

People with IDD Wait To Be Served!

Caseload Forecast DDA Services!



Special Education: Burden of Proof

Almost twenty years ago, if a parent of a child with intellectual/developmental disabilities (IDD) did not believe that their school district was meeting the educational needs of their child with disabilities in the Individual Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA), it was up to the family to take the district to court and try to prove this. The burden of proof always fell on the families, while school districts just sent their attorney to fight it. Parents almost always lost their case.

The Supreme Court's *Schaffer v. Weast* (2005) decision said it harms children with disabilities and their families by placing the burden of proof on parents under the IDEA. After the decision, the National Council on Disability issued a Position Paper that said “the burden of proof should always be on school districts”. Should the party that attacks the IEP have the burden of proving that the IEP is not appropriate? Or, should the party that prepared the IEP, and has greater expertise and resources, have the burden of proving that the IEP is appropriate?

Some states already had rules that the moving party had the burden of proof, so they had no change after the ruling. OSPI should be required to write a hearing rule that puts the burden of proving a school district's special educational plan (IEP) on the School District that wrote the plan, rather than on the parents of students with disabilities.

- OSPI agrees that it has the legal authority to implement this equitable hearing rule.
- Six other states have changed the burden of proof in hearings to school districts instead of parents by using agency rule making authority or by passing statutes
- School Districts are in the best position to prove the appropriateness of the educational plan they develop rather than parents having to prove that the plan doesn't work for their child.
 - ⇒ School Districts have access to all the information and expertise to prove the plan works; parents have neither the resources nor expertise to prove the negative
 - ⇒ School Districts have ready access to legal representation in hearing; parents most often must appear alone without lawyers to present the law and facts
- Statistics from States that put the burden of proof on School Districts show that this leads to quicker resolution of disputes and students receiving appropriate educational services much sooner than waiting for a hearing decision
- School districts, not students and families, are in the greater position of power in the litigation; making the district prove its plan is correct is the equitable and just allocation of the burden

Direct OSPI to Implement a Hearing Rule that Changes Burden of Proof to the School Districts

For more information:

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