



The Council of Parent Attorneys and Advocates, Inc.

A national voice for special education rights and advocacy

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January 15, 2009

The Honorable Edward M. Kennedy

United States Senate

Washington, DC 20510

Re: *The Civil Rights Act: Protecting Children with Disabilities*

Dear Senator Kennedy,

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of parents, attorneys, and advocates who work to protect the civil rights of children with disabilities and ensure that they receive appropriate educational services. We thank you for introducing S. 2554, the Civil Rights Act of 2008, last Congress, and write to support introducing it again this year. The bill would override two Supreme Court decisions that have dangerously tilted the playing field against parents who exercise their due process rights to ensure that their children with disabilities receive the education to which the law entitles them.

Arlington Central School District v. Murphy (2006). By overriding this decision, Section 433(d) of the Civil Rights Act of 2008 will reinstate prevailing parents' right to recover expert witness fees in hearings under the Individuals with Disabilities Education Act. This will restore Congress' original intent in enacting the Handicapped Children's Protection Act of 1986. Few parents can afford the thousands of dollars needed to pay qualified medical, educational, and technical experts to testify on their children's behalf. Almost 2/3 of children with disabilities live in families earning under \$50,000 a year. School districts can use therapists, psychologists, and other experts they employ, or hire outside experts with taxpayer dollars. When prevailing parents cannot recover expert costs, the playing field is neither level nor fair, and parents cannot protect their children's rights. Section 433(d) in the 2008 Civil Rights Act will correct this gross inequity.

Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Res. (2000). By overriding this decision, Section 411 of the Civil Rights Act of 2008 will enable parents to recover attorneys' fees for cases when their cases settle but they caused the school district to voluntarily change its conduct. *Buckhannon* prohibits parents and other civil rights plaintiffs from recovering attorneys' fees in such cases unless their settlement is by judicial or administrative order. Yet, few hearing officers will order such consent decrees. *Buckhannon* has made it much harder for parents without substantial financial resources to find attorneys willing to take their cases. When parents do litigate, they often find that the school district settles at the last minute, after parents have been forced into prolonged and costly litigation and hearing preparation, creating legal bills they cannot afford. An override will deter school districts from doing so in the future. Because IDEA relies on parents as private attorneys general for enforcement, an override is important.

Thank you again for your strong support for the Civil Rights Act during past Congresses, and your strong work on behalf of children with disabilities for decades.

Sincerely yours,

Robert Berlow, Government Affairs Chair

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