



HB140 SPECIAL EDUCATION - ADMINISTRATIVE PROCEEDINGS AND JUDICIAL ACTIONS - ATTORNEY'S AND EXPERT WITNESS FEES AND RELATED COSTS

March 20, 2019

EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

OPPOSE

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The Board of Education of Anne Arundel County opposes **HB140 Special Education - Administrative Proceedings and Judicial Actions - Attorney's and Expert Witness Fees and Related Costs**. This bill authorizes court to award reasonable attorney's fees and related costs to the parent of a child with a disability, if the parent prevails in a hearing that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education.

Local boards of education place a high priority on ensuring that special education students have access to high quality programs and instruction to meet their unique needs. Due to the complexities of individualized educational programs, disagreements may arise between parents, teachers and a school system. The Individuals with Disabilities Education Act (IDEA) along with State regulations provide parents and students full protections and access to due process hearings before an Administrative Law Judge. The proposed legislation would have an extensive fiscal impact on the school system if this bill were to pass. As such, this legislation would result in an unfunded mandate and may have the unintended consequence of encouraging litigation.

Currently, if the parent is the prevailing party in a due process or court hearing, the parent is awarded only attorney fees. This bill proposes to award parents expert witness fees and "related costs" in direct contradiction to *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 548 US 291, where the Supreme Court determined that "'costs' is a term of art that generally does not include expert fees." 402 F. 3d, at 336 and "was not meant to be an open-ended provision that makes participating States liable for all expenses incurred by prevailing parents in connection with an IDEA case..." The Court 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. Reimbursement of this expense, according to the Supreme Court, runs counter to statutory intent to reduce litigation fees.

Accordingly, the Board of Education of Anne Arundel County respectfully requests an **UNFAVORABLE** committee report on HB140.