

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

COUNTY SCHOOL BOARD)
OF HENRICO COUNTY, VIRGINIA,)
)
Plaintiff,)
) Civil Action No. 3:04CV923
v.)
)
R.T., a minor, *et al.*)
)
Defendants.)
_____)

**BRIEF OF THE UNITED STATES AS AMICUS CURIAE IN RESPONSE TO
SCHOOL BOARD’S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

Questions Presented

The United States will address the following questions raised by the Henrico County Board of Education’s Second Motion for Partial Summary Judgment:

1. Whether the United States Department of Education’s (“the Department”) regulation 34 C.F.R. § 300.514(c) is contrary to the plain language of the Individuals with Disabilities Education Act (“IDEA”),¹ specifically 20 U.S.C. §§ 1412(a)(10)(C)(i),² 1415(i)(2)(C)(iii),³ and 1415(j).
2. Whether 20 U.S.C. § 1415(j) requires a local education agency (“LEA”) to maintain at

¹ Unless otherwise noted, the references to the IDEA are to the 2004 Reauthorization.

² Henrico argues that the regulation contradicts 20 U.S.C. § 1412(10)(C)(i), Henrico Summ. J. Mem. at 9, but the language cited by Henrico comes from 20 U.S.C. 1412(a)(10)(C)(i).

³ Henrico appears to have cited the IDEA 1997 provision requiring “the preponderance of the evidence” at 20 U.S.C. § 1415(i)(2)(B)(iii). *See* Letter to Hon. J. Payne from J. T. Tokarz of Aug. 15, 2005, at 2. That language now appears at 20 U.S.C. § 1415(i)(2)(C)(iii).

LEA expense the private educational placement of a child agreed to by the state education agency (“SEA”) and the parents during the pendency of the proceedings under 20 U.S.C. § 1415; and

3. Whether 20 U.S.C. § 1415(j), as interpreted by its implementing regulation 34 C.F.R. § 300.514(c), violates the Spending Clause of the United States Constitution.

Interests of the United States

This case presents issues under the IDEA, 20 U.S.C. § 1400 *et seq.*, concerning the validity of the stay put provision of the IDEA, 20 U.S.C. § 1415(j), and its implementing regulation 34 C.F.R. § 300.514(c). The IDEA is an important civil rights statute for children with disabilities and is enforced by the Department, which is authorized to promulgate regulations. *See* 20 U.S.C. § 1406. The Department also may refer IDEA matters to the Department of Justice for enforcement. *See* 20 U.S.C. §§ 1416(e)(2)(B)(vi) and 1416(e)(3)(D). The Department of Justice is filing an amicus brief in this case not on the basis of a referral for enforcement but rather to represent the Department’s interest in defending the validity of one of the IDEA’s most important procedural safeguards. Because of our interest in the proper interpretation of the IDEA and its applicable regulations, the United States has filed amicus briefs in a number of IDEA cases, including two recent cases involving the meaning of the stay put statutory provision. *See Pardini v. Allegheny Intermediate Unit*, 2005 WL 2063876 (3d Cir. Aug. 29, 2005); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195 (2d Cir. 2002).

Statement of the Case

The first stated purpose of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education [“FAPE”] that emphasizes special education and related services designed to meet their unique needs and prepare them for further

