No. 21-887

In the Supreme Court of the United States

MIGUEL LUNA PEREZ,
Petitioner,
v.
STURGIS PUBLIC SCHOOLS; STURGIS PUBLIC SCHOOLS BOARD OF EDUCATION,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF PETITIONER

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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 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 Sixth Circuit affirmed the dismissal of petitioner's claim under the Americans with Disabilities Act for failure to exhaust—even though that claim sought only relief that is unavailable under the IDEA, and even though petitioner had settled his IDEA claim with the school district to the satisfaction of all parties.

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.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Perez v. Sturgis Public Schools, No. 20-1076, United States Court of Appeals for the Sixth Circuit, judgment entered June 25, 2021 (3 F.4th 236), rehearing denied July 29, 2021.

Perez v. Sturgis Public Schools, No. 1:18-cv-1134, United States District Court for the Western District of Michigan, judgment entered December 19, 2019 (2019 WL 6907138).

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OPINIONS BELOW

The decision of the court of appeals (Pet.App. 1a-35a) is published at 3 F.4th 236. The court's denial of rehearing en banc (Pet.App. 56a-57a) is not published. The opinion of the United States District Court of the Western District of Michigan granting Sturgis Public Schools' motion to dismiss (Pet.App. 43a-53a) is not published but available at 2019 WL 6907138. The court's related order granting Sturgis Public Schools Board of Education's motion to dismiss (Pet.App. 54a-55a) is not published.

JURISDICTION

The court of appeals entered judgment on June 25, 2021 (Pet.App. 1a-35a) and denied Miguel's petition for rehearing en banc on July 29, 2021 (Pet.App. 56a-57a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the addendum to this brief.

INTRODUCTION

For twelve years, petitioner Miguel Luna Perez suffered unlawful disability discrimination at the hands of respondents Sturgis Public Schools and Sturgis Public Schools Board of Education (collectively, "Sturgis"). That discrimination violated both the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). The core issue in this case is whether Miguel should lose his right to bring a claim against Sturgis for money damages under the ADA, simply because he and Sturgis settled his separate claim for education-focused equitable relief under the IDEA.

The answer to that question is *no*. The Sixth Circuit held otherwise and dismissed Miguel's ADA claim based on an outlier interpretation of the IDEA's exhaustion provision, 20 U.S.C. § 1415(*l*), that is at odds with the provision's text, history, purpose, and precedent. The Sixth Circuit is mistaken: The IDEA does not punish students with disabilities for using IDEA-mandated settlement mechanisms to resolve IDEA disputes with their schools. Here, Miguel fully complied with Section 1415(*l*) when seeking IDEA and ADA remedies. This Court should reverse the decision below and let his ADA case proceed.

Miguel is deaf. His parents entrusted his primary and secondary education to Sturgis. For over a decade, Sturgis failed to provide Miguel with a qualified sign-language interpreter, and it misled his parents into believing that Miguel was progressing well and would graduate with a high school diploma. In reality, Sturgis's misconduct prevented Miguel from learning, impeded his communication skills, and inflicted lasting harm on his ability to earn a living.

Miguel brought claims under the ADA and IDEA in state IDEA administrative proceedings. After the hearing officer dismissed his ADA claim for lack of jurisdiction, the parties settled Miguel's IDEA claim in full. Having received all the relief the IDEA proceeding could give him, Miguel then brought an ADA suit in federal court to obtain a remedy the IDEA could *not* provide—money damages for his past harm.

The district court and Sixth Circuit both rejected Miguel's ADA lawsuit under Section 1415(*l*), which requires exhaustion of the IDEA administrative process only when a non-IDEA claim "seek[s] relief that is also available under [the IDEA]." The Sixth Circuit held that Section 1415(*l*) required Miguel to exhaust his IDEA claim before bringing an ADA claim in court—even though the ADA claim seeks money damages that are categorically unavailable under the IDEA. And it likewise held that Miguel failed to exhaust his IDEA claim because he and Sturgis resolved it by settlement.

The Sixth Circuit's decision rested on two core errors, each of which misinterprets Section 1415(*l*) and deprives children with disabilities of their rights under the ADA and other federal antidiscrimination laws.

First, the Sixth Circuit misconstrued Section 1415(*l*)'s plain text when concluding that the provision's exhaustion requirement applies to Miguel's ADA damages claim. By its terms, Section 1415(*l*) requires exhaustion only when the plaintiff's non-IDEA suit "seek[s] relief that is also available under [the IDEA]." That condition is not satisfied in cases—like Miguel's—where the plaintiff seeks money damages that are indisputably *not* available under the IDEA.

Second, even if Section 1415(*l*) requires exhaustion, the Sixth Circuit erroneously dismissed Miguel's case. Exhaustion means pursuing administrative procedures to their "appropriate conclusion" under the statutory scheme at issue. *Aircraft & Diesel Equip. Corp. v. Hirsch*, 331 U.S. 752, 767 (1947). Here, the IDEA's text and history make clear that settlement is not only an "appropriate" resolution of the IDEA administrative process, but in fact the *preferred* method of resolving IDEA disputes. Miguel's settlement with Sturgis fully exhausted the IDEA process, clearing the way for him to file this separate ADA suit.

Further exhaustion of Miguel's IDEA claims in the administrative proceedings would have been futile. It would have been entirely pointless—and fraught with risk—for Miguel to reject a settlement giving him the full IDEA relief he was entitled to receive. The Sixth Circuit was wrong to dismiss this Court's decision in *Honig v. Doe*, 484 U.S. 305 (1988)—and break with eleven courts of appeals and its own precedent—in holding that futility is not an exception to Section 1415(*l*). The court likewise erred in holding that settlement does not trigger that exception.

If allowed to stand, the Sixth Circuit's misinterpretation of Section 1415(*l*) will inflict severe harm on children with disabilities and their families. Most significantly, it requires them to reject reasonable IDEA settlements—and the promise of immediate educational relief—in order to preserve their meritorious claims under other statutes. Section 1415(*l*) does not mandate that senseless result, which turns the IDEA's settlement-promoting administrative scheme on its head. This Court should reverse.

STATEMENT OF THE CASE

A. Legal Background

1. The IDEA's core purpose is to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). The IDEA also sets forth procedures for resolving disputes between families and school officials when the family believes the child has been denied a FAPE. *Id.* § 1415; *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749 (2017).

To begin IDEA proceedings, the parent files a "due process complaint" with the local or state educational agency. 20 U.S.C. § 1415(b)(6)-(7). From there, the statute encourages the parties to reach a mutually agreeable and "speed[y]" settlement, "so that children with disabilities obtain the needed services and education in a timely manner." H.R. Rep. No. 108-77, at 85-86 (2003); *see* 20 U.S.C. § 1415(f)(1)(B) (requiring "preliminary meeting" so that parties can pursue "written settlement agreement"); *id.* § 1415(e) (directing states to establish "mediation process" to resolve IDEA disputes). The IDEA incentivizes parents to settle by eliminating their right to seek certain attorney's fees if they turn down "written offer[s] of settlement" from the school that turn out to be "more favorable" than the relief that is later attained through the adversary process. 20 U.S.C. § 1415(i)(3)(D)(i); *see generally infra* at 31-34.

If the parties fail to reach a settlement, they proceed to the "due process hearing" before an administrative hearing officer. 20 U.S.C. § 1415(f)(1)(A). The hearing officer issues a decision

"based on a determination of whether the child received a [FAPE]." *Id.* § 1415(f)(3)(E)(i). "Any party aggrieved" by the hearing officer's decision may then seek judicial review by filing an IDEA civil action in state or federal court. *See id.* § 1415(i)(2)(A).[1]

This Court has long recognized that the IDEA's extensive statutory procedures imply an exhaustion requirement. *Honig*, 484 U.S. at 326-27. Parents may only bring IDEA claims in court if they have completed the administrative process first. At the same time, the Court has held that exhaustion of the IDEA's administrative procedures is excused "where exhaustion would be futile or inadequate." *Id.*; *accord Smith v. Robinson*, 468 U.S. 992, 1014 n.17 (1984).

Courts hearing IDEA disputes may "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). Such "equitable relief" may include an injunction requiring the school district to provide special education and related services that will ensure a FAPE. *Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 16 (1993). IDEA relief may also include financial compensation to "reimburse parents" for past educational expenses that should have been borne by the school district. *School Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 369-70 (1985). This Court has differentiated such relief from compensatory "damages," *id.* at 370-71, and has noted that the IDEA "does not allow for damages," *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 254 n.1 (2009); *see also Fry*, 137 S. Ct. at 754 n.8.

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[1] If state law channels the parents to a local educational agency first, then the hearing officer's decision is first appealable to the state agency. 20 U.S.C. § 1415(g).

2. Beyond the IDEA, the Constitution and other statutes also protect children with disabilities. As relevant here, the ADA provides that qualified individuals with disabilities shall not "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Unlike the IDEA, it also authorizes individuals to bring suits for money damages to redress violations. *Fry*, 137 S. Ct. at 750.

Over the years, Congress and this Court have addressed the relationship between the IDEA's remedial scheme and the ADA, other federal discrimination statutes, and the Constitution. In 1984, *Smith* held that the IDEA provided the "exclusive avenue" for students with disabilities to bring claims regarding their education—thus barring claims under other sources of federal law. 468 U.S. at 1009.

Congress responded by overturning *Smith* and enacting what is now 20 U.S.C. § 1415(*l*) to restore students' rights to bring both IDEA claims and non-IDEA discrimination claims. That provision states in relevant part:

> Nothing in [the IDEA] 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 . . . .

20 U.S.C. § 1415(*l*); *see* Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, § 3, 100 Stat. 796, 797 (HCPA).

Section 1415(*l*) also made the IDEA's preexisting exhaustion requirement governing IDEA claims applicable to certain non-IDEA claims, stating:

> [B]efore the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the procedures under subsections (f) and (g) [of Section 1415] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].

Section 1415(*l*)'s legislative history makes clear that this new exhaustion requirement for non-IDEA claims is subject to futility and inadequacy exceptions, just like the pre-existing exhaustion requirement for IDEA claims. *See* H.R. Rep. No. 99-296, at 7 (1985) (1985 House Report); S. Rep. No. 99-112 at 15 (1985) (1985 Senate Report).

This Court analyzed Section 1415(*l*) in *Fry*. There, the petitioners did not exhaust the IDEA's administrative procedures before suing under the ADA; they argued that exhaustion was not required because they were seeking money damages that were not "available under [the IDEA]." 20 U.S.C. § 1415(*l*). But *Fry* resolved the case on other grounds, holding that "exhaustion is not necessary when the gravamen of the plaintiff's [non-IDEA] suit is something other than the denial" of a FAPE. 137 S. Ct. at 748, 758-59.

B. Factual And Procedural Background

1. From ages nine through twenty, Miguel attended schools in the Sturgis Public School District.

Pet.App. 1a, 6a. Sturgis knew that Miguel required sign language for communication, and an expert recommended that he receive instruction in American Sign Language (ASL), the predominant language used by deaf people in the United States. *See id.* at 1a; JA21-22. But Sturgis assigned Miguel an unqualified classroom aide who was not trained to work with deaf students and did not know sign language, and Sturgis misled Miguel and his parents about the aide's qualifications. Pet.App. 1a-2a, 18a. Unwilling to teach Miguel ASL, Sturgis sought to teach him a different sign language called "Signed English"—"because [Sturgis] belie[ved] it would be easier *for the teaching assistant* to learn." JA23-24 (emphasis added); *see* JA24 (explaining that aide's "sole qualification" was that she had "attempt[ed] to teach herself Signed English by reading a book"). The aide ultimately failed to teach Miguel either ASL *or* Signed English. JA22.

In later years of Miguel's education, the aide would abandon him for hours at a time—so Miguel had no way to communicate with anyone. Pet.App. 18a. As a result, after over a decade attending school in the district, "Miguel still did not know any formal sign language" and instead "communicated through an idiosyncratic method of invented signs that Sturgis misled Miguel and his family to believe was 'Signed English,'" but was in fact "insufficient to allow Miguel to communicate with anybody unfamiliar with his unique signing method." JA22.

During the same period, Sturgis awarded Miguel inflated grades that did not reflect his mastery of the curriculum. Pet.App. 5a-6a. Based on Sturgis's misrepresentations, Miguel and his parents believed he would earn a high school diploma after twelfth

grade. But months before graduation, they were informed that Miguel qualified only for a "certificate of completion." *Id.* at 2a, 6a.

2. In December 2017, Miguel filed a due process complaint with the Michigan Department of Education alleging that Sturgis had violated the IDEA, ADA, Rehabilitation Act, and two Michigan laws. JA16-45. In May 2018, the hearing officer dismissed the ADA, Rehabilitation Act, and Michigan discrimination claims as "outside the jurisdiction of this Tribunal." Pet.App. 2a, 36a-38a.

In advance of the due process hearing, Sturgis served Miguel with a "Ten Day" settlement offer, as the IDEA contemplates. JA70; *see* 20 U.S.C. § 1415(i)(3)(D). On June 14, 2018, the parties met at the required preliminary meeting. JA70; Pet. 10; *see also* 20 U.S.C. § 1415(f)(1)(B)(i). The next day, they agreed to settle the IDEA claim pursuant to Section 1415(f)(1)(B)(iii). Pet. 10-11; JA70.

The settlement granted Miguel the full equitable relief he had been seeking in the IDEA proceedings. Sturgis agreed to Miguel's placement at the Michigan School for the Deaf; it agreed to pay for post-secondary compensatory education and sign language instruction for Miguel and his family; and it paid the family's attorney's fees. Pet.App. 2a. The settlement agreement did not release Miguel's ADA claim. After the parties informed the hearing officer of their settlement, she dismissed the case. *Id.*

3. In October 2018, Miguel filed a complaint against Sturgis in federal district court alleging violations of the ADA. JA10. He sought a declaration that Sturgis violated the ADA, as well as "compensatory damages," to address his emotional

distress, lost income, and other financial harm. JA16-17, 44-45; *see also* Cert. Reply 9-12.

Sturgis moved to dismiss, asserting that Miguel failed to exhaust administrative procedures as required by Section 1415(*l*). Pet.App. 3a. Sturgis argued that, to bring his ADA claim, Miguel should have rejected the IDEA settlement and obtained a final decision on the merits of his IDEA claim from the hearing officer. *Id.* The district court agreed with Sturgis and dismissed Miguel's ADA claim. *Id.* at 45a-52a.

4. A panel of the Sixth Circuit affirmed, with Judge Stranch dissenting. Pet.App. 1a-35a.

a. The majority first concluded that Section 1415(*l*)'s exhaustion requirement applied to Miguel's ADA claim. *Id.* at 5a-8a. The majority recognized that this claim seeks compensatory damages—"a specific remedy that is unavailable under the IDEA." *Id.* at 7a. But the majority found that Miguel nonetheless "'seek[s] relief that is also available under [the IDEA],'" insofar as "[t]he crux of Perez's [ADA] complaint is that he was denied an adequate education." *Id.* at 5a-7a (quoting 20 U.S.C. § 1415(*l*)). The court reasoned that Section 1415(*l*) applies because the IDEA provides relief for that injury—"even though Perez wants a remedy he cannot get" under that statute. *Id.* at 7a-8a. And the majority concluded that Miguel did not exhaust the IDEA administrative process because the hearing officer "never determined whether Perez received [a FAPE]," due to the parties' settlement. *Id.* at 9a.

The Sixth Circuit next rejected Miguel's argument that further exhaustion of the IDEA process—beyond the settlement—should be excused as futile. *Id.* at

10a-14a. The majority asserted that Section 1415(*l*)'s text "does not come with a futility exception." *Id.* at 10a. Invoking this Court's analysis of the Prison Litigation Reform Act (PLRA) in *Ross v. Blake*, 578 U.S. 632 (2016), the Sixth Circuit reasoned that "[a]ny futility exception" recognized in prior decisions "cannot survive *Ross*, which prohibits judge-made exceptions to statutory exhaustion requirements." Pet.App. 10a-12a & n.*.

In the alternative, the Sixth Circuit held that even if a futility exception existed, it would not help Miguel. *Id.* at 11a-14a. The majority reasoned that "when an available administrative process could have provided relief" for Miguel's IDEA claim, further exhaustion is "not futile" just because he "decide[d] not to take advantage of" that process and settled instead. *Id.* at 13a. In other words, the majority believed that to preserve his right to later bring a separate ADA damages claim, Miguel had to reject the favorable IDEA settlement and instead litigate his IDEA claim all the way to a merits decision from the hearing officer.

b. Judge Stranch dissented. *Id.* at 15a-35a. She emphasized that "Supreme Court precedent compels the conclusion" that Section 1415(*l*) contains a futility exception, citing *Honig*. *Id.* at 24a, 28a-29a. She noted that "every single one of our sister circuits" has recognized such an exception based on that controlling precedent. *Id.* at 29a-30a. And she argued that the majority had misread *Ross*. *Id.* at 30a-35a. Judge Stranch also concluded that Miguel's settlement established futility, and that forcing students to turn down IDEA settlements as the price for asserting their ADA rights is "exactly the opposite of what Congress intended." *Id.* at 24a, 26a-28a.

SUMMARY OF ARGUMENT

Section 1415(*l*)'s exhaustion requirement does not bar Miguel's ADA claim for money damages.

I. Miguel's ADA claim is not subject to Section 1415(l)'s exhaustion requirement. That requirement only applies when the plaintiff's non-IDEA "civil action" is "seeking relief that is also available under [the IDEA]." Here, Miguel's complaint makes clear he is seeking money damages, which all agree are *not* available under the IDEA. Section 1415(*l*) therefore does not apply.

This interpretation follows directly from Section 1415(*l*)'s text, which makes clear that the exhaustion requirement turns on the precise type of "relief" that the plaintiff's "civil action" is "seeking"—i.e., on the particular remedies the plaintiff requests in his complaint. That understanding tracks how the operative statutory language is normally used in standard dictionaries, the Federal Rules of Civil Procedure, this Court's precedents, and other provisions of the IDEA.

It also tracks Section 1415(*l*)'s history and purpose. Section 1415(*l*)'s framers expressly noted that exhaustion is not required when the IDEA procedures cannot award the relief sought. Congress enacted Section 1415(*l*) to ensure that children with disabilities may obtain relief under both the IDEA and other federal laws without delay. If parents seek only remedies that the IDEA cannot provide, there is no good reason to force them to participate in time-consuming, adversarial, and potentially costly administrative proceedings.

The Sixth Circuit's contrary approach is deeply flawed. The court's assertion that Section 1415(*l*)'s

applicability does not turn on the remedies that the plaintiff requests—i.e., the particular *relief* the plaintiff is *seeking*—directly contradicts the statutory text. Nor can it be squared with *Fry*, which held that Section 1415(*l*)'s applicability turns on what relief the plaintiff actually seeks in his complaint, rather than on what relief he theoretically could have sought.

II. Even if Section 1415(*l*) applied here, Miguel satisfied its exhaustion requirement by pursuing his IDEA claim in administrative proceedings until it was dismissed by settlement. In these circumstances, further exhaustion is futile and unnecessary.

Exhausting administrative procedures means pursuing them to an "appropriate conclusion" under the statutory scheme at issue. *Aircraft & Diesel*, 331 U.S. at 767. The IDEA's express provisions encouraging settlement leave no doubt that settlement is the preferred conclusion of IDEA proceedings. The unique structure of Section 1415(*l*)'s exhaustion requirement—which, unlike most other such requirements, applies to non-IDEA claims that typically cannot be litigated in the administrative process—confirms this textual point. The Sixth Circuit's holding that Miguel could satisfy Section 1415(*l*)'s exhaustion requirement only by litigating IDEA proceedings to conclusion and *losing* is untenable.

Further exhaustion in these circumstances would have been futile and is therefore excused. As this Court held in *Honig*, the IDEA's baseline exhaustion requirement for IDEA claims comes with a futility exception. Section 1415(*l*) carries that exception over to non-IDEA claims. The Sixth Circuit had no license to depart from *Honig*. Moreover, that court was wrong to hold that exhaustion was not futile here.

Once the hearing officer dismissed Miguel's ADA claim and then dismissed the IDEA claim pursuant to the settlement agreement, there was nothing left for the administrative proceeding to accomplish.

Miguel was not required to reject Sturgis's settlement offer of full IDEA relief—and to pursue that identical relief in the administrative process—to preserve his rights under the ADA. That empty exercise would have been worse than pointless: It would have delayed Miguel's receipt of a FAPE, while threatening severe financial and educational loss for Miguel and his family. Section 1415(*l*) does not mandate that perverse result.

ARGUMENT

I. THE IDEA DOES NOT REQUIRE EXHAUSTION WHEN A NON-IDEA CLAIM SEEKS RELIEF THAT THE IDEA DOES NOT AUTHORIZE

Congress enacted Section 1415(*l*) to overturn *Smith v. Robinson*, 468 U.S. 992 (1984), and make clear that the IDEA is not the exclusive mechanism for vindicating the rights of children with disabilities. That provision expressly contemplates that such children may invoke other statutes—including the ADA—to secure relief. Section 1415(*l*) places a single restriction on such non-IDEA litigation: It states that litigants must exhaust the IDEA's administrative procedures "before the filing of a civil action under [the ADA or other specified] laws *seeking relief that is also available* under [the IDEA]." 20 U.S.C. § 1415(*l*) (emphasis added). And even then, Section 1415(*l*) requires exhaustion only "to the same extent as would be required had the action been brought under [the IDEA]." *Id.* This means that when a non-IDEA claim

seeks only relief that the IDEA does not authorize, exhaustion is unnecessary.

Here, Miguel's ADA claim seeks money damages—a form of relief that all agree is *not* available under the IDEA. JA58. Section 1415(*l*)'s exhaustion requirement does not apply to that claim.

A. Section 1415(*l*) Requires Exhaustion Only When The Remedy Sought Is Available In The IDEA Administrative Process

1. As a textual matter, determining whether a non-IDEA "civil action" is subject to Section 1415(*l*) exhaustion requires a two-step analysis of (1) what "relief" the plaintiff's "civil action" is "seeking," and (2) whether that relief is "available" under the IDEA.

a. Starting with the first step, the verb "seek" means "[to] ask for," "to try to acquire or gain," or "[to] request." *Webster's Third New International Dictionary* 2055 (1986); *see also New Oxford American Dictionary* 1581 (3d ed. 2010) ("attempt or desire to obtain or achieve," "ask for"). And "[t]he ordinary meaning of 'relief' in the context of a lawsuit is the 'redress[] or benefit' that attends a favorable judgment." *Fry*, 137 S. Ct. at 753 (alteration in original) (quoting *Black's Law Dictionary* 1161 (5th ed. 1979)).

Section 1415(*l*) thus requires the court to determine what specific remedy the plaintiff's complaint is asking the court to award. As the Court emphasized in *Fry*, Section 1415(*l*) "treats the plaintiff as 'the master of the claim,'" such that the plaintiff both "identifies [her claim's] remedial basis," and "is subject to exhaustion or not based on that choice." *Id.* at 755 (citation omitted). "A court deciding whether [Section] 1415(*l*) applies must

therefore examine whether a "plaintiff's complaint—the principal instrument by which she describes her case"—seeks forms of relief that are available under the IDEA. *Id.*

Looking to the complaint to determine what "relief" the plaintiff is "seeking" tracks Federal Rule of Civil Procedure 8(a)(3), which requires every complaint to contain a "demand for the *relief sought*." Fed. R. Civ. P. 8(a)(3) (emphasis added). It also tracks *Bowen v. Massachusetts*, 487 U.S. 879 (1988), where the Court looked to the specific forms of relief requested in the plaintiff's complaint to determine whether the case qualified as an "action . . . *seeking relief* other than money damages" for purposes of the Administrative Procedure Act (APA), 5 U.S.C. § 702. 487 U.S. at 892-93 (emphasis added); *see also McCarthy v. Madigan*, 503 U.S. 140, 142, 152 (1992) (stating that plaintiff was "seeking only money damages" because such damages were "the only relief requested by [him]" in complaint).

The references in Rule 8, *Bowen*, and *McCarthy* to the *relief* being *sought* track how this Court ordinarily uses those terms—to describe the specific remedies a plaintiff directly requests in a lawsuit. *See, e.g.*, *Biden v. Texas*, 142 S. Ct. 2528, 2536 (2022) (describing complaint as seeking "injunctive relief, declaratory relief, and vacatur"); *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1345 (2021) ("monetary relief"). The IDEA elsewhere uses the word "relief" in this same way, to refer to the particular remedies

awarded at the end of a successful lawsuit. *See* 20 U.S.C. § 1415(i)(2)(C)(iii), (3)(D)(i)(III).[2]

b. After identifying the "relief" that the complaint is "seeking," a court must then proceed to the second step and ask whether that relief is also "available" under the IDEA. *Id.* § 1415(*l*). If not, exhaustion is not required.

As this Court observed in *Fry*, "relief is 'available'" only "when it is 'accessible or may be obtained.'" 137 S. Ct. at 753 (quoting *Ross v. Blake*, 578 U.S. 632, 642 (2016)). Relief is therefore *not* available under the IDEA if the relief sought is a remedy that the IDEA cannot provide. Here, it is undisputed that compensatory damages are not available under the IDEA. *See supra* at 8; BIO 10; Pet.App. 7a. It follows that a plaintiff seeking only such damages under a non-IDEA statute (like the ADA) need not exhaust that claim.

2. Section 1415(*l*) also states that exhaustion is required only "to the same extent as would be required had the [non-IDEA] action been brought under the IDEA." This additional limitation confirms that Congress did not require exhaustion when the plaintiff brings a non-IDEA claim seeking money damages unavailable under the IDEA.

To apply Section 1415(*l*)'s "to the same extent" language, a court must imagine a hypothetical IDEA action based on the same alleged misconduct and seeking the same relief as the non-IDEA action

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[2] Of course, "substance, not surface," controls whether Section 1415(*l*)'s exhaustion requirement applies. *Fry*, 137 S. Ct. at 755. A plaintiff cannot "bypass" exhaustion simply by using "particular labels" for relief that, in substance, is available under the IDEA. *Id.*

actually at issue. If the plaintiff in that hypothetical action would not be subject to the IDEA's exhaustion requirement, then Section 1415(*l*) does not require exhaustion of the non-IDEA action either. The "to the same extent" language thus makes clear that any *exceptions* to exhaustion that apply to IDEA claims also apply to non-IDEA claims.

In *Honig v. Doe*, 484 U.S. 305 (1988), this Court held that the exhaustion requirement governing IDEA claims incorporates standard administrative law exceptions for when the available administrative relief is "inadequate." *Id.* at 326-27; *see also infra* at 41-51 (discussing separate exception for "futility"). This "inadequa[cy]" exception to exhaustion applies where an agency "lack[s] authority to grant the type of relief requested." *McCarthy*, 503 U.S. at 147-48; *see also id.* at 156-57 (Rehnquist, C.J., concurring in judgment).[3]

Under *Honig* and *McCarthy*, therefore, a hypothetical IDEA claimant would be excused from exhausting a money damages claim. The same rule carries over to non-IDEA claimants subject to Section 1415(*l*).

The IDEA's legislative history confirms that the *Honig*/*McCarthy* inadequacy exception also applies to Section 1415(*l*). The House Report on the HCPA expressly declared, in no uncertain terms, that exhaustion is "not appropriate"—and would *not* be required under what is now Section 1415(*l*)—when "the hearing officer lacks the authority to grant

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[3] *See also Reiter v. Cooper*, 507 U.S. 258, 269 (1993); *McNeese v. Board of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 675-76 (1963); *Montana Nat'l Bank of Billings v. Yellowstone County*, 276 U.S. 499, 505 (1928).

the relief sought." 1985 House Report at 7. That unequivocal statement is strong evidence of the original public meaning of Section 1415(*l*)'s key term "exhaustion." *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 382, 388 (2012) (approving legislative history as guide to "linguistic usage"); *Fry*, 137 S. Ct. at 750 (invoking legislative history to explain Section 1415(*l*)). And it removes any doubt that Section 1415(*l*) does not require exhaustion when a non-IDEA claim seeks remedies that cannot be obtained in IDEA proceedings.

3. *Fry* left open whether Section 1415(*l*) applies to non-IDEA claims seeking particular remedies that the IDEA does not authorize. *See* 137 S. Ct. at 752 n.4. Nonetheless, its reasoning reinforces the textual analysis of Section 1415(*l*) set forth above. The key principle embraced in *Fry*—that exhaustion is not required of claims seeking relief that is beyond a hearing officer's power to grant—leads directly to the conclusion that exhausting a money damages claim is not required.

Fry recognized that Section 1415(*l*)'s exhaustion requirement applies "when (but only when) [a non-IDEA] suit 'seek[s] relief that is also available under the IDEA.'" *Id.* at 752. So as a threshold matter, the Court held, Section 1415(*l*)'s exhaustion requirement does not apply unless the plaintiff "seek[s] relief for the denial of FAPE." *Id.* That is because of a fundamental limit on the power of IDEA hearing officers: "The only relief that an IDEA officer can give—hence the thing a plaintiff must seek in order to trigger Section 1415(*l*)'s exhaustion rule—is relief for the denial of a FAPE." *Id.* at 753. As a result, relief of *any* kind for a claim that does not have

the denial of a FAPE as its "gravamen" is beyond a hearing officer's power to award, is not "available" under the IDEA, and therefore does not trigger Section 1415(*l*)'s exhaustion requirement. *Id.* at 754-55.

This case involves a different—but analogous—limit on the power afforded IDEA hearing officers, which leads to the same result under *Fry*. The IDEA grants hearing officers only "equitable authority" to award "equitable relief" to redress educational losses. *Florence Cnty. Sch. Dist. Four v. Carter ex rel. Carter*, 510 U.S. 7, 12, 16 (1993). They may not award legal remedies that redress other types of losses that the denial of a FAPE may cause, such as money damages to compensate for lost income, reduced earning capacity, medical expenses, or emotional distress. *Supra* at 8. As in *Fry*, such legal remedies are beyond a hearing officer's power to award, are not "available" under the IDEA, and likewise do not trigger Section 1415(*l*)'s exhaustion requirement.

B. Section 1415(*l*) Establishes A Sound And Workable Policy

The policy choice embodied in Section 1415(*l*)'s plain language is a sensible one. It requires exhaustion only where the hearing process can provide the relief actually sought by the child. It spares all parties the burden of potentially time-consuming and burdensome procedures—without undermining the purposes of exhaustion. It also preserves the discretionary authority of district courts to stay litigation of non-IDEA claims in the unlikely event that a parent brings both IDEA and non-IDEA claims in parallel.

1. All agree that if a child pursues IDEA and non-IDEA claims to obtain the same equitable relief for the denial of a FAPE, Section 1415(*l*) requires exhaustion of the IDEA administrative process before the non-IDEA claim can proceed in court. But if the child seeks only relief that the IDEA *cannot* provide, there is no good reason to force that child (and the school district) to participate in time-consuming, adversarial, and potentially costly IDEA administrative proceedings.

Such IDEA proceedings will necessarily fail to provide the student the benefit he is trying to obtain—and will instead create unnecessary burdens for all involved. At the end of the administrative process, when the parents are finally able to file the non-IDEA claim that they wanted to bring all along, the parties will have to begin a new set of proceedings to decide the non-IDEA legal questions that actually matter. And in cases where a plaintiff's IDEA claim is resolved via settlement, the policy consequences of the Sixth Circuit's position are even worse: If the Court agrees with the Sixth Circuit on the issues discussed in Part II, *infra* at 29-51, then the plaintiff will *never* be able to bring a non-IDEA claim.

That regime would be fundamentally inconsistent with the usual purpose of exhaustion. Exhaustion requirements are premised on the idea that "[a] complaining party may be successful in vindicating his rights in the administrative process." *McKart v. United States*, 395 U.S. 185, 194-95 (1969). They thus serve "very practical notions of judicial efficiency," because if the complaining party "is required to pursue his administrative remedies, the courts may never have to intervene." *Id.*; *McCarthy*, 503 U.S. at 145 (explaining that "exhaustion promotes judicial

efficiency" because "judicial controversy may well be mooted"); *Parisi v. Davidson*, 405 U.S. 34, 37 (1972) (similar).

It would therefore be "anomalous" for Congress to "foreclose[] suit" on exhaustion grounds where an administrative decisionmaker "has no power to order [the] corrective action" that the plaintiff seeks. *McNeese v. Board of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 675-76 (1963); *see also Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 404 (1988). That goes against the very idea of what it means to exhaust. *See, e.g.*, *Reiter v. Cooper*, 507 U.S. 258, 269 (1993) (explaining that "doctrine of exhaustion of administrative remedies" applies only "[w]here relief is available from an administrative agency"). The efficiency rationale for exhaustion does not apply when the administrative process cannot moot the need for a lawsuit.

It is true that exhaustion may sometimes create "a useful record for subsequent judicial consideration" of the *IDEA claim* litigated in the administrative process. *McCarthy*, 503 U.S. at 145; *see also* Pet.App. 13a-14a. That is because courts adjudicating such an IDEA case must resolve the same legal and factual issues raised in the IDEA administrative proceeding. *See* 20 U.S.C. § 1415(i)(2). Notably, Congress has required such courts to defer to factual findings in the IDEA administrative record. *See Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982) (citing what is now 20 U.S.C. § 1415(i)(2)(C)).

Those same considerations do not apply to non-IDEA claims seeking money damages. For one thing, such claims—including under the ADA—are subject to the Seventh Amendment and must

typically be tried to a jury. Congress has not required juries adjudicating non-IDEA claims to defer to factual findings made in the IDEA administrative process, and it is hard to see how it could do so given the Seventh Amendment. Nor has Congress required such deference from judges adjudicating non-IDEA claims—even though it *did* require deference in IDEA cases.

Moreover, the non-IDEA case will necessarily involve different issues from those addressed in the IDEA administrative hearing. For example, the ADA imposes an intent requirement that does not apply under the IDEA, and allows other defenses (such as undue burden and fundamental alteration) that are not available under the IDEA. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 186-87 (2002) (ADA liability generally requires "intentional conduct" by the defendant); *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013) (ADA liability, unlike IDEA liability, depends in part on "costs, administrative burdens, [and] program alterations"). Any benefit to an ADA lawsuit from an administrative record focused on an alleged IDEA violation would be marginal at best—and scarcely worth the time and expense involved.

2. Applying Section 1415(*l*)'s plain-meaning interpretation is also fully workable. At oral argument in *Fry*, some Justices questioned whether that interpretation might allow plaintiffs to evade the IDEA's administrative procedures. *Fry* Oral Argument Tr. 7:2-11, 8:4-9, 57:10-24, 60:20-25. Any such concerns are misplaced.

a. In most cases, parents whose children are not receiving a FAPE will want educational relief from the school district as quickly and efficiently as

possible. That means they will virtually always bring an IDEA administrative due process claim, regardless of whether other non-IDEA claims are also pursued in court. Few, if any, will surrender their entitlement to the full suite of relief available under the IDEA, in favor of money damages under non-IDEA statutes.

Parents seeking immediate relief for their children will typically have no incentive to bypass the IDEA administrative process. That process is geared toward ensuring that students with disabilities receive a FAPE, and seeking relief through that process is usually faster and more cost-effective than filing a non-IDEA lawsuit. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 61 (2005). That is particularly true if a settlement can be reached at the statutorily prescribed "[p]reliminary meeting" that is part of those proceedings. 20 U.S.C. § 1415(f)(1)(B)(i). Parents are also more likely to prevail on IDEA claims, given the heightened intent requirements and unique defenses available to defendants in non-IDEA cases. *Supra* at 24.

In some limited circumstances, parents will have good reasons for foregoing the IDEA administrative process. IDEA relief from the school district might no longer be necessary—for example, if the school has already committed to remedy the IDEA violation (by formal settlement or otherwise), or if the would-be claimant has aged out of school or moved to a different district. In those situations, so long as parents are not seeking IDEA monetary relief, such as reimbursement for past educational expenses or future compensatory education, proceeding directly to court is entirely appropriate. It makes no sense to force parents to clog up the state administrative

system with pointless IDEA claims, simply to preserve their child's rights under other statutes.

b. Theoretically, some parents could try to simultaneously pursue IDEA relief in administrative proceedings and non-IDEA relief in court. So long as the only remedy they are seeking in the non-IDEA case is unavailable under the IDEA, Section 1415(*l*) would not prohibit this dual-track approach. But if parents try to tack on an IDEA claim to their non-IDEA case—or seek a remedy that *is* available under the IDEA—the district court would apply Section 1415(*l*) and dismiss those unexhausted claims. *See, e.g.*, *Jones v. Bock*, 549 U.S. 199, 219-24 (2007) (permitting dismissal of unexhausted claims and stating that, "if a complaint contains both good and bad claims, the court proceeds with the good and leaves the bad"); *Cassidy v. Indiana Dep't of Corr.*, 199 F.3d 374, 376-77 (7th Cir. 2000) (affirming dismissal of one aspect of relief sought by plaintiff).

Even in a dual-track case where Section 1415(*l*)'s exhaustion requirement does not apply, other legal doctrines grant district courts full authority to delay adjudication of the non-IDEA claim to await the conclusion of IDEA proceedings. In *Clinton v. Jones*, 520 U.S. 681 (1997), this Court recognized that a district court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Id.* at 706. Granting a stay of the non-IDEA case will often be appropriate in non-IDEA cases to minimize the burdens of parallel litigation.

For all these reasons, parents will have little incentive to bring simultaneous IDEA and non-IDEA cases. And even if they do so, courts have ample tools—apart from Section 1415(*l*)—to manage the cases in an orderly fashion.

C. The Sixth Circuit's Analysis Is Flawed

The Sixth Circuit held that "[a] lawsuit that seeks relief for the denial of an appropriate education is subject to section 1415(*l*), even if it requests a remedy the IDEA does not allow." Pet.App. 7a. The court's precise rationale is difficult to discern. But its conclusion cannot be squared with the statutory text.

According to the Sixth Circuit, "[t]he focus of the [Section 1415(*l*)] analysis is not the kind of relief the plaintiff wants, but the kind of *harm* he wants relief from." *Id.* at 8a. That exclusively harm-focused approach is irreconcilable with the text: Section 1415(*l*) expressly turns on the "relief" a plaintiff's non-IDEA lawsuit is actually "*seeking*." Although *Fry* makes clear that the harm at issue must be redressable under the IDEA, 137 S. Ct. at 754-55, that is not the only requirement for triggering Section 1415(*l*) exhaustion.

As *Fry* explained, the applicability of Section 1415(*l*) turns not on "whether the suit '*could have sought*' relief available under [the IDEA]," but instead on "whether [the] lawsuit *in fact* 'seeks' relief available under the IDEA." *Id.* at 755 (emphasis added). What matters are the particular "choice[s]" a plaintiff makes when bringing his case. *Id.* The Sixth Circuit's holding that "the plaintiff's choice of remedy is irrelevant" is untenable. Pet.App. 8a.

The Sixth Circuit emphasized that "the word 'relief'" was "key" to its understanding of when Section 1415(*l*)'s requires exhaustion. *Id.* at 7a. But the court never provided a coherent definition of what it believes "relief" means here. *Fry* makes clear that the "ordinary meaning of 'relief' in the context of a lawsuit is the 'redress[] or benefit' that attends a

favorable judgment." 137 S. Ct. at 753 (quoting *Black's Law Dictionary* 1161 (5th ed. 1979)). That is how "relief" is used elsewhere throughout the IDEA—as a synonym for remedies. *Supra* at 17-18 (citing provisions). Section 1415(*l*)'s reference to the "relief" that the plaintiff's civil action is "seeking" thus necessarily refers to the specific remedies requested in the complaint for the harm at issue. *Id.* at 16-18.

The Sixth Circuit rejected a remedy-focused understanding of "relief," concluding that exhaustion is required "even though [Miguel] wants a remedy he cannot get." Pet.App. 8a. Instead, the court's harm-focused approach examines "relief" in terms of the "the wrong that the IDEA was enacted to address" and "the conduct the plaintiff complains about." *Id.* at 7a-8a. The court thus emphasized that "'[r]elief available' under the IDEA" refers to "relief for the events, condition, or consequences of which the person complains, not necessarily relief of the kind the person prefers." *Id.* at 8a.

The Sixth Circuit is certainly right that Section 1415(*l*) only applies if the "relief" being sought by the plaintiff is for a harm covered by the IDEA. *See Fry*, 137 S. Ct. at 754. But that condition is only necessary, not sufficient, to trigger Section 1415(*l*)'s exhaustion requirement. The plaintiff must *also* actually be "seeking" a specific *remedy* that is "available" under the IDEA. A plaintiff seeking only money damages—which are *not* available—need not exhaust.

II. SECTION 1415(*l*) DOES NOT REQUIRE CHILDREN WITH DISABILITIES TO REJECT SETTLEMENTS OF IDEA CLAIMS

Section 1415(*l*) requires a non-IDEA plaintiff to "exhaust" the IDEA administrative process "to the same extent" as would be required if he were instead bringing suit in court under the IDEA. If the Court rejects Miguel's primary argument for why Section 1415(*l*) does not apply here, it should hold that the exhaustion requirement is satisfied whenever a child with disabilities pursues his IDEA administrative claim to an appropriate conclusion under the IDEA statutory scheme. This would include contesting the IDEA claim to a final decision on the merits—regardless of whether the child wins or loses. It would also include any settlement agreement that resolves the child's IDEA administrative claims. Either way, the goals of IDEA exhaustion are fully satisfied, and any further exhaustion would be futile.

Here, Miguel and Sturgis fully resolved Miguel's IDEA claim in a settlement that provided him payment for tuition at the Michigan School for the Deaf (MSD), post-secondary compensatory education, sign language instruction, and attorney's fees. Pet.App. 2a. The hearing officer then dismissed Miguel's IDEA claim based on that settlement. This textbook resolution of Miguel's IDEA claim constitutes exhaustion under Section 1415(*l*). Further exhaustion would be pointless, given that the settlement gave Miguel full IDEA relief. Miguel is now free to vindicate his ADA rights.

A. A Settlement Conclusively Resolving An IDEA Administrative Claim Qualifies As Exhaustion

This Court has never announced a one-size-fits-all definition of "exhaustion" applicable to every statutory scheme containing an exhaustion requirement. Rather, exhaustion is context-specific. The Court has generally stated that exhausting administrative procedures requires "pursuing [such procedures] to their *appropriate conclusion*" and "awaiting their *final outcome* before seeking judicial intervention." *Aircraft & Diesel Equip. Corp. v. Hirsch*, 331 U.S. 752, 767 (1947) (emphasis added).

What qualifies as an "appropriate conclusion" necessarily depends on the precise statutory framework being considered. As the Court has repeatedly emphasized, "the doctrine of administrative exhaustion should be applied with a regard for the particular administrative scheme at issue." *Smith v. Berryhill*, 139 S. Ct. 1765, 1776 (2019) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)); *see also Parisi*, 405 U.S. at 37; *McKart*, 395 U.S. at 193. The analysis demands an "intensely practical" inquiry into how each statute's text, structure, and purpose fit together. *Bowen v. City of New York*, 476 U.S. 467, 484 (1986). And courts considering how exhaustion works must be "sensitive to the[] differences" between different statutes. *Berryhill*, 139 S. Ct. at 1776.

Here, as school boards across the country have recognized, the "IDEA's framework clearly shows the intent of Congress that the special education needs of students be addressed collaboratively by parents and schools" where possible. *Fry* Amicus Br. of Nat'l Sch.

Bd. Ass'n (NSBA) 6. Even when conflict arises, the IDEA's administrative procedures "are designed to encourage informal and early resolution." *Id.* at 4. Resolving an IDEA due process complaint by settlement thus qualifies as an "appropriate conclusion" to the IDEA administrative process. *Aircraft & Diesel*, 331 U.S. at 767; *see* Pet. 28 n.7. The Sixth Circuit was wrong to hold otherwise.

1. Dismissal Based On An IDEA Settlement Is The Preferred Resolution Of The IDEA Administrative Process

a. Section 1415(*l*)'s text, structure, and history make absolutely clear that settlement is not merely an available means of resolving IDEA disputes, but in fact the *preferred* mechanism for doing so. A student who successfully resolves his IDEA administrative complaint by persuading the school district to provide appropriate relief has done everything right under the IDEA. Such resolution clears the way for him to seek non-IDEA relief in court.

As this Court observed forty years ago, litigating IDEA claims to conclusion was (and still is) often a "ponderous" process. *School Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 370 (1985). Faced with that reality, Congress has since established multiple provisions to facilitate and encourage settlement as a means of ensuring that children with disabilities receive urgently needed educational relief without delay.

When promulgating the HCPA in 1986, Congress incentivized settlement of IDEA claims by limiting a plaintiffs' ability to recover attorney's fees after rejecting a settlement offer. Specifically, Congress

established that plaintiffs who do not "accept[]" certain offers within ten days may not recoup post-offer attorney's fees if "the relief finally obtained" is "not more favorable" than "the offer of settlement." HCPA § 2(D); *see* 20 U.S.C. § 1415(i)(3)(D)(i). That placed a weighty thumb on the scale in favor of settlement.

Congress went further a decade later. In 1997, Congress directed that state and local educational agencies "shall" establish a voluntary "mediation process" for resolving IDEA disputes before "a qualified and impartial mediator." Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, § 615(e), 111 Stat. 37, 90 (1997 IDEA Amendments); *see* 20 U.S.C. § 1415(e). And for "parents who choose not to use the mediation process," Congress instructed that state and local agencies may afford them an "[o]pportunity to meet" with certain other "disinterested part[ies]" in an effort to resolve the dispute amicably. 1997 IDEA Amendments § 615(e)(2)(B); *see* 20 U.S.C. § 1415(e)(2)(B).

The House Report addressing these 1997 amendments declared a "*strong preference* that mediation become the norm for resolving disputes under IDEA." H.R. Rep. No. 105-95, at 106 (1997) (emphasis added). And it further emphasized that "in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind." *Id.*

Seven years later, Congress again reaffirmed its strong preference for settlement, amending the IDEA to include an express finding that "[p]arents and schools should be given expanded opportunities to

resolve their disagreements in positive and constructive ways." Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 601(c)(8), 118 Stat. 2647, 2650 (2004 IDEA Amendments); 20 U.S.C. § 1400(c)(8).

With that goal in mind, Congress directed that the local educational agency "shall convene" a "[p]reliminary meeting" with the parents "within 15 days of receiving notice of the parents' complaint." 2004 IDEA Amendments, § 615(f)(1)(B); 20 U.S.C. § 1415(f)(1)(B). This preliminary meeting affords the parties an "opportunity to resolve the complaint" early via a "[w]ritten settlement agreement." *Id.* To facilitate the settlement process, Congress provided that "all of the applicable timelines for a due process hearing" before a hearing officer are stayed for 30 days following "the receipt of the complaint." *Id.* Congress also imposed requirements on written settlement agreements reached at a preliminary hearing or in mediation, including that the settlement be "enforceable" in court. 2004 IDEA Amendments, § 615(e)(2)(F), (f)(1)(B)(iii); 20 U.S.C. § 1415(e)(2)(F), (f)(1)(B)(iii).

The House Report on the 2004 Amendment made clear that the point of all this was "to speed the resolution time so that children with disabilities obtain the needed services and education in a timely manner." H.R. Rep. No. 108-77, at 85-86 (2003). The Senate Report likewise noted the "high value [Congress placed] on the successful use of mediation." S. Rep. No. 108-185, at 37 (2003). The preliminary-meeting requirement served these aims by affording "parents and school districts a new opportunity to sit down and work out the issues" in a "rapid time frame, so that the child can be better served." 149 Cong. Rec.

10,000 (2003) (Rep. Carter). And by giving the parties an additional "tool[]" to "resolve complaints outside of the courtroom," the preliminary hearing was meant to ease the "burden for many districts" caused by protracted IDEA litigation. 150 Cong. Rec. 24,278 (2004) (Sen. Enzi).

All these measures designed "to produce accord" between the parties, *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017), confirm that Congress viewed settlement as an appropriate conclusion of IDEA proceedings. Congress recognized that settling IDEA claims early allows children with disabilities to immediately receive urgently needed IDEA relief, without having to traverse lengthy, costly, and "often 'ponderous'" administrative proceedings all the way through to an adversarial hearing and decision. *Honig*, 484 U.S. at 322; *see also* Perry A. Zirkel, *Post*-Fry *Exhaustion Under the IDEA*, 381 Ed. L. Rep. 1, 3 n.21 (2020, Westlaw) (explaining that most IDEA proceedings last far longer than the statutory timeline); *Fry* NSBA Amicus Br. 16-18 (touting benefits of IDEA settlements). Congress enshrined that pro-settlement approach in the IDEA's text.

b. Treating settlement of an IDEA claim as exhaustion also makes sense given the unique structure and purpose of Section 1415(*l*)'s exhaustion requirement.

Most exhaustion frameworks force a plaintiff to pursue a legal claim to conclusion in an administrative forum before bringing that *same* legal claim to a court. *See, e.g.*, 5 U.S.C. §§ 702-706 (APA); 42 U.S.C. § 405 (Social Security Act (SSA)). When that is so, exhaustion "prevent[s] premature interference with agency processes" and allows the

agency to "correct its own errors" with respect to the claim. *Weinberger*, 422 U.S. at 765. Exhaustion can thus "moot" any need to go to court, *Parisi*, 405 U.S. at 37, "if the result of the [administrative process] is fully favorable" to the plaintiff, *Berryhill*, 139 S. Ct. at 1772 n.5. Exhaustion also facilitates "judicial review" of the agency's ruling on the particular claim at issue, because courts typically grant substantial deference to agency factual and/or legal determinations on that claim. *See, e.g.*, 5 U.S.C. § 706(2)(E) (substantial evidence review of agency factual findings); 42 U.S.C. § 405(g) (same); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (deferential review of agency legal interpretations).

In these standard administrative contexts, it makes little sense to treat a settlement as a form of exhaustion that then authorizes a subsequent lawsuit on the settled claim. After all, the claimant's decision to settle the claim at the administrative level reflects a final decision to conclusively end the dispute and accept the settlement's agreed-upon relief. The settlement cuts short the agency's deliberative process and eliminates any need for judicial review of a final decision.

Section 1415(*l*) is totally different. The Sixth Circuit's holding that Section 1415(*l*) applies to claims seeking remedies that the IDEA does not authorize, *contra supra* at 15-28, means that Section 1415(*l*) forces plaintiffs to pursue an IDEA claim in the IDEA administrative process *before* suing on a different claim under the Constitution, the ADA, or other anti-discrimination statutes. But the purpose of Section 1415(*l*) exhaustion under that interpretation is not to obviate the need for the plaintiff to bring the non-IDEA claim altogether, or to set up deferential

judicial review of the non-IDEA claim. After all, IDEA proceedings are not designed to resolve a child's non-IDEA claims; hearing officers lack authority to award key forms of relief (like money damages) often sought in non-IDEA cases; and Congress did not require courts or juries to defer to hearing officers' factual findings in non-IDEA cases. *Supra* at 23-24.

Rather, the purpose of Section 1415(*l*) on that view would be to sequence IDEA and non-IDEA claims in a way that promotes efficiency. The provision is "designed to channel requests for a FAPE (and its incidents) through IDEA-prescribed procedures." *D.D. ex rel. Ingram v. Los Angeles Unified Sch. Dist.*, 18 F.4th 1043, 1049 (9th Cir. 2021) (en banc). Such sequencing ensures that "an IDEA hearing officer" will hear all FAPE-related disputes in the first instance, leveraging the officer's "experience[] in addressing exactly" those kinds of disputes. *Fry*, 137 S. Ct. at 754.

More fundamentally, because IDEA and non-IDEA claims involve different elements and defenses (and typically implicate different forms of relief), a claimant's decision to settle his IDEA claim implies nothing about the non-IDEA claim he wishes to bring in court.[4] It certainly does not relinquish that non-IDEA claim. Rather, settlement of an IDEA claim conclusively ends *only* the IDEA dispute, thus enabling the parties to move on to address their remaining disputes under other statutes. Treating settlement as exhaustion under Section 1415(*l*) thus

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[4] For example, a school might recognize that corrective action is needed to provide a FAPE but vigorously dispute that it has acted with the requisite intent for ADA liability, making settlement feasible only on the IDEA claim.

facilitates that provision's core goal of sequencing the resolution of the child's IDEA and non-IDEA claims. And it furthers Congress's clear purpose of preserving non-IDEA rights for children with disabilities, as shown by Section 1415(*l*)'s text and repudiation of *Smith*. *Supra* at 7, 15.

c. Miguel's case perfectly illustrates how IDEA disputes *should* be resolved. Miguel filed a due process complaint against Sturgis, alleging how he had been denied a FAPE for more than a decade. JA16-45. For good measure, he presented his ADA claim to the hearing offer, who dismissed it for lack of jurisdiction. Pet.App. 2a.

Sturgis subsequently offered to resolve Miguel's IDEA claim by granting him the educational relief he demanded in his complaint and deserved under the IDEA. *Supra* at 10. Sturgis agreed to Miguel's placement at MSD; it agreed to pay for post-secondary compensatory education and sign language instruction for Miguel and his family; and it agreed to pay the family's attorney's fees. Pet.App. 2a. The parties then memorialized the IDEA settlement in writing pursuant to Section 1415(f)(1)(B)(iii). That is exactly what Congress wanted: In cases like Miguel's, where a school district readily offers the IDEA relief a student seeks, students *should* accept the deal and bring the administrative proceedings to an end.

Of course, the settlement did not resolve Miguel's claims for money damages under the ADA. But Sturgis agreed to that outcome, and it did not provide additional compensation to secure a broader release. And for Miguel, speedy resolution of his IDEA claim ensured that his family (who are of limited means) could keep him enrolled at MSD and that he would obtain critical sign-language instruction. This

resolution made sense for Miguel given his urgent educational needs. By agreeing to settle his IDEA claim on these terms, while leaving adjudication of his ADA damages claims for another day, Miguel did everything the IDEA asked of him.

2. The Sixth Circuit Mistakenly Adopted An "Aggrieve[ment]" Requirement For Exhaustion

The Sixth Circuit nevertheless held that an IDEA settlement does not qualify as exhaustion under Section 1415(*l*). Pet.App. 8a-9a. It began by noting Section 1415(*l*)'s requirement that administrative procedures be exhausted "*to the same extent* as would be required had the [non-IDEA] action been brought under [the IDEA]." *Id.* The court interpreted this language to mean that a plaintiff "can sue under [non-IDEA statutes] only if he could also bring an IDEA action in court." *Id.* It then pointed out that under 20 U.S.C. § 1415(i)(2)(A), an IDEA plaintiff "cannot come to court" unless he has been "*aggrieved* by the findings and decision" rendered in the IDEA administrative proceeding—and that a plaintiff who settles his IDEA administrative claim has "nothing to be aggrieved by." Pet.App. 8a-9a (emphasis added). The court thus held that the IDEA's aggrievement requirement for bringing suit is a necessary element of exhaustion under Section 1415(*l*).[5]

a. The Sixth Circuit's aggrievement-is-mandatory theory is mistaken—especially if combined with the court's holding that Section 1415(*l*)

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[5] Writing for the Tenth Circuit, then-Judge Gorsuch reached a similar conclusion in *A.F. ex rel. Christine B. v. Española Public Schools*, 801 F.3d 1245, 1247 (10th Cir. 2015).

applies to claims for money damages unavailable under the IDEA. Section 1415(*l*) cannot sensibly be read to prohibit a student who *wins* his IDEA administrative claim from later suing to vindicate his rights—and obtain different relief—under the Constitution, the ADA, and other anti-discrimination statutes. That approach would resurrect *Smith* by making the IDEA the exclusive avenue for relief for those children with disabilities who have the *strongest* ADA claims.

The Sixth Circuit's approach would also provide a windfall to schools that refuse to remedy IDEA violations and lose in IDEA proceedings. Those schools—the ones that have treated children with disabilities the worst—would not be subject to damages liability under the ADA and other federal statutes. Indeed, schools could immunize themselves from damages liability by stonewalling during settlement discussions and insisting on fighting in the administrative process to the bitter end, despite knowing all along that the plaintiff will prevail. That cannot be right.[6]

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[6] If this Court agrees with the Sixth Circuit that Section 1415(*l*) requires aggrievement as a condition of exhaustion, that only reinforces the need to adopt either (1) the plain-meaning construction of Section 1415(*l*)'s "seeking relief that is available under the IDEA" language, as discussed in Part I, *supra* at 15-28; or (2) a "futility" exception to exhaustion, as discussed in Part II-B, *infra* at 41-51. *Cf. A.F.*, 801 F.3d at 1248-49 (observing that circuit precedent controlled the first point, and that the plaintiff had forfeited the latter contention). One way or the other, children who obtain all the IDEA relief available—whether by final merits decision *or* by settlement—must be allowed to vindicate their rights to other forms of relief available under other statutes, as Congress clearly intended.

b. The Sixth Circuit improperly conflated the IDEA's exhaustion and aggrievement requirements. It is true that Section 1415(*l*) requires exhaustion of IDEA procedures "to the same extent" that would be necessary for the child to bring an IDEA dispute to court. But that merely requires the child to pursue his IDEA administrative claim to an appropriate and final conclusion. *Supra* at 30. It does not require the child to satisfy other prerequisites for filing suit, such as Section 1415(i)(2)(A)'s aggrievement requirement.

Exhaustion and aggrievement are different. Whereas exhaustion focuses on whether the claimant has adequately *completed* the administrative process—regardless who wins or loses—aggrievement focuses on whether the result of that process deprives the claimant of the full relief he seeks, thereby giving him statutory standing to seek further review in court. The term "aggrieved" is a term of art used to limit "those who have standing to challenge or appeal an agency decision" to persons who have suffered harm as a result of the decision. *Director, Off. of Workers' Comp. Programs v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 126 (1995) (noting term's "long history in federal administrative law"). Under the APA, for example, 5 U.S.C. § 704 requires "exhaustion," but a separate provision, 5 U.S.C. § 702, limits statutory standing to persons who "suffer[] legal wrong" or are "adversely affected or aggrieved" by agency action. *Darby v. Cisneros*, 509 U.S. 137, 146 (1993).

There is no good reason to condition Section 1415(*l*) exhaustion on the child being aggrieved by the IDEA administrative ruling. Section 1415(*l*)'s text does not incorporate Section 1415(i)(2)(A)'s aggrievement requirement. Section 1415(*l*) directs

that "the procedures *under subsections (f) and (g)* shall be exhausted to the same extent as would be required had the [non-IDEA] court action been brought under [the IDEA]." 20 U.S.C. § 1415(*l*) (emphasis added). Section 1415(i)(2)(A)'s aggrievement requirement is not included in that cross reference, and unlike Section 1415(*l*), Section 1415(i)(2)(A) does not even expressly mention exhaustion.

Rather, Section 1415(*l*) incorporates the IDEA's *implicit* exhaustion requirement, which courts have long inferred from the IDEA's detailed administrative procedures. *See Honig*, 484 U.S. at 326-27. Because exhaustion focuses only on whether the administrative process has been pursued to an appropriate conclusion—and not on who wins or loses—aggrievement is not part of Section 1415(*l*)'s exhaustion calculus at all.

The Sixth Circuit relied entirely on its aggrievement-is-mandatory theory to conclude that IDEA settlements do not satisfy Section 1415(*l*)'s exhaustion requirement. Pet.App. 9a. That theory was mistaken, and in fact such settlements mark the preferred conclusion of the IDEA administrative process. To the extent Section 1415(*l*)'s exhaustion requirement applies in this case, Miguel has satisfied it.

B. Further Exhaustion Would Be Futile And Is Not Required In These Circumstances

Regardless of whether or how the resolution of Miguel's IDEA proceedings pursuant to the settlement is itself treated as exhaustion, *further* exhaustion in this case would be futile—and is therefore excused. As this Court held in *Honig*, the

IDEA incorporated the traditional exceptions to exhaustion when it was first enacted, including a futility exception. By its terms, Section 1415(*l*) carries over those established exceptions to its exhaustion requirement for non-IDEA claims.

Section 1415(*l*)'s futility exception applies here, because further exhaustion would be pointless. Once the parties reached a fair settlement of the IDEA claim, there was no reason for Miguel to seek anything more from the administrative process—and nothing left for the IDEA hearing officer to do except dismiss the case. Miguel was not required to reject a favorable settlement of his IDEA claim to preserve his ADA rights.

1. Section 1415(*l*) Incorporates A Futility Exception

This Court has already held that IDEA exhaustion is not required where it "would be futile or inadequate." *Honig*, 484 U.S. at 327. By requiring exhaustion of non-IDEA claims concerning FAPE denials "to the same extent as" IDEA claims, Section 1415(*l*) expressly incorporates that longstanding exception. Uncommonly clear-cut legislative history confirms this textual point. The Sixth Circuit's contrary analysis does not withstand scrutiny.

a. It is well established that "'Congress legislates against the backdrop' of certain unexpressed presumptions." *Bond v. United States*, 572 U.S. 844, 857 (2014) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)). One of those background presumptions, as this Court has repeatedly observed, is the bedrock principle that the "[d]octrine[] of . . . 'exhaustion' contain[s] exceptions," including "when exhaustion would prove 'futile.'" *Shalala v. Illinois*

Council on Long Term Care, Inc., 529 U.S. 1, 13 (2000) (citing *McCarthy*, 503 U.S. at 147-48); *see Bethesda Hosp. Ass'n*, 485 U.S. at 404; *Bowen*, 476 U.S. at 485; *McKart*, 395 U.S. at 197-201; *Montana Nat'l Bank v. Yellowstone County*, 276 U.S. 499, 505 (1928).

Less than two years ago, the Court reaffirmed that it "has consistently recognized a futility exception to exhaustion requirements." *Carr v. Saul*, 141 S. Ct. 1352, 1361 (2021). Accordingly, "general references to the duty to exhaust" in a statute constitute "mere codifications of the common law duty, subject to the usual pragmatic judge-made exceptions to the duty." Kristin E. Hickman & Richard J. Pierce, Jr., *Administrative Law Treatise* § 17.3 (6th ed. 2022, online).

Congress drafted the IDEA against this backdrop, and nothing in its text departs from these settled principles. As originally enacted, and up until 1986 when Congress created what is now Section 1415(*l*), the IDEA's text did not expressly mention exhaustion, even of IDEA claims.[7] Rather, as explained, courts inferred from the IDEA's detailed administrative procedures that the IDEA requires exhaustion, complete with the standard exceptions. *Supra* at 41. That is why, in 1984, *Smith* noted the widespread view that the IDEA's exhaustion requirement contained a futility exception. *See* 468 U.S. at 1014 n.17.

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[7] *See* Education Amendments of 1974, Pub. L. No. 93-380, § 614(d), 88 Stat. 484, 581-82 (creating Section 1415's procedural safeguards and not mentioning exhaustion); Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 615, 89 Stat. 773, 788-89 (similar).

Two years later, Congress enacted Section 1415(*l*) to require "exhaust[ion]" of non-IDEA claims "*to the same extent* as would be required had the action been brought under" the IDEA. 20 U.S.C. § 1415(*l*) (emphasis added). Congress thereby incorporated the same well-established futility exception for exhaustion of IDEA claims into its new exhaustion requirement applicable to non-IDEA claims. Two years after that, *Honig* reaffirmed the IDEA's futility exception, holding that "parents may bypass the administrative process where exhaustion would be futile or inadequate." 484 U.S. at 327.

This Court has held—in the IDEA context—that "Congress is presumed to be aware" of a "judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009). Congress has done so on two occasions since *Honig*, ratifying *Honig*'s understanding of the IDEA's exhaustion requirement for IDEA claims twice over—and by extension, Section 1415(*l*)'s identical exhaustion requirement for non-IDEA claims. *See* 2004 IDEA Amendments § 101; 1997 IDEA Amendments § 101. Congress has also amended the IDEA numerous other times without eliminating this recognized futility exception.[8]

On top of all this, in the 34 years since *Honig*, twelve circuits—including the Sixth Circuit until the

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[8] *See, e.g.*, Education Flexibility Partnership Act of 1999, Pub. L. No. 106-25, 113 Stat. 41; Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 587; Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103; Handicapped Programs Technical Amendments Act of 1988, Pub. L. No. 100-630, 102 Stat. 3289.

decision below—understood that Section 1415(*l*) incorporates a futility exception. *See* Pet. 14-15 (collecting cases); Pet.App. 12a n.*. This consensus dated back to 1989, was reaffirmed repeatedly over the ensuing decades, and was disrupted only by the Sixth Circuit's decision in this case. The "[then-]unanimous holdings of the Courts of Appeals" throughout subsequent reenactments and amendments of the IDEA is further "convincing support for the conclusion that Congress accepted and ratified" a futility exception to Section 1415(*l*). *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 536 (2015).

b. Uniquely on-point legislative history confirms that the IDEA excuses exhaustion of both IDEA and non-IDEA claims in various circumstances, including futility. In 1975, the principal sponsor of the original IDEA explained that exhaustion "should not be required" when "exhaustion would be futile." 121 Cong. Rec. 37,416 (1975) (Sen. Williams), *cited in Honig*, 484 U.S. at 327.

When enacting Section 1415(*l*) a decade later, Congress left no doubt that the provision incorporated the IDEA's existing futility exception. The House Report noted that "it is not appropriate to require the use of" the IDEA's procedures where "it would be futile to use the due process procedures." 1985 House Report at 7. The Senate Report similarly explained that "[e]xhaustion of [IDEA] administrative remedies" would "be excused where they would not be required to be exhausted under the [IDEA], such as when resort to those proceedings would be futile." 1985 Senate Report at 15.

c. The Sixth Circuit's decision below rejected *Honig* and decisions from eleven circuits—and

upended its own precedent—by ruling that Section 1415(*l*) does not contain a futility exception. *Supra* at 45-46. The court justified its lonely position on two grounds: (1) *Honig*'s recognition of a futility exception was purportedly "dictum," and (2) "[a]ny futility to section 1415(*l*)" supposedly "cannot survive *Ross*." Pet.App. 12a n.*; *see also id.* at 10a. Both points are mistaken.

Honig's treatment of the futility exception was not dicta. *Honig* held that schools are generally required to adhere to the IDEA's "stay-put provision," which prohibits schools from unilaterally changing a student's placement while administrative proceedings are ongoing. 484 U.S. at 323. In doing so, the Court relied on the existence of the futility and inadequacy exceptions—which it noted are available to schools as well as parents—to conclude that schools would not necessarily have to fully exhaust the IDEA's procedures before turning to a court for relief in dealing with a dangerous student. *Id.* at 326-28. As Judge Stranch explained below, "[t]hat reasoning was essential to [*Honig*'s] judgment because it explained why the Court's interpretation of the [IDEA stay-put provision] would not lead to absurd results." Pet.App. 29a.

The Sixth Circuit also misread *Ross*'s PLRA-specific analysis. *Ross* rejected a novel PLRA "special circumstances" doctrine that would have excused exhaustion when the prisoner "'reasonably' . . . 'believed that he had sufficiently exhausted his remedies.'" 578 U.S. at 637. The Court explained that adopting this broad exception would unequivocally contravene congressional intent. *Id.* at 640-42. The "precursor" to the PLRA had "made exhaustion 'in large part discretionary,'" and

Congress enacted the PLRA to do away with that approach. *Id.* at 640-41. If the Court were to recognize the special circumstances doctrine, it would "resurrect" the exact kind of discretionary exhaustion scheme Congress had sought to discard. *Id.* at 641.

Crucially, *Ross* clarified that it was not stating a general rule about exhaustion provisions other than the PLRA. "[A]n exhaustion provision with a different text and history," the Court explained, "might be best read to give judges the leeway to create exceptions or to itself incorporate standard administrative-law exceptions." *Id.* at 642 n.2; *see also id.* at 649-50 (Breyer, J., concurring in part) (explaining that statutory exhaustion requirements remain subject to "administrative law's 'well-established exceptions'"); *Berryhill*, 139 S. Ct. at 1773-74.

Fry declared that the PLRA is undoubtedly a "stricter exhaustion statute" than the IDEA. *Fry*, 137 S. Ct. at 755. Most notably, the IDEA's text and history—unlike those of the PLRA—firmly support a futility exception. As for text, Section 1415(*l*) directs that, "before the filing of a civil action" under non-IDEA statutes, the IDEA's procedures "shall be exhausted *to the same extent* as would be required" if the non-IDEA action "had been brought under [the IDEA]." 20 U.S.C. § 1415(*l*) (emphasis added). As discussed, this "to the same extent" language expressly incorporates the implicit exhaustion requirement that governs IDEA claims. *Supra* at 41.

By contrast, the PLRA's exhaustion requirement states in blanket terms that "*[n]o action* shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted"—end of story. 42 U.S.C. § 1997e(a)

(emphasis added). That explicit exhaustion requirement is phrased as a prohibition and is absolute, save for a single enumerated "exception" for administrative procedures that are not "available." *Ross*, 578 U.S. at 638-39.

As for the IDEA's history, Congress enacted Section 1415(*l*) to *reaffirm* that anti-discrimination laws like the ADA remain fully available to students with disabilities. *Fry*, 137 S. Ct. at 750. And committee reports and statements from key legislators confirm that Congress fully intended to incorporate a futility exception. *Supra* at 45. The PLRA's history evinced the opposite intent—to eliminate the "discretionary" approach to exhaustion that previously governed civil rights lawsuits brought by prisoners. *Ross*, 578 U.S. at 640-41.

Ross accordingly gave the Sixth Circuit no license to disregard *Honig*'s holding that Section 1415(*l*) excuses exhaustion where it "would be futile or inadequate." 484 U.S. at 327. And there is no reason for this Court to jettison *Honig* now, especially given the "superpowered form of *stare decisis*" that applies to decisions interpreting a federal statute. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 458 (2015).

2. Requiring Further Exhaustion Beyond An IDEA Settlement Is Futile And Inflicts Needless Harm On Children With Disabilities

Miguel followed the IDEA's procedures by seeking the relief available in the administrative process and accepting a satisfactory settlement from Sturgis on his IDEA claim. Further exhaustion would have been futile, as every court of appeals confronted with

similar circumstances had held until the Sixth Circuit's decision below. *See* Pet. 17-20.

Here, the settlement gave Miguel and his family full relief for Sturgis's IDEA violations. There was accordingly nothing else the administrative process could provide. After all, the hearing officer's "role, under the IDEA, is to enforce [Miguel's] 'substantive right' to a FAPE"—nothing else. *Fry*, 580 U.S. at 754; *see* 20 U.S.C. § 1415(f)(3)(E). No one disputes that the settlement accomplished that objective. Nor was there any chance that the hearing officer would hear Miguel's ADA claim despite her narrow mandate: The hearing officer had *already* dismissed that claim for lack of jurisdiction.

The Sixth Circuit nonetheless held that exhaustion was not futile because Miguel could have rejected Sturgis's settlement offer and "continue[d] to litigate [his IDEA claim] in the administrative forum." Pet.App. 8a. But treating plaintiffs who successfully settle their IDEA claims as failing to exhaust the IDEA's administrative process would undercut the IDEA's core objectives, contravene the IDEA's emphasis on collaboration rather than conflict, and inflict harm on children with disabilities.

Plaintiffs like Miguel have absolutely nothing to gain by rejecting appropriate IDEA relief and forging ahead to a hearing incapable of giving more than what a school has already offered. That empty exercise is the definition of futile: It "serv[es] no useful purpose." *Futile*, *Webster's Third New International Dictionary* 925; *see also New Oxford American Dictionary* 707 ("incapable of producing any useful result; pointless"). Miguel and his family "[s]urely" did not "ha[ve] to pursue a further

administrative hearing to get what they had already obtained." *Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16, 30 n.20 (1st Cir. 2019).

As Judge Stranch correctly observed, the Sixth Circuit's contrary approach would require students with meritorious claims under both the IDEA and the ADA "to choose between immediately obtaining the FAPE to which they are entitled, or forgoing that education so they can enforce their ADA right of equal access to institutions." Pet.App. 27a. That is exactly "the opposite" of what Congress wanted Section 1415(*l*) to do. *Id.* As *Fry* emphasized, Section 1415(*l*) "'reaffirm[s] the viability' of federal statutes like the ADA or Rehabilitation Act 'as separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" 137 S. Ct. at 750 (quoting 1985 House Report at 4). Yet under the Sixth Circuit's rule, the only way for children with disabilities to obtain educational relief in a timely manner is to surrender their right to all other relief under federal law. Imposing this heavy price on settlement would deter agreements to resolve IDEA claims amicably and expeditiously. Children with disabilities would suffer as a result: Every instructional day without a FAPE is a learning opportunity lost.

Rejecting a settlement offer—as the Sixth Circuit's decision would require Miguel to do—is also fraught with risk for children with disabilities and their families. For one thing, it would have delayed Miguel's receipt of a FAPE. For another, litigating IDEA administrative hearings (which involve the presentation of witnesses and evidence) can be extremely expensive. In most circumstances, a family who rejects a favorable settlement offer will be unable

to collect post-offer attorney's fees even if it later prevails. *Supra* at 31-32. And there is always a danger that the administrative process will produce a *less* favorable result, or even outright defeat. The IDEA does not require children with disabilities to roll the dice with their education, simply to preserve their rights under the ADA and other anti-discrimination laws.

* * *

Miguel did everything the IDEA could possibly have wanted a victim of disability discrimination to do. He filed an IDEA due process complaint, reached a mutually acceptable agreement with Sturgis, and then brought a separate ADA suit seeking distinct relief unavailable to him under the IDEA. Section 1415(*l*) does not preclude Miguel from vindicating his rights in this way.

CONCLUSION

The Sixth Circuit's judgment should be reversed, and Miguel's ADA case should be allowed to proceed.

Respectfully submitted,

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ADDENDUM

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5 U.S.C. § 702

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. § 704

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

20 U.S.C. § 1400

§ 1400. Short title; findings; purposes

(a) Short title

This chapter may be cited as the "Individuals with Disabilities Education Act".

(b) Omitted

(c) Findings

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

(A) the children did not receive appropriate educational services;

(B) the children were excluded entirely from the public school system and from being educated with their peers;

(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this chapter has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this chapter has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—

(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

(C) coordinating this chapter with other local, educational service agency, State, and Federal school improvement efforts, including

improvement efforts under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

(H) supporting the development and use of technology, including assistive technology devices

and assistive technology services, to maximize accessibility for children with disabilities.

(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

(C) Minority children comprise an increasing percentage of public school students.

(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of

minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) African-American children are identified as having intellectual disabilities and emotional disturbance at rates greater than their White counterparts.

(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

(E) Studies have found that schools with predominately White students and teachers have

placed disproportionately high numbers of their minority students into special education.

(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this chapter, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

(d) Purposes

The purposes of this chapter are—

(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

20 U.S.C. § 1415

§ 1415. Procedural safeguards

(a) Establishment of procedures

Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures

The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

(ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

(A) proposes to initiate or change; or

(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

(5) An opportunity for mediation, in accordance with subsection (e).

(6) An opportunity for any party to present a complaint—

(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

(ii) that shall include—

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of Title 42), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements

(1) Content of prior written notice

The notice required by subsection (b)(3) shall include—

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

(2) Due process complaint notice

(A) Complaint

The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) Response to complaint

(i) Local educational agency response

(I) In general

If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

(cc) a description of each evaluation procedure, assessment, record, or report the

agency used as the basis for the proposed or refused action; and

(dd) a description of the factors that are relevant to the agency's proposal or refusal.

(II) Sufficiency

A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

(ii) Other party response

Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing

The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination

Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice

(i) In general

A party may amend its due process complaint notice only if—

(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(ii) Applicable timeline

The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) Procedural safeguards notice

(1) In general

(A) Copy to parents

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

(i) upon initial referral or parental request for evaluation;

(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

(B) Internet website

A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(2) Contents

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) the opportunity to present and resolve complaints, including—

(i) the time period in which to make a complaint;

(ii) the opportunity for the agency to resolve the complaint; and

(iii) the availability of mediation;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(J) State-level appeals (if applicable in that State);

(K) civil actions, including the time period in which to file such actions; and

(L) attorneys' fees.

(e) Mediation

(1) In general

Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements

Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational

agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

(i) a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or

(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in

any subsequent due process hearing or civil proceeding;

(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) Resolution session

(i) Preliminary meeting

Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(ii) Hearing

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence.

(iii) Written settlement agreement

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

(iv) Review period

If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

(2) Disclosure of evaluations and recommendations

(A) In general

Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

(B) Failure to disclose

A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing

(A) Person conducting hearing

A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

(i) not be—

(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts;

(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for requesting hearing

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, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer

(i) In general

Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(ii) Procedural issues

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

(I) impeded the child's right to a free appropriate public education;

(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

(III) caused a deprivation of educational benefits.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply

with procedural requirements under this section.

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

(g) Appeal

(1) In general

If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision

The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

(A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and

(B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

(i) Administrative procedures

(1) In general

(A) Decision made in hearing

A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

(B) Decision made at appeal

A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) Right to bring civil action

(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.

(C) Additional requirements

In any action brought under this paragraph, the court—

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees

(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;

(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(ii) Rule of construction

Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees

Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind

and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services

(i) In general

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) IEP Team meetings

Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

(iii) Opportunity to resolve complaints

A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

(I) a meeting convened as a result of an administrative hearing or judicial action; or

(II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs

Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees

Except as provided in subparagraph (G), whenever the court finds that—

(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees

The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current

placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services

A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a

manifestation of the child's disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting

The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational

agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general

A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order

In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

(I) return a child with a disability to the placement from which the child was removed; or

(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals

When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in

paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general

A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge

A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or

(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general

If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction

Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records

An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions

In this subsection:

(A) Controlled substance

The term "controlled substance" means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug

The term "illegal drug" means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon

The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of title 18.

(D) Serious bodily injury

The term "serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18.

(*l*) Rule of construction

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.

(m) Transfer of parental rights at age of majority

(1) In general

A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

(A) the agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this subchapter transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this subchapter transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

(n) Electronic mail

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

(*o*) Separate complaint

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

42 U.S.C. § 1997e(a)

§ 1997e. Suits by prisoners

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

* * *

42 U.S.C. § 12132

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.