No. 24-249

In the Supreme Court of the United States

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

v.

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 279, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, require students with disabilities to prove that defendants acted with "bad faith or gross misjudgment" in order to establish liability for discrimination related to elementary or secondary education.

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INTEREST OF THE UNITED STATES

This case concerns the legal standards for claims brought under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the context of elementary and secondary education. The Department of Justice is authorized to bring civil actions to enforce Title II and Section 504. See 29 U.S.C. 794a(a)(2); 42 U.S.C. 12133. In addition, the Department of Justice has promulgated regulations implementing Title II and is responsible for coordinating federal agencies' implementation and enforcement of Section 504. See 42 U.S.C. 12134(a); 28 C.F.R. Pts. 35 and 41; Exec. Order No. 12,250, 3 C.F.R. 298 (1980 comp.); see also 28 C.F.R. 0.51(b)(3). The Department of Education has

promulgated regulations implementing Section 504; is authorized to investigate and administratively enforce compliance with Section 504; and has general authority to investigate, negotiate administrative resolutions of, and refer to the Department of Justice unresolved Title II matters. See 29 U.S.C. 794a(a)(2); 42 U.S.C. 12133; 34 C.F.R. Pt. 104; see also 28 C.F.R. 35.190(b)(2) and (e); 34 C.F.R. 104.61.

This case also concerns the effect of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, on claims brought under other federal statutes. The Department of Education administers the IDEA and has promulgated regulations implementing it. See 20 U.S.C. 1402, 1406; 34 C.F.R. Pt. 300.

INTRODUCTION

Title II of the ADA bars discrimination against individuals with disabilities by public entities, including state and local governments. Section 504 of the Rehabilitation Act bars such discrimination by federal funding recipients. Those provisions broadly prohibit discrimination in *all* covered locations and against *all* covered persons—including discrimination in schools and discrimination against students.

Courts of appeals have generally held that plaintiffs may establish liability under Title II and Section 504 by proving that they were discriminated against by a covered entity. And they have required plaintiffs seeking compensatory damages to prove discriminatory intent, which plaintiffs can do by establishing that a defendant acted with deliberate indifference to the plaintiffs' federally protected rights. Those requirements are correct: They are consistent with the relevant statutory texts and with this Court's interpretation of similar laws. The deliberate-indifference requirement in par-

ticular ensures that schools will not face damages liability for mere mistakes or negligence.

Some courts of appeals, however, including the Eighth Circuit in the decision below, have held that Title II and Section 504 plaintiffs who allege disability discrimination in the context of elementary or secondary education must make an additional showing. To establish a defendant's liability in those courts, such plaintiffs must prove that the covered entity acted with "bad faith or gross misjudgment." That requirement has no basis in the text of Title II or Section 504. Those statutory provisions do not distinguish between educational and non-educational settings, neither when prohibiting discrimination nor when specifying remedies. The broader statutory context likewise provides no basis for that heightened intent requirement. Because the court of appeals based its decision on petitioner's failure to satisfy the "bad faith or gross misjudgment" standard, its judgment should be vacated, and the case should be remanded for further proceedings.

STATEMENT

A. Legal Background

1. Title II of the ADA and Section 504 of the Rehabilitation Act "aim to root out disability-based discrimination, enabling each covered person * * * to participate equally to all others in public facilities and federally funded programs." *Fry* v. *Napoleon Community Sch.*, 580 U.S. 154, 170 (2017). Both statutes prohibit discrimination against "adults and children with disabilities, in both public schools and other settings." *Id.* at 159. And they both "authorize individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or [compensatory] money damages." *Id.* at 160.

Specifically, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132. It defines a "public entity" as including any instrumentality of a State or local government. 42 U.S.C. 12131(1)(B).

Section 504 of the Rehabilitation Act prohibits recipients of federal financial assistance from discriminating based on disability. 29 U.S.C. 794(a). Phrased much like Title II, Section 504 provides that "[n]o otherwise qualified individual with a disability * * * shall, solely by reason of her or his disability, 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." *Ibid.*; see 28 C.F.R. 41.51(a); 34 C.F.R. 104.4(a). Section 504 served as the model for Title II of the ADA, and the same liability standards generally apply under both statutes. See, *e.g.*, 42 U.S.C. 12201(a); cf. *Fry*, 580 U.S. at 159 (noting that the two statutes impose the "same prohibition").

2. The IDEA (formerly known as the Education for All Handicapped Children Act of 1975, Pub. L. No. 94-172, 89 Stat. 773) provides federal grants to States "to assist them to provide special education and related services to children with disabilities." 20 U.S.C. 1411(a)(1). States and school districts receiving IDEA funds must make a "free appropriate public education" (FAPE) "available" to every eligible child "with [a] disabilit[y] residing in the State." 20 U.S.C. 1412(a)(1)(A); see 20 U.S.C. 1401(9) (defining FAPE).

As the "centerpiece" of the IDEA's procedural protections, a school district must provide each eligible child with an "'individualized education[] program'" (IEP). *Honig* v. *Doe*, 484 U.S. 305, 311 (1988). An IEP must establish a program of special education and related services that is designed to meet the child's "unique needs." *Ibid.*; see 20 U.S.C. 1412(a)(4) (defining IEP); see also 20 U.S.C. 1414(d); 34 C.F.R. 300.22, 300.34.

The IDEA prescribes procedures by which a student's parents can seek administrative and judicial review of a school district's IDEA-related determinations. See 20 U.S.C. 1415(f)-(j); *School Comm. of Burlington* v. *Department of Educ.*, 471 U.S. 359, 368-369 (1985). If a dispute with the school district cannot be resolved under established procedures, the parents may obtain review by a state or local educational agency. 20 U.S.C. 1415(f) and (g).

A party aggrieved by an agency decision under the IDEA may file a civil action in federal district court, 20 U.S.C. 1415(i)(2)(A), and the court may "grant such relief as the court determines is appropriate," 20 U.S.C. 1415(i)(2)(C)(iii). This Court and the courts of appeals have generally held that the "appropriate" "relief" authorized by the IDEA, *ibid.*, is equitable in nature and encompasses both (1) future special education and related services that ensure a FAPE or redress past denials of a FAPE, and (2) financial compensation to reimburse parents for past educational expenditures that the State should have borne. See, *e.g.*, *Burlington*, 471 U.S. at 369-370; *Polera* v. *Board of Educ. of the Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 486 (2d Cir. 2002); *Charlie F.* v. *Board of Educ. of Skokie Sch. Dist. 68*, 98 F.3d 989, 992-993 (7th Cir. 1996), abrogated in part not relevant by *Fry*, 580 U.S. 154. This Court

has distinguished such relief from compensatory "damages," *Burlington*, 471 U.S. at 370, which the IDEA does "not allow," *Fitzgerald* v. *Barnstable Sch. Comm.*, 555 U.S. 246, 254 n.1 (2009); cf. *Luna Perez* v. *Sturgis Pub. Sch.*, 598 U.S. 142, 148 (2023) (noting that "everyone agrees" that the "IDEA does not provide" "for compensatory damages").

3. The different rights, procedures, and remedies under the IDEA on the one hand, and the ADA and the Rehabilitation Act on the other, reflect the distinct purposes that those statutes serve. "[T]he IDEA guarantees individually tailored educational services, while Title II and [Section] 504 promise non-discriminatory access to public institutions." *Fry*, 580 U.S. at 170-171. Although "some overlap in coverage" exists, such that "[t]he same conduct might violate all three statutes," *id.* at 171, the three laws contemplate different claims with different proof requirements and different available remedies.

In *Smith* v. *Robinson*, 468 U.S. 992 (1984), this Court held that the IDEA "was 'the exclusive avenue' through which a child with a disability (or his parents) could challenge the adequacy of his education." *Fry*, 580 U.S. at 160 (quoting *Smith*, 468 U.S. at 1009). Two years later, Congress responded by enacting an IDEA provision that "overturned *Smith*'s preclusion of non-IDEA claims." *Id.* at 161. That provision, now codified at 20 U.S.C. 1415(*l*), reads as follows:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 * * * , title V of the Rehabilitation Act of 1973 * * * , or other Federal laws protecting the rights of children with disabilities, except

> that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, [state and local administrative] procedures * * * shall be exhausted to the same extent as would be required had the action been brought under this subchapter [of the IDEA].

20 U.S.C. 1415(*l*).

Since Congress enacted Section 1415(*l*), this Court has repeatedly recognized that the IDEA is not the exclusive avenue by which a student with a disability can challenge the adequacy of her education. Rather, as long as a plaintiff bringing a covered claim complies with Section 1415(*l*)'s administrative exhaustion requirement, the IDEA does not preclude or limit claims brought under other laws. See *Fry*, 580 U.S. at 157-161, 165-176; *Luna Perez*, 598 U.S. at 146-151.

B. Factual And Procedural Background

1. Petitioner has a rare and severe form of epilepsy. Pet. App. 2a, 50a. She has seizures throughout the day and needs assistance with everyday tasks. *Id.* at 50a. In the mornings her seizures are so frequent that she is unable to attend school before noon, but she is then alert and able to learn until 6 p.m. *Ibid.* Petitioner previously attended school in Kentucky where, as part of her IEP, she received instruction from noon until 6 p.m. each school day, with some of that instruction occurring at home. *Id.* at 8a. That gave her the same number of instructional hours as her peers without disabilities. *Ibid.*

In 2015, petitioner moved to the Osseo Area School District in Minnesota. Pet. App. 49a-50a. Although the District (one of respondents here) created an IEP for petitioner, it repeatedly denied petitioner's requests for after-hours instruction, which would have allowed her

to receive the same number of instructional hours as her peers. *Id.* at 8a-12a, 50a-51a. In denying petitioner's requests, the District offered "a series of shifting explanations." *Id.* at 50a. Petitioner accordingly received only 4.25 hours of instruction each school day during most of her years in the District, while other students generally received 6.5 hours. *Id.* at 8a-9a, 50a-51a.

Petitioner's parents filed a complaint with the Minnesota Department of Education, alleging that the District's refusal to provide after-hours instruction denied petitioner a FAPE in violation of the IDEA. Pet. App. 51a. After a hearing, the state agency concluded that the District had denied petitioner a FAPE. *Ibid.* The agency ordered the District to provide petitioner with 495 hours of compensatory education and at-home instruction from 4:30 to 6 p.m. each school day. *Ibid.*

The District sought judicial review, and a federal district court affirmed both (1) the state agency's finding that the District had denied petitioner a FAPE in violation of the IDEA, and (2) the remedy the agency had imposed. *Osseo Area Sch.* v. *A.J.T.*, No. 21-cv-1453, 2022 WL 4226097, at *21 (D. Minn. Sept. 13, 2022), aff'd, 96 F.4th 1062 (8th Cir. 2024). The court of appeals affirmed the district court's judgment. Pet. App. 49a-57a.

2. a. Petitioner separately sued respondents (the Osseo Area School District and the Osseo School Board) in federal district court, alleging that respondents had discriminated against her on account of her disability, in violation of Title II of the ADA and Section 504 of the Rehabilitation Act. See Pet. App. 7a. Petitioner sought a permanent injunction and compensatory damages. Am. Compl. 25, 28-29.

The district court granted respondents' motion for summary judgment. Pet. App. 6a-43a. The court found

that, when "alleged ADA and [Section] 504 violations are based on educational services for disabled children, the plaintiff must prove that school officials acted in bad faith or with gross misjudgment." *Id.* at 20a (citation omitted); see *id.* at 24a-25a. The court applied that standard and concluded that respondents "did not act with bad faith or gross misjudgment when making educational decisions regarding" petitioner. *Id.* at 7a; see *id.* at 25a-36a.

b. The court of appeals affirmed. Pet. App. 1a-5a. The court explained that, under Eighth Circuit precedent, when "alleged ADA and Section 504 violations are 'based on educational services for disabled children,' * * * a plaintiff must prove that school officials acted with 'either bad faith or gross misjudgment'" in order to establish the defendants' "liability." *Id.* at 3a (citations omitted). The court concluded that, although petitioner "may have established a genuine dispute about whether [respondents were] negligent or even deliberately indifferent," she had failed to provide sufficient evidence of "'bad faith or gross misjudgment'" to withstand respondents' motion for summary judgment. *Ibid.* (citation omitted); see *id.* at 3a-5a. The court made clear that it viewed the "bad faith or gross misjudgment" standard as significantly more demanding than the intent standard that applies to non-school-based Title II and Section 504 claims. See *id.* at 5a n.2 (noting that the court "require[s] much less in other disability-discrimination contexts").

Although the court of appeals applied the "bad faith or gross misjudgment" standard as a matter of circuit precedent, the court questioned the legal basis for that standard. Pet. App. 5a n.2. The court explained that the standard had originated in *Monahan* v. *Nebraska*,

687 F.2d 1164 (8th Cir. 1982), cert. denied, 460 U.S. 1012 (1983), in which the court had "speculated that Congress intended" the IDEA "to limit Section 504's protections, and without any anchor in statutory text, * * * added a judicial gloss on Section 504 to achieve that end." Pet. App. 5a n.2. The court further noted that, although Congress had later "rejected *Monahan*'s premise" by enacting Section 1415(*l*), *Monahan*'s "bad faith or gross misjudgment rule" had continued to "spread like wildfire." *Ibid.* The court accordingly viewed the "bad faith or gross misjudgment" standard as offering "a lesson in 'why we do not . . . add provisions to . . . federal statutes.'" *Ibid.* (brackets and citation omitted).

c. The court of appeals denied rehearing en banc, with Judges Grasz, Stras, and Kobes noting that they would have granted the petition for en banc rehearing. Pet. App. 44a-45a.

SUMMARY OF ARGUMENT

A. 1. To establish a violation of Title II of the ADA or Section 504 of the Rehabilitation Act, a plaintiff need only prove that she was an individual with a disability who was discriminated against by reason of her disability. Those showings can be made without proof that the defendant intended to discriminate. Title II and Section 504 are framed in the passive voice and do not suggest that an actor's bad intent is an element of a statutory violation. Accordingly, a plaintiff may obtain injunctive relief under Title II or Section 504 without proving intent to discriminate, as long as the other requirements for injunctive relief are satisfied.

2. To obtain compensatory damages under Title II or Section 504, however, a plaintiff must prove intentional discrimination; to do so, she must at a minimum prove deliberate indifference. Both the intent require-

ment and the deliberate-indifference standard are drawn from this Court's decisions interpreting similar statutes. And the deliberate-indifference standard—which requires proof that a covered entity failed to act despite its actual knowledge that a federally protected right was substantially likely to be violated—ensures that schools will not incur damages liability on account of mistakes, negligence, or bureaucratic inaction. That standard also appropriately balances the relevant considerations that this Court has identified: It ensures that regulated entities will have notice before they are held liable for damages, and it gives them the necessary flexibility to implement their programs, while also supporting the ADA's and the Rehabilitation Act's goals of assuring that people with disabilities have equal opportunities and are fully integrated into society.

B. 1. Some courts have applied a heightened intent standard—"bad faith or gross misjudgment"—to Title II and Section 504 claims that arise in the context of elementary or secondary education. The Court should reject that approach. Because the texts of Title II and Section 504 do not distinguish between school and non-school settings, there is no sound basis for that idiosyncratic heightened standard.

2. The statutory context reinforces that conclusion. For these purposes, the only potentially salient distinction between school and non-school settings is that the school setting is also subject to the IDEA. But imposing a heightened intent requirement on that basis would contravene Congress's directive that the IDEA should not be read to "restrict or limit * * * the remedies available under" the ADA and the Rehabilitation Act. 20 U.S.C. 1415(*l*). Indeed, Congress enacted Section 1415(*l*) in order to overturn a decision of this Court that

had read the IDEA to preclude application of Section 504 in the context of elementary and secondary education. A heightened intent requirement would also disserve the purposes of the ADA and the Rehabilitation Act, which broadly seek to end disability discrimination throughout society, including in elementary and secondary schools.

3. Like other courts that have adopted the "bad faith or gross misjudgment" standard, the Eighth Circuit below has identified no sound basis for that standard. Rather, the standard originated in dictum that was wrong when it was first articulated and has been further discredited by Congress's intervening enactment of Section 1415(*l*). Respondents' arguments likewise have no basis in the statutory text or context, and the policy concerns that respondents invoke are overstated.

ARGUMENT

A. Proof Of Discriminatory Intent Is Not Required To Demonstrate A Violation Of Title II Or Section 504, But Such Proof Is Required To Recover Damages Under Those Provisions

Under Title II of the ADA and Section 504 of the Rehabilitation Act, plaintiffs may bring suit seeking "money damages" and "injunctive relief." *Fry* v. *Napoleon Community Sch.*, 580 U.S. 154, 160 (2017). Well-established legal standards govern those claims. To demonstrate a violation of Title II or Section 504, a plaintiff need not prove that the defendant intended to engage in disability discrimination. And a plaintiff need not make a showing of discriminatory intent in order to obtain injunctive or other equitable relief under those statutes. But a plaintiff seeking compensatory damages must prove intentional discrimination; she may make that showing by proving deliberate indifference. As discussed below in

Part B, those standards also apply in the context of elementary and secondary education.

1. To establish a violation of Title II or Section 504, a plaintiff need not prove that the defendant intended to engage in disability discrimination

By its plain terms, Section 504 protects a covered individual from specified outcomes—"be[ing] excluded" from participation, "be[ing] denied" benefits, or "be[ing] subjected to" discrimination—when the adverse effect occurs "solely by reason of," *i.e.*, has a sufficient causal link to, that individual's disability. 29 U.S.C. 794(a); cf. *Hemi Grp., LLC* v. *City of New York*, 559 U.S. 1, 9 (2010). Section 504 is written in the "passive voice," "focus[ing] on an event that occurs without respect to a specific actor, and therefore without respect to any actor's intent or culpability." *Dean* v. *United States*, 556 U.S. 568, 572 (2009). "Congress' use of the passive voice" "indicates that [Section 504] does not require proof of intent." *Ibid.*

This Court has also observed that, when Congress enacted the Rehabilitation Act in 1973, "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Alexander* v. *Choate*, 469 U.S. 287, 295 (1985). For that reason, "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent." *Id.* at 296-297. The same is true of the key provision of Title II of the ADA, which was modeled on Section 504 and is also in the passive voice. See 42 U.S.C. 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from par-

ticipation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."). A heightened intent standard for establishing liability would also undermine the congressional objectives articulated in the ADA and the Rehabilitation Act: maximizing the "inclusion and integration" into "society" of individuals with disabilities, 29 U.S.C. 701(a)(3)(F), and "assur[ing] equality of opportunity, full participation, independent living, and economic self-sufficiency" for persons with disabilities, 42 U.S.C. 12101(a)(7). See pp. 25-26, *infra* (discussing the purposes of those statutes in more detail); see also *S.H.* v. *Lower Merion Sch. Dist.*, 729 F.3d 248, 264 (3d Cir. 2013).

As a general matter, the courts of appeals have agreed that a plaintiff need not prove intent to discriminate in order to establish a violation of Title II or Section 504. See, *e.g.*, *Ruskai* v. *Pistole*, 775 F.3d 61, 78 (1st Cir. 2014); but see *Doe* v. *BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 241 (6th Cir. 2019). Thus, they have described proof of "deliberate indifference" (an intent showing, see pp. 15-18, *infra*) as "an additional hurdle" that under Title II and Section 504 applies only to claims for "damages." *Silberman* v. *Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019). The courts of appeals have also explained that "equitable remedies for violations of the ADA"—including "injunction[s] mandating compliance with its provisions"—"are available regardless of a defendant's intent." *Midgett* v. *Tri-County Metro. Transp. Dist.*, 254 F.3d 846, 851 (9th Cir. 2001); see *Hall* v. *Higgins*, 77 F.4th 1171, 1180-1181 (8th Cir. 2023) (indicating that the need to show deliberate indifference applies only to damages claims); *D.E.* v. *Central Dauphin Sch. Dist.*, 765 F.3d 260, 269 (3d Cir.

2014) (similar); *Mark H.* v. *Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010) (similar).

2. To obtain compensatory damages for Title II and Section 504 violations, a plaintiff must prove intentional discrimination, which may be shown by proving deliberate indifference

A private plaintiff seeking money damages for a violation of Title II or Section 504 must prove that the defendant engaged in intentional discrimination. A plaintiff may prove that discriminatory intent by demonstrating that the defendant acted with deliberate indifference to the plaintiff's federally protected rights—a standard that is properly understood to require a showing considerably higher than negligence.

a. To demonstrate an entitlement to compensatory damages under Title II or Section 504, a plaintiff must prove that the covered entity intentionally discriminated against the plaintiff. Petitioner acknowledges (Pet. 7) that "people with disabilities may not obtain damages under the ADA or Rehabilitation Act without proving intent." And the courts of appeals have generally concluded that, "[t]o recover monetary damages under Title II of the ADA or the Rehabilitation Act, a plaintiff must prove intentional discrimination on the part of the defendant." *Duvall* v. *County of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001) (footnote omitted); see, *e.g.*, *S.H.*, 729 F.3d at 260-262; *Liese* v. *Indian River County Hosp. Dist.*, 701 F.3d 334, 344 (11th Cir. 2012); *Meagley* v. *City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011); *Loeffler* v. *Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009); *Barber* v. *Colorado Dep't of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009).

A discriminatory-intent requirement for damages claims under Title II and Section 504 is consistent with

this Court's decisions interpreting Title IX of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 373-375. Title IX's prohibition on discrimination is similar to that in the Rehabilitation Act, although Title IX addresses sex discrimination in federally funded educational programs and activities, while the Rehabilitation Act addresses disability discrimination in all programs and activities conducted by recipients of federal funds. Compare 20 U.S.C. 1681(a), with 29 U.S.C. 794(a). "When Congress attaches conditions to the award of federal funds under its spending power," the Court "examine[s] closely the propriety of private actions holding the recipient liable in monetary damages for noncompliance with the condition." *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998). The Court in *Gebser* concluded that, while equitable relief might be appropriate to undo the effects of unintentional Title IX violations and prevent such violations from recurring, only intentional violators are subject to damages liability. See *id.* at 287-291; *Franklin* v. *Gwinnett County Pub. Sch.*, 503 U.S. 60, 74-75 (1992). The same approach is appropriate under Title II and Section 504.

b. To prove intent to discriminate, a Title II or Section 504 plaintiff needs to show that an entity acted with at least deliberate indifference to the plaintiff's federally protected rights. That standard is grounded in this Court's decisions in *Gebser*, *supra*, and *Davis* v. *Monroe County Board of Education*, 526 U.S. 629 (1999), and in the similarities between those statutes and Title IX. And outside the educational context, courts of appeals have generally concluded that a plaintiff can prove intentional discrimination by demonstrating deliberate indifference on the part of a covered entity. See, *e.g.*, *S.H.*, 729 F.3d at 262-265; *Liese*, 701 F.3d at 344-351;

Meagley, 639 F.3d at 389-390; *Loeffler*, 582 F.3d at 275; *Barber*, 562 F.3d at 1228-1229; *Duvall*, 260 F.3d at 1138-1139.[1]

In *Gebser*, the Court considered the circumstances in which an educational institution receiving federal funds may be held liable for damages under Title IX for sexual harassment of a student by a teacher. 524 U.S. at 277. The Court concluded that damages could be recovered in such a case only when "an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of discrimination in the recipient's programs" and responds with "deliberate indifference to [the] discrimination." *Id.* at 290. In adopting the deliberate-indifference standard, the Court explained that Title IX "attaches conditions to the award of federal funds," and that a federal funding recipient generally should have "'notice that it will be liable for a monetary award.'" *Id.* at 287 (citation omitted). The Court also noted that Title IX's express remedial scheme, which allows termination of federal funding by the government, is predicated on notice and an opportunity for the recipient to rectify a violation. *Id.* at 289. The Court accordingly found that Congress did not intend to subject a recipient of federal funding to damages liability

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[1] Proof of discriminatory *intent* does not require evidence of discriminatory *animus*. The courts of appeals have generally concluded that the deliberate-indifference standard "does not require a showing of personal ill will or animosity toward the disabled person; rather, 'intentional discrimination can be inferred from a defendant's deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights.'" *Barber*, 562 F.3d at 1228-1229 (citation omitted); see, *e.g.*, *S.H.*, 729 F.3d at 263; *Liese*, 701 F.3d at 344; *Loeffler*, 582 F.3d at 275.

in a private Title IX action when the recipient "was unaware of discrimination in its programs and is willing to institute prompt corrective measures." *Ibid.*

In *Davis*, the Court extended *Gebser* to claims alleging "student-on-student harassment," holding that damages can be awarded against a school board under Title IX "where the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities." *Davis*, 526 U.S. at 633. In reaching that conclusion, the Court emphasized that deliberate indifference is a "high standard" that allows "[s]chool administrators [to] continue to enjoy the flexibility they require" because a plaintiff must prove "actual knowledge" of discrimination and "'an official decision by the recipient not to remedy the violation.'" *Id.* at 642-643, 648 (citation omitted).

Gebser's rationales for adopting the deliberate-indifference standard apply with full force to damages claims under Section 504. See *Liese*, 701 F.3d at 348 ("Because of the similarities between Title IX and the [Rehabilitation Act], *Gebser*'s * * * reasoning applies with similar force to the [Rehabilitation Act] and yields the same result."). And while the ADA is not a Spending Clause statute, U.S. Const. Art. I, § 8, Cl. 1, Title II's incorporation of Section 504's remedies suggests that the same rationales apply to Title II claims.[2]

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[2] Entry of an injunction ordering a covered entity to comply with its legal obligations under Title II or Section 504 does not raise the same concerns that motivated the Court to adopt the deliberate-indifference standard for the private damages claims at issue in *Gebser* and *Davis*. Unlike damages, equitable relief does not implicate the Court's "central concern" when interpreting Spending Clause statutes: "that 'the receiving entity of federal funds has notice that it will be liable for a monetary award.'" *Gebser*, 524 U.S. at 287 (brackets and citation omitted). And unlike damages liability

c. The deliberate-indifference intent requirement is "an exacting standard," *J.S.* v. *Houston County Bd. of Educ.*, 877 F.3d 979, 987 (11th Cir. 2017) (per curiam) (citation omitted), that ensures that entities cannot be held liable for damages on account of mistakes, negligence, or bureaucratic inaction. Similar to the analysis this Court applied in *Gebser* and *Davis*, courts analyzing Title II and Section 504 damages claims must ask whether the evidence proves that the covered entity both "(1) [had] *knowledge* that a federally protected right is substantially likely to be violated * * * and (2) *fail[ed] to act* despite that knowledge." *S.H.*, 729 F.3d at 265; see *Liese*, 701 F.3d at 344; *Barber*, 562 F.3d at 1229. Application of the deliberate-indifference standard to Title II and Section 504 damages claims accordingly ensures that regulated entities will have "'notice that [they] will be liable for a monetary award,'" *Gebser*, 524 U.S. at 287 (citation omitted), and provides them with the necessary "flexibility" to implement their programs without fear of unexpected damages liability, *Davis*, 526 U.S. at 648.

The knowledge requirement demands "actual knowledge" of the substantial likelihood of discrimination, *Gebser*, 524 U.S. at 290, and does not generally allow imposition of damages liability based on what the defendant "*should have* known," *Davis*, 526 U.S. at 642. See, *e.g.*, *J.S.*, 877 F.3d at 989 (applying an "actual knowledge" standard); *Loeffler*, 582 F.3d at 276 (same). And the failure-to-act requirement requires proof of "a 'deliberate choice, rather than negligence or bureaucratic inaction.'" *Loeffler*, 582 F.3d at 276 (citation omit-

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for past violations, a recipient of federal funds can avoid equitable relief under the Rehabilitation Act by withdrawing from the federal funding program.

ted); see *Liese*, 701 F.3d at 344 ("[D]eliberate indifference plainly requires more than gross negligence."); *J.V.* v. *Albuquerque Pub. Sch.*, 813 F.3d 1289, 1298 (10th Cir. 2016) ("The failure to act must be 'more than negligent' and involve 'an element of deliberateness.'") (citation omitted); *Barber*, 562 F.3d at 1229 (similar); 1 *Americans with Disabilities: Practice and Compliance Manual* §§ 1:261, 2:222 (2d ed. 2024). "[D]eliberate indifference does not occur where a duty to act may simply have been overlooked, or a complaint may reasonably have been deemed to result from events taking their normal course"; in other words, "bureaucratic slippage that constitutes negligence" is not deliberate indifference. *Duvall*, 260 F.3d at 1139.

B. Title II And Section 504 Claims Are Subject To The Same Intent Standards Inside And Outside The Educational Context

In the decision below, the Eighth Circuit recognized that, outside the context of elementary and secondary education, defendants can be held liable under Title II and Section 504 based on their failure to make reasonable accommodations, even absent proof of intentional discrimination. See Pet. App. 3a, 5a n.2. The question presented, as set forth in the petition for a writ of certiorari, asks whether "a *uniquely stringent* 'bad faith or gross misjudgment' standard" applies to disability-discrimination claims when plaintiffs "seek[] relief for discrimination relating to their education." Pet. i (emphasis added). Respondents' brief in opposition does not dispute that, outside of school settings, Section 504

of the Rehabilitation Act and Title II of the ADA do not require proof of intentional discrimination.[3]

The Eighth Circuit nevertheless held that, "when the alleged ADA and Section 504 violations are 'based on educational services for disabled children,' a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability." Pet. App. 3a (citation omitted). The court applied circuit precedents holding that, in the school setting, a plaintiff must prove "either bad faith or gross misjudgment" as well. *Ibid.* (citation omitted); see *id.* at 5a n.2 (explaining that Eighth Circuit precedents impose "a high bar for claims based on educational services" even though the court "require[s] much less in other disability-discrimination contexts"). Nothing in the text or purposes of Title II or Section 504 supports that approach.

1. The texts of Title II and Section 504 indicate that the same intent standards apply inside and outside the educational context

The substantive terms of Title II and Section 504—which include those provisions' primary bans on disability discrimination—do not apply differently in school settings than they do elsewhere. Title II provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimina-

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[3] Indeed, respondents state that this Court in *Choate*, *supra*, "held that conduct barred by the Rehabilitation Act need not be 'fueled by a discriminatory intent.'" Br. in Opp. 30 (quoting *Choate*, 469 U.S. at 297). Respondents argue that "[t]he 'bad faith or gross misjudgment' standard takes this instruction [from *Choate*] into account by proscribing intentional conduct, bad faith, *in addition to* unintentional yet harmful conduct, gross misjudgment." *Ibid.*

tion by any such entity." 42 U.S.C. 12132. Section 504 provides that "[n]o otherwise qualified individual with a disability * * * shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any" covered program. 29 U.S.C. 794(a). Both statutory provisions apply to any "qualified individual," *ibid.*; 42 U.S.C. 12132, and neither provision contains any language that distinguishes between educational and non-educational contexts (or between elementary and secondary schools, on the one hand, and colleges on the other, see Pet. Br. 43-44).

The same is true of the two Acts' remedial provisions. Under the Rehabilitation Act, "[t]he remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964," Pub. L. No. 88-352, 78 Stat. 252 (42 U.S.C. 2000d *et seq.*), "shall be available to any person aggrieved by any act or failure to act by" a federal funding recipient. 29 U.S.C. 794a(a)(2). And "[t]he remedies, procedures, and rights set forth" in the Rehabilitation Act are available "to any person alleging discrimination" under Title II. 42 U.S.C. 12133. Accordingly, the remedies under each Act are available to "any person" —regardless of the setting in which she claims to have suffered disability-based discrimination. *Ibid.*; 29 U.S.C. 794a(a)(2).

Reading those provisions to require one level of intent for claims brought in the context of elementary and secondary education, and a different level of intent for claims brought outside that context, would run afoul of basic statutory-interpretation principles. When a statutory phrase "'applies without differentiation'" to "two categories," courts ordinarily give that phrase the same meaning as applied to both categories. *Pasquantino* v.

United States, 544 U.S. 349, 358 (2005) (citation omitted). Because the Eighth Circuit's heightened intent requirement gives the "same words a different meaning for each category," that reading would impermissibly "invent a statute rather than interpret one." *Clark* v. *Martinez*, 543 U.S. 371, 378 (2005); see *United States* v. *Santos*, 553 U.S. 507, 522 (2008) (plurality opinion) (noting that the Court has "never engaged in [the] interpretive contortion" of "giving the same word, *in the same statutory provision*, different meanings *in different factual contexts*").

2. The statutory context supports reading Title II and Section 504 to impose the same intent standards inside and outside the educational context

For purposes of the question presented here, the only salient difference between school-based Title II and Section 504 claims, and other claims brought under those statutes, is that the school-based claims potentially implicate the IDEA. That difference, however, provides no sound basis for the Eighth Circuit's heightened intent standard. To the contrary, the larger statutory context—which includes both the IDEA and the congressionally articulated purposes of Title II and Section 504—confirms that Title II and Section 504 claims based on a plaintiff's treatment by an elementary or secondary school are governed by the same intent standards that apply to all other Title II and Section 504 claims.

a. The IDEA confirms that Title II and Section 504 do not mean different things in different contexts. Contra Br. in Opp. 27-30. The IDEA provides that, with the exception of an exhaustion requirement that is not relevant here, "[n]othing in" the IDEA "shall be construed to restrict or limit the rights, procedures, and remedies

available under * * * the Americans with Disabilities Act" or "the Rehabilitation Act." 20 U.S.C. 1415(*l*).

Congress added Section 1415(*l*) to the IDEA in order to overturn this Court's holding in *Smith* v. *Robinson*, 468 U.S. 992 (1984). In *Smith*, the Court held that the IDEA in its then-current form "was 'the exclusive avenue' through which a child with a disability (or his parents) could challenge the adequacy of his education." *Fry*, 580 U.S. at 160 (quoting *Smith*, 468 U.S. at 1009). The Court accordingly held that the plaintiffs could not invoke the Equal Protection Clause and Section 504 as alternative means of vindicating children's IDEA-protected educational rights. *Smith*, 468 U.S. at 1009-1013, 1016-1021.

In 1986, Congress responded by enacting the provision that is "[n]ow codified" as Section 1415(*l*), which "overturned *Smith*'s preclusion of non-IDEA claims." *Fry*, 580 U.S. at 161. Section 1415(*l*) "'reaffirm[ed] the viability' of federal statutes like the ADA or Rehabilitation Act 'as separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" *Ibid.* (quoting H.R. Rep. No. 296, 99th Cong., 1st Sess. 4 (1985)). And Section 1415(*l*) focused on "remedies and relief," *Luna Perez* v. *Sturgis Pub. Sch.*, 598 U.S. 142, 148 (2023); see *id.* at 147-150, making clear that "[n]othing in" the IDEA "restrict[s] or limit[s] the * * * remedies available under" Title II or Section 504, 20 U.S.C. 1415(*l*). Requiring plaintiffs to meet a heightened intent requirement when bringing Title II and Section 504 claims in the context of elementary and secondary education would "restrict or limit" ADA and Rehabilitation Act "remedies," *ibid.*, in plain contravention of the text of Section 1415(*l*).

b. The Eighth Circuit's school-specific "bad faith or gross misjudgment" requirement is likewise inconsistent with the congressional purposes identified in the relevant statutory texts. The Rehabilitation Act seeks to maximize the "inclusion and integration into society" of individuals with disabilities, including by integrating individuals into the "educational mainstream of American society." 29 U.S.C. 701(a)(3)(F) and (b)(1); see 29 U.S.C. 701(a)(5), (a)(6)(B), and (c)(3). As already noted, when it enacted the Rehabilitation Act, Congress "perceived" that "[d]iscrimination against the handicapped was * * * most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Choate*, 469 U.S. at 295. And subsequent amendments to the Rehabilitation Act "reflected Congress' concern with protecting the handicapped against discrimination stemming not only from simple prejudice, but also from 'archaic attitudes and laws' and from 'the fact that the American people [we]re simply unfamiliar with and insensitive to the difficulties confronting individuals with handicaps.'" *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 279 (1987) (quoting S. Rep. No. 1297, 93d Cong., 2d Sess. 50 (1974)) (brackets omitted).

Congress enacted Title II of the ADA to extend the anti-discrimination principle in the Rehabilitation Act beyond executive-branch agencies and recipients of federal funds. See *Berardelli* v. *Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 115 (3d Cir. 2018); see also *Fry*, 580 U.S. at 159-160, 170-171 (noting that Title II and Section 504 have substantially similar purposes and coverage). The ADA accordingly seeks to further the "goals" of "assur[ing] equality of opportunity, full participation, independent living, and economic self-sufficiency,"

42 U.S.C. 12101(a)(7), including in the educational context, see 42 U.S.C. 12101(a)(3) and (6).

Requiring students to make a showing of heightened intent when bringing Title II and Section 504 claims in the school context would undermine the goals of maximizing students' "inclusion and integration" in educational institutions and of "assur[ing] equality of" educational "opportunity." 29 U.S.C. 701(a)(3)(F); 42 U.S.C. 12101(a)(7). Differential treatment of such claims would be particularly inappropriate because both statutes expressly acknowledge the importance of curbing disability-based discrimination in "education" alongside numerous other situations in which such discrimination may occur. See, *e.g.*, 42 U.S.C. 12101(a)(3) (congressional finding that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services"); 29 U.S.C. 701(a)(5) ("[I]ndividuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services."). Applying different intent standards inside and outside the context of elementary and secondary education would undermine Congress's choice to bar even discrimination that arises out of "thoughtlessness," "indifference," and "benign neglect." *Choate*, 469 U.S. at 295; cf. *Liese*, 701 F.3d at 348.

3. The Eighth Circuit and respondents have identified no sound basis for applying a heightened intent requirement to disability-discrimination claims in the context of elementary and secondary education

The Eighth Circuit identified no sound basis for applying a heightened "bad faith or gross misjudgment" standard to ADA and Rehabilitation Act claims brought in the school context. Respondents' arguments likewise lack merit.

a. The courts of appeals that apply a "bad faith or gross misjudgment" standard to Title II and Section 504 claims in the educational context have identified no sound basis for that heightened standard. As the court of appeals recognized here, Pet. App. 3a, 5a n.2, the heightened standard originated in its decision in *Monahan* v. *Nebraska*, 687 F.2d 1164 (8th Cir. 1982), cert. denied, 460 U.S. 1012 (1983). In *Monahan*, the court affirmed the dismissal of the plaintiffs' Section 504 and IDEA claims, which alleged infirmities in the State's process for reviewing educational placement decisions. *Id.* at 1167-1168. The court found that the IDEA claim was moot because it was premised on a challenge to a state law that had been amended since the plaintiffs filed their complaints. *Id.* at 1168. The court further found that, because the plaintiffs' "claims of violation of [Section] 504 seem to rest on the same procedural theories that plaintiffs have unsuccessfully urged under [the IDEA]," dismissal of the plaintiffs' Section 504 claims was appropriate as well. *Id.* at 1170.

After reaching that conclusion, the Eighth Circuit "add[ed] a few words for the guidance of the District Court and the parties" in the event the plaintiffs "refil[ed] * * * a new complaint." *Monahan*, 687 F.2d at 1170. The court stated that a plaintiff must prove "ei-

ther bad faith or gross misjudgment" to "show[]" a Section 504 "violation * * * at least in the context of education of handicapped children." *Id.* at 1171. The court viewed such a standard as necessary because "[t]he Rehabilitation Act and [the IDEA] are entirely different statutes"; because the "bad faith or gross misjudgment" standard would "give each of these statutes the full play intended by Congress"; and because the intent requirement would "proper[ly] balance * * * the rights of handicapped children, the responsibilities of state education officials, and the competence of courts to make judgments in technical fields." *Id.* at 1170-1171.

Monahan's "bad faith or gross misjudgment" standard had no basis in the then-current text of the Rehabilitation Act. See pp. 21-23, *supra*. And Congress's subsequent addition of Section 1415(*l*) to the IDEA confirms the impropriety of imposing uniquely stringent requirements for school-based disability-discrimination claims. Two years after the Eighth Circuit decided *Monahan*, this Court similarly read Section 504 and the IDEA to cover separate ground, holding that the IDEA was "the exclusive avenue" for challenging the adequacy of a child's education. *Smith*, 468 U.S. at 1009; see p. 24, *supra*. Congress promptly rejected that approach, however, by enacting Section 1415(*l*), which provides that "[n]othing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under" Title II and Section 504. 20 U.S.C. 1415(*l*); see pp. 6-7, 23-24, *supra*. By imposing a heightened intent requirement only on Section 504 claims that arise "in the context of education of" children with disabilities, 687 F.2d at 1171, *Monahan* read the IDEA to "limit the rights" and "remedies available under" the Rehabilitation Act, 20 U.S.C. 1415(*l*)—an in-

terpretation that is now expressly foreclosed by Section 1415(*l*).

b. Respondents' defense of *Monahan*'s "bad faith or gross misjudgment" standard fares no better.

i. Respondents have observed (Br. in Opp. 26) that petitioner's private rights of action under Title II and Section 504 stem from the judicially implied cause of action under Title VI. Respondents contend that this Court therefore has a "measure of latitude to shape a sensible remedial scheme that best comports with the statute." Br. in Opp. 26 (quoting *Gebser*, 524 U.S. at 284). Respondents further claim (Br. in Opp. 27) that the Eighth Circuit's heightened standard "is an appropriate exercise of that discretion" because Title II and Section 504 claims in the educational context may overlap with IDEA claims and touch on educational policy. Given the relief available under the IDEA, plaintiffs who allege disability-based discrimination in elementary and secondary schools may less often have a *practical* need to invoke the remedies that Title II and Section 504 provide. There is no sound basis, however, for applying a different *legal* standard to school-based Title II and Section 504 claims than to other claims brought under those statutes.

In *Gebser*, this Court recognized that, "[b]ecause the private right of action under Title IX is judicially implied," no statutory language specifies the standard that governs damages claims under that law. 524 U.S. at 284. The Court explained that, when "shap[ing] a sensible remedial scheme that best comports with the statute," the Court "examine[s] the relevant statute to ensure that [the Court does] not fashion the scope of an implied right in a manner at odds with the statutory structure and purpose." *Ibid.* Applying that analysis

here, the statutory text, structure, context, and purpose all point in the same direction: Congress intended Title II and Section 504 to apply fully in the educational context, even if claims under those statutes sometimes overlap with IDEA claims. See pp. 21-26, *supra*. Indeed, Congress added Section 1415(*l*) to the IDEA to repudiate the inference that this overlap in coverage should affect Title II's and Section 504's application to school-based claims. See pp. 23-24, *supra*.

There is consequently no basis in the "statutory structure" or "purpose," *Gebser*, 524 U.S. at 284, for the education-specific intent requirement that the *Monahan* court adopted. And it would "frustrate the purposes" of Title II and Section 504, *id.* at 285—which seek to eliminate disability-based discrimination equally within and outside the educational context, see pp. 25-26, *supra*—to apply a heightened intent standard solely to school-based claims.

ii. Respondents assert (Br. in Opp. 30-31) that the "bad faith or gross misjudgment" standard is more consistent with the Court's statement in *Choate* that "much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult if not impossible to reach were the Act construed to proscribe only conduct fueled by a discriminatory intent." 469 U.S. at 296-297. In respondents' view, "the 'deliberate indifference' standard" is less consistent with *Choate* because it "still requires discriminatory intent." Br. in Opp. 30-31; see p. 21 n.3, *supra*. But *Choate*, which involved a claim for declaratory and injunctive relief, discussed only the requirements for proving disability discrimination, see 469 U.S. at 289, 292-299; it did not discuss the requirements for obtaining damages, which all agree include a showing of intent, see Br. in Opp. 26.

In briefly defending the "bad faith or gross misjudgment" standard, respondents appear to contend (Br. in Opp. 31-32) that the standard applies to *all* Title II and Section 504 claims, not simply to those that involve elementary and secondary education. But no court of appeals has adopted that view, and the decision below made clear that the court viewed the standard as a heightened intent requirement that applies only to school-based claims. See Pet. App. 3a, 5a n.2. And respondents' argument is not directly responsive to the question presented in the petition for a writ of certiorari, which asks this Court to consider whether "children with disabilities" must "satisfy a *uniquely stringent* 'bad faith or gross misjudgment' standard when seeking relief for discrimination relating to their education" under Title II or Section 504. Pet. i (emphasis added); see p. 20, *supra*.

iii. Respondents observe (Br. in Opp. 31) that Congress enacted Section 1415(*l*) to overturn this Court's decision in *Smith*, and that the Eighth Circuit's decision in *Monahan* is "distinct" from *Smith*. To be sure, the Eighth Circuit's decision in *Monahan* was less restrictive than this Court's decision in *Smith*, because the Eighth Circuit announced a heightened intent standard for school-based Title II and Section 504 claims but did not hold that such claims are entirely foreclosed. But while *Smith* was the immediate impetus for Congress's enactment of Section 1415(*l*), *Monahan*'s reasoning and its "bad faith or gross misjudgment" standard are similarly inconsistent with Section 1415(*l*)'s plain text.

The "bad faith or gross misjudgment" standard adopted in *Monahan* reflected the Eighth Circuit's attempt "to harmonize the Rehabilitation Act and the [IDEA] to the fullest extent possible." 687 F.2d at 1171.

But Section 1415(*l*) now expressly provides that "[n]othing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under" Title II or Section 504. 20 U.S.C. 1415(*l*). That language "'reaffirms the viability' of federal statutes like the ADA or Rehabilitation Act 'as separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" *Fry*, 580 U.S. at 161 (brackets and citation omitted). Congress thus disapproved of efforts to invoke the IDEA's remedial scheme as a justification for narrowing the coverage of Title II or Section 504. Respondents are correct that "Section 1415(*l*) does not * * * opine on the standard governing" claims under those statutes. Br. in Opp. 31. But Section 1415(*l*) clearly indicates that the *same* intent standards —both for liability and for damages—should govern school-based and non-school-based Title II and Section 504 claims.

iv. Respondents assert (Br. in Opp. 28) that applying the deliberate-indifference standard "would open the door for plaintiffs to end-run the statutorily prescribed IEP process." But regardless of the applicable intent standard, a plaintiff who wishes to bring Title II or Section 504 claims must first comply with Section 1415(*l*)'s administrative-exhaustion requirement whenever that requirement applies. See *Fry*, 580 U.S. at 161 (explaining that "the second half of [Section] 1415(*l*) * * * imposes a limit * * * in the form of an exhaustion provision" on Section 1415(*l*)'s general rule that Title II and Section 504 claims are unaffected by the IDEA); *id.* at 165 (summarizing the analysis used to determine whether Section 1415(*l*)'s exhaustion requirement applies to a particular claim). Indeed, Section 1415(*l*)'s explicit directive that ADA and Rehabilitation Act plain-

tiffs must satisfy the IDEA's exhaustion requirement provides further evidence that school-based Title II and Section 504 claims are not subject to any *other* education-specific restrictions.

Respondents also contend that a heightened intent requirement is necessary to avoid "inhibit[ing] the ability of schools and parents to 'work cooperatively to find the best education placement and services for the child.'" Br. in Op. 28 (brackets and citation omitted). But as explained above, see pp. 19-20, *supra*, schools cannot be held liable for damages when they merely make mistakes, act negligently, or engage in bureaucratic inaction that delays the delivery of services. The deliberate-indifference standard correctly respects the balance Congress struck in Title II and Section 504: It permits damages claims against covered entities that engage in disability discrimination, but only where they have "actual knowledge" of a substantial likelihood "of discrimination in the recipient's programs" and yet respond with "deliberate indifference." *Gebser*, 524 U.S. at 290. In any event, respondents' policy arguments cannot override the plain text of the provisions that Congress enacted, which provide no basis for imposing different intent requirements for school-based and non-school-based Title II and Section 504 claims. See *14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 270 (2009) ("We cannot rely on [a] judicial policy concern as a source of authority for introducing a qualification into the [statute] that is not found in its text.").

CONCLUSION

The judgment of the court of appeals should be vacated, and the case should be remanded for further proceedings.

Respectfully submitted.

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* The Acting Solicitor General is recused in this case.