

# Shifting the legal burden in special education

By CLAUDE SOLNIK

Parents of children with special needs have won a statewide victory that shifts the balance of power in their favor.

Even if it's not quite a children-with-special-needs version of *Brown v. Board of Education*, attorneys and analysts said new legislation signed into law this month goes a long way toward giving more rights to New York parents of children with disabilities.

Gov. Eliot Spitzer signed a law Aug. 15 that puts the burden of proof on school districts — rather than parents — to show their plans for students with special needs are appropriate. The decision comes as many parents turn to attorneys to make their case in dealing with special education issues.

In New York, school districts' special education committees develop individualized education plans for children. Parents can appeal to a state hearing officer if they believe the IEPs are not meeting their child's needs.

In the 2005 case *Schaeffer v. Weast*, the U.S. Supreme Court ruled the school districts would prevail — unless state law shifts the burden of proof to districts, as New York now does.

The new standard, said Saundra Gumerove, an attorney in Jericho specializing in special education, gives parents a more level playing field. "It was huge," Gumerove said. "This is a real victory for parents."

She said the 2005 Supreme Court ruling led to "more districts refusing to provide services" and "had a real chilling effect. My case load went up after that."

Doreen Cordoba, executive director of Long Island Advocates, a disability advocacy center in Syosset, agreed the Supreme Court had skewed the scales toward school districts.

"It placed an undue burden on [parents]," Cordoba said, adding the new state law makes it easier "for the parent to come forth and get what's required."

Gumerove said negotiation is part of the process of reaching the right individual plan, and "if a parent doesn't know [their full rights] and the district doesn't tell them, the child may not get the service."

Special education laws indicate children with disabilities are entitled to services without regard to cost, but there is a "built-in problem," according to Gumerove.

"Frequently, special education services are expensive and school districts worry about total dollars," she said. "Parents never worry about total dollars."

Gumerove has helped parents obtain school district payments for residential facilities, even when the districts say the child doesn't warrant residential treatment. "The school district was, 'Absolutely not, absolutely not, absolutely

not,'" she said, "until I got involved in the case."

By negotiating with a school district attorney, Gumerove also obtained special services for an autistic child whose parents wanted the child held back in preschool, over the district's initial objections. And she's helped children when districts failed to provide the services listed in IEPs.

Cordoba said districts may be more willing to negotiate with an attorney in the room. "The school districts know the parents are represented and know what their rights are," she said. "I'm not adversarial. We're not there to point fingers. We just want to get [students] the education they're entitled to get." ■



Bob Giglione

Negotiation is part of the special education process, according to attorney Saundra Gumerove.