No. 22-840

In the Supreme Court of the United States

K.M., individually and on behalf of M.M. and S.M., and all others similarly situated, *et al.*,
Petitioners,

v.

ERIC ADAMS, in his official capacity as Mayor of New York City, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION BY RESPONDENTS THAT ARE BOARDS OF EDUCATION AND SCHOOL DISTRICTS LOCATED OUTSIDE OF NEW YORK CITY

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May 22, 2023

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Did the court of appeals properly dismiss Plaintiffs' claims as to the Non-NYC Defendants because they failed to brief them before that court and conceded at oral argument that they were not pursuing any claims against the Non-NYC Defendants?

Is the question of whether the Individuals with Disabilities Education Act's (IDEA) exhaustion requirement presents a jurisdictional issue or is a claim-processing rule properly subject to this Court's review when, based on the undisputed record in this case, a dismissal would enter in either scenario?

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INTRODUCTION

Plaintiffs' purported class action was filed in the Southern District of New York ("SDNY") alleging claims against nearly 14,000 state and local boards of education and school districts throughout the United States. Plaintiffs alleged that Respondents failed to provide adequate services to students with disabilities during school closures caused by the COVID-19 pandemic. The District Court dismissed Plaintiffs' Complaint as against all Defendants. In the Opinion and Order dismissing the case, the District Court explained the various grounds for dismissing claims against the different categories of defendants. As to the state and local boards of education and school districts located outside of New York State, the District Court dismissed the lawsuit for lack of personal jurisdiction, improper venue, and improper joinder. As to all defendants located outside of New York City (apart from the New York State Department of Education) ("NY Defendants"), the District Court dismissed the lawsuit for improper joinder. Claims against New York City and the NYC public schools ("NYC Defendants") were dismissed on procedural and substantive grounds, including, as relevant to here, lack of subject matter jurisdiction for failure to exhaust administrative remedies under the IDEA.

In their brief to the Court of Appeals, Plaintiffs focused their arguments exclusively on the portions of the District Court's order addressing the claims against the NYC Defendants. Plaintiffs did not address the District Court's dismissal of claims against the State of New York, the other 51 State departments of education (including Puerto Rico and

the District of Columbia), or the nearly 14,000 local boards of education and public school districts, nor do they challenge the grounds asserted by the District Court (*i.e.,* lack of personal jurisdiction, improper venue, and improper joinder) for dismissing those claims. As a result, the Non-NYC Defendants argued in their brief to the Court of Appeals that Plaintiffs had waived any appeal of the District Court's rulings as to the Non-NYC Defendants.

At oral argument before the Court of Appeals, counsel for Plaintiffs acknowledged that any claims against the Non-NYC Defendants were not a part of their appeal. Specifically, counsel "conceded that they are no longer pursuing any of the claims in this case . . . other than the IDEA claim against the NYC Defendants' and the RICO claim." *K.M. v. Adams*, No. 20-4128, __ F.4th ___ (2022); Pl. App. at A6 n.1 (internal quotations and alterations omitted). Plaintiffs further represented at oral argument that, "on appeal, the Court doesn't need to worry about any of the Appellees other than the NYC Defendants." *Id.*; Pl. App. at A7 n.2 (; internal quotations and alterations omitted). As a result, the Court of Appeals dismissed Plaintiffs' appeal as to the Non-NYC Defendants. *Id*.

To the extent that such appeals were not waived, this Court should nonetheless deny the instant petition for a writ of certiorari and allow the decision of the Court of Appeals to stand because the instant case is not a good vehicle through which to review the question presented by Plaintiffs' petition.

STATEMENT

The Respondents who join this brief in opposition[1] are all state and local boards of education and public school districts located outside of New York City (the "Non-NYC Defendants").[2] They join in this brief to oppose Plaintiffs' petition for a writ of certiorari to appeal from the summary order of a panel of U. S. Court of Appeals for the Second Circuit (*Chin, Sullivan, Menashi, J.*'s)

I. BACKGROUND

A. The Parties

Plaintiffs purport to be students classified under federal law as having an educational disability, and the parents of such students (collectively, "Plaintiffs").

Respondents are individuals and public organizations named as defendants in Plaintiffs' District Court complaint. These appellees include Eric Adams, in his official capacity as the Mayor of New York City ("Mayor Adams"); David C. Banks, in his official capacity as the Chancellor of New York City Department of Education ("Chancellor Banks"); and the New York City Department of Education (the "NYCDOE") (collectively the "NYC Defendants").

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[1] Please note that parties to this brief are limited to those appearing on the signature pages.

[2] By the Non-NYC Defendants joining in this brief together, the Non-NYC Defendants do not and have not created a class of defendants, nor do the Non-NYC Defendants waive any objections to any future attempt by Plaintiffs to certify a class.

Additionally, Plaintiffs' also name more than 13,800 school districts throughout the United States, and "STATE DEPARTMENTS OF EDUCATION IN THE UNITED STATES," which includes the Departments of Education of all 50 states, the District of Columbia, and Puerto Rico (collectively the "Non-NYC Defendants").

This brief in opposition is filed on behalf of the Non-NYC Defendants who join herein.

B. The District Court's Order

In its November 13, 2020 Opinion and Order, the United States District Court for the Southern District of New York entered a final order dismissing the Plaintiff-Appellee's Complaint in its entirety. The District Court's opinion contained five distinct orders, as detailed below.

First, the District Court dismissed the Complaint without prejudice as against all defendants located outside the State of New York "for myriad reasons," including that (1) the court lacked personal jurisdiction over those parties, (2) venue did not lie against those defendants in the Southern District of New York, and (3) "even if (1) and (2) were not the case, permissive joinder pursuant to Fed. R. Civ. P. 20 . . . is so grossly inappropriate that severance and dismissal is the appropriate remedy." *See J.T. v. de Blasio*, 500 F. Supp. 137, 148 (2020).

In its detailed analysis of this order, the District Court explained that although Plaintiffs did not assert any RICO claim in the original Complaint, "RICO entered this case by the back door" when Plaintiffs

"asserted that jurisdiction could be acquired over all defendants, wherever located in the United States, pursuant to the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968." *Id.* at 163. While the District Court acknowledged that "it is possible to obtain nationwide service of process in a civil action brought under the RICO statute" in certain situations, *see id.* at 164, the District Court ultimately found that "it is perfectly apparent" that Plaintiffs "[have] not and cannot plead a viable RICO claim." *Id.* at 164-165; *see also id.* at 165-172 (detailing the multiple reasons why Plaintiffs' RICO claim is not viable). Therefore, the District Court concluded that because Plaintiffs had failed to plead a viable RICO claim, they could not acquire personal jurisdiction over the defendants located outside the State of New York through the naked assertion of a RICO claim. In any event, even if Plaintiffs could somehow establish personal jurisdiction, that would not affect the District Court's holding that venue was improper and permissive joinder was not appropriate.

Second, the District Court dismissed the Complaint as against all defendants except the NYC Defendants and the New York State Department of Education because permissive joinder was not appropriate and "dismissal rather than severance is the appropriate remedy." *Id.* at 148. As the court stated, "[w]hether groups of disabled students located in a single district outside of New York City can maintain a single action against that district or must all sue separately, and in what court any action against any district can (venue) or should (*forum non conveniens*) be filed are questions this court need not

answer – and are, indeed, best answered when and if lawsuits are filed, individually or collectively, against particular school districts arising out of their particularized conduct of disability education during the continuing pandemic." *Id*. at 179.

Third, the District Court dismissed as plaintiffs "all parents who do not have children enrolled in the New York City public schools" because they lacked standing to assert any claims against the NYC Defendants, which were the only remaining defendants after the first two holdings. *Id*. at 148.

Fourth, the District Court denied the New York City Plaintiffs' motion for a preliminary injunction and dismissed the Complaint as against the NYC Defendants without prejudice. *Id.* at 148-149. The District Court laid out three reasons for dismissing the Complaint as against the NYC Defendants. First, the District Court did not have subject-matter jurisdiction over the claim that the NYC Defendants had denied the affected students a free and appropriate public education ("FAPE") because the NYC Plaintiffs had not exhausted their administrative remedies or shown that an exception to this requirement should apply. *Id*. at 192-194.

Second, the District Court dismissed the NYC Plaintiffs' "stay-put" claim because the emergency closure of New York City schools did not cause a change in pendency, and Plaintiffs could not "complain about an administrative order of general applicability to all students." SPA-83. Finally, the District Court dismissed the NYC Plaintiffs' RICO claim because the NYC Plaintiffs lacked standing to

pursue this claim and failed to plead essential elements of a RICO claim. *Id.* at 193-194.

Fifth, the District Court *sua sponte* dismissed the claims "against the only remaining Defendant in this case, which is the New York State Department of Education." *Id.* In its detailed opinion, the District Court explained that although the New York State Department of Education had not moved to dismiss the claims against it, the District Court would *sua sponte* dismiss these claims for many of the same reasons it had dismissed the claims against the other defendants. *Id.* at 194-195.

C. The Court of Appeals' Summary Order

Plaintiffs timely filed their appeal on December 11, 2020. In their brief to the Court of Appeals, Plaintiffs presented the following issues:

1. "Whether the District Court erred in denying the New York City Plaintiffs' Motion for a Stay Put Preliminary Injunction Against the NYC Defendants." [Doc. 157, p. 17.]

2. "Whether the District Court erred in holding Plaintiffs-Appellants failed to exhaust their administrative remedies under the IDEA." *Id.*

3. "Whether the District Court abused its discretion by denying Plaintiffs-Appellants' motion for leave [to] amend their RICO claims." *Id.*

4. "Whether the District Court erroneously dismissed Plaintiffs-Appellants' RICO claims." *Id.*

As noted by the Non-NYC Defendants in their brief to the Court of Appeals, none of the claims raised on appeal were directed against the Non-NYC Defendants. At oral argument before the Court of Appeals, Plaintiffs further clarified that any claims against the Non-NYC Defendants were not a part of this appeal. Counsel "conceded that they are no longer pursuing any of the claims in th[is] case . . . other than the IDEA claim against the [NYC] Defendants' and 'the RICO [claim]." *K.M. v. Adams*, No. 20-4128, __ F.4th ___ (2022); Pl. App. at A6 n.1 (alterations in original; internal quotations omitted). Plaintiffs further represented at oral argument that, "on appeal, [the Court] do[es]n't need to worry about any of the Appellees other than the [NYC] Defendants." *Id.*; Pl. App. at A7 n.2 (alterations in original; internal quotients omitted).

In a summary order dated August 21, 2022, a panel of the Court of Appeals (*Chin, Sullivan, Menashi, J*'s) dismissed as moot Plaintiffs' appeal from the denial of a preliminary injunction and affirmed the decision as to the NYC Defendants in all other respects. *Id.*; Pl. App. at A5. As to the Non-NYC Defendants, the panel dismissed any such claims based on the concessions made by counsel at oral argument that those claims were not being pursued on appeal. *Id.*; Pl. App. at A5, A6n.1, A7n.2.

Thereafter, Plaintiffs filed a Petition for Rehearing and Rehearing En Banc challenging the Panel's affirmance of the District Court's decision as to the NYC Defendants. Plaintiffs again did not challenge the Panel's order dismissing the appeal as to the Non-NYC Defendants. The Court denied

Plaintiffs' petition. Pl. App. at A.122. In their Petition, Plaintiffs claimed *for the very first time* in this litigation that the Second Circuit's treatment of the IDEA's exhaustion of administrative remedies requirement as jurisdictional is erroneous.

D. Petition for a Writ of Certiorari

On February 27, 2023, Plaintiffs filed a petition for a writ of certiorari to appeal from the Second Circuit's decision with this Court. In response, several of the Respondents filed waivers of their right to respond. On April 20, 2023, this Court issued an order directing Respondents to file briefs in opposition to Plaintiffs' petition.

REASONS FOR DENYING THE PETITION

I. This Case Is a Poor Vehicle to Review Plaintiffs' Claims Because All Claims Made Against the Non-NYC Defendants Were Waived Both in Briefing and at Oral Argument Before the Second Circuit

Plaintiffs argue before this Court that this case was a "class action against school districts and departments of education throughout the United States." Pl. Pet. at 3. The claim presented is that disabled students were deprived of their right to a free appropriate public education (FAPE) by virtue of the nationwide COVID-19 shutdown that required students to partake in remote education. *Id*.

However, Plaintiffs fail to acknowledge that, by the time the case reached the Court of Appeals, Plaintiffs abandoned their claims as to the Non-NYC

Defendants. The nationwide significance of this appeal is belied by this critical fact.

Indeed, the Court of Appeals specifically dismissed Plaintiffs' appeal as to the Non-NYC Defendants. *K.M. v. Adams*, No. 20-4128, __ F.4th __; Pl. App. at A5. It did so for two undisputed reasons – the failure of Plaintiffs to brief claims against the Non-NYC Defendants and Plaintiffs' counsel's concessions at oral argument that the appeal was no longer being pursued against those defendants.

First, Plaintiffs failed to brief any issues related to the Non-NYC Defendants in their brief to the Court of Appeals. Federal Rule of Appellate Procedure 28(a) requires an appellant's brief to contain argument, including "the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relief on." "[S]imply stating an issue does not constitute compliance with Rule 28(a): an appellant or cross-appellant must state the issue and advance an argument." *Frank v. United States*, 78 F.3d 815, 833 (2d Cir. 1996), *vacated on other grounds*, 521 U.S. 1114 (1997); *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir.), *cert. denied*, 525 U.S. 1001 (1998) (stating an issue without advancing an argument does not suffice to preserve the issue on appeal).

Thus, it is well-established that arguments not sufficiently briefed on appeal are waived. *See, e.g. Domen v. Vimeo, Inc.*, 991 F.3d 66, 70-71 (2d Cir. 2021) ("On appeal, Appellants… do not make any arguments regarding their state constitutional free speech claim in their opening brief and have therefore waived the

ability to challenge it in this appeal.")*; Chabad Lubavitch of Litchfield County, Inc. v. Litchfield Historic Dist. Commn.*, 768 F.3d 183, 200 (2d Cir. 2014), *cert. denied*, 575 U.S. 963 (2015) (*quoting Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998) ("Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.")); *Gross v. Rell*, 585 F.3d 72, 95 (2d Cir. 2009) (failure to address issue in principal brief constitutes waiver); *Yueqing Zhang v Gonzales*, 426 F.3d 540, 541, n. 1 (2d Cir. 2005) (the appellant "abandoned any challenge to the IJ's denial of his claim…by failing to discuss this claim anywhere in his brief."); *id.* at 545, n.7 (finding issue on appeal abandoned and declining to consider it where appellant "devote[d] only a single conclusory sentence to the argument").

Plaintiffs' brief to the Court of Appeals contained no argument whatsoever challenging the District Court's findings dismissing the claims against the Non-NYC Defendants. More specifically, Plaintiffs' brief contained no argument challenging the following three rulings of the District Court, which are relevant to the Non-NYC Defendants:

1. That the District Court lacked personal jurisdiction over the defendants located outside New York State;

2. That venue in the SDNY was not proper as to the defendants located outside New York State; and

3. That permissive joinder pursuant to Federal Rule of Civil Procedure 20 was improper as to

the Non-NYC Defendants with the exception of the State of New York.

Not only did Plaintiffs fail to brief these arguments, they also made the NYC Defendants the sole focus of their arguments on appeal. While Plaintiffs listed numerous Non-NYC Defendants in the case caption below and argued in the Conclusion that the District Court's order "granting the defendants' motion to dismiss the Complaint should be reversed in its entirety," [Doc. 157, p. 76], they included no substantive arguments explaining why any claim should proceed against any of the Non-NYC Defendants. For these reasons, Plaintiffs waived any challenge to the District Court's findings as to claims against the Non-NYC Defendants in this appeal.

Second, to the extent there could be any dispute about Plaintiffs' waiver based on their briefing, it was resolved at oral argument. There, Plaintiffs clearly stated that any claims against the Non-NYC Defendants were not a part of their appeal. Counsel "conceded that they are no longer pursuing any of the claims in th[is] case . . . other than the IDEA claim against the [NYC] Defendants' and 'the RICO [claim]." *K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A6 n.1 (alterations in original; internal quotations omitted). Plaintiffs further represented at oral argument that, "on appeal, [the Court] do[es]n't need to worry about any of the Appellees other than the [NYC] Defendants." *Id.*; Pl. App. at A7 n.2 (alterations in original; internal quotients omitted).

As the Court of Appeals panel correctly observed, Plaintiffs are bound by those concessions

made at oral argument. *K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A7 (citing *Dorce v. City of New York*, 2 F.4th 82, 2012 (2d Cir. 2021). As a result, Plaintiffs waived their claims against the Non-NYC Defendants rendering the instant appeal a poor candidate for the extraordinary relief of U. S. Supreme Court review, especially with regards to the Non-NYC Defendants.

II. The Court of Appeals Panel Properly Held That Plaintiffs Failed to Exhaust Their Administrative Remedies Rendering this Case a Poor Vehicle to Address the Plaintiffs' Question Presented

In its petition for a writ of certiorari, Plaintiffs seek this Court's review as to whether the exhaustion of administrative remedies requirement for a claim under the Individual with Disabilities Education Act (IDEA) is jurisdictional or a claims-processing rule.[3]Pl. Pet. at i. The petition asserts that there is currently a circuit split as to whether the IDEA's exhaustion requirement presents a question of subject matter jurisdiction.

The petition acknowledges that, in the Second Circuit, the jurisdiction from which this matter stems, it is well-settled that the IDEA's exhaustion requirement is jurisdictional. *See* Pl. Pet. at 12 (citing *Murphy v. Arlington Cen. Sch. Dist. Bd. of Educ.*, 297 F.3d 195 (2d Cir. 2002) and *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478 (2d

[3] Plaintiffs did not raise this issue before either the District Court or in their appeal to the Second Circuit. The first time this issue was raised was in Plaintiffs' Petition for Rehearing.

Cir. 2002)). The Petition further acknowledges that the rule followed in the Second Circuit is also followed by the First, Third, and Tenth Circuits. See Pl. Petition at 13-15 (citing *Valentin-Marrero v. Commonwealth of P.R.*, 29 F.4th 45, 53 n.4 (1st Cir. 2022); *T.R. v. Sch. Dist. of Phila. L.R.*, 4 F.4th 179, 185 (3d Cir. 2021); *Muskrat v. Deer Creek Pub. Schs*, 715 F.3d 775, 783 (10th Cir. 2013).

The petition then submits that three circuits – the Seventh, Fourth, and Ninth – have held that the failure to exhaust administrative remedies under the IDEA is not jurisdictional, but rather an affirmative defense that can be waived. Pl. Pet. at 15-17 (citing *Mosley v. Bd. of Educ.*, 434 F.3d 527, 533 (7th Cir. 2006); *K.I. v. Durham Pub. Sch. Bd. of Educ.*, 54 F.4th 779, 790 (4th Cir. 2022); *Payne v. Peninsula School Dist.*, 653 F.3d 863, 868 (2011).

But this case does not present a good vehicle to address this purported circuit split because, regardless of the answer to that question, it is undisputed that the exhaustion requirement was not satisfied here. *See K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A8 ("The Students and Parents do not dispute that they failed to exhaust their administrative remedies…"). Thus, regardless of whether the Court acts under Rule 12(b)(1) or 12(b)(6), the result would be the same – a dismissal of the Plaintiffs' complaint.

The Second Circuit panel in this case concluded that the failure to exhaust administrative remedies a jurisdictional defect under the IDEA. *See K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A10. As

the Panel noted, Second Circuit precedent expressly holds exhaustion to be a jurisdictional requirement for an IDEA claim and, absent *en banc* review, that jurisprudence could not be changed. *Id*. And, indeed, the Court denied Plaintiffs' request for *en banc* review. Pl. App. at A122. Thus, the panel in this case correctly applied well-settled Second Circuit precedent in deciding this case and the Court declined to revisit that precedent through *en banc* review

To the extent Plaintiffs now ask this Court to consider how different circuits apply the IDEA exhaustion requirement, this case is a poor vehicle for such review because, regardless of whether exhaustion implicates subject matter jurisdiction (as held by the panel in accord with settled Second Circuit jurisprudence) or a claim processing rule (as argued by Plaintiffs), there is no dispute that Plaintiffs failed to exhaust administrative remedies here.[4] *See K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A8 ("The Students and Parents do not dispute that they failed to exhaust their administrative remedies…"). Thus,

[4] On the merits of this issue, Respondents maintain that the Second Circuit's treatment of IDEA's exhaustion requirement as jurisdictional best accords with the text of the statute. *See* 20 U.S.C. § 1415(l) ("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) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter"); *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d at 483 (explaining that plain text of 20 U.S.C. § 1415(l)) creates a jurisdictional exhaustion requirement). Since at least 1995, the Second Circuit has treated IDEA's exhaustion requirement as a jurisdictional prerequisite to bringing suit. *See Hope v. Cortines*, 69 F.3d 687 (1995).

whether the requirement is jurisdictional, as held by the Courts below, or as a special defense, as claimed by Plaintiffs, the result would be the same – Plaintiffs' claims fail for the undisputed fact that they failed to exhaust their administrative remedies. *See Levine v. Greece Cent. Sch. Dist.*, 353 F. App'x 461, 463 (2d Cir. 2009) (declining to address plaintiff's claim that IDEA's exhaustion requirement is not jurisdictional where defendants had not waived exhaustion as a defense); *Coleman v. Newburgh Enlarged City Sch. Dist.*, 503 F.3d 198, 204 (2d Cir. 2007) (same); *see also Foresta v. Centerlight Cap. Mgmt, LLC*, 379 F.App'x 44, 46 (2d Cir. 2010) (Court may convert motion to dismiss filed pursuant to Rule 12(b)(1) as motion filed pursuant to Rule 12(b)(6)).

Indeed, because there is no practical difference between a party prevailing under either a Rule 12(b)(1) or a Rule 12(b)(6) motion, courts have declined to opine on which motion is more appropriate for an IDEA exhaustion claim when the record shows that the defendant will prevail either way. *See Logan v. Morris Jeff Cmty. Sch.*, No. 21-30258, 2021 WL 4451980, at *2 (5th Cir. Sept. 28, 2021) ("As a preliminary matter, we have not yet decided whether a failure to exhaust under IDEA deprives courts of subject matter jurisdiction or is instead a claim-processing requirement which could be forfeited by the party seeking to assert it. … We can avoid the issue again. Because the school has raised failure to exhaust as a defense, there is no practical difference in whether we treat the issue as jurisdictional under Rule 12(b)(1) like the district court did, or instead treat exhaustion as an element of the plaintiff's claim

under Rule 12(b)(6)."); *see also Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 254, 130 S. Ct. 2869, 2877, 177 L. Ed. 2d 535 (2010) (unnecessary to remand for purposes of putting "a new Rule 12(b)(6) label for the same Rule 12(b)(1) conclusion").

There is no dispute that Plaintiffs failed to exhaust their administrative remedies and their claim of futility was expressly rejected. *See K.M. v. Adams*, No. 20-4128, __ F.4th ___; Pl. App. at A8. For this reason, the instant case is not a good vehicle through which to review the question presented by Plaintiffs' petition as to whether the failure to exhaust administrative remedies under the IDEA is subject to a Rule 12(b)(1) or a Rule 12(b)(6) motion to dismiss. Either way, based on the instant record, the District Court's dismissal of Plaintiffs' complaint was proper and the Second Circuit correctly affirmed. This case is not a good candidate for U.S. Supreme Court review.

CONCLUSION

For any and all of the reasons set forth herein, the Second Circuit's affirmance of the District Court's dismissal of Plaintiffs' complaint should stand. There is no reason for this Court to take the extraordinary step of granting a writ of certiorari in light of the record in this case. Plaintiffs' petition should be denied.

Dated: May 22, 2023

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Education, Westport Board of Education, Wethersfield Board of Education, Winchester Board of Education, Windsor Locks Board of Education, Wolcott Board of Education and Woodstock Board of Education, all located in the State of Connecticut, Freeburg Community Consolidated School District # 70, located in the State of Illinois and Martin County School Board, located in the State of Florida.

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Academy CSD at Delhi; Dolton School District 149; East Aurora UFSD; East Greenbush Central School; East Rochester UFSD; East Syracuse-Minoa CSD; Elba CSD; Ellicottville Central School; Erie 2 Chautauqua-Cattaraugus Boces; Evans-Brant CSD, Lake Shore Central Schools; Fayetteville Manlius CSD; Fort Ann CSD; Franklinville Central School; General Brown CSD; Genesee Valley Boces; Geneseo CSD; Geneva City SD; Gilbertsville-Mt. Upton CSD; Gilboa-Conesville CSD; Glens Falls Common SD; Gloucester Township Public Schools; Granville CSD; Greater Souther Tier Boces / Steuben Allegany Boces and School; Greene CSD; Greenville CSD; Greenwich CSD; Guilderland CSD; Hadley-Luzerne Central School; Hammond CSD; Hammondsport CSD; Harrisville CSD; Hartford CSD; Herkimer CSD; Heuvelton CSD; Hornell City SD; Hudson Falls CSD; Hunter-Tannersville Central School; Indian Lake CSD; Indian River CSD; Jamesville-Dewitt C.S. District; Jasper-Troupsburg CSD; Jefferson Central School; Johnsburg Central School; Kingston City SD; Lafargeville CSD; Lafayette CSD; Lake George CSD; Lake Placid CSD; Lancaster Central School; Lansing Central Schools; Leroy CSD #1; Letchworth CSD at Gainesville; Lewiston-Porter CSD; Liverpool CSD #1; Livonia CSD; Long Lake CSD; Lowville CSD; Lyme CSD; Lyndonville CSD; Madison CSD; Marcellus CSD; Mechanicville City SD; Menands Union Free School; Mexico Academy & CSD; Miller Place UFSD; Morristown CSD; Morrisville Eaton CSD; Mt. Morris CSD; Newfield Central School; North Allegheny SD; North Syracuse CSD; North Warren CSD; Norwich City SD; Odessa-Montour CSD; Ogdensburg City SD; Old Rochester Regional SDOneida City SD; Onondaga

CSD; Onteora CSD; Otselic Valley CSD at Georgetown-South Otselic School; Oxford Academy & Central School; Parishville-Hopkinton CSD; Pavilion CSD; Pembroke CSD; Penfield CSD; Perry CSD #1; Prattsburgh CSD; Queensbury UFSD; Questar III Rensselaer, Columbia, Green Counties BOCES; Rancocas Valley Regional HS Board of Education Jacksonville Rd & Ridgeway St; Ravena Coeymans Selkirk CSD; Regional SD #4 & Supervision District Boards of Education; Rome City SD; Royalton Hartland CSD; Sackets Harbor CSD; Salamanca City SD; Salem CSD; Schuylerville CSD; Skaneateles CSD; Slippery Rock Area SD; South Colonie CSD; South Glens Falls CSD; South Jefferson CSD; South Kortright CSD; South Lewis CSD; South Seneca Central School; St. Regis Falls CSD; Stamford CSD; Stockbridge Valley Central School; The Enlarged City School District of the City of Watervliet/Watervliet City School District; Thousand Islands Central School; Town of Webb UFSD; Trinity Area SD; Trumansburg Central School; Tully CSD; Union Springs CSD; Union-Endicott Central School; Voorheesville CSD; Warrensburg Central School; Warsaw CSD #1; Waterford-Halfmoon UFSD; Watertown City SD; Waverly CSD; Wayland-Cohocton CSD; Wells CSD; Westfield Academy & Central School; Westhill CSD; Wheatland Chili CSD; Windsor CSD; Wyoming CSD; York CSD; Yorkshire Pioneer Central Schools

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