



# STATE OF CONNECTICUT

STATE BOARD OF EDUCATION



## Special Education Regulations – Burden of Proof Connecticut State Board of Education Follow-up

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### Background:

During the State Board of Education (SBE) deliberations on the proposed revisions to the state special education regulations, board members raised questions related to the assignment of the Burden of Proof in special education due process hearings. Currently, the burden of proof in special education due process hearings rests with the local school district regardless of which party filed for a hearing. It should be noted however, in hearings involving a unilateral placement of a student in a private school, during the hearing, the Burden of Proof may shift from the local school district to the parent.

The Board specifically asked the Connecticut State Department of Education to address the following question:

***“Is it feasible to give the hearing officer authority to determine assignment of the burden of proof based on the issues in the due process hearing assigned to the hearing officer?”***

This question was brought forward to a group of stakeholders for discussion at a meeting held on September 24, 2013.

### Stakeholder Group Process:

The group of stakeholders invited to the September meeting replicated individuals/entities previously engaged with the CSDE in examining the issue of the burden of proof. The entities are listed below:

- CT Association of School Business Officials
- CT Association of Boards of Education
- CT Association of Public School Superintendents
- CT Parent and Advocacy Center
- State Office of Protection and Advocacy
- Connecticut Council of Administrators of Special Education (ConnCASE)
- State Advisory Council for Special Education
- CT Association of Boards of Education
- Shipman & Goodwin, LLP
- Attorneys who represent parents of children with special needs

A total of 10 entities were invited. Nine were represented by 13 individuals who attended the meeting.

An external facilitator, Ms. Susan Marks, was brought in by CSDE to facilitate the discussion. She is a Senior Program Associate with the Northeast Regional Resource Center (NERRC). Ms. Marks has been a practicing attorney since 1978, has specialized in education law for over 15 years and in special education law since 2002.

## Discussion:

**Response to the Board Question:** The consensus of the group was that it was not a good idea to give the hearing officer authority to determine assignment of the burden of proof on an individual case basis, based on the issues in an individual due process hearing. They stated that it would be important to know ahead of time which party has the burden of proof. Determination on a case-by-case basis would likely add complexity to an already complex process and could lead to increased costs in certain cases.

**Other Related Issues:** In addition to the discussion that led to the above consensus, members of the group expressed that the burden of proof question is a small part of larger concerns that they have within the due process system. The stakeholders raised general concerns regarding the following components of the due process system:

There were concerns and issues with the due process system overall. Generally, the group talked about an integrated issue concerning the following components of the due process system, the Department and ultimately the child:

- child outcome – the stakeholders questioned if hearing decisions always represented a positive outcome for the child;
- time – there should be a time limit on the hearings;
- cost – it can get very expensive for the district or the parents in terms of legal fees, especially when the hearing lasts for days;
- inconsistencies with hearing officer and the process – a hearing officer’s decision appears to be is very subjective -
  - depending on the hearing officer assigned, the attorney for the parent or the district may file a request for a dismissal without prejudice in hopes of getting a different hearing officer assigned;
- length of hearings – it was reported that some hearings unnecessarily last for weeks. (For example, a stakeholder mentioned a hearing where the district rested and the hearing officer then requested that a teacher who was in another state, due to a family emergency, be called back to testify at the hearing.);
- training of hearing officers – the stakeholders felt that training offered to hearing officers was inconsistent and not very thorough;
- per diem system of compensation – since a hearing officer receives a per diem rate, the stakeholders questioned if the per diem system of compensation attributes to longer hearings;
- per diem rate – the stakeholders questioned if the per diem rate is affecting the quality of individuals contracted to serve as hearing officers; and
- Department oversight – there continues to be a need for a bureau chief.

## Conclusion and Next Step:

The stakeholder group wished to thank the State Board of Education for bringing this question forward to them for further discussion and feedback.

As a result of this meeting and the consensus reached, the CSDE will assemble a team to include CSDE representatives and external stakeholders to review the present special education due process system in Connecticut to determine areas that can be improved or made more efficient and effective.