



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.**