No. 19-55810

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

D.D., a minor, by and through his Guardian Ad Litem, Micaela Ingram,
Plaintiff – Appellant,

v.

Los Angeles Unified School District,
Defendant – Appellee.

Appeal from the United States District Court for the
Central District of California
Case No. 2:19-cv-00399-PA-PLAx
The Honorable Percy Anderson, Presiding

Brief of Amici Curiae California Association of Parent-Child Advocacy, Disability Rights Advocates, Disability Rights California, National Center for Youth Law, and National Disability Rights Network in Support of Plaintiff-Appellant D.D. and Reversal of District Court's Order Dismissing Case with Prejudice

All parties have consented. FRAP 29(a)(2).

ANDRIA SEO, CA RLSA 803670, OR SBN 162984
LAUREN LYSTRUP, CA SBN 326849
CARLY J. MUNSON, CA SBN 254598
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 290
Los Angeles, California 90017
Telephone: (213) 213-8000
Fax: (213) 213-8001
Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae make the following disclosures:

1. Amici are not publicly held corporations;
2. Amici have no parent corporations;
3. Amici do not have 10 percent or more of stock owned by a corporation.

Dated: October 22, 2019 DISABILITY RIGHTS CALIFORNIA

By: /s/ Andria Seo
Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES, RULES, AND REGULATIONS

OTHER SOURCES

STATEMENT OF AUTHORSHIP

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, Amici Curiae certify that:

1. No counsel for either party authored this brief in whole or in part;
2. No party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and
3. No person other than the named Amici Curiae, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief.

Dated: October 22, 2019 DISABILITY RIGHTS CALIFORNIA

By: /s/ Andria Seo

INTERESTS OF AMICI CURIAE

Amici Curiae are five nonprofit organizations that represent, advocate for, and support school-age children with disabilities who are entitled to be free from discrimination under laws such as the Americans with Disabilities Act ("ADA")[1, 2] and receive a free and appropriate public education under the Individuals with Disabilities Education Act ("IDEA").[3] Collectively, Amici's work spans all fifty states and U.S. territories, assisting thousands of children with disabilities and their families each year.

Individuals with disabilities continue to face ignorance, prejudice, insensitivity, and lack of or difficulty accessing legal protections in their endeavors to achieve fundamental dignity and respect. Among other services, Amici provide public education, conduct research, and litigate on behalf of children with disabilities.

Amici are thoroughly versed in special education history, legislation, case law, and policy as they apply to this case. Amici believe that their expertise and perspective can help the Court understand more fully the grave ramifications of upholding the underlying order, and the need to clarify the

---

[1] 42 U.S.C. § 12101 et seq.
[2] Unless indicated otherwise, all statutory and regulatory references contained herein refer to the versions in effect at the time of this filing.
[3] 20 U.S.C. § 1400 et seq.

legal landscape of administrative exhaustion for school-age students with disabilities.

Although the instant case directly involves only one student, D.D., the Court's decision in this matter could significantly affect the landscape of the special education exhaustion process. This Court should reverse the decision of the District Court and send a clear message that the IDEA's exhaustion requirement is waived, inapplicable, or otherwise futile where a student with a disability seeks a form of relief that an IDEA hearing officer cannot give, or lacks viable IDEA claims (for example, as here, where the student and school district agreed to resolve all IDEA claims through settlement while explicitly preserving claims under other statutes for damages). Upholding the district court's decision risks a slippery slope of cascading consequences for children throughout California, the Ninth Circuit, and the nation, including Amici's present and future clients.

This brief is submitted with the consent of all parties and without a motion requesting leave pursuant to Federal Rule of Appellate Procedure 29(a)(2).

Amici Curiae include:

California Association for Parent-Child Advocacy: The California Association for Parent-Child Advocacy ("CAPCA") is an all-volunteer

organization engaging in legislative and policy advocacy on matters of concern to students with disabilities in California. CAPCA's members are lawyers representing students with disabilities and their parents, non-lawyer advocates, parents, and individuals with disabilities. CAPCA was founded in 2003 when families and professionals came together to resist proposals in the California legislature to drastically shorten the statute of limitations in special education cases and impose other restrictions on exercise of parental and student rights. CAPCA believes that it is critical that parents and adult students be able to enter into settlements with respect to educational issues, without foreclosing accountability as to the discrimination and retaliation which, unfortunately, sometimes surface in special education matters. CAPCA's members routinely negotiate settlement agreements, in which parties bargain as to scope of releases, and are concerned that the intent of parties be honored.

Disability Rights Advocates: Disability Rights Advocates ("DRA") is a non-profit, public interest law firm that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, and housing. DRA's clients, staff, and board of

directors include people with various types of disabilities. With offices in New York City and Berkeley, California, DRA strives to protect the civil rights of people with all types of disabilities nationwide.

Disability Rights California: Disability Rights California ("DRC") is a non-profit protection and advocacy ("P&A") agency mandated under federal law to advance the legal rights of Californians with disabilities, including children in special education programs.[4] DRC was established in 1978 and is the largest disability rights group in the nation. As part of its mission, DRC works to ensure that youth with disabilities have access to a free and appropriate public education in the least restrictive environment under the IDEA and are free from disability-based discrimination under the ADA through direct representation, including administrative hearings, litigation in state and federal courts, and appellate work. In 2018 alone, DRC assisted more 26,000 individuals throughout California, including youth and families in the Los Angeles Unified School District ("Appellee School District").

National Center for Youth Law: The National Center for Youth

---

[4] Protection and Advocacy for Individuals with Developmental Disabilities, 42 U.S.C. §§ 15001-09, 15041-45; Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §§ 10801-27; Protection and Advocacy of Individual Rights, 29 U.S.C. § 794e.

Law ("NCYL") is a private, non-profit organization that uses that law to help children in need nationwide. For more than 40 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support, and opportunities necessary for healthy and productive lives. NCYL provides representation to children with disabilities in litigation and class administrative complaints to ensure their access to appropriate and non-discriminatory services. NCYL engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL pilots collaborative reforms with state and local jurisdictions across the nation to improve educational outcomes of children in the foster care and juvenile justice systems, with a particular focus on improving education for system-involved children with disabilities.

National Disability Rights Network: The National Disability Rights Network ("NDRN") is the non-profit membership association of protection and advocacy agencies that are located in all fifty states, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A 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. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to

investigate abuse and neglect of individuals with disabilities in various settings. The P&A system is the nation's largest provider of legally based advocacy services for persons with disabilities.

NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. Education cases make up a large percentage of the P&A networks' casework. P&A agencies handled close to 14,000 education matters in the most recent year for which data is available. These education matters include claims under IDEA, Section 504,[5] and the ADA.

NDRN has filed as amicus curiae in the U.S. Supreme Court in *Endrew F. v. Douglas County School District RE-1*,[6] *Fry v. Napoleon Community Schools*,[7] *Forest Grove School District v. T.A.*,[8] *Board of Education v. Tom F.*,[9] *Arlington Central School District Board of Education*

---

[5] 29 U.S.C. § 794.
[6] 137 S. Ct. 988 (2017).
[7] 137 S. Ct. 743 (2017).
[8] 557 U.S. 230 (2009).
[9] 552 U.S. 1 (2007).

v. Murphy,[10] *Schaffer v. Weast*,[11] and *Winkelman v. Parma City School District*,[12] and in numerous cases in the United States Courts of Appeal.

SUMMARY OF ARGUMENT

At its core, this appeal turns on two related questions:

1) Is exhaustion under the IDEA waived or otherwise futile where a student with a disability presents a cognizable non-IDEA claim and requests a form of relief that is unavailable under the IDEA; and/or, in the alternative,

2) Is exhaustion under the IDEA waived or otherwise futile where a student with a disability lacks viable IDEA claims to pursue through the IDEA's administrative process?

As to the first question, in *Fry v. Napoleon Community Schools*, the U.S. Supreme Court made plain that exhaustion of the IDEA's administrative remedies is not required where a court determines that the gravamen of student's claims do not allege the denial of a free, appropriate

[10] 548 U.S. 291 (2006).
[11] 546 U.S. 49 (2005).
[12] 550 U.S. 516 (2007).

public education ("FAPE") – the core legal right afforded by the IDEA.[13, 14] However, the Court left open whether exhaustion was also waived where a student seeks relief unavailable under the IDEA, even if he raises claims that arguably implicate FAPE.[15] Accordingly, if this Court determines that D.D.'s ADA claim does allege a denial of FAPE, then it must decide *Fry*'s unanswered question.

The plain language of the statute, legislative history, and key policy considerations mandate a resounding "yes" – exhaustion is waived or otherwise futile where a student raises cognizable non-IDEA claims in an appropriate forum and seeks relief that is impossible to obtain under the IDEA. Although this is a matter of first impression for this Court post-*Fry*,

---

[13] 137 S. Ct. at 752 (finding that the IDEA's exhaustion provision only applies to lawsuits seeking "relief for the denial of a FAPE").

[14] Amici note that Plaintiff-Appellant D.D. argues in his Opening Brief that the gravamen of his complaint does not allege a denial of FAPE. Rather than repeat D.D.'s arguments, Amici joins in and reiterates his position by way of this footnote. Amici also assert that, even if the Court finds the gravamen of D.D.'s complaint involves or relates to a denial of FAPE, it should nevertheless find that IDEA exhaustion is waived or futile because D.D. has obtained all relief available under the IDEA and the relief sought in the instant case – monetary damages – is not available under the IDEA. Amici will focus its brief on these points.

[15] *Id*. at 752 n.4, 754 n.8.

this Court has evaluated similar issues before and allowed cases such as D.D.'s to proceed.

Accordingly, Amici urge the Court to affirm and clarify its pre-*Fry* rulings in *Payne v. Peninsula School District*[16] and *Witte v. Clark County School District*,[17] and join with the Third Circuit[18] in holding that administrative exhaustion is waived or otherwise futile where a student seeks relief unavailable under the IDEA, regardless of whether the gravamen of a complaint implicates the student's FAPE.

This conclusion is consistent with *Fry*, which clearly implies that exhaustion is contingent on what an IDEA hearing officer can provide. For example, the *Fry* Court reasoned that exhaustion would be waived if "[a] hearing officer . . . would have to send [a plaintiff] away empty-handed."[19]

---

[16] 653 F.3d 863, 871 (9th Cir. 2011) (en banc) (holding that "the IDEA's exhaustion provision applies only in cases where the relief sought . . . is available under the IDEA"), *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).
[17] 197 F.3d 1271, 1275 (9th Cir. 1999) (holding that exhaustion is not required when seeking relief unavailable under the IDEA).
[18] *W.B. v. Matula*, 67 F.3d 484, 496 (3d Cir. 1995) (holding that exhaustion is excused where the relief sought is unavailable in IDEA administrative proceedings), *abrogated on other grounds by A.W. v. Jersey City Public Schs.*, 486 F.3d 791 (3d Cir. 2007).
[19] 137 S. Ct. at 754.

A hearing officer would certainly have to send a student such as D.D. away empty-handed if he raised ADA claims and requested relief that a hearing officer cannot award, such as monetary damages.[20]

Moreover, it is deeply inefficient to force a student to go through a hearing that, by law, cannot grant the relief he seeks. This would frustrate the purpose of the IDEA's exhaustion framework and sister anti-discrimination statutes, which do not contain exhaustion provisions, and contravene Congress' intent.

With regard to the latter question, this Court should join with the First,[21] Third,[22] and Tenth Circuits,[23] which have each found that engaging in the IDEA's administrative process to a point of natural resolution of the IDEA issues can be sufficient to meet the exhaustion requirement or, in the alternative, that the lack of remaining viable IDEA claims renders further use of the administrative process futile or an "empty formality."[24]

Where, as here, the parties do not dispute that a student has obtained

---

[20] As noted in *Fry*, the U.S. Solicitor General also agrees with this plain-language interpretation. *Id.* at 752 n.4.
[21] *Doucette v. Georgetown Pub. Sch.*, 936 F.3d 16, 33 (1st Cir. 2019).
[22] *Matula*, 67 F.3d at 495-96.
[23] *Muskrat ex rel. J.M. v. Deer Creek Pub. Sch.*, 715 F.3d 775, 785-86 (10th Cir. 2013).
[24] *Doucette*, 936 F.3d at 33 (citing *Panetti v. Quarterman*, 551 U.S. 930, 946 (2007)).

relief and has no remaining viable IDEA claims, it is absurd to nonetheless block the student's access to court in the name of IDEA exhaustion. In practical terms, if this order stands, it will mean that, by virtue of settling IDEA claims, unsuspecting students and parents will have waived all other school-related civil rights and personal injury claims under other statutes, *even where those claims were explicitly preserved in the written settlement agreements*. It will render meaningless limited waiver provisions in countless pre-existing settlement agreements and effectively insulate school districts from ever facing liability for the most egregious acts that can happen at school.[25]

Although administrative hearings under the IDEA are less involved than litigation (for example, by lacking a formal discovery process), they are still complex, resource-intensive hearings. If this Court upholds the district court's order, it will effectively foreclose countless future parties' ability to

---

[25] Amici note that what is at issue here is a basic threshold of access to justice, not which party will ultimately prevail and to what degree. Courts are amply equipped to weed out cases that do not present cognizable claims, do not seek appropriate relief, or otherwise lack substantive merit, without endorsing a system of requiring administrative hearings where IDEA claims can be mutually resolved or do not exist, or the relief sought is unavailable under the IDEA.

settle any portion of their IDEA disputes in matters where the IDEA provides incomplete relief. This could flood the administrative system with cases that cannot be settled, abandoning the general principle that parties should resolve as many issues as possible and only bring to hearing remaining disputed claims.[26] Moreover, it will delay timely relief for students when some, but not all, claims can be settled.

This Court should reject these outcomes and preserve the integrity of the IDEA and ADA by reversing the order of the district court.

ARGUMENT

I. Violations Of The IDEA And ADA May Arise From The Same Or Similar Facts, But The Laws Provide Distinct Rights, Claims, And Relief.

A. The IDEA and ADA Provide Different Rights, Claims, and Forms of Relief.

In the United States, seven million students, or fourteen percent of total public school enrollment, receive special education services.[27] These children are protected under several statutes, including the IDEA and ADA. Though IDEA and ADA claims can arise from the same or similar set of

---

[26] *See Clyde K. v. Puyallup Sch. Dist. No. 3*, 35 F.3d 1396, 1402 (9th Cir. 1994).

[27] *Children and Youth with Disabilities*, Nat'l Ctr. for Educ. Statistics (May 2018), https://nces.ed.gov/programs/coe/pdf/coe_cgg.pdf.

facts pertaining to a child's education, they are nonetheless separate statutes that give rise to distinct and separate rights, causes of action, and forms of relief.

The aim of the IDEA is to ensure that children with disabilities receive a free appropriate public education.[28] A FAPE is provided through the development of an Individualized Education Program ("IEP"), which describes the student's unique education needs and the special education and related services to be provided.[29] The U.S. Supreme Court has recently articulated that the standard for what constitutes a FAPE is an IEP that is reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances.[30]

The IDEA provides administrative hearing procedures for students and parents to pursue equitable relief to address a school district's failure to provide FAPE.[31] Relief is limited to future special education services, including those that may be compensatory in nature, and reimbursements to

---

[28] 20 U.S.C. § 1400(d)(1)(A).
[29] *Id.* § 1414(d).
[30] *Endrew F.*, 137 S. Ct. at 1001.
[31] *A.G. v. Paradise Valley Unified Sch. Dist.*, 815 F.3d 1195, 1203 (9th Cir. 2016); *see also* 20 U.S.C. § 1415(f)(1)(A).

parents for education-related expenditures;[32] but monetary damages are not available.[33] Whenever students seek relief that *is* available under the IDEA, they must avail themselves of the IDEA administrative procedures before bringing those claims to the courts.[34] This is commonly referred to as "administrative exhaustion."

In contrast, Title II of the ADA provides causes of action for *discrimination* based on disability. Title II provides that no person with a disability shall, by reason of her disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.[35]

To bring suit under the ADA, a student with a disability must show, for example, that she was denied a reasonable accommodation that she needed to enjoy meaningful access to the benefits of a public education.[36]

---

[32] *See Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369-71 (1985).
[33] *See C.O. v. Portland Pub. Sch.*, 679 F.3d 1162, 1166-67 (9th Cir. 2012).
[34] *See* 20 U.S.C. § 1415(*l*).
[35] 42 U.S.C. § 12132.
[36] *A.G.*, 815 F.3d at 1204 (citing *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010)).

The ADA "authorize[s] . . . suits for injunctive relief or money damages."[37] Title II does not contain its own administrative exhaustion process or requirement.[38]

The fundamental difference between these statutes is that "the IDEA guarantees individually tailored educational services, while Title II . . . promise[s] non-discriminatory access to public institutions."[39] The two statutes differ in ends and means.[40] A school district's satisfaction of its obligations to a student under IDEA (namely, providing FAPE) does not mean that the district has satisfied its obligations under Title II.[41]

B. Disability-Based Discrimination Is Not FAPE-Based Simply Because It Occurs at School.

The U.S. Supreme Court has recognized that the IDEA and ADA overlap, and that one set of facts can give rise to multiple but separate claims

---

[37] *Fry*, 137 S. Ct. at 750 (citing 42 U.S.C. § 12133).
[38] *See* U.S.C. § 12101 et seq.; *see also* H.R. Rep. No. 101-485, at 98 (1990), reprinted in 1990 U.S.C.C.A.N. 267, 381 ("[I]t is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.").
[39] *Fry*, 137 S. Ct. at 756.
[40] *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1097 (9th Cir. 2013).
[41] *Id.* at 1101.

arising under each of these statutes.[42] Indeed, "a complaint brought under Title II . . . might instead seek relief for simple discrimination, irrespective of the IDEA's FAPE obligation."[43]

Disability discrimination claims do not implicate a school district's obligation to provide FAPE simply because they arise at school. Though discriminatory conduct "*might* interfere with a student enjoying the fruits of a FAPE, the resulting [discrimination] claim is not, for that reason alone, a claim that must be brought under the IDEA."[44] "If the school's conduct constituted a violation of laws other than the IDEA, a plaintiff is entitled to hold the school responsible under those other laws."[45]

However, since *Fry*, federal district courts within the Ninth Circuit

---

[42] *Fry*, 137 S. Ct. at 756 ("the same conduct might violate all three statutes"); *see also A.G.*, 815 F.3d at 1208 (holding that plaintiffs' disability discrimination claims were improperly dismissed, where the same set of facts was the basis of claims under the IDEA, Title II, Section 504). In *A.G.*, like here, plaintiffs' discrimination claims related to the school district's alleged failure to provide adequate behavior-related accommodations, including a full-time aide. *Id.* at 1201.

[43] *Fry*, 137 S. Ct. at 756.

[44] *Payne*, 653 F.3d at 880 (emphasis added); *see also Fry*, 137 S. Ct. at 754 ("A school's conduct toward such a child [with a disability] – say, some refusal to make an accommodation – might injure her in ways unrelated to a FAPE, which are addressed in statutes other than the IDEA.").

[45] *Payne*, 653 F.3d at 877.

have inconsistently evaluated the interaction between the IDEA and anti-discrimination statutes where IDEA exhaustion is concerned,[46] frequently failing to consider this Court's pre-*Fry* ruling in *Payne* altogether. Many district courts have required IDEA exhaustion for ADA and Section 504 claims or requests for relief not available under the IDEA, incorrectly concluding that disability discrimination claims necessarily implicate or are co-extensive of the IDEA's FAPE component, whereas just as many have waived or excused exhaustion under similar circumstances.[47] Such diametrically opposite applications of *Fry* underscore the confusion among courts in the Ninth Circuit – and the country, as this tension holds true across

---

[46] Given the "clues" articulated in *Fry*, this is not surprising and was even predicted by Justices Alito and Thomas. 137 S. Ct. at 759 (opinion concurring in part and concurring in the judgment) (cautioning against the use of the majority's "clue[s]" to determine whether the gravamen of a complaint lies in FAPE because of the overlap between the relief available under the IDEA, the ADA, and Section 504).

[47] *See McCarthy v. Scottsdale Unified Sch. Dist. No. 48*, 2019 WL 3997369 (D. Ariz. Aug. 23, 2019); *J.M. v. Los Angeles Unified Sch. Dist.*, 2019 WL 2871144 (C.D. Cal. Mar. 13, 2019); *S.B. v. California Dep't of Educ.*, 327 F.Supp.3d 1218 (E.D. Cal. 2018). *But compare with J.G. v. Los Angeles Unified Sch. Dist.*, 2019 WL 5158973 (C.D. Cal. Sept. 26, 2019); *Duncan v. San Dieguito Union High Sch. Dist.*, 2019 WL 4016450 (S.D. Cal. Aug. 26, 2019); *Abraham P. v. Los Angeles Unified Sch. Dist.*, 2017 WL 4839071 (C.D. Cal. Oct. 5, 2017); *J.V. v. Pomona Unified Sch. Dist.*, Case No. 2:15-cv-07895-JAK-MRW (C.D. Cal. May 2, 2017).

circuits as well.[48]

Accordingly, it is imperative that this Court provide clear post-*Fry* guidance on this point: administrative exhaustion is waived or otherwise futile where a student presents a cognizable non-IDEA claim and seeks relief that is impossible to obtain under the IDEA, such as monetary damages.[49]

C. *Fry* Did Not Address IDEA Exhaustion Where No Viable IDEA Claims Exist and Left Open the Question of Requiring Exhaustion for Relief Unavailable Under IDEA.

i. *Fry* should be confined to its facts and does not address cases in which there are no viable IDEA claims to exhaust.

---

[48] *See, e.g., J.S., III v. Houston County Bd. of Educ.*, 877 F.3d 979, 986 (11th Cir. 2017) (explaining that the cause of action in question "does not fit neatly into *Fry*'s hypotheticals and could conceivably fit under both a denial of FAPE and intentional discrimination under the ADA); *compare Abraham P.*, 2017 WL 4839071 (applying *Fry* and finding that student's claim of segregation was not based on a denial of FAPE), *with Parrish v. Bentonville Sch. Dist.*, 2017 WL 1086198 (W.D. Ark. Mar. 22, 2017) (applying *Fry* and finding that a similar claim of segregation *did* amount to a denial of FAPE), *affirmed by* 896 F.3d 889 (8th Cir. 2018).

[49] This Court's recent ruling in *Paul G. v. Monterey Peninsula Unified School District* is inapposite on this point, as *Paul G.* involved requests for both injunctive relief and damages, and the Court did not analyze the forms of relief separately. *See* 933 F.3d 1096 (9th Cir. 2019) (petition for rehearing en banc pending). Amici urge the Court to grant *Paul G.*'s petition and reconsider the panel's ruling in light of the issues posed in this case to ensure the two decisions provide a consistent and workable legal framework.

The district court's decision turns solely on its application of the *Fry* "clues." However, the *Fry* Court did not consider or address cases such as this one, in which there are no viable IDEA claims to exhaust. *Fry* is not instructive here, and its clues cannot determine whether exhaustion is required.[50]

Moreover, the *Fry* clues fail here for another reason: the student in question *did* first pursue his administrative remedies under the IDEA and successfully resolved only those claims through the mediation and settlement process specifically contemplated by the IDEA.[51] Accordingly, the purpose of the *Fry* clues – to address concerns of so-called "artful pleading" to circumvent the IDEA – is squarely inapplicable.[52]

As discussed below, upholding the district court's decision and extending the *Fry* rationale to these distinct facts not contemplated in *Fry* would have the perverse effects of chilling the ability to settle IDEA due process cases and punishing unsuspecting future pro se parents who – quite logically – believe that settlement language that preserves non-IDEA claims does just that.

---

[50] 137 S. Ct. at 756-57.
[51] 20 U.S.C. § 1415(e)-(f).
[52] 137 S. Ct. at 755.

ii. The *Fry* Court explicitly declined to extend its ruling to forms of relief not available under the IDEA.

Even if *Fry* was applicable here, it does not address a question directly relevant to this matter: whether a plaintiff who seeks relief that is impossible to obtain under the IDEA must nevertheless pursue administrative exhaustion, FAPE gravamen aside. In footnote four of the opinion, the Court was careful to clarify that it was declining to decide whether "exhaustion [is] required when the plaintiff complains of the denial of FAPE, but the specific remedy she requests – here, money damages for emotional distress – is not one that an IDEA hearing officer may award."[53]

Accordingly, even if this Court decides that D.D.'s complaint falls within *Fry's* gravamen parameters, it must nevertheless evaluate the question raised, but not answered, by *Fry*. Fortunately, as discussed below, this Court considered and answered this point prior to *Fry*, and those decisions remain instructive.

II. The Plain Language Of The IDEA, Legislative History, And Policy Considerations Support Affirmation of Pre-*Fry* Decisions That Exhaustion Is Waived Or Futile As To Forms Of Relief Not Available Under the IDEA.

A. The Court's Treatment of This Issue Pre-*Fry*.

---

[53] 137 S. Ct. at 752; *see also id.* at 754 n.8.

Long before *Fry* was decided, this Court considered and explicitly rejected the idea that students who assert non-IDEA claims and seek relief unavailable under the IDEA must nevertheless first pursue administrative exhaustion under the IDEA.[54]

In *Witte v. Clarke County School District*, this Court held that "under the plain words of the statute," exhaustion is not required when money damages are sought.[55] Prior to filing his suit for damages, the student had changed schools and obtained appropriate educational services "through the IEP process."[56] The Witte family had never invoked a formal due process hearing, but their satisfaction with the current educational state of affairs meant that relief under the IDEA would be an inappropriate remedy for the harm caused by the school district.[57] Although, as in D.D.'s case, the claims related to how the school district had treated him in response to his alleged poor behaviors, the Court allowed the suit to proceed without administrative

---

[54] Exhaustion can be waived when its pursuit would be "futile or inadequate." *Honig v. Doe*, 484 U.S. 305, 327 (1988).
[55] 197 F.3d at 1275.
[56] *Id.* at 1274 n.1.
[57] *Id.* at 1276.

exhaustion under the IDEA.[58]

More recently, the Court examined this issue en banc in *Payne v. Peninsula School District*.[59] In *Payne*, this Court promulgated a "relief-centered" approach, stating that "[n]on-IDEA claims that do not seek relief available under the IDEA are not subject to the exhaustion requirement, even if they allege injuries that could conceivably have been redressed by the IDEA."[60, 61]

Although *Payne*'s relief-centered approach has been replaced by *Fry*'s gravamen approach as to cases within *Fry*'s purview, *Payne* remains instructive in this circuit on matters not covered by *Fry* – such as non-IDEA claims that seek relief unavailable under the IDEA, regardless of whether

---

[58] *Id.* at 1273, 1276. A few years later, this Court reexamined its *Witte* rationale in *Robb v. Bethel School District # 403*, 308 F.3d 1047, 1051-52 (9th Cir. 2002), and stated that the key factor in the exhaustion inquiry was that the parents had already resolved the student's educational claims informally and that the alleged injuries were physical. *Robb* was overruled by this Court's decision in *Payne*. 653 F.3d at 874.

[59] 653 F.3d 863 (9th Cir. 2011).

[60] *Id.* at 871, 874.

[61] In contrast, other circuits utilized an "injury-centered" approach, where injuries that could be addressed to any degree by the IDEA's administrative procedures required exhaustion. *See, e.g.*, *Charlie F. v. Bd. of Educ. of Skokie Sch. Dist. 68*, 98 F.3d 989 (7th Cir. 1996). *Fry* rejected this approach and resolved the circuit split.

they arguably allege a denial of FAPE,[62] or cases in which there are no viable IDEA claims.[63]

This Court has not revisited this specific issue since *Fry*.[64] This case allows the Court to affirm that the relief-centered approach articulated in *Payne* is consistent with *Fry* and remains the appropriate standard in circumstances not addressed by *Fry*, such as those presented here.[65]

B. The Plain Language of Section 1415(*l*) Applies Only to Relief Available Under the IDEA.

---

[62] *Fry*, 137 S. Ct. at 752 n.4, 754 n.8.

[63] *See Abraham P.*, 2017 WL 4839071 at *5 (finding *Fry* does not apply and that *Payne* permits the suit to proceed without further exhaustion of administrative remedies, where plaintiff sought money damages and previously settled all IDEA claims).

[64] Two circuit courts have raised this issue post-*Fry*, including the First Circuit in *Doucette*, 936 F.3d 16 (2019), discussed below, and the Eighth Circuit in *J.M. v. Francis Howell School District*, 850 F.3d 944, 950 (2017). The Eighth Circuit disregarded canons of statutory construction and relied on policy considerations to conclude that the form of relief sought does not control whether exhaustion is waived. This Court should not be persuaded, as policy concerns cannot trump the plain language of Section 1415(*l*) and congressional intent, discussed below.

[65] Amici also note that, as a procedural matter, this Court has held that it is inappropriate to resolve administrative exhaustion, which is an affirmative defense, through a motion to dismiss brought under Fed. R. Civ. P. 12(b). *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014). Instead, generally the matter should be resolved through a motion for summary judgment. *Id.* at 1169-70. Upholding the instant decision would contradict the Court's ruling in *Albino* and leave great ambiguity for future litigants.

As the *Fry* Court noted, "[w]e begin, as always, with the statutory language at issue."[66] The text of Section 1415(*l*) reads:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], [Section 504], 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 [the IDEA]*, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].[67]

Although often used interchangeably, the use of "relief" as opposed to "remedy" is important to a proper reading of Section 1415(*l*). According to the edition of Black's Law Dictionary that was current at the time Section 1415(*l*) was added, remedy refers to "[t]he means by which . . . the violation of a right is prevented, redressed, or compensated." Relief, on the other hand, is defined as "[d]eliverance from oppression, wrong, or injustice." "Under these definitions, then, remedy is the process; relief is what the complainant asks for as a result of the process."[68]

---

[66] 137 S. Ct. at 753.
[67] 20 U.S.C. § 1415(*l*) (emphasis added).
[68] Katherine Bruce, *Vindication for Students with Disabilities: Waiving Exhaustion for Unavailable Forms of Relief after Fry v Napoleon Community*, 85 U. Chi. L. Rev. 987, 1013 (2018); *see also*, 1A Cal. Jur. 3d *Actions* § 3.71, 122-23 (2014) (stating that a remedy "is the means by which the action or corresponding obligation is effectuated" and relief "is the result obtained through the remedy").

This is consistent with the dependent clause of Section 1415(*l*): if (and only if) the student is "seeking relief" that is "also available" under the IDEA, then that student must "exhaust" the "procedures" listed in subsections (f) and (g). If the student is not seeking relief that is available under the IDEA, then the requirement to exhaust the IDEA's procedures contained within the secondary clause does not apply.

As discussed *supra*, the relief available under the ADA and the IDEA is different. It is undisputed that the ADA provides for monetary damages, whereas the IDEA does not. The declaratory and injunctive relief available under each statute is also different. For example, the IDEA does not afford a student the ability to obtain a declaration from a hearing officer that the school district violated his rights under the ADA. Similarly, the IDEA does not provide the opportunity to receive injunctive relief from a hearing officer for acts that do not violate the IDEA but do violate the ADA.

Accordingly, in these kinds of cases, it is critical that the Court consider not only what the relief is *for* (for example, disability-based discrimination), but also the *form* of the relief sought and whether that relief is available under the IDEA and through its administrative hearing procedures. Simply put, in this case and cases like it, that answer is "no."

C. Requiring IDEA Exhaustion for Relief Not Available Under the IDEA Severely Restricts Students' Rights Under the ADA and Contravenes Congressional Intent.

Not only is the conclusion that exhaustion should be waived when a student seeks relief unavailable under the IDEA firmly rooted in the plain language of the statute, it is also consistent with the purpose of the IDEA and Section 1415(*l*).

As early as the 1975 hearings on the Education of the Handicapped Act ("EHA") – IDEA's predecessor statute – members of the Senate emphasized that exhaustion was not an unequivocal mandate: "I want to underscore that exhaustion of the administrative procedures established under this part 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."[69]

In 1984, the U.S. Supreme Court misinterpreted Congress' intent in *Smith v. Robinson* by holding that the IDEA precluded all other education-related claims.[70] Immediately thereafter, Congress added what is now

---

[69] 121 Cong. Rec. 37416, 94th Cong, 1st Sess. (Nov. 19, 1975) (statements of Senator Harrison Williams).
[70] 468 U.S. 992 (1984).

Section 1415(*l*) to specifically affirm "the viability of federal statutes like the ADA . . . as separate vehicles, no less integral than the IDEA, for ensuring the rights of handicapped children."[71] Representative George Miller, one of the original coauthors of the EHA, stated that "there are certain situations in which it is not appropriate to require the exhaustion of EHA remedies before filing a civil law suit," including when "the hearing officer lacks the authority to grant the relief sought."[72]

Consequently, mandating exhaustion for non-IDEA claims that seek relief unavailable under the IDEA would be wholly inconsistent with Congressional intent. Exhaustion "is not intended to temporarily shield school officials from all liability for conduct that violates constitutional and statutory rights that exist *independent* of the IDEA and entitles a plaintiff to relief *different* from what is available under the IDEA."[73]

D. Requiring IDEA Exhaustion for Non-IDEA Claims Seeking Forms of Relief Not Available Under the IDEA Would Be Futile and Confer No Benefit to Courts and Parties.

Not only would requiring exhaustion under these circumstances

---

[71] *Fry*, 137 S. Ct. at 750; *see also* H.R. 1523, 99th Cong, 1st Sess., in 131 Cong Rec 31376 (Nov. 12, 1985) ("We all want to see the decision in Smith versus Robinson overturned.").
[72] *Id.*
[73] *Payne*, 653 F.3d at 876 (emphasis in original).

ignore congressional intent, it would also serve no useful purpose for courts or parties.

As a preliminary matter, the scope of IDEA administrative hearings is limited. Hearings can only resolve whether a school has met its obligation to provide an individual student with a FAPE.[74] Administrative hearing officers cannot rule on non-IDEA matters, "as any decision by a hearing officer on substantive relief 'shall' be 'based on a determination of whether the child received a free appropriate public education.'"[75] Accordingly, a plaintiff seeking redress for something *other* than a denial of FAPE cannot obtain any relief from the administrative hearing procedures, because an IDEA hearing officer cannot order relief beyond that for a denial of FAPE.[76]

As a result, courts around the country have found that exhaustion is futile in certain circumstances.[77] In *Hoeft v. Tuscon Unified School District*, this Court recognized that the IDEA's administrative process can be futile in "situations in which exhaustion serves no useful purpose."[78] Similarly, the

---

[74] *Fry*, 137 S. Ct. at 754; *see also* 20 U.S.C. § 1415(f)(1)(A).
[75] 137 S. Ct. at 754 (quoting 20 U.S.C. § 1415(f)(3)(E)(i)).
[76] *Id.*
[77] *See* n.55, above.
[78] 967 F.2d 1298, 1303 (9th Cir. 1992).

First Circuit has found that exhaustion under the IDEA is futile "when (1) the plaintiff's injuries are not redressable through the administrative process . . . and (2) the administrative process would provide negligible benefit to the adjudicating court."[79] The Third Circuit has found exhaustion futile and thus excused where the relief sought was unavailable through the IDEA.[80] Finally, the Tenth Circuit has held that exhaustion would be futile where the plaintiff settled his IDEA claims through the administrative process and obtained all the relief the IDEA could provide.[81]

Accordingly, where, as here, a student seeks monetary damages under the ADA and has already obtained all the relief that IDEA could provide, further administrative efforts would be futile. The student's injuries could not be redressed, and there is no other relief that the student could obtain through the IDEA's administrative process.

Additionally, requiring further use of the IDEA's administrative process for such claims does not provide any of the typical benefits sought

---

[79] *Doucette*, 936 F.3d at 31.
[80] *Matula*, 67 F.3d at 496 (relying on a plain language reading of Section 1415(*l*)).
[81] *Muskrat*, 715 F.3d at 785-86.

by courts. IDEA hearing officers do not address questions of discrimination because they have no jurisdiction over those claims.[82]

Moreover, non-IDEA claims involve facts as to which an IDEA hearing would not produce a relevant record. If a student with a disability asserts denial of equal access to extracurricular activities under the ADA, without claiming participation was required to afford FAPE, she could not secure discovery, or likely even elicit testimony, about generally available activities during an IDEA hearing. Similarly, if students with disabilities claimed they were denied equal access to science or social studies instruction by routine replacement of such classes by "study halls" for homework help, or by inaccessible lab facilities or exclusion from field trips, IDEA hearings would not generate information about nondisabled students' opportunities. Discrimination cases such as these inherently involve systemic issues that IDEA hearing officers do not consider.

Retaliation claims are equally as unaddressed by IDEA hearings. For example, a district could call Child Protective Services on a family to divert attention from injuries at school, cut off normal parent-teacher contact, or manipulate classroom and staff assignments to punish advocacy, without

---

[82] *See*, *Abraham P.*, 2017 WL 4839071 at *3.

having to explain any of that conduct in an IDEA hearing so long as the alleged legal violations stem from rights other than FAPE.

In contrast, courts regularly adjudicate and are well-equipped to hear discrimination and retaliation claims, and they do not need technical educational expertise to do so. Accordingly, requiring plaintiffs such as D.D. who are seeking relief unavailable under the IDEA to take further administrative action would be "an empty formality,"[83] and exhaustion should be waived.

III. Similarly, This Court Should Find That Exhaustion Is Waived, Futile, Or Otherwise Inapplicable Where A Student Has Pursued And Now Lacks Viable IDEA Claims.

Upholding the district court's cursory decision leaves D.D. and students like him with no way forward and no way back, unjustly insulating school districts from litigation, regardless of what the parties bargained for during settlement.

A. The Court Should Join the First, Third, and Tenth Circuits and Find that Exhaustion is Waived or Futile Where the Student Did Not Circumvent the IDEA's Procedures and There Are No Viable IDEA Claims.

This Court should find that, even if exhaustion is required under the

---

[83] *Doucette*, 936 F.3d at 33 (quoting *Panetti*, 551 U.S. at 946).

IDEA, that requirement can be waived, satisfied, or otherwise made futile where the parties have engaged in the IDEA's administrative procedures, the student has obtained IDEA relief, and no viable IDEA claims remain. At least three other circuits have taken this step.

In *Matula*, the Third Circuit evaluated a settlement agreement that was ambiguous as to whether non-IDEA claims for damages had been released.[84] Applying a "more searching standard[]" than general contract principles where waivers of civil rights were concerned, the court resolved the ambiguity in the student's favor.[85] Having done so, the court held that further recourse to administrative proceedings would be futile and that any exhaustion requirement was excused.[86] The court noted it had "reservations about whether the administrative tribunal would even be competent to hear plaintiff's IDEA claim since any rights that can be had have already been settled, and both parties are required to adhere to that settlement agreement."[87]

Thereafter, the Tenth Circuit considered this issue in *Muskrat*.[88] The

---

[84] 67 F.3d at 487-88, 491, 496-99.
[85] *Id.* at 498-99.
[86] *Id.* at 496.
[87] *Id*.
[88] 715 F.3d at 785-86.

Tenth Circuit considered the underlying advocacy efforts of the family and declined to require additional administrative steps. "Although the [family] did not formally request a due process hearing under the IDEA, they nonetheless worked through administrative channels to obtain the relief they sought, namely, preventing [the student] from being put in a timeout room in the future."[89] "At this point . . . it would have been futile to then force them to request a formal due process hearing – which in any event cannot award damages – simply to preserve their damages claim."[90, 91]

Most recently, the First Circuit tackled this issue post-*Fry* in *Doucette v. Georgetown Public Schools*. Like D.D., the student in *Doucette* alleged that, among other things, he had experienced physical harm and emotional distress, resulting in multiple hospitalizations. Noting that "[a]lthough

---

[89] *Id.* at 786.
[90] *Id.*
[91] It is worth noting that at least two district courts within the Ninth Circuit have already reached the conclusion that students satisfied exhaustion by raising non-IDEA claims in due process where the hearing officer dismissed those claims for lack of jurisdiction. *See Y.G. v. Riverside Unified Sch. Dist.*, 774 F.Supp.2d 1055, 1062 (C.D. Cal. 2011); *Abraham P.*, 2017 WL 4839071 at *5.

exhaustion of IDEA claims is the general rule, it 'is not absolute,'"[92] the court stated that exhaustion is "not meant to be enforced in a manner that would require 'empty formalit[ies].'"[93] "Plaintiffs are not required to exhaust administrative remedies under the IDEA when exhaustion would be futile."[94]

The First Circuit's analysis of whether settlement could result in waiver or futility centered on a claim under Section 1983.[95] The court found that the claim alleged a denial of FAPE under *Fry* and thus subject to the IDEA's exhaustion provision.[96] However, the court allowed the claim to proceed because "it was either exhausted [through settlement] or further invocation of the administrative process would have been futile."[97] The court doubted that a hearing officer would have the knowledge or expertise to evaluate the student's current claims, which involved evaluating liability

---

[92] 936 F.3d at 22 (citing *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 59 (1st Cir. 2002).
[93] *Id.* (quoting *Panetti*, 551 U.S. at 946).
[94] *Id.*
[95] *Id.* at 28-33.
[96] *Id.* at 29.
[97] *Id*. at 24.

and damages for physical and emotional harm.[98]

The court noted that the IDEA's administrative process "contemplates a series of stages."[99] The family had "engaged in the administrative process until they received the relief that they sought" through a settlement.[100] Only then, "after they had no further 'remedies under the IDEA to exhaust,'" did the family bring their claims for damages in federal court.[101] Accordingly, the court concluded that the Doucettes had availed themselves of the IDEA's remedies and were not engaging in artful pleading or otherwise attempting to circumvent the IDEA's procedures.

This Court should join with the holdings of the First, Third, and Tenth Circuits: in cases where exhaustion is required, it is waived or otherwise futile where student have no viable IDEA claims at the time they bring their remaining claims in a court of competent jurisdiction.

B. The Court Should Honor Settlement Agreements that Preserve Non-IDEA Claims.

It is undisputed that D.D. and the Appellee School District explicitly *preserved* D.D.'s ADA claims for damages. However, the Appellee School

---

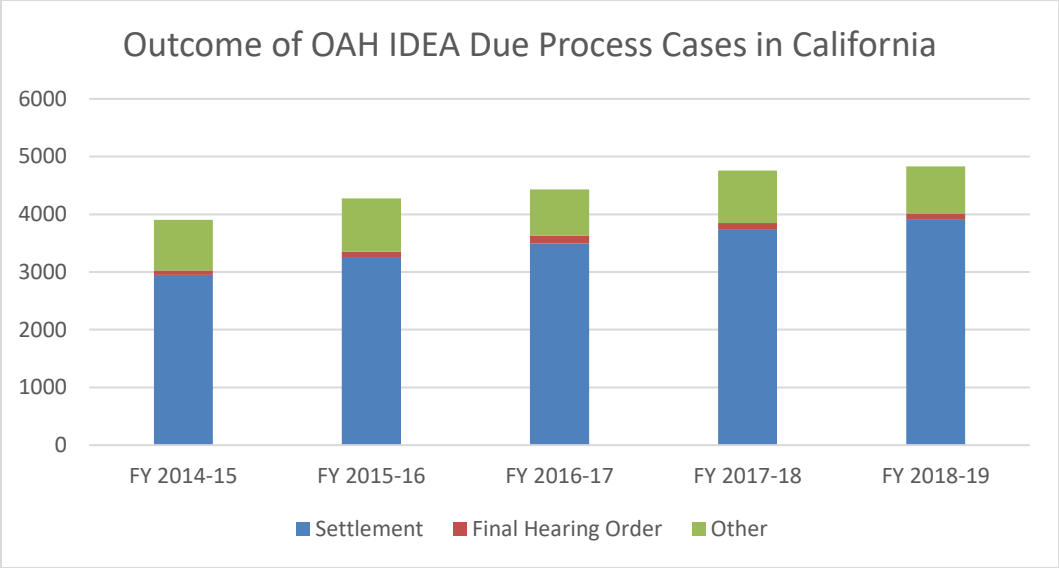
[98] *Id*. at 31-33.
[99] *Id*. at 29.
[100] *Id*. at 30.
[101] *Id*. at 31 (citing *Blanchard v. Morton Sch. Dist.*, 420 F.3d 918, 921-22 (9th Cir. 2005) (overruled on other grounds by *Payne*)).

District now argues that D.D.'s ability to settle his IDEA claims should prohibit him from pursuing other claims. If this Court upholds this order, it will effectively endorse that students can involuntarily, unknowingly, and unwittingly waive their civil rights claims, even where those claims are clearly preserved in writing by the parties.

i. Most administrative cases settle, which should be encouraged because settlement promotes judicial economy and affords students with IDEA relief in a timely fashion.

The overwhelming majority of IDEA administrative cases are resolved through settlement. Over the past five years in California, settlements have represented around eighty percent of nearly five thousand closed cases; only two to three percent resulted in a final hearing order. [102]

[102] Office of Admin. Hearings Dep't of Gen. Serv. State of Cal. Special Educ. Div., *Special Educ. Div. Q. Data Rep. FYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19*; 4 (2015-19), 2018-19 data available at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Resources/Page-Content/Special-Education-Resources-List-Folder/Quarterly-Reports-and-Dashboards.



Settlements reached through the IDEA's administrative processes, such as mediation, can and often do fully resolve students' various claims. For example, districts can make concessions sufficient to induce families to waive all claims, including state law tort claims and federal discrimination and retaliation claims. However, full resolution is sometimes not possible, given the absence of discovery in IDEA cases and the fact that parties' perspectives on non-IDEA issues can diverge sufficiently to preclude settlement, even when they can compromise on how to deal with the student's education going forward. D.D.'s case represents those circumstances where the student and district cannot reach an agreement on all claims, and so agree on the student's special education services and remedies, but preserve separate claims for litigation.

Forcing the parties to incur the expense[103] and delay of an administrative hearing when the student can obtain relief available under the IDEA to her satisfaction through settlement, runs counter to this Court's previously expressed policies of timely relief and judicial economy. In *Clyde K. v. Puyallup Sch. Dist. No. 3*, this Court encouraged parties in IDEA disputes "to resolve their differences through cooperation and compromise rather than litigation."[104] The Court noted that the litigation process is not well-equipped to resolve educational disputes, as it is "simply too slow and too costly to deal adequately with the rapidly changing needs of children."[105] Instead, the Court stressed that parents and school officials should cooperate to "[w]ork out an acceptable educational program" where possible.[106]

Settling IDEA claims allows a child's educational needs to be met in a timely manner. This is especially critical for students with disabilities where there can be windows of opportunity that should not be missed. For

---

[103] A study comparing mediation, resolution meetings, and due process hearings found that due process hearings were the most costly in terms of time, fiscal resources, and impact on relationships between school personnel and parents. William H. Blackwell & Vivian V. Blackwell, *A Longitudinal Study of Special Education Due Process Hearings in Massachusetts: Issues, Representation, and Student Characteristics*, SAGE Open Jan.-March 2015, 1–11 (March 23, 2015), https://doi.org/10.1177/2158244015577669.
[104] 35 F.3d at 1402.
[105] *Id.*
[106] *Id.*

example, students who have Autism may learn language best during key developmental windows; students with dyslexia may lose eagerness to learn to read after repeated failures; and students with mental health conditions may become so discouraged and depressed about school that even greater resources are required to recover missed learning opportunities. This Court should not require students who need immediate changes to their special education program to wait on a final administrative order merely to preserve their non-IDEA claims.

ii. Upholding the district court's order will invalidate the plain language of settlement agreements that preserve non-IDEA claims.

The district court's order alters the terms of D.D.'s written settlement agreement by effectively releasing his explicitly preserved civil rights claims under the ADA. This is a troubling outcome that contradicts clear precedent. Indeed, "[a] release of claims for violations of civil and constitutional rights must be voluntary, deliberate, and informed."[107] Where claims are explicitly preserved, it is impossible to say that D.D.'s release – added after-the-fact by the district court – was voluntary, deliberate, or informed.

---

[107] *Salmeron v. United States*, 724 F.2d 1357, 1361 (9th Cir. 1983) (citation omitted).

Upholding the district court's order has the potential to affect more than just D.D. Indeed, upholding the order would invalidate parallel limited waiver provisions in an unknown number of settlements throughout the circuit, leaving those students without redress even absent voluntary, deliberate, or informed waivers.

Instead, this Court should find that exhaustion is waived or otherwise futile where students have availed themselves of IDEA's administrative procedures, attained all relief available under IDEA through settlement, and preserved non-IDEA claims in settlement.

IV. Conclusion

For the reasons stated above, Amici respectfully urge this Court to reverse the district court's decision.

Dated: October 22, 2019 Respectfully submitted,

By: s/ Andria Seo

Andria Seo
Lauren Lystrup
Carly J. Munson
DISABILITY RIGHTS CALIFORNIA

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. of App. P. 32(a)(7)(B) and Circuit Rule 32-1(a) because this brief contains 6,982 words, excluding the tables, certificates, disclosures, and prefatory interests of amici.

Dated: October 22, 2019 DISABILITY RIGHTS CALIFORNIA

By: /s/ Andria Seo