No. 15-827

IN THE

Supreme Court of the United States

ENDREW F., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, JOSEPH F. AND JENNIFER F.,

Petitioner,

—v.—

DOUGLAS COUNTY SCHOOL DISTRICT RE-1,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

AMICI CURIAE BRIEF OF DISABILITY RIGHTS ORGANIZATIONS AND PUBLIC INTEREST CENTERS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Statutes

Page(s)

Rules

Other Authorities

INTEREST OF THE AMICI CURIAE[1]

Amici are various disability rights organizations and public interest centers whose efforts include litigation, public policy and general advocacy to protect, *inter alia*, the civil rights of persons with disabilities to equal educational opportunities. The *amici* include Autism Speaks; the National Down Syndrome Society (NDSS); TASH; the International Dyslexia Association (IDA); United Cerebral Palsy; the Washington Lawyers' Committee for Civil Rights and Urban Affairs; Decoding Dyslexia chapters, and Public Counsel. Each *amicus* has experience in securing the rights of students with disabilities to free appropriate public educations and has a substantial interest in the outcome of this case. The individual statements of interest of all *amici* appear in the Appendix.

SUMMARY OF ARGUMENT

In support of the 1997 amendments to the Individuals with Disabilities Education Act ("IDEA"), Senator Jim Jeffords testified:

> *[T]he bottom line is that when it comes time to graduate from high school we*

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[1] Pursuant to Supreme Court Rule 37.6, no party or counsel for a party authored or contributed monetarily to the preparation or submission of any portion of this brief. Counsel of record for all parties received notice of *amici curiae*'s intention to file this brief more than 10 days before it was due. The parties have filed with the Clerk's office a blanket consent to all amicus briefs.

> *must make sure that our students, all students, have the skills to either pursue post-secondary education or training or to get a good job and be contributing members of our community to the utmost of their ability . . . IDEA was originally enacted in 1975 . . . After 22 years, I think it is appropriate to acknowledge that schools have changed. The range of disabilities seen in schools has changed. Our expectations for children with disabilities have changed. And the expectations we've placed on each other as educators and parents have changed.*[2]

It was almost 35 years ago when the Court last reviewed the appropriate educational standard for children with disabilities under the IDEA as originally enacted in 1975.[3] *Board of Education v. Rowley,* 458 U.S. 176 (1982). As Senator Jeffords eloquently explained in supporting Congress's decision to amend the IDEA in order to improve educational outcomes for those children, the decades following the EHA and *Rowley* ushered in dramatic changes in the participation of persons with

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[2] Testimony of Sen. Jeffords, R-VT, Chairman, Hearing of Senate Labor and Human Resources Committee, Specialized Education Programs Reauthorization, Jan. 29, 1997.

[3] The IDEA was originally enacted as The Education of All Handicapped Children Act ("EHA"), Pub. L. 94-142. It was amended and renamed the IDEA in 1990. Pub L. 101-476.

disabilities at school and in the community. Advances in instructional practices and technologies have improved opportunities for achievement beyond any expectations Congress held when adopting the EHA.

In a series of educational laws beginning in 1994, Congress took note of these advances and raised the standards expected for educational and functional achievement by students with disabilities. Many legislative changes explicitly require students with disabilities to be assessed on the same scales as non-disabled students in mastering the same curriculum. *Amici* here present information on the research-based interventions, instructional practices and technologies which have led Congress to raise standards for educational and functional achievement and permit schools to meet those raised standards.

Resolving the proper standard for determining an appropriate education under the IDEA is crucially important to the futures of countless numbers of children with disabilities, including disproportionately minorities and poor children, as well as their families, and their educators. As set forth below, that resolution should be clear: the IDEA unequivocally requires a higher standard than the "merely more than *de minimis"* educational benefits employed by the Tenth Circuit below.

Even in its original formulation in 1975, the statute did not define the appropriate educational

benefit for children with disabilities as little more than trivial or *de minimis*. To the contrary, Congress intended to provide "full educational opportunities" for all children with disabilities. The Court in *Rowley* also did not adopt a merely more than *de minimis* standard nor any single standard for educational achievement. This is understandable in light of the time *Rowley* was decided. Back in 1982, special education was in its infancy and methods for identifying and effectively educating children with disabilities were still developing. The world – and the EHA (now the IDEA) – has dramatically changed since *Rowley*. There has been a broad movement in national education policy that shifted the focus from mere access to education to an emphasis on improved educational outcomes and standards for all students, including those with disabilities.

Congress codified this effort in a string of legislation – including two robust amendments to the IDEA in 1997 and 2004 – that increasingly emphasized moving beyond the low expectations of just providing children with disabilities with a desk and a teacher, to demanding high educational expectations for them consistent with that provided non-disabled students. New legislation focused on preparing students for further education, employment and independent living. Whatever the appropriate educational standard may have been for children with disabilities thirty-five years ago, it is crystal clear that the amended IDEA now calls for a far more robust standard.

These Congressional changes did not occur in a vacuum. Expectations rose from data demonstrating that educators had the capacity to meet higher standards. Progress in educating students with disabilities has in fact changed the understanding of what is possible and practicable and thus what constitutes meaningful progress in light of a child's abilities. Research-based science has provided effective methods to help children with disabilities learn that were just being developed at the time of *Rowley*. Advancements in assistive technology have game-changing benefits for children with a wide range of disabilities when combined with evidence-based practices. And implementation of such researched-based practices, which is required "to the extent practicable" by IDEA is fully workable as demonstrated by the wealth of information available and the experience of many public schools.

To ensure the performance levels meet the high standards Congress intended, a school must set measureable goals. These goals must be designed in light of peer-reviewed research and available technological advancements, and must include opportunities for children with disabilities to participate in the general curriculum so that they have a substantially equal opportunity to advance to further education, employment and independent living as their non-disabled peers. This standard provides the flexibility, but also the accountability, required for school districts to fulfill their obligations under the IDEA. Because Endrew F.'s school did not consider and implement such standards, the Tenth

Circuit below was in error to find that the district complied with the statutory directives, and should be reversed.

ARGUMENT

I. Disparate Educational Opportunity Has a Profound Effect on Children With Disabilities

Nineteen percent of the U.S. population has a disability. U.S. Dep't of Commerce, Econ. & Statistics Admin., Census Bureau, Americans with Disabilities: 2010.[4] The past several decades have seen broad social and legislative recognition of the rights and capabilities of the disabled as equal and valued members of society. This has taken place against a backdrop of tremendous strides in research-based interventions, accommodations and technologies that have markedly enhanced the potential of persons with disabilities for educational achievement, employment and independent living.

These changes have been reflected in legislation and court decisions advancing the rights of individuals with disabilities to ensure their full participation and equality in the fabric of our community. As discussed in this Court's landmark decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), segregating persons with disabilities from the community and depriving them of the means to

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[4] Available at: https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html.

overcome this isolation violates their rights and perpetuates unwarranted assumptions that such persons are incapable of or unworthy of participating in community life on equal terms. Such discrimination "severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 601.

The right to education—a fundamental predicate to participation in modern society—was part and parcel of the movement to empower and integrate people with disabilities. More than 60 years ago, this Court admonished that "We must consider public education in the light of its full development and its present place in American life throughout the Nation." *Brown v. Bd. Of Ed. Of Topeka*, 347 U.S. 483, 492-93 (1954). "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . . a right which must be made available to all on equal terms." *Id.* at 493. These judgments formed the basis for the EHA, since strengthened and extended as the IDEA, with the purpose of meeting the "unique needs" of children with disabilities and preparing them for "further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A) (2012). In huge swaths of the country, however, this has been an empty promise. A number of circuit courts, including the Tenth Circuit, have erroneously concluded that schools must only provide these children an education that is of "merely

more than *de minimis*" benefit. For children with disabilities, this deprivation of educational opportunity truly "affect[s] their hearts and minds in a way unlikely ever to be undone." *Brown*, 347 U.S. at 494.

Every year, approximately 396,000 students with disabilities transition from school to adult life. *See* Nat'l Ctr. for Educ. Statistics, *Children and Youth with Disabilities* (May 2016) (2012-13 school year data).[5] Like Endrew F., 50,000 of these students have autism. Anne M. Roux, et al., *Postsecondary Employment Experiences Among Young Adults With an Autism Spectrum Disorder Rh: Employment in Young Adults with Autism*, 52 J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY 931 (2013). For children living in jurisdictions following a merely more than *de minimis* standard, that transition is all too frequently to lives of poverty and isolation because their public schools neither provided nor were required to provide an equal educational opportunity to prepare them for further education, employment, and independent living.

The unemployment rate for these children remains far too high and the post-secondary education rate far too low in relation to their abilities. In 2015, only 17.5 percent of the population with disabilities was employed. Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics—2015* (June 21, 2016). Thirty-five

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[5] Available at: http://nces.ed.gov/programs/coe/indicator_cgg.asp

percent of young adults (aged 19-23) with autism have not had a job or received postgraduate education after leaving high school. Paul T. Shattuck, et al., *Postsecondary Education and Employment Among Youth with an Autism Spectrum Disorder*, 129 PEDIATRICS 1042, 1046 (June 2012).

The number of children with autism and other conditions has been growing not shrinking, making it all the more imperative to act. Centers for Disease Control and Prevention ("CDC"), *Prevalence of Autism Spectrum Disorder Among Children Aged 8 Years — Autism and Developmental Disabilities Monitoring Network, 11 Sites,* United States, 2010, 63 MORBIDITY & MORTALITY WKLY. REP. 2, 8 (Mar. 28, 2014) (estimating that the number of American children diagnosed with autism spectrum disorder ["ASD"] increased 123% between 2002 and 2010 and now stands at 1 in 68 children). The percentage of children diagnosed with ADHD increased from 7.8% in 2003 to 11.0% in 2011. Centers for Disease Control and Prevention, *Attention-Deficit/Hyperactivity Disorder (ADHD), Data & Statistics*.[6] And while the number of students identified as learning disabled (a term that encompasses those with dyslexia, dyscalculia, and dysgraphia) has declined since 2002, that population increased over 300% since 1976 to comprise approximately 5% of the nation's current school-age population. Nat'l Ctr. for Learning Disabilities, *The*

[6] Available at http://www.cdc.gov/ncbddd/adhd/data.html.

State of Learning Disabilities: *Facts, Trends and Emerging Issues* 12 (Third Edition, 2014).

As the numbers of children identified with disabilities increase, so have economic opportunities for individuals with disabilities who are adequately educated. Data analyzed by a joint initiative of the Department of Labor and the White House Council of Economic Advisors indicates that "[m]ost job growth is in occupations where computer use is important, and the rapid development of new computer and information technologies has particular benefits for many people with disabilities by helping overcome specific physical and cognitive limitations, and significantly increasing the workplace productivity of people with disabilities."[7] U.S. Dep't of Labor, *Economic Picture of the Disability Community Project; Key points on Disability and Occupational Projections Tables* (Oct. 2014) (internal citation omitted). Yet, as the joint initiative concluded: "Whether the potential for increased employment of people with disabilities will be realized depends in part on public and corporate policies regarding access to appropriate education, computer skills, and other training . . . ." *Id.*

Providing an adequate education to prepare children to be able to lead productive lives lies at the heart of the IDEA. A standard that is "reasonably calculated" to provide a merely more than *de minimis*

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[7] Available at https://www.dol.gov/odep/pdf/20141022-KeyPoints.pdf.

educational benefit quickly devolves to a stiflingly low ceiling on children's futures, not a floor of opportunity. As in the present case, some parents unable to get their children appropriate educational supports and services as a result of this low standard must forego a public education entirely and instead home-school or place their children in private school—an outcome that the IDEA was meant to prevent. Others simply cannot afford those options.

Low educational expectations disproportionally affect minority students, who continue to be placed into special education at a far higher rate than non-minority students. U.S. Dep't of Education, Office of Special Educ. Programs, *37th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*, 41, Exh. 25 (Dec. 2015).[8] In addition, minority students have historically faced greater poverty making them more dependent on services from the public schools. For many of these children, there is simply no alternative to the public school and no option for improvement when faced with the barrier of a merely more than *de minimis* standard.[9] And yet these same students are

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[8] Available at http://www2.ed.gov/about/reports/annual/osep/2015/parts-b-c/37th-arc-for-idea.pdf

[9] The consequences to the student and society are grave. In addition to the prospect of unemployment and dependency, studies have shown disproportionate numbers of youth in juvenile justice facilities were students with disabilities. *See e.g.*, National Center on Education, Disability and Juvenile Justice, *Special Education in Correctional Facilities* (May 2000), available at http://www.edjj.org/Publications/pub05_01_00.html. More than one in three children entering correctional facilities

also the most likely to be enrolled in schools with less funding that are less likely to implement the very practices that are known to close the achievement gap.

Graduation rates for African-American students with disabilities are substantially lower than rates for Caucasian or Asian/Pacific Islander students. Rosalie S. Boone & Arlene King-Berry, *African American students with disabilities: beneficiaries of the legacy?*, 76 J. OF NEGRO EDUC. 334-345 (2007). African-American students are more likely to be tracked into segregated special education schools and classrooms. *Id.*; *see also*, U.S. Dep't of Educ., Office of Special Education Programs, *38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Oct. 2016) 51 (showing Caucasian students are more likely to be in mainstreamed classrooms than African American students). According to one survey, one in every two students identified as learning disabled faced a school disciplinary action such as suspension or expulsion in 2011, with those statistics even less favorable to students identified with emotional disturbances. Nat'l Ctr. for Learning Disabilities at 16. Students of color are disproportionately represented in both categories. For far too many students, the reality of special education is de facto segregation that *Brown* sought to rectify. These

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previously received special education services; children with emotional disturbance and learning disabilities make up 42% and 45%, respectively, of those incarcerated. *Id.*

outcomes are facilitated by the low definition of an appropriate education for students with disabilities permitted by the Tenth Circuit standard.

II. Neither The EHA, Nor The Court In *Rowley*, Established A Merely More Than *De Minimis* Standard for Determining an Appropriate Education for Children with Disabilities

The Tenth Circuit concluded in this case that this Court's decision in *Rowley* dictated that "the educational benefit mandated by IDEA must *merely be more than de minimis." Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 798 F.3d 1329, 1338 (10th Cir. 2015) (emphasis added). Neither the EHA nor the Court in *Rowley* adopted such a meager standard. Indeed, the terms "trivial" and "*de minimis*" do not appear anywhere in the EHA or in *Rowley*.

The 1982 decision in *Rowley* construed the relatively new EHA of 1975 at a time when many children with disabilities were excluded from any opportunity to learn. Looking to the EHA's legislative history and purpose, the *Rowley* Court saw Congress's primary focus in the EHA as providing educational access to those children. *Rowley*, 458 U.S. at 192 ("[T]he intent of the Act was more to open the door of public education to handicapped children . . . ."). Even then, however, Congress clearly contemplated a higher degree of educational benefit than one that is merely more than *de minimis*. As set forth in its legislative findings and purposes, the Act was "to establish a

policy of providing full educational opportunities for all handicapped children." S. Rep. No. 94-168 (1975). "[T]he quality of education for all children [must] attain[] a level commensurate with the demands of life in our complex society and offer[] the opportunity for the fulfillment of the potential abilities of all children, especially our handicapped children." 121 Cong. Rec. 37412 (Nov. 19, 1975) (statement of Sen. Taft). Congress recognized that not only had 1.75 million children been totally excluded from schools but 2.5 million children with disabilities who were in school still did not receive "an adequate education." 121 Cong. Rec. 37030 (Nov. 18, 1975) (statement of Dominick V. Daniels); 121 Cong. Rec. 37025 (Nov. 18, 1975) (statement of Mr. Brademas).

In keeping with the individualized focus of special education in the EHA, *Rowley* must be viewed in light of the facts before the Court. The Court did not purport to determine a one-size-fits-all test for an appropriate education, much less that providing a merely more than *de minimis* educational benefit would meet that test. Instead, it concluded that Amy Rowley's education was appropriate because she was receiving an "adequate" education due to – importantly – her passing grades and high performance in relation to general standards for children *without* disabilities, and she was receiving specialized education and related services to meet her educational needs. *Id.* at 210. Although her story may parallel some, Amy Rowley's situation was and remains vastly different from that of millions of other children receiving services under the current IDEA.

The world has changed since *Rowley*. In 1982, special education had received little attention. Methods for identifying children with disabilities were still developing. Indeed, the two primary disabilities of Endrew F. – autism and ADHD, disabilities that are now commonplace – were not even recognized disabilities within the statutory regime and would not be so for many years.[10] The Court in *Rowley* also did not have the benefit of the over thirty years of research, experiential learning, outcome analysis, and best practices, set forth *infra* at Point IV and which informed current statutory requirements.

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[10] Congress added the definition of autism to the list of disabilities in the Act in 1990, nearly ten years after the *Rowley* decision. 20 U.S.C. § 1401. ADHD was added to the regulatory definition of other health impairment after the 1997 amendments to the IDEA. 34 C.F.R. 300.8(c)(9). The estimated prevalence of autism in the 1960s and 1970s was only four to five cases per 10,000 children, as opposed to current estimates of 1 in 68 children. CDC, *Prevalence of Autism* at 8. As of 2011, some 6.4 million children, or one in five children, are identified as having ADHD. Centers for Disease Control and Prevention, *Attention-Deficit/Hyperactivity Disorder*. The understanding of other disabilities has similarly evolved. The classic text on dyslexia, by Sally Shaywitz, *Overcoming Dyslexia: A New and Complete Science-Based Program for Reading Problems at Any Level*, was not published until 2003. At that time, over twenty years after the *Rowley* decision, research was finally available to establish identification as early as age 4. *See id.* at 99.

III. Congressional Legislation Since Rowley Requires High Educational Standards for Students With Disabilities

The years after *Rowley* saw a broad movement in education policy. Focus shifted from mere access to education to an emphasis on improved educational outcomes for all students, including students with disabilities.

A. The 1994 Goals 2000: Educate America Act Set High, Measureable Academic Goals for All Students, Including Students With Disabilities

Congress moved away from access-based education and towards outcome-based education in 1994 with the enactment of the Goals 2000: Educate America Act, 20 U.S.C. 5801 *et seq.* The Act established a framework for meeting national education goals by "establishing valid and reliable mechanisms for . . . assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards." 20 U.S.C. § 5801(4). Among the goals was to "promot[e] the social, emotional and academic growth of children," including "children with disabilities." *Id.* §§ 5812(8)(A), (B)(i).

B. The 1997 Amendments to IDEA Emphasized a High-Expectation, Outcome-Based Education for Children with Disabilities

An increased emphasis on educational quality and outcomes was a central feature of the 1997 amendments to the IDEA ("IDEA 1997"). Congress recognized that low expectations for students with disabilities had impeded implementation of the Act. As stressed in the Senate Committee Report:

> This committee believes that the critical issue now is to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education. Educational achievement for children with disabilities, while improving, is still less than satisfactory. This review and authorization of the IDEA is needed to move to the next step of providing special education and related services to children with disabilities: to improve and increase their educational achievement.

S. Rep. No. 105-17, at 3 (1997).

IDEA 1997 emphasized high expectations to insure participation in the general curriculum to the maximum extent possible. Congress also updated the nature and goals of an appropriate education under the IDEA requiring the design of IEPs to meet

children with disabilities' "unique needs" and prepare them for "employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). Congress also recognized the potential of assistive technologies "to maximize accessibility [to the classroom] for children with disabilities." *Id.* at (c)(5)(H); *see also* § 1414(d)(3)(B)(v).

The overall intent was to "review, strengthen, and improve IDEA to better educate children with disabilities and enable them to achieve a quality education." *Id.* at 5. The legislation contemplated using improved tools and increased standards to heighten academic achievement. The legislation was to "encourage exemplary practices that lead to improved teaching and learning experiences for children with disabilities, and that in turn, for these children, result in productive independent adult lives, including employment." *Id.*

IDEA 1997 consolidated and strengthened IEP provisions as the primary vehicle for insuring educational benefits preparing a child for a productive adult life. 34 C.F.R. § 300.347(b)(1)(i); *see also* H.R. Rep. No. 105-95 (1997) ("The purpose of [this provision] is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school."). The amendments were intended to improve the "educational results for children with disabilities [as] an essential element of our national policy of ensuring equality of opportunity, full participation,

independent living and economic self-sufficiency for individuals with disabilities." *Id.* at 2-3.

The House Committee report similarly emphasized that: "The challenge today is not so much how to provide access to special education services but how to appropriately provide educational services to children with disabilities in order to improve educational results for such children." H.R. Rep 105-95. The Committee saw the requirement for a child's IEP to include measureable goals, benchmarks, and objectives as "critical." *Id.* at 100. The goals should be directed to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general educational curriculum." *Id.* The Committee also recognized the importance of integrating research knowledge and practice to improve outcomes and emphasized that the "Committee believes strongly that an organized collective commitment to get validated research – best practice information – to the teacher in the classroom is essential." *Id.* at 118.

As summed up by the President at the signing ceremony for IDEA 1997: "[T]he legislation mandates that with appropriate accommodations children with disabilities learn the same things with the same curricula and the same assessments as all other children . . . . [C]hildren rise to expectations when they are set high. And children with disabilities are no exception." Remarks of Pres. William J. Clinton at the Signing Ceremony for the Individuals with Disabilities Education Act (June 4, 1997).

C. With the No Child Left Behind Act of 2001, Congress Established Higher Educational Standards for All Children, Including Children with Disabilities

As part of this broader movement to improve educational outcomes and standards for all students, Congress enacted the No Child Left Behind Act ("NCLB") in 2001. This was an update to the Elementary and Secondary Education Act of 1965. Notwithstanding the significant diversity in learning cultures, social and economic challenges, income and other factors of children in the nation's public schools, Congress, through NCLB, required that "all children" are to obtain "a high-quality education" so that they can "at a minimum, [achieve] proficiency on challenging State academic achievement standards and state academic assessments." 20 U.S.C. § 6301. The "high quality education" standard expressly applied to children with disabilities. *Id.* § 6301(2).

D. The 2004 IDEA Amendments Heightened Outcomes, Requirements and Accountability

In 2004 Congress further amended the IDEA ("IDEA 2004"), strengthening provisions for research-based interventions and technologies designed to ensure that children with disabilities receive a high quality education commensurate with their non-disabled peers and to effectively prepare them to lead independent and productive lives. The amendments were a direct response to Congress's conclusion that

"the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." 20 U.S.C. § 1400(c)(4). IDEA 2004 spells out the promise of that research:

> Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—
>
> (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—
>
> > (i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and
> >
> > (ii) be prepared to lead productive and independent adult lives, to the maximum extent possible.

20 U.S.C. § 1400(c)(5). Congress designed IDEA 2004 to fulfill that promise by "ensur[ing] that all children with disabilities have available to them 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).

The addition of preparation for "further education" was new. As explained in the House Report: "By modifying the purpose to reflect the importance of further education, the Committee intends to send the message that children with disabilities have a broad array of opportunities available to them when they complete their secondary education and that children with disabilities can continue on to post-secondary education or to competitive employment or independent living." H.R. Rep. 108-77 at 46.

Moving beyond IDEA 1997's mandate that children with disabilities should have *access* to the general curriculum "to the maximum extent possible," the IDEA 2004 mandate was to improve their actual "academic achievement and functional performance" to the "maximum extent possible." 20 U.S.C. § 1400(c)(5)(E). The Senate Committee explained:

> Nearly 30 years ago, the Education for All Handicapped Children's Act was enacted to provide keys to the schoolhouse door for children with disabilities. Previously, many of these children did not have the opportunity to receive a public education in America's classrooms. Today the school house door is open. The committee's focus during

> this reauthorization is on the quality of education children are receiving under the law. The committee has sought to ensure that the framework of IDEA helps to produce improved educational results for children with disabilities.

S. Rep. No. 108-185, at 6.

As part of its heightened emphasis on performance, Congress stated that it was "crucial" to "concentrate on improving educational outcomes for children by focusing on accountability for results." *Id.* at 3. A key mechanism for this was the alignment of assessments used for children with disabilities with state academic content and achievement standards applicable to all students. The Senate Committee viewed this as a "necessary component to ensuring accountability for the performance of all children with disabilities, including children with significant disabilities." *Id.* at 56. The Committee also concluded that "an increased focus on improved results in education, providing a successful transition to post-school employment or education is an essential measure of accountability for students with disabilities." *Id.* at 60; *see also id.* at 96 (stating that the 2004 amendments align IDEA with the accountability systems of NCLB because they "established a rigorous accountability system for States and local educational agencies to ensure that all children, including children with disabilities, are held to high academic achievement standards . . .").

In recognition of the significant advances in research-based interventions and proven technologies available to meet increasingly rigorous outcome-oriented standards, Congress fortified the IDEA with provisions for technology, peer reviewed research, transition planning and services,[11] and behavioral interventions to prepare students for that further education, employment and independent living. 20 U.S.C. § 1400(c)(4)-(5); *see also* S. Rep. No. 108-185, at 27 (2003) (emphasizing the importance of sound research-based methodologies).

As part of this shift from mere access to "academic achievement and functional performance," the requirement for benchmarks and short-term objectives in IEPs was to be phased out after the 2005-06 school year for a large majority of children with disabilities. As explained by the Senate Committee:

> Special education practice via short-term objectives too often focuses on achieving only small incremental improvements in student performance to the detriment of more effective longer range planning. Short-term objectives and benchmarks can focus too much on minor details and detract from the real purpose of special education which is to

[11] Congress also amended the definition of "transition services" to "emphasize a focus on improving academic and functional achievement of a child with disability." S. Rep. No. 108-185, at 9.

> ensure that all children and youth with disabilities achieve high educational outcomes and are prepared to participate fully in the social and economic fabric of their communities.

S. Rep. No. 108-185, at 28; *see also* H.R. Rep. 108-77 at 109.

E. New IEP Requirements Expanded the Definition of Appropriate Education

The IEP is "the centerpiece of the statute's education delivery system," *Honig v. Doe*, 484 U.S. 305, 311 (1988), and a primary component of the appropriate education required by the Act. *Rowley*, 458 U.S. at 181, 203. The definition of "free appropriate public education" explicitly requires it to be "provided in conformity with the individualized education program" requirements of the Act. 20 U.S.C. § 1401(9)(D). The IDEA in its current form contains detailed requirements for IEPs that would make little sense if all that was required was an IEP reasonably calculated to deliver a merely more than *de minimis* educational benefit. The IEP must be carefully tailored to the particular needs and abilities of each child, *see* 20 U.S.C. § 1414(d)(1)(A)(i)(I), as determined by use of a variety of technically sound instruments used to assess relevant functional, developmental and academic information about the child. 20 U.S.C. § 1414(b)(2)(a)(ii), (c). The IEP requires a clear statement of "measurable annual goals" in light of those needs and abilities. 20 U.S.C.

§ 1414(d)(1)(A)(i)(II). Section 1414(d) also requires special education and related services to enable each child "to advance appropriately toward attaining the annual goals" and "to be involved in and make progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A)(i)(IV). Special education and related services and supplementary aids and services are now required to be "based on peer-reviewed research to the extent practicable." *Id.* at § (d)(1)(IV). For children sixteen and over, the IEP must include transition planning including measurable goals based on appropriate assessments and services needed to assist in reaching those goals. 20 U.S.C. § 1414(d)(1)(VIII)(aa), (bb).

The IEP is to be developed based on the academic, developmental and functional needs of the child. 20 U.S.C. § 1414(d)(3)(A)(iv). When children have behavioral issues that "impede" learning, the IEP team must consider positive behavioral interventions, supports and strategies to address this. 20 U.S.C. § 1414(d)(3)(B)(i). The IEP team must also consider the "communication needs" of the child and also "whether the child needs assistive technology devices and services." 20 U.S.C. § 1414(d)(3)(B)(iv), (v). The IEP team is required to revise the IEP as appropriate to address "*any* lack of progress toward the annual goals and in the general education curriculum, where appropriate." 20 U.S.C. § 1414(d)(4)(A)(i), (ii)(I) (emphasis added).

Current guidance from the U.S. Department of Education further underscores that the Act's

provisions call for robust standards and not a merely more than *de minimis* educational benefit. *See*, U.S. Dep't of Educ., Dear Colleague Letter: Clarification of FAPE and Alignment with State Academic Standards 1 (Nov. 16, 2015) (children with disabilities should be given "rigorous academic standards," emphasizing the importance of having "high expectations" for them in 2015).

In addition, under the recently enacted Every Student Succeeds Act ("ESSA") amending the ESEA, alternate academic achievement standards for students with the most significant cognitive disabilities must "reflect professional judgment as to the highest possible standards achievable by such students" and be "aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue post-secondary education or employment consistent with the purposes of [the Rehabilitation Act]." 20 U.S.C, § 6311(b)(1)(E)(iii), (i)(V).

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A merely more than *de minimis* educational benefit standard cannot fulfill the intended functions and requirements of the amended statute. It renders superfluous, and defeats enforcement of, requirements for accountability, individualized programming using valid tools based on peer reviewed research, meaningful consideration of needed behavioral interventions and assistive technologies, and requirements for meeting state

standards. An IEP calculated to deliver a merely more than *de minimis* level of educational benefit reflects the watered-down expectations, and lack of accountability that Congress consistently rejected and prevents the achievement of independent living, employment and full participation in society for students with disabilities.

IV. Advances in Educational Practices and Technologies Markedly Improve Educational Outcomes for Students with Disabilities and Have Done So In Many Districts

The advances in peer-reviewed evidence-based instruction practices, assistive technologies and behavioral interventions that served as an impetus for Congressional revisions to the IDEA have continued to mount, dramatically increasing the potential for children with disabilities to achieve significant learning.

The science of Applied Behavior Analysis ("ABA")[12] provides effective methods to teach children with autism to communicate, do academic work, build functional skills, reduce behaviors that impede learning and increase socialization in ways critical for independence and further education and

[12] Applied Behavior Analysis is the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree. *See* Donald M. Baer, Montrose M. Wolf & Todd R. Risley, *Some Still-Current Dimensions of Applied Behavior Analysis*, 20 J. OF APPLIED BEHAVIOR ANALYSIS 313 (1987).

employment. *See*, *e.g.,* CDC, *Autism Spectrum Disorder (ASD) Treatment* ("ABA has become widely accepted");[13] Scott M. Myers, Chris Plauche Johnson, the Council on Children with Disabilities, *Management of Children with Autism Spectrum Disorders*, 120 PEDIATR. 1164 (2007) ("The effectiveness of ABA-based intervention in ASD has been well-documented.").[14]

A comprehensive 2013 report funded by the U.S. Department of Education and the Institute of Education Science identified a number of evidence-based practices ("EBPs") for children with autism, involving ABA techniques, that are effective across multiple developmental and skill areas. *See* Connie Wong, et al., Univ. of N.C., *Evidence-based practices for children, youth, and young adults with autism spectrum disorder* 22 (2014).[15] The report stressed

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[13] Available at http://www.cdc.gov/ncbddd/autism/treatment.html (last updated Feb. 24, 2015).

[14] The use and development of ABA gained increasing prevalence after a landmark research study showing 90% of subject children with autism substantially improved when utilizing ABA, compared to the control group, and close to half attained a normal IQ and tested within the normal range on adaptive and social skills. Ole Ivar Lovaas, *Behavioral treatment and normal educational and intellectual functioning in young autistic children*, 55 J. CONSULTING & CLINICAL PSYCHOLOGY 1, 6 (1987). A 1993 study showed that these same children had maintained their skills into early adolescence and could succeed in life without costly special education and residential services. John Jay McEachin, et al., *Long-term outcome for children with autism who received early intensive behavioral treatment*, 97 AM. J. MENTAL RETARDATION 4 (1993).

[15] Available at http://fpg.unc.edu/sites/fpg.unc.edu/files/

the importance of linking EBPs with student goals and the "great responsibility of the practitioner to implement the EBP with fidelity." *Id.* at 33.[16]

A key feature of ABA is that it can allow students to acquire skills at a faster rate which is essential if they are to "close the gap"[17] with constantly developing typical children. *See* Lars Klintwall, et al., *Narrowing the Gap: Effects of Intervention on Developmental Trajectories in Autism,* 19 AUTISM 1, 53-63 (2015); *see also* Jane S. Howard, et al., *A comparison of intensive behavior analytic and eclectic treatments for young children with autism*, 26 RES. IN DEVELOPMENTAL DISABILITIES 359, 376 (2005).

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resources/reports-and-policy-briefs/2014-EBP-Report.pdf

[16] By contrast, research indicates that general eclectic programs (which tend to be used by a number of school districts) are significantly less effective than intensive research-based ABA programs implemented with fidelity. *See* Jane S. Howard, et al., *Comparison of behavior analytic and eclectic early interventions for young children with autism after three years*, 35 RES. IN DEVELOPMENTAL DISABILITIES 3326–3344 (2014) ("children who received [intensive behavior analytic intervention] were more than twice as likely to score in the normal range on measures of cognitive, language and adaptive functioning than were children who received either form of eclectic intervention."); Sigmund Eldevik, et al., *Using participant data to extend the evidence base for intensive behavioral intervention for children with autism*, AM. J. ON INTELL. & DEVELOPMENTAL DISABILITIES 381 (2010).

[17] Cf. Dear Colleague letter dated November 16, 2015 at 5 ("IEP goals should be sufficiently ambitious to help close the gap.").

As in this case, behavioral issues stemming from a child's disability can have wide and long-lasting consequences preventing learning and socialization. In addition to skill building and communication, ABA interventions have been effective to reduce behavior such as aggression, self-injurious behavior and impaired social interaction that can prevent education and functioning.[18]

ABA-based instruction is also effective for transitioning children with autism to adult life, allowing them to develop foundational and job specific skills for employment, functional independent living skills, and social and community interaction skills. *See* Jonathan W. Ivy & Kimberly A. Schreck, *The efficacy of ABA for individuals with autism across the lifespan*, CURR. DEV. DISORD. REP. 57, 62-63 (2016); Carol Schall, et al., *Transition from school to work for students with autism spectrum disorders: understanding the process and achieving*

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[18] Mieke Heyvaert, et al., *A multilevel meta-analysis of single-case and small-n research on interventions for reducing challenging behavior in persons with intellectual disabilities*, RES. DEVELOPMENTAL DISABILITIES 766 (2012); Brian Reichow & Fred Volkmar, *Social skills interventions for individuals with autism: evaluation for evidence-based practices within a best evidence synthesis framework*, J. AUTISM DEV. DISORD. 2010. Addressing social impairments is particularly important for students with Aspergers or high functioning autism who may be successful academically but have significant impairments that impede them functionally. *See* Kelly May*, Teaching Strategies for Asperger Students*, Johns Hopkins School of Education, available at http://www.education.jhu.edu/PD/newhorizons/Exceptional%20Learners/Autism/Articles/Teaching%20Strategies%20for%20Asperger%20Students/

better outcomes, PEDIATR. CLIN. N. AM. (2012); Jennifer Ninci, et al., *Meta-analysis of single-case research on teaching functional living skills to individuals with ASD*, REV. J. AUTISM DEV. DISORD. (2015).

Peer-reviewed research also demonstrates the effectiveness of evidence-based educational and supportive interventions for children with learning disabilities, including the eighty percent that have dyslexia. Children whose dyslexia is not addressed face tremendous difficulties in adulthood. Yet effective interventions are available. Peer-reviewed research about the hallmarks of strong reading programs for children with dyslexia gained prominence after the National Reading Panel released its findings in April of 2000. *See* Nat'l Reading Panel, *Teaching children to read: an evidence-based assessment of the scientific research literature on reading and its implications for reading instruction* (Apr. 2000) (also describing advances for ADHD programs).[19] Experts on the Reading Panel identified key features necessary for reading programs to be effective, including phonemic awareness, phonics taught systematically and explicitly, spelling, sight words, and others. *Id.*, Findings and determinations. *See also*, Sally Shaywitz, *Overcoming Dyslexia – A New and Complete Science-Based Program for Reading Problems at Any Level* 208-10 (1st Ed. 2003).

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[19] Available at https://www.nichd.nih.gov/publications/pubs/nrp/pages/smallbook.aspx

As noted expert Dr. Joseph Torgeson concluded a decade ago, "we now have considerable evidence available concerning the effectiveness of intensive and explicit reading interventions for children who have struggled in learning to read." Joseph Torgesen, *Recent discoveries from research on remedial interventions for children with dyslexia, in* The Science of Reading: A Handbook 537 (M. Snowling & C. Hulme, 2008).

Another significant tool for educators is Universal Design for Learning ("UDL"). UDL is a set of principles to help schools design curricula that serve all learners, regardless of ability, age, gender, disability, or cultural or linguistic background, in order to give all students equal opportunity to learn. UDL provides a scientifically valid framework for educational practice surrounding curricular goals, instructional materials, assessments, and teaching methods in a way that ensures the widest range of learners is receiving the supports they need. UDL was incorporated in the Higher Education Act of 2008 (Public Law 110-315) ("HEOA") at 20 U.S.C. § 1003.24.[20] UDL principles were also expressly incorporated throughout ESSA (*supra* at 27). *See* Pub. L. No. 114-95, 129 Stat. 1802 (2015) §§ 1005, 1204, 2221(b)(1), and 4104. UDL is a tool that

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[20] The 2010 National Education Technology Plan that was released by the U.S. Department of Education also incorporates UDL throughout to ensure that technology is optimized to benefit diverse learners, including those with disabilities. U.S. Dep't of Educ., Office of Educ. Tech., *Transforming American Education, Learning Powered by Technology* 1, 14-18 (2010).

applies to all learners and, as such, it provides a bridge between special education and the mainstream classroom.

Another example of evolved educational practices that benefit a wide swath of students with disabilities, including those with Down Syndrome, is inclusive education. Forty years of research demonstrates the correlation between time in the general education classroom and academic and social progress. Meghan Cosier, et al., *Does access matter? Time in general education and achievement for students with disabilities*, 34 REMEDIAL & SPECIAL EDUC. 323-332 (2013); Michael Guralnick, et al., *The peer relations of preschool children with communication disorders*, 67 CHILD DEV. 471-89 (1996); Kurth, et al., *Academic and Cognitive Profiles of Students with Autism: Implications for Classroom Practice and Placement,* 25 INT'L J. OF SPECIAL EDUC. 2, 8—14 (2010) (finding junior high-school students with autism in self-contained classrooms had similar scores on cognitive and adaptive functioning tests as children with autism in general education classrooms, but the latter scored significantly higher in achievement tests).[21]

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[21] Indeed, studies show that inclusive classrooms lead to improved academic and decision-making skills for the entire classroom, and not just the subset of students identified as having disabilities. *See, e.g.*, Jeong Hoon Choi, et al., *Improving learning for all students through equity-based inclusive reform practices: effectiveness of a fully integrated schoolwide model on student reading and math achievement*, REMEDIAL & SPECIAL EDUC. 1-14 (2016); Xin Zhang, et al., *Improving children's*

Advancements in technology have game-changing benefits for a wide range of children with disabilities, including those with autism and cerebral palsy, when combined with evidence-based practices. For example, "integrating multimedia computer supports with activity schedules can be an effective way to teach students to manage their work, play, and skill-building activities independently." Robert Stromer, et al., *Activity schedules, computer technology, and teaching children with autism spectrum disorders*, 21 FOCUS ON AUTISM & OTHER DEVELOPMENTAL DISABILITIES 14-24 (2006). Further, Ipads and other:

> [m]obile technology can be used effectively . . . not only . . . as . . . [Assistive or Augmented Communication] devices, but to also assist in teaching academic areas, social skills, video modeling, reinforcement, ABA, speech/language therapy, fine motor skills, visual supports, functional life skills, organizational skills, and increasing independence.

Kristie Brown Lofland, *The Use of Technology in Treatment of Autism Spectrum Disorders*, Indiana Resource Center for Autism, Indiana University.[22]

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competence as decision makers: contrasting effects of collaborative interaction and direct instruction, 53 AM. EDUC. RES. J. 194-223 (2016).

[22] Available at https://www.iidc.indiana.edu/pages/the-use-of-technology-in-treatment-of-autism-spectrum-disorders.

For children with physical disabilities, "technology can give access to learning opportunities previously closed to them. E-readers help students turn book pages without applying dexterity, and voice adaptive software can help students answer questions without needing to write." Kris Zorigian & Jennifer Job, *How do special education students benefit from technology?*, LEARN NC, UNC-CHAPEL HILL SCHOOL OF EDUCATION (2010).[23] Other technologies include "alphabet eye gaze frames allowing children to 'point' to letters with their eyes, onscreen keyboards that are controlled by switches, and electronic flipcharts." *Id.* For students with print disabilities, including those with dyslexia and visual impairments, screen reader software can read aloud information from e-books and web-pages. Refreshable braille peripheral devices can actively translate that information into braille. Assistive Training Online Project, Sch. of Pub. Health and Health Professions, SUNY-Buffalo, *Reading & Computing*.[24]

It should also be noted that a number of resources are available to assist schools implementing these interventions, which are being employed in many schools across the country. *See*, *e.g.*, It's Time for School: Building Quality ABA Educational Programs for Students with Autism Spectrum Disorders, by Ronald Leaf, Mitchell Taubman & John McEachin; U.S. Dep't of Educ.,

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[23] Available at http://www.learnnc.org/lp/pages/6917?ref=search.

[24] Available at http://atto.buffalo.edu/.

Dear Colleague Letter: 68 IDELR 176 (OSEP/OSERS) (Aug. 1, 2016) (discussing changes and improvements to IEPs as needed to address behavioral issues.); Levine, P., Marder, C., & Wagner, M. (2004), *Services and Supports for Secondary School Students with Disabilities: A Special Topic Report from the National Longitudinal Transition Study-2 (NLTS2).* Menlo Park, CA: SRI International.[25]

Schools in circuits rejecting a merely more than *de minimis* educational standard in favor of a robust standard have implemented substantial evidence-based programs, and have successfully defended them from due process challenges seeking additional benefits. *See R.K. & D.K. v. Clifton Board of Education*, 587 F. App'x 17, 17 (3d Cir. 2014) (holding that school's ABA program provided a free appropriate public education ["FAPE"] and rejecting plaintiffs' request for services delivered by a different ABA provider); *M.A. v. Jersey City Bd. of Educ.*, 592 F. App'x 124, 124 (3d Cir. 2014) (finding that school district's proposed placement from a department of education approved private ABA school to a district school's less intensive ABA program based on skills student had developed for learning in more natural settings did not deny student a FAPE); *Ridley School Dist. v. M.R.*, 680 F.3d 260, 275 (3d Cir. 2012) (holding school provided a FAPE where "the peer reviewed specially designed reading instruction in E.R.'s IEP was 'reasonably calculated to enable [her]

[25] Available at http://www.nlts2.org/reports/2004_05/index.html.

to receive meaningful educational benefits in light of [her] intellectual potential'") (quoting *Chambers v. Sch. Dist. of Phila. Board of Education*, 587 F.3d 176 (3d Cir. 2009)).

V. An Appropriate Education Under the IDEA Requires Measureable Goals Designed in Accordance with Peer-Reviewed Research To Provide Children With Disabilities With Educational Opportunities Substantially Equal to Their Non-Disabled Peers

The Tenth Circuit standard that "merely more than trivial" educational progress satisfies the IDEA requirement for a "free appropriate public education" is erroneous and should be rejected. It is important, however, for strong and consistent enforcement of the Act, that the Court now clarify how educators and lower courts should make that determination.

The purposes and requirements of the IDEA as amended provide a solid model for the answer. First, what is appropriate must be determined in light of the needs and potential of the particular student, determined in light of current peer-reviewed research and technologies. Second, Congress has clarified that the services for these students are to be judged in relation to whether they are "designed to meet their unique needs *and prepare them for further education, employment, and independent living*." 20 U.S.C. § 1400(d)(1)(A) (emphasis added). Third, progress is determined with reference to the same standards as non-disabled children.

Taken as a whole, the appropriate standard for a free and appropriate public education is one that provides individualized special education and related services in accordance with the provisions of the Act to afford children with disabilities with substantially equal opportunities as non-disabled students to advance to further education, employment and independent living.

Because the legislative branch directed that an appropriate education be one which is provided "in conformity with" the requirements of the fortified IEP standards adopted by the 1997 and 2004 amendments, any evaluation of a child's educational services must include a determination of whether the child's IEP properly reflects those strengthened IEP directives. *See*, *e.g.*, *Anchorage S.D. v. D.K.*, 4 IDELR 28 (D. Alaska, 2009) (goals insufficient to constitute FAPE). Any IEP goals that do not reflect the peer-reviewed research mandated by 20 U.S.C. § 1414(d)(1)(IV) cannot meet the definition of FAPE that the services be "in conformity" with 20 U.S.C. § 1414(d). As noted in the preceding section of this brief, there is significant research about the progress children can actually make, including those considered highly disabled, with the appropriate types of interventions and technological supports. Where, as here, a school has neither set measureable goals consistent with the child's abilities, nor considered and implemented programs shown to be effective by peer-reviewed research for the type disability of the child, those special education

services cannot constitute a "free appropriate public education."

CONCLUSION

The world, taking the IDEA with it, has moved beyond low expectations of just providing a desk and a teacher, to demanding high expectations for all students – including those with disabilities. For the foregoing reasons, *amici curiae* respectfully request that this Court reverse the decision below.

Respectfully submitted,

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APPENDIX

Statements of Interest

Autism Speaks is the world's leading autism science and advocacy organization dedicated to increasing awareness and education about autism, funding research regarding its causes, prevention, and effective treatments, and enforcing state and federal rights and protections for individuals with autism and advocating for the needs of individuals with autism and their families. Each year, 50,000 individuals with autism in the United States will transition to adulthood. Autism Speaks is deeply familiar with the special education challenges faced by children with autism and their families, and the special teaching approaches proven effective to enable children with autism to learn skills across a variety of settings so that they may have the opportunity to lead functional, independent lives as the ultimate outcome of their educational experience.

The National Down Syndrome Society (NDSS) is the leading human rights organization for people with Down syndrome, advocating for the value, acceptance and inclusion of all people with Down syndrome and their families. Since 1979, NDSS has actively advocated for policies and programs to promote inclusive opportunities for students with Down syndrome and access to the general education curriculum, while seeking to ensure that standards and accountability remain high. NDSS has played a key role in supporting the development of postsecondary education options for individuals with developmental disabilities and in promoting

Universal Design for Learning in all classroom settings. NDSS recognizes that individuals with Down syndrome are lifelong learners who learn and develop at their own rate and in their own way, but that Down syndrome is not a blueprint for potential or a prescription for a given educational or life plan. People with Down syndrome have varied goals for their futures and individual expectations of their roles in the family, school and community.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization established to eradicate discrimination and poverty by enforcing civil rights laws through litigation. In furtherance of this mission, the Washington Lawyers' Committee's public education project works to ensure a free and high quality of education for all children, and its disability rights project strives to guarantee equal access to all aspects of society to persons within the disability community. Through these two projects, the Washington Lawyers' Committee has amassed expertise in issues arising under the nation's education and disability laws, including the Individuals with Disabilities Education Act.

Decoding Dyslexia is a network of parent-led grassroots groups in 50 states concerned with the limited access to educational interventions for dyslexia within the public education system. The groups aim to raise dyslexia awareness, empower families to support their children and inform policy-makers on best practices to identify, remediate and

support students with dyslexia. The following 18 Decoding Dyslexia chapters are *amici* on this brief: Arizona, California, Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, New Jersey, New Mexico, New Hampshire, Ohio, North Carolina, Oklahoma, Pennsylvania, and Utah.

TASH is a national organization founded in 1975 advocating for human rights and inclusion for people with significant disabilities and support needs. TASH works to advance inclusive education practices through advocacy, research, professional development, policy, and information and resources for parents, families and self-advocates. The inclusive practices TASH validates through research have been shown to improve outcomes for all people. Because of its activities TASH has significant knowledge about what works in public schools for persons with disabilities.

The International Dyslexia Association (IDA) is a 501(c)(3) nonprofit, scientific, and educational organization dedicated to the study and treatment of the specific language disability know as dyslexia. IDA is the authoritative voice of current and reliable research and information to educate families and professionals about dyslexia and to inform the practice and policy changes needed to provide effective instruction for all people to learn to read. IDA has been serving individuals with dyslexia, their families, and professionals in the field for sixty-five years. IDA's membership is composed of a global

network of people with dyslexia, their families, educators, diagnosticians, physicians, researchers, and other professionals in the field.

United Cerebral Palsy (UCP) educates, advocates and provides support services through an affiliate network to ensure a life without limits for people with a spectrum of disabilities. Together with nearly 70 affiliates, UCP has a mission to advance the independence, productivity and full citizenship of people with disabilities by supporting more than 176,000 children and adults every day. And, more than 15 UCP affiliates specifically provide after school enrichment programs in cooperation with school districts across the US.

Public Counsel is the largest pro bono law office in the nation. Public Counsel provides legal representation, advocacy, and social work support to hundreds of low-income children and families every year, specializing in complex cases involving multiple legal issues. Public Counsel ensures that youth with disabilities have access to a free and appropriate public education under the IDEA through court- and community-based legal clinics, direct representation, policy advocacy, and impact litigation.