

**TESTIMONY OF SUSAN D. CARLE BEFORE THE MARYLAND COMMISSION
ON SPECIAL EDUCATION ACCESS AND EQUITY**

Annapolis, MD

March 18, 2014

Thank you for this opportunity to present brief testimony today. I am a professor of law at American University Washington College of Law, where I teach civil rights, labor and employment, and torts law. I am also the mother of an almost 16-year-old son in the special education system in Montgomery County. Until this year, our experiences with that system were very difficult, but I am very happy to report my son is finally in a program appropriate for him. He has gone from a highly unmotivated student receiving C and D grades to a straight A student in all honors classes. Achieving this required me to take my son's case all the way up to Dr. Mason, and I thank her for taking the time to offer crucial help to my family last spring.

I testify today because receiving the right special education services has made all the difference to my son. I believe it is imperative that the system be reformed so that *all* students who need services get the ones appropriate to them, at the time they need them. As a law professor I understand that it is not rights on paper that matter. Instead, what matters is how systems are designed. Systems must balance rights in such a way that they encourage parties to understand each others' perspectives and find solutions. To make the Maryland special education system work that way, the burden of proof in due process hearings should be placed on school districts. They are the party with access to the relevant information and resources and they should go first to explain why the actions they are taking are appropriate.

I had the opportunity to attend your last Commission meeting last January and I was enormously impressed by your great care and expertise in examining data on equity in special education coding and services. I teach and write in the area of civil rights, and I know that the issue of fair and equitable pathways in education

To: The Commission on Special Education Access and Equity

Re: Burden of Proof legislation

Date: March 18, 2014

From: Mike McLaughlin
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I am the father of a current PGCPSS student who has received special education services for over ten years; my two older children are PGCPSS graduates. I am a member and former Chair of the Special Education Citizen's Advisory Committee of Prince George's County; I am the current Chair of the Disability Issues Advisory Board, the sole advisory to the Prince George's County Board of Education; I am Co-Chair of the Maryland Down syndrome Advocacy Coalition; I have been on the Boards of both The Arc PG and The Arc MD, advocating on education issues for years. And I twice ran for the Prince George's County Board of Education. Despite my experience and knowledge of special education, like any parent involved in special education, I feel the burden all the time, at every IEP meeting, that the current Burden of Proof imposes on every parent whose child receives special education services.

The following was submitted as my testimony at the Ways and Means Committee hearing for the Burden of Proof bill, HB 1198. I hope the Commission on Special Education Access and Equity will consider it, and I urge you to recommend passage of HB 1198 during this legislative session.

My name is Mike McLaughlin. I live in Laurel with my wife and daughter Erin. Erin has Down Syndrome and has been included in the general education classroom in her neighborhood school since kindergarten. She has thrived in that environment and I'm certain her classmates have benefitted from her presence as well (see <http://www.youtube.com/watch?v=BcoVI80iLe0>)

Ten years ago however, we had to go to mediation to make that happen because the school system recommended placement in a segregated classroom in another school.

In common legal disputes, "burden of proof" is simply the obligation of the party seeking relief to produce evidence to prove its argument. When it comes to special education however, disagreements have little in common with typical legal disputes, and nothing is ever simple.

First there is the language of special education, with its acronym-filled vocabulary, similar to the military's, that requires a glossary just to communicate. It is not the parents who have come up with this language. Yet they are expected to be fluent.

Then there is FAPE, or Free Appropriate Public Education, which is what students with IEPs (Individual Education Plans) are guaranteed. Despite the good intentions behind the word "appropriate" - meant to individualize the education depending on a student's needs - the word is often used in the negative, i.e., "This service (placement, etc.) is not appropriate for your child." Or worse: too many parents have been coolly reminded that their child is "not entitled to a great, or even a good education, just an appropriate education."

And then there is LRE, or Least Restrictive Environment. There is an accepted maxim that "Special education is a service not a place." Yet disputes can center on where a student receives special education services, or their placement. The law, IDEA (Individuals with Disabilities Education Act) says that the default placement should be the Least Restrictive Environment (LRE), which, whenever possible,

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Commission on Special Education Equity and Access
18 March 2014

The purpose of my written testimony is to request your support for shifting the burden of proof in special education due process hearings to schools. My husband and I live in Howard County with our two sons, one of whom is on an IEP. While both our sons have had many outstanding teachers and administrators, we have still had many struggles with a few individuals related to the IEP.

As an environmental scientist, my job is to ensure I am well versed in environmental laws and my company remains in compliance with those laws. If I fail to educate employees and do not ensure compliance, my company faces the potential for fines and lawsuits. Inspectors from EPA, well versed in environmental laws, can enter our facility at any time. That potential helps me ensure that managers set the tone that the programs I put in place are followed.

How is this analogous to schools and special education laws? The school's IEP team members know the special education laws. Their job is to educate their employees, (teachers and staff) and to ensure that programs are in place for compliance. However, there is no compliance management of their programs, except when parents disagree with decisions made about their children. Parents are not in the classroom, have limited knowledge of special education laws, cannot make final decisions, and are often intimidated in a room full of school officials. If a lay person with no environmental expertise tried to sue my company for environmental violations, he would lose. My company could continue with poor environmental practices with no repercussions. Similarly, parents who try to get schools to comply with special education laws often fail in court.

Parents of special needs children need the burden of proof to be with the schools, so that there is accountability for the special education programs the schools manage. Our end goal with the shift in burden of proof is more collaboration between parents and schools, in the best interest of the child. No one wants to go through the lengthy, stressful and costly battle of due process and everything leading up to it. We want the schools to have the authority to ensure the law is being followed by all representatives of the public schools. I wholeheartedly believe that placing the burden of proof on the schools will accomplish that goal and, ultimately, the number of complaints and hearings will be greatly reduced. More importantly, our children will have better access to the education they deserve. We need to have accountability for special education processes, just as we do for environmental laws. Our children should not have to wait for their rights another year or more.

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Commission on Special Education Equity and Access
18 March 2014

The purpose of my written testimony is to request your support for shifting the burden of proof in special education due process hearings from parents to school systems. I am a speech-language pathologist and have been a part of hundreds of IEP team meetings in my career working for several different public school systems in Maryland. When my own son was four he started receiving special education services through an IEP. It was an eye-opening experience for me, as I was cast into a different role at his IEP meetings--that of a parent of a special needs child.

Even my years of experience and knowledge of the special education process did not prepare me for the hurdles my husband and I often faced when we sat down to meet with my son's IEP team. By his three year re-evaluation, my son's needs were deemed to mild to warrant an IEP or even a 504 plan, yet he was still facing many challenges at school. Unfortunately, I knew our recourse--due process with the burden of proof falling on us, the parents of the special needs child.

Having been through due process several times as a professional, it was not something I was even remotely interested in pursuing for my own son. It is a daunting process that is emotionally, physically, and financially draining and leaves you feeling like your child is an object to be dissected under a microscope--with the burden of proof falling on the parents of the special needs child. So, instead of keeping my son in the public school system and fighting a lengthy legal battle, we chose to send him to a private school that is a better fit for his learning style.

Parents of special needs children need the burden of proof to be shifted to school systems, so that there is accountability for the special education programs the schools manage. Our end goal with the shift in burden of proof is more collaboration between parents and schools, in the best interest of the child. No one wants to go through the lengthy, stressful, and costly battle of due process and everything leading up to it. We want the schools to have the authority to ensure the law is being followed by all representatives of the public schools. I wholeheartedly believe that placing the burden of proof on the schools will accomplish that goal and, ultimately, the number of complaints and hearings will be greatly reduced. More importantly, our children will have better access to the education they deserve. We need to have accountability for special education processes. Our children should not have to wait for their rights another year or more.

Delivered via e-mail & US Postal Service

March 12, 2014

Commission on Special Education Access and Equity
c/o Marcella E. Franczkowski, Commission Chair
Asst. State Superintendent, MSDE
Division of Special Education/Early Intervention Services
200 West Baltimore Street, Baltimore, MD 21201

Dear Commission Members:

My name is Jeanne Taylor and I am providing this written testimony in regard to Senate Bill 779 and House Bill 1198, legislation which shifts the burden of proof in special education due process cases.

I am writing as the mother of three children who are served by the IDEA, and as a volunteer parent advocate who helps other special needs families.

I understand the Commission has been working on improving the IEP experience for parents. This work is admirable, but it **will not** result in improved rights and better outcomes for children with disabilities.

While parents continue to shoulder the burden of proof when they dispute the IEP team's decision(s), their child's rights are essentially limited by the amount of money the parents have to pay for legal counsel.

Even when represented by counsel in due process hearings, **parents lose disputes more than 90% of the time**, despite the merits of their case.

This lopsided situation is unacceptable and unjust. It needs to be rectified.

Please recommend passing this legislation now, while the bills are before the MD General Assembly.

All of the parents, students, and child advocacy groups that are concerned with the rights of those who cannot speak for themselves will thank you.

Sincerely,

Jeanne Taylor

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