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LAW/IS 6/23/08

P.L. 2007, CHAPTER 331, *approved January 13, 2008*
Assembly, No. 4076

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

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
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.

15
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.

19
20 STATEMENT

21
22 This bill places the burden of proof on the school district in due
23 process hearings conducted for the purpose of resolving issues
24 related to special education. In Schaffer v. Weast, 126 S.Ct. 528
25 (2006), the United States Supreme Court held that the burden of
26 proof in such a due process hearing is properly placed upon the
27 party seeking relief. However, the Supreme Court in Schaffer
28 declined to address the issue of whether a state could override this
29 rule. Prior to the decision in Schaffer, New Jersey placed the
30 burden of proof on the school district, pursuant to the holding of the
31 New Jersey Supreme Court in Lascari v. Bd. of Educ., 116 N.J. 30
32 (1989). This bill will return the burden of proof to the school
33 district, as was the case in New Jersey prior to the holding in
34 Schaffer.

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

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

ASSEMBLY, No. 4076

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 8, 2007

Sponsored by:

Assemblyman JOSEPH CRYAN

District 20 (Union)

Assemblywoman JOAN M. VOSS

District 38 (Bergen)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblyman CRAIG A. STANLEY

District 28 (Essex)

Co-Sponsored by:

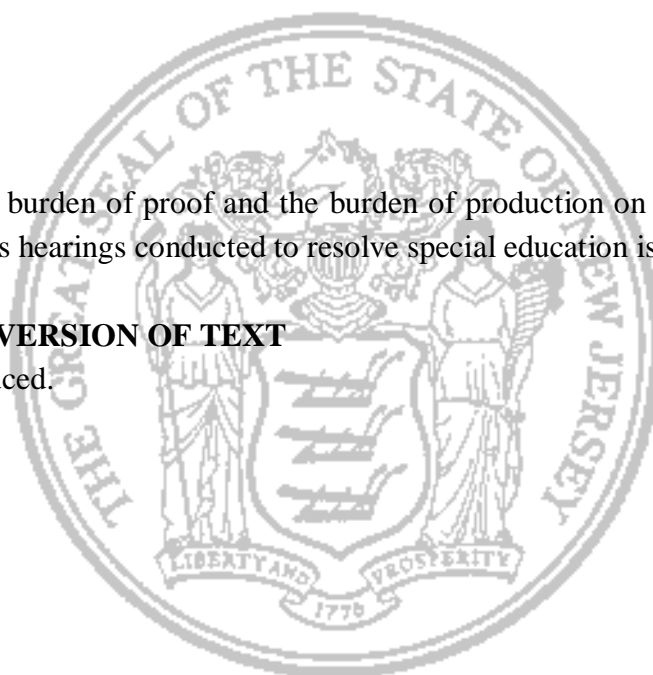
**Assemblyman Diegnan, Assemblywomen Truitt, Lampitt, Vainieri Huttie,
Assemblymen Schaer, Epps, Conners, Assemblywoman McHose, Senators
Sweeney, Doria, Weinberg, Bucco and Madden**

SYNOPSIS

Places the burden of proof and the 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: 1/8/2008)

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

3

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

6

7 1. Whenever a due process hearing is held pursuant to the
8 provisions of the "Individuals with Disabilities Education Act," 20
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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 Lascari 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.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4076

STATE OF NEW JERSEY

DATED: MAY 14, 2007

The Assembly Education Committee favorably reports Assembly Bill No. 4076.

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 Schaffer v. Weast, 126 S.Ct. 528 (2005), 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 Schaffer declined to address the issue of whether a state could override this rule. Prior to the decision in Schaffer, New Jersey placed the burden of proof on the school district, pursuant to the holding of the New Jersey Supreme Court in Lascari v. Bd. of Educ., 116 N.J. 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 Schaffer.

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

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:

Senators Weinberg, Bucco and Madden

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: 11/9/2007)

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

3

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
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25 related to special education. In Schaffer v. Weast, 126 S.Ct. 528
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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.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 2604

STATE OF NEW JERSEY

DATED: NOVEMBER 29, 2007

The Senate Education Committee reports favorably Senate Bill No. 2604.

This bill concerns the allocation of the burdens of proof and production in due process hearings conducted for the purpose of resolving issues related to special education.

The bill allocates the burden of proof in a due process hearing to the school district, restoring the procedure used in New Jersey courts prior to the 2006 United States Supreme Court decision in Schaffer v. Weast, 126 S.Ct. 528 (2006). In Schaffer, the Court held that the burden of proof in a due process hearing is properly placed upon the party seeking relief. However, the Court left open the possibility that a state may override this rule by statute. Prior to Schaffer, courts in New Jersey allocated the burden of proof to the school district pursuant to the holding of the New Jersey Supreme Court in Lascari v. Bd. of Educ., 116 N.J. 30 (1989). This bill will reinstitute that practice. The bill also allocates the burden of production to the school district.

The party with the “burden of production” must produce enough evidence to show the judge that a reasonable trier of fact could find in the party’s favor as to every element of the claim at issue. The party with the “burden of proof” is the party that must ultimately prove its case to the trier of fact.