FEE SHIFTING UNDER THE IDEA ANALYSIS OF FEE AWARDS

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INTRODUCTION

- The Individual with Disabilities Education Act ("IDEA") contains a fee shifting provision which "award(s) reasonable attorneys' fees . . . to a prevailing party who is a parent of a child with a disability." (20 U.S.C. § 1415(i)(3)(B)(i)(II)).
- In any action or proceeding brought under the IDEA, a federal district court may award reasonable attorneys' fees as part of the costs to a "prevailing party" who is the parent of a child with a disability (20 U.S.C. § 1415(i)(3)(B)(i) and 34 C.F.R. § 300.517(a)(1)(i)).*
- "Proceedings" brought under the IDEA include administrative proceedings, such as a hearing before an Impartial Hearing Officer ("IHO") or State Review Officer ("SRO") (*see A.R. v. New York City Dept. of Educ*., 407 F.3d 65 (2d Cir. 2005); *Streck v. Bd. of Educ. of East Greenbush Cent. Sch. Dist.*, 408 Fed Appx. 411, 2010 WL 4847481 (2d Cir. 2010)).

*Under the IDEA and its implementing regulations, "parent" is defined to include a guardian. 34 C.F.R. §300.30.

INTRODUCTION (Cont'd)

- As a threshold matter, in order for a parent to be eligible for attorneys' fees, they must be considered to be a "prevailing party."
- A party achieves "prevailing party" status if that party attains success on any significant issue in the litigation or proceeding that achieves some of the benefit sought, and the manner of the resolution of the dispute constitutes a change in the legal relationship of the parties (*See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Res*., 532 U.S. 598 (2001); *B.W. ex rel. K.S. v. New York City Dept. of Educ*., 716 F. Supp. 2d 336 (S.D.N.Y. 2010)).
- In the context of an IDEA proceeding, an IHO-ordered relief on the merits alters the legal relationship between the parties and thus confers an "administrative imprimatur" sufficient to support an award of attorneys' fees (*See e.g*., *A.R. v. New York City Dept. of Educ*., 407 F.3d at 76; *B.W. ex rel. K.S.*, 716 F. Supp. 2d at 344).

PREVAILING PARTY

- The prevailing party standard has been liberally interpreted by the Supreme Court and the Second Circuit in terms of the degree of relief required (*D.M. ex rel. G.M. v. Bd. of Educ., Center Moriches Union Free Sch. Dist.*, 296 F. Supp. 2d 400 (E.D.N.Y. 2003); *see also Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.,* 489 U.S. 782 (1989)). To qualify for attorneys' fees "a party need not prevail on all issues" but rather must "succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." (*Texas State Teachers Ass'n*, 489 U.S. at 789).
- A 'purely technical or *de minimis*' victory, however, will not qualify a plaintiff as a prevailing party (*B.W. ex rel. K.S.*, 716 F. Supp. 2d at 346).

PREVAILING PARTY (Cont'd)

- A plaintiff may be considered a prevailing party even though the relief ultimately obtained is not identical to the relief demanded in the complaint, provided the relief obtained is of the same general type (*G.M. ex rel. R.F. v. New Britain Bd. of Educ.* 173 F.3d 77 (2d Cir. 1999)).

PREVAILING PARTY (Cont'd)

- In *B.W. ex rel. K.S. v. New York City Dept. of Educ*., *supra,* the District Court held that a parent achieved the necessary level of success to qualify as a prevailing party where the IHO found that the district failed to provide a free appropriate public education ("FAPE") and directed the Committee on Special Education ("CSE") to reconvene and develop a compliant individualized education program ("IEP"), notwithstanding the fact that the parent did not receive the exact relief she sought, namely payment of tuition at a private school (*B.W. ex rel. K.S.*, 716 F. Supp. 2d at 348

LODESTAR APPROACH

Attorneys' Fees Recoverable By Parents:

- Attorneys' fees in IDEA actions are calculated using the "lodestar approach", in which the fee is derived by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate (*B.W. ex rel. K.S.*, 716 F. Supp. 2d at 346).
- Although there is a strong presumption that the lodestar figure represents a reasonable fee, a court may reduce the award based on the results obtained (*Id.*).

LODESTAR APPROACH (Cont'd)

- A reduction may be appropriate where a party lost on claims unrelated to the ones on which he prevailed and the overall level of success is low (*Id.*; *see also N.S. ex rel. P.S.*, 97 F. Supp. 2d at 242 (court determined that a 15% reduction in fees was appropriate where parents failed to succeed on several issues).

LODESTAR APPROACH (Cont'd)

- In determining reasonableness of attorneys' fees under the IDEA, the fees should be based on rates prevailing in the community, in which the action or proceeding arose for the kind and quality of services furnished, and the fees may be reduced based on a finding, *inter alia*, that the rates charged or time spent and legal services spent were excessive (20 U.S.C. § 1415 (i)(3)(C), (F)).

LODESTAR APPROACH (Cont'd)

Attorneys' Fees Recoverable by School District:

- In any action or proceeding for attorneys' fees brought under the IDEA, the Court in its discretion may award reasonable attorneys' fees as part of the cost, "to a prevailing party who is a State, educational agency or local educational agency (1) against the attorney of a parent who files a complaint or subsequent course of action that is frivolous, unreasonable, without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; (2) to a prevailing State educational agency or local educational agency against the attorney of a parent, or (3) against the parent, if the parent's complaint or subsequent cause of action was presented for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation (20 U.S.C. § 1415(i)(3)(B)(i)).

ADVOCATES

- In *Bowman v. District of Columbia*, 496 F. Supp. 2d 160 (D.D.C. 2007), the Court held that the Court-appointed educational advocates for children who were allegedly prevailing parties against the District of Columbia Public Schools ("DCPS") in the Due Process Hearing, were "parents", for purposes of the IDEA's attorney fee provisions, notwithstanding that the children had *guardians ad litem*.

ADVOCATES (Cont'd)

- The Court noted that the definition of "parent" under the IDEA includes "guardian(s)," and 34 CFR § 300.30 which defines "parent" to include guardians, "authorized to make education decisions for the child." Thus, the Court held that education advocates are "parents" under the attorneys' fee provision of the IDEA. However, since this decision was issued by a Federal Court in the District of Columbia, it is not binding upon New York Courts.

PARENT ATTORNEYS

- In 1991 in *Kay v. Ehrler*, 499 U.S. 432 the Supreme Court held that a *pro se* litigant who was also an attorney could not recover attorneys' fees under § 1988's fee-shifting provision.

PARENT ATTORNEYS (Cont'd)

- According to the Court, even though the fee-shifting provision was intended to encourage litigants to protect their civil rights, "its more specific purpose was to enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights." *Kay v. Ehrler*, 499 U.S. 432 (1991).

PARENT ATTORNEYS (Cont'd)

- In *S.N. v. Pittsford Cent. Sch. Dist.*, 448 F.3d 601, which is a Second Circuit decision issued in 2006, the Court affirmed the order of the District Court, denying the parent's application for attorney's fees and dismissing the action, thus finding that a parent-attorney is not entitled to attorneys' fees under the IDEA for the representation of his or her own child. *Id.*