

SPECIAL EDUCATION

BACKGROUND

Local boards of education place a very high priority on ensuring that students receive high quality special education programs and instruction to meet the unique needs of every disabled student. MABE, on behalf of all local boards of education, assures the General Assembly that Maryland's professional educators and school administrators are working within a very comprehensive federal and state legal and educational framework to serve special education students, without the need for shifting the burden of proof in due process hearings as proposed in this legislation.

Maryland, and all other states, are mandated to provide a wide array of special education services in accordance and compliance with the federal Individuals with Disabilities Education Act (IDEA) and corresponding federal and state regulations. IDEA requires that eligible disabled students receive special education and related services if they are between the ages of 3 and 21, meet the definition of one or more of the categories of disabilities specified in IDEA, and are in need of special education and related services as a result of the disability.

The special education services mandated and governed by IDEA must meet the legal standard of providing a Free Appropriate Public Education, or FAPE, and do so in the least restrictive environment. A student is identified as disabled for purposes of receiving special education services based on having one or more disability which adversely affects the student's educational performance.

When IDEA became law in 1975, the federal government promised to fund 40 percent of the additional cost of educating children with disabilities; and yet has never providing more than 20 percent of the additional cost. Maryland, by contrast, has provided additional special education funding through the weighted per pupil cost formulas in the Bridge to Excellence Act. In addition, current law requires that for each student in a nonpublic special education placement, local school systems pay 300% of the local share of the "basic cost", or average per pupil amount spent by the local school system from county, State, and federal sources. State law also places a cap on the local share of costs in excess of this per pupil amount. In these ways, state funding more adequately address the costs of providing special education services to Maryland students.

In 2013, state legislation was introduced to place the burden of proof on the local school system in a due process hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities. In Maryland, the party initiating the action in a special education due process hearing, whether the parents or the school system, bears the burden of proof. This is consistent with the assignment of burden of proof in the American legal system; and with a 2005 Supreme Court case arising from a special education due process complaint against the Montgomery County school system (*Schaffer ex rel. Schaffer v. Weast* 546 U.S. 49 (2005)).

For addition information, see [MABE's Resolution on IDEA](#).

LEGISLATIVE POSITIONS

The Maryland Association of Boards of Education, representing all boards of education in Maryland:

- ✓ **Supports** continued state funding and significant increases in federal funding to support high quality special education programs and services.
- ✗ **Opposes** legislation to shift the burden of proof from those filing legal complaints to the local school system defending against such complaints.
- ✗ **Opposes** reducing the State's share of costs for nonpublic placements of students.