

HOUSE BILL REPORT

SB 5883

As Passed House:
February 27, 2024

Title: An act relating to the burden of proof for special education due process hearings.

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..

Brief History:

Committee Activity:

Education: 2/14/24, 2/19/24 [DP].

Floor Activity:

Passed House: 2/27/24, 94-1.

Brief Summary of Bill

- Establishes burden of proof requirements for special education due process hearings.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass. Signed by 13 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; Bergquist, Couture, Eslick, Harris, McClintock, Nance, Ortiz-Self, Pollet, Stonier and Timmons.

Minority Report: Without recommendation. Signed by 2 members: Representatives McEntire, Assistant Ranking Minority Member; Steele.

Staff: Megan Wargacki (786-7194).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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.

Staff Summary of Public Testimony:

(In support) This bill shows a shared commitment to families of students with individualized education programs (IEPs). Currently, the burden of proof is on the parent to prove the facts in a due process hearing about special education. Most due process hearings are initiated by parents that have concerns about special education. As a result of these hearings, parents do not receive money for their child's education, just more services.

The due process hearing for special education cases is complicated and there are many barriers that families face in having their concerns resolved, especially for parents with limited English proficiency. This bill would resolve one barrier for families by appropriately placing the burden of proof on the entity that has all information, resources, and experts. The schools are the ones with the documents because they craft the IEPs. School districts should be confident in the IEPs they craft and in the services they provide, so should be able to prove their case by the 51 percent threshold.

Many families are unable to access lawyers to help them with the process, rather they represent themselves in the hearing. This shift levels the playing field so that families have a chance to have their concerns resolved in a more timely and fair fashion. Shifting the burden of proof to the school district will not result in more due process hearings.

A few years ago, the United States Supreme Court left it on the states to determine where the burden of proof in special education due process hearings is placed. The states that have shifted the burden of proof to school districts have found that cases are now resolved more quickly. Research supports this shift in the burden of proof because it incentivizes case resolution and equalizes the litigation.

(Opposed) None.

(Other) Federal law provides that parent participation is a cornerstone of special education. Parental consent is sought at each step of IEP development, including the initial evaluation

and annual reevaluations. Schools are committed to working with parents and guardians in the special education process, which is already under resourced in many school districts.

Parents have ample opportunities to engage in IEP development, so they are in the best position to prove which part of the IEP is insufficient. Placing the burden of proof on school districts could result in more complaints from parents and divert resources away from special education programs. Shifting the burden of proof allows continued appeals and makes it less likely that one party will come to the table for negotiations.

Small school districts often lack resources to effectively bear the burden of proof in special education due process hearings. They have limited legal expertise and administrative support. Shifting the burden of proof to school districts without providing additional assistance may widen the gap between resource-rich and resource-poor districts. Limited special education funds need to go to special education students and not endless litigation.

Educators have a sense of duty and service others; they want to support families of students with disabilities. The bill places an untenable burden on school districts affecting their ability to provide special education services. The focus should be on curriculum, not compliance. It is already difficult to keep teachers in special education, and this bill may result in teachers questioning every decision and being wary of partnering with parents.

The idea for the bill is commendable, but will result in excessive burdens on school districts. Another good solution would be providing more special education funding. There are other options for improving conflict resolution, such as mandatory mediation and dispute resolution, that should be tried before shifting the burden of proof to school districts.

Persons Testifying: (In support) Senator Yasmin Trudeau, prime sponsor; Karen Pillar, TeamChild; and Stacy Dym, The Arc of Washington State.

(Opposed) None.

(Other) Mike Hoover, Washington State School Directors' Association; Sue Ann Bube, Mercer Island School District; Mike McKay, School Alliance; and Michelle Jeffries.

Persons Signed In To Testify But Not Testifying: Ramona Hattendorf, The Arc of King County; Meghan Hamill; Melissa Spiker, Seattle Special Education Parent Teacher Student Association; Lisa Brodoff; and Kelley Clevenger, Everett Public Schools.