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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES

Introduced By: Senators Gallo, Lombardi, McCaffrey, Jabour, and Archambault

Date Introduced: February 13, 2013

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 16-24 of the General Laws entitled "Children with Disabilities" is  
2 hereby amended by adding thereto the following section:

3           **16-24-19. Costs to prevailing plaintiff -- Special education matter in controversy. –**

4           (a) Costs awarded to prevailing plaintiff.

5           (1) In any adjudicatory proceeding or superior court action in any matter governing the  
6 education of children with disabilities, the hearing officer or superior court, if requested by a  
7 parent who is a prevailing party in a hearing brought pursuant to the Individuals with Disabilities  
8 Education Act, 20 USC section 1400 et seq., and/or Title 16 of the Rhode Island general laws  
9 ("Education"), shall require that the prevailing parent be awarded reasonable attorney and expert  
10 witness fees, as part of the costs associated with bringing the action. Provided, however, that any  
11 such parent who is a prevailing party may elect to seek an award of reasonable attorneys' fees in  
12 the United States District Court pursuant to the Individuals with Disabilities Education Act, 20  
13 USC section 1400 et seq., rather than before the hearing officer or in superior court.

14           (2) In any action or proceeding brought in a court of proper jurisdiction, the court, in its  
15 discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is a  
16 state or local education agency against the attorney of a parent who files a complaint or  
17 subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the  
18 attorney of a parent who continued to litigate after the litigation clearly became frivolous,  
19 unreasonable or without foundation.

1 (3) In any action or proceeding brought in the court of proper jurisdiction, the court, in its  
2 discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is a  
3 state or local education agency against the attorney of a parent, or against the parent, if the  
4 parent's complaint or subsequent cause of action was presented for any improper purpose, such as  
5 to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

6 (4) In any adjudicatory proceeding or superior court action in any matter governing the  
7 education of children with disabilities, the hearing officer or superior court may, in his, her, or its  
8 discretion, award reasonable attorneys' fees as part of the costs to a prevailing party who is a  
9 parent against the attorney of a state or local education agency who files a complaint or  
10 subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the  
11 attorney of a state or local education agency who continued to litigate after the litigation clearly  
12 became unreasonable or without foundation.

13 (b) "Prevailing party" defined. A prevailing party is a parent that prevails on behalf of a  
14 child in an administrative action by a decision of a hearing officer, or by an informal disposition,  
15 which includes, but is not limited to, an agreement by the parties or termination of the proceeding  
16 by the agency.

17 (c) Determination of amount of attorney and expert fees. Awarded attorney and expert  
18 fees shall be based on rates prevailing in the community in which the action or proceeding arose  
19 for the kind and quality of services furnished. No bonus or multiplier may be used in  
20 calculating the fees awarded under this subsection.

21 (d) Prohibition of attorney and/or expert fees and related costs for certain services.

22 (1) Attorney and expert fees may not be awarded and related costs may not be reimbursed  
23 in any action or proceeding under this statute for services performed subsequent to the time of a  
24 written offer of settlement to a parent if:

25 (i) The offer is made within the time prescribed by Rule 68 of the Rhode Island Superior  
26 Court Rules of Civil Procedure or Rule 68 of the Federal Rules of Civil Procedure, or, in the case  
27 of an administrative hearing, at any time more than ten (10) days before the proceeding begins;

28 (ii) The offer is not accepted within ten (10) days; and

29 (iii) The court of proper jurisdiction or administrative hearing officer finds that the relief  
30 finally obtained by the parent is not more favorable to the parent than the offer of settlement.

31 (e) Exception to prohibition on attorney and/or expert fees and related  
32 costs. Notwithstanding paragraph (d) of this section, an award of attorney and expert fees and  
33 related costs may be made to a parent who is the prevailing party and who was substantially  
34 justified in rejecting the settlement offer.

1           (f) Reduction of amount of attorney and/or expert fees. Except as provided in subsection  
2 (g) of this section, the administrative hearing officer or court of proper jurisdiction may reduce,  
3 accordingly, the amount of the attorney and/or expert witness fees awarded, if the administrative  
4 hearing officer or court of proper jurisdiction finds that:

5           (1) The parent, during the course of the action or proceeding, unreasonably protracted the  
6 final resolution of the controversy; or

7           (2) The amount of the attorney and/or expert fees otherwise authorized to be awarded  
8 unreasonably exceeds the hourly rate prevailing in the community for similar services by  
9 attorneys and/or expert witnesses of reasonably comparable skill, reputation, and experience; or

10          (3) The time spent and legal and expert witness services furnished were excessive  
11 considering the nature of the action or proceeding; or

12          (4) The attorney representing the parent did not provide to the school district the  
13 appropriate information in the notice of the due process complaint as described in 20 USC section  
14 1415 (b)(7) of the Individuals with Disabilities Education Act as amended or in any subsequent  
15 provisions providing for a similar due process complaint.

16          (g) Exception to reduction in amount of attorney and expert fees. The provisions of  
17 subsection (f) of this section do not apply in any action or proceeding if the administrative  
18 hearing officer or court of proper jurisdiction finds that the state or local agency unreasonably  
19 protracted the final resolution of the action or proceeding.

20          (h) As used in this section, the term “parent” shall also include a legal guardian of a child  
21 if applicable.

22           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO EDUCATION -- CHILDREN WITH DISABILITIES

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- 1           This act would allow parents of children with educational disabilities to recover their
- 2 attorney and expert fees when they prevail in an adjudicatory proceeding or superior court action
- 3 in matters governing the education of their child with disabilities.
- 4           This act would take effect upon passage.

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