



An Act Relative to Equal Educational Opportunities for Students with Disabilities

Lead Sponsor: Rep. Sannicandro

H. 487 Fact Sheet

- This bill is critical to level the playing field between school districts and families by encouraging prompt and fair settlement agreements, saving parents and school districts money and ensuring that all families, regardless of income, have an opportunity to exercise essential due process rights.
- Federal special education law provides that parents who are prevailing parties in hearings are entitled to legal fees- similar provisions in other civil rights laws provide crucial protections for victims of discrimination who cannot afford representation.
- As a result of a Rehnquist Supreme Court decision in 2001, parents are no longer entitled to attorney's fees if the parties negotiate a settlement agreement¹. Prior to this Supreme Court decision, parents who filed appeals were entitled to fees if they prevailed in a case that was fully adjudicated by a hearing officer *or if the parent prevailed through a settlement that was negotiated as a result of litigation*.
- The impact of the Rehnquist decision is to discourage settlements, with lengthy delays in resolution of cases. This results both in harm to children who remain without services for the lengthy duration of the legal process and in needless litigation expense.
- Delays do not impact all children equally. Under federal special education law, families with the means can place a child in a private school pending a hearing and seek retroactive reimbursement, while low and middle income families can not afford this opportunity.
- The sooner children receive appropriate special education services, the more likely they will be to make adequate progress and achieve state standards as measured by MCAS.
- Federal special education law was amended in 2004 to allow school districts to recover legal fees from the parent or parent's attorney for cases that have been determined to be frivolous, unreasonable, or without foundation. This adds a further chilling effect, creating additional barrier for families hoping to obtain equal opportunities for their children.
- In 2005, the US Supreme Court ruled² that the party seeking to change a placement – the parents in the vast majority of cases - carry the burden of proof in special education cases, creating even greater obstacles for parents. As emphasized by the dissent, districts have greater access to information, expertise, and resources.
- We now have a two tier system:
 - Families with means can enforce their special rights
 - Middle and low-income families are left behind

SOLUTION— PASSAGE OF H. 487

- Encourage prompt resolution and settlement of disputes
- Reduce litigation costs for families and school districts
- Reduce the lengthy delays which harm children deprived of essential services for months and sometimes years
- Help ensure that middle and low-income families have equal access to special education rights and services

Massachusetts Advocates for Children 9/30/09

¹ *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health and Human Services*, 532 U.S. 598 (2001).
² *Schaeffer v. Weast*, 546 U.S. 49 (2005).