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For over 30 years, the Individuals with Disabilities Education Act (IDEA) and its predecessors have ensured that children with disabilities receive a free appropriate public education.¹ Today, 6.5 million children are covered by the Act.² In response to the historic segregation and wholly inadequate education of children with disabilities, the IDEA gives children a variety of substantive and procedural protections. When parents have cause to believe the IDEA has been violated, they may file an administrative complaint, followed by an IDEA enforcement action in federal court. Parents who prevail generally recover their reasonable attorneys' fees.³ Such fee-shifting provisions, common in civil rights cases, ensure that parents and other plaintiffs are able to obtain legal representation. The IDEA was amended in December 2004, to allow prevailing school districts to seek their attorneys' fees from parents and their counsel under very limited circumstances.⁴ Specifically, the parents' case must be "frivolous, unreasonable, or without foundation" or the parents must have acted with an "improper purpose" in filing it.⁵ These amendments went into effect on July 1, 2005 as part of the

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1. 151 CONG. REC. S13, 400 (daily ed. Nov. 18, 2005) (statement of Sen. Enzi).

2. 150 CONG. REC. S11, 654 (daily ed. Nov. 19, 2004) (statement of Sen. Gregg).

3. 20 U.S.C. § 1415(i)(3)(B)(i)(I) (2005).

4. The IDEA formally refers to school districts as Local Education Agencies (LEAs). 20 U.S.C. § 1401(19) (2005). Because school districts are most often the defendant in IDEA enforcement actions, this article generally refers to them. The same law and analysis, however, is applicable when the defendant is the State Education Agency (SEA). 20 U.S.C. § 1415(i)(3)(B)(i)(II)-(III) (2005).

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Individuals with Disabilities Education Improvement Act.⁶ Care must be taken in applying these new amendments to avoid chilling IDEA enforcement actions filed on behalf of children with disabilities seeking an adequate education.

The purpose of this article is to review and analyze the new fee-shifting amendments. Part I of this article begins with the history of the IDEA and a summary of its major provisions. Part II summarizes the law applicable to prevailing parents' requests for attorneys' fees in IDEA enforcement actions. Part III discusses the new fee-shifting amendments in detail. First, it describes the general rules applied to a school district's fee request. Second, it analyzes the ability of school districts to recover their fees if the parents' case is frivolous or the parents continue to litigate after the case clearly became frivolous. Third, the article discusses fee-shifting if the parents file a case with an improper purpose. Finally, the article addresses some additional issues raised by these new amendments, including situations involving interrelated claims where only some are frivolous or filed for an improper purpose.

I. OVERVIEW OF THE IDEA

For much of this country's history, children with disabilities were excluded from public education or received vastly inferior educations. In 1970, before laws protecting the rights of children with disabilities were adopted, four out of five were not educated.⁷ Even those children admitted to public school often received inadequate and inappropriate educations.⁸ They were segregated into separate schools and later, separate wings of regular schools, rather than educated with their nondisabled peers.⁹ In reaction to these problems, Congress passed the Education of the Handicapped Amendments of 1974¹⁰ and then the Education for All Handicapped Children Act (EAHCA) in 1975.¹¹ The EAHCA established that all

6. The Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 302, 118 Stat. 2803 (codified as amended at 20 U.S.C. § 1415 (2005)).

7. OFFICE OF SPECIAL EDUCATION & REHABILITATIVE SERVICES, U.S. DEPT. OF EDUCATION, A 25 YEAR HISTORY OF THE IDEA (2005),