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The Individuals with Disabilities Education Act (IDEA): Attorneys' Fees Provisions in Current Law and in H.R. 1350 and S. 1248, 108th Congress

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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. In the Senate, S. 1248 was reported out of committee by a unanimous vote on June 25, 2003 and placed on the Senate legislative calendar under general orders on November 3, 2003. On November 21, 2003, a unanimous consent agreement was agreed to which limited consideration of S. 1248 to certain amendments, including an amendment on attorneys' fees. 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 Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an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 171.⁴ In the Senate, S. 1248 was introduced by Senators Gregg and Kennedy and referred to the Senate Health, Education, Labor and Pensions Committee on June 12, 2003. The bill was reported out of committee by a unanimous vote on June 25, 2003 (S.Rept. 108-185) and placed on the Senate legislative calendar under general orders on November 3, 2003. On November 21, 2003, a unanimous consent agreement was agreed to which limited consideration of S. 1248 to certain amendments, including an amendment on attorneys' fees.⁵

Current Statutory Language Relating to Attorneys' Fees⁶

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 hearing⁷ with a right to appeal.⁸

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.⁹ 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 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

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 this decision.

⁴ For a more detailed discussion of H.R. 1350, see CRS Report RL31830, *The Individuals with Disabilities Education Act (IDEA): Selected Changes that Would be Made to the Law by H.R. 1350, 108th Congress*.

⁵ 149 Cong. Rec. S15500 (Nov. 21, 2003). For a more detailed discussion of S. 1248, see CRS Report RL31971, *The Individuals with Disabilities Education Act (IDEA): Selected Changes that Would be Made to the Law by S. 1248, 108th Congress*.

⁶ For a discussion of attorneys' fees in general see CRS Report 94-970, *Awards of Attorneys' Fees by Federal Courts and Federal Agencies*.

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

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

⁹ 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.

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 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.¹⁰

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."¹¹ 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."¹²

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

¹⁰ 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).

¹¹ "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.

¹² *Id.*

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.”¹³

Attorneys’ Fees Provisions in S. 1248, as Reported out of Committee

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, S. 1248 does make some changes. S. 1248 would add a requirement for a preliminary meeting prior to a due process hearing to provide an opportunity to resolve the complaint. 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 report contains a brief description of these changes but does not elaborate.

¹³ Id. at 380. See also, “Backgrounder: Special Education,” (April 29, 2003) <http://edworkforce.house.gov/democrats/ideabackgrounder.html>; Consortium for Citizens with Disabilities, “Attorneys’ fees and the Individuals with Disabilities Education Act Myths and Realities (Oct. 3, 2003) <http://www.c-c-d.org/attorneyfeemyth.htm>