No._____

SUPREME COURT OF THE UNITED STATES

22-5765

Ryanne Parker & Nakhila Parker (N.P),

Pro se petitioners

V

West Carroll Special School District,

Respondents

On Petition for Writ of Certiorari

To The United States Court of Appeals for the Sixth Circuit

PETITION OF WRIT OF CERTIORARI

Ryanne Parker, pro se petitioner,

Nakhila, Parker, pro se petitioner

315 Wingo Circle

Trezevant, Tn 38258

731-552-4822 (for both petitioners)

QUESTION PRESENTED

In the Handicapped Children's Protection Act of 1986 (HCPA), 20 U.S.C. § 1415(l), it requires the exhaustion of state administrative remedies under the Individuals with Disabilities Education Act (IDEA) for non-IDEA actions "seeking relief that is also available under" the IDEA. The question presented, on which the circuits have persistently disagreed, is:

Whether the HCPA commands an exhaustion of such in a suit, brought under the Americans with Disabilities Act and the Rehabilitation Act, that seeks damages—a remedy that is not available under the IDEA.

PARTIES TO THE PROCEEDING

Ryanne Parker, as parent of N.P., and Nakhila Parker (N.P, now an adult as of June 17, 2020) were plaintiffs-appellants in the proceedings below.

West Carroll Special School District were defendants-appellees in the proceedings below.

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LISTS OF RELATED CASES

CASES:

Board of Education v. Rowley, 458 U.S. 176, 201 (1982)

Burlington School Comm. v. Massachusetts Dept. of Educ., 471 U.S. 359, 370-371 (1985)

Charlie F. v. Board of Educ. of Skokie Sch. Dist. 68, 98 F.3d 989, 992 (7th Cir. 1996)

Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 246 (2009)

Fry v. Napoleon, 788 F.3d 622 (6th Cir. 2015)

Payne V. Peninsula School District 653 F.3d at 874-875 (9th circuit, 2011)

Smith v. Robinson, 468 U.S. 992 (1984)

Tennessee v. Lane, 541 U.S. 509, 517 (2004)

Wallace v. Oakwood Healthcare, Inc., 954 F.3d 879 (6th Cir. 2020)

W.B. v Matula, 1995, 67 F.3d 484,494,496 (3d cir. 1995).

Weber v Cranston School Committee, 2000, 212 F.3d 41(1st circuit)

OPINIONS BELOW

The opinion of the court of appeals was not recommended to be published and is unpublished. The opinion of the district court is reported at 2020 WL 7647633 (W.D. Tenn. 2020).

JURISDICTION

The court of appeals entered judgment on March 14,2022, and denied rehearing en banc April 26, 2022.The petition is filed within 90 days of the latter date. This Court has jurisdiction pursuant to 28U.S.C. § 1254(1).

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Relevant provisions of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act,and the Americans with Disabilities Act of 1990, the Handicapped Children's Protection Act of 1986 as well as of the Americans with Disabilities Act's implementing regulations, are reprinted at App. 55.

STATEMENT OF THE CASE

This case is an open and shut case. The respondents have received multiple state violations of IDEA issued to them and multiple investigations and a 504 due process hearing has found issues concerning the discriminatory and retaliatory educational practices and behaviors of the respondents that were obvious actions of retaliation and discrimination towards the petitioners. The petitioner R.P. has provided both the district and the appellant courts multiple material facts to the consideration of the questions presented within this case. The petitioner N.P (Nakhila Parker) has added herself because she is now an adult and can represent herself. What proceeded in both the district court and the appellate court can be summarized that both court dismissed the petitioner's case due to her not exhausting her administrative remedies through IDEA due process, however, the petioner would argue that the IDEA due process could not give the petitioner R.P the

relief that she sought for. A parent cannot recover monetary damages through an IDEA proceeding. "IDEA itself makes no mention of such relief. Hence by its plain terms § 1415(f) does not require exhaustion where the relief sought is unavailable in an administrative proceeding" W.B. v Matula, 1995, 67 F.3d 484,494,496 (3d cir. 1995).

This case involves interpretation of the Handicapped Children's Protection Act of 1986 (HCPA), 20 U.S.C. § 1415(l), which requires exhaustion of state administrative remedies under the Individuals with Disabilities Education Act (IDEA) for non-IDEA actions "seeking relief that is also available under" the IDEA. Petitioner R.P brought this case under Title II ofthe Americans with Disabilities Act (ADA), 42 U.S.C.§ 12132, IDEA and Section 504 of the Rehabilitation Act, 29U.S.C. § 794, to seek damages for the social and emotional harm caused by the retaliatory and discriminatory acts of the Defendants as the mother advocating for her Autistic daughter's education. Petitioner Nakhila Parker (N.P) seeks damages social and emotional, and educational harm caused by the retaliatory and discriminatory acts of the Defendants while she was a student.

A. The Facts

In August 2018, during an IEP meeting, it was decided that the IEP team would reconvene on the appropriate RTI services petitioner R.P's daughter petitioner NP would receive once she had completed the benchmark assessment test after school started somewhere around September 2018. After some time, in October petitioner R.P had received no notice of RTI instruction place met yet, she reached out to Mrs. Tammy Davis, NP's then Special Education teacher and case manager, via text message about NP's RTI services and results, she stated that N.P had not completed the testing yet and that N.P was not in RTI due to a computer apps class that was assigned to her in the beginning. petitioner R.P then remined Mrs. Tammy of RTI intervention instruction not being implemented before her RTI results and tier implementation wouldn't come until after benchmark

which was discussed in the August IEP meeting. petitioner R.P was then informed by Mrs. Tammy that in order for NP to be assigned to RTI intervention, an IEP meeting would have to be scheduled to discuss RTI, and she informed me that she would also inform Mrs. Dana Carey, Supervisor of Special Programs, at that time. petitioner R.P also reached out by phone, to Mrs. Dana Carey to schedule a meeting to discuss RTI, appellant did not receive a returned phone call nor email from Mrs. Dana regarding an IEP meeting in October nor November 2018. During this same time, there were some other issues regarding compensatory services that were agreed upon after a March 2018 TDOE IDEA administration complaint decision, recommending that compensatory education be provided to NP, this was a separate issue outside of RTI intervention instruction placement. Petitioner R.P had to request a mediation meeting through the TDOE IDEA administration division for that separate issue to be attempted to be resolved. Petitioner R.P did not receive a response from Dana Carey regarding an IEP meeting until December 10, I received an email from Mrs. Dana requesting that we should have an IEP meeting instead of the mediation, however, in the event the petitioner R.P chose to continue the mediation an IEP meeting would take place after mediation. On December 13, 2018, a mediation took place with the following participants: mediator/ ALJ, Dana Carey, Mr. Dexter Williams, Superintendent, and the petitioner R.P. There was no agreement reached during the mediation. The petitioner R.P was concerned that during the mediation Mrs. Dana had mentioned in her argument to disagreement with what the petitioner R.P was asking for in the mediation that NP was already receiving RTI services along with compensatory services with the same teacher, in what seemed obvious to display that the respondents were providing NP multiple services to help her to gain progress. The appellant informed her again of the information that was told to her by Mrs. Tammy in October. Mrs. Dana still continue to profess and insist to the mediator that RTI intervention tier instruction was being

provided, leading the mediator Ms. Summers to say that it was obvious that the respondents were providing enough services, however Mrs. Dana had made several untruthful statements during the mediation meeting. The bigger result of the mediation was the data presented at mediation, the progress monitoring data provided by the appellees shown that N.P was in a high risk category in math, Mrs Dana stated during the mediation meeting that an IEP meeting would be had in the next couple of days.

After the mediation petitioner R.P sent an email on December 14, 2018, to the following Mrs. Dana, Mr. Williams, and other parties of the board to express concern of the false, misleading and inaccurate information that was given in the mediation meeting by Mrs. Dana. In response, Mr. Williams, replied stating that the information stated in the mediation was due to "confusion". Mr. Williams also continued within in the reply that Mrs. Tammy had conveyed to him that last year petitioner R.P was not happy with NP intervention class during RTI time, and that NP was in a computer application class that was required for her to graduate, that information was false, the appellant had not said that nor was computer application a required class for N.P to graduate. The petitioner R.P within her reply to the respondents, informed them of the need for NP to be in RTI intervention and she expressed her concern of a need for the IEP meeting. By the end of the term and before the school Christmas break 2018 the petitioner R.P did not get a response to schedule an IEP meeting. It was obvious that the respondents had not scheduled an IEP meeting with the petitioner R.P in retaliation. the new term began on January 2, 2019, the petitioner R.P sent an email to multiple agents of the respondents requesting an IEP meeting. After no response from the appellees for over a month on or around February 14, 2019, the petitioner R.P called Mr. Steve Sparks. Mr. Steve Sparks, who was an IDEA investigator for TDOE, petitioner R.P called him to inform him of the issues that were occurring with the respondents and to ask what her rights were

regarding IEP meeting requests. The next day on February 15, 2019, of my conversation with Mr. Sparks, I received an email from Mrs. Dana giving the petitioner R.P dates to schedule an IEP meeting. On February 23, 2019, the petitioner R.P finally was able to have an IEP meeting with the agents of the respondents. Within the IEP meeting the petitioner R.P asked Mrs Dana why there was delay during the discussion, Mrs. Dana informed the petitioner R.P that the respondents were advised, by their attorney, not to have contact with the petitioner R.P. This information can be concurred through an email Mrs. Dana sent to IDEA investigator Steve Sparks, confirming that the respondents were given advice from their attorney, that they had decided to take, not to contact the petitioner R.P. During the meeting RTI intervention instruction services were finally put in place for petitioner R.P's daughter NP. However, by the end of the school year NP did not make progress by the end of the school year. During a May 21, 2019, IEP meeting petitioner, R.P received a copy of NP's data from progress monitoring revealing that NP was still in high risk category for intervention. During the meeting Ms. Tammy Davis, N.P's case manager and Special Education teacher had recommended that NP did not need ESY services. The petitioner R.P refused the recommendation due to the data that was provided, and other information discussed during the IEP meeting. After much discussion, the respondents made an offer to provide NP with the same ESY services as other students. ESY According to the IDEA procedural guidelines, Sec 300.106, that states "Extended school year (ESY) services are special education and related services that are provided to a student with a disability beyond the regular school year in accordance with his/her IEP. The need for ESY services must be determined annually on an individual basis..." and not based on the services of other students, ESY is individually determined. After the petitioner R.P was informed by the agents of the respondents who attended the meeting, that anything else other than what was offered would have to be approved by Mrs.

Dana Carey, the Supervisor of Special programs, whom was not in attendance at this meeting the petitioner R.P informed the respondents in attendance of the meeting that she would like for them to inform Mrs. Dana that the petitioner R.P would like for her to be in attendance to another meeting and the petitioner R.P left the meeting. After that meeting the petitioner R.P, during a phone conversation also spoke with Mr. Williams and expressed the need to speak with Mrs. Dana. A couple of days after the meeting the petitioner R.P received a copy of a finalized IEP that included within the parent's signature line "Parent Refused to sign" this was a direct violation of SBOE Rule 0520-01-09.13 stating "when IEPs must be in effect. This violation, among others were included in the July 2019 TDOE IDEA determination letter issued. The petitioner R.P filed the IDEA administrative complaint after she received the finalized IEP in the mail on May 29, 2019, in which the respondents were issued multiple violations.

B. The Procedural Background before Court filing

On or about mid December 2018 the appellant attended a mediation meeting with the defendants to discuss compensatory services for N.P., there was also a need for an IEP meeting, the appellant sent a written request for an IEP meeting around the same time and the respondents' ignored the request for more than a month.

On or about the end of May 2019 and among other issues that surrounded N.P's special services and the petitioner R.P's other child, the petitioner R.P pro se contacted the Tennessee Department of Education. (TDOE) and filed a complaint. As a result of who determined that Defendant violated N.P.'s right to a free and appropriate public education (FAPE) among other violations (Please see Exhibit B).

The petitioner R.P did file for an IDEA due process on or around later 2019, however due to

scheduling conflicts with an already scheduled ADA/Section 504 due process hearing the appellant cancelled the IDEA due process with intentions of refiling at a later time. However, once the IDEA concerns and issues for N.P were addressed within the ADA/Section 504 decision letter from a November 2019 504 due process hearing and the petitioner R.P moved forward to court to seek monetary damages from the information of the mass retaliation, intentional discrimination and deliberate indifference revealed from the testimonies of the agents of the respondents during the ADA/Section 504 due process hearing.

There were still other issues of retaliation and discrimination committed by the agents of the respondents, the petitioner R.P filed an ADA Section 504 complaint and due process which was heard by an impartial due process hearing officer on or about mid November 2019. Exhibit B is a copy of the report and recommendations of the hearing, please see Exhibit A. The ADA/Section 504 hearing officer also addressed IDEA concerns through recommendations within his report.

As a result of the ADA/ Section 504 complaint, monetary damages were sought by the petitioners, so a case was filed in the chancery court in January of 2020. The counsel of the respondents moved the case to federal court soon after.

C. Statute Background

The Congress enacted the HCPA in response to Smith v. Robinson, 468 U.S. 992 (1984). In Smith, the Court held that the Education for the Handicapped Act (the prior name for the IDEA) provided "the exclusive avenue" for students with disabilities to assert an educational-rights claim—even if that claim arose under some other federal statute or even the Constitution itself. See id. at 1012-

1013. Congress responded swiftly to "reaffirm[] the viability of section 504 and other federal statutes such as 42 U.S.C. § 1983 as separate from but equally viable with EHA as vehicles for securing the rights of handicapped children and youth." H.R. Rep. No. 99-296, 99th Cong., 1st Sess. 6 (1985). In service of that goal, the HCPA amended the IDEA specifically to preserve educational-rights claims under the Constitution and other federal laws. In its current form, the relevant section of the HCPA provides: Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter. 20 U.S.C. § 1415(l) (emphasis added). This provision expressly preserves non-IDEA claims for the educational rights of children with disabilities, but it requires that, where a plaintiff "seek[s] relief that is also available under" the IDEA, that plaintiff must first exhaust state administrative remedies under that statute. See 20 U.S.C. § 1415(f) (requiring state to establish process for impartial due process hearing); id. § 1415(g) (providing for appeal to state educational agency if due process hearing is held by the local educational agency). Preserving non-IDEA claims serves an important role, while the IDEA itself only provides a limited substantive protection and authorizes only a limited relief. Substantively, the IDEA's requirement of a "free appropriate public education [FAPE]," 20 U.S.C. § 1412(a)(1), implemented through a student's IEP, 20 U.S.C. § 1414(d), guarantees only a "basic floor of opportunity" for students with disabilities. Board of Education v. Rowley, 458 U.S. 176, 201 (1982). It also does not guarantee "'equal' educational opportunities." Id. at 198. And although

the IDEA authorizes an order of "reimbursement of the costs of private special education services in appropriate circumstances," Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 246 (2009), it does not authorize the recovery of money damages of retaliation and discrimination. (Living in rural West Tennessee there are no private schools near the petitioners)See Burlington School Comm. v. Massachusetts Dept. of Educ., 471 U.S. 359, 370-371 (1985) (holding that tuition reimbursement is available specifically because that remedy is restitutionary and does not constitute damages). The ADA, by contrast, is an antidiscrimination statute that substantively requires equal opportunity. In particular, Title II of the ADA prohibits any state or local government entity from discriminating against a "qualified individual with a disability." 42 U.S.C. § 12132. The statute specifically contemplates that, to avoid discrimination, such a public entity will be required to make "reasonable modifications to rules, policies, or practices." 42 U.S.C. § 12131(2). See Tennessee v. Lane, 541 U.S. 509, 517 (2004). Congress authorized the Department of Justice to issue regulations implementing Title II of the ADA. 42 U.S.C. § 12134. Because of the importance of service animals to ensuring equal access for many people with disabilities, the Department has interpreted the statute's "reasonable modifications" language to require that, with certain exceptions not applicable here, "[i]ndividuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go," 28 C.F.R. § 35.136(g) (2011).2 This rule applies to all state and local government entities, and it does not require a showing of a particular educational need before an individual may invoke its protections. Unlike the IDEA, the ADA also provides for damages liability. See Lane, 541 U.S. at 517.3

REASONS FOR GRANTING THE PETITION

There are two circumstances where the Supreme Court will often grant a petition of writ of certiorari. One, if two or more federal circuit courts of appeals have decided the same issue in different ways. Two, is that the highest court in the state has held a federal or state law to be in violation of the constitution or has upheld a state law against the claim that it is in violation of the constitution.

The majority opinion also squarely conflicts with this Court's prior opinions in *Wallace v. Oakwood Healthcare, Inc.*, 954 F.3d 879 (6th Cir. 2020), holding that the claimant did not need to exhaust her administrative remedies. In this case, the appellant, as a parent cannot recover monetary damages through an IDEA proceeding. "IDEA itself makes no mention of such relief. Hence by its plain terms § 1415(f) does not require exhaustion where the relief sought is unavailable in an administrative proceeding" *W.B. v Matula, 1995, 67 F.3d 484,494,496 (3d cir. 1995).* In Wallace v Oakwood Healthcare, Inc. this court rejected the argument of exhaustion of administrative remedies. Consideration by the full Court is necessary to secure and maintain uniformity of this Court's decisions. Fed. R. App. P. 35(a)(1). The petitioners assert to this court that as the parent R.P does "not have to meet the IDEA exhaustion requirement because, as a parent, she does not have standing to file her own retaliation claim under IDEA" *(Weber v Cranston School Committee,* 2000, 212 F.3d 41(1st circuit). The Sixth Circuit stated in many cases that before filing a damages lawsuit under the ADA and the Rehabilitation Act, a child with a disability must first exhaust state administrative proceedings under the IDEA if those proceedings could possibly have provided a remedy—though not a damages remedy—for the injuries the child alleges. App. 6. That holding accords with the rulings of at least six other courts of appeals. But it squarely conflicts with the Ninth Circuit's en banc holding in . Payne, 653 F.3d at 874-875. the Ninth Circuit has held that a

"relief-centered approach" better accords with the text: "[W]hether a plaintiff could have sought relief available under the IDEA is irrelevant—what matters is whether the plaintiff actually sought relief available under the IDEA." Id. at 875. Had the Petitioners brought this suit in the Ninth Circuit, the case would not have been dismissed on exhaustion grounds, because the damages relief they actually sought is not available under the IDEA. In Charlie F. v. Board of Educ. of Skokie Sch. Dist. 68, 98 F.3d 989, 992 (7th Cir. 1996) the Seventh Circuit nonetheless held that the district court properly dismissed the suit for failure to exhaust IDEA administrative remedies, see id. at 991-993. The court reasoned that IDEA proceedings might conceivably result in non-damages relief that could address the harms of which the plaintiff complained, and that the plaintiff therefore first had an obligation to pursue those proceedings before seeking damages under other legal regimes. "Perhaps Charlie's adverse reaction to the events of fourth grade cannot be overcome by services available under the IDEA and the regulations, so that in the end money is the only balm," the court explained. Id. at 993. "But," it concluded, "parents cannot know that without asking, any more than we can." Id. Because "at least in principle relief [was] available under the IDEA," id., even if the lawsuit did not "seek[]" that relief (cf. 20 U.S.C. § 1415(l)), the Seventh Circuit held that exhaustion was required: "the theory behind the grievance may activate the IDEA's process, even if the plaintiff wants a form of relief that the IDEA does not supply." Id. at 992. The appellant is seeking monetary damages in this case and because of that the IDEA exhaustion requirement would also be irrelevant for the appellant to complete, for the relief she sought could not be available under IDEA. Granting the petition consideration is necessary to secure and maintain uniformity of the court's decisions.

The district and the appeals court's decisions in this case conflicts with decisions of the Supreme Court. Fed. R. App. P. 35(b)(1)(A). In *Fry v. Napoleon*, 788 F.3d 622 (6th Cir. 2015), the Court

of Appeals for the Sixth Circuit upheld a ruling by a Michigan federal court that Elhena Fry's parents were required to request a special education due process hearing, i.e., exhaust their administrative remedies, before they could file suit for monetary damages under the ADA and Section 504.On February 22, 2017 by a unanimous 8-0 decision, SCOTUS reversed the Court of Appeals for the sixth circuit decision and ruled in favor of the parents. The SCOTUS Court explained that "We hold that exhaustion is not necessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee", *Fry v Napoleon.* The appellant's case and TDOE complaint she filed in May of 2019 resulted in the appellee's being in violation for not providing FAPE to N.P.

The Petitioners' complaint sought one principal form of relief: "damages in an amount to be determined at trial, this form of relief is not available under the IDEA. The IDEA does not provide for monetary damages. Both of the lower courts erred in dismissing the case for failure to exhaust.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

Ryanne Parker pro se petitioner 7-21-22

Ryanne Parker, Petitioner

Na'Khila Parker pro se petitioner 7-21-22

Nakhila Parker, Petitioner

CERTIFICATE OF COMPLIANCE

No.

Ryanne Parker, petitioner

Nakhila Parker, petitioner

V

West Carroll Special School District, Respondents

As required by the Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 4,868 words excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty that the forgoing is true and correct

Executed on July 21, 2022

Ryanne Parker, pro se petitioner 7-21-22

Ryanne Parker, pro se petitioner

Na'Khila Parker pro se petitioner 7-21-22

Nakhila Parker, pro se petitioner