

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LENNOX SCHOOL DISTRICT.

OAH CASE NO. 2012090003

ORDER GRANTING DISTRICT'S
MOTION NOT TO SHIFT BURDEN OF
PERSUASION

On August 31, 2012, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH) against the Lennox School District (District). On September 5, 2012, the District filed a motion for an order to determine the burden of persuasion as Student's complaint requested that OAH shift the burden of persuasion to the District. Student did not file a response.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), the party filing a due process action to determine whether the local education agency provided a student with a free appropriate public education has the burden of persuasion in the due process hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-61 [126 S.Ct. 528, 163 L.Ed.2d 387].)

DISCUSSION

Student complaint requests that OAH place the burden of persuasion on the District in this matter because the District purportedly failed to produce all of Student's educational records, which prevents Student from proving that the District denied him a free appropriate public education. Student's complaint did not cite any legal authority for his contention. Therefore, Student did not establish that OAH should change the United States Supreme Court's clearly enunciated position in *Schaffer* that Congress intended in the IDEA to place the burden of persuasion on the party who files the due process hearing request, pursuant to the common law rule that the party seeking relief has the burden of persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49, 57-61 [126 S.Ct. 528, 163 L.Ed.2d 387].) Therefore, Student has the burden of persuasion as the party seeking relief.

ORDER

The District's motion to not to shift the burden of persuasion onto the District is granted.

Dated: September 13, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings