
ASSEMBLY BILL NO. 318—ASSEMBLYWOMEN
MASTROLUCA AND SMITH

MARCH 18, 2011

Referred to Committee on Education

SUMMARY—Places the burden of proof and the burden of production on a school district in a due process hearing held pursuant to the Individuals with Disabilities Education Act. (BDR 34-1025)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to education; placing the burden of proof and the burden of production on a school district in a due process hearing held pursuant to the Individuals with Disabilities Education Act in which the school district is a party; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing federal law prescribes certain requirements for the education of pupils
2 with disabilities pursuant to the Individuals with Disabilities Education Act. (20
3 U.S.C. §§ 1400 et seq.) Under the federal Act, school districts are required to make
4 available to pupils with disabilities a “free appropriate public education,” including
5 the development of an individualized education program for each pupil with a
6 disability served by the school district. The federal Act also requires each state to
7 comply with certain prescribed administrative procedures to ensure that pupils with
8 disabilities and their parents or guardians are guaranteed procedural safeguards
9 with respect to the provision of a free appropriate public education, including
10 procedures allowing a parent or guardian to file a due process complaint notice and
11 the opportunity for an impartial due process hearing. (20 U.S.C. § 1415) Existing
12 administrative regulations of the State Board of Education set forth the procedural
13 requirements for such a due process complaint and hearing. (NAC 388.306-
14 388.318) The federal Act is silent, however, as to whether the school district or the
15 parent or guardian bears the burden of proof at such a hearing. The United States
16 Supreme Court has not specifically ruled on the issue of whether a state law may
17 shift the burden of proof to the school district in all cases but has ruled that in the
18 absence of a state law, the complaining party bears the burden of proof. (*Schaffer v.*
19 *Weast*, 126 S.Ct. 528 (2005)) This bill provides that in all due process hearings held



* A B 3 1 8 *

20 pursuant to the federal Act where the school district is a party, the school district
21 bear the burden of proof and the burden of production.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 388 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *Whenever a due process hearing is held pursuant to the*
4 *Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et*
5 *seq., regarding the identification, evaluation, reevaluation,*
6 *classification, educational placement or disciplinary action of or*
7 *provision of a free appropriate public education to a pupil with a*
8 *disability, and a school district is a party, the school district has*
9 *the burden of proof and the burden of production.*

10 **Sec. 2.** NRS 388.440 is hereby amended to read as follows:

11 388.440 As used in NRS 388.440 to 388.5317, inclusive ~~§~~,
12 *and section 1 of this act:*

13 1. “Gifted and talented pupil” means a person under the age of
14 18 years who demonstrates such outstanding academic skills or
15 aptitudes that the person cannot progress effectively in a regular
16 school program and therefore needs special instruction or special
17 services.

18 2. “Pupil who receives early intervening services” means a
19 person enrolled in kindergarten or grades 1 to 12, inclusive, who is
20 not a pupil with a disability but who needs additional academic and
21 behavioral support to succeed in a regular school program.

22 3. “Pupil with a disability” means a person under the age of 22
23 years who deviates either educationally, physically, socially or
24 emotionally so markedly from normal patterns that the person
25 cannot progress effectively in a regular school program and
26 therefore needs special instruction or special services.

27 **Sec. 3.** This act becomes effective on July 1, 2011.

