



The Council of Parent Attorneys and Advocates, Inc.

A national voice for special education rights and advocacy

July 2, 2007

via facsimile (518-474-1513)
The Honorable Eliot Spitzer
Governor of the State of New York
State Capitol
Albany, NY 12224

Re: Assembly Bill 5396A/S. 5972: Special Education Hearings
Leveling the Playing Field for Parents of Children with Disabilities

Dear Governor:

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. COPAA members see the special education's successes and failures through thousands of eyes, every day of every year. 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. Many members live in New York.

We write to urge you to sign Assembly Bill 5396A, which would restore the burden of proof in special education due process hearings to school districts. This bill would help protect the rights of over 400,000 children with disabilities in New York to the free appropriate public education that the Individual with Disabilities Education Act (IDEA) requires.

A vital part of IDEA's success is a fair hearing process. For many children, good special education services make the difference between success and failure. Yet when a school district has failed to provide the free appropriate public education the law requires, parents' only recourse is to seek a due process hearing if they cannot convince the school team otherwise. By placing the burden of proof on school districts, Assembly Bill 5396A would require a school district to do no more than establish for an impartial hearing officer that the Individualized Education Program or placement it proposes meets the law's minimal standards. Indeed, parents prevail in a hearing only if a school district provides an education so inferior that it fails its legal obligations.

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. Yet parents have far fewer resources and are less able to navigate the special education hearing maze than school districts. It is therefore appropriate that school districts in New York bear the burden of proof, as Assembly Bill 5396A would require.

Under the IDEA, parents should play an active role in advocating for their child's education. Nonetheless, even before a hearing, school districts have overwhelming advantages over parents. CSE (IEP) meetings are inherently intimidating for most parents. They are often outnumbered by school personnel, who control the process and the information. School districts rely on psychologists, service providers, and other employees in CSE 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.¹

Furthermore, school districts have free, unfettered access to relevant information about a proposed placement. Parents do not, and are often denied access to these programs in advance of hearings. When parents' experts are permitted to observe children in class, observations are often limited. Moreover, while school districts and their personnel are familiar with, and trained in, special education law and hearing procedures, most parents are not. Most parents are not lawyers, and few receive any real training in special education advocacy, let alone education law. School districts also have inherent advantages as repeat players in the process. Most parents have very little experience. At hearings, school districts use their built-in expert witnesses and lawyers (both paid for with tax dollars). On the other hand, many parents are not represented by counsel, know little about the law, and lack the vast resources that the school districts have.

Placing the burden of proof on school districts, as Assembly Bill 5396A does, is important to level the playing field for parents and children in New York. This bill would help ensure that New York has a strong scheme for enforcing a law that protects the rights of over 400,000 students with disabilities in New York. Thank you for your consideration.

Sincerely yours,

Jessica Butler
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Robert Berlow
Chair, Government Relations Committee

¹ 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.