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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Respondents offer four reasons why this Court should deny the petition: (1) petitioners' three Questions Presented were not raised below; (2) this case does not involve the Individuals with Disabilities Education Act (IDEA); (3) the Third Circuit's decision is not in conflict with decisions of this Court, other federal appellate courts, or the New Jersey Supreme Court; and (4) the Third Circuit correctly held petitioners did not effectively invoke 20 U.S.C. 1415(f)(1)(B)(iv).

Respondents also offer an alternative question presented and additional reason to deny the petition. They assert: (5) the only proper question is whether the educational placement and settlement agreement (EPSA) was entered knowingly and voluntarily and without equitable fraud; and (6) petitioners are harassing respondents.

None of these reasons is persuasive. This Court should grant review.

A. Statement of The Case

Respondents' newly-raised factual allegations are incorrect. An accurate statement of undisputed facts follows:

1. On March 2, 2018, the parties appeared before the New Jersey Office of Administrative Law (NJOAL) for a hearing.

2. A.W. and defense counsel Brett Gorman ("Gorman") discussed a resolution while reviewing a document on his laptop. S-PR-App.29 (¶ 5).

3. Gorman assured A.W. he would insert a provision in the document stating that N.W. could re-enroll in the district and respondents would conduct evaluations, offer an IEP, and the agreement would be void. S-PR-App.29 (¶ 5).

4. Gorman pointed out to A.W. on the soft copy of the document where he would add the language of ¶ 3. S-PR-App.29.

5. Gorman left the room to speak with respondent, Micki Crisafulli (Crisafulli), and upon returning, assured A.W. respondents authorized his promises and added: "[Crisafulli] even said if you want to come back in district she would consider other placements." S-PR-App.29 (¶ 7).

6. Gorman promised A.W. that she would be reimbursed $42,194 for tuition costs for the 2017-2018 school year within forty-five days of approval. S-App.14.

7. Based on these promises, A.W. agreed to settle. S-PR-App.29 (¶ 6).

8. Gorman revised the soft copy of the document on his laptop; he did not track or mark his changes or bring them to A.W.'s attention. S-PR-App.30 (¶ 9).

9. Three copies of the document were printed from the court printer and A.W. was asked to sign them. S-PR-App.34, 39 (¶ 103).

10. Before signing, A.W. raised with the Administrative Law Judge (ALJ) with all parties present that

she understood she was entitled to a three-day review period to study the agreement and request changes; the ALJ confirmed this and respondents did not object. S-PR-App.30 (¶ 10); S-PR-App.34, 39 (¶ 104).

11. A.W. then signed the three copies and handed them to the ALJ. S-PR-App.15 (l. 20).

12. When back on the record, the ALJ had already collected all three signed copies. *Id.* The ALJ handed a copy only to Gorman who gave an oral summary for the ALJ. S-PR-App.15 (l. 15).

13. When questioned by the ALJ, the dialogue was that A.W. waived claims for two years which was contingent upon respondents' compliance with all payment terms and following through on their promises. S-PR-App.34, 39 (¶ 105); S-PR-App.22 (l. 9)-23 (l. 7).

14. Within the three days, A.W. reviewed the document and developed concerns about changes that could be construed inconsistently with respondents' promises. S-PR-App.34 (¶ 107); S-App.48.

15. On March 6, 2018, A.W. wrote to respondents asking that the document be corrected and stated: "To preserve our rights, we are invoking 20 U.S.C. 1415(f)(iv), to void the stipulation of settlement dated 3/2/2018 subject to these very limited requests for clarification." S-App.48.

16. On March 14, 2018, Gorman assured A.W. that she would be reimbursed $42,194, within forty-five days of board approval. S-PR-App.42.

17. On March 15, 2018, A.W. wrote to Gorman and again asked respondents to confirm their promises made on March 2, 2018 regarding voiding the contract. She said if they did not confirm, she would contact the judge "to ensure the agreement is aligned with your representations at the time of the agreement." R-App.1.

18. The respondents' board was scheduled to meet on March 20, 2018. S-PR-App.23 (l. 15). By March 27, 2018, A.W. was uninformed and asked Gorman for a status update; receiving no response, on March 28, 2018, she inquired again. R-App.3-4.

19. On March 29, 2018, Gorman submitted the executed EPSA to the NJOAL and asked that it be entered into a final order which is when A.W. first received a copy of the fully executed version. S-PR-App.35, 40 (¶ 113).

20. On March 29, 2018, respondents informed A.W. that she would receive payment of $29,525. S-PR-App.43-44.

21. On April 3, 2018, petitioners filed an application before the NJOAL for equitable reformation relying on their three-day letter and 20 U.S.C. 1415(f)(iv). S.PR.App.45. Petitioners stated:

> we ask that the agreement be approved subject to equitable reformation that (1) the District is required to provide a lump-sum reimbursement in the amount of $42,194 by May 4, 2018 (45 days of approval, . . .) and (2) should N.W. be re-enrolled in district at any time, the district would conduct evaluations, offer an IEP, and the waivers in the

> agreement would be void. Furthermore, given the District has already repudiated its obligation to provide the reimbursement within forty-five days . . . we would ask that the Court defer its approval until May 4, 2018 and enter an order approving the settlement only once the District presents a copy of a reimbursement check in the amount of $42,194.00. [S-PR-App.49.]

22. On April 13, 2018 respondents' response to petitioners' application for equitable reformation was due. N.J.A.C. 1:1-12(b). On this date, respondents issued a purchase order proposing to pay A.W. the $42,194. R. App. 5.

23. On April 23, 2018, receiving no objections to petitioners' reformation request, A.W. signed the purchase order. R. App. 5.

24. On April 24, 2018, respondents filed a motion to enforce the EPSA "as written." S-App.15.

25. On May 4, 2018, petitioners informed the NJOAL that the first part of their reformation request was resolved but the issue of future waivers remained paramount. S-PR-App.50. Petitioners added that, absent reformation, the EPSA would deviate from the negotiated agreement and be unenforceable as contrary to law and public policy. S-PR-App.51.

26. On May 17, 2018, the NJOAL granted respondents' motion to enforce the EPSA as written. S-App.36.

27. On August 11, 2018, petitioners relocated to another school district (S-PR-App.37, 41 [¶ 113]), but moved back during the summer of 2019 and then

on May 1, 2020, when N.W. was in a psychiatric residential treatment center. S-App.19-20.

28. Respondents did not pay $45,000 for the 2018-2019 school year, the consideration recited in the EPSA for future waivers (S-App. 50-51), but continued to enforce the EPSA including prospective waivers of N.W.'s IDEA rights and remedies to due process through the 2020-2021 school year. S-App.33.

B. Reasons for Granting The Writ

1. The Questions Presented Were Raised Below

(a) First Question Presented

Petitioners argued state and federal public policy below and that: "school districts should not be permitted to demand that parents release them from prospective statutory obligations as a condition of securing their child's educational placement as this frustrates the broad remedial purposes of the IDEA. . . ." PR-App. 10, 24.

(b) Second Question Presented

Petitioners argued below: "the parent [A.W.] expressly voided the [EPSA] pursuant to 20 U.S.C. 1415(f)(1)(B)(iv), subject to clarification to comport the written agreement with what had been expressly promised." PR-Appx19. This issue was raised in petitioners' appellate brief (PR-App.5, 12-13) and addressed in the Third Circuit's opinion. Pet. App.10.

(c) Third Question Presented

Before the Third Circuit, petitioners argued: "[t]he district court's decision violated *Klaxon v. Stentor Elec. Mfg. Co*., 313 U.S. 487 (1941). . . . [T]he district court flouted its duty to honor decisions of the New Jersey Supreme Court on an issue of state law. . . ." (PR-App.7-8).

2. This Case Involves The IDEA

The Third Circuit relied upon two IDEA cases to decide that prospective waivers in this EPSA were enforceable. Pet. App. 6. That this is an IDEA case was outcome determinative, as the Third Circuit ruled prospective waivers under other anti-discrimination laws were *not* enforceable. Pet. App. 7-8.

While respondents claim this case does not involve the IDEA, they assert the Third Circuit correctly applied the IDEA's safeguard in section 1415(f)(1)(B)(iv) (BIO 11), and rejected *Hojnowski v. Vans Skate Park*, 901 A.2d 381 (N.J. 2006), as unrelated to the IDEA. BIO 14.

This is an important IDEA case and this Court should grant review.

3. The Third Circuit's Decision Conflicts With Decisions of This Court, Other Federal Appellate Courts And The New Jersey Supreme Court

(a) This Court's Precedent

Respondents argue this Court's prospective waiver doctrine has been applied "under different Statutes and laws." BIO 7. That the prospective waiver doctrine applies to different statutes and laws teaches that the doctrine applies generally to preclude prospective waiver of statutory rights and remedies including under the IDEA.

Respondents further argue there is no conflict with this Court's prospective waiver doctrine because the Third Circuit invalidated prospective waivers of anti-discrimination laws. BIO 8. That *one part* of the Third Circuit's decision follows this Court's precedent does not save the *rest* from being in conflict.

Lastly, respondents argue that petitioners "were never harmed" by their conduct. BIO 7. Respondents' denial of the harm and trauma petitioners experienced as a direct result of their conduct is not relevant to the legal issues and not a reason to deny the petition.

(b) Other Federal Appellate Courts

Respondents argue that the Third Circuit relied on Ninth Circuit rulings, specifically, *Facebook, Inc. v. Pacific Northwest Software, Inc.*, 640 F.3d 1034, 1040 (9th Cir. 2011). BIO 9-10.

However, the Third Circuit did not cite *Facebook* or any other Ninth Circuit case in its opinion. Pet. App. 1-14.

Respondents also mistakenly rely upon *Facebook* to argue that the prospective waivers are valid because the *pro se* parent, A.W., allegedly was a sophisticated party with an equal bargaining position. BIO 10. *Facebook* involved waivers of claims arising from a past commercial transaction. 640 F.3d at 140. It has no bearing on forfeiture of prospective statutory rights and remedies which cannot be contracted away. *Rodriguez v. Raymours Furniture Co.*, 138 A.3d 528, 534-35 (N.J. 2016) (public policy overrides individual right of contract in furtherance of broader public interests promoted by statute).

Additionally, respondents' arguments on bargaining power are divorced from the subject matter of IDEA litigation, *i.e.*, free and appropriate public education services for disabled children. The local school district is the one and only source for these services and has power and control as to how those resources are allocated. When A.W. appeared *pro se* at the hearing, she had essentially no bargaining power which was confirmed by the ALJ at the start of proceedings. S-PR-App.5-7.

(c) New Jersey Supreme Court

Regarding petitioners' arguments based on *Klaxon*, 313 U.S. at 487, respondents' sole response is that petitioners "improperly" rely upon *Hojnowski*, 901

A.2d at 381. BIO 13. *Hojnowski* is a comprehensive decision by the New Jersey Supreme Court dealing with prospective waivers of minors' rights; it was properly relied upon. The Third Circuit held the EPSA released future tort claims (Pet. App. 12-13), which directly conflicts with *Hojnowski*.

Beyond this, petitioners rely not only on *Hojnowski* but on a line of New Jersey Supreme Court cases which have consistently held for more than half a century that prospective waivers of statutory rights are contrary to public policy and unenforceable. Pet. 31; PR-App.8-9.

4. Petitioners Properly Invoked 20 U.S.C. 1415(f)(1)(B)(iv) Which Involves An Important Question of Federal Law

Respondents argue that petitioners' three-day letter under 20 U.S.C. 1415(f)(1)(B)(iv) was ineffective because petitioners "purported to conditionally void the agreement." BIO 12. This is not persuasive. Respondents suggest it is better for a transaction to be revoked entirely than conditionally revoked which invites continued discussion toward amicable resolution.

On this question, respondents also refer to correspondence showing that from March 6, 2018 through March 15, 2018, A.W. continued to asked that respondents correct the EPSA to comport with the promises that were made at the time of signing and stated she would contact the NJOAL if respondents did not comply. R. App. 1. The correspondence further shows that,

after the board meeting, petitioners made two status inquiries, *e.g.*, as to whether the agreement was approved, what was the reimbursement process, and *how the district would like to proceed*. R. App. 1-3. Such inquiries were not assent to be bound by an agreement "as written" when petitioners did not even know what, if anything, respondents had approved.

Petitioners expressly invoked 20 U.S.C. 1415(f)(1)(B)(iv) to void the agreement within three days of signing and promptly contacted the NJOAL seeking reformation within three days of being provided with a fully executed copy of the EPSA.

Respondents next argue that even assuming the Third Circuit erred in applying 20 U.S.C. 1415(f)(1)(B)(iv), this does not provide a basis for granting a writ. BIO 12.

The Act's provision of a three-day review period has the potential to work significant hardship (rather than offer protection), if school districts are permitted to ignore parental objections raised within three days of signing. Parents may be lulled into signing an agreement on the expectation of a three-day review only to be stuck with an agreement altered by school district counsel at a resolution session to the disadvantage of a disabled child.

5. Whether The EPSA Was Not The Product of Fraud And Entered Voluntarily Raises Important But Independent Questions

Even if the EPSA was not the product of fraud and petitioners voluntarily agreed to it, those determinations are not relevant to whether the EPSA is void as against federal or state public policy (*ante*, p. 9). Petitioners' Questions Presented are entirely independent of respondents' proposed question.

Petitioners maintain that the lower courts erred under Fed. R. Civ. P. 56, in granting respondents summary judgment on petitioners' equitable fraud and lack of voluntariness claims. However, if the petition is granted, there will be plenty of time to debate whether the Third Circuit reached the right outcome. The issue here is whether there is a federal question warranting the grant of a writ.

The Third Circuit's decision on equitable fraud raises issues of federal law and conflicts of law. The Third Circuit ruled, as a matter of law, that petitioners could not establish equitable fraud under state law on the ground that they did not effectively invoke IDEA's Section 1415(f)(1)(B)(iv). Pet. App. 10. This oddly creates a defense to state-law fraud claims based on IDEA procedural safeguards: *i.e.*, following the Third Circuit's ruling, school districts can avert state-law fraud claims by raising the defense that the parent did not properly invoke 20 U.S.C. 1415(f)(1)(iv)(B).

6. Petitioners Are Seeking Vindication In This Matter Fairly Based On The Law

Respondents have repeatedly threatened petitioners with Rule 11 sanctions throughout this case. BIO 15. Respondents filed a motion for sanctions under Fed. R. Civ. P. 11(b) before the district court which was denied; they then appealed to the Third Circuit from the district court's denial of their Rule 11 motion which also was denied. Pet. App. 13-14.

Respondents' smokescreen of baseless accusations necessarily increases the stress and cost of litigation for petitioners; it is respondents' claims that lack basis.

For example, respondents protest that petitioners "have gone so far as to argue" that they may retain reimbursement for the 2017-2018 school year while maintaining this suit. BIO 14-15. This Court has instructed a plaintiff need not tender back consideration to maintain suit challenging a release.[1] This caselaw was cited in briefs below, yet respondents characterize it as harassing.

Respondents also complain that petitioners "have gone so far" to argue they need not exhaust administrative remedies. BIO 15. Petitioners have weighty precedent to support this position as well. *Fry v.*

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[1] *Oubre v. Entergy Operations Inc.*, 522 U.S. 422 (1998); *Hogue v. Southern R. Co.*, 390 U.S. 516 (1968); *Jakimas v. Hoffman-La Roche, Inc.*, 485 F.3d 770 (3d Cir. 2007); *Long v. Sears Roebuck & Co.*, 105 F.3d 1529 (3d Cir. 1997); *Mohr v. Penn. R.R. Co.*, 409 F.2d 73 (3d Cir. 1969); *Smith v. Pinell*, 597 F.2d 994 (5th Cir. 1979).

Napoleon Community Sch., 137 S. Ct. 743 (2017); *Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16 (1st Cir. 2019); *Doe v. Dallas Indep. Sch. Dist.*, 941 F.3d 224 (5th Cir. 2019); *Komninos v. Upper Saddle River*, 13 F.3d 775 (3d Cir. 1994).

In their brief, respondents also make inaccurate claims including as to when A.W. signed the EPSA (BIO 2, ¶ 2), when respondents paid reimbursement (BIO 2, ¶ 5), when petitioners moved (BIO 7, 11), and even the caselaw the Third Circuit relied upon (BIO 10). They inaccurately claim, via attorney argument, that respondents provided N.W. with a FAPE during the 2020-2021 school year and through graduation (BIO 11), which is disputed and not supported by any evidence of record in this case.

Respondents also claim that petitioners "took" the "full consideration" under the EPSA (BIO 4, 15), when, in fact, respondents' proffered reimbursement in response to petitioners' reformation request and did not pay $45,000 promised for future waivers they enforced. Given respondents were legally obligated to provide a FAPE to N.W., it begs the question whether there was consideration at all. Does the federal government provide consideration if it withholds your salary, but then agrees to pay it if you waive your future tenure rights?

Respondents' accusations and trivialization of the youth mental health crisis as an "irrelevant tangent" must be disregarded. Respondents' conduct caused significant trauma to a psychiatrically-disabled youth when this conflict could have been avoided, and N.W.

supported, if they only kept their promises and welcomed N.W. as an enrolled student in their school community on the same terms and with the same rights as others.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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