



**Board of Education
of Howard County**

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**Board of Education of Howard County
Testimony Submitted to the Howard County Delegation
December 14, 2022**

The Board of Education of Howard County looks forward to working with the Howard County Delegation during the coming session of the Maryland General Assembly. Collaboration on education issues and related legislation has been a hallmark of the relationship between our two elected bodies.

Similar to previous years, the Board presented legislative priorities to the Delegation this past fall. These topics focused on sufficient and sustainable funding for the Howard County Public School System (HCPSS) to maintain appropriate instructional programming and operational services, including for mandated programs and priorities under the Blueprint for Maryland's Future. Adequate facility investments were also discussed to ensure HCPSS can maintain safe and efficient physical spaces that are conducive to learning and close the gap in the total cost of facility ownership needs of the school system. We also asked the Delegation to consider legislative measures to support teacher recruitment and retention, local school system authority and autonomy to work collaboratively with stakeholders in the development of virtual options, and support for the expanded role of the school system in nurturing the physical, social, and emotional needs of students.

Among the topics discussed, the Board **SUPPORTs** the re-introduction of **Ho. Co. 2-23, Due Process Proceedings for Children With Disabilities – Burden of Proof**, by Senator Hester. During the 2022 session HB0865 had unanimous support from the Delegation and sailed through the Maryland House of Delegates with interest from many other county representatives hoping to follow suit as the bill is ultimately about doing right by special education students and families.

Unfortunately, similar to statewide legislative efforts to shift the burden of proof in special education due process cases as far back as 2013, the bill failed due to unwarranted opposition by other school systems. In Howard County, however, the Board believes this shift would allow the school system to reinforce a culture of partnership.

The opposition to this bill centers largely on unreliable forecasts of a dramatic rise in due process cases being brought against the school system. There is no data, however, to support this claim. In fact, the Maryland Department of

Legislative Services noted under HB1489 from 2018¹ – the last time this bill was introduced statewide – case studies found the U.S. Department of Education reported that after New Jersey’s shift in 2008 there was an initial surge in the number of due process cases in the first year after passage, but in the following three years that number returned at or below levels prior to the change. They also noted a downward trend in cases following a shift in the law in New York in 2007.

Many argue school systems will take on heavy financial legal fees, and that teachers and staff will be overly burdened by such a shift. Without research to support the claim of increased cases, the opposition tied to these arguments also falls short.

Moreover, misguided opposition also results from the decision made in the Supreme Court case under *Schaffer v. Weast* 546 U.S. 49 (2005). That ruling addressed the fact that because federal law is silent on the placement of the burden of proof in special education due process cases, the decision falls to the default rule for court proceedings, which in Maryland is the party seeking relief. The Court specifically declined, however, to address whether state laws or regulations could override the default – meaning the issue remains open to a shift at the local level. The Maryland Department of Legislative Services found in 2017 eight other states that had a statute or regulation that places the burden of proof on the public agency in some manner in their research on past statewide bills², and New Hampshire passed a similar bill in 2021³.

Simply put, school systems hold the fundamental responsibility to provide a Free and Appropriate Education (FAPE) under the Individuals with Disabilities Act (IDEA). As such, staff already prepares for meetings with parents on the Individualized Education Plan (IEP) developed by the school and has access to the data and expertise on a student’s progress – the proof needed to show that appropriate services have been provided. Drafted as a local pilot bill, Ho.Co. 2-23 allows Howard County to lead by example in making this meaningful shift.

¹ Maryland Department of Legislative Services, “HB1489 – Fiscal and Policy Note,” 2018 Session, Page 3-4, https://mgaleg.maryland.gov/2018RS/fnotes/bil_0009/hb1489.pdf.

² Maryland Department of Legislative Services, “Issues Papers – 2017 Legislative Session,” December 2016, Page 92, <https://mgaleg.maryland.gov/Pubs/LegisLegal/2017rs-Issue-Papers.pdf>.

³ “NH HB581 – Version Adopted by Both Bodies,” LegiScan, 2021 Session, https://legiscan.com/NH/text/HB581/id/2415917/New_Hampshire-2021-HB581-Enrolled.html.

A newly introduced bill, **Ho.Co. 10-23, Howard County Board of Education – Membership – Alterations**, was discussed by the Board at our December 5, 2022, meeting. The Board voted to **OPPOSE** the current version of the bill as of that date.

Changing the make-up of the Board of Education of Howard County to a hybrid body, Ho.Co. 10-23 as originally drafted calls for the election of five members by state senatorial districts as opposed to the current local councilmanic districts and shifts the remaining two to appointed members by the County Executive. Appointments would be made from three to five nominees provided by the Howard County Delegation.

Our fundamental opposition to this change is the potential to diminish the Board's direct accountability to its constituents. It is important at the local level that citizens participate in the governance and operation of the school system by voting for their representatives on the Board.

The Board, however, is aware of anticipated amendments from the bill sponsors. Once available, the Board will revisit the impact of proposed language. Tonight's public hearing is also an opportunity to understand Howard County resident's thoughts on this bill.

As we move into the 2023 legislative session, the new Board is actively preparing to advocate for the needs of the Howard County Public School System. We thank the Delegation for the opportunity to address the bills introduced thus far, and for your work on behalf of all citizens in Howard County.