

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PALMDALE SCHOOL DISTRICT.

OAH CASE NO. 2009050621

ORDER DENYING STUDENT'S
MOTION TO SHIFT BURDEN OF
PERSUASION

On May 14, 2009, attorney Suzanne N. Snowden, on behalf of Student, filed a request for due process hearing (complaint) against the Palmdale School District (District). On June 4, 2009, Student filed a motion to shift the burden of persuasion to the District in the Due Process Hearing. On June 10, 2009, attorney Lee Rideout, on behalf of the District, filed an opposition to Student's motion. On June 15, 2009, Student filed a reply brief.

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].)

DISCUSSION

Student contends that the District has the burden of persuasion in this matter because the District's April 14, 2009 individualized educational program seeks to change the status quo by changing Student's educational placement from his present elementary school to home instruction. Student attempts to distinguish *Schaffer*, which places the burden of persuasion on the party seeking relief, by citing to a 1984 District Court decision, which placed the burden of persuasion on a school district that sought to change a student's educational placement. (*Burger v. Murray County School Dist.* (N.D. Ga. 1984) 612 F.Supp. 434.)

Student's reliance on *Burger* is misplaced because the United States Supreme Court clearly enunciated its position in *Schaffer* that Congress intended in the IDEA to place the burden of persuasion to 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].) Therefore, Student has the burden of persuasion as Student is the party seeking relief.

ORDER

Student's motion to shift the burden of persuasion is denied.

Dated: June 15, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings