



The Council of Parent Attorneys and Advocates, Inc.

January 24, 2006

Members, Senate Committee on Education and Health  
c/o Senator H. Russell Potts, Jr., Chair  
Senate of Virginia  
P.O. Box 396  
Richmond, VA 23218

Senator Patricia S. Ticer  
Senate of Virginia  
P.O. Box 396  
Richmond, VA 23218

Re: S.B. 241; Individuals with Disabilities Education Act: Burden of Proof

Dear Senators:

The Council of Parent Attorneys and Advocates (COPAA) is a nonprofit organization of attorneys, advocates, and parents whose primary mission is to protect the civil rights of children with disabilities and secure appropriate educational services for them. Members of COPAA come from a variety of states, including a number from Virginia. Some of our members are in private practice; others work for nonprofit public interest groups and organizations, a number of which serve those with low incomes.

We ask the Committee to support S.B. 241, placing the burden of persuasion in special-education cases on school districts. We thank Senator Ticer for introducing this bill, which will help protect the rights of over 150,000 Virginia students with disabilities to the free appropriate public education that Virginia and federal law require. The bill is very similar to the position that the Commonwealth of Virginia took in its *amicus curiae* brief to the Supreme Court in *Schaffer v. Weast*. In that brief, Virginia explained why fundamental fairness merited placing the burden of proof on school districts. The Commonwealth's points were excellent ones, and we urge the Senate to adopt the same position and pass S.B. 241.

The Individuals with Disabilities Education Act mandates an active and equal role for parents in advocating for their child's education. Critical to the success of our special-education laws is the ability of parents, as private attorneys general, to bring due process complaints when their child's rights under Virginia and federal law are violated or denied. Parents often find it hard to navigate the special-education hearing maze. Most are not lawyers or trained in education law. School districts are familiar with special-education law and hearing procedures; parents are not. Senator Ticer's bill recognizes these inequities and seeks to correct them.

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Placing the burden of proof on school districts requires districts to do nothing more than prove to an impartial hearing officer that the Individualized Education Program or placement they propose for a child meets the IDEA's minimal standards. Indeed, school districts' overwhelming advantages over parents merit adoption of S.B. 241. IEP meetings are inherently intimidating for parents. Parents are often outnumbered by school personnel, who control the process. School districts have free, unfettered access to all relevant information about a proposed placement. Parents do not and are often denied access to those programs in advance of hearings. When parents' experts are permitted to observe children in class, observations are limited. School districts rely on psychologists, service providers, and other employees in IEP meetings to develop IEPs and then, on these same people (and other paid experts) to testify as witnesses at hearings. Parents, on the other hand, are often unable to access or afford expert witnesses. In fact, many parents of children with disabilities live in poverty or difficult financial circumstances and are less well-educated than parents of children in the general population.<sup>1</sup>

For many children, good special-education services make the difference between success and failure. But when parents believe that the school district has failed to provide the free appropriate public education mandated by law, their only recourse is to seek due process if they cannot convince the school team otherwise. School districts use their built-in expert witnesses and lawyers (both paid for with tax dollars) at these hearings. School districts are often experienced, repeat players. On the other hand, many parents are not represented by counsel, and know little about the law, and lack the large resources that the school districts have. Hence, placing the burden of proof on school districts, as S.B. 241 does, is important to level the playing field for parents and children in Virginia.

The Supreme Court's recent *Schaffer v. Weast* decision puts the burden of proof on the party challenging the IEP, unless a state law or regulation states otherwise. This party is most often the parent. (See Virginia Dept. of Education, *Annual Report of the Dispute Resolution Systems and Administrative Services*, 2005). In adopting S.B. 241, Virginia would join many states that place the burden of proof on school districts, thereby strengthening protections for students with disabilities. Please let us know if COPAA may be of assistance or provide further information.

Sincerely,

Robert I. Berlow  
Chair, Government Relations

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<sup>1</sup> M. Wagner, C. Marder, J. Blackorby, & D. Cardoso, *The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and Their Households* (Sept. 2002), 23 -24, 28-29 available at [http://www.seels.net/designdocs/SEELS\\_Children\\_We\\_Serve\\_Report.pdf](http://www.seels.net/designdocs/SEELS_Children_We_Serve_Report.pdf) (as visited November 29, 2005).