



BILL: HB 405 - Special Education - Judicial Actions - Attorney's Fees and Related Costs
DATE: January 20, 2021
POSITION: OPPOSE
COMMITTEE: House Ways and Means Committee
House Judiciary Committee
CONTACT: Mary Pat Fannon, Executive Director

This bill authorizes a court to award reasonable attorney's fees and related costs, including expert witness fees and costs, to the parent of a child with a disability who is the prevailing party in a proceeding to dispute the identification, evaluation, or educational placements or the provision of a free appropriate public education. However, such an award may not be made after the date a written offer of settlement is made to the parent, under certain conditions, unless the parent was substantially justified in rejecting the settlement offer.

The Public School Superintendents' Association of Maryland (PSSAM), which represents all twenty-four local school superintendents, **opposes House Bill 405**.

Local school systems take their responsibility very seriously to provide exceptional and appropriate special education services to our students. We work diligently to adhere to comprehensive federal and state requirements to serve our special education students, and PSSAM believes these existing requirements adequately provide due process, include monetary awards to prevailing parents, and that this legislation is not necessary.

At the state level, the Code of Maryland Regulations (COMAR 13A.05.01.15c(22)) provides an existing remedy that affords parents/guardians the right to recover attorney fees as the prevailing party under specific circumstances. In the vast majority of cases, local school systems are the prevailing party in the small number of cases that are actually litigated at a due process hearing. More frequently, local school systems work with parents to resolve cases without going to a hearing. These resolutions are signed settlement agreements between both parties and often contain lump sum fees that account for a portion of the parent's/guardian's attorney fees.

At the federal level, HB 405 is inconsistent with the provisions of the 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 405 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. Therefore, House Bill 405 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 405** and urges an unfavorable committee report.

One Voice, One Vision for Maryland's Students