

No. 21-887

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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

**SUPPLEMENTAL BRIEF FOR PETITIONER**

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## SUPPLEMENTAL BRIEF

Sturgis’s supplemental brief mostly rehashes the arguments made in its brief in opposition. Petitioner Miguel Perez has already addressed those arguments in his reply and will not respond point-for-point once again. This submission is meant to correct the record on three issues, each bearing on Sturgis’s argument that Miguel will ultimately lose this case on the merits if this Court grants certiorari and reverses the Sixth Circuit’s pleading-stage exhaustion ruling.

1. As Miguel and the Solicitor General have explained, Miguel’s complaint states a claim—even after *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (2022)—because Sturgis’s *twelve years* of severe neglect caused compensable pecuniary harm by dramatically limiting Miguel’s vocational prospects and earning capacity, and by forcing Miguel to forego years of income during the high school years he had to redo. Pet. Reply 1, 9-12; OSG Br. 19. At minimum, then, Miguel may seek compensatory damages for lost income.

Sturgis counters (at 3) that Miguel affirmatively “*disclaimed*” all potential bases for compensatory damages, save for emotional distress. That is incorrect. The portion of the petition on which Sturgis relies merely reiterated the question left open in *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017). Here is the relevant passage, quoted in full:

The Court should also grant certiorari to decide the question it planned to address in *Fry*: whether “exhaustion [is] required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests—here, money

damages for emotional distress—is not one that an IDEA hearing officer may award.”

Pet. 30 (quoting 137 S. Ct. at 752 n.4). That direct quotation from *Fry* did not say that Miguel seeks damages for emotional distress and nothing else. Rather, it referenced the relief that “she”—*i.e.*, the female petitioner in *Fry*—was seeking in that case. And the petition elsewhere explained that Miguel seeks “compensatory damages” generally, not emotional-distress damages exclusively. Pet. 4; *see also, e.g., id.* at 2-3, 11, 32. Sturgis is plainly wrong to characterize the petition as disclaiming any form of compensatory relief other than emotional-distress damages.

Sturgis next seizes (at 3) on two out-of-context snippets from Miguel’s reply brief before the Sixth Circuit. The first remarked that Miguel “seeks only damages for a non-educational injury, emotional distress suffered due to the denial of effective communication,” as distinct from “relief available under [the] IDEA.” Pet’r C.A. Reply 8. Viewed in context, however, this assertion merely underscored a difference between Miguel’s ADA claim and his IDEA claim, as part of an argument that exhaustion was unnecessary under *Fry*.<sup>\*</sup> *See id.* at 6-9. The second, which noted that “[t]he relief that Miguel seeks” was “recovery of emotional distress damages,” similarly emphasized differences between his claims—this time to show that Miguel could not obtain complete relief in IDEA administrative proceedings. *Id.* at 25. Neither statement purported to waive entitlement to

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<sup>\*</sup> The Sixth Circuit rejected this argument. *See* Pet. App. 5a-7a. Miguel does not challenge that conclusion in this Court.

any relief demanded in the complaint or other “relief to which [Miguel] is entitled” under the law. Fed. R. Civ. P. 54(c); *see also* OSG Br. 19. And although it’s certainly true that Miguel emphasized emotional-distress damages before *Cummings*, he has valid claims for lost income. *See* Pet. Reply 9-12 (discussing expert reports).

2. Sturgis also says (at 1) that it is “[t]oo late” for Miguel to amend his complaint to explicitly seek compensatory damages for pecuniary harms, if necessary. That, too, is wrong. As already explained, Sturgis never challenged the complaint based on the rationale that prevailed in *Cummings*. Pet. Reply 11-12 & n.4. And if Sturgis eventually moves to dismiss based on *Cummings* after this case is remanded, Miguel would have the right to amend given that intervening change in the law. *Id.* at 12 n.4 (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 482 (1990), and *Doe I v. Nestle USA, Inc.*, 766 F.3d 1013, 1028 (9th Cir. 2014)); *see also* *Getman v. Oregon Health & Sci. Univ.*, No. 3:21-cv-01408, 2022 WL 1565693, at \*2 (D. Or. May 18, 2022) (granting motion to amend complaint in light of *Cummings*). Sturgis has no response.

At any rate, as the Solicitor General observes, the complaint in its current form *already* seeks compensatory damages beyond compensation for emotional distress. OSG Br. 19. Miguel previously made the same point. Pet. Reply 11. Sturgis again offers no response.

3. Without disputing that its failure to comply with the ADA devastated Miguel’s ability to earn a living, Sturgis suggests (at 4) that damages for this and other pecuniary harms may be unavailable under the ADA. But Sturgis’s sole support comes from

decisions addressing freestanding negligence claims for “educational malpractice” under state law. *See Ambrose v. New England Ass’n of Schs. & Colls., Inc.*, 252 F.3d 488, 499 (1st Cir. 2001); *Ross v. Creighton Univ.*, 957 F.2d 410, 412 (7th Cir. 1992). Those common-law tort cases say nothing about the ADA, which after *Cummings* continues to authorize claims for traditional pecuniary injuries. *See* Pet. Reply 9; *Montgomery v. District of Columbia*, No. 18-cv-1928, 2022 WL 1618741, at \*25 (D.D.C. May 23, 2022); *Gillette v. Oregon*, No. 3:20-cv-00513, 2022 WL 2819057, at \*7 n.5 (D. Or. July 19, 2022). Indeed, despite foreclosing emotional-distress damages, *Cummings* itself noted that other forms of “compensatory damages” remain available. 142 S. Ct. at 1571.

More fundamentally, though, this contention is yet another way of saying that Miguel’s ADA claim should be rejected on the merits. *See* OSG Br. 18-19. Such arguments belong in a future motion before the district court. They are beside the point here in this Court: Sturgis does not assert that the possibility of dismissal on other grounds could somehow complicate or impede review of the questions presented, which deal exclusively with the IDEA’s exhaustion provision.

This Court should reject Sturgis’s convoluted efforts to manufacture a vehicle problem. As Miguel and the Solicitor General have both explained, this case raises important questions of federal disability law on which the circuits are divided—and as to which the Sixth Circuit erred. The petition should be granted.

Respectfully submitted,

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