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HOUSE BILL 381: Baltimore City and Baltimore County –
Due Process Proceedings for Children With Disabilities –
Burden of Proof
February 15, 2023
POSITION: SUPPORT IF AMENDED

The Arc Maryland is the largest statewide advocacy organization dedicated to protecting and advancing the rights and quality of life of people with intellectual and developmental disabilities.

We support HB381 as it would level the field when parents and schools are involved in due process related to an IEP dispute. We understand the opposition feels it would increase paperwork for teachers and take time away from the teachers' other duties, but we do not believe that will be the case. Teachers already have to document what they are doing, record the student's progress, and create reports. Currently, when a due process complaint is made, the educators and school have to produce their documentation to support their cases. **The only difference between what is current law and what would change is would be who is responsible for proving the evaluation was accurate or the IEP is effective. If the burden is shifted to the school, they present their case first and have the opportunity to show, through a preponderance of evidence, that what they did was right.**

The law now: If a school district does not meet its obligations under the IDEA, a parent can file a due process complaint.¹ Currently, when this happens in Maryland, the parent has the burden of proving the Individualized Education Program (IEP) does not provide the special education and related services required under the IDEA. This bill would put the burden of proof on the schools, as some other states have done (CT, NJ, NY, MN, DC, AK, DE, GA, W.VA). This seems most appropriate as school systems have both the obligation to provide the tools and processes necessary for FAPE and already have the obligation to show the effectiveness of their actions. 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, putting the burden on parents to show, by a preponderance of evidence (evidence they typically do not have access to) that the school did not provide FAPE.

Legislation such as HB381, is necessary to balance the power in IEP due process disputes. Often parents of students with special needs have less available resources which makes it difficult for them to engage counsel and pay for experts. They also don't have the same access to documents and information as the school system: Parents do not have rights and access to teachers and other school professionals for interviews for support in their case. Comparatively, school systems have access to all of these things: ample legal representation, abundance of funding for expert witnesses, and full access to records and teachers, making them much more likely to prevail.

¹ 20 U.S.C. § 1400(d)(1) (2005)



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We have supported similar legislation to this bill in the past; however, this bill is different. Prior bills shifted the burden of proof in special education due process hearings to the school system in **ALL** cases. This version of the bill includes an exception for “unilateral placement” cases. These include cases where the parent does not believe the school system has provided appropriate services and FAPE, removes their child from the school, and places their child in a private or non-public school. This is sometimes necessary for the family and the child when a situation has already gone on too long, there is an extended loss of learning, and the environment for collaboration no longer seems possible.

The Arc Maryland cannot support the exception to who would bear the burden of proof in these cases, because if the burden of proof is going to be shifted to school systems in all other cases to prove that an appropriate education was offered, then school systems should likewise bear that burden in unilateral placement cases too. Therefore, The Arc Maryland supports HB 381 if amended to remove the exception by striking the following section on page 4 of the bill.

16 (III) IF A STUDENT OTHERWISE WOULD BE REQUIRED TO
17 ENROLL IN A PUBLIC SCHOOL IN BALTIMORE CITY OR BALTIMORE COUNTY BUT A
18 PARENT OR GUARDIAN MADE A UNILATERAL PLACEMENT OF A STUDENT IN A
19 NONPUBLIC SCHOOL, A PARENT OR GUARDIAN SEEKING REIMBURSEMENT FOR THE
20 STUDENT’S NONPUBLIC SCHOOL TUITION SHALL HAVE THE BURDEN OF PROOF IN A
21 DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.

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