No. 21-887

In The Supreme Court of the United States

MIGUEL LUNA PEREZ,

Petitioner,

v.

STURGIS PUBLIC SCHOOLS, ET AL.

Respondents.

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

BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION AND MICHIGAN ASSOCIATION OF SCHOOL BOARDS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Roy Henley
THRUN LAW FIRM, P.C.
2900 West Road
Suite 400
East Lansing, MI 48823

Francisco M. Negrón, Jr.
Counsel of Record
Sonja H. Trainor
NATIONAL SCHOOL BOARDS ASSOCIATION
1680 Duke St.
2nd Fl.
Alexandria, VA 22314
(703) 838-6722
fnegron@nsba.org

Counsel for Amicus Curiae

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INTEREST OF *AMICI CURIAE*[1]

The National School Boards Association (NSBA), founded in 1940, is a non-profit organization representing state associations of school boards and the Board of Education of the U.S. Virgin Islands. NSBA advocates for equity and excellence in public education through school board leadership. Public schools serve millions of public school students, regardless of their disability. NSBA regularly represents its members' interests before federal and state courts, and has participated as amicus curiae in numerous cases addressing the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq*.

The Michigan Association of School Boards (MASB) is a voluntary, nonprofit association of local and intermediate boards of education throughout the State of Michigan, whose membership consists of boards of education of over 600 local school boards and intermediate school boards in the state. The mission of the Michigan Association of School Boards is to provide high-quality educational leadership services for all Michigan boards of education, and to advocate for an equitable and exceptional public education for all students.

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[1] Letters of consent are on file with the Clerk. No counsel for either party authored this brief in whole or in part, nor did any party or other person or entity other than *amici curiae*, its members or its counsel make a monetary contribution to the brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

IDEA's longstanding exhaustion requirement must be interpreted in the context of its collaborative framework. Congress requires exhaustion in disputes about Free Appropriate Public Education (FAPE) for students with disabilities to encourage use of IDEA's reticulated procedures over litigation in federal courts, an expensive and contentious forum by comparison. Allowing circumvention of IDEA's procedures to provide direct access to federal courts forfeits the benefits of the administrative scheme Congress designed for resolving disputes about the appropriate programs and services of students with disabilities.

ARGUMENT

I. THE STATUTE'S PLAIN TEXT REQUIRES COLLABORATION THROUGH AND INCLUDING EXHAUSTION.

The cornerstone of the IDEA is collaboration between families and schools to ensure that every eligible student with a disability receives a FAPE. IDEA's longstanding exhaustion requirement is an essential element in maintaining this approach. Mandatory exhaustion of the IDEA's administrative remedies, in the ordinary course, is less expensive and less contentious than litigation, and offers a more informed and efficient approach to remedying special education disputes comprehensively. If parents can

initiate litigation immediately, the benefits of the administrative remedies Congress designed to ensure quick resolution of educational disputes concerning students with disabilities will be significantly undermined, delaying resolution of students' educational programs.

The IDEA's emphasis on collaboration between schools and parents is apparent in the statute's plain language. *See, e.g.*, 20 U.S.C. § 1414(b)(2)(A) ("In conducting the evaluation [to determine if the child is a child with a disability], the local educational agency shall . . . use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining [whether the child has a disability and the content of the child's Individualized Education Program ("IEP").]"); § 1414(b)(4)(A) ("[T]he determination of whether the child is a child with a disability . . . shall be made by a team of qualified professionals and the parent of the child . . . ."); § 1414(d)(1)(B) (The IEP Team consists of the parents of the child with a disability, at least one regular education teacher, at least one special education teacher or provider, and a representative of the local education agency.); § 1414(d)(3)(A)(ii) ("In developing each child's IEP, the IEP Team . . . shall consider . . . the concerns of the parents for enhancing the education of their child"); § 1415(e) (providing for mediation of disputes between parents and the local education agency to resolve due process complaints); §

1415(f)(3)(E)(ii) (providing that a procedural violation may rise to a failure to provide a free appropriate public education if the procedural misstep "significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child[.]"); § 1415(f)(1)(B)(i) (providing that before a due process hearing can be held, the local education agency "shall convene a meeting with the parents and the relevant member or members of the IEP Team . . . where the parents of the child discuss their complaint . . . and the local education agency is provided the opportunity to resolve the complaint[.]").

The statute's plain language presumes and requires collaboration through and including exhaustion of the IDEA dispute resolution process. Such collaboration allows the parents, student, and school to engage in an interactive and constructive process, creating a comprehensive and integrated education program that is tailored to meet the child's unique needs while preserving the relationships essential for effective delivery of special education and related services.

Given the emotional intensity that accompanies both educating and advocating for students with special needs, disputes naturally arise. Congress designed and modified IDEA to require these disputes to be exhausted through the statute's carefully designed administrative procedures before litigation becomes an option. IDEA's exhaustion requirement ensures that: 1) an IEP Team, including the parents,

has met to discuss the educational needs of the child, to consider available services and placements that might meet those needs, and to develop individualized educational goals for the child and benchmarks to assess attainment of those goals; 2) the parties have engaged in a resolution session or mediation to resolve any disagreements regarding the education of a student with a disability prior to the commencement of a due process hearing; and 3) in the event a due process hearing is necessary, an impartial state official trained in special education matters has reviewed, and ruled on, those disagreements. *See* 20 U.S.C. §§ 1414(d)(1), 1415(f)-(g). By requiring exhaustion before proceeding to litigation, Congress created a process that ensures efficient dispute resolution and the ability for parents and schools to continue their partnership with the least disruption possible to the child's educational program.

A. The IDEA's Dispute Resolution Mechanism Furthers Its Collaborative Goal.

The IDEA strongly encourages informal dispute resolution. See 20 U.S.C. § 1400(c)(8). ("Congress finds . . . parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways."). The U.S. Department of Education reiterated that approach in its Analysis of Comments and Changes accompanying the 2006 release of regulations implementing the statute's most recent reauthorization. 71 Fed. Reg.

46661 (2006) ("Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal dispute resolution process."); 71 Fed. Reg. 46701 (2006) ("[T]he resolution process offers a valuable chance to resolve disputes before expending what can be considerable time and money in due process hearings."). That process, which must be completed before an administrative hearing occurs under the IDEA's accelerated timelines, is described in greater detail below.

1. **The Mandatory Resolution Meeting or Mediation Encourages Collaborative Solutions to Disputes.**

To further the goal of quickly and cooperatively resolving educational disputes, the IDEA mandates that the parties participate in a resolution session after the due process complaint is filed. 20 U.S.C. §1415(f)(1)(B); 34 C.F.R. § 300.510(a). In fact, this meeting can be avoided only if both parties agree in writing to waive it, or they pursue mediation instead, and must be convened within 15 days of the school district (local educational agency, or "LEA") receiving notice of the complaint. *Id*. To ensure that the meeting is collaborative and not adversarial, a school's attorney may not attend unless the parent brings an attorney. 20 U.S.C. §1415(f)(1)(B)(i)(III); 34 C.F.R. § 300.510(a)(1)(ii).

The resolution meeting is an informal process at which the participants discuss the parents' concerns

and brainstorm ways to address those concerns within the parameters of the IDEA. If the parents and school cannot come to an agreement, the parents may continue to a hearing, where a hearing officer trained in the requirements of the IDEA will build an administrative record and issue a ruling.

The IDEA places such great emphasis on this resolution meeting that the regulations authorize a school district to request that the hearing officer dismiss the complaint in its entirety if the parent declines to participate. 34 C.F.R. § 300.510(b)(4). Recognizing IDEA's emphasis on resolving these matters short of a hearing, hearing officers have exercised their authority to dismiss complaints when parties do not act in good faith to resolve their issues. *See*, *e.g*. *Marinette Sch Dist*., 47 I.D.E.L.R. (LRP) 143 (S.E.A. WI 2007) (dismissing a party's due process complaint where the party refused to participate in a resolution meeting unless the other signed a confidentiality agreement); *Beaverton Sch. Dist*., 62 I.D.E.L.R. (LRP) 70 (S.E.A. OR 2013) (dismissing a party's due process complaint where the party ignored multiple emails and phone calls to schedule a resolution session); *Cobb County Sch. Dist*., 63 I.D.E.L.R. (LRP) 175 (S.E.A. GA 2014) (dismissing a party's due process complaint where party failed to cooperate with planning a resolution session).

The IDEA creates an incentive to ensure that a FAPE dispute does not needlessly advance to a hearing. It prevents an attorney from recouping fees

incurred after rejecting a settlement offer if the offer was more favorable to the parent than the result of the hearing. 34 C.F.R. § 300.517(c)(2).

2. If Resolution is Not Successful, IDEA's Administrative Hearing Process Ensures that the School/Parent Relationship is Not Unnecessarily Impeded.

If settlement efforts fail, the IDEA anticipates that the hearing process will be quick, efficient, and fair. The parties must disclose all information that will be used at the hearing at least five business days ahead. 34 C.F.R. § 300.512, ensuring transparency throughout the hearing process. The hearing officer must issue a decision within 45 to 75 days if a resolution is not reached, ensuring efficiency of the hearing process itself. 34 C.F.R. § 300.515.

The expeditious administrative hearing process allows the parties to continue participating in the daily educational needs of the child, often with little disruption. The relatively quick and informal nature of the IDEA dispute resolution process supports continued communication between the administration, service providers, student, and parents, without the interference of attorneys and the civil discovery process. Even in matters where relationships become strained because of the dispute, the administrative process ends relatively quickly compared to litigation, enabling both parties to move forward with some certainty as to the appropriate

programming, services, and placement of the student. Conversely, litigation can extend across multiple school years. Notably, the school retains its duty to provide special education and related services to the student at issue in litigation, yet litigation naturally interferes with the collaborative environment necessary to meet the student's needs.

3. Exhaustion Permits Local Education Agencies to Remedy Problems Within the Collaborative Framework.

The IDEA's administrative scheme is designed, in part, to allow local and state education agencies to discover and remedy problems in the administration of the complex requirements of special education programs without the cost of frequent litigation.[2] Students served under the IDEA have individualized education programs (IEPs), which must include at least eight elements describing the child's current functioning, goals, and more.[3] The child's program

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[2] *See* Mary C. Stablein, *An IDEA Gone Out of Control: Covington v. Knox County School Board*, 45 How. L.J. 643 (2002).

[3] A student's IEP must contain:

must be provided in the least restrictive environment (LRE). 20 U.S.C. §1412(a)(5). To meet the LRE

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a statement of the child's present levels of academic achievement and functional performance;

a statement of measurable annual goals, including academic and functional goals;

a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided;

a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to or on behalf of the child;

a statement of the program modifications or supports for school personnel that will be provided for the child;

an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and other activities;

a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments;

the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications; and

beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, appropriate measurable postsecondary goals based upon age-appropriate transition assessments. 20 U.S.C. §1414(d)(1)(A).

mandate, each state must ensure that: "To the maximum extent appropriate, children with disabilities … are educated with children who are nondisabled." 20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. §300.114(a)(2). The educational placement of an eligible child with a disability in the LRE must be based on his/her individual needs.

In other words, the IDEA's requirements are complex. Mistakes by school administrators will happen. At times, parents and schools disagree about whether a particular service or placement is necessary or tailored to the unique needs of the student. By requiring parents to exhaust the IDEA's administrative remedies in all situations where FAPE is an issue, IDEA provides a pathway that allows a local education agency to "bring their expertise and judgement to bear," *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 580 U.S. 386, 1001 (2017), and to correct any errors quickly and in a manner far less likely to undermine irrevocably the family/school relationship.[4] If schools are forced to expend their already limited time and resources on

[4] *See* Lewis M. Wasserman, *Delineating Administrative Exhaustion Requirements and Establishing Federal Courts' Jurisdiction Under the Individuals with Disabilities Education Act: Lessons from the Case Law and Proposals for Congressional Action*, 29 Nat'l Ass'n L. Jud. 350 (Fall 2009).

litigation regularly, existing problems will inevitably be exacerbated, and students will suffer.

B. Exhaustion Promotes Judicial Efficiency Through the Creation of a Thorough Administrative Record.

The IDEA's hearing procedures result in the creation of an administrative record, thereby promoting judicial efficiency in cases that do result in litigation. The purpose of exhaustion is to "enable[ ] the agency to develop a factual record, to apply its expertise to the problem, to exercise its discretion, and to correct its own mistakes, and is credited with promoting accuracy, efficiency, agency autonomy, and judicial economy." *Rose v. Yeaw*, 214 F.3d 206, 210 (1st Cir. 2000) (quoting *Christopher W. v. Portsmouth Sch. Comm.*, 877 F.2d 1089, 1094 (1st Cir. 1989)); *see also Woodford v. Ngo*, 547 U.S. 81, 89-91 (2006)(noting exhaustion gives an agency the opportunity to correct mistakes with respect to the programs it administers before it is haled into federal court). Requiring administrative exhaustion allows subject matter experts—a hearing officer trained in the requirements of the IDEA, school officials, special education providers, and parents—to create a detailed factual record. This record is necessary to fully apprise a court, which more often than not will have no specialized expertise related to the IDEA, of the outcome of technical special education issues if an appeal of the administrative decision or claims based upon it is filed.

A well-developed administrative record assists the court by providing a comprehensive picture of the child's assessed needs, the efforts of the school to meet those needs, the basis for the parents' concerns, the reasons explaining the denial of parental requests, the resources available to provide needed services, and other factors that may have influenced the hearing officer's decision. That assistance is invaluable to a court of general jurisdiction.[5]

C. The Civil Litigation Process Undermines the IDEA's Collaborative Framework.

In 1984, Chief Justice Warren Berger lamented, "Our [legal] system has become too costly, too painful, too destructive, too inefficient for a truly civilized people."[6] Though there has been an undeniable shift

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[5] Federal district courts hearing IDEA cases frequently cite extensively to the administrative record. *See, e.g., Doe v. Cape Elizabeth Sch. Dept.*, 382 F.Supp.3d 83 (D. Me. 2019); *Regional Sch. Unit No. 51 v. Doe*, 920 F.Supp.2d 168 (D. Me. 2012); *Elida Local Sch. Dist. Bd. of Educ. v. Erickson*, 252 F.Supp.2d 476 (N.D. Ohio 2003).

[6] Arthur Perlstein, *Issues in Pretrial Litigation: Forward: Pretrial Litigation, Dispute Resolution, and the Rarity of Trial*, 40 Creighton L. Rev. 651, 652 (June 2007),

away from trials in recent decades, that shift has not reduced the adversarial, lengthy, and costly nature of litigation. The "pain" of litigation now comes primarily in the pretrial phase of discovery disputes and dispositive motions. [7] Civil litigation can be an expensive endeavor that drags litigants through costly and extensive pre-trial discovery and numerous procedural hearings, which increases costs for both parties, before any consideration of the case's merits begins.

Yet during the pendency of active litigation between a family and a school system, the latter retains its duty to provide special education and related services to the student at its center. While the parties and their attorneys exchange discovery requests, appear for scheduling conferences, argue motions, and bill their hours, the child whose education is at issue often is receiving services from the LEA. The parents and school staff must continue to interact and work through daily challenges. Litigation naturally interferes with the collaborative

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quoting Chief Justice Warren Burger, *Annual Report on the State of the Judiciary, Address Before the American Bar Association* (Feb. 13, 1984).

[7] *Id. See also* George Shepherd, *Symposium: Trends in Federal Civil Discovery: Still a Failure: Broad Pretrial Discovery and the Superficial 2015 Amendments*, 51 Akron L. Rev. 817, 819 (2017) (stating, "Discovery is a powerful weapon for imposing expense and difficulty on an adversary.")

environment necessary to meet the student's needs. Its adversarial design directly conflicts with the IDEA's collaborative process.

1. Discovery Under Rule 26 Impedes the IDEA's Collaborative Scheme.

Discovery rules that govern civil litigation create a "hide the ball" mentality that defies Congress's intent that parents and local education agencies share information about the needs of a student with a disability, the design of special education, and the availability of resources. *See* Fed. R. Civ. P. 26. For example, the IDEA promotes the sharing of medical and psychological documentation obtained outside the educational setting in making determinations about eligibility and in creating programming for students. 34 C.F.R. § 300.305(a)(1)(i) (The student's team must review and consider evaluations and information provided by the parents.). When parents are unwilling to share this information, the student's special education programming can suffer. If parents contemplate litigation or are currently in litigation against the local education agency, they may believe that sharing any information will compromise their success in that litigation and, therefore, apply the usual litigation tactic of playing information disclosure as "close to the vest" as possible. This approach makes it difficult to create an appropriate IEP for the student and to resolve FAPE disputes informally.

The IDEA's administrative process, on the other hand, limits discovery to an exchange of documents and witness lists days before the hearing, eliminating the need for months-long discovery. The IDEA simply requires parties to exchange all the evaluations and recommendations upon which they intend to rely at hearing, 34 C.F.R. § 300.512(b); each party then has the right to prohibit the introduction of *any* evidence that has not been disclosed to it at least five days before the hearing. 34 C.F.R. § 300.512(a)(3). IDEA does not provide for depositions, interrogatories, requests for production, extended motion practice. Rarely are there discovery disputes.

2. The Threat of Litigation Can Force School Districts into Settlements Contrary to Their View of the Student's Best Interests.

Any threat to initiate litigation simultaneously or in lieu of an IDEA due process hearing necessarily injects elements of the companion litigation into the IDEA's administrative procedures, thereby undermining their utility. Such threats also insert an adversarial and purely compensatory element into a system designed to solve a problem quickly and equitably. The predictable result is expense, delay, unnecessary use of resources, and unnecessary strain on relationships necessary to the future provision of quality educational services. School districts presented with the choice of conceding to services or placement its educational staff believe are not

necessary or appropriate for a child on the one hand, and more expensive and traumatic litigation on the other, often choose the former to preserve staff and resources to serve the child and all students.

The Court should not lose sight of the fact that litigation remains available to the parties in the rare instances in which the IDEA administrative process cannot remedy the issues presented. In these cases, the short delays attendant to completing the administrative process prior to pursuing litigation should not necessitate the de facto dismantling of a system designed to be both efficient and effective.

II. IDEA'S REMEDIAL FRAMEWORK ALLOWS COMPREHENSIVE RELIEF ADDRESSING THE STUDENT'S EDUCATIONAL NEEDS.

The IDEA's remedial structure precludes the need for simultaneous administrative and judicial proceedings addressing the same controversy over the provision of FAPE to a student with disabilities. Although at times overly broadly described as exclusively "equitable," the funds and services awarded by IDEA hearing officers or negotiated by the parties in an IDEA settlement agreement, often amount to compensatory relief. In this case, the school agreed to pay for private school tuition, post-secondary compensatory education, sign language instruction for Perez and his family, and the family's

attorney's fees. *Perez v. Sturgis Public School*s, 3 F.4th 236, 239 (6th Cir. 2021).

IDEA's remedies arise from the breadth of the educational and related rights it guarantees. The IDEA grants students with disabilities the right to a "free appropriate public education" by mandating both special education and related services. 20 U.S.C. § 1401(9). "Special education" is "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability . . .." 20 U.S.C. § 1401(29). "Related services" are defined as:

> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and

> assessment of disabling conditions in children.

20 U.S.C. § 1401(26).

The breadth of related services is further defined by regulation. For example, psychological services provided to IDEA-eligible students go beyond typical curriculum-related matters and expressly extend to "[p]lanning and managing a program of psychological services, including psychological counseling for children and parents," and "[a]ssisting in developing positive behavioral intervention strategies." 34 C.F.R. § 300.34(c)(10)(v), (vi). Related services extend to training and counseling parents regarding child development and helping them to acquire "the necessary skills that will allow them to support implementation of their child's IEP . . .." 34 C.F.R. § 300.34(c)(8)(i). The availability of extensive related services reveals that the IDEA's remedies are not exhausted by provision of prospective educational accommodations, especially where psychological damage or other mental health needs are alleged.

Extensive statutory rights drive the need for wide-ranging relief to enforce them. The IDEA's language in that regard is unconstrained, permitting the award of "such relief as the court determines is appropriate" 20 U.S.C. § 1415(i)(2)(C)(iii) when a hearing officer's decision is appealed to a district court. The meaning of "appropriate" has since been expansively defined by the courts and in the

Department of Education regulations implementing the IDEA.

Compensatory educational services are the primary form of relief typically granted in IDEA FAPE cases. *Ferren C. v. School Dist. of Philadelphia,* 612 F.3d 712, 717 (10th Cir. 2010). Those services "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." *Id.* at 718, quoting *Reid v. District of Columbia,* 401 F.3d 516, 518 (D.C. Cir. 2005).

Such relief can take either a compensatory or equitable form. As to the former, awards of the prospective costs of private placements are available under the IDEA. "Congress did not intend the child's entitlement to a *free* education to turn upon her parent's ability to 'front' its costs." *Doe v. East Lyme Bd. of Educ.,* 790 F.3d 440, 456 (2nd Cir. 2015) (quoting *Miener v. Missouri,* 800 F.2d 749, 753 (8th Cir. 1986)). Accordingly, in lieu of awards of public educational services, a court or IDEA hearing officer may order a school district to pay for services from a private school or educational provider. *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1285, 1290 (11th Cir. 2008), *cert. denied* 562 U.S. 937 (2010). Relief has also been provided by ordering funds for future education to be placed in escrow account. *Doe v. East Lyme Bd. of Educ.,* 962 F.3d 649, 653-54 (2nd Cir. 2020).

Reimbursement of the costs of unilateral, appropriate parental private educational placements

of students is also a well-established IDEA remedy. The IDEA regulations specifically provide for it:

> If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

34 C.F.R. § 300.148(c). *See also Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359 (1985) (recognizing a pre-regulation IDEA-based right to tuition reimbursement for certain unilateral parental private educational placements); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993) (tuition reimbursement available to unilateral private

placements reasonably calculated to provide educational benefit where the school does not meet state standards).

Related service awards can be similarly compensatory. Where transportation is found to be a related service, parents who drive their students to school have been awarded ongoing payment for that service at market rate. *Hurry v. Jones*, 734 F.2d 879, 883-84 (1st Cir. 1984). Payment or reimbursement for various therapeutic services is also routinely awarded. *See, e.g.*, *T.Y. v. New York City Dep't of Educ.*, 213 F.Supp.3d 446, 464 (E.D.N.Y. 2016); *Cobb Co. Sch. Dist. v. A.V.*, 961 F.Supp.2d 1252, 1262 (N.D. Ga. 2013); *Dep't of Educ. v. M.F.*, 840 F.Supp.2d 1214, 1224 (D. Haw. 2011).

Even substantial consequential costs incurred by families of special education students have been reimbursed as a related service. In *Union School District v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1993), *cert. denied* 513 U.S. 965 (1994), the student was placed in a non-residential private institution beyond commuting distance from the family's home. The Ninth Circuit affirmed as a related service an award providing the family with reimbursement of the cost of a second residence near the school, along with related transportation expenses. *Id*. at 1527-28.

Finally, under the IDEA, prevailing students and their parents are routinely awarded costs and attorney fees. 20 U.S.C. § 1415(i)(3)(B)(i)(1); 34 C.F.R. § 300.517. Although left to judicial resolution, this discrete issue of costs and fees sustained in the

administrative process is ordinarily resolved by settlement. Little is left uncompensated under the IDEA's remedial framework.

In all but the most extraordinary IDEA cases, expedited access to the courts before full exhaustion of administrative remedies is simply unnecessary. In *Charlie F. v. Board of Education*, 98 F.3d 989 (7th Cir. 1996), the Seventh Circuit noted that monetary damages in IDEA-related judicial actions are often redundant to those available through the administrative process. A child's parent could seek monetary damages

> at least in part to pay for services (such as counseling) that will assist his recovery of self-esteem and promote his progress in school. Damages could be measured by the cost of these services. Yet the school district may be able (indeed, may be obliged) to provide these services in kind under the IDEA. If it turns out that the school is *not* obliged to provide such services, that may be because Charlie's parents have exaggerated what happened in fourth grade, the consequences of those events, or both." *Id*. at 992.

The IDEA administrative process ordinarily fully resolves the educationally related injuries at issue, does so in a manner that maintains relationships

critical to the educational process, and is rapid enough to mitigate the emotional distress attendant to educational deficits and their resolution. This efficiency is borne out by recent statistics concerning the filing and resolution of IDEA due process hearing complaints. In the U.S. and outlying areas, from the 2010-2011 to the 2020-2021 school years, 23,567 due process complaints were filed. Of those, only 1,293 proceeded to full adjudication – even under the IDEA's expedited timelines.[8]

* * *

Congress designed the IDEA administrative process to be collaborative, effective, efficient, and aimed at preserving relationships where possible. Routinely permitting judicial litigation to be initiated before the administrative process is exhausted will unnecessarily inject a lengthy, adversarial proceeding into due process complaints. The cost of settling concurrent IDEA administrative claims and federal claims will increase. It will force every school district to insist on a waiver of claims under other federal statutes. Under such circumstances, it is easy to imagine IDEA's administrative procedures being used primarily to support or avoid lengthy civil litigation, to the detriment of both the child's educational

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[8] CADRE, IDEA Dispute Resolution Data Summary for U.S. and Outlying Areas: 2010-2011 to 2020-2021, https://www.cadreworks.org/resources/cadre-materials/2020-21-dr-data-summary-national.

interests and the relationships between schools and families. Under most circumstances, the process that results will be longer, and less likely to result in a quick and efficient determination of the child's appropriate education program.

CONCLUSION

For the foregoing reasons, the judgments of the lower courts should be affirmed.

Respectfully submitted.

Roy Henley
THRUN LAW FIRM, P.C.
2900 West Road
Suite 400
East Lansing, MI
48823

Francisco M. Negrón, Jr.
Counsel of Record
Sonja H. Trainor
National School Boards
Association
1680 Duke St.
2nd Fl.
Alexandria, VA 22314
(703) 838-6722
fnegron@nsba.org

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