No. 21-887

IN THE

Supreme Court of the United States

MIGUEL LUNA PEREZ,

Petitioner,

—v.—

STURGIS PUBLIC SCHOOLS, STURGIS PUBLIC SCHOOLS BOARD OF EDUCATION,

Respondents.

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

BRIEF FOR *AMICI CURIAE* THE ARC OF THE UNITED STATES, THE AUTISTIC SELF ADVOCACY NETWORK, COMMUNICATION FIRST, THE COELHO CENTER FOR DISABILITY LAW, POLICY AND INNOVATION, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, EDUCATION LAW CENTER, INNISFREE FOUNDATION, LEARNING RIGHTS LAW CENTER, THE NATIONAL CENTER FOR LEARNING DISABILITIES, THE NATIONAL CENTER FOR YOUTH LAW, THE NATIONAL DISABILITY RIGHTS NETWORK, THE NATIONAL FEDERATION OF THE BLIND IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Arc of the United States (The Arc), founded in 1950, is the Nation's largest community-based organization of and for people with intellectual and developmental disabilities (IDD). Through its legal advocacy and public policy work, The Arc promotes and protects the human and civil rights of people with IDD and actively supports their full inclusion and participation in the community throughout their lifetimes.

The Autistic Self Advocacy Network (ASAN) is a national, private, nonprofit organization, run by and for autistic individuals. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN's advocacy activities include combating stigma, discrimination, and violence against autistic people and others with disabilities; promoting access to health care and long-term supports in integrated community settings; and educating the public about the access needs of autistic people. ASAN takes a strong interest in cases that affect the rights of autistic individuals and others with

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[1] Pursuant to Rule 37.6, the undersigned certifies that: (A) there is no party, or counsel for a party who authored the amicus brief in whole or in part; (B) there is no party or counsel for a party who contributed money that was intended to fund preparing or submitting the brief; and (C) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members. Counsel of record for all parties received notice of *Amici*'s intent to file at least ten days prior to this brief's due date. *See* Sup. Ct. R. 37.2(a).

disabilities to participate fully in community life and enjoy the same rights as others without disabilities.

Communication First is a national, disability-led nonprofit organization based in Washington, DC, dedicated to protecting the human, civil, and communication rights and advancing the interests of the estimated 5 million people in the United States who cannot rely on speech to be heard and understood due to disability. Communication First's mission is to reduce barriers, expand equitable access and opportunity, and eliminate discrimination against our historically marginalized population in all aspects of community and society, including education.

The Coelho Center for Disability Law, Policy and Innovation collaborates with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. We envision a world in which people with disabilities belong and are valued, and their rights are upheld. The Coelho Center was founded in 2018 by former Congressman Anthony "Tony" Coelho, original sponsor of the Americans with Disabilities Act.

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization for parents of children with disabilities, their attorneys, and advocates. COPAA provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. Our attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in attempts to safeguard the civil rights guaranteed to those

individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13,codified as amended at 42 U.S.C. §1983 (Section 1983), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*. (ADA).

Education Law Center (ELC), a non-profit organization founded in 1973, advocates on behalf of public-school children for education equity, school improvement, and protection of student rights under state and federal laws in New Jersey and across the country. ELC has served as counsel and co-counsel in special education cases in the Third Circuit Court of Appeals, the District of New Jersey and Eastern District of Michigan, and has participated as *amicus curiae* in special education cases before the United States Supreme Court and the Third Circuit Court of Appeals. Over the past twenty-five years, ELC has developed substantial interest and expertise in the legal rights of students with disabilities and in ensuring that those rights are protected.

Innisfree Foundation (Innisfree) is a non-profit corporation that advocates for the educational rights of New Jersey children with disabilities. Innisfree directly assists clients who meet its income criteria through its low bono and pro bono referral programs, and advocates on behalf of the state's entire special education population through participation in direct representation, amicus filings, impact litigation, and test cases. Innisfree commits its resources to projects that will directly or indirectly benefit its constituents, either by obtaining positive outcomes for them or seeking to improve governing law. Innisfree's constituents include all parents of children with disabilities who attend school in New Jersey.

Learning Rights Law Center (LRLC) is a nonprofit legal services organization that provides education and direct legal representation and advocacy to families of students with disabilities in Los Angeles and surrounding counties. LRLC is also counsel in *D. D. v. Los Angeles Unified School District*, Petition for Writ of Certiorari filed April 18, 2022, Sup. Ct. No. 21-1373, presenting indirectly related questions of the scope of exhaustion of non-IDEA claims.

The National Center for Learning Disabilities (NCLD) is a national not-for-profit organization founded in 1977. The mission of NCLD is to improve the lives of the 1 in 5 children and adults nationwide with learning and attention issues — by empowering parents and young adults, transforming schools and advocating for equal rights and opportunities. NCLD works to create a society in which every individual possesses the academic, social, and emotional skills needed to succeed in school, at work, and in life.

The National Center for Youth Law (NCYL) is a private, non-profit organization that works to build a future in which every child thrives and has a full and fair opportunity to achieve the future they envision for themselves. For more than 50 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support, and opportunities they need to become self-sufficient adults. One of NCYL's priorities is to ensure students have access to equitable education opportunities in public schools. NCYL represents students with disabilities in litigation and class administrative complaints to ensure their access to appropriate and non-discriminatory services. NCYL also pilots collaborative reforms with state and local jurisdictions across the nation to improve **e**ducational outcomes of

children in the foster care and juvenile justice systems, with a particular focus on improving education for system-involved children with disabilities.

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands), and there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States.

The National Federation of the Blind (NFB) is the oldest, largest and most influential membership organization of blind people in the United States. With tens of thousands of members, and affiliates in all fifty states, the District of Columbia, and Puerto Rico, the ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. Since its founding in 1940, the NFB has devoted significant resources toward advocacy, education, research, and development of programs to ensure that blind individuals enjoy the same opportunities enjoyed by others. Over the decades, the Federation has represented countless blind students under IDEA and other laws and strongly believes that the courts should

not unreasonably restrict the rights Congress has expressly granted them.

Both parties provided written consent for the filing of this brief, pursuant to Supreme Court Rule 37.3(a).

SUMMARY OF ARGUMENT

After Congressional legislators learned of the amount of exclusion, discrimination, and real harms suffered by students with disabilities in the public school system, Congress took steps to ensure that all students can have meaningful educational experiences regardless of their disability status. Congress passed what is now known as IDEA, which created and affirmed that students with disabilities have procedural and substantive rights in our public schools, and created a comprehensive procedural system to identify and appropriately serve students' unique educational needs in school settings, and to resolve disagreements about students' programming needs through Individualized Education Program (IEP) meetings, mediations, and due process hearings. See 20 U.S.C. §§ 1414-15.

But Congress also understood that students suffered additional harms beyond being denied appropriate educational instruction. This led Congress to pass the Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372 (HCPA), now codified in IDEA at 20 U.S.C. § 1415(*l*), to confirm and ensure that students with disabilities could also assert valid civil rights claims under Section 1983, Section 504, and, later, the ADA. The underlying decision ignores the plain meaning and extensive history of the HCPA, which was designed to ensure that students entering the schoolhouse doors are not

required to exhaust their administrative remedies in order to bring non-IDEA civil rights claims.

In addition, the decision below significantly undermines IDEA's policies of protecting students' rights and the use of alternative dispute resolution procedures as a preferred method for resolving IDEA claims. If allowed to stand, the decision will force parents who could otherwise achieve all available IDEA relief through settlement to nonetheless litigate their claims, lest they be left foreclosed from pursuing non-IDEA civil rights claims as Miguel Perez (Miguel) was. This would be true even though an administrative record regarding appropriate educational instruction serves no purpose whatsoever for adjudicating non-IDEA claims and, more significantly, would delay the implementation of any appropriate IDEA remedy (as to which the respective parties are already in agreement). In other words, it adds nothing of value and may further harm students who already prevailed on their IDEA claims.

ARGUMENT

I. HCPA IS NOT INTENDED TO ABRIDGE STUDENTS' NON-IDEA CIVIL RIGHTS

The HCPA's exhaustion requirement states:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 et seq.], 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, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. § 1415(*l*). As this Court in *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154 (2017) made clear, the language of the HCPA, itself, specifies that exhaustion is not required in cases where, as here, the remedy sought is not available under the IDEA:

> The first half of §1415(*l*) (up until "except that") "reaffirm[s] 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." H.R. Rep. No. 99-296, p. 4 (1985); see *id.* at 6. According to that opening phrase, the IDEA does not prevent a plaintiff from asserting claims under such laws even if . . . those claims allege the denial of an appropriate public education (much as an IDEA claim would). But the second half of §1415(*l*) (from "except that" onward) imposes a limit on that "anything goes" regime, in the form of an exhaustion provision. According to that closing phrase, a plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws must in certain circumstances – that is, when "seeking relief that is also available under" the IDEA – first exhaust the IDEA's administrative procedures.

Id. at 161. The Court of Appeals' decision is inconsistent with this language in *Fry* as well as the statutory purpose of IDEA.

The legislative histories and purposes of the HCPA, the IDEA, and the other statutes used by students that protect students' rights in the public schools make clear that Congress never intended 20 U.S.C. § 1415(*l*) to be used as a shield like in the underlying case: to prevent Miguel from being able to pursue civil rights claims and money damages which are not available under IDEA. Instead, canons of statutory interpretation make clear that HCPA not only *allows*, but also *promotes* the ability of students to be able to raise *both* IDEA and ADA claims. Because the Sixth Circuit's decision conflicts with the statutory text and purpose, the Court should clarify that exhaustion is not required in cases like Miguel's.

A. THE DECISION IS INCONSISTENT WITH THE STATED PURPOSE OF IDEA

IDEA's statutory scheme precludes the interpretation of the HCPA from the decision below because it produces a "substantive effect" incompatible with the rest of IDEA. *See generally King v. Burwell*, 576 U.S. 473, 492 (2015). Federal courts "cannot interpret federal statutes to negate their own stated purposes," *King*, 576 U.S. at 492-93 (citing *N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973)), and the IDEA's broad purposes are:

> (A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (B) to ensure that the rights of children with disabilities and parents of such children are

> protected; and (C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.

20 U.S.C. § 1400(d)(1).

Moreover, when interpreting legislation, federal courts "ascertain and follow the original meaning of the law," and should not fall short of, or exceed what Congress set out. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2468 (2020) (citing *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019)).

Appellate courts have long interpreted the "broad purpose" of IDEA thusly: "a wide-ranging remedial purpose intended to protect the rights of children with disabilities and their parents." *Avila v. Spokane Sch. Dist. 81*, 852 F.3d 936, 943 (9th Cir. 2017). Specifically, IDEA offers States federal funds in exchange for a commitment to furnish a FAPE to all IDEA-eligible children and "establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE." *Lartigue v. Northside Indep. Sch. Dist.*, No. SA-19-CV-00393-JKP, 2022 U.S. Dist. LEXIS 116532, at *9 (W.D. Tex. July 1, 2022); *Fry,* 580 U.S. at 159. Nothing in IDEA's language or history indicates an intention to replace or limit students' other protections. The HCPA "is located in a section [of IDEA] detailing procedural safeguards which are largely for the benefit of the parents and the child." *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 373 (1985). Thus, it should be interpreted consistent with those purposes.

B. THE SIXTH CIRCUIT'S DECISION IS INCONSISTENT WITH CONGRESS' INTENDED SCHEME WHEN PASSING HCPA

Congress passed the HCPA to correct the courts' misguided understanding as exemplified in *Smith v. Robinson*, 468 U.S. 992 (1984). Because Congress passed the HCPA in response to *Smith v. Robinson*, an understanding of that case is integral to interpreting the legislative history of Section 1415*(l)*. *Smith* held that IDEA provided "the exclusive avenue" for assertion of educational rights claims for students with disabilities. *Id.* at 1013. In *Smith*, the parent-plaintiffs initially exhausted their administrative remedies under IDEA. They subsequently filed an IDEA lawsuit in federal court and later amended the complaint to add claims under the United States Constitution and Section 504 that were substantively identical to their IDEA claims. *Id.* at 1000. The district court affirmed the IDEA victory but did not decide the other non-IDEA claims and instead held that an IDEA-eligible child asserting Section 504 claims that were substantively identical to the IDEA claims could only seek those remedies available under IDEA. *Id*. at 1019; see also *Fry*, 580 U.S. at 160.

Congress responded quickly to overturn *Smith* and reaffirm the viability of non-IDEA claims through the HCPA, introducing bills in both chambers within 19 days of *Smith*. Brief *Amicus Curiae* of Honorable Lowell P. Weicker, Jr., *Fry v. Napoleon Cmty. Schs. (Weicker Amicus Br.*) at 11 (citing Myron Schreck, *Attorneys' Fees for Administrative Proceedings Under the Education of the Handicapped Act: of Carey, Crest Streetand Congressional Intent*, 60 Temple L.Q. 599,

612 n.91 (1987)).[2] https://www.scotusblog.com/wp-content/uploads/2016/09/15-497-amicus-petitioner-weicker.pdf

The original version of both the House and Senate HCPA bills clarified that IDEA should not be construed to restrict or limit rights under other federal laws. *Id.* at 13. Instead, "20 U.S.C. § 1415(*l*) was introduced in both chambers as a provision that protects the right of children with disabilities and their families to pursue non-[IDEA] remedies. The exhaustion language was . . . added as a proviso to those protections – a narrowly worded exception to the general rule." *Id.*; S. Rep. No. 112, 99th Cong. 1st Sess. 2, 15 (1985) (explaining goal of overruling *Smith*). To that end, the House Report on the HCPA emphasizes that exhaustion is not required when "the hearing officer lacks the authority to grant the relief sought." H.R. Rep. No. 296, 99th Cong., 1st Sess. 7 (1985).[3]

Thus, the legislative history makes clear that the HCPA was narrowly tailored to require "that certain non-[IDEA] claims, such as the ones at issue in *Smith*, were so duplicative of [IDEA] claims that they had to be exhausted through the [IDEA] process in the same manner as [IDEA] claims." *Weicker Amicus Br.* at 10. Courts must understand that in education cases ADA

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[2] "Senator Weicker took the lead in drafting, introducing, and enacting the HCPA." *Weicker Amicus Br.* at 1.

[3] Special education hearing officers typically undergo specific training regarding the IDEA, educational interventions and policy, and other related topics to ensure that they can appropriately consider FAPE disputes. They can award educational relief as they deem appropriate, but lack the authority to grant monetary damages of the type typically sought in non-IDEA actions. *See Witte v. Clark County. Sch. Dist.*, 197 F.3d 1271 (9th Cir. 1999); *Charlie F. v. Bd. of Educ.*, 98 F.3d 989 (7th Cir. 1996).

claims can be separate and distinct from IDEA claims. Though the IDEA plays an important role in the appropriate education of students with disabilities, they undeniably *also* have other rights and interests which are protected by other statutes.

C. THE SIXTH CIRCUIT'S DECISION IGNORES THE DIFFERENT PURPOSES CONGRESS SET OUT FOR IDEA AND ADA CLAIMS

In understanding Congress' actions vis-à-vis these statutes, courts must "attend to the diverse means and ends" of IDEA and the ADA. *Fry,* 580 U.S. at 170 "Important as the IDEA is for children with disabilities, it is not the only federal statute protecting their interests." *Id.* at 749. IDEA concerns only the education of students with disabilities, *Fry*, 580 U.S. at 159 (citing 20 U.S.C. § 1412(a)(1)(A)), and creates a comprehensive procedural framework by which students with disabilities will be educated in a meaningful way. By contrast, the ADA covers people with disabilities of all ages, inside and outside schools. The ADA aims "to root out disability-based discrimination, enabling each covered person (sometimes by means of reasonable accommodations) to participate equally to all others in public facilities and federally funded programs." *Id.* at 170. IDEA guarantees individually tailored educational services, while the ADA promises "non-discriminatory access to public institutions," *id.*, Title II of the ADA specifically "forbids any 'public entity' from discriminating on the basis of disability," *Id.* at 159.

Another key distinction between these two statutory schemes is that the ADA includes the ability to pursue

damages relief to make victims of discrimination whole, and to disincentivize unlawful discrimination.

The underlying decision ignores important distinctions between the IDEA and ADA, and thus threatens to eliminate important additional civil rights for people with disabilities. To avoid this, Amici respectfully ask this Court to uphold Congress' legislative intent by overruling the opinion below.

II. MIGUEL SOUGHT RELIEF NOT AVAILABLE UNDER IDEA AND SO SECTION 1415(*l*) SHOULD NOT BAR HIS CLAIMS

A question before this Court is whether Section 1415*(l)* requires exhaustion of a non-IDEA claim seeking money damages that are not available under the IDEA.[4] Pet. at 2. The history of the HCPA and other civil rights laws shows why a relief-centered approach to determining exhaustion would be appropriate. Amici further propose that reasoning raised by the dissent in another case pending before this Court, *D.D. v. Los Angeles Unified School District*, 18 F.4th1043 (9th Cir. 2021) (Petition for Cert. filed April 18, 2022), provides helpful guidance when thinking about the questions raised in this case.

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[4] This inquiry was left open in *Fry*. 580 U.S. at 168 n.8 ("[W]e do not address here . . . a case in which a plaintiff, although charging the denial of a FAPE, seeks a form of remedy that an IDEA officer cannot give—for example, as in the Frys' complaint, money damages for resulting emotional injury.")

A. THE REMEDIES SOUGHT THROUGH IDEA AND NON-IDEA CLAIMS ARE SEPARATE AND DISTINCT IN MOST CASES

Congress was familiar with IDEA and ADA when it codified HCPA into the statutory text of IDEA through the 1997 amendments.[5] Congress could have required all Title II ADA claims involving public elementary and secondary education claims to be brought first in the same due process proceedings it established to resolve IDEA claims. In fact, Congress established precisely this type of requirement for advancing all Title I ADA claims, which must be filed first with equal employment opportunity agencies. Here, it chose not to do so. Instead, Congress has amended IDEA[6] to provide that ADA claims *could* be brought separately and *without* undergoing the IDEA administrative hearing process except when student is seeking relief that is also provided for under IDEA.[7] *See* Individuals

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[5] The ADA was signed into law in 1990.

[6] For similar reasons, IDEA does not require exhaustion of claims arising under other civil rights laws or state laws, even for incidents causing harm to students with disabilities that occurred within the school setting. *See Q.T., et. al v. Fairfax County School Board,* 1:19-cv-01285-RDA-JFA (E.D. Va. July 14, 2020)*; Graham v. Friedlander*, 223 A.3d 796, 811 (Conn. 2020) (IDEA exhaustion not required before state law negligence claims could be brought); *Doe v. Dallas Indep. Sch. Dist.*, 941 F.3d 224, 228 (5th Cir. 2019) (although sexual harassment claim under Title IX requires denial of educational opportunity, plaintiff sought relief irrespective of IDEA's FAPE obligations and exhaustion not required); *F.H. v. Memphis City Sch.*, 764 F.3d 638, 644 (6th Cir. 2014) (student did not have to exhaust claims of physical, verbal and sexual abuse under Section 1983).

[7] It should also be noted that Congress has been faced with numerous opportunities to model the IDEA in a way that would require similar exhaustion, but it has not. For example, under

with Disabilities Education Act Amendments Act of 1997, 105 Pub. L. No. 17, 111 Stat. 37. It chose *not to* require exhaustion of administrative remedies *for every* ADA claim that might relate to public education.

Moreover, Section 1415(*l*) only requires exhaustion "***to the same extent*** as would be required had the action been brought under" IDEA. 20 U.S.C. § 1415(*l*) (emphasis added). With this limitation, Congress incorporated exceptions to exhaustion that were previously recognized. Specifically, IDEA did not require exhaustion when it would be futile or the relief inadequate. *Honig v. Doe*, 484 U.S. 305, 326-27 (1988); see also Senate Report 1986 U.S.C.C.A.N. at 1805. And IDEA "asks whether a lawsuit in fact 'seeks' relief available under IDEA–not, as a stricter exhaustion statute might, whether the suit 'could have sought' relief available under the IDEA (or, what is much the same, whether any remedies 'are' available under that law)." *Fry*, 580 U.S. at 169; see also *Doucette v. Georgetown Pub. Schs.*, 936 F.3d 16, 25 (1st Cir. 2019) (barring service dog denies "access to a public institution, irrespective of school district's FAPE obligation"); *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013) (provision of FAPE does not cancel ADA violations); *Ga. Advocacy Office v. Georgia*, 447 F. Supp. 3d 1311, 1326 (N.D. Ga. 2020)

Section 1415(*l*), Congress used the same format for ADA education claims as it did with Title VI and Title IX of the Civil Rights Act, which bar discrimination on the basis of race, national origin, and sex, and allow individuals with disabilities to bring suit directly in federal court without any administrative exhaustion requirement. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) ("Title IX has no administrative exhaustion requirement")*; Cannon v. Univ. of Chicago*, 441 U.S. 677, 707 n.41 (1979) (noting Title VI does not provide for exhaustion of administrative remedies).

(exhaustion not required because stigmatization and isolation (violation under ADA) were gravamen of complaint).

Fry recognized that Section 1415(*l*) differed fundamentally from the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (PLRA). *Fry*, 580 U.S. at 169. The Sixth Circuit 's heavy reliance on the PLRA in interpreting Section 1415(*l*) denied Miguel his day in court and was clearly misplaced as it contradicts *Fry*. Compare *Id.* with *Perez v. Sturgis Pub. Sch.*, 3 F.4th 236, 244 (6th Cir. 2021).

B. STUDENTS WHO ACHIEVE ALL IDEA RELIEF VIA SETTLEMENT SHOULD BE FREE TO PURSUE NON-IDEA MONEY DAMAGES CLAIMS

IDEA "treats the plaintiff as 'the master of the claim': She identifies its remedial basis—and is subject to exhaustion or not based on that choice." *Fry*, 580 U.S. at 169 (internal citations omitted). IDEA also only authorizes equitable educationally related relief and does not provide for compensatory damages. 20 U.S.C. § 1415(i)(2)(C)(iii); *see also Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12 (1993) (IDEA grants courts equitable authority); *Sch. Comm. of Burlington*, 471 U.S. at 369-71 (only relief available under IDEA is future special education services and reimbursements of education-related expenditures).

Through his underlying claim Miguel sought *compensatory damages*. Because the IDEA does not authorize compensatory damages, Miguel's non-IDEA claims should not be subject to IDEA exhaustion.

C. ONLY COMPLAINTS SEEKING MONEY DAMAGES IN THE FORM OF REIMBURSEMENT FOR SCHOOL-RELATED EXPENSES SHOULD REQUIRE IDEA EXHAUSTION

Related to this case are the questions raised in *D.D. supra*,.[8] There, a heavily divided Ninth Circuit *en banc* panel overruled the underlying majority opinion that "the gravamen of [D.D.'s] ADA claim [wa]s discrimination separate from his right to a FAPE." *D.D.*, 984 F.3d 773, 778 (9th Cir. 2020), instead finding "the gravamen" was "that the District failed to offer D.D. supports needed to receive a FAPE." *D.D.*, 18 F.4th at 1055. Judges Paez, Berzon, and Chief Judge Thomas disagreed that the "substance of [D.D.'s] claim concern[ed] denial of FAPE." Compare *Id.* with *D.D.*, 18 F.4th at 1062-71. Judge Bumatay and Chief Judge Thomas accepted that the gravamen of D.D.'s complaint was a denial of FAPE claim,[9] but nonetheless found that D.D.'s claims fell within the

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[8] In that case, through an IDEA-mediation, the parties "negotiated a settlement agreement resolving 'all educational claims . . . arising under the IDEA, . . . and all California special education statutes and regulations [that] did not 'release any claims for damages required to be asserted in a court of law and which could not have been asserted in proceedings under the IDEA and/or California special education statutes and regulations,' including 'any claims that can be made under' the ADA." *D.D. v. Los Angeles Unified Sch. Dist.*, 984 F.3d 773, 781 (9th Cir. 2020) vacated by *D.D.*, 18 F.4th 1043.

[9] The many disagreements between judges as to the gravamen of D.D.'s complaint (between the district court, and the underlying and *en banc* panels) evidences how the *Fry* factors can lead to a Rorschach-like inquiry into whether the core of a complaint is about / had to do with an appropriate education. A relief-focused approach presents a much more workable test and should be adopted.

open question from *Fry* and they (along with Judges Berzon, Paez, and Chief Judge Thomas) thus concluded that as "a complaint seeking damages—other than reimbursement of private school expenses under § 1412(a)(10)(C)(ii)," D.D.'s complaint did "not require exhaustion under the IDEA." *Id.* at 1061.

Judge Bumatay opined that the overarching exhaustion question there was whether (a) D.D. sought money damages unavailable to him under the IDEA; and (b) if the money damages sought were not "parallel" to IDEA relief such as "money to pay for private school or tutoring" as allowed for under 20 U.S.C. § 1412(a)(10)(C)(ii) or "directly tied to 'counseling, tutoring, or private schooling.'" See *Id*. at 1060-62 (citing *Payne v. Peninsula School District*, 653 F.3d 863, 877 (9th Cir. 2011) (*en banc*)). Because D.D.'s money damages claims were not based on school or tutoring, they did not require exhaustion. These discussions are helpful in understanding the outstanding question from *Fry* and the remaining guidance from *Payne* post-*Fry*, see *D.D.*, 18 F.4th at 1062 n.2 (only "certain aspects of *Payne* have been supplanted by *Fry's* gravamen approach," and so it "remains instructive").

As the primary rationale, Judge Bumatay, acknowledges that while many other circuits "overwhelmingly favor the majority's view that exhaustion is necessary for any FAPE complaint—regardless of the type of remedy sought by the plaintiff," *D.D.* 18 F.4th at 1060, the plain meaning of the HCPA requires a different outcome and inquiry into the relief being sought. Specifically, he states:

> Based on this understanding of remedies under the IDEA, I would hold that a complaint seeking damages—other than

> reimbursement of private school expenses under § 1412(a)(10)(C)(ii)—does not require exhaustion under the IDEA. That's because general compensatory damages cannot be awarded under the IDEA and Congress only prescribed exhaustion when the plaintiff seeks relief that is "available" under the IDEA. And this is true even if the complaint is ultimately about the denial of a FAPE.

Id. at 1061 (Bumatay, J., dissenting).

As such, Section 1415(*l*) does not require exhaustion of non-IDEA claims seeking money damages unavailable under the IDEA. This conclusion is based on the text of the HCPA. Specifically, Judge Bumatay relies on longstanding jurisprudence regarding the plain-meaning of 20 U.S.C. § 1415(*l*) to conclude that:

> Because damages are not a form of relief available under the IDEA, I would hold that plaintiffs who seek them are generally not required to exhaust the IDEA process. It may be true that this textualist approach may allow more claims to escape exhaustion and frustrate Congress's supposed purpose to have "educational experts—not the courts—address deficiencies" in providing a FAPE in the first instance, as the majority contends. But, "[t]he fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." This applies even if "Congress had a particular purpose in mind when enacting [the] statute." Because the majority holds otherwise, I respectfully dissent.

D.D., 18 F.4th at 1062 (Bumatay, J., dissenting) (internal citations omitted). See also *id.* at 1060 ("we must be guided by the plain meaning of the statute.") (Bumatay, J., dissenting).

Beyond this textualist answer to the outstanding *Fry* question, the dissent points to precedent supporting a second path to this conclusion: "*Payne* remains good law for its holding that the 'exhaustion requirement applies to claims only to the extent that the relief *actually* sought by the plaintiff could have been provided by the IDEA,'" *D. D.*, 18 F.4th at 1062 n.2 (citing *Payne*, 653 F.3d at 874). While the *en banc* majority holds that *Payne* mandated "exhaustion any time a complaint allege[d] a FAPE injury," this was an oversimplification of the interplay between *Fry* and *Payne*. *Compare Id.* at 1056 (Judge Hurwitz) with *D.D.*, 18 F.4th at 1061-62 (citing *Payne*, 653 F.3d at 877).

Only after courts find that (a) money damages are sought; and (b) that are not artfully pled attempts at IDEA-relief (e.g. reimbursement for counseling, tutoring, or private school tuition) can exhaustion be excused.[10] These *D.D.* dissents provide a persuasive solution to the outstanding questions left by *Fry*.

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[10] One might even use *Fry's* guidance to evaluate damage claims for IDEA-roots by asking whether they could be sought from a "public facility that was *not* a school" or by "an *adult* at the school." See *Fry*, 137 S. Ct. at 756.

III. THE SIXTH CIRCUIT'S DECISION DISCOURAGES SETTLEMENT AND WOULD INCREASE THE LITIGATION OF IDEA CLAIMS

IDEA was drafted to enable parents and school staff to be able to collaboratively identify, plan for, and serve students with disabilities. Through legally mandated written communications, and the collaborative IEP meeting process, 20 U.S.C. §§ 1415(c)(1) & 1414(d), it is clear Congress hoped parties would avoid most disagreements over students' educational needs. But even after disagreements arose, Congress created a due process system that promoted resolution prior to litigation. 20 U.S.C. §§ 1415(f)(1)(B), & 1415(e). The real implications of the Sixth Circuit's decision below put that preference in jeopardy and will lead far more families to have to face "the slow and tedious workings of the judicial system. . ." and to access "the courthouse a less than ideal forum in which to resolve disputes over a child's education." *D.D.*, 18 F.4th. at 1070 (Berzon, J., dissenting) (*citing Clyde K. v. Puyallup Sch. Dist., No. 3*, 35 F.3d 1396, 1402 (9th Cir. 1994)).

A. THE SIXTH CIRCUIT'S DECISION WOULD FORCE IDEA LITIGATION TO PROCEED AS A PRECONDITION TO BRINGING DISCRIMINATION CLAIMS, CONTRARY TO THE STATUTORY TEXT

IDEA encourages resolution of FAPE-related disputes through settlement and other informal dispute resolution procedures. *See* 20 U.S.C. §§ 1415(e) & (f)(1)(B). Indeed, with the most recent amendments to IDEA, Congress recognized the value to all parties of settlement prior to litigation and so

refined and expanded provisions to promote alternative dispute resolution. Mark C. Weber, *Settling Individuals with Disabilities Education Act Cases: Making Up is Hard to Do*, 43 Loy. L.A. L. Rev. 641, 647 (2010). Indeed, "everyone's interests are better served when parents and school officials resolve their differences through cooperation and compromise rather than litigation." *D.D.*, 18 F.4th at 1071 (Berzon, J., dissenting).

Relying on 20 U.S.C. section 1415(*l*), the underlying decision penalizes Miguel and prevents him from raising ADA claims because rather than litigate unrelated IDEA claims through the administrative hearing procedures set out in 20 U.S.C. section 1415(f), he made use of the alternative dispute resolution mechanisms promoted by the Act.[11] The exhaustion necessary under section 1415(*l*) is limited to "the procedures under subsections (f) and (g)" and only "to the same extent as would be required had the action been brought under [IDEA]." Section 1415(f)(1)(A) requires only "an opportunity for an impartial due process hearing," not that the parties try each case to conclusion. This is made clear by section 1415(f)(1)(B) requiring a resolution session between the parties as an "opportunity to resolve the complaint" and other statutory text allowing and encouraging informal resolution of IDEA disputes.

The Sixth Circuit imposes obligations to exhaust not in the text of section 1415(*l*). Moreover, students with ADA claims would be required to exhaust to a greater extent than those who had only an IDEA claim which could be settled. Only students with ADA claims would

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[11] D.D. was similarly penalized for settling through an IDEA-sanctioned mediation. 18 F. 4th 1043 (*en banc*).

be *forced* to complete a due process hearing to achieve relief, instead of settling.

This ruling undermines Congress' policy favoring alternative dispute resolution by demanding plaintiffs with other civil rights claims litigate FAPE-based claims that could otherwise be settled even when parties jointly wish to avoid unnecessary litigation.

B. THE SIXTH CIRCUIT'S DECISION WILL FORCE IDEA LITIGATION EVEN WHEN EXHAUSTION WOULD BE FUTILE

Forcing Miguel to complete an administrative proceeding that could afford him none of the non-educational relief he seeks is inconsistent with Congressional policy as embodied in 20 U.S.C. § 1415(*l*) and would be futile. The Sixth Circuit's analysis in the underlying decision is also an outlier; other courts of appeal considering this question of futility have concluded that exhaustion is not required when no viable IDEA claims remain.

In *W.B. v. Matula*, the Third Circuit held that no exhaustion was required after an IDEA-settlement agreement resolved all "classification and placement" issues, and only non-IDEA claims for damages remained. 67 F.3d 484, 496 (3d Cir. 1995). In the context of explaining the futility of exhaustion in such a scenario, the court even expressed "reservations about whether the administrative tribunal would even be competent to hear [the] IDEA claim since any rights that can be had ha[d]already been settled." *Id*

In *A.F. v. Española Public Schools,* the Tenth Circuit acknowledged that exhaustion would be unnecessary if further administrative proceedings were futile. 801 F.3d 1245, 1248-49 (10th Cir. 2015),

(citing *Muskrat v. Deer Creek Pub. Schs*, 715 F.3d 775, 786 (10th Cir. 2013)).[12] The family in *Muskrat* worked through administrative channels to obtain the IDEA relief they sought – cessation of use of seclusion in school. At that point, the Tenth Circuit concluded that "given the steps the Muskrats took and the relief they obtained, it would have been futile to then force them to request a formal due process hearing – which in any event cannot award damages – simply to preserve their damages claim." *Id.:* see also *D.D.*, 18 F. 4th at 1070-71 (Berzon J., dissenting) (suggesting that settlement after IDEA-prescribed mediation amounts to exhaustion).

The First Circuit reached a similar conclusion in *Doucette, supra*. There, the family "engaged in the administrative process until they received the relief that they sought (and the only relief available to them through the IDEA's administrative process) – an alternative placement for B.D. and compensatory educational services." *Doucette*, 936 F.3d at 30. The family then sought damages for the harm caused by the delays in securing administrative relief, bringing their damages claim only after they had no further remedies available under IDEA. *Id.*

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[12] *A.F.* held that a mediated settlement did not exhaust administrative remedies because the dispositive question vis-à-vis the 20 U.S.C. § 1415(*l*)'s exhaustion requirement is not whether the plaintiff sought damages or another particular remedy, but whether the plaintiff's alleged injuries *could be redressed to any degree* by the IDEA's administrative procedures and remedies. See *A.F.*, 801 F.3d at 1247. However, *A.F.* "never attempted a futility argument . . . before the district court issued its final judgment," and the court acknowledged that the result might have been different had the futility argument been presented earlier. *Id.* at 1249.

The First Circuit began by noting that the "legislative history . . . shows a special concern with futility," as the principal author of IDEA's predecessor statute indicated that exhaustion should not be required where "'exhaustion would be futile either as a legal or practical matter.'" *Id.* at 31 (quoting *Weber v. Cranston Sch. Comm.*, 212 F.3d 41, 52 n. 12 (1st Cir. 2000) (quoting 121 Cong. Rec. 37416 (1975)). Further, the family sought, under 42 U.S.C. § 1983, money damages for medical expenses and the physical, emotional, and psychological harm B.D. experienced because of the school's pervasive disregard for her safety and well-being. The court noted such damages are not provided for under IDEA. *Id.* at 32.

Finally, the First Circuit explained that adjudicating the FAPE-based claims would be of limited utility in resolving the damages claims. "The damages aspect of the claim concerns . . . medical causation—not educational issues that are the administrative body's area of expertise." *Id.* Since federal courts and juries routinely consider medical causation questions through the testimony of medical experts, without the benefit of an administrative record, "no educational expertise [wa]s needed for a court to adjudicate the damages aspect of the § 1983 claim." *Id.* at 33. In light of all this, the court ruled that "requiring the Doucettes to take further administrative action would be an 'empty formality.'" *Id.* (citation omitted). *Amici* urge this Court to recognize that the unavailability of relief under IDEA constitutes futility.

C. THE SIXTH CIRCUIT'S DECISION FORCES IDEA LITIGATION EVEN WHEN THE REMEDY SOUGHT IS UNAVAILABLE UNDER IDEA AND WOULD DELAY EDUCATIONALLY RELATED RELIEF

The Sixth Circuit's decision also disrupts Congress' sound policy judgments in eliminating exhaustion for claims seeking relief unavailable under IDEA. Congress understood a blanket exhaustion requirement would force parties to engage in a burdensome and expensive administrative process over their equitable, education-based remedy as a prerequisite to pursuing viable compensatory damages claims. That surely played a role in Congress' decision to limit exhaustion to cases where the parties sought "relief that is also available under" the IDEA.[13] Congress, in so enacting Section 1415(*l*), made the policy determination that the costs of requiring administrative exhaustion of non-IDEA claims when the relief ultimately sought was not available under IDEA outweighed any potential benefits, and courts must defer to Congress on policy decisions like this. *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 52 (2008) (federal courts may not substitute their policy views for those of Congress).

In cases where an IDEA claim is settled and appropriate educationally based relief has been agreed upon by the parties, there is no policy reason to require development of an IDEA record dealing with FAPE claims. This record would be of limited (or no) value in an action addressing non-FAPE allegations. Further,

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[13] See Hon. Pat Williams Remarks, H.R. 1523, March 7, 1985, Vol. 131, Part 4, p. 5064.

IDEA Hearing Officers, lacking jurisdiction over non-IDEA claims in many states, would be unable to hear evidence regarding non-IDEA claims. Here, Miguel achieved all sought educationally related relief via an IDEA settlement agreement. Through his non-IDEA claims he sought *money damages*, but the decision below would require him to waste time and money to achieve the same IDEA relief as a precondition to pursuing money damages. This delays Miguel's educational relief, and also disadvantages school districts who will have to fund the litigation of claims even when they would otherwise prefer to preserve school resources and fund services. The Sixth Circuit's decision also forces families to delay the receipt of the appropriate educational remedies under IDEA. Completing an administrative hearing and receiving a FAPE decision would delay the implementation of even the same educational remedy by many months, oftentimes at a student's critical learning juncture. This is at odds with Congress' understanding that students require prompt resolution of FAPE disagreements to ensure the continuity of educational opportunity.

D. THE SIXTH CIRCUIT'S DECISION MAY RESULT IN SANCTIONS UNDER RULE 11 AND IDEA

The Sixth Circuit decision, if upheld, essentially would require IDEA plaintiffs seeking Section 504 or ADA damages to either (a) forgo any settlement efforts at the IDEA administrative hearing level or (b) maintain an IDEA administrative even after settling the IDEA claims. In the former situation, IDEA's preference for resolving special education disputes informally is thwarted. In the latter, attorneys and *pro se* litigants may be subject to sanctions under Rule 11

of the Federal Rules of Civil Procedure or under IDEA at 20 U.S.C. § 1415(i)(3)(B)(i).

As *Amici Curiae* in *Fry v. Napoleon Cmty. Schs.,* National School Boards Association, Michigan Association of School Boards, The School Superintendents Association (AASA), Association of School Business Officials International, National Association of State Directors of Special Education argued in their brief,[14] it is not in the interest of children with disabilities to bypass IDEA's collaborative IEP development process. *Fry, Amici Curiae Br.* at 13. *Amici* argued that forgoing the collaborative process deprives students "of the dedication and expertise that school personnel bring to evaluating students' educational needs, designing comprehensive, integrated individualized education programs, problem-solving and correcting errors." *Id.* at 13-14. In contrast, the decision below *demands* that parents forego the collaborative IEP process if they want to pursue claims under other federal statutes. This will also place parents in an untenable position that risks their being sanctioned.

Under Rule 11 of the Federal Rules of Civil Procedure, a court may impose sanctions either by motion or by its own initiative, when claims are "being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1) (emphasis added). Courts have sanctioned attorneys under Rule 11 for litigating cases that have been settled. *See Morris v. City of Det. Water & Sewage Dep't*, 20 F. App'x 466 (6th Cir. 2001) (Rule 11 sanctions imposed

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[14] Brief of *Amici Curiae* available at https://cdn-files.nsba.org/s3fs-public/reports/Fry%20v.%20NISD%20Amicus%20Brief.pdf?qFy1jLI82JJBXWWeMBCDhaW9dLD46Akw

for maintaining federal action following settlement of case); *Walker v. Health Int'l Corp.*, 845 F.3d 1148, 1154 (Fed. Cir. 2017) (District court correct that there was no legitimate reason to continue litigation once parties fully settled all claims).

Sanctions under Rule 11 have also been ordered against attorneys in IDEA actions. *Moubry v. Indep. Sch. Dist. No. 696*, No. 98-2246, 32 IDELR 90 (D. Minn., March 28, 2000); *Giangrasso, v. Kittatinny Regional High Sch. Bd. of Educ.*, 865 F. Supp. 1133 (D. N.J. 1994) (Rule 11 sanctions were appropriate for attorney's filing of frivolous claims based on improper motive). These Rule 11 sanctions have also been ordered against *pro se* litigants. See *W.V. v. Encinitas Union Sch. Dist.*, 289 F.R.D. 308 (S.D. Cal., Sept. 25, 2012).

Beyond Rule 11, the IDEA has even codified the sanctions standard in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412 (1978), as evidenced by IDEA sections regarding the award of attorneys' fees:

> (II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent *who continued to litigate after the litigation clearly became frivolous*, unreasonable, or without foundation; or
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> (III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper

> purpose, such as to harass, *to cause unnecessary delay, or to needlessly increase the cost of litigation*.

20 U.S.C. § 1415(i)(3)(B)(i)(I) and (II) (emphasis added).

Sanctions under this IDEA provision have been ordered against attorneys representing students. *See Capital City Charter Sch. v. Gambale*, 27 F.Supp.3d 121, 135–39 (D.D.C. Mar. 20, 2014) (parent's claims were frivolous and thus sanctionable); *Bridges Public Charter School v. Barrie,* 796 F.Supp.2d 39, 47–48 (D.D.C. 2011) (complaint was frivolous as was decision to continue litigation).

These cases show that IDEA plaintiffs that must continue litigation of a settled case in order to exhaust IDEA administrative remedies so that they can seek Section 504 or ADA damages may be subject to Rule 11 and IDEA sanctions.

CONCLUSION

For all the reasons set forth above, the decision of the Court of Appeals for the Sixth Circuit undermines both the IDEA and the ADA, to the significant detriment of students with disabilities. It further places IDEA plaintiffs in an unnecessary and untenable position of having to litigate otherwise resolvable claims, potentially to their own financial harm. For these reasons, and to preserve IDEA's preference for informal dispute resolution, the Sixth Circuit decision must be reversed.

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Respectfully submitted,

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