

No. 07-613

Supreme Court, U.S.  
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**In The  
Supreme Court of the United States**

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D.P. on Behalf of E.P., D.P. and K.P., and  
L.P. on Behalf of E.P., D.P., and K.P.,

*Petitioners,*

v.

SCHOOL BOARD OF BROWARD COUNTY, FLORIDA,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether, Under 20 U.S.C. §1415(j), the Stay-Put Placement for a Child Transitioning From Part C to Part B of IDEA and Applying for Initial Admission to Public School, is the Child's IFSP, Which May Not Include An Educational Component.

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## COUNTER-STATEMENT OF THE CASE

### A. Statutory Background.

The Individual with Disabilities Education Act (“IDEA”) provides a federal grant program to assist state and local agencies in providing education to disabled children from ages 3 through 21, and “early intervention services” for disabled infants and toddlers from birth to 3 years of age.

Part B of the IDEA, 20 U.S.C. §§1400-1427, requires that states provide a Free and Appropriate Public **Education** (FAPE) to eligible children with disabilities, beginning at age three (3) to age twenty-one (21). *See* 20 U.S.C. §1412; 34 C.F.R. Part 300. FAPE is defined as “special education and related services” that meet the standards of the state educational agency, that include an appropriate preschool, elementary, or school education in the State involved, and that are provided in conformity with the individualized education program (“IEP”) required under section 614(d) [20 U.S.C. §1414(d)]. 20 U.S.C. §1401(8); 34 C.F.R. §300.13.

An IEP is centered on and responsive to the **educational** needs of the individual child. *See* 20 U.S.C. §1414(d)(1)(A). An appropriate IEP is one that meets the procedural and regulatory requirements and is one that is designed to provide meaningful educational benefit to the child. *See Hendrick Hudson Board of Education v. Rowley*, 458 U.S. 176 (1982).

In 1986, Congress enacted Part C of the IDEA, 20 U.S.C. §§1431-1445. Part C requires states to provide “early intervention services” to disabled infants from birth to age 3. Early intervention services are “developmental services” that are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. 20 U.S.C. §1432(4)(C); Fla. Admin. Code R. 6A-6.03411(1)(b).

All early intervention (“developmental”) services must be provided in accordance with an Individualized *Family Service* Plan (“IFSP”). 20 U.S.C. §1432(4)(H). The IFSP is developed with the cooperation and consent of the family with an eye toward the “resources, priorities, and concerns of the family.” 20 U.S.C. §1436(a)(2). In other words, Part C seeks to provide support to improve families’ capacity to meet the special needs of their infants and toddlers with disabilities, and to enhance children’s functional development. *See* U.S. Dept. Of Educ., Office of Special Education Policy, OSEP 23rd Annual Report to Congress on the Implementation of the IDEA IV-28 (2001).<sup>1</sup> Part C services are *not* designed to provide a

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<sup>1</sup> Available at <http://www.ed.gov/about/reports/annual/osep/2001/index.html>.

FAPE, are not designed to provide an education, and may not include any educational component at all.

The policies and goals behind Part C and Part B are different. Eligibility requirements are different. Part C and Part B are administered by entirely different agencies.

Congress has mandated that when a child turns age 3, the transition from Part C to Part B (when an appropriate education is to begin) must be smooth “and effective.” 20 U.S.C. §1412(a)(9); U.S. Dept. Of Educ., Office of Special Education Policy, OSEP 23rd Annual Report to Congress on the Implementation of the IDEA IV-28 (2001). Congress has specifically provided that an IFSP may serve as an IEP under certain specified circumstances:

Program for child aged 3 through 5. In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in 636, and is developed in accordance with this section, *may* serve as the IEP of the child if using that plan as the IEP is –

- (i) consistent with State policy; and
- (ii) agreed to by the agency and the child’s parents.

20 U.S.C. §1414(d)(2)(B) (emphasis added); *see also*, 34 C.F.R. 342(c)(1)(ii); Fla. Admin. Code R. 6A-6.03029(2).

### **Stay-Put Provisions**

Both Part C and Part B of IDEA contain “stay-put” provisions to govern what services will be provided should a dispute arise over an IFSP or an IEP between the parents of a child receiving services under IDEA and a state agency.

The stay-put provision contained in Part C, 20 U.S.C. §1439(b), provides that during the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability under Part C:

unless the State agency or parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided, or, if applying for initial services, shall receive only the services not in dispute.

Thus, if the parents do not consent to an initially proposed IFSP there is no “stay-put” placement in early intervention services of the parents’ choice.

At issue here is Part B’s stay-put provision, 20 U.S.C. §1415(j), which provides:

(j) Maintenance of current educational placement:

Except as provided in subsection (k)(7) of this section, during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child

shall remain in the then-current educational placement of such child, or, ***if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.***

(Emphasis added). According to the plain directive of this provision, if a child is applying for initial admission to public school, the stay-put placement, with the consent of the parents, is the public school program. If the parents do not consent to an initially proposed IEP, the “stay-put” placement is not an IFSP. Indeed, IFSPs need not include any educational component at all.

### **Recent Amendments to IDEA**

Effective December 3, 2004, Congress amended 20 U.S.C. §1435(c) of IDEA to add a new provision which provides in part:

Requirements for a statewide system:

- (c) Flexibility to serve children 3 years of age until entrance into elementary school.
- (1) In general. A statewide system described in section 633 [20 U.S.C. §1433] [providing for Part C early intervention services] ***may*** include a State policy, developed and implemented jointly by the lead agency and the State educational

agency, under which parents of children with disabilities who are eligible for services under section 619 [20 U.S.C. §1419] [the 3 to 5 year program] and previously received services under this part [20 U.S.C. §§1431 et seq.], ***may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills)*** for such children under this part [20 U.S.C. §§1431 et seq.] until such children enter, or are eligible under State law to enter, kindergarten.

(Emphasis added). Thus, as of December 2004, Congress has provided that States can have a policy of allowing parents to choose to continue early intervention services until kindergarten (age 5) if, and only if, the IFSP includes an educational component.

Even more recently, effective October 13, 2006, §300.518 of the Code of Federal Regulations, which implements Part B's stay-put provision, 20 U.S.C. §1415(j), was amended to provide:

§300.518 Child's status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the

parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) ***If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three the public agency is not required to provide the Part C services that the child had been receiving.*** If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under §300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

The commentary to this amendment reads in pertinent part:

Comment: One commenter recommended clarifying that an IFSP is not a child's pendent placement as the child transitions from

a Part C early intervention program to a Part B preschool program.

Discussion: The programs under Part B and C of the Act differ in their scope, eligibility, and the services available. Services under Part B of the Act are generally provided in a school setting. By contrast, services under Part C of the Act are provided, to the maximum extent appropriate, in the natural environment, which is often the infant or toddler's home or other community program designed for typically developing infants or toddlers. The Department has long interpreted the current educational placement language in the stay-put provisions in section 615(j) of the Act and Sec. 300.518(a) as referring only to the child's placement under Part B of the Act and not to the early intervention services received by the child under Part C of the Act. We believe that a child who previously received services under Part C of the Act, but has turned three and is no longer eligible under Part C of the Act, and is applying for initial services under Part B of the Act, does not have a "current educational placement."

We are adding language to clarify that if the complaint involves an application for initial services under Part B of the Act from a child who has turned three and is no longer eligible under Part C of the Act, the public agency is not required to continue providing the early intervention services on the child's IFSP. The provision clarifies that a public

agency must obtain parental consent prior to the initial provision of special education and related services, consistent with Sec. 300.300(b), and if a child is eligible under Part B of the Act and the parent provides consent under Sec. 300.300(b), the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

Changes: We have added a new paragraph (c) in Sec. 300.518 to clarify the Department's longstanding policy that if a complaint involves an application for initial services under Part B of the Act from a child who has turned three and is no longer eligible under Part C of the Act, the public agency is not required to continue providing the early intervention services on the child's IFSP.

71 Fed. Reg. 46709 (August 14, 2006).

## **B. Factual Background.**

D.P., E.P., and K.P. are autistic triplets who live with their parents in Broward County, Florida. *D.P., E.P. and K.P. v. School Board of Broward County*, 483 F.3d 725 (11th Cir. 2007). Prior to their third birthday, they received individualized care under the early intervention program administered under Part C of

the IDEA. The services were provided pursuant to IFSPs.<sup>2</sup> *Id.*

On January 4, 2004, the triplets turned three and aged out of the Part C program. At the same time, they became eligible for services under Part B of IDEA, which guarantees free and appropriate education to disabled children over three. *Id.* On January 6, 2004, the Petitioners filed with the Respondent, Broward County School Board (“School Board”), a Request for Due Process Hearings/Emergency Motion for Mandatory Injunctive Relief. The Request alleged that IEPs had not been developed for the triplets and that the School Board was contemplating modifying the services provided in the triplets’ last IFSP. Petitioners claimed that IDEA’s Part B “stay-put” provision, 20 U.S.C. §1415(j), required that until such time as IEPs were in place, the School Board was required to continue to provide the services authorized by the triplets’ last IFSPs. The Request sought an injunction requiring the School Board to continue the triplets’ IFSP services. *Id.*

The Request for Due Process Hearing was referred to the Florida Division of Administrative Hearings (“DOAH”). On February 10, 2004, an Administrative Law Judge (“ALJ”) issued a Final Order

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<sup>2</sup> The services were provided under Florida’s Early Intervention Program, which is overseen by the Florida Dept. of Health, Division of Children’s Medical Services. *See D.P. v. Broward County School Bd.*, 2005 Fla. Div. Admin. Hear. LEXIS 826 \*2 (April 25, 2005).

finding that the “stay-put” provision of Part B of IDEA does not require the School Board to provide the triplets with the services on their last IFSPs until such time as IEPs were in place and/or judicial remedies were exhausted.

Petitioners filed a Complaint in the United States District Court for the Southern District of Florida challenging the ALJ’s Final Order. The District Court determined that the ALJ correctly held that IFSP services pursuant to Part C of the IDEA are not the required “stay-put” placement under Part B of the IDEA for a three-year-old child without an IEP. The District Court found that, pursuant to the clear and unambiguous language of the “stay-put” provision, the pendency placement for a child applying for initial admission to a public school is the public school program, without regard to the timeliness or appropriateness of the IEP for the child.

On August 17, 2004, while the above-action was pending, the Petitioners filed a Second Request for Due Process Hearings. The Second Request alleged that the School Board failed to timely have IEPs in place for the triplets, and that on February 3, 2004, the School Board developed “temporary IEPs” for the triplets, which Petitioners claimed were invalid for numerous reasons, including that the parents did not consent to the temporary IEPs.<sup>3</sup> The parents sought

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<sup>3</sup> Pending finalization of a “permanent IEP,” an “interim” or “temporary IEP” may be developed and utilized to allow for the  
(Continued on following page)

to protest the School Board's decision to place the children, pursuant to the temporary IEPs, at Baudhuin Preschool for pre-kindergarten children with autism.

The second Request was referred to the Division of Administrative Hearings. The Petitioners requested that the ALJ resolve the issue of whether the parents' failure to consent to their children's temporary IEPs render these temporary IEPs invalid and, if so, what if anything must be done to remedy the situation.

On October 5, 2004, the ALJ determined that the temporary IEPs developed for the triplets were invalid because they had never been consented to by the parents. The ALJ found that the School Board was therefore prohibited from providing the triplets with the services it proposed. However, the ALJ also found that nothing in IDEA or Florida law obligates the School Board, as a result of the parents' failure to consent to the triplets' temporary IEPs, to provide the triplets with the early intervention services they had been receiving under Part C of the IDEA before turning three (3) years of age.

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delivery of special education and related services under Part B. See *Weiss By and Through Weiss v. School Bd. of Hillsborough County*, 141 F.3d 990, 996 (11th Cir. 1998); 34 C.F.R. Pt. 300. App. A, Question 14. Florida law specifically authorizes the use of temporary IEPs for "transferring exceptional students" for a period of up to six (6) months. Fla. Admin. Code R. 6A-6.0334(4) and (5).

Petitioners filed a Complaint in the United States District Court for the Southern District of Florida challenging the ALJ's October 5, 2004 Order, and requesting that the district court order the School Board to continue the IFSP services. The District Court denied the request, finding that pursuant to the "stay-put" provision, 20 U.S.C. §1415(j), a child transitioning from Part C to Part B of the IDEA is not entitled to a continuation of the early intervention services, even if parental consent to the temporary placement is withheld.

Petitioners appealed both district court orders interpreting Part B's stay-put provision to the Eleventh Circuit Court of Appeals. However, in the meantime, further DOAH proceedings occurred in which the Petitioners sought reimbursement for the early intervention services that the triplets had received under their IFSPs since their third birthday. After an evidentiary hearing, the ALJ issued a Final Order on April 25, 2005. *D.P. v. Broward County School Bd.*, 2005 Fla. Div. Admin. Hear. LEXIS 826 (April 25, 2005). The ALJ found that the School Board had not denied Petitioners' due process, and had acted reasonably under the circumstances in evaluating and preparing IEPs for the children. The ALJ also determined that Petitioners were not eligible for reimbursement for services provided pursuant to their IFSPs because these services did not in any way constitute "educational services." The ALJ found that "The ABA therapy that the children received . . . was not exceptional student education – indeed was not

even ‘education’ as that term is used and understood in the context of the IDEA and corresponding law.” *Id.*

Thereafter, the Eleventh Circuit Court of Appeals affirmed the ALJ’s and district court’s decisions which interpreted the stay-put provision of Part B of IDEA. *D.P. v. School Board of Broward County*, 483 F.3d 725 (11th Cir. 2007). The Eleventh Circuit found that the plain language of the stay-put provision in Part B of IDEA provided that the stay-put placement for a child applying for initial admission to public school is the public school program, which in this case was the public school program at the Mailman Segal Institute’s Baudhuin Preschool, located at Nova Southeastern University. *D.P.*, at 729, n.1. The Eleventh Circuit held that when parents do not consent to the public school program, the parents can continue private services and challenge the School Board’s plan in a due process hearing and, if necessary, a subsequent lawsuit in which they attempted to prove that the school board had denied the child a FAPE. Had they been successful, the parents would be able to recover reimbursement from the school board for the costs of the private services that replaced the FAPE their children were denied.



## REASONS FOR DENYING THE WRIT

### A. Review is Not Warranted Under the Circumstances.

Petitioners argue that the Court should review the Eleventh Circuit Court of Appeals decision in *D.P., E.P. and K.P. v. School Board of Broward County*, 483 F.3d 725 (11th Cir. 2007), because the decision conflicts with the decision reached by the Third Circuit Court of Appeal in *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181 (3rd Cir. 2005), petition for certiorari denied, *Allegheny Intermediate Unit v. Pardini*, S.Ct. Docket No. 05-795.

The *Pardini* decision was filed by a quorum of the three-judge panel, after one of the three judges assigned to the case resigned before the opinion was filed. Additionally, the two-member quorum consisted of only *one* member of the Third Circuit Court of Appeals, in that the other judge assigned to the case was a District Court Judge sitting by designation. Therefore, the case realistically represents the opinion of one judge of the Third Circuit Court of Appeals.

### B. IDEA Has Been Recently Amended.

Recent amendments to IDEA demonstrate that *Pardini* was wrongly decided, and that the Third Circuit Court of Appeals would likely not reach the same decision today. The dispute in *Pardini* arose in March of 2003. In that case, the parents of a child with cerebral palsy disputed a proposed IEP which did not provide for “conducive education” for their

child, which she had been receiving pursuant to an IFSP.<sup>4</sup> The parents claimed that the school district was required to continue providing the IFSP/conducive education services for their child during dispute resolution proceedings pursuant to the stay-put provision, 20 U.S.C. §1415(j), and the Allegheny Intermediate Unit (“AIU”) disagreed. After AIU’s decision was upheld by the district court, the case was fully brief and argued in the Third Circuit Court of Appeals in November of 2004.

Effective December 3, 2004, Congress amended 20 U.S.C. §1435(c) of IDEA to add a new provision which provides that States can have a policy of allowing parents to choose to continue early intervention services until kindergarten (age 5) if, and only if, the IFSP includes an educational component.

This new provision addresses the situation found in both *Pardini* and *D.P.* The Legislature has now set forth that States *can* provide parents who desire to continue with their children’s IFSP services with an option to forego their right to FAPE until the child turns 5 and enters pre-school. However, the option exists only when certain conditions are met, one of

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<sup>4</sup> Conducive education is an educational approach for children with central nervous system disabilities which helps develop problem-solving skills. *Id.* at 182. Unlike in *Pardini*, in the Eleventh Circuit *D.P.* appeal, the triplets’ IFSPs did not contain any educational component. See *D.P. v. Broward County School Bd.*, 2005 Fla. Div. Admin. Hear. LEXIS 826 (April 25, 2005).

which is that the IFSP contain an educational component.

This amendment demonstrates that prior to its enactment parents did *not* have the option to have their children “stay-put” in an IFSP placement. It also supports that Congress requires that the only IFSPs which can serve as IEPs must have an educational component. As not all IFSPs have an educational component, they are not appropriate stay-put placements.

Even more recently, effective October 13, 2006, §300.518 of the Code of Federal Regulations was amended to provide that if the complaint involves an application for initial services from a child who is transitioning from Part C to Part B of the Act, and the child is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving.

In light of these amendments, which have taken effect since the issue arose in *Pardini*, review is simply not warranted. The Third Circuit Court of Appeals would likely decide the issue differently today.

### **C. The Eleventh Circuit Court of Appeals Decision Was Entirely Correct.**

Petitioners also contend the Court should review the Eleventh Circuit Court of Appeals decision because they maintain the Eleventh Circuit’s

interpretation of the stay-put provision contained in Part B of IDEA is incorrect. It is not. This provision plainly requires that during the pendency of review proceedings regarding educational services offered under Part B, unless the parties agree otherwise, the child shall remain in the then-current educational placement of such child, or, ***if applying for initial admission to public school***, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

The appropriate pendency placement for a child under the stay-put provision of the IDEA depends upon whether the child has or has not been admitted to public school. The pendency placement of a child is determined by the then-current educational placement, unless the child is “applying for initial admission to public school,” in which case the second part of the stay-put provision applies. If the child is applying for initial admission to public school, thereby triggering the second part of the stay-put provision, it follows that the child’s pendency placement is not determined by the first part of the stay-put provision.

In this case, because the triplets had not been admitted to public school, the second clause of the stay-put provision applies. Therefore, the triplets’ pendency placement, with the consent of the parents, is the public school program until all proceedings have been completed.

Contrary to Petitioners’ suggestion, application of the stay-put provision does not depend upon whether

the identification, evaluation or educational placement of the child, or the provision of a FAPE to the child, was adequate or timely. Rather, the clear language of the statute establishes that the pendency placement is the public school program for a child applying for initial admission in public school, without regard to the untimeliness or inappropriateness of the IEP for the child.<sup>5</sup> The only prerequisite to interim placement is the parents' consent. If parental consent is withheld, a pendency placement is simply not provided by the school district during the pendency of proceedings. There is no indication that by withholding consent parents are entitled to a pendency placement of their choice.

Petitioners argue that the stay-put provision provides children entering the public school system for the first time with an option to either (a) remain in the "then-current educational placement," which they claim is the existing IFSP for children transitioning from Part C to Part B of IDEA, *or* (b) be placed in the public school program until all proceedings have been resolved. This interpretation of the statute is untenable for at least two (2) reasons.

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<sup>5</sup> A parent is not without remedy. If the education that is offered does not provide a FAPE for the child (that is, a free and appropriate education), they can continue the education themselves and seek reimbursement, or they can seek compensatory education to make up for time spent without appropriate services.

First, the statute plainly does **not** provide the option Petitioners suggest. It provides “if applying for initial admission to a public school, [the child] **shall**, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.” 20 U.S.C. §1415(j) (Emphasis added). There is no option for children applying for initial admission to public school to choose to be placed in a “then-current educational placement.”

Second, an IFSP is not a “current educational placement.” An IFSP – an Individualized **Family Service** Plan – is a plan to assist families in meeting the special needs of their infants and toddlers with disabilities and to provide services to improve the infant or toddler’s functional development. 20 U.S.C. §1432(4)(C) and (E); Fla. Admin. Code R. 6A-6.03411(1)(b).

The IFSP is developed with the cooperation and consent of the family with an eye toward the “resources, priorities, and concerns of the family.” 20 U.S.C. §1436(a)(2). Early intervention services provided for in an IFSP can include physical therapy, medical services for diagnostic and evaluation purposes, social work services, vision services, among many others. 20 U.S.C. §1432(4)(E). The goal behind providing IFSP services to **minimize** the need for special education, as opposed to **being** special education. 20 U.S.C. §1431(a). While an IFSP may (or may

not) include an educational component, it is simply not designed as an “educational placement.”<sup>6</sup>

The Eleventh Circuit Court of Appeals’ interpretation of the stay-put provision is consistent with the interpretation of the Office of Special Education and Rehabilitative Services of the United States Department of Education, through its Office of Special Education Programs (“OSEP”), which has promulgated 34 C.F.R. §300.514, the stay-put provision’s implementing regulation.

In a policy letter interpreting former 34 C.F.R. §300.513 (which was essentially identical in all material respects to its successor, 34 C.F.R. §300.514), OSEP gave the following answer to the question of “whether a placement that was intended to provide a disabled infant or toddler and his or her family with appropriate early intervention services under Part H (now Part C of the IDEA) would constitute the child’s ‘present educational placement’ under 34 C.F.R. §330.513”:

OSEP does not interpret 34 CFR §300.513 as requiring a public agency responsible for providing FAPE to a disabled child to maintain that child in a program developed for a

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<sup>6</sup> The fact that IFSPs are not “educational placements” is made clear by the facts underlying the instant case. With respect to the triplets’ IFSPs, which provided only for ABA services for the triplets, the ALJ ultimately held that the specific ABA services the triplets in this case received did *not* in any way constitute “educational” services.

two-year-old child as a means of providing that child and his or her family appropriate early intervention services under part H. Rather, in the situation prompting your inquiry, the complaint involves a child's initial admission to public school. Therefore, it is OSEP's view that, in this instance, to meet its obligation under 34 C.F.R. §300.513(b), the public agency responsible for providing FAPE to the child would place that child, with the consent of the parents, ***in the public preschool program*** until the completion of authorized review proceedings. 34 C.F.R. §300.513(b).

*Letter to Kelbanoff*, 28 IDELR 478 (1997). (Emphasis added).

The Florida Department of Education has also determined that IDEA's pendency provision does not apply to children transitioning from early intervention services to district school programs. Rule 6A-6.0334, F.A.C.; Florida Dept. of Ed., Technical Assistance Paper 10925.

The Eleventh Circuit Court of Appeals decision is plainly correct, conforms to recent amendments to IDEA, and is supported by agency interpretation. Review is therefore not warranted.



**CONCLUSION**

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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