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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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L.E.; E.S., Individually and as Parents and  
Natural Guardians of M.S., a minor,

*Appellants,*

—v.—

RAMSEY BOARD OF EDUCATION; BRUCE DEYOUNG, Individually and as Superintendent of Schools;  
FREDERICKA SHPETNER, Individually and as Director of Special Services; JOAN W. MOORE,  
Individually and as Learning Disabilities Teacher-Consultant and Case Manager,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NO. 03-CV-2605 (FSH)

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**FILED UNDER SEAL**

**BRIEF IN SUPPORT OF APPELLANTS AND REVERSAL ON BEHALF OF *AMICI CURIAE* CENTER FOR  
LAW AND EDUCATION, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, EDUCATION LAW  
CENTER, EDUCATION LAW CENTER OF PENNSYLVANIA, NEW JERSEY COALITION FOR INCLUSIVE  
EDUCATION, INC., NEW JERSEY PROTECTION AND ADVOCACY, INC., PENNSYLVANIA  
PROTECTION AND ADVOCACY, INC., AND STATEWIDE PARENT ADVOCACY NETWORK**

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SAIBER SCHLESINGER SATZ  
& GOLDSTEIN, LLC  
One Gateway Center - 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311  
(973) 622-3333  
Attorneys for *Amici Curiae*

On Brief:

Sean R. Kelly, Esq.  
Bryan P. Schroeder, Esq.

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
IDENTITY AND INTEREST OF AMICI CURIAE.....	1
AUTHORITY TO FILE UNDER FED. R. APP. P. 29(a) .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	3
I.    THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT MANDATES THE INCLUSION OF CHILDREN WITH DISABILITIES IN TYPICAL EDUCATIONAL SETTINGS TO THE MAXIMUM EXTENT APPROPRIATE .....	3
II.   A FULL INCLUSIVE EDUCATIONAL ENVIRONMENT IS HIGHLY BENEFICIAL TO CHILDREN WITH DISABILITIES .....	4
A.   Children With Disabilities Who Are Educated In A Fully Inclusive Environment Are Substantially More Likely To Make Greater Academic and Cognitive Achievements .....	6
B.   Children With Disabilities Who Are Educated In A Fully Inclusive Environment Are Substantially More Likely To Have Improved Social and Behavioral Interactions With Children Without Disabilities .....	9
III.  A FULLY INCLUSIVE EDUCATIONAL ENVIRONMENT IS HIGHLY BENEFICIAL TO THE CHILDREN WITHOUT DISABILITIES WHO ARE PART OF THE INCLUSION PLACEMENT .....	12
CONCLUSION .....	17

## **TABLE OF AUTHORITIES**

### **CASES**

<u>Girty v. Sch. District of Valley Grove</u> , 163 F. Supp. 2d 527 (W.D. Pa. 2001), <u>aff'd</u> 60 Fed. Appx. 889 (3d Cir. 2002).....	3
<u>Oberti v. Board of Education</u> , 995 F.2d 1204 (3d Cir. 1993) .....	3
<u>T.R. v. Kingswood Township Board of Education</u> , 205 F.3d 572 (3d Cir. 2000).....	3

### **STATUTES**

20 U.S.C. § 1412(a)(5).....	2, 3
-----------------------------	------

### **REGULATIONS**

34 C.F.R. §§ 300.550 .....	3
N.J.A.C. § 6A:14-4.2 .....	3

### **COURT RULES**

Fed. R. App. P. 29(a) .....	1
Fed. R. App. P. 32(a)(7).....	19

### **RESEARCH ARTICLES**

<i>Educating Children with Autism</i> , Commission on Behavioral & Social Sciences & Education: National Research Council (2001) .....	12
<i>Educating Students with Disabilities in General Education Classrooms: A Summary of the Research</i> , Western Regional Resource Center (1998), available at <a href="http://interact.uoregon.edu/wrrc/AKInclusion.html">http://interact.uoregon.edu/wrrc/AKInclusion.html</a> (last visited June 10, 2005) .....	4, 5
<i>Still Separate &amp; Unequal: The Education of Children with Disabilities in New Jersey</i> , 2004 Report of the New Jersey Council on Development Disabilities (hereinafter “ <i>Still Separate &amp; Unequal</i> ”) (2005), available at <a href="http://www.njddc.org/sep-uneq.htm">http://www.njddc.org/sep-uneq.htm</a> (last visited June 10, 2005) .....	5, 6

S. Deno, G. Marutama, & C. Cohen, <i>Educating Students with Mild Disabilities in General Education Classrooms: Minnesota Alternatives</i> , 57 EXCEPTIONAL CHILDREN 150 (1990) .....	8, 11
I.M. Evans, et al., <i>Children's Perception of Fairness in Classroom &amp; Interpersonal Situations Involving Peers with Severe Disabilities</i> , 19 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 326-32 (1994) .....	14, 15
M.S. Fishbaugh & P. Gum, <i>Inclusive Education in Billings, MT: A Prototype for Rural Schools</i> , ERIC Reproduction Serv. No. ED 369-636 (1994), available at <a href="http://www.eric.ed.gov">http://www.eric.ed.gov</a> (last visited June 10, 2005) .....	7
M. Fisher & L.H. Meyer, <i>Development &amp; Social Competence After Two Years For Students Enrolled in Inclusive and Self-Contained Educational Programs</i> , THE FOUNDATIONS OF INCLUSIVE EDUCATION: A COMPENDIUM OF ARTICLES AN EFFECTIVE STRATEGIES TO ACHIEVE INCLUSIVE EDUCATION (D.L. Ryndak & D. Fisher, eds., 2003) .....	11
D. Fryxell & C.H. Kennedy, <i>Placement Along the Continuum of Services &amp; Its Impact on Students' Social Relationships</i> , 20 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 259 (1995) .....	10
M.F. Giangreco, et al., <i>"I've Counted Jon: " Transformational Experiences of Teachers Educating Students with Disabilities</i> , 59 EXCEPTIONAL CHILDREN 364, 368 (1993) .....	15
L.J. Hall, <i>A Descriptive Assessment of Social Relationships in Integrated Classrooms</i> , 19 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 302 (1994) .....	11
E. Helmstetter, C.A. Peck & M.F. Giangreco, <i>Outcomes of Interactions with Peers with Moderate or Severe Disabilities: A Statewide Survey of High School Students</i> , 19 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS 263 (1994) .....	15, 16
T.M. Hollowood, et al., <i>Use of Instructional Time in Classrooms Serving Students with and without Severe Disabilities</i> , 61 EXCEPTIONAL CHILDREN 242 (1995) .....	13
P. Hunt & F. Davis-Farron, <i>A Preliminary Investigation of IEP Quality &amp; Content Associated with Placement in General Education Versus Special Education Classes</i> , 17 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS 247 (1992) .....	7
P. Hunt, et al., <i>Evaluating the Effects of Placement of Students with Severe Disabilities in General Education Versus Special Classes</i> , 19 Journal of the Association of Persons with Severe Disabilities 200 (1994) .....	5, 7, 10
J.R. Jenkins, M.L. Speltz & S.L. Odom, <i>Effects of Social Integration on Preschool Children with Handicaps</i> , 55 EXCEPTIONAL CHILDREN 420 (1989) .....	9

J. Jenkins, et al., <i>Accommodations for Individual Differences without Classroom Ability Groups: An Experiment in School Restructuring</i> , 60 EXCEPTIONAL CHILDREN 344 (1992) .....	9
D.K. Lipsky & A. Gartner, <i>National Study on Inclusion: Overview &amp; Summary Report</i> , National Center on Educational Restructuring & Inclusion Bulletin 2(2) (1995) .....	7, 9, 14
J. McDonnell, et al., <i>Academic Engaged Time of Students with Low-Incidence Disabilities in General Education Classes</i> , 35 Mental Retardation 18 (1997) .....	10
Y. Rafferty, V. Piscitelli & C. Boettcher, <i>The Impact of Inclusion on Language Development and Social Competence Among Preschoolers with Disabilities</i> , 69 Exceptional Children 467 (2003) .....	4, 9
L. Saint-Laurent, et al., <i>Academic Achievement Effects of an In-Class Service Model on Students with and without Disabilities</i> , 64 EXCEPTIONAL CHILDREN 239 (1998) .....	13, 14
M.N. Sharpe, J.L. York & J. Knight, <i>Effects of Inclusion on the Academic Performance of Classmates without Disabilities</i> , 15 Remedial & Special Education 281 (1994) .....	13
R.E. Slavin, <i>Neverstreaming: Preventing Learning Disabilities</i> , 53 EDUCATIONAL LEADERSHIP 4-7 (1996) .....	12
W. Stainback, et al., <i>Concerns About Full Inclusion: An Ethnographic Investigation</i> , in CREATING AN INCLUSIVE SCHOOL (R.A. Villa & J.S. Thousand eds., 1995) .....	15
D. Staub, et al., <i>Four Portraits of Friendship at an Inclusive School</i> , 19 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS 314 (1994) .....	10, 11
N. Waldron & C. Cole, <i>The Indiana Inclusion Study Year One Final Report</i> , Indiana Institute on Disability & Community, Bloomington, IN (2000) .....	14
N.L. Waldron & J. McLeskey, <i>The Effects of an Inclusive School Program on Students with Mild and Severe Learning Disabilities</i> , 64 EXCEPTIONAL CHILDREN 395 (1998) .....	8
G. Wolpert, <i>The Educational Challenges Inclusion Study</i> , National Down Syndrome Society (1996) .....	4

## **IDENTITY AND INTEREST OF *AMICI CURIAE***

The *amici curiae* that submit this brief are nonprofit organizations dedicated to ensuring a free appropriate public education in the least restrictive environment for all children with disabilities, as guaranteed by the Individuals with Disabilities Education Act (hereinafter “IDEA”), 20 U.S.C. § 1400 et seq. (West 2004).<sup>1</sup>

Congress’ intent in enacting IDEA was to ensure an appropriate education for all children with disabilities in the least restrictive environment. That goal will be frustrated if this Court does not reverse the district court’s decision that failed to recognize that Michael can be educated in an inclusive preschool together with his typically developing peers.

To provide a context for this Court’s decision, *amici* share their expertise regarding the extensive body of research recognizing that children with disabilities benefit greatly when educated together with their non-disabled peers.

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

Authority to file this *Amici Curiae* Brief is made by way of Motion for Leave to File pursuant to Federal Rule of Appellate Procedure 29(a).

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<sup>1</sup> The *amici* joining this brief are the Center for Law and Education, the Council of Parent Advocates and Attorneys, Education Law Center, Education Law Center of Pennsylvania, New Jersey Coalition for Inclusive Education, Inc., New Jersey Protection and Advocacy, Inc., Pennsylvania Protection and Advocacy, Inc., and the Statewide Parent Advocacy Network. Their specific missions, activities and interests are described briefly in the Appendix to this Brief.

## SUMMARY OF ARGUMENT

The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (hereinafter “IDEA”), mandates that Michael be educated in the regular education classroom with supplementary aids and services, because that is the least restrictive environment (“LRE”) in which he can be educated satisfactorily. See 20 U.S.C. § 1412(a)(5)(A).

The present appeal asks this Court to affirm the fundamental principle that children who are eligible for special education have the right to be educated with their non-disabled peers to the maximum extent appropriate as required by IDEA, and specifically 20 U.S.C. § 1412(a)(5)(A), which mandates the inclusion of children with disabilities in a general education classroom. This Court's interpretation of the inclusion mandate in this case will affect a significant number of children with disabilities who live within the Third Circuit. Because many of these children still do not have access to the “least restrictive environment” mandated by IDEA, *amici* respectfully submits this brief in support of the Appellants, L.E., E.S., and Michael.

To begin excluding and segregating preschool children like Michael in settings with only students with disabilities, at precisely the time he is reaching the age where his academic and social development are beginning to flourish, denies Michael a meaningful opportunity to attain appropriate academic and social skills.

## ARGUMENT

### I. **THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT MANDATES THE INCLUSION OF CHILDREN WITH DISABILITIES IN TYPICAL EDUCATIONAL SETTINGS TO THE MAXIMUM EXTENT APPROPRIATE.**

IDEA mandates that:

to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the child is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A).

The Third Circuit has long recognized that IDEA mandates that states “establish procedures to assure that, to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled . . . .” Oberti v. Bd. of Educ., 995 F.2d 1204, 1213 (3d Cir. 1993). See also T.R. v. Kingswood Township Bd. of Educ., 205 F.3d 572 (3d Cir. 2000) (reversing in part a district court decision and determining that the trial court inadequately inquired into whether regular classroom options were available within a reasonable distance); Girty v. Sch. Dist. of Valley Grove, 163 F.Supp.2d 527 (W.D. Pa. 2001) (entering judgment for parents and holding that school district failed to make reasonable accommodations for student in regular classrooms, and show that moving student



to special education class would provide enhanced educational benefits), aff'd 60 Fed. Appx. 889 (3d Cir. 2002). Indeed, federal and state regulations echo the inclusion preference of IDEA. See 34 C.F.R. §§ 300.550 to 300.556 (federal provisions); N.J.A.C. § 6A:14-4.2 (New Jersey provisions).

## **II. A FULLY INCLUSIVE EDUCATIONAL ENVIRONMENT IS HIGHLY BENEFICIAL TO CHILDREN WITH DISABILITIES.**

Inclusion refers to the “process of placing children with disabilities in the same classes or programs as their typically developing peers and providing them with the necessary services and supports.” Y. Rafferty, V. Piscitelli & C. Boettcher, *The Impact of Inclusion on Language Development and Social Competence Among Preschoolers with Disabilities*, 69 *Exceptional Children* 467 (2003). See also G. Wolpert, *The Educational Challenges Inclusion Study*, National Down Syndrome Society, at 1 (1996) (defining inclusion as placing students with disabilities at their home school with their age and grade peers with the availability of the supports necessary to ensure an appropriate educational experience for the students). In essence, inclusion provides that “all students in a school's attendance area are full members of that school community and each student participates equitably in the opportunities and responsibilities of the general education environment.” *Educating Students with Disabilities in General Education Classrooms: A Summary of the Research*, Western Regional Resource

Center, at 1 (1998), available at <http://interact.uoregon.edu/wrrc/AKInclusion.html> (last visited June 10, 2005).

A substantial body of research demonstrates that inclusion greatly aids students with disabilities obtain an appropriate education. P. Hunt, et al., *Evaluating the Effects of Placement of Students with Severe Disabilities in General Education Versus Special Classes*, 19 Journal of the Association of Persons with Severe Disabilities 200, 210-14 (1994). Specifically, students with disabilities in an inclusive setting demonstrate acquisition of academic, social and communication skills and increased interaction with peers. *Id.* Indeed, students with disabilities educated in an inclusive environment are better developed and prepared for educational and social experiences in the future. *Id.*

Most recently, the New Jersey Council on Developmental Disabilities (“NJCDD”) issued a report criticizing the State’s inclusion policies and extolling the benefits of inclusion for children with disabilities. *Still Separate & Unequal: The Education of Children with Disabilities in New Jersey*, 2004 Report of the New Jersey Council on Development Disabilities (hereinafter “*Still Separate & Unequal*”), at 8 (2005), available at <http://www.njddc.org/sep-uneq.htm> (last visited June 10, 2005). The NJCDD report found that “[t]he greatest problem area [in New Jersey] remains the large percentage of children sent out-of-district to private and public segregated special education schools.” *Still Separate &*

*Unequal*, supra, at 5. In fact, the NJCDD cited to research that suggests “community membership at age 10 predicts community membership as an adult[, hence] the more separate the child’s education at age 10, the more likely they will be in the same type of setting at age 25.” *Still Separate & Unequal*, supra, at 5. The report found that New Jersey places nearly four times as many preschoolers in out-of-district segregated placements as the national average. Id. at 14.

This conclusion tragically predicts what is in store for Michael. In contrast to this misguided policy of educational segregation, *Still Separate & Unequal* highlights how children with disabilities who were placed in general educational settings achieved substantial social, developmental and academic success from their inclusion experiences. Id.

**A. Children With Disabilities Who Are Educated In A Fully Inclusive Environment Are Substantially More Likely To Make Greater Academic and Cognitive Achievements.**

Besides the enormous social benefits associated with inclusion, see infra, at 9, fully inclusive placements provide significant academic gains for students with disabilities as compared to segregated programs. Even before students with disabilities are assessed, an inclusive setting has substantial advantages. One study found that the “individualized educational programs” (“IEPs”) for students with disabilities placed in general education classrooms contain more academic objectives and improved curriculum content than the IEPs developed for students

in segregated placements. P. Hunt, et al., *Evaluating the Effects of Placement of Students with Severe Disabilities in General Education Versus Special Classes*, supra, at 210-213; P. Hunt & F. Davis-Farron, *A Preliminary Investigation of IEP Quality & Content Associated with Placement in General Education Versus Special Education Classes*, 17 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS 247-53 (1992). See also D.K. Lipsky & A. Gartner, *National Study on Inclusion: Overview & Summary Report*, National Center on Educational Restructuring & Inclusion Bulletin 2(2), 1-8 (1995) (finding students with a range of disabilities who were part of an inclusion placement experienced generally positive academic outcomes).

Another study concluded that students with mild disabilities who are part of an inclusion setting demonstrate academic gains that are reflected in achievement test data. M.S. Fishbaugh & P. Gum, *Inclusive Education in Billings, MT: A Prototype for Rural Schools*, ERIC Reproduction Serv. No. ED 369-636 (1994), available at <http://www.eric.ed.gov> (last visited June 10, 2005). During the 1992-1993 school year, a Montana school district implemented a full inclusion program for students with disabilities in one of its elementary schools. The study recorded the progress of certain students with disabilities and concluded that several students with disabilities made “phenomenal two- to three-year gains” toward their

IEP goals. Id. In addition, achievement test data demonstrated consistent academic gains by the included students with disabilities. Id.

A similar study analyzed the outcome of efforts by Minnesota schools to modify general education classrooms to improve inclusion for students with mild disabilities. S. Deno, G. Marutama, & C. Cohen, *Educating Students with Mild Disabilities in General Education Classrooms: Minnesota Alternatives*, 57 EXCEPTIONAL CHILDREN 150-61 (1990). In that study, comparisons of students' achievement in reading showed that students with mild disabilities did better in the inclusive programs. Id.

Research suggests that the academic area where children with disabilities have the greatest improvement due to an inclusive setting is reading. One study compared the reading performances of children with learning disabilities from an inclusion program with children with disabilities from a segregated classroom. N.L. Waldron & J. McLeskey, *The Effects of an Inclusive School Program on Students with Mild and Severe Learning Disabilities*, 64 EXCEPTIONAL CHILDREN 395-405 (1998). The students from the inclusion program showed substantially greater gains in reading than their peers from the segregated resource room. Id. Moreover, a greater number of students from the inclusion program progressed in reading at a rate that paralleled their grade-level peers without disabilities, than did their segregated counterparts. Id.

Finally, in another study, students with disabilities in an inclusive school “demonstrated significantly superior gains on several . . . scales, including reading vocabulary, total reading, and language, with a marginally significant effect on reading comprehension[,]” than did students in a segregated environment. J. Jenkins, et al., *Accommodations for Individual Differences without Classroom Ability Groups: An Experiment in School Restructuring*, 60 EXCEPTIONAL CHILDREN 344, 355 (1992). Notably, these positive effects were not limited to children with disabilities, but also were experienced by the non-disabled and remedial students in the inclusive school. *Id.* See also *infra*, at 12.

**B. Children With Disabilities Who Are Educated In A Fully Inclusive Environment Are Substantially More Likely To Have Improved Social and Behavioral Interactions With Children Without Disabilities.**

Overall, research comparing the developmental and social progress of children with disabilities in inclusive and segregated settings has found that inclusion provides at least as much educational benefit, and often much greater educational benefit, than segregation. Rafferty, Piscitelli & Boettcher, *The Impact of Inclusion on Language Development and Social Competence Among Preschoolers with Disabilities*, *supra*, at 469; J.R. Jenkins, M.L. Speltz & S.L. Odom, *Effects of Social Integration on Preschool Children with Handicaps*, 55 EXCEPTIONAL CHILDREN 420 (1989). See also Lipsky & Gartner, *National Study on Inclusion: Overview & Summary Report*, *supra*, at 1-8. In fact, students with

disabilities in fully inclusive placements show significantly higher levels of involvement in school activities and integrated school environments than the segregated students. P. Hunt, et al., *Evaluating the Effects of Placement of Students with Severe Disabilities in General Education Versus Special Classes*, supra, at 210-213.

Students with severe disabilities educated in inclusive placements have more social contacts and richer friendship networks that include peers without disabilities than their counterparts in self-contained classrooms. See D. Fryxell & C.H. Kennedy, *Placement Along the Continuum of Services & Its Impact on Students' Social Relationships*, 20 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 259-69 (1995).

Other studies have shown that students with disabilities initiated and engaged in social interactions with peers and adults without disabilities more frequently than their peers in separate settings. Id. See also J. McDonnell, et al., *Academic Engaged Time of Students with Low-Incidence Disabilities in General Education Classes*, 35 Mental Retardation 18-26 (1997) (finding that students with disabilities in inclusive settings had more frequent and substantial interactions with peers without disabilities); D. Staub, et al., *Four Portraits of Friendship at an Inclusive School*, 19 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE

HANDICAPS 314-25 (1994) (noting that inclusion facilitated peer friendships between students with and without disabilities).

A study focused on efforts by Minnesota schools to modify general education classrooms to enhance inclusive opportunities for students with mild disabilities, Deno, Marutama & Cohen, *Educating Students with Mild Disabilities in General Education Classrooms: Minnesota Alternatives*, supra, 150-61, demonstrated that students with disabilities in the inclusive programs had more social success than the segregated students. More recent and geographically diverse research reinforces this conclusion. In one study, researchers evaluated forty (40) students with disabilities over the course of two years and concluded that the students in the inclusive placement made significant gains and realized higher social competence scores. M. Fisher & L.H. Meyer, *Development & Social Competence After Two Years For Students Enrolled in Inclusive and Self-Contained Educational Programs*, THE FOUNDATIONS OF INCLUSIVE EDUCATION: A COMPENDIUM OF ARTICLES AND EFFECTIVE STRATEGIES TO ACHIEVE INCLUSIVE EDUCATION (D.L. Ryndak & D. Fisher, eds., 2003).

One study identified “reciprocal” and “positive relationships” between children with disabilities and their classmates. L.J. Hall, *A Descriptive Assessment of Social Relationships in Integrated Classrooms*, 19 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 302-13 (1994). Another study



suggests that students with mild disabilities need early intervention programs to maintain development with their peers. R.E. Slavin, *Neverstreaming: Preventing Learning Disabilities*, 53 EDUCATIONAL LEADERSHIP 4-7 (1996). More recently, a report by the National Research Council (“NRC”) noted that early intervention was essential for treating children with autistic spectrum disorder. *Educating Children with Autism*, Commission on Behavioral & Social Sciences & Education: National Research Council, at 221 (2001). Specifically, the NRC recommended that “young children with an autistic spectrum disorder should receive specialized instruction **in a setting in which ongoing interactions occur with typically developing children.**” Id. (emphasis added).

As shown by the preceding research findings, the education objectives for preschool children—i.e., language, cognitive, social or motor development—may be achieved by inclusion in a general educational environment. Young children with disabilities are better served by an inclusive placement than a segregated, self-contained classroom.

### **III. A FULLY INCLUSIVE EDUCATIONAL ENVIRONMENT IS HIGHLY BENEFICIAL TO THE CHILDREN WITHOUT DISABILITIES WHO ARE PART OF THE INCLUSION PLACEMENT.**

In addition to the benefits provided by inclusion to children with disabilities, typically developing children also receive advantages and benefits from inclusive settings. It is typically uncontroverted that developing students experience no

negative academic effects from being part of an inclusion placement. Moreover, the non-disabled students experienced great benefits, having developed a genuine capacity for friendship and greater acceptance of individual differences.

Inclusion results in no significant negative academic or behavior effects due to non-disabled students being placed in an inclusive setting with peers with disabilities. See, e.g., M.N. Sharpe, J.L. York & J. Knight, *Effects of Inclusion on the Academic Performance of Classmates without Disabilities*, 15 Remedial & Special Education 281-87 (1994) (noting that standardized tests and report cards used to determine any type of academic impact suggested no negative effects on non-disabled, elementary school students being educated in inclusive classes); T.M. Hollowood, et al., *Use of Instructional Time in Classrooms Serving Students with and without Severe Disabilities*, 61 EXCEPTIONAL CHILDREN 242-52 (1995) (finding the quantity of time spent on educational instruction for students without disabilities was not adversely affected by their placement in an inclusion program with students with severe disabilities).

Several studies—examining the academic impact of inclusion placement on third grade students without disabilities—even suggest that inclusion provides significant academic benefits to the non-disabled students. See, e.g., L. Saint-Laurent, et al., *Academic Achievement Effects of an In-Class Service Model on Students with and without Disabilities*, 64 EXCEPTIONAL CHILDREN 239-253

(1998). The findings of this study revealed that the reading and mathematics performances of the students without disabilities from the inclusion program were substantially better than their non-disabled peers who were educated in a traditional, segregated classroom. Id. A two-year study that investigated the effects of inclusive programs for students without disabilities revealed that students with and without disabilities educated in inclusive settings made as great or greater academic gains than students educated in segregated schools, and that students without disabilities made significantly greater academic progress in mathematics. N. Waldron & C. Cole, *The Indiana Inclusion Study Year One Final Report*, Indiana Institute on Disability & Community, Bloomington, IN (2000). See also Lipsky & Gartner, *National Study on Inclusion: Overview & Summary Report*, supra, at 1-8.

Aside from the academic benefits of inclusion, research clearly establishes that non-disabled students in an inclusive environment experience substantial social and developmental benefits as well. Numerous studies have examined the attitudes and relationships stemming from inclusion, and generally researchers have found that students without disabilities experience positive gains in such settings. See, e.g., I.M. Evans, et al., *Children's Perception of Fairness in Classroom & Interpersonal Situations Involving Peers with Severe Disabilities*, 19 JOURNAL OF THE ASSOCIATION OF PERSONS WITH SEVERE HANDICAPS 326-32

(1994) (finding that children who attended a fully inclusive program were able to display “sophisticated judgments and suggestions” when dealing with common scenarios involving peers with severe disabilities); M.F. Giangreco, et al., “*I’ve Counted Jon:*” *Transformational Experiences of Teachers Educating Students with Disabilities*, 59 EXCEPTIONAL CHILDREN 364, 368 (1993) (assessing teachers who had a student identified as having a severe disability in their class for a year and noting that the teachers reported that “the participation of a student with severe disabilities in their class had a positive impact on the child with disabilities, as well as on the child's classmates.”)

Besides improved social interaction and development, research also reveals that students develop “positive attitudes” toward students with disabilities based on the experience of learning in an inclusive environment. See E. Helmstetter, C.A. Peck & M.F. Giangreco, *Outcomes of Interactions with Peers with Moderate or Severe Disabilities: A Statewide Survey of High School Students*, 19 JOURNAL OF THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS 263-76 (1994); W. Stainback, et al., *Concerns About Full Inclusion: An Ethnographic Investigation*, in *CREATING AN INCLUSIVE SCHOOL* (R.A. Villa & J.S. Thousand eds., 1995). Hence, inclusion can lead to enhanced student relationships and greater understanding and empathy between the non-disabled students and their peers with disabilities. Helmstetter, Peck & Giangreco, *Outcomes of Interactions with Peers*

*with Moderate or Severe Disabilities: A Statewide Survey of High School Students*, supra, at 273-76.

Under IDEA and the cases discussed in Point I, supra, this Court must evaluate whether or not Michael can receive a meaningful benefit from education in the regular class and whether the Board failed to provide a “free and appropriate public education” for Michael in the “least restrictive environment” possible. To assist the Court in making this evaluation, the Court should be apprised that research conclusively demonstrates that students with disabilities, who are included in regular classes with appropriate aids and services, make significantly more progress than their peers in segregated classes. Indeed, the research discussed herein demonstrates that inclusion not only benefits students with disabilities, but it also provides significant advantages to typically developing students.

## 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 enter summary judgment in favor of the Appellants.



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SEAN R. KELLY, ESQ.

**SAIBER SCHLESINGER SATZ  
& GOLDSTEIN, LLC**

One Gateway Center - 13<sup>th</sup> Floor

Newark, New Jersey 07102-5311

(973) 622-3333

[srk@saiber.com](mailto:srk@saiber.com)

Attorneys for *Amici Curiae*

DATED: June 13, 2005

## **APPENDIX**

### **NAMES AND DESCRIPTIONS OF ORGANIZATIONS JOINING THIS BRIEF AS *AMICI CURIAE***

#### **Center for Law and Education**

The Center for Law and Education ("CLE") is a national advocacy organization that works with parents, advocates and educators to improve the quality of education for all students, and in particular, students from low-income families and communities. Throughout its history, CLE has been a recognized leader in advancing the rights of students with disabilities -- from federal policy through state and local implementation. As one of the few national organizations that is firmly rooted in both disability rights and school reform, CLE has focused increasingly on bringing the two together in order to help ensure, for example, that students with disabilities are included in the general education curriculum and supported in overcoming the low expectations and other barriers that have historically prevented them from meeting the high standards set for their non-disabled peers.

#### **Council of Parent Attorneys and Advocates**

Council of Parent Attorneys and Advocates ("COPAA") is an independent, non-profit organization of attorneys, advocates and parents in 43 states and the District of Columbia established to improve the quality and quantity of legal assistance for parents of children with disabilities. COPAA represents the interests of all students with disabilities. Its primary objective is to integrate the unique strengths of parent, advocate and attorney to improve the availability and quality of legal assistance to students. COPAA's interest in this case is two-fold: to enhance opportunities for inclusion of students with disabilities in public education and to preserve those rights afforded to students under the IDEA.

#### **Education Law Center**

Education Law Center ("ELC") is a not-for-profit law firm in New Jersey specializing in education law. Since its founding in 1973, ELC has acted on behalf of disadvantaged students and students with disabilities to achieve education reform, school improvement and protection of individual rights. ELC seeks to accomplish these goals through research, public education, technical assistance,

advocacy and legal representation. In addition to serving as lead counsel to 350,000 urban school children who are plaintiffs in New Jersey's school funding case, Abbott v. Burke, 164 N.J. 84 (2000), ELC provides a full range of direct legal services to parents involved in disputes with public school officials. ELC serves approximately 400 individual clients each year, primarily in the area of special education law. Recent education cases litigated by ELC before the Third Circuit include M.A. v. State-Operated Sch. Dist. Of Newark, 344 F. 3d 335 (3d Cir. 2003) and A.W. v. Jersey City Pub. Sch., 341 F. 3d 234 (3d Cir. 2003), and ELC recently submitted an amicus brief in the case of P.N. v. Clementon Bd. Of Educ., Docket No. 04-4705. Ensuring that students with disabilities are educated in the least restrictive environment is a priority for ELC.

### **Education Law Center of Pennsylvania**

For thirty (30) years, the Education Law Center of Pennsylvania ("ELC-PA"), a not-for-profit education advocacy organization, has worked to improve quality and equity in Pennsylvania's public schools. Supported in large part by Pennsylvania's Protection and Advocacy System, ELC-PA provides free legal assistance to children with disabilities and their families. Each year ELC-PA counsels approximately 3,500 families, special education advocates, and allied professionals on the rights of students with disabilities to special education or, for younger children, early intervention programs. In selected cases, ELC-PA represents children and families at special education hearings and in court, including a number of cases before the United States Court of Appeals for the Third Circuit. ELC-PA also provides technical assistance to public and private attorneys who represent these families. Each year ELC-PA interacts with thousands of families and professionals through training and other outreach activities. Ensuring that children with disabilities, and especially the youngest children, are educated effectively together with their non-disabled peers, in accordance with the requirements of the IDEA, is of great importance to ELC-PA's client community.

### **New Jersey Coalition for Inclusive Education, Inc.**

Established in 1995, the New Jersey Coalition for Inclusive Education, Inc. ("NJCIE") is a nonprofit association with membership consisting of several hundred parents and professionals. Its mission is to promote education for children with disabilities in general education settings in their neighborhood schools. NJCIE advocates for inclusive classrooms in which students recognize one



another's individual differences and strive to support one another's efforts. Among its activities, NJCIE provides professional development to schools in research-based practices to support students and teachers in classrooms across the state, provides information to families and community members about inclusion and its benefits, and supports opportunities for collaborative networking of parents, higher education faculty and school professionals.

### **New Jersey Protection and Advocacy, Inc.**

New Jersey Protection & Advocacy, Inc. ("NJP&A") is a nonprofit, consumer-directed corporation dedicated to protecting the civil, human and legal rights of individuals with disabilities. NJP&A is the designated protection and advocacy system for individuals with disabilities in New Jersey pursuant to 42 U.S.C. §§ 15041 - 15045, 42 U.S.C. §§ 10801 - 10807, 29 U.S.C. § 732, 29 U.S.C. § 794(e), and 29 U.S.C. § 2201. NJP&A provides legal representation and advocacy services to eligible individuals with disabilities seeking special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and/or relief under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a, and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. NJP&A also provides training for parents to enable them to understand and effectively represent the interests of their children with disabilities in the educational system.

### **Pennsylvania Protection and Advocacy, Inc.**

Pennsylvania Protection and Advocacy ("PP&A") is a non-profit organization designated by the Commonwealth of Pennsylvania since the mid-1970s to protect and advocate for the rights of persons with developmental disabilities (such as mental retardation) pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15043. Through its Children's Project and through a contract with ELC-PA, PP&A provides help to thousands of children with disabilities and their families in special education and early intervention matters. Ensuring that children with significant disabilities are educated in the "least restrictive environment" as required by federal law is a major PP&A priority.

## **Statewide Parent Advocacy Network**

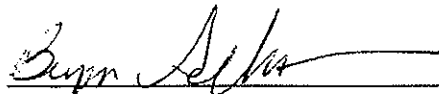
The Statewide Parent Advocacy Network ("SPAN") is a non-profit organization assisting and advocating for children and families throughout New Jersey. SPAN's mission is to empower families and inform and involve professionals and other individuals interested in the healthy development and education rights of children, particularly children with the greatest need due to disability; poverty; discrimination based on race, sex, or language; geographic location; or other special circumstances. As the federally-funded Parent Training and Information Center for families of children with special needs, SPAN provides information, training, technical assistance, advocacy and support for families to assist them to become more effective advocates for their children's educational rights under the Individuals with Disabilities Education Act and the New Jersey Special Education Code.

**CERTIFICATION OF ADMISSION TO THE BAR OF THE UNITED  
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

BRYAN P. SCHROEDER certifies as follows:

1. On the date indicated below, I have filed an application for admission to the Bar of the United States Court of Appeals for the Third Circuit Court of Appeals pursuant to *Local Appellate Rule* 46.1(e) with the Clerk for the United States Court of Appeals for the Third Circuit.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



BRYAN P. SCHROEDER, ESQ.  
SAIBER SCHLESINGER SATZ  
& GOLDSTEIN, LLC

One Gateway Center - 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311  
(973) 622-3333  
[bps@saiber.com](mailto:bps@saiber.com)  
Attorneys for *Amici Curiae*

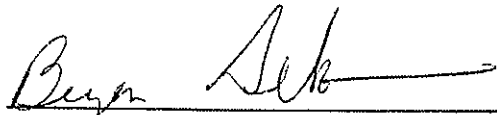
DATED: June 13, 2005

**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULES OF  
APPELLATE PROCEDURE 29(c) & 32(a)**

BRYAN P. SCHROEDER certifies as follows:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,471 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5) because this brief was prepared in 14 point Times New Roman, a proportionally spaced typeface, using Microsoft Word 2003 word processing software.



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**BRYAN P. SCHROEDER, ESQ.  
SAIBER SCHLESINGER SATZ  
& GOLDSTEIN, LLC**

One Gateway Center - 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311  
(973) 622-3333  
[bps@saiber.com](mailto:bps@saiber.com)  
Attorneys for *Amici Curiae*

DATED: June 13, 2005

## CERTIFICATION OF FILING AND SERVICE

BRYAN P. SCHROEDER, of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey, and an associate of the firm of Saiber Schlesinger Satz & Goldstein, LLC, attorneys for *amici curiae* in the above - captioned matter.

2. On the date indicated below, I caused an original and ten (10) copies of the Brief of *Amici Curiae* in Support of Appellants to be filed with the United States Court of Appeals for the Third Circuit by Federal Express overnight service addressed to:

Office of the Clerk  
United States Court of Appeals for the Third Circuit  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

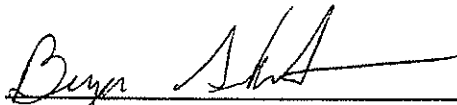
3. On the date indicated below, I caused two (2) copies of the Brief of *Amici Curiae* in Support of Appellants to be served on:

Eric L. Harrison, Esq.  
Methfessel & Werbel  
3 Ethel Road  
Edison, New Jersey 08818

Lisa K. Eastwood, Esq.  
Eastwood Scandariato & Steinberg  
723 Kennedy Boulevard  
North Bergen, New Jersey 07047

via Federal Express overnight service.

4. I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

  
BRYAN P. SCHROEDER, ESQ.  
SAIBER SCHLESINGER SATZ  
& GOLDSTEIN, LLC  
One Gateway Center - 13<sup>th</sup> Floor  
Newark, New Jersey 07102-5311  
(973) 622-3333  
[bps@saiber.com](mailto:bps@saiber.com)  
Attorneys for *Amici Curiae*

DATED: June 13, 2005