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**House Bill 381:  
Due Process Proceedings for Children With Disabilities – Burden of Proof**

**House Ways and Means Committee  
February 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.

Joining me in this testimony is Ms. Liz Zogby. She is the co-chair of the Maryland Down Syndrome Advocacy Coalition and outreach coordinator at the Trace R&D Center at the University of Maryland that focuses on inclusive information and communication technology.

The opposition of local school systems to this bill is unjustified and unjust. But don't take our 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 over-worked 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 HB 381. Thank you.

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