



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Shan Goff, Chief  
Bureau for Education for  
Exceptional Students  
Florida Department of Education,  
Florida Education Center  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

JUN 24 1999

Dear Ms. Goff:

The Office of Special Education Programs (OSEP) has received the enclosed letter dated April 2, 1998 from Mr. Robert Hornstein of the Southern Legal Counsel, Inc. and subsequent January 19, 1999 letter and State Appellate Court decision, W.R. y. School Bd. Of Osceola County, No. 98-946 (January 15, 1999). Mr. Hornstein wrote to OSEP requesting the Department's opinion regarding a rule of the Osceola County School Board, that precludes parents who prevail in actions or proceedings brought under §615 of the Individuals with Disabilities Education Act as amended in 1997, Pub. L. 105-17, (IDEA '97) from seeking an award of attorney's fees in a Florida State court. It is my understanding that the Florida Department of Education's (FDE) policies and procedures manual contains a similar provision. Such a rule effectively would require parents who prevail in an action or proceeding under §615 of IDEA '97 to bring an attorney's fee claim in Federal court, regardless of whether the parent had previously prevailed in State court. We are aware of *dicta* in the Eleventh Circuit that suggests that the IDEA does not authorize State courts to award attorney's fees. Zipperer v. School Bd. of Seminole County, 111 F.3d 847, 851 n.2 (11th Cir. 1997). We also are aware that the decision in W.R., above, held that State courts in Florida have jurisdiction to award fees in IDEA cases.

Section 615(i)(3)(B) of IDEA '97 reads as follows:

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

Sequentially, this provision follows the creation of jurisdiction in Federal district courts. However, we do not read this provision as specifically limiting the ability to award attorney's fees to Federal courts. We believe that there are sound policy reasons for not imposing such limitations. Where a court reviews the substantive issues, it would be in the best position to assess prevailing party status and the reasonableness of a fee request. Also, fiscal and judicial economy are served

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when a fee request is brought at the end of a legal action, rather than as a separate cause of action in Federal court.

Because this involves complicated issues, we wish to better understand the State's legal position. It also appears that by adopting this limitation on State courts' jurisdiction, the rule of the Osceola County School Board, and the FDE policies and procedures manual are in conflict with a State court ruling. In order to assist this office in resolving this matter, we request that within thirty days from the date of receipt of this letter, FDE provide this Office with the State law basis for the State rule precluding parents from filing in State courts requesting attorney's fees in any action or proceeding brought under §615 of IDEA '97.

we appreciate your prompt attention to this matter. If you have further questions, please feel free to contact Ms. Sheila Friedman, the Florida State contact, at (202)205-9055.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosure

Cc: Robert Hornstein