

Bill as
Introduced

HB 581 - AS AMENDED BY THE HOUSE

7Apr2021... 0823h

2021 SESSION

21-0702
06/05

HOUSE BILL

581

AN ACT

relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

SPONSORS:

Rep. Cordelli, Carr. 4; Rep. Verville, Rock. 2; Rep. Thomas, Rock. 5; Rep. Spillane, Rock. 2; Rep. McLean, Hills. 44; Rep. Rouillard, Hills. 6; Sen. Reagan, Dist 17

COMMITTEE:

Education

AMENDED ANALYSIS

This bill provides that the burden of proving the appropriateness of a child's special education placement or program is on the school district or other public agency. This bill also establishes a committee to study special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Special Education; Due Process Hearing; Burden of Proof. Amend RSA 186-
2 C:16-b by inserting after paragraph III the following new paragraph:

3 III-a. In all hearings the school district shall have the burden of proof, including the burden
4 of persuasion and production, of the appropriateness of the child's program or placement, or of the
5 program or placement proposed by the public agency. This burden shall be met by a preponderance
6 of the evidence.

7 2 Committee Established. There is established a committee to study special education dispute
8 resolution options and the burden of proof in due process hearings conducted by the department of
9 education.

10 3 Membership and Compensation.

11 I. The members of the committee shall be as follows:

12 (a) Three members of the house of representatives, appointed by the speaker of the
13 house of representatives.

14 (b) One member of the senate, appointed by the president of the senate.

15 II. Members of the committee shall receive mileage at the legislative rate when attending to
16 the duties of the committee.

17 4 Duties. The committee shall:

18 I. Examine "child find" IDEA requirements.

19 II. Examine the IEP process under IDEA including team participants, roles, and
20 responsibilities, time frames, and parental consent.

21 III. Familiarize itself with federal IDEA and department of education options for dispute
22 resolution in special education cases.

23 IV. Examine department and other agency supports for parents including information for
24 parents on procedural safeguards and available remedies.

25 V. Examine department of education monitoring of:

26 (a) District compliance with IDEA, state law and rules.

27 (b) IDEA parental complaints leading to state administrative hearings.

28 VI. Opportunities and best practices for dispute resolution processes at the "early stages."

29 VII. Consult with parents, other state agencies and experts, as needed.

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- Page 2 -

1 VIII. Develop findings and recommendations based upon federal IDEA, parental and expert
2 input, and best practices from districts as well as other states.

3 5 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
4 among the members. The first meeting of the committee shall be called by the first-named house
5 member. The first meeting of the committee shall be held within 45 days of the effective date of this
6 section. Three members of the committee shall constitute a quorum.

7 6 Report. The committee shall report its findings and any recommendations for proposed
8 legislation to the speaker of the house of representatives, the president of the senate, the house
9 clerk, the senate clerk, the governor, and the state library on or before November 1, 2021.

10 7 Effective Date. This act shall take effect upon its passage.

CHAPTER 158
HB 581 - FINAL VERSION

7Apr2021... 0823h

2021 SESSION

21-0702
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HOUSE BILL **581**

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 158:7 Effective Date. This act shall take effect upon its passage.

Approved: July 29, 2021
Effective Date: July 29, 2021

Committee Minutes

**AMENDED
SENATE CALENDAR NOTICE
Education**

Sen Ruth Ward, Chair
Sen Erin Hennessey, Vice Chair
Sen Denise Ricciardi, Member
Sen Jay Kahn, Member
Sen Suzanne Prentiss, Member

Date: April 7, 2021

HEARINGS

Tuesday	04/13/2021	
(Day)	(Date)	
Education	REMOTE 000	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	HB 401	relative to the duty of school superintendents regarding criminal history records checks.
9:10 a.m.	HB 500	relative to reducing school food waste and addressing child hunger.
9:20 a.m.	HB 581	relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.
9:30 a.m.	HB 152	relative to the apportionment of costs in cooperative school districts.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98146769174>
2. To listen via telephone: Dial(for higher quality, dial a number based on your current location):

1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833

3. Or iPhone one-tap: +13126266799, 98146769174# or +19292056099, 98146769174#

4. Webinar ID: 981 4676 9174

5. To view/listen to this hearing on YouTube, use this link:

<https://www.youtube.com/channel/UCjBZdtriRnQdmg-2MPMiWrA>

6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:

<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 401

Rep. Mullen

Rep. Myler

HB 500

Rep. Loughman

Sen. Sherman

HB 581

Rep. Cordelli

Rep. McLean

HB 152

Rep. McGhee

Rep. Allard

Rep. Tanner

Rep. M. Murray

Sen. Ward

Rep. Verville

Rep. Rouillard

Rep. Cornell

Rep. Woodcock

Rep. Mullen

Rep. Thomas

Sen. Reagan

Rep. M. Murray

Rep. Kenney

Rep. Spillane

Ava Hawkes 271-4151

Ruth Ward
Chairman

Senate Education Committee

Ava Hawkes 271-4151

HB 581, relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

Hearing Date: April 13, 2021

Time Opened: 9:53 a.m.

Time Closed: 11:03 a.m.

Members of the Committee Present: Senators Ward, Hennessey, Ricciardi, Kahn and Prentiss

Members of the Committee Absent : None

Bill Analysis: This bill provides that the burden of proving the appropriateness of a child's special education placement or program is on the school district or other public agency. This bill also establishes a committee to study special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education.

Sponsors:

Rep. Cordelli

Rep. Verville

Rep. Thomas

Rep. Spillane

Rep. McLean

Rep. Rouillard

Sen. Reagan

Who supports the bill: 61 people signed up in support of this bill. Full sign-in sheet available upon request.

Who opposes the bill: Gerald Zelin (NHASEA), Becky Wilson (NHSBA), Jane Bergeron-Beaulieu (NHASEA)

Who is neutral on the bill: None.

Summary of testimony presented:

Representative Glen Cordelli - Carroll, District 4

- This bill deals with special education due process.
- This bill passed the House Committee unanimously.
- A Supreme Court case of importance is from 2005 where the parents of student sued their local school district over a proposed IEP.
- The district court ruled in favor of the parents, however, the 4th district reversed the decision.

- As IDEA is silent on the burden of proof in due process hearings, the 4th circuit held to the general rule that the party initiating the suit bears the burden of proof. This set the stage for the U.S. Supreme Court case.
- The Supreme Court agreed that the party seeking the suit bear the burden, but they declined to address if states on their own could adopt laws or regulations assigning burden to school districts.
- In this Supreme Court case, nine states submitted briefs supporting that idea, that the burden should fall on the district.
- Since that 2005 decision, several states have done what NH intends to do with this bill. States include CT, NY, NJ, and DE.
- There is a difference between terms burden of production and persuasion appear. Burden of proof includes both of those burdens.
- It could cost parents upwards of \$20,000 or more for a due process hearing.
- Parents do not have legal resources, documents or school information readily available.
- The deck is stacked against parents as they are at a disadvantage.
- The study commission included in this bill is tasked with finding answers on what leads parents and families to the last step of a due process hearing.
- It is incumbent on us to make the due process hearing more fair for parents.
- Senator Kahn asked Representative Cordelli about the three states who have independently enacted statutes and if he recalled the source of this information.
 - Representative Cordelli believes there are more states who have enacted similar legislation, he listed those three as neighboring states.
 - He does not recall the source but will send it along to the committee.

Representative Sue Mullen - Hillsborough, District 7

- Supports this bill as the coauthor of the amendment in the House.
- This bill required exceptional consideration as she could see merit on both sides of the argument.
- Arguing on behalf of your child can be intimidating, especially when there is a lack in access to legal resources and knowledge of where to go for help.
- On the other hand, NHDOE worked diligently to develop a multi-tiered resolution process to prevent litigation becoming the only choice.
- We all want an alternative to a lawsuit to resolve a conflict.
- This bill, as introduced, would address the perspective of the parent.
- The amended version takes a deeper dive into what best practices would result in minimizing conflicts in NH, get to the bottom of the issues that result in lawsuits.
- Senator Kahn asked Representative Mullen if a study committee should come first, then proceed with the process changes in statute. He asked if we should we flip the order.

- Representative Mullen said her original amendment was to actually replace HB 581 with a study committee altogether. But, the urgency presented in the bill is felt across the state.
- The House Education Committee felt marrying the two was the best bipartisan effort.

Moira Ryan

- Supports this bill and will submit written testimony.
- The need to help our kids to become independent heavily outweighs anything else.
- She has been through all four steps of the resolution process.
- There is disproportionate burden on single parents, minorities, low-income households.
- Schools write the IEPs and are responsible for implementing them. They control the data and can deny the parent access to that data.
- In her due process hearing in 2019, the school district turned over data up until 2016, but failed to give her 2017-2019.
- Interpretation of test results can also be misleading. For example, if a student gets an A in English but an F in math, your average overall is a C.
- A due process hearing is a compliance hearing, not a criminal proceeding. The goal is to determine if the school is in compliance with IDEA.
- Less than 3% of all students with IEPs have them for intellectual disabilities. With 14% proficiencies in math and 17% in reading, this renders it impossible for the kids to maintain gainful employment.
- Approximately 20% of any given class has students with IEPs.
- These children are not getting fully educated or becoming independent which prevents them from participating in our society and causes the state to have to pay trillions of dollars for their support.
- About 36,000 students have IEPs in NH.
- Her son, who has an IQ of 160, has never learned how to properly read or write.
- As a junior in high school, college is not an option for him nor is the military. The military doesn't accept folks who had IEPs after age 13.
- The opportunity to become an independent and productive member of society has been taken away from her son.
- This is largely due to her school district debating over spending \$7,000 to teach her son how to write properly.
- A debate over services that the school district is legally required to provide, but denied because they can.

Andrew Feinstein

- Private attorney in Mystic, Connecticut and works with a national organization that represents children with disabilities around the country.
- The Supreme Court said the term “appropriate,” when referring to an appropriate education, is cryptic.
- Because of this uncertainty, there are disputes but very few disputes go to the hearing stage and cases result in different outcomes.
- In Connecticut, 80-90,000 kids have an IEP. Each year, only roughly 15 cases are litigated. Most are resolved in the mediation process.
- The study commission is far broader than the issue of due process. This is not a situation where one needs to study it first.
- There are seven states plus D.C. that place the burden on school districts now.
- This year, there was a substantial dispute in Maryland and the result was not a change in the burden of proof, but requiring parents to affirmatively consent to an IEP.
- Seconde the question raised by a former testifier if this bill would violate the NH constitution due to an unfunded mandate.
- This is not a bill that would result in parents winning disputes more often. States with this kind of legislation do not have higher success rates by parents.
- This bill is about judicial efficiency.
- Burden of production is the more important of the two burdens of proof.
- Burden of persuasion only comes into play when the case is close.
- He has read hundreds of hearing officer decisions, burden of persuasion just doesn't happen.
- Who has resources and expertise to go first is what this is really about.

Alicia Houston

- Supports this bill and submitted written testimony.
- Parent of two children in Nashua.
- This bill is insurmountably significant.
- Her experiences have been far from easy or a fair fight.
- There is not fair access in special education today.
- This month, during remote learning, she pleaded with guidance counselors at her child's school for at least a four day in-person education for her son. Since her son only has a 504 plan, not an IEP, her request was denied.
- Her child's school district used the COVID-19 pandemic and the subsequent emergency orders with malice, by persuading parents from requesting services for their own children, as they would be taking services from students who actually need them.
- Even though the system intends to help, it is an uphill battle.

- This bill shifts weight from parents shoulders, children receive fairness and equality.
- By the time a due process hearing is requested, parents have exhausted all other means.

Becky Wilson – Director of Governmental Relations, NH School Board Association

- Opposed to this bill and submitted written testimony.
- They appreciate the amendment.
- Unclear how the original bill provides anything different than what parents would gain from due process hearing.
- The majority of cases are resolved via other dispute resolution methods.
- Their focus would be to provide a better look into how we can better support dispute resolutions in IEP process as cases don't have to go to due process hearings.
- As NH already supersedes IDEA mandates, this would further the burden on school districts to meet federal requirements.
- Since 2011, highest number of cases which have gone to due process hearing is nine.
- By resorting to due process hearings, this impacts how districts can work with families over time.
- Cases can be resolved in other ways.
- Some districts must file for due process hearings in some cases.
- Some districts have insurance to cover cost, however, it doesn't cover findings of hearings, i.e. additional services and placements that weren't anticipated. These costs are down shifted to taxpayers.
- These costs will then have to come out of operating budgets. After the first year, those costs are no longer considered unanticipated.
- Due process is final attempt to resolve a disagreement.
- Unclear how this bill would encourage parents to participate in due process hearings without representation.
- She was previously a district director. She has only ever attended a due process hearing once.
- Shifting burden of proof doesn't provide representation to families.

Gerald Zelin

- In opposition and submitted written testimony.
- Attorney in Portsmouth.
- Specializes in representation school districts since 1975.
- Volunteering on behalf of a statewide organization, NH Association of Special Education Administrators.

- Seven states plus D.C. have overridden the decision regarding the burden of proof. Fewer states have done what this bill seeks to accomplish which is always place production burden on school district.
- There is evidence that states it is better when parents present their evidence first.
- NH has leveled playing field in a different way by allowing parents to veto an IEP.
- Under federal law, and in most states, districts offer an IEP and placement is given. In NH, it is flipped and districts cannot implement unless parents consent.
- Power that parents have in NH gives them an enormous amount of bargaining power; this is a reason why there are so few cases.
- In 2020, an identical bill, with the exception of the study committee, was sent to interim study.
- He would suggest that the bill be stripped down to the study committee only to review nuances.
- Senator Kahn asked Attorney Zelin to clarify that out of the 27,000-29,000 IEPs, which is roughly 15% of our school population, only approximately three cases go to dispute resolution.
 - Mr. Zelin said this COVID-19 pandemic year is unusual. However, typically, they receive over 100 requests each year and only a handful, around three, go to a hearing.
- Speaking for a second time, he noted that under FERPA, parents have rights to all records that schools have on their student and they can seek them at any time.
- While a school district doesn't have to explain their decision until the hearing, a written prior notice is due and they must present cogent efforts.
- The idea that districts can hold information close to chest and spring upon folks at hearings is false.

Patricia Eno

- Supports this bill.
- Parent of a special education child.
- The school district typically has staff present at meetings, where they can't comfortably advocate for a student's needs, that go against their employer.
- School district is responsible to prove they are doing their best.
- Mediation and other resolution steps are voluntary; school district does not have to participate.
- She was against her IEP on several occasions, then it just sits there, and they do what they want.
- School districts do not have to prove that they have done what they're required to do.

- They have advantage in numbers.
- She brought medical evidence to her district's attention. A follow-up meeting was required, her child was then told he didn't need additional services, besides the fact that his proficiency numbers decreased each year.
- Administrators left to meet a budget goal will focus on conserving resources. Students who need more expensive services will be the ones to suffer.
- Elementary students without needs met will become a costly middle school student.
- This also leads to these children growing up to be underemployed and undereducated.
- Gaps widen each year that needs aren't met.
- It is very easy to delay and deny.
- Blame is placed on child and shifted to parent; character assassination is common on parents.

Katherine Shea

- Supports this bill.
- This bill is not about lawsuits but about the process.
- It's about a really old and broken process that stacks the deck against parents.
- Families and schools cannot wait for the results of another study committee.
- She has four children, two who are autistic.
- Having been held back two grades, her child's case is now in worse condition due to a lack in services requested.
- Inefficient process and never ending debates.
- There are 36,000 students in NH with IEPs. This number has grown since the data previously referenced.
- They now have to pay out of pocket for services, even when their tax dollars fund attorneys to fight against them.
- They have no power, if they don't sign IEP, nothing happens.
- Contrary to previous testimony, schools only have to consider medical diagnoses and don't have to accept them.
- Many teachers and administrators can't say a word, but know things need to change.
- You can file for mediation and due process, but you'll need funds.
- Families have no chance because of the burden of proof. They don't realize this until they're too far in the process.
- Encourage a more collaborative process.
- This destroys families and children's futures.
- There should not be a fight over whether kids need basic services. This bill should not solely be sent to a study committee.

Jane Bergeron-Beaulieu - Executive Director, NH Association of Special Education Administrators

- Opposed to this bill.
- Supports the legal aspects brought forward by Attorney Zelin.
- Hopes to represent their members viewpoint.
- Their members recognize and value the partnerships with families.
- Positive relationships are needed for children and youth with disabilities.
- There are many processes and pathways to resolving conflict.
- Statistics are low for when a due process hearing is needed.
- These low statistics speak to the work they do for meeting needs of children.
- Financial burden will fall on local taxpayers.
- As amended, the study committee does not include school districts, which is disappointing. They need to be a part of the conversation.
- Senator Kahn asked Ms. Bergeron-Beaulieu how dispute cases are just dropped when IEPs aren't approved by parents, per experiences referenced in previous testimony. It is disturbing that someone is not following through the process.
 - If there is a disagreement, IEP stays in place until resolution comes forward; there are a number of alternative routes. She doesn't know if all those things happened in the cases previously mentioned.
- Senator Kahn asked if a parent could say they'd like mediation, then the school district would be responsible for contacting NHDOE in asking for a mediator.
 - Ms. Bergeron-Beaulieu said the parent or school district can reach out to NHDOE to move those options forward.
 - NH is lucky, we have more options prior to a due process hearing; other states have more due process hearings and more conflict.
- Senator Kahn asked Ms. Bergeron-Beaulieu if the number of times NHDOE is asked to intervene is around 100.
 - Ms. Bergeron-Beaulieu said she is not certain, happy to follow-up. She knows the number of formal complaints is very low.

Joseph Hannon

- Supports this bill.
- Father of a child with Downs Syndrome.
- His daughter has received excellent care and his family is lucky.
- He has only objected to school district recommendations once regarding physical exercise training.
- He agreed with previous testifiers about why so few cases reach due process hearing level, i.e. David and Goliath argument.
- Parents don't have resources to go up against school districts.
- It is easy for school districts to bear burden as they have access to the resources and information to prove that services are being provided.
- When children don't receive the education required, there are lifelong impacts.

- As this is a study committee and not a commission, the membership would be legislative members only.
- The interim study recommendation from 2020 is not a good indicator as it was a year of lost legislation due to the COVID-19 pandemic.

Michael Skibbie - Policy Director, Disability Rights Center of NH

- Supports this bill.
- It is important to take note of the testimony provided by NH School Board's Association where they noted that schools would ultimately have to provide more services with this in place. This is a striking concept.
- If school districts are doing the right thing, there shouldn't be a concern about having to justify actions.
- The effect of this bill will unlikely impact hearings themselves. For example, outcomes are not drastically different in states where school districts bear the burden of proof.
- The benefit will be upstream via the decisions made in close cases.
- Most families do not have resources to mount a successful challenge before a hearing officer.
- In close cases, schools are already confident that they won't be challenged. This bill would result in them having to justify their decisions.

Jennifer Blagriff

- Supports this bill and submitted written testimony.
- The amendment to this bill is necessary, however, she is nervous that the Senate will just go forward with amendment only and not the entire bill as amended.
- She has two students with dyslexia, so she has some understanding of mediation and due process.
- Due process hearing is the last resort.
- Parents that have time, money and resources can hire special education attorneys or folks to do independent evaluations that can come to due process as witnesses.
- She is worried about parents without time, money and resources.
- If you call a law office, due process will cost approximately \$20,000 and mediation will run roughly \$6,000. In addition to these costs, you also have to pay for independent evaluations.
- This bill needs to pass as it will result in an upstream resolution and prevent problems down the line.

Tracy Walbridge

- Testified following the conclusion of the hearing on HB 581.

- Supports this bill and submitted written testimony.
- IEP teams are not functioning the way they need to be.
- The involvement of law firms has yet been addressed.
- The idea that, under FERPA, families have access to many things is not the case.
- Malicious compliance by school districts.
- Student outcomes are very low as are proficiency rates.

amh

Date Hearing Report completed: April 16, 2021

Speakers

Senate Remote Testify

Education Committee Testify List for Bill HB581 on 2021-04-13

Support: 61 Oppose: 3 Neutral: 0 Total to Testify: 13

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Walbridge, Tracy	tracywalbridge@gmail.com	603.312.1283	A Member of the Public	Myself	Support	Yes
Bouchard, Shannon	Sbouchard92@yahoo.com	Not Given	A Member of the Public	Myself	Support	Yes
Rouillard, Claire	Not Given	Not Given	An Elected Official	Myself	Support	No
Rakoski, Ronnieann	ronnieann.l.rakoski@ddc.nh.gov	603-3236	State Agency Staff	Council members	Support	No
Wilson, Jennifer	Not Given	Not Given	A Member of the Public	Myself	Support	No
Pike, Jennifer	jennifer-pike@comcast.net	603.526.2456	A Member of the Public	Myself	Support	No
Blagriff, Edward	Not Given	Not Given	A Member of the Public	Myself	Support	No
Fry, Thomas	Not Given	Not Given	A Member of the Public	Myself	Support	No
Hicks, C	Not Given	Not Given	A Member of the Public	Myself	Support	No
Ward, Joanne	Not Given	Not Given	A Member of the Public	Myself	Support	No
Merwin, Joyce	Not Given	Not Given	A Member of the Public	Myself	Support	No
Shea, Tanner	Not Given	Not Given	A Member of the Public	Myself	Support	No
Merwin, Robert	Not Given	Not Given	A Member of the Public	Myself	Support	No
Reagan, Senator John	Not Given	Not Given	An Elected Official	Senate District 17	Support	No
Reed, Barbara D.	BDRreed74@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Benard, Patrice	playchords@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Ryan, Maryann	Not Given	Not Given	A Member of the Public	Myself	Support	No
Ryan, Jack	jackjryan@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Ryan, Thomas	Not Given	Not Given	A Member of the Public	Myself	Support	No
Murphy, Hon. Nancy	murphy.nancya@gmail.com	603.424.0254	A Member of the Public	Myself	Support	No
Blagriff, Jennifer	jenniferblagriffpt@gmail.com	603-731-4424	A Member of the Public	Myself	Support	No
Gundy, Connor	connorgundy77@gmail.com	603.494.7672	A Member of the Public	Myself	Support	No
Kinara, Tonya	tlkinara@gmail.com	603.858.4105	A Member of the Public	Myself	Support	No
Cooper, Lora	mizkoop31@gmail.com	703-931-7388	A Member of the Public	Myself	Support	No
Battaglia, Michele	Not Given	Not Given	A Member of the Public	Myself	Support	No
Clement, Ellen	bruceaclement@gmail.com	603.399.4923	A Member of the Public	Myself	Support	No
Beaulieu, Rothna	Not Given	Not Given	A Member of the Public	Myself	Support	No
Carter, Jaime	gundyja@hotmail.com	603.848.5447	A Member of the Public	Myself	Support	No
Carter, Ross	rosscarter02@gmail.com	603.545.1538	A Member of the Public	Myself	Support	No
Beaulieu, James	beaulieujm@protonmail.com	339.234.1190	A Member of the Public	Myself	Support	No
Robertson, Lindsay	aynlindsay@gmail.com	904-402-4796	A Member of the Public	My daughter with Down syndrome	Support	No
Ulery, Shannon	Not Given	Not Given	An Elected Official	Myself	Support	No
Gildersleeve, Darlene	dmcote88@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Ostroff, Sam	sostroff@comcast.net	603.793.2500	A Member of the Public	Myself	Support	No
Capone, Tiffanie	tcapone74@icloud.com	603.520.1947	A Member of the Public	Myself	Support	No
Jordan, Jennifer	Not Given	Not Given	A Member of the Public	Myself	Support	No
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No
Hanson, Jeannette	Not Given	Not Given	A Member of the Public	Myself	Support	No
LaJeunesse, Craig	Not Given	Not Given	A Member of the Public	Myself	Support	No
McLean, Mark	Mmclean777@comcast.net	16036680076	An Elected Official	Myself	Support	No
Jannino, Erica	Not Given	Not Given	A Member of the Public	Myself	Support	No
DeWitt, Colt	Not Given	Not Given	A Member of the Public	Myself	Support	No
Thomas, Doug	doug.thomasnh@gmail.com	603.490.3226	An Elected Official	Myself	Support	No
Appleton, Hunter	Not Given	Not Given	A Member of the Public	Myself	Support	No
Dubuque, Darlene	Not Given	Not Given	A Member of the Public	Myself	Support	No
Notter, Jeanine	jeanine.notter@leg.state.nh.us	603-423-0408	An Elected Official	Hillsborough 21	Support	No
Jordan, Andrew	apjordan217@gmail.com	Not Given	A Member of the Public	Myself	Support	No

Casey, Bebe	bcasey1996@comcast.net	Not Given	A Member of the Public	Myself	Support	No	4
Owens, Becky	beckybco@yahoo.com	603.315.0981	A Member of the Public	Myself	Support	No	4
Symms, Jane	janesymms6_1@yahoo.com	603-335-6109	A Member of the Public	Myself	Support	No	4
Anderson, Sarah	scanderson5852@gmail.com	603.306.7435	A Member of the Public	Myself	Support	No	4
Pospychala, Erin	erinmvp@gmail.com	603.526.7616	A Member of the Public	Myself	Support	No	4
Wright, Greta	I	Not Given	A Member of the Public	Myself	Support	No	4
Hannon, Joe	joehannon4nh@gmail.com	603.418.5531	A Member of the Public	Myself	Support	Yes	4
Shea, Katherine	klynshea4618@gmail.com	603-361-3534	A Member of the Public	Myself	Support	Yes	4
Bergeron-Beaulieu, Jane	jbergeron@nhasea.org	603 494 1149	A Lobbyist	NH Association of Special Education Administrators	Oppose	Yes	4
Mullen, Sue	Sue.mullen@leg.state.nh.us	Not Given	An Elected Official	Myself	Support	Yes	4
Feinstein, Andrew	afeinstein@edlawct.com	860-969-0700	A Member of the Public	Council of Parent Attorneys and Advocates	Support	Yes	4
Wilson, Becky	bwilson@nhsba.org	Not Given	A Lobbyist	New Hampshire School Boards Association	Oppose	Yes	4
Houston, Alicia	Ahouston617@gmail.com	603.820.3468	A Member of the Public	Myself	Support	Yes	4
Zelin, Gerald	gzelin@dwmlaw.com	603-792-7408	A Member of the Public	New Hampshire Association of Special Education Administrators	Oppose	Yes	4
cordelli, Glenn	Not Given	603.515.0008	An Elected Official	Myself	Support	Yes	4
Eno, Patricia	marktrisheno@yahoo.com	603.898.5045	A Member of the Public	Students, Parents, and an educated public	Support	Yes	4
Ryan, Moira	army51kilo@hotmail.com	603.404.8891	A Member of the Public	Myself	Support	Yes	4

Testimony

Ava Hawkes

From: Jaime Gundy <gundyja@hotmail.com>
Sent: Wednesday, April 7, 2021 11:54 AM
To: Ava Hawkes
Subject: Support HB 581

Good Afternoon

My name is Jaime Carter and I live in Londonderry with my husband Ross (a former Marine) and am the mother of a special education student. I am reaching out regarding HB 581. I would respectfully ask that you support the passage of this bill.

As you know, many neighboring states have already beat our state to punch by passing similar bills (NJ, NY, CT to name a few). This bill provides greater equality for disadvantaged families, whom we know are statistically more likely to have special needs students.

Parents don't have the same access to documents and experts and school information. I can tell you from personal experience it is very hard to gain access to them by requesting them and even harder to tell if you're looking at a final copy where the documents lack any form of control and version approval dates etc. and signature pages are separate from the rest of the document. The language of schools and IEPs is really well understood within the system but for newcomers, you really need an SME to help disentangle the language. For example, I had a parent-teacher conference recently. I assumed that was like any other kid would have, especially with a 15-minute meeting window given, however, it was in fact an IEP progress meeting and was totally blindsided without my consultant there to help.

The IDEA does not provide pre-trial discovery - thus no right to interview teachers and other school professionals in advance—yet school systems have access to all of this discovery. I can see that being problematic, for example in a recent governor's compensation meeting I was asked to sign an excusal for one IEP team member. Working in the FDA regulated industry, I pay a lot of attention to good documentation and noted missing documents referenced and requested them but didn't receive them until after the meeting. These documents informed the reader and acknowledged a gap in services that was not discussed but should have been. Without the education and specific career field, I was lucky enough to choose, I would not have even been provided that referenced document.

Many parents are unable to afford an attorney or experts- schools already have representation. I have been very grateful to have the ability to have a private consultant with me at most meetings since I have a family member in the field but this is not something most of our most disadvantaged parents would have access to. I also have had my IEPs change drastically thanks to reports from my private evaluations. The same things would apply were it to be necessary for us to pursue things legally with our school district.

Schools "win" cases while presenting little or NO evidence in support. Again, I am new to this, I haven't had to go through due process to date as my student is just 4 and diagnosed mid pandemic but this has been my experience as it relates to Governor's Compensatory Services meeting, I recently had with the school district. I would argue the supports were at times inaccurate, missing, vague and conflicting with our accounts and records. Even the invitation to the meeting, which we were supposed to receive in September, was in question. I was told an email invite was sent. I

recieved a determination for a meeting I wasn't notified of. I checked my junk, spam and have my district emails whitelisted on my email server. It was not recieved. It was simply my word against theirs.

Thank you for taking the time to consider my thoughts on this matter. Please pass HB 581.

With Thanks,
Jaime Carter
3 Angelo Lane
Londonderry, NH 03053
(603) 848-5447

April 12, 2021

Via email and first class mail

Ruth Ward, Chair
New Hampshire Senate Education Committee
State House, Room 302
107 North Main St.
Concord, N.H. 03301

RE: 2021 NH HB 581 (regarding the burden of proof at
special education hearings)

Dear Sen. Ward:

The New Hampshire Association of Special Education Administrators (NHASEA), which I have volunteered to represent, opposes House Bill 581.

1. The bill places the cart before the horse. Section 2 (page 1, line 8) creates a committee to study the burden of proof. However, Section 1 alters the burden of proof before that committee studies the issue.
2. The bill is unconstitutional insofar as it shifts the burden of *persuasion* onto school districts. The New Hampshire Supreme Court has ruled that a state law shifting the burden of persuasion onto municipalities, causing them to lose more cases, violates Part 1, Article 28-a of the state constitution, which prohibits new unfunded state mandates. *New Hampshire Municipal Trust Workers' Compensation Fund v. Flynn*, 133 N.H. 17 (1990).
3. Imposing the burden of *persuasion* on school districts in special education cases is bad policy, as the U.S. Supreme Court explained in *Schaffer v. Weast*. 546 U.S. 49 (2005).
4. Imposing the burden of *production* on school districts is bad policy because it will unnecessarily prolong special education hearings.
5. The bill (at page 1, line 29) directs the study committee to consult with the State Department of Education, parents, and "other state agencies and experts, as needed," but omits consultation with school districts.

HB 581 resurrects an idea that the legislature has already firmly rejected. Aside from proposing a study commission, HB 581 is identical to 2020 HB 1232. On October 20, 2020, the House Education Committee voted 17-2 that HB 1232 was "inexpedient to

legislate” and sent it to interim study.¹ On October 20, 2020 the interim study committee voted 13-0 to issue the following report: “Not recommended for Future Legislation.”²

ELABORATION

HB 581 proposes to impose on school districts the burden of proof at special education hearings conducted by the New Hampshire Department of Education under RSA 186-C, which is New Hampshire’s special education statute. RSA 186-C implements the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.

The term “burden of proof” encompasses two distinct concepts:

- the burden of production (which party must present its evidence first); and
- the burden of persuasion (which party loses if the evidence is closely balanced).

HB 581 would turn current law upside down by imposing both burdens on school districts in all IEP and placement disputes.

The status quo, which HB 581 would reverse, is as follows.

- The New Hampshire Board of Education’s rules impose the burden of *production* on the party initiating the hearing, unless the hearing officer determines that altering this sequence would allow the hearing to proceed more quickly and efficiently and “would not materially prejudice any party’s right to a full and fair hearing.” N.H. Code Admin. Rules, Ed 1123.17(a).
- The U.S. Supreme Court has ruled that the IDEA imposes the burden of *persuasion* on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005).³The court declined to answer whether states may alter this through state law.

The IDEA requires that school districts in participating states offer a “free appropriate public education” (FAPE) to every child with a disability who requires special education. To be “appropriate,” a program must be “reasonably calculated to confer a meaningful educational benefit in light of the child’s circumstances.” *C.D. v. Natick Public School District*, 924 F.3d 621, 629 (1st Cir. 2019). Parents understandably want the “best” programs that will enable their children to reach full potential, but the IDEA does not require this. *Board of Education of Hendrick Hudson School District v. Rowley*, 458 U.S.

¹http://gencourt.state.nh.us/bill_Status/bill_docket.aspx?lsr=2442&sy=2020&sortoption=billnumber&txtsessionyear=2020&txtbillnumber=hb1232

² *Id.*

³ This may be the party that filed for the hearing or the party challenging the IEP team’s decision. E.g., *D.B. v. Esposito*, 675 F.3d 26, note 3 (1st Cir. 2012).

176 (1982). While the average annual costs for educating an IDEA-eligible child is approximately \$32,000, in most years school districts receive approximately \$1,400 in federal IDEA funds to help defray those costs.⁴

The blueprint for each child's special education program is set forth in an IEP, which is developed by a team that includes school district personnel and the student's parents. 20 U.S.C. § 1401(9)(D). An IEP recites the special education services the school district will provide for the coming year. The team then selects a "placement," which is the school or environment in which the IEP will be implemented.

If parents or the school district cannot agree on a student's IEP or placement, either of them may file for a "due process hearing." 20 U.S.C. § 1415(b)(7), (c)(2), (f). These hearings are conducted by administrative law judges appointed by the New Hampshire Department of Education. RSA 186-C:16-a. Hearing officer decisions are appealable to state and federal court. 20 U.S.C. § 1415(i)(2). Parents who prevail at an IDEA due process hearing may recover attorney's fees from the school district. 20 U.S.C. § 1415(i)(3)(B).

Most requests for IDEA hearings are filed by parents who seek more special education services than their school district offered. The most common case in my experience involves parents seeking public funding for special education at a private school after the IEP team decided that that an in-district program was appropriate.

According to the New Hampshire Department of Education, between 1978 and April 2020, IDEA hearing officer decisions ruled in favor of school districts 58 percent of the time, for parents 34 percent of the time, and reached mixed outcomes 8 percent of the time. N.H. Dept. Educ., *Special Education Impartial Due Process Hearings in New Hampshire – A 45 year History, 1975-2020* (May 2020).

It is important to note that New Hampshire law already gives parents a significant advantage that federal law does not confer: the power to veto a proposed IEP or placement.

- The U.S. Department of Education's regulations implementing the IDEA require that a school district obtain written parental consent before implementing a student's *first* IEP or *first* placement. 34 C.F.R. § 300.300(b)(1). For any *subsequent* IEP or placement, federal law allows the school district to implement its proposal unless parents file for a due process hearing and prevail.
- The New Hampshire Board of Education's regulations significantly alter that balance of power. They require that a school district obtain parental consent (or permission from a hearing officer) before implementing *any* IEP or placement. N.H. Code Admin. Rules, Ed 1120.04. As a consequence, New Hampshire IEP teams strive to reach consensus and school districts make many compromises to

⁴ In New Hampshire, the average annual per pupil cost for all children is approximately \$16,000. Multiple studies confirm that the average annual per pupil cost for an IDEA-eligible child is approximately twice that amount.

secure parental consent.⁵

Thus, shifting the burden of proof onto school districts is not necessary to level the playing field in New Hampshire.

It is already difficult for school districts to prevail at special education hearings. Hearing officers, being human, naturally sympathize with students who have disabilities and with those students' parents. Hearing officers sometimes overlook that public resources are finite; when a school district spends more money on one student, it must either raise taxes or cut programs for other children. When parents of students with disabilities prevail at hearings, federal law allows them to recover their attorney's fees from the school district. Hearings require extensive witness preparation, pulling teachers out of their classrooms.

Those realities induce school districts to settle most special education disputes through mediation, thus avoiding a hearing.

The U.S. Supreme Court's decision in *Schaffer v. Weast* lists several policy reasons for placing the *burden of persuasion* on the "moving party" at an IDEA hearing. These include the following:

- In American jurisprudence, the plaintiff ordinarily bears the burden of persuasion.
- Automatically placing the burden of persuasion on the district "assume[s] every IEP is invalid until the school district demonstrates it is not." The IDEA "does not support this conclusion." The IDEA "relies heavily upon the expertise of school districts to meet its goals."
- The IDEA compels the school district to explain to the student's parents, well in advance of any hearing, all the reasons for its proposals.

Turning from the burden of persuasion to the *burden of production*, Peter Wright, a nationally recognized attorney who represents *parents* in special education cases, explained why it is unwise to require that school districts always present their case first.

I always go first. This gives me control over the order of witnesses, and allows me to lay out the case and theme of the case in the manner I prefer.

* * *

I prefer to go first. I had a case in Pennsylvania where the school district had the burden of proof and was expected to go first. Opposing counsel and I agreed that I would go first, even though the school district had the burden of proof. The

⁵ COPAA's January 22, 2021 letter to the Committee overlooks this idiosyncrasy of New Hampshire law. COPAA's letter incorrectly assumes that parents must file for due process whenever they disagree with the IEP or placement a school district offers.

Hearing Officer refused to go along with our agreement and forced the school district to go first.

What was the result?

The due process hearing, a tuition reimbursement "Carter" case, could have been completed in two or three days. Instead, the case continued for months. With nearly two weeks of testimony.

Why?

The school district attorney had to anticipate my case, the testimony of my witnesses, and had to cover every possible issue from A to Z in direct examination of school witnesses. The case that should have been clear, simple and quick became long, drawn out and slow. In the process, the issues in the case became more convoluted.⁶

HB 581, in contrast, requires that school districts *always* present their evidence first. The bill strips hearing officers of authority to alter the sequence no matter what the circumstances. HB 581 does not even allow an alteration of the sequence by agreement of the parties. The bill is much too rigid in that respect.

Thank you for considering these comments.

Very truly yours,

Gerald M. Zelin

Gerald M. Zelin

⁶ Wright, Peter W. D. "Schaffer v. Weast: How Will the Decision Affect YOU?" *Wrightslaw*, 2005, www.wrightslaw.com/law/art/schaffer.impact.pwright.htm.

Ava Hawkes

From: Shannon Marie Bouchard <sbouchard92@yahoo.com>
Sent: Monday, April 12, 2021 9:37 AM
To: Ava Hawkes
Subject: Hb581

To whom it may concern:

I am the parent of a child with a disability.

My daughter began receiving services through our local school district from the age of 3. My daughter has now been in special education and she is now 15.

As I look back on the struggles my daughter has faced with her disability I am in awe of just how far she has come.

You would now think I would be so grateful for the special education she has received through my district. Though some of the years were easy to obtain services that she desperately needed most unfortunately were not.

The way the law is written it is up to the parent/legal guardian to have all the burden of proof on what is and is not being followed by the district. This burden being put on the parents to obtain legal counsel if needed is unjust. The districts all have their high payed attorneys on staff and meanwhile the average layperson does not have the funds nor the ability to make sure the districts are following the best interest of the student.

My daughter and I would eventually have to use the manifest educational hardship law in order to have her transferred due to the harassment and bullying she endured with our home district. We then had to learn the law does not even fully protect the student in finding another district to accept a hardship transfer.

Now that we have found a school. we as the parents have to provide transportation. The only school willing to accept her is the farthest away from our residence. We are pleased that at least she has a new school to be transferred to with the added expense on us.

Our families struggles though have not stopped there. We are still facing the same obstacles with this district with the special education not being inclusive, instead they once again offering a push out education in order to obtain her special educational needs. If I could be paid for the amount of times these districts are not following the safeguards put into place by the state of NH, I would also then have the ability to go forth with afford to file for due process.

I truly believe that districts realize that they will usually prevail as they have attorneys on their side while most parents who pay taxes and struggle to survive will not.

I would ask you all to allow this to pass so that parents and those caring for the most vulnerable members of our society have a voice and have a way to protect them that is more than a pamphlet of rules promising to safeguard their rights in the state of NH.

Sincerely,
Shannon Bouchard

HB 581

Good Morning.

For the record: I am Rep. Sue Mullen from Hillsborough County and I represent the town of Bedford.

For me, HB 581 was one of those bills that warranted careful consideration because I could see the merit in both sides of the argument.

On the one hand, there is no doubt that many parents find it challenging, if not intimidating, to argue on behalf of their children in Special Education matters. Schools have experts, attorneys, and resources that parents may struggle to find. Regulations can be hard to understand and frequently change, and parents may not know where to go for help.

On the other hand, the Department of Education has worked diligently to both develop and implement conflict resolution processes with the intent of helping parents reach agreement with their school district BEFORE litigation seems to be the only choice. There is dedicated personnel available to listen, direct, and mediate disputes, as well as the due process offered through the Department hearings and the State Board of Education appeal. Surely, lawsuits can't be the only way to solve a problem?!

Rep. Cordelli's original bill flipping the burden of proof is meant to address the intimidation of David fighting Goliath. The amendment to that bill is a bipartisan effort to dig deeper, to see if we can determine the root cause of any unresolved disputes. We want to look at the laws, both state and federal, the policies and procedures currently in place, and the best practices in both NH and other states that might result in minimizing conflict and assisting our disabled students to thrive.

Thank you.

Submitted by Rep. Sue Mullen on April 13, 2021

Ava Hawkes

From: Patrice Benard <playchords@gmail.com>
Sent: Monday, April 12, 2021 1:50 PM
To: Ava Hawkes
Subject: HB 581

Dear Committee Members,

I am unable to give testimony today due to the fact that I will be helping other parents in two different IEP meetings Tuesday morning. I am now homeschooling my child who was on an IEP in the Manchester School District. I chose this option rather than going through the tedious process of asking for a due process hearing after I witnessed such a hearing for my friend. It was so stacked against the parent and child, that it discouraged me from even attempting to get a free and appropriate education for my own child. After discovering that the school that my child would be attending failed to educate even one IEP student to a proficient rate in Math in 2019, according to the disaggregated data on the state website, I realized that I can do far better myself. When I assessed my son, I realized that although he had received A's in all classes at McLaughlin Middle School, he was unable to tell me the basic parts of speech. I had to start with a First Grade grammar textbook to insure he would get a solid foundation for Grammar and Composition.

Next year my child's public school won't be getting the adequacy funds for my child, nor will they be getting the supplemental funds for his IEP, nor the supplemental funds for his reduced lunch. If I could have those funds myself, maybe I could hire a high-priced lawyer to go to a due process hearing. But you won't give me those funds, so I will simply teach my child myself. Please do what you can to make the process more equitable for the child and the parents. Thank you.

Mrs Patrice Benard
31 Aurore Ave, Manchester, NH 03109



New Hampshire School Boards Association

Barrett M. Christina, Executive Director
Travis Thompson, President, Exeter Regional
Cooperative
Amy Facey, First Vice-President, Souhegan
Cooperative
Brenda Willis, Second Vice-President, Derry
Cooperative
Shannon Barnes, Past-President, Merrimack

25 Triangle Park Drive, Suite 101
Concord, NH 03301
Phone: (603) 228-2061
www.nhsba.org

April 12, 2021

Dear Madam Chair and members of the Senate Education Committee,

My name is Becky Wilson, and I serve as the Director of Governmental Relations for the New Hampshire School Boards Association. NHSBA is opposed to HB 581. This bill proposes to impose on New Hampshire school districts, the burden of proof at special education hearings conducted by the New Hampshire Department of Education.

Due process hearings, regardless of who carries the burden of proof, are significant investments for districts. Special education law in New Hampshire *requires* districts to move forward with a due process hearing in certain circumstances, although in many situations, disagreements are resolved or settled through mediation or other dispute resolution options, negating the need for a hearing. In fact, in 2019, only one case in New Hampshire was resolved through due process, in 2018- 4 cases, and in 2017-3 cases. Since 2011, the highest number of cases to be resolved through due process hearings, was 9 cases in 2011. These numbers and decisions can be found on the NHDOE website. Parents currently only carry the burden of proof in a Due Process Hearing, when the parents initiate and file for a Due Process Hearing. As stated previously, many times, cases do not need to go to Due Process, as they are resolved in other ways, through facilitated IEP meetings, mediation or neutral conference.

Mediations are often attended by school district leadership representing the district, and perhaps one other district staff member. Parents or guardians also attend and are able to bring an advocate or others to assist them. Mediations often last a full day, but can be highly successful in resolving a disagreement. Should a case not be resolved, school districts must prepare many more staff members for a due process hearing in anticipation of each staff member needing to participate in the trial. This can include extensive pre-trial conferences with legal counsel, interviews, extensive data collection, file preparation, and other required meetings prior to a hearing. These commitments remove staff from the classroom and service provision for large amounts of time; sometimes multiple days, or even weeks.

There is a large increase in legal fees to districts, as well, when a case goes to a due process hearing. In addition, districts at times, are ordered to reimburse parents for legal fees incurred as part of the due process hearing. This is in addition to any unanticipated costs which may come from the findings of the hearings, such as out of district placements, additional services, etc.

School districts across New Hampshire have currently set their operating budgets for 2021-2022. Proposed budgets likely do not include the additional costs to legal fees, the additional staffing which will be needed when due process hearings increase, to cover classroom and special education teachers and providers who are needing to attend hearings, and do not include the potential increased costs of changed placements or increased services which could come as a result of additional hearings. School districts will be put into a position once again, to shift monies within the operating budget to cover these unanticipated costs, and this will affect other programming and resources available to all students within the district. In the following year's budget, the costs of placements, additional or changed services, are no longer "unanticipated", and must be included in the operating budget, potentially increasing costs to local taxpayers.

School districts work diligently to work collaboratively with families to meet their IDEA obligations, and the additional statutes required by New Hampshire's special education rules and regulations, which *already supersede* many federal IDEA statutes. HB 581 as proposed, will increase the likelihood that parents will pursue due process hearings as a first step, as opposed to a final attempt to resolve disagreement. While NHSBA appreciates the amended version of HB 581, to include a committee to study special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education. When filing for due process, districts and parents must state if they are willing to first go to mediation. The capacity of the NHDOE to staff, schedule and manage additional mediations, facilitated IEP meetings, and hearings within the mandated timelines, is an area of concern.

Please do not hesitate to reach out with any further questions or if NHSBA can be of any further assistance.

Respectfully submitted,


Rebecca R. Wilson, NHSBA, Director of Governmental Relations



NEW HAMPSHIRE
COUNCIL ON
DEVELOPMENTAL DISABILITIES

March 1, 2021

Dear members of the House Education Committee,

My name is Shawna Bowman. I am a parent representative on the New Hampshire Council on Developmental Disabilities and Chair of the Policy Committee.

On behalf of the New Hampshire Council on Developmental Disabilities, I am writing in support of **HB 581** relative to the burden of proof in special education hearings.

As a parent of students receiving special education services I can speak to the challenges of ensuring that my children are receiving a free and appropriate education as guaranteed under the federal Individuals with Disabilities Education Act. In the event parents and school districts cannot come to a consensus on how to best provide supports for a student receiving special education services, they may resort to mediation or due process.

Due Process is a formal hearing to obtain a ruling on disputes between a school district and parents regarding a child's education. Unfortunately, due process inherently leaves parents at a disadvantage. School districts are represented by attorneys compensated for their wealth of resources and legal experience. Most parents caring for a child with a disability cannot afford representation. Additionally, parents may not be able to gain access to all of the necessary resources for a fair representation of their argument.

School Districts are deemed experts in special education services. Their access to information regarding supports available to them, institutional knowledge and the professional experience of working with other students receiving special education services creates an advantage over parents.

We urge you to support **HB 581** relative to the burden of proof in special education hearings. As the experts, the school district should be required to provide proof of the success of their implemented individualized education plan regardless of who has filed the complaint.

Thank you for your time and consideration.

Best,

Shawna Bowman
Chair, Policy Committee for the Council on Developmental Disabilities

Ava Hawkes

From: Patricia Eno <marktrisheno@yahoo.com>
Sent: Monday, April 12, 2021 2:59 PM
To: Ruth Ward; Erin Hennessey; Suzanne Prentiss; Denise.Riccardi@leg.state.nh.us; Jay Kahn; Ava Hawkes
Subject: Please support HB 581

Good afternoon,

As a parent of a special education child, I am asking for your support for HB 581, to shift the burden of proof in Due Process Proceedings to the school district in every case. The school district already has present at each team meeting staff that can't comfortably advocate for a student's needs when that means going against their employer.

I understand testimony opposing this bill will come from an attorney speaking for the Superintendents association. That attorney will have you ignore that less than 20% of special education students graduate proficient in either reading or math, despite only 3% having intellectual disability. The superintendents themselves assign a budget to Special Education, and use privacy laws as a shield to protect them, and all non-special education staff, from the reality that New Hampshire schools are not educating some students in favor of those that are easier to educate well. Many students are offered less than they need, and it may take the parent a year or two to catch on. The IEP has to be renewed every year, and delaying and denying are very effective in reducing the budget for special education services. Tricks are constant. I once accepted small group help in math with my son's middle school special education teacher, only to find out that "small" was removed from the documentation before I signed it. My son counted twenty students receiving math help from a single special educator and one paraprofessional for 30 minutes, three times a week, in an honest-to- God converted broom closet. This is what compliance with an IEP looks like.

The legal firms that very frequently earn more in fees than the services they strike down have much to loose with this bill.

New Hampshire as a whole, as well as each family involved, has much to gain if high school graduates are all educated to the extent that they can be productive members of society.

Please advance, explain, and promote the need to shift the burden of proof to the party that owes the duty. The burden on the students is high, and the parents are not able to win against the natural advantages of the school districts.

Thank you for your time and service to New Hampshire Education,
Patricia Eno
90 Shadow Lake Road
Salem, NH 03079
(603) 898-5045

Ava Hawkes

From: jennifer-pike@tds.net
Sent: Tuesday, April 13, 2021 2:05 PM
To: Ava Hawkes
Subject: Please Support HB581
Attachments: Testimony - 3-15-21.pdf

Importance: High

I have been unable to update my written testimony as now, as a single mom, I am fighting with Deutsche Bank to save my house. You see I have a homestead right that is supposedly superior to the foreclosure, however, now that Deutsche has been ordered to pay my homestead amount they are unwilling to negotiate for me to purchase the house. Why is this so devastating? Because my son is autistic, has abandonment issues, has been abandoned by his father who fled the country for the Philippines, and his older siblings are off living their lives. The only thing he has that is stable is myself and this house. My son's JPPO, Fast Forward Team, and Psychologist even agree that his displacement would cause great harm. This is just another example of the Legal Abuse Syndrome that is practiced all over the country. Take advantage of the marginalized groups – whether it's race like black men being targeted, or Asians, Single Mother's, or Children with Disabilities... it is more of the same... and it is absolutely deplorable. I apologize that I did not have time to provide testimony in person this morning, or update my written testimony, but again I am trying to save my disabled son and I from becoming homeless. This is utterly disgusting. I hope that you find in support of HB581 for the sake of our disabled children that are being denied access to FAPE.

Please feel free to contact me at any time with any questions or concerns.

Thank you,
Jennifer

JENNIFER PIKE

Home: (603) 526-2456

Cell: (603) 748-5960

E-Mail: jennifer-pike@tds.net

E-Mail: jennifer-pike@comcast.net

JENNIFER PIKE
34 DOGWOOD LANE
NEW LONDON, NEW HAMPSHIRE 03257

March 15, 2021

Members of the House Education Committee
(via email @HouseEducationCommittee@leg.state.nh.us)

Re: HB581 - Amend RSA 186-C:16-b to shift the burden of proof in special education hearings to the school district.

Dear Chairman Rick Ladd and Members of the House Education Committee,

My name is Jennifer Pike and I live in New London, NH with my 16-year-old son Charlie that has Agenesis of the Corpus Callosum, Autism, Epilepsy, and more. On March 2, 2021, I submitted testimony asking you to support HB581, however, I feel compelled to reach out to all of you again and implore you to support this incredibly important bill that lies before you.

While I understand and appreciate Representative's Mullen's desire to form a study sub-committee, this would continue to allow the Districts to hold our children's education hostage. Only an exceedingly small percentage of particularly wealthy people would be able to ensure their children receive the very services the Districts are charged with providing by law by following through with the high cost of due process.

While November 1st may not seem that far off before the sub-committee would report back to the full committee, by then my son will be 17 and 4 months old – and the clock is ticking. He needs every second of instruction that we can give to him before he leaves High School. He is currently reading at a 2nd grade level. Please let that sink in. He will be 17 on June 11th and he is STILL reading at a 2nd grade level. I was told in Kindergarten that he was at a 1.8-2.3 grade level for Reading. How is it possible that he has made virtually no progress in 10 years?

The reason my son has not been able to make any meaningful progress is because the burden of proof is on the parent – or the party filing due process. I have had no recourse in 10 years to get my son the appropriate intensive services he requires for his disabilities. I am a single mom with little income and the school district knows this. The law firm that represents the District is known for not providing services to children of single moms as documented by multiple published articles. What gives the District or the Law Firm the right to decide that MY SON does not deserve a Free and Appropriate Education (FAPE)?

My son's educational file shows all the proof anyone needs that he requires "intensive intervention". In fact, Representative Cordelli pointed out that our special needs children typically test around 15% proficient on the State Assessments, however, my son falls in the 1%. His State Assessment has had an alert on it each time that he needs emergency intervention. Please understand this is NOT because he cannot learn, however, he has NOT been provided appropriate services. In fact, it was not until just about three weeks ago that I FINALLY was able to get the District to agree to provide **Reading services every day for my son!** After 10 years of trying! I had obtained it at one point; however, the Special Education Director then made a unilateral decision to change my son's IEP on his own and decrease his services on the first day of his 9th grade year!

Also, keep in mind, another important limitation with any dispute resolution is that you can only go back a maximum of two years from the time of filing. This is quite a barrier in itself. There is no room for frivolous actions, but this has also enabled the District to choose to provide minimal services in some cases because they can get away with it. No one is holding the District accountable.

What recourse do I have? I can file a complaint. It takes months of providing paperwork to the Department of Education and then the District gets a slap on the hand. I cannot go to due process because I do not have that kind of money and the District knows it. Hence, we keep going around and around in circles. There is no such thing as a level playing field. They have the data. I was not even provided report cards for years! How is that possible? Because I cannot file a due process hearing.

What is particularly troubling is the law firms hired by these Districts frequently publish articles about how NOT to provide services for our children with disabilities. Some articles have been written on how to manipulate the

interpretation of a Supreme Court Ruling in the favor of the District, again to avoid providing the very services the Districts are charged with providing to the children. Below is a link of an example where a Law Firm is trying to misrepresent the age in which a Special Education student can attend High School. The Federal Law trumps the State Laws, and the Federal Law states that a student can attend THROUGH their 21st year – INCLUSIVE – until the day before their 22nd birthday, however, this Law Firm is trying to have a parent believe the State Law would have precedence over the Federal Law.

Drummond Woodsum Article:

http://www.dwmlaw.com/READ-ITEM?artid=860&fbclid=IwAR03kDWvy0HTeUOaD5mgIz3BYe-OI2Wsp5JZ4eE_wzL20IHFpktPJ5ptTc

Maine Rules to Follow Federal Standard:

https://mainedoenews.net/2021/01/21/priority-notice-idea-eligibility-extended-until-age-22/?fbclid=IwAR1iey-q_BfJCCaL7BaGyENREKRy7xawmHKRKHirI8A3W_3to7K5QNjFAU

Furthermore, I received the offer below from the District in the attached WPN dated 2-03-21 after a recent IEP meeting.

1. Description of the action being proposed or refused by the school district:
 - a. The district is refusing Ms. Pike's request for out of district placement.
 - b. The district is refusing Ms. Pike's request for 4 hours of Lindamood-Bell
 - c. The district is refusing Ms. Pike's request to change Charlie's graduation date to 6/10/2026!
 - d. The district is proposing to update Charlie's Anticipated Graduation date from 6/18/2023 to 6/10/2025!
 - e. The district is proposing to add an additional 2.5 sessions a week of 1:1 Reading instruction time at 45 minutes per session.
 - f. The district is proposing to conduct an independent reading evaluation for Charlie.
 - g. The district is proposing to add a generalization expectation to Charlie's academic goals.

2. Explanation of why the school district proposes or refuses to take this action:
 - a. The district is refusing Ms. Pike's request for out of district placement due to data supporting that Charlie is making progress towards his goals.

- b. The district is refusing Ms. Pike's request for 4 hours of Lindamood-Bell due to him receiving 1:1 appropriate reading program currently being offered in which Charlie is making progress.
- c. The district is refusing Ms. Pike's request to change Charlie's graduation date to 6/10/2026 due to the current law of New Hampshire indicating that students are eligible for special education services until the age of 21.
- d. The district is proposing to update Charlie's anticipated graduation date from 6/18/2023 to 6/10/2025 as he will continue to receive special education services until he turns 21 years old to address transition/academic needs.
- e. The district is proposing to add an additional 2.5 sessions a week of 1:1 reading instruction time at 45 minutes per session to provide additional daily instruction as a compromise to Ms. Pike's request.
- f. The district is proposing to conduct an independent reading evaluation to obtain current reading level across all reading domains from a neutral outside evaluator.
- g. The district is proposing to add a generalization expectation to Charlie's academic goals to address parent concerns regarding his ability to generalize his skills with different people and in different settings.

Ironically, our District employs Drummond & Woodsum Law Firm, which has a reputation for not providing services for children with disabilities, and especially targets those who belong to single moms. As you can see from the explanation above, the District is being advised to reference State Law above Federal Law which is not legally correct. Please note that they did offer to change his graduation date to 6/10/2025. Upon receiving this WPN, I then requested this to be changed according to Federal Law, as per my email below.

Dear Larry,

Thank you for checking with the District's counsel regarding House Bill 1558. Yes, I see the bill was amended several times and ultimately there is no reference specifically to special education. However, I still respectfully request that you change Charlie's anticipated date of graduation to 6/10/26 based upon the Federal Special Education Regulations as defined by 34 C.F.R. section §300.101(a).

§300.101(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

Also, please reference the 2018 First Circuit Court ruling, K.L. v. Rhode Island Board of Education, that concluded students are entitled to FAPE until age 22 and referred to this as the “Federal Standard”.

Please feel free to contact me at your earliest convenience if you feel I have misinterpreted anything.

***Thank you,
Jen***

As I previously told you, the Special Education Director, Larry Elliott has made unilateral changes to my son's IEP without any explanation. No changes are to be made unless the entire IEP team agree, including the parent. This is an egregious violation of procedure at best and not the first time it has happened. Now remember I said to take note that the WPN identified that the TEAM was willing to change Charlie's graduation date to 6/10/2025? Now, please read the email I received from Larry Elliott below.

Dear Jen,

Thank you for your letter expressing disagreement with the “anticipated date of graduation” that is listed in Charlie's IEP. As Charlie is on track to receive a high school diploma, this date must accurately reflect when the team anticipates that Charlie will earn his high school diploma. This is currently listed in the IEP as 6/18/2023, which is an accurate reflection of the team's assessment of when Charlie will complete the credits necessary for him to earn his high school diploma. This date is not set in stone and the team will meet at least annually to discuss it and revise if necessary. At this point, the District is not changing Charlie's anticipated graduation date from 6/18/23. I have noted your disagreement with this decision and will include your letter on this point in Charlie's educational file.

***Larry Elliott
Director of Student Support Services
Kearsarge Regional School District
Phone: (603) 526- 9176
Fax: (603) 526-2145***

The TEAM does NOT feel that Charlie is prepared to graduate within two years as reflected on the WPN where they had already offered to make his graduation date 6/10/25. In fact, I believe it would take a small miracle to make anything close to making that happen. Remember, he is currently reading at a 2nd grade level. He does not have any Algebra or basic Math classes, Science, Social Studies, or 2 years of a Language. These are all requirements of High School Diploma according to the NH State Regulations.

The last thing I would like to bring to your attention at this moment is the attached press release for our new High School Principal. Mr. Langille joined us last July during a difficult time, and I appreciate the special challenges he has had to face during this difficult transition. However, please read through the entire press release and at the very end you will notice that it states that Mr. Langille, Jr. is "Drummond & Woodsum trained". From a special needs parent's perspective, I find this statement incredibly disturbing especially as Drummond & Woodsum represents the District against parents in any form of Special Education dispute resolution. This immediately makes me believe that the new High School Principal is going to be anti-special needs students/parents.

I am attaching copies of letters – these are real letters that I have sent to the school over the years regarding my son's education. If you truly insist on forming a study sub-committee, I implore you to pass HB581 in the meantime so I can at least get my son some services in the time he has left. Please think about all these kids who have limited time left in school. We need your help NOW.

In addition, the following link is to the late Justice Ginsburg's dissenting regarding where the burden of proof should lie in due process. I believe you would be awfully interested to read all her points.

https://www.law.cornell.edu/supct/pdf/04-698P.ZD?fbclid=IwAR23s8YZqTNHRR6PlaaKJrSpHflvyvEQXS590LOWy_cjXeT6-GPCBs26sgY

Please remember that we are not talking about someone winning a "prize". We are talking about our children's access to a Free and Appropriate Education (FAPE). My son never have a sincere chance for FAPE until the School Districts are held accountable. Until this happens, none of our children will have a chance to lead a meaningful and productive life. In addition, the costs will skyrocket for supporting these young adults that have not been educated appropriately or prepared for further education, employment, and independent living. Please remember the effects of your actions on families like mine when you are considering your vote today and support HB581 to amend RSA 186-C:16-b to shift the burden of proof in special education hearings to the school district.

Should you have any questions, please feel free to contact me at 526-2456.

Thank you for your time and service.

Sincerely,

Jennifer L. Pike

Jennifer L. Pike



Charlie Pike, 16yo with Romi

HB 581 Written testimony

Date: emailed April 13, 2021. at approximately 2:30 am

To: Senate Education Committee

From: Jennifer Blagriff, jenniferblagriffpt@yahoo.com, 603-731-4424, Hopkinton, NH

Re: HB 581

Hello, my name is Jennifer Blagriff. I am a democrat and live in Hopkinton, NH. I am providing this written testimony to state my support for HB 581 in my own personal capacity as a citizen. This bill provides that the burden of proving the appropriateness of a child's special education placement or program is on the school district or other public agency. Thank you in advance for reading my written testimony.

Please take note that I have 2 children with dyslexia who receive special education, I have considerable experience working in public schools with children with various disabilities receiving special education as a physical therapist, I am a Decoding Dyslexia - NH member transitioning to a leadership roll and I am a parent representative on the State Advisory Committee on the Education of Children with Disabilities Advising the NH Department of Education. I strongly believe all children with disabilities have the right to a free appropriate public education and I am greatly concerned that those families in NH with limited time, money and resources are at a significant disadvantage in attempting to advocate for their children.

Again, I am providing this written testimony to state my support of HB 581 in my own personal capacity as a citizen.

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. Parents, school staff members and other team members work together to develop a special education program and placement for the student. An Individualized Education Program (IEP) and placements must be decided by the this team. A key aspect to IDEA law is the requirement that the parent be an equal part of the team process at all times. This is an important aspect of special education which parents take very seriously. Parents are actively engaged in working with the schools to develop programs and placements to serve their children.

At times, parents and schools cannot reach agreements. When this happens, the parent can file for a due process hearing. At this time, in NH, if the parent files due process the parent has the burden of proof. This means that the parent will have to prove that the school district did not meet its obligations or will not be meeting its obligations under well established special education law. For a parent with ample time, money and resources, they may be able to bear the burden of proof successfully by researching special education law, organizing all school files they have received, requesting those files they have not received, organizing all communication records with the school district, hiring an excellent special education attorney, hiring experts to evaluate their child, and hiring experts to serve as witnesses at a due process hearing. Simply put, parents are not experts in special education programs, special education placements, special education law, or special education eligibility evaluations. However, due to bearing the burden of proof, in my opinion, it is necessary for a parent to hire a special education attorney and other experts in order to properly bear the burden of proof. Thus, many parents who are able, do spend a considerable amount of time, money and resources to bear the burden of proof at a due process special education hearing. The reason I advocate for your support for HB581 is not necessarily for these parents and their children but instead for the children and parents that cannot overcome these barriers to filing for due process and to be successful at a due process hearing. **Parents *without* ample time, money and resources are at a clear disadvantage prior to due process, when considering whether or not to file due process and during due process. By placing the burden of proof on the school district, fairness will be greatly improved for those children who have parents and families without ample time, money or resources.**

New Hampshire school districts have all of the resources that parents have to pay for at their finger tips and are most definitely the experts in special education when compared to the parent. NH school districts are able to perform appropriate special education evaluations, develop appropriate programs and decide on appropriate placements with the resources they have available within their district. Furthermore, **if a district is finding that their evaluation procedures, programs or placements, would not prove to be providing a child a free appropriate public education at a due process hearing than this in itself**

should indicate that the district needs to take action as this would mean they are not following IDEA federal law and state laws designed to protect children with disabilities. Lastly, many school districts in NH have established relationships with special education attorneys and interestingly many even hold liability insurance to assist in paying for their special education attorneys and possibly subsequent costs if it is proved at due process that they did not or were not planning on providing a free appropriate public education. When compared to parents, school districts are far better positioned to prove that they have provided a child with a free appropriate public education as required by law.

Unfortunately, by not placing the burden of proof on NH school districts, some school districts may pay closer attention to their budget than making sure that they are following federal and state laws. By changing the burden of proof to the school district, school administrators, educators and other professionals will be held at the appropriate and already well established legal standard in a due process hearing. If this burden of proof change does lead to some school districts in certain circumstances needing to spend additional resources to develop a program and placement for a child to receive a free appropriate public education, there will end up being long term savings to the school district and the state. The simple prevention of a due process hearing will save the district considerable resources & funds as they: (1) will not have to spend time working with their liability insurance provider, (2) will not have to pay lawyer fees above and beyond what their liability insurance covers, (3) will not have to spend time consulting with their school district special education attorney, (4) will not take staff members away from work to attend and prepare for hearings, (5) will not have to provide reimbursement fees to parents, and (6) will not have to pay compensatory education costs for education and services owed to the child.

Furthermore, when a child with a disability receives a free appropriate public education, this child will succeed as an adult and thus need considerably less or no state and federal resources. It also ensures that tax payer dollars are being spent on effective programs. For example, my two very intelligent children with dyslexia have a right to a free appropriate public education. This requires that they receive effective evidence based programming. My husband and I have had to strongly advocate for both of them at various points through the years so that they could be taught to read, spell and perform written expression tasks with appropriate evidence based programming in order to access grade level curriculum. The stark and heartbreaking reality is that if my children with dyslexia, albeit incredibly bright, do not receive a free appropriate public education they are at incredible risk of not becoming productive and happy members of our society. In summary, placing burden of proof on NH school districts will not place undue burden on districts or taxpayers. It will instead help ensure that districts are following the clear and specific special education laws already in place. I do recognize that changing burden of proof will only decrease one form or inequity in our state. I do support other measures, such as the school funding report findings, to decrease other causes of inequities in our state. Please strongly consider supporting HB581 as it is the right, just and fair thing to do in this difficult situation. This is a bill that republicans and democrats should both support as it will improve the civil rights and educational rights of children with disabilities.

Sincerely,
Jennifer Blagriff
716 Hopkinton Rd
Hopkinton, NH 03229

Ava Hawkes

From: Katherine Shea <klynshea4618@gmail.com>
Sent: Tuesday, April 13, 2021 3:34 PM
To: Ava Hawkes
Subject: Please Pass HB581
Attachments: BOP-Sen.pdf

Dear Madam Chairwoman & Committee Members,

Thank you for giving me time to be heard today. I have attached my testimony but wanted to touch on a few key points:

- Atty. Zelin has a huge self interest mutually beneficial with Drummond Woodson. He gets tipped off about due process situations well before they happen via his education consultant. These people are paid to benefit from DP in the schools favor as they are on the dole retained by districts with taxpayer money.
- Parents are held back in many ways with the current process, being able to copy some records but never getting all and at their own expense, in one case of someone testifying today, \$600.
- Educational advocates we try to retain at our expense will not go to mediation even without a lawyer. So not too many get that far but if they had a chance especially without a lawyer knowing it would be a fair playing field, more might go and resolve issues that drag on and on costing the schools time and expense of staff.
- There are NO OTHER negotiating contrary to Ms Bergeron who has also likely not stepped into an IEP meeting herself in decades if at all. There are zero checks and balances and to Senator Kahn's question yes, this is a problem with the process and it is wrong these things don't get resolved. Kids and families are suffering and it honestly makes it a lot harder on teachers also.
- if a parent wants mediation does not always automatically happen. Schools have the right to say no. Is voluntary.
- We have consulted with the Commissioner directly and he is in agreement the process must change.

I hope this is helpful. Please know that for a House Ed Committee to pass this 20-0 is pretty big sign our families desperately need help. It will also help our schools get matters resolved and move on. These are kids generally who need a little help and have non-intellectual disabilities and by federal education law should get the help not use "more might come" mentality.

Sincerely,
Katherine Shea
603-361-3534

KATE SHEA
29 TAMAR DRIVE
GOFFSTOWN, NH 03045

April 13, 2021

Dear Madame Chair and Senate Committee Members,

I testified today asking you to please pass HB 581, the Burden of Proof, which received overwhelming bipartisan support in the NH House.

This bill is not about lawsuits. It is about the process to garner what is typically a small amount of support from a paraprofessional or 30-minute session of speech or math help. And to echo Representative Mullen, it's about an old and broken David and Goliath process that stacks the deck against families and wastes time and energy of both the parents and school. And NH families and NH schools cannot wait any longer to have this addressed by yet another study committee.

In my family with four children we have the "tale of two children", both autistic, one who received a small amount of support needed (para support, OT) and the other who for no reason was consistently denied and is now living with a more serious condition and having been held back two grades. He had the same set of needs, but like many of the 36,000 NH families with an IEP, we try and try and try to get some little bit of support but cannot get anywhere. Again, these are inefficient, never ending debates and often arbitrary decisions and over small amounts of support, that consume more money and time fighting *than just providing them to the child*. Our family has been damaged badly by the strain and struggle like many, and we now pay out of pocket for something we already paid for. Ironically, our tax dollars also fund school attorney's like Drummond Wilson to fight against us. We don't have VETO power; we have NO POWER. We will get nothing for that child not signing it. It requires a lawyer to go to mediation which is commonly advised by educational advocates – they won't even touch your case without one. There are no other resolution processes. And educational hearings should not be treated like divorce hearings – adversarial and no one wins. It is a huge waste of time and energy, and teachers and administration agree needs to change to be more collaborative and not drag on and consume time when they could be helping children.

Contrary to Ms. Wilson's School Board Association testimony also heard by the house, there are already many safeguards built in for schools – such as under I.D.E.A., schools already only have to 'consider' medical diagnoses not just accept them – and, coupled with the way this NH law is written now, leaves typically financially stretched and life burdened families with even more hardship. I speak not just for me, but many of the teachers and administrators who cannot say a word, but know things need to change. If you can't get anywhere with an IEP team which is often a 10:1 situation, you are then told you can file for mediation or due process – both requiring expensive legal representation. If you are fortunate enough to get here, you then hit the brick wall and have lost before you start – because of the burden of proof. Families have no chance. They just do not realize this until too far into the process.

Flipping the burden of proof makes sense to address an already overstretched educational system and struggles of NH families. We need to encourage a more collaborative process. These supports are very basic and relate to providing a free and appropriate education justified by legitimate medical diagnoses and documentation – often way more than would even be required in a court of law. And because of the burden of proof, it is never enough. This is no different than denying a wheelchair or adaptive support, and what is worse, is that it destroys families and any hope they have for their children in the process.

Please help our kids and schools come together in a better way. Please let our families and schools work out a better process. We don't need to invest this kind of time and money to fight over whether a child needs basic supports and services.

Please do the right thing for NH families and approve this bill.

Sincerely,

Katherine Shea

Ava Hawkes

From: Darlene <dmcote88@gmail.com>
Sent: Tuesday, April 13, 2021 10:28 PM
To: Ava Hawkes
Subject: HB581-Support -Darlene Gildersleeve
Attachments: 20210404_111454.jpg

Dear Honorable Chair and Committee Members:

My name is Darlene Gildersleeve. I am a member of the Board of Directors of Disability Rights Center, speaking in my own individual capacity. I am also the Founder of Protect Concord Students Now and led an successful effort to protect all children, including those with disabilities from a child predator in Concord schools.

When my son was 11 he was diagnosed with an educational disability, after a struggle just to get him evaluated. When the Hooksett School District was not providing services to enable my son access to a Free and Appropriate Public Education under federal and state law, I exercised my rights to use mediation.

At the time, I was a single Mother, having left an abusive marriage. I was penniless and unable to find a Pro Bono Attorney. I was newer to the Special Education process but had spent time researching the NH Rules for the Special Education of Children.

Imagine my shock when Michael Opuda of the firm Drummond and Woodsum showed ip, without my knowledge or consent to my son's IEP meeting. He was hostile, loud, purposely intimidating and played the role of an Attorney, yet called himself a "Consultant". He had no firsthand knowledge of my child and never even met him. Yet, he had been given access to my son's private FERPA protected file without my consent or knowledge. How was this a "Mediation"??

Now please imagine if I had requested a Due Process hearing. I had no money for an Attorney. Yet my own Taxpayer dollars would have given the District an endless supply of legal fees to fight against my child and his educational disability. Not only did the District pay Michael Opuda and Drummond and Woodsum nearly \$8,000 of taxpayer money (obtained through a RSA 91-A request) but if I requested Due Process that amount would have inflated to at least \$50-100,000. I was NO match for that, having had to rely on the food pantry and fuel assistance to care for my children at the time and keep them safe.

In Hopkinton, where I moved after that experience my daughter showed signs of learning challenges and anxiety. She was denied an Evaluation for Special Education-twice. Only after my child collapsed at school and required 2 hospitalizations did the district finally agree to evaluate- but only after a struggle, getting the Dr. on the phone and essentially telling the District they could NOT say no again to an Evaluation. 10 people at the table and I was the ONLY ONE on my child's side. After the Evaluation my child was hospitalized again-4 more times. But each time the District refused to reconsider her IEP educational school placement. At this point I could file for Due Process. I had finally caught up on bills. I could breathe again. I had a new baby who I stayed home with to care for while juggling my other daughter's needs. We were a 1 income home of modest means.

Where would the money from Due Process come from? Would I have to go to work just to pay a lawyer? How would I care for my disabled child who was in the hospital so often? It was the darkest days of my life. Every day I worried my child would die from suicide, yet Hopkinton was trying to force them into the school where there was no suitable IEP intensive services and no qualified staff to meet her very high level of need.

I had very intense conversations with the Superintendent to save my child's life. That is not standard IEP procedure. NO parent should have to beg a school Superintendent to save the life of their child like I did. NO parent should be forced into poverty from Due Process legal fees. No parent should be stuck in this impossible situation. No parent should have the deck unfairly stacked against them.

Shifting the burden of proof in Due Process to the school district is fair to students and families. We don't have vast reserves of taxpayer money to pay expensive lawyers. Parents suffer daily with a disabled child. I have 2 children with disabilities and have lost count at the number of decks stacked against my children. I volunteer often to give advice and help to a crying parent who has lost hope in their school district. I have spent time in Laconia where a child was only being "allowed" to go to school for a hour a day. 2 if they were "lucky". How is a low income family supposed to file for Due Process and get a lawyer when they don't have enough money for gas to pick up their child when the district unfairly won't service the child's IEP?

I beg this Committee to restore fairness and level the playing field for our most vulnerable kids and families in NH. Please vote Yes to HB581. Please don't hesitate to email me to set up a call with questions. I'm happy to chat and help in any way I can.

Enclosed is a photo of my teen and her little sister. Anna is alive today thanks to an out of district therapeutic placement at the excellent Contoocook School. If I would have requested Due Process and lost because I couldn't afford legal fees, Anna would not be alive today.

Thank you,
Darlene Gildersleeve
Hopkinton, NH
dmcote88@gmail.com





The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

March 25, 2021

Rep. Rick Ladd
Chairman, House Education Committee
Legislative Office Building, Room 207
33 North State Street
Concord, NH 03301

Dear Representative Ladd:

The Council of Parent Attorneys and Advocates (COPAA) previously, on January 22, 2021, wrote to indicate our support for HB 581, placing the burden of proof in special education due process hearings on the school district, because the district is in possession of the information on which the Individualized Education Program (IEP) was based. Ordinarily, we would not be writing again, but we have become aware of the February 16, 2021 letter from Attorney Gerald Zelin in opposition to the legislation, which letter contains criticism of COPAA's position. So, we write again to respond to Attorney Zelin's inaccurate comments.

Attorney Zelin cites *New Hampshire Municipal Trust Workers' Compensation Fund v. Flynn*, 133 NH 17 (1990), for the proposition that Part 1, Article 28-A of the New Hampshire Constitution prohibits placing any new unfunded mandates on local school districts, noting gratuitously that COPAA "overlooks [the] idiosyncrasy of New Hampshire law." The *Flynn* decision makes plain that the legislative amendment in question was passed to "increase the likelihood that afflicted fire fighters would receive benefits." 133 NH at 4. The legislation in question in *Flynn* would have clearly placed new financial obligations on municipalities. That is not the case with HB 581. The justification for shifting the burden of proof is premised on the unique advantages in legal, informational and personnel resources possessed by school districts. The school district has the documents, data, and educators who developed the IEP and can explain to a hearing officer why the IEP appropriately addresses the student's educational needs, consistent with the standard established in *Andrew F. v. Douglas County School District*, 137 S.Ct. 988 (2017). The change in the burden of production and in the burden of persuasion leads to a more efficient administrative hearing process

Attorney Zelin's letter quotes a 2005 blog by Attorney Peter Wright on the dangers of the Supreme Court decision in *Schaeffer v. Weast*, 546 U.S. 49 (2005), suggesting that hearings would be extended if the district had to go first. With due respect to Attorney Wright, who is a COPAA member, he was wrong. The *Schaeffer* decision left it open to states to place the burden of proof on school districts, 546 U.S. at 62, and approximately eight states have done so. There is no evidence whatsoever that placing the burdens on the school district have prolonged hearings or reduced the proportion of cases won by school districts. Indeed, such data as exists shows that the total number of hearings has continued to decline in such states and that the ratio won by districts has remained fairly constant. What is clear is that the time and cost of hearings, as well as the vagueness of the appropriateness standard, induces both sides to settle their disagreements short of a hearing. There is nothing to suggest that good faith negotiations and amicable settlements are idiosyncratic to New Hampshire.

Attorney Zelin further opposes H B 581 on the mistaken presumption that special education due process hearings are always a battle involving the amount of funds spent on one particular student, with the parent advocating for more funds and the district proposing less. This presumption is both incorrect and dangerous. First, this assumes that these hearings are always about money – in fact, they are not. The disputes leading to these hearings are typically founded on different beliefs as to what program or services will help a child achieve the goals of the IDEA – further education, employment and independent living. Sometimes, the district’s proposal costs more in funding than the parent’s proposal. However, even if Attorney Zelin’s premise were correct, the IDEA does not allow for a district to pit one child against another in the way Attorney Zelin suggests, or to refuse to provide what a child needs simply because it requires fiscal resources.

COPAA's support of HB 581 is rooted in logic and judicial efficiency. The school district is the natural and sole custodian of the evidence necessary to prove the appropriateness of their IEP and recommendations. Under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et. seq.*, the local education agency is responsible for developing a challenging, individualized program, called an IEP, to meet the special needs of each student with a disability and afford that student an opportunity to make meaningful educational progress. To do so, the local school district keeps data on progress, evaluates, and seeks input from teachers and service providers. If the parent believes the IEP fails to afford the student a free appropriate public education (FAPE), the parent can file for due process. At that point, the school district has the educational record, employs the individuals who designed the program, and understands how the program it proposed can supply a FAPE.

Requiring the school district go first, present its evidence and make the case that its proposed program provides a FAPE will lead to speedier hearings because parents will know the district's argument and be able to address it directly. IDEA requires parents to set forth every issue in a due process complaint in order for those issues to be heard. Though districts are required to submit a due process response, the failure to respond to each issue does not carry the same penalties. Often, the due process responses are quite limited and parents do not learn the reasons for a district’s actions until the due process hearing itself. Therefore, currently, parents need to adopt a shotgun approach, not knowing what the district's argument is. Nothing in HB 581 makes it easier for parents to win hearings, except in the hypothetical case in which the arguments for and against appropriateness are evenly balanced. We are unaware of any case in which a hearing officer has declared the merits evenly balanced.

So, again, COPAA asks for the enactment of HB 581.

Sincerely,



Denise Marshall, CEO

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, attorneys, advocates, and related professionals; over 90% of whom identify as having a disability; or are parents or family members of individuals with disabilities. COPAA works to protect the civil rights and secure excellence in education on behalf of the 8 million children with disabilities in America. COPAA’s mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares them for meaningful employment, higher education, and lifelong learning, as well as full participation in their community.



The Council of Parent Attorneys and Advocates, Inc.
Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

January 22, 2021

Rep. Rick Ladd
Chairman, House Education Committee
Legislative Office Building, Room 207
33 North State Street
Concord, NH 03301

Dear Representative Ladd:

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, attorneys, advocates, and related professionals; over 90% of whom identify as having a disability; or are parents or family members of individuals with disabilities. COPAA works to protect the civil rights and secure excellence in education on behalf of the 8 million children with disabilities in America. COPAA's mission is to serve as a national voice for special education rights and is grounded in the belief that every child deserves the right to a quality education that prepares them for meaningful employment, higher education, and lifelong learning, as well as full participation in their community.

We write to urge your support for HB 581 which would restore the burden of proof in special education due process hearings to school districts. This bill would help protect the rights of the *165,169 children with disabilities in New Hampshire* to the free appropriate public education that the Individual with Disabilities Education Act (IDEA) requires.

A vital part of IDEA's success is a fair hearing process. For many children, good special education services make the difference between success and failure. Yet when a school district has failed to provide the free appropriate public education the law requires, parents' only recourse is to seek a due process hearing if they cannot convince the school team otherwise. By placing the burden of proof on school districts, HB 581 would require a school district to do no more than establish for an impartial hearing officer that the Individualized Education Program (IEP) or placement for the child it proposes meets the law's minimal standards. Indeed, parents prevail in a hearing only if a school district provides an education so inferior that it fails its legal obligations.

While the Supreme Court's decision in *Schaffer v. Weast* puts the burden of proof on the party challenging the IEP, unless a state law or regulation states otherwise, parents are most often the party that needs to challenge. Yet, parents have far fewer resources and are less able to navigate the special education hearing maze than school districts. Furthermore, the IDEA mandates an active and equal role for parents because Congress recognized that parental participation is critical to the child's success, but parents often find IEP meetings intimidating because they are outnumbered by school personnel, who control the process. It is therefore appropriate that school districts in New Hampshire bear the burden of proof, as HB 581 would require.

In adopting HB 581, New Hampshire would join many states that place the burden of proof on school districts, thereby strengthening protections for students with disabilities. Please let us know if COPAA may be of assistance or provide further information.

Sincerely,

A handwritten signature in black ink that reads "Denise Marshall". The signature is written in a cursive style with a large, looped "M" at the end.

Denise Marshall, CEO

April 14, 2021

Re: HB 581

Senator Ruth Ward, Chair
Senate Education Committee

Dear Senator Ward and Members of the House Education Committee,

I am writing to ask you to please support for **HB 581 – *AN ACT relative to the burden of proof in special education hearings***. As the parent of an adult son who benefited from the special education services he received in under NH's special education rules, I know that we were fortunate. While our school district and I didn't always agree on everything, we were able to work together using informal means, such as follow-up meetings and sharing additional information or new options, to resolve any disagreements. Sometimes though, parents and school districts find that they need to use more formal dispute resolution options, including filing for a due process hearing.

Due process hearings are not common; in the past 5 years, NH has held an average of 3 due process hearings each year, or about 1 due process hearing for every 10,000 NH students with disabilities. One positive reason for that low number is that NH's special education law and rules include many opportunities for meaningful parent involvement in the special education process, particularly NH's additional parental consent requirements and clear timelines, procedures that facilitate reaching agreement, and an array of alternative dispute resolution options that parents and schools can use to resolve disputes without having to file for a due process hearing.

There is also the harsh reality that there is an inherent imbalance in due process hearings that discourages parents from filing. Of the 16 due process hearings held in the past 5 years (about half filed by parents), parents prevailed in 1 and partially prevailed in a second case.

Due process hearing procedures are complex and overwhelming; parents would almost never choose to file for a due process hearing unless they truly believed that it was their best, or only, way to obtain the special education services or educational placement their child with a disability needed. While parents can go to a due process hearing without legal representation, when they do, they rarely prevail, and the costs of paying for an attorney make the process prohibitive for most parents. Federal and State law provide alternative dispute resolution (ADR) options, including mediation, but those options require the voluntary participation by both parties. So, if a school district refuses, the parent may find that filing for a due process hearing is their only remaining option to resolve the dispute.

School districts almost always have more knowledge of the special education laws than parents, and they have access to more resources, including evaluators, special education experts and attorneys. Since those resources are funded by tax dollars, including those paid by the parent, the parent is put in the unenviable position of paying for both their own (if they can find one) and the school district's attorney! Some of the other points that support a school district bearing the burden of proof in due process hearings are that schools/districts have:

- a legal responsibility under IDEA to ensure that a FAPE is available to each child with a disability;
- a stronger understanding of, and experience with, IDEA and its procedures;
- better access to resources, including teachers, evaluators and related services personnel;
- the resources, experience and legal representation they need to present an effective due process case; and
- control over the potential witnesses who have worked directly with the child and are in the employ of the school.

In most due process cases, the evidence is clearly weighted in favor of either the school district's or the parent's position. The "burden of proof" standard is only needed when the evidence presented by the 2 parties is closely balanced. The Federal Individuals with Disabilities Education Act (IDEA), is silent on the issue of burden of proof, but in the 2005 *Schaffer v. Weast* decision, the Supreme Court determined, even while recognizing that school districts have a "natural advantage" over the parents in a dispute, that unless state law assigns the burden of proof on one party or the other, the burden of proof is placed on the party that requested the due process hearing.

In her dissenting opinion in this case, Justice Ginsburg wrote that while courts typically assign the burden of proof to the party initiating the proceeding, she was “persuaded that, ‘policy considerations, convenience, and fairness’ call for assigning the burden of proof to the school district in this case”. Judge Ginsburg noted that school districts have the responsibility to offer each child with a disability an IEP that meets that child’s unique needs, and added “the proponent of the IEP, it seems to me, is properly called upon to demonstrate its adequacy.” In developing its proposal, the school district should have already gathered the data and other information to clearly demonstrate to the parents that its proposal was appropriate, so it should not pose a hardship for the district to demonstrate the appropriateness of that same proposal at a due process hearing.

If NH passes HB 581, we will not be the first state to take such a position. Most states had no law placing the burden of proof on one party or the other, but prior to the Schaffer v. Weast decision, there were at least 7 states that assigned the burden of proof to school districts, regardless of whether the hearing was initiated by the parent or the school district. Since then, several other states (including New York and New Jersey) have changed their state statutes to place the burden of proof in special education due process hearings on the school district.

HB 581 is intended to “level the playing field”, to insert some balance into the dispute resolution process. Assigning the burden of proof to the school district **will not encourage** parents to file due process hearings frivolously or for an improper purpose; in such cases, IDEA (sec. 300.517(a)) could require the parents to pay for the school district’s attorneys’ fees. Additionally, the Council of Parent Attorneys and Advocates, Inc. (COPAA) found that there is no research showing that shifting the burden of proof to the school would increase litigation. Even with shifting the burden of proof, due process hearings would remain an option of last resort for families because of their heavy emotional and financial cost. In those cases when a parent believes it is necessary to file for a due process hearing to obtain a free appropriate public education for his/her child, HB 581 will make that process fairer and more equitable.

The House amendment to HB 581 to include the formation of a committee to “study special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education” makes sense (although I believe that the bill had merit even without the amendment). I would just encourage the committee to limit their focus to their stated purpose. Some of the duties, specifically to “examine “child find” IDEA requirements” and “examine the IEP process under IDEA including team participants, roles, and responsibilities, time frames, and parental consent” are extremely broad, and could reduce the amount of time the committee has to spend on the important topic of options available to parents and school districts to resolve special education disputes. I am not sure why those two duties are included and would prefer that they be removed so that the committee that is established is clearly focused on studying “special education dispute resolution options and the burden of proof in due process hearings conducted by the department of education”.

I encourage you to please support HB 581. Thank you in advance for your consideration of my input.

Sincerely,



Bonnie A. Dunham

16 Wren Court

Merrimack, NH 03054

Tel. (603) 860-5445

Email Bsdunham12@gmail.com



The Council of Parent Attorneys and Advocates, Inc.

Protecting the Legal and Civil Rights of Students with Disabilities and Their Families

Testimony of Attorney Andrew Feinstein
Council of Parent Attorneys and Advocates
To Senate Committee on Education
New Hampshire General Court

On H.B. 581

April 13, 2021

COPAA is a national nonprofit organization of parents, attorneys, advocates, and related professionals who work to protect the civil rights and secure excellence in education on behalf of the 7.7 million children ages 0 through 21 eligible for special education services under the *Individuals with Disabilities Education Act* (IDEA) and the 1.4 million K-12 students with disabilities protected by Section 504 of the Rehabilitation Act across the United States. I am Andrew Feinstein, a private attorney in Connecticut, who serves as the co-chair of COPAA's Government Relations Committee. I am pleased to have the opportunity to testify on House Bill 581.

COPAA is committed to placing the burden of proof in special education due process hearings on the school district. We do not delude ourselves into thinking that parents will win more often when the burden is on the school district. What we do know is that school boards are repositories of all the documents, creators of all the performance reports, principal evaluators, and architects of Individualized Education Programs (IEPs). As such, they have the knowledge, the expertise and the resources to explain to a hearing officer why the program they offered provides the student with a free appropriate public education (FAPE). The burden of persuasion only because meaningful in cases that are a toss-up, in equipoise. The burden of going forward, however, is significant and should be borne by the party with the wherewithal to carry it.

Attorney Gerald Zelin has raised the question of whether shifting the burden of proof to school districts violates Part I, Article 28-A of the New Hampshire Constitution, which prohibits placing any new unfunded mandates on local school districts. He cites to *New Hampshire Municipal Trust Workers' Compensation Fund v. Flynn*, 133 NH 17 (1990), a case involving a statute making it easier for fire fighter to receive benefits, which undoubtedly placed new financial obligations on municipalities. That is not the case with H.B. 581. The change in the burden of production and in the burden of persuasion leads to a more efficient administrative hearing process, not to higher costs for school districts.

The United States Supreme Court decision in *Schaeffer v. Weast*, 546 U.S. 49 (2005), left it open to states to place the burden of proof on school districts, 546 U.S. at 62, and eight states have done so, with New Hampshire considering doing so. Frankly, there is no evidence whatsoever that placing the burden on the school district has prolonged hearings or reduced the proportion of cases won by school districts. Indeed, such data as exists shows that the total number of hearings has continued to decline in such states and that the ratio won by districts has remained fairly constant, at well over 60%. What is clear is that the time and cost of hearings, as well as the vagueness of the appropriateness standard, induces both sides to settle their disagreements short of a hearing. There is nothing to suggest that good faith negotiations and amicable settlements are idiosyncratic to New Hampshire.

Attorney Zelin mistakenly presumes that special education due process hearings are always a battle involving the amount of funds spent on one particular student, with the parent advocating for more funds and the district proposing less. This presumption is both incorrect and dangerous. First, this assumes that these hearings are always about money – in fact, they are not. The disputes leading to these hearings are typically founded on different beliefs as to what program or services will help a child achieve the goals of the IDEA – further education, employment and independent living. At times, the district's proposal costs more in funding than the parent's proposal. Not infrequently, the parent seeks an inclusive program within the school, while the district seeks to outpace the child.

Requiring the school district go first, present its evidence and make the case that its proposed program provides a FAPE will lead to speedier hearings because parents will know the district's argument and be able to address it directly. IDEA requires parents to set forth every issue in a due process complaint in order for those issues to be heard. Though districts are required to submit a due process response, the failure to respond to each issue does not carry the same penalties. Often, the due process responses are quite limited and parents do not learn the reasons for a district's actions until the due process hearing itself. Therefore, currently, parents need to adopt a shotgun approach, not knowing what the district's argument is. Nothing in HB 581 makes it easier for parents to win hearings, except in the hypothetical case in which the arguments for and against appropriateness are evenly balanced. We are unaware of any case in which a hearing officer has declared the merits evenly balanced.

So, again, COPAA asks for the enactment of HB 581.

Ava Hawkes

From: virginia hennighausen <vhennighausen@gmail.com>
Sent: Thursday, April 15, 2021 7:40 PM
To: uth.Ward@leg.state.nh.us; Erin Hennessey; Jay Kahn; Denise Ricciardi; Suzanne Prentiss; Ava Hawkes
Subject: HB 581

Dear Committee members

I am mom of a son with special needs. We are currently navigating the special ed system, but also have chosen a charter school for him as it fits both our children's needs. Little did I know that the special ed journey would be harder and more nerve wracking to navigate than finding out that your son had a genetic condition with just 12 cases known in the world. Yes that is how hard it is to get my son services he needs and deserves. I read about this bill and realize how this would help my son and many many many others like him. I ask you to do the right thing and vote yes on HB 581. our children deserve it

respectfully

Virginia hennighausen
mom and educator

April 13, 2021

Tracy Walbridge
24 Riverlawn Avenue
Rochester, NH 03868

The New Hampshire State Senate
Education Committee
107 North Main Street
Concord, NH 03301

RE: Testimony for HB 581

Chairwoman Ruth Ward and Education Committee Members,

Please **support HB581** relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

My name is Tracy Walbridge. I live in Rochester, NH. I am a parent and serve on many boards, including the State Advisory Committee [SAC] on the Education of Children with Disabilities Advising the NH Department of Education.

I am testifying in my personal capacity as a citizen.

Having the burden on NH school districts simply requires NH school districts to show that they are providing a student; identified, evaluated, and found eligible to receive specially designed instruction; supports, and services, with an appropriate education, consistent with federal and NH special education law.

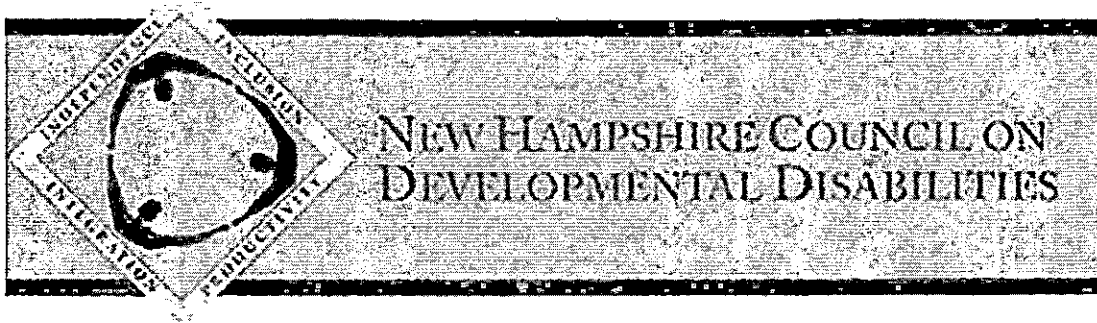
Having the burden on NH school districts does not unduly burden districts or taxpayers, as it ensures that tax dollars are being spent on effective programs and enhances district accountability.

The House of Representatives Education Committee voted unanimously [20-0] in favor of HB581 with the amendment.

I ask that you **support HB581**.
Thank you for your time.

Sincerely,
Tracy Walbridge
Rochester, NH

Please provide a copy of this email to all committee members before the hearing, and I request this written testimony form part of the permanent and public record for this bill.



April 13, 2021

Dear members of the Senate Education Committee,

My name is Shawna Bowman. I am a parent representative on the New Hampshire Council on Developmental Disabilities and appointed Chair of the Policy Committee.

On behalf of the New Hampshire Council on Developmental Disabilities, I am writing in **support** of HB581 relative to the burden of proof in special education hearings.

As a parent of students receiving special education services I can speak to the challenges of ensuring that my children are receiving a free and appropriate education as guaranteed under the federal Individuals with Disabilities Education Act. Often school districts will utilize methods to confuse, overwhelm or dismiss parent concerns regarding their children's education, keeping them at bay in order to provide the bare minimum, sometime less, for the students needing the greatest support. This leaves parents to resort to mediation or Due Process.

By design, Due Process leaves parents at a disadvantage. School districts are represented by attorneys with a wealth of resources and legal experience where most parents cannot afford representation. Additionally, parents may not be able to gain access to all of the necessary resources for a fair representation of their argument.

During Due Process, the school district is deemed the expert in special education services because they have better information about the resources available to schools to provide supports. School Districts also have the added benefit of institutional knowledge and the professional experience of working with students receiving special education services. As experts, the school district should be required to provide proof of their successfully implemented individualized education plan.

Thank you for your time and consideration.

Best,

Shawna Bowman

Chair, Policy Committee for the Council on Developmental Disabilities

Ava Hawkes

From: Mary Gibbons Stevens <mstevens@gibbonsstevens.com>
Sent: Friday, April 16, 2021 10:58 PM
To: Ava Hawkes
Cc: Glenn Cordelli
Subject: HB 581

Dear Madam Chair and members of the Senate Education Committee,

My name is Mary Stevens. I am an attorney with Gibbons Stevens Law Office in Kittery, Maine. I have been practicing law for more than thirty years and much of that time has been spent as a child advocate. One part of my advocacy has been in protecting the educational rights of disabled children and their parents under the Individuals with Disabilities Education Act (known as IDEA). I am writing to you in support of HB581 - a bill to shift the burden of proof in due process hearings.

The purpose of IDEA is to ensure that disabled children are provided with a free and appropriate public education (FAPE) so that they can achieve further education, employment and independent living. In the big picture, compliance with IDEA causes states to invest money in the education of disabled children so they become productive members of society and are ultimately taxpayers who contribute to all aspects of our communities. IDEA grants legal rights to children and their parents.

Like many laws, the intent of IDEA is not always carried out in practice. The reality is that parents of disabled children often fight an uphill battle regarding their children's education. In addition to caring for their children, parents have to learn all they can about their child's disability. They become experts not only about their individual children, but about the condition or conditions that impact their development. Then they have to advocate for them to receive an appropriate education. When parents are treated as equal members of the team, the system can work well.

Unfortunately, there are many times that parents are not viewed as experts at the table and are not treated as equal members of the team. When that happens, and parents assert that the school is not providing their child with FAPE, they can request a due process hearing. The hearing is intended to be an efficient administrative review, not lengthy litigation. The truth is, it is a complicated and difficult legal process. The federal and state laws and regulations are long and dense. The parent-friendly guide to NH special education regulations is 282 pages long. In addition to all of the caregiving and other responsibilities parents have, they have to familiarize themselves with hundreds of pages of detailed legal language in order to assert their child's right to an education. Even when they have some understanding of those rights, they are still at a disadvantage.

This bill is a step toward leveling the playing field. The school is the holder of all the information and evidence regarding the child's education. Parents do not know what happens at school on a day-to-day basis. It is not unusual for teachers or other staff members to give parents information "off the record." It is understandable that the same people are then be unwilling to speak up in a

way that would impact their employment. Parents often have to fight with schools to obtain documents and other evidence. Even after several requests, all the information may not be provided. Since the school is the holder of the evidence, the school should bear the burden of proof at hearing.

In order for parents to prove that their children did not receive FAPE from the school district, they usually need the testimony of one or more expert witnesses. While schools have a variety of experts on staff, and calling those experts to testify may not cost the school district any extra money, parents must find and retain experts at their own expense. Shifting the burden of proof to the school may alleviate some of the expenses incurred by parents in pursuing due process.

Furthermore, the school should bear the burden of proof at a due process hearing because it is the school that has an obligation to provide FAPE. Parents have their own responsibilities, but when it comes to educating a disabled child, that duty rests squarely upon the school district. The school district has the obligation to educate; the school district should have the burden of proving it has done so when parents raise a challenge.

It has been argued that parents can "veto" the IEP if they do not agree. The fact is that parents must consent to an IEP before the school can provide services. If the parents and school do not agree, the only option to the parents is to file a complaint with the department of education. Also, while FERPA gives parents a right to view their children's educational record, it does not give them a right to obtain copies. Once a due process action is filed, the parents can subpoena their children's records, but by that point they have already incurred the cost of beginning the hearing process. Also, there is often disagreement on the definition of "educational records." Even though emails about a student should be kept as educational records, they are not always provided, or are only provided after requests from attorneys. They certainly are not provided to parents as a matter of course.

The interests of justice require the passage of this bill because it protects the rights of the most vulnerable members of our society – disabled children.

Thank you for your consideration,

Mary Gibbons Stevens, Esq.
Gibbons Stevens Law Office
7 Wallingford Square, Suite 206
Kittery, Maine 03904
Phone: (207)703-2950
Fax: (207)703-2951
Email: MStevens@GibbonsStevens.com
Website: www.GibbonsStevens.com

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Ava Hawkes

From: Louise Andrus <louiseandrus00@gmail.com>
Sent: Thursday, April 22, 2021 7:57 PM
To: Ruth Ward; Erin Hennessey; Jay Kahn; Denise Ricciardi; Suzanne Prentiss; Ava Hawkes
Subject: HB 581

Dear Honorable Senate Education Committee,

I am asking that you pass HB 581 as we did in the House Education Committee 20-0. It is time we stand up for the parents and the burden of proof in special education be placed on the school district and not on the parents.

Thank you for your consideration.

Representative Louise Andrus
Member of the House Education Committee
District 1
Andover, Danbury, Salisbury

Ava Hawkes

From: Katherine Shea <klynshea4618@gmail.com>
Sent: Tuesday, April 27, 2021 12:35 AM
To: Ava Hawkes; Denise Ricciardi; Jay Kahn; Suzanne Prentiss; Erin Hennessey; Ruth Ward
Cc: Glenn Cordelli; Moira Ryan; Tracy Walbridge
Subject: Urgent -Union Leader Op-Ed for Passing HB 581

Good day,

As it is likely that HB581 is to be voted on soon I have included some text below that is being published in the Union Leader and likely also Concord Monitor.

Along with the over 600 who in one week signed an online petition (link below), the comments in the petition are emotional and very telling that action is needed now, and please no more studies. If we never test, we can never learn.

The families including educators signing and providing testimony face retaliation, one already has been turned into DCYF, simply for testifying on this bill and a fake claim made. This is the landscape of the ever increasing David and Goliath situation. Our teachers also need kids to have help sooner - this bill will encourage that and benefits so many.

Please help this be a victory for *good* and NH families and teachers who often break under the load. We need your help. Please pass HB581, the Burden of Proof. This will be a great testament to your bipartisan collaboration and listening to the will of the people.

Sincerely,
Katherine Shea

Text to be printed in UL Op-Ed:

by Katherine Shea, Moira Ryan and Tracy Walbridge - Moms Making a Difference, a volunteer educational advocacy group

Why HB581 is Critical to Save our Kids and Schools: the Iron Triangle Analogy & the Burden of Proof.

In United States politics, the "iron triangle" comprises the policy-making relationship among the congressional committees, the bureaucracy, and interest groups. Iron triangles do exist today in NH, in fact, perhaps more-so than ever in Education. Education law is complex and is often difficult to understand unless you are living it with children in our schools today, and yesterday's standards simply do not apply. The demographics of our school populations has changed. Districts are swayed by special interest groups and the 'who gets what' decision not always made based as it should be on federal education law standards. The elite few controlling the iron triangle enforce monolithic standards that ruin lives.

In an effort to address a David and Goliath like situation that affects special needs kids and families who represent 36,000 Individual Education Plans (IEP's), a self-made volunteer group of moms started to ask "why" about a number of things, including why it is ok for kids with an IEP to have a 14% proficiency in math and 17% proficiency in reading, and no one is doing anything about it. Further, we started to question those lobbyists showing up every time first at hearings, getting favor over parents. According to the School Boards Association and Drummond Woodsum, a law firm continually on retainer paid by school districts, things are just hunky dory in education, especially for special needs kids. But parents continually are begging for help, and a recent petition shows that even at the cost of retaliation from districts or other entities which is very real, they are speaking up, exhausted and need relief now from our legislature. In the course families attempting to receive a "Free and Appropriate Public School Education" (FAPE) for their child, often small amounts of support for a medical diagnosis like autism or learning disability like dyslexia, families are too often

denied. Yet because of the current 'Burden of Proof' law wording, disputes over these small amounts of support are allowed to drag out indefinitely.

In the dispute resolution process, the iron triangle represents wealthy lobbyists and associations, such as the School Board Association, who appear at every bill that might slightly help parents and even teachers in the process. It represents attorney's like Drummond Woodsom, who are paid by districts to fight parents, selling insurance to districts to protect against any actions, getting tipped off on cases and appearing in force to squash parents from any chance of getting what they need for their child. All of this is on top of federal education law that says that even with a medical diagnosis such as autism, school officials only have to 'consider' it, not accept it. These little known nuances allow the abuses to continue and Goliath to get bigger and more powerful, creating situations where families lose hope, and even kids are lost forever. Families cannot even make it as far as dispute resolution. All hope is lost.

But the symbiotic relationship of the iron triangle leaves out some key players that others assume are helped by these powerful players, such as teachers and aides. If one has ever attended an IEP meeting you'll know it is usually at 10:1 ratio attending, and the teachers struggle to crack a smile looking stressed and parents knowing they don't have enough time to do their day job being in meetings half of the week. And these dear folks who support our kids as best they can, cannot say a word. This bill will help them too, addressing problems earlier on in the process.

So who is benefitting or profiting from misery and suffering? Well, it would seem to be those in the iron triangle.

Contrary to testimony by the *only* three people who opposed HB 581 the Burden of Proof which will shift that burden from families to districts, there is only one vertical dispute resolution process as described beforehand. If one does not agree to an IEP, there is NO VETO POWER, parents have NO POWER. An IEP will fall back to what it was previously, no needed services will be provided, Goliath always wins, the child goes without help.

The situation we have is dire and especially in light of the pandemic, needs action NOW. We cannot wait for another study. Human lives are at stake.

How can you help? Sign our [petition](#). CALL and or EMAIL the [Senate Education Committee](#) today, and ask them to pass HB 581, the Burden of Proof, passed 20-0 by the House Education Committee, and with full support by the NH House. NH kids, struggling families and school staff need the committee to do the right thing – NOW.

Ava Hawkes

From: Katherine Shea <klynshea4618@gmail.com>
Sent: Tuesday, April 27, 2021 12:45 AM
To: Ava Hawkes; Denise Ricciardi; Jay Kahn; Suzanne Prentiss; Erin Hennessey; Ruth Ward
Cc: Glenn Cordelli; Moira Ryan; Tracy Walbridge
Subject: Re: Urgent - Compass Supports Passing HB 581

Here is also a letter from another supporter to his district senator - so many need this now.

Hello Senator Kahn,

We have exchanged messages in the past but have not yet had the opportunity for a conversation. I moved to Keene last year (my wife and I live in the log building on the Keene/Marlborough line). In addition to being the owners of Compass, we are also parents to 4 adult children who had significant special needs in their school years. In my current capacity, I work with many school districts to provide support for IEP students.

Speaking both as a parent and a provider, I cannot tell you how many times I have seen school districts put parents through a literal hell to "prove" that their children need special support to be able to survive in the public school environment. I've been to countless IEP meetings where parents come with multiple diagnoses from respected neuropsychologists and still be told that the school "doesn't see a problem". This is not right, and our kids are suffering because of it.

Please support HB 581. It is the right thing to do, and the kind thing to do, for parents who are completely overwhelmed...especially in the last year with remote learning. Kids are regressing and need the support of schools. This bill fixes a lot of problems with the current system.

Thank you.

-Dan

On Tue, Apr 27, 2021 at 12:34 AM Katherine Shea <klynshea4618@gmail.com> wrote:

Good day,

As it is likely that HB581 is to be voted on soon I have included some text below that is being published in the Union Leader and likely also Concord Monitor.

Along with the over 600 who in one week signed an online petition (link below), the comments in the petition are emotional and very telling that action is needed now, and please no more studies. If we never test, we can never learn.

The families including educators signing and providing testimony face retaliation, one already has been turned into DCYF, simply for testifying on this bill and a fake claim made. This is the landscape of the ever increasing David and Goliath situation. Our teachers also need kids to have help sooner - this bill will encourage that and benefits so many.

Please help this be a victory for *good* and NH families and teachers who often break under the load. We need your help. Please pass HB581, the Burden of Proof. This will be a great testament to your bipartisan collaboration and listening to the will of the people.

Sincerely,
Katherine Shea

Text to be printed in UL Op-Ed:

by Katherine Shea, Moira Ryan and Tracy Walbridge - Moms Making a Difference, a volunteer educational advocacy group

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But parents continually are begging for help, and a recent petition shows that even at the cost of retaliation from districts or other entities which is very real, they are speaking up, exhausted and need relief now from our legislature. In the course families attempting to receive a "Free and Appropriate Public School Education" (FAPE) for their child, often small amounts of support for a medical diagnosis like autism or learning disability like dyslexia, families are too often denied. Yet because of the current 'Burden of Proof' law wording, disputes over these small amounts of support are allowed to drag out indefinitely.

In the dispute resolution process, the iron triangle represents wealthy lobbyists and associations, such as the School Board Association, who appear at every bill that might slightly help parents and even teachers in the process. It represents attorney's like Drummond Woodsom, who are paid by districts to fight parents, selling insurance to districts to protect against any actions, getting tipped off on cases and appearing in force to squash parents from any chance of getting what they need for their child. All of this is on top of federal education law that says that even with a medical diagnosis such as autism, school officials only have to 'consider' it, not accept it. These little known nuances allow the abuses to continue and Goliath to get bigger and more powerful, creating situations where families lose hope, and even kids are lost forever. Families cannot even make it as far as dispute resolution. All hope is lost.

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Ava Hawkes

From: Jay Kahn <kahnjay03@gmail.com>
Sent: Tuesday, April 27, 2021 7:37 AM
To: Ava Hawkes; Ruth Ward; Sue Prentiss; Erin Hennessey; Denise Ricciardi; Denise Ricciardi
Subject: Senate Education re: HB 581

I had asked for some number on special education appeals. At the bottom of this exchange is information from Jane Bergeron-Beaulieu. It helps provide a context for how Special Education IEP services are mediated currently.

Jay

Jay Kahn
State Senator
Senate-District 10
Keene, NH
603-381-2930 (c)

Begin forwarded message:

From: Jane Bergeron <jbergeron@nhasea.org>
Subject: Re: Information for Senate Education re: HB 581
Date: April 26, 2021 at 8:00:30 AM EDT
To: Jay Kahn <Jay.Kahn@leg.state.nh.us>

Glad it helps, sure feel free to share!
Happy Monday!
Jane

On Apr 25, 2021, at 9:52 PM, Jay Kahn <Jay.Kahn@leg.state.nh.us> wrote:

This helps a lot. Thanks. Do you mind if I share this with the Committee?

Jay

Jay Kahn
State Senator
Senate-District 10
Keene, NH
603-381-2930 (c)

On Apr 25, 2021, at 7:24 PM, <jbergeron@nhasea.org>
<jbergeron@nhasea.org> wrote:

Good Evening Jay,

My apologies for the late response; I needed to disconnect over the weekend. Both school districts and parents can access/request any of these processes. Typically if there is just a concern about the IEP and the district or parent wants to seek an independent facilitator to work through the challenges, IEP facilitation is typically a first step. If agreements can not be made by both parties, either the school district or the parent can ask for "mediation". This might be related to the IEP, or it could be related to the placement recommendation, the recommended evaluations etc. This typically involves both parties, the NHDOE and often times legal representation. A formal complaint can be filed at any time with the NHDOE which is investigated by the NHDOE and a ruling issued. A parent can file a complaint with the NHDOE without going through any of the previously described available processes. Lastly, the school district or parent can file for due process hearing, which is the legal route to resolve issues at hand. Let me know if this helps; hope you had a nice weekend.

Best,
Jane

From: Jay Kahn <Jay.Kahn@leg.state.nh.us>
Sent: Friday, April 23, 2021 4:13 PM
To: jbergeron@nhasea.org
Subject: Re: Information for Senate Education re: HB 581

Can you help me differentiate the steps and participants in each of the processes below, like is a formal complaint the first step and then mediation and finally due process hearing? Who makes the recommendations at each step?

Jay

Jay Kahn
State Senator
Senate-District 10
Keene, NH
603-381-2930 (c)

On Apr 23, 2021, at 3:42
PM, jbergeron@nhasea.org wrote:

Good Afternoon Jay,
Thanks for the phone conversation today. Below is the data that the NHDOE sent to my attention, let me know if you have questions.

Have a wonderful weekend.
Best,
Jane

From: Fredette, Rebecca
<Rebecca.A.Fredette@doe.nh.gov>
Sent: Monday, April 19, 2021 2:11 PM
To: jbergeron@nhasea.org
Cc: Berwick, Stephen
<Stephen.W.Berwick@doe.nh.gov>; Fenton, Diana
<Diana.E.Fenton@doe.nh.gov>; Lupiani, Natasha
<Natasha.K.Lupiani@doe.nh.gov>
Subject: FW: Information for Senate Education re: HB
581

Hi Jane,

Here is the information you requested. Please let me know if you have any questions.

Information for FY 2020 and FY 2021:

- How many districts/parents have requested/accessed facilitated IEP meetings? (2020) 5; (2021) 2
- How many/districts/parents have accessed mediation process? (2020) 18; (2021) 6
- How many districts/parents have filed formal complaints? FY 20- 38 total, FY 21- 27 total
- How many due process hearings have happened this year? (2020) hearings held 3; (2021) hearings held 2

Rebecca A. Fredette, M.Ed.
Administrator, Bureau of Student Support
State Director of Special Education
NH Department of Education
101 Pleasant Street
Concord, NH 03301

Phone: (603)271-6693
Fax: (603)271-1099

Rebecca.A.Fredette@doe.nh.gov

Ava Hawkes

From: Patricia Eno <marktrisheno@yahoo.com>
Sent: Wednesday, April 28, 2021 12:22 PM
To: Ruth Ward; Erin Hennessey; Suzanne Prentiss; Denise.Riccardi@leg.state.nh.us; Jay Kahn; Ava Hawkes; Bob Giuda; Jeb Bradley; David Watters; James Gray; Harold French; Jay Kahn; Gary Daniels; Kevin Avard; Cindy Rosenwald; Sharon Carson; Becky Whitley; Kevin Cavanaugh; John Reagan; Lou D'Allesandro; Rebecca Perkins Kwoka; Chuck Morse; William Gannon; Tom Sherman; Donna Soucy; Glenn Cordelli
Subject: Please support HB 581
Attachments: April 9, 2021 letter Courtois.pdf; FERPA 90 day delay.pdf; April 8, 2021 settlement offer.pdf

Hi All,

Here are 3 documents that refute lobbyists testimony that NH has viable options for parents (and eligible adult students) prior to Due Process.

#1 A letter from my son's case manager (not a WPN as legally required) that tells my son that his filing for DP is the only option, without stating that this is so because the district is permitted to refuse mediation, additional team meetings, or a facilitated meeting. Instead of trying to reach agreement, or taking us to Due process where they would have to prove that there was an offer of FAPE. They want a 19 year old autistic kid to go up against them in court because they can win regardless of facts.

#2 FERPA complaint response telling my son not to request any update regarding his complaint for at least 90 days.

The complaint is regarding the District's refusal to challenge false and misleading information in my son's records that was quite intentionally planted there to deny services, as well as failure to provide a multitude of records.

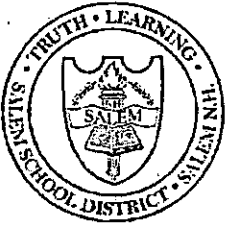
If we "win" the FERPA complaint, the District will be asked to follow FERPA, but they'll probably get another few months to do so, by which time the case will be moot.

#3 Settlement offer for services (that were offered and accepted in writing - 2 IEP's and invoices attached emailed (not verbal) request for payment of tutoring that I arranged when the district did not bother to arrange. The settlement offer demands that I give up my adult son's claims to compensatory services for everything missed during the pandemic in exchange for \$1,500 owed me for tutoring (no mileage) that the district agreed to in 2019. Note that the superintendent has claimed they have no documentation whatsoever - there were several attachments to an email sent to an assistant superintendent, including a letters with dates of the IEPs, page numbers, and offers of further documentation available upon request. The superintendent is lying, and has cc'd every administrator involved. He knows he can do this because FERPA won't catch up for months.

Please support HB 581.

If anyone would like further information on the atrocious behavior of one school district, I'd be glad to supply it. For the time being, my son and I are placing our confidence in the Federal Government with OCR complaints, because we understand the truth has no chance in NH today.

Thank you for your time and attention.



Michael W. Delahanty, Ed.D.
Superintendent

Tara Bazydlo
Director
Literacy

Timothy Koumrian
Director
Student Services

Bradley St. Germain
Director
Mathematics/Science

M Kathleen Courtois
Special Education Coordinator
38 Geremonty Dr.
Salem, NH 03079

April 1, 2021

Sam Eno
Adult Student
90 Shadow Lake Road
Salem, NH 03079

Dear Sam,

In response to your letter date March 23, 2021, it appears that we are unable to resolve the partial exceptions to the current IEP dated 6/11/2020-6/10/2021. The most recent document that was sent to you was an attempt to get approval of the June IEP; however, this was rejected by you. It appears to the school district that the only possible way to resolve the exceptions to the IEP will be to have you file for a due process hearing.

The only change that was made to the IEP that was most recently sent to you was the signature page. This was a change in the NHSEIS system and was not in our control. In addition, the accommodations page was not included in the IEP due to an error in the system. No changes have been made to the accommodations. I have attached a copy of these to this document.

Please inform the school district of your next steps.

Thank you,

M Kathleen Courtois

M Kathleen Courtois

0079-142150

Salem
Salem
(603) 8



03079

Mr. Sam Eno
90 Shadow Lake Road
Salem, NH

9 APR 2021 AM

MANCHESTER NH 0310



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APR 08 2021
FITNEY BOWES
UNITED STATES POSTAGE

4/28/2021

Yahoo Mail - RE: FERPA Complaint from Sam Eno

RE: FERPA Complaint from Sam Eno

From: FERPA. Complaints (ferpa.complaints@ed.gov)

To: marktrisheno@yahoo.com

Date: Monday, April 26, 2021, 02:23 PM EDT

Tracking# 21-0204

Dear Samuel,

Please be advised that this email intends to serve as confirmation that the Student Privacy Policy Office (SPPO), formerly known as the Family Policy Compliance Office, has received your complaint form submission regarding the Family Educational Rights and Privacy Act (FERPA). Please note that this Office addresses complaints in the order they are received.

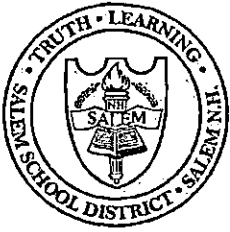
SPPO will review the information you provided; and consider all relevant statutory and regulatory requirements and the Department's interpretation of those requirements, in reaching a decision as to whether there are sufficient facts of a potential violation of FERPA that supports our conducting a formal investigation of a complaint. At the end of that review, you will either receive a letter from this Office indicating our next course of action, or a phone call and/or email requesting clarification or the submission of additional information. At this time, we do not have any other information to provide you with respect to your specific allegation, as your complaint has not been adequately reviewed.

Unfortunately, given our resource constraints, the high volume of incoming complaints and resulting backlog, we are not able to complete the intake process in as timely a manner as we'd prefer. We will do our best to keep you informed throughout the process; and ask that you wait until at least 90 days after the date of your submission before contacting SPPO requesting an update on the status of your complaint.

After the initial 90 day period, if you have not been contacted by this Office and you wish to inquire about the status of your complaint, you may submit an email request to FERPA.Complaints@ed.gov including "Status Update" and the tracking number provided above in the subject line or call 202-260-3887, push Option 3 to leave a message, and someone will get back to you as soon as possible.

We thank you in advance for your patience and understanding as we work to address your concerns.

Student Privacy Policy Office



Salem School District

38 Geremonty Drive
Salem, New Hampshire 03079-3313
(603) 893-7040 Fax (603) 893-7080

Maura E. Palmer
Assistant Superintendent
Academics & Support

Michael W. Delahanty, Ed.D.
Superintendent

Deborah E. Payne
Assistant Superintendent
Business Operations

April 8, 2021

Mrs. Patricia Eno
90 Shadow Lake Road
Salem, New Hampshire

Dear Mrs. Eno:

I have been made aware of your assertion that the Salem School District made verbal promises to pay a support service called North Star for services provided to your son Samuel. We have no record of commitments to pay for such services, and you have not provided written evidence to that effect.

Regardless, you have made this claim more than once, and the school district is interested in putting the matter to rest. Therefore, we will pay you \$1500 for services rendered and payments you made with the stipulation that you sign and return the enclosed document attesting to this as final and last payment.

Very truly yours,


Michael W. Delahanty, Ed.D.
Superintendent

MWD:pas

Cc: Deborah Payne, Assistant Superintendent for Business Operations
Maura Palmer, Assistant Superintendent Academics and Support
Timothy Koumrian, Director of Student Services
Kathy Courtois, Special Education Coordinator

SETTLEMENT AGREEMENT AND GENERAL RELEASE

In consideration of the Salem School District's total payment of One Thousand Five Hundred Dollars (\$1,500.00), Patricia Eno, on behalf of herself, her son Sam, their heirs, beneficiaries, executors, administrators or assigns (Releasors) does hereby remise, release, and forever discharge SAU #57, the Salem School District, their Boards, officers, agents, employees and volunteers, from any and all manner of actions, causes of action, suits, proceedings, debts, dues, contracts, judgments, damages, claims, and demands whatsoever in law or equity, which the Releasors ever had, now have, or which the Releasors hereafter can, shall, or may have for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the date of this Settlement Agreement and General Release relating to the services performed by North Star Education Services for Sam.

This Settlement Agreement is not to be construed as an admission of liability but is entered into to buy peace and resolve disputed claims.

Patricia Eno hereby acknowledges that she has read this Settlement Agreement and General Release, understands it, and has knowingly and voluntarily signed it of her own free will after a reasonable opportunity to consult with legal counsel if she chooses.

The validity, interpretation and enforcement of this Settlement Agreement and General Release shall be governed by the laws of the State of New Hampshire.

IN WITNESS WHEREOF, Patricia Eno has hereunto set her hand and seal below.

Date

PATRICIA ENO

Voting Sheets

Senate Education Committee
EXECUTIVE SESSION RECORD
2020-2021 Session

Bill # HB 581

Hearing date: 4/13/21

Executive Session date: 5/4/21

Motion of: OTP Vote: 4-1

Committee Member	Present	Made by	Second	Yes	No
Sen. Ward, Chair	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Sen. Hennessey, VC	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Sen. Ricciardi	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	
Sen. Kahn	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Sen. Prentiss	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Ward, Chair	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Hennessey, VC	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ricciardi	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Ward, Chair	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Hennessey, VC	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ricciardi	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Prentiss

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Tuesday, May 4, 2021

THE COMMITTEE ON Education

to which was referred **HB 581**

AN ACT

relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

Having considered the same, the committee recommends that the Bill

ought to pass

BY A VOTE OF: 4-1

Senator Suzanne Prentiss
For the Committee

Ava Hawkes 271-4151

EDUCATION

HB 581, relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

Ought to Pass, Vote 4-1.

Senator Suzanne Prentiss for the committee.

General Court of New Hampshire - Bill Status System

Docket of HB581

Docket Abbreviations

Bill Title: (New Title) relative to the burden of proof in special education hearings and establishing a committee to study special education IEP and dispute resolution processes.

Official Docket of HB581.:

Date	Body	Description
1/12/2021	H	Introduced (in recess of) 01/06/2021 and referred to Education HJ 2 P. 54
3/2/2021	H	Public Hearing: 03/02/2021 02:30 pm Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/97910276071 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/11/2021	H	Executive Session: 03/11/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95090800832
3/24/2021	H	Committee Report: Ought to Pass with Amendment #2021-0823h (Vote 20-0; CC) HC 18 P. 8
4/7/2021	H	Amendment #2021-0823h : AA VV 04/07/2021 HJ 5 P. 10
4/7/2021	H	Ought to Pass with Amendment 2021-0823h: MA VV 04/07/2021 HJ 5 P. 10
4/7/2021	H	Reconsider (Rep. Osborne): MF VV 04/07/2021 HJ 5 P. 50
4/7/2021	S	Introduced 04/01/2021 and Referred to Education; SJ 11
4/7/2021	S	Remote Hearing : 04/13/2021, 09:20 am; Links to join the hearing can be found in the Senate Calendar; SC 19
5/4/2021	S	Committee Report: Ought to Pass, 05/13/2021; SC 23
5/13/2021	S	Ought to Pass : RC 24Y-0N, MA; OT3rdg; 05/13/2021; SJ 15
6/11/2021	S	Enrolled Adopted, VV, (In recess 06/10/2021); SJ 19
6/11/2021	H	Enrolled (in recess of) 06/10/2021 HJ 10 P. 21
8/3/2021	H	Signed by Governor Sununu 07/29/2021; Chapter 158; Eff: 07/29/2021

NH House

NH Senate

Other Referrals

