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Council of Parent Attorneys and Advocates, Inc.

Yesterday, on March 17, 2011, federal legislation was introduced to allow parents to recover expert witness fees in due process hearings and litigation under the Individuals with Disabilities Education Act.

The IDEA Fairness Restoration Act was introduced in the Senate (S.613) by Senator Tom Harkin (D-IA), Chair of the Senate Health Education Labor and Pensions Committee; Senator Barbara Mikulski (D-MD), and Senator Bernie Sanders (I-VT); and introduced in the House of Representatives (H.R. 1208) by Congressman Chris Van Hollen (D-MD) and Congressman Pete Sessions (R-TX).

As COPAA members are likely aware, in its [*Arlington Central School District v. Murphy \(2006\)*](#) decision the Supreme Court decided that parents who win/prevail in their IDEA cases cannot get expert witness fees under the provision in the law that allows parents who win/prevail to get attorneys' fees. Although the legislative history to the IDEA fees provision clearly states that expert fees are covered the Supreme Court refused to consider that history.

COPAA has worked hard since that damaging decision was announced to obtain a legislative fix. Congressmen Van Hollens and Sessions have championed this issue for us in previous legislative sessions. This is the first time a bill was introduced in the Senate. COPAA is grateful to all of the members of Congress who are taking the lead on this important legislation.

The bipartisan IDEA Fairness Restoration Act will restore Congress' original intent and make due process hearings more equitable and affordable for parents of children with disabilities.

Without the ability to recover their expert witness fees, few parents could afford to exercise their constitutional and IDEA rights to challenge denial of FAPE to their children by school districts.

This is because parents, who increasingly have the [*burden of proof after the Supreme Court decision in Schaffer v. Weast*](#), must present admissible evidence about educational methodology, complex behavioral supports, medical issues, and other technical subjects. Only qualified expert witnesses can present this technical testimony and such testimony can easily cost many thousands of dollars, money that few parents have.

There can be no equal opportunity and access to a public education that is both free and appropriate unless all families of children with disabilities—rich, poor and those in the vast

middle—can obtain an education on the same terms. Without the ability to recover expert costs, the due process playing field ceases to be level or fair.

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