



**Board of Education of Howard County
Testimony Submitted to the Maryland Senate,
Education, Health, and Environmental Affairs Committee
April 5, 2022**

**Board of Education
of Howard County**

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HB0865: FAVORABLE

Howard County – Due Process Proceedings for Children With Disabilities – Burden of Proof Ho. Co. 02-22

The Board of Education of Howard County (the Board) supports **HB0865 Howard County – Due Process Proceedings for Children With Disabilities – Burden of Proof Ho. Co. 02-22** as a local legislative priority for the school system.

Statewide legislative efforts to shift the burden of proof in special education due process cases have failed repeatedly as far back as 2013 due to unwarranted opposition by school systems. In Howard County, however, the Board believes this shift would allow the school system to reinforce a culture of partnership. Ultimately, HB0865 is about doing right by our special education students and families.

The opposition the Committee may hear on this bill centers largely on unreliable forecasts of a dramatic rise in due process cases being brought against the school system. There is no data, however, to support this claim. In fact, the Maryland Department of Legislative Services noted under HB1489 from 2018¹ – the last time this bill was introduced statewide – case studies found the U.S. Department of Education reported that after New Jersey’s shift in 2008 there was an initial surge in the number of due process cases in the first year after passage, but in the following three years that number returned at or below levels prior to the change. They also noted a downward trend in cases following a shift in the law in New York in 2007.

Many argue school systems will take on heavy financial legal fees, and that teachers and staff will be overly burdened by such a shift. Without research to support the claim of increased cases, the opposition tied to these arguments also falls short.

Moreover, misguided opposition also results from the decision made in the Supreme Court case under *Schaffer v. Weast* 546 U.S. 49 (2005). That ruling addressed the fact that because federal law is silent on the placement of the

¹ Maryland Department of Legislative Services, “HB1489 – Fiscal and Policy Note,” 2018 Session, Page 3-4, https://mgaleg.maryland.gov/2018RS/fnotes/bil_0009/hb1489.pdf.

burden of proof in special education due process cases, the decision falls to the default rule for court proceedings, which in Maryland is the party seeking relief. The Court specifically declined, however, to address whether state laws or regulations could override the default – meaning the issue remains open to a shift at the local level. The Maryland Department of Legislative Services found in 2017 eight other states that had a statute or regulation that places the burden of proof on the public agency in some manner in their research on past statewide bills², and New Hampshire just passed a similar bill this past year³.

Simply put, school systems hold the fundamental responsibility to provide a Free and Appropriate Education (FAPE) under the Individuals with Disabilities Act (IDEA). As such, staff already prepares for meetings with parents on the Individualized Education Plan (IEP) developed by the school and has access to the data and expertise on a student's progress – the *proof* needed to show that appropriate services have been provided.

For these reasons, we urge a FAVORABLE report of HB0865 from this Committee. The Board and HCPSS commend the Howard County Delegation, the Sponsor Senator Katie Fry Hester, and the Howard County Education Association for their unanimous support of this effort as a pilot over the next three years.

² Maryland Department of Legislative Services, "Issues Papers – 2017 Legislative Session," December 2016, Page 92, <https://mgaleg.maryland.gov/Pubs/LegisLegal/2017rs-Issue-Papers.pdf>.

³ "NH HB581 – Version Adopted by Both Bodies," LegiScan, 2021 Session, https://legiscan.com/NH/text/HB581/id/2415917/New_Hampshire-2021-HB581-Enrolled.html.