

20-6234

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Karen Moynihan - PETITIONER

vs.

The West Chester Area School District - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Karen Moynihan

607 W. Rosedale Ave.

West Chester, PA 19382

610-692-6226

QUESTION(S) PRESENTED

Did the United States District Court of Appeals for the Third Circuit disregard this Honorable Court's Opinion on the Individuals with Disabilities Education Act, as that Opinion was defined at *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1 - 137 S. Ct. L. Ed. 2d 335 (2017) when ruling against Petitioner and for Respondent?

Suggested Answer: Yes

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States District Court for the Eastern District of Pennsylvania; 2-18-cv-04388

United States District Court for the Eastern District of Pennsylvania; Civil Action Number 19-648

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TABLE OF AUTHORITIES CITED

CASES

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Endrew F., A Minor, By and Through His Parents
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STATUTES AND RULES

The Individuals with Disabilities Education Act 20 U.S.C. § 1400 et seq.; 34 CFR
§300

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. (As much as this pro se Petitioner could ascertain.
Therefore, I am attaching it as Appendix "A".)

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished. (As much as this pro se Petitioner could ascertain.
Therefore, I am attaching it as Appendix "C".)

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court
appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 3, 2020.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Individuals with Disabilities Education Act

**20 U.S.C. § 1400 et seq
34 CFR §300 Section 504**

STATEMENT OF THE CASE

In 2008, Respondent, the West Chester Area School District, provided C.M.¹ with an Individual Education Plan (now herein and throughout collectively referred to as an "IEP"), pursuant to 34 CFR § 300 and its implementing regulations, due to Respondent's own diagnosis of C.M. with Asperger's Syndrome. A developmental pediatrician at The Children's Hospital of Philadelphia (now herein and throughout collectively referred to as "CHOP"), after evaluating C.M., concurred with Respondent's initial diagnosis of C.M. with Asperger's Syndrome.

C.M. was an honor student throughout his 9th grade high school year of 2013-14, while receiving advanced scores that year, the first time taking the Keystone standardized examinations mandated by the No Child Left Behind Act. Furthermore, in C.M.'s 9th school year, CHOP's Center for Autism Research also diagnosed C.M. with Social Anxiety Disorder. Upon receiving the written report and recommendations of CHOP's Report on C.M., Petitioner promptly met with C.M.'s IEP Team. Petitioner requested that Respondent's IEP Team fully include into C.M.'s IEP, the recommendations of CHOP in their report on how to efficiently educate C.M. Respondent's repeatedly refused, despite our frequent IEP meetings to discuss the matter.

¹Although C.M. is no longer a minor, Petitioner will continue to refer to him with his initials only, since Respondent has continued to do so throughout my legal proceedings with them.

As a result of Respondent's persistent resistance to our repeated requests for changes to C.M.'s IEP, beginning in his 10th grade school year of 2014-15, C.M. began to falter and was prescribed psycho-pharmacological medications, which ultimately did not help him.

In March of 2016, Petitioner filed, on behalf of C.M., my first administrative complaint with the Pennsylvania Office for Dispute Resolution (now herein and throughout collectively referred to as the ODR) at (ODR File No. 17866/15-16). However, Respondent's attorneys were able to delay that administrative proceeding from commencing until August of 2017. In the interim, C.M. continued his social, academic and emotional decline due to the gross negligence of the Respondent.

Because of C.M.'s continued demise, Petitioner subsequently filed additional administrative complaints with the ODR at ODR File #19245/16-17; ODR File #19399/16-17 and ODR File #19562/17-18. The ODR's presiding Hearing Officers denied each of our requests for compensatory education and psychological expenses for C.M.

In October of 2018, Petitioner filed our first appeal to the United States District Court for the Eastern District of Pennsylvania on behalf of C.M.²

² Please see Civil Action No. 2:18-cv-04388-NIQA.

In February of 2019, Petitioner filed another appeal to the United States District Court for the Eastern District of Pennsylvania on behalf of C.M.³

On November 12, 2019, Petitioner filed an Appeal with the United States Court of Appeals for the Third Circuit. Please refer to the attached Appendix "B".

In April of 2020, the United States District Court for the Eastern District of Pennsylvania Granted most of Respondent's Motion to Dismiss. Please see Petitioner's attached Appendix "C".

³ Please see Civil Action No. 2:19-cv-00648-NIQA

REASONS FOR GRANTING THE PETITION

As this Honorable Court will be able to ascertain from viewing the aforementioned civil actions, Petitioner requested that the U.S.D.C. ED PA order that the Respondent provide to that Court, the full and entire reproduced record of those ODR proceedings, pursuant to (34 CFR § 300.516)3.1. Yet, as you can see from the attached Appendix D, that Court did not receive those records until October of 2020. As a pro se Petitioner, I could not provide any burden of proof in my briefs and filings in those matters, without my knowledge that the U.S.D.C. ED had the records of the ODR Administrative Proceedings. Similarly, this pro se Petitioner could not provide enough burden of proof to the United States Court of Appeals for the Third Circuit (now herein and throughout referred to as “the Third Circuit”).

As this Honorable Court can see from my attached Appendix D, the Third Circuit is concurring with the Respondent’s assertions that Petitioner did not state any claim. But the Administrative Reproduced Records prove opposite. This pro se Petitioner did repeatedly state my claims. Those claims are evidenced in the Administrative Record. Yet, since neither of the aforementioned Courts had any knowledge of the voluminous administrative proceeding’s records, Petitioner could not effectively provide any burden of proof to refute Respondent’s Motions.

CONCLUSION

Because of the aforementioned reasons, Petitioner, Karen Moynihan, hereby requests that this Honorable Court consider my Motion for a Writ of Certiorari as *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1* - 137 S. Ct. L. Ed. 2d 335 (2017) has been determined by this Court, to be a conclusion of law as it pertains to The Individuals with Disabilities Education Act (IDEA) and its supporting regulations and statutes.

By way of further clarification, the Rules of the Supreme Court states that the Court will consider a Petitioner's Writ of Certiorari, pursuant to Rule 14. (a) (1), and to Part III, Rule 10 © of The Rules of the United States Supreme Court:

- © "...a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. "

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Karen Moynihan

Date: October 30, 2020