



## **Burden of proof: What to know and why it's important**

Burden of proof is generally understood as the duty of one of the parties to a legal dispute to prove a fact or an issue in dispute such that the decision-maker will rule in the party's favor.

In special education litigation that means, depending on who has the burden of proof, a parent who brings a claim against a school district needs to have the evidence to show why that what the district did was in violation of their child's rights in some way, said Nathanya Simon, a school attorney with Scarinci Hollenbeck, LLC in Lyndhurst, N.J.

Take, for example, a parent who feels that his child should get a certain accommodation. If the district said, 'No, we're not allowing that accommodation,' and the burden of proof fell upon the parent, it would be the responsibility of the parent to bring forth medical or other evidence upon which a judge could find the parent was correct in her challenge, Simon said.

"If you think of the lawsuit as going from zero, where you have no chance, to 100 percent, the burden of proof means you're more than 50 percent correct," Simon said.

A lot of these cases are very close, so the person with the burden of proof has a harder time because he's not just challenging the other party, and he also has to prove that he's right, she said.

## **Background**

The IDEA did not have in its provisions how the burden of proof was supposed to be allocated until the Supreme Court decision in *Schaffer v. Weast*, [44 IDELR 150](#) (2005). In that decision, the court found that while it supported the parents having the burden of proof as a matter of best protocol, it was not going to mandate it if a state felt otherwise, Simon said. "What happens in a majority of the states, because of the way the Supreme Court worded it, [is that] the burden of proof either remains with or changed to the parent," she said.

However, this is different for each state. There are some states where the parent has the burden of proof, and still a few where it's shifted back again by state legislatures to the school districts having the burden of proof. In New Jersey, for example, the burden of proof is on the school district, Simon said. In many other states, it's on the parents.

"In New Jersey, burden of proof in IDEA and Section 504 rests with districts to prove what they did is correct, as opposed to the parent having to prove that what the district did was wrong," Simon said.

## **Reasonable accommodations**

When working with parents on student accommodations, Section 504 coordinators should think about a few things:

- **What is the parent asking for?**
- **How reasonable is the accommodation?**

## · What is the hardship of the district providing the accommodation?

For example, a parent requests that the school install an elevator in one of its buildings because his child's lab is on the third floor. The district is not going to add the elevator because it will cost thousands of dollars. Instead, they might offer the student accommodations to the maximum extent possible, such as putting the lab in a different location or providing an alternative educational activity that satisfies the lab requirement.

Or a student may want to play an athletic sport that he does not have the physical ability to play. Section 504 coordinators need to consider if the accommodations that the family is asking for will change the nature of the sport. For example, if a student is unable to walk the golf course, but is able to hit the ball, can she still be in the tournament? What is the accommodation? Does the accommodation change the sport, or become unreasonable?

Over the years, accommodations have been made for children in wheelchairs to participate in many activities, Simon said. "The physically handicapped are incorporated," she said. "We make accommodations, provide aids, equipment that will allow for access. These are the things that are going on in 504." But there are also cases where accommodations are denied. "In those circumstances, that's where burden of proof becomes important," she said.

See also:

- [Parents can't persuade Court to revisit burden of proof in IDEA actions](#)
- [SmartStart: Judicial Actions -- Evidentiary Issues](#)
- [What Do I Do When... The Answer Book on Special Education Law -- Sixth Edition](#)

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