

Testimony of Representative Frank I. Smizik  
Before the Committee on Education  
In support of House Bill 547  
An Act Relative to Special Education Due Process Costs  
(Refile of H.4594, reported favorably by Education Committee)

October 11, 2007

**What is the problem:** In 1986, Congress amended the federal special education law to allow parents to recover attorney's fees when they prevail in administrative or court proceedings to enforce their child's right to receive appropriate special education services. Many low-income and middle-income parents of children with disabilities cannot afford legal council when their children face discriminatory barriers and fail to receive equal educational opportunities. However, as a result of a Supreme Court decision in 2001, parents are not entitled to fees if the parties settle the case. The impact of the limitation on recovery for fees has been devastating on children with disabilities.

**What this bill does:** This bill addresses the impact of a Rehnquist decision by the Supreme Court (*Buckhannon, 2001*) which has effectively created a two-tier system, barring many low and middle-income families from accessing special education rights and services. This bill would reinstate parents' rights to recover attorney's fees as previously available prior to 2001.

**Why this bill is important:** It is critical to encourage prompt resolution and settlement of disputes, reduce litigation costs for families and school districts, reduce the lengthy delays which harm children deprived of essential services for months and sometimes years, and help ensure that children of all income levels receive equal educational opportunities.