No. 20-____

IN THE

Supreme Court of the United States

CHAD AND TONYA RICHARDSON, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF L,

Petitioners,

v.

OMAHA SCHOOL DISTRICT,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, offers states federal funds for committing to provide a "free appropriate public education" for every child with a disability. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 993–94 (2017). To enforce that guarantee, parents may initiate a "due process hearing" before a state or local IDEA hearing officer. 20 U.S.C. § 1415(f)(1)(A), (g). And if they are still "aggrieved" after exhausting administrative procedures, they may seek judicial review within 90 days, unless state law provides a different limitations period. *Id.* § 1415(i)(2)(A), (B).

The IDEA also provides a separate cause of action for attorneys' fees for parents who prevail in those administrative proceedings. *Id.* § 1415(i)(3)(B)(i)(I). But the IDEA contains no limitations period for prevailing parents' attorneys' fees actions.

Given Congress' silence, the Ninth and Eleventh Circuits borrow years-long state statutes of limitations, because they analogize fees actions to independent lawsuits separate from the underlying merits of the IDEA administrative proceedings. The Sixth, Seventh, and Eighth Circuits, in contrast, borrow far shorter periods designed for judicial review of IDEA administrative merits decisions, because they find fees actions merely ancillary to the underlying educational dispute.

The question presented is: What type of state statute of limitations should courts borrow for attorneys' fees actions under 20 U.S.C. § 1415(i)(3)(B)(i)(I)?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioners Chad and Tonya Richardson, Respondent Omaha School District, and Defendants-Appellees Jacob Sherwood, Superintendent; Amanda Green, Principal; and Dawn Dillon, Teacher. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

RELATED PROCEEDINGS

United States District Court (W.D. Ark.):

Richardson et al. v. Omaha Sch. Dist., No. 3:17-cv-03111-TLB (Apr. 30, 2019)

Richardson et al. v. Omaha Sch. Dist., No. 3:17-cv-3053-TLB (Nov. 8, 2017)

United States Court of Appeals (8th Cir.):

Chad Richardson et al. v. Omaha Sch. Dist. et al., No. 19-2058 (Apr. 27, 2020)

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

INTRODUCTION

This case presents an acknowledged circuit split about the kind of state statute of limitations courts should borrow for actions for attorneys' fees by parents who obtain administrative relief for their children under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. The choice of approach produces widely divergent results. Under the Ninth and Eleventh Circuits' approach, parents in every state would have at least a year (and often two to six years) to seek fees. Under the Sixth, Seventh, and Eighth Circuits' approach, however, parents nationwide would get just one to four months. *See* App. 64a–76a. The difference matters, and it will persist unless this Court steps in.

The IDEA requires participating states to provide a "free appropriate public education" (FAPE) for all students with disabilities. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 993–94 (2017). Parents may enforce that guarantee through "due process hearings" before state or local IDEA hearing officers. 20 U.S.C. § 1415(f)(1)(A), (g). If still "aggrieved" after administrative exhaustion, parents have 90 days to seek judicial review, unless state law explicitly provides a different limitations period. *Id.* § 1415(i)(2)(A), (B).

Separately, the IDEA also provides an independent cause of action for "reasonable attorneys' fees" for parents who prevail in due process hearings. *Id.* § 1415(i)(3)(B)(i)(I). Congress viewed fee-shifting as "a critical tool" for parental IDEA enforcement. *Angela L. v. Pasadena Indep. Sch. Dist.*, 918 F.2d 1188, 1192–93 (5th Cir. 1990). Congress provided no statute of limitations for fees actions.

Given Congress' silence, courts adopt state law statutes of limitations as a matter of federal law. But the courts of appeals disagree about what kind of limitations period to adopt. The Ninth and Eleventh Circuits borrow years-long state statutes of limitations for independent statutory violations. They reason that fees claims are independent actions, separate from the merits of the educational dispute, in which the parties present fees evidence to the district court in the first instance, because state and local administrative authorities lack authority to award fees. These courts also stress that short limitations periods frustrate the IDEA's policy goals.

In contrast, the Sixth and Seventh Circuits, plus the Eighth Circuit here, borrow short limitations periods ranging from just one to four months. These are the same periods (which Congress has allowed states to adopt, 20 U.S.C. § 1415(i)(2)(B)) for judicial review of IDEA administrative merits decisions. In those courts' view, fees disputes are merely ancillary to the underlying merits disputes, and parents need only a few months to sue.

The question presented is important. As Appendix D (at 64a–76a) shows, the choice of approach would produce starkly different results in every state as well as the District of Columbia and Puerto Rico. In each of these jurisdictions, the limitations period borrowed under the Ninth and Eleventh Circuits' approach would give parents and their attorneys at least a year, and often two or more, up to even six years, to sue for fees. That, in turn, would let them prioritize their energies where they belong: on the separate and far more urgent issues presented by the underlying IDEA dispute. But under the Sixth, Seventh, and

Eighth Circuits' approach, each jurisdiction would give parents as little as 30 days, and no more than 120. During that short time, parents are often still distracted—and rightly so—by the merits dispute about their child's educational placement.

That was the case here. Chad and Tonya Richardson sought attorneys' fees in federal district court for successfully enforcing their child's right to a FAPE before an administrative hearing officer. In the months after the hearing officer's decision, the Richardsons remained preoccupied with concerns that their child was being bullied. *See, e.g.*, App. 20a, 45a. The district court dismissed their fees claim as 54 days too late anyway, and the Eighth Circuit affirmed. App. 2a–10a. In doing so, the Eighth Circuit acknowledged that the Richardsons' suit would have gone forward in the Ninth and Eleventh Circuits. App. 6a.

The Ninth and Eleventh Circuits have it right. The text and structure of the IDEA establish that fees actions are separate from the underlying merits dispute. Indeed, the IDEA contains separate causes of action for merits review and recovery of attorneys' fees. Merits review actions are a continuation of the ongoing proceedings. But the fees issue is committed to the courts alone, not hearing officers, so it is not merely a review or an extension of the merits proceedings. And courts must presume that Congress acted deliberately in providing a months-long limitations period only for merits review actions.

The Ninth and Eleventh Circuits' approach, moreover, gives effect to Congress' intent and promotes the IDEA's policy goals. It is hard enough for parents to find and afford IDEA attorneys. The Sixth, Seventh, and Eighth Circuits' rule exacerbates the problem by

making it more difficult to recover fees and forcing attorneys to pursue fees when they are often practically—and ethically—distracted by more urgent matters over the student's educational placement.

This Court often grants review to resolve limitations questions that have divided the circuits. It should do so here as well.

OPINIONS BELOW

The court of appeals' opinion (App. 1a–17a) is reported at 957 F.3d 869. The relevant opinions of the district court (App. 18a–42a and App. 43a–63a) are unpublished but available at 2019 WL 1930129 and 2018 WL 1439603.

JURISDICTION

The court of appeals affirmed the district court's judgment on April 27, 2020. App. 1a. By order of March 19, 2020, this Court extended the deadline for all petitions for writs of certiorari due on or after the date of the Court's order to 150 days from the date of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The IDEA provides in 20 U.S.C. § 1415(i)(2), "Right to bring civil action," in relevant part:

> **(A) In general**
>
> Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant

> to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.
>
> **(B) Limitation**
>
> The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

The IDEA provides in 20 U.S.C. § 1415(i)(3), "Jurisdiction of district courts; attorneys' fees," in relevant part:

> **(A) In general**
>
> The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.
>
> **(B) Award of attorneys' fees**
>
> **(i) In general**
>
> In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—
>
> **(I)** to a prevailing party who is the parent of a child with a disability ….

STATEMENT

The issue in this case is how to determine the statute of limitations for actions to recover attorneys' fees under 20 U.S.C. § 1415(i)(3)(B)(i)(I) by parents of children with disabilities who prevailed in IDEA administrative proceedings. The Eighth Circuit borrowed Arkansas' 90-day statute of limitations for merits review of IDEA decisions. In doing so, it sided with the Sixth and Seventh Circuits, which likewise borrow periods from state law for review of IDEA determinations. But according to the Ninth and Eleventh Circuits' approach, which the Eighth Circuit expressly rejected, the court would have instead borrowed the three-year statute of limitations under Arkansas Code § 16-56-105 for independent causes of action. App. 8a–10a. The choice was outcome-determinative: because the Richardsons filed their complaint 144 days after the administrative proceedings became final, App. 20a–21a n.1, 54a, the court of appeals affirmed the district court's dismissal of their claim for attorneys' fees. App. 10a.

1. a. The IDEA requires participating school districts to provide a FAPE for all eligible children. *Endrew F.*, 137 S. Ct. at 993. To that end, the IDEA requires teachers, parents, and school officials to collaborate to develop each eligible student's comprehensive "individualized education program," or IEP. *Id.* at 994; *see* 20 U.S.C. § 1414(d)(1)(A). By design, "[p]arents and guardians play a significant role in the IEP

process." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005).[1]

Because parents and educators sometimes disagree about an IEP or its implementation, the IDEA provides for "due process hearings" before state or local IDEA hearing officers. 20 U.S.C. § 1415(f)(1)(A), (g). The hearing officer must determine "whether the child received a [FAPE]," *id.* § 1415(f)(3)(E)(i), and the only relief the hearing officer can provide is "enforce[ment of] the child's 'substantive right' to a FAPE." *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 754 (2017).

After exhausting local and state administrative procedures, "[a]ny party aggrieved by the findings and decision" may seek relief in state or federal court. 20 U.S.C. § 1415(i)(2)(A). "The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows." *Id.* § 1415(i)(2)(B).

b. Separately, and as centrally relevant here, the IDEA also allows "a prevailing party who is the parent of a child with a disability" to sue for "reasonable attorneys' fees" incurred in the state and local administrative proceedings. *Id.* § 1415(i)(3)(B)(i)(I); *see id.* § 1415(i)(3)(A) (federal district courts have "jurisdiction of actions brought under this section"); *Schaffer*, 546 U.S. at 54. Attorneys' fees actions are not judicial *review* actions, because attorneys' fees are exclusively

[1] Until 1990, "the IDEA was called the Education of the Handicapped Act." *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 750 n.1 (2017).

a judicial remedy; administrative hearing officers lack authority to award them. *E.g.*, *D.G. ex rel. LaNisha T. v. New Caney Indep. Sch. Dist.*, 806 F.3d 310, 313 (5th Cir. 2015); *see also Fry*, 137 S. Ct. at 754. Thus, parents who have prevailed in administrative proceedings must bring an independent judicial action to recover their fees from those hearings. *E.g.*, *El Paso Indep. Sch. Dist. v. Richard R.*, 591 F.3d 417, 422 & n.4 (5th Cir. 2009); *Barlow-Gresham Union High Sch. Dist. No. 2 v. Mitchell*, 940 F.2d 1280, 1284 (9th Cir. 1991); *Moore v. District of Columbia*, 907 F.2d 165, 166 (D.C. Cir. 1990) (en banc).[2]

As noted, the IDEA provides a default 90-day statute of limitations, applicable unless "the State has an explicit time limitation," for actions by parties "aggrieved" by the result of the state or local hearing procedures. 20 U.S.C. § 1415(i)(2)(B). Congress added that limitations period through a 2004 amendment. App. 10a n.3. But the Act provides no statute of limitations for attorneys' fees actions. *See* 20 U.S.C. § 1415(i)(3); *see also, e.g.*, *D.G.*, 806 F.3d at 316. Before the 2004 amendment, "many courts had applied different limitations periods to the two types of actions," and they "have continued to do so." *D.G.*, 806 F.3d at 317.

c. "When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or

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[2] The attorneys' fees provision is now codified at 20 U.S.C. § 1415(i)(3)(B)(i)(I) but was previously codified at § 1415(e)(4)(B). *King ex rel. King v. Floyd Cty. Bd. of Educ.*, 228 F.3d 622, 624 (6th Cir. 2000).

policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 266–67 (1985); *see Hardin v. Straub*, 490 U.S. 536, 538–39 (1989) (citing *Wilson*, 471 U.S. at 271). The "court 'borrows' or 'absorbs' the local time limitation most analogous to the case at hand." *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 355 (1991); *see* 28 U.S.C. § 1652. To determine "which state statute provides the most appropriate limiting principle," courts "characterize the essence of the claim"; determine the limitations period for the most "analogous cause of action under state law"; and ensure that "it is not inconsistent with federal law or policy." *Wilson*, 471 U.S. at 266–67, 268, 271.

Although "the length of the limitations period, and closely related questions of tolling and application, are to be governed by state law," "the state rule is adopted as a federal rule" and "[t]he characterization of [the federal statute] for statute of limitations purposes" remains "a federal question." *Id.* at 268–69 (internal quotation marks omitted). "[S]tate law is applied only because it supplements and fulfills federal policy, and the ultimate question is what federal policy requires." *Id.* at 270 n.20. The inquiry, "in [the] final analysis," is a federal "question[] of statutory construction." *Id.* at 268.

The question presented here is how to determine which kind of state-law statute of limitations to borrow for an action for attorneys' fees.

2. a. In November 2016, Petitioners Chad and Tonya Richardson filed a due process complaint before the Arkansas Department of Education alleging that Respondent Omaha School District had denied their child, "L," his right to a FAPE under the IDEA. App.

2a, 19a. The Richardsons alleged that the school district had failed to (1) conduct required evaluations of L; (2) develop and implement an IEP for L; (3) ensure that L was not bullied by peers or teachers; and (4) educate L in the least restrictive environment possible. *Id.* The hearing officer agreed with the Richardsons' first two claims, though not with the latter two. The officer ordered the district to comprehensively evaluate L's academic, social, and behavioral deficits and reconvene L's IEP team to develop and update L's IEP. App. 19a.

b. Although they prevailed before the hearing officer on their first two claims, the Richardsons disagreed with the hearing officer's resolution of their other claims. Thus, in July 2017, they filed a complaint in federal district court seeking review of the hearing officer's decision as "aggrieved" parties under § 1415(i)(2)(A). App. 44a–45a. In November 2017, however, after denying the Richardsons' motion for an extension of time to complete service, the district court dismissed their complaint without prejudice. App. 45a–46a; *see Richardson v. Omaha Sch. Dist.*, No. 3:17-cv-3053, Dkt. 7 (W.D. Ark. Nov. 8, 2017).

3. In December 2017, the Richardsons filed a new lawsuit, which is at issue here. They sought attorneys' fees under § 1415(i)(3) as "prevailing part[ies]" given the relief ordered by the hearing officer. App. 2a, 46a. (Though not relevant here, the Richardsons also alleged violations of the Rehabilitation Act and Americans with Disabilities Act, and asserted several claims under 42 U.S.C. § 1983.)

The district court dismissed the Richardsons' attorneys' fees claim as time-barred. App. 51a. Agreeing with the Sixth and Seventh Circuits, the court held

that "a claim for attorneys' fees arising out of a due process hearing under the IDEA is ancillary to the administrative action and therefore should be governed by the state statute of limitations that governs appeals from administrative decisions." App. 52a (citing *King v. Floyd Cty. Bd. of Educ.*, 228 F.3d 622, 625–26 (6th Cir. 2000); *Powers v. Ind. Dep't of Educ.*, 61 F.3d 552, 556–59 (7th Cir. 1995)). Accordingly, the court applied the 90-day statute of limitations for judicial review of an IDEA merits decision, rather than the three-year statute of limitations under Arkansas Code § 16-56-105 for independent causes of action. App. 50a–54a; *see* App. 6a. Because the Richardsons sued "144 days after the hearing officer's decision became final," the court dismissed it with prejudice. App. 21a n.1.

4. The Eighth Circuit affirmed. App. 1a–17a. The court began by describing the conflicting approaches of the Sixth and Seventh Circuits, on the one hand, and the Ninth and Eleventh Circuits, on the other. App. 6a–8a. The Eighth Circuit noted that the Sixth and Seventh Circuits view an attorneys' fees action as "ancillary to the judicial review of the administrative decision," and thus borrow short state-law periods for seeking judicial review of the administrative decision. App. 6a (quoting *Powers*, 61 F.3d at 555); *see* App. 8a (discussing *King*, 228 F.3d at 625–26). In contrast, the Ninth and Eleventh Circuits reason that a fees action is "an independent claim" warranting adoption of a longer state-law statute of limitations for "actions founded on statutory liability." App. 6a–7a (quoting *Zipperer ex rel. Zipperer v. Sch. Bd.*, 111 F.3d 847, 850–51 (11th Cir. 1997); citing *Meridian Joint*

Sch. Dist. No. 2. v. D.A., 792 F.3d 1054, 1063–64 (9th Cir. 2015)).

Joining the Sixth and Seventh Circuits, the Eighth Circuit "agree[d] with the district court's decision to borrow the ninety-day statute of limitations for merits actions from Arkansas Code section 6-41-216(g), Arkansas's statutory framework for IDEA compliance." App. 9a. In the Eighth Circuit's view, "the claim for attorneys' fees is ancillary to judicial review of the administrative decision." *Id.* The court reasoned that the shorter period "does not frustrate the policy embedded in the federal law," because parties will know whether the losing party will seek judicial review before needing to decide whether to file a fees action. App. 9a–10a. And "the shorter period does 'not run the risk of hurting vulnerable unrepresented parents,'" the court continued, because "parents of the aggrieved student have already hired a lawyer." App. 10a (quoting *King*, 228 F.3d at 627; *Powers*, 61 F.3d at 558). Finally, the court reasoned, "[t]he parents, school district, and attorneys have an interest in the expeditious resolution of the attorneys' fees issue." *Id.* (internal quotation marks omitted).

REASONS FOR GRANTING THE PETITION

I. The courts of appeals are split 2–3 on which kind of state statute of limitations to adopt

The circuits are split 2–3, with no sign that any court will revisit its approach. The split makes for a perfect cert candidate. It is outcome-determinative, and lower courts have repeatedly acknowledged the disagreement. And it produces widely divergent results in different states. *See* App. 64a–76a.

A. The Ninth and Eleventh Circuits borrow years-long state statutes of limitations for independent causes of action

Expressly rejecting the Sixth and Seventh Circuits' (and now Eighth Circuit's) approach of adopting months-long limitations periods, the Ninth and Eleventh Circuits borrow years-long state statutes of limitations. The Ninth and Eleventh Circuits reason that IDEA attorneys' fees actions are independent from the IDEA administrative process and that short statutes of limitations are inconsistent with congressional intent and the IDEA's policy goals.

1. In *Zipperer*, the Eleventh Circuit held that the district court should have borrowed Florida's four-year statute of limitations for claims based on statutory liability because the IDEA's attorneys' fees provision "provides for an independent claim." 111 F.3d at 850–52. The district court had borrowed a thirty-day limitations period. It followed Seventh Circuit precedent and found the fee request "ancillary to the administrative proceeding rather than an independent cause of action." *Id.* at 851.

The Eleventh Circuit reversed. It explained that "the IDEA provides two distinguishable causes of action." *Id.* One is for seeking substantive review of an administrative determination. *Id.* The other is for seeking fees for success in administrative proceedings. *Id.* A party prevailing in the administrative proceedings cannot seek fees by appealing the hearing officer's substantive decision under the first cause of action, because it is a prevailing party. *See id.* Moreover, "[b]ecause the district court, rather than the administrative agency, has jurisdiction to award fees," there is no fees decision to appeal. *Id.* The Eleventh Circuit

thus rejected the argument that a claim for attorneys' fees "is analogous to the appeal of an administrative hearing." *Id.*

The Eleventh Circuit also reasoned that the limitations periods for administrative appeals "are too short to vindicate the underlying federal policies associated with the fee-claims provisions of the IDEA." *Id.* Conversely, the court explained, Florida's four-year statute of limitations was not "inconsistent with the policies of the IDEA." *Id.* Fees claims are "less urgent" and "more likely to be resolved by the attorneys' interest in prompt payment than by a short period of limitations" anyway. *Id.* And a four-year period "is likely to encourage the involvement of parents, as represented by attorneys, in securing appropriate public educations for their children." *Id.* at 851–52.[3]

2. The Ninth Circuit followed *Zipperer* in *Meridian Joint School District No. 2. v. D.A.*, 792 F.3d 1054. Noting the split with the Sixth and Seventh Circuits, the Ninth Circuit agreed with the district court's reasoning that a longer statute of limitations is preferable for the reasons the Eleventh Circuit gave in *Zipperer*. *Id.* at 1062–64.

The Ninth Circuit began by explaining that the 90-day limitations period for actions by "aggrieved"

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[3] When the Eleventh Circuit decided *Zipperer* (in 1997), Congress had not yet enacted the express statute of limitations for "aggrieved party" merits review (as it would in 2004). *See supra* p. 8. Thus, courts addressing merits-review suits borrowed state limitations periods designed for appeals of administrative decisions, like the 30-day period at issue in *Zipperer*, *see* 111 F.3d at 850–51. The statute of limitations for merits review is now whatever "explicit time limitation" a state may provide, or otherwise 90 days. 20 U.S.C. § 1415(i)(2)(B); *see supra* p. 8.

parties for substantive review of an administrative decision under § 1415(i)(2)(B) does not apply to fees actions under § 1415(i)(3)(B). *Id.* at 1062. That period applies by its terms "only to parties that are aggrieved by the hearing officer's decision, not to those who prevailed," and the limitation "was added in 2004 but did not reference, or affect, the provision addressing attorneys' fees." *Id.*

The court next found that "a request for attorneys' fees under the IDEA is more analogous to an independent claim than an ancillary proceeding." *Id.* at 1064. The court emphasized that "[t]he fact that the hearing officer may not award attorneys' fees weighs in favor of holding that a request for attorneys' fees filed in the district court is not ancillary to the judicial review of the administrative decision." *Id.* The court also concluded that "the longer time period promotes the purposes of the IDEA" and ensures that "the party that prevailed before the hearing officer" need not decide whether to file a fees action until the substantive proceedings come to rest. *Id.*

"Faced with an existing circuit split," the Ninth Circuit rejected the Sixth and Seventh Circuits' approach, refusing to adopt a weeks-long limitations period under the Idaho Administrative Procedure Act. *Id.* at 1061–64. The court instead adopted the Eleventh Circuit's approach and found the parents' action "timely under either" a two-year or a three-year Idaho statute of limitations for independent causes of action. *Id.* at 1064 & n.9.

B. The Sixth, Seventh, and Eighth Circuits borrow months-long periods for judicial review of IDEA merits decisions

At odds with the Ninth and Eleventh Circuits, the Sixth and Seventh Circuits, joined by the Eighth Circuit here, borrow very short state-law limitations periods—as little as 30 days, and no more than four months—designed for judicial review of administrative decisions (*i.e.*, the periods applicable to judicial review of the underlying IDEA merits decision itself). The Sixth, Seventh, and Eighth Circuits reason that attorneys' fee requests are ancillary to the underlying IDEA dispute.

1. Recognizing that the question "is difficult," the Seventh Circuit borrowed an Indiana law limitations period of only 30 days. *Powers*, 61 F.3d at 556–57. The court first acknowledged that "an action for attorneys' fees … may arguably be characterized as either an independent cause of action … or as ancillary to the judicial review of the administrative decision on educational placement." *Id.* at 555. The consequence, the court explained, would be analogy either "to a tort action seeking money damages, which usually carries a comparatively long statute of limitations," or, alternatively, "to statutes dealing with judicial review of state agency decisions." *Id.* (footnote omitted). The court further acknowledged "that a number of courts have found a 30 day limitations period too short, concluding that such a limited period violates congressional intent." *Id.* at 557.

The Seventh Circuit borrowed a 30-day period anyway, concluding that a fees action is more analogous to judicial review of an administrative decision. *Id.* at 556. The court further reasoned that "both the

school district and the parents … have an interest—along with the attorney—in the expeditious resolution" of the fees question. *Id.* In the court's view, a short limitations period would not "discourage parents from participating in the education of their children" because they "have already hired a lawyer." *Id.* at 558. Nor would a short limitations period discourage parents from hiring lawyers in the first place, because "if an action is being brought for fees, that decision has already been made long before." *Id.*

2. a. The Sixth Circuit sided with the Seventh Circuit in a 2–1 decision in *King*, 228 F.3d at 627. The court opined that "the statute seems to treat the award of attorney fees as another phase of the administrative proceeding," and therefore as merely "'ancillary to the underlying education dispute.'" *Id.* at 625–26 (quoting *Powers*, 61 F.3d at 556). In the Sixth Circuit's view, the fees claim is thus "analogous to a cause of action for judicial review of the proceeding to which the claim is appended." *Id.* at 626. The court therefore borrowed Kentucky's 30-day statute of limitations for appeal from an administrative order. *Id.* at 624, 627.

b. Judge Engel dissented. *Id.* at 627–31. He would have adopted the approach of the Eleventh Circuit in *Zipperer* because the majority's approach "is unfair" and "unsympathetic to the evident intent of Congress." *Id.* at 627. The dissent identified four problems with the majority's analysis:

First, the short limitations period "is unrealistic and has the effect of chilling rights emphatically created by Congress." *Id.* The dissent explained that a "thirty-day limit is far too short for the wide variety of circumstances which are bound to arise in the mine run of these cases, even where diligence occurs," and

that the majority's approach "shows a greater concern for the convenience of the state agency than for the handicapped child or their parents." *Id.* at 627–28.

Second, a short limitations period is both unfair and unnecessary. It is unfair because "within thirty days" of issuance of the administrative decision, "the parent or representative of the parent or child [must] make several critical decisions in addition to computing and marshaling the evidence to justify an original action in another court." *Id.* at 628. In *King*, for example, the parents and their attorneys had to quickly analyze a nineteen-page order to determine whether it was final; whether the parents were prevailing parties; and, even if so, whether the order "was adequate to achieve its intended result"—all before considering whether to prepare a federal fees action before the short limitations period expired. *Id.*

During this time, the parents and school district might be distracted as they dispute implementation of the relief ordered by the hearing officer. *Id.* Such "practical and ethical considerations" "might reasonably occupy counsel's attention," "as they would [for] any counselor trying faithfully to represent a handicapped child and their family." *Id.*

The dissent explained, moreover, that a short limitations period is unnecessary. Once the more pressing issues of educational placement have been resolved, then "rarely, if ever, will an attorney want to delay five years in seeking to collect attorney fees … if he can get paid sooner." *Id.*

Third, short time limits will generate wasteful litigation by requiring protective suits while negotiations over fees proceed beyond the short limitations

periods. *Id.* "[W]hy crank up the entire and often ponderous machinery of a federal court if there is a reasonable chance to avoid it altogether?" *Id.* at 629.

Finally, the majority's approach ignored "the nature of the forum in which the cause of action is to be litigated." *Id.* While administrative proceedings are "less formal" and place a premium on "speedy resolution," the agency does not have the power to award attorneys' fees. *Id.* And because the administrative proceedings will be final before the fees action proceeds, there is no question of delaying the administrative proceedings. *See id.* At the same time, a short limitations period may work substantial hardship on "[t]he vast majority of working attorneys, especially in the areas of historically local and family concern," who "will rarely if ever recourse to the more remote and forbidding temples of federal law." *Id.*

3. The Eighth Circuit here adopted the Sixth and Seventh Circuits' approach. App. 6a–10a. The court acknowledged that "the Ninth and Eleventh Circuits have borrowed … years-long statutes of limitations" on the ground that an attorneys' fee claim is a separate cause of action. App. 6a. But the Eighth Circuit was "persuaded by the reasoning in the Sixth and Seventh Circuit decisions" that "an action for attorneys' fees is a claim ancillary to the underlying dispute." App. 7a–8a. The court thus "agree[d] with the district court's decision to borrow the ninety-day statute of limitations" from Arkansas law for merits appeals of IDEA administrative decisions. App. 9a.

Beyond that, the Eighth Circuit offered cursory policy arguments: prevailing parties would not have to decide whether to file suit until after the time for

an aggrieved party to appeal expired; the parents already have a lawyer, so a shorter period does not undermine their interests; parents, school districts, and attorneys have an interest in prompt resolution of the fees issue; and delay serves no useful purpose. App. 9a–10a.

C. Numerous lower courts have recognized the split of authority

Multiple courts have acknowledged the circuit split. Ever since the Eleventh Circuit in *Zipperer* parted ways with the Seventh Circuit in *Powers*, each court in the split has acknowledged the need to choose sides. *See Zipperer*, 111 F.3d at 851 (11th Cir.) (noting that it was joining "a number of district courts [that had] rejected th[e] reasoning" of the Seventh Circuit and instead "borrowed longer state statutes of limitations"); *King*, 228 F.3d at 623 (6th Cir.) (noting the "circuit split as to the approach that should be followed in filling the gap" left by Congress); *D.A.*, 792 F.3d at 1063 (9th Cir.) (recognized that it was taking sides in "a circuit split" between the Sixth and Seventh Circuits, on the one hand, and the Eleventh Circuit, on the other); App. 7a–8a (contrasting Sixth and Seventh Circuits' approach with Ninth and Eleventh Circuits' approach).

Other courts of appeals have acknowledged the disagreement too. *See, e.g.*, *D.G.*, 806 F.3d at 320 (5th Cir.); *Kaseman v. District of Columbia*, 444 F.3d 637, 641 (D.C. Cir. 2006). And numerous district courts

have had to confront the split as well, with most siding with the Ninth and Eleventh Circuits.[4]

II. The question presented is important

Limitations issues are inherently important, because statutes of limitations provide "certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella v. Wood*, 528 U.S. 549, 555 (2000). Accordingly, this Court routinely grants cert to resolve limitations questions that have divided the lower courts. *See, e.g.*, *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 774–75 (2020); *Rotkiske v. Klemm*, 140 S. Ct. 355, 360 (2019); *McDonough v. Smith*, 139 S. Ct. 2149, 2154 (2019); *Artis v. District of Columbia*, 138 S. Ct. 594, 598 (2018); *Cal. Pub. Emps. Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2048 (2017); *Kokesh v. SEC*, 137 S. Ct. 1635, 1641 (2017); *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 137 S. Ct. 954, 959–60 (2017); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 676 (2014).

The limitations question here is particularly important. The question presented matters a great deal to parents of children with disabilities, their attorneys,

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[4] *See, e.g.*, *Doe v. Bos. Pub. Schs.*, 80 F. Supp. 3d 332, 336–38 (D. Mass. 2015) (three years); *G-N v. City of Northampton*, 60 F. Supp. 3d 267, 271–72 (D. Mass. 2014) (three years); *Martinez v. Puerto Rico*, 31 F. Supp. 3d 334, 339–41 (D.P.R. 2014) (three years); *S.F. ex rel. J.F. v. Cabarrus Cty. Bd. of Educ.*, No. 12-cv-560, 2013 WL 4552639, at *9–10 (M.D.N.C. Aug. 28, 2013) (either 30 days or 90 days); *Wilson v. Gov't of D.C.*, 269 F.R.D. 8, 16, 20 (D.D.C. 2010) (three years); *Teakell v. Clovis Mun. Schs.*, No. 04-cv-50, 2004 WL 7337863, at *3–6 (D.N.M. June 25, 2004) (four years); *Mayo v. Booker*, 56 F. Supp. 2d 597, 598 (D. Md. 1999) (180 days).

and school districts alike. As Appendix D shows, the choice of approach produces significantly different limitations periods in every state as well as the District of Columbia and Puerto Rico. Those differences matter given the pressing issues of educational placement that parents, attorneys, and school districts should conclusively resolve before dedicating time, energy, and money to fees disputes.

A. Fees disputes are common, and the circuit split produces widely divergent results in different states

Fees disputes are common given the thousands of IDEA due process hearings completed each year.[5] Indeed, a quick search reveals that hundreds of judicial decisions address § 1415(i)(3)(B), the IDEA's attorneys' fee provision. *See also supra* p. 21 n.4. And as Appendix D (64a–76a) shows, the choice of approach produces significantly different limitations periods in all fifty states plus the District of Columbia and Puerto Rico. Under the Ninth and Eleventh Circuits' approach, parents in every jurisdiction would have at least a year to sue for fees. In fact, 48 of the 52 jurisdictions surveyed in Appendix D have independent-lawsuit limitations of two or more years, and nearly half provide three to six years. If the Ninth and Eleventh Circuits' approach prevailed nationwide, parents everywhere would have time to focus on the urgent issue of the child's placement before navigating often-unfamiliar federal procedure. *See infra* pp. 28–29.

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[5] *See* U.S. Dep't of Educ., *41st Annual Report to Congress on the Implementation of the Individuals with Disabilities Education act, 2019*, at 84–85, https://www2.ed.gov/about/reports/annual/osep/2019/parts-b-c/41st-arc-for-idea.pdf.

Under the Sixth, Seventh, and Eighth Circuits' approach, in contrast, parents and their attorneys will have no more than four months, and often as little as 30 days, to sue for attorneys' fees. In fact, a third of the jurisdictions surveyed in Appendix D provide IDEA merits-review periods no longer than 60 days. Such stingy time periods undermine the role that Congress intended fee-shifting to serve.

B. The length of the limitations period is important

The length of the limitations period matters a great deal to parents of children with disabilities. Parents' access to attorneys is crucial. But shorter statutes of limitations discourage legal representation, in turn burdening parents' efforts to enforce the important rights created by the IDEA.

First, attorneys are critical to the proper functioning of the IDEA. Although parents have the right to enforce their child's entitlement to a FAPE, *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 533 (2007), that right is much more difficult to vindicate without an attorney's assistance. Studies have shown that parents represented by experienced IDEA counsel experience "a markedly higher rate of success in IDEA due process" hearings. Kevin Hoagland-Hanson, *Getting Their Due (Process): Parents and Lawyers in Special Education Due Process Hearings in Pennsylvania*, 163 U. Pa. L. Rev. 1805, 1809 (2015); *see also, e.g.*, Debra Chopp, *School Districts and Families Under the IDEA: Collaborative in Theory, Adversarial in Fact*, 32 J. Nat'l Ass'n Admin. L. Judiciary 423, 451 (2012).

But not all families can afford attorneys. *See, e.g.*, Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 Notre Dame L. Rev. 1413, 1431–32 (2011); Samuel R. Bagenstos, *The Future of Disability Law*, 114 Yale L.J. 1, 9 (2004) ("Disability is a frequent cause of poverty, and living in poverty often causes or exacerbates disabling conditions."). Thus, Congress viewed fee-shifting as "a critical tool" for parents. *Angela L.*, 918 F.2d at 1192–93; *see also* S. Rep. No. 99-112, at 17–18 (1985). Congress did not "intend[] that only *some* parents would be able to enforce th[e] [IDEA's] mandate[s]." *Winkelman*, 550 U.S. at 533 (emphasis added).

Second, there are already "very few private attorneys" willing to represent parents in special education cases, Chopp, *supra*, at 452 n.127, and short statutes of limitations exacerbate the problem by making recovery of fees that much more difficult. Before they can get paid, lawyers may have to confront well-represented school districts that may "drag[] [their] feet," *Angela L.* 918 F.2d at 1197; *see also Mitten ex rel. Mitten v. Muscogee Cty. Sch. Dist.*, 877 F.2d 932, 937 (11th Cir. 1989), or fight a fees demand "tooth and nail," *Max M. v. New Trier High Sch. Dist. No. 203*, 859 F.2d 1297, 1301 (7th Cir. 1988). And when attorneys *do* take on IDEA cases, short statutes of limitations are likely to force them to divide their attention and energy between the child's needs and their own need for payment—a potential "conflict of interest." *Doe v. Bos. Pub. Schs.*, 80 F. Supp. 3d 332, 339 (D. Mass. 2015).

III. The Eighth Circuit's decision is incorrect

The IDEA's text, structure, history, and purpose confirm that the Ninth and Eleventh Circuits have taken the correct approach.

A. The IDEA's text, structure, and history require courts to borrow statutes of limitations for independent causes of action

1. The IDEA provides independent causes of action for judicial review of an administrative decision by "[a]ny party aggrieved by the [administrative] findings and decision," 20 U.S.C. § 1415(i)(2)(A), on the one hand, and for attorneys' fees by "a prevailing party who is the parent of a child with a disability," *id.* § 1415(i)(3)(B)(i)(I), on the other. The two causes of action appear in separate provisions and serve different purposes. And only the administrative review provision contains a statute of limitations—90 days by default, or, alternatively, such time as "explicit" state law may provide. *Id.* § 1415(i)(2)(B). In turn, every state either incorporates the default federal 90 days or provides a maximum of four months to seek administrative review. *See* App. 64a–76a.

The IDEA's design and history confirm the independent nature of a fees action. *First*, federal courts in an action by an "aggrieved" party under § 1415(i)(2)(A) *review* the preexisting decision of a state administrative body. An attorneys' fees action, in contrast, is a new proceeding in which no party has presented the crucial evidence—*i.e.*, the fees and their reasonableness—and no prior tribunal has made the necessary findings. Indeed, courts uniformly recognize that administrative hearing officers lack authority to award attorneys' fees given that the statute provides that "*the court*, in its discretion, may award reasonable attorneys' fees." 20 U.S.C. § 1415(i)(3)(B)(i) (emphasis added); *see supra* pp. 7–8. The district court therefore must decide in the first instance whether

and to what extent the parents are "prevailing part[ies]," 20 U.S.C. § 1415(i)(3)(B)(i)(I), and then determine what quantum of attorneys' fees is reasonable based on evidence presented for the first time. There is nothing appellate in nature about that process, which is committed to the district court's "discretion," unlike review of an administrative decision in an action by an "aggrieved" party. *Cf. Endrew F.*, 137 S. Ct. at 1001–02 (noting deference due to the "expertise and the exercise of judgment by school authorities" in merits review cases).

Second, Congress acted selectively to provide a statute of limitations for merits review actions only. Initially, Congress provided no statute of limitations for either aggrieved-party actions or fees actions, and "many courts … applied different limitations periods to the two types of actions." *D.G.*, 806 F.3d at 317; *see* App. 10a–11a n.3. Congress then added the current limitations provision allowing for 90 days or incorporation of "an explicit [state] time limitation for bringing such action," 20 U.S.C. § 1415(i)(2)(B))—but *only* for aggrieved-party actions. *E.g.*, *D.G.*, 806 F.3d at 317; S. Rep. No. 108-185, at 37, 42 (2003) ("a new provision … gives a party 90 days from the date of decision of the hearing officer *for appealing a due process hearing decision* to State or federal district court" (emphasis added)). Consequently, "the consensus of courts … have found that § 1415(i)(2)(B) does not apply to attorneys' fees actions." *D.G.*, 806 F.3d at 319. And it makes little sense to assume that Congress silently intended courts to apply the same statute of limitations to fees actions when it could have said so explicitly. *See Russello v. United States*, 464 U.S. 16, 23 (1983).

2. The Eighth Circuit's only argument based on statutory structure rested on selective quotations (at App. 8a–9a) from the D.C. Circuit's decision in *Kaseman*, 444 F.3d at 641. But as the Eighth Circuit itself noted, the D.C. Circuit was "addressing a different question," App. 8a—whether a D.C.-specific statutory cap on attorneys' fees for IDEA actions applied once to fees in all proceedings (administrative and judicial), or whether it applied to each round of proceedings. *Kaseman*, 444 F.3d. at 639. The D.C. Circuit looked to the language and policy of the D.C.-specific appropriations law to conclude that "IDEA administrative proceedings and subsequent litigation regarding attorneys' fees are part of the same 'action,' as used in the appropriations act." *Id.* at 640. The court did not address the question presented here.

If anything, the D.C. Circuit's decision in *Kaseman undercuts* the Eighth Circuit's analysis. In language the Eighth Circuit ignored, the D.C. Circuit made clear that "a prevailing party's fee request" is "brought pursuant to an independent 'cause of action.'" *Id.* at 641–42. Thus, D.C. district courts have read *Kaseman* to "*reaffirm[]* in large measure the distinction between IDEA fee litigation and substantive IDEA litigation." *Davidson v. District of Columbia*, 736 F. Supp. 2d 115, 124 (D.D.C. 2010) (emphasis added). In other words, courts that must actually follow *Kaseman* have concluded that "the three-year statute of limitations set forth in D.C. Code § 12-301(8) [applies] to claims for attorney's fees under the IDEA" and that *Kaseman* "do[es] not expressly or impliedly" say otherwise. *Id.*; *accord, e.g.*, *Wilson v. Gov't of D.C.*, 269 F.R.D. 8, 17–18 (D.D.C. 2010).

B. The IDEA's purposes likewise require courts to borrow statutes of limitations for independent causes of action

Only a longer statute of limitations is consistent with the IDEA's purposes.

"By the time any [merits] dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement." *Endrew F.*, 137 S. Ct. at 1001–02. Furthermore, this Court has recognized the need "to ensure that a school's failure to provide a FAPE is remedied with the speed necessary to avoid detriment to the child's education." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009). Thus, it makes sense to have a short limitations period for merits review, which entails simply another round of arguments on the same issues, which are time-sensitive.

By contrast, when parents go to federal court to seek fees, the issue has never before been litigated, because hearing officers have no authority to award fees. And requiring parents and their attorneys to rush to file fees actions distracts them from the more urgent task of making sure the school district—which has just been found to have violated the IDEA—remedies the problem quickly and properly for the benefit of the child. Short limitations periods for fees actions threaten to distract counsel from the "practical and ethical considerations" of "trying faithfully to represent a handicapped child and their family." *King*, 228 F.3d at 628 (Engel, J., dissenting). As even the Seventh Circuit recognized, "the promptness of a decision on attorneys' fees is not as important as a quick decision in questions of educational placement." *Powers*, 61 F.3d at 556.

But that is not all. Short limitations periods encourage school districts to drag their feet in the hopes that parents might be more willing to accept a lowball fees offer. *See, e.g.*, *Angela L.*, 918 F.2d at 1192–93; *Mitten*, 877 F.2d at 937. Short limitations periods may also make it harder for parents to obtain counsel in the first place. Attorneys who know that recovering fees is more difficult, and may require a hasty trip to the "forbidding temples of federal law," *King*, 228 F.3d at 629–30 (Engel, J., dissenting), may hesitate before accepting IDEA engagements—contrary to the statutory purpose of making fees available to promote private enforcement.

Conversely, there is no reason to think that parents and attorneys will lie in wait for years before seeking fees. Attorneys want to get paid. Parents want attorneys to get their fees, particularly where the parents have had to pay out of pocket up front. And since parents and attorneys bear the burden of proving the reasonableness of their fees, they have every reason not to compromise their showing by allowing evidence to disappear or memories to fade.

This case perfectly illustrates these points: Concerned about their child's educational experience even after their partial success before the IDEA hearing officer, the Richardsons initially decided to challenge other aspects of the hearing officer's decision. App. 44a–45a. By the time they adjusted course to seek attorneys' fees for the claims on which they prevailed—without undue delay, and well within the statute of limitations for their non-IDEA claims, *see supra* p. 10—the IDEA attorneys' fee statute of limitations had expired, according to the Eighth Circuit. App. 9a–10a. Parents should not be put to such a choice.

IV. This case is an excellent vehicle

This case is an excellent vehicle for answering the question presented. Because the Richardsons filed suit 144 days from when the hearing officer's decision became final, the suit is plainly timely under the Ninth and Eleventh Circuits' approach, which would be to borrow the three-year statute of limitations in Arkansas Code § 16-56-105. *See, e.g.*, *Douglas v. First Student, Inc.*, 385 S.W.3d 225, 228 (Ark. 2011) (Arkansas Code § 16-56-105 applies to "statutorily created liabilities that do not contain an express limitations period"). Indeed, the Eighth Circuit itself acknowledged as much. *See* App. 6a. And there are no jurisdictional disputes, procedural complications, alternative holdings, or other obstacles to this Court's review.

* * *

The question presented is ripe for review. The circuit conflict produces widely divergent results: while parents in Arkansas have only 90 days to seek fees under the Sixth, Seventh, and Eighth Circuits' approach, App. 9a, parents in Idaho get at least two years under the Ninth and Eleventh Circuits' approach, *D.A.*, 792 F.3d at 1064 & n.9. That discrepancy is not unique. To the contrary, the choice of approach will make a comparable difference in *every* state as well as the District of Columbia and Puerto Rico. *See* App. 64a–76a; *supra* pp. 22–23.

What's more, the Sixth, Seventh, and Eighth Circuits' approach is wrong. Borrowing short statutes of limitations for IDEA attorneys' fees suits flouts the IDEA's text, structure, and history. It disregards Congress' selective provision for months-long limitations periods for merits review actions alone. And it ignores

the on-the-ground challenges parents and their advocates face, "chilling rights emphatically created by Congress." *King*, 228 F.3d at 627 (Engel, J., dissenting). This Court should intervene without delay.

CONCLUSION

The Court should grant the petition for writ of certiorari.

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Respectfully submitted,

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