

SENATE, No. 2604

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 15, 2007

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

Senator Weinberg

SYNOPSIS

Places the burden of proof and burden of production on school districts in due process hearings conducted to resolve special education issues.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2007)

1 AN ACT concerning special education and supplementing chapter
2 46 of Title 18A of the New Jersey Statutes.

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4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

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7 1. Whenever a due process hearing is held pursuant to the
8 provisions of the "Individuals with Disabilities Education Act," 20
9 U.S.C. s.1400 et seq., chapter 46 of Title 18A of the New Jersey
10 Statutes, or regulations promulgated thereto, regarding the
11 identification, evaluation, reevaluation, classification, educational
12 placement, the provision of a free, appropriate public education, or
13 disciplinary action, of a child with a disability, the school district
14 shall have the burden of proof and the burden of production.

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16 2. This act shall take effect immediately and shall apply to due
17 process hearings requested in writing after the effective date of this
18 act.

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STATEMENT

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23 This bill places the burden of proof on the school district in due
24 process hearings conducted for the purpose of resolving issues
25 related to special education. In Schaffer v. Weast, 126 S.Ct. 528
26 (2006), the United States Supreme Court held that the burden of
27 proof in such a due process hearing is properly placed upon the
28 party seeking relief. However, the Supreme Court in Schaffer
29 declined to address the issue of whether a state could override this
30 rule. Prior to the decision in Schaffer, New Jersey placed the
31 burden of proof on the school district, pursuant to the holding of the
32 New Jersey Supreme Court in Lescari v. Bd. of Educ., 116 N.J. 30
33 (1989). This bill will return the burden of proof to the school
34 district, as was the case in New Jersey prior to the holding in
35 Schaffer.

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37 The bill also places the burden of production on the school
38 district. The Supreme Court in Schaffer noted at the outset of its
39 opinion that the case concerned only the burden of proof. The
40 burden of production, prior to the Schaffer decision, was generally
placed on the school district. This bill codifies that practice.