No. 24-6151

ORIGINAL

In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR.,

Petitioner,

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 504 of the Rehabilitation Act ("Sec. 504") provides that "[n]o otherwise qualified individual with a disability" shall "be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a); *see* 34 C.F.R. § 104.4(a). "[A]id[s], benefits, and services," to be equally effective, "must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement [as non-handicapped persons], in the most integrated setting appropriate to the person's needs." 34 C.F.R. § 104.4(b)(2). Similarly, Title III of the Americans with Disabilities Act ("Title III") guarantees individuals with disabilities "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation," 42 U.S.C. § 12182(a), and prohibits providing an "opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals," 42 U.S.C. § 12182(b)(1)(A)(ii).

The questions presented are:

1. Whether, under Sec. 504 and Title III, a student with disabilities may obtain as relief an injunction permitting him to restart his medical education afresh, including grade expungement.

2. Whether, under Sec. 504, the standard for showing intentional discrimination to recover compensatory damages is deliberate indifference or a potentially higher standard, such as discriminatory animus, and whether Petitioner's pleadings have met either standard.

PARTIES TO THE PROCEEDING

Petitioner in this Court is James Gregory Howell, Jr. Respondent is The Morehouse School of Medicine, Inc.

A corporate disclosure statement is not required because Petitioner James Gregory Howell, Jr. is not a corporation. *See* U.S. Sup. Ct. R. 29.6.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

James Gregory Howell, Jr., v. The Morehouse School of Medicine, Inc., No. 22-13778 (11th Cir. June 5, 2024)

James Gregory Howell, Jr., v. The Morehouse School of Medicine, Inc., No. 1:20-cv-3389-MHC (N.D. Ga. Oct. 11, 2022)

The following proceedings are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii):

James Gregory Howell, Jr., v. The Morehouse School of Medicine, Inc., No. 24-10087 (11th Cir. June 18, 2024)

James Gregory Howell, Jr., v. The Morehouse School of Medicine, Inc., No. 1:23-cv-4725-MHC (N.D. Ga. Dec. 4, 2023)

James Gregory Howell, Jr., v. The Morehouse School of Medicine, Inc., No. 2022CV372654 (Fulton County, Georgia Superior Court) (discovery is stayed)

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In the Supreme Court of the United States

JAMES GREGORY HOWELL, JR., PETITIONER

v.

THE MOREHOUSE SCHOOL OF MEDICINE, INC., RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner James Gregory Howell, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's decision is reported at 2024 WL 1460308 and reprinted in the Appendix ("App."), *infra*, at 1a-3a. The District Court's order on Respondent's motion to dismiss is not reported but is reprinted at App. 4a-86a. The District Court's subsequent mootness determination and denying reconsideration is not reported but is reprinted at App. 87a-122a.

JURISDICTION

The judgment of the Eleventh Circuit was entered on April 4, 2024. A petition for rehearing was denied on June 5, 2024. (App. 126a-27a.) On August 27, 2024, Justice Thomas extended the time to file a petition for a writ of certiorari from September 3, 2024, to October 3, 2024. No. 24A210. The jurisdiction of this Court is invoked

under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced at App. 130a-265a.

STATEMENT

This case presents an ideal vehicle to resolve two circuit splits: (1) an 8-2 circuit split on the standard for defining intentional discrimination with regards to compensatory damages under Section 504 of the Rehabilitation Act of 1973 ("Sec. 504"), 29 U.S.C. § 794; and (2) the types of equitable relief available under Sec. 504 and Title III of the Americans with Disabilities Act ("Title III"), 42 U.S.C. § 12182, in particular a 3-1 circuit split on the availability of expungement of records as prospective injunctive relief.

Both Sec. 504 and Title III, and their respective implementing regulations, require responsible parties to provide necessary and reasonable accommodations, auxiliary aids, and services to individuals with disabilities. 34 C.F.R. § 104.44(a), (d)(1)-(2) [Sec. 504]; 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii) [Title III]. (App. 183a, 263a.) Under Sec. 504, accommodations "must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement [as non-handicapped persons], in the most integrated setting appropriate to the person's needs." 34 C.F.R. § 104.4(b)(2). (App. 259a.) In determining what constitutes as necessary, this Court held Sec. 504 "requires . . . meaningful access to the benefit that the [federal] grantee offers" which may necessitate "reasonable accommodations," and the benefit "cannot be defined in a way that effectively denies otherwise qualified

handicapped individuals the meaningful access to which they are entitled." *Alexander v. Choate*, 469 U.S. 287, 301 (1985).[1] Similarly, under Title III, necessary and reasonable accommodations, auxiliary aids, and services provide an individual with disabilities the "full and equal enjoyment" of the "services, facilities, privileges, advantages, or accommodations" offered to non-disabled individuals, 42 U.S.C. § 12182(a), (b)(2)(A)(ii)-(iii), so that individuals with disabilities are not provided an "opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals," 42 U.S.C. § 12182(b)(1)(A)(i)-(ii); 28 C.F.R. § 36.202(b). (App. 183a, 218a.)

Education "is the very foundation of good citizenship," *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), and "[m]edicine is a profession that requires extensive training" and education, Ilana Kowarski, *How Hard Is Medical School and What Is the Medical School Curriculum*, Yahoo! News (Apr. 18, 2019), https://www.yahoo.com/news/hard-medical-school-medical-school-curriculum-145404478.html.[2] The "amount of work medical students are expected to complete during medical school is formidable." Kowarski, *supra* (*citing* Dr. Aron Sousa, senior associate dean of academic affairs at Michigan State University College of Human Medicine). "[T]here is so much studying and work that . . . [m]ost medical schools expect their students to work 60-80 hours a week every week." *Id.* (*quoting* Dr. Aron Sousa). And "though cramming is sometimes an effective study strategy in college, it is not a viable option

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[1] The standard in *Alexander v. Choate*, 469 U.S. 287, 301 (1985) is applicable to ADA cases. *Merrill v. People First of Ala.*, 141 S.Ct. 25, 27 (Mem) (2020) (Sotomayor, S., Breyer, S., Kagan, E., dissenting).

[2] Also available at: https://web.archive.org/web/20240716020157/https://www.yahoo.com/news/hard-medical-school-medical-school-curriculum-145404478.html.

during medical school, which requires continuous disciplined study." *Id.* (*citing* Dr. Joseph Kass, associate dean of student affairs at Baylor College of Medicine). Indeed, "the stakes are higher in medical school than in other types of higher education, because medical students need to absorb their professors' lessons well enough to apply that knowledge during a health crisis." *Id.* (*citing* Dr. Robert B. Young, associate professor of psychiatry at the University of Rochester School of Medicine and Dentistry). In medical school, "[i]t's not just about making the grades; it's about learning to do what you'll have to be able to do in order to deserve" the responsibility "to make decisions about people's lives that are in your hands." *Id.* (*quoting* Dr. Robert B. Young).

Petitioner James Gregory Howell, Jr. ("Howell" or "Petitioner"), a student with disabilities, attended Respondent The Morehouse School of Medicine, Inc.'s ("MSM" or "Respondent") Doctor of Medicine ("MD") program from 2017 to 2020. Before choosing to matriculate into MSM's MD program, MSM advertised to Howell the availability of note-takers for qualified students. (App. 275a, 284a-87a, 456a, 465a-67a.) Every accommodation granted by MSM to enable Howell to fulfill the MD program's academic requirements required supporting medical documentation provided by Howell. (App. 289a, 451a-53a, 461a.) For all three years, MSM annually determined Howell met the eligibility standards and was granted a note-taking accommodation with the expectation of providing each class's notes within one to two days after each class was held. (App. 276a, 292a, 296a, 318a, 326a.)

Howell's annually granted note-taking accommodation was necessary because MSM's MD program has a cumulative curriculum where class lectures are built atop

previous lectures, and students rely on notetaking during lectures to obtain all necessary information. (App. 293a-94a, 297a-98a, 318a-19a, 465a-67a, 482a, 487a, 492a, 497a, 502a, 528a, 533a, 552a, 571a, 591a.) During Howell's first two years, he submitted numerous complaints about the ineffectiveness of his annually granted notetaking accommodation, to no effect. (App. 298a-310a, 314a-16a, 318a-22a.) During Howell's first year, he received notes for only 61% of classes, which had an average turnaround time from when the class was held to when Howell received the notes of 4.17 days. (App. 310a.) In his second year, Howell received notes for only 88% of classes, of which notes received had a 14.61-day average turnaround time. (App. 323a.) The Office of Civil Rights ("OCR") believes note-taking accommodations taking longer than four to five days are useless for students because of how fast-paced medical school is and how everything builds upon itself. (App. 502a.) The average turnaround time of the notes Howell did receive during his first and second year was greater than four days, thus considered useless by the OCR's standard.

As a result of MSM's documented failure to provide for Howell's annually granted note-taking accommodation, Howell was always behind in his studies and was forced to rely on *cramming* in attempts to pass his courses, causing significant impairment in his learning experience and academic record. (App. 298a-99a, 471a-72a, 483a-85a, 487a-88a, 493a-95a, 497a-98a, 501a-02a, 529a-31a, 533a-34a.) *See supra* pp. 3-4 ("Cramming . . . is not a viable option during medical school.") Howell's first- and second-year grade point averages were 2.49/4.00 and 2.68/4.00, respectively. (App. 311a, 323a.) Howell's academic injuries have precluded his ability to be

successful in completing the rest of his medical education and matching into residency programs, something MSM told Howell would happen. (App. 310a-14a, 317a-19a, 323a, 327a-28a, 332a-33a & n.6, 339a & n.7, 381a-82a, 473a-75a, 482a, 484a, 486a-87a, 492a, 494a, 496a-97a, 501a-02a, 528a, 530a, 532a-33a.) Howell seeks to restart his medical education to become the best physician he can, with the opportunity to earn new grades so as not to be harmed by the irreparable damage to his foundational medical knowledge base and prior academic record caused by MSM's actions. (App. 367a, 381a-82a.)

Despite holding that Howell had sufficiently alleged failure-to-accommodate claims under both Sec. 504 and Title III, the District Court held Howell did not "plausibly allege that MSM was deliberately indifferent" for compensatory damages and that grade expungement, and by extension Howell's requested injunctive relief to restart medical school afresh, is never appropriate relief under Sec. 504 and the Americans with Disabilities Act ("ADA"). (App. 50a, 63a, 64a-65a, 99a.) The District Court then dismissed Howell's failure-to-accommodate claims as moot. (App. 119a.) The Eleventh Circuit affirmed the District Court's decision, labeling Howell's requested equitable relief as simply "novel." (App. 3a.)

This case meets all the Court's criteria for certiorari. First, it presents two clear circuit splits. Courts have divided **(3-1)** on the types of equitable relief available under Sec. 504 and Title III. Courts have also divided **(8-2)** on the standard for defining intentional discrimination regarding compensatory damages under Sec. 504 and the ADA.

Second, this case has immense practical importance. There are millions of students with disabilities.[3] This case concerns important issues that are recurring, national in scope, and impede the effectiveness of federal statutes. The United States, in its amicus brief filed in the Eleventh Circuit, stated it "has a substantial interest in this appeal, which concerns the relief available under Title III . . . and [Sec.] 504." (App. 646a.) The United States argued that the District Court's decision "contravenes basic principles that guide courts in providing equitable relief" and that "such an outcome might diminish educational institutions' incentives to fully and expediently implement needed accommodations." (App. 656a.)

Third, this case presents issues only this Court can resolve. First, the Eleventh Circuit's affirming of the District Court's decision that Howell's requested equitable relief is categorically improper cannot stand because it contravenes this Court's foundational cases defining courts' authority to craft equitable remedies and has no basis in either statute or their implementing regulations. The Eleventh Circuit's decision has created a 3-1 circuit split between the Second, Fourth, and Ninth Circuits and the Eleventh Circuit. Second, because this Court has not provided guidance on the meaning of intentional discrimination "in the context of either Title VI or [Sec. 504]," *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 346 (11th Cir. 2012), the circuit courts are in an 8-2 split and have divided themselves into two camps regarding the

[3] During the 2019-2020 academic year, the number of students with disabilities made up 20.5%, or 3,478,000, of the total 16,936,000 undergraduate students, and 10.7%, or 385,000, of the total 3,600,000 graduate students. U.S. Dep't of Educ., *Number and Percentage Distribution of Students Enrolled in Postsecondary Institutions, by Level, Disability Status, and Selected Student Characteristics: Academic Year 2019-20*, NAT'L CTR. FOR EDUC. STAT. (June 2023) (*citing* 2019-20 National Postsecondary Student Aid Study), https://nces.ed.gov/programs/digest/d22/tables/dt22_311.10.asp.

legal standard for intentional discrimination. The first camp, comprised of the Second, Third, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits, has held the requisite standard for showing intentional discrimination is deliberate indifference. The second camp, comprised of the First and Fifth Circuits, suggests a heavier burden, such as discriminatory animus. This Court's review is warranted because only this Court can provide guidance on what its precedents mean.

Finally, the Court should grant certiorari because the Eleventh Circuit's decision is wrong. Its rejection of Howell's requested prospective relief conflicts with this Court's precedents of equity jurisprudence and ignores the fact that (1) a school's repeated failure to provide for an annually granted accommodation effectively may have ongoing impacts on a student's academic knowledge base and later education, and (2) failing and bad grades on an academic record produced by disability discrimination may have ongoing impacts on a student's career and education.

The Court should grant certiorari and reverse the Eleventh Circuit.

I. Legal Background

1. Congress enacted Sec. 504 because "millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing," and "individuals with disabilities constitute one of the most disadvantaged groups in society." 29 U.S.C. § 701(a)(1)-(2). (App. 130a.) Sec. 504 was established as a "comprehensive federal program," *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 626 (1984), to ensure that individuals with disabilities would not be "excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29

U.S.C. § 794(a); 34 C.F.R. § 104.4(a) (2017-2024).[4] (App. 167a, 259a.) To achieve that purpose, regulations promulgated under Sec. 504 provide, in relevant part, that qualified students with disabilities shall not be excluded from participation in, denied the benefits of, or otherwise discriminated against in the "aid, benefits, or services" of a postsecondary education program. 34 C.F.R. § 104.43(a) (2017-2024).[5] (App. 262a.) For "aid, benefits, and services" to be equally effective, they "must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement [as non-handicapped persons], in the most integrated setting appropriate to the person's needs." 34 C.F.R. § 104.4(b)(2) (2017-2024). (App. 259a.) Students with disabilities may not be excluded "from any course, course of study, or other part of its education program or activity." 34 C.F.R. § 104.43(c) (2017-2024). (App. 262a.) Further, a postsecondary educational program must also modify its "academic requirements" and provide "auxiliary aids" and "other similar services" to ensure that students with disabilities do not experience denial of benefits, exclusion, or discrimination. 34 C.F.R. § 104.44(a), (d) (2017-2024). (App. 263a.)

These regulations also define discrimination by entities receiving federal funding as denying "a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service"; affording "a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not

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[4] Under Section 504, a "program or activity" includes "a college, university, or other postsecondary institution." 29 U.S.C. § 794(b)(2)(A); 34 C.F.R. § 104.3(k) (2017-2024). (App. 167a, 247a, 253a.)

[5] With respect to postsecondary education, a qualified handicapped person under Section 504 means someone "who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity." 34 C.F.R. § 104.3(l)(3) (2017-2024). (App. 247a, 253a.)

equal to that afforded others"; providing "a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others"; or otherwise limiting "a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service." 34 C.F.R. § 104.4(b)(1)(i)-(iii), (vii) (2017-2024). (App. 259a.)

2. Similarly, in 1990, the ADA was enacted "to remedy widespread discrimination against disabled individuals," *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001), because Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem" and discrimination "persists in such critical areas as . . . education," 42 U.S.C. § 12101(a)(2)-(3). (App. 173a.) One of the many purposes of the ADA was to "provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(2). (App. 173a.) In furtherance of its congressional purpose, Title III prohibits places of public accommodation from discriminating against individuals with disabilities "in the full and equal enjoyment" of the "services, facilities, privileges, advantages, or accommodations" they offer. 42 U.S.C. § 12182(a).[6] (App. 183a.) Title III prohibits denying an individual with disabilities "the opportunity . . . to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity," and prohibits providing an "opportunity to participate in or benefit from a good,

[6] Under Title III, places of public accommodation include "postgraduate private school[s]." 42 U.S.C. § 12181(7)(j); 28 C.F.R. § 36.104 (2017-2024). (App. 179a, 195a.)

service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals." 42 U.S.C. § 12182(b)(1)(A)(i)-(ii).[7] (App. 183a.)

Title III also defines discrimination as failure to "make reasonable modifications in policies, practices, or procedures" that are "necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities" or as failure to "take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services." 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii); 28 C.F.R. §§ 36.302-36.303 (2017-2024).[8] (App. 183a, 220a, 234a.)

Regulations promulgated under Title III require the provision of "appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities," 28 C.F.R. § 36.303(c)(1) (2017-2024), and places of public accommodation are to "consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication," *id.* § 36.303(c)(1)(ii) (2017-2024). (App. 234a.) The term "auxiliary aids and

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[7] Both Title III and Sec. 504 define disability, with respect to an individual, as "a physical or mental impairment that substantially limits one or more major life activities of such individual." 42 U.S.C. § 12102(1)(A); 29 U.S.C. § 705(9). (App. 175a, 134a.) Major life activities include, but are not limited to, learning and concentrating. 42 U.S.C. § 12102(2)(A); *see also* 28 C.F.R. § 36.105(a)(1), (b)(2) (2017-2024). (App. 175a, 205a.)

[8] Although the ADA and Sec. 504's implementing regulations use the term "reasonable modification," it is often used interchangeably in caselaw with the term "reasonable accommodation." *Compare PGA Tour, Inc. v. Martin*, 532 U.S. 661, 682 (2001) ("Petitioner does not contest that a golf cart is a reasonable modification that is necessary if Martin is to play in its tournaments.") *with Alexander v. Choate*, 469 U.S. 287, 301 (1985) ("[T]o assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made."). Here, Howell primarily uses "reasonable accommodation" or just "accommodation," consistent with the briefing below.

services" includes "notetakers," 28 C.F.R. § 36.303(b)(1) (2017-2024), and "[i]n order to be effective, auxiliary aids and services must be provided in accessible formats" and "in a timely manner," *id.* § 36.303(c)(1)(ii) (2017-2024). (App. 234a.) In addition, "[g]oods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual." 42 U.S.C. § 12182(b)(1)(B); 28 C.F.R. § 36.203(a) (2017-2024). (App. 183a, 219a.)

II. Factual Background

3. Howell is a student with disabilities who has life-long diagnosed learning disorders: severe attention-deficit/hyperactivity disorder and anxiety disorder. Howell has previously received accommodations in his primary, secondary, and postsecondary education and on the Medical College Admission Test (MCAT). (App. 278a-80a.) The Morehouse School of Medicine ("MSM") is a private postsecondary institution and receives federal financial assistance. (App. 271a-74a.) In March 2017, Howell was accepted into MSM's Doctor of Medicine ("MD") program and immediately requested accommodations.[9] (App. 281a-82a, 286a.) Every accommodation granted by MSM to enable Howell to fulfill the MD program's academic requirements required that he provide detailed and supporting medical documentation completed by a qualified and licensed professional. (App. 289a, 451a-53a, 461a.)

Before Howell's matriculation decision, MSM advertised to Howell the availability of note-takers, extended time for in-class assignments and examinations, and

[9] Howell was admitted into three different medical schools. (App. 281a n.1.)

alternative testing environments for qualified students.[10] (App. 285a-86a, 456a.) Marla Thompson ("Thompson"), MSM's Office of Disability Services ("ODS") manager, MSM's human resources manager, and MSM's Title IX coordinator, also verbally communicated to Howell that MSM could accommodate his requested note-taking accommodation before his matriculation decision. (App. 275a, 284a-87a, 465a-67a.) MSM only grants reasonable accommodations that "enable [Howell] to have an equal opportunity to benefit from the academic program," that "assist [Howell] in meeting the academic requirements," and that are designed to meet Howell's "individual needs." (App. 274a-75a, 295a-96a, 453a, 456a, 544a-45a, 564a, 584a-85a.) During Howell's three years in MSM's MD program, Thompson annually determined he met the eligibility standards for and was granted the following four reasonable accommodations: (1) a note-taking accommodation, with the expectation of providing each class's notes within one to two days; (2) access to audio/video recordings of lectures;[11] (3) double time for exams and in-class assignments; and (4) distraction-reduced testing rooms.[12] (App. 276a, 284a-85a, 291a-92a, 296a, 318a, 326a, 351a, 377a, 465a-67a, 476a, 536a.)

MSM's MD program has a *cumulative curriculum*, where *class lectures build on one another*, and all courses "are required in order to develop [the] essential skills required to become a competent physician." (App. 297a-98a, 318a-19a, 487a, 497a,

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[10] These same advertisements were made during Howell's new student orientation. (App. 297a.)

[11] A majority of these recordings would have been available to Howell regardless of whether MSM granted this accommodation. (App. 482a, 492a, 528a.)

[12] Howell's annual Letters of Accommodations stated he "met the eligibility standards for the reasonable [note-taking] accommodation[]." (App. 465a-67a.)

502a, 533a, 552a, 571a, 591a.) Students are *reliant on note-taking* during lectures to obtain all necessary information. (App. 297a-98a, 318a-19a, 482a, 492a, 528a.) Howell's note-taking accommodation was *recommended in psychological evaluations* provided to MSM due to "weaknesses in switching between tasks, and working memory make note-taking difficult," and "difficulties with inattention and frequent distraction making it challenging for [Howell] to listen to large amounts of information and take effective notes." (App. 293a-94a.) Howell has auditory learning deficits, and his annually granted note-taking accommodation was the *only accommodation that made the lectures' orally delivered materials available in a written format.* (App. 465a-67a, 482a, 492a, 528a.) Lastly, the psychological evaluations provided by Howell stated: "Overall, [Howell] exhibits many strengths from which to draw. In particular, [Howell] demonstrated strong intellectual abilities. The prognosis for the academic success in medical school will be favorable if [Howell] makes active use of appropriate academic accommodations and support services." (App. 325a.)

Thompson was at all times in charge of determining Howell's eligibility for accommodations, granting his accommodations, and managing their implementation. (App. 275a, 282a-85a, 288a-92a.) Thompson had supervisory authority over Dr. Brandi Knight ("Knight") and other employees and assigned Knight in charge of Howell's note-taking accommodation wherein Thompson communicated what Knight's responsibilities were, and Knight, along with other employees, was required to report to Thompson about Howell's accommodations.[13] (App. 275a-76a, 299a-300a, 468a.)

[13] As Thompson stated to Howell, "I will reiterate to the group again to make sure updates are provided to me even if it is just a notification. You can also provide updates/concerns directly to me so I can

Thompson had supervisory authority over Howell's accommodations as MSM's student handbooks dictate, "[f]aculty must not provide any disability-related academic adjustments to any student until s/he has received notification by letter to do so from [Thompson]." (App. 465a-67a, 545a, 565a, 585a.) MSM directed Howell to submit complaints of discrimination, harassment, and retaliation to Thompson to investigate and resolve. (App. 300a-06a, 337a-38a, 545a-49a, 564a-68a, 585a-88a.) Regarding Howell's accommodations, Thompson enjoyed substantial, if not complete, supervisory authority within MSM's chain of command and had the authority to override MSM's policies and institute corrective measures. (App. 278a, 282a-84a.)

On June 16, 2017, before Howell's medical school education started, Thompson confirmed that Howell's note-taking accommodation was approved and would be available upon his arrival at MSM. (App. 290a-91a.) Such assurances were hollow as no system was in place to provide Howell with notes. (App. 297a-98a.) On August 1, 2017, following four consecutive weeks of not receiving any notes for his granted note-taking accommodation,[14] Howell made his first complaint to Thompson. (App. 298a-99a.) Following this complaint, Thompson stated MSM was "ready to ensure [Howell's] accommodations would be implemented seamlessly" upon the start of his medical education but acknowledged MSM was not, in fact, prepared to provide for Howell's note-taking accommodation and stated she would need to "pivot and rethink" how to provide this accommodation. (App. 299a-300a.) In October 2017, Knight

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address issues in the manner you expect." (App. 468a.)

[14] Howell first received notes thirty-eight days after his first-year classes started. (App. 308a.)

revealed that Howell's note-taking accommodation was a "totally new process for [MSM] and there [was] nothing set to work seamlessly and quickly." (App. 308a.) During Howell's first two years, he submitted numerous vocal complaints and three written complaints to Thompson about MSM's failure to provide him with notes effectively for his annually granted note-taking accommodation, all to no effect, wherein Thompson did not follow MSM's policies in handling Howell's complaints. (App. 298a-310a, 314a-16a, 318a-22a.)

Prior to Howell's matriculation decision, Thompson never warned Howell that the note-taking accommodation was not an established service. (App. 298a.) During Howell's first two years, Thompson never measured the effectiveness of Howell's granted note-taking accommodation despite Howell's complaints. (App. 311a, 324a.) For the first year's note-taking accommodation, Howell received notes for only *61% of his classes*, and the notes received took, on average, *4.17 days* to arrive after the class was held. (App. 310a.) For the second year's note-taking accommodation, Howell received notes for only *88% of his classes,* and the notes received took an average of *14.61 days*.[15] (App. 323a.) The issue of MSM's failure to provide Howell with notes effectively was even outlined in the updated psychological evaluation Thompson requested and used to continue granting Howell's note-taking accommodation. (App. 325a-26a.) During Howell's third year, Thompson admitted MSM had access to old

[15] Howell's third-year compliance complaint outlined guidance he received in late February of 2020 from the Office for Civil Rights ("OCR") about how note-taking accommodations taking longer than four to five days to provide notes are "useless for [medical] students because of how fast-paced medical school is and how everything builds upon itself." (App. 502a.) The average turnaround time for Howell's first- and second-year notes surpassed four days, thus considered useless by OCR's standard.

class notes from before Howell was a student and did not provide these to supplement its ineffectiveness in providing notes to Howell during his first two years. (App. 330a.)

Howell suffered because of MSM's two years of failing to provide him with notes effectively for his note-taking accommodation. Howell reported to MSM that he could be expected to lose up to nine hours a day attempting to transcribe his class recordings into notes (a task his accommodation would have eliminated). (App. 293a-94a, 298a, 469a, 471a, 484a-85a, 494a-95a, 501a-02a, 516a, 530a-31a.) Likewise, Howell reported to MSM that during his first two years, he was always behind in his studies and precluded from the continuous, disciplined study required of MSM's MD students and forced to rely instead on cramming, causing significant impairment in his learning experience. (App. 298a-99a, 471a-72a, 483a-85a, 487a-88a, 493a-95a, 497a-98a, 501a-02a, 529a-31a, 533a-34a.) Howell would fail one first-year course, necessitating that he remediate the course, passing with the lowest score possible and never receiving 31.4% of notes for the course.[16] (App. 312a-14a.) Further, Howell has never had access to any missing first- and second-year notes. (App. 310a-13a, 323a-24a, 499a.) Howell's first- and second-year grade point averages (GPA) were 2.49/4.00 and 2.68/4.00, respectively. (App. 311a, 323a.) Due to MSM's failure to provide Howell with notes effectively during his first year, and at MSM's suggestion, Howell reluctantly split his second year's curriculum into two separate years, a process called academic deceleration, prolonging his education to five years.[17] (App. 316a-18a.)

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[16] Remediation is available to all students. (App. 558a-59a, 578a, 598a.)

[17] Academic deceleration is available to all students. (App. 316a-17a.)

Knight proposed a few changes to possibly improve MSM's delivery of Howell's note-taking accommodation, but none were implemented until after her leaving MSM near the end of Howell's second year. (App. 309a-10a, 319a-20a.) MSM advised Howell that he could not learn the material in his third-year courses without first properly learning and understanding the course material in his first two years. (App. 327a-28a.) Because MSM failed to effectively provide Howell's granted note-taking accommodation during his first two years, Howell was precluded from properly learning and understanding the course material during his first two years, making it impossible for Howell to properly learn the course material in his third-year courses. (App. 327a-28a, 332a-33a.) At the start of Howell's third year, inferably attempting naively to self-fix the debilitating injuries to his academic knowledge base, Howell requested and was granted two additional accommodations by Thompson: preferential seating for class and breaks during examinations.[18] (App. 326a.) Nevertheless, Howell's knowledge deficits were impossible to overcome. Howell would submit complaints to Thompson and Associate Dean Dr. Ngozi Anachebe ("Anachebe") halfway through the third year, stating that he was failing his third-year courses due to the knowledge gaps left because of MSM's previous two years of failing to provide his note-taking accommodation effectively. (App. 328a-29a, 479a, 486a, 489a, 496a.)

Howell met with both Thompson and Anachebe to address these concerns,[19] but neither was concerned about Howell's academic failings and emotional turmoil.

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[18] Requiring Howell to provide detailed and supporting medical documentation. *See supra* p. 12.

[19] Howell met with Anachebe because Thompson could not address "non-ODS decisions," like Howell's tuition concerns. (App. 331a, 538a.)

(App. 329a-34a, 538a, 542a.) Thompson suggested that Howell use his student handbook to find a solution. (App. 334a, 538a.) Anachebe suggested Howell contact Chief Compliance Officer Keith Henderson ("Henderson") to file a compliance complaint if he felt aggrieved. (App. 332a, 542a.) Howell would email Henderson with questions about how he should prepare and file a complaint. (App. 338.) Henderson did not respond, and Howell was unaware of who else he could ask for help. (App. 338a, 606a.)

Because MSM never kept track of what classes Howell received notes for and how long it took Howell to receive the notes, and because Henderson never responded to Howell's email request for help, the filing of Howell's March 28, 2020, compliance complaint necessitated that he conduct and include the full statistical analyses of his note-taking accommodation for the 456 classes making up the courses of his first two years. (App. 311a, 324a, 338a, 361a, 499a-502a.) Howell's compliance complaint outlined his current third-year course failings due to MSM's previous two years of failing to provide for his granted note-taking accommodation effectively. (App. 499a-502a.) As outlined in Howell's April 28, 2020, email to MSM, it was at this time that Howell disengaged from medical school after he subsequently missed his March exams after he was already failing his third-year courses, due to his time spent meeting with Thompson and Anachebe, the time spent preparing and filing his compliance complaint with no guidance from MSM, and because inferably no one at MSM seemed concerned about Howell's academic and emotional well-being. (App. 606a.)

Howell would fail his third-year courses. (App. 339a.) Two weeks before MSM dismissed Howell on July 30, 2020, MSM's determination letter of Howell's

compliance complaint confirmed MSM's previous two years of failing to provide his annually granted note-taking accommodation effectively. (App. 351a, 362a.) On appeal, President/Dean Dr. Valerie Montgomery Rice overturned Howell's dismissal on September 15, 2020, citing MSM's previous two years of failing to effectively provide his granted note-taking accommodation. (App. 377a-78a, 535a-37a.) The following day, on September 16, 2020, Senior Associate Dean Dr. Martha Elks ("Elks") submitted MSM's reentry plan to Howell, which sought first only to allow Howell to retake his third-year courses, starting after the first exam block and skipping material which MSM states is necessary for learning subsequent third-year material. (App. 378a-79a.) Second, the plan sought to have Howell pay third-year tuition a second time despite him no longer qualifying for federal student loans because of his time already spent in MSM's first- and second-year curriculum and despite Howell having already taken out $184,279.00 in federal student loans to attend MSM's MD program. (App. 379a, 383a-84a, 391a, 487a, 497a, 533a.) Third, the plan sought not to address Howell's ongoing irreparable damage to his foundational medical knowledge base and academic record caused by MSM's previous two years of failing to effectively provide for his granted note-taking accommodation. (App. 313a-14a, 317a-18a, 327a-28a, 332a-33a, 339a, 378a, 608a-09a.)

Regarding Howell's ongoing irreparable damage to his foundational medical knowledge base, the consequence suffered by Howell from MSM's two years of failing to effectively provide for his annually granted note-taking accommodation caused his third-year course failures, and this consequence is what MSM told Howell would

happen. (App. 310a-11a, 318a-19a, 323a, 327a-28a, 332a-33a, 339a, 381a.) Howell was already failing his third-year courses before filing his compliance complaint and submitting complaints to and meeting with Thompson and Anachebe. (App. 328a-29a, 479a, 486a, 489a, 496a, 499a-502a.) Regarding Howell's ongoing irreparable damage to his academic record, Anachebe instructed Howell that medical residency programs, when deciding whether to accept medical school graduates, consider a graduate's grades and length of time to graduate, and failing grades and taking longer than four years to graduate are judged very unfavorably. (App. 311a-14a, 317a-18a, 332a-33a & n.6, 339a & n.7, 381a-82a, 473a-75a, 482a, 484a, 486a-87a, 492a, 494a, 496a-97a, 501a-02a, 528a, 530a, 532a-33a.) Due to MSM's two years of failing to provide for his annually granted note-taking accommodation effectively, Howell's current GPA is 2.02/4.00, with three failing course grades (one in the first year and two in the third year), and he will now require no less than six years to graduate after already extending the duration of his medical education. (App. 311a-14a, 316a-18a, 323a, 339a, 473a-75a.)

On September 20, 2020, Howell told Elks that MSM's reentry plan was inequitable and prejudicial and wished to wait for the District Court's guidance. (App. 379a, 608a-09a.) Two days later, Elks acknowledged Howell's note-taking accommodation did not provide good notes and though MSM opposed Howell restarting afresh, Elks assured Howell that he would not be dismissed again if he did not accept MSM's plan. (App. 380a-82a, 627a, 631a, 634a.) However, since MSM's October 12, 2021, supplemental briefing ordered by the District Court on Howell's failure-to-

accommodate claims' mootness, MSM has inferably withdrawn its proposed reentry plan as it now argues Howell is permanently dismissed based on an email it knows he could have never received. (App. 66a-67a, 86a, 623a-24a, 626a-30a, 633a-35a.) As a result of MSM's actions, Howell has experienced economic and general losses of educational, employment, and research opportunities and increased financial debt. (App. 367a-68a, 391a, 421a.) MSM has taken away any reasonable opportunity for Howell to study or practice medicine. (App. 367a.)

III. The District Court's Decisions

4. MSM moved to dismiss Howell's amended complaint, and the District Court initially denied the motion regarding Howell's failure-to-accommodate claims, holding Howell sufficiently stated failure-to-accommodate claims under Sec. 504 and Title III. (App. 50a-51a.) The District Court held Howell is "otherwise qualified" and that the appropriate time for such an evaluation is at the time a student requests accommodation. (App. 40a.) The District Court found MSM did not dispute Howell's disability, that Howell was found qualified for and annually granted a note-taking accommodation at the beginning of all three years based on medical documentation provided to MSM, and that Howell relied on his accommodation in order to meet MSM's academic requirements. (App. 41a.) The District Court held, at the motion to dismiss stage, that it "must credit Howell's allegation that the ineffectiveness of the note-taking accommodation administered during the first two academic years negatively impacted his ability to pass all of his courses in the third year." (App. 50a.) The District Court held events during Howell's third year do not preclude MSM's liability during Howell's first and second year "based on ineffective administration of the

[note-taking accommodation] that [was] requested, found appropriate, and granted at the start of each academic year." (App. 41a-42a.) The District Court held Howell's failure-to-accommodation claims were not time-barred because Howell properly alleged a continuing violation where the District Court found MSM's "persistent ineffective administration of [Howell's] note-taking accommodation" during Howell's first and second academic year were "not a discrete discriminatory act but a series of alleged continual denials of effective accommodations." (App. 46a-47a.)

Regarding equitable relief, the District Court held removing grades, and by extension "Howell's requested relief of restarting his entire medical education with a deletion of his entire prior academic record[,] is improper under the ADA or [Sec. 504]." (App. 64a-65a.) The District Court relied on a single, unpublished decision by another judge in the same district that held "[r]emoving grades from a college transcript" is "simply not appropriate relief under the ADA or Sec. 504" in a failure-to-accommodate case. *Wilf v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010). (App. 64a-65a, 104a-05a.) Regarding compensatory damages, the District Court found Howell did not "plausibly allege that MSM was deliberately indifferent" because he did not allege Thompson was a "policy maker[]" or "capable of making 'official decisions' on behalf of MSM." (App. 63a.) In denying reconsideration, the District Court affirmed its previous holding explaining Howell did not allege "Thompson had any supervisory authority" and "that Thompson's decisions themselves were not reviewable." (App. 99a.) After ordering supplement briefing on the failure-to-accommodate claims' mootness regarding the absence

of available relief for Howell, the District Court dismissed the claims as moot because Howell allegedly sought impermissible relief and because after he filed suit, MSM reversed his dismissal and offered him the opportunity to retake his third-year classes—a "portion" of his desired relief.[20] (App. 65a-67a, 86a, 116a-20a.)

IV. The Eleventh Circuit's Decisions

5. The Eleventh Circuit's opinion found Howell "claim[ed]" MSM "did not administer his note-taking accommodation effectively during his first two years because he did not receive notes for every class, and when he did receive notes, they were not always delivered within the 48-hour timeframe that [MSM] allegedly promised." (App. 2a.) The Eleventh Circuit found that "[t]hough the problems with the note-taking accommodation had been indisputably corrected by Howell's third year of school, Howell struggled even more in his [third-year] classes" and was dismissed after "fail[ing] multiple [third-year] courses." (App. 2a.) The Eleventh Circuit found "Howell's basic theory of the case is that, because his note-taking accommodation was ineffective during his first two years, he never absorbed the foundational medical knowledge required to succeed in his later coursework." (App. 3a.) The Eleventh Circuit labeled Howell's requested relief of restarting medical school afresh as "novel" and affirmed the District Court, finding no reversible errors. (App. 3a.) Howell sought rehearing, which the Eleventh Circuit denied. (App. 127a.) Howell moved for a stay, which was also denied. (App. 129a.)

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[20] *But see* MSM's supplemental briefing, prior to the District Court's mootness ruling, arguing Howell is now permanently dismissed based on an email it knows he could never receive. *See supra* pp. 21-22.

REASONS FOR GRANTING THE WRIT

I. The Circuits are Split on the Types of Equitable Relief Available Under Sec. 504 and Title III.

Sec. 504 and Title III permit private civil suits for injunctive relief. Sec. 504 incorporates the remedies of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, which have been interpreted to encompass "any appropriate relief," including injunctions. 29 U.S.C. § 794a(a)(2). (App. 170a.) *See Barnes* v. *Gorman*, 536 U.S. 181, 185, 187 (2002) (explaining the availability of "remedies traditionally available in suits for breach of contract" such as "compensatory damages" and "injunction[s]" in suits against a "funding recipient"); *Alexander* v. *Sandoval*, 532 U.S. 275, 279 (2001) (explaining under Title VI, "private individuals may sue . . . and obtain both injunctive relief and damages"). Title III incorporates the remedies of Title II of the Civil Rights Act of 1964, which include "preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." 42 U.S.C. § 2000a-3(a); *see* 42 U.S.C. § 12188(a)(1); 28 C.F.R. § 36.501(a). (App. 171a, 191a, 246a.) This case concerns whether, under Sec. 504 and Title III, a student with disabilities may obtain injunctive relief to restart medical school afresh, including grade expungement.

A. The Eleventh Circuit's Decision Creates a 3-1 Circuit Split.

The District Court held Howell sufficiently pled valid failure-to-accommodate claims, but removing grades, and by extension "Howell's requested relief of restarting his entire medical education with a deletion of his entire prior academic record[,] is improper under the ADA or [Sec. 504]." (App. 50a, 64a-65a.) The District Court relied on a single, unpublished decision by another judge in the same district that held

"[r]emoving grades from a college transcript" is "simply not appropriate relief under the ADA or Sec. 504." *Wilf* v. *Bd. of Regents of the Univ. Sys. of Ga.*, No. 1:09-CV-1877, 2010 WL 11469573, at *3 (N.D. Ga. July 6, 2010). (App. 64a-65a; 104a-05a.) Other than a reference to its own statement "in a prior order," *Wilf* offered no authority or reasoning supporting this conclusion. *Wilf*, 2010 WL 11469573, at *3. Likewise, the District Court in Howell's case did not cite any such order; it is not even clear to which "prior order" *Wilf* referred. The District Court then dismissed Howell's failure-to-accommodate claims as moot. (App. 119a.) The Eleventh Circuit subsequently labeled Howell's requested relief as "novel" and affirmed the District Court. (App. 3a.) There appears to be no controlling authority for the proposition that grade expungement or the opportunity for a fresh start is *never* appropriate relief under Title III or Sec. 504, much less where, as here, Howell pleads his academic performance suffered because MSM failed to provide a reasonable and granted accommodation effectively.

The Second, Fourth, and Ninth Circuits. Other than the court below, every circuit court to have addressed the availability of expungement of records under the ADA or Sec. 504 has held expungement is an available remedy for prospective relief, similar to those sought herein. *Shepard v. Irving*, 77 F. App'x 615, 620 (4th Cir. 2003) (explaining expungement of academic records was prospective and a viable remedy when it sought to remedy an ongoing violation of federal law); *Constantine* v. *Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 496-98 & n.16 (4th Cir. 2005) (explaining prospective injunctive relief, including expungement of academic records and opportunity for re-examination, is available when it seeks to remedy an ongoing

violation of federal law); *Motoyama v. Haw., Dept. of Transp.*, 864 F. Supp. 2d 965, 986-87 (D. Haw. 2012), *aff'd,* 584 Fed. Appx. 399 (9th Cir. 2014) (explaining injunctive relief, including reinstatement of position and benefits, and expungements of records in personnel file is available when it seeks to prevent a continuing violation of federal law); *T.W. v. N.Y. State Bd. of L. Exam'rs*, 110 F.4th 71, 93-95 (2d Cir. 2024) (explaining injunctive relief, including expungement of academic records, is available when it seeks to prevent an ongoing violation of federal law); *Doherty v. Bice*, 101 F.4th 169, 172-73 (2d Cir. 2024) (explaining an injunction for expungement of academic records could have provided relief prior to graduation, or post-graduation in the event plaintiff's claims were based on an enduring record).

In Howell's case, a causal connection exists between the deprivation of his annually granted note-taking accommodation, his poor grades and academic knowledge base, and their impacts on his education and future pursuits.[21] Howell, pursuant to MSM's policies, filed complaints and reported to MSM that he was always behind in his studies because of MSM's two years of failing to provide for his note-taking accommodation effectively.[22] *See supra* pp. 15-19. During these two years, Howell failed courses, received poor grades and a poor academic knowledge base, and had to prolong the duration of his medical education. *See supra* pp. 17-19. MSM instructed Howell that he could not learn the material in his third year without first properly

[21] The District Court also held it "must credit Howell's allegation that the ineffectiveness of the note-taking accommodation administered during the first two academic years negatively impacted his ability to pass all of his courses in the third year." (App. 50a.)

[22] Indeed, "[i]t is the word 'accommodation' . . . that conveys the need for effectiveness. An *ineffective* 'modification' or 'adjustment' will not *accommodate* a disabled individual's limitations." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002).

learning and understanding the course material in his first two years. *See supra* pp. 18-19. Notably, Howell was *already failing* his third-year courses, which MSM said would happen, before he submitted his third-year complaints to and met with MSM's officials and subsequently filed a compliance complaint, all to no effect. *See supra* pp. 18-19. The Eleventh Circuit's finding that Howell "struggled even more in his [third-year] classes" acknowledges Howell struggled during his first two years whilst MSM failed to provide for his note-taking accommodation effectively. (App. 2a.)

MSM advised Howell that medical residency programs judge failing grades and taking longer than four years to graduate very unfavorably. *See supra* p. 21. Due to MSM's two years of failing to provide for his annually granted note-taking accommodation effectively, Howell had to extend the duration of his medical education and received poor and failing grades. *See supra* pp. 17-21. Accordingly, Howell also has standing when MSM's actions produce injury through their "determinative or coercive effect upon the action of someone else." *Bennett v. Spear*, 520 U.S. 154, 169 (1997); *see also Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019) (explaining that standing is present when the theory of harm "does not rest on mere speculation about the decisions of third parties; it relies instead on the *predictable effect* of [the defendant's] action on the decisions of third parties" (emphasis added)). Here, Howell's irreparable damage to his foundational medical knowledge base and lost opportunities due to his academic record are the *predictable effects* of MSM's two years of failing to effectively provide for his annually granted note-taking accommodation and constitute a continuing injury that is redressable with injunctive relief. This Court should grant

certiorari to resolve this conflict; the availability of relief for a disability discrimination claim should not depend on where a case is brought. *See Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 65 (1992) (granting certiorari because of a circuit split between the Eleventh and Third Circuits regarding the availability of a damages remedy under Title IX).

B. The Eleventh Circuit's Decision is Wrong.

1. The Eleventh Circuit's rejection of Howell's requested relief conflicts with this Court's precedents of equity jurisprudence and ignores the facts that (1) a school's repeated failure to provide for an annually granted accommodation effectively may have ongoing impacts on a student's academic knowledge base and education; and (2) failing and bad grades on an academic record, produced by disability discrimination, may have ongoing impacts on a student's career and education. Indeed, MSM caused severe injuries to Howell's academic knowledge base, academic record, ability to be successful in medical school (*including in his third year*), and ability to match into medical residency programs post-graduation. *See supra* pp. 15-21. Thus, sometimes, only a do-over may rectify an academic process conducted without already granted reasonable and effective accommodations. Additionally, and while not precisely mirroring the bounds of courts' equitable powers, the United States stated in its amicus curiae that the "relief of the nature Howell proposes—including opportunities to retake courses or to have poor grades expunged—is well established in the federal government's resolution of students' ADA and Section 504 complaints alleging denials of accommodations or other discrimination." (App. 662a-64a.)

In assessing a remedy's appropriateness, the rule is "well settled" that, where Congress has provided a right to sue for invasion of rights, courts may order "any available remedy to make good the wrong done." *Barnes*, 536 U.S. at 189 (citation omitted).[23] Additionally, the "nature and scope of the remedy are to be determined by the violation," *Milliken* v. *Bradley*, 433 U.S. 267, 281-82 (1977), with the ultimate goal of providing a plaintiff "complete relief in the light of statutory purposes," *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 292 (1960). Further, a remedy's appropriateness must be measured against the underlying statute's purpose that defendant has violated. *See Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417 (1975). "Remedies designed to end a continuing violation of federal law[s] are necessary to vindicate the federal interest in assuring the supremacy of [those] law[s]." *Green v. Mansour,* 474 U.S. 64, 68 (1985) (citations omitted). The District Court and Eleventh Circuit's holding that Howell is not entitled to prospective injunctive remedies to MSM's ongoing violations of Sec. 504 and Title III is contrary to Sec. 504's and Title III's guarantees of: "meaningful access," *Alexander v. Choate*, 469 U.S. 287, 301 (1985); "full and equal enjoyment" of the offered "services, facilities, privileges, advantages, or accommodations," 42 U.S.C. § 12182(a); and an "equal opportunity to . . . gain the same benefit, or to reach the same level of achievement [as non-handicapped persons], in the most integrated setting appropriate to the person's needs," 34 C.F.R. § 104.4(b)(2); *see also* 42 U.S.C. § 12182(b)(1)(A)(i)-(ii). (App. 183a, 259a.)

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[23] *See also Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 66, 70-71 (1992) ("[W]e presume the availability of all appropriate remedies unless Congress has expressly indicated otherwise . . . This principle has deep roots in our jurisprudence.").

2. Without expressly deciding, the highlighted facts in the Eleventh Circuit's opinion insinuate Howell's note-taking accommodation was neither reasonable nor necessary and that Howell was not a qualified individual because when MSM's two years of failing to provide for his annually granted note-taking accommodation effectively was "indisputably corrected by Howell's third year of school, Howell struggled even more in his [third-year] classes" and would be dismissed after failing his third-year courses. (App. 2a.) However, finding Howell unqualified and his note-taking accommodation unreasonable and unnecessary because he struggled and failed his *third-year* courses disregards the necessity of his granted note-taking accommodation during his *first two years*.

Howell's note-taking accommodation was necessary because MSM's MD program has a cumulative curriculum, where class lectures build on one another, and students rely on note-taking during lectures to obtain all the required information. *See supra* pp. 13-14. Howell's annually granted note-taking accommodation was recommended in psychological evaluations provided to MSM due to his deficits in switching between tasks, working memory, and attention. *See supra* p. 14. Howell also has auditory learning deficits, and his granted note-taking accommodation was the only accommodation that made the lectures' orally delivered materials available in a written format. *See supra* p. 14. Howell reported to MSM that he was always behind in his studies because of MSM's two years of failing to provide for his note-taking accommodation effectively. *See supra* pp. 15-19. MSM instructed Howell that he could not learn the material in his third year without first properly learning and

understanding the course material in his first two years. *See supra* p. 18. The lower court's finding that Howell "struggled even more in his [third-year] classes" acknowledges that Howell struggled during his first two years whilst MSM failed to provide for his annually granted note-taking accommodation effectively. (App. 2a.) Thus, "[r]ather than merely ensure that [Howell] is not 'effectively excluded' from its medical school, the ADA and [Sec. 504] require [MSM] to 'start by considering how [its educational programs] are used by non-disabled [medical school students] and then take reasonable steps to provide [Howell] with a like experience.'" *Argenyi v. Creighton Univ.*, 703 F.3d 441, 451 (8th Cir. 2013) (second alterations added) (quoting *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012)) (citing *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 128-29 (2005)).[24]

Howell's annually granted note-taking accommodation was reasonable because Howell's annual Letters of Accommodations stated he "met the eligibility standards for the reasonable [note-taking] accommodation[]." *See supra* note 12. *See Pickett v. Tex. Tech Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1033 (5th Cir. 2022) (explaining schools are "obliged to carefully weigh whether requested accommodations are 'feasible' and 'effective,'" and "[defendant] agreed that giving [plaintiff] those [lecture notes and] materials was reasonable by putting that accommodation in her [Letters of Accommodation] each semester" (quoting *Wong v. Regents of the Univ. of Cal.*,

[24] *See Ramsay v. Nat'l Bd. of Med. Exam'rs*, 968 F.3d 251, 255 & n.1, 262-63 (3d Cir. 2020) (explaining that even though defendant granted some of plaintiff's requested accommodations, the defendant's "refusal to provide [the requested and denied] accommodations can cause the [plaintiff] irreparable harm because doing so jeopardizes her 'opportunity to pursue her chosen profession'" (quoting *Enyart v. Nat'l Conf. of Bar Exam'rs*, 630 F.3d 1153, 1166 (9th Cir. 2011))).

192 F.3d 807, 818 (9th Cir. 1999))).[25]

Howell is a qualified individual with a disability. The Fifth Circuit has explained that the timing of a qualified determination in a postsecondary setting is determined at the time a postsecondary institution admits or continues to allow (retain) a student to participate in an education program. *See McGregor v. La. State Univ. Bd. of Sup'rs.*, 3 F.3d 850, 854-55 (5th Cir. 1993) (explaining a difference exists "between being otherwise qualified for admission and being otherwise qualified for retention . . . To be otherwise qualified for retention, [a student] must be capable of satisfying the academic and technical requirements set by [the education program] with the aid of reasonable accommodations" (citing 45 C.F.R. § 84.3(k)(3) (1992)));[26] *see also Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 406 (1979).[27] Accordingly, the timing of any qualified determination regarding Howell's failure-to-accommodate claims is made, as the District Court correctly decided, at the start of his first and second years when he requested accommodations and was admitted to or allowed to continue in MSM's MD program. (App. 40a.) Nevertheless, MSM denied reasonable, necessary, and granted accommodations to Howell, and the Eleventh Circuit and the District Court have incorrectly held that he has no remedy under Sec. 504 and Title III.

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[25] The Fifth Circuit continued, "[plaintiff] explains she nevertheless did not receive [the lecture notes and materials] on 'numerous instances.' If that is true, the [defendant] is liable for failing to provide the [granted] accommodation." *Pickett v. Tex. Tech Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1033 (5th Cir. 2022) (citation omitted).

[26] 34 C.F.R. § 104.3(l)(3) [2017-2024] contains the same language. *See supra* note 5.

[27] Other circuits have held that the timing of a related qualified determination is made when an individual requests an accommodation. *See Frazier-Hill v. Chi. Transit Auth.*, 75 F.4th 797, 801-02 (7th Cir. 2023); *Minter v. D.C.*, 809 F.3d 66, 70 (D.C. Cir. 2015); *Kocsis v. Multi-Care Mgt., Inc.*, 97 F.3d 876, 884 & n.13 (6th Cir. 1996); *Freeman v. City of Cheyenne*, No. 23-8022, 2024 WL 464069, at *2 (10th Cir. Feb. 7, 2024) (quoting *Aubrey v. Koppes*, 975 F.3d 995, 1006-07 (10th Cir. 2020)).

The question presented is a matter of significant importance as the lower court's ruling is outcome-dispositive and undermines civil rights enforcement. The Court should, therefore, grant certiorari on the first question to resolve this circuit split and confirm that restarting medical school afresh after two years of being without an annually granted accommodation provided effectively is not categorically improper under Sec. 504 and the ADA. The outcome of a case, the meaning of a statute or regulation, or the availability of relief should not depend on where a case is brought.

II. The Circuits are Split (8-2) on the Standard for Defining Intentional Discrimination Under Sec. 504.

Sec. 504 permits private civil suits against recipients of "Federal assistance" and incorporates the remedies of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, which have been interpreted to encompass compensatory damages. 29 U.S.C. § 794a(a)(2). (App. 170a.) *See Barnes* v. *Gorman*, 536 U.S. 181, 185, 187 (2002) (explaining the availability of "remedies traditionally available in suits for breach of contract" such as "compensatory damages" and "injunction[s]" in suits against a "funding recipient"); *Alexander* v. *Sandoval*, 532 U.S. 275, 282-83 (2001) (holding compensatory damages are available under Title VI only for intentional discrimination (citation omitted)). While lower courts have since taken the next logical step and held compensatory damages under Sec. 504 also requires a finding of intentional discrimination; this Court has not provided any guidance on the meaning of intentional discrimination "in the context of either Title VI or [Sec. 504]," *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 346 (11th Cir. 2012). The circuit courts are in conflict and have divided themselves into two camps regarding the legal standard for

intentional discrimination: deliberate indifference or discriminatory animus.

The first camp, comprised of eight circuits—**the Second, Third, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits**—has held the requisite standard for showing intentional discrimination is deliberate indifference. *See Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98, 115 (2d Cir. 2001) (explaining deliberate indifference remains the standard for Sec. 504); *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 263 (3d Cir. 2013) (holding "a showing of deliberate indifference may satisfy a claim for compensatory damages under [Sec.] 504"); *Lacy v. Cook Cnty., Ill.*, 897 F.3d 847, 863 (7th Cir. 2018) (adopting the deliberate indifference standard as it "is better suited to the remedial goals" of the ADA and Sec. 504) (quoting *S.H.*, 729 F.3d at 264)); *Pierce v. D.C.*, 128 F. Supp. 3d 250, 279 (D.D.C. 2015) (same); *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011) (agreeing that the deliberate indifference is "the appropriate standard for showing intentional discrimination"); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001), *as amended on denial of reh'g* (Oct. 11, 2001) (same); *Powers v. MJB Acq. Corp.*, 184 F.3d 1147, 1153 (10th Cir. 1999) (same); *Liese*, 701 F.3d at 345 (same).

Deliberate indifference is defined as knowledge that harm to a federally protected right is substantially likely, the authority to address the discrimination on behalf of the funding recipient, and a failure to act upon that likelihood. *See Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275-76 (2d Cir. 2009) (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290-91 (1998)); *Koon v. North Carolina*, 50 F.4th 398, 407 (4th Cir. 2022) (same); *Liese*, 701 F.3d at 348-49 (same). Deliberate

indifference does not require personal animosity or ill will toward a person with disabilities. *See Loeffler*, 582 F.3d at 275; *S.H.*, 729 F.3d at 263; *Lacy*, 897 F.3d at 862; *Meagley*, 639 F.3d at 389; *Liese*, 701 F.3d at 344.

The second camp, comprised of two circuits—**the First and Fifth Circuits**—suggests a heavier burden, such as discriminatory animus. *See Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 126-27 (1st Cir. 2003) (suggesting "damages [are] not available when there [is] no evidence of economic harm or animus toward the disabled." (citation omitted)); *Smith v. Harris Cnty., Tex.*, 956 F.3d 311, 317-18 (5th Cir. 2020) (explaining deliberate indifference does not suffice and the "precise contours" of intentional discrimination have not been delineated, but intent requires at least the defendant to "have actual notice" (citation omitted)). To demonstrate discriminatory animus, a plaintiff must show "prejudice, spite or ill will." *S.H.*, 729 F.3d at 263 (quoting *Liese*, 701 F.3d at 344); *see Lacy*, 897 F.3d at 862 (explaining discriminatory animus "is generally thought to be a combination of intentionally differential treatment and a disdainful motive for acting that way" (quoting *Liese*, 701 F.3d at 344)). This Court should grant certiorari to resolve this conflict; the legal standard for intentional discrimination under Sec. 504 should not depend on where a case is brought.

A. The Eleventh Circuit's Decision is Wrong.

This case concerns whether Howell sufficiently alleged intentional discrimination for the availability of compensatory damages. The Eleventh Circuit affirmed the District Court's finding that Howell did not "plausibly allege that MSM was deliberately indifferent" because he did not allege Thompson was a "policy maker[]" or "capable of making 'official decisions' on behalf of MSM." (App. 3a, 63a.) The lower

decision is wrong because Thompson could override MSM's policies as she did the first time she spoke with Howell. *See supra* p. 15; App. 283a-84a. The lower decision is wrong because Thompson's titles as MSM's Title IX coordinator, MSM's human resources manager, and manager of MSM's ODS plausibly infer the making of policy to ensure legal compliance. *See supra* p. 13. The lower decision is wrong because Thompson was the official in charge of annually determining Howell's eligibility for accommodations, granting accommodations, and managing their implementation, all official decisions on behalf of MSM.[28] *See supra* pp. 13-15. The lower decision is wrong because Thompson had the authority to address Howell's "issues in the manner [he] expect[s]." *See supra* note 13. The lower decision is wrong because Thompson enforced MSM's policies and was charged with receiving, investigating, and resolving complaints of discrimination and retaliation, all on behalf of MSM.[29] *See supra* p. 15.

The Eleventh Circuit affirmed the District Court's denial of reconsideration, where the District Court affirmed its previous holding because Howell did not allege "Thompson had any supervisory authority" and "that Thompson's decisions themselves were not reviewable." (App. 99a.) The lower decision is wrong because Thompson had supervisory authority over Knight and other employees regarding Howell's granted accommodations. *See supra* p. 14. The lower decision is wrong because Thompson's title as MSM's human resources manager and manager of MSM's ODS

[28] Thompson's annual granting of Howell's accommodations was an official decision on behalf of MSM as it created an official agreement between MSM and Howell. *See supra* pp. 13-14; App. 465a-67a.

[29] During Howell's first year, Thompson was one of two officials charged with this responsibility, the other being her subordinate, the deputy Title IX coordinator. During Howell's second and third years, Thompson was the only official authorized with this responsibility. (App. 304a n.4, 552a, 576a, 601a.)

plausibly infers supervisory authority. *See supra* p. 13. Likewise, Thompson's title as MSM's Title IX coordinator plausibly infers supervisory authority over MSM's deputy Title IX coordinator. *See supra* p. 13; App. 300a-06a, 337a-38a. The lower decision is wrong because Thompson's annual granting of Howell's accommodations was a decision that was not reviewable as it created an official agreement between MSM and Howell. *See supra* pp. 13-14; App. 465a-67a. MSM's student handbooks even dictate that "[f]aculty must not provide any disability-related academic adjustments to any student until s/he has received notification by letter to do so from [Thompson]." *See supra* p. 15. Thus, Thompson enjoyed "substantial if not complete supervisory authority within MSM's chain of command and the ability to institute corrective measures regarding [Howell]'s note-talking accommodation." *See supra* p. 15; App. 278a.

In Howell's case, an official with authority to address the discrimination on MSM's behalf had knowledge that harm to his federally protected rights was substantially likely: (1) Howell made complaints to Thompson, the official designated to receive, investigate, and resolve said complaints regarding MSM's two years of failure to provide for his annually granted note-taking accommodation effectively, all to no effect, *see supra* pp. 15-16; (2) the issue of MSM's failure to provide Howell notes effectively was outlined in the updated psychological evaluation Thompson requested and used to continue granting the note-taking accommodation in his second year, *see supra* p. 16; and (3) Thompson had supervisory authority over Knight and other employees, and authority to address Howell's issues and complaints, *see supra* pp. 14-15 and note 13. Finally, Thompson failed to act upon the likelihood that harm would

come to Howell's federally protected rights: (1) MSM's failure to provide notes effectively continued for two years, *see supra* pp. 15-18; (2) Howell's complaints to Thompson were not handled in accordance with MSM's policies, *see supra* p. 16; (3) Thompson never measured the effectiveness of Howell's note-taking accommodation despite Howell's complaints, *see supra* p. 16; (4) Thompson discovered Knight had old notes, from before Howell was a student, and never provided him with these notes, *see supra* pp. 16-17; and (5) MSM advertised, and Thompson confirmed, to Howell the availability of a note-taking accommodation before his matriculation decision, but such a system did not exist,[30] *see supra* pp. 12-13, 15-16. The Court, therefore, should grant certiorari on the second question to resolve this circuit split and outline the standard for intentional discrimination under Sec. 504 and confirm Howell's pleadings have met this standard. The outcome of a case, the meaning of a statute or regulation, or the availability of relief should not depend on where a case is brought.

III. This Case is Worthy of This Court's Review

A. This Issue is Important, and the Decision Below Conflicts with the Position of the Executive Branch.

A purpose of the ADA and Sec. 504 is to ensure the Federal Government plays a central role. *See* 42 U.S.C. § 12101(b)(3); 29 U.S.C. § 701(b)(3). (App. 130a, 173a.) The Department of Justice has significant responsibility for the implementation and

[30] *Compare* Thompson's August 1, 2017, email to Howell confirming MSM was "ready to ensure [Howell's] accommodations would be implemented seamlessly" *with* Knight's October 31, 2017, email revealing that providing notes for a note-taking accommodation was a "totally new process for [MSM] and there [was] nothing set to work seamlessly and quickly." (App. 299a-300a, 308a.) Importantly, "*[s]chools are obliged to carefully weigh* whether requested accommodations are 'feasible' and 'effective.'" *Pickett v. Tex. Tech Univ. Health Scis. Ctr.*, 37 F.4th 1013, 1033 (5th Cir. 2022) (emphasis added) (quoting *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807, 818 (9th Cir. 1999)).

enforcement of Sec. 504 and Title III. *See* 42 U.S.C. § 12188(b); 29 U.S.C. §§ 794(a), § 794a; 28 C.F.R. pt. 36. (App. 167a, 170a, 191a.) The Department of Education has responsibility for the implementation and enforcement of Sec. 504 with respect to programs or activities to which it provides federal financial assistance, including universities. *See* 29 U.S.C. § 794(a), § 794a; 34 C.F.R. §§ 104.43-44. (App. 167a, 170a, 262a, 263a.) The Departments' views and regulations "are entitled to deference," *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998) (citation omitted), and "warrant respect," *Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999).

The Eleventh Circuit's decision undermines civil rights enforcement and contradicts the considered views of the Executive Branch. The United States has made its position clear: the lower court's holding that "restarting an educational program with a clean slate is not a form of relief available under Title III or [Sec.] 504 . . . even when a plaintiff has stated a valid failure-to-accommodate claim—has no basis in the text of either statute or in binding case law." (App. 656a.) The lower court's holding "contravenes basic principles that guide courts in providing equitable relief," and "such an outcome might diminish educational institutions' incentives to fully and expediently implement needed accommodations." (App. 656a.) Given the millions of students with disabilities, *see supra* note 3 and 29 U.S.C. § 701(a)(1), and that the "United States has a substantial interest in this appeal, which concerns the relief available under Title III . . . and [Sec.] 504," the Court should invite the Solicitor General to file a brief expressing the views of the United States. (App. 130a, 646a.)

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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