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 *AMICI CURIAE* ON BEHALF OF PROFESSORS IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTEREST OF *AMICI CURIAE*[1]

Amici curiae (listed in the Appendix) are professors who research, write, and teach about disability law, special education, civil rights, and administrative law. They are interested in the proper application of the statutes that protect disabled students' rights and in the scope of exhaustion doctrine. *Amici* also have an interest in preserving the ability of parties to voluntarily settle disputes, particularly in the context of the legislative schemes here, which encourage cooperation between parties.

SUMMARY OF ARGUMENT

By ruling that the standard futility exception to exhaustion categorically does not apply to 20 U.S.C. § 1415(*l*), the Sixth Circuit has undermined two intersecting statutory schemes designed to protect the rights of disabled children in school settings—the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA). The Sixth Circuit took out of context one statement from *Ross v. Blake*, 578 U.S. 632, 639 (2016)—which construed a different, mandatory exhaustion provision from the Prison Litigation Reform Act—and made it the departure point for a fundamental revision of exhaustion

[1] No counsel for any party authored this brief in whole or in part. No person or entity, other than *amici*, made a monetary contribution intended to fund the preparation and submission of this brief. The parties have provided blanket consent to the filing of *amicus* briefs.

doctrine. In deciding that the time-honored futility exception does not apply to Section 1415(*l*), the Sixth Circuit ignored Congress's language, the provision's enactment history, and this Court's recognition of an IDEA futility exception in *Honig v. Doe*, 484 U.S. 305, 327 (1988). And the Sixth Circuit reached this decision where the plaintiff, prior to bringing his federal ADA action, had already pursued the administrative process and obtained in settlement all possible relief on his IDEA claim, and had his ADA claim dismissed by the administrative hearing officer.

The hearing officer's refusal to hear the Petitioner's ADA claim was consistent with common practice around the Nation. *Amici* have surveyed hearing officer decisions in jurisdictions in which about ninety percent of the country's IDEA due process complaints are filed. Almost invariably, ADA claims brought before an IDEA hearing officer are dismissed on the ground that the officer lacks authority to adjudicate those claims. IDEA hearing officers also lack authority to award compensatory damages—a key form of relief under the ADA and the type of relief that Miguel Perez ("Miguel") seeks.

Consistent with administrative law principles, and in light of *amici*'s survey, exhaustion of IDEA due process proceedings would be futile and thus not required before an ADA damages claim may be brought in court. Administrative exhaustion seeks to enable parties and the court to benefit from an agency's "experience and expertise." *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975). So, when an administrative decisionmaker "determine[s]

that the only issue" for resolution is "beyond his . . . jurisdiction to determine"—as IDEA hearing officers generally hold regarding ADA claims—"further exhaustion would not merely be futile," but also "unsupported by any administrative or judicial interest." *Id.* at 765–66. And when there is "doubt as to whether an agency [i]s empowered to grant effective relief," exhaustion is not required. *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14 (1973)). No doubt exists here: The ADA authorizes awards of compensatory damages—the "effective relief" that Miguel seeks—but IDEA hearing officers do not award them. There also is no benefit to holding a hearing to make findings of fact when the facts are not in dispute. Holding a hearing when there is nothing left to dispute and no relief to grant is the very definition of an exercise in futility.

Moreover, the Sixth Circuit's interpretation of Section 1415(*l*) undermines an IDEA dispute resolution system designed to foster collaboration between parents and schools and to encourage resolution of disputes quickly so that students receive needed services. The decision gives a disabled child an overly circumscribed choice: 1) accept a satisfactory settlement of a special-education dispute to get services promptly but give up any non-IDEA claim for compensatory damages, despite significant past harms; or 2) relinquish the opportunity to quickly obtain vital services, pursue a costly administrative hearing that can provide no greater relief than was already offered, but preserve the non-IDEA damage claim.

Finally, *amici* are concerned about the potential precedent set by the Sixth Circuit's refusal to construe Section 1415(*l*) as it is written. After this Court's decision in *Smith v. Robinson*, 468 U.S. 992 (1984), holding that any challenge touching on disabled students' special education had to be channeled through the IDEA, Congress swiftly rejected that holding by enacting Section 1415(*l*) to provide that "nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies" available under the ADA and other civil rights laws. Congress appended a provision requiring exhaustion only when an action seeks relief "also available" under the IDEA. Under the clear statutory language, Miguel was entitled to bring his ADA claim both because he completed the mandated IDEA administrative process and because he was seeking relief not available under the IDEA. The Sixth Circuit acted as though *Smith* was still the law of the land and Section 1415(*l*) had not been enacted. Its decision should be reversed.

ARGUMENT

I. A FUTILITY EXCEPTION IS WARRANTED HERE BECAUSE ENGAGING IN FURTHER IDEA ADMINISTRATIVE PROCEEDINGS WOULD BE A POINTLESS EXERCISE.

Amici agree with Petitioner that Section 1415(*l*) incorporates the standard futility exception to exhaustion and that the decision below is at odds with this Court's recognition of a futility exception in *Honig*, 484

U.S. at 327. *See* Pet'r's Br. 42–48. Contrary to the Sixth Circuit's sweeping conclusion in *Perez v. Sturgis Public Schools*, 3 F.4th 236, 242–43 (6th Cir. 2021) (Pet.App. 10a), this Court has recognized futility as an exception to exhaustion in multiple statutory contexts. *See Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 404 (1988) (finding that statutory review process does not require futile presentation of question beyond reviewer's authority); *Montana Nat'l Bank of Billings v. Yellowstone Cnty.*, 276 U.S. 499, 505 (1928) (recognizing futility of application to agency that was "powerless to grant any appropriate relief"); *see also Union Pac. R.R. Co. v. Bd. of Cnty. Comm'rs*, 247 U.S. 282, 287 (1918) (rejecting requirement that railroad exhaust state statutory scheme for contesting tax assessment because there was doubt as to whether administrative process could provide relief).

Exhaustion "serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency." *McCarthy*, 503 U.S. at 145. Thus, when an agency lacks institutional competence to adjudicate an issue or lacks authority to grant relief requested, courts apply well-established administrative-law exceptions to avoid requiring exhaustion as an empty exercise. *See id.* at 147–48; *Weinberger*, 422 U.S. at 765. Similarly, when there is "nothing to be gained from permitting the compilation of a detailed factual record, or from agency expertise," exhaustion would be futile. *Bowen*, 476 U.S. at 484.

As *amici* demonstrate below, ADA claims for damages are not redressable in the IDEA hearing process.

Further, as happened here, when claimants attempt to bring ADA claims in the IDEA administrative process, hearing officers dismiss those claims as outside their jurisdiction. Thus, hearing officers do not develop expertise in ADA damage claims. Nor does exhaustion produce a record that is useful for adjudication of the ADA damages claim, which hinges on proving discriminatory intent and is, in any event, considered de novo by the district court.[2]

A. The IDEA Hearing Process is Not Designed to Adjudicate ADA Claims or Award Compensatory Damages.

The IDEA hearing process is structured so that students with disabilities will use its administrative procedures to vindicate their rights to special-education services, not their rights to equal access protected by the ADA. The IDEA requires state agencies to establish "due process proceedings" that permit parents to challenge a school district's action related to "the

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[2] *See*, *e.g.*, *Hupp v. Switzerland of Ohio Local Sch. Dist.*, 912 F. Supp. 2d 572, 586–87 (S.D. Ohio 2012) (applying "traditional [summary judgment/de novo] standard of review" to Plaintiff's ADA claims and "modified de novo standard of review" to IDEA claims); *but see*, *Stephen O. v. Sch. Dist. of Phila.*, No. 20-1991, 2021 WL 6136217, at *10–12 (E.D. Pa. Dec. 29, 2021) (applying modified de novo standard giving due weight to Hearing Officer's factual findings to plaintiffs' overlapping Section 504 and ADA claims seeking only compensatory education and services and tuition reimbursement). *See generally Dorsey v. City of Detroit*, 157 F. Supp. 2d 729, 732 (E.D. Mich. June 6, 2001) (concluding ADA Plaintiff entitled to trial by jury with respect to liability and compensatory damages).

identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." *See*, *e.g.*, 20 U.S.C. §§ 1415(b)(6), (f), (g), (*l*). State laws establishing those procedures reference the IDEA and do not refer to or confer jurisdiction over ADA claims. *See*, *e.g.*, Conn. Gen. Stat. § 10-76h(a)(1), (b), (d)(1); Ill. Admin. Code tit. 23, §§ 226.610, 226.615, 226.630(a), 226.670, 226.690; Mich. Admin. Code R. 340.1724f(3)(k). *See infra* I.B.

Every step of the multi-tiered process is geared toward the resolution of IDEA, not ADA, claims. To request a hearing, a complainant must submit a due-process complaint describing only "matter[s] relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. . . ." 20 U.S.C. § 1415(b)(6)(A). Model forms developed by states to assist parents in filing complaints expressly invoke the IDEA's requirements and do not mention the ADA.[3] For example, Michigan's form advises complainants that it may be used to request a due process hearing "to resolve a disagreement about the identification, evaluation, eligibility, educational placement, or manifestation determination of a student, or regarding the provision of a free appropriate public education for a student under the [IDEA]."[4]

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[3] *Amici* reviewed the 2021 IDEA-mandated model state complaint forms, *see* 20 U.S.C. § 1415(b)(8), for each U.S. jurisdiction, and none refers to the ADA, indicating that IDEA hearing officers are not expected to adjudicate ADA claims. The model forms for the twelve jurisdictions surveyed in this brief are collected here: https://perma.cc/8QZX-Y8QK.

[4] *See id.*

When claims reach the hearing stage, complainants are limited to raising issues identified in their initial filings, absent consent of the opposing party. 20 U.S.C. § 1415(f)(3)(B).

A hearing officer's decision at a due process hearing must be based "on a determination of whether the child received a free appropriate public education." 20 U.S.C. § 1415(f)(3)(E)(i). Thus, the substantive expertise required of hearing officers is "knowledge of, and the ability to understand, the provisions of [the IDEA], Federal and State regulations pertaining to [the IDEA], and legal interpretations of [the IDEA] by Federal and State courts," 20 U.S.C. § 1415(f)(3)(A)(ii)—not the ADA's anti-discrimination provisions.

The relief available through the IDEA hearing process is limited to equitable relief for denial of a free appropriate public education (FAPE), typically compensatory special education services such as Miguel's placement at a private school and reimbursement of parents' past out-of-pocket educational expenditures. *See Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369–71 (1985). These awards are distinct from compensatory damages, *id.* at 370–72, which are not available for violations of the IDEA.[5]

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[5] *See*, *e.g.*, *McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d 640, 647 (5th Cir. 2019); *Moore v. Kan. City Pub. Schs.*, 828 F.3d 687, 693 (8th Cir. 2016); *C.O. v. Portland Pub. Schs.*, 679 F.3d 1162, 1166 (9th Cir. 2012); *Chambers ex rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F.3d 176, 185–86 (3d Cir. 2009); *Ortega v. Bibb Cnty. Sch. Dist.*, 397 F.3d 1321, 1325 (11th Cir.

B. IDEA Hearing Decisions Confirm that Hearing Officers Do Not Exercise Jurisdiction Over ADA Claims or Award Compensatory Damages.

Hearing officers, following the IDEA's mandates, typically hear only IDEA claims and almost never hear ADA claims. *Amici* have surveyed the IDEA administrative process in eleven states and the District of Columbia, where about ninety percent of the country's IDEA due-process complaints arise.[6] Time and again, IDEA hearing officers dismiss ADA claims on the ground that they lack authority to hear them, and hearing officers never award compensatory damages, illustrating the futility of bringing an ADA claim through the IDEA's administrative process.[7]

2005); *see also Fry v. Napoleon Cmty. Sch.*, 137 S.Ct. 743, 752 n.4 (2017).

[6] The jurisdictions were selected based on a study observing that ninety percent of IDEA complaints arose in ten states, D.C., and Puerto Rico. *See* Consortium for Appropriate Dispute Resolution in Special Educ., IDEA Data Brief at 2 (May 2017), https://www.cadreworks.org/sites/default/files/resources/CADRE%20DPC%20Brief_WebFinal_6.2017.pdf. Puerto Rico was omitted from *amici*'s survey because its policies and hearing-officer decisions are published in Spanish only. *Amici*'s survey also includes Michigan, where Miguel brought his due-process complaint.

[7] *Amici* surveyed every hearing-officer decision in California, Maryland, Michigan, and New Jersey through December 2021. These states had either a limited number of published decisions or online search mechanisms enabling *amici* to filter decisions using search terms. The eight other jurisdictions published dozens—in some cases, hundreds—of decisions each year but did not have similar search mechanisms. For those jurisdictions, *amici* reviewed all hearing-officer decisions dating back at least five

California. California's special-education law directs state agencies to establish "[a]ll procedural safeguards under the [IDEA]" and invokes only federal IDEA regulations. Cal. Educ. Code §§ 56500.1(a), 56500.3, 56500.6; *see* Cal. Code Regs. tit. 5, §§ 3080(a), 3082(a). *Amici* surveyed all California due-process decisions and found that hearing officers dismiss ADA claims as "outside the jurisdiction" of California's IDEA administrative body. Nos. 2012020458, 2012020005, and 2012090247 at 3 n.2 (Jan. 14, 2013)[8]; *see also*, *e.g.*, No. 2018050651 at 32 n.6 (Sept. 21, 2018)[9]; No. 2010110301 at 3 n.1 (Feb. 7, 2011)[10]; Nos. 2010090344 and 2010070140 at 2 n.1 (Feb. 3, 2010)[11]; No. 2019101130 at 6 (Sept. 25, 2020) (dismissing ADA claim for lack of jurisdiction and noting that IDEA hearing officers do not award compensatory damages).[12]

Connecticut. Connecticut's special-education law references the IDEA and its right to an impartial hearing-officer decision. *See* Conn. Gen. Stat. § 10-76h(a)(1), (b), (d)(1); *accord* Conn. Agencies Regs. §§ 10-76h-2, 10-76h-3(a), 10-76h-7(a). Not surprisingly, Connecticut's IDEA due-process decisions generally do not mention the ADA. Dating to 2011, only two decisions involved an ADA claim, with both dismissed for "lack

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years through December 2021. *Amici* have provided a footnoted link to each decision cited.

[8] https://perma.cc/3M2H-25K2

[9] https://perma.cc/3XGK-PNLG

[10] https://perma.cc/8SMQ-FZVY

[11] https://perma.cc/722U-TNA9

[12] https://perma.cc/GFC5-TSRS

of subject-matter jurisdiction." No. 21-0123 at 2 (Dec. 22, 2020)[13]; Nos. 16-0486 and 16-0617 at 17 (June 7, 2017) (stating that Connecticut law limits jurisdiction to "confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of FAPE to a child, to determining the appropriateness of a unilateral placement of a child or to prescribing alternative special education programs for a child.").[14]

District of Columbia. D.C.'s special-education law focuses exclusively on the IDEA, *see* D.C. Code §§ 38-2571.03(1), (2), (6)(A), 38-2571.04, 38-2572.02(a), with no mention of the ADA. *Amici* reviewed all hearing decisions dating to 2016, and only three involved ADA claims. One observed that "in the District of Columbia, a [hearing officer's] jurisdiction is limited to disputes about the eligibility, identification, evaluation, educational placement, or the provision of FAPE." No. 2019-0301 at 32 (June 30, 2020) (concluding that "[i]t is abundantly clear," that the hearing officer's limited jurisdiction did not extend to ADA claims).[15] The others were dismissed for lack of jurisdiction, No. 2019-0073 at 3 (June 17, 2019),[16] and "without prejudice." No. 2016-0023 at 3 n.4 (Apr. 2, 2016).[17]

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[13] https://perma.cc/DA5W-57AK

[14] https://perma.cc/V49T-YS9M

[15] https://perma.cc/2EG3-6FE5

[16] https://perma.cc/3Y5N-HD29

[17] https://perma.cc/ZP4K-T7SV

Florida. Florida's special-education law requires the state to "comply with the Individuals with Disabilities Education Act (IDEA), as amended, and its implementing regulations." Fla. Stat. § 1003.571(1). Hearing officers may consider non-IDEA claims, but only when the school district contracts with the state adjudicatory agency to do so. *Id.* § 120.65(6). *See* No. 12-3976E at 11 n.4 (Apr. 5, 2013) (hearing Rehabilitation Act claim because of contractual authorization to hear cases involving school-based "section 504 plans" providing services to access the child's educational program).[18] *Amici*'s review of all Florida due-process decisions since 2007 reveals no decision in which a school district contracted for adjudication of ADA claims. Thus, hearing officers dismiss ADA claims for lack of jurisdiction. *See*, *e.g.*, No. 18-0604E at 2 n.1 (Aug. 16, 2018)[19]; No. 12-2322E at 5 (Oct. 22, 2012)[20]; Nos. 09-0568E and 09-1233E at 85 (Sept. 9, 2009).[21]

Illinois. Illinois' special-education regulations refer to the IDEA, but not to other statutes protecting students with disabilities. *See* Ill. Admin. Code tit. 23, §§ 226.610, 226.615, 226.630(a), 226.670, 226.690. *Amici*'s survey of every Illinois IDEA due-process decision since 2014 reveals only two involving ADA claims, and both disclaimed jurisdiction. In one, the hearing officer held "she d[id] not have jurisdiction over the

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[18] https://perma.cc/WAF2-C3EU

[19] https://perma.cc/H2BW-YXYQ

[20] https://perma.cc/S8GD-BS7X

[21] https://perma.cc/GYZ7-SNCP

ADA claims, but d[id] have jurisdiction to address whether Student was denied a FAPE under the IDEA." No. 2018-0062 at ISBE000168 (Feb. 1, 2018).[22] In the other, the hearing officer had "no jurisdiction to adjudicate" ADA claims because "[i]n Illinois, an [IDEA hearing officer's] jurisdiction is limited to . . . matters involving the identification, evaluation, educational placement or the provisions of a free appropriate public education." No. 2018-0391 at 17 & n.31 (Nov. 13, 2018).[23]

Maryland. Maryland's special-education dispute-resolution processes are designed to handle only IDEA claims. Hearing officers must be "knowledgeable and understand[] the provisions of the IDEA, and federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA."[24] Like the IDEA, Maryland law specifies that a hearing officer's decision "shall be made on substantive grounds based on the determination of whether the child received a free appropriate public education." Md. Code Ann., Educ. § 8-413(g)(1).

Amici reviewed every special-education decision published by the Maryland Office of Administrative Hearings. One held that the complainant had "no legal authority" to file an administrative complaint alleging

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[22] https://perma.cc/NLL9-J6L9

[23] https://perma.cc/D7UT-GEBJ

[24] Maryland State Department of Education, *Parental Rights: Maryland Procedural Safeguards Notice* at 33–34, https://www.pgcps.org/globalassets/offices/special-education/docs-special-education/maryland-procedural-safeguards-notice.pdf.

discriminatory retaliation under the ADA. No. MSDE-CITY-OT-17-37284 at 8–9, 12 n.6 (Mar. 16, 2018).[25] In another, a parent included an ADA claim in the original due-process complaint, but the hearing officer later noted the claim had been dropped. No. MSDE-BCNY-OT-18-18944 at 2 n.3 (Aug. 28, 2018).[26] *Amici* found no case in which a Maryland hearing officer considered an ADA claim on its merits.

Massachusetts. Massachusetts law authorizes IDEA hearing officers to adjudicate IDEA and the Rehabilitation Act claims, but not ADA claims. Mass. Gen. Laws ch. 71B, § 2A(a), (c). And even when hearing Rehabilitation Act claims, hearing officers "lack[] authority to award monetary damages." No. 06-6508 at 3 (Mar. 9, 2007).[27] *Amici* reviewed every decision dating to 2016, and students attempting to bring ADA claims are sent away empty-handed because Massachusetts hearing officers "do[] not have jurisdiction over the ADA." No. 1702629 at 1 n.2 (Nov. 9, 2016) (citing Nos. 1404388 and 1309716, which held that IDEA hearing officers lack jurisdiction over ADA claims).[28]

Michigan. In Michigan, due-process hearings are conducted "in accordance with the [IDEA]." Mich. Admin. Code R. 340.1724f(3)(k). *Amici* reviewed every published IDEA hearing decision since 1997. Hearing officers dismiss non-IDEA claims, including ADA claims,

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[25] https://perma.cc/D4WZ-XVL5

[26] https://perma.cc/JD7F-A9L4

[27] https://perma.cc/GZL5-US9Q

[28] https://perma.cc/P98J-ULLY

because they are "not within the purview of this forum." *See*, *e.g.*, No. 2008-018 at 46 (Apr. 6, 2009)[29]; No. 2003-007b at 11 (Oct. 8, 2003)[30]; *accord* No. 13-001454 at 21 (Oct. 2013).[31] One decision held that "monetary damages under § 504 or the ADA is beyond [a hearing officer's] authority to award." No. 2004-105E at 5–6 (Oct. 17, 2006).[32]

New Jersey. New Jersey law authorizes hearing officers to decide IDEA and Rehabilitation Act claims. N.J. Admin. Code § 6A:14-2.7(k), (w). No statute authorizes hearing officers to decide ADA claims, and no hearing officer has reached the merits of an ADA claim. In one case, the hearing officer did not address the ADA claim, but noted that "this tribunal does not have the authority to award damages," and then held that the parents could "pursue their [non-IDEA] claims in federal court." No. EDS 07848-17 at 2, 79–80 (July 18, 2019).[33] In another, the hearing officer mentioned the student's ADA claim, but disposed of the case solely because "the District has met all of its obligations under the IDEA and New Jersey statutes and regulations," making no further mention of the ADA. No. EDS 08837-19 at 2, 59–60 (Mar. 9, 2020).[34]

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[29] https://perma.cc/VPK5-3VL2

[30] https://perma.cc/D3PJ-WR7J

[31] https://perma.cc/SC8L-5T8B

[32] https://perma.cc/D6N5-G6DQ

[33] https://perma.cc/KW7F-QTU5

[34] https://perma.cc/8EAV-2UJX

New York. New York's special-education regulations mimic federal law, requiring that "a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.5(j)(4)(i). Hearing officers have come to inconsistent conclusions regarding their power to hear ADA claims. One held that he "[wa]s not the trier of fact for . . . the ADA," so he could "offer no relief pursuant to [the ADA]." No. 162323 at 72 (Aug. 4, 2018).[35] Other decisions are in accord. No. 503548 at 10 (Aug. 15, 2017)[36]; No. IH-2016(65) at 21 (Apr. 6, 2016).[37] But another decision found that the school "denied [the student] a FAPE . . . in violation of the IDEA, Section 504 and the ADA." No. 172586 at 12–13 (July 27, 2018).[38] Even there, the complainant was awarded only prospective educational services, as available under the IDEA, not compensatory damages. *Id.* Based on *amici*'s review, no New York hearing officer has ever awarded compensatory damages under the ADA (or any other statute).

Pennsylvania. Pennsylvania authorizes hearing officers to decide both IDEA and Rehabilitation Act claims. 22 Pa. Code §§ 14.162, 15.8(a). The Commonwealth's due-process complaint form thus allows

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[35] https://perma.cc/7UV5-E6T7

[36] https://perma.cc/UG3H-NSVX

[37] https://perma.cc/3ZGV-XJ22

[38] https://perma.cc/A63Y-MUYF

complainants to indicate whether they are seeking relief under either or both statutes.[39] Notably, a Rehabilitation Act complainant challenging the school district's failure to provide "aids, services and accommodations specified in the student's service agreement" "may" use the due-process system, 22 Pa. Code § 15.8(a), and go to court afterwards, but "is not required to start with the due process system."[40]

Pennsylvania statutes and regulations do not mention the ADA, which has created "considerable disagreement as to whether [hearing officers] have jurisdiction to hear ADA claims." No. 20014-1718AS at 11 n.5 (Feb. 16, 2018) (not reaching the complainant's ADA claim because the school had not denied the student a FAPE).[41] Just last year, a hearing officer held that a school had not discriminated under the ADA, No. 23695-19-20 at 34 (Mar. 2, 2021),[42] while another dismissed an ADA claim for lack of jurisdiction, No. 24533-20-21 at 2 n.3 (May 27, 2021).[43] In any event, no Pennsylvania hearing officer has ever awarded

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[39] Pennsylvania Office of Dispute Resolution, *Due Process Complaint*, https://perma.cc/U6B7-AZZE.

[40] Pennsylvania Office of Dispute Resolution, Understanding Special Education Due Process Hearings: A Guide for Parents 32 (2019), https://perma.cc/8RHB-RERD.

[41] https://perma.cc/7W7E-A4JG

[42] https://perma.cc/T25H-NNTB (refusing to find a violation of Section 504 or the ADA based on the school's termination of the child's 504 educational services plan).

[43] https://perma.cc/62RF-3G54

compensatory damages under the ADA or even suggested there was authority to do so.

Texas. Texas's due-process complaint form requires "a statement that a public education agency has violated Part B of the IDEA" or a "state special education statute or administrative rule." 19 Tex. Admin. Code § 89.1195(b)(3). Not surprisingly, Texas hearing officers invariably dismiss ADA claims (as well as other non-IDEA claims) for "lack of jurisdiction." *See*, *e.g.*, No. 017-SE-0920 at 2 n.2 (June 23, 2021)[44]; No. 365-SE-0719 at 1–2 (Nov. 15, 2019)[45]; No. 144-SE-0119 at 3 (June 21, 2019)[46]; No. 228-SE-0518 at 36 (Feb. 8, 2019).[47]

C. Requiring a Hearing on IDEA Claims that Have Already Been Resolved Would Not Improve the Accuracy or Efficiency of Judicial Proceedings.

IDEA exhaustion permits agencies to exercise discretion and apply educational expertise, facilitate "exploration of technical educational issues," develop a factual record, and "promote[] judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children." *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992). In circumstances like

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[44] https://perma.cc/Q6TS-8S9Z

[45] https://perma.cc/X53N-ZE36

[46] https://perma.cc/7RVJ-LKR8

[47] https://perma.cc/DE2Z-HU5E

Miguel's, none of these purposes would have been served by further IDEA proceedings.

Further IDEA proceedings would not serve the purpose of improved efficiency when the parties no longer dispute any relevant factual issues or appropriate relief under the IDEA. The due-process complaint and hearing focus on the facts of the complainant's alleged FAPE denial and a proposed solution. 34 C.F.R. § 300.508(b). The settlement here reflected agreement on the key IDEA facts—that Miguel was deaf, had not received a FAPE, and, as a result, required compensatory education and related services. A hearing would have entailed the submission of evidence that was likely already in the administrative record, the examination and cross-examination of witnesses, followed by the hearing officer's findings of fact and decision—at great expense to the parties, school staff, and the forum to establish facts not in dispute. Nor can it be considered efficient to require a hearing when the only claim unresolved is one that is beyond the jurisdiction of the hearing officer. *See Weinberger*, 422 U.S. at 767 (recognizing that exhaustion is futile when agency lacked authority to resolve constitutional claim and that it "would also be a commitment of administrative resources unsupported by any administrative or judicial interest").

Nor would an administrative hearing concerning Miguel's IDEA claim "have improved the accuracy and efficiency" of the subsequent federal proceedings to address his ADA claim, as the Sixth Circuit speculated in *dicta*. Pet.App. 13a. The benefit of any additional

peripheral factfinding on the IDEA claim would be marginal at best when the ADA damage claim differs from the IDEA claim and the hearing officer lacks relevant substantive expertise. As demonstrated above, IDEA hearing officers are experts in special education, not in ADA claims for damages that they invariably do not hear. IDEA claims and ADA claims seeking monetary damages for past discrimination differ in critical ways. The central questions in an IDEA claim are whether the school followed IDEA procedures and whether the child received a FAPE. *Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07 (1982); *see also* 20 U.S.C. § 1415(f)(3)(E). On the other hand, the central questions in an ADA damages claim are: 1) whether a school provided the disabled student with equal and non-discriminatory access to and participation in its programs, *see* 42 U.S.C. § 12132; and 2) whether the discrimination was intentional. *See*, *e.g.*, *Miraglia v. Bd. of Supervisors of the La. State Museum*, 901 F.3d 565, 574 (5th Cir. 2018).

A finding that a child was provided a FAPE does not determine whether equal access or effective communication was provided under the ADA. *See K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1099 (9th Cir. 2013) (holding that ADA effective communication claim was not foreclosed by finding that plaintiffs with hearing disabilities had been provided a FAPE). Alternatively, if a hearing officer determines that a child *was denied* a FAPE, that does not establish the discriminatory intent required for an ADA damage

claim, which requires plaintiffs to demonstrate bad faith, deliberate indifference, or gross misjudgment.[48] Federal courts, not IDEA hearing officers, have unique expertise in assessing ADA claims, as they routinely consider whether plaintiffs have proffered sufficient evidence on intent to create triable issues of fact in discrimination claims. *See*, *e.g.*, *C.L. v. Scarsdale Union Free Sch. Dist.*, 744 F.3d 826, 841 (2d Cir. 2014) (affirming grant of summary judgment against parents on Section 504 claim, even though IDEA violation proven, because of insufficient intent evidence).

Nor would a hearing serve the other goal of agency deference—to permit the agency to correct its own mistakes before being haled into court. *See McCarthy*, 503 U.S. at 145. The school system already agreed to remedy its past failures to provide special education by providing compensatory education and related sign-language instruction. At that point, the agency's interest in correcting its mistakes was served—a hearing would not have permitted the school to correct past intentional discrimination for which compensatory damages are the remedy. *See*, *e.g.*, *Witte v. Clark County Sch. Dist.*, 197 F. 3d. 1271, 1274–75 (9th Cir. 1999), *overruled in part on other grounds by Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 870–71 (9th Cir. 2011);

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[48] *See*, *e.g.*, *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (3d Cir. 2013) (requiring deliberate indifference); *D.A. ex rel. Latasha A. v. Houston Indep. Sch. Dist.*, 629 F.3d 450, 455 (5th Cir. 2010) (requiring bad faith or gross departure from accepted educational standards); *see also Nieves–Marquez v. Puerto Rico*, 353 F.3d 108, 126–27 (1st Cir. 2003) (suggesting discriminatory animus required).

Dorsey v. City of Detroit, 157 F. Supp. 2d 729, 732 (E.D. Mich. 2001).

II. REQUIRING FURTHER EXHAUSTION AFTER VOLUNTARY SETTLEMENT UNDERMINES THE IDEA'S GOAL OF ENCOURAGING PROMPT RESOLUTION OF EDUCATIONAL DISPUTES.

The Sixth Circuit concluded that having settled his IDEA claims, Miguel had not exhausted the IDEA administrative process and could not pursue his ADA claim in court. Pet.App. 9a. The decision places the student in an impossible position: 1) accept an IDEA settlement that will immediately provide essential special-education services but relinquish all non-IDEA claims; or 2) place oneself at educational risk by rejecting necessary services and pursue an IDEA due process hearing to establish a right to services the district was willing to provide, simply to preserve the right to pursue non-IDEA claims in the only forum that will actually decide them: court. Left standing, the Sixth Circuit's decision will do little more than deter appropriate IDEA settlements that would benefit disabled children for no legitimate purpose—undermining the IDEA's goals of providing prompt services and fostering the early, voluntary resolution of educational disputes.

A. The IDEA is Structured to Resolve Disputes Quickly to Provide Timely Special-Education Services.

Section 1415(*l*) must be understood in light of "the entire statutory scheme," *see Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 523 (2007), which focuses on identification, evaluation, and prompt provision of educational services to qualifying students. Disabled children's rights to IDEA services are principally secured through a collaborative process among parents, educators, and other experts to develop an individualized education program and provide the child with a FAPE that meets their unique developmental and educational needs. *See Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 994 (2017). This process should function "with the speed necessary to avoid detriment to the child's education." *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245 (2009) (citation omitted). *See generally, e.g.*, 20 U.S.C. §§ 1400(d)(2) (providing early intervention services); 1412(a)(2) (requiring state timetable for meeting disabled student needs); 1414(a)(1)(C) (setting time frame for evaluations); 1415(c)(2)(B)(i) (setting deadline for school district response to parent complaint); 1415(f)(1)(B) (requiring preliminary resolution meeting within 15 days of parent complaint).

Recognizing that disputes will arise between parents and school districts, the IDEA creates opportunities to resolve disputes at numerous points in the administrative process. *See*, *e.g.*, 20 U.S.C. §§ 1415(e) (mediation); 1415(f)(1)(B) (resolution session); *Alegria*

v. District of Columbia, 391 F.3d 262, 267–68 (D.C. Cir. 2004) (noting that procedures in § 1415 encourage settlement). To further encourage early dispute resolution, the IDEA permits school districts to make binding ten-day offers of settlement prior to a hearing that limit the parents' attorney's fees and costs if they reject the proposed settlement and ultimately obtain less favorable relief in formal adjudication. 20 U.S.C. § 1415(i)(3)(D)(i). Consistent with this preference for voluntary resolution, most parents resolve their disputes without adversarial hearings. For example, nearly eighty percent of those due process complaints filed and resolved nationwide in 2018–19 were resolved without a due-process hearing.[49] These opportunities for voluntary dispute resolution prior to administrative adjudication help "ensure prompt resolution of disputes regarding appropriate education for handicapped children. . . ." *Spiegler v. District of Columbia*, 866 F.2d 461, 467 (D.C. Cir. 1989) (citing 121 Cong. Rec. 37,416 (1975) (statement of Sen. Williams, principal IDEA author, noting that prompt provision of services prevents "substantial setback to the child's development")).

The IDEA's emphasis on prompt provision of services comports with research demonstrating that timely intervention is the best path toward independence and mitigation of the disabling effects of a child's

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[49] Center for Appropriate Disp. Resol. in Special Educ., *IDEA Dispute Resolution Data Summary for: U.S. and Outlying Areas 2008–09 to 2018–19*, 11–12 (2020), https://www.cadreworks.org/resources/cadre-materials/2019-20-dr-data-summary-national.

condition.[50] For students who must regularly practice educational and functional skills, every instructional minute is important, such that missing even a few weeks of school can undo months or even years of progress. *See* Susan R. Easterbrooks et al., *Ignoring Free, Appropriate, Public Education, a Costly Mistake: The Case of F.M. & L.G. versus Barbour County*, 9 J. Deaf Stud. & Deaf Educ. 219, 225 (2004) (discussing importance of providing appropriate language services to Deaf students to avoid permanent developmental delays and reduced employability and earning potential); Wyatte C. Hall, *What You Don't Know Can Hurt You: The Risk of Language Deprivation by Impairing Sign Language Development in Deaf Children*, 21 Maternal & Child Health J. 961, 962 (2017). IDEA exhaustion must be understood within the context of this IDEA statutory scheme that encourages pre-hearing dispute resolution to ensure the quickest delivery of special-education services to disabled children.

B. Requiring Further IDEA Administrative Proceedings Would Deter Voluntary IDEA Settlements that Serve the Interests of the Parties and the Process.

By forcing families who wish to preserve intentional discrimination damage claims to reject appropriate

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[50] *See*, *e.g.*, National Ctr. on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, *Why Act Early if You're Concerned about Development?* (Apr. 19, 2021), https://www.cdc.gov/ncbddd/actearly/whyActEarly.html.

IDEA settlements and pursue (no longer disputed) FAPE issues through administrative hearings that cannot provide additional relief, the Sixth Circuit's decision would inevitably discourage future IDEA settlements—harming both students and school districts. *See Marek v. Chesny*, 473 U.S. 1, 10–11 (1985). Not only would the decision force parties to waste time and resources, it would diminish the efficient operation of the IDEA administrative hearing process by requiring hearings for matters that were already resolved with a focus on claims (such as those under the ADA) on which hearing officers lack expertise, experience, and adjudicatory authority. *See generally McDermott, Inc. v. AmClyde*, 511 U.S. 202, 215 (1994); *see also*, *e.g.*, *F.T.C. v. Actavis, Inc.*, 570 U.S. 136, 154 (2013) (discussing policy favoring settlements to avoid the unnecessary expenditure of time, money and judicial resources).

The IDEA's encouragement of settlement is consistent with the broader view that settlement is "the modal civil case outcome." Theodore Eisenberg & Charlotte Lanvers, *What is the Settlement Rate and Why Should We Care?*, 6 J. Empirical Legal Stud. 111, 112 (2009). Voluntary settlements are encouraged in state and federal courts and in federal procedural and evidentiary rules. *See*, *e.g.*, *Reiter v. MTA N.Y. City Transit Auth.*, 457 F.3d 224, 229 (2d Cir. 2006) (observing that Fed. R. Civ. P. 68 seeks "to encourage[s] settlements without the burdens of additional litigation"); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 350 (1981); *see also*, *e.g.*, Fed. R. Civ. P. 16(a)(5) (providing pre-trial

conferences to "[facilitate] settlement"); 2006 Advisory Committee's Note, Fed. R. Evid. 408 (noting rule promotes "public policy" favoring settlements). This general policy preference for voluntary settlement when appropriate is a central governing principle in our judicial and administrative forums.

Sometimes settlement does not fully resolve the parties' dispute, but can narrow the issues, leaving litigation only for those issues where there is an impasse. It is not uncommon for parties to settle some issues or claims and save others for later resolution by settlement or trial. *See*, *e.g.*, 1 California Deskbook on Complex Civil Litigation Management § 4.34 (2021). Parties also frequently settle injunctive claims to obtain immediate relief while saving damages claims for subsequent resolution. *See Carson v. American Brands, Inc.*, 450 U.S. 79, 89–90 (1981) (endorsing this practice); *see also Delta Air Lines, Inc.*, 450 U.S. at 350 (observing that defendant can offer to settle damage claims after a verdict or order finding it legally liable); 8 Moore's Federal Practice—Civil § 42.20 (2021) (noting traditional divisibility of liability and damages determinations); Fed. R. Civ. P. 68(c) (permitting formal offers to settle damages after defendant's liability has been established).

Like the significant number of individuals who resolve educational disputes without adversarial hearings,[51] the school district proffered a 10-day settlement

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[51] *See* U. S. Gov't Accountability Off., GAO-20-22, Special Education: IDEA Dispute Resolution Activity in Selected States

offer agreeing to immediately provide Miguel with appropriate continuing and compensatory education and related services, Pet.App. 2a, in exchange for releasing the district from all IDEA liability. Miguel's anti-discrimination claims were preserved for future resolution. The settlement in Miguel's case was not atypical.[52] He had a strong case for immediate equitable relief in the form of an appropriate instructional program and related services to prepare him for an independent life. Like other litigants, school districts benefit from settling rather than holding an expensive and time-consuming hearing that serves no purpose, especially in a case such as Miguel's where there is no factual dispute over the disabled child's needs or the appropriate way to meet them.

Here, the school district's attorneys, who were fully familiar with IDEA requirements and the hearing officer's dismissal of Miguel's ADA claim, freely offered to settle the IDEA claims in exchange for release of Miguel's IDEA claims, but not those under the

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Varied Based on School Districts' Characteristics 9–11 (2019) (hereinafter, GAO Report) (noting increase in mediation requests, decline in due process complaints, and sharp decline in full adjudications at hearings).

[52] *See*, *e.g.*, *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1219–20 (9th Cir. 2016) (discussing settlement providing tutoring and compensatory counseling services and reimbursing costs of private evaluation); *D.R. by M.R. v. E. Brunswick Bd. of Educ.*, 109 F.3d 896, 899 (3d Cir. 1997) (discussing settlement in which the school district would pay for costs of placing student at private school for two years and student released the district for all claims for "further costs based upon this placement, related service, or transportation in connection therewith").

ADA.[53] The proposed settlement terms were clear and permitted Miguel to "make [a] reasonable decision[] regarding the conduct of litigation." *Boorstein v. City of New York*, 107 F.R.D. 31, *34 (S.D.N.Y. 1985); *see Johnson v. Univ. Coll. of Univ. of Alabama in Birmingham*, 706 F.2d 1205, 1209 (11th Cir. 1983) (concluding that offeree can only accept the offer provided by the offeror), *holding modified by Gaines v. Dougherty Cnty. Bd. of Educ.*, 775 F.2d 1565 (11th Cir. 1985). Miguel accepted the terms of the settlement he was offered.

Here, in an open-eyed, bilateral settlement agreement between the parties and their experienced lawyers, Miguel relinquished his IDEA claims in exchange for the district's immediate provision of IDEA services. Students are entitled to have voluntary IDEA settlements recognized and enforced based on the terms of their final, accepted written agreement.[54] *See* 20 U.S.C. §§ 1415(f)(1)(B)(iii) (providing that IDEA settlement agreements will be "legally binding" and "enforceable");

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[53] The school district could have made an offer on the ADA claim, or demanded a release of that claim, but did not. For an example of an IDEA release that also releases the district for liability on the student's ADA claims, *see R.K., ex rel. T.K. v. Hayward Unified Sch. Dist.*, No. C 06-07836 JSW, 2007 WL 2778702, at *2 (N.D. Cal. Sept. 21, 2007).

[54] The parties should be able to freely reach agreement as long as the IDEA's exhaustion requirement is treated as a non-jurisdictional claims processing rule. Circuits are divided on this point. *See*, *e.g.*, *Payne*, 653 F.3d at 867–71, *overruled by Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014); *Muskrat v. Deer Creek Pub. Sch.*, 715 F.3d 775, 783–84 (10th Cir. 2013) (questioning prior Tenth Circuit cases finding exhaustion jurisdictional and discussing split in Circuit decisions).

see generally, e.g., *Cooper v. Retrieval-Masters Creditors Bureau, Inc*., 42 F.4th 675, 684 (7th Cir. 2022) (recognizing that parties will be held to terms of the final, accepted written agreement); 66 Am. Jur. 2d Release § 2 (2021) (recognizing that "definite, certain, and unambiguous" settlement agreements should be enforced). Once the parties have entered into a voluntary settlement of their FAPE claims, those agreements should be enforced. *See*, *e.g.*, *D.R. by M.R.*, 109 F.3d at 901 ("[P]ublic policy plainly favors upholding the settlement agreement entered between D.R.'s parents and the Board."). The decision below undercuts the settlement agreement reached within the administrative process. If not reversed, the decision will undermine the ability of parties to settle disputes when it is in their interests to do so, undermining a principal objective of the IDEA and, more generally, the clear legal and policy preference of Congress and the courts.

III. SECTION 1415(*l*)'S PLAIN LANGUAGE PROTECTS THE RIGHTS OF DISABLED STUDENTS TO ASSERT NON-IDEA CLAIMS ARISING IN A SCHOOL SETTING.

The panel's decision is contrary to Section 1415(*l*)'s clear text. After *Smith* held that all challenges related to the adequacy of disabled students' special education had to be channeled through the IDEA, Congress swiftly rejected it by enacting 20 U.S.C. § 1415(*l*) to protect disabled students' rights to bring school-based non-IDEA discrimination claims. *See* Pub. L. No. 99-372, § 3, 100 Stat. 796, 797; H.R. Rep. No. 99-296, at 4

(1985) (affirming "viability of . . . other statutes as separate vehicles for ensuring the rights of handicapped children"). Section 1415(*l*)'s language is clear: "[n]othing in this chapter shall be construed to restrict or limit the rights, procedures, or remedies available under . . . other Federal laws protecting the rights of children with disabilities . . . " Section 1415(*l)* protects a student's right to assert their non-IDEA claims. However, if those claims are seeking "relief that is also available" under the IDEA, they have to exhaust the IDEA administrative procedures in §§ 1415(f) and (g) prior to bringing those non-IDEA claims, but only "to the same extent as would be required" for an IDEA claim. 20 U.S.C. § 1415(*l*). The panel's decision demands much more from the student.

The Sixth Circuit takes us back to the days of *Smith* and ignores the statute's language and enactment history. Reading 1415(*l*) according to its plain language as courts must, *see*, *e.g.*, *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004), Miguel met all his 1415(*l*) obligations prior to bringing his ADA action. First, he attempted to bring his ADA claim in the IDEA forum, only to have that claim dismissed *at the behest of the school district*. Then, he fully resolved his FAPE/IDEA claim in a settlement with the district, satisfying his obligations under §§ 1415(f) and (g). *See generally Muskrat*, 715 F.3d at 778. He then pursued his ADA claim for the additional relief that was not available under the IDEA. This is precisely the result that the statute's terms authorize. There was no effort to

prematurely interrupt the administrative process. *See McKart v. United States*, 395 U.S. 185, 193 (1969).[55]

This Court has recognized that relief for an ADA damages claim is not "available" when the student would be sent away from the IDEA forum "empty-handed." *Fry*, 137 S.Ct. at 753–54 (citation omitted). As explained in Point IB, *supra*, the IDEA hearing officer won't decide an ADA claim, nor will they award monetary damages. *See id.* at 752 n.4. The student seeking compensatory damages for an ADA violation simply cannot get that relief through the IDEA process, and Section 1415(*l*) does not require them to further exhaust that process. *See* H.R. Rep. No. 99-296, at 7 (statement of bill sponsor clarifying that exhaustion is not required when it would "be futile" or "improbable that adequate relief can be obtained by pursuing administrative remedies" such as when "the hearing officer lacks the authority to grant the relief sought"). *See also* Brief for the United States as *Amicus Curiae* at 32, *Fry*, 137 S.Ct. at 753–54; *D.D. by & through Ingram v. Los Angeles Unified Sch. Dist.*, 18 F.4th 1058-62 (9th Cir. 2021) (Bumatay, J., concurring in part and dissenting in part). *But see McMillen*, 939 F.3d at 643, 645–48 (dismissing on exhaustion grounds damage

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[55] Some courts have raised concerns that a fair, plain-language reading of 1415(*l*) will encourage students to circumvent the IDEA process and go straight to court. Even if one indulges the atextual notion that factors outside the statute's words merit consideration, *see*, *e.g.*, *McMillen*, 939 F.3d at 648; *Cudjoe v. Indep. Sch. Dist. No. 12*, 297 F.3d 1058, 1067 (10th Cir. 2002); *Polera v. Board of Ed.*, 288 F.3d 478, 487–88, 490 (2d Cir. 2002), these concerns do not apply in the procedural posture here.

claim found to be perfectly coextensive with FAPE claim and collecting cases).

Clarification of this point would not result in a rush to file damage claims against school districts. First, evidence indicates that parents already have difficulties accessing even the more user-friendly IDEA administrative procedures, s*ee* GAO Report at 20, 28,[56] and parents are at least as likely to be deterred by the even greater barriers to commencing a federal court action. The additional evidentiary standards for establishing intentional discrimination and entitlement to compensatory damages, such as medical expenses or lost earning capacity, *see supra* note 48, at 16, create further barriers deterring inappropriate filings. Consequently, there is little incentive to file ADA damage claims except in the most egregious cases. A decision supporting Petitioners will not result in a flood of ADA litigation *in lieu of* IDEA proceedings. Students will continue to use the less costly and more accessible IDEA process to obtain their educational services. The Sixth Circuit's decision, however, forecloses the student's right to bring precisely the non-IDEA action that Section 1415(*l*) was enacted to protect. Tragically, the Sixth Circuit's decision will have the greatest

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[56] *See generally* Steven Marchese, PUTTING SQUARE PEGS INTO ROUND HOLES: MEDIATION AND THE RIGHTS OF CHILDREN WITH DISABILITIES UNDER THE IDEA, 53 Rutgers L. Rev. 333, 361 (2001) (positing that because many parents already face great difficulties advocating on behalf of their children at the IEP and due process hearing levels, they may settle cases to avoid more formal administrative or judicial proceedings).

negative impact on those students with the clearest entitlement to IDEA services and the strongest ADA claims—and who, like Miguel, have suffered from intentional, egregious misconduct.

The Sixth Circuit determined that, even in the face of a settlement agreement that preserved his ADA claims, by settling his IDEA claims, Miguel "traded off" his right to bring his ADA claim. Pet.App. 9a. But Section 1415(*l*) does not demand that type of tradeoff. It expressly allows Miguel to bring his ADA claim for damages because that type of relief is not available under the IDEA. The Court should correct the Sixth Circuit's dramatic departure from the statute's command. "[R]equiring administrative exhaustion for any case that falls within the general 'field' of educating disabled students," *see generally Fry*, 137 S.Ct. at 752 n.3 (citation omitted); Mark C. Weber, A New Look at Section 504 and the ADA in Special Education Cases, 16 Tex. J. C.L. & C.R. 1, 25 (2010), returns us to the days before Section 1415(*l*)'s enactment.

CONCLUSION

For these reasons, *amici curiae* respectfully urge this Court to reverse the decision of the Sixth Circuit.

Respectfully submitted,

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