

BILL: House Bill 140
TITLE: Special Education - Administrative Proceedings and Judicial Actions - Attorney's and Expert Witness Fees and Related Costs
DATE: March 20, 2019
POSITION: OPPOSE
COMMITTEE: Education, Health and Environmental Affairs Committee
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The Maryland Association of Boards of Education (MABE), representing all of the State's local boards of education, opposes House Bill 140, not only because it would impose a cost burden on local school systems to compensate fees for expert witnesses and attorneys in special education disputes in a manner not required under federal law, but also because it could be expected to promote such litigation. By contrast, MABE is advocating for a reauthorization of the federal Individuals with Disabilities Education Act (IDEA) to enhance collaboration and non-adversarial dispute resolutions.

MABE, on behalf of all local boards of education, assures the General Assembly that Maryland's professional educators and school administrators are working within a very comprehensive federal and state legal and educational framework to provide students with special education services and accommodations.

Recent developments in the law have heightened awareness about the rights of students and parents to a Free Appropriate Public Education (FAPE). The United States Supreme Court, in *Endrew F. v. Douglas County School District*, 137 S. Ct. 988 (2017), held that the provision of FAPE must be tailored to the unique needs of a particular student and that the school system must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. In addition, the court ruled that a student's education program must be "appropriately ambitious" in light of his or her unique circumstances.

However, the Supreme Court has also clearly ruled on the subject matter of the pending bill. The Supreme Court in *Arlington Cen. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006), ruled that IDEA does not require school districts to reimburse parents for expert witness fees even when the parent prevails in a special education dispute. The Court found that IDEA's specific provision for the awarding of attorney's fees does not make the school district responsible for other costs incurred by the prevailing parent absent specific statutory language and notice.

Local boards of education place a very high priority on ensuring that students receive high quality special education programs and instruction to meet the unique needs of every disabled student. Maryland's public school systems are mandated to provide a wide array of special education services in accordance and compliance with the federal Individuals with Disabilities Education Act (IDEA) and corresponding federal and state regulations. IDEA requires that all eligible disabled students receive special education and related services if they are between the ages of 3 and 21, meet the definition of one or more of the categories of disabilities specified in IDEA, and are in need of special education and related services as a result of the disability.

Given the complexity and individualized nature of IEPs, disputes do arise between parents and teachers and other educators working in the school system. To accommodate such disputes, IDEA and state regulations provide parents the full protections of a state regulated complaint and enforcement process, and access to due process hearings before an Administrative Law Judge. MABE firmly believes that Maryland's local school systems are providing high quality special education services, and involving parents and guardians in decision-making on behalf of their child's educational well-being, as intended and envisioned by IDEA and Maryland's special education laws and regulations.

Lastly, assessments of special education programs and services and funding recommendations are in varying stages of being developed or finalized at this time. Legislation passed last year required MSDE to contract for an independent study to evaluate funding methodologies used nationally and internationally and make recommendations regarding the appropriate level of funding for special education students in Maryland. This study is to be completed by the end of 2019. At the same time, the Kirwan Commission on Innovation and Excellence in Education has developed cost analysis and recommendations for a more than \$500 million increase in state aid for special education. The cost analysis is premised on the fact that federal and state funding are woefully inadequate to provide the services demanded by IDEA, and that local governments – and school systems from within their own budgets – must fund the bulk of these essential services.

MABE respectfully requests that the legislature defer consideration of imposing any new cost, particularly a cost not relating directly to the delivery of teaching and learning for students, as these ongoing initiatives are finalized or, in the case of major funding increases, well underway.

For these reasons, MABE requests an unfavorable report on House Bill 140.