

FINAL BILL REPORT

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..

Senate Committee on Early Learning & K-12 Education
House Committee on Education

Background: In accordance with the Individuals with Disabilities Education Act (IDEA), parents and school districts have a right to request a due process hearing on any matter relating to the identification, evaluation, educational placement, or provision of a free appropriate public education to a student with a disability. The due process hearing is a formal, legal proceeding conducted by an administrative law judge, and parties have the right to present and question witnesses and submit or challenge documents regarding the issues.

A written request for a due process hearing must be submitted within two years of when the parent or district knew or should have known about the alleged action. When a parent requests a due process hearing, the district must convene a resolution meeting within 15 days for the purpose of discussing the facts and resolving the dispute. If the parties are unable to resolve the dispute within the following 30-day resolution period then a due process hearing must be scheduled and a final decision must be issued within 45 days, with some exceptions. Due process hearings concerning disciplinary placements or safety concerns may be expedited to occur within 20 school days.

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 IDEA. The court declined to state whether states may override the default rule. Six states currently place the burden of proof on school districts: Connecticut, Delaware, Florida, New Jersey, Nevada, and New York.

Summary: A school district has the burden of proof, including the burden of persuasion and production, when it is a party to a due process hearing regarding the identification,

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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 that seeks tuition reimbursement for a unilateral parental placement has the burden of proof, including the burden of persuasion and production, on the appropriateness of that placement.

Votes on Final Passage:

Senate 48 0

House 94 1

Effective: Ninety days after adjournment of session in which bill is passed.