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

BRIEF FOR ADVOCATES FOR CHILDREN OF NEW YORK, CHILDREN'S LAW CENTER, INC., CONNECTICUT PARENT ADVOCACY CENTER, EQUIP FOR EQUALITY, THE LEGAL AID SOCIETY, LEGAL SERVICES NYC, NATIONAL CENTER FOR YOUTH LAW, NEW YORK LAWYERS FOR THE PUBLIC INTEREST, NEW YORK LEGAL ASSISTANCE GROUP, PARTNERSHIP FOR CHILDREN'S RIGHTS, AND STATEWIDE PARENT ADVOCACY NETWORK AS AMICI CURIAE IN SUPPORT OF PETITIONER

DANIEL WINIK
JUSTIN BAXENBERG
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006

ALAN E. SCHOENFELD
Counsel of Record
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com

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INTEREST OF AMICI CURIAE

Amici curiae are advocacy and legal-services organizations committed to protecting the rights of children with disabilities to receive a quality education in public schools.[1]

For over forty years, Advocates for Children of New York (AFC) has worked with low-income families to secure quality public education services for their children, including children with disabilities. AFC provides a range of direct services, including advocacy for students and families in individual cases, and also pursues institutional reform of educational policies and practices through advocacy and litigation. AFC routinely advocates for the rights of children and their families under the Individuals with Disabilities Education Act (IDEA) and therefore has a strong interest in the proper interpretation of the IDEA.

The Children's Law Center, Inc. (CLC) is a non-profit organization committed to the protection and enhancement of the legal rights of children. CLC strives to accomplish this mission through various means, including providing legal representation for children and advocating for systemic and societal change. For over 27 years, CLC has worked in the field of special education to ensure that all youth, regardless of race, ethnicity, gender, sexual orientation, economic status or disability, have access to education programming which provides meaningful benefit. Each year, CLC represents hundreds of students with

[1] Both parties have given written consent to the filing of all amicus briefs. No counsel for a party authored this brief in whole or in part, and no person other than amici, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

disabilities in ensuring that their rights under the IDEA are protected. To this end, CLC has a strong interest in ensuring that all students with disabilities receive an education appropriate to meet their unique needs.

Connecticut Parent Advocacy Center (CPAC) is Connecticut's federally-funded Parent Training and Information Center pursuant to 20 U.S.C. § 1482. CPAC's mission is to empower and support families, and inform and involve professionals and others interested in the healthy development and education of children and youth, with the goal of ensuring that all children and youth, including those with disabilities, receive the services needed to become productive, contributing members of their communities and our society. CPAC provides training and technical assistance to thousands of parents and professionals each year, on issues such as special education, school reform, rights of homeless and immigrant children, bilingual services, discipline and positive behavioral supports, parent involvement, and parent-professional collaboration.

Equip for Equality (EFE) is an independent, non-profit, civil rights organization for people with disabilities which administers the Protection and Advocacy System in the State of Illinois. EFE provides information, referral, self-advocacy assistance, and legal representation to people with disabilities throughout the State. One of EFE's primary areas of focus is the rights of children with disabilities. Every year, EFE assists approximately 1,500 children with disabilities seeking legal assistance in disputes with school districts. Specifically, EFE provides systemic and individual legal services to students with disabilities who are not receiving a free appropriate

public education as guaranteed by the IDEA. As a result, EFE has a strong interest in the proper interpretation of the IDEA.

The Legal Aid Society of New York City is the nation's oldest and largest provider of legal services to low-income families and individuals. Each year, the Society provides legal assistance in some 300,000 legal matters involving civil, criminal, and juvenile rights. A significant number of the Society's clients are children with disabilities, who struggle to obtain the educational services they need in order to be prepared for further education, employment, and independent living. The Society also provides extensive advocacy for adults with disabilities, many of whom did not receive adequate special education services as children and are now suffering lifelong consequences. The Society therefore has a significant interest in ensuring that students with disabilities have access to appropriate educational services under the IDEA.

Legal Services NYC (LSNYC) is one of the largest law firms for low income people in New York City, with 18 community-based offices and numerous outreach sites located throughout each of the City's five boroughs. LSNYC serves over 70,000 New Yorkers annually through a number of specialized practices, including disability advocacy and education rights. LSNYC regularly engages in litigation, advocacy, and education on behalf of public school students and their families related to the IDEA.

National Center for Youth Law (NCYL) is a private, non-profit organization that uses the law to help children in need nation-wide. For more than 40 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the

resources, support, and opportunities necessary for healthy and productive lives. NCYL provides representation to children and youth in cases that have a broad impact and has represented many children with disabilities in litigation and class administrative complaints to ensure their access to appropriate and non-discriminatory services. NCYL engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL pilots collaborative reforms with state and local jurisdictions across the nation to improve educational outcomes of children in the foster care and juvenile justice systems, with a particular focus on improving education for system-involved children with disabilities.

New York Lawyers for the Public Interest, Inc. (NYLPI) is a public interest law office founded in 1976 which, through its Disability Justice program and partnerships with community groups, advocates for the rights of persons with disabilities in New York. On both an individual and systemic basis, NYLPI represents low-income parents and their children with disabilities to ensure the children receive the free appropriate public education (FAPE) guaranteed by the IDEA, Section 504 of the Rehabilitation Act and state and local laws.

The New York Legal Assistance Group (NYLAG) is a not-for-profit law firm founded in 1990 to provide free civil legal services to low income New Yorkers who would otherwise be unable to afford or receive legal assistance. NYLAG assists the poor and near poor in New York City in accessing legal rights of vital importance. NYLAG's clients include, among others, seniors, immigrants, victims of domestic violence, Holocaust survivors, and at-risk children. With regard

to children, NYLAG represents them in special education cases and SSI appeals.

Partnership for Children's Rights (PFCR) is a nonprofit organization that provides free legal services to disabled children from low-income families throughout New York City in the area of special education. PFCR's mission is to ensure that each disabled child receives an appropriate education under the IDEA and a meaningful opportunity for self-sufficiency in adulthood.

The Statewide Parent Advocacy Network (SPAN) is New Jersey's federally funded Parent Training and Information Center pursuant to 20 U.S.C. § 1482. SPAN's mission is to empower and support families, and inform and involve professionals and others interested in the healthy development and education of children and youth with the goal of ensuring that all children and youth, including those with disabilities, receive the services needed to become productive, contributing members of their communities and our society. SPAN provides training and technical assistance to thousands of parents and professionals each year, on issues such as special education, school reform, rights of homeless and immigrant children, bilingual services, discipline and positive behavioral supports, parent involvement, and parent-professional collaboration.

SUMMARY OF ARGUMENT

In opposing certiorari, respondent contended that the Individuals with Disabilities Education Act (IDEA) relies almost exclusively on procedural requirements to meet Congress's goal of ensuring that students with disabilities receive a free appropriate public education.

Supp. Br. 1. Respondent abjures the notion that the IDEA imposes any substantive requirement at all on the education provided to students with disabilities, except for a requirement "that the education to which access is provided is reasonably calculated to confer more than a *de minimis* educational benefit." *Id.*

Respondent's position is at odds with this Court's decision in *Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176 (1982), with Congress's subsequent amendments to the IDEA, and with common sense. In enacting and amending the IDEA, Congress elaborated a comprehensive scheme for ensuring that students with disabilities have an equal opportunity to succeed in the classroom, to "meet developmental goals," and to "be prepared to lead productive and independent adult lives, to the maximum extent possible." 20 U.S.C. § 1400(c)(5)(A)(i)-(ii). It would be surpassingly odd for Congress to legislate in the service of such ambitious goals, only to have local school districts fulfill their statutory obligations by developing individualized educational programs (IEPs) that check off the requisite procedural steps but confer barely any educational benefits on students with disabilities.

In arguing to the contrary, respondent relies heavily on the notion that this Court's decision in *Rowley* forecloses any substantive definition of what makes a free public education "appropriate," beyond the meaningless requirement imposed by the Tenth Circuit. Not so. *Rowley* recognizes that the requirement of a "free appropriate public education" must have some substantive meaning given Congress's desire to guarantee "meaningful" access to an education for children with disabilities. 458 U.S. at 192. And although the Court declined to answer the question of

how to determine "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the" IDEA, *id.* at 202, Congress stepped into the breach, clarifying in subsequent amendments that the IDEA's purpose is "to ensure 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 amendments thus make clear that an education supplies the necessary degree of benefit when the IEP is reasonably tailored "to meet the[] unique needs" of each student with a disability "and prepare [the student] for further education, employment, and independent living." *Id.*

Forswearing any substantive guidance from the statute, respondent theorizes that the IDEA's procedural provisions will sufficiently ensure that children with disabilities receive an appropriate education. But as the experiences of amici and their clients have shown, adherence to procedures alone does not ensure that students receive an education appropriate to meet their unique needs. Moreover, it is amici's experience that school districts, administrative hearing officers, and ultimately courts need more guidance on what constitutes the requisite educational benefit under *Rowley*.

Congress enacted and amended the IDEA because local educational authorities often lacked the understanding, ability, or will to meet the individualized needs of students with disabilities. Respondent's position assumes that Congress responded to those deficiencies by announcing ambitious goals for students with disabilities but

entrusting fulfillment of those goals to a procedural scheme alone. The Court should instead assume Congress intended that its high expectations be carried into effect, by ensuring that IEPs are substantively adequate to meet students' educational needs, not just that they are promulgated in accordance with a set of procedures and provide a "more than *de minimis*" degree of benefit.

ARGUMENT

I. THE IDEA GUARANTEES MEANINGFUL ACCESS TO EDUCATION

A. Congress Has Set Demanding Standards For The Education Of Students With Disabilities

In enacting and amending the IDEA, Congress has set the goal of ensuring that students with disabilities have an equal chance to succeed in leading productive and independent lives.

Congress's most recent findings—associated with the 1997 and 2004 amendments to the IDEA—establish that the statute aims not just to grant students with disabilities *access* to public school classrooms but to enable them to succeed there, to the maximum extent possible. Congress determined that although prior versions of the IDEA had "been successful in ensuring children with disabilities … access to a free appropriate public education," the statute's implementation had "been impeded by low expectations." 20 U.S.C. § 1400(c)(3)-(4). It observed that during the three decades since the enactment of the IDEA's predecessor, the Education for All Handicapped Children Act of 1975, "research and experience ha[ve] demonstrated that the education of children with disabilities can be made more effective by … having

high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible." *Id.* § 1400(c)(5). Congress found that students with disabilities are capable of "meet[ing] developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children," and that they should "be prepared to lead productive and independent adult lives, to the maximum extent possible." *Id.* § 1400(c)(5)(A)(i)-(ii).

Consistent with these findings, Congress has specified that one of the IDEA's purposes is "to ensure 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). Congress has also declared a "national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." *Id.* § 1400(c)(1).

It is inconceivable, given Congress's findings and its exposition of the ambitions of the IDEA, that the "free appropriate public education" Congress meant to guarantee, 20 U.S.C. § 1412(a)(1)(A), was one providing just barely more than a *de minimis* benefit to students with disabilities. Rather, Congress has prescribed that public schools must give students with disabilities an education that is substantially equal—in its rigorous demands and high expectations—to the one received by all other students.

B. *Rowley* Reserved The Question Of What Constitutes Meaningful Access To Education, But Congress Has Since Answered It

The Tenth Circuit's precedents—and respondent's position at the certiorari stage—rest on the notion that any genuine substantive requirement of an "appropriate" education is foreclosed by this Court's decision in *Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176 (1982). But *Rowley* does not support, let alone compel, that crabbed reading. Rather, *Rowley* recognizes that the requirement of a "free appropriate public education" must have some substantive meaning given Congress's desire to guarantee "meaningful" access to an education for children with disabilities. *Id.* at 192.

In *Rowley*, the Court addressed a challenge to an IEP for Amy Rowley, a first-grade student with a hearing impairment. 458 U.S. at 184-186. Amy's parents asked the school district to provide a sign-language interpreter in each of her classes. *Id.* at 184. Instead, the IEP provided for her to use a hearing aid and receive periodic instruction from a tutor and a speech therapist. *Id.*

The district court ruled in favor of Amy's parents. The court found that Amy was "'a remarkably well-adjusted child,'" who "interact[ed] and communicate[d] well with her classmates and ha[d] 'developed an extraordinary rapport' with her teachers." 458 U.S. at 185. Amy was, in fact, "'perform[ing] better than the average child in her class and [was] advancing easily from grade to grade.'" *Id.* Nonetheless, the district court determined that she was not receiving a "'free appropriate public education'" because she could "'understand[] considerably less of what goes on in

class than she could if she were not deaf' and thus '[was] not learning as much, or performing as well academically, as she would without her handicap.'" *Id.* The Second Circuit embraced that analysis. *Id.* at 186.

This Court rejected the lower courts' conclusions that in enacting the IDEA, Congress intended "to achieve strict equality of opportunity or services" between students with and without disabilities. 458 U.S. at 198. Looking to "the *language* of the statute," the Court found no "substantive standard prescribing the level of education to be accorded handicapped children." *Id.* at 189 (emphasis added).

The Court's analysis did not end with the language of the statute, however. Rather, the Court proceeded to examine other indicia of the IDEA's meaning. And in doing so, it recognized that the requirement of a "free appropriate public education" must have some substantive meaning.

First, the Court opined that in seeking "to make public education available to handicapped children," Congress must have intended "to make such access meaningful." 458 U.S. at 192. In the Court's view, Congress did not intend to "impose upon the States any *greater* substantive educational standard than" that. *Id.* (emphasis added). But the requirement of "meaningful" access to an education is itself a substantive threshold. The Court recognized, for example, that "furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement." *Id.* at 198-199.

Second, the Court held that "the congressional purpose of providing access to a 'free appropriate public education'" implies "the requirement that the

education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." 458 U.S. at 200. "It would do little good," the Court recognized, "for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from that education." *Id.* at 200-201.

The *Rowley* Court left open the question of how to determine "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the" IDEA. 458 U.S. at 202. But it did so simply because resolving that question was unnecessary, in a case in which the student with disabilities was "receiving substantial specialized instruction and related services" and was "performing above average in the regular classrooms of a public school system." *Id.*; *see Polk* v. *Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988) ("*Rowley* was an avowedly narrow opinion that relied significantly on the fact that Amy Rowley progressed successfully from grade to grade in a 'mainstreamed' classroom."); *see also Deal* v. *Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 863 (6th Cir. 2004) (same).

Fortunately, Congress's post-*Rowley* amendments to the IDEA have answered the question reserved by the *Rowley* Court: What degree of "educational benefit" is required for a student with a disability to have "meaningful access" to a free public education? Congress has stated that one of the amended IDEA's purposes is "to ensure 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).

Congress has thus directly indicated what sort of "free appropriate public education" it regards as supplying the requisite educational benefit—namely, one that is reasonably tailored "to meet the[] unique needs" of students with disabilities "and prepare them for further education, employment, and independent living." *Id.*

Moreover, whereas the *Rowley* Court found no "congressional intent to achieve *strict* equality of opportunity or services" between students with disabilities and those without, 458 U.S. at 198 (emphasis added), Congress has since declared a "national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities," 20 U.S.C. § 1400(c)(1).

The Tenth Circuit's standard—under which an IEP is substantively adequate so long as the educational benefit it provides is "more than *de minimis*," Pet. App. 16a (internal quotation marks omitted)—is irreconcilable with Congress's articulation of what the IDEA is meant to achieve. As the Sixth Circuit has observed, "states providing no more than *some* educational benefit could not possibly hope to attain the lofty goals proclaimed by Congress." *Deal*, 392 F.3d at 864.

II. ADHERENCE TO IDEA PROCEDURES CANNOT GUARANTEE MEANINGFUL ACCESS TO EDUCATION

Respondent argues that "the IDEA's procedural requirements ensure that a child's access to public education is meaningful." Supp. Br. 8 (internal quotation marks omitted). That is incorrect. The experiences of children with disabilities, their families, and their advocates have shown that the procedures

specified by the IDEA, while critical to protecting the rights of children with disabilities and their parents, cannot by themselves guarantee that children with disabilities will receive the education to which the statute entitles them. Procedures are only as meaningful as the substantive objectives that they are employed to promote. To ensure that access to education is meaningful, and substantially equal among students with and without disabilities, the IDEA's procedural protections must be coupled with substantive requirements that exceed the Tenth Circuit's meaningless formulation.

A. The IDEA's Procedural Requirements Provide No Substantive Protection To Students With Disabilities

The IDEA provides an extensive procedural framework for assessing the needs of a child with disabilities, developing an appropriate IEP, and ensuring that the IEP functions as intended. In the absence of meaningful substantive requirements, however, even the most careful adherence to those procedures cannot ensure that children with disabilities have access to the education that Congress envisioned. Congress did not prescribe procedure for the sake of procedure; it crafted the IDEA's procedural framework in the service of a substantive requirement that states provide children with disabilities access to an education that will "prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). The IDEA's procedures must be understood as means to achieving this purpose, not as ends in themselves.

The first set of procedures focuses on the assessment of the educational needs of children with

suspected disabilities. The statute requires an initial evaluation using "a variety of assessment tools" to determine whether the child has a disability and how to shape the IEP in order to "enabl[e] the child to be involved in and progress in the general education curriculum." 20 U.S.C. § 1414(b)(2)(A). The IEP team must review evaluations and information provided by the child's parents and teachers and identify and obtain any additional necessary information. *Id.* § 1414(c)(1). Once the assessment is completed, the same statutorily defined "team of qualified professionals," together with the child's parents, must determine the educational needs of the child. *Id.* § 1414(b)(4)(A).

The IDEA next prescribes procedures for developing an IEP that will meet the child's needs. The IDEA requires every IEP to include various elements: a description of the child's level of academic performance, a set of annual goals designed to meet the child's disability-related needs, an explanation of how progress towards these annual goals will be measured, a statement of the services that will be provided to the child, and a projected date for services to begin. 20 U.S.C. § 1414(d)(1)(A)(i). If the child will not participate with children without disabilities in a general-education classroom or will require accommodations for statewide or districtwide assessments, the IEP must explain the extent of the nonparticipation or accommodation. *Id.* § 1414(d)(1)(A)(i)(V)-(VI). And beginning with the school year in which the child turns 16, the IEP must include "appropriate measurable postsecondary goals" for enabling the child to transition from high school into further education or independent living. *Id.* § 1414(d)(1)(A)(i)(VIII)(aa).

In developing the IEP, the IEP team must consider "the strengths of the child," "the concerns of the parents," "the results of the initial … or most recent evaluation of the child," and "the academic, developmental, and functional needs of the child." 20 U.S.C. § 1414(d)(3)(A)(ii)-(iv). The team must also consider "positive behavioral interventions" for children with behavior that interferes with learning, the language needs of children with limited English proficiency, the special communication needs of children with visual or auditory impairments, and the use of assistive technology if appropriate. *Id.* § 1414(d)(3)(B).

The final set of procedures is meant to ensure that the IEP is functioning as intended. The IEP must be reviewed at least annually and revised as appropriate to address any issues that may arise. 20 U.S.C. § 1414(d)(4)(A). Parents must be provided the opportunity to review records relating to their child and must receive written notice before any significant change is made to their child's education. *Id.* § 1415(b)(1), (3). And if parents are dissatisfied with their child's IEP or the treatment their child is receiving, they have the right to a due process hearing before an impartial hearing officer. *Id.* § 1415(f). A party aggrieved by the hearing officer's decision ultimately may resort to state or federal courts. *Id.* § 1415(g), (i)(2).

These procedures are indisputably detailed. But in arguing that the procedures themselves do the work of achieving Congress's purposes for the IDEA, respondent profoundly misses the point. Like procedures of all kinds, the IDEA's procedures are only means by which the people implementing them work toward a substantive goal. If the Tenth Circuit were

correct that the IDEA's only substantive requirement is for students with disabilities to achieve "more than *de minimis*" results, then that is the only outcome the procedures will in turn promote. That is the standard by which the IEP team will be compelled to determine the child's educational needs, 20 U.S.C. § 1414(b)(4)(A); the standard by which the child's educational goals must be determined, *id.* § 1414(d)(1)(A)(i); and—importantly—the standard by which a hearing officer reviewing the IEP will determine "whether the child received a free appropriate public education," *id.* § 1415(f)(3)(E)(i). An IEP would comply with the IDEA under this view so long as it were adopted using the proper procedures, even if the plan proved to be all but completely ineffective.

Indeed, respondent concedes that the consequence of its interpretation is that the IDEA poses no bar to an IEP under which a school district "offer[s] assistive technology to a hearing-impaired child in just one class, so long as the child made progress in that class." Supp. Br. 10-11. Respondent suggests that such an IEP would violate the Americans with Disabilities Act (ADA). Supp. Br. 11. But even if that were true, it is hardly a satisfying answer to why the IDEA should be construed to allow such an absurd result. That is particularly so for amici and their clients—generally poor parents seeking to protect their children's rights in the labyrinthine administrative and court proceedings for review of IDEA claims. The notion that parents would need to pursue a school's failure to fulfill its IEP goals in an IDEA proceeding, and separately pursue the school's failure to provide accommodations for the same disability in a proceeding brought under the ADA, is preposterous. Aside from the potential exhaustion issues, *c.f. Fry* v. *Napoleon*

Community Schools, No. 15-497 (argued Oct. 31, 2016), the ADA imposes different obligations and affords different defenses than the IDEA. In the hypothetical posited by the government and addressed by respondent, for example, the school district could escape any ADA liability by demonstrating that the provision of assistive technology in every class "would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. § 35.164. The IDEA allows no such defense.

Respondent argues that courts are not permitted "to second-guess the *substance* of … educational decisions" made by an IEP team "by requiring a 'particular outcome' or 'level of education.'" Supp. Br. 9. But when Congress legislates toward particular ends, it rarely does so on a wing and a prayer, stating the objective without actually mandating that it be carried out. The Court should not presume Congress acted so cavalierly in enacting and amending the IDEA, particularly in view of the basic statutory command that educators pursue the substantive objective of providing an education reasonably tailored "to meet the[] unique needs" of students with disabilities "and prepare them for further education, employment, and independent living," 20 U.S.C. § 1400(d)(1)(A).[2] That result would be inconsistent with Congress's concern that "low expectations" not be permitted to hold back

[2] Indeed, in introducing the Conference Report for the amended IDEA, Senator Gregg described the amendments as "shift[ing] focus away from compliance with burdensome and confusing rules, and plac[ing] a renewed emphasis on our most fundamental concern[,] making sure that children with disabilities receive a quality education." 150 Cong. Rec. S11,653, S11,654 (daily ed. Nov. 19, 2004).

children with disabilities, *id.* § 1400(c)(4)—a clear indication that Congress recognized the role of strong federal standards in ensuring that school districts provide sufficient education to children with disabilities.

Respondent attempts to analogize the IDEA to the Administrative Procedure Act (APA), on the theory that both statutes "achieve[] Congress's goals through [their] *procedures*." Supp. Br. 9. But that analogy, far from supporting respondent's position, highlights its weakness. The APA alone does not achieve Congress's goals; rather, it provides mechanisms for guiding and correcting agencies as they carry out the purposes specified in substantive law by Congress. *See Judulang* v. *Holder*, 132 S. Ct. 476, 485 (2011) (agency action "must be tied" to the purposes of the law). And when agencies fail to act in a manner reasonably calculated to promote Congress's purposes, courts can and do overturn their actions for contravening or misinterpreting the underlying substantive law. *See, e.g.*, *id.* at 490 (overturning Board of Immigration Appeals interpretation "unmoored from the purposes and concerns of the immigration laws"); *Massachusetts* v. *EPA*, 549 U.S. 497, 528 (2007) (holding that the Clean Air Act barred EPA's argument that it could not regulate greenhouse gas emissions from automobiles).

Unlike the APA, the IDEA's procedures do not implement some other congressional objective manifest in some other statute; those procedures implement the same statute's substantive objectives. In the IDEA, as in the statutes that federal agencies are charged with implementing, Congress has specified the purpose that it wants carried out: Congress wants school districts to give students with disabilities an education that is "designed to meet their unique needs and prepare them

for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). IEPs that fail to pursue that purpose are just as unlawful as agency actions that fail to pursue the substantive goals Congress has set. Respondent's position—that Congress had no interest in the results achieved by an IEP, so long as the requisite procedures were followed—is as untenable as the notion that a court reviewing a regulation under the APA need not look to the statute being administered so long as the regulation was issued through notice-and-comment rulemaking. That is not how the APA functions, and it should not be how the IDEA functions.

B. The Courts' Implementation Of The IDEA Demonstrates The Ineffectiveness Of Relying On Procedural Protections Alone

Respondent claims that the IDEA's procedures "ensure that educators *do* aim high when they develop an IEP in collaboration with the child's parents." Supp. Br. 9. Unfortunately, the "more than *de minimis*" standard adopted by the Tenth Circuit and other courts has resulted in children with disabilities being denied the services they need to obtain a meaningful education. Congress surely did not intend to construct a statute that acknowledges the government's "responsibility to provide an equal educational opportunity for all individuals," 20 U.S.C. § 1400(c)(7), and promises "to ensure that the rights of children with disabilities and parents of such children are protected," *id.* § 1400(d)(1)(B), but fails to actually keep those promises. The caselaw shows how fealty to IDEA's procedural requirements often fails to advance the statute's ambitious substantive aims.

Consider Luke P., a child with autism, on whose case the Tenth Circuit relied in rejecting Endrew F.'s appeal. Pet. App. 3a, 16a, 19a, 21a (citing *Thompson R2-J Sch. Dist.* v. *Luke P. ex rel. Jeff P.*, 540 F.3d 1143 (10th Cir. 2008)). Luke began receiving special-education services in kindergarten, after being diagnosed with autism at the age of two. During kindergarten and first grade, he achieved many of his IEP goals and made significant progress, but he began to demonstrate problems with applying skills learned in the classroom to non-classroom environments. 540 F.3d at 1145-1146. Luke transferred to another public school in the second grade, and continued to make some progress, but his behavioral challenges increased. He refused to sleep in a bed, woke up frequently throughout the night, and "developed a habit of intentionally spreading his nighttime bowel movements around his bedroom." *Id.* at 1146.

After an occupational therapist determined that "since transferring … Luke had apparently regressed in certain respects," 540 F.3d at 1146, Luke's parents determined that he required residential treatment tailored to students with autism. The school district insisted that Luke could receive an adequate education in his current placement, in spite of the behaviors he was exhibiting. Luke's parents subsequently sought a due process hearing under the IDEA, and the impartial hearing officer agreed with them that the district's proposed IEP was inadequate. *Id.* at 1147. This determination was upheld on administrative appeal by an administrative law judge who noted that Luke "'was unable to transfer any of his learned skills and use them in environments outside of school.'" *Id.* After the school district brought suit in federal court, the district court agreed with the hearing officer and the ALJ that

the IEP was insufficient because "'whatever educational progress Luke made … was meaningless if there was no strategy to ensure those skills would be transferred outside of the school environment.'" *Id.* at 1154.

The Tenth Circuit reversed. Like respondent, the Tenth Circuit viewed the IDEA as establishing "procedures to guarantee disabled students access and opportunity, not substantive outcomes." 540 F.3d at 1151. The remainder of the court's analysis followed from the premise that compliance with the IDEA's procedural requirements sufficed, irrespective of the substantive quality of the child's educational development. Because Luke had been making "some progress"—even though that progress was minimal and, as noted by the district court, "'meaningless'"—the court determined that it was "constrained" to disagree with the district court, the ALJ, and the hearing officer. *Id.* at 1154-1155. Rather, the court held, "[t]he fact that … Luke *was* making some educational progress and had an IEP reasonably calculated to ensure that progress continued [was] sufficient to indicate compliance," regardless of how minimal that progress was. *Id.* at 1154.

Or consider Endrew F., the petitioner in this case. As the petitioner's brief explains (at 8-12), the IEP that respondent offered Endrew and his parents may have complied in every respect with the IDEA's procedural requirements—but even if it did, it was plainly inadequate to provide Endrew with meaningful access to the classroom and a substantially equal opportunity for an education. Respondent's paean to procedure rings particularly hollow given respondent's own failure to live up to its lofty claims about how

procedural compliance will necessarily ensure good educational outcomes.

So long as courts refuse to apply a meaningful substantive standard in reviewing the adequacy of IEPs, the procedures required by the IDEA will be inadequate to protect the rights of children with disabilities to receive an education. This Court should clarify that the IDEA requires more.

III. THE COURT SHOULD ARTICULATE AS DETAILED A STANDARD AS POSSIBLE

In the mine run of cases, the IDEA is implemented by the IEP team (composed of educators and parents) and by state administrative officers, who hear challenges to the adequacy of the IEP. Those parties need express direction from this Court as they fulfill their statutory responsibilities to guarantee meaningful access to education for students with disabilities. The Court would do little to clarify the law if it were simply to reject the Tenth Circuit's standard of a "more than *de minimis*" benefit in favor of a "meaningful benefit" standard, without giving content to the definition of a "meaningful benefit" as suggested above. That is particularly so because, among other things, the Circuits have used the phrase "meaningful benefit" in different ways.

The Third and Sixth Circuits correctly regard a "meaningful" educational benefit as one that exceeds the Tenth Circuit's low threshold. *See, e.g.*, *Ridgewood Bd. of Educ.* v. *N.E.*, 172 F.3d 238, 247 (3d Cir. 1999) ("[t]he provision of merely 'more than a trivial educational benefit' does not meet" the Circuit's "'significant learning' and 'meaningful benefit'" standards), *superseded by statute on other grounds as*

recognized by P.P. ex rel. Michael P. v. *W. Chester Area Sch. Dist.*, 585 F.3d 727, 730 (3d Cir. 2009); *Deal*, 392 F.3d at 862-864 (similar). Other Circuits, however, have equated the "meaningful benefit" standard with the Tenth Circuit's. *See, e.g.*, *Rockwall Indep. Sch. Dist.* v. *M.C. ex rel. M.C.*, 816 F.3d 329, 338 (5th Cir. 2016) (contrasting a "meaningful" benefit with one that is "'a mere modicum or *de minimus*'"); *O.S. ex rel. Michael S.* v. *Fairfax Cty. Sch. Bd.*, 804 F.3d 354, 359 (4th Cir. 2015) ("Using 'meaningful' … was simply another way to characterize the requirement that an IEP must provide a child with more than minimal, trivial progress."); *D.B. ex rel. Elizabeth B.* v. *Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) ("[T]he IDEA calls for more than a trivial educational benefit, in line with the intent of Congress to establish a 'federal basic floor of meaningful, beneficial educational opportunity.'"). Even within each Circuit, the courts have differing interpretations of the level of progress that reaches an educational benefit.

Parents and school administrators require as much clarity as possible in making the difficult choices involved in educating students with disabilities. Parents must understand the governing standard in order to advocate for their children. The clarity of the standard is particularly important when parents must make the difficult choice to pull their child out of a public school and enroll the child in a private school—a choice that can be financially devastating if a court ultimately holds, as the lower courts did in this case, that the public school was providing a "free appropriate public education." School administrators likewise cannot properly fulfill their obligations under the IDEA unless they understand what educational benefits they are obligated to provide.

The Court should therefore hold, consistent with *Rowley* and with Congress's subsequent amendments to the IDEA, that a public education is substantively "appropriate" if it is reasonably tailored "to meet the[] unique needs" of students with disabilities "and prepare them for further education, employment, and independent living," 20 U.S.C. § 1400(d)(1)(A).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

DANIEL WINIK
JUSTIN BAXENBERG
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006

ALAN E. SCHOENFELD
Counsel of Record
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com

NOVEMBER 2016