CHAPTER 12

U.S. Supreme Court Cases

The Supreme Court of the United States

458 U. S. 176

BOARD OF EDUCATION OF THE HENDRICK HUDSON CENTRAL SCHOOL DISTRICT, WESTCHESTER COUNTY, et al.,

Petitioners

v.

AMY ROWLEY, by her parents, ROWLEY et al.,

Respondent

No. 80-1002

On a Writ of Certiorari to the United States Court of Appeals for The Second Circuit. 632 F. 2d 945, reversed and remanded.

June 28, 1982

Before Burger, C.J., and Brennan, White, Marshall, Blackmun, Powell, Rehnquist, Stevens, O'Connor, JJ.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and POWELL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., filed an opinion, concurring in the judgment.

WHITE, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined.

JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents a question of statutory interpretation Petitioners contend that the Court of Appeals and the District Court misconstrued the requirements imposed by the Congress upon States which receive federal funds under the Education for All Handicapped Children Act. We agree and reverse the judgment of the Court of Appeals.

I

The Education for All Handicapped Children Act of 1975 (Act), 20 U.S.C. 1401 *et seq.*, provides federal money to assist state and local agencies in educating handicapped children, and conditions such funding upon a States compliance with extensive goals and procedures. The Act represents an ambitious federal effort to promote the education of handicapped children, and was passed in response to Congress' perception that a majority of handicapped in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'" H.R. Rep. No. 94-332. P. 2 (1975). The Acts evolution and major provisions shed light on the question of statutory interpretation which is at he heart of this case.

Congress first addressed the problem of education the handicapped in 1966 when it amended the Elementary and Secondary Education Act of 1965 to establish a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children." Pub. L. No. 89-750, 161, 80 Stat. 1204 (1966). That program was repealed in 1970 by the Education for the Handicapped Act, Pub. L. No. 91-230, 84 Star, 175, Part B of which established a grant program similar in purpose to the repealed legislation. Neither the 1966 nor 1970 legislation contained specific guidelines for state use of the grant money; both were aimed primarily at stimulating the States to develop educational resources and to train personnel for educating the handicapped.[1]

Dissatisfied with the progress being made under these earlier enactments, and spurred by two district court decisions holding that handicapped children should be given access to a public education, [2] Congress in 1974 greatly increased federal funding for education of the handicapped and for the first time required recipient States to adopt "a goal of providing full educational opportunities to all handicapped children." Pub. L. 93-380, 88 Stat. 579, 583 (1974) (the 1974 statute). The 1974 statute was recognized as an interim measure only, adopted "in order to give the Congress an additional year in which to study what if any additional Federal assistance [was] required to enable the States to meet the needs of handicapped children." H.R. Rep. No. 94-332, *supra*, p. 4. The ensuing year of study produced the Education for All Handicapped Children Act of 1975.

In order to qualify for federal financial assistance under the Act, a State must demonstrate that it "has in effect a policy that assures all handicapped children the right to a free appropriate public education." 20 U. S. C. 1412(1). That policy must be reflected in a state plan submitted to and approved by the Secretary of Education 1413[3], which describes in detail the goals, programs, and timetables under which the State intends to educate handicapped children within its borders. 1412. 1413. States receiving money under the Act must provide education to the handicapped by priority, first "to handicapped children who are not receiving an education" and second "to handicapped children . . . with the most severe handicaps who are receiving an inadequate education," 1413(3), and to the maximum extent appropriate" must educate handicapped children "with children who are not handicapped." 1412(5)[4]. The Act broadly defines "handicapped children" to include "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, [and] other health impaired children, [and] children with specific learning disabilities." 1401(1)[5]

The "free appropriate public education" required by the Act is tailored to the unique needs of the handicapped child by means of an "individualized educational program" (IEP). 1401(18). The IEP, which is prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child parents or guardian, and, where appropriate, the child, consists of a written document containing

> (A) a student of the present levels of educational performance of the child,
>
> (B) a statement of annual goals, including short-term instructional objectives,
>
> (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs,
>
> (D) the projected date for initiation and anticipated duration of such service, and
>
> (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved." 1401(19).

Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. 1404(a)(5). See also 1413(a)(11), 1414(a)(5).

In addition to the state plan and the IEP already described, the Act imposes extensive procedural requirements upon State receiving federal funds under its provisions. Parents or guardians of handicapped children must be notified of any proposed change in "the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child," and must be permitted to being a complaint about "any matter relating to" such evaluation and education. 1415(b)(1)(D) and (E).[6] Complaints brought by parents or guardians must be resolved at "an impartial due process hearing," and appeal to the State educational agency must be provided if the initial hearing is held at the local or regional level. 1415(B)(2) and (c)[7] Thereafter, "any party aggrieved by the findings and decisions" of the state administrative hearing has "the right to bring a civil action with respect to the complaint . . .in any State court of competent jurisdiction or in a district court of the United Stated without regard to the amount in controversy." 1415(e)(2).

Thus, although the Act leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, it imposes significant requirements to be followed in the discharge of that responsibility. Compliance is assured by provisions permitting the withholding of federal funds upon determination that a participating state or local agency has failed to satisfy the requirements of the Act, 1414(b)(A), 1416, and by the provision for judicial review. At present, all States except New Mexico receive federal funds under the portions of the Act at issue today. Brief for the United States as Amicus Curiae 2, n. 2.

II

This case arose in connection with the education of Amy Rowley, a deaf student at the Furnace Woods School in the Hendrick Hudson Central School District, Peekskill, New York. Amy has minimal residual hearing and is an excellent lip reader. During the year before she began attending furnace Woods, a meeting between her parents and school administrators resulted in a decision to place in a regular kindergarten class in order to determine what supplement services would be necessary to her education. Several members of the school administration prepared for Amy's arrival by attending a course in sign-language interpretation, and a teletype machine was installed in the principal's office to facilitate communication with her parents who are also deaf.

At the end of the trial period it was determined that Amy should remain in the kindergarten class, but that she should be provided with an FM hearing aid which would amplify words spoken into a wireless receiver by the teacher or fellow students during certain classroom activities. Amy successfully completed her kindergarten year.

As required by the Act, an IEP was prepared for Amy during the fall of her first-grade year. The IEP provided that Amy should be educated in a regular classroom at Furnace Woods, should continue to use the FM hearing aid, and should receive instruction from a tutor for the deaf for one hour each day and from a speech therapist for three hours

each week. The Rowleys agreed with the IEP but insisted that Amy also be provided a qualified sign-language interpreter in all of her academic classes. Such an interpreter had been placed in Amy's kindergarten class for a two-week experimental period, but the interpreter had reported that Amy did not need his services at that time. The school administrators likewise concluded that Amy did not need such an interpreter in her first-grade classroom. They reached this conclusion after consulting the school district's Committee on the Handicapped, which had received expert evidence from Amy's parents on the importance of a sign-language interpreter, received testimony from Amy's teacher and other persons familiar with her academic and social progress, and visited a class for the deaf.

When their request for an interpreter was denied, the Rowleys demanded and received a hearing before an independent examiner. After receiving evidence from both sides, the examiner agreed with the administrators' determination that an interpreter was not necessary because "Amy was achieving educationally, academically, and socially" without such assistance. App. to Pet. for Cert. F-22. The examiner's decision was affirmed on appeal by the New York Commissioner of Education on the basis of substantial evidence in the record. *Id*., at E-4. Pursuant to the Act's provision for judicial review, the Rowleys then brought an action in the United States District Court for the Southern District of New York, claiming that the administrators' denial of the sign-language interpreter constituted a denial of the "free appropriate public education" guaranteed by the Act.

The District Court found that Amy "is a remarkably well adjusted child" who interacts and communicates well with her classmates and has "developed an extraordinary rapport" with her teachers. 483 F. Supp, 528, 531. It also found that "she performs better than the average child in her class and is advancing easily from grade to grade," *id*., at 534, but "that she understands considerably less of what goes on in class than she would if she were not deaf" and thus "is not learning as much, or performing as well academically, as she would without her handicap," *id*., at 532. This disparity between Amy's achievement and her potential led the court to decide that she was not receiving a "free appropriate public education" which the court defined as "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." *id*., at 534. According to the District Court, such a standard "requires that the potential of the handicapped child be measured and compared to his or her performance, and that the remaining differential or 'shortfall' be compared to the shortfall experienced by nonhandicapped children.' *Ibid*. The District Court's definition arose from its assumption that the responsibility for "giving content to the requirement of an 'appropriate education'" had 'been left entirely to the federal courts and the hearing officers.' *Id*., at 533.[8]

A divided panel of the United States Court of Appeals for the Second Circuit affirmed. The Court of Appeals "agree[d] with the [D]istrict [C]ourt's conclusions of law," and held that its 'findings of fact [were] not clearly erroneous." 632 F. 2d 945, 947 (1980).

We granted certiorari to review the lower courts' interpretation of the Act. Such review requires us to consider two questions: What is meant by the Act's requirement of a "free appropriate public education"? And what is the role of state and federal courts in exercising the review granted by 1415 of the Act? We consider these questions separately.[9]

III

A

This is the first case in which this Court has been called upon to interpreter any provision of the Act. As noted previously, the District Court and Court of Appeals concluded that "the Act itself does nor define 'appropriate education,'" 483 F. Supp., at 533, but leaves "to the courts and the hearing officers" the responsibility of "giv[ing] content to the requirement of an appropriate education." *Ibid*. see also 632 F. 2d, at 947.

Petitioners contend that the definition of the phrase "free appropriate public education" used by the courts below overlooks the definition of the phrase actually found in the Act. Respondents agree that the Act defines "free appropriate public education," but contend that the statutory definition is not "functional" and thus "offers judges no guidance in their consideration of controversies involving the 'identification, evaluation, or educational placement of the child or the provision of a free appropriate public education," Brief for Respondents 28. The United States, appearing as amicus curaie on behalf of respondents, states that "[a]though the Act includes definitions of 'free appropriate public education' and other related terms, the statutory definitions do not adequately explain what is meant by 'appropriate,'" Brief for United States as Amicus Curiae.

We are loath to conclude that Congress failed to offer any assistance in defining the meaning of the principal substantive phrase used in the Act. It is beyond dispute that, contrary to the conclusions of the courts below, the Act does expressly define "free appropriate public education":

> The term ' free appropriate public education' means special education and related services which
>
> (A) have been provided at public expenses, under public supervision and direction, and without charge,
>
> (B) meet the standards of the State educational agency,
>
> (C) include an appropriate preschool, elementary, or secondary school education in the State involved,

and

(D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title." 1401(18) (emphasis added).

"Special education," as referred to in this definition, means "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." 1401(16). "Related services" are defined as "transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a handicapped child to benefit from special education." 1401(17).[10]

Like many statutory definitions, this one tends toward the cryptic rather than the comprehensive, but that is scarcely a reason for abandoning the quest for legislative intent. Whether or not the definition is a "functional" one, as respondents contend it is not, it is the principal tool which Congress has given us for parsing the critical phrase of the Act, we think more must be made of it than either respondents or the United States seems willing to admit.

According to the definitions contained in the Act, a "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. 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.

Other portions of the statute also shed light on congressional intent. Congress found that of the roughly eight million handicapped children in the United States at the time of enactment, one million were "excluded entirely form the public school system" and more than half were receiving an inappropriate education. Note to 1401. In addition, as mentioned in Part I, the Act requires States to extend educational services first to those children who are receiving no education and second to those children who are receiving an "inadequate education." 1412(3). When these express statutory findings and priorities are read together with the Act's extensive procedural requirements and its definition of "free appropriate public education," the face of the statute evinces a congressional intent to bring previously excluded handicapped children into public education systems of the States and to require the States to adopt procedures which would result in individualized consideration of and instruction for each child.

Noticeably absent from the language of the statue is any substantive standard prescribing the level of education to be accorded handicapped children. Certainly the language of the statute contains no requirement like the one imposed by the lower courts-that States maximize the potential of handicapped children "commensurate with the opportunity provided to other children." 483 F. Supp., at 534. That standard was expounded by the District court without reference to the statutory definitions or even to the legislative history of the Act. Although we find the statutory definition of "free appropriates public education" to be helpful in our interpretation of the Act, there remains the question of whether the legislative history indicates a congressional intent that such education meet some additional substantive standard. For an answer, we turn to that history.[11]

B

(i)

As suggested in Part I, federal support for education of the handicapped is a fairly recent development. Before passage of the Act some States has passed laws to improve the educational services afford handicapped children,[12] but many of these children were excluded completely form any form of public education or were left to fend for themselves in classrooms designed for the education of their nonhandicapped peers. The House Report begins by emphasizing this exclusion and misplacement, noting that millions of handicapped children "were either totally excluded form schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'" H.R. Rep, No. 94-332, supra, at 2. See also S. Rep. No. 94-168, p. 8 (1975). One of the Act's two principal sponsors in the Senate urged its passage in similar terms:

> "While much progress has been made in the last few years, we can take no solace in that progress until all handicapped children are, in fact, receiving an education. The most recent statistics provided by the Bureau of Education for the Handicapped estimate that . . . 1.75 million handicapped children do not receive any educational services, and 2.5 million handicapped children are not receiving an appropriate education." 121 Cong. Rec. 1946 (1975) (remarks of Sen. Williams).

This concern, stressed repeatedly throughout the legislative history,[13] confirms the impression conveyed by the language of statute: By passing the Act, Congress sought primarily to make public education available to handicapped children. But in seeking to provide such access to public education, Congress did not impose upon the states any greater substantive educational standard than would

be necessary to make such access meaningful. Indeed, Congress expressly "recognized that in many instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome." S. Rep. No. 94-168, *supra*, at 11. Thus, the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.

Both the House and the Senate reports attribute the impetus for the Act and its predecessors to two federal court judgments rendered in 1971 and 1972. As the Senate Report states, passage of the act "followed a series of landmark court cases establishing in law the right to education for all handicapped children." S. Rep. No. 94-168, *supra*, at 6.[14] The first case, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC)*, 334 F. Supp. 1257 (1971) 343 F. Supp. 279 (ED PA 1972), was a suit on behalf of retarded children challenging the constitutionality of a Pennsylvania statue which acted to exclude them from public education and training. The case ended in a consent decree which enjoined the State from "den[ying] to any mentally retarded child **access** to a free public program of education and training." 334 F. Supp. at 1258 (emphasis added).

PARC was followed by *Mills v. Board of Education of the District of Columbia*, 343 F. Supp. 866 (DC 1972), a case in which the plaintiff handicapped children had been excluded from the District of Columbia public schools. The court judgment, quoted at page 6 of the Senate Report on the Act, provided:

> "that no handicapped child eligible for publicly supported education in the District of Columbia public schools shall be **excluded** from a regular school assignment by a Rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided
>
> (a) **adequate** alternative educational services suited to the child's needs, which may include special education or tuition grants, and
>
> (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the **adequacy** of any educational alternative."
> 348 F. Supp., at 878 (emphasis added).

Mills and *PARC* both held that handicapped children must be given access to an adequate, publicly supported education. Neither case purports to require any particular substantive level of education.[15] Rather, like the language of the Act, the cases set forth extensive procedures to be followed in formulating personalized educational programs for handicapped children. See 348 F. Supp., at 878-883; 334 F. Supp., at 1258-1267.[16] The fact that both *PARC* and *Mills* are discussed at length in the legislative reports[17] suggest that the principles which they established are the principles which, to a significant extent, guided the drafters of the Act. Indeed, immediately after discussing these cases the Senate Report describes the 1974 statute as having "incorporated the major principles of the right to education cases." S. Rep. No 94-168, *supra*, at 8. Those principles in turn became the basis of the Act, which itself was designed to effectuate the purposes of the 1974 statute. H.R. Rep. No. 94-332, *supra*, at 5.[18]

That the Act imposes no clear obligation upon recipient States beyond the requirement that handicapped children receive some form of specialized education is perhaps best demonstrated by the fact that Congress, in explaining the need for the Act, equated an "appropriate education" to the receipt of some specialized educational services.

The Senate report states: 'The most recent statistics provided by the Bureau of education for the Handicapped estimate that of the more than 8 million children...with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education." S. Rep. No. 94-332, *supra*, at 8.[19] This statement, which reveals Congress' view that 3.9 million handicapped children were "receiving an appropriate education" in 1975, is followed immediately in the Senate Report by a table showing that 3.9 million handicapped children were "served " in 1975 and a slightly larger numbers were "unserved." A similar statement and table appear in the House report. H.R. Rep. No. 94-332, *supra*, at 11-12.

It is evident from the legislative history that the characterization of handicapped children as "served" referred to children who were receiving some form of specialized educational services from the States, and that the characterization of children as "unserved" referred to those who were receiving no specialized educational services. For example, a letter sent to the United States Commissioner of Education by the House Committee on Education and Labor, signed by two key sponsors of the Act in the House, asked the commissioner to identify the number of handicapped " children served" in each State. The letter asked for statistics on the number of children "being served" in various types of "special education programs" and the number of children who were not "receiving educational services." Hearing on S. 6 before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare, 94th Cong. 1st Sess., 205-207 (1975). Similarly, Senator Randolph, one of the Act 's principal sponsors in the Senate, noted that roughly one-half of the handicapped children in the United States "are receiving special educational services." *Id*., at 1.[20] By characterizing the 3.9 million handicapped children who were "served" as children who were receiving an appropriate education," the Senate and House reports unmistakably disclose Congress' perception

of the type of education required by the Act: an "appropriate education" is provided when personalized educational services are provided.[21]

(ii)

Respondents contend that "the goal of the Act is to provide each handicapped child with an equal educational opportunity." Brief for Respondents 35. We think, however, that the requirement that a State provides specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential "commensurate with the opportunity provided other children."

Respondents and the United States correctly note that Congress sought "to provide assistance to the States carrying out their responsibilities under the Constitution of the United States to provide equal protection of the laws." S. Rep. No. 94-168, *supra*, at 13.[22] But we do not think that such statements imply a congressional intent to achieve: strict equality of opportunity or services.

The educational opportunities provided by our public school systems undoubtedly differ from student to student, depending upon a myriad of factors that might affect a particular student's ability to assimilate information presented in the classroom. The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of "free appropriate public education." To require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go. Thus to speak in terms of "equal" services in one instance give less than what is required by the Act and in another instance more. The theme of the Act is "free appropriate public education," a phrase which is too complex to be captured by the word "equal" whether on is speaking of opportunities or services.

The legislative conception of the requirements of equal protection was undoubtedly informed by the two district court decisions referred to above. But cases such as *Mills* and *PARC* held simply that handicapped children may not be excluded from entirely public education. In *Mills*, the District Court said:

> If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom." 348 F Supp., at 876.

The *PARC* Court used similar language, saying "[i]t is the commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity. . ." 334 F. Supp., at 1260. The right of access to free public education enunciated by these cases is significantly different from any notion of absolute equality of opportunity regardless of capacity. To the extent the Congress might have looked further than these cases which are mentioned in the legislative history at the time of enactment of the Act, this Court has held at least twice that the Equal Protection Clause of the Fourteenth Amendment does not require States to expend equal financial resources on the education of each child. *San Antonio School District v. Rodriguez*, 411 U.S. 1(1975); *Mcinnis v. Shapiro*, 238 F.Supp. 327 (ND Ill. 1968), aff'd sub nom, *Mcinnis v. Ogilvie*, 394 U.S. 322 (1969).

In explaining the need for federal legislation, the House Report noted that "no congressional legislation has required a precise guarantee for handicapped children, i.e., a basic floor of opportunity that would bring into compliance all school districts with the constitutional right of equal protection with respect to handicapped children." H.R. Rep. No. 94-332, *supra*, at 14. Assuming that the Act was designed to fill the need identified in the House Report-that is, to provide a "basic floor of opportunity' consistent with equal protection-neither the Act nor its history persuasively demonstrate that Congress thought that equal protection required anything more than equal access. Therefore, Congress' desire to provide specialized educational services, even in furtherance of "equality," cannot be read as imposing any particular substantive educational standard upon the States.

The District Court and the Court of Appeals thus erred when they held that the Act requires New York to maximize the potential of each handicapped child commensurate with the opportunity provided nonhandicapped children. Desirable though that goal might be, it is not the standard that Congress imposed upon States which receive funding under the Act. Rather, Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to a free public education.

(iii)

Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child. It would do little good for Congress to spend millions of dollars in providing access to public education only to have the handicapped child receive no benefit from that education. The statutory definition of "free appropriate public education," in addition to requiring that States provide each child with "specially designed instruction," expressly requires the provision of "such . . .

supportive services . . . as may be required to assist a handicapped child to benefit from special education." 1401(17) (emphasis added). We therefore conclude that the "basic floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.[23]

The determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem. The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically form those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with nonhandicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills. We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to the situation.

The Act requires participating States to educate handicapped children with nonhandicapped children whenever possible.[24] When the "mainstreaming" preference of the Act has been met and a child is being educated in the regular classrooms of a public school system, the system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit. Children who graduate from our public school systems are considered by our society to have been "educated" at least to the grade level they have completed, and access to an "education" for handicapped children is precisely what Congress sought to provide in the Act.[25]

C

When the language of the Act and its legislative history are considered together, the requirements imposed by Congress become tolerably clear. Insofar as a State is required to provide a handicapped child with a "free appropriate public education," we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.[26]

IV

A

As mentioned in Part I, the Act permits "any party aggrieved by the findings and decision" of the state administrative hearings "to bring a civil action "in" any State Court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy." 1415(e)(2). The complaint, and therefore the civil action, may concern "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 1415(b)(1)(E). In reviewing the complaint, the Act provides that a court "shall receive the record of the state administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." 1415(e)(2).

The parties disagree sharply over the meaning of these provisions, petitioners contending that courts are given only limited authority to review for state compliance with the Act's procedural requirements and no power to review the substance of the state program, and respondents contending that the Act requires courts to exercise *de novo* review over state educational decisions and policies. We find petitioners' contention unpersuasive, for Congress expressly rejected provisions that would have so severely restricted the role of reviewing courts. In substituting the current language of the statue for language that would have made state administrative findings conclusive if supported by substantial evidence, the Conference Committee explained that courts were to make "independent decisions based on a preponderance of the evidence." S. Conf. Rep.No. 94-455, *supra*, at 50. (See also 121 Cong. Rec. 37416 (1975), remarks of Senator Williams).

But although we find that this grant of authority is broader than claimed by petitioners, we think the fact that it is found in 1415 of the Act, which is entitled "Procedural Safeguards," is not without significance when the elaborate and highly specific procedural safeguards embodied in 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggera-

tion to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Commissioner for approval, demonstrate the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

Thus, the provision that a reviewing court base its decision on the "preponderance of the evidence" is by no means an invitation to the court to substitute their own notions of sound educational policy for those of the school authorities which they review. The very importance which Congress has attached to compliance with certain procedures in the preparation of an IEP would be frustrated if a court were permitted simply to set state decisions aside. The fact that 1415(e) requires that the reviewing court "receive the records of the [state] administrative proceedings" carries with it the implied requirement that due weight shall be given to these proceedings. And we find nothing in the Act to suggest that merely because Congress was rather sketchy in establishing substantive requirements, as opposed to procedural requirements for the preparation of an IEP, it intended that reviewing courts should have a free hand to impose substantive standards of review which cannot be derived from the Act itself. In short, the statutory authorization to grant "such relief as the court determines is appropriate' cannot be read without reference to the obligations, largely procedural in nature, which are imposed upon recipient States by Congress.

Therefore, a court's inquiry in suits brought under 1415(e)(2) is twofold. First, has the State complied with the procedures set forth in the Act?[27] And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?[28] If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

B

In assuring that the requirements of the Act have been met, courts must be careful to avoid imposing their view of preferable educational methods upon the States.[29] The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived form educational research, demonstration, and similar projects, and of adopting, where appropriate, promising educational practices and materials." 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to 1415(e)(2).[30]

We previously have cautioned that courts lack the "specialized knowledge and experience" necessary to resolve "persistent and difficult questions of educational policy." *San Antonio School District v. Rodriguez*, 411 U.S. 1, 42 (1973). We think that Congress shared that view when it passed the Act. As already demonstrated, Congress' intention was not that the Act displace the primacy of States in the field of education, but that the states receive funds to assist them in extending their educational systems to handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States.

V

Entrusting a child's education to state and local agencies does not leave the child without protection. Congress sought to protect individual children by providing for parental involvement in the development of State plans and policies, *supra*, at 4-5 and n. 6, and in the formulation of the child's individual educational program. As the Senate Report states:

> The Committee recognizes that in may instances the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcome. By changing the language of the provision relating to individualized educational programs to emphasize the process of parent and child involvement, and to provide a written record of reasonable expectations, the Committee intends to clarify that such individualized planning conferences are a way to provide parent involvement and protection to assure that appropriate services are provided to a handicapped child. S. Rep. No. 94-168, *supra*, at 11-12. See also S. Conf. Rep. No. 94-445, p. 30 (1975); 45 CFR 121a.345 (1980).

As this very case demonstrates, parents and guardians will not lack ardor in seeking to ensure that handicapped children receive all the benefits to which they are entitled by the Act.[31]

VI

Applying these principles to the facts of this case, we conclude that the court of Appeals erred in affirming the decision of the District Court. Neither the District Court

nor the Court of Appeals found that petitioners had failed to comply with the procedures of the Act, and the findings of neither court would support a conclusion that Amy's educational program failed to comply with the substantive requirements of the Act. On the contrary, the District Court found that the "evidence firmly establishes that Amy is receiving an 'adequate' education, since she performs better than the average child in her class and is advancing easily from grade to grade." 483 F Supp., at 534.

In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by the Furnace Woods school administrators to meet her educational needs, the lower courts should not have concluded that the Act requires the provision of a sign-language interpreter. Accordingly, the decision of the Court of appeals is reversed and the case is remanded for further proceedings consistent with this opinion.[32]

SO ORDERED.

JUSTICE BLACKBMUN, concurring in the judgment.

Although I reach the same result as the Court of the Education for All Handicapped Children Act differently. Congress unambiguously stated that it intended to "to take a more active role under its responsibility for equal protection of the laws to guarantee that handicapped children are provided **equal educational opportunity**." S. Rep. No. 94-168, p. 9 (1975) (emphasis added). See also 20 U.S.C. 1412(2)(A)(i) (requiring States to establish plans with the 'goal of providing full educational opportunity to all handicapped children").

As I have observed before, "[i]t seems plain to me that Congress, in enacting [this statue], intended to do more than merely set out politically self-serving but essentially meaningless language about what the [handicapped] deserve at the hands of state . . . authorities." *Pennhurst State School v. Halderman*, 451 U.S. 1, 32 (1981) (opinion concurring in part and concurring in judgment).

The clarity of the legislative intent convinces me that the relevant question here is not, as the court says, whether Amy Rowley's individualized education program was "reasonably calculated to enable [her] to receive educational benefits," measured in part by whether or not she "achieves passing marks and advances from grade to grade." Rather, the question is whether Amy's program, viewed as a whole, offered her an opportunity to understand and participate in the classroom that was substantially equal to that given her nonhandicapped classmates. This is a standard predicated on equal educational opportunity and equal access to the educational process, rather than upon Amy's achievement of any particular educational outcome.

In answering this question, I believe that the District Court and the court of Appeals should have given greater deference than they did to the findings of the School District's impartial hearing officer and the State's Commissioner of Education, both of whom sustained petitioner's refusal to add sign-language interpreter to Amy's individualized education program. 20 U.S.C. 1415(e)(2) (requiring reviewing court to "receive the records of the administrative proceeding" before granting relief). I would suggest further that those courts focused too narrowly on the presence or absence of a particular service-a sign-language interpreter-rather than on the total package of services furnished to Amy by the School Board.

As the Court demonstrates, petitioner Board has provided Amy Rowley considerably more than "a teacher with a loud voice." See post, at 4 (dissenting opinion). By concentrating on whether Amy was "learning as much, or performing as well academically, as she would without her handicap," 483 F. Supp. 528, 532 (SDNY 1980), the District Court and the Court of Appeals paid too little attention to whether, on the entire record, respondent's individualized education program offered her an educational equal to that provided her nonhandicapped classmates. Because I believe that standard has been satisfied here, I agree that the judgment of the Court of Appeals should be reversed.

Endnotes

1 See S. Rep. No. 94-168, p. 5 (1975; H.R. Rep. No. 94-332, pp. 2-3 (1975).

2 Two cases, *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972), and *Pennsylvania Assn. for Retarded Children v. Commonwealth*, 334 F.Supp. 1257 (ED Pa. 1971) and 343 F.Supp. 279 (1972), were later identified as the most prominent of the cases contributing to Congress' enactment of the Act and the statutes which preceded it. H. R. Rep., at 3-4. Both decisions are discussed in Part III of this opinion.

3 All functions of the Commissioner of Education, formerly an officer in the Department of Health, Education, and Welfare, were transferred to the Secretary of Education in 1979 when Congress passed the Department of Education Organization Act, 20 U. S. C. § 3401 *et seq.* (1976 ed., Supp. IV). See 20 U. S. C. § 3441(a)(1) (1976 ed., Supp. IV).

4 Despite this preference for "mainstreaming" handicapped children -- educating them with nonhandicapped children -- Congress recognized that regular classrooms simply would not be a suitable setting for the education of many handicapped children. The Act expressly acknowledges that "the nature or severity of the handicap [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." § 1412(5). The Act thus provides for the education of some handicapped children in separate classes or institutional settings. See *ibid.*; § 1413(a)(4).

5 In addition to covering a wide variety of handicapping conditions, the Act requires special educational services for children "regardless of the severity of their handicap." §§ 1412(2)(C), 1414(a)(1)(A).

6 The requirements that parents be permitted to file complaints regarding their child's education, and be present when the child's IEP is formulated, represent only two examples of Congress' effort to maximize parental involvement in the education of each handicapped child. In addition, the Act requires that parents be permitted "to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and . . . to obtain an independent educational evaluation of the child." § 1415(b)(1)(A). See also §§ 1412(4), 1414(a)(4). State educational policies and the state plan submitted to the Secretary of Education must be formulated in "consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children." § 1412(7). See also § 1412(2)(E). Local agencies, which receive funds under the Act by applying to the state agency, must submit applications which assure that they have developed procedures for "the participation and consultation of the parents or [guardians] of [handicapped] children" in local educational programs, § 1414(a)(1)(C)(iii), and the application itself, along with "all pertinent documents related to such application," must be made "available to parents, guardians, and other members of the general public." § 1414(a)(4).

7 "Any party" to a state or local administrative hearing must "be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions." § 1415(d).

8 For reasons that are not revealed in the record, the District Court concluded that "[the] Act itself does not define 'appropriate education.'" 483 F.Supp., at 533. In fact, the Act expressly defines the phrase "free appropriate public education," see § 1401(18), to which the District Court was referring. See 483 F.Supp., at 533. After overlooking the statutory definition, the District Court sought guidance not from regulations interpreting the Act, but from regulations promulgated under § 504 of the Rehabilitation Act. See 483 F.Supp., at 533, citing 45 CFR § 84.33(b)

9 The IEP which respondents challenged in the District Court was created for the 1978- 1979 school year. Petitioners contend that the District Court erred in reviewing that IEP after the school year had ended and before the school administrators were able to develop another IEP for subsequent years. We disagree. Judicial review invariably takes more than nine months to complete, not to mention the time consumed during the preceding state administrative hearings. The District Court thus correctly ruled that it retained jurisdiction to grant relief because the alleged deficiencies in the IEP were capable of repetition as to the parties before it yet evading review. 483 F.Supp. 536, 538 (1980). See *Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975).

10 Examples of "related services" identified in the Act are "speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only." § 1401(17).

11 The dissent, finding that "the standard of the courts below seems . . . to reflect the congressional purpose" of the Act, post, at 218, concludes that our answer to this question "is not a satisfactory one." Post, at 216. Presumably, the dissent also agrees with the District Court's conclusion that "it has been left entirely to the courts and the hearing officers to give content to the requirement of an 'appropriate education.'" 483 F. Supp., at 533. It thus seems that the dissent would give the courts carte blanche to impose upon the States whatever burden their various judgments indicate should be imposed. Indeed, the dissent clearly characterizes the requirement of an "appropriate education" as open-ended, noting that "if there are limits not evident from the face of the statute on what may be considered an 'appropriate education,' they must be found in the purpose of the statute or its legislative history." Post, at 213. Not only are we unable to find any suggestion from the face of the statute that the requirement of an "appropriate education" was to be limitless, but we also view the dissent's approach as contrary to the fundamental proposition that Congress, when exercising its spending power, can impose no burden upon the States unless it does so unambiguously. See *infra*, at 204, n. 26. No one can doubt that this would have been an easier case if Congress had seen fit to provide a more comprehensive statutory definition of the phrase "free appropriate public education." But Congress did not do so, and "our problem is to construe what Congress has written. After all, Congress expresses its purpose by words. It is for us to ascertain -- neither to add nor to subtract, neither to delete nor to distort." 62 Cases of *Jam v. United States*, 340 U.S. 593, 596 (1951). We would be less than faithful to our obligation to construe what Congress has written if in this case we were to disregard the statutory language and legislative history of the Act by concluding that Congress had imposed upon the States a burden of unspecified proportions and weight, to be revealed only through case-by-case adjudication in the courts.

12 See H. R. Rep., at 10; Note, The Education of All Handicapped Children Act of 1975, 10 U. Mich. J. L. Ref. 110, 119 (1976).

13 See, e. g., 121 Cong. Rec. 19494 (1975) (remarks of Sen. Javits) ("all too often, our handicapped citizens have been denied the opportunity to receive an adequate education"); id., at 19502 (remarks of Sen. Cranston) (millions of handicapped "children . . . are largely excluded from the educational opportunities that we give to our other children"); id., at 23708 (remarks of Rep. Mink) ("handicapped children . . . are denied access to public schools because of a lack of trained personnel").

14 Similarly, the Senate Report states that it was an "[increased] awareness of the educational needs of handicapped children and landmark court decisions establishing the right to education for handicapped children [that] pointed to the necessity of an expanded federal fiscal role." S. Rep., at 5. See also H. R. Rep., at 2-3.

15 The only substantive standard which can be implied from these cases comports with the standard implicit in the Act. *PARC* states that each child must receive "access to a free public program of education and training appropriate to his learning capacities," 334 F.Supp., at 1258 (emphasis added), and that further state action is required when it appears that "the needs of the mentally retarded child are not being adequately served," *id*., at 1266. (Emphasis added.) *Mills* also speaks in terms of "adequate" educational services, 348 F.Supp., at 878, and sets a realistic standard of providing some educational services to each child when every need cannot be met. "If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child." *Id*., at 876.

16 Like the Act, *PARC* required the State to "identify, locate, [and] evaluate" handicapped children, 334 F.Supp., at 1267, to create for each child an individual educational program, id., at 1265, and to hold a hearing "on any change in educational assignment," id., at 1266. *Mills* also required the preparation of an individual educational program for each child. In addition, *Mills* permitted the child's parents to inspect records relevant to the child's education, to obtain an independent educational evaluation of the child, to object to the IEP and receive a hearing before an independent hearing officer, to be represented by counsel at the hearing, and to have the right to confront and cross-examine adverse witnesses, all of which are also permitted by the Act. 348 F.Supp., at 879-881. Like the Act, *Mills* also required that the education of handicapped children be conducted pursuant to an overall plan prepared by the District of Columbia, and established a policy of educating handicapped children with nonhandicapped children whenever possible. *Ibid*.

17 See S. Rep., at 6-7; H. R. Rep., at 3-4.

18 The 1974 statute "incorporated the major principles of the right to education cases," by "[adding] important new provisions to the Education of the Handicapped Act which require the States to: establish a goal of providing full educational opportunities to all handicapped children; provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement of handicapped children; establish procedures to insure that, to the maximum extent appropriate, handicapped children . . . are educated with children who are not handicapped; . . . and, establish procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory." S. Rep., at 8.

The House Report explains that the Act simply incorporated these purposes of the 1974 statute: the Act was intended "primarily to amend . . . the Education of the Handicapped Act in order to provide permanent authorization and a comprehensive mechanism which will insure that those provisions enacted during the 93rd Congress [the 1974 statute] will result in maximum benefits for handicapped children and their families." H. R. Rep., at 5. Thus, the 1974 statute's purpose of providing handicapped children access to a public education became the purpose of the Act.

19 These statistics appear repeatedly throughout the legislative history of the Act, demonstrating a virtual consensus among legislators that 3.9 million handicapped children were receiving an appropriate education in 1975. See, e. g., 121 Cong. Rec. 19486 (1975) (remarks of Sen. Williams); *id*., at 19504 (remarks of Sen. Schweicker); *id*., at 23702 (remarks of Rep. Madden); *ibid*. (remarks of Rep. Brademas); *id*., at 23709 (remarks of Rep. Minish); *id*., at 37024 (remarks of Rep. Brademas); *id*., at 37027 (remarks of Rep. Gude); *id*., at 37417 (remarks of Sen. Javits); *id*., at 37420 (remarks of Sen. Hathaway).

20 Senator Randolph stated: "[Only] 55 percent of the school-aged handicapped children and 22 percent of the pre-school-aged handicapped children are receiving special educational services." 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). Although the figures differ slightly in various parts of the legislative history, the general thrust of congressional calculations was that roughly one-half of the handicapped children in the United States were not receiving specialized educational services, and thus were not "served." See, e. g., 121 Cong. Rec. 19494 (1975) (remarks of Sen. Javits) ("only 50 percent of the Nation's handicapped children received proper education services"); *id*., at 19504 (remarks of Sen. Humphrey) ("[almost] 3 million handicapped children, while in school, receive none of the special services that they require in order to make education a meaningful experience"); *id*., at 23706 (remarks of Rep. Quie) ("only 55 percent [of handicapped children] were receiving a public education"); *id*., at 23709 (remarks of Rep. Biaggi) ("[over] 3 million [handicapped] children in this country are receiving either below par education or none at all").

Statements similar to those appearing in the text, which equate "served" as it appears in the Senate Report to "receiving special educational services," appear throughout the legislative history. See, e. g., *id*., at 19492 (remarks of Sen. Williams); *id*., at 19494 (remarks of Sen. Javits); *id*., at 19496 (remarks of Sen. Stone); id., at 19504-19505 (remarks of Sen. Humphrey); *id*., at 23703 (remarks of Rep. Brademas); Hearings on H. R. 7217 before the Subcommittee on Select Education of the House Committee on Education and Labor, 94th Cong., 1st Sess., 91, 150, 153 (1975); Hearings on H. R. 4199 before the Select Subcommittee on Education of the House Committee on Education and Labor, 93d Cong., 1st Sess., 130, 139 (1973). See also 34 CFR § 300.343 (1981).

21 In seeking to read more into the Act than its language or legislative history will permit, the United States focuses upon

the word "appropriate," arguing that "the statutory definitions do not adequately explain what [it means]." Brief for United States as Amicus Curiae 13. Whatever Congress meant by an "appropriate" education, it is clear that it did not mean a potential-maximizing education.

The term as used in reference to educating the handicapped appears to have originated in the *PARC* decision, where the District Court required that handicapped children be provided with "education and training appropriate to [their] learning capacities." 334 F.Supp., at 1258. The word appears again in the *Mills* decision, the District Court at one point referring to the need for "an appropriate educational program," 348 F.Supp., at 879, and at another point speaking of a "suitable publicly-supported education," *id*., at 878. Both cases also refer to the need for an "adequate" education. See 334 F.Supp., at 1266; 348 F.Supp., at 878.

The use of "appropriate" in the language of the Act, although by no means definitive, suggests that Congress used the word as much to describe the settings in which handicapped children should be educated as to prescribe the substantive content or supportive services of their education. For example, § 1412(5) requires that handicapped children be educated in classrooms with nonhandicapped children "to the maximum extent appropriate." Similarly, § 1401(19) provides that, "whenever appropriate," handicapped children should attend and participate in the meeting at which their IEP is drafted. In addition, the definition of "free appropriate public education" itself states that instruction given handicapped children should be at an "appropriate preschool, elementary, or secondary school" level. § 1401(18)(C). The Act's use of the word "appropriate" thus seems to reflect Congress' recognition that some settings simply are not suitable environments for the participation of some handicapped children. At the very least, these statutory uses of the word refute the contention that Congress used "appropriate" as a term of art which concisely expresses the standard found by the lower courts.

22 See also 121 Cong. Rec. 19492 (1975) (remarks of Sen. Williams); *id*., at 19504 (remarks of Sen. Humphrey).

23 This view is supported by the congressional intention, frequently expressed in the legislative history, that handicapped children be enabled to achieve a reasonable degree of self-sufficiency. After referring to statistics showing that many handicapped children were excluded from public education, the Senate Report states:

> "The long range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to maintain such persons as dependents and in a minimally acceptable lifestyle. With proper education services, many would be able to become productive citizens, contributing to society instead of being forced to remain burdens. Others, through such services, would increase their independence, thus reducing their dependence on society." S. Rep., at 9. See also H. R. Rep., at 11.

Similarly, one of the principal Senate sponsors of the Act stated that "providing appropriate educational services now means that many of these individuals will be able to become a contributing part of our society, and they will not have to depend on subsistence payments from public funds." 121 Cong. Rec. 19492 (1975) (remarks of Sen. Williams). See also *id*., at 25541 (remarks of Rep. Harkin); *id*., at 37024-37025 (remarks of Rep. Brademas); *id*., at 37027 (remarks of Rep. Gude); *id*., at 37410 (remarks of Sen. Randolph); *id*., at 37416 (remarks of Sen. Williams).

The desire to provide handicapped children with an attainable degree of personal independence obviously anticipated that state educational programs would confer educational benefits upon such children. But at the same time, the goal of achieving some degree of self- sufficiency in most cases is a good deal more modest than the potential-maximizing goal adopted by the lower courts.

Despite its frequent mention, we cannot conclude, as did the dissent in the Court of Appeals, that self-sufficiency was itself the substantive standard which Congress imposed upon the States. Because many mildly handicapped children will achieve self-sufficiency without state assistance while personal independence for the severely handicapped may be an unreachable goal, "self-sufficiency" as a substantive standard is at once an inadequate protection and an overly demanding requirement. We thus view these references in the legislative history as evidence of Congress' intention that the services provided handicapped children be educationally beneficial, whatever the nature or severity of their handicap.

24 Title 20 U. S. C. § 1412(5) requires that participating States establish "procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

25 We do not hold today that every handicapped child who is advancing from grade to grade in a regular public school system is automatically receiving a "free appropriate public education." In this case, however, we find Amy's academic progress, when considered with the special services and professional consideration accorded by the Furnace Woods school administrators, to be dispositive.

26 In defending the decisions of the District Court and the Court of Appeals, respondents and the United States rely upon isolated statements in the legislative history concerning the achievement of maximum potential, see H. R. Rep., at 13, as support for their contention that Congress intended to impose greater substantive requirements than we have found. These statements, however, are too thin a reed on which to base an interpretation of the Act which disregards both its language and the balance of its legislative history. "Passing references and isolated phrases are not controlling

when analyzing a legislative history." *Department of State v. Washington Post Co.*, 456 U.S. 595, 600 (1982). Moreover, even were we to agree that these statements evince a congressional intent to maximize each child's potential, we could not hold that Congress had successfully imposed that burden upon the States. "[Legislation] enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' . . . Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State School v. Halderman*, 451 U.S. 1, 17 (1981) (footnote omitted). As already demonstrated, the Act and its history impose no requirements on the States like those imposed by the District Court and the Court of Appeals. A fortiori Congress has not done so unambiguously, as required in the valid exercise of its spending power.

27 This inquiry will require a court not only to satisfy itself that the State has adopted the state plan, policies, and assurances required by the Act, but also to determine that the State has created an IEP for the child in question which conforms with the requirements of § 1401(19).

28 When the handicapped child is being educated in the regular classrooms of a public school system, the achievement of passing marks and advancement from grade to grade will be one important factor in determining educational benefit. See Part III, *supra*.

29 In this case, for example, both the state hearing officer and the District Court were presented with evidence as to the best method for educating the deaf, a question long debated among scholars. See Large, *Special Problems of the Deaf Under the Education for All Handicapped Children Act of 1975*, 58 Wash. U. L. Q. 213, 229 (1980). The District Court accepted the testimony of respondents' experts that there was "a trend supported by studies showing the greater degree of success of students brought up in deaf households using [the method of communication used by the Rowleys]." 483 F.Supp., at 535.

30 It is clear that Congress was aware of the States' traditional role in the formulation and execution of educational policy. "Historically, the States have had the primary responsibility for the education of children at the elementary and secondary level." 121 Cong. Rec. 19498 (1975) (remarks of Sen. Dole). See also *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("By and large, public education in our Nation is committed to the control of state and local authorities").

31 In addition to providing for extensive parental involvement in the formulation of state and local policies, as well as the preparation of individual educational programs, the Act ensures that States will receive the advice of experts in the field of educating handicapped children. As a condition for receiving federal funds under the Act, States must create "an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, [and] (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children." § 1413(a)(12).

32 Because the District Court declined to reach respondents' contention that petitioners had failed to comply with the Act's procedural requirements in developing Amy's IEP, 483 F.Supp., at 533, n. 8, the case must be remanded for further proceedings consistent with this opinion.

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, **dissenting**.

In order to reach its result in this case, the majority opinion contradicts itself, the language of the statute, and the legislative history. Both the majority's standard for a "free appropriate education" and its standard for judicial review disregard congressional intent.[1]

I

The majority first turns its attention to the meaning of a "free appropriate public education." the Act provides:

> The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standard of the State educational agency, (c) include an appropriate preschool, elementary agency, (D) are provided in conformity with the individualized education program required under section 1414(a)(5) of this title." 20 U.S.C. 1401(18).

The majority reads this statutory language as establishing a congressional intent limited to bringing "previously excluded handicapped children into the public education systems of the States and requiring the States to adopt procedures which would result in individualized consideration of and instruction for each child." *Ante*, at 12. In its attempt to constrict the definition of "appropriate" and the thrust of the Act, the majority opinion states, "Noticeably absent from the language of the statute is any substantive standard prescribing the level of education to be accorded handicapped children. Certainly the language of the statute contains no requirements like the one imposed by the lower courts-that States commensurate with the opportunity provided to other children." quoting 483, F. Supp. at 534.

I agree that the language of the Act does not contain a substantive standard beyond requiring that the education

offered must be "appropriate." However, if there are limits not evident from the face of the statute on what may be considered an "appropriate education," they must be found in the purpose of the statute or its legislative history. The Act itself announces it will provide a "full educational opportunity to all handicapped children." 20 U.S.C. 1412(2)(A) (emphasis added). This goal is repeated throughout the legislative history, in statements too frequent to be "passing references and isolated phrases." Ante, at 27, n. 26, quoting Department of State v. Washington Post Co., __ U.S.__ (1982). These statements elucidate the meaning of "appropriate." According to the Senate Report, for example, the Act does "guarantee that handicapped children are provided equal educational opportunity." S. Rep. No. 94-168, at 9 (1975) (emphasis added). This promise appears throughout the legislative history. See 121 Cong. Rec. 19482-19483 (1975) (remarks of Sen. Randolph); *id*., at 19504 (Sen. Humphrey); *id*., at 19505 (Sen. Beall); *id*., at 23704 (Rep Brademas); *id*., at 25538 (Rep. Cornell); *id*., at 25540 (Rep. Grassley); *id*., at 37025 (Rep. Perkins); *id*., at 37030 (Rep. Mink); *id*., at 37412 (Sen. Taft); *id*., at 37413 (Sen. Williams); *id*., at 37418-37419 (Sen. Cranston); *id*., at 37419-37420 (Sen. Beall).

Indeed, at times the purpose of the Act was described as tailoring each handicapped child's educational plan to enable the child "to achieve his or her maximum potential." H.R. Rep. No. 94-332, 94th Cong., 1st Sess. 13 19 (1975), See 121 Cong. Rec. 23709 (1975). Sen. Stafford, one of the sponsors of the Act, declared "We can all agree that the education given a handicapped child should be equivalent, at least, to the one those children who are not handicapped receive." 121 Cong. Rec. 19483 (1975). The legislative history thus directly supports the conclusion that the Act intends to give handicapped children an educational opportunity commensurate with that given other children.

The majority opinion announces a different substantive standard, that "Congress did not impose upon the States any greater substantive standard than would be necessary to make such access meaningful." While "meaningful" is no more enlightening than "appropriate," the Court purports to clarify itself. Because Amy was provided with some specialized instruction from which she obtained some benefit and because she passed from grade to grade, she was receiving a meaningful and therefore appropriate education. [2]

This falls far short of what the Act intended. The Act details as specifically as possible the kind of specialized education each handicapped child must receive. It would apparently satisfy the Court's standard of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child," for a deaf child such as Amy to be given a teacher with a loud voice, for she would benefit from that service. The Act requires more. It defines "special education" to mean "specifically designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child." 1401(16) (emphasis added).[3] Providing a teacher with a loud voice would not meet Amy's needs and would not satisfy the Act. The basic floor of opportunity is instead, as the courts below recognized, intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible. Amy Rowley, without a sign language interpreter, comprehends less than half of what is said in the classroom-less than half of what normal children comprehend. This is hardly an equal opportunity to learn, even if Amy makes passing grades.

Despite its reliance on the use of "appropriate" in the definition of the Act, the majority opinion speculates that "Congress used the word as much described the settings in which the children should be educated as to prescribe the substantive content or supportive services of their education." Of course, the word "appropriate" can be applied in many ways; at times in the Act, Congress used it to recommend mainstreaming handicapped children; at other points, it used the word to refer to the content of the individualized education. The issue before us is what standard the word "appropriate" incorporates when it is used to modify "education." The answer given by the Court is not a satisfactory one.

II

The Court's discussion of the standard for judicial review is as flawed as its discussion of a "free appropriate public education.' According to the Court, a court can ask only whether the State has "complied with the procedures set forth in the Act" and whether the individualized education program is "reasonably calculated to enable the child to receive educational benefit." Both the language of the Act and legislative history, however, demonstrate that Congress intended the courts to conduct a far more searching inquiry.

The majority assigns major significance to the review provision's being found in a section entitled "Procedural Safeguards." But where else would a provision for judicial review belong? The majority does acknowledge that the current language, specifying that a court "shall receive the record of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate," 1415(e)(2), was substituted at Conference for language that would have restricted the role of the reviewing court much more sharply. It is clear enough to me that Congress decided to reduce substantially judicial deference to state administrative decisions.

The legislative history shows that judicial review is not

limited to procedural matters and that the state educational agencies are given first, but not final, responsibility for the content of a handicapped child's education. The Conference committee directs courts to make an "independent decision." S. Conf. Rep. No. 94-455, at 50. The deliberate change in the review provision is an unusually clear indication that Congress intended courts to undertake substantive review instead of relying on the conclusions of the state agency.

On the floor of the Senate, Senator Williams, the chief sponsor of the bill, committee chairman, and floor manager responsible for the legislation in the Senate, emphasized the breath of the review provisions at both the administrative and judicial levels:

> Any parent or guardian may present a complaint concerning **any matter** regarding the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to such a child.
>
> In this regard, Mr. President, I would like to stress that the language referring to "free appropriate education" has been adopted to make clear that a complaint may involve matters such a questions respecting a child's individualized education program, questions of whether special education and related services are being provided without charge to the parents or guardians, questions relating to whether to the services provided a child meet the standards of the State education agency, **or any other question** within the scope of the definition of "free appropriate public education." In addition, it should be clear that a parent or guardian may present a complaint alleging that a State or local education agency has refused to provide services to which a child may be entitled or alleging that the State or local educational agency has erroneously classified a child as as handicapped child when, in fact, that child is not a handicapped child. 121 Cong. Rec. 37415 (emphasis added).

There is no doubt that the state agency itself must make substantive decisions. The legislative history reveals that the courts are to consider, de novo, the same issues. Senator Williams explicitly stated that the civil action permitted under the Act encompasses all matters related to the original complaint. *Id*., at 37416.

Thus, the Court's limitations on judicial review have no support in either the language of the Act or the legislative history. Congress did not envision that inquiry would end if a showing is made that the child is receiving passing marks and is advancing from grade to grade. Instead, it intended to permit a full and searching inquiry into any aspect of a handicapped child's education. The court's standard, for example, would not permit a challenge to part of the IEP; the legislative history demonstrate beyond doubt that Congress intended such challenge to be possible, even if the plan as developed is reasonably calculated to give the child some benefits.

Parents can challenge the IEP for failing to supply the special education and related services needed by the individual handicapped child. That is what the Rowleys did. As the Government observes,

> "Courts called upon to review the content of an IEP, in accordance with 20 U.S.C. 1415(e) inevitably are required to make a judgment on the basis of the evidence presented, concerning whether the educational methods proposed by the local school district are 'appropriate' for the handicapped child involved." Brief for United States as Amicus Curiae 13.

The courts below, as they were required by the Act, did precisely that.

Under the judicial review provisions of the Act, neither the District Court nor the Court of Appeals was bound by the state's construction of what an "appropriate" education means in general or by what the state authorities considered to be an appropriate education for Amy Rowley. Because the standard of the courts below seems to me to reflect the congressional purpose and because their factual findings are not clearly erroneous, I respectfully dissent.

Endnotes

1 The Court's opinion relies heavily on the statement, which occurs throughout the legislative history, that, at the time of enactment, one million of the roughly eight million handicapped children in the United States were excluded entirely from the public school system and more than half were receiving an inappropriate education. See, e.g. *ante*, at pp. 11, 18-19. But this statement was often linked to statements urging equal educational opportunity. See, e.g. *121 Cong. Rec.* 19502 (remarks of Sen. Cranston); *id*. at 23702 (remarks of Rep. Brademas). That is, Congress wanted not only to bring handicapped children into schoolhouse, but wanted also to benefit them once they had entered.

2 As further support of its conclusion, the majority opinion turns to *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (PARC)*, 334 F. Supp. 1257 (1971), 343 F. Supp. 279 (ED Pa. 1972) and *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (DDC 1972). That these decisions served as an impetus for the Act does not, however, establish them as the limit of the Act. In any case, the very language that the majority quotes from Mills sets a standard not of some education, but of educational opportunity equal to that of non-handicapped children.

Indeed, *Mills*, relying on decisions since called into question by this Court's opinion in *San Antonio School District v. Rodriquez*, 411 U.S. 1 (1973), states:

In *Hobson v. Hansen* [269 F. Supp. 401 (DD,) Judge Wright found that denying poor public school children educational opportunity equal to that available to more affluent public school children was violative of the Due Process Clause of the Fifth Amendment. *A fortiori*, the defendants' conduct here, denying plaintiffs and their class not just an equal publicly supported education while providing such education to other children, is violative of the Due Process Clause." 348 F.Supp., at 875. Whatever the effect of *Rodriquez* on the validity of this reasoning, the statement exposes the majority's mischaracterization of the opinion and thus of the assumptions of the legislature that passed the Act.

3 "Related services' are "transportation, and such developmental, corrective, and other supportive services . . . as may be required to assist a handicapped child to benefit from special education." 1401(17).

The Supreme Court of the United States

468 U. S. 883 (1984)

IRVING INDEPENDENT SCHOOL DISTRICT,

Petitioners

v.

TATRO, et. Ex., Individually and as Next Friends of TATRO, a Minor,

Respondent

No. 83-558.

Decided July 5, 1984

BURGER, C. J., delivered the opinion of the Court, in which WHITE, BLACKMUN, POWELL, REHNQUIST, and O'CONNOR, JJ., joined, and in all but Part III of which BRENNAN, MARSHALL, and STEVENS, JJ., joined.

BRENNAN, J., filed an opinion concurring in part and dissenting in part, in which MARSHALL, J., joined, post, p. 896. STEVENS, J., filed an opinion concurring in part and dissenting in part, post, p. 896.

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether the Education of the Handicapped Act or the Rehabilitation Act of 1973 requires a school district to provide a handicapped child with clean intermittent catheterization during school hours.

I

Amber Tatro is an 8-year-old girl born with a defect known as spina bifida. As a result, she suffers from orthopedic and speech impairments and a neurogenic bladder, which prevents her from emptying her bladder voluntarily. Consequently, she must be catheterized every three or four hours to avoid injury to her kidneys. In accordance with accepted medical practice, clean intermittent catheterization (CIC), a procedure involving the insertion of a catheter into the urethra to drain the bladder, has been prescribed. The procedure is a simple one that may be performed in a few minutes by a layperson with less than an hour's training. Amber's parents, babysitter, and teenage brother are all qualified to administer CIC, and Amber soon will be able to perform this procedure herself.

In 1979 petitioner Irving Independent School District agreed to provide special education for Amber, who was then three and one-half years old. In consultation with her parents, who are respondents here, petitioner developed an individualized education program for Amber under the [468 U.S. 883, 886] requirements of the Education of the Handicapped Act, 84 Stat. 175, as amended significantly by the Education for All Handicapped Children Act of 1975, 89 Stat. 773, 20 U.S.C. 1401(19), 1414(a)(5). The individualized education program provided that Amber would attend early childhood development classes and receive special services such as physical and occupational therapy. That program, however, made no provision for school personnel to administer CIC.

Respondents unsuccessfully pursued administrative remedies to secure CIC services for Amber during school hours.[1] In October 1979 respondents brought the present action in District Court against petitioner, the State Board of Education, and others. See 1415(e)(2). They sought an injunction ordering petitioner to provide Amber with CIC and sought damages and attorney's fees. First, respondents invoked the Education of the Handicapped Act. Because Texas received funding under that statute, petitioner was required to provide Amber with a "free appropriate public education," 1412(1), 1414(a)(1)(C)(ii), which is defined to include "related services," 1401(18). Respondents argued that CIC is one such "related service."[2] Second, respondents invoked 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, 29 U.S.C. 794, which forbids an individual, by reason of a handicap, to be "excluded from the [468 U.S. 883, 887] "participation in, be denied the benefits of, or be subjected to discrimination under" any program receiving federal aid.

The District Court denied respondents' request for a preliminary injunction. *Tatro v. Texas*, 481 F. Supp. 1224 (N. D. Tex. 1979). That court concluded that CIC was not a "related service" under the Education of the Handicapped Act because it did not serve a need arising from the effort to educate. It also held that 504 of the Rehabilitation Act did not require "the setting up of governmental health care for people seeking to participate" in federally funded programs. *Id*., at 1229.

The Court of Appeals reversed. *Tatro v. Texas*, 625 F.2d 557 (CA5 1980) (*Tatro I*). First, it held that CIC was a "related service" under the Education of the Handicapped Act, 20 U.S.C. 1401(17), because without the procedure Amber could not attend classes and benefit from special education. Second, it held that petitioner's refusal to provide CIC effectively excluded her from a federally funded educational program in violation of 504 of the Rehabilitation Act. The Court of Appeals remanded for the District Court to develop a factual record and apply these legal principles.

On remand petitioner stressed the Education of the Handicapped Act's explicit provision that "medical services" could qualify as "related services" only when they served the purpose of diagnosis or evaluation. See n. 2, *supra*. The District Court held that under Texas law a nurse or other qualified person may administer CIC without engaging in the unauthorized practice of medicine, provided

that a doctor prescribes and supervises the procedure. The District Court then held that, because a doctor was not needed to administer CIC, provision of the procedure was not a "medical service" for purposes of the Education of the Handicapped Act. Finding CIC to be a "related service" under that Act, the District Court ordered petitioner and the State Board of Education to modify Amber's individualized education program [468 U.S. 883, 888] to include provision of CIC during school hours. It also awarded compensatory damages against petitioner. *Tatro v. Texas*, 516 F. Supp. 968 (ND Tex. 1981).[3]

On the authority of *Tatro I*, the District Court then held that respondents had proved a violation of 504 of the Rehabilitation Act. Although the District Court did not rely on this holding to authorize any greater injunctive or compensatory relief, it did invoke the holding to award attorney's fees against petitioner and the State Board of Education [4] 516 F. Supp., at 968; App. to Pet. for Cert. 55a-63a. The Rehabilitation Act, unlike the Education of the Handicapped Act, authorizes prevailing parties to recover attorney's fees. See 29 U.S.C. 794a.

The Court of Appeals affirmed. *Tatro v. Texas*, 703 F.2d 823 (CA5 1983) (*Tatro II*). That court accepted the District Court's conclusion that state law permitted qualified persons to administer CIC without the physical presence of a doctor, and it affirmed the award of relief under the Education of the Handicapped Act. In affirming the award of attorney's fees based on a finding of liability under the Rehabilitation Act, the Court of Appeals held that no change of circumstances since *Tatro I* justified a different result.

We granted certiorari, 464 U.S. 1007 (1983), and we affirm in part and reverse in part.

II.

This case poses two separate issues. The first is whether the Education of the Handicapped Act requires petitioner to [468 U.S. 883, 889] provide CIC services to Amber. The second is whether 504 of the Rehabilitation Act creates such an obligation. We first turn to the claim presented under the Education of the Handicapped Act.

States receiving funds under the Act are obliged to satisfy certain conditions. A primary condition is that the state implement a policy "that assures all handicapped children the right to a free appropriate public education." 20 U.S.C. 1412(1). Each educational agency applying to a state for funding must provide assurances in turn that its program aims to provide "a free appropriate public education to all handicapped children." 1414(a)(1)(C)(ii).

A "free appropriate public education" is explicitly defined as "special education and related services." 1401(18).[5] The term "special education" means

> "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions." 1401(16).

"Related services" are defined as

> "transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from [468 U.S. 883, 890] special education, and includes the early identification and assessment of handicapping conditions in children." 1401(17) (emphasis added).

The issue in this case is whether CIC is a "related service" that petitioner is obliged to provide to Amber. We must answer two questions: first, whether CIC is a "supportive servic[e] . . . required to assist a handicapped child to benefit from special education"; and second, whether CIC is excluded from this definition as a "medical servic[e]" serving purposes other than diagnosis or evaluation.

A.

The Court of Appeals was clearly correct in holding that CIC is a "supportive servic[e] . . . required to assist a handicapped child to benefit from special education."[6] It is clear on this record that, without having CIC services available during the school day, Amber cannot attend school and thereby "benefit from special education." CIC services therefore fall squarely within the definition of a "supportive service."[7] [468 U.S. 883, 891]

As we have stated before, "Congress sought primarily to make public education available to handicapped children" and "to make such access meaningful." *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 192 (1982). A service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned. The Act makes specific provision for services, like transportation, for example, that do no more than enable a child to be physically present in class, see 20 U.S.C. 1401(17); and the Act specifically authorizes grants for schools to alter buildings and equipment to make them accessible to the handicapped, 1406; see S. Rep. No. 94-168, p. 38 (1975); 121 Cong. Rec. 19483-19484 (1975) (remarks of Sen. Stafford). Services like CIC that permit a child to remain at school during the day are no less related

to the effort to educate than are services that enable the child to reach, enter, or exit the school.

We hold that CIC services in this case qualify as a "supportive servic[e] . . . required to assist a handicapped child to benefit from special education."[8]

B.

We also agree with the Court of Appeals that provision of CIC is not a "medical servic[e]," which a school is required to provide only for purposes of diagnosis or evaluation. See 20 U.S.C. 1401(17). We begin with the regulations of the [468 U.S. 883, 892] Department of Education, which are entitled to deference.[9] See, e. g., *Blum v. Bacon*, 457 U.S. 132, 141 (1982). The regulations define "related services" for handicapped children to include "school health services," 34 CFR 300.13(a) (1983), which are defined in turn as "services provided by a qualified school nurse or other qualified person," 300.13(b) (10). "Medical services" are defined as "services provided by a licensed physician." 300.13(b)(4).[10] Thus, the Secretary has determined that the services of a school nurse otherwise qualifying as a "related service" are not subject to exclusion as a "medical service," but that the services of a physician are excludable as such.

This definition of "medical services" is a reasonable interpretation of congressional intent. Although Congress devoted little discussion to the "medical services" exclusion, the Secretary could reasonably have concluded that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence.[11] From this understanding of [468 U.S. 883, 893] congressional purpose, the Secretary could reasonably have concluded that Congress intended to impose the obligation to provide school nursing services.

Congress plainly required schools to hire various specially trained personnel to help handicapped children, such as "trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel." S. Rep. No. 94-168, *supra*, at 33. School nurses have long been a part of the educational system, and the Secretary could therefore reasonably conclude that school nursing services are not the sort of burden that Congress intended to exclude as a "medical service." By limiting the "medical services" exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision.

Petitioner's contrary interpretation of the "medical services" exclusion is unconvincing. In petitioner's view, CIC is a "medical service," even though it may be provided by a nurse or trained layperson; that conclusion rests on its reading of Texas law that confines CIC to uses in accordance with a physician's prescription and under a physician's ultimate supervision. Aside from conflicting with the Secretary's reasonable interpretation of congressional intent, however, such a rule would be anomalous. Nurses in petitioner School District are authorized to dispense oral medications and administer emergency injections in accordance with a physician's prescription. This kind of service for nonhandicapped children is difficult to distinguish from the provision of CIC to the handicapped.[12] It would be strange indeed if Congress, [468 U.S. 883, 894] in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped.

To keep in perspective the obligation to provide services that relate to both the health and educational needs of handicapped students, we note several limitations that should minimize the burden petitioner fears. First, to be entitled to related services, a child must be handicapped so as to require special education. See 20 U.S.C. 1401(1); 34 CFR 300.5 (1983). In the absence of a handicap that requires special education, the need for what otherwise might qualify as a related service does not create an obligation under the Act. See 34 CFR 300.14, Comment (1) (1983).

Second, only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless how easily a school nurse or layperson could furnish them. For example, if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide nursing services to administer it.

Third, the regulations state that school nursing services must be provided only if they can be performed by a nurse or other qualified person, not if they must be performed by a physician. See 34 CFR 300.13(a), (b)(4), (b)(10) (1983). It bears mentioning that here not even the services of a nurse are required; as is conceded, a layperson with minimal training is qualified to provide CIC. See also, e. g., *Department of Education of Hawaii v. Katherine D.*, 727 F.2d 809 (CA9 1983). [468 U.S. 883, 895]

Finally, we note that respondents are not asking petitioner to provide equipment that Amber needs for CIC. Tr. of Oral Arg. 18-19. They seek only the services of a qualified person at the school.

We conclude that provision of CIC to Amber is not subject to exclusion as a "medical service," and we affirm the Court of Appeals' holding that CIC is a "related service" under the Education of the Handicapped Act.[13] [13]

III.

Respondents sought relief not only under the Education of the Handicapped Act but under 504 of the Rehabilitation Act as well. After finding petitioner liable to provide CIC under the former, the District Court proceeded to hold that petitioner was similarly liable under 504 and that respondents were therefore entitled to attorney's fees under 505 of the Rehabilitation Act, 29 U.S.C. 794a. We hold today, in

Smith v. Robinson, post, p. 992, that 504 is inapplicable when relief is available under the Education of the Handicapped Act to remedy a denial of educational services. Respondents are therefore not entitled to relief under 504, and we reverse the Court of Appeals' holding that respondents [468 U.S. 883, 896] are entitled to recover attorney's fees. In all other respects, the judgment of the Court of Appeals is affirmed.

It is so ordered.

Endnotes

1 The Education of the Handicapped Act's procedures for administrative hearings are set out in 20 U.S.C. 1415. In this case a hearing officer ruled that the Education of the Handicapped Act did require the school to provide CIC, and the Texas Commissioner of Education adopted the hearing officer's decision. The State Board of Education reversed, holding that the Act did not require petitioner to provide CIC.

2 As discussed more fully later, the Education of the Handicapped Act defines "related services" to include "supportive services (including . . . medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education." 20 U.S.C. 1401(17).

3 The District Court dismissed the claims against all defendants other than petitioner and the State Board, though it retained the members of the State Board "in their official capacities for the purpose of injunctive relief." 516 F. Supp., at 972-974.

4 The District Court held that 505 of the Rehabilitation Act, 29 U.S.C. 794a, which authorizes attorney's fees as a part of a prevailing party's costs, abrogated the State Board's immunity under the Eleventh Amendment. See App. to Pet. for Cert. 56a-60a. The State Board did not petition for certiorari, and the Eleventh Amendment issue is not before us.

5 Specifically, the "special education and related services" must

"(A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) [be] provided in conformity with the individualized education program required under section 1414(a)(5) of this title." 1401(18).

6 Petitioner claims that courts deciding cases arising under the Education of the Handicapped Act are limited to inquiring whether a school district has followed the requirements of the state plan and has followed the Act's procedural requirements. However, we held in Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 206 , n. 27 (1982), that a court is required "not only to satisfy itself that the State has adopted the state plan, policies, and assurances required by the Act, but also to determine that the State has created an [individualized education plan] for the child in question which conforms with the requirements of 1401(19) [defining such plans]." Judicial review is equally appropriate in this case, which presents the legal question of a school's substantive obligation under the "related services" requirement of 1401(17).

7 The Department of Education has agreed with this reasoning in an interpretive ruling that specifically found CIC to be a "related service." 46 Fed. Reg. 4912 (1981). Accord, Tokarcik v. Forest Hills School District, 665 F.2d 443 (CA3 1981), cert. denied sub nom. Scanlon v. Tokarcik, 458 U.S. 1121 (1982). The Secretary twice postponed temporarily the effective date of this interpretive ruling, see 46 Fed. Reg. 12495 (1981); id., at [468 U.S. 883, 891], and later postponed it indefinitely, id., at 25614. But the Department presently does view CIC services as an allowable cost under Part B of the Act. Ibid.

8 The obligation to provide special education and related services is expressly phrased as a "conditio[n]" for a state to receive funds under the Act. See 20 U.S.C. 1412; see also S. Rep. No. 94-168, p. 16 (1975). This refutes petitioner's contention that the Act did not "impos[e] an obligation on the States to spend state money to fund certain rights as a condition of receiving federal moneys" but "spoke merely in precatory terms," *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 18 (1981).

9 The Secretary of Education is empowered to issue such regulations as may be necessary to carry out the provisions of the Act. 20 U.S.C. 1417(b). This function was initially vested in the Commissioner of Education of the Department of Health, Education, and Welfare, who promulgated the regulations in question. This function was transferred to the Secretary of Education when Congress created that position, see Department of Education Organization Act, 301(a)(1), (2)(H), 93 Stat. 677, 20 U.S.C. 3441(a)(1), (2)(H).

10 The regulations actually define only those "medical services" that are owed to handicapped children: "services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services." 34 CFR 300.13(b)(4) (1983). Presumably this means that "medical services" not owed under the statute are those "services by a licensed physician" that serve other purposes.

11 Children with serious medical needs are still entitled to an education. For example, the Act specifically includes instruction in hospitals and at home within the definition of "special education." See 20 U.S.C. 1401(16).

12 Petitioner attempts to distinguish the administration of prescription drugs from the administration of CIC on the ground that Texas law expressly limits the liability of school personnel performing the former, see Tex. Educ. Code Ann. 21.914(c) (Supp. 1984), but not the latter. This distinction, however, bears no relation to whether CIC is a "related service." The introduction of handicapped children into a school creates numerous new possibilities for injury and liability. Many of these risks are [468 U.S. 883, 894] more serious than that posed by CIC, which the courts below found is a safe procedure even

when performed by a 9-year-old girl. Congress assumed that states receiving the generous grants under the Act were up to the job of managing these new risks. Whether petitioner decides to purchase more liability insurance or to persuade the State to extend the limitation on liability, the risks posed by CIC should not prove to be a large burden.

13 We need not address respondents' claim that CIC, in addition to being a "related service," is a "supplementary ai[d] and servic[e]" that petitioner must provide to enable Amber to attend classes with nonhandicapped students under the Act's "mainstreaming" directive. See 20 U.S.C. 1412(5)(B). Respondents have not sought an order prohibiting petitioner from educating Amber with handicapped children alone. Indeed, any request for such an order might not present a live controversy. Amber's present individualized education program provides for regular public school classes with nonhandicapped children. And petitioner has admitted that it would be far more costly to pay for Amber's instruction and CIC services at a private school, or to arrange for home tutoring, than to provide CIC at the regular public school placement provided in her current individualized education program. Tr. of Oral Arg. 12.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in part and dissenting in part.

I join all but Part III of the Court's opinion. For the reasons stated in my dissenting opinion in *Smith v. Robinson*, post, p. 992, I would affirm the award of attorney's fees to the respondents.

JUSTICE STEVENS, concurring in part and dissenting in part.

The petition for certiorari did not challenge the award of attorney's fees. It contested only the award of relief on the merits to respondents. Inasmuch as the judgment on the merits is supported by the Court's interpretation of the Education of the Handicapped Act, there is no need to express any opinion concerning the Rehabilitation Act of 1973. * Accordingly, while I join Parts I and II of the Court's opinion, I do not join Part III.

[Footnote *] The "Statement of the Questions Presented" in the petition for certiorari reads as follows:

1. Whether 'medical treatment' such as clean intermittent catheterization is a 'related service' required under the Education for All Handicapped Children Act and, therefore, required to be provided to the minor Respondent.

2. Is a public school required to provide and perform the medical treatment prescribed by the physician of a handicapped child by the Education of All Handicapped Children Act or the Rehabilitation Act of 1973?

3. Whether the Fifth Circuit Court of Appeals misconstrued the opinions of this Court in *Southeastern Community College v. Davis*, *Pennhurst State School & Hospital v. Halderman*, and *State Board of Education v. Rowley*." Pet. for Cert. i.

Because the Court does not hold that the Court of Appeals answered any of these questions incorrectly, it is not justified in reversing in part the judgment of that court. [468 U.S. 883, 897]

The Supreme Court of the United States

471 U. S. 359

BURLINGTON SCHOOL COMMITTEE, ***et. al.*****,**

Petitioners

v.

MASSACHUSETTS DEPARTMENT OF EDUCATION

Respondent

No. 84-433

April 29, 1985

JUSTICE REHNQUIST delivered the opinion of the court.

The Education of the Handicapped Act (Act), 84 Stat. 175, as amended, 20 U.S.C. § 1401 *et seq.*, requires participating state and local educational agencies "to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education" to such handicapped children. § 1415(a). These procedures include the right of the parents to participate in the development of an "individualized education program" (IEP) for the child and to challenge in administrative and court proceedings a proposed IEP with which they disagree. § § 1401(19), 1415(b), (d), (e). Where as in the present case review of a contested IEP takes years to run its course – years critical to the child's development – important practical questions arise concerning interim placement of the child an financial responsibility for that placement. This case requires us to address some of those questions.

Michael Panico, the son of respondent Robert Panico, was a first grader in the public school system of petitioner Town of Burlington, Massachusetts, when he began experiencing serious difficulties in school. It later became evident that he had "specific learning disabilities" and thus was "handicapped" within the meaning of the Act, 20 U.S.C. § 1401(1). This entitled him to receive at public expense specially designed instruction to meet his unique needs, as well as related transportation. § § 1401(16), 1401(17). The negotiations and other proceedings between the Town and the Panicos, thus far spanning more than 8 years, are too involved to relate in full detail; the following are the parts relevant to the issues on which we granted certiorari.

In the spring of 1979, Michael attended the third grade of the Memorial School, a public school in Burlington, Mass., under an IEP calling for individual tutoring by a reading specialist for one hour a day individual and group counseling. Michael's continued poor performance and the fact that Memorial School encompassed only grades K through 3 led to much discussion between his parents and Town school officials about his difficulties and his future schooling. Apparently the course of these discussions did not run smoothly; the upshot was that the Panicos and the Town agreed that Michael was generally of above average to superior intelligence, but had special educational needs calling for a placement in a school other than Memorial. They disagreed over the source and exact nature of Michael's learning difficulties, the Town believing the source and exact nature of Michael's learning difficulties, the Town believing the source to be emotional and the parents believing it to be neurological.

In late June, the Town presented the Panicos with a proposed IEP for Michael for the 1979-1980 academic year. It called for placing Michael in a highly structured class of six children with special academic and social needs, located at another Town public school, the Pine Glen School. On July 3, Michael's father rejected the proposed IEP and sought review under § 1415(b)(2) by respondent Massachusetts Department of Education's Bureau of Special Education Appeals (BSEA). A hearing was initially scheduled for August 8, but was apparently postponed in favor of a mediation session on August 17. The mediation efforts proved unsuccessful.

Meanwhile, the Panicos received the results of the latest expert evaluation of Michael by specialists at Massachusetts General Hospital, who opined that Michael's "emotional difficulties are secondary to a rather severe learning disorder characterized by perceptual difficulties" and recommended "a highly specialized setting for children with learning handicaps . . . such as the Carroll School, "a state approved private school for special education located in Lincoln, Mass. App. 26, 31. Believing that the Town's proposed placement of Michael in the Carroll School in mid-August at his own expense, and Michael started there in September.

The BSEA held several hearings during the fall of 1979, and in January 1980 the hearing officer decided that the Town's proposed placement at the Pine Glen School was inappropriate and that the Carroll School was "the least restrictive adequate program within the record" for Michael's educational needs. The hearing officer ordered the Town to pay for Michael's tuition and transportation of the Carroll School for the 1979-1980 school year, including reimbursement the Panicos for their expenditures on these items for the school year to date.

The Town sought judicial review of the State's administrative decision in the United States District Court for the District of Massachusetts pursuant to 20 U.S.C. § 1415(e)(2) and a parallel state statute, naming Mr. Panico and the State Department of Education as defendants. In November 1980, the District Court granted summary judgment against the Town on the state-law claim under a "sub-

stantial evidence" standard or review, entering a final judgment on this claim under Federal Rule of Civil Procedure 54(b). The Court also set the federal claim for future trial. The Court of Appeals vacated the judgment on he state-law claim, holding that review under the state statute was preempted by 1415(e)(2), which establishes a "preponderance of the evidence" standard of review and which permits the reviewing court to hear additional evidence.

In the meantime, the Town had refused to comply with the BSEA order, the District Court had denied a stay of that order, and the Panicos and the State had moved for preliminary injunctive relief. The State also had threatened outside of the judicial proceedings to freeze all of the Town's special education assistance unless it complied with the BSEA order. Apparently in response to this treat, the Town agreed in February 1981 to pay for Michael's Carroll School placement and related transportation for the 1980-1981 term, none of which had yet been paid, and to continue paying for these expenses until the case was decided. But the Town persisted in refusing to reimburse Mr. Panico for the expenses of the 1979-1980 school year. When the Court of Appeals disposed of the state claim, it also held that under this status quo, none of the parties could show irreparable injury and thus none was entitled to a preliminary injunction. The court reasoned that the Town had not shown that Mr. Panico would not be able to repay the tuition and related costs borne by the Town if he ultimately lost on the merits, and Mr. Panico had not shown that he would be irreparably harmed if not reimbursed immediately for past payments which might ultimately be determined to be the Town's responsibility.

On remand, the District Court entered an extension pretrial order on the Town's federal claim. In denying the Town summary judgment, it rules that 20 U.S.C. § 1415(e)(3) did not bar reimbursement despite the Town's insistence that the Panicos violated that provision by changing Michael's placement to the Carroll School during the pendency of the administrative proceedings. The court reasoned that § 1415(e)(3) concerned the physical placement of the child and not the right to tuition reimbursement or to procedural review of a contested IEP. The court also dealt with the problem that no IEP had been developed for the 1980-1981 or 1981-1982 school years. It held that its power under § 1415(e)(2) to grant appropriate" relief upon reviewing the contested IEP for the 1979-1980 school year included the power to grant relief for subsequent school years despite the lack of IEPs for those years. In this connection, however, the court interpreted the statute to place the burden of proof on the Town to upset the BSEA decision that the IEP was inappropriate for 1979-1980 and on the Panicos and the State to show that the relief for subsequent terms was appropriate.

After a 4-day trial, the District Court in August 1982 overturned the BSEA decision, holding that the appropriate 1979-1980 placement for Michael was the one proposed by the Town in the IEP and that the parents had failed to show that this placement would not also have been appropriate for subsequent years. Accordingly, the court concluded that the Town was "not responsible for the cost of Michael's education at the Carroll School for the academic years 1979-80 through 1982-82."

In contesting the Town's proposed form of judgment embodying the court's conclusion, Mr. Panico argued that, despite finally losing on the merits of the IEP in August 1982, he should be reimbursed for his expenditures in 1979-1980, that the Town should finish paying for the recently completed 1981-1982 term, and that he should not be required to reimburse the Town for its payments to date, apparently because the school terms in question fell within the pendency of the administrative and judicial review contemplated by § 1415(e)(2). The case was transferred to another District Judge and consolidated with two other cases to resolve similar issues concerning the reimbursement for expenditures during the pendency of review proceedings.

In a decision on the consolidated cases, the court rejected Mr. Panico's argument that the Carroll School was the "current educational placement" during the pendency of the review proceedings and thus that under § 1415(e)(3) the Town was obligated to maintain that placement. *Doe v. Anrig*, 561 F. Supp. 121 (1983). The court reasoned that the Panicos' unilateral action in placing Michael at the Carroll School without the Town's consent could not "confer thereon the imprimatur of continued placement," *id*. at 129, n. 5, even though strictly speaking there was no actual placement in effect during the summer of 1979 because all parties agreed Michael was finished with the Memorial School and the Town itself proposed in the IEP to transfer him to a new school in the fall.

The District Court next rejected an argument, apparently grounded at least in part on a state regulation, that the Panicos were entitled to rely on the BSEA decision upholding their placement contrary to the IEP, regardless of whether that decision were ultimately reversed by a court. With respect to the payments made by the Town after the BSEA decision, under the State's threat to cut off funding, the court criticized the State for resorting to extrajudicial pressure to enforce a decision subject to further review. Because this "was not a case where the town was legally obliged under section § 1415(e)(3) to continue payments preserving the status quo," the State's coercion could not be viewed as "the basis for a final decision on liability" and it could only be "regarded as other than wrongful . . . on the assumption that the payments were to be returned if the order was ultimately reversed." *Id*., at 130. The court entered a judgment ordering the Panicos to reimburse the Town for its payments for Michael's Carroll placement and related transportation in 1980-1981 and 1981-1982.

The Panicos appealed.

In a broad opinion, most of which we do not review, the Court of Appeals for the First Circuit remanded the case a second time. 736 F.2d 773 (1984). The court ruled, among other things, that the District Court erred in conducting a full trial *de novo*, that it gave insufficient weight to the BSEA findings, and that in other respects it did not properly evaluate the IEP. The court also considered several questions about the availability of reimbursement for interim placement. The Town argued that § 1415(e)(3) bars the Panicos from any reimbursement relief, even if on remand they were to prevail on the merits of the IEP, because of their unilateral change of Michael's placement during the pendency of the § 1415(e)(2) proceedings. The court held that such unilateral parental change of placement would not be "a bar to reimbursement of the parents if their actions are held to be appropriate at final judgment." *Id*., at 799. In dictum, the court suggested, however, that a lack of parental consultation with the Town or "attempt to achieve a negotiated compromise and agreement on a private placement," as contemplated by the Act, "may be taken into account in a district court's computation of an award of equitable reimbursement." *Ibid*. To guide the District Court on remand, the court stated that "whether to order reimbursement, and at what amount, is a question determined by balancing the equities." *Id*., at 801. The court also held that the Panicos' reliance on the BSEA decision would estop the Town from obtaining reimbursement "for the period of reliance and requires that where parents have paid the bill for the period, they must be reimbursed." *Ibid*.

The town filed a petition for a writ of certiorari in this Court challenging the decision of the Court of Appeals on numerous issues, including the scope of judicial review of the administrative decision and the relevance to the merits of an IEP of violations by local school authorities of the Act's procedural requirements. We granted certiorari, 469 U.S. __ (1984), only to consider the following two issues: whether the potential relief available under § 1415(e)(2) includes reimbursement to parents for private school tuition and related expenses, and whether § 1415(e)(3) bars such reimbursement to parents who reject a proposed IEP and place a child in a private school without the consent of local school authorities. We express no opinion on any of the many other views stated by the Court of Appeals.

Congress stated the purpose of the Act in these words:

> "to assure that all handicapped children have available to them . . . a free appropriate public education which emphasized special education and related services designed to meet their unique needs [and] to assure that the rights of handicapped children and their parents or guardians are protected." 20 U.S.C. § 1400(c).

The Act defines a "free appropriate public education" to mean:

> "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with [an] individualized education program." 20 U.S.C. § 1401(18).

To accomplish this ambitious objective, the Act provides federal money to state and local educational agencies that undertake to implement the substantive and procedural requirements of the Act. See *Hendrick Hudson District Bd. of Education v. Rowley*, 458 U.S. 176, 179-184 (1982).

The modus operandi of the Act is the already mentioned "individualized educational program." The IEP is in brief a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. § 1401(19). The IEP is to be developed jointly by a school official qualified in special education, the child's teacher, the parents or guardian, and, where appropriate, the child. In several places, the Act emphasizes the participation of the parents in developing the child's educational program and assessing its effectiveness. See §§ 1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(b)(2); 34 CFR § 300.345 (1984).

Apparently recognizing that this cooperative approach would not always produce a consensus between the school officials and the parents, and that in any disputes the school officials would have a natural advantage, Congress incorporated an elaborate set of what it labeled "procedural safeguards" to insure the full participation of the parents and proper resolution of substantive disagreements. Section 1415(b) entitles the parents "to examine all relevant records with respect to the identification, evaluation, and educational placement of the child," to obtain an independent educational evaluation of the child, to notice of any decision to initiate or change the identification, evaluation, or educational placement of the child, and to present complaints with respect to any of the above. The parents are further entitled to "an impartial due process hearing," which in the instant case was the BSEA hearing, to resolve their complaints.

The Act also provides for judicial review in state or federal court to "[a]ny party aggrieved by the findings and decision" made after the due process hearing. The Act confers on the reviewing court the following authority:

> "[T]he court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." § 1415(e)(2)

The first question on which we granted certiorari requires us to decide whether this grant of authority includes the power to order school authorities to reimburse parents for their expenditures on private special education for a child, if the court ultimately determines that such placement rather than a proposed IEP, is proper under the Act.

We conclude that the Act authorizes such reimbursement. The statute directs the court to "grant such relief as [it] determines is appropriate." The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be "appropriate." Absent other reference, the only possible interpretation is that the relief is to be "appropriate" in light of the purpose of the Act. As already noted, this is principally to provide handicapped children with "a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." The Act contemplates that such education will be provided where possible in regular public schools, with the child participating as much as possible in the same activities as non-handicapped children, but the Act also provides for placement in private schools at public expense where this is not possible. See § 1412(5); 34 CFR §§ 300.132, 300.227, 300.307(B), 300.347 (1984). In a case where a court determines that a private placement desired by the parents was proper under the Act and that an IEP calling for placement in a public school was inappropriate, it seems clear beyond cavil that "appropriate" relief would include a prospective injunction directing the school officials to develop and implement at public expense an IEP placing the child in a private school.

If the administrative and judicial review under the Act could be completed in a matter of weeks, rather than years, it would be difficult to imagine a case in which such prospective injunctive relief would not be sufficient. As this case so vividly demonstrates, however, the review process is ponderous. A final judicial decision on the merits of an IEP will in most instances come a year or more after the school term covered by that IEP has passed. In the meantime, the parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement.

If they choose the latter course, which conscientious parents who have adequate means and who are reasonably confident of their assessment normally would, it would be an empty victory to have a court tell them several years later that they were right but that these expenditures could not in a proper case be reimbursed by the school officials. If that were the case, the child's right to a free appropriate public education, the parents' right to participate fully in developing a proper IEP, and all of the procedural safeguards would be less than complete. Because Congress undoubtedly did not intend this result, we are confident that by empowering the court to grant "appropriate" relief Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case.

In this Court, the Town repeatedly characterizes reimbursement as "damages," but that simply is not the case. Reimbursement merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP. Such a post-hoc determination of financial responsibility was contemplated in the legislative history:

"If a parent contends that he or she has been forced, at that parent's own expense, to seek private schooling for the child because an appropriate program does not exist within the local educational agency responsible for the child's education and the local educational agency disagrees, that disagreement and **the question of who remains financially responsible** is a matter to which the due process procedures established under [the predecessor to 1415] appl[y]." S. Rep. No. 94-168, p. 32 91975) (emphasis added).

See 34 CFR § 300.403(b) (1984) (disagreements and question of financial responsibility subject to the due process procedures).

Regardless of the availability of reimbursement as a form of relief in a proper case, the Town maintains that the Panicos have waived any right they otherwise might have to reimbursement because they violated § 1415(e)(3), which provides:

> "During the pendency of any proceedings conducted pursuant to [1415], unless the State or local educational agency and the parents or guardian otherwise agree, the child remain in the then current educational placement of such child . . ."

We need not resolve the academic question of what Michael's "then current placement" was in the summer of 1979, when both the Town and the parents had agreed that a new school was in order. For the purposes of our decision, we assume that the Pine Glen School, proposed in the IEP, was Michael's current placement and, therefore, that the Panicos did "change" his placement after they had rejected the IEP and had set the administrative review in motion. In so doing, the Panicos contravened the conditional command of § 1415(e)(3) that "the child shall remain in the then current educational placement."

As an initial matter, we note that the section calls for agreement by **either** the **State or** the **local educational agency**. The BSES's decision in favor of the Panicos and the Carroll School placement would seem to constitute agreement by the State to the change of placement. The decision was issued in January 1980, so from then on the Panicos were no longer in violation of § 1415(e)(3). This conclusion, however, does not entirely resolve the instant dispute

because the Panicos are also seeking reimbursement for Michael's expenses during the fall of 1979, prior to the State's concurrence in the Carroll School placement.

We do not agree with the Town that a parental violation of § 1415(e)(3) constitutes a waiver of reimbursement. The provision says nothing about financial responsibility, waiver, or parental right to reimbursement at the conclusion of judicial proceedings. Moreover, if the provision is interpreted to cut off parental rights to reimbursement, the principal purpose of the Act will in many cases be defeated in the same way as if reimbursement were never available. As in this case, parents will often notice a child's learning difficulties while the child is in a regular public school program. If the school officials disagree with the need for special education or the adequacy of the public school's program to meet the child's needs, it is unlikely they will agree to an interim private school placement while the review process runs its course. Thus, under the Town's reading of § 1415(e)(3), the parents are forced to leave the child in what may turn out to be an inappropriate educational placement or to obtain the appropriate placement only by sacrificing any claim for reimbursement. The Act was intended to give handicapped children both an appropriate education and a free one; it should not be interpreted to defeat one or the other of those objectives.

The legislative history supports this interpretation, favoring a proper interim placement pending the resolution of disagreements over the IEP:

> "The conferees are cognizant that an impartial due process hearing may be required to assure that the rights of the child have been completely protected. We did feel, however, that the placement, or change of placement should not be unnecessarily delayed while long and tedious administrative appeals were being exhausted. Thus the conference adopted a flexible approach to try to meet the needs of both the child and the State." 121 Cong. Rec. 37412 (1975) (Sen. Stafford).

We think at least one purpose of § 1415(e)(3) was to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings. As we observed in *Rowley*, 458 U.S., at 192, the impetus for the Act came from two federal court decisions, *Pennsylvania Assn. for Retarded Children v. Commonwealth*, 334 F. Supp. 1257 (ED Pa. 1971), and 343 F. Supp. 279 (1972), and *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.C. 1972), which arose from the efforts of parents of handicapped children to prevent the exclusion or expulsion of their children from the public school. Congress was concerned about the apparently widespread practice of relegating handicapped children to private institutions or warehousing them in special classes. See § 1400(4); 34 CFR § 300.347(a) (1984). We also note that § 1415(e)(3) is located in a section detailing procedural safeguards which are largely for the benefit of the parents and the child.

This is not to say that § 1415(e)(3) has no effect on parents. While we doubt that this provision would authorize a court to order parents to leave their child in a particular placement, we think it operates in such a way that parents who unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk. If the courts ultimately determine that the IEP proposed by the school officials was appropriate, the parents would be barred from obtaining reimbursement for any interim period in which their child' placement violated § 1415(e)(3). This conclusion is supported by the agency's interpretation of the Act's application to private placements by the parents:

> (a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility . . .
>
> (b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under [§ 1415]. 34 CFR § 300.403 (1984).

We thus resolve the questions on which we granted certiorari; because the case is here in an interlocutory posture, we do not consider the estoppel ruling below or the specific equitable factors identified by the Court of Appeals for granting relief. We do think that the court was correct in concluding that "such relief as the court determines is appropriate," within the meaning of § 1415(e)(2), means that equitable considerations are relevant in fashioning relief.

The judgment of the Court of Appeals is **Affirmed**.

The Supreme Court of the United States

484 U. S. 305

HONIG, California Superintendent of Public Instruction,
Plaintiff
v.
DOE, et al.,
Respondents

No. 86-728

January 20, 1988

JUSTICE BRENNAN delivered the opinion of the Court as to holdings in number 1 and 2, in which Rehnquist, C.J., and White, Marshall, Blackmun, and Stevens, J.J joined. Rehquist, C.J., filed a concurring opinion. Scalia, J. filed a dissenting opinion, in which O'Connor, J. joined.

As a condition of federal financial assistance, the Education of the Handicapped Act requires States to ensure a "free appropriate public education" for all disabled children within their jurisdictions. In aid of this goal, the Act establishes a comprehensive system of procedural safeguards designed to ensure parental participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree. Among these safeguards is the so-called "stay-put" provision, which directs that a disabled child "shall remain in [his or her] then current educational placement" pending completion of any review proceedings, unless the parents and state or local educational agencies otherwise agree. 20 U.S.C. 1415(e)(3). Today we must decide whether, in the face of this statutory proscription, state or local school authorities may nevertheless unilaterally exclude disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities. In addition, we are called upon to decide whether a district court may, in the exercise of its equitable powers, order a State to provide educational services directly to a disabled child when the local agency fails to do so.

I

In the Education of the Handicapped Act (EHA or the Act), 84 Stat. 175, as amended, 20 U.S.C. 1400 *et seq.*, Congress sought "to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, [and] to assure that the rights of handicapped children and their parents or guardians are protected." 1400(c). When the law was passed in 1975, Congress had before it ample evidence that such legislative assurances were sorely needed: 21 years after this Court declared education to be "perhaps the most important function of state and local governments," *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), Congressional studies revealed that better than half of the Nation's eight million disabled children were not receiving appropriate educational services. 1400(b)(3). Indeed, one out of every eight of these children was excluded from the public school system altogether, 1400(b)(4); many others were simply "warehoused" in special classes or were neglectfully shepherded through the system until they were old enough to drop out. See H. R. Rep. No. 94-332, p. 2 (1975). Among the most poorly served of disabled students were emotionally disturbed children: Congressional statistics revealed that for the school year immediately preceding passage of the Act, the educational needs of 82 percent of all children with emotional disabilities went unmet. See S. Rep. No. 94-168, p. 8 (1975) (hereinafter S. Rep.).

Although these educational failings resulted in part from funding constraints, Congress recognized that the problem reflected more than a lack of financial resources at the state and local levels. Two federal-court decisions, which the Senate Report characterized as "landmark," see *id*., at 6, demonstrated that many disabled children were excluded pursuant to state statutes or local rules and policies, typically without any consultation with, or even notice to, their parents. See *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (DC 1972); *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (ED Pa. 1971), and 343 F. Supp. 279 (1972) (*PARC*). Indeed, by the time of the EHA's enactment, parents had brought legal challenges to similar exclusionary practices in 27 other states. See S. Rep., at 6.

In responding to these problems, Congress did not content itself with passage of a simple funding statute. Rather, the EHA confers upon disabled students an enforceable substantive right to public education in participating States, see *Board of Education of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176 (1982)[1], and conditions federal financial assistance upon a State's compliance with the substantive and procedural goals of the Act. Accordingly, States seeking to qualify for federal funds must develop policies assuring all disabled children the "right to a free appropriate public education," and must file with the Secretary of Education formal plans mapping out in detail the programs, procedures and timetables under which they will effectuate these policies. 20 U. S. C. 1412(1), 1413(a). Such plans must assure that, "to the maximum extent appropriate," States will "mainstream" disabled children, i.e., that they will educate them with children who are not disabled, and that they will segregate or otherwise remove such children from the regular classroom setting

"only when the nature or severity of the handicap is such that education in regular classes . . . cannot be achieved satisfactorily." 1412(5).

The primary vehicle for implementing these congressional goals is the "individualized educational program" (IEP), which the EHA mandates for each disabled child. Prepared at meetings between a representative of the local school district, the child's teacher, the parents or guardians, and, whenever appropriate, the disabled child, the IEP sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives. 1401(19). The IEP must be reviewed and, where necessary, revised at least once a year in order to ensure that local agencies tailor the statutorily required "free appropriate public education" to each child's unique needs. 1414(a)(5).

Envisioning the IEP as the centerpiece of the statute's education delivery system for disabled children, and aware that schools had all too often denied such children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness. See 1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(2). Accordingly, the Act establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate. These safeguards include the right to examine all relevant records pertaining to the identification, evaluation and educational placement of their child; prior written notice whenever the responsible educational agency proposes (or refuses) to change the child's placement or program; an opportunity to present complaints concerning any aspect of the local agency's provision of a free appropriate public education; and an opportunity for "an impartial due process hearing" with respect to any such complaints. 1415(b)(1), (2).

At the conclusion of any such hearing, both the parents and the local educational agency may seek further administrative review and, where that proves unsatisfactory, may file a civil action in any state or federal court. 1415(c), (e)(2). In addition to reviewing the administrative record, courts are empowered to take additional evidence at the request of either party and to "grant such relief as [they] determine[] is appropriate." 1415(e)(2). The "stay-put" provision at issue in this case governs the placement of a child while these often lengthy review procedures run their course. It directs that:

> "During the pendency of any proceedings conducted pursuant to [1415], unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child . . ." 1415(e)(3).

The present dispute grows out of the efforts of certain officials of the San Francisco Unified School District (SFUSD) to expel two emotionally disturbed children from school indefinitely for violent and disruptive conduct related to their disabilities. In November 1980, respondent John Doe assaulted another student at the Louise Lombard School, a developmental center for disabled children. Doe's April 1980 IEP identified him as a socially and physically awkward 17 year old who experienced considerable difficulty controlling his impulses and anger. Among the goals set out in his IEP was "[i]mprovement in [his] ability to relate to [his] peers [and to] cope with frustrating situations without resorting to aggressive acts." App. 17. Frustrating situations, however, were an unfortunately prominent feature of Doe's school career: physical abnormalities, speech difficulties, and poor grooming habits had made him the target of teasing and ridicule as early as the first grade, *id.*, at 23; his 1980 IEP reflected his continuing difficulties with peers, noting that his social skills had deteriorated and that he could tolerate only minor frustration before exploding. *Id.*, at 15-16.

On November 6, 1980, Doe responded to the taunts of a fellow student in precisely the explosive manner anticipated by his IEP: he choked the student with sufficient force to leave abrasions on the child's neck, and kicked out a school window while being escorted to the principal's office afterwards. *Id.*, at 208. Doe admitted his misconduct and the school subsequently suspended him for five days. Thereafter, his principal referred the matter to the SFUSD Student Placement Committee (SPC or Committee) with the recommendation that Doe be expelled. On the day the suspension was to end, the SPC notified Doe's mother that it was proposing to exclude her child permanently from SFUSD and was therefore extending his suspension until such time as the expulsion proceedings were completed.[2]2 The Committee further advised her that she was entitled to attend the November 25 hearing at which it planned to discuss the proposed expulsion.

After unsuccessfully protesting these actions by letter, Doe brought this suit against a host of local school officials and the state superintendent of public education. Alleging that the suspension and proposed expulsion violated the EHA, he sought a temporary restraining order cancelling the SPC hearing and requiring school officials to convene an IEP meeting. The District Judge granted the requested injunctive relief and further ordered defendants to provide

home tutoring for Doe on an interim basis; shortly thereafter, she issued a preliminary injunction directing defendants to return Doe to his then current educational placement at Louise Lombard School pending completion of the IEP review process. Doe re-entered school on December 15, 5 1/2 weeks, and 24 school days, after his initial suspension.

Respondent Jack Smith was identified as an emotionally disturbed child by the time he entered the second grade in 1976. School records prepared that year indicated that he was unable "to control verbal or physical outburst[s]" and exhibited a "[s]evere disturbance in relationships with peers and adults." *Id*., at 123. Further evaluations subsequently revealed that he had been physically and emotionally abused as an infant and young child and that, despite above average intelligence, he experienced academic and social difficulties as a result of extreme hyperactivity and low self-esteem. *Id*., at 136, 139, 155, 176. Of particular concern was Smith's propensity for verbal hostility; one evaluator noted that the child reacted to stress by "attempt[ing] to cover his feelings of low self worth through aggressive behavior [,] . . . primarily verbal provocations." *Id*., at 136.

Based on these evaluations, SFUSD placed Smith in a learning center for emotionally disturbed children. His grandparents, however, believed that his needs would be better served in the public school setting and, in September 1979, the school district acceded to their requests and enrolled him at A. P. Giannini Middle School. His February 1980 IEP recommended placement in a Learning Disability Group, stressing the need for close supervision and a highly structured environment. *Id*., at 111. Like earlier evaluations, the February 1980 IEP noted that Smith was easily distracted, impulsive, and anxious; it therefore proposed a half-day schedule and suggested that the placement be undertaken on a trial basis. *Id*., at 112, 115.

At the beginning of the next school year, Smith was assigned to a full-day program; almost immediately thereafter he began misbehaving. School officials met twice with his grandparents in October 1980 to discuss returning him to a half-day program; although the grandparents agreed to the reduction, they apparently were never apprised of their right to challenge the decision through EHA procedures. The school officials also warned them that if the child continued his disruptive behavior—which included stealing, extorting money from fellow students, and making sexual comments to female classmates—they would seek to expel him. On November 14, they made good on this threat, suspending Smith for five days after he made further lewd comments. His principal referred the matter to the SPC, which recommended exclusion from SFUSD. As it did in John Doe's case, the Committee scheduled a hearing and extended the suspension indefinitely pending a final disposition in the matter. On November 28, Smith's counsel protested these actions on grounds essentially identical to those raised by Doe, and the SPC agreed to cancel the hearing and to return Smith to a half-day program at A. P. Giannini or to provide home tutoring. Smith's grandparents chose the latter option and the school began home instruction on December 10; on January 6, 1981, an IEP team convened to discuss alternative placements.

After learning of Doe's action, Smith sought and obtained leave to intervene in the suit. The District Court subsequently entered summary judgment in favor of respondents on their EHA claims and issued a permanent injunction. In a series of decisions, the District Judge found that the proposed expulsions and indefinite suspensions of respondents for conduct attributable to their disabilities deprived them of their congressionally mandated right to a free appropriate public education, as well as their right to have that education provided in accordance with the procedures set out in the EHA. The District Judge therefore permanently enjoined the school district from taking any disciplinary action other than a two- or five-day suspension against any disabled child for disability-related misconduct, or from effecting any other change in the educational placement of any such child without parental consent pending completion of any EHA proceedings. In addition, the judge barred the State from authorizing unilateral placement changes and directed it to establish an EHA compliance-monitoring system or, alternatively, to enact guidelines governing local school responses to disability-related misconduct. Finally, the judge ordered the State to provide services directly to disabled children when, in any individual case, the State determined that the local educational agency was unable or unwilling to do so.

On appeal, the Court of Appeals for the Ninth Circuit affirmed the orders with slight modifications. *Doe v. Maher*, 793 F.2d 1470 (1986). Agreeing with the District Court that an indefinite suspension in aid of expulsion constitutes a prohibited "change in placement" under 1415(e)(3), the Court of Appeals held that the stay-put provision admitted of no "dangerousness" exception and that the statute therefore rendered invalid those provisions of the California Education Code permitting the indefinite suspension or expulsion of disabled children for misconduct arising out of their disabilities. The court concluded, however, that fixed suspensions of up to 30 school days did not fall within the reach of 1415(e)(3), and therefore upheld recent amendments to the state education code authorizing such suspensions.[3] Lastly, the court affirmed that portion of the injunction requiring the State to provide services directly to a disabled child when the local educational agency fails to do so.

Petitioner Bill Honig, California Superintendent of Public Instruction,[4] sought review in this Court, claiming

that the Court of Appeals' construction of the stay-put provision conflicted with that of several other courts of appeals which had recognized a dangerousness exception, compare *Doe v. Maher*, 793 F. 2d 1470 (1986) (case below), with *Jackson v. Franklin County School Board*, 765 F. 2d 535, 538 (CA5 1985); *Victoria L. v. District School Bd. of Lee County, Fla.*, 741 F.2d 369, 374 (CA 11 1984); *S-1 v. Turlington*, 635 F.2d 342, 348, n. 9 (CA5), cert. denied, 454 U.S. 1030 (1981), and that the direct services ruling placed an intolerable burden on the State. We granted certiorari to resolve these questions, 479 U.S. ___ (1987), and now affirm.

II

At the outset, we address the suggestion, raised for the first time during oral argument, that this case is moot.[5] Under Article III of the Constitution this Court may only adjudicate actual, ongoing controversies. *Nebraska Press Assn v. Stuart*, 427 U.S. 539, 546 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). That the dispute between the parties was very much alive when suit was filed, or at the time the Court of Appeals rendered its judgment, cannot substitute for the actual case or controversy that an exercise of this Court's jurisdiction requires. *Steffel v. Thompson*, 415 U.S. 452, 459, n. 10 (1974); *Roe v. Wade*, 410 U.S. 113, 125 (1973). In the present case, we have jurisdiction if there is a reasonable likelihood that respondents will again suffer the deprivation of EHA-mandated rights that gave rise to this suit. We believe that, at least with respect to respondent Smith, such a possibility does in fact exist and that the case therefore remains justiciable.

Respondent John Doe is now 24 years old and, accordingly, is no longer entitled to the protections and benefits of the EHA, which limits eligibility to disabled children between the ages of three and 21. See 20 U.S.C. Sec. 1412(2)(B). It is clear, therefore, that whatever rights to state educational services he may yet have as a ward of the State, see Tr. of Oral Arg. 23, 26, the Act would not govern the State's provision of those services, and thus the case is moot as to him. Respondent Jack Smith, however, is currently 20 and has not yet completed high school. Although at present he is not faced with any proposed expulsion or suspension proceedings, and indeed no longer even resides within the SFUSD, he remains a resident of California and is entitled to a "free appropriate public education" within that State. His claims under the EHA, therefore, are not moot if the conduct he originally complained of is "'capable of repetition, yet evading review.'" *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). Given Smith's continued eligibility for educational services under the EHA[6], the nature of his disability, and petitioner's insistence that all local school districts retain residual authority to exclude disabled children for dangerous conduct, we have little difficulty concluding that there is a "reasonable expectation," *ibid*., that Smith would once again be subjected to a unilateral "change in placement" for conduct growing out of his disabilities were it not for the state-wide injunctive relief issued below.

Our cases reveal that, for purposes of assessing the likelihood that state authorities will re-inflict a given injury, we generally have been unwilling to assume that the party seeking relief will repeat the type of misconduct that would once again place him or her at risk of that injury. See *Los Angeles v. Lyons*, 461 U.S. 95, 105-106 (1983) (no threat that party seeking injunction barring police use of chokeholds would be stopped again for traffic violation or other offense, or would resist arrest if stopped); *Hunt v. Murphy*, *supra*, at 484 (no reason to believe that party challenging denial of pre-trial bail "will once again be in a position to demand bail"); *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974) (unlikely that parties challenging discriminatory bond-setting, sentencing, and jury-fee practices would again violate valid criminal laws). No such reluctance, however, is warranted here. It is respondent Smith's very inability to conform his conduct to socially acceptable norms that renders him "handicapped" within the meaning of the EHA. See 20 U.S.C. 1401(1); 34 CFR 300.5(b)(8) (1987). As noted above, the record is replete with evidence that Smith is unable to govern his aggressive, impulsive behavior -- indeed, his notice of suspension acknowledged that "Jack's actions seem beyond his control." App. 152.

In the absence of any suggestion that respondent has overcome his earlier difficulties, it is certainly reasonable to expect, based on his prior history of behavioral problems, that he will again engage in classroom misconduct. Nor is it reasonable to suppose that Smith's future educational placement will so perfectly suit his emotional and academic needs that further disruptions on his part are improbable. Although Justice Scalia suggests in his dissent, post, at 3, that school officials are unlikely to place Smith in a setting where they cannot control his misbehavior, any efforts to ensure such total control must be tempered by the school system's statutory obligations to provide respondent with a free appropriate public education in "the least restrictive environment," 34 CFR 300.552(d) (1987); to educate him, "to the maximum extent appropriate," with children who are not disabled, 20 U.S.C. 1412(5); and to consult with his parents or guardians, and presumably with respondent himself, before choosing a placement. 1401(19), 1415(b). Indeed, it is only by ignoring these mandates, as well as Congress' unquestioned desire to wrest from school officials their former unilateral authority to determine the placement of emotionally disturbed children, see *infra*, at 15-16, that the dissent can so readily assume that respondent's future placement will satisfactorily prevent any further dangerous conduct on his part. Overarching these statutory obligations, moreover, is the inescapable fact that the preparation of an IEP, like any other effort at predicting human behavior, is an inexact science at best.

Given the unique circumstances and context of this case, therefore, we think it reasonable to expect that respondent will again engage in the type of misconduct that precipitated this suit.

We think it equally probable that, should he do so, respondent will again be subjected to the same unilateral school action for which he initially sought relief. In this regard, it matters not that Smith no longer resides within the SFUSD. While the actions of SFUSD officials first gave rise to this litigation, the District Judge expressly found that the lack of a state policy governing local school responses to disability-related misconduct had led to, and would continue to result in, EHA violations, and she therefore enjoined the state defendant from authorizing, among other things, unilateral placement changes. App. 247-248. She of course also issued injunctions directed at the local defendants, but they did not seek review of those orders in this Court. Only petitioner, the State Superintendent of Public Instruction, has invoked our jurisdiction, and he now urges us to hold that local school districts retain unilateral authority under the EHA to suspend or otherwise remove disabled children for dangerous conduct. Given these representations, we have every reason to believe that were it not for the injunction barring petitioner from authorizing such unilateral action, respondent would be faced with a real and substantial threat of such action in any California school district in which he enrolled. Cf. *Los Angeles v. Lyons, supra*, at 106 (respondent lacked standing to seek injunctive relief because he could not plausibly allege that police officers choked all persons whom they stopped, or that the City "AUTHORIZED police officers to act in such manner" (emphasis added)). Certainly, if the SFUSD's past practice of unilateral exclusions was at odds with state policy and the practice of local school districts generally, petitioner would not now stand before us seeking to defend the right of all local school districts to engage in such aberrant behavior.[7]

We have previously noted that administrative and judicial review under the EHA is often "ponderous," *Burlington School Committee v. Massachusetts Dept. of Education*, 471 U.S. 359, 370 (1985), and this case, which has taken seven years to reach us, amply confirms that observation. For obvious reasons, the misconduct of an emotionally disturbed or otherwise disabled child who has not yet reached adolescence typically will not pose such a serious threat to the well-being of other students that school officials can only ensure classroom safety by excluding the child. Yet, the adolescent student improperly disciplined for misconduct that does pose such a threat will often be finished with school or otherwise ineligible for EHA protections by the time review can be had in this Court. Because we believe that respondent Smith has demonstrated both "a sufficient likelihood that he we will again be wronged in a similar way," *Los Angeles v. Lyons*, 461 U.S., at 111, and that any resulting claim he may have for relief will surely evade our review, we turn to the merits of his case.

III

The language of 1415(e)(3) is unequivocal. It states plainly that during the pendency of any proceedings initiated under the Act, unless the state or local educational agency and the parents or guardian of a disabled child otherwise agree, "the child **shall** remain in the then current educational placement." 1415(e)(3) (emphasis added). Faced with this clear directive, petitioner asks us to read a "dangerousness" exception into the stay-put provision on the basis of either of two essentially inconsistent assumptions: first, that Congress thought the residual authority of school officials to exclude dangerous students from the classroom too obvious for comment; or second, that Congress inadvertently failed to provide such authority and this Court must therefore remedy the oversight. Because we cannot accept either premise, we decline petitioner's invitation to re-write the statute.

Petitioner's arguments proceed, he suggests, from a simple, common-sense proposition: Congress could not have intended the stay-put provision to be read literally, for such a construction leads to the clearly unintended, and untenable, result that school districts must return violent or dangerous students to school while the often lengthy EHA proceedings run their course. We think it clear, however, that Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to "self-help," and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts.

As noted above, Congress passed the EHA after finding that school systems across the country had excluded one out of every eight disabled children from classes. In drafting the law, Congress was largely guided by the recent decisions in *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (1972), and *PARC*, 343 F. Supp. 279 (1972), both of which involved the exclusion of hard-to-handle disabled students. *Mills* in particular demonstrated the extent to which schools used disciplinary measures to bar children from the classroom. There, school officials had labeled four of the seven minor plaintiffs "behavioral problems," and had excluded them from classes without providing any alternative education to them or any notice to their parents. 348 F. Supp., at 869-870. After finding that this practice was not limited to the named plaintiffs but affected in one way or another an estimated class of 12,000 to 18,000 disabled students, *id*., at 868-869, 875, the District Court enjoined

future exclusions, suspensions, or expulsions "on grounds of discipline." *Id*., at 880.

Congress attacked such exclusionary practices in a variety of ways. It required participating States to educate all disabled children, regardless of the severity of their disabilities, 20 U.S.C. 1412(2)(c), and included within the definition of "handicapped" those children with serious emotional disturbances. 1401(1). It further provided for meaningful parental participation in all aspects of a child's educational placement, and barred schools, through the stay-put provision, from changing that placement over the parent's objection until all review proceedings were completed. Recognizing that those proceedings might prove long and tedious, the Act's drafters did not intend 1415(e)(3) to operate inflexibly, see 121 Cong. Rec. 37412 (1975) (remarks of Sen. Stafford), and they therefore allowed for interim placements where parents and school officials are able to agree on one. Conspicuously absent from 1415(e)(3), however, is any emergency exception for dangerous students. This absence is all the more telling in light of the injunctive decree issued in *PARC*, which permitted school officials unilaterally to remove students in "'extraordinary circumstances.'" 343 F. Supp., at 301. Given the lack of any similar exception in *Mills*, and the close attention Congress devoted to these "landmark" decisions, see S. Rep., at 6, we can only conclude that the omission was intentional; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create.

Our conclusion that 1415(e)(3) means what it says does not leave educators hamstrung. The Department of Education has observed that, "[w]hile the [child's] placement may not be changed [during any complaint proceeding], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." Comment following 34 CFR 300.513 (1987). Such procedures may include the use of study carrels, time-outs, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days.[8] This authority, which respondent in no way disputes, not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a "cooling down" period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts under 1415(e)(2), which empowers courts to grant any appropriate relief.

Petitioner contends, however, that the availability of judicial relief is more illusory than real, because a party seeking review under 1415(e)(2) must exhaust time-consuming administrative remedies, and because under the Court of Appeals' construction of 1415(e)(3), courts are as bound by the stay-put provision's "automatic injunction," 793 F.2d, at 1486, as are schools.[9] It is true that judicial review is normally not available under 1415(e)(2) until all administrative proceedings are completed, but as we have previously noted, parents may by-pass the administrative process where exhaustion would be futile or inadequate. See *Smith v. Robinson*, 468 U.S. 992, 1014, n. 17 (1984) (citing cases); see also 121 Cong. Rec. 37416 (1975) (remarks of Sen. Williams) ("[E]xhaustion . . . should not be required . . . in cases where such exhaustion would be futile either as a legal or practical matter"). While may of the EHA's procedural safeguards protect the rights of parents and children, schools can and do seek redress through the administrative review process, and we have no reason to believe that Congress meant to require schools alone to exhaust in all cases, no matter how exigent the circumstances. The burden in such cases, of course, rests with the school to demonstrate the futility or inadequacy of administrative review, but nothing in 1415(e)(2) suggests that schools are completely barred from attempting to make such a showing. Nor do we think that 1415(e)(3) operates to limit the equitable powers of district courts such that they cannot, in appropriate cases, temporarily enjoin a dangerous disabled child from attending school.

As the EHA's legislative history makes clear, one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by **schools**, not courts, and one of the purposes of 1415(e)(3), therefore, was "to prevent **school** officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings." *Burlington School Committee v. Massachusetts Dept. of Education*, 471 U.S., at 373 (emphasis added). The stay-put provision in no way purports to limit or pre-empt the authority conferred on courts by 1415(e)(2), see *Doe v. Brookline School Committee*, 722 F.2d 910, 917 (CA1 1983); indeed, it says nothing whatever about judicial power.

In short, then, we believe that school officials are entitled to seek injunctive relief under 1415(e)(2) in appropriate cases. In any such action, 1415(e)(3) effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others. In the present case, we are satisfied that the District Court, in enjoining the state and local defendants from indefinitely suspending respondent or otherwise unilaterally altering his then current placement, properly balanced respondent's interest in receiving a free appropriate public education in accordance with the

procedures and requirements of the EHA against the interests of the state and local school officials in maintaining a safe learning environment for all their students.[10]

IV

We believe the courts below properly construed and applied 1415(e)(3), except insofar as the Court of Appeals held that a suspension in excess of 10 school days does not constitute a "change in placement."[11] We therefore affirm the Court of Appeals' judgment on this issue as modified herein. Because we are equally divided on the question whether a court may order a State to provide services directly to a disabled child where the local agency has failed to do so, we affirm the Court of Appeals' judgment on this issue as well.

Affirmed.

Chief Justice Rehnquist, **concurring**.

I write separately on the mootness issue in this case to explain why I have joined Part II of the Court's opinion, and why I think reconsideration of our mootness jurisprudence may be in order when dealing with cases decided by this Court.

The present rule in federal cases is that an actual controversy must exist at all stages of appellate review, not merely at the time the complaint is filed. This doctrine was clearly articulated in *United States v. Munsingwear*, 340 U.S. 36 (1950), in which Justice Douglas noted that "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id*., at 39. The rule has been followed fairly consistently over the last 30 years. See, e.g., *Preiser v. Newkirk*, 422 U.S. 395 (1975); *SEC v. Medical Committee for Human Rights*, 404 U.S. 403 (1972).

All agree that this case was "very much alive," *ante*, at 10, when the action was filed in the District Court, and very probably when the Court of Appeals decided the case. It is supervening events since the decision of the Court of Appeals which have caused the dispute between the majority and the dissent over whether this case is moot. Therefore, all that the Court actually holds is that these supervening events do not deprive this Court of the authority to hear the case. I agree with that holding, and would go still further in the direction of relaxing the test of mootness where the events giving rise to the claim of mootness have occurred after our decision to grant certiorari or to note probable jurisdiction.

The Court implies in its opinion, and the dissent expressly states, that the mootness doctrine is based upon Art. III of the Constitution. There is no doubt that our recent cases have taken that position. See *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546 (1976); *Preiser v. Newkirk, supra*, at 401; *Sibron v. New York*, 392 U.S. 40, 57 (1968); *Liner v. Jafco, Inc*., 375 U.S. 301, 306, n. 3 (1964). But it seems very doubtful that the earliest case I have found discussing mootness, *Mills v. Green*, 159 U.S. 651 (1895), was premised on constitutional constraints; Justice Gray's opinion in that case nowhere mentions Art. III.

If it were indeed Art. III which—by reason of its requirement of a case or controversy for the exercise of federal judicial power—underlies the mootness doctrine, the "capable of repetition, yet evading review" exception relied upon by the Court in this case would be incomprehensible. Article III extends the judicial power of the United States only to cases and controversies; it does not except from this requirement other lawsuits which are "capable of repetition, yet evading review." If our mootness doctrine were forced upon us by the case or controversy requirement of Art. III itself, we would have no more power to decide lawsuits which are "moot" but which also raise questions which are capable of repetition but evading review than we would to decide cases which are "moot" but raise no such questions.

The exception to mootness for cases which are "capable of repetition, yet evading review," was first stated by this Court in *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498 (1911). There the Court enunciated the exception in the light of obvious pragmatic considerations, with no mention of Art. III as the principle underlying the mootness doctrine:

> "The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short-term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress." *Id*., at 515.

The exception was explained again in *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969):

> "The problem is therefore 'capable of repetition, yet evading review.' The need for its resolution thus reflects a continuing controversy in the federal-state area where our 'one man, one vote' decisions have thrust" (citation omitted).

It is also worth noting that *Moore v. Ogilvie* involved a question which had been mooted by an election, just as did *Mills v. Green* some 70 years earlier. But at the time of *Mills*, the case originally enunciating the mootness doctrine, there was no thought of any exception for cases which were "capable of repeition, yet evading review."

The logical conclusion to be drawn from these cases,

and from the historical development of the principle of mootness, is that while an unwillingness to decide moot cases may be connected to the case or controversy requirement of Art. III, it is an attenuated connection that may be overridden where there are strong reasons to override it. The "capable of repetition, yet evading review" exception is an example. So too is our refusal to dismiss as moot those cases in which the defendant voluntarily ceases, at some advanced stage of the appellate proceedings, whatever activity prompted the plaintiff to seek an injunction. See, e.g., *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289, n. 10 (1982); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953).

I believe that we should adopt an additional exception to our present mootness doctrine for those cases where the events which render the case moot have supervened since our grant of certiorari or noting of probable jurisdiction in the case. Dissents from denial of certiorari in this Court illustrate the proposition that the roughly 150 or 160 cases which we decide each year on the merits are less than the number of cases warranting review by us if we are to remain, as Chief Justice Taft said many years ago, "the last word on every important issue under the Constitution and the statutes of the United States." But these unique resources—the time spent preparing to decide the case by reading briefs, hearing oral argument, and conferring—are squandered in every case in which it becomes apparent after the decisional process is underway that we may not reach the question presented. To me the unique and valuable ability of this Court to decide a case—we are, at present, the only Art. III court which can decide a federal question in which a way as to bind all other courts—is a sufficient reason either to abandon the doctrine of mootness altogether in cases which this Court has decided to review, or at least to relax the doctrine of mootness in such a manner as the dissent accuses the majority of doing here. I would leave the mootness doctrine as established by our cases in full force and effect when applied to the earlier stages of a lawsuit, but I believe that once this Court has undertaken a consideration of a case, an exception to that principle is just as much warranted as where a case is "capable of repetition, yet evading review."

Justice Scalia, with whom Justice O'Connor joins, **dissenting.**

Without expressing any views on the merits of this case, I respectfully dissent because in my opinion we have no authority to decide it. I think the controversy is moot.

I

The Court correctly acknowledges that we have no power under Art. III of the Constitution to adjudicate a case that no longer presents an actual, ongoing dispute between the named parties. Ante, at 10, citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). Here, there is obviously no present controversy between the parties, since both respondents are no longer in school and therefore no longer subject to a unilateral "change in placement." The Court concedes mootness with respect to respondent John Doe, who is now too old to receive the benefits of the Education of the Handicapped Act (EHA). *Ante*, at 11. It concludes, however, that the case is not moot as to respondent Jack Smith, who has two more years of eligibility but is no longer in the public schools, because the controversy is "capable of repetition, yet evading review." *Ante*, at 11-16.

Jurisdiction on the basis that a dispute is "capable of repetition, yet evading review" is limited to the "exceptional situatio[n]," *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983), where the following two circumstances simultaneously occur: "'(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.'" *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam), quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam). The second of these requirements is not met in this case.

For there to be a "reasonable expectation" that Smith will be subjected to the same action again, that event must be a "demonstrated probability." *Murphy v. Hunt*, *supra*, at 482, 483; *Weinstein v. Bradford, supra*, at 149. I am surprised by the Court's contention, fraught with potential for future mischief, that "reasonable expectation" is satisfied by something less than "demonstrated probability." Ante, at 11-12, n. 6. No one expects that to happen which he does not think probable; and his expectation cannot be shown to be reasonable unless the probability is demonstrated. Thus, as the Court notes, our cases recite the two descriptions side by side ("a 'reasonable expectation' or a 'demonstrated probability,'" Hunt, supra, at 482). The Court asserts, however, that these standards are "described . . . in the disjunctive," ante, at 11-12, n. 6 -- evidently believing that the conjunction "or" has no accepted usage except a disjunctive one, i.e., "expressing an alternative, contrast, or opposition," *Webster's Third New International Dictionary* 651 (1981). In fact, however, the conjunction is often used "to indicate . . . (3) the synonymous, equivalent, or substitutive character of two words or phrases fell over a precipice [or] cliff the off [or] far side lessen [or] abate; (4) correction or greater exactness of phrasing or meaning these essays, [or] rather rough sketches the present king had no children--[or] no legitimate children . . ." *Id.*, at 1585. It is obvious that in saying "a reasonable expectation or a demonstrated probability" we have used the conjunction in one of the latter, or nondisjunctive, senses. Otherwise (and according to the Court's exegesis), we would have been saying that a contro-

versy is sufficiently likely to recur if either a certain degree of probability exists or a higher degree of probability exists. That is rather like a statute giving the vote to persons who are "18 or 21." A bare six years ago, the author of today's opinion and one other member of the majority plainly understood "reasonable expectation" and "demonstrated probability" to be synonymous. Cf. Edgar v. MITE Corp., 457 U.S. 624, 662, and n. 11 (1982) (Marshall, J., dissenting, joined by Brennan, J.) (using the two terms here at issue interchangeably, and concluding that the case is moot because "there is no DEMONSTRATED PROBABILITY that the State will have occasion to prevent MITE from making a takeover offer for some other corporation") (emphasis added).

The prior holdings cited by the Court in a footnote, see *ante*, at 12, n. 6, offer no support for the novel proposition that less than a probability of recurrence is sufficient to avoid mootness. In *Burlington Northern R. Co. v. Maintenance of Way Employees*, __ U.S. __ , __, n. 4 (1987), we found that the same railroad and union were "reasonably likely" to find themselves in a recurring dispute over the same issue. Similarly, in *California Coastal Comm'n v. Granite Rock Co.*, __ U.S. ___, ___ (1987), we found it "likely" that the plaintiff mining company would submit new plans which the State would seek to subject to its coastal permit requirements. See *Webster's Third New International Dictionary* 1310 (1981) (defining "likely" as "of such a nature or so circumstanced as to make something probable[] . . . seeming to justify belief or expectation[] . . . in all probability"). In the cases involving exclusion orders issued to prevent the press from attending criminal trials, we found that "[i]t can reasonably be assumed" that a news organization covering the area in which the defendant court sat will again be subjected to that court's closure rules. *Press-Enterprise Co. v. Superior Court of Cal., Riverside County*, __ U.S. __, __ (1986); *Globe Newspaper Co. v. Superior Court of Norfolk County*, 457 U.S. 596, 603 (1982). In these and other cases, one may quarrel, perhaps, with the accuracy of the Court's probability assessment; but there is no doubt that assessment was regarded as necessary to establish jurisdiction.

In *Roe v. Wade*, 410 U.S. 113, 125 (1973), we found that the "human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete," so that "pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied." *Roe*, at least one other abortion case, see *Doe v. Bolton*, 410 U.S. 179, 187 (1973), and some of our election law decisions, see *Rosario v. Rockefeller*, 410 U.S. 752, 756, n. 5 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 333, n. 2 (1972), differ from the body of our mootness jurisprudence not in accepting less than a probability that the issue will recur, in a manner evading review, between the same parties; but in dispensing with the same-party requirement entirely, focusing instead upon the great likelihood that the issue will recur between the defendant and the other members of the public at large without ever reaching us. Arguably those cases have been limited to their facts, or to the narrow areas of abortion and election rights, by our more recent insistence that, at least in the absence of a class action, the "capable of repetition" doctrine applies only where "there [is] a reasonable expectation that the SAME COMPLAINING PARTY would be subjected to the same action again." *Hunt*, 455 U.S., at 482 (emphasis added), quoting *Weinstein*, 423 U.S., at 149; see *Burlington Northern R. Co., supra*, at __, n. 4; *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 187 (1979). If those earlier cases have not been so limited, however, the conditions for their application do not in any event exist here. There is no extraordinary improbability of the present issue's reaching us as a traditionally live controversy. It would have done so in this very case if Smith had not chosen to leave public school. In sum, on any analysis, the proposition the Court asserts in the present case—that probability need not be shown in order to establish the "same-party-recurrence" exception to mootness—is a significant departure from settled law.

II

If our established mode of analysis were followed, the conclusion that a live controversy exists in the present case would require a demonstrated probability that all of the following events will occur: (1) Smith will return to public school; (2) he will be placed in an educational setting that is unable to tolerate his dangerous behavior; (3) he will again engage in dangerous behavior; and (4) local school officials will again attempt unilaterally to change his placement and the state defendants will fail to prevent such action. The Court spends considerable time establishing that the last two of these events are likely to recur, but relegates to a footnote its discussion of the first event, upon which all others depend, and only briefly alludes to the second. Neither the facts in the record, nor even the extra-record assurances of counsel, establish a demonstrated probability of either of them.

With respect to whether Smith will return to school, at oral argument Smith's counsel forthrightly conceded that she "cannot represent whether in fact either of these students will ask for further education from the Petitioners." Tr. of Oral Arg. 23. Rather, she observed, respondents would "look to [our decision in this case] to find out what will happen after that." *Id.*, at 23-24. When pressed, the most counsel would say was that, in her view, the 20-year-old Smith could seek to return to public school because he has not graduated, he is handicapped, and he has a right to an education. *Id.*, at 27. I do not perceive the principle that would enable us to leap from the proposition that Smith could reenter public school to the conclusion that it is a demonstrated probability he will do so.

The Court nevertheless concludes that "there is at the very least a reasonable expectation" that Smith will return to school. *Ante*, at 12, n. 6. I cannot possibly dispute that on the basis of the Court's terminology. Once it is accepted that a "reasonable expectation" can exist without a demonstrable probability that the event in question will occur, the phrase has been deprived of all meaning, and the Court can give it whatever application it wishes without fear of effective contradiction. It is worth pointing out, however, how slim are the reeds upon which this conclusion of "reasonable expectation" (whatever that means) rests. The Court bases its determination on three observations from the record and oral argument. First, it notes that Smith has been pressing this lawsuit since 1980. It suffices to observe that the equivalent argument can be made in every case that remains active and pending; we have hitherto avoided equating the existence of a case or controversy with the existence of a lawsuit. Second, the Court observes that Smith has "as great a need of a high school education and diploma as any of his peers." *Ibid*. While this is undoubtedly good advice, it hardly establishes that the 20-year-old Smith is likely to return to high school, much less to public high school. Finally, the Court notes that counsel "advises us that [Smith] is awaiting the outcome of this case to decide whether to pursue his degree." *Ibid*. Not only do I not think this establishes a current case or controversy, I think it a most conclusive indication that no current case or controversy exists. We do not sit to broaden decision-making options, but to adjudicate the lawfulness of acts that have happened or, at most, are about to occur.

The conclusion that the case is moot is reinforced, moreover, when one considers that, even if Smith does return to public school, the controversy will still not recur unless he is again placed in an educational setting that is unable to tolerate his behavior. It seems to me not only not demonstrably probable, but indeed quite unlikely, given what is now known about Smith's behavioral problems, that local school authorities would again place him in an educational setting that could not control his dangerous conduct, causing a suspension that would replicate the legal issues in this suit. The majority dismisses this further contingency by noting that the school authorities have an obligation under the EHA to provide an "appropriate" education in "the least restrictive environment." *Ante*, at 14. This means, however, the least restrictive environment appropriate for the particular child. The Court observes that "the preparation of an [individualized educational placement]" is "an inexact science at best," *ante*, at 14, thereby implying that the school authorities are likely to get it wrong. Even accepting this assumption, which seems to me contrary to the premises of the Act, I see no reason further to assume that they will get it wrong by making the same mistake they did last time—assigning Smith to too unrestrictive an environment, from which he will thereafter be suspended—rather than by assigning him to too restrictive an environment. The latter, which seems to me more likely than the former (although both combined are much less likely than a correct placement), might produce a lawsuit, but not a lawsuit involving the issues that we have before us here.

III

The Chief Justice joins the majority opinion on the ground, not that this case is not moot, but that where the events giving rise to the mootness have occurred after we have granted certiorari we may disregard them, since mootness is only a prudential doctrine and not part of the "case or controversy" requirement of Art. III. I do not see how that can be. There is no more reason to intuit that mootness is merely a prudential doctrine than to intuit that initial standing is. Both doctrines have equivalently deep roots in the common-law understanding, and hence the constitutional understanding of what makes a matter appropriate for judicial disposition. See *Flast v. Cohen*, 392 U.S. 83, 95 (1968) (describing mootness and standing as various illustrations of the requirement of "justiciability" in Art. III).

The Chief Justice relies upon the fact that an 1895 case discussing mootness, *Mills v. Green*, 159 U.S. 651 (1895), makes no mention of the Constitution. But there is little doubt that the Court believed the doctrine called into question the Court's power and not merely its prudence, for (in an opinion by the same Justice who wrote *Mills*) it had said two years earlier:

"[T]he court is not EMPOWERED to decide moot questions or abstract propositions, or to declare . . . principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel . . . can enlarge the POWER, or affect the duty, of the court in this regard." *California v. San Pablo & Tulare R. Co.*, 149 U.S. 308, 314 (1893) (Gray, J.) (emphasis added).

If it seems peculiar to the modern lawyer that our 19th century mootness cases make no explicit mention of Art. III, that is a peculiarity shared with our 19th century, and even our early 20th century, standing cases. As late as 1919, in dismissing a suit for lack of standing we said simply:

> "Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it." *Blaire v. United States,* 250 U.S. 273, 279 (1919).

See also, e.g., *Standard Stock Food Co. v. Wright*, 225 U.S. 540, 550 (1912); *Southern Ry. Co. v. King*, 217 U.S. 524, 534 (1910); *Turpin v. Lemon*, 187 U.S. 51, 60-61 (1902); *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 409 (1900). The same is also true of our early cases dismissing actions

lacking truly adverse parties, that is, collusive actions. See, e.g., *Cleveland v. Chamberlain*, 1 Black 419, 425-426 (1862); *Lord v. Veazie*, 8 How. 251, 254-256 (1850). The explanation for this ellipsis is that the courts simply chose to refer directly to the traditional, fundamental limitations upon the powers of common-law courts, rather than referring to Art. III which in turn adopts those limitations through terms ("The judicial Power"; "Cases"; "Controversies") that have virtually no meaning except by reference to that tradition. The ultimate circularity, coming back in the end to tradition, is evident in the statement by Justice Field:

> "By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case." *In re Pacific R. Commn.*, 32 F. 241, 255 (CCND Cal. 1887).

See also 2 M. Farrand, *Records of the Federal Convention of 1787*, p. 430 (rev. ed. 1966):

> "Docr. Johnson moved to insert the words 'this Constitution and the' before the word 'laws'
>
> "Mr. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising Under the Constitution, & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.
>
> "The motion of Docr. Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature—"

In sum, I cannot believe that it is only our prudence, and nothing inherent in the understood nature of "The judicial Power," U.S. Const., Art. III, 1, that restrains us from pronouncing judgment in a case that the parties have settled, or a case involving a nonsurviving claim where the plaintiff has died, or a case where the law has been changed so that the basis of the dispute no longer exists, or a case where conduct sought to be enjoined has ceased and will not recur. Where the conduct has ceased for the time being but there is a demonstrated probability that it will recur, a real-life controversy between parties with a personal stake in the outcome continues to exist, and Art. III is no more violated than it is violated by entertaining a declaratory judgment action. But that is the limit of our power. I agree with The Chief Justice to this extent: the "yet evading review" portion of our "capable of repetition yet evading review" test is prudential; whether or not that criterion is met, a justiciable controversy exists. But the probability of recurrence between the same parties is essential to our jurisdiction as a court, and it is that deficiency which the case before us presents.

* * * *

It is assuredly frustrating to find that a jurisdictional impediment prevents us from reaching the important merits issues that were the reason for our agreeing to hear this case. But we cannot ignore such impediments for purposes of our appellate review without simultaneously affecting the principles that govern district courts in their assertion or retention of original jurisdiction. We thus do substantial harm to a governmental structure designed to restrict the courts to matters that actually affect the litigants before them.

Endnotes

1 Congress' earlier efforts to ensure that disabled students received adequate public education had failed in part because the measures it adopted were largely hortatory. In the 1966 amendments to the Elementary and Secondary Education Act of 1965, Congress established a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects . . . for the education of handicapped children." Pub. L. 89-750, 161, 80 Stat. 1204. It repealed that program four years later and replaced it with the original version of the Education of the Handicapped Act, Pub. L. 91-230, 84 Stat. 175, Part B of which contained a similar grant program. Neither statute, however, provided specific guidance as to how States were to use the funds, nor did they condition the availability of the grants on compliance with any procedural or substantive safeguards. In amending the EHA to its present form, Congress rejected its earlier policy of "merely establish[ing] an unenforceable goal requiring all children to be in school." 121 Cong. Rec. 37417 (1975) (remarks of Sen. Schweiker). Today, all 50 states and the District of Columbia receive funding assistance under the EHA. U.S. Dept. of Education, Ninth Annual Report to Congress on Implementation of Education of the Handicapped Act (1987).

2 California law at the time empowered school principals to suspend students for no more than five consecutive school days, Cal. Educ. Code Ann. 48903(a) (West 1978), but permitted school districts seeking to expel a suspended student to "extend the suspension until such time as [expulsion proceedings were completed]; provided, that [it] has determined that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process." 48903(h). The State subsequently amended the law to permit school districts to impose longer initial periods of suspension. See n. 3, *infra*.

3 In 1983, the State amended its Education Code to permit school districts to impose initial suspensions of 20, and in certain circumstances, 30 school days. Cal. Educ. Code Ann.

48912(a), 48903 (West Supp. 1988). The legislature did not alter the indefinite suspension authority which the SPC exercised in this case, but simply incorporated the earlier provision into a new section. See 48911(g).

4 At the time respondent Doe initiated this suit, Wilson Riles was the California Superintendent of Public Instruction. Petitioner Honig succeeded him in office.

5 We note that both petitioner and respondents believe that this case presents a live controversy. See Tr. of Oral Arg. 6, 27-31. Only the United States, appearing as amicus curiae, urges that the case is presently nonjusticiable. *Id*., at 21.

6 Notwithstanding respondent's undisputed right to a free appropriate public education in California, Justice Scalia argues in dissent that there is no "demonstrated probability" that Smith will actually avail himself of that right because his counsel was unable to state affirmatively during oral argument that her client would seek to re-enter the state school system. See post, at 2. We believe the dissent overstates the stringency of the "capable of repetition" test. Although Justice Scalia equates "reasonable expectation" with "demonstrated probability," the very case he cites for this proposition described these standards in the distinctive, see *Murphy v. Hunt*, 455 U.S., at 482 ("[T]here must be a 'reasonable expectation' OR a 'demonstrated probability' that the same controversy will recur" (emphasis added)), and in numerous cases decided both before and since *Hunt* we have found controversies capable of repetition based on expectations that, while reasonable, were hardly demonstrably probable. See e.g., *Burlington Northern R. Co. v. Maintenance of Way Employees*, 481 U.S. ____, ___, n. 4 (1987) (parties "reasonably likely" to find themselves in future disputes over collective bargaining agreement); *California Coastal Comm'n v. Granite Rock Co*., 480 U.S. ____, ____ (1987) (O'Connor, J.) ("likely" that respondent would again submit mining plans that would trigger contested state permit requirement); *Press-Enterprise Co. v. Superior Court of Cal., Riverside County*, 478 U.S. 1, 6 (1986) ("It can reasonably be assumed" that newspaper publisher will be subjected to similar closure order in the future); *Globe Newspaper Co. v. Superior Court of Norfolk County*, 457 U.S. 596, 603 (1982) (same); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 398 (1980) (case not moot where litigant "faces some likelihood of becoming involved in same controversy in the future") (dicta). Our concern in these cases, as in all others involving potentially moot claims, was whether the controversy was capable of repetition and not, as the dissent seems to insist, whether the claimant had demonstrated that a recurrence of the dispute was more probable than not. Regardless, then, of whether respondent has established with mathematical precision the likelihood that he will enroll in public school during the next two years, we think there is at the very least a reasonable expectation that he will exercise his rights under the EHA. In this regard, we believe respondent's actions over the course of the last seven years speak louder than his counsel's momentary equivocation during oral argument. Since 1980, he has sought to vindicate his right to an appropriate public education that is not only free of charge, but free from the threat that school officials will unilaterally change his placement or exclude him from class altogether. As a disabled young man, he has as at least as great a need of a high school education and diploma as any of his peers, and his counsel advises us that he is awaiting the outcome of this case to decide whether to pursue his degree. Tr. Oral Arg. 23-24. Under these circumstances, we think it not only counterintuitive but unreasonable to assume that respondent will forgo the exercise of a right that he has for so long sought to defend. Certainly we have as much reason to expect that respondent will re-enter the California school system as we had to assume that Jane Roe would again both have an unwanted pregnancy and wish to exercise her right to an abortion. See *Roe v. Wade*, 410 U.S. 113, 125 (1973).

7 Petitioner concedes that the school district "made a number of procedural mistakes in its eagerness to protect other students from Doe and Smith." Reply Brief for Petitioner 6. According to petitioner, however, unilaterally excluding respondents from school was not among them; indeed, petitioner insists that the SFUSD acted properly in removing respondents and urges that the stay-put provision "should not be interpreted to require a school district to maintain such dangerous children with other children." *Id*., at 6-7.

8 The Department of Education has adopted the position first espoused in 1980 by its Office of Civil Rights that a suspension of up to 10 school days does not amount to a "change in placement" prohibited by 1415(e)(3). U.S. Dept. of Education, Office of Special Education Programs, Policy Letter (Feb. 26, 1987), Ed. for Handicapped L. Rep. 211:437 (1987). The EHA nowhere defines the phrase "change in placement," nor does the statute's structure or legislative history provide any guidance as to how the term applies to fixed suspensions. Given this ambiguity, we defer to the construction adopted by the agency charged with monitoring and enforcing the statute. See *INS v. Cardoza-Fonseca*, 480 U.S. ____, ____ (1987). Moreover, the agency's position comports fully with the purposes of the statute: Congress sought to prevent schools from permanently and unilaterally excluding disabled children by means of indefinite suspensions and expulsions; the power to impose fixed suspensions of short duration does not carry the potential for total exclusion that Congress found so objectionable. Indeed, despite its broad injunction, the District Court in *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (DC 1972), recognized that school officials could suspend disabled children on a short-term, temporary basis. See *id*, at 880. Cf. *Goss v. Lopez*, 419 U.S. 565, 574-576, (1975) (suspension of 10 school days or more works a sufficient deprivation of property and liberty interests to trigger the protections of the Due Process Clause). Because we believe the agency correctly determined that a suspension in excess of 10 days does constitute a prohibited "change in placement," we conclude that the Court of Appeals erred to the extent it approved suspensions of 20 and 30 days' duration.

9 Petitioner also notes that in California, schools may not suspend any given student for more than a total of 20, and in certain special circumstances 30, school days in a single

year, see Cal. Educ. Code Ann. 48903 (West Supp. 1988); he argues, therefore, that a school district may not have the option of imposing a 10-day suspension when dealing with an obstreperous child whose previous suspensions for the year total 18 or 19 days. The fact remains, however, that state law does not define the scope of 1415(e)(3). There may be cases in which a suspension that is otherwise valid under the stay-put provision would violate local law. The effect of such a violation, however, is a question of state law upon which we express no view.

10 We therefore reject the United States' contention that the District Judge abused her discretion in enjoining the local school officials from indefinitely suspending respondent pending completion of the expulsion proceedings. Contrary to the Government's suggestion, the District Judge did not view herself bound to enjoin any and all violations of the stay-put provision, but rather, consistent with the analysis we set out above, weighed the relative harms to the parties and found that the balance tipped decidedly in favor of respondent. App. 222-223. We of course do not sit to review the factual determinations underlying that conclusion. We do note, however, that in balancing the parties' respective interests, the District Judge gave proper consideration to respondent's rights under the EHA. While the Government complains that the District Court indulged an improper presumption of irreparable harm to respondent, we do not believe that school officials can escape the presumptive effect of the stay-put provision simply by violating it and forcing parents to petition for relief. In any suit brought by parents seeking injunctive relief for a violation of 1415(e)(3), the burden rests with the school district to demonstrate that the educational status quo must be altered.

11 See n. 8, *supra*.

The Supreme Court of the United States

510 U. S. 7

FLORENCE COUNTY SCHOOL DISTRICT FOUR, et al.

Petitioners

v.

SHANNON CARTER, a minor by and through her father, and next friend, Emory D. Carter

Respondent

No. 91-1523

November 9, 1993

On Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit.

Counsel for Petitioners: Donald B. Ayer, Esq., Washington, DC.

Counsel for Respondent: Peter W.D. Wright, Esq., Richmond, VA.

Counsel for the United States, as Amicus Curiae supporting Respondent: Amy L. Wax, Esq., Assistant to the Solicitor General, Department of Justice, Washington, DC.

Before Rehnquist, C.J., and Blackmun, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, and Ginsburg, JJ.

SANDRA DAY O'CONNOR, Associate Justice.

The Individuals with Disabilities Education Act (IDEA), 84 Stat. 175, as amended, 20 U.S.C. § 1400 et seq. (1988 ed. and Supp. IV), requires States to provide disabled children with a "free appropriate public education," § 1401(a)(18). This case presents the question whether a court may order reimbursement for parents who unilaterally withdraw their child from a public school that provides an inappropriate education under IDEA and put the child in a private school that provides an education that is otherwise proper under IDEA, but does not meet all the requirements of § 1401(a)(18). We hold that the court may order such reimbursement, and therefore affirm the judgment of the Court of Appeals.

I

Respondent Shannon Carter was classified as learning disabled in 1985, while a ninth grade student in a school operated by petitioner Florence County School District Four. School officials met with Shannon's parents to formulate an individualized education program (IEP) for Shannon, as required under IDEA. 20 U.S.C. §§ 1401(a)(18) and (20), 1414(a)(5) (1988 ed. and Supp. IV). The IEP provided that Shannon would stay in regular classes except for three periods of individualized instruction per week, and established specific goals in reading and mathematics of four months' progress for the entire school year. Shannon's parents were dissatisfied, and requested a hearing to challenge the appropriateness of the IEP. See § 1415(b)(2). Both the local educational officer and the state educational agency hearing officer rejected Shannon's parents' claim and concluded that the IEP was adequate. In the meantime, Shannon's parents had placed her in Trident Academy, a private school specializing in educating children with disabilities. Shannon began at Trident in September 1985 and graduated in the spring of 1988.

Shannon's parents filed this suit in July 1986, claiming that the school district had breached its duty under IDEA to provide Shannon with a "free appropriate public education," § 1401(a)(18), and seeking reimbursement for tuition and other costs incurred at Trident. After a bench trial, the District Court ruled in the parents' favor. The court held that the school district's proposed educational program and the achievement goals of the IEP "were wholly inadequate" and failed to satisfy the requirements of the Act. App. to Pet. for Cert 27a. The court further held that "[a]lthough [Trident Academy] did not comply with all the procedures outlined in [IDEA]," the school "provided Shannon an excellent education in substantial compliance with all the substantive requirements" of the statute. *Id*. at 37a. The court found that Trident "evaluated Shannon quarterly, not yearly as mandated in [IDEA], it provided Shannon with low teacher-student ratios, and it developed a plan which allowed Shannon to receive passing marks and progress from grade to grade." *Ibid*. The court also credited the findings of its own expert, who determined that Shannon had made "significant progress" at Trident and that her reading comprehension had risen three grade levels in her three years at the school. *Id*., at 29a. The District Court concluded that Shannon's education was "appropriate" under IDEA, and that Shannon's parents were entitled to reimbursement of tuition and other costs. *Id*., at 37a.

The Court of Appeals for the Fourth Circuit affirmed. 950 F.2d 156 (1991). The court agreed that the IEP proposed by the school district was inappropriate under IDEA. It also rejected the school district's argument that reimbursement is never proper when the parents choose a private school that is not approved by the State or that does not comply with all the terms of IDEA. According to the Court of Appeals, neither the text of the Act nor its legislative history imposes a "requirement that the private school be approved by the state in parent-placement reimbursement cases." *Id*., at 162. To the contrary, the Court of Appeals concluded, IDEA's state-approval requirement applies only when a child is placed in a private school by public school officials. Accordingly, "when a public school system had defaulted on its obligations under the Act, a private school placement

is 'proper under the Act' if the education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits.'" *Id*., at 163, quoting *Board of Ed. of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 207 (1982).

The court below recognized that its holding conflicted with *Tucker v. Bay Shore Union Free School Dist*., 873 F.2d 563, 568 (1989), in which the Court of Appeals for the Second Circuit held that parental placement in a private school cannot be proper under the Act unless the private school in question meets the standards of the state education agency. We granted certiorari, 507 U.S. __ (1993), to resolve this conflict among the Courts of Appeals.

II

In *School Comm. of Burlington v. Department of Ed. of Mass*., 471 U.S. 359, 369 (1985), we held that IDEA's grant of equitable authority empowers a court "to order school authorities to reimburse parents for their expenditures on private special education for a child if the court ultimately determines that such placement, rather than a proposed IEP, is proper under the Act." Congress intended that IDEA's promise of a "free appropriate public education" for disabled children would normally be met by an IEP's provision for education in the regular public schools or in private schools chosen jointly by school officials and parents. In cases where cooperation fails, however, "parents who disagree with the proposed IEP are faced with a choice: go along with the IEP to the detriment of their child if it turns out to be inappropriate or pay for what they consider to be the appropriate placement." *Id*. at 370. For parents willing and able to make the latter choice, "it would be an empty victory to have a court tell them several years later that they were right but that these expenditures could not in a proper case be reimbursed by the school officials." *Ibid*. Because such a result would be contrary to IDEA's guarantee of a "free appropriate public education," we held that "Congress meant to include retroactive reimbursement to parents as an available remedy in a proper case." *Ibid*.

As this case comes to us, two issues are settled: 1) the school district's proposed IEP was inappropriate under IDEA, and 2) although Trident did not meet the § 1401(a)(18) requirements, it provided an education other proper under IDEA. This case presents the narrow question whether Shannon's parents are barred from reimbursement because the private school in which Shannon enrolled did not meet the § 1401(a)(18) definition of a "free appropriate public education."[1] We hold that they are not, because § 1401(a)(18)'s requirements cannot be read as applying to parental placements.

Section 1401(a)(18)(A) requires that the education be "provided at public expense, under public supervision and direction." Similarly, § 1401(a)(18)(D) requires schools to provide an IEP, which must be designated by "a representative of the local educational agency," 20 U.S.C. § 1401(a)(20) (1988 ed., Supp. IV), and must be "establish[ed]," and "revise[d]" by the agency, § 1414(a)(5). These requirements do not make sense in the context of a parental placement. In this case, as in all Burlington reimbursement cases, the parents' rejection of the school district's proposed IEP is the very reason for the parents' decision to put their child in a private school. In such cases, where the private placement has necessarily been made over the school district's objection, the private school education will not be under "public supervision and direction." Accordingly, to read the § 1401(a)(18) requirements as applying to parental placements would effectively eliminate the right of unilateral withdrawal recognized in Burlington. Moreover, IDEA was intended to ensure that children with disabilities receive an education that is both appropriate and free. *Burlington, supra*, at 373. To read the provisions of § 1401(a)(18) to bar reimbursement in the circumstances of this case would defeat this statutory purpose.

Nor do we believe that reimbursement is necessarily barred by a private school's failure to meet state education standards. Trident's deficiencies, according to the school district, were that it employed at least two faculty members who were not state-certified and that it did not develop IEPs. As we have noted, however, the § 1401(a)(18) requirements—including the requirement that the school meet the standards of the state educational agency, § 1401(a)(18)(B) —do not apply to private parental placements. Indeed, the school district's emphasis on state standards is somewhat ironic. As the Court of Appeals noted, "it hardly seems consistent with the Act's goals to forbid parents from educating their child at a school that provides an appropriate education simply because that school lacks the stamp of approval of the same public school system that failed to meet the child's needs in the first place." 950 F.2d. at 164. Accordingly, we disagree with the Second Circuit's theory that "a parent may not obtain reimbursement for a unilateral placement if that placement was in a school that was not on [the State's] approved list of private" schools. *Tucker*, 873 F.2d, at 568 (internal quotation marks omitted). Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement.

Furthermore, although the absence of an approved list of private schools is not essential to our holding, we note that parents in the position of Shannon's have no way of knowing at the time they select a private school whether the school meets state standards. South Carolina keeps no publicly available list of approved private schools, but instead approves private school placements on a case-by-case basis. In fact, although public school officials had previously placed three children with disabilities at Trident, see

App. to Pet. for Cert. 28a, Trident had not received blanket approval from the State. South Carolina's case-by-case approval system meant that Shannon's parents needed the cooperation of state officials before they could know whether Trident was state-approved. As we recognized in *Burlington*, such cooperation is unlikely in cases where the school officials disagree with the need for the private placement. 471 U.S., at 372.

III

The school district also claims that allowing reimbursement for parents such as Shannon's puts an unreasonable burden on financially strapped local educational authorities. The school district argues that requiring parents to choose a state-approved private school if they want reimbursement is the only meaningful way to allow States to control costs; otherwise States will have to reimburse dissatisfied parents for any private school that provides an education that is proper under the Act, no matter how expensive it may be. There is no doubt that Congress has imposed a significant financial burden on States and school districts that participate in IDEA. Yet public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.

Moreover, parents who, like Shannon's, "unilaterally change their child's placement during the pendency of review proceedings, without the consent of the state or local school officials, do so at their own financial risk." *Burlington, supra*, at 373-374. They are entitled to reimbursement only if a federal court concludes both that the public placement violated IDEA, and that the private school placement was proper under the Act.

Finally, we note that once a court holds that the public placement violated IDEA, it is authorized to "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(e)(2). Under this provision, "equitable considerations are relevant in fashioning relief," *Burlington*, 471 U.S., at 374, and the court enjoys "broad discretion" in so doing, *id*., at 369. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.

Accordingly, we **affirm** the judgment of the Court of Appeals.

So Ordered.

Endnotes

1 Section 1401(a)(18) defines "free appropriate public education" as, special education and related services that

(A) have been provided at public expense, under public supervision and direction, and without charge,

(B) meet the standards of the State educational agency,

(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program . . .

The Supreme Court of the United States
526 U.S. 66 (1999)

CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT,
Petitioners
v.
GARRET F., a minor, by his mother and next friend, CHARLENE F.,
Respondents

No. 96-1793.

Certiorari to the United States Court of Appeals for the Eighth Circuit

Decided March 3, 1999

Stevens, J., delivered the opinion of the Court, in which Rehnquist, C. J., and O'Connor, Scalia, Souter, Ginsburg, and Breyer, JJ., joined. Thomas, J., filed a dissenting opinion, in which Kennedy, J., joined.

The Individuals with Disabilities Education Act (IDEA), 84 Stat. 175, as amended, was enacted, in part, "to assure that all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." 20 U. S. C. §1400(c). Consistent with this purpose, the IDEA authorizes federal financial assistance to States that agree to provide disabled children with special education and "related services." See §§1401(a)(18), 1412(1). The question presented in this case is whether the definition of "related services" in §1401(a)(17)[1] requires a public school district in a participating State to provide a ventilator-dependent student with certain nursing services during school hours.

I

Respondent Garret F. is a friendly, creative, and intelligent young man. When Garret was four years old, his spinal column was severed in a motorcycle accident. Though paralyzed from the neck down, his mental capacities were unaffected. He is able to speak, to control his motorized wheelchair through use of a puff and suck straw, and to operate a computer with a device that responds to head movements. Garret is currently a student in the Cedar Rapids Community School District (District), he attends regular classes in a typical school program, and his academic performance has been a success. Garret is, however, ventilator dependent,[2] and therefore requires a responsible individual nearby to attend to certain physical needs while he is in school.[3]

During Garret's early years at school his family provided for his physical care during the school day. When he was in kindergarten, his 18-year-old aunt attended him; in the next four years, his family used settlement proceeds they received after the accident, their insurance, and other resources to employ a licensed practical nurse. In 1993, Garret's mother requested the District to accept financial responsibility for the health care services that Garret requires during the school day. The District denied the request, believing that it was not legally obligated to provide continuous one-on-one nursing services.

Relying on both the IDEA and Iowa law, Garret's mother requested a hearing before the Iowa Department of Education. An Administrative Law Judge (ALJ) received extensive evidence concerning Garret's special needs, the District's treatment of other disabled students, and the assistance provided to other ventilator-dependent children in other parts of the country. In his 47-page report, the ALJ found that the District has about 17,500 students, of whom approximately 2,200 need some form of special education or special services. Although Garret is the only ventilator-dependent student in the District, most of the health care services that he needs are already provided for some other students.[4] "The primary difference between Garret's situation and that of other students is his dependency on his ventilator for life support." App. to Pet. for Cert. 28a. The ALJ noted that the parties disagreed over the training or licensure required for the care and supervision of such students, and that those providing such care in other parts of the country ranged from non-licensed personnel to registered nurses. However, the District did not contend that only a licensed physician could provide the services in question.

The ALJ explained that federal law requires that children with a variety of health impairments be provided with "special education and related services" when their disabilities adversely affect their academic performance, and that such children should be educated to the maximum extent appropriate with children who are not disabled. In addition, the ALJ explained that applicable federal regulations distinguish between "school health services," which are provided by a "qualified school nurse or other qualified person," and "medical services," which are provided by a licensed physician. See 34 CFR §§300.16(a), (b)(4), (b)(11) (1998). The District must provide the former, but need not provide the latter (except, of course, those "medical services" that are for diagnostic or evaluation purposes, §1401(a)(17)). According to the ALJ, the distinction in the regulations does not just depend on "the title of the person providing the service"; instead, the "medical services" exclusion is limited to services that are "in the special train-

ing, knowledge, and judgment of a physician to carry out." App. to Pet. for Cert. 51a. The ALJ thus concluded that the IDEA required the District to bear financial responsibility for all of the services in dispute, including continuous nursing services.[5]

The District challenged the ALJ's decision in Federal District Court, but that Court approved the ALJ's IDEA ruling and granted summary judgment against the District. *Id.*, at 9a, 15a. The Court of Appeals affirmed. 106 F. 3d 822 (CA8 1997). It noted that, as a recipient of federal funds under the IDEA, Iowa has a statutory duty to provide all disabled children a "free appropriate public education," which includes "related services." See *id.*, at 824. The Court of Appeals read our opinion in *Irving Independent School Dist. v. Tatro,* 468 U. S. 883 (1984), to provide a two-step analysis of the "related services" definition in §1401(a)(17) -- asking first, whether the requested services are included within the phrase "supportive services"; and second, whether the services are excluded as "medical services." 106 F. 3d, at 824-825. The Court of Appeals succinctly answered both questions in Garret's favor. The Court found the first step plainly satisfied, since Garret cannot attend school unless the requested services are available during the school day. *Id.*, at 825. As to the second step, the Court reasoned that *Tatro* "established a bright-line test: the services of a physician (other than for diagnostic and evaluation purposes) are subject to the medical services exclusion, but services that can be provided in the school setting by a nurse or qualified layperson are not." *Ibid.*

In its petition for certiorari, the District challenged only the second step of the Court of Appeals' analysis. The District pointed out that some federal courts have not asked whether the requested health services must be delivered by a physician, but instead have applied a multi-factor test that considers, generally speaking, the nature and extent of the services at issue. See, e.g., *Neely v. Rutherford County School*, 68 F. 3d 965, 972-973 (CA6 1995), cert. denied, 517 U. S. 1134 (1996); *Detsel v. Board of Ed. of Auburn Enlarged City School Dist.*, 820 F. 2d 587, 588 (CA2) (per curiam), cert. denied, 484 U. S. 981 (1987). We granted the District's petition to resolve this conflict. 523 U. S. __ (1998).

II

The District contends that §1401(a)(17) does not require it to provide Garret with "continuous one-on-one nursing services" during the school day, even though Garret cannot remain in school without such care. Brief for Petitioner 10. However, the IDEA's definition of "related services," our decision in *Irving Independent School Dist. v. Tatro*, 468 U. S. 883 (1984), and the overall statutory scheme all support the decision of the Court of Appeals.

The text of the "related services" definition, see n. 1, *supra*, broadly encompasses those supportive services that "may be required to assist a child with a disability to benefit from special education." As we have already noted, the District does not challenge the Court of Appeals' conclusion that the in-school services at issue are within the covered category of "supportive services." As a general matter, services that enable a disabled child to remain in school during the day provide the student with "the meaningful access to education that Congress envisioned." *Tatro*, 468 U. S., at 891 ("'Congress sought primarily to make public education available to handicapped children' and 'to make such access meaningful'" (quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 192 (1982)).

This general definition of "related services" is illuminated by a parenthetical phrase listing examples of particular services that are included within the statute's coverage. §1401(a)(17). "Medical services" are enumerated in this list, but such services are limited to those that are "for diagnostic and evaluation purposes." *Ibid*. The statute does not contain a more specific definition of the "medical services" that are excepted from the coverage of §1401(a)(17).

The scope of the "medical services" exclusion is not a matter of first impression in this Court. In *Tatro* we concluded that the Secretary of Education had reasonably determined that the term "medical services" referred only to services that must be performed by a physician, and not to school health services. 468 U. S., at 892-894. Accordingly, we held that a specific form of health care (clean intermittent catherization) that is often, though not always, performed by a nurse is not an excluded medical service. We referenced the likely cost of the services and the competence of school staff as justifications for drawing a line between physician and other services, *ibid*., but our endorsement of that line was unmistakable.[6] It is thus settled that the phrase "medical services" in §1401(a)(17) does not embrace all forms of care that might loosely be described as "medical" in other contexts, such as a claim for an income tax deduction. See 26 U. S. C. §213(d)(1) (1994 ed. and Supp. II) (defining "medical care").

The District does not ask us to define the term so broadly. Indeed, the District does not argue that any of the items of care that Garret needs, considered individually, could be excluded from the scope of §1401(a)(17).[7] It could not make such an argument, considering that one of the services Garret needs (catheterization) was at issue in *Tatro*, and the others may be provided competently by a school nurse or other trained personnel. See App. to Pet. for Cert. 15a, 52a. As the ALJ concluded, most of the requested services are already provided by the District to other students, and the in-school care necessitated by Garret's ventilator dependency does not demand the training, knowledge, and judgment of a licensed physician. *Id*., at 51a-52a. While

more extensive, the in-school services Garret needs are no more "medical" than was the care sought in *Tatro*.

Instead, the District points to the combined and continuous character of the required care, and proposes a test under which the outcome in any particular case would "depend upon a series of factors, such as [1] whether the care is continuous or intermittent, [2] whether existing school health personnel can provide the service, [3] the cost of the service, and [4] the potential consequences if the service is not properly performed." Brief for Petitioner 11; see also *id.*, at 34-35.

The District's multi-factor test is not supported by any recognized source of legal authority. The proposed factors can be found in neither the text of the statute nor the regulations that we upheld in *Tatro*. Moreover, the District offers no explanation why these characteristics make one service any more "medical" than another. The continuous character of certain services associated with Garret's ventilator dependency has no apparent relationship to "medical" services, much less a relationship of equivalence. Continuous services may be more costly and may require additional school personnel, but they are not thereby more "medical." Whatever its imperfections, a rule that limits the medical services exemption to physician services is unquestionably a reasonable and generally workable interpretation of the statute. Absent an elaboration of the statutory terms plainly more convincing than that which we reviewed in *Tatro*, there is no good reason to depart from settled law.[8]

Finally, the District raises broader concerns about the financial burden that it must bear to provide the services that Garret needs to stay in school. The problem for the District in providing these services is not that its staff cannot be trained to deliver them; the problem, the District contends, is that the existing school health staff cannot meet all of their responsibilities and provide for Garret at the same time.[9]

Through its multi-factor test, the District seeks to establish a kind of undue-burden exemption primarily based on the cost of the requested services. The first two factors can be seen as examples of cost-based distinctions: intermittent care is often less expensive than continuous care, and the use of existing personnel is cheaper than hiring additional employees. The third factor-the cost of the service-would then encompass the first two. The relevance of the fourth factor is likewise related to cost because extra care may be necessary if potential consequences are especially serious.

The District may have legitimate financial concerns, but our role in this dispute is to interpret existing law. Defining "related services" in a manner that accommodates the cost concerns Congress may have had, cf. *Tatro*, 468 U. S., at 892, is altogether different from using cost itself as the definition. Given that §1401(a)(17) does not employ cost in its definition of "related services" or excluded "medical services," accepting the District's cost-based standard as the sole test for determining the scope of the provision would require us to engage in judicial lawmaking without any guidance from Congress. It would also create some tension with the purposes of the IDEA. The statute may not require public schools to maximize the potential of disabled students commensurate with the opportunities provided to other children, see *Rowley*, 458 U. S., at 200; and the potential financial burdens imposed on participating States may be relevant to arriving at a sensible construction of the IDEA, see *Tatro*, 468 U. S., at 892. But Congress intended "to open the door of public education" to all qualified children and "require[d] participating States to educate handicapped children with non-handicapped children whenever possible." *Rowley*, 458 U. S., at 192, 202; see *id.*, at 179-181; see also *Honig v. Doe*, 484 U. S. 305, 310-311, 324 (1988); §§1412(1), (2)(c), (5)(B).[10]

This case is about whether meaningful access to the public schools will be assured, not the level of education that a school must finance once access is attained. It is undisputed that the services at issue must be provided if Garret is to remain in school.

Under the statute, our precedent, and the purposes of the IDEA, the District must fund such "related services" in order to help guarantee that students like Garret are integrated into the public schools.

The judgment of the Court of Appeals is accordingly **Affirmed**.

Endnotes

1 "The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children." 20 U. S. C. §1401(a)(17).

Originally, the statute was enacted without a definition of "related services." See Education of the Handicapped Act, 84 Stat. 175. In 1975, Congress added the definition at issue in this case. Education for All Handicapped Children Act of 1975, §4(a)(4), 89 Stat. 775. Aside from nonsubstantive changes and added examples of included services, see, e.g., Individuals with Disabilities Education Act Amendments of 1997, §101, 111 Stat. 45; Individuals with Disabilities Education Act

Amendments of 1991, §25(a)(1)(B), 105 Stat. 605; Education of the Handicapped Act Amendments of 1990, §101(c), 104 Stat. 1103, the relevant language in §1401(a)(17) has not been amended since 1975. All references to the IDEA herein are to the 1994 version as codified in Title 20 of the United States Code—the version of the statute in effect when this dispute arose.

2 "Included are such services as care for students who need urinary catheterization, food and drink, oxygen supplement positioning, and suctioning." *Id*., at 28a; see also *id*., at 53a.

3 In addition, the ALJ's opinion contains a thorough discussion of "other tests and criteria" pressed by the District, *id*., at 52a, including the burden on the District and the cost of providing assistance to Garret. Although the ALJ found no legal authority for establishing a cost-based test for determining what related services are required by the statute, he went on to reject the District's arguments on the merits. See *id*., at 42a-53a. We do not reach the issue here, but the ALJ also found that Garret's in-school needs must be met by the District under an Iowa statute as well as the IDEA. *Id*., at 54a-55a.

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6 "The regulations define 'related services' for handicapped children to include 'school health services,' 34 CFR §300.13(a) (1983), which are defined in turn as 'services provided by a qualified school nurse or other qualified person,' §300.13(b)(10). 'Medical services' are defined as 'services provided by a licensed physician.' §300.13(b)(4). Thus, the Secretary has [reasonably] determined that the services of a school nurse otherwise qualifying as a 'related service' are not subject to exclusion as a 'medical service,' but that the services of a physician are excludable as such.

" . . . By limiting the 'medical services' exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision." 468 U. S., at 892-893 (emphasis added) (footnote omitted); see also *id*., at 894 ("[T]he regulations state that school nursing services must be provided only if they can be performed by a nurse or other qualified person, not if they must be performed by a physician").

Based on certain policy letters issued by the Department of Education, it seems that the Secretary's post-Tatro view of the statute has not been entirely clear. E.g., App. to Pet. for Cert. 64a. We may assume that the Secretary has authority under the IDEA to adopt regulations that define the "medical services" exclusion by more explicitly taking into account the nature and extent of the requested services; and the Secretary surely has the authority to enumerate the services that are, and are not, fairly included within the scope of §1407(a)(17). But the Secretary has done neither; and, in this Court, she advocates affirming the judgment of the Court of Appeals. Brief for United States as Amicus Curiae; see also *Auer v. Robbins*, 519 U. S. 452, 462 (1997) (an agency's views as amicus curiae may be entitled to deference). We obviously have no authority to rewrite the regulations, and we see no sufficient reason to revise *Tatro*, either.

7 See Tr. of Oral Arg. 4-5, 12.

8 At oral argument, the District suggested that we first consider the nature of the requested service (either "medical" or not); then, if the service is "medical," apply the multi-factor test to determine whether the service is an excluded physician service or an included school nursing service under the Secretary of Education's regulations. See Tr. of Oral Arg. 7, 13-14. Not only does this approach provide no additional guidance for identifying "medical" services, it is also disconnected from both the statutory text and the regulations we upheld in *Irving Independent School Dist. v. Tatro*, 468 U. S. 883 (1984).

"Medical" services are generally excluded from the statute, and the regulations elaborate on that statutory term. No authority cited by the District requires an additional inquiry if the requested service is both "related" and non-"medical." Even if §1401(a)(17) demanded an additional step, the factors proposed by the District are hardly more useful in identifying "nursing" services than they are in identifying "medical" services; and the District cannot limit educational access simply by pointing to the limitations of existing staff. As we noted in *Tatro*, the IDEA requires schools to hire specially trained personnel to meet disabled student needs. *Id*., at 893.

9 See Tr. of Oral Arg. 4-5, 13; Brief for Petitioner 6-7, 9. The District, however, will not necessarily need to hire an additional employee to meet Garret's needs. The District already employs a one-on-one teacher associate (TA) who assists Garret during the school day. See App. to Pet. for Cert. 26a-27a. At one time, Garret's TA was a licensed practical nurse (LPN). In light of the state Board of Nursing's recent ruling that the District's registered nurses may decide to delegate Garret's care to an LPN, see Brief for United States as Amicus Curiae 9-10 (filed Apr. 22, 1998), the dissent's future-cost estimate is speculative. See App. to Pet. for Cert. 28a, 58a-60a (if the District could assign Garret's care to a TA who is also an LPN, there would be "a minimum of additional expense").

10 The dissent's approach, which seems to be even broader than the District's, is unconvincing. The dissent's rejection of our unanimous decision in *Tatro* comes 15 years too late, see *Patterson v. McLean Credit Union*, 491 U. S. 164, 172-173 (1989) (stare decisis has "special force" in statutory interpretation), and it offers nothing constructive in its place. Aside from rejecting a "provider-specific approach," the dissent cites unrelated statutes and offers a circular definition of "medical

services." Post, at 3-4 ("'services' that are 'medical' in 'nature'"). Moreover, the dissent's approach apparently would exclude most ordinary school nursing services of the kind routinely provided to nondisabled children; that anomalous result is not easily attributable to congressional intent. See *Tatro*, 468 U. S., at 893.

In a later discussion the dissent does offer a specific proposal: that we now interpret (or rewrite) the Secretary's regulations so that school districts need only provide disabled children with "health-related services that school nurses can perform as part of their normal duties." Post, at 7. The District does not dispute that its nurses "can perform" the requested services, so the dissent's objection is that District nurses would not be performing their "normal duties" if they met Garret's needs. That is, the District would need an "additional employee." Post, at 8. This proposal is functionally similar to a proposed regulation—ultimately withdrawn—that would have replaced the "school health services" provision. See 47 Fed. Reg. 33838, 33854 (1982) (the statute and regulations may not be read to affect legal obligations to make available to handicapped children services, including school health services, made available to nonhandicapped children). The dissent's suggestion is unacceptable for several reasons. Most important, such revisions of the regulations are better left to the Secretary, and an additional staffing need is generally not a sufficient objection to the requirements of §1401(a)(17). See n. 8, *supra*.

Justice Thomas, with whom Justice Kennedy joins, **dissenting**.

The majority, relying heavily on our decision in *Irving Independent School Dist. v. Tatro*, 468 U. S. 883 (1984), concludes that the Individuals with Disabilities Education Act (IDEA), 20 U. S. C. §1400 *et seq*., requires a public school district to fund continuous, one-on-one nursing care for disabled children. Because *Tatro* cannot be squared with the text of IDEA, the Court should not adhere to it in this case. Even assuming that *Tatro* was correct in the first instance, the majority's extension of it is unwarranted and ignores the constitutionally mandated rules of construction applicable to legislation enacted pursuant to Congress' spending power.

I

As the majority recounts, *ante*, at 1, IDEA authorizes the provision of federal financial assistance to States that agree to provide, *inter alia*, "special education and related services" for disabled children. §1401(a)(18). In *Tatro*, *supra*, we held that this provision of IDEA required a school district to provide clean intermittent catheterization to a disabled child several times a day. In so holding, we relied on Department of Education regulations, which we concluded had reasonably interpreted IDEA's definition of "related services"[a] to require school districts in participating States to provide "school nursing services" (of which we assumed catheterization was a subcategory) but not "services of a physician." *Id*., at 892-893. This holding is contrary to the plain text of IDEA and its reliance on the Department of Education's regulations was misplaced.

A

Before we consider whether deference to an agency regulation is appropriate, "we first ask whether Congress has 'directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.' "*National Credit Union Admin. v. First Nat. Bank & Trust Co*., 522 U. S. 479, 499-500 (1998) (quoting *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc*., 467 U. S. 837, 842-843 (1984)).

Unfortunately, the Court in *Tatro* failed to consider this necessary antecedent question before turning to the Department of Education's regulations implementing IDEA's related services provision. The Court instead began "with the regulations of the Department of Education, which," it said, "are entitled to deference." *Tatro, supra*, at 891-892. The Court need not have looked beyond the text of IDEA, which expressly indicates that school districts are not required to provide medical services, except for diagnostic and evaluation purposes. 20 U. S. C. §1401(a)(17). The majority asserts that *Tatro* precludes reading the term "medical services" to include "all forms of care that might loosely be described as 'medical.' " *Ante*, at 8. The majority does not explain, however, why "services" that are "medical" in nature are not "medical services." Not only is the definition that the majority rejects consistent with other uses of the term in federal law,[2] it also avoids the anomalous result of holding that the services at issue in *Tatro* (as well as in this case), while not "medical services," would nonetheless qualify as medical care for federal income tax purposes. *Ante*, at 8.

The primary problem with *Tatro*, and the majority's reliance on it today, is that the Court focused on the provider of the services rather than the services themselves. We do not typically think that automotive services are limited to those provided by a mechanic, for example. Rather, anything done to repair or service a car, no matter who does the work, is thought to fall into that category. Similarly, the term "food service" is not generally thought to be limited to work performed by a chef. The term "medical" similarly does not support *Tatro*'s provider-specific approach, but encompasses services that are "of, relating to, or concerned with physicians or the practice of medicine." See *Webster's Third New International Dictionary* 1402 (1986) (emphasis added); see also *id*., at 1551 (defining "nurse" as "a person skilled in caring for and waiting on the infirm, the injured, or the sick; specif: one esp. trained to carry out such duties under the supervision of a physician").

IDEA's structure and purpose reinforce this textual interpretation. Congress enacted IDEA to increase the educational opportunities available to disabled children, not to provide medical care for them. See 20 U. S. C. §1400(c) ("It is the purpose of this chapter to assure that all children with disabilities have . . . a free appropriate public education"); see also §1412 ("In order to qualify for assistance . . . a State shall demonstrate . . . [that it] has in effect a policy that assures all children with disabilities the right to a free appropriate public education"); *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 179 (1982) ("The Act represents an ambitious federal effort to promote the education of handicapped children"). As such, where Congress decided to require a supportive service—including speech pathology, occupational therapy, and audiology—that appears "medical" in nature, it took care to do so explicitly. See §1401(a)(17). Congress specified these services precisely because it recognized that they would otherwise fall under the broad "medical services" exclusion. Indeed, when it crafted the definition of related services, Congress could have, but chose not to, include "nursing services" in this list.

B

Tatro was wrongly decided even if the phrase "medical services" was subject to multiple constructions, and therefore, deference to any reasonable Department of Education regulation was appropriate. The Department of Education has never promulgated regulations defining the scope of IDEA's "medical services" exclusion. One year before *Tatro* was decided, the Secretary of Education issued proposed regulations that defined excluded medical services as "services relating to the practice of medicine." 47 Fed. Reg. 33838 (1982). These regulations, which represent the Department's only attempt to define the disputed term, were never adopted. Instead, "[t]he regulations actually define only those 'medical services' that are owed to handicapped children," *Tatro*, 468 U. S., at 892, n. 10) (emphasis in original), not those that are not. Now, as when Tatro was decided, the regulations require districts to provide services performed " 'by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.' " *Ibid*. (quoting 34 CFR §300.13(b)(4) (1983), recodified and amended as 34 CFR §300.16(b)(4) (1998).

Extrapolating from this regulation, the *Tatro* Court presumed that this meant "that 'medical services' not owed under the statute are those 'services by a licensed physician' that serve other purposes." *Tatro, supra*, at 892, n. 10 (emphasis deleted). The Court, therefore, did not defer to the regulation itself, but rather relied on an inference drawn from it to speculate about how a regulation might read if the Department of Education promulgated one. Deference in those circumstances is impermissible. We cannot defer to a regulation that does not exist. (c)

II

Assuming that *Tatro* was correctly decided in the first instance, it does not control the outcome of this case. Because IDEA was enacted pursuant to Congress' spending power, *Rowley, supra*, at 190, n. 11, our analysis of the statute in this case is governed by special rules of construction. We have repeatedly emphasized that, when Congress places conditions on the receipt of federal funds, "it must do so unambiguously." *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981). See also *Rowley, supra*, at 190, n. 11; *South Dakota v. Dole*, 483 U. S. 203, 207 (1987); *New York v. United States*, 505 U. S. 144, 158 (1992).

This is because a law that "condition[s] an offer of federal funding on a promise by the recipient ... amounts essentially to a contract between the Government and the recipient of funds." *Gebser v. Lago Vista Independent School Dist*., 524 U. S. 274, 276 (1998). As such, "[t]he legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it." *Pennhurst, supra*, at 17 (citations omitted). It follows that we must interpret Spending Clause legislation narrowly, in order to avoid saddling the States with obligations that they did not anticipate.

The majority's approach in this case turns this Spending Clause presumption on its head. We have held that, in enacting IDEA, Congress wished to require "States to educate handicapped children with nonhandicapped children whenever possible," *Rowley*, 458 U. S., at 202. Congress, however, also took steps to limit the fiscal burdens that States must bear in attempting to achieve this laudable goal. These steps include requiring States to provide an education that is only "appropriate" rather that requiring them to maximize the potential of disabled students, see 20 U. S. C. §1400(c) *Rowley, supra*, at 200, recognizing that integration into the public school environment is not always possible, see §1412(5), and clarifying that, with a few exceptions, public schools need not provide "medical services" for disabled students, §§1401(a)(17) and (18).

For this reason, we have previously recognized that Congress did not intend to "impos[e] upon the States a burden of unspecified proportions and weight" in enacting IDEA. *Rowley, supra*, at 176, n. 11. These federalism concerns require us to interpret IDEA's related services provision, consistent with *Tatro*, as follows: Department of Education regulations require districts to provide disabled children with health-related services that school nurses can perform as part of their normal duties. This reading

of *Tatro*, although less broad than the majority's, is equally plausible and certainly more consistent with our obligation to interpret Spending Clause legislation narrowly. Before concluding that the district was required to provide clean intermittent catheterization for Amber Tatro, we observed that school nurses in the district were authorized to perform services that were "difficult to distinguish from the provision of [clean intermittent catheterization] to the handicapped." *Tatro*, 468 U. S., at 893. We concluded that "[i]t would be strange indeed if Congress, in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped." *Id*., at 893-894.

Unlike clean intermittent catheterization, however, a school nurse cannot provide the services that respondent requires, see *ante*, at 3, n. 3, and continue to perform her normal duties. To the contrary, because respondent requires continuous, one-on-one care throughout the entire school day, all agree that the district must hire an additional employee to attend solely to respondent. This will cost a minimum of $18,000 per year. Although the majority recognizes this fact, it nonetheless concludes that the "more extensive" nature of the services that respondent needs is irrelevant to the question whether those services fall under the medical services exclusion. *Ante*, at 9. This approach disregards the constitutionally mandated principles of construction applicable to Spending Clause legislation and blindsides unwary States with fiscal obligations that they could not have anticipated.

For the foregoing reasons, I respectfully dissent.

Footnotes - Dissent

[a] The Act currently defines "related services" as "transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education . . . ." 20 U. S. C. §1401(a)(17) (emphasis added).

[b] See, e.g., 38 U. S. C. §1701(6) ("The term 'medical services' includes, in addition to medical examination, treatment and rehabilitative services ... surgical services, dental services . . . optometric and podiatric services, . . . preventive health services, . . . [and] such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment"); §101(28) ("The term 'nursing home care' means the accommodation of convalescents . . . who require nursing care and related medical services"); 26 U. S. C. §213(d)(1) ("The term 'medical care' means amounts paid-- . . . for the diagnosis, cure, mitigation, treatment, or prevention of disease").

[c] Nor do I think that it is appropriate to defer to the Department of Education's litigating position in this case. The agency has had ample opportunity to address this problem but has failed to do so in a formal regulation. Instead, it has maintained conflicting positions about whether the services at issue in this case are required by IDEA. See ante, at 7-8, n. 6. Under these circumstances, we should not assume that the litigating position reflects the "agency's fair and considered judgment." *Auer v. Robbins*, 519 U. S. 452, 462 (1997).

The Supreme Court of the United States

546 U. S. __ (2005)

BRIAN SCHAFFER, A MINOR, BY HIS PARENTS AND NEXT FRIENDS, JOCELYN AND MARTIN SCHAFFER, ET AL., PETITIONERS

v.

JERRY WEAST, SUPERINTENDENT, MONTGOMERY COUNTY PUBLIC SCHOOLS, ET AL.

No. 04-698

On Writ Of Certiorari to The United States Court Of Appeals for The Fourth Circuit Court

Decided: November 14, 2005

O'Connor, J., delivered the opinion of the Court, in which Stevens, Scalia, Kennedy, Souter, and Thomas, JJ., joined. Stevens, J., filed a concurring opinion. Ginsburg, J., and Breyer, J., filed dissenting opinions. Roberts, C. J., took no part in the consideration or decision of the case.

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. A. §1400 *et seq*. (main ed. and Supp. 2005), is a Spending Clause statute that seeks to ensure that "all children with disabilities have available to them a free appropriate public education," §1400(d)(1)(A). Under IDEA, school districts must create an "individualized education program" (IEP) for each disabled child. §1414(d). If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." §1415(f). The Act is silent, however, as to which party bears the burden of persuasion at such a hearing. We hold that the burden lies, as it typically does, on the party seeking relief.

I.

A.

Congress first passed IDEA as part of the Education of the Handicapped Act in 1970, 84 Stat. 175, and amended it substantially in the Education for All Handicapped Children Act of 1975, 89 Stat. 773. At the time the majority of disabled children in America were "either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out,' " H. R. Rep. No. 94-332, p. 2 (1975). IDEA was intended to reverse this history of neglect. As of 2003, the Act governed the provision of special education services to nearly 7 million children across the country. See Dept. of Education, Office of Special Education Programs, Data Analysis System, www.ideadata.org/tables27th/ar_ aa9.htm (as visited Nov. 9, 2005, and available in Clerk of Court's case file).

IDEA is "frequently described as a model of 'cooperative federalism.' " *Little Rock School Dist. v. Mauney*, 183 F. 3d 816, 830 (CA8 1999). It "leaves to the States the primary responsibility for developing and executing educational programs for handicapped children, [but] imposes significant requirements to be followed in the discharge of that responsibility." *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 183 (1982). For example, the Act mandates cooperation and reporting between state and federal educational authorities. Participating States must certify to the Secretary of Education that they have "policies and procedures" that will effectively meet the Act's conditions. 20 U. S. C. §1412(a). (Unless otherwise noted, all citations to the Act are to the pre-2004 version of the statute because this is the version that was in effect during the proceedings below. We note, however, that nothing in the recent 2004 amendments, 118 Stat. 2674, appears to materially affect the rule announced here.) State educational agencies, in turn, must ensure that local schools and teachers are meeting the State's educational standards. 20 U. S. C. §§1412(a)(11), 1412(a)(15)(A). Local educational agencies (school boards or other administrative bodies) can receive IDEA funds only if they certify to a state educational agency that they are acting in accordance with the State's policies and procedures. §1413(a)(1).

The core of the statute, however, is the cooperative process that it establishes between parents and schools. *Rowley, supra*, at 205-206 ("Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard"). The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, §§1414(a)-(c), develop an IEP for each one, §1414(d)(2), and review every IEP at least once a year, §1414(d)(4). Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide. §1414(d)(1)(A).

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. §1414(c)(3). Parents are included as members of "IEP teams." §1414(d)(1)(B). They have the right to examine any records relating to their child, and to obtain an "independent educational evaluation of the[ir] child." §1415(b)(1). They must be given written prior notice of any changes in an IEP, §1415(b)(3), and be notified in writing of the procedural safeguards available to them under the Act, §1415(d)(1). If parents believe that an IEP is not appropriate, they may seek an administrative "impartial due process hearing." §1415(f). School districts

may also seek such hearings, as Congress clarified in the 2004 amendments. See S. Rep. No. 108-185, p. 37 (2003). They may do so, for example, if they wish to change an existing IEP but the parents do not consent, or if parents refuse to allow their child to be evaluated. As a practical matter, it appears that most hearing requests come from parents rather than schools. Brief for Petitioners 7.

Although state authorities have limited discretion to determine who conducts the hearings, §1415(f)(1)), and responsibility generally for establishing fair hearing procedures, §1415(a), Congress has chosen to legislate the central components of due process hearings. It has imposed minimal pleading standards, requiring parties to file complaints setting forth "a description of the nature of the problem," §1415(b)(7)(B)(ii), and "a proposed resolution of the problem to the extent known and available . . . at the time," §1415(b)(7)(B)(iii). At the hearing, all parties may be accompanied by counsel, and may "present evidence and confront, cross-examine, and compel the attendance of witnesses." §§1415(h)(1)-(2) After the hearing, any aggrieved party may bring a civil action in state or federal court. §1415(i)(2) Prevailing parents may also recover attorney's fees. §1415(i)(3)(B) Congress has never explicitly stated, however, which party should bear the burden of proof at IDEA hearings.

B.

This case concerns the educational services that were due, under IDEA, to petitioner Brian Schaffer. Brian suffers from learning disabilities and speech-language impairments. From pre-kindergarten through seventh grade he attended a private school and struggled academically. In 1997, school officials informed Brian's mother that he needed a school that could better accommodate his needs. Brian's parents contacted respondent Montgomery County Public Schools System (MCPS) seeking a placement for him for the following school year.

MCPS evaluated Brian and convened an IEP team. The committee generated an initial IEP offering Brian a place in either of two MCPS middle schools. Brian's parents were not satisfied with the arrangement, believing that Brian needed smaller classes and more intensive services. The Schaffers thus enrolled Brian in another private school, and initiated a due process hearing challenging the IEP and seeking compensation for the cost of Brian's subsequent private education.

In Maryland, IEP hearings are conducted by administrative law judges (ALJs). See Md. Educ. Code Ann. §8-413(c)(Lexis 2004). After a 3-day hearing, the ALJ deemed the evidence close, held that the parents bore the burden of persuasion, and ruled in favor of the school district. The parents brought a civil action challenging the result. The United States District Court for the District of Maryland reversed and remanded, after concluding that the burden of persuasion is on the school district. *Brian S. v. Vance*, 86 F. Supp. 2d 538 (2000). Around the same time, MCPS offered Brian a placement in a high school with a special learning center. Brian's parents accepted, and Brian was educated in that program until he graduated from high school. The suit remained alive, however, because the parents sought compensation for the private school tuition and related expenses.

Respondents appealed to the United States Court of Appeals for the Fourth Circuit. While the appeal was pending, the ALJ reconsidered the case, deemed the evidence truly in "equipoise," and ruled in favor of the parents. The Fourth Circuit vacated and remanded the appeal so that it could consider the burden of proof issue along with the merits on a later appeal. The District Court reaffirmed its ruling that the school district has the burden of proof. 240 F. Supp. 2d 396 (Md. 2002). On appeal, a divided panel of the Fourth Circuit reversed. Judge Michael, writing for the majority, concluded that petitioners offered no persuasive reason to "depart from the normal rule of allocating the burden to the party seeking relief." 377 F. 3d 449, 453 (2004). We granted certiorari, 543 U. S. 1145 (2005), to resolve the following question: At an administrative hearing assessing the appropriateness of an IEP, which party bears the burden of persuasion?

II.

A.

The term "burden of proof" is one of the "slipperiest member[s] of the family of legal terms." 2 J. Strong, *McCormick on Evidence* §342, p. 433 (5th ed. 1999) (hereinafter McCormick). Part of the confusion surrounding the term arises from the fact that historically, the concept encompassed two distinct burdens: the "burden of persuasion," i.e., which party loses if the evidence is closely balanced, and the "burden of production," i.e., which party bears the obligation to come forward with the evidence at different points in the proceeding. *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U. S. 267, 272 (1994). We note at the outset that this case concerns only the burden of persuasion, as the parties agree, Brief for Respondents 14; Reply Brief for Petitioners 15, and when we speak of burden of proof in this opinion, it is this to which we refer.

When we are determining the burden of proof under a statutory cause of action, the touchstone of our inquiry is, of course, the statute. The plain text of IDEA is silent on the allocation of the burden of persuasion. We therefore begin with the ordinary default rule that plaintiffs bear the risk of failing to prove their claims. *McCormick* §337, at 412 ("The burdens of pleading and proof with regard to most facts have and should be assigned to the plaintiff

who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure or proof or persuasion"); C. Mueller & L. Kirkpatrick, *Evidence §3.1*, p. 104 (3d ed. 2003) ("Perhaps the broadest and most accepted idea is that the person who seeks court action should justify the request, which means that the plaintiffs bear the burdens on the elements in their claims").

Thus, we have usually assumed without comment that plaintiffs bear the burden of persuasion regarding the essential aspects of their claims. For example, Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e-2 *et seq.*, does not directly state that plaintiffs bear the "ultimate" burden of persuasion, but we have so concluded. *St. Mary's Honor Center v. Hicks*, 509 U. S. 502, 511 (1993); *id.*, at 531 (Souter, J., dissenting). In numerous other areas, we have presumed or held that the default rule applies. See, e. g., *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 561 (1992) (standing); *Cleveland v. Policy Management Systems Corp.*, 526 U. S. 795, 806 (1999) (Americans with Disabilities Act); *Hunt v. Cromartie*, 526 U. S. 541, 553 (1999) (equal protection); *Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U. S. 588, 593 (2001) (securities fraud); *Doran v. Salem Inn, Inc.*, 422 U. S. 922, 931 (1975) (preliminary injunctions); *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, 287 (1977) (First Amendment). Congress also expressed its approval of the general rule when it chose to apply it to administrative proceedings under the Administrative Procedure Act, 5 U. S. C. §556(d); see also *Greenwich Collieries, supra*, at 271.

The ordinary default rule, of course, admits of exceptions. See *McCormick §337*, at 412-415. For example, the burden of persuasion as to certain elements of a plantiff's claim may be shifted to defendants, when such elements can fairly be characterized as affirmative defenses or exemptions. See, e.g., *FTC v. Morton Salt Co.*, 334 U. S. 37, 44-45 (1948). Under some circumstances this Court has even placed the burden of persuasion over an entire claim on the defendant. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U. S. 461, 494 (2004). But while the normal default rule does not solve all cases, it certainly solves most of them. Decisions that place the entire burden of persuasion on the opposing party at the outset of a proceeding—as petitioners urge us to do here—are extremely rare. Absent some reason to believe that Congress intended otherwise, therefore, we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.

B.

Petitioners contend first that a close reading of IDEA's text compels a conclusion in their favor. They urge that we should interpret the statutory words "due process" in light of their constitutional meaning, and apply the balancing test established by *Mathews v. Eldridge*, 424 U. S. 319 (1976). Even assuming that the Act incorporates constitutional due process doctrine, *Eldridge* is no help to petitioners, because "[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment." *Lavine v. Milne*, 424 U. S. 577, 585 (1976).

Petitioners next contend that we should take instruction from the lower court opinions of *Mills v. Board of Education*, 348 F. Supp. 866 (D. C. 1972), and *Pennsylvania Association for Retarded Children v. Commonwealth*, 334 F. Supp. 1257 (ED Pa. 1971) (hereinafter *PARC*). IDEA's drafters were admittedly guided "to a significant extent" by these two landmark cases. *Rowley*, 458 U. S., at 194. As the court below noted, however, the fact that Congress "took a number of the procedural safeguards from *PARC* and *Mills* and wrote them directly into the Act" does not allow us to "conclude . . . that Congress intended to adopt the ideas that it failed to write into the text of the statute." 377 F. 3d, at 455.

Petitioners also urge that putting the burden of persuasion on school districts will further IDEA's purposes because it will help ensure that children receive a free appropriate public education. In truth, however, very few cases will be in evidentiary equipoise. Assigning the burden of persuasion to school districts might encourage schools to put more resources into preparing IEPs and presenting their evidence. But IDEA is silent about whether marginal dollars should be allocated to litigation and administrative expenditures or to educational services. Moreover, there is reason to believe that a great deal is already spent on the administration of the Act. Litigating a due process complaint is an expensive affair, costing schools approximately \$8,000-to-\$12,000 per hearing. See Department of Education, J. Chambers, J. Harr, & A. Dhanani, What Are We Spending on Procedural Safeguards in Special Education 1999-2000, p. 8 (May 2003) (prepared under contract by American Institute for Research, Special Education Expenditure Project). Congress has also repeatedly amended the Act in order to reduce its administrative and litigation-related costs. For example, in 1997 Congress mandated that States offer mediation for IDEA disputes. Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, §615(e), 111 Stat. 90, 20 U. S. C. §1415(e). In 2004, Congress added a mandatory "resolution session" prior to any due process hearing. Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, §615(7)(f)(1)(B), 118 Stat. 2720, 20 U. S. C. A. §1415(f)(1)(B) (Supp. 2005). It also made new findings that "[p]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways," and that "[t]eachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes." §§1400(c)(8)-(9).

Petitioners in effect ask this Court to assume that every IEP is invalid until the school district demonstrates that it is not. The Act does not support this conclusion. IDEA relies heavily upon the expertise of school districts to meet its goals. It also includes a so-called "stay-put" provision, which requires a child to remain in his or her "then-current educational placement" during the pendency of an IDEA hearing. §1415(j). Congress could have required that a child be given the educational placement that a parent requested during a dispute, but it did no such thing. Congress appears to have presumed instead that, if the Act's procedural requirements are respected, parents will prevail when they have legitimate grievances. See *Rowley, supra*, at 206 (noting the "legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP").

Petitioners' most plausible argument is that "[t]he ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary." *United States v. New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5 (1957); see also *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U. S. 602, 626 (1993). But this "rule is far from being universal, and has many qualifications upon its application." *Greenleaf's Lessee v. Birth*, 6 Pet. 302, 312 (1832); see also McCormick §337, at 413 ("Very often one must plead and prove matters as to which his adversary has superior access to the proof"). School districts have a "natural advantage" in information and expertise, but Congress addressed this when it obliged schools to safeguard the procedural rights of parents and to share information with them. See *School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U. S. 359, 368 (1985). As noted above, parents have the right to review all records that the school possesses in relation to their child. §1415(b)(1). They also have the right to an "independent educational evaluation of the[ir] child." *Ibid.* The regulations clarify this entitlement by providing that a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency." 34 CFR §300.502(b)(1) (2005). IDEA thus ensures parents access to an expert who can evaluate all the materials that the school must make available, and who can give an independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the firepower to match the opposition.

Additionally, in 2004, Congress added provisions requiring school districts to answer the subject matter of a complaint in writing, and to provide parents with the reasoning behind the disputed action, details about the other options considered and rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision. Pub. L. 108-446, §615(c)(2)(B)(i)(I), 118 Stat. 2718, 20 U. S. C. A. §1415(c)(2)(B)(i)(I) (Supp. 2005). Prior to a hearing, the parties must disclose evaluations and recommendations that they intend to rely upon. 20 U. S. C. §1415(f)(2). IDEA hearings are deliberately informal and intended to give ALJs the flexibility that they need to ensure that each side can fairly present its evidence. IDEA, in fact, requires state authorities to organize hearings in a way that guarantees parents and children the procedural protections of the Act. See §1415(a). Finally, and perhaps most importantly, parents may recover attorney's fees if they prevail. §1415(i)(3)(B). These protections ensure that the school bears no unique informational advantage.

III.

Finally, respondents and several States urge us to decide that States may, if they wish, override the default rule and put the burden always on the school district. Several States have laws or regulations purporting to do so, at least under some circumstances. See, e.g., Minn. Stat. §125A.091, subd. 16 (2004); Ala. Admin. Code Rule 290-8-9-.08(8)©(6) (Supp. 2004); Alaska Admin. Code tit. 4, §52.550(e)(9) (2003); Del. Code Ann., Tit. 14, §3140 (1999). Because no such law or regulation exists in Maryland, we need not decide this issue today. Justice Breyer contends that the allocation of the burden ought to be left entirely up to the States. But neither party made this argument before this Court or the courts below. We therefore decline to address it.

We hold no more than we must to resolve the case at hand: The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief. In this case, that party is Brian, as represented by his parents. But the rule applies with equal effect to school districts: If they seek to challenge an IEP, they will in turn bear the burden of persuasion before an ALJ. The judgment of the United States Court of Appeals for the Fourth Circuit is, therefore, affirmed.

It is so **ordered**.

The Chief Justice took no part in the consideration or decision of this case.

Justice Stevens, **concurring**.

It is common ground that no single principle or rule solves all cases by setting forth a general test for ascertaining the incidence of proof burdens when both a statute and its legislative history are silent on the question. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U. S. 461, 494, n. 17 (2004); see also *ante*, at 7; post, at 1-2 (Ginsburg, J., dissenting). Accordingly, I do not understand the majority to disagree with the proposition that a court, taking into account "'policy considerations, convenience, and fairness,'" post, at 1 (Ginsburg, J., dissenting), could conclude

that the purpose of a statute is best effectuated by placing the burden of persuasion on the defendant. Moreover, I agree with much of what Justice Ginsburg has written about the special aspects of this statute. I have, however, decided to join the Court's disposition of this case, not only for the reasons set forth in Justice O'Connor's opinion, but also because I believe that we should presume that public school officials are properly performing their difficult responsibilities under this important statute.

Justice Ginsburg, **dissenting**.

When the legislature is silent on the burden of proof, courts ordinarily allocate the burden to the party initiating the proceeding and seeking relief. As the Fourth Circuit recognized, however, "other factors," prime among them "policy considerations, convenience, and fairness," may warrant a different allocation. 377 F. 3d 449, 452 (2004) (citing 2 J. Strong, *McCormick on Evidence §337*, p. 415 (5th ed. 1999) (allocation of proof burden "will depend upon the weight . . . given to any one or more of several factors, including . . . special policy considerations . . . [,] convenience, . . . [and] fairness")); see also 9 J. Wigmore, *Evidence §2486*, p. 291 (J. Chadbourn rev. ed. 1981) (assigning proof burden presents "a question of policy and fairness based on experience in the different situations"). The Court has followed the same counsel. See *Alaska Dept. of Environmental Conservation v. EPA*, 540 U. S. 461, 494, n. 17 (2004) ("No 'single principle or rule ... solve[s] all cases and afford[s] a general test for ascertaining the incidence' of proof burdens." (quoting Wigmore, *supra*, §2486, p. 288; emphasis deleted)). For reasons well stated by Circuit Judge Luttig, dissenting in the Court of Appeals, 377 F. 3d, at 456-459, I am persuaded that "policy considerations, convenience, and fairness" call for assigning the burden of proof to the school district in this case.

The Individuals with Disabilities Education Act (IDEA), 20 U. S. C. §1400 *et seq*., was designed to overcome the pattern of disregard and neglect disabled children historically encountered in seeking access to public education. See §1400(c)(2) (congressional findings); S. Rep. No. 94-168, pp. 6, 8-9 (1975); *Mills v. Board of Ed. of District of Columbia*, 348 F. Supp. 866 (DC 1972); *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F. Supp. 1257 (ED Pa. 1971), and 343 F. Supp. 279 (ED Pa. 1972). Under typical civil rights and social welfare legislation, the complaining party must allege and prove discrimination or qualification for statutory benefits. See, e.g., *St. Mary's Honor Center v. Hicks*, 509 U. S. 502, 511 (1993) (Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e *et seq*.); *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U. S. 267, 270 (1994) (Black Lung Benefits Act, 30 U. S. C. §901 *et seq*.). The IDEA is atypical in this respect: It casts an affirmative, beneficiary-specific obligation on providers of public education. School districts are charged with responsibility to offer to each disabled child an individualized education program (IEP) suitable to the child's special needs. 20 U. S. C. §§1400(d)(1), 1412(a)(4), 1414(d). The proponent of the IEP, it seems to me, is properly called upon to demonstrate its adequacy.

Familiar with the full range of education facilities in the area, and informed by "their experiences with other, similarly-disabled children," 377 F. 3d, at 458 (Luttig, J., dissenting), "the school district is . . . in a far better position to demonstrate that it has fulfilled [its statutory] obligation than the disabled student's parents are in to show that the school district has failed to do so," *id*., at 457. Accord *Oberti v. Board of Ed. of Borough of Clementon School Dist*., 995 F. 2d 1204, 1219 (CA3 1993) ("In practical terms, the school has an advantage when a dispute arises under the Act: the school has better access to relevant information, greater control over the potentially more persuasive witnesses (those who have been directly involved with the child's education), and greater overall educational expertise than the parents."); *Lascari v. Board of Ed. of Ramapo Indian Hills Regional High School Dist*., 116 N. J. 30, 45-46, 560 A. 2d 1180, 1188-1189 (1989) (in view of the school district's "better access to relevant information," parent's obligation "should be merely to place in issue the appropriateness of the IEP. The school board should then bear the burden of proving that the IEP was appropriate. In reaching that result, we have sought to implement the intent of the statutory and regulatory schemes.").[1]

Understandably, school districts striving to balance their budgets, if "[l]eft to [their] own devices," will favor educational options that enable them to conserve resources. *Deal v. Hamilton County Bd. of Ed*., 392 F. 3d 840, 864-865 (CA6 2004). Saddled with a proof burden in administrative "due process" hearings, parents are likely to find a district-proposed IEP "resistant to challenge." 377 F. 3d, at 459 (Luttig, J., dissenting). Placing the burden on the district to show that its plan measures up to the statutorily mandated "free appropriate public education," 20 U. S. C. §1400(d)(1)(A), will strengthen school officials' resolve to choose a course genuinely tailored to the child's individual needs.[2]

The Court acknowledges that "[a]ssigning the burden of persuasion to school districts might encourage schools to put more resources into preparing IEPs." *Ante*, at 9. Curiously, the Court next suggests that resources spent on developing IEPs rank as "administrative expenditures" not as expenditures for "educational services." *Ibid*. Costs entailed in the preparation of suitable IEPs, however, are the very expenditures necessary to ensure each child covered by IDEA access to a free appropriate education. These outlays surely relate to "educational services." Indeed, a carefully designed IEP may ward off disputes productive of large administrative or litigation expenses.

This case is illustrative. Not until the District Court ruled that the school district had the burden of persuasion did the school design an IEP that met Brian Schaffer's special educational needs. See *ante*, at 5; Tr. of Oral Arg. 21-22 (Counsel for the Schaffers observed that "Montgomery County . . . gave [Brian] the kind of services he had sought from the beginning once . . . [the school district was] given the burden of proof."). Had the school district, in the first instance, offered Brian a public or private school placement equivalent to the one the district ultimately provided, this entire litigation and its attendant costs could have been avoided.

Notably, nine States, as friends of the Court, have urged that placement of the burden of persuasion on the school district best comports with IDEA's aim. See *Brief for Virginia et al.* as Amici Curiae. If allocating the burden to school districts would saddle school systems with inordinate costs, it is doubtful that these States would have filed in favor of petitioners. Cf. Brief for United States as Amicus Curiae Supporting Appellees Urging Affirmance in 00-1471 (CA4), p. 12 ("Having to carry the burden of proof regarding the adequacy of its proposed IEP . . . should not substantially increase the workload for the school.").[3]

One can demur to the Fourth Circuit's observation that courts "do not automatically assign the burden of proof to the side with the bigger guns," 377 F. 3d, at 453, for no such reflexive action is at issue here. It bears emphasis that "the vast majority of parents whose children require the benefits and protections provided in the IDEA" lack "knowledg[e] about the educational resources available to their [child]" and the "sophisticat[ion]" to mount an effective case against a district-proposed IEP. Id., at 458 (Luttig, J., dissenting); cf. 20 U. S. C. §1400(c)(7)-(10). See generally M. Wagner, C. Marder, J. Blackorby, & D. Cardoso, *The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and their Households* (Sept. 2002), available at www.seels.net/designdocs/SEELS_Children We Serve Report.pdf (as visited Nov. 8, 2005, and available in Clerk of Court's case file). In this setting, "the party with the 'bigger guns' also has better access to information, greater expertise, and an affirmative obligation to provide the contested services." 377 F. 3d, at 458 (Luttig, J., dissenting). Policy considerations, convenience, and fairness, I think it plain, point in the same direction. Their collective weight warrants a rule requiring a school district, in "due process" hearings, to explain persuasively why its proposed IEP satisfies IDEA's standards. Ibid. I would therefore reverse the judgment of the Fourth Circuit.

Justice Breyer, **dissenting**.

As the majority points out, the Individuals with Disabilities Education Act (Act), 20 U. S. C. §1400 *et seq*., requires school districts to "identify and evaluate disabled children, . . . develop an [Individualized Education Program] for each one . . . , and review every IEP at least once a year." *Ante*, at 3 (opinion of the Court). A parent dissatisfied with "any matter relating [1] to the identification, evaluation, or educational placement of the child," or [2] to the "provision of a free appropriate public education," of the child, has the opportunity "to resolve such disputes through a mediation process." 20 U. S. C. §§1415(a), (b)(6)(A), (k) (Supp. 2005). The Act further provides the parent with "an opportunity for an impartial due process hearing" provided by the state or local education agency. §1415(f)(1)(A). If provided locally, either party can appeal the hearing officer's decision to the state educational agency. §1415(g). Finally, the Act allows any "party aggrieved" by the results of the state hearing(s), "to bring a civil action" in a federal district court. §1415(i)(2)(A). In sum, the Act provides for school board action, followed by (1) mediation, (2) an impartial state due process hearing with the possibility of state appellate review, and, (3) federal district court review.

The Act also sets forth minimum procedures that the parties, the hearing officer, and the federal court must follow. See, e.g., §1415(f)(1) (notice); §1415(f)(2) (disclosures); §1415(f)(3) (limitations on who may conduct the hearing); §1415(g) (right to appeal); §1415(h)(1) ("the right to be accompanied and advised by counsel"); §1415(h)(2) ("the right to present evidence and confront, cross-examine, and compel the attendance of witnesses"); §1415(h)(3) (the right to a transcript of the proceeding); §1415(h)(4) ("the right to written . . . findings of fact and decisions"). Despite this detailed procedural scheme, the Act is silent on the question of who bears the burden of persuasion at the state "due process" hearing.

The statute's silence suggests that Congress did not think about the matter of the burden of persuasion. It is, after all, a relatively minor issue that should not often arise. That is because the parties will ordinarily introduce considerable evidence (as in this case where the initial 3-day hearing included testimony from 10 witnesses, 6 qualified as experts, and more than 50 exhibits). And judges rarely hesitate to weigh evidence, even highly technical evidence, and to decide a matter on the merits, even when the case is a close one. Thus, cases in which an administrative law judge (ALJ) finds the evidence in precise equipoise should be few and far between. Cf. *O'Neal v. McAninch*, 513 U. S. 432, 436-437 (1995). See also Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, §§615(f)(3)(A)(ii)-(iv), 118 Stat. 2721, 20 U. S. C. A. §§1415(f)(3)(A)(ii)-(iv) (Supp. 2005) (requiring appointment of ALJ with technical capacity to understand Act).

Nonetheless, the hearing officer held that before him was that rara avis—a case of perfect evidentiary equipoise. Hence we must infer from Congress' silence (and from the

rest of the statutory scheme) which party—the parents or the school district—bears the burden of persuasion.

One can reasonably argue, as the Court holds, that the risk of nonpersuasion should fall upon the "individual desiring change." That, after all, is the rule courts ordinarily apply when an individual complains about the lawfulness of a government action. E.g., *ante*, at 6-11 (opinion of the Court); 377 F. 3d 449 (CA4 2004) (case below); *Devine v. Indian River County School Bd.*, 249 F. 3d 1289 (CA11 2001). On the other hand, one can reasonably argue to the contrary, that, given the technical nature of the subject matter, its human importance, the school district's superior resources, and the district's superior access to relevant information, the risk of nonpersuasion ought to fall upon the district. E.g., *ante*, at 1-5 (Ginsburg, J., dissenting); 377 F. 3d, at 456-459 (Luttig, J., dissenting); *Oberti v. Board of Ed.*, 995 F. 2d 1204 (CA3 1993); *Lascari v. Board of Ed.*, 116 N. J. 30, 560 A. 2d 1180 (1980). My own view is that Congress took neither approach. It did not decide the "burden of persuasion" question; instead it left the matter to the States for decision.

The Act says that the "establish[ment]" of "procedures" is a matter for the "State" and its agencies. §1415(a). It adds that the hearing in question, an administrative hearing, is to be conducted by the "State" or "local educational agency." 20 U. S. C. A. §1415(f)(1)(A) (Supp. 2005). And the statute as a whole foresees state implementation of federal standards. §1412(a); *Cedar Rapids Community School Dist. v. Garret F.*, 526 U. S. 66, 68 (1999); *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 208 (1982). The minimum federal procedural standards that the Act specifies are unrelated to the "burden of persuasion" question. And different States, consequently and not surprisingly, have resolved it in different ways. See, e.g., Alaska Admin. Code, tit. 4, §52.550(e)(9) (2003) (school district bears burden); Ala. Admin. Code Rule 290-8-9.08(8)(c)(6)(ii)(I) (Supp. 2004); (same); Conn. Agencies Regs. §10-76h-14 (2005) (same); Del. Code Ann., tit. 14, §3140 (1999) (same); 1 D. C. Mun. Regs., tit. 5, §3030.3 (2003) (same); W. Va. Code Rules §126-16-8.1.11(c) (2005) (same); Ind. Admin. Code, tit. 511, 7-30-3 (2003) (incorporating by reference Ind. Code §4-21.5-3-14 (West 2002)) (moving party bears burden); 7 Ky. Admin. Regs., tit. 707, ch. 1:340, Section 7(4) (2004) (incorporating by reference Ky. Rev. Stat. Ann. §13B.090(7) (Lexis 2003)) (same); Ga. Comp. Rules & Regs., Rule 160-4-7-.18(1)(g)(8) (2002) (burden varies depending upon remedy sought); Minn. Stat. Ann. §125A.091, subd. 16 (West Supp. 2005) (same). There is no indication that this lack of uniformity has proved harmful.

Nothing in the Act suggests a need to fill every interstice of the Act's remedial scheme with a uniform federal rule. See *Kamen v. Kemper Financial Services, Inc.*, 500 U. S. 90, 98 (1991) (citations omitted). And should some such need arise—i.e., if non-uniformity or a particular state approach were to prove problematic—the Federal Department of Education, expert in the area, might promulgate a uniform federal standard, thereby limiting state choice. 20 U. S. C. A. §1406(a) (Supp. 2005); *Irving Independent School Dist. v. Tatro*, 468 U. S. 883, 891-893 (1984); see also *Barnhart v. Walton*, 535 U. S. 212, 217-218 (2002); *NationsBank of N. C., N. A. v. Variable Annuity Life Ins. Co.*, 513 U. S. 251, 256-257 (1995); *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842-845 (1984).

Most importantly, Congress has made clear that the Act itself represents an exercise in "cooperative federalism." See *ante* (opinion of the Court), at 2-3. Respecting the States' right to decide this procedural matter here, where education is at issue, where expertise matters, and where costs are shared, is consistent with that cooperative approach. See *Wisconsin Dept. of Health and Family Servs. v. Blumer*, 534 U. S. 473, 495 (2002) (when interpreting statutes "designed to advance cooperative federalism[,] . . . we have not been reluctant to leave a range of permissible choices to the States"). Cf. *Smith v. Robbins*, 528 U. S. 259, 275 (2000); *New State Ice Co. v. Liebmann*, 285 U. S. 262, 311 (1932) (Brandeis, J., dissenting). And judicial respect for such congressional determinations is important. Indeed, in today's technologically and legally complex world, whether court decisions embody that kind of judicial respect may represent the true test of federalist principle. See *A T & T Corp. v. Iowa Utilities Bd.*, 525 U. S. 366, 420 (1999) (Breyer, J., concurring in part and dissenting in part).

Maryland has no special state law or regulation setting forth a special IEP-related burden of persuasion standard. But it does have rules of state administrative procedure and a body of state administrative law. The state ALJ should determine how those rules, or other state law applies to this case. Cf., e.g., Ind. Admin. Code, tit. 511,7-30-3 (2003) (hearings under the Act conducted in accord with general state administrative law); 7 Ky. Admin. Regs., tit. 707, ch. 1:340, Section 7(4) (2004) (same). Because the state ALJ did not do this (i.e., he looked for a federal, not a state, burden of persuasion rule), I would remand this case.

Endnotes

1 The Court suggests that the IDEA's stay-put provision, 20 U. S. C. §1415(j), supports placement of the burden of persuasion on the parents. Ante, at 10. The stay-put provision, however, merely preserves the status quo. It would work to the advantage of the child and the parents when the school seeks to cut services offered under a previously established IEP. True, Congress did not require that "a child be given the educational placement that a parent requested during a dispute." Ibid. But neither did Congress require that the IEP advanced by

the school district go into effect during the pendency of a dispute.

2 The Court observes that decisions placing "the entire burden of persuasion on the opposing party at the outset of a proceeding ... are extremely rare." *Ante*, at 8. In cases of this order, however, the persuasion burden is indivisible. It must be borne entirely by one side or the other: Either the school district must establish the adequacy of the IEP it has proposed or the parents must demonstrate the plan's inadequacy.

3 Before the Fourth Circuit, the United States filed in favor of the Schaffers; in this Court, the United States supported Montgomery County.

The Supreme Court of the United States

548 U. S. ____ (2006)

ARLINGTON CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner

v.

PEARL MURPHY AND THEODORE MURPHY,

Respondents

No. 05-18

On Writ Of Certiorari to The United States Court Of Appeals For The Second Circuit Court: 402 F. 3d 332, reversed and remanded.

June 26, 2006

Alito, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, and Thomas, JJ., joined.

Ginsburg, J., filed an opinion concurring in part and concurring in the judgment. Souter, J., filed a dissenting opinion. Breyer, J., filed a dissenting opinion, in which Stevens and Souter, JJ., joined.

The Individuals with Disabilities Education Act (IDEA or Act) provides that a court "may award reasonable attorneys' fees as part of the costs" to parents who prevail in an action brought under the Act. 111 Stat. 92, 20 U. S. C. §1415(i)(3)(B). We granted certiorari to decide whether this fee-shifting provision authorizes prevailing parents to recover fees for services rendered by experts in IDEA actions. We hold that it does not.

I.

Respondents Pearl and Theodore Murphy filed an action under the IDEA on behalf of their son, Joseph Murphy, seeking to require petitioner Arlington Central School District Board of Education to pay for their son's private school tuition for specified school years. Respondents prevailed in the District Court, 86 F. Supp. 2d 354 (SDNY 2000), and the Court of Appeals for the Second Circuit affirmed, 297 F. 3d 195 (2002).

As prevailing parents, respondents then sought $29,350 in fees for the services of an educational consultant, Marilyn Arons, who assisted respondents throughout the IDEA proceedings. The District Court granted respondents' request in part. It held that only the value of Arons' time spent between the hearing request and the ruling in respondents' favor could properly be considered charges incurred in an "action or proceeding brought" under the Act, see 20 U. S. C. §1415(i)(3)(B). 2003 WL 21694398, *9 (SDNY, July 22, 2003). This reduced the maximum recovery to $8,650. The District Court also held that Arons, a non-lawyer, could be compensated only for time spent on expert consulting services, not for time spent on legal representation, *id*., at *4, but it concluded that all the relevant time could be characterized as falling within the compensable category, and thus allowed compensation for the full $8,650, *id*., at *10.

The Court of Appeals for the Second Circuit affirmed. 402 F. 3d 332 (2005). Acknowledging that other Circuits had taken the opposite view, the Court of Appeals for the Second Circuit held that "Congress intended to and did authorize the reimbursement of expert fees in IDEA actions." *Id*., at 336. The court began by discussing two decisions of this Court holding that expert fees could not be recovered as taxed costs under particular cost- or fee-shifting provisions. See *Crawford Fitting Co. v. J. T. Gibbons, Inc*., 482 U. S. 437 (1987) (interpreting Fed. Rule Civ. Proc. 54(d) and 28 U. S. C. §1920); *West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U. S. 83 (1991) (interpreting 42 U. S. C. §1988 (1988 ed.)). According to these decisions, the court noted, a cost- or fee-shifting provision will not be read to permit a prevailing party to recover expert fees without " 'explicit statutory authority' indicating that Congress intended for that sort of fee-shifting." 402 F. 3d, at 336.

Ultimately, though, the court was persuaded by a statement in the Conference Committee Report relating to 20 U. S. C. §1415(i)(3)(B) and by a footnote in *Casey* that made reference to that Report. 402 F. 3d, at 336-337 (citing H. R. Conf. Rep. No. 99-687, p. 5 (1986)). Based on these authorities, the court concluded that it was required to interpret the IDEA to authorize the award of the costs that prevailing parents incur in hiring experts. 402 F. 3d, at 336.

We granted certiorari, 546 U. S. ____ (2006), to resolve the conflict among the Circuits with respect to whether Congress authorized the compensation of expert fees to prevailing parents in IDEA actions. Compare *Goldring v. District of Columbia*, 416 F. 3d 70, 73-77 (CADC 2005); *Neosho R-V School Dist. v. Clark ex rel. Clark*, 315 F. 3d 1022, 1031-1033 (CA8 2003); *T. D. v. LaGrange School Dist. No. 102*, 349 F. 3d 469, 480-482 (CA7 2003), with 402 F. 3d 332 (CA2 2005). We now reverse.

II.

Our resolution of the question presented in this case is guided by the fact that Congress enacted the IDEA pursuant to the Spending Clause. U. S. Const., Art. I, §8, cl. 1; see *Schaffer v. Weast*, 546 U. S. ___ (2005). Like its statutory predecessor, the IDEA provides federal funds to assist state and local agencies in educating children with disabilities "and conditions such funding upon a State's compliance with extensive goals and procedures." *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 179 (1982).

Congress has broad power to set the terms on which it disburses federal money to the States, see, e.g., *South Dakota v. Dole*, 483 U. S. 203, 206-207 (1987), but when Congress attaches conditions to a State's acceptance of federal funds, the conditions must be set out "unambiguously," see *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981); *Rowley, supra*, at 204, n. 26. "Legislation enacted pursuant to the spending power is much in the nature of a contract," and therefore, to be bound by "federally imposed conditions," recipients of federal funds must accept them "voluntarily and knowingly." *Pennhurst*, 451 U. S., at 17. States cannot knowingly accept conditions of which they are "unaware" or which they are "unable to ascertain." *Ibid*. Thus, in the present case, we must view the IDEA from the perspective of a state official who is engaged in the process of deciding whether the State should accept IDEA funds and the obligations that go with those funds. We must ask whether such a state official would clearly understand that one of the obligations of the Act is the obligation to compensate prevailing parents for expert fees. In other words, we must ask whether the IDEA furnishes clear notice regarding the liability at issue in this case.

III.

A.

In considering whether the IDEA provides clear notice, we begin with the text. We have "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U. S. 249, 253-254 (1992). When the statutory "language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000) (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989), in turn quoting *Caminetti v. United States*, 242 U. S. 470, 485 (1917); internal quotation marks omitted).

The governing provision of the IDEA, 20 U. S. C. §1415(i)(3)(B), provides that "in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs" to the parents of "a child with a disability" who is the "prevailing party." While this provision provides for an award of "reasonable attorneys' fees," this provision does not even hint that acceptance of IDEA funds makes a State responsible for reimbursing prevailing parents for services rendered by experts.

Respondents contend that we should interpret the term "costs" in accordance with its meaning in ordinary usage and that §1415(i)(3)(B) should therefore be read to "authorize reimbursement of all costs parents incur in IDEA proceedings, including expert costs." Brief for Respondents 17.

This argument has multiple flaws. For one thing, as the Court of Appeals in this case acknowledged, "'costs' is a term of art that generally does not include expert fees." 402 F. 3d, at 336. The use of this term of art, rather than a term such as "expenses," strongly suggests that §1415(i)(3)(B) was not meant to be an open-ended provision that makes participating States liable for all expenses incurred by prevailing parents in connection with an IDEA case—for example, travel and lodging expenses or lost wages due to time taken off from work. Moreover, contrary to respondents' suggestion, §1415(i)(3)(B) does not say that a court may award "costs" to prevailing parents; rather, it says that a court may award reasonable attorney's fees "as part of the costs" to prevailing parents. This language simply adds reasonable attorney's fees incurred by prevailing parents to the list of costs that prevailing parents are otherwise entitled to recover. This list of otherwise recoverable costs is obviously the list set out in 28 U. S. C. §1920, the general statute governing the taxation of costs in federal court, and the recovery of witness fees under §1920 is strictly limited by §1821, which authorizes travel reimbursement and a $40 per diem. Thus, the text of 20 U. S. C. §1415(i)(3)(B) does not authorize an award of any additional expert fees, and it certainly fails to provide the clear notice that is required under the Spending Clause.

Other provisions of the IDEA point strongly in the same direction. While authorizing the award of reasonable attorney's fees, the Act contains detailed provisions that are designed to ensure that such awards are indeed reasonable. See §§1415(i)(3)(C)-(G). The absence of any comparable provisions relating to expert fees strongly suggests that recovery of expert fees is not authorized. Moreover, the lack of any reference to expert fees in §1415(d)(2) gives rise to a similar inference. This provision, which generally requires that parents receive "a full explanation of the procedural safeguards" available under §1415 and refers expressly to "attorneys' fees," makes no mention of expert fees.

B.

Respondents contend that their interpretation of §1415(i)(3)(B) is supported by a provision of the Handicapped Children's Protection Act of 1986 that required the General Accounting Office (GAO) to collect certain data, §4(b)(3), 100 Stat. 797 (hereinafter GAO study provision), but this provision is of little significance for present purposes. The GAO study provision directed the Comptroller General, acting through the GAO, to compile data on, among other things: "(A) the specific amount of attorneys' fees, costs, and expenses awarded to the prevailing party" in IDEA cases for a particular period of time, and (B) "the number of hours spent by personnel, including attorneys and consultants, involved in the action or proceeding, and expenses incurred by the parents and the State educational agency and local educational agency." *Id*., at 797-798.

Subparagraph (A) would provide some support for respondents' position if it directed the GAO to compile data on awards to prevailing parties of the expense of hiring consultants, but that is not what subparagraph (A) says. Subparagraph (A) makes no mention of consultants or experts or their fees.[1]

Subparagraph (B) similarly does not help respondents. Subparagraph (B), which directs the GAO to study "the number of hours spent in IDEA cases by personnel, including ... consultants," says nothing about the award of fees to such consultants. Just because Congress directed the GAO to compile statistics on the hours spent by consultants in IDEA cases, it does not follow that Congress meant for States to compensate prevailing parties for the fees billed by these consultants.

Respondents maintain that "Congress' direction to the GAO would be inexplicable if Congress did not anticipate that the expenses for 'consultants' would be recoverable," Brief for Respondents 19, but this is incorrect. There are many reasons why Congress might have wanted the GAO to gather data on expenses that were not to be taxed as costs. Knowing the costs incurred by IDEA litigants might be useful in considering future procedural amendments (which might affect these costs) or a future amendment regarding fee shifting. And, in fact, it is apparent that the GAO study provision covered expenses that could not be taxed as costs. For example, the GAO was instructed to compile statistics on the hours spent by all attorneys involved in an IDEA action or proceeding, even though the Act did not provide for the recovery of attorney's fees by a prevailing state or local educational agency.[2] Similarly, the GAO was directed to compile data on "expenses incurred by the parents," not just those parents who prevail and are thus eligible to recover taxed costs.

In sum, the terms of the IDEA overwhelmingly support the conclusion that prevailing parents may not recover the costs of experts or consultants. Certainly the terms of the IDEA fail to provide the clear notice that would be needed to attach such a condition to a State's receipt of IDEA funds.

IV.

Thus far, we have considered only the text of the IDEA, but perhaps the strongest support for our interpretation of the IDEA is supplied by our decisions and reasoning in *Crawford Fitting*, 482 U. S. 437, and *Casey*, 499 U. S. 83. In light of those decisions, we do not see how it can be said that the IDEA gives a State unambiguous notice regarding liability for expert fees.

In *Crawford Fitting*, the Court rejected an argument very similar to respondents' argument that the term "costs" in §1415(i)(3)(B) should be construed as an open-ended reference to prevailing parents' expenses. It was argued in *Crawford Fitting* that Federal Rule of Civil Procedure 54(d), which provides for the award of "costs" to a prevailing party, authorizes the award of costs not listed in 28 U. S. C. §1821. 482 U. S., at 439. The Court held, however, that Rule 54(d) does not give a district judge "discretion to tax whatever costs may seem appropriate"; rather, the term "costs" in Rule 54(d) is defined by the list set out in §1920. *Id*., at 441. Because the recovery of witness fees, see §1920(3), is strictly limited by §1821, the Court observed, a broader interpretation of Rule 54(d) would mean that the Rule implicitly effected a partial repeal of those provisions. *Id*., at 442. But, the Court warned, "we will not lightly infer that Congress has repealed §§1920 and 1821, either through Rule 54(d) or any other provision not referring explicitly to witness fees." *Id*., at 445.

The reasoning of *Crawford Fitting* strongly supports the conclusion that the term "costs" in 20 U. S. C. §1415(i)(3)(B), like the same term in Rule 54(d), is defined by the categories of expenses enumerated in 28 U. S. C. §1920. This conclusion is buttressed by the principle, recognized in *Crawford Fitting*, that no statute will be construed as authorizing the taxation of witness fees as costs unless the statute "refers explicitly to witness fees." 482 U. S., at 445; see also *ibid*. ("absent explicit statutory or contractual authorization for the taxation of the expenses of a litigant's witness as costs, federal courts are bound by the limitations set out in 28 U. S. C. §1821 and §1920").

Our decision in *Casey* confirms even more dramatically that the IDEA does not authorize an award of expert fees. In *Casey*, as noted above, we interpreted a fee-shifting provision, 42 U. S. C. §1988, the relevant wording of which was virtually identical to the wording of 20 U. S. C. §1415(i)(3)(B). Compare *ibid*. (authorizing the award of "reasonable attorneys' fees as part of the costs" to prevailing parents) with 42 U. S. C. §1988(b) (1988 ed.) (permitting prevailing parties in certain civil rights actions to be awarded "a reasonable attorney's fee as part of the costs"). We held that §1988 did not empower a district court to award expert fees to a prevailing party. *Casey*, *supra*, at 102. To decide in favor of respondents here, we would have to interpret the virtually identical language in 20 U. S. C. §1415 as having exactly the opposite meaning. Indeed, we would have to go further and hold that the relevant language in the IDEA unambiguously means exactly the opposite of what the nearly identical language in 42 U. S. C. §1988 was held to mean in *Casey*.

The Court of Appeals, as noted above, was heavily influenced by a *Casey* footnote, see 402 F. 3d, at 336-337 (quoting 499 U. S., at 91-92, n. 5), but the court misunderstood the footnote's meaning. The text accompanying the footnote argued, based on an analysis of several fee-shifting statutes, that the term "attorney's fees" does not include expert fees. *Id*., at 88-91. In the footnote, we commented

on petitioners' invocation of the Conference Committee Report relating to 20 U. S. C. §1415(i)(3)(B), which stated: "'The conferees intended that the term "attorneys' fees as part of the costs" include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the ... case.' " 499 U. S., at 91-92, n. 5 (quoting H. R. Conf. Rep. No. 99-687, at 5; ellipsis in original). This statement, the footnote commented, was "an apparent effort to depart from ordinary meaning and to define a term of art." 499 U. S., at 92, n. 5. The footnote did not state that the Conference Committee Report set out the correct interpretation of §1415(i)(3)(B), much less that the Report was sufficient, despite the language of the statute, to provide the clear notice required under the Spending Clause. The thrust of the footnote was simply that the term "attorneys' fees," standing alone, is generally not understood as encompassing expert fees. Thus, *Crawford Fitting* and *Casey* strongly reinforce the conclusion that the IDEA does not unambiguously authorize prevailing parents to recover expert fees.

V.

Respondents make several arguments that are not based on the text of the IDEA, but these arguments do not show that the IDEA provides clear notice regarding the award of expert fees.

Respondents argue that their interpretation of the IDEA furthers the Act's overarching goal of "ensuring that all children with disabilities have available to them a free appropriate public education," 20 U. S. C. §1400(d)(1)(A) as well as the goal of "safeguarding the rights of parents to challenge school decisions that adversely affect their child." Brief for Respondents 20. These goals, however, are too general to provide much support for respondents' reading of the terms of the IDEA. The IDEA obviously does not seek to promote these goals at the expense of all other considerations, including fiscal considerations. Because the IDEA is not intended in all instances to further the broad goals identified by the respondents at the expense of fiscal considerations, the goals cited by respondents do little to bolster their argument on the narrow question presented here.[3]

Finally, respondents vigorously argue that Congress clearly intended for prevailing parents to be compensated for expert fees. They rely on the legislative history of §1415 and in particular on the following statement in the Conference Committee Report, discussed above: "The conferees intend that the term 'attorneys' fees as part of the costs' include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the ... case." H. R. Conf. Rep. No. 99-687, at 5.

Whatever weight this legislative history would merit in another context, it is not sufficient here. Putting the legislative history aside, we see virtually no support for respondents' position. Under these circumstances, where everything other than the legislative history overwhelming suggests that expert fees may not be recovered, the legislative history is simply not enough. In a Spending Clause case, the key is not what a majority of the Members of both Houses intend but what the States are clearly told regarding the conditions that go along with the acceptance of those funds. Here, in the face of the unambiguous text of the IDEA and the reasoning in Crawford Fitting and Casey, we cannot say that the legislative history on which respondents rely is sufficient to provide the requisite fair notice.

We reverse the judgment of the Court of Appeals for the Second Circuit and remand the case for further proceedings consistent with this opinion.

It is so **ordered**.

Justice Ginsburg, concurring in part and concurring in the judgment.

I agree, in the main, with the Court's resolution of this case, but part ways with the Court's opinion in one respect. The Court extracts from *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981), a "clear notice" requirement, and deems it applicable in this case because Congress enacted the Individuals with Disabilities Education Act (IDEA), as it did the legislation at issue in *Pennhurst*, pursuant to the Spending Clause. Ante, at 3-4. That extraction, in my judgment, is unwarranted. *Pennhurst's* "clear notice" requirement should not be unmoored from its context. The Court there confronted a plea to impose "an unexpected condition for compliance—a new programmatic obligation for participating States." *Bell v. New Jersey*, 461 U. S. 773, 790, n. 17 (1983). The controversy here is lower key: It concerns not the educational programs IDEA directs school districts to provide, but "the remedies available against a non-complying district." *Ibid*; see post, at 9-11 (Breyer, J., dissenting).

The Court's repeated references to a Spending Clause derived "clear notice" requirement, see *ante*, at 3-4, 6, 8, 11, and n. 3, 12, are questionable on other grounds as well. For one thing, IDEA was enacted not only pursuant to Congress' Spending Clause authority, but also pursuant to §5 of the Fourteenth Amendment. See *Smith v. Robinson*, 468 U. S. 992, 1009 (1984) (IDEA's predecessor, the Education of the Handicapped Act, was "set up by Congress to aid the States in complying with their constitutional obligations to provide public education for handicapped children."). Furthermore, no "clear notice" prop is needed in this case given the twin pillars on which the Court's judgment securely rests. First, as the Court explains, *ante*, at 4-6, the specific, attorneys'-fees-oriented, provisions of IDEA, i.e., 20 U. S. C. §1415(i)(3)(B)-(G); §1415(d)(2)(L), "overwhelmingly support the conclusion that prevailing parents

may not recover the costs of experts or consultants," *ante*, at 8. Those provisions place controls on fees recoverable for attorneys' services, without mentioning costs parents might incur for other professional services and controls geared to those costs. Second, as the Court develops, prior decisions closely in point "strongly support," even "confirm ... dramatically," today's holding that IDEA trains on attorneys' fees and does not authorize an award covering amounts paid or payable for the services of an educational consultant. *Ante*, at 9 (citing *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U. S. 437 (1987), and *West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U. S. 83 (1991)).

For the contrary conclusion, Justice Breyer's dissent relies dominantly on a Conference Report stating the conferees' view that the term "attorneys' fees as part of the costs" includes "expenses and fees of expert witnesses" and payments for tests necessary for the preparation of a case. H. R. Conf. Rep. No. 99-687, p. 5 (1986) (internal quotation marks omitted).[4] Including costs of consultants and tests in §1415(i)(3)(B) would make good sense in light of IDEA's overarching goal, i.e., to provide a "free appropriate public education" to children with disabilities, §1400(d)(1)(A). See *post*, at 5-8 (Breyer, J., dissenting). But Congress did not compose §1415(i)(3)(B)'s text,[5] as it did the texts of other statutes too numerous and varied to ignore, to alter the common import of the terms "attorneys' fees" and "costs" in the context of expense-allocation legislation. See, e.g., 42 U. S. C. §1988(c) (2000 ed. and Supp. III) (added in 1991 specifically to "include expert fees as part of the attorney's fee"); *Casey*, 499 U. S., at 88-92, and n. 4 (citing variously composed statutes that "explicitly shift expert ... fees as well as attorney's fees"). Given the constant meaning of the formulation "attorneys' fees as part of the costs" in federal legislation, we are not at liberty to rewrite "the statutory text adopted by both Houses of Congress and submitted to the President," *id.*, at 98, to add several words Congress wisely might have included. The ball, I conclude, is properly left in Congress' court to provide, if it so elects, for consultant fees and testing expenses beyond those IDEA and its implementing regulations already authorize[6], along with any specifications, conditions, or limitations geared to those fees and expenses Congress may deem appropriate. Cf. §1415(i)(3)(B)-(G); §1415(d)(2)(L) (listing only attorneys' fees, not expert or consulting fees, among the procedural safeguards about which school districts must inform parents).

In sum, although I disagree with the Court's rationale to the extent that it invokes a "clear notice" requirement tied to the Spending Clause, I agree with the Court's discussion of IDEA's terms, *ante*, at 4-6, and of our decisions in *Crawford* and *Casey, ante*, at 8-11. Accordingly, I concur in part in the Court's opinion, and join the Court's judgment.

Dissents

Justice Souter, dissenting.

I join Justice Breyer's dissent and add this word only to say outright what would otherwise be implicit, that I agree with the distinction he draws between this case and *Barnes v. Gorman*, 536 U. S. 181 (2002). See *post*, at 10-11 (citing *Barnes, supra*, at 191 (Souter, J., concurring)). Beyond that, I emphasize the importance for me of §4 of the Handicapped Children's Protection Act of 1986, 100 Stat. 797, as amended, 20 U. S. C. A. §1415 note, which mandated the study by what is now known as the Government Accountability Office. That section, of equal dignity with the fee-shifting provision enacted by the same statute, makes Justice Breyer's resort to the related Conference Report the reasonable course.

Justice Breyer, with whom Justice Stevens and Justice Souter join, dissenting.

The Individuals with Disabilities Education Act (IDEA or Act), 20 U. S. C. A. §1400 *et seq.*, (Supp. 2006), says that a court may "award reasonable attorneys' fees as part of the costs to the parents" who are prevailing parties. §1415(i)(3)(B). Unlike the Court, I believe that the word "costs" includes, and authorizes payment of, the costs of experts. The word "costs" does not define its own scope. Neither does the phrase "attorneys' fees as part of costs." But Members of Congress did make clear their intent by, among other things, approving a Conference Report that specified that "the term 'attorneys' fees as part of the costs' includes reasonable expenses of expert witnesses and reasonable costs of any test or evaluation which is found to be necessary for the preparation of the parent or guardian's case in the action or proceeding." H. R. Conf. Rep. No. 99-687, p. 5 (1986); Appendix A, *infra*, at 19. No Senator or Representative voiced *any* opposition to this statement in the discussion preceding the vote on the Conference Report—the last vote on the bill before it was sent to the President. I can find no good reason for this Court to interpret the language of this statute as meaning the precise opposite of what Congress told us it intended.

I.

There are two strong reasons for interpreting the statutory phrase to include the award of expert fees. First, that is what Congress said it intended by the phrase. Second, that interpretation furthers the IDEA's statutorily defined purposes.

A.

Congress added the IDEA's cost-shifting provision when it enacted the Handicapped Children's Protection Act of 1986 (HCPA), 100 Stat. 796. Senator Lowell Weicker introduced the relevant bill in 1985. 131 Cong. Rec. 1979-1980 (1985). As introduced, it sought to overturn this Court's

determination that the then-current version of the IDEA (and other civil rights statutes) did not authorize courts to award attorneys' fees to prevailing parents in IDEA cases. See *Smith v. Robinson*, 468 U. S. 992 (1984). The bill provided that "in any action or proceeding brought under this subsection, the court, in its discretion, may award a reasonable attorney's fee as part of the costs to a parent or legal representative of a handicapped child or youth who is the prevailing party." 131 Cong. Rec. 1980; see S. Rep. No. 99-112, p. 2 (1985).

After hearings and debate, several Senators introduced a new bill in the Senate that would have put a cap on attorneys' fees for legal services lawyers, but at the same time would have explicitly authorized the award of "a reasonable attorney's fee, reasonable witness fees, *and other reasonable expenses of the civil action*, in addition to the costs to a parent . . . who is the prevailing party." *Id*., at 7 (emphasis added). While no Senator objected to the latter provision, some objected to the cap. See, e.g., *id*., at 17-18 (Additional Views of Senators Kerry, Kennedy, Pell, Dodd, Simon, Metzenbaum and Matsunaga) (accepting cost-shifting provision, but objecting to cap and other aspects of the bill). A bipartisan group of Senators, led by Senators Hatch and Weicker, proposed an alternative bill that authorized courts to award "a reasonable attorney's fee in addition to the costs to a parent" who prevailed. *Id*., at 15-16 (Additional Views of Senators Hatch, Weicker, Stafford, Dole, Pell, Matsunaga, Simon, Kerry, Kennedy, Metzenbaum, Dodd, and Grassley); 131 Cong. Rec. 21389.

Senator Weicker explained that the bill: "*will enable courts to compensate parents for whatever reasonable costs they had to incur to fully secure what was guaranteed to them by the EHA*. As in other fee shifting statutes, it is our intent that such awards will include, at the discretion of the court, reasonable attorney's fees, *necessary expert witness fees, and other reasonable expenses which were necessary for parents to vindicate their claim to a free appropriate public education for their handicapped child*." *Id*., at 21390 (emphasis added).

Not a word of opposition to this statement (or the provision) was voiced on the Senate floor, and S. 415 passed without a recorded vote. *Id*., at 21393.

The House version of the bill also reflected an intention to authorize recovery of expert costs. Following the House hearings, the Committee on Education and Labor produced a substitute bill that authorized courts to "award reasonable attorneys' fees, *expenses and costs*" to prevailing parents. H. R. Rep. No. 99-296, pp. 1, 5 (1985) (emphasis added). The House Report stated that

"The phrase 'expenses and costs' *includes expenses of expert witnesses; the reasonable costs of any study, report, test, or project which is found to be necessary for the preparation of the parents' or guardian's due process hearing, state administrative review or civil action*; as well as traditional costs and expenses incurred in the course of litigating a case (e.g., depositions and interrogatories)." *Id*., at 6 (emphasis added).

No one objected to this statement. By the time H. R. 1523 reached the floor, another substitute bill was introduced. 131 Cong. Rec. 31369 (1985). This new bill did not change in any respect the text of the authorization of expenses and costs. It did add a provision, however, that directed the General Accounting Office (GAO) -- now known as the Government Accountability Office, see 31 U. S. C. A. §731 note (Supp. 2006) -- to study and report to Congress on the fiscal impact of the cost-shifting provision. See *id*., at 31369-31370. The newly substituted bill passed the House without a recorded vote. *Id*., at 31377.

Members of the House and Senate (including all of the primary sponsors of the HCPA) then met in conference to work out certain differences. At the conclusion of those negotiations, they produced a Conference Report, which contained the text of the agreed-upon bill and a "Joint Explanatory Statement of the Committee of the Conference." See H. R. Conf. Rep. No. 99-687 (1986), Appendix A, *infra*. The Conference accepted the House bill's GAO provision with "an amendment expanding the data collection requirements of the GAO study to include information regarding the amount of funds expended by local educational agencies and state educational agencies on civil actions and administrative proceedings." *Id*., at 7. And it accepted (with minor changes) the cost-shifting provisions provided in both the Senate and House versions. The conferees explained:

> "With slightly different wording, both the Senate bill and the House amendment provide for the awarding of attorneys' fees in addition to costs. The Senate recedes to the House and the House recedes to the Senate with an amendment clarifying that 'the court, in its discretion, may award reasonable attorneys' fees as part of the costs . . .' This change in wording incorporates the Supreme Court's *Marek v. Chesny* decision 473 U. S 1 (1985). *The conferees intend that the term 'attorneys' fees as part of the costs' include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the parent or guardian's case in the action or proceeding, as well as traditional costs incurred in the course of litigating a case*." *Id*., at 5 (emphasis added; citation omitted).

The Conference Report was returned to the Senate and the House. A motion was put to each to adopt the Conference Report, and both the Senate and the House agreed to the Conference Report by voice votes. See Appendix B, *infra*, at 22 (Senate); Appendix C, *infra*, at 23 (House). No objection was raised to the Conference Report's statement that the

cost-shifting provision was intended to authorize expert costs. I concede that "sponsors of the legislation did not mention anything on the floor about expert or consultant fees" at the time the Conference Report was submitted. *Ante*, at 3, n. 2 (Ginsburg, J., concurring in part and concurring in judgment). But I do not believe that silence is significant in light of the fact that every Senator and three of the five Representatives who spoke on the floor had previously signed his name to the Conference Report—a Report that made Congress' intent clear on the first page of its explanation. See Appendix A, *infra*, at 19. And every Senator and Representative that took the floor preceding the votes voiced his strong support for the Conference Report. 132 Cong. Rec. 16823-16825 (1986) (Senate); *id*., at 17607-17612 (House). The upshot is that Members of both Houses of Congress voted to adopt both the statutory text before us and the Conference Report that made clear that the statute's words include the expert costs here in question.

B.

The Act's basic purpose further supports interpreting the provision's language to include expert costs. The IDEA guarantees a "free" and "appropriate" public education for "all" children with disabilities. 20 U. S. C. A. §1400(d)(1)(A) (Supp. 2006); see also §1401(9)(A) (defining "free appropriate public education" as one "provided at public expense," "without charge"); §1401(29) (defining "special education" as "specially designed instruction, at *no cost* to parents, to meet the unique needs of a child with a disability" (emphasis added)).

Parents have every right to become involved in the Act's efforts to provide that education; indeed, the Act encourages their participation. §1400(c)(5)(B) (IDEA "ensures that families of disabled children have meaningful opportunities to participate in the education of their children at school"). It assures parents that they may question a school district's decisions about what is "appropriate" for their child. And in doing so, they may secure the help of experts. §1415(h)(1) (parents have "the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities"); see generally *Schaffer v. Weast*, 546 U. S. ___, ___ (2005) (slip op., at 3-4) (detailing Act's procedures); *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 205-206 (1982) (emphasizing importance of Act's procedural guarantees).

The practical significance of the Act's participatory rights and procedural protections may be seriously diminished if parents are unable to obtain reimbursement for the costs of their experts. In IDEA cases, experts are necessary. See Kuriloff & Goldberg, Is Mediation a Fair Way to Resolve Special Education Disputes? First Empirical Findings, *2 Harv. Negotiation L. Rev. 35*, 40 (1997) (detailing findings of study showing high correlation between use of experts and success of parents in challenging school district's plan); Kuriloff, Is Justice Served by Due Process?: Affecting the Outcome of Special Education Hearings in Pennsylvania, *48 Law & Contemp. Prob. 89*, 100-101, 109 (1985) (same); see also Brief for National Disability Rights Network et al. as *Amici Curiae* 6-15 (collecting sources); cf. *Schaffer, supra*, at ___ (slip op., at 5) (Ginsburg, J., dissenting) ("The vast majority of parents whose children require the benefits and protections provided in the IDEA lack knowledge about the educational resources available to their child and the sophistication to mount an effective case against a district-proposed IEP" (internal quotation marks and alterations omitted)).

Experts are also expensive. See Brief for Respondents 28, n. 17 (collecting District Court decisions awarding expert costs ranging from $200 to $7,600, and noting three reported cases in which expert awards exceeded $10,000). The costs of experts may not make much of a dent in a school district's budget, as many of the experts they use in IDEA proceedings are already on the staff. Cf. *Oberti v. Board of Ed. Clementon School Dist*., 995 F. 2d 1204, 1219 (CA3 1993). But to parents, the award of costs may matter enormously. Without potential reimbursement, parents may well lack the services of experts entirely. See Department of Education, M. Wagner et al., *The Individual and Household Characteristics of Youth With Disabilities: A Report from the National Longitudinal Transition Study-2 (NLTS-2)*, pp. 3-5 (Aug. 2003) (finding that 25% of disabled children live in poverty and 65% live in households with incomes less than $50,000); see Department of Education, M. Wagner et al., *The Children We Serve: The Demographic Characteristics of Elementary and Middle School Students with Disabilities and Their Households*, p. 28 (Sept. 2002), available at http: // www.seels.net / designdocs / SEELS _ Children _ We _Serve_Report.pdf (as visited June 23, 2006, and available in Clerk of Court's case file) (finding that 36% of disabled children live in households with incomes of $25,000 or less).

In a word, the Act's statutory right to a "free" and "appropriate" education may mean little to those who must pay hundreds of dollars to obtain it. That is why this Court has previously avoided interpretations that would bring about this kind of result. See *School Comm. of Burlington v. Department of Ed. of Mass*., 471 U. S. 359 (1985) (construing IDEA provision granting equitable authority to courts to include the power to order reimbursement for parents who switch their child to private schools if that decision later proves correct); *id*., at 370 (without cost reimbursement for prevailing parents, "the child's right to a free appropriate public education, the parents' right to participate fully in developing a proper individualized education plan (IEP), and all of the procedural safeguards would be less than

complete"); *Florence County School Dist. Four v. Carter*, 510 U. S. 7, 13 (1993) (holding that prevailing parents are not barred from reimbursement for switching their child to a private school that does not meet the IDEA's definition of a free and appropriate education). In *Carter*, we explained: "IDEA was intended to ensure that children with disabilities receive an education that is both appropriate and free. To read the provisions of §1401(a)(18) to bar reimbursement in the circumstances of this case would defeat this statutory purpose." *Id*., at 13-14 (citation omitted).

To read the word "costs" as requiring successful parents to bear their own expenses for experts suffers from the same problem. Today's result will leave many parents and guardians "without an expert with the firepower to match the opposition," *Schaffer, supra*, at __ (slip op., at 11), a far cry from the level playing field that Congress envisioned.

II.

The majority makes essentially three arguments against this interpretation. It says that the statute's purpose and "legislative history is simply not enough" to overcome: (1) the fact that this is a Spending Clause case; (2) the text of the statute; and (3) our prior cases which hold that the term "costs" does not include expert costs. *Ante*, at 12. I do not find these arguments convincing.

A.

At the outset the majority says that it "is guided by the fact that Congress enacted the IDEA pursuant to the Spending Clause." *Ante*, at 3. "In a Spending Clause case," the majority adds, "the key is not what a majority of the Members of both Houses intend but what the States are clearly told regarding the conditions that go along with the acceptance of those funds." *Ante*, at 12. Thus, the statute's "conditions must be set out 'unambiguously.'" *Ante*, at 3-4 (citing *Pennhurst State School* and *Hospital v. Halderman*, 451 U. S. 1, 17 (1981) and *Rowley*, 458 U. S., at 204, n. 26). And "we must ask" whether the statute "furnishes clear notice regarding the liability at issue in this case." *Ante*, at 4.

I agree that the statute on its face does not *clearly* tell the States that they must pay expert fees to prevailing parents. But I do not agree that the majority has posed the right question. For one thing, we have repeatedly examined the nature and extent of the financial burdens that the IDEA imposes without reference to the Spending Clause or any "clear-statement rule." See, e.g., *Burlington, supra*, at 369 (private school fees); *Carter, supra*, at 13 (same); *Smith*, 468 U. S., at 1010-1011 (attorneys' fees); *Cedar Rapids Community School Dist. v. Garret F.*, 526 U. S. 66, 76-79 (1999) (continuous nursing service); but see *id*., at 83 (Thomas, J., joined by Kennedy, J., dissenting). Those cases did not ask whether the statute "furnishes clear notice" to the affirmative obligation or liability at issue.

For another thing, neither *Pennhurst* nor any other case suggests that *every spending detail* of a Spending Clause statute must be spelled out with unusual clarity. To the contrary, we have held that *Pennhurst's* requirement that Congress "unambiguously" set out "a condition on the grant of federal money" *does not* necessarily apply to legislation setting forth "*the remedies available against a non-complying State*." *Bell v. New Jersey*, 461 U. S. 773, 790, n. 17 (1983) (emphasis added) (rejecting *Pennhurst*-based argument that Elementary and Secondary Education Act of 1965 did not unambiguously provide that the Secretary could recover federal funds that are misused by a State). We have added that *Pennhurst* does not require Congress "specifically" to "identify" and "proscribe *each condition* in Spending Clause legislation." *Jackson v. Birmingham Bd. of Ed*., 544 U. S. 167, 183 (2005) (rejecting argument that *Pennhurst* precluded interpreting Title IX's private cause of action to encompass retaliation (internal quotation marks and alterations omitted)); see also *Bennett v. Kentucky Dept. of Ed*., 470 U. S. 656, 665-666 (1985). And we have denied any implication that "suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to *all* issues that they raise." *Barnes v. Gorman*, 536 U. S. 181, 188-189, n. 2 (2002) (emphasis added).

These statements and holdings are not surprising. After all, the basic objective of *Pennhurst*'s clear-statement requirement does not demand textual clarity in respect to every detail. That is because ambiguity about the precise nature of a statutory program's details—particularly where they are of a kind that States might have anticipated—is rarely relevant to the basic question: Would the States have accepted the Federal Government's funds *had they only known* the nature of the accompanying conditions? Often, the later filling-in of details through judicial interpretation will not lead one to wonder whether funding recipients would have agreed to enter the basic program at all. Given the nature of such details, it is clear that the States would have entered the program regardless. At the same time, to view each statutory detail of a highly complex federal/state program (involving say, transportation, schools, the environment) simply through the lens of linguistic clarity, rather than to assess its meanings in terms of basic legislative purpose, is to risk a set of judicial interpretations that can prevent the program, overall, from achieving its basic objectives or that might well reduce a program in its details to incoherence.

This case is about just such a detail. Permitting parents to recover expert fees will not lead to awards of "indeterminate magnitude, untethered to compensable harm" and consequently will not "pose a concern that recipients of federal funding could not reasonably have anticipated." *Barnes*, 536 U. S., at 191 (Souter, J., joined by O'Connor, J., concurring) (citation and internal quotation marks omit-

ted). Unlike, say, punitive damages, an award of costs to expert parties is neither "unorthodox" nor "indeterminate," and thus does not throw into doubt whether the States would have entered into the program. *Id*., at 188. If determinations as to whether the IDEA requires States to provide continuing nursing services, *Cedar Rapids, supra,* or reimbursement for private school tuition, *Burlington, supra*, do not call for linguistic clarity, then the precise content of recoverable "costs" does not call for such clarity here *a fortiori*.

B.

If the Court believes that the statute's language is unambiguous, I must disagree. The provision at issue says that a court "may award reasonable attorneys' fees as part of the costs" to parents who prevail in an action brought under the Act. 20 U. S. C. A. §1415(i)(3)(B) (Supp. 2006). The statute neither defines the word "costs" nor points to any other source of law for a definition. And the word "costs," alone, says nothing at all about which costs falls within its scope.

Neither does the statutory phrase—"as part of the costs to the parents of a child with a disability who is the prevailing party"—taken in its entirety unambiguously foreclose an award of expert fees. I agree that, read literally, that provision does not clearly grant authority to award any costs at all. And one might read it, as the Court does, as referencing another federal statute, 28 U. S. C. §1920, which provides that authority. See *ante*, at 5; see also §1920 (federal taxation of cost statute). But such a reading is not inevitable. The provision (indeed, the entire Act) says nothing about that other statute. And one can, consistent with the language, read the provision as both embodying a general authority to award costs while also specifying the inclusion of "reasonable attorneys' fees" as part of those costs (as saying, for example, that a court "may award reasonable attorneys' fees as part of a costs award ").

This latter reading, while linguistically the less natural, is legislatively the more likely. The majority's alternative reading, by cross-referencing only the federal general cost-awarding statute (which applies solely in *federal courts*), would produce a jumble of different cost definitions applicable to similar IDEA administrative and state-court proceedings in different States. See §1920 ("A judge or clerk of *any court of the United States* may tax as costs the following. . . ." (emphasis added)). This result is particularly odd, as all IDEA actions must begin in state due process hearings, where the federal cost statute clearly does not apply, and the overwhelming majority of these actions are never appealed to *any* court. See GAO, Report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U. S. Senate, Special Education: Numbers of Formal Disputes are Generally Low and States Are Using Mediation and Other Strategies to Resolve Conflicts (GAO-03-897), p. 13 (2003) (approximately 3,000 administrative hearings annually; under 10% appealed to state or federal court); see also *Moore v. District of Columbia*, 907 F. 2d 165, 166 (CADC 1990) (en banc) (joining other Circuits in holding that IDEA authorizes an "award of attorney fees to a parent who prevails in IDEA administrative proceedings"). And when parents do appeal, they can file their actions in either state or federal courts. 20 U. S. C. A. §1415(i)(2)(A) (Supp. 2006).

Would Congress "obviously" have wanted the content of the word "costs" to vary from State to State, proceeding to proceeding? *Ante*, at 5. Why? At most, the majority's reading of the text is plausible; it is not the only possible reading.

C.

The majority's most persuasive argument does not focus on either the Spending Clause or lack of statutory ambiguity. Rather, the majority says that "costs" is a term of art. In light of the law's long practice of excluding expert fees from the scope of the word "costs," along with this Court's cases interpreting the word similarly in other statutes, the "legislative history is simply not enough." *Ante*, at 12.

I am perfectly willing to assume that the majority is correct about the traditional scope of the word "costs." In two cases this Court has held that the word "costs" is limited to the list set forth in 28 U. S. C. §1920 and does not include fees paid to experts. See *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U. S. 437 (1987) (interpreting Fed. Rule Civ. Proc. 54(d)); *West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U. S. 83 (1991) (interpreting 42 U. S. C. §1988 (1988 ed.)). But Congress is free to redefine terms of art. See, e.g., *Casey*, 499 U. S., at 88-90 (citing examples of statutes that shift "'costs of litigation (including . . . expert witness fees)'"). And we have suggested that it might well do so through a statutory provision worded in a manner similar to the statute here—indeed, we cited the Conference Report language here at issue. *Id*., at 91-92, n. 5 (characterizing language as an "apparent effort to *depart* from ordinary meaning and to define a term of art" and noting that Congress made no such "effort" in respect to 42 U. S. C. §1988).

Regardless, here the statute itself indicates that Congress did not intend to use the word "costs" as a term of art. The HCPA, which added the cost-shifting provision (in §2) to the IDEA, also added another provision (in §4) directing the GAO to "conduct a study of the impact of the amendments to the IDEA made by section 2" over a 312 year period following the Act's effective date. §4(a), 100 Stat. 797. To determine the fiscal impact of §2 (the cost-shifting provision), §4 ordered the GAO to submit a report to Congress containing, among other things, the following information:

"Data, for a geographically representative

> select sample of States, indicating (A) *the specific amount of attorneys' fees, costs, and expenses awarded to the prevailing party*, in each action and proceeding under §2 from the date of the enactment of this Act through fiscal year 1988, *and* the range of such *fees, costs and expenses* awarded in the actions and proceedings under such section, categorized by type of complaint and (B) for the same sample as in (A) the *number of hours spent by personnel, including attorneys and consultants*, involved in the action or proceeding, and expenses incurred by the parents and the State educational agency and local educational agency." §4(b)(3), *id*., at 797-798 (emphasis added).

If Congress intended the word "costs" in §2 to authorize an award of only those costs listed in the federal cost statute, why did it use the word "expenses" in §4(b)(3)(A) as part of the "amount awarded to the prevailing party"? When used as a term of art, after all, "costs" does not cover expenses. Nor does the federal costs statute cover any expenses—at least not any that Congress could have wanted the GAO to study. Cf. 28 U. S. C. §1920 (referring only once to "expenses," and doing so solely to refer to special interpretation services provided in actions initiated by the United States).

Further, why did Congress, when asking the GAO (in the statute itself) to study the "numbers of hours spent by personnel" include among those personnel both attorneys "*and consultants*"? Who but experts could those consultants be? Why would Congress want the GAO to study the hours that those experts "spent," unless it thought that it would help keep track of the "costs" that the statute imposed?

Of course, one might, through speculation, find other answers to these questions. One might, for example, imagine that Congress wanted the GAO to study the expenses that payment of expert fees engendered in state-court proceedings where state, but not federal, law requires that "'expenses' other than 'costs' might be receivable." *Ante*, at 7, n. 1; but see *supra*, at 12-13. Or one might think that the word "expenses" is surplusage. *Ante*, at 7, n. 1; but see *Duncan v. Walker*, 533 U. S. 167, 174 (2001) (expressing Court's "'reluctance to treat statutory terms as surplusage in any setting,'" but especially when they play "a pivotal role in the statutory scheme"). Or one might believe that Congress was interested in the hours these experts spent, but not in the fees they obtained. *Ante*, at 7. But these answers are not necessarily consistent with the purpose of the GAO study provision, a purpose revealed by the language of the provision and its position in the statute. Its placement and its reference to §2 indicate that Congress ordered the study to help it keep track of the magnitude of the reimbursements that an earlier part of the new statute (namely, §2) mandated. See 100 Stat. 797 (stating that purpose of GAO study was to determine the "impact" of "section 2"). And the *only* reimbursement requirement that §2 mandates is the payment of "costs."

But why speculate about this? We *know* what Congress intended the GAO study to cover. It *told* the GAO in its Conference Report that the word "costs" included the costs of experts. And, not surprisingly, the GAO made clear that it understood precisely what Congress asked it to do. In its final report, the GAO wrote: "Parents can receive reimbursement from state or local education agencies for some or all of their attorney fees *and related expenses* if they are the prevailing party in part or all of administrative hearings or court proceedings. *Expert witness fees, costs of tests or evaluations found to be necessary during the case, and court costs for services rendered during administrative and court proceedings are examples of reimbursable expenses.*" GAO, Briefing Report to Congressional Requesters, Special Education: The Attorney Fees Provision of Public Law 99-372 GAO/HRD-22BR, p. 13 (Nov. 1989). At the very least, this amounts to *some* indication that Congress intended the word "costs," not as a term of art, not as it was used in the statutes at issue in *Casey and Crawford Fitting*, but rather as including certain additional "expenses." If that is so, the claims of tradition, of the interpretation this Court has given other statutes, cannot be so strong as to prevent us from examining the legislative history. And that history could not be more clear about the matter: Congress intended the statutory phrase "attorneys' fees as part of the costs" to include the costs of experts. See Part I, *supra*.

III.

For the reasons I have set forth, I cannot agree with the majority's conclusion. Even less can I agree with its failure to consider fully the statute's legislative history. That history makes Congress' purpose clear. And our ultimate judicial goal is to interpret language in light of the statute's purpose. Only by seeking that purpose can we avoid the substitution of judicial for legislative will. Only by reading language in its light can we maintain the democratic link between voters, legislators, statutes, and ultimate implementation, upon which the legitimacy of our constitutional system rests.

In my view, to keep faith with that interpretive goal, we must retain all traditional interpretive tools—text, structure, history, and purpose. And, because faithful interpretation is art as well as science, we cannot, through rule or canon, rule out the use of any of these tools, automatically and in advance. Cf. *Helvering v. Gregory*, 69 F. 2d 809, 810-811 (CA2 1934) (L. Hand, J.).

Nothing in the Constitution forbids us from giving significant weight to legislative history. By disregarding a clear statement in a legislative report adopted without opposition in both Houses of Congress, the majority has reached a

result no Member of Congress expected or overtly desired. It has adopted an interpretation that undercuts, rather than furthers, the statute's purpose, a "free" and "appropriate" public education for "all" children with disabilities. See *Circuit City Stores, Inc. v. Adams*, 532 U. S. 105, 133 (2001) (Stevens, J., joined by Souter, Ginsburg, and Breyer, JJ., dissenting) ("A method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court's own views of how things should be, but it may also defeat the very purpose for which a provision was enacted"). And it has adopted an approach that, I fear, divorces law from life. See *Duncan, supra*, at 193 (Breyer, J., joined by Ginsburg, J., dissenting).

For these reasons, I respectfully dissent.

Endnotes

1 Because subparagraph (A) refers to both "costs" and "expenses" awarded to prevailing parties and because it is generally presumed that statutory language is not superfluous, it could be argued that this provision manifests the expectation that prevailing parties would be awarded certain "expenses" not included in the list of "costs" set out in 28 U. S. C. §1920 and that expert fees were intended to be among these unenumerated "expenses." This argument fails because, whatever expectation this language might seem to evidence, the fact remains that neither 20 U. S. C. §1415 nor any other provision of the IDEA authorizes the award of any "expenses" other than "costs." Recognizing this, respondents argue not that they are entitled to recover "expenses" that are not "costs," but that expert fees are recoverable "costs." As a result, the reference to awards of both "expenses" and "costs" does not support respondents' position. The reference to "expenses" may relate to IDEA actions brought in state court, §1415(i)(2)(A), where "expenses" other than "costs" might be receivable. Or the reference may be surplusage. While it is generally presumed that statutes do not contain surplusage, instances of surplusage are not unknown.

2 In 2000, the attorneys' fees provision provided only an award to prevailing parents. See 20 U. S. C. §1415(i)(3)(B). In 2004, Congress amended §1415(i)(3)(B) to include two additional awards. See §101, 118 Stat. 2724. The amendments provided awards "to a prevailing party who is a State educational agency or local educational agency" where the complaint filed is frivolous or presented for an improper purpose, such as to harass, delay, or increase the cost of litigation. See 20 U. S. C. A. §§1415(i)(3)(B)(i)(II)-(III) (Supp. 2006).

3 Respondents note that a GAO report stated that expert witness fees are reimbursable expenses. See Brief for Respondents 19 (citing GAO, Special Education: The Attorney Fees Provision of Public Law 99-372, p. 13 (Nov. 1989)). But this passing reference in a report issued by an agency not responsible for implementing the IDEA is plainly insufficient to provide clear notice regarding the scope of the conditions attached to the receipt of IDEA funds.

4 The relevant statement from the Conference Report reads in its entirety:

"The conferees intend that the term 'attorneys' fees as part of the costs' include reasonable expenses and fees of expert witnesses and the reasonable costs of any test or evaluation which is found to be necessary for the preparation of the parent or guardian's case in the action or proceeding, as well as traditional costs incurred in the course of litigating a case." H. R. Conf. Rep. 99-687, at 5.

Although the Conference Report goes on to consider other matters, including controls on attorneys' fees, nothing further is said on expert witness fees or test costs.

5 At the time the Conference Report was submitted to the Senate and House, sponsors of the legislation did not mention anything on the floor about expert or consultant fees. They were altogether clear, however, that the purpose of the legislation was to "reverse" this Court's decision in Smith v. Robinson, 468 U. S. 992 (1984). In *Smith*, the Court held that, under the statute as then designed, prevailing parents were not entitled to attorneys' fees. See 132 Cong. Rec. 16823 (1986) (remarks of Sen. Weicker) ("In adopting this legislation, we are rejecting the reasoning of the Supreme Court in Smith versus Robinson."); *id*., at 16824 (remarks of Sen. Kerry) ("This vital legislation reverses a U. S. Supreme Court decision Smith versus Robinson."); *id*., at 17608-17609 (remarks of Rep. Bartlett) ("I support those provisions in the conference agreement that, in response to the Supreme Court decision in ... Smith versus Robinson, authorize the awarding of reasonable attorneys' fees to parents who prevail in special education court cases."); id., at 17609 (remarks of Rep. Biaggi) ("This legislation clearly supports the intent of Congress back in 1975 and corrects what I believe was a gross misinterpretation of the law. Attorneys' fees should be provided to those individuals who are being denied access to the educational system.").

6 Under 34 C. F. R. §300.502(b)(1) (2005), a "parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency."

Note: Appendix A, B, and C in Justice Breyer's dissent have been omitted. Appendix A is the Conference Report that accompanied the Handicapped Children's Protection Act of 1986, which modified the special education law to include reimbursement for attorneys' fees. Appendix B and C consisted of a portion of the House and Senate testimony noting that "the Conference Report was agreed to." A pdf version of *Arlington Central School District Board of Education v. Pearl and Theodore Murphy* with these Appendices is available from the U. S. Supreme Court website at www.supremecourtus.gov/opinions/05pdf/05-18.pdf