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Senate Education, Energy, and the Environment Committee
HB1237— Special Education - Judicial Actions - Attorney's Fees and Related Costs
April 4, 2023

Position: Support

The Arc Maryland is the largest statewide advocacy organization dedicated to protecting and advancing the rights and quality of life of people of intellectual and developmental disabilities. We strongly support House Bill 1237, which would allow a judge to award attorney's fees and expert witness fees/costs to parents on the occasion that they are the prevailing party at a special education due-process hearing or court proceeding.

Students with disabilities are guaranteed a right to a free and appropriate public education, also known as FAPE, under PL 94-142/IDEA. We believe this bill will improve assurances of education rights and increase access and equity in our education system.

Often, families of limited means are at an incredible disadvantage when it comes to the ability to exercise the procedural protections available under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et. seq., and state special education laws. 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. The issue is that only federal special education law allows parents who prevail in a hearing to recover attorney's fees and neither federal nor state special education law allows parents to recover the cost of experts. This needs to change.

Attorneys and experts are unfortunately unaffordable for many families and this is disproportionately so for families with limited means. Even families with modest means who can afford an attorney often cannot afford expert witnesses needed to put them on even ground with the school system in a special education case.

There is no downside to this bill which would only create an **equitable circumstance** for each party in a special education due process hearing or court proceeding. Protections are baked in to this bill as parents will only be able to obtain attorney's and expert witness fees if they meet certain conditions (they win). We believe will restore fairness to the dispute process and ensure the rights of children to a FAPE are upheld.

The House agreed:

The House vote in favor of passing HB1237 was UNANIMOUS (135-0)

For these reasons, The Arc Maryland asks the Senate EEE Committee for a favorable report on HB1237.

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