## SENATE, No. 2604

# STATE OF NEW JERSEY

### 212th LEGISLATURE

INTRODUCED MARCH 15, 2007

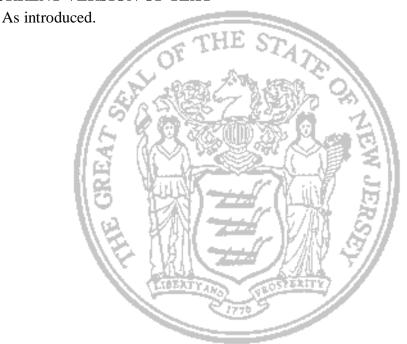
Sponsored by: Senator STEPHEN M. SWEENEY District 3 (Salem, Cumberland and Gloucester) Senator JOSEPH V. DORIA, JR. District 31 (Hudson)

**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**



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

#### **S2604** SWEENEY, DORIA

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

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

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

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

#### **STATEMENT**

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

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