



BILL: House Bill 140  
TITLE: Special Education – Administrative Proceedings and Judicial Actions – Attorney’s and Expert Witness Fees and Related Costs  
DATE: February 7, 2019  
POSITION: OPPOSE  
COMMITTEE: Ways and Means  
CONTACT: Renee McGuirk Spence, Executive Director, PSSAM  
Email: [pssamed@gmail.com](mailto:pssamed@gmail.com); Cell: 410-925-2183

House Bill 140 authorizes an administrative law judge to award certain attorney's fees and related costs to the parent of a child with a disability who is the prevailing party in a special education proceeding; prohibiting an administrative law judge from awarding attorney's fees and certain related costs to a certain parent in a certain proceeding under certain circumstances; etc.

PSSAM **opposes** House Bill 140.

Local superintendents consistently place top priority on providing special education services to our students. We work diligently to adhere to comprehensive federal and state requirements to serve our special education students. PSSAM believes that House Bill 140 is inconsistent with current state and federal special education provisions.

The Code of Maryland Regulations (COMAR 13A.05.01.15©(22) already provides an existing adequate remedy that affords parents/guardians the right to recover attorney fees as the prevailing party. This regulation provides that in an action or proceedings under this section, courts may award reasonable attorneys’ fees to the prevailing party under specific circumstances.

In numerous cases, local school systems are successful in being the prevailing party in the small number of cases which are actually litigated at a due process hearing. More frequently local school systems resolve cases successfully without going to a hearing, with lump sum fees that account for a portion of the parent’s/guardian’s attorney fees. When a case is resolved, the result is a signed settlement agreement to the satisfaction of both parties.

HB 140 is inconsistent with the provisions of the federal Individuals with Disabilities Education Act (IDEA), (20 U.S.C. §1415(i)(3)(B)-(G) and 34 C.F.R. §300.517), which authorizes a court of law, in its discretion, to award reasonable attorney fees to either party. House Bill 140 provides that only the parent/guardian of a child may be awarded reasonable attorney fees if they are the prevailing party during a due process hearing without the need to petition a court of law.

Finally, the proposed bill also explicitly permits fees for expert witnesses to be awarded. There is currently no similar provision in special education federal laws or regulations. House Bill 140 could actually extend the time it takes to litigate these matters due to legal arguments regarding the reasonableness of such fees.

For the reasons stated above, PSSAM **opposes** House Bill 140 and urges an unfavorable committee report.