No. 21-887

In the
Supreme Court of the United States

MIGUEL LUNA PEREZ,
Petitioner,
v.

STURGIS PUBLIC SCHOOLS; STURGIS PUBLIC SCHOOLS BOARD OF EDUCATION
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AASA, THE SCHOOL SUPERINTENDENTS ASSOCIATION, THE COUNCIL OF ADMINISTRATORS OF SPECIAL EDUCATION, THE AMERICAN PHYSICAL THERAPY ASSOCIATION, THE ASSOCIATION OF SCHOOL BUSINESS OFFICIALS INTERNATIONAL, THE NATIONAL ASSOCIATION OF PUPIL SERVICES ADMINISTRATORS, AND THE NATIONAL ASSOCIATION OF SCHOOL NURSES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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I.
INTEREST OF *AMICI CURIAE*[1]

AASA, The School Superintendents Association ("AASA"), founded in 1865, is the professional organization for over 13,000 educational leaders in the United States and throughout the world. AASA members range from chief executive officers, superintendents and senior level school administrators to cabinet members, professors and aspiring school system leaders. Throughout its more than 150 years, AASA has advocated for the highest quality public education for all students and provided programing to develop and support school system leaders. AASA members advance the goals of public education and champion children's causes in their districts and nationwide.

The Council of Administrators of Special Education ("CASE"), a division of the Council for Exceptional Children, is an international nonprofit professional organization advocating for and providing leadership and professional development to over 5,000 administrators who work on behalf of students with disabilities and their families in public and private school systems and institutions of higher education. CASE members are committed to the highest standards of access and inclusion and to enhancing the worth, dignity, and educational achievement of all students in school districts across the country.

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[1] All parties have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

The American Physical Therapy Association ("APTA") is an individual membership professional organization representing 100,000 member physical therapists, physical therapist assistants, and students of physical therapy. Physical therapists play a unique role in society in prevention, wellness, fitness, health promotion, and management of disease and disability for individuals across the age span. Physical therapists are often a member of a child's IEP team and play an important role in helping children access their free appropriate public education. APTA is committed to ensuring that parents, school staff, and the student actively work together to evaluate and implement the student's educational plan and attempt to resolve any disagreements before seeking litigation.

The Association of School Business Officials International ("ASBO") provides programs, resources, services, and a global network to school business professionals who are the finance and operations decision makers in school systems. ASBO members manage school budgeting, purchasing, facility operations and maintenance, human resources, technology, transportation, food service, healthcare, and other areas of education administration and operations. ASBO promotes the highest standards of school business management, professional growth, and the effective use of educational resources.

The National Association of Pupil Services Administrators ("NAPSA") is a national association of student services administrators with members across the nation who collaborate, coordinate and communicate with advocates, parents and students to provide appropriate services for all students, including students with disabilities. NAPSA is committed to

the cultivation of leadership, advocacy, and professional development in the field of pupil services. Pupil services administrators must possess a broad knowledge of many fields within student services, including but not limited to special education, psychology, social work, school health, school counseling, and other related services.

The National Association of School Nurses ("NASN") is the only national association solely dedicated to optimizing student health and learning by advancing the specialty practice of school nursing. With over 17,000 members in every part of the country and affiliate organizations in 48 states, the District of Columbia, and overseas, NASN has extensive reach at the national, state and local level. Located in Silver Spring, MD, NASN is a 501(c)(3) public charity. NASN's interest in this case comes from the school nurse's unique knowledge and experience that is essential to assess and identify student health-related barriers to learning and the accommodations necessary to provide students proper access to education. School nurses work collaboratively with other team members to identify, evaluate, and develop plans for students in need of educational accommodations and special education services.

Between them, Amici represent many of the school professionals who are instrumental in the daily education of students with disabilities. Amici are concerned that any weakening of the exhaustion requirement of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq*. ("IDEA") that would result from the reversal of the decision of the Sixth Circuit below (*Perez v. Sturgis Pub. Sch.*, 3 F.4th 236 (6th Cir. 2021)) would cause irreparable damage to the

cooperative working relationship between parents and schools that is the linchpin of the IDEA.

Based on the foregoing, Amici submit that the U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") correctly interpreted the relevant portions of the IDEA, and urge the Court to uphold the decision below.

II.
INTRODUCTION AND SUMMARY OF THE ARGUMENT

Sound practical and policy considerations—aimed at both protecting the interests of children and at promoting judicial efficiency—undergird Congress's decision to extend IDEA's exhaustion requirement beyond claims that directly invoke the IDEA, to any claim which seeks relief that would be available under the IDEA, including those brought under Section 504 and the ADA. The language used by Congress evinces its desire to prevent artful pleading by plaintiffs from undermining these important considerations. A resolute exhaustion requirement supports the carefully crafted, collaborative framework Congress created for students with disabilities, parents, and school districts to develop and implement a comprehensive and individualized education program for a child with a disability. Weakening the exhaustion requirement will undermine the collaborative nature of the IDEA process, and will shift the parties' focus to money rather than the student's education needs, will waste money on litigation that could more effectively be spent on students themselves, and will discourage settlements by making them more expensive.

III.
ARGUMENT

"Discourage litigation. Persuade your neighbor to compromise whenever you can."
- President Abraham Lincoln[2]

Litigation is, by its very nature, confrontational: it relies on an adversarial process, highlighted by the right to cross examine hostile witnesses, to attempt to resolve disputes in a manner that in most cases produces someone who wins and someone who loses. Educating children, however, should never be about winning or losing. When describing the IDEA, Justice O'Connor declared, "The core of the statute…is the cooperative process that it establishes between parents and schools." *Shaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005). To explain why the burden of proof in IDEA cases should be on the party seeking relief, which is usually parents, she noted:

> Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act. § 1414(c)(3). Parents are included as members of "IEP teams." § 1414(d)(1)(B). They have the right to examine any records relating to their child, and to obtain an "independent

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[2] From "Abraham Lincoln's Notes for a Law Lecture", found at https://www.abrahamlincolnonline.org/lincoln/speeches/lawlect.htm (visited Dec 8, 2022).

> educational evaluation of the[ir] child." § 1415(b)(1). They must be given written prior notice of any changes in an IEP, § 1415(b)(3), and be notified in writing of the procedural safeguards available to them under the Act, § 1415(d)(1). If parents believe that an IEP is not appropriate, they may seek an administrative "impartial due process hearing." § 1415(f).

Id. at 53. So not only does the IDEA provide for an administrative hearing, but it also contains numerous provisions that encourage collaboration well before the parties even get to a hearing.

The School Superintendents Association, the Council of Administrators for Special Education, the American Physical Therapy Association, the Association of School Business Officials International, the National Association of Pupil Services Administrators, and the National Association of School Nurses, whose members are the school employees who – among many other duties – are tasked by the IDEA with collaborating with parents to ensure that children with disabilities receive a quality public education, file this Brief in support of Respondents Sturgis Public Schools and Sturgis Public Schools Board of Education, to emphasize their belief that a reversal of the decision below (or, more accurately, the adoption of the position taken by Petitioner in this appeal) would irreparably harm the IDEA's administrative exhaustion requirement that is the fundamental legal underpinning of the collaborative process.

A. "Timothy"

While the facts in the underlying case are sympathetic, Amici – whose members are the professional employees who work daily with children with disabilities all across the country – believe that the situation considered by the Sixth Circuit below is an outlier. In a hypothetical but more common scenario, a school district in Texas was served with a lawsuit filed by parents whose 15-year-old child with autism ("Timothy") had not been enrolled in the district since 2018. The complaint stated that the parents had withdrawn Timothy from the district four years earlier, because they believed the school had failed to offer Timothy a free appropriate public education ("FAPE"). The lawsuit asserted claims under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act ("ADA"), and sought compensatory damages for emotional distress and reimbursement for four years of Timothy's private school tuition. The lawsuit also asserted a claim for disability discrimination under the Equal Protection Clause of the Fourteenth Amendment against several individual defendants, including Timothy's teacher.

The district's special education director was shocked to receive a lawsuit about a student she had not seen in years. She pulled the student's file from 2018 out of storage and noticed that rather than meet with school administrators and teachers in 2018 to discuss their concerns with Timothy's IEP, the parents had withdrawn their child and unilaterally placed him in a private school that they thought could offer their son with autism a better educational program, but which the district knew from past experience was ill-equipped to educate students with

autism. She could not find any proof that the parents had made any requests for meetings or information that had been denied by the district.

A year into litigation, the district received a settlement offer from the parents' attorney demanding over $300,000 in reimbursement for the student's private school tuition, along with a demand that the district continue to fund the student's placement at the private school until graduation. The case eventually settled after mediation, with the school district agreeing to pay $150,000, plus $50,000 in attorney's fees.

To this day, the school district does not know what the money went to. Had the parents followed the IDEA's exhaustion requirements and requested mediation or a resolution meeting in 2018, educational services could have been agreed on then, at potentially a fraction of the cost to the school district – and Timothy would have received his needed services *then*, and not years later when the parents could afford to pay for them with settlement funds. As it stands, whether Timothy ever received a proper education at the private school designed to address his needs as a student with autism remains a mystery.

B. Allowing the IDEA's exhaustion requirements to be avoided simply by requesting monetary damages in a non-IDEA lawsuit would significantly weaken the collaborative benefits of the IDEA.

If Timothy's parents were able to skip exhausting administrative remedies through the available due process hearing simply by asking for monetary damages in a subsequent lawsuit, this would effectively render the exhaustion requirement meaningless, and

reduce the chance that the parties would be able to work together successfully in the future. Disputes arise daily in public school districts across the country over how to educate students with disabilities, and the IDEA provides the opportunity for a parent or a public agency to file a complaint with respect to *any* matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. 34 C.F.R. 300.507(a). This includes whether the school misidentified a student's disability, whether the school prevented a parent from actively participating in the IEP process, or whether the IEP provided educational benefits to the child. Using litigation to resolve disputes over these kinds of educational services is akin to using a sledge hammer to perform brain surgery, instead of the scalpel needed for such delicate work.

In 1997, Congress amended the IDEA, with the specific intention "to place greater emphasis on improving student performance and ensuring that children with disabilities receive a quality public education." *Forest Grove Sch. Dist. v. T.*A., 557 U.S. 230, 239 (2009) (citing S.Rep. No. 105–17, p. 3 (1997)). As the IDEA and its regulations have further developed, students, parents, special education administrators, teachers, and other educational experts work together to develop an individualized education program ("IEP") that is tailored to meet the unique needs of children with disabilities. The key to this collaboration is ongoing communication between parents, educators, and other experts who have the training and knowledge to create an IEP that is intended to allow students with disabilities to be educated with non-disabled peers as much as possible. *See Endrew F. ex rel.*

Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 999 (2017) ("The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians.").

If the parents and the school cannot agree on a proper IEP using this collaborative team approach, the IDEA provides for an administrative hearing process with specified timelines as a means to resolve any disagreements.[3] These procedures are designed to promote informal and early resolution to ensure that the child's education experience is not harmed by a lengthy adjudicative process. Within fifteen days of receiving notice of the due process complaint, the parties are required to engage in a "resolution meeting," to discuss their issues and give the school an opportunity to resolve the dispute that is the basis for the due process complaint.[4] In the alternative, rules exist to provide for a full mediation, with a qualified mediator who is "knowledgeable in laws and regulations relating to the provision of special education and related services."[5]

If a parent's complaint cannot be resolved despite these informal efforts, the parent may then present evidence and make arguments to a specially trained hearing officer with broad authority to grant relief related to a child's educational program. A hearing officer may grant relief in the form of orders for future conduct, reimbursement orders, or awards of compensatory education. *See Forest Grove Sch. Dist. v. T.A.*,

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[3] *See* 34 C.F.R. 300.506-508, 300.510-511.
[4] *See* 34 C.F.R. 300.510.
[5] *See* 34 C.F.R. 300.506.

557 U.S. 230, 240 (2009); 71 Fed. Reg. 46,599 (2006). Although hearing officers are not authorized to award monetary damages under the IDEA, they have authority to grant a wide variety of education services to students that might not be available in a Section 504 or ADA lawsuit.

The evidence strongly suggests that collaboration works: most IDEA claims brought against school districts are resolved before the conclusion of a due process hearing. A report prepared by the Center for Appropriate Dispute Resolution in Special Education ("CADRE" and the "CADRE Report") shows that during the 2020-2021 school year, 9,790 due process complaints were resolved without a hearing, and only 1,293 fully adjudicated hearings were held.[6] A review of data from the previous 10 years shows that, between 2010 and 2018, over half of the due process complaints filed were resolved without a hearing, and the number of fully adjudicated hearings each year remained fairly constant, between 1,993 and 2,813.[7]

Conversely, litigation is by its very nature adversarial, and is inherently inefficient as a speedy dispute resolution mechanism, especially when the

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[6] *See* Page 10 of the "IDEA Dispute Resolution Data Summary for U.S. and Outlying Areas: 2010-11 to 2020-2021," found at https://www.cadreworks.org/resources/cadre-materials/2020-21-dr-data-summary-national. CADRE collects and reports on the dispute resolution data that all states are required to report to the U.S. Department of Education Office of Special Education Programs.

[7] Experience of Amici members suggests that the increase in due process complaints filed and decrease in completed hearings from the 2019-2020 school year forward is likely due to the impact of the COVID-19 pandemic on the operations of the public school system.

dispute involves the education of a child with a disability. If the Sixth Circuit's decision is overturned, it will give parents an expedited path to litigation in civil court and defeat the IDEA's core purpose of collaboration and early dispute resolution. It will embroil students, parents, and school districts in lengthy and expensive court proceedings, depleting district local funds that could be used to serve the needs of students with and without disabilities alike.

The adversarial nature of litigation also is counterproductive to encouraging ongoing collaborative working relationships between parents and the school officials they have just sued. Timothy's parents chose above to assert equal protection claims against Timothy's teacher in her individual capacity, and it is unfortunately not uncommon for families suing school districts to bring claims against the individual school officials who are simply trying to educate the student. Amici's members not only must by necessity work daily with the student and his or her parents, but the working relationship must sometimes last for years. Special education students do not always progress from one classroom to another at the end of each traditional "grade," and some special education specialists – such as specialized instructional support personnel like school nurses, speech-language pathologists, physical therapists, school psychologists and even teachers – spend multiple years working with the same students. An adversarial litigation process that encourages plaintiffs to file claims directly against individual defendants can destroy critical working relationships.

This is not to naively suggest that the due process hearing itself cannot become adversarial and

confrontational. However, the focus of the hearing should be on the student's education, and not necessarily on the specific acts of individual employees. There are no "Individual Defendants" in due process hearings.

In Timothy's case, had the parents reached out to the school district back in 2018 when they claimed the school was not providing a FAPE to their child, the district would have had the opportunity to collaborate with the parents to attempt to resolve their issues with Timothy's IEP, as the IDEA intended. School resources, both financial and in staff time, could have been much better spent on the provision of services to all students in the school district. The parties would also have had the opportunity, before Timothy left the district, to discuss the viability of the education program for students with autism at the private school in question. While the parents might have disagreed if school officials had said the private school's program was not appropriate for students with autism, the parents would have at least had more information and been in a better position to make an informed decision about the education of their child.

C. Allowing the IDEA's exhaustion requirements to be avoided simply by requesting monetary damages in a non-IDEA lawsuit would create a de facto compensatory damage component for IDEA claims.

Overturning the Sixth Circuit's decision would open the floodgates for parents seeking monetary gain for claims that most likely could have been resolved using the IDEA's collaborative processes of IEP

meetings,[8] resolution sessions,[9] mediations,[10] or due process hearings.[11] The IDEA's goal is to resolve educational disputes using educational means. This Court acknowledged as much in *Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 137 S.Ct. 743 (2017), when it stressed that the IDEA's exhaustion requirement applies when the gravamen of a plaintiff's complaint is for the denial of a student's appropriate education. Specifically, this Court stated that if a lawsuit, based on the substance of the complaint, seeks redress for a school's failure to provide a free appropriate public education, exhaustion of the administrative procedures of the IDEA is required, even if the lawsuit is brought under a statute other than the IDEA. *Id.* at 754–55.

Allowing parents to skip the administrative process by asking for monetary damages under Section 504 or the ADA is the functional equivalent of providing a compensatory damage remedy under the IDEA. Congress deliberately chose not to provide for compensatory damages under the IDEA. *See*, *e.g.*, *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 37 (1st Cir. 2006) ("In choosing not to authorize tort-like monetary damages or punitive damages in cases under the IDEA, Congress made a balanced judgment that such damages would be an unjustified remedy for this statutorily created cause of action."); *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 486 (2d Cir. 2002) ("The purpose of the IDEA is to provide educational services, not compensation for personal injury, and a damages remedy – as contrasted with

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[8] *See* 34 C.F.R. 300.116(a)(1).
[9] *See* 34 C.F.R. 300.510.
[10] *See* 34 C.F.R. 300.506.
[11] *See* 34 C.F.R. 300.511.

reimbursement of expenses – is fundamentally inconsistent with this goal.") Encouraging parents to prioritize money over educational services in essence creates a compensatory damage aspect to the IDEA, in contravention of Congress's clear intent to focus on the education of the child.

Allowing parents' attorneys to incorporate monetary relief for future Section 504 and ADA claims into their IDEA settlement demands would in turn force school districts to increase their settlement offers to pay to waive such claims in any settlement agreement. This would exponentially increase the cost of resolving IDEA claims in mediation. In Timothy's case, the school was forced to pay hundreds of thousands of dollars just to resolve the litigation, with no guarantee that it would improve Timothy's education.

If parents can go straight to federal court simply by demanding monetary damages under Section 504 or the ADA, the parties would be denied the opportunity to have a trained special education hearing officer examine the merits of the parents' education-focused IDEA claims, to give them some indication of whether their claims are meritorious. Any reviewing court would be deprived of the creation of a record of the highly technical and often expansive evidence typical in such disputes. The Sixth Circuit's decision must be upheld to prevent parents from stifling the IDEA's collaborative nature and forcing school districts to spend hundreds of thousands of dollars defending these complaints, regardless of whether the complaints have merit.

D. The IDEA's futility exception should be limited to situations where parents do not voluntarily elect to pursue monetary damages.

Pursuant to *Fry*, parents who truly believe that their child has a pure monetary claim for damages for disability discrimination unrelated to their educational services may file lawsuits under statutes such as Section 504 or the ADA. *See Fry*, 137 S. Ct. at 743 ("But if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required.") Furthermore, nothing in the IDEA prevents students with disabilities from seeking relief under other disability-related laws once the student has properly exhausted their IDEA remedies at the administrative level. The exhaustion requirement therefore functions effectively as an election of remedies provision, allowing parents to choose which remedies they focus on initially (and thus which path they take[12]), while at the same time emphasizing the education of the child.

School districts should not be forced to have to defend themselves twice for the same underlying dispute. As Justice Sutherland once said, "[t]he doctrine of election of remedies … has for its underlying basis the maxim which forbids that one shall be twice vexed for one and the same cause." *United States v. Oregon Lumber Co.*, 260 U.S. 290, 301 (1922). As the Eighth Circuit has noted:

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[12] *See Homeland Training Ctr., LLC v. Summit Point Auto. Rsch. Ctr.*, 594 F.3d 285, 293 (4th Cir. 2010) ("Election of remedies doctrine also has a sequencing component.")

> Election of remedies is, in the words of one commentator, '[the] legal version of the idea that [a plaintiff may not] have his cake and eat it too.' ... A plaintiff must elect among remedies when he has available inconsistent remedies for the redress of a single right,"

PVI, Inc. v. Ratiopharm GmbH, 253 F.3d 320, 327 (8th Cir. 2001) (quoting *Grogan v. Garner*, 806 F.2d 829, 839 (8th Cir.1986) and Dan B. Dobbs, Handbook on the Law of Remedies § 1.5 at 14 (1973)). While Amici are not suggesting that educational services and monetary damages are completely inconsistent for these kinds of disputes, the IDEA makes it clear that the parties' focus should be "on improving student performance and ensuring that children with disabilities receive a quality public education." *Forest Grove*, 557 U.S. at 239.

As in most civil rights litigation, context matters under the IDEA: the futility exception to exhaustion should be limited to situations where the surrounding circumstances clearly show genuine (actual) futility, and not situations where futility has been artificially created by the voluntary choice of the parents. As the lower court stated, when parents seek relief for the denial of FAPE, the hearing officer's inability to award money damages cannot be a source of futility. *Perez v. Sturgis Pub. Sch.*, 3 F.4th 236, 244 (6th Cir. 2021). A lawsuit that seeks *relief* for the denial of an appropriate education is subject to section 1415(*l*), even if it requests a *remedy* the IDEA does not allow. *Id.* at 241 (citing *Covington v. Knox Cnty. Sch. Sys.*, 205 F.3d 912, 916–17 (6th Cir. 2000)). Most other

circuits agree. *See Covington*, 205 F.3d at 916–17 (collecting cases); *McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d. 640, 647–48 (5th Cir. 2019).

Multiple circuits have held that, "[d]espite the plausible 'textualist case that a claim does not "seek relief that is also available" under the IDEA if the plaintiff cannot seek the same remedy under the IDEA,'. . . the meaning of 'relief available' under the IDEA depends on the 'conduct the plaintiff complains about,' not the type of remedy that the plaintiff desires." *Logan v. Morris Jeff Cmty. Sch.*, 2021 WL 4451980, at *3 (5th Cir. 2021) (quoting *McMillen*, 939 at 648.); *Ahearn v. East Stroudsburg Area Sch. Dist.*, 848 Fed.Appx. 75, 78 (3d Cir. 2021) (holding that it is "of no moment" that only monetary damages are sought). "Allowing a plaintiff complaining about the denial of a [FAPE] to avoid exhaustion 'merely by tacking on a request for money damages' would subvert the procedures Congress designed for prompt resolution of these disputes." *McMillen*, 939 F.3d at 648 (quoting *Polera*, 288 F.3d at 487–88).

Given section 1415(*l*)'s focus on exhaustion of the IDEA's collaborative procedures, we know that "Congress meant to require procedural exhaustion regardless of the fit between [Perez's] prayer for relief and the administrative remedies possible." *Perez*, 3 F.4th at 244; *see* 20 U.S.C. § 1415(*l*). But if a request for damages could excuse the failure to exhaust, then any student seeking money damages could skip the administrative process. Section 1415(*l*) would have no force, as the Sixth Circuit explained.

Although Petitioner in this case downplays the benefits of electing to first pursue exhaustion under

the IDEA, administrative exhaustion serves a number of important purposes:

> Exhaustion of the administrative process allows for the exercise of discretion and educational expertise by state and local agencies, affords full exploration of technical educational issues, furthers development of a complete factual record, and promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children.

Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1303 (9th Cir. 1992) (citing *McKart v. United States*, 395 U.S. 185, 193-195 (1969)); *see also Marc V. v. N.E. Indep. Sch. Dist.*, 455 F. Supp. 2d 577, 592 (W.D. Tex. 2006), *aff'd*, 242 Fed.Appx. 271 (5th Cir. 2007) (exhaustion "allows deference to agency expertise in resolving educational matters; it gives the agency a first opportunity to correct errors; it presents courts with a more fully developed record; and it prevents parties from deliberately disregarding the statute's comprehensive procedures and remedies."); *Papania-Jones v. Dupree*, 275 Fed.Appx. 301, 303-04 (5th Cir. 2008) (per curium) ("By failing to exhaust the IDEA's administrative remedies, the Jones family did not give the State an appropriate opportunity to resolve their complaints prior to filing suit against the State.").

This view of the benefits of exhaustion under the IDEA is consistent with the Supreme Court's view of administrative exhaustion generally:

> Exhaustion of administrative remedies required by 20 U.S.C. § 1415(l) serves two main purposes. First, exhaustion protects "administrative agency authority." Exhaustion gives an agency "an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court," and it discourages "disregard of [the agency's] procedures." Second, exhaustion promotes efficiency. Claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court.

Woodford v. Ngo, 548 U.S. 81, 89 (2006) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50–51 (1938)).

As discussed above, the CADRE Report shows that the exhaustion requirement has been very successful in helping parents and schools resolve their disputes without having to go all the way through a full due process hearing. During the 2020-2021 school year, out of the 23,567 due process complaints filed, 17,215 resolution meetings were held, and 4,796 mediations occurred, leading to 9,790 complaints (42%) being resolved without a hearing.[13] In the eight school years between 2010 and 2018, 60% or more of all due process complaints were resolved each year without a

[13] https://www.cadreworks.org/sites/default/files/resources/2022%20National%20IDEA%20Dispute%20Resolution%20Data%20Summary%20FINAL_accessible.pdf (page 4).

hearing, with some years over 70%.[14] A system that encourages parents to first resolve disputes over their children's educational needs before pursuing monetary damages satisfies the educational policy goals of the IDEA.

E. Parents who settle their IDEA claims during the administrative process cannot be said to have properly exhausted their administrative remedies, and should be barred from bringing educational service-related claims in subsequent lawsuits.

In the case below, the parents asserted that "[a]s part of the settlement, the school agreed to pay for Perez to attend the Michigan School for the Deaf, for any 'post-secondary compensatory education,' and for sign language instruction for Perez and his family. It also paid the family's attorney's fees." *Perez*, 3 F.4th at 239. They should be excused from proceeding all the way through the hearing, they argued, because they had "obtained all the educational relief the IDEA [could] provide" the student when he settled his claim. *Id*. at 242. The IDEA's administrative scheme, however, actually affords students with disabilities greater protections by promoting parental involvement,[15] providing strict timelines for school districts to respond to parental concerns,[16] and ensuring that "[f]ederal courts—generalists with no experience in the educational needs of handicapped students—are given the benefit of expert factfinding by a state

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[14] *Id.*

[15] *See, e.g.*, 20 U.S.C. § 1414(d)(1)(B)(i) (parents are required member of IEP committee).

[16] *See, e.g.*, 20 U.S.C. § 1414(a)(1)(C)(i)(I) (setting timeline to respond to parent request for evaluation).

agency devoted to this very purpose." *Hoeft*, 967 F.2d at 1303 (quoting *Crocker v. Tenn. Secondary Sch. Athletic Ass'n*, 873 F.2d 933, 935 (6th Cir. 1989)).

If parents can obtain the educational services they desire through settlement of the due process proceedings, and then turn around and file a lawsuit in court for monetary damages, that could extend the adversarial proceedings anywhere from one to three more years. School districts will lose their incentive to offer those educational services to the student – and it will be the student who suffers. As noted by one Texas court, the administrative system ensures tight timelines because "the longer it takes to resolve disputes through a due process hearing and subsequent suit for judicial review, the greater the potential damages to a child's education." *Texas Advocates Supporting Kids with Disabilities v. Texas Educ. Agency*, 112 S.W.3d 234, 236 (Tex. App.—Austin 2003, no pet.).

Under the IDEA, only a party who is "aggrieved by" a final administrative decision has the right to bring a lawsuit about a student's special education services. 34 C.F.R. 300.514(b). After establishing thorough procedures for collaborative resolution in the administrative stages of the IDEA, Congress sought to also ensure access to the courts for related non-IDEA claims, but only once the many alternative dispute opportunities had failed. *A.F. ex rel. Christine B. v. Española Public Schools*, 801 F.3d 1245 (10th Cir. 2015). A parent who obtains a favorable hearing decision, or a settlement agreement, is not aggrieved within the meaning of the IDEA. *Id.*; *See also W.K. and P.K. v. Sea Isle City Board of Education*, 2007 WL 433323, at *3 (D.N.J. 2007). A party is only aggrieved by a final

decision on the matter. *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1090 (9th Cir. 2012).

Cases finding futility generally focus on external factors, and not on the voluntary choices of the parties to the dispute. A court may hold that exhaustion would be futile if a hearing officer is not capable of providing *any* meaningful relief. *Honig v. Doe*, 484 U.S. 305, 327, 108 S. Ct. 592, 606 (1988). Because hearing officers have the authority to grant extensive relief for IDEA violations, the futility exception usually arises in cases brought under other statutes. *See, e.g., Reid v. Prince George's County Bd. of Educ.*, 60 F. Supp. 3d 601, 607 (D. Md. 2014) (holding that the permanent physical injuries a student with ED and PTSD suffered when she jumped through a moving school bus could not be remedied through the IDEA's administrative process).

Parents have also alleged futility in some IDEA cases based on hearing delays, concerns about a hearing officer's impartiality, or dismissals of their complaints. In *H.B. and T.B. v. Byram Hills Cent. Sch. Dist.*, 648 F. App'x 122, 124 (2d Cir. 2016) (unpublished), the Second Circuit concluded that although the original hearing officer failed to issue a decision on the parents' due process complaint, the replacement hearing officer's pledge to issue a decision within six weeks made the parents' IDEA lawsuit premature.

In some non-IDEA cases, courts have ruled that the student's death makes the exhaustion of administrative remedies futile. *See, e.g. Estate of D.B. v. Thousand Islands Cent. Sch. Dist.*, 169 F. Supp. 3d 320, 328 (N.D.N.Y. 2016), *abrogated on other grounds*

by Christiansen v. Omnicom Grp., Inc., 852 F.3d 195 (2d Cir. 2017); *Moore v. Chilton County Bd. of Educ.*, 936 F. Supp. 2d 1300, 1307 (M.D. Ala. 2013); *Morton v. Bossier Parish Sch. Bd.*, 2013 WL 696725, at *3 (W.D. La. 2013); *Taylor v. Altoona Area Sch. Dist.*, 737 F. Supp. 2d 474, 482 (W.D. Pa. 2010).

As discussed above, context matters: the futility exceptions to exhaustion found in the above cases occurred when genuine futility was created by circumstances generally outside of the control of the family, and not by the voluntary choice of the family. Parties who settle their IDEA claims are not "aggrieved" by a final administrative decision. They have elected the remedies that they wish to receive and chosen a voluntary course of action.

To the extent that both sides argue that the other side's position will discourage them from settling, the IDEA contains a built-in preference for early, informal resolution of education disputes by requiring an early resolution meeting or mediation before a due process hearing. As shown by the CADRE Report, during the last decade this means between 42% (2020-2021) and 75% (2011-2012) of all due process complaints were resolved without the need for a hearing.[17] These procedures focus the parties on considering the educational needs of the student, and not just on arbitrary dollar figures. The administrative exhaustion system of the IDEA was created specifically to require the parents and the school to consider settlement at the *beginning* of the process, when the parties are

[17] https://www.cadreworks.org/sites/default/files/resources/2022%20National%20IDEA%20Dispute%20Resolution%20Data%20Summary%20FINAL_accessible.pdf (page 4).

(hopefully) still communicating, and when any disruption to the education of the student will be minimal. Parents and school officials can work ***together*** to try to come up with a plan that meets the needs of the student, instead of ***against*** each other in the winner-takes-all arena of litigation.

Allowing parents to file lawsuits for monetary damages after fully settling their claims for educational services under the IDEA will discourage schools from settling or engaging in meaningful dispute resolution, because they would lose one of the main benefits of settlement: certainty and finality of resolution of the dispute. *See D.R. by M.R. v. E. Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3d Cir. 1997) ("Settlement agreements are encouraged as a matter of public policy because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts."); *see also Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (favoring settlement "also ties into the strong policy favoring the finality of judgments and the termination of litigation.") Schools that know that years of expensive, adversarial litigation await even if they offer parents the educational services they want may be tempted to "roll the dice" and refuse to offer any services, trying their luck in the due process hearing and ultimately the courts to see if they can achieve an outcome more favorable to the school district. But it is the student who will suffer, since any outcome – and any needed educational services – could be delayed for years.

To the extent that parents argue that this just means that schools should negotiate releases of ADA, Section 504 and other claims as part of the IDEA settlements – which admittedly can be done – this would

in effect raise the cost of settlements for schools by requiring them to take the possibility of future monetary damages into consideration when building their settlement offers in IDEA proceedings. This would become a backdoor means for parents to seek compensatory damages under the IDEA, which as discussed above is currently not allowed and would have a negative effect on the resolution of education-based disputes.

Parents may claim, as in this case, that being forced to obtain a decision from a hearing officer at the end of a due process hearing that could have been settled is a waste of time and money, and would somehow only benefit school districts. However, due process hearings are as much of a drain, if not more, on school districts. Districts spend thousands of dollars and hundreds of hours of staff time and energy preparing for and defending their actions in a hearing. Due process hearings put an incredible strain on special educators and teachers who are already trying to manage unprecedented staff shortages, an expanding special education population, and extensive student needs which have been exacerbated by the COVID-19 pandemic.

Amici are aware that even exhausting administrative remedies puts significant burdens on their educators and school districts. Every special education dispute is paid for out of the district's general fund, which means costly settlements and litigation impact the educational offerings that all students served by the public school may receive. For example, a district may no longer be able to afford a new curriculum purchase, additional teachers and staff, or technology because of the costs incurred by litigation. Only the largest

districts can afford to budget for these potential expenses, and so the financial impact of the litigation on an average-size school district can be profound and widespread.

Increasing the incentive for parents to engage in litigation over their student's education could also have an unintended negative impact on the creation of the IEPs in the first place. If school officials believe that parents will not cooperate in creating and implementing an IEP and intend to go to court regardless, the officials will have less incentive to devote the time and energy necessary for crafting an appropriate education plan for the student. If exhaustion under the IDEA is weakened or no longer required, parents and district leaders will stop finding ways to work together and turn their attention to the courts. Creating a "culture of litigation" could encourage all parties to focus more on their ultimate litigation positions, and less on the needs of the child before them.

IV.
CONCLUSION

For the foregoing reasons, the judgment of the court of appeals below should be upheld.

Respectfully submitted,

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