No. 19-1148

In The
Supreme Court of the United States

MICHAEL BRUNO, AS PARENTS/GUARDIANS/NEXT FRIEND OF R.B., A MINOR; R.B., INDIVIDUALLY, A MINOR; BRITTANY BRUNO, AS PARENTS/ GUARDIANS/NEXT FRIEND OF R.B., A MINOR,

Petitioners,

v.

NORTHSIDE INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the School District provided Student R.B., who transferred to the School District from another state, with comparable special education services during his initial 30-day placement at the District when it provided the same type and amount of special education services that he received at his prior school.

LIST OF PARTIES

Petitioners are:

(1) Michael Bruno

(2) Brittany Bruno

(3) R.B., minor

Respondent is:

Northside Independent School District

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STATUTORY AND REGULATORY PROVISIONS INVOLVED

20 U.S.C. §1414(d)(2)(C)(i)(II):

> (C) Program for children who transfer school districts
>
> (i) In general
>
> . . . .
>
> (II) Transfer outside State
>
> In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

34 C.F.R. §300.323(f):

> IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the

parents) must provide the child with a FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency –

> (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and
>
> (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

STATEMENT OF THE CASE

In this case, Petitioners challenge Respondent Northside Independent School District's (District or NISD) temporary 30-day placement of 4 year old Student R.B. in a half-day pre-kindergarten program in which he received the same special education services he received at the out-of-state school from which he transferred. Petitioners claim the length of the day is relevant to determining whether R.B. received "comparable" services under 20 U.S.C. §1414(d)(2)(C)(i)(II), arguing he should have been in a full-day program. The District argues the focus is on the services received, not the length of the school day.

A. Factual Background

R.B., a child with autism and speech impairment, attended Boldt Elementary at Northside Independent School District at the time of the underlying lawsuit.[1] As a result of a military transfer to San Antonio, Texas from Florida, Petitioners enrolled R.B., who was then a 4 year old pre-school student, in NISD in January 2016.[2]

1. Florida school and Florida IEP

R.B. was identified as eligible for special education services while a pre-school child in Florida.[3] At that time, R.B. exhibited inappropriate behaviors, such as pica (eating or chewing non-edible items), elopement, tantrums, and non-compliance.[4] It was determined that he does well with individualized attention and reinforcement.[5]

The individualized education plan ("IEP") from Florida did not specify a length of the school day.[6] The IEP indicated that R.B. was served in the "exceptional student classroom" ("ESE"), which was a self-contained setting for students eligible for special education.[7]

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[1] ROA.23 at ¶3; ROA.27 at ¶33.

[2] ROA.26 at ¶22; ROA.2849:7-8; ROA.2851:1-2.

[3] ROA.2042-2050.

[4] ROA.1170-1188, 2516:7-14, 2672:2-20.

[5] ROA.2552:1-3.

[6] ROA.3252:1-5, 2041-2050.

[7] ROA.3248:72-3251:25.

R.B. was placed in the "exceptional student" classroom, which had enrollment of "less than or equal to 40%" non-disabled peers.[8] Under the Florida IEP, R.B. received his special education services in a "separate class."[9] R.B.'s Florida IEP included goals in the areas of social/emotional development, independent functioning, and communication.[10]

The Florida IEP called for 30 minutes of direct occupational therapy ("OT") weekly as well as 60 minutes of speech/language therapy.[11] The Florida IEP also included 25 minutes a month of collaborative OT.[12]

2. NISD – Langley Elementary School

When R.B. moved to Texas in January 2016 at the age of 4, he enrolled at Langley Elementary in NISD.[13] NISD provided special education services to R.B. upon his enrollment based upon his IEP developed in Florida.[14] Ms. Davila, R.B.'s teacher at Langley Elementary School, reviewed the Florida IEP and conferred with R.B.'s teachers in Florida to verify his special education services and placement.[15] When Ms. Davila spoke with the Florida school, she was told that R.B. was

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[8] ROA.2043-2049, 3249:25-3251:3, 3251.

[9] ROA.2041-2050.

[10] ROA.2042-2050.

[11] ROA.2041-2050.

[12] ROA.2041-2050.

[13] ROA.2849:7-12; ROA.1164-1169.

[14] ROA.2900:18-22; ROA.2901:3-13; ROA.1164-1169.

[15] ROA.3248:22-3251:25, 3302:12-15.

served in the "exceptional student classroom" ("ESE").[16] The Florida school described the ESE as a self-contained, special classroom, which Ms. Davila understood to mean that R.B.'s classroom was limited to special education students.[17]

a. January 2016 temporary placement meeting

Northside ISD convened a temporary placement meeting on January 13, 2016.[18] Ms. Davila, the vice-principal, and R.B.'s mother attended that meeting. Ms. Davila explained to R.B.'s mother that the services typically offered by Northside ISD for pre-school age children are provided in the half-day program, but if there is a demonstrated need, a full-day is provided.[19] Northside ISD offers the half-day program to PPCD[20] students due to their typically very short attention span and stamina; however, the District also offers a full instructional day when a student is not making sufficient progress on their IEP goals in the half-day program.[21] The District had no credible reason to believe that R.B.'s Florida IEP required more than the

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[16] ROA.3248:22-3251:25, 3302:12-15.

[17] ROA.3248:22-3251:25, 3302:12-15.

[18] ROA.1164-1169, 1170-1175, 3252:16-3253:13; ROA.26 at ¶23.

[19] ROA.1164-1169, 1165, 3253:14-3254:15, 2897-2902, 3252-3253.

[20] PPCD stands for Preschool Program for Children with Disabilities. ROA.2710:3-5.

[21] ROA.3255:13-3256:20.

typical half-day program.[22] Northside ISD's temporary service plan expressly included speech-language therapy services and occupational therapy services comparable to those provided in the Florida IEP.[23]

At the January meeting, the District staff reviewed and accepted R.B.'s Florida IEP and attached it to the temporary placement documentation.[24] At the meeting to discuss R.B.'s temporary placement, R.B.'s mother was in agreement with the temporary placement decisions, including the half-day of school.[25] For the 30-day temporary placement, R.B. was placed in the District's half-day afternoon self-contained PPCD class at Langley Elementary based on the District's understanding that this was the most comparable to the Florida setting.[26] At the temporary placement meeting, the District concluded additional evaluation of R.B. was needed and the Admission Review Dismissal ("ARD") committee meeting would reconvene on February 22, 2016 to review additional evaluation data and information concerning R.B. to develop his permanent IEP.[27]

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[22] ROA.3257:1-11.

[23] ROA.1164-1169, 1167, 3303:20-24, 3304:17-3305:12, 3333:16-23.

[24] ROA.1164-1169, 1170-1188.

[25] ROA.1164-1167, 3258:3-8.

[26] ROA.2900-2904, 3257:1-3258:11.

[27] ROA.1164-1165, 1170-1188, 2898:10-16.

R.B.'s mother conferred frequently with Ms. Davila, inquiring as to how R.B. was doing in class and how Ms. Davila was responding to R.B.'s behavior.[28]

b. February 2016 ARD meeting and IEP

The District completed a full individual evaluation ("FIE") of R.B. in all areas of suspected disability on February 22, 2016, and confirmed R.B. met eligibility requirements for special education and related services as a student with autism and a speech impairment.[29] A Reevaluation Review ARD meeting was held on February 22, 2016, and the ARD committee reviewed R.B.'s FIE and confirmed his need for continued services.[30] A functional behavior assessment ("FBA") was also conducted and reviewed.[31] Ms. Davila proposed a Behavior Improvement Plan ("BIP") for R.B. to address his behaviors, social and emotional needs, and disruptive classroom behaviors of spitting and physical aggression.[32] The ARD committee also decided that Ms. Davila would use a visual chart to document R.B.'s behavior and use a daily communication log that would be sent home daily.[33]

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[28] ROA.3261:26-3262:12.

[29] ROA.1170-1188, 1187, 1190.

[30] ROA.1170-1188, 1189-1225, 1207-1213, 2243-2250, 2906:12-2907:14, 3263:3-20, 3297:8-3300:17, 3325:1-9.

[31] ROA.1192, 1206, 1177-1185.

[32] ROA.1192, 1206, 3266-3269.

[33] ROA.1189.

The February ARD committee developed an IEP that was in effect from February 22, 2016 through February 21, 2017.[34] The IEP was based on R.B.'s FIE and his present levels of academic achievement and functional performance ("PLAAFPs").[35] The IEP also was based on data from the Child Observation Record ("COR") (which is a developmental profile), behavior data, classroom observations, progress reports, and input from service providers.[36] At the PPCD level, academic skills include behavior, listening, comprehension, reading, math, science, social studies, and fine motor skills studies.[37] Ms. Davila used COR to document R.B.'s progress and went over the COR at the February ARD meeting.[38]

Ms. Davila recommended, and the ARD committee approved, R.B.'s placement be changed from the self-contained afternoon class to the half-day morning PPCD/Early Childhood Collaborative classroom ("ECC") at Langley, which classroom was more inclusive having non-disabled peers in the class.[39] This PPCD collaborative classroom is staffed with a special education teacher, a general education Early Childhood teacher, a special education instructional assistant, and a

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[34] ROA.1189-1224, 1194-1196, 3264-3268.

[35] ROA.1194-1197.

[36] ROA.1170-1188, 1189-1225, 2221-2224.

[37] ROA.3029:19-3030:15.

[38] ROA.3030-3031, 3324:14-25.

[39] ROA.2408:23-2409:22, 2417-2420, 2571:11-18, 2909:1-20, 3264:7-23, 1199-1201, 1207.

general education instructional assistant.[40] R.B.'s IEP indicated his change in placement, which took effect for the remainder of the 2015-16 school year and the following school year.[41]

The District's evaluation of R.B. did not recommend OT services for R.B.; however, the ARD committee agreed to provide OT services in response to concerns expressed by R.B.'s mother about his sensory needs.[42] The IEP provided for 20 minutes of OT weekly for the remainder of the 2015-16 school year, and 20 minutes weekly of OT for the first two nine week grading periods of the 2016-17 school year.[43] The OT would use an integrative collaborative approach, working alongside the teacher to gather their input and make recommendations to them.[44] The occupational therapist worked in R.B.'s half-day PPCD classroom many times.[45]

For speech therapy, R.B.'s IEP included two 30-minute sessions per week for weeks 6 and 7 of the school's third nine week grading period of 2015-16.[46] The IEP also called for two 30-minute speech therapy sessions weekly for weeks 2, 3, 5, and 6 of the 2015-16

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[40] ROA.2408:23-2409:22, 2417-2420, 2571:11-18, 2909:1-20, 3264:7-23, 1199-1201, 1207.

[41] ROA.1202-1204.

[42] ROA.2945:1-21, 1189-1190, 1203, 1206.

[43] ROA.1203, 2945:7-2946:2-10.

[44] ROA.1203, 2945:7-2946:2-10.

[45] ROA.3306:13-23, 1167.

[46] ROA.1203.

4th nine week grading period, and one 10-minute integrated therapy session in weeks 4 and 8.[47] For 2016-17, R.B.'s IEP indicated he would receive two 30-minute weekly sessions of speech therapy in the 1st nine weeks on weeks 3, 5, 6, and 7, with weeks 4 and 8 providing one 10-minute integrated therapy session each week.[48] For the 2nd nine week grading period, two 30-minute sessions per week of speech therapy were provided for weeks 1, 2, 3, 5, 6, and 7, and one 10-minute integrated therapy session would occur for weeks 4 and 8.[49] For the 3rd nine week grading period, weeks 1, 2, 3, and 5, R.B. would receive two 30-minute sessions each week of speech therapy, and on week 4, one 10-minute integrated therapy session.[50]

c. Langley PPCD class

Based on reports of R.B.'s behaviors of spitting, hitting, throwing, and screaming, his IEP contained measurable goals for his behavior.[51] R.B. did not have difficulty with toileting in his PPCD class.[52] He made progress while at Langley Elementary school, showing improved responses to redirection, a diversity of interests in the classroom, and decreased behaviors of

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[47] ROA.1203.

[48] ROA.1203.

[49] ROA.1203-1204.

[50] ROA.1203-1204.

[51] ROA.1177, 1179-1184, 1192, 1195-1197, 3258:12-3261:8.

[52] ROA.3261:9-15.

hitting, throwing, and spitting.[53] R.B. also made improvement in his use of verbal communication to communicate his wants and needs.[54]

Contrary to Petitioner's assertions, R.B. demonstrated progress while at NISD and that progress was documented.[55] He continued to show progress in his fine motor skills, toileting, and behavior as well as his academic skills in literacy, language, reading, blending sounds, and math.[56] He demonstrated a decrease in hitting, throwing items, and spitting during the spring of 2016, and in increase in the use of language.[57]

Additionally, he continued to make progress during the 2016-17 school year in fine motor skills, literacy, language, reading, blending sounds, math, counting, toileting and classroom behavior.[58] R.B. was one of the higher performing students academically in the class.[59]

R.B.'s spitting and physical aggression improved, and he was at 100% of his goals in these areas by the

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[53] ROA.2220-2224, 2225-2229, 3277:5-3278:20, 3286:4-6, 3291:22-25.

[54] ROA.2220-2224, 2225-2229, 3277:5-3278:20, 3286:4-6, 3291:22-25, 3278:14-17.

[55] ROA.2469-2470, 2515, 3030-3043, 3059, 3064, 1345-1352, 1730-1744, 2243-2250.

[56] ROA.1345-1355, 1730-1734, 2243-2250, 2469-2470, 2515, 3034-3043, 3059.

[57] ROA.3278:2-20.

[58] ROA.3038:5-3043:18.

[59] ROA.1526-1540, 2528:17-25, 2539:11-21, 2595:1-25.

time of his October 2016 ARD.[60] His behavior data charts kept at Langley show marked improvement throughout the Spring concerning his spitting,[61] hitting,[62] and throwing.[63] As R.B. became more accustomed to the daily routine in class, he exhibited less behavioral issues.[64] Regarding R.B.'s toileting skills, the record showed that R.B. made progress with toileting – he progressed to going to the bathroom independently and without the need for prompts.[65] He no longer used diapers.[66]

Contrary to Petitioners' assertions, the administrative record demonstrates that R.B. made meaningful, measurable progress at NISD.

B. Procedural background

On January 11, 2017, Petitioners brought a special education Due Process Hearing, alleging that the District failed to provide R.B. with a free appropriate public education ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 et seq., by failing to provide R.B. with comparable services when he transferred into the District from a

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[60] ROA.2171-2174.

[61] ROA.2137-2154; ROA.3277-3278; 2137-2154.

[62] ROA.3277-3278, 2137-2154, 1724-1740.

[63] ROA 2866-2867, 2137-2153.

[64] ROA.3278:2-13.

[65] ROA.2993:21-2997:18, 3002:3-3003:4.

[66] ROA.2993:21-2997:18, 3002:3-3003:4.

public school district in Florida and failing to provide R.B. with a FAPE thereafter.[67]

After a full evidentiary hearing held over three days on August 7-9, 2017, the special education hearing officer found that the District provided a FAPE to R.B.[68] Specifically, the hearing officer concluded that the District provided R.B. with the requisite comparable services upon his transfer to NISD from a Florida public school, having provided R.B. with the exact same related services during the temporary service period.[69] The hearing officer stated that the focus of the "temporary services provision is on services provided as established by the student's prior IEP – not necessarily on a specific classroom placement or length of the school day."[70]

Additionally, the hearing officer concluded that R.B.'s IEP was appropriate and individualized based on his assessment and performance and was administrated in the least restrictive environment.[71] Finding appropriate collaboration among the District staff and R.B.'s parents and private providers and R.B.'s receipt of academic and non-academic benefits from the program, the hearing officer concluded the District had provided a FAPE to R.B.[72]

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[67] ROA.459-468.

[68] ROA.412-451.

[69] ROA.439-443; ROA.449.

[70] ROA.439-443; ROA.449.

[71] ROA.443-446.

[72] ROA.446-448.

Petitioners then appealed the decision to the federal district court.[73] On appeal to the district court, the District and Petitioners filed cross-motions for judgment on the administrative record.[74] The district court granted judgment on the administrative record in the District's favor, finding the District provided R.B. comparable services during his 30-day transfer period and that R.B. received a FAPE while at the District.[75] Next, Petitioners appealed to the Fifth Circuit Court of Appeals, which affirmed the district court's judgment in a per curiam opinion.[76] Petitioners now petition this Court to reverse the Fifth Circuit's decision. Respondent asks this Court to deny the Petition.

REASONS FOR DENYING PETITION

Pursuant to Rule 10 of the Court's Rules, review on a petition for a writ of certiorari will be granted only for compelling reasons. *See* U.S. Supreme Court Rule 10. The Court should deny the Petition in this case because the underlying decision does not conflict with the decision of another court of appeals nor does the decision decide an important federal question in a way that conflicts with relevant decisions of the Court. Moreover, this case does not involve an important question of federal law that "has not been, but should

[73] ROA.7-71.

[74] ROA.140-250.

[75] ROA.348-388.

[76] ROA.390-391; Petitioners' Appx. A.

be, settled by this Court." *See* U.S. Supreme Court Rule 10.

A. No Important Federal Question Is Presented; "Comparable" services Is Given Its Ordinary Meaning

Petitioners contend the District denied R.B. "comparable" services during his initial 30-day placement at NISD after he transferred from Florida. *See* Petition at 11, 13. They claim that R.B.'s comparable services should have been a full day of pre-school with non-disabled peers, instead of the initial half-day in a self-contained classroom provided by the District. *Id.* They argue their case presents an important question and ask this Court to clarify what the term "comparable" means under 42 U.S.C. §1414(d)(1)(C)(i)(II) and 34 C.F.R. §323(f). *Id.* at 13. The District contends that the term "comparable" services should be given its ordinary meaning, and thus, review is not necessary as this is not an important federal question.

The statute at issue, 42 U.S.C. §1414(d)(1)(C)(i)(II), provides, in pertinent part:

> (C) Program for children who transfer school districts
>
> (i) In general
>
> . . . .

> (II) Transfer outside State
>
> In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency ***shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP***, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

42 U.S.C. §1414(d)(1)(C)(i)(II) (Emphasis added). The federal regulations at issue also provide:

> IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) ***must provide the child with a FAPE (including services comparable to those described in the child's IEP from the previous public agency)***, until the new public agency –
>
> (1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

> (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.

See 34 C.F.R. §300.323(f) (Emphasis added).

Thus, comparable services are required to be provided pending an initial evaluation "[i]f a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year[.]" 34 C.F.R. §300.323(f); *see* 142 U.S.C. §1414(d)(1)(C)(i)(II); 9 TEX. ADMIN. CODE §89.1050(j)(2); *Dallas Indep. Sch. Dist. v. Woody*, 865 F.3d 303, 312 (5th Cir. 2017).

At issue in this case is what the term "comparable" services require. Petitioners contend it required a full-day of school; the District contends the focus is on the type of services provided, not the hours in which they were given. When interpreting a statute, the Court's goal is to give effect to Congress' intent, and its starting point "is the language of the statute itself." *See Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *Kennedy v. Texas Utilities*, 179 F.3d 258, 261 (5th Cir. 1999). The "inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). "Absent congressional direction to the contrary, words in statutes are to be construed according to 'their ordinary, contemporary, common meaning[s].'" *Kennedy*, 179 F.3d at

261. Additionally, courts should defer to the position and interpretation of the Office of Special Education Programs of the Department of Education ("OSEP"). *See Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2124-25 (2016) (if a statute is ambiguous, the court should defer to the agency's reasonable interpretation).

Here, "comparable" services plainly means "similar" or "equivalent." *See* 20 U.S.C. §1414(d)(2)(C)(i)(II); *see Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (courts must "presume that [the] legislature says in a statute what it means and means in a statute what it says."); MIRRIAM-WEBSTER DICTIONARY (April 13, 2020) https://www.merriam-webster.com/dictionary/comparable (defining "comparable" as "similar," "like"). Moreover, OSEP has noted that while several commentators have requested clarification of the meaning of "comparable" services, clarification was not necessary because "the Department interprets 'comparable' to have the plain meaning of the word, which is 'similar' or 'equivalent.'" 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006); *Sterling A. ex rel. Andrews v. Washoe Cty. Sch. Dist.*, No. 307-CV-00245-LRH-RJJ, 2008 WL 4865570, at *5-6 (D. Nev. Nov. 10, 2008). When a child transfers to a new public agency from another state, "comparable services means services that are 'similar' or 'equivalent' to those that were described in the child's IEP from the previous public agency, as determined by the child's newly-designated IEP Team in the new public agency." 71 Fed. Reg. 46540, 46681 (Aug. 14, 2006); *Sterling A.*, 2008 WL 4865570 at *5-6.

The District is not required to adopt an IEP in its exact form as the prior school's IEP; all that is required is that the interim IEP be similar or equivalent to the prior state's IEP for the child. *Sterling A.*, 2008 WL 4865570 at *6 (finding change in location of special education services did not mean services were not comparable). Because "comparable" services is given its ordinary meaning of "similar" or "equivalent," there is no need for the Court to review this case, as it does not present an important federal question.

B. NISD Provided Student R.B. with Comparable Services During His 30-Day Transfer Period

Here, the District provided comparable services to what R.B. was receiving in Florida. *Compare* ROA.2041-2050 (Florida IEP) *with* ROA.1164-1169 (NISD transfer IEP). His Florida IEP did not specify the length of his school day; instead, it only specified the number of minutes for OT and speech therapy. ROA.2041-2050. His Florida IEP specified he was receiving services "every school day" and in a "separate class." ROA.2049. For his occupational therapy ("OT"), his Florida IEP indicated he would receive 30 minutes of occupational therapy each week. ROA.2049. For his language therapy, his Florida IEP specified 60 minutes weekly. ROA.2049. *Nowhere* did his Florida IEP specify that he required any other minimum number of hours of special education services or a specific length for his school day. ROA.2041-2050.

His NISD transfer IEP indeed was comparable to his Florida IEP. NISD's IEP for R.B. provided: "During 30-day evaluation period, services provided will be comparable to services provided according to previous IEP." ROA.1167. As with his Florida IEP, the NISD transfer IEP indicated R.B. would receive 30 minutes of OT per week and speech therapy for 60 minutes each week, just as the Florida IEP did. ROA.1164, 1167.

Petitioners claim R.B. "received four fewer hours daily than the Florida IEP mandated, thus losing 84 hours of instructional time." *See* Petition at 5. However, Petitioners are referring not to designated hours of special education services, but to the length of the school day, which was not specified on the Florida IEP. The IEP only specified the number of minutes for his special education services for OT and speech therapy. In their Petition, Petitioners appear to take issue with R.B.'s *February* NISD IEP, which did change some of the timing of R.B.'s OT and speech therapy, as they reference the February 2016 IEP and not the transfer IEP from January when complaining of a change in services. *See* Petition at 17. However, the February IEP is not part of R.B.'s 30-day placement services following his transfer that is governed by 42 U.S.C. §1414(d)(1)(C)(i)(II) and 34 C.F.R. §300.323(f). To determine whether the District complied with the statute, the Court looks at the services provided during the interim period between the transfer and the District's conducting a new evaluation, if one was deemed necessary, and the development of the new IEP. *See* 34 C.F.R. §300.323(f). The District provided R.B. with a new IEP

based on evaluations and input from his parents, providers, and teachers following the February 22, 2016 ARD meeting. ROA.1170-1225. Thus, the interim transfer period covered only the period from January 13, 2016 through February 22, 2016 and did not include the IEP developed at his February 2016 ARD. ROA.1164-1169, 1170-1188.

Petitioners further claim R.B. should not have been in a self-contained classroom. Contrary to Petitioners' assertions, the District placed R.B. in a classroom similar to his Florida classroom. According to Ms. Davila, who had spoken with R.B.'s Florida teacher, R.B.'s Florida classroom was a self-contained classroom and not a general education classroom. ROA.3249:25-3251:3. His Florida IEP even indicates that R.B. received special education services in a "separate class" and his classroom had less than or equal to 40% non-disabled peers, showing the class was predominantly special needs students. ROA.2041-2050, 3248-3251.

As found by the hearing officer, the district court, and the Court of Appeals, Northside ISD clearly provided "comparable" services to R.B. during his initial 30-day placement, as required by the statute.

CONCLUSION

For the reasons shown above, the Petition should be denied.

Respectfully submitted,

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