

Monahan & Cohen Special Education ENews

Local and National News

March 2008- Vol 8, Issue 1

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From the Desk of Matt Cohen

Welcome to Monahan & Cohen's newsletter dedicated to bringing you **Special Education** news from both the national and local level.

Matt Cohen
Monahan & Cohen
225 West Washington
Suite 2300
Chicago, IL 60606
312-419-0252 fax 312-419-7428
mdcspedlaw@earthlink.net
www.monahan-cohen.com



PLEASE NOTE:
Effective April 1, 2008, our **NEW ADDRESS** will be 55 West Monroe St. Suite 3700, Chicago, IL 60603.

The Civil Rights Act of 2008 Introduced by Senator Kennedy and Congressperson Lewis

Senator Kennedy and Congressperson Lewis introduced the Civil Rights Act of 2008 (SB 2554 and HR 5129) to override Supreme Court decisions which have dramatically restricted the ability of successful civil rights plaintiffs to obtain attorneys fees for settlements and to recover expert witness fees. Here is a portion of a letter from COPAA written in support of this new legislation:

"S. 2554 and H.R. 5129 will override two Supreme Court decisions that have dangerously tilted the playing field against parents who must exercise their due process rights to ensure that their children with disabilities receive the education to which the law entitles them.

Congress passed the Individuals with Disabilities Education Act 33 years ago so children with disabilities would receive a free appropriate public education--a right they had long been denied, and which many continue to be denied. Hence, the IDEA gives parents the right to seek redress through an impartial due process hearing or judicial proceeding. Of course, hearings have always been rare; in 2003, the GAO reported that there were only 5 hearings per 10,000 special education students in 2000. But because IDEA's enforcement depends on parents to enforce the law, proposed Sections 411 and 433 (d) of the Civil Rights Act of 2008 are critically important.

Arlington Central School District v. Murphy (2006). By overriding this decision, Section 433(d) of the Civil Rights Act of 2008 will reinstate prevailing parents' right to recover expert witness fees. This provision will implement Congress' original intent in enacting the Handicapped Children's Protection Act of 1986--to ensure that parents who prevail in IDEA due process or court cases can recover their expert witness costs. Few parents can afford the thousands of dollars needed to pay qualified medical, educational, and technical experts. Almost 2/3 of children with disabilities live in families earning under \$50,000 a year. School districts can use therapists, psychologists, and other expert witnesses on their own payroll, or hire outside experts with taxpayer dollars. When prevailing parents cannot recover expert costs, the playing field is neither level nor fair. Section 433(d) in your proposed bill will correct this inequity, and we thank you for including it.

Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Res. (2000). By overriding this decision, Section 411 of the Civil Rights Act of 2008 will enable parents to recover attorneys' fees for cases when their cases settle but caused the school district to voluntarily change its conduct and provide relief. Buckhannon permits parents and other civil rights plaintiffs to recover attorneys' fees in such cases only if their settlement is by judicial or administrative order. But, most hearing officers do not order consent decrees when cases settle, meaning that parents who settle those cases cannot receive their attorneys' fees. Thus, Buckhannon has made it much harder for parents without substantial financial resources to find attorneys willing to take their cases. This further deters parents from

seeking a remedy when their children are denied a free appropriate public education. Moreover, school districts often settle at the last minute, after parents have been forced into prolonged and costly litigation and hearing preparation, leaving them unable to pay hefty legal bills. Buckhannon, like Murphy, has upset the balance that Congress so carefully crafted to ensure access to a fair decision-making system. Because IDEA relies on parents as private attorneys general for enforcement, Section 411 is particularly important."

Please feel free to repost the letter or share it with others. You can also write to your Senators and Representatives to urge them to support the bills.

Email contact info is:

House of Representatives: <http://www.house.gov/writerep/>

Senate: http://www.senate.gov/general/contact_information/senators_cfm.cfm "

Support the IDEA Restoration Act to Restore the Right of Parents to Recover the Cost of Expert Witness Fees if they Prevail in Due Process Hearings

In a related development, H.R. 4188, the IDEA Fairness Restoration Act, would enable prevailing parents to recover their expert witness fees in due process and litigation under the IDEA. A total of 96 organizations signed on to the letter supporting this legislation, ranging from national to state and local ones. In addition, another 15 national organizations signed a similar letter from the Consortium of Citizens with Disabilities two weeks earlier. Together, over 100 organizations support the bill. Please contact your Senators and Congressperson in support of the legislation

Senate Judiciary Committee Passes the Reauthorization of the Mentally Ill Offender Treatment and Crime Reduction Act

On March 6, 2008, members of the Senate Judiciary Committee passed S. 2304, the Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act. The legislation, introduced last year by Sens. Edward Kennedy (D-MA), Pete Domenici (R-NM), Patrick Leahy (D-VT) and Arlen Specter (R-PA), will now be sent to the Senate floor for consideration.

The bill, which passed the U.S. House of Representatives in January with overwhelming bipartisan support, will help provide states and counties with the resources needed to design and implement collaborative efforts between the criminal justice and mental health systems. The legislation offers grants to communities to develop diversion programs, mental health treatments in jails and prisons, and transition and aftercare services to facilitate reentry into the community. The bill also provides for the cross-training of criminal justice, law enforcement and mental health personnel. (From Criminal Justice/Mental Health Consensus Project, courtesy of Rob Tudisco)

US Department of Education Website Updates

The US Department of Education has updated its website on the Family Educational Rights and Privacy Act (FERPA), which is also known as the Buckley Amendments. This law regulates the right to confidentiality of school records. This link, and the two links that follow, were forwarded by Dee Alpert:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html>

The Department of Education Office of Special Education Programs has also created an updated website with a directory of its Letters interpreting many aspects of the IDEA and Section 504. The new site is:

<http://www.ed.gov/policy/speced/guid/idea/letters/revpolicy/index.html>

They have also created a new site indexing the most recent and important policy letters, at:

<http://www.ed.gov/news/web/latest/whatsnew.jhtml?pageNumber=26&perPage=10>

New 11TH Circuit Court Of Appeals Decision Allows For Four Years of Prospective Compensatory Education to Remedy School's Denial of a Free Appropriate Public Education

In a decision that dramatically expands the potential relief available to children who have been flagrantly denied a free appropriate public education, the 11th Circuit ruled that: "In our review of Draper's award, we are mindful that an award of compensation for a violation of the Act is different from the educational program ordinarily required by the Act. An educational program must be 'reasonably calculated to enable the child to receive educational benefits.... Courts must only determine whether the child has received the basic floor of opportunity....' If there has been a violation, the district court may award 'appropriate compensatory relief.'" 20 USC Sec. 1415 (i)(2)(C)(iii) Although "ordinary (educational programs) need only provide 'some benefit,' compensatory awards must do more-they must compensate." Compensatory awards should place children in the place they would have been in but for the violation of the Act." Jarron Draper v. Atlanta Ind. School Dist., (11th Cir., 2008)

This case is of considerable significance, as it allows for the the provision of substantial future services to make up for a prior denial of FAPE. Many courts have limited compensatory awards to a few years, particularly limiting the period of award based on the statute of limitations and other limiting factors, including limiting the award to services that are more precisely equivalent to the calculation of the deprivation, rather than focusing on the services needed to remedy the wrong. Here, the court found that the family initially did not have sufficient information to challenge the school district's failure to provide FAPE, which meant the statute of limitations did not bar recovery for some of the earlier violations.

Further, the court held that the award was proportionate to the wrongs of the school district, and was "reasonably calculated to provide educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."

(See www.wrightslaw.com for full text and commentary)

Recent Illinois Legislative Developments



Thanks to Phil Milsk for the following Illinois Legislative Updates:

HB 5188(Confidentiality for Type 73 Certificated Personnel): Favorably reported by the House Judiciary-Civil Law Committee as amended. Amends the Student Records Act to make confidentiality laws applicable to information disclosed in confidence to license-exempt school social workers, school counselors or school psychologists, or interns working under their direct supervision. (Licensed staff are covered under their respective licensure acts.)

SB 2256(Human Rights Act):

Favorably reported by the Senate Executive Committee. The bill would change provisions in the public accommodations article of the Human Rights Act regarding non-sectarian educational institutions by narrowing the jurisdictional limits enacted last year concerning "classroom activity". An amendment with the Department of Human Rights is being considered that would allow charges of discriminatory harassment or bullying in the classroom to be brought if the covered entity fails to take remedial action.

Monahan & Cohen News



Monahan & Cohen will be moving to **55 W. Monroe St., Suite 3700, Chicago, IL. 60603**, effective March 31, 2008. Our new offices will provide us with approximately 30% more space, increased conference room capacity, and more offices. We will also be upgrading our computer and

telecommunications systems to be as advanced as possible.

Our phone number (312-419-0252) and web and email addresses will remain the same.

Matt Cohen Upcoming Presentations

Saturday, March 29, 2008, 9:00 AM - 4:00 PM

Matt Cohen

Planning for Adults and Children with Special Needs for Today, Tomorrow & the Future

Arc of Illinois Presentations

The Autism Program

The Hope Institute for Children and Families

15 E. Hazel Dell Lane

Springfield, IL 62712

708-206-1930

May 1, 2008

Matt Cohen

Transition Under the New IDEA 2004: Untapped Opportunities, Unmet Responsibilities

Northwestern Illinois Center for Independent Living

229 1st Avenue, Suite 2

Rock Falls, IL 61071

Presented at Sauk Valley Community College

more information to follow

May 9, 2008 8:55 am- 4:10 pm

Matt Cohen

Administrative Hearings: A Primer for lawyers who Represent Children

ISBA Child law Section Day

20 South Clark Street

Suite 900

Chicago, IL

www.isba.org 800-252-8908

May 14, 1008

Joseph Monahan

2008 Mental Health Law Day

Sponsored by Illinois State Bar Association's Standing Committee
on Mental Health

Northwestern University

Thorne Auditorium

375 East Chicago Avenue

Chicago, IL

More information to follow

May 15, 2008, Noon

Matt Cohen & Joseph Monahan

Domestic Relations Division's Child Representative Services

for Court Appointed Lawyers and Guardian *ad Litem*'s - Mental Health Law

Courtroom 1905 - Judge Jacobius

Cook County Courts, Daley Center

June 28, 2008

Matt Cohen

Cornelia de Lange Syndrome (CdLS) Foundation Conference

Key Note Address

Marriott Lincolnshire

800-223-8355

www.cdlsusa.org

July 15, 2008 7:00 p.m. - 9:30 p.m.

Matt Cohen with Brian Rubin and Sherri Schneider

**Transition - Planning for Adults and Children with Special Needs for Today,
Tomorrow & the Future**

Keshet School

more information to follow

October 4, 2008

Matt Cohen

ADHD Conference (CHADD)

Lexington, KY (Invited)

More information to follow

November 13-15, 2008

Matt Cohen - (tentative)

CHADD 20th Annual Conference

Anaheim, CA

www.chadd.org

More information to follow

As information becomes available, we will post on our websites presentations page, found at www.monahan-cohen.com.

Donate to the MATT COHEN CHADD MEMBERSHIP SUPPORT FUND



Children and Adults with
Attention Deficit/Hyperactivity Disorder

The [CHADD](#) Matt Cohen Membership Support Fund is running dry. The fund is used to provide free memberships to persons interested in joining CHADD, the premier advocacy organization for children and adults with AD/HD and their families. The fund also provides financial support to assist families to attend CHADD's annual conference, which is held in the fall of every year at different cities around the US. To make a donation to the Matt Cohen Membership Support Fund, please send your check, payable to CHADD, with a note on the note line of the check and an accompanying note indicating you are making a specific donation to the Matt Cohen Support Fund, to CHADD, **CHADD National Office**; 8181 Professional Place - Suite 150, Landover, MD 20785. You can also make a donation by phone, by calling Sue Odachowski at 800-233-4050. ext. 105.



Matt Cohen is a founding partner in the Chicago law firm, Monahan and Cohen. Currently admitted to practice in both Illinois and Indiana, his practice is concentrated in representation of children and families in special education and discipline disputes with public schools. He also has extensive experience in mental health and confidentiality law.

If you have any questions, please call his assistant, Tami Kuipers, at 312-419-0252.

Sincerely,

Matt Cohen
Monahan & Cohen
225 West Washington, Suite 2300
Chicago, IL 60606
312-419-0252

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