
Education Committee

SB 5883

Brief Description: Concerning the burden of proof for special education due process hearings.

Sponsors: Senators Trudeau, Braun, Dhingra, Frame, Hasegawa, Kauffman, Nobles, Saldaña, Valdez and Wilson, C..

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes burden of proof requirements for special education due process hearings.
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Hearing Date: 2/14/24

Staff: Megan Wargacki (786-7194).

Background:

Due Process Hearings.

A due process hearing is a formal, legal proceeding conducted by an impartial administrative law judge. The federal Individuals with Disabilities Education Act (IDEA) gives parents and school districts the right to request a due process hearing to resolve issues about the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to a student with disabilities. The parties to a due process hearing have the right to:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- present and challenge evidence, and question witnesses; and
- obtain a record of the hearing and a findings of fact and decisions.

Burden of Proof.

Generally, "burden of proof" describes the standard that a party to a hearing must satisfy to prove

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the facts at issue. The burden of proof is made up of the burden of persuasion and the burden of production. The standard of proof in many administrative hearings is a "preponderance of the evidence," which means that it is more likely than not that something happened or exists.

The IDEA and state law are silent about which party to the hearing has the burden of proving the facts at issue. In 2005, in *Schaffer v. Weast*, the United States Supreme Court held that the party requesting a due process hearing bears the burden of proof under the IDEA. The court declined to state whether states may override the default rule.

Unilateral Placement of a Student.

Under the IDEA, there are several ways a child with a disability may be placed in a private school, and the public school's responsibilities to cover the cost of the child's tuition vary depending on the type of and reason for the placement. If the child with a disability is placed in the private school by the public school as a means of providing FAPE, the public school must cover the full cost of the private school tuition.

If the parents of a child with a disability unilaterally place the child in a private school because the public school fails to provide the child with FAPE, the public school may be required to reimburse the parents for the private school tuition if an administrative law judge or other court officer finds that the public school had not made FAPE available to the child in a timely manner prior to the private school enrollment and the private placement is appropriate.

Summary of Bill:

Except as provided below, the school district has the burden of proof, including the burden of persuasion and production, whenever it is a party to a due process hearing regarding the identification, evaluation, reevaluation, classification, educational placement, disciplinary action, or provision of a free appropriate public education for a student with a disability. The burden of proof must be met by a preponderance of the evidence.

A parent or person in parental relation who seeks a tuition reimbursement for a unilateral parental placement has the burden of proof, including the burden of persuasion and production, on the appropriateness of such placement.

Appropriation: None.

Fiscal Note: Requested on January 2, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.