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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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INTRODUCTION

Respondent concedes 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 an ideal vehicle for resolving the disagreement.

The United States nevertheless urges the Court to deny certiorari. It claims that this Court has a practice of leaving *federal* questions about borrowing state-law limitations periods to lower courts, and that the question presented has no nationwide significance because the ultimate choice of limitations period will depend on particular states' laws.

Both arguments fail. This Court regularly provides guidance about the federal legal rules for borrowing state-law limitations periods for federal claims. It should do so here. Answering the question presented will tell parents nationwide whether they have weeks or years to file an IDEA fee action. Regardless of variations across relevant state laws, the *shortest* limitation period in any jurisdiction under the independent-action approach is more than three times longer than the *longest* period under the administrative-review approach. That difference matters to children, parents, and their lawyers. The Petition should be granted.

ARGUMENT

I. The Question Presented Is Important

A. The United States agrees that 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 produces widely divergent results in different states. *See* Pet. App. 64a-76a. Under the independent-action approach, parents everywhere would have at least a year to file their fee claim; in 44 jurisdictions, they would have at least two or three years. *Id.* Under the administrative-review approach, parents would have as little as 30 days (and no more than 120 days) to file their fee claim; in more than half of jurisdictions, the limitations period would be 90 days. *See id.*

Those disparities are unacceptable. The IDEA's fee-shifting provision is a critical tool for ensuring that children with disabilities receive the statute's guaranteed educational benefits. Pet. 23-24. Children's ability to obtain those benefits should not turn on where they live. In the weeks following a hearing officer's decision, moreover, parents and their attorneys are (appropriately) focused on time-sensitive issues about a child's educational placement. Pet. 23-24, 28-29. Requiring some parents, but not others, to file a federal lawsuit about the separate question of fees during that critical time period "adds another strain to an already burdened and stressed parent." Office of Special Education Programs, U.S. Dep't of Education, *Letter to Anonymous*, 19 IDELR 277 (July 6, 1992).

B. The United States' contrary arguments fail.

First, citing *Runyon v. McCrary*, 427 U.S. 160, 181 (1976), the United States claims that questions about choosing an analogous state limitations period to borrow for a federal claim are not cert-worthy, because this Court lets lower courts decide. *See* U.S. Br. 7-8. But the Court granted certiorari in *Runyon* to consider precisely that sort of question: whether

the lower court had borrowed the correct statute of limitations for a claim under 42 U.S.C. § 1981. *Runyon*, 427 U.S. at 167. To be sure, *Runyon* upheld the Fourth Circuit's choice of limitations period, which turned on its understanding of a term of art in Virginia law. *See id.* at 181; *see also id.* at 182 ("[P]etitioners have not cited any Virginia court decision to the effect that the term 'personal injuries' in [state law] means only 'physical injuries.'"). This case, however, requires no such parsing of the terms of state law to decide *which particular* state limitations period to borrow. The federal question here concerns the characterization of the federal cause of action, and thus what *kind* of limitations period—an administrative-review period or an independent-action period—to borrow. This Court has granted cert on similar questions repeatedly *after Runyon*. *See* Reply 2-3 (discussing *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409 (2005); *N. Star Steel Co. v. Thomas*, 515 U.S. 29 (1995); *Owens v. Okure*, 488 U.S. 235 (1989); *Burnett v. Grattan*, 468 U.S. 42 (1984)).

The United States dismisses *Graham* and *North Star Steel* because the pool of potential limitations periods that the statutes in those cases may have borrowed included federal- and state-law options. According to the United States, deciding whether to borrow a federal statute of limitations is "a question of federal statutory interpretation," but choosing among state-law options is not. U.S. Br. 17. That is wrong. The borrowing inquiry itself is "a question of federal law," as is the attendant "characterization of the nature of the right being vindicated under [a federal statute]." *Wilson v. Garcia*, 471 U.S. 261, 264,

270 (1985) (citation omitted); *see Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW), AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704-05 (1966) ("[W]e hold that the timeliness of a [federal-law action], such as the present one, is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations."). The nature of that question is not transformed when state law provides the answer.

Wilson, *Okure*, and *Burnett* confirm that limitations-borrowing inquiries remain federal questions even when the only possible choices come from state law. *See Wilson*, 471 U.S. at 264, 270; Reply 2-3 (discussing *Okure* and *Burnett*). The Court's granting of certiorari—twice—to consider the appropriate characterization of 42 U.S.C. § 1983 claims, *see Okure*, 488 U.S. at 236; *Wilson*, 471 U.S. at 266, underscores that it does not simply "leave[]" limitations-borrowing inquiries to the lower courts, U.S. Br. 8.

The United States argues that *Okure, Wilson*, and *Burnett* are different because the need for "uniformity" and "certainty" is particularly acute when it comes to §§ 1981 and 1983. U.S. Br. 17. That seems to be another way of saying that choosing among state-law analogs can *become* a federal question if uniformity and certainty are at stake. That theory makes no sense, and in any event, supports granting certiorari here. While the IDEA permits "variation across States" in some respects (U.S. Br. 18), it does not embrace uncertainty—especially when uncertainty hampers a vital tool that is essential to enforcing the IDEA's mandates. *See* Reply 7. Moreover, certainty and uniformity were not

the driving forces in *Burnett*, which held that borrowing a state's administrative-review limitations period was inappropriate for § 1981 claims, but left open which of many other potential state-law analogs was appropriate. *See Burnett*, 468 U.S. at 46 & n.9.

Second, the United States tries to undermine the significance of choosing between the administrative-review and independent-action approaches, claiming that the analysis is "heavily contingent upon … state law." U.S. Br. 16 (citation omitted). But, as noted, the correct characterization of an IDEA fee action—as more analogous to administrative review or an independent action—is a federal question that does not require parsing state law. Determining what *kind* of limitations period to borrow would tell parents virtually *everywhere* whether they have weeks or years to file their claim. None of the variations the United States identifies across a handful of states' laws changes the bottom line that the answer to the question presented, a matter of federal law, is dispositive nearly everywhere.

In virtually every jurisdiction, there is only one choice under the administrative-review approach: Every state, along with D.C. and Puerto Rico, has enacted a statute to implement the IDEA, and all but one jurisdiction—Massachusetts—either specifies a limitations period for merits review or incorporates by reference 20 U.S.C. § 1415(i)(2)(B)'s or 34 C.F.R. 300.516's 90-day period. *See* Pet. App. 64a-76a; *see also* 707 Ky. Admin. Regs. 1:340 (sec. 11(4)) (West 2021) (amending statute to specify 30-day limitations period for merits appeals).

While multiple options may exist in some states under the independent-action approach, the *shortest*

option in any jurisdiction is a year—more than three times longer than the *longest* administrative-review period of 120 days (and more than 12 times longer than the shortest administrative-review period). *See* Pet. App. 64a-76a. Moreover, courts will rarely need to choose *which* independent-action analog to apply because a parent's fee action will typically be timely under them all. *See, e.g.*, *Meridian Joint Sch. Dist. No. 2 v. D.A.*, 792 F.3d 1054, 1064 n.9 (9th Cir. 2015). Indeed, as the United States points out (U.S. Br. 20), the Ninth and Eleventh Circuits have not struggled with this issue in the many years since they selected the independent-action approach.

The United States' identification of a third potential analog in four states that have enacted statutes of limitations specifically for IDEA fee actions does not undermine the importance of the conflict everywhere else. *See* U.S. Br. 18. The same is true of the United States' claim that minor features of IDEA procedures in three states might impact the analysis in those states. *See* U.S. Br. 19. Even if they would, that says nothing of the 49 other jurisdictions.

Finally, the United States says that the question presented is unimportant because "only" five circuits have addressed it, and apparently have not had to grapple with the issue since. U.S. Br. 20. But that just confirms the value of definitive guidance about which sort of analog to borrow—guidance that parents lack in the eight circuits that have not yet considered the question. Numerous districts courts have confronted the split, and hundreds of decisions cite 20 U.S.C. § 1415(i)(3)(B). *See* Pet. 21 n.4, 22. Parents who prevail in the thousands of due process hearings that occur each year deserve certainty about

the limitations period for their subsequent fee action. *See* Pet. 22.

II. This Case Is An Excellent Vehicle For Answering The Question Presented

This case is an ideal vehicle. Pet. 30. The difference between the administrative-review approach and the independent-action approach is dispositive virtually everywhere, and Respondent agrees that there are no other obstacles to the Court's review.

The United States protests that this case does not necessarily require the Court to resolve questions about accrual or tolling. That is not a vehicle problem. Analyzing the timeliness of a claim in the abstract always presents several issues, including the length of a period, when it begins to run, and whether it may be tolled. The Court does not reserve its guidance for cases that require it to opine on all of those questions simultaneously. *See, e.g.*, *Rotkiske v. Klemm*, 140 S. Ct. 355, 360-61 (2019) (addressing accrual of claims under Fair Debt Collection Protection Act but declining to consider equitable tolling, which had been waived below); *Gabelli v. S.E.C.*, 568 U.S. 442, 447 n.2 (2013) (addressing accrual of enforcement actions under the Investment Advisers Act and noting that equitable-tolling doctrines were not before the Court); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 191-92 (1997) (reserving decision on questions concerning accrual of RICO claims).

The United States' advice to hold off for a case involving equitable tolling is especially perplexing. The United States surmises that it may be helpful to know whether a school district's failure to notify

parents of the correct limitations period warrants equitable tolling. *See* U.S. Br. 21-22. In light of the acknowledged circuit split, however, it is unrealistic and illogical to impose responsibility on school districts to determine the correct limitations period for parents. The better course is for this Court to provide nationwide guidance.

III. The Decision Below Is Wrong

A. The United States devotes the vast majority of its brief to defending the Eighth Circuit's decision. The relative merits of one position are no reason to deny certiorari in the face of an entrenched conflict. In any event, the Eighth Circuit chose the wrong side of the split.

The IDEA's text, structure, and legislative history confirm that prevailing parents' fee actions are more analogous to independent causes of action than administrative appeals on the merits. Pet. 25-27. The two causes of action appear in separate provisions and serve different purposes. While § 1415(i)(2)(A)'s merits action necessarily involves reviewing a preexisting decision, a fee action requires district courts to make various decisions in the first instance. Pet. 25-26.

Moreover, only the administrative-review provision contains a statute of limitations, which—the United States agrees (U.S. Br. 10-12)—does not apply to fee actions and indicates Congress's intent for federal courts to borrow the most analogous cause of action from state law. *See* 20 U.S.C. § 1415(i)(2)(A). It would be strange to assume that Congress silently intended courts to apply the same statute of limitations to merits and fee actions alike when it

could have said so explicitly. *See Rusello v. United States*, 464 U.S. 16, 23 (1983).

The years-long limitations periods applicable to independent actions also 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 v. Sch. Bd. of Seminole Cnty., Fla.*, 111 F.3d 847, 852 (11th Cir. 1997). By contrast, the short periods applicable to administrative-review actions thwart the IDEA's goals by distracting parents and their attorneys during a time when they are focused on ensuring that the school district properly implements a hearing officer's decision. *See* Reply 7-9.

B. The United States' efforts to defend the decision below are unavailing.

First, the United States insists that a fee action is more analogous to an action for judicial review because there is already an administrative record. U.S. Br. 12. To be sure, both types of actions share a common factual background—the proceedings before the hearing officer. But that inevitable coincidence does not transform the distinct nature of the *court's* tasks in each cause of action. A court awarding fees still needs to make its own findings on critical issues, Pet. 25-26: As the United States acknowledges, "no State currently authorizes its hearing officers to award fees." U.S. Br. 13; *see also Letter to Anonymous*, *supra* ("While [the IDEA] does not prohibit a State law that would allow administrative hearing officers to award attorneys' fees, *neither does it authorize such a practice*." (emphasis added)). The hypothetical possibility that states could confer such

authority in the future is irrelevant, and not just because no state has done so. The question presented here centers on the statute of limitations when one of "[t]he district courts of the United States … in *its* discretion, may award reasonable attorneys' fees" to prevailing parents. 20 U.S.C. § 1415(i)(3)(A), (B)(i)(I) (emphasis added).

Second, the United States implicitly acknowledges that it would be odd to assume that Congress silently intended for courts to apply § 1415(i)(2)(B)'s express limitations period rules for merits actions to fee actions via borrowing. *See* U.S. Br. 14-15. Seeking to mitigate that problem, the United States says that its approach may not *always* result in applying the same limitations period to both merits and fee actions. U.S. Br. 14. But 51 jurisdictions have enacted a limitations period for IDEA merits actions—by either specifying a limitations period or incorporating § 1415(i)(2)(B)'s 90-day period. *See supra* 5. In all of those jurisdictions, the United States' approach would apply that same period to fee actions.

Alternatively, the United States says that Congress silently intended this result. The United States surmises that Congress knew that lower courts were borrowing state-law limitations periods for IDEA fee actions when it enacted § 1415(i)(2)(B), and "expected" courts to start borrowing state-law administrative-review periods enacted pursuant to § 1415(i)(2)(B)'s invitation. U.S. Br. 14-15; *but see BP P.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1541 (2021) ("It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of judicial consensus so broad and unquestioned that we must presume Congress knew

of and endorsed it." (citation omitted)). By that logic, however, Congress also would have known that lower courts already disagreed about how to characterize fee actions. *See* U.S. Br. 14-15. It is implausible to assume that Congress silently and circuitously intended to resolve a circuit split when it could have done so expressly. *See Rusello*, 464 U.S. at 23.

Third, as to policy, the United States dismisses the disparity that the administrative-review approach creates by giving parents a matter of weeks to file their fee claim even though school districts have four years, claiming it is "the straightforward consequence of Congress's decision not to make 28 U.S.C. 1658(a) retroactive." U.S. Br. 11 n.3. But that does not mean that such disparities comport with the IDEA's goals or that Congress would have intended them. To the contrary, as the United States argued in *North Star*, § 1658(a)'s four-year period "reflects … Congress's decision that a relatively long (four-year) limitations period should apply unless Congress has expressly enacted a different one." Brief for the United States as Amicus Curiae at 12 n.5, *N. Star*, 515 U.S. 29 (Nos. 94-834, 94-835).

Finally, the United States claims a short administrative-review period does not frustrate the IDEA's goals because a parent seeking fees has already retained a lawyer and prevailed on the merits. U.S. Br. 12-13. That ignores the impact a short administrative-review period may have on parents' ability to retain an attorney in the first place. Pet. 23-24; Reply 6-7. The United States' own authorities lament that "[i]t is very difficult to get attorneys to take due process hearing cases because of the difficulty in collecting fees." *Letter to*

Anonymous, *supra*. "The emotional toll of having to worry about attorney fees adds another strain to an already burdened and stressed parent[.]" *Id.* And even if the difficulty of recovering fees does not dissuade a lawyer from taking on the case, parents and their attorneys are appropriately occupied by time-sensitive issues concerning their child's education in the aftermath of a hearing officer's decision. Pet. 28-29. They should not be distracted from that priority to pursue the "less urgent" matter of fees. *Zipperer*, 111 F.3d at 851.

CONCLUSION

The Petition for Certiorari should be granted.

June 8, 2021

Respectfully submitted,

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