

Barbara Krupiarz
7834 Rockburn Dr
Ellicott City, MD 21043
3/15/2023

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

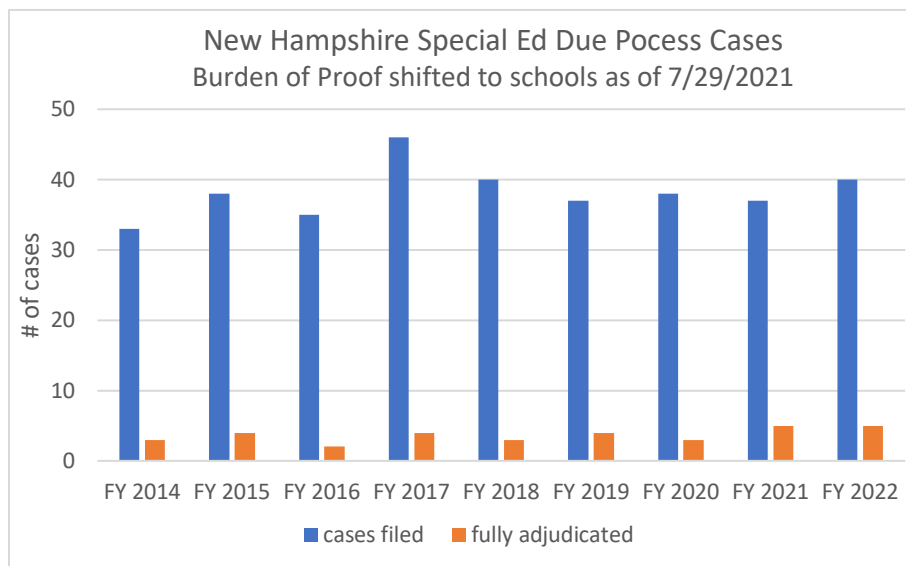
SB 926 – County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

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 3rd 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.

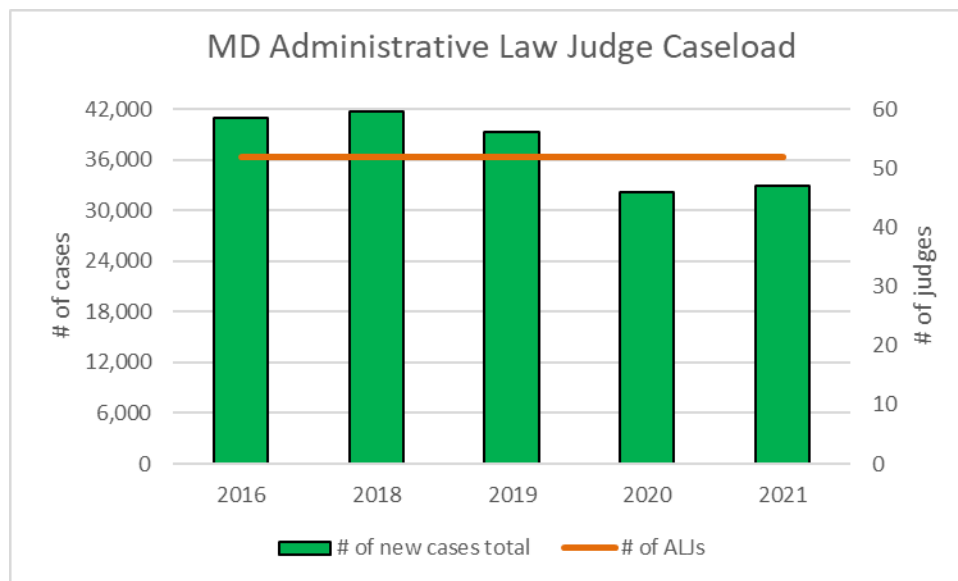
Opponents argue that the number of due process cases will increase if the burden of proof is shifted to schools. Other states, such as New York and New Jersey did not have that experience when they shifted the burden. The most recent state to shift the burden of proof was New Hampshire, effective July 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