No. 24-196

In The
Supreme Court of the United States

JENN-CHING LUO,
Petitioner,

v.

OWEN J. ROBERTS SCHOOL DISTRICT,
RICHARD MARCHINI,
GEOFFREY BALL
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This petition is regarding the stay-put provision, e.g., 20 U.S.C. §1415(j), of the Individuals with Disabilities Education Act ("IDEA"). In Honig v. Doe, 484 U.S. 305, 306 (1988), the Supreme Court held:

> *The "stay-put" provision prohibits state or local school authorities from unilaterally excluding disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities during the pendency of review proceedings. Section 1415(e)(3)* [recodified in §1415(j)] *is unequivocal in its mandate that "the child shall remain in the then current educational placement" (emphasis added), and demonstrates a congressional intent to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school.*

Petitioner respectfully presents the following question:

Can the Third Circuit disobey the Supreme Court's holding to rule that age 21 is a condition to end stay-put protection?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner JENN-CHING LUO was the appellant in the court of appeals. The Petitioner is not a nongovernmental corporation, nor does it have a parent corporation or shares held by a publicly traded company.

The Respondents were three appellees in the court of appeals: Owen J. Roberts School District and its employees Richard Marchini and Geoffrey Ball.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Pennsylvania:

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 14-6354 (Dec. 19, 2023)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 16-6568 (Dec. 7, 2023)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 17-1508

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 21-1098

United States Court of Appeals for the Third Circuit:

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 23-2143 (Mar. 21, 2024)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 24-1030

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 24-1090

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Petitioner JENN-CHING LUO respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINION BELOW

The panel order denying the petition for panel rehearing and rehearing *en banc* (App. *infra*, 1a-2a) is not published. Only Honorable Richard Lowell Nygaard voted for panel rehearing; The panel opinion of the Third Circuit that affirmed the district

court judgment, not published, is in the Appendix (App. *infra*, 3a-9a); The opinion of the District Court that granted Respondents' pre-answer motions to dismiss is in the Appendix (App. *infra*, 10a-19a); The order of District Court that denied reconsideration is in the Appendix (App. *infra*, 20a-24a)

JURISDICTION

On May 30, 2024, the Third Circuit denied the petition for panel rehearing and rehearing *en banc*. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20 U.S.C. §1415(j)

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

STATEMENT

This petition is regarding interpreting the stay-put provision, e.g., 20 U.S.C. §1415(j), of IDEA.

Background

Petitioner has a child with special needs. Respondent, the school district, provided the student with special education.

The background of this action includes four pending proceedings arising from disputes of educational placement and Individualized Education Program ("IEP"). The first pending proceeding was commenced in 2014 because the School District refused to carry out a residential IEP that the IEP team developed for the student effective 8/31/2014, on page 33 of Section B of the IEP. The School District's refusal to carry out the residential IEP violated the student's right to a free appropriate public education. See 20 U.S.C. §1401(9)(D) ("*The term 'free appropriate public education' means special education and related services that are provided in conformity with the individualized education program required under section 1414(d) of this title.*") The first pending proceeding is to resolve the educational placement and IEP dispute. That was the student's 2014 IEP before the Third Circuit, Case No. 24-1090.

The second pending proceeding commenced in 2016 because the school district allowed the independent evaluator not to attend the IEP meeting, which was scheduled to review the evaluation report and develop an IEP. Because the independent evaluator did not attend the meeting to review the evaluation report, Petitioner had no information to develop the IEP. That significantly

impeded Petitioner's opportunities to participate in the development of IEP and violated the student's right to a free appropriate public education. See 20 U.S.C. §1415(f)(3)(E)(ii)(II) ("*a hearing officer may find that a child did not receive a free appropriate public education ... if the procedural inadequacies – significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child ...*"). The second pending proceeding is also to resolve an IEP dispute, presently which is before the Third Circuit, Case No. 24-1030.

The third and fourth pending proceedings are also related to free appropriate public education disputes. Thus, this action has four pending proceedings.

The student reached 21 by the end of the 2021-2022 school year. In December 2021, the School District informed Petitioner that the School District decided to unenroll the student at the end of the 2021-2022 school year because the student reached 21. The Petitioner raised two objections to the School District's decision. One of which is the stay-put protection. This petition is only limited to the stay-put provision. Under the stay-put protection, during the pendency of all proceedings, "*the child shall remain in the then current educational placement.*" Because there are four pending proceedings, the School District could not unenroll the student. However, the School District unenrolled the student. Particularly, IEP disputes have not been resolved. How could the School District unenroll the student? The School District acted recklessly.

Disobedience of Supreme Court's holding

The hearing officer, District court, and the Third Circuit agreed with the School District that age 21 terminates stay-put protection. The School District presented a laundry list of cases to argue that age 21 terminated stay-put protection; none have such a holding. In one paragraph, the Third Circuit summarized the arguments that age 21 is a condition to end stay-put protection. (App. 7a-8a, *Infra*). For example, the Third Circuit concluded, "The Hearing Officer properly determined that the protections of the stay-put provision terminate, like the right to a FAPE, once a student turns 21." (App. 8a)

However, the Third Circuit's decision conflicted with the Supreme Court's holding and other Circuits; the Third Circuit also showed no reasons. In Honig @323, the Supreme Court had the holding that "the language of §1415(e)(3) [recodified in §1415(j)] is unequivocal that during the pendency of any proceedings, the child *shall* remain in the then current educational placement." The Supreme Court's holding is a binding precedent. However, the Third Circuit disobeyed the Supreme Court's holding to rule that age 21 is a condition to end stay-put protection.

No reasons in support

Further, the Third Circuit never showed which language of 20 U.S.C. §1415(j) indicated the provision shall lose its effect when a student reaches age 21. The Third Circuit only cited two cases

purportedly to support its ruling. However, those two cited cases did not have such a holding; on the contrary, they are against the Third Circuit's ruling.

First, the Third Circuit cited the following case to support its decision that age 21 is a condition to end stay-put protection:

> Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Illinois State Bd. of Educ., 79 F.3d 654, 659 (7th Cir. 1996) (so holding, reasoning that, otherwise, "parents [could] obtain adult benefits for their child to which they had no entitlement simply by filing a claim for compensatory education on the eve of their child's turning 21")

(App. 8a) The Third Circuit misplaced Board of Education because Board of Education did not rule that age 21 is a condition to terminate stay-put protection. It may cause confusion: Board of Education denied a request for stay-put protection; however, Board of Education did not deny it because of age 21 but denied it because the proceeding sought a compensatory education. In Board of Education, the Seventh Circuit held that a claim for compensatory education cannot invoke the stay-put provision for protection. The Seventh Circuit's reason is as follows: the statute's protections are only limited to relief authorized by the law; however, compensatory education is not authorized by the statute. Based on this, the Seventh Circuit ruled that a claim for compensatory education cannot invoke the stay-put provision for protection as the reason to deny stay-put protection. For example,

Board of Education @660 noted:

> *With the exception of compensatory education, which is, as we said, indeed exceptional and nowhere expressly authorized by the statute, the statute's protections are limited to minors — the statutory domain is childhood disability — and so it is natural to presume that the limitation is carried into the stay-put provision, which is silent on the question.*

Board of Education concluded that claims for compensatory education "*are not entitled to the injunction automatically, by force of the stay-put provision.*" *Id* @660. In short, Board of Education never denied stay-put protection because of age 21 but denied it because a claim for compensatory education could not invoke the stay-put provision for protection. The Third Circuit should have gotten the point. Board of Education is not a reference for the Third Circuit to prove that age 21 is a condition to end stay-put protection.

Second, the Third Circuit also cited the following case to purportedly support its ruling that age 21 is a condition to end stay-put protection:

> Honig v. Doe, 484 U.S. 305, 318 (1988) (holding (under the predecessor IDEA statute) that a student over age 21 "***is no longer entitled to the protections and benefits of the*** *[statute]*").

(App. 8a) The Third Circuit only quoted eleven words from Honig; however, the Third Circuit misplaced the Honig. The opinion of Honig from which the Third Circuit quoted eleven words is copied in the

following where the eleven words that the Third Circuit quoted are typed in boldface:

> Respondent John Doe is now 24 years old and, accordingly, **is no longer entitled to the protections and benefits of the** EHA, which limits eligibility to disabled children between the ages of 3 and 21. See 20 U.S.C. §1412(2)(B) [recodified in §1412(a)(1)(A)]. It is clear, therefore, that whatever rights to state educational services he may yet have as a ward of the State, *see* Tr. of Oral Arg. 23, 26, the Act would not govern the State's provision of those services, and thus the case is moot as to him. ... ...

Honig @318. The Third Circuit only quoted the eleven words in boldface to misinterpret the opinion. The cited opinion only said that John Doe is 24 years old, and his proceeding is moot because the eligible age for a free appropriate public education is between the ages of 3 and 21. The background of John Doe's proceeding is that John Doe "*sought a temporary restraining order.*" Honig @314. Indeed, a proceeding for injunctive relief is moot when John Doe is beyond the eligible age. The point is that Honig's opinion, from which the Third Circuit quoted eleven words, never ruled that age 21 is a condition to terminate stay-put protection.

In short, the two cases, which the Third Circuit cited to purportedly support its ruling, never held that age 21 terminates stay-put protection. Up to now, the Third Circuit has never shown why stay-put protection is terminated at age 21 but disobeyed the Supreme Court's holding to rule that age 21 is a

condition for ending stay-put protection.

REASONS FOR GRANTING THE PETITION

A. The Third Circuit's decision conflicted with the Supreme Court's holding.

In Honig v. Doe, 484 U.S. 305, 323 (1988), the Supreme Court had the following holding,

> *The language of §1415(e)(3)* [recodified in §1415(j)] *is unequivocal. It states plainly that, during the pendency of any proceedings initiated under the Act, unless the state or local educational agency and the parents or guardian of a disabled child otherwise agree, "the child shall remain in the then current educational placement." §1415(e)(3)* [recodified in §1415(j)] *(emphasis added).*

The Supreme Court's holding is clear that stay-put protection should be maintained during the pendency of all proceedings. Such a holding is a controlling precedent binding every school district and all courts. See Jordon v. Gilligan, 500 F.2d 701, 707 (6th Cir. 1974) ("*Decisions of the United States Supreme Court rendered by written opinions are binding on all courts, state and federal. The Court's holding is stare decisis and cannot be overruled except by the Court itself.*"); Also, see 1B J. Moore, Federal Practice, ¶0.402[2]. There is no ground for the Third Circuit to disobey the Supreme Court's holding for stay-put protection.

(1) However, Respondent, the School District,

disobeyed the Supreme Court's holding. The Third Circuit should rule against the Respondent. However, the Third Circuit ruled in favor of the Respondent.

(2) Petitioner objected to the Respondent's decision based on the Supreme Court's holding. The Third Circuit should rule in favor of Petitioner; however, the Third Circuit ruled against Petitioner.

The Third Circuit's ruling is injustice. The Third Circuit made the Supreme Court's holding does not count.

The Third Circuit's decision conflicted mainly with the Supreme Court's holding number 2 in Honig v. Doe, 484 U.S. 305, 306 (1988). This petition should be granted to vacate the Third Circuit's ruling that stay-put protection is terminated when a student reaches age 21 and the Third Circuit's order dismissing the Petitioner's claim for stay-put protection.

CONCLUSION

For the reasons stated abive, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: Aug. 14, 2024

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