

# MASSACHUSETTS ADVOCATES for CHILDREN

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## S. 227 An Act to Provide Fair Process for Students with Disabilities

Lead Sponsors: Sen. Eldridge, Rep. Wolf

### Fact Sheet

- This bill would add one sentence to the Massachusetts Special Education statute-- **“The school committee shall have the burden of proof in any proceeding conducted pursuant to this section.”** --reinstating an important Massachusetts procedural rule that was set aside following a decision by the U.S. Supreme Court.
- The burden of proof determines which party wins if the evidence is closely balanced. The party who carries the burden of proof must present enough evidence to convince the hearing officer or judge that their position should prevail in a close case.
- Prior to the issuance of the 2005 U.S. Supreme Court decision, *Shaffer v. Weast*, 543 U.S. 1145, the Massachusetts Bureau of Special Education Appeals (BSEA) and the 1<sup>st</sup> Circuit Court of Appeals had placed the burden of proof on school districts to demonstrate the adequacy of an IEP, following what was then the generally accepted rule under federal special education law. (*See, TB v. Warwick School Committee*, 361 F.3d 80 (1<sup>st</sup> Cir. 2004); *Pioneer Valley R.S.D.*, BSEA #04-2566, 10 MSER 214 (2004).)
- The Supreme Court held in *Shaffer*, however, that the party initiating a due process action--parents in the vast majority of cases-- must carry the burden of proof under federal special education law **unless a state chooses to apply a different rule**. This means that, unless a state applies a different rule, parents must produce evidence sufficient to prove that the school’s program is inadequate.
- As stated by Justice Ginsburg in the dissent, “policy considerations, convenience, and fairness” call for assigning the burden of proof to the school district. School districts are in a much better position to gather evidence and prove their case because they have much greater access to the resources, information, experts, and witnesses directly involved with the child’s education, including the child’s classroom teachers, psychologists, behavioral specialists, special education administrators, speech therapists, curriculum specialists, etc.
- Further tipping the scales of justice in the school districts’ favor, a later Supreme Court decision (*Arlington v. Murphy*, 548 U.S. 291 (2006)) ruled that parents who prevail in special education cases can not recover fees for experts.
- As noted in the *Schaffer* decision, placing the burden of proof on school districts is likely to encourage school officials to put more effort into preparing IEPs, improving educational outcomes for children with disabilities and warding off disputes and large litigation expenses.
- Placing the burden of proof on parents creates an unfair burden on families trying to ensure that the school district is providing an appropriate program. The due process protections are essential to ensure that children with disabilities receive equal educational opportunities. The burden of proof should be assigned to school districts as a matter of fairness to level the playing field, and to help deter costly disputes.