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EQUITY AND JUSTICE FOR STUDENTS WITH DISABILITIES

Testimony on SB 1000 and HB 1300: Blueprint for Maryland's Future – Implementation (2/17/2020)

Senate and House Committee Chairs and Members:

I was a member of the Kirwan Commission, and want, first, to thank the legislators here who served so hard and well on the Commission. I am grateful to have been your colleague and I strongly support the Blueprint.

But there is one un-noticed provision in the bills that urgently requires amendment. It involves a big loophole in the appropriation of additional funds for students with disability under last year's preliminary Blueprint bill (SB 1030). The loophole allowed local school districts to divert some or all of the additional funds away from serving students with disabilities. That is, some local districts used the funds to supplant, not supplement funding for special education.

The Department of Legislative Services tried to prevent it. Its guidance was intended to prevent supplanting, but many local school districts were still able to get away with it. And that diversion is both illegal and immoral.

The clear purpose of the additional funds was to begin to remedy the severe underfunding of special education and underachievement of students with disabilities (even taking their disabilities into account) --- for example, students with dyslexia.

There is no doubt that the diversion is illegal: inadequate funding constitutes a violation of federal and state law that guarantees appropriate services to students with disabilities. And it is immoral because funding is being taken away from our most vulnerable students – those who have disabilities and are disproportionately poor and of color. **Of all of last year's Blueprint funding, the only funding that could be and was diverted from its categorical purpose was the funding for students with disabilities.**

How can this be? Because for one thing, students with disabilities are also the most politically powerless of all school constituencies, or else special education programs wouldn't be as bad as they are universally known to be. For another, the diversion of funds can be done by complicated bookkeeping that is not transparent.

The Kirwan Commission at its last meeting recognized the loophole in SB 1030 that enabled the diversion, and recommended certain language that was similar to the language that the Department of Legislative Services had tried to impose.

However, the bills before you use a different language that unintentionally creates an even wider loophole. The language reads (p. 38, line 16): “Each school shall use the funds provided under this section to provide the services required by each student’s individualized education program or 504 plans.” Those of us who work in special education as I do --- I have over the past 20 years represented pro bono over 250 students with disabilities – know that this language is open to a technical interpretation that would continue to allow diversion.

That language should be stricken and a straightforward sentence inserted that says in effect: Local school districts shall use the special education funding under the Blueprint to supplement funding for special education over the previous year’s funding level. This is standard Maintenance of Effort language, and no reason has ever been given as to why it should not be used to close the diversion loophole once and for all.

Let me add two more notes about the diversion. One, it undercuts the General Assembly’s promise that there will be accountability for how the Blueprint funds are spent. Nothing is more unaccountable than the diversion of special education funds from their intended purpose.

A second note is that it isn’t only students who are being victimized. Teachers are victimized too. Special education teachers are the hardest to recruit because they are asked to teach too many students who are too far behind. Despite their commitment, job satisfaction is missing, and they exit quickly. One way we can enhance teacher recruitment and retention is by giving special education teachers the resources to do the job right.

In closing, I appreciate and admire your dedication to the very difficult task ahead of you. At the same time, ending the diversion of funds from students with disabilities should be easy. It’s necessary and the right and just thing to do. Thank you for considering it.