

**In the
Supreme Court of the United States**

D. C., BY HIS PARENTS AND GUARDIANS,
TREVOR CHAPLICK AND VIVIAN CHAPLICK, ET AL.,
Petitioners,

v.

FAIRFAX COUNTY SCHOOL BOARD, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

**BRIEF OF AMICI CURIAE
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REBEKAH DILLER, ROBERT DINERSTEIN, DORON DORFMAN,
CRYSTAL GRANT, LISA LUKASIK, KATHERINE A. MACFARLANE,
NICOLE B. PORTER, CLAIRE S. RAJ, JESSICA L. ROBERTS,
AND JENNIFER ROSEN VALVERDE
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE AMICI CURIAE¹

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¹ Amici requested consent to file this brief from counsel for all parties. Petitioners provided written consent and Respondents provided written notice that they take no position on the filing of this brief. Pursuant to this Court's Rule 37.6, we note that no part of this brief was authored by counsel for any party, and no person or entity other than the amici curiae law professors (including through funds available to them as faculty members) made any monetary contribution to the preparation or submission of the brief.

* The law professors whose names are listed above are designated as amici in their individual capacities and do not join as representatives of their respective institutions. The references to their teaching positions and institutions are for identification purposes only. Their inclusion on this brief may not reflect the views of and does not constitute an endorsement by their institutions.

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SUMMARY OF ARGUMENT

From its inception, the Individuals with Disabilities Education Act (“IDEA”) has required that complex special education disputes be first considered through an administrative due process mechanism involving state-designated hearing officers. However, the legislative history reveals that Congress recognized from the outset that certain categories of disputes could simply not be addressed via that process, and that parties should have judicial recourse when, for example, the administrative hearing officer lacked the authority to furnish the remedies being sought, or where forcing parties to go through the administrative hearing process would otherwise be futile. Several circuits have considered the legislative history and nonsensical nature of an absolute administrative exhaustion requirement and embraced limited exceptions. The court below chose

not to follow those examples, highlighting a circuit split on the exceptionally important exhaustion issue.

As some circuits have recognized, exceptions should exist both when the due process hearing officer is impotent to grant the type of relief that should be available to those alleging IDEA violations, and when forcing a party to go through the cumbersome administrative process is futile. Both states and local school districts sometimes commit violations or alleged violations of IDEA that cannot be addressed without injunctive or other equitable relief that a hearing officer can neither order nor enforce. These violations often involve large similarly situated student populations, but may also necessitate individually-focused relief.

Likewise, the futility exception recognized by several circuits permits appropriate relief in cases that cannot accommodate specific types of systemic IDEA claims. When the systemic issue implicates the state education agency, the due process system is meaningless, because those claims cannot be resolved in those fora. And even at the local level, a hearing officer cannot resolve systemic claims against a local education agency, because the due process system may consider only individual claims. Only a futility exception, contemplated by Congress when they designed the dispute resolution structure, can bridge that gap.

For all of these reasons, this Court should grant the writ of certiorari.



ARGUMENT

I. The Circuits That Have Embraced Exceptions to IDEA’s Exhaustion Requirement Have Ruled Consistently with IDEA’s Statutory Scheme and Legislative History

The petition for certiorari (the “Petition”) submitted on behalf of D.C. aptly captures the scope of the circuit split over the exhaustion requirement of the Individuals with Disabilities Education Act (“IDEA”). Yet the very existence of that division among the circuits is difficult to comprehend, because the availability of exceptions to that general requirement of exhaustion have been understood since the initial adoption of IDEA’s predecessor statute in 1975. Many of the circuits that have embraced exceptions for exhaustion and the inability of administrative hearing officers to order or enforce needed relief for IDEA violations have examined the legislative history of IDEA, and appropriately applied those exceptions when apposite, while declining to do so when an IDEA plaintiff could find relief via the administrative process. The divided panel of the Fourth Circuit that refused to follow many of its sister courts ignored that legislative history, not even mentioning it in the majority opinion below.

IDEA’s exhaustion requirement is found in 20 U.S.C. § 1415(l), which provides that “before the filing of a civil action” the due process procedures shall be exhausted. There are manifest reasons for the deference to administrative process embodied in that requirement. Most IDEA disputes arise when parents or other caregivers reach an impasse with a local school district

over an individual child’s particularized Individualized Education Program (“IEP”). Those disputes typically center on whether the school district’s goals, accommodations or proposed placement provide the mandated “free appropriate public education,” 20 U.S.C. § 1401(9), or whether the proposed placement constitutes that individual child’s “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A). The very nature of IDEA as a framework that necessitates that each child with disabilities be treated as an individual commends the use of an administrative process to take the first pass at resolving most IDEA disputes. The specifics of the administrative processes employed in each state and other jurisdiction (for the purposes of this brief, a “state”) must be established by the individual states, subject to the minimum standards of IDEA and its related federal regulations. 20 U.S.C. § 1415; 34 C.F.R. §§ 300.500, 300.507-300.518.

When the IDEA dispute is tethered to the individual components of a child’s IEP or placement, or to the eligibility of that child for special education, application of the statutory deference requirement makes sense. Resolution of the dispute will likely depend on granular examinations of the individual’s disability (or absence thereof), the child’s educational history and performance, various education records, and reports of evaluators (educators and medical professionals). As the Ninth Circuit noted, the exhaustion requirement “affords full exploration of technical educational issues, furthers development of a complete factual record, and promotes judicial efficiency.” *Hoefst v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992); *see also J.S. ex rel. N.S. v. Attica Cent. Schs.*, 386 F.3d 107, 113 (2d Cir. 2004) (in considering

applicability of exhaustion requirement, court must “consider whether administrative review would further the goals of developing facts, making use of available expertise, and promoting efficiency.”) IDEA also requires that hearing officers used by the states meet minimum requirements that they can apply in service of the individual child-related dispute before them, including possession of “knowledge of, and the ability to understand” IDEA, its related federal and state regulations, and court decisions interpreting IDEA. 20 U.S.C. § 1415(f)(3)(A)(ii).

Yet from the outset, IDEA (through its former name, the Education of All Handicapped Children Act of 1975, sometimes abbreviated as “EHA”) has recognized that certain categories of IDEA disputes are simply not capable of being resolved through state-administered due process systems. For the purposes of considering the writ of certiorari in the instant case, the most relevant of these long-standing exceptions to the exhaustion requirement include cases where an administrative due process hearing officer is powerless to grant the type of relief necessary to resolve the dispute, and other situations where forcing the parties to go through the due process system would be futile. These categories of exceptions were explicitly noted by Senator Harrison Williams in 1975, speaking to the original iteration of IDEA, when he sought to “underscore that exhaustion of the administrative procedures under this part should not be required for any individual complainant filing a judicial action in cases where such exhaustion would be futile either as a legal or practical matter.” 121 Cong. Rec. 37416 (1975) (remarks of Senator Harrison Williams). A decade later, as Congress

considered amendments to IDEA, Senator Paul Simon again highlighted these exceptions:

It is important to note that there are certain situations in which it is not appropriate to require the exhaustion of EHA administrative remedies before filing a civil law suit. These include complaints that: . . . three, an agency has adopted a policy or pursued a practice that is contrary to the law, or where it would otherwise be futile to use the due process procedures—for example, where the hearing officer lacks the authority to grant the relief sought . . .

131 Cong. Rec. 21392-21393 (1985) (remarks of Senator Paul Simon). Senator Simon's remarks were likewise validated by the reports issued on both sides of Congress that year. The Senate report on the legislation reported that "[e]xhaustion of EHA administrative remedies would thus be excused where they would not be required to be exhausted under the EHA, such as when resort to those proceedings would be futile." S. Rep. 99-112, 99th Cong., 1st Sess., at *2. And the contemporaneous House report similarly made clear in connection with its report on IDEA updating legislation that:

. . . there are certain situations in which it is not appropriate to require the use of due process and review procedures set out in [IDEA] before filing a law suit.

These include complaints that: (1) it would be futile to use the due process procedures . . . ; (2) an agency has adopted a policy or pursued a practice of general applicability that is

contrary to the law; (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies (e.g., the hearing officer lacks the authority to grant the relief sought); . . .

H.R. Rep. 99-296, 99th Cong., 1st Sess., at 7 (1985).

In several of the circuits that have adopted exceptions to the IDEA exhaustion requirement, these legislative history references have been relied upon directly at both the appellate and district court level. *See, e.g., J.M. v. New York City Dep't of Educ.*, 161 F.4th 149, 152, 156 (2d Cir. 2025) (challenge to “a blanket policy or practice of general applicability that is contrary to law”); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002); *Mrs. W. v. Tirozzi*, 832 F.2d 748, 756-757 (2d Cir.1994) (hearing officer lacked authority to effectuate system-wide relief); *Heldman v. Sobol*, 962 F.2d 148, 158-159 (2d Cir. 1992) (assigned hearing officer lacked authority to alter the complained-of state procedures); *Beth V. by Yvonne V. v. Carroll*, 87 F.3d 80, 88-89 (3d Cir. 1996) (exceptions for futility and no-administrative-relief); *Komninos by Komninos v. Upper Saddle River Bd. of Educ.*, 13 F.3d 775, 778-779 (3d Cir. 1994) (applying irreparable harm to child exception); *Upper Valley Ass'n for Handicapped Citizens v. Mills*, 928 F. Supp. 429, 435-436 (D. Vt. 1996) (plaintiffs sought “system-wide relief, which a due process hearing officer is unable to provide”). The legislative history has also been recognized as relevant in cases where the fact pattern in that specific case did not support application of an exception, *see, e.g., Ass'n for Cmty. Living v. Romer*, 992 F.2d 1040, 1044 (10th Cir. 1993) (none of the exceptions were determined to apply), and

by this Court in one case where the exceptions at issue in this case were not directly present. *See Honig v. Doe*, 484 U.S. 305, 327 (1988) (“parents may bypass the administrative process where exhaustion would be futile or inadequate” and citing 1975 remarks of Senator Williams).

Notwithstanding the clear legislative history validating exceptions to the IDEA exhaustion requirement, several courts have (without examining the legislative history described above) created the circuit split that forms the basis for the Petition by declining to allow exceptions. Because resolution of this split in favor of appropriate exceptions is a question of exceptional importance to millions of children with disabilities who live in states where the exceptions are not recognized, it is now time for this Court to resolve the split.

II. Resolving the Conflict Over the Availability of Exceptions to IDEA’s Exhaustion Requirement Is a Matter of Exceptional Importance

This Court explicitly recognized the rigidity of the IDEA administrative exhaustion requirement as an open issue in one of its most recent special education cases, *Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023). In that decision, the Court observed that “whether IDEA’s exhaustion requirement is susceptible to a judge-made futility exception” was not necessary to deciding that case. *Id.* at 151 (“today, we have no occasion to address” the exception question). Given the legislative history outlined above, and the legal issue directly presented by the Petition, it is now appropriate for this Court to consider both the

existence of exceptions² and whether those exceptions are even judge-made, given that they flow directly from the legislative intentions of Congress.

A. Administrative Hearing Officers Are Powerless Under IDEA to Provide or Enforce Injunctive Relief, and the Scope of Relief Under IDEA Therefore Depends on an Exception to the Exhaustion Requirement

It is well-established that administrative hearing officers lack the authority to order or enforce injunctive or similar equitable relief. In the statute itself, IDEA permits a hearing officer to do just three things: (1) determine on substantive grounds whether that individual child received a “free appropriate public education,”³ 20 U.S.C. § 1415(f)(3)(E)(i); (2) determine whether a procedural violation implicated the receipt

² The Court in *Luna Perez*, and earlier in *Honig*, referenced the possible exception as one related to “futility.” *Luna Perez* at 151; *Honig* at 327. In the legislative history, and throughout many of the cases that have addressed exceptions to the exhaustion requirement, both Congress and some of those courts have treated an exception where the hearing officer is unable to grant certain types of relief as separate from a futility exception. This section of the brief treats the two circumstances as separate exceptions, but it would of course also be correct to define an exception based on the legal unavailability of relief from a hearing officer as a subset of a futility exception.

It is also appropriate to note that the exception lists in the legislative history, and in the judicial decisions outlining the various exceptions, are all formulated in the disjunctive. *J.M.* at 156. Accordingly, none of the exceptions are predicated on the existence of facts that would counsel application of any other of the exceptions.

³ Subsequently in this brief, “FAPE.”

of a FAPE, 20 U.S.C. § 1415(f)(3)(E)(ii); and (3) order a local school district to comply with IDEA’s procedural requirements, 20 U.S.C. § 1415(f)(3)(E)(iii). *See also Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 166 (2017) (“IDEA makes remedies available only in suits that ‘directly implicate[] a FAPE’”).

Nothing in IDEA authorizes a hearing officer to consider any violation of IDEA that does not implicate FAPE for the single child to whom the hearing relates, to address any violation of IDEA that occurs at the state level, or to resolve any other IDEA violation that affects more than the individual child whose due process complaint is before the hearing officer.

This Court and other courts confronted with these limitations of the due process schema have consistently recognized that the administrative due process system is inadequate – indeed powerless – to address any IDEA violation the remedy for which necessitates injunctive or other equitable relief. In *Honig*, this Court saluted the futility exception by holding that “parents may bypass the administrative process where exhaustion would be futile or inadequate.” 484 U.S. at 327. The *Honig* holding does not directly govern this case, because that decision involved enforcement of IDEA’s “stay-put”⁴ statutory provision, 20 U.S.C. § 1415(j) that is sometimes described as an “automatic injunction.” 484 U.S. at 326. Yet the logic of this Court in *Honig* was that the exhaustion requirement is nonsensical when the adjudicator before whom exhaustion must occur cannot provide the requested relief. That is precisely the situation presented by the

⁴ The right of a child to “stay put” in a current educational placement during the pendency of a dispute.

Petition, and that has been addressed by numerous lower courts.

The powerlessness of hearing officers has furnished the basis for most of the decisions finding exceptions to the exhaustion requirement. *See, e.g., Heldman* at 158-159 (alleged deficiencies implicated the existing administrative scheme, which hearing officer could not alter); *J.S.* at 115 (complaint contained numerous allegations of systemic problems that hearing officer could not address); *J.A. v. Monroe Twp. Bd. of Educ.*, 2019 WL 1760583 (D.N.J. Apr. 22, 2019) (complaint alleged systemic state-level violations of due process timeline requirements). Perhaps the most cogent explication of the need for an exception when the relief sought cannot be addressed through the administrative process is found in *Murphy*, where then-Judge Sotomayor explained why exhaustion was not required for the violation of the stay-put requirement. Although that case, like *Honig*, addressed the presumptive injunction applicable to stay-put violations, the opinion outlined the primary rationale for exceptions to the exhaustion requirement: that the vindication of IDEA rights may in some cases require the powers granted to courts that are not possessed by hearing officers. 297 F.3d at 199-200. The IDEA violations alleged in the lower courts in this case were undisputedly within categories of violations not able to be addressed by a hearing officer. Indeed, there was no dispute among the parties regarding whether the relief sought by Petitioners was even available via administrative due process. *See* Petition at 25a (Gregory, J., dissenting) (“As all parties seem to agree, the injunctive and declaratory relief sought by these plaintiffs could not have been granted by any hearing officer.”).

The importance of the issue presented by the Petition extends to many more children than the few child plaintiffs in this case. The availability of exhaustion exceptions when the hearing officer's limited powers are implicated is critical both in cases involving individual children as well as when systemic issues involve numerous children (and in some of these situations, as in the Petition before this Court, perhaps every eligible special education student in a state).

1. IDEA Violations Affecting Large Student Populations Cannot Be Remedied by Individual Parents Invoking Administrative Due Process Hearings

Every administrative due process hearing is limited to the specific FAPE-related claims of a single student with disabilities. A hearing officer's decision cannot extend to other students in the local school division, or statewide, who are affected by an IDEA violation, and without an exception to the exhaustion requirement, every one of those students (generally through their parents or other caregivers) would need to invoke the administrative due process procedures, incurring the substantial economic and personal costs of subjecting themselves to that administrative procedure and possible appeals. And even then, if the needed relief requires an injunctive or other equitable remedy, the entire effort would be wasted until the subsequent appeal to a court commences. None of this "process" serves the efficiency purposes for which the default rule of administrative exhaustion exists.

Moreover, a due process complaint cannot be made against the state that establishes the procedures under which due process proceedings occur, because

IDEA limits those hearings to complaints against individual school districts. *See, e.g.*, 20 U.S.C. § 1415(f)(1)(A) (referencing local educational agencies as parties to due process complaints).

The case now before the Court involves allegations, at the complaint stage, that encompass potential violations of IDEA involving the entire due process system in the Commonwealth of Virginia. It is similar to the cases in other circuits that have validated exceptions to exhaustion where the relief sought was at a statewide or other broad-based level, and where the relief was simply not something that could be provided through the administrative process. *See DL v. District of Columbia*, 860 F.3d 713 (D.C. Cir. 2017) (systematic district-level violations of the requirements to timely identify eligible special education students); *J.M.* (systemwide New York City school district level policy of discontinuing special education services prematurely); *Heldman* (challenging New York statute and regulations that hearing officer had no power to change); *D.M. v. New Jersey Dep’t of Educ.*, 801 F.3d 205 (3d Cir. 2015) (challenging state-level school placement policy); *Beth V. by Yvonne V.*, 87 F.3d at 89 (plaintiffs were requesting “system-wide relief” for state level timetable failures “that cannot be provided (or even addressed) through the administrative process”); *N.D. v. Reykdal*, 102 F.4th 982 (9th Cir. 2024) (considering injunction for state-level failures to extend special education services until twenty-second birthday, but refusing injunction on traditional lack of irreparable harm basis).

State and district-wide IDEA violations cannot be remedied by a single hearing officer taking evidence about a single student’s claims. Moreover, in many

cases, the party that must be required to take the corrective action is at the state level, and so cannot even be reached by IDEA's administrative processes. In these cases, the administrative process is useless, indeed wasteful. As one court pointed out, when the requested type of relief "turns on a question of law that is untethered from the . . . circumstances of any individual student, and the resolution of which would not benefit from an administrative record in an individual case or cases," *J.M.*, 161 F.4th at 160, the purposes of requiring exhaustion are not served.

Cases that fall beyond the purview of IDEA hearing officers often raise critical issues that go to the heart of IDEA's professed goals of ensuring that every student with disabilities be properly served and afforded fair processes when failures occur. The case underlying the Petition squarely confronts such issues, which are of exceptional importance and worthy of judicial consideration. That consideration cannot happen, at least in the five states of the Fourth Circuit, without a grant of certiorari.

2. Certain Violations that Affect Individual Students Also Require the Availability of Injunctive Relief

Although the clearest cases for affirming an exception to the exhaustion requirement arise where entire populations of students would benefit from relief that cannot be awarded by a hearing officer, other cases involving individual students are also important and deserving of exceptions from the exhaustion requirement.⁵

⁵ Although making exceptions to the exhaustion requirement in cases involving individual students might result in more cases

This Court already recognized one of these individual case exceptions to exhaustion in *Honig*, where it concluded that violations of the stay-put requirement did not require a separate invocation of administrative due process. But individualized injunctive or equitable relief may also be necessary in other situations lacking the kind of explicit mandate for injunctions present in the stay-put obligation.

Cólon Vázquez v. Dep't. of Educ. of P.R., 79 F. Supp. 3d 382 (D.P.R. 2015), presents just such a case. In that case, the Department of Education of Puerto Rico (apparently both a state and island-wide education agency) had exhibited prior disregard for administrative hearing outcomes and subsequent judicial orders. The court concluded, without requiring the initiation of additional administrative proceedings, that a permanent injunction was indicated.

The enforcement of IDEA obligations related to student rights in connection with disciplinary proceedings provides another example where a judicial bypass of the administrative exhaustion requirement would be appropriate. Section 1415(k) prescribes safeguards for students whose special education placement may be affected by school discipline, including, among the rights, the requirement that after a prescribed number of

being filed in federal court without a prior administrative decision, these cases would still be limited to those in which an exception based on a permitted reason (e.g., lack of a remedy at the administrative level or futility) applies. Cases in which a legal and/or factual basis for the exception is not present would remain subject to dismissal under Fed. R. Civ. P. 10(b)(6). The present case did not reach the 10(b)(6) threshold before being dismissed on other grounds that are now the subject of the Petition.

suspension days, each student be afforded a manifestation determination process. 20 U.S.C. § 1415(k). A school district that failed to provide these protections to a special education student could cause irreparable harm, and the due process procedures cannot address those circumstances effectively (because of the lack of power to grant injunctions) or in a timely way. The stay-put right of a disciplined student was addressed in *Honig*, but that case’s holding did not extend to the protection of the other safeguards embodied in Section 1415(k).

Finally, a situation analogous to the “stay-put” right that *Honig* protected could also arise in the twelve states that have availed themselves of IDEA’s authorization of placement maintenance rules that go further than what IDEA requires as a minimum. See Council of Parent Attorneys and Advocates, Parental Consent Under IDEA and State Law, States that Have Heightened Consent Requirements, www.copaa.org/general/custom.asp?page=Consent2, last visited September 12, 2026 (identifying twelve states that have availed themselves of the authority to give parents additional consent rights in connection with their child’s placement or change in placement). These rights are akin to stay-put rights, in that in some form or another, the child’s IEP placement may not be altered by the school district without parent consent. The additional rights are validated by federal IDEA regulation in 34 C.F.R. § 300.300(d)(2), and a representative example (from the state at issue in this case) may be found in 8 Va. Admin. Code § 20-81-170E, which specifies that “Informed parental consent is required before: . . . d. Any revision to the child’s IEP services; e. Any partial or complete termination of special

education and related services” In other words, once a child in Virginia receives a special education placement or services, that child’s placement or services may not be changed or removed (except by high school graduation with a non-special education diploma) without parental consent.

The federal statutory stay-put rule applies to pending proceedings, but does not explicitly extend to similar placement maintenance rights that are permitted by federal law but extended to students by state law or regulation. Yet the identical logic used in *Honig* would apply to students whose rights to maintain their placement or services were being denied by their school district. For that reason, the same exception to exhaustion – based on the inability of a hearing officer to award injunctive relief – would apply to these situations, even though they involve individual students and do not require system- or state-wide relief.

B. Giving Effect to IDEA Also Necessitates the Judicial Resolution of Systemic IDEA Failures that Cannot Be Addressed by Futile or Unavailable Administrative Processes

As noted earlier in this brief, in *Luna Perez*, the Court reserved the question whether a futility exception exists under IDEA. If that exception exists, then by definition it would apply only where the complaining parent or caregiver may properly assert the existence of practical or legal futility. Simply put, there is no reason to demand that parents and caregivers incur the delay and expense of administrative due process when the claim is against a party that cannot be reached by due process, or where the hearing itself would waste resources because it could never

lead to the necessary remedy. The question whether such a fruitless process is required by IDEA is of exceptional importance to the students in circuits, such as the Fourth Circuit, where these extra burdens are being imposed, or where the issue of exceptions to the administrative exhaustion requirement is yet unresolved.

**1. When IDEA Violations Are Caused by
the State Education Agency, the Due
Process System Is Not Available at
All**

The Petitioners in this case possessed two types of claims: those against a local school district and connected to the specific education plan of a single student, and others arising against the state agency – the Virginia Department of Education – responsible for implementing the substantive and procedural protections of IDEA. However, only the individual-specific claims were potentially subject to administrative remedies. IDEA’s administrative due process system does not contemplate due process proceedings to remedy IDEA violations that result from the acts or omissions of the state education agency. Accordingly, allowing a party like Petitioners to assert state-level claims in a federal court action provides the only forum for those complaints, and is not a duplicative use of resources.

In the case before the Court, Petitioners challenged various aspects of Virginia’s due process system. These concerns all arose out of alleged violations of IDEA that only the state agency or a court could remedy, and the underlying complaint catalogued a lengthy history of state-level compliance concerns.⁶ None of these

⁶ Virginia’s disregard of IDEA compliance in its dispute resolution system was well-known at the time of filing of the

concerns were capable of being remedied by an order from a due process hearing officer, in part because due process cannot be initiated against the state itself.

Of course, Virginia is not the only state that has been confronted with state-level claims of IDEA violations. In other jurisdictions, however, the complaint-level allegation of state-focused compliance claims has permitted the consideration of potential exceptions to the exhaustion requirement. *See, e.g., Roe v. Healey*, 78 F.4th 11, 25-26 (1st Cir. 2023) (considering systemic exception but finding lack of showing of entitlement to such an exception if it exists); *Mrs. W*, 832 F. 2d at 757 (allowing exception to exhaustion for challenge to state-level policy); *D.M.*, 801 F.3d at 212 (finding exhaustion unnecessary when challenge involved state agency); *Hawai'i Disability Rts. Ctr. v. Kishimoto*, 122 F.4th 353 (9th Cir. 2024) (confirming exceptions exist but finding that plaintiff had not sufficiently shown state-level violation subject to an exception); *J.A.* at *6 (allowing exhaustion exception for systemic state-level timeline claims); *Upper Valley Ass'n for Handicapped*

complaint below. *See, e.g.,* U.S. Dep't of Educ., Off. of Special Educ. Progs., *Differentiated Monitoring and Support: Virginia*, <https://www.ed.gov/media/document/dms-va-b-report-03-13-2024-pdf-46237.pdf>, March 13, 2024 (federal Department of Education compliance report detailing violations of federal law in Virginia's compliance processes); Virginia Commission on Youth, *Review of Virginia's Special Education Dispute Resolution System (Chapter 502, 2024)*, Sen. Doc. No. 7 (2025), https://rga.lis.virginia.gov/Published/2025/SD7/PDF?utm_source=substack&utm_medium=email (study report recommending needed changes to dispute resolution system); Virginia General Assembly, 2025 Session, House Bill 473, <https://lis.virginia.gov/bill-details/20261/HB473> (failed 2025 legislation designed to implement study report recommendations).

Citizens, 928 F. Supp. at 435-436 (allowing exhaustion exception for systemic state-level compliance claims).

2. Other Systemic Failures Also Require the Bypass of Administrative Due Process

Although state-level compliance failures provide a compelling basis for exhaustion exceptions, so do systemic failures at the local school district level, because those claims affect entire cadres of students and the underlying systemic failure is therefore not addressable in individualized due process hearings. Because local school districts have the potential to apply one-size-fits-all policies and practices that will not honor the individualized nature of the IEP process, IDEA must furnish a means to challenge and obtain relief from those policies and practices when they run afoul of IDEA.

Again, several judicial decisions furnish examples of localized systemic violations for which an exhaustion exception was considered. In some of these cases, the court demonstrated the ability to parse cases where exhaustion was unnecessary from those where an insufficient basis for an exception was present. *See Roe*, 78 F.4th at 24-26 (considering but rejecting futility and lack of available relief exceptions relating to child eligibility identification practices because of standing and insufficient justification); *J.M.* at 159-160 (providing exception based on violative systemwide policy or practice “untethered” from any individual student); *Ass’n for Cmty. Living* at 1044-1045 (rejecting exception because question of policy application necessarily involved effect on individual IEPs). Similarly, in *P.V. ex rel. Valentin v. Sch. Dist. of Philadelphia*, 2011 WL 5127850 (E.D. Pa. Oct. 31, 2011), the court examined

a challenged school district policy of forcing students with autism into a limited number of schools. The court applied an exception to exhaustion based on the hearing officer's inability to do more than issue a hortatory recommendation to the district to "alter its procedures." *Id.* at *6. The court characterized the case as one that illustrated "the prototypical case in which a court should permit IDEA plaintiffs to bypass IDEA's administrative dispute resolution process." *Id.* at *8.

This last case showcases the kinds of local practices that should be prone to exhaustion exceptions. It is easy to posit other one-size-fits-all school district level solutions that demonstrably and intentionally undermine the very foundation of IDEA – child-tailored education programs, the assurance of proper accommodations and other supports, or the guarantee that every child will be educated in his or her least restrictive environment. As just a few examples, school systems can and do implement explicitly or *sub rosa* policies and practices that inappropriately segregate students with certain common disability characteristics; limit the provision of related services such as speech therapy or ASL interpretation to students who satisfy their arbitrary levels of "profoundness"; create illegal definitions of what constitutes an "education record" available to parents; utilize IQ tests and other unreliable measures to deny special education eligibility; impose artificial limits on summer "extended" services; and refuse to make available to children with IEPs the kind of testing that assures accountability in order to "gig" their system- and building-wide test results. Blanket policies like these exist around the country, and run contrary to what Congress mandated be an

individualized process. When courts mandate that every child challenge blanket policies one student at a time in confidential administrative proceedings, before a hearing officer who cannot enjoin those policies, we fail to serve the laudable and statutorily prescribed goals of IDEA.



CONCLUSION

For the foregoing reasons, this Court should grant the writ for certiorari.

Respectfully submitted,

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