IDENTITY AND INTEREST OF *AMICUS CURIAE*

The *amici* that submit this brief are nonprofit organizations dedicated to ensuring a free and appropriate public education for all children with disabilities, as guaranteed by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq*.[1]

Congress' intent in enacting IDEA was to ensure an appropriate education for all children with disabilities. That goal will be frustrated if the courts fail to apply properly the provision in IDEA that mandates an award of attorney's fees to prevailing parties. Families with children who have disabilities often are disadvantaged economically and cannot obtain counsel without the benefit of the fee-shifting provision of IDEA. *Amici* support the position taken by plaintiffs-appellants that the District Court erred in this case by denying an award of attorney's fees to plaintiffs' counsel.

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[1] The *amici* joining in this brief are the Alliance for the Betterment of Citizens with Disabilities; the American Civil Liberties Union of New Jersey; ARC of New Jersey; Bazelon Center for Mental Health Law; Becoming Educated and Motivated About Education; the Center for Law and Education; the New Jersey Center for Outreach and Services for the Autism Community; Disability Rights Advocates; the Education Law Center; the Essex County Bar Association; International Dyslexia Association; the National Association of Protection and Advocacy Systems; the New Jersey Coalition for Inclusive Education, Inc.; New Jersey Protection and Advocacy, Inc.; the Rutgers School of Law-Newark Special Education Clinic; the Special Education Leadership Council; the Statewide Parent Advocacy Network; and United Cerebral Palsy Associations. Their specific missions and activities are described briefly in the Appendix to this Brief.

AUTHORITY TO FILE UNDER FED. R. APP. P. 29(a)

Amici file this brief with the consent of the parties pursuant to Federal Rule of Appellate Procedure 29(a).

SUMMARY OF ARGUMENT

Congress intended that the courts construe liberally federal statutes that provide for awards of attorney's fees to prevailing plaintiffs in civil rights cases. This includes the fee-shifting provision of IDEA. In this case the District Court should have construed the fee provision to provide for a fully compensatory fee award, because plaintiffs were prevailing parties and obtained substantial relief that enforced important rights under IDEA, and no special circumstances existed that would justify denial of a fee.

A properly liberal construction of the fee statute would recognize the importance of the rights secured by IDEA and the futility of that statute if parents are left unable to obtain counsel to enforce their rights. The need for counsel is particularly acute in IDEA cases because the families that need its protection are often disadvantaged economically and therefore unable to retain counsel without the potential for a fee award under the statute.

ARGUMENT

I. CONGRESS MANDATED A LIBERAL INTERPRETATION OF IDEA'S FEE-SHIFTING PROVISION TO ENSURE EFFECTIVE ENFORCEMENT OF THE STATUTE.

For nearly a half-century Congress has expressed a clear and consistent intent: statutes that allow for awards of attorney's fees to prevailing plaintiffs, in cases brought to enforce civil rights protected by federal law, should be liberally construed to promote the "vigorous enforcement" of "the Nation's fundamental" laws. *See* S. REP. NO. 94-1011, at 2-4 (1976).

That principle applies with equal force to the fee-shifting provision of IDEA, which provides that "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B). In this case the District Court failed to give that provision the liberal construction that Congress intended. Instead it restricted the right to a fee award in a manner inconsistent with the manifest purpose of the statute and Congressional intent. This approach, if approved, would severely restrict the ability of children with disabilities to enforce their federally protected rights.

An award of attorney's fees to a prevailing plaintiff in a federal civil rights case protects fundamental federal rights by allowing every plaintiff, including those of limited means, to enforce the rights protected by Congress.

Congress expressed this principle clearly when it amended 42 U.S.C. § 1988, the Civil Rights Attorney's Fees Awards Act of 1976, on which the fee provision in IDEA is based.[2] Congress concluded:

> In many cases arising out of our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.

S. REP. NO. 94-1011 at 2. Congress allowed fee awards to encourage plaintiffs to prosecute their claims, recognizing that a prevailing plaintiff in a civil rights case obtains relief

> not for himself [or herself] alone but also as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority. If successful plaintiffs were routinely forced to bear their own attorney's fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the Federal courts.

Id. at 2-3 (quoting *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968)).

Congress instructed the courts to use the broadest and most effective remedies available to achieve the goals of the civil rights statutes. S. REP. NO. 94-1011, at 3. Because Congress wanted to encourage plaintiffs to enforce their

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[2] *See John T. v. Delaware. County Intermediate Unit*, 318 F.3d 545, 556-57 (3d Cir. 2003).

rights, a successful party in a civil rights case "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." S. REP. NO. 94-1011, at 5 (*quoting Newman*, 390 U.S. at 402).

A liberal reading of these fee statutes is necessary to attract competent and experienced lawyers to handle civil rights cases – including cases under IDEA – because even though they involve fundamental rights, the financial recoveries seldom are comparable to those achieved in tort or commercial cases. *See Hensley*, 461 U.S. at 447 (Brennan, J. dissenting) (the "legislative history of § 1988 reveals Congress' basic goal that attorneys should view civil rights cases as essentially equivalent to other types of work they could do, even though the monetary recoveries in civil rights cases …would seldom be equivalent to recoveries in most private-law litigation"). *See also Copeland v. Marshall*, 641 F.2d 880, 915 (D.C. Cir. 1980) ("Congress intended that the attorney's fee awards be sufficient to attract competent counsel").

The fee provision in IDEA is substantively identical to section 1988 and the fee shifting provisions in other civil rights laws. It therefore must be read to evidence the same legislative intent. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983) ("[t]he standards set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a "prevailing party"); *John T.*, 318 F.3d at 556-57 (the term "prevailing party" in IDEA follows

the same language in other fee-shifting statutes, and "IDEA's legislative history shows that Congress intended that courts interpret the term 'prevailing party' consistently with other fee-shifting statutes");[3] *Woodside v. School Dist. of Phila. Bd. of Educ.*, 248 F.3d 129, 131 (3d Cir. 2001) ("the policy behind the IDEA's fee-shifting provision is to encourage the effective prosecution of meritorious claims").[4]

It follows that the fee provision in IDEA must be construed liberally, to favor the award of fees to a prevailing plaintiff unless special circumstances justify a denial of fees. *See, e.g., New Jersey Coalition of Rooming & Boarding House Owners v. Mayor of Asbury Park*, 152 F.3d 217, 225 (3d Cir. 1998). *See also Dennis v. Chang*, 611 F.2d 1302, 1306 (9th Cir. 1980) (fee-shifting provisions should be construed liberally since Congress "instructed the courts to use the broadest and most effective remedies available to achieve the goals" of the civil rights laws); *Mid-Hudson Legal Svcs., Inc. v. G. & U., Inc.*, 578 F.2d 34, 37 (2d

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[3] *John T.* held that the Supreme Court's decision in *Buckannon Board and Care Home, Inc. v. West Va. Dep't of Health and Human Res.*, 532 U.S. 598 (2001), which dealt with fees under the Fair Housing Amendments Act and the Americans with Disabilities Act, applies to claims for attorney's fees under IDEA. *John T.*, 318 F.3d at 557.

[4] There is nothing in the most recent amendments to IDEA that would affect the rights of a prevailing party to attorney's fees, nor is there anything in the legislative history of those amendments to suggest any intention to limit fee awards.

Cir. 1978) (same); *Keyes v. School Dist. No. 1*, 439 F. Supp. 393, 401 (D. Colo. 1977) (legislative history of civil right statutes supports liberal interpretation of fee award provisions).

The rights extended by IDEA to families of children with disabilities are no less important than the rights advanced by other fee award statutes. Congress determined that millions of American children with disabilities were not receiving an appropriate education and responded to that pressing national problem by enacting the fundamental protections in the Education For All Handicapped Children Act, Pub. L. No. 94-142, the precursor to IDEA. That statute greatly expanded the educational opportunities available to children with disabilities by requiring states and local agencies to provide them a free and appropriate public education, and by establishing important procedural safeguards to ensure those children and their families could enforce their right to an appropriate education.

In *Smith v. Robinson*, 468 U.S. 992 (1984), the Supreme Court held that parents who prevailed in disputes concerning the adequacy of the education provided to their children with disabilities could not recover attorney's fees because the Act did not specifically provide for it. Concluding that *Smith* "seriously impairs the ability of parents to enforce their handicapped child's rights under P.L. 94-142," Congress enacted the Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, which adopted the fee shifting provision now

codified at 20 U.S.C. § 1415(i)(3)(B). Congress' intent was to increase "the possibility that poor parents will have access to the procedural rights in EHA [the precursor to IDEA], thereby making the laws' protections available to all." H.R. REP. NO. 99-296, at 5 (1985).

A study commissioned by Congress shows that attorney's fee awards are particularly important in IDEA cases because the families protected by that statute are disproportionately poor and thus among the least able to protect their rights by retaining counsel. The U.S. Department of Education reported to Congress that a disproportionate number of the children with disabilities in the nation's educational systems are members of economically disadvantaged families: "[S]tudents in special education have different demographic characteristics from school-aged children overall. Students with disabilities are more likely than other students to be … from low-income families …." U.S. Department of Education, TWENTY-SECOND ANNUAL REPORT TO CONGRESS OF THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, at II-37 (2000) (citations omitted) ("DOE Report"). The Department noted that "a large proportion of children entering early intervention [to obtain disability–related services] were in families who received some kind of public assistance (42%) …." *Id.* at IV, 9-10.

Congress understood when it enacted IDEA's fee provision that many cases litigated under the statute would involve economically disadvantaged families. It enacted the fee provision in part to address their needs:

> When a parent is poor, of a minority group, or not well-versed in the intricacies of the law and regulations, the inequities of the situation are greatly increased. Increasing the possibility that such a parent may have access to representation when necessary is one step toward making the procedural rights of Public Law 94-142 work for everyone.

131 Cong. Rec. S. 10396 (1985) (remarks of Sen. Simon).

Protecting these families through liberal application of the fee provision is even more important today than it was when the provision was enacted. Nationally, in 2004, there were only 686 low-cost or free attorneys who regularly accepted IDEA cases. 150 Cong. Rec. S. 5351 (2004) (remarks of Sen. Kennedy). Of course all prevailing parties, not just those of limited means, are entitled to fee awards under IDEA (and under similar provisions in other civil rights statutes), and in fact the fee provision in IDEA benefits all families because the availability of fee awards in a broad class of cases makes it possible for counsel to concentrate their practices in this area, and to develop expertise and skills relevant to all IDEA cases.

The legal counsel made available through the fee provision in IDEA have proven critical to the protection of the rights afforded by that statute. The General Accounting Office concluded that "[t]here was a noticeable difference in

parents' success rates in administrative hearings when they were represented by attorneys in their disputes with school districts." United States General Accounting Office, SPECIAL EDUCATION: THE ATTORNEY FEES PROVISION OF PUBLIC LAW 99-372, Report No. HRD-90-22BR, Nov. 24, 1989, at 26. Between 1984 and 1988, 42 to 44 percent of the families involved in administrative proceedings under IDEA prevailed in those proceedings, but 59 percent of the prevailing parties were represented by counsel. *Id*.

A study of cases in Illinois between 1997 and 2002 found that representation by counsel was the single most important factor in determining whether parents won their due process hearing. It showed that 50.4% of parents represented by counsel prevailed compared to only 16.8% of the parents without lawyers. M. Archer, *Access and Equity in the Due Process System: Attorney Representation and Hearing Outcomes in Illinois*, 1997-2002 (Dec. 2002). The study demonstrated that representation by counsel gives parents a fair chance to prevail in disputes with school districts – which are represented by attorneys in 94% of all hearings. *Id*. at p. 7.[5]

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[5] A recent GAO study relating to the Social Security Administration's (SSA) disability benefits claims found similar results, and these differences were magnified when the claimants were African-American. "[A]mong [SSA] claimants without attorneys, African-American claimants were significantly less likely to be awarded benefits than white claimants." For example, an African-American claimant without an attorney is one-half as likely to be awarded benefits

(continued…)

II. PLAINTIFFS OBTAINED SIGNIFICANT RELIEF IN THIS CASE, AND A LIBERAL APPLICATION OF THE FEE PROVISION, CONSISTENT WITH CONGRESSIONAL INTENT, SHOULD HAVE RESULTED IN A FULL AWARD OF FEES.

The District Court failed to give effect to the clear Congressional intent of liberal construction of the fee provision. That proper construction would allow for fee awards whenever parents successfully enforce IDEA, as Plaintiffs did here. The District Court erred in refusing a fee award, and ruling, if accepted, could significantly restrict fee awards in other cases and undermine the Congressional purpose to protect the essential rights afforded by IDEA.

The Supreme Court consistently has held that a prevailing party is "one who has been awarded some relief by the court." *Buckannon Board & Care Home*, 532 U.S. at 603. This is a "generous formulation" under which a plaintiff is entitled to a fee award if he succeeds on any significant issue. *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 489 U.S. 782, 791-92 (1989).

(..continued)
than a white claimant without an attorney. United States General Accounting Office, SSA DISABILITY DECISION MAKING: ADDITIONAL STEPS NEEDED TO ENSURE ACCURACY AND FAIRNESS OF DECISIONS AT THE HEARING LEVEL, Report No. GAO-04-14, Nov. 12, 2003, at 2, 42. Since Congress has recognized that minority children are "identified as having mental retardation and emotional disturbance at rates greater than their white Counterparts," the need for attorney's fees to assure adequate representation is even greater in IDEA cases. 20 U.S.C. §1400 (C)(12)(C).

The case law recognizes that in a narrow class of cases, in which the relief obtained by the plaintiff is "purely technical" or "de minimis," a fee award may be denied. *Id.* at 792. Congress did not expressly adopt this doctrine; it appears only in case law. The District Court purported to rely upon that doctrine here to deny a fee, but its decision went far beyond the Supreme Court's limited guidance on what constitutes "de minimis" relief. The District Court adopted an interpretation so limiting that many parents who obtain full relief under IDEA nonetheless may be ineligible to receive attorney's fees.[6]

There is nothing in the legislative history of the IDEA fee provision that calls for the restrictive application to which the District Court resorted. S. REP. NO. 99-112 (1985). Congress did not define "prevailing party" but explained that the term is to be construed consistent with *Hensley*, the Supreme Court decision applying section 1988. *Hensley* held that the determination of a prevailing party is a "generous formulation." *Hensley*, 461 U.S. at 433. Once a party is determined to be a prevailing party, the court is to determine what

[6] The Supreme Court did not define "de minimis" or "purely technical relief," but illustrated its point by citing case law that found an award of attorney's fees inappropriate where a party attacked an antiquated and rarely enforced curfew statute to bring the offending statute into compliance with constitutional standards. The Court cited to another case that held that "nuisance settlements" do not give rise to prevailing party status. *Id*. at 792.

attorney's fees are "reasonable." *Id*. at 436. Under this rule, attorney's fees are the rule rather than the exception for a plaintiff that obtains any relief.

Hensley explained further that plaintiffs typically are found to be prevailing parties if "they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley*, 461 U.S. at 433. The Court cited *Nadeau v. Helgemoe*, 581 F.2d 275 (1st Cir. 1978), in which the appeals court held that a prevailing party includes one "who is partially successful in achieving the relief sought." *Id*. at 278.

The Congressional reports that accompany the Civil Rights Attorney's Fee Awards Act of 1976 provide additional guidance on the definition of "prevailing party." Congress explained that a prevailing party may include someone who has vindicated his or her rights through a consent judgment. S. REP. NO. 94-1011, at 5. A prevailing party also includes someone who prevails "on an important matter in the course of litigation, even when he [or she] ultimately does not prevail on all issues." *Id*.

The District Court ignored this legislative history and case law, which calls for a generous formulation of the concept of a "prevailing party," and instead applied an extreme application of the "de minimis" doctrine. This can be seen clearly by comparing the relief sought by plaintiff to the relief awarded.

Plaintiffs sought: (a) the immediate return of P.N. to his prior educational placement; (b) reimbursement for the cost of all psychological services received by P.N.; (c) a meeting to develop a Section 504 accommodation plan for P.N.; (d) the payment for P.N.'s psychologist to participate in the meeting; (e) an independent child study team evaluation; (f) accommodations for P.N.'s behavior; (g) tutoring to make up for Defendant's failure to provide home instruction during P.N.'s suspension; and (h) transportation to and from the evaluations. Plaintiffs received *all* of this relief, including the award of a psychiatric evaluation with Defendant to pay the cost. *See* Office of Administrative Law, CONSENT ORDER, November 1, 2001; Office of Administrative Law, CONSENT ORDER, February 13, 2002. This relief is far more than a "technical victory," and goes far beyond the minimal requirement that a prevailing party succeed on "any" significant issue that achieves some of the benefits sought in bringing suit. *Texas State Teachers*, 489 U.S. at 791-92.

The District Court's conclusion that attorney's fees should be denied because "Plaintiffs did not prevail beyond the basic requirements of the IDEA" is a non sequitur. If a school district meets the basic requirements of IDEA, a plaintiff has no reason to bring an IDEA action at all, and a fee award should not even be an issue. The very purpose of the fee-shifting provision is to empower plaintiffs to do exactly what these Plaintiffs did: enforce IDEA's "basic requirements" when a

school district *does not* honor these requirements. Under the District Court's analysis, a plaintiff who challenges a school district's failure to comply with IDEA may not receive attorney's fees even if he or she obtains all the relief sought, if plaintiffs sought only what they were entitled to under the Act. The District Court reached this conclusion without citing any case law or legislative history. It has no support in either, and makes no sense. The District Court's decision simply is inconsistent with the purpose of IDEA and its legislative history.

Each item of relief obtained here is substantial. With respect to the award of a judicially sanctioned IEP, the District Court erroneously relied on *J.C. v. Mendham Township Bd. of Educ.*, 29 F. Supp. 2d 214 (D.N.J. 1998), to conclude that the IEP was not substantial relief supporting a fee award. In *J.C.* the court ruled that an acceptable IEP did not confer prevailing party status because the IEP was not "judicially sanctioned," but instead was developed by the parties through out-of-court negotiations. *J.C.* is not on point here, because this IEP was part of the Court's Consent Order and therefore was judicially mandated relief.

The fact that Defendant was ordered to provide health professionals and pay for their services on behalf of P.N. is another significant victory. The Supreme Court has held that under IDEA children with disabilities are entitled to reimbursement to ensure their right to a free appropriate education. *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 372 (1985). The District

Court focused wrongly on the amount of the reimbursement instead of on the fact that Plaintiffs were awarded reimbursement for the full cost of the service to which they were entitled under IDEA.

The fact that the administrative law judge also ordered P.N. returned to school after several weeks of an indefinite suspension, and awarded P.N. a meeting to develop a Section 504 accommodation plan, a psychiatric evaluation, and transportation costs to and from the evaluations, demonstrates the significant victory that Plaintiffs achieved. Particularly when viewed in light of the clear command of Congress to apply the fee provision in IDEA liberally, the relief awarded in this case clearly was not "de minimis."[7]

The District Court's decision in this case is inconsistent with Congress' stated intent to ensure that "poor parents will have access to the procedural rights in [the statute] thereby making the laws' protections available to all." H.R. REP. NO. 99-296, at 5 (1985). It should be reversed and the case

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[7] In *J.O. v. Orange Township Bd. of Educ.*, 287 F.3d 267 (3d Cir. 2002), this Court denied attorneys' fees because the return of C.O. to school was only interim-relief and was not merit-based. *Id*. at 274. The Court considered the relief to be emergent relief similar to a stay-put provision, because the ALJ's order explicitly provided that it was effective "only until an appropriate placement could be found for C.O. or until a 'further Order of an [ALJ], or until the issuance of a final decision in this matter.'" *Id*. Here, the ALJ disposed completely of the matter and P.N. was put back in school unconditionally. Unlike *J.O.*, nothing was "contingent upon the consent of the parties." *Id*. at 272. Further, these Plaintiffs won substantial additional relief beyond the return of P.N. to school.

remanded with instructions to enter a fully compensatory fee award to plaintiffs' counsel.

CONCLUSION

For the reasons stated in appellants' brief and in this brief, *amici curiae* respectfully urge this Court to reverse the judgment of the District Court and to remand this matter for entry of a fully compensatory award of attorney's fees.

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