

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER: SC18-67

CITIZENS FOR STRONG SCHOOLS,
INC., et al.,

Lower Tribunal Cases:1D16-2862;
372009CA00453

Petitioners,

Vs.

FLORIDA STATE BOARD
OF EDUCATION, et al.,

Respondents,

_____ /

ON APPEAL FROM
THE FIRST DISTRICT COURT OF APPEAL

**BRIEF OF UNITED CEREBRAL PALSY ASSOCIATION OF MIAMI, INC.
AND UNITED CEREBRAL PALSY OF BROWARD, PALM BEACH, AND
MID-COAST COUNTIES, INC. AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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STATEMENT OF IDENTITY OF *AMICUS CURIAE*

The United Cerebral Palsy Association of Miami, Inc., d/b/a United Community Options of Miami and United Cerebral Palsy of Broward, Palm Beach, and Mid-Coast Counties Inc. d/b/a United Community Options of Broward, Palm Beach and Mid-Coast Counties, jointly d/b/a United Community Options of South Florida (hereinafter referred to as “UCP”), file this brief pursuant to Fla. R. App. P. 9.370(b), in support of Defendants-Respondents and Intervenors-Respondents in this appeal.

STATEMENT OF INTEREST IN THE CASE

UCP was created and has operated programs in Miami-Dade County since 1947. Through its schools and programs, UCP serves students with disabilities in public and private school programs, as well as provides after school and summer school programs for public and private school children. UCP’s interest in this case is to provide the Court with information on its student recipients of the McKay Scholarship Program and explain how those students will be affected if the Court was to strike down the McKay Scholarship Program.

UCP opened a Transitional Learning Program funded by the McKay Scholarship Program first in Miami, and then Lake Worth, in response to a need and request from parents in these communities. The McKay Scholarship Program as it is applied in practice does not take anything away from the public-school system in

violation of Florida's state constitution. Rather, the McKay Scholarship Program provides a supplement to the public school system for children with disabilities whose parents determine they will learn more or fit better in a smaller, more private setting that allows for a continuum of services past graduation from high school.

It would be detrimental to the lives of these disabled students to invalidate the McKay Scholarship Program and place the students back into the public school system.

PROGRAMS AND STUDENTS UCP SERVES

I. PRIVATE SCHOOL PROGRAMS

UCP operates non-profit corporations in Miami-Dade, Broward, and Palm Beach Counties, Florida, providing education to students through state and locally sponsored programs. UCP serves more than 1,600 infants, children, and adults at over 60 locations in Miami-Dade, Broward, Palm Beach & Mid-Coast Counties.¹ The individual schools operated by UCP include: United Cerebral Palsy Transitional Learning Academy (Miami), Diamond Minds Transformational Learning Academy, Diamond Minds, Diamond Minds Excel, UCP Early Beginnings, and United Cerebral Palsy Transitional Learning Academy (Lake Worth).

¹ <http://www.unitedcommunityoptionssfl.org/about-us>.

UCP serves children and adults with a wide range of needs and abilities including physical, intellectual, and neurological disabilities, as well as developmental delays and developmental disabilities, such as cerebral palsy, down syndrome, autism spectrum disorder, Prader-Willi syndrome, epilepsy, traumatic brain injury (TBI), and those who are technologically dependent or medically fragile.² In addition, UCP serves typically developing children and adolescents in many of its programs.

UCP operates four schools in Miami-Dade County, Florida that serve McKay Scholarship Program recipients. UCP has served student recipients of the McKay Scholarship in Miami-Dade County since the 2001-2002 school year. The Miami Transitional Learning Academy is the oldest McKay Scholarship Program funded school operated by UCP. The school was established for students from families that were having challenges in public schools and other programs – and wanted a better educational match that would transition the disabled student to some kind of employment (sheltered, supported or competitive) and/or participation in a meaningful day training program post high school that facilitates continued learning in a supervised environment.

² Florida Department of Education, Office of Independent Education & Parenting, 2016-2017 and 2017-2018 Public Filings for School numbers 1720, 3506, 7922, 8855, 8862, 5849 (www.fldoe.org).

During the 2017-2018 school year, the four UCP schools served fifty-one students in Miami-Dade County.³ The Florida Department of Education tracks student disabilities on a matrix score of between 251 to 255. The student recipients of the McKay Scholarship Program from the UCP schools average at the higher level of the disability matrix. The United Cerebral Palsy Transitional Learning Academy (Miami) during the 2017 to 2018 school year served twenty-four students, all recipients of the McKay scholarship. The Miami Transitional Learning Academy is a McKay recipient exclusive school, serving middle and high school level students with the highest matrix level of disability. Furthermore, during the 2017-2018 school year, 87.5% of the students at the United Cerebral Palsy Transitional Learning Academy were minorities.⁴ UCP runs a similar Transitional Learning Academy in Palm Beach County.

The Miami and Palm Beach Transitional Learning Academy also has an adult program on campus. UCP often hears from families that after graduating from a traditional high school, the higher matrix students were unable to find a program they were comfortable with to attend as an adult. Many families like the fact that there is a transitioning place they can go to after they graduated. UCP also helps

³ *Supra* at FN 2.

⁴ *Supra* at FN 2, School #3506.

their students get on the waiting list to receive programs for disabled adults so they can attend additional programs once the high school experience ends.

UCP Transitional Learning Academy schools in Dade and Palm Beach serve as vocational rehabilitation and adult day training programs for adults; and provide students experience to learn how to function in supported or sheltered employment. The goal is that when a disabled student at UCP's Transitional Learning Academy school programs graduates he or she can go directly into some kind of employment (sheltered, supported or competitive) and/or participate in a meaningful day training program post high school that facilitates continued learning in a supervised environment.

Parents of UCP students like the programs because they are small, safe, and provide a familiar setting that a student may potentially stay after graduating from high school. For a parent of a student with disabilities of a higher matrix level, knowing where their son or daughter may go once they graduate from high school is very important. UCP also helps refer students to supported employment and supported living services through state rehabilitation programs (Vocational Rehabilitation and Agency for Persons with Disabilities) and helps teach their adult students how to live in a supported living or group home setting if and when they decide to leave the family home. UCP also hears from families that they feel more

comfortable as they get to know the teachers and staff and get to stay with the same kids throughout their education.

The numbers of McKay Scholarship recipients are similar in Broward and Palm Beach Counties. UCP operates two schools that serve McKay Scholarship recipients in Broward and Palm Beach Counties. Similar to the Miami-Dade County School, UCP operates a Palm Beach United Cerebral Palsy Transitional Learning Academy. One hundred percent of the students at United Cerebral Palsy Transition Learning Academy are McKay Scholarship recipients. The Palm Beach Transitional Learning Academy assists students in their senior year of high school, teaching them how to transition out of high school and into the adult world, focusing on their strengths, abilities, and interests, versus only on their disability and the challenges associated with it.

II. PUBLIC SCHOOL PROGRAMS

UCP runs other programs that work with and support the public-school system. In Miami-Dade County, for twenty-eight years UCP has participated in a three party contract with the Miami-Dade Public School System (“MDCPS”) and Part C Early Steps to provide special education and therapy services for children from birth to three years of age.⁵ UCP has contracted with MDCPS since the mid

⁵ http://www.floridahealth.gov/alternatesites/cms-kids/families/early_steps/early_steps.html

1980's.

UCP also operates summer schools funded via The Children's Trust⁶ for public and private school age students ages three to twenty-two at Civic and North Shore sites, and separate programs for public and private school age students ages five to middle school at Diamond Minds Transformational Learning Academy.

In Broward County, UCP contracted with Broward County Public Schools (BCPS) to provide special education, therapy and transportation services for children ages three to five years old in three public school classrooms. Broward County also funds Advocacy and Respite services for children with special needs ages birth to twenty-two years of age and their families

The Children's Services Council funds an after school and summer program (Maximizing Out of School Time) for fifty-two to sixty public school age students with special needs. Services are provided by BCPS Bright Horizons Center School and St. Ambrose Church. They also fund after school Supported Transition Employment Program (STEP) for fifty-two public school age students sixteen to twenty-two years old with special needs located at six Broward School Board sites. Broward County funds Respite Services for 125 families with children with special needs birth to twenty-two years of age.

In Palm Beach County, UCP runs an after school program funded by United

⁶ <https://www.thechildrenstrust.org>

Way for students with special needs at Palm Beach Public Schools Royal Palm Center School for up to forty students up to age eighteen years of age. The Respite program is funded by Palm Beach County for twenty students and United Way/Children's Services Council for forty students from birth to eighteen years old with special needs that includes public school age students.

LEGAL ARGUMENT

THE MCKAY SCHOLARSHIP PROGRAM IS NOT UNCONSTITUTIONAL

The McKay Scholarship Program is not unconstitutional, as these issues were briefed in connection with the *Bush v. Holmes*, 919 So.2d 392, 411-13 (Fla. 2006) decision. UCP has only recently become aware of the challenge pending in the Florida Supreme Court regarding the McKay Scholarship Program. Despite Petitioners' arguments on appeal, Petitioners have not asserted a stand-alone challenge to the McKay Scholarship in this case.

During the lead up to this Court's *Bush v. Holmes* decision, numerous parties briefed the effect a decision could have on the McKay Scholarship Program. *Bush v. Holmes* does not bind this Court to find that the McKay Scholarship Program is unconstitutional, and in fact, supports the argument that the McKay Scholarship is constitutional. As stated above, the McKay Scholarship has been helping students with disabilities since 1999.

Bush v. Holmes does not require the McKay Scholarship Program to be struck down, and UCP requests this Court to affirm the lower court’s finding that the McKay Scholarship Program does not interfere with the state’s obligation to make adequate provision for the public school system.

The *Bush v. Holmes* decision includes a section titled “Other Programs Unaffected,” wherein this Court forcefully “reject[ed] the suggestion by the State and amici that other publicly funded educational and welfare programs would necessarily be affected by our decision.” *Holmes*, 919 So. 2d at 412.

To illustrate the types of programs that were unaffected, this Court singled out the “program for exceptional students . . . in *Scavella*,” which the Court explained was “structurally different from the OSP, which provide[d] a systematic private school alternative to the public school system mandated by our constitution.” *Id.* The program at issue in *Scavella*, like the McKay Scholarship Program, “is a specialized scholarship limited to students with disabilities.” *Citizens for Strong Sch., Inc.*, 232 So. 3d 1163, 1173 (1st DCA 2017); *see also Scavella v. Sch. Bd. of Dade Cty.*, 363 So. 2d 1095, 1098 (Fla. 1978) (upholding program allowing school districts to use public funds to pay for tuition on behalf of students with disabilities enrolled in private schools).

In the *Bush v. Holmes* decision, this Court specifically found that other programs were unaffected. This Court clearly weighed issues relating to the

education of Florida's special needs children prior to the *Bush v. Holmes* decision and found that scholarship programs that assists such students and their families on a daily basis are not unconstitutional. If this Court finds that the McKay Scholarship Program is unconstitutional, which was implemented in 1999, it will have a negative life changing effect on the McKay Scholarship Program recipients that UCP serves.

CONCLUSION

A ruling in this case that the McKay Scholarship Program is unconstitutional will have a direct effect on UCP's school programs. Without the McKay Scholarship Program, these educational opportunities would not be available and many of these programs and schools would cease to exist, adversely affecting the special needs students UCP serves.

Date: July 30, 2018

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Joseph S. Van de Bogart ,
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2018, a true and correct copy of the foregoing document was sent via email pursuant to Fla. R. Jud. Admin. 2.516 to all counsel of record on the attached Service List.

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