

SHIFTING THE BURDEN OF PROOF FROM FAMILIES TO SCHOOL DISTRICTS

The *burden of proof* refers to the burden of providing evidence that is more persuasive than the evidence presented by the other party. Since 2005, in most special education due process hearings in Washington State, families have been required to bear the burden of proof. **House Bill 1305** aims to change that by helping to level the playing field in special education due process hearings.

Why shifting the burdens of proof and production makes sense

- *Under Federal law (Individuals with Disabilities Education Act or the IDEA), school districts already have the duty to provide a Free Appropriate Public Education (FAPE). Requiring districts to prove that they have provided what the law already requires will contribute to improved accountability from districts. Since the school district is expected to support and justify its proposals it makes in meetings with parents, who are equal members of the IEP team, the school district should already be prepared to present that very same information to and persuade a judge.*
- *Districts already have full access to records, teachers, therapists and educational experts that families don't have.*
- *The current rule in Washington State that places this burden on the party who filed for the due process hearing contributes to inequities faced by families of students with disabilities. Families of children with disabilities are 50% more likely to live in poverty than families of students who do not have disabilities. Pursuing a due process hearing with legal representation is very expensive—it can cost in excess of \$40,000. Unlike school districts, which retain taxpayer-financed lawyers, and rely on the school's own employees to testify in due process hearings, parents of children with disabilities are often unable to afford legal counsel and their own expert witnesses.*

Questions?

- *Are there other states that have shifted the burden of proof to school districts?*
Yes. Connecticut, Delaware, Nevada, New Hampshire, New Jersey, and New York have already shifted the burden of proof to school districts in most cases.
- *Will shifting the burden of proof drive up district's litigation expenses?*
There is no proof that shifting the burden of proof to school districts drives up district's legal costs. In fact, there is proof that shifting the burden of proof to school districts can cause districts to engage in a less expensive settlement process instead of fully adjudicating a due process hearing.

Who supports this change in the law?

- **Lisa Brodoff, Professor Emerita, Seattle University School of Law**

