

**THE SUPREME COURT OF THE UNITED STATES**

A.S. a 9-year old child with Autism Spectrum Disorder (ASD) entitled  
to Special Education and Related services per IDEA  
represented by his parents E.S. *Pro se* and R.S. *Pro se*

*Plaintiffs-Petitioners*

APPLICATION TO

EXCEED WORD LIMIT

SET FOR PETITION

FOR A WRIT OF

CERTIORARI DATE

DUE OCTOBER 5, 2020

*-against-*

*Case No. 1153-CV-501*

Board of Education Shenendehowa Central School District,  
Interim Commissioner Betty Rosa, of The University of the State of New York

*Defendants-Respondents*

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Roger Swartz and Ekaterina Shishova

42-L Hollandale Ln.

Clifton Park, NY 12065

P: 215-280-4756

To: The Honorable Samuel Alito, Esq.

Supreme Court of the United States

1 First Street, NE

Washington, DC 20543

CC:

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Albany, NY 12224-0341

Attorney for Betty Rosa Commissioner of the NYSED

Application to exceed word limit in filing a Petition for a Writ of Certiorari from the Decision, Order and Judgment of The United States Court of Appeals of the Second Circuit for Action No. 1153-CV-501 by Judges Pierre N. Leval, Raymond J. Lohier, Jr. and Michael H. Park to dismiss for lack of jurisdiction the Appeal from the Memorandum Decision and Order and Judgment of Case No. 1:17-CV501-LEK/CFH of The United States District Court for the Northern District of New York by Judge Lawrence E. Khan entered February 20, 2019 and Motion to Reopened Granted on March 16, 2020 and postmarked on March 16, 2020.

APPLICATION TO EXCEED WORD LIMIT IN FILING PETITION FOR A  
WRIT OF CERTIORARI

Dear Supreme Court Justice Alito,

My condolences to the recent loss of Supreme Court Justine Ginsburg. She has served the court and the public well and her legacy will live on in a most significant way! One can only admire the principles she lived by and her dedication to the laws of this great country so that justice may be served for all in these constantly changing times.

For reasons stated below A.S. represented by his parents R.S. pro se and E.S. pro se respectfully move to file a Petition for a Writ of Certiorari in excess of the 9,000 word-limit not to exceed 18,000 words.

This case arises out of the individuals with disabilities education act (IDEA) as it relates to individuals with autism. There are 10 - 11 questions listed below (the eleventh question may be removed or even changed) which may be adjusted in their wording, cannot be petitioned in the proper way in 9,000 words.

The 11 Questions are listed as follows:

1. Whether an appellate court may sue sponte dismiss an appeal which has been filed within the time limitations stated in the Federal Rules of

Appellate Procedure FRAP Rule 26(c) that adds 3 days for service by mail to file an appeal for which the motion has been granted to reopen the time to file an appeal under rule 4(a)(6) of FRAP.

2. Whether non-attorney pro se parents can reasonably have been expected to know of unwritten rules that lawyers take for granted that FRAP Rule 26(c) does not apply to mailed motions that are granted to reopen the time to file an appeal under rule 4(a)(6) of FRAP when that is impossible to determine when reading the Federal Rules of Appellate Procedure.
3. Whether FRAP is improperly written and that substantially and unlawfully disadvantages non-attorney pro se parents in cases when motion has been granted by mail to reopen the time to file an appeal under rule 4(a)(6) and FRAP Rule 26(c) is interpreted to apply.
4. Whether the interpretation of FRAP is intended to be based on the stand-alone document and whether supplementary rules are required for its interpretation where such supplementary rules are referenced within FRAP to the particular application of FRAP rules 26(c) on FRAP rules 4(a)(6)?
5. Can a court defer to the opinion of a lower judicial body when there is an alleged bias of that lower judicial body?
6. Is a child diagnosed with autism spectrum disorder that meets the requirements to receive Special Education and Related Services entitled to

a particular evidence-based methodology such as Intensive Behavioral Intervention or Applied Behavior Analysis?

7. Are the rules, regulations and laws of 8 N.Y.C.R.R. §200 et seq. and also The IDEA 20 U.S.C. §§ 1400-1482 written so that they are unconstitutionally vague and such that they unlawfully empower school personnel, schools, school districts other Local Education Agencies (LEAs) to broadly interpret the education law themselves especially on such pertinent matters of Least Restrictive Environment (LRE) determinations and the appropriateness of a particular methodology such that it permits the curtailing of the rights of students receiving special education and their parents and consistently results in a denial of a FAPE, a denial of access to the students LRE to the maximum extent appropriate and also results in confusion amongst the appellate courts on how to interpret the education law and render a judgment?
8. In light of Question 7., should those unconstitutionally vague rules, regulations and laws in 8 N.Y.C.R.R. §200 et seq. be replaced by more clear and specific rules, regulations and laws that allows for a narrowly defined interpretation of those laws by all teachers, parents, lawyers and judicial bodies? In other words should the assessment of a specific child with autism and their recommended programming be sufficiently similar across different evaluators in different school districts and would that require a well-defined interpretation of the special education law?

9. Given the nature of the common developmental delays found in nearly all autism spectrum disorder (ASD) diagnoses, if a student with a an ASD entitled to an Individualized Education Plan (IEP) and special education and related services should the three measures of 1) expressive language, 2) conversational ability (measured in the number of peer aged exchanges that a student can consistently demonstrate) with typically developing peers if in their LRE and 3) a reduction in prompt dependence be guaranteed goals on the student's IEP since these measures are necessary to the purpose of The Individuals with Disabilities Education Act (The IDEA) (20 U.S.C. §§ 1400-1482) which is "to ensure that students with disabilities have available to them a FAPE in the LRE to the maximum extent appropriate that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living" (20 U.S.C. §§ 1400(d)(1)(A))?
10. If Question 9 is not answered in the affirmative does 20 U.S.C. §§ 1400(d)(1)(A)) have any meaning for a child with autism?
11. Are federal laws that permit the withholding of funding if special education laws are not met unenforceable

In order to adequately file a Petition for a Writ of Certiorari for these questions it is requested that the Court grant the application to exceed the word limit from 9,000 words to under 18,000 words.

Respectfully Submitted,

Thursday September 24, 2020

A handwritten signature in cursive script, appearing to be 'E.S.', written above a horizontal line.

E.S. *Pro Se* on behalf of A.S.

A handwritten signature in cursive script, appearing to be 'R.S.', written above a horizontal line.

R.S. *Pro Se* on behalf of A.S.

# MANDATE

N.D.N.Y.  
17-cv-501  
Kahn, J.  
Hummel, M.J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8<sup>th</sup> day of May, two thousand twenty.

Present:

Pierre N. Leval,  
Raymond J. Lohier, Jr.,  
Michael H. Park,  
*Circuit Judges.*

R.S., individually and on behalf of their son, A.S., E.S.,  
individually and on behalf of their son, A.S.,

*Plaintiffs-Appellants,*

v.

20-1153

Board of Education Shenendehowa Central School District,  
MaryEllen Elia, Commissioner of the University of the State  
of New York,

*Defendants-Appellees,*

Justyne Bates, Chief State Reviewer, Office of State Review  
New York State Education Department,

*Defendant.*

This Court has determined sua sponte that the notice of appeal was untimely because it was not filed within 14 days from the date of entry of the order reopening the time to appeal. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED for lack of jurisdiction. See 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(6); *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

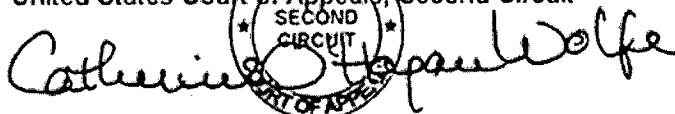
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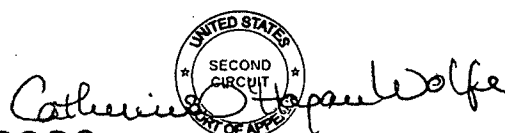
Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

  
Catherine O'Hagan Wolfe

  
Catherine O'Hagan Wolfe

MANDATE ISSUED ON 06/01/2020