
United States Court of Appeals
for the
Sixth Circuit

Case No. 25-1602

IBRAHIM ALZANDANI,

Plaintiff,

– and –

Y.A., A MINOR BY NEXT FRIEND IBRAHIM ALZANDANI;
W.A., A MINOR BY NEXT FRIEND NADHEM ALNAJAR;
A.M., A MINOR BY NEXT FRIEND ABRAHAM MUZIB,

Plaintiffs-Appellees,

– v. –

HAMTRAMCK PUBLIC SCHOOLS,

Defendant,

– and –

MICHIGAN DEPARTMENT OF EDUCATION,

Defendant-Appellant.

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

**BRIEF FOR *AMICI CURIAE* COUNCIL OF PARENT ATTORNEYS AND
ADVOCATES, DISABILITY RIGHTS EDUCATION & DEFENSE FUND,
DISABILITY RIGHTS MICHIGAN, ERIN CHEMERINSKY, KENTUCKY
PROTECTION & ADVOCACY, DISABILITY RIGHTS OHIO, DISABILITY
RIGHTS TENNESSEE, LEGAL AID SOCIETY OF SOUTHWEST OHIO,
ABDNOUR WEIKER, JUSTIN S. GILBERT, ADVOCATES FOR BASIC
LEGAL EQUALITY, NORTHERN KENTUCKY CHILDREN’S LAW
CENTER, MI AECRES AND NATIONAL DISABILITY RIGHTS
NETWORK IN SUPPORT OF PLAINTIFFS-APPELLEES**

ELLEN MARJORIE SAIDEMAN
LAW OFFICE OF ELLEN SAIDEMAN
Seven Henry Drive
Barrington, Rhode Island 02806
(401) 258-7276
esaideman@yahoo.com

SELENE ALMAZAN-ALTOBELLI
COUNCIL OF PARENT ATTORNEYS
AND ADVOCATES, INC.
P.O. Box 6767
Towson, Maryland 21285
(844) 426-7224
selene@copaa.org

Attorneys for Amici Curiae



CORPORATE DISCLOSURE STATEMENT

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

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ADVOCATES FOR BASIC LEGAL EQUALITY, INC. (ABLE)
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DISABILITY RIGHTS MICHIGAN
DISABILITY RIGHTS OHIO
DISABILITY RIGHTS TENNESSEE
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND (DREDF)
ERWIN CHERMERINSKY
JUSTIN S. GILBERT, GILBERT LAW, PLC
KENTUCKY PROTECTION & ADVOCACY (P&A)
LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC (LASSO)
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RIGHT TO EDUCATIONAL SUCCESS)
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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.

s/ Selene Almazan-Altobelli
Selene Almazan-Altobelli

Attorney for *Amici Curiae*

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INTEREST OF *AMICI CURIAE*¹

Council of Parent Attorneys and Advocates (COPAA) is a national not-for-profit organization for parents of children with disabilities, their attorneys and advocates. COPAA does not undertake individual representation but provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education (FAPE) that children are entitled to under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA).² COPAA supports its members' efforts 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 Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* (ADA). COPAA brings the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has filed as *amicus curiae* in the United States

¹ Pursuant to Fed. R. App. P. 29, *Amici* certify that no party's counsel in this matter authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than *amici* and their members and counsel contributed money intended to fund the brief's preparation or submission.

² The statute was originally named the Education of the Handicapped Act or EHA; it was renamed IDEA in 1990. *See Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 n.1 (2017). For the sake of simplicity, we refer only to IDEA in this brief. *Id.*

Supreme Court, including in *A.J.T. v. Osseo Area Schs.*, 145 S. Ct. 1647 (2025); *Perez v. Sturgis Public Schs.*, 598 U.S. 142 (2023); *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154 (2017); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Bd. of Educ. v. Tom F.*, 552 U.S. 1 (2007); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005); and *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007), and in the twelve United States Courts of Appeals that routinely hear special education appeals.

Disability Rights Education and Defense Fund (DREDF) based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts. DREDF is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws. DREDF has participated as amicus and amici counsel in numerous cases addressing the scope and meaning of disability civil rights mandates. DREDF remains dedicated to advancing the human and civil rights of people with disabilities, including students with disabilities.

Erwin Chemerinsky is Dean of the University of California, Berkeley, School of Law, and the Jesse H. Choper Distinguished Professor of Law. Amicus has an interest in this case because, as a scholar who has dedicated his career to constitutional law, he has a special interest in ensuring the doctrine of sovereign immunity is properly interpreted and applied by federal courts, including its abrogation, and that the balance of powers between the legislative and judicial branches accords with the requirements and purposes of the Constitution.

Disability Rights Michigan (DRM) is the independent, private, nonprofit, and nonpartisan protection and advocacy organization authorized by federal and state law to advocate for and protect the legal rights of people with disabilities in Michigan. Designated by the governor of Michigan as this state's Protection & Advocacy System, DRM exists to protect the legal and human rights of people with disabilities. 42 U.S.C. §§ 15041 and 10801. DRM provides free information and referral, self-advocacy assistance, and direct representation to students with disabilities to assist them in protecting their federal and state rights, including the right to a free appropriate public education (FAPE) and to be free from discrimination in school. DRM assists around 700 children with education-related issues each year. When districts fail to comply with IDEA, it is the responsibility of the SEA, the Michigan Department of Education (MDE), to ensure students receive a FAPE. Students must be able to hold MDE liable when it fails to do so. When an

administrative hearing is futile, parents and students must be allowed to seek appropriate relief in state or federal court.

Kentucky Protection & Advocacy (P&A) is a federally mandated state agency whose mission is to protect and promote the rights of individuals who have been discriminated against due to a disability. Designated by the Governor of Kentucky as the state's Protection & Advocacy System, *Amicus* exists to protect the legal and human rights of people with disabilities. 42 U.S.C. §§ 15041 and 10801. *Amicus* provides information; referrals; individual and systemic advocacy and education; technical assistance on legal, legislative, and policy matters; direct case representation; and investigates abuse and neglect of people with disabilities. The Court's decision could have a negative impact on students with disabilities enrolled in public schools, including but not limited to Kentucky public schools, by making it more difficult for these students to receive a free appropriate public education (FAPE) under the IDEA and be free from discrimination under Title II of the ADA.

Disability Rights Ohio (DRO) is a non-profit corporation with a mission to advocate for an equitable Ohio for people with disabilities and the federally authorized protection and advocacy system (P&A) for Ohio. DRO's education team provides information, legal advice, and representation to nearly 700 students and their parents each year on education issues. DRO frequently engages in systemic advocacy with Ohio's State Education Agency to protect the rights of students to a

free appropriate public education (FAPE) and parent access to important procedural safeguards under the Individuals with Disabilities Education Act (IDEA).

Disability Rights Tennessee (DRT) is an independent, private, nonprofit, and nonpartisan protection and advocacy agency authorized by federal law to advocate for and protect the legal rights of people with disabilities in Tennessee. DRT exists to protect the legal and human rights of people with disabilities, including students with disabilities enrolled in public schools. The Court's decision could have a negative impact on students with disabilities enrolled in public schools, including but not limited to Tennessee public schools, by making it more difficult for these students to receive Free and Appropriate Public Education (FAPE) under the IDEA and be free from discrimination under Title II of the ADA and Section 504 of the Rehabilitation Act.

The Legal Aid Society of Southwest Ohio, LLC (LASSO) is a nonprofit law firm whose mission is to reduce poverty and ensure family stability through effective legal assistance. LASSO provides free legal services to low-income families across Southwest Ohio. A longstanding part of our practice is the representation of parents and students in disputes under the IDEA. Our organizational interest is ensuring that the educational rights of low-income students are fully protected and enforceable to improve educational outcomes and long-term economic stability for families. As counsel for low-income parents and students, both recognition of a futility exception

and acknowledgment of SEA liability are essential to ensure that the IDEA functions as Congress intended to secure meaningful educational opportunities for all children with disabilities, regardless of income.

Abdnour Weiker is an education law firm in Ohio, Michigan, and Pennsylvania. Amicus has pursued hundreds of claims on behalf of individuals with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Justin S. Gilbert, of Gilbert Law, PLC, is an attorney of thirty years licensed to practice in Tennessee and who appears frequently in the Sixth Circuit on behalf of students with disabilities. Mr. Gilbert has a strong professional interest in the issues presented because his practice involves placements and services for students with disabilities in Tennessee public schools, where funding is provided through the state education authority (in Tennessee, the Tennessee Department of Education (TDOE)). His representative cases include, *inter alia*, *William A. v. Clarksville-Montgomery Cnty. Sch. Sys.*, 127 F.4th 656 (6th Cir. 2025); *Doe v. Knox Cnty. Bd. of Educ.*, 56 F.4th 1076 (6th Cir. 2023); *Knox Cnty. v. M.Q.*, 62 F.4th 978 (6th Cir. 2023); and *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779 (6th Cir. 2018).

Advocates for Basic Legal Equality, Inc. (ABLE) is a regional legal aid serving west and northwest Ohio, committed to promoting opportunity for and protecting the rights of low-income people. ABLE provides free representation in a range of civil matters to low-income Ohioans, including assistance in special education matters to achieve appropriate education for children. ABLE cannot provide representation to all who need our assistance in disinvested areas, and the outcome of this matter will affect the rights and opportunities of our clients and other low-income Ohio families.

The Northern Kentucky Children's Law Center, Inc. is a nonprofit legal services center that engages in free direct representation of young people, community education, and policy reform surrounding legal issues that affect youth in Kentucky and Ohio. *Amicus* advocates for children in the juvenile justice, child welfare, and education systems. Specifically, *Amicus* directly represents children who are seeking to enforce their special education and school discipline rights and advocates for policy reforms that ensure free and appropriate public education for all children, regardless of disability.

MI AECRES (Michigan Advocating for Every Child's Right to Educational Success) is a non-profit organization established in February 2021 dedicated to improving the educational outcomes of children with disabilities. *Amicus'* mission is to ensure children in Michigan, particularly those in West

Michigan, receive the quality education they need to thrive. Initially, *Amicus* provided direct advocacy and legal services to children in West Michigan. However, beginning in January 2025, *Amicus* shifted its focus to instead providing education and resources to families and related service providers to be able to reach more individuals in need of assistance. *Amicus* partners with other organizations, law firms, or related service providers to host learning seminars on a topic related to education and/or civil rights; shares learning resources, such as books and websites, for parents and service providers to learn more about students' educational and civil rights; and connects families with attorneys, advocates, and/or related service providers as needed to meet their child's specific educational or service needs.

The National Disability Rights Network (NDRN) is the non-profit membership organization of the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities. The P&A and CAP agencies were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. There are P&As and CAPs in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San

Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP agencies are the largest provider of legally based advocacy services to people with disabilities in the United States

Amici's interest in this case stems from its commitment to ensuring that students with disabilities have access to a free appropriate public education in all areas of disability with programming reasonably calculated to result in academic and functional progress.

Both parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

After Congressional legislators learned of the amount of exclusion, discrimination, and other real harm suffered by students with disabilities in the public school system, Congress took the necessary steps to ensure that all students can have meaningful educational experiences regardless of their disability. Congress passed legislation which is now known as IDEA, ensuring students with disabilities have guaranteed procedural and substantive rights in public schools, by enabling a comprehensive procedural system to identify and appropriately serve students' unique educational needs in school settings, and to resolve disagreements about students' programming needs through individualized education program meetings, mediations, and due process hearings. *See* 20 U.S.C. §§ 1414-15. The State, not the district or local educational agency (LEA), is responsible for

applying for federal funds. *See* 20 U.S.C. §1411. Without the Michigan Department of Education (MDE), Hamtramck cannot meet its IDEA requirements.

Congress has made clear that State Educational Agencies can be liable for violations of IDEA; it amended IDEA to provide that states were not immune from suit in federal court for IDEA violations. 20 U.S.C. § 1403. Congress also made clear that attorney fees are to be awarded to prevailing *State* Educational Agencies, 20 U.S.C. §1415(i)(3)(B)(i)(II), (III). States may be liable for their failures to comply with their statutory obligations under IDEA, including those set out at 20 U.S.C. §1412.

Furthermore, futility by reason of lack of an available appropriate remedy may excuse non-exhaustion in an IDEA case. Exhaustion under IDEA is not jurisdictional. Courts have routinely held that exhaustion is appropriately excused in a number of scenarios, including when there is no factual dispute for a hearing officer to determine and the hearing officer does not have the capacity to order a remedy that would address the violation.

ARGUMENT

I. IDEA ESTABLISHES A CAUSE OF ACTION AGAINST STATES FOR THE DENIAL OF A FREE APPROPRIATE PUBLIC EDUCATION

In 1975, IDEA established a substantive right to free appropriate public education (FAPE) for children with certain disabilities. *Endrew F. v. Douglas*

County School District RE-1, 580 U.S. 386, 390 (2017). This law “was passed in response to Congress’ perception that a majority of [disabled students] in the United States were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out.” *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 179 (1982).

IDEA is designed to “ensure that all children with disabilities have available to them a free appropriate public education” that prepares them “for further education, employment, and independent living.” *Id.* § 1400(d)(1)(A); *McIntyre v. Eugene Sch. Dist. 4J*, 976 F.3d 902, 910 (9th Cir. 2020). Each State must implement policies and procedures to ensure that all eligible children with disabilities aged 3 to 21 residing in the state receive a FAPE in the least restrictive environment. 20 U.S.C. § 1412(a)(1)(A), (a)(5). A FAPE consists of “special education,” specially designed instruction that meets the unique needs of a child with a disability, *id.* § 1401(29), and “related services,” the supportive services “required to assist a child with a disability to benefit from special education.” *Id.* § 1401(26). The standard for FAPE is a “demanding” one: students with disabilities must receive an “appropriately ambitious” educational program that gives them “the chance to meet challenging objectives.” *Endrew F.*, 580 U.S. at 402.

Any state receiving funding under IDEA must ensure that each eligible child has in effect an individualized education program (IEP). 20 U.S.C. § 1412(a)(4). The

IEP is the “primary vehicle” for ensuring that each child receives FAPE in the least restrictive environment (LRE). *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 158 (2017) (citation omitted). The IEP sets out a written plan to achieve each child’s unique academic and functional goals and includes the special education and related services to be provided “so that [the child] can advance appropriately toward those goals.” *Id.* at 159.

“[S]tates have primary responsibility for ensuring that local educational agencies comply with the requirement[s] of IDEA,” *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303 (9th Cir. 1992). *See, e.g., Kerr Ctr. Parents Ass’n v. Charles*, 897 F.2d 1463, 1470 (9th Cir. 1990). To fulfill these responsibilities a state must engage in “effective monitoring.” 20 U.S.C. § 1416(a)(1)(C), (a)(3)(B). Effective monitoring requires the state—use appropriate data to measure school districts’ performance, maintain administrative complaint processes, and take corrective action upon finding any violations of the Act. *Id.* §§ 1411(e)(2)(B)(i), 1415, 1416(a)(3). The state’s “primary focus” must be on “improving educational results and functional outcomes for all children with disabilities.” *Id.* § 1416(a)(2)(A). Ultimately, the state is solely responsible for ensuring each and every eligible Michigan student receives a FAPE meeting the “demanding” standard required by *Endrew F.*, 580 U.S. at 402, in the LRE—which, for most children, is the general education classroom. *Id.* at 401-02 (citing 20 U.S.C. § 1414(d)(1)(A)(i)).

Federal law requires MDE to monitor LEAs to ensure that every student with a disability receives a FAPE in the LRE. 20 U.S.C. § 1416(a)(1)(C); 34 C.F.R. § 300.149; 34 C.F.R. § 300.600(d)(1). MDE must also focus its monitoring activities on improving educational results and functional outcomes for all students with disabilities and ensuring that other public bodies meet their obligations to improve educational results for these students. 20 U.S.C. § 1416(a)(2); 34 C.F.R. § 300.600(b). Moreover, MDE must ensure Michigan students with disabilities are not subjected to discrimination through the administration of their educational programs. 42 U.S.C. § 12131(1); 29 U.S.C. § 794(a). Among other things, MDE must ensure Michigan students with disabilities have access to equal educational opportunity as provided to their peers without disabilities. 28 C.F.R. § 35.130(b)(1)(ii), (iii); 34 C.F.R. § 104.4(b)(1)(ii) (Section 504). MDE failed to carry out these obligations.

MDE, as the state educational agency that receives federal funds under IDEA, is responsible for ensuring each and every school district, no matter how small and no matter how impecunious, has the necessary resources and capacity to provide each student with an IEP a free appropriate public education. It is essential for implementation of IDEA that parents are able to hold state educational agencies responsible when they fail to meet their statutory obligations. In fact, the school district agrees that states are liable for their failures to comply with IDEA and states:

“IDEA imposes unique obligations on SEAs and expressly envisions that an SEA may be liable for not meeting those obligations. Precedent, including from this Circuit, has consistently upheld findings of liability against SEAs when a student is denied the free appropriate education guaranteed by the IDEA.” Brief of Defendant.-Appellant at 28, *Alzandani v. Hamtramck Pub. Schs.*, No. 25-1603 (6th Cir. Sept. 2, 2025).

Despite being on notice of serious IDEA violations by Hamtramck Public Schools for years, MDE failed to ensure a FAPE under IDEA for each of the Named Plaintiffs due to at least three broad-based deficiencies: (1) the State’s failure to proactively monitor the districts’ legal compliance and correct any noncompliance beyond simply operating its administrative complaint system, Compl. ¶¶; 34 C.F.R. § 300.151 *et seq.*; 34 C.F.R. §300.507 *et seq.*; (2) the State’s failure to enforce federal and state laws and policies and correct violations thereof, Compl. ¶; *see also* 20 U.S.C. § 1412(a)(11)(A); and (3) the State’s failure to provide needed resources, technical assistance, and training to help districts support students effectively, Compl. ¶¶; *see also* 20 U.S.C. § 1412(a)(12); 34 C.F.R. § 300.600(a)(3); *see also* 20 U.S.C. §§ 1412(a)(1)(A), (5)(A).

The State of Michigan, not the district or LEA, is responsible for applying for federal funds; LEAs cannot apply directly. *See* 20 U.S.C. §1411. Without MDE, Hamtramck cannot meet the most basic IDEA requirements.

A. MDE is subject to liability under IDEA

In *Dellmuth v. Muth*, 491 U.S. 223, 232 (1989), the United States Supreme Court held IDEA did not “evinced an unmistakably clear intention to abrogate the States’ constitutionally secured immunity from suit.” It overturned a decision that had found the State Educational Agency and the school district jointly liable for IDEA violations. *See id.* at 226-27. Congress disagreed with the holding and reworked IDEA to leave no doubt of its intention regarding state immunity: “A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter.” 20 U.S.C. §1403(a) (1990).

Michigan procedurally waived its claim of immunity from suit under IDEA the minute it willingly accepted federal IDEA funds.³ The State Educational Agency

³ Courts addressing this provision of IDEA have found that states waive their immunity under the IDEA by accepting federal funds that are expressly conditioned on compliance with the statute’s requirements. *A.W. v. Jersey City Public Schools*, 341 F.3d 234, 245 (3d Cir. 2003) (finding that the state waived its immunity by consenting to suit and accepting federal funds under both the IDEA and the Rehabilitation Act); *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 33 (1st Cir. 2006) (“[T]he Commonwealth defendants do not have Eleventh Amendment immunity against the federal IDEA and Rehabilitation Act claims, because they waived such immunity by accepting federal funds”); *Board of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Kelly E.*, 207 F.3d 931, 935 (7th Cir.) (“Having enacted legislation under its spending power, Congress did not need to rely on § 5 [of the Fourteenth Amendment]. States that accept federal money, as Illinois has done, must respect the terms and conditions of the grant”); *Pace v. Bogalusa City School Board*, 403 F.3d 272, 281-87 (5th Cir. 2005) (finding in the

(SEA), here MDE, 20 U.S.C. §1401(32), decided on its own to participate in IDEA, on its own created the state plan, on its own distributed funds to LEAs, and on its own became responsible for ensuring their compliance with IDEA’s substantive and procedural requirements, 20 U.S.C. §1412(a)(11).

That states are parties to IDEA claims is also demonstrated by IDEA’s fee provision, 20 U.S.C. § 1415(i)(3)(B)(i)(II) & (III), which provides for attorneys’ fees for “a prevailing State educational agency.” Congress exercising its inherent authority expressly amended IDEA to abrogate states’ Eleventh Amendment immunity. The amended provision makes it abundantly clear Congress intended states to be liable for their violations of IDEA.

B. IDEA obligates States to protect students’ IDEA rights and they are liable when they fail to do so

The ultimate legal test for any state monitoring system is whether it adequately “protect[s] the rights of” students with disabilities. *Doe by Gonzales v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986), *aff’d as modified sub nom. Honig v. Doe*, 484 U.S. 305 (1988). Under IDEA, an SEA has the direct responsibility to respond to “potential legal problems” in the provision of special education by an LEA. *A.H. by & Through A.H. v. Clarksville-Montgomery Cnty. Sch. Sys.*, No. 3:18-CV-00812,

context of IDEA that Congress expressly and non-coercively conditioned states’ receipt of federal funds on their waiver of Eleventh Amendment immunity).

2019 WL 483311, at *10 (M.D. Tenn. Feb. 7, 2019). When an SEA is “well aware” of “ongoing problems but has taken only slight corrective action,” it violates IDEA. *Cordero by Bates v. Pennsylvania Dep’t of Educ.*, 795 F. Supp. 1352, 1362 (M.D. Pa. 1992).

MDE, as the SEA for Michigan, must engage in monitoring to ensure that every student with a disability receives a FAPE in the LRE. 34 C.F.R. § 300.149; 34 C.F.R. § 300.600(d)(1); 20 U.S.C. § 1416(a)(1)(C). MDE must focus its efforts on “improving educational results and functional outcomes for all children with disabilities” and ensuring that other public agencies meet their obligations to provide special education. 34 C.F.R. § 300.600(b); 20 U.S.C. § 1416(a)(2). In addition to metrics required for its annual reporting to the U.S. Department of Education, MDE “must use quantifiable indicators and such qualitative indicators as are needed to adequately measure” the performance of school districts. 34 C.F.R. § 300.600(c); 20 U.S.C. § 1416(a)(3). MDE must effectively respond to “potential legal problems” in the provision of education to students with disabilities by the districts. *A.H. by & Through A.H. v. Clarksville-Montgomery Cnty. Sch. Sys.*, No. 3:18-CV-00812, 2019 WL 483311, at *10 (M.D. Tenn. Feb. 7, 2019).

An SEA “must” investigate evidence of placements inconsistent with FAPE and LRE requirements and redress violations found by “[r]eview[ing] the public agency’s justifications for its actions and [a]ssist[ing] in planning and implementing

any necessary corrective action.” 34 C.F.R. § 300.120(b). Instead, MDE repeatedly failed to act after Hamtramck’s violations were brought to its attention, exactly the sort of evidence that should have resulted in MDE investigating these practices. Defendants’ primary responsibility under IDEA is to ensure that children with disabilities actually receive an appropriate education. *See* 20 U.S.C. § 1412(a); *Doe*, 793 F.2d at 1492; *Ullmo ex rel. Ullmo v. Gilmour Acad.*, 273 F.3d 671, 679 (6th Cir. 2001) (parents must file a complaint with either the SEA or the LEA, which is then obligated to conduct a hearing regarding the parents’ complaint. 20 U.S.C. § 1415(f) providing that parents who file a complaint regarding their disabled child’s education are entitled to an impartial due process hearing); *Kruelle v. New Castle Cnty. Sch. Dist.*, 642 F.2d 687, 697-98 (3d Cir. 1981) (rejecting Delaware’s contention that no relief could be had against it for denial of special education because “it functions solely as a supervisory agency” and rejecting premise that “the state agency [can] disclaim[] responsibility and point[] back to the local education authorities”); *Corey H. v. Bd. of Educ. of Chi.*, 995 F. Supp. 900, 902 (N.D. Ill. 1998); *Orange Cnty. Dep’t of Educ. v. Cal. Dep’t of Educ.*, 668 F.3d 1052, 1063 (9th Cir. 2011); S. REP. NO. 94-168, at 24 (1971), *reprinted in* 1975 U.S.C.C.A.N. 1425, 1448. Students with disabilities must receive an “appropriately ambitious” educational program giving them “the chance to meet challenging objectives.” *Endrew F.*, 580 U.S. at 402.

Congress placed this burden on states, knowing full well that many parents of students with disabilities lack the resources to hire attorneys to pursue IDEA due process remedies. One-quarter of students with IEPs have families with incomes below the poverty line and two-thirds have family incomes of \$50,000 or less. Many parents, desperate to help their children, mortgage their homes and raid their retirement funds, to obtain the funds to hire lawyers and pay expert fees. Others do not have those options.

The scarcity of attorneys available to assist families with children with disabilities is well established, particularly for families unable to pay for attorneys and experts. Even with IDEA's fee-shifting provisions, it is, more than with other civil rights fields, increasingly difficult for families to find (and afford) attorneys to handle these special education cases. It is even more difficult for low-income parents to obtain legal counsel to assist. "There is a growing literature on the problem of economic disparities in the implementation and enforcement of the IDEA. Chief among the concerns in the literature is that wealthier parents use the private enforcement mechanisms more than poor parents do."⁴

⁴ Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 Notre Dame L. Rev. 1413, 1424-25 (2011).

II. FUTILITY EXCUSES NON-EXHAUSTION OF IDEA’S ADMINISTRATIVE REMEDIES

The United States Supreme Court’s holding in *Honig v. Doe*, 484 U.S. 305, 327 (1988) explicitly recognized that futility excuses non-exhaustion. In *Honig*, the Supreme Court held that IDEA’s statutory requirement that “the child shall remain in the then current educational placement” did not include a dangerousness exception. 484 U.S. at 323-27. The Supreme Court found that schools could seek injunctive relief to remove the student. *Id.* at 328. The Supreme Court explained: “parents may bypass the administrative process where exhaustion would be futile or inadequate,” and that, similarly, schools may “demonstrate the futility or inadequacy of administrative review.” *Id.* at 327.

In *Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023), the Supreme Court held that exhaustion could be excused when the plaintiff sought a remedy, money damages, not available under IDEA but that was available under ADA. The Court found, given its holding, it had no occasion to address the question of “whether IDEA’s exhaustion requirement is susceptible to a judge-made futility exception.” *Id.* at 151. It reversed the Sixth Circuit’s decision. *Id.* See also *Perez v. Sturgis Pub. Sch.*, No. 20-1076, 2023 U.S. App. LEXIS 10678, 2023 WL 3158950 (6th Cir. Apr. 24, 2023).

The Supreme Court “has consistently recognized a futility exception to exhaustion requirements.” *Carr v. Saul*, 593 U.S. 83, 93 (2021). The Court

explained, “It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested. Such a vain exercise will rarely ‘protec[t] administrative agency authority’ or ‘promot[e] judicial authority.” *Id.*, quoting *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992). Thus, the Court held that Social Security claimants had not forfeited their constitutional Appointment Clause challenge by not raising it in an administrative proceeding. *Id.* at 85. The Court specifically referenced two cases in which exhaustion was excused, one nearly a hundred years old: *Bethesda Hospital Association v. Bowen*, 485 U.S. 399, 405-06 (1988) (holding petitioners could claim dissatisfaction “without incorporating their challenge in the cost reports filed with their fiscal intermediaries”); and *Montana Nat’l Bank v. Yellowstone County of Montan*, 276 U.S. 499, 505 (1928) (holding taxpayer was not required to apply to county board of equalization for an administrative remedy where state supreme court decision rendered such an application “utterly futile since the county board of equalization was powerless to grant any appropriate relief in the face of that conclusive decision.”).

Prior to its now vacated decision in *Perez*, this Court routinely held that the futility exception applied to IDEA’s exhaustion requirement. *See Covington v. Knox Cnty. Sch. Sys.*, 205 F.3d 912, 917 (6th Cir. 2000); *see also F.C. v. Tenn. Dep’t of Educ.*, 745 Fed. App’x 605, 608 (6th Cir. 2018); *Doe v. Smith*, 879 F.2d 1340, 1343

(6th Cir. 1989); *Crocker v. Tenn. Secondary Sch. Athletic Ass’n*, 873 F.2d 933, 936 (6th Cir. 1989).

Further, every other circuit has recognized the futility exception in IDEA cases. *See Heston v. Austin Indep. Sch. Dist.*, 816 Fed. App’x 977, 983 (5th Cir. 2020); *Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16, 22 (1st Cir. 2019); *Twp. v. Marlboro Bd. of Educ. v. H.L.*, 793 Fed. App’x 101, 104 (3d Cir. 2019); *Paul G. v. Monterey Peninsula Unified Sch. Dist.*, 933 F.3d 1096, 1100 (9th Cir. 2019); *Durbrow v. Cobb Cty. Sch. Dist.*, 887 F.3d 1182, 1191 (11th Cir. 2018); *Z.G. v. Pamlico Cnty. Pub. Schs. Bd. of Educ.*, 744 Fed. App’x 769, 777 (4th Cir. 2018); *J.M. v. Francis Howell Sch. Dist.*, 850 F.3d 944, 950 (8th Cir. 2017); *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 157 & n.3 (2d Cir. 2016); *Muskrat v. Deer Creed Pub. Schs.*, 715 F.3d 775, 786 (10th Cir. 2013); *C.T. ex rel Trevorrow v. Necedah Area Sch. Dist.*, 39 F. Appx 420, 422 (7th Cir. 2002); *Cox v. Jenkins*, 878 F.2d 414, 418-19 (D.C. Cir. 1982).

Appellant mischaracterizes IDEA’s exhaustion requirement as “mandatory” based on a truncated reading of the plain language of the statute. Appellant’s Brief, RE 14, p. 30. IDEA’s exhaustion provision provides that parallel claims are subject to IDEA’s due process procedures and “shall be exhausted *to the same extent* as would be required had the action been brought under this subchapter.” 20 U.S.C. § 1415(l)(emphasis added). The phrase “to the same extent” signifies that exhaustion

is not absolute, although its parameters are not defined in the subsection or elsewhere in the statute.

As the Supreme Court observed, “Statutory interpretation, as we always say, begins with the text.” *Ross v. Blake*, 578 U.S. 632, 638 (2016) (see, e.g., *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251, 130 S.Ct. 2149, 176 L.Ed.2d 998 (2010)). In *Ross*, the Supreme Court held the statutory mandate set forth in the Prison Litigation Reform Act of 1995 (PLRA) that an inmate “shall” not bring an action absent exhaustion of available remedies foreclosed judicially-created exemptions beyond that plain textual limit and declined to apply an exception to exhaustion in that case. *Id.* at 638-39.

But significantly, the Supreme Court recognized that where Congress enacted a statutory exhaustion provision, Congress “sets the rules”. *Id.* at 639. The Court looked to both the statutory language and the legislative history to determine Congressional intent and to apply the exception as Congress intended.

And just as the statutory language and legislative history of the PLRA clearly established mandatory exhaustion, IDEA’s plain language and legislative history establish that IDEA excuses exhaustion when it is futile. In 1975, the principal sponsor of the original IDEA explained exhaustion “should not be required” when “exhaustion would be futile.” 121 Cong. Rec. 37,413 (1975) (remarks of Sen. Williams), *cited in Honig*, 484 U.S. at 327.

When Congress enacted Section 1415(*l*) a decade later, it left no doubt that the provision incorporated IDEA’s then existing futility exception.⁵ The House committee report noted “it is not appropriate to require the use of” IDEA’s procedures where “it would be futile to use the due process procedures.” 1985 House Report at 7. The Senate committee report similarly explained that “[e]xhaustion of [IDEA] administrative remedies” would “be excused where they would not be required to be exhausted under the [IDEA], such as when resort to those proceedings would be futile.”⁶ 1985 Senate Report at 15.

⁵ In *Smith v. Robinson*, 468 U.S. 992, 1014 n.17 (1984), the Supreme Court recognized the futility exception, noting that courts had construed district courts authority under IDEA as including granting injunctive relief “prior to exhaustion of the state remedies if pursuing those remedies would be futile or inadequate.” The Court also quoted Senator Williams’ remarks providing that exhaustion “should not be required for any individual complainant filing a judicial action in cases where such exhaustion would be futile either as a legal or practical matter.”

⁶ Note the timing of the IDEA amendments in response to Supreme Court decisions. In 1986, in response to *Smith v. Robinson*, Congress added 1415(*l*) (then (*f*)) to correct the Supreme Court’s misinterpretation that IDEA would be the only vehicle for upholding student’s with disabilities’ rights. Again in 1990, in response to *Dellmuth v. Muth*, Congress swiftly enacted an abrogation clause to ensure their clear intent that the State could be held liable under IDEA. If Congress was concerned that the Supreme Court was misinterpreting the futility exception to exhaustion, it would have acted. See *Perez v. Sturgis Pub. Sch.*, 3 F.4th 236, 254 (6th Cir. 2021) (Stranch, J., dissenting) (noting “even though the IDEA was amended after *Smith* and several times more in the years following *Honig*, Congress has never seen fit to revisit the language or scope of the exhaustion requirement”), *rev’d and remanded sub nom. Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. 142 (2023).

III. THE FUTILITY EXCEPTION APPLIES HERE

This Court in *Covington* “concluded that exhaustion was futile because the ‘administrative process would be incapable of imparting appropriate relief.’” Slip op. at 9, quoting *Covington*, 205 F.3d at 916-18. In determining whether the futility exception applies, this Court should evaluate whether the district court erred in holding that the futility exception applied. The district court, based on the allegations in the complaint and the law, determined that an administrative hearing officer could not order the relief necessary to remedy the violations of IDEA. Denial Order, R. 67, Page ID # 1334–1341. The district court noted that the plaintiffs sought to address staffing shortages that made it impossible to provide the students with FAPE, and that relief was beyond the ability of a due process hearing officer to order.

The district court set forth a simple rule to determine whether exhaustion is required: “The Court will not address at this time whether it will be able to provide this relief, however, the relevant inquiry here is only whether the administrative process would be able to do so. And the answer to that inquiry is a resounding no.” The district court went on to say: “If the students of HPS are unable to secure relief through the administrative process, the Court finds they are entitled to an exemption from IDEA's exhaustion requirement.” *Y.A. by Next Friend Alzandani v. Hamtramck Pub. Sch.*, No. 23-CV-12817, 2024 WL 6076334, at *6 (E.D. Mich. Sept. 24, 2024),

rev'd sub nom. *Y.A. by Alzandani v. Hamtramck Pub. Sch.*, 137 F.4th 862 (6th Cir. 2025).

There is no indication that there is any factual dispute requiring a lengthy hearing for the purpose of an administrative hearing officer to determine well-established and uncontested facts. The fundamental problem is that the local school district responsible for providing a FAPE is impecunious and simply lacks the resources to meet the requirements set out in the students' IEPs. That is a problem well beyond a due process hearing officer's ability to correct. That is a problem that only the MDE can fix. Established caselaw places such authority in the hands of the MDE to correct, something the MDE has not chosen to accomplish. And exhaustion is not required as the federal court, and not the administrative hearing officer, have the legal authority to order the necessary remedies.

CONCLUSION

For the foregoing reasons, the ORDER, RE 67, should be AFFIRMED.

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Respectfully submitted,
s/Selene A. Almazan-Altobelli
Selene Almazan-Altobelli
Council of Parent Attorneys and Advocates,
Inc.
P.O. Box 6767
Towson, MD 21285
selene@copaa.org
(844) 426-7224

/s/Ellen Marjorie Saideman
Law Office of Ellen Saideman
7 Henry Drive
Barrington, RI 02806
esaideman@yahoo.com
(401) 258-7276

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on the 30th day of October 2025. I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Selene Almazan-Altobelli