No: 22-5765

In the

Supreme Court of the United States

RYANNE PARKER, INDIVIDUALLY AND ON BEHALF OF HER MINOR DAUGHTER, N.P.

Petitioners,

v.

WEST CARROLL SPECIAL SCHOOL DISTRICT,

Respondent

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

BRIEF IN OPPOSITION

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INTRODUCTION

West Carroll Special School District respectfully opposes Ryanne Parker's Petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit. Ms. Parker provides no compelling reasons for the Court to grant her petition. First, there is no conflict of law among the federal circuits or state supreme courts regarding exhaustion of administrative remedies under the IDEA. The circuits agree that exhaustion is required. Second, the lower court's decision is not inconsistent with this Court's precedent. And third, this case does not raise an important issue of federal law nor does it raise significant practical consequences. The District Court properly granted and the Sixth Circuit Court of Appeals properly affirmed summary judgment to Respondent as Petitioner failed to exhaust administrative remedies as required by the Individuals with Disabilities Education Act ("IDEA").

STATEMENT OF THE CASE

Ryanne Parker ("Petitioner") is the parent of N.P, and at all relevant times, N.P was a student in the West Carroll Special School District ("Respondent") and received special education services through an individualized education plan ("IEP"). (Statement of Undisputed Facts, RE 76-2, PageID 464-72, ¶¶ 1-3).[1] Petitioner's Petition contains a Statement of the Case that contains information that is unnecessary for the Court to decide the Question Presented: whether Petitioner was required to exhaust her administrative remedies under the IDEA prior to filing suit.

Petitioner's opening paragraph of the Statement of the Case alleges "multiple state violations of IDEA issued" and "issues concerning the discriminatory and retaliatory educational practices." These statements are not only untrue, but also completely irrelevant to the question presented to this Court.

The following are the facts relevant to the Question Presented to the Court:

On July 18, 2019, the Tennessee Department of Education ("TDOE") issued findings concerning Administrative Complaint #19-68 submitted by Petitioner. (*Id*., ¶ 5). In doing so, the TDOE instructed Respondent to implement certain corrective actions with respect to N.P. (*Id*., ¶ 6). Respondent implemented said corrective actions and timely reported the same to the TDOE. (*Id*., ¶¶ 7-8). On August 26, 2019, the TDOE issued a letter, confirming that said corrective actions had been completed by Respondent. (*Id*., ¶ 9).

Despite the completed corrective actions taken by Respondent, the TDOE

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[1] Petitioner failed to respond to Respondent's Statement of Undisputed Material Facts. (*See* R&R, RE 90, PageID 727-28).

received a Due Process Hearing Request Form from Petitioner on October 15, 2019, alleging that Respondent denied N.P. a free appropriate public education ("FAPE") due to N.P.'s Response to Intervention ("RTI") placement, and Petitioner provided Respondent with the related due process complaint under the IDEA (APD Case No. 07.03-191723J). (*Id.*, ¶¶ 10-11). On October 28, 2019, an Order Setting Prehearing Conference was issued in said action (APD Case No. 07.03-191723J) by Elizabeth D. Cambron, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State. (*Id.*, ¶ 12). On November 6, 2019, Administrative Judge Cambron issued an Order of Dismissal in said action (APD Case No. 07.03-191723J), providing, in part, "On November 1, 2019, [Petitioner] R.P. provided notification by email that she wished to withdraw her due process hearing request. Accordingly, pursuant to the [Petitioner's] request, this matter is hereby dismissed." (*Id.*, ¶¶ 13-14).

Meanwhile, in July of 2019, Petitioner also delivered a Discrimination/ Harassment Complaint Form to Respondent, alleging that a special education teacher employed by Respondent had discriminated against/harassed her and/or N.P. (*Id.*, ¶ 15). In response, a Complaint Review was completed by Respondent. (*Id.*, ¶ 16). Because Petitioner was not satisfied with the Complaint Review, Respondent's Supervisor of Special Programs completed an additional ADA/Section 504 Complaint Review at Petitioner's request. (*Id.*, ¶ 17). Subsequently, on October 8, 2019, Petitioner submitted a Request for ADA/Section 504 Due Process Hearing with Respondent based upon her Discrimination/Harassment Complaint Form. (*Id.*, ¶ 18). On November 19, 2019, a due process hearing pursuant to the provisions § 504 was

held at the Central Office of Respondent, Impartial Hearing Officer Thomas M. Minor presiding. (*Id*., ¶ 19). During the due process hearing, the witnesses who appeared were not sworn and provided their statements in narrative format aided by questions from Hearing Officer Minor, and Hearing Officer Minor ultimately issued a "Decision of Impartial Hearing Officer to Section 504 Due Process Hearing" ("Minor's Decision") on November 22, 2019. (*Id*., ¶¶ 20-22). Within Minor's Decision, Hearing Officer Minor instructed Respondent to provide N.P. with seven § 504 accommodations. (*Id*., ¶ 23). Respondent complied with the instructions contained within Minor's Decision in full. (*Id*., ¶¶ 24-32).

Notwithstanding, on January 23, 2020, Petitioner, proceeding *pro se*, filed a civil action against Respondent, along with Dexter Williams, Dana Carey, and Tammy Davis ("individual defendants"), in the Chancery Court of Carroll County, Tennessee. (State Court Complaint, Sealed RE 3). Within her Complaint, Petitioner asserted claims under the IDEA and the ADA, alleging that Respondent and the individual defendants discriminated against N.P. and denied N.P. FAPE during the 2018-2019 school year. (*Id*.).

Respondent, along with the individuals, timely filed a Notice of Removal (Notice, RE 1, PageID 1-2), as well as a Motion to Dismiss and supporting Memorandum, arguing, in part, that the individual defendants should be dismissed. (Motion, RE 12, 12-1, PageID 137-46).

Petitioner filed a Motion to Remand (Motion, RE 9, PageID 46-48), and Respondent filed a Response in Opposition to Petitioner's Motion, confirming that the

district court maintained original jurisdiction over Petitioner's IDEA and ADA claims. (Response, RE 14, PageID 148-49).

The Magistrate Judge issued a Report and Recommendation ("R&R"), recommending, in part, that Petitioner's motion to remand be denied and that the individual defendants be dismissed. (R&R, RE 32, PageID 189-205). The R&R provided:

NOTICE

> **WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. 28 U.S.C. § 636(B)(1); FED. R. CIV. P. 72(B)(2); L.R. 72.1(G)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER.**

(*Id.*, PageID 205).

Petitioner subsequently obtained counsel and filed an Amended Complaint on behalf of Petitioner and N.P. against Respondent, alleging claims, *inter alia*, under the IDEA and the ADA. (Amended Complaint, RE 35, PageID 213-218).

The District Court later issued an Order to Show Cause Why Report and Recommendation Should Not be Adopted, ordering Petitioner to show cause within seven days why the Magistrate Judge's prior R&R should not be adopted in its entirety. (Order, RE 37, 222-23). Said Order included, "Failure to respond to this order will result in the adoption of the report and recommendation without further

notice." (*Id*., PageID 223). Petitioner failed to respond. (*See* Order, RE 40, PageID 233).

Respondent filed an Answer to the Amended Complaint. (Answer, RE 39, PageID 224-230).

The District Court issued an Order adopting the prior R&R in its entirety. (Order, RE 40, PageID 232-33).

Petitioner's counsel subsequently withdrew from this cause. (Order, RE 44, PageID 244).

Once again proceeding *pro se,* Petitioner, individually and on behalf of N.P., filed an Amended Complaint, asserting claims against Respondent pursuant to the IDEA, the ADA, § 504, and § 1983. (Amended Complaint, RE 45, PageID 246-53).

Respondent filed an Answer (Answer, RE 48, PageID 266-73) and a Partial Motion to Dismiss, contending that Petitioner failed to state a colorable § 1983 claim, that Petitioner failed to state a colorable ADA and/or § 504 claim, and that Petitioner could not represent the interests of N.P. (Motion, RE 47, 47-1, PageID 258-65).

Petitioner filed a Response to Respondent's Partial Motion to Dismiss. (Response, RE 52, PageID 281-83).

The Magistrate Judge issued a R&R, recommending that Petitioner's claims under the ADA, § 504, § 1983 be dismissed and that Petitioner's claims brought on behalf of N.P. be dismissed. (R&R, RE 54, PageID 297-303). Petitioner filed an Objection to the R&R (Objection, RE 57, PageID 313-77), and Respondent filed a Response to Petitioner's Objection. (Response, RE 60, PageID 385-89). The District

Court adopted the R&R, granting Respondent's motion for partial dismissal. (Order, RE 63, PageID 404-11).

Respondent filed its Motion for Summary Judgment and supporting documentation concerning the sole remaining claims – Petitioner's personal claim asserted under the IDEA related to N.P.'s education at WCSSD and Petitioner's personal claim vaguely asserted under Tennessee law. (Motion, RE 76 - 76-14, PageID 448-534). Petitioner filed a response to Respondent's Motion (Response, RE 81, PageID 561-607), and Respondent filed a Reply to Petitioner's Response. (Reply, RE 85, PageID 699-703).

The Magistrate Judge issued a R&R, recommending that Respondent's motion be granted because Petitioner failed to exhaust her administrative remedies as required under the IDEA. (R&R, RE 90, PageID 727-751). Petitioner filed an Objection to the R&R (Objection, RE 91, PageID 752-58), and Respondent filed a Response to Petitioner's Objection. (Response, RE 92, PageID 759-66). On June 24, 2021, the District Court adopted the R&R and granted Respondent's Motion for Summary Judgment. (Order, RE 96, PageID 773-84). In doing so, the District Court certified that any appeal by Petitioner would not be taken in good faith. (*Id*., PageID 784). A Judgement was entered in Respondent's favor on June 25, 2021. (Judgement, RE 97, PageID 785).

Petitioner subsequently filed her Notice of Appeal on July 22, 2021. (Notice of Appeal, RE 98, PageID 786-87).

On Appeal, the Court of Appeals affirmed the District Court's decision holding

that Petitioner was required to exhaust her administrative remedies under the IDEA prior to filing suit. (RE 101).

REASONS FOR DENYING THE PETITION

This Court should deny Petitioner's Petition because none of the Court's considerations for review as outlined in Rule 10 of the Rules of the Court are present. Although not entirely clear, it appears that Petitioner is asserting that the federal circuit rulings on the issue of whether exhaustion of administrative remedies under IDEA when seeking money damages are in conflict with one another. This is simply untrue.

The circuits agree that seeking money damages does not excuse a plaintiff from exhausting her administrative remedies. *See*, *J.L. v. Wyo. Valley W. Sch. Dist.*, 722 F. App'x 190, 192 (3d Cir. 2018); *J.M. v. Francis Howell Sch. Dist.*, 850 F.3d 944, 950 (8th Cir. 2017); *J.S. v. Attica Cent. Sch.*, 386 F.3d 107, 112 (2d Cir. 2004); *C.T. v. Necedah Area Sch. Dist.*, 39 F. App'x 420, 423 (7th Cir. 2002); *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 63 (1st Cir. 2002); *N.B. by D.G. v. Alachua Cty. Sch. Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996). "[W]hen a plaintiff seeks relief related to the IDEA's core guarantee—a 'free appropriate public education'—[s]he is required to exhaust the Act's administrative procedures." *F.C. v. Tenn. Dep't of Educ.*, 745 Fed. App'x. 605, 606 (6th Cir. 2018). Parents cannot bypass the administrative process merely by seeking some type of relief not available under the IDEA. *See W.R. v. Ohio Health Dep't,* 651 F. App'x. 514, 519 (6th Cir. 2016). Courts have explained that exhaustion is required because "[t]he federal courts are not the entities best equipped to craft an IEP or remedial substitutes. They are, instead, suited to reviewing detailed administrative records, such as those that would be furnished through due process

hearings…under the IDEA." *Long v. Dawson Springs Indep. Sch. Dist*., 197 F. App'x 427, 433-34 (6th Cir. 2006). Thus, the "relief available under the IDEA means relief for events, consequences, and conditions giving rise to the complaint, not the type of relief the plaintiff prefers." *Necedah Area Sch. Dist.*, 39 F. App'x at 422.

Petitioner relies on *Wallace v. Oakwood Healthcare, Inc.*, an ERISA case, for the assertion that she did not need to exhaust her administrative remedies. 954 F.3d 879, 884 (6th Cir. 2020). Petitioner does not elaborate on how the Court of Appeals analysis of the administrative requirements of ERISA lend to the conclusion that she was excused from exhausting her administrative remedies in this case. Indeed, an ERISA matter has no bearing here.

Petitioner further relies on *W.B. v. Matula* for the same assertion. 67 F.3d 484, 495 (3d Cir. 1995). *Matula* is a case that involved the question of whether claims under the IDEA could be predicated on § 1983, and, if so, what remedies were available. 67 F.3d 484. The Third Circuit Court of Appeals held that § 1983 supplied a private right of action for IDEA claims. *Id.* at 496. The Court reasoned that because monetary damages are available under § 1983 but not the IDEA, exhaustion of administrative remedies is not required when IDEA claims are predicated on § 1983 and seek damages. *Id. Matula,* has no bearing here either, however, and has since been overruled by *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 795 (3d Cir. 2007). In *Jersey City*, the Third Circuit revisited whether IDEA claims were actionable under § 1983. 486 F.3d 791. And when it did so, it overturned its decision in *Matula* and held that IDEA claims may not be predicated on § 1983. *Id.* at 795.

Courts generally recognize two exceptions to the IDEA's exhaustion requirement. *See F.C.*, 745 F. App'x at 608. First, a plaintiff may be excused from the IDEA's exhaustion requirement "when the use of administrative procedures would be futile or inadequate to protect the plaintiff's rights." *Id*. (citing *Covington v. Knox Cty. Sch. Sys.*, 205 F.3d 912, 917 (6th Cir. 2000). Said exception has been applied sparingly, usually in cases where the plaintiff-student was a victim of abuse in an educational setting. *See e.g., F.H. Memphis City Sch.,* 764 F.3d 638, 644 (6th Cir. 2014). Moreover, a plaintiff may be excused from the IDEA's exhaustion requirement "when the plaintiff was not given full notice of his procedural rights under the IDEA." *Id*. Notably, the burden is on the plaintiff to establish that either exception applies in her case. *Id*

Petitioner did not establish that it would have been futile for her to exhaust her administrative remedies and/or that she was not provided full notice of her procedural rights under the IDEA. (RE 45; Response, RE 81, PageID 561-72). Specifically, Petitioner's claims concern the amount and/or sufficiency of N.P.'s services – not that Petitioner or her daughter were subjected to any type of physical harm, abuse, or tortious conduct. (*See id*.). Likewise, Petitioner has submitted no argument or evidence to establish that she was not provided full notice of her IDEA rights at any time. Accordingly, the District Court correctly found that Petitioner's failure to exhaust her administrative remedies prior to filing suit was not excusable.

Because Petitioner has failed to show any conflict among the circuits regarding this issue, and none of the other considerations for review as outlined in Rule 10

apply, this Court should deny Petitioner's Petition.

CONCLUSION

Based upon the above and upon the record as a whole, this Court should deny Petitioner's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via U.S. Mail upon:

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This the 16th day of December, 2022.

PENTECOST, GLENN & TILLY, PLLC

By: s/Nathan D. Tilly