

HB 1237_ The Arc Maryland_Support.pdf

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Position: FAV



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House Ways and Means and Judiciary Committee
HB1237— Special Education - Judicial Actions - Attorney's Fees and Related Costs
March 14, 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.

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

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EACtestimony.HB1237.pdf

Uploaded by: Leslie Margolis

Position: FAV

Education Advocacy Coalition

for Students with Disabilities

HOUSE WAYS AND MEANS COMMITTEE

HOUSE BILL 1237

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

MARCH 14, 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,

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Maureen van Stone, Annie Carver and Tyler Cochran, Project HEAL at Kennedy Krieger Institute
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HB 1237.DD Council.Support.pdf

Uploaded by: Rachel London

Position: FAV



Maryland Developmental Disabilities Council

CREATING CHANGE • IMPROVING LIVES

House Ways and Means Committee

March 14, 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.

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

Testimony In Support HB 1237 - Ways and Means - Ju

Uploaded by: Rich Ceruolo

Position: FAV



March 8, 2023

Maryland House of Delegates
6 Bladen St.
Annapolis, MD. 21401

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

Members of the Maryland House of Delegates, Ways and Means and Judiciary Committees.

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.Special Education Expert Witness Fees.pdf

Uploaded by: John Woolums

Position: UNF

BILL: House Bill 1237
TITLE: Special Education - Judicial Actions - Attorney's Fees and Related Costs
DATE: March 14, 2023
POSITION: OPPOSE
COMMITTEE: Ways and Means and Judiciary
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 teaching and learning for students, as 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 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.