



# **The Individuals with Disabilities Education Act (IDEA): Attorneys' Fees Provisions in P.L. 108-446**

**Nancy Lee Jones**  
Legislative Attorney

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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. Attorneys' fees were among the most controversial provisions in the 2004 reauthorization of IDEA. This report analyzes the attorneys' fees provisions in P.L. 108-446 and the final regulations. For a general discussion of the 2004 reauthorization, see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by (name redacted) and (name redacted). This report will be updated as necessary.

## **Contents**

Background .....	1
P.L. 108-446 Language Relating to Attorneys' Fees .....	1
Final Regulations.....	4

## **Contacts**

Author Contact Information .....	5
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## Background

The Individuals with Disabilities Education Act (IDEA)<sup>1</sup> 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. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities, and to judicial decisions requiring that states provide an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 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.<sup>2</sup>

These provisions were amended in 1997. The P.L. 105-17 amendments allowed the reduction of attorneys' fees if the attorney representing the parents did not provide the LEA with timely and specific information about the child and the basis of the dispute, and specifically excluded the payment of attorneys' fees for most individualized education plan (IEP) meetings.

The House and Senate bills leading to the 2004 law contained very different approaches to the attorneys' fees issue. The House bill, H.R. 1350, 108<sup>th</sup> Cong., would have changed the determination of the amount of attorneys' fees by requiring the Governor, or other appropriate state official, to determine rates. The Senate bill, S. 1248, 108<sup>th</sup> Cong., kept the same general framework as in previous law with several changes. The final 2004 IDEA reauthorization was closer to the Senate version and kept many of the previous provisions on attorneys' fees but also made several additions. These include allowing attorneys' fees for the state educational agency (SEA) or the local educational agency (LEA) against the parent or the parent's attorney in certain situations.

## P.L. 108-446 Language Relating to Attorneys' Fees<sup>3</sup>

Under the new law the general provisions regarding filing a complaint and appeals have not changed except that the local educational agency may also file a complaint. A parent or LEA 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 or LEA then have an opportunity for an impartial due process hearing<sup>4</sup> with a right to appeal.<sup>5</sup>

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<sup>1</sup> 20 U.S.C. §1400 *et seq.*

<sup>2</sup> 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.

<sup>3</sup> For a discussion of attorneys' fees in general see CRS Report 94-970, *Awards of Attorneys' Fees by Federal Courts and Federal Agencies*, by (name redacted). See also, GAO Special Education: *The Attorney Fees Provision of Public Law 99-372*, HRD-90-22BR.

<sup>4</sup> 20 U.S.C. §1415(f), P.L. 108-446, §615(f).

<sup>5</sup> 20 U.S.C. §1415(g), P.L. 108-446 §615(g).

At the court's discretion, reasonable attorneys' fees may be awarded as part of the costs to the parents of a child with a disability who is the prevailing party.<sup>6</sup> The 2004 reauthorization also allows the award of reasonable attorneys' fees against a parent's attorney to a prevailing SEA or LEA in two situations. These are when the attorney

- files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or
- continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation.<sup>7</sup>

P.L. 108-446 also allows for the award of attorneys' fees against the attorney of a parent of a child with a disability or a parent to a prevailing SEA or LEA if the parent's complaint or subsequent cause of action was for an improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.<sup>8</sup>

In the Senate debate on the attorneys' fees amendment, Senator Grassley stated that the amendment regarding attorneys' fees 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."<sup>9</sup> 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*<sup>10</sup> 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."<sup>11</sup> 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" and that case law "directs courts to consider the financial resources of the plaintiff in awarding attorney's fees to a prevailing defendant."<sup>12</sup>

The attorneys' fee provision also would allow defendants to recover fees if lawsuits were brought for an improper purpose. In the Senate debate, Senator Gregg noted that this concept was drawn

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<sup>6</sup> 20 U.S.C. § 1415(i)(3), P.L. 108-446 § 615(i)(3).

<sup>7</sup> 20 U.S.C. § 1415(i)(3)(B), P.L. 108-446 § 615(i)(3)(B).

<sup>8</sup> *Id.* These provisions are not to be construed to affect section 327 of the District of Columbia Appropriations Act of 2005 which provides for limitations on attorneys' fees in the District of Columbia.

<sup>9</sup> 150 Cong. Rec. S5349 (daily ed. May 12, 2004).

<sup>10</sup> 434 U.S. 412 (1978).

<sup>11</sup> *Id.* at 420.

<sup>12</sup> 150 Cong. Rec. S5349 (daily ed. May 12, 2004).

from Rule 11 of the Federal Rules of Civil Procedure<sup>13</sup> and that “in interpreting this language from Rule 11, courts must apply an objective standard of reasonableness to the facts of the case.”<sup>14</sup>

Attorneys’ fees are based on the rates prevailing in the community and no bonus or multiplier may be used.<sup>15</sup> There are specific prohibitions on attorneys’ fees and reductions in the amounts of fees.<sup>16</sup> Fees may not be awarded for services performed subsequent to a written offer of settlement to a parent in certain circumstances:

- if the offer is made with the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or ten days before an administrative proceeding begins;
- if the offer is not accepted within ten days; and
- 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.

The 2004 reauthorization added a requirement for a “resolution session” prior to a due process hearing. Essentially, this is a preliminary meeting involving the parents, relevant members of the IEP team, and a representative of the LEA who has decision-making authority.<sup>17</sup> Attorneys’ fees are not allowable for the resolution session.<sup>18</sup>

Like previous law, P.L. 108-446 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.<sup>19</sup> Attorneys’ fees may be reduced in certain circumstances including where the court finds

- that the parent or the parent’s attorney 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; or

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<sup>13</sup> *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...”

<sup>14</sup> 150 Cong. Rec. S5349 (daily ed. May 12, 2004).

<sup>15</sup> 20 U.S.C. §1415(i)(3)(C), P.L. 108-446 §615(i)(3)(C).

<sup>16</sup> 20 U.S.C. §1415(i)(3)(D), P.L. 108-446 §615(i)(3)(D).

<sup>17</sup> 20 U.S.C. §1415(f)(1)(B), P.L. 108-446 §615(f)(1)(B).

<sup>18</sup> 20 U.S.C. §1415(i)(3)(D)(iii), P.L. 108-446 §615(i)(3)(D)(iii).

<sup>19</sup> 20 U.S.C. §1415(i)(3)(E), P.L. 108-446 §615(i)(3)(E).

- the attorney representing the parent did not provide the school district with the appropriate information in the due process complaint.<sup>20</sup> This information includes the name of the child, the child's address and school, or available contact information in the case of a homeless child, a description of the problem, including facts relating to the issue, and a proposed resolution to the problem.<sup>21</sup>

As in previous law, P.L. 108-446 contains a specific exception to these circumstances where attorneys' fees may be reduced. There shall be no reduction if the court finds that the SEA or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of the section.<sup>22</sup>

## Final Regulations

The final regulations for P.L. 108-446 were issued on August 14, 2006.<sup>23</sup> Generally, the Department of Education (ED) declined to elaborate on the statutory language, observing that "further guidance on the interpretation of this statutory language is not appropriate since judicial interpretations of statutory provisions will necessarily vary based upon case-by-case factual determinations, consistent with the requirement that the award of reasonable attorneys fees is left to a court's discretion."<sup>24</sup>

One of the issues ED declined to address in the regulations involved whether a court could award fees to non-attorney advocates who accompanied and advised the parents at a due process hearing. ED stated that "[l]ay advocates are, by definition, not attorneys and are not entitled to compensation as if they were attorneys."<sup>25</sup> ED also noted that the Supreme Court's recent decision in *Arlington Central School District Board of Education v. Murphy*<sup>26</sup> held that if Congress wishes to allow recovery of experts' fees by prevailing parents, it must include explicit language authorizing such a recovery. Such explicit language was not added in the 2004 reauthorization of IDEA. The Supreme Court's rationale was found by ED to be controlling concerning the fees of non-attorney experts, and the Department of Education declined to add a regulatory provision on the subject.<sup>27</sup>

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<sup>20</sup> 20 U.S.C. §1415(i)(3)(F), P.L. 108-446 §615(i)(3)(F).

<sup>21</sup> 20 U.S.C. §1415(b)(7), P.L. 108-446 §615(b)(7).

<sup>22</sup> 20 U.S.C. §1415(i)(3)(G), P.L. 108-446 §615(i)(3)(G).

<sup>23</sup> For detailed discussion of major provisions in the final regulations see CRS Report RL33649, *The Individuals with Disabilities Education Act (IDEA): Final Regulations for P.L. 108-446*, by (name redacted) and (name redacted).

<sup>24</sup> 71 Fed. Reg. 46708 (Aug. 14, 2006).

<sup>25</sup> 71 *Federal Register* 45708, Aug. 14, 2006.

<sup>26</sup> 126 S.Ct. 2455, 165 L.Ed. 526, 2006 U.S. LEXIS 5162 (June 26, 2006). For a more detailed discussion of this case see CRS Report RS22465, *The Individuals with Disabilities Education Act (IDEA): The Supreme Court Denies Expert Fees in Arlington Central School District v. Murphy*, by (name redacted).

<sup>27</sup> 71 *Federal Register* 45708, Aug. 14, 2006.

## **Author Contact Information**

(name redacted)  
Legislative Attorney  
[redacted]@crs.loc.gov, 7-....



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