
From: Denise Lanchantin Dwyer <Denise@DLDwyerLaw.com>
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To: Comments Mailbox
Subject: [External]Comments on Recommendations Relating to Retainer Fee Agreements in Fee-Shifting Cases

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Dear Judge Grant:

I am a sole practitioner whose practice is primarily representing parents of students with disabilities. I write in support of the comments submitted by John D. Rue, Esq. regarding Section 7 of the recommendations of the committee regarding retainer fee agreements in fee-shifting cases. Mr. Rue's detailed arguments will not be repeated here, but he has cogently summarized the unreasonable predicament in which parents of students eligible for special education find themselves as do competent counsel who could represent them.

Although Congress designed the special education process, including its dispute resolution procedures, to be a collaborative effort between parents and school districts, the reality in New Jersey is that unrepresented parents are very unlikely to achieve favorable results in due process hearings in the Office of Administrative Law, and even less so if they appeal an unfavorable decision to the U.S. District Court. (For the past two years, I presented the case law review at the New Jersey Institute for Continuing Legal Education's annual Hot Topics in Special Education seminar.) Despite the fact that administrative law judges routinely note that they do not have the authority to award prevailing party fees in those cases, they regularly permit waivers of such fees to be part of negotiated settlement agreements, and do not hesitate to adopt such settlement agreements as part of an order that is final under the Individuals With Disabilities Education Act. Currently in New Jersey, only wealthy parents and a very few fortunate ones whose cases are accepted for representation by organizations such as Disability Rights New Jersey and Rutgers Law School's Education and Health Law Clinic are certain to have access to competent counsel in this highly specialized area of law.

I urge reconsideration and revision of Section 7 of the committee's report before adoption of its recommendations.

Respectfully submitted,

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