

Testimony on HB 294

My name is Edward Kitlowski. I am a retired special education teacher with over thirty years teaching experience. For part of my career, I was the ARD/IEP Team Chairman in two schools. I believe I was the first person in Baltimore County Public Schools to serve in that capacity who was not an assistant principal. I not only worked in Baltimore County Public Schools, I was also an instructor with Howard Community College's Project Access. I was part of a team that developed guidelines on school accountability for the NEA. I also participated in a Federal panel on special education guidelines. I was Co-Chair of then MSTA's committee on the impact of No Child Left Behind on Maryland schools. I have had articles on education published. I also have a learning disability. I believe in a voir dire in court, I would be recognized as an expert in special education.

While I understand the intention of HB 294, I am not in favor of House Bill 294. I believe it is in contradiction to the Supreme Court case of *Schaffer v. Weast*, 546 U.S. 49 (2005), Justice O'Connor wrote, *Under IDEA, school districts must create an "individualized education program" (IEP) for each disabled child. §1414(d). If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." §1415(f). The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, as it typically does, on the party seeking relief.*

COMAR already places accountability on the local government to comply with IDEA. I have personal experiences with parental challenges to what services their children were receiving. IDEA states that students with a determined educational disability are entitled to a Free Appropriate Public Education (FAPE). That did not exist when my brother and I were in public school. The law does not state what FAPE is which is the crux of the challenges.

My personal experiences with parental challenges are limited. The few I had as IEP Chair were by parents with demands that exceeded FAPE. The lawyer for BCPS told me that it was cheaper to give parents what they wanted than to go through the process of a hearing.

I know that special education services in public education can be better, but the action in HB 294 will not solve the problem. My prediction if the Bill is passed is special education teachers will be required to place more attention on completing paperwork. In my last few years in teaching, the demands on completing paperwork increased exponentially. At one point, my department chairperson said she would get a substitute for my classes so I could complete paperwork. Does it really make sense to pull a highly qualified teacher out of the classroom to complete paperwork? What would you want for your child?

There are many constraints on local implementation of IEPs placed by the Federal government. Some of these constraints have consequences on what services the school can provide. At one point in my career, we, the special education teachers at the school, were told we had too many students in the self-contained class, according to the Federal government. We were told we had to change the level of service of students to comply with the Federal standard on percentage of students in that setting, regardless of what we the local professionals felt was FAPE. HB 294 potentially places the local system in a no-win position. The Federal government is not held accountable.

There is an expression, "The road to hell is paved with good intentions." Another way of viewing this phenomenon is the term of unintended consequences. When I was looking at the impact of NCLBA, I quickly discovered that not only did it contradict IDEA, but it would also mean most if not all public schools in the US would be considered failing by 2014. There are numerous unintended consequences if HB 294 is passed which far outweigh any benefit.

One precept of our democracy and system of law is the accused is innocent until proven guilty. HB 294 would make the accused guilty until proven innocent. This is not something our state or country should condone.

Respectfully submitted:

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