

Testimony for HB 405

Hearing Date: January 20, 2021

Wayne and Means Committee

My name is Wayne Steedman. I have been a special education attorney for 30 years. The Individuals with Disabilities Act (IDEA) requires states to provide children with disabilities a free appropriate public education (FAPE). 20 U.S.C. §1400(d). The Act goes so far as to define “free” as at no charge to the parents. §1401(9). When a school system fails to provide a child a FAPE, parents may request mediation or file for a due process hearing. §1415(b)(6). If the dispute is not resolved through mediation and proceeds to a Hearing, parents may be entitled to reimbursement of their legal fees if they are the prevailing party. §1415(i)(3)(B). However, the Courts have interpreted the fee shifting provision of the IDEA not to include reimbursement to parents for their expert fees. *Arlington Central Sch. Dist. Bd. Of Edu. V. Murphy*, 548 U.S. 291 (2006). The notion of a *free* appropriate public education is defeated when parents, who have proven that their school system denied their child a FAPE, are saddled with a bill for expert witness fees that may be in the thousands of dollars. School systems typically call multiple experts to testify in their case, most of whom are school system employees such as the child’s teacher(s), school administrators, school psychologist, speech/language pathologists, etc. Parents who do not counter with their own experts lose, and the child may be denied an appropriate education for want of having needed experts. Thus, the need for parents to bring in expert witnesses cannot be gainsaid. Many attorneys are willing to represent children in these matters either *pro bono* or on a contingency basis so that parents, who cannot afford legal representation otherwise, are able to access the legal system for their child. However, if the parents have no opportunity to be reimbursed for their experts, their access to legal representation for their child remains elusive. Congress never intended to limit the IDEA’s extensive procedural safeguards to only those who can afford access to the Act’s legal protections. But the Supreme Court’s interpretation of the Act in *Murphy*, has had that unfortunate effect. Congress has not reconsidered the Act since 2004 and does not seem poised to review it in the foreseeable future. I respectfully request that this Committee vote in favor of HB 405.