

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLAKE B.,	:	
	:	
AND	:	
	:	
JACK AND YVONNE B.,	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 06-1968
	:	
v.	:	
	:	
COUNCIL ROCK SCHOOL DISTRICT,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

AND NOW, this 27th day of July, 2006, after consideration of plaintiffs’ Motion for Preliminary Determination of Entitlement to Independent Educational Evaluation, and defendant’s Response in opposition thereto, it is hereby ORDERED that plaintiffs’ Motion is DENIED.

The Supreme Court in Schaffer v. Weast, 126 S.Ct. 528 (2005) did not undertake to do more than construe the IDEA and decide that a plaintiff challenging an IEP has the burden of persuasion, consistent with the ordinary rule in a civil action that the party who brings a lawsuit has the burden of proving the claims asserted. The decision did not change the IDEA or the implementing Federal Regulations. The statute is silent on burden of proof. The Court rejected the parents’ argument that this burden is unfair and cited with approval Federal Regulation 34 C.F.R. § 300.502(b)(1)(2005) as a genuine effort at implementing the “cooperative federalism” represented by the IDEA. Invocation of Section

(b)(1) necessarily triggers the sequential processes set out in (b)(2), (b)(3) and (b)(4).

BY THE COURT:

S/ James T. Giles
J.