

Assembly Bill No. 318–Assemblywomen
Mastroluca and Smith

CHAPTER.....

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:

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

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


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

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

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



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

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

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

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

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

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

