

SPECIAL EDUCATION

MABE POSITIONS

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

- ✓ **Supports** increased state, local, and federal funding and resources to support high quality special education programs and services.
- ✓ **Supports** maintaining the State's required share of the total costs for nonpublic placements of students.
- ✗ **Opposes** legislation to mandate expanded special education services beyond federal requirements.
- ✗ **Opposes** legislation to provide unilateral parental consent conditions, shift the burden of proof, or require payment of expert witness fees, in special education decisions and disputes including IEP meetings and due process hearings.

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 each student. 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. The Blueprint for Maryland's Future law and other recently enacted laws further enhance funding levels and the quality of early intervention and special education services.

Local boards recognize that the pandemic and resulting school closures have presented enormous challenges for students, families, and educators. Through each school system's education recovery and reopening plan, school systems are working to provide all students eligible for special education services with access to continuity of learning through distance and in-person instruction and the delivery of other services. In 2021, a new law required continuity of learning plans to complement IEPs in addressing how educational services would be provided during emergency school closures. In these ways Maryland has mandated expanded special education procedures and services beyond federal requirements.

Maryland, and all other states, are mandated to provide a wide array of special education services in compliance with the federal Individuals with Disabilities Education Act (IDEA) and 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. The special education services mandated by IDEA must meet the legal standard of providing a Free Appropriate Public Education, or FAPE, and do so in the least restrictive environment.

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 provided more than 20 percent. Maryland, by contrast, has historically provided additional special education funding through per pupil cost formulas. In addition, non-public special education placement are supported by local school systems paying 300% of the local share of the average per pupil, with costs above this amount shared between the State (70%) and school system (30%).

Since 2013, state legislation has been introduced to place the burden of proof on the local school system in a due process hearing that is held to resolve special education disputes. In Maryland, and nearly all states, 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 complaint against the Montgomery County school system (*Schaffer v. Weast*). In 2019, a multi-year study of the IEP process, staff allocations, and resources for parents was completed without recommending shifting the burden of proof.

As a meaningful alternative to shifting the burden of proof, bills passed in 2014 to ensure that parents are informed of procedural safeguards, rights and responsibilities, and available services; and in 2017 to require parental consent for certain decisions adopted by the IEP team. Other bills include a 2016 law to require the translation of IEPs into the parents' native language, and a 2021 bill to clarify the independent evaluation process.

For additional information, see [MABE's Resolution on Special Education](#).