

[Is It Becoming Near Impossible for a Prevailing Defendant to Collect Its Fees?](#)

Posted on February 9, 2011 by [Gary A. Bresee](#)

Once again, the [Ninth Circuit Court of Appeals](#) has reversed a District Court decision granting a prevailing defendant its attorneys' fees and costs.

In *R.P. v. Prescott Unified School District*, 09-15651 (9th Cir., Feb. 4, 2011), the parents of an autistic child brought an administrative action under the [Individuals with Disabilities Education Act](#) (IDEA) against the School District, alleging the District failed to provide their child with free, appropriate public education.

When an administrative law judge ruled against them, the parents appealed to the District Court alleging the same IDEA violations, but also included claims under the [Americans with Disabilities Act](#) (ADA) and the [Rehabilitation Act](#).

The District Court not only found for the School District, but also found the parents' action both without foundation and brought for an improper purpose, consequently awarding the District its attorneys' fees and costs.

While the Ninth Circuit generally affirmed the substantive portion of the lower court's decision, it reversed the fee award.

The court determined the action was not unfounded, citing to the parents' claim for additional education, which was a remedy available to them under the IDEA statutory scheme. The parents had made plausible arguments; the fact that their arguments did not carry the day did not make those arguments automatically frivolous.

Similarly, the court determined the action was not brought for an improper purpose.

If the claims were not frivolous, then as a matter of law they could not have been filed for an improper purpose. Moreover, the non-IDEA claims were not frivolous either, because the parents would have had plausible claims under the ADA and Rehabilitation Act, but they were not allowed to amend their complaint after the cutoff date for amended pleadings.

While it is not impossible for a prevailing defendant to collect its statutory fees from a plaintiff, the burden of proof can be daunting in most instances.