

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 REHEARING

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PETITION FOR REHEARING

Petitioners respectfully move pursuant to Rule 44.2 for an order (1) vacating its denial of the petition for writ of certiorari, entered on October 21, 2024, and (2) granting the petition. As grounds for this motion, Petitioners state the following.

The denial of the petition for writ of certiorari to vacate the Third Circuit's ruling has created "*intervening circumstances of a substantial or controlling effect.*" The Third Circuit's ruling conflicted with the Supreme Court's holding. If the Supreme Court lets the Third Circuit's ruling stand, shall we follow the Supreme Court's holding or the Third Circuit's ruling?

This petition is regarding the stay-put protection, e.g., 20 U.S.C. §1415(j), of the Individuals with Disabilities Education Act ("IDEA"). In Honig v. Doe, 484 U.S. 305 (1988), the Supreme Court had decided the matter and had the following holding as Holding #2.

The language of §1415(e)(3) [recodified as §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 as §1415(j)] (emphasis added). Id @323

According to the Supreme Court's holding, during the pendency of any proceedings, "*the child shall remain in the then current educational placement.*" However, the Third Circuit ruled that stay-put protection terminates when a student reaches age 21. For example, the Third Circuit held, "*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*" to rule against the petitioner. (Cert Petition, App. 8a) The Third Circuit's ruling conflicted with the Supreme Court's holding.

Particularly, the Third Circuit's ruling was a clear error. After 1988, when the Supreme Court decided on Honig, it has been over three decades, and no Circuits except the Third Circuit issued the order that stay-put protection ends when a student reaches 21. That was a clear error because the Supreme Court had held explicitly that the stay-put provision is applicable "***pending completion of any review proceedings.***" For example, the Supreme Court stated:

Among these safeguards is the so-called "stay-put" provision, which directs that a disabled child "shall remain in [his or her] then current educational placement" pending completion of any review proceedings (Emphasis added), unless the parents and state or local educational agencies otherwise agree. 20 U.S.C. §1415(e)(3) [recodified as §1415(j)]. Honig @308.

The stay-put provision is applicable “*pending completion of any review proceedings.*” How could the Third Circuit rule that the application of the stay-put provision ends when the student reaches age 21 without the completion of any review proceedings? The Third Circuit's ruling conflicted with the Supreme Court's holding.

Further, in Honig, the Supreme Court also agreed that continuously enforcing stay-put protection beyond age 21 is **a proper construe and application of the stay-put provision**. For example, when the Ninth Circuit decided Honig, DOE was beyond age 21. The Ninth Circuit continuously enforced the stay-put protection for DOE. When the Supreme Court reviewed Honig, the Supreme Court was aware that DOE was beyond age 21 and the Ninth Circuit continuously enforced the stay-put protection. The Supreme Court agreed it was a proper construe and application of the stay-put provision. For example, the Supreme Court noted, “*We believe the courts below properly construed and applied §1415(e)(3) [re-codified as §1415(j)], except insofar as the Court of Appeals held that a suspension in excess of 10 schooldays does not constitute a ‘change in placement.’*” Honig @328-329. The Third Circuit had no point in issuing an order in conflict with the Supreme Court's opinion.

The denial of the petition for writ of certiorari to vacate the Third Circuit's ruling has created “*intervening circumstances of a substantial or controlling effect*” because the Supreme Court allowed the Third Circuit's ruling to stand. We have the following question.

Before the completion of all proceedings, when the student reaches age 21,

- (1) shall we follow the Supreme Court holding that "*the child shall remain in the then current educational placement*" or
- (2) shall we follow the Third Circuit's ruling that stay-put protection terminates when a student reaches age 21?

Further, the petitioner stands on the Supreme Court's holding. If the Third Circuit's ruling against the petitioner is not vacated, then the petitioner who stands on the Supreme Court's holding receives the adverse consequence. It also has a substantial or controlling effect; how does a person on the Supreme Court's holding receive the adverse result?

In light of these extraordinary circumstances, the petitioner respectfully requests that this Court grant rehearing, grant the petition for a writ of certiorari, and summarily reverse the judgment of the Third Circuit.

Respectfully submitted,



Oct. 28, 2024

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CERTIFICATE OF COUNSEL

Pursuant to this Court's Rule 44.2, Petitioner certifies that the Petition for Rehearing is restricted to the grounds specified in the rule. Petitioner certifies that this Petition is presented in good faith and not for delay.

Respectfully submitted,



Oct. 28, 2024

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CERTIFICATE OF COMPLIANCE

No. 24-196

JENN-CHING LUO,

Petitioner(s)

v.

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

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for rehearing contains 789 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 29, 2024


JENN-CHING LUO, pro se

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PROOF OF SERVICE

I, JENN-CHING LUO, do swear or declare that on this date, October 29, 2024, I have served three copies of the enclosed PETITION FOR REHEARING on the following by USPS Priority Mail with tracking number:

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[Counsel for Owen J. Roberts school district, Richard Marchini, Geoffrey Ball]

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2024.



JENN-CHIN LUO