



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.¹ However, in Maryland only 18% of students with intellectual disabilities are fully included.² 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.

¹ https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf

² <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,

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