



Maryland Developmental Disabilities Council

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House Ways and Means Committee

*HB 294: Education—County Boards of Education – Due Process Proceedings for Children with Disabilities—
Burden of Proof*
February 8, 2023

Position: **Support IF Amended**

The Maryland Developmental Disabilities Council (DD Council), a statewide public policy organization led by people with developmental disabilities and their families, has supported this legislation in the past; however, **this year's bill is different**. Prior bills shifted the burden of proof in special education due process hearings to the school system in **ALL** cases. This year's bill, similar to 2018 when we took the same position, includes an **exception for "unilateral placement"** cases—that is, cases where the parent does not believe the school system has provided appropriate services pursuant to federal and state law, and places their child in another school and then seeks tuition reimbursement from the local school system. The DD Council cannot support such an exception because if the burden of proof is going to be shifted to school systems in all other cases to prove that they offered an appropriate education, then school systems should likewise bear that burden in unilateral cases too. Therefore, **the DD Council supports HB 294 only if amended to remove the exception.**

The Individuals with Disabilities Education Act (IDEA), the primary federal law governing the education of students with disabilities, requires the provision of a free, appropriate public education in the least restrictive environment in which a student's needs can be met. Least restrictive environment means that, to the maximum extent appropriate, school districts must educate students with disabilities in the regular classroom with appropriate aids and supports along with their nondisabled peers in the school they would attend if not disabled, unless a student's Individualized Education Program (IEP) requires some other arrangement.

Part of the special education process includes a family's right to bring due process complaints when they perceive that their child's educational rights are violated or denied. See 34 CFR §300.153. Despite the fact that **the IDEA mandates that parents play an active and equal role in their child's education, the current complaint process in Maryland creates a distinct imbalance.**

Under current state law, if a parent challenges their child's IEP or the school system for not providing their child with disabilities appropriate access to a free, appropriate public education, the parent must prove the school system has done something wrong. When what the family wants to prove relates to a child's placement in a more restrictive environment, **parents have no right to learn the details of a school system's proposed placement, or the details of other placements within the "continuum" of placement options that school districts are required to offer.** See 20 U.S.C. § 1400 *et seq.* (2005). This puts families at a distinct disadvantage.

This bill would require school systems to bear the burden of proof. Meaning the school system would now be responsible for proving that a free, appropriate public education was provided to the child with a disability. **Switching that burden to the school system makes sense. School systems have access to more resources, information, and expertise and are thus in a better position to prove if they have provided a free, appropriate public education.**

For these reasons and because it protects the procedural rights of parents of children with disabilities, the DD Council supports HB 294 if amended.

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