Case No. 07-56827

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

M.D., etc., et al.,

Plaintiffs and Appellants

v.

SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT,

Defendant and Appellee

PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA SCHOOL BOARDS ASSOCIATION EDUCATION LEGAL ALLIANCE

IN SUPPORT OF SADDLEBACK VALLEY USD

Appeal From the United States District Court
for the Central District of California
United States District Court Case No. SACV06-861 JVS (MLGx)
Honorable James V. Selna, Judge

IN SUPPORT OF AFFIRMANCE

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I. INTEREST OF AMICUS CURIAE.

The California School Boards Association ("CSBA") is a California non-profit, member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. As part of CSBA, the Education Legal Alliance ("ELA") helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local educational agencies. The CSBA ELA represents its members, over 800 of the state's 1,000 school districts and county offices of education, by addressing legal issues of statewide concern to school districts. The ELA's activities include joining in litigation where the interests of public education are at stake.

The ELA has a significant interest in this case, namely, to protect and promote the ability of California public school districts to quickly and finally resolve special education administrative hearing complaints, without incurring undue liability for the attorney's fees of a non-prevailing party complainant, under the Individuals with Disabilities Education Act of 2004. 20 U.S.C. §§1400 *et seq.* (2004) ("IDEA"). Amicus' interest in this case revolves around two district court rulings. First, the district court ruled that the IDEA does not compel a state administrative hearing agency to "enter judgment" and issue an order incorporating the settlement's terms, when there is no agreement by the parties to do so. Second,

the district court ruled that, when an IDEA due process student complainant accepts an offer of settlement from a school district, pursuant to the IDEA's offer of settlement provision, 20 U.S.C. §1415(i)(3)(D)(i), this constitutes a private settlement agreement and does not create a prevailing party status for the student. Amicus urges the Court to affirm both of these rulings.

II. INTRODUCTION AND SUMMARY OF ARGUMENT: FEDERAL COURTS ARE COURTS OF LIMITED JURISDICTION, AND ABSENT CONGRESSIONAL AUTHORIZATION, CANNOT CONFER JURISDICTION UPON THEMSELVES OVER IDEA SETTLEMENT AGREEMENTS.

Amicus believes that it can be of assistance in illuminating the legal and policy issues before the Court. Student's Opening Brief has one overriding goal – to persuade the Court to confer Federal jurisdiction upon itself over section 1415(i)(3)(D)(i) settlement agreements, like the one agreed upon by Student himself. Although Student proffers various "procedural" mechanisms to get there, which the district court rejected entirely, the inescapable fact is that, in order to uphold Student's position, this Court will have to confer Federal jurisdiction upon itself over settlement agreements with no Congressional authorization.

Specifically, therefore, Amicus will focus on the following narrow issue: in the IDEA and its implementing regulations, Congress only authorized Federal

court jurisdiction to review and enforce settlement agreements in specific circumstances addressed in the statute, namely, written settlement agreements resulting from a "resolution session" or mediation. Other than in those specific situations, Congress left enforcement of private, voluntary settlement agreements to existing mechanisms. Federal courts are courts of limited jurisdiction, and in the absence of explicit Congressional authorization, the Federal courts cannot assert federal jurisdiction over claims such as that under review here. Such explicit Congressional authorization of Federal jurisdiction is not present in Section 1415(i)(3)(D).

Amicus files this brief in support of Appellee Saddleback Valley Unified School District, and respectfully urges the Court to uphold the district court's decision in its entirety.

III. STUDENTS CANNOT CARRY THE BURDEN OF ESTABLISHING FEDERAL ENFORCEMENT JURISDICTION OVER A SECTION 1415(i)(3)(D) SETTLEMENT.

As recognized by the U.S. Supreme Court, "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, **which is not to be expanded by judicial decree.** It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life*

Ins. Co. of Am., 511 U.S. 375, 377 (1994) (citations omitted; emphasis added). Indeed, "[i]t remains rudimentary law that '[a]s regards all courts of the United States inferior to [the Supreme Court], two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, **and an act of Congress must have supplied it**. . . . To the extent that such action is not taken, the power lies dormant.'" *Finley v. United States*, 490 U.S. 545, 547-48 (1989) (emphasis added in *Finley*) (quoting *Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1868).

Student depicts this case as one involving the IDEA's "silence" on a "rule of adjudicatory procedure," and argues that "the IDEA should be presumed to employ the rule that normally, generally, or ordinarily applies in other adjudicatory situations, at least '[a]bsent some reason to believe that Congress intended otherwise.'"[1] Opening Br. at 24. From here, Student argues that the Court should "presume" an entry of judgment requirement when parties settle under Section 1415(i)(3)(D)(i), in order to confer Federal jurisdiction over any ensuing enforcement of settlement claim. Opening Br. at 25.

[1] Moreover, Student's argument that the Court should "presume" that section 1415(i)(3)(D) requires "entry of judgment" based upon comparison to national offer of judgment rules only highlights the fact that Congress omitted any reference to "entry of judgment" in the IDEA's fee shifting statute. Opening Br. at 24-26.

Student misstates the issue, as well as the operative presumption in this case. M.D. does not ask the Court to merely insert a "rule of adjudicatory procedure" into section 1415(i)(3)(D), but rather, Student is asking this Court to confer Federal jurisdiction over private settlement agreements, in a statutory context where Congress plainly declined to authorize such jurisdiction. As such, Student bears the burden of establishing jurisdiction in this case. Because the IDEA contains no authorization of Federal court jurisdiction over section 1415(i)(3)(D)(i) settlements, particularly in light of such Congressional express authorization over other settlement agreements elsewhere in the Act, Student cannot meet this burden.

IV. WHEN ENACTING THE 2004 AMENDMENTS TO THE IDEA, CONGRESS WAS AWARE OF EXISTING ENFORCEMENT MECHANISMS FOR IDEA SETTLEMENT AGREEMENTS AND DID NOT AUTHORIZE FEDERAL COURT ENFORCEMENT OF AGREEMENTS UNDER 20 U.S.C §1415(i)(3)(D)(i).

The IDEA's "offer of settlement" rule (20 U.S.C §1415(i)(3)(D)(i)) contains no language that confers jurisdiction upon the Federal courts to hear breach of contract complaints from parties who enter into a settlement agreement under the rule, which reads:

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if –
   (I) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
   (II) The offer is not accepted within 10 days; and
   (III) The court or administrative hearing officer finds that the relief obtained by the parents is not more favorable to the parents than the offer of settlement.

20 U.S.C.§1415(i)(3)(D)(i).

On its face, Section 1415(i)(3)(D)(i) exclusively governs the recoverability of attorney's fees in IDEA due process hearings, where the student prevails but does not obtain a result more favorable than a rejected settlement offer. As such, nothing in section 1415(i)(3)(D)(i) indicates that offered-and-accepted settlement agreements are enforceable in Federal Court. The language that Student relies on is not ambiguous, nor would its literal application produce absurd or unjust results. "Consequently, there is no reason to go beyond the application of the law as written." *M.J. v. Clovis Unif. Sch. Dist., supra,* 2007 U.S. Dist. LEXIS 28761, *20-21 (quoting *Bowman v. District of Columbia*, 2006 U.S. Dist. LEXIS 53467 (D.D.C. Aug. 2, 2006)). Without express authorization from Congress, Student cannot establish Federal jurisdiction over the enforcement of the agreement.

Moreover, in the 2004 IDEA amendments, Congress authorized Federal Court jurisdiction in certain settlement contexts, but did not authorize such jurisdiction

for section 1415(i)(3)(D)(i) settlements. Prior to the 2004 amendments, the IDEA was silent as to the enforceability of settlement agreements arising out of due process disputes. Thus, such agreements were enforced via the State Complaint Resolution Process and via state contract law, both of which remain viable enforcement mechanisms today. *Wyner v. Manhattan Beach Unif. Sch. Dist.*, 223 F.3d 1026 (9th Cir. 2000); *see also, e.g., Connors v. Mills*, 34 F.Supp.2d 795 (N.D.N.Y. 1998); *Letter to Shaw*, 50 IDELR 78 (OSEP 2007).

In the 2004 amendments, Congress amended section 1415, subsections (e) and (f), which relate to settlement agreements arising out of two statutorily prescribed proceedings – mediation or a resolution session. Subsection (e)(2)(F) now reads:

> (F) Written agreement
>
> In the case that a resolution is reached to resolve the complaint <u>through the mediation process</u>, the parties shall execute a legally binding agreement that sets forth such resolution and that --
>
> (i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
>
> (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
>
> (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

20 U.S.C. §1415(e)(2)(F) (emphasis added).

Prior to the 2004 amendments, the language of subsection (e) was substantially similar to its current form, except that the language conferring jurisdiction upon the Federal district courts to enforce settlement agreements reached through the mediation process was not present. *See* P.L. 105-17 (June 4, 1997). Congress obviously intended to confer jurisdiction in this context. "The judicial provision was added to confer jurisdiction precisely because such jurisdiction did not previously exist." *M.J. v. Clovis Unif. Sch. Dist.*, *supra*, 2007 U.S. Dist. LEXIS 28761, *19.

Congress added similar language in subsection (f)(1)(B), related to resolution sessions, which provides, in pertinent part:

> (B) Resolution session
>
> (i) Preliminary meeting
>
> Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint --
>
> ...
>
> (iii) Written settlement agreement
>
> In the case that a resolution is reached to resolve the complaint <u>at a meeting described in clause (i)</u>, the parties shall execute a legally binding agreement that is

> (I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and
>
> (II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

20 U.S.C. §1415(f)(1)(B) (emphasis added).

Again, the judicial provision was added to confer jurisdiction precisely because such jurisdiction would not otherwise exist.

As such, Congress specifically indicated that only those settlement agreements reached "at a meeting described in clause (i) [a resolution session, with specific procedural requirements]" or "through the mediation process" should be "enforceable ... in a district court of the United States.'" 20 U.S.C. §§1415(e)(2)(F), (f)(1)(B)(iii). Student's attempts to invoke Federal jurisdiction for settlement agreements made outside these contexts must fail.

The Eastern District of California recently rejected a party's contention that the specific jurisdictional language contained in §§ 1415(e) and (f) should be extended to settlement agreements reached in contexts other than mediation and resolution session. *M.J. v. Clovis Unif. Sch. Dist.*, *supra*, 2007 U.S. Dist. LEXIS 28761, *20-21 ("The district court in *Bowman* reasoned:

> Perhaps it is true, as plaintiffs suggest, that a district court's exercise of subject matter jurisdiction over disputes involving settlement agreements like those in this case would be 'a logical extension,' . . . of the jurisdictional provisions in § 1415 and would advance

> Congress's goal of facilitating non-judicial resolution of IDEIA-related disputes. **But it is not the role of the courts to append new provisions to statutes whenever doing so might comport with some of Congress's goals.** *See Brogan v. United States*, 522 U.S. 398, 408 (1998); *Nathan v. Smith*, 737 F.2d 1069, 1081 (D.C. Cir. 1984). This is especially true when other parts of the Act indicate that Congress also wanted to encourage plaintiffs to resolve their disputes only through certain formal administrative procedures. *See* 20 U.S.C. §1415(i)(D)(ii) (forbidding the awarding of attorneys' fees relating to an IEP Team meeting "unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) of this section."). The language that plaintiffs rely on is not ambiguous, nor would its literal application produce absurd or unjust results. Consequently, there is no reason to go beyond the application of the law as written. **The court therefore declines to confer jurisdiction on itself where Congress has not done so.**" (emphasis added) [quoting *Bowman v. District of Columbia*, *supra*, 2006 U.S. Dist. LEXIS 53467]).

Similarly, according to the unambiguous language of Section 1415(i)(3)(D)(i), Congress has not authorized the federal courts to exercise jurisdiction to enforce private, voluntary settlement agreements entered into pursuant to Section 1415(i)(3)(D)(i), because it is outside the framework of any alternative dispute resolution procedure described in section 1415(e) or (f). Congress simply did not choose to include language regarding the content or enforceability of settlement agreements under Section 1415(i)(3)(D). Essentially, Student urges the Court to legislate this for them, and make all private IDEA

settlement agreements enforceable in Federal court. Amicus urges the Court to decline to confer jurisdiction upon itself where Congress has not done so.

V. CONCLUSION.

Based upon the foregoing, Amicus files this brief in support of the Saddleback Valley Unified School District, and urges the Court to affirm the district court's final judgment in its entirety.

DATED: August 13, 2008

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 2,179 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 14 point font in Times New Roman.

DATED: August 13, 2008

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