20-1076

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

MIGUEL LUNA PEREZ,

Plaintiff-Appellant,

—v.—

STURGIS PUBLIC SCHOOLS;
STURGIS PUBLIC SCHOOLS BOARD OF EDUCATION,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

BRIEF FOR A*MICUS 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:

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.

Respectfully submitted,

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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 the 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.

COPAA brings to this Court the unique perspective of parents and advocates for children with disabilities. COPAA has previously filed as *amicus curiae* in the United States Supreme Court in *Fry v. Napoleon Community Schools,* 137 S. Ct. 743 (2017); *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Board of Education of New York v. Tom F.*, 552 U.S. 1 (2007); *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City School District*, 550 U.S. 516 (2006), as well as numerous cases in the United States Courts of Appeal.

COPAA members' clients include IDEA-eligible children who have strong anti-discrimination claims under ADA/Section 504 that are not available as claims under IDEA. Whether these children eventually gain employment, live independently, and become productive citizens 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. Accordingly, COPAA has a compelling interest in the clarification of exhaustion requirements for cognizable claims arising under the ADA, Section 504, and other civil rights laws that do not present actionable claims under IDEA.

Amicus requested consent to file this Motion and accompanying *Amicus Curiae* brief from counsel for both parties. Plaintiffs-Appellants have consented to

this brief; despite repeated attempts to obtain a response from Defendants-Appellees there was no response and the accompanying Motion for Leave to File Amici Curiae brief is filed with this brief.

SUMMARY OF ARGUMENT

Congress passed the Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372 (HCPA), now codified at 20 U.S.C. § 1415(*l*), to *protect* students with disabilities. HCPA ensures that students do not lose their right to bring their non-IDEA civil rights claims when they enter the schoolhouse door. In enacting the HCPA, Congress recognized that there are claims for which IDEA provides appropriate remedies and claims for which it cannot. IDEA provides a robust 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. Other civil rights laws, such as ADA/Section 504, however, protect distinct rights and offer different remedies.

The district court read 20 U.S.C. § 1415(*l*) to preclude pursuit of meaningful and important discrimination claims because the student had received all IDEA relief to which he was entitled through settlement. This result is contrary to well-established federal policy encouraging resolution of IDEA claims without the expense of litigation. Further, it confuses and conflates the entirely different processes, standards, and purposes of IDEA, ADA, and Section 504. Finally, and

most egregiously, it allows a school district to weaponize §1415(*l*) against students with disabilities by securing dismissal of ADA claims at the administrative level for lack of jurisdiction and then precluding assertion of those same claims at the federal court level due to lack of exhaustion. This ruling cannot stand.

ARGUMENT

I. THE PLAIN LANGUAGE OF 20 U.S.C. § 1415(*l*) MAKES CLEAR THAT FOR NON-IDEA CLAIMS SEEKING DAMAGES AS A REMEDY, EXHAUSTION OF ADA AND OTHER NON-IDEA CLAIMS IS NOT REQUIRED TO PROCEED TO COURT

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

IDEA offers federal funds to States in exchange for a commitment to furnish a FAPE "to children with certain disabilities, 20 U.S.C. § 1412(a)(1)(A), and establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE." *Fry*, 137 S. Ct. at 746. As *Fry* recognized other federal statutes protecting the interests of school children with disabilities, including ADA and Section 504, are of equal importance. *Id.*

Courts must "attend to the diverse means and ends of the statutes covering persons with disabilities—the IDEA on the one hand, the ADA and [Section 504] (most notably) on the other." *Id.* at 755. IDEA protects children and concerns only their schooling. *Id.* (citing 20 U.S.C. § 1412(a)(1)(A)). IDEA creates a comprehensive standard and procedural framework by which students with

disabilities will be educated in a meaningful way. By contrast, ADA and Section 504 "cover people with disabilities of all ages and do so both inside and outside schools. And those statutes aim to root out disability-based discrimination, enabling each covered person (sometimes by means of reasonable accommodations) to participate equally to all others in public facilities and federally funded programs." *Id.* at 756. "In short, the IDEA guarantees individually tailored educational serves, while [ADA/Section 504] promise non-discriminatory access to public institutions." *Id.*

Congress enacted Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794, on September 26, 1973. 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 the laws 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 . . ." 29 U.S.C. § 794. Unlike the later-enacted IDEA, 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.

Unlike IDEA, however, the scope of ADA and Section 504 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 United States Department of Justice to promulgate regulations to implement ADA to that end. 42 U.S.C. § 12134. IDEA sets the "basic floor of opportunity," but ADA/504 may require more. To achieve elimination of discrimination, ADA and Section 504 both include the ability to pursue damages. Damages serve two purposes. Damages make victims of discrimination whole, and also act as a disincentive to discriminate. As such, IDEA and ADA/Section 504 provide purposely distinct rights and scopes of remedy. *See, e.g., Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16, 24 (1st Cir. 2019) (refusal to allow use of service dog "involves the denial of non-discriminatory access to a public institution, irrespective of school district's FAPE obligation"); *E.F. v. Napoleon Cmty. Sch.*, 371 F. Supp. 3d 387, 406-07 (E.D. Mich. 2019) (no exhaustion required because ADA and not IDEA precluded denial of access to service dog and damages remedy); *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. 2013) (denial of real time transcription actionable under ADA even if not a FAPE violation); *A.F. v. Portland Pub. Sch. Dist.*, No. 3:19-cv-01827, 2020 U.S. Dist.

LEXIS 61380, at *10-11 (D. Or. Apr. 7, 2020) (student seeking access under ADA/Section 504 to medically necessary services to treat autism as a reasonable accommodation not subject to IDEA's exhaustion requirement); *A.K.B. v. Indep. Sch. Dist.*, 2020 U.S. Dist. LEXIS 52688, at *14-15 (D. Minn. March 26, 2020) (student seeking damages for failure to accommodate asthma resulting in lifelong brain injury not required to exhaust administrative remedies); *Georgia Advocacy Office v. Georgia*, No. 1:17-cv-03999, 2020 U.S. Dist. LEXIS 58721, at *27-28 (N.D. Ga. Mar. 19, 2020) (exhaustion not required because stigmatization and isolation in violation of ADA was gravamen of complaint).[2]

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

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. Unlike IDEA, which requires IDEA claims be heard by an independent hearing officer prior to any suit being brought before a

[2] For similar reasons, the HCPA does not require exhaustion of claims arising under other civil rights laws or state laws, even for incidents causing harm to students with disabilities that occurred within the school setting. *See Graham v. Friedlander*, 223 A.3d 796 (Conn. 2020) (HCPA did not preclude state law negligence claims for lack of exhaustion); *Doe v. Dallas Indep. Sch. Dist.*, 941 F.3d 224, 228 (5th Cir. 2019) (although sexual harassment claim under Title IX requires denial of educational opportunity, plaintiff sought relief irrespective of IDEA's FAPE obligations and exhaustion not required); *F.H. v. Memphis City Sch.*, 764 F.3d 638, 644 (6th Cir. 2014) (student did not have to exhaust claims of physical, verbal and sexual abuse under Section 1983).

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.

In drafting 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, addressing employment, follows the same format as Title VII of the Civil Rights Act of 1964. Individuals pursuing employment discrimination claims must file complaints first with EEO agencies, just like employees who are covered by Title VII. Congress modeled Title III of ADA after Title II of the Civil Rights Act of 1964. In light of extensive litigation over the definition of public accommodation, Congress provided a far more detailed definition of that phrase. *Compare* 42 U.S.C. § 12181(7) with 42 U.S.C. § 2000a(b)&(c). Just as it provided for all Title I ADA claims[3] 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.

[3] 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.

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 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 of the Civil Rights Act and Title IX 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 Chicago*, 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 § 1415(*l*) AS WELL AS ITS STATUTORY PURPOSE

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

20 U.S.C. § 1415(*l*) 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*, the Supreme Court had never interpreted § 1415(*l)*.

Fry reaffirmed that the federal courts must begin interpretation, "as always, with the statutory language at issue." 137 S. Ct. at 753; *Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718 (2017); *Millbrook v. United States*, 569 U.S. 50, 56 (2013); *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." *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)); *see also King v. Burwell*, 135 S. Ct. 2480, 2492 (2015) *King*,135 S. Ct. at 2492; *G.L.*, 802 F.3d at 618 (interpreting IDEA's statute of limitations). This approach "calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *Heuso v. Barnhart*, 948 F.3d 324, 333 (6th Cir. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)).

When construing statutory exhaustion provisions, federal courts must be particularly careful in their interpretation. The *Fry* Court cited to *Ross v. Blake*, 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.

B. The District Court's Decision is Inconsistent with the Statutory Language, IDEA's Statutory Scheme as a Whole, and the Legislative History of § 1415(*l*)

Fry addressed "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 (6th Cir. 2015), *rev'd* 137 S. Ct. 743 (2017)). This Court held 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) , *rev'd* 137 S. Ct. 743 (2017) (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.* Miguel Perez did not seek relief for denial of FAPE and did not seek a remedy available under IDEA. Applying the plain statutory language, the exhaustion requirement simply does not apply.

Moreover, 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*, 458 U.S. 176, 179 (1982).

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 94-142 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 purpose 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.

The district court's decision does not comply with *Fry*. The ruling also eviscerates the ADA rights of students with disabilities attending public schools. Accordingly, this Court should grant Appellant's requested relief.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the district court's judgment dismissing Miguel's Complaint and remand the case for further proceedings.

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Respectfully submitted,

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CERTIFICATION OF COMPLIANCE PURSUANT TO FED. R. APP. 32(a)(7)(C)

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 4,057 words.

/s/ Catherine Merino Reisman
Catherine Merino Reisman

CERTIFICATE OF SERVICE

I certify that on May 8, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF.

/s/ Catherine Merino Reisman
Catherine Merino Reisman