

Grassroots effort seeks to level the playing field

Momentum is building behind a movement that would level the playing field for everyday parents challenging deep-pocket school districts in the legal system. Called the IDEA Fairness Restoration Act, it would force districts to reimburse parents for expert witness fees if their cases prevail in court.

Supporters are urged to contact their congressional representatives next week by phone, email or letter to urge passage of H.B. 2740.

The bill would override the 2006 U.S. Supreme Court decision of *Arlington Central School District v. Murphy*. The Maryland-based Council of Parent Attorneys and Advocates (COPAA), which is

driving the effort to override *Murphy*, says that ruling goes against the intent of the Handicapped Children's Protection Act of 1986.

Since *Murphy*, parents have had to spend the money for expert witnesses while school districts use their staff members and/or rely on public coffers to pay witness costs. The IDEA Fairness Restoration Act would require the school district to reimburse parents for those fees, if a court ultimately determined the district was in the wrong.

COPAA has more details about the bill in a [pamphlet](#) that also reviews some of the ways the *Murphy* ruling has hampered parents.

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Supreme Court ruling has national potential

The U.S. Supreme Court's ruling in favor of a family seeking private school tuition reimbursement could impact districts around the country. The 6-3 decision supported past rulings that allowed reimbursements under IDEA, but went further to clarify that a student doesn't even need to attend his or her public school first.

A portion of the decision noted that fewer than 1 percent of parents pursue private education for their children with special needs, and that reimbursement would only come after a federal court determined that the private

school met needs that the public district did not. Still, the ruling will stand as a new guide for districts around the United States, leading to the possibility that more families will follow the route of the parents in this 5-year-old case.

Identified only as T.A., the original plaintiff was a high school student whose district team did not diagnose with a disabling impairment. A two-year battle resulted in an independent hearing officer's determination that attention deficit hyperactivity disorder (ADHD) did indeed qualify T.A. for special education services, but by the time the district drafted an education plan

he parents had already placed him in a private school. Reimbursement costs could top \$65,000.

Legal costs, meanwhile, could be \$500,000. The district's superintendent told [The Oregonian](#) newspaper that the school board challenged the case all the way to the Supreme Court not because of its financial benefits but because of the precedent it would set by giving in. Other districts have contributed to the costs, too.

The complete affirmative [opinion](#) and dissenting view are available online from the Supreme Court.

Custody, not biology, gives right to participate in education decisions

In the eyes of an appeals court, a New York City father has no right to participate in educational decisions for his son because he has neither sole nor shared custody. That recent ruling – from the U.S. Court of Appeals for the Second Circuit – seems to keep non-custodial parents out of the educational

schools when his complaints about an IEP went unheard. Fuentes, the biological and non-custodial father of the boy, sought an administrative hearing to challenge the education plan's adequacy.

The appeals court sided with the district, saying that without joint custody or an order specifically

Court of Appeals for the Second Circuit – seems to keep non-custodial parents out of the educational loop if they're not in agreement with the custodial parent.

Jesus Fuentes brought a lawsuit against NYC

The appeals court sided with the district, saying that without joint custody or an order specifically granting authority regarding educational decisions, a non-custodial parents has no right under IDEA to contest his or her child's education plan.

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Seth N. Broder, Esq.

sbroder@broderlawgroup.com
www.broderlawgroup.com

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110 Marter Ave., Ste. 409
Moorestown, NJ 08057
(856) 234-8768 Phone
(856) 772-0532 Fax