

Burden of Proof

MO Disability Empowerment's 2022 Legislative Priority

A **Burden of Proof** statute would require school districts to bear the burden of proof in a special education due process hearing. Federal law requires that schools provide FAPE (Free Appropriate Public Education) to students with disabilities. Since schools have the responsibility of providing FAPE, they should have the responsibility of proving they are providing FAPE when there is a disagreement.

Congress enacted the IDEA to ensure that all students with disabilities receive a free appropriate public education (FAPE). The law does not leave it to parents to apply for this education. Instead, the law requires that districts identify, locate, evaluate, and provide FAPE to students. **THE BURDEN IS ON THE SCHOOL TO PROVIDE THE APPROPRIATE EDUCATION.**

When there is a disagreement related to the IDEA between parents and the school district, parents only recourse is to file due process. This involves an administrative hearing process, not a typical court case.

In MO, the burden of proof that the district is not meeting IDEA requirements lies on the parents. Parents do not have full access to documents, school information, and experts. With no pre-trial discovery, parents cannot interview teachers ahead of time, while the school district can. Parents cannot often afford lawyers and in MO, few lawyers will represent the student or parents in due process cases.

Some states are now requiring their school districts to carry the burden of proof in due processes cases.

- School systems have full access to records, teachers, educational experts, and therapists.
 - School systems are almost always represented by counsel.
 - Federal law imposes an affirmative obligation on school districts to provide an appropriate education to children.
 - School systems have an obligation to provide the tools and processes necessary for an appropriate education and should be required to prove the effectiveness of their actions.
- (copaa.org/page/BOP)

What other states have Burden of Proof statutes?

Connecticut, New Jersey, New York, Alaska, Delaware, Georgia, Massachusetts, Minnesota, West Virginia, New Hampshire, and Washington DC

Learn more at moempower.com/burden-of-proof.

