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Exceptional Student Services Unit

Colorado Department of Education

CHANGES IN EFFECT

RULES FOR THE EXCEPTIONAL CHILDREN'S EDUCATIONAL ACT

On January 13, 2005, the State Board of Education approved a package of amendments to the ECEA Rules (2005 Amendments). The 2005 Amendments went into effect on March 5, 2005.

The primary focus of the 2005 Amendments is to clarify requirements involving tuition costs for special education students who attend school out-of-district at the parent's choice. Such schools include traditional schools, charter schools and on-line programs ("choice school"). A choice school may claim tuition costs from the child's district of residence if the child spends more than 60% of his/her time in special education as specified by the child's IEP. Tuition costs are those costs in excess of the revenues received by the choice school for educating the child.

Under the 2005 Amendments, tuition contracts must be established. For charter schools and on-line programs, a tuition rate must also be approved by the State Board of Education. Regardless of whether the choice school seeks tuition costs, the choice school must notify the district of residence that the child is attending the choice school. In addition, new procedures have been added to the ECEA Rules for resolving tuition disputes.

The Amendments also involve other important changes to the ECEA Rules. For example, administrative units of attendance now have primary responsibility for special education functions. There are also changes in the placement rules to address the unique circumstances of on-line education.

Because it is not possible to summarize all of the 2005 changes to the ECEA Rules in this short article, we strongly encourage our readers to take the time to carefully review the 2005 ECEA Rules.

You may access the 2005 ECEA Rules at: http://www.cde.state.co.us/spedlaw/download/ECEARules2005.pdf

It is also important to note that the 2005 Amendments do not address IDEA 2004. At this time, OSEP anticipates that new regulations implementing IDEA 2004 will be finalized in December 2005. After the federal regulations are final, CDE will begin its own process to align the ECEA Rules to IDEA 2004. CDE's current goal is to have amended ECEA Rules in place by July 2006.

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VISIT OUR WEBSITE

- Our home page is found at: http://www.cde.state.co.us/spedlaw/index.htm
- For Parents Rights and other special education informational brochures: http://www.cde.state.co.us/spedlaw/info.htm
- To view the Rules for the Administration of the Exceptional Children's Educational Act: http://www.cde.state.co.us/spedlaw/download/ECEARules2005.pdf

BURDEN OF PROOF

WHO BEARS THE BURDEN OF PROOF IN A DUE PROCESS HEARING?

According to the Special Education Dictionary, "burden of proof" is defined as: "Generically understood as the duty of one of the parties to a legal dispute to prove a fact or an issue in dispute such that the decision maker will rule in the party's favor; technically comprised of two separate components: the burden of production and the burden of persuasion. Neither the IDEA statute nor regulations address who has the burden of proof in proceedings under the IDEA, making it largely a matter of state or local law. Courts have followed several different approaches in allocating the burden in judicial and administrative proceedings under the IDEA. For example, in *Urban v. Jefferson County School District R-1*, 21 IDELR 985 (D. Colo. 1994), the court stated that the burden of proof varies depending on the adequacy of the IEP." Norlin, John W., Esq. (Ed.). (2003). *Special Education Dictionary Revised Edition*, Horsham, PA:LRP Publications. Depending on the jurisdiction, the burden of proof issue is approached differently.

In Weast v. Schaffer, "An ALJ ruled the parents bore the burden of proving the IEP was inadequate. But on appeal, the District Court placed the burden of proof on the district and awarded the parents reimbursement. Reversing the lower court, the 4th Circuit decided there was no reason to depart from the general rule of allocating the burden of proof to the party seeking relief." *Weast v. Schaffer*, 377 F.3d 449, 449 (2004).

In its decision, the 4th Circuit stated that "by the time the IEP is finally developed, parents have been provided with substantial information about their child's educational situation and prospects." "In sum, Congress has taken into account the natural advantage a school system might have in the IEP process, including the administrative hearing, by providing the explicit protections we have outlined. As a result, the school system has no unfair information or resource advantage that compels us to reassign the burden of proof to the school system when the parents initiate the proceeding." *Weast v. Schaffer,* 377 F.3d 449, 454. The Court finds that "the IDEA does not allocate the burden of proof, and we see no reason to depart from the general rule that a party initiating a proceeding bears that burden," and they "hold that parents who challenge an IEP have the burden of proof in the administrative hearing." *Weast v. Schaffer*, 377 F.3d 449, 456 (2004).

In this 2 to 1 decision by the 4th Circuit, the dissenting judge wrote an opinion maintaining that the district should bear the burden. An appeal of the decision has gone before the U.S. Supreme Court which has agreed to hear the appeal. This ruling is expected by June of this year. Norlin, John W., Esq. (Ed.). (2005). *Supreme Court Bulletin: High court to decide burden of proof issue*, Horsham, PA:LRP Publications.