

LDA

Burden of Proof Legislation Is Needed in the 2007 Legislative Session to Halt the Reduction of Parent and Student Rights Under IDEA

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Chartered by the Board of Regents in 1958, the Learning Disabilities Association of New York State (LDANYS) is the only statewide parent driven organization, specifically representing and advocating for individuals who have learning disabilities; their families and professionals who support them. A learning disability is a neurobiological disorder, which is developmental in nature. A learning disability manifests itself as a chronic condition in many aspects of learning and behavior across the lifespan and its impact upon an individual's ability to function can be significant. As a parent advocacy organization, LDANYS seeks to protect the rights of parents and the rights of their children with disabilities to receive a "free and appropriate public education" as provided by the federal Individuals with Disabilities Education Act and opposes any actions, state or federal, that would diminish these rights.

LDA Regional Affiliates:

LDA of the Capital District
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LDA of the Life & Learning Services
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LDA of the Mohawk Valley
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LDA of New York City, Inc.
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LDA of the Southern Tier
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LDA of Western New York
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Background:

In 2005, the United States Supreme Court ruled in *Schaffer v Weast* that in the absence of a state law to the contrary, parents who disagreed with their child's Individualized Education Plan have the burden of proof to demonstrate that services being provided by a school district would not provide an "appropriate" education as required by the federal Individuals with Disabilities Education Act (IDEA). This decision was in conflict with the longstanding practice in New York State that required school districts to demonstrate they provided appropriate services in impartial hearing cases. Prior to this decision, due process proceedings recognized the natural advantage school districts had over parents and compensated for this advantage by placing the burden of proof in special education disputes on school districts. However, once the ruling was issued and because state law is silent on the topic, the New York State Education Department issued guidance to the field supporting the precepts of the Supreme Court decision.

The Supreme Court decision deals a second blow to parental rights in special education proceedings. In the 2004 reauthorization of IDEA, Congress tightened due process requirements making it more difficult for parents to win in impartial hearings. Additionally, language was added to suggest that if parents were found to have frivolous reasons for requesting a hearing, they could be held liable for school district legal fees in