March 25, 2011

The Honorable Barbara Mikulski
United States Senate
Washington, DC 20510

Dear Senator Mikulski:

We write to express our heartfelt gratitude for your sponsorship of S. 613 “The IDEA Fairness Restoration Act.”

The Council of Parent Attorneys and Advocates, Inc. (COPAA) is an independent, nonprofit, §501(c)(3) tax-exempt membership organization of attorneys, advocates, parents and other professionals. COPAA members work to protect special education rights and secure excellence in education on behalf of the 7.1 million children with disabilities in America.

With over 1200 members nationwide, COPAA is at the forefront of special education advocacy. For five years a major focus of COPAA’s work has been to obtain legislation to reverse the 2006 Supreme Court decision in Arlington Central School District v. Murphy. As you know, in that decision, the Court held that prevailing parents are not entitled to recover the fees of expert witness fees at the same time they may recover attorneys’ fees under 42 U.S.C. § 1415(i)(3). In so doing the Court refused to consider Congress’ expressly stated intent that expert fees could be recovered.

COPAA has been in the forefront of the effort to restore the law as Congress intended because our members and countless other parents and children are directly and adversely affected by the Court’s holding. The fact is that our members and most parents of children with disabilities cannot afford lawyers or experts. The fact is that the right to an impartial due process hearing which has been part of the IDEA since 1975 can only be exercised, can only be meaningful, can only exist in reality if fees are transferred to the school system when, but only when, that system is found to have violated the law – found to have denied to a child the free appropriate public education Congress sought to ensure when IDEA was enacted. Congress added the fee transfer provision in 1986 to reverse another Supreme Court decision, Smith v. Robinson, to ensure that parents who believed that FAPE had been denied had access to lawyers acting as private attorneys’ general and that parents, on behalf of children with disabilities, would be able to hire the experts needed to prove their claims.

On behalf of our members and children with disabilities across America COPAA thanks you for your support of this important bill to reverse Murphy and restore the rights a bi-partisan Congress enacted in 1986. We look forward to working with you towards its enactment.

Sincerely,

Robert I. Berlow, Esq., Co-Chair, COPAA Governmental Relations
Denise Stile Marshall, M.S., Executive Director