18-16669

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

A. L., by and through her guardian, I. LEE,

Plaintiff-Appellant,

—v.—

CLOVIS UNIFIED SCHOOL DISTRICT; YVETTE ADAMS, in her personal and official capacity as Program Specialist; APRIL LAUREN WOODS,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIEF FOR *AMICUS CURIAE* COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC. IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 the following disclosure is made on behalf of these entities:

Council of Parent Attorneys and Advocates

1. No amicus is a publicly held corporation or other publicly held entity;

2. No amicus has parent corporations; and

3. No amicus has 10% or more of stock owned by a corporation.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Council of Parent Attorneys and Advocates (COPAA) is a not-for-profit organization for parents of children with disabilities, their attorneys and advocates. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education (FAPE) such children are entitled to under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq*.[1] Our attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §1983) (Section 1983), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*. (ADA).

[1] Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, Amicus states that: (A) there is no party, or counsel for a party in the pending appeal who authored the amicus brief in whole or in part; (B) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (C) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than Amicus and its members.

Because of its work involving education of students with disabilities and its concern that parents and children should be able to bring their anti-discrimination claims without devoting unnecessary resources to IDEA claims that cannot provide them with meaningful relief, COPAA filed an *amicus curiae* brief in *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017). Because COPAA members' clients include IDEA-eligible who have strong anti-discrimination claims under Section 504/ADA that are not available as claims under IDEA, COPAA has a compelling interest in the clarification of exhaustion requirements for cognizable claims arising under the ADA and Section 504 that do not present actionable claims under IDEA.

COPAA brings to the Court the unique perspective of parents and advocates for children with disabilities. Many of these children experience significant challenges. Their success depends not only on the right to secure the IDEA's guarantee of a FAPE, but also upon the enjoyment of all rights under federal law guaranteed to students, whether or not they receive special education. *Amicus* requested consent to file this Motion and accompanying *Amicus Curiae* brief from counsel for both parties. Plaintiffs-Appellants have consented to this brief; Defendants-Appellees, did not consent.

SUMMARY OF ARGUMENT

IDEA is a very different statute from ADA and Section 504. Reading the Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372 (HCPA), now codified at 20 U.S.C. § 1415(*l*), to require exhaustion in all discrimination

cases that deal with students or educational environments confuses and conflates the entirely different processes, standards, and purposes of these acts. Such a reading is inappropriate and erroneous.

IDEA provides a strong entitlement to an Individualized Educational Program (IEP) with appropriate special education and related services regardless of cost to the school district. IDEA also provides strong procedural protections. There are claims for which IDEA provides appropriate remedies and claims for which it cannot. To require exhaustion even when IDEA procedures **cannot resolve the harms at issue or provide meaningful relief** will have significant due process and practical consequences that are detrimental to students with disabilities seeking to vindicate their Section 504/ADA rights. Congress passed HCPA to ensure that students do not lose their right to bring their non-IDEA civil rights claims when they enter the schoolhouse door. Students, like A.L., with disabilities who have resolved their IDEA FAPE claims may still have Section 504 and ADA claims that do not involve the right to receive FAPE under IDEA and are therefore not seeking relief available under it.

The district court's decision in this case erroneously dismisses 504/ADA claims for failure to exhaust when there is no dispute that the student exhausted administrative remedies with respect to her IDEA claims and is seeking systemic relief under federal civil rights law. California's Office of Administrative Hearings (OAH) does not have jurisdiction of the 504/ADA claims and A.L.

could not have sought systemic relief to address discriminatory policies and practices in front of an OAH administrative law judge.

ARGUMENT

I. THE REMEDIES UNDER IDEA DO NOT DISPLACE RELIEF AVAILABLE UNDER SECTION 504 AND THE ADA

While IDEA creates a comprehensive standard and procedural framework by which students with disabilities will be educated in a meaningful way, Section 504 and ADA are civil rights statutes designed to end unlawful discrimination against individuals with disabilities, including students in public schools. Because the statutes were developed at different times, and with different purposes in mind, the mechanisms and remedies that have developed for each are distinct

A. ADA/504 Claims Address Discrimination and Offer Remedies Not Available Under IDEA

Section 504 of the Rehabilitation Act was passed on September 26, 1973 and is codified at 29 U.S.C. § 701. It was the first piece of federal civil rights legislation directed at the protection of people with disabilities, and arguably paved the way for the passage of what is now known as IDEA and ADA. Section 504 is an antidiscrimination statute which provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance . . .” *Id.* § 794. Unlike the IDEA (which was enacted a few years after), Section 504 prohibits discriminatory conduct, policies, and programs, but creates no affirmative obligation on entitlements to ensure people with disabilities access.

In 1990, Congress passed the Americans with Disabilities Act, a landmark law protecting the rights of individuals with disabilities. Title II barred discrimination by public entities, including school districts. In drafting the ADA to be a comprehensive statute protecting people with disabilities from discrimination, Congress paid careful attention to the various civil rights laws that it had previously passed. Thus, Title I of ADA, employment, follows the same format as Title VII of the Civil Rights Act of 1964; employees who are covered by ADA must file complaints first with EEO agencies, just like employees who are covered by Title VII. Title III of ADA is modeled after Title II of the Civil Rights Act of 1964; in light of the extensive litigation over the definition of public accommodation, Congress provided a far more detailed definition of public accommodation. *Compare* 42 U.S.C. § 12181(7) *with* 42 U.S.C. § 2000a(b), (c).

Like Section 504, in Title II of ADA, Congress prohibited discrimination by public agencies. Title II goes beyond Section 504 in applying to state and local government agencies regardless of whether they receive any federal funds; while Section 504 applies to private schools and other private businesses that receive federal funds. Because public schools receive federal funds and are public agencies, public schools are subject to the requirements of both Title II of ADA and Section 504.

Unlike IDEA, however, the scope of Section 504 and ADA is much broader, particularly for specific disability- related areas. In fact, ADA includes a mandate to eliminate discrimination against individuals with disabilities, and it required the U.S. Department of Justice to promulgate regulations to implement ADA to that end. 42 U.S.C. § 12134. Thus, while IDEA may set the "basic floor of opportunity," ADA/504 may require more. To achieve that end, inclusive in both ADA and Section 504 is the ability to pursue damages to make victims of discrimination whole, and also to disincentivize discrimination at an institutional level. As such, the purpose and scope of remedy for these statutes differ.

This Court, in *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013) recognized that federal anti-discrimination laws created different substantive obligations than IDEA. In that case, a student who was deaf sought Communication Access Real-time Translation services—an accommodation that provides word-for-word transcription—to enable her to follow classroom instruction. The district in that case declined to provide her with such supports and instead offered her different supports which did not provide her with the type of word-for-word transcription she felt she needed to be able to access instruction. *K.M. v. Tustin Unified Sch. Dist., CASE NO. SACV 10-1011 DOC* (*MLGx*), 2011 WL 2633673 (C.D. Cal. July 5, 2011), *rev'd in part*, 725 F.3d 1088 (9th Cir. 2013).

Under the *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982), analysis, the District's failure to provide the CART services was deemed to not have denied

K.M. a FAPE because "[u]nder the *Rowley* 'educational benefit' standard, it cannot reasonably be said that K.M. was deprived of a FAPE. For one thing, as the ALJ held, Plaintiff has not demonstrated a need for CART services; rather, she has just shown that it would likely offer a benefit for her." *Id.* at *12. However, ADA and DOJ regulations regarding effective communications provide a completely different legal claim, and a good one at that. Those regulations require that communication be made equally accessible to people with communication disabilities, regardless of whether equal access is necessary for the child to benefit from education under *Rowley*. *See, e.g., K.M.,* 725 F.3d at 1098.

IDEA and ADA/504 differ in both ends and means. IDEA sets a floor of access, requiring school districts to provide individualized services necessary to get *a particular child* to that floor. ADA/504 require that school districts make services equally accessible to all individuals with disabilities. *Id.* at 1097. A.L. exhausted her administrative remedies under IDEA when she settled her own IEP-related claims. The relief A.L. sought, money damages for her injuries and prospective injunctive relief regarding systemic policies, was not available to her through the administrative process. The administrative process could not offer her the systemic relief she now seeks in federal court.

B. Congress Chose Not to Impose an Exhaustion Requirement on ADA/504 Claims

Unlike IDEA, which requires IDEA claims be heard by an independent hearing officer prior to any suit being brought before a state or federal court, Section 504's federal regulations do not require administrative due process exhaustion prior to bringing suit in federal court. *Compare* 20 U.S.C. § 1415(f)(3)(A) *with* 34 C.F.R. § 104.36. There are also other significant procedural differences in bringing forth cases under IDEA and Section 504, *see Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 872 (9th Cir. 2011). For example, while documents and experts need to be exchanged at least 5 days before an IDEA due process hearing, there is no such requirement for a Section 504 hearing. *Compare* 20 U.S.C. § 1415(f)(2) *with* 34 C.F.R. § 104.36.

Congress was familiar with IDEA, yet it chose not to require exhaustion of administrative remedies for all Title II or Section 504 claims involving public elementary and secondary education. Just as it provided for all Title I ADA[2] claims to be filed first with EEO agencies, it could have required all Title II ADA claims involving public elementary and secondary education claims to be brought first in the same due process proceedings provided for IDEA claims. It chose not to do so, but instead later amended HCPA to provide that ADA claims, like Section 504 claims, could be brought separately and without IDEA exhaustion

[2] Title I of the ADA required coordination of ADA and Section 504 employment claims to "prevent imposition of inconsistent or conflicting standards," 42 U.S.C. § 12117(b). Notably, Congress did not provide any similar statutory requirement that ADA/Section 504 claims be consistent with IDEA claims.

unless they seek the same relief available under IDEA. *See* Individuals with Disabilities Education Act Amendments Act of 1997, 105 Pub. L. No 17, 111 Stat. 37. But beyond that, ADA regulations do not set out any due process procedures for ADA claims. Instead, apart from § 1415(*l*), Congress used the same format for ADA education claims as it did with Title VI and Title IX of the Civil Rights Act, which bar discrimination on the basis of race and national origin and sex and allow individuals with disabilities to bring suit in federal court directly, without any administrative exhaustion. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009) ("Title IX has no administrative exhaustion requirement")*; Cannon v. Univ. of Chi.*, 441 U.S. 677, 707 n.41 (1979) (noting Title VI does not provide for exhaustion of administrative remedies).

II. THE DISTRICT COURT'S DECISION CONFLICTS WITH THE PLAIN LANGUAGE OF THE HCPA AS WELL AS ITS STATUTORY PURPOSE

A. *Fry v. Napoleon Community Schools* Clarified that the Plain Language of the HCPA Controls

The HCPA reads:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

Id. Prior to *Fry v. Napoleon Cmty. Schs*, 580 U.S. ___, 137 S. Ct. 743 (2017)), the Supreme Court had never interpreted the HCPA.

Fry reaffirmed that the plain terms of a law control statutory interpretation. *King v. Burwell*, 576 U.S. __, __ 135 S. Ct. 2480, 2489 (2015); *Henson v. Santander Consumer USA, Inc.*, 580 U.S. ___, ___, 137 S. Ct. 1718 (2017); *Millbrook v. United States*, 569 U.S. ___, ___, 133 S. Ct. 1441, 1446 (2013); *In re Trump Entm't Resorts Unite Here Local 54*, 810 F.3d 161, 167 (3d Cir. 2016); *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 611 (3d Cir. 2015). Federal courts must also interpret statutes in context, "and with a view to their place in the overall statutory scheme." *King*,135 S. Ct. at 2492 (quoting *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. __, 134 S. Ct. 2427, 2441, (2014)); *see also In re Trump Entm't Resorts Unite Here Local 54*, 810 F.3d at 167-68; *G.L.*, 802 F.3d at 618 (interpreting IDEA's statute of limitations).

When construing statutory exhaustion provisions, federal courts must be particularly careful in their interpretation. The *Fry* Court cited to *Ross v. Blake*, 578 U.S. ___, 136 S. Ct. 1850 (2016) in its discussion of the appropriate interpretation of the HCPA. *See Fry*, 137 S. Ct. at 753. *Ross*' discussion of judicial interpretation of statutory exhaustion provisions is therefore particularly instructive.

Ross interpreted the exhaustion provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. § 1997e(a). The PLRA requires that inmates

exhaust "such administrative remedies as are available" prior to litigating claims related to prison conditions. 136 S. Ct. at 1855. The Fourth Circuit Court of Appeals held that inmate Sheldon Blake satisfied the PLRA because its "exhaustion requirement is not absolute." *Id.* at 1856 (quoting *Ross v. Blake*, 787 F.3d 693, 698 (4th Cir. 2015)). The Fourth Circuit held that under "certain special circumstances," a prisoner need not exhaust. "In particular, that was true when a prisoner 'reasonably – even though mistakenly – believed that he had exhausted his remedies.'" *Id.* (quoting 787 F.3d at 695). The Court granted certiorari and vacated the judgment of the Court of Appeals because "[s]tatutory text and history alike foreclose the Fourth Circuit's adoption of a 'special circumstances' exception" to exhaustion. *Id.*

In *Ross,* the Court of Appeals adopted an "extra-textual" exception to the exhaustion requirement. "And that failure makes a difference, because the statute speaks in unambiguous terms opposite to what the Fourth Circuit said." *Id.* The PLRA contains a mandatory exhaustion provision, with one qualifier – remedies must be available to the inmate. The Court of Appeals erred in using a "special circumstances" test.

In a discussion markedly pertinent to this case, the Court noted:

> No doubt, judge-made exhaustion doctrines, even if flatly stated at first, remain amenable to judge-made exceptions . . . But a statutory exhaustion provision stands on a different footing. There, Congress sets the rules – and courts have a role in creating exceptions only if Congress wants them to. For that reason, mandatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial

> discretion . . . Time and again, this Court has taken such statutes at face value – refusing to add unwritten limits onto their rigorous textual requirements.

Id. at 1857 (citations omitted).

This strict statutory interpretation rule applies regardless of which party benefits. The Supreme Court has "thus overturned judicial rulings that impose extra-statutory limitations on a prisoner's capacity to sue – reversing, for example, decisions that required an inmate to demonstrate exhaustion in his complaint, permitted suit against only defendants named in the administrative grievance and dismissed an entire action because of a single unexhausted claim. *Id.* at 1856 n.1 (citing *Jones v. Bock*, 549 U.S. 199, 203 (2007)). Crafting and imposing rules not required by the PLRA "exceeds the proper limit on the judicial role." *Jones*, 549 U.S. at 203.

The Supreme Court granted certiorari in *Fry* "to address confusion in the courts of appeals as to the scope of § 1415(*l*)'s exhaustion requirement," *Fry*, 137 S. Ct. at 752. In *Fry*, E.F. and her parents alleged that the school districts violated the ADA and Section 504 by refusing reasonable accommodations regarding her use of a service dog and otherwise discriminated against E.F. on the basis of her disabilities. E.F. sought declaratory relief that the districts had violated Section 504 and the ADA and money damages to compensate her for emotional distress, embarrassment, and mental anguish. 137 S. Ct. at 752 (citing *Fry v. Napoleon Cmty. Sch.*, 788 F.3d 622, 627 (6th Cir. 2015)). The Sixth Circuit said that E.F. had to exhaust administrative remedies because, although E.F. did not allege that

the school violated IDEA, the "genesis and manifestation" of the injury was educational. *Fry v. Napoleon Cmty. Schs.*, 788 F.3d 622, 627 (6th Cir. 2015) (quoting *Charlie F. by Neil F. v. Bd. of Educ.*, 98 F.3d 989, 993 (7th Cir. 1996)).

Fry rejected this injury-centered approach to interpretation of Section 1415(*l*), because it ignores the explicit text of the HCPA. Specifically, "Section 1415(*l*) requires that a plaintiff exhaust the IDEA's procedures before filing an action under the ADA, the Rehabilitation Act, or similar laws when **(but only when)** her suit 'seek[s] relief that is also available' under the IDEA." *Fry*, 137 S. Ct. at 752 (emphasis supplied)." To meet the HCPA standard, a suit must seek relief for a denial of FAPE as defined by IDEA, "because that is the only 'relief' that IDEA makes available." *Id.* "The 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 (or what is much the same, whether any remedies are available under that law)." *Id.* at 755.

Fry explains that relief is "available" under a statute when it is "accessible or may be obtained" under that law. 137 S. Ct. at 753 (quoting *Ross*, 136 S. Ct. 1858 (quoting *Booth v. Churner*, 532 U.S. 731, 727-28 (2001) and Webster's Third New International Dictionary 150 (1993)). The scope of §1415(*l*), therefore, is limited to "the circumstances in which the IDEA enables a person to obtain redress (or similarly, to access a benefit))." *Id.*

B. The District Court's Decision is Inconsistent with IDEA's Statutory Scheme as a Whole and the Legislative History of the HCPA

Examining the statutory scheme as a whole precludes the district court's interpretation, because it produces a substantive effect that is not compatible with the rest of the law. *King*, 135 S. Ct. at 2489. A court's "duty, after all, is 'to construe statutes, not isolated provisions.'" *Id.* (quoting G*raham County Soil & Water Conserv. Dist. v. United States ex rel. Wilson,* 559 U.S. 280, 290 (2010)).

Congress passed the HCPA to provide greater protection to IDEA eligible students, not detract from their civil rights. *G.L.*, 802 F.3d at 618. The legislative history of IDEA, Section 504, and ADA make clear that Congress understood that, while there would be significant interplay between these three statutes, they were complementary and not identical. Thus, there would be non-IDEA legal claims under Section 504 and ADA that would not require exhaustion of IDEA administrative remedies.

Two years after it passed Section 504, Congress passed the Education for All Handicapped Children Act (EHA), IDEA's predecessor, which required education of all students with disabilities. P.L. 94-142 (1975). Congress passed this law because of its concern that students with disabilities were either being excluded from school or "sitting idly in regular classrooms." *See Bd. of Educ. v. Rowley* at 179.

Due to the absence of a statute providing that Section 504 applied to EHA-eligible students and the comprehensive nature of EHA, the Supreme Court

restricted civil rights of EHA-eligible children in *Smith v. Robinson*, 468 U.S. 992 (1984). *Smith* involved a student, who had brought identical claims under the EHA and Section 504 claims and had been awarded attorney's fees under Section 504. The Court held that the EHA provided the exclusive avenue of relief for appropriate education claims. Thus, the plaintiff in *Smith* could not assert a claim for attorney's fees either under Section 504 or under 42 U.S.C. § 1983. The Court "emphasize[d] the narrowness of our holding," and specifically stated that it did not apply where "the EHA is not available or where § 504 guarantees rights greater than those available under EHA." *Id.* at 1021 n.8

Congress swiftly responded with HCPA, so as "to reaffirm . . . the viability of Section 504, 42 U.S.C. § 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children," and to restore attorney's fees for prevailing parents. H.R. Rep. No. 296, 99th Cong., 1st Sess. 4, 6-7 (1985); *see also* S. Rep. No. 112, 99th Cong., 1st Sess. 2, 15 (1985).

In introducing HCPA, Senator Weicker explained that "the Court has not only misinterpreted the congressional intent underlying the EHA, but it has also frustrated Congress' intent in enacting section 504 and 1983 which I and many members of this body assumed protected the civil rights claims of handicapped children." 130 Cong. Rec. S9078 (daily ed. July 24, 1984). He said that the legislative record and "a decade of unbroken executive branch interpretation. . . by the Nixon, Ford, Carter, and Reagan administrations –reflect a consistent assumption that Public Law 94-1425 and Section 504 were intended to be

freestanding, complementary – but not identical – legislative acts." *Id.* (emphasis added).

It was never Congress' intent that eligibility (or possible eligibility) for IDEA substantive or procedural rights would detract from the rights of individuals with disabilities under Section 504 and, by extension, ADA. Roughly five years later, in adopting ADA, Congress explained that its purposes in passing ADA included providing both "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." *Id.* § 12101(b)(1), (2). In light of the history of *Smith* and HCPA, it is easily understood that Congress could have required the millions of public school students receiving special education through IDEA to go through IDEA administrative proceedings for *any* ADA or Section 504 claim, but it did not.

C. The District Court's Misapplication of Section 1415(*l*) Unlawfully Constricts the Civil Rights of Individuals with Disabilities Enrolled in Public Schools

Apart from public school students, individuals with disabilities can file ADA/504 claims without worrying about that an administrative exhaustion requirement will delay a court's exercise of its original jurisdiction under 28 U.S.C. § 1331. Courts have recognized that a plaintiff asserting Section 504 claims need not be exhausted because an administrative process could not provide the requested relief. *Freed v. CONRAIL*, 201 F.3d 188, 192 (3d Cir. 2000)

(referencing cases from First, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits). Similarly, Title II of ADA does not require exhaustion of remedies. *See* 28 C.F.R. § 35.172, Apx. A (according to United States Department of Justice analysis, Title II "complainant may elect to proceed with a private suit at any time").

Although HCPA restored the right of public school students who were dually covered by IDEA and Section 504 to bring Section 504 and other civil rights claims that had been eliminated by *Smith*, 468 U.S. at 1021 n.8, the district court's decision, if upheld, would completely eliminate the ability of school children with disabilities to seek relief under 504/ADA of a systemic nature – unavailable under IDEA – even after they have exhausted their IDEA remedies. This misapplication of §1415(*l*) is erroneous.

CONCLUSION

This court should reverse the district court's decision dismissing the Second Amended Complaint and remand for further proceedings.

Dated: December 21, 2018

Respectfully submitted,
/s/Selene Almazan-Altobelli

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CERTIFICATION OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NUMBER

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C), the attached amicus brief is proportionately spaced, has a typeface of 14 points and contains 4,202 words.

Dated: December 21, 2018

/s/ Selene Almazan-Altobelli
Selene Almazan-Altobelli
Attorney for Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on December 21, 2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF

/s/ Selene Almazan-Altobelli
Selene Almazan-Altobelli
Attorney for Amicus Curiae