No. 15-657

A. Allowing Parents to Pursue ADA and Section 504 Claims Without First Exhausting IDEA Procedures Will Fundamentally Alter the IEP Process 11

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NSBA advocates for equity and excellence in public

by providing services to state educational agencies to facilitate their efforts to maximize educational and functional outcomes for students with disabilities.

Amici have a profound interest in how this case is resolved because the Court's decision will impact the ability of schools across the nation to address effectively the needs of s pecial education stivel3(e1(a)-4(t)t)-5((Td ( )Tf57(s)3(/T

individualized education program (IEP) tailored to meet the child's unique needs. Key to this end goal is ongoing parental communication with educators, therapists, and other experts who have the knowledge and training to devise an appropriate, minimally restrictive, and individually tailored education program for the student. This process helps stakeholders develop solutions that work for everyone.

In the event the parents and school cannot agree through this cooperative team approach on the appropriate special education and related services needed by the child, Congress has provided due process procedures with specified timelines as the primary means to address disagreements. These procedures are designed to encourage informal and early resolution. Litigation, by contrast, is designed to be confrontational; it is inherently inefficient as a dispute resolution mechanism,[2] and is incompatible with the mutual exchange between home and school critical to student well-being and academic success. Allowing litigation as a first resort encourages the parties needlessly to adopt adversarial stances rather than taking advantage of the IDEA's collaborative framework. The parties' focus shifts to marshalling evidence, often including expert testimony, to support entrenched positions and to executing adversarial strategies that often have little to do with benefitting

[2] "Our system is too costly, too painful, too destructive, [and] too inefficient for a truly civilized people." David Margolick, Burger Says Lawyers Make Legal Help Costly, N.Y. TIMES (Feb. 13, 1984), available at http://www.nytimes.com/1984/02/13/us/burger-says-lawyers-make-legal-help-too-costly.html (quoting Chief Justice Burger's annual "State of the Judiciary" address to the American Bar Association on Feb. 12, 1984).

I. THE IDEA'S LONG-STANDING EXHAUSTION REQUIREMENT MUST BE INTERPRETED IN THE CONTEXT OF ITS COLLABORATIVE FRAMEWORK.

A. Allowing Students and Parents to Proceed Directly to Court to Pursue a Damages Claim Under Section 504 or the ADA Without Exhausting Administrative Processes Directly Contravenes the Intent of Congress.

Statutory interpretation begins with a review of the language itself, Ardestani v. I.N.S., 502 U.S. 129, 135 (1991), read in the context of the overall statutory scheme. [3] IDEA's fram-2(e)1rk clearly

part of this framework , the exhaustion requirement emerges as the lynchpin ensuring that the positive, constructive mechanisms set in place by Congress have a chance to work . Before litigation ever becomes an option, the exhaustion requirement ensures that: 1) an IEP Team, including the parents, has met to discuss the educational needs of the child, to consider availab le services and placements that might meet those needs, and to develop individualized educational goals for the child and benchmarks to assess attainment of those goals, 20 U.S.C. § 1414(d)(1); 2) the parties have engaged in a resolution session and/or mediation to resolve any disagreements regarding the education of a student a

B. Congress Consistently and Clearly Has Required Exhaustion in Disputes About Services for Students with Disabilities.

Beginning with the 1975 enactment of the Education for All Handicapped Children Act (EHA) (predecessor of the IDEA), Congress has consistently required parents who disagree wit h the services provided to their children to exhaust administrative remedies under the (now) IDEA before filing a complaint in court. In the EHA

Education Act, enacted in 1990 as the successor to the EHA, maintained a similar exhaustion requirement in the procedural safeguards provision. 20 U.S.C. § 1415(i)(2)(A). The IDEA exhaustion requirement at issue here states 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." 20 U.S.C. § 1415(l). In sum, over the past 40 years, Congress has made it clear that before filing a complaint in court, parents must work collaboratively with school officials to resolve the dispute, which may or may not lead to the filing of a due process complaint, a resolution session, mediation, or due process hearing. This exhaustion requirement supports the IDEA's collaborative framework, which Congress has repeatedly and purposefully strengthened over a span of decades. This statutory history illustrates Congress' intent to prevent artful pleading from undercutting long-standing procedures that support the educational goals of the Act.

educational needs of the student. At any time, the school and the family can agree to modify any aspect of the educational plan without the need for the time and expense of legal proceedings.

Parents and schools have been using the IEP due process system successfully for decades. Though each state's system has its own character—and some tend to see more adversarial proceedings than others due to differences in rules about the length of hearings, whether the school district pays hearing expenses, and the like—parties know that when disputes arise about the educational program for an IDEA-eligible student, that statute's procedures must be used. If the Sixth Circuit is reversed, that assumption would evaporate, and the effectiveness of this process would be severely jeopardized. Parents would no longer be required to work collaboratively with school officialsptraen(l)-5((di)-9(s)-1(pu)-3(t)45(e)-4(st)-2Eu)222 ot advus (r)3r

family, and to consider input from all members of the team before developing an IEP that addresses the child's educational needs in a manner that provides a FAPE. Educational professionals considering how to integrate children with disabilities into regular classrooms may take into account how parentally-proposed placements and services will affect other students. As long as FAPE is provided to the child at issue, the IEP may provide strategies to minimize potential classroom distractions or offer an alternative to the parentally-preferred service based on specific concerns for the welfare or legal rights of other students. [6] For example, the school district here may have had Section 504 obligations to accommodate the dog-allergic students whose parents raised concerns. Finding solutions that balance these competing interests can be challenging for school districts. Nevertheless, using their specialized and team-informed knowledge of the child's needs and their familiarity with district resources, facilities, and pertinent circumstances, school officials are committed to designing individual education plans that are feasible and practical and that make the best use of the district's personnel, programs and services.

If parents are authorized to bypass the IDEA's collaborative process, their children will be deprived of the dedication and expertise that school personnel

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[6] See, e.g., Case v. East Meadow Union Free Sch. Dist., 514 F.3d 240, 247-48 (2d Cir. 2008) (remanding and ordering district court to dismiss service dog case brought under Section 504 and ADA based on plaintiff's failure to exhaust IDEA administrative remedies; the court noted that the school district's concerns about dog-allergic students and staff and potential classroom distractions implicated the student's IEP and would be best dealt with through the IDEA administrative process).

bring to evaluating students' educational needs, designing comprehensive, integrated individualized education programs,

exert this pressure through an attorney, the negotiations may become unduly influenced by the financial incentiv es for attorneys to continue conflict rather than to reconcile quickly .

Financial rather than educational considerations

agreement) or through voluntary mediation before the hearing . 34 C.F.R § 300.510. If the school district has not resolved the complaint within 30 days of the initial complaint, the hearing must commence. The

within the regulatory timelines or an extended timeline granted by the hearing officer. [8] As in

2. Due Process Hearing Officers with Particularized Knowledge and Training in Special Education Law and Hearing Procedures Offer Important Benefits

The IDEA specifically requires that disputes adjudicated through due process hearings be decided by impartial state hearing officers who have particularized knowledge about the statute, its implementing regulations, and court interpretations. 20 U.S.C. § 1415(f)(3)(A); 34 C.F.R. § 300.511(c)(1)(ii). States often include additional qualifications for hearing officers, such as experience as an attorney or a professional serving children with disabilities, and proficiency in conducting contested hearings.[11] The U.S. Department of Education has directed state education agencies to ensure that hearing officers are sufficiently trained to [illegible]

and materials for such administrative hearing officers on subjects ranging from relevant federal and state legal authority, to case management, to hearing procedures are offered by state governments, educational institutions, and private consultants.[13] In addition to training requirements, states may put in place procedures to evaluate and certify special education hearing officers on a regular basis. E.g., 8 VA. ADMIN. CODE § 20-81-210(D).

These competency requirements are especially important in ensuring that decisions about the appropriate education and services for a student with disabilities are being made by individuals with a thorough grounding not only in the intricacies of disability law but also in the complexities that affect delivery of services to students with disabilities. A due process hearing officer's specialized knowledge and experience help her adhere to the strict administrative timelines, exercise fairness and

wisdom in applying more relaxed evidentiary standards, and work with the parents, attorneys, special education advocates, educational experts and other witnesses adeptly, ensuring that all the relevant facts have been adduced and that she reaches a reasoned, well supported decision. In the event a party aggrieved by the hearing officer's decision seeks review by a court, the judge has the benefit of a detailed factual record and legal rationale from a qualified hearing officer. The administrative record can help provide a court with a comprehensive understanding of the child's needs, the efforts the school district has or has not made to meet those needs, the basis for the parents' concerns, the reasons explaining the district's denial of parental requests, the resources available to provide needed services and a host of other factors that may have influenced the hearing officer's decision. [14]

Under Petitioners' approach, a court faced with what amounts to an educational decision is deprived of this crucial information. Even in cases where non-IDEA components must be resolved, the administrative process can shed light on how best to accommodate a child's need in the context of the educational setting. [15]

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[14] "The p

3. IDEA Due Process Procedures Include Important Elements That Seek to Reduce the Burdens of Contested Hearings.

Petitioners' amici argue that IDEA due process proceedings are costly, burdensome impediments to families seeking relief for a school district's alleged denial of their rights under Section 504 and the ADA. To the extent this conclusory statement references costs in dollars, there is little, if any, definitive empirical evidence about the actual financial burdens imposed on parents by IDEA due process procedures relative to those associated with undertaking civil rights litigation. While research may not offer hard numbers to either substantiate or refute Petitioners' assertion from a comparative standpoint, it cannot be disputed that civil litigation can be an expensive proposition as well, sometimes dragging litigants through costly and extensive pre-trial discovery and numerous procedural hearings, running up costs for both sides before any consideration of the merits of a case even begins.

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students' rights under the Constitution and other federal laws. E.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503

In contrast, federal and state IDEA regulations provide parents certain benefits aimed at easing the burdens that may be associated with contested hearings. These measures particularly benefit low income families in accessing the IDEA's due process system. First, the IDEA requires school districts to help parents find legal counsel by providing parents with information on any free or low cost legal or other relevant services, such as parent advocates, that may be available to assist them. 34 CFR § 300.507(b). The IDEA also eliminates the need for the parties to engage in extended discovery battles by requiring the

excluded under normal evidentiary rules. Relaxed administrative procedures may also reduce potential expenses for parents challenging a school district's determinations, by allowing qualified representatives, parent advocates, or even the parents themselves to appear on their own behalf without incurring the expense associated with legal counsel.[17] In such situations, the benefits of relaxed hearing rules often inures to the non-lawyer parent or advocate who may actually receive substantial assistance from a hearing officer in entering on the record as much information as possible.[18] Thus, the administrative hearing process makes it possible for parents to engage in an impartial process for resolution of their claims without necessarily requiring parents to expend funds associated with a full blown federal trial. Finally, if parents prevail at the administrative hearing stage, the need for court proceedings is averted, and parents are entitled to recover their attorneys' fees, just as they would were

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[17] E.g., MISS. ADMIN. CODE § 7-4-1: 300.512 (2016); 19 TEX. ADMIN. CODE § 89.1175 (2016).

[18] See generally, Jim Gerl, Bench Skills for Hearing Officials: Conduct and Control of Administrative Hearings, Presentation at the Annual Conference of the National Association of Hearing Officials November 16-19, 2014, *22, http://todaycms.s3.amazonaws.com/naho/00/cd38f05bc211e48fab03cef238b12c/Conduct-and-Control-of-Admin-Hearings.pdf ("Particularly where a party is not represented by counsel (such parties are sometimes referred to as 'pro se' parties), the hearing officer has a duty to develop a complete record (citing Board of Educ. of Victor Central Sch. Dist., 27 IDELR 1159 (SEA NY 1998); Salisbury Township Sch. Dist., 26 IDELR 919 (SEA PA 1997); LBDE Pub. Schs. v Massachusetts Bureau of Special Educ. Appeals, 59 IDELR 284 (D. Mass. 2012)).

they to succeed in court on claims under Section 504 or the ADA . 20 U.S.C. § 1415(i)(3)(B)-(G).

It is true that the

Similarly, many of the currently proposed solutions, such as facilitated IEP meetings, [21] focus on maximizing the likelihood that parents and schools will reach early agreement on appropriate services for students with disabilities, thereby reducing the need for any formal dispute resolution whether through administrative or court proceedings. In short, to the

its complexities. In this way, Petitioners' reading of the exhaustion requirement risks advantaging wealthier families by granting them greater negotiating power through the threat of litigation and a larger share of educational funds expended on litigation or services that benefit only one child. Requiring everyone seeking changes to their child's IEP to first use the IDEA's more accessible and informal procedures benefits all families by promoting a more equitable remedial scheme.

CONCLUSION

Petitioners' position, rather than increasing protection of the rights of students with disabilities, could have consequences that harm more than help. Weakening the IDEA's exhaustion requirement would unnecessarily distort the focus of the collaborative framework and undermine the effectiveness of the procedural safeguards that Congress carefully crafted to facilitate agreement between parents and school on appropriate services to meet the educational needs of children with disabilities. We urge the Court to eschew a decision here that would encourage more "[l]itigation [that] is expensive, time-consuming, and emotionally draining." Brown v. TD Bank, N.A., 2016 WL 1298973, *7 (E.D. Pa. Apr. 4, 2016). Litigation inflicts relational costs that render parents and schools unable to form or maintain the constructdur