Mary Pat Fannon, Executive Director
1217 S. Potomac Street
Baltimore, MD 21224
410-935-7281
marypat.fannon@pssam.org

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

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.