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

## BRIEF FOR *AMICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC. AND NATIONAL FEDERATION FOR THE BLIND IN SUPPORT OF PETITIONER


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## STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

**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).

COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has previously filed as *amicus curiae* in this Court in *Endrew F. v. Douglas County*

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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).

*School District RE-1*, 137 S. Ct. 988 (2017); *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Board of Education of New York v. Tom F.*, 552 U.S. 1 (2007); *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007), and in numerous cases in the United States Courts of Appeal.

**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.

*Amici* requested consent to file this Motion and accompanying *Amici Curiae* brief from counsel for both parties. Both parties provided written consent for the filing of this brief.

## SUMMARY OF ARGUMENT

After parents of children with disabilities shared with Congress the amount of exclusion, discrimination, and real harms suffered by their

children with disabilities, 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 acknowledged and established students with disabilities have procedural and substantive rights in public schools. As part of the IDEA, Congress created a comprehensive procedural system to resolve disagreements about student programming needs through individualized education program meetings, mediations, and due process hearings. *Id.* §§ 1414-1415

But Congress also understood that students suffered harm beyond not receiving appropriate education, and so Congress passed 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 ensure students with disabilities who want to assert claims under Section 1983, Section 504, and the ADA could do so. In light of this, the underlying decision ignores the plain meaning and extensive history of the HCPA, which was designed to ensure that students entering the schoolhouse doors do not lose their ability to bring non-IDEA civil rights claims.

In addition to ignoring the plain meaning and history of the HCPA, the decision below significantly undermines IDEA's policies favoring protection of children's rights as well as alternative dispute resolution procedures as a promoted resolution method for IDEA claims. If allowed to stand, the decision will force parents who can achieve all relief available under IDEA 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 the development of an administrative record would serve no purpose whatsoever for adjudication of the non-IDEA claims and, more significantly, even though implementation of an appropriate education (to which the respective parties are already in agreement as to what is appropriate) would be delayed.

## ARGUMENT

### I. HCPA IS NOT INTENDED TO ABRIDGE STUDENTS' NON-IDEA RIGHTS, AND SO THE UNDERLYING DECISION IS INCONSISTENT WITH THE STATUTE

IDEA's statutory scheme as a whole precludes the interpretation of the HCPA adopted in 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 (quoting *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).

Appellate courts have long interpreted the "broad purpose" thusly: "[T]he broader context of the IDEA shows that it has 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, the IDEA offers federal funds to States in exchange for a commitment to furnish a FAPE "to children with certain disabilities, 20 U.S.C. § 1412(a)(1)(A) and establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE." *Fry*, 137 S. Ct. at 746. 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).

The *Fry* Court summarized the HCPA as follows:

> 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.

*Fry*, 137 S. Ct. at 750.

Although Congress had been working to protect the rights of students with disabilities before, the HCPA was a legislative reaction to what Congress perceived to be a specific problem. Congress was responding to and correcting the courts' misguided understanding as exemplified in *Smith v. Robinson*, 468 U.S. 992 (1984), that IDEA provided "the exclusive avenue" for assertion of educational rights claims for students with disabilities.

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*). In *Smith*, the parent-plaintiffs initially exhausted their administrative remedies under IDEA. They subsequently filed a 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 the IDEA claims. *Id.* at 1000. The district court affirmed the IDEA victory but did not decide the other non-IDEA claims. *Smith v. Robinson* instead held that the *only* remedies available to an IDEA-eligible child *asserting 504 claims that were substantively identical to the IDEA claims* were those available under IDEA. *Id*. at 1019; see also *Fry*, 137 S. Ct. at 750 ("But instead of bringing suit under the IDEA alone, [the plaintiffs] appended 'virtually identical' claims (again alleging the denial of a 'free appropriate public

education') under §504 . . . and the Fourteenth Amendment's Equal Protection Clause.") (quoting *Smith*, 468 U.S. at 994).

Congress responded quickly to overturn *Smith* and reaffirm the continued viability of non-IDEA claims with the HCPA. The first bills to overturn *Smith* were introduced in both chambers within 19 days. 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 Street and Congressional Intent*, 60 Temple L.Q. 599, 612 n.91 (1987) ).[2]

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]

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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

As such, the history makes clear that the HCPA was narrowly tailored to require "that certain non-EHA claims, such as the ones at issue in *Smith*, were so duplicative of EHA claims that they had to be exhausted through the EHA process in the same manner as EHA claims." *Weicker Amicus Br.* at 10. The HCPA's purpose was to require exhaustion only when a child's non-IDEA claims were substantively identical to IDEA claims, and the remedy sought was educational in nature. *Id.* at 7-10. So in understanding actions under these statutes and actions brought under them, courts must "attend to the diverse means and ends" of IDEA and the ADA. *Id.* at 755 "Important as the IDEA is for children with disabilities, it is not the only statute protecting their interests." *Id.*

IDEA protects children and concerns only their schooling, *id.* (citing 20 U.S.C. § 1412(a)(1)(A)) and creates a comprehensive standard and 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 756. IDEA

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appropriately consider the disputes that come before them. They are able to award educational relief as they deem appropriate, but specifically "lack the authority" to grant monetary damages of the type typically sought in non-IDEA actions. *See Witte by Witte v. Clark Cnty. Sch. Dist.*, 197 F.3d 1271 (9th Cir. 1999); *Charlie F. by Neil F. v. Bd. of Educ.*, 98 F.3d 989 (7th Cir. 1996); *W.B. v. Matula*, 67 F.3d 484 (3d Cir. 1995), *abrogated on other grounds by A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791 (3d Cir. 2007).

guarantees individually tailored educational services, while the ADA promises "non-discriminatory access to public institutions," *Id.*, and Title II of the ADA "forbids any 'public entity' from discriminating on the basis of disability." *Id.*

Another key distinction between these two statutory schemes is that the ADA includes a mandate to eliminate discrimination against individuals with disabilities and requires the United States Department of Justice to promulgate regulations to that end. 42 U.S.C. § 12134. To achieve elimination of discrimination, the ADA includes the ability to pursue damages. Damage claims serve two purposes: damages make victims of discrimination whole, and damages also provide an incentive to eliminate unlawful discrimination.

The legislative history of the HCPA, and the broader purposes of it, IDEA, and other statutes used by students to protect their rights in the public school context make clear that Congress never intended 20 U.S.C. § 1415(*l*) to be used as it has been in the underlying case: to prevent Miguel from being able to pursue additional civil rights claims and money damages. Because the Sixth Circuit's reading conflicts with the statutory language and purpose, this Court should clarify that exhaustion is not required in cases like Miguel's.

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

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

139 S. Ct. 532 (2019)); *see also Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (courts must enforce plain statutory language according to its terms).

In the context of 20 U.S.C. §1415(*l*), Congress was familiar with IDEA as well as the ADA when it codified HCPA into the statutory text of 20 U.S.C. 1400 et seq. in 1997 amendments.[4] It chose not to require exhaustion of administrative remedies *for every* ADA claim involving public elementary and secondary education. It 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 provided for IDEA claims just as it has provided for all Title I ADA claims to be filed first with EEO agencies. It chose not to do so. Instead, Congress has amended IDEA[5] to provide that ADA claims could be brought separately and without IDEA exhaustion except for when they seek the same relief available under IDEA.[6] *See* Individuals with Disabilities Education

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[4] The ADA was passed in 1990.

[5] 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 Graham v. Friedlander*, 223 A.3d 796 (Conn. 2020) (IDEA did not preclude state law negligence claims for lack of exhaustion); *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 Schs.*, 764 F.3d 638, 644 (6th Cir. 2014) (student did not have to exhaust claims of physical, verbal and sexual abuse under Section 1983).

[6] It should also be noted that Congress has been faced with numerous opportunities to model the IDEA in a way that

Act Amendments Act of 1997, 105 Pub. L. No 17, 111 Stat. 37.

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*). By including the "to the same extent" limitation, Congress acknowledged that exceptions to exhaustion previously recognized for IDEA claims applied to non-IDEA claims as well. IDEA does 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 the law)." *Fry*, 137 S. Ct. at 755; *see also Doucette v. Georgetown Pub. Schs.*, 936 F.3d 16, 25 (1st Cir. 2019) (refusal to allow use of service dog "involves the denial of non-discriminatory 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) (denial of real time transcription actionable under ADA even if not a

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would require similar exhaustion, but it has not. For example, under 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 in federal court directly, without any administrative exhaustion. *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).

FAPE violation); *E.F. v. Napoleon Cmty Schs.*, 371 F. Supp. 3d 387, 407 (E.D. Mich. 2019) (no exhaustion required because student sought compensatory damages available only under ADA/Section 504 for refusal to allow student to bring service animal to school); *A.F. v. Portland Pub. Sch. Dist.*, No. 3:19-cv-01827-BR, 2020 U.S. Dist. LEXIS 61380, at *10-11 (D. Or. Apr. 7, 2020) (student seeking access under ADA/Section 504 to medically necessary services to treat autism as a reasonable accommodation not subject to IDEA's exhaustion requirement); *A.K.B. v. Indep. Sch. Dist. 194*, No. 19-cv-2421 (SRN/KMM), 2020 U.S. Dist. LEXIS 52688, at *14-15 (D. Minn. Mar. 26, 2020) (student seeking damages for failure to accommodate asthma resulting in lifelong brain injury not required to exhaust administrative remedies); *Ga. Advocacy Office v. Georgia*, 447 F. Supp. 3d 1311, 1326 (N.D. Ga. 2020) (exhaustion not required because stigmatization and isolation in violation of ADA was gravamen of complaint). For that reason, *Fry* recognized that Section 1415(*l*) differs fundamentally from the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (PLRA), the statute on which the decision below relied heavily in interpreting Section 1415(*l*) to deny Miguel his day in court. *Id.*

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*, 137 S. Ct. at 755. In this case, through the underlying claim Miguel sought *compensatory damages*. IDEA only authorizes equitable educationally related relief and does not provide for an award of compensatory damages. *Board of Education v. L.M.,* 478 F.3d 307, 316 (6th Cir. 2007) (award of compensatory education is an equitable

remedy that a court can grant as it finds appropriate. 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 through IDEA administrative process is future special education services and reimbursements for education-related expenditures). Because the IDEA does not authorize the type of compensatory damages remedy sought by Miguel, his non-IDEA claims are not subject to IDEA exhaustion.

## III. THE DECISION BELOW UNDERMINES THE STATUTORY PURPOSE OF SECTION 1415(*l*) AND WOULD INCREASE LITIGATION OF AND DISCOURAGE SETTLEMENT OF IDEA CLAIMS

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

The decision below undermines the policy favoring alternative dispute resolution by demanding that a plaintiff with other civil rights claims litigate FAPE-based claims that could otherwise be settled regardless of the parties' shared willingness to avoid unnecessary litigation vis-à-vis the educationally-related IDEA FAPE claims. The decision also disrupts Congress' sound policy judgments in

eliminating the exhaustion requirement 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 its decision to limit exhaustion to cases where the parties sought "relief that is also available under" the IDEA.

In cases where an IDEA claim is settled and appropriate educationally-based relief has been agreed upon to the satisfaction of the parties, there is no policy reason to require development of an IDEA record dealing with the IDEA FAPE claims, which would be of limited (or no) value in a non-IDEA action addressing non-FAPE allegations. Further, IDEA Hearing Officers, lacking jurisdiction over non-IDEA claims in many jurisdictions, would be unable to hear evidence regarding non-IDEA claims based on distinct statutory obligations. Congress, in enacting Section 1415(*l*), made the policy determination that the costs of requiring administrative exhaustion of non-IDEA claims when the relief ultimately sought is not available under IDEA outweighed any potential benefits. *See 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).

Other courts of appeal considering this question 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 at 496 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 Pub. Schs.*, 801 F.3d 1245 (10th Cir. 2015), the Tenth Circuit also acknowledged the holding in a prior case, that exhaustion would be unnecessary if further administrative proceedings were futile. *Id.* at 1248-49. (citing *Muskrat v. Deer Creek Pub. Schs*, 715 F.3d 775, 786 (10th Cir. 2013)).[7] 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.; cf. D.D. v. Los Angeles Unified Sch. Dist.*, 18 F. 4th 1043, 1058 (9th

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[7] *A.F.* held that settlement at mediation did not exhaust administrative remedies because the dispositive question when assessing the applicability of 20 U.S.C. § 1415(*l*)'s exhaustion requirement isn't whether the plaintiff seeks damages or some other particular remedy, but whether the plaintiff has alleged injuries that could be redressed to any degree by the Individuals with Disabilities Education Act's administrative procedures and remedies. *A.F.*, 801 F.3d at 1248. However, the plaintiff in *A.F.* "never attempted a futility argument before the district court issued its final judgment." *Id.* at 1249. The court acknowledged that the result in the case might have been different if the plaintiff had presented the futility argument earlier. *Id.*

Cir. 2021) (*en banc*) (because issue not preserved, leaving for another day whether a settlement agreement that gave the student services allegedly denied or in which the school district concedes a denial of FAPE can render exhaustion futile).

The First Circuit reached a similar conclusion in *Doucette, supra*. In that case 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.*

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 that B.D. experienced because of the District'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 to 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, assisted by 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).

Forcing Miguel to commence an administrative proceeding that could afford him none of the non-educational relief he seeks through a body that was not designed to address the relevant issues in his non-IDEA claims is inconsistent with Congressional policy as embodied in 20 U.S.C. § 1415(*l*). More troubling, it would delay Miguel's (and other similarly situated students') receipt of the appropriate educational remedies under IDEA since a trial and the drafting of an opinion would put off the implementation of any remedy by many months. And it also completely undermines IDEA's policy favoring alternative dispute resolution of special education claims to secure prompt relief and preserve to the maximum extent possible the working relationship between parents and school districts who will have to collaborate on IDEA planning beyond the underlying disagreement.

## 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 children with disabilities. For this

reason, *Amici* respectfully request that this Court grant certiorari and reverse the decision below.

Dated: January 12, 2022

Respectfully submitted,

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