No. 24-249

In the Supreme Court of the United States

A.J.T., BY AND THROUGH HER PARENTS, A.T. AND G.T.,

Petitioner,

V.

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 279; OSSEO SCHOOL BOARD,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Ava's petition raises one core question: Must children with disabilities seeking relief for education-related discrimination satisfy a more stringent test than *everyone else* suing under Title II of the ADA and Section 504 of the Rehabilitation Act? The answer is emphatically no, as two circuits have squarely held. Yet five circuits adopt a contrary position, to the detriment of countless children with disabilities and their families. That 5-2 split cries out for review.

The District concedes the split but downplays its importance. *First*, the District says the conflict does not matter for damages claims because there is "no material distinction" between the heightened "bad faith or gross misjudgment" standard for education-related claims and the baseline "deliberate indifference" test applied to all other claims. Opp.14. That assertion defies the District's longstanding litigation position, along with the views of the District's amici, the United States, the Eighth Circuit, and other courts. *Second*, the District claims no circuit has established the standard for injunctive relief in this context. That's just wrong: Five circuits condition a statutory violation—and thus injunctive relief—on a showing of "bad faith or gross misjudgment," and two do not.

On the merits, the District ignores the settled principle that the same statutory text cannot have different meanings for different people. Nor does the District offer any rebuttal to the various ways the ADA, Rehabilitation Act, and IDEA explicitly foreclose its position, as explained by Ava, her amici, and the United States. *See* Pet.23-26; Council of

Parent Attorneys & Advocates (COPAA) Amicus Br.6-11; Suppl.Add.7a-11a, 14a-18a.

The rest of the District's opposition boils down to its assertion that prevailing on the question presented won't actually help Ava and children like her. That claim fails too: Eliminating the atextual "bad faith or gross misjudgment" standard will protect children with disabilities in precisely the ways Congress intended. Ava's petition should be granted.

ARGUMENT

I. The Circuit Split Is Conceded And Meaningful

1. The circuits are split 5-2 on whether children with disabilities bringing education-related claims must satisfy the "bad faith or gross misjudgment" standard invented in *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982), to obtain relief under the ADA and Rehabilitation Act. The Third and Ninth Circuits say no, while the Second, Fourth, Fifth, Sixth, and Eighth Circuits say yes. Pet.14-21.

The District concedes the split is real. It admits that in contrast to the five other circuits, "the Third and [Ninth] Circuits" require "deliberate indifference"—"a standard other than 'bad faith or gross misjudgment'" when children with disabilities sue for damages under the ADA and Rehabilitation Act for education-related discrimination. Opp.13-15. The District also concedes that the United States has "adopted Ava's understanding of the circuit split." Opp.21 n.1.

2. Instead of denying the split, the District claims the conflict is not "[m]eaningful," because there is supposedly "no material distinction" between "bad faith or gross misjudgment" and "deliberate

indifference." Opp.14. That contradicts what the District argued below, and it is wrong.

For years, the District urged the lower courts to apply the *Monahan* test—because it raises the bar for Ava to prove her case. Below, the District told the district court that "bad faith or gross misjudgment" is "an exactingly high threshold," D.Ct.Dkt.34 at 21, and "not" the same as "deliberate indifference," D.Ct.Dkt.56 at 6-7. And it repeatedly told the Eighth Circuit that deliberate indifference is a "less stringent" and "lower" standard than "bad faith or gross misjudgment." CA8 Reh'g.Resp.1-3, 7, 14-15; CA8 Appellees' Br.23.

The District's amici—speaking on behalf of "all 331 school districts in the State of Minnesota"—were in accord. CA8 School Boards' Amici Br.1. They told the Eighth Circuit that "eliminating the 'bad faith or gross misjudgment'" test would "*undoubtedly make it easier* for a dissatisfied parent to sue the local school district." *Id.* at 4-5 (emphasis added).

The Eighth Circuit agreed. The court explained that *Monahan*'s "bad faith or gross misjudgment" test imposes a "high bar for claims based on educational services," noting that the court "require[s] *much less* in other disability-discrimination contexts." Pet.App.5a & n.2 (emphasis added). Indeed, the Eighth Circuit recognized that Ava "may have established a genuine dispute about whether the [D]istrict was … deliberately indifferent, but"—under the *Monahan* test—"*that's just not enough*." Pet.App.3a (emphasis added).

Other circuits agree. For example, the Fourth Circuit has recognized that "bad faith or gross misjudgment" is a "heightened standard," *Shirey*

ex rel. Kyger v. City of Alexandria Sch. Bd., 2000 WL 1198054, at *4 (4th Cir. Aug. 23, 2000) (unpublished), and the Sixth Circuit has called the test "an impossibly high bar," *Knox County v. M.Q.*, 62 F.4th 978, 1002 (6th Cir. 2023). Many district courts likewise acknowledge that *Monahan*'s invented standard is "more stringent" than "deliberate indifference." *Bishop v. Children's Ctr. for Developmental Enrichment*, 2011 WL 4337088, at *12 (S.D. Ohio Sept. 15, 2011).[1]

The United States also recognizes that "bad faith or gross misjudgment" is a "heightened standard," unlike anything required of other ADA and Rehabilitation Act plaintiffs. Suppl.Add.6a-7a. So do Ava's amici, whose primary mission is to defend the rights of children with disabilities. COPAA Amicus Br.1-7, 11-15. And so do academic commentators, who understand that the "bad faith or gross misjudgment" standard requires a special "showing of extreme fault." Thomas Simmons, *The ADA Prima Facie Plaintiff: A Critical Overview of Eighth Circuit Case Law*, 47 Drake L. Rev. 761, 822-23 & nn.370-71 (1999).

The District ignores this consensus, instead invoking a handful of outlier decisions erroneously equating "bad faith or gross misjudgment" with "deliberate indifference." Opp.16-17. Those rulings disregard the clear differences between the two standards. The "bad faith or gross misjudgment" test requires proof that school officials departed so

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[1] *See, e.g.*, *K.D. ex rel. J.D. & T.D. v. Starr*, 55 F. Supp. 3d 782, 789 (D. Md. 2014); *R.M.M. ex rel. T.M. v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, 2017 WL 2787606, at *9 (D. Minn. June 27, 2017).

"substantially from accepted professional judgment, practice or standards as to demonstrate" that they "actually did not base the decision on [professional] judgment." *Est. of Barnwell v. Watson*, 880 F.3d 998, 1004 (8th Cir. 2018). The "deliberate indifference" test, meanwhile, requires only that school officials ignored a "strong likelihood" that their actions would "result in a violation of federally protected rights." *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011).

The District's new claim of "little daylight" between these palpably different standards should not fool this Court. Opp.14. Even the District's opposition finally admits (or lets slip) that "deliberate indifference" is indeed a "less-demanding" standard than "bad faith or gross misjudgment." Opp.23-24 (contrasting the two standards).

3. Whereas the District concedes the circuit split as to damages, it denies any split as to injunctive relief. According to the District, "no circuit has opined on the standard for injunctive relief in" cases involving "education-related ADA and Rehabilitation Act claims." Opp.18.

That's just wrong. The Eighth Circuit's decision *in this very case* relied on the "bad faith or gross misjudgment" standard to deny Ava's request for an injunction. Pet.App.4a-5a. That makes sense under *Monahan*, which holds that no ADA or Rehabilitation Act "violation" can be "made out" in the educational context without demonstrating "bad faith or gross misjudgment." 687 F.2d at 1170-71. It follows that none of the five circuits adhering to *Monahan* would issue an injunction under those statutes unless that test is satisfied. Pet.15-17.

By contrast, the Third and Ninth Circuits reject *Monahan* and instead apply the same rules across all ADA and Rehabilitation Act claims. Pet.17-19. Those circuits recognize that these statutes are violated if the defendant fails to provide a reasonable accommodation, even without wrongful intent. *D.E. v. Cent. Dauphin Sch. Dist.*, 765 F.3d 260, 269 (3d Cir. 2014); *accord Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008). And because the statutes are violated, "an injunction mandating compliance with [their] provisions" is available—"regardless of [the] defendant's intent"—so long as the plaintiff satisfies the traditional equitable factors for such relief. *Midgett v. Tri-Cnty. Metro. Transp. Dist.*, 254 F.3d 846, 851 (9th Cir. 2001).[2]

To sum up: There is no dispute that the circuits are split 5-2 over whether "bad faith and gross misjudgment" is needed to establish an ADA or Rehabilitation Act violation. That acknowledged split is implicated every time children with disabilities seek relief—either damages *or* an injunction—for discrimination by their schools. Only this Court can resolve the conflict.

II. *Monahan*'s Atextual Rule Is Indefensible

1. The District offers no good reason why the ADA and Rehabilitation Act should be interpreted to force children with disabilities bringing education-related claims—but no one else—to satisfy *Monahan*'s heightened standard. *See* Pet.22-30; Opp.26-31.

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[2] The Third and Ninth Circuits do not require "deliberate indifference" to establish a statutory violation, but rather only as a prerequisite for damages. Pet.18-19; *see CTL ex rel. Trebatoski v. Ashland Sch. Dist.*, 743 F.3d 524, 528 n.4 (7th Cir. 2014).

Most glaringly, the District does not explain how these statutes' uniform textual requirements can vary depending on who plaintiffs are and how their claims arise. *See* Pet.22-25. Nor does the District address the ADA and Rehabilitation Act provisions making clear that their remedies for discrimination are equally available to "any person" under the standards set forth in Title VI, which does not distinguish between children with disabilities and other plaintiffs. 29 U.S.C. § 794a(a)(2); *see* 42 U.S.C § 12133; Pet.23-24.

The District likewise offers no persuasive answer to Section 1415(*l*), which commands that "[n]othing in the [IDEA] shall be construed to restrict or limit" the ADA and Rehabilitation Act's "remedies." Yet *Monahan*'s logic construes the IDEA to limit relief under the ADA and Rehabilitation Act to cases involving bad faith or gross misjudgment. 687 F.2d at 1170-71; *see* Opp.26-28, 31 n.3. That is *exactly* what Section 1415(*l*) forbids.

The District counters that Section 1415(*l*) "overruled *Smith v. Robinson*, 468 U.S. 992 (1984), not *Monahan*." Opp.31. That misses the point. Whatever precedent Congress had in mind, Section 1415(*l*)'s *text* flatly prohibits construing the IDEA to limit relief available under the ADA and Rehabilitation Act. Pet.25-26. *Monahan* violates that clear directive.

2. Rather than grapple with the statutory text, the District defends *Monahan* mainly on policy grounds. The District warns that letting children with disabilities pursue ADA and Rehabilitation Act claims under the same standards as everyone else would invite second-guessing of school officials' "expertise," while enabling "plaintiffs to end-run the

statutorily prescribed IEP process." Opp.27-28. But these sorts of policy arguments provide no license to disregard the text. *Perez v. Sturgis Pub. Schs.*, 598 U.S. 142, 150 (2023).

The District argues that because the ADA and Rehabilitation Act's rights of action are "judicially implied," courts have "a measure of latitude to shape a sensible remedial scheme." Opp.26 (quoting *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 284 (1998)). But the rights of action here are *not* implied. The ADA and Rehabilitation Act expressly incorporate the preexisting right of action under Title VI of the Civil Rights Act, which was originally judicially implied and later congressionally ratified. 29 U.S.C. § 794a(a)(2); 42 U.S.C § 12133; *see Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 217-18 (2022). Regardless, the District cites no case authorizing courts to disfavor different classes of plaintiffs asserting the same implied right of action under Title VI or other statutes.

The District's policy argument also fails on its own terms. Federal courts can apply the baseline ADA and Rehabilitation Act standards with appropriate respect for school officials' expertise. Pet.28. And the IDEA *already* addresses potential evasion: It "demand[s]" exhaustion of the IEP process "when a plaintiff seeks a remedy IDEA can supply," like a FAPE-related injunction—while "excus[ing] exhaustion when a plaintiff seeks a remedy IDEA cannot provide," like damages. *Perez*, 598 U.S. at 150. *Monahan* is indefensible.

III. This Case Is An Ideal Vehicle

The District spends several pages grasping for vehicle problems—to no avail. It does not dispute

that Ava has preserved her argument that the Eighth Circuit's rule is wrong. Nor does it identify a jurisdictional problem or other impediment to review of the question presented. Instead, the District insists that prevailing in this Court won't ultimately do Ava any good. Opp.21-23. Wrong again.

As to damages, the District concedes that Ava is eligible "to recover over more time" under the ADA and Rehabilitation Act (six years) than she obtained under the IDEA (two years). Opp.25. But the District claims Ava won't be able to satisfy the "deliberate indifference" standard as a factual matter. Opp.22. The Eighth Circuit didn't see it that way: The decision below held that Ava "may have established a genuine dispute about whether the district was negligent *or even deliberately indifferent*, but"—under *Monahan*'s "bad faith or gross misjudgment" standard—"*that's just not enough*." Pet.App.3a (emphasis added).

Ava's proof of deliberate indifference is strong. The Eighth Circuit pointedly criticized the District's deliberate "choice to prioritize its administrative concerns" over Ava's "individual needs," while giving "a series of shifting explanations" for failing to meet them. Pet.App.57a; *see* CA8 Appellant's Br.4-17, 50-55. The District's insistence that it "could not have acted" with deliberate indifference *as a matter of law* rests on a self-serving account of the facts and distorts what the Eighth Circuit actually said. Opp.17. At a minimum, that issue must go to a jury.

Ava will also be entitled to ADA and Rehabilitation Act injunctive relief, which under the proper test requires no proof of wrongful intent at all. Pet.6-7 & n.1; *contra* Opp.22. And the injunctive relief Ava seeks under those statutes differs from

what she received under the IDEA. For example, Ava wants an injunction giving her "the opportunity" to participate in non-instructional services that "typical kids get"—such as the chance to join extracurricular activities—where doing so is feasible with reasonable accommodations for her disability. CA8 Appellant's App.184; *see id.* at 264; *id.* at 19-20, 24. That's more than she gets under her IDEA injunction, which just orders the District to provide "at-home instruction 4:30pm to 6:00pm" and related services. Pet.App.51a.

Even as to instruction, Ava seeks an ADA/Rehabilitation Act injunction that would block the District from exploiting the annual IEP-revision process to (once again) cut her instructional hours below what other students receive. Pet.10. That too provides relief beyond her IDEA injunction.[3]

Ultimately, the nature and scope of any ADA and Rehabilitation Act relief are downstream issues for consideration on remand, after Ava prevails here. They are certainly no barrier to this Court's review of the pure legal issue Ava has raised in her petition.

IV. The Question Presented Is Important

Finally, the District maintains that the question presented is somehow too trivial to warrant review. Opp.23-26. That assertion would surely surprise the District's amici, who consider this an "important question" from "the perspective[] of all school districts in Minnesota." CA8 School Boards' Amici Br.5. So too the myriad disability-rights organizations

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[3] The District is wrong to suggest that the IDEA's "stay-put" provision provides equivalent protection. Opp.23. That provision would kick in only if Ava initiates a new IDEA "proceeding[]" challenging a new IEP, and it would block changes that Ava favors. *See* 20 U.S.C. § 1415(j).

supporting Ava's petition, as well as the United States. *See* COPAA Amicus Br.1-5; Suppl.Add.2a.

The District's argument would also confound the hundreds of parents who have seen their children's ADA and Rehabilitation Act claims rejected under the *Monahan* standard. Pet.31-32 & n.4. On this score, the District faults Ava for lacking proof that those other lawsuits would have come out differently under the less-demanding "deliberate indifference" test for damages claims. Opp.17. But demanding such proof is plainly unreasonable: The decisions applied the "bad faith or gross misjudgment" standard and did not consider other tests.

The District also insists ADA and Rehabilitation Act lawsuits are essentially a waste of time—because those statutes generally do "not offer plaintiffs relief beyond what is already available under the IDEA." Opp.24. But Congress expressly "reaffirm[ed]" that "the ADA [and] Rehabilitation Act" are "'separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 161 (2017) (quoting H.R. Rep. No. 99-296, at 4 (1985)). In *Perez*, for example, this Court upheld the right of students to use the ADA and Rehabilitation Act to seek "compensatory damages"—such as lost income—that are not available under the IDEA. *See Perez*, 598 U.S. at 145, 147-51; *Perez* Cert. Reply 10 (No. 21-887); *Perez* Order, No. 18-cv-1134 (W.D. Mich.), Dkt.49 (noting post-remand settlement of Perez's damages claims). Moreover, ADA and Rehabilitation Act plaintiffs are subject to a longer statute of limitations for filing their claims. Pet.10.

These statutes partially "overlap in coverage," but they do different work. *Fry*, 580 U.S. at 171. Whereas

"the IDEA guarantees individually tailored educational services," the ADA and Rehabilitation Act "promise non-discriminatory access to" educational services. *Id.* at 170-71. So a school district can "establish a FAPE in compliance with the IDEA, while nevertheless engaging in discriminatory conduct under the ADA [and Rehabilitation Act]." *Lartigue v. Northside Indep. Sch. Dist.*, 100 F.4th 510, 521 (5th Cir. 2024); *accord Le Pape v. Lower Merion Sch. Dist.*, 103 F.4th 966, 981 (3d Cir. 2024).

The District responds that courts don't apply the "bad faith or gross misjudgment" standard to "non-FAPE discrimination claims." Opp.23. That is incorrect. *See, e.g.*, *Baker v. Bentonville Sch. Dist.*, 75 F.4th 810, 816 (8th Cir. 2023) (safety hazards for visually impaired child); *Hoekstra ex rel. Hoekstra v. Independent Sch. Dist. No. 283*, 103 F.3d 624 (8th Cir. 1996) (elevator access for physically impaired child). And here, Ava seeks relief for disability discrimination *beyond* the District's failure to provide a FAPE. *Supra* at 9-10.

The reality is that case after case has relied on *Monahan*'s made-up rule to deny children with disabilities much-needed relief. The question presented matters. This Court should resolve it this Term.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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