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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO EDUCATION - CHILDREN WITH DISABILITIES

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 03, 2015

Referred To: Senate Judiciary

(by request)

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 16-24 of the General Laws entitled "Children With Disabilities  
2 [See Title 16 Chapter 97 - The Rhode Island Board of Education Act]" is hereby amended by  
3 adding thereto the following section:

4           **16-24-19. Costs to prevailing plaintiff in a special education matter in controversy. –**

5           (a) Costs awarded to prevailing plaintiff.

6           (1) 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, if requested by a  
8 parent who is a prevailing party in a hearing brought pursuant to the Individuals with Disabilities  
9 Education Act, 20 U.S.C. § 1400 et seq. and/or title 16 of the Rhode Island general laws, shall  
10 require that the prevailing party, who is a parent, be awarded reasonable attorney and expert  
11 witness fees, as part of the costs associated with bringing their action. Provided, however, that  
12 any such parent who is a prevailing party may elect to seek an award of reasonable attorneys' fees  
13 in the United States District Court pursuant to the Individuals with Disabilities Education Act, 20  
14 U.S.C. § 1400 et seq., rather than before the hearing officer or in superior court.

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

1 unreasonable or without foundation.

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

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

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

18 (c) Prohibition of attorney and/or expert fees and related costs for certain services.  
19 Attorney and expert fees may not be awarded and related costs may not be reimbursed in any  
20 action or proceeding under this statute for services performed subsequent to the time of a written  
21 offer of settlement to a parent if:

22 (1) The offer is made within the time prescribed by Rule 68 of the Rhode Island superior  
23 court rules of civil procedure or Rule 68 of the Federal Rules of Civil Procedure or, in the case of  
24 an administrative hearing, at any time more than ten (10) days before the proceeding begins;

25 (2) The offer is not accepted within ten (10) days; and

26 (3) The court of proper jurisdiction or administrative hearing officer finds that the relief  
27 finally obtained by the parents is not more favorable to parents than the offer of settlement.

28 (d) Exception to prohibition of attorney and/or expert fees and related costs.  
29 Notwithstanding subsection (c) of this section, an award of attorney and expert fees and related  
30 costs may be made to a parent who is the prevailing party and who was substantially justified in  
31 rejecting the settlement offer.

32 (e) Reduction of amount of attorney and/or expert fees. Except as provided in subsection  
33 (f) of this section, the administrative hearing officer or court of proper jurisdiction may reduce the  
34 amount of the attorney and/or expert witness fees awarded if the administrative hearing officer or

1 court of proper jurisdiction finds that:

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

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

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

9 (4) The attorney representing the parent did not provide to the school district the  
10 appropriate information in the notice of the due process complaint described in 20 U.S.C. § 1415  
11 (b)(7) of the Individuals with Disabilities Education Act as amended.

12 (f) Exception to reduction in amount of attorney and/or expert fees. The provisions of  
13 subsection (e) of this section as to reductions in attorney and/or expert fees shall not apply in any  
14 action or proceeding if the administrative hearing officer or court of proper jurisdiction finds that  
15 the state or local agency unreasonably protracted the final resolution of the action or proceeding.

16 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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