STATEMENT OF INTEREST OF THE AMICI CURIAE[1]

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization for parents of children with disabilities, their attorneys and advocates. COPAA's primary goal is to secure appropriate educational services for children with disabilities in accordance with national policy. To that end, COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties.

While COPAA does not represent children, it provides resources, training, and information for parents, advocates, and attorneys to assist them in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA or Act), 20 U.S.C. § 1400 *et seq*.[2] COPAA also supports individuals with disabilities, their parents, and advocates, in seeking to safeguard the civil rights guaranteed to those individuals under federal

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[1] Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, *Amici* state that: (A) there is no party, or counsel for a party in the pending appeal who authored the amici brief in whole or in part; (B) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (C) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members.

[2] "Improving educational results for children with disabilities is an essential element of [the U.S.] national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. § 1400(c)(1).

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 the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*. (ADA).

Accordingly, COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. Many children with disabilities experience significant challenges. Whether these children eventually gain employment, live independently, and become productive citizens depends in large measure on whether they secure their right to the free appropriate public education guaranteed under IDEA and other educational policies. Indeed, the core of IDEA is codified in its goal that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living . . . ." 20 U.S.C. § 1400(d)(1)(A).

The National Disability Rights Network (NDRN) is the non-profit membership association of protection and advocacy (P&A) agencies that is located in all 50 states, the District of Columbia, Puerto Rico, the United States Territories, and includes a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo and Piute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal

representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in various settings. The P&A system is the nation's largest provider of legally-based advocacy services for persons with disabilities.

NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. Education cases make up a large percentage of the P&A networks' casework. P&A agencies handled over 10,000 education matters in the most recent year for which data is available. These education matters include claims under IDEA, Section 504, and the ADA.

Disability Rights Maryland (DRM) is Maryland's designated Protection & Advocacy (P&A) agency, dedicated to advancing the civil rights of people with all types of disabilities. It provides legal representation and/or other advocacy services in a number of substantive areas, including special education. DRM has a long history of representing students in individual special education cases and in systemic special education reform litigation. DRM also engages in policy work at the local, state and national levels on behalf of students with disabilities and conducts special education outreach and training sessions for families and professionals. DRM is committed to ensuring that students with disabilities and their families are able to

exercise the full panoply of rights guaranteed to them by the Individuals with Disabilities Education Act.

Because of their work involving education of students with disabilities, *Amici's* interest in this case lies in their deep commitment to ensuring that all children with disabilities obtain needed special education services. *Amici* adopts the Statement of Facts contained in Appellant's Brief at pp. 8-13 and the Statement of the Issue contained in Appellant's Brief at pp. 2-4.

Amici received consent from Appellants for the filing of this brief, Appellees did not give consent.

SUMMARY OF ARGUMENT

The Supreme Court has recently made clear that the Individual Education Programs (IEPs) of children with disabilities must be "appropriately ambitious" to enable them to make progress in light of their unique abilities. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000 (2017). The Court explained that children with disabilities are to be challenged to reach their potential progress just as their non-disabled peers are, regardless of the severity of their disabilities. Moreover, the IEP must also describe the "special education and related services . . . that will be provided" so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general

education curriculum." *Endrew F.*, 137 S. Ct. at 994 (quoting 20 U.S.C. §1414(d)(1)(A)(i)(IV)).

To that end, IDEA contains numerous procedural safeguards that are designed so that parents play a central role in the education decision-making process. *See* 20 U.S.C. § 1415. "These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances." *Endrew F.*, 137 S. Ct. at 994. Importantly, "[u]nder the IDEA, parental participation doesn't end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." *E.g., M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017). Accordingly, a school district must also provide the parents with "[w]ritten prior notice" of any proposals to initiate or change the child's services and placement. *See* 20 U.S.C. § 1415(b)(3). Because "[w]hen a parent is unaware of the services offered to the student—and, therefore, can't monitor how these services are provided—a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP." *M.C.*, 858 F.3d at 1198.

In this case, just three weeks into the school year, R.F.'s teacher decided that R.F.'s placement in the general education setting should be reduced. But rather than calling an IEP meeting to involve R.F.'s parents in that discussion and decision, the Cecil County members of the IEP team made unilateral decisions about R.F.'s

placement. Those unilateral changes significantly increased R.F.'s time in the self-contained special education classroom. This egregious failure to permit R.F.'s parents' participation in the placement decisions of their child, violated IDEA, and denied R.F. FAPE. *See* 20 U.S.C. § 1415(f)(3)(E)(ii)(II).

ARGUMENT

I. CONGRESS PASSED IDEA TO ENSURE AN APPROPRIATE EDUCATION FOR ALL CHILDREN WITH DISABILITIES

In the 1970s, Congress held hearings investigating the quality of educational instruction provided to children with disabilities. These hearings established that public school districts throughout the county had wholly excluded millions of children with a multitude of disabilities or placed those children in programs where they received no educational benefit. *Education for All Handicapped Children, 1973-74: Hearings on S.6 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 93d Cong., 1st Sess. (1973-74). At that time, statistics showed that "only 55 percent of the school-aged handicapped children and 22 percent of the pre-school-aged handicapped children [were] receiving special educational services." Senator Randolph, *Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 94th Cong., 1st Sess., 1 (1975). Parents and educators discussed the widespread failure of states to provide the extent of supportive services necessary to meet the needs of children with varying degrees and forms of disabilities. Statistics

compiled for Congress by the Office of Education at that time revealed that children of all ages and with a range of disabilities were affected. For example, pupils excluded or receiving inappropriate education included 82% of "emotionally disturbed" children; 82% of "hard-of-hearing" children; 67% of "deaf-blind" and "other multi-handicapped" children; and 88% of those classified "learning disabled." S. Rep. No. 168, 94th Cong., 1st Sess. 5-8 (1975) reprinted in 1976 U.S. C.C.A.N., 1425, 1429-32; H.R. Rep. No. 332, 94th Cong., 1st Sess. 11-12 (1975).

In light of these gross disparities regarding access to educational programming for students with disabilities, Congress enacted Public Law 94-142, the Education for All Handicapped Children Act in 1975, which, following various amendments, is now known as IDEA. IDEA requires that state and local public education agencies enact policies and procedures to ensure that all students with disabilities receive a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

In enacting these laws, Congress did not merely require access, but Congress mandated that children with disabilities receive a free appropriate public education (FAPE) in order for the states to receive federal funds. 20 U.S.C. § 1412(a)(1). While IDEA itself does not provide a substantive standard giving content to the term

"appropriate," the statute itself states it will provide a "full educational opportunity to all handicapped children." *Id.* § 1412(2)(A). Additionally, "[t]he instruction offered must be 'specially designed' to meet a child's 'unique needs' through an '[IEP]." 20 U.S.C. §§ 1401(14), (29)

II. THE SUPREME COURT'S *ENDREW F.* DECISION ADDRESSED THE FAPE STANDARD FOR EDUCATION OF STUDENTS WITH DISABILITIES AND THE IMPORTANCE OF FOLLOWING IDEA'S PROCEDURAL REQUIREMENTS INCLUDING PARENTAL PARTICIPATION

In *Endrew F.*, the Supreme Court announced a clear standard for the level of educational benefit IDEA requires for the receipt of a FAPE as well as addressing the importance of IDEA's procedural requirements in developing the child's IEP. *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 (U.S. 2017). In doing so, the Supreme Court rejected the Tenth Circuit's low standard for the provision of a FAPE which had allowed a school district to meet IDEA's FAPE requirement by providing the student an educational benefit that was "merely more than *de minimis*." The Supreme Court instead held: "The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 1001. The Court emphasized that the IEP must be "appropriately ambitious," and the objectives must be "challenging." *Id.* at 999-1000.

Further, the Supreme Court emphasized the importance of compliance with IDEA's procedures. The Supreme Court rejected the argument that such provisions governing the IEPs required components "impose only procedural requirements – a checklist of items the IEP must address – not a substantive standard enforceable in court." *Id.* at 1000. As the Supreme Court explained, the "procedures are there for a reason." They provide insight into what it means to meet the unique needs of a child with a disability. *Id.*

As the Supreme Court recognized, the IEP is the roadmap to the child's academic and functional advancement, "constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* at 999 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I) -(IV), (d)(3)(A)(i)-(iv)). The IEP must be drafted in compliance with a detailed set of procedures, which emphasize parental involvement in the decision-making process. *See* 20 U.S.C. § 1414.

Every IEP must include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be measured. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(III). The IEP also must

describe the "special education and related services . . . that will be provided" so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

On December 7, 2017, the U.S. Department of Education released a helpful resource for parents, advocates and attorneys alike in its Questions and Answers (Q&A) on *Endrew F. v. Douglas County School District RE-1*, https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-endrewcase-12-07-2017.pdf (last viewed Sept. 11, 2018). As the Q&A acknowledged, the Court's clarification of a school's substantive obligation under IDEA, "reinforced the requirement that 'every child should have the chance to meet challenging objectives.'" (Q&A No. 3). The guidance also makes clear that parental involvement in these decisions is essential. *See* (Q&A Nos. 10-12, 15). "Determining an appropriate and challenging level of progress is an individualized determination that is unique to each child. When making this determination, each child's IEP Team must consider the child's present levels of performance and other factors such as the child's previous rate of progress and any information provided by the child's parents." (Q&A Nos. 12).

III. CECIL COUNTY DENIED FAPE TO R.F. BY IMPEDING HER PARENTS' MEANINGFUL PARTICIPATION IN THE DECISION-MAKING PROCESS WHEN IT UNILATERALLY CHANGED R.F.'S PLACEMENT

A. Cecil County Denied R.F.'s Parents' Procedural Right to Meaningfully Participate in the Decision-Making Process Regarding R.F.'s Educational Placement

Parents are key members of the IEP Team.[3] And as the U.S. Supreme Court has repeatedly emphasized, parent participation in the IEP decision-making process is essential to implementing the education rights of children with disabilities that Congress sought to protect with IDEA.[4] "Compliance with procedures giving

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[3] 20 U.S.C. § 1414(d)(1)(b); 34 C.F.R. § 300.321(a)(1), § 322(a)-(f).

[4] *Endrew F.*, 137 S. Ct. at 994 ("These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances."). *Honig v. Doe*, 484 U.S. 305, 311 (1988)("[e]nvisioning the IEP as the centerpiece of the statute's education delivery system…and aware that schools had all too often denied such children appropriate educations without in any way consulting with their parents, Congress repeatedly emphasized throughout the Act the importance and indeed necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness."); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-206 (1982) ("the importance Congress attached to these procedural safeguards cannot be gainsaid…Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process…as it did upon the measurement of the resulting IEP against a substantive standard…{T}he congressional emphasis upon full participation of concerned parties throughout the development of the IEP…demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.").

parents and guardians a large measure of participation at every stage of the administrative process"[5] has been enforced through the utilization and enforcement of these procedural safeguards.

Accordingly, school districts are responsible for initiating IEP meetings and ensuring that parents are given a meaningful opportunity to attend the IEP meeting and participate as full members of the IEP Team.[6] To ensure parents are afforded the opportunity to participate in their child's IEP Team meeting, school districts are required to notify the parents with enough advance notice of the IEP meeting so that one or more parents can attend, [7] to schedule the meeting at a mutually agreeable time and place to ensure parental attendance,[8] provide advance notice to the parents of who will attend the IEP meeting as well as the purpose/(s) for the meeting,[9] ensure other methods of attendance, such as conference calling, if the parent cannot physically attend the IEP meeting,[10] provide for interpreters at the IEP meeting for parents who are deaf or hard of hearing or whose primary language is not English,[11] and if the school "cannot convince the parents they should attend," the school must

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5 *Rowley*, 458 U.S. at 205.
6 *See* 34 C.F.R. §300.322.
7 34 C.F.R. § 300.322(a).
8 34 C.F.R. § 300.322(a)(1)-(2).
9 34 C.F.R. § 300.322(b)(1).
10 34 C.F.R. § 300.322(c).
11 34 C.F.R. § 300.322(e).

document its attempts to contact the parents and invite them to the meeting, including phone calls and visits to the parents' home and places of employment to attempt to arrange a mutually agreeable meeting time.[12] In addition, after participating in the development of their child's IEP at the meeting, parents must also be involved in their child's placement decision.[13]

Moreover, parental involvement in the IEP process far exceeds mere physical attendance at meetings, as evidenced by the 1997 amendments to IDEA which strengthened parental rights and specifically mandated that parents are equal members of an IEP Team.[14] As active and equal participants on the team, parents are in the unique position to offer valuable information on their children's strengths, to describe the need for services, and to share specific concerns with the entire IEP team.[15] *See also Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1044 (9th Cir. 2013) ("Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.").

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12 34 C.F.R. § 300.322(d).

13 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(c).

14 20 U.S.C. § 1414(d)(1)(B); *Notice of Interpretation,* Appendix A to 34 CFR Part 300, Question 5 (1999 regulations); 20 U.S.C. § 1414(d)(1)(b); *see also e.g.*, *Deal v. Hamilton Cty. Bd. of Educ*., 392 F.3d 840, 858 (6th Cir. 2004)("[Parental] [p]articipation must be more than a mere form; it must be *meaningful*.").

15 *See* 34 CFR Part 300, App. A, Quest. 5

Specifically, parents are afforded the opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child (including IEP meetings);[16] be part of the IEP team that determine what additional data are needed as part of an evaluation of their child;[17] assist in determining their child's eligibility;[18] have their concerns and the information that they provide regarding their child considered in developing and reviewing their child's IEP's;[19] and be regularly informed of their child's progress.[20] Collaborative and conversant decisions regarding placement and services only occur when parental input equips the IEP team with the best available information specific to the individual child.

Further, "[u]nder the IDEA, parental participation doesn't end with the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017). Accordingly, a school district must call a meeting to revise the IEP as appropriate to address any needed changes or lack of expected progress and must also provide the parents with "[w]ritten prior notice" of any proposals to initiate or change the child's services and placement. *See* 20 U.S.C. §

16 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.322; 34 C.F.R. §§300.501(b).
17 20 U.S.C. § 1414(b)(1)-(2), (c)(i).
18 20 U.S.C. § 1414(b).
19 20 U.S.C. § 1415 (d)(3)(A)(ii), (4)(A)(ii)(III).
20 20 U.S.C. § 1414(d)(1)(A)(i)(bb)(III).

1414(d)(4)(ii); 20 U.S.C. § 1415(b)(3). As explained by the Ninth Circuit following the *Endrew F.* decision's emphasis on the importance of following IDEA's procedural safeguards:

> **An IEP, like a contract, may not be changed unilaterally. It embodies a binding commitment and provides notice to both parties as to what services will be provided to the student during the period covered by the IEP.** If the District discovered that the IEP did not reflect its understanding of the parties' agreement, it was required to notify M.N. and seek her consent for any amendment. *See* 20 U.S.C. § 1414(d)(3)(D), (F) (discussing amendments to the IEP). Absent such consent, the District was bound by the IEP as written unless it sought to re-open the IEP process and proposed a different IEP.

M.C., 858 F.3d at 1197 (emphasis added). Accordingly, the Ninth Circuit found that "allowing the District to change the IEP unilaterally undermines its function of giving notice of the services the school district has agreed to provide and measuring the student's progress toward the goals outlined in the IEP," and therefore, was a per se violation of the procedural requirements of IDEA. *Id.*

Here, even though Cecil County discovered three weeks into the school year that the IEP developed in April was not working and needed a dramatic change, Cecil County did not call the parents in for an IEP meeting to consult them regarding changes for their child's program. Instead, Cecil County unilaterally made the changes to R.F.'s placement which significantly increased her time in the self-contained special education classroom (comprised of one student) without any notice to the parents at all. Both the ALJ and the court below found that the district had

violated the parents' rights, but both held that the error was harmless because it did not deny the student FAPE. As discussed below, the ALJ's and district court's findings erroneously failed to consider that Cecil County's actions significantly impeded R.F.'s parents' rights to meaningfully participate in the decision-making process regarding a crucial component of their child's provision of FAPE—placement—which denied R.F. a FAPE.

B. Failure to Provide for Meaningful Parental Participation Alone is Sufficient to Deprive a Student of a FAPE

The Supreme Court held that procedural violations are just as important as the Act's substantive requirement that students be appropriately educated holding that procedural protections for parents and students are at the "core of the statute," necessary for parents to be able to protect the substantive rights provided to their children. *Schaffer v. Weast*, 546 U.S. 49, 53 (2005); *Honig*, 484 U.S. at 311; 20 U.S.C. § 1415. These procedural requirements are designed to "guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decision they think inappropriate." *Buser by Buser v. Corpus Christi Indep. Sch.l*, 51 F.3d 490, 493 (5th Cir. 1995) (quoting *Honig*, 484 U.S. at 311-12). Indeed, "one of the central innovations of the special education law, and a key to its success, is that it empowers parents to participate in designing programs for their children and to challenge school district decisions about educational services and placement." Mark C. Weber, *Litigation*

Under the Individuals with Disabilities Education Act After Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 65 Ohio St. L.J. 357, 369 (2004).

IDEA specifically recognized the crucial importance of parental participation by explicitly providing that procedural violations alone may result in a finding that a child did not receive FAPE if the procedural violation "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." 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Thus, courts have found that procedural violations that deprive parents of critical information that impedes their ability to participate in the decision-making process cause a deprivation of FAPE. *See e.g., Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038, 1047 (9th Cir. 2013) ("The failure to include Doug C. in the IEP meeting clearly infringed on his ability to participate in the IEP formulation process. That reason alone is cause to conclude that Spencer was denied a FAPE."); *Beckwith v. District of Columbia*, 208 F. Supp. 3d 34, 46-47 (D. D.C. 2016) (failure to provide required information about restraints and to produce relevant staff people at MDT meeting impeded parental participation and deprived student of FAPE); *Bell v. Bd. of Educ. of Albuquerque Schs.*, 2008 U.S. Dist. LEXIS 108748 at *87-88 (D. N. Mex. Nov. 28, 2008) (providing incorrect information regarding student's diagnosis impeded parental participation and deprived student of FAPE because it

provided parents "with lack of reliable information on which to rely on in advocating for [the student] and meaningfully participate in the IEP process.").

More recently, in the *M.C. v. Antelope Valley Union High School District* case, the Ninth Circuit held that failing to inform a parent of unilateral changes made to a child's IEP was not just a denial of parental participation in the *formation* of the child's IEP, but also in the *enforcement* of the child's IEP which resulted in a denial of FAPE. *M.C.*, 858 F.3d at 1198 (citing *Rowley*, 458 U.S. at 205 which discussed how in enacting IDEA, Congress was concerned with parental participation in both the *formation* and *enforcement* of the IEP as Congress' intent was "to give parents and guardians participation *at every stage of the administrative process*"). The Ninth Circuit reasoned:

> Under the IDEA, parental participation doesn't end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive.**When a parent is unaware of the services offered to the student—and, therefore, can't monitor how these services are provided—a FAPE has been denied**, whether or not the parent had ample opportunity to participate in the formulation of the IEP.

M.C., 858 F.3d at 1198.

In this case, Cecil County's failure to provide R.F.'s parents with information that the IEP needed to be changed resulted in a denial of FAPE to R.F. It was only three weeks into the school year when Cecil County determined that R.F.'s IEP developed in April was not working and needed adjustment. J.A.I 42 (FOF 85).

Rather than call the parents in for an IEP meeting to consult them on any necessary changes for their daughter's program, Cecil County unilaterally made the changes without any notice to the parents at all. J.A.II 316:13 – 317:10. While both the ALJ and the district court found that Cecil County had violated the parents' rights, both held that the error was harmless because it did not deny the student FAPE. The ALJ and district court's holdings were in error because they ignored the specific statutory language providing that the hearing officer may find a denial of FAPE based on procedural errors alone if those errors "significantly impeded the parents' opportunity to participate in the decision-making process" regarding FAPE for their child. 20 U.S.C. § 1415(f)(3)(E)(ii)(II).

Here, Cecil County's procedural errors undoubtedly significantly impeded R.F.'s parents' opportunity to participate in the decision-making process, and thus denied R.F. a FAPE. The fact that their daughter's behaviors had intensified so significantly that Cecil County felt her participation in the general education classroom needed to be dramatically reduced was very important information. Had the parents known about the impact of her behaviors, the parents could have provided their important insight and suggestions to Cecil County which could have helped the school district address her behavioral concerns, rather than change her placement. Additionally, had R.F.'s parents been included in the decision to change R.F.'s placement by Cecil County, they could have advocated for a new Functional

Behavior Assessment or for changes to her Behavior Intervention Plan to address the additional behaviors, which should have been tried before changing R.F.'s placement. However, without being provided this information from Cecil County, R.F.'s parents were left "unaware of the services offered to the student—and, therefore, [could not] monitor how these services are provided—[accordingly,] a FAPE has been denied." *See e.g., M.C.*, 858 F.3d at 1198.

CONCLUSION

For the foregoing reasons, the judgment below should be REVERSED.

Dated: September 17, 2018

Respectfully submitted,

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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), the attached amicus brief is proportionately spaced, has a typeface of 14 points and contains 4,655 words.

Dated: September 17, 2018

/s/ *Selene Almazan-Altobelli*
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on September 17, 2018 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.

/s/ *Selene Almazan-Altobelli*
Attorney for Amici Curiae

CERTIFICATE OF CONFERENCE

The undersigned certifies on the 7th of September 2018 that consent to file an *amici curiae* brief in support of the Appellants was sought from Appellee in this matter. Appellee notified undersigned on September10, 2018 that they would not consent to this filing. Appellants consented to the filing on August 15, 2018.

/s/Selene Almazan-Altobelli
Selene Almazan-Altobelli