IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

CHARLES KASS, PARENT/GUARDIAN; LISA KASS, PARENT/GUARDIAN; BRODY KASS,

Plaintiffs-Appellants,

—v.—

WESTERN DUBUQUE COMMUNITY SCHOOL DISTRICT; KEYSTONE AREA EDUCATION AGENCY,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

BRIEF FOR A*MICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, NATIONAL DISABILITY RIGHTS NETWORK AND AMERICAN CIVIL LIBERTIES UNION OF IOWA IN SUPPORT OF PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

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

COUNCIL OF PARENT ATTORNEYS AND ADVOCATES
NATIONAL DISABILITY RIGHTS NETWORK
ACLU OF IOWA

1. No amicus is a publicly held corporation or other publicly held entity;
2. No amicus has parent corporations; and
3. No amicus has 10% or more of stock owned by a corporation.

/s/Ellen Marjorie Saideman
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

Cases

Statutes

Rules

Regulations

Other Authorities

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

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

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

[2] The statute was originally named the Education of the Handicapped Act or EHA; it was renamed IDEA in 1990. *See Fry v. Napoleon Cmty. Schs.,* 580 U.S. 154, 137 S. Ct. at 750, n.1. For the sake of simplicity, we refer only to IDEA in this brief. *Id.*

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq*. (ADA).

COPAA is extremely concerned about the use of shortened school days for students with disabilities by school districts and states. COPAA is an organizational plaintiff in *J.N. v. Oregon Department of Education*, 338 F.3d 256 (No. 6:19-cv- (D. Or 2021) (granting class certification), which is challenging the use of shortened school days by Oregon and its school districts.

COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has often filed as *amicus curiae* in the United States Supreme Court, including *Perez v. Sturgis Public Schools, cert. granted*, 143 S. Ct. 81 (2022); *Endrew F. v. Douglas County School District. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 1000 (2017); *Fry v. Napoleon Community Schools*, 580 U.S. 154, 137 S. Ct. 743 (2017); and *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009), and in numerous cases in the United States Courts of Appeal.

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all

50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization made up of more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution. The ACLU of Iowa, founded in 1935, is its statewide affiliate in Iowa. The ACLU of Iowa works in the courts and state legislature to safeguard the rights of all people. The ACLU of Iowa has a longstanding interest in protecting the civil and constitutional rights of people with disabilities, including the rights of students with disabilities in school, and has accumulated knowledge and expertise in this area on a national and statewide basis. The ACLU of Iowa takes an interest in the important questions presented in this case regarding the misuse of shortened school days and the availability of IDEA special education to eligible Iowa students after completing graduation requirements, through age twenty-one, to ensure that all students with disabilities receive a free appropriate public education.

Amici's interest in this case stems from their deep commitment to ensuring that students with disabilities are provided with a free appropriate education, including challenging academic goals and appropriate transition services, throughout their educational experience under IDEA so that they are prepared for adulthood.

Amici have requested consent to file this Motion and accompanying *Amici Curiae* brief from counsel for both parties. Appellants have consented to the filing of this brief; Appellees have declined to give consent. *Amici* are therefore filing this Brief with an accompanying Motion for Leave to File Amici Curiae.

STATEMENT OF FACTS

Amici adopt by reference herein the Statement of Facts provided by the Appellants on pages 3-9 of their brief.

ARGUMENT

I. IDEA ESTABLISHED AN ENFORCEABLE RIGHT TO A SUBSTANTIVELY APPROPRIATE EDUCATION FOR STUDENTS WITH DISABILITIES THAT INCLUDES CHALLENGING ACADEMIC GOALS UNTIL THE STUDENTS GRADUATE OR AGE OUT

In the 1970s, Congress held hearings investigating the quality of educational instruction provided to children with disabilities. These hearings established that public school districts throughout the county had wholly excluded millions of

children with a multitude of disabilities or placed those children in programs where they received no educational benefit. *Education for All Handicapped Children, 1973-74: Hearings on S.6 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 93d Cong., 1st Sess. (1973-74). At that time, statistics showed that only 55 percent of the school-aged children with disabilities and 22 percent of the pre-school-aged children with disabilities receiving were special educational services. Senator Jennings Randolph, *Hearings on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare*, 94th Cong., 1st Sess., 1 (1975).

Parents and educators discussed the widespread failure of states to provide the supportive services necessary to meet the needs of children with varying degrees and forms of disabilities. Statistics compiled for Congress by the Office of Education at that time revealed that children of all ages and with a range of disabilities were affected. For example, pupils excluded or receiving inappropriate education included 82% of "emotionally disturbed" children; 82% of "hard-of-hearing" children; 67% of "deaf-blind" and other multiply-disabled children; and 88% of those classified "learning disabled." S. Rep. No. 168, 94th Cong., 1st Sess. 5-8 (1975) reprinted in 1976 U.S. C.C.A.N., 1425, 1429-32; H.R. Rep. No. 332, 94th Cong., 1st Sess. 11-12 (1975).

To eliminate these gross disparities in the access to education for students with disabilities, in 1975, Congress enacted Public Law 94-142, now known as the Individuals with Disabilities Education Act (IDEA). IDEA requires that state and local public education agencies enact policies and procedures to ensure that all students with disabilities receive a "free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A).

This legislation did not merely require access. Congress mandated that children with disabilities receive a free appropriate public education ("FAPE"). IDEA states its 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).

Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), the first Supreme Court case to interpret IDEA, emphasized the definition of FAPE is directly tied to the statute's explicit requirements. "Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' as

defined by the Act." *Id.* at 189. The "other items from the definitional checklist" require that instruction and services: (i) "be provided at public expense and under public supervision"; (ii) "meet the State's educational standards"; (iii) "approximate the grade levels used in State's regular education"; and (iv) "comport with the child's IEP." *Id*.

In *Endrew F. v. Douglas County School District RE-17*, 580 U.S. 386, 402 (2017), the Supreme Court held that, for those children for whom "progressing smoothly through the regular curriculum" is not a reasonable prospect, the student's "educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom." The Court declared, "every child should have the chance to meet challenging objectives." *Id*.

The Supreme Court has consistently emphasized the importance of compliance with IDEA's procedures. In *Endrew F.* the Supreme Court explicitly rejected the argument that provisions governing the IEPs required components "impose only procedural requirements – a checklist of items the IEP must address – not a substantive standard enforceable in court." *Id.* at 1000. As the Supreme Court

explained, the "procedures are there for a reason." *Id.* They provide insight into what it means to meet the unique needs of a child with a disability.

Further, as the Supreme Court recognized, the IEP is the roadmap to the child's academic and functional advancement, "constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth." *Id.* at 999 (citing 20 U.S.C. §§ 1414(d)(1)(A)(i)(I) -(IV), (d)(3)(A)(i)-(iv)). Therefore, the IEP must be drafted in compliance with a detailed set of procedures, which emphasize collaboration among parents and educators and careful consideration of the child's individual circumstances. *See* 20 U.S.C. § 1414.

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

the child's IEP Team must use develop a "transition plan" which "must" include "[a]ppropriate measurable postsecondary goals" in areas such as training, education, and employment. 34 C.F.R. § 300.320(b)(1). These requirements apply throughout the student's education under IDEA, which terminates when the student graduates or ages out.

II. IDEA REQUIRES THAT SCHOOL DISTRICTS PROVIDE A FREE APPROPRIATE PUBLIC EDUCATION, INCLUDING CHALLENGING OBJECTIVES, TO STUDENTS WITH DISABILITIES UNTIL THEY GRADUATE WITH A STANDARD HIGH SCHOOL DIPLOMA OR AGE OUT

Congress recognized that students with disabilities may require more time to learn than other students and, therefore, provided that students may be entitled to FAPE beyond the standard age for graduation, which is often eighteen. As a general rule, States are required to provide a free appropriate education to "all children with disabilities residing in the State between the ages of 3 and 21, inclusive." 20 U.S.C. § 1412(a)(1)(A). The obligation to children 18-21 is limited if it is "inconsistent with State law or practice, or the order of any court." 20 U.S.C. § 1412(a)(1)(B)(i). Three circuit courts have unanimously ruled that federal law does not permit a state to cut off educational services to students before their 22nd birthday when general education students may receive some educational services from the state after age 21. *See. A.R. v. Conn. State Bd. of Educ.*, 5 F.4th 155 (2d Cir. 2021); *K.L. v. Rhode*

Island Bd. of Educ., 907 F.3d 639 (1st Cir. 2018); *E.R.K. v. State of Hawaii Dep't of Educ.*, 728 F.3d 982 (9th Cir. 2013).

Under Iowa law, children with special education may continue public education until the end of the school year in which the student turns twenty-one. Iowa Code §256B.2. There is no dispute in this case that Brody is entitled to education until the end of the school year that he turns twenty-one, the 2022-2023 school year. Brody fits the profile of a student who is eligible for special education until he ages out. As the district court opinion reports, "[h]e has severely impaired vision, moderate intellectual disability, intractable epilepsy, autism spectrum disorder, attention-deficit-hyperactivity disorder and a brain injury resulting from a lesion on his brain." App. 27. The district court at no point suggested that Brody would be able to attend college without significant modifications or that he would be able to enter competitive employment without supports once he aged out of educational services. Neither the district court nor the school district have suggested that Brody met the academic requirements that are required for students without disabilities to obtain a standard high school diploma. Thus, it is undisputed that Brody is entitled to special education until he ages out of IDEA services.

A. The May 2020 IEP Denied Brody FAPE Because Students with Disabilities Are Entitled to Challenging Academic Objectives until They Age Out of IDEA Services

Here, Brody's parents have sought continued academic goals for their son. However, the district court held that the school district could deny Brody additional academic instruction with academic goals because he had earned credits by completing course requirements for graduation. *Endrew F.* makes clear that students with disabilities are entitled to "challenging academic objectives." 580 U.S. at 402. That applies to students who receive education beyond their 18th birthday and beyond twelfth grade. As long as they are eligible for IDEA services, they are entitled to FAPE, including "challenging academic objectives." *Id.* Thus, students who are entitled to FAPE beyond twelfth grade cannot be denied academic instruction simply because they earned credits for attending school through twelfth grade.

Further, the record here reflects Brody was capable of making further academic progress. The district court found that Brody, who was reading at a kindergarten level, had continued to make educational progress in reading through March 2020. App. 46-47, App. 53. Brody learns at a different pace from typical students, and that is exactly why he is entitled to FAPE beyond twelfth grade.

Here, the record reflects that the May 2020 IEP had no academic goals at all; there were no goals in reading, writing, sex education, or physical education. App.

58, 395-422. The court notes that the school staff recommended a shift to functional math and reading skills App.53, but the IEP does not include any goals relating to any functional math and reading skills. Thus, even if the district court and the school district were correct that Brody's English and math instruction should be shifted to functional English and math, the IEP denied Brody FAPE because it did not contain any goals at all in English and math.

When special education programs teach students functional reading and math, the students' IEPS necessarily include goals and objectives for reading and math because, without goals and objectives, there is no way to measure progress. *See, e.g.*, *M.C. v. L.A. Unified Sch. Dist.*, 559 F. Supp. 3d 1112, 1116 (C.D. Cal. 2021) (noting student "required an alternate curriculum to meet his IEP goals, which included goals for functional writing, functional reading, and functional math"). For one example, a functional reading goal could focus on grocery shopping and provide that a student would be able to match pictures of grocery items to their words or focus on reading menus and ordering meals at restaurants. For another example, functional math goals may focus on money skills, such as identifying currency notes and coins, knowing how to count money or her items, comparing prices, and completing a budget. IEP goals therefore could provide that a student would be able to identify currency notes up to $20 and coins up to quarters, add and subtract currency and coins, and make change. Without any academic goals in reading or

math, there is no way of knowing whether Brody is making educational progress in those areas.

The district court erred in holding that the school district could deny Brody academic instruction because he had "fulfilled general education credits." App. 73. IDEA provides for continued education, not limited solely to transition services, for students aged 18-21 who have not met the requirements for a regular general education diploma. 34 C.F.R. § 300.102(3)(i). The regulation makes clear that the regular general education diploma must be fully aligned with the State's academic standards, and that it does not include "an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational developmental credential (GED)."

The district court erred by focusing solely on Brody's achievement in obtaining academic credits for attending classes. First, DEA and Iowa law provide for education beyond the twelve grades of elementary and secondary high school for students with disabilities like Brody. Students typically earn credits for attending classes, so students typically complete the course credits for high school by twelfth grade if they have a full schedule of classes. Thus, students with disabilities who are entitled to FAPE after twelfth grade may have already earned all the course credits needed for a high school diploma by the end of twelfth grade. Earning the course credits does not extinguish their right to challenging academic goals that can

enable them to increase their academic skills. For a student like Brody who is reading at a kindergarten level, academic goals are necessary for him to continue making educational progress, whether it is functional reading skills or more academic reading skills.

Second, the court did not consider whether he obtained credits for academic work that was "fully aligned with the State's academic standards" used for students without disabilities. The district court recognized that Brody was reading at kindergarten level in May 2020. App. 50. For Brody, FAPE required continued educational goals in reading and math, whether the goals were academic or functional. Further, there was no dispute that Brody required other special education services; the IEP team agreed that Brody had not met all rubric standards and had unmet needs in adaptive behaviors and employability. App. 30-1, 33, 46, 49, 69-70.

B. The May 2020 IEP Denied Brody FAPE By Denying Him Appropriate Transition Services

The record also reflects that the District failed to conduct age-appropriate assessments upon which to build Brody's post-secondary goals, as the IDEA requires. Vocational interest surveys and interviews are age-appropriate only for younger students just beginning the transition process to help identify possible areas of post-secondary interests upon which to build post-secondary goals, not for students like Brody who are at the end of their high school career. *See generally,* David Test, Nellie Aspel, & Jane Everson *Transition methods for youth with*

disabilities. Upper Saddle River, NJ: Pearson Education Inc. (2006).; *see also* Jay Rojewski, *Career assessment for adolescents with mild disabilities: Critical concerns for transition planning,* *Career Development for Exceptional Individuals*, *25*(1), 73–95 (2002).

Here, the record reflects that Brody's parent, who was a member of the IEP team, seriously questioned the appropriateness of the post-secondary goals Ultimately, neither the district, nor the district court, considered Brody's Parent's input, input which was critical to understanding, and supporting, Brody's unique post-secondary employment and education-related needs. However, *Endrew F.* teaches that the school district must provide a cogent reason for rejecting a parent's concern. *See* 137 S. Ct. at 1001.

Finally, even assuming *arguendo* that Brody's post-secondary goals were sufficient, which they were not, like all other aspects of special education programming, transition services must then be provided to meet the individual needs of each eligible student. If they are not, the failure to provide appropriate transition services results in a loss of educational opportunity, which in itself is a denial of FAPE. *Letter to Hamilton*, 23 IDELR 721 (OSEP 1995); *Gibson v. Forest Hills Local Sch. Dist. Bd. of Educ.*, 655 Fed. Appx. 423, 439 (6th Cir. 2016). IDEA's requirement of transition planning and transition services means more is required; student-specific goals and objectives and accompanying services are mandated to

put a student on a pathway that could yield post-secondary success.

In fact, the Pennsylvania Middle District recently held that a school district is required to provide an explanation of how and why the specific transition services provided to the student are appropriate:

> The District maintains that the Hearing Officer overlooked the many services that Matthew did receive, including development of pre-vocation skills in the classroom, "such as cooking, using money for purchases, how to contact and use community resources such as transportation, following multi-step directions, and increasing his understanding of community and household sight words, making a simple meal, and following one or two step recipes in support of his independent." (*Id.*). Further, "once he moved up to High School, the Student also participated at work sites located outside the District, including the library and local supermarket." (*Id.*).
>
> The Court finds no basis for the District's argument. **In its brief, the District does nothing more than provide a list of services and educational opportunities which it provided to Matthew. More specifically, the District fails to address *how* and *why* what it provided to Matthew was appropriate under his circumstances.** For example, the District states "[h]is transition services were appropriate for him" but the District fails to further explain that statement. (*Id.*). In sum, the District fails to address how the Hearing Officer's conclusion — that Matthew's IEP itself was deficient, *in light of the services he received* — is incorrect and instead, the argument it presents in its brief is conclusory and lacking in factual support or law.

Matthew B. v. Pleasant Valley Sch. Dist., No. 3:17-CV-2380, 2019 U.S. Dist. LEXIS 190226, at *30-32 (M.D. Pa. Oct. 31, 2019) (emphasis added). The court found that the district's IEP was deficient because it did not explain how it would help the student attain the goal of receiving training so that he could pursue supported employment when he graduated. *Id.* at 34.

Similarly, in *District of Columbia Public Schools*, 115 LRP 40497 (SEA DC 05/15/15), the hearing officer found that while a student's transition plan listed his interests in becoming a mechanic, a business professional, or a basketball player, there was nothing specific in the plan "about how the Student might actually become" any of those things. *Id*. The hearing officer therefore concluded that the transition plan was deficient given the absence of a concrete plan for the student to achieve his goals and the failure to provide transition services that related to the student's expressed vocational choices. *Id.*

Likewise, in this case, the district court erred in finding no violation of Brody's right to FAPE, because the district did not put forth any cogent explanation of *how* and *why* what it provided to Brody in the form of educational courses and IEP accommodations was appropriate under his circumstances to meet his post-secondary goals. Further, the IEP goals were not measurable, using baseline data to indicate the present levels of performance so that the progress can be observed and documented. For example, the IEP includes as a "behavioral goal," that "By May 2021, during classroom activities and community experiences, Brody will use his math and reading skills with assistance to make purchasing decisions, complete transactions and navigate community settings while demonstrating appropriate social interaction skills with the adults." App. 404. This goal does not provide for Brody to make any progress in his math and reading skills at all, and it does not

indicate what level of support/assistance he will be using. Because assistance is provided with no indicating of the level of support, there is no way to assess whether Brody is obtaining an increased independence in using his math and reading skills. Accordingly, the district court erred in finding that the transition plan provided Brody with a FAPE.

C. The May 2020 IEP Denied Brody FAPE By Providing for a Shortened School Day

There is no dispute that Brody required special education for the 2020-2021 school year and, therefore, was entitled to FAPE. The district court specifically noted that Brody "had areas of need in adaptive behavior and employability" and that he had "unmet transitional needs" that "would be best met through real life experiences using functional literacy and functional math resources in school and in post-secondary environments." App. 69. There is also no dispute that, under IDEA and Iowa law, Brody was entitled to special education services for that entire school year.

Here, there is nothing in the record to suggest that the IEP team could not have developed a full-day educational program that would have provided Brody with educational benefits. The only reason given by the court to support the shortened school day is that he had "fulfilled general education credits." App. 73. But that could be true of for all students with disabilities after twelfth grade as long as the students had been given credits for class attendance during high school. Thus, by

the district court's logic, school districts could simply award high school credits to student with disabilities for attendance, regardless of their academic achievements, and then provide half-day transition programs even if the students have the potential to make more educational progress if given a full day program.

But there is nothing in the statute or regulations to support limiting the school day to a half day after a student has completed twelfth grade and before the student has aged out of special education services simply because the student has been given high school credits. *See* 20 U.S.C. § 1412(a). The Office of Civil Rights of the U.S. Department of Education has made clear that a shortened school day is only appropriate if there is data that indicates that a particular student requires a shortened school day to meet his individual needs. *See Shoreline Sch. Dist. No. 412*, 55 IDELR 178, 110 LRP 57393 (OCR Jan. 27. 2010). OCR has stated that "under Section 504, as a general rule, a disabled student has to right to the same length school day that a district provides to non-disabled students." *Id.* In its settlement agreement in *Shoreline*, OCR provided that "any determination to provide a disabled student a shortened school day will not be based on factors such as the category of disability, severity of disability, availability of special education or related services, configuration of the district's service delivery system, availability of space, administrative convenience, or any factor unrelated to the student's individual educational needs." *Id.*

Here, the school district's decision to provide a shortened school day to Brody was not based on Brody's educational needs but instead based on an arbitrary factor, namely the number of credits he had accrued by attending classes. There is nothing in the record to indicate that Brody would not have benefited from special education services provided for the balance of the school day.

The district court erred in failing to find that the school district's shortened school day denied Brody FAPE. The IEP team could have – and should have - designed a full-day program that supported Brody with challenging educational goals and objectives.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request the Court reverse the decision of the district court.

Dated: February 8, 2023

Respectfully submitted,

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

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C), the attached amicus brief is proportionately spaced, has a typeface of 14 points and contains 4,498 words as measured by Word 2010, the word processing program used to create the brief and is virus free.

Dated: February 8, 2023

/s/Ellen Marjorie Saideman
Ellen Marjorie Saideman

CERTIFICATE OF SERVICE

I certify that, on February 8, 2023, the foregoing document was served on all parties or their counsel of record through the CM/ECF.

/s/Ellen Marjorie Saideman
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