



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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HUMAN RESOURCES
DIVISION

B-217771

MARCH 12, 1985

The Honorable Lowell Weicker, Jr.
Chairman, Subcommittee on the Handicapped
Committee on Labor and Human Resources
United States Senate

Dear Mr. Chairman:

Subject: Judicial Cases Reviewed for Awards of Damages,
Attorney's Fees, and Nonmonetary Remedies in
Special Education Lawsuits Brought Under
Public Law 94-142 (GAO/HRD-85-44)

In response to a request from your office, we have reviewed several lawsuits filed under The Education of All Handicapped Children Act (EAHCA) (Public Law 94-142). The act provides for "a free appropriate public education which emphasizes special education and related services designed to meet . . . [the] unique needs . . . of handicapped children."

As agreed with your office, our review was limited to obtaining information on only the successfully litigated cases under EAHCA from those court cases identified for your Subcommittee by the Congressional Research Service. We determined (1) whether each successfully litigated case was brought by an individual or a class; (2) the attorney's fees awarded, if any, and who paid; (3) the amount of the damage award, if any, and who paid; and (4) the nature of each case and the reasons litigation was brought.

Twenty-three of the 42 cases that were identified by the Congressional Research Service involved successful litigation under EAHCA. The other 19 cases did not involve EAHCA claims or were not successfully litigated. Of the 23 relevant cases, 15 provided for attorney's fees. Although EAHCA itself does not allow for such fees, those cases allowing for attorney's fees relied on the authority of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and/or the Civil Rights Attorney's Fees Awards Act of 1976 (42 U.S.C. 1988). Recently, however, the Supreme Court held that where EAHCA provides a remedy with more clarity and precision than other laws, one may not enlarge the remedies, including attorney's fees, available under EAHCA by resorting to one of these other laws. Smith v. Robinson, 104 S.Ct. 3457 (1984).

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On December 17, 1984, we met with your office, discussed the results of our review, and agreed that further work to determine the effect of the cases on the students, parents, and schools would not be required because of (1) the difficulty encountered in defining and measuring case effect and (2) the limited usefulness of such anecdotal information. This report summarizes the information provided during the December briefing.

The 23 cases reviewed include 5 class action suits and 18 individual suits. All of the class action suits involved the award of attorney's fees. The attorney's fees awarded in the class action suits totaled \$519,031.93, with awards ranging from \$65,000 to \$211,681.93. Of the 18 individual suits, attorney's fees were awarded to parents in 10 cases. Attorney's fees awarded in 6 of the 10 cases totaled \$63,337.50, with awards ranging from \$2,860 to \$36,465. In the remaining four cases, fees were awarded to the plaintiffs, but information was not readily available on the amounts of the awards.

Regarding judicial remedies, all five of the class action suits were limited to awarding nonmonetary relief to rectify past actions or practices regarding the plaintiffs' efforts to obtain a free appropriate public education. These included two consent decrees, two injunctions, and one case in which a representative of the court was appointed to establish and oversee a detailed remedial plan.

Thirteen of the 18 individual cases also were limited to nonmonetary remedies. In another case, such a remedy became unnecessary because the state provided the necessary remedy before the court decision. In the other four suits, plaintiffs were awarded damages totaling \$13,050, with awards ranging from \$1,200 to \$5,750. Courts have awarded such damages to cover tuition reimbursement to parents for private school tuition or out-of-pocket expenses for related services as defined under EAHCA, such as transportation costs to the school program and physical therapy services required during the school day. Specific information on each of the 23 cases reviewed is presented in enclosure I.

In addition to the information requested, we have identified a case on appeal to the Supreme Court that appears to be related to your office's request since it involves the award of damages to parents under EAHCA. Town of Burlington v. Massachusetts Board of Education 736 F.2d 773 (1st Cir. 1984), cert. granted, 53 U.S.L.W. 3417 (U.S. December 3, 1984 (No. 84-433)). The Supreme Court has agreed to hear the case, and arguments are scheduled before the Court for March 26, 1985.

We are sending copies of this report to other interested congressional committees; the Director, Office of Management and Budget; and the Department of Education. Copies will be provided to other interested parties on request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard L. Fogel". The signature is written in a cursive style with a large, sweeping initial "R".

Richard L. Fogel
Director

Enclosure

SELECTED CASES REVIEWED FOR AWARD OF DAMAGES, ATTORNEY'S FEES,
AND NONMONETARY REMEDIES IN SPECIAL EDUCATION LAWSUITS
BROUGHT UNDER PUBLIC LAW 94-142

INDIVIDUAL CASES

<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Case decision</u>	
	<u>Amount</u>	<u>Citation</u>	<u>Damages/ remedies</u>	<u>Summary</u>
<u>Hurry v. Jones</u> 734 F.2d 879 (1st Cir. 1984)	Not awarded		\$5,750.00	School district must pay parents for reasonable time and effort expended and out-of-pocket costs of transportation of handicapped student. Request denied for attorney's fees under Rehabilitation Act.
<u>Department of Education, State of Hawaii v. Katherine</u> D. 531 F. Supp. 517 (D. Hawaii 1982), aff'd in part, 727 F.2d 809 (9th Cir. 1983)	Not awarded		\$1,200.00	Handicapped student able to function in normal classroom environment is entitled to recover cost of a private school education until an appropriate public school program is devised. Appellate court reversed that part of the district court decision awarding attorney's fees under Attorney's Fees Awards and Rehabilitation Acts.
<u>Espino v. Besteiro</u> 520 F. Supp. 905 (S.D. Tex. 1981) rev'd 708 F.2d 1002 (5th Cir. 1983)	a	42 U.S.C. 1988	Non- monetary award	Lower court issued preliminary injunction enjoining defendants from refusing handicapped student free appropriate public education. School district subsequently arranged for education in local private school at district expense. Appellate court held that handicapped student was also entitled to attorney's fees under Attorney's Fees Awards Act.

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<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Case decision</u>	
	<u>Amount</u>	<u>Citation</u>		<u>Summary</u>	
<u>Tatro v. State of Texas</u> , 516 F. Supp. 968 (N.D. Tex. 1981), <u>aff'd</u> , 703 F.2d 823 (5th Cir. 1983), <u>aff'd and rev'd in part</u> , 52 U.S.L.W. 5151 (U.S. July 5, 1984)	b		\$1,271.00	Lower court assessed school district for costs of physical therapy in addition to attorney's fees award. Fee award upheld in appellate court but reversed by Supreme Court. Supreme Court held that where relief is available under EAHCA, attorney's fees may not be awarded under authority of Rehabilitation Act.	
<u>Smith v. Robinson</u> 703 F.2d 4 (1st Cir. 1983) <u>aff'd</u> , 104 S.Ct. 3457 (1984)	Not awarded		Non-monetary award	District court issued permanent injunction requiring school committee to pay full cost of handicapped child's attendance at school. District court's award of attorney's fees of \$32,109 was reversed in appellate court, and reversal was upheld by Supreme Court.	
<u>Hastings v. Maine-Endwell Central School District</u> 676 F.2d 893 (2nd Cir. 1982)	c	42 U.S.C. 1988	Non-monetary award	In administrative proceeding, handicapped student held entitled to certain level of rehabilitative services from school district. District court issued injunction preventing school district from immediately commencing new review of level of rehabilitative services. District court also awarded attorney's fees to student. Circuit court dismissed appeal of the school district and stated that grounds of appeal were so baseless that district court should consider whether to assess defendant's attorney personally for cost of appeal.	

<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Case decision</u>
	<u>Amount</u>	<u>Citation</u>		<u>Summary</u>
<u>Robert M. v. Benton</u> F.2d 1104 (8th Cir. 1982)	\$5,052.00	42 U.S.C. 1988	Non- monetary award	Suit concerned propriety of placement of student in special education classes in public school. Plaintiff student sought attorney's fees, and appellate court held that trial court did not abuse its discretion in awarding \$5,052 in attorney's fees in suit under EAHCA and Attorney's Fees Awards Act.
<u>Hynes v. Harnett</u> <u>County Board of</u> <u>Education, 664</u> F.2d 410 (4th Cir. 1981)	c	42 U.S.C. 1988	Non- monetary award	Plaintiff child won state administrative proceedings that returned child from home-bound placement to public classroom with school district required to provide particular health service. District court awarded attorney's fees for services related to claim that home-bound placement was accomplished without due process. Appellate court remanded case to district court for consideration of additional fees for litigating case in district and appellate courts.
<u>Anderson v. Thompson</u> 495 F. Supp. 1256 (E.D. Wis. 1980), aff'd, 658 F.2d 1205 (7th Cir. 1981)	Not awarded		Non- monetary award	District court ordered phased transition of child from private school to full-time attendance in public school. School board ordered to pay transition costs. Appellate court upheld district court decision not to award compensatory damages and attorney's fees.

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<u>Case name and citation</u>	<u>Attorney's fees</u>	<u>Damages/</u> <u>remedies</u>	<u>Case decision</u>
<u>Amount</u>	<u>Citation</u>		<u>Summary</u>
<u>Rollison v. Biggs</u> <u>567 F. Supp. 964</u> <u>(D. Del. 1983)</u>	Not awarded	\$4,829.00 plus interest	State defendants agreed to reimburse parents for tuition and transportation costs of 1979-80 school year. District court found no statutory basis to justify awarding attorney's fees.
<u>Noe v. Ambach</u> <u>542 F. Supp. 70</u> <u>(S.D.N.Y. 1982)</u>	Not awarded	Non-monetary award	Stipulation agreement reached in action seeking educational and psychological services for disabled child. District court found no statutory basis to justify awarding attorney's fees.
<u>Turillo v. Tyson</u> <u>535 F. Supp. 577</u> <u>(D.R.I. 1982)</u>	c 42 U.S.C. 1988	Non-monetary award	School committee found liable for placement expenses of handicapped child at hospital. Attorney's fees awarded under Attorney's Fees Awards Act for work performed in EAHCA administrative proceedings.
<u>Davis v. D.C. Board</u> <u>of Education, 522 F.</u> <u>Supp. 1102 (D.D.C.</u> <u>1981), 530 F. Supp.</u> <u>1215 (D.D.C. 1982)</u>	\$5,752.00 29 U.S.C. 794a(b)	Non-monetary award	District court held that due process hearing concerning the special education placement of learning disabled child was inadequate. Court awarded attorney's fees by authority of Rehabilitation Act after parties were unable to agree on fees resulting from an earlier decision.

<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Case decision</u>
	<u>Amount</u>	<u>Citation</u>		<u>Summary</u>
<u>Patsel v. D.C. Board of Education</u> , 522 F. Supp. 535 (D.D.C. 1981), 530 F. Supp. 660 (D.D.C. 1982)	\$2,860.00	29 U.S.C. 794a(b)	Non-monetary award	District court ordered board of education to hold due process hearing regarding propriety of special education placement of learning disabled child. In a later decision, district court held that parents of child were entitled to award of attorney's fees incurred in challenging board of education refusal to provide due process hearing.
<u>Department of Education v. Valenzuela</u> 524 F. Supp. 261 (D. Hawaii 1981)	\$3,668.50	42 U.S.C. 1988	Non-monetary award	Without acceptable public school instructional program for handicapped child, Department of Education agreed to pay child's tuition at private school. District court awarded attorney's fees under Attorney's Fees Awards Act.
<u>Campbell v. Talladega County Board of Education</u> 518 F. Supp. 47 (N.D. Ala. 1981)	\$36,465.00	29 U.S.C. 794a(b)	Non-monetary award	Among other things, district court ordered school board to present retarded student's education plan to court within 60 days of order; school board also ordered to provide free appropriate public education to child for 2 years after 21st birthday. Court retained jurisdiction for oversight. Court awarded attorney's fees under Rehabilitation Act but declined to award damages because it said they were incapable of reasonable determination.

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Case decision

<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Summary</u>
	<u>Amount</u>	<u>Citation</u>		
<u>Hines v. Pitt County Board of Education</u> 497 F. Supp. 403 (E.D. N.C. 1980)	Not awarded		Non-monetary award	District court enjoined defendants from denying an appropriate education to emotionally handicapped child, and further ordered that plaintiff child be placed (within 7 days of order) in one of three institutions considered in court. Court retained jurisdiction for oversight, but declined to award attorney's fees under the Rehabilitation or Attorney's Fees Awards Acts because plaintiff treated proceeding throughout as being under EAHCA.
<u>Monahan v. Nebraska</u> 530 F. Supp. 295 (1981), aff'd and vacated in part, 687 F.2d 1164 (8th Cir. 1982)	\$9,540.00	42 U.S.C. 1988	No award	Case involved the validity of Nebraska's statutory procedure for administrative appeals from placement decisions made by school officials. Later repeal of state statute inconsistent with EAHCA rendered procedural issue moot, but not question of damages. Nevertheless, court declined to award damages under EAHCA or Rehabilitation Act. However, court remanded case to district court for computation of attorney's fees for one plaintiff entitled to fees under Attorney's Fees Awards Act.
Total of individual case awards	<u>\$63,337.50</u>		<u>\$13,050.00</u>	

CLASS ACTION SUITS

<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Case decision</u>
	<u>Amount</u>	<u>Citation</u>		<u>Summary</u>
<u>Jose P. v. Ambach</u> 669 F.2d 865 (2nd Cir. 1982)	\$211,681.93	42 U.S.C. 1988	Non- monetary award	Education authorities admitted violations of federal and state law in that they did not expeditiously evaluate and place handicapped children in appropriate programs. District court appointed a "special master"—a representative of the court—to establish and oversee a detailed remedial plan. Appellate court upheld district court's apportionment of attorney's fees awarded under the Attorney's Fees Awards Act.
<u>Willie M. v. Hunt</u> 90 FRD 601 (W.D. N.C. 1981), <u>aff'd</u> 681 F.2d 818 (4th Cir. 1982) 732 F.2d 383 (4th Cir. 1984)	\$160,000 ^d	42 U.S.C. 1988	Non- monetary award	District court case, settled by stipulation, involved rights to treatment and education of a group with mental, emotional, and related problems. Court action apparently resulted in submission of state budget request of \$22 million for 2 years, with funds earmarked for services and facilities called for in suit. Appeals court upheld decision, including award of attorney's fees, without opinion. Questions later arose as to interpretation of consent judgment entered in earlier proceedings. Further litigation ensued with corresponding award of attorney's fees under Attorney's Fees Awards Act. Appellate court upheld award of additional attorney's fees, but remanded subsequent action to district court for recomputation.

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<u>Case name and citation</u>	<u>Attorney's fees</u>		<u>Damages/ remedies</u>	<u>Case decision</u>
	<u>Amount</u>	<u>Citation</u>		<u>Summary</u>
<u>Mattie T. v. Holladay</u> 522 F. Supp. 72 (N.D. Miss. 1981)	\$82,350.00	42 U.S.C. 1988	Non- monetary award	Case was brought on behalf of all handicapped school age children in Mississippi. Plaintiffs alleged state violations of EAHCA and other statutes and laws. State agreed to comprehensive consent decree which established a plan to comply with court order. Attorney's fees awarded under Attorney's Fees Awards Act.
<u>New Mexico Association for Retarded Citizens v. State of New Mexico</u> 495 F. Supp. 391 (D.N.M. 1980), rev'd 678 F.2d 847 (10th Cir. 1982)	e	29 U.S.C. 794(a)(2) and (b); 42 U.S.C. 1988	Non- monetary award	Appellate court reversed district court decision holding that state violates section 504 of Rehabilitation Act by discriminating against handicapped children when providing educational services. Case remanded to district court for more detailed consideration under section 504. ^f Appellate court expressed no opinion on entitlement to attorney's fees.
<u>Gary B. v. Cronin^g</u> 542 F. Supp. 102 (1980) (N.D. Ill. 1982)	\$65,000.00	42 U.S.C. 1988	Non- monetary award	Preliminary injunction issued requiring state to pay for counseling and therapeutic services for emotionally disturbed children. State rule holding that such services are not special education or related services mandated by law may be in conflict with EAHCA. Attorney's fees awarded under Attorney's Fees Awards Act.
Total of class action awards	<u>\$519,031.93</u>		<u>0</u>	

^aCircuit court reversed district court decision to deny attorney's fees. Case remanded to district court to determine appropriate fees. We were unable to determine whether or what fees were assessed by the district court.

^bThe Supreme Court reversed a \$24,192 fee award allowed by the lower courts.

^cThe amount of the fee award is not stated in court opinion.

^dAdditional unspecified fees allowed in subsequent related action.

^eAttorney's fees (unspecified amount) award allowed by district court. Upon appeal circuit court reversed decision on other grounds and remanded for further district court consideration. Possible fee award delayed until final judgment.

^fThe case was reversed and remanded not because there was no violation of section 504, but because the district court's analysis did not consider a relevant Supreme Court case.

^gInterim action, class not certified yet.