

Statement Of Senator Harkin On Introducing the IDEA Fairness Restoration Act, S.613, on March 17, 2011

Ensuring that all students, regardless of background or ability, receive an education that gives them the opportunity to live a successful and fulfilling life has always been a major focus of my career in public service. To achieve this goal, I have fought especially hard for students with disabilities to have access to the general education curriculum and the services and supports they need to succeed, and to safeguard their rights under the Individuals with Disabilities Education Act (IDEA). That is why I am pleased to introduce the IDEA Fairness Restoration Act, which my colleague Rep. Van Hollen will also be introducing in the House today. This critical legislation will remove the financial barrier that families, especially low- and middle-income families, face as they pursue their children's rights to the free, appropriate public education they deserve and are entitled to under the Fourteenth Amendment.

When Congress originally passed IDEA, we recognized the vital importance of parent and school collaboration in special education and required they jointly develop an Individualized Education Plan (IEP) to identify goals to promote the academic achievement of students with disabilities. In general, this partnership has served students well. There are, however, times when schools have not fulfilled their responsibilities to provide an appropriate education. In these cases, IDEA provides parents the right to challenge the schools through mediation and due process. To make their argument, families often need access to expert witnesses who can assess the student's needs and testify about whether the current IEP meets those needs. These expert witnesses are a resource that many families cannot afford, but without access to them, families may be unable to make their case.

When Congress amended IDEA in 1986, it recognized the financial barriers that parents face in pursuing due process to resolve disagreements with their school and specified in the Conference Committee Report that when the court finds in favor of the parents a judge could award attorney's fees, including "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." For years, parents who prevailed in judicial proceedings were awarded these fees, as Congress intended. But in 2006, the U.S. Supreme Court ruled in *Arlington Central School District v. Murphy* that courts could no longer award these fees because Congress made its intention explicit in the Conference Report rather than in statute. As a result, many parents are discouraged and even prevented from pursuing meritorious cases to secure the rights of their children. Low- and middle-income families are particularly hard hit.

This IDEA Fairness Restoration Act clarifies Congress' express intent that parents should recover expert witness fees, as they currently can do with attorneys' fees, if they prove that the school system has wrongfully denied their child an appropriate education as defined by IDEA. By including "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" and reestablishing the right of judges to award such fees to parents who prevail in IDEA cases, as Congress intended, this legislation will level the playing field and restore the ability of low- and middle-income parents to be effective advocates for their children's educational needs.

This legislation is an essential step for protecting the rights of students with disabilities and ensuring that all families, regardless of their financial resources, can advocate for and protect their children's rights through due process.

TEXT OF IDEA FAIRNESS RESTORATION ACT BILL

[Bipartisan bill introduced March 17, 2011 in Senate by Senator Tom Harkin, Chair, Health, Education, Labor and Pensions Committee, Senator Barbara Mikulski (D-MD), and Senator Bernie Sanders (I-VT); and in House of Representatives by Congressmen Chris Van Hollen and Pete Sessions.]

S.613 and H.R. 1208

A BILL

To amend the Individuals with Disabilities Education Act to permit a prevailing party in an action or proceeding brought to enforce the Act to be awarded expert witness fees and certain other expenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘IDEA Fairness Restoration Act.’

SEC. 2. INCLUSION OF EXPERT WITNESS FEES AND OTHER EXPENSES AS ATTORNEYS’ FEES.

(a) In General- Section 615(i)(3) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(i)(3)) is amended by adding at the end the following new subparagraph:

‘(H) INCLUSION OF EXPERT WITNESS FEES AND OTHER EXPENSES AS ATTORNEYS’ FEES- For the purposes of this paragraph, the term ‘attorneys’ fees’ shall include the fees of expert witnesses, including the reasonable costs of any test or evaluation necessary for the preparation of the parent or guardian's case in the action or proceeding.’.

(b) Effective Date- The amendment made by subsection (a) shall apply to any action or proceeding brought under section 615 of the Individuals with Disabilities Education Act (20 U.S.C. 1415) that has not been finally adjudicated as of the date of the enactment of this Act.