

The Burger Court Opinion Writing Database

School Committee of Burlington v. Department of Education of Massachusetts

471 U.S. 359 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University





CHAMBERS OF
THE CHIEF JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

April 24, 1985

Re: No. 84-433 - School Committee of Burlington v.
Dept. of Education, Massachusetts

Dear Bill:

I join.

Regards,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

April 19, 1985

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

No. 84-433

School Committee of Burlington
v. Department of Education, MA.

Dear Bill,

I am in full accord with the result and most of the analysis in your fine opinion in the above. I would like to raise two points with respect to the analysis on pages 11-14.

The first point involves the interpretation of §1415(e)(3). The opinion appears to hold that the parents violated §1415(e)(3) ("the Panicos contravened the conditional command of §1415(e)(3)"), but that this violation does not waive the right to reimbursement under §1415(e)(2) if such relief is otherwise appropriate. This understanding of §1415(e)(3) threatens to reduce the statutory requirement of an agreement to precatory status with respect to parents. For this reason, the opinion goes on to suggest that, despite the holding of the case, §1415(e)(3) still imposes obligations on parents because it would operate to cut off reimbursement if, absent agreement, a parent were to place a child in a private school and the courts were then to conclude that the public school placement would have been appropriate. It is this last assertion that troubles me.

As the opinion is now written, a violation of §1415(e)(3) does not cut off reimbursement if a parent ultimately wins on the merits in court but may cut off reimbursement if the parent ultimately loses. Obviously the distinguishing factor with respect to relief in these situations has nothing to do with the violation of 1415(e)(3); the situations are distinguished by the fact that in the former the school board offered an inappropriate placement while in the latter the school board offered an appropriate placement. The point that the opinion tries to make is that §1415(e)(3) nonetheless has an effect on parents. Even if the parent ultimately loses on the merits in court, the opinion suggests, interim reimbursement might be available if the parent changed a child's placement pursuant to an agreement but will certainly not be available if the parent unilaterally moved the child.

It may be true that the availability of such interim reimbursement will generally turn on whether the parents had authorization to change a child's placement. But the purported violation of §1415(e)(3) could not be the impetus for denying reimbursement for an unauthorized move; that impetus would be equally present if the parent had ultimately won in court. Rather, relief would be denied absent an agreement because the parents would have no affirmative basis for arguing that relief was "appropriate" within the meaning of §1415(e)(2); they were neither correct in their judgment that the public school placement was inadequate nor justified in reasonable reliance on agreement with the state or school authorities for the interim period. In other words, it is never by operation of the force of §1415(e)(3) that reimbursement is granted or denied; had that section not existed reasonable reliance on an agreement would supply the justification for interim relief and the absence of an agreement would generally leave a parent without any basis for arguing that relief is appropriate. I am thus unpersuaded by the claim that §1415(e)(3) retains independent force under the analysis presently set forth.

A better course might be to hold that the conduct of the parents in this case simply does not violate §1415(e)(3). Much of the analysis presently in the opinion would support this result. Finding a violation under the circumstances of this case would contravene the purpose of the statute. And the primary intent of this section is to prevent school officials from removing a child from the regular classroom over a parent's objection. This alternative reading would not render §1415(e)(3) toothless because it would still achieve the primary congressional purpose of constraining unilateral activity of the public school officials. Nor would it amount to a holding that interim reimbursement is required despite an adverse final disposition; courts remain free to interpret §1415(e)(2) such that relief would generally not be "appropriate" where the parent makes an unauthorized change of placement and the reviewing court does not vindicate that choice.

Ultimately we may not be far apart. Either approach supports reimbursement under the circumstances of this case. A potential difference would seem to exist with respect to the treatment of parents who ultimately lose in court on the merits. Interpreting §1415(e)(3), the opinion explicitly cuts off reimbursement to parents who unilaterally change the child's placement and implies but does not hold that reimbursement is appropriate when the parents have obtained an agreement. The suggested alternative would make no holding, nor even suggest a resolution, with respect to either issue. This is obviously not a life or death matter but we did deny certiorari on this question in this case, and we might well be better off addressing it directly in the proper case, rather than indirectly as the opinion currently does. Also, I am uncomfortable with the notion that we are labeling certain parental conduct violative of the statute in this case but then authorizing reimbursement for the

consequences of such conduct on the ground that it was perfectly reasonable. For these reasons, and given that I am uncertain §1415(e)(3) can be read in the way the opinion now suggests, I think it would be advisable to hold that §1415(e)(3) was not violated at all.

My second point is more easily stated. The penultimate sentence of the opinion would seem to hold that "appropriate" relief within the meaning of §1415(e)(2) means equitable relief. This sentence might be misread to suggest that we have resolved the issue of whether damages may constitute "appropriate" relief as well in the proper case. That is an open question not presented by this case. Perhaps the words "includes reimbursement" could be substituted for the words "means equitable relief."

I am certain that I will be able to join your opinion if you could see your way to accomodating these suggestions.

Sincerely,

Neil

Justice Rehnquist

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H
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 23, 1985

No. 84-433

School Committee of Burlington
v. Department of Education

Dear Bill,

Thanks so much for your change in the penultimate sentence of the opinion. I withdraw my suggestion of the first point and join your opinion.

Sincerely,

Bill

Justice Rehnquist

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37

Supreme Court of the United States
Washington, D. C. 20543

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CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1985

84-433 -

Burlington School Committee of the Town
of Burlington v. Department of Education
of the Commonwealth of Massachusetts

Dear Bill,

Please join me.

‡ Sincerely yours,

Byron

Justice Rehnquist

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

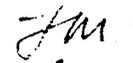
April 18, 1985

Re: No. 84-433-Burlington School v. Dept. of Ed.

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Rehnquist

cc: The Conference

W
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 18, 1985

Re: No. 84-433, School Committee of the Town of Burlington
v. Department of Education of the Commonwealth of Mass.

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1985

84-433 Burlington School Committee
v. Department of Education

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

APR 17 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-433

BURLINGTON SCHOOL COMMITTEE OF THE TOWN
OF BURLINGTON, MASSACHUSETTS, ET AL.,
PETITIONERS *v.* DEPARTMENT OF EDU-
CATION OF THE COMMONWEALTH
OF MASSACHUSETTS ET AL.

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

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

The Education of the Handicapped Act (Act), 84 Stat. 175, as amended, 20 U. S. C. § 1401 *et seq.*, requires participating state and local educational agencies "to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education" to such handicapped children. § 1415(a). These procedures include the right of the parents to participate in the development of an "individualized education program" (IEP) for the child and to challenge in administrative and court proceedings a proposed IEP with which they disagree. §§ 1401(19), 1415(b),(d),(e). Where as in the present case review of a contested IEP takes years to run its course—years critical to the child's development—important practical questions arise concerning interim placement of the child and financial responsibility for that placement. This case requires us to address some of those questions.

Michael Panico, the son of respondent Robert Panico, was a first grader in the public school system of petitioner Town of Burlington, Massachusetts, when he began experiencing serious difficulties in school. It later became evident that

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 22, 1985

Re: 84-433 - School Committee of Burlington v.
Department of Education

Dear Bill,

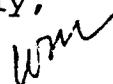
I am happy to accommodate your second point by changing the penultimate sentence of the opinion to read as follows:

"We do think that the court was correct in concluding that 'such relief as the court determines is appropriate,' within the meaning of §1415(e)(2), means that equitable considerations are relevant in fashioning relief."

I hope this substitute language will meet your concerns.

With respect to your first point, I think the opinion as currently written is faithful to the statutory scheme. Moreover, I must confess that I have some difficulty imagining a real-life situation in which the changes you propose will make any difference in allocating financial responsibility for interim placements. Accordingly, I am not disposed to make any changes on this point.

Sincerely,



Justice Brennan

cc: The Conference

STYLISTIC CHANGES THROUGHOUT

p. 15

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-433

BURLINGTON SCHOOL COMMITTEE OF THE TOWN
OF BURLINGTON, MASSACHUSETTS, ET AL.,
PETITIONERS *v.* DEPARTMENT OF EDU-
CATION OF THE COMMONWEALTH
OF MASSACHUSETTS ET AL.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1985

MEMORANDUM TO THE CONFERENCE

Re: No. 84-433, Burlington School Comm. v. Mass.
Dept. of Ed.

The following sentence appears on page 2 of the slip opinion in this case:

"Michael's continued poor performance and the fact that Memorial School encompassed only grades K through 3 led to much discussion between his parents and Town school officials about his difficulties and his future schooling."

Counsel has advised Henry Lind that Memorial School encompassed at all times relevant to this suit grades K through 4. The record does not expressly state one way or the other, though, contrary to the above statement, it can be inferred from the record that grade 3 was not the highest grade at the school.

The issue has no bearing on the reasoning or result of the case, but absent dissent, I will change the above sentence to read as follows:

"Michael's continued poor performance and the fact that Memorial School was not equipped to handle his needs led to much discussion"

Sincerely,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 18, 1985

Re: 84-433 - Burlington School Committee v.
Department of Education of the
Commonwealth of Massachusetts

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Supreme Court of the United States
Washington, D. C. 20543

April 17, 1985

No. 84-433 Burlington School Committee of the
Town of Burlington, Massachusetts
v. Department of Education of the
Commonwealth of Massachusetts

Dear Bill,

Please join me.

Sincerely,

Justice Rehnquist

Copies to the Conference