


No. _____

**In the
Supreme Court of the United States**



D.D., A MINOR, BY AND THROUGH
HIS GUARDIAN AD LITEM, MICHAELA INGRAM,
Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Individuals with Disabilities Education Act (IDEA) preserves the rights of children with disabilities to bring claims under the Constitution and other federal anti-discrimination statutes, so long as they exhaust the IDEA’s administrative procedures if their non-IDEA suit “seek[s] relief that is also available under [the IDEA].” 20 U.S.C. § 1415(*l*). In the decision below, the Ninth Circuit affirmed the dismissal of petitioner’s claim under the Americans with Disabilities Act (ADA)¹ for failure to exhaust—even though it was undisputed that petitioner had settled his IDEA-based special education claims with the school district to the satisfaction of all parties. In addition, interpreting *Fry v. Napoleon Community Schools*, 137 S.Ct. 743 (2017), the Ninth Circuit held that the IDEA’s exhaustion requirement applies even when the plaintiff only seeks money damages for past injuries under a non-IDEA statute, a remedy that is not available under the plain language of the IDEA.

The Questions Presented Are:

1. Whether Section 1415(*l*) requires exhaustion of a non-IDEA claim seeking money damages that are not available under the IDEA?
2. Whether, and in what circumstances, courts should excuse further exhaustion of the IDEA’s administrative proceedings under Section 1415(*l*) when such proceedings would be futile by virtue of settlement, or otherwise.

¹ 20 U.S.C. § 12101 et. seq.

PARTIES TO THE PROCEEDINGS

Petitioner

D.D. is a minor student eligible for special education and related services under the IDEA who also suffered emotional distress at the hands of his school district. D.D., by and through his mother, filed an administrative complaint against the Los Angeles Unified School District before the Office of Administrative Hearings, Special Education Division for the State of California (OAH). D.D. resolved the complaint by way of an IDEA settlement agreement that specifically preserved his ability to raise non-IDEA discrimination claims. D.D. then brought suit in the United States District Court for the Central District of California (District Court) alleging discrimination and claims for emotional distress under the Americans with Disabilities Act, and was the plaintiff-appellant before the Ninth Circuit challenging the District Court's dismissal of his claims on exhaustion grounds.

Respondent

Los Angeles Unified School District (LAUSD) is the Local Educational Agency responsible for providing D.D. with a free and appropriate public education under the IDEA, and with accommodating and educating D.D. to the same extent as his peers without disabilities. The LAUSD's agents and employees engaged in discriminatory and tortious conduct against D.D., in addition to LAUSD failing to provide D.D. with a FAPE. As such, the LAUSD was the Respondent in the administrative complaint before the OAH and negotiated an IDEA settlement agreement that preserved D.D.'s ability to bring non-IDEA claims in the District Court. Later, the LAUSD (despite its' prior representations

as part of the IDEA settlement process) sought dismissal of D.D.'s claims by the District Court on exhaustion grounds, and was the defendant-respondent before the Ninth Circuit after D.D. appealed the dismissal of his ADA his claim.

LIST OF PROCEEDINGS

Direct Proceedings Below

D.D., a minor, by and through his guardian ad litem v. Los Angeles Unified Public School District, No. 19-55810, United States Court of Appeals for the Ninth Circuit, judgment entered November 19, 2021. (18 F.4th 1043) (en banc).

D.D., a minor, by and through his guardian ad litem v. Los Angeles Unified Public School District, No. 19-55810, United States Court of Appeals for the Ninth Circuit, judgment entered December 31, 2020. (984 F.3d 773) rehearing en banc granted May 6, 2021.

D.D., a minor, by and through his guardian ad litem v. Los Angeles Unified Public School District, No. 2:19-cv-00399-PA-PLA (C.D.CA.) (Order and Judgment granting dismissal, June 14, 2019). (Dkt. Nos. 45, 46).

Related Proceeding

The following proceeding, in which a petition for certiorari is currently pending, is indirectly related to this case because the Sixth Circuit addressed the identical issue of exhaustion:

Miguel Luna Perez v. Sturgis Public Schools; Sturgis Public Schools Board of Education, Petition for Writ of Certiorari filed December 13, 2021, Sup. Ct. No. 21-887.

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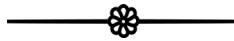
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PETITION FOR A WRIT OF CERTIORARI

D.D., a minor, by and through his guardian ad litem, Michaela Ingram, respectfully petitions this Court for a writ of certiorari to review the en banc judgment of the United States Court of Appeals for the Ninth Circuit.



OPINIONS BELOW

The decision of the en banc panel of the Ninth Circuit Court of Appeals, which reversed and vacated the 2-1 opinion of the three judge panel and affirmed the District Court opinion, is published at 18 F.4th 1043. (App.1a). The decision of the three-judge panel of the Ninth Circuit Court of Appeals is published at 984 F.3d 773. (App.57a). (vacated). The opinion of the United States District Court of the Central District of California granting Los Angeles Unified School District's motion to dismiss is not published but is available at 2019 WL 4149372. (App.108a).



JURISDICTION

The en banc court of appeals entered judgment on November 19, 2021. (App.1a). On February 9, 2022, Justice Kagan extended the time to file a petition for a writ of certiorari through April 18, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS INVOLVED

The Exhaustion Provision of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(l) provides:

Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted

to the same extent as would be required had the action been brought under this subchapter.



STATEMENT OF THE CASE

Petitioner here requests that this petition for a writ of certiorari be held pending the disposition of *Miguel Luna Perez v. Sturgis Public Schools; Sturgis Public Schools Board of Education*, Petition for Writ of Certiorari filed December 13, 2021, No. 21-887.

This case presents a question of exceptional importance: namely whether a plaintiff who seeks only monetary damages under the Americans with Disabilities Act (ADA), and who can obtain all educationally-related remedies by way of an IDEA settlement through a mediation held under 20 U.S.C. § 1415(e), should nevertheless be forced to proceed with an administrative hearing as outlined by 20 U.S.C. § 1415(f) prior to bringing a suit under the ADA. These are the questions left open by *Fry*², and currently presented for review in *Perez*.

In *Fry*, the Court considered Section 1415(l) and its impact on non-IDEA lawsuits. The petitioners in *Fry* sought only monetary damages under the ADA and the Rehabilitation Act³. Thus, they argued that exhaustion was not required because they were not “seeking relief that is also available under the [IDEA].”

² 137 S. Ct. at 752 n.4.

³ 29 U.S.C. § 790, et seq.

20 U.S.C. § 1415(*l*)⁴. The United States filed cert-stage and merits briefs supporting the petitioners, arguing that under the plain language of Section 1415, IDEA exhaustion is not required for ADA and Rehabilitation Act claims seeking remedies that cannot be provided under the IDEA, *i.e.* damages⁵.

Ultimately *Fry* did not determine the question of whether exhaustion is required for non-IDEA claims seeking non-IDEA relief; and the Court left open the question of whether a claim for relief that is limited to damages requires exhaustion:

In reaching these conclusions, we leave for another day a further question about the meaning of § 1415(*l*): Is exhaustion required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests—here, money damages for emotional distress—is not one that an IDEA hearing officer may award? The Frys, along with the Solicitor General, say the answer is no. See Reply Brief 2–3; Brief for United States as Amicus Curiae 16. But resolution of that question might not be needed in this case because the Frys also say that their complaint is not about the denial of a FAPE, see Reply Brief 17—and, as later explained, we must remand that distinct issue to the Sixth Circuit, *see infra*, at 757-759. Only if that court rejects the Frys’ view of their lawsuit, using the analysis we set out below, will the question

⁴ See Petition for Writ of Certiorari at i., *Fry v. Napoleon Cmty. Schs.*, No-15-497, 137 S.Ct. 743 (2017).

⁵ See, *Fry*, U.S. Br. 16.

about the effect of their request for money damages arise.¹³⁷ S. Ct. at 752 n. 4.

D.D.'s matter falls squarely within the unresolved issue in *Fry*. Here, D.D., a student with a disability, pled that he was routinely excluded from school, harassed and bullied due to his disability-related behavior. (App.9a-11a, 37a) He alleged that he was denied accommodations needed for his disability (specifically, a one-to-one aide or placement in a smaller setting) (App.10a, 12a). The underlying district court complaint sought only damages for emotional distress under the ADA.⁶

LAUSD subsequently filed a motion to dismiss based on *Fry*, alleging D.D. failed to exhaust under the IDEA by not taking the free and appropriate public education issues to an administrative hearing. (App.112a, 115a). The District Court held that D.D. was required to exhaust his ADA claims because the complaint "effectively seeks a remedy under the IDEA." (App.114a). D.D. denied this characterization. The three-judge panel agreed with D.D. as did Chief Judge Thomas, Judge Paez, and Judge Berzon in the dissenting en banc opinion authored by Judge Paez. (App.48a, 58a).

⁶ Prior to bringing suit, D.D. filed an IDEA administrative due process complaint. He reached an advantageous settlement that provided him with the free and appropriate public education to which he was entitled to under the IDEA and expressly waived all of his educational claims under the IDEA in exchange. (App.13a). The IDEA settlement agreement also preserved as part of the release D.D.'s right to pursue a civil action for any overlapping claims under other statutes such as the ADA, based on the same facts. Accordingly, D.D. then filed the underlying case for damages under the ADA. (App.42a).

Still, in the decision below, the majority of the Ninth Circuit’s en banc panel held the district court properly dismissed D.D.’s action under the ADA for failure to exhaust pursuant to Section 1415(l) based upon this Court’s decision in *Fry*, because the “gravamen” of D.D.’s discrimination complaint alleging personal injuries as a result of LAUSD’s failure to grant his requested accommodations was a denial of FAPE claim. (App.3a). Moreover, the majority held even though D.D. sought only money damages for emotional distress—relief that is indisputably not available under the IDEA—he was still required to exhaust. (App.19a).

In doing so, the majority did not correctly analyze the operative text of the IDEA, which provides that exhaustion is required only where the plaintiff “seek[s] relief that is also available under [the IDEA].” 20 U.S.C. § 1415(l). Instead, the majority relied primarily on what it surmised to be Congress’s “intent,” as evidenced by snippets of legislative committee reports, to require exhaustion even where the plaintiff seeks a remedy that is unavailable under the IDEA. (App.23a).

However, the Ninth Circuit was divided on this question. As the dissent of Judge Bumatay explained (joined by Chief Judge Thomas, and Judges Collins, Paez and Berzon) the majority’s approach ignores the plain meaning of Section 1415(l) and misapplies *Payne*⁷ because money damages are not a form of relief

⁷ *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 883 (9th Cir. 2011) (en banc) (non-IDEA claims that do not seek relief available under the IDEA are not subject to exhaustion, including cases seeking damages for emotional distress for personal injuries allegedly inflicted by school officials (*overruled on other grounds by Albino v. Baca*, 747 F.3d 1162, 1171)).

“available” under the IDEA. (App.29a-30a). Thus, any suggestion by the majority that D.D. engaged in “artful pleading” to avoid IDEA exhaustion as warned against in *Fry* is without merit and contradicted by the record. (App.31a). Moreover, the dissent’s textualist approach is consistent with the Solicitor General’s view in *Fry* that this Court left for another day. (App.28a).

As the dissenters pointed out, the en banc majority’s atextual reasoning is inappropriate. “[T]he plain meaning of the statute” controls. (App.29a). And under the plain meaning of the key terms: “[A] complaint seeking damages—other than reimbursement of private school expenses under [20 U.S.C.] § 1412(a)(10)(C)(ii)—does not require exhaustion under the IDEA. That’s because general compensatory damages cannot be awarded under the IDEA and Congress only prescribed exhaustion when the plaintiff seeks relief that is ‘available’ under the IDEA. And this is true even if the complaint is ultimately about the denial of a FAPE.” (App.31a).



REASONS FOR HOLDING AND GRANTING THE PETITION

The same question is raised in *Perez* in which a deaf child, who had been denied a sign language interpreter for years by his school district, settled his administrative case and obtained all available IDEA relief through settlement, such that further pursuit of administrative remedies was futile. He then brought an action for disability discrimination under the ADA seeking money damages, which the Sixth Circuit dismissed based on a failure to exhaust under *Fry*⁸.

Perez filed a petition for certiorari on December 13, 2021, identifying two questions, namely: Whether Section 1415(*l*) requires exhaustion of a non-IDEA claim seeking money damages that are not available under the IDEA; and whether, and in what circumstances, courts should excuse further exhaustion of the IDEA’s administrative proceedings under Section 1415(*l*) when such proceedings would be futile. The Court has asked for a response in *Perez*.

For the reasons stated in the petition in *Perez*, the Court should grant that petition and decide the question it planned to address in *Fry*: whether “exhaustion [is] required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests—here, money damages for emotional distress—is not one that an IDEA hearing officer may award.”⁹ The Court should also rule on the merits in *Perez* that

⁸ *Perez v. Sturgis Public Schools*, 3 F.4th 236 (6th Cir. 2021).

⁹ 137 S. Ct. at 752 n.4.

a claim for money damages under the ADA, after a settlement under the IDEA, does not require further exhaustion under Section 1415(l).

Because *Perez* raises the same issues regarding the scope of exhaustion required under Section 1415(l) as this case, petitioner respectfully requests that the Court hold this petition pending any forthcoming decision in *Perez*, and then it should dispose of it in accord with the result of that proceeding.



CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be held pending the disposition of *Miguel Luna Perez v. Sturgis Public Schools; Sturgis Public Schools Board of Education*, Petition for Certiorari filed December 13, 2021, Sup. Ct. No. 21-887, and subsequently granted.

Respectfully submitted,

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