UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

RUBY J., individually and as mother and next friend of L.L., a minor,	)	
Plaintiff,	)	
v.	)	Case No. 2:14-CV-581-RDP
JEFFERSON COUNTY BOARD OF EDUCATION,	)	
Defendant.	)	

UNITED STATES' BRIEF AS INTERVENOR

The United States intervened in this case pursuant to 28 U.S.C. § 2403(a) for the limited purpose of defending the constitutionality of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.* Doc. 36. The United States submits this intervenor brief in response to Jefferson County Board of Education's (Jefferson County) motion for judgment on the record (Docs. 27-28 and 42-43). This Court should reject Jefferson County's claim of sovereign immunity. Jefferson County is not an "arm of the State" entitled to invoke sovereign immunity. Even if it were, the State of Alabama waived its immunity with respect to private IDEA suits when it accepted federal IDEA funding.[1] The Court should therefore evaluate the plaintiff's IDEA claims on the merits. The United States takes no position on the ultimate outcome of the plaintiff's IDEA claims.

[1] The IDEA also validly abrogates state sovereign immunity, *see* 20 U.S.C. § 1403, although the Court need not reach the issue of abrogation to decide the pending motion.

STATEMENT

1. Statutory Framework

When the IDEA, or its predecessor statutes,[2] 20 U.S.C. §§ 1400 *et seq.*, first became law, "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." *Schaffer* v. *Weast*, 546 U.S. 49, 52 (2005) (quoting H.R. Rep. No. 332, 94th Cong., 1st Sess. 2 (1975); internal quotation marks omitted); *see also Honig* v. *Doe*, 484 U.S. 305, 309 (1988). With the passage of the IDEA and its predecessor statutes, Congress sought to "reverse this history of neglect," *Schaffer*, 546 U.S. at 52, by ensuring "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs," 20 U.S.C. § 1400(d)(1)(A).

The IDEA provides federal grants to States "to assist them to provide special education and related services to children with disabilities." 20 U.S.C. § 1411(a)(1). In order to receive the federal IDEA funds, a State must ensure that a "free appropriate public education" designed to meet the child's unique needs is made available to every eligible child with a disability residing within the State between the ages of three and twenty-one, based on a State's mandated age range. 20 U.S.C. §§ 1412(a)(1), (4) and (5). Under the IDEA, typically, local school officials and parents meet to discuss and agree to the child's yearly program of special education and related services, which is set forth in the child's individualized education program (IEP). 20 U.S.C. § 1414(d); *Schaffer*, 546 U.S. at 53. The IDEA also requires that States that accept IDEA

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[2] Congress first enacted the IDEA in the 1970s as the Education of the Handicapped Act, Pub. L. No. 91-230, 84 Stat. 175. *Schaffer* v. *Weast*, 546 U.S. 49, 51-52 (2005). That Act was substantially amended by the Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773. *Ibid.* The Act became known as the IDEA in 1990. *Forest Grove Sch. Dist.* v. *T.A.*, 129 S. Ct. 2484, 2491 n.6 (2009).

funds comply with detailed procedural requirements, which include review of individual complaints regarding the IDEA's substantive requirements in administrative due process hearings and judicial review in state or federal court. 20 U.S.C. §§ 1412(a)(6), 1415; *see also Board of Educ. of Hendrick Hudson Cent. Sch. Dist.* v. *Rowley*, 458 U.S. 176, 179 (1982) (the IDEA predecessor statute "conditions such funding upon a State's compliance with extensive goals and procedures").

The state educational agency, here the Alabama State Board of Education, 20 U.S.C. § 1401(32), distributes funds to the local educational agencies and is responsible for supervising their compliance with the IDEA's substantive and procedural requirements, 20 U.S.C. § 1412(a)(11); *see also* Ala. Admin. Code r. 290-8-9-.10(4) (2014). The Alabama State Board of Education has accepted IDEA funds for decades, subject to carrying out its legal responsibilities.[3]

As part of the procedural requirements of the IDEA, a state recipient of IDEA funds must establish an administrative review process to address 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." 20 U.S.C. § 1415(b)(6). Under the IDEA, any party (a parent or the local educational agency) filing a complaint is entitled to "an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law." 20 U.S.C. § 1415(f)(1)(A). Any party

[3] *See*, *e.g.*, United States Department of Education, OSEP's Annual Reports to Congress on the Implementation of the Individuals with Disabilities Act (IDEA), annual reports to Congress, *available at* http://www2.ed.gov/about/reports/annual/osep/index.html (last visited February 25, 2015).

aggrieved by the finding and decision of the hearing officer in an individual case may file suit in state or federal court. 20 U.S.C. § 1415(i)(2)(A).

In *Dellmuth* v. *Muth*, 491 U.S. 223, 232 (1989), the Supreme Court held that the IDEA predecessor statute did not "evince an unmistakably clear intention to abrogate the States' constitutionally secured immunity from suit," and, accordingly, held that the Eleventh Amendment was a bar to suit against the state defendant. In response, Congress enacted 20 U.S.C. § 1403, which provides, in pertinent part, that: "A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter." 20 U.S.C. § 1403(a).

2. Factual Background[4]

Ruby J.'s daughter, L.L., is a 12-year-old girl with multiple disabilities, including Angelman's Syndrome, Reactive Airway Disease, a seizure disorder, Cystic Cerebromalacia, global developmental delays, and brain damage. Doc. 1 at 2, 9-10. L.L. has no meaningful verbal communication, requires a wheelchair for mobility, and has a "G-tube" to supplement her nutritional needs. Doc. 1 at 10. Due to an increase in seizure activity, in August 2012, L.L.'s physician prescribed an anti-seizure medication that must be administered anally in emergency situations. Doc. 1 at 10-11. L.L.'s doctor also indicated that a nurse or other healthcare professional trained to administer the anti-seizure medicine must accompany L.L. on any bus ride longer than ten minutes. Doc. 1 at 10-11.

L.L. moved to Jefferson County in December 2012. Doc. 1 at 11. L.L. and her family left Jefferson County from approximately March to August 2013. Doc. 1 at 12. Ruby J. alleges

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[4] These facts are drawn from the plaintiff's complaint (Doc. 1). The United States takes no position on the veracity of these allegations or the parties' factual disputes.

that she had difficulty enrolling L.L. in a Jefferson County school for the 2013-2014 school year, but that she was eventually enrolled in a Jefferson County school for children with disabilities approximately two weeks after the start of the school year. Doc. 1 at 12-13. Ruby J. alleges that she had further difficulty securing adequate transportation for L.L. from her home to her school, which was approximately 45 minutes away. Doc. 1 at 13. Because Jefferson County did not provide a nurse for the bus ride, Ruby J. drove L.L. to school. Doc. 1 at 13. Ruby J. had to be home when her other children were picked up and dropped off by the school bus, which required her to take L.L. to school late and pick her up early. Doc. 1 at 13-14. Consequently, L.L. missed approximately 15 to 30 minutes of instruction both at the beginning and end of each school day. Doc. 1 at 13-14.

According to Ruby J., Jefferson County failed to convene an IEP meeting to consider her request for appropriate transportation for L.L. Doc. 1 at 15. Ruby J. ultimately requested a due process hearing; Jefferson County agreed to provide appropriate transportation two days later. Doc. 1 at 17. The hearing officer found against Ruby J. on all issues. Doc. 1 at 17.

3. Procedural History

On March 28, 2014, Ruby J. filed suit against Jefferson County in which she alleges violations of the IDEA, the Alabama Exceptional Child Education Act, Ala. Code §§ 16-39-01, *et seq.* (2014), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), which prohibits discrimination on the basis of disability in any federally funded program or activity. Doc. 1. Ruby J. alleges that by failing to provide appropriate transportation, convene an IEP meeting, and comply with IDEA notice requirements, Jefferson County failed to provide L.L. with the free appropriate public education the IDEA guarantees her. Doc. 1 at 18. Ruby J. further alleges that Jefferson County violated Section 504 by failing to provide appropriate

related services, limiting L.L.'s ability to participate in off-campus school-sponsored activities, and failing to provide adequate notice. Doc. 1 at 20. Ruby J. seeks, among other things, a declaratory judgment, a preliminary and permanent injunction, compensatory education for L.L., reimbursement for the time Ruby J. spent transporting L.L. to school and off-campus activities, as well as her mileage. Doc. 1 at 21-22.

On April 30, 2014, Jefferson County moved to dismiss the complaint on the grounds that the Eleventh Amendment bars the suit because Jefferson County is an arm of the State of Alabama and thus entitled to sovereign immunity against plaintiffs' IDEA claims. Doc. 8. The Court denied this motion without prejudice on May 22, 2014. Doc. 13. On October 17, 2014, Jefferson County moved for judgment on the record, arguing again that it was immune from suit under the Eleventh Amendment. Docs. 27-28.

Following Jefferson County's notice of a constitutional issue (Doc. 31), on November 19, 2014, the Court certified that Jefferson County had raised a constitutional challenge to portions of the IDEA and indicated that the United States had 60 days in which to intervene in the case (Doc. 33). On December 31, 2014, the Court extended this filing deadline until February 16, 2015.[5] Due to inclement weather, all federal government offices in the Washington, DC area were closed on February 17, 2015. On February 18, 2015, with the parties' consent, the United States filed a notice of intervention.

On February 19, 2015, the Alabama Disabilities Advocacy Program filed a motion for leave to file an amicus brief in support of plaintiff. Doc. 37. This same date, the Court administratively terminated the parties' pending dispositive motions and the Alabama

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[5] Because February 16, 2015, was a legal holiday, the United States' filing deadline was February 17, 2015. *See* Fed. R. Civ. P. 6.

Disabilities Advocacy Program's motion for leave to file an amicus brief, and directed the parties, the United States, and the Alabama Disabilities Advocacy Program to file a joint proposed amended briefing schedule. Doc. 39. During the February 24, 2015, teleconference with the parties, the United States, and the Alabama Disabilities Advocacy Program, the Court indicated its approval of the joint proposed amended briefing schedule. That same date, the parties re-filed their dispositive motions (Docs. 42-44), and the Alabama Disabilities Advocacy Program re-filed its motion for leave to file an amicus brief (Doc. 41). The United States now files this brief as intervenor.

ARGUMENT

The Eleventh Amendment is not a bar to the plaintiff's IDEA claims against Jefferson County. Eleventh Circuit law is clear that local school boards are not arms of the State and thus may not assert a sovereign immunity defense. What is more, Alabama waived any immunity from suit under the IDEA when it accepted federal IDEA funds. The Court should therefore reject Jefferson County's claim of sovereign immunity and evaluate the plaintiff's IDEA claims on the merits. The United States takes no position on the ultimate outcome of these claims.

I.

JEFFERSON COUNTY IS NOT AN ARM OF THE STATE ENTITLED TO SOVEREIGN IMMUNITY

This Court does not need to address Jefferson County's constitutional challenge to the IDEA to resolve this case. As a threshold matter, Jefferson County is not an arm of the State entitled to assert sovereign immunity. Thus, regardless of whether the IDEA validly requires States to waive sovereign immunity or abrogates state sovereign immunity, Jefferson County, as a local school board, does not fall within the scope of state sovereign immunity.

Eleventh Amendment sovereign immunity "extends both to states and to state officials in appropriate circumstances, but it does not extend to counties, municipal corporations, or other political subdivisions of the state." *Stewart* v. *Baldwin Cnty. Bd. of Educ.*, 908 F.2d 1499, 1509 (11th Cir. 1990) (citing *Mount Healthy City Sch. Dist. Bd. of Educ.* v. *Doyle*, 429 U.S. 274, 280 (1977)). Therefore, a local school board is immune from suit only if it is an "arm of the State" as opposed to a "municipal corporation or other political subdivision." *Stewart*, 908 F.2d at 1509. This inquiry is guided by four factors: (1) how state law defines the entity; (2) the degree of state control over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity. *Walker* v. *Jefferson Cnty. Bd. of Educ.*, 771 F.3d 748, 751-753 (11th Cir. 2014) (citing *Stewart*, 908 F.2d at 1509).

The Eleventh Circuit recently stated that "the Supreme Court and the vast majority of appellate courts that have considered the issue have found that school districts and school boards are not entitled to Eleventh Amendment immunity." *Lightfoot* v. *Henry Cnty. Sch. Dist.*, 771 F.3d 764, 768-769 (11th Cir. 2014). Consistent with this, the Eleventh Circuit held in *Stewart* that the county school board was not an arm of the State of Alabama because it had the ability to raise significant independent funding and to establish educational policy, and the authority to supervise schools, assign teachers, and place students. 908 F.2d at 1510-1511. The Eleventh Circuit recently held that *Stewart* compelled a holding that local school boards in Alabama are not arms of the State with respect to employment-related decisions. *Walker*, 771 F.3d at 757.

Jefferson County is not an arm of the State entitled to sovereign immunity. The Eleventh Circuit recently rejected this very argument and held that Jefferson County was not immune from suit under the Eleventh Amendment. *Walker*, 771 F.3d 748. In so holding, the Eleventh Circuit specifically reaffirmed its earlier *Stewart* decision, the validity of which Jefferson County had

challenged. Thus, a clear line of binding precedent has established for the last 25 years that local boards of education in Alabama are not arms of the State for the purposes of sovereign immunity. The fact that this case involves an alleged violation of the IDEA as opposed to an employment-based claim, as in *Stewart* and *Walker*, does not alter the outcome. See *Walker*, 771 F.3d at 757 (noting that the arm of the State inquiry is function-specific).

Here, the first factor weighs against finding Jefferson County to be an arm of the State. Alabama state law imbues county school boards with a large degree of autonomy. Members of school boards are elected by county voters; school boards determine and establish their own educational policy and prescribe rules and regulations for the conduct and management of its schools; and the general administration and supervision of public schools is vested in the county school boards. *Walker*, 771 F.3d at 755; *Stewart*, 908 F.2d at 1511; *Ex parte Madison Cnty. Bd. of Educ.*, 1 So. 3d 980, 987-988 (Ala. 2008); Ala. Code §§ 16-8-1, 16-8-8, 16-1-30(b) (2014).

Many of these same provisions of Alabama law also indicate that county school boards enjoy a great degree of autonomy free from state control. As with other educational matters, the State Board of Education has general supervision over the county schools boards to ensure their compliance with the IDEA, Ala. Admin. Code r. 290-8-9-.10(4) (2014). The county school boards, however, are responsible for the day-to-day implementation of the IDEA, *see*, *e.g.*, Ala. Admin. Code r. 290-8-9-.01(1)(a) (2014) (county school boards "must develop and implement procedures that ensure that all children within their jurisdiction, birth to twenty-one, regardless of the severity of their disability, and who need special education and related services are identified, located, and evaluated"). Other circuit courts of appeals have held that local school boards are not arms of the State for purposes of providing special education under the IDEA. *See*, *e.g.*, *Lester H.* v. *Gilhool*, 916 F.2d 865, 871 (3d Cir. 1990) ("the School District even in

special education remains primarily responsible for providing, administering and maintaining special education services"), *cert. denied*, 499 U.S. 923 (1991); *Gary A.* v. *New Trier High Sch. Dist. No. 203*, 796 F.2d 940, 946 (7th Cir. 1986) ("The defendants have not found a case, as we have not, in which an entity not otherwise immune under the eleventh amendment acquired immunity by virtue of its role in a state administered federal aid program. The details of the [IDEA predecessor statute] suggest no such immunity."). The fact that a state board of education establishes minimum requirements for curriculum, salaries, and other matters is not sufficient to demonstrate state control over county school boards. *Lightfoot*, 771 F.3d at 773; *see also Ex parte Madison Cnty. Bd. of Educ.*, 1 So. 3d at 988 (holding that "the authority to exercise general control and supervision over the county . . . boards of education does not include the authority to exercise the powers and authority which the Legislature has specifically conferred upon such local boards") (citation omitted). Thus, the second factor also weighs against Jefferson County's arm of the State argument.

The third factor further reveals that county school boards are not arms of the State for Eleventh Amendment purposes. The Eleventh Circuit has stated that "[c]ounty school boards in Alabama possess a significant amount of flexibility in raising local funding." *Stewart*, 908 F.2d at 1510 (collecting statutory cites). Although the State Board of Education distributes IDEA funds to county school boards, these are not state funds. As the Seventh Circuit explained, in this circumstance, the "state is a conduit, as the money is earmarked for the locality. The money may best be characterized as 'federal' or 'local', not 'state.'" *Gary A.*, 796 F.2d at 946. Even so, the Supreme Court and courts of appeals have found that local school districts receiving significant amounts of money from the State are not arms of the State for the purposes of

Eleventh Amendment sovereign immunity simply because they receive state funds. *See Mount Healthy*, 429 U.S. at 280; *Lester H.*, 916 F.2d at 871; *Gary A.*, 796 F.2d at 945.

As to the final factor, Jefferson County has not alleged that any monetary reimbursement ordered in this case would be paid from the State's treasury. It is questionable whether Jefferson County could seek the State's money to cover the cost of reimbursement. *See*, *e.g.*, *Board of Educ. of Oak Park & River Forest High Sch. Dist. No. 200* v. *Kelly E.*, 207 F.3d 931, 933 (7th Cir.) (holding that the IDEA did not require the State to reimburse a local school board for the costs associated with failing to provide a free and appropriate education to a child with disabilities), *cert. denied*, 531 U.S. 824 (2000); *cf. Andrews* v. *Ledbetter*, 880 F.2d 1287, 1288-1289 (11th Cir. 1989) (local educational agencies may not file suit to force the state educational agency to provide needed services for children with disabilities). Thus, this factor also weighs in favor of finding that Jefferson County is not an arm of the State of Alabama.

All of the four factors undercut Jefferson County's argument that it is entitled to assert a sovereign immunity defense that is reserved for States. This Court need go no further than this analysis to reject Jefferson County's challenges to the plaintiff's IDEA claims.

II.

ALABAMA WAIVED SOVEREIGN IMMUNITY WHEN IT ACCEPTED FEDERAL IDEA FUNDING

Even if this Court were to find that Jefferson County is an arm of the State, Jefferson County is nevertheless subject to suit because Alabama waived its sovereign immunity with respect to private IDEA suits when it accepted federal IDEA funds. The Eleventh Circuit has not yet decided this precise issue, but other circuit courts of appeals are unanimous that the IDEA validly conditions the receipt of federal funds on a waiver of state sovereign immunity for private actions to enforce the IDEA. *See Pace* v. *Bogalusa City Sch. Bd.*, 403 F.3d 272, 274 (5th

Cir.) (*en banc*), *cert. denied*, 546 U.S. 933 (2005); *A.W.* v. *Jersey City Pub. Sch.*, 341 F.3d 234, 238 (3d Cir. 2003); *M.A.* v. *State-Operated Sch. Dist. of City of Newark*, 344 F.3d 335, 338 (3d Cir. 2003); *Board of Educ. of Oak Park & River Forest High Sch. Dist. No. 200* v. *Kelly E.*, 207 F.3d 931, 935 (7th Cir.), *cert. denied*, 531 U.S. 824 (2000); *Bradley* v. *Arkansas Dep't of Educ.*, 189 F.3d 745, 753 (8th Cir. 1999), *vacated in part on reh'g en banc*, 235 F.3d 1079 (8th Cir. 2000), and *cert. denied*, 533 U.S. 949 (2001).

1. In Exchange For Federal IDEA Funding, Alabama Knowingly And Voluntarily Waived Its Sovereign Immunity With Respect To Private IDEA Suits

It is well established that a State may waive its sovereign immunity and consent to suit. *E.g.*, *College Sav. Bank* v. *Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). Incident to its Spending Clause power, Congress may attach conditions to the receipt of federal funds, including a waiver of state sovereign immunity. *Sandoval* v. *Hagan*, 197 F.3d 484, 492-493 (11th Cir. 1999), *rev'd on other grounds*, 532 U.S. 275 (2001). This is true even if Congress did not have the power to legislate such conditions directly. *South Dakota* v. *Dole*, 483 U.S. 203, 207 (1987) ("objectives not thought to be within Article I's enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds") (citation and internal quotation marks omitted); *Benning* v. *Georgia*, 391 F.3d 1299, 1305 (11th Cir. 2004).

A Spending Clause waiver requires a clear statement of the statute's intent "to condition participation in the programs funded under the Act on a State's consent to waive its constitutional immunity." *Sandoval*, 197 F.3d at 493 (quoting *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 247 (1985)). This clear statement requirement enables a State's waiver to be knowing.

The IDEA explicitly provides for a waiver of sovereign immunity in exchange for federal funds. Section 1403(a) provides that a "State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter." 20 U.S.C. § 1403(a). Section 1415(i)(2)(A) provides that any party aggrieved by the administrative review of complaints regarding compliance with the IDEA's substantive and procedural requirements may file suit in state or federal court. 20 U.S.C. § 1415(i)(2)(A). "Taken together, §§ 1403 and 1415 embody a clear and unambiguous expression of Congress's intent to condition a state's participation in the IDEA on the state's waiver of Eleventh Amendment immunity from suit in federal court." *M.A.*, 344 F.3d at 347; *see also Bradley*, 189 F.3d at 753 (discussing Sections 1403 and 1415). The Eleventh Circuit has held that similar statutory language set forth in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-7,[6] which prohibits discrimination on the basis of race, color, and national origin in federally funded programs, was a clear statement of Congress's intent to condition federal funding on a State's waiver of sovereign immunity. *Sandoval*, 197 F.3d at 493-494 (collecting cases).

The fact that Section 1403 is entitled "Abrogation of State sovereign immunity" is of no importance. *Kelly E.*, 207 F.3d at 935 (rejecting an argument that Section 1403 was an invalid waiver provision because it "does not use words such as 'consent' or 'waiver'"); *accord Pace*, 403 F.3d at 282; *M.A.*, 344 F.3d at 348-349; *Bradley*, 189 F.3d at 753. As the Third Circuit has

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[6] Section 2000d-7(a)(1) provides: "A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794], title IX of the Education Amendments of 1972 [20 U.S.C. §§ 1681 *et seq.*], the Age Discrimination Act of 1975 [42 U.S.C. §§ 6101 *et seq.*], title VI of the Civil Rights Act of 1964 [42 U.S.C. §§ 2000d *et seq.*], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." 42 U.S.C. § 2000d-7(a)(1). As the Third Circuit has noted, "the operative waiver language–that which limits Eleventh Amendment immunity–is almost identical in § 2000d-7(a)(1) and § 1403 of the IDEA." *M.A.*, 344 F.3d at 348.

explained, Section 1403 "is logically capable of constituting both a clear statement of abrogation and an unambiguous expression of an intent to condition the availability of federal IDEA funds on the state's relinquishment of immunity." *A.W.*, 341 F.3d at 245. There is no requirement that Congress "declare in the statute whether it is proceeding under abrogation, waiver, or both." *Pace*, 403 F.3d at 282.

A State's waiver of its sovereign immunity must be voluntary. As the Eleventh Circuit has explained, "the Spending Clause power does not abrogate state immunity through unilateral federal action. Rather, [S]tates are free to accept or reject the terms and conditions of federal funds much like any contractual party." *Sandoval*, 197 F.3d at 494. States may withdraw from a federal program and decline further funding. *Davis* v. *Monroe Cnty. Bd. of Educ.*, 120 F.3d 1390, 1399 (11th Cir. 1997), *rev'd on other grounds*, 526 U.S. 629 (1999). Therefore, federal law has long made clear that a State's acceptance of clearly conditioned federal funds necessitating a waiver of sovereign immunity shall constitute a knowing and voluntary waiver of sovereign immunity. *See*, *e.g.*, *Atascadero*, 473 U.S. at 247; *Garrett* v. *University of Ala. at Birmingham Bd. of Trs.*, 344 F.3d 1288, 1293 (11th Cir. 2003). When Alabama chose to accept federal IDEA funds, it voluntarily waived its sovereign immunity with respect to private suits to enforce the provisions of the IDEA.

2. The IDEA Is Valid Spending Clause Legislation

Finally, Congress must not exceed its broad Spending Clause power when it requires a waiver of sovereign immunity as a condition of funding. For legislation enacted under the Spending Clause to be valid, it must: (1) promote the general welfare; (2) impose unambiguous conditions on the state receipt of funds to enable States to exercise their choice knowingly; (3) impose conditions related to the federal interest in the particular national program; and

(4) not violate the Constitution. *Dole*, 483 U.S. at 207-208; *Benning*, 391 F.3d at 1305. In addition, the "financial inducement offered by Congress" may not "be so coercive as to pass the point at which pressure turns into compulsion." *Dole*, 483 U.S. at 211 (citation and internal quotation marks omitted). The IDEA meets all of these criteria.

The IDEA and its predecessor statutes were enacted to reverse a history of neglect and wholesale exclusion of children with disabilities from public educational programs. *Schaffer* v. *Weast*, 546 U.S. 49, 52 (2005); *Honig* v. *Doe*, 484 U.S. 305, 309 (1988); *Board of Educ. of Hendrick Hudson Cent. Sch. Dist.* v. *Rowley*, 458 U.S. 176, 179 (1982). The provision of a free appropriate public education to children with disabilities unquestionably serves the general welfare. *M.A.*, 344 F.3d at 350; *see also Association for Disabled Ams., Inc.* v. *Florida Int'l Univ.*, 405 F.3d 954, 957-958 (11th Cir. 2005) ("The Supreme Court long has recognized that even when discrimination in education does not abridge a fundamental right, the gravity of the harm is vast and far reaching. * * * Thus, the constitutional right to equality in education, though not fundamental, is vital to the future success of our society.") (discussing Title II of the Americans with Disabilities Act). The IDEA's waiver provision is essential to private enforcement of the IDEA's substantive and procedural requirements, both of which are essential components of the law. *See*, *e.g.*, *Rowley*, 458 U.S. at 205. Therefore, the IDEA satisfies the first and third *Dole* factors.

For the reasons discussed above, the IDEA statutory text unambiguously conditions federal funds on waiver of sovereign immunity, thus satisfying the second *Dole* factor.

As to the fourth *Dole* factor, as discussed previously, the IDEA and its waiver provision do not violate the Eleventh Amendment. Nor does the IDEA violate the Tenth Amendment, as Jefferson County suggests. The Supreme Court has described the IDEA as a model of

"cooperative federalism." *Schaffer*, 546 U.S. at 52 (citation omitted). The IDEA "leaves to the States the primary responsibility for developing and executing educational programs for handicapped children," although "it imposes significant requirements to be followed in the discharge of that responsibility." *Rowley*, 458 U.S. at 183. The mere fact that a Spending Clause law "condition[s] federal funds on an explicit state waiver of sovereign immunity does not violate bedrock principles of federalism." *Sandoval*, 197 F.3d at 494.

Finally, the IDEA's requirement that States receiving federal funds consent to suit is not unduly coercive. Jefferson County's assertion (Doc. 28 at 44-45; Doc. 43 at 44-45) that Alabama has no choice but to accept IDEA funds is false. The default assumption is that sovereign States exercise free will when deciding whether to waive their immunity in exchange for federal funding. *See Dole*, 483 U.S. at 211. Alabama can avoid suit under the IDEA by refusing IDEA funding. Such a choice might be "politically painful," but it is not coercive. *Jim C.* v. *United States*, 235 F.3d 1079, 1081-1082 (8th Cir. 2000) ("The sacrifice of all federal education funds, approximately $250 million or 12[%] of the annual state education budget" did not "compel[] Arkansas's choice."), *cert. denied*, 533 U.S. 949 (2001). For this reason, courts have rejected coercion challenges to IDEA's waiver provision. *E.g.*, *Pace*, 403 F.3d at 287; *accord Barbour* v. *Washington Metro. Area Transit Auth.*, 374 F.3d 1161, 1165-1166 (D.C. Cir. 2004) (discussing 42 U.S.C. § 2000d-7), *cert. denied*, 544 U.S. 904 (2005); *Nieves-Marquez* v. *Puerto Rico*, 353 F.3d 108, 128-129 (1st Cir. 2003) (same).

Thus, even if the Court were to find that Jefferson County is an arm of the State, the Eleventh Amendment would nonetheless provide no shelter to Jefferson County. The IDEA

validly requires States accepting federal IDEA funds, including Alabama, to waive sovereign immunity with respect to private IDEA suits.[7]

CONCLUSION

For the reasons stated herein, the Court should reject Jefferson County's claim of sovereign immunity and evaluate the plaintiff's IDEA claims on the merits.

Respectfully submitted,

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[7] Most courts of appeals have resolved sovereign immunity challenges to the IDEA by way of a waiver analysis. *See*, *e.g.*, *Pace*, 403 F.3d at 277-286; *A.W.*, 341 F.3d at 238; *M.A.*, 344 F.3d at 345-351; *Kelly E.*, 207 F.3d at 933. Although the Court need not reach this issue in this case, the IDEA's abrogation clause, 20 U.S.C. § 1403, is also a valid exercise of Congress's enforcement authority under Section 5 of the Fourteenth Amendment. *See Association for Disabled Ams., Inc.*, 405 F.3d at 957-959 (rejecting a public university's sovereign immunity defense and holding that Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.*, as applied to public education, was a valid exercise of Congress's enforcement power under Section 5 of the Fourteenth Amendment); *see also Little Rock Sch. Dist.* v. *Mauney*, 183 F.3d 816, 821-831 (8th Cir. 1999) (holding that the IDEA validly abrogated state sovereign immunity), *abrogation recognized by Bradley*, 189 F.3d 745 (8th Cir. 1999), *vacated in part on reh'g en banc*, 235 F.3d 1079 (8th Cir. 2000), *cert. denied*, 533 U.S. 949 (2001); *Lawrence Twp. Bd. of Educ.* v. *New Jersey*, 417 F.3d 368, 370 n.3 (3d Cir. 2005) (same).

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2015, the foregoing "United States' Brief As Intervenor" was electronically filed with the Clerk of the Court using the CM/ECF system, which automatically sent email notification of such filing to all counsel of record.

s/ Erin Aslan