

# SHIFT THE BURDEN OF PROOF(BOP) In Special Education

**What is the impact of the bill?** Bring fairness, equity and accountability to Special Education.

**What change is being sought?**

Leveling the field in special education disputes will foster greater collaboration between families and schools; add accountability to supports and services provided. Ultimately, will reduce the number of due process cases in special education (*as happened in NY and NJ, states which shifted BOP after Schaffer v. Weast*).

Even though in the majority of special education due process cases parents are the party seeking relief, shift the BOP to the party required by federal law (\*IDEA) to work with parents to develop and implement IEPs (Individual Education Programs): our school systems.

What is Burden of Proof (BOP)? BOP IN MARYLAND

In common legal disputes, “burden of proof” is simply the obligation (burden) of the party seeking relief to produce the preponderance of evidence to prove its argument. In special education however, disagreements have little in common with typical legal disputes, and nothing is ever simple.

The U.S. Supreme Court’s 2005 Schaffer v. Weast decision included the clause “in the absence of a state statute assigning burden of proof to either party,” allowing states to decide which party bears the BOP in special education due process cases.

**Maryland does not have a state statute** assigning BOP to either party in due process hearings. By filling the void of the missing statute, Maryland can - as other states already have done - help bring fairness, equity and accountability to special education by shifting the burden of proof in due process cases to the party responsible for working with parents to create and implement IEPs - the school district.

**This will not put an extra burden on teachers.** None of the teacher’s responsibility is changing. Special educators are already responsible for performing compliance work where they have to prove that they are providing services, because we know it’s critical to students’ success. The data and assessment results are used to identify deficiencies and validate progress. Therefore, more work by the educators is not needed.

**Why shifting the BOP is important:**

*Schools can and often do make changes to the plans, services and placements of students with special needs without parental consent.*

- Schools control all aspects of the plans, services, and placements provided to students with special needs.
- Schools have the knowledge of special education law, available services and placement options.

- Schools have the educational and legal experts, available and funded, on staff or by contract, as well as easy access to school-based witnesses.
- Schools have easy access to the complete history of a student's IEP and education record.
- Most parents have limited resources, limited knowledge of their options, and limited access to witnesses and information.
- School systems often decline to participate in mediations meant to resolve disputes, forcing parents to choose due process or withdraw their complaint.
- The burden weighs heaviest on low-income families who cannot afford attorneys to represent them in a due process hearing.
- The scales of fairness and equity are out of balance, and favor school systems.
- Parents want resolution; they do not want escalation to a due process hearing.