No. 22-778

In The
Supreme Court of the United States

DANIELLE HOWARD MARTINEZ, et al.,

Petitioners,

vs.

GAVIN NEWSOM, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

LEN GARFINKEL
General Counsel
Counsel of Record
CALIFORNIA DEPARTMENT OF EDUCATION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone: 916-319-0860
Facsimile: 916-322-2549
Email: lgarfinkel@cde.ca.gov
Attorneys for Respondents California Department of Education, State Superintendent of Public Instruction Tony Thurmond, California Schools for the Deaf, California School for the Blind, and Diagnostic Centers of California

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court of Appeals erred in finding certain claims for injunctive and declaratory relief related to remote learning moot upon the return to in-person learning.

2. Whether the Ninth Circuit Court of Appeals should have found the claims not moot on the grounds that the question of whether the California Department of Education violated the Individuals with Disabilities Education Act [IDEA] during remote learning is an important one.

3. Whether the Ninth Circuit Court of Appeals should have found the claims not moot on the grounds that the ruling would leave Petitioners without a remedy.

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COUNTER-STATEMENT OF THE CASE

The key facts alleged in the Complaint (Respondents' Appendix or App., 27-92), supplemented by judicially noticeable facts in the record, are as follows. The named Petitioners include four special education students – three of whom reside together – who attend schools in two school districts located in San Bernardino County. D.P. and K.P. attend in Etiwanda School District. App., 88-89, ¶¶ 11-17; App., 99, ¶ 46; App., 101, ¶ 53. T.W. and P.C. attend in Chaffey Joint Union High School District. App., 102, ¶ 59; App., 105, ¶ 67. The Complaint does not allege that any of the Petitioners attends the state-run California School for the Deaf or California School for the Blind, or has been served by the state-run Diagnostic Centers of California.

On March 13, 2020, California's Governor issued an Executive Order requiring the California Department of Education (CDE) and the California Health and Human Services Agency to jointly develop guidance by March 17, 2020 to address topics including (1) implementing distance learning strategies and addressing equity and access issues that may arise due to differential access to internet connectivity and technology and (2) ensuring students with disabilities receive a free appropriate public education [FAPE] consistent with their individualized education program [IEP] and meeting other procedural requirements under the IDEA and California law. App., 1-5. The CDE issued an initial letter on March 13, 2020, which referred local educational agencies (LEAs) to, and encouraged them to read, the United States

Department of Education (USDOE) guidance issued on March 12, 2020, titled "Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak." App., 6-8.[1] The CDE followed up with more detailed guidance on March 20, 2020, and updated guidance on April 9, 2020. App., 9-30.

The CDE's guidance stated all of the following:

1. It is not necessary to amend all IEPs solely to discuss the need to provide services away from school, because that change must necessarily occur due to the COVID-19 pandemic. App., 10.

2. The United States Department of Education (USDOE) has stated that FAPE could be provided via remote learning. App., 10-11.

3. There may be instances where it is appropriate to consider amending an IEP to address an individual student's unique circumstances. App., 11.

4. Regular communication with parents about the move to remote learning is recommended. App., 12.

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[1] The USDOE guidance, at Question A-1, emphasized equal access and stated that if LEAs continued to provide educational services to their general student population during school closures, they must ensure to the greatest extent possible that students with disabilities were provided with the services identified in their IEPs and Section 504 (29 U.S.C. § 794) plans; see also App., 19-20.

5. In some exceptional circumstances, certain services for certain students might need to be provided in-person. App., 12-13.

6. USDOE has not waived federal IDEA requirements due to COVID-19. App., 17.

7. School districts should consider whether individual students require remedial services. App., 22.

On June 29, 2020, Governor Newsom signed the 2020 Budget Act and Senate Bill (SB) 98, effective July 1, 2020, which, in Section 66, added section 56345(a)(9) of the California Education Code to require that IEPs include a description of the means by which the IEP will be provided under emergency conditions, in which instruction or services, or both, cannot be provided to the student either at the school or in person for more than ten school days. SB 98, in Section 34, added Cal. Educ. Code § 43500 et seq., establishing detailed requirements for distance learning for the 2020-2021 school year and acknowledging that instruction in the 2020-2021 school year may at times include distance learning, in-person learning, or a hybrid. SB 98, in Section 34, also added Cal. Educ. Code § 43503(b)(4), stating that distance learning during the 20-21 school year must include "accommodations necessary to ensure that the IEP can be executed in a distance learning environment." On July 15, 2020, the CDE issued guidance on SB 98 and special education. App., 31-37.

On August 25, 2020, the California Department of Public Health (CDPH) issued guidance specifying the

conditions in which "cohorts" of no more than fourteen students may receive instruction and services in person on campus. App., 165-170. That guidance was updated on September 4, 2020. App., 38-43. Pursuant to the guidance, schools could provide special education and related services in person, on campus, if necessary to provide a FAPE pursuant to a student's IEP. The CDE issued updated guidance on September 30, 2020 (App., 44-81) which noted that the USDOE had not waived rules on assessments and reassessments. App., 51.

Petitioners filed their Complaint in the District Court on August 31, 2020. App., 82-164. The CDE is named only in the Second Cause of Action, which seeks only declaratory and injunctive relief, and does not seek compensatory education. App., 129, 142-144. The Second Cause of Action alleges that the CDE's March 2020 guidance denied FAPE in violation of the IDEA because it did not require school districts to formally reassess students to determine what additional or different accommodations, if any, they might need for distance learning. App., 137-139, ¶¶ 200-205.[2]

Specifically, the declaratory and injunctive relief sought as to the CDE includes: (1) declaratory relief that defendants violated the IDEA when they failed to require that all students with disabilities assigned to

[2] Although the Second Cause of Action alleges that the CDE is responsible for ensuring that school districts follow Section 504 and Title II of the Americans With Disabilities Act, 42 U.S.C. § 12132 (App., 130, ¶ 160), it neither specifically alleges a violation of, nor seeks relief under, either of those statutes.

distance learning be reassessed before the start of the 20-21 school year to determine any needed changes to their IEPs and/or other accommodations for distance learning; (2) declaratory relief that defendants failed to order LEAs to reassess students with disabilities or make appropriate accommodations for them for distance learning; (3) injunctive relief requiring defendants to amend their guidance or issue new guidance to allow students with disabilities to return to in-person learning immediately, or to require the immediate reassessment of students with disabilities assigned to distance learning for the 2020-2021 school year; and (4) declaratory and injunctive relief that Petitioners are entitled to certain services (known as related services or designated instruction and services) at defendants' expense until such time as appropriate accommodations for distance learning are made for each student, or they are returned to in-person instruction. App., 142-144.

The Fourth Cause of Action against the school districts seeks compensatory education for alleged denial of a FAPE during distance learning at the end of the 2019-2020 school year. App., 163-164, ¶ 2.

In the District Court, Petitioners did not file a motion for a temporary restraining order or a preliminary injunction, nor did they file a motion for class certification. On November 24, 2020, the District Court granted the CDE's motion to dismiss the IDEA claims based on

failure to exhaust the administrative remedy. Petitioners' Appendix or Pet. App., 49.[3]

On June 30, 2021, the statutory authorization for distance learning expired on its own terms. Cal. Educ. Code § 43511(b).

Petitioners appealed the District Court's ruling to the Ninth Circuit. At oral argument in the Ninth Circuit in December 2021, counsel for Petitioners explicitly conceded that there was no valid legal basis for their allegation that the CDE had violated the IDEA during distance learning. In response to the Ninth Circuit's questions, Petitioners were unable to identify anything in IDEA that authorized, let alone obligated, the CDE to mandate that LEAs take any of the actions requested by Petitioners. This exchange occurred at minute 5:25 through minute 5:54:

> JUDGE SMITH: And in the IDEA, what part of the statute would you cite that says that the California Department of Education was legally required to compel all of the school districts in California to do a new IEP for every student and take certain actions?
>
> MR. PRITT: Well, I'm not sure I would point to anything specific in the IDEA per se.

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[3] The District Court dismissed Petitioners' Section 504 and ADA claims on exhaustion grounds as well. Pet. App., 51. The District Court dismissed Petitioners' claim under the substantive due process clause of the Fourteenth Amendment for failure to identify a fundamental right. Pet. App., 53.

See oral argument available at https://www.ca9.uscourts.gov/media/video/?20211206/20-56404/.[4]

On June 15, 2022, while this case remained pending, the Ninth Circuit decided *Brach v. Newsom*, 38 F.4th 6 (9th Cir. 2022) (en banc), *cert. denied*, 2023 WL 2124256 (2023), finding that the question of whether California violated federal law when it ordered schools to suspend in-person instruction due to COVID-19 in 2020 and early 2021 was moot because California had rescinded its school closure orders, students had returned to school, and school closures were not likely to recur. Pet. App., 16-17. On June 23, 2022, the Ninth Circuit ordered the parties in this case to submit

[4] This Court should disregard the material referenced at Petition or Pet. 12-13, footnotes 12 through 15 as none of it is in the record. With respect to the material referenced at Pet. 13, footnote 14, a USDOE Office for Civil Rights (OCR) investigation in Los Angeles Unified School District (LAUSD), this Court should disregard it for the additional reasons that: Petitioners do not attend schools in LAUSD; as is made clear only in the footnote, OCR addressed only FAPE under Section 504, *not* FAPE under IDEA, and those are two different concepts, see *Mark H. v. Lemahieu*, 513 F.3d 922, 933 (9th Cir. 2008), and, to the extent Petitioners suggest that OCR found that CDE failed to do anything, OCR did no such thing, and Petitioners have taken the partial quote grossly out of context. The reference to the CDE indicated only that the CDE – pursuant to its role in handling informal special education complaints as set forth in IDEA regulations at 34 C.F.R. §§ 300.151-153 – was in the process of enforcing corrective actions in LAUSD for delays in required assessments during the pandemic, including the need for compensatory education in the event that an assessment, once completed, identified the need for a new or increased level of service for an individual student.

supplemental briefs as to the impact of *Brach*. Pet. App., 16.

The Ninth Circuit issued its decision in this case on August 24, 2022. The Ninth Circuit noted that while Petitioners purported to continue to pursue their claims for declaratory relief and an injunction requiring compensatory education, "Plaintiffs do not contest that their other requests for injunctive relief, such as their request for a return to in-person instruction, are moot." Pet. App., 16-17. The Ninth Circuit noted that while Petitioners' claims against the school districts for compensatory education were not moot, Petitioners had requested compensatory education only from the school districts, and not from the CDE. Pet. App., 17-18. Next, the Ninth Circuit held that Petitioners' request for a declaration that the CDE violated the IDEA during distance learning, untethered from moot injunctive relief claims, was not enough to save the case from mootness. The Ninth Circuit stated, "The plaintiffs in *Brach* were equally curious to learn whether California's school closures were unlawful, but we held that we could not offer an opinion on the matter in light of the schools' reopening." Pet. App., 18. Thus, the Ninth Circuit found that all claims against the CDE were moot. *Id.*[5]

The Ninth Circuit then found that claims against Etiwanda and Chaffey school districts were properly

[5] The Ninth Circuit found that it lacked jurisdiction over the claims against the State Special Schools (Schools for Deaf and Blind, and Diagnostic Centers), which Petitioners did not attend. Pet. App., 16.

dismissed for failure to exhaust the IDEA administrative remedy. Pet. App., 27. Petitioners' Petition to this Court does not challenge that finding, so their case against the school districts is over.

SUMMARY OF ARGUMENT

This case involves a straightforward application of settled law to a particular set of facts, resulting in a finding of mootness as to certain of Petitioners' claims but not others. Petitioners fail to identify any decision from any court that conflicts with the Ninth Circuit's specific finding that IDEA claims against a state educational agency for injunctive and declaratory relief related to COVID-19 school closures were moot once students returned to in-person learning. This case presents a particularly poor vehicle for addressing a state educational agency's responsibility under IDEA during school closures because Petitioners conceded at oral argument that the CDE did not violate the IDEA, and Petitioners are bound by that concession. Finally, the Ninth Circuit's ruling on mootness did not leave the four student plaintiffs without a potential remedy, as their claims for compensatory education against Etiwanda and Chaffey school districts were not found to be moot.

BACKGROUND ON IDEA

Under the IDEA, eligible students with disabilities are entitled to a FAPE consisting of special education and related services that meet their individual needs, as set forth in an IEP agreed upon by the LEA and the parent. 20 U.S.C. §§ 1401(9), (29); § 1414(d). In California, the LEA is responsible for identifying eligible students with disabilities, determining appropriate educational placements and services through the IEP process, and providing needed special education and related services. Cal. Educ. Code §§ 56300, 56302, 56340, 56344(c).

The assessment process involves the LEA and the parent.[6] Once a student has been initially assessed and found eligible for special education and an IEP has been developed, reassessment is required if the LEA determines that the student's needs warrant it, or if the parent or teacher requests it. 20 U.S.C. §§ 1414(a)(2)(A)(i, ii).[7] Reassessment shall be conducted at least once every three years unless the parent and the LEA determine it is not necessary, and shall not be conducted more than once in a year unless the parent and LEA agree otherwise. 20 U.S.C. §§ 1414(a)(2)(B)(i, ii). If a reassessment so indicates,

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[6] Federal law uses the term "evaluation," while California law uses the term "assessment," and the two terms are often used interchangeably. Cal. Educ. Code § 56302.5. Because the Complaint uses the term assessment, we use that term here for consistency.

[7] Reassessment, like initial assessment, requires parent consent. 20 U.S.C. § 1414(c)(3).

a new IEP shall be developed. Cal. Educ. Code § 56381(a)(2).

Within a given year, the IEP can be amended at a meeting of the full IEP team or by agreement of the parent and LEA without a full IEP team meeting. 20 U.S.C. § 1414(d)(3)(D, F). An IEP meeting shall be held within 30 days of a parent's written request. Cal. Educ. Code §§ 56043(l); 56343(c). The IEP team may meet to review a subsequent assessment after the initial assessment. Cal. Educ. Code § 56343(a).

The statewide move to distance learning was not a change in placement that triggered any specific procedural protections for students with IEPs. See *N.D. v. Hawaii Dept. of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010) (system-wide changes that affect disabled and non-disabled students alike are not changes in educational placement under IDEA).[8]

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[8] Federal courts have uniformly held that the move to distance learning did not constitute a change of placement under the IDEA. See *Roe v. Baker*, 2022 WL 3916035 at *3 (D. Mass.); *Bills v. Virginia Dept. of Educ.*, 605 F. Supp. 3d 744, 754-755 (W.D. Va. 2022); *Carmona v. New Jersey Dept. of Educ*., 2022 WL 1639195 at *4 (D.N.J.) ("*Carmona I*") (denying preliminary injunction); *Carmona v. New Jersey Dept. of Educ.*, 2022 WL 3646629 at *4 (D.N.J.) ("*Carmona II*") (granting motion to dismiss); *J.T. v. DiBlasio*, 500 F. Supp. 137, 187-189 (S.D.N.Y. 2020), aff'd sub nom. *K.M. v. Adams*, 2022 WL 4352040 (2d Cir. 2022); *C.M. v. Jara*, 2020 WL 8671980 at *2 (D. Nev.). In fact, as support for this view, courts have noted that the USDOE guidance specifically contemplated that LEAs could provide FAPE through distance learning during the pandemic. *Roe*, 2022 WL 391603 at *4; *Carmona I*, 2022 WL 1639195 at *4 ("the USDOE guidance explicitly

In summary, if a parent or LEA believed that there should be a reassessment to determine what, if any, additional accommodations may be needed for an individual student during distance learning, either party could initiate the reassessment process. And, if a parent or LEA believed there should be a revision to an individual student's IEP with respect to distance learning – with or without a formal reassessment – they could seek an agreement with the other party to accomplish this, with or without a meeting of the full IEP team.

Further, if a parent believed for whatever reason that her student was not receiving FAPE from her LEA during distance learning, she could submit a request for an administrative hearing. 20 U.S.C. §§ 1415(b)(6)(A), (f)(1)(A). The administrative law judge (ALJ) determines if there has been a denial of FAPE to an individual student. 20 U.S.C. § 1415(f)(3)(E). The ALJ may award appropriate relief. 20 U.S.C. §§ 1415(e)(2), 1415(i)(2)(C)(iii); *Forest Grove v. T.A.*, 557 U.S. 230, 243-244 n. 11 (2009) (extending this authority to ALJs); *Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 1496 (9th Cir. 1994) (compensatory education); *Taylor v. Honig*, 910 F.2d 627, 628 (9th Cir. 1990) (injunctive and other prospective relief). A party aggrieved by an ALJ's decision may appeal to the federal district court. 20 U.S.C. § 1415(i)(2)(A), (B).

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states that remote education is not a per se violation of the IDEA"); *J.T.*, 500 F. Supp. at 187-189.

REASONS TO DENY THE PETITION

As demonstrated below, none of Petitioners' arguments satisfy Supreme Court Rule 10.

A. The Finding that the Claims Against the California Department of Education Were Moot Does not Constitute a Departure From Settled Law

1. The Ninth Circuit did not depart from settled law on legally cognizable interest or the ability to order effective relief

In order for a case to proceed in federal court, there must be an actual ongoing controversy. U.S. Const., art. III, § 2; *Honig v. Doe*, 484 U.S. 305, 317 (1988). The live controversy must exist not only at the initial stages of the case, but at all times. *Lewis v. Continental Bank Corporation*, 494 U.S. 472, 477-478 (1990). A case is moot when (1) the issues are no longer live or (2) the parties lack a legally cognizable interest in the outcome. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000). If the court cannot grant effective relief, the case is moot. *Public Utilities Commission v. F.E.R.C.*, 100 F.3d 1451, 1458 (9th Cir. 1996). Courts may not render advisory opinions. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). When the challenged conduct ceases such that there is no reasonable expectation that the wrong will be repeated, then it becomes impossible for the court to grant any effectual relief whatever to the prevailing party, and any opinion as to the legality of the challenged action would be advisory.

City of Erie, 529 U.S. at 287; *City of Los Angeles v. Davis*, 440 U.S. 625, 627-630 (1979) (suit to enjoin allegedly discriminatory hiring practice became moot when the government abandoned the practice, and there was no reasonable possibility that it would re-employ the practice if the injunction were dissolved). Absent a true case or controversy, a complaint for declaratory relief is subject to dismissal under Fed. R. Civ. P. 12(b)(1). *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151, 1157 (9th Cir. 2007).

Here, the Ninth Circuit applied those principles to the facts and reached a decision with which Petitioners simply disagree. As in *Brach*, the return to in-person learning rendered Petitioners' injunctive relief claims against the state moot. The 2020-2021 school year, the school closure orders and the authority to offer distance learning have all ended. See *Maldonado v. Morales*, 556 F.3d 1037, 1042 (9th Cir 2009) (statutory change rendered case moot); see also *N.D. v. Hawaii Dept. of Educ.*, 469 Fed. Appx. 570, 572 (9th Cir. 2012) (case was moot because the school year in which the challenged "furlough Fridays" had been imposed had ended, and Hawaii had passed a new law modifying the required length of school year). Students have returned to in-person learning, and it cannot reasonably be expected that Petitioners will be subjected to such school closures again. A court could not grant effective injunctive relief – a return to in-person learning, reassessments relating to distance learning, and/or provision of additional services during distance learning – as the distance learning environment no

longer exists. A declaration as to whether the CDE violated the IDEA during distance learning would be advisory. The CDE is named only in the Second Cause of Action which seeks declaratory and injunctive relief but not compensatory education.

Contrary to Petitioners' assertion, the Ninth Circuit well understood that Petitioners' injunctive relief claim extended beyond a return to in-person instruction. The Ninth Circuit well understood that Petitioners sought an injunction requiring immediate reassessment for distance learning and for various services in the interim until appropriate accommodations were made or until students returned to in-person instruction. Pet. App., 11. And the Ninth Circuit well understood that Petitioners sought an injunction requiring compensatory education from Etiwanda and Chaffey, the school districts that served the four Petitioner students. Pet. App., 11. With those things in mind, the Ninth Circuit noted that "Plaintiffs do not contest that their other requests for injunctive relief, *such as* their request for a return to in-person instruction, are moot." Pet. App., 17 (emphasis added).

This case is a particularly poor vehicle for addressing a state educational agency's responsibility under IDEA during distance learning. While Petitioners continue to assert an interest in a declaratory judgment that the CDE's failure to mandate that LEAs reassess students in relation to distance learning violated IDEA, Petitioners conceded at oral argument that nothing in IDEA required CDE to do so. Were this case to proceed on the merits, the Ninth Circuit would bind Petitioners

to that concession, dooming their appeal. See *Ostad v. Oregon Health Sciences Univ.*, 327 F.3d 876, 881 (9th Cir. 2003) (concession at oral argument that party's liability was same as co-defendant's waived party's right to have its liability considered separately); *U.S. v. 0.95 Acres of Land*, 994 F.2d 696, 699 n. 1 (9th Cir. 1993) (court held party to concession at oral argument that it would be estopped from making a certain argument in the future).

Petitioners' citation to *Northwest Environmental Defense Center v. Gordon*, 849 F.2d 1241 (9th Cir. 1988) is not helpful to them. There, a challenge to rules for the 1986 fishing season was not rendered moot because injunctive relief was still available for a future fishing season. Here, the injunctive relief sought – a return to in-person learning or reassessment to determine whether any additional accommodations are needed while students remain in remote learning – does not apply to any future school year. There can no longer be an argument that students need reassessment for distance learning given that they are attending in-person learning.

Similarly, Petitioners' citation to *Church of Scientology of California v. United States*, 506 U.S. 9, 13 (1992) is not helpful to them. There, although a party's privacy interest had already been impaired by forced production of tapes, the court could still partially remedy the wrong by ordering the tapes returned or destroyed. Petitioners fail to show how that case controls here. Petitioners sought to compel CDE to order LEAs to return them to in-person learning or reassess them

in relation to their distance learning needs. Once students returned to in-person learning, a court could not order any partial remedy.

2. Petitioners have waived their argument as to Federal Rule of Civil Procedure 54(c), and in any event the Ninth Circuit did not depart from settled law on availability of alternative relief

Petitioners now reference two new requests that were not sought in their Complaint: reassessments *after* the return to in-person learning, and compensatory education. Petitioners rely on Federal Rule of Civil Procedure 54(c) for the proposition that a court may grant relief in a judgment even if a party did not request it in its pleadings. Petitioners did not raise this argument related to Fed. R. Civ. P. 54(c) below, and therefore it has been waived.

In any event, the rule relates to judgments. Here, the Ninth Circuit affirmed a District Court dismissal at the pleading stage, based on mootness. This is not a case involving a question of whether a judgement could or should have included any particular relief.

Furthermore, as noted above, Petitioners have already conceded the merits of their IDEA claim against the CDE, and the Ninth Circuit's ruling on mootness as to the CDE did not bar Petitioners from pursuing compensatory education against Etiwanda and Chaffey.

B. Petitioners' Policy Argument that the Ninth Circuit's Ruling cut Short an Important Inquiry is Without Merit

Petitioners suggest that even though this case involves just four students, the decision is important because COVID-19 impacted all students. To the extent that Petitioners suggest that the CDE directed LEAs *not* to conduct reassessments (Pet. 8, 17, 23, 27), there is simply no factual support for that assertion in the record, and in fact it is inconsistent with the record. See App., 51 (CDE guidance stating that assessment requirements have not been waived).

Further, any parent who believes that their LEA denied her student a FAPE under the IDEA during the school closures can request an administrative hearing, and if the ALJ finds a denial of FAPE they can award compensatory education. The District Court took notice of a case in which a California ALJ had done just that. Pet. App., 43; see also *Brach v. Newsom*, 2020 WL 72221034 at *12 (C.D. Cal.) (ALJ can make an individualized inquiry as to whether a particular disabled student received a FAPE during distance learning and can award appropriate relief such as compensatory education); *N.D. v. Hawaii Dept. of Educ.*, 600 F.3d 1104, 1117 (9th Cir. 2010) (ALJ can determine whether an alleged failure to provide IEP services during an emergency constitutes a denial of FAPE to an individual student). And it bears mentioning once again that Petitioners have already conceded the merits of their IDEA claim against the CDE, and that the Ninth Circuit's ruling on mootness as to the CDE did not bar Petitioners from pursuing compensatory education against Etiwanda and Chaffey.

C. Petitioners' Policy Argument that the Ninth Circuit's Finding on Mootness Leaves Them Without a Remedy is Without Merit

Petitioners suggest that if their claim against the CDE is deemed moot then they cannot receive any relief for alleged violations of IDEA during the school closures. Not so. The Ninth Circuit found that Petitioners' claim for compensatory education against the two LEAs that served them was not moot. Nothing in the Ninth Circuit's ruling on mootness as to the CDE prevented Petitioners from pursuing compensatory education against Etiwanda and Chaffey.

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: March 16, 2023

Respectfully submitted,

LEN GARFINKEL
General Counsel
Counsel of Record
CALIFORNIA DEPARTMENT OF EDUCATION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone: 916-319-0860
Facsimile: 916-322-2549
Email: lgarfinkel@cde.ca.gov
Attorneys for Respondents California Department of Education, State Superintendent of Public Instruction Tony Thurmond, California Schools for the Deaf, California School for the Blind, and Diagnostic Centers of California