

HB1237_The Arc Maryland_FAV Senate EEE.pdf

Uploaded by: Ande Kolp

Position: FAV



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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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Special Education - Judicial Actions - Attorney's

Uploaded by: Laura Stewart

Position: FAV

**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 1237)**

April 4, 2023

SUPPORT

Free State PTA represents over 50,000 volunteer members and families in over 500 public schools. Free State PTA is composed of families, students, teachers, administrators, and business as well as community leaders devoted to the educational success of children and family engagement in Maryland. As the state's premier and largest child advocacy organization, Free State PTA is a powerful voice for all children, a relevant resource for families, schools and communities and a strong advocate for public education. ***House Bill 1237 Special Education - Judicial Actions - Attorney's Fees and Related Costs is compatible with Free State PTA's position on Shifting the "burden of proof" in individualized education plan (IEP) due process cases from parents to school districts.***

While House Bill 1237 does nothing to shift the "burden of proof" in an IEP due process case from parents to school districts, it does help alleviate the costs that are borne to parents or guardians who prevail in a proceeding 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 fact that the passage of this bill would authorize a court to award reasonable attorney's fees and related costs, including expert witness fees and costs, to the parent of a child with a disability is a step in the right direction toward advocating for parents who seek to ensure that their children receive a free appropriate public education in the least restrictive environment which is in accordance with the federal Individuals with Disabilities Education Act (IDEA).

Because parents and guardians have had to challenge school systems in court regarding their responsibility for ensuring that they make a free appropriate public education available to students with disabilities from age 3 through 21, it comes at an enormous financial price. Unquestionably, the Free State PTA supports the protection of the rights of children with special needs and those of their parents' or guardians' effort to seek the best remedy for having their children be provided a free education. If the state or local school district has been found to not guarantee that a child with a disability is provided a free and appropriate education in the least restrictive environment, then the school system should be financially accountable for the ascertainment of this court outcome. Prevailing in legal proceedings is a way to motivate a school system to provide the proper education of disabled students. In general, all parents begin to hold school systems accountable when money is being allocated for legal proceedings as opposed to the proper resources required to educate children with disabilities.

Parents have long advocated for the successes of their children who have IEPs, required adherence of teachers to follow plans, and for principals as well as administrators to be accountable for administering an IEP. Parents are often defeated by the legal cost associated with time, effort and finances involved to help guarantee that their children are receiving a proper education. Prevailing parents need financial relief and Free State PTA supports the proposed stipulations in the bill knowing that any relief at this point strengthens accountability measures that include children with disabilities.

Therefore, the Free State PTA urges the passage of HB 1237.

Testimony is presented on the behalf of

Marla Posey-Moss

Marla Posey-Moss, President
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EACtestimonyHB1237.Senate.pdf

Uploaded by: Megan Jones

Position: FAV

Education Advocacy Coalition

for Students with Disabilities

SENATE EDUCATION, ENERGY, AND ENVIRONMENTAL AFFAIRS COMMITTEE

HOUSE BILL 1237

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

APRIL 4, 2023

POSITION: SUPPORT

The Education Advocacy Coalition for Students with Disabilities (EAC), a coalition of approximately 40 organizations and individuals concerned with education policy for students with disabilities in Maryland, strongly supports House Bill 1237, 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 1237 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 1237 would incorporate into Maryland statute, rather than simply regulations, 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 1237.

For more information or questions, please contact Leslie Seid Margolis, Chairperson, at lesliem@disabilityrightsmd.org or 443-692-2505.

Respectfully submitted,

Selene Almazan, Selene Almazan Law, LLC
Rene Averitt-Sanzone, The Parents' Place of Maryland
Linda Barton, Ms.Ed., Education Advocate
Elizabeth Benevides, Howard County Autism Society
Rich Ceruolo, Parent Advocacy Consortium
Michelle Davis, ABCs for Life Success
Jennifer Engel Fisher, Weinfeld Education Group
Lisa Frank, Andrea Bennett, Jen Ritchotte and Amy Tonti, Special Kids Company
Ann Geddes, Maryland Coalition of Families
Beth Ann Hancock, Charting the Course, LLC
Kalman Hettleman, Independent Advocate
Morgan Horvath, Abilities Network
Nicole Joseph, Law Offices of Nicole Joseph
Rosemary Kitzinger and Marjorie Guldan, Bright Futures, LLC
Ande Kolp, The Arc Maryland
Rachel London, Maryland Developmental Disabilities Council
Leslie Seid Margolis, Disability Rights Maryland
Mark Martin, Law Offices of Mark B. Martin, P.A.
Ellen O'Neill, Atlantic Seaboard Dyslexia Education Center
Ronza Othman, National Federation of the Blind of Maryland
Maria Ott, attorney
Rebecca Rienzi, Pathfinders for Autism,
Jaime Seaton, BGS Law
Kelly Spanoghe, Education Advocate
Karleen Spitulnik, Decoding Dyslexia Maryland
Ronnetta Stanley, M.Ed., Loud Voices Together
Wayne Steedman, Steedman Law Group, LLC
Guy Stephens, Alliance Against Seclusion and Restraint
Maureen van Stone, Annie Carver and Tyler Cochran, Project HEAL at Kennedy Krieger Institute
Jessica Williams, Education Due Process Solutions, LLC
Liz Zogby and Lauren Ochalek, Maryland Down Syndrome Advocacy Coalition

HB 1237.DD Council.Support.EEE.pdf

Uploaded by: Rachel London

Position: FAV



Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

Senate Education, Energy, and the Environment Committee

April 4, 2023

HB 1237: Special Education – Judicial Actions – Attorney’s Fees and Related Costs

Position: Support

HB 1237, which would allow parents to recover attorney’s fees and related costs, including expert witness costs if they are the prevailing party at a special education due process hearing or court proceeding is 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 and state special education laws.

WHY is this legislation important?

- **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.** 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.
- **Families will be better equipped to exercise the rights and protections afforded by federal and state law.** Many parents cannot afford to hire an attorney or an expert to help if they want to challenge their child’s special education program or services or if the school system requests a hearing against them. As a result, families may not pursue a case even when their child’s rights have been violated or may not be able to bring experts to help support them if they do go to a hearing.
- **The possibility of recovering these expenses is reasonable.** School systems have access to more resources, information, and expertise and are in a better position to prove if they have provided a free, appropriate public education. In addition, **part of the special education process includes a family’s right to bring due process complaints when they perceive that their child’s educational rights are violated or denied.** See 34 CFR §300.153. School systems are always represented by attorneys at due process hearings, even when parents are not.

WHAT does this legislation do?

Allows a prevailing party who is the parent of a child with disabilities to be awarded:

- **Reasonable attorney’s fees and related costs** by incorporating into Maryland law the attorney’s fees provisions currently contained in the IDEA.
- **Reasonable expert fees.** Parents are not able to recover the cost of their experts under either federal or state law.

For these reasons, the Maryland Developmental Disabilities Council supports HB 1237. The possibility of being awarded attorney’s fees and related costs, including expert witness fees, allows more parents to exercise the rights and protections afforded them and their children with disabilities.

Contact: Rachel London, Executive Director; RLondon@md-council.org

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Dee Sapp, *Chairperson* • Rachel London, Esq., *Executive Director*

Testimony In Support HB 1237 - Senate EEE - Due Pr

Uploaded by: Rich Ceruolo

Position: FAV



April 3, 2023

Maryland Senate
11 Bladen St.
Annapolis, MD. 21401

In Support of HB 1237: Special Education – Judicial Actions – Attorney’s Fees and Related Costs.

Members of the Maryland Senate’s EEE Committee.

I am the parent of a child with multiple challenges and disabilities. He has been bounced between 504 plans and IEP plans over the course of 8 years within the AACPS system. After we initiated our rights to request that the county school system pay for an IEE, or outside professional assessment. We had a due process complaint filed on our family by AACPS when we did not agree with their expert’s assessment reports of my son’s intellectual and behavioral challenges, and his disabilities. We felt taking services away from our son was doing more harm than good so we challenged the school’s findings.

Caring for a child with disabilities is already an expensive undertaking for any family. There are lots of associated costs for therapies, specialists, doctors, medications and the list goes on and on. Many families that are in the public school system may encounter resistance to provide much needed services from their local school system officials. But lack the means to fight a school system with expensive legal fees and delays in received services that have been guaranteed to our children by the Individuals with Disabilities Education Act - IDEA.

Many families of children with disabilities soon find themselves embroiled in a due process hearing and ensuing legal battle with their local school district. An expensive and time-consuming process that is very emotionally and financially draining. One that we will probably lose as the deck has been stacked against us from the beginning here in Maryland at the offices of OAH. All this just to get the services that a child needs to access their education in a fair and equitable manner, and in alignment with their non-disabled peers. It’s the law of the land, yet it is always an uphill fight in many Maryland school districts.

We ask for so many of our families, like mine, that you support HB 1237. After going through an expensive due process hearing and potential legal court battle with a school system, special education families need this financial relief and to recover the legal fees that weigh heavy on many Maryland families. We simply need to do better for our most vulnerable students and their families. Please ease their burden and return a favorable report for HB 1237.

Mr. Richard Ceruolo | richceruolo@gmail.com

Parent Advocacy Consortium: <https://www.facebook.com/groups/ParentAdvocacyConsortium>

HB 1237 Crossover_ Special Education - Judicial Ac

Uploaded by: Alexa Thomas

Position: UNF



PSSAM
Public School Superintendents' Association
OF MARYLAND

Mary Pat Fannon, Executive Director
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BILL: HB 1237
TITLE: Special Education - Judicial Actions - Attorney's Fees and Related Costs
DATE: April 4, 2023
POSITION: Oppose
COMMITTEE: Senate Education, Energy, and the Environment Committee
CONTACT: Mary Pat Fannon, Executive Director, PSSAM

The Public School Superintendents' Association of Maryland (PSSAM), on behalf of all twenty-four public school superintendents, **opposes** House Bill 1237.

House Bill 1237 authorizes a court to award reasonable attorney's fees and related costs, including expert witness fees, to the parent of a child with a disability who is the prevailing party in a proceeding to dispute the identification, evaluation, educational placements, or the provision of a free and appropriate public education. However, such an award may not be made after the date a written offer of settlement is made to the parent, under certain conditions, unless the parent was substantially justified in rejecting the settlement offer.

Maryland's local school systems take great care in their responsibility to provide exceptional and appropriate special education services for students with disabilities, and by virtue of this goal, local systems work diligently to adhere to comprehensive federal and state requirements to serve special education students. It is because of these standards that PSSAM believes existing requirements adequately provide due process and monetary awards to prevailing parents and render this legislation unnecessary.

At the state level, the Code of Maryland Regulations (COMAR 13A.05.01.15c(22)) provides an existing remedy that affords parents/guardians the right to recover attorney fees as the prevailing party under specific circumstances. In the small number of cases that are formally litigated at a due process hearing, local school systems are most commonly the prevailing party. More commonly, local school systems work with parents to resolve cases without formal due process

hearings. These resolutions are signed settlement agreements between both parties and often contain lump sum fees that account for a portion of the parent's/guardian's attorney fees.

At the federal level, House Bill 1237 is inconsistent with the provisions of the Individuals with Disabilities Education Act (IDEA), (20 U.S.C. §1415(i)(3)(B)-(G) and 34 C.F.R. §300.517), which authorizes a court of law, in its discretion, to award reasonable attorney fees to either party. House Bill 1237 provides that only the parent or guardian of a child may be awarded reasonable attorney fees if they are the prevailing party during a due process hearing without the need to petition a court of law. Additionally, the proposed bill explicitly permits fees for expert witnesses to be awarded, language of which there is currently no similar provision in special education federal laws or regulations. Therefore, as a result, House Bill 1237 could actually extend the time it takes to litigate these matters due to legal arguments regarding the reasonableness of such fees.

For the reasons stated above, PSSAM **opposes** House Bill 1237 and urges an unfavorable committee report.

FINAL HB1237 Special Ed Judicial Actions.pdf

Uploaded by: Grace Wilson

Position: UNF



HB1237 SPECIAL EDUCATION – JUDICIAL ACTIONS – ATTORNEY’S FEES AND RELATED COSTS

April 4, 2023

EDUCATION, ENERGY, AND THE ENVIRONMENT

OPPOSE

Grace Wilson, Legislative & Policy Specialist (410.440.1758)

Anne Arundel County Public Schools (AACPS) opposes **HB1237 – Special Education – Judicial Actions – Attorney’s Fees and Related Costs**. This bill authorizes a court to award reasonable attorney’s fees and related costs, including expert witness fees, to the parent of a child with a disability who is the prevailing party in a special education proceeding.

Currently, if the parent is the prevailing party in a due process or court hearing, the parent is awarded only attorney fees. HB1237 proposes to award parents expert witness fees and “other costs” in direct contradiction to *Arlington Central School Dist. Bd. Of Ed. V. Murphy*, 548 US 291, where the Supreme Court determined that “costs’ is a term of art that generally does not include expert fees” 402 F. 3d, at 336 and “was not meant to be an open-ended provision that makes participating States liable for all expenses incurred by prevailing parents in connection with the IDEA case...” Reimbursement of this expense, according to the Supreme Court, runs counter to statutory intent to reduce litigation fees.

The proposed legislation would have a significant fiscal impact on the school system if this bill were to pass and would as written result in an unfunded mandate. In recent litigation, a plaintiff used five expert witnesses – four of whom were in court for a half day each and one of whom was in court for one full day. Had AACPS not prevailed in the case, this bill would require AACPS to absorb the costs of five expert witnesses.

Accordingly, AACPS respectfully requests an **UNFAVORABLE** committee report on HB1237.

HB 1237.Special Education Expert Witness Fees- SEN

Uploaded by: John Woolums

Position: UNF

BILL: House Bill 1237
TITLE: Special Education - Judicial Actions - Attorney's Fees and Related Costs
DATE: April 4, 2023
POSITION: OPPOSE
COMMITTEE: Education, Energy, and the Environment
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 1237, not only because it would impose a cost burden on local school systems to compensate fees for expert witnesses in special education disputes in a manner not required under federal law, but also because it could be expected to promote such litigation.

MABE, on behalf of all local boards of education, assures the General Assembly that Maryland's professional educators and school administrators are working within a very comprehensive federal and state legal and educational framework to provide students with special education services and accommodations.

Recent developments in the law have heightened awareness about the rights of students and parents to a Free Appropriate Public Education (FAPE). The United States Supreme Court, in *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017), held that the provision of FAPE must be tailored to the unique needs of a particular student and that the school system must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. In addition, the court ruled that a student's education program must be "appropriately ambitious" in light of his or her unique circumstances.

However, the Supreme Court has also clearly ruled on the subject matter of the pending bill. The Supreme Court in *Arlington Cen. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006), ruled that IDEA does not require school districts to reimburse parents for expert witness fees even when the parent prevails in a special education dispute. The Court found that IDEA's specific provision for the awarding of attorney's fees does not make the school district responsible for other costs incurred by the prevailing parent absent specific statutory language and notice.

Local boards of education place a very high priority on ensuring that students receive high quality special education programs and instruction to meet the unique needs of every disabled student. Maryland's public school systems are mandated to provide a wide array of special education services in accordance and compliance with the federal Individuals with Disabilities Education Act (IDEA) and corresponding federal and state regulations. IDEA requires that all eligible disabled students receive special education and related services if they are between the ages of 3 and 21, meet the definition of one or more of the categories of disabilities specified in IDEA, and are in need of special education and related services as a result of the disability.

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. MABE firmly believes that Maryland's local school systems are providing high quality special education services and involving parents and guardians in decision-making on behalf of their child's educational well-being, as intended and envisioned by IDEA and Maryland's special education laws and regulations.

MABE respectfully requests that the legislature not impose any new litigation-related costs, particularly costs not relating directly to the delivery of instruction and other services for students. School systems, students, and families continue to work collaboratively toward the goal of faithfully providing the instruction and related services called for in each student's IEP. Passing House Bill 1237 would not be in the best interests of this work.

For these reasons, MABE requests an unfavorable report on House Bill 1237.

MAJ Position Paper -- HB1237 --2023.pdf

Uploaded by: Josh Howe

Position: UNF



Maryland Association for Justice, Inc.

2023 Position Paper

Special Education – Judicial Actions – Attorney’s Fees and Related Costs HB 1237 – UNFAVORABLE

House Bill 1237 would authorize state courts to award expert witness fees and costs to the parent of a child with a disability who prevails in an action brought to enforce the provisions of the Individuals with Disabilities in Education Act, 20 U.S.C. §§ 1400 *et seq.* (“IDEA”).

The IDEA is federal legislation providing that students with disabilities must be provided with a free and appropriate public education tailored to their individual needs, in accordance with an Individualized Education Program (“IEP”). Disputes arising with respect to the identification, evaluation, and educational placement of students with disabilities can be resolved by litigation under the IDEA or Md. Educ. Code Ann. § 8-413.

The IDEA currently authorizes an award of reasonable attorney’s fees to the prevailing party – a parent of a student with a disability or a state or local education agency. Maryland has adopted the fee-shifting provisions of the IDEA by regulation. COMAR 13A.05.01.15C(22) (adopting the provisions of 20 U.S.C. § 1415(i)(3) and 45 C.F.R. § 300.517). The IDEA does not currently permit an award of expert witness fees to a prevailing party. Arlington Central School Dist. Bd. of Educ. v. Murphy, 548 U.S. 291 (2006). By authorizing an award of expert witness fees and costs, therefore, HB 1237 takes Maryland law further than the cost-shifting provisions of current federal law.

The Maryland Association for Justice (MAJ) opposes HB 1237, out of concern that it may contribute to undermining the traditional “American Rule” that parties to litigation generally bear their own costs, with exceptions only in special cases. The American Rule keeps civil justice accessible in our court system for most people in our society – because most people do not have financial resources to pay their own costs and their opponent’s costs if, for whatever reason, they do not prevail in a claim or defense. Allowing a prevailing party to recover perhaps thousands of dollars in expert witness fees and costs in IDEA litigation may erode the protections afforded by the American Rule to litigants in other kinds of civil litigation by virtue of the “slippery slope.”

While MAJ acknowledges that students with disabilities and their parents in IDEA cases are certainly a sympathetic class of litigants, MAJ also believes that the American Rule plays a vital role in maintaining the accessibility of civil justice for Maryland citizens. Accordingly, MAJ opposes HB 1237.

**The Maryland Association for Justice respectfully requests
an UNFAVORABLE report on HB 1237.**