

BILL: House Bill 405
TITLE: Special Education - Judicial Actions - Attorney's Fees and Related Costs
DATE: January 20, 2021
POSITION: OPPOSE
COMMITTEE: Ways and Means Committee
Judiciary 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 405, not only because it would impose a cost burden on local school systems to compensate fees for expert witnesses in special education disputes in a manner not required under federal law, but also because it could be expected to promote such litigation.

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.

MABE respectfully requests that the legislature not impose any new litigation-related costs, particularly costs not relating directly to the delivery of teaching and learning for students, as school systems, students, and families continue to work collaboratively toward the goal of faithfully providing the instruction and related services called for in each student IEP. Passing House Bill 405 would not be in the best interests of this work.

For these reasons, MABE requests an unfavorable report on House Bill 405.