

## **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.

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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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