

No. 11-539

IN THE
Supreme Court of the United States

DENVER SCHOOL DISTRICT, a municipal corporation,

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ARTONDALE ELEMENTARY SCHOOL: JODI COY. in her

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the ability to formulate and implement a student's educational program without the specter of costly litigation, knowing instead that the parties will take part in a more predictable and expedient administrative dispute resolution process should disagreements arise

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A. Congress included the exhaustion requirement to encourage parents and schools to work together to resolve educational issues concerning children with disabilities.

Congress enacted what is now 20 U.S.C. § 1415(l) in response to the Supreme Court's decision in *Smith v. Robinson*, 468 U.S. 992 (1984), which found that the IDEA was "the exclusive avenue through which" claims related to special education could be asserted. The *Smith* Court foreclosed the right to seek damages and other remedies which are

When Congress enacted § 1415(l), its intent was to open the door that *Smith* closed, specifically allowing claims under "other Federal laws protecting the rights of children with disabilities." However, while § 1415(l) permits other federal claims, it limits those claims as follows:

before the filing of a civil action under such laws seeking relief that is also available under this subchapter, *the procedures under sections (f) and (g) [administrative dispute resolution procedures] shall be exhausted to the same extent as would be required had the action been brought under this subchapter.*

By requiring the exhaustion of administrative remedies prior to seeking relief under other federal laws, Congress preserved "the rationale of *Smith* which had used the primacy of the IDEA process as a reason for precluding plaintiffs from resorting to other theories to get into court." Terry Jean

agency to develop a factual record, to exercise its discretion, and to correct its own mistakes, and is credited with promoting accuracy, efficiency . . . and judicial economy." *Frazier*, 276 F.3d at 60 (quoting *Christopher W. v. Portsmouth Sch. Comm.*, 877 F.2d 1089, 1094 (1st Cir. 1989)). When plaintiffs are given a "back door," allowing them to circumvent the exhaustion requirement, the underlying purposes of the IDEA are undermined. *21 N.D. v. Alaska County Sch.*

a manner that creates no barrier at all to artful pleading.

The Ninth Circuit's exhaustion test exposes a conflict within the majority's own reasoning. On one hand, the test gives no means to prohibit artful pleading. On the other hand, it asserts that plaintiffs should not be allowed to escape exhaustion merely by limiting their claims to a request for

then such evidence was 'also available' before the
action was filed." Dissent at 9783.

In addition to being unnecessary the

in one study, investigators found that from 1978 to 1983, the first six years after Congress enacted what has become the IDEA, the number of children of

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The IDEA recognizes that the courts are ill-equipped to act as fact-finders in matters relating to special education. See *Doe v. Alfred*, 906 F.Supp. 1092, 1100 (S.D. W.Va. 1995); *Zasslow v. Menlow* D. I. Cir. S.D. Va. 2001 WL 100015, at 7 (S.D.

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caseload will be especially dramatic in California, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia. The due process hearings held in these states account for approximately 80% of all hearings nationwide.

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an ongoing litigation case was \$94,600, nearly seven

education, those services must be provided. Nothing in the statute requires any inquiry as to *why* those services are required. Thus, if a child suffers from crippling anxiety at school, and that anxiety must be alleviated before he can learn (or, in the words of the statute, "benefit from special education"), the IDEA plainly requires psychological services to be provided. It makes no difference whether that anxiety was caused by the school or whether it was caused by some external factor.

D.

