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 SENATOR TOM HARKIN, REPRESENTATIVE TONY COELHO, AND REPRESENTATIVE GEORGE MILLER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici Senator Tom Harkin, Representative Tony Coelho, and Representative George Miller are former Members of Congress who have championed the rights of individuals with disabilities throughout their careers. All three *amici* were members of Congress when the language of 20 U.S.C. § 1415(*l*) was enacted. All three *amici* also were involved in subsequent amendments and reauthorizations of the Individuals with Disabilities Education Act (IDEA). They authored, sponsored, and introduced the Americans with Disabilities Act (ADA). As recognized leaders in education and disability rights legislation, *amici* have shaped the body of disability rights legislation, including the exhaustion provision, 20 U.S.C § 1415(*l*), at issue in this case.

Senator Harkin has devoted his career to disability rights. As chair of the Subcommittee on Disability Policy, he sponsored the ADA. Later, Senator Harkin became chair of the Senate Health, Education, Labor and Pensions Committee. He has previously joined amicus briefs (*see, e.g.*, Brief of 118 Members of Congress as Amici Curiae in Support of Petitioner, *Endrew F. ex rel. Josheph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017) (No. 15-827), 2016 WL 6873059), and this Court has drawn on his statements from the time of the

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[1] This brief was not authored in whole or part by counsel for a party. No one other than *amici curiae* or their counsel made a monetary contribution to preparation or submission of this brief. Blanket letters of consent to filing from counsel for all parties are on file with the Clerk.

IDEA's enactment. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 n.23 (1982). He also founded the Harkin Institute, which carries on this legacy by promoting disability rights worldwide.

Representative Tony Coelho was likewise crucial to the inception of the ADA and championing the rights of people with disabilities. Representative Coelho has founded his own disability rights advocacy group with Loyola Marymount University. He has been recognized as a leader in disability law by President George Bush and Governor Edmund Brown. *Founder*, Loyola Law School: The Coelho Center, https://www.lls.edu/coelhocenter/ourmissionandguidingprinciples/founder/ (last visited Nov. 14, 2022).

Representative George Miller, too, was instrumental in the implementation of the IDEA and in amending the ADA. Representative Miller formerly chaired the House Education and Labor Committee. Like the other *amici*, he has devoted his long career to disability rights and now serves on the advisory committee of an organization that works to make accessible exercise equipment, along with Senator Harkin and Representative Coelho.

Congress enacted the IDEA, the ADA, and other seminal legislation to ensure that individuals with disabilities have the right to full and equal participation in all aspects of society, including in the classroom. As key authors of these landmark civil rights laws, *amici* have an interest in ensuring that individuals with disabilities retain the ability to enforce all of the rights guaranteed to them under the law. Accordingly, *amici* urge this Court to interpret the exhaustion requirement

of the IDEA consistent with its text and purpose, and hold that it does not require exhaustion where a plaintiff seeks relief the IDEA does not offer or where exhaustion would otherwise be futile.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici believe that the plain language of the provision at issue in this case, 20 U.S.C. § 1415(*l*), and its legislative history make three propositions indisputably clear.

First, in passing § 1415(*l*), Congress intended to ensure that students with disabilities and their families could enforce *all* of the rights and obtain *all* of the remedies available to them under the Constitution and the federal laws protecting students with disabilities.

Second, the exhaustion provision in § 1415(*l*) is, accordingly, narrow: it requires exhaustion under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq, only when a plaintiff is "seeking relief that is also available under [the IDEA]." 20 U.S.C. § 1415(*l*). Congress in fact considered, but rejected, a proposal to include a broad exhaustion requirement that would have applied even if plaintiffs, like petitioners here, sought relief under other statutes. The rejected proposal would have required exhaustion unless the IDEA did *not* "provide remedies to the handicapped individual," meaning that exhaustion would have been required wherever the plaintiff *could* seek an IDEA remedy. Congress chose a narrower exhaustion regime,

requiring exhaustion only to the extent plaintiff was *actually* seeking relief provided by the IDEA.

Third, Congress did not intend to require exhaustion in circumstances where exhaustion would be futile. Congress adopted the exhaustion provision against a backdrop of statutes whose exhaustion provisions had been construed to incorporate a futility exception. And the legislative history indicates that Congress clearly understood and intended § 1415(*l*) to contain that same exception for futility, lest the provision needlessly hinder claimants in their pursuit of the remedies that federal law permits.

Specifically, Congress enacted § 1415(*l*) to overturn the Supreme Court's holding in *Smith v. Robinson*, 468 U.S. 992 (1984). In *Smith*, this Court held that the Education for All Handicapped Children Act (the "EHA") provided the exclusive rights and procedures for challenging the failure to provide a free appropriate public education, precluding substantively identical claims under both the Constitution and other laws. *Id.* at 1011-13, 1019-21.

Just weeks after that decision, legislators introduced bills to overturn *Smith*. And the following session, Congress enacted the Handicapped Children's Protection Act of 1986 ("HCPA"), Pub. L. No. 99-372, 100 Stat. 796. It clarified that the EHA, now known as the IDEA, does not preempt suits enforcing rights under separate laws, such as the Americans with Disabilities Act. 20 U.S.C. § 1415(*l*). Thus, the IDEA guarantees a free, appropriate public education ("FAPE") to children with disabilities. But, as Congress

stated in the HCPA, the IDEA "shall [not] be construed to restrict or limit the rights, procedures, and remedies available 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]." HCPA § 3, 100 Stat. at 797.

During its deliberations on the HCPA, Congress added the narrow exhaustion provision at issue in this case. Congress specifically considered the argument that the statute should include a broad exhaustion requirement, which would have required exhaustion whenever a plaintiff had a claim for which the IDEA offered relief even if the plaintiff was not seeking that relief. Congress declined to adopt such language, though, and instead enacted the narrow provision now at issue in this case, which requires parties to exhaust their administrative remedies only "before the filing of a civil action under [the Constitution or other federal laws] *seeking* relief that is also available under [the IDEA]." *Id.* (emphasis added). That textual command reflects Congress's judgment that its exhaustion provision was not designed to cover suits where "the hearing officer lacks the authority [under the IDEA] to grant the relief sought." H.R. Rep. No. 99-296 at 7 (1985) ("House Report"). And it does not cover suits where "it would be futile to use the [IDEA's] procedures." *Id.*

The Sixth Circuit's holding in this case runs afoul of both the plain language Congress enacted in § 1415(*l*) and Congress' clear intent in enacting this provision. In this case, Petitioner Perez seeks only money damages

under the ADA. It is undisputed that this remedy is not available under the IDEA. And in addition, Petitioner Perez previously settled his IDEA claims, rendering further IDEA procedures futile. But the Sixth Circuit nevertheless held that his ADA claim for money damages must be dismissed for failure to exhaust.

The Sixth Circuit's theory is unfaithful both to the text of § 1415(*l*) and to Congress's purpose. It warps a provision that was designed to preserve the ability of children with disabilities to enforce non-IDEA rights into an obstacle that hinders access to the courts. That was neither what Congress intended nor what it accomplished. This Court should construe § 1415(*l*) consistent with its plain meaning and purpose to empower children with disabilities to enforce their non-IDEA rights as well as their IDEA rights.

ARGUMENT

The Sixth Circuit misreads the IDEA's narrow exhaustion requirement. Congress intended that § 1415(*l*)'s exhaustion requirement be limited to cases in which the relief sought is available under the IDEA. And Congress intended that § 1415(*l*) would not require plaintiffs to undertake exhaustion efforts that would be futile. Congress recognized that the IDEA's rights and remedies, although important, are not the only legal protections that children with disabilities enjoy at school. Accordingly, Congress elected to empower children with disabilities and their families to take advantage of the full panoply of remedies available to them under federal disability laws, requiring exhaustion only when the remedies at issue are available under

theIDEA. That was Congress's choice, and this Court should respect it.

I. Section 1415(*l*) Was Enacted In Response To *Smith v. Robinson*.

The narrowly worded exhaustion language of 20 U.S.C. § 1415(*l*) was prompted by the holding of *Smith v. Robinson*. In *Smith*, parents challenged a school system's refusal to pay for the private education of their child, who had cerebral palsy and other disabilities. The parents exhausted their administrative remedies under the EHA and filed a lawsuit in the district court. They contended that the school system's actions violated the child's right to a "free, appropriate educational placement without regard to whether or not said placement can be made within the local school system." 468 U.S. at 998 (quoting complaint). Well into the litigation, the plaintiffs filed an amended complaint that added substantively identical claims under the Equal Protection Clause and § 504 of the Rehabilitation Act of 1973 and sought attorney's fees as a prevailing party under those laws. *Id.* at 1000.

The plaintiffs eventually prevailed on their EHA claim. Having granted plaintiffs all the relief they sought, the district court found it unnecessary to adjudicate the merits of the plaintiffs' other claims. 468 U.S. at 1000-01. It nonetheless awarded attorney's fees—which were not available under the EHA—because the plaintiffs' non-adjudicated claims were sufficiently colorable. *Id.* at 1001-02. The court of appeals reversed the fee award and this Court affirmed. *Id.* at 1002, 1020.

This Court held that Congress intended the EHA to provide the exclusive rights and procedures for challenging the failure to provide a free appropriate public education, precluding substantively identical claims under both the Constitution, 468 U.S. at 1012, and § 504, *id.* at 1019-21. It reasoned that, in a case "[w]here § 504 adds nothing to the substantive rights of a handicapped child, we cannot believe that Congress intended to have the careful balance struck in the EHA upset by reliance on § 504 for otherwise unavailable damages or for an award of attorney's fees." *Id.* at 1021. Rather, it reasoned, "there is no doubt that the remedies, rights, and procedures Congress set out in the EHA are the ones it intended to apply to a handicapped child's claim to a free appropriate public education." *Id.* at 1019.

This Court took care to "emphasize the narrowness of our holding." 468 U.S. at 1021. It did not "address a situation where the EHA is not available or where § 504 guarantees substantive rights greater than those available under the EHA." *Id.* Rather, it held only that where "whatever remedy might be provided under § 504 is provided with more clarity and precision under the EHA, a plaintiff may not circumvent or enlarge on the remedies available under the EHA by resort to § 504." *Id.*

II. Congress Adopted The HCPA And § 1415(*l*) To Ensure That Litigants Would Be Able To Benefit Fully From All Disability Rights Legislation.

It was against that background that Congress passed the HCPA and the narrowly worded exhaustion language now at issue. From inception to enactment, the legislative record evinces Congress' clear intent to overrule *Smith* and expand the rights and remedies available to students and families. Congress explicitly provided that exhaustion is required only where a plaintiff "seek[s] relief that is also available under" the IDEA. 20 U.S.C. § 1415(*l*). And the legislative history makes clear that Congress meant what it said: only suits seeking relief that the IDEA authorizes are subject to exhaustion. That narrow exhaustion requirement reflects Congress's affirmative intent to ensure that plaintiffs would have access to the full complement of remedies afforded by federal disability law.

A. Congress moved quickly after *Smith* to introduce legislation to overturn that decision. Just 19 days after *Smith* was decided, bills were introduced in both the House and Senate to overturn that decision's holding that individuals could not seek attorney's fees under the Rehabilitation Act where they had brought a claim under the EHA. *See* Myron Schreck, *Attorneys' Fees for Administrative Proceedings Under the Education of the Handicapped Act: of* Carey, Crest Street *and Congressional Intent*, 60 Temple L.Q. 599, 612 n.91 (1987) (describing introduction of bills); *see also* 130 Cong. Rec. 20,597 (1984); 130 Cong. Rec. 20,702.

B. The bills introduced immediately after *Smith* did not pass, but in the next congressional term, both chambers considered and eventually enacted reintroduced versions of those bills. Those bills became the HCPA.

1. The original version of these bills did not contain an exhaustion requirement, but—reflecting Congress's priorities—they did include the savings clause language that would ultimately become the first half of 20 U.S.C. § 1415(*l*): "Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes prohibiting discrimination." H.R. 1523, 99th Cong. (1985); S. 415, 99th Cong. (1985).

The sponsor of the Senate bill, Senator Weicker, explained that the bill's central purpose was to strengthen parents' rights under the EHA, specifically by allowing them to collect attorney's fees. He further explained that Congress and multiple administrations had consistently assumed that the EHA and § 504 "were intended to be free-standing, complementary—but not identical—legislative acts." 130 Cong. Rec. 20,597. *See also* 130 Cong. Rec. 20,761 (statement of Rep. Austin J. Murphy) ("[T]he [EHA] is intended to complement and not preempt other Federal statutes that affect handicapped children in elementary and secondary education."). Another Senator explained that the legislation was necessary because Congress "never envisioned" the EHA "as limiting or restricting the civil

rights of handicapped children" under other laws. 130 Cong. Rec. 20,623 (statement of Sen. Stafford).

2. During deliberations on those bills, Congress considered proposals to add a broad exhaustion requirement, which would have required exhaustion whenever a plaintiff *could have* enforced IDEA rights and sought IDEA remedies. Congress rejected those proposals, however, and instead added the narrow exhaustion provision at issue in this case. The enacted version of the HCPA thus included both the savings clause language and the exhaustion provision now codified in § 1415(*l*). Again, the legislative history makes clear that Congress's intent was to ensure that individuals would have access to the full complement of remedies provided by federal anti-discrimination law.

The exhaustion provision ultimately adopted states: "before the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the [IDEA's administrative procedures] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA]." 20 U.S.C. § 1415(*l*). Legislative history makes clear that Congress understood well the meaning of the words it chose: exhaustion applies only to claims that seek "relief" that the IDEA provides.

a. Both the Senate and House committee reports reflect Congress's understanding that, consistent with the actual language of the exhaustion provision, exhaustion would only be required with respect to suits actually seeking relief available under the EHA, such

that those suits could have been brought under the EHA itself.

The House Report stated that "before going to court, parents or guardians *seeking relief that is also available under EHA* must exhaust administrative remedies available under EHA to the same extent as would be required had the action been brought under EHA." House Report at 7 (emphasis added). It then reiterated: "In other words, parents alleging violations for section 504 and 42 U.S.C. [§] 1983 are required to exhaust administrative remedies before commencing actions in court where exhaustion would be required under EHA *and the relief they seek is also available under EHA*." *Id.* (emphasis added). In practice, this meant that "a parent is required to exhaust administrative remedies where complaints involve the identification, evaluation, education placement, or the provision of a free appropriate public education to their handicapped child." *Id.* And even then exhaustion would not be required where doing so would be futile—including where "the hearing officer lacks the authority to grant the relief sought." *Id.*

The Senate Report reflected a similar understanding that the exhaustion requirement was triggered when an action sought the same remedies available under the EHA. It stated that exhaustion was required "when a parent brings suit under another law *when that suit could have been brought under the EHA*." S. Rep. No. 99-112, at 3 (1985) (emphasis added). Sen. Simon further explained that exhaustion would not be necessary "where the hearing officer lacks the authority to grant

the relief sought." 131 Cong. Rec. 21,393 (1985). Sen. Simon also noted that S. 415 was not meant to foreclose the availability of other administrative options, let alone options granted by other statutory schemes. *Id.* ("Nor is S. 415 intended to modify existing policy regarding the use of alternative avenues in pursuing complaints, including: the filing of a complaint with the State educational agency under the Education Department General Administrative Regulations; or filing a complaint with the Office of Civil Rights of the Department of Education.").

Thus, both committee reports clarify that, as this Court recently wrote, "[t]he statutory language asks whether a lawsuit in fact 'seeks' relief available under the IDEA—not, as a stricter exhaustion statute might, whether the suit 'could have sought' relief available under the IDEA … ." *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 169 (2017).

b. There is still further confirmation that the exhaustion provision is limited to claims that seek relief the IDEA offers: Congress considered and rejected an alternative proposal that would have imposed exactly the sort of broad exhaustion requirement against which the enacted statutory language contrasts.

The National School Board Association ("NSBA") requested a broad exhaustion provision that would have required exhaustion of IDEA claims in any case where a plaintiff *could have* enforced IDEA rights and sought IDEA remedies. Before the Senate, NSBA argued that, because "parents of handicapped students who are asserting claims of a violation of their right to a free

appropriate public education are fully protected by EHA," it would be unnecessary and counterproductive to permit them to bring § 504 claims alleging such violations outside the strictures of the EHA process. *Handicapped Children's Protection Act of 1985: Hearing on S. 415 Before the Subcomm. on the Handicapped of the S. Comm. on Lab. and Human Res.*, 99th Cong. 74 (1985) ("Senate Hearing"). For such claims, the NSBA argued, "by not requiring plaintiffs to exhaust the remedies of EHA, the EHA process itself is weakened." *Id.* at 75.

Similarly, before the House, an NSBA representative expressed the same concern about claims under other laws that simply enforced the EHA right to a free appropriate public education:

> If Section 504 is simply a superfluous claim that adds nothing to a handicapped child's substantive right to a free appropriate public education, then handicapped plaintiffs should be limited to seeking relief under the EHA. To provide otherwise would allow handicapped plaintiffs to forego the administrative procedures in the EHA and file a complaint, either with OCR or a court, under Section 504.

Handicapped Children's Protection Act: Hearing on H.R. 1523 Before the Subcomm. on Select Educ. of the H. Comm. on Educ. and Lab., 99th Cong. 27 (1985) ("House Hearing") (testimony of Jean Arnold).

The NSBA thus asked Congress to add an exhaustion requirement stating that § 504 claims could be brought

"only where the EHA does not protect the rights of and provide remedies to the handicapped individual." House Hearing at 27 (testimony of Jean Arnold). In support of this proposal, the NSBA cited with approval Justice Brennan's statement that "a plaintiff with a claim covered by the EHA" should be required "to pursue relief through the administrative channels established by that Act before seeking redress in the courts" under another law. Senate Hearing at 75 (quoting *Smith v. Robinson*, 468 U.S. at 1024 (Brennan, J., dissenting)).

In response to the NSBA's concerns, the Senate and House both added the exhaustion clause now at issue in essentially the same form in which it eventually was enacted. Congress did not, as urged by the NSBA, require exhaustion whenever the IDEA "protect[s] the rights of and provide[s] remedies to the handicapped individual." House Hearing at 27. Instead, it required exhaustion only when a plaintiff actually "seek[s] relief that is also available under" the IDEA. 20 U.S.C. § 1415(*l*).

c. On top of all of this, Congress continued to emphasize that the law was intended to expand parental rights even as the exhaustion provision was added. Conferees from the two chambers met to reconcile various disagreements between the two bills, none of which is material to the issue before this Court. In subsequently introducing the conference report on the House and Senate floors, lawmakers continued to express their understanding of the HCPA as intended to *expand* the rights of children with disabilities and their

parents following *Smith*, not to diminish them in any way.

In describing S. 415 on the Senate floor, Sen. Weicker stated that the bill's purpose was "simple—to overturn the *Smith [v.] Robinson* decision," particularly with respect to the availability of attorney's fees for EHA claims but also with respect to the suggestion that the EHA could preempt rights and remedies available under other laws. 131 Cong. Rec. 21,389. *See also* 131 Cong. Rec. 21,392 (statement of Sen. Simon) ("S. 415 reestablishes the relationships between the Education of the Handicapped Act … and other statutes protecting the rights of handicapped children that existed prior to the Smith versus Robinson decision.").

Sen. Weicker observed that, as a result of *Smith v. Robinson*, "handicapped children are now provided substantially less protection against discrimination than other vulnerable groups of people," and his bill "would remove these inequities by restoring equivalent protection to handicapped children." 131 Cong. Rec. 21,389. Sen. Kennedy added that S. 415 "clearly" provided that "the educational rights of handicapped children are protected from discrimination under Section 504 of the Rehabilitation Act and other civil rights statutes." 131 Cong. Rec. 21,391.

As he brought the bill to the House floor, Rep. Williams highlighted the predominant purpose of 20 U.S.C. § 1415(*l*): "reestablishing the viability of Section 504 of the Rehabilitation Act of 1973 and other statutes as separate vehicles for ensuring the rights of handicapped children and youth." 131 Cong. Rec. 31,370.

Neither he nor any member of the House suggested that the exhaustion clause was anything more than a narrow exception to that broad rule.

III. The IDEA Does Not Require Exhaustion When Exhaustion Would Be Futile.

A. When it enacted the HCPA, Congress was operating against the backdrop of this Court's exhaustion jurisprudence, which has consistently recognized a futility exception to exhaustion requirements. *See e.g.*, *Bethesda Hosp. Ass'n v. Bowen*, 485 U.S. 399, 404-05 (1988). Typically, if a statute has an exhaustion requirement, but exhausting the procedure required by the statute could not achieve any meaningful result, the exhaustion requirement can be waived. *See Glover v. St. Louis-S.F. Ry. Co.*, 393 U.S. 324, 327, 331 (1969).

Consistent with this backdrop, this Court noted in *Smith* the consensus view that the EHA's exhaustion requirements came with a futility exception. *See* 468 U.S. at 1014 n.17. Legislative history supports the consensus. When the EHA was originally enacted in 1975, its sponsors explained that the Act's exhaustion requirements "should not be required … in cases where such exhaustion would be futile either as a legal or practical matter." 121 Cong. Rec. 37,416 (1975) (statement of Sen. Williams).

So too with the post-*Smith* exhaustion requirements of the HCPA. Congress incorporated the background presumption—that exhaustion would not be required when it would be futile—by only requiring exhaustion of

non-EHA claims "*to the same extent* as would be required had the action been brought under" the EHA. 20 U.S.C. § 1415(*l*) (emphasis added). The committee reports of both chambers of Congress reflect this fact. The House Report acknowledged that "it is not appropriate to require the use of [EHA procedures]" when "it would be futile to use the due process procedures" or when "it is improbable that adequate relief can be obtained by pursuing administrative remedies (e.g., the hearing officer lacks the authority to grant the relief sought"). House Report at 7. The Senate Report similarly stated that "[e]xhaustion of EHA administrative remedies would thus be excused where they would not be required to be exhausted under the EHA, such as when resort to those proceedings would be futile." S. Rep. No. 99-112, at 15.

As Sen. Simon explained, the HCPA exhaustion provision was intended to prevent "circumvention of the due process procedures set out in … the Education of the Handicapped Act." 131 Cong. Rec. 21,392. The exhaustion requirement thus would be inappropriate in cases where it would "be futile to use the due process procedures," such as "where the hearing officers lacks the authority to grant the relief sought." *Id.* at 21,393. In other words, when families of children with disabilities sought remedies outside the scope of the the EHA, exhaustion under EHA procedures was necessarily futile because EHA hearing officers lacked authority to grant such relief.

Amicus George Miller, then a member of the House of Representatives, similarly affirmed that "neither [he]

nor others who wrote the [EHA] intended that parents should be forced to expend valuable time and money exhausting unreasonable or unlawful administrative hurdles to gain for their children an education which meets their individual needs." 131 Cong. Rec. 31,376. Rep. Miller elaborated that "there are certain situations in which it is not appropriate to require the exhaustion of EHA administrative remedies before filing a civil lawsuit," including where it would "be futile to use the due process procedures (that is, where the hearing officer lacks the authority to grant the relief sought)." 131 Cong. Rec. 31,376. *See also* 121 Cong. Rec. 37,416 (statement of Sen. Williams) (Exhaustion requirements "should not be required . . . in cases where such exhaustion would be futile either as a legal or practical matter."); 131 Cong. Rec. 21,393 (statement of Sen. Simon) (It is not appropriate to require exhaustion "where it would otherwise be futile to use the due process procedures—for example, where the hearing officer lacks the authority to grant the relief sought."); House Report at 7 ("[I]t is not appropriate to require the use of [IDEA procedures] [when] it would be futile to use the due process procedures.").

B. The reason for a futility exception to the exhaustion requirement—to avoid imposing pointless administrative burdens on plaintiffs—is, if anything, especially compelling in connection with the IDEA. Rep. Pat Williams made the point explicitly in his address to the House of Representatives on the HCPA, the statute that added the exhaustion requirement at issue in this case: "This Congress did not then and does not now

intend to see handicapped children and their parents suffer unwarranted burdens." *See* 131 Cong. Rec. 5064.

Instead of creating administrative burdens, post-HCPA Congresses have encouraged efficient and effective resolutions of IDEA disputes—resolutions that would be discouraged if the statute's exhaustion requirements contained no futility exception. As proponents of the 1997 IDEA Amendments explained, for example, "in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind." H.R. Rep. No. 105-95, at 106 (1997). They therefore declared a "strong preference that mediation become the norm for resolving disputes under IDEA." *Id.* Since then, Congress has consistently reaffirmed its desire to expand settlement opportunities and encourage mediation of IDEA disputes. *See, e.g.*, H.R. Rep. No. 108-77, at 85-86 (2003) (explaining that the 2004 IDEA Amendments sought to "encourage[] the use of mediation and voluntary binding arbitration to speed the resolution time so that children with disabilities obtain the needed services and education in a timely manner"); S. Rep. No. 108-185, at 37 (2003) (explaining that the 2004 IDEA Amendments sought to "encourag[e] parties to consider mediation as an option at earlier stages of disagreements and disputes," and noting that the legislators placed "a high value on the successful use of mediation" to resolve IDEA disputes).

IV. The Court Should Construe § 1415(*l*) According To Its Plain Language And Congress's Clear Intent.

There can be no question that § 1415(*l*), like the larger bill of which it was a part, was intended to *expand* the ability of children with disabilities to bring non-IDEA claims and obtain non-IDEA remedies.

A. In the lower court proceedings, the Sixth Circuit misconstrued the narrowly worded exhaustion requirement to require exhaustion of claims seeking remedies *not* available under the IDEA, and to require exhaustion of claims even when exhaustion would be futile. This construction gives § 1415(*l*) an effect that is the opposite of what Congress intended. It turns a provision meant to restore the right to bring non-IDEA claims into one that reduces that right even more than did *Smith v. Robinson*. And it construes the exhaustion requirement in a way that is more consistent with the NSBA's proposed language, which Congress declined to adopt.

Congress could have simply overruled the result of *Smith v. Robinson* by making attorney's fees available for prevailing IDEA plaintiffs. But Congress went further, also providing explicitly that it is improper to construe the IDEA as limiting rights and remedies guaranteed by other laws. Congress understood that, fundamental as the IDEA's guarantee of meaningful education is for children with disabilities, it does not represent the entire sum of their rights and remedies vis-à-vis their schools or their education. A family with rights guaranteed by the IDEA does not thereby shed

the rights and remedies guaranteed under other laws—or the ability to enforce them outside the IDEA process.

B. The Sixth Circuit's requirement that plaintiffs exhaust non-IDEA claims seeking remedies not available under the IDEA runs afoul of Congress' intent.

Section 1415(*l*) was not intended to limit or reduce the rights, procedures, or remedies available to children with disabilities and their parents under the Constitution or other federal laws. *See* 130 Cong. Rec. 20,597-98. Rather, as discussed above, Congress enacted § 1415(*l*) as a direct response to the Court's decision in *Smith*, 468 U.S. at 1013, which held that the IDEA was the exclusive avenue through which a child with a disability (or his parents) could challenge the adequacy of his education. *Fry*, 580 U.S. at 161. Section 1415(*l*) thus was enacted explicitly to "reaffirm the viability of federal statutes like the ADA or Rehabilitation Act as separate vehicles, no less integral than the IDEA, for ensuring the rights of handicapped children," while also enacting a limited exhaustion provision. *Id.* (quoting House Report at 4 (internal quotation marks omitted)).

Moreover, Congress enacted § 1415(*l*) with the purpose of emphasizing the availability of "the full range of remedies necessary to protect and defend" the rights of children with disabilities to a free public education *and* their right to be free from discrimination. *See* 132 Cong. Rec. 17,608 (1986). And the plain language enacted by Congress did just that: Congress crafted a narrow exhaustion requirement that requires exhaustion only when the plaintiff is "seeking *relief* that is *also* available under [IDEA]". 20 U.S.C. § 1415(*l*) (emphases added).

The Sixth Circuit thus was wrong to conclude that § 1415(*l*) requires exhaustion in cases like this one, where the plaintiff seeks only relief *not* available under the IDEA.

C. The Sixth Circuit's conclusion that a plaintiff is required to engage in further exhaustion efforts, beyond a full settlement of his IDEA claims, similarly runs afoul of Congress' intent.

As discussed above, Congress intended to incorporate a well-recognized futility exception into the IDEA's narrow exhaustion requirement. Congress enacted § 1415(*l*) against the backdrop of its prior enactments and this Court's jurisprudence, which long recognized a futility exception to statutory exhaustion requirements. And § 1415(*l*)'s legislative history confirms that Congress intended to incorporate the widely accepted principle that exhaustion requirements do not apply when futile. The Sixth Circuit therefore was wrong to hold that § 1415(*l*) requires exhaustion where, as here, the plaintiff already had obtained full relief under the IDEA and was asking for relief that could not be granted by an IDEA hearing officer.

D. Interpreting IDEA's exhaustion provision to effectively displace a student's ability to seek adequate relief would frustrate both Congress's legislative intent and the IDEA's regulatory scheme. IDEA was designed "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). And the HCPA was enacted to *enhance* the ability of students and their families to obtain relief under other federal

statutes in the wake of *Smith v. Robinson*. As this case makes clear, the Sixth Circuit's approach does the opposite. It makes it *harder* for families of students with FAPEs under the IDEA to obtain all the remedies provided to them under other federal statutes. And as this case illustrates, it in some cases effectively forecloses families from getting the full relief guaranteed to them under federal law. This is not what Congress intended or enacted.

The Sixth Circuit's elimination of the futility exception to the exhaustion requirement also unnecessarily complicates proceedings for students and families. It forces parents into a Catch-22, having to decide between accepting an IDEA settlement or forfeiting their statutory rights and remedies under other disability laws. And such an interpretation of the statute would render the efficiency-driven impetus behind exhaustion requirements moot by forcing parents to engage in lengthy and costly administrative proceedings, even where a school would gladly remediate an IDEA violation. As discussed above, Congress intended exactly the opposite, as it repeatedly and consistently enacted provisions that encouraged early and efficient settlements of IDEA claims.

Congress noted that it would not be "appropriate" to require the exhaustion of remedies for non-IDEA suits when "it would otherwise be futile to use … due process procedures—for example, where the hearing officer lacks the authority to grant the relief sought." 131 Cong. Rec. 21,393 (statement of Sen. Simon). In this case, Petitioner could not obtain the relief he sought under the

IDEA, and Petitioner settled his IDEA claim and obtained full relief under that statute. Further IDEA proceedings therefore would have been futile, and Congress did not intend to require them.

E. Disability-specific legal protections, like the ADA and Rehabilitation Act, often exceed those rights guaranteed by the IDEA. As individuals with disabilities integrate into every aspect of society, our laws now explicitly recognize their right to an equal opportunity to participate in the public sphere—including, but not limited to, in educational settings. Most notably, Congress enacted the landmark Americans with Disabilities Act of 1990. That law, along with its implementing regulations, sets the ambitious goal of providing full equality. *See, e.g.*, 42 U.S.C. § 12132 (No qualified individual with a disability may be "denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.").

As this case illustrates, children with disabilities have available remedies under the ADA or related laws that often exceed the remedies available under the IDEA. Congress did not mean for the IDEA to leave children with disabilities *worse* off, by preempting their general rights and remedies, or by imposing procedural obstacles that would not otherwise apply. Congress therefore meant what it said in § 1415(*l*): its exhaustion requirement applies only when a plaintiff is seeking the same relief that is also available to him or her under the IDEA.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

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