



WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS21690>

February 2, 2009

Congressional Research Service

Report RS21690

*The Individuals with Disabilities Education Act (IDEA):
Attorneys Fees Provisions in Current Law and in H.R. 1350
as passed by the House and Senate, 108th Congress*

Nancy Lee Jones, American Law Division

June 8, 2004

Abstract. The Individuals with Disabilities Education Act (IDEA) authorizes federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE and includes a provision for attorneys fees. Congress is presently considering reauthorizing IDEA. H.R. 1350, 108th Congress, passed the House on April 30, 2003, by a vote of 251 to 171. On May 13, 2004, the Senate incorporated S. 1248 in H.R. 1350 and passed H.R. 1350 in lieu of S. 1248 by a vote of 95 to 3. This report will discuss current IDEA provisions on attorneys fees and the differing provisions in the House and Senate bills.

WikiLeaks

CRS Report for Congress

Received through the CRS Web

The Individuals with Disabilities Education Act (IDEA): Attorneys' Fees Provisions in Current Law and in H.R. 1350 as Passed by the House and Senate, 108th Congress

Nancy Lee Jones
Legislative Attorney
American Law Division

Summary

The Individuals with Disabilities Education Act (IDEA) authorizes federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE and includes a provision for attorneys' fees. Congress is presently considering reauthorizing IDEA. H.R. 1350, 108th Congress, passed the House on April 30, 2003, by a vote of 251 to 171. On May 13, 2004, the Senate incorporated S. 1248 in H.R. 1350 and passed H.R. 1350 in lieu of S. 1248 by a vote of 95 to 3. This report will discuss current IDEA provisions on attorneys' fees and the differing provisions in the House and Senate bills. This report will not be updated.

Background

The Individuals with Disabilities Education Act (IDEA)¹ authorizes federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE).² The statute also contains detailed due process provisions to ensure the provision of FAPE and includes a provision for attorneys' fees. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an education for children with disabilities if they

¹ 20 U.S.C. §1400 *et seq.*

² For a more detailed discussion of IDEA see CRS Report RL31259, *Individuals with Disabilities Education Act: Statutory Provisions and Selected Issues*.

provided an education for children without disabilities. The attorneys' fees provisions were added in 1986 by the Handicapped Children's Protection Act, P.L. 99-372.³

Congress is presently considering reauthorizing IDEA. H.R. 1350, 108th Congress, passed the House on April 30, 2003, by a vote of 251 to 171. On May 13, 2004, the Senate incorporated S. 1248 in H.R. 1350 and passed H.R. 1350 in lieu of S. 1248 by a vote of 95 to 3.⁴

Current Statutory Language Relating to Attorneys' Fees⁵

Under current law, a parent may file a complaint with respect to the identification, evaluation, educational placement, provision of a free appropriate public education or placement in an alternative educational setting. The parents then have an opportunity for an impartial due process hearing⁶ with a right to appeal.⁷

At the court's discretion, attorneys' fees may be awarded as part of the costs to the parents of a child with a disability who is the prevailing party.⁸ Attorneys' fees are based on the rates prevailing in the community and no bonus or multiplier may be used. There are specific prohibitions on attorneys' fees and reductions in the amounts of fees. Fees may not be awarded for services performed subsequent to a written offer of settlement to a parent in certain circumstances including if the court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. Also, attorneys' fees are not to be awarded relating to any meeting of the Individualized Education Program (IEP) team unless the meeting is convened as a result of an administrative proceeding or judicial action or, at the state's discretion, for a mediation. Current law specifically provides that an award of attorneys' fees and related costs may be made to a parent who is the prevailing party if the parent was substantially justified in rejecting a settlement offer. Attorneys' fees may be reduced in certain circumstances including where the court finds that the parent unreasonably protracted the final resolution of the controversy; the amount of attorneys' fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable

³ Although the original act contained no specific provision for attorneys' fees, prevailing parties used section 505 of the Rehabilitation Act of 1973, 29 U.S.C. §794a, or section 1988 of the Civil Rights Attorneys' Fees Award Act, 42 U.S.C. §1988, to seek fees. However, the Supreme Court in *Smith v. Robinson*, 468 U.S. 992 (1984), held that the only remedies for prevailing parties under IDEA were those contained in that statute. Congress enacted the Handicapped Children's Protection Act in response to the Court's decision.

⁴ For a more extensive discussion of the House and Senate bills see CRS Report RL32415, *The Individuals with Disabilities Education Act (IDEA): Comparison and Analysis of Selected Provisions in H.R. 1350 as Passed by the House and by the Senate, 108th Congress*.

⁵ For a discussion of attorneys' fees in general see CRS Report 94-970, *Awards of Attorneys' Fees by Federal Courts and Federal Agencies*. See also, GAO, *Special Education: The Attorney Fees Provision of Public Law 99-372*, HRD-90-22BR.

⁶ 20 U.S.C. §1415(f), P.L. 105-17 §615(f).

⁷ 20 U.S.C. §1415(g), P.L. 105-17 §615(g).

⁸ 20 U.S.C. §1415(i), P.L. 105-17 §615(i). The provision on attorneys' fees was added by Congress in the Handicapped Children's Protection Act, P.L. 99-372.

skill, reputation and experience; where the time spent and legal services furnished were excessive considering the nature of the action or proceedings; and when the court finds that the parent did not provide the school district with the appropriate information in the due process complaint. This information includes the name of the child, the child's address and school, a description of the problem, including facts relating to the issue, and a proposed resolution to the problem.⁹

Attorneys' Fees Provisions in H.R. 1350, as Passed by the House

The attorneys' fees provisions in H.R. 1350 would change the determination of the amount of attorneys' fees by requiring the Governor, or other appropriate state official, to determine rates. As discussed above, under current law, attorneys' fees are determined by the court hearing the case.

More specifically, H.R. 1350 would amend current law by changing the general statement under current law that attorneys' fees may be awarded at the court's discretion to read: "Fees awarded under this paragraph shall be based on rates determined by the Governor of the State (or other appropriate State official) in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection." In addition, the amendment provides that the Governor or other appropriate official shall make these rates available to the public on an annual basis. The other provisions of current law regarding the prohibition of attorneys' fees in certain situations, the exception to this prohibition, and the reduction of attorneys' fees in certain circumstances were not amended.

The House report discussed the proposed attorneys' fee provision noting that "the Committee remains concerned about excessive litigation under the act and the burden that local educational agencies face in paying fees to attorneys."¹⁰ The report noted that the Governor may take the geographic differences in a state into account and encouraged the Governor to make the established rates public prior to the beginning of the school year. This provision was described in the report as helping to "restore balance to the proceedings under this Act and continue to provide early opportunities for schools and parents to foster more cooperative partnerships and resolve problems."¹¹

However, the attorneys' fees provision in H.R. 1350 has been criticized. The minority views in the committee report argued for removal of the language stating: "There is no question that this will limit access to knowledgeable and experienced legal representation by the people who need it the most—low income, inexperienced parents seeking to obtain the best education for their children with disabilities."¹²

⁹ 20 U.S.C. §1415(i), P.L. 105-17 §615(i); 20 U.S.C. §1415(b)(7), P.L. 105-17 §615(b)(7).

¹⁰ "Improving Educational Results for Children with Disabilities Act of 2003," Report of the House Committee on Education and the Workforce, Rep. No. 108-77, 108th Cong., 1st Sess. at 116.

¹¹ *Id.*

¹² *Id.* at 380. See also, "Backgrounder: Special Education," (April 29, 2003) [<http://edworkforce.house.gov/democrats/ideabackgrounder.html>]; Consortium for Citizens with

Attorneys' Fees Provisions in H.R. 1350, as Passed by the Senate

The Senate bill would keep the same general framework as is in current law; a federal district court may, in its discretion, award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. However, the Senate bill would make some changes. The Senate bill would add a requirement for a preliminary meeting prior to a due process hearing to provide an opportunity to resolve the complaint and the bill specifically provides that attorneys' fees are not available for this preliminary meeting. In addition, the bill would add language to the provision on the reduction of attorneys' fees clarifying that if the parents' attorney does not provide the required information to the local educational agency, the court shall reduce the attorneys' fees.

The Senate bill would add a new subsection specifically allowing parents to represent their children in court. Generally, an individual has a right to proceed as his or her own counsel in federal court.¹³ Rule 17 of the Federal Rules of Civil Procedure precludes minors from proceeding *pro se* although a representative or guardian may sue on the minor's behalf. However, several circuits have held that the right to proceed *pro se* in federal court does not give parents who are not attorneys the right to represent their children.¹⁴ The IDEA cases that have specifically addressed this issue have generally found that parents cannot proceed *pro se* on behalf of their child.¹⁵ The leading case is *Collinsgru v. Palmyra Board of Education* where the third circuit held that "parents seeking to enforce their child's substantive right to an appropriate education under the IDEA may not represent their child in federal court."¹⁶ However, in a detailed examination of the issue, the first circuit declined to follow *Collinsgru*. In *Maroni v. Pemi-Baker Regional School District*, the court held that parents do have procedural and substantive rights under IDEA since they are "parties aggrieved" because they are able to request due process hearings "and thus are logically within the groups of 'parties aggrieved' given the right to sue."¹⁷ The Senate bill does not state whether or not parents who represent their children in court have a right to attorneys' fees. Generally, under

¹² (...continued)

Disabilities, "Attorneys' fees and the Individuals with Disabilities Education Act Myths and Realities (Oct. 3, 2003) [<http://www.c-c-d.org/attorneyfeemyth.htm>]

¹³ 28 U.S.C. §1654.

¹⁴ See e.g., *Osei-Afriyie v. Medical College of Pa.*, 937 F.2d 876, 883 (3d Cir.1991).

¹⁵ Several courts, have allowed parents to proceed *pro se* without discussing the issue. See e.g., *Kruelle v. New Castle County School District*, 642 F.2d 687,690 (3d Cir. 1981); *Susan R.M. v. N.W. Independent School District*, 818 F.2d 455 (5th Cir. 1987); *Gregory K. v. Longview School District*,811 F.2d 1307 (9th Cir. 1987).

¹⁶ *Collinsgru v. Palmyra Board of Education*, 161 F.3d 225, 227 (3d Cir. 1998). For a detailed discussion of this case see Richard P. Diegnan, Jr., "Handicapped Persons – Individuals with Disabilities Education Act – Non-Attorney Parents Have No Right to Represent their Child in an Action Under the IDEA Because the act does not Create Joint Rights in the Parent and Child – *Collinsgru v. Palmyra Bd. of Educ.*," 29 Seton Hall L. Rev. 1170 (1999).

¹⁷ 346 F.3d 247, 251 (1st Cir. 2003). IDEA provides at 20 U.S.C. §1415(i)(2)(A) that "any party aggrieved by the findings and decision made....shall have the right to bring a civil action."

current law, even if the parent is a licensed attorney, attorneys' fees have not been allowed in pro se cases.¹⁸

An amendment on attorneys' fees was agreed to on the Senate floor which would allow the court to award fees to a SEA or LEA against the attorney of a parent or a parent in certain circumstances. The attorney of a parent may be required to pay the SEA's or LEA's fees if he or she

- files a complaint that is frivolous, unreasonable, or without foundation,
- continues to litigate when the litigation clearly became frivolous, unreasonable or without foundation or
- if the complaint or subsequent cause of action was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Like the provision relating to attorneys, the parent of a child with a disability who files a complaint may be required to pay the SEA's or LEA's attorneys' fees if the complaint or subsequent cause of action was presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The Senate bill also included a provision that nothing in the subparagraph shall be construed to affect the attorneys' fees provisions applicable to the District of Columbia.

In the Senate debate on the attorneys' fees amendment, Senator Grassley stated that the amendment would "in no way limit or discourage parents from pursuing legitimate complaints against a school district if they feel their child's school has not provided a free appropriate public education. It would simply give school districts a little relief from abuses of the due process rights found in IDEA and ensure that our taxpayer dollars go toward educating children, not lining the pockets of unscrupulous trial lawyers."¹⁹ Senator Gregg also emphasized the need for the attorneys' fee amendment. He noted that the concept that a defendant should be able to obtain attorneys' fees when a plaintiff's actions were "frivolous, unreasonable, or without foundation" has been applied to title VII of the Civil Rights Act of 1964. The Supreme Court in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*²⁰ held that prevailing defendants should recover attorneys' fees when a plaintiff's actions were frivolous, unreasonable, or without foundation in order to "protect defendants from burdensome litigation having no legal or factual basis."²¹ Senator Gregg observed that the standard is "very high...and prevailing defendants are rarely able to meet it and obtain a reimbursement of their attorneys fees"

¹⁸ See e.g., *Ann Doe and John Doe v. Board of Education of Baltimore County*, 165 F.3d 260 (4th Cir. 1998), *cert. denied*, 526 U.S. 1159 (1999). For a discussion of this issue and others, see Lynn M. Daggett, "Special Education Attorney's Fees: Of Buchannon, The IDEA Reauthorization Bills, and the IDEA as Civil Rights Statute," 8 UC Davis J. Juv. L. & Policy 1 (2004).

¹⁹ 150 Cong. Rec. S5349 (daily ed. May 12, 2004).

²⁰ 434 U.S. 412 (1978).

²¹ *Id.* at 420.

and that case law “directs courts to consider the financial resources of the plaintiff in awarding attorney’s fees to a prevailing defendant.”²²

The attorneys’ fee amendment also would allow defendants to recover fees if lawsuits were brought for an improper purpose. Senator Gregg noted that this concept was drawn from Rule 11 of the Federal Rules of Civil Procedure²³ and that “in interpreting this language from Rule 11, courts must apply an objective standard of reasonableness to the facts of the case.”²⁴

²² 150 Cong. Rec. S5349 (daily ed. May 12, 2004).

²³ *Id.* Rule 11 states in relevant part that an attorney by signing pleadings, motions and other documents certifies to the court that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, – (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation...”

²⁴ 150 Cong. Rec. S5349 (daily ed. May 12, 2004).