Plaintiffs - Appellants Reply Brief

Buncombe County has filed a reply to the Appellant's brief. The North Carolina School Boards Association has filed an Amicus Curiae brief. The State of North Carolina has intervened and filed a brief in support of Buncombe County. This brief is a reply to the preceding briefs.

Reply to Factual Assertions

In their Brief, Buncombe County has asserted that:

> Although Plaintiffs now allege that the School System failed to offer C.E. a free appropriate education, they never instituted proceedings to challenge the School System's proposed educational program under IDEA and N.C.G.S §115C, Article 9 during the time period when C.E. was eligible to receive services. (Appellant's Reply Brief, page 4)

The parents did not institute proceedings to challenge the IEP because they were involved in ongoing negotiations and IEP meetings with the school staff. During this time, one issue was whether or not the parents would accept the school's offer of 22 hours of special education that was not exclusively one-on-one, in contrast with thirty-five hours of "strictly one-on-one." The parents sought a more intensive educational program because we "wanted him on track for hopefully regular kindergarten, and the way we were going, we had a good shot of making that. To reduce the hours, I felt we wouldn't have made it." (JA 109)

To facilitate their son's entry into regular Kindergarten, the parents continued to provide thirty-five to forty hours of individual one-on-one therapy a

week. (JA 113) In September, 1996, the school district offered and the parents accepted an IEP that included speech therapy and occupational therapy. (JA 118) During these months, the parents attended IEP meetings in which "there were lots of things (that) weren't specifically spelled out in the IEP. There were lots of blanks on how they would measure progress and percentages that they would require . . . it didn't seem like a complete IEP." (JA 75, 119)

Buncombe County asserted that:

> The School System presented an IEP as a counteroffer in late January, and in February 1997 school personnel sent a letter asking the plaintiffs to notify the School System if the IEP was acceptable because additional personnel would be needed to implement the program . . . The Plaintiffs never responded. (Appellant's Reply Brief, page 5)

In fact, the prehearing statement prepared by school board counsel notes that the school board attorney (JA 102) sent this letter to the parents. At that time, parents were preparing for their child to exit special education and be placed in a regular education class for kindergarten. (JA 75, 102) The school staff completed new evaluations that resulted in leaving special education and entering regular education. (JA 75) Clearly, C.E. had benefited from the special education provided by his parents.

North Carolina's brief stated that:

> The fact that PE and CE carried on extensive litigation in Maryland over their son's educational program in earlier years is irrelevant to this lawsuit. The local district here was entitled to evaluate their son's needs in 1996 and thereafter, without automatic or reflexive acquiescence in prior

> determinations about a different school system in another State during a different period of the child's life. (Intervenor's Brief, page 8)

North Carolina seeks to ignore the importance of the litigation history with Maryland, the parent's insistence on implementing a program that worked for their son, and which enabled C.E. to enter regular education in Kindergarten. The parent's program was markedly different from the school's proposed program, and it worked.

The school district argued that the parents knew that there was a sixty day statute of limitations, and that the parents knew that the statute had begun to run against their claim. The school denies the assertion in the appellant's initial brief, that if the parents, or their counsel, "had been aware of a sixty day statute of limitations, they would have requested a special education due process hearing within that time." (Appellant's Reply Brief, page 8)

If the parents, or their counsel, had been aware of the **running** of the sixty day statute of limitations, or they had received notice of the running of the statute, they would have requested a special education due process hearing within that time.

This counsel was in error in regard to the parent's knowledge of the existence of the statute. However the issue is whether the parents received "Notice" that the statute had begun to run. The parent knew about the existence of the sixty day statute, but never received notice that it had begun to run. As

settlement negotiations deteriorated, the plaintiff never received a letter or notice that the 60 day clock had started, in the last August 8, 1997 letter from school board counsel or prior to that.

The North Carolina statute mandates that:

> The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of **the right, the procedure, and the time limit** to file a contested case petition.[1] (Emphasis added.)

Neither the parents nor their counsel received any notice that set forth the agency action and informed them of their right, procedure, and the sixty day time limit to file a contested case petition. The sole "writing" received were two letters from school board counsel, dated August 7 and August 8, 1997. The last sentence of the August 8 letter stated that: "The Board of Education has authorized the superintendent and me to make a settlement offer, however any agreement we reach is subject to final approval by the Board."(JA 64) The August 7 letter said you "have the right to file a due process petition at any time, however the reality of school systems requires that the governing board be consulted and that process takes time." (JA 63) There was no mention of the clock beginning to run. Query: If the consultation process took sixty-one days and the governing board did not approve the settlement, would the parent's claim be barred?

[1] N.C. Gen. Stats. 150B-23

The last pages of the adverse decisions rendered by the Administrative Law Judge and State Level Review Officer provide clear notice of the right of appeal and the timeline to appeal. (JA 188, 199)

The school district has argued that:

> . . . the North Carolina 60-day limitation is only triggered after the school system gives parents written notice of a decision and notice of the time to file. In the instant case, those requirements were satisfied through the Handbook and the August 8, 1997 letter from the attorney for the School System. (Appellant's Reply Brief, page 15)

Neither the Handbook nor the August 8, 1997 letter are the "Notice" mandated in the statute. Constructive notice created by different inside covers of a Handbook given to counsel is not sufficient Notice to the parent.

Query: Did school board counsel intend that her August 7 and August 8 letters were the Notice mandated in the statute? If this was the intent and purpose of the letters, to provide notice, she should have provided notice. She could have easily stated that "Pursuant to the N. C. General Statute 150B-23 this letter is your Notice that you may file a contested case petition with the Office of Administrative Hearings and that said petition must be filed within sixty days of this letter." Counsel did not provide this notice because this was not the purpose of the letters.

20 U.S.C. § 1400(d)(1)(B)

Buncombe County has argued that even if their Notice was inadequate, this was irrelevant because:

> In addition, under the facts of this case, the School System was not required to provide the "prior written notice" described in the 1997 amendments to the IDEA. At the time of plaintiffs' demand for reimbursement, their minor child was no longer eligible to receive services under the IDEA, and thus, a "prior written notice" would have served no purpose. (Appellant's Reply Brief, page 9)

This is the same logic used by the Administrative Law Judge, Review Officer and District Court. When this dispute arose, C.E. was a child with a disability. He was entitled to the protections of the Individuals with Disabilities Education Act. The purpose[2] of IDEA-97 is to protect the rights of the child, not school systems.

C. E. and his parents were entitled to the Notice mandated by both IDEA-97 and the North Carolina statutes. That fact that C.E. benefited so much from the education provided by his parents that he no longer required special education should not deprive him of the rights available to him under IDEA-97.

U. S. Department of Education
National Council of Disability

The State of North Carolina has asserted that the U. S. Department of Education consented to the sixty day statute of limitation. Their brief stated that:

> Despite its issuance of a Letter Ruling to North Carolina in 1987 and subsequent extensive federal monitoring for IDEA compliance here, at no time has OSERS or OSEP objected to the State's 60-day limitations period.

[2] 20 U.S.C. § 1400(d) Purposes.--The purposes of this title are--
(1)
(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
(B) to ensure that the rights of children with disabilities and parents of such children are protected; and . . .

> Indeed, in no compliance monitoring by OSEP since the 1988 and 1990 amendments to § 1150-116 has the Office of Special Education Programs ever objected to North Carolina's due process procedures, let alone cited North Carolina for its limitations period for due process petitions. To the contrary, the State procedures in place for more than a decade have been continually reapproved by OSEP. Indeed, in a March 31, 1998, letter from the Director of OSEP to the N.C. Department of Public Instruction, the State was commended for its proposals in the plan for implementing IDEA 1997 reflecting "NCDPI's unique needs and resources and its administrative structure." (Intervenor's Brief, page 7)

A commendation from the U. S. Department of Education does not mean that North Carolina has a commendable program. The National Council on Disability,[3] (NCD) is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. NCD recently issued their report "Back to School on Civil Rights."[4]

> This report focuses primarily on the enforcement mechanism, policies, and activities of the Department of Education in relation to IDEA. Because of its integral relationship to enforcement, our researchers carefully evaluated the Department of Education (DoED) compliance-monitoring system in use at the time our research was conducted. (Report, page 18)
>
> . . .
>
> The report does not assess the performance of local education agencies (LEA) in implementing the requirements of IDEA, but does discuss findings on LEA compliance published in the Department of Education's monitoring reports evaluating state monitoring and enforcement efforts. (Report, page 21)

The report notes that:

> DoED has been monitoring states and states have been monitoring local education agencies since the mid-1970s as intended by law. As part of its responsibility for the administration of IDEA, DoED has been issuing

[3] 29 U.S.C. § 780

[4] http://www.ncd.gov/newroom/publications/backtoschool_1.html

> monitoring reports that detail state noncompliance and deficiencies for more than 20 years. (Report, page 40)
>
> . . .
>
> Unlike some other agencies, such as the Equal Employment Opportunity Commission and the Department of Justice, its core activity is not civil rights enforcement. Civil rights enforcement is a secondary task of the DoED; its primary activities are programmatic. (Report, page 40)
>
> The 1997 amendments to IDEA explicitly authorize the Department of Education to refer noncompliant states to the Department of Justice for investigation, litigation, or both. While the Department of Education has likely always had this authority, the 1997 amendments make such authority explicit and statutory. (Report, page 45)

The report contains a number of findings and recommendations:

> As a result of 25 years of nonenforcement by the Federal Government, parents are still a main enforcement vehicle for ensuring compliance with IDEA. (Report, page 70)
>
> . . .
>
> Many states are found eligible for full funding under Part B of IDEA while simultaneously failing to ensure compliance with the law. Though no state is fully ensuring compliance with IDEA, states usually receive full funding every fiscal year. Once eligible for funding, a state receives regular increases, which are automatic under the formula. OSEP's findings of state noncompliance with IDEA requirements usually have no effect on that state's eligibility for funding unless (1) the state's policies or procedures create systemic obstacles to implementing IDEA, or (2) persistent noncompliance leads OSEP to enforce by imposing high risk status with "special conditions" to be met for continued funding. (Report, page 78)
>
> . . .
>
> OSEP claims its approach to monitoring has had significant positive impacts on compliance in a number of states. For example, the state educational agency (SEA) in some states has taken action to correct deficient practices identified by OSEP during the monitoring review, even before the state has received OSEP's report. In such instances, the states' solutions have often incorporated technical assistance provided by OSEP during the monitoring visits. According to OSEP, a number of states also have made positive changes, at least in part because of the emphases and findings of OSEP monitoring, in two important areas: (1) state monitoring and complaint

> resolution procedures, and (2) the movement of many children with disabilities from separate settings into less restrictive placement options. (Report, page 80)

NCD found that the U. S. Department of Education failed to keep a record or inventory of their monitoring reports of the individual states. (Report, page 85)

NCD found that "After 25 years, all states are out of compliance with IDEA to varying degrees." (Report, page 125) "OSEP's monitoring reports did not clearly indicate which IDEA requirements were monitored, why they were monitored, and what the compliance status was." (Report, page 128)

The Department of Education's monitoring report of North Carolina lists seven primary areas of evaluation with thirty-five secondary areas. North Carolina was not found compliant in any area. The state was either "Noncompliant" or insufficient information was provided. There were twenty-two entries of "Noncompliant." (Report, page 314)

In the initial "Executive Summary" of the Report, the NCD stated that:

> In the past 25 years, states have not met their general supervisory obligations to ensure compliance with the civil rights requirements of IDEA at the local level . . . The Federal Government has frequently failed to take effective action to enforce the civil rights protections of IDEA when federal officials determine that states have failed to ensure compliance with the law. (Report, page 7)

That the U. S. Department of Education and Office of Special Education was not diligent in monitoring North Carolina's change of procedure in the development of a sixty day statute of limitations should come as no surprise. The

Department of Education is a funding agency, not an enforcement agency and has not focused on protections of the rights of children with disabilities.

Statute of Limitations and Borrowing

Relying on language in the Fourth Circuit's recent *Kirkpatrick v. Lenoir County*, North Carolina discussed the concept of Courts borrowing an analogous statute of limitations. In *Kirkpatrick*, the Court specifically discussed North Carolina's thirty day statute for the filing of an appeal of special education litigation at the administrative level. The Court stated that *Schimmel* controls, despite a specific state statute that provides a shorter statute of limitations.

> To the extent the Kirkpatricks suggest that, for any claim filed under 20 U.S.C. § 1415 challenging the decision of a North Carolina review officer, the appropriate limitations period is thirty days, see N.C. Gen. Stat. § 115c-116(k), their argument is, in all likelihood, foreclosed by circuit precedent. In *Schimmel*, we refused to apply a thirty-day limitations period to an action filed in federal court under 20 U.S.C. § 1415 on the grounds that such a short limitations period would undermine various federal policies behind the Act. See *Schimmel*, 819 F.2d at 482-83. (*Kirkpatrick v. Lenoir County Board of Education*, No. 99-1609, at paragraph 53, http://www.versuslaw.com, C04.0043399, (4th Cir. 2000)

In contrast with the position asserted by Buncombe County and North Carolina, Lenoir County, North Carolina recently asserted to this Court that three years was the proper limitations period. This Court responded:

> The Board, however, argues that even if the court characterizes the action as an appeal, North Carolina's three year statute of limitations found at section 1-52(16) of the General Statutes of North Carolina is the appropriate limitations period. (*Kirkpatrick*, supra, paragraph 49)

No Harm, No Foul

The School Board Association argues that even if the parents did not have notice of the running of the statute of limitations, there is no harm, no foul.

> Rather, courts have uniformly held that some significant harm must result from the procedural violation in order for a school system to be responsible for providing compensatory education or reimbursement The appellants in this case failed to detail any harm stemming from the alleged procedural violations. (School Board Association Amicus Brief, page 12.)

Perhaps the School Board Association has forgotten the language of *Schimmel*:

> Our concern about imposing a very short statute of limitations upon parties who are not represented by counsel at administrative due process hearings is magnified by the fact that such parties may never be advised of the **applicable limitations period**. The EHA imposes on educational agencies a duty to inform parents or guardians of all procedural safeguards available to them under the EHA 20 U.S.C. Sec. 1415 (b)(1)(D). *Schimmel by Schimmel v. Spillane*, 819 F.2d 477, 482, (4th Cir. 1987) (Emphasis added.)

The parents were never advised that the statute had began to run. The school's failure to provide Notice of the running of the statute of limitations, then using the statute to cause the claim to be dismissed with prejudice, is the ultimate harm.

Policy and Practice Arguments

In *Burlington,* Chief Justice Rehnquist discussed the natural advantage enjoyed by school officials in educational disputes with parents:

> Apparently recognizing that this cooperative approach would not always produce a consensus between the school officials and the parents, and that in

> any disputes the school officials would have a natural advantage, Congress incorporated an elaborate set of what it labeled "procedural safeguards" to insure the full participation of the parents and proper resolution of substantive disagreements. (*Burlington School Comm. v. Dept. of Education*, 471 U.S. 359, 368, (1985))

The Eighth Circuit has issued decisions recently in two cases related to federal policy and the statute of limitations. In *Strawn*, the Court relied on the Fourth Circuit's decision in *Manning*[5] to apply a two year statute in Missouri:

> A two-year statute of limitations does not frustrate federal policy. A two-year limitation provides for relatively quick resolution of the claims so that important years of education are not lost. Two years is also not such a brief period that it undermines the IDEA policy of providing parents the opportunity to protect their disabled children's rights. See *Manning*, 176 F.3d at 239. Thus, we apply the two-year statute of limitations to IDEA claims. (*Strawn v. Missouri State Board of Education*, No. 99-1850, paragraph 23, http://www.versuslaw.com, C08.0042474, (8th Cir. 2000))

In August, 2000, the Eighth Circuit applied a three year statute of limitations for Nebraska:

> On a practical note, the truncated *limitations* period does not take into account the realities of raising a disabled child. Disabled children can require considerable parental attention, which leaves parents limited time to prepare a lawsuit. Borrowing a thirty-day limitations period would prevent many parents from bringing valid IDEA claims, simply because of their child's disability -- an effect abhorrent to the IDEA. (*Birmingham v. Omaha School District*, No. 99-3590 paragraph 35, http://www.versuslaw.com, C08.0042906, (8th Cir. 2000))

[5] See the extensive discussion about *Manning* and *Schimmel* in the Appellant's Initial Brief filed with this Court.

North Carolina argued that as a matter of practice and policy, the sixty day timeline could "run anew . . . at any time" and thus, by implication the sixty day timeline would not be a realistic bar to parents seeking to assert their rights.

> The 60-day period begins to run anew in North Carolina at any time the district makes a related decision with which the parents disagree; the 60 days does not only begin to run at the time of a meeting for signing the IEP as under the N.H. statute. By way of example, an IEP might be signed off on in this State by the parents on August 15; on October 20 (more than 60 days after implementation of the IEP), the parents might request a new meeting of the IEP team to consider modifications in the existing IEP; on November 1, the school might refuse to modify the IEP. Under N.C. law, the parents would have 60 days from November 1 to contest that decision. The N.H. legislation would have foreclosed such contest. (Intervenor's Brief, page 25, footnote 12)

Under the this sixty day limitation, if a parent requested that the IEP team reconsider an IEP issue, the school would be inclined to refuse and maintain their original position for fear of resetting the clock for the running of the statute. In a subsequent due process hearing and motion for summary judgment based on the statute of limitations, the case would not focus on the merits of the original IEP, but on whether or not there was a reasonable basis and / or an abuse of discretion related to the school district's refusal to re-open or consider amending a current IEP. Hearing Officers and Administrative Law Judges usually defer to school districts about issues of reasonableness and discretion. The parent's ability to re-open discussions or amend the child's IEP would be thwarted by a short statute of limitations and subsequent procedural posturing by school districts.

Buncombe County, the North Carolina School Boards Association and the State of North Carolina have argued that a sixty day statute of limitations to request a due process hearing does not violate the purposes of IDEA and encourages speedy resolution of special education disputes.

These arguments are based on a lengthy string of *Schimmel* cases, not on a discussion of *Manning* cases.[6] These "*Schimmel*" cases discuss speedy resolution of special education litigation where a special education due process hearing and review hearing have been completed. The cases cited in the briefs and in 106 E. Law. Rep. at 968, relate to the "original civil actions"[7] and the filing of an "appeal" in U. S. District Court or state court. By this time, the parties have already been involved in extensive litigation.

A common issue in special education litigation is that during the latter part of a school year, an IEP meeting is held in preparation for the next school year. This IEP meeting is usually held in late April, in May, or early June. Parents are often presented with an IEP that is simply a continuation of a program that resulted in the child falling further and further behind despite several years of special education.

[6] *Schimmel* cases relate to the statute of limitations for filing an original civil action in state or federal court. *Manning* cases relate to the statute of limitations for filing a request for a due process hearing.
[7] *Kirkpatrick v. Lenoir County Board of Education*, No. 99-1609 (4th Cir. 06/20/2000)

In IEP meetings, staff often present parents with a "take it or leave it" proposed IEP. Parents must look for alternatives, and locate educational solutions that will benefit their child. In time, parents learn about private special education schools that specialize in teaching basic academic skills to children with disabilities. In many cases, parents place their children in private programs before they learn about possible entitlement to tuition reimbursement. Under the June, 1997 amendments to the Individuals with Disabilities Education Act, if parents do not provide the public school with prior notice pursuant to 20 U.S.C. § 1412(a)(10)(C)(iii)(I), the parents may lose any entitlement to reimbursement. Parents who are aware of this new provision in the statute may provide the public school staff with notice of their intent to place their child in a private school and may seek reimbursement later. However, parents must be able to show that the public placement was not appropriate and that the private placement was appropriate. The preceding factual scenario is fairly common and similar to the evolution of such cases.[8]

Before they unilaterally remove their child from public school, parents are required to provide the school district with the requisite notice. After the child is placed in the private school program and receives report cards and testing that

[8] *Board of Education of Montgomery County v. Brett Y*, 155 F.3d 557 (4th Cir. 1998), *Carter v. Florence County School District IV*, 950 F. 2d 156, (4th. Cir. 1991) affirmed 510 U. S. 7 (1993), *Doyle v. Arlington County Sch. Bd.*, 953 F.2d 100 (4th Cir. 1991), *Gadsby v. Grasmick*, 109 F.3d 940, (4th Cir. 1997), *Hall by Hall v. Vance County Bd.*

shows the child is benefiting, parents typically contact the public school in the spring to request reimbursement for that year and prospective reimbursement for the subsequent year. In most cases, public school staff will often evaluate the child, then convene a meeting where they either agree to reimburse the parents retroactively and prospectively, or refuse to reimburse the parents. At that point, some cases are settled and resolved amicably, other cases may proceed to a due process hearing. After the receipt of the request for a hearing, a final decision is to be rendered within forty-five days.[9]

The due process hearing includes elements of a medical malpractice wrongful death action coupled with an equitable distribution divorce and custody case. Litigation involves a battle of expert witnesses coupled with strong emotional feelings of betrayal on both sides. Parents often feel that their trust in school staff was betrayed and that their child was damaged. Educators often feel that parents betrayed them after they tried to help the child.

Given these dynamics, to force quick decisions to litigate or not litigate will exacerbate strained relations. This will increase the frequency of litigation between parents and school districts. The passage of time serves to cool tempers, helping to settle disputes. After a due process hearing is initiated, the issues are more difficult to resolve.

---

of Educ., 774 F.2d 629 (4th Cir. 1985), *Schimmel v. Spillane*, 819 F.2d 477 (4th Cir. 1987) *Stockton v. Barbour*

Few parents can make an intelligent and rational decision in the summer about whether to request a special education due process hearing and whether to seek prospective tuition for a private unilateral placement that has not even been made. During the summer, most school staff are not working. With a sixty day statute, it is to the school district's benefit to draw lines in the sand, force the clock to run, force a hearing and a ruling within the mandated 45 days.

The purpose of the Individuals with Disabilities Education Act is not served by forcing litigation.

Conclusion

The parents did not have notice that the statute of limitations had begun to run. However the most important issue affecting the education of children with disabilities is the impact of a sixty day statute. Permitting the continuation of a sixty day statute of limitations will result in an increase in litigation between parents and schools, forcing fights and procedural posturing rather than an emphasis on quality education for children with disabilities so that they can learn how to read, write, spell and do arithmetic.

This Court has established law in *Schimmel*, *Manning* and now *Kirkpatrick* that discusses public policy. The policy of *Schimmel* developed in 1987 is valid today:

County, No. 95-1809, unpublished, 25 IDELR 1076 (4th Cir. 1997)

[9] 34 C.F.R. § 300.511(a)(1)

> We are unwilling, however, to say that this interest in prompt resolution takes precedence over the other federal policies we have identified that could be undermined by application of a very short limitations period. In our view, the need for speedy resolution of disputes does not outweigh the risk that a very short statute of limitations may deny parties a fair opportunity to obtain judicial review of adverse decisions rendered in administrative due process proceedings. Furthermore, we believe that the natural desire of parents to secure an appropriate education for their children will motivate parents to seek such judicial review promptly. Other courts have agreed. (*Schimmel*, supra, at 483)

In closing, C.E. is a child with autism. Autism a severe disability. Many autistic children must be institutionalized. With intensive early intervention services during the first few years of life, some autistic children are being mainstreamed into regular education classes.

In amending the Individuals with Disabilities Act, Congress found that "there is an urgent and substantial need (2) to reduce the educational costs to our society . . . by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age . . ." and to "minimize the likelihood of institutionalization of individuals with disabilities and maximize the potential for their independently living in society . . ." 20 U.S.C. § 1431(a).

Because his parents had high expectations and provided him with appropriate intensive early intervention services, C.E. no longer requires special education services. He is enrolled in regular education classes. C.E.'s parents ensured that he learned the skills he needs for "equality of opportunity, full

participation, independent living, and economic self-sufficiency." 20 U.S.C. § 1400(c)(1)

C.E.'s impressive progress was not due to the efforts of his school district which squandered valuable time quibbling about the services they would provide. In the end, the school district succeeded in **not** providing C.E. with the educational services he needed for "equality of opportunity, full participation, independent living, and economic self-sufficiency."

Now, this school district seeks protection from a 60-day statute of limitations – although they failed to advise the child's parents or their attorney that this statute was running. We ask the Court to find that North Carolina's 60-day statute is not consistent with the purpose of the Individuals with Disabilities Act.

ORAL ARGUMENT STATEMENT

Appellant requests oral argument and believes that it will be helpful to the Court in resolving the issues before it.

Respectfully Submitted

_____

Peter W. D. Wright
Attorney at Law
P. O. Box 1008
Deltaville, Virginia 23043
Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief has been prepared using Fourteen point, proportionally spaced, Times New Roman, 14 point with Microsoft Word 2000.

Exclusive of the corporate disclosure statement; table of contents; table of citations; statement with respect to oral argument, and the certificate of service, the brief contains 4,785 words.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the court so directs, I will provide an electronic version of the brief and / or a copy of the word or line print-out.

_____

Peter W. D. Wright

CERTIFICATE OF SERVICE

I, Peter W. D. Wright, Counsel for the Appellants, hereby certify that on this 14th day of August, 2000, eight copies of this brief were filed in the Clerk's Office of the United States District Court, and two copies were mailed by U. S. Mail, first class, to Christopher Z. Campbell, Esq., counsel for the Appellees, Thomas J. Ziko, counsel for the Intervenor, Mark L. Gross, counsel for *Amicus Curiae*, and Elaine M. Whitford, Counsel for *Amicus Curiae.*

_____

Peter W. D. Wright, Esq.
P. O. Box 1008
Deltaville, VA 23043

804-776-7008
Virginia State Bar # 17606