The Anne Arundel County Board of Education OPPOSES House Bill 1240 - Individualized Education Programs - Burden of Proof in Due Process Hearings and Studies. This bill would shift the burden of proof in a due process hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. The 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.

The Anne Arundel County Board of Education opposes legislation such as House Bill 1240, which would shift the burden of proof, in special education decisions and disputes including individualized educational program (IEP) meetings and due process hearings. Local school systems place a very high priority on ensuring that students receive 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. AACPS provides a wide array of special education services in compliance with the federal Individuals with Disabilities Education Act and federal and State regulations.

The Supreme Court has held that parents, not school officials, have the burden of proving a parents' claim that an IEP for a child with a disability does not satisfy the child'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. 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. However, House Bill 1240 would change this by shifting the burden of proof to the school system and minimize the expertise of educational professionals who make such recommendations. 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, which is 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.

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 students.

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