



**The Council of Parent Attorneys and Advocates, Inc.**  
*A national voice for special education rights and advocacy*

October 1, 2008

***Protecting the Educational and Civil Rights of Children with Disabilities***

There are 7.1 million children with disabilities in America. Almost 33 years ago, a bipartisan Congress passed the Individuals with Disabilities Education Act so that children with disabilities would receive a free appropriate public education, a right they had long been denied. Sadly many children with disabilities continue to be denied an education that will enable them to achieve maximum independence and succeed in post-secondary education and the workforce as adults. Moreover, their parents—whom Congress envisioned as equal partners in developing their children’s educational programs—face a playing field that is neither balanced nor fair. They fight an uphill battle to get the services that their children need, largely resulting from recent Supreme Court decisions. They also face significant economic burdens, at times related to caring for their child. Almost 2/3 of children with disabilities live in families earning less than \$50,000 a year; slightly over 1/3, in families earning less than \$25,000 a year.

As a national organization dedicated to the rights of children with disabilities, the Council of Parent Attorneys & Advocates (COPAA) has been concerned about these issues. The promise of the IDEA three decades ago must be made a reality for every child today. The following are some of the actions that we believe are needed to help do this and have supported for several years. The list is not an exhaustive list of all reforms needed.

**1. Improve the state of special education so that all children with disabilities receive a good education that prepares them for adulthood, employment, and maximum independence.**

Too many children with disabilities receive weak and inferior educations that do little to prepare them for post-secondary education, employment, and maximum independence as adults. The most recent GAO study found that 30 of 31 states studied had failed to comply with the IDEA. Over half of the failures were directly related to providing critical services such as counseling, speech and other therapies, and assistive technology. Moreover, many parents report increasing concerns that their children aren’t being taught the essential skills they need to succeed, falling further behind and winding up in need of intensive services to catch up—if they do at all. Accommodations and supports are often inadequate or non-existent. Many schools fail to identify many children with disabilities and once identified, poorly serve them. And 30 years after IDEA’s enactment, many children with disabilities are still being placed in segregated classrooms, away from their peers, simply because of their disabilities. In some of the largest states – California, Pennsylvania, Illinois, New Jersey and Virginia – less than half of all students with disabilities spend most of the school day in regular class.

These fundamental problems require dedicated leadership. Steps must be taken by our nation’s leaders to cure them, and to provide children with disabilities with the meaningful education they deserve. Our society pays huge social and economic costs when children with disabilities receive ineffective educations. Nearly 1/3 of youth with disabilities drop out of school, facing far fewer employment opportunities than their nondisabled peers.

## **2. Fully fund the Individuals with Disabilities Education Act, as Congress and the President promised 30 years ago.**

In 1975, Congress and the President promised full funding of the IDEA, but this promise continues to elude our grasp. COPAA has long advocated for full funding, including supporting legislation introduced by Senator Sanders this year. COPAA members see the effects of IDEA's unfunded mandate every day. Evaluations of children are incomplete; children do not receive effective or appropriate services and therapies; accommodations and supports are inadequate or non-existent; and providers of services are overworked, under-trained, and under-supervised. While this is not totally due to the lack of funds, the failure to fully fund the IDEA is substantial part of the problem.

## **3. Level the playing field for parents of children with disabilities; override Supreme Court decisions that impede parents from meaningfully exercising the right to due process.**

Parents who advocate for their children face an increasingly unlevel playing field. School personnel control the special education process, and vastly outnumber parents at meetings about their child's program, called the Individualized Education Program (IEPs). Rather than participating as equals as Congress had envisioned in enacting the IDEA, many parents are merely tolerated or worse yet, intimidated. They have little access to the information that school districts maintain about their children's education and services, and their experts and advocates are often denied the opportunity to observe the children. Some of the parents themselves have disabilities which are not accommodated in the special education process.

Under the IDEA, when a school district provides an education so inferior that it fails its legal obligations, parents have the right to seek a hearing before an impartial hearing officer. This is the primary method by which the IDEA is enforced. Yet, hearings are rare; in 2004-05, the median number of hearings per state was 1.4 per 10,000 students with disabilities, and some of those hearings were brought by school districts.

When parents do seek hearings, school districts often litigate special-education disputes to the bitter end when they could have resolved them. The nearly bankrupt Ravenswood, CA school district paid \$2.1 million to its law firm to defend a program a federal court found grossly deficient. In another case, a national law firm charged a Georgia school district \$1.3 million to fight parents who had requested an Independent Educational Evaluation for their child with autism. Rather than provide it, the school district sued. The district rebuffed eight settlement offers from the parents, until the parents finally obtained the evaluation. A Minnesota school district paid over \$250,000 in lawyer fees to contest a \$600 assistive technology device for a student that, in the end, it was required to provide anyway.

Unlike the school districts, most parents cannot afford expert witnesses. They often lack the lawyers and resources to match the districts' well of resources during months or years of protracted proceedings. To help address these inequities, we believe that the following three actions should be taken, among others:

- ◆ **Support and pass the IDEA Fairness Restoration Act, H.R. 4188, and enable parents who prevail at a hearing to recover their expert witness costs, as many other civil rights plaintiffs do.** This bill would restore Congress' original intent and override the Supreme Court's decision in *Arlington Central School District v. Murphy* (2005). Few parents can afford the thousands of dollars needed to pay qualified medical, educational, and technical experts. School districts can use therapists, psychologists, and other expert witnesses on their own payroll, or hire outside experts with taxpayer dollars. Title VII and other civil rights statutes provide that plaintiffs who prevail may recover their expert witness fees.
- ◆ **Support and pass the Civil Rights Act of 2008.** This bill will override both *Murphy* and *Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.* (2000). *Buckhannon* often prevents parents from recovering their attorneys' fees when their cases settle but they were the catalyst that caused the school district to voluntarily change its conduct and provide relief. The IDEA places the responsibility on schools to provide services for these children; it does not place the responsibility on the parents. School districts often settle at the last minute, after parents have been forced into prolonged and costly litigation and hearing preparation, leaving them unable to pay hefty legal bills. Many parents are deterred from seeking a remedy when their children are denied a free appropriate public education because they cannot recover attorneys' fees if they settle, and cannot afford to pay them themselves. Because the IDEA provides only injunctive relief, appropriate attorneys' fees are necessary to adequately enforce the law.
- ◆ Support and pass legislation that would place the burden of proof in IDEA hearings on school districts. This was the position supported by the majority of Courts of Appeal until the Supreme Court decided otherwise in *Schaffer v. Weast*. School districts should bear the burden of proof because IDEA requires them to affirmatively identify, evaluate, and provide a free appropriate public education to children with disabilities. Parents are at a great disadvantage in IDEA cases. Lacking the resources and expertise that school districts have, they fare far worse in hearings. Many parents proceed pro se, unrepresented by counsel. Many parents cannot afford expert witnesses. Placing the burden of proof on the school district simply helps level the playing field for parents when they are forced to seek a hearing because the school district has denied their child a free appropriate public education. Such legislation needs to occur at both the federal and state levels.

### **3. Stop schools from using abusive interventions on children with disabilities.**

We believe it is important to stop the use of restraints, seclusion, and aversive interventions on children with disabilities. No child with a disability should be subjected to neglect, abuse, or risk of death in the name of treatment or under the guise of providing educational or therapeutic services, regardless of the setting. Abuse violates children's rights and dignity and is neither educational nor effective. Children should receive effective positive behavior supports developed within a comprehensive, professionally-developed plan of behavioral accommodations, supports, and interventions. Effective federal and state legislation is important. Among other actions, we support Congressman George Miller's bill, H.R. 6358, to prevent abuse in residential schools, and we ask that similar protection be extended to students in public and private day schools.

## **Conclusion**

When children with disabilities receive inappropriate educations, America pays enormous social and economic costs. Children with disabilities deserve the same equality of opportunity as other children. Obstacles to parents' ability to enforce the IDEA deny their children access appropriate educations. We ask all Americans to join us in standing up for the rights of children with disabilities, through supporting these actions and others.

Sincerely yours,

Alice K. Nelson, Chair, Board of Directors  
Robert Berlow, Chair, Government Affairs  
Jessica Butler, Co-Chair Government Affairs  
Denise Marshall, Executive Director  
[strongidea@copaa.org](mailto:strongidea@copaa.org)