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HOUSE WAYS AND MEANS COMMITTEE
HOUSE BILL 0120: Harford County - Due Process Proceedings for Children With Disabilities -
Burden of Proof
JANUARY 24, 2023
POSITION: SUPPORT

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.

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 HB0120, 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 representation, access to and funding for experts, and full access to records and teachers, making them more likely to prevail.

Burden of Proof legislation has been presented to the Maryland General Assembly a few times in the past and has narrowly missed passage. We are hopeful this legislation may finally pass this year and serve as a model for other counties and possibly (hopefully) eventual statewide implementation in the future.

HB0120 would help level the playing field for parents and children with disabilities. We therefore ask the committee for a favorable report.

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¹ 20 U.S.C. § 1400(d)(1) (2005)