18-20274

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

SPRING BRANCH INDEPENDENT SCHOOL DISTRICT,

Plaintiff-Appellant,

—v.—

O.W., by next friend HANNAH W.,

Defendant-Appellee.

HANNAH W., as Parent/Guardians/Next Friends of O.W., an Individual with a Disability; DANIEL W., as Parents/Guardians/ Next Friends of O.W., an Individual with a Disability; O.W.,

Plaintiffs-Appellees,

—v.—

SPRING BRANCH INDEPENDENT SCHOOL DISTRICT,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

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

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to 5th Cir. R. 28.2.1 *Amicus* certifies that the "Joint Certificate of Interested Persons and Corporate Disclosure Statement" previously filed by the appellee, is correct to the best of their knowledge and belief, but the following additional persons and corporation needed to be added:

1. Council of Parent Attorneys and Advocates, Inc.
2. Almazan-Altobelli, Selene, counsel for Amicus

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.

By: Selene Almazan-Altobelli
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STATEMENT OF INTEREST OF *AMICUS 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 believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties.

COPPA's attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in seeking 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 the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA).

COPAA's primary goal is to secure appropriate educational services for children with disabilities in accordance with national policy. COPAA provides resources, training, and information for parents, advocates, and attorneys to assist them in obtaining the free appropriate public education such children are entitled to

[1] Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, Amicus states that: (A) there is no party, or counsel for a party in the pending appeal who authored the amicus 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 Amicus and its members.

under the Individuals with Disabilities Education Act (IDEA or Act), 20 U.S.C. § 1400 et seq.[2]

COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has previously filed as *amicus curiae* in the United States Supreme Court in *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1000 (2017); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Bd. of Educ. v. Tom F.*, 552 U.S. 1 (2007); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007), and in numerous cases in the United States Courts of Appeal.

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 the IDEA and other educational policies. Indeed, the core of the IDEA is its codified 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

[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).

needs and prepare them for further education, employment, and independent living . . . ." *Id.* § 1400(d)(1)(A).

Because of its work involving education of students with disabilities, COPAA is particularly concerned with assuring that the appropriate legal standards of review, consistent with the review scheme set out by Congress, are applied to appeals of state hearing officer and district court decisions.

Counsel for Appellant, Spring Branch Independent School District (SBISD), has consented to this brief, and counsel for Appellee, O.W., has also provided consent for this brief.

SUMMARY OF ARGUMENT

The IDEA mandates that courts make independent determinations as to whether a school district has complied with IDEA based upon the evidence in the record. While the district court's role is to provide an "independent review of the administrative record and make a determination based upon the preponderance of the evidence," the district court must also "give due weight to state administrative proceedings, mindful that the judiciary generally lacks the specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy." 20 U.S.C. § 1415(i)(2)(C)(iii); *Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist.*, 773 F.3d 372, 386-86 (2d Cir. 2014); *M.H. v. N.Y. City Dep't of Educ.*, 685 F.3d 217, 240 (2d Cir. 2012).

Here, the hearing officer's thorough decision detailed the factual findings

based upon the testimony and evidence in the administrative record. The District Court then provided its virtual *de novo* review and examined the evidence in the administrative record, while providing "due weight" to the hearing officer's determinations and affirmed the decision of the administrative hearing officer. On appeal in the Fifth Circuit, this Court must review the district court's decision as a mixed question of law and fact: reviewing its legal questions *de novo* and reviewing its findings of underlying fact within its decision for "clear error." *E.g.*, *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676 (5th Cir. 2018). In doing so, *Amicus* respectfully requests that this Court find that there is no clear error in the District Court's factual findings, and therefore, affirm the District Court's decision.

FACTUAL BACKGROUND

Amicus adopts fully by reference herein the Statement of the Case in the Brief for Appellee at 2-22.

ARGUMENT

I. STATUTORY FRAMEWORK

Under the Act, a party aggrieved by a decision in the impartial due process hearing may seek review in federal court. 20 U.S.C. § 1415(i)(2). "Congress expressly rejected provisions [of the Act] that would have… severely restricted the role of reviewing courts. In substituting the current language of the statute for language that would have made state administrative findings conclusive if supported

by the evidence, the Conference Committee explained that courts were to make "'independent decision[s] based upon the preponderance of the evidence'" from the records of the proceeding and, if submitted, additional evidence. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S., supra, at 176, 206 (quoting S. Rep. No. 94-455, at 5 (1975); *see* 20 U.S.C. § 1415(i)(2).

In fact, the standard of review in cases brought under the Act provides federal courts with more authority to make determinations as to the propriety of administrative decisions than federal courts have under the Administrative Procedures Act's (APA), which requires an "arbitrary," "capricious," or "unsupported by substantial evidence" standard of review. *See* 5 U.S.C. § 706 (2012). In drafting the Act, Congress explicitly rejected a standard review akin to that in the APA. *See Bd. of Educ. v. Rowley*, 458 U.S. 176, 206 (1982). The Supreme Court determined, in interpreting the Act, determined that the while making an independent decision based upon the evidence, federal courts should give "due weight" to the administrative proceedings. *Rowley*, 458 U.S. at 206.

The Act and case law reject the conclusion that due weight means obedience to administrative hearing officers' decisions unless the decision was arbitrary, capricious, or unsupported by the evidence. *Id.* . It means ascribing some extra weight to discretionary decisions made, while still guarding against violations of the law.

Congress provided parents who believe their child's individualized educational program (IEP) is insufficient to provide their child with a FAPE with a series of procedures to challenge the appropriateness of the school's planning. 20 U.S.C. 20 U.S.C. § 1415. Parents may file a complaint with a state administrative hearing officer under IDEA "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such a child. . ." Any party aggrieved by the decision of the hearing officer may then file a civil action in a federal district court. *See* 20 U.S.C. § l 4 l 5(i)(2)(A). If such an action is brought, the district court must "grant such relief as the court determines is appropriate" based on a preponderance of the evidence. 20 U.S.C. § 1415(i)(2)(C).

II. STANDARD OF REVIEW

In *Board of Education v. Rowley,* the Supreme Court addressed the proper role for a district court in reviewing state administrative decisions in IDEA cases and held that a district court must give "due weight" to the administrative proceedings. *Rowley,* 458 U.S. at 205-06. The Supreme Court expressly rejected the argument that a district court had no power to review the substance of a state's educational decisions, observing that Congress declined to adopt language in the IDEA that "would have made state administrative findings conclusive if supported by

substantial evidence." *Id.* . Instead, the Supreme Court adopted the less deferential "due weight" standard.

In essence, the standard of review articulated by the Act and the Supreme Court in cases brought in federal courts under the Act is as follows: (1) review legal conclusions of administrative decisions de novo without giving due weight to the administrative decisions; (2) review mixed questions of law and fact, such as whether the school district offered a free appropriate public education (FAPE), de novo without giving due weight to the administrative decisions; (3) give due weight to the factual findings of the administrative decisions that are supported by the preponderance of the evidence; and (4) defer to the educational policies recommended by school officials if the court determine that school district complied with the procedural and substantive requirements of the Act.

Recognizing these principles, the Fifth Circuit has employed a virtually de novo standard of review. Under a virtually de novo standard of review, a district court has the discretion to accept or reject any finding of the administrative hearing officer based on its independent review of the administrative record and any additional evidence. However, the court must do this while remaining mindful that it is required to give "due weight" to the administrative record. *E.g., Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 338 (5th Cir. 2016).

III. UNDER THE ACT AND SUPREME COURT PRECEDENT, FEDERAL COURTS ARE REQUIRED TO CONDUCT A *DE NOVO* REVIEW OF QUESTIONS CONCERNING PROCEDURAL AND SUBSTANTIVE VIOLATIONS OF THE ACT

The express purpose of the Act is "to ensure 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. . . ." 20 U.S.C. § 1400(d)(1)(A); *see Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 367 (1985). In exchange for receipt of federal funds, Texas has agreed, and is required, to guarantee a FAPE to ***every*** child with a disability. 20 U.S.C. § 1412(a)(1)(A). This is accomplished through the development of an individualized education program (IEP), a "comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs." *Sch. Comm. of Burlington*, 471 U.S. at 367.

A. The District Courts Are Empowered to Determine Whether the School District Has Complied With Both the Procedural Safeguards and Substantive Requirements of the Act

The Act provides both procedural safeguards and substantive requirements to be followed in the development of an IEP. *Rowley*, 458 U.S. 193-94, 206. In *Rowley*, the Supreme Court confirmed that Congress empowered federal courts to determine whether States have complied with the Act's procedural safeguards and substantive requirements, including whether the child's "[IEP] developed through

the [Act's] procedures [was] reasonably calculated to enable the child to receive educational benefits." *Id.* at 206-07.

Procedural requirements, set forth in 20 U.S.C. § 1415, are "procedures to be followed in formulating personalized educational programs [i.e. IEPs] for handicapped children," 20 U.S.C. § 1415, such as "full participation of concerned parties throughout the development of the IEP…." *Id.* at 206. The substantive requirements of the Act are that the IEP must provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP." *Id.* at 203. In summary, to meet the substantive requirements of the Act, the IEP developed through the Act's procedures must be reasonably calculated to enable the child to receive educational benefits, i.e. a FAPE. *Id.* at 187-88, 203.

B. The Fifth Circuit reviews the district court's decision as a mixed question of law and fact: reviewing its legal questions *de novo* and reviewing its findings of underlying fact within its decision for "clear error."

On appeal from the district court, however, the Fifth Circuit reviews the district court's decision as a mixed question of law and fact: reviewing its legal questions *de novo* and reviewing its findings of underlying fact within its decision for "clear error." *E.g.*, *Krawietz v. Galveston Indep. Sch. Dist.*, 900 F.3d 673, 676

(5th Cir. 2018); *Seth B. v. Orleans Par. Sch. Bd.*, 810 F.3d 961, 967 (5th Cir. 2016) ("Mixed questions should be reviewed under the clearly erroneous standard if factual questions predominate, and de novo if the legal questions predominate. Here, the validity of the district court's ruling turns in large part on the interpretation of regulatory text. We therefore review the ruling de novo. Within this analysis, however, we review the district court's underlying factual findings for clear error."); *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 808 (5th Cir. 2012), *E.R. v. Spring Branch Indep. Sch. Dist*., 2018 U.S. App. LEXIS 33407 (5th Cir. 2018) (citing *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. ex rel. Barry F*., 118 F.3d 245, 252 (5th Cir. 1997)). For example, the court of appeals "reviews the district court's findings of underlying fact, such as 'findings that a disabled student obtained educational benefits under an IEP,' for clear error." *R.P.*, 703 F.3d at 808. Under the "clear error" standard of review, a district court's findings may not be reversed "unless the court is left with a definite and firm conviction that a mistake has been committed." *E.g.*, *Hous. Indep. Sch. Dist. v. V.P.*, 582 F.3d 576, 583 (5th Cir. 2009).

IV. THE DISTRICT COURT PROPERLY AFFIRMED THE HEARING OFFICER'S DECISIONS THAT SBISD VIOLATED ITS CHILD FIND DUTY TO O.W., FAILED TO APPROPRIATELY IMPLEMENT O.W.'S IEP, AND MUST REIMBURSE O.W. FOR HIS PRIVATE PLACEMENT

A. The District Court appropriately applied the legal standard of review

The District Court appropriately applied the legal standard of review in upholding the hearing officer's factual determination that the school district had more than ample evidence to trigger its "Child Find" duties referring O.W. for special education services four months earlier than it did, that the school district failed to appropriately implement O.W.'s IEP, and that reimbursement to O.W. by the school district for an appropriate private placement was warranted.[3] The District Court correctly recognized that it must give due weight to the hearing officer's findings. *See Endrew F*, 137 S. Ct. at 997; *accord Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 805 (5th Cir. 2003).[4] Moreover, when an SEHO makes certain credibility findings, those findings should be given deference because a Court generally would not make credibility determinations in ruling on a motion for summary judgment. *Caldwell Indep. Sch. Dist. v. L.P. b/n/f Joe P.*, 994 F. Supp. 2d 811 (W.D. Tex. 2012), *aff'd*, 551 F. App'x 140 (5th Cir. 2014).[5]

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[3] *See* pages 7-8 of the District Court's Final Order (Order), setting forth the legal standard of review utilized by federal courts under IDEA when reviewing hearing officer's findings.

[4] Other circuits have also emphasized deference to factual findings. *Sch. Bd. of Henrico Co. v. Z.P.*, 399 F.3d 298, 304-305 (4th Cir. 2005) (facts are presumed correct as long as they are regularly made); *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004) (findings of fact are prima facie correct, and Court must explain departing from them, limiting a court's departure from credibility determinations to situations non-testimonial, extrinsic evidence in the record justifies a contrary conclusion); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 891 (9th Cir. 1995) (increased deference if the findings are thorough and careful).

[5] Although this Court has not ruled directly on this issue, lower federal courts in Texas have relied on case law from other Circuits to accept hearing officer's

Due weight is critical because IDEA requires special education hearing officers to have particularized knowledge about special education. *See Rowley*, 458 U.S. at 207-08 & n.30.

Moreover, when a hearing officer makes certain credibility findings, those findings should be given deference because a Court generally would not make credibility determinations in ruling on a motion for summary judgment. *Caldwell Indep. Sch. Dist.*, 994 F. Supp. 2d 811, *aff'd*, 551 F. App'x 140. Thus, this Court reviews factual findings for clear error. *Christopher v. DePuy Orthopaedics, Inc.*, 888 F.3d 753, 778 (5th Cir. 2018). And "a factual finding is not clearly erroneous as long as it is plausible in the light of the record read as a whole." *Id.* (quoting *Walker v. City of Mesquite*, 402 F.3d 532, 535 (5th Cir. 2005)).

As demonstrated by its Order, the District Court appropriately applied the virtually *de novo* legal standard of review while giving "due weight" to the factual and credibility decisions reached by the hearing officer's detailed 104-page opinion when it adopted the hearing officer's factual and credibility determinations. The

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credibility determinations "'unless the non- testimonial, extrinsic evidence in the record would justify a contrary conclusion.'" *E.M. v. Lewisville Indep. Sch. Dist.,* , 2018 U.S. Dist. LEXIS 50237, at *21-22 (E.D. Tex. March 27, 2018) (citing *Carlisle Area Sch. v. Scott P.*, 62 F.3d 520, 529 (3d Cir. 1995); *McAllister v. Dist. of Columbia*, 45 F. Supp. 3d 72, 76-77 (D.D.C. 2014)); *cf. Shafi A. v. Lewisville Indep. Sch. Dist., CASE NO. 4:15-CV-599*, 2016 U.S. Dist. LEXIS 173798, at *25 (E.D. Tex. Dec. 15, 2016). "[I]n this context, the word 'justify' requires that the applicable standard of review be essentially the same as that a federal appellate court applies when reviewing a trial court's findings of fact." *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 564 (3d Cir. 2010) (citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004)).

Court did so by detailing the facts established in the administrative record (Order at 3-7), and the hearing officer's decision to conclude that the school district:

- did not refer O.W. for a special education evaluation until January 15, 2015, despite the fact that by October 8, 2014 it was aware of O.W.'s disability and that general education interventions were not working;[6]
- failed to fully implement O.W.'s IEP as written because the school district's use of timeouts, physical restraints, and police involvement were not allowed under the IEP and contradicted the IEP's specific instructions to use calm interaction styles, minimize verbal interactions, direct O.W. to the cooling-off area, provide more physical space, and avoid "power struggles";[7]
- failed to implement O.W.'s IEP by shortening O.W.'s school day the last twenty days of school;[8] and
- deprived O.W. of five months of meaningful educational benefits during which time he regressed educationally, behaviorally, and emotionally due to the school district's violations.[9]

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6 *See* Order at 12.

7 *Id.* at 14-15.

8 *Id.* at 16.

9 *Id.* at 18.

The District Court also found that Fusion (the unilateral private placement) was an appropriate placement for O.W. based on the record and upheld the hearing officer's award for tuition reimbursement.[10]

B. The District Court Appropriately Relied on *Endrew F*.

The pertinent federal regulations provide that "Child find must include "[c]hildren who are *suspected* of being a child with a disability under § 300.8 and in need of special education, *even though they are advancing from grade to grade*." 34 C.F.R. § 300.111(c)(1) (emphasis added). The plain meaning of "suspicion" is "the act or an instance of suspecting something wrong without proof or on slight evidence" or "a state of mental uneasiness and uncertainty."[11] *See, e.g.,* D*ep't of Educ. v. Cari Rae S.,* 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001) ("[T]he threshold for 'suspicion' is relatively low, and . . . the inquiry is not whether or not [the student] actually qualified for services, but rather, was whether [the student] should be referred for an evaluation.") (emphasis in original); *see also W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995). The D.C. Court of Appeals noted: "As the district court put it, 'the entire point of the Child Find requirement is to provide services to children with disabilities,' a duty the District is violating by offering children only some of the services to which they are entitled. *DL v. District of Columbia*, 194 F. Supp. 3d 30, 91 (D.D.C. 2016)." *See DL v. D.C.*, 860 F.3d 713, 729 (D.C. Cir. 2017).

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[10] *Id.* at 19.

[11] Merriam Webster online dictionary updated March 21, 2018, *available at* https://www.merriam-webster.com/dictionary/suspicion (last visited Dec. 16, 2018).

"In order to provide a free appropriate public education to all children with disabilities States must, of course, first identify those children and evaluate their disabling conditions." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1109 (9th Cir. 2016) (citing *Schaffer*, 546 U.S. at 52 (2005)); § 1412(a)(3)(A). Once identified, *those children must be evaluated and assessed for all suspected disabilities* so that the school district can begin the process of determining what special education and related services will address the child's individual needs. *See id*. §§ 1412(a)(7), 1414(a)-(c) (emphasis added). Of course, that this evaluation is done early, thoroughly, and reliably is of extreme importance to the education of children. Otherwise, many disabilities will go undiagnosed, neglected, or improperly treated in the classroom. *Timothy O.*, 822 F.3d at 1110 ; *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009).

The District Court correctly relied on IDEA and *Endrew F.*'s holding when it stated that the special education services must be provided in conformity with a child's IEP. Order at 14. Instead, the District Court relied on the extensive administrative record which demonstrated O.W's need for specialized services and instruction. The administrative record revealed that O.W. was subjected to SBISD's "use of timeouts, physical restraints, and police involvement." *Id.* Furthermore, none of these actions were allowed pursuant to O.W.'s IEP. To the contrary, O.W.'s IEP specifically indicated that staff use calm intervention styles, minimize verbal interactions and avoid power struggles. *Id.* Accordingly, the District Court rightly concluded that these actions, coupled with the fact that O.W. was denied a full school day for at least twenty days of school, denied O.W. FAPE. *Id.*

In reaching these conclusions, the District Court applied an appropriate and careful virtual *de novo* review relying on the evidence presented in the administrative record while giving due weight to the factual findings and determinations reached by the hearing officer, as stated by the District Court at the outset of its analysis:

> A district court should afford "due weight" to the hearing officer's decision. *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d127, 131 (5th Cir. 1993). However, the decision is not conclusive. *Id.* The Court's review, therefore, is virtually *de novo*." *Id. See also Rockwall Indep. Sch. Dist. v. M.C.*, 816 F.3d 329, 338 (5th Cir. 2016). Here, the only additional evidence introduced by the parties was evidence related to O.W.'s stay-put placement. Such evidence is not relevant to the decision made herein. Relying on the same evidence available to the hearing officer, the Court therefore affords due weight to the hearing officer's comprehensive Decision.

Id. at 8. Accordingly, the District Court properly afforded due weight to the hearing officer's factual and credibility determinations when it upheld the hearing officer's detailed decision. Absent clear error, which is not obviously not present here as the findings are amply supported evidence and testimony in the record, the District Court's decision should not be disturbed on appeal to this Court.

CONCLUSION

For the reasons stated above and in appellee's brief, COPAA respectfully requests that this Court affirm the Order of the District Court.

Dated December 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 3,999 words.

/s/ Selene Almazan-Altobelli
Selene Almazan-Altobelli

CERTIFICATE OF SERVICE

I certify that on December 17, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF as they are registered users.

/s/SeleneAlmazan-Altobelli
Selene Almazan-Altobelli

CERTIFICATE OF CONFERENCE

The undersigned certifies on the 17th of December 2018 that consent to file an *amicus curiae* brief in support of the Appellees was sought from the parties in this matter. Appellees provided consent on October 11, 2018 and Appellants consented to this filing on December 12, 2018.

/s/SeleneAlmazan-Altobelli
Selene Almazan-Altobelli

United States Court of Appeals

FIFTH CIRCUIT
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December 18, 2018

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No. 18-20274 Spring Branch Indep Sch Dist, et al v. O.W., et al
USDC No. 4:16-CV-2643
USDC No. 4:16-CV-2672

Dear Ms. Almazan-Altobelli,

We have reviewed your electronically filed Amicus Curiae and it is sufficient.

You must submit the 7 paper copies of your brief required by 5TH CIR. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Casey A. Sullivan, Deputy Clerk
504-310-7642

cc:
Mr. Jonathan Griffin Brush
Ms. Sonja D. Kerr
Ms. Dorene J. Philpot
Ms. Cristina Torres
Ms. Amy Joyce Cumings Tucker