

School Not Required to Pay Attorneys' Fees Even Where IDEA Violation Found



Devin Bates

dbates@mwlaw.com

(501) 688.8864

12/30/2019

A hearing officer with the Arkansas Department of Education (“ADE”) finds that a school violated the Individuals with Disabilities Education Act (“IDEA”) by failing to evaluate and develop a behavior intervention plan (“BIP”) to address a student’s behavior deficits. Under the IDEA, this constituted a denial of a Free Appropriate Public Education (“FAPE”), so the ADE granted relief to the parent. The IDEA also allows for the recovery of reasonable attorneys’ fees. Because the ADE ordered the creation and implementation of a BIP, is the parent entitled to recover attorneys’ fees for having to bring the claim? No, according to a recent decision by the Eighth Circuit Court of Appeals evaluating a certain set of facts.

Lessons Learned

Remedy requiring action by school AND parent. Even though the parent received some level of victory, the ADE Hearing Officer’s opinion against the school required action by both the school and the parent. Instead of taking the action ordered by the ADE Hearing Officer, the parent immediately moved the student to a new school. Thus, the parent’s action precluded implementation of the relief ordered. The Eighth Circuit followed an earlier case decided on virtually the same facts, and concluded that the school was not liable to the parent for attorneys’ fees in this situation.

Watch carefully for loopholes in statute awarding attorneys’ fees. While the general rule under the IDEA is that if the parent prevails they get attorneys’ fees paid by the school, there are notable exceptions. Illustrated here is one important one—what does it mean to “prevail?” By conducting legal research to fully understand what it means to “prevail,” the skilled education lawyer can sometimes defeat the award of attorneys’ fees through creative legal arguments. Here, the Eighth Circuit agreed with the District Court that the parent was not a “prevailing party” because of the parent’s actions, and therefore not entitled to a recovery of fees against the school.

IDEA litigation is costly for Arkansas schools. Cases challenging a school’s actions under the IDEA are not rare in Arkansas. These disputes begin with administrative hearings at the ADE, and then can be filed in federal district court. In some instances an appeal is taken to the United States Court of Appeals for the Eighth Circuit. Litigating these cases can take years, and can be extremely expensive for schools. Attorneys’ fees and costs can be highly variable and make budgeting a challenge. It would be wise for schools to consider all avenues for controlling this cost, including flat fee representation, fixed fee menus, fee caps, and other alternative fee arrangements. Decisions like the one discussed above send an important message to parents looking to sue a school over an IDEA issue: the Court required the parent to uphold their end of the bargain as it was dictated by the ADE, rather than allowing a parent to remove their student from the district and still collect fees. At the end of the day, all students are better served when legal costs are controlled, keeping tax dollars in the classroom rather than in the courtroom.

Case reference: *Wofford v. N. Little Rock Sch. Dist.*, No. 19-1730 (8th Cir. Dec. 20, 2019).

