UT LAW CLE | THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

40th Annual School Law Conference

February 12-13, 2025
Austin, Texas

Attorney's Fees in Special Education Litigation

Christopher Schulz

Christopher Schulz
Schulman, Lopez, Hoffer & Adelstein
9011 Mountain Ridge Dr., #210
Austin, Texas 78759

cschulz@slh-law.com
(210) 840-0022

Attorney's fees in special education litigation may be a driving factor in a school's decision to resolve a case. Federal court decisions from the past year have awarded fee amounts to prevailing parents in the amounts of $440,000,[1] $76,830,[2] and $29,622.[3] When approaching whether to settle a case and determining how much a school might be "on the hook" for attorney's fees, it can be helpful to know how the fees are calculated and how they can be reduced.

I. Attorney's Fees for Parents

A. Prevailing Party Status

The first step is to determine whether a parent is entitled to attorney's fees by figuring out if the parent won the hearing. To become a prevailing party, a party must obtain (1) a remedy that alters the legal relationship between the parties and fosters the Individuals with Disabilities Education Act's ("IDEA") purposes and (2) a judicial imprimatur on a material alteration of the legal relationship.[4]

A party does not have to wholly prevail to be a prevailing party. "A prevailing party is one that attains a remedy that both (1) alters the legal relationship between the school district and the handicapped child and (2) fosters the purposes of the IDEA."[5] In *Krawietz by Parker v. Galveston Indendent School District*, the Fifth Circuit affirmed the district court's determination that a special education hearing officer's ("SEHO") decision offered a "sufficient judicial imprimatur" to confer prevailing party status because the decision altered the legal relationship between the school and student by obligating the school to provide equitable and compensatory relief to the student.[6] The relief included training, counseling, and transition services for the student and fulfilled the IDEA's purpose of providing disabled students with a free appropriate public education.[7] Qualitatively, the student received relief for much of the relief sought. The fact that the student was not wholly successful does not mean that she was not a prevailing party.

However, depending on the relief, the student may not be a prevailing party if the student is not ultimately determined to be eligible for special education. In *R.B. v. North East ISD*, the SEHO ordered a school to pay for an independent evaluation to determine the student's

[1] *N.D. v. Reykdal*, No. 2:22-CV-01621-LK, 2024 WL 4875055, at *5 (W.D. Wash. Nov. 22, 2024).
[2] *Lynn v. District of Columbia*, No. 23-CV-2648 (DLF), 2024 WL 3967286, at *4 (D.D.C. Aug. 27, 2024).
[3] *Northeast Ind. Sch. Dist. v. I.M.*, 5:23-CV-769-DAE (W.D. Tex. July 15, 2024).
[4] *See Gary G. v. El Paso Indep. Sch. Dist.*, 632 F.3d 201, 207 (5th Cir. 2011) (quoting *El Paso Indep. Sch. Dist. v. Richard R.*, 591 F.3d 417, 421–22 (5th Cir. 2009)).
[5] *Jason D.W. v. Houston Indep. Sch. Dist.*, 158 F.3d 205, 209 (5th Cir. 1998). *See also Hensley v. Eckerhart,* 461 U.S. 424, 433 (1983) ("[P]laintiffs may be considered 'prevailing parties'... if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit"); *El Paso Indep. Sch. Dist. v. Richard R.*, 591 F.3d 417, 423 (5th Cir. 2009) ("[A] litigant must attain some judicial imprimatur on a material alteration of the legal relationship in order to be a prevailing party").
[6] *Krawietz v. Galveston Indep. Sch. Dist.*, No. 3:15-CV-203, 2017 WL 1177740, at *7 (S.D. Tex. Mar. 30, 2017), *aff'd sub nom*, Krawietz by Parker v. Galveston Indep. Sch. Dist., 900 F.3d 673 (5th Cir. 2018).
[7] *Id.*

eligibility.[8] The district court considered the evaluation and found that the evaluation did not provide the information needed to make an eligibility determination.[9] Because the plain language of the IDEA limits recovery of attorney's fees to the parent of a child who, by reason of an enumerated condition, needs special education and related services, the parents were not entitled to recover attorney's fees.[10] Under the IDEA, the district court has discretion to award reasonable attorney's fees "to a prevailing party who is the parent of a child with a disability."[11] The IDEA defines a "child with a disability" as a child with a disability "who, by reason thereof, needs special education and related services."[12] Recovery of attorney's fees is only available in IDEA proceedings to a parent of a "child with a disability."[13] Thus, the parent of a child who is not yet determined to be a "child with a disability" cannot recover attorney's fees under the IDEA.

Likewise, in *D.H.H. v. Kirbyville Consolidated Independent School District*, a parent did not prove that the child was eligible for special education, but the hearing officer awarded reimbursement of a private evaluation.[14] The court found that the party must prevail on "some significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."[15] The cost of reimbursement for the private evaluation does not alter the legal relationship because reimbursement for the evaluation was not the relief the parents sought.

B. Determining the Fee – Lodestar and *Johnson* Factors

The next step is to determine the amount of reasonable attorney's fees by calculating the "lodestar," which is the product of the number of hours reasonably and necessarily expended multiplied by the attorney's reasonable hourly rate.[16] From there, the court will determine whether to award the parent's full fee or whether to reduce the fee based on a number of factors.

[8] *R.B. v. N. East Ind. Sch. Dist.*, No. SA-20-CV-01441-JKP, 2022 WL 488500, at *4 (W.D. Tex. Feb. 16, 2022).
[9] *Id.* at *14.
[10] *Id.* at *19.
[11] 20 U.S.C. § 1415(i)(3)(B)(i)(I); 34 C.F.R. § 300.517.
[12] 20 U.S.C. § 1401(3)(A); T.B. ex rel. Debbra B. v. Bryan Indep. Sch. Dist., 628 F.3d 240, 243 (5th Cir. 2010).
[13] *T.B. ex rel. Debbra B.*, 628 F.3d at 243-46.
[14] *D.H.H. by Rob Anna H. v. Kirbyville Consol. Indep. Sch. Dist.*, No. 1:18-CV-00120-MAC, 2019 WL 4052200, at *3 (E.D. Tex. Aug. 27, 2019), *aff'd*, No. 20-40315, 2021 WL 4948918 (5th Cir. Oct. 22, 2021).
[15] *Id.* at *17 (citing *Alief Indep. Sch. Dist. v. C.C. Ex Rel. Kenneth C.,* 713 F.3d 268, 270 (5th Cir. 2013) (quoting Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).
[16] *D.C. v. Klein Indep. Sch. Dist.*, No. 4:19-CV-00021, 2020 WL 2832968, at *12 (S.D. Tex. May 29, 2020), *aff'd*, 860 F. App'x 894 (5th Cir. 2021).

Title search: Attorney’s Fees in Special Education Litigation

First appeared as part of the conference materials for the
40th Annual School Law Conference session
"Attorney’s Fees in Special Education Litigation"