No. 10-886

In The Supreme Court of The United States

COMPTON UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STARVENIA ADDISON and GLORIA ALLEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF REPLY

In Respondents' Brief, Respondents assert that this case does not warrant Supreme Court consideration for the following reasons:

1. The District's position has to be wrong on the merits because there must be a remedy if a school district fails to seek out and assess students.

2. Even if the question presented were worthy of Supreme Court review, the Court should await a better fact pattern before granting certiorari since, in this case, the District's inaction could be construed as a "refusal" to act rather than negligence.

3. Many published district court decisions imply that a claim for negligence is cognizable under the IDEA.

4. Respondents' Westlaw search yielded no court ruling citing the *Compton Unified School District v. Addison* decision. Therefore, the decision has not impacted the scope of due process hearing claims in the Ninth Circuit.

Respondents' assertions are without merit for the following reasons:

1. Not every claimed instance of noncompliance with the IDEA is a ground for a due process hearing complaint. The remedy for failure of a state or local agency to locate disabled students is withholding of federal funds.

2. No finding was made by the district court or the state administrative agency that the District intentionally failed to act; the district court and agency decisions were premised on a claim of negligence.

3. None of the cases cited by Student is apposite. Even the majority opinion cites to no precedent in support of its finding of a claim for negligence under the IDEA.

4. The court of appeals decision was issued just one year ago and is not even final. It is highly unlikely that any due process hearing complaint reliant on the decision would have filtered its way through to a district court decision in just one year.

REPLY

I. ARGUMENT

A. Not Every Claimed Instance Of Noncompliance With The IDEA Is A Ground For A Due Process Hearing Complaint; The Remedy For Failure Of A State Of Local Agency To Locate Disabled Students Is Withholding Of Federal Funds.

Respondents assert that a claim for negligence must lie under the IDEA because has to be a remedy for failure to seek out and assess disabled students.

In the underlying due process hearing decision, the ALJ likewise cited to the state and

federal statutes that call for states and school districts to seek out and serve disabled students, as follows:

> 4. The IDEA and State special education law impose upon each school district the duty to actively and systematically identify, locate, and assess all children with disabilities who require special education and related services. (20 U.S.C. § 1412; 34 C.F.R. § 300.125; Cal. Educ. Code §§ 56300, 56301.) The obligation set forth in this statutory scheme is often referred to as the "child find" or "seek and serve" obligation. This obligation to identify, locate, and assess applies to "children who are suspected of being a child with a disability. . . and are in need of special education, even though they are advancing from grade to grade." (34 C.F.R. § 300.123, subd. (a)(2).) The comments to 34 C.F.R. section 300.300, subdivision (a)(2), note the "crucial role that an effective child-fund system plays as part of a State's obligation of ensuring that FAPE is available to all children with disabilities." (68 Federal Register no. 48 (March 12, 1999) at p. 12573.)
>
> (A. 36-37.)

Respondents misunderstand the statutory framework.

The IDEA due process hearing procedures do not cover every complaint of non-compliance with the IDEA. Specifically, 34 C.F.R. Section 300.507, which enumerates the scope of the IDEA's due process hearing procedures, nowhere mentions as an appropriate subject of a due process hearing any of the "child find" sections cited by the ALJ.

Rather, there is a completely separate system of enforcement if the federal government concludes that a state or school district is not making reasonable efforts to seek out, locate, and identify disabled students. See 20 U.S.C. § 1416.

20 U.S.C. Section 1416 sets forth a comprehensive system of monitoring and enforcement of the IDEA. Under this framework, States that fail to comply with their mandates under the IDEA can be stripped of federal funding or sanctioned in other ways.

Under 20 U.S.C. Section 1416(a)(3), the federal Secretary of Education monitors implementation of "child find" obligations by the states, as follows:

> 1416. Monitoring, technical assistance, and enforcement
>
> (a) Federal and State monitoring

* * *

> (3) Monitoring priorities
>
> The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:
>
> * * *
>
> (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title.

20 U.S.C. Section 1416(d) calls for the Secretary of Education to review the "performance reports" of the states to determine if the Secretary believes the states are fulfilling their mandates under the IDEA.

Should the Secretary find noncompliance, he/she may issue enforcement actions, including

withholding of federal funds. See 20 U.S.C. § 1416(e). In addition, the states are authorized to issue financial consequences to their local educational agencies ("LEA's") *(i.e.*, school districts) in the event of noncompliance with the LEA's performance requirements. (See 20 U.S.C. § 1416(f).)

Accordingly, while it is true that states and LEA's have a duty to make certain efforts to locate and identify disabled students, it does not follow that a claim of deficiency in this process is a proper subject for a due process hearing proceeding. Nor, given the clear language of the applicable C.F.R.s, would the States be on notice of any such requirement.

The lower courts and Respondents erred in reading claims for negligence into the available due process hearing complaint process.

B. No Finding Was Made By The District Court Or State Administrative Agency That The District Intentionally Failed To Act; Rather, The District Court And Agency Decisions Were Premised On A Claim Of Negligence.

Respondents assert that, even if the question presented were worthy of Supreme Court review, the Court should await a better fact pattern before granting certiorari since, in this case, the District's inaction could be construed as a "refusal" to act rather than negligence.

Respondents' contention is meritless.

Neither the district court nor the state administrative agency (the Office of Administrative Hearings) made any finding that the District intentionally decided to ignore the needs of Student.

Rather, the ALJ applied the negligence standard ("knew or should have known"), and the district court agreed that such a claim is cognizable under the IDEA.

The ALJ held as follows:

> Determination of Issues
>
> Issue 1: The child-find issue is a cognizable claim. The District failed its child-find obligations from the fall of 2003, through January 26, 2005, when it first determined Student was eligible for special education and related services. The District knew or had reason to suspect that Student was eligible for special education either as a student with a specific learning disability or under the category of emotional disturbance.

(A. 88.)

The district court held as follows:

> CUSD does not dispute the clear right of parents to bring a due process complaint to challenge the

denial of rights afforded by the IDEA. CUSD does contend, however, that "not every charge under the IDEA is included as a claim available for due process under the due process hearing procedures of the IDEA." (*Id.*). CUSD further argues that Student's allegation that CUSD failed to discharge its obligation under the IDEA child-find provision is the type of complaint that is "not available for due process" because the District's failure to assess her for eligibility for SLD services was attributable to neglect, rather than a refusal to act. (*Id.* at 2; *passim*).

* * *

Fairly summarized, then, CUSD's fundamental argument is that if the federal government and the State of California intended to afford parents the right to a due process hearing for a school district's failure to discharge its child-find duties--which CUSD characterizes as "negligence" or "educational malpractice"—their respective statutes would have said so explicitly, by adding the word "neglects" to the words "proposes" and "refuses."

> CUSD's fundamental contention conflicts with the clear language of the IDEA and federal regulations, is not supported by applicable case law and would lead to the illogical and unjust conclusion that Student and her mother have a recognized right under the IDEA but no means to enforce (and, ultimately, no remedy for) violations of that right. I reject CUSD's challenge and uphold the ALJ's conclusion, for the following reasons.

(A. 42)

Further, no factual finding was made by the ALJ or the district court, condemning the District's claimed "inaction" as being akin to a refusal to act.

Should the Supreme Court grant certiorari and correct the legal standard, the case could be remanded to be reconsidered in light of the corrected standard.

C. None Of The Cases Cited By Student Is Apposite.

In footnotes 1 and 2, Student cites to a number of district court decisions which she contends have "assumed" that claims for negligence are available under the IDEA.

However, none of the cases cited by Student ever addressed the issue which is the subject of this

case: whether a claim for negligence is available under the IDEA.

Even the majority opinion of the court of appeals cites to no precedent in support of its finding of a claim for negligence under the IDEA.

None of the cases cited by Student is apposite.

D. It Is Highly Unlikely That Any Due Process Hearing Complaint Reliant On The Majority Opinion Would Have Filtered Its Way Up Through To District Court Decision In Just One Year.

Respondents assert that they have run a Westlaw search and the search yielded no court ruling citing the *Compton Unified School District v. Addison* decision.

Respondents argue that this is a proof that the court of appeals decision will not impact the scope of due process hearing claims in the Ninth Circuit.

Respondents' assertion is without merit.

The court of appeals decision was issued just one year ago and is not even final. It is highly unlikely that any due process hearing complaint reliant on the decision would have filtered its way through to a district court decision in just one year.

Further, as explained in the District's petition, if the court of appeals' decision stands it will be extremely challenging and expensive for any school district to contest a claim of negligence in a due process hearing.

A fortiori, Supreme Court intervention is urgently needed.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully Submitted,

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