

**SENATE, No. 2604**

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**STATE OF NEW JERSEY**  
**212th LEGISLATURE**

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INTRODUCED MARCH 15, 2007

Sponsored by:  
Senator STEPHEN M. SWEENEY  
District 3 (Salem, Cumberland and Gloucester)  
Senator JOSEPH V. DORIA, JR.  
District 31 (Hudson)

**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.

S2604 SWEENEY, DORIA

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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  
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.

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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.

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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 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  
burden of production, prior to the Schaffer decision, was generally  
40 placed on the school district. This bill codifies that practice.

**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)

**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*

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2 46 of Title 18A of the New Jersey Statutes.

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7 1. Whenever a due process hearing is held pursuant to the  
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9 U.S.C. s.1400 et seq., chapter 46 of Title 18A of the New Jersey  
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STATEMENT

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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 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.

36 The bill also places the burden of production on the school  
37 district. The Supreme Court in Schaffer noted at the outset of its  
38 opinion that the case concerned only the burden of proof. The  
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