

**SB0926.pdf**

Uploaded by: Amy Dodson

Position: FAV

March 14<sup>th</sup>, 2023

Dear Committee Members,

I am writing to you in support of SB0926. As a parent of a child with a disability, you can only imagine that keeping your child safe, and making sure they have an opportunity to do well in school is a high priority. It is also extremely important to me that my sons school has fairness and equity in mind when educating him. I also greatly appreciate our educators. Shifting the burden of proof only means the school presents its case first and must show what they are providing to need the education support and instrumental needs of the students.

As the wife of an educator, it is also important to me that we do not create extra work for our special educators. However, this bill does in fact not create extra work. Educators all ready keep data and reports to satisfy requirements that exist today for IEPs (individual education plans). There are in fact other states where the burden of proof has been shifted to the schools, and there is not data to support opponents claims that passing this bill would create more work for educators. States that have enacted this have shown, over time, due process complaints decreased which create better outcomes for students with disabilities, and less burden for everyone.

Please consider passing this bill so we continue to see progress and improvements of serving our students with special needs.

Best,

Amy Dodson

**SB0296\_The Arc Maryland\_Support written.pdf**

Uploaded by: Anthony Zanfordino

Position: FAV



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EDUCATION, ENERGY, and the ENVIRONMENT COMMITTEE  
SENATE BILL 0296: County Boards of Education - Due Process Proceedings for Children With Disabilities -  
Burden of Proof  
March 15, 2023  
POSITION: SUPPORT

Good afternoon! My name is Anthony Zanfordino, I am presenting on behalf of the Arc Maryland Governmental Affairs committee and my son Stormie Zanfordino (a 16 year old with Down syndrome). I am here to encourage the passage of the bill through committee and eventually the Senate.

Let me start by saying when parents are going into IEP meetings they ask for prayers and guidance. When things get tough, they want an advocate. This is a supposed to be a meeting of on how to best educate our children. Our tax dollars already are paying for this service.

My story. When my son first entered school, we were excited about Infants and Toddlers and eventually Kindergarten. By the time my son entered third grade, we were faced with multiple IEP meetings that wanted take him from an educational track to life skills. I can remember the school providing all this information on his test scores and what he was not doing. As a matter of fact, his third-grade teacher said students like him may not learn. I could have appealed that decision by team, but I already knew he was unwanted at that school. We had to re-enroll him into the other school not just a transfer.

I am ashamed today to say maybe, I should have fought harder for him for his early education. Maybe, I should have filed for due process, but I knew it would be a continual fight to do what is right. It would create financial and emotional stress for my family beyond what we were already going through.

During middle school, we would ask for him to be included in typical classes, but nothing changed. In 2020, we decided to forgo the IEP process and move Stormie to Bishop McNamara HS St. Andreas program. It was a choice for his personal development, education and sense of pride. There are other parents who have decided on homeschooling. In 2022, my wife and I discussed due process with an advocate, but changed our mind when they advised about the uphill battle and no possibility of reimbursement.



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So today, I ask that you approve the bill in committee and bring it to a full Senate vote. It's just one step in us moving closer to working together for the children and the future.

**SB\_926\_BOP\_2023.pdf**

Uploaded by: Barbara Krupiarz

Position: FAV

Barbara Krupiarz  
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Ellicott City, MD 21043  
3/15/2023

Education, Energy, and Environment Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

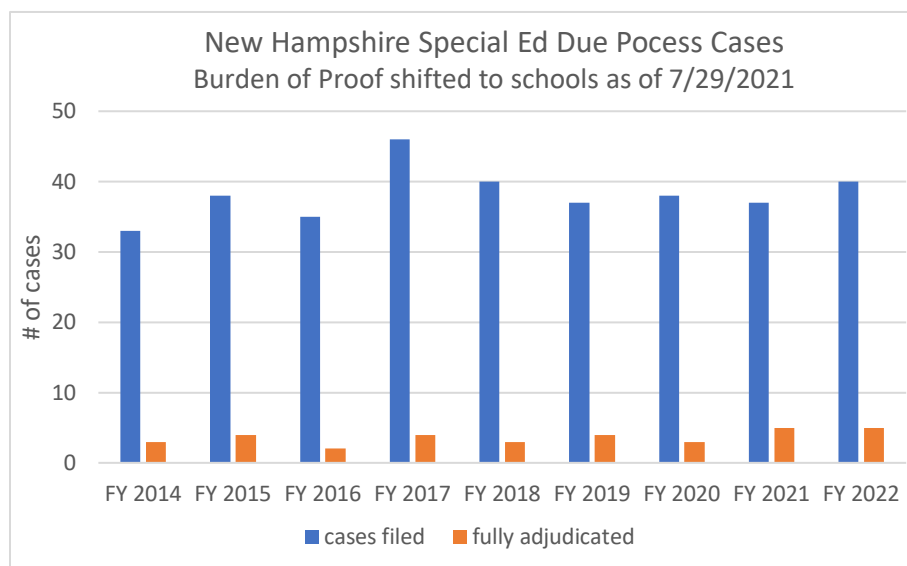
### SB 926 – County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

Position: Support

This bill simply levels the playing field – especially for low-income parents who can't afford an attorney. Going to court is a last resort for parents – it is expensive if you can afford an attorney and it is stressful for everyone.

I will give you a simple example of the issue. My son was failing Spanish in ninth grade. I kept having meetings with the teachers and they kept telling me that foreign languages are tough for kids with disabilities. In the 3<sup>rd</sup> quarter, an office referral came home stating that my son refused to start his packet in Spanish. At least I knew why he was failing now. Kids with ADHD often shut down when tasks seem too large, so his Individual Education Program (IEP) required the teacher to give him one page at a time if a packet was to be handed out – a simple accommodation. When I brought it up, the response was “we are following the IEP”. This is a small example of how parents are in the dark about IEP compliance. They just know their kids are regressing. I wouldn't have been able to prove noncompliance in court, if I had gone, without the office referral.

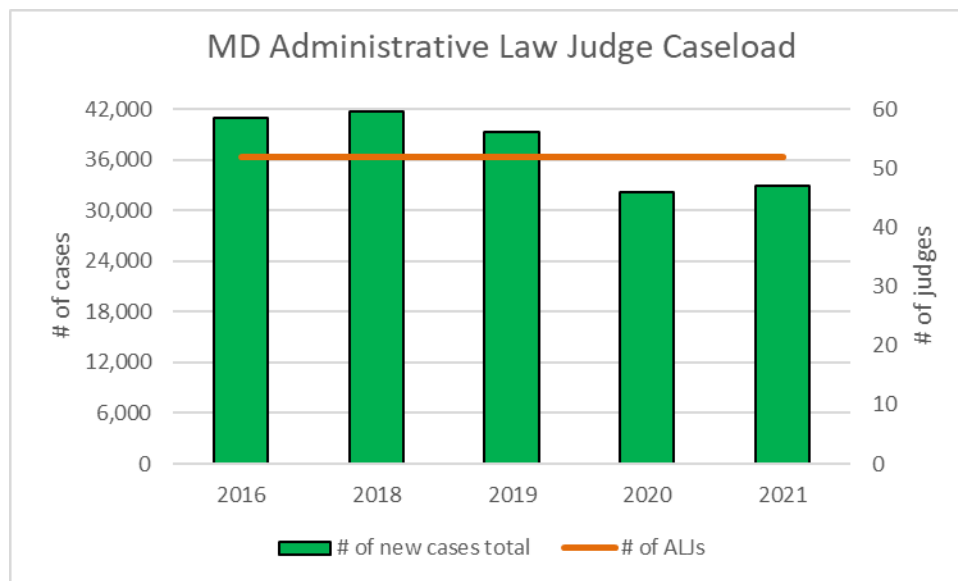
Opponents argue that the number of due process cases will increase if the burden of proof is shifted to schools. Other states, such as New York and New Jersey did not have that experience when they shifted the burden. The most recent state to shift the burden of proof was New Hampshire, effective July 2021. Here are their numbers, so you can see for yourself:



Shifting the burden to schools means schools present their evidence first. And if the judge believes it's a tie, the decision goes to the parent. That's it. Parents and Schools are required to prepare their cases anyway and provide all evidence to each other 5 days before the hearing. Parents can't recover their expert witness fees and they have no discovery capabilities, except to ask for student records. The school system has all the data, legal budgets for private attorneys, staff, etc.

If parents can't afford an attorney and present their case first, there is a strong possibility that it will be thrown out before the school has to present anything because parents don't know how to introduce evidence, file a motion, or cross examine a witness. Special ed parents can't appeal decisions to their Boards of Ed like their general ed counterparts due to the "legal nature" of special ed.

The fiscal note says that additional Administrative Law Judges would have to be hired if cases increased significantly. Other states have proven that cases do NOT increase significantly and the caseload data from the Office of Administrative Hearings shows that there have been 8,000+ fewer total cases filed in the last 5 years with the same number of ALJs. Maryland has roughly 20 special ed cases per year.



It is disappointing that the same groups continue to oppose this very minor change in Maryland. In New York, the *state teachers union* spearheaded the shift to schools and said it corrects an injustice. New Jersey recently passed a bill to have a special education-only unit of ALJs supported by their *State School Board Association*. The Connecticut *State Board of Education* fought numerous proposals to shift the burden to parents over the years. None of these states saw increases in due process cases from placing the burden of proof on schools.

As the New Hampshire Governor said as he signed their bill in 2020: "It really does what we always talked about: putting the individual first, putting the kids first, putting families first." NH has not seen an increase in cases either.

I have been testifying for this bill since 2013 and legislators stated they needed more data, which we have in abundance from other states. This bill has a sunset clause for only 3 years. Please collect the data in Maryland for 3 years and put low-income families first by a favorable report on this bill.

Barb Krupiarz



**SB0926 2.pdf**

Uploaded by: Brian Coughlin

Position: FAV

To Whom it May Concern,

I am a resident of Baltimore City and a teacher in Baltimore City Public Schools. I am writing to ask that you give a favorable report out of committee for SB926 County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof. This bill would level the playing field for families and students who disagree with their school system about an important decision regarding the placement of their child or special education services their child needs to be successful. This bill will simply require school systems to defend their position first if there is a disagreement about a student's program, placement or services that cannot be settled at the IEP table. Right now,, only parents who can afford expensive attorneys and expert witnesses have any chance of winning and even then they hardly ever do. The system isn't fair.

This bill particularly matters to me because I have a 15 year old daughter with Down syndrome. As we advocate for her needs and navigate the school system, we have experienced how parents are at a disadvantage when disagreements occur. Our families deserve to be able to have our voices heard on an equal playing field.

I am also a special education teacher in Baltimore City for the past 9 years. I know that the teachers unions are saying that this bill will add to teacher workloads, but teachers are already required to collect data about my child's progress at school. This bill will do nothing to add to their workload. In my teaching experience, I have not seen any indication that this bill would add any additional work for teachers. There is evidence from other states like New Jersey and New York that have already shifted the burden of proof that after a short period of increased cases the number of cases actually fell because school systems are more willing to mediate disagreements and find mutually agreeable solutions at the IEP table before going to court. This is a win for everyone!

Please help families across the state of Maryland who are trying to protect the rights of their children, and make the process of meeting the needs of kids who get special education services more fair and less contentious. I ask for a favorable vote for SB926

Thank you,  
Brian Coughlin

# **Catherine Grube Testimony - St. Mary's County Resi**

Uploaded by: Catherine Grube

Position: FAV

I am writing today in support of SB0926 as a parent of a student with Down syndrome who is enrolled in St. Mary's County Public Schools. The Burden of Proof Bill is a critical change needed to ensure that the IDEA is implemented correctly and students with disabilities receive a free and appropriate public education regardless of their economic status, access to legal representation, and without fear of retaliation. The Burden of Proof Bill would not create more work for teachers as they already are required to track metrics of progress, services delivered and the supports and accommodations given to each student receiving special education services. Parents of children with limited communication or no communication have to entirely rely on what is and is not shared by the school system. Therefore in a situation where they are concerned about whether or not their child is receiving the agreed upon services and supports, it is unfathomable that they would have to provide evidence and witnesses first. Additionally, school systems hold another advantage in having in-house legal counsel and numerous experts to help argue that they have provided what is in the students' IEP and are providing a free and appropriate public education. Parents who cannot afford legal counsel cannot adequately access their parental safeguards and then cannot actually advocate for their own child's special education needs. I believe that this bill would actually reduce the number of due process complaints because school systems would be more inclined to follow IEP plans with fidelity and keep accurate records as they would be in the position to defend themselves first. In the end, that would mean a significant improvement in educational outcomes for students receiving special education services, a reduction in stress and financial burden on families, and more adherence to the IDEA and COMAR. Wins all around.

I can personally speak to the imbalances that exist within the current procedures. We filed due process in the fall of 2022 after more than 6 months of IEP meetings, emails, and phone calls trying to get our son out of a self-contained, segregated classroom. The school failed to hear our concerns and refused to change his placement to his least restrictive environment despite 9 years of success in a general education placement with support. When we filed our due process complaint, we learned several things: that we would have less access to information about our son and his education during this time because of "liability", that we were "on trial" within the staff at our son's school due to our filing, and that we had no chance of success in our hearing because "Maryland has a very strong record" in due process. As a result of the retaliation against our family and our son, our family's financial constraints, and a deep and painful feeling that nothing would change for our son's placement, we withdrew our due process request after mediation. During this process, our son's personal information and information about our case was shared widely within our small community by school personnel with no repercussions. He developed tics and anxiety as a result of the retaliation and poor treatment by school staff. He eventually had to be removed from the school and is now home on HHT. The escalation of events and the lack of transparency led my husband and I to the conclusion that he was no longer safe in the building. So now, not only is he not receiving a FAPE, he isn't able to be a part of his school community at all. Putting the burden of proof on the school system, who hold all records and employ all witnesses, is the only way to ensure that parents can actually USE their parental safeguards and ensure that the law is upheld for some of the state's most vulnerable students. Please vote yes on SB0926.

Thank you for reading this and for your consideration. Please reach out for any needed additional information.

Catherine Grube  
Parent of a child with Down syndrome in St. Mary's County  
Phone: 240-538-5473 Email:ccgrube@gmail.com

# **MANSEF Written testimony - SB 926 - Burden of Proo**

Uploaded by: Dorie Flynn

Position: FAV



**Bill: SB 926**

**Title: County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof**

**Date: March 15, 2023**

**Position: Support**

**Dorie Flynn, Executive Director**

The Maryland Association of Nonpublic Special Education Facilities (MANSEF), representing 70 nonpublic schools across Maryland supports Senate Bill 926. We currently serve over 3500 publicly funded school children and employ over 1500 teachers, clinicians, and administrators.

It is unfair that parents have the burden of proving that the school system is not providing their child with appropriate services. The deck is stacked against them. In my role as an advocate, I hear from parents everyday who are struggling to find appropriate services and simply want the best for their child. We encourage parents to advocate and then refute their very involvement. Many parents do not feel they are equal partners on the IEP team. This puts parents at a disadvantage as they do not have access to all the same information as the school system and are intimidated by the IEP process. Unfortunately, IEP meetings can be adversarial, and this should not be the case. When the burden of proof is put on the school districts, the school districts will have to prove a *positive*, that the IEP they created *does* provide FAPE. Given their resources, this is completely fair and appropriate. This bill in no way creates a hardship for either public or nonpublic teachers as the documentation and data are already collected and parents need access to all the evidence developed by the school to put their complaint forward. Despite having strong federal and state protections for students with IEPs, concerns still exist and parents should have an equal voice at the table. Additionally, there is no correlation or evidence that shifting the burden will increase referrals to special placement schools which are federally mandated as part of the full continuum.

MANSEF supports the belief that each student's unique needs are met on an individual basis to achieve their maximum potential. This bill will support a more conciliatory IEP process and lessen the acrimony that often takes place at IEP meetings. All students require a quality education and having parents actively engaged enhances the outcomes.

**2023-03-15 SB 926 (OAG Support).pdf**

Uploaded by: Hannibal Kemerer

Position: FAV

**ANTHONY G. BROWN**  
*Attorney General*



**CANDACE McLAREN LANHAM**  
*Chief of Staff*

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*Deputy Attorney General*

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March 15, 2023

**TO:** The Honorable Brian Feldman  
Chair, Education, Energy, and the Environment Committee

**FROM:** Hannibal G. Williams II Kemerer  
Chief Counsel, Legislative Affairs, Office of the Attorney General

**RE:** SB926 – County Boards of Education – Due Process Proceedings for  
Children with Disabilities – Burden of Proof (**Support**)

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The Office of Attorney General writes in support of Senate Bill 926, Senator Alonzo T. Washington's legislation to shift the burden of proof from the party seeking relief in an administrative hearing regarding a dispute under the Individuals with Disabilities Education Act ("IDEA") to the county board of education (with the limited exception of parents seeking a unilateral placement at a nonpublic school). In *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005), the U.S. Supreme Court held that under the IDEA the burden of proof in an administrative hearing challenging an individual education plan ("IEP") was properly placed upon the student, who was the party seeking relief, rather than the school district. However, the Court's ruling did not forbid a state from adopting law that shifts the burden. To date, six states (CT, NJ, NY, DC, DE, and NH) place the burden of proof on school districts in various circumstances. As a matter of equity, Maryland should join their ranks.

All too often, parents of disabled children lack the resources to engage counsel to vindicate their children's IDEA rights. This change in the law will ensure that those parents and their disabled children are not adversely affected by school districts refusing to grant them accommodations to which the students are entitled.

For the foregoing reasons, we urge a favorable report on SB 926.

cc: The Hon. Alonzo T. Washington & Committee Members



# **Due Process Bill 2023.pdf**

Uploaded by: Jimara Kocik

Position: FAV

March, 14 of 2023

Dear Honorable Members of the Legislative Committee Education, Energy and the Environment Committee

My name is Jimara Kocik and I live in Columbia, MD. I am a parent, caregiver and a Board Member of Howard County Autism Society. I am writing to you to ask for your support of the bill Due Process Proceeding for Children With Disabilities Burden of Proof. Bill number SB0926.

I am writing a testimony for you. As a parent with a boy with autism age 9, he has been attending elementary school in Howard County for the last 6 years. Last year, we had a disagreement with the school and my family had to bring an advocate with us during the meetings. It was a very complex and complicated IEP meeting with the school and my husband and I needed the support to navigate it. The Bill is important to us because our family will not be intimidated by the power of school. This bill will aid the balance of power. I have had the opportunity to have an organization like Howard County Autism Society that works with us and helps other families with language barriers. These families do not have the same opportunities for there is no hope for improving better services for their children with special needs. The passing of the bill will not only impact my family, it will impact families with the same issues my family is having. It is important for the Committee to know, especially after covid 19, that public schools students are losing academically and have continued gaps. If we can have a balance of power, we can support them and reverse back that loss. More importantly, the school will follow their IEP more efficiently.

Please consider supporting Bill SB 0926. Thank you for your time and efforts.

Sincerely,

Jimara Kocik

9519 Rommel Drive  
Columbia,MD 21046

# **Testimony in Favor of S926 (Burden of Proof) Julie**

Uploaded by: Julie Reiley

Position: FAV

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## **FAV – TESTIMONY IN SUPPORT S0926**

County Boards of Education – Due Process Proceedings for Children with Disabilities – Burden of Proof.

I first advocated for a burden of proof bill in 2011, at a priorities hearing before my county's delegation; I continued for several years afterwards when bills were introduced in Annapolis. And even though my child has graduated, this bill still matters very much to me as a matter of fundamental fairness and equity. I have seen first-hand, I *know*, the difference in a life between having a genuinely appropriate public education under IDEA and not. I support this bill because our current system *is too hard for parents, especially parents who aren't attorneys and can't afford one.*

Before I address the importance of this bill to Maryland's most vulnerable children and their families, especially lower income families, I'd like to address the unsubstantiated speculation I have heard over the years about shifting the burden of proof, speculation you'll undoubtedly hear this session. Those who oppose this bill, who want to maintain their unfair power over parents and the system, have repeatedly claimed shifting the burden of proof will cause a big increase in due process hearings. And yet, they have failed to provide any evidence that it's true (indeed, this claim is contradicted by the current and past fiscal notes). In contrast, the Maryland General Assembly has, over the years, been provided with data – by me and others - *demonstrating just the opposite.* New York (*with* the support of the New York teacher's union) and New Jersey are among several states with burden of proof bills. In the years immediately following passage of their bills, neither New York nor New Jersey saw an increase in the number of complaints filed. In fact, New Jersey had fewer complaints, New York about the same number, and both New Jersey and New York experienced a *decrease* in the number of due process hearings.

I have often heard opponents claim that putting the burden of proof on the “non-moving” party is antithetical to legal doctrine. That is false. While it is true that in most cases the burden is on the moving party, speaking as an attorney who practiced law for a decade, and then taught for over another decade, the reality is that in certain circumstances, when justice and fairness require it, the burden belongs on the nonmoving party. This is one such situation. It is unjust in due process hearings to have the burden on the moving party because it almost always ends up being on the parents, because each year a child gets a new IEP that, with a few exceptions, takes effect even over the parents' objections, and if the parents object, *they* bear the burden of proving the *district* violated *its* mandate

Schools are required by federal law to provide a free appropriate public education to students with disabilities. To achieve that, they are also required to work with parents to develop IEPs for those students. When disagreements arise, they are usually resolved in IEP meetings or mediation. And if these alternatives don't work, parents may request a due process hearing.

Both the prospect of due process, and the due process hearing itself, exist to hold the school district accountable to parents and meet the IDEA's requirements. In order to achieve this (to quote the late Justice Ginsburg), "policy considerations . . . and fairness call for the assigning of burden of proof to the school district . . ." *Schaffer*, 126 U.S. at 63 (Ginsburg, J., dissenting). The school district has superior access to critical information. The district, "familiar with the full range of educational facilities" and how similarly situated children have fared at them, is in a far better position to demonstrate compliance. *Schaffer*, 126 U.S. at 64 (citations omitted) (Ginsburg, J., dissenting). Schools also have the education and legal knowledge (lawyers), staff, funding, and access to experts, outside lawyers, and other resources. Finally, and critically, due process forces parents to ask principals and teachers to testify against their employers.

In stark contrast, parents are limited in resources, knowledge of their options, and access to experts and attorneys. **This is especially true for families who can't afford lawyers and experts.** And because of the nature of burden of proof, there have even been due process hearings in which school districts have not provided **any** evidence in support of the IEP they created - yet still won.

This inequity is very real. **A Maryland school district is 3x more likely to win than a parent, thus severely undermining the accountability of Maryland school districts to their children and families.** (<https://www.baltimoresun.com/maryland/howard/cng-ho-burden-of-proof-special-education-hearing-20230217-5w2fp7ahwbhizp54vdekdtrjta-story.html>) (Between 2018-22, Maryland parents prevailed only about 26% of the time).

For parents without attorneys, it's worse: **Maryland parents without attorneys won zero due process cases in the last five years.** (<https://www.baltimoresun.com/opinion/readers-respond/bs-ed-rr-special-education-burden-letter-20230304-4drmwtr6zb6rlopoksrvdaxiy-story.html>)

Finally, it is extremely disappointing that MSEA continues to oppose this bill instead of supporting our most vulnerable children. Especially when, as I have recently been informed, while MSEA points to the Blueprint as a reason to oppose the bill, *the State Superintendent of Schools, Mr. Choudhury, has apparently decided to resist the Accountability and Implementation Board's creation of a special education workgroup.*

**Moreover, MSEA's opposition stands in stark contrast to the New York teachers union, NYSUT,** which recognized the injustice of saddling special education parents with the burden of proof and advocated with parents in New York to pass its bill.

**As explained by the NYSUT in 2007 when New York enacted its burden of proof law:**

**"This corrects an injustice. It is unfair to put this burden on parents, especially those who do not have the financial means to hire an attorney and navigate the special education hearing process,"** said NYSUT Executive Vice President Alan B. Lubin, who thanked state Sen. Andrew Lanza, R-Staten Island, and Assemblywoman Cathy Nolan, D-Queens, for sponsoring the bill. "And, we applaud the governor for signing it."

"NYSUT Vice President Maria Neira noted the 585,000-member union worked with a coalition of more than 30 organizations - including the New York State Association for Retarded Children; Parent to Parent of New York; New York State Independent Living Centers; Cerebral Palsy of New York State and Disability Advocates - to convince the Legislature and Governor to approve the bill.

**"This is another example of how parents and teachers, working together, can form strong partnerships and accomplish great things for schoolchildren,"** Neira said. "Now, when there is a disagreement between school districts and parents on educating children with special needs, parents know they have a seat at the table and can advocate for their children without worry."

<https://www.nysut.org/news/2007/august/nysut-applauds-governor-for-signing--burden-of-proof--legislation> (emphasis added)

Maryland can be a national leader in disability rights in education by doing the right thing and passing this bill.

Thus, I respectfully request a favorable report for this bill.



Julie Reiley

*Former Positions and Honors:*

Maryland PTA Lifetime Achievement Award (2014)\*

MCCPTA Special Education Outstanding Parent Award (2012, 2020)\*

MCCPTA Special Education Committee Chair, Vice Chair and member (former)\*

Special Education Chair Westbrook PTA, Westland PTA, Walter Johnson PTSA (former)\*

Special Education Advisory Committee (SEAC) Co-chair (former)\*

Professorial Lecturer in Law, George Washington U. Law (2005-2016)\*

**\*The views expressed here are entirely my own.**

**SB 926 Written Testimony\_YEJ Clinic.pdf**

Uploaded by: Kaitlin Barnes

Position: FAV



## EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE

### SENATE BILL 926

### COUNTY BOARDS OF EDUCATION – DUE PROCESS PROCEEDINGS FOR CHILDREN WITH DISABILITIES – BURDEN OF PROOF

#### POSITION: SUPPORT

The Youth, Education, and Justice Clinic at the University of Maryland Carey School of Law represents students who have been excluded from school through suspension, expulsion, or other means. Because many of the clinic's clients have disabilities, our legal representation often involves special education matters. **The Clinic strongly supports Senate Bill 926**, which would require a county board of education to bear the burden of proof in due process proceedings that initiate from a due process complaint regarding the provision of special education services. SB 926 would help the families who are most likely to need assistance navigating the complicated world of special education, while not creating any new obligations for the state, school districts, or teachers.

The expense and complexity of due process hearings prevent most families of children with disabilities from vindicating their rights when they disagree with a school about their child's education. School districts are usually represented by counsel<sup>1</sup> and have the further advantage of being repeat players.<sup>2</sup> To effectively make their argument, families need attorneys and experts.<sup>3</sup> Special education attorneys have the expertise to guide parents through a due process hearing. As such, families represented by counsel are more likely to succeed in due process hearings than unrepresented families.<sup>4</sup>

But most families of children with disabilities cannot afford to hire attorneys or experts.<sup>5</sup> This is significant because students from low-income families are more likely to be identified for special education services than non-low-income students.<sup>6</sup> Moreover, after they are identified, many low-income students with disabilities are placed in a more restrictive educational environment. A recent study found that low-income students with disabilities are more likely to be placed in substantially separate classrooms (spending

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<sup>1</sup> Debra Chopp, *School Districts and Families Under the IDEA: Collaborative in Theory, Adversarial in Fact*, 32 J. NAT'L ASS'N ADMIN. L. JUDICIARY 423, 453 (2012).

<sup>2</sup> Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 NOTRE DAME L. REV. 1413, 1438 (2011).

<sup>3</sup> Elisa Hyman et al., *How IDEA Fails Families Without Means: Causes and Corrections From the Frontlines of Special Education* 20 J. GENDER, SOC. POL'Y & L. 1, 111, 141 (2011)

<sup>4</sup> Chopp, *supra* note 1, at 451.

<sup>5</sup> Hyman et al., *supra* note 3, at 113; Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, AM. BAR ASS'N (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap/>.

<sup>6</sup> LAURA A. SCHIFTER ET AL, THE CENTURY FOUNDATION, STUDENTS FROM LOW-INCOME FAMILIES AND SPECIAL EDUCATION (2019), <https://tcf.org/content/report/students-low-income-families-special-education/>.

less than 40% of the day in the general education classroom) than their non-low-income peers.<sup>7</sup> This is one point where race and disability intersect in Maryland: only a third of our State’s Black students with disabilities spend more than 80% of their school day in a general education classroom, compared to 55% of white students with disabilities.<sup>8</sup> Students placed in substantially separate classrooms generally have less challenging curricula, little to no social interactions with nondisabled students, and worse academic outcomes than students with disabilities placed in general education classrooms.<sup>9</sup> Thus, the families with the greatest need to challenge their child’s individualized education program (IEP) are usually those least able to effectively do so. The rights guaranteed to children and families by the Individuals with Disabilities Education Act (IDEA) become meaningless if the majority of parents are unable to exercise them and seek meaningful redress.

Placing the burden of proof on the complaining party puts low-income families at an even greater disadvantage. Without legal representation or access to experts, even families with a strong case are likely to lose because their lack of expertise and access to information prevent them from meeting the burden of proof. Shifting the burden of proof to school districts is a common-sense solution because districts have the most access to and knowledge of a child’s educational records.<sup>10</sup> School district personnel trained in special education are much more equipped to explain the standardized testing, classroom observations, and other data that accompany special education decisions.<sup>11</sup>

Furthermore, school districts have an affirmative responsibility to provide each student with disabilities a free appropriate public education.<sup>12</sup> When a parent challenges the district’s decision, only the district is fully aware of its rationale in making that decision. Therefore, the district—not the parent—is best positioned to identify and explain the factors that led to its decision. The district is best situated to explain the different types of educational programs and services it offers, describe the various educational placements available, and, in the end, explain its decision against the burden of proof.<sup>13</sup> As a result, the district should be the party required to prove that it fulfilled its statutory obligations under the IDEA.

School districts bear the burden of proof in due process hearings in at least five other states.<sup>14</sup> Connecticut, for example, requires that “in all cases . . . the public agency has the burden of proving the appropriateness of the child's program or placement, or of the

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<sup>7</sup> *Id.*

<sup>8</sup> DATA DEEP DIVE: STUDENTS WITH DISABILITIES, MD. DEP’T OF EDUC. 11 (Feb. 16, 2023), <https://marylandpublicschools.org/stateboard/Documents/2023/0228/DeepDiveStudentsWithDisabilitiesPart2.pdf>.

<sup>9</sup> Schifter et al., *supra* note 6.

<sup>10</sup> Thomas A. Mayes et al., *Allocating the Burden of Proof in Administrative and Judicial Proceedings Under the Individuals with Disabilities Education Act*, 108 W. VA. L. REV. 27, 73-76 (2005).

<sup>11</sup> *Id.* at 74.

<sup>12</sup> 34 C.F.R. § 300.101 (2006).

<sup>13</sup> Mayes et al., *supra* note 10 at 75.

<sup>14</sup> CONN. AGENCIES REGS. § 10-76h-14 (2000); DEL. CODE ANN. tit. 14, § 3140 (West 1983); N.J. STAT. ANN. § 18A:46-1.1 (West 2008); NEV. REV. STAT. ANN. 388.467 (West 2015); N.Y. EDUC. LAW § 4404(c) (McKinney 2007).

program or placement proposed by the public agency.”<sup>15</sup> New York, like SB 926, places the burden of proof on the school district, but shifts the burden to families “seeking tuition reimbursement for a unilateral parental placement.”<sup>16</sup>

Importantly, there is no evidence to suggest that SB 926 would significantly impact the number of due process hearings that the state must respond to.<sup>17</sup> An examination of two states that shifted the burden to school districts is informative when predicting how SB 926 will affect Maryland. New York, which passed identical legislation to SB 926 in 2007, saw no increase in the number of due process hearings after it shifted the burden of proof to school districts.<sup>18</sup> New Jersey, which passed legislation in 2008 to shift the burden of proof to districts in all due process proceedings, saw a short-lived increase in the number of hearings.<sup>19</sup> However, the number of hearings soon returned to previous levels.<sup>20</sup> Based on the experiences of New York and New Jersey, Maryland would likely see little to no impact on the total number of due process hearings.

Additionally, SB 926, if passed, would not require school district employees to change their documentation processes. The bill does not create any new record-keeping requirements and shifting the burden of proof does not change the evidence that a party must provide. Instead, SB 926 merely acknowledges that school districts already have control of the educational records and data at issue in a due process hearing and shifts the burden to the party that has the best access to and knowledge of that evidence.<sup>21</sup>

SB 926 recognizes the many obstacles that families face in their quest to ensure that their children receive an appropriate education. By shifting the burden of proof to school districts, SB 926 takes an important step toward leveling the playing field in due process hearings and allows for decisions based on the entirety of the evidence.

**For these reasons, the Clinic asks for a favorable report on SB 926.**

This written testimony is submitted on behalf of the Youth, Education, and Justice Clinic at the University of Maryland Francis King Carey School of Law and not on behalf of the School of Law or the University of Maryland, Baltimore.

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<sup>15</sup> CONN. AGENCIES REGS. § 10-76h-14, *supra* note 14.

<sup>16</sup> N.Y. EDUC. LAW § 4404(c), *supra* note 14.

<sup>17</sup> FISCAL AND POLICY NOTE, SENATE BILL 926, DEP’T OF LEGIS. SERVS. 3 (March 8, 2023), [https://mgaleg.maryland.gov/2023RS/fnotes/bil\\_0006/sb0926.pdf](https://mgaleg.maryland.gov/2023RS/fnotes/bil_0006/sb0926.pdf) (predicting SB 926’s impact on the number of due process hearings to be “relatively modest”).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Mayes et al., *supra* note 10, at 73-76.

# **burdenofproofwrittentestimonyeee.pdf**

Uploaded by: Kalman Hettleman

Position: FAV

Kalman R. Hettleman  
2901 Boston Street, Unit 216  
Baltimore, Md. 21224  
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443-286-0854

**Senate Bill 926:  
County Boards of Education -- Due Process Proceedings for Children With Disabilities –  
Burden of Proof**

**Senate Education, Energy and the Environment Committee  
March 15, 2023**

**Position: Support**

I am a former member of the Kirwan Commission, Baltimore City School Board, Maryland Secretary of Human Resources and Deputy Mayor of Baltimore City. Most importantly, I have been a pro bono attorney for over 200 students with disabilities, mainly in Baltimore City but also in many counties.

The opposition of local school systems to this bill is unjustified and unjust. But don't take my word for it. Please listen to the wisdom of the late, great Justice of the U.S. Supreme Court Ruth Bader Ginsburg. She wrote that placing the burden of proof on parents in administrative hearings violated parents' rights and was particularly unfair to parents who are poor or of color.

Justice Ginsburg was dissenting in a case (*Schaffer v. Weast*, 2005) in which the majority of the Court held that under the federal law in question, the burden rested on parents. But the full Court agreed that states could pass laws to place the burden on schools --- which is what many states do but Maryland disgracefully does not.

Justice Ginsburg pointed out the imbalance between the power of school systems and the powerlessness of parents. In her words, “the school has better access to relevant information, greater control over the potentially more persuasive witnesses (those who have been directly involved with the child's education), and greater overall education expertise than the parents.”

Also, the costs of administrative appeals – lawyers and expert witnesses – are trivial to school system budgets, while beyond the means of the overwhelming majority of parents. And pro bono lawyers for parents in appeal cases are almost never available.

Please don't be misled by the exaggerated claims of school systems that the burden of proof on them will mean more work for already overwhelmed special educators. True, teachers are overworked but that's not because of the burden of proof: It's because special education is

shamefully underfunded (despite the Blueprint legislation), and there are too few teachers and other resources.

In fact, placing the burden of proof on schools won't change teachers' jobs in the classroom at all. It only means that after they do their jobs, as best they can, parents will have an equitable chance to hold schools accountable for providing the services that students with disabilities are morally and legally entitled to.

This bill is only a small step but, as Justice Ginsburg taught us, it will help to balance the scales of justice and increase awareness that large-scale reform of special education – that will truly empower teachers – is desperately needed.

Please approve SB 926. Thank you.

burdenofproofwrittentestimony2023



# **Burden of Proof \_BOP White Paper.pdf**

Uploaded by: Kim Tart

Position: FAV



# SHIFT THE BURDEN OF PROOF(BOP) In Special Education

**What is the impact of the bill?** Bring fairness, equity and accountability to Special Education.

**What change is being sought?**

Leveling the field in special education disputes will foster greater collaboration between families and schools; add accountability to supports and services provided. Ultimately, will reduce the number of due process cases in special education (*as happened in NY and NJ, states which shifted BOP after Schaffer v. Weast*).

Even though in the majority of special education due process cases parents are the party seeking relief, shift the BOP to the party required by federal law (\*IDEA) to work with parents to develop and implement IEPs (Individual Education Programs): our school systems.

What is Burden of Proof (BOP)? BOP IN MARYLAND

In common legal disputes, “burden of proof” is simply the obligation (burden) of the party seeking relief to produce the preponderance of evidence to prove its argument. In special education however, disagreements have little in common with typical legal disputes, and nothing is ever simple.

The U.S. Supreme Court’s 2005 Schaffer v. Weast decision included the clause “in the absence of a state statute assigning burden of proof to either party,” allowing states to decide which party bears the BOP in special education due process cases.

**Maryland does not have a state statute** assigning BOP to either party in due process hearings. By filling the void of the missing statute, Maryland can - as other states already have done - help bring fairness, equity and accountability to special education by shifting the burden of proof in due process cases to the party responsible for working with parents to create and implement IEPs - the school district.

**This will not put an extra burden on teachers.** None of the teacher’s responsibility is changing. Special educators are already responsible for performing compliance work where they have to prove that they are providing services, because we know it’s critical to students’ success. The data and assessment results are used to identify deficiencies and validate progress. Therefore, more work by the educators is not needed.

**Why shifting the BOP is important:**

*Schools can and often do make changes to the plans, services and placements of students with special needs without parental consent.*

- Schools control all aspects of the plans, services, and placements provided to students with special needs.
- Schools have the knowledge of special education law, available services and placement options.

- Schools have the educational and legal experts, available and funded, on staff or by contract, as well as easy access to school-based witnesses.
- Schools have easy access to the complete history of a student's IEP and education record.
- Most parents have limited resources, limited knowledge of their options, and limited access to witnesses and information.
- School systems often decline to participate in mediations meant to resolve disputes, forcing parents to choose due process or withdraw their complaint.
- The burden weighs heaviest on low-income families who cannot afford attorneys to represent them in a due process hearing.
- The scales of fairness and equity are out of balance, and favor school systems.
- Parents want resolution; they do not want escalation to a due process hearing.

# **HB 469 Children with Disabilities \_Special Educati**

Uploaded by: Kim Tart

Position: FAV

Senate Bill 0926 – County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof

Dear Members of the Education, Energy, and the Environment Committee:

I am writing to you in hopes of your support for House Bill 294- *County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof*.

As a parent of a student who attends public school in Prince George's County. I am supportive of what this bill that shifts the Burden of Proof from families to school districts in due process cases. This change is an effort to bring greater fairness, accountability, and collaboration to special education.

My son, Montgomery, is educated in a community reference instruction (CRI) program at Charles H. Flowers Highschool where he receives his education in a self- contained classroom. In addition to academic classroom instruction, he receives Speech/Language, Occupational Therapy (OT), Physical Therapy, Adaptive Physical Education (PE) and Assistive Technology (AT) services.

We have recently submitted a compliant to the state. Monty's IEP is not being appropriately enforced; in addition, to IEP issues, the scheduling tool used to indicate Montgomery's academic performance on his report card does not produce an accurate report of the actual classes and grades on his schedule. We bear the burden to pay for a

As parents, we must bear the burden of proof and pay for outside evaluations and assessments. We parents experience psychological, emotional and physical toll on a as soon as we dare to disagree or ask for clarification. Parents pay between \$600 - \$800 per evaluation. Our children have multiple delays – such as speech/language, physical (gross motor and fine moto); therefore, we pay for each specialty evaluation. In our case, Monty required speech and occupational therapy evaluations – total cost, at a minimum, \$1200. Not all families have comprehensive health insurance to defray costs – Parents are still paying \$30 to \$75 co-pays.

Teachers will not be burden with additional work. Schools present data at the hearing to support and justify their position. Schools have the educational and legal experts, available and funded, on staff or by contract, as well as easy access to school-based witnesses. Those experts collect, track and maintain data on students. Detailed data that can reveal if the school addresses the goals/objectives of the IEP and complies with IDEA. Bottom line - The county needs to undoubtedly prove that the educators are performing their jobs and have not violated IDEA requirements.

The primary responsibilities of special education teachers are as follows: *Under direction of the school principal and special education coordinator, the special education teacher provides direct instruction and instructional support to students with disabilities and works in collaboration with the general education teacher. The Special Education Teacher monitors and evaluates outcomes for students with disabilities and assists in the development of Individual Education Programs (IEP). Special education teachers must possess knowledge of differentiated instruction, data collection, best instructional practices, research-based reading instruction, and other pertinent special education policies/laws.*

SB 0926 will enforce accountability and responsibility of public agencies [schools]; ensure schools fully implement actions required as a result of a due process hearing decision. It is a

**Favorable**

win-win solution: *Students received a free appropriate public education (FAPE) and schools are in compliance with Federal and State laws and policies.*

Due process is considered the last resort. The process is the most adversarial, least collaborative dispute resolution option, and may possibly damage the working relationship between educators and families. In FY 2022, State Complaints received was 129. Forty-eight (48) were from Prince Georges County.

If all schools were responsible and made a concerted effort to ensure that students with disabilities receive FAPE, there would be no need for due process or at least the number of cases would decrease. Sadly, that is not the case.

Also... Consider how due process in other legal cases are handled....If a driver receives a speeding ticket, the police officer must prove that the driver was speeding – not the driver.

Please support SB 0926.

*Kim J. Tart*

Respectfully,  
Kim Tart  
301-466-2494

**SB 0926 xMinds IN FAVOR (1).pdf**

Uploaded by: Melanie Carlos

Position: FAV



**Testimony in FAVOR of SB 0926 Submitted to the Chair, Vice Chair,  
and the Members of the Education, Energy, and the Environment Committee**

Submitted: March 14, 2023

As an organization that speaks for thousands of families with children on the autism spectrum, **xMinds (Partnership for Extraordinary Minds) strongly urges you to support SB 0926, County Boards of Education – Due Process Proceedings for Children With Disabilities – Burden of Proof.**

**xMinds is a non-profit dedicated to improving education outcomes for autistic students in Montgomery County.** We provide parents and guardians of autistic students with essential information about special education in Montgomery County so that they can effectively advocate for their children and partner constructively with their children’s schools. xMinds provides all these services and other advocacy tools free of charge to the entire community. We make special efforts to reach out to the BIPOC (Black, Indigenous and People of Color) and Spanish-speaking autism communities, offering all our resources and services in Spanish and English.

**An Individualized Education Program (IEP) is the key document that dictates what special education supports a student with a disability will receive in school – but there is a critical imbalance in the development and implementation of the IEP.** Schools fully control all aspects of implementing the IEP, including provision of appropriate supports and services, as well as placement in the appropriate special education program. **Unlike parents,** the school system has knowledge of complex special education law, access to staff attorneys and outside counsel; it employs the teachers, therapists and educational experts responsible for the IEP; and it has full access to records, instructional materials, and placement options.

**Parents, however, often lack full knowledge of their options, much less the significant resources needed to hire expert witnesses and lawyers.** Thus, it is unsurprising that parents lose the overwhelming number of IEP disputes in Maryland. In fiscal year 2019, parents lost 19 out of 20 cases. In fiscal year 2016, they lost 86% of cases; in FY2017, 95% of cases, and in FY2018, 81% of cases. Between 2014 and 2019, parents lost all 44 cases where they advocated for themselves in court without an attorney (<https://aucdpolicytalk.org/2020/08/28/a-fighting-chance-in-due-process-hearings/>). As long as families carry the burden of proof, school systems will continue to win cases against them without having to produce evidence that the IEPs they create do in fact provide a free and appropriate public education under the Individuals with Disabilities Education Act (IDEA).

**Families of color and low-income families are particularly disadvantaged by the current imbalance of information and resources.** There is ample evidence that even in counties with robust special education programs, autistic children from Black and Spanish-speaking families or low-income families are more likely than children from white and/or upper-income families to be placed by their school team in an inappropriate educational program and denied the services that can make a critical difference between educational success and failure.

**By placing the burden of proof on the local schools, SB 0926 will address the harmful imbalance currently in place, by promoting accountability and good faith collaboration by school systems.** School districts with well-designed services and programs should have nothing to fear from this legislation, which is based on the presumption that the educators who design the IEPs are capable of explaining and defending them. Contrary to fears of the bill's opponents, due process hearings will not proliferate and may even decline if the bill is passed, as evidenced by the examples of New Jersey and New York (Atterbeary and Griffith, Fiscal Policy Note, First Reader, pg. 3, [https://mgaleg.maryland.gov/2023RS/fnotes/bil\\_0004/hb0294.pdf](https://mgaleg.maryland.gov/2023RS/fnotes/bil_0004/hb0294.pdf)).

**We urge you to support SB 0926.** If school districts continue to prevail because parents are unable to meet the burden of proof, it is ultimately the children who will lose.

**Board of Directors, Partnership for Extraordinary Minds (xMinds)**

Melanie Carlos  
Nora Dudwick  
Daria Hall  
Carolina Harp  
Flor de Amelia Hoffman  
Eric Skigen  
Marci Skigen



**Testimony - SB0926 (Howard County Autism Society).**

Uploaded by: Melissa Rosenberg

Position: FAV



## **Testimony of Support**

Due Process Proceedings for Children With Disabilities

Burden of Proof, SB 0926

By Howard County Autism Society

March 15, 2023

The Howard County Autism Society is supportive of legislation proposed to shift the burden of proof in special education due process cases from the parents to the school system. According to IDEA, the school district has the professional capacity and legal responsibility to develop and implement a student's Individualized Education Program (IEP) as part of the child's entitlement to a free appropriate public education (FAPE). In cases where families and the school district disagree on the provision of FAPE by the school district, county school districts like HCPSS should bear the burden of proving that the proposed program is appropriate for the student. Assigning this responsibility should not put a strain on the school system considering that its employees developed the IEP.

The reality is that the majority of parents are simply unable to afford counsel, and may have difficulty paying to retain expert witnesses needed to challenge their child's program, something they are entitled to do under federal law if they disagree with any aspect of the program offered by the school district or any action refused by the district. Many parents proceed *pro se* (without legal representation) at IDEA administrative hearings. The school district, however, is virtually always represented by counsel at such hearings. The school district's counsel is familiar with the procedural and substantive requirements of IDEA, as well as the concepts of "burden of proof" and the mechanisms used for coming forward with evidence to meet that burden. Placing the burden of proof on a *pro se* parent also creates a significant risk that an inadequate IEP will nonetheless be upheld, defeating the IDEA's statutory mandate of providing a free appropriate public education to all children with disabilities.

Additionally, the IDEA administrative hearing process provides only limited access to information. Parents cannot engage in the full range of discovery options that are available during a court trial. This has serious

implications for parents attempting to protect their child's statutory right to a free appropriate public education. The school system has a great deal of information that may be presented in the form of testimony or in documents that the parent may receive only five days before a hearing. In the face of this information imbalance, having a parent have to face a school system lawyer at a hearing in order to exercise the parent and child's disagreement with a school-system proposed action, a statutorily-granted right, is a David and Goliath scenario, but it happens repeatedly. In Maryland, Goliath almost always wins, even when the parent is represented.

Because IDEA assigns primary responsibility for developing the educational program to the school district, the school district should have assembled the requisite evaluations and other supporting data and presented them at the IEP meeting at which the proposal was made. To the degree the school district prepared such materials for the IEP meeting, there should be little additional burden for the district to assemble those materials and present its rationale in order to persuade an impartial factfinder that it has met IDEA's substantive requirements. Having failed to persuade the parents of the merits of its position, as the IEP team process hopes for, the school district is entitled to set forth its own proposal at a hearing, but the district should bear the burden of proof. If school districts are not required to justify their proposals at a hearing when they have failed to achieve a consensus at the IEP meeting, it will only encourage them to give short shrift to the IDEA's parental participation requirements and procedural protections. The ultimate result is that children with disabilities will be deprived of educational programs that reflect the important input of the parents who know the child best.

**There is no harm to school districts from requiring them to bear this burden in order to reinforce and protect parents' procedural rights and involvement in developing the IEP.** Since the school district is expected to support and justify its proposals it makes in meetings with parents, who are equal members of the IEP team, the school district should *already* be prepared to present that very same information to and persuade a neutral fact-finder.

For these reasons, the Howard County Autism Society supports the proposed legislation.

**Contact Information:** Howard County Autism Society  
9770 Patuxent Woods Drive, Suite 308, Columbia, MD 21046  
410-290-3466 [info@howard-autism.org](mailto:info@howard-autism.org) <https://howard-autism.org>

**R\_Doyle\_SB972.pdf**

Uploaded by: Rachel Doyle

Position: FAV

To: Senate Education, Energy, and Environment Committee  
Re: SB926  
Position: Favorable

Thank you for the opportunity to provide written testimony for this important legislation. I am a Maryland voter and the parent of a child with an IEP, and **I am urging you to vote favorably for SB926.**

My son is a gift. To know him is to love him. But our state and country's flawed systems make it very expensive and tiring to parent kids with disabilities. If a child needs lifesaving surgery, we don't ask parents to have a deep understanding of it, but for some reason society has determined that parents need to become special education experts for our children to receive the education to which they are entitled. This is the only way our children receive Free and Appropriate Public Education (FAPE). When there is conflict between parents and schools, we parents will always be at a disadvantage: we don't have administrators and lawyers on our payroll, we don't have the specialized educational background, and we definitely aren't paid to do this.

Thanks to the pandemic, my son's year of virtual special education preschool went about as well as it sounds like it did – through no fault of his teachers, they were wonderful and did the best they could with an exceptionally challenging circumstance. We looked forward to kindergarten, my son's first year of school not substantially interrupted by the pandemic. Things seemed fine at first, but it became clear from his behavior that there were concerns about his school environment. Behavior is always communication, but my son has a speech delay, so for any specifics we were completely reliant upon the adults to tell us about his day. Yet, we even encountered high resistance when we wanted to make minor changes to his daily communication log.

We have always been very intentional about building a warm and collaborative relationship with both of our children's teachers - we have a lot of respect for their challenging job, and we see them as our partners rather than our adversaries. It was gutting to have multiple challenges so early in his school career. Even though it was difficult, the challenges we encountered felt surmountable until the day we discovered bruising on our *5-year-old* that compelled us to file a CPS report.

We subsequently hired an educational advocate, a financial stretch but surmountable for us, while acutely aware of the privilege of even having the option to hire expert assistance. It would be impossible for me to overstate how stressful this time period was. I assure you that I was not eager for a fight. I just wanted the issues to resolve, and if I stayed quiet, I could have pretended that was happening. But like any parent, I wanted my son to be safe in school. Also, my son is entitled to FAPE even though he has a disability, and he needs and deserves to be educated, just like any child.

With the help of our advocate, our son is now in a different school and is, thankfully, thriving. If this had not happened or if he was still expressing concerns through his behavior (or now even with his words!), I can assure you we would have kept advocating for him despite the stress on our family.

No parent reaches the point of due process lightly, particularly given how terrible Maryland's due process statistics are for families. By issuing a favorable report for SB926, you are not tipping the scales in favor of parents when there is conflict – school systems are still *always* going to have the upper hand. By issuing a favorable report, however, you can allow the scales to equalize just a little bit when there is conflict between schools and parents. Thank you for your consideration.

Sincerely,  
Rachel Doyle

## **Amendment to SB926**

Uploaded by: Senator Alonzo Washington

Position: FAV



SB0926/453827/1

AMENDMENTS  
PREPARED  
BY THE  
DEPT. OF LEGISLATIVE  
SERVICES  
  
14 MAR 23  
08:46:37

BY: Senator A. Washington  
(To be offered in the Education, Energy, and the Environment  
Committee)

AMENDMENTS TO SENATE BILL 926  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, strike “, except under certain circumstances”.

AMENDMENT NO. 2

On page 4, strike beginning with “**EXCEPT**” in line 7 down through “**A**” in line 8 and substitute “**A**”; strike in their entirety lines 13 through 18, inclusive; and in line 19, strike “**(III)**” and substitute “**(II)**”.

**SB0926 Howard Co BOE Testimony 031523 for EEE - Bu**

Uploaded by: Staff Howard County

Position: FAV





**Board of Education of Howard County  
Testimony Submitted to the Maryland Senate,  
Education, Energy, and the Environment Committee  
March 15, 2023**

**Board of Education  
of Howard County**

Antonia Watts, *Chair*

Yun Lu, Ph.D., *Vice Chair*

Linfeng Chen, Ph.D.

Christina Delmont-Small

Jennifer Swickard Mallo

Jacky McCoy

Jolene Mosley

Abisola Ayoola  
*Student Member*

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

**SB0926: FAVORABLE**

**County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof**

The Board of Education of Howard County (the Board) supports **SB0926 County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof** 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, SB0926 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 2018<sup>1</sup> – 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

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<sup>1</sup> 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](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 bills<sup>2</sup>, and New Hampshire just passed a similar bill in 2021<sup>3</sup>.

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 SB0926 from this Committee.

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

<sup>3</sup> “NH HB581 – Version Adopted by Both Bodies,” LegiScan, 2021 Session, [https://legiscan.com/NH/text/HB581/id/2415917/New\\_Hampshire-2021-HB581-Enrolled.html](https://legiscan.com/NH/text/HB581/id/2415917/New_Hampshire-2021-HB581-Enrolled.html).

**TracyShermanTestimonySB926.pdf**

Uploaded by: Tracy Sherman

Position: FAV

## Testimony- Tracy Sherman SB 926

My name is Tracy Sherman from Hyattsville in PG County. I am a single mom to my 14-year-old daughter Jaelynn with multiple disabilities including learning disabilities and stage 3 chronic kidney disease. On behalf of Jaelynn and all of the other kids out there, PLEASE support SB926 as favorable which focuses on burden of proof in due process cases. We and our lawyer are about to file for a due process hearing in the very immediate future. I have spent over \$105,000 over the past 10 years trying to get Jaelynn the interventions and accommodations she needs according to multiple outside specialists.

In 2019, the school suddenly changed her IEP code from specific learning disability to emotional disability with no new evaluations, assessments or any other proof. Now, 4 years later the school has STILL not provided any proof of emotional disability. No behavior assessment was ever completed and no behavior plan was ever put in place. She has been forced into a behavioral school where she DOES NOT BELONG and is not getting the accommodations she needs. She is reading at a 3<sup>rd</sup> grade level in the 9<sup>th</sup> grade. I had to provide outside proof that she has dyslexia, however the school has not been held accountable to provide proof of emotional disability. It should not take a lawyer and thousands of dollars for a child with kidney disease to be able to use the restroom, a child with dyslexia to get daily reading interventions, or me to clear my name after a teacher lied to police to try to get a restraining order on me.

We are Latina, bilingual, and fortunate enough to be able to pay for this fight, but it makes me sick to think about the other families out there struggling because they can't afford a lawyer, don't speak much English, or know their rights. Please support this bill to even the playing field for all families. FAPE should not depend on a family's income.

**SB0926-EEE\_MACo\_SWA.pdf**

Uploaded by: Brianna January

Position: FWA



## **Senate Bill 926**

### ***County Boards of Education – Due Process Proceedings for Children With Disabilities – Burden of Proof***

MACo Position: **SUPPORT**  
**WITH AMENDMENTS**

To: Education, Energy, and the Environment  
Committee

Date: March 15, 2023

From: Brianna January

The Maryland Association of Counties (MACo) **SUPPORTS SB 926 WITH AMENDMENTS**. This bill would require county boards of education to have the burden of proof in a due process proceeding regarding the provision of special education services or a program for a child with disabilities. **Counties acknowledge the difficulties of the current system and agree that both families and school boards could benefit from its modernization. However, Maryland’s children would be best served if this daunting task were first considered by a task force of experts and relevant stakeholders charged with studying best practices and drafting recommendations.**

As partners in the financial and operational governance of Maryland’s public schools, the provision of quality and fair educational services responsive to the needs of all children is of the highest priority for counties. Likewise, counties have critical stake in the resolution of any challenges to the services provided to students of different needs and abilities. An abrupt change to the standards referenced in SB 926 may divert substantial resources away from other critical components of the Blueprint for Maryland’s Future.

The current process to consider these cases is fraught with numerous challenges that pose significant financial, administrative, and labor-intensive obstacles for Maryland families and local school boards. Counties appreciate the intention of SB 926 to tackle the complex challenge of modernizing this system. However, counties fear that the bill is too ambitious and has not been subjected to the due diligence of key stakeholders, including counties.

It is the strongly held belief of counties that the bill – and Maryland’s children – would benefit from the establishment of a task force to identify the challenges of the current system, study best practices in due process proceedings regarding special education services and K-12 programs for children with disabilities, and recommend policy reforms to modernize the process. Such a task force should include key stakeholders, including county governments.

Counties remain committed to supporting all students and look forward to collaborating on a reasonable path forward to modernize these processes. For these reasons, MACo requests a **FAVORABLE WITH AMENDMENTS** report on SB 926.

# **County Boards of Education - Due Process Proceedin**

Uploaded by: Laura Stewart

Position: FWA

**Written Testimony Submitted for the Record to the Maryland Senate  
Education, Energy, and the Environment Committee  
For the Hearing on  
County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof (SB 926)**

**March 15, 2023**

**SUPPORT WITH AMENDMENT**

Free State PTA represents over 50,000 volunteer members and families in over 500 public schools. Free State PTA is composed of families, students, teachers, administrators, and business as well as community leaders devoted to the educational success of children and family engagement in Maryland. As the state's premier and largest child advocacy organization, Free State PTA is a powerful voice for all children, a relevant resource for families, schools and communities and a strong advocate for public education. ***House Bill 294 County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof, aligns with Free State PTA's position on Shifting the "burden of proof" in individualized education plan (IEP) due process cases from parents to school districts.***

Simply put, Senate Bill 926 places the burden of proof on a local board of education in a due process hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. Free State PTA supports the amendment to strike the exception that places the burden of proof on the parent or guardian when a parent whose child is required to enroll in a public school seeks tuition reimbursement for the unilateral placement of a student by the parent or guardian.

Currently, Maryland, under its supervisory authority required by the Individuals with Disabilities Education Act, has the ultimate responsibility for ensuring that local school systems make a free appropriate public education available to students with disabilities from age 3 through 21. Unequivocally, the Free State PTA supports the protection of the rights of children with special needs and those of their parents or guardians including due process. Free State PTA believes that the state and local school district is accountable for guaranteeing that each child with a disability is provided a free and appropriate education (FAPE) in the least restrictive environment. These accountability measures are often determined based on students' behavioral performance, progress reports, quantitative data and anecdotal observations that local school systems collect from their schools and teachers.

Parents have long advocated for the successes of their children who have IEPs and required adherence of teachers to follow plans and for principals as well as administrators to be accountable for administering an IEP. Parents are often defeated from the legal cost associated with time, effort and finances involved to help guarantee that due process is met. They need relief so that the interests of all children served by the school community are met. While a shift in the burden of proof will not change the evidence that each party must present to meet the preponderance of evidence standard, Free State PTA believes this a step in the right direction toward improving school, school district and/or state accountability measures that include children

The mission of PTA is to make every child's potential a reality by  
engaging and empowering families and communities to advocate for all children. Page 1



with disabilities, so parents/guardians and educators know how well each entity is doing in improving the results for students with disabilities. Therefore, the Free State PTA urges the passage of SB 926 along with a larger advocacy voice, the Maryland Education Coalition.

Testimony is presented on the behalf of

**Marla Posey-Moss**

Marla Posey-Moss, President  
[mposey-moss@fspta.org](mailto:mposey-moss@fspta.org)

**EACtestimony.SB926.pdf**

Uploaded by: Leslie Margolis

Position: FWA

# Education Advocacy Coalition

for Students with Disabilities

**SENATE EDUCATION, ENERGY, AND THE ENVIRONMENT COMMITTEE**

**SENATE BILL 926: EDUCATION—DUE PROCESS PROCEEDINGS FOR CHILDREN WITH DISABILITIES—  
BURDEN OF PROOF**

**DATE: MARCH 15, 2023**

**POSITION: SUPPORT WITH AMENDMENT**

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of approximately 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, supports Senate Bill 926 if it is amended to place the responsibility on school systems of bearing the burden of proof in all special education administrative proceedings.

Parents of children with disabilities face a number of barriers to the effective exercise of the rights granted to them and their children by federal and state special education laws. Families with children who have disabilities are poorer than those whose children do not have disabilities, and they are often unable to afford attorneys and needed experts when they disagree with any aspect of a program or service offered by, or refused by, their school system. As a result, if they are even able to navigate the thicket of procedures to exercise their right to a due process hearing, a number of parents proceed to these hearings without counsel, even though the school district is virtually always represented by counsel who is well-versed in the procedural and substantive requirements of the Individuals with Disabilities Education Act and Maryland special education law, including the production of evidence and the concept of burden of proof. Further, the school system's witnesses are generally considered to be experts in their fields, making it extremely difficult for parents who ask for a hearing to prove that the school system has failed to fulfill its obligation to their child.

Parents and guardians may not fully understand that bearing the burden of proof means that they must introduce sufficient evidence through documents and witnesses to make their case; failure to do so could mean that their case could be dismissed before the school system even has to call a witness. Even if parents have a strong case, they could lose simply because their inexperience and lack of knowledge of the law prevented them from successfully carrying the burden of proof by skillfully eliciting the required level of evidence.

The IDEA administrative hearing process provides only limited access to information. Parents cannot engage in the full range of discovery options that are available during a court trial. This has serious implications for parents who are attempting to protect their children's right to a free appropriate public education. The school system has a great deal of information that may be presented in the form of testimony or in documents that the parent may receive only five days before the hearing. In the face of this information imbalance, requiring parents to bear the burden of proof creates a David versus Goliath scenario but in Maryland, Goliath almost always wins, even when the parent is represented by counsel.

Because the school district developed the proposal at issue, because the IDEA assigns primary responsibility for developing the educational program to the school district, because the school district should have previously assembled the relevant evaluations and other data supporting its position and

Education Advocacy Coalition Testimony—Senate Bill 926, Page Two

presented them to the parents at an IEP meeting at which the challenged proposal was made, and because the school district has built-in experts in the form of its teachers, therapists and administrators, there should be little additional work for a school district to assume the burden of proof in a due process hearing. The United States Supreme Court has noted that school authorities are required “to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 1001 (2017). If school districts are not required to justify their proposals at a due process hearing when they have failed to achieve consensus at an IEP meeting, they will only be encouraged to give short shrift to the IDEA’s parental participation requirements and procedural protections. In fact, this happens repeatedly in Maryland districts when parents disagree with IEP teams and are told “So take us to a hearing” by IEP team members who know that parents will face an uphill battle to make their case.

School districts will not be harmed by bearing the burden of proof. In 2017, the Maryland General Assembly placed the burden of proof on school districts in situations in which the IEP team proposes to include restraint or seclusion on an IEP or when the team proposes to move a student off the diploma path, to the alternate assessment, or to non-credit bearing classes. The floodgates have not opened and school districts have not been prejudiced in any way by bearing the burden in these instances.

Senate Bill 926 proposes to shift the burden to school systems except when parents are seeking reimbursement for the unilateral placement of their child. This exception makes an unfair distinction between parents and is not rationally justifiable. All parents who seek due process hearings are attempting to protect the rights they and their children have in the special education process. For this reason, the EAC supports Senate Bill 926 if it is amended to strike the exception.

Respectfully submitted,

Selene Almazan, Selene Almazan Law, LLC  
Rene Averitt-Sanzone, The Parents’ Place of Maryland  
Linda Barton, MS.Ed, Education Consultant  
Beth Benevides, Howard County Autism Society  
Rich Ceruolo, Parent Advocacy Consortium  
Michelle Davis, ABCs for Life Success  
Alyssa Fieo, Office of the Public Defender  
Lisa Frank, Andrea Bennett, Jen Ritchotte, Amy Tonti, Special Kids Company  
Ann Geddes, Maryland Coalition of Families  
Kim Glassman and Brian Gruber, Law Office of Brian K. Gruber, P.A.  
Beth Ann Hancock, Charting the Course, LLC  
Kalman Hettleman, Independent Advocate  
Morgan Durand Horvath, M.Ed., Abilities Network  
Rosemary Kitzinger and Marjorie Guldán, Bright Futures, LLC  
Rachel London, Maryland Developmental Disabilities Council  
Leslie Seid Margolis, Disability Rights Maryland  
Ellen O’Neill, Atlantic Seaboard Dyslexia Education Center  
Ronza Othman, National Federation of the Blind of Maryland

(over)

Education Advocacy Coalition Testimony—Senate Bill 926, Page Three

Maria Ott, Attorney

Rebecca Rienzi, Pathfinders for Autism

Jaime Seaton, BGS Law

Kelly Spanoghe, Education Advocate

Karleen Spitulnik, Decoding Dyslexia Maryland

Ronnetta Stanley, Loud Voices Together

Wayne Steedman, Steedman Law Group, LLC

Guy Stephens, Alliance Against Seclusion and Restraint

Maureen van Stone, Annie Carver, Tyler Cochran, Project HEAL—Kennedy Krieger Institute

Liz Zogby, Maryland Down Syndrome Coalition

Jessica Williams, M.Ed., Education Due Process Solutions, LLP

The Maryland Education Coalition joins this testimony.

The Public Justice Center joins this testimony.

**SB926 - BOP 2023 MDAC testimony.pdf**

Uploaded by: Liz Zogby

Position: FWA



**Senate Education, Energy, and the Environment Committee**  
**SB 926: Due Process Proceedings for Children with Disabilities - Burden of Proof**  
**March 15, 2023**  
**Position: Support with Amendment**

The Maryland Down Syndrome Advocacy Coalition (MDAC) is a coalition of the five Down syndrome organizations in Maryland as well as individuals with Down syndrome and their family members who have come together to advocate for improved quality of life for all individuals with Down syndrome throughout the state of Maryland. MDAC works in coalition with other disability and advocacy organizations across the state and supports many legislative and policy efforts.

MDAC strongly supports SB 926 which would shift the burden of proof in special education due process proceedings from families to school districts.

No one wants a contentious special education process. Families, teachers, administrators—we all want the needs of students with disabilities to be met so that students can thrive and learn. But sometimes families and school districts have very different ideas about how to make that happen.

In our Down syndrome community this disconnect can unfortunately sometimes be quite profound. Decades of research indicate that students with Down syndrome make the most academic progress and have the best long-term outcomes when they are fully included in general education classrooms.<sup>1</sup> However, in Maryland only 18% of students with intellectual disabilities are fully included.<sup>2</sup> This longstanding problem has been exacerbated by the challenges and pressures faced by schools and educators because of the COVID-19 pandemic—with many students with Down syndrome being shuttled to more restrictive placements, including segregated classrooms and schools, and students being pulled off diploma track, some as young as 4 or 5 years old, and never given the opportunity to access general education and reach their full potential.

When parents of students with Down syndrome disagree with these placement decisions or decisions limiting students to receipt of a certificate of completion instead of a diploma, they have few options. Unlike parents of kids without disabilities who could shop around for another school, maybe apply to a private or parochial school, virtually all of our students rely on the protections of the Individuals with Disabilities Education Act (IDEA) and the supports available only through the public school system.

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<sup>1</sup> [https://alana.org.br/wp-content/uploads/2016/12/A\\_Summary\\_of\\_the\\_evidence\\_on\\_inclusive\\_education.pdf](https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf)

<sup>2</sup> <https://data.ed.gov/dataset/idea-section-618-data-products-static-tables-part-b-count-environ-tables13/resources>

One mechanism allowed by law to resolve such disputes is due process. And yet, in this system as it currently functions, the deck is not just stacked against parents—the school district holds every single card. It has the experts and attorneys on payroll, it has all the data and documentation, and—most importantly—it has little to fear from a due process hearing because the school district is virtually assured of victory.

When one side of a dispute holds all the power, there is no incentive to negotiate or to collaborate. When a disagreement gets heated, too many families hear this message, often in these exact words: “The team agrees, and we are moving forward with this change. If you don’t like it, you can file for due process.” The system knows it will win. If a family doesn’t have tens of thousands of dollars available to hire an attorney and expert witnesses, they will lose—100% of the time in the last five years in Maryland. While those who oppose this bill may like those odds, they indicate that the status quo is patently unfair to families and students.

The opposition to this bill rests largely on the idea that this shift will increase teacher workloads. But shifting the burden of proof has no impact on the data collection and documentation required of teachers for compliance with special education law. The only change made by shifting the burden of proof is that the school district presents its case during the due process hearing first. The evidence that is used in that hearing—the data and documentation—has to be compiled regardless of who goes first.

It should be acknowledged, however, that contentious relationships related to special education do raise the temperature on teachers and increase scrutiny on compliance. And the tension felt by teachers who are caught between their employer and their students is clearly problematic and a negative for everyone involved. But increased tension is not the same as increased teacher workloads—and no one in the opposition has provided any evidence of increased workloads in the states where the burden has been shifted.

On the other hand, what we do have evidence of, from states that have already shifted the burden of proof, is that the number of due process hearings actually declines. That means fewer contentious cases that have boiled over. Why would this be the case? Because when one side of a dispute doesn’t hold all the power, they are more likely to try to resolve it by finding mutually agreeable solutions. With fewer “winners” and “losers,” you have more kids whose needs are being met and more teachers freed from the uncomfortable space between their employers and the students and families they are committed to serving.

One final note: MDAC is seeking an amendment to this bill to remove the exclusion of families who have unilaterally placed their student in a nonpublic school. Please understand that this kind of placement is often an extreme step taken by a family in a last-ditch effort to protect their child who is struggling mightily and experiencing distress because the supports, services, or placement at school are not meeting her needs—a situation that has in many cases been deteriorating over years. It can take a long time to reach the point where due process is filed and a dispute is finally resolved. In the meantime, that child is living her one and only childhood. Families in this situation should also have the burden of proof shifted in due process



proceedings so that they too have access to the procedural safeguards of IDEA to protect the rights of their child.

MDAC urges you to provide a favorable report for SB 926.

Respectfully submitted,

Liz Zogby  
Maryland Down Syndrome Advocacy Coalition  
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# **Beast of a Burden-attach.pdf**

Uploaded by: Michael McLaughlin

Position: FWA

# SUPPORT

## SB0926 - Burden of Proof

gazette.net

Lorraine Ryan, Delwyn Heights

From The Gazette  
March 27, 2014

### A beast of a burden

There is a bill in the General Assembly (HB 1198) to ensure that school systems bear the burden of proof when disagreements with parents over the special education services provided cannot be resolved other than by a due process hearing.

My wife and I live in Laurel with our daughter, Erin. Erin has Down syndrome and has been included in the general education classroom in her neighborhood school since kindergarten. She has thrived in that environment and I think her classmates have benefited from her presence as well.

Ten years ago, however, we had to go to through the legal process of mediation — with the prospect of a due process hearing if mediation was unsuccessful — to make that happen because the school system recommended placement in a segregated classroom in another school. If a due process hearing had been necessary, we would have borne the burden to prove a negative: that the school system had not provided the appropriate supports and services to enable Erin to succeed in her neighborhood school, the same school her brother and sister attended.

In common legal disputes, "burden of proof" is simply the obligation of the party

seeking relief to produce evidence to prove its argument. When it comes to special education, disagreements have little in common with typical legal disputes, and nothing is ever simple.

First of all, there is the language of special education, with its acronym-filled vocabulary, that requires a glossary just to communicate. It is not the parents who have come up with this language, yet they are expected to be fluent.

Then there is FAPE, or Free Appropriate Public Education, which is what students with IEPs (Individual Education Plans) are guaranteed. Despite the good intentions behind the word "appropriate" — meant to individualize the education depending on a student's needs — the word is often used in the negative, i.e., "This service (placement, etc.) is not appropriate for your child." Or worse: too many parents have been reminded their child is "not entitled to a great, or even a good education, just an appropriate education."

And then there is LRE, or Least Restrictive Environment. There is an accepted maxim that "special education is a service not a place." Yet disputes can center on where a student receives special education services. The law, IDEA (Individuals

with Disabilities Education Act) says that the default placement should be the Least Restrictive Environment, which, whenever possible, is the general education class in the student's neighborhood school.

In special education, the standard notion of burden of proof is flipped on its head: despite the fact that in the majority of due process cases parents are the party seeking relief, parents have limited resources and access to proof. Simply put, parents bear the burden while school systems have the proof. That is why it is unfair for the legal burden of proof to be on parents.

In its 2005 Schaffer v. Weast decision, the Supreme Court was not trying to be unfair. Its "in the absence of a state statute or regulation" language clearly meant for states to decide the burden of proof in due process. New York and New Jersey have already acted — both passed burden of proof laws like HB 1198 after Schaffer-Weast. By passing HB 1198, our legislators have an opportunity to tell the Supreme Court and the nation that Maryland, the "leader in education," will lead by doing the right thing.

Mike McLaughlin, Laurel

## More work needed toward workplace equality

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**SB926 testimony-final.pdf**

Uploaded by: Michael McLaughlin

Position: FWA

## **SUPPORT**

### **SB0926 - Burden of Proof**

My name is Michael K. McLaughlin. I live in Laurel with my wife and daughter Erin, who has Down Syndrome.

First, I want to thank Sen. Washington for sponsoring SB926, the Burden of Proof bill. I'd also like to thank all the members of this committee. Efforts to shift the BOP have come through the legislature before over the years, and I appreciate your time and consideration as it is brought forward again.

Because of those previous efforts, the old axiom that "good legislation takes time" certainly applies here. If memory serves me right, Delegate Washington sponsored a House bill to shift the BOP in 2014. I remember him being well-informed on the issue even then, and his dedication is evident in sponsoring SB926 nine years later.

I hope that, like Sen. Washington, you recognize that enough time has passed for this good legislation to finally become law and help ease the burden on the families in Maryland who struggle in special education. It is time to let the burden of proof in special education finally shift in Maryland.

Erin is an adult now, but during all her school years in the Prince George's County Public School system she was taught in general education classrooms in her neighborhood schools. From kindergarten through high school, Erin thrived in that environment, and I believe her classmates benefitted from her presence as well (see <http://www.youtube.com/watch?v=BcoVI80iLe0> and <https://www.baltimoresun.com/maryland/laurel/ph-ll-erin-mclaughlin-0219-20150312-story.html>).

Keeping Erin in that environment (the general ed classroom in her neighborhood school) wasn't easy.

In fact, our family's conflict with PGPCS was about Erin's placement. All we wanted was what IDEA said was the preferred placement for Erin: in her neighborhood school with her typical peers, the same school that she would attend if she did not have a disability. The school system wanted to place her in a different PGPCS school in a segregated (only students receiving special education services) classroom. We had to go to Mediation where, fortunately, it was resolved in our favor and Erin started kindergarten in Laurel Elementary, the same school her brother and sister attended. But before and during Mediation, looming over all of our thoughts and actions, was the threat of a due process hearing.

THAT is the real burden: the threat of added legal, financial and emotional stress of a due process hearing; a burden that begins to weigh on families as soon as they dare to disagree. We felt that burden especially at every IEP meeting for a school transition: from preschool to kindergarten, then from elementary to middle school, and from middle school to high school. At every transition, despite her history of always being integrated (included) with her typical peers - as IDEA dictates - the school system wanted to segregate Erin into special-ed-only schools or classes. Every. Single. Transition.

## **SUPPORT**

### **SB0926 - Burden of Proof**

Along with my written testimony I've attached a copy of a letter to the editor I wrote that was published in The Gazette during that previous 2014 legislative effort to shift the BOP. Other than some editing for space, it is almost verbatim to my written testimony then and now. I include it here mainly for the date it was published, to help reinforce that it was almost ten years ago, that the effort to shift the BOP goes back to the days when there were still local newspapers! Actually the efforts go back beyond 2014 - I first became involved in the efforts to shift the burden of proof in 2009.

I know from my experience advocating for education issues that education is a tough sell. Largely because over 75% of the population does not have school-age children, it is hard to stimulate people's interest in education reform. Even with parents of school-age children, if you are discussing broad education topics, not specific to their child, it is difficult to engage their interest. And when it comes to special education, with its confusing glossary of acronyms and disability jargon, it's not long into a conversation before you see peoples' eyes glaze over.

Now take that into a smaller subset of families contesting parts of their child's IEP, and then into an even smaller group of those families whose conflicts with a school system escalate to a due process hearing, and you are preaching to a very small choir. And it is one reason why legislation to shift the burden of proof has lingered in limbo for so long.

I get that. But it has lingered long enough. It is time to stand up for the most vulnerable in society no matter how small their number.

Erin has been out of school for four years now. So the BOP threat is in the rear view mirror for our family. But we are here today because we lived with that threat for Erin's entire K-12 experience and we would like to see that threat, that burden, lifted from the families who are still in the special education arena.

I urge you to **vote Favorable for SB0926.**

Thank you.

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**SB926\_DD Council\_SWA .pdf**

Uploaded by: Rachel London

Position: FWA



## Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

Senate Education, Energy, and the Environment Committee

*SB 926: Education—County Boards of Education – Due Process Proceedings for Children with Disabilities—  
Burden of Proof*

March 15, 2023

Position: **Support IF Amended**

The Maryland Developmental Disabilities Council (DD Council), a statewide public policy organization led by people with developmental disabilities and their families, has supported this legislation in the past; however, **this year's bill is different**. Prior bills shifted the burden of proof in special education due process hearings to the school system in **ALL** cases. This year's bill, similar to 2018 when we took the same position, includes an **exception** for “**unilateral placement**” cases—that is, cases where the parent does not believe the school system has provided appropriate services pursuant to federal and state law, and places their child in another school and then seeks tuition reimbursement from the local school system. The DD Council cannot support such an exception because if the burden of proof is going to be shifted to school systems in all other cases to prove that they offered an appropriate education, then school systems should likewise bear that burden in unilateral cases too. Therefore, **the DD Council supports SB 926 only if amended to remove the exception.**

**The Individuals with Disabilities Education Act (IDEA), the primary federal law governing the education of students with disabilities, requires the provision of a free, appropriate public education in the least restrictive environment in which a student's needs can be met.** Least restrictive environment means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports along with their nondisabled peers in the school they would attend if not disabled, unless a student's Individualized Education Program (IEP) requires some other arrangement.

**Part of the special education process includes a family's right to bring due process complaints when they perceive that their child's educational rights are violated or denied.** See 34 CFR §300.153. Despite the fact that **the IDEA mandates that parents play an active and equal role in their child's education, the current complaint process in Maryland creates a distinct imbalance.**

Under current state law, if a parent challenges their child's IEP or the school system for not providing their child with disabilities appropriate access to a free, appropriate public education, the parent must prove the school system has done something wrong. When what the family wants to prove relates to a child's placement in a more restrictive environment, **parents have no right to learn the details of a school system's proposed placement, or the details of other placements within the “continuum” of placement options that school districts are required to offer.** See 20 U.S.C. § 1400 *et seq.* (2005). This puts families at a distinct disadvantage.

This bill would require school systems to bear the burden of proof. Meaning the school system would now be responsible for proving that a free, appropriate public education was provided to the child with a disability. **Switching that burden to the school system makes sense. School systems have access to more resources, information, and expertise and are thus in a better position to prove if they have provided a free, appropriate public education.**

For these reasons and because it protects the procedural rights of parents of children with disabilities, the DD Council supports SB 926 if amended.

Contact: Rachel London, Executive Director: [RLondon@md-council.org](mailto:RLondon@md-council.org)

217 E. Redwood Street, Suite 1300 • Baltimore, MD 21202 • 410.767.3670 • [md-council.org](http://md-council.org)

Dee Sapp, *Chairperson* • Rachel London, Esq., *Executive Director*



# **Testimony Support with amendment SB 926 - HB 294 -**

Uploaded by: Rich Ceruolo

Position: FWA



March 13, 2023

Maryland Senate  
11 Bladen St.  
Annapolis, MD. 21401

**Support with amendment SB 926 / HB 294: County Boards of Education - Due Process Proceedings – For Children with Disabilities Special Education – Burden of Proof**

Members of the Maryland Senate’s Education, Energy and Environment Committee.

We are an organization of military and non-military families with over 1500 members and fully support Senator Washington, and Delegates Atterbeary and Griffith’s bill to shift the burden of proof for Special education – Office of Administrative Hearings (OAH) - Due process hearing proceedings to the local school district and its board of education.

Much like the state of N.H. just recently did to bring a sense of balance and fairness to families of children with disabilities within its special education related administrative hearings:

<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 needed to them. Especially as the Blueprint for Maryland’s Future Law reforms of our education system shifting its focus to be more inclusive of all its student populations. While also considering the lingering aftereffects of the ongoing Covid 19 pandemic on students and their social, emotional health and the negative impacts on their student learning demonstrated recently with NAEP <sup>1</sup> and MCAP reports that show steep decreases and many students still underperforming in ELA and Math scores core subject areas.

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<sup>1</sup> NAEP Reading Scores: <https://www.nationsreportcard.gov/highlights/reading/2022/>

And NAEP Math Scores: <https://www.nationsreportcard.gov/highlights/mathematics/2022/>

Education Weekly Article - NAEP Scores: <https://www.edweek.org/leadership/two-decades-of-progress-nearly-gone-national-math-reading-scores-hit-historic-lows/2022/10>



We simply need to do better in order to serve and educate all of our students, across all of our state and return a sense of justice to a system that has been too unjust and unfair for far too long.

**An additional ask from our community of special education families and advocates also includes:**

**OAH & ALJ Special Ed process training** - 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 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 kindly continue to build on this effort to support Maryland families of children with disabilities now, and well into the future, by bolstering justice, equity, inclusion while supporting 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 across all of Maryland.

We respectfully request that the committee members please support Senate Bill 926 and return a favorable report.

Thank you for your time, and for considering our testimony.

Mr. Richard Ceruolo | [richceruolo@gmail.com](mailto:richceruolo@gmail.com)

Parent, Lead Advocate and Director of Public Policy

Parent Advocacy Consortium: <https://www.facebook.com/groups/ParentAdvocacyConsortium>

# **Burden of Proof Letter-Consortium.pdf**

Uploaded by: Alexa Thomas

Position: UNF

# Mid-Shore Special Education Consortium

12 Magnolia Street  
Easton, Maryland 21601

Boards of Education:  
Caroline County  
Dorchester County  
Queen Anne's County  
Talbot County

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The Mid-Shore Special Education Consortium (MSSEC), on behalf of Caroline, Dorchester, Queen Anne's, and Talbot County Public Schools, opposes Senate Bill 926.

Senate Bill 926 would shift the burden of proof in cases regarding due process of Individualized Education Programs (IEPs) to the local school system, as opposed to the parent or guardian of the student receiving services. This bill would require school systems to bear the burden of proof in due process hearings that are filed by parents/guardians. This shift would significantly impact the smaller systems on the Eastern Shore where the size of the district and resources available would prove to be particularly impactful.

As educators we place priority in providing quality programming to special education students. We value the relationships built between teachers, schools, and families we serve. We believe approval of SB926 would have detrimental impacts to the quality of instruction, availability of staff, and the relationships between staff and families.

Special educators already have rigorous schedules and duties to deliver high quality instruction and supports to students. Special educators are also responsible for important medical billing and related administrative functions that require care and precision. This ensures accurate data recordation and meaningful reports that are shared with families on a formal basis each quarter and on an informal basis throughout the student's tenure with the school system. It allows the school team and parents to effectively understand student needs, track progress, and pivot practices and strategies for success. If special educators assume an even greater responsibility to bear the burden of proof at due process hearings, it could force the focus of their workload from instruction to documentation.

The number one reason special educators are leaving the field is due to the fact that the focus is no longer on providing service delivery and instruction but has become overburdened with significant levels of documentation and clerical responsibilities. Special educators recognize and value the need for documentation however this shift adds an additional level that may tip the scales in a negative direction. Due process complaints, or the threat of a due process complaint, raises anxiety levels of all staff involved which in turn can negatively impact a teacher's ability to meet the demands of their professional responsibilities. A shift of burden to the local system has the great potential to make Maryland a highly litigious state which further deters educators from entering the field.

We recognize the place due process proceedings have in affording each party a fair balance in determining the best interest of students; we believe current practices provide opportunities for resolution and mediation prior to a formal proceeding. Based on trends of neighboring states where the burden has been shifted, an increase in litigation has been shown which results in an increase in preparation time for all parties. This removes them from providing services and increases the length of hearings as the scope of litigation is broadened.

We feel Maryland should support a special education system that respects the dedication and professional expertise of special educators to develop, in collaboration with parents, individual education programs (IEPs), which identify and determine which services are appropriate for the student. We believe this system should not be converted into one which presumes that the legal burden should be placed on the school system and educators to defend the sufficiency of the IEP. Does Maryland want to send the message to our educators that they would always have to prove their expertise and knowledge within the profession?

In lieu of approving Senate Bill 926, is it our opinion that improvements to our existing support network for parents would better empower parents before feeling the need to access legal avenues. Current fiscal structure provides for part-time family support personnel. Personnel are provided with quarterly meetings across the state, limited training related to the IEP and it's process, with the burden of coordination provided by the local school system which can create a perception of imbalance by parents seeking their support. It is our position that these roles should be funded by MSDE as full-time positions commensurate with local enrollment figures. In addition, ongoing, routine, and targeted training should be provided by the state in an effort to better equip these individuals with the skills and knowledge to provide timely and appropriate support to parents. The existing requirement that the role be filled by a parent of a child with a disability limits the applicant pool and can prevent more qualified individuals with experience working with families of children with disabilities seeking employment.

Ensuring quality instruction and compliance is essential to meeting the comprehensive programming outlined by the IEP. Given the existing requirements placed on special educators, having pseudo-administrative oversight through a school-based expert in special education, an IEP Chairperson, would aid in compliance of IEP implementation and process as well as provide valuable coaching to address implementation of specially designed instruction. This additional layer of accountability for the local school system would allow for timely responses to parent concerns and oversight to the process.

For these reasons, MSSEC opposes Senate Bill 926 and supports consideration for alternative options to support families and school systems equally.

Respectfully,

Elizabeth Anthony	Caroline County Public Schools
Kim Waller	Dorchester County Public Schools
Joeleen Smith	Queen Anne's County Public Schools
Kristen Mentges	Talbot County Public Schools

# **SB 926\_ County Boards of Education - Due Process P**

Uploaded by: Alexa Thomas

Position: UNF



**PSSAM**  
Public School Superintendents' Association  
OF MARYLAND

**Mary Pat Fannon, Executive Director**  
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marypat.fannon@pssam.org

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**BILL:** SB 926

**TITLE:** County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

**DATE:** March 15, 2023

**POSITION:** Oppose

**COMMITTEE:** Education, Energy, and the Environment

**CONTACT:** Mary Pat Fannon, Executive Director, PSSAM

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The Public School Superintendents' Association of Maryland (PSSAM), on behalf of all twenty-four local school superintendents, **opposes** Senate Bill 926.

Senate Bill 926 would shift the burden of proof in cases regarding due process of Individualized Education Programs (IEPs) to the local school system, as opposed to the parent or guardian of the student receiving services. The bill requires certain public agencies to bear the burden of proof in due process hearings that are held to resolve a dispute relating to the provision of a free appropriate public education. This shift would apply to all twenty-four local school systems, regardless of system size or resources.

Local superintendents consistently place top priority on providing special education services to our students. We strive to ensure that our students receive high quality special education programs and instruction that will meet their individual needs. We work diligently to adhere to comprehensive federal and state requirements to serve our special education students.

We believe this legislation will greatly and negatively impact special educators. The proposed change will require additional action on the part of special educators, piling on to their already full plates. Special educators would be required to enhance an already effective system resulting in greater data collection and heightened reporting expectations each day. We believe the most significant role that a special educator plays is meeting the needs of their students, and this bill will create a barrier in that process. This bill will also widen the gap of the special educator's administrative burden as compared with their general educator peers. We have serious concerns



that this will send more special educators back into general education classrooms and will make the job of recruiting and retaining special educators even more difficult.

Special educators already have rigorous schedules and duties to deliver high quality instruction and supports to students. Special educators are also responsible for important medical billing and related administrative functions that require care and precision. This ensures accurate data recordation and meaningful reports that are shared with families on a formal basis each quarter and on an informal basis throughout the student's tenure with the school system. It allows the school team and parents to effectively understand student needs, track progress, and pivot practices and strategies for success. If special educators assume an even greater responsibility to bear the burden of proof at due process hearings, the workload could become unmanageable, and their classroom focus and overall ability to meet student needs may be diminished.

With respect to due process proceedings themselves, it is never the goal of any system to find itself in a due process hearing. Time spent by our special educators leading up to and participating in a due process hearing conflicts with instruction. While the law currently requires the burden on parents, most school systems take all possible steps to resolve matters prior to any formal process.

Due process hearings require a great deal of focus, preparation, and time from school staff beyond their normal duties in the classroom. For example, Harford County's most recent due process hearings took an average of 5.5 days and involved not only legal counsel, but also four-to-six special educators and school staff to provide relevant evidence during the proceeding. Leading up to the hearing, those special educators each spent an estimated average of 20-40 hours reviewing and assembling records and preparing testimony. If due process hearings increase as a result of the burden shifting, Harford County can reasonably expect increased costs of between \$476,280 in FY 2025 and 697,318 in FY 2028. While those costs reflect classroom coverage for special educators (substitutes), it is *impossible* to measure the impact on students who have a gap in time spent with their assigned teachers.

We strongly believe that the current law regarding due process complaints is a fair and functional process, affording each party a fair balance in determining the best interest of students; it also provides opportunity for resolution and mediation prior to a formal proceeding.

PSSAM supports a special education system that respects the dedication and professional expertise of special educators and school administrators to develop, in collaboration with parents, individual education programs (IEPs), which identify and determine which services are appropriate for the student. PSSAM believes this system should not be converted into one which presumes that the legal burden should be placed on the school system and educators to defend the sufficiency of the IEP. PSSAM supports maintaining the general legal principle that a complaining party has the burden to prove the merits of their complaint.

In recent years, the General Assembly has considered and rejected legislation to place the burden of proof on the public agency (local school system or the Maryland State Department of Education (MSDE) in a special education-related due process hearing held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. PSSAM strongly opposes such legislation, and supports the Supreme Court decision in a Maryland case, *Shaffer v. Weast* (2005), which upheld Maryland's recognition that parents should meet the burden of proving their complaint when they disagree with the IEP developed for their child.

For these reasons, PSSAM **opposes** Senate Bill 926 and requests an unfavorable report.

# **SB926 County Boards of Education - Due Procsc Proc**

Uploaded by: Dawana Sterrette

Position: UNF

# BALTIMORE CITY PUBLIC SCHOOLS

**Brandon M. Scott**  
Mayor, City of Baltimore

**Jhnette A. Richardson**  
Chair, Baltimore City Board  
of School Commissioners

**Dr. Sonja Brookins Santelises**  
Chief Executive Officer

**Testimony of the  
Baltimore City Board of School Commissioners  
In Opposition of  
Senate Bill 926  
County Boards of Education – Due Process Proceedings  
For Children with Disabilities – Burden of Proof**

**March 15, 2023**

The Baltimore City Board of School Commissioner opposes Senate Bill 926 as requiring the school system to have the burden of proof in cases that is opposite to what occurs in the American judicial system and was upheld in the Supreme Court case, *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 44 IDELR 150 (2005). **Additionally, the school board believes that any major modification to this long-standing judicial procedure should be considered with the utmost care.**

Under current law, any moving party would have the burden to prove its case. However, in this legislation, if a parent or guardian files a due process complaint against a school system concerning a dispute over the identification, evaluation, or educational placements of children with disabilities or the provisions of a free appropriate public education the school system has the burden. The Board agrees with testimony submitted by the Maryland Association of Boards of Education and the Public School Superintendents Association of Maryland as to the issues that shifting the burden represents.

The Committee should also be reminded that in 2020 the General Assembly established a special education ombudsman in the Office of the Inspector General for Education. Also, in 2014, several bills passed the General Assembly that requires the school system to notify parents of rights and procedural safeguards in due process hearings. Several bills that became law also require school systems to translate IEPs in the parent's native language and to provide on line access to all special education services.

The Committee should also be aware of the funding challenges that exist in Baltimore City. A school system that has one of the highest special education student populations in the State. In Baltimore City, the school board spends approximately \$300 million on special education services and receives only \$80M.

For the foregoing reasons, the Baltimore City Board of School Commissioners opposes Senate Bill 296 and urges an unfavorable report.

# BALTIMORE CITY PUBLIC SCHOOLS

**Brandon M. Scott**  
Mayor, City of Baltimore

**Jhnette A. Richardson**  
Chair, Baltimore City Board  
of School Commissioners

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# **SB 926.Burden of Proof Shift.pdf**

Uploaded by: John Woolums

Position: UNF



MARYLAND ASSOCIATION OF BOARDS OF EDUCATION

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**BILL:** Senate Bill 926  
**TITLE:** Education - Due Process Hearings for Children with Disabilities -  
Burden of Proof  
**POSITION:** OPPOSE  
**DATE:** March 15, 2023  
**COMMITTEE:** Education, Energy, and the Environment  
**CONTACT:** John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes Senate Bill 926, which would shift the burden of proof to local school systems in special education due process hearings.

Maryland's public school systems are mandated to provide a wide array of special education services in accordance and compliance with the federal Individuals with Disabilities Education Act (IDEA) and corresponding federal and state regulations. IDEA requires that all students receive special education and related services if they are between the ages of 3 and 21, meet the definition of one or more of the categories of disabilities specified in IDEA, and are in need of special education and related services as a result of the disability. An Individualized Educational Program (IEP) is an educational plan designed for the unique needs of each student identified as requiring special education services, and is formed by parents, teachers, administrators, related services personnel. Each IEP states the student's present levels of academic performance, and states how the disability affects the student's involvement and progress in the general curriculum; and the IEP must include academic and functional annual goals, and benchmarks or instructional objectives.

The IEP is a legally binding document and constitutes the foundation for the educational services provided to every student with a disability. School systems take very seriously the responsibility for identifying and evaluating students with disabilities; developing, reviewing, or revising an IEP for a student with a disability; and determining the placement of a child with a disability in the least restrictive environment. IEP teams, comprised of professional educators and parents, meet to develop the initial IEP and at least once a year thereafter to ensure that the IEP includes the services needed for the student to make progress on the specified annual goals. However, given the complexity and individualized nature of IEPs, disputes do arise between parents and teachers and other educators working in the school system. To accommodate such disputes, federal and state laws provide parents the full protections of a state regulated complaint and enforcement process, and access to due process hearings before an Administrative Law Judge.

In Maryland, and nearly all other states, the party initiating the action in a special education due process hearing, whether the parents or the school system, bears the burden of proof. This is consistent with a 2005 Supreme Court case which arose from a complaint against the Montgomery County school system (*Schaffer v. Weast*, 546 U.S. 49 (2005)). In *Schaffer v. Weast*, the Supreme Court held that the burden of proof in an administrative hearing challenging a student's IEP is properly placed upon the party seeking relief, whether the moving party is the school system or the student's parent or guardian.

As the U.S. Supreme Court has observed and held, the legislative intent and operation of IDEA is to guarantee substantial rights to students identified as requiring special education services. Shifting the burden of proof to the school system to defend the appropriateness of the IEP, which is developed by professional special educators in collaboration with parents and in accordance with strict federal and state laws, is therefore unnecessary to ensure that students in Maryland continue to receive individualized and high quality special education services.

The special education services required to be provided under IDEA must meet the legal standard of providing a Free Appropriate Public Education, or FAPE, and do so in the least restrictive environment. A student is identified for purposes of receiving special education services based on having one or more disability which adversely affects the student's educational performance. These include intellectual disabilities; hearing, speech or language, or visual impairments; emotional disturbance; autism; and other specified impairments and learning disabilities. The specially designed instruction called for under FAPE refers to the adaptation of content, methodology, or delivery of instruction to address the unique needs of the student to ensure access to the general curriculum, so the student can meet the educational standards that apply to each student in the school system.

The determination of what is an "appropriate" education under IDEA is decided on a case-by-case basis. In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court identified a two-part analysis in determining FAPE: (1) Has the school system complied with IDEA's procedures, and (2) Is the Individualized Educational Program (IEP) developed through these procedures reasonably calculated to enable the child to receive educational benefit?

Local boards of education have great respect and appreciation for the dedication and commitment of educators and parents who are collaborating throughout the school year to ensure that the educational needs of students qualifying for special education services are being met. MABE is concerned with the potential unintended consequences of shifting the burden of proof; including the increase in cost and duration of IEP challenges and the resulting delay in students receiving the services they need until the completion of the dispute. These outcomes are not in the best interests of students, families, and the educators involved in the collaborative and intensive process mandated under the current law.

Finally, local boards recognize that the pandemic and resulting school closures presented enormous challenges for all students, families, and educators. Through each school system's education recovery and reopening plan, and in accord with State and federal laws and regulations, school systems worked to provide all students eligible for special education services with access to continuity of learning through distance and in-person instruction and the delivery of other services. Today, these extraordinary efforts by students, families, and educators are not only ongoing but made more difficult by shortages of teachers and other staff. MABE is therefore supporting bills in 2023 to address special education funding and staffing issues. By contrast, MABE does not endorse adopting a new statewide policy leading to more disputes in courtrooms when all parties should be working collaboratively to serve students in classrooms.

Again, each local board of education place a very high priority on ensuring that students receive high quality special education programs and instruction to meet the unique needs of every student. MABE, on behalf of all local boards of education, assures the General Assembly that Maryland's professional educators and school administrators are working within a very comprehensive federal and state legal and educational framework to serve special education students, without the need for shifting the burden of proof in due process hearings as proposed in this legislation.

For these reasons, MABE opposes shifting the burden of proof to school systems in cases concerning the delivery of services under the student's current IEP, and urges this Committee to issue an unfavorable report on Senate Bill 926.



**SB926\_MSEA\_Zwerling\_Oppose.pdf**

Uploaded by: Samantha Zwerling

Position: UNF

**Testimony in Opposition of Senate Bill 926  
County Boards of Education – Due Process Proceedings for Children With  
Disabilities – Burden of Proof**

**Senate Education, Energy, and the Environment Committee  
March 15, 2023**

**Samantha Zwerling  
Government Relations**

The Maryland State Education Association opposes Senate Bill 926. Senate Bill 926 would require a county board of education to bear the burden of proof in due process proceedings that initiate from a due process complaint regarding the provision of special education services or a program for a child with disabilities. MSEA's opposition to SB 926 stems from a concern that this legislation fails to provide meaningful enhancements of special education services and will only lead to a dramatic increase in special educators already daunting workload.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

Shifting the burden of proof onto county boards of education in special education due process proceedings is not a policy solution to strengthen special education services for students. The policy will result in special educators spending more time dedicated to bureaucratic administrative matters either to anticipate and prepare for litigation or actually being pulled from the classroom to attend pre-trial and trial proceedings. In practice, this policy would establish a presumption that special education services provided by schools are insufficient until the county school board demonstrates that services are in fact sufficient. MSEA disagrees with this effect and believes special educators work tirelessly to deliver robust care and great education for all their students.



MSEA appreciates well-intentioned efforts to enhance educational services, but this bill will not accomplish that goal. Our educators work hard day and night, weekday and weekend to deliver the best educational opportunities we can for our students. We are facing a staffing crisis in this state and across the country, especially for special educators. In the 2021-2022 school year, there were approximately 447 special educator vacancies in Maryland.<sup>1</sup> Staffing shortages continue to exacerbate enormous workloads that special educators currently face. Policymakers must understand the workload that special educators are facing in their working conditions, while dealing with critical staffing shortages before enacting policies that will increase their existing workload.

Moreover, school systems are grappling with a lack of financial support from the federal government's failure to fulfill its funding obligations under the Individuals with Disabilities in Education Act (IDEA). Under the IDEA, the federal government is supposed to provide forty percent of the average per pupil expenditure to help offset the cost of educating eligible students.<sup>2</sup> Sadly, for decades Congress has failed to meet its obligations, leaving states and school districts to find the financial resources necessary to comply with the IDEA.<sup>3</sup> The federal government's failure to fully fund its portion of IDEA funding has caused states and school districts, among other things, to limit hiring of key school personnel and to reduce or eliminate other general education programs—practices that contribute to high turnover and exacerbate existing shortages.<sup>4</sup> Congress slightly increased federal funding for the IDEA in Fiscal Year 2023, however, the increase in funding still falls far below from what Congress should be spending to support students with disabilities.<sup>5</sup>

Finally, the Maryland General Assembly enacted legislation in 2020 to enhance special education support for parents, students, and educators by creating a Special

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<sup>1</sup> Maryland State Department of Education, *Maryland Teacher Workforce: Supply, Demand, and Diversity*, slide 15 (July, 26, 2022) retrieved from: <https://www.marylandpublicschools.org/stateboard/Documents/2022/0726/TabGBlueprintAndDataDeepDiveTeacherPipelineAndDiversity.pdf>.

<sup>2</sup> National Council on Disability, *IDEA Series, Broken Promises: The Underfunding of IDEA*, p. 9 (Feb. 7, 2018), [https://ncd.gov/sites/default/files/NCD\\_BrokenPromises\\_508.pdf](https://ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 41.

<sup>5</sup> Mark Lieberman, *Special Ed., Civics, and High-Need Schools Get a Boost in New Federal Spending Package*, Education Week (Dec. 23, 2022), <https://www.edweek.org/policy-politics/special-ed-civics-and-high-need-schools-get-a-boost-in-new-federal-spending-package/2022/12>.



Education Ombudsmen in the Office of the Attorney General.<sup>6</sup> The purpose of the Ombudsmen is to provide information and support to parents, students, and educators regarding special education rights and services.<sup>7</sup> Among other things, the Ombudsmen provides impartial information and resources concerning the process to obtain special education evaluations and services, the process for resolving disputes concerning special education programs, and the rights of parents and students and how they may avail themselves of those rights.<sup>8</sup> Unfortunately, former Governor Hogan did not include funding in previous budgets to establish this office, and the General Assembly did not mandate an appropriation to establish the office.<sup>9</sup>

MSEA urges the General Assembly to swiftly dedicate resources to this effort, so the office may be established and fulfill its mission. MSEA supports legislative efforts that provide greater clarity and knowledge with respect to existing rights and how to navigate processes and procedures to effectuate those rights for parents, students, and educators.

MSEA continues to be an open and willing partner to provide the best education possible to our students. Our members joined this profession to make a measurable impact on the lives of children and to educate and prepare them for life beyond the walls of our schools. We will continue to support efforts that we whole-heartedly believe will further this vision but will oppose legislation that we believe will impede this effort.

**We urge the committee to issue an unfavorable report on Senate Bill 926.**

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<sup>6</sup> MD Code, State Government, §§ 6-501 – 506.

<sup>7</sup> MD Code, State Government, § 6-502(b).

<sup>8</sup> MD Code, State Government, § 6-504(a).

<sup>9</sup> Letter from Brian Frosh, Maryland Attorney General to The Honorable Paul G. Pinsky and The Honorable Vanessa E. Atterbeary, *Regarding Senate Bill 504 (2020) Office of the Attorney General – Special Education Ombudsman MSAR# 12813* (July 1, 2022), [https://dlslibrary.state.md.us/publications/AG/SG6-506\\_2022.pdf](https://dlslibrary.state.md.us/publications/AG/SG6-506_2022.pdf).