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2/6/2023

Ways and Means Committee
Room 131
House Office Building
Annapolis, Maryland 21401

HB 294 – County Boards of Education - Due Process Proceedings for Children With Disabilities - Burden of Proof

Position: Support

In an IEP dispute, the school system has all of the information (data, programs, evaluations, school work, testimony of staff, etc.) is often not shared with parents. Even in the best case scenario, parents receive the school system's evidence five days before the hearing. General education students and parents have the ability to appeal school system decisions to their Board of Education. But BOEs are advised to not hear a special education concern – due to the “legal nature” of IDEA. Therefore, a parent must hire a lawyer or battle a school system attorney at a hearing to address a disagreement with their child's education. In Maryland, parents win a small percentage of their cases, even with lawyers. I investigated decisions in 2019 for the District of Columbia that has their own set of consistently trained hearing officers who hear ONLY special education cases. I found almost 75% of the time, parents won at least partially, if not fully, in their due process hearings.

Sadly, opponents of this bill believe that it will increase litigation. States that have shifted BOP have not had increases as a result. Teachers' unions and state departments of education have fought to keep BOP on schools in those states because it is simply the right thing to do with such an imbalance of power – even in states with orders of magnitude more due process filings and higher percentages of students receiving special education services. Let's look at a few cases:

New York State

- 14,618 due process cases filed in 2021
- 20.5% of their students have an IEP
- The State Teachers Union (NYSUT) lead the charge to shift BOP to schools in 2007.
- "This corrects an injustice. It is unfair to put this burden on parents, especially those who do not have the financial means to hire an attorney and navigate the special education hearing process," said New York State United Teachers Executive Vice President Alan B. Lubin.
<http://www.nysut.org/news/2007/august/nysut-applauds-governor-for-signing--burden-of-proof--legislation>

New Jersey

- 1,117 due process cases filed in 2021
- 17.3% of their students have an IEP
- Burden of proof is on schools in all cases
- In 2020 the NJ DOE and OAL proposed a “pilot program” to use Independent Hearing Officers (“IHOs”) specially trained and assigned to preside over special education cases only

Connecticut

- 195 due process cases filed in 2021
- 16.5% of their students have an IEP
- Any time there is a challenge to BOP on schools and placing the burden on parents, the State Department of Education fights against the change. <https://www.cga.ct.gov/2010/rpt/2010-R-0054.htm>

New Hampshire

- 37 due process cases filed in 2021
- 17.3% of their students have an IEP
- New Hampshire became the most recent state to shift the BOP to schools
- The governor stated - “It really does what we always talked about: putting the individual first, putting the kids first, putting families first.” <https://www.nhpr.org/nh-news/2021-07-30/special-education-law-nh-burden-proof>

Maryland

- 202 due process cases filed in 2021
- 12.6% of their students have an IEP
- 3 local Boards of Education have bills to shift the BOP to schools this year (Baltimore City, Harford, Howard)

Staffing and training of Maryland teachers and staff are needed to increase special education student outcomes. While the Blueprint should assist with those resources, they must be directed in the appropriate ways. If schools have the burden of proving what they are doing is compliant with the law, I believe they will make more of an attempt to follow the law on the front end. Shifting the burden to schools is a very small step in making things a little fairer for families who struggle every day to help their children succeed – especially families with limited means.

Please put children first and pass this bill as written.

Sincerely,

Barb Krupiarz