

Case Nos. 14-56457 (L), 14-56524

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IRVINE UNIFIED SCHOOL DISTRICT,
Plaintiff-Appellant,

v.

K.G., an adult student,
Defendant-Appellee.

Appeal from a Decision of the
United States District Court for the Central District of California
Honorable James V. Selna
No. 2:10-cv-01431-JVS-MLG

BRIEF OF AMICI CURIAE
CALIFORNIA SCHOOL BOARDS ASSOCIATION EDUCATION LEGAL
ALLIANCE & NATIONAL SCHOOL BOARDS ASSOCIATION
IN SUPPORT OF IRVINE UNIFIED SCHOOL DISTRICT AND
REVERSAL OF THE DISTRICT COURT'S DECISION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae California School Boards Association Educational Legal Alliance and National School Boards Association state that they do not issue stock and that neither of them is a subsidiary or affiliate of any publicly owned corporation.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

This case is a matter of statewide and Circuit-wide significance because it

forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), and its progeny¹⁷ too often, awards of attorney's fees under the IDEA to prevailing students and parents are viewed by their attorneys and the district courts as automatic, a foregone

- A. Attorney's fees awards are not automatic once a party is determined to be a prevailing party.

There should be nothing "automatic" about attorney's fees awards in IDEA cases *Farrar v. Hobby*, 506 U.S. 103, 119 (1992) (O'Connor, J., concurring) ("Section 1988 expressly grants district courts discretion to withhold attorney's fees from prevailing parties in appropriate circumstances"); *Bank v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1037 (9th Cir. 2006) (Beezer, J., concurring) ("Prevailing party status does not guarantee the receipt of attorney's fees"); *Choate v. County of Orange*, 86 Cal. App. 4th 312, 324 (2001) (prevailing parties under § 1988 "potentially entitled to attorney fees ... [b]ut that does not end the matter").

"Narrow discretion" does not mean "no discretion," and it should not be interpreted to allow an automatic award of fees to a prevailing party. "[T]he most critical factor" in an attorney's fees analysis, including under the IDEA, is meaningful degree of success. *Farrar*, 506 U.S. at 114; *Aguirre*, 461 F.3d at 1118. Moral satisfaction in pursuing an argument or claim is not enough to constitute meaningful success. *Farrar*, 506 U.S. at 114.

"[S]ection 1988 is not 'a relief Act for lawyers' who accomplish no public goal 'other than occupying the time and energy of counsel, court and client.'" *Choate*, 86 Cal. App. 4th at 324 (quoting O'Connor, J., concurring in *Farrar*, 506 U.S. at 122); accord *Aguirre*, 461 F.3d at 1120 ("Acquiring a client with one

meaningful success⁴*Farrar*, 506 U.S. at 114*Choate*, 86 Cal. App. 4th at 324. To the extent K.G. can even be characterized as a prevailing party in this regard – and *Amici Curiae* doubt that he can be – reasonable attorney’s fees are “no attorney’s fees at all.”*Farrar*, 506 U.S. at 115*Aguirre*, 461 F.3d at 1121. The district court, however, awarded fees for this misadventure despite previously characterizing such an award as inequitable, presumably feeling constrained by the inaccurate view that fees should be automatic.

II. THE DISTRICT COURT’S INTERPRETATION AND APPLICATION OF FEE-SHIFTING IMPOSES SIGNIFICANT ADDITIONAL COSTS ON SCHOOL DISTRICTS ALREADY OVERBURDENED BY THE ENORMOUS EXPENSE OF PROVIDING SPECIAL EDUCATION.

inflict substantial harm on all students, including those with disabilities. *Record Aguirre*, 461 F.3d at 1120.

- A. Litigation costs, including attorneys' fee awards, are a significant additional burden under the IDEA.

In April 2013, the American Association of School Administrators ("AASA") released a proposal concerning reauthorization of the IDEA entitled, "Rethinking Special Education Due Process," in which it argues that the current due process system should be reconsidered because it –

continues to expend considerable school district resources and impedes the ability of school personnel to provide enhanced academic experiences for all students with disabilities because it devotes the district's precious time and resources to fighting the legal actions of a single parent.⁵

By adding to the financial and resource expenditures of IDEA litigation, the district court's decision to grant an unmerited fee award may also unintentionally result in educational costs. Based on a survey of 200 school superintendents from across the United States, AASA found that

[m]ore than ever before, districts are weighing the cost of complying with parents' requests for services, programs and placements against the cost of engaging in a due process hearing, even when districts believe these requests are frivolous, unreasonable or inappropriate for the student.⁶

⁵ Available at http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resource

The district court's award of attorney's fees in this case was based on an inaccurate view and application of the law and should therefore be reversed.

DATED: March 25, 2015

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Rules 29(c) and (d) and 32(a)(5) of the Federal Rules of Civil Procedure, the attached brief uses a proportionally spaced typeface of 14-points or larger and contains 2,846 words.

DATED: March 25, 2015

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