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House Ways and Means Committee

HB405— Special Education - Judicial Actions - Attorney's Fees and Related Costs

January 20, 2021

**Position: Support**

The Arc Maryland strongly supports House Bill 405, 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. The Arc Maryland is the largest statewide advocacy organization dedicated to the rights and quality of life of people with intellectual and developmental disabilities, including the right to a free and appropriate public education (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 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 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. Attorneys are unfortunately unaffordable for families with limited means, and the availability of free and low attorneys is limited. Even families with modest means who can afford an attorney often cannot afford an expert witness that would put them on more even ground with the school system in a special education case. Without the ability for recovery of expert witness fees (upon prevailing), there is an unbalance of representation and a parent's ability to prevail is significantly hindered.

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 which we believe will restore fairness to the process and ensure the rights of children to access education and receive accommodations necessary for that access.

For these reasons, The Arc Maryland support HB 405 and asks for the committee's favorable report.

Respectfully submitted,  
Ande Kolp  
Executive Director