

Education Advocacy Coalition

for Students with Disabilities

HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 405

SPECIAL EDUCATION—JUDICIAL ACTIONS—ATTORNEY'S FEES AND RELATED COSTS

JANUARY 20, 2021

POSITION: SUPPORT

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of more than 30 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly supports House Bill 405, which would allow parents to recover attorney's fees and expert witness costs if they are the prevailing party at a special education due process hearing or court proceeding.

House Bill 405 is, at the heart of it, about access and equity: it seeks to ensure that families of low and moderate income, as well as those with more resources, are able to exercise the procedural protections afforded them under federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et. seq.*, and state special education laws. These procedural protections are meant to ensure that students are able to receive the free appropriate public education guaranteed to them by the IDEA and state law. These procedural protections include the right to seek dispute resolution through a due process hearing, which is an administrative hearing conducted by an administrative law judge with witnesses and documentary evidence. School systems are represented by counsel at due process hearings, even if parents are not. In the past five fiscal years, no unrepresented parent has prevailed at a due process hearing. However, attorneys are out of reach for many families, and the availability of free and low cost attorneys is limited. Even if parents are able to find an attorney willing and able to represent them, they need experts to help present their case to the administrative law judge. The United States Supreme Court in *Schaffer v. Weast*, 546 U.S. 49 (2005) recognized the importance of experts when discussing the IDEA's right to an independent educational evaluation so that parents are not left "without an expert with the firepower to match the opposition."

Currently, federal special education law permits parents who prevail at a due process hearing to recover attorney's fees from a court, but state education law contains no similar provision. Parents are not able to recover the cost of their experts under either federal or state law. And even the request to obtain an independent evaluation exposes a parent to the possibility of a due process hearing if the school system refuses to fund the evaluation. The end result is that many families are unable to exercise the rights they have under the IDEA and state law because they cannot pay for experts, while other families—those with more resources—are able to exercise their rights. This is fundamentally inequitable and unjust.

HB 405 would incorporate into Maryland law the attorney's fees provisions currently contained in the IDEA. Parents are able to obtain attorney's fees if they meet certain conditions. Including reimbursement of expert fees would make the due process protections guaranteed by law less illusory for a number of families of limited means for whom the procedural protections are little more than

words in the booklet that is handed to them at IEP meetings but have little meaning for them in their daily lives as they seek the free appropriate public education the law guarantees their children.

For these reasons, the EAC strongly supports passage of HB 405.

For more information or questions, please contact Leslie Seid Margolis, Chairperson, at lesliem@disabilityrightsmd.org or 410-727-6352, ext. 2505.

Respectfully submitted,

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