

SUPPORT HB 628/SB 1616
MAKE SPECIAL EDUCATION PROCEEDINGS FAIRER FOR PARENTS

WHAT THE BILLS WOULD DO:

Amend the School Code to

- Allow parents to recover the costs of an expert witness if the parents are prevailing parties in a due process hearing, a private settlement, or a civil action.
- Ensure the parents' expert access in order to evaluate the child and the child's current or proposed educational program and placement at mutually agreeable times, subject to compliance with school safety and security procedures.
- Ensure that parents are afforded reasonable access to observe their child and the child's educational program.

WHY THE BILL IS NEEDED:

- Parents are at a distinct disadvantage in special education proceedings. If a dispute arises between the school district and the parents over the child's IEP or placement, the school district is represented by legal counsel and has available an array of school personnel and school-based experts to support its position.
- Most parents are not represented by lawyers and lack the resources to hire lawyers and their own experts. (Approximately 36% of children with disabilities live in families earning less than \$25,000 per year. About 66% of children with disabilities live in households with incomes less than \$50,000 per year.)
- While there are parents who have the means to secure the assistance of an expert in a discipline relevant to their child's disability, many parents will incur debt to secure a private expert to advise them with respect to their child's disability and educational needs. An expert such as a neuropsychologist, speech and language pathologist, behavioral analyst, occupational therapist, etc., can cost a family up to several thousand dollars.
- IDEA allows parents who prevail in due process hearings to recover "reasonable attorney fees and costs," but a 2006 U.S. Supreme Court decision held that the term "costs" does not include the costs of expert witnesses because IDEA does not specifically refer to expert costs. This decision changed the prevailing law and practice with respect to the recovery of expert fees.
- The 2006 decision only interprets IDEA and does not bar a state from enacting laws granting parents and children stronger procedural safeguards than are provided under IDEA.
- Knowing from the outset that they cannot recoup the cost of an expert, many parents will forego a request for a due process hearing, even though they may have an excellent chance to prevail. Of course, the child suffers the most if the IEP does not meet his or her needs and the parents do not have the ability to mount a challenge.
- The access provisions of the bill are intended to address situations in which a parent or a parent's expert has been blocked from having reasonable access to school facilities and staff.

HB 628/SB1616 WILL NOT SOLVE ALL OF THE INEQUITIES OF THE SPECIAL EDUCATION DUE PROCESS SYSTEM, BUT IT WILL HELP TO LEVEL THE PLAYING FIELD.

For more information, please contact Amy Zimmerman, Health & Disability Advocates, (312) 265-9075, azimmerman@hdadvocates.org, or Phil Milsk, (217) 899-1566, philmilsk@aol.com

HB 628/SB1616 Supporters (list in progress):

- **Autism Society of Illinois**
- **Arc of Illinois**
- **Illinois Chapter American Academy of Pediatricians (ICAAP)**
- **Concerned Christian Americans**
- **Learning Disabilities Association of Illinois (LDA)**
- **Illinois Council of Developmental Disabilities**
- **UCP of Illinois**
- **Health & Disability Advocates**
- **Equip for Equality**
- **Chicago Metropolitan Association for the Education of Young Children (Chicago Metro AEYC)**
- **Epilepsy Foundation of Greater Chicago**
- **Statewide Independent Living Council (SILC)**
- **Coalition of Citizens with Disabilities in IL (CCDI)**
- **Illinois Network of Centers for Independent Living (INCIL)**
- **Illinois Assistive Technology Program (IATP)**
- **Ounce of Prevention Fund**
- **Mental Health America of Illinois**
- **Bridges to Autism**
- **Evanston Citizens for Appropriate Special Education**
- **Centers for Independent Living (CIL): Springfield, Rock Island, RAMP (Rockford), Illinois Valley, Will Grundy, Progress Center, PACE (Urbana), LINC (Belleville), IMPACT(Alton), Jacksonville, Access Living, Lake County, Illinois-Iowa**