

Special Education

(Adopted 2002; amended 2005; readopted 2008, 2011; amended 2014, 2017, 2020)

WHEREAS, local boards of education place a very high priority on ensuring that students receive high quality special education programs and instruction; and

WHEREAS, in 1975 Congress enacted the Education for All Handicapped Children Act (P.L. 94-142) to: improve access to education for children with disabilities by guaranteeing a Free Appropriate Public Education (FAPE) in the least restrictive environment; ensure that the rights of children with disabilities and their parents or legal guardians are protected; assist States and school systems to provide for the education of all children with disabilities; and to assess and ensure the effectiveness of efforts to educate all children with disabilities; and

WHEREAS, Congress has routinely reauthorized the federal special education law, entitled the Individuals with Disabilities Education Act (IDEA), and Maryland has amended state laws and regulations to ensure compliance with the expanded scope of federal law; and

WHEREAS, Maryland not only complies with federal special education requirements, but has adopted laws and regulations which exceed federal requirements; and

WHEREAS, the General Assembly has enacted laws to require school personnel to provide parents or legal guardians with an accessible copy of all documents the Individualized Education Program (IEP) team plans to discuss at the meeting at least five business days before the scheduled meeting; and also requires school personnel to provide parents or legal guardians an accessible copy of the completed IEP not later than five days after the IEP meeting; and

WHEREAS, the General Assembly has enacted laws to require each local school system to provide to parents or legal guardians of a child with a disability verbal and written information about access to habilitative services; and to develop and publish on its website a list of all special education service delivery models in the local school system; and

WHEREAS, in Maryland, the party initiating the action in a special education due process hearing, whether the parent and legal guardian or the school system, bears the burden of proof; 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)); and

WHEREAS, legislation has been introduced, but not enacted, to shift the burden of proof to the local school system in special education disputes; and

WHEREAS, in 2013 the General Assembly created the Commission on Special Education Access and Equity which, in 2014, adopted recommendations to: enhance procedural safeguards through informing parents and legal guardians; provide professional development for educators and administrators; train administrative law judges in special education; create a workgroup to identify and resolve disparities; set

statutory or regulatory caps on the workload and caseload of special educators and school psychologists; adopt new state policies and technical assistance and monitor for standards-based results driven accountability; and increase state funding for special education; and

WHEREAS, the Commission on Special Education did not adopt a recommendation to shift the burden of proof; and

WHEREAS, the General Assembly enacted legislation in 2017 to require the individualized education program (IEP) team to obtain written consent from a parent or legal guardian if the team proposes to (1) enroll the child in an alternative education program that does not issue or provide credits toward a high school diploma; (2) identify the child for the alternate assessment aligned with the State's alternate curriculum; and/or (3) include restraint or seclusion in the IEP to address the child's behavior; and

WHEREAS, legislation was enacted in 2017 to require both internal and external studies of special education programs and services and the Individualized Education Program (IEP) process; and the final study released in December of 2019 focused on the need for additional funding and accountability for student learning outcomes; and

WHEREAS, in 2017 legislation was enacted to require MSDE to convene a task force to examine policies and practices related to behavioral interventions in schools, including the use of restraint, seclusion, and trauma-informed interventions; and to develop revised regulations on the use of seclusion; and

WHEREAS, in 2017 legislation was enacted to require annual reporting on the specialized early intervention services provided to students in kindergarten through grade 3 who are not currently identified as needing special education or related services and who need additional academic and behavioral supports; and

WHEREAS, in 2020 legislation was enacted to establish the Special Education Ombudsman in the Office of the Attorney General to serve as a resource to provide information and support to parents, students, and educators regarding special education rights and services; and

WHEREAS, in 2020 the COVID-19 pandemic and resulting school closures presented enormous challenges for local school systems in providing all students eligible for special education services with access to continuity of learning, including instruction and related health services; and

WHEREAS, the Individuals with Disabilities Education Improvement Act of 2004 reauthorized the Individuals with Disabilities Education Act (IDEA) through 2011, making significant changes to the federal law and incorporating many of the recommendations offered by the National School Boards Association; and

WHEREAS, the 2004 reauthorization of IDEA includes pilot programs for multi-year IEPs, and paperwork reduction efforts to "reduce excessive paperwork and non-instructional time burdens that do not assist in improving educational and functional results for children with disabilities"; and

WHEREAS, the law now permits a school district to use up to 15 percent of its IDEA funds for early intervention services; and allows states to reserve up to 10 percent of their allocation of federal funds to create a risk pool to help school districts provide services to high-need children with disabilities; and

WHEREAS, IDEA includes improved due process provisions including the requirement that parents or legal guardians and a school district must meet before a due process hearing can be scheduled, the ability for school districts to recover legal fees in frivolous cases, and shorter time limitations for filing due process complaints; and

WHEREAS, 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 the federal government has failed to adequately fund the mandated programs and services arising under IDEA, never providing more than 15 percent of the additional cost; and

WHEREAS, sufficient federal funding for IDEA would significantly enhance the ability of local school systems to provide an excellent education for all students;

NOW, THEREFORE, BE IT RESOLVED, that MABE urges Maryland's Governor, General Assembly, State Board of Education, and State Superintendent of Schools to strenuously advocate for significant increases in federal special education funding and meaningful special education reforms at the federal and state levels; and

BE IT FURTHER RESOLVED, that MABE urges the Governor and General Assembly to continue to reject legislative proposals to require an IEP team to obtain written consent from a parent or legal guardian regarding a change in student services provided or the student's placement; and

BE IT FURTHER RESOLVED, that MABE urges the Governor and General Assembly to continue to reject legislative proposals to shift the burden of proof to local school systems in special education cases.