

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) (a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 C.F.R. Secs. 300.500 through 300.599.

(b) Subsection (2) (a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3) (a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3) (b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05120, filed 6/29/07, effective 7/30/07.]