No. _____

In The
Supreme Court of the United States

PAUL G., a conserved adult, by and through his conservator STEVE G.,

Petitioner,

vs.

MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT and CALIFORNIA DEPARTMENT OF EDUCATION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- Whether exhaustion of the administrative procedures provided by the Individuals with Disabilities in Education Act, 20 U.S.C. § 1415(l), is required when Plaintiffs seek relief not available under the IDEA for non-IDEA claims that have been determined to involve a denial of a free appropriate public education.
- Whether the established futility exception to the IDEA's exhaustion requirements applies, where Plaintiff has attained all relief available under the IDEA and seeks only relief not available under the IDEA for violations under related (non-IDEA) provisions of law.
- Whether Petitioners met the IDEA's exhaustion requirement by filing a due process complaint and entering into a written settlement agreement with the respective local educational agency.

PARTIES TO THE PROCEEDING

Petitioner Paul G., a conserved adult, by and through his conservator Steve G., was the plaintiff in the underlying administrative and district court proceedings and the appellant in the court of appeal. The California Department of Education and the Monterey Peninsula Unified School District were respondents in the administrative and district court proceedings, and appellees in the court of appeal.

LIST OF RELATED PROCEEDINGS

- *Paul G. v. Monterey Peninsula Unified School District and California Department of Education*, No. 18-16536, U.S. Court of Appeals for the Ninth Circuit. Judgment entered August 12, 2019. Rehearing denied November 21, 2019.
- *Paul G. v. Monterey Peninsula Unified School District and California Department of Education*, No. 16-cv-05582-BLF, U.S. District Court for the Northern District of California. Judgment entered July 20, 2018.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

STATUTES

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Paul G. petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in his case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit (App. 1) is published at 933 F.3d 1096. The Opinion of the United States District Court for the Northern District of California (App. 13) is unpublished but is available at 2018 WL 2763302. The Order of the Office of Administrative Hearings is available in the attached Appendix (App. 48).

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on November 29, 2019, following the denial of Petitioner's Request for Rehearing *en Banc*. (App. 54). Therefore, this Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

- 20 U.S.C. § 1415

Subdivision (l):

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

- 29 U.S.C. § 794

Subdivision (a):

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and

> Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

- 42 U.S.C. § 12132:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

STATEMENT OF THE CASE

Paul is a twenty-two year-old conserved adult with autism who, at all relevant times, was eligible for special education services in the Monterey Peninsula Unified School District ("the District"). Due to the severity of his disability-related behaviors, Paul required a residential placement to access the benefits of public education. In July of 2015, before his placement in a residential facility, Paul eloped from the public library while receiving tutoring services from the District. As he ran outside, Paul collided with an elderly woman, causing injury. Because of this incident, Paul was charged with three felonies.

On July 20, 2015, the District convened an Individual Education Program ("IEP") meeting and offered Paul a residential placement. However, because Paul was over eighteen years old with severe behavioral needs, no placement in the state of California could serve him. Although there were residential placements out-of-state that could have served Paul, Paul was prohibited from leaving the state pending resolution of his criminal case. Therefore, Paul was left without an educational placement for seven months, through February 2016, when he was finally placed in a residential treatment center out-of-state.

On July 28, 2015, Paul filed an administrative complaint with the Office of Administrative Hearings ("OAH") against both the California Department of Education ("CDE") and the District. The complaint was amended on August 25, 2015. On August 31, 2015, the CDE moved for dismissal from the administrative proceeding, arguing that OAH lacked jurisdiction to hear Paul's claims against it. On September 23, 2015, the OAH dismissed CDE from the administrative proceeding, finding that Paul's claims were "beyond the jurisdiction of OAH" because "[a]ny remedy addressing Student's allegations against CDE would amount to *structural and systemic statewide relief*." App. 52-53 (emphasis added).

On January 21, 2016, Paul entered into a settlement agreement with the District, to resolve his claims under the IDEA. In exchange for a waiver of IDEA claims, Paul received compensatory education funds

and agreement to fund his placement in an out-of-state residential facility.

After obtaining the above remedies under the IDEA, Paul filed a Complaint in the Northern District of California, which had original jurisdiction under 28 U.S.C. section 1331. Paul alleged that the CDE violated Section 504 and Title II by failing to ensure that disabled students over the age of eighteen had equal access to educational programs within the state. As a remedy, Paul sought money damages and injunctive relief. The CDE moved to dismiss on various grounds, arguing Paul was required to exhaust his administrative remedies under the IDEA against the District before bringing discrimination claims against the CDE.

The district court recognized that the relief Paul sought against the CDE was not available under the IDEA, nor was it meant to compensate Paul for a denial of educationally-related services. App. 31 ("Paul is not seeking damages as the cost for 'counseling, tutoring, or private schooling.' "). Yet, the district court concluded that Paul's discrimination claims were still subject to the IDEA's exhaustion requirement under the standard articulated by this Court in *Fry v. Napolean Community Schools*, 137 S.Ct. 743 (2017) (hereafter "*Fry*"). To reach this conclusion, the district court relied on the "clues" developed by this Court in *Fry* and held that Paul's discrimination claims were "premised on a violation of the IDEA," because the "harm . . . stems from his purported deprivation of receiving a

FAPE, in particular, for not being placed at an in-state residential treatment facility." App. 31.

The district court rejected Paul's argument that he had exhausted his administrative remedy to the extent necessary and that further exhaustion should be excused as futile. App. 38. To arrive at this conclusion, the district court focused on the relief available under the IDEA, rather than the relief Paul actually sought. *Id*. On June 8, 2018, the district court dismissed Paul's claims against the CDE, and Paul appealed to the Ninth Circuit Court of Appeals.

On August 12, 2019, the Ninth Circuit affirmed the District Court's dismissal of Paul's claims on exhaustion grounds. After accepting the district court's conclusion that Paul's discrimination claims were based on a denial of FAPE, instead of his right to equal access to a publicly-funded program (education), the Ninth Circuit held that no exceptions to the exhaustion requirement applied. App. 11. Although Paul's claims against CDE had been dismissed from the administrative process due to a lack of jurisdiction to order the "structural and systemic statewide relief" Paul sought, the Court of Appeal concluded that Paul was required to exhaust the administrative process *against the District* before bringing non-IDEA claims against the CDE. *Id*. This conclusion was based on the Court's focus on what it determined to be the nature of Paul's discrimination claims – "if the plaintiff is claiming a violation of the IDEA, the plaintiff must take that claim through the administrative process," whether or

not the administrative process could provide the relief sought. *Id*.

REASONS FOR GRANTING THE WRIT

In *Fry*, this Court reviewed the history behind the IDEA's exhaustion provision, including Congress' " . . . 'reaffirm[ation] of the viability' of federal statutes like the ADA or Rehabilitation Act 'as separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" *Fry*, 137 S.Ct. at 750 citing H.R. Rep. No. 99-296, p. 4 (1985). However, the Court noted the limitation placed on claims under such other laws when the claims seek relief that is "also available under the IDEA." *Id*. at 750. The Court ultimately held that non-IDEA claims are subject to the IDEA's exhaustion requirement if the gravamen of the non-IDEA claims is related to a free appropriate public education "FAPE." *Id*. at 755.

The Court expressly reserved judgment on the question of whether exhaustion is required when non-IDEA claims seek a remedy not available under the IDEA, such as money damages, regardless of whether the gravamen of the claims relate to a FAPE or not. See *Fry*, 137 at fn. 4 (" . . . we leave for another day a further question about the meaning of §1415(l): Is exhaustion required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests–here, money damages for emotional distress – is not one that an IDEA hearing officer may award?").

Paul requests the Court grant review of his case to answer this important question. Paul's non-IDEA claims were dismissed for failure to exhaust despite the undisputed fact that the relief he sought (money damages and injunctive relief) was not available to him through the IDEA's administrative process. *See* App. 52. Yet, the district court concluded that Paul's claims against CDE under Section 504 and Title II were subject to the IDEA's exhaustion provisions because, in the court's view, "Paul's harm . . . stems from his purported deprivation of receiving a FAPE, in particular, for not being placed at an in-state residential treatment facility." App. 31. Therefore, the district court held that Paul had to first prove a denial of FAPE through the due process hearing procedures against his local educational agency before he could seek relief against CDE under Section 504 and Title II. As Paul had already resolved his IDEA claims against his local educational agency, he was prevented from obtaining relief under Section 504 and/or Title II.

However, the outcome in Paul's case would have been different in the First Circuit. In August 2019, the Court of Appeal for the First Circuit decided *Doucette v. Georgetown Public Schools*, 936 F.3d 16 (1st Cir. 2019) (hereafter "*Doucette*"), a case with facts similar to *Fry* in which a special education student sought to bring his service dog to school with him as an accommodation. The Doucettes used the IEP process under the IDEA to resolve their dispute regarding their son's IEP; however, did not complete the due process hearing through to a decision. *Id*. at 30. The Doucettes then

sought damages in the district court under Section 504 and 42 U.S.C. § 1983. *Id*. at 22. The district court dismissed the claims for failure to exhaust, and the First Circuit reversed.

The First Circuit focused on the claims actually at issue, and "not on other claims that [the plaintiffs] might have brought." *Id*. at 26. Further, the Doucettes' use of the IEP process to resolve their dispute regarding their son's FAPE was not dispositive of the nature of their non-IDEA claims. *Id*. (citing Justice Alito's concurring opinion in *Fry*: "A court may conclude, for example, that the move to a courtroom came from a late-acquired awareness that the school had fulfilled its FAPE obligation and that the grievance involves something else entirely." *Fry*, 137 S.Ct. at 757, 759).

Although the First Circuit held that the gravamen of the Section 1983 claim was a denial of FAPE, the court found that the plaintiffs had fulfilled their obligation to exhaust their administrative remedies under the IDEA through successful use of the IEP process. *Id*. at 30. The First Circuit recognized that this Court's decision in *Fry* " . . . left open the question of whether 'exhaustion [is] required when [a] plaintiff complains of the denial of a FAPE, but the specific remedy she requests' – such as money damages for physical or emotional harm – 'is not one that an IDEA hearing officer may award.' " *Id*. at 31 citing *Fry*, 137 S.Ct. at 752, n. 4. Because the relief sought, money damages, was not available under the IDEA, the First Circuit concluded that "further invocation of the administrative process . . . was not required." *Id.* at 31-33. Under the First

Circuit's analysis, Paul's claims against CDE would have survived.

Given the circuit split that has developed since the *Fry* decision, it is critical that this Court grant review of Paul's case to provide a clear path forward for special education students who have civil rights claims related to their education. Fortunately, the statute provides the clarity that the case law lacks. Paul urges the Court to adopt a "straightforward interpretation" of the statute, as proposed by the Solicitor General in its Amicus Brief filed in *Fry*. Brief for the United States as Amicus Curiae, *Fry v. Napolean Community Schools, et al*., 137 S.Ct. 743 (2017) (No. 15-497), 2016 WL 2937224 at 16 (hereafter "Brief for the United States as Amicus Curiae").

Under the express language of the statute, and regardless of the nature of the claim(s) asserted, exhaustion is not required " . . . when the hearing officer lacks the authority to grant the relief sought." *Id*. at 13 citing House Report 7. As the Solicitor General explained:

> That rule implements Section 1415(l)'s overarching purpose of overturning *Smith v. Robinson*, 468 U.S. 992 (1984), and 'reaffirming . . . the viability of' other anti-discrimination provisions as 'separate vehicles for ensuring the rights of handicapped children.' *Id.* citing House Report 4.

Having left the question unresolved in *Fry*, the Court should grant review of Paul's case to clarify that, regardless of the nature of the non-IDEA claims at

issue, exhaustion of IDEA administrative remedies is required only when a plaintiff seeks relief that the administrative process can actually afford. Such a simple construction is required by the plain text of the statute and supported by, not only legislative history, but principles of judicial economy and the well-established exception to the exhaustion requirement.

1) Regardless of the Nature of the Claims, Exhaustion of the IDEA Administrative Process is Not Required when a Plaintiff Seeks Relief Not Available through the Administrative Process.

In *Fry*, this Court explained that "[t]he ordinary meaning of 'relief' in the context of a lawsuit is the 'redress[ ] or benefit' that attends a favorable judgment." *Fry*, 137 S.Ct. at 753. However, the Court recognized that the explicit language of the statute "asks whether a lawsuit in fact 'seeks' relief available under the IDEA – not, as a stricter exhaustion statute might, whether the suit 'could have sought' relief available under the IDEA (or, what is much the same, whether any remedies 'are' available under that law.") *Id*. at 755 citing Brief for United States as Amicus Curiae at 20.

The Court then shifted its focus to the primary right secured under the IDEA – the right to a FAPE – and concluded that the IDEA's exhaustion requirement "hinges on whether a lawsuit seeks relief for the denial of a free appropriate public education." *Id*. at 754. In drawing this conclusion, the Court strayed

from the statute's focus on the nature of the relief sought to the nature of the injury the relief was intended to remedy.

This mixed message caused confusion in Paul's case. In its Opinion below, the Ninth Circuit asserted both (1) that "[t]he crucial issue is . . . whether the relief sought *would be available* under the IDEA" and (2) whether Paul *was in fact* seeking relief for a denial of FAPE. App. 7. (emphasis added). The Ninth Circuit referenced a string of cases from sister circuits which also focused on the nature of the harm alleged instead of the actual relief sought. App. 9.

This focus on the nature of the injury, and whether the IDEA could possibly provide a remedy for that injury, conflicts with the express language of the statute and this Court's direction in *Fry*. *Fry*, 137 S.Ct. at 755 (explaining that the essential question is not whether the plaintiff "could have sought" relief under the IDEA, or whether any remedies are available under the IDEA, but instead "whether a lawsuit in fact 'seeks' relief" available under the IDEA).

Even if, as the courts below concluded, Paul's claims under Section 504 and Title II sought relief for the denial of a FAPE,[1] the relief he sought – money

[1] Paul maintains that his non-IDEA claims did not seek relief for a denial of FAPE. Much like the plaintiffs in *Fry*, Paul did not raise claims related to the adequacy of his IEP and did not "seek to modify [his] IEP in any way," via his discrimination claims. *Fry*, 137 S.Ct. at 752. Other circuits have since recognized the problematic nature of the "clues" proposed in *Fry*. See *Sophie G. v. Wilson County Schools*, 742 Fed. Appx. 73, 79 (6th Cir. 2018)

damages and injunctive relief – was not available to him through the IDEA's administrative process. In the administrative case below, CDE itself argued that the OAH lacked jurisdiction to award the relief Paul sought and moved to be dismissed from the due process case on that basis. The OAH agreed and dismissed Paul's claims against CDE from the administrative proceeding.

In its Order Granting California Department of Education's Motion to Dismiss, the OAH explained:

> In this case, OAH has no jurisdiction to order the type of statewide policy changes Student seeks such as ordering CDE to create in-state placements for students over the age of 18. Any remedy addressing Student's allegations against CDE would amount to *structural and systemic statewide relief*, not just relief for Student. Complaints for such structural and systemic relief are beyond the jurisdiction of OAH. App. 52.

The district court concluded that Paul's claims under Section 504 and Title II "stem from a denial of a

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(holding that "Plaintiffs' complaint does not fit neatly into *Fry*'s hypotheticals because some claims apply only to children, including access to childcare"); see also *J.S., III by and through J.S. Jr. v. Houston County Board of Education*, 877 F.3d 979, 986 (11th Cir. 2017) (concluding that "[t]he cause of action here does not fit neatly into *Fry*'s hypotheticals . . . Unlike the examples in *Fry*, here we cannot as easily divorce J.S.'s claim of isolation from the context of him being an elementary student at school. Although this claim could be brought as a FAPE violation for failure to follow J.S.'s IEP, we conclude that it is also cognizable as a separate claim for intentional discrimination.").

FAPE and are subject to the [IDEA's] exhaustion requirement," however, also acknowledged that Paul did not seek "'an IDEA remedy or its functional equivalent' . . . because Paul is not seeking damages for the cost for 'counseling, tutoring, or private schooling.'" App. 31 citing *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863 at 875, 877 (9th Cir. 2011) (hereafter "*Payne*"). Yet, the district court held that Paul's claims were still subject to the IDEA's exhaustion requirement because, "Paul's harm . . . stems from his purported deprivation of receiving a FAPE, in particular, for not being placed at an in-state residential treatment facility." App. 31. The Ninth Circuit affirmed this injury-centered analysis, stating, " . . . if a plaintiff is claiming a violation of the IDEA, the plaintiff must take that claim through the administrative process." App. 11.

Much like the Sixth Circuit in *Fry*, the lower courts in Paul's case arrived at this erroneous conclusion by focusing on what they interpreted to be the "nature of the harm," rather than the relief actually sought. In its Amicus Brief, the Solicitor General argued that this "injury-centered approach is entirely divorced from the text of Section 1415(l). That provision does not require exhaustion based on the nature of the injury, but instead on whether the particular 'civil action' filed by the plaintiff is 'seeking relief' that the IDEA makes 'available.'" Brief for the United States as Amicus Curiae at 23 citing 20 U.S.C. § 1415(l). Therefore, an analysis which focuses on whether " . . . a plaintiff's alleged injuries either (1) 'can be remedied' in some fashion 'through IDEA procedures,' or (2)

'relate to the specific substantive protections of the IDEA,'" is misplaced. *Id*.

Interestingly, the "injury-centered" approach to analyzing the IDEA's exhaustion requirement has also been expressly rejected by the Ninth Circuit. *Payne*, 653 F.3d at 874 (" . . . we reject the 'injury-centered' approach . . . and hold that a 'relief-centered' approach more aptly reflects the meaning of the IDEA's exhaustion requirement."). In *Payne*, the Ninth Circuit directed courts to focus on a complaint's "prayer for relief and determine whether the relief sought is also available under the IDEA. If it is not, then it is likely that § 1415(*l*) does not require exhaustion in that case." *Id*. at 875. Such a result is not only required by the express language of the statute but is supported by the known legislative intent.

As the Solicitor General pointed out, Congress carefully crafted the language of the statute to dispense of the IDEA's exhaustion requirement for non-IDEA claims " . . . when 'the hearing officer lacks the authority to grant the relief sought.'" Brief of United States as Amicus Curiae at 26 citing House Report 7. "By requiring exhaustion only when the plaintiff's non-IDEA action is 'seeking relief' that is 'available' under the IDEA, Congress gave plaintiffs the option to go directly to court if all they seek are damages under other statutes." *Id*. at 26-27.

2) Exhaustion Should be Excused as Futile or Inadequate when Plaintiffs Seek Relief Not Available Under the IDEA.

This Court has long recognized an exception to the IDEA's exhaustion requirement where resort to the administrative process "would be futile or inadequate." *Honig v. Doe*, 484 U.S. 305 at 660 (1988) citing *Smith v. Robinson*, 468 U.S. 992, 1014, n.17 (1984); see also 121 Cong. Rec. 37416 (1975) (remarks of Sen. Williams) ("Exhaustion . . . should not be required . . . in cases where such exhaustion would be futile either as a legal or practical matter.").

The Ninth Circuit itself has also excused exhaustion as inadequate when " . . . the hearing officer lacks the authority to grant the relief sought . . . " *Hoeft v. Tucson Unified School Dist.*, 967 F.2d 1298, 1309 (9th Cir. 1992). Further, "administrative remedies are generally inadequate where structural, systemic reforms are sought." *Id.*

Paul sought monetary damages and systemic injunctive relief against the CDE under Section 504 and Title II. Monetary damages are not an available remedy under the IDEA. *School Committee of the Town of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985); see also *Mark H. v. Lamahieu*, 513 F.3d 922, 930 (9th Cir. 2008). Moreover, the administrative body itself determined that it lacked jurisdiction to grant the relief Paul sought against the CDE below. App. 52. Yet, the lower courts held that Paul was required to pursue his IDEA claims against the school district, not the CDE,

through completion of the due process hearing, before he could bring his non-IDEA claims seeking relief not available under the IDEA against the CDE.

The Ninth Circuit only provided a short explanation for this ruling, that the administrative agency must have " . . . an opportunity to rule on a claim [under the IDEA] before a plaintiff goes to court." App. 11. The Ninth Circuit cited to *Payne* as support for this conclusion. *Id*. However, the *Payne* court recognized the "limited" purpose of the exhaustion requirement:

> The exhaustion requirement is intended to prevent courts from acting as ersatz school administrators and making what should be expert determinations about the best way to educate disabled students. At the same time, it is not intended to temporarily shield school officials from all liability for conduct that violates constitutional and statutory rights that exist *independent* of the IDEA and entitles a plaintiff to relief *different* from what is available under the IDEA. *Payne*, 653 F.3d at 876.

Forcing Paul, a student who had resolved his IDEA claims with his local educational agency, to complete a costly and time-consuming due process hearing solely to preserve his related civil rights claims against an agency who was dismissed from the due process hearing by their own motion, in order to seek relief not available under the IDEA in the first place, is not what Congress had in mind when crafting the IDEA's exhaustion provision. Such a requirement ". . . . not only ignores the substantial costs of requiring exhaustion

when the relief sought is not available in the administrative proceeding, it also overstates the benefits of exhaustion." Brief for the United States as Amicus Curiae at 29.

In cases with no pending IDEA claims (because they have been resolved through settlement or there were none to begin with), " . . . it is not clear why the state hearing officer would need to go through the burden and expense of developing any sort of detailed record at all; he could simply deny relief." *Id*. at 30. Moreover, "[e]ven if a record were developed, it would be of limited value in a subsequent non-IDEA action . . . the chief purpose of IDEA proceedings is to determine whether a plaintiff is entitled to relief *under the IDEA*. Any record in such proceedings would therefore principally focus on whether or not the plaintiff has established a violation of the IDEA, not on whether other statutes were violated." *Id*. at 30-31 (emphasis added).

By definition, if a claim seeks relief that is not available under the IDEA, meaning that the administrative hearing officer may not award such relief, further pursuit of the administrative hearing would be futile. See *Doucette*, 936 F.3d at 33 citing *Panetti*, 551 U.S. at 946 (" . . . requiring the Doucettes to take further administrative action would be an 'empty formality.' "). Paul urges the Court to grant review of his case to adopt this straightforward approach to the IDEA's exhaustion requirement for non-IDEA claims seeking remedies not available through the IDEA's administrative process.

3) Resolution of IDEA Claims is Part of the Administrative Process Contemplated by Section 1415(l).

In *Doucette*, the plaintiffs "engaged in the administrative process until they received the relief that they sought (and the only relief available to them through the IDEA's administrative process) – an alternative placement for B.D. and compensatory educational services." *Doucette*, 936 F.3d at 30. Therefore, practically speaking, there was no need to proceed with a due process hearing against the local educational agency. *Id*.

Like the plaintiffs in *Doucette*, Paul sought remedies not available under the IDEA after he successfully resolved his IDEA dispute with the District via settlement. See *Doucette*, 936 F.3d at 30-31 ("The Doucettes brought their constitutional claims only after they had no further 'remedies under the IDEA to exhaust,' . . . and they now seek damages for the harms B.D. experienced while being forced to wait for that relief."). Yet, the lower courts in Paul's case found that his settlement of IDEA claims with the District did not fulfill the purposes of the exhaustion requirement. App. 11-12; 35 (" . . . resolution of the OAH's proceeding on the merits is necessary for exhaustion under the IDEA.").

Requiring a special education student to eschew a reasonable settlement of IDEA claims at the administrative level in order to preserve the ability to pursue damages, or other relief not available under the IDEA, under other laws encourages litigation between students and school districts even when no dispute exists

between them regarding the student's IEP. Not only would this result in a delay in obtaining an appropriate placement for the student, but it would waste judicial resources and cause both parties to incur unnecessary attorneys' fees. *See* 20 U.S.C. § 1415(i)(3)(D) (explaining that the educational agency will not be responsible for parents' attorneys' fees if parents reject a reasonable settlement offer made before the hearing).

Although Paul brought this issue to the attention of the courts below, the district court dismissed his argument, stating, "If there is no dispute, there is no reason why a student would engage in litigation." App. 42. This is incorrect. The holding below encourages, and even requires, parties to proceed through a due process hearing with their respective school district, even absent a dispute regarding FAPE, in order to preserve claims under non-IDEA statutes for relief not available under the IDEA.

Congress did not intend to place students in such a quandary. Nothing in the IDEA requires that parties try a due process hearing to completion in order to resolve their case. Rather, Section 1415 merely provides for "*an opportunity* for an impartial due process hearing" 20 U.S.C. § 1415(f)(1)(A) (emphasis added). In fact, settlement is encouraged. The statute requires a resolution session between the parties to provide an "opportunity to resolve the complaint" and sets forth explicit requirements for settlement agreements to resolve disputes. 20 U.S.C. § 1415(f)(1)(B)(i), (iii).

The Solicitor General understood that this would be a consequence of the District Court's holding: "As a

practical matter, the plaintiffs who are likely to [choose to forego IDEA claims] are those who either (1) do not believe that the IDEA was violated, (2) *have already reached a resolution with the school providing them with whatever IDEA relief they may be entitled to receive*, or (3) no longer seek IDEA services from the school district for the child at issue. Those are precisely the plaintiffs who should not be forced to exhaust a potentially burdensome, adversarial administrative process as a prerequisite to filing an inevitable civil action in court." Brief for the United States as Amicus Curiae at 32-33 (emphasis added).

Paul has long ago resolved his IDEA claims with his respective local educational agency and has secured relief under that statute to his satisfaction. Justice requires that he be allowed to now pursue non-IDEA remedies under Section 504 and Title II. Any other outcome would deny him a forum for his discrimination claims and effectively "limit the rights, procedures, and remedies" available under Section 504 and Title II. *See* 20 U.S.C. § 1415(l).

CONCLUSION

Paul's claims under Title II and Section 504 were not subject to exhaustion of the IDEA administrative process, because he did not seek relief available under the IDEA. Rather, Paul sought systemic changes to statewide policies and procedures and monetary damages for his injury, psychological, and emotional distress. Requiring Paul to complete a due process

hearing under the IDEA with his local educational agency, despite having no active dispute regarding his IEP, in search of relief that is not available under the IDEA, for claims arising under non-IDEA statutes, runs counter to the legislative intent and the plain language of the IDEA.

Paul requests this Court grant his writ petition to resolve the question left unanswered by *Fry*, and affirm the plain meaning of the IDEA's exhaustion provision. Such a decision is necessary to rectify the split between the circuits and provide a clear path forward for special education students seeking relief not available through the administrative process, under laws other than the IDEA.

Dated: February 19, 2020

Respectfully submitted,

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