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ATTORNEY'S FEE AWARDS TO DEFENDANT DISTRICTS IN IDEA CASES: THE ROAD IN THE REVERSE DIRECTION [a1]

Enacted in its original version in 1975, the Individuals with Disabilities Act (IDEA) [1] started as a funding act. [2] The 1986 amendments of the Individuals with Disabilities Act (IDEA) authorized attorney's fees for prevailing parents, [3] thus making it more like a civil rights act. [4] This shift in the burden under the general American rule [5] undoubtedly contributed to the upward trend of litigation under the IDEA, [6] which starts with an impartial ***604** hearing. [7]

As a narrower step in the reverse direction (i.e., against the plaintiffs), [8] the 2004 amendments of the IDEA authorized attorney's fees for the defendant local and state education agencies in more limited circumstances. [9] More specifically, if as a threshold matter the defendant agency, which usually is a school district, qualifies as prevailing, [10] these most recent amendments authorize a court to award attorney's fees:

> [1] against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or... who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or...
>
> [2] against the attorney of a parent, or against the parent, if the parent's complaint 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. [11]

For the sake of brevity, this Article refers to these respective frivolousness and improper–purpose provisions as "prong 1" and "prong 2." [12] The prerequisite step of the analysis is whether the defendant qualified as prevailing. [13] ***605** At the other end, if the defendant prevailed and preponderantly proved prong 1 and/or prong 2, is the amount, if any, in the court's discretion, that meets stipulated boundaries of reasonableness. [14]

The primary alternate and pre–existing avenue for what this Article similarly refers to as "reverse" attorney's fees [15] is the broad sanctions authorization of Federal Rule of Civil Procedure 11. [16] The other, narrower and, thus, less frequent alternatives are Section 1927, [17] Federal Rule of Appellate Procedure 38, [18] and the courts' inherent sanctioning authority. [19]

The literature is ample with regard to attorneys' fees generally under the prevailing–parents' federal highway [20] under the originally amended IDEA. [21] However, it thus far has not addressed this specific, reverse direction under the most recent amendments of the Act.

The purpose of this initial exploratory analysis is to systematically and synoptically canvass the case law to show the frequency and outcomes of judicial rulings specific to reverse attorney's fees under this two–pronged provision of the IDEA and the other, pre–existing avenues, such as Rule 11. [22] The specific research questions are as follows:

> ***606** (1) What is the total number of these decisions and their distribution between the IDEA and alternate avenues, such as Rule 11?

(2) What is the overall longitudinal trend in these decisions?

(3) Which jurisdictions account for the majority of these decisions?

(4) What is the outcome distribution of the rulings under (a) the IDEA, and (b) Rule 11?

(5) For the IDEA rulings, which part of the analysis—prevailing status, prong 1, or prong 2—tends to be the decisive step in the courts' decision–making?

Method

The pool for potentially pertinent decisions included: (1) the court case citations listed for the topical index subheading "Attorney Sanctions" under the heading "Attorney's Fees/IDEA" in the Specialedconnection®, which is the electronic database for LRP's Individuals with Disabilities Education Law Reports (IDELR); (2) the results of a Boolean search on Westlaw using combinations of the terms "Individuals with Disabilities Education Act," "attorneys' fees," "frivolous," "improper use," and "Rule 11"; and (3) the court decisions cited within the pertinent decisions. The selection criteria for pertinent decisions were that the underlying claims were based on the IDEA and the ruling was specific to the merits of attorney's fees for the local or state education agency. Conversely, the exclusions were cases in which the court based the reverse attorney's fees ruling on either an underlying claim that was not the IDEA [23] or threshold adjudicative grounds, such as untimeliness or lack of jurisdiction. [24]

As the foundation for the data analysis, the Appendix charts the relevant court decisions in chronological order. The various columns identify (1) the case in terms of the latest relevant decision (columns A–C) [25]; (2) the basis in terms of the IDEA or direct alternative [26] and its specifically decisive part ***607** (columns D–E) [27]; and (3) the outcome in terms of the defendant agency's extent of success (column F). For the decisive part in cases based on the 1986 IDEA amendments or the approximate parallels for the alternate avenues, the options were as follows:

> P = whether the defendant qualified as prevailing

> 1 = the frivolousness prong (including the "continued" subpart) [28]

2 = the improper–purpose prong

For the outcome, the coded categories were as follows:

+ = court awarded the full requested amount

(+) = court awarded a reduced amount

[+] = court ruled in favor of district but postponed determination of the amount

+/– = court awarded offsetting amounts

[+/–] = inconclusive (i.e., remanded or preserved for further proceedings whether district was entitled to attorney's fees)

– = court denied award altogether

Finally, the Comments column provides clarification or supplementation of the entries in the identified columns. [29]

Results

This section reports the findings for each of the aforementioned research questions in sequence. Based on the empirical design and overview purpose, the cases are not limited to published court decisions nor otherwise differentiated in terms of precedential weight.

1) What was the total number of these decisions and their distribution between the IDEA and alternate avenues, such as Rule 11?

As the Appendix shows, in cases with underlying IDEA claims, at least 66 court decisions have contained rulings concerning reverse attorney's fees since the 2004 amendments. [30] Two of the decisions included additional, alternative rulings to the IDEA, specifically based on Rule 11 and/or Section 1927. [31] Thus, the 66 court decisions yielded 68 rulings. Of the 68 rulings, 56 were specific to the pertinent provisions in the IDEA amendments, ten were ***608** based on Rule 11, and the three miscellaneous others were based on Appellate Rule 38 and Section 1927. [32]

2) What was the overall longitudinal trend in these decisions?

The longitudinal trend, although less consistent on a year–by–year basis, was markedly upward in three–year intervals: 15 cases in 2006–08, 19 cases in 2009–11, and 24 cases in 2012–14. The remaining eight cases were in the first eight months of 2015, which is too limited a period to include in the trend analysis. [33]

3) Which jurisdictions account for the majority of these decisions?

The leading jurisdictions were as follows in order of descending frequency:

- Ninth Circuit–13, including 5 at the federal appellate level and 10 from California
- D.C. Circuit–10, including 2 at the federal appellate level
- Fifth Circuit–8, including 3 at the federal appellate level, and all from Texas
- Second Circuit–7, including 4 at the federal appellate level and 5 from New York

4) What is the outcome distribution of the rulings under (a) the IDEA, and (b) Rule 11?

The outcomes distribution of these two major categories of reverse attorneys' fees rulings was as follows:

	– DENIED	[+/-] INCONCLUSIVE	+/- OFFSET AM'T	[+] POSTPONED AM'T	(+) REDUCED AM'T	+ FULLY GRANTED
IDEA	40	6	1	2	2	5
(n=56)	(71%)	(11%)	(2%)	(4%)	(4%)	(9%)
Rule 11	4	1		1	2	2
(n=10)	(40%)	(10%)		(10%)	(20%)	(20%)

Thus, under the 2004 IDEA amendments courts ruled that the defendants were entitled to attorneys' fees in slightly less than one fifth of the cases (attributable to the combination of the final four columns), but the amount was offset, postponed, or reduced in half of these cases. For the five cases where the defendant was fully successful, the average amount was $18k. [34] Conversely, for the pre–existing and overlapping authority of Rule 11, the number of rulings was much fewer, but the success rate was more favorable ***609** for the defendants. [35] Another difference was that a higher proportion of the Rule 11 awards, as compared with the percentage of the IDEA awards, was against pro se parents.

5) For the IDEA rulings, which part of the analysis—prevailing status, prong 1, or prong 2—tended to be the decisive step in the courts' decisionmaking?

The deciding step most frequently was both prongs together, followed in second place by prong 1. The courts disposed of approximately one fifth of the IDEA cases at the initial step of whether the defendant qualified as a prevailing party. Finally, prong 2 was the deciding step for only a handful of cases.

Discussion

The findings, in response to questions 1 and 2, that the total number of reverse attorney's fees decisions is not inconsequential and is on the rise reflects the increasing legalization of special education.[36] The two–pronged amendment to the IDEA in 2004 was a response to this development. As one federal appeals court observed, "[b]y amending the statute, Congress implicitly recognized that IDEA was being distorted; it was no longer simply a means to improve primary education, but was becoming a breeding ground for vexatious and costly litigation."[37] Ironically, in providing a "judicializing" response,[38] Congress fueled further litigation. Yet, the total of 65–plus decisions pales in comparison to IDEA case law overall[39] and even in comparison to the cases concerning "direct" attorney's fees.[40] Thus, as another federal appellate court correctly concluded in 2011: "There is [relatively] little case law governing the IDEA's provisions allowing school districts to recover attorney's fees."[41]

The findings for the third research question largely correlated to the relatively high frequency of litigation in particular circuits[42] and states,[43] ***610** reflecting the "two worlds" of IDEA case law activity within the United States.[44] However, although the periods of the analysis do not specifically square with each other, the leading positions of California and Texas for the reverse attorney's fees case law is disproportionally high in relation to their rankings in the frequency of IDEA court decisions,[45] suggesting a possible propensity among the defendant districts in these two states to resort to this particular tactic.[46]

In response to the fourth research question, the low success rate of education agencies in recovering attorney's fees under the 2004 IDEA amendments is not surprising. As another court recognized, "[a]wards of attorney's fees to prevailing defendants under the IDEA are unusual. Cases in which the court has granted attorneys' fees to the prevailing governmental defendant have generally rested upon egregious failures of counsel."[47] The higher success rate under Rule 11 is reflective of the much smaller number of cases, with "sanctions" reserved for exceptional circumstances.

In relation to the final question, the relatively high frequency of decisions based on prongs 1 and 2 together or on prong 1 alone reflect the focus on claims that defendants perceived primarily, if not exclusively, as frivolous. Conversely, the relatively small number of decisions based on prong 2 appears attributable to the interpretation, led by the Ninth Circuit, that improper purpose has a prerequisite of a frivolous claim, thereby reversing an award of approximately $150k against the parents and their attorney.[48] The same reasoning explains why the liable individual is much more often the attorney, not the parent: "It's...harder for a school district to collect attorney's fees against parents than against their lawyers: Collecting against parents requires a showing of both frivolousness and an improper purpose, while collecting against their attorneys requires only a showing of frivolousness."[49]

***611** Finally, the outcomes of these reverse attorney's fees cases reflects the courts' balancing of the competing interests of stemming vexatious litigation and, yet, not chilling ardent advocacy on behalf of students with disabilities. The courts understandably provided ample weighing of the latter interest. However, on occasion they also supplied the sobering reminder of not taxing the limited resources for education with the transaction costs of litigation.[50]

Overall, it appears, subject to more in–depth research,[51] that the 2004 IDEA amendments for reverse attorney's fees have been more symbolic than consequential in terms of IDEA policy. Reflecting rather than resolving the increasing litigiousness under the IDEA, in some of these cases the ruling concerning reverse attorney's fee is merely one step in on ongoing line of litigation.[52] Moreover, the cases of awards under this two–pronged provision have been few and far between, with the rate of district success less potent than that under the pre–existing alternative of Rule 11 sanctions. The partial awards under the 2004 amendments were often a significant reduction from the requested amount.[53] The rare full awards were not particularly large amounts,[54] typically being more a matter of the district being conservative in its requested amount than coming close to the district's total cost for legal representation,[55] much less each side's investment in witness time, document collection, and court costs. Thus, the reverse attorneys' fees provisions of the 2004 amendments amount to only one small part of an ongoing policy experiment to obtain more effective and efficient education for students with disabilities.[56] Even when limited to the picture of a counterbalancing road, this analysis reveals that its course is narrow, bumpy, and uphill.

*612 Appendix: Court Decisions and Their Rulings Specific to Reverse Attorney's Fees

A	B	C	D	E	F	G
Case Name	**Citation**	**Court/Yr.**	**Basis**	**Part**	**Outcome**	**Comments**
Mr. L. v. Sloan	449 F.3d 405 210 Ed.Law Rep. 401	2d Cir. 2006	IDEA	P	--	E: not prevailing under *Buckhannon* (here, private settlement)
Lunn v. Weast	2006 WL 1554895	D. Md. 2006	IDEA	1-2	--	E: unsupported
Sturm v. Bd. of Educ. of Kanawha Cnty.	46 IDELR ¶ 72	S.D. W. Va. 2006	IDEA	1	--	F: perhaps state court but not this federal court
S.N. v. Old Bridge Twp. Bd. of Educ.	2006 WL 3333138	D.N.J. 2006	IDEA	1b	--	E: summarily declined in court's discretion
Grenon v. Taconic Hills Cent. Sch. Dist.	47 IDELR ¶ 10	N.D.N.Y. 2006	(IDEA)[57]	1	--	E: insufficient evidence of bad faith
T.S. v. Dist. of Columbia	47 IDELR ¶ 227	D.D.C. 2007	IDEA	P	--	E: hearing officer ordered plaintiff's requested relief
Taylor v. Mo. Dep't of Elementary & Secondary Educ.	48 IDELR ¶ 242	W.D. Mo. 2007	IDEA	1-2	--	E: no dispute re prevailing but neither prong, citing "good faith" standard in *Christiansburg Garment Co.*
Hawkins v. Berkeley Unified Sch. Dist.	250 F.R.D. 459 234 Ed.Law Rep. 152	N.D. Cal. 2008	IDEA	P	--	E: not prevailing under *Hensley*

J.G. v. Paramus Bd. of Educ.	50 IDELR ¶ 45	D.N.J. 2008	IDEA	1-2	--	E: parent's claims were arguably well-considered, reasonable, and within state law allowance for hearing request withdrawal and refiling
Amherst Exempted Vill. Sch. Dist. Bd. of Educ. v. Calabrese	50 IDELR ¶ 218	N.D. Ohio 2008	IDEA	1	(+)	E: prong 1 -- insufficient investigation and unconscionable prosecution F: $44k reduced to $10k in light of remedial purpose of the IDEA and its two-stage adjudicative process
C.H. v. Nw. Indep. Sch. Dist.	50 IDELR ¶ 214	E.D. Tex. 2008	IDEA	P	--	E: alternatively relying on reasonableness calculation--district failed to engage in the lodestar and *Johnson* factors analysis
T.R. v. St. Johns Cnty. Sch. Dist.	50 IDELR ¶ 254	M.D. Fla. 2008	IDEA	1-2	[+/-]	F: ancillary to denial of plaintiff's motion for Rule 11 sanctions (thus marginal case) - undecided but not frivolous
Petersen v. Cal. Special Educ. Hearing Office	50 IDELR ¶ 250	N.D. Cal. 2008	(Rule 11?) [58]	~1	--	F: "close call but "not at this time"
Oscar v. Alaska Dep't of Educ.	541 F.3d 978 236 Ed.Law Rep. 570	9th Cir. 2008	IDEA	P	--	E: not prevailing under *Buckhannon* (dismissal w/o prejudice)
Bingham v. New Berlin Sch. Dist.	550 F.3d 601 239 Ed.Law Rep. 901	7th Cir. 2008	Rule 38	~1b	[+/-]	E: court issued show cause order (thus, notice to plaintiffs' attorney)
E.K. v. Stamford Bd. of Educ.	52 IDELR ¶ 133	D. Conn. 2009	IDEA	1b	+	E: no dispute re prevailing and, here, "continued" subpart of prong 1 F: $16k (reasonable, including limited to IDEA claim)
Kelly v. Saratoga Springs City Sch. Dist.	53 IDELR ¶ 110	N.D.N.Y. 2009	IDEA	2	--	E: zealous advocacy, not bad faith
Pedraza v. Alameda Unified Sch. Dist.	111 LRP 65121	N.D. Cal. 2009	IDEA	2	[+/-]	F: denied dismissal + subsequent recovery under contractual

						indemnity provision of settlement agreement at 57 IDELR ¶ 226 (N.D. Cal. 2012)
R.W.V. Ga. Dep't of Educ.	48 IDELR ¶ 279, *affd mem.*, 353 Fed.Appx. 422	N.D. Ga. 2007 11th Cir. 2009	IDEA	1-2	[+]	E: plaintiff's claim against state defendant is based on "rhetoric" rather than "disciplined analysis" F: ordered state defendant to provide itemized request for review and determination of amount
El Paso Indep. Sch. Dist. v. Richard R.	591 F.3d 417 252 Ed.Law Rep. 92	5th Cir. 2009	IDEA	P	--	E: only succeeding in reducing plaintiff-parents' attorney's fees award was not sufficient for prevailing status
Dist. of Columbia v. Straus	590 F.3d 898 252 Ed.Law Rep. 66	D.C. Cir. 2010	IDEA	P	--	E: not prevailing under *Buckhannon* (here, dismissal due to mootness - district provided the requested relief)
Z.A. v. St. Helena Unified Sch. Dist.	54 IDELR ¶ 25	N.D. Cal. 2010	IDEA	1-2	[+/-]	E: premature at this early juncture in the proceedings (motion to strike)
Wood v. Katy Indep. Sch. Dist.	54 IDELR ¶ 82	S.D. Tex. 2010	IDEA	(1)	--	E: sought under prong 1 but lack of subject matter jurisdiction here
Dist. of Columbia v. Nahass	699 F.Supp. 2d 75 258 Ed.Law Rep. 112	D.D.C. 2010	IDEA	1	--	E: prevailing party but district's mooting relief left other non-frivolous issues, distinguishing *Straus*
Dist. of Columbia v. West	699 F.Supp.2d 273 258 Ed.Law Rep. 131	D.D.C. 2010	IDEA	1	--	E: prevailing party (based on hearing officer's dismissal on the merits) but neither la nor 1b
Sch. for Arts in Learning Pub. Charter Sch. v. Barrie	724 F.Supp.2d 86 261 Ed.Law Rep. 939	D.D.C. 2010	IDEA	P	--	E: not prevailing party, applying *Straus*
Dist. of Columbia v. Barrie	741 F.Supp.2d 250 264 Ed.Law Rep. 253	D.D.C. 2010	IDEA	1-2	--	E: detailed but denied successively for 1a, 1b, and 2

El Paso Indep. Sch. Dist. v. Berry	400 Fed.Appx. 947 264 Ed.Law Rep. 705	5th Cir. 2010	IDEA	1b	(+)	E: waiver of prevailing issue, and "unique facts" that were "more than a 'refusal to settle'" [59] F: unappealed amount of $10k as reduction from district request of $80k + distinguishing Rule 11 (safe harbor provision)
A.M. v Monrovia Unified Sch. Dist.	627 F.3d 773 263 Ed.Law Rep. 44	9th Cir. 2010	IDEA+ [60]	1b	[+/-]	F: vacating and remanding award of $49k, which had been erroneously based on mootness, to determine remaining issue of waiver
R.P. v. Prescott Unified Sch. Dist.	631 F.3d 1117 264 Ed.Law Rep. 618	9th Cir. 2011	IDEA+ [61]	1-2	--	E, F: reversing award of $149+ based on high standard for prong 1 [62] and even higher standard for prong 2 against parents [63] based on chilling-effect rationale
Dist. of Columbia v. Ijeabuonwu	642 F.3d 1191 268 Ed.Law Rep. 698	D.C. Cir. 2011	IDEA	P	--	E: not prevailing under *Buckhannon* (here, moot due to district providing the requested relief)
Alief Indep. Sch. Dist. v. C.C.	655 F.3d 412 268 Ed.Law Rep. 698	5th Cir. 2011	IDEA	P	[+/-]	E: prevailing (where district filed and won declaratory ruling at hearing officer level) but remanded to decide prongs 1-2 + subsequent ruling denying attorneys' fees for plaintiffs - 713 F.2d 268 (9th Cir. 2013)
Bridges Pub. Charter Sch. v. Barrie	796 F.Supp.2d 39 273 Ed.Law Rep. 736	D.D.C. 2011	IDEA	1-2	+	E: prevailing under the *Straus* test, and all 3 claims were frivolous and even more so upon 1b (continued subpart) F: awarded almost entire requested amount of $16k (only exception was $.5k for paralegal)

C.H. v. Nw. Indep. Sch. Dist. [64]	815 F.Supp.2d 977	E.D. Tex. 2011	IDEA	1-2	-	E: summary rejection of both prongs for lack of evidence
	277 Ed.Law					
	Rep. 268					
J.G. v. Kiryas Joel Union Fee Sch. Dist.	893 F.Supp.2d 394	S.D.N.Y. 2012	IDEA	1	-	E, F: not prepared to declare frivolous and exercises discretion to deny the motion
	282 Ed.Law					
	Rep. 170					
L.P. v. Longmeadow Pub Sch.	59 IDELR ¶ 169	D. Mass. 2012	IDEA	P + 1-2	-	E, F: unclear whether prevailing but not showing of either prong in any event--dismissed w/o prejudice + subsequent attorneys' fees award to parents at 60 IDELR ¶ 15
IS. v. Sch. Town of Munster	58 IDELR ¶ 186	N.D. Ind. 2012	IDEA	2	[+/-]	E: ruling that an award against a parent-attorney requires, as against any other parent, must prove both prongs - here, the parent-attorney's meritless shotgun approach meets threshold standard for discovery
Jenkins v. Butts Cnty. Sch. Dist.	58 IDELR ¶ 282	M.D. Ga. 2012	IDEA	2	-	F: good faith error
W.V. v. Encinitas Unified Sch. Dist.	59 IDELR ¶ 289	S.D. Cal. 2012	Rule 11	~2	(+)	F: ordered pro se parent to pay district $2.5k
Smith v. Indian Hill Exempted Vill. Sch. Dist.	60 IDELR ¶ 14	S.D. Ohio 2012	IDEA	2	+	F: magistrate's recommended award of full requested amount of $42k against pro se parent after no response in opposition (original ruling at 57 IDELR ¶ 198)
M.M. v. Lafayette Sch. Dist.	59 IDELR ¶ 160, *appeal allowed*, 60 IDELR ¶ 5	N.D. Cal. 2012	IDEA+ [65]	1b	+/-	E: rejected la but agreed with regard to 1b F: awarded offsetting amounts of $5k in response to parent's request for

						$262k and district's request for $76k in attorney's fees + subsequent ruling in parent's favor on another claim, with order for possible attorneys' fees for plaintiff - 767 F.3d 842 (9th Cir. 2014)
						+ recent ruling to hold attorneys' fees rulings in abeyance in light of subsequent decisions on the merits in the three interrelated cases 2015 WL 5064078 (N.D. Cal. Aug. 27, 2015)
Moyer v. Long Beach Unified Sch. Dist.	60 IDELR ¶ 126	C.D. Cal. 2013	IDEA	1	-	E: not frivolous in terms of precedent
Doe v. Attleboro Sch. Dist.	960 F.Supp.2d 286 301 Ed.Law Rep. 345	D. Mass. 2013	IDEA	1-2	-	E: award against parents requires both prongs (based on *R.P.*), and parents' claim was not frivolous, which would have required completely false and nonsensical, rather than plausible, evidence
Candeo Sch., Inc. v. Bonno	60 IDELR ¶ 245	D.Ariz. 2013	IDEA	1	--	E: not at the requisite level (citing *R.P. v Prescott Unified Sch. Dist.*)
S.M. v. Taconic Hills Cent. Sch. Dist.	60 IDELR ¶ 284	N.D.N.Y. 2013	IDEA	P	--	E: not prevailing (and footnote that that even if prevailing, would deny based on lack of prong 1 and court's discretion)
Bolduc v. Norwood Pub. Sch.	61 IDELR ¶ 16	D. Mass. 2013	IDEA	1-2	--	E: dismissed, with focus on subpart 1b
Bethlehem Area Sch. Dist. v. Zhou	61 IDELR ¶ 9	E.D. Pa. 2013	IDEA	2	[+]	+ subsequent ruling requiring both parties to substantially reduce their requests (for more than $300k each) at 63 IDELR ¶ 186 (E.D. Pa. 2014)
M.M. v. Piano Indep. Sch. Dist.	63 IDELR ¶ 49	E.D.Tex. 2014	Rule 11	~1-2	+	E, F: granted full requested amount of

						$4k against parents' counsel as justified and reasonable based on frivolousness and improper purpose
Capital City Pub. Charter Sch. v. Gambale	27 F.Supp.3d 121 311 Ed.Law Rep. 879	D.D.C. 2014	IDEA	1	+	E: no dispute re prevailing and both claims were frivolous F: awarded full requested amount of $12k as reasonable
Dawn G. v. Mabank Indep. Sch. Dist.	63 IDELR ¶ 63	N.D. Tex. 2014	IDEA	1-2	--	E: lack of specific supporting evidence -- plaintiff's lack of success is not enough -- policy against deterring good faith challenges under the IDea
Northport Pub. Sch. v. Woods	63 IDELR ¶ 134	W.D. Mich. 2014	IDEA	1-2	[+/-]	E, F: satisfied threshold standards for further proceedings on both prongs
A.L. v. Jackson Cnty. Sch. Bd.	63 IDELR ¶ 136, *adopted*, 63 IDELR ¶ 168	N.D. Fla. 2014	Rule 11	~1	(+)	F: award against parents' attorney of $6k, which was half way between plaintiff attorney's proposed amount and the maximum (and stern warning about possible discipline for incompetence in the future)
G.M. v. Saddleback Valley Sch. Dist.	583 Fed.Appx. 702	9th Cir. 2014, *cert. denied* 135 S. Ct. 1705 (2015)	IDEA	1	--	F: technically remanded but clearly disagreeing that the claim was frivolous
Oakstone Cmty. Sch. v. Williams	59 IDELR ¶ 214, *rev'd for non-IDEA rulings*, Fed.Appx.	S.D. Ohio 2012 6th Cir. 2015	IDEA Rule 11/Sec. 1927	1-2	--	E: award for prong 2 also requires violation of prong 1 (based on *R.P.*), which district failed to show here F: rev'd sanction against parents' counsel of $7,500 -- not repeated (Am. I and FERPA)
					--	
Horen v. Bd. of Educ.	63 IDELR ¶ 290	S.D. Ohio 2014	Rule 11	~1b	+	F: awarded sanction of full requested amount of $33k against pro se parents who continued groundless litigation

						after repeated warnings
S.M. v. Hendry Cnty. Bd. of Educ.	64 IDELR ¶ 75	M.D. Fla. 2014	Rule 11	~1	--	E: not at requisite deliberately indifferent level + subsequent dismissals of "shotgun" claims, including Section 504 and Section 1983 in addition to IDEA (at 64 IDELR ¶¶ 109 and 164)
Bobby v. Sch. Bd. of City of Norfolk	54 F.Supp.3d 466 315 Ed.Law Rep. 829	E.D. Va. 2014	IDEA	1	--	F: shortcomings but not at the requisite flagrant level [66]
G.M. v. Dry Creek Joint Elementary Sch. Dist.	59 IDELR ¶ 223, *aff'd*, 595 Fed.Appx. 698 315 Ed.Law Rep. 88	E.D. Cal. 2012 9th Cir. 2014	IDEA	2	+	E, F: upheld hearing officer's award of $4k against based on prong 2
Intravaia v. Rocky Pont Union Free Sch. Dist.	64 IDELR ¶ 274	E.D.N.Y. 2014	Rule 11	~1	--	F: procedural defense of safe harbor provision
			Sec. 1927	~1	--	F: not at the requisite even narrower level
A.L. v. Jackson Cnty. Sch. Bd. [67]	64 IDELR ¶ 266	M.D. Fla. 2015	IDEA	1	--	E, F: district's claim suffers from "hindsight bias"
Turton v. Va. Dep't of Educ.	64 IDELR ¶ 305	E.D. Va. 2015	Rule 11	~1-2	[+]	E: utterly inadequate investigation and inferable improper purpose (though not based on $20M claim)
						F: further proceedings to determine reasonable form and, if monetary, amount
A.A. v. Clovis Unified Sch. Dist.	65 IDELR ¶ 18	E.D. Cal. 2015	IDEA	1	--	E: declined to decide, instead exercismg discretion to decline "at this time" due to small victory and ongoing litigation
S. Kingstown Sch. Comm. v. Joanna S.	65 IDELR ¶ 178, *adopted*, 65 IDELR ¶ 209	D.R.I. 2015	IDEA	1-2?	--	E: quick cryptic denial for what seemed to be throwaway district claim (+ parent received partial award)
C.W. v. Capistrano Unified Sch. Dist.	784 F.3d 1237, 317 Ed.Law Rep. 53	9th Cir. 2015	IDEA [Sec. 1988]	1 [2]	- [+]	E, F: reversing lower court award for not meeting requisite standard

						of *Christiansburg*, however, agreeing in part with prongs 1-2 under Section 1988 (for underlying ADA and Section 1983 claims, not the Section 504 claim) and remanding for further proceedings to determine amount
Salmeron v. Dist. of Columbia	F.Supp.3d	D.D.C. 2015	Rule 11	~1,2	(+)	sua sponte show cause order on plaintiff's attorney
Shadie v. Hazleton Area Sch. Dist.	66 IDELR ¶ 106	M.D. Pa. 2015	IDEA Sec. 1988]	1	--	refused to apply prevailing party analysis to defendant in the absence of frivolousness or other such exception

Footnotes

57 Not deciding whether the IDEA amendments applied, the court alternatively relied on its inherent authority to levy sanctions.

58 The court did not specifically cite the basis of its relevant, but Rule 11 appeared to be implicit in the court's reference to "vexatious" litigant. However, this language may alternatively suggest that the basis was Section 1927.

59 *El Paso Indep. Sch. Dist. v. Berry*, 400 Fed.Appx. at 954; see also id. at 955 ("Given [the plaintiff attorney's] extreme and--we hope--unique combination of behaviors, including the refusal to accept all offered relief, the continued litigation of a claim for compensatory services arguably unnecessary [much earlier], and stonewalling tactics, we conclude that the district court properly determined from the undisputed evidence that [he] continued to litigate claims after they clearly became frivolous, unreasonable, and without foundation such that an award of attorneys' fees to the District was permissible").

60 The appellate court also addressed the basis under the interrelated underlying Section 504 claim. *A.M. v. Monrovia*, 627 F.3d at 782.

61 The appellate court also disposed of the award based on the ancillary underlying Section 504 and ADA claims. *P.P. v. Prescott*, 631 F.3d at 1127.

62 *Id.* at 1126 ("So long as the plaintiffs present evidence that, if believed by the fact-finder, would entitle them to relief, the case is per se not frivolous and will not support an award of attorney's fees")

63 *Id.* ("Collecting against parents requires a showing of both frivolousness and an improper purpose, while collecting against their attorneys requires only a showing of frivolousness").

64 This ruling is separate from the 2008 decision *supra* concerning the same parties.

65 As part of its determination under la, the court rejected the district's contention that the parent's Section 504 retaliation claim was frivolous.

66 The court observed the relative rarity of attorney's fees awards to districts to show why the standard is strict. *Bobby v. Sch. Bd. of City of Nortfolk*, 54 F.Supp.3d at 473 & n.6 (noting the absence of any such decisions in the Fourth Circuit).

67 Separable from the decision cited supra in the Appendix, this case has the same parties but a subsequent set of facts.

Footnotes

a1 *Education Law Into Practice* is a special section of the EDUCATION LAW REPORTER sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 321 Ed.Law Rep. [603] (November 5, 2015).

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1 20 U.S.C. §§ 1400 *et seq.* (2013).

2 Its original version was the Education of the Handicapped Act, and Congress subsequently amended the act in 1986, 1990 (when its name changed to the IDEA), 1997, and—most recently—2004. *See*, *e.g.*, Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act*, 31 J. NAT'L ASS'N OF ADMIN. L. JUD. 211, 212 n.2 (2011).

3 Pub. L. No. 99–372, 100 Stat. 796 (1986) (codified at 20 U.S.C. § 1415(i)(3)(B)(i)(I) and authorizing the court "in its discretion" to "award reasonable attorney's fees...to a prevailing party who is the parent of a child with a disability").

4 For the general fee–shifting statute corresponding to 42 U.S.C. § 1983, see 42 U.S.C § 1988 (2013) (Civil Rights Attorney's Fees Awards Act). For other, more specific examples, see 29 U.S.C. § 794a(b) (2013) (Section 504 of the Rehabilitation Act); 42 U.S.C. § 2000e–5(k) (2013) (Title VI); 42 U.S.C. § 706(k) (2013) (Title VII). For general recognition of the connection of the 1986 IDEA amendments' fee–shifting provision with the civil rights model, see, e.g., *C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1124, 264 Ed.Law Rep. 618 (9th Cir. 2011) (noting that IDEA's fee–shifting statute is "nearly identical" to the general federal civil rights fee–shifting law); *Abu–Sahyun ex rel. Abu–Sahyun v. Palo Alto Unified Sch. Dist.*, 843 F.2d 1252, 46 Ed.Law Rep. 72 (9th Cir. 1988) (recognizing that Congress's intent was to follow the burden–shifting model of 42 U.S.C. § 1988(b), as applied in *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)). For a limited difference customized to the administrative adjudication level under the IDEA, see, e.g., *Duane M. v. Orleans Parish Sch. Bd.*, 861 F.3d 115, 51 Ed.Law Rep. 365 (5th Cir. 1988) (holding that the fee–shifting provision of the IDEA applies to parents prevailing at the administrative level).

5 *See*, *e.g.*, *Aleyaska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975) (referring to "the general 'American rule' that the prevailing party may not recover attorneys' fees as costs or otherwise").

6 *See*, *e.g.*, Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Updated Analysis*, 265 Ed. Law Rep. 1 (2011); Perry A. Zirkel & Anastasia D'Angelo, *Special Education Case Law: An Empirical Trends Analysis*, 161 Ed. Law Rep. 731 (2002)

7 20 U.S.C. §§ 1415(f)–(g). *See*, *e.g.*, Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems Under the IDEA: A State–by–State Survey*, 21 J. DISABILITY POL'Y STUD. 3 (2010) (showing the variety of state system for administrative adjudications under the IDEA); Perry A. Zirkel & Cathy L. Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions Under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525, 538–40 (2014) (analyzing the number and outcomes of administrative adjudications under the IDEA).

8 The earlier countering steps, which were part and parcel of the aforementioned 1986 amendments, were to limit or negate attorney's fees awards to parents rather than to proceed in the reverse direction of awarding attorney's fees to local and state education agencies. For example, one provision precluded attorney's fees to the plaintiff–parents subsequent to a timely offer of settlement where the parents unjustifiably did not accept the offer within the requisite period and their ultimate relief was not more favorable than the offer. 20 U.S.C. §§ 1415(i)(3)(D)(i)–1415(i)(3)(E) (2013). Moreover, another provision authorized reduction of the attorney's fee award to the plaintiff–parents where they "unreasonably protracted the final resolution of the controversy" and the defendant education agency did not. *Id.* § 1415(i)(3)(F)–(G).

9 As with the 1986 amendments (*supra* note 4), the Congressional intent was to follow the model of the burden–shifting precedents of federal civil rights acts. *See*, *e.g.*, 150 Cong. Rec. S5250 and S5349.

10 For the two–part test for reverse attorney's fees under the IDEA, see, e.g., *E.K. v. Stamford Bd. of Educ.*, 52 IDELR ¶ 133 (D. Conn. 2009) (citing *Mr. L. v. Sloan*, 449 F.3d 405, 407, 210 Ed.Law Rep. 41 (2d Cir. 2006)). For the evolving jurisprudence for the meaning of "prevailing" in this burden–shifting context, see, e.g., *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001); *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 93 S.Ct. 694, 54 L.Ed.2d 648 (1978).

11 20 U.S.C. § 1415(i)(3)(B)(i)(II)–(III).

12 For the interrelations to pre–existing models, see, e.g., *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1124–25, 264 Ed.Law Rep. 618 (9th Cir. 2011); *Dist. of Columbia v. Straus*, 590 F.3d 898, 903, 252 Ed.Law Rep. 66 (2010) (observing that prong 1 is based on *Christiansburg*'s elaboration of Section 1988 and that prong 2 is based on FED. R. CIV. P. 11).

13 For the current criteria of this threshold issue of prevailing status, see, e.g., *Dist. of Columbia v. Straus*, 590 F.3d 898, 901, 252 Ed.Law Rep. 66 (D.C. Cir. 2010) (citing three–part test).

14 For the reasonableness boundaries, see 20 U.S.C. § 1415(i)(3)(C) (prevailing community rates without any bonus or multiplier) and *id.* § 1415(i)(3)(F)(ii) (reduction for excessive hours). For the resulting multi–step test of (a) prevailing, (b) prong 1 and/or 2, and (c) reasonable amount, see, e.g., *Bridges Pub. Charter Sch. v. Barrie*, 796 F.Supp.2d 39, 46–47, 273 Ed.Law Rep. 736 (D.D.C. 2011).

15 For prior use of this term in the same context, see, e.g., *Boretos v. Fenty*, 2009 WL 4034987 (D.D.C. Nov. 17, 2009) at n.5.

16 FED. R. CIV. P. 11 (2013). The four specified bases under this Rule, though not using identical language, broadly encompass the frivolousness and improper–purpose prongs, and the sanctions include "[i]f warranted,... attorney's fees." *Id.* 11(b)–(c). For the breadth of this sanctioning authority, which extends beyond attorney's fees specifically and monetary awards more generally, see, e.g., *In re Kuntsler*, 914 F.2d 505 (4th Cir. 1990).

17 28 U.S.C. § 1927 (2013) (providing sanctioning authority for excess fees and costs against attorney who unreasonably and vexatiously multiplies the proceedings). For the narrower scope of Section 1927, which also applies to both parties, see *Palagonia v. Sachem Cent. Sch. Dist.*, 2010 WL 811301 (E.D.N.Y. Mar. 1, 2010). For its application, see, e.g., *Greer v. Richardson Indep. Sch. Dist.*, 471 Fed.Appx. 336, 281 Ed.Law Rep. 814 (5th Cir. 2012); *U.S. v. Associated Convalescent Enter., Inc.*, 766 F.2d 1342 (9th Cir. 1985). As with the court's inherent authority, § 1927 is a two–way street, applying to the conduct of defendants' attorneys as well as plaintiffs' attorneys. *See*, *e.g.*, *Blackman v. Dist. of Columbia*, 72 F.Supp.3d 249, 318 Ed.Law Rep. 912 (D.D.C. 2014).

18 28 U.S.C. FED. R. APP. P. 38 (2013) (authorizing "just damages and single or double costs" for frivolous appeals).

19 For the inherent authority of courts to issue sanctions, see, e.g., *Benner v. Negley*, 725 F.2d 446, 449 (7th Cir. 1984).

20 For the referent for this wide–road analogy, see *supra* note 3 and accompanying text.

21 *See*, *e.g.*, Jean B. Arnold & Mark Chestnut, *Attorneys' Fees in Special Education Cases under the Individuals with Disabilities Education Act*, 100 Ed. Law Rep. 497 (1995); Tana Lin, *Recovering Attorney's Fees under the Individuals with Disabilities Education Act*, 180 Ed. Law Rep. 1 (2003); Allan G. Osborne, *Update on Attorney's Fees under the IDEA*, 193 Ed. Law Rep. 1 (2004); Ralph D. Mawdsley, *Examining Partial Successful Attorney Fees under the Individuals with Disabilities Education Act*, 301 Ed. Law Rep. 557 (2014); Ronald D. Wenkart, *Attorneys' Fees under the IDEA and the Demise of the Catalyst Theory*, 165 Ed. Law Rep. 439 (2002).

22 See *supra* notes 15–19 and accompanying text. Conversely, Section 1988 (*supra* note 4) is not at play in these cases inasmuch as the IDEA has its own provision specific to reverse attorney's fees.

23 *See*, *e.g.*, *Sagan v. Sumner Cnty. Sch. Dist.*, 501 Fed.Appx. 537, 291 Ed.Law Rep. 52 (6th Cir. 2001), *on remand*, 61 IDELR ¶ 10 (M.D. Tenn. 2013); *Held v. Northshore Sch. Dist.*, 65 IDELR ¶ 139 (W.D. Wash. 2015); *Brown v. Napa Valley Unified Sch. Dist.*, 59 IDELR ¶ 291 (N.D. Cal. 2012). In partial contrast, the coverage here extended to otherwise pertinent cases

that also contained rulings based on ancillary underlying federal claims, such as under Section 504 of the Rehabilitation Act, although in an occasional case, the dividing line is far from bright. *See*, *e.g.*, *C.W. v. Capistrano Unified Sch. Dist.*, 784 F.3d 1237, 317 Ed.Law Rep. 53 (9th Cir. 2015).

24 *See*, *e.g.*, *Ruben A. v. El Paso Indep. Sch. Dist.*, 414 Fed.Appx. 704, 267 Ed.Law Rep. 560 (5th Cir. 2011) (dismissing based on statute of limitations); *Ms. S. v. Reg'l Sch. Unit No. 72*, 64 IDELR ¶ 136 (D. Me. 2014) (dismissing without prejudice counterclaim on procedural grounds). Similarly excluded where reverse attorney's fees rulings that were entirely peripheral. *See*, *e.g.*, *MM v. San Ramon Valley Unified Sch. Dist.*, 61 IDELR ¶ 39 (N.D. Cal. 2013) (denying motion in brief footnote); *Wright v. Carroll Cnty. Bd. of Educ.*, 61 IDELR ¶ 289 (D. Md. 2013); *B.D. v. Griggs*, 54 IDELR ¶ 319 (W.D.N.C. 2010) (warning of possible *sua sponte* Rule 11 sanction in dicta).

25 For column B, the identified citations were based on this priority order of selection within the Westlaw and Specialedconnection® databases: (1) official reporter (e.g., F.Supp.2d or Fed.Appx.); (2) IDELR; and (3) electronic–only (WL or, if not available, LRP citation).

26 Among the alternatives cross–referenced in *supra* note 22, the primary example is Rule 11. For the partial contrast, *supra* note 23, the Comments column noted but did not analyze the fee–shifting rulings for ancillary claims under other civil rights legislations, such as Section 504 of the Rehabilitation Act.

27 "Decisive part" refers here to the particular juncture, or criterion, in the multi–step analysis (*supra* note 14) that was the linchpin of the court's ruling regarding reverse attorney's fees.

28 The entries in this column differentiate the two successive subparts of this prong as "1a" (filing) and "1b" (continuing).

29 With entries preceded by a "+," the Comments column also cited subsequent litigation in the same case that related to but was separable from the reverse attorney's fees ruling(s).

30 Despite the rather extensive efforts to find the pertinent court decisions, it is likely that the multi–pronged search missed a few cases in light of the secondary or even tertiary treatment often accorded to the reverse attorney's fee ruling(s).

31 *See* Appendix–*Oakstone Cmty. Sch. v. Williams* and *Intravaia v. Rocky Point Union Free Sch. Dist.* For the scope and application of Section 1927, see *supra* note 17

32 Additionally noted in the Appendix but not counted in the analysis was, in one of the IDEA decisions, a separable ruling attributable to Section 1983 and ADA claims and based on Section 1988. *See* Appendix–*C.W. v. Capistrano Unified Sch. Dist.*

33 The time lag in publication, whether official or not, is a further limitation on this period.

34 The awarded amounts were $16k in each of the first two cases (*E.K. v. Stamford Bd. of Educ.* and *Bridges Pub. Charter Sch. v. Barrie*), $42k in the next case (*Smith v. Indian Hill Exempted Vill. Sch. Dist.*), $12k in the subsequent case (*Capital City Pub. Charter Sch. v. Gambale*), and $4k in the most recent case (*G.M. v. Dry Creek Joint Elementary Sch. Dist.*).

35 The small number of these Rule 11 cases cautions against overgeneralization. For example, the recent reversal of a reduced award in one case (*Oakstone Cmty. Sch. v. Williams*) notably changed the percentage distribution. Moreover, the two cases of a fully awarded request were a $33k sanction against pro se parents (*Horen v. Bd. of Educ.*) and a $4k sanction against the parents' attorney (*M.M. v. Plano Indep. Sch. Dist.*) both represented rather exceptional circumstances.

36 *See*, *e.g.*, Perry A. Zirkel, *The Over–Legalization of Special Education*, 195 Ed. Law Rep. 35 (2004).

37 *Blackman v. Dist. of Columbia*, 633 F.3d 1088, 1094, 265 Ed.Law Rep. 459 (D.C. Cir. 2011).

38 *See*, *e.g.*, Perry A. Zirkel, Zorka Karanxha, & Anastasia D'Angelo, *Creeping Judicialization of Special Education Hearings: An Exploratory Study*, 27 J. NAT'L ASS'N ADMIN. L. JUDICIARY 27 (2007).

39 By extrapolation, the total number of court decisions in special education during the corresponding period is more than 1,000. *See*, *e.g.*, Perry A. Zirkel & Brent L. Johnson, *The "Explosion" in Education Litigation: An Update*, 265 Ed. Law Rep. 1 (2011).

40 For example, a quick search of the West key no. 141Ek898(5), which is for "costs and attorney fees" under "Children with Disabilities; Special Education," yields more than 500 decisions for the time period of this analysis.

41 *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1124, 264 Ed.Law Rep. 618 (9th Cir. 2011).

42 *See*, *e.g.*, Zorka Karanxha & Perry A. Zirkel, *Trends in Special Education Case Law: Frequencies and Outcomes of Published Court Decisions 1998–2012*, 27 J. SPECIAL EDUC. LEADERSHIP 55 (2014) (finding that the leading circuit court regions for IDEA court decisions for the period 1998–2012 in rank order to be: 1–Second Circuit, 2–Third Circuit, and 3–Ninth Circuit).

43 *See*, *e.g.*, Tessie Rose Bailey & Perry A. Zirkel, *Frequency Trends of Court Decisions under the Individuals with Disabilities Education Act*, 28 J. SPECIAL EDUC. LEADERSHIP 3 (2015) (finding the leading states, including D.C., for IDEA court decisions for the period 1979–2013 in rank order to be: 1–New York, 2–Pennsylvania, and 3–D.C).

44 *See*, *e.g.*, Perry A. Zirkel, *Longitudinal Trends in Impartial Hearings under the IDEA*, 302 Ed. Law Rep. 1, 8 (2014).

45 California ranked fourth and Texas ranked eighth in their overall IDEA litigation frequencies. *See* Bailey & Zirkel, *supra* note 43. Conversely, the rate for Pennsylvania was disproportionately low in relation to its overall frequency. *Id.* The regional results reinforced this conclusion to the extent that the Ninth Circuit and Fifth Circuit regions respectively ranked third and eighth overall (in comparison to first and sixth here) and, conversely, the Third Circuit ranked second overall (in comparison to fifth here). *See* Karanxha & Zirkel, *supra* note 42.

46 Alternatively or additionally, perhaps the defendant districts in these states have a perception—which the courts apparently do not largely share—that the parents' bar exhibited an unwarranted litigation culture.

47 *Bobby v. Sch. Bd. of City of Norfolk*, 54 F.Supp.3d 466, 473, 315 Ed.Law Rep. 829 (E.D. Va. 2014).

48 *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d at 1126.

49 *Id.*

50 *See*, *e.g.*, *M.M. v. Lafayette Sch. Dist.*, 59 IDELR ¶ 160, at *13 (N.D. Cal. 2012) (commenting that the parties failure to resolve their dispute short of continued litigation consumed "money that might have been better spent improving educational opportunities for [the plaintiff] and other disabled students"). For a resource reminder on the other side of the litigation table, see *Bobby v. Sch. Bd. of City of Norfolk*, 54 F.Supp.3d at 479 (commenting that "the decision [of the nonprofit, public interest advocacy organization] to pursue this appeal beyond the due process hearing likely diverted resources from other matters and did more to harm to that mission than the modest and entirely reasonable attorney's fee award [the districts] seeks against it"). For the occasional corresponding recognition in terms of plaintiff's, not reverse, attorney's fees, see, e.g., *Evanston Cmty. Consol. Sch. Dist. No. 65 v. Michael M.*, 356 F.3d 798, 806, 184 Ed.Law Rep. 692 (7th Cir. 2004) (observing competing public policies, with difference between IDEA and civil rights cases).

51 This exploratory analysis provides a springboard for both empirical (including qualitative) and traditional legal analysis of the fact patterns, jurisdictional factors, precedential weight, and practical implications of this critical mass of case law.

52 *See* Appendix–e.g., *M.M. v. Lafayette Sch. Dist., Bethlehem Area Sch. Dist. v. Zhou*, and *S.M. v. Hendry Cnty. Bd. of Educ.*

53 *See* Appendix—*Amherst Exempted Vill. Sch. Dist. Bd. of Educ. v. Calabrese* and *El Paso Indep. Sch. Dist. v. Berry*.

54 *See supra* note 33 and accompanying text.

55 *See* Appendix–e.g., *E.K. v. Stamford Bd. of Educ.*

56 Other pieces of this ongoing puzzle include the aforementioned (*supra* note 8) 1986 amendments' provisions for reducing or precluding attorney's fees; alternate dispute resolution and revisions in the prehearing process at the administrative level for adjudication; and provisions for voucher systems in state laws.

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