

HB865_HoCoDelegation_FAV.pdf

Uploaded by: Abbey Rubeling

Position: FAV

SENATOR CLARENCE K. LAM
SENATE CHAIR

MILLER SENATE OFFICE BUILDING
11 BLADEN STREET, ROOM 420
ANNAPOLIS, MARYLAND 21401

SENATOR GUY GUZZONE
SENATOR KATIE FRY HESTER



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401
HOWARD COUNTY DELEGATION

DELEGATE COURTNEY WATSON
HOUSE CHAIR

THE MARYLAND HOUSE OF DELEGATES
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DELEGATE VANESSA ATTERBEARY
DELEGATE ERIC EBERSOLE
DELEGATE JESSICA FELDMARK
DELEGATE TERRI L. HILL
DELEGATE TRENT KITTLEMAN
DELEGATE REID J. NOVOTNY
DELEGATE SHANE PENDERGRASS
DELEGATE JEN TERRASA

April 5, 2022

The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs
The Maryland Senate
11 Bladen Street, 2 West
Annapolis, Maryland 21401

Dear Chair Pinsky:

The Howard County joint House and Senate Delegation has voted in favor of the following bill that will appear before your Committee:

HB0865: Howard County – Due Process Proceedings for Children With Disabilities – Burden of Proof Ho. Co. 02-22

A copy of the Delegation vote sheet in favor of this bill is attached and we request a favorable Committee Report. Please contact the Howard County Delegation office at x3360 or hoc1@mlis.state.md.us if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Clarence K. Lam".

Senator Clarence K. Lam
Senate Chair
Howard County Delegation

A handwritten signature in black ink, appearing to read "Courtney Watson".

Delegate Courtney Watson
House Chair
Howard County Delegation

Howard County Delegation

Voting Record – 2022 Session

Bill Number: HB0865

HoCo Bill Number: 2-22

Vote Date: 1/26

Final Action: Passed

Motion:

- Favorable Favorable with Amendment Withdrawn

Name	Yea	Nay	Abstain	Excused
Lam, Clarence, Chair, Sen.	✓			
Watson, Courtney, Chair, Del.	✓			
Guzzone, Guy, Sen.	✓			
Hester, Katie Fry, Sen.	✓			
Atterbeary, Vanessa, Del.	✓			
Ebersole, Eric, Del.	✓			
Feldmark, Jessica, Del.	✓			
Hill, Terri, Del.	✓			
Kittleman, Trent, Del.	✓			
Novotny, Reid, Del.	✓			
Pendergrass, Shane, Del.				✓
Terrasa, Jen, Del.	✓			

Committee Reporter Abbey Rubeling

HB0865 Written Testimony.pdf

Uploaded by: Julie Hotopp

Position: FAV

Dear Honorable Members of the Maryland State Senate:

Please ensure passage of HB865. Please ensure that it has a vote in the Senate Committee. Please encourage your colleagues to favorably vote on HB865.

The school system in Howard County has asked for this legislation. The Howard County Board of Education AND the teacher's union (HCEA) have both testified in person in favor of this legislation. It is supported by so many in Howard County in addition to the BOE and HCEA, including the Howard County Delegation, PTACHC, and many more, but most importantly our special education community. The bill would support shifting the burden of proof in due process cases from families to the Board of Education.

In special education, the school holds all the cards and that will still remain (despite it being an enormous conflict of interest). Schools do the testing, schools determine what is written in reports, schools control the meetings when they happen and what is and is not discussed, schools ultimately determine if a child gets an IEP, and even when things sour schools hold all the documents. Schools determine what is in meeting minutes. **NONE OF THAT WILL CHANGE.**

This bill would, at the very end, if there is a tie, allow a case to be decided in the family's favor. At this point, having had all the cards, if the school can't demonstrate what needs to be demonstrated, it seems reasonable to decide in the family's favor, the family who has had little control over the process. In fact, data thus far in other jurisdictions suggests that in these cases, everyone is less likely to pursue legislation and instead the schools do what is in the best interest of the child's education.

Schools have the burden of proof in teacher disputes because of the unfair advantage of the institution. Let's extend that same fairness to students with disabilities. It is only a 3 year trial for one county and will provide actual real world, in Maryland, evidence. New York State's teachers' union has been the champion of this shift because it is the right thing to do. More and more states are following suit. Please allow Howard County to test the waters as we have requested.

Passing HB865 is the right thing to do. Let's get it done!

Sincerely,

Julie Hotopp
Howard County Parent

Testimony In Support of HB 865 - Senate - EHE - Bu

Uploaded by: Rich Ceruolo

Position: FAV



April 4, 2022

Maryland Senate
11 Bladen St.
Annapolis, MD. 21401

In Support of HB 865 with Amendment(s): Due Process Proceedings – For Children with Disabilities Special Education – Howard County - Burden of Proof – 02-22

Members of the Maryland Senate's EHE Committee.

We are an organization of military and non-military families with over 1400 members and fully support The Howard County delegation's efforts to shift the burden of proof for Special education – Office of Administrative Hearings (OAH) - Due process hearings to the local school district's board of education.

Much like the state of N.H. just recently did for families of children with disabilities:

<https://drcnh.org/issue-highlight/burden-of-proof-in-due-process-hearings/>

This bill would be a huge help to families that need the most help caring for their loved ones struggling with behavioral health issues and disabilities. This bill would help to provide the necessary updates to an aging OAH process and procedures when it comes to special education laws and the many updates to them, especially since the Covid 19 pandemic.

Amendments: We would love to see this Bill and potential law passed into law and applied to the entire state, across all 24 school districts, for all OAH's special education, due process hearings.

SPED Unit ALJ - We would also really appreciate a renewed effort (2019 – House Bill 1275) by the MGA to ensure that Administrative Law Judge's (ALJ) that hear special education cases, have the required numbers of hours and necessary training to be well informed, impartial judges in the very complex and specialized area of education law. Helping to shoulder the financial burden being shouldered by so many Maryland families by a lengthy and expensive due process hearing process. Often times the ALJs lean on the LEA attorneys for guidance, due to their lack of expertise in this very complex (IDEA - Special Education) area of education law. Thereby leveling the playing field, while bringing about more equity to due process hearings. Like N.J., maybe even form a sub unit of ALJ's that have additional training hours in special education, and civil rights law.

<https://www.ahherald.com/2022/01/19/administrative-law-unit-dedicated-to-special-education-cases-signed-into-law/>



Please let's continue to build on this effort to support Maryland families of children with disabilities now, and well into the future, by bolstering justice, equity and equality within Maryland's special education process, due process hearings policies and procedures. And shift the burden of proof to the Local Education Agency's Board of Education in Howard County and beyond.

Please support House Bill 865 and return a favorable report. Thank you for your time, and for considering our testimony today.

Mr. Richard Ceruolo | richceruolo@gmail.com

Parent, Lead Advocate and Director of Public Policy

Parent Advocacy Consortium (Find us on Facebook/Meta)

<https://www.facebook.com/groups/ParentAdvocacyConsortium>

HB0865 Howard Co BOE Testimony 040522 for EHEA - B

Uploaded by: Staff Howard County

Position: FAV



**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**

Vicky Cutroneo, *Chair*

Antonia Watts, *Vice Chair*

Christina Delmont-Small

Yun Lu, Ph.D.

Jennifer Swickard Mallo

Jolene Mosley

Chao Wu, Ph.D.

Peter J. Banyas
Student Member

Michael J. Martirano, Ed.D.
*Superintendent
Secretary/Treasurer*

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.