

BILL: House Bill 1198
TITLE: Education - Due Process Hearings for Children with Disabilities - Burden of Proof
DATE: February 26, 2014
POSITION: OPPOSE
COMMITTEE: Ways and Means Committee
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The Maryland Association of Boards of Education (MABE), representing all twenty-four of the state's local boards of education, opposes House Bill 1198.

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's public school systems 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. These include intellectual disabilities; hearing, speech or language, or visual impairments; emotional disturbance; autism; and other specified impairments and learning disabilities. The specially designed instruction called for under FAPE refers to the adaptation of content, methodology, or delivery of instruction to address the unique needs of a disabled student to ensure access to the general curriculum, so the student can meet the educational standards that apply to each student in the school system.

The determination of what is an "appropriate" education under IDEA is decided on a case-by-case basis. In *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court identified a two-part analysis in determining FAPE: (1) Has the school system complied with IDEA's procedures, and (2) Is the Individualized Educational Program (IEP) developed through these procedures reasonably calculated to enable the child to receive educational benefit?

An Individualized Educational Program (IEP) is an educational plan designed for the unique needs of each special education student and is formed by parents, teachers, administrators, related services personnel. The IEP is a legally binding document and constitutes the foundation for the educational services provided to every student with a disability. Each IEP states the student's present levels of academic performance, and states how the disability affects the student's involvement and progress in the general curriculum. It must include academic and functional annual goals, and benchmarks or instructional objectives.

School systems take very seriously the responsibility for identifying and evaluating students with disabilities; developing, reviewing, or revising an IEP for a student with a disability; and determining the placement of a child with a disability in the least restrictive environment. IEP teams, comprised of professional educators and parents, meet to develop the initial IEP and at least once a year thereafter to ensure that the IEP includes the services needed for a child to receive FAPE based on whether the specified annual goals are being achieved.

Given the complexity and individualized nature of IEPs, and questions of whether FAPE is being provided, disputes do arise between parents and school systems. To accommodate such disputes, IDEA and state regulations provide parents the full protections of a state regulated complaint and enforcement process, and access to due process hearings before an Administrative Law Judge.

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 a 2005 Supreme Court case which arose from a complaint against the Montgomery County school system (*Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005)). In *Schaffer v. Weast*, the Supreme Court held that the burden of proof in an administrative hearing challenging a student's Individualized Education Program (IEP) is properly placed upon the party seeking relief, whether the moving party is the student or the school system.

As Justice O'Connor eloquently stated for the Supreme Court's majority decision:

"School districts have a "natural advantage" in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them. As noted above, parents have the right to review all records that the school possesses in relation to their child. They also have the right to an "independent educational evaluation of the[ir] child." The regulations clarify this entitlement by providing that a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency." IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition." (citations omitted)

As the U.S. Supreme Court has observed and held, the legislative intent and operation of IDEA is to guarantee substantial rights to students identified as requiring special education services. Shifting the burden of proof to the school system to defend the appropriateness of the IEP, developed by professional special educators in collaboration with parents and in accordance with strict federal and state laws, is therefore unnecessary to ensure that students in Maryland continue to receive individualized and high quality special education services.

For these reasons, MABE strongly opposes shifting the burden of proof in IEP due process hearings, and urges this Committee to issue an unfavorable report on House Bill 1198.