. Department of Education of Massachusetts, 471 U.S. 359 (1985).
- Cedar Rapids Community School District v. Garret F. 526 U.S. 66 (1999).
- ERIC/OSEP. (2001). *Family involvement in special education* (Research Connection No. 9). Arlington, VA: Author. Available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/4b/74.pdf
- Florence County School District v. Carter, 510 U.S. 7 (1993).
- Heward, W. L. (2006). *Exceptional children: An introduction to special education*. Upper Saddle River, NJ: Pearson/Merrill Education.
- Honig v. Doe, 484 U.S. 305 (1988).
- Huefner, D. S. (2002). *Getting comfortable with special education law: A framework for working with children with disabilities*. Norwood, MA: Christopher Gordon.

Individuals With Disabilities Education Act Amendments of 1997, 20 U.S.C. § 1415 et seq. (1997).

Individuals With Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 et seq. (2004).

Irving Independent School District v. Tatro, 458 U.S. 883 (1984).

Murphy v. Arlington Central School District Board of Education, 86 F. Supp. 2d 354, 368 (S.D.N.Y. 2000), aff'd 297 F.3d 195 (2d Cir. 2005).

Murphy v. Arlington Central School District, 297 F.3d 195 (2d Cir. 2000).

Schaffer v. Weast, Superintendent, Montgomery County Public Schools, 546 U.S. 49 (2005).

Smith v. Robinson, 468 U.S. 992 (1984).

Turnbull, A. P., Turnbull, H. R., Erwin, E., & Soodak, L. (2006). *Families, professionals, and exceptionality: Positive outcomes through partnerships and trust*. Upper Saddle River, NJ: Pearson/Merrill Education.

Winkelman v. Parma City School District, 550 U.S. 127 (2007).

Wright, P. W. (2007). Supreme Court rules: Parents have independent, enforceable rights. Retrieved on May 22, 2007, from <http://www.wrightslaw.com/law/art/winkelman.pwanalysis.htm>

Yell, M. L. (2006). *The law and special education* (2nd ed.). Upper Saddle River, NJ: Pearson/Merrill Education.

Yell, M. L., Katsiyannis, A., & Hazelkorn, M. (2007). Reflections on the 25th anniversary of the U.S. Supreme Court's decision in Board of Education v. Rowley. *Focus on Exceptional Children*, 39, 1-12.

Mitchell L. Yell (CEC SC Federation), *Fred and Francis Lester Palmetto Chair in Teacher Education Program in Special Education, University of South Carolina, Columbia*. **Joseph B. Ryan**, Assistant Professor, Special Education Program, Clemson University, South Carolina.

Michael E. Rozalski (CEC NY Federation), Associate Professor, Special Education, State University of New York at Geneseo. **Antonis Katsiyannis** (CEC SC Federation), Professor, Special Education Program, Clemson University, South Carolina.

Address correspondence to Mitchell L. Yell, 235-G Wardlaw, University of South Carolina, Columbia, SC 29208 (e-mail: myell@gwm.sc.edu).

TEACHING Exceptional Children, Vol. 41, No. 3, pp. 68-75.

Copyright 2009 CEC.