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**TO:** The Honorable Vanessa Atterbeary  
Chair, Ways and Means Committee

**FROM:** Hannibal G. Williams II Kemerer  
Chief Counsel, Legislative Affairs, Office of the Attorney General

**RE:** HB 294 – County Boards of Education – Due Process Proceedings for  
Children with Disabilities – Burden of Proof (Support)

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The Office of Attorney General writes in support of House Bill 294, Chair Atterbeary's legislation to shift the burden of proof from the party seeking relief in an administrative hearing regarding a dispute under the Individuals with Disabilities Education Act ("IDEA") to the county board of education (with the limited exception of parents seeking a unilateral placement at a nonpublic school). In *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005), the U.S. Supreme Court held that under the IDEA the burden of proof in an administrative hearing challenging an IEP was properly placed upon the student, who was the party seeking relief, rather than the school district. However, the Court's ruling did not forbid a state from adopting law that shifts the burden. To date, six states (CT, NJ, NY, DC, DE, and NH) place the burden of proof on school districts in various circumstances. As a matter of equity, Maryland should join their ranks.

All too often, parents of disabled children lack the resources to engage counsel to vindicate their children's IDEA rights. This change in the law will ensure that those parents and their disabled children are not adversely affected by school districts refusing to grant them accommodations to which the students are entitled.

For the foregoing reasons, we urge a favorable report on HB 294.

cc: Sponsor & Committee Members

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us