No. _____

In The
Supreme Court of the United States

MARIA NAVARRO CARRILLO
AND JOSE GARZON,

Petitioners,

v.

NEW YORK CITY
DEPARTMENT OF EDUCATION, ET AL.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether this Court should intervene to reverse the policy, ratified by the Second Circuit, of blatantly violating binding State statutes and regulations, applicable in cases under the Individuals with Disabilities Education Act, in contravention of the intent of Congress, in violation of cooperative federalism, and resulting in the deprivation of the federally-guaranteed education rights of students with disabilities?

PARTIES TO THE PROCEEDING

The Petitioners here are Maria Navarro Carrillo and Jose Garzon, on behalf of M.G. as parents and natural guardians, and Maria Navarro Carrillo and Jose Garzon, individually.

The Respondents here are the New York City Department of Education and Chancellor Richard Carranza (collectively, "DOE").

RELATED PROCEEDINGS

The following proceedings are related directly to this case:

In the United States Court of Appeals for the Second Circuit, *Carrillo et al. v. New York City Department of Education*, Case No. 21–2639. The Summary Order was entered on May 1, 2023.

In the United States District Court for the Southern District of New York, *Carrillo et al. v. Carranza*, Case No. 1:20-cv-04639. Summary Judgment was entered September 10, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Maria Navarro Carrillo and Jose Garzon, on behalf of M.G. as parents and natural guardians, and Maria Navarro Carrillo and Jose Garzon, individually, respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The decision of the Court of Appeals denying the Petition for Rehearing and Rehearing En Banc (A64) is unreported. The decision of the Court of Appeals (A1-A11) is not published but is available at 2023 U.S. App. LEXIS 10533 and 2023 WL 3162126. The United States District Court decision for the Southern District of New York (A12-A63) is not published but is available at 2021 U.S. Dist. LEXIS 172246 and 2021 WL 4137663.

JURISDICTION

The United States Court of Appeals for the Second Circuit entered a Summary Order affirming the District Court on May 1, 2023, and denied Appellants' Petition for Rehearing/Rehearing En Banc on May 31, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

The statutes/regulations involved are the following:

- 20 U.S.C. § 1407(a)(1) and (2), which provide:

(a) Rulemaking

Each State that receives funds under this chapter shall-

(1) ensure that any State rules, regulations, and policies relating to this chapter conform to the purposes of this chapter;

(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this chapter and Federal regulations;. ..

- N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) and (iii), which provide:

(h) Special classes. The following standards shall be used in the provision of special classes for students with disabilities:

.. .

(4) Special class size for students with disabilities. The maximum class size for those students whose people who receive special-education

services needs consist primarily of the need for specialized instruction which can best be accomplished in a self-contained setting shall not exceed 15 students, or 12 students in a State-operated or State-supported school, except that:

.. .

(ii)

(a) The maximum class size for special classes containing students whose management needs are determined to be highly intensive, and requiring a high degree of individualized attention and intervention, shall not exceed six students, with one or more supplementary school personnel assigned to each class during periods of instruction.

.. .

(iii) The maximum class size for those students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment, shall not exceed 12 students. In addition to the teacher, the staff/student ratio shall be one staff person to three students. The additional staff may be teachers, supplementary school personnel, and/or related service providers.

STATEMENT OF THE CASE

A. Legal Background

This case involves the responsibility of the District Court and Circuit Court to review a case under the Individuals with Disabilities Education Act ("IDEA"), applying State statutes and regulations enacted under the authority of Congress.

The IDEA creates a substantive obligation by a school district to offer a free appropriate public education ("FAPE") to all students with disabilities in the district. The FAPE is provided in connection with an individualized education program ("IEP") created for each disabled student, along with any additional services, such as occupational therapy, physical therapy, transportation, and nursing, among others, that the child requires to access that education. The education must, among other things, be provided under public supervision and direction, meet the standard of the State educational agency, and include an appropriate preschool, elementary school, or secondary school education in the State involved. 20 U.S.C. § 1401. The instruction must also be provided at no cost to parents. *Id.*; *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007).

Congress, recognizing that the expense of special-education and related services places a significant financial burden on school districts, "offers federal funds to States in exchange for a commitment" to provide a FAPE "to all children with certain physical or intellectual disabilities." *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 158 (2017).

The IDEA provides a floor, not a ceiling, for the protection of the rights of students with disabilities.

Amplifying that principle, Congress explicitly authorized States to pass their own laws and regulations implementing the IDEA. In so doing, States may provide greater protections than the IDEA and fill in gaps left by the IDEA, as long as the State laws and regulations do not run afoul of the IDEA and its requirements. 20 U.S.C. § 1407(a)(1) and (2).

Once a State accepts IDEA funds, it is bound to implement due process procedures for a parent to contest whether the education provided is appropriate for their child. The IEP is the primary vehicle for providing each child with the promised FAPE. Crafted by a child's IEP team—school officials, teachers, and parents—the IEP spells out a personalized plan to meet the child's educational needs. 20 U.S.C. § 1414(d)(1)(A)(i)(II)(bb), (d)(1)(B).

"Most notably, the IEP documents the child's current 'levels of academic achievement,' specifies 'measurable annual goals' for how she can 'make progress in the general education curriculum,' and lists the 'special-education and related services' to be provided so that she can 'advance appropriately toward those goals." *Fry*, 580 U.S. at 158–59 (quoting 20 U.S.C. § 1414(d)(1)(A)(i)(I), (II), (IV)(aa)). The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399, 402 (2017).

Parents who feel their child is denied a FAPE are entitled to due process to challenge the school district. The IDEA establishes general principles for due process hearings but allows States to decide how

to implement them. "The IDEA allows states to choose between a one-tiered system or a two-tiered system for administrative review before claims arising under the IDEA may be pursued in state or federal court. The 'State educational agency' decides the case in a one-tier system. 20 U.S.C. § 1415(f)(1)(A). In a two-tiered system, where the 'local educational agency' initially decides the case, an appeal must be taken to the 'State educational agency' to conduct an impartial review before a civil action is brought in state court or the district court of the United States. 20 U.S.C. § 1415(f)(1)(A), (g)(1)." *K.I. v. Durham Pub. Sch. Bd. of Educ.*, 54 F.4th 779, 788–89 (4th Cir. 2022).

New York has established a two-tier system. *Mackey ex rel. Thomas M. v. Bd. of Educ. For Arlington Cent. Sch. Dist.*, 386 F.3d 158, 160 (2d Cir.), *supplemented sub nom. Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 112 F. App'x 89 (2d Cir. 2004). The Impartial Hearing Officer ("IHO") is appointed as the first level of review, and must comply with the requirements of the IDEA, its regulations, and all applicable New York statutes and regulations. An appeal from an IHO decision is to the State Review Officer ("SRO"). Only after the SRO has ruled may a litigant bring the case to federal court, where the District Court, subject to the same laws and regulations, addresses the case in a quasi-appellate role.

B. Factual and Procedural Background

At an early age, M.G. suffered a seizure and intracranial bleed, resulting in a loss of brain mass and Traumatic Brain Injury. Because of her brain

injury, M.G. has been diagnosed with cerebral palsy and hydrocephalus and has global developmental impairments, which adversely affect her educational abilities and performance. M.G. is non-verbal and non-ambulatory, has highly intensive management needs, and requires a high degree of individualized attention, instruction, and intervention. (Appellants' Initial Brief, Case 21–2639, Doc. 37 ("Doc. 37") at 3).

Because M.G. is classified as a student with a disability and a resident of New York City, the DOE must provide M.G. with a FAPE according to the IDEA and New York State Education Law. The DOE must provide M.G. with an appropriate educational placement outlined in an IEP for every school year. (Doc. 37 at 3–4).

For more than half of M.G.'s life, however, the DOE has failed to meet its obligations to M.G. and her parents under the IDEA–the DOE has failed to provide M.G. with a public-school education that is appropriate given her highly intensive management needs at no cost to her family. Since the 2015–2016 extended school year, M.G. has attended private schools that her parents unilaterally placed her in because the DOE cannot meet M.G.'s educational needs. (Doc. 37 at 4).

During the 2017–2018 extended school year, Petitioners unilaterally placed then-6-year-old M.G. at iHOPE, a private special-education school dedicated to meeting the needs of children with disabilities with brain injuries, like M.G. iHOPE employs specialized teachers, nurses, and therapists to provide extended school day and extended school

year care to children with brain injuries. (Doc. 37 at 4).

During the 2018–2019 extended school year, Petitioners unilaterally placed M.G. at iBRAIN, which is also a private special-education school dedicated to meeting the needs of disabled children with brain injuries, employing specialized teachers, nurses, and therapists to provide extended school day and extended school year care to children with brain injuries. Petitioners have unilaterally placed M.G. at iBRAIN each year since the 2018–2019 extended school year—the subject of the instant litigation. M.G. is attending iBRAIN. (Doc. 37 at 4–5).

Because M.G. suffered a traumatic brain injury as a child, each year that she has attended school, her IDEA disability classification has been Traumatic Brain Injury—except for the 2018–2019 extended school year. For every school year since 2016–2017, Petitioners have challenged the DOE's educational placements for M.G. Every year since 2016–2017, there has been an administrative decision finding that the DOE denied M.G. a FAPE–except for the 2018-2019 school year. (Doc. 37 at 5).

Since 2015, Petitioners have unilaterally placed M.G. in a private school for every school year. An administrative decision has found the Petitioners' unilateral placement appropriate each year–except for the 2018–2019 extended school year. For every school year since the 2015–2016 extended school year, the equities have favored Petitioners' request for funding/reimbursement for M.G.'s unilateral private school placements and related services, including

tuition and transportation–except for the 2018–2019 extended school year. (Doc. 37 at 5).

While attending iBRAIN (2018–2019 extended school year to date), M.G.'s educational program consisted of an extended school day, and she was part of a twelve-month academic program. M.G. has been in a 6:1:1[1] educational program and has a dedicated 1:1 paraprofessional during the school day. (Doc. 37 at 6).

The DOE's proposed IEP for the 2018–2019 extended school year constituted a change to M.G.'s educational placement. The proposed IEP changed M.G.'s educational placement from a 6:1:1 program to a 12:1+(3:1)[2] program, reduced M.G.'s related services from 60-minute durations to 30-minute durations, and reclassified M.G.'s IDEA Disability Classification from "Traumatic Brain Injury" to the IDEA's catchall disability category, "Multiple Disabilities." (Doc. 37 at 9). The IEP noted Petitioners' concerns about increasing the size of M.G.'s classes from six (6) students to twelve (12) students because M.G. gets very distracted, but ultimately placed her in a 12:1:4 classroom anyway. (Doc. 37 at 13).

In the 2018–2019 IEP, the DOE acknowledged that "[M.G.]'s management needs are highly intensive. As such, she requires [a] high degree of individualized attention and intervention throughout the school day." The DOE failed to consider any

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[1] Six students: one teacher: one paraprofessional.

[2] Twelve students: one teacher: + (three paraprofessionals for each student).

appreciably different options for M.G.'s placement. The DOE's IEP indicates that a 12:1:1 class was considered an option, with the same number of students as the proposed class. The note regarding the "reason for rejection" of the 12:1:1 class is most interesting. The note states in pertinent part, "[M.G.]'s management needs are highly intensive. As such, she requires a high degree of individualized attention and intervention throughout the school day. For this reason, [M.G.] requires support in an [sic] highly structured educational setting that [sic] which district 75 provides." (Doc. 37 at 14).

On June 21, 2018, Petitioners gave the DOE a 10-day notice of their intent to place M.G. at iBRAIN and seek funding for the placement. (Doc. 37 at 14). On July 9, 2018, Petitioners filed their due process complaint. (Doc. 37 at 12). The IHO and SRO both found for the DOE. (Doc. 37 at 15–16).

The District Court is expected to give the factual findings of the IHO and SRO "deference" because judges lack the specialized knowledge and experience required to resolve persistent and difficult questions of educational policy. *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 129 (2d Cir. 1998). But no deference is due when the administrative officer's ruling is based on a question of law, nor when the decision is not well-reasoned. *Muller on Behalf of Muller v. Comm. on Special Educ. of E. Islip Union Free Sch. Dist.*, 145 F.3d 95, 101 (2d Cir. 1998); *see also Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1122 (2d Cir. 1997) ("due weight" that ordinarily must be given to the state administrative proceedings is not implicated where the decision below concerns an issue

of law). The *Burlington/Carter* test is used to determine whether parents are entitled to reimbursement for the unilateral placement of their disabled child in a non-public educational program or school. *See Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985); *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7 (1993). "A court may award tuition reimbursement 'if it appears (1) that the proposed IEP was inadequate to afford the child an appropriate public education, and (2) that the private education services obtained by the parents were appropriate to the child's needs." *M.S. ex rel. S.S. v. Bd. of Educ. of the City Sch. Dist. of the City of Yonkers*, 231 F.3d 96, 102 (2d Cir. 2000) (quoting *Walczak*, 142 F.3d at 129 (citing *School Committee of Town of Burlington, Mass.*, 471 U.S. at 370))).

The District Court ruled in favor of the DOE, deferring to the SRO decision, and the Second Circuit affirmed. (A63, A11).

REASONS FOR GRANTING THE WRIT

As is typically the case with federal law, the IDEA provides a floor of protection for disabled students in the educational setting, not a ceiling. In the IDEA itself, Congress has authorized individual States to provide additional protections for students and their parents, so long as they meet the minimum requirements established in the IDEA. In addition, States may, and arguably must, fill in gaps left by the IDEA in providing procedural protections for students with disabilities and their parents. New York, for one, has availed itself of this grant of authority.

New York has restricted the size of classrooms, measured in the number of students, in which disabled students with distinct needs must be placed in accordance with the IDEA. These requirements have been codified, in relevant part, at N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4).

The Second Circuit has, as it did here, ignored New York's statutory requirements and instead given "deference" to administrative officers rendering decisions in direct contravention of these requirements. District courts in the circuit have already begun to rely on the Second Circuit's Summary Order in subsequent cases, solidifying these statutory violations in binding federal caselaw.

The lead taken by the Second Circuit, in this case, has resulted in a policy, stamped with the imprimatur of the federal courts, that blatantly violates binding State statutes and regulations and directly contravenes Congress' intent in creating the IDEA. The Second Circuit's decision violates the vital doctrine of cooperative federalism and, most importantly, has established a basis for the chronic deprivation of the educational rights of children with disabilities in New York. This Court must intervene to reverse the tide of this grave and legally unsupportable injustice.

I. The Second Circuit Erred in Setting Aside Binding State Law

A. The Second Circuit Erroneously Gave Deference to the

Administrative Findings on a Question of Law

The Second Circuit correctly set forth the general principle that "[f]ederal courts reviewing state administrative proceedings under the IDEA 'are required to give "due weight" to the findings of' those proceedings." (A5) (quoting *Muller on Behalf of Muller*, 145 F.3d at 101 (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 206 (1982))). But in a footnote, the Court erred by rejecting the principle that an administrative decision is not entitled to deference when it involves a question of law. (A5-A6 n.3). The Court held: "This case presents a straightforward question of whether the IEP developed for M.G. provided her a FAPE, in contrast to the cases cited by appellants." (A5 n.3). Yet the first such case the Court cited was *Muller on Behalf of Muller*, 145 F.3d at 102: "Deference was not required because the question was interpretation of 'the definition of "emotionally disturbed" set forth in the relevant state and federal regulations." (*Id.*).

This case turns on the application of New York regulations governing students with disabilities with "highly intensive management needs" and students with "multiple disabilities." As in *Muller*, the heart of the issue here is the interpretation of New York's Regulations—a pure question of law that is not entitled to deference.

B. The Second Circuit Relied Upon Factual Testimony in Affirming M.G.'s Placement in a 12:1:4

Classroom is in Direct Violation of State Law

After declaring that the issue here is not a question of law, the Court proceeded to "turn to the regulations" to analyze the issue in the case. Interpreting the regulations is an issue of law. At any rate, the Court latched onto the term "[c]ontinuum of services" from the heading of N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6. (A6-A7). The Court used this general term (which does not appear in § 200.6(h)) to bypass the concrete requirements of N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii).

The Court incorrectly cited the regulation, observing that "Section 200.6(h)(4)(ii)(a) provides that a 6:1:1 classroom—appellants' preferred placement—is appropriate for 'students whose management needs are determined to be highly intensive. .. ." (A7). But the regulation does not say a 6:1:1 classroom is "appropriate" for students with highly intensive management needs—it provides that the classroom for such students "**shall not exceed** six students. .. ." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) (emphasis added). That language is unambiguous and unequivocal.

The Court disregarded this binding provision by resorting to a "continuum" of options established by factual testimony. The Court held that "[i]n the continuum of classroom options, the 12:1:4 is the most supportive classroom available." (A7). In reaching this conclusion, the Court relied on the testimony of Rochelle Flemister, the DOE's supervisor of school psychologists, who testified that "a 12:1:4 classroom is

appropriate for 'students that really have a lot of management needs' and that it gives those students 'the attention and support that they need[,]' including attending to 'whatever their medical needs are in addition to provid[ing] education." (A8).

The regulation references "highly intensive management needs," a legal term of art. "[S]tudents that really have a lot of management needs" is not a legal term of art; it is a vague, ambiguous term used by a fact witness. Equally vague and ambiguous are the terms "attention and support that [the students] need," "whatever their medical needs are," and "provid[ing] education." The Second Circuit relied on this imprecise language to essentially overrule the concrete requirements of the binding regulations.

Notably, the Second Circuit stated that "[t]he District Court found that there 'is absolutely no question that M.G. has highly intensive management needs. .. ." (A8). The Court then addressed the argument that M.G. requires a 6:1:1 classroom, concluding that the "argument is not supported by the plain language of the regulation." (A8-A9). The Court held that M.G. has both "multiple disabilities" and "highly intensive management needs." (A9). The Court then justified the placement in a 12:1:4 classroom by (mis)characterizing that option as a "high-support classroom" and a 6:1:1 classroom as a "lower support classroom."

This reasoning is backward and is a misapplication of New York Law—the law and regulations passed by the New York State Legislature as envisioned by Congress. N.Y. Comp. Codes R. &

Regs. tit. 8, § 200.6(h)(4)(iii) states clearly that a student with multiple disabilities must be placed in a classroom of **no more than 12 students**. This is unambiguous and unequivocal. This requirement is also unaltered by the ratio of students to the teacher in each class or of the students to the support staff.[3] No matter how many adults are or might be present, the classroom must not have more than 12 students. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) provides that a student with highly intensive management needs must be in a classroom of **not more than six students**. Again, this is unambiguous and unequivocal and has nothing to do with ratios of students to special-education teachers, nurses, aides, paraprofessionals, or other adults. The issue addressed by this provision is not the number of students per adult in the room but the number of **students** in the room.

Applying these two provisions where they might both be relevant becomes a simple math problem. The only class (by size or ratio) **that complies with both provisions**—meaning the maximum number of students is no more than 12 **and** no more than 6—is the 6:1:1 classroom.[4]

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[3] Such ratios come later in the regulation but in no way modify or alter the maximum number of students allowed in the classroom. A school must first meet the maximum student requirement, and then the appropriate ratio requirements. They are separate requirements.

[4] Put differently, 6 is not greater than 6, and 6 is not greater than 12. However, 12 is greater than six, and 12 is not greater than 12. The only class ratio that

The 12:1:4 classroom does not comply with N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) because it has more than 6 students. The 6:1:1 classroom also meets the remaining requirements of both provisions. N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(iii) requires a ratio of "one staff person to three students." M.G. has her own assigned paraprofessional plus the classroom paraprofessional, and so the ratio is 2:1, which exceeds the requirement of N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(iii). Section 200.6(h)(4)(ii)(a) requires "one or more supplementary school personnel assigned to each class during periods of instruction." Again, the 6:1:1 classroom meets this regulation.

It does not matter whether, in the estimation of the SRO, the school psychologist, the Committee on Special Education ("CSE"), or anyone else, the 12:1:4 classroom is "more supportive" or "less supportive" than a 6:1:1 classroom on the "continuum" of services available. The only opinion that matters is that of the New York State Legislature—a collective opinion that children in New York State with disabilities who have highly intensive management needs shall be educated in a classroom environment **WITH NO MORE THAN SIX** students.

Neither the SRO, the District Court, nor the Second Circuit explained why the New York State Legislature's preference, contained in the regulation, could be ignored. Neither the SRO, the District Court,

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satisfies both statutes, when and if they are both applicable, is a class ratio of 6:1:1.

nor the Second Circuit explained why the New York State Legislature could not raise the IDEA's floor—the minimum level of education children with disabilities are entitled to—in New York. The minimum that students with disabilities who have highly intensive management needs are entitled to in New York State is a special-education class with no more than six (6) Students. Full Stop.

Children with disabilities in New York who have highly intensive management needs, like elsewhere, are NOT entitled to the BEST education possible—admittedly. But they are entitled to the protection of New York State's laws and regulations—they are statutorily entitled to be in a class with no more than six students. To provide children with disabilities, who have highly intensive management needs, with a FAPE in the State of New York, the NYC DOE must ensure they are placed in a class with no more than six (6) Students.

As for meeting the physical needs of the students, the fact is, as the record bears out, that M.G. needs, and has, a personal, 1:1, full-time person (nurse/paraprofessional) attending to her every need. So do the other students at a school like iBRAIN. So while the statutory maximum number of students may result in a class ratio of 6:1:1, six full-time nurses and/or paraprofessionals are still available in each class, along with the teacher and paraprofessional—six students and eight adults. In a 12:1:4 class, there are typically 12 students and five adults. Add full-time nurses into the equation, and there would be 12 students and 17 adults. The total number of people in each class would be 14 and 29. With full-time nurses,

there would be 14 **people** in a single class (6:1:1 ratio), where the 6 students would get **twice as much** time with their special-education teacher as the 12 students in a class with 29 people (12:1:4)—where the students spend **half as much** time with their special-education teacher as the students in a 6:1:1 class. And NOTHING would stop the NYC DOE from offering a 6:1:2 class (2 students per adult ratio), which has nearly the same student per adult ratio (2.4 students per adult ratio)—**BUT COMPORTS WITH THE NEW YORK STATUTE** as the class size does not exceed 6 students. In fact, the NYC DOE could have put M.G. in a 6:1:5 class with a student-to-adult ratio of one-to-one—without exceeding the 6-student maximum set by New York's statutes.[5]

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[5] When parents, like the Petitioners here, unilaterally enroll their child in private school, they take certain risks—most being financial. Parents, like the Petitioners, know they might not receive tuition reimbursement for their child's private placement. However, Parents should be able to rely on the law, on statutes, and on regulations. Parents should be able to rely on straightforward, clear, and concise language in State Regulations and Statutes. Parents should be able to rely on the New York State Legislature's decision that students with highly intensive management needs shall be placed in a class with no more than 6 students. In deciding whether to move their disabled child, who has highly intensive management needs, from public-school, where she is in a class with twelve students, to a private school, where she will be in a class with 6 students, a parent should—no must—be able to rely on the law. And here, New York Law mandates that

The fact is that the 12:1:4 classroom does not meet the unambiguous requirements of N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a), while the 6:1:1 classroom meets the black-and-white requirements of **both** N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(iii) and § 200.6(h)(4)(ii)(a). This is solely a matter of law, and the SRO may have misunderstood that— couching their final decision as one involving "special-education" matters. Relying on the SRO's determination that the issues here involve special-education issues rather than legal issues or analysis, the Second Circuit accorded undue deference to the SRO's findings and decision—the Second Circuit erred, affecting its ultimate decision.

The Second Circuit held: "The CSE determined based on M.G.'s individual needs that she should be placed in a 12:1:4 classroom. Nothing about the regulation prohibits this." (A9). As discussed above, the plain, unambiguous language of the regulation prohibits this: not more than six means not more than six, and 12 is more than six. The Second Circuit continued: "The CSE met its obligation to carefully consider the student's needs, and developed a plan that would provide her with a FAPE; M.G.'s parents' preference for a different placement is not controlling." (*Id.*) (emphasis in original). The error in that reasoning is that the parents' "preference" is not merely a preference; it is a statutory requirement. That requirement is controlling, and is binding on the

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a child with highly intensive management needs be placed in a special-education class with no more than 6 students.

DOE, notwithstanding the CSE's "careful consideration" of M.G.'s needs, and its ultimate opinion that the statute is wrong, and a 12:1:4 classroom is best for M.G.

C. The Second Circuit Violated the Canons of Statutory Construction

This Court has held that ". .. in all statutory construction cases, we begin with the language of the statute. The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.' *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989)). The inquiry ceases 'if the statutory language is unambiguous and "the statutory scheme is coherent and consistent.' *Robinson*, 519 U.S. at 340." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002).

As discussed above, the language of the relevant regulations is plain and unambiguous. The Second Circuit's inquiry should have ended with the interpretation and application of the regulations. Instead, the Court considered the opinions of the CSE and the school psychologist in essentially concluding that the regulation was wrong. Furthermore, while the Court held that both N.Y. Comp. Codes R. & Regs. tit. 8, § 200.6(h)(4)(ii)(a) and 200.6(h)(4)(iii) applied here, it only needed to harmonize the Statutes to conclude that M.G. could not be placed in a class with over 12 students—she could be placed only in a class with NO MORE than six (6) students. *See Barnhart*,

534 U.S. at 450 (no further inquiry is necessary if the "statutory scheme is coherent and consistent").

Applying both provisions above, as written, leaves only one permissible classroom for M.B. here—the 6:1:1 classroom. The Second Circuit violated the canons of statutory interpretation in holding otherwise.

D. The Second Circuit Contravened the Doctrine of Cooperative Federalism

The Second Circuit's decision contravenes the cooperative federalism contemplated by the IDEA. In exchange for federal funds, school districts must provide a FAPE to qualified children. 20 U.S.C. § 1412(a) and 20 U.S.C. § 1413(a). Parents who feel their child is denied a FAPE are entitled to due process to challenge the school district. The IDEA establishes general principles for due process hearings but allows States to decide how to implement them. The IDEA serves as a floor, not a ceiling. It guarantees the minimum a State must do to benefit parents and their children but invites the State to do even better for those parties.

Given the historical atrocities that children with disabilities faced, the IDEA specifically noted that disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is essential to our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for

individuals with disabilities. 20 U.S.C. § 1400(c)(1). Whether because of funding issues or social stigmas around disability, States failed at special-education. "Certainly the failure to provide a right to education to handicapped children cannot be allowed to continue. .. Congress must take a more active role. .. to guarantee that children are provided equal educational opportunity." S. REP. 94–168, 9.

The State has historically controlled the education of children—particularly children with disabilities. As failures to educate special-education children became apparent, Congress implemented the Education for All Handicapped Children Act, which became the IDEA. While federal oversight was necessary, the State itself was the primary driver of education. Though federal courts are given jurisdiction to decide complaints, they must still implement the State rules as critical and necessary. The IDEA requires each State to make its own guidelines to meet the Act's purposes—it allows States to go above and beyond those basic requirements. States are only eligible to receive IDEA funds if they show they have those basic procedures in place. 20 U.S.C. § 1412(a).

For policies that go beyond the basics, each State must identify in writing to local educational agencies any rules, regulations, or policies as a State requirement that are not required by the IDEA and federal regulations. 20 U.S.C. § 1407(a)(2). States like New York have recognized that parents and children are at a disadvantage when drafting and filing a due process complaint and have put extensive protections into place. New York State publishes charts of these

rules, which show the State requirement, citation, and how the requirement differs from the federal requirement. In March 2023, this chart encompassed 32 pages reflecting the extra rights given by New York Educational Law and New York Codes, Rules, and Regulations.[6]

New York has taken an aggressive approach to ensure that the rights of children with disabilities and parents of such children are protected. Parents may prosecute claims on behalf of their children and have separate rights under the IDEA that they may prosecute individually. *Winkelman ex rel. Winkelman*, 550 U.S. 516. These added protections are meaningless should a parent challenging an administrative order in district court have their argument rejected in favor of the lesser protections of the IDEA. "Cooperative federalism" requires the federal court system to ensure that State Regulations are followed and that administrative decisions are given due weight.

"Congress has made clear that the Act itself represents an exercise in 'cooperative federalism.' Respecting the States' right to decide this procedural matter here, where education is at issue, where expertise matters, and where costs are shared, is consistent with that cooperative approach." *Schaffer*

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[6] New York State Law, Regulations and Policy Not Required by Federal Law/Regulation/Policy March 2023. Last accessed October 18, 2023, at https://www.nysed.gov/sites/default/files/programs/special-education/nys-law-regulations-policy-not-required-by-federal-law-regulation-policy.pdf.

ex rel. Schaffer v. Weast, 546 U.S. 49, 67 (2005) (Breyer, J., dissenting) (internal citation omitted). *See also Wisconsin Dep't of Health & Fam. Servs. v. Blumer*, 534 U.S. 473, 495 (2002) (when interpreting statutes "designed to advance cooperative federalism" the Court has "not been reluctant to leave a range of permissible choices to the State"). Cooperative federalism requires respect for the State's right to set the rules and its right to determine how those rules apply here.

II. This Court's Intervention is Necessary to Reverse the Trend of State Administrative Officers and Federal Courts Violating the Rights of Disabled Students as Codified in Binding State Law

The Second Circuit decision has unleashed an alarming trend of administrative officers and federal courts defying State statutory and regulatory requirements intended by the New York legislature, under the authority of Congress, to provide protections for students with disabilities and their parents above and beyond those provided by the IDEA. Cloaked with the authority of Second Circuit precedent (albeit non-binding precedent), IHOs and SROs can now ignore binding State statutes and regulations, replacing them with their own "expert" opinions.

Drawing on the Second Circuit's authority, District courts reject challenges to the IHO and SRO opinions in the name of "deference." The end result goes far beyond a granular legal issue—it is the repeated denial of educational rights of the State's

most vulnerable students—the disabled. It is the repeated denial of educational rights that the State of New York specifically created for its citizens—rights to protect students with disabilities.

Without this Court's intervention, this avalanche of adverse decisions will continue under the auspices of the Second Circuit decision in this case, further cementing the blatant defiance of duly enacted laws intended to protect students with disabilities. Accordingly, Petitioners respectfully request that this Court grant a writ of certiorari and reverse the Second Circuit decision, holding that federal courts must apply duly enacted, binding State statutes and regulations in IDEA cases.

CONCLUSION

For the preceding reasons, the writ of certiorari should be granted.

Dated: October 30, 2023

Respectfully submitted,

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