

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

**Ways and Means
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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/TabGBlueprintAndDataDeepDiveTeacherPipelineAndDiversity.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).