

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 04–698

BRIAN SCHAFFER, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, JOCELYN AND MARTIN SCHAFFER, ET AL.,
PETITIONERS *v.* JERRY WEAST, SUPERINTENDENT, MONTGOMERY COUNTY PUBLIC SCHOOLS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[November 14, 2005]

JUSTICE O’CONNOR delivered the opinion of the Court.

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. A. §1400 *et seq.* (main ed. and Supp. 2005), is a Spending Clause statute that seeks to ensure that “all children with disabilities have available to them a free appropriate public education,” §1400(d)(1)(A). Under IDEA, school districts must create an “individualized education program” (IEP) for each disabled child. §1414(d). If parents believe their child’s IEP is inappropriate, they may request an “impartial due process hearing.” §1415(f). The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, as it typically does, on the party seeking relief.

I
A

Congress first passed IDEA as part of the Education of the Handicapped Act in 1970, 84 Stat. 175, and amended

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it substantially in the Education for All Handicapped Children Act of 1975, 89 Stat. 773. At the time the majority of disabled children in America were “either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out,’” H. R. Rep. No. 94–332, p. 2 (1975). IDEA was intended to reverse this history of neglect. As of 2003, the Act governed the provision of special education services to nearly 7 million children across the country. See Dept. of Education, Office of Special Education Programs, Data Analysis System, http://www.ideadata.org/tables27th/ar_aa9.htm (as visited Nov. 9, 2005, and available in Clerk of Court’s case file).

IDEA is “frequently described as a model of ‘cooperative federalism.’” *Little Rock School Dist. v. Mauney*, 183 F. 3d 816, 830 (CA8 1999). It “leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, [but] imposes significant requirements to be followed in the discharge of that responsibility.” *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 183 (1982). For example, the Act mandates cooperation and reporting between state and federal educational authorities. Participating States must certify to the Secretary of Education that they have “policies and procedures” that will effectively meet the Act’s conditions. 20 U. S. C. §1412(a). (Unless otherwise noted, all citations to the Act are to the pre-2004 version of the statute because this is the version that was in effect during the proceedings below. We note, however, that nothing in the recent 2004 amendments, 118 Stat. 2674, appears to materially affect the rule announced here.) State educational agencies, in turn, must ensure that local schools and teachers are meeting the State’s educational standards. 20 U. S. C. §§1412(a)(11), 1412(a)(15)(A). Local educational agencies (school boards or other administrative bodies) can receive IDEA funds only if

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they certify to a state educational agency that they are acting in accordance with the State's policies and procedures. §1413(a)(1).

The core of the statute, however, is the cooperative process that it establishes between parents and schools. *Rowley, supra*, at 205–206 (“Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, . . . as it did upon the measurement of the resulting IEP against a substantive standard”). The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, §§1414(a)–(c), develop an IEP for each one, §1414(d)(2), and review every IEP at least once a year, §1414(d)(4). Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide. §1414(d)(1)(A).

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. §1414(c)(3). Parents are included as members of “IEP teams.” §1414(d)(1)(B). They have the right to examine any records relating to their child, and to obtain an “independent educational evaluation of the[ir] child.” §1415(b)(1). They must be given written prior notice of any changes in an IEP, §1415(b)(3), and be notified in writing of the procedural safeguards available to them under the Act, §1415(d)(1). If parents believe that an IEP is not appropriate, they may seek an administrative “impartial due process hearing.” §1415(f). School districts may also seek such hearings, as Congress clarified in the 2004 amendments. See S. Rep. No. 108–185, p. 37 (2003). They may do so, for example, if they wish to change an existing IEP but the parents do not consent, or if parents refuse to

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allow their child to be evaluated. As a practical matter, it appears that most hearing requests come from parents rather than schools. Brief for Petitioners 7.

Although state authorities have limited discretion to determine who conducts the hearings, §1415(f)(1), and responsibility generally for establishing fair hearing procedures, §1415(a), Congress has chosen to legislate the central components of due process hearings. It has imposed minimal pleading standards, requiring parties to file complaints setting forth “a description of the nature of the problem,” §1415(b)(7)(B)(ii), and “a proposed resolution of the problem to the extent known and available . . . at the time,” §1415(b)(7)(B)(iii). At the hearing, all parties may be accompanied by counsel, and may “present evidence and confront, cross-examine, and compel the attendance of witnesses.” §§1415(h)(1)–(2). After the hearing, any aggrieved party may bring a civil action in state or federal court. §1415(i)(2). Prevailing parents may also recover attorney’s fees. §1415(i)(3)(B). Congress has never explicitly stated, however, which party should bear the burden of proof at IDEA hearings.

B

This case concerns the educational services that were due, under IDEA, to petitioner Brian Schaffer. Brian suffers from learning disabilities and speech-language impairments. From prekindergarten through seventh grade he attended a private school and struggled academically. In 1997, school officials informed Brian’s mother that he needed a school that could better accommodate his needs. Brian’s parents contacted respondent Montgomery County Public Schools System (MCPS) seeking a placement for him for the following school year.

MCPS evaluated Brian and convened an IEP team. The committee generated an initial IEP offering Brian a place in either of two MCPS middle schools. Brian’s parents

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were not satisfied with the arrangement, believing that Brian needed smaller classes and more intensive services. The Schaffers thus enrolled Brian in another private school, and initiated a due process hearing challenging the IEP and seeking compensation for the cost of Brian's subsequent private education.

In Maryland, IEP hearings are conducted by administrative law judges (ALJs). See Md. Educ. Code Ann. §8-413(c) (Lexis 2004). After a 3-day hearing, the ALJ deemed the evidence close, held that the parents bore the burden of persuasion, and ruled in favor of the school district. The parents brought a civil action challenging the result. The United States District Court for the District of Maryland reversed and remanded, after concluding that the burden of persuasion is on the school district. *Brian S. v. Vance*, 86 F. Supp. 2d 538 (2000). Around the same time, MCPS offered Brian a placement in a high school with a special learning center. Brian's parents accepted, and Brian was educated in that program until he graduated from high school. The suit remained alive, however, because the parents sought compensation for the private school tuition and related expenses.

Respondents appealed to the United States Court of Appeals for the Fourth Circuit. While the appeal was pending, the ALJ reconsidered the case, deemed the evidence truly in "equipoise," and ruled in favor of the parents. The Fourth Circuit vacated and remanded the appeal so that it could consider the burden of proof issue along with the merits on a later appeal. The District Court reaffirmed its ruling that the school district has the burden of proof. 240 F. Supp. 2d 396 (Md. 2002). On appeal, a divided panel of the Fourth Circuit reversed. Judge Michael, writing for the majority, concluded that petitioners offered no persuasive reason to "depart from the normal rule of allocating the burden to the party seeking relief." 377 F. 3d 449, 453 (2004). We granted

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certiorari, 543 U. S. 1145 (2005), to resolve the following question: At an administrative hearing assessing the appropriateness of an IEP, which party bears the burden of persuasion?

II

A

The term “burden of proof” is one of the “slipperiest member[s] of the family of legal terms.” 2 J. Strong, McCormick on Evidence §342, p. 433 (5th ed. 1999) (hereinafter McCormick). Part of the confusion surrounding the term arises from the fact that historically, the concept encompassed two distinct burdens: the “burden of persuasion,” *i.e.*, which party loses if the evidence is closely balanced, and the “burden of production,” *i.e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding. *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U. S. 267, 272 (1994). We note at the outset that this case concerns only the burden of persuasion, as the parties agree, Brief for Respondents 14; Reply Brief for Petitioners 15, and when we speak of burden of proof in this opinion, it is this to which we refer.

When we are determining the burden of proof under a statutory cause of action, the touchstone of our inquiry is, of course, the statute. The plain text of IDEA is silent on the allocation of the burden of persuasion. We therefore begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. McCormick §337, at 412 (“The burdens of pleading and proof with regard to most facts have and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure or proof or persuasion”); C. Mueller & L. Kirkpatrick, Evidence §3.1, p. 104 (3d ed. 2003) (“Perhaps the broadest and most accepted idea is that the person

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who seeks court action should justify the request, which means that the plaintiffs bear the burdens on the elements in their claims”).

Thus, we have usually assumed without comment that plaintiffs bear the burden of persuasion regarding the essential aspects of their claims. For example, Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e–2 *et seq.*, does not directly state that plaintiffs bear the “ultimate” burden of persuasion, but we have so concluded. *St. Mary’s Honor Center v. Hicks*, 509 U. S. 502, 511 (1993); *id.*, at 531 (SOUTER, J., dissenting). In numerous other areas, we have presumed or held that the default rule applies. See, *e.g.*, *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 561 (1992) (standing); *Cleveland v. Policy Management Systems Corp.*, 526 U. S. 795, 806 (1999) (Americans with Disabilities Act); *Hunt v. Cromartie*, 526 U. S. 541, 553 (1999) (equal protection); *Wharf (Holdings) Ltd. v. United Int’l Holdings, Inc.*, 532 U. S. 588, 593 (2001) (securities fraud); *Doran v. Salem Inn, Inc.*, 422 U. S. 922, 931 (1975) (preliminary injunctions); *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, 287 (1977) (First Amendment). Congress also expressed its approval of the general rule when it chose to apply it to administrative proceedings under the Administrative Procedure Act, 5 U. S. C. §556(d); see also *Greenwich Collieries, supra*, at 271.

The ordinary default rule, of course, admits of exceptions. See McCormick §337, at 412–415. For example, the burden of persuasion as to certain elements of a plaintiff’s claim may be shifted to defendants, when such elements can fairly be characterized as affirmative defenses or exemptions. See, *e.g.*, *FTC v. Morton Salt Co.*, 334 U. S. 37, 44–45 (1948). Under some circumstances this Court has even placed the burden of persuasion over an entire claim on the defendant. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U. S. 461, 494 (2004). But while the normal default rule does not solve all cases, it certainly

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solves most of them. Decisions that place the *entire* burden of persuasion on the opposing party at the *outset* of a proceeding—as petitioners urge us to do here—are extremely rare. Absent some reason to believe that Congress intended otherwise, therefore, we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.

B

Petitioners contend first that a close reading of IDEA’s text compels a conclusion in their favor. They urge that we should interpret the statutory words “due process” in light of their constitutional meaning, and apply the balancing test established by *Mathews v. Eldridge*, 424 U. S. 319 (1976). Even assuming that the Act incorporates constitutional due process doctrine, *Eldridge* is no help to petitioners, because “[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment.” *Lavine v. Milne*, 424 U. S. 577, 585 (1976).

Petitioners next contend that we should take instruction from the lower court opinions of *Mills v. Board of Education*, 348 F. Supp. 866 (D. C. 1972), and *Pennsylvania Association for Retarded Children v. Commonwealth*, 334 F. Supp. 1257 (ED Pa. 1971) (hereinafter *PARC*). IDEA’s drafters were admittedly guided “to a significant extent” by these two landmark cases. *Rowley*, 458 U. S., at 194. As the court below noted, however, the fact that Congress “took a number of the procedural safeguards from *PARC* and *Mills* and wrote them directly into the Act” does not allow us to “conclude . . . that Congress intended to adopt the ideas that it failed to write into the text of the statute.” 377 F. 3d, at 455.

Petitioners also urge that putting the burden of persuasion on school districts will further IDEA’s purposes because it will help ensure that children receive a free ap-

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propriate public education. In truth, however, very few cases will be in evidentiary equipoise. Assigning the burden of persuasion to school districts might encourage schools to put more resources into preparing IEPs and presenting their evidence. But IDEA is silent about whether marginal dollars should be allocated to litigation and administrative expenditures or to educational services. Moreover, there is reason to believe that a great deal is already spent on the administration of the Act. Litigating a due process complaint is an expensive affair, costing schools approximately \$8,000-to-\$12,000 per hearing. See Department of Education, J. Chambers, J. Harr, & A. Dhanani, *What Are We Spending on Procedural Safeguards in Special Education 1999–2000*, p. 8 (May 2003) (prepared under contract by American Institute for Research, Special Education Expenditure Project). Congress has also repeatedly amended the Act in order to reduce its administrative and litigation-related costs. For example, in 1997 Congress mandated that States offer mediation for IDEA disputes. Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105–17, §615(e), 111 Stat. 90, 20 U. S. C. §1415(e). In 2004, Congress added a mandatory “resolution session” prior to any due process hearing. Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108–446, §615(7)(f)(1)(B), 118 Stat. 2720, 20 U. S. C. A. §1415(f)(1)(B) (Supp. 2005). It also made new findings that “[p]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways,” and that “[t]eachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.” §§1400(c)(8)–(9).

Petitioners in effect ask this Court to assume that every IEP is invalid until the school district demonstrates that it

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is not. The Act does not support this conclusion. IDEA relies heavily upon the expertise of school districts to meet its goals. It also includes a so-called “stay-put” provision, which requires a child to remain in his or her “then-current educational placement” during the pendency of an IDEA hearing. §1415(j). Congress could have required that a child be given the educational placement that a parent requested during a dispute, but it did no such thing. Congress appears to have presumed instead that, if the Act’s procedural requirements are respected, parents will prevail when they have legitimate grievances. See *Rowley, supra*, at 206 (noting the “legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP”).

Petitioners’ most plausible argument is that “[t]he ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary.” *United States v. New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5 (1957); see also *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 626 (1993). But this “rule is far from being universal, and has many qualifications upon its application.” *Greenleaf’s Lessee v. Birth*, 6 Pet. 302, 312 (1832); see also *McCormick §337*, at 413 (“Very often one must plead and prove matters as to which his adversary has superior access to the proof”). School districts have a “natural advantage” in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them. See *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U. S. 359, 368 (1985). As noted above, parents have the right to review all records that the school possesses in relation to their child. §1415(b)(1). They also

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have the right to an “independent educational evaluation of the[ir] child.” *Ibid.* The regulations clarify this entitlement by providing that a “parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.” 34 CFR §300.502(b)(1) (2005). IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.

Additionally, in 2004, Congress added provisions requiring school districts to answer the subject matter of a complaint in writing, and to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision. Pub. L. 108–446, §615(c)(2)(B)(i)(I), 118 Stat. 2718, 20 U. S. C. A. §1415(c)(2)(B)(i)(I) (Supp. 2005). Prior to a hearing, the parties must disclose evaluations and recommendations that they intend to rely upon. 20 U. S. C. §1415(f)(2). IDEA hearings are deliberately informal and intended to give ALJs the flexibility that they need to ensure that each side can fairly present its evidence. IDEA, in fact, requires state authorities to organize hearings in a way that guarantees parents and children the procedural protections of the Act. See §1415(a). Finally, and perhaps most importantly, parents may recover attorney’s fees if they prevail. §1415(i)(3)(B). These protections ensure that the school bears no unique informational advantage.

III

Finally, respondents and several States urge us to decide that States may, if they wish, override the default

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rule and put the burden always on the school district. Several States have laws or regulations purporting to do so, at least under some circumstances. See, e.g., Minn. Stat. §125A.091, subd. 16 (2004); Ala. Admin. Code Rule 290–8–9–.08(8)(c)(6) (Supp. 2004); Alaska Admin. Code tit. 4, §52.550(e)(9) (2003); Del. Code Ann., Tit. 14, §3140 (1999). Because no such law or regulation exists in Maryland, we need not decide this issue today. JUSTICE BREYER contends that the allocation of the burden ought to be left *entirely* up to the States. But neither party made this argument before this Court or the courts below. We therefore decline to address it.

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, 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 an ALJ. The judgment of the United States Court of Appeals for the Fourth Circuit is, therefore, affirmed.

It is so ordered.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.