**24:05:30:11.01.  Reasonable attorneys' fees.** In any action or proceeding brought under 20 U.S.C. § 1415, the court, in its discretion, may award reasonable attorneys' fees under 20 U.S.C. § 1415(i)(3) as in effect on December 3, 2004, as part of the cost to the prevailing party who is the parent of a child with a disability; to the prevailing party who is the state or district 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 to the prevailing party who is the state or district 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.

Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys’ fees or costs of a party related to an action or proceeding under section 615 of the IDEA and this chapter. This does not preclude a district from using IDEA, Part B funds for conducting an action or proceeding under section 615 of IDEA.

A court shall award reasonable attorneys' fees under section 615(i)(3) of the IDEA consistent with the following:

(1)  Fees awarded under section 615(i)(3) of the IDEA 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 section;

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

(a)  The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure (1987) or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(b)  The offer is not accepted within 10 days; and

(c)  The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement;

(3)  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 department for a mediation described in this chapter. A resolution meeting conducted pursuant to this chapter is not considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of this section;

(4)  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;

(5)  The court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the IDEA, if the court finds that:

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

(b)  The amount of 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;

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

(d)  The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with this chapter.

(6)  The provisions of subdivision (5) of this section 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 IDEA.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.