

Parents Don't Need Lawyers to Fight for Special-Ed Help

Ruling levels the field in school lawsuits

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If Friendswood mother Louise Baker had extra money, she'd spend it on tutoring for her dyslexic son, not on legal fees to fight her school district for extra help.

Though she thinks she'd have a strong case, Baker, like most parents of Texas' 500,000 special-education students, can't afford a lawyer to take on a school system. And school districts know it, she said.

"They know no one's enforcing (the law), and they know I can't afford a lawyer," Baker said.

But a recent Supreme Court ruling strengthens the rights of parents with special-needs children, saying they can fight their own cases "without high-priced lawyers or fear of getting into trouble for practicing law without a license.

Though challenging a school district still won't be easy, lawyers said, the ruling levels the playing field for parents who can't afford representation.

"It's very, very rare for the Supreme Court to decide special-education issues. In that nature, it's a big decision," said San Antonio lawyer Matthew Finch, vice president of the Texas Organization of Parents, Attorneys and Advocates. "This gives parents direct authority to sue on behalf of their children."

The *Winkelman v. Parma City School District* ruling also allows parents their own rights under the federal Individuals with Disabilities Education Act, a philosophical shift that officials say needs time to play out.

"It's a very big change, that the parents have the entitlement to a 'free and appropriate public education' on their own," said Sandy Lowe, a lawyer with the Texas Education Agency. "That does change the dynamic some."

In the Winkelman case, an Ohio couple sued to get their school district to pay for private school tuition for their autistic son.

The Cleveland Bar Association threatened to have them slapped with a \$10,000 fee for practicing law without a license.

Even though special education is a highly contentious field, only a small percentage of parents sue their school districts. Few have the time or money to challenge school systems, which use attorneys paid with a seemingly endless supply of tax dollars.

Last academic year, Texas had 327 due-process hearings — requests for administrative hearings that usually are filed when parents don't agree with how a school district is handling their special-needs child.

Of those, 213 cases were resolved without an administrative hearing, and 84 are still pending, according to the Texas Education Agency.

Though parents always have been able to represent themselves in due process, the Supreme Court ruling clarifies that they also can represent themselves in appeals to state and federal court.

The Winkelman ruling would have made a difference this past year for at least one Houston school district parent, whose case was dropped specifically because of self-representation, HISD general counsel Elneita Hutchins-Taylor said.

"The interpretation of the law at that time was that parents had to be represented by an attorney in order to file in federal court," Hutchins-Taylor said.

Dallas-area mother Amy Sosa said she is much more likely to sue her district now that the Supreme Court has cleared the way.

"Before, we would have had to have an attorney, and we don't have the money," Sosa said. "I'm now less scared of being hit with unauthorized practice of law. ... We could go and essentially fight for our own rights."

Houston advocate Louis Geigerman plans to encourage parents to do just that.

"It's going to be big," said Geigerman, who runs National ARD/IEP Advocates. "I'm advising my people, if they can't afford counsel, to go for it; go *pro se*."

Parents following that advice could cost Texas school seven more in special education-related legal fees, said Fred Shafer, head of special education for the Katy district.

"Districts may end up spending more money on lawsuits that are appealed to the state or federal level," Shafer said.

But other area school officials said they aren't worried the ruling will open the floodgates. They said parents know they're trying their hardest to help special-needs students.

"Districts and parents spend so much time as adversaries, using the courts as a means to get their respective opinions heard, that it removes the focus from where it should be — the child," said April Fox, head of special education for the La Porte school district.

"I believe in building relationships with families. They need to have an opportunity to get to know me and realize that I am all about doing what's best for kids."

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