No. 16-2465

In the United States Court of Appeals
For the Third Circuit

M.R. AND J.R., PARENTS OF E.R., A MINOR
APPELLANTS,

v.

RIDLEY SCHOOL DISTRICT
APPELLEE.

On Appeal from the United States District Court
For the Eastern District of Pennsylvania,
Judge Mitchell S. Goldberg,

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Letter from 35 education organizations to House and Senate Subcommittees on Education Appropriations, June 14, 2017, available at

needs. Id. at 748-49 (citing Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 458 U.S. 176, 203 (1982)). FAPE is the substantive right IDEA provides, Endrew F. v. Douglas County Sch. Dist. RE-1, 137 S.Ct. 988, 993 (2017) (cite omitted), and the only basis for substantive relief awarded through its due process procedures, as indicated by the Supreme Court just this year. The "only relief that an IDEA officer can give – hence the thing a plaintiff must seek in order to trigger § 1415(l)'s exhaustion rule – is relief for the denial of a FAPE." Fry, 137 S. Ct. at 753.

The panel's most recent decision to uphold an award of attorney's fees to parents who obtain only interim stay-put relief severely undercuts the centrality of FAPE under the IDEA and significantly magnifies the burden on a school district despite its compliance with its IDEA obligations. Amicus urges

The IDEA sets forth a collaborative process between parents and schools to develop the IEP, but if a dispute emerges and leads to legal proceedings, the IDEA provides the additional safeguard of stay-put. With some limited exceptions, stay-put requires a student to remain in his or her then-current educational placement pending completion of the proceedings to resolve the underlying FAPE dispute. 20 U.S.C. § 1415(j) (2017). Under Third Circuit precedent, "proceedings" extends to all levels [illegible]

816 F.3d 57 (5th Cir.), cert. denied, 137 S. Ct. 371 (2016); Maine Sch. Admin. Dist. No. 35 v. Mr. R., 321 F.3d 9 (1st Cir. 2003); Board of Educ. of Oak Park v. Nathan R., 199 F.3d 377 (7th Cir. 2000).

The stay-put provision is triggered automatically to protect children with disabilities whose parents request a due process hearing. Drinker v. Colonial Sch. Dist., 78 F.3d 859 (3d Cir. 1996). It functions as a temporary preservation of educational continuity until the resolution of the parents' claim—usually an alleged denial of FAPE[2]—in administrative or court proceedings. Drinker, 78 F.3d at 864.

C.L. v. Department of Educ., 665 F.3d 1110, 1118 (9th Cir. 2011). Where, as here, the final appeals tribunal overturns such an initial determination and finds that the district's IEP provides FAPE, the school's obligation to fund the private placement ceases, e.g., MR II, 744 F.3d 112;

to use taxpayer dollars to pay the parents' attorneys' fees incurred during protracted proceedings despite the districts' compliance with FAPE requirements. These additional expenditures are particularly troubling because school districts must redirect resources intended to secure the benefits of the IDEA to all children with disabilities served by the district in order to pay attorneys' fees in one case.

A. Requiring districts to pay attorneys' fees to parents who obtain a favorable interim ruling substantially increases the financial burden on school districts.

Prior to the panel's decision, a public school district could be required to underwrite the costs of private school tuition for years of litigation, to shoulder its own significant legal costs, and to reimburse the legal fees of parents who prevailed on their FAPE claims. Even under that scheme, school districts expend millions of dollars a year on special education legal costs. From 1999 to 2000, schools spent approximately $146.5 million on special education mediation, due process, and litigation costs under the IDEA.[3]

KA. D. v. Nest, Nos. 10-56320, 10-56373 (9th Cir., Aug. 1, 2014) (school district ordered to pay parents' attorneys' fees of $580,000); Laura P. v. Haverford Sch. Dist.,

Strained local budgets and continuing federal shortfalls in special education funding[5] already make it difficult for school districts to meet their IDEA obligations, much less pay for both sides' legal costs. Because Congress has not met its initial promise to fund a significant portion of the cost of special education, states and local school boards have largely had to carry the load. Attorneys' fees awards that amplify this burden are especially difficult to manage within the restrictions of school districts' yearly budget cycles and state laws requiring school boards to adopt balanced budgets. E.g., CAL. EDUC. CODE § 42127.1 (2017); ILL. STAT. Ch. 105 § 5/1B-11 (2017); MT. STAT. § 20-9-323 (2017); 24 PA. STAT. § 6-687(b) (2017); RI STAT. § 16-2-21.4 (2017).

B. The threat of additional attorneys' fees imposed by the panel's decision incites school districts to base decisions about children with disabilities on financial considerations rather than educational needs.

The panel's decision derails the IEP process. The IEP is the "centerpiece of the statute's education delivery system for disabled children," Honig v. Doe, 484 U. S. 305, 311 (1988), and "the means by which special education and related services are 'tailored to the unique needs' of a particular child." Endrew F., 137 S. Ct at 999

[5] Letter from 35 education organizations to House and Senate Subcommittees on Education Appropriations, June 14, 2017, available at https://www.nsba.org/nsba-and-coalition-call-full-funding-individuals-disabilities-education-act-idea (noting 2017 federal appropriations for IDEA funding amounted to only 15% of the total cost of providing special education services despite Congress' original promise to provide 40%).

effectiveness of the IEP process is drastically diminished to the detriment of the child.

CONCLUSION

For the reasons set forth above, amicus urges the Court to grant rehearing en banc.

Respectfully submitted this 12th day of September, 2017.

/S/ Francisco M. Negrón, Jr.

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Dated: September 12, 2017

/s/Francisco M. Negrón, Jr.
Francisco M. Negrón, Jr.