No. 21-887

In the Supreme Court of the United States

MIGUEL LUNA PEREZ, PETITIONER

v.

STURGIS PUBLIC SCHOOLS, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

Section 1415(*l*) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq*., provides that nothing in the IDEA shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *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 [the IDEA], the procedures under [20 U.S.C. 1415](f) and (g)"—which specify an administrative process for resolving IDEA claims—"shall be exhausted to the same extent as would be required had the action been brought under [the IDEA]." 20 U.S.C. 1415(*l*). The questions presented are:

1. Whether Section 1415(*l*) requires individuals who have entered into a settlement resolving their IDEA claims to further exhaust the IDEA's administrative process before filing an ADA action.

2. Whether Section 1415(*l*)'s requirement to exhaust the IDEA's administrative remedies before filing a suit "seeking relief that is also available under [the IDEA]" applies to an ADA action seeking only money damages that are not available under the IDEA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes, regulations, and rule:

Statutes, regulations, and rule—Continued: Page

Statutes, regulations, and rule—Continued: Page

Miscellaneous:

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

STATEMENT

1. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, both protect the rights of "children with disabilities." *Fry* v. *Napoleon Cmty. Sch.*, 137 S. Ct. 743, 749 (2017). This case concerns the extent to which the IDEA requires a plaintiff to exhaust the IDEA's administrative procedures before bringing an ADA action.

a. In 1970, Congress enacted the statute now known as the IDEA. See Education of the Handicapped Act,

Pub. L. No. 91-230, Tit. VI, 84 Stat. 175.[1] In 1975, Congress amended the statute to issue grants to States "to provide special education and related services to children with disabilities," 20 U.S.C. 1411(a)(1), and to require, as a condition of receiving those funds, that each State and its school districts make a "free appropriate public education" (FAPE) available to every eligible child with a disability in the State. 20 U.S.C. 1412(a)(1)(A); see 20 U.S.C. 1401(9) (defining FAPE); Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, §§ 3(a), 4(a)(4), 5, 89 Stat. 775-794.

A school district must provide each eligible child with an "individualized education program" (IEP), 20 U.S.C. 1412(a)(4), 1414(d), which "serves as the 'primary vehicle' for providing [the] child with the promised FAPE." *Fry*, 137 S. Ct. at 749 (citation omitted). A proper IEP must establish a program of special education and related services designed to meet "all of the child's 'educational needs'" resulting from his disability, *ibid.* (quoting 20 U.S.C. 1414(d)(1)(A)(i)(II)(bb)), and must be "reasonably calculated to enable [the] child to make progress appropriate in light of the child's circumstances," *Endrew F.* v. *Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 999 (2017).

The IDEA establishes procedures for resolving disputes that may arise between parents and school districts. As a general matter, parents who are not satisfied with a proposed IEP, or with other matters relating to the "identification, evaluation, or educational placement of the child, or the provision of a [FAPE]," must first notify the district of their complaint. 20 U.S.C.

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[1] Congress renamed the legislation as the IDEA in 1990. See *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 239 & n.6 (2009). For ease of reference, this brief refers to the pre-1990 statute as the IDEA.

1415(b)(6)(A); see 20 U.S.C. 1415(b)(7). The IDEA then encourages settlement through mediation and a separate resolution session. 20 U.S.C. 1415(e) and (f)(1)(B). If those efforts are unsuccessful, parents may obtain "an impartial due process hearing" before a state or local educational agency. 20 U.S.C. 1415(f)(1)(A). The hearing officer's decision must generally determine "whether the child received a [FAPE]." 20 U.S.C. 1415(f)(3)(E)(i). If a local agency conducted the hearing, a party may appeal to the relevant state agency. 20 U.S.C. 1415(g).

A party "aggrieved by the [resulting administrative] findings and decision" may "bring a civil action with respect to the complaint presented [under Section 1415]." 20 U.S.C. 1415(i)(2)(A). Although such "review is normally not available * * * until all administrative proceedings are completed," this Court has determined that parents and schools "may bypass the administrative process" and pursue relief in court "where exhaustion would be futile or inadequate." *Honig* v. *Doe*, 484 U.S. 305, 326-327 (1988) (interpreting 20 U.S.C. 1415(e)(2) (1982), now 20 U.S.C. 1415(i)(2)).

The court hearing an IDEA action must receive the records of any prior administrative proceedings and must hear additional evidence at the request of a party. 20 U.S.C. 1415(i)(2)(C). The court then may "grant such relief as [it] determines is appropriate," 20 U.S.C. 1415(i)(2)(C)(iii), and award reasonable attorneys' fees to a prevailing-party parent, 20 U.S.C. 1415(i)(3)(B)(i)(I). If the parents previously rejected a settlement offer and then failed to obtain "relief * * * more favorable * * * than the offer of settlement," however, the IDEA prohibits an award of attorneys' fees and costs "for services

performed subsequent to the time of [the] written offer of settlement." 20 U.S.C. 1415(i)(3)(D)(i).

This Court and the courts of appeals have generally held that the "'appropriate' relief" authorized by the IDEA is equitable in nature and encompasses both (1) future special education and related services that ensure a FAPE or redress past denials of a FAPE, and (2) financial compensation to "reimburse parents" for past educational expenditures that should have been borne by the State. *School Comm. of the Town of Burlington* v. *Department of Educ.*, 471 U.S. 359, 369-370 (1985) (*Burlington*); see, *e.g.*, *Doe* v. *East Lyme Bd. of Educ.*, 790 F.3d 440, 454 (2d Cir. 2015), cert. denied, 578 U.S. 976 (2016). This Court has distinguished that relief from compensatory "damages," *Burlington*, 471 U.S. at 370-371, and has concluded that the IDEA does "not allow for damages," *Fitzgerald* v. *Barnstable Sch. Comm.*, 555 U.S. 246, 254 n.1 (2009).

b. Title II of the ADA, 42 U.S.C. 12131 *et seq.*, prohibits discrimination against "both adults and children with disabilities, in both public schools and other settings," *Fry*, 137 S. Ct. at 749, by prohibiting any "'public entity'"—including any instrumentality of a State or local government, 42 U.S.C. 12131(1)—from discriminating against any qualified "individual with a disability" in its provision of "services, programs, or activities," 42 U.S.C. 12132. Any person alleging a violation of Section 12132 may bring a civil action "for injunctive relief or money damages." *Fry*, 137 S. Ct. at 750; see 42 U.S.C. 12133 (incorporating 29 U.S.C. 794a(a)).

c. In *Smith* v. *Robinson*, 468 U.S. 992 (1984), this Court held that the IDEA "was 'the exclusive avenue' through which a child with a disability (or his parents) could challenge the adequacy of his education." *Fry*,

137 S. Ct. at 750 (quoting *Smith*, 468 U.S. at 1009). In 1986, Congress responded by enacting an IDEA provision "[n]ow codified at 20 U.S.C. § 1415(*l*)" that both "overturned *Smith*'s preclusion of non-IDEA claims" and set forth "a carefully defined exhaustion requirement." *Ibid.* The questions presented concern the proper interpretation of Section 1415(*l*), which provides that:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], * * * 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 [the IDEA], the procedures under [Section 1415](f) and (g) shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].

20 U.S.C. 1415(*l*). In *Fry*, this Court held that a non-IDEA claim "seek[s] relief that is also available under [the IDEA]" (*ibid.*) only if the "gravamen" of the claim "seeks redress for a school's failure to provide a FAPE." 137 S. Ct. at 755. But the Court left "for another day a further question about the meaning of [Section] 1415(*l*)": Whether exhaustion is "required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests * * * is not one that an IDEA hearing officer may award." *Id.* at 752 n.4.

2. a. Petitioner is deaf and required a qualified sign-language interpreter to communicate in school. First Am. Compl. (Compl.) ¶¶ 11-12.[2] In 2004, at the age of

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[2] This brief relies on the facts alleged in petitioner's amended complaint because the case was dismissed on the pleadings.

nine, petitioner began attending Sturgis Public Schools (Sturgis), a respondent here. ¶ 15. Petitioner later attended Sturgis Public High School for four years, anticipated graduating with a diploma in June 2016, and planned to attend college. ¶¶ 52, 55.

Petitioner contends that Sturgis and respondent the Sturgis Public Schools Board of Education (Board) discriminated against him based on his disability in violation of the ADA. Compl. ¶ 15. The ADA requires a public entity to "furnish appropriate auxiliary aids and services"—including qualified interpreters for the hearing impaired—"where necessary to afford individuals with disabilities * * * an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity." 28 C.F.R. 35.160(b)(1); see 28 C.F.R. 35.104. Sturgis, however, never provided petitioner with a qualified sign-language interpreter. Compl. ¶ 21.

Sturgis instead provided an educational assistant, who served as petitioner's "sole communication facilitator" from approximately 2006 to May 2016. Compl. ¶¶ 22, 27. The assistant did not know sign language and had no credentials indicating any qualification to interpret for the deaf. ¶ 23. The assistant later tried to learn sign language without formal training, but she "essentially invented the signing system she used" and her "command of sign language remained so poor that, when briefly paired with a different deaf student who used sign language, the other deaf student could not understand her at all." ¶¶ 24-26, 36. As a result, petitioner "was learning nothing in his classes." ¶ 53.

Sturgis knew that the assistant was not a qualified sign-language interpreter, but it misrepresented to petitioner and his parents that she "used 'Signed English'" and was "qualified," Compl. ¶¶ 23, 33-35, and that

petitioner had been given "sufficient" auxiliary aids and services to allow him to participate in, and benefit from, classroom instruction, ¶¶ 48-49. Sturgis also "intentionally misrepresented [petitioner's high-school] academic achievement," awarding him "A" or "B" grades in "nearly all his classes" and honor-roll status every term. ¶¶ 50-52. Petitioner's parents—who spoke only Spanish and did not know sign language (¶¶ 14, 38)—were misled into believing that petitioner was "receiving meaningful communication access" and would earn a high-school diploma. ¶ 55; see ¶¶ 37-39, 54.

In March 2016, shortly before petitioner's graduation, petitioner and his parents learned that he would receive only a "certificate of completion," not a diploma. Compl. ¶ 56. Two months later, petitioner's parents and respondents agreed that, after completing high school in June 2016, petitioner should attend "for the following school years" the Michigan School for the Deaf, where high-school classes are conducted in American Sign Language and petitioner would have "full access to all his classes." ¶¶ 57-58, 60. In August 2016, petitioner began attending the Michigan School for the Deaf, ¶ 59, from which it was anticipated that he would receive a merit diploma after four years, D. Ct. Doc. 25-2, ¶ 5 (July 22, 2019).

b. In December 2017, petitioner filed an administrative complaint alleging violations of, *inter alia*, the IDEA and ADA. Compl. ¶ 69. In May 2018, a state hearing officer dismissed the ADA claims for want of jurisdiction. Pet. App. 37a-38a.

In June 2018, respondents proffered "a written offer of settlement" to resolve petitioner's claims under the IDEA and its state-law counterpart. D. Ct. Doc. 25-2, ¶¶ 3-4. The parties then settled those claims. *Ibid.*

Under the settlement, respondents agreed to pay for petitioner's attendance at the Michigan School for the Deaf, any post-secondary compensatory education, sign-language instruction for petitioner and his family, and the family's attorneys' fees. Pet. App. 2a. After being informed of the settlement, the hearing officer dismissed petitioner's remaining claims under the IDEA and its state-law counterpart. Compl. ¶ 71.

3. In December 2018, petitioner filed this ADA action seeking "compensatory damages." Compl. ¶ 2; Compl. 14. The district court granted Sturgis's motion to dismiss. Pet. App. 43a-53a. The court concluded that Section 1415(*l*) required petitioner to exhaust his IDEA claim before filing his ADA action, *id.* at 48a-49a, and that petitioner's settlement "did not exhaust the available administrative remedies," *id.* at 50a-51a. The court deemed "irrelevant" petitioner's contention that "further exhaustion of his [IDEA] claim would [have been] futile." *Id.* at 51a-52a. The court granted the Board's separate motion to dismiss on "the same reasoning." *Id.* at 54a-55a.

4. A divided panel of the court of appeals affirmed. Pet. App. 1a-35a.

a. The panel majority held that "the decision to settle [his IDEA claim] means that [petitioner] is barred from bringing a similar case against [respondents] in court—even under a different federal law"—because Section 1415(*l*)'s exhaustion requirement required him to "complet[e] the IDEA's administrative process.'" Pet. App. 1a, 4a.

The majority first determined that Section 1415(*l*)'s exhaustion requirement applied because petitioner's ADA action sought "relief that is also available under [the IDEA]." Pet. App. 5a-8a (quoting 20 U.S.C.

1415(*l*)) (brackets in original). The majority concluded that the gravamen of the ADA complaint was that respondents violated petitioner's right under the IDEA to a FAPE by "den[ying] him an appropriate education." *Id.* at 5a-6a. And although petitioner sought only "compensatory damages" on his ADA claim—a "remedy that is unavailable under the IDEA"—the majority concluded that the "choice of remedy make[s] [no] difference." *Id.* at 7a. The majority reasoned that a non-IDEA claim seeks "relief" available under the IDEA within the meaning of Section 1415(*l*) if it "seeks relief for the wrong that the IDEA was enacted to address." *Id.* at 7a-8a.

The majority then determined that petitioner failed to satisfy Section 1415(*l*)'s exhaustion requirement. Pet. App. 8a-9a. The majority reasoned that Section 1415(*l*) permits an ADA claim to be filed only if the plaintiff "could also bring an IDEA action in court," and that "[a]n IDEA plaintiff cannot come to court until a state determines"—after an administrative "hearing"—"that the student has not been denied a [FAPE]." *Id.* at 9a. Because "[petitioner's] parents accepted [respondents'] settlement offer," the majority stated, the "parents had to dismiss [the IDEA] complaint, which meant" that "[petitioner] did not exhaust the IDEA's procedures" and "could never file the IDEA claim or any other corresponding statutory claim in court." *Ibid.*

For two reasons, the majority rejected petitioner's contention that Section 1415(*l*) excused further exhaustion as futile because he had already "obtained [by settlement] all the educational relief the IDEA" could provide. Pet. App. 10a-14a (citation omitted). First, the majority concluded that "Section 1415(*l*) does not come with a 'futility' exception," and that *Honig*'s futility dis-

cussion was "dictum." *Id.* at 10a-11a. Second, the majority concluded that "[e]ven assuming that a general futility exception exists," *id.* at 11a, it would not apply where, as here, a plaintiff "settle[s] his claim before allowing the [administrative] process to run its course," *id.* at 13a. The majority reasoned that "when an available administrative process could have provided relief, it is not futile, even if the plaintiff decides not to take advantage of it." *Ibid.* And the majority added that the administrative adjudication of petitioner's IDEA claim "would not have been an empty bureaucratic exercise" because the resulting "administrative record [on petitioner's IDEA claim] would have improved the accuracy and efficiency of judicial proceedings" on his ADA claim. *Ibid.*

b. Judge Stranch dissented. Pet. App. 14a-35a. She first concluded that petitioner's ADA claim for damages does not trigger Section 1415(*l*)'s exhaustion requirement because it is a "classic ADA claim" alleging disability discrimination and "plainly does not seek IDEA relief." *Id.* at 15a, 18a-24a.

Judge Stranch also concluded that Section 1415(*l*) embodies a futility exception applicable here. Pet. App. 24a-35a. She explained that *Honig* determined in reasoning "essential to the judgment" that the IDEA includes a futility exception to exhaustion; that "every single one of [the Sixth Circuit's] sister circuits" recognize that exception; and that the exception's validity is confirmed by both Congress's subsequent reenactment of the IDEA without altering the "language or scope of the exhaustion requirement" and the Act's legislative history. *Id.* at 24a-25a, 28a-30a, 33a-34a.

Judge Stranch also emphasized that other courts of appeals have applied the futility exception when plain-

tiffs settle their IDEA claims. Pet. App. 26a-27a. And she concluded that the majority's contrary holding "is exactly the opposite of what Congress intended" when it enacted Section 1415(*l*) to reaffirm the viability of the ADA as a separate vehicle for protecting children with disabilities. *Id.* at 27a-28a. That holding, she explained, erroneously forces a litigant "to reject an acceptable IDEA settlement offer" in order to further "'exhaust'" IDEA remedies in an administrative process "incapable of compensating th[e] harm" that the ADA would redress, thus "forc[ing] students to choose between immediately obtaining the FAPE to which they are entitled, or forgoing that education so they can enforce their ADA right[s]." *Id.* at 26a-27a.

DISCUSSION

The divided Sixth Circuit panel erred by rejecting the established futility exception to Section 1415(*l*)'s exhaustion requirement and by holding in the alternative that the exception does not apply to a plaintiff who accepts a settlement resolving his IDEA claim. Both of those holdings, which are encompassed in the petition's first question presented, implicate divisions of authority warranting this Court's review.

If the Court grants certiorari, it should also take up the second question presented. The question whether Section 1415(*l*)'s exhaustion requirement applies in this case at all is both important and logically antecedent to the first question presented. And the Sixth Circuit erred in holding that Section 1415(*l*) requires exhaustion where, as here, a plaintiff brings a non-IDEA claim seeking money damages that are not available under the IDEA.

A. The First Question Presented Warrants Review

1. Section 1415(*l*) provides that a plaintiff filing a non-IDEA action that seeks relief available under the IDEA must first exhaust the IDEA's procedures for resolving IDEA claims "to the same extent as would be required had the action been brought under [the IDEA]." 20 U.S.C. 1415(*l*). Because an action may be "brought under [the IDEA]," *ibid.*, without exhausting that IDEA process "where exhaustion would be futile or inadequate," *Honig* v. *Doe*, 484 U.S. 305, 327 (1988), Section 1415(*l*) likewise does not require such exhaustion when pursuing the IDEA process would be "futile." As Judge Stranch recognized, every other court of appeals that hears IDEA claims has recognized "the existence of the futility and inadequacy exceptions to exhaustion" in the IDEA. Pet. App. 29a-30a; see Pet. 14-15; Reply Br. 2-3. The Sixth Circuit's contrary conclusion is incorrect and warrants review.

The panel majority broke with the uniform view of its sister circuits based on its erroneous conclusion that *Honig*'s recognition of a futility exception was "dictum." Pet. App. 10a-11a; see Br. in Opp. (Opp.) 32. In *Honig*, the Court considered a school district's attempt to expel two children with emotional disabilities for violent and disruptive conduct in light of the IDEA's so-called "stay-put" provision, which provided that, absent an agreement by all parties, a "'child shall remain in [his] then current educational placement" "[d]uring the pendency of any proceedings conducted pursuant to [Section 1415].'" 484 U.S. at 312 (quoting 20 U.S.C. 1415(e)(3) (1982), now 20 U.S.C. 1415(j)). The Court rejected the district's contention that the stay-put provision included a "'dangerousness' exception" permitting a child's removal. *Id.* at 323. But the Court determined

that schools could invoke "the aid of the courts under [Section] 1415(e)(2) [now Section 1415(i)(2)], which empowers courts to grant any appropriate relief," in order to obtain an injunction to remove a child by showing that continuing his current placement would be "substantially likely to result in injury either to [the child] or to others," *id.* at 326, 328. See *id.* at 323-328.

In so holding, *Honig* rejected the school district's contention that "the availability of judicial relief [to remove a child from his current placement] is more illusory than real, because a party seeking review under [Section] 1415(e)(2) must exhaust time-consuming administrative remedies." *Honig*, 484 U.S. at 326. The Court acknowledged that "judicial review is normally not available under [Section] 1415(e)(2) until all administrative proceedings are completed," but it concluded that "parents may bypass the administrative process where exhaustion would be futile or inadequate." *Id.* at 326-327. And the Court extended that interpretation of Section 1415(e)(2) to schools because it found "no reason to believe that Congress meant" to treat them differently. *Id.* at 327. *Honig* therefore concluded that exhaustion is not required under Section 1415(e)(2) (now Section 1415(i)(2)) if "the school [can] demonstrate the futility or inadequacy of administrative review." *Ibid.* That reasoning was central to *Honig*'s holding, not "dicta."

Furthermore, "Congress is presumed to be aware of [this Court's] interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." See *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 239-240 (2009) (citation omitted). And since *Honig*, Congress has twice ratified *Honig*'s interpretation of the IDEA's exhaustion requirement (which the courts

of appeals had uniformly followed until this case) by reenacting the IDEA's relevant text without material change. See Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 101, 118 Stat. 2647, 2723-2724; Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, § 101, 111 Stat. 37, 92.

The court of appeals mistakenly believed (Pet. App. 10a) that *Ross* v. *Blake*, 578 U.S. 632 (2016), undermined the settled understanding that the IDEA's exhaustion requirement is subject to a futility exception. *Ross* reflects the principle that statutory exhaustion provisions with "mandatory language" are not subject to "judge-made exceptions." *Id.* at 639. But Section 1415(*l*) requires exhaustion only "to the same extent as would be required had the action been brought under [the IDEA]." 20 U.S.C. 1415(*l*). And, as noted, Congress ratified the courts' longstanding interpretation of the IDEA's exhaustion requirement as including a futility exception. See also, *e.g.*, H.R. Rep. No. 296, 99th Cong., 1st Sess. 7 (1985) (explaining that administrative exhaustion is not required to bring non-IDEA action when "it would be futile to use the [IDEA's] due process procedures"). Respondents identify no other court that has altered its view of Section 1415(*l*)'s futility exception based on *Ross*. See Opp. 2-3, 14, 25, 31.

2. Respondents do not dispute that the Sixth Circuit's no-futility holding conflicts with the uniform view of its sister circuits. Respondents instead argue (Opp. 13-14) that this case is a poor vehicle to resolve that conflict because the Sixth Circuit additionally held that exhaustion would not have been futile here. But that holding was itself an error that conflicts with decisions of at least three other courts of appeals. The Sixth Circuit's

alternative holding thus only reinforces the need for review.

a. When a student like petitioner settles his IDEA claims and obtains all relief that the IDEA would offer, it would be futile to require him to further exhaust through the IDEA's administrative process. The only function of that process is to resolve the parties' dispute under the IDEA. See pp. 2-4, *supra*. Once the parties have settled their IDEA claim and agreed on the appropriate relief, there is nothing left for a hearing officer to do—the IDEA does not, for example, authorize hearing officers to decide claims or award relief under other federal statutes like the ADA. And neither the court of appeals nor respondents have identified any precedent for requiring parties to further exhaust administrative procedures on an already settled claim.

The court of appeals suggested that further exhaustion "would not have been an empty bureaucratic exercise" because it might have developed an administrative record that might have helped the courts hearing petitioner's non-IDEA claim. Pet. App. 13a. But the court did not explain how an IDEA hearing officer would develop such a record when the parties had already settled the only claim the officer would have had authority to decide. And unlike the IDEA, see 20 U.S.C. 1415(i)(2)(C)(i), statutes like the ADA do not contemplate that courts will decide cases based on an administrative record.

Requiring a student to forego a favorable IDEA settlement in order to pursue a non-IDEA claim would also be inconsistent with other aspects of the IDEA. It would needlessly delay the student's receipt of prospective educational relief that both parties agree should be provided. And it would be inconsistent with the IDEA's

detailed provisions encouraging settlements. The IDEA establishes procedures for the resolution of "disputes through a [voluntary] mediation process," 20 U.S.C. 1415(e)(1) and (2)(A)(i), and if that "mediation process" is not used, the local education agency must typically meet with parents to have an "opportunity to resolve the[ir] complaint" before an administrative hearing, 20 U.S.C. 1415(f)(1)(B)(i)(IV). If the parties can resolve their disagreements, the IDEA specifically requires that the parties execute "a legally binding agreement" settling the dispute. 20 U.S.C. 1415(e)(2)(F) and (f)(1)(B)(iii). Significantly, moreover, the IDEA *punishes* parents who reject a settlement offer and fail to obtain "relief * * * more favorable * * * than the offer of settlement" by prohibiting them from obtaining attorneys' fees and costs "for services performed subsequent to the time of [the] written offer of settlement." 20 U.S.C. 1415(i)(3)(D)(i).

In short, Congress enacted Section 1415(*l*) to "'reaffirm[] the viability' of federal statutes like the ADA * * * 'as separate vehicles,' no less integral than the IDEA, 'for ensuring the rights of handicapped children.'" *Fry* v. *Napoleon Cmty. Sch.*, 137 S. Ct. 743, 750 (2017) (citation omitted). It is not plausible that, in so doing, Congress also required parents to forgo favorable IDEA settlements, delay educational relief, pursue administrative proceedings that could offer them no further relief, and simultaneously deprive the parents of attorneys' fees in order to pursue the ADA claims that Section 1415(*l*) was specifically designed to preserve.

b. The Sixth Circuit's contrary conclusion conflicts with decisions by the Third, Ninth, and Tenth Circuits.

In *Muskrat* v. *Deer Creek Public Schools*, 715 F.3d 775 (2013), the Tenth Circuit concluded that where a student's parents negotiated IDEA relief, Section 1415(*l*)'s exhaustion requirement did not foreclose their related suit for money damages, because it would have been "futile" to "force them to request a formal due process hearing—which in any event cannot award damages—simply to preserve their damages claim." *Id.* at 786. As the Tenth Circuit later explained, *Muskrat* "accepted that IDEA's administrative exhaustion requirement is subject to a traditional futility exception" and "held" that it "would be 'futile'" to proceed through the IDEA's administrative process once "parents, through an agreement with the school, had obtained *all* the relief IDEA could possibly provide." *A.F. ex rel. Christine B.* v. *Española Pub. Sch.*, 801 F.3d 1245, 1249 (2015) (*A.F.*) (Gorsuch, J.) (citation omitted). And although *A.F.* declined to apply the futility exception in that case, it did so only because the plaintiff had forfeited the issue by "fail[ing] to present the argument before final judgment" in the district court. *Ibid.*

In *W.B.* v. *Matula*, 67 F.3d 484 (1995), abrogated on other grounds, *A.W.* v. *Jersey City Pub. Sch.*, 486 F.3d 791 (3d Cir. 2007) (en banc), the Third Circuit similarly concluded that Section 1415(*l*) (then Section 1415(f) (1994)) did not require exhaustion "[w]here recourse to IDEA administrative proceedings would be futile or inadequate." *Id.* at 495. And like the Tenth Circuit, *W.B.* held that, once a "settlement agreement" resolves the IDEA claim, "it would be futile, perhaps even impossible, for plaintiffs to exhaust their administrative remedies." *Id.* at 496. *W.B.* "note[d]" a "second rationale for excusing exhaustion" based on the development of a factual record in administrative proceedings, *ibid.*, but

that alternative ruling does not diminish the precedential force of *W.B.*'s distinct futility holding. See *Woods* v. *Interstate Realty Co.*, 337 U.S. 535, 537 (1949) ("[W]here a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*.").

Relying on *W.B.*, the Ninth Circuit likewise concluded that "exhaustion of administrative remedies is not required" under Section 1415(*l*) where "all educational issues already have been resolved to the parties' mutual satisfaction." *Witte* v. *Clark Cnty. Sch. Dist.*, 197 F.3d 1271, 1275 (1999). And although *Witte* did not use the word "futility," its reliance on *W.B.* confirms that its decision rests on futility. See *Porter* v. *Board of Trs.*, 307 F.3d 1064, 1074 (9th Cir. 2002) (citing *Witte* as teaching that the IDEA's "due process hearing [is] futile where all the educational issues are resolved"), cert. denied, 537 U.S. 1194 (2003). Contrary to respondents' suggestion (Opp. 18-19), the en banc Ninth Circuit specifically acknowledged that *Witte* "excused exhaustion" where the plaintiff filed his non-IDEA suit for damages after "obtain[ing] the [IDEA] relief available to him" and characterized *Witte*'s holding as a "species of futility." *D.D.* v. *Los Angeles Unified Sch. Dist.*, 18 F.4th 1043, 1058 n.7 (2021), petition for cert. pending, No. 21-1373 (filed Apr. 18, 2022). The en banc court did not disturb *Witte*'s settlement-based futility holding, instead "leav[ing] for another day" any futility questions because the plaintiff in *D.D.* "conceded" that he had forfeited any futility argument. *Id.* at 1058.

3. Respondents separately contend that this case is a poor vehicle for review because, although the court of appeals decided the case based solely on threshold exhaustion grounds, this Court's intervening decision in *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 142

S. Ct. 1562 (2022), purportedly forecloses petitioner's ADA claim *on the merits* by precluding the recovery of "emotional distress damages under the ADA." Opp. 10. That is incorrect.

Although petitioner seeks emotional-distress damages, his ADA complaint more broadly requests "compensatory damages." Compl. ¶ 2; Compl. 14. The complaint, fairly read, sufficiently alleges that ADA violations curtailed petitioner's educational development, requiring that he redo high school at the Michigan School for the Deaf and putting him "years behind where he should have been" (Pet. App. 6a) on his road to employment. See pp. 6-7, *supra*. Petitioner accordingly seeks damages for those four years of lost income. See Reply Br. 10. And because the judicial relief available on petitioner's ADA claim is "relief to which [petitioner] is entitled, even if [he] has not demanded that relief in [his complaint]," Fed. R. Civ. P. 54(c), the proof adduced in litigation rather than the pleadings will determine the proper measure of relief. See 10 Charles Alan Wright et al., *Federal Practice and Procedure* § 2664 (4th ed. 2014).

Because respondents moved to dismiss on only exhaustion grounds, the parties have not litigated, nor have the courts below considered, those merits issues. And the fact that respondents might challenge the validity of petitioner's damages claim in future proceedings is no barrier to this Court's review of the important questions that provided the sole basis for the decisions below.

B. If The Court Grants Certiorari On The First Question Presented, It Should Review The Second Question

Petitioner's second question presented asks whether Section 1415(*l*)'s exhaustion requirement—which ap-

plies to non-IDEA actions "seeking relief that is also available under [the IDEA]," 20 U.S.C. 1415(*l*)—applies to an action seeking only money damages that are not available under the IDEA. The court of appeals erred in holding that the exhaustion requirement applies in this circumstance. If the Court grants review on the first question presented, it should consider that important and logically antecedent question as well.

1. The court of appeals correctly recognized that the resolution of the second question presented largely turns on the meaning of "the word 'relief'" in Section 1415(*l*), Pet. App. 7a, but it erred in interpreting that word. Notwithstanding Congress's direction that exhaustion is not required for an action "seeking relief" unavailable under the IDEA, 20 U.S.C. 1415(*l*), the court concluded that "[t]he focus" is "*not the kind of relief the plaintiff wants*, but the *kind of harm* he wants relief from." Pet. App. 8a (emphases added). The court reasoned that when a non-IDEA action "seeks relief for the wrong that the IDEA was enacted to address," the same "relief" is available under the IDEA, because "we say that people come to court for relief when they have been wronged." *Id.* at 7a; see Opp. 12-13. That loose, colloquial reading of Section 1415(*l*) is incorrect.

"In statutory drafting, where precision is both important and expected, the sort of colloquial usage [suggested by the Sixth Circuit] is not customary." *Allison Engine Co.* v. *United States ex rel. Sanders*, 553 U.S. 662, 670 (2008). Instead, when Congress addresses legal concepts, it uses terms as they are used in the legal context. And the term "'relief' in the legal context * * * [is] also termed a 'remedy'" and "means 'redress or benefit . . . that a party asks of a court.'" *D.D.*, 18 F.4th at 1060 (Bumatay, J., concurring in part and dissenting in

part) (quoting *Black's Law Dictionary* 1544 (11th ed. 2019)); accord *McMillen* v. *New Caney Indep. Sch. Dist.*, 939 F.3d 640, 648 (5th Cir. 2019), cert. denied, 140 S. Ct. 2803 (2020); see *Webster's Third New International Dictionary* 1918 (1971) ("legal remedy or redress").

The term "relief" in adjudicatory contexts is thus naturally used to refer collectively to the remedy or remedies that a tribunal may award. And as the government has previously explained at greater length, see U.S. Amicus Br. at 11-34, *Fry*, *supra* (No. 15-497), Section 1415(*l*) does not require exhaustion of the IDEA process before a plaintiff files an ADA action seeking only money damages, because such an ADA action does not "seek[] relief that is also available under [the IDEA]," 20 U.S.C. 1415(*l*).

That conclusion is confirmed by the principle that "identical words and phrases within the same statute should normally be given the same meaning." *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). Section 1415 repeatedly uses "relief" in its legal sense as a synonym for a claim's remedy or remedies. Congress directed that the court in an IDEA action shall "grant such *relief* as the court determines is appropriate." 20 U.S.C. 1415(i)(2)(C)(iii) (emphasis added). And when Congress enacted Section 1415(*l*)'s text, it also barred parents who reject a school's settlement offer from recovering attorneys' fees for subsequent work if "the *relief* finally obtained by the parents is not more favorable" than the offer. 20 U.S.C. 1415(i)(3)(D)(i)(III) (emphasis added). That prohibition clearly uses "relief" in its legal sense and requires a comparison of the nature and magnitude of any remedies awarded to those offered in the settlement.

2. In *Fry*, this Court left "for another day" the question whether exhaustion is required if a plaintiff complains of the denial of a FAPE but seeks a remedy "that an IDEA hearing officer may [not] award." 137 S. Ct. at 752 n.4, 754 n.8. Most courts of appeals have held that exhaustion is required in those circumstances. Opp. 11. Although the Ninth Circuit had previously taken a different view (*ibid.*), the en banc court, in a 6-5 opinion, has now aligned itself with its sister circuits. See *D.D.*, 18 F.4th at 1056. But five dissenting judges concluded, in an opinion by Judge Bumatay, that applying a "textualist approach" to Section 1415(*l*) demonstrates that exhaustion is not required if the non-IDEA action "seeks money damages not available under the IDEA." *Id.* at 1059, 1062; see *id.* at 1060-1062 & n.2; cf. *McMillen*, 939 F.3d at 647-648 (observing that "[t]he question may be a closer one than the circuit scorecard suggests" given the "textualist" reading of Section 1415(*l*), but adopting contrary reading based on policy considerations).

After the Ninth Circuit's decision in *D.D.*, the second question presented no longer implicates a division of authority independently warranting certiorari. But when the Court grants certiorari on one question, it "often also grant[s] certiorari on attendant questions that are not independently 'certworthy,' but that are sufficiently connected to the ultimate disposition of the case that the efficient administration of justice supports their consideration." *City & Cnty. of S.F.* v. *Sheehan*, 575 U.S. 600, 619-620 (2015) (Scalia, J., concurring in part and dissenting in part). Here, the question that *Fry* left unresolved is logically antecedent to—and would significantly inform the Court's understanding of—the first question presented about the scope of Section 1415(*l*)'s

exhaustion requirement. The Court should therefore grant review on the second question presented if it grants review on the first.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 2022