

ERIC LUEDTKE
Legislative District 14
Montgomery County

MAJORITY LEADER

Ways and Means Committee
Chair, Revenues Subcommittee



The Maryland House of Delegates
6 Bladen Street, Room 350
Annapolis, Maryland 21401
301-858-3110 · 410-841-3110
800-492-7122 Ext. 3110
Fax 301-858-3053 · 410-841-3053
Eric.Luedtke@house.state.md.us

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

January 30, 2020

SPONSOR Testimony on House Bill 184
Special Education - Judicial Actions - Attorney's Fees and Related Costs

Madame Chair, Distinguished Members of the Ways and Means Committee,

One of the pillars of our country's special education law is the Individuals with Disabilities Education Act (IDEA), first passed in 1975 to entitle every student to a free and appropriate public education in the least restrictive environment. IDEA accomplishes this by requiring the development of an Individualized Education Program laid out in an Individualized Education Plan (IEP) for students with disabilities. In the vast majority of cases, schools and parents agree with what should be included in their student's IEP. However, when disputes arise between parents and school about an IEP, parents are entitled to a judicial process to resolve the dispute known colloquially as "due process". At a due process hearing, parents file a civil complaint before an Administrative Law Judge from the Office of Administrative Hearings.

These due process hearings can be highly expensive and burdensome on families who have a child with disabilities. This is underscored by reporting from the Coalition of Parent Attorneys and Advocates which states that almost 2/3 of children with disabilities live in families earning under \$50,000 annually. With the financial limitations of families and these high costs in mind, current federal law allows courts to award attorney's fees when a family wins a due process hearing and the Code of Maryland Regulations (COMAR) requires this to occur. For decades, attorney's fees were the major costs associated with these hearings. However, as a result of the 2005 US Supreme Court decision in *Schaffer v. Weast*, parents must now present admissible evidence about educational methodology, complex behavioral supports, medical issues, and other technical subjects. Only qualified expert witnesses can present this technical testimony which most often costs thousands of dollars. One year later, in *Arlington v. Murphy*, the US Supreme Court ruled that IDEA requires only the reimbursement of attorney's fees and not of expert witness fees, since only the reimbursement of attorney fees are explicitly stated. This is a major shortcoming of special education law that puts a substantial strain on families fighting to provide their child with adequate education because, as a result of *Schaffer v. Weast*, expert witnesses are as important as attorneys in a due process hearing.

Schaffer v. Weast revealed a flaw in IDEA that can be partly solved by allowing these reimbursements. A child's access to an appropriate education should not be determined by the financial situation of their family. For this reason, I urge the committee to give House Bill 184 a favorable report.