No. 13-1547

IN THE

Supreme Court of the United States

RIDLEY SCHOOL DISTRICT

,

v.

M.R., J.R., PARENTS OF MINOR CHILD E.R.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

AMICI CURIAE BRIEF OF
NATIONAL S

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INTERESTS OF THE

The National School Boards Association -profit organization representing state associations of school boards, and the Board of Education of the U.S. Virgin Islands. Through its member state associations, NSBA represents over 90,000 school board members who govern approximately 13,800 local school districts serving nearly 50 million public school students, including approximately 6.4 million students with disabilities. NSBA regularly represents its
and federal and state courts and has participated as *amicus curiae* in numerous cases.

The Pennsylvania School Boards Association is a non-profit association of virtually all the public school boards in the state, pledged to the highest ideals of local lay leadership for public schools. PSBA participates in appellate-level court cases as an *amicus curiae*

organization established in 1938 to promote and support education programs and related services for children and youth with disabilities. Its members are the state directors of special education in the states, District of Columbia, Department of Defense Education Agency, federal territories and the Freely Associated States. NASDSE's primary mission is to

disputes about the special education and related services necessary to provide students with a free -put carries with it the obligation of the school district to pay the costs of the stay-put placement until the proceedings are completed. Interpreting the word rought in federal court after a district court ruling in favor of the school district potentially inflicts significant harm on school districts and the children they serve. In an effort to avert these detrimental consequences, *Amici* strongly urge this Court to grant review.

of school private school placements while stay-put continues through litigation including appeals of trial court rulings in creates a perverse incentive for parents to prolong appeals simply to reap the benefit of private school tuition funded by public dollars. Parents are much less likely to participate meaningfully in which requires educators and parents to work together to form education plans, or to hasten resolution of a dispute once a due process complaint has been filed, if stay-put requires the school district to continue paying for private school placements as long as the parent keeps appealing decisions favorable to the district. This type of prolonged, often futile, litigation frustrates the clear purposes of the IDEA to resolve disputes expeditiously, 20 U.S.C. § 1415(b) (2014), and to encourage collaboration between parents and educators.

Requiring a school district to shoulder the cost of maintaining a

IDEA encourages parents and educators to collaborate in developing IEPs by granting parents extensive procedural rights, such as allowing them to examine all records and to participate in meetings

§ 1415(b) (2014).

When this collaborative process fails to produce agreement between the parents and schools, and a dispute results, the IDEA provides the additional safeguard of stay-put. With some limited exceptions, (i.e., violent students), this provision requires that a student remain in his or her then-current educational placement until all proceedings have been completed to resolve the dispute. 20 U.S.C. § 1415(j) (2014). The question in this case centers on Congress contemplated when it instituted stay-put.

Courts of appeals have issued divergent decisions on this issue, causing a circuit split warranting this

1415(f)(1)(A), (B)(ii), 34 C.F.R. § 300.515(a); and any state administrative review of that decision must take place within 30 days

(2014), and the opportunity for mediation in order to provide parents and school personnel the chance to

was later determined not to provide a FAPE. In fact, in most IDEA cases, the parents lose. By the time an IDEA case arrives at a federal circuit court of appeals, it has already been subject to review several times,[6] making it likely that a district court decision in favor of a school district will be affirmed. This result is borne out by statistics showing that federal circuit courts of appeals overwhelmingly affirm trial court decisions.[7]

These odds do not deter parents convinced of the educational benefits of a particular placement for their child with disabilities. When the cost of that

provided a FAPE, the district still had to pay for more than four years of tuition at the Boston placement. In *Luke P.*, the school district, not the parents, sought the appeal, but the stay-put provision still required the school district to fund the placement until completion of the proceedings.[8] this would amount to over $500,000

These outcomes demonstrate the monumental costs that could be imposed on a school district if it is required to pay for a stay-put placement beyond a district court decision finding that the district has provided a FAPE. *Amici*

Burlington involved tuition reimbursement for only one year, if a similar dispute were to arise in the Third Circuit today, the school district would potentially be required to pay for the private school placement during the entire six years of litigation approximately $256,000 using current tuition rates.[9]

- In *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009), the parents withdrew the student as a junior from public school and unilaterally placed him in a private school in the spring of 2003. The hearing officer found the school district had failed to provide a FAPE and ordered the district to reimburse the cost of the private placement. Using the tuition rate of $5,200 per month cited by the district court on remand, 675 F.Supp.2d 1063 (D. Or. 2009), the school district could have been liable for $57,200 to pay for the eleven graduation. On remand, however, the court denied reimbursement. The parents again appealed.
had the student been in elementary school rather than high school, the potential cost to fund the placement throughout the nearly nine years of legal proceedings would have been over half a million dollars.

Carroll School, http://www.carrollschool.org/admissions/tuition-fees

2. The Third Circuit's rule increases the cost of IDEA litigation to school districts, thereby draining public funds away from the provision of educational services.

Public school districts must underwrite not only the costs of private school tuition for years of -put interpretation, but also the costs of the litigation itself.

Any increase in school district expenditures on legal fees is particularly regrettable because it means already-scarce public funds are diverted away from providing educational services to all children, with and without disabilities, into legal proceedings that may not end up serving the educational needs of the child(ren) at the center of the dispute. Local budget constraints and continuing federal shortfalls in special education funding[13] already make it difficult for school districts to meet their IDEA obligations. Any rule that increases the need for schools to spend money on litigation rather than purpose.

There are also non-monetary costs associated with these proceedings, including teachers being pulled from classrooms, sometimes for one to two weeks to prepare for and testify at hearings.[14] In such situations, teachers are being required to spend time on resolving one case instead of providing educational services needed by multiple students. Qualified special education teachers currently are in short supply, making their absence from the classroom a particular burden on schools, teachers and students alike. Special education teachers themselves already face untold demands in carrying

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NATIONAL SCHOOL BOARDS ASSOCIATION, ISSUE BRIEF ON INDIVIDUALS WITH DISABILITIES EDUCATION ACT: EARLY PREPARATION FOR REAUTHORIZATION 8 (Feb. 2014) (showing 2014 federal appropriations for IDEA funding amounted to a little over 15% of the total cost of providing special education

[14] Perry A. Zirkel, *Transaction Costs and the IDEA*, EDUCATION WEEK, May 21, 2003, at 44.

out their daily responsibilities in the classroom; the added stress of involvement in legal proceedings is a heavy burden.

While teachers are tied up in administrative and judicial hearings, schools must hire substitutes, who may not be licensed to teach special education, or, depending on state law, may not even be required to hold a college degree. Thus, students in those classrooms with substitutes may not receive the benefit of a qualified professional providing the services they need.

In addition to teachers, other school staff, such as aides, counselors, and specialists (e.g., speech/ language, occupational, and physical therapy) may be drawn away from their primary responsibilities into due process and judicial proceedings. During their absence, the students they serve may be deprived altogether of the educational benefits and assistance these staff provide.

CONCLUSION

For the reasons set forth above, *amici* believe the issue at stake here is of exceptional importance and urge the Court to grant review in order to set properly the outer limits of the stay-put provision.

Respectfully submitted,

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