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**Written Testimony Submitted for the Record to the
Maryland House of Delegates
Ways and Means Committee
For the Hearing on
Special Education – Judicial Actions Attorney’s Fees and Related Costs
(HB 184)**

January 30, 2020

SUPPORT

Maryland PTA is the state’s oldest and largest child advocacy organization that serves as a powerful voice for all children, a relevant resource for families, schools and communities and a strong advocate for public education. We represent thousands of volunteer members in 900 public schools and we are comprised of families, students, teachers, administrators, and business as well as community leaders devoted to the educational success of children and family engagement in Maryland. For nearly 105 years, our mission has been to make every child’s potential a reality by engaging and empowering families and communities to advocate for all children.

Maryland PTA submits this testimony in support of House Bill 184, Special Education - Judicial Actions – Attorney’s Fees and Related Costs (“HB 184”). The bill:

- authorizes a court to award attorney's fees and related costs to the parent of a child with a disability, who is the prevailing party in certain special education proceedings;
- prohibits a court from awarding attorney's fees and related costs to certain parents under certain circumstances; and,
- authorizes an award of attorney's fees and related costs to a parent of a child with a disability who is a prevailing party under certain circumstances.

Article VIII of the Maryland Constitution guarantees each child a “thorough and efficient System of Free Public Schools.” Section 1-201 of the Maryland Education Code provides “a general system of free public schools.” Additionally, section 8-403 declares, “[t]he State and each local school system shall make a free appropriate public education available to each child with a disability ... Appropriate special education and related services are available to a child with a disability from birth through the end of the school year in which the child turns 21 years of age.”

Federal law also requires special education and related services for a child with a disability. Laws such as the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act mandate a free and appropriate public education for children with special needs and give parents the right to challenge or appeal any decision related to the identification, evaluation, and placement of their child. Federal and State law have administrative and judicial remedies when a local school system violates the civil rights of a disabled child.

According to the U.S. Department of Education, the percentage of total public school enrollment that represents children served by federally supported, special education programs increased from 8.3 percent to 13.8 between 1976–77 and 2004–05. Students identified as having specific learning disabilities increased from 1976–77 (1.8%) to 2004–05 (5.7%). The overall percentage of students being served in programs for those with disabilities decreased between 2004–05 (13.8%) and 2015–16 (13.2%). The percentage of children identified as having other health impairments, e.g., limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, rose from 1.1 to 1.8 of total public school enrollment. The percentage with autism rose from 0.4 to 1.2 percent, and the percentage with developmental delay rose from 0.7 to 0.9 percent. The percentage of children with specific learning disabilities declined, however, from 5.7 percent to 4.6 percent of total public school enrollment during this same period.

The increase in children with disabilities directly results in increased educational costs. However, federal and State law require it. When local school systems fail to comply with the law, parents either give up or seek legal assistance to enforce the law. The cost to prosecute a special education violation is expensive. Attorney's fees alone run from \$200 to \$500 an hour, and reports are that cases run on average 20 to 80 hours. Depending on the complexity of the case, legal fees can run from a few thousand dollars up to a hundred thousand.

HB 184 will help parents recover the costs associated with advocating for the rights of their child. Maryland PTA also hopes it will serve as a deterrent to local school systems that fail to comply with the law. Parents, particularly those who lack the sophistication, family support or resources to enforce their child’s rights often cannot afford to engage in a legal battle, but the opportunity costs for them far outweighs the cost of legal and expert witness fees. HB 184 will level the playing field for parents who have a chance of success in the fight for a free and appropriate education for a disabled child.

Maryland PTA has countless members who have children struggling with learning, physical, or behavioral disabilities. PTA leaders have assisted many parents with advocating and seeking a remedy for their child and against a local school system that has not complied with an individualized education plan or 504 plan. In some instances, parents must fight to get an initial evaluation for services and have suffered out-of-pocket costs for expensive tests and evaluations to prove their child needs special education and support services.

Parents should be able to rely upon their local school system to help identify the need for special education services and to provide them. It is unacceptable to require parents to incur the high cost of acquiring services that the law guarantees. It is only fair to transfer the burden of advocacy and litigation costs to local school systems that are noncompliant.

Maryland PTA appreciates the implementation of HB 184 will be costly for local school systems. However, the costs are avoidable if school systems employ and train educators to efficiently and effectively address the concerns of children with special needs and their parents. This is one instance where an ounce of prevention will be worth a pound of cure.

Passing HB 184 will ensure all children can reach their potential by empowering families to advocate on their child's behalf.

Respectfully Submitted,



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President