

**§ 300.518**

accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—

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

(ii) The amount of the 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;

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

(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with § 300.508.

(5) The provisions of paragraph (c)(4) 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 Act.

(Authority: 20 U.S.C. 1415(i)(3)(B)-(G))

**§ 300.518 Child's status during proceedings.**

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child

had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

**§ 300.519 Surrogate parents.**

(a) *General.* Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) *Duties of public agency.* The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) *Wards of the State.* In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) *Criteria for selection of surrogate parents.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—