

No. 08-305

IN THE
Supreme Court of the United States

FOREST GROVE SCHOOL DISTRICT,
Petitioner,

v.

T.A.,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF AMICI CURIAE OF NATIONAL SCHOOL
BOARDS ASSOCIATION AMERICAN ASSOCIATION

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**STATEMENT OF INTEREST
OF AMICI CURIAE¹**

The National School Boards Association (“NSBA”)
is a federation of state associations of school boards.²

support education programs and related services for
children and youth with disabilities. NASDSE

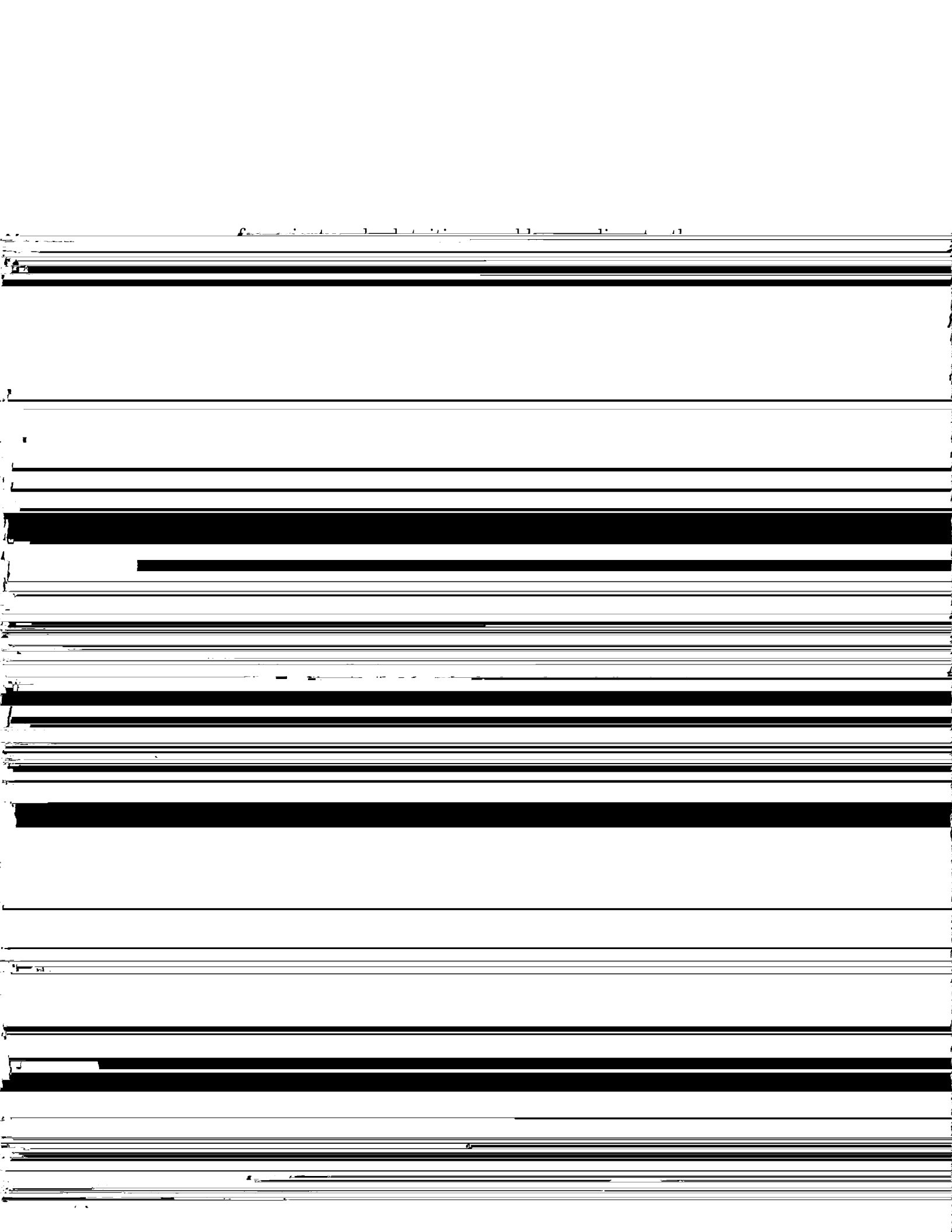
members include the state directors of special
education in all 50 states, the District of Columbia,
the Department of Defense Education Agency, the
Bureau of Indian Education, federal territories, and

the Freely Associated States. NASDSE's primary
mission is to support students with disabilities by
providing services to state educational agencies to
facilitate their efforts to maximize educational and
functional outcomes for students with disabilities.

districts in deciding what educational opportunities they can afford to provide for children.

NSBA, AASA and NASDSE, therefore, assign critical importance to the issue presented in this case: whether Congress in IDEA authorized tuition

their children in private schools where those



cooperative process results in the development,

public schools.²

By holding that § 1412(a)(10)(C)(ii) does not apply to parents who do not give public schools a fair chance to meet the needs of their disabled child or who have no genuine interest in obtaining a public education for that child at all, the Ninth Circuit's decision allows such parents to treat the IEP process merely as a means to a government-funded private school education. This expansion of school districts' obligations under IDEA is in contravention of the statute and should be reversed.³

² While the Federal Government committed to funding 40 percent of the cost per pupil for special education when it first enacted the predecessor statute to IDEA in 1974, it currently funds less than 20 percent of those costs, creating a cumulative funding gap of more than \$55 billion for the last four fiscal years. Ann Lordeman, *Individuals with Disabilities Education Act (IDEA): Current Funding Trends*, CRS Report for Congress, 10-11-2009, http://www.fas.org/irp/congress/other/idea/idea_funding_trends.htm.

ARGUMENT

I. REQUIRING ALL PARENTS AND STUDENTS TO COMPLY WITH THE REQUIREMENTS OF SECTION 1412(a)(10)(C) IS CONSISTENT WITH THE PURPOSE AND STRUCTURE OF IDEA.

As part of its 1997 IDEA amendments, C

sensibly adopted a threshold requirement for tuition reimbursement claims by parents who unilaterally

available for an evaluation, or (4) otherwise acted unreasonably. 20 U.S.C. § 1412(a)(10)(C)(iii). The Ninth Circuit concluded below not only that IDEA

disabled child who never received special education services from a public agency, but also that those parents are not subject to these statutory

The perverse outcome of this conclusion starkly demonstrates that the Ninth Circuit's interpretation of the law is flawed and inconsistent with the purposes and structure of IDEA. Under the Ninth

services from a public entity.

A. IDEA's History and Fundamental

Public School Placements are Preferred.

The principal motivating force behind IDEA and its predecessor was to stop the exclusion of disabled students from *public* schools—not to increase the opportunity for disabled children to attend private schools at public expense. In the 1970s “the majority of disabled children in America were *not* in school.”

The Act's "least restrictive environment" ("LRE")

requirement, further underscores IDEA's goal of promoting public school access for children with disabilities. 20 U.S.C. § 1412(a)(5). Through this requirement, the Act incorporates a strong preference that, whenever possible, children with disabilities attend schools and classes with children who are not disabled—giving rise to "a presumption in favor of placement in the public schools." *T.F. v. [REDACTED]*, 2014 WL 110,783 (E.D. Pa. 1/15/14).

B. IDEA Establishes a Collaborative Framework for Parents and Public Schools to Work in Tandem to Ensure Appropriate Educational Programs for Children with Disabilities.

that it establishes between parents and schools.”
Schaffer, 546 U.S. at 53. *See also Rowley*, 458 U.S.
at 205-206 (Congress gave “parents and guardians a

Parents are also involved in an ongoing process of evaluating the implementation of the child's

parents believe during a school year that their child's

Honig, 484 U.S. at 321 (referring to “inescapable fact that the preparation of an IEP *** is an inexact science at best”). By contrast, to allow parents to obtain tuition reimbursement where, as here, they initially agreed that their child was ineligible for

ten days prior to removing their child from a public

and to determine the extent to which the

true collaboration in determining the development

occur when the collaborative process established by the Act is operating as it is intended.

C. IDEA Provides Numerous Effective Procedural Protections to Parents and Students that Ensure Quality Education and Prevent “Absurd Results.”

complaint it has only ten days to explain to the

action at issue. 20 U.S.C. § 1415(c)(2)(B)(i)(I).
Within 15 days, the school district must convene a
meeting with the parents and relevant IEP team

because the “student would *never* receive special
education in public school and therefore would *never*
be eligible for reimbursement under

§ 1412(a)(10)(C)(ii)” *Forest Grove Sch Dist* 523

F.3d at 1087. The Ninth Circuit’s conclusion that it
is absurd to apply the plain language of the IDEA to
all parents seeking a publicly funded private

Second, there is nothing "alarming" in information

I

[REDACTED]

[REDACTED]

U

[REDACTED]

7

[REDACTED]

[REDACTED]

Indeed, interpreting IDEA to not apply the limits in § 1412(a)(10)(C) to parents and students who never receive special education or related services from a public entity leads to absurd results because

tuition reimbursement when they unilaterally place their child in private school without first receiving special education services from the public school district go beyond those parents' ability to avoid procedural requirements in IDEA with which parents whose children have received public special education services must comply. As a practical matter, parents whose children have not received public special education services will also benefit from an advantage in any later administrative proceeding or litigation with the school district.

Under an interpretation of IDEA that provides that

When the school district has already determined

prior to the parents' unilateral removal that a child
is eligible for special education, unilateral refusal by
parents to try an IEP means that school officials are

no special education services), against the parents' claim that their child is in need of services as reinforced by evidence of how well the child is doing while receiving the panoply of services available at the private placement. Where eligibility is not at

vacuum whether the IEP is reasonably calculated to

provide some educational benefit to the child because the child has no experience with the public school educational plan. This necessitates an abstract

by asking the hearing officer to compare the school

district's proposed program, or lack thereof, to the private school's actual program. In contrast, for a student who has attended the public schools, has gone through the evaluation process, been identified

a difficult process.⁵ These costs have been described as the “wild cards in school district budgets,” because they are based on particular needs of specific

statutory rules and procedures. Rather than having advance notice and an opportunity to plan ahead in

budgeting for a student whom the public school district has attempted to serve, the Ninth Circuit rule means that school districts will be hit after-the-fact with potentially large tuition reimbursement claims for private placements of students who the school district did not even know might require such services.

The budgeting challenges in this case exemplify the problem. How could the school district have suspected in 2001, after T.A.'s mother *agreed* with

education services, or even in March of 2003, when the district assisted T.A.'s father in arranging a placement at Portland Community College while

2003), available at <http://csef.air.org/publications/-SEEP/national/Procedural%20Safeguards.pdf>

~~Reorganization of Chambers Procedural Safeguards~~

Congress is aware of this problem and has been trying to rein in these costs. As a Senate Report

~~Committee on Environment and Public Works, 100th Cong., 1st Sess. (1987)~~

supra, at 8. And on average, schools spent \$8,160-\$12,200 for *each* due process hearing or mediation. *Id.* Given that the average per pupil expenditure for special education services is about \$9,000 a year,

process hearing or mediation effectively doubles a school district's cost to educate a single disabled child. *See id.* at 3; U.S. Dep't of Educ., *Twenty-fourth Annual Report to Congress on the Implementation of* H. R. 1081, 100-500 (1988).

School Districts and the Federal Government

requirements for complaints); 20 U.S.C.
§ 1415(h)(2)(D) (statute of limitations); 20 U.S.C.

§ 1415(e) (mediation and nonbinding arbitration); 20 U.S.C. § 1415(i)(3)(B) (attorney's fees for frivolous claims); H.R. Rep. No. 108-77, at 85-86 (discussing new provisions). But ruling that *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), and *Florence County School District Four v. Carter*, 510 U.S. 7 (1993), are not limited by Section 1412(a)(10)(C)(ii) would only result in a continued flood of private school parents seeking to play in a tuition-reimbursement lottery, regardless of their interest (or lack thereof) in securing a public education for their children. It would place school districts nationwide—many of them small and

financially strapped, in the untenable position of
being forced to choose between an expensive

between expensive litigation and expensive private placements and offering windfalls to parents who prefer private schools.