



PSSAM
Public School Superintendents' Association
OF MARYLAND

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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.