No. 22-310

In The
Supreme Court of the United States

A.W. on behalf of N.W., and N.W.,

Petitioners,

v.

PRINCETON PUBLIC SCHOOLS
BOARD OF EDUCATION and MICKI CRISAFULLI,
Individually and as Director of Special Education,

Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENTS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Petitioners' brief in support of the petition for a writ of certiorari describes the questions presented as a series of legal issues they believe to be the core of their underlying complaint. However, the issues Petitioners raise were not previously raised before either the United States District Court for the District of New Jersey (herein after "District Court"), or the United States Court of Appeals for the Third Circuit (herein after "Third Circuit) below.

Instead, the only question that could be properly before this Court, is whether the Third Circuit correctly affirmed the July 10, 2020, Order by the District Court dismissing with prejudice the Petitioners' Complaint, based on the parties having entered into a valid and enforceable settlement agreement.

PARTIES TO THE PROCEEDING

Petitioners are A.W. o.b.o. N.W. and now N.W., as N.W. has reached the age of 18.

Respondents are Princeton Public Schools Board of Education and Micki Crisafulli, individually and as Director of Special Education.

RELATED CASES

A.W. o/b/o N.W. v. Princeton Public Schools Board of Education, Docket No. EDS 03738-17, Agency Docket No. 2017-25766, New Jersey Office of Administrative law. Final Decision entered May 17, 2018.

A.W. o/b/o N.W. v. Princeton Public Schools Board of Education, No 3:17-cv-11432, U.S. District Court for the District of New Jersey. Judgement entered July 10, 2020.

A.W. o/b/o N.W. v. Princeton Public Schools Board of Education, Case No. 20-2433. U.S. Court of Appeals for the Third Circuit. Judgement entered March 15, 2022.

A.W. o/b/o N.W. v. Princeton Public Schools Board of Education, Case No. 21-1502. U.S. Court of Appeals for the Third Circuit. Judgement entered March 15, 2022.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The Opinion of the Third Circuit dismissing Petitioners' Complaint is found in Petitioners' appendix at Petitioners' appendix, document 1. The Opinions of the District Court are found within Petitioners' sealed appendix, document 1 (Civil No. 3:18-cv-13973-MAS-TJB, Document 73).

JURISDICTION

The Judgment of the Third Circuit was entered on March 22, 2022. On August 9, 2022, the Third Circuit denied Petitioners' Petition for Rehearing. The Petitioners' Petition for a Writ of Certiorari was filed in the United States Supreme Court on July 8, 2022. The Jurisdiction of this Court was invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

This case arises from a Settlement Agreement entered into by the parties in order to resolve a claim brought by Petitioners under the Individuals with Disabilities Education Act ("IDEA").

1. Prior to the start of the scheduled Due Process Hearing on March 2, 2018, the parties reached an agreement on settlement. (S. App. 49).

2. The entirety of the March 2, 2018, Settlement Agreement (Herein after "Settlement Agreement")

was read into the record before the Office of Administrative Law, and Petitioner, A.W., was *voir dired* by the Administrative Law Judge on the record before signing the agreement. (S. App. 9-11; 49).

3. After the Agreement was memorialized before the ALJ, Petitioner, A.W., emailed the undersigned, counsel for Respondent, several times seeking changes to the Settlement Agreement. These changes were rejected and it was communicated via email that the Board intended to move forward with the agreement as written. (Pet. App. 10; R. App. 1).

4. The Board of Education approved the agreement on March 23, 2018, and Petitioner, A.W. thereafter emailed requesting an update on whether the Board approved the Settlement Agreement and when she could expect to be reimbursed. (Pet. App. 10; R. App. 2).

5. On April 13, 2018, payment in the amount of $42,194.00 was made by the District to A.W., representing tuition for the entirety of the 2017-2018 school year. (R. App. 3).

6. At the conclusion of the 2017-2018 school year Petitioners moved out of New Jersey for the 2018-2019 school year.

7. On April 24, 2018, Respondent filed a Motion to Accept Settlement and Issue a Final Order before the OAL, which was granted on May 17, 2018. (S. App. 36).

8. On September 25, 2018, Petitioner, A.W., filed an Amended Complaint before the District Court

alleging claims which were waived by and through the Settlement Agreement.

9. Only July 10, 2020, the District Court issued an Order dismissing Petitioners' Amended Complaint *with prejudice*, finding that the Settlement Agreement was an enforceable contract, entered into knowingly and voluntarily by Petitioners. (S. App. 1).

10. Petitioners then appealed to the Third Circuit, which ultimately affirmed the District Court's rulings. (Pet. App. 1).

SUMMARY OF THE ARGUMENT

Petitioners' petition for a writ of certiorari results from decisions by the District Court, and the Third Circuit terminating their case by dismissing their complaint with prejudice. The District Court dismissed Petitioners' complaint because it was found that the parties had voluntarily and of their own free will and fill knowledge entered into a valid and enforceable settlement agreement. The District Court's decision was affirmed by the Third Circuit. Because neither court erred in their judgment, and because the enforcement of a settlement agreement is not a compelling issue of law, respectfully, this Court should deny the petition for a writ of certiorari.

The Court may find it useful to note that throughout the litigation Petitioner, A.W., has maintained a steady stream of vexatious, meritless, and nonsensical

pleadings, despite having received full consideration by Respondent under the Settlement Agreement. Petitioners have enjoyed the consideration provided under the Settlement Agreement, while continuing to file harassing and meritless litigation against a public school district.

REASONS FOR DENYING THE WRIT

The District Court and the Third Circuit were correct in holding that the Settlement Agreement did not violate public policy, was entered into knowingly and willingly by Petitioners, and that there was no equitable fraud.

I. PETITIONERS HAVE FAILED TO ESTABLISH A COMPELLING BASIS FOR THIS COURT TO ISSUE A WRIT OF CERTIORARI

Pursuant to United States Supreme Court Rule 10, the Supreme Court will only issue a writ of certiorari under the following limited circumstances and compelling reasons:

> (a) The United States Court of Appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from

> the accepted course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of [The Supreme Court's] supervisory power;
>
> (b) A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals;
>
> (c) A state court of United States court of appeals has decided an important question of federal law that has not been, but should be, settled by [the Supreme Court], or has decided an important federal question in a way that conflicts with relevant decisions of [the Supreme Court].
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

[Supreme Court Rule 10].

As argued more fully below, Petitioners have failed to assert a valid or compelling basis for this Court to issue a writ of certiorari. The Third Circuit's decision was not in contradiction with any other United States Court of Appeals or State Court of last resort. Moreover, the Third Circuit's Decision is grounded in well settled principles of settlement. Accordingly, as this matter does not involve issues of national significance, does not require the harmonization of conflicting decisions of the United States Courts of Appeals, and

involves well settled legal principles, there is no compelling basis for this Court to issue a writ of certiorari.

A. THE CURRENT MATTER DOES NOT INVOLVE THE APPLICATION OF THE PROVISIONS OF THE IDEA

First, disposing of Petitioners' argument that this Court regularly grants review to clarify the application of the IDEA, the issue before the Courts below, and now raised before this Court, is not a question of application of the IDEA, but rather, whether the Settlement Agreement is a valid and enforceable contract. Petitioners have asked this Court to review the District Court and Third Circuit's decisions enforcing the Settlement Agreement, which were decided based upon well settled precedent favoring the settlement of litigation matters. The District Court and Third Circuit were charged with determining whether the Settlement Agreement was a valid contract entered into knowingly and voluntarily and without equitable fraud. Petitioners now attempt to veil the legal issue of contract enforceability under the cloak of a review of the application of the IDEA. In fact, an analysis of the District's obligations under the IDEA was never reached, nor would it be appropriate, in this matter as there was no hearing on the merits of the original Due Process Petition. The underlying matter was never reviewed by the appropriate administrative agency because every tribunal that has viewed this matter has found that the underlying dispute was settled when the parties

entered into a valid and enforceable Settlement Agreement.

Accordingly, this is not the type of matter that this Court has routinely granted review. Instead, this matter involves well settled principles of law pertaining to settlement agreements and enforceability of same.

B. THE DECISION BY THE THIRD CIRCUIT IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT

Petitioners attempt to confuse the decision of the Third Circuit by citing to several decisions by this Court which dealt with claims raised under different Statutes and laws which are not applicable to the present matter. Moreover, the Third Circuit acknowledged the holding in *Alexander v. Gardner-Denver Co.*, by severing the prospective discrimination waivers in paragraph 6 of the Settlement Agreement, and enforcing the remainder of the Agreement. It is important to note that Petitioners' underlying complaint only contains allegations occurring prior to the Settlement Agreement. It is even more important to note that Petitioners relocated outside of the State of New Jersey in June 2018 for the remainder of the term of the Settlement Agreement, therefore extinguishing Respondent's obligations to the student N.W. under the IDEA and Respondent's financial obligations under the Settlement Agreement. Accordingly Petitioners were never harmed by the prospective waivers in the Settlement Agreement.

Those waivers that have been deemed illegal by this Court were severed from the Settlement Agreement by the Third Circuit. As such, the Third Circuit's finding, enforcing the remainder of the Settlement Agreement is not in conflict with any decision of this Court.

C. THE DECISION BY THE THIRD CIRCUIT IS NOT IN CONFLICT WITH ANY DECISIONS OF OTHER FEDERAL COURTS OF APPEALS

Next, upon review of the decisions of the District Court and the Third Circuit, it is abundantly clear that the breadth of case law supports the enforceability of the Settlement Agreement.

The Third Circuit properly relied on *D.R. o.b.o. M.R. v. E. Brunswick Bd. of Educ.*, holding that settlements serve an important public policy in that they, "promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts." 109 F.3d 896, 301 (3d Cir. 1997). It was also acknowledged in that case, "a party enters a settlement agreement, at least in part, to avoid unpredictable costs in litigation in favor of agreeing to known costs." *Id.* It was emphasized that government entities have additional interest in settling disputes in order to increase the predictability of costs. The Third Circuit stated "we are concerned that a decision that would allow parents to void settlement agreements when they become unpalatable would work a significant

deterrence contrary to the federal policy of encouraging settlements." *Id.*

These are settled principles of law regarding the enforceability of settlement agreements, and were properly relied on by the Third Circuit and District Court. Petitioners have incorrectly argued *D.R.* should not be relied on because the Third Circuit held that its decision was limited to the facts of that case. However, the Third Circuit was not referring to their analysis of the public policy considerations favoring settlement agreements of these matters, but rather, to their finding with respect to the specific settlement agreement at issue in light of the unique facts of that case. As such, the Third Circuit's reliance on their prior analysis of proper settlement agreements and public policy favoring the enforcement of settlement agreements was not improper in reviewing the applicability of the Settlement Agreement at issue.

The Third Circuit also properly relied on the *Blunt v. Lower Merion Sch. Dist.*, decision, wherein it was found that settlement agreements of IDEA matters, "may release all claims arising out of the transaction with which the release was concerned even if they are not yet known; and broad releases are valid at least when negotiated between sophisticated parties." 767 F.3d 247, 282 (3d Cir. 2014). In so holding, the Third Circuit relied on a decision by the Ninth Circuit, which held, "parties possessing roughly equivalent bargaining strength could release *all* claims arising out of the transaction that gave rise to the litigation, even though they hadn't yet discovered some of the

securities claims when they signed the settlement." *Facebook, Inc. v. Pacific Northwest Software, Inc.*, 640 F.3d 1034, 1040 (9th Cir. 2011).

Parenthetically, it is noted that when analyzing whether parties have equivalent bargaining power, the Ninth Circuit recognized that parties involved in litigation have equivalent bargaining strength because, "they can use discovery to ferret out a great deal of information before even commencing settlement negotiations. They can further protect themselves by requiring that the adverse party supply the needed information, or provide specific representations and warranties as a condition of signing the settlement agreement." *Id.* Accordingly, as A.W. was engaged in litigation with the District, had the opportunity to retain or consult with counsel, and is in fact a licensed attorney herself who has boasted about her prior representation of her other children in IDEA due process matters, the parties had equal bargaining positions at the start of settlement negotiations.

Regardless, all of the case law relied on by the Third Circuit in upholding settlement agreements in IDEA matters remains valid and controlling. There are no conflicting decisions by this Court or any other United States Circuit Court of Appeals that contradict those holdings by the Third Circuit. Rather, the Third Circuit relied on rulings by the Ninth Circuit in reaching their decision. Petitioners cite to several decisions of the United States District Court, which are not only not binding on the Third Circuit, but are not in conflict with the Third Circuit's ruling. As this Court did in

both *D.R.* and *Blunt*, this Court should decline to review the Third Circuit's holding here. 118 S.Ct. 415 (1997); 135 S.Ct. 1738 (2015).

Petitioners' baseless arguments with respect to prospective waivers of rights under the IDEA are specious because those allegations predate the Settlement Agreement. Moreover, Petitioners relocated outside of the District from June 2018 through June 2020. When Petitioners returned to the Princeton Public School District, Respondent continued to provide a Free and Appropriate Public Education to N.W. through the conclusion of her graduation at the Princeton Public School District. The Third Circuit also noted that the Settlement Agreement contained a provision stating that, should N.W. re-enroll in the Princeton Public School District during the course of the agreement, the School District would provide an IEP. (Petitioners' App. 6). Petitioner, N.W., was never deprived of her rights to a FAPE under the IDEA by or through the Settlement Agreement.

The validity and enforceability of settlement agreements is not a novel issue, but rather, one that had been reviewed numerous times and is well settled.

D. THE THIRD CIRCUIT PROPERLY HELD THAT PETITIONERS FAILED TO PROPERLY INVOKE 20 U.S.C. 1415(f)(iv)

Petitioners' arguments with respect to the review period set forth under the IDEA are not only factually false, but also do not form a basis for this Court to issue

a writ of certiorari. The Third Circuit conducted an extensive review of the evidence surrounding the Settlement Agreement, including Petitioners' email correspondence. Petitioners refer to correspondence sent on March 6, 2018; however, in this correspondence Petitioners did not state that they were voiding the agreement, but rather, purported to conditionally void the agreement. As properly noted by the Third Circuit, after Respondent refused to modify the language, Petitioners did not take steps to void the agreement, but instead emailed the undersigned to inquire as to whether the Board of Education approved the agreement so that they could proceed with the tuition reimbursement set forth therein. (Petitioners' App. 10). Parenthetically, it should be noted, as it was noted by the Third Circuit, that Petitioners have voided a settlement agreement with Respondent previously, and thus had knowledge of what steps must be taken to invoke 20 U.S.C. 1415(f)(iv).

Accordingly, the record clearly established that Petitioners never took steps to void the Settlement Agreement. Moreover, as set forth under Supreme Court Rule 10, "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Even assuming arguendo this was an error by the Third Circuit, it does not form the compelling basis required for a writ of certiorari. Petitioners' contention that the Third Circuit's decision undermines the procedural safeguards contained in the IDEA is another effort to mischaracterize the facts and

rulings in this matter, which clearly demonstrate that Petitioners knowingly and voluntarily entered into a binding settlement agreement.

E. THE THIRD CIRCUIT'S DECISION IS NOT IN CONFLICT WITH ANY NEW JERSEY STATE LAW

Again, Petitioners attempt to conflate inapplicable decisions of other Courts in order to bolster their argument that the Third Circuit failed to consider all binding precedent. First, it must be noted that Petitioners represent that their argument is supported by the IDEA's provisions permitting States to enact laws providing greater protections than required by the Act. However, Petitioners do not cite to one New Jersey Department of Education Regulation or Decision by New Jersey Courts to support their claim that the Settlement Agreement was invalid under New Jersey's implementation of the IDEA. This is because one does not exist.

Rather, Petitioners continue to place improper reliance on *Hojnowski v. Vans Skate Park*, 187 N.J. 323, 901 A.2d 381 (2006). The agreement at issue in *Hojnowski*, was not a settlement agreement, but rather an exculpatory agreement releasing a commercial facility from liability for any potential tort claim arising out of use of the facility by a minor. This case focuses on a parental release of a child's ***tort*** claims arising from injury where the Court found, "in view of the protections that our State historically has afforded to a

minor's claims and the need to discourage negligent activity on the part of commercial enterprises attracting children, we hold that a parent's execution of a pre-injury release of a minor's future tort claims arising out of the use of a commercial facility is unenforceable." *Hojnowski*, 901 A.2d at 389. This matter is clearly distinguishable as the Court is reviewing a very specific type of waiver and release that is entirely unrelated to settlements of claims raised under the IDEA.

The Third Circuit considered this argument and properly rejected Petitioners' reliance on *Hojnowski*, to support their contention that New Jersey State Law disfavors or does not allow certain waivers under settlements of claims raised under the IDEA.

Accordingly, the Third Circuit's ruling is not in conflict with any State Court of last resort, and therefore does not warrant review by this Court.

II. PETITIONERS' PRACTICE OF HARASSING AND VEXATIOUS LITIGATION SHOULD LEAD THE COURT TO DENY THE PETITION FOR A WRIT OF CERTIORARI

The present litigation is only the latest in a long series of harassing and vexatious litigation filed by Petitioners in Federal Courts. In this action alone Petitioners have filed, or attempted to file, dozens of voluminous and meritless pleadings, despite having accepted and retained consideration under the Settlement Agreement they seek to invalidate.

In these cases, Petitioners have a demonstrable record of bombarding a public entity with a steady barrage of lengthy and meritless pleadings. This pattern forces public entity respondents to spend time and resources reading and responding to every senseless filing, while Petitioners have taken and retained consideration from that public entity.

The concern is not simply with the volume of Petitioners' pleadings; it is rather the fact that they patently lack any grounding in the law. Petitioner, A.W., is a licensed attorney in the State of New Jersey, and has on numerous occasions articulated her vast legal experience and has documented experience litigating IDEA claims on behalf of her children. Despite this Petitioner, A.W., insists that she was subject to a fraudulent and invalid settlement agreement at the hands of district. Moreover, Petitioners have accepted consideration under that very agreement they seek to invalidate, and have gone so far as to argue that should they prevail, they should be exempt from exhausting administrative remedies and be permitted to retain the $42,194.00 paid to them under the Settlement.

Throughout the course of this litigation case, Petitioners were repeatedly warned that their continued meritless IDEA action may be found to be abusive, triggering sanctions under Federal Rule of Civil Procedure 11 or 28 U.S.C. § 1927.

Finally, the current Petition, lacking any real merit, spends approximately three pages discussing entirely irrelevant statistics and studies relating to

adolescent mental illness and suicide rates. This erroneous and irrelevant tangent by Petitioners is designed solely to distract from the actual issue in this matter, which is whether the Settlement Agreement was valid and enforceable under well settled legal principles. Moreover, Petitioners fail to acknowledge that Petitioner, N.W. has successfully graduated from the Princeton Public School District. It is respectfully urged that the Court deny this petition for a writ of certiorari and put an end to this particular chapter of Petitioners' campaign of harassment.

CONCLUSION

Based upon the above, Respondents respectfully request that the Court deny the Petition for certiorari.

Respectfully submitted,

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