

House Ways and Means Committee
House Bill 405: Special Education - Judicial Actions - Attorney's Fees and Related Costs

January 20, 2021

POSITION: SUPPORT

Project HEAL (Health, Education, Advocacy, and Law), a community-based program of the Maryland Center for Developmental Disabilities at Kennedy Krieger Institute, Maryland's University Center for Excellence in Developmental Disabilities, submits this written testimony in support of House Bill 405 ("HB 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. Project HEAL attorneys represent children with disabilities and children with complex medical histories who are at high risk for adverse outcomes within the school setting if they are not provided with critically necessary services and supports. Project HEAL attorneys work to ensure that children with disabilities have an appropriate educational program and placement, as they are entitled to under federal and state law and regulations. Project HEAL attorneys have represented over 700 children with disabilities from low-and moderate- income families who are receiving special education and related services across Maryland. Project HEAL attorneys have also provided limited representation (e.g., brief advice, document review, referrals, resources and information) to more than 3,700 families raising children with disabilities. Project HEAL's work with low-and moderate-income families give us unique perspective into the necessity of HB 405. All too often, families of low- and moderate-income are unable to meaningfully participate in the special education dispute resolution process because of financial limitations. HB 405 seeks to close that gap and enable greater access for families of any means.

Project HEAL attorneys believe that HB 405 is about access, equity, and fairness. It seeks to ensure that families of any means are able to exercise the procedural protections afforded to them under federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et. seq., and state special education laws and regulations. These procedural protections apply equally to all students, and they are intended to ensure that all students receive the free appropriate public education to which they are entitled by the IDEA and state law and regulations. A key procedural protection afforded to students and families is the right to seek dispute resolution through a due process hearing. A due process hearing is a formal, administrative hearing conducted by an administrative law judge through the Office of Administrative Hearings. Witness testimony and documentary evidence are offered during the hearing to assist the administrative law judge with appropriately and fairly resolving the dispute. At due process hearings, school systems are represented by counsel, even if parents

are not. Retaining a lawyer is an expensive undertaking. When families cannot afford counsel, they are often not able to meaningfully participate in the hearing. As evidence of this, in the past six fiscal years, no unrepresented parent has prevailed at a due process hearing. Even if parents are able to find and afford an attorney who is willing and able to represent them, they need experts to help present their case to the administrative law judge. School systems commonly present experts at these hearings, so in order to present a case that is compelling, parents must do the same.

At present, federal special education law permits parents who prevail at a due process hearing to recover attorney's fees from a court. However, currently, Maryland's state education law contains no similar provision. Additionally, parents are not able to recover the cost of their experts, often totaling thousands of dollars, under either federal or state law. Ultimately, because of the financial burden associated with due process hearings, many families are not able to exercise the rights they are afforded under the IDEA and state law and regulations because they cannot pay for experts. This effectively strips rights from low- and moderate-income parents, while other families—those with financial means—are able to exercise their rights. This is fundamentally inequitable.

HB 405 would incorporate into Maryland law the attorney's fees provisions currently covered by the IDEA. Additionally, the reimbursement of expert fees would make the due process protections afforded to families less illusory. The passage of HB 405 would increase access to the special education dispute resolution process for all families, regardless of their financial picture. For these reasons, Project HEAL strongly supports passage of HB 405.

Thank you for your consideration of this testimony. For more information or questions, please contact me at 443-923-4416 or vanstone@kennedykrieger.org.

Respectfully submitted,

Maureen van Stone, Esq., MS
Director, Maryland Center for Developmental Disabilities
Director, Project HEAL
Faculty, Center for Innovation and Leadership in Special Education
Associate, Johns Hopkins Bloomberg School of Public Health