



A Legal Update

Council of Urban Boards of Education Issues Forum

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Presented by

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Outline

- I. Supreme Court Docket:
Special Education
- II. Florida Vouchers
- III. Justice Samuel Alito



Weast v. Schaffer, 126 S.Ct. 528 (2005)

- This special education case arose out of Montgomery County, MD public schools.
- Issue: Which party has the burden of proof in a case under the IDEA?
- Parents argued that because the IDEA requires a school district to provide FAPE (free, appropriate public education), the school district had the burden of proof.



Weast v. Schaffer, 126 S.Ct. 528 (2005)

- The Supreme Court in a 6-2 decision, rejected the parents' claim, and
- Upheld the traditional legal approach that a moving party has the burden of proving its case.



Weast v. Schaffer, 126 S.Ct. 528 (2005)

➤ Significance:

- Court rejected the argument that IEP's should be presumed to be invalid;
- Upheld the IEP as the result of a core collaborative process intended by Congress in the IDEA;
- Congressional amendments to IDEA were intended to reduce "administrative and litigation-related costs."
- Rejected argument that school districts had a "natural advantage" over parents, because the IDEA included procedural safeguards.



Weast v. Schaffer, 126 S.Ct. 528 (2005)

➤ Concurrence by Justice Stephens

- Although dissenting along with Justice Ginsburg, Stephens wrote:

“[W]e should presume that public school officials are properly performing their difficult responsibilities under this important statute.”



Arlington v. Murphy, *cert. granted (U.S. Jan. 6, 2006)*

➤ Single Issue case:

- Are parents who win IDEA cases entitled to recover expert witness fees from the school district.
- NSBA will file an amicus brief in the case.



Arlington v. Murphy, *cert. granted (U.S. Jan. 6, 2006)*

- This case arose out of the 2nd Circuit (New York) which ruled that the parents were entitled to reimbursement for expert witness fees.
- The 7th and 8th Circuit Courts have ruled the other way, finding expert fees are not payable.



Arlington v. Murphy, *cert. granted (U.S. Jan. 6, 2006)*

- The issue centers around statutory language in the IDEA stating that a prevailing parent is entitled to reasonable attorney's fees and costs.
- The 2nd Circuit based its decision on a legislative history and on parallels drawn to the recovery of expert fees under other statutes, i.e., civil rights action under USC §1983.



Arlington v. Murphy, *cert. granted (U.S. Jan. 6, 2006)*

- NSBA's amicus brief will alert the Court to the negative impact of a ruling for the parents on expert fees:
- Increased IDEA litigation costs for school districts;
- Growth of self-styled experts entering the process to reach school's perceived deep pockets;
- Collaborative IEP process being rendered meaningless or adversarial.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- Florida Supreme Court ruled Florida's regular education voucher scheme unconstitutional.
- The vote was a 5-2 in a 7-member court.
- The Court's most recent appointees voted against the ruling.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- The Court found that the state constitution required a public system of “uniform” education.
- Vouchers violated the explicit constitutional language, because the *public* education students would receive at a private school was unregulated and by definition not uniform.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- The Florida Supreme Court also noted that the Fla. Constitution required a public system of “high quality” schools.
- The unregulated nature of the private schools again defined the private schools as not uniform.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- The Florida Supreme Court reached its decision solely on the question of uniformity and quality, refusing to reach the arguments of the plaintiffs, that the voucher scheme also violated the state constitutional prohibition against “directly or indirectly” funding sectarian schools with public dollars.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- In avoiding the religious question, the Court undercut Governor Bush's ability to raise a federal constitutional argument in the U.S. Supreme Court.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- To materially affect the Court's ruling voucher proponents in Florida will have to:
 - Change the constitution (not likely; it was amended a few years ago to include current education language), or
 - Seek legislation to address the Court's concerns over uniformity (regulation of private schools receiving public dollars? De facto charter schools?)
 - State tuned.



Holmes v. Bush, 2006 WL 20584 (Fla. Jan 5, 2006)

- What does Florida ruling mean elsewhere?
 - It is not controlling elsewhere.
 - But, it is helpful in terms of informing what works for public education in a state constitution: “high quality” “public system” “uniform”
 - Contrast with South Carolina: “minimally adequate education”
 - Floor vs. optimal
 - Too early to tell in terms of state legislative responses.



Of Justice Alito & public schools...

- Often compared to Justice Scalia, widely accepted to be the Court's most conservative member.
- But, is Justice Alito really Scalito? Scalia-lite?
- An analysis of his opinions shows he's a traditional conservative.



Of Justice Alito & public schools...

- So what can we expect from a “traditional conservative” on public education?
- Employer v. Employee
- Constitutional Issues
 - Establishment v. Free Exercise
 - Free Speech
- Pro-government?
- Disabilities



Of Justice Alito & public schools...

Employer v. Employee

- Generally pro-employer.
- Alito's pro-employer stance is apparent in his treatment of Title VII discrimination cases.
- In *Bray v. Marriott Hotels*, he dissented in an discrimination case, because he would have imposed stricter standards of proof on the plaintiff.



Of Justice Alito & public schools...

- In *Bray*, Alito would shift the burden back to a plaintiff to show that an employer's reasons for discriminating were either
 - *A fabrication, or*
 - *More than likely not the basis for the discriminatory act*
- This is different from the accepted standard that the discriminatory act was simply "pretextual."



Of Justice Alito & public schools...

- Alito is a free exercise advocate as opposed to an establishment clause defender.
- Thus, he would limit what he perceives as state limits on the exercise of religion, while minimizing traditional notions of separation of church and state.



Of Justice Alito & public schools...

- Free exercise in schools:
 - Child Evangelism Fellowship v. Stafford (3rd Cir.) Public schools must distribute promo material for outside religious groups if distribution is permitted for non-religious groups.



Of Justice Alito & public schools...

- How does Alito avoid violating the Establishment Clause?
 - He would permit schools to disclaim or affirmatively state they do not endorse a particular religious view.
 - CH v. Olivia (Alito, dissenting). Jesus Thanksgiving poster.



Of Justice Alito & public schools...

Soft spot for Disabilities?

Education and training can be weighed in determination of disability under ADA;

Retaliation under ADA can include shift reassignment.

Mondzelewski v. Pathmark Stores (3rd Cir. 1998)



Justice Alito & public schools...

- Also, under ADA, Alito has ruled an employee is not required to identify a position to which he/she may transfer, in a failure-to-transfer case. *Shapiro v. Township of Lakewood*.
- In one IDEA case he decided a school district failed to provide FAPE by failing to provide a harassment-free environment.
Shore Regional High School Bd. Of Educ. V. PS



Of Justice Alito & public schools...

➤ Summary:

- Pro-employer; strict standards for complaints of discrimination
- Pro free exercise of religion; against state restrictions on religious exercise; willing to insulate public schools disclaiming endorsement of religious message.
- Pro employee leanings on disability issues.



