



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

January 20, 2020

Testimony in SUPPORT of HB 405 - Special Education - Judicial Actions - Attorney's Fees and Related Costs

Summary: HB 405 authorizes a court to award attorney's fees and related costs to the parent of a child with a disability who is the prevailing party in a certain special education proceeding.

Overview: In 1975, the US affirmed the rights of students with disabilities to have a free and appropriate education with the passage of the Individuals with Disabilities Act (IDEA). The legislation requires schools to develop an Individualized Education Plan (IEP) for students with disabilities.

When parents disagree with their child's school about their IEP, they are entitled to judicial resolution through what is known colloquially as "due process." At a due process hearing, parents file a civil complaint before an Administrative Law Judge from the Office of Administrative Hearings. If these families are successful, their attorney's fees are reimbursed by the school.

In 2005, the Supreme Court ruled in *Schaeffer v. Weast* that parents must present admissible evidence about educational methodology, complex behavioral supports, medical issues, and other technical subjects to support their case. Qualified expert witnesses are the only ones who can present this testimony, increasing the families' court costs by thousands of dollars. In 2006, the Supreme Court ruled in *Arlington Central School District v. Murphy* that because IDEA only states that attorney fees can be reimbursed, the fees for these qualified experts cannot be reimbursed.

This creates an extensive financial burden on families of children with disabilities, many of whom are already financially strained; according to the Council of Parent Attorneys and Advocates, nearly two-thirds of children with disabilities live in families with annual incomes under \$50,000.

Conclusion: This legislation works to relieve this burden on these families by amending Maryland law to explicitly state that successful plaintiffs are entitled to have both attorney's fees and expert witness fees reimbursed. This change will allow all students with disabilities, regardless of income, to ensure that they are receiving the best education possible.

Thank you and I ask for a favorable report on HB 405.