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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**)

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