

United States Court of Appeals for the Ninth Circuit

E.T., by and through her Guardian Ad Litem KALLIE TETTENBURN
and MARK TETTENBURN,

Plaintiff-Appellant,

— v. —

SAN DIEGO UNIFIED SCHOOL DISTRICT,

Defendant-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN NO.
3:5-CV-00028-AGS-MMP, HONORABLE ANDREW GEORGE SCHOPLER

BRIEF FOR *AMICUS CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC. IN SUPPORT OF PLAINTIFF-APPELLANT FOR REVERSAL

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CORPORATE DISCLOSURE STATEMENT

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

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.

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

Council of Parent Attorneys and Advocates (COPAA) is a national 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.

COPAA's attorney members represent children in matters involving the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA or Act). 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, *et seq.* (ADA), 42 U.S.C. 12101, *et seq.*

COPAA's primary goal is to secure appropriate educational services for children with disabilities in accordance with national policy. COPAA provides

¹ Pursuant to Rule 29(a)(4)(E) 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 *Amici* and its members.

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 IDEA.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 *A.J.T. v. Osseo Area School*, 605 U.S. 335 (2025); *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023); *Endrew F. v. Douglas County School District. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Community School*, 580 U.S. 154 (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Board of Education v. Tom F.*, 552 U.S. 1 (2007); *Winkelman v. Parma City School District*, 550 U.S. 516 (2007), and *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005), and in numerous cases in the United States Courts of Appeal.

The Appellants have consented to the filing of this brief; the Appellees declined to consent. Amicus has filed the Motion for Leave.

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).

SUMMARY OF ARGUMENT

Congress enacted the IDEA to guarantee every child with a disability a free appropriate public education, delivered through an individualized education program (IEP) developed with the child’s parents as equal participants. The Act’s procedural safeguards are not technicalities. The Supreme Court has placed “every bit as much emphasis” on compliance with them as on the substantive adequacy of the IEP itself. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205 (1982).

The decision below cannot be reconciled with that framework, and it cannot be reconciled with this Court’s decision in *L.B. ex rel. Morrissey v. San Diego Unified School District*, 168 F.4th 1150 (9th Cir. 2026)—a case arising from the same District and decided after the ruling below. *L.B.* holds that parents’ participation in IEP meetings creates a “continuous obligation” on the district to offer a FAPE, and it squarely rejects the distinction the district court drew between an IEP “meeting” and an IEP “document.” *Id.* at 1161. Each time E.T.’s parents came to the table, San Diego had an independent statutory duty to review E.T.’s then-current needs and to revise and offer an IEP reasonably calculated to meet them. 20 U.S.C. § 1414(d)(4)(A).

The February 3, 2023 Settlement Agreement did not extinguish that duty. By its , it released only claims that had accrued through the date of execution; it did not waive E.T.’s right to a FAPE going forward, and the parents never consented to the

District’s placement. A release of accrued claims does not silently waive a challenge to a later, distinct FAPE offer—least of all one the District had not yet made. Reading it otherwise produces the “bizarre” result that a family’s rights turn on the fortuity of whether the District re-offered its program days before or after the release date. *N.W. v. District of Columbia*, 107 F. Supp. 3d 141, 149 (D.D.C. 2015).

Each IEP offer is judged as a “snapshot” of what was reasonable when it was made, *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). Here, the Settlement Agreement did not resolve the appropriateness of the earlier offer, and, in any event, even if it did, the appropriateness of an earlier offer does not establish the appropriateness of the March 2023 offer. Here, Parents never waived their right to dispute an IEP that the district offered subsequent to the settlement agreement. Parents argue that they arrived at an IEP meeting having already decided to re-adopt a stale program, unwilling to consider the family’s new information, predetermined the outcome, denied parents the meaningful participation the Act requires, and denied the student a FAPE. *W.G. v. Bd. of Trs. of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484–85 (9th Cir. 1992). Because Parents did not waive their right to challenge the IEP, the district court erred in not reaching the merits of their legal claim.

For these reasons, and those set forth below, the judgment should be reversed.

ARGUMENT

Congress has promoted settlement of IDEA cases to resolve disputes between parents and school districts. It amended IDEA to add mediation as an option, 20 U.S.C. § 1415(e), and mandated a resolution session to discuss settlement in most cases, 20 U.S.C. § 1415(f)(1)(B). It provided that a settlement agreement reached in resolution is a legal binding agreement enforceable in state and federal courts. 20 U.S.C. § 1415(f)(1)(B)(iii). IDEA due process hearings are often lengthy and expensive for both parties, and settlement allows parties to resolve their disputes without the time and expense of litigation. For Parents to participate in mediation and settlement, it is important that they trust that settlement agreements will be construed in light of their literal language.

The Parties in this case were both represented by capable attorneys, and both had very strong views about what was acceptable in a settlement agreement. The Parents thought their daughter required a residential educational program, and the school district thought its Riley day program could provide her with a free appropriate public education.

As in many settlement agreements, neither party got what they really wanted. They agreed to disagree on the merits of the May 2022 IEP. The Parents received reimbursement for their educational expenses through February 3, 2023, and the school district did not agree to make a residential educational placement for

their child. The Parties agreed that Parents would continue the student's placement in the residential educational placement as a parentally placed student as of February 4, 2023, but that Parents had the right to reenroll their student in the school district and have an IEP meeting to discuss the educational services appropriate for their student as of the IEP meeting date.

As was contemplated by the agreement, the parents reenrolled their daughter and requested an IEP meeting, which was held on March 7, 2023. As the Settlement Agreement acknowledged that the Parties had different views, it is not surprising that the Parents sought the IEP Team's agreement to a residential program for their daughter, and that the school district disagreed, triggering a second unilateral placement by the Parents. *Amicus* is aware of many cases in which Parents and school districts persist in disagreeing about what is required for FAPE for students.

The district court erred in holding that the parents waived their rights to seek residential placement for the rest of the 2022-2023 school year because the literal language of the settlement agreement makes clear that they did not waive any rights to seek any services at an IEP meeting called after February 3, 2023. The Ninth Circuit has made clear that parents who parentally place their children have the right to reenroll their children in public schools and seek any IEP. *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125 (2021). In the experience of *Amicus*, many IDEA settlement agreements contain waivers, and, when the settlement agreement includes

prospective services, the school districts frequently insist on language that limits the parents right to go back to seek more services from school districts to changed circumstances. Here, the agreement did not restrict Parents' right to seek educational services for their daughter for education after February 3, 2023.

Further, the new IEP meeting created a newly amended IEP. The IDEA does not distinguish between an IEP and an amended IEP. It simply provides that changes to an IEP may be made "by amending the IEP rather than by redrafting the entire IEP." 20 U.S.C. § 1414(d)(3)(F). The Parents had the right to challenge the newly amended IEP regardless of whether there were any meaningful changes from the prior IEP. In fact, sadly, there are many IEPs written that do not have any meaningful change from a prior IEP.

In any event, the IEP meeting did create changed circumstances. The IEP meeting is a collaborative endeavor, and the IEP meeting was the first time the Parents had to bring to the IEP team their concerns after their firsthand observation of the Riley School. The Supreme Court made clear in *Endrew F.*, 580 U.S. at 404, that the school district is required to give parents a cogent reason for its decision; this IEP meeting was the first opportunity for the IEP team members to explain their reasoning to Parents.

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

A. IDEA was enacted to ensure that all children with disabilities receive a free appropriate public education and provides powerful legal protections for eligible students with disabilities

IDEA “ensures that children with disabilities receive needed special education services.” *Fry.*, 580 U.S. at 157. IDEA thus confers upon students with disabilities “an enforceable substantive right to public education in participating States.” *Honig v. Doe*, 484 U.S. 305, 310 (1988). “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 580 U.S. at 387.

As the Supreme Court explained, the statute “represents an ambitious federal effort to promote the education of handicapped children and was enacted in response to Congress’ perception that a majority of handicapped in the United States ‘were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’”” *Bd. of Educ. v. Rowley*, 458 U.S. 176, 178 (1982). For decades preceding passage of the Education for All Handicapped Children Act (IDEA’s predecessor), “school districts routinely denied children with disabilities an adequate education. They provided no educational assistance or accommodations to disabled children in school, ‘warehoused’ children

in institutions thereby segregating them from their non-disabled peers, or excluded them from school altogether.” Jennifer Rosen Valverde, *A Poor IDEA: Statute of Limitations Cement Second-Class Remedial Scheme for Low-Income Children in the Third Circuit*, 41 Fordham Urb. L.J. 599, 600-01 (2013).

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 country had wholly excluded millions of children with a multitude of disabilities or placed those children in programs where they received no educational benefit. IDEA, adopted in response to this problem, “seeks to ensure that all children with disabilities have available to them a free appropriate public education [FAPE].” 20 U.S.C. § 1400(d)(1)(A)).

Thus, “IDEA was intended to reverse this history of neglect” for children with disabilities. *Schaffer*, 546 U.S. at 52. As IDEA expressly recognizes in its findings, before IDEA was enacted “the educational needs of millions of children with disabilities were not being fully met” for a variety of reasons, including some children who “were excluded entirely from the public school system and from being educated with their peers” and others whose “undiagnosed disabilities prevented” them “from having a successful educational experience.” 20 U.S.C. § 1400(c)(2)).

IDEA provides detailed requirements for the development of an appropriate Individualized Educational Program (IEP) for every student and powerful

procedural protections when school districts fail to follow statutory and regulatory directives. The most recent data from 2024 shows that more than eight million students in the United States have IEPs.³ IDEA is a powerful entitlement statute because it “requires school districts to provide the individualized services necessary to get a child to that floor [of access to education], regardless of the costs, administrative burdens, or program alterations required.” *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013).

IDEA confers upon courts and administrative hearing officers broad equitable authority to provide appropriate relief. *Forest Grove Sch. Dist.*, 557 U.S. at 239. Such relief “would include a prospective injunction directing the school officials to develop and implement at public expense an [appropriate] IEP.” *Burlington*, 471 U.S. at 370. For those children whose parents have the means and the opportunity to provide special education and/or related services for their children while pursuing an IDEA remedy, reimbursement of funds spent on unilateral placements and services are available. *Id.*; *Forest Grove Sch. Dist.*, 557 U.S. at 240; *Leggett v. District of Columbia*, 793 F.3d 59, 63-64 (D.C. Cir. 2015) (awarding placement at residential school that met student’s needs when school district failed to identify alternative appropriate placement).

³ <https://www.advocacyinstitute.org/blog/>

B. IDEA Procedures Address What Happens When Parents and School Districts Dispute What Constitutes a FAPE

Because Congress knew that the IEP planning process “would not always produce a consensus between the school officials and the parents, and that, in any disputes, the school officials would have a natural advantage, Congress incorporated an elaborate set of what it labeled ‘procedural safeguards’ to insure the full participation of the parents and proper resolution of substantive disagreements.” *Sch. Comm. of Burlington v. Dep’t of Educ.*, 471 U.S. 359, 368 (1985); *see also* 20 U.S.C. § 1415. These procedural safeguards for resolving disagreements over offers of FAPE are found in 20 U.S.C. section 1415 and include prior written notice obligations for school districts and allow for state complaints or administrative due process hearings to resolve disputes. They also include requirements for the student’s education during the pendency of these disagreements. *See* 20 U.S.C. § 1415(j).⁴

In *Burlington*, the Supreme Court held that parents who disagree with the school district’s proposed placement and fund unilateral placements may recover tuition reimbursement from the school districts as a remedy. 471 U.S. at 370-71.

⁴ In the context of non-reimbursement cases, students are to be maintained in their last agreed upon and implemented IEP during the pendency of any due process hearing absent an agreement otherwise by the parties. This means that the school district is obligated to continue monitoring the student’s progress and providing the last agreed upon and implemented services.

Twelve years later, in 1997, Congress amended IDEA to require, in most circumstances, parents to provide advance notice, either at an IEP meeting or in writing ten business days before placement, when they assert that the school district's proposed IEP and placement will not provide their children with FAPE and they "seek to enroll their child in a private school at public expense." 20 U.S.C. § 1412(a)(10)(C)(iii)(I)(aa) & (bb). Because, as the Supreme Court recognized, the review process is "ponderous," 471 U.S. at 370, by the time a case gets to federal district court multiple school years may have passed.

C. Congress amended IDEA to promote settlement

Congress amended IDEA in 1997 to add mediation as an option for the procedural safeguards to promote resolution of cases, among other things. IDEA provides that, if both parties are willing, school districts and parents may mediate their disputes, including matters arising in a due process complaint (DPC). 20 U.S.C. § 1415(e).

Seven years later, Congress wanted to further encourage settlement. To promote early resolution of disputes and realize the statutory goal of enabling children to receive FAPE at the earliest opportunity, Congress amended IDEA in 2004 to add a resolution session, 20 U.S.C. § 1415(f)(1)(B). The resolution session must be convened within fifteen days after parents file a due process hearing complaint and gives the parties an opportunity to resolve the case before a hearing. *See* 20 U.S.C. § 1415(f)(1)(B)(i)(I). The House Committee stated that "parents and

local educational agencies should be able to easily resolve issues when they are brought to the attention of appropriate individuals with the school system.” H.R. Report No. 108-77, at 114 (April 29, 2003). As the United States Department of Education explained, the purpose of the resolution meeting is to give the school district a chance to “better understand and possibly resolve, the dispute without either side expending *additional* time and resources in the due process hearing.”⁵

An IEP meeting was held on March 7, 2023. That meeting was the first time the parents had to engage in the collaborative IEP process to discuss the Parents’ observations when they toured the proposed placement of Riley. Although the parents had toured the school on February 1, 2023, just one day before they signed the settlement agreement, they did not meet with the district to discuss their concerns until March 7, 2023.

II. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR WHEN IT DETERMINED THAT THE PARENTS WAIVED ALL CLAIMS FOR THE BALANCE OF THE 2022-23 SCHOOL YEAR AND COULD NOT BRING CLAIMS RESULTING FROM THE MARCH 7, 2023 IEP MEETING.

The district court erred in holding that the Parents could not bring claims resulting from the IEP resulting from the March 7, 2023 IEP meeting. In the instant

⁵ *Letter to Irby*, 55 IDELR 264 (OSEP Feb. 12, 2010) (*emphasis added*). <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/irby021210dueprocess1q2010.pdf>.

case, the parties settled IDEA claims with reimbursement for New Leaf Academy or BlueFire Wilderness Therapy for fees incurred from May 2, 2022 until the date the Settlement Agreement was executed. February 3, 2023. The Settlement Agreement explicitly contemplated that the student would continue a residential educational placement; it provided that as of February 3, 2023, the “Student shall be a parentally placed private school student.” It also provided that the Parents could reenroll the student for the balance of the 2022-2023 school year by providing written notice and requesting an IEP meeting.

The settlement agreement explicitly allowed Parents to reenroll in the school district and request an IEP meeting to discuss an IEP for the balance of the 2022-2023 school year. It did not restrict Parents from requesting residential placement at the IEP meeting or from requesting funding for the current placement. The settlement agreement stated that it “addresses the parents’ claims for reimbursement for costs incurred “for the time period up and through the date of the final execution of this Agreement.” Thus, by its explicit terms, it does not address any costs incurred following February 3, 2023. The record reflects that the school district sought to include a waiver of prospective educational services, but the parents rejected any such waiver and insisted that the settlement only cover the period through February 3, 2023.

The district court’s reliance on *J.G. v. L.A. Unified School Department*, 2023

U.S. Dist. LEXIS 1194433, 2023 WL 8125847 (C.D. Cal.) is misplaced as the parents in that case sought to challenge the same IEP that had been the subject of the settlement agreement, the February 20, 2018, IEP. There had been no subsequent IEP meeting or any amendment to the IEP; the parents challenged the same February 20, 2018, IEP in the second due process complaint. *Id.* at *16, Further, in that case, the parents had consented to implementation of the February 20, 2018, IEP. Here, in contrast, the parents never consented to the school district’s proposed placement and instead received reimbursement for their unilateral placement through February 3, 2023, as part of the settlement agreement. The record is clear that the parents rejected the school district’s proposed IEP; the agreement provides for the parents to continue their child’s residential placement at their own expense, at least until the next IEP meeting.

The district court held that San Diego owed E.T. nothing at the March 7, 2023 meeting because a single annual IEP already existed and the meeting was a mere “amendment.” That holding misreads the statute and is foreclosed by this Court’s recent decision in *L.B.*, and should be overturned.

The IDEA requires the IEP Team to review the child’s IEP “periodically, but not less frequently than annually,” and to “revise[]” it “as appropriate” to address, among other things, “any lack of expected progress,” “information about the child provided to, or by, the parents,” and “the child’s anticipated needs.” 20 U.S.C. §

1414(d)(4)(A); *accord* 34 C.F.R. § 300.324(b). The annual review is a floor, not a ceiling: the District must “have in effect” an appropriate IEP for each child at all times, § 1414(d)(2)(A), and the amendment mechanism the District invokes is merely an alternative means of making changes “rather than by redrafting the entire IEP,” § 1414(d)(3)(D), (F)—not an exemption from the substantive duty to review and revise.

In *L.B.*, this Court held that parents’ “participation in IEP meetings created a continuous obligation” on the District “to offer [the student] a FAPE,” and rejected the precise distinction the court below drew here between an IEP “meeting” and an IEP “document.” 1168 F.4th at 1161. “[T]he very purpose of ‘IEP meetings,’” the Court explained, “is to develop or revise an IEP that offers a student a FAPE,” and whether parents request an IEP using the words “meeting” or “document” “is irrelevant.” *Id.* at 1161–62. *L.B.* arose from this same District on materially indistinguishable facts—repeated IEP meetings at which San Diego re-offered its prior Riley placement to a residentially placed student—and was decided after the ruling below. It controls here.

The statute reinforces the point. An IEP “may not be changed unilaterally”; a district that wishes to maintain or modify its offer must reopen the IEP process through the participatory Team rather than simply carry a prior plan forward. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1197–98 (9th Cir. 2017)

(citing § 1414(d)(3)(D), (F)). Nor does E.T.’s status as a parentally placed student excuse the duty: when a child has been placed in private school by her parents, “all they have to do is ask for an IEP, and then the district must prepare one.” *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125, 1138 (9th Cir. 2021). The parents asked. San Diego’s duty to offer a FAPE followed.

II. THE DISTRICT COURT ERRED IN FINDING THAT THE MARCH 7, 2023 IEP MEETING DID NOT RESULT IN A NEW IEP FOR THE PARENTS TO CHALLENGE

While the district court determined that the March 7, 2023, was an amended IEP and not a new IEP, IDEA does not distinguish between an amended IEP and a new IEP. It simply provides that changes to an IEP may be made “by amending the IEP rather than by redrafting the entire IEP.” 20 U.S.C. § 1414(d)(3)(F).

IDEA specifically encourages parents who seek public funding reimbursement for tuition expenses to provide school districts with notice of the unilateral placement at public expense and provides that reimbursement “may be reduced or denied” if the parent has not provided notice of both the unilateral placement and their intent that the placement be at public expenses. 20 U.S.C. § 1412(a)(10)(C). This notice requirement is intended not only to allow the school district one last opportunity to reconsider the placement offer, but also so that all parties are aware that a *Burlington* dispute may arise within the next two years (the IDEA’s statute of limitations period). 20 U.S.C. § 1415(f)(3)(c).

While some parents immediately pursue their claims for unilateral placement, for a variety of reasons, some parents wait to file, and some parents never pursue their claims beyond the written notice. In reimbursement cases, hearing officers must consider whether (a) the school district offered a FAPE to the student in a timely manner prior to the placement; and if it did not, (b) whether the private placement was appropriate. *See* 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c); *see also Burlington*, 471 U.S. at 369-70. And so, there are many factors that go into the parents' calculus, including the efficacy of the unilateral placement, the school district's ongoing efforts and potential for meeting the student's FAPE needs in the future, and the student's updating needs once he or she is placed in a presumably appropriate private setting.

The assessment data, progress monitoring, and proposed IEPs are all fundamental evidentiary elements of any hearing officer's consideration of those two questions about procedural compliance and substantive appropriateness. While parents and school districts may disagree about the appropriateness of any program offer, the ultimate beneficiary of the procedural protections is the student, for whom these procedures are intended to ensure ongoing supportive monitoring and program planning in line with any potential changes to his or unique educational needs, and a hearing officer who will have before them up-to-date information about a student's present levels, needs, and IEP offers. 20 U.S.C. § 1414(d)(4)(A)(ii).

This need for updated information was acknowledged by the First Circuit which (in the first unilateral placement case) noted the utility of annual reviews of IEPs while evaluating the reimbursement claims raised by the parents in the first year where the IEP dispute arose, and for subsequent years. *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 794 (1st Cir. 1984), *aff'd sub. nom., Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985). The First Circuit noted that the failure of the school district to prepare IEPs for the years after the initial IEP dispute was initiated and the lack of reviewable findings and decisions for those subsequent years posed difficulties for courts to evaluate ongoing reimbursement claims for those subsequent years. *Id.* It explained the annual IEP reviews requirement:

pending review of an earlier IEP, local educational agencies should continue to review and revise IEPs in accordance with applicable law, at least in the absence of a stipulation between the parties providing for how the outcome of the suit will affect later years. Without an IEP as a starting point, the court is faced with a mere hypothesis of what the Town would have proposed and effectuated during the subsequent years, an hypothesis which at the time of trial would have the unfair benefit of hindsight. Such a rear view proposal could not comply with the statutory requirements for drafting IEPs, could not have been submitted in a timely fashion to the parents, and cannot constitute evidence at trial. IEPs for subsequent years could be appealed to the state agency; and appeals from the state agency's 'findings and decisions' on the subsequent IEPs could be consolidated with the original appeal to the district court.

Id.

“The continuation of the IEP process during the pendency of litigation may assist in promoting settlements.” *Id.* And so, once invoked (as was done for E.T.), a student’s rights to ongoing IEP procedures should be honored, regardless of form, because of the real-world impact on the due process procedures (e.g. promoting settlement and helping hearing officers with up-to-date information collected and documented by the LEA as part of the IEP process).

By not following through with the procedural requirements once the family asked for IEP meetings after the unilateral placement, San Diego interfered with the team’s own ability to make informed IEP offers in the future, and with the parents’ abilities to participate in the IEP planning process,⁶ as well as denying the hearing officer updated present levels, goals, and IEP offers to evaluate. The extent to which San Diego’s offer continued to be that which was in place prior to the unilateral placement, procedurally speaking, the District was denying FAPE. *See Katonah-Lewisboro*, 742 F. Supp. 2d at 442-43.

Substantively, the hearing officer and district court never fully evaluated whether E.T.’s in-district offer of programming as appropriate given her worsening

⁶ Parental participation is linked to the creation of a robust IEP document; a clear IEP offer is key to the family’s ability to use the IEP to monitor and enforce their child’s rights. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017). This ongoing monitoring and enforcement is of critical importance, even in unilateral placement cases.

presentation, though such a substantive evaluation would be made harder by the fact that the district did not create an updated IEP document with updated present levels and needs. Given what information is available from those who were recording contemporaneously what E.T. looked like (the two residential placements E.T. accessed), it is clear that she required a more restrictive setting than the February 2020 IEP offered as of the time of the October and November IEP meetings. Parents had the right to challenge the newly amended IEP regardless of whether there were any meaningful changes from the prior IEP. In fact, new IEPs can be identical to a prior IEP and amended IEPs can provide for completely different educational services and placements.

III. THE DISTRICT COURT ERRED IN FINDING THERE WERE NO NEW CIRCUMSTANCES THAT WERE DISCUSSED AT THE MARCH 7, 2023 IEP AND REQUIRED RECONSIDERATION OF THE DISTRICT'S OFFER OF PLACEMENT

The IEP meeting is designed to be a collaborative process, where parents bring their concerns to the attention of the relevant school district staff and have a discussion that considers the parents' position. Here, the district court notes that the parents toured the district's proposed placement, the Riley School, on February 1, 2023, and concludes that the parents knew about their concerns about the placement prior to the date the settlement agreement was signed. But the parents did not have the opportunity to discuss their concerns with the IEP team prior to signing the

settlement agreement. They knew that they could bring their concerns for consideration to the next IEP meeting for discussion and consideration by the IEP team. As the district court noted, they thought that the Riley school was not appropriate because its student body was primarily composed of boys with behavior problems and was therefore not appropriate for a girl who was working through trauma related to sexual assault.

At the time of the settlement agreement, they had not had the opportunity to discuss their concerns with the IEP team and get the school district's cogent response as to why it was offering the Riley program and rejected the parents' proposed placement. The IEP team is required to consider Parents' position, including their reasons for objecting to the Riley program. The school members of the IEP team were required to give a cogent reason for preferring a school that was primarily composed of boys with behavior problems for a girl who was working through trauma related to sexual assault. *See Endrew F.*, 380 U.S. at 404. It was at this meeting that the family informed the district they would be re-enrolling E.T. and making another unilateral placement. Transcript, p. 22.

Even on the District's own premise—that E.T. must identify something new—the settlement does not bar her claims. By its terms, the Agreement released only claims “arising from or related to [E.T.’s] education . . . up to and through the date of final execution,” February 3, 2023. It did not purport to waive E.T.’s right to

a FAPE for the remainder of the school year, and the parents never consented to the District’s placement as appropriate. A release of accrued claims does not silently reach a later, distinct FAPE offer. In *N.W. v. District of Columbia*, the court held that a release worded like this one waived claims only for the settled period and did “not waive claims relating to a FAPE for the [next] school year, even if those claims are based on events that took place before” the cutoff. 107 F. Supp. 3d 141, 148 (D.D.C. 2015). The court rejected as “bizarre” and “arbitrary” the very reading the District advances here—that a family’s rights should turn on “the fortuity . . . of when [the district] prepared the IEP.” *Id.* at 149. Other courts agree that re-offering the same program that was offered before the release after a release was signed does not immunize the later offer from challenge. See *Melanie B. v. Georgetown Indep. Sch. Dist.*, No. 1:17-CV-438-LY, 2018 WL 2027745 (W.D. Tex. May 1, 2018); cf. *S. Kingstown Sch. Comm. v. Joanna S.*, 773 F.3d 344, 354 (1st Cir. 2014) (a settlement release is construed by its actual terms and scope).

The District’s contrary position also improperly collapses two distinct offers into one. Each IEP is “a snapshot, not a retrospective,” judged by “what was, and was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted.” *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). That the May 2022 placement may have been defensible when made says nothing about whether the identical placement remained appropriate on March 7, 2023, after E.T.’s

circumstances had continued to develop. The two offers must be evaluated on their own facts. *See id.* (assessing successive plans separately).

**A. The District Court Committed Legal Error in
Disregarding the Broad Procedural Protections
Acknowledged by the Ninth Circuit**

The district court's decision below is at odds with the broader procedural protections this Court has acknowledged parents are afforded in *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047 (2012) wherein it held that procedural compliance is required regardless of whether a parent acts in a way that empowers or supports the school district's efforts to meet its procedural obligations. 689 F.3d 1047, 1055 (9th Cir. 2012). There, this Court held that "shift[ing] the burden for substantive compliance with the IDEA from the [school district] to [the student's] parents" was improper. *Id.* at 1055. The *Anchorage* court made clear that a parent's exercise of procedural rights, even if the parent is demanding or in disagreement with the school does not excuse a school district from fulfilling its statutory obligations to the student, which include providing the student with updated IEP offers and progress monitoring as outlined in 20 U.S.C. § 1414. *Anchorage*, at 1055-57.

Here, the parents were engaging in the IEP process, and the district clearly understood the family to continue to be interested in convening IEP meetings and discussing E.T.'s ongoing and future needs. Per *Anchorage*, to eliminate E.T.'s IEP

rights because her parents had rejected the same proposed placement in a prior due process proceeding “would be antithetical to the IDEA’s purposes to penalize parents—and consequently children with disabilities—for exercising the very rights afforded to them under the IDEA.” *Id.* at 1056, citing 20 U.S.C. § 1400(d)(1)(B).

IEP meetings are, definitionally, the type of special education decision by a school district that requires the creation of a prior written notice document—in this case, the IEP document. Compare 20 U.S.C. § 1415(b)(3) and § 1414(d) (making no reference to a “document” except in the context of an amendment); *see also Union School Dist. v. Smith*, 15 F.3d 1519, 1526 (9th Cir. 1994) (holding that the requirement for a formal written offer in an IEP document “has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.”)

The Supreme Court has long held that procedural violations are as important as the Act’s substantive requirement that students be appropriately educated; 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 v. Doe*, 484 U.S. 305,

311 (1988). *See also* 20 U.S.C. § 1415. Here, Parents had accumulated additional support for their preferred placement since the prior IEP meeting and had a record of their daughter's success in the programs that they had selected. They thought that the school district would consider this information that had not been presented at the prior IEP meeting that led to the due process proceeding and agree with them on the appropriate program and placement for their child

The requirement that school districts develop, and review IDEA eligible students' IEPs extends even to situations where there are unresolved disagreements regarding the program offerings. This Court has stated, “[n]either the IDEA nor its implementing regulations condition this—or any other—duty expressly imposed on a state or local educational agency upon parental cooperation or acquiescence in the agency's preferred course of action.” *Anchorage*, 689 F.3d at 1051.

CONCLUSION

In this case, parents requested the IEP meetings with the full, shared expectation that an IEP would be developed. As such, E.T. has not done any of the specific things Congress set out that would terminate her rights to an ongoing offer of FAPE. The district court erred in holding otherwise and this Court should reverse that ruling.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 15th day of September 2026. I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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