



**Maryland Developmental
Disabilities Council**

EMPOWERMENT • OPPORTUNITY • INCLUSION

House Ways and Means Committee

January 20, 2021

HB 405: Special Education – Judicial Actions – Attorney’s Fees and Related Costs

Position: **Support**

HB 405 which would allow parents to recover attorney’s fees and related costs, including expert witness costs if they are the prevailing party at a special education due process hearing or court proceeding is about access and equity. It seeks to ensure that families of low and moderate income, as well as those with more resources, are able to exercise the procedural protections afforded them under federal and state special education laws.

WHY is this legislation important?

- **Only federal special education law allows parents who prevail in a hearing to recover attorney’s fees and neither federal nor state special education law allows parents to recover the cost of experts.** Currently, federal special education law permits parents who prevail at a due process hearing to recover attorney’s fees from a court, but state education law contains no similar provision.
- **Families will be better equipped to exercise the rights and protections afforded by federal and state law.** Many parents cannot afford to hire an attorney or an expert to help if they want to challenge their child’s special education program or services or if the school system requests a hearing against them. As a result, families may not pursue a case even when their child’s rights have been violated or may not be able to bring experts to help support them if they do go to a hearing.
- **The possibility of recovering these expenses is reasonable.** School systems have access to more resources, information and expertise and are in a better position to prove if they have provided a free, appropriate public education. In addition, **Part of the special education process includes a family’s right to bring due process complaints when they perceive that their child’s educational rights are violated or denied.** See 34 CFR §300.153. School systems are always represented by attorneys at due process hearings, even when parents are not.

WHAT does this legislation do?

Allows a prevailing party who is the parent of a child with disabilities to be awarded:

- **Reasonable attorney’s fees and related costs** by incorporating into Maryland law the attorney’s fees provisions currently contained in the IDEA.
- **Reasonable expert fees.** Parents are not able to recover the cost of their experts under either federal or state law.

For these reasons, the Maryland Developmental Disabilities Council, supports HB 405. The possibility of being awarded attorney’s fees and related costs, including expert witness fees will allow more parents to exercise the rights and protections afforded them and their children with disabilities.

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