Make due process in special education fair

Ramona Hattendorf, rhattendorf@arcofkingcounty.org

Who is working on this issue?
The Arc of King County, with The Arc of Washington and other chapters

Advocacy areas
Civil rights; K-12 education

What is the problem you are trying to solve?
- Inequitable access to due process and accountability for IEPs.

Parents have a right to request due process to affirm whether special education decisions are correct. It is a legal proceeding that helps ensure students with disabilities get the right support.

But our state puts the burden of proof on parents to prove students are not being supported correctly. This means parents must hire attorneys and experts and figure out what data to request or collect to prove a negative. It can be very expensive.

It puts parents without a lot of resources at a great disadvantage. Parents who don’t speak or read English or who face other communication barriers are also disadvantaged.

For the student, it jeopardizes an important accountability check. If their Individualized Education Program (IEP) isn’t right – or if they were incorrectly denied one – they can’t access education. Due process helps ensure the process works for kids.

What is your proposed solution?
- Join other states and switch the burden of proof to school districts. This means that school districts need to submit their data and reasoning about the student’s IEP to the court for review.

If the school district prevails, that means the IEP stood up to scrutiny and the IEP team can move forward.

If families prevail, that means kids who weren’t being correctly supported will get an appropriate IEP, with the services they need to access education.
Why is this a good solution?

The purpose of special education services is to make sure education is accessible to students with disabilities and that they are getting a free and appropriate public education, per federal and state law. If the IEP isn’t right, students don’t learn. This switch makes things better.

**Better for kids:** Statistics from states that put the burden of proof on school districts show it leads to quicker resolution of disputes and students receive appropriate educational services much sooner.

**Better for equity:** School districts, not students and families, have power in litigation. Making a district show its decision is correct is an equitable and just allocation of burden.
- School districts have access to data and expertise to prove the IEP works. Parents have neither.
- School districts have ready access to legal representation. Parents without means must appear alone, without lawyers, to present the law and facts.

**Better for the budget:** As a bonus, costs associated with litigation are reduced when schools have burden of proof. If districts lose due process cases, the court can order them to pay attorney costs for parents. Quicker resolutions and lower attorney fees for parents save districts money if they are in the wrong.

**Better for accountability:** Any evidence districts must produce for a due process hearing is information they should have already collected to make the IEP decision. Putting the burden of proof on districts shifts dynamics. The focus becomes the quality of information schools are gathering about student growth and their ability to use it to ensure students are progressing appropriately.

---

<table>
<thead>
<tr>
<th>What is the fiscal impact?</th>
<th>Is there a bill number?</th>
<th>Is there a legislator working on this issue?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs should be neutral to the state</td>
<td>SB 5883 and HB 2121 - Concerning the burden of proof for special education due process hearings.</td>
<td>Sen. Yasmin Trudeau, 27th LD, <a href="mailto:yasmin.trudeau@leg.wa.gov">yasmin.trudeau@leg.wa.gov</a>; and Rep. Jamila Taylor, 30th LD, <a href="mailto:jamila.taylor@leg.wa.gov">jamila.taylor@leg.wa.gov</a></td>
</tr>
</tbody>
</table>

---

2024 Legislative Session Notebook. Issue papers are provided as a courtesy and reflect the advocacy of named individuals or organizations.