

Senate Bill 797 Education – Access to Attorneys, Advocates, and Consultants for Special Education Program and Fund - Established

Education, Energy and the Environment Committee

February 23, 2024

Position: SUPPORT

Mental Health Association of Maryland (MHAMD) is a nonprofit education and advocacy organization that brings together consumers, families, clinicians, advocates and concerned citizens for unified action in all aspects of mental health and substance use disorders (collectively referred to as behavioral health). We appreciate the opportunity to provide this testimony in support of SB 797.

SB 797 would establish an Access to Attorneys, Advocates, and Consultants for Special Education Program and Fund, to assist low-income families who are in dispute with a school over certain specified special education decisions regarding their child.

It sometimes can be difficult for families with a child with a disability (who has an Individualized Education Plan) to reach consensus with their child's school on what services and supports their child needs to adequately access the "free, appropriate, public education" to which they are entitled. Usually, after some discussion, a reasonable agreement can be reached between the school and the parents/caregivers, but this is not always the case. When a family adamantly disagrees with the school's decision about their child's education, they can opt to go to mediation to try to resolve the matter. If mediation fails, they can try to prevail in a due process hearing.

The laws governing special education are complicated, and most families don't fully understand their rights, their child's rights, or all the nuances of special education law. The school's attorneys, however, are experts in special education law. Not surprisingly, when a family goes to a due process hearing with their child's school and represents themselves, they fail. In fact, recent Maryland data showed that zero families prevailed in a due process hearing when they represented themselves. Families with means can hire an attorney, and the data shows that they fared much better in due process hearings.

Ideally, issues between parents/caregivers and schools should never go to due process but be resolved earlier. This is where education consultants and advocates play an important role. They can explain to a family what a child is entitled to by law, and what they are not entitled to. They can help a family to understand the legal position of the school. They can also provide information about potential supports and services and help a family advocate for their child in a positive manner.

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As beneficial as education consultants and advocates can be, their cost is prohibitive for many families. And if a dispute ultimately does end up in a due process hearing and an attorney is needed, that cost is out of the reach of most families. SB 797 would alleviate disputes between parents/caregivers and schools, as well as level the playing field.

Families with a child with a serious mental health condition, who has been assessed and determined to have an “emotional disability” under special education law, are especially prone to come into conflict with their child’s school. Children categorized as having an emotional disability are disproportionately Black/African American (50.4%) compared to White (32.7%). They also tend to be from low-income families (eligibility for free and reduced meals: 56%).¹ Children assessed as having an emotional disability are subject to the use of restraint and seclusion, and experience multiple suspensions, far more than their non-disabled peers. They also are more likely than other disability groups to be placed in a non-public school.²

The families of these children need assistance to ensure that the school is providing the necessary supports and services, in the least restrictive environment, so that their child can be successful in school. The students need professional Functional Behavioral Assessments and robust Behavioral Intervention Plans. They need appropriate therapy, trusted staff, and instruction that is responsive to their needs. By enabling families who are in conflict with their child’s school to access professional help, SB 797 would improve the outcomes for children assessed as having an emotional disability.

For these reasons, MHAMD supports SB 797 and urges a favorable report.

¹ Data Dive – Students with Disabilities. Maryland State Department of Education (February 2023). Accessed February 19, 2024.
<https://marylandpublicschools.org/stateboard/Documents/2023/0228/DeepDiveStudentsWithDisabilitiesPart2.pdf>

² Ibid.