17-5444

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

F. C.; A. C.; S. C.,

Plaintiffs-Appellants,

—v.—

TENNESSEE DEPARTMENT OF EDUCATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BRIEF FOR *AMICUS CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC. IN SUPPORT OF PLAINTIFFS-APPELLANTS

JUDITH A. GRAN
Counsel of Record
REISMAN CAROLLA GRAN LLP
19 Chestnut Street
Haddonfield, New Jersey 08033
(856) 354-0071

SELENE ALMAZAN-ALTOBELLI
COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC.
PO Box 6767
Towson, Maryland 21285
(844) 426-7224

Attorneys for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 the following disclosure is made on behalf of these entities:

Council of Parent Attorneys and Advocates

1. No amicus is a publicly held corporation or other publicly held entity;
2. No amicus has parent corporations; and
3. No amicus has 10% or more of stock owned by a corporation.

/s/ Judith A. Gran
JUDITH GRAN

Attorney for Amici Curiae, Council of Parent Attorneys and Advocates

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization of parents of children with disabilities, their attorneys and advocates in forty- eight states and the District of Columbia who are routinely involved in special education advocacy and due process hearings throughout the country. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA does not undertake individual representation but provides resources, training, and information for parents, advocates and attorneys to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act 20 U.S.C. § 1400, *et seq*. (IDEA). COPAA also supports individuals with disabilities, their parents and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983) (Section 1983), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*. (ADA).

[1] Pursuant to Fed. R. App. P. 29, *Amicus* certifies that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than *Amicus* and its members and counsel contributed money intended to fund the brief's preparation or submission.

Because of COPAA's concern for the rights of students with disabilities and their parents and the experience of its members in advocating for their rights, COPAA offers a unique perspective on two issues raised by the District Court's decision: exhaustion of administrative remedies and the statute of limitations for IDEA claims. COPAA has extensive experience with the exhaustion of administrative remedies requirement, including filing an amicus curiae brief in *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017). COPAA is concerned that the District Court's decision precluding the parents from appealing a Final Order dismissing their due process complaint frustrates IDEA by imposing a Dickensian pleading burden[2] on parents and evading resolution of an important legal question, the statute of limitations in IDEA cases.

COPAA also has extensive experience addressing the statute of limitations requirement and has long argued that consistent with the plain language of the statute, the IDEA sets out a "discovery rule" approach, wherein the statute of limitations period begins to run on the date the parents knew or should have known of the IDEA violation. Otherwise, students will be denied relief for denial of a free appropriate public education even in situations in which their parents were unaware of the violation and powerless to obtain timely relief.

Appellants and Appellees have consented to the filing of this brief in support of reversal and remand.

[2] See Charles Dickens, Bleak House.

SUMMARY OF ARGUMENT

IDEA requires that parents exhaust administrative remedies through due process hearing channels for both their IDEA claims and claims brought under other federal statutes that seek relief available under the IDEA. Where, as here, parents have filed due process complaints and have obtained a Final Order dismissing those claims, they have fulfilled their obligation to exhaust administrative remedies. Further, the question of whether IDEA's statute of limitations is subject to the "occurrence rule" (the date the injury occurred) or the "discovery rule" is a legal question appropriate for decision by a court rather than an administrative hearing officer. In this case, both the hearing officer and the district court erred in finding that IDEA set a two-year limit on damages regardless of when the parents discovered the legal violation. This Court should join the Third and Ninth Circuits in adopting the discovery rule, as is required by the plain language of the statute.

ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT PARENTS WHO OBTAINED A FINAL ORDER DISMISSING THEIR DUE PROCESS COMPLAINT DID NOT SATISFY THE EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIREMENT

In the typical case where school districts argue that parents have not met

their statutory obligation to exhaust administrative remedies, the parents have not filed a due process proceeding and instead have filed proceedings directly in federal court. *See e.g.*, *Fry*, 137 S. Ct. at 751-52. Here, in contrast, the parents complied with IDEA's exhaustion requirement and filed an initial due process complaint and then, when that due process complaint was dismissed, they filed an amended due process complaint only to receive a Final Order dismissing their amended due process complaint. Further, among the reasons given by the hearing officer for dismissing the complaint was the parents' persistence in raising the claims that they are now pursuing in this case, non-IDEA claims and claims that the hearing officer determined were time-barred. However, rather than dismiss the parents' entire complaint, the hearing officer could have simply ruled that he lacked jurisdiction over the non-IDEA claims and the claims squarely outside two-year window from the date of filing. The hearing officer could have then proceeded to hold a hearing on the remaining IDEA claims that fell within the two-year window of the parents' filing. In that case, the parents would have had to wait for the end of the case to appeal those decisions, but they would have been able to go to hearing on the issues the hearing officer agreed were timely IDEA.

Unfortunately, the hearing officer did not hold a hearing, and instead, issued a Final Order dismissing the entire complaint. Therefore, the parents exhausted their administrative remedies and had the right to appeal. They cannot be required to undertake the Sisyphean task of continuing to revise their complaint until it was

perfect in the eyes of the hearing officer.

A. Because IDEA Requires Exhaustion of Administrative Remedies for Non-IDEA Claims As Well As IDEA Claims, Parents Appropriately Included Non-IDEA Claims in Their Complaint

IDEA, since its first iteration in 1975, has always required that parents exhaust administrative remedies to bring IDEA claims. Public Law 94-142. After the Supreme Court held that the IDEA foreclosed students and parents from bringing claims under Section 504 of the Rehabilitation Act and the Fourteenth Amendment's Equal Protection Clause in *Smith v. Robinson,* 468 U.S. 992 (1984), Congress immediately went to work to revise IDEA and enacted the Handicapped Children's Protection Act of 1986. As the Supreme Court recently noted, "It overturned Smith's preclusion of non-IDEA claims while also adding a carefully defined exhaustion requirement." *Fry*, 137 S. Ct. at 750. That provision states:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the [IDEA's administrative procedures] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].

20 U.S.C. § 1415(*l*). As the Court in *Fry* observed, under this provision, "a plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws must in certain circumstances – that is, when 'seeking relief that is also available under' the IDEA – first exhaust the IDEA's administrative procedures." *Fry*, 137 S. Ct. at 750.

Accordingly, the parents in this case heeded the directives of 20 U.S.C. § 1415(*l*) by including non-IDEA claims in their due process complaints to ensure that they had done what was needed to exhaust their administrative remedies. *Amicus Curiae* has extensive experience with the exhaustion requirement and with the various state laws regarding jurisdiction of non-IDEA claims. Some states allow hearing officers in IDEA due process proceedings to also have jurisdiction of Section 504 or other federal claims while other states hold that hearing officers lack jurisdiction over Section 504 or ADA claims.[3] It is the experience of *Amicus Curiae* that, in those jurisdictions where hearing officers lack jurisdiction over non-IDEA claims, the hearing officers typically dismiss the non-IDEA claims, proceeding to hold hearings solely on the IDEA claims. *See, e.g., In re Springfield Public Sch. Dist.*, BSEA #1404388 (Mass. BSEA Feb. 26, 2014) (dismissing ADA claims while retaining IDEA and 504 claims).

Given the exhaustion requirement set out in 20 U.S.C. § 1415(*l*), and the need for timely resolution of due process proceedings, combined with the deprivation that students suffer every day without receiving a free appropriate public education, it is illogical to require parents to first plead their non-IDEA claims, obtain an order dismissing them, and then be required to re-plead their complaint without the IDEA claims. Otherwise, parents are victims of a Catch-22: required to plead non-IDEA claims under 20 U.S.C. § 1415(*l*) and then waste precious time repleading the claims

[3] Perry A. Zirkel, *Impartial Hearings for Public School Students under Section 504: A State by State Survey,* 279 Ed. Law Rep. 1 5-6 (2012).

without inclusion of the non-IDEA claims to provide the hearing officer with a perfect complaint. This simply cannot be the procedural method required for parents to undertake in order to bring claims to protect their children's education rights under federal law.

B. Parents Appropriately Included Claims Dating to the Date of Discovery of the Injury in Their Due Process Complaint

IDEA provides that a party must request a "due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint." 20 U.S.C. § 1415(f)(3)(C). As discussed more fully in Section *II.* below, parents asserted in their due process complaint that their claims began to run with the Spring 2015 date of discovery of the injury, not the date of the actual injury. (Amended Due Process Complaint, ¶¶ 2-4). While the plain language of the statute clearly states that the statute of limitations for requesting a due process hearing is within 2 years of the date the parent or agency *knew or should have known* about the injury, this Court has not yet squarely addressed the question of whether the statute of limitations under IDEA begins to run with the discovery of the injury, not the date of the injury.

Nevertheless, the parents had a good faith belief that the plain language of the statute supported their claims, and, as discussed below, there are two circuit court decisions that also support their interpretation. The hearing officer not only found that their claims pre-dating the two-year window from the date of filing their due process

complaint were in part time-barred, but the hearing officer also dismissed the *entire* due process complaint, including the claims brought within two years from the date of filing their due process complaint.

Additionally, like the hearing officer could have done with the non-IDEA claims, the hearing officer could have held a hearing on the claims that were within the two-year window from the date of filing of the due process complaint while dismissing the claims the hearing officer believed were time-barred claims. Moreover, there is no provision in the IDEA that permits the hearing officer to dismiss valid claims simply because the parents have also raised other claims in good faith which the hearing officer for whatever reason finds invalid.[4] Accordingly, the parents attempted to bring their claims in the proper forum twice, thereby exhausting their administrative remedies and entitling them to a decision on the merits of their appeal.

C. Exhaustion Is Not Required to Determine Questions of Law

As this Court has recognized, the exhaustion requirement "furthers the substantive purposes of the {IDEA} by allowing the state to apply its expertise." *Doe v. Smith*, 879 F.2d 1340, 1344 (6th Cir. 1989). The First Circuit has observed, "There

[4] Moreover, statutes of limitation do not bar a plaintiff from "using prior acts as background evidence in support of a timely claim." *E.g.*, *AMTRAK v. Morgan*, 536 U.S. 101, 113 (2002). Therefore, statute of limitations issue aside, there was no reason for the hearing officer to refuse to hear the parents' due process complaints which contained factual allegations which pre-dated two years prior to the parents' date of filing their due process complaint.

are instances in which application of the exhaustion of remedies doctrine will not serve the interests protected by it, such as issues of pure law upon which specialized administrative understanding plays little role." *Ezratty v. Puerto Rico*, 648 F.2d 770, 774 (1st Cir. 1981); *see also K.S. v. R.I. Bd. of Educ.*, 44 F. Supp. 3d 193 (D.R.I. 2014) (holding exhaustion not required for "a purely legal question of statutory interpretation concerning whether enforcement of Section 300.101 is a violation of the IDEA").

Here, the question of whether the discovery rule applies to IDEA's statute of limitations, the plain language of the statute indicates, has not been addressed by this Circuit and is therefore suitable for decision by a court. Thus, it is not the type of question to which the administrative hearing officer's expertise in education would apply. IDEA provides parents with a right to appeal final Orders by Hearing Officers regardless of whether the Hearing Officer held a hearing. There has been a growing trend for independent hearing officers to determine cases via motion practice rather than by hearing.[5] It is, therefore, critical that parents have the right to appeal final orders from hearing officers, regardless of whether the decision was reached after an actual hearing or as a result of motion practice.

Accordingly, the district court should have reached the legal issue and held that the discovery rule applies to IDEA's statute of limitations. At that point, having corrected the hearing officer's error in limiting the statute of limitations to two years

[5] *See* Timothy Gilsbach, *Special Education Due Process Hearings Under IDEA: A Hearing Should Not Always Be Required*, 2015 BYU Educ. & L.J. 187, 188 (2015).

without regard to the date of discovery of the violation, the district court could have then remanded the case to the hearing officer for a decision on the merits on the educational issues.

II. IDEA EXPLICITLY MANDATES THAT THE TWO-YEAR STATUTE OF LIMITATIONS BEGINS TO RUN WITH THE DISCOVERY OF INJURY, NOT THE DATE OF INJURY

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). "When . . . statutory 'language is plain, the sole function of the courts - at least where the disposition required by the text is not absurd - is to enforce it according to its terms.'" *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296-97 (2006) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)) (citations omitted). Thus, federal courts proceed with the understanding that, unless otherwise defined, statutory terms should be interpreted in accordance with their ordinary meaning. *Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013); *see also Octane Fitness, L.L.C. v. ICON Health & Fitness, Inc.*, *13*4 S. Ct. 1749, 1756 (2014).

At the same time, courts construe federal laws by not only reading the text, but also "considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S.1, 7 (2011) (quoting *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006)). This approach makes "statutes into more coherent schemes for the

accomplishment of specified goals than they might otherwise be." David M. Driesen, *Purposeless Construction*, 48 Wake Forest L. Rev. 97, 128 (2013).

IDEA provides that a party must request a "due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint." 20 U.S.C. § 1415(f)(3)(C). The complaint must therefore set forth an alleged violation that occurred "not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint." 20 U.S.C. § 1415(b)(6)(B). It would have been very simple to write a statute indicating that parents could only recover for the two years prior to the filing of the due process complaint. That is not what Congress did.

Notwithstanding the plain statutory text, the District Court simply prohibited F.C. from pursuing claims and obtaining relief for IDEA violations that occurred more than two years before the filing of the due process complaint. By doing so, the court failed to ground its decision in the statutory language. "And that failure makes a difference, because the statute speaks in unambiguous terms opposite to what the [District Court] said." *Ross*, 136 S. Ct. at 1856. The District Court did not determine the "knew or should have known" date, and therefore, could not apply the statute of limitations as written in IDEA.

This is a case of first impression in the Sixth Circuit. The Third Circuit was the first Court of Appeals to comprehensively analyze the statute of limitations for IDEA adopted in the 2004 amendments to IDEA. *See G.L. v. Ligonier Valley Sch. Dist. Auth.*,

802 F.3d 601, 604-26 (3d Cir. 2015). After thoroughly analyzing the statutory language, Congressional intent, the U.S. Department of Education's interpretation, and the entire structure and purpose of IDEA, the Third Circuit held that IDEA's statute of limitations, "imposes a deadline on the filing of claims once they are reasonably discovered but does not limit the redress available for timely-filed claims." *Id.* at 612.

The Third Circuit thus held:

> [o]nce a violation is reasonably discovered by the parent, any claim for that violation, however far back it dates, must be filed within two years of the 'knew or should have known' date. If it is not, all but the most recent two years before the filing of the complaint will be time-barred; but if it is timely filed, then, upon a finding of liability, the entire period of the violation should be remedied.

Id. at 620-21.

More recently, the Ninth Circuit, agreeing with the Third Circuit, held that 20 U.S.C. § 1415(f)(3)(C) requires courts to bar only claims brought more than two years after the parents or local education agency "knew or should have known" about the actions forming the basis of the complaint. Because the district court barred all claims "occurring" more than two years before the plaintiffs filed their administrative due process complaint, the panel remanded for the district court to determine when the plaintiffs knew or should have known about the actions forming the basis of their complaint. *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 937 (9th Cir. 2017).

In *Avila*, the court recognized that parents' knowledge of a *fact* does not equate to knowledge of the *legal harm.* The "knew or should have known" date "stems from

when parents know, or have reason to know of, an alleged denial of a free appropriate public education under the IDEA, not necessarily when the parents became aware that the district acted or failed to act." *Somoza v. N.Y. City Dep't of Educ.*, 538 F.3d 106, 114 (2d Cir. 2008).

That the IDEA language of "knew or should have known" indicates a discovery rule approach is consistent with court interpretations of other similar statutory provisions. The discovery rule applies, and the limitations period begins to run when the plaintiff knows the *injury* that is the basis of the action. *Lyons v. Michael & Assoc.*, 824 F.3d 1169, 1171 (9th Cir. 2016). In *Lyons*, a debt collector filed a suit against the plaintiff on December 7, 2011. The debt collector violated federal law when it filed the lawsuit, by suing the plaintiff in the wrong county so plaintiff learned of the lawsuit when she received service of process in mid-January of 2012. Plaintiff then filed her case against the debt collector within a year of being served with process. This Court rejected the debt collector's argument that the statute of limitations began running on the date of filing because the discovery rule controlled. The plaintiff did not know or should not have known of her injury (the violation of federal law), until she received service of process, rendering her complaint timely. *Id.* at 1171-72.

Likewise in *Merck & Co. v. Reynolds, 55*9 U.S. 633 (2010)), in the securities law context, the Supreme Court explained what it means to "discover the facts constituting the violation." *Id.* at 638. In order to have a claim for securities fraud, a plaintiff must know that there was a misrepresentation *and* that the wrongdoer made

the representation knowingly (with scienter). The Court reasoned that it would frustrate the very purpose of the discovery rule if the limitations period began to run regardless of whether a plaintiff had discovered *all* the facts necessary to prove the claim, including the mental state of the defendant, which "constitutes an important and necessary element of a [securities fraud] 'violation.'" *Id.* at 648. "A plaintiff cannot recover without proving that a defendant made a material misstatement *with an intent to deceive* – not merely innocently or negligently." *Id.* at 649 (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007).

The Court further explained:

> An incorrect prediction about a firm's future earnings, by itself, does not automatically tell us whether the speaker deliberately lied or just made an innocent (and therefore nonactionable) error. Hence, the statute may require "discovery" of scienter-related facts beyond the facts that show a statement (or omission) to be materially false or misleading.

Id. at 650. Thus, "the limitations period . . . begins to run once the plaintiff did discover or a reasonably diligent plaintiff would have 'discover[ed] the facts constituting the violation' – whichever comes first." *Id.* at 653.

Moreover, in considering the "discovery" rule, a plaintiff should not be charged with knowledge of a harm when the defendants are presumably experts and themselves did not have that knowledge. *Winter v. United States*, 244 F.3d 1088 (9th Cir. 2001) (where "not even the doctors knew of the probable general medical cause," a medical malpractice claim does not accrue); *see also Rosales v. United States*, 834 F.3d 799, 803-805 (9th Cir. 1987). Accordingly, in IDEA cases such as this, parents should not

be charged with knowledge of the harm when school officials repeatedly assured the parents that the student did not have a disability under IDEA.

III. THE SIXTH CIRCUIT SHOULD ADOPT THE *LIGONIER* APPROACH AND REMAND FOR A DETERMINATION OF THE "KNEW OR SHOULD HAVE KNOWN" DATE

Without inquiring into the "knew or should have known" date, the District Court barred claims and relief outside the two-year period preceding the filing of the F.C.'s due process complaint. This approach erroneously applied an "occurrence rule," contrary to the explicit, mandatory language of the IDEA imposing a "discovery rule." The holding "contravenes the language and purpose of Congress in using a reasonable discovery date" to determine when the statute of limitations begins to run. *Ligonier*, 802 F.3d at 613.

The District Court's failure to correctly apply the discovery rule in this case also undermines IDEA's goals. IDEA is intended to ensure that every child with special needs receives a free appropriate public education through the statute's comprehensive remedial scheme. *Ligonier*, 802 F.3d at 619. The statute of limitations provisions are "located in a section detailing procedural safeguards which are largely for the benefit of the parents and the child." *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 374 (1985). The District Court's failure to analyze the discovery date and limit relief based on the filing date does not benefit the parent or child.

The discovery rule adopted by the Third and Ninth Circuits more appropriately effectuates IDEA's statutory purpose. To illustrate, *Ligonier* gives a practical example

– that of a school district that unreasonably fails to identify a child's disability. *Ligonier*, 802 F.3d at 613-614. Assume a district's failure to identify a child's disability continues for more than two years. Once the parents reasonably discover the problem, IDEA allows them two years within which to file a complaint. 20 U.S.C. § 1415(f)(3)(C). A rule limiting recovery to two years would mean that even if the parents filed the complaint the same day of discovery, the child's compensatory education for the injury would be capped at two years from the date of filing, even if the injury had been ongoing for more than two years.

Moreover, those two years of a potential compensatory education remedy would diminish daily for each day after the date of discovery that the parents did not file a complaint. This would act as a disincentive for Parents to conduct due diligence, negotiate with the school district to obtain appropriate services, and carefully prepare a complaint. *Id.* Parents would be forced to file their complaint immediately to preserve the period for which relief could be sought.

Such a restrictive interpretation is at odds with the need to interpret IDEA expansively to provide a comprehensive remedy for children deprived of FAPE. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 237-38 (2009) ("In determining the scope of the relief authorized, [] absent any indication to the contrary, what relief is appropriate must be determined in light of the Act's broad purpose of providing children with a FAPE []"). Limiting a court to awarding compensatory education for twenty-four months of denial of FAPE would leave "parents without an adequate

remedy when a school district unreasonably failed to identify a child with disabilities" *Id* at 245.

In addition, this interpretation has a disproportionately negative impact on lower income families. Many of these families do not have the money to pay for services and seek reimbursement later. *See generally* Jennifer Rosen Valverde, *A poor IDEA: Statute of Limitations Decisions Cement Second-Class Remedial Scheme for Low-Income Children with Disabilities in the Third Circuit*, 41 Fordham Urb. L.J. 599, 605-24 (2013). Approximately two-thirds of special education eligible children live in households earning under $50,000 dollars per year. Half of these children live at or below the federal poverty line. *See Id.* at 604 (citing Mary Wagner et. al., *The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and their Households*, at 29 (2002), *available at* http://www.seels.net/designdocs/SEELS_Children_We_Serve_Report.pdf (last visited 11/8/16). Unable to "front" the cost of a FAPE and seek reimbursement later, these children rely on compensatory education to remedy FAPE denials. Therefore, limitations on the scope of relief further reduces their opportunity to perform commensurate with their non-disabled or wealthier peers, and contravenes controlling precedent and principles of fundamental fairness.

Accordingly, adoption of *Ligonier* protects the rights of lower income special education students, who most need the ability to obtain full relief for violations of

IDEA because these families lack financial resources. Thus, it would allow all special education children a complete remedy when deprived of FAPE.

CONCLUSION

For the foregoing reasons, COPAA respectfully requests that the Court hold either that the Appellants met the exhaustion requirement or that exhaustion was not required for an issue of law, and that the discovery rules applies to the IDEA statute of limitations.

Respectfully submitted,

/s/ Judith A. Gran_____
JUDITH A. GRAN, ESQ.
REISMAN CAROLLA GRAN LLP
19 Chestnut Street
Haddonfield, New Jersey 08033
(856) 354-0071
Counsel of Record
Counsel for Amicus Curiae

SELENE ALMAZAN-ALTOBELLI
ELLEN SAIDEMAN
JESSICA F. SALONUS
Council of Parent Attorneys and Advocates
P.O. BOX 6767
Towson, Maryland 21285
(844) 426-7224
Counsel for Amicus Curiae

CERTIFICATION OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C)

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C) and Fifth Circuit Rule 32-1, the attached amicus brief is proportionately spaced, has a typeface of 14 points and contains 4,547 words.

Dated: November 16, 2017

/s/ Judith A. Gran
JUDITH A. GRAN, ESQ.
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on November 16, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF if they are registered users, or if they are not, by serving a true copy and correct copy at the addresses below.

Cheryl L. Cheffins
P.O. Box 90857
Nashville, Tennessee 37209

Colleen E. Mallea |Assistant Attorney General
Office of Tennessee Attorney General
Civil Litigation and State Services Division
P.O. Box 20207
Nashville, TN 37202-0207

/s/ Judith A. Gran
JUDITH A. GRAN, ESQ.
Attorney for Amici Curiae