

Supreme Court Determines that IDEA Prevailing Party Fees Do Not Include Expert Costs

Resolving a split among federal courts, the Supreme Court recently decided the issue of whether expert fees and costs are recoverable as part of the IDEA's fee shifting provisions. The Court held in *Arlington Central School District Board v. Murphy*, 126 S. Ct. 2455 (June 26, 2006), that awardable prevailing party fees under the IDEA do not include any expert fees or costs that parents may have incurred during the litigation process.

The Court's position in *Arlington* represents a welcome departure from previous Pennsylvania federal and State practice, which permitted recovery of most expert costs expended by parents during the dispute process, in addition to attorneys fees when parents were prevailing parties. Now, however, the Court has made clear that the IDEA's fee shifting provisions are intended to apply to only the attorney's fees of prevailing parents, and not to the fees and costs of any other experts that the parents also may have employed during the course of litigation.

In *Arlington*, the parents prevailed against a school district in obtaining private school reimbursement for their disabled child. As part of their claim for fees as prevailing parties under the IDEA, the parents sought reimbursement of several thousand dollars they had spent for the services of an educational consultant. Specifically, the parents argued that the IDEA's fee shifting provisions should be read as open-ended and inclusive in nature, thereby including the fees of not only attorneys, but also those fees incurred in the hiring of experts.

In rejecting the parents' position, the Court observed that not only did the literal language of the IDEA fail to expressly permit the recovery of the expert fees being sought by the parents, but that even if read more liberally, the terminology utilized in the IDEA statute - "costs" as opposed to "expenses" - also suggested a much narrower interpretation. Specifically, the Court noted that under federal law, "costs" is considered a term of art, and that unless expressly provided for by statute, ordinarily would not include expert's fees.

The plain language of the IDEA appears to have significantly influenced the Court's decision in *Arlington*, as the Court discussed at length the fact that pursuant to the Spending Clause of the United States Constitution, the IDEA must provide clear notice to States as to all potential liability in accepting federal IDEA funding. As the IDEA makes no express reference to States potentially incurring liability for prevailing party expert fees in addition to attorney's fees, the Court found that interpreting the fee shifting provisions of the IDEA otherwise simply was not supportable.

The Supreme Court's decision in *Arlington* represents a positive departure from historical Pennsylvania federal and State court interpretations as to what prevailing party fees and costs are recoverable in IDEA cases. While the financial benefits of the decision may not be immediately recognized by school districts given the other costly IDEA remedies that remain unaffected by *Arlington*, the cost savings related to no longer being

responsible for parent expert fees is potentially significant, and likely will serve to also reduce the number of due process hearings that involve a seeming “army” of parent experts.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.