

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,

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