No. 06-3274
No. 06-3738

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN M., by his parents and next friends,
CHRISTINE M. and MICHAEL M.,
Plaintiffs-Appellees
vs.
BOARD OF EDUCATION OF EVANSTON
TOWNSHIP HIGH SCHOOL DISTRICT 202,
EVANSTON TOWNSHIP HIGH SCHOOL
DISTRICT 202, and ERIC WITHERSPOON,
Defendants-Appellants

Consolidated Appeal From The United States District Court
For the Northern District of Illinois,
Case No. 05 C 6720
The Honorable Judge James F. Holderman

BRIEF OF THE *AMICUS CURIAE* NATIONAL SCHOOL BOARDS ASSOCIATION, ILLINOIS ASSOCIATION OF SCHOOL BOARDS, ILLINOIS ASSOCIATION OF SCHOOL ADMINSTRATORS, AND ILLINOIS ALLIANCE OF ADMINISTRATORS OF SPECIAL EDUCATION SUPPORTING REVERSAL

HODGES, LOIZZI, EISENHAMMER, RODICK, & KOHN
Nancy Fredman Krent
Stephanie E. Jones
John DiJohn
Attorneys for the *Amicus Curiae*
3030 Salt Creek Lane, Suite 202
Arlington Heights, IL 60005
(847) 670-9000
(847) 670-7334 (fax)

STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICI

On September 26, 2006, the Court issued an order seeking guidance from the Department of Education ("the DOE") regarding the issue of the "then-current educational placement" for students who transfer or matriculate through different schools. The amici seek leave to file this brief to offer their insights into this issue as well. The amici, the National School Boards Association ("NSBA"), the Illinois Association of School Boards ("IASB"), the Illinois Association of School Administrators ("IASA"), and the Illinois Alliance of Administrators of Special Education ("IAASE") are uniquely qualified to provide guidance on this issue. They are not-for-profit organizations that advocate for school districts and school administrators nationally and throughout the State of Illinois. The members of these organizations are responsible for the local implementation of the IDEIA. Thus, the associations are in a unique position to assess the issues presented as well as their potential impact on school districts in Illinois and nationwide.

Federal Rule of Appellate Procedure 29 permits Amici to file a brief by leave of Court when the opposing party does not consent.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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INTRODUCTION

As a condition of receiving federal financial assistance, the Individuals with Disabilities Education Improvement Act of 2004 ("the IDEIA" or "the Act") requires States to ensure that all children with disabilities have access to a "free appropriate public education" ("FAPE") that provides special education and related services designed to meet the children's unique needs. 20 U.S.C. § 1400(d)(1)(A). To achieve FAPE, the IDEIA requires state and local educational agencies to meet certain substantive and procedural conditions. Honig v. Doe, 484 U.S. 305, 310, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988). Substantively, the particulars of a child's educational program must be set forth in an "Individualized Education Program" ("IEP") designed by school officials in collaboration with the child's parents. 20 U.S.C. § 1414. The IEP is considered "the primary vehicle" for implementing Congress' goals in enacting the IDEIA. Honig at 311. A child's IEP sets out his or her educational needs, identifies goals and objectives, specifies the special education and related services the child will receive, and establishes the setting in which the education and services will be delivered. 20 U.S.C. § 1414(d). Procedurally, the statute sets forth "safeguards" to ensure that a student's rights are preserved through the process of developing and implementing an IEP. 20 U.S.C. § 1415. These safeguards include a hearing procedure for parents to use when they dispute the IEP developed for the student. Id.

At the heart of the present case is the application of one of the procedural safeguards of the IDEIA. Commonly known as the "stay-put" provision, Section 1415(j) of the Act requires that, during a dispute between the school district and a child's parents, the child remain in his or her "then-current educational placement" unless otherwise

agreed upon by the parties or ordered by the court. 20 U.S.C. § 1415(j). This provision is considered an automatic injunction. Honig v. Doe, 484 U.S. at 326-327. In the present case, the Court has been asked to determine the meaning of the phrase "then-current educational placement" in the context of a student who matriculates from one school district to another and claims he is entitled to services or methods of instruction that were not specified in his IEP.

In its September 26, 2006, decision, the district court held "[b]ecause the stay-put provision uses the term 'then-current educational placement' instead of 'then current IEP,' the stay-put provision covers more than just the four corners of the last-agreed upon IEP." John M. *ex Rel.* Christine M. v. Evanston Township High School District, 2006 WL 2796420 at 5 (N.D. Ill. 2006). Using its expanded definition of "then-current educational placement," the district Court ordered the Defendants/Appellants to go beyond the provisions in the IEP and provide services and educational methodologies that were neither specified in the student's IEP nor regularly available in the school district.

In reviewing the district court's decision, this Court requested that the DOE offer its opinion as to the meaning of the "then-current educational placement" of a student during a dispute. On May 22, 2007, the DOE filed its brief, stating that "then-current educational placement" was intended by Congress to refer to the services and goals provided in a student's IEP, as the IEP is the centerpiece of IDEA. Specifically, DOE has opined that the district court erred in ordering co-teaching as part of the stay-put placement because co-teaching was not referenced in the IEP. The DOE did not, however, fully address the meaning of the term "then-current educational placement" as

regards disputes involving students transferring from one school or district to another. Because of the significance of this issue, the amici seek leave to file this brief.

This case has far-reaching implications for all school districts that accept transfer students, as well as those states that matriculate students through separate elementary and high school districts, such as Illinois, Wisconsin, Montana, Arizona, California, Missouri, Massachusetts, and New Jersey. By looking outside of the IEP for the "then-current educational placement" of a child, the district court's decision imposes unpredictable and apparently unspecified obligations on school districts, denying them the participation in students' educational planning conferred by Congress and the Courts. See Beth B. v. Van Clay, 282 F.3d 493, 498-499 (7th Cir. 2002), *citing* Board of Education v. Rowley, 458 U.S. 176, 207, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). The district court's decision, if allowed to stand, would deny school districts any certainty with respect to the services a child must receive during the pendency of a dispute.

Under the district court's position, school districts would have no way of ascertaining their obligations from the IEPs they are being asked to implement. The court has held that the IEP itself, the crucial and legally binding document created by the parties, is no longer to be the defining factor in establishing placement. Instead, the district court has imposed a new obligation, to provide an educational experience in the exact same manner as those services were provided in the prior district. This approach fails to consider the differences in facilities, staff, schedules, curricular approaches, organization and teaching structures between differing schools or school districts. For example, consider a student transitioning from middle to high school with an IEP specifying 20 minutes per week of adaptive physical education. If the middle school has

a swimming pool, that student might receive adaptive P.E. in the pool. When the child matriculates to the high school district, or transfers schools, the new school district must develop a new IEP. If the parents dispute the new IEP, the student's "then-current educational placement" would be the IEP developed by the middle school. The Amici do not dispute that the high school must implement the IEP and provide 20 minutes per week of adaptive P.E. However, under the district court's decision, the high school or receiving school would be required to provide adaptive P.E. in a swimming pool, even if it does not have one, because that was the manner in which the service was provided in the prior district.

The amici's position is that the phrase "then-current educational placement" in Section 1415(j) of IDEIA means the goals and services articulated in a student's IEP, and not the methodologies used to reach those goals or other particular trappings of classes in which the child participated in the prior school district. Because it is the IEP which is the legal document governing the child's claim to FAPE, and because the IEP sets forth the legal obligations of the school district, it must be the IEP which defines "placement." This position is supported by the plain language of the statute, the regulations, prior case law, and Spending Clause analysis. Moreover, the district court's ruling in this case could require all school districts in stay-put situations to provide unwritten, and possibly inappropriate or even impossible services when students make a variety of transitions, which is not a good outcome for parents and students or school districts.

ARGUMENT

I. IDEIA Requires The Definition Of "Then-Current Educational Placement" To Remain Within The Four Corners Of The IEP.

A. The Statute Requires That Educational Placement Be Defined By The IEP.

According to the Supreme Court in Arlington Central School District Board of Education v. Murphy, the courts must presume that Congress means what it says in a statute. 126 S.Ct. 2455, 165 L.Ed.2d 526 (2006). An examination of the language of the IDEIA and its implementing regulations demonstrates that Congress did not comprehend the definition of "then-current educational placement" to include anything other than the educational goals and services identified in the IEP.

Section 1415(j) states:

> …during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

20 U.S.C. 1415(j). Nothing in this section requires a school district to look outside the four corners of an IEP to determine the placement of a student as the district court held. Nevertheless, the IDEIA did not statutorily define the phrase.

In the absence of a clear statutory definition of the "then-current educational placement", the Court must defer to the interpretation of the agency charged with the administration of the statute unless that interpretation is arbitrary, capricious, or manifestly contrary to the statute. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-844, 104 S.Ct. 2778, 81 L.Ed.2d. 694 (1984). Thus, in this case, the Court should give deference to the Department of Education's regulatory

interpretation of the statute, and in particular to the definition of "educational placement". Section 300.116(b) of the Federal Regulations implementing the IDEIA states:

> In determining the educational placement of a child with a disability … each public agency must ensure that … (b) the child's placement (1) [i]s determined at least annually; *(2) [i]s based upon the child's IEP*; and (3) [i]s as close as possible to the child's home.

34 C.F.R. § 300.116 (emphasis added). The Department of Education, in implementing the IDEIA, defines educational placement by the terms of the IEP.

The DOE's focus on the content of the IEP in defining educational placement is further strengthened by the language in the statute relating to mid-year transfer students. Section 1414 of the IDEIA requires school districts to provide transfer students with services comparable to the student's previous IEP. Section 1414 states:

> In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, *including services comparable to those described in the previously held IEP*, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

20 U.S.C. § 1414 (emphasis added). Thus, Congress recognized that it is the previous IEP itself which defines the services that a student must receive until the parties can agree upon a new IEP.

Congress intended the IEP to serve as the centerpiece of the IDEA. Honig v. Doe, 484 U.S. at 311. Practically speaking, the IEP is a critical document for a school district, outlining its obligations with respect to each disabled child. Because of the level of detail involved, a student's IEP may be ten or twenty pages long. The IEP sets forth the identified needs of the student, the goals (and often short-term benchmarks or objectives for those goals), the nature and type of related services (such as speech or occupational

therapy), the amount of such services and their manner of delivery (such as direct or consultative support), and any program accommodations necessary for the child. The IEP may also contain a detailed behavior intervention plan or a transition plan addressing post-high school needs. As required by the statute, the IEP is developed by a team of professionals, in collaboration with the child's parents, who are familiar with the child and have the expertise to address his needs. It is the IEP which guides the parties in understanding the services that must be provided to the student throughout the course of the school year, and which serves as the critical benchmark for assessing whether the school district has lived up to its legal obligations to the student.

Thus, the district court's interpretation of the phrase "then-current educational placement" as something other than the IEP ignores both the intent and the language of the statute. It undermines the IDEIA's reliance on the IEP as the fundamental guarantee of each student's rights under the statute. Moreover, the district court fails to give due consideration to the DOE's interpretation of the IDEIA. Accordingly, the district court's decision should be reversed.

B. Case Law Supports The Definition Of The "Then-Current Educational Placement" Proffered By The Amici

In interpreting the phrase "then-current educational placement", the Seventh Circuit has relied upon a fact driven and flexible approach to determining a student's educational placement during disputes that focuses only on the contents of the student's IEP. Board of Education of Community High School District No. 218 v. Illinois State Board of Education, 103 F.3d 545, 548 (7th Cir. 1996). The district court in this case acknowledged this standard for determining the educational placement, but then, without citing to any authorities, expanded the "then-current educational placement" to include

services and methodologies beyond those set forth in the IEP, an extension never proposed or endorsed by this Court.

In Board of Education of Community High School District No. 218, 103 F.3d at 548, as in this case, the Court was required to determine the meaning of "then-current educational placement." In doing so, the Court examined the student's IEP, but the Court did not look beyond the IEP. The Court specifically held that "the IEP, which sets forth the child's educational level, performance, and goals, *is the governing document for all educational decisions concerning the child*." Id. at 546 (emphasis added). Further, the Court held that "…the meaning of 'educational placement' falls somewhere between the physical school attended by the child and the abstract goal of a child's IEP." Id. at 549. According to the Court, therefore, placement may mean something less than everything specified in the IEP document, but it does not extend beyond the requirements of the IEP. In District 218, the Court found that the general contours of the IEP could be implemented by an alternative placement, and that the alternative placement therefore met the requirements for stay-put. Thus, District 218 illustrates that overall achievement of the IEP, and nothing more, determines whether a school district has provided the equivalent of the "then-current educational placement."

Casey K. v. St. Anne Community High School District No. 302, 400 F.3d 508 (7th Cir. 2005), affirms the notion that "then-current educational placement" must be found within the IEP. In Casey K., a special education student was placed in a private school by the elementary school district as part of a settlement agreement. The high school district met with the parents and, over the parents' objections, adopted an IEP that required that the student return to the public school. Before the student matriculated to

high school, the parents filed for a due process hearing and a dispute ensued over the appropriate educational placement of the child pending the outcome of the hearing. Id. at 510. The parents claimed that the IEP set forth in the settlement agreement with the elementary district contained the educational placement of the child. The high school district argued that a settlement agreement cannot create a current educational placement. As in District 218, the Casey K. Court looked to the IEP, but not beyond the IEP, to determine the educational placement of the child. The Court held that the "then-current educational placement" could be found in the elementary school district's IEP as the last agreed upon IEP, despite the fact that the IEP was developed through a settlement agreement. Id. at 513.

Moreover, the district court's decision in this case is not supported by other courts that have examined this provision. See Johnson v. Special Education Hearing Office, 287 F.3d 1176, 1180 (9th Cir. 2002)(defining "stay put" as "typically the placement described in the child's most recently implemented IEP"); Thomas v. Cincinnati Bd. Of Educ., 918 F.2d 618, 625 (6th Cir. 1990)(describing "stay put" by reference to "the previously implemented IEP").

Because the district court's expansion of the phrase "then-current educational placement" as something nebulous beyond the IEP is not grounded in case law from this Circuit or any other Circuit, the district court should be reversed.

II. If the "Then-Current Educational Placement" Represents Something Beyond the IEP, Then The IDEIA Violates The Spending Clause of the U.S. Constitution.

Article I, § 8 of the United States Constitution gives Congress the power to fix the terms on which it will disburse federal money to the States. Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 17, 101 S.Ct. 1531, 67 L.Ed.2d 171 (1987). The Court must interpret a Spending Clause statute narrowly in order "to avoid saddling the States with obligations they did not anticipate." Cedar Rapids Community School District v. Garrett F. *ex. rel.* Charlene F., 526 U.S. 66, 84, 119 S.Ct. 992, 143 L.Ed.2d 154 (1999). In enacting the IDEIA, Congress did not intend to impose upon the States a burden of "unspecified proportions and weight." Id. at 84. Thus, since Congress enacted the IDEIA pursuant to the powers granted to it by the Spending Clause of the U.S. Constitution, it must be interpreted narrowly to avoid imposing an undue burden.

Legislation enacted pursuant to such spending power is akin to a contract: in exchange for federal funds, states agree to comply with certain federally imposed conditions. Pennhurst at 17. According to Pennhurst:

> The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the "contract". There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. By insisting that Congress speak in a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.

Pennhurst at 17 (internal citations omitted).

In consideration of federal funding, the States agree to comply with the conditions set forth by Congress in the IDEIA, which includes requiring local educational agencies to maintain students in their "then-current educational placement" during the pendency of

a dispute between the school district and the child's parents over the child's IEP. As demonstrated above, through reviewing the statute, the regulations, and previous case law, the States have clear notice that a student's "educational placement" would be found in the student's IEP. To impose otherwise, as the district court suggests, would create precisely the burden of "unspecified proportions and weight" that Garrett F. forbids. Cedar Rapids School District v. Garrett F. 526 U.S. at 84.

Similarly, school districts cannot reasonably be expected to assume obligations that are not contained within the IEP. The IEP is the school district's "contract" with disabled students and sets out in detail all educational services for which the student is entitled. Imposing such additional obligation places an undue burden on the school district to predict which "outside" arrangements are of such importance that they must be carried over. For example, under the district court's approach, one student might claim that during the stay-put period he should be educated with the same set of textbooks used in his prior district, even if the entire class is learning from a different set of books, which addresses the subject in an entirely different manner. Another student might claim that she is entitled to change classes every 40 minutes, as she did in her prior district, even though the new school district operates on a 50 minute period schedule. The district court's opinion gives receiving school districts no way to gauge which elements of the student's non-IEP programming must be continued, and no ability to predict the extent or cost of those unspecified obligations.

Further, in Arlington Central School District Board of Education, 126 S.Ct. 2455, 2458, 165 L.Ed.2d 526 (2006), the Court held that, to determine the constitutionality of an application of the IDEIA, courts must examine the IDEIA from the perspective of a

state official engaged in the process of deciding whether the State should accept the federal funds and the obligations that go along with those funds. In this case, the district court did not interpret the statute from the perspective of a State official engaged in the process of deciding whether or not to accept federal funds. The district court did not narrowly construe the IDEIA to avoid placing an undue burden on States. The district court did not look to the statute, the regulations, and the case law to determine what notice the States received before entering into a "contract" with Congress. Instead, the district court, without considering any of these requirements, and without providing any clear rationale, re-interpreted "then-current educational placement" to mean some unspecified amount and type of services and programming beyond the IEP. This interpretation obligates States to requirements for which they did not bargain and could not anticipate. Because the district court's interpretation of the statute would constitute a violation of the Spending Clause, it must be rejected and the district court's decision reversed.

III. Policy Reasons Support Defining The "Then-Current Educational Placement" Within the Four Corners of the IEP.

There are numerous practical and policy considerations that support defining the "then-current education placement" within the four corners of the IEP. First, as the DOE explains in its brief, the IEP contains all of the obligations of the school district in providing services to a particular child. Looking beyond the IEP document for other "obligations" that might exist causes needless uncertainty for school officials. Second, methodology was not intended to become part of the IEP and is appropriately left to the discretion of the school district. Finally, because of the recognized expertise of school districts in effectuating educational decisions, they are entitled to reasonable deference in exercising educational discretion in implementing a student's IEP.

A. Looking Beyond the IEP for the "Then-Current Educational Placement" of a Child Causes Needless Uncertainty.

As explained in section I.A, supra, the IEP outlines the parties' plan for the education of a student with disabilities. The IEP is a comprehensive document which contains all of a school district's obligations with respect to a particular child. The district court's order, however, requires school districts to look beyond the IEP in some nebulous, unspecified manner, to determine the "then-current educational placement" of a special education student. This position creates uncertainty among school districts with respect to what their obligations are to a particular child. School districts will not know if the next student who enrolls will require them to build a swimming pool, hire a particular teacher or aide, or provide other services that may not be available in the school. If the district court's position is upheld, classrooms will be held hostage to the vagaries of particular transfer students and the minutiae of their prior school's programming, and the

receiving school district's planning and budgeting processes will be paralyzed. Furthermore, parents will also suffer from this lack of predictability, since they will have no way to ascertain, without resorting to legal action, which of the non-IEP services or supports their children receive are to be continued by the receiving school district. Transition from one school district to another will become mired in these controversies, which will lead to an unnecessary and harmful increase in special education litigation.

The position of the statute and regulations, one that this Court and others have previously articulated, is that the "then-current educational placement" is to be defined by reference to the student's IEP. This position eliminates any uncertainty, as the IEP spells out the obligations of the school district and the rights of the child clearly. Such a position minimizes disputes, and allows both sides the predictability they need to program successfully for special education students entering a new school district.

B. Methodology Is Not Considered A Part of the IEP and Is Appropriately Left To the Discretion of the School District.

In its decision, the district court ordered the school district to utilize a particular methodology called "co-teaching." The co-teaching methodology was apparently used by the elementary school district, but was not identified in the IEP.[1] This Court has clearly held that methodology is not to be considered part of a student's IEP. Lachman v. Illinois State Board of Education, 852 F.2d 290, 294 (7th Cir.), *cert. denied*, 488 U.S. 925 (1988). Rather, methodology is left to the educational judgment of the school staff.

[1]Co-teaching requires one regular education teacher and one or more special education teachers to teach the same class of students with diverse needs. Co-teaching is one of many collaborative teaching methodologies that can be employed by a school district to meet the educational needs of special education students. See, Larry Bartlett, Successful Inclusion For Educational Leaders, Pearson Education, Inc. (2002).

Accordingly, the district court's specification of a particular methodology in the context of stay-put contradicts this Court's decision in Lachman.

In Lachman, the Court addressed the responsibility for the determination of educational methodology. Id. at 297. The Lachman Court held that the primary responsibility for choosing the educational method most suitable to fit the child's needs was left by the IDEIA to state and local educational agencies in cooperation with the parents of the child. Id. The Court held:

> The purpose of the Act was to open the door of public education to handicapped children by means of specialized educational services rather than to guarantee any particular substantive level of education once the child was enrolled… Courts must avoid imposing their own views of preferable educational methods upon the responsible authorities. Once it is shown that the Act's requirements have been met, questions of methodology are for resolution by the responsible authorities.

Lachman at 292. *See also*, Beth B. v. Van Clay, 282 F.3d at 499 (holding that the school official's decision about how to best educate a child is based on expertise that the courts cannot match).

In this case, the district court imposed its own views upon the high school district, ordering the high school district to implement the methodology the district court thought most appropriate. This action by the district court ignored the mandate of the Lachman Court that questions of methodology be left to the responsible authorities and not the courts. Again, the district court had no authority for such imposition.

C. Deference Should Be Afforded to the School District Responsible for Educating the Child.

The district court's decision took the discretion for determining the most appropriate educational methodologies out of the hands of trained professionals currently responsible for educating the child. In Wood v. Strickland, the Supreme Court held that

the success of the public education system "relies necessarily upon the discretion and judgment of school administrators and school board members…" Wood v. Strickland, 420 U.S. 308, 326, 992 S.Ct. 992, 43 L.Ed.2d 214 (1975). This premise is especially true when special education is involved. See Heather S. v. State of Wisconsin, 125 F.3d 1045, 1057 (7th Cir. 1997) (holding that the court "must defer to trained educators").

This deference to school districts is written into the IDEIA. The IDEIA clearly assigns the responsibility for formulating a disabled child's educational program to the state and local agencies. 20 U.S.C. §1414. In Board of Education v. Rowley, 458 U.S. at 207, the Supreme Court held, "[i]n the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories…" The Rowley Court stressed that "courts lack the 'specialized knowledge and experience' necessary to resolve 'persistent and difficult questions of educational policy'". Id. *at* 208, citing Independent School Dist. v. Rodriguez, 411 U.S. 1, 42, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). As a result, the Supreme Court cautioned, "courts must be careful to avoid imposing their view of preferable educational methods upon the States." 458 U.S. at 207.[2]

Contrary to the position articulated by the district court, the current school district must be permitted to make these educational decisions when implementing any student's IEP. This district is legally responsible for implementing the IEP, and its staff is charged

[2] Following this mandate from the Supreme Court, this Court has repeatedly emphasized its obligation to defer to the educational judgment of school districts. For example, in Brookhart v. Illinois State Board of Education, 697 F.2d 179, 182 (7th Cir. 1983), "[w]e note at the outset that in analyzing these claims deference is due the School District's educational and curricular decisions...and the courts will interfere with educational policy decisions only when necessary to protect individual statutory or constitutional rights."; Heather S. v. State of Wis., 125 F.3d 1045 (7th Cir. 1997), "A court is particularly incapable of making such judgments which is why it must defer to trained educators…".

with educating the student. Therefore, those teachers must be allowed to exercise their professional judgment as to the appropriate methods and approaches to use in educating the student. This is especially critical when the child is, as in the present case, in the mainstream classroom. The teacher must be allowed to determine the appropriate means both for educating the disabled student and for managing the classroom as a whole. For the district court, which has no educational expertise, to impose its will on the operation of the daily educational process, contravenes all settled authority on the need for courts to defer to "trained educators", as this Court clearly held in Heather S., supra.

In this case, this Court should follow the statutory mandate, Supreme Court guidance, and its own precedents and give deference to the school district in determining the methodology used to implement the IEP and the "then-current educational placement" of the child.

CONCLUSION

The IDEIA requires that schools maintain a student in the "then current educational placement" when a dispute arises over the development or implementation of a student's IEP. A review of the Act, its implementing regulations, and case law interpreting the Act demonstrates that the "then current educational placement" cannot be anything other than the goals and information set forth in the IEP. This interpretation allows schools the flexibility and authority to educate children with disabilities in a manner that confers some educational benefit within the structure of the particular school without placing a burden on the school that was not bargained. If "then current educational placement" means something else, something that need not be defined in the student's IEP, no receiving school district would ever know with certainty what services

any incoming student must receive. This would not only produce absurd results, it would violate the intent of the statute, which is to give a student clear rights articulated in his IEP. Further, if the IDEIA were interpreted to mandate such uncertainty, it would violate the Spending Clause. For these reasons, this Court should hold that the term "then-current educational placement" is limited to the goals and services of a student's IEP, and does not include every methodology, teaching tool or practice a prior teacher or school district has chosen to use.

For the reasons set forth above, the Court should reverse the district court's order.

DATED: May 30, 2007

Respectfully submitted,

Nancy Fredman Krent

Nancy Fredman Krent
Attorney for Amici
National School Boards Association
Illinois Association of School Boards
Illinois Association of School Administrators
Illinois Alliance of Administrators of Special Education

Nancy Fredman Krent
Stephanie E. Jones
John DiJohn
HODGES, LOIZZI, EISENHAMMER, RODICK & KOHN
3030 Salt Creek Lane, Suite 202
Arlington Heights, IL 60005
(847) 670-9000
(847) 670-7334 (fax)

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,974 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)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in Times New Roman Font Size 12.

3. The electronic version of this brief, which has been sent to the Court online via the Court's upload procedures, has been scanned with Symantic Antivirus Version 10.0.2.2000 and is virus-free.

Nancy Fredman Krent

Attorney for Amici

Dated: May 30, 2007

CERTIFICATE OF SERVICE

I certify that on May 30, 2007, two copies of the foregoing Brief for The National School Boards Association, Illinois Association of School Boards, Illinois Association of School Administrators, and the Illinois Alliance of Administrators of Special Education As *Amicus Curiae* Supporting Reversal were sent via regular U.S. mail, postage pre-paid, to the following counsel of record:

Charles F. Stone, Esq.
79 West Monroe Street, Suite 1212
Chicago, Illinois 60603

Anne Wilson Lokken, Esq.
Franczek Sullivan P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606

Nancy Fredman Krent

Nancy Fredman Krent