

281—41.517 (256B,34CFR300) Attorneys' fees.

41.517(1) General. In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

- a. The prevailing party who is the parent of a child with a disability;
- b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) Prohibition on use of funds.

a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.

b. Paragraph 41.517(2) "a" does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) Award of fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. *Amount of fees.* Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. *When fees and costs may not be awarded.*

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

- 1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;
- 2. The offer is not accepted within ten days; and
- 3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 281—41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 281—41.510(256B,34CFR300) shall not be considered either of the following:

- 1. A meeting convened as a result of an administrative hearing or judicial action; or
- 2. An administrative hearing or judicial action for purposes of this rule.

c. *Exception to offer of settlement subrule.* Notwithstanding 41.517(3) "b"(1), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. *Reduction in attorney fees.* Except as provided in 41.517(3) "e," the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the Act, if the court finds that:

- (1) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

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

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 281—41.508(256B,34CFR300).

e. Exception to reduction in fees subrule. The provisions of 41.517(3)“d” do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.