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**Cosponsor the IDEA Fairness Restoration Act, S. 613 and H.R. 1208
Restore Equity and Make Due Process Hearings Affordable
For Parents of Children with Disabilities**

Please cosponsor the IDEA Fairness Restoration Act, S. 613 and H.R. 1208 sponsored by Senator Tom Harkin (D-IA), Senator Barbara Mikulski (D-MD), and Senator Bernie Sanders (I-VT), and H.R. 1208, sponsored by Representatives Chris Van Hollen (D-MD) and Pete Sessions (R-TX)..

In *Arlington Central School District v. Murphy* (2006), the Supreme Court ruled that parents cannot recover expert witness fees in IDEA due process hearings and court cases. Few parents can afford the money needed for medical, educational, and other expert testimony. Low and middle-income parents are particularly impacted. The situation is made even worse because parents have the burden of proof in these hearings. The IDEA Fairness Restoration Act would override *Murphy* and enable parents to recover their expert witness fees. It will restore Congress' intent.

The IDEA Fairness Restoration Act Would Restore Bipartisan Congressional Intent. In 1986, Congress enacted the Handicapped Children's Protection Act, to enable prevailing parents to recover their attorneys' fees in IDEA cases, as in all civil rights cases. Congress made clear its intent to include expert witness fees in the definition of recoverable fees. The Joint Statement of the Conferees was clear "The conferees intend that the term 'attorneys' fees as part of the costs' include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found necessary to the preparation of" the parents' case." [1] The Supreme Court acted contrary to Congress' intent in the *Murphy* case. This bill will simply restore Congress' original intent and protect children with disabilities.

Allowing parents who prevail to recover expert fees simply gives them the same right that plaintiffs have under the Americans with Disabilities Act and similar laws. Problems with expert fees were made worse by *Schaffer v. Weast*, as parents now have the burden of proof but cannot afford the witnesses to bear that burden.

Expert Witnesses Necessary But Difficult to Afford. For 35 years, the Individuals with Disabilities Education Act (IDEA) has required school districts to provide a free appropriate public education to children with disabilities. But when a school provides an education so bad and wholly inferior that it fails the school district's legal obligations, parents may seek an impartial hearing.

Parents must have expert witnesses for these hearings. Expert witnesses can include psychologists; pediatricians and physicians; speech, occupational, physical and other therapists; educational experts; inclusion experts; positive behavioral support experts, and others. Parents must prove that the school district did not provide their children with a free appropriate public education and meet certain legal standards to do so. Expert testimony is essential to proving this. Expert witness

testimony ensures that children with disabilities get the educational programs, accommodations, and supports they need.

Many low and middle income parents cannot afford the expense of expert witness fees. For them, the door to justice is barred. Approximately 36% of children with disabilities live in families earning less than \$25,000 a year; about 2/3 earn less than \$50,000 a year. [2] Parents of children with disabilities are also 67% more likely to be unemployed than parents of nondisabled children. They are also 50% more likely to have a high school education or less. [3]

The situation is even more unfair when school districts sue parents. Districts can use their own staff as expert witnesses, but parents must pay for expert witnesses whose testimony can help defend them. Parents who cannot raise the money for experts may be left with little defense.

The Proposed Bill. Like all civil rights statutes, the IDEA allows prevailing parents to recover their attorneys' fees. S. 613 and H.R. 1028 will amend the IDEA, 20 U.S.C. 1415(i)(3), to state that prevailing parties can also recover their expert witness fees at the same time. This will bring the IDEA into sync with the Americans with Disabilities Act and similar statutes that allow recovery of expert witness fees.

Hearings are Rare. Few parents go to hearings, as most try to resolve things through negotiations with the school district. In 2003, before the Murphy decision, the Government Accountability Office reported that there were only 5 hearings per 10,000 special education students. But for those parents who must go to a hearing to protect their children's rights under the IDEA, due process must be affordable. The IDEA Fairness Restoration Act would restore that balance. Only prevailing parents will be able to recover expert witness fees. Parents who do not prevail cannot recover fees. Thus, the bill will not lead to frivolous lawsuits. It will work a lot like the ADA.

Please cosponsor the IDEA Fairness Restoration Act, S. 613 and H.R. 1208. It is important to restore Congressional Intent and enable parents to afford due process hearings.

Notes:

[1] "Joint Explanatory Statement of the Committee of the Conference," H.R. Conf. Rep. 99-687 (1986) in support of the Handicapped Children's Protection Act of 1986.

[2] Special Education Elementary Longitudinal Study (SEELS): The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and Their Households (2002).

[3] The Individual and Household Characteristics of Youth With Disabilities: A Report from the National Longitudinal Transition Study-2 (NLTS-2) (2003)).

The bills are available here:

- The Senate bill, (S.613) is here: <http://hdl.loc.gov/loc.uscongress/legislation.112s613>
- The House bill (H.R. 1208) is here: <http://hdl.loc.gov/loc.uscongress/legislation.112hr1208>

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