

# MEMORANDUM

## State of Alaska *Department of Law*

To: Honorable Shirley Holloway  
Commissioner  
Department of Education and  
Early Development

DATE: February 12, 2003

FILE NO.: 663-03-0145

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FROM: Stephen C. Slotnick  
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SUBJECT: Attorneys' fees awards  
under the IDEA

You have requested an opinion on how the department should provide for awards of attorney's fees when a parent prevails against a district in a lawsuit brought under federal special education law. Specifically, you ask whether the department should adopt by reference federal regulations governing awards of attorneys for actions filed under 20 U.S.C. § 1415(i)(2). We conclude that the department does not need to adopt these federal regulations by reference because Alaska law already allows courts to award these fees. Attorney's fees awards in an action filed under federal law will be governed by federal law. Your request for this opinion will satisfy the department's obligation to provide procedural safeguards that ensure that courts may award these fees.

This issue arises from the state's obligation to implement the Individuals with Disabilities Education Act (IDEA). Under the IDEA, any state that accepts money from the federal government for education of disabled children must provide a free appropriate public education to disabled children.<sup>1</sup> The state must also adopt procedural safeguards to ensure that the state or its municipal or other local agencies comply with this requirement.<sup>2</sup> In order to receive federal money for education of children with

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<sup>1</sup> 20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. §§ 300.110(a); 300.121(a). Section 1412 of the IDEA lists 22 different criteria with which a state must comply. Providing a free appropriate public education is but one of these criteria, but it is a broad, representative statement of a state's duties under the IDEA.

<sup>2</sup> 20 U.S.C. § 1415; 34 C.F.R. § 300.129.

disabilities, “the State must have on file with the Secretary [of Education] procedural safeguards that ensure that the requirements of [federal regulations] are met.”<sup>3</sup>

The procedural safeguards in federal law are numerous. In broad summary, however, the safeguards require that dissatisfied parents be able to file a complaint, and then seek resolution of the complaint. To resolve any dispute, the state education agency must provide for mediation and for hearings that protect the due process rights of the complainant.<sup>4</sup>

Under the IDEA, a complainant who remains dissatisfied after receiving a final decision from the administrative process may file a lawsuit in federal or state court.<sup>5</sup> The road to court provided by the IDEA is somewhat unusual—normally, a litigant who is dissatisfied with a decision made by an administrative agency would have to file an administrative appeal, not an original action.<sup>6</sup> Under the IDEA, however, a complainant may choose between an administrative appeal under the Alaska Rules of Appellate Procedure or an original action under the Alaska Rules of Civil Procedure.<sup>7</sup> If the complainant opts for an original action, the procedure will be something of a hybrid—it will be based in part on the administrative record and the questions under review will be limited.<sup>8</sup>

Because Alaska accepts federal money for education of children with disabilities, Alaska must provide in its own law the procedures required under the IDEA. Accordingly, Alaska law provides an extensive administrative process for resolving disputes that arise under the IDEA.<sup>9</sup> The question you ask, however, does not involve an

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<sup>3</sup> 34 C.F.R. § 300.129(a) (citing to 34 C.F.R. §§ 300.500-300.529).

<sup>4</sup> *See generally* 20 U.S.C. § 1415.

<sup>5</sup> 20 U.S.C. § 1415(i)(2)(A).

<sup>6</sup> *See, e.g.*, Alaska R. App. P. 601(b).

<sup>7</sup> *Compare* AS 14.30.193(f) (parent may file appeal after exhausting administrative remedies) *with* 20 U.S.C. § 1415(i)(2) (parent may file original action in federal or state court after exhausting administrative remedies).

<sup>8</sup> *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3050-51 (1982).

<sup>9</sup> AS 14.30.180-14.30.350; 4 AAC 52.500-52.620.

alleged deficiency in these administrative procedures. Rather, this issue involves a requirement that comes into play after the administrative process is over—the ability of a court to award attorney’s fees to a prevailing complainant.

The IDEA provides that, “[i]n any action or proceedings brought under this section, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to the parents of a child with a disability who is the prevailing party.”<sup>10</sup> No Alaska statute or regulation specifically addresses whether a court may award attorneys’ fees under the same standards as provided in the IDEA. This lack of a statute or regulation on the subject prompted the federal authorities to ask whether Alaska is in compliance with the IDEA.

Part of the federal authorities’ concern was whether Civil Rule 82 would govern the award of attorneys’ fees in original actions filed in state court under the IDEA. Although Civil Rule 82 allows awards of attorneys’ fees to the prevailing party in a case filed in Alaska courts, the standards are different from the standards under the IDEA. The IDEA allows full reasonable fee awards for all proceedings, including administrative proceedings.<sup>11</sup> Civil Rule 82, on the other hand, limits awards to partial fees, except in unusual circumstances, and applies only to court proceedings, not administrative proceedings.<sup>12</sup> In addition, Alaska law provides for a different interpretation of the term “prevailing party” than does federal law.<sup>13</sup>

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<sup>10</sup> 20 U.S.C. § 1415(i)(3)(B).

<sup>11</sup> See, e.g., *Brown v. Griggsville Community Unit School District No. 4*, 12 F.3d 681, 683-84 (7th Cir. 1993) (court may award attorneys’ fees to parent who prevails in administrative proceeding).

<sup>12</sup> See Alaska R. Civ. P. 82; *State v. Abbott*, 498 P.2d 712, 731 (Alaska 1972) (“purpose of Rule 82(a) is only to partially compensate a client for the productive work done by his attorney”); *State v. Smith*, 593 P.2d 625, 631 (Alaska 1979) (no authority under state law for awarding attorney’s fees for administrative proceedings).

<sup>13</sup> *Hickel v. Southeast Conf.*, 868 P.2d 919, 925 (Alaska 1994) (prevailing party determination is different under Civil Rule 82 than under federal law: “Unlike Alaska’s approach, the federal approach is extremely generous in granting prevailing party status”).

Alaska law is very clear, however, that Civil Rule 82 would not apply to any case filed under the IDEA. In a case where the right to sue derives from federal law, an award of fees must be based on the federal statute that gave rise to the action.<sup>14</sup>

In *Brown v. Ely*, for example, the plaintiff sued various police officers under federal civil rights law, and tried to sue the Village of Hoonah under state law governing malicious prosecutions. At the end of the proceedings in the trial court, the trial court awarded attorney's fees solely under Civil Rule 82, without regard to the federal attorney's fees provisions under the Civil Rights Act. On review, the Alaska Supreme Court instructed that any "award must distinguish between fees incurred litigating federal claims and fees incurred litigating state claims."<sup>15</sup> As the Court explained, "Attorney's fee awards for § 1983 actions brought in state court are governed by 42 U.S.C. § 1988 and federal case law interpreting that statute. Alaska law does not allow an award under Civil Rule 82 if the award would conflict with federal law."<sup>16</sup> The Alaska Supreme Court long ago explained that Civil Rule 82 involved different standards for the awarding of fees than does the federal Civil Rights Act.<sup>17</sup>

Moreover, the Court has made clear that this rule extends to all federal laws that provide for awards of attorneys' fees.<sup>18</sup> Thus, it follows that here, where the contemplated action would be brought in state court but governed by the IDEA, any award of attorney's fees would be governed by the IDEA, not Civil Rule 82.

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<sup>14</sup> E.g., *Brown v. Ely*, 14 P.3d 257, 263-64 (Alaska 2000); *Lyman v. State*, 824 P.2d 703, 707 (Alaska 1992) (for award of attorney's fees, "[w]hen a federal claim is brought in state court, the court must use the standards set forth in the federal statute rather than those in the Alaska Rules of Court."); *Fairbanks Correctional Center Inmates v. Williamson*, 600 P.3d 743,747 (Alaska 1979) (determination of attorney's fees in case brought under a federal cause of action "must be made under federal guidelines"); *Ferdinand v. City of Fairbanks*, 599 P.2d 122, 125 (Alaska 1979) ("when attorney's fees are awarded pursuant to the federal act, [they] will be reviewed on appeal in light of federal rather than Alaska law").

<sup>15</sup> 4 P.3d at 263.

<sup>16</sup> *Id.* at 264 (citations omitted).

<sup>17</sup> *Tobeluk v. Lind*, 589 P.2d 873, 876 (Alaska 1979) ("Despite [their] similarities, the two fee award provisions [Civil Rule 82 and federal Civil Rights Attorney's Fees Awards Act of 1976] are based on dissimilar underlying policies.").

<sup>18</sup> *Hayer v. Nat'l Bank of Alaska*, 663 P.2d 547, 549-50 (Alaska 1983) (fees should be awarded under federal Truth-in-Lending Act, not Civil Rule 82).

In sum, the federal law at issue here provides for awards of attorney's fees when a litigant chooses to file suit under the IDEA, rather than an administrative appeal under AS 14.30.193(f). Suits under this provision are governed by federal case law interpreting the IDEA. These cases allow attorney's fees awards for prevailing claimants in administrative hearings.<sup>19</sup> Therefore, prevailing claimants will be eligible to apply to a court for an award of attorney's fees for administrative and judicial proceedings, without regard to whether Alaska adopts a statute or regulation that provides for awards of full reasonable attorney's fees for proceedings under the IDEA.

In addition, we would like to briefly address whether you should recommend to the Board of Education and Early Development that it adopt by reference the attorneys' fees provision found in the federal regulations implementing the IDEA. We recommend against this approach. Adoption by reference could be confusing in this case, in part because the language in the C.F.R. would become a part of substantive Alaska law, yet it would still retain its federal focus, including cites to the Federal Rules of Civil Procedure. Moreover, adoption of an attorneys' fees provision by an administrative agency is problematic—to the extent that it is construed as an administrative agency attempting to give courts authority to award attorneys' fees, it would raise serious separation of powers problems. Only a legislative body or a court by its rulemaking power could authorize awards of attorneys' fees. A better approach is for the agency to not attempt to legislate in this area. Given that Congress has already authorized the attorneys' fees awards at issue here, courts in Alaska will follow the federal statutes and regulations in awards of attorney's fees under the IDEA.

Furthermore, adopting a federal regulation by reference is not the most effective means to provide notice to parents of their rights. Including with the final hearing decision a clear statement of a parent's right to file an original action in federal or state court under the IDEA would provide much better notice to parents. We understand that the department currently includes a notice of the right to sue when it distributes a final hearing decision.

In conclusion, federal law requires that the department demonstrate that Alaska has complied with the procedural requirements of the IDEA. This attorney general opinion affirms that the attorney's fees provision of the IDEA will be enforced by Alaska courts when a suit is filed in an Alaska court under 20 U.S.C. § 1415(i). Accordingly, no additional action by the department is necessary to comply with its requirement that it

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<sup>19</sup> *Brown v. Griggsville*, 12 F.3d at 683 (under IDEA, court may award fees to prevailing party in administrative proceeding even when only reason for court hearing is to determine fee award).

Honorable Shirley Holloway, Commissioner  
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assure the federal government of compliance with the procedural safeguards of 20 U.S.C. § 1415(i) and 34 C.F.R. § 300.513.

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