



SB783 SPECIAL EDUCATION - JUDICIAL ACTIONS - ATTORNEY'S FEES AND RELATED COSTS

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EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

OPPOSE

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Anne Arundel County Public Schools (AACPS) opposes **SB783 Special Education - Judicial Actions - Attorney's Fees and Related Costs**. This bill authorizes an administrative law judge to award 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.

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 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. Currently, if the parent is the prevailing party in a due process or court hearing, the parent is awarded only attorney fees. HB184 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 an IDEA case...” Reimbursement of this expense, according to the Supreme Court, runs counter to statutory intent to reduce litigation fees.

In addition, legislation passed in 2019 required MSDE to contract for an independent study to evaluate funding methodologies used nationally and internationally and make recommendations regarding the appropriate level of funding for special education students in Maryland. At the same time, the Commission on Innovation and Excellence in Education has developed cost analysis and recommendations for a more than \$500 million increase in state aid for special education. The cost analysis is premised on the fact that federal and State funding are woefully inadequate to provide the services demanded by IDEA, and that local governments – and school systems from within their own budgets – must fund the bulk of these essential services.

AACPS respectfully requests that the Committee reject imposing any new cost to local school systems, particularly a cost not that does not directly relate to the delivery of teaching and learning for students.

Accordingly, AACPS respectfully requests an **UNFAVORABLE** committee report on SB783.