No.

# In the Supreme Court of the United States

D.C., BY HIS PARENTS AND GUARDIANS, TREVOR CHAPLICK AND VIVIAN CHAPLICK; TREVOR CHAPLICK; VIVIAN CHAPLICK; ET AL.,

*Petitioners*,

v.

FAIRFAX COUNTY SCHOOL BOARD; VIRGINIA DEPARTMENT OF EDUCATION; ET AL.,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## PETITION FOR A WRIT OF CERTIORARI


WILLIAM R.H. MERRILL
MICHAEL ADAMSON
*Susman Godfrey LLP*
*1000 Louisiana Street*
*Suite 5100*
*Houston, TX 77002*
*(713) 653-7865*

CHARLES A. ROTHFELD
*Counsel of Record*
ALAN M. GRIMALDI
ORAL D. POTTINGER
ERIC A. WHITE
*Mayer Brown LLP*
*1999 K Street, NW*
*Washington, DC 20006*
*(202) 263-3000*
*crothfeld@mayerbrown.com*

*Counsel for Petitioners*

*(Additional counsel listed on inside cover)*

ADERSON FRANCOIS
*Georgetown Law*
*Civil Rights Law Clinic*
*600 New Jersey Avenue, NW*
*Washington, DC 20001*
*(202) 662-9000*

R. BRAXTON HILL
*Kaleo Legal PLLC*
*1717 E Cary Street*
*Richmond, VA 23223*
(804) 363-8557

## QUESTION PRESENTED

The Individuals with Disabilities Education Act ("IDEA") establishes a set of requirements designed to ensure that all children receive a free appropriate public education. The IDEA also guarantees an opportunity for "an impartial due process hearing" to address any issue related to a particular child's education. Such due process hearings are individualized proceedings limited to addressing educational plans for particular disabled children; hearing officers are not empowered to resolve system-wide problems or flaws in the due process hearing system itself.

In this case, Petitioners—children and parents in the Fairfax County, Virginia public school system—brought suit in district court to challenge the manner in which the state and local IDEA administrative process operates at every stage, asserting a host of pervasive and systemic defects. A divided panel of the Fourth Circuit ordered the suit dismissed. Notwithstanding a hearing officer's inability to resolve such claims, the majority held that plaintiffs may not challenge systemic failures in the IDEA due process hearing system without first exhausting administrative remedies within that system itself. Dissenting, Judge Gregory explained that administrative exhaustion would be futile, noting that other courts of appeals, including the Second and Third Circuits, have held that exhaustion of administrative remedies is not required in such circumstances.

The question presented is:

Whether plaintiffs bringing a system-wide challenge to the IDEA due process hearing system may do so without first exhausting remedies in individualized administrative proceedings.

## PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioners in this case are D.C., by his parents and guardians, Trevor Chaplick and Vivian Chaplick; Trevor Chaplick; Vivian Chaplick; M.B., by his parents and guardians, James Bingham and Sheila Bingham; James Bingham; Sheila Bingham; and Hear Our Voices, Inc. ("HOV").

The Respondents are the Fairfax County School Board; Virginia Department of Education; Dr. Michelle Reid, Superintendent of Fairfax County Public Schools; and Jenna Conway, Virginia's Superintendent of Public Instruction. Dr. Lisa Coons, the former Virginia Superintendent of Public Instruction, was previously a defendant in this case.

Pursuant to Rule 29.6, Petitioner HOV certifies that it is a non-profit, tax-exempt organization incorporated in Delaware. HOV has no parent corporation, and no publicly traded corporation has 10% or greater ownership in HOV. Petitioners D.C., Trevor Chaplick, Vivian Chaplick, James Bingham, M.B., and Sheila Bingham are natural persons.

## RELATED PROCEEDINGS

There are no related proceedings in state or federal courts, or in this Court.

## TABLE OF CONTENTS

**Page**

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ..... ii

RELATED PROCEEDINGS ..... ii

TABLE OF AUTHORITIES ..... v

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

STATUTORY PROVISIONS INVOLVED ..... 1

INTRODUCTION ..... 2

STATEMENT ..... 3

REASONS FOR GRANTING THE PETITION ..... 10

I. THE CIRCUITS ARE DIVIDED ON WHETHER IDEA PLAINTIFFS MUST EXHAUST INDIVIDUALIZED ADMINISTRATIVE REMEDIES BEFORE SEEKING REVIEW IN FEDERAL COURT OF SYSTEMIC IDEA VIOLATIONS ..... 11

A. Several Circuits Have Held That IDEA Plaintiffs Need Not Exhaust Administrative Remedies When Doing So Would Be Futile ..... 11

B. Other Circuits Have Imposed An Exhaustion Requirement In Like Circumstances ..... 17

II. THIS CASE PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE ..... 20

A. The Question Presented Here Holds Great Importance For Disabled Children And Their Families ..... 20

**TABLE OF CONTENTS**
**(continued)**

**Page**

B. These Systemic IDEA Violations Cannot Be Resolved Through An IDEA Due Process Hearing ..... 23

III. THE FOURTH CIRCUIT'S RULE IS WRONG ..... 25

CONCLUSION ..... 31

APPENDIX A – The Fourth Circuit's decision (March 19, 2026) ..... 1a

APPENDIX B – The district court's decision (July 25, 2023) ..... 28a

APPENDIX C – The district court's order modifying its decision (August 1, 2023) ..... 43a

## TABLE OF AUTHORITIES

**Cases** **Page(s)**

*Alzandani* v. *Hamtramck Pub. Schs.*,
176 F. 4th 455 (6th Cir. 2026) .....17, 18

*Ass'n for Cmty. Living* v. *Romer*,
992 F.2d 1040 (10th Cir. 1993).....15

*Axon Enter., Inc.* v. *FTC*,
598 U.S. 175 (2023).....29

*J.B. ex rel. Bailey* v. *Avilla R-XIII Sch. Dist.*,
721 F.3d 588 (8th Cir. 2013).....16

*Beth V. by Yvonne V.* v. *Carroll*,
87 F.3d 80 (3d Cir. 1996) .....13

*Biden* v. *Nebraska*,
600 U.S. 477 (2023).....28

*Blackmon ex rel. Blackmon* v. *Springfield R-XII Sch. Dist.*, 198 F.3d 648 (8th Cir. 1999).....16

*Bowen* v. *City of New York*,
476 U.S. 467 (1986).....30

*Carr* v. *Saul*,
593 U.S. 83 (2021).....29, 30

*A.F. ex rel. Christine B.* v. *Espanola Pub. Schs.*, 801 F.3d 1245 (10th Cir. 2015) .....26

*D.M.* v. *New Jersey Dep't of Educ.*,
801 F.3d 205 (3d Cir. 2015) .....13, 14, 23

*DL* v. *District of Columbia*,
450 F. Supp. 2d 11 (D.D.C. 2006).....19

*Douglass* v. *District of Columbia*,
750 F. Supp. 2d 54 (D.D.C. 2010).....19

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**

*Easter* v. *District of Columbia*,
128 F. Supp. 3d 173 (D.D.C. 2015) .....19

*Everett H.* v. *Dry Creek Joint Elementary Sch. Dist.*, 2016 WL 5661775 (E.D. Cal. Sept. 30, 2016).....15

*Fry* v. *Napoleon Cmty. Schs.*,
580 U.S. 154 (2017).....5, 27, 30

*Georgia* v. *Public.Resource.Org, Inc.*,
590 U.S. 255 (2020).....27

*Handberry* v. *Thompson*,
446 F.3d 335 (2d Cir. 2006) .....13

*Hawai'i Disability Rts. Ctr.* v. *Kishimoto*,
122 F. 4th 353 (9th Cir. 2024) .....15

*Heldman v. Sobol*,
962 F.2d 148 (2d Cir. 1992) .....12, 14

*Hoeft* v. *Tucson Unified Sch. Dist.*,
967 F.2d 1298 (9th Cir. 1992).....15

*Honig* v. *Doe*,
484 U.S. 305 (1988).....26, 27

*J.M.* v. *Francis Howell Sch. Dist.*,
850 F.3d 944 (8th Cir. 2017).....16

*J.M.* v. *New York City Dep't of Educ.*,
161 F. 4th 149 (2d Cir. 2025).....12, 13

*Jacobs* v. *Salt Lake City Sch. Dist.*,
154 F. 4th 790 (10th Cir. 2025) .....15

*Luna Perez* v. *Sturgis Pub. Schs.*,
598 U.S. 142 (2023).....9, 25, 26, 31

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**

*M.B.* v. *Fairfax Cnty. Sch. Bd.*,
660 F. Supp. 3d 508 (E.D. Va. 2023) .....24

*Mathews* v. *Eldridge*,
424 U.S. 319 (1976).....29

*McCarthy* v. *Madigan*,
503 U.S. 140 (1992).....27, 29, 30

*Mullin* v. *Doe*,
146 S. Ct. 2121 (2026).....28

*Murphy* v. *Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195 (2d Cir. 2002).....13

*J.S. ex rel. N.S.* v. *Attica Cent. Schs.*,
386 F.3d 107 (2d Cir. 2004) .....11, 12

*Papania-Jones* v. *Dupree*,
275 F. App'x 301 (5th Cir. 2008).....16

*Student A ex rel. Parent A* v. *S.F. Unified Sch. Dist.*, 9 F. 4th 1079 (9th Cir. 2021) .....16

*Parent/Pro. Advoc. League* v. *City of Springfield*, 934 F.3d 13 (1st Cir. 2019).....18

*R.T.* v. *Bradley Cnty. Bd. of Educ.*,
2026 WL 412102 (E.D. Tenn. Feb. 13, 2026) .....18

*Randolph-Sheppard Vendors of Am.* v. *Weinberger*, 795 F.2d 90 (D.C. Cir. 1986) .....19

*Robertson* v. *District of Columbia*,
762 F. Supp. 3d 34 (D.D.C. 2025).....18, 19

*Roe* v. *Healey*,
78 F. 4th 11 (1st Cir. 2023).....18

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**

*Ross* v. *Blake*,
578 U.S. 632 (2016) ..... 28

*Smith* v. *Robinson*,
468 U.S. 992 (1984) ..... 26, 27

*Staples* v. *United States*,
511 U.S. 600 (1994) ..... 28

*T.R.* v. *Sch. Dist. of Philadelphia*,
4 F. 4th 179 (3d Cir. 2021) ..... 14

*Trump* v. *Barbara*,
146 S. Ct. 2438 (2026) ..... 27

*Woodford* v. *Ngo*,
548 U.S. 81 (2006) ..... 30

**Statutes and regulation**

20 U.S.C.:
§ 1400(d)(1)(A) ..... 3, 4
§ 1414 ..... 4
§ 1415 ..... 1, 14
§ 1415(a) ..... 4, 20
§ 1415(b) ..... 4
§ 1415(b)(1) ..... 4
§ 1415(b)(6) ..... 4, 5, 20
§ 1415(f) ..... 21
§ 1415(f)(1)(A) ..... 4, 20
§ 1415(i) ..... 26
§ 1415(i)(2) ..... 5
§ 1415(i)(2)(A) ..... 28
§ 1415(i)(2)(B) ..... 28
§ 1415(*l*) ..... 27, 28

28 U.S.C. § 1254(1) ..... 1

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**

42 U.S.C. § 1983 .....6

34 C.F.R. § 300.511 .....21

**Miscellaneous**

Brian M. Lipshutz, *Bypassing Agency Adjudication,* 103 Wash. U.L. Rev. 933 (2026) .....29

2 Richard J. Pierce, Administrative Law Treatise §15.3 (5th ed. 2010) .....28

Chris Yarrell, *Administrative Exhaustion After* Perez, 60 Harv. C.R.-C.L. L. Rev. 1 (2025) .....11, 16, 18

U.S. Dep't of Educ., Office of Special Educ. Programs, *IDEA Section 618 Data, Part B Child Count* (2024) .....20

## PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 171 F. 4th 255. The opinion of the district court (App., *infra*, 28a-42a) is not published in the Federal Reporter but is available at 2023 WL 4765583.

## JURISDICTION

The judgment of the court of appeals was entered on March 19, 2026. On June 4, 2026, the Chief Justice extended the time for filing a petition for writ of certiorari to and including Sunday, August 16, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

20 U.S.C. § 1415 (Procedural Safeguards) provides in relevant part:

(a) Establishment of procedures

> Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

* * *

(f) Impartial due process hearing

(1) In general

(A) Hearing

Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

* * *

## INTRODUCTION

Petitioners challenge persistent, systemic failures in the due process hearings used to satisfy the requirements of the Individuals with Disabilities Education Act ("IDEA"). Individual IDEA due process hearings are not designed to, and cannot, provide the sort of relief sought by Petitioners. Nevertheless, the majority below held that Petitioners were obligated to proceed through such an individualized hearing before bringing a suit that actually could offer the requested system-wide relief—even though, "[a]s all parties seem to agree, the injunctive and declaratory relief sought by these plaintiffs could not have been granted by any hearing officer." App., *infra*, 25a (Gregory, J., dissenting).

That holding was wrong: the law, and this Court's decisions in closely analogous areas, do not require

such an exercise in futility. The issue involves a recurring matter of enormous practical importance, touching on the application of a law that affects the quality of the education received by innumerable children every year. And the decision below contributes to a wide and growing circuit conflict, departing from holdings of the Second and Third Circuits. As Judge Gregory noted in his dissent below, "the plaintiffs [in cases before the Second and Third Circuits] could have taken the path that the majority prescribes here: tediously wind through hollow administrative proceedings until reaching a court that had authority to grant the requested relief. But the Second and Third Circuits acknowledged the absurdity of requiring plaintiffs to waste the hearing officer's, the state's, and their own time in farcical hearings." App., *infra*, 25a.

If Petitioners were children and families in New York City or Pittsburgh rather than the suburbs of Washington, D.C., their claims would have gone forward. This Court's review is needed to ensure consistent treatment of disabled children and their families nationwide.

## STATEMENT

1. Congress enacted the IDEA in 1975 to "ensure that all children with disabilities have available to them a free appropriate public education ["FAPE"] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). Congress acknowledged that schools were not fully meeting the needs of millions of disabled children because (1) children did not receive appropriate educational services; (2) children were excluded entirely from the public school system and from being educated with their peers; (3) undiagnosed disabilities prevented children from having a

successful educational experience; or (4) a lack of adequate resources within the public school system forced families to find services outside that system. *Id.* § 1400(c)(2).

To remedy this inadequacy, the IDEA provides that each student with a disability is entitled to an individualized education program ("IEP") that is developed jointly by the student's parents, teachers, and educators to ensure that the student receives an appropriate public education that is tailored to the student's individual needs. See 20 U.S.C. § 1414; see also *id.* § 1415(b). Under the IDEA, students with disabilities and their parents are an integral part of the development of the student's IEP. Among other things, the IDEA stipulates that parents must be given an opportunity to obtain an independent educational evaluation of their child; an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child; and the provision of a free appropriate public education to their child. See *id.* § 1415(b)(1).

The IDEA requires that any state educational agency, state agency, or local educational agency ("LEA") receiving assistance under the IDEA establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed certain procedural safeguards with respect to their public education. 20 U.S.C. § 1415(a). Key among these guaranteed procedures is an opportunity for "an impartial due process hearing" relating to the identification, evaluation, or educational placement of the child, or any issue related to the provision of that child's free appropriate public education. *Id.* §§ 1415(b)(6), 1415(f)(1)(A).

If an LEA (*i.e.*, a school district) does not meet its obligations under the IDEA, a parent can file an administrative complaint and receive a due process hearing before an impartial hearing officer. 20 U.S.C. § 1415(b)(6). Before pursuing a claim in state or federal court related to a disabled student's individual education program, the student and their parents must first complete this due process hearing and otherwise exhaust their administrative remedies. *Id.* § 1415(i)(2). When an LEA's IDEA violations relate to individual issues related to a student's IEP, due process hearings provide an appropriate remedy to address these violations, at least when those due process hearings are impartial. Within that system, "[t]he only relief that an IDEA officer can give * * * is relief for the denial of a FAPE." *Fry* v. *Napoleon Cmty. Schs.*, 580 U.S. 154, 166 (2017).

By contrast, when the LEA's or State's IDEA violations are systemic or affect the very hearing procedures designed to protect students under the IDEA, an individual due process hearing is unable to address those issues. In those situations, many courts of appeals and district courts have recognized that direct actions for judicial review are necessary and that an administrative exhaustion requirement is inappropriate. See I.A., *infra*.

2. Petitioners are children and their families in the Fairfax County, Virginia public school system (FCPS). App., *infra*, 4a. Petitioner D.C. has a variety of intellectual disabilities, including autism, attention deficit hyperactivity disorder, and Tourette's syndrome. *Id.* at 20a. Petitioner M.B. similarly has multiple learning disabilities, including attention deficit hyperactivity disorder, dyslexia, and dyscalculia. ECF No. 43, Pls.' First Am. Compl. (FAC) ¶ 29, *D.C.* v. *Fairfax Cnty. Sch. Bd.*, No. 1:22-cv-01070 (Jan. 20, 2023).

For years, their parents (the Chaplicks and Binghams, respectively) attempted to work within the local IDEA administrative process to achieve favorable IEPs to secure their children a FAPE. *Id.* ¶¶ 23-28, 32-36. After many years of struggling within the local education agency, FCPS, they learned through the FOIA process that the due process hearing system had itself been manipulated to favor schools to the detriment of their children. *Id.* ¶ 82. They turned to federal court, where they were joined by Hear Our Voices, Inc. ("HOV"), an organization that seeks to expand and improve the rights of disabled students and their families, and of which the Chaplicks and Binghams are members. *Id.* ¶¶ 38-39.

Petitioners filed suit in the Eastern District of Virginia in 2022 against the Virginia Department of Education ("VDOE") and the Fairfax County School Board ("FCSB"). They asserted constitutional and statutory claims, including under the IDEA and 42 U.S.C. § 1983. App., *infra*, 39a n.3. The gravamen of their claims was a challenge to the way that the state and local IDEA administrative process operates at every stage—from the moment a student is first suspected of having a disability through to when parents seek to secure relief for their child in a due process hearing. See *id.* at 17a-20a (Gregory, J., dissenting). They asserted a host of systemic violations, including the defendants' use of obstruction, delay, and false information in the IEP and evaluation processes; inflation of grades and exaggeration of student progress; manipulation and withholding from parents of evidentiary records used in due process hearings; routine rejection of medical diagnoses and the experts who offer them; curation of a slate of biased due process hearing officers; employment of "monitors" who improperly bias mediations and due process hearings; insertion of

VDOE facilitators into the IEP process to pressure parents to accept school districts' proposed IEPs; and failure to implement an effective and responsive state complaint system. ECF No. 43 (¶¶ 10, 195-222, 351).

To redress these systemic violations, Petitioners sought broad, system-wide relief. App., *infra*, 17a, 20a (Gregory, J., dissenting). Among other things, they sought an injunction requiring Fairfax County to conduct timely evaluations of students suspected of having a disability; stop inflating disabled students' grades to exaggerate their academic progress; stop concealing information about disabled students' progress (and lack thereof) from parents; and stop bullying, threatening, and retaliating against parents who seek to exercise their IDEA rights. ECF No. 43 (FAC ¶ 355). They also sought an injunction requiring VDOE to ensure that Fairfax County (and all other Virginia school districts) comply with the IDEA, including halting statewide the type of procedural violations alleged against Fairfax County. *Id.* ¶ 357. And they requested implementation of a fair and impartial system for due process hearings, including by closely scrutinizing and/or removing hearing officers with a record of always ruling against parents for almost two decades. *Id.* ¶ 359.

3. The district court dismissed Petitioners' claims. App., *infra*, 28a-42a. It held that D.C. and the Chaplicks failed to exhaust their administrative remedies because they did not first seek relief on their system-wide claims through the IDEA administrative process. *Id.* at 38a-40a. At the same time, it faulted M.B. and the Binghams for filing a suit it viewed as "duplicative" of a pending individual case in which they were attempting to recover reimbursement for one year of M.B.'s private-school expenses. *Id.* at 40a-41a. Because of its ruling on the exhaustion and

duplicative litigation issues, it held that HOV lacked associational standing to sue. *Id.* at 32a.

4. A divided court of appeals affirmed. App., *infra*, 1a-27a. The panel majority treated Petitioners' systemic claims as no different than individual claims for exhaustion purposes, reasoning that "[c]onsolidating these individual claims into one lawsuit * * * does not erase the IDEA's exhaustion requirement." *Id.* at 9a. Although the court recognized that, among other things, Petitioners "challenge the competence and neutrality of hearing officers who preside over the due process hearings," it said that those sorts of systemic allegations against the administrative system itself "do not exempt the Chaplicks from the statute's exhaustion requirement." *Id.* at 10a. And the majority rejected Petitioners' allegations about what it termed the "practical futility" of presenting systemic challenges to an individual hearing officer who lacks the power to redress those claims, saying that "cannot excuse their failure to exhaust." *Id.* at 11a.

Building on that holding, the majority also affirmed the dismissal of the other Petitioners' claims. App., *infra*, 12a-17a. It held that the Binghams' systemic claims were duplicative of their other pending litigation specific to the reimbursement of educational expenses for their individual child, M.B. *Id.* at 13a-14a. And because the panel majority determined that the Chaplicks and Binghams were not able to maintain suit as members of HOV, it affirmed the dismissal of HOV's claims for lack of associational standing. *Id.* at 14a-15a.

Judge Gregory dissented. App., *infra*, 17a-27a. He would have reversed the district court's dismissal as to all Petitioners' claims. *Ibid.* In his view, the complaint "implicate[s] the heart of the IDEA's due

process guarantees." *Id.* at 27a. He highlighted the breadth of Petitioners' claims, which "allege that the hearing system, as currently operated, does not provide them a fair opportunity to vindicate their due process rights under the IDEA" and "seek declaratory and injunctive relief which would bring the system into compliance." *Id.* at 24a. That is to say, "[t]hey challenge the adequacy of the very procedures that the majority would force them into, and they request relief that those procedures cannot grant." *Ibid.* After all, he added, "[e]ven if an individual hearing officer were sympathetic to claims of systemic procedural injustice—an impossibility, if the allegations in the complaint are accepted as true—that hearing officer would have no authority to grant the declaratory and injunctive relief that plaintiffs seek." *Id.* at 27a.

The dissenting judge faulted the majority for holding "that this double layer of futility does not qualify these plaintiffs for the long-recognized 'futility' exception to the IDEA's exhaustion requirements." App., *infra*, 27a. Although he recognized that this Court's decision in *Luna Perez* v. *Sturgis Public Schools* "does not control directly" because it involved another statutory claim alongside one under the IDEA, he noted that the Court "embraced th[e] principle" that "a plaintiff need not exhaust the IDEA's administrative processes 'if the remedy a plaintiff seeks is not one IDEA provides.'" *Id.* at 23a (quoting 598 U.S. 142, 150 (2023)). In keeping with that principle, Judge Gregory "would join several of our sister circuits in recognizing that a claim of systemic procedural defects satisfies a futility exception to the IDEA exhaustion requirement, and therefore * * * would reverse the district court and remand for further proceedings." *Id.* at 17a.

Specifically, Judge Gregory noted that other courts of appeals have recognized "that the policies

underlying the exhaustion requirement—to allow agencies to bring its expertise to bear without court interference—are not implicated when a plaintiff challenges the structure of the proceedings, rather than an outcome." *Id.* at 22a. In contrast to the panel majority, he said, these other courts "are careful to distinguish claims of systemic failure, which need not be exhausted through the administrative process, from substantive claims regarding particular programs, which must first be considered through ordinary administrative channels." *Ibid.* Failing to do so, he added, elevates form over substance by requiring "plaintiffs to bring a claim of systemic injustice before the system itself, knowing that even if the system were capable of identifying its own shortcomings, it would be powerless to change them." *Id.* at 23a.

## REASONS FOR GRANTING THE PETITION

Courts of appeals are divided over whether plaintiffs bringing system-wide claims challenging features of an IDEA due process hearing system must first present their claims to due process hearing officers who lack the authority to grant them the relief they seek. Most courts that have considered the issue recognize that requiring administrative exhaustion in those circumstances would be a pointless exercise of futility. That recognition accords with this Court's case law, the text and structure of the IDEA, and background principles of administrative exhaustion.

## I. THE CIRCUITS ARE DIVIDED ON WHETHER IDEA PLAINTIFFS MUST EXHAUST INDIVIDUALIZED ADMINISTRATIVE REMEDIES BEFORE SEEKING REVIEW IN FEDERAL COURT OF SYSTEMIC IDEA VIOLATIONS

Most circuits that have considered the issue have recognized that IDEA plaintiffs seeking system-wide changes to the IDEA process itself should not be required to exhaust administrative remedies—which cannot provide the requested relief—before presenting their claims in federal court. The decision below adopted the minority position, deepening "an enduring circuit split" over the scope of the futility exception to exhaustion under the IDEA. Chris Yarrell, *Administrative Exhaustion After* Perez, 60 Harv. C.R.-C.L. L. Rev. 1, 3 (2025). Recent decisions of the Second and Sixth Circuits have further entrenched that split. The Court should resolve the conflict.

### A. Several Circuits Have Held That IDEA Plaintiffs Need Not Exhaust Administrative Remedies When Doing So Would Be Futile

The Second and Third Circuits have squarely held that claims seeking system-wide relief under the IDEA need not be administratively exhausted. And at least the Fifth, Eighth, Ninth, and Tenth Circuits have also recognized that same proposition in principle.

As Judge Gregory noted below (at App., *infra*, 21a-22a), the Second Circuit has long "excused exhaustion of administrative remedies in cases that included allegations of systemic violations." *J.S. ex rel. N.S.* v. *Attica Cent. Schs.*, 386 F.3d 107, 113 (2d Cir. 2004). In those cases, the court explained, "it would be futile to

complete the administrative review process because the hearing officer had no power to correct the violation." *Ibid.* Thus, in *Heldman ex rel. T.H.* v. *Sobol*, the court held that the plaintiff was not required to exhaust a claim that a "regulation specifying the hearing officer selection procedure violates the mandate of IDEA." 962 F.2d 148, 159 (2d Cir. 1992). Indeed, the court said, the "futility exception is particularly relevant in actions, such as the one at hand, that allege systemic violations of the procedural rights accorded by IDEA." *Id.* at 158-159. "To require a systemic challenge, such as Heldman's, to pursue administrative remedies would not further the purposes of IDEA and would only serve to insulate the state procedures from review—an outcome that would undermine the system Congress selected for the protection of the rights of children with disabilities." *Id.* at 159.[1]

The Second Circuit recently reaffirmed this line of decisions, again holding in an IDEA case that "exhaustion would have been futile insofar as Plaintiffs challenge a blanket policy or practice of general applicability that is contrary to law." *J.M.* v. *New York City Dep't of Educ.*, 161 F. 4th 149, 152 (2d Cir. 2025). The *J.M.* court explained that the "policy-or-practice exception" applied because "the purposes of

[1] The panel majority attempted to distinguish *Heldman* on the basis that the challenge there was to "the legality of a statute or regulation itself," not "the manner in which those standards are implemented in specific cases." App., *infra*, 9a. But the Second Circuit never suggested that it viewed the exception as limited to claims about the legality of statutes or regulations, and its later decisions (discussed *infra*) make clear that it does not. Moreover, Petitioners' challenge is not limited to complaining about inadequacies "in specific cases." *Id.* at 9a. Instead, Petitioners challenge the due process hearing system as a whole. See *id.* at 24a (Gregory, J., dissenting).

exhaustion would not be served by requiring it here." *Id.* at 160. The court concluded that the lawsuit "turns on a question of law that is untethered from the individual circumstances of any individual student, and the resolution of which would not benefit from an administrative record in an individual case or cases." *Ibid.* ("[R]equiring many hundreds of individual hearings would not promote efficiency.").[2]

As then-Judge Sotomayor explained, elaborating on the Second Circuit's long-standing rule, "exhaustion is not necessary if (1) it would be futile to resort to the IDEA's due process procedures; (2) an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law; or (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies." *Murphy* v. *Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002) (Sotomayor, J.); see also *Handberry* v. *Thompson*, 446 F.3d 335, 343 (2d Cir. 2006) ("IDEA exhaustion in the instant case is excused under the futility exception for challenges addressing systemic issues."). That describes this case.

Likewise, the Third Circuit recognizes that when "the administrative process would be unable to grant relief * * * exhaustion of that process is unnecessary." *D.M.* v. *New Jersey Dep't of Educ.*, 801 F.3d 205, 212 (3d Cir. 2015); see also *Beth V. by Yvonne V.* v. *Carroll*,

---

[2] The Second Circuit appeared to be of two minds in *J.M.* regarding whether the systemic exception was a subspecies of the futility exception or a separate exception to exhaustion. Compare *J.M.*, 161 F. 4th at 152 (framing the systemic nature of the challenge as a reason why "exhaustion would have been futile"), with *id.* at 160 (referring to futility as a "distinct exception to the exhaustion requirement"). But that distinction has no bearing on the issue here: whether claims seeking system-wide relief qualify at all for an exception to exhaustion requirements.

87 F.3d 80, 89 (3d Cir. 1996) ("In the IDEA § 1415 context, plaintiffs may * * * be excused from the pursuit of administrative remedies where they allege systemic legal deficiencies and, correspondingly, request system-wide relief that cannot be provided (or even addressed) through the administrative process.").[3] That court has recently elaborated that "[c]laims that *do* meet the systemic exception often challenge policies that concern the administrative dispute-resolution mechanism itself." *T.R.* v. *Sch. Dist. of Philadelphia*, 4 F. 4th 179, 192 (3d Cir. 2021).

Other courts of appeals have similarly recognized that plaintiffs bringing system-wide challenges should not have to engage in the futile act of first exhausting administrative remedies in individualized administrative proceedings that cannot grant them the relief they seek.

In the Tenth Circuit, the "recognized situations that would justify excusing exhaustion" include "where administrative remedies are inadequate or exhaustion would be futile, where plaintiffs assert 'violations of the IDEA's due process provisions,' or where 'an agency has adopted a policy or pursued a practice

---

[3] As with the Second Circuit's decision in *Heldman*, the panel majority below sought to distinguish the Third Circuit's decision in *D.M.* by limiting that case to the precise scenario there, which implicated a regulation. App., *infra*, 9a. But like the Second Circuit in *Heldman*, the *D.M.* court never suggested that its recognition that proceeding through the administrative process would be futile turned on that specific feature. See *D.M.*, 801 F.3d at 212 ("Here, we find that the administrative process would be unable to grant relief, and so exhaustion of that process is unnecessary. Neither IDEA nor the New Jersey administrative code provides administrative means for a parent to challenge an action of a state agency, only to challenge action of a local public-school system.").

of general applicability that is contrary to the law.'" *Jacobs* v. *Salt Lake City Sch. Dist.*, 154 F. 4th 790, 805 n.7 (10th Cir. 2025) (quoting *Ass'n for Cmty. Living* v. *Romer*, 992 F.2d 1040, 1044 (10th Cir. 1993)). In *Romer*, the court declined to excuse exhaustion on the facts, but explained that "[a]dministrative remedies are generally inadequate or futile where plaintiffs allege structural or systemic failure and seek systemwide reforms." 992 F.2d at 1044.[4]

The Ninth Circuit has likewise recognized that an exhaustion exception exists for systematic challenges, framing it as related to the exceptions for futility and inadequacy. See *Hawai'i Disability Rts. Ctr.* v. *Kishimoto*, 122 F. 4th 353, 367 (9th Cir. 2024) ("A claim is systemic, and therefore entitled to the general applicability exception, if it concerns 'the integrity or reliability of the IDEA dispute resolution procedures themselves, or requires restructuring the education system itself in order to comply with the dictates of the Act.'"). When a violation "rise[s] to a truly systemic level in the sense that the IDEA's basic goals are threatened on a system-wide basis," plaintiffs need not exhaust their administrative remedies. *Hoeft* v. *Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1305 (9th Cir. 1992); see also *Everett H.* v. *Dry Creek Joint Elementary Sch. Dist.*, 2016 WL 5661775, at *10 (E.D. Cal. Sept. 30, 2016) (holding that challenges to "overall policies and practices" "go beyond the scope of student-specific due process charges over which [a

[4] The panel majority barely discusses *Romer*, noting only that the court enforced an exhaustion requirement and not mentioning that court's acknowledgment of a systemic exception. See App., *infra*, 9a-10a.

hearing officer] could preside").[5] The Eighth Circuit has also recognized the existence of an exception to administrative exhaustion under the IDEA where a plaintiff challenges "the establishment of an agency policy or practice of general applicability that is contrary to law." *Blackmon ex rel. Blackmon* v. *Springfield R-XII Sch. Dist.*, 198 F.3d 648, 656 (8th Cir. 1999); see also *J.M.* v. *Francis Howell Sch. Dist.*, 850 F.3d 944, 950 (8th Cir. 2017) (listing this as one of the "exceptions to the exhaustion requirement," alongside futility); *J.B. ex rel. Bailey* v. *Avilla R-XIII Sch. Dist.*, 721 F.3d 588, 594 (8th Cir. 2013) (same).

Finally, the Fifth Circuit appears to have recognized at least some form of a systemic-violation exception, albeit in an unpublished opinion. See *Papania-Jones* v. *Dupree*, 275 F. App'x 301, 304 (5th Cir. 2008) (favorably citing the Second Circuit's precedent holding that "exhaustion may be bypassed in situations with *systematic* violations that a hearing officer would have no power to correct").

In sum, several circuits "have recognized that IDEA claims raising 'systemic' or 'structural' allegations may not need to be administratively exhausted." Yarrell, *supra*, at 5 (citation omitted).

---

[5] The panel majority does not address any of this Ninth Circuit case law. The one Ninth Circuit decision it does cite recognized that "a claim may qualify for one of the exceptions that we have recognized to the IDEA's exhaustion requirement," including for futility and where "it is improbable that adequate relief can be obtained by pursuing administrative remedies (e.g. the hearing officer lacks the authority to grant the relief sought)." See App., *infra*, 9a; *Student A ex rel. Parent A* v. *S.F. Unified Sch. Dist.*, 9 F. 4th 1079, 1083 (9th Cir. 2021).

### B. Other Circuits Have Imposed An Exhaustion Requirement In Like Circumstances

In the present case, the Fourth Circuit broke from the above decisions and held that the futility exception to exhaustion does not extend to claims seeking system-wide relief like the ones here. App., *infra*, 11a (holding that "the Chaplicks' practical futility argument cannot excuse their failure to exhaust"). Indeed, as of that time, "though they have formulated it with slight variation, every circuit to consider the question ha[d] indicated that plaintiffs need not exhaust the IDEA procedures when they allege systemic failure within the procedures themselves, particularly when the IDEA procedures cannot provide the requested relief." *Id.* at 23a (Gregory, J., dissenting).

Since then, however, the Sixth Circuit has taken the side of the Fourth Circuit panel majority here, holding squarely that "there is no 'systemic violations' exception to the IDEA's procedural requirements." *Alzandani* v. *Hamtramck Pub. Schs.*, 176 F. 4th 455, 462 (6th Cir. 2026). Although that court suggested that contrary precedent from some other circuits was factually distinguishable from the unusual facts there before it (*id.* at 464-465)—which the Sixth Circuit understood to involve a challenge to a school district's "understaffing or underfunding" (*id.* at 466), not the persistent use of unfair processes in the conduct of IDEA hearings, as in this case—there unquestionably is significant tension between its doctrinal approach and that taken by the Second, Third, and other circuits. Indeed, the Sixth Circuit explicitly acknowledged that tension with the Second Circuit. *Id.* at 465 (noting that "the Second Circuit * * * has identified and applied a systemic violations exception * * * [that] excuses parents from complying with the exhaustion requirement when a school district or educational

agency has implemented a district-wide or state-wide policy and individual fact-finding would not benefit the court's decision-making process").[6] Regardless of whether some of the results reached may be reconcilable on their particular facts, the doctrinal tests applied by the different circuits are plainly incompatible. See Yarrell, *supra*, at 6 (noting the confusion over "when futility's systemic violation exception to exhaustion must be applied").

Other circuits have yet to weigh in. The First Circuit has so far declined to address whether there is a "systemic exception to the IDEA's exhaustion requirement." *Roe* v. *Healey*, 78 F. 4th 11, 26 (1st Cir. 2023). In doing so, however, it noted that "[o]ther circuits have defined" just such an exception. *Parent/Pro. Advoc. League* v. *City of Springfield*, 934 F.3d 13, 27 (1st Cir. 2019).

The D.C. Circuit has likewise not yet taken a position. District courts in D.C., though, have long recognized a futility exception of sufficient breadth to encompass systemic-violation claims like those rejected in the Fourth and Sixth Circuits. See *Robertson* v. *District of Columbia*, 762 F. Supp. 3d 34, 47 (D.D.C. 2025)

---

[6] Concurring in the judgment, Judge Ritz disagreed with the analysis of the Sixth Circuit majority, explaining not only that prior Sixth Circuit decisions recognized a futility exception, but also that it "makes sense, as many circuits have recognized, to excuse claims [from the IDEA administrative exhaustion requirement] where the administrative hearing process is defective or 'inadequate,' * * * in some way that 'implicates the integrity or reliability of the IDEA dispute resolution procedures themselves.'" *Alzandani*, 176 F. 4th at 468. (Ritz, J., concurring in the judgment) (citations omitted); see also, *e.g.*, *R.T.* v. *Bradley Cnty. Bd. of Educ.*, 2026 WL 412102, at *6 (E.D. Tenn. Feb. 13, 2026) ("Although other circuits have adopted this [systemic violations] exception, the Sixth Circuit has never expressly done so.").

(observing that, although "this Circuit has not recognized a 'systemic violation' exception to the IDEA's exhaustion requirement," such claims can still "be addressed under the exceptions for futility and inadequacy"). Indeed, that district court has recognized that "the administrative remedies provided by the IDEA only address individual relief, which is 'not sufficient to right the wrong' of systemic issues." *Id.* at 54-55 (quoting *Randolph-Sheppard Vendors of Am.* v. *Weinberger*, 795 F.2d 90, 107 (D.C. Cir. 1986)). Thus, "exhaustion would be both futile and inadequate" when the claims concern "systemic failures." *Id.* at 55; accord *Easter* v. *D.C.*, 128 F. Supp. 3d 173, 178 (D.D.C. 2015) (holding that a "systemic violation of the IDEA" was "precisely the type of issue that cannot be addressed on a student-by-student basis during Due Process Hearings, but is better addressed by seeking injunctive relief in federal court").[7]

In sum, two circuits have held and at least six circuits have recognized that exhaustion should not be required for claims seeking system-wide relief under the IDEA, while two circuits (including the court below), both in divided decisions, have held otherwise. The Court should resolve this persistent and growing split.

---

[7] See also, *e.g.*, *DL* v. *District of Columbia*, 450 F. Supp. 2d 11, 17 (D.D.C. 2006) (stating that "[e]xhaustion is excused on grounds of futility or inadequacy of administrative remedies" when "an agency has adopted a policy or pursued a practice of general applicability that is contrary to the law" (quoting *Murphy* v. *Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002))); *Douglass* v. *District of Columbia*, 750 F. Supp. 2d 54, 60-61 (D.D.C. 2010) (similar).

## II. THIS CASE PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE

As suggested by the frequency with which the issue presented here has been litigated in the courts of appeals, the question whether plaintiffs may obtain immediate court review of systemic IDEA failures is a recurring one of tremendous practical importance. The answer to that question determined the outcome below.

### A. The Question Presented Here Holds Great Importance For Disabled Children And Their Families

The practice in Virginia powerfully demonstrates the ways in which systemic departures from the IDEA's procedures are harming disabled children and their families. As of 2024, approximately 8.2 million students nationwide were disabled.[8] Disabled students across the country depend on the procedural safeguards in the IDEA, in particular its provision of an impartial due process hearing to resolve disputes with individual schools and boards. See 20 U.S.C. §§ 1415(a), 1415(b)(6), 1415(f)(1)(A). The decisions from courts of appeals across the country reveal the nationally pervasive need for effective and timely remedies when that hearing system fails. But the experience in Virginia provides a clear demonstration of how school districts can fail their disabled students on a systemic basis, graphically illustrating how such

[8] Specifically, 8,194,424 students ages three to 21 were classified in 2024 as having disabilities and served under the IDEA. U.S. Dep't of Educ., Office of Special Educ. Programs, *IDEA Section 618 Data, Part B Child Count* (2024), available at https://www.ed.gov/data/idea-section-618-data.

violations occur and the importance of effective and timely review of the violations.

Like many other cases where courts recognized a systemic exception to the exhaustion requirement, this case involves egregious IDEA violations that substantially undermine the due process hearing system itself. Among other things, Petitioners allege that Virginia LEAs and the VDOE have improperly restricted access to evaluations under the IDEA, preventing many students from receiving any IDEA services. ECF No. 43 (FAC ¶¶ 4-5, 192-205). Petitioners allege manipulation of records to prevent the detection and proof of IDEA violations. *Id.* ¶¶ 206-222. They allege that school officials ignored and effectively buried hundreds of complaints of IDEA violations. *Id.* ¶¶ 178-186 (citing the U.S. Department of Education's finding that VDOE's state complaint system had received 1843 complaint communications, but had resolved only 29 of them.). They allege use of VDOE "monitors" or "evaluators" to manipulate IDEA mediations and due process hearings. *Id.* ¶¶ 11-12, 158-159, 165-166. And they allege cultivation of a group of hearing officers who never (or almost never) rule in favor of parents. *Id.* ¶¶ 8, 83-92, 176-177.

Though the violations are pervasive, the most pernicious effects manifest in the lack of impartiality of hearing officers in due process hearings, one of the most critical protections for disabled children under the IDEA. See 20 U.S.C. § 1415(f); 34 C.F.R. § 300.511. The statistics relating to hearing officer rulings in Virginia show a remarkably one-sided process. From 2010 to 2021 in the densely populated area of Northern Virginia containing some of the largest school districts in the country, only three of the 395 due process cases filed—less than 1%—resulted in a favorable ruling granting the relief requested. ECF

No. 43 (FAC ¶¶ 83-86). This included the time period in which the Chaplicks brought and lost their 2015 due process hearing. *Id.* ¶¶ 27-28.[9] See also *id.*, Ex. C (of the 578 due process cases filed in Northern Virginia from 2003-2021, only seven resulted in a ruling granting the relief requested by a disabled student or the student's parent). The numbers were similar elsewhere in Virginia. *Id.* ¶ 89, Ex. C (during this 19-year period, Virginia hearing officers ruled fully in favor of a disabled child in just 1.8% of the cases, 25 of 1,391 cases filed statewide).

These outcomes occurred before nearly all hearing officers in Virginia. Out of the 22 hearing officers eligible to serve from 2010 through 2021, only four ruled in favor of a disabled student or family more than once. ECF No. 43 (FAC ¶ 86). Nearly two-thirds of all eligible hearing officers in Virginia *never* ruled fully in favor of a disabled student or family in a due process hearing from 2003 to 2021. *Id.* ¶¶ 8, 85, 87. In Northern Virginia, based on the most recent data produced by VDOE, from 2010 through 2021 the vast majority of hearing officers (10 out of 12) *never* ruled in favor of a disabled child. *Id.* ¶¶ 8, 83-92. The same core group of 22 hearing officers responsible for these decisions was virtually unchanged over this 19-year period. See *id.* ¶ 90, Exs. A-C. For at least that time period, these officers were influenced by VDOE representatives in *ex parte* communications to rule against parents (*id.* ¶¶ 11-12, 158-159, 165-166) and were removed when they ruled against an LEA. *Id.* ¶¶ 159, 176-177.

---

[9] The Chaplicks learned in 2021, six years later, that their 2015 hearing officer had never once ruled in favor of a parent of a disabled child in a due process hearing. ECF No. 43 (FAC ¶¶ 123-126).

Aside from a flawed hearing officer system, Petitioners allege that Virginia LEAs and VDOE manipulate and conceal student records and other evidence to ensure that students appear to be succeeding or making progress when they are not. The complaint identifies policies, practices, and training in Virginia LEAs to inflate grades (ECF No. 43 (FAC ¶¶ 151, 207-210)), to misrepresent academic progress (*id.* ¶¶ 152, 206-210), and to avoid documenting failures to comply with the IDEA. *Id.* ¶¶ 218-219. These practices make it extremely difficult to challenge the LEAs' actions because the manipulated documents provide a counterfactual record in favor of the LEAs. This manipulation of student records often is not discovered at all and, if it is discovered, often is discovered too late to remedy.

### B. These Systemic IDEA Violations Cannot Be Resolved Through An IDEA Due Process Hearing

The broad, system-wide violations of the IDEA alleged by Petitioners simply cannot be addressed through individual due process hearings, which do not "provide[] administrative means for a parent to challenge an action of a state agency." *D.M.*, 801 F.3d at 212. Nothing in the IDEA itself, or any other federal or state law, confers that broad power on hearing officers. In fact, as Judge Gregory noted below, there was no dispute that "the injunctive and declaratory relief sought by these plaintiffs could not have been granted by any hearing officer." App., *infra*, 25a. And even if it were legally permissible for a hearing officer to order a state agency to re-write its regulations and re-vamp its hearing officer system, it is not reasonably possible to obtain such an order through the Virginia due process system. ECF No. 43 (FAC ¶¶ 187-191).

This case therefore squarely presents the question whether plaintiffs must use individualized due process hearings, provided to address issues with an individual student's education plan, to resolve systemic IDEA violations. As Judge Gregory summarized the issue:

> [T]he IDEA procedures cannot provide the requested relief. The alternative is to require plaintiffs to bring a claim of systemic injustice before the system itself, knowing that even if the system were capable of identifying its own shortcomings, it would be powerless to change them. But exhaustion does not mandate impotent procedures.

App., *infra*, 23a.

The futility issue, as it relates to systemic claims like those presented here, was squarely addressed below. The exhaustion requirement was the central ground on which the district court based its dismissal of the Chaplick Petitioners' claims, and it affected that court's dismissal of the other Petitioners' claims. App., *infra*, 32a, 38a-41a. The futility/systemic issue also was the primary basis for the majority opinion in the Fourth Circuit and the only ground on which that court rejected the Chaplicks' claims. App., *infra*, 6a-12a. As the dissent pointed out, a contrary holding on that issue would have allowed all Petitioners' claims to proceed. App., *infra*, 17a, 27a. This case is therefore a suitable vehicle for resolving the issue presented.[10]

---

[10] In affirming dismissal of the Binghams' claim, the panel majority collapsed their systemic challenge into another case where they sought individualized monetary relief and IEP adjustment. App., *infra*, 13a-14a; see *M.B.* v. *Fairfax Cnty. Sch. Bd.*, 660 F.

## III. THE FOURTH CIRCUIT'S RULE IS WRONG

Finally, the panel majority's decision to require exhaustion is wrong. It cannot be squared with this Court's decisions recognizing the limitations on relief that individualized IDEA proceedings can provide, with the text and structure of the IDEA itself, or with background principles of administrative exhaustion. Because it would be futile to bring claims seeking system-wide relief in an individualized IDEA proceeding, parents should not be required to do so.

1. In *Luna Perez*, this Court held that exhaustion may not be required when the administrative process is unable to provide the relief requested. 598 U.S. at 150. Although *Luna Perez* concerned a companion claim under the Americans with Disabilities Act and, by its terms, left open application of a futility principle under the IDEA (see *id.* at 151), its reasoning cannot fairly be reconciled with the panel majority's approach in this case. As the dissenting judge below noted, just "[a]s in *Luna Perez*, the question is 'whether a plaintiff

---

Supp. 3d 508, 513 (E.D. Va. 2023) (seeking "reimbursement for tuition costs" and funds for "private day facility going forward"). Judge Gregory correctly recognized the difference, noting that "[i]f the Binghams were to prevail on their claims in [this] case, it would not undo M.B.'s IEP." App., *infra*, 26a (Gregory, J., dissenting). As for Petitioner HOV, the panel majority held that HOV lacked standing because its members did not first exhaust a futile due process hearing procedure. App., *infra*, 14a-15a. That supposed standing problem falls away if the individual Petitioners—members of HOV—did not need to exhaust their systemic claims. See *id.* at 27a (Gregory, J., dissenting) (concluding that "HOV had standing to sue on behalf of its members, which include the Chaplicks and the Binghams"). If the Court reverses the Fourth Circuit's ruling on the exhaustion issue, it should remand the case for reconsideration of the duplicative litigation and HOV standing holdings, in light of its reversal of the exhaustion issue.

must exhaust administrative processes under IDEA that cannot supply what he seeks.'" App., *infra*, 24a (quoting *Luna Perez*, 598 U.S. at 150). The answer should be the same here as it was there.

In this case, as in *Luna Perez*, Petitioners seek remedies beyond securing any one child's FAPE. They sought wide-ranging injunctive relief to resolve system-wide IDEA and constitutional violations, presenting constitutional due process and equal protection claims. See pp. 6-7, *supra*. And as in *Luna Perez*, Virginia's IDEA administrative processes cannot supply this relief. As noted above, those processes are designed solely to address disputes between individual students and local educational agencies with respect to individualized education programs. 20 U.S.C. § 1415(i).

Although *Luna Perez* formally left open the question "whether IDEA's exhaustion requirement is susceptible to a judge-made futility exception" because it was unnecessary to reach the issue in that case (598 U.S. at 151), this Court has twice recognized that the IDEA's predecessor statute, the Education for All Handicapped Children Act, encompassed a futility exception to exhaustion. See *Honig* v. *Doe*, 484 U.S. 305, 327 (1988) ("[P]arents may bypass the administrative process where exhaustion would be futile or inadequate."); *Smith* v. *Robinson*, 468 U.S. 992, 1014 n.17, 1019 nn.22-23 (1984) (exhaustion excused "if pursuing those remedies would be futile or inadequate"); see also *A.F. ex rel. Christine B.* v. *Espanola Pub. Schs.*, 801 F.3d 1245, 1249 (10th Cir. 2015) (Gorsuch, J.) (citing *Honig* for the proposition that "IDEA's

administrative exhaustion requirement is subject to a traditional futility exception").[11]

Since *Honig*, Congress has reenacted the relevant portions of the statute without material change. If Congress had wanted to overturn *Honig* and eliminate any futility exception, it "presumably would not have repeated the precise language" it had previously used. *Trump* v. *Barbara*, 146 S. Ct. 2438, 2470 (2026) (Kavanaugh, J., concurring in judgment); see, *e.g.*, *Georgia* v. *Public.Resource.Org, Inc.*, 590 U.S. 255, 270 (2020).

Imposing an exhaustion requirement here would be a paradigmatic example of futility. As this Court has recognized, "[t]he only relief that an IDEA officer can give * * *is relief for the denial of a FAPE." *Fry*, 580 U.S. at 166; *id.* at 158 ("exhaustion is not necessary when the gravamen of the plaintiff's suit is something other than the denial of * * * a 'free appropriate public education'") (quoting 20 U.S.C. § 1412(a)(1)(A)). And where an "administrative remedy furnishes no effective remedy at all," it is "improper to impose an exhaustion requirement." *McCarthy* v. *Madigan*, 503 U.S. 140, 156 (1992) (Rehnquist, C.J., concurring in judgment).

2. Not requiring exhaustion for system-wide claims best accords with the text and structure of the IDEA. The administrative process under the IDEA is limited to determining whether a child received a

---

[11] Although *Smith* predated the addition of § 1415(*l*), it would make little sense to read a statutory amendment designed to *expand* remedies instead to limit them. See *Fry*, 580 U.S. at 161 (noting that Congress's 1986 amendment "overturned *Smith*'s preclusion of non-IDEA claims," allowing such claims to proceed if properly exhausted).

FAPE, and there is no administrative means to challenge state-agency action.

The IDEA contains only one explicit reference to exhaustion, which concerns statutory relief under statutes *other* than the IDEA. It requires that certain non-IDEA claims be exhausted "to the same extent" as IDEA claims, while not specifying that extent. 20 U.S.C. § 1415(*l*). The text and structure of the IDEA therefore imply an exhaustion requirement for IDEA claims, but say nothing about the scope of that requirement. Instead, the IDEA describes a series of administrative processes to complete before bringing a civil action seeking a FAPE. See *id.* § 1415(i)(2)(A), (B). Logically, then, any exhaustion requirement should be limited to an individual child's entitlement to a FAPE.

3. There is no reason to treat the IDEA's implied exhaustion requirements as inflexible and categorical. To the contrary, the Court has recognized that implied exhaustion requirements "might be best read to give judges the leeway to create exceptions or to * * * incorporate standard administrative-law exceptions." *Ross* v. *Blake*, 578 U.S. 632, 642 n.2 (2016). And it is well established that "the common law duty to exhaust administrative remedies is flexible and subject to pragmatic exceptions." 2 Richard J. Pierce, Administrative Law Treatise § 15.3 (5th ed. 2010). Accordingly, courts must look to "general administrative-law principles" that form the background against which Congress acted. *Mullin* v. *Doe*, 146 S. Ct. 2121, 2136 (2026); cf. *Biden* v. *Nebraska*, 600 U.S. 477, 511-512 (2023) (Barrett, J., concurring) ("Background legal conventions * * * are part of the statute's context."); *Staples* v. *United States*, 511 U.S. 600, 605 (1994) (discussing how statutes are frequently construed "in light of the background rules of the common law").

Under background principles of exhaustion, the IDEA should not be read to require plaintiffs seeking non-individualized relief first to engage in futile exhaustion of individualized procedures. For one, "this Court has consistently recognized a futility exception to exhaustion requirements" because "[i]t makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested." *Carr* v. *Saul*, 593 U.S. 83, 93 (2021); see also *McCarthy*, 503 U.S. at 146-149 (discussing the basis of the futility exception). That is precisely the situation here. The panel majority would have Petitioners go through an administrative process that is powerless to grant the relief they seek.

For another, due process hearing officers acting under the IDEA are statutorily charged with following administrative procedures designed to ensure an individual FAPE, not to address inadequacies in the administrative structure itself. Requiring exhaustion is a pointless exercise when the "challenge is entirely collateral" to the sorts of claims that are resolvable through the available administrative process. *Mathews* v. *Eldridge*, 424 U.S. 319, 330 (1976); cf. *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 195-196 (2023) (holding that claims about agency structure can be brought in district court because they "are collateral to any decisions the Commissions could make in individual enforcement proceedings").[12] Because Petitioners here challenge "systemwide" practices, "[t]he

[12] Although *Axon Enterprise* concerned statutory preclusion of judicial review, the factors the Court applied essentially amount to "a judge-made exhaustion requirement." 598 U.S. at 209 n.2 (Gorsuch, J., concurring in judgment); see also Brian M. Lipshutz, *Bypassing Agency Adjudication*, 103 Wash. U. L. Rev. 933, 946-947 & n.103 (2026) (discussing the close relationship between the *Thunder Basin* doctrine and exhaustion).

claims in this lawsuit are collateral to" those that could have been raised administratively. *Bowen* v. *City of New York*, 476 U.S. 467, 483-485 (1986). Accordingly, "[t]he purposes of exhaustion would not be served by requiring these class members to exhaust administrative remedies." *Id.* at 484. When the "gravamen" of a suit is not seeking "redress for a school's failure to provide a FAPE" to individual students, exhaustion is not required. *Fry*, 580 U.S. at 170.

Unsurprisingly, the purposes that administrative exhaustion is designed to serve are simply not implicated when plaintiffs seek system-wide relief under the IDEA. For instance, exhaustion requirements recognize that "an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *McCarthy*, 503 U.S. at 145. But that rationale is inapplicable when the claims at issue cannot be resolved by the agency. And the rationale from *Woodford* v. *Ngo*, 548 U.S. 81, 89 (2006), that "exhaustion promotes efficiency" in the sense that "[c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court," does not apply here. There is nothing efficient about going through a proceeding that cannot grant the requested relief. That is particularly true when those ineffective proceedings likely will cost individual parents tens of thousands of dollars. "Such a vain exercise will rarely protect administrative agency authority or promote judicial efficiency." *Carr*, 593 U.S. at 93 (citation modified).

* * *

As Judge Gregory noted, "exhaustion does not mandate impotent procedures." App., *infra*, 23a (Gregory, J., dissenting). That straightforward

principle should have resolved this case, as it has in other circuits. The Fourth Circuit erred in holding otherwise. This Court should resolve the division of authority, and answer the question left open in *Luna Perez*, by granting review and holding that claims seeking system-wide relief under the IDEA are not barred by failure to exhaust administrative remedies.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WILLIAM R.H. MERRILL
MICHAEL ADAMSON
*Susman Godfrey LLP*
*1000 Louisiana Street*
*Suite 5100*
*Houston, TX 77002*
*(713) 653-7865*

ADERSON FRANCOIS
*Georgetown Law*
*Civil Rights Law Clinic*
*600 New Jersey Avenue, NW*
*Washington, DC 20001*
*(202) 662-9000*

CHARLES A. ROTHFELD
*Counsel of Record*
ALAN M. GRIMALDI
ORAL D. POTTINGER
ERIC A. WHITE
*Mayer Brown LLP*
*1999 K Street, NW*
*Washington, DC 20006*
*(202) 263-3000*
*crothfeld@mayerbrown.com*

R. BRAXTON HILL
*Kaleo Legal PLLC*
*1717 E Cary Street*
*Richmond, VA 23223*
*(804) 363-8557*

*Counsel for Petitioners*

AUGUST 2026