22-3137

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 279,

Plaintiff-Appellant,

—v.—

A.J.T., by and through her parents, A.T. and G.T.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRIEF FOR *AMICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., THE ARC OF THE UNITED STATES, THE MINNESOTA DISABILITY LAW CENTER AND THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW IN SUPPORT OF DEFENDANT-APPELLEE SUPPORTING AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 the following disclosure is made on behalf of these entities:

COUNCIL OF PARENT ATTORNEYS AND ADVOCATES
THE ARC OF THE UNITED STATES
THE MINNESOTA DISABILITY LAW CENTER
THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH

1. No amici is a publicly held corporation or other publicly held entity;

2. No amici has parent corporations; and

3. No amici has 10% or more of stock owned by a corporation.

/s/ Selene Almazan-Altobelli
Attorney for Amici Curiae

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*[1]

Council of Parent Attorneys and Advocates (COPAA) is a national not-for-profit organization for parents of children with disabilities, their attorneys, and advocates. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal partners. COPAA does not undertake individual representation but provides resources, training, and information for parents, advocates and attorneys to assist them in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq*.[2] COPAA also supports individuals with disabilities in efforts to safeguard the civil rights guaranteed to them under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983), Section 504 of the Rehabilitation Act of

[1] Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, *Amici* state that: (i) there is no party or counsel for a party in the pending appeal who authored the *Amici Curiae* brief in whole or in part; (ii) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (iii) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members.

[2] The statute was originally named the Education of the Handicapped Act or EHA; it was renamed IDEA in 1990. *See Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 n.1 (2017). For the sake of simplicity, we refer only to IDEA in this brief. *Id.*

1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*.

COPAA is extremely concerned about efforts by school districts and states to shorten the school days for students with disabilities. COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has often filed as *amicus curiae* in the United States Supreme Court, including *Perez v. Sturgis Public Schools*, 143 S. Ct. 859 (2023); *Endrew F. v. Douglas County School District. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Community Schools*, 580 U.S. 154 (2017); and *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009), and in numerous cases in the United States Courts of Appeal. COPAA also is an organizational plaintiff in *J.N. v. Oregon Department of Education*, 338 F.R.D. 256 (D. Or. 2021) (granting class certification), which challenges the use of shortened school days by Oregon and its school districts.

The Arc of the United States (The Arc), founded in 1950, is the nation's largest community-based organization of and for people with intellectual and developmental disabilities (IDD). Through its legal advocacy and public policy work, The Arc promotes and protects the human and civil rights of people with IDD and actively supports their full inclusion and participation in the community throughout their lifetimes.

The Minnesota Disability Law Center (MDLC) is a project of Mid-Minnesota Legal Aid (MMLA). Based on more than 100 years of high-quality representation, MMLA was designated by the Governor of Minnesota pursuant to federal statutes to serve as the Protection and Advocacy System for persons with disabilities in Minnesota. MMLA performs this function through the MDLC.

MDLC works to advance the dignity, self-determination and equality of individuals with disabilities through direct legal representation, advocacy, education and policy analysis. As part of its Protection and Advocacy work, MDLC advocates for the rights of children with identified disabilities to receive special education services pursuant to federal and state law. MDLC provides representation for these children, including individual advice and policy advocacy on special education issues.

The Judge David L. Bazelon Center for Mental Health Law (Bazelon Center), is a non-profit legal advocacy organization dedicated to advancing the rights of people with disabilities, including mental disabilities, for over four decades. Ensuring that children with disabilities are provided with a free appropriate public education, as mandated by the IDEA, is a central part of the Bazelon Center's mission.

Amici's interest in this case stems from its deep commitment to ensuring that students obtain appropriate relief when the school district has denied them their statutory rights to a FAPE.

Amici requested consent to file this *Amici Curiae* brief from counsel for both parties. Both parties, Appellants and Appellees, have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The Supreme Court has made clear that children with disabilities eligible under IDEA are entitled to an Individualized Education Program (IEP) that is "appropriately ambitious" to enable them to make meaningful progress. *Endrew F.*, 580 U.S. at 388. The Supreme Court held that IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances," and programs that provided merely "some" progress were inadequate. *Id.* at 402-03. Instead, the Court explained that children with disabilities (regardless of the severity of their disability) are entitled to an IEP that considers their present levels of achievement, disability, and potential for growth to develop appropriately ambitious goals. *Id.* at 400. If progressing smoothly through the general education curriculum is not a reasonable prospect for a child, the "IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from

grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives." *Id.* at 402.

To ensure appropriately ambitious programming with challenging objectives is developed, IDEA relies on procedures for developing a child's IEP set forth in the statute, including robust parental participation. When a school district denies meaningful parental participation by predetermining programming decisions without considering parental input, it commits an actionable procedural violation.

In this case, Osseo Area School District (Osseo or District) predetermined the length of instructional time for A.J.T. based on factors *other than her individual needs*, focusing instead on administrative convenience for the District. Osseo refused to consider parental input on the length of school day necessary for A.J.T. to receive an educational program that would meet her unique needs. In relying on its predetermined policy, Osseo procedurally denied A.J.T.'s parents their right to meaningful participation. These procedural failures also resulted in a substantive violation of IDEA, as A.J.T. did not receive an appropriately ambitious education.

ARGUMENT

I. CONGRESS ENACTED IDEA TO ENSURE AN APPROPRIATE EDUCATION FOR ALL CHILDREN WITH DISABILITIES

In the 1970s, Congress held hearings investigating the quality of educational instruction provided to children with disabilities. These hearings established that public school districts throughout the county had wholly excluded millions of children with a multitude of disabilities or placed those children in programs where they received no educational benefit. *Education for All Handicapped Children, 1973-74: Hearings on S.6 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 93d Cong., 1st Sess. (1973-74). At that time, statistics showed that "only 55 percent of the school-aged [disabled] children and 22 percent of the pre-school-aged [disabled] children [were] receiving special educational services." Senator Randolph, *Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare*, 94th Cong., 1st Sess. 1 (1975). Parents and educators discussed the widespread failure of states to provide the extent of supportive services necessary to meet the needs of children with varying degrees and forms of disabilities. Statistics compiled for Congress by the Office of Education at that time revealed that children of all ages and with a range of disabilities were affected. For example, pupils excluded or receiving inappropriate education included 82% of "emotionally disturbed" children; 82% of "hard-of-hearing" children; 67% of "deaf-blind" and

"other multi-handicapped" children; and 88% of those classified "learning disabled." S. Rep. No. 168, 94th Cong., 1st Sess. 5-8 (1975) *reprinted in* 1976 U.S.C.C.A.N., 1425, 1429-32; H.R. Rep. No. 332, 94th Cong., 1st Sess. 11-12 (1975).

In light of these gross disparities regarding access to educational programming for students with disabilities, Congress enacted Public Law 94-142, the Education for All Handicapped Children Act in 1975, which, following various amendments, is now known as IDEA. IDEA requires that state and local public education agencies enact policies and procedures to ensure that all students with disabilities receive a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

II. THE SUPREME COURT'S *ENDREW F.* DECISION ADDRESSED THE FAPE STANDARD FOR STUDENTS WITH DISABILITIES AND THE SIGNIFICANCE OF IDEA'S PROCEDURAL REQUIREMENTS, INCLUDING PARENTAL PARTICIPATION, FOR DEVELOPING SUBSTANTIVELY APPROPRIATE IEPS

To receive federal funds under IDEA, states must provide FAPE to all eligible children. *Endrew F.*, 580 U.S. at 390 (citing 20 U.S.C. § 1412(a)(1)). "A focus on the particular child is at the core of the IDEA. The instruction offered must be '*specially* designed' to meet a child's '*unique* needs' through an '[*i*]*ndividualized* education program.'" *Id.* at 400 (quoting 20 U.S.C. §§ 1401(29) & (14)) (emphasis

in original); *see also Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1078-79 (8th Cir. 2020). Thus, the "adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Endrew F.*, 580 U.S. at 404.

In *Endrew F.*, the Supreme Court announced a clear standard for the level of educational benefit IDEA requires for the receipt of a FAPE as well as addressing the importance of IDEA's procedural requirements in developing the child's IEP. In so doing, the Court rejected the Tenth Circuit's low standard for a FAPE: that "merely . . . more than *de minimis*" educational benefit was sufficient. *Id.* at 391. The Supreme Court instead held that: "The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at 399; *E.M.D.H.*, 960 F.3d at 1082. The Court emphasized that the IEP must be "appropriately ambitious," and the objectives must be "challenging." *Id.* at 402.

Further, the Supreme Court emphasized the importance of compliance with IDEA's procedures as a means to develop an appropriate IEP. The Supreme Court rejected the argument that such provisions governing the IEPs required components "impose only procedural requirements – a checklist of items the IEP must address – not a substantive standard enforceable in court." *Id.* at 401-02. As the Supreme Court explained, the "procedures are there for a reason" and provide insight into what it means to meet the unique needs of a child with a disability.

As the Supreme Court recognized, the IEP is the roadmap to the child's academic and functional advancement, "constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* at 400 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I) -(IV), (d)(3)(A)(i)-(iv)). The IEP must be drafted in compliance with a detailed set of procedures, which emphasize collaboration among parents and educators and careful consideration of the child's individual circumstances. *See id.* at 391.

Every IEP must include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be measured. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(III). The IEP also must describe the "special education and related services . . . that will be provided: so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

On December 7, 2017, the U.S. Department of Education released a helpful resource for parents, advocates, and attorneys in its Questions and Answers (Q&A) on *Endrew F. v. Douglas County School District RE-1*,

https://sites.ed.gov/idea/files/qa-endrewcase-12-07-2017.pdf (last viewed April 17, 2023). As the Q&A acknowledged, the Court's clarification of a school's substantive obligation under IDEA, "reinforced the requirement that 'every child should have the chance to meet challenging objectives.'" (Q&A No. 3). The guidance also makes clear that decisions made by the IEP Team must be made with collaboration and input with the child's parents, who are important and required members of the IEP Team. *See* Q&A Nos. 10-12, 15.

If the parents of the child are dissatisfied with the IEP, or with the manner in which the IEP is developed or implemented, they "may turn to dispute resolution procedures established by the IDEA. The parties may resolve their differences informally, through a 'preliminary meeting,' or, somewhat more formally, through mediation. If these measures fail to produce accord, the parties may proceed to what the Act calls a 'due process hearing' before a state or local educational agency. And at the conclusion of the administrative process, the losing party may seek redress in state or federal court." *Endrew F.*, 580 U.S. at 391 (cleaned up). The court "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C).

III. OSSEO DENIED A.J.T. A FAPE BY PREDETERMINING THE LENGTH OF HER SCHOOL DAY, THEREBY IMPEDING HER PARENTS' MEANINGFUL PARTICIPATION IN THE IEP PROCESS AND FAILING TO PROVIDE AN APPROPRIATE EDUCATIONAL PROGRAM.

A. The Right to Meaningful Parental Participation is Essential to Ensure the Provision of a FAPE

Parents are key members of the IEP Team. 20 U.S.C. § 1414(d)(1)(b); 34 C.F.R. § 300.321(a)(1). And as the U.S. Supreme Court has repeatedly emphasized, parental participation in the IEP decision-making process is essential to safeguarding the educational rights of children with disabilities that Congress sought to protect under IDEA. The statute's "procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances." *Endrew F.*, 580 U.S. at 391. "Congress repeatedly emphasized throughout the Act the importance and indeed necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness." *Honig v. Doe*, 484 U.S. 305, 311 (1988).

IDEA contemplates that the fact-intensive exercise of developing an IEP that is reasonably calculated to result in educational benefit "will be informed not only by the expertise of school officials, but also by the input of the child's parents." *Endrew F.*, 580 U.S. at 399. "Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the

measurement of the resulting IEP against a substantive standard." *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982). Thus, school districts are responsible for initiating IEP meetings and ensuring that parents are given a meaningful opportunity to attend the IEP meeting and participate as full members of the IEP Team. *See* 34 C.F.R. § 300.322. In addition, after participating in the development of their child's IEP at the meeting, parents must also be involved in their child's placement decision. 20 U.S.C. § 1414(e); 34 C.F.R. § 300.327; 34 C.F.R. § 300.501(c).

The "nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. *Endrew F.*, 580 U.S. at 404. Parental involvement in the IEP process far exceeds mere physical attendance at meetings. *See, e.g., O v. Glastonbury Bd. of Educ.,* No. 3:20-cv-00690, 2021 U.S. Dist. LEXIS 247211, at *25 (D. Conn. Dec. 29, 2021); *see* 20 U.S.C. § 1414(d)(1)(B); *Notice of Interpretation,* Appendix A to 34 CFR Part 300, Question 5 (1999 regulations); *see also Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004) ("[Parental] [p]articipation must be more than a mere form; it must be meaningful.") (citations omitted). Specifically, parents are afforded the opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the

child (including IEP meetings);[3] be part of the IEP team that determine what additional data are needed as part of an evaluation of their child;[4] assist in determining their child's eligibility;[5] have their concerns and the information they provide regarding their child considered in developing and reviewing their child's IEP's;[6] and be regularly informed of their child's progress.[7]

As active and equal participants on the team, parents are in the unique position to offer valuable information on their children's strengths, to describe the need for services, and to share specific concerns with the entire IEP team. *See* 34 CFR Part 300, App. A, Quest. 5; *see also Doug C. v. Haw. Dep't of Educ.,* 720 F.3d 1038, 1044 (9th Cir. 2013) ("Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.") (quoting *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001)). The collaborative and conversant decisions regarding placement and services

[3] 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.322; 34 C.F.R. §300.501(b).

[4] 20 U.S.C. § 1414(b)(1)-(2), (c)(i).

[5] 20 U.S.C. § 1414(b).

[6] 20 U.S.C. § 1415 (d)(3)(A)(ii), (4)(A)(ii)(III).

[7] 20 U.S.C. § 1414(d)(1)(A)(i)(bb)(III).

anticipated by the IDEA occur when parental input equips the IEP team with the best available information specific to the individual child.

B. The District's Refusal to Consider Parental Input Regarding the Inappropriateness of a Shortened School Day Resulted in a Substantive Deprivation of FAPE for A.J.T.

The Supreme Court has held that procedural violations are just as important as the Act's substantive requirement that students be appropriately educated, holding that procedural protections for parents and students are at the "core of the statute," necessary for parents to be able to protect the substantive rights provided to their children. *Schaffer v. Weast*, 546 U.S. 49, 53 (2005) (internal citation omitted); *Honig*, 484 U.S. at 311; 20 U.S.C.A. § 1415. These procedural requirements are designed to "guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decision they think inappropriate.'" *Buser by Buser v. Corpus Christi Indep. Sch.*, 51 F.3d 490, 493 (5th Cir. 1995) (quoting *Honig,* 484 U.S. at 311-12 (1988)). Indeed, "[o]ne of the central innovations of the special education law, and a key to its success, is that it empowers parents to participate in designing programs for their children and to challenge school district decisions about educational services and placement." Mark C. Weber, *Litigation Under the Individuals with Disabilities Education Act After Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 65 Ohio St. L.J. 357, 369 (2004).

IDEA specifically recognized the crucial importance of parental participation by explicitly providing that denial of that right alone may result in a finding that a child did not receive FAPE if the procedural violation "significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child." 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Accordingly, courts have found that procedural violations that deprive parents of critical information that impedes their ability to participate in the decision-making process cause a deprivation of FAPE. *See, e.g., M.C. v. Antelope Valley Union High Sch. Dist.,* 858 F.3d 1189, 1197-98 (9th Cir. 2017) (school district's unilateral revision to IEP after meeting violated right of parental participation); *Doug C.,* 720 F.3d at 1047 (failure to include parent in IEP meeting clearly infringed on his ability to participate in the IEP formulation process, so that student was denied a FAPE); *Indep. Sch. Dist. No. 413 v. H.M.J.*, 123 F. Supp. 3d 1100, 1111 (D. Minn. 2015) (by simply indicating that student did not qualify for special education without fully considering Other Health Disabilities criteria, school district deprived parents of meaningful participation, resulting in substantive violation); *C.P. v. N.J. Dep't of Educ.*, No. 19-12807, 2022 U.S. Dist. LEXIS 158147, at *33 (D.N.J. Sept. 1, 2022) (significant delays in due process hearing system deprived parents of the right to take part in the decision-making process regarding the provision of FAPE to their children thereby denying substantive right

of participation); *Knox v. St. Louis City Sch. Dist.*, No. 18-cv-216, 2020 U.S. Dist. LEXIS 114445, at *31 (E.D. Mo. June 30, 2020) (failure to consider eligibility under "Other Health Impairment" deprived grandmother full participation in the IDEA process); *Beckwith v. District of Columbia*, 208 F. Supp. 3d 34, 46-47 (D.D.C. 2016) (failure to provide required information about restraints and to produce relevant staff people at MDT meeting impeded parental participation and deprived student of FAPE); *Bell v. Bd. of Educ. of the Albuquerque Pub. Schs*, No. CIV 06-1137 JB/ACT, 2008 U.S. Dist. LEXIS 108748, at *87-88 (D.N.M. Nov. 28, 2008) (D. N. Mex. Nov. 28, 2008) (holding school district failure to provide correct diagnosis to parent was a denial of FAPE because it was "a lack of reliable information on which to rely on in advocating for [the student] and meaningfully participate in the IEP process.").

Thus, when a school district designs a program and placement without considering the student's actual needs and parental input, it violates IDEA. *M.S. v. L.A. Unified Sch. Dist.*, 913 F.3d 1119, 1137 (9th Cir. 2019); *Indep. Sch. Dist. No. 413 v. H.M.J.*, 123 F. Supp. 3d 1100, 1112 (D. Minn. 2015) (egregious procedural violations seriously infringed on parental participation rights). In *Deal*, for example, the Sixth Court of Appeals upheld a finding of a denial of FAPE when the school district refused to consider provision of Applied Behavior Analysis programming because of a policy mandating denial regardless of the student's demonstrated

individual needs. 392 F.3d at 855; *see also W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484-85 (9th Cir. 1992); *B.H. v. W. Clermont Bd. of Educ.*, 788 F. Supp. 2d 682, 693-94 (S.D. Ohio 2011) (predetermined decision to deny speech and occupational therapy services resulted in substantive denial of FAPE).

The district court recognized that the crux of the conflict between the parties in this case was the District's desire to program based on administrative convenience and the Parents' knowledge that A.J.T.'s unique needs required "a school day that is 6.5 hours long and that those hours coincide with the hours when she is medically able to learn (*i.e.,* when she is less prone to seizure activity and is alert and receptive to learning)." *Id.* at *33.

In ruling for the Parents, the district court relied, in part, upon the finding of the Administrative Law Judge (ALJ) that the District's refusal to extend A.J.T.'s hours of instruction had nothing to do with her unique needs. The ALJ "found that the current IEP, without the supplemental instruction at home, was not providing an educational program reasonably calculated to enable A.J.T. to make progress appropriate in light of her circumstances." *Osseo Area Sch. Dist. v. A.J.T.*, No. 21-1453, 2022 U.S. Dist. LEXIS 164444, at *31 (D. Minn. Sept. 13, 2022). The ALJ also "found that whenever there was a conflict between the need to maintain the regular hours and A.J.T.'s need for instruction, regular hours was always 'the

prevailing and paramount consideration' and that A.J.T.'s educational programming was 'thus constrained by limitations imposed upon, and outside of, the IEP Team.'" *Id.* at *31-32 (quoting *ALJ Order, Conclusions*, ¶¶ 6-7). The district court relied upon an administrative decision holding that a categorical refusal to consider provision of extended day services failed to account for the circumstances of the individual child and therefore violated IDEA. *Id.* at *32 (citing *Ind. Sch. Dist. No. 623*, No. 317-2, 31 IDELR ¶ 17, 53). The court also cited to a decision holding that shortening a school day outside of the required IEP team process violated IDEA. *Id.* at *35 (citing *Spring Branch Indep. Sch. Dist. v. O.W.*, 938 F.3d 695, 712 (5th Cir. 2019), *opinion withdrawn and superseded on other grounds on reh'g sub nom. Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W.*, 961 F.3d 781 (5th Cir. 2020)). The district court deferred to the ALJ's factual determination that the District's request to attempt morning instruction was "made solely to provide a standard departure time for its staff." *Id.* at *68.

In short, the district court correctly concluded that the record in this case demonstrates that the District relied on a policy that it would not extend instruction hours beyond 4:15 p.m. without considering either A.J.T.'s individualized needs or parental input regarding those needs. As the district court explained:

> The District steadfastly refused to extend the instruction hours past 4:15 with a series of shifting reasons: at one point merely stating, "We don't provide both homebound and school support," then stating state law did not mandate this type of support, and finally stating that it would not

> provide an extended school day "due to the precedent it would start [for the District] and other districts across the area." None of these reasons is based on an individual assessment of AJT's needs as required by the IDEA, under which extended days "are appropriate in certain circumstances and their location is not confined to the school day or a school setting." *Ind. Sch. Dist. No. 623, 31 IDELR ¶ 17*; *Endrew F.*, [580 U.S. at 400] ("A focus on the particular child is at the core of the IDEA.").

Id. at * 42.

Courts have recognized that shortening school days for IDEA-eligible children based on administrative convenience rather than individual student needs can cause substantive harm. *See J.N. v. Or. Dep't of Educ.*, No. 6:19-cv-00096-AA, 2020 U.S. Dist. LEXIS 159070, at *25-26 (D. Or. Sept. 1, 2020) ("The Court concludes that E.O. sufficiently alleges that he suffers an actual injury and that [other plaintiffs] who have yet to receive the supports they need to succeed at full-day school and whose previously non-compliant districts are not being monitored, are at risk of imminent future harm from again suffering unnecessarily shortened school days"). Similarly, Osseo's actions did just that: the school district omitted a toileting goal, and could not implement all interventions recommended by A.J.T.'s evaluations due to lack of time after it unilaterally shortened her school day. *Id.* It is undisputed this resulted in A.J.T.'s regression in several critical areas. *Id.* at *52-53. Not only did Osseo's actions deprive A.J.T.'s parents of their participation rights, they deprived A.J.T. of her educational benefits under IDEA as well.

CONCLUSION

IDEA's procedural safeguards, especially the right to meaningful parental participation, exist to ensure the delivery of meaningful educational benefit to all children with disabilities. Because of Osseo's undisputed failure to comply with IDEA's procedural mandates, A.J.T. did not receive an appropriately ambitions program with challenging objectives. For these reasons, this Court should affirm the district court's ruling that Osseo denied A.J.T. a FAPE in violation of IDEA.

Dated: April 20, 2023

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C)

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C), the attached amicus brief is proportionately spaced, has a typeface of 14 points and contains 4,374 words.

Dated: April 20, 2023

/s/ Selene Almazan-Altobelli
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CERTIFICATE OF SERVICE

I certify that on April 20, 2023 the foregoing document was served on all parties or their counsel of record through the CM/ECF if they are registered users.

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