03-7274

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INGABRITT LILLBASK, legal guardian on
behalf of Lindsey Mauclaire,

Plaintiff-Appellant,

v.

STATE OF CONNECTICUT DEPARTMENT OF EDUCATION,
Theodore S. Sergi, Commissioner, CONNECTICUT STATE BOARD
OF EDUCATION, MARY GELFMAN, Hearing Officer, KENNETH
FREESTON, Superintendent of Redding Schools
and REDDING BOARD OF EDUCATION,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES
AND UNITED STATES DEPARTMENT OF EDUCATION
AS AMICUS CURIAE SUPPORTING PLAINTIFF-APPELLANT
URGING REVERSAL

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TABLE OF CONTENTS

PAGE

INTEREST OF THE UNITED STATES 1

STATEMENT OF THE ISSUE 2

STATEMENT OF THE CASE:

I. The IDEA's Scheme For Providing Free Appropriate Public Education To Children With Disabilities. 2

II. The Connecticut Statutory Scheme. 6

III. Administrative And Judicial Proceedings Below. 6

ARGUMENT:

CONNECTICUT'S STATUTORY ISSUE-PRECLUSION RULE CONFLICTS WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND IS THEREFORE INVALID

I. State Laws That Are Contrary To The IDEA Are Invalid. 8

II. Connecticut's Statutory Issue-Preclusion Rule Is Invalid Both Because It Actually Conflicts With The IDEA's Provisions And Because It Is An Obstacle To The Accomplishment Of The IDEA's Goals And Purposes. 10

A. Connecticut's Issue-Preclusion Rule Actually Conflicts With Several IDEA Provisions. 11

B. Connecticut's Statutory Issue-Preclusion Rule Creates An Obstacle To The Full Accomplishment Of The IDEA's Goals And Purposes. 13

TABLE OF CONTENTS (continued): **PAGE**

1. The IEP Team Meeting Is Intended To Be A Collaborative And Cooperative Proceeding. 14

2. Connecticut's Statutory Issue-Preclusion Rule Frustrates The Purposes And Goals Of The IEP Team Meeting Because It Encourages An Adversarial Atmosphere. 16

3. Connecticut's Statutory Issue-Preclusion Rule Effectively Limits The IDEA Rights Of Parents More Than It Limits Those Of School Districts 18

4. Connecticut's Statutory Issue-Preclusion Rule Is Not Parallel To Or Consistent With The IDEA's Requirement That Parties First Exhaust Their Administrative Remedies. 19

III. In Determining Whether Connecticut's Statutory Issue-Preclusion Rule Conflicts With The IDEA, The Court Must Give Weight To The United States Department Of Education's Conclusion That The Statute Does Conflict. 20

CONCLUSION 22

CERTIFICATE OF COMPLIANCE

ATTACHMENT

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES: **PAGE**

Antkowiak v. *Ambach*, 838 F.2d 635 (2d Cir.), *cert. denied*, 488 U.S. 850 (1988) . . . . . *passim*

Board of Educ. v. *Rowley*, 458 U.S. 176 (1982) 3, 4, 5, 20

Cedar Rapids Cmty. Sch. Dist. v. *Garrett F.* 526 U.S. 66 (1999) 3

Crosby v. *National Foreign Trade Council*, 530 U.S. 363 (2000) 9

Dalton v. *Little Rock Family Planning Servs.*, 516 U.S. 474 (1996) 9, 12

Felder v. *Casey*, 487 U.S. 131 (1988) 18

Geier v. *American Honda Motor Co.*, 529 U.S. 861 (2000) 21

J.C. v. *Regional Sch. Dist. 10*, 278 F.3d 119 (2d Cir. 2002) 14, 16

Lawrence County v. *Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256 (1985) 9, 10, 21

Leyda v. *AlliedSignal, Inc.*, 322 F.3d 199 (2d Cir. 2003) 16

Lillbask ex rel. Mauclaire v. *Sergi*, 117 F. Supp. 2d 182 (D. Conn. 2000) . *passim*

Lillbask ex rel. Mauclaire v. *Sergi*, 193 F. Supp. 2d 503 (D. Conn. 2002) . . . 8, 18

Town of Burlington v. *Department of Educ.*, 736 F.2d 773 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985) 17

Walczak v. *Florida Union Free Sch. Dist.*, 142 F.3d 119 (2d Cir. 1998) 10

CONSTITUTION AND STATUTES: **PAGE**

United States Constitution, Art. VI, Cl. 2 8

Individuals with Disabilities Education Act (IDEA):
20 U.S.C. 1400 *et seq.* 1
20 U.S.C. 1400(d)(1)(A) 2-3
20 U.S.C. 1400(d)(1)(B) 3
20 U.S.C. 1406 2
20 U.S.C. 1412(a)(10)(C)(iii) 13
20 U.S.C. 1414(a)-(c) 3
20 U.S.C. 1414(a)(1)(C)(ii) 18
20 U.S.C. 1414(d) 4
20 U.S.C. 1414(d)(1)(A) 4
20 U.S.C. 1414(d)(1)(B) 4
20 U.S.C. 1414(d)(3) 4
20 U.S.C. 1414(d)(4) 4
20 U.S.C. 1415(a) 4
20 U.S.C. 1415(b)(6) 4, 11
20 U.S.C. 1415(f)(1) 5, 11, 18
20 U.S.C. 1415(f)(2)(A) 12
20 U.S.C. 1415(f)(2)(B) 12
20 U.S.C. 1415(g) 5
20 U.S.C. 1415(h)(1) 12
20 U.S.C. 1415(h)(2) 12
20 U.S.C. 1415(i)(2) 5, 20
20 U.S.C. 1415(i)(2)(B) 5
20 U.S.C. 1415(i)(2)(B)(ii) 19
20 U.S.C. 1415(i)(2)(B)(iii) 19
20 U.S.C. 1415(i)(3)(D)(ii) 15
20 U.S.C. 1416 2
20 U.S.C. 1416(a)(1) 21
20 U.S.C. 1416(b)(1) 21
20 U.S.C. 1416(b)(3) 21
20 U.S.C. 1417 2

STATUTES (continued): **PAGE**

42 U.S.C. 1983 18

Conn. Gen. Stat. § 10-76h(a)(1) 6

LEGISLATIVE HISTORY:

H.R. Rep. No. 95, 105th Cong., 1st Sess. (1997) 15

S. Rep. No. 17, 105th Cong., 1st Sess. (1997) 15

REGULATIONS:

64 Fed. Reg. 12,478 (March 12, 1999) 15

RULES:

Fed. R. App. P. 29(a) 2

Fed. R. Civ. P. 60(b)(6) 8

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INTEREST OF THE UNITED STATES

This case raises a significant issue regarding the procedural safeguards required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* One of the issues in this appeal is whether a provision in a Connecticut statute that precludes issues from being heard at the state administrative hearing under the IDEA conflicts with Part B of the IDEA and is

therefore invalid. The IDEA is enforced by the United States Department of Education, which is authorized to promulgate regulations and interpretive letters and to withhold IDEA funds from states that fail to comply with the IDEA's requirements. See 20 U.S.C. 1406, 1416 & 1417. The Department of Education informed Connecticut that its statute at issue here conflicts with the IDEA, and therefore placed special conditions on Connecticut's Fiscal Year 2002 Part B IDEA grant. Letter of Sep. 25, 2002 (Attached hereto). This issue remains in dispute.

The United States files this *amicus curiae* brief pursuant to Fed. R. App. P. 29(a) and argues that the Connecticut statute at issue is invalid because it conflicts with the IDEA.

STATEMENT OF THE ISSUE

Whether a Connecticut statute that bars parents from raising an issue in an administrative due process hearing if the issue was not first raised at an Individualized Education Program (IEP) Team meeting conflicts with the IDEA and is therefore invalid.[1]

STATEMENT OF THE CASE

I. The IDEA's Scheme For Providing Free Appropriate Public Education To Children With Disabilities.

The first stated purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that

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[1] The United States takes no position on the other issues raised in the appellant's brief.

emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. 1400(d)(1)(A). The second stated purpose is "to ensure that the rights of children with disabilities and parents of such children are protected." *Id.* at 1400(d)(1)(B). Education is a matter traditionally left to the states. See, *e.g.*, *Board of Educ.* v. *Rowley*, 458 U.S. 176, 208 n.30 (1982). States that apply for and accept funds under the IDEA must comply with its provisions. The IDEA does not establish specific and detailed standards for what is an appropriate education for individual disabled students, but rather it provides a general statutory framework, for example, requiring that the child with a disability be educated, to the extent appropriate, in the least restrictive environment. Also, the IDEA provides procedural safeguards for children with disabilities that the state must follow to ensure that such children receive a free appropriate public education. The Supreme Court recognized that the IDEA's procedural safeguards are extremely important to accomplishing the Act's objectives. See *Rowley*, 458 U.S. at 205 ("we think that the importance Congress attached to these procedural safeguards cannot be gainsaid").[2]

The IDEA establishes procedures for evaluating and reevaluating children who have or may have disabilities. See 20 U.S.C. 1414(a)-(c). It also sets forth

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[2] The Court in *Rowley* addressed a prior version of the Act, the Education of All Handicapped Children's Act, but because the various predecessor Acts do not materially differ, cases addressing the prior acts are routinely cited for authoritative interpretation of the IDEA. See, *e.g.*, *Cedar Rapids Cmty. Sch. Dist.* v. *Garret F.*, 526 U.S. 66, 77-78 (1999) (relying on *Rowley* when deciding issues under the IDEA). For simplicity, this brief will refer to the Act as the IDEA throughout.

procedures for developing an Individualized Education Program (IEP) for each child. *Id.* at 1414(d). The IEP is a written statement setting out, among other things, the child's current level of development, measurable annual goals for the child, and the special education and related services to be provided to the child. *Id.* at 1414(d)(1)(A). The IEP is the means by which the IDEA ensures that each child with a disability is provided a free appropriate public education. See *Rowley*, 458 U.S. at 181-182. The IEP is developed and reviewed by the "IEP Team." 20 U.S.C. 1414(d)(3) & (d)(4). The IEP Team includes the child's parents; at least one regular education teacher of the child; at least one special education teacher, or if appropriate, provider; a representative of the local school agency who must meet specific knowledge and qualification criteria; someone qualified to interpret the instructional implications of evaluation results; other persons with knowledge or special expertise regarding the child; and, where appropriate, the child with the disability. *Id.* at 1414(d)(1)(B).

The IDEA requires states to establish specific "procedural safeguards" to protect the rights of children with disabilities and their parents, which can be used by parents who are dissatisfied with their child's IEP, or who believe the child is not receiving appropriate educational services. *Id.* at 1415(a). Those safeguards include "an opportunity to present complaints with respect to 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." *Id.* at 1415(b)(6). For every complaint under Section 1415(b)(6), "the parents involved in such

complaint shall have an opportunity for an impartial due process hearing," *id.* at 1415(f)(1). Under Section 1415(f)(1), states can establish a one-tier or a two-tier system, depending on whether under state law the due process hearing is conducted by the state education agency or by the local education agency. In a one-tier system (as in Connecticut), the impartial due process hearing is conducted by the state education agency and the decision of the hearing officer is final for administrative purposes. See *id.* at 1415(i)(2). In a two-tier system, the impartial due process hearing is conducted by the local educational agency's hearing officer, and either party may appeal that decision to the state education agency, which must conduct an impartial review. *Id.* at 1415(g). The decision rendered by the state agency on review is then the final administrative decision. See *id.* at 1415(i)(2).

After a final administrative decision is rendered, an aggrieved party may file an IDEA action in state or federal district court. *Id.* at 1415(i)(2). The IDEA states that the reviewing court shall receive the record of the administrative proceeding, "shall hear additional evidence at the request of a party," and base its decision on "the preponderance of the evidence." *Id.* at 1415(i)(2)(B). The Supreme Court has held that a district court must give "due weight" to findings and decisions of state administrative proceedings. *Rowley*, 458 U.S. at 206.

II. The Connecticut Statutory Scheme.

The Connecticut statute at issue here implements provisions of the IDEA. It calls the IEP Team the "planning and placement team" or "PPT." The Connecticut statute precludes parents (or the local educational agency) from raising at the administrative due process hearing any issue they have not raised in a PPT meeting:

> A parent or guardian * * * may request, in writing, a hearing of the local or regional board of education * * * whenever such board * * * proposes or refuses to initiate or change the identification, evaluation or educational placement of or the provision of a free appropriate public education to such child or pupil, *provided no issue may be raised at such hearing unless it was raised at a planning and placement team meeting for such child or pupil* * * *.

Conn. Gen. Stat. § 10-76h(a)(1) (emphasis added).[3]

III. Administrative And Judicial Proceedings Below.

The plaintiff is the guardian of Lindsey Mauclaire, a child with significant disabilities who attends public school in the Redding, Connecticut, school district. During the 1996-97 school year, Lindsey attended pre-kindergarten at the Redding Elementary School. *Lillbask ex rel. Mauclaire* v. *Sergi*, 117 F. Supp. 2d 182, 186 (D. Conn. 2000) (*Lillbask I*). After a PPT meeting in August 1997, the Redding Board of Education proposed for the 1997-98 school year to place Lindsey at a

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[3] Section 10-76h of the Connecticut statute is a lengthy provision with many subsections. The only portion of this provision that the United States in this brief argues is invalid is the part of subsection (a)(1) that is italicized in the quotation. For clarity, throughout this brief, that portion of the state statute is referred to as Connecticut's statutory issue-preclusion rule.

special needs school that has only children with disabilities. Plaintiff exercised her IDEA complaint rights and demanded a due process hearing regarding Lindsey's placement and other issues. Four hearings were held between May 1997 and August 1998. The hearing officer conducting the August 1998 hearing upheld the decision to place Lindsey at the special needs school. *Ibid.*

Plaintiff filed the present suit in June 1997. (The complaint was amended several times in order to reflect administrative decisions rendered in later hearings). Plaintiff sued the Connecticut Department of Education and its Commissioner, the Connecticut State Board of Education, the Redding School Board and its Superintendent, and one of the administrative hearing officers. She challenged the decisions reached in four due process hearings, including the decision that Lindsey's proposed placement in the special needs school was appropriate. Among other things, plaintiff challenged Connecticut's statutory issue-preclusion rule, quoted above. Plaintiff complained that this provision had limited the issues that she was able to raise at the due process hearings. She asserted that the IDEA preempted this provision.

In September 2000, the district court rejected plaintiff's arguments and granted defendants summary judgment on these issues. In rejecting plaintiff's preemption argument, the district court concluded that

> [n]othing in the IDEA prohibits a requirement that issues must be first raised at a PPT meeting before they may be raised at a due process hearing. Such a requirement is consistent with, and parallel to, the IDEA requirement that available administrative remedies be exhausted before a special education claim is brought to court.

Id. at 190.

In March 2002, the district court further granted summary judgment for the defendants as to certain of plaintiff's state law claims, which left for resolution at trial only plaintiff's claim that the local education agency's decision to place Lindsey in the special needs school had been unlawful retaliation against her because she had exercised her right to challenge its decisions. *Lillbask ex rel. Mauclaire* v. *Sergi*, 193 F. Supp. 2d 503 (D. Conn. 2002) (*Lillbask II*).[4] The retaliation claim was tried in January 2003, and the district court rejected it in a memorandum opinion dated February 6, 2003. Plaintiff then timely appealed.

ARGUMENT

CONNECTICUT'S STATUTORY ISSUE-PRECLUSION RULE CONFLICTS WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND IS THEREFORE INVALID

I. State Laws That Are Contrary To The IDEA Are Invalid.

Under the Constitution, Art. VI, Cl. 2, federal laws are the supreme law of the land, anything in state law "to the Contrary notwithstanding." State laws can be found contrary to federal law, and therefore invalid, in two ways relevant to this

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[4] The district court also rejected plaintiff's motion under Fed. R. Civ. P. 60(b)(6) for relief from the court's prior summary judgment ruling. Plaintiff asked the district court to reconsider, among other issues, its ruling regarding Connecticut's statutory issue-preclusion rule based on a letter plaintiff's counsel had received from the U.S. Department of Education concluding that the Connecticut provision conflicts with the IDEA. The district court rejected this argument for two reasons: First, it held such interpretive letters are not legally binding, *Lillbask II*, 193 F. Supp. 2d at 517-18, and second, it held "[t]he relevant portion of the letter is not even persuasive," *id.* at 518.

case. First, a state law is invalid to the extent it "actually conflicts" with a federal law, that is, where the state law requirements are directly contrary to the requirements of federal law. See *Dalton* v. *Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (*per curiam*); see also *id.* at 477-478 (state law invalid to extent it prohibited payments required by federal law). Second, a state law is invalid where, although the state law requirements may not "actually conflict" with the federal law, the state law "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Lawrence County* v. *Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 260 (1985) (internal quotation omitted); see also *Antkowiak* v. *Ambach*, 838 F.2d 635, 641 (2d Cir.) (state statute that is inconsistent with the IDEA is unenforceable), *cert. denied*, 488 U.S. 850 (1988). Whether a state law is an "obstacle" to the federal scheme "is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 373 (2000).[5] In analyzing whether a state law was such an obstacle, the Supreme Court has examined, in addition to the language of the federal statute itself, the federal statute's legislative history and the position of the federal agency charged

[5] A state law is also invalid when the state attempts to regulate an area that Congress has regulated so broadly that Congress "intends federal law to 'occupy the field.'" *Crosby*, 530 U.S. at 372. The IDEA is clearly not a statute by which Congress has meant to "occupy the field" of education.

with enforcing the statute. See, *e.g.*, *Lawrence County*, 469 U.S. at 261-268.[6] Because Connecticut applied for and accepted IDEA funds, the IDEA applies to Connecticut. See *Walczak* v. *Florida Union Free Sch. Dist.*, 142 F.3d 119, 123 (2d Cir. 1998) ("Since New York State receives federal funds under IDEA, it is obliged to comply with the requirements of this law.").

II. Connecticut's Statutory Issue-Preclusion Rule Is Invalid Both Because It Actually Conflicts With the IDEA's Provisions And Because It Is An Obstacle to the Accomplishment of the IDEA's Goals and Purposes.

As discussed in the following sub-sections, Connecticut's statutory issue-preclusion rule actually conflicts with the IDEA because that rule is directly contrary to at least two IDEA provisions.[7] The statutory issue-preclusion rule limits the broad right that the IDEA expressly grants parents to file complaints regarding any matter and to have those complaints heard at an administrative hearing. It also limits the parents' right, expressly granted by the IDEA, to present additional information and witnesses to support their complaints at the administrative hearing. Moreover, the statutory issue-preclusion rule is an obstacle to the full accomplishment of the IDEA's goals and purposes. The IDEA created the IEP Team as a mechanism for collaboration between school officials and the

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[6] The U.S. Department of Education, the agency charged with enforcing the IDEA has, pursuant to its enforcement powers, concluded that Connecticut's statutory issue-preclusion rule does conflict with the IDEA. See pp. 20-21 *infra*.

[7] Again, the United States does not argue that the entire statute is invalid but rather only that portion of the statute setting out Connecticut's issue-preclusion rule. See fn. 3 *supra*.

parents of children with disabilities so that the participants could focus on the needs of the child with a disability. Connecticut's statutory issue-preclusion rule effectively transforms the IEP Team meeting into an adversarial hearing preliminary to the administrative due process hearing. For these reasons, Connecticut's statutory issue-preclusion rule is invalid.

A. Connecticut's Issue-Preclusion Rule Actually Conflicts With Several IDEA Provisions.

Connecticut's issue-preclusion rule conflicts with parents' express right under Section 1415(b)(6) to file complaints with respect to any matter and have those complaints heard at an administrative hearing. The IDEA requires a state to provide a procedure that gives parents "an opportunity to present complaints" regarding their child's education. 20 U.S.C. 1415(b)(6). Whenever a parent files a complaint under this section, the IDEA requires that parents "shall have an opportunity for an impartial due process hearing." *Id.* at 1415(f)(1). The scope of the complaint mandated by Section 1415(b)(6), and thus the scope of the due process hearing on that complaint, is extremely broad: The complaint can be presented "with respect to *any matter* relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." *Id.* at 1415(b)(6) (emphasis added). Under Connecticut's statutory issue-preclusion rule, however, "any matter" is expressly limited to any matter *raised in a PPT meeting.* Because the Connecticut requirement limits the right to raise *any* issue at the due process hearing that the IDEA expressly grants, it is

invalid. See *Dalton* v. *Little Rock Family Planning Servs.*, 516 U.S. 474, 476 & 477-478 (1996) (*per curiam*) (Arkansas constitutional provision prohibiting state funding of abortions except those necessary to save life of mother preempted only to the extent federal statute required State receiving Medicaid payments to fund abortions resulting from rape or incest).

The Connecticut statute may also limit the statutory right of parents and the local educational agencies to present additional information to the hearing officer, which is expressly granted by the IDEA. Under the IDEA, the parties to the impartial due process hearing are permitted to present newly completed evaluations and recommendations, with the only limit being disclosure five days prior to the due process hearing. 20 U.S.C. 1415(f)(2)(A). In fact, failure to disclose does not automatically bar a party from presenting the evaluations at the hearing, because the hearing officer has discretion to bar them but is not required to do so, and the other party is permitted to consent to their presentation. See *id*. at 1415(f)(2)(B). To the extent that newly completed evaluations and recommendations raise new issues — and presumably they would do so to some extent — Connecticut's statutory issue-preclusion rule would prohibit their introduction because they had not been presented and addressed at the PPT meeting.

Further, under Section 1415(h)(1), any party to the impartial due process hearing has the right to be accompanied by and advised by counsel "and by individuals with special knowledge or training with respect to the problems of children with disabilities." Under sub-section (h)(2), any party to the hearing has

"the right to present evidence and confront, cross-examine, and compel the attendance of witnesses." Again, to the extent the witnesses or evidence presented at the due process hearing present issues not raised at the PPT meeting, Connecticut's statutory issue-preclusion rule would bar their introduction, although the IDEA expressly permits their introduction.

Although it is not applicable in this case, the IDEA does impose a limited requirement on parents to provide prior notice to the IEP Team. Under 20 U.S.C. 1412(a)(10)(C)(iii), if parents did not inform the IEP Team at the most recent IEP Team meeting that they intended to remove their child from the public school and place the child in a private school, the reimbursement for such private education "may be reduced or denied." Clearly Congress, when it wished to do so, was able to craft a specific requirement for parents to notify the IEP Team and imposed a specific and limited consequence for failing to do so. When granting the broad right to have complaints regarding "any matter" heard at the due process hearing, Congress chose not to limit the issues that may be raised.

B. Connecticut's Statutory Issue-Preclusion Rule Creates An Obstacle To The Full Accomplishment Of The IDEA's Goals And Purposes.

In addition to limiting procedural rights that the IDEA expressly grants, Connecticut's statutory issue-preclusion rule creates an obstacle to accomplishing fully the goals and purposes of the IDEA. By limiting the issues that may be raised in a due process hearing to those that were raised at the PPT meeting, Connecticut has fundamentally changed the PPT meeting's character. Connecticut's statutory

issue-preclusion rule effectively transforms the PPT meeting into a proceeding wholly inconsistent with the IDEA's goals, and is therefore invalid. See *Antkowiak* v. *Ambach*, 838 F.2d 635, 641 (2d Cir.), *cert. denied*, 488 U.S. 850 (1988).

1. The IEP Team Meeting Is Intended To Be A Collaborative And Cooperative Proceeding.

a. This Court in *J.C.* v. *Regional School District 10*, 278 F.3d 119, 124 (2d Cir. 2002), recognized that "[t]he IEP Team is a mechanism for compromise and cooperation rather than adversarial confrontation." This Court's conclusion is entirely consistent with Congressional intent and the interpretation of the United States Department of Education.

b. Congress charged the United States Department of Education with enforcing the IDEA. The regulations promulgated by the United States Department of Education and the legislative history of the 1997 amendments to the IDEA make clear that the IEP Team meeting is intended not to be adversarial. Rather it is intended to be a means for parents and the school district to cooperate to achieve the best interests of the child with a disability and ensure that the child is provided with a free appropriate public education. The U.S. Department of Education interprets the purposes and goals of the IEP meetings as collaborative so that parents and school officials can jointly determine the appropriate special educational and related services and placement for the child. Through its regulations, the Department has in fact discouraged the participation of attorneys at IEP meetings precisely because their participation would be inconsistent with the

IEP meeting's cooperative and informal functions. See 64 Fed. Reg. 12,478, question 29 (March 12, 1999) ("an attorney's presence would have the potential for creating an adversarial atmosphere [at the IEP meeting] that would not necessarily be in the best interests of the child. Therefore, the attendance of attorneys at IEP meetings should be strongly discouraged").

c. The legislative history of the 1997 amendments demonstrates that the Department of Education's view of the IEP Team meeting is consistent with Congressional intent. Congress specifically amended the IDEA in 1997 to discourage the participation of attorneys in IEP meetings. Congress prohibited the award of attorneys' fees "relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action * * *." 20 U.S.C. 1415(i)(3)(D)(ii). The history of these amendments demonstrates that Congress was concerned with keeping the IEP Team meetings as non-adversarial as possible. The House and Senate conference reports note "that the IEP process should be devoted to determining the needs of the child and planning for the child's education with parents and school personnel. To that end, the bill specifically excludes the payment of attorneys' fees for attorney participation in IEP meetings, unless such meetings are convened as a result of an administrative proceeding or judicial action." H.R. Rep. No. 95, 105th Cong., 1st Sess. 105 (1997); S. Rep. No. 17, 105th Cong., 1st Sess. 25-26 (1997).

2. Connecticut's Statutory Issue-Preclusion Rule Frustrates The Purposes And Goals Of The IEP Team Meeting Because It Encourages An Adversarial Atmosphere.

a. Consistent with Congressional intent, this Court has recognized that the "atmosphere" of cooperation at an IEP Team meeting "would be jeopardized if we were to encourage the participation of counsel in the IEP process." *J.C.*, 278 F.3d at 124-125. But in effect, the Connecticut scheme accomplishes *precisely* what Congress sought to avoid: Connecticut's statutory issue-preclusion rule transforms the PPT meeting into a hearing preliminary to the due process hearing. As this case demonstrated, this will inexorably change the PPT meeting into an adversarial exercise.

Although the district court criticized the parties for turning the PPT meetings into adversarial proceedings, see *Lillbask I*, 117 F. Supp. 2d at 188, the court failed to recognize that the state's issue-preclusion statute necessarily led to that undesirable end. Because under Connecticut law, a parent could be barred from later raising an issue at a due process hearing if she did not properly preserve it at a PPT meeting, it is entirely understandable that a parent might want and need to be represented by counsel at the PPT meeting. This is so in the same way that a party to a civil suit would not want to be unrepresented at trial since issues not properly preserved below generally may not be raised on appeal. See, *e.g.*, *Leyda* v. *AlliedSignal, Inc.*, 322 F.3d 199, 207 (2d Cir. 2003). While seeking legal representation at the PPT meeting is an understandable reaction to Connecticut's issue-preclusion rule, that merely demonstrates that the issue-preclusion rule is

wholly inconsistent with Congress's intentions for the function and goals of an IEP Team meeting.

b. This Court has previously recognized that when a state law imposes procedural requirements on parents that are inconsistent with the goals and purposes of the IDEA, the state requirement is invalid. In *Antkowiak*, 838 F.2d at 641, New York asserted that, although a state administrative due process proceeding was final under the IDEA, parents had to appeal that final decision to the State Department of Education before exercising their right under the IDEA to judicial review. This Court rejected that claim, finding that "[f]ederal courts have authority under the [IDEA] to enforce state procedures consistent with the federal scheme, but procedures 'inconsistent with the federally-mandated procedures cannot, of course, be enforced by a federal court.'" *Ibid.* (quoting *Town of Burlington* v. *Department of Educ.*, 736 F.2d 773, 780 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985)). This Court went on to note that "[w]hile state procedures which more stringently protect the rights of the handicapped and their parents are consistent with the [Act] and thus enforceable, those that merely add additional steps not contemplated in the scheme of the Act are not," and found that the suggested state administrative review of the state hearing officer's decision was inconsistent with the IDEA. *Antkowiak*, 838 F.2d at 641.

This Court should similarly find Connecticut's statutory issue-preclusion rule an obstacle to the IDEA's goals and purposes and therefore invalid.

3. *Connecticut's Statutory Issue-Preclusion Rule Effectively Limits The IDEA Rights Of Parents More Than It Limits Those Of School Districts.*

Connecticut's statutory issue-preclusion rule burdens a parent's rights substantially more than the school system's rights. The right to an impartial due process hearing is primarily a right belonging to parents and the child with a disability. See 20 U.S.C. 1415(f)(1). (A local district may seek an impartial due process hearing when the parents have refused to give consent to evaluate the needs of their child. *Id.* at 1414(a)(1)(C)(ii).) Thus, to the extent that the state statute limits the issues that can be raised at the impartial due process hearing, it is a limit on the *parents'* right to complain. The unequal burden of the issue preclusion rule is made more unequal because, as the district court recognized, parents' requests for PPT meetings are granted by school officials only when they deem the request to be reasonable. See *Lillbask I*, 117 F. Supp. 2d at 196; *Lillbask II*, 193 F. Supp. 2d at 518. On the other hand, the school officials are free to hold a PPT meeting whenever they desire, thus preserving any issues the school might want to raise in a later due process hearing. And unlike parents, the local education agency would generally have experience with the legal issues that would have to be preserved, and would in any event have access to counsel while parents generally would not.

This one-sided application argues strongly in favor of finding the provision invalid. In *Felder* v. *Casey*, 487 U.S. 131 (1988), the Supreme Court, in finding a state notice-of-claim requirement conflicted with 42 U.S.C. 1983, noted that because the state procedural rule imposed a burden only on persons seeking a

redress from injuries allegedly resulting from state action, the rule was not a "neutral and uniformly applicable rule of procedure." 487 U.S. at 141. Similarly, because Connecticut's statutory issue-preclusion rule burdens parents' rights under the IDEA substantially more than it burdens the school system's rights, it cannot be viewed simply as a neutral procedural rule governing the efficient resolution of hearings.

4. Connecticut's Statutory Issue-Preclusion Rule Is Not Parallel To Or Consistent With The IDEA's Requirement That Parties First Exhaust Their Administrative Remedies.

The district court, in rejecting plaintiff's preemption argument, stated that Connecticut's statutory issue-preclusion rule was "consistent with, and parallel to, the IDEA requirement that available administrative remedies be exhausted before a special education claim is brought to court." *Lillbask I*, 117 F. Supp. 2d at 190. That analysis is flawed because it is both incomplete and incorrect.

The district court in this case was wrong to conclude that Connecticut's statutory issue-preclusion rule was parallel to the IDEA's requirement that parties first exhaust their administrative remedy before bringing a court action. There is no comparable issue-preclusion rule for a civil action under the IDEA. Indeed, under the IDEA, parties have the right to present additional evidence, 20 U.S.C 1415(i)(2)(B)(ii), and the court must render its decision on the preponderance of the evidence, *id.* at 1415(i)(2)(B)(iii), and "grant such relief as the court determines is appropriate," *ibid.* Congress had considered a more limited form of judicial review (akin to review of administrative decisions) but rejected it. Congress

enacted the Act's current language, rejecting "language that would have made state administrative findings conclusive if supported by substantial evidence." *Rowley*, 458 U.S. at 205. Rather, Congress opted for a scheme in which courts would make "independent decisions based on a preponderance of the evidence." *Ibid.* (internal quotation and brackets omitted). The IDEA requires only that the administrative decision be final. See 20 U.S.C. 1415(i)(2); see also *Antkowiak*, 838 F.2d at 641 (parties entitled to judicial review when administrative decision is final). Thus, Connecticut's statutory issue-preclusion rule imposes a completely new requirement that greatly limits parents' ability to raise issues at the due process hearing and which is thus inconsistent with the IDEA.

Because Connecticut's statutory issue-preclusion rule is an obstacle to the full accomplishment of the IDEA's purposes and goals for the IEP Team meeting and the due process hearing, this Court should hold that it is invalid.

III. In Determining Whether Connecticut's Statutory Issue-Preclusion Rule Conflicts With The IDEA, The Court Must Give Weight To The United States Department of Education's Conclusion That The Statute Does Conflict.

As noted above, the U.S. Department of Education has, under its statutory authority, placed special conditions on Connecticut's funding under the IDEA because, in part, the Department of Education concluded that Connecticut's statutory issue-preclusion rule is inconsistent with the IDEA. Letter of Sep. 25, 2002 (Attached hereto). The Supreme Court has held that when a federal agency — here the U.S. Department of Education — charged with administering a federal

statute concludes that a state law is an obstacle to accomplishing the federal statute's objectives, courts must give the agency's conclusion "some weight." *Geier v. American Honda Motor Co.*, 529 U.S. 861, 883 (2000); see also *Lawrence County* v. *Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 261-262 (in analyzing whether state statute conflicts with federal statute, Court relied on agency's reasonable interpretation of federal provision). Congress expressly intended the Department of Education to have a substantial role in deciding whether a state's implementation of the IDEA conforms with the statute. See*, e.g.,* 20 U.S.C. 1416(a)(1) (power to withhold funds for noncompliance); *id.* at 1416(b)(1) & (3) (in judicial review of administrative ruling, Secretary of Education's findings of fact are "conclusive" if supported by substantial evidence). The Department of Education, which has administered the IDEA since its inception in 1976, has consistently taken the position that Connecticut's statutory issue-preclusion rule conflicts with the IDEA. As discussed above, this Court should agree.

CONCLUSION

For the reasons stated above, the district court's conclusion that Connecticut's statutory issue-preclusion rule was valid should be reversed.[8]

Respectfully submitted,

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[8] Because the United States takes no position on the other issues raised in appellant's brief, the United States does not take a position as to whether this case should be remanded to the district court for further proceedings or can be reversed on the present record.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

Pursuant to Fed. R. App. P. 32(a)(7) and 29(d), I certify that the foregoing Brief of the United States and United States Department of Education as Amicus Curiae Supporting Plaintiff-Appellant is proportionally spaced, has a typeface of 14 points, and contains 5541 words, as determined using the word counting feature of WordPerfect 9.

June 10, 2003

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CERTIFICATE OF SERVICE

I certify that two copies of the above Brief of the United States and United States Department of Education As Amicus Curiae Supporting Plaintiff-Appellant, were served by first-class mail, postage prepaid, on June 10, 2003, on the following parties:

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