

IDEA Fairness Restoration Act of 2014

Restoring Equity to Special Education Due Process Hearings

Background:

The Individuals with Disabilities Education Act (IDEA) requires states to provide a free and appropriate public education in the least restrictive environment to children with disabilities. In order to do this, schools work with parents to develop an Individualized Education Program (IEP) for each student. When there is disagreement in creating an IEP or if parents feel that a school is not meeting the legal obligations under IDEA, they may seek an impartial due process hearing. In 2005, the U.S. Supreme Court ruled in *Schaeffer v. Weast*¹ that the burden of proof in such hearings belongs to the party bringing the suit. This includes the cost of expert witnesses, such as psychologists; pediatricians; physicians; therapists; educational, inclusion, and positive behavioral support experts; and others.

Though either party can initiate a suit, generally parents challenge school district decisions. As part of the due process hearing, parents may choose to use experts. If they do, they are required to cover the cost of expert witnesses. School districts, particularly larger school districts, often have direct access to expert witnesses. This causes an imbalance of access to information in favor of schools. Under IDEA, the prevailing party of a due process hearing is able to recover attorney's fees. However, in 2006 the Supreme Court ruled that expert witness fees were not part of attorney's fees and therefore schools did not need to reimburse parents for the costs of expert witnesses even when a family prevailed in the case.² Since that time, parents have not been able to recover expert witness fees even if the court rules in their favor. This makes it more difficult for families, especially those with limited resources, to protect the educational rights of their children. Parents are discouraged from bringing such cases to trial and financially burdened even if the school is found at fault.

Bill Summary:

The *IDEA Fairness Restoration Act* ensures that parents are reimbursed for expert witness fees if they prevail in a due process hearing. By defining that expert witness fees are part of attorney's fees, the Act enables parents to recover these costs when a school is found at fault. Any tests or evaluations needed to prepare the family's case can also be covered. This bill restores the initial intent of IDEA to cover the costs of expert fees and examinations when schools are found to be not meeting their legal requirements to provide a free and appropriate public education for children with disabilities. The Act would remove financial barriers in due process hearings, empowering parents to advocate for the education their children are guaranteed under IDEA.

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¹ <http://www.supremecourt.gov/opinions/05pdf/04-698.pdf>

² <http://www.supremecourt.gov/opinions/05pdf/05-18.pdf>