IN THE

Supreme Court of the United States

NO. 20-905

INDEPENDENT SCHOOL DISTRICT NO. 283,
Petitioner,
v.
E.M.D.H. EX REL. L.H. AND S.D.,
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Eighth Circuit

BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION, MINNESOTA SCHOOL BOARDS ASSOCIATION, ARKANSAS SCHOOL BOARDS ASSOCIATION, ASSOCIATED SCHOOL BOARDS OF SOUTH DAKOTA, IOWA ASSOCIATION OF SCHOOL BOARDS, MISSOURI SCHOOL BOARDS' ASSOCIATION, NEBRASKA ASSOCIATION OF SCHOOL BOARDS, NORTH DAKOTA SCHOOL BOARDS ASSOCIATION, NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The National School Boards Association ("NSBA") represents state associations of school boards across the country. Through its member state organizations, NSBA represents more than 90,000 local school board members, who govern nearly 14,000 local school districts educating nearly 50 million public school students, 7.1 million of whom are served under the Individuals with Disabilities Education Act ("IDEA"). NSBA seeks to promote a collaborative environment in which parents and educators can efficiently identify and resolve disputes to ensure the best possible education for children. NSBA believes that applying the IDEA's procedural and other requirements in a clear and predictable manner allows school districts to focus their time and resources on their primary—and essential—task of educating children.

The Minnesota School Boards Association ("MSBA") is a voluntary, nonprofit organization that represents the school boards of all 333 public school districts in Minnesota, all of which serve children with disabilities under the IDEA. MSBA's mission is to support, promote, and strengthen the work of school boards and school districts throughout Minnesota.

The Arkansas School Boards Association ("ASBA") is a private, nonprofit membership organization that provides leadership, training, advocacy, and specialized services to school boards throughout Arkansas. The

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[1] All parties received timely notice of this brief, and all parties have consented to its filing. No counsel for a party authored this brief in whole or in part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief; and no person other than *amici*, their members, or their counsel made such a contribution.

mission of ASBA is to promote student-focused leadership in public education through training, advocacy, and service for local board members.

The Associated School Boards of South Dakota ("ASBSD") is a private, nonprofit organization representing more than 850 local school board members, the school districts they govern, and the students they serve. ASBSD provides services and support to local school boards and local school districts, specializing in assisting members with aspects related to the governance of public education. As the state school board association, ASBSD advocates in the interest of local school board members for continued advancement of the K-12 education system.

The Iowa Association of School Boards ("IASB") is a voluntary, nonprofit organization which represents members of the school boards of Iowa's 327 public school districts and 9 area education agencies. All IASB members serve children with disabilities under the IDEA. IASB's mission is to educate, support, and challenge public school board members in their pursuit of world-class education for all students in Iowa.

The Missouri School Boards' Association ("MSBA") strives to assist Missouri school boards. MSBA's interest and authority to file comes from its Delegate Assembly's policy goals for the IDEA, which include: authorizing and streamlining the timely sharing of information among public school districts, medical providers, and state and local mental health and social services agencies to provide districts relevant information to appropriately educate students with special needs; and eliminating unnecessary administrative process requirements.

The Nebraska Association of School Boards ("NASB") is a private, nonprofit organization that serves the needs of Nebraska's public schools. Since 1919, the NASB has

been committed to serving school boards in Nebraska. NASB currently represents 258 Nebraska school districts and Educational Service Units, all of which serve children with disabilities under the IDEA.

The North Dakota School Boards Association ("NDSBA") was established to bring together school board members from all parts of the state and to stimulate their interest in matters pertaining to public schools, including their ongoing improvement. NDSBA's mission is to support North Dakota school boards in their governance role through education, services, information, and legislative advocacy. All NDSBA member school boards serve children with disabilities under the IDEA.

The National Association of Elementary School Principals ("NAESP") is the leading advocate for elementary and middle-level principals in the United States and worldwide. NAESP believes that in order for school leaders to effectively serve students with disabilities, there must be certainty and predictability around the Individuals with Disabilities Education Act's requirements.

The National Association of Secondary School Principals ("NASSP") is the leading organization of and voice for principals and other school leaders across the United States. NASSP's members believe that school officials must be focused on ensuring quality services for students with disabilities without the threat of litigation, and that legal issues must be addressed expediently.

Amici have a substantial interest in this case because the decision below has created significant uncertainty over the meaning of the IDEA's statute of limitations and threatens profoundly damaging consequences for schools and students alike. Until the decision below, schools could rely on a uniform understanding that the IDEA's

limitations provision was subject to *only* the two exceptions recognized in the statutory text. The decision below upended that predictable operational rule by creating a new, extrastatutory exception that Congress never approved. The resulting uncertainty makes it even more difficult for resource-strapped school districts to predict, and budget for, potential IDEA litigation and liability. The Eighth Circuit's rule, moreover, harms both *amici*'s members and the students their member districts serve. By effectively eliminating any meaningful statute of limitations, the Eighth Circuit's approach recreates the very evils that led Congress to add the limitations provision in the first place. It risks breeding mistrust among schools, parents, and students. It threatens needless delay in ensuring that students with disabilities receive the educational services to which they are entitled. And it all but ensures that scarce school resources will be diverted away from classrooms and into courtrooms.

SUMMARY OF ARGUMENT

I.A. In 2004, Congress added a statute of limitations for parents to file an administrative complaint under the Individuals with Disabilities Education Act ("IDEA") to address the serious problems that had arisen without one. School districts, often surprised by claims related to events many years earlier, maintained excessive records in anticipation of future litigation. Students suffered from delays in obtaining needed services. And tensions rose between school and families.

Before the decision below, there was a uniform understanding that the IDEA's limitations period was subject to only the two exceptions enumerated in the statute's text—and that other, extrastatutory exceptions were impermissible. The Department of Education and every

court of appeals to consider the issue all reached that conclusion. Schools thus could reasonably rely on the statute's being enforced according to its plain terms.

B. The decision below upended that consistent understanding by incorrectly recognizing an atextual "continuing violation" exception to the IDEA's statute of limitations. In doing so, the court of appeals injected grave uncertainty into a previously stable area of the law, affecting thousands of schools and millions of students served under the IDEA. School districts in circuits that have not yet addressed the issue may have to assume the worst—that they now face unbounded liability for alleged IDEA violations from long ago—and resume the same burdensome procedures the limitations period was designed to alleviate. Schools in the Eighth Circuit, and any that might follow its lead, likewise face grave uncertainty. The reasoning adopted below is not confined to a "continuing violation" theory, leaving open the prospect that courts will later discover still other unwritten exceptions to (what had appeared to be) a clear statutory text.

II.A. The Eighth Circuit's approach is fundamentally inconsistent with the statutory text and structure. The "continuing violation" doctrine the court of appeals invoked applies *regardless* of a plaintiff's knowledge. It is irreconcilable with the IDEA's statute of limitations, whose text makes a plaintiff's knowledge its *touchstone*.

Recognizing exceptions beyond those Congress enumerated also defies the IDEA's broader structure. Numerous provisions show how Congress crafted a calibrated statutory scheme to provide fair procedures for school districts and families, with specific rights granted to one party tempered by specific protections for another, and an overall purpose of encouraging

collaboration for the benefit of the child. By imposing a new exception found nowhere in the statute, the court of appeals upset the careful framework Congress sought to create.

B. The Eighth Circuit's approach threatens disastrous consequences for families and school districts alike, reinvigorating the same problems Congress sought to address by adding a limitations period. By effectively eliminating any meaningful statute of limitations, the decision will increase friction between schools and families, impose costly burdens on school districts, and invite needless delay in raising and resolving disputes over how best to serve the children the IDEA is meant to protect. This Court should grant review.

ARGUMENT

I. THE GRAVE UNCERTAINTY CREATED BY THE DECISION BELOW WARRANTS IMMEDIATE REVIEW

The circuit split created by the decision below shatters what had previously been a uniform, text-based understanding of the IDEA's statute of limitations. Absent this Court's intervention, the resulting uncertainty will plague school districts and students throughout the country.

A. The Eighth Circuit Departed from the Uniform, Text-Based Understanding of the IDEA's Limitations Provision

1. The IDEA secures important protections to students with disabilities. It not only requires schools that receive federal funding to provide students with disabilities a "free appropriate public education" ("FAPE"), 20 U.S.C. §1412(a)(1)(A), but also mandates that schools take steps to ensure that all such students

needing special education "are identified, located, and evaluated," §1412(a)(3)(A).

The IDEA originally did not include a statute of limitations. But experience soon revealed the problems that created for schools, parents, and students alike. Without a firm deadline, plaintiffs often lacked sufficient incentive to present claims in a timely fashion. As a result, school districts were "often surprised by claims from parents involving issues that occurred in an elementary school program when the child may currently be a high school student." H.R. Rep. No. 108-77, at 115 (2003). Affected students likewise suffered when problems that could have been raised—and resolved—early on instead lingered for up to a decade or more. And the specter of long-delayed litigation encouraged school professionals to engage in defensive, even excessive, recordkeeping of their encounters with students and parents. All of that risked "breed[ing] an attitude of distrust between the parents and school personnel." *Ibid.*

Congress thus amended the IDEA in 2004 to require prompt presentation of claims against school districts. See Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, 118 Stat. 2647, 2722, §101, sec. 615. Declaring that "[t]eachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes," 118 Stat. at 2650, §101, sec. 601(c)(9), Congress imposed a generally applicable limitations period. Under that provision, "[a] parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that

forms the basis of the complaint." 20 U.S.C. § 1415(f)(3)(C).[2]

Congress recognized only two exceptions to that general rule: The limitations period does not apply "if the parent was prevented from requesting the hearing" because of either "(i) specific misrepresentations by the [school district] that it had resolved the problem forming the basis of the complaint" or "(ii) the [school district]'s withholding of information from the parent that was required * * * to be provided to the parent." 20 U.S.C. § 1415(f)(3)(D).

2. Before the decision below, there was a uniform understanding that the *only* exceptions to the IDEA's limitations period were those stated in the statutory text. Authority after authority refused to recognize additional, extrastatutory exceptions—and emphatically rejected an exception for "continuing violations" in particular.

The Department of Education took that view shortly after the 2004 amendment's passage. Some commenters implored the Department to issue regulations "allow[ing] extensions of the statute of limitations when a violation is continuing." Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540-01, at 46,697 (2006). The Department declined to depart from the statutory text, explaining that the statute "provides explicit exceptions," which "*do not include when a violation is continuing*." *Ibid.* (emphasis added). For the same reason, the Department found it "not necessary" to clarify that "common-law directives

[2] States may adjust that two-year period by providing "an explicit time limitation" of their own. 20 U.S.C. § 1415(f)(3)(C).

regarding statutes of limitations should not override the Act or State regulatory timelines"—the statute's plain text already made that clear. *Ibid.*

The courts of appeals took the same view. In *D.K.* v. *Abington School District*, 696 F.3d 233 (3d Cir. 2012), the Third Circuit rejected plaintiffs' request to extend the limitations period under the doctrines of minority tolling and equitable tolling. *Id.* at 248. Because Congress had enumerated specific exceptions in the statute, the Third Circuit explained, courts could not carve out additional, unwritten exceptions. *Ibid.* In so ruling, the court cited with approval an earlier district court ruling that "the IDEA statute of limitations 'is not subject to the continuing violation or equitable tolling doctrines.'" *Ibid.* The Third Circuit reinforced that principle in *G.L.* v. *Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015), explaining that "parents may not, without satisfying one of the two statutory exceptions, knowingly sit on their rights or attempt to sweep both timely and expired claims into a single 'continuing violation' claim brought years later." *Id.* at 625.

The Fifth Circuit also rebuffed efforts to read atextual exceptions into the IDEA's limitations provision. In *Reyes ex rel. E.M.* v. *Manor Independent School District*, 850 F.3d 251 (5th Cir. 2017), the court rejected a request to extend the limitations period by applying a state tolling provision for persons "'of unsound mind.'" *Id.* at 255. "There is nothing in the IDEA," the Fifth Circuit explained, "that incorporates general state tolling provisions." *Ibid.* And it was inappropriate to import unmentioned tolling rules, given the express "federal

tolling provisions" in the statute itself—*i.e.*, the two exceptions in § 1415(f)(3)(D). *Ibid.*[3]

3. For more than a decade, then, schools could rely on a uniform understanding of the IDEA rooted in the statute's plain text: The two-year limitations period would apply except in narrow circumstances defined by the statute itself.

That uniformity was shattered by the decision below. The Eighth Circuit assumed the plaintiffs "knew or should have known about the alleged action that form[ed] the basis of the complaint" more than two years before seeking a due process hearing, 20 U.S.C. § 1415(f)(3)(C), and it did not find that *either* textually authorized exception applied. Pet. App. 18a. But the court found the claim timely nonetheless, on the theory that plaintiffs had alleged a "continued violation of [the school district's] child-find duty." *Ibid.* The Eighth Circuit thus adopted precisely the sort of atextual "continuing violation" exception to the IDEA's limitations period that other courts and the Department of Education had consistently found the statute's text to foreclose.

B. The Circuit Conflict Creates Grave Uncertainty for Schools Throughout the Country

The Eighth Circuit's decision throws into disarray what had been a stable and predictable legal regime. Before, school districts could reasonably conclude that

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[3] District courts in other circuits have similarly concluded that the statute's plain text forecloses additional, unwritten exceptions to the limitations period. See, *e.g.*, *Bell* v. *Bd. of Educ.*, No. 06 Civ. 1137, 2008 WL 4104070, at *18 (D.N.M. Mar. 26, 2008). As the petition observes, some district courts in the Third Circuit once applied a "continuing violation" exception. See Pet. 12-13 n.4. But the Third Circuit emphatically rejected that view in *D.K.* and *G.L.*

the IDEA's statute of limitations would be applied consistent with its clear text, to allow only two, carefully defined exceptions. Now, however, schools face grave uncertainty about whether and when courts might carve out other, unwritten exceptions to the statute's plain terms.

The impact of that uncertainty is perhaps clearest for school districts in circuits that have not yet addressed the issue. Unable to predict with confidence how the statute will be construed, those school districts may be forced to assume the worst. That will encourage them to act defensively—documenting all parent-teacher conversations, saving paperwork relating to decisions about every student, and budgeting more funds for possible litigation—to prepare for the unbounded liability they may face if their circuits follow the decision below. Thus, *uncertainty alone* will impose on those schools—and the millions of students they serve—the same burdens that Congress sought to alleviate by enacting the statute of limitations in the first place. See H.R. Rep. No. 108-77, at 115-116.

Uncertainty also plagues schools within the Eighth Circuit (and any circuits that might follow its lead). Because the decision below has no textual grounding, it also has no textual limits. Nor did the Eighth Circuit identify any limiting principle. While the decision below dealt specifically with the "continuing violation" doctrine, nothing in the opinion suggests that is the only unwritten exception that could apply. Untethered from the text Congress enacted, courts might find other nonstatutory doctrines—such as unclean hands, equitable estoppel, and common-law tolling—to be equally worthy of recognition. Even within the Eighth Circuit, school

districts cannot know what exceptions might someday be found to apply.

Nor is the Eighth Circuit's reasoning limited to the "child-find" obligation at issue in this case. Other IDEA provisions that could be said to create ongoing obligations, such as the requirement to reevaluate students in 20 U.S.C. §1414(a)(2), might also be found to qualify for exemption from the statute of limitations. The result is that school districts, in the Eighth Circuit and elsewhere, cannot be certain about their potential liability for virtually *any* alleged IDEA violation, regardless of how long ago it occurred.

That situation is untenable. The legal uncertainty created by the decision below exacerbates the severe challenges that resource-strapped schools already face in planning for the future. This Court's review is urgently needed.

II. The Eighth Circuit's Atextual Decision Is Wrong And Threatens Disastrous Consequences

The decision below does not merely disrupt settled understandings of the IDEA. It is also fundamentally inconsistent with the statute's text and structure. And it causes precisely the same problems that Congress enacted the limitations provision to eliminate.

A. The Decision Below Defies the IDEA's Text and Structure

1. As the petition explains, the decision below cannot be reconciled with the IDEA's plain language. Congress's decision to include two—and only two—exceptions in the statute's text precludes judicial discovery of other, atextual exceptions. See Pet. 14-18.

The Eighth Circuit's recognition of an unwritten "continuing violation" exception is particularly inap-

propriate. Indeed, it is difficult to imagine an exception more at odds with the statute Congress wrote. The continuing violation doctrine "'starts the statutory period running again'" with each new overt act, "'*regardless of the plaintiff's knowledge of the alleged illegality at much earlier times*.'" *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 189 (1997) (emphasis added). Here, however, Congress expressly tied the running of the limitations period to the plaintiff's knowledge of the alleged illegality. The statute directs that a plaintiff *must* seek a hearing within two years of "the date the parent or agency *knew or should have known about the alleged action that forms the basis of the complaint*." 20 U.S.C. §1415(f)(3)(C) (emphasis added). Courts have no warrant to engraft an exception that applies "'regardless of the plaintiff's knowledge,'" *Klehr*, 521 U.S. at 189, onto a statute whose text makes the plaintiff's knowledge its *touchstone*.

2. The Eighth Circuit's approach is also inconsistent with the broader structure of the IDEA. The IDEA exemplifies the principle that "no legislation pursues its purposes at all costs." *Rodriguez* v. *United States*, 480 U.S. 522, 525-526 (1987). Throughout the statute, Congress labored to strike an appropriate balance between ensuring families the benefits to which they are entitled and protecting schools from excessive administrative and litigation burdens. The result is a carefully calibrated statutory scheme designed to provide fair procedures that facilitate collaboration and prompt resolution of disputes between families and school districts.

The IDEA's hearing notice provisions are a prime example. The statute allows parents to demand a due process hearing challenging a school's compliance with the IDEA. To receive a hearing, a parent must provide a "due process complaint notice" containing specific

information about the child, "a description of the nature of the problem," and "a proposed resolution of the problem to the extent known and available to the party at the time." 20 U.S.C. §1415(b)(7)(A)(ii), (b)(7)(B). That notice requirement is designed to protect the school from defending against vague complaints or issues raised for the first time at the hearing. But the same provision offers corresponding safeguards for potentially unsophisticated families: It requires the school to develop a "model form" parents can use for the notice, §1415(b)(8), and provides that a parent's notice "shall be deemed to be sufficient" unless the school district notifies the hearing officer and the parents in writing that it is not, §1415(c)(2)(A).

The IDEA's procedural safeguards notice requirement similarly illustrates the statute's calculated structure of fair rights and protections. Under that provision, parents of a child with a disability are entitled to a copy of the statute's procedural safeguards, which includes information such as parents' right to bring a civil action and to seek attorneys' fees, written in their native language (if feasible) and in an "easily understandable manner." 20 U.S.C. §1415(d)(1)-(2). That procedural protection for families is tempered, however, so as not to overburden schools: While a school district must provide a copy of the procedural safeguards on its website (if it has one), it is only required to provide a copy to the parent of a disabled child once per year or upon certain specified events, such as when the parent requests an evaluation. §1415(d)(1).

The IDEA's statute of limitations is of a piece. By requiring parents to seek a due process hearing within two years, Congress limited schools' potential liability to a discrete, identifiable period, protecting them from the

threat (and corresponding burden) of unending liability. 20 U.S.C. § 1415(f)(3)(C). At the same time, Congress tempered that protection by excusing compliance with the statute of limitations in two—but only two—circumstances, including where the school failed to provide the procedural safeguards notice discussed above. See § 1415(f)(3)(D)(i), (ii).

Reasonable minds can debate whether the limitations period should yield in more (or fewer) circumstances than the statute presently allows. Reasonable minds can likewise debate whether a parent's due process complaint notice should be more (or less) elaborate than the statute demands, or whether schools should provide more (or less) frequent notices of the IDEA's procedural safeguards. Indeed, States have passed their own statutory and regulatory regimes on top of the IDEA framework. Those policy questions, however, are not for courts to decide. At the federal level, they fall squarely within *Congress's* prerogative to decide "what competing values will or will not be sacrificed to the achievement of a particular objective." *Rodriguez*, 480 U.S. at 526. Here, Congress weighed the competing values and decided that school districts' interest in repose should be sacrificed in only two narrow situations. By creating a third exception of its own design, the Eighth Circuit erroneously substituted its judgment for Congress's, upending the carefully crafted choice Congress made in the IDEA.

B. Overriding Congress's Considered Choice Will Have Disastrous Consequences for Students and School Districts

By making the IDEA's limitations period all but meaningless, the Eighth Circuit's decision invites the harmful delay and administrative burdens Congress sought to avoid when creating the limitations period in

the first place. Students, parents, and schools will all suffer the consequences.

The IDEA is supposed to "promote better cooperation and understanding between parents and schools" as they work toward educational solutions. S. Rep. No. 108-185, at 6 (2003). A protracted potential for litigation undermines that goal by shifting the focus to "document[ing] conversations" and away from "working cooperatively to find the best education placement and services for the child." H.R. Rep. No. 108-77, at 115-116. If claims can go unraised for years without consequence, parents will have less incentive to actively collaborate with schools to reach a swift resolution. And when belated claims are finally raised, evidence may be stale, heels may be dug in, and it may be harder to correct the course of a student's education. All of that threatens to recreate the risk of "rais[ing] the tension level between the school and the parent" and "breed[ing] an attitude of distrust between the parents and school personnel" that the IDEA's limitations provision was meant to prevent. *Id.* at 115.

The delay licensed by the Eighth Circuit's approach threatens serious harm to students with disabilities. Prompt identification of students in need of special education—and prompt resolution of any related disputes—is especially important given that childhood is fleeting. Formative years may be lost when plaintiffs excessively delay in alleging that a school district has not met its obligations under the IDEA. See *Spiegler* v. *District of Columbia*, 866 F.2d 461, 467 (D.C. Cir. 1989); see also *Muth* v. *Cent. Bucks Sch. Dist.*, 839 F.2d 113, 124-125 (3d Cir. 1988), rev'd on other grounds sub nom. *Dellmuth* v. *Muth*, 491 U.S. 223 (1989). Indeed, even after a claim is presented, resolving it can take weeks or

months, if not years. "While Congress mandated that due process hearings be concluded within a 45-day timeline, * * * this is rarely the case."[4] For example, in California, "[t]he length of the proceeding coupled with scheduling demands necessitates that hearings occur over the course of several weeks, if not months."[5] Judicial review can extend the proceedings further still: Here, three years passed between the due process complaint and the court of appeals' decision. See Pet. App. 2a, 18a. If disputes are allowed to stretch for several years *before a complaint is even filed*, students may suffer even greater delays in obtaining the relief they seek.

The Eighth Circuit's rule also threatens subtler—but no less pernicious—harms to students. Wary of potential claims that they failed to identify students with disabilities many years earlier, schools may make the reasonable decision to conduct formal evaluations earlier than they otherwise would, and to err on the side of identifying students as disabled. Preemptively placing more students in special education early on may help avoid later liability for many years of compensatory education. But it can also exacerbate another problem Congress sought to address in the 2004 IDEA amendments: "the inappropriate overidentification or disproportionate representation by race and ethnicity of

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[4] Sasha Pudelski, *Rethinking Special Education Due Process: A Proposal for the Next Reauthorization of the Individuals with Disabilities Education Act*, The School Superintendents Ass'n, Apr. 2016, at 15, https://www.aasa.org/uploadedFiles/Policy_and_Advocacy/Public_Policy_Resources/Special_Education/AASARethinkingSpecialEdDueProcess.pdf (hereinafter Pudelski).

[5] *Id.* at 16.

children as children with disabilities." Pub. L. 108-446, 118 Stat. at 2691, § 101 sec. 612(a)(24) (requiring States to institute policies to prevent such overidentification). Such overidentification can be harmful to children's development and poisonous to the relationships between schools and the communities they serve.

The unbounded liability threatened by the decision below will also force school districts to devote more of their already-scarce resources to recordkeeping and potential lawsuits. Under the Eighth Circuit's approach, an allegation of a "continued violation" can compel schools to defend actions they took many years earlier, and expose them to liability spanning a student's entire educational career.[6] Without any horizon for potential claims, schools will be forced to "document every step they take with every child, even if the parents agree with the action, because they could later change their mind and sue." H.R. Rep. No. 108-77, at 115. And schools will have to maintain those records for many years.

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[6] While the Eighth Circuit remarked in passing that "[a]ny claim of a breach falling outside of the IDEA's two-year statute of limitations would be untimely," Pet. App. 18a, it plainly did not limit the claims here to events within the two-year limitations period. It affirmed the district court's conclusion that "the District breached its obligation to identify the Student by the spring of her eighth-grade year" (more than two years before plaintiffs sought a hearing), and it approved *all* of the relief ordered by the district court (and then some) without regard to when the corresponding breaches occurred or expenses were incurred. Pet. App. 16a, 18a-21a. That the Eighth Circuit reached the same result as the district court—which had found the limitations period did not apply *at all* under an express statutory exception, see Pet. App. 45a—shows that the court of appeals' "continued violation" exception effectively nullifies the statute of limitations.

Schools similarly will have to budget more resources for potential litigation, reducing their flexibility to devote funds to student services. Those costs can be enormous. In 2012—when it was still uniformly understood that only the two textual exceptions to the limitations period applied—districts already "earmarked as little as $12,000 a year to as much as $50,000 to address potential costs associated with due process or litigation."[7] Now that schools can no longer rely on the statute of limitations to cabin such proceedings, schools will rationally set aside even more funds. Those expenses add up quickly. The cost of outside counsel alone can average $10,000 per case, often more.[8] Every untimely suit invited by the decision below will divert even more funds away from classrooms and into courtrooms.

And then there is the expanded liability for reimbursement and compensatory education school districts now face. As is common in IDEA cases, the Eighth Circuit concluded that the student here was entitled to a "compensatory-education award" of private tutoring "until the Student earns the credits expected of her same-age peers." Pet. App. 21a. While the claims here were brought relatively soon after the statute of limitations expired, nothing in the court of appeals' reasoning would prevent plaintiffs from bringing similar claims much later. Parents of a high-school student thus could seek compensation for a decade's worth of private education—even if the problem could have been addressed much more efficiently in the public school

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[7] Pudelski at 9, 13.

[8] Pudelski at 13.

system had it been promptly raised in elementary school.[9]

In short, "the sooner parents start [the IDEA's statutory] process and secure appropriate intervention and remedial supports after they discover or reasonably should have discovered the need for it, the better for the well-being of the child, the goals of the school district, and the relationship between the family and school administrators." *G.L.*, 802 F.3d at 625. The atextual approach adopted below, by contrast, invites needless delay in invoking the statute's processes. That delay comes at enormous cost to schools, parents, and—most critically—the students the statute is designed to protect.

This Court's intervention is urgently needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[9] Nor is schools' potential liability constrained by the twenty-one-year age limit on their duty to provide a free appropriate public education. See 20 U.S.C. §1412(a)(1)(A). Federal courts have routinely held that a school district may be liable for compensatory education even *after* a student turns twenty-one to make up for past FAPE denials. See *G ex rel. RG* v. *Fort Bragg Dependent Schs.*, 343 F.3d 295, 308-309 (4th Cir. 2003) (collecting cases).

Respectfully submitted.

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