

ANNE ARUNDEL COUNTY BOARD OF EDUCATION

2644 Riva Road · Annapolis · Maryland · 21401

BILL: HB1240 INDIVIDUALIZED EDUCATION PROGRAMS - BURDEN OF PROOF IN DUE PROCESS HEARINGS AND STUDIES

HEARING DATE: APRIL 5, 2017

COMMITTEE: EDUCATION, HEALTH AND ENVIRONMENTAL AFFAIRS COMMITTEE

POSITION: OPPOSE

CONTACT PERSON: JEANETTE ORTIZ, ESQ., *LEGISLATIVE & POLICY COUNSEL* (410.703.5352)

The Anne Arundel County Board of Education **OPPOSES House Bill 1240 - Individualized Education Programs - Burden of Proof in Due Process Hearings and Studies**. As amended, this bill would shift the burden of proof if a parent files a due process complaint concerning 1) a dispute over the delivery of services in a student's existing individualized educational program (IEP); and 2) a dispute over changes to a student's existing IEP at the annual review. This bill would also require the Maryland State Department of Education (MSDE) to contract with an outside entity to conduct a study of the individualized education program (IEP) process in the State. In addition, MSDE would be required to review and assess staff allocations and resources that are available to assist the parents and guardians of children with disabilities to participate in IEP process, as well as current population densities of children with IEPs. MSDE would be required report on the findings and recommendations from the required outside study, as well as from its review and assessment, to the General Assembly.

While we appreciate the amendments attempting to narrow the scope of this bill and requiring MSDE to conduct a study on the current process, the Anne Arundel County Board of Education still has concerns with **House Bill 1240**. Of particular concern is the second provision which would shift the burden of proof to the school system in a dispute over changes to a student's existing IEP at the annual review. This particular provision is broad in that virtually every issue that comes up in a due process hearing could be characterized as a dispute over proposed changes at the annual IEP meeting.

Local school systems place a very high priority on providing high quality special education programs and instruction to meet the unique needs of every special education student. The Anne Arundel County Public Schools (AACPS) Division of Special Education provides oversight, supervision and direction in the delivery of special education and related services for students with disabilities. These services are designed to reflect the commitment to one system of quality education and equity for all students. Provision of special education services is a joint effort among general and special educators, working collaboratively to ensure educational opportunities that recognize the potential of all students while maximizing results. In addition, general and special educators work cooperatively with parents and all stakeholders to support a seamless specialized instruction model in the least restrictive environment. As such, AACPS provides a wide array of special education services in compliance with the federal Individuals

with Disabilities Education Act (IDEA), and federal and State regulations. Shifting the burden of proof minimizes the work and expertise of our special education professionals.

The Supreme Court has held that parents, not school officials, have the burden of proving a parents' claim that an IEP for a student with a disability does not satisfy the student's needs. 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. Given the complexity and individualized nature of IEPs, disputes do arise between parents and teachers and other educators working in the school system. Further, 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.

Additionally, by shifting the burden of proof, a parent/guardian would be more likely to refute service recommendations by special education professionals because they know that the school system's only recourse to implement their recommendations would be via litigation. As a result, AACPS anticipates that litigation fees would increase under this bill. We also anticipate that staff would need to spend additional time away from the students they serve in order to prepare for the increased litigation, and this will ultimately have a negative impact on all students.

Accordingly, the Anne Arundel County Board of Education respectfully requests an **UNFAVORABLE** committee report on **House Bill 1240**.