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INTERESTS OF AMICI CURIAE [1]

The National School Boards Association (NSBA), founded in 1940, is a not-for-profit organization representing state associations of school boards and their approximately 13,800 member districts across the United States which serv H W K H Q D W L R Q · V P L O O L R Q S X E O L F V F K R R O V

The Colorado Association of School Boards (CASB) represents more than 1000 school board members and superintendents from across the state. Established in 1940, CASB provides the structure through which school board members unite in efforts to promote the interests and welfare of Colorado school districts.

the school district did not offer their child a free appropriate public education (FAPE). If left unreviewed, the Tenth Circuit decision will facilitate the improper transfer of the enormous costs of medical and mental health care to schools under the guise of the IDEA and open the door to school district liability that will ultimately prove detrimental to the entire student population, as the limited public funds available to school districts will be depleted by increased litigation and the escalated costs of medical care in private residential facilities. For the reasons more fully explained below, Amici urge this Court to grant review to ensure that the IDEA is not stretched beyond its intended limits to provide free appropriate public education to children with disabilities.

SUMMARY OF THE ARGUMENT

This Court should grant review to bring definitive guidance to what has been more than thirty years of uncertainty regarding unilateral residential placements of students with disabilities to address and treat mental health issues and provide medical care. The issue in dispute has been adjudicated by the circuit courts using disparate standards and without any consensus, impermissibly leaving schools without the necessary clear notice of their obligations under the IDEA in this regard. The conflicting decisions from the circuit courts force key stakeholders into positions of adversarial mistrust rather than cooperation and facilitate costly and lengthy litigation betwer6n 0 1 3781 2194(i)-4(e.)-63(-201(wi)-7l)-4(6-481(t)-171l)-

IDEA requires a school district to pay for a residential placement that is required to treat a F K L O G · V P H Q W D O K H D O W K L illness or medical needs. Pet. 13-21. Although a case

law when a determination is made that a residential placement is reimbursable. Pet. 20a. It refused to DSSO\ WKH ´LQH[WULFDEO\ LQWHUWZLQHG WHVW the term was not coined by any circuits purporting to apply it, and finding that no matter whether courts professed to adopt the test or eschew it, they frequently conflated the two statutory provisions UHODWHG WR ´VSHFLDO HGXFDWLRQ´ DQG ´UHODWHG Pet. 20a. The Tenth Circuit went on to characterize WKH ´SULPDULO\ RULHQWHG and WDQGDUG RI WKH

emotional problems or l LIH FKDOOHQJH Pet. 33a-34a.µ

The Tenth Circuit decision thus highlights and exacerbates a long-standing problem of crucial importance that only this Court can remedy. Moreover, the confusion and conflict are compounded E\ XQQHFHVVDU\ WHQVLRQ EHWZHHQ WKH 7HQWK test and the

IDEA. The lack of uniformity aggravates the relationship between parents and schools, defeats the cooperative process envisioned by Congress in enacting the IDEA, promotes litigation and depletes limited resources to the detriment of all involved.

B. The legal uncertainty undermines the ,'($·V FRRSHUDWLYH SURFHVV DQG SURPRWHV litigation.

A clear pronouncement of the law is needed in this case so that school officials and parents know in which cases reimbursement is likely to be ordered. The existin g uncertainty fosters non -cooperation and encourages litigation to test which party is responsible to fund residential placements made for the treatment of students with mental health illness or medical needs. This is contrary to the underlying purpose of the IDEA.

This Court has described the cooperative processes Congress crafted in the IDEA , including GHYHORSPHQW RI WKH FKLOG·V (3 statute. µSchaffer v. Weast, 546 U.S. 49, 53 (2005). Indeed, the IEP is recognized as the ´FHQWHU SLHFH WKH VWDWXWH·V HGXFDWLRQ GHOLYHU\ V\VWHP FKLOGUHQ µHendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 181-82 (1982); Honig v. Doe, 484 U.S. 305, 311 (1988). Ideally, the IDEA contemplates that parents and school official will work together to make decisions regarding residential placements. Under the I DEA, the IEP is not developed by the parents unilaterally, but rather by a group of individuals, including the SDUHQWV ZKR UHYLHZ WKH FKLOG·V QHHGV DQG the appropriate educational placement for that student. 20 U.S.C. § 1414(d)(1)(B) (2013).

more willing to risk litigation against a school district in such cases. They will always be able to DUJXH WKDW DQ\ LPSURYHPHQW LQ D VWXGHQW·V health or behavior will also have the beneficial side-effect of improving the FKLOG·V education.

Parents need not H[KDXVW D VFKRRO GLVWULFW·V offered program prior to seeking private placement reimbursement. See Forest Grove Sch. Dist. v. T.A., 557 U.S. 230 (2009). This leaves school districts at the significant disadvantage of having to prove the appropriateness of its proposed education program in the abstract. The resulting costs of litigation in an IDEA dispute are often prohibitive for school districts. As the Senate Report from the 1997 IDEA amendments pronoXQFHG ´>W@KH JURZLQJ ERG\ RI litigation surrounding IDEA is one of the unintended DQG FRVWO\ FRQVHTXHQFHV RI WKLV ODZ µ 6 104-275 at 85 (1996). Since that report the cost of litigation has remained substantial. Even when school districts prevail against claims for residential placement reimbursement, they still incur the high costs of litigation, which depletes their limited resources and funds meant to serve the entire student population. This places school districts in the dilemma of having to choose to litigate or capitulate to avoid such costs, even when they believe they have appropriately served the student.

(2013), but the standard for relief thereunder is difficult to satisfy, discretionary, and rarely exercised by courts.

anything but clear on this issue. The admitted circuit split in this case, in fact, proves that public schools are not receiving the unambiguous notice of their obligations under the IDEA as required by the Spending Clause. This lack of clear notice impermissibly deprives public schools of the ability to understand the scope of their obligations under the IDEA. Specifically, the circuit split here prevents public schools from making reasoned decisions regarding what may or may not constitute a free appropriate public education, in the least restrictive environment, for a student with a disability unilaterally withdrawing from public school to enroll in a residential placement to treat his or her mental health illness or medical needs. The Tenth Circuit's new approach to this issue amply demonstrates this point; there is no way that either the State of Colorado or Jefferson County school officials could have guessed, much less known, that the District's liability for the placement at issue here is properly determined under the test ultimately espoused by the Tenth Circuit.

II. TREATING STUDENTS' MENTAL HEALTH PROBLEMS IS BEYOND THE ROLE, CAPACITY AND COMPETENCY OF PUBLIC SCHOOLS.

It is the role of public schools to provide an education to our children. The treatment of children's mental health issues is a function of parents or federal health agencies. The recent passage of the Patient Protection Affordable Care Act, Pub. L. 111-

F R Q V L G H U Arlington County Sch. Dist. Bd. of Educ. v. Murphy , 548 U.S. 291, 303 (2006). For H [D P S O H W K H medical services exclusion ´ Z D V G H V L J Q H G W R V S D U H V F K R R O V I U R P D Q R E O provide a service that might well prove unduly expensive and beyond the range of their F R P S H W H Tatro v. State , 908 F.2d 1200, 1209 (4th Cir. 1990) (quoting Irving Indep. Sch. Dist. v. Tatro , 468 U.S. 883, 892 (1984)).

B. Health care agencies, not public schools, are the proper institutions for ensuring children receive the medical care and mental health serv ices they need.

Nationally, health expenditures have grown since 2000 from $1.38 trillion to $2.7 trillion in 2011, representing a per capita increase from $4,878 to $8,680. See U.S. DEP T OF HEALTH AND HUMAN SERVICES , National Health Expenditures Aggre gate, Per Capita Amounts, Percent Distribution: Table 1 (2012). During this same time period hospital care

increased during the same time period from 683 to 969 per 100,000 children. Blader J.C., Acute Inpat ient Care for Psychiatric Disorders in the United States, 1996 through 2007 , ARCHIVES OF GENERAL PSYCHIATRY (Aug. 1, 2011). These young patients a

CONCLUSION

Given the rising number of students receiving services under the IDEA and the skyrocketing costs of health care, a better solution must be found than what has been created by the thirty years of differing circuit court decisions addressing the question presented. Schools lack the competency or F D S D F L W \ W R W U H D W R U I X Q G D V W X G H Q W · V P H treatment or medical care. Moreover, the IDEA does not provide clear notice that this is an obligation that must be accepted in exchange for the receipt of public funds. As this issue stands today, the purposes of the IDEA are not served by the circuit split or the Tenth Circuit decision below. Without further intervention from this Court, the cooperative process under IDEA to ensure children with disabilities receive a free appropriate public education will be subverted, as public schools are faced with litigation seeking to make them the payer of first resort for services that they are neither suite d nor funded to provide directly.

For the foregoing reasons, Amici urge the Court to grant the petition for writ of certiorari .