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NEW LEGISLATION INTRODUCED TO RESTORE PARENT RIGHT TO EXPERT WITNESS FEES BILL WILL ENSURE MEANINGFUL RIGHT TO DUE PROCESS, PROTECT CHILDREN WITH DISABILITIES

Today, Congressman Chris Van Hollen of Maryland and Congressman Pete Sessions of Texas introduced the IDEA Fairness Restoration Act. This bipartisan bill would allow prevailing parents to recover their expert witness costs in due process and litigation under the Individuals with Disabilities Education Act. The bill is important to protect parents, most of whom cannot afford to pay thousands of dollars for expert witnesses. The right to due process must be affordable to be meaningful.

In 1986, Congress adopted legislation that was intended to allow prevailing parents to recover their expert witness fees. But in 2006, the Supreme Court ignored Congress' intent and held that parents cannot recover these costs in *Arlington Central School District v. Murphy*. The IDEA Fairness Restoration Act will override the Supreme Court's decision.

Few parents can afford the thousands of dollars needed to pay qualified medical, educational, and technical experts needed in IDEA due process. Almost 2/3 of children with disabilities live in families earning under \$50,000 a year. By contrast, school districts can pay their experts with taxpayer dollars or use staff already on their payroll. With their greater resources, school districts are no match for parents. Congress should allow parents in IDEA cases to recover expert fees just like prevailing plaintiffs in ADA, Title VII, and other civil rights cases.

The Murphy decision has the potential to affect many many families. Here are some examples:

- A Pennsylvania 8th grader with dyslexia and a written expression disorder had struggled intensely with reading and writing all of his life. His single mother sought due process to implement the Independent Educational Evaluation recommendations. She had to borrow \$1,400 to pay the evaluator to testify. She also had to pay for the expert's time during two days of school district cross-examination. Before the Supreme Court's *Murphy* decision, she was able to recover these fees after prevailing and getting the scientifically-based reading instruction to which her son was entitled. After *Murphy*, she would not.
- Many attorneys, in small/solo practices, report being unable to take pro bono cases because neither they nor their clients can pay the expert fees. Others report

that where they had previously been able to lay out funds for expert witnesses because parents could recover them, they no longer could afford to do so.

- From a Special Education Advocate in the Midwest, “Since Arlington, I have had no fewer than three clients who had to withdraw their request for a hearing, and no fewer than five clients who wanted to request a hearing but did not, due to the fact that they could not afford witness fees and costs.” She explained how one of her clients had become deeply depressed because he was powerless to stop the school district from denying his children the educational services they needed.

Last year, over 100 organizations joined COPAA in supporting the IDEA Fairness Restoration Act and overriding Murphy.

The right to a hearing before an impartial, independent hearing officer is meaningful only if parents can afford it. Approximately 7 million children with disabilities are 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 prevail in IDEA cases only when they show that the school district provided an education so inferior that it failed its legal obligations. But when this happens, due process must be affordable for parents.

COPAA is grateful for the hard work and leadership of Congressman Van Hollen and Congressman Sessions on this bill. We will have copies of the IDEA Fairness Restoration Act on our webpage, www.copaa.org in the next few days. (We do not yet have a bill number but will post that when we get it.) Please stay tuned for additional activities to support this important legislation to restore Congress' original intent and protect children with disabilities.

For more information on the IDEA Fairness Restoration Act and the impact of Arlington C.S.D. v. Murphy on parents, see: <http://www.copaa.org/pdf/MurphyBrochure.pdf>

Please feel free to share and forward this legislative alert.

Thank you,
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