

## New Jersey puts onus on schools to prove an IEP works

New Jersey has become one of a handful of states requiring school districts to prove the effectiveness of Individualized Education Programs when they are challenged in court. Until Gov. Jon Corzine signed a bill into law last month, New Jersey parents always carried the burden of proof if they sued over an IEP.

The new law reverses a 2007 U.S. Supreme Court ruling (*Schaffer v. Weast*). In that case, justices determined that whatever party objects to the IEP has to prove it wasn't working.

Faced with the prospect of finding evidence that a

school wasn't providing an appropriate education, many parents felt that their hands were tied.

But that *Schaffer v. Weast* ruling left a loophole: It said the burden falls to the party seeking relief when no state law assigns that burden. Now New Jersey -- along with 10 other states and the District of Columbia -- has passed a law to clarify the issue within its borders.

New York added a similar law to its books in August, and special education advocates see such moves as a success in the fight for appropriate education plans for children with unique needs.

## More money marked for special ed, but the devil is in the details

More money will be earmarked for special education costs in New Jersey's 2008 budget, but

it will be allocated differently. Changes have some school districts crying fowl, and it could lead them to push harder against the idea of paying for schooling outside the public district.

New Jersey will boost special education aid from \$970 million to \$1.4 billion. More than half of will be distributed on a simple per-student formula. The rest will be spread around using a formula that considers the wealth of a district. As a result, wealthier districts will likely need to dig into their regular education budgets to shoulder the costs.

Republicans opposed that piece of the proposal, but even after heated debate it stayed in the measure that was ultimately approved by the legislature. Democrats had their own

objection to the amount districts will be reimbursed for students with so-called "extraordinary" special education costs -- and they won that battle after a standoff that tagged more money for those situations.

That key provision specifically applies to students educated in private schools at the expense of their public districts. The state will reimburse districts 75 percent of such "extraordinary" costs, and only after the district has paid out \$55,000. Last year, the state covered 23 percent of those costs, but the district got that reimbursement after paying out \$40,000.

The [New York Times](#) offers a detailed explanation of the funding plan.

Broder Law Group, P.C. will keep you up to date on legal issues affecting special education.

**Seth N. Broder, Esq.**

[sbroder@broderlawgroup.com](mailto:sbroder@broderlawgroup.com)  
[www.broderlawgroup.com](http://www.broderlawgroup.com)

901 Route 168, Ste. 110  
Turnersville, NJ  
(856) 227-5100 Phone  
(856) 227-4124 Fax

To unsubscribe, send an email [here](#).