



The Arc Maryland
8601 Robert Fulton Drive
Suite 140
Columbia, MD 21046
T 410.571.9320
www.thearcmd.org

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