

June 19, 2008

The Honorable Michael N. Castle  
1233 Longworth House Building  
Washington D.C. 20515

Dear Congressman Castle:

The State Council for Persons with Disabilities (SCPD) has reviewed the IDEA Fairness Restoration Act (H.R. 4188). This bipartisan bill would allow prevailing parents to recoup their expert witness costs in litigation under the Individuals with Disabilities Education Act (IDEA). The bill would restore Congress' original intent in granting parents the ability to recover their attorneys' fees and costs when they prevail in IDEA cases. SCPD endorses the proposed legislation since it would remedy the gross imbalance of resources between parents and school districts.

Parents prevail in IDEA cases only when they show that the school district provided an education so inferior that it failed its legal obligations. But while they can recover their attorneys' fees, they cannot recover their expert witness costs as a result of the Supreme Court's decision in *Arlington Central School District v. Murphy* (2006). The IDEA Fairness Restoration Act would override the Supreme Court's decision and help even the playing field for parents of children with disabilities.

Congress included in the IDEA the right to a due process hearing because it recognized that parents needed an independent dispute resolution process to enforce their rights to a free appropriate public education for their children with disabilities. Expert testimony is often necessary in such cases.

In 1986, Congress amended the IDEA to allow parents to recover their attorneys' fees when they prevail in due process. This was necessary to reverse a Supreme Court decision forbidding such recovery. Congress amended the IDEA because it recognized that parents need lawyers and experts to exercise their right to due process. Congress knew that parents have substantially fewer resources than school districts and many cannot afford expert witness fees. That reality still has not changed. Approximately 36% of children with disabilities live in families earning less than \$25,000 a year and over 2/3 earn less than \$50,000 a year. Few parents can afford the thousands of dollars needed to pay qualified medical, educational, and technical experts. While parents must hire expert witnesses to testify, school districts can use therapists, psychologists, and other expert witnesses on their own payroll.

Approximately 7 million children with disabilities are currently covered by the IDEA. Nonetheless,

parents proceed to litigation only as a last resort. In 2003, the GAO reported that there were only 5 hearings per 10,000 special education students. Parents should not be deprived of their right to due process for lack of resources.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed legislation.

Sincerely,

Daniese McMullin-Powell, Chair  
State Council for Persons with Disabilities

Cc: Developmental Disabilities Council  
Governor's Advisory Council for Exceptional Citizens

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