



## **The IDEA Fairness Restoration Act**

Children and families need Congress to re-establish the right of prevailing parents to recover the cost of expert witness fees as a result of due process under the Individuals with Disabilities Education Act (IDEA).

### **Background on Expert Witness Fees**

- Under IDEA, every child with a disability is required to have available to them a free appropriate public education (FAPE); achieved through developing, implementing and revising an individualized education program (IEP) in accordance with IDEA regulations.
- It is well established that a FAPE prepares a child for meaningful employment, higher education and lifelong learning, and full participation in his or her community. One of the most powerful protections that Congress provided in the IDEA is the right to an impartial due process hearing to protect each child's right to a free appropriate public education (FAPE).
- In 1986, Congress amended IDEA and explained in the conference report that when parents go to due process and win their case, a judge could award attorney's fees that are "reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the parent or guardian's case."
- However, in 2006 the provision was challenged and the U.S. Supreme Court, in *Arlington Cent. Sch. Dist. v. Murphy* ruled that courts could no longer award expert witness fees or other expenses that were not explicit in federal statute.

In cases involving IDEA rights, parents bear the burden of proof and must pay for qualified expert witnesses to present admissible evidence—that is often complex and technical—to establish what the child needs in order to receive FAPE. Without the ability to recover expert witness fees, few parents have the option to fully exercise their due process rights. Parents should not have to be affluent to vindicate their child's civil rights.

### **Why Congress Must Restore Expert Witness Fees via *The IDEA Fairness Restoration Act***

- Most school and family disputes are over a child's placement and IEP, which are rights granted to each child with a disability under IDEA (GAO-03-897)
- Due process disputes are not a common remedy between families and schools: In 2000, only 5 due process hearings were held per 10,000 students with disabilities (GAO-03-897) and just .27% of the 6 million eligible families exercise this right. (IDEA data <http://tadnet.public.tadnet.org/pages/712>)
- Expert witnesses are essential and costly but most families cannot afford them: 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. When COPAA polled its membership, they expressed that "experts are critical 100% of the time in due process cases," and they say they need the experts "early and often" in every case.

**Support *The IDEA Fairness Restoration Act* so that every family who may need to exercise due process rights can afford to do so, knowing they will be compensated for witness fees if they prevail.**