

HB294_BOP_2023.pdf

Uploaded by: Barbara Krupiarz

Position: FAV

Barbara Krupiarz
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2/6/2023

Ways and Means Committee
Room 131
House Office Building
Annapolis, Maryland 21401

HB 294 – County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

Position: Support

In an IEP dispute, the school system has all of the information (data, programs, evaluations, school work, testimony of staff, etc.) is often not shared with parents. Even in the best case scenario, parents receive the school system's evidence five days before the hearing. General education students and parents have the ability to appeal school system decisions to their Board of Education. But BOEs are advised to not hear a special education concern – due to the “legal nature” of IDEA. Therefore, a parent must hire a lawyer or battle a school system attorney at a hearing to address a disagreement with their child's education. In Maryland, parents win a small percentage of their cases, even with lawyers. I investigated decisions in 2019 for the District of Columbia that has their own set of consistently trained hearing officers who hear ONLY special education cases. I found almost 75% of the time, parents won at least partially, if not fully, in their due process hearings.

Sadly, opponents of this bill believe that it will increase litigation. States that have shifted BOP have not had increases as a result. Teachers' unions and state departments of education have fought to keep BOP on schools in those states because it is simply the right thing to do with such an imbalance of power – even in states with orders of magnitude more due process filings and higher percentages of students receiving special education services. Let's look at a few cases:

New York State

- 14,618 due process cases filed in 2021
- 20.5% of their students have an IEP
- The State Teachers Union (NYSUT) lead the charge to shift BOP to schools in 2007.
- "This corrects an injustice. It is unfair to put this burden on parents, especially those who do not have the financial means to hire an attorney and navigate the special education hearing process," said New York State United Teachers Executive Vice President Alan B. Lubin.
<http://www.nysut.org/news/2007/august/nysut-applauds-governor-for-signing--burden-of-proof--legislation>

New Jersey

- 1,117 due process cases filed in 2021
- 17.3% of their students have an IEP
- Burden of proof is on schools in all cases
- In 2020 the NJ DOE and OAL proposed a “pilot program” to use Independent Hearing Officers (“IHOs”) specially trained and assigned to preside over special education cases only

Connecticut

- 195 due process cases filed in 2021
- 16.5% of their students have an IEP
- Any time there is a challenge to BOP on schools and placing the burden on parents, the State Department of Education fights against the change. <https://www.cga.ct.gov/2010/rpt/2010-R-0054.htm>

New Hampshire

- 37 due process cases filed in 2021
- 17.3% of their students have an IEP
- New Hampshire became the most recent state to shift the BOP to schools
- The governor stated - “It really does what we always talked about: putting the individual first, putting the kids first, putting families first.” <https://www.nhpr.org/nh-news/2021-07-30/special-education-law-nh-burden-proof>

Maryland

- 202 due process cases filed in 2021
- 12.6% of their students have an IEP
- 3 local Boards of Education have bills to shift the BOP to schools this year (Baltimore City, Harford, Howard)

Staffing and training of Maryland teachers and staff are needed to increase special education student outcomes. While the Blueprint should assist with those resources, they must be directed in the appropriate ways. If schools have the burden of proving what they are doing is compliant with the law, I believe they will make more of an attempt to follow the law on the front end. Shifting the burden to schools is a very small step in making things a little fairer for families who struggle every day to help their children succeed – especially families with limited means.

Please put children first and pass this bill as written.

Sincerely,

Barb Krupiarz

State numbers IEPs_2021.pdf

Uploaded by: Barbara Krupiarz

Position: FAV

Number and percentage of children served under Individuals with Disabilities Education Act (IDEA), Part B, by age group and state or jurisdiction: Selected years, 1990-91 through 2020-21	3- to 21-year-olds served									
									As a percent of public school enrollment, 2020-21	Percent change in number served, 2000-01 to 2020-21
	1990-91	2000-01	2010-11	2015-16	2017-18	2018-19	2019-20	2020-21		
1	2	3	4	5	6	7	8	9	10	11
United States	4,710,089	6,295,816	6,434,916	6,676,974	6,964,424	7,134,248	7,281,881	7,182,916	14.5	14.1
Alabama	94,601	99,828	82,286	84,278	90,319	93,472	96,429	95,189	13.0	-4.6
Alaska	14,390	17,691	18,048	18,390	19,148	19,479	19,473	18,941	14.6	7.1
Arizona	56,629	96,442	125,816	132,592	140,702	144,812	148,121	144,814	13.0	50.2
Arkansas	47,187	62,222	64,881	68,178	72,835	74,863	76,483	75,267	15.5	21.0
California	468,420	645,287	672,174	727,718	767,562	788,268	754,502	773,183	12.8	19.8
Colorado	56,336	78,715	84,710	95,101	102,240	105,186	109,276	106,887	12.1	35.8
Connecticut	63,886	73,886	68,167	75,030	79,758	82,336	85,010	84,155	16.5	13.9
Delaware	14,208	16,760	18,608	20,742	23,196	24,382	26,060	24,672	17.9	47.2
District of Columbia	6,290	10,559	11,947	12,258	13,399	14,113	14,927	14,977	16.7	41.8
Florida	234,509	367,335	368,808	372,476	389,626	405,796	420,515	409,257	14.7	11.4
Georgia	101,762	171,292	177,544	202,314	214,267	219,111	225,610	222,620	12.9	30.0
Hawaii	12,705	23,951	19,716	19,223	19,276	19,592	20,125	20,017	11.3	-16.4
Idaho	21,703	29,174	27,388	29,718	32,908	34,310	35,846	35,536	11.5	21.8
Illinois	236,060	297,316	302,830	296,784	295,066	297,960	300,356	291,371	15.4	-2.0
Indiana	112,949	156,320	166,073	171,368	176,104	178,511	182,135	180,789	17.5	15.7
Iowa	59,787	72,461	68,501	63,822	65,935	67,990	69,673	69,295	13.7	-4.4
Kansas	44,785	61,267	66,873	70,762	73,729	75,511	77,559	76,283	15.8	24.5
Kentucky	78,853	94,572	102,370	99,283	104,270	106,158	108,475	105,779	16.1	11.9
Louisiana	72,825	97,938	82,943	84,221	84,473	86,829	89,121	86,582 ²	12.5	-11.6
Maine	27,987	35,633	32,261	32,531	33,004 ³	34,382	35,020	34,482	20.0	-3.2
Maryland	88,017	112,077	103,490	105,440	108,491	110,563	113,714	110,944	12.6	-1.0
Massachusetts	149,743	162,216	167,526	168,199	173,762	176,627	179,634	175,548	19.0	8.2
Michigan	166,511	221,456	218,957	197,316	198,751	199,794	199,147	193,592	13.5	-12.6
Minnesota	79,013	109,880	122,850	128,218	135,386 ⁴	141,454	145,888	144,492	16.6	31.5
Mississippi	60,872	62,281	64,038	66,799	69,197	69,433	70,329	67,162	15.2	7.8
Missouri	101,166	137,381	127,164	126,328	131,114	132,286	132,638	126,064	14.3	-8.2
Montana	16,955	19,313	16,761	17,387	18,803	19,380	19,645	19,156	13.1	-0.8
Nebraska	32,312	42,793	44,299	47,795	50,415	52,005	52,774	52,050	16.0	21.6
Nevada	18,099	38,160	48,148	55,452	60,123	60,120	63,828	62,000	12.9	62.5
New Hampshire	19,049	30,077	29,920	28,806	29,233	29,920	30,400	29,199	17.3	-2.9
New Jersey	178,870	221,715	232,002	232,401	238,178	241,063	246,693	237,344	17.3	7.0
New Mexico	36,000	52,256	46,628	49,667	52,838	53,996	54,147	53,786	17.0	2.9
New York	307,366	441,333	454,542	499,551	522,221	530,702	540,245	532,943	20.5	20.8
North Carolina	122,942	173,067	185,107	198,808	200,905	201,658	203,848	193,809	12.8	12.0
North Dakota	12,294	13,652	13,170	13,953	15,153	15,902	16,438	16,483	14.3	20.7
Ohio	205,440	237,643	259,454	253,896	266,670	271,090	275,267	270,977	16.5	14.0
Oklahoma	65,457	85,577	97,250	108,459	112,080	115,289	116,875	115,219	16.6	34.6
Oregon	54,422	75,204	81,050	84,517	87,156	89,125	91,493	87,040	15.0	15.7
Pennsylvania	214,254	242,655	295,080	303,633	320,817	327,908	339,283	338,713	19.9	39.6
Rhode Island	20,646	30,727	25,332	23,515	23,748	24,170	24,548	23,949	17.2	-22.1
South Carolina ^{77,367}		105,922	100,289	101,776	104,698	106,521	108,932	106,315	13.9	0.4
South Dakota ^{14,726}	16,825	18,026	19,527		21,190	21,712	22,175	21,763	15.6	29.3
Tennessee	104,853	125,863	120,263	129,386	129,319	130,229	131,408	125,097	12.7	-0.6

Texas	344,529	491,642	442,019	463,238	498,588	532,185	588,317	605,351	11.3	23.1
Utah	46,606	53,921	70,278	79,932	84,196	86,532	87,968	85,890	12.6	59.3
Vermont	12,160	13,623	13,936	13,903	^{14,482} ₃	14,911	15,555	15,154	18.4	11.2
Virginia	112,072	162,212	162,338	164,757	172,370	175,450	179,481	174,043	13.9	7.3
Washington	83,545	118,851	127,978	135,757	143,498	147,628	152,495	147,202	13.5	23.9
West Virginia	42,428	50,333	45,007	45,297	46,810	47,183	47,278	45,846	18.1	-8.9
Wisconsin	85,651	125,358	124,722	120,864	^{120,864} ₅	^{120,864} ₅	^{120,864} ₅	120,348	14.5	-4.0
Wyoming	10,852	13,154	15,348	15,608	15,551	15,487	15,858	15,341	16.5	16.6

---Not available.

https://nces.ed.gov/programs/digest/d21/tables/dt21_204.70.asp

known states with BOP on schools

2023-02-08 HB 294 (Support).pdf

Uploaded by: Hannibal Kemerer

Position: FAV

ANTHONY G. BROWN
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February 8, 2023

TO: The Honorable Vanessa Atterbeary
Chair, Ways and Means Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: HB 294 – County Boards of Education – Due Process Proceedings for
Children with Disabilities – Burden of Proof (Support)

The Office of Attorney General writes in support of House Bill 294, Chair Atterbeary'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 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 HB 294.

cc: Sponsor & Committee Members

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

HB0294 Testimony.pdf

Uploaded by: Kari Fisher

Position: FAV

2-6-23

Please forgive the brevity, as I did not have the time I wanted to devote to this. I fully support a change to shift the burden to due process complaints in Maryland Statewide. I have written many letters about the horrific abuses of PGCPs with respect to the IDEA, and that includes the due process proceedings. There needs to be major law reform. Local representatives in my area, former Del. Fisher, but Del. Pena-Melnyk and Del. Lehman, as well as Sen. Rosapepe and Sen. Augustine, SECAC PG, County Council Members Dernoga, Olson, and Ivey, and so forth, can attest to my situation. I have written many letters to the Governor's Office as well as copied the USDE. While there are other great needs to address in Maryland with respect to the IDEA, shifting the burden in Maryland to the school systems is a start. Thank you for the opportunity to provide testimony. Kari Fisher, 2508 Heatherwood Court, Adelphi, MD 20783 karifisher7@gmail.com 301-996-8523

HB 294 County Boards of Education_ Due Process Pro

Uploaded by: Kim Tart

Position: FAV

House Bill 294 – County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof

Hearing Date: In the House - Hearing 2/08 at 1:00 p.m.

Dear Members of the Ways and Means Committee:

I am writing to you in hopes of your support for House Bill 294- *County Boards of Education - Due Process Proceedings for Children with Disabilities - Burden of Proof*.

As a parent of a student who attends public school in Prince George's County. I am supportive of what this bill that will that shifts the Burden of Proof from families to school districts in due process cases. This change is an effort to bring greater fairness, accountability, and collaboration to special education.

My son, Montgomery, is educated in a community reference instruction (CRI) program at Charles H. Flowers Highschool where he receives his education in a self- contained classroom. In addition to academic classroom instruction, he receives Speech/Language, Occupational Therapy (OT), Physical Therapy, Adaptive Physical Education (PE) and Assistive Technology (AT) services.

We have recently submitted a compliant to the state. Monty's IEP is not being appropriately enforced; in addition, to IEP issues, the scheduling tool used to indicate Montgomery's academic performance on his report card does not produce an accurate report of the actual classes and grades on his schedule.

As parents, we must bear the burden of proof and pay for outside evaluations and assessments. But, the burden we parents bear - that doesn't fall on school system personnel - includes the psychological, emotional and physical toll it takes on us on a daily basis as soon as we dare to disagree or ask for clarification. That burden doesn't fall on the school personnel because, unlike parents, they get to clock out at the end of the school day. Or as the saying goes, "School personnel have the children for the school year; parents have them for a lifetime."

The county board of education [school] has those experts on board for the identification, evaluation or educational placement of a student. Those experts collect, track and maintain data on students. Detailed data that can reveal if the school addresses the goals/objectives of the IEP and complies with IDEA. Bottom line - The county needs to undoubtedly prove that the educators are performing their jobs and have not violated IDEA requirements.

HB 294 will enforce accountability and responsibility of public agencies [schools]; ensure schools fully implement actions required as a result of a due process hearing decision. It is a win-win solution: *Students received a free appropriate public education (FAPE) and schools are in compliance with Federal and State laws and policies.*

Due process is considered the last resort. The process is the most adversarial, least collaborative dispute resolution option, and may possibly damage the working relationship between educators and families. In FY 2022, State Complaints received was 129. Forty-eight (48) were from Prince Georges County.

If all schools were responsible and made a concerted effort to ensure that students with disabilities receive FAPE, there would be no need for due process or at least the number of cases would decrease. Sadly, that is not the case.

As parents, we entrust the school staff with our most vulnerable children every day. Being able to collaborate and have transparency will enable us all to work together in a concerted effort for the betterment of our children. Please support HB 294.

Sincerely,

A handwritten signature in cursive script that reads "Kim J. Tart".

Kim Tart
1302 Fairfield Drive
District Heights, Maryland 20747
tartkg@prodigy.net

HB0294 Testimony.pdf

Uploaded by: Lisa Wilson

Position: FAV

House Bill 0294 – County Boards of Education – Due Process Proceedings for Children with Disabilities – Burden of Proof

Hearing Date: In the House – Hearing February 8, 2023, at 1:00 pm

In SUPPORT

My name is Lisa Wilson, and I am the single parent of a student with autism and multiple other disabilities. My son attends school in Prince George's County, Maryland. The school officials have failed him catastrophically as evidenced by retention and a Letter of Finding issued by the Maryland Department of Education. I have recently filed a second State Complaint, which has been accepted for investigation. I have other administrative claims pending currently as well. I am in support of this legislation as the power imbalance between the parent and the school is concerning at best. School officials have a host of subject matter experts and attorneys, which are often used to overpower the parents in IEP meetings and consequential decisions impacting the student. I am testifying in favor of House Bill 0294 based on the following below:

- 300.322 Parent Participation. (a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place (b) Information provided to parents (1) The notice required under paragraph (a)(1) of this section must –(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (ii) inform the parents of the provisions in §300.321(a)(6) and (c) relating to the participation of other individuals on the IEP Team who have special knowledge or special expertise about the child.
- Due process is guided by the Individuals with Disabilities Education Act to protect parents' rights. A due process complaint is a written document used to request a due process hearing. Parents might file a due process complaint when they disagree with the results of their child's evaluation for eligibility determination on special education and related services; when they think the child's IEP doesn't meet his or her special education and related service needs; when they believe the school is not providing the services included in their child's IEP; or when they disagree with the school district's placement decision for their child.

- On March 22, 2017, the U.S. Supreme Court (Court) issued a unanimous opinion in *Endrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988. In that case, the Court interpreted the scope of the free appropriate public education (FAPE) requirements in the Individuals with Disabilities Education Act (IDEA). The Court overturned the Tenth Circuit's decision that Endrew, a child with autism, was only entitled to an educational program that was calculated to provide "merely more than de minimis" educational benefit. In rejecting the Tenth Circuit's reasoning, the Supreme Court determined that, "[t]o meet its substantive obligation under IDEA, a school must offer an IEP [individualized education program] that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." The Court additionally emphasized the requirement that "every child should have the chance to meet the challenging objectives."
- Under IDEA, parents have the right to fully participate in all decision-making about their child's educational program. It is, of course, wise to consider input from all school professionals. However, all decisions about a child's education need to be signed off on by the parent. This includes every step from evaluation, to diagnosis, to the child's placement in an educational setting. Teachers and other school professionals will, of course, give their recommendations, but the parent has the final say.

Currently and historically, Prince George's County Public Schools registers the most State Complaints annually. Additionally, there are currently approximately ten pending federal complaints with the U.S. Department of Education, Office of Civil Rights, for retaliation and disability discrimination. Parents are often left with few options in working with IEP Teams that do not operate in good faith or in the spirit of IDEA. In some instances, school officials engage in conduct that is unethical, offensive, disrespectful, and violative. Parents that present in a serious advocacy posture for their children are often subjected to retaliation, which is most unfortunate. Prince George's County Public Schools currently do not have a mechanism in place to allow parents to file internal complaints against school personnel who engage in misconduct and retaliation during the IEP process. The U.S. Department of Education cannot accept every parental complaint for investigation; therefore, parents are relying upon local authorities to uphold the critical tenets of IDEA. In moments of desperation and exhaustion parents initiate Due Process Proceedings with the hopes that a neutral judicial officer will hold all parties accountable in an equitable manner.

I believe that FAVOR for HB0294 will be a positive step in reimagining the role of parents as articulated in IDEA. Parents should request a Due Process Hearing when all good faith opportunities to develop a reasonably calculated IEP fall short of the spirit of IDEA. The federal law is very clear on the duties and responsibilities of school officials. Unfortunately, parents do not have the ability or authority to enforce IDEA. In my view, requesting a Due Process hearing is a loud resounding ringing of a bell indicating that something is horribly wrong and likely to result in serious educational harm and denial of FAPE. Notwithstanding the adversarial nature of such proceedings, parents who are *pro se litigants* should not bear the Burden of Proof. Parents able to afford private counsel are certainly well-positioned to resist the emotional and legal bullying running rampant in school districts. I conclude that IDEA is a sophisticated and layered legislation that requires a serious application as the plight of the disabled hang in the balance. In removing the Burden of Proof, the pendulum swings in the direction of accountability for those charged with executing IDEA in the manner which Congress intended. The schools receive significant state and federal funding to provide reliable, credible, competent special education services to every disabled child in Maryland. Your SUPPORT of House Bill 0294 will level the playing field for parents advocating for special education services consistent with IDEA and U.S. Supreme Courts' unanimous decision in *Endrew v. Douglas County School District*.

I am available for further testimony upon request.

Respectfully Submitted,

Lisa Wilson

6705 Chapel Dale Road

Bowie, MD 20720

County Boards of Education - Due Process Proceedin

Uploaded by: Marla Posey-Moss

Position: FAV

**Written Testimony Submitted for the Record to the Maryland House of Delegates
Ways and Means Committee
For the Hearing on
County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof (HB 294)**

February 8, 2023

SUPPORT

Free State PTA represents over 50,000 volunteer members and families in over 500 public schools. Free State PTA is composed of families, students, teachers, administrators, and business as well as community leaders devoted to the educational success of children and family engagement in Maryland. As the state's premier and largest child advocacy organization, Free State PTA is a powerful voice for all children, a relevant resource for families, schools and communities and a strong advocate for public education. ***House Bill 294 County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof, aligns with Free State PTA's position on Shifting the "burden of proof" in individualized education plan (IEP) due process cases from parents to school districts.***

Simply put, house bill 294 places the burden of proof on a local board of education in a due process hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. The exception is when a parent whose child is required to enroll in a public school, but a parent or guardian seeks tuition reimbursement for the unilateral placement of a student by the parent or guardian, the burden of proof in these hearings is on the parent or guardian.

Currently, Maryland, under its supervisory authority required by Individuals with Disabilities Education Act, has the ultimate responsibility for ensuring that local school systems make a free appropriate public education available to students with disabilities from age 3 through 21. Unequivocally, the Free State PTA supports the protection of the rights of children with special needs and those of their parents or guardians including due process. Free State PTA believes that the state and local school district is accountable for guaranteeing that each child with a disability is provided a free and appropriate education (FAPE) in the least restrictive environment. These accountability measures are often determined based on students' behavioral performance, progress reports, quantitative data and anecdotal observations that local school systems collect from their schools and teachers.

Parents have long advocated for the successes of their children who have IEPs and required adherence of teachers to follow plans and for principals as well as administrators to be accountable for administering an IEP. Parents are often defeated from the legal cost associated with time, effort and finances involved to help guarantee that due process is met. They need relief so that the interests of all children served by the school community are met. While a shift in the burden of proof will not change the evidence that each party must present to meet the preponderance of evidence standard, Free State PTA believes this a step in the right direction toward improving school, school district and/or state accountability measures that include children

The mission of PTA is to make every child's potential a reality by
engaging and empowering families and communities to advocate for all children. Page 1

with disabilities, so parents/guardians and educators know how well each entity is doing in improving the results for students with disabilities. Therefore, the Free State PTA urges the passage of HB 294 along with a larger advocacy voice, the Maryland Education Coalition.

Testimony is presented on the behalf of

Marla Posey-Moss

Marla Posey-Moss, President
mposey-moss@fspta.org

Support HB 0294 testimony .pdf

Uploaded by: Michael McLaughlin

Position: FAV

SUPPORT

HB 0294 - Burden of Proof

My name is Michael K. McLaughlin. I live in Laurel with my wife and daughter Erin, who has Down Syndrome. Erin is an adult now, but during her school years she was taught in the general education classrooms in her neighborhood schools. From kindergarten through high school, Erin thrived in that environment and I'm certain her classmates benefitted from her presence as well (see <http://www.youtube.com/watch?v=BcoVI80iLe0> and <https://www.baltimoresun.com/maryland/laurel/ph-ll-erin-mclaughlin-0219-20150312-story.html>)

Many years ago however, we had to go to mediation to make that happen because the school system recommended placement in a segregated classroom in another school.

In common legal disputes, "burden of proof" is simply the obligation of the party seeking relief to produce evidence to prove its argument. When it comes to special education however, disagreements have little in common with typical legal disputes, and nothing is ever simple.

First of all there is the language of special education, with its acronym-filled vocabulary, similar to the military's, that requires a glossary just to communicate. It is not the parents who have come up with this language. Yet they are expected to be fluent.

Then there is FAPE, or Free Appropriate Public Education, which is what students with IEPs (Individual Education Plans) are guaranteed. Despite the good intentions behind the word "appropriate" - meant to individualize the education depending on a student's needs - the word is often used in the negative, e.g., "This service (placement, etc.) is not appropriate for your child." Or worse: too many parents have been coolly reminded that their child is "not entitled to a great, or even a good education, just an appropriate education."

And then there is LRE, or Least Restrictive Environment. There is an accepted maxim that "Special education is a service not a place." Yet disputes can center on where a student receives special education services, or their placement. The law, IDEA (Individuals with Disabilities Education Act) says that the default placement should be the Least Restrictive Environment (LRE), which, whenever possible, is the general education class in the student's neighborhood school; that the student should learn with their non-disabled peers in the school and classroom they would attend if they did not have a disability.

Setting aside whether parents of typical (non-disabled) students would tolerate *any* restrictions on their child's learning environment, there are of course some students with disabilities who require classroom settings different from classrooms as we have come to know them. But too often and at very young ages, students with disabilities are placed in segregated settings for no other reason other than that's the way it has been done in the past. It is the school systems who recommend placements. And some of them misinterpret the "L" in LRE to mean "Less Restrictive Environment."

That was our case years ago in Erin's early schooling. The school system wanted a more restricted placement for Erin. We wanted what the law (IDEA) said, we had the support of the Principal at the neighborhood school, and yet we were forced to go to mediation with the possibility of a due process hearing if resolution was not reached in mediation. It was scary. But we were determined not to go to due process - we didn't feel mediation, much less due process, was necessary. Still, the threat was there. And it is that threat of due process, and the time, effort and expense it entails, that is the real "burden" for parents.

SUPPORT HB 0294 - Burden of Proof

When it comes to Burden of Proof, the burden on parents doesn't start at due process. Parents feel the burden at every IEP meeting. And especially when they dare to disagree with or challenge a decision of the "school team." Because that's when the real burden is felt, when the weight of law looms in the form of a due process hearing for which most parents are wholly unprepared, while school systems are fully armed with data, documents, and attorneys on staff.

In special education the standard notion of burden of proof is flipped on its head: despite the fact that in the majority of due process cases parents are the party seeking relief, parents have limited resources and access to proof. Simply put, parents bear the burden while school systems have the proof. That is why it is unfair for the legal burden of proof to be on parents.

In its *Schaffer-Weast* decision, the Supreme Court was not trying to be unfair. Its "in the absence of a state statute or regulation" language clearly meant for states to decide the burden of proof in due process. New York and New Jersey have already acted - both passed burden of proof laws like HB 0294 after *Schaffer-Weast*. By supporting HB 0294 you have an opportunity to tell the Supreme Court and the nation that Maryland, the "leader in education," will lead by doing the right thing.

During previous efforts to pass similar, burden of proof legislation, one of the arguments used by the opposition was that the number of due process cases was too small to warrant legislation. While I doubt that they intended it, I hope by now they have realized how that could be interpreted as an historically insulting argument against the rights of any minority.

The other argument used was that most due process cases are about parents wanting non-public placements. I believe an independent analysis of cases will disprove that. And because the "burden" begins not at due process, but when the initial complaint is filed, I believe a similar analysis of all complaints including those withdrawn by Mediation, Resolution or Unspecified will also show that, while a non-public placement is sometimes requested by parents *and also by school systems*, the majority of complaints involve simply the proper development and implementation of student IEPs.

My daughter's experience in special education is done. But our family would like to know that the Maryland legislature had the understanding and compassion to lessen the burden on other parents already weighed down by many the challenges in special education.

I urge you to **vote Favorable for HB 0294**.

Thank you.

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Edit - Testimony In Support of HB 294 - Ways and M

Uploaded by: Rich Ceruolo

Position: FAV



February 8, 2023

Maryland House of Delegates
6 Bladen St.
Annapolis, MD. 21401

In Support of HB 294: County Boards of Education - Due Process Proceedings – For Children with Disabilities Special Education – Burden of Proof

Members of the Maryland House of Delegate's Ways and Means Committee.

We are an organization of military and non-military families with over 1500 members and fully support Delegates Atterbeary and Griffith to shift the burden of proof for Special education – Office of Administrative Hearings (OAH) - Due process hearing proceedings to the local school district and its board of education.

Much like the state of N.H. just recently did to bring a sense of balance and fairness to families of children with disabilities locked within its education administrative hearings: <https://drcnh.org/issue-highlight/burden-of-proof-in-due-process-hearings/>

This bill would be a huge help to families that need the most help caring for their loved ones struggling with behavioral health issues and disabilities. This bill would help to provide the necessary updates to an aging OAH process and procedures when it comes to special education laws and the many updates needed to them. Especially as the Blueprint for Maryland's Future Law reforms of our education system shifting its focus to be more inclusive of all its student populations. While also considering the lingering aftereffects of the ongoing Covid 19 pandemic on students and their social, emotional health and the negative impacts on their student learning demonstrated recently with NAEP ¹ and MCAP reports that show steep decreases and many students still underperforming in ELA and Math scores core subject areas.

¹ NAEP Reading Scores: <https://www.nationsreportcard.gov/highlights/reading/2022/>
And NAEP Math Scores: <https://www.nationsreportcard.gov/highlights/mathematics/2022/>
Education Weekly Article - NAEP Scores: <https://www.edweek.org/leadership/two-decades-of-progress-nearly-gone-national-math-reading-scores-hit-historic-lows/2022/10>



We simply need to do better in order to serve and educate all of our students, across all of our state and return a sense of justice to a system that has been far too unjust and unfair for too long.

Some additional asks from our community of special education families and advocates also includes:

OAH & ALJ Special Ed process training - We would also really appreciate a renewed effort (2019 – House Bill 1275) by the MGA to ensure that Administrative Law Judge's (ALJ) that hear special education cases, have the required numbers of hours and necessary training to be well informed, impartial judges in the very complex and specialized area of education law. Helping to shoulder the financial burden being shouldered by so many Maryland families by a lengthy and expensive due process hearing process. Often the ALJs lean on the LEA attorneys for guidance, due to their lack of expertise in this very complex (IDEA - Special Education) area of education law. Thereby leveling the playing field, while bringing about more equity to due process hearings. Like N.J., maybe even form a sub unit of ALJ's that have additional training hours in special education, and civil rights law.

<https://www.ahherald.com/2022/01/19/administrative-law-unit-dedicated-to-special-education-cases-signed-into-law/>

Reimbursement of Expert Costs: We would also like to see families of special education students be reimbursed for the cost of having their experts come to their children's IEP and 504 Plan meetings. Parents are often not the expert in a particular disability or medical condition that a child may be diagnosed as having and our documentation and medical reports are not given the proper weight by the school team members in our children's meeting, required to help us make the case for services that help our kids succeed in school. We often need those experts there in the meeting room in order to help us advocate and make the case for our children's accommodations, services and supports within their education plans. And since their presence is often necessary to ensure their needs are met in the school building, those costs for having them there should be borne by the school district in question.

Please kindly continue to build on this effort to support Maryland families of children with disabilities now, and well into the future, by bolstering justice, equity, inclusion while supporting equality within Maryland's special education process, due process hearings, policies and procedures. And shift the burden of proof to the Local Education Agency's Board of Education across all of Maryland.

We respectfully request that the committee members please support House Bill 294 and return a favorable report.

Thank you for your time, and for considering our testimony.

Mr. Richard Ceruolo | richceruolo@gmail.com

Parent, Lead Advocate and Director of Public Policy

Parent Advocacy Consortium: <https://www.facebook.com/groups/ParentAdvocacyConsortium>

HB0294_The Arc Maryland_SWA.pdf

Uploaded by: Anthony Zanfordino

Position: FWA



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HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 294: County Boards of Education - Due Process Proceedings for Children With Disabilities -
Burden of Proof
February 8, 2023
POSITION: SUPPORT AS AMENDED

The Arc Maryland is the largest statewide advocacy organization dedicated to protecting and advancing the rights and quality of life of people with intellectual and developmental disabilities.

My name is Anthony Zanfordino, I am presenting on their behalf as the Chair of the Governmental Affairs Committee of The Arc Maryland and the father of a 16 year old with Down syndrome. During his third-grade year, I attended multiple IEP meetings with the school's goal of getting my son classified for certificate track. His teacher said students like him may not learn. I am ashamed today to say maybe, I should have fought harder for him for his early education. Maybe, I should have filed for due process, but I knew it would be a continual fight to do what is right. It would create financial and emotional stress for my family beyond what we were already going through. Today, my son is an 11th grader at Bishop McNamara. I literally gave up on the IEP process for him to have a better educational experience which there is no reimbursement. Had things been different, with the burden of proof on my son's school, there is no telling how much different our story would be.

Background on the IDEA and Burden of Proof:

The IDEA is the federal law that requires the provision of special education services to special needs children in an Individualized Education Program (IEP), and for which the state receives funding. Congress enacted the IDEA to ensure that students with disabilities were provided a free appropriate public education (FAPE).¹ When Congress enacted the IDEA, Congress did not leave it up to parents to push for their child's FAPE. Instead, they put the obligation on states and local school districts to identify and evaluate children to ensure access to FAPE and promote success in learning.

If a school district does not meet its obligations under the IDEA, a parent can file a due process complaint. Currently, when this happens in Maryland, the parent has the burden of proving the Individualized Education Program (IEP) does not provide the special education and related services required under the IDEA. This bill would put the burden of proof on the schools, as some other states have done (CT, NJ, NY, MN, DC, AK, DE, GA, W.VA). This seems most appropriate as school systems have both the obligation to provide the tools and processes necessary for FAPE and to show the effectiveness of their actions.

Legislation such as HB294, which would place the burden of proof in a due process proceeding on the schools, is necessary to balance the power in IEP due process disputes. Often parents of students with special needs have less available resources which makes it difficult for them to engage counsel and pay for experts. They also don't have the same access to documents and information as the school system. Parents do not have rights and access to teachers and other school professionals for interviews for support in their case. Comparatively, school systems have access to all of these things: ample legal

¹ 20 U.S.C. § 1400(d)(1) (2005)



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representation, access to and funding for experts, and full access to records and teachers, making them more likely to prevail.

There is one part of the bill, that we would like to see stricken through amendment to address the needs of parents or guardians who feel they have no choice but to place their child in a nonpublic school in order for the child to receive FAPE:

Page 4, Line 13-18:

(II) IF A STUDENT OTHERWISE WOULD BE REQUIRED TO ENROLL IN A PUBLIC SCHOOL IN A COUNTY BUT A PARENT MADE A UNILATERAL PLACEMENT OF A STUDENT IN A NONPUBLIC SCHOOL, A PARENT SEEKING REIMBURSEMENT FOR THE STUDENT'S NONPUBLIC SCHOOL TUITION SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.

Burden of Proof legislation has been presented to the Maryland General Assembly a few times in the past and has narrowly missed passage. HB0294 would help level the playing field for parents and children with disabilities. We therefore ask the committee for a favorable report.

Please contact: Tony Zanfordino, Chair, The Arc Maryland Governmental Affairs Committee
tony.zanfordino@gmail.com

HB0294-WM_MACo_SWA.pdf

Uploaded by: Brianna January

Position: FWA



House Bill 294

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

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Ways and Means Committee

Date: February 8, 2023

From: Brianna January

The Maryland Association of Counties (MACo) **SUPPORTS HB 294 WITH AMENDMENTS**. This bill would require county boards of education to have the burden of proof in a due process proceeding regarding the provision of special education services or a program for a child with disabilities. **Counties acknowledge the difficulties of the current system and agree that both families and school boards could benefit from its modernization. However, Maryland’s children would be best served if this daunting task were first considered by a task force of experts and relevant stakeholders charged with studying best practices and drafting recommendations.**

As partners in the financial and operational governance of Maryland’s public schools, the provision of quality and fair educational services responsive to the needs of all children is of the highest priority for counties. Likewise, counties have critical stake in the resolution of any challenges to the services provided to students of different needs and abilities. An abrupt change to the standards referenced in HB 294 may divert substantial resources away from other critical components of the Blueprint for Maryland’s Future.

The current process to consider these cases is fraught with numerous challenges that pose significant financial, administrative, and labor-intensive obstacles for Maryland families and local school boards. Counties appreciate the intention of HB 294 to tackle the complex challenge of modernizing this system. However, counties fear that the bill is too ambitious and has not been subjected to the due diligence of key stakeholders, including counties.

It is the strongly held belief of counties that the bill – and Maryland’s children – would benefit from the establishment of a task force to identify the challenges of the current system, study best practices in due process proceedings regarding special education services and K-12 programs for children with disabilities, and recommend policy reforms to modernize the process. Such a task force should include key stakeholders, including county governments.

Counties remain committed to supporting all students and look forward to collaborating on a reasonable path forward to modernize these processes. For these reasons, MACo requests a **FAVORABLE WITH AMENDMENTS** report on HB 294.

EACtestimony.HB294.pdf

Uploaded by: Leslie Margolis

Position: FWA

Education Advocacy Coalition for Students with Disabilities

HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 294: EDUCATION—DUE PROCESS PROCEEDINGS FOR CHILDREN WITH DISABILITIES— BURDEN OF PROOF

DATE: FEBRUARY 8, 2023

POSITION: SUPPORT WITH AMENDMENT

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of approximately 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, supports House Bill 294 if it is amended to place the responsibility on school systems of bearing the burden of proof in all special education administrative proceedings.

Parents of children with disabilities face a number of barriers to the effective exercise of the rights granted to them and their children by federal and state special education laws. Families with children who have disabilities are poorer than those whose children do not have disabilities, and they are often unable to afford attorneys and needed experts when they disagree with any aspect of a program or service offered by, or refused by, their school system. As a result, if they are even able to navigate the thicket of procedures to exercise their right to a due process hearing, a number of parents proceed to these hearings without counsel, even though the school district is virtually always represented by counsel who is well-versed in the procedural and substantive requirements of the Individuals with Disabilities Education Act and Maryland special education law, including the production of evidence and the concept of burden of proof. Further, the school system's witnesses are generally considered to be experts in their fields, making it extremely difficult for parents who ask for a hearing to prove that the school system has failed to fulfill its obligation to their child.

Parents and guardians may not fully understand that bearing the burden of proof means that they must introduce sufficient evidence through documents and witnesses to make their case; failure to do so could mean that their case could be dismissed before the school system even has to call a witness. Even if parents have a strong case, they could lose simply because their inexperience and lack of knowledge of the law prevented them from successfully carrying the burden of proof by skillfully eliciting the required level of evidence.

The IDEA administrative hearing process provides only limited access to information. Parents cannot engage in the full range of discovery options that are available during a court trial. This has serious implications for parents who are attempting to protect their children's right to a free appropriate public education. The school system has a great deal of information that may be presented in the form of testimony or in documents that the parent may receive only five days before the hearing. In the face of this information imbalance, requiring parents to bear the burden of proof creates a David versus Goliath scenario but in Maryland, Goliath almost always wins, even when the parent is represented by counsel.

Because the school district developed the proposal at issue, because the IDEA assigns primary responsibility for developing the educational program to the school district, because the school district should have previously assembled the relevant evaluations and other data supporting its position and

Education Advocacy Coalition Testimony--House Bill 294, Page Two

presented them to the parents at an IEP meeting at which the challenged proposal was made, and because the school district has built-in experts in the form of its teachers, therapists and administrators, there should be little additional work for a school district to assume the burden of proof in a due process hearing. The United States Supreme Court has noted that school authorities are required "to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 1001 (2017). If school districts are not required to justify their proposals at a due process hearing when they have failed to achieve consensus at an IEP meeting, they will only be encouraged to give short shrift to the IDEA's parental participation requirements and procedural protections. In fact, this happens repeatedly in Maryland districts when parents disagree with IEP teams and are told "So take us to a hearing" by IEP team members who know that parents will face an uphill battle to make their case.

School districts will not be harmed by bearing the burden of proof. In 2017, the Maryland General Assembly placed the burden of proof on school districts in situations in which the IEP team proposes to include restraint or seclusion on an IEP or when the team proposes to move a student off the diploma path, to the alternate assessment, or to non-credit bearing classes. The floodgates have not opened and school districts have not been prejudiced in any way by bearing the burden in these instances.

House Bill 294 proposes to shift the burden to school systems except when parents are seeking reimbursement for the unilateral placement of their child. This exception makes an unfair distinction between parents and is not rationally justifiable. All parents who seek due process hearings are attempting to protect the rights they and their children have in the special education process. For this reason, the EAC supports House Bill 294 if it is amended to strike the exception.

Respectfully submitted,

Selene Almazan, Selene Almazan Law, LLC
Rene Averitt-Sanzone, The Parents' Place of Maryland
Linda Barton, MS.Ed, Education Consultant
Beth Benevides, Howard County Autism Society
Rich Ceruolo, Parent Advocacy Consortium
Michelle Davis, ABCs for Life Success
Alyssa Fieo, Office of the Public Defender
Lisa Frank, Andrea Bennett, Jen Ritchotte, Amy Tonti, Special Kids Company
Ann Geddes, Maryland Coalition of Families
Kim Glassman and Brian Gruber, Law Office of Brian K. Gruber, P.A.
Beth Ann Hancock, Charting the Course, LLC
Kalman Hettleman, Independent Advocate
Morgan Durand Horvath, M.Ed., Abilities Network
Rosemary Kitzinger and Marjorie Guldán, Bright Futures, LLC
Rachel London, Maryland Developmental Disabilities Council
Leslie Seid Margolis, Disability Rights Maryland
Ellen O'Neill, Atlantic Seaboard Dyslexia Education Center
Ronza Othman, National Federation of the Blind of Maryland

(over)

Education Advocacy Coalition Testimony—House Bill 294, Page Three

Maria Ott, Attorney

Rebecca Rienzi, Pathfinders for Autism

Jaime Seaton, BGS Law

Kelly Spanoghe, Education Advocate

Karleen Spitulnik, Decoding Dyslexia Maryland

Ronnetta Stanley, Loud Voices Together

Wayne Steedman, Steedman Law Group, LLC

Guy Stephens, Alliance Against Seclusion and Restraint

Maureen van Stone, Annie Carver, Tyler Cochran, Project HEAL—Kennedy Krieger Institute

Liz Zogby, Maryland Down Syndrome Coalition

Jessica Williams, M.Ed., Education Due Process Solutions, LLP

The Maryland Education Coalition joins this testimony.

The Public Justice Center joins this testimony.

HB294_DD Council_SWA.pdf

Uploaded by: Rachel London

Position: FWA



Maryland Developmental Disabilities Council

EMPOWERMENT • OPPORTUNITY • INCLUSION

House Ways and Means Committee

*HB 294: Education—County Boards of Education – Due Process Proceedings for Children with Disabilities—
Burden of Proof*

February 8, 2023

Position: **Support IF Amended**

The Maryland Developmental Disabilities Council (DD Council), a statewide public policy organization led by people with developmental disabilities and their families, has supported this legislation in the past; however, **this year's bill is different**. Prior bills shifted the burden of proof in special education due process hearings to the school system in **ALL** cases. This year's bill, similar to 2018 when we took the same position, includes an **exception** for “**unilateral placement**” cases—that is, cases where the parent does not believe the school system has provided appropriate services pursuant to federal and state law, and places their child in another school and then seeks tuition reimbursement from the local school system. The DD Council cannot support such an exception because if the burden of proof is going to be shifted to school systems in all other cases to prove that they offered an appropriate education, then school systems should likewise bear that burden in unilateral cases too. Therefore, **the DD Council supports HB 294 only if amended to remove the exception.**

The Individuals with Disabilities Education Act (IDEA), the primary federal law governing the education of students with disabilities, requires the provision of a free, appropriate public education in the least restrictive environment in which a student's needs can be met. Least restrictive environment means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports along with their nondisabled peers in the school they would attend if not disabled, unless a student's Individualized Education Program (IEP) requires some other arrangement.

Part of the special education process includes a family's right to bring due process complaints when they perceive that their child's educational rights are violated or denied. See 34 CFR §300.153. Despite the fact that **the IDEA mandates that parents play an active and equal role in their child's education, the current complaint process in Maryland creates a distinct imbalance.**

Under current state law, if a parent challenges their child's IEP or the school system for not providing their child with disabilities appropriate access to a free, appropriate public education, the parent must prove the school system has done something wrong. When what the family wants to prove relates to a child's placement in a more restrictive environment, **parents have no right to learn the details of a school system's proposed placement, or the details of other placements within the “continuum” of placement options that school districts are required to offer.** See 20 U.S.C. § 1400 *et seq.* (2005). This puts families at a distinct disadvantage.

This bill would require school systems to bear the burden of proof. Meaning the school system would now be responsible for proving that a free, appropriate public education was provided to the child with a disability. **Switching that burden to the school system makes sense. School systems have access to more resources, information, and expertise and are thus in a better position to prove if they have provided a free, appropriate public education.**

For these reasons and because it protects the procedural rights of parents of children with disabilities, the DD Council supports HB 294 if amended.

Contact: Rachel London, Executive Director: RLondon@md-council.org

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Dee Sapp, *Chairperson* • Rachel London, Esq., *Executive Director*

HB 294_ County Boards of Education - Due Process P

Uploaded by: Alexa Thomas

Position: UNF



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BILL: HB 294

TITLE: County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

DATE: February 8, 2023

POSITION: Oppose

COMMITTEE: Ways and Means

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** House Bill 294.

House Bill 294 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** House Bill 294 and requests an unfavorable report.

Testimony on HB 294.pdf

Uploaded by: EDWARD KITLOWSKI

Position: UNF

Testimony on HB 294

My name is Edward Kitlowski. I am a retired special education teacher with over thirty years teaching experience. For part of my career, I was the ARD/IEP Team Chairman in two schools. I believe I was the first person in Baltimore County Public Schools to serve in that capacity who was not an assistant principal. I not only worked in Baltimore County Public Schools, I was also an instructor with Howard Community College's Project Access. I was part of a team that developed guidelines on school accountability for the NEA. I also participated in a Federal panel on special education guidelines. I was Co-Chair of then MSTA's committee on the impact of No Child Left Behind on Maryland schools. I have had articles on education published. I also have a learning disability. I believe in a voir dire in court, I would be recognized as an expert in special education.

While I understand the intention of HB 294, I am not in favor of House Bill 294. I believe it is in contradiction to the Supreme Court case of *Schaffer v. Weast*, 546 U.S. 49 (2005), Justice O'Connor wrote, *Under IDEA, school districts must create an "individualized education program" (IEP) for each disabled child. §1414(d). If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." §1415(f). The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, as it typically does, on the party seeking relief.*

COMAR already places accountability on the local government to comply with IDEA. I have personal experiences with parental challenges to what services their children were receiving. IDEA states that students with a determined educational disability are entitled to a Free Appropriate Public Education (FAPE). That did not exist when my brother and I were in public school. The law does not state what FAPE is which is the crux of the challenges.

My personal experiences with parental challenges are limited. The few I had as IEP Chair were by parents with demands that exceeded FAPE. The lawyer for BCPS told me that it was cheaper to give parents what they wanted than to go through the process of a hearing.

I know that special education services in public education can be better, but the action in HB 294 will not solve the problem. My prediction if the Bill is passed is special education teachers will be required to place more attention on completing paperwork. In my last few years in teaching, the demands on completing paperwork increased exponentially. At one point, my department chairperson said she would get a substitute for my classes so I could complete paperwork. Does it really make sense to pull a highly qualified teacher out of the classroom to complete paperwork? What would you want for your child?

There are many constraints on local implementation of IEPs placed by the Federal government. Some of these constraints have consequences on what services the school can provide. At one point in my career, we, the special education teachers at the school, were told we had too many students in the self-contained class, according to the Federal government. We were told we had to change the level of service of students to comply with the Federal standard on percentage of students in that setting, regardless of what we the local professionals felt was FAPE. HB 294 potentially places the local system in a no-win position. The Federal government is not held accountable.

There is an expression, "The road to hell is paved with good intentions." Another way of viewing this phenomenon is the term of unintended consequences. When I was looking at the impact of NCLBA, I quickly discovered that not only did it contradict IDEA, but it would also mean most if not all public schools in the US would be considered failing by 2014. There are numerous unintended consequences if HB 294 is passed which far outweigh any benefit.

One precept of our democracy and system of law is the accused is innocent until proven guilty. HB 294 would make the accused guilty until proven innocent. This is not something our state or country should condone.

Respectfully submitted:

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HB 294.Burden of Proof Shift.pdf

Uploaded by: John Woolums

Position: UNF

BILL: House Bill 294
TITLE: Education - Due Process Hearings for Children with Disabilities -
Burden of Proof
POSITION: OPPOSE
DATE: February 8, 2023
COMMITTEE: Ways and Means
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 294, which would shift the burden of proof to local school systems in special education due process hearings.

Maryland's public school systems are mandated to provide a wide array of special education services in accordance and compliance with the federal Individuals with Disabilities Education Act (IDEA) and corresponding federal and state regulations. IDEA requires that all students receive special education and related services if they are between the ages of 3 and 21, meet the definition of one or more of the categories of disabilities specified in IDEA, and are in need of special education and related services as a result of the disability. An Individualized Educational Program (IEP) is an educational plan designed for the unique needs of each student identified as requiring special education services, and is formed by parents, teachers, administrators, related services personnel. Each IEP states the student's present levels of academic performance, and states how the disability affects the student's involvement and progress in the general curriculum; and the IEP must include academic and functional annual goals, and benchmarks or instructional objectives.

The IEP is a legally binding document and constitutes the foundation for the educational services provided to every student with a disability. School systems take very seriously the responsibility for identifying and evaluating students with disabilities; developing, reviewing, or revising an IEP for a student with a disability; and determining the placement of a child with a disability in the least restrictive environment. IEP teams, comprised of professional educators and parents, meet to develop the initial IEP and at least once a year thereafter to ensure that the IEP includes the services needed for the student to make progress on the specified annual goals. However, given the complexity and individualized nature of IEPs, disputes do arise between parents and teachers and other educators working in the school system. To accommodate such disputes, federal and state laws provide parents the full protections of a state regulated complaint and enforcement process, and access to due process hearings before an Administrative Law Judge.

In Maryland, and nearly all other states, the party initiating the action in a special education due process hearing, whether the parents or the school system, bears the burden of proof. This is consistent with a 2005 Supreme Court case which arose from a complaint against the Montgomery County school system (*Schaffer v. Weast*, 546 U.S. 49 (2005)). In *Schaffer v. Weast*, the Supreme Court held that the burden of proof in an administrative hearing challenging a student's IEP is properly placed upon the party seeking relief, whether the moving party is the school system or the student's parent or guardian.

As the U.S. Supreme Court has observed and held, the legislative intent and operation of IDEA is to guarantee substantial rights to students identified as requiring special education services. Shifting the burden of proof to the school system to defend the appropriateness of the IEP, which is developed by professional special educators in collaboration with parents and in accordance with strict federal and state laws, is therefore unnecessary to ensure that students in Maryland continue to receive individualized and high quality special education services.

The special education services required to be provided under IDEA must meet the legal standard of providing a Free Appropriate Public Education, or FAPE, and do so in the least restrictive environment. A student is identified for purposes of receiving special education services based on having one or more disability which adversely affects the student's educational performance. These include intellectual disabilities; hearing, speech or language, or visual impairments; emotional disturbance; autism; and other specified impairments and learning disabilities. The specially designed instruction called for under FAPE refers to the adaptation of content, methodology, or delivery of instruction to address the unique needs of the student to ensure access to the general curriculum, so the student can meet the educational standards that apply to each student in the school system.

The determination of what is an "appropriate" education under IDEA is decided on a case-by-case basis. In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court identified a two-part analysis in determining FAPE: (1) Has the school system complied with IDEA's procedures, and (2) Is the Individualized Educational Program (IEP) developed through these procedures reasonably calculated to enable the child to receive educational benefit?

Local boards of education have great respect and appreciation for the dedication and commitment of educators and parents who are collaborating throughout the school year to ensure that the educational needs of students qualifying for special education services are being met. MABE is concerned with the potential unintended consequences of shifting the burden of proof; including the increase in cost and duration of IEP challenges and the resulting delay in students receiving the services they need until the completion of the dispute. These outcomes are not in the best interests of students, families, and the educators involved in the collaborative and intensive process mandated under the current law.

Finally, local boards recognize that the pandemic and resulting school closures presented enormous challenges for all students, families, and educators. Through each school system's education recovery and reopening plan, and in accord with State and federal laws and regulations, school systems worked to provide all students eligible for special education services with access to continuity of learning through distance and in-person instruction and the delivery of other services. Today, these extraordinary efforts by students, families, and educators are not only ongoing but made more difficult by shortages of teachers and other staff. MABE is therefore supporting bills in 2023 to address special education funding and staffing issues. By contrast, MABE does not endorse adopting a new statewide policy leading to more disputes in courtrooms when all parties should be working collaboratively to serve students in classrooms.

Again, each local board of education place a very high priority on ensuring that students receive high quality special education programs and instruction to meet the unique needs of every student. MABE, on behalf of all local boards of education, assures the General Assembly that Maryland's professional educators and school administrators are working within a very comprehensive federal and state legal and educational framework to serve special education students, without the need for shifting the burden of proof in due process hearings as proposed in this legislation.

For these reasons, MABE opposes shifting the burden of proof to school systems in cases concerning the delivery of services under the student's current IEP, and urges this Committee to issue an unfavorable report on House Bill 294.

HB294_MSEA_Zwerling_Oppose.pdf

Uploaded by: Samantha Zwerling

Position: UNF

**Testimony in Opposition of House Bill 294
County Boards of Education – Due Process Proceedings for Children With
Disabilities – Burden of Proof**

**Ways and Means
February 8, 2023**

**Samantha Zwerling
Government Relations**

The Maryland State Education Association opposes House Bill 294. House Bill 294 would require a county board of education to bear the burden of proof in due process proceedings that initiate from a due process complaint regarding the provision of special education services or a program for a child with disabilities. MSEA's opposition to HB 294 stems from a concern that this legislation fails to provide meaningful enhancements of special education services and will only lead to a dramatic increase in special educators' already daunting workload.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

Shifting the burden of proof onto county boards of education in special education due process proceedings is not a policy solution to strengthen special education services for students. The policy will result in special educators spending more time dedicated to bureaucratic administrative matters either to anticipate and prepare for litigation or actually being pulled from the classroom to attend pre-trial and trial proceedings. In practice, this policy would establish a presumption that special education services provided by schools are insufficient until the county school board demonstrates that services are in fact sufficient. MSEA disagrees with this effect and believes special educators work tirelessly to deliver robust care and great education for all their students.

MSEA appreciates well-intentioned efforts to enhance educational services, but this bill will not accomplish that goal. Our educators work hard day and night, weekday and weekend to deliver the best educational opportunities we can for our students. We are facing a staffing crisis in this state and across the country, especially for special educators. In the 2021-2022 school year, there were approximately 447 special educator vacancies in Maryland.¹ Staffing shortages continue to exacerbate enormous workloads that special educators currently face. Policymakers must understand the workload that special educators are facing in their working conditions, while dealing with critical staffing shortages before enacting policies that will increase their existing workload.

Moreover, school systems are grappling with a lack of financial support from the federal government's failure to fulfill its funding obligations under the Individuals with Disabilities in Education Act (IDEA). Under the IDEA, the federal government is supposed to provide forty percent of the average per pupil expenditure to help offset the cost of educating eligible students.² Sadly, for decades Congress has failed to meet its obligations, leaving states and school districts to find the financial resources necessary to comply with the IDEA.³ The federal government's failure to fully fund its portion of IDEA funding has caused states and school districts, among other things, to limit hiring of key school personnel and to reduce or eliminate other general education programs—practices that contribute to high turnover and exacerbate existing shortages.⁴ Congress slightly increased federal funding for the IDEA in Fiscal Year 2023, however, the increase in funding still falls far below from what Congress should be spending to support students with disabilities.⁵

¹ Maryland State Department of Education, *Maryland Teacher Workforce: Supply, Demand, and Diversity*, slide 15 (July, 26, 2022) retrieved from: <https://www.marylandpublicschools.org/stateboard/Documents/2022/0726/TabGBBlueprintAndDataDeepDiveTeacherPipelineAndDiversity.pdf>.

² National Council on Disability, *IDEA Series, Broken Promises: The Underfunding of IDEA*, p. 9 (Feb. 7, 2018), https://ncd.gov/sites/default/files/NCD_BrokenPromises_508.pdf.

³ *Id.*

⁴ *Id.* at 41.

⁵ Mark Lieberman, *Special Ed., Civics, and High-Need Schools Get a Boost in New Federal Spending Package*, Education Week (Dec. 23, 2022), <https://www.edweek.org/policy-politics/special-ed-civics-and-high-need-schools-get-a-boost-in-new-federal-spending-package/2022/12>.

Finally, the Maryland General Assembly enacted legislation in 2020 to enhance special education support for parents, students, and educators by creating a Special Education Ombudsmen in the Office of the Attorney General.⁶ The purpose of the Ombudsmen is to provide information and support to parents, students, and educators regarding special education rights and services.⁷ Among other things, the Ombudsmen provides impartial information and resources concerning the process to obtain special education evaluations and services, the process for resolving disputes concerning special education programs, and the rights of parents and students and how they may avail themselves of those rights.⁸ To the extent that this office has not been fully funded or staffed by the Office of the Attorney General, MSEA urges the General Assembly to swiftly dedicate resources to this effort, so the office may be established and fulfill its mission. MSEA supports legislative efforts that provide greater clarity and knowledge with respect to existing rights and how to navigate processes and procedures to effectuate those rights for parents, students, and educators.

MSEA continues to be an open and willing partner to provide the best education possible for our students. Our members joined this profession to make a measurable impact on the lives of children and to educate and prepare them for life beyond the walls of our schools. We will continue to support efforts that we whole-heartedly believe will further this vision but will oppose legislation that we believe will impede this effort.

We strongly urge the committee to issue an unfavorable report on House Bill 294.

⁶ MD Code, State Government, §§ 6-501 – 506.

⁷ MD Code, State Government, § 6-502(b).

⁸ MD Code, State Government, § 6-504(a).

BTU Testimony HB294.pdf

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

House Ways and Means

February 8, 2023

1:00pm

The Baltimore Teachers Union opposes House Bill 294, which would require a county board of education to bear the burden of proof in due process proceedings that initiate from a due process complaint regarding the provision of special education services or a program for a child with disabilities in the county in which the county board is located, except under certain circumstances.

The Baltimore Teachers Union represents 8,280 teachers, paraprofessionals, counselors, clinicians, librarians, secretaries, community school site specialists, bus transportation aides, and many more school-based and central office support staff. We are 4 out of 5 workers in Baltimore City Public Schools, serving 75,595 students and their families. Our national union, the American Federation of Teachers, has over 1.7 million members in the United States and its territories.

Special educators want what's best for the students they support—and that means more time to work directly with students, more personnel to address enormous caseloads, and more support staff to take on non-instructional requirements handed down by IDEA and state and local agencies. Unfortunately, HB 294 runs counter to these goals. HB294 could dramatically increase the workload for already under-staffed and overworked special educators and take away time from working with students. Educators and parents need support and resources to come together for the benefit of students, not reforms that would divide them.

In Baltimore City, special education continues to suffer from a critical shortage amid the statewide challenge of staffing our schools. This school year, Baltimore City Schools faces unprecedented vacancies in special education resulting in untenable workloads for special educators. This bill which seeks to shift the burden of proof would only worsen rather than help to address this staffing crisis.

Spend a day or talk with a special educator and it's plain to see that special educators are among the most overworked individuals in our schools. Despite this, they perform a variety of critical services to their students, in addition to traditional instruction and individualized educational

support. Many schools do not have the necessary support or clerical staff available to assist special educators with administrative tasks that accompany their essential duties. For example, many special educators manage medical billing for their students' services, conduct required testing, draft a variety of reports mandated by state and federal law, and compile all of the necessary data and information to complete individualized education plans.

The expanded staffing and student support promised by the Blueprint for Maryland's Future and the accountability and oversight provided by mechanisms such as the recently created Special Education Ombudsman in the Attorney General's office are far better pathways to delivering strong and transparent special education programs for our students. We all want to do right by our special education students.

The Baltimore Teachers union urges Maryland lawmakers to please vote against HB 294 and local bills to the same effect.