No. 20-402

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

REPLY IN SUPPORT OF CERTIORARI

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INTRODUCTION

The Petition for Certiorari explains that (1) the courts of appeals have openly disagreed about which kind of statute of limitations to adopt for IDEA fee actions; (2) the conflicting approaches yield starkly different results; and (3) this case is a perfect vehicle for resolving the disagreement.

The Brief in Opposition does not dispute any of these points. Indeed, it concedes the split and its consequences, and does not even try to identify vehicle problems. Instead, Respondent's central argument is that federal questions about borrowing limitations periods from state law are inherently unworthy of the Court's attention. That argument is inconsistent with this Court's practice and illogical on its own terms. The Petition should be granted.

ARGUMENT

I. There Is An Acknowledged Circuit Split On Which Kind Of Statute Of Limitations To Adopt For IDEA Fee Actions

As Respondent concedes, the courts of appeals are split 2-3 about the kind of state statute of limitations to borrow for actions for attorneys' fees by parents who obtain administrative relief for their children under the IDEA. That disagreement is outcome-determinative and produces widely divergent results in different states. *See* Pet. App. 64a–76a.

Respondent urges the Court to deny certiorari because federal questions about which state limitations period to borrow are not cert-worthy.

Opp. 2, 18. Respondent is wrong, as a matter of both precedent and logic.

A. This Court frequently grants certiorari to consider federal questions about borrowing state limitations periods, even when the answer may not be "determinative of the limitations period within any particular jurisdiction." Opp. 2.

Some of the best examples come from Respondent's own brief. *Owens v. Okure* considered whether 42 U.S.C. § 1983 claims are governed by state limitations periods for intentional torts or by state limitations periods for residual personal injury claims. 488 U.S. 235, 236 (1989). The Court granted certiorari even though resolving this question would not necessarily have provided a definitive answer in every state (because "[e]very State has multiple intentional tort limitations provisions, carving up the universe of intentional torts into different configurations"). *Id.* at 243–44 & n.8.

Similarly, in *Burnett v. Grattan*, the Court "granted certiorari to resolve confusion in the Circuits regarding reliance upon a state administrative statute of limitations in a federal civil rights suit." 468 U.S. 42, 46 (1984). Courts disagreed about which state limitations period to borrow for claims under 42 U.S.C. § 1981: the period for administrative remedies or the period for some other, more analogous state-law claim (of which there were multiple possibilities in any given state). *See id.* at 46 & n.9. *Burnett* gave lower courts guidance by rejecting the limitations period for state administrative law as "inappropriate," but it did not address how courts should choose between

other potential state-law limitations periods. *See id.* at 45–46, 55.

Likewise, in *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, the Court provided guidance to lower courts about the appropriate borrowing framework for False Claims Act retaliation claims, but left open the possibility that multiple periods may apply in a given state. 545 U.S. 409, 411, 419 n.3, 422 (2005).

Finally, in *North Star Steel Co. v. Thomas*, the Court considered whether federal or state law supplied the limitations period for WARN Act claims. 515 U.S. 29, 32 (1995). The Court determined that Congress intended to borrow the limitations period from state law. The Court did not, however, decide among the four potential options because the action was "timely even under the shortest," and "none of the[] potentially applicable statutes would be at odds with WARN's purpose or operation, or frustrate or interfere with the intent behind it." *Id.* at 35 (citation omitted).

As these cases show, the Court routinely considers questions about which state limitations period to borrow. Even though the answer may not definitively determine the statute of limitations in every (or any) state, the Court's guidance promotes uniformity across jurisdictions by ensuring that courts apply the same federal rule when they choose among different state-law limitations periods.

B. Respondent offers no compelling reason for this Court to withhold its guidance about the appropriate framework for borrowing state limitations periods for IDEA fee actions.

First, Respondent claims that the Petition implicates "only one factor . . . in determining which state statute of limitations to borrow" and has no "independent significance" in the "holistic" borrowing inquiry. Opp. 12, 14. This argument misreads the Question Presented and the lower court opinions addressing it.

When a federal statute is silent on the limitations period, courts first "characterize the essence of the claim" in order to borrow the limitations period for the most "analogous cause of action under state law," and then confirm that "it is not inconsistent with federal law or policy." *Wilson v. Garcia*, 471 U.S. 261, 266–68, 271 (1985).

The Question Presented here—what type of statute of limitations to borrow for IDEA attorneys' fees actions—encompasses this entire inquiry. *See* Pet. i. The Petition discusses the whole inquiry. *See id.* at 13–20, 28–29 (discussing both the most analogous state action and its compatibility with the policies underlying the IDEA). And the lower courts considering this question likewise analyze each step of the analysis. *See Powers v. Ind. Dep't of Educ.*, 61 F.3d 552, 555 (7th Cir. 1995) (court's tasks are to "characterize the essence of the claim" in order to "determine whether [state law] has an analogous statute of limitations," and then consider whether use of that analogous period "would be consistent with the policies and goals of the IDEA" (first citation omitted)); *see also* Pet. App. 8a–10a; *Meridian Joint Sch. Dist. No. 2 v. D.A.*, 792 F.3d 1054, 1064 (9th Cir. 2015); *King ex rel. King v. Floyd Cnty. Bd. of Educ.*, 228 F.3d 622, 626–27 (6th Cir. 2000); *Zipperer ex rel. Zipperer v. Sch. Bd.*, 111 F.3d 847, 851 (11th Cir. 1997).

Second, Respondent claims that even the broader borrowing inquiry (the question actually presented here) is not cert-worthy because courts may have to choose among multiple state statutes of limitations "irrespective of how the claim is characterized." Opp. 15. But that is true of many borrowing inquiries, including in cases where this Court previously has granted certiorari. *See supra* 2–3.

And it is not a reason to deny certiorari here, where the lower courts' conflicting characterizations of IDEA fee actions produce starkly different results. Respondent claims that there may be multiple possible administrative review analogs and multiple possible independent action analogs in every state, but it does not dispute that knowing *which type of analog* to borrow matters. *See* Opp. 15, 17–18. When courts borrow administrative review analogs, parents have as little as 30 days (and no more than 120 days) to file their fee claim. *See* Pet. App. 64a–76a. When courts borrow independent action analogs, parents have at least one year, and in the vast majority of states two or more years, to bring their claim. *See id.* Knowing which category applies tells parents and their attorneys whether they are operating on a timeline of months or years—a critical difference, *see infra* 7–9. To be sure, there will be variation among states under either approach, but that is "just the cost[] of the [borrowing] rule itself"; it is not a reason to perpetuate a conflict about the legal rules to apply when borrowing state limitations periods for a particular federal statute. *N. Star*, 515 U.S. at 35–36.

Third, Respondent claims that granting certiorari will "not promote uniformity" across jurisdictions because the independent-action approach that Petitioners favor would give parents a greater range of limitations periods than they would have under the administrative-review approach. Opp. 17–18. That is an argument about the merits of the conflicting approaches, not an argument for denying review. The same is true of Respondent's heavy reliance on *Owens* for its holding that § 1983 claims require a predictable limitations period. *Id.* at 13–14. Whether the policies relevant to § 1983 cases apply equally to IDEA fee actions is a question the parties can debate if the Court grants review. But when it comes to criteria for granting certiorari, *Owens* confirms the importance of resolving the conflict here. *See supra* 2. As it stands now, a parent in Indiana has 30 days to seek fees, and a parent in Florida has four years. Pet. App. 67a–68a. Granting the Petition would diminish those current disparities, not "amplify" them (Opp. 17), because litigants nationwide will be subject to *either* months-long or years-long limitations periods.

II. The Question Presented Is Important

While statutes of limitations are inherently important, the certainty they provide is particularly critical in the context of the thousands of IDEA due process hearings completed each year.[1] Most parents cannot enforce their child's right to a

[1] *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.

Free Appropriate Public Education (FAPE) without an attorney's expertise. *See* Pet. 23 (citing evidence that parents represented by experienced counsel have a higher rate of success in IDEA due process hearings). For the many families who are unable to afford attorneys, the prospect of fee-shifting is essential to enforcing the IDEA's mandates. *See id.* at 24. This vital tool should not be hampered by uncertainty over the appropriate limitations period, especially when the two potential approaches yield such starkly different results. *See supra* 5–6.

Respondent insists that the Question Presented is not important because parents and their attorneys simply "may err on the side of caution by complying with the shortest possible limitations period." Opp. 21. But the same could be said of virtually any dispute about the length of a limitations period, and that has not precluded this Court from stepping in to resolve a split. *See, e.g.*, *Owens*, 488 U.S. at 236; *Graham*, 545 U.S. at 411; *Burnett*, 468 U.S. at 46; *N. Star*, 515 U.S. at 32; *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004).

The Court should not refrain from doing so here, particularly when a shorter limitations period would divert the attention of parents and attorneys away from time-sensitive issues concerning a child's educational placement. *See King*, 228 F.3d at 628 (Engel, J., dissenting); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009) (recognizing 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"). 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; *see Zipperer*, 111 F.3d at 851 (fee claims are "less urgent").

For example, in the aftermath of the hearing officer's decision in this case, Petitioners were concerned about continued peer- and teacher-bullying of their child. *See* Pet. App. 2a, 20a, 45a. That Petitioners challenged the hearing officer's unfavorable decision on those issues within 90 days (Opp. 20) has no bearing on whether they could or should have filed an action for attorneys' fees within the same time period.

That is especially true because Petitioners filed their administrative appeal as "the 'aggrieved party,'" but brought their subsequent fee action as "the 'prevailing party.'" Pet. App. 46a. Those categories are not mutually exclusive: the same party can be "aggrieved by the [hearing officer's] findings and decision" such that he has the right to appeal, 20 U.S.C. § 1415(i)(2)(A), even if he also "succeeded on [a] significant issue which achieved some of the benefit [he] sought" such that he may claim attorneys' fees, *Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369, 1377 (8th Cir. 1996); *cf. Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989) ("The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute."). Parents appealing an unfavorable decision about a disabled child's educational

placement understandably may not immediately consider themselves prevailing parties, even if they prevailed on some issues before the hearing officer. Indeed, the awkwardness of being forced to assert both positions simultaneously could easily create a "conflict of interest" among parents, attorneys, and a disabled child's educational needs. *Doe v. Bos. Pub. Schs.*, 80 F. Supp. 3d 332, 339 (D. Mass. 2015). "[I]t is better that the substantive question come first before attorneys' fees are considered." *Id.*

III. The Decision Below Is Wrong

As the Petition explains, the IDEA's text, structure, and history confirm that courts must borrow statutes of limitation for independent causes of action. Pet. 25–27. And unlike the short limitations periods applicable to actions for administrative review, those years-long periods advance the policies of the IDEA's fee action by "encourag[ing] the involvement of parents, as represented by attorneys, in securing appropriate public educations for their children." *Zipperer*, 111 F.3d at 852.

Respondent's attempts to defend the Eighth Circuit's contrary holding are unavailing.

First, Respondent argues that the 90-day period for judicial review of IDEA actions in Arkansas Code § 6-41-216(g)—which makes no mention of actions for attorneys' fees—is the most analogous state limitations period, "irrespective of how a claim for attorneys' fees under the IDEA is characterized." Opp. 21. But courts cannot evaluate the "most closely analogous state cause of action" without first "characteriz[ing] the essence

of the claim." *Wilson*, 471 U.S. at 263, 268. And as Respondent acknowledges, that is a federal-law inquiry. Opp. 12–13; *see Wilson*, 471 U.S. at 268–69. The fact that Arkansas accepted Congress's invitation to provide a limitations period for judicial review of administrative decisions, *see* 20 U.S.C. § 1415(i)(2)(B), thus says nothing about which statute of limitations Congress intended to apply to the separate cause of action for attorneys' fees. When it comes to that inquiry, the text, structure, and history of the IDEA confirm the independent nature of a fees action. *See* Pet. 25–27.

Second, Respondent says that "[j]udicial review of a hearing officer's decision is much more thorough than a simple appeal." Opp. 23. But that only underscores the distinction between an aggrieved party's action and a fee action, which does not revisit the merits of any preexisting decision at all. *See* Pet. 25–26 (noting that administrative hearing officers lack authority to award fees). To be sure, both types of actions will share a common factual background (Opp. 24): the proceedings before the hearing officer. That inevitable coincidence, however, cannot overcome the substantive differences between these distinct causes of action. *See* Pet. 25–26.

Finally, without acknowledging the important policies behind IDEA fee actions (*see* Pet. 14–15, 17–19), Respondent declares that a shorter limitations period is appropriate because the alternative may in some instances be too long. Opp. 24–25; *see id.* at 17–18. But *school district*s have four years to seek fees. *See* Pet. App. 5a (citing 28

U.S.C. § 1658(a)). Respondent fails to explain how a years-long limitations period for *parents'* fee actions would be inconsistent with the policies of the IDEA, and there is no reason to think that attorneys or parents would delay their claim for fees (*see* Pet. 29). By contrast, "the short statutes of limitations associated with appeals of administrative procedures . . . are too short to vindicate the underlying federal policies associated with the fee-claims provision of the IDEA." *Zipperer*, 111 F.3d at 851; *see supra* 7–9.

Respondent tries to salvage the Eighth Circuit's contrary conclusion by arguing that "distinct considerations" are at play here. Opp. 25. But the only consideration Respondent identifies is the Ninth Circuit's concern that parents may have to file their action for attorneys' fees before an aggrieved party decides to appeal. *Id.* (citing *Meridian*, 792 F.3d at 1064). As we have explained, that is not the only problem with the administrative-review approach. *See* Pet. 28–29; *supra* 7–9. And in any event, the Eighth Circuit's rule that the limitations period for fee actions starts running when the time expires for an aggrieved party to file a complaint (Pet. App. 9a) does not entirely resolve concerns about premature suits. The Eighth Circuit does not appear to toll the limitations period for fee actions while a merits appeal is pending, meaning that "prudent counsel" and parents (Opp. 21) may still have to file "protective suit[s]" before they know the outcome of any merits appeal, *King*, 228 F.3d at 628 (Engel, J., dissenting); *see also Meridian*, 792 F.3d at 1064;

Pet. App. 45a, 51a (limitations period for attorneys' fees action expired while appeal was pending).

CONCLUSION

The Petition for Certiorari should be granted.

December 23, 2020

Respectfully submitted,

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