

SENATE BILL REPORT

SB 5883

As Passed Senate, January 31, 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: Early Learning & K-12 Education: 1/15/24, 1/18/24 [DP].

Floor Activity: Passed Senate: 1/31/24, 48-0.

Brief Summary of Bill

- Provides that a school district has the burden of proof when it is a party to a special education due process hearing.
- Creates an exception to this burden of proof requirement in circumstances when a parent seeks reimbursement for a unilateral parental placement.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass.

Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

Staff: Alex Fairfortune (786-7416)

Background: In accordance with the Individuals with Disabilities Education Act (IDEA), parents and school districts have a right to request a due process hearing on any matter relating to the identification, evaluation, educational placement, or provision of a free

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appropriate public education to a student with a disability. The due process hearing is a formal, legal proceeding conducted by an administrative law judge, and parties have the right to present and question witnesses and submit or challenge documents regarding the issues.

A written request for a due process hearing must be submitted within two years of when the parent or district knew or should have known about the alleged action. When a parent requests a due process hearing, the district must convene a resolution meeting within 15 days for the purpose of discussing the facts and resolving the dispute. If the parties are unable to resolve the dispute within the following 30-day resolution period then a due process hearing must be scheduled and a final decision must be issued within 45 days, with some exceptions. Due process hearings concerning disciplinary placements or safety concerns may be expedited to occur within 20 school days.

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 IDEA. The court declined to state whether states may override the default rule. Six states currently place the burden of proof on school districts: Connecticut, Delaware, Florida, New Jersey, Nevada, and New York.

Summary of Bill: A school district has the burden of proof, including the burden of persuasion and production, when 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 that seeks tuition reimbursement for a unilateral parental placement has the burden of proof, including the burden of persuasion and production, on the appropriateness of that placement.

Appropriation: None.

Fiscal Note: Requested on January 2, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: When parents have to bear the burden of proof during these special education due process hearings they are at a disadvantage. Parents are asked to prove a negative and they do not have the same resources or information that the school district has. Some parents face additional barriers, such as not speaking English, having to take unpaid time off work, and having to familiarize themselves

with complex legal paperwork and requirements. Only families with wealth or those who receive civil legal aid get anywhere with the process. Districts hold all the power and information and have unlimited taxpayer dollars to fight these claims. This bill promotes equity by making school districts responsible. Statistics from six states show that moving the burden to districts promotes quicker resolution. Since parents do not receive damages this will not open the floodgates, it will only result in students getting the services they should already have access to.

OTHER: The increased cost of lawsuits and workload on district staff would be burdensome and interfere with the district's ability to provide a free appropriate public education. It may be feasible for larger districts but not smaller ones, which creates a disparity. The Supreme Court already found that those bringing the complaint should have the burden.

Persons Testifying: PRO: Senator Yasmin Trudeau, Prime Sponsor; Ramona Hattendorf, The Arc of King County; Samantha Fogg, Seattle Council PTSA Immediate Past President; Stacy Dym, The Arc of Washington State; Melissa Spiker, Seattle Special Education PTSA / Advocacy Chair; Lisa Brodoff, Seattle university clinical law program; Michele Campbell; Andrea Kadlec, Disability Rights Washington; Jana Parker, Seattle Special Education PTSA (co-President); Karen Pillar, TeamChild; Jen Chong Jewell, Special Education Advisory Council for OSPI; Michelle Whitehead, 1651 24th PL NE; April Ferguson, Mother of a child who just pro se represented in a 17 day due process hearing for son.

OTHER: Sue Ann Bube, Mercer Island School District.

Persons Signed In To Testify But Not Testifying: No one.