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 OF PROFESSORS MARK C. WEBER AND BERNARD P. PERLMUTTER AS AMICI CURIAE IN SUPPORT OF PETITIONER

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Table of Contents

Table of Authorities ii

Interest of Amici 1

Introduction and Summary of Argument 1

Argument 5

I. Congress established multiple avenues for students with disabilities to vindicate their rights 6

A. The Individuals with Disabilities Education Act 6

B. The IDEA's 1986 amendment and the Americans with Disabilities Act 7

II. Students with disabilities generally are unable to pursue ADA claims before IDEA hearing officers and invariably cannot obtain compensatory damages from them. 9

III. ADA claims need not be exhausted in IDEA administrative proceedings because exhaustion would be futile and cannot provide the relief the ADA offers. 19

A. An ADA claim need not be exhausted under administrative-law futility principles. 20

B. The IDEA does not require exhaustion of claims seeking non-IDEA relief. 23

Conclusion 26

Table of Authorities

Cases **Page(s)**

Bowen v. City of New York,
476 U.S. 467 (1986) 20

C.O. v. Portland Pub. Schs.,
679 F.3d 1162 (9th Cir. 2012) 7

Cary v. Curtis,
44 U.S. 236 (1845) 20

Chambers ex. rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ.,
587 F.3d 176 (3d Cir. 2009) 7

Charlie F. ex rel. Neil F. v. Bd. of Educ. of Skokie Sch. Dist. 68,
98 F.3d 989 (7th Cir. 1996) 7

Crocker v. Tenn. Secondary Sch. Athletic Ass'n,
980 F.2d 382 (6th Cir. 1992) 7

Doucette v. Georgetown Pub. Sch.,
936 F.3d 16 (1st Cir. 2019) 21

Ellenberg v. New Mexico Mil. Inst.,
478 F.3d 1262 (10th Cir. 2007) 22

Fry v. Napoleon Cmty. Sch.,
137 S. Ct. 743 (2017) 23

Gibson v. Berryhill,
411 U.S. 564 (1973) 5, 20

Honig v. Doe,
484 U.S. 305 (1988) 20, 21, 22, 23

Matthews v. Eldridge,
424 U.S. 319 (1976) 21

McCarthy v. Madigan,
503 U.S. 140 (1992) 5, 20

McGee v. United States,
402 U.S. 479 (1971) 25

McMillen v. New Caney Indep. Sch. Dist.,
939 F.3d 640 (5th Cir. 2019) 7

Moore v. Kan. City Pub. Schs.,
828 F.3d 687 (8th Cir. 2016) 7

Nieves-Marquez v. Puerto Rico,
353 F.3d 108 (1st Cir. 2003) 7

Ortega v. Bibb Cnty. Sch. Dist.,
397 F.3d 1321 (11th Cir. 2005) 7

Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.,
288 F.3d 478 (2d Cir. 2002) 7

Ross v. Blake,
578 U.S. 632 (2016) 22, 23, 24

Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ.,
471 U.S. 359 (1985) 7

Sellers ex rel. Sellers v. Sch. Bd. of Manassas,
141 F.3d 524 (4th Cir. 1998) 7

Smith v. Berryhill,
139 S. Ct. 1765 (2019) 23

Smith v. Robinson,
468 U.S. 992 (1984) 4, 7, 8

Stone v Gilliam,
89 Eng. Rep. 505 (K.B. 1691) 20

Wade v. Mayo,
334 U.S. 672 (1948) 20

Weinberger v. Salfi,
422 U.S. 749 (1975) 4, 21

Woodford v. Ngo,
548 U.S. 81 (2006) 23

Federal Statutes and Regulations

20 U.S.C. § 1400(d)(1)(A)..................................... 1, 6

20 U.S.C. § 1415(b)(6)(A).. 9

20 U.S.C. § 1415(b)(8).. 10

20 U.S.C. § 1415(e)(1).. 6

20 U.S.C. § 1415(e)(3).. 21

20 U.S.C. § 1415(f)(1)(A) 2

20 U.S.C. § 1415(f)(1)(B)(i)....................................... 6

20 U.S.C. § 1415(f)(1)(B)(ii) 6

20 U.S.C. § 1415(f)(3)(A) 2

20 U.S.C. § 1415(f)(3)(E)(i) 7, 9, 22

29 U.S.C. § 794a 8

42 U.S.C. § 1997e(a) 22, 24

42 U.S.C. § 1997e(a) 22, 24

42 U.S.C. § 12101(a)(3) 8

42 U.S.C. § 12132 .... 2, 8

42 U.S.C. § 12133(a)(2) 8

Pub. L. No. 99-372, 100 Stat. 797 (1986) 8

Pub. L. No. 108-446, 118 Stat. 2730 (2004) 8

34 C.F.R. § 300.511(c)(1) 22

State Statutes and Regulations

22 Pa. Code § 14.162 18

22 Pa. Code § 15.8(a) 18

Cal. Educ. Code § 56500.1(a) 11

Cal. Educ. Code § 56500.3 11

Cal. Educ. Code § 56500.6 11

Conn. Gen. Stat. § 10-76h(a)(1) 12

Conn. Gen. Stat. § 10-76h(b) 12

Conn. Gen. Stat. § 10-76h(d)(1) 12

D.C. Code § 38-2571.03(1) 12

D.C. Code § 38-2571.03(2) 12

D.C. Code § 38-2571.03(6)(A) 12

D.C. Code § 38-2571.04 12

D.C. Code § 38-2572.02(a) 12

Fla. Stat. § 1003.571(1) 13

Fla. Stat. § 120.65(6) 13

Md. Code Ann., Educ. § 8-413(g)(1) 14

Mass. Gen. Laws ch. 71B, § 2A(a) 15

Mass. Gen. Laws ch. 71B, § 2A(c) 15

19 Tex. Admin. Code § 89.1195(b)(3) 19

Cal. Code Regs. tit. 5, § 3080(a) 11

Cal. Code Regs. tit. 5, § 3082(a) 11

Conn. Agencies Regs. § 10-76h-2 12

Conn. Agencies Regs. § 10-76h-3(a) 12

Conn. Agencies Regs. § 10-76h-7(a) 12

Ill. Admin. Code tit. 23, § 226.610 13

Ill. Admin. Code tit. 23, § 226.615 13

Ill. Admin. Code tit. 23, § 226.630(a) 13

Ill. Admin. Code tit. 23, § 226.670 13

Ill. Admin. Code tit. 23, § 226.690 13

Mich. Admin. Code R. 340.1724f(3)(k) 16

N.J. Admin. Code § 6A:14-2.7(k) 16

N.J. Admin. Code § 6A:14-2.7(w) 16

N.Y. Comp. Codes R. & Regs. tit. 8, §
200.5(j)(4)(i) 17

State Aministrative Hearing Decisions

California

No. 2019101130 (Sept. 25, 2020),
https://perma.cc/GFC5-TSRS 11

No. 2018050651 (Sept. 21, 2018),
https://perma.cc/3XGK-PNLG 11

Nos. 2012020458/2012020005/2012090247
(Jan. 14, 2013),
https://perma.cc/3M2H-25K2 11

No. 2010110301 (Feb. 7, 2011),
https://perma.cc/8SMQ-FZVY 11

Nos. 2010090344/2010070140 (Feb. 3, 2010),
https://perma.cc/722U-TNA9 11

Connecticut

No. 21-0123 (Dec. 22, 2020), https://perma.cc/DA5W-57AK 12

Nos. 16-0486/16-0617 (June 7, 2017), https://perma.cc/V49T-YS9M 12

District of Columbia

No. 2019-0301 (June 30, 2020), https://perma.cc/2EG3-6FE5 12

No. 2019-0073 (June 17, 2019), https://perma.cc/3Y5N-HD29 13

No. 2016-0023 (Apr. 2, 2016), https://perma.cc/ZP4K-T7SV 13

Florida

No. 18-0604E (Aug. 16, 2018), https://perma.cc/H2BW-YXYQ 13

No. 12-3976E (Apr. 5, 2013), https://perma.cc/WAF2-C3EU 13

No. 12-2322E (Oct. 22, 2012), https://perma.cc/S8GD-BS7X 13

Nos. 09-0568E/09-1233E (Sept. 9, 2009), https://perma.cc/GYZ7-SNCP 13

Illinois

No. 2018-0391 (Nov. 13, 2018), https://perma.cc/D7UT-GEBJ 14

No. 2018-0062 (Feb. 1, 2018),
https://perma.cc/NLL9-J6L9 14

Maryland

No. MSDE-BCNY-OT-18-18944 (Aug. 28, 2018),
https://perma.cc/JD7F-A9L4 15

No. MSDE-CITY-OT-17-37284 (Mar. 16, 2018),
https://perma.cc/D4WZ-XVL5 15

Massachusetts

No. 1702629 (Nov. 9, 2016),
https://perma.cc/P98J-ULLY 15

No. 06-6508 (Mar. 9, 2007),
https://perma.cc/GZL5-US9Q............................. 15

Michigan

No. 13-001454 (Oct. 2013),
https://perma.cc/SC8L-5T8B.............................. 16

No. 2008-018 (Apr. 6, 2009),
https://perma.cc/VPK5-3VL2 16

No. 2004-105E (Oct. 17, 2006),
https://perma.cc/D6N5-G6DQ 16

No. 2003-007b (Oct. 8, 2003),
https://perma.cc/D3PJ-WR7J............................. 16

New Jersey

No. EDS 07848-17 (July 18, 2019),
https://perma.cc/KW7F-QTU5 16

No. EDS 08837-19 (Mar. 9, 2020),
https://perma.cc/8EAV-2UJX............................ 17

New York

No. 162323 (Aug. 4, 2018),
https://perma.cc/7UV5-E6T7 17

No. 172586 (July 27, 2018),
https://perma.cc/A63Y-MUYF........................... 17

No. 503548 (Aug. 15, 2017),
https://perma.cc/UG3H-NSVX.......................... 17

No. IH-2016(65) (Apr. 6, 2016),
https://perma.cc/3ZGV-XJ22............................. 17

Pennsylvania

No. 20014-1718AS (Feb. 16, 2018),
https://perma.cc/7W7E-A4JG 18

No. 23695-19-20 (Mar. 2, 2021),
https://perma.cc/T25H-NNTB........................... 18

No. 24533-20-21 (May 27, 2021),
https://perma.cc/62RF-3G54 18

Texas

No. 017-SE-0920 (June 23, 2021),
https://perma.cc/Q6TS-8S9Z 19

No. 144-SE-0119 (June 21, 2019), https://perma.cc/7RVJ-LKR8 19

No. 228-SE-0518 (Feb. 8, 2019), https://perma.cc/DE2Z-HU5E 19

No. 365-SE-0719 (Nov. 15, 2019), https://perma.cc/X53N-ZE36 19

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Interest of Amici[1]

Mark C. Weber is the Vincent de Paul Professor of Law at De Paul College of Law. He is an expert on special-education and disability law and has published extensively on the Individuals with Disabilities Education Act (IDEA).[2] Bernard P. Perlmutter is Professor of Law & Co-Director of the Children & Youth Law Clinic at the University of Miami Law School. An expert on children's rights, he has litigated and published widely, including on the education of children with disabilities.[3] Amici support the petition because of their longstanding interest in the proper interpretation of the IDEA.

Introduction and Summary of Argument

The Individuals with Disabilities Education Act requires public schools to provide students with disabilities a "free appropriate public education" (FAPE) to prepare them for further education, a career, and a fulfilled, independent life. 20 U.S.C. § 1400(d)(1)(A). When disagreements arise over whether a school has provided a student with a FAPE,

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[1] Counsel of record for all parties received notice of amici's intent to file this brief at least ten days before its due date. The parties have consented to this filing. No counsel for a party authored this brief in whole or in part, and no person other than amici or its counsel made a monetary contribution to the preparation or submission of this brief.

[2] *See* https://law.depaul.edu/faculty-and-staff/faculty-a-z/Pages/mark-weber.aspx.

[3] *See* https://www.law.miami.edu/faculty/bernard-p-perlmutter.

either party may turn to the IDEA's administrative dispute-resolution system, culminating in an "impartial due process hearing" before an IDEA "hearing officer." 20 U.S.C. § 1415(f)(1)(A), (3)(A).

This case presents the question whether students must exhaust the IDEA's administrative process before filing a suit for damages under Title II of the Americans with Disabilities Act, which prohibits public schools from discriminating against students with disabilities and does not itself demand exhaustion of administrative remedies. *See* 42 U.S.C. § 12132. As this brief explains—supported by amici's survey of state special-education law and hearing-officer decisions—the answer to that question is no.

A. Petitioner Miguel Luna Perez is a deaf individual. He arrived in the United States with his Spanish-speaking family at age nine and began attending schools overseen by Respondent Sturgis Public Schools (Sturgis). Miguel was unable to communicate with his teachers and classmates and so required an interpreter and American Sign Language instruction. But Sturgis provided Miguel with only an assistant who "was not trained to work with deaf students and did not know" American Sign Language. Pet. App. 1a.

Miguel's academic progress therefore fell far behind his peers, and, unexpectedly, shortly before his anticipated graduation, Sturgis informed the family that Miguel did not qualify for a diploma. Pet. App. 2a. Sturgis sent Miguel at age twenty to a school where he finally began instruction in American Sign Language. *See* Pet. 9-10.

B. Miguel filed a due-process complaint, maintaining, as relevant here, that Sturgis had deprived him of a FAPE under the IDEA and discriminated against him in violation of the ADA. Pet. App. 2a. Sturgis moved to dismiss the ADA claim, arguing that the IDEA hearing officer did "not have jurisdiction" over "non-IDEA issues or claims." Sturgis Admin. Mot. to Dismiss at 8. The hearing officer agreed, dismissing Miguel's ADA claim as "outside [her] jurisdiction." Pet. App. 37a-38a.

With only Miguel's IDEA claim remaining, the parties settled. The settlement provided Miguel and his family with equitable relief, including sign-language instruction, but it neither included compensatory damages nor released Miguel's ADA claim. Pet. 11.

Miguel then sued Sturgis under the ADA, seeking compensatory damages for emotional distress for the years of educational deprivation inflicted by the school district. Pet. 11. Sturgis again moved to dismiss the ADA claim, this time arguing that Miguel had failed to exhaust his IDEA administrative remedies. The district court agreed. Pet. App. 43a.

Miguel appealed, arguing that the hearing officer's dismissal of his ADA claim either constituted exhaustion or made exhaustion futile. Pet. 11. He also argued that because he sought compensatory damages—relief unavailable under the IDEA—the IDEA did not require him to exhaust before bringing his ADA claim to court. Pet. 3. In a 2-1 ruling, the Sixth Circuit affirmed, holding that because Miguel had settled his IDEA claim he had not exhausted it, and "to pursue his ADA claim" in court "that is what he had to do." Pet. App. 9a.

C.1. The Sixth Circuit majority got it wrong. Congress amended the IDEA to overrule this Court's holding that the IDEA was the "exclusive avenue" for students with disabilities to vindicate their rights. *See Smith v. Robinson*, 468 U.S. 992, 1009 (1984). In doing so, it emphasized that other laws, particularly those like the ADA that provide for compensatory damages not available under the IDEA, are independent means for students with disabilities to obtain relief in court. *See* 20 U.S.C. § 1415(*l*). The Sixth Circuit's decision undermines Congress's understanding by demanding exhaustion when it would be futile—that is, when exhaustion cannot lead to vindication of the rights that Congress sought to protect.

2. Amici have surveyed hearing-officer decisions in twelve jurisdictions in which about ninety percent of the country's IDEA due-process complaints are filed. Almost invariably, ADA claims brought before an IDEA hearing officer are dismissed on the ground that the officer lacks authority to adjudicate those claims. IDEA hearing officers also lack authority to award compensatory damages—a key form of relief under the ADA and the type of relief that Miguel now seeks.

3.a. Consistent with administrative-law principles, and in light of amici's survey, exhaustion of IDEA due-process proceedings would be futile and thus is not required before an ADA damages claim may be brought in court. Administrative exhaustion seeks to enable parties and the court to benefit from an agency's "experience and expertise." *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975). So, when an administrative decisionmaker "determine[s] that the only issue" for resolution is "beyond his … jurisdiction

to determine"—as IDEA hearing officers generally hold regarding ADA claims—"further exhaustion would not merely be futile," but also "unsupported by any administrative or judicial interest." *Id.* at 765-66. And when there is "doubt as to whether an agency [i]s empowered to grant effective relief," exhaustion is not required. *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14 (1973)). No doubt exists here: The ADA authorizes awards of compensatory damages—the "effective relief" that Miguel seeks—but IDEA hearing officers do not award them.

b. The IDEA's text demands the same conclusion. Though it requires administrative exhaustion in some circumstances "before the filing of a civil action," it does so only when the action is one "seeking relief that is also available under" the IDEA. 20 U.S.C. § 1415(*l*). Compensatory damages are not available under the IDEA. Exhaustion is thus not required when an ADA plaintiff seeks compensatory damages.

This Court should grant review and reverse.

Argument

Under the Sixth Circuit's ruling, students with disabilities seeking to vindicate their ADA rights to compensatory damages must first exhaust the IDEA's administrative process, even though it is generally impossible to pursue ADA claims and obtain the remedies that the ADA offers in that process.

Part I below briefly reviews the IDEA and the ADA. Part II surveys twelve jurisdictions in which about ninety percent of the country's IDEA due-process complaints arise and shows that, in almost all cases, IDEA hearing officers refuse to hear ADA

claims, and they never award compensatory damages. Part III explains why, under the futility exception to administrative exhaustion and the IDEA's text, ADA claims brought by students with disabilities need not be exhausted before they are brought in court.

I. Congress established multiple avenues for students with disabilities to vindicate their rights.

A. The Individuals with Disabilities Education Act

Congress passed the IDEA to provide students with disabilities a "free appropriate public education," or FAPE. 20 U.S.C. § 1400(d)(1)(A). To provide FAPE, states must offer appropriate educational services tailored to the "unique needs" of each student with a disability. *Id.*

Parents and educators occasionally disagree on whether the school has provided a FAPE. The IDEA offers an opportunity to resolve these differences informally. 20 U.S.C. § 1415(e)(1), (f)(1)(B)(i). When that is not possible, either party may request a more formal "due process hearing" before a hearing officer. 20 U.S.C. § 1415(f)(1)(B)(ii). Nearly ninety percent of due-process complaints are withdrawn, dismissed, or resolved short of a hearing. Consortium for Appropriate Dispute Resolution in Special Educ., *Trends in Dispute Resolution under the Individuals with Disabilities Education Act* (Nov. 2020).[4] When a dispute reaches a hearing, the hearing officer decides

[4]https://www.cadreworks.org/sites/default/files/TrendsinDisputeResolution%202018-19%20Final%20Accessible%2012.15.20.pdf

whether the school district has provided the student with a FAPE. 20 U.S.C. § 1415(f)(3)(E)(i). Aggrieved parties may then sue in court. *Id.* § 1415(i)(2)(A).

IDEA hearing officers and reviewing courts may award families equitable relief for a denial of a FAPE, typically compensatory special-education services or similar relief. *See Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ.*, 471 U.S. 359, 369-71 (1985). Courts have uniformly held, however, that the IDEA does not authorize an award of compensatory damages.[5]

B. The IDEA's 1986 amendment and the Americans with Disabilities Act

1. In *Smith v. Robinson*, 468 U.S. 992, 1009 (1984), this Court held that the Education for All Handicapped Children Act, the IDEA's predecessor, was the "exclusive avenue" for students with disabilities to challenge the adequacy of their education.

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[5] *See, e.g., McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d 640, 647 (5th Cir. 2019); *Moore v. Kan. City Pub. Schs.*, 828 F.3d 687, 693 (8th Cir. 2016); *C.O. v. Portland Pub. Schs.*, 679 F.3d 1162, 1166 (9th Cir. 2012); *Chambers ex. rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F.3d 176, 185-86 (3d Cir. 2009); *Ortega v. Bibb Cnty. Sch. Dist.*, 397 F.3d 1321, 1325 (11th Cir. 2005); *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 124 (1st Cir. 2003); *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 486 (2d Cir. 2002); *Sellers ex rel. Sellers v. Sch. Bd. of Manassas*, 141 F.3d 524, 526-27 (4th Cir. 1998); *Charlie F. ex rel. Neil F. v. Bd. of Educ. of Skokie Sch. Dist. 68*, 98 F.3d 989, 991 (7th Cir. 1996); *Crocker v. Tenn. Secondary Sch. Athletic Ass'n*, 980 F.2d 382, 386 (6th Cir. 1992).

Congress soon emphatically overturned *Smith*, *see* Pub. L. No. 99-372, § 3(f), 100 Stat. 797 (1986), providing that the IDEA may not be "construed to restrict or limit" an individual's right to seek relief "under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities." 20 U.S.C. § 1415(*l*).[6] Though in some circumstances the IDEA's administrative procedures must be exhausted "before the filing of a civil action," in all events, exhaustion is required only when the plaintiff is "seeking relief that is also available under" the IDEA. *Id.*

2. The Americans with Disabilities Act outlaws discrimination against people with disabilities, including in the "critical area[]" of education. 42 U.S.C. § 12101(a)(3). Title II of the ADA, at issue here, mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

Unlike the IDEA, which provides only equitable, non-damages relief, *see supra* at 7 & note 5, the ADA offers compensatory damages. 42 U.S.C. § 12133(a)(2) (incorporating the remedies under the Rehabilitation Act, 29 U.S.C. § 794a, which in turn incorporates the remedies under Title VI of the Civil Rights Act of

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[6] When Congress overrode *Smith*, the ADA had yet to be enacted. A later IDEA amendment added the express reference to the ADA that now appears in Section 1415(*l*). *See* Pub. L. No. 108-446, § 101, 118 Stat. 2730 (2004).

1964). For instance, Miguel maintains that the ADA entitles him to compensatory damages for the emotional anguish he endured from Sturgis's years of deliberate indifference to his educational needs. Pet. App. 2a.

As just discussed, students with disabilities have recourse under both the IDEA and the ADA, and the ADA provides compensatory damages, while the IDEA does not. We next show that IDEA hearing officers almost always refuse to hear ADA claims and never award compensatory damages.

II. Students with disabilities are generally unable to pursue ADA claims before IDEA hearing officers and invariably cannot obtain compensatory damages from them.

A. The IDEA contemplates that students with disabilities will use its administrative procedures to vindicate their IDEA rights, not rights under other laws. A complainant must submit a due-process complaint describing only "matter[s] relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education." 20 U.S.C. § 1415(b)(6)(A). A hearing officer's decision must be based "on a determination of whether the child received a free appropriate public education." *Id.* § 1415(f)(3)(E)(i). Thus, hearing officers must have "knowledge of, and the ability to understand, the provisions of [the IDEA], Federal and State regulations pertaining to [the IDEA], and legal interpretations of [the IDEA] by Federal and State courts." *Id.* § 1415(f)(3)(A)(ii).

The IDEA requires states to "develop a model form to assist parents in filing a [due-process]

complaint." 20 U.S.C. § 1415(b)(8). These forms expressly invoke the IDEA's requirements and generally do not mention other statutes that confer rights on students with disabilities. Amici have reviewed the model form for each U.S. jurisdiction, and none refers to the ADA, indicating that IDEA hearing officers are not expected to adjudicate ADA claims and do not have ADA expertise.[7]

B. Hearing officers, following the IDEA's mandates, typically hear only IDEA claims and almost never hear ADA claims. Amici have surveyed the IDEA administrative process in eleven states and the District of Columbia, where about ninety percent of the country's IDEA due-process complaints arise. Time and again, IDEA hearing officers dismiss ADA claims on the ground that they lack authority to hear them, and hearing officers never award compensatory damages, illustrating the futility of bringing an ADA claim through the IDEA's administrative process.[8]

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[7] The model forms for the twelve jurisdictions surveyed in this brief are collected here: https://perma.cc/8QZX-Y8QK.

[8] The jurisdictions were selected based on a study observing that ninety percent of IDEA complaints arose in ten states, D.C., and Puerto Rico. *See* Consortium for Appropriate Dispute Resolution in Special Educ., IDEA Data Brief at 2 (May 2017), https://www.cadreworks.org/sites/default/files/resources/CADRE%20DPC%20Brief_WebFinal_6.2017.pdf. Puerto Rico was omitted from amici's survey because its policies and hearing-officer decisions are published in Spanish only. Amici's survey also includes Michigan, where Miguel brought his due-process complaint.

Amici surveyed every hearing-officer decision in California, Maryland, Michigan, and New Jersey. These states had either a

California. California's special-education law directs state and local agencies to establish "[a]ll procedural safeguards under the Individuals with Disabilities Education Act" and invokes federal IDEA regulations. Cal. Educ. Code §§ 56500.1(a), 56500.3, 56500.6; *see* Cal. Code Regs. tit. 5, §§ 3080(a), 3082(a). It does not mention other statutes.

Amici surveyed all California due-process decisions and found that hearing officers dismiss ADA claims as "outside the jurisdiction" of California's IDEA administrative body. Nos. 2012020458, 2012020005, and 2012090247 at 3 n.2 (Jan. 14, 2013)[9]; *see also, e.g.*, No. 2018050651 at 32 n.6 (Sept. 21, 2018)[10]; No. 2010110301 at 3 n.1 (Feb. 7, 2011)[11]; Nos. 2010090344 and 2010070140 at 2 n.1 (Feb. 3, 2010)[12]; No. 2019101130 at 6 (Sept. 25, 2020) (dismissing ADA claim for lack of jurisdiction and noting that IDEA hearing officers do not award compensatory damages).[13]

Connecticut. Connecticut's special-education law references the IDEA and its key terms including FAPE

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limited number of published decisions or online search mechanisms enabling amici to filter decisions using search terms. The eight other jurisdictions published dozens—in some cases, hundreds—of decisions each year but did not have similar search mechanisms. For those jurisdictions, amici reviewed all hearing-officer decisions dating back at least five years. Amici have provided a footnoted link to each decision cited.

[9] https://perma.cc/3M2H-25K2

[10] https://perma.cc/3XGK-PNLG

[11] https://perma.cc/8SMQ-FZVY

[12] https://perma.cc/722U-TNA9

[13] https://perma.cc/GFC5-TSRS

and the right to an impartial hearing-officer decision. *See* Conn. Gen. Stat. § 10-76h(a)(1), (b), (d)(1); *accord* Conn. Agencies Regs. §§ 10-76h-2, 10-76h-3(a), 10-76h-7(a).

Not surprisingly, Connecticut's IDEA due-process decisions generally do not mention the ADA. Dating to 2011, only two decisions involved an ADA claim, with both dismissed for "lack of subject-matter jurisdiction." No. 21-0123 at 2 (Dec. 22, 2020)[14]; Nos. 16-0486 and 16-0617 at 17 (June 7, 2017) (stating that Connecticut law limits jurisdiction to "confirming, modifying or rejecting the identification, evaluation or educational placement of or the provision of FAPE to a child, to determining the appropriateness of a unilateral placement of a child or to prescribing alternative special education programs for a child.").[15]

District of Columbia. D.C.'s special-education law focuses exclusively on the IDEA, *see* D.C. Code §§ 38-2571.03(1), (2), (6)(A), 38-2571.04, 38-2572.02(a), with no mention of the ADA. Amici reviewed all hearing decisions dating to 2016, and only three involved ADA claims. One observed that "in the District of Columbia, a [hearing officer's] jurisdiction is limited to disputes about the eligibility, identification, evaluation, educational placement, or the provision of FAPE." No. 2019-0301 at 32 (June 30, 2020).[16] "It is abundantly clear," the hearing officer stated, "that this limited jurisdiction does not include … ADA … claims." *Id.* The others were dismissed for

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[14] https://perma.cc/DA5W-57AK

[15] https://perma.cc/V49T-YS9M

[16] https://perma.cc/2EG3-6FE5

lack of jurisdiction, No. 2019-0073 at 3 (June 17, 2019),[17] and "without prejudice." No. 2016-0023 at 3 n.4 (Apr. 2, 2016).[18]

Florida. Florida's special-education law requires the state to "comply with the Individuals with Disabilities Education Act (IDEA), as amended, and its implementing regulations." Fla. Stat. § 1003.571(1). Hearing officers may consider non-IDEA claims, but only when the school district contracts with the state adjudicatory agency to do so. *Id.* § 120.65(6). *See* No. 12-3976E at 11 n.4 (Apr. 5, 2013) (hearing Rehabilitation Act claim because of contractual authorization).[19] Amici's review of all Florida due-process decisions since 2007 reveals no decision in which a school district contracted for adjudication of ADA claims. Thus, hearing officers dismiss ADA claims for lack of jurisdiction. *See, e.g.*, No. 18-0604E at 2 n.1 (Aug. 16, 2018)[20]; No. 12-2322E at 5 (Oct. 22, 2012)[21]; Nos. 09-0568E and 09-1233E at 85 (Sept. 9, 2009).[22]

Illinois. Illinois' special-education regulations refer to the IDEA, but not to other statutes protecting students with disabilities. *See* Ill. Admin. Code tit. 23, §§ 226.610, 226.615, 226.630(a), 226.670, 226.690. Amici's survey of every Illinois IDEA due-process decision since 2014 reveals only two involving ADA

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[17] https://perma.cc/3Y5N-HD29

[18] https://perma.cc/ZP4K-T7SV

[19] https://perma.cc/WAF2-C3EU

[20] https://perma.cc/H2BW-YXYQ

[21] https://perma.cc/S8GD-BS7X

[22] https://perma.cc/GYZ7-SNCP

claims, and both disclaimed jurisdiction. In one, the hearing officer held "she d[id] not have jurisdiction over the ADA claims, but d[id] have jurisdiction to address whether Student was denied a FAPE under the IDEA." No. 2018-0062 at ISBE000168 (Feb. 1, 2018).[23] In the other, the hearing officer had "no jurisdiction to adjudicate" ADA claims because "[i]n Illinois, an [IDEA hearing officer's] jurisdiction is limited to hearing issues relating to matters involving the identification, evaluation, educational placement or the provisions of a free appropriate public education." No. 2018-0391 at 17 & n.31 (Nov. 13, 2018).[24]

Maryland. Maryland's special-education dispute-resolution processes are designed to handle only IDEA claims. Hearing officers must be "knowledgeable and understand[] the provisions of the IDEA, and federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA."[25] Like the IDEA, Maryland law specifies that a hearing officer's decision "shall be made on substantive grounds based on the determination of whether the child received a free appropriate public education." Md. Code Ann., Educ. § 8-413(g)(1).

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[23] https://perma.cc/NLL9-J6L9

[24] https://perma.cc/D7UT-GEBJ

[25] Maryland State Department of Education, *Parental Rights: Maryland Procedural Safeguards Notice* at 33-34, https://www.pgcps.org/globalassets/offices/special-education/docs-special-education/maryland-procedural-safeguards-notice.pdf.

Amici reviewed every special-education decision published by the Maryland Office of Administrative Hearings. One held that the complainant had "no legal authority" to file an administrative complaint alleging discriminatory retaliation under the ADA. No. MSDE-CITY-OT-17-37284 at 8-9, 12 n.6 (Mar. 16, 2018).[26] In another, a parent included an ADA claim in the original due-process complaint, but the hearing officer later noted the claim had been dropped after a prehearing conference. No. MSDE-BCNY-OT-18-18944 at 2 n.3 (Aug. 28, 2018).[27] Amici found no case in which a Maryland hearing officer considered an ADA claim on its merits.

Massachusetts. Massachusetts law authorizes IDEA hearing officers to adjudicate claims under the IDEA and the Rehabilitation Act, but not under the ADA. Mass. Gen. Laws ch. 71B, § 2A(a), (c). And even when hearing Rehabilitation Act claims, hearing officers "lack[] authority to award monetary damages." No. 06-6508 at 3 (Mar. 9, 2007).[28] Amici reviewed every decision dating to 2016, and students attempting to bring ADA claims are sent away empty-handed because Massachusetts hearing officers "do[] not have jurisdiction over the ADA." No. 1702629 at 1 n.2 (Nov. 9, 2016) (citing Nos. 1404388 and 1309716, which held that IDEA hearing officers lack jurisdiction over ADA claims).[29]

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[26] https://perma.cc/D4WZ-XVL5

[27] https://perma.cc/JD7F-A9L4

[28] https://perma.cc/GZL5-US9Q

[29] https://perma.cc/P98J-ULLY

Michigan. In Michigan, due-process hearings are conducted "in accordance with the Individuals with Disabilities Education Act." Mich. Admin. Code R. 340.1724f(3)(k). Amici reviewed every published IDEA hearing decision since 1997. Hearing officers dismiss non-IDEA claims, including ADA claims, because they are "not within the purview of this forum." *See e.g.*, No. 2008-018 at 46 (Apr. 6, 2009)[30]; No. 2003-007b at 11 (Oct. 8, 2003)[31]; *accord* No. 13-001454 at 21 (Oct. 2013).[32] One decision held that "monetary damages under § 504 or the ADA is beyond [a hearing officer's] authority to award." No. 2004-105E at 5-6 (Oct. 17, 2006).[33]

New Jersey. New Jersey law authorizes hearing officers to decide IDEA and Rehabilitation Act claims. N.J. Admin. Code § 6A:14-2.7(k), (w). No statute authorizes hearing officers to decide ADA claims, and no hearing officer has reached the merits of an ADA claim. In one case, the hearing officer did not address the ADA claim, but noted that "this tribunal does not have the authority to award damages," and then held that the parents could "pursue their [non-IDEA] claims in federal court." No. EDS 07848-17 at 2, 79-80 (July 18, 2019).[34] In another, the hearing officer mentioned the student's ADA claim, but disposed of the case solely on the ground that "the District has met all of its obligations under the IDEA and New Jersey

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[30] https://perma.cc/VPK5-3VL2

[31] https://perma.cc/D3PJ-WR7J

[32] https://perma.cc/SC8L-5T8B

[33] https://perma.cc/D6N5-G6DQ

[34] https://perma.cc/KW7F-QTU5

statutes and regulations," making no further mention of the ADA. No. EDS 08837-19 at 2, 59-60 (Mar. 9, 2020).[35]

New York. New York's special-education regulations mimic federal law, requiring that "a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.5(j)(4)(i). Hearing officers have come to inconsistent conclusions regarding their power to hear ADA claims. One held that he "[wa]s not the trier of fact for … the ADA," so he could "offer no relief pursuant to [the ADA]." No. 162323 at 72 (Aug. 4, 2018).[36] Other decisions are in accord. No. 503548 at 10 (Aug. 15, 2017)[37]; No. IH-2016(65) at 21 (Apr. 6, 2016).[38] But another decision found that the school "denied [the student] a FAPE … in violation of the IDEA, Section 504 and the ADA." No. 172586 at 12-13 (July 27, 2018).[39] Even there, the complainant was awarded only prospective educational services, as available under the IDEA, not compensatory damages. *Id.* Based on amici's review, no New York hearing officer has ever awarded compensatory damages under the ADA (or any other statute).

Pennsylvania. Pennsylvania authorizes hearing officers to decide both IDEA and Rehabilitation Act

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[35] https://perma.cc/8EAV-2UJX

[36] https://perma.cc/7UV5-E6T7

[37] https://perma.cc/UG3H-NSVX

[38] https://perma.cc/3ZGV-XJ22

[39] https://perma.cc/A63Y-MUYF

claims. 22 Pa. Code §§ 14.162, 15.8(a). The Commonwealth's due-process complaint form thus allows complainants to indicate whether they are seeking relief under either or both statutes.[40] Notably, a Rehabilitation Act complainant "may" use the due-process system, 22 Pa. Code § 15.8(a), and go to court afterwards, but "is not required to start with the due process system."[41]

But Pennsylvania statutes and regulations do not mention the ADA, which has created "considerable disagreement as to whether [hearing officers] have jurisdiction to hear ADA claims." No. 20014-1718AS at 11 n.5 (Feb. 16, 2018) (not reaching the complainant's ADA claim because the school had not denied the student a FAPE).[42] Just last year, a hearing officer held that a school had not discriminated under the ADA, No. 23695-19-20 at 34 (Mar. 2, 2021),[43] while another dismissed an ADA claim for lack of jurisdiction, No. 24533-20-21 at 2 n.3 (May 27, 2021).[44] In any event, no Pennsylvania hearing officer has ever awarded compensatory damages under the ADA or even suggested authority to do so.

Texas. Texas's due-process complaint form requires "a statement that a public education agency has violated Part B of the IDEA" or a "state special

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[40] Pennsylvania Office of Dispute Resolution, *Due Process Complaint*, https://perma.cc/U6B7-AZZE.

[41] Pennsylvania Office of Dispute Resolution, Understanding Special Education Due Process Hearings: A Guide for Parents 32 (2019), https://perma.cc/8RHB-RERD.

[42] https://perma.cc/7W7E-A4JG

[43] https://perma.cc/T25H-NNTB

[44] https://perma.cc/62RF-3G54

education statute or administrative rule." 19 Tex. Admin. Code § 89.1195(b)(3). Not surprisingly, then, Texas hearing officers invariably dismiss ADA claims (as well as other non-IDEA claims) for "lack of jurisdiction." *See, e.g.*, No. 017-SE-0920 at 2 n. 2 (June 23, 2021)[45]; No. 365-SE-0719 at 1-2 (Nov. 15, 2019)[46]; No. 144-SE-0119 at 3 (June 21, 2019)[47]; No. 228-SE-0518 at 36 (Feb. 8, 2019).[48]

III. ADA claims need not be exhausted in IDEA administrative proceedings because exhaustion would be futile and cannot provide the relief the ADA offers.

As just shown, IDEA hearing officers generally view ADA claims as outside their jurisdiction and never award compensatory damages. It would therefore be futile for students to exhaust before an IDEA hearing officer prior to bringing their ADA claims to court, and they should not be required to do so. This conclusion is underscored by Miguel's case, and others reviewed in Part II above, where the student sought administrative adjudication of an ADA claim, but the hearing officer dismissed it for lack of jurisdiction. *See* Pet. 27-28 & n.7.

To be clear: Amici's position is based on the on-the-ground reality discussed above, not on an immutable rule. If state special-education law actually authorized administrative adjudication of ADA claims and IDEA hearing officers actually awarded students

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[45] https://perma.cc/Q6TS-8S9Z

[46] https://perma.cc/X53N-ZE36

[47] https://perma.cc/7RVJ-LKR8

[48] https://perma.cc/DE2Z-HU5E

compensatory damages for ADA violations, then exhaustion would not be futile.

But given the reality, a futility exception to IDEA exhaustion applies to ADA claims through two separate sources of authority: (1) time-honored common-law principles, carried over into modern administrative law, and (2) the IDEA's text.

A. An ADA claim need not be exhausted under administrative-law futility principles.

1.a. The ancient maxim "*lex non cogit ad inutilia*," or "[t]he law does not require the doing of a futile act," is a fundamental principle of Anglo-American jurisprudence. *See Stone v Gilliam*, 89 Eng. Rep. 505 (K.B. 1691); *Cary v. Curtis*, 44 U.S. 236, 246 (1845).

This principle has developed deep roots in modern administrative law because, as in the law more generally, "[g]ood judicial administration is not furthered by insistence on futile procedure." *Wade v. Mayo*, 334 U.S. 672, 681 (1948). Thus, it has long been understood that exhaustion of an administrative process is not required before filing suit when using the process would be futile or inadequate. *See, e.g.*, *Honig v. Doe*, 484 U.S. 305, 327 (1988); *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992); *see generally* 2 Kenneth Davis, *Administrative Law Treatise* §§ 15.2-15.3, 15.8 (1994). Of special salience here, when there is "doubt as to whether an agency [i]s empowered to grant effective relief," exhaustion is not required. *McCarthy*, 503 U.S. at 147-48 (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14 (1973)).

Administrative-exhaustion doctrine is "intensely practical." *Bowen v. City of New York*, 476 U.S. 467,

484 (1986) (quoting *Matthews v. Eldridge*, 424 U.S. 319, 331 n.11 (1976)). It seeks to foster efficient agency administration, enable parties and the court to benefit from the adjudicator's "experience and expertise," and to "compile a record which is adequate for judicial review." *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975). But when an agency decisionmaker "determine[s] that the only issue" for resolution is "beyond his … jurisdiction to determine," then "further exhaustion would not merely be futile," but also "a commitment of administrative resources unsupported by any administrative or judicial interest." *Id.* at 765-66.

b. The IDEA's legislative history, *see* Pet. 15, 22, and its express preservation of non-IDEA remedies, *see* 20 U.S.C. § 1415(*l*), demonstrates "a special concern with [the] futility" exception to exhaustion. *Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16, 31 (1st Cir. 2019).

This concern manifested itself in this Court's decision in *Honig*, 484 U.S. 305, involving the IDEA's "stay-put" provision, 20 U.S.C. § 1415(e)(3), which generally requires schools to keep students with disabilities in their current placements while administrative proceedings are pending. The school district argued that a textual reading of the provision would require districts to "return violent or dangerous students to school" during the proceedings. *Honig*, 484 U.S. at 323. The Court responded by invoking the futility doctrine, explaining that an IDEA complainant "may bypass the administrative process where exhaustion would be futile or inadequate," *id.* at 326-27, and noting that there was "no reason to believe that Congress meant to require schools alone to exhaust in all cases, no matter how exigent the

circumstances," *id.* at 327. Though the Sixth Circuit majority identified *Honig*'s invocation of the futility doctrine as dicta, Pet. App. 11a, it was, instead, central to the Court's holding, ensuring that its "interpretation of the statute would not lead to absurd results." Pet. App. 29a (Stranch, J., dissenting).

2.a. As shown above in Part II (at 9-19), the IDEA limits hearing officers' obligations. Hearing officers make decisions based only "on a determination of whether the child received a free appropriate public education" under the IDEA. 20 U.S.C. § 1415(f)(3)(E)(i). They are required to have expertise only in the IDEA. 34 C.F.R. § 300.511(c)(1). In few, if any, cases then "would the administrative process offer insight into the merits of a[n ADA] discrimination claim." *Ellenberg v. New Mexico Mil. Inst.*, 478 F.3d 1262, 1281 (10th Cir. 2007). ADA discrimination claims—which, as demonstrated earlier, are typically dismissed by hearing officers for lack of jurisdiction—therefore fit squarely within the futility exception.

b. In holding that Miguel had not exhausted his ADA claim, the Sixth Circuit held that *Ross v. Blake*, 578 U.S. 632 (2016), a decision interpreting the Prison Litigation Reform Act (PLRA), had tacitly overruled *Honig*, Pet. App. 10a, which, as explained, fully embraced the futility exception to administrative exhaustion under the IDEA. *Ross* does not justify jettisoning the age-old principle that exhaustion is not required when futile or when the administrative process cannot provide a legally adequate remedy.

Under the PLRA, "[n]o action shall be brought … by a prisoner … until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

True, this provision, because of its "text and history," "foreclos[es] judicial discretion," *Ross*, 578 U.S. at 638-39, "even when the relief sought … cannot be granted by the administrative process." *Woodford v. Ngo*, 548 U.S. 81, 85 (2006). *Ross* was clear, however, that a statute with "a different text and history" should be "read to give judges the leeway to create exceptions or to itself incorporate standard administrative-law exceptions." *Ross*, 578 U.S. at 642 n.2 (citation omitted). *Ross*, therefore, does not displace *Honig*, which addressed a divergent statutory text, *see infra* at 24-25, and legislative history, *see* Pet. 22, supporting the opposite conclusion.

The Sixth Circuit also overlooked *Smith v. Berryhill*, 139 S. Ct. 1765, 1776 (2019), decided after *Ross*, which concerned the Social Security Act's administrative-exhaustion requirements. This Court reiterated there that exhaustion is unnecessary when it would "serve no meaningful purpose." *Id.* at 1780 n.21. *Ross*, then, could not have foreclosed all applications of the futility doctrine when a statute expressly addresses exhaustion.

B. The IDEA does not require exhaustion of claims seeking non-IDEA relief.

1. This Court has left open the question whether the IDEA requires exhaustion when "the specific remedy [a student] requests … is not one that an IDEA hearing officer may award," *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 752 n.4 (2017), "for example," when the plaintiff seeks "money damages for resulting emotional injury," *id.* at 754 n.8—the relief that Miguel and other ADA plaintiffs seek. The Court should answer that question now. *See* Pet. 30-34.

The IDEA does not require exhaustion when the plaintiff is "seeking relief" from a court that is not "available" under the IDEA. 20 U.S.C. § 1415(*l*). "[R]elief" is "[d]eliverance from oppression, wrong, or injustice" and "a general designation of the assistance, redress, or benefit which a complainant seeks at the hand of court." Black's Law Dictionary 1161 (5th ed. 1979). Relief, then, is not the *process* required, but the *result* of a process. *See* Katherine Bruce, *Vindication for Students with Disabilities: Waiving Exhaustion for Unavailable Forms of Relief After Fry v. Napoleon Community Schools*, 85 U. Chi. L. Rev. 987, 1019 (2018). When a student brings an ADA claim, the relief typically sought—compensatory damages—is not available under the IDEA. *See supra* at 7 & note 5 (noting unanimity of authority on this point). An ADA damages claim, therefore, may be brought directly to court.

On this score, Section 1415(*l*) stands in sharp contrast to the text at issue in *Ross*. Under the PLRA, a prison's grievance *process*, not the money or other *relief* that the prisoner hopes to obtain, is the "available remed[y]" at issue. *Ross*, 578 U.S. at 641-44; *see* 42 U.S.C. § 1997e(a) (requiring exhaustion of the "administrative remedies as are available"). "Remedy" under the PLRA, then, is the "mechanism … to provide relief" as distinct from the "relief" itself, *Ross*, 578 U.S. at 644, to which the IDEA refers, *see* Bruce, *supra*, 85 U. Chi. L. Rev. at 1020.

Moreover, as noted, the PLRA mandates that "*[n]o* action shall be brought … *until* such administrative remedies … are exhausted," 42 U.S.C. § 1997e(a) (emphasis added). Section 1415(*l*), on the other hand, expressly affirms the rights of students

with disabilities to bring a civil action under the ADA (and other laws), and, as indicated, they must first exhaust only when "seeking relief that is also available under [the IDEA]." 20 U.S.C. § 1415(*l*).

2. This straightforward application of Section 1415(*l*)'s text would not provide an impermissible end-run around exhaustion. "[T]he contention that the rigors of the exhaustion doctrine should be relaxed" may not be rebuffed "by mechanical recitation of the broad interests usually served by the doctrine but rather should be assessed in light of a discrete analysis of the particular default in question." *McGee v. United States*, 402 U.S. 479, 485 (1971). Any "fear of 'frequent and deliberate flouting' can easily be overblown, since in the normal case a [complainant] would be 'foolhardy' indeed to withhold a valid claim from administrative scrutiny." *Id.* (citation omitted).

For most families, a due-process complaint seeking IDEA relief is the most attractive means for remedying educational deficiencies in their children's education. It is less expensive and time-consuming than filing suit, and the vast majority of complainants resolve their disputes well short of a full-blown administrative hearing, let alone a lawsuit. *See supra* at 6 & note 4.

But the administrative process is attractive only when it can provide meaningful relief measured against the harms imposed on students and their families. As shown above, Congress understood that exhaustion is not required when that relief cannot be provided. In cases like Miguel's, when a student brings an ADA claim seeking compensatory damages for serious harms not remediable under the IDEA, Section 1415(*l*), like analogous administrative-law

futility principles, provides a critical exception to exhaustion.

Conclusion

The petition for a writ of certiorari should be granted.

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