

Julie Reiley  
[reiley@aya.yale.edu](mailto:reiley@aya.yale.edu)  
301-320-5573

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**Statement before Commission on Special Education Access and Equity**

Recently, MSEA claimed shifting the burden of proof in special education is a proxy for other issues. This is incorrect. We've articulated the problem and how to fix it. It is unfair for children with disabilities to have their parents bear the burden of proof, and it needs to be shifted to the schools. I do think, though, that MSEA opposition may be a proxy for something else, in all likelihood too many students per case manager.

By asking a school district to carry the burden of proof, all we're asking is that when, for example, without parental consent, it removes a child from a program, or eliminates half his resource time, the school district goes first and explains to the hearing officer how it's still providing the child with FAPE or the "basic floor of opportunity" (*Rowley*, 458 U.S. 176 (1982)), and that it does so regardless of the parents' ability to pay for an attorney, by meeting the same burden parents must meet now. Given the significant advantages the schools have, this is basic fairness. Several states have recognized this. In New York and New Jersey schools had the burden of proof for years before *Schaffer v. Weast*, and they took it back. The NYSUT knew it was unfair to expect parents to carry the burden of proof.

Moreover, shifting the burden will increase collaboration. Right now, we lack a meaningful institutional incentive to collaborate, because school districts know that, except in the most egregious cases that also happen to involve parents who can afford thousands of dollars for attorneys and testing, they'll win - *no matter what*.

As for paper work, the data from New York and New Jersey show we can expect fewer hearings. This has not been refuted. Likewise, an independent analysis found *if an IEP team is complying with the IDEA*, the information gathered to justify the IEP at the meeting stage would suffice.

It's time to stop opposing this civil right as a proxy for addressing resource concerns. If the real problem is, for example, that case managers have too many students and a state cap is needed, then address that. But let's stop making things harder on parents by shortening the 5-day rule (as was attempted three sessions ago) or opposing rectifying the fundamentally unfair situation of the burden of proof on parents – and their children - *because this is about the children*. Instead, let's right this wrong, and encourage collaboration and a fairer process, for the benefit of all children with special needs.

Thus, once again, I ask the Commission to recommend shifting the burden of proof to the school districts in special education due process.