No. 10-886

IN THE

Supreme Court of the United States

COMPTON UNIFIED SCHOOL DISTRICT,
Petitioner,
v.

STARVENIA ADDISON AND GLORIA ALLEN,
Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

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March 11, 2011

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INTRODUCTION

Starvenia Addison's tenth-grade teachers reported that her work was "gibberish and incomprehensible in all areas of study," that she was "like a stick of furniture" in class, that she colored with crayons and played with dolls at her desk during lessons, and that she urinated on herself. Her math and reading were at the fourth-grade level. She failed every one of her academic courses.

But when Compton Unified School District's own third-party mental-health counselor recommended that Starvenia be assessed for special education services, the District refused to do so. A state administrative law judge found that the District violated the "child-find" requirement of the Individuals with Disabilities Education Act (IDEA), which obliges states to ensure that "all children with disabilities … who are in need of special education services … are identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A).

The District does not challenge the merits of that finding. Instead, it urges this Court to consider a novel jurisdictional argument that has not been adopted by any court in the three decades since the IDEA's enactment. Although the IDEA requires states to entertain administrative complaints "with respect to *any matter* relating to the identification, evaluation, or educational placement of the child," 20 U.S.C. § 1415(b)(6)(A), the District proposes limiting the jurisdiction of state administrative agencies to cases in which a school district affirmatively refuses to act on a specific proposal.

Because no court in the nation has adopted the District's argument, because it would make no difference on the facts of this case, and because it is wrong as a matter of statutory interpretation, certiorari should be denied.

STATEMENT

1. Facts. Starvenia Addison began as a student in the Compton Unified School District in the fourth grade. Pet. App. 58. By the end of her eighth-grade year, standardized testing revealed that her math and reading ability remained at a fourth-grade level. *Id.* at 59. The District nevertheless allowed her to graduate from middle school to high school.

In her first year of high school, Starvenia received failing grades in several academic subjects and standardized test scores in the first percentile for both math and reading. *Id.* at 59-60. Her guidance counselor, who was responsible for more than eight hundred students, conceded that he "did not pay a lot of attention" to Starvenia but believed that "a ninth grader's performance at a fourth-grade level in high school was not atypical" and did not indicate a need for special education services. *Id.* at 60.

By the fall of her tenth-grade year, it had become apparent that Starvenia was experiencing severe mental or emotional disability. Her teachers reported that she was "emotionally withdrawn" and "like a stick of furniture" during class. *Id.* at 62. She "urinated on herself in class, stood outside the classroom, and would not enter the room even with coaxing." *Id.* When she did enter the classroom, she would play with dolls or color with crayons at her desk. *Id.*

Starvenia's teachers reported that her work was "gibberish and incomprehensible in all areas of study including reading, writing, listening, and speaking." *Id.* Several teachers reported their concerns to the guidance counselor. *Id.* at 62. Starvenia failed every academic subject that year—a development that the guidance

counselor admitted should have been "a major red flag." *Id.* at 63.

Although the District was aware of all of these problems, the only action it took was to refer Starvenia to a third-party mental health counselor. *Id.* at 64. The counselor reported that Starvenia suffered from a range of emotional problems and recommended that the District provide her with individual tutoring and assess whether she should receive special education services. *Id.* The District, however, declined to follow the counselor's recommendation, took no action to address Starvenia's problems, and instead promoted her to the eleventh grade. *Id.* at 65.

2. Proceedings Below. At the start of Starvenia's eleventh-grade year, her mother, Gloria Allen, sent a letter to the District explicitly requesting an educational assessment and Individualized Education Program (IEP) meeting. In January 2005, the District determined that Starvenia was eligible for special-education services. Starvenia and her mother then filed an administrative claim under the IDEA seeking educational services to compensate for the District's failure to identify Starvenia's needs and provide her with an appropriate public education prior to January 2005.

The state administrative law judge (ALJ) made detailed and extensive factual findings. *Id.* at 58-78. The ALJ concluded that although the District's failure to act during Starvenia's ninth-grade year could be excused, the District clearly knew or had reason to know by the fall of her tenth-grade year that she needed to be evaluated. The ALJ concluded that Starvenia's "loss of educational opportunity has been substantial" and ordered the District to provide her with compensatory education including individual tutoring. *Id.* at 97-100.

In response, the District sued Starvenia and her mother in federal district court, challenging the ALJ's jurisdiction. The court dismissed the case on the pleadings, concluding that the District's jurisdictional argument "conflicts with the clear language of the IDEA and federal regulations, is not supported by applicable case law, and would lead to the illogical and unjust conclusion that the Student and her mother have a recognized right under the IDEA but no [remedy for] violations of that right." *Id.* at 42.

3. Decision Below. The court of appeals affirmed, holding that the IDEA expressly requires states to afford parties an opportunity to present administrative complaints "with respect to *any matter* relating to the identification, evaluation, or educational placement of the child." 20 U.S.C. § 1415(b)(6)(A) (emphasis added).

The District argued on appeal that the broad reach of § 1415(b)(6)(A) is limited by the IDEA's written-notice requirement, § 1415(b)(3), which requires schools to give prior written notice to parents whenever the school "proposes to initiate or change" or "refuses to initiate or change . . . the identification, evaluation, or educational placement of the child," as well as the IDEA's pleading provision, § 1415(b)(7), which requires a complainant to include "a description of the nature of the problem of the child relating to such proposed initiation or change." The District argued that there is no right to bring an administrative claim unless the notice provisions of § 1415(b)(3) apply to the claim. It further argued that it had merely ignored Starvenia's disabilities but had not affirmatively "refused" to act, and that the notice provisions therefore did not apply to this case.

The court of appeals rejected both arguments. *Id.* at 4-9. *First,* the court held that nothing in the notice

requirement of § 1415(b)(3) or the pleading requirement of § 1415(b)(7) cabins the "broad jurisdictional mandate" of § 1415(b)(6)(A). *Id.* at 6-7. *Second*, the court held that, even if the District were correct that only claims for "refusals" to initiate a change are cognizable, the claim in this case would nevertheless be cognizable because the District's "deliberate indifference" and "willful inaction in the face of numerous red flags" would qualify as a "refusal" to initiate Starvenia's identification, evaluation, or educational placement. *Id.* at 7-8 n.2

Judge Randy N. Smith dissented, concluding that the question whether administrative jurisdiction lies over an IDEA claim is ultimately a matter of state law. *Id.* at 9-22. Although § 1415(b)(6)(A) requires states to establish procedures that provide an opportunity for parties to present a complaint on "any matter" relating to educational placement, the California Education Code provision implementing that requirement, on Judge Smith's reading, allows parties to initiate due process hearings only under circumstances where the school has refused to initiate a child's identification, evaluation, or placement. *Id.* at 13 (citing Cal. Educ. Code § 56501(a)(2)). Judge Smith also concluded, in the alternative, that "the record before this panel is not sufficiently developed so that we should render judgment in this case" because the record did not contain the District's local plan, which would indicate whether the District has any procedures designed to comply with the IDEA's child-find requirement. *Id.* at 18-22.

The District sought rehearing and rehearing en banc. No judge requested a vote on whether to rehear the case en banc and the petition was denied. Pet. App. 104.

REASONS FOR DENYING THE WRIT

I. There Is No Conflict Over the Question Presented, Which Is Neither Important Nor Recurring.

As the District's petition candidly admits, there is no conflict among the lower courts over the question presented. Pet. 29-30. The District concedes that "it is extremely unlikely" that a conflict will develop and that the District "is unaware of any other district court or circuit court of appeals considering the issue." Pet. 30. The decision below is the only court of appeals decision identified in the petition as having ever addressed the question presented in the three-and-a-half decades since the IDEA's enactment. And the petition does not identify a single ruling, from any level of the state or federal judiciary, adopting the jurisdictional argument that it urges this Court to consider. These facts, standing alone, demonstrate that the question presented is neither sufficiently important nor recurring to justify review by this Court.

Nonetheless, the District confidently predicts that the decision below will "profound[ly] impact" "millions of students, parents, and taxpayers," and open the floodgates to sweeping claims of "educational malpractice." Pet. 28-29. But the petition offers nothing to back up this hyperbole. Although it has been a year since the decision below was issued, there is no evidence that it has had any impact beyond this case. A Westlaw search reveals no ruling from any court citing its holding on the question presented.

In fact, the decision below is fully consistent with the status quo that has prevailed for more than three decades under the IDEA. Numerous lower courts have

either held or assumed that (a) state administrative agencies have jurisdiction to hear claims concerning school districts' failure to comply with their child-find obligations under the IDEA and (b) the proper standard for adjudicating such claims is whether a school district knew or had reason to know that the student has a disability that would be addressed by special education services.[1]

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[1] *See, e.g., Regional Sch. Dist. No. 9 Bd. of Educ. v. Mr. and Mrs. M.*, 2009 WL 2514064, at *8 (D. Conn. 2009) ("The [child-find] duty is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability."); *Jamie S. v. Milwaukee Pub. Sch.*, 2009 WL 1615520 (E.D. Wis. 2009) (awarding compensatory education to members of a class for systemic delays in identification and evaluation of disabled students); *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 25 (D.D.C. 2008) ("[T]he Child Find obligation extends to all children *suspected* of having a disability, not merely to those students who are ultimately determined to be disabled. … This statutory mandate is clear."); *Dist. of Columbia v. Abramson*, 493 F. Supp. 2d 80, 86-87 (D.D.C. 2007) (failure to complete an evaluation constituted denial of appropriate public education, which could result in reimbursement "from the date that the eligibility determination should have been made"); *Miller ex rel. Miller v. San Mateo-Foster City Unified Sch. Dist.*, 318 F. Supp. 2d 851, 862 (N.D. Cal. 2004) (affirming administrative ruling that school violated child-find obligations); *Lindsley ex rel. Kolodziejczack v. Girard Sch. Dist.*, 213 F. Supp. 2d 523, 536-537 (W.D. Pa. 2002) ("Plaintiff has the right to request an administrative hearing concerning the Defendant's compliance with its child find obligations, and the hearing officer has the ability to order that the school district provide compensatory education."); *Wiesenberg v. Bd. of Educ.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002) ("[K]nowledge of a disability may be inferred from written parental concern, the behavior or performance of a child, teacher concern, or a parental request for an evaluation."); *Wolfe v. Taconic-Hills Cent. Sch. Dist.*, 167 F. Supp. 2d 530, 535 (N.D.N.Y. 2001) (upholding award of reimbursement for school district's child-find violations); *Dept. of Educ., State of*

(*Footnote continued*)

The petition does not identify any cases that have deemed a school district's affirmative refusal of a specific proposal to identify or evaluate a student to be a prerequisite for administrative jurisdiction. To the contrary, the lower courts have consistently held the opposite: "School districts may not ignore disabled students' needs, nor may they await parental demands before providing special instruction. Instead school systems must ensure that '[a]ll children … who are in need of special education and related services, are identified, located and evaluated.'" *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005) (quoting 20 U.S.C. § 1412(a)(6)(A)).[2]

Thus, as the district court observed, the state administrative agency's decision in this case "do[es] not impose

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Hawaii v. Cari Rae S., 158 F. Supp. 2d 1190, 1200 (D. Haw. 2001) (approving reimbursement award for violation of child-find obligation).

[2] *Accord N.G. v. Dist. of Columbia*, 556 F. Supp. 2d at 25, 27 ("Because the 'Child Find' requirement is an affirmative obligation, a parent is not required to request that a school district identify and evaluate a child . . . [W]hen a district is aware that a student *may* have a disability, . . . it has an obligation to evaluate the student."); *J.S. ex rel. R.S. v. S. Orange/Maplewood Bd. of Educ.*, 2008 WL 820181, at *4 (D.N.J. 2008) ("The 'child-find' provisions of the IDEA require … that children be identified and evaluated within a reasonable time after school officials notice behavior likely to indicate a disability. … Thus, the "duty 'is triggered when the [state] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.'"); *see also Bd. of Educ. of Fayette County, Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007) ("[T]he claimant must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.").

any new requirement on a school district. In short, this case does not at all involve, or even conjure up, the specter of educational malpractice." Pet. App. 50.

II. Even If the Question Presented Were Certworthy, This Case Would Be an Unsuitable Vehicle to Address It.

Even if the jurisdictional question that the District asks this Court to consider were otherwise worthy of review, this case would not be an appropriate vehicle to address it because the answer to the question would not affect the outcome of this case. As the court of appeals recognized, even if the District were correct that only claims arising out of a "refusal" to initiate a change are cognizable, the claim in *this* case would still be cognizable because the District's "deliberate indifference" cannot sensibly be described as anything other than a "refusal" to initiate Starvenia's identification, evaluation, or educational placement. Pet. App. 7 n.2. As the court put it, "[t]he School District's willful inaction in the face of numerous 'red flags' is more than sufficient to demonstrate its unwillingness and refusal to evaluate [Starvenia]." Pet. App. 8 n.2; *see also* Pet. App. 58-63 (detailed factual findings concerning District's willful conduct).

Indeed, there is no dispute here that the District affirmatively rejected the recommendation of its own third-party mental-health counselor that Starvenia should be evaluated for learning disabilities and assessed for special education services. Pet. App. 64-65. To be sure, the dissent reached a different conclusion about whether that conduct constituted a "refusal," but disputes concerning the application of the law to the facts are generally inappropriate candidates for certiorari. *See* S. Ct. R. 10. As the district court noted, its "decision

[was] heavily fact-bound (as was the ALJ's decision)." *Id.* at 50.

At the same time, the dissenting judge in the court of appeals believed that "the record [was] not sufficiently developed" because, in his view, the court could not decide whether the District violated the IDEA's child-find requirement without first reviewing both the California Education Code and the District's local procedures, which are not in the record. Pet. App. 21-22. But if the dissenting judge were correct, then this case would be an inappropriate vehicle for yet another reason. A question that turns on the law of a single state or local jurisdiction, "whether right or wrong, does not have the kind of national significance that is the typical predicate for the exercise of [] certiorari jurisdiction," *Leavitt v. Jane L.*, 518 U.S. 137, 146-47 (1996) (Stevens, J., dissenting), and this Court's custom in such circumstances is "to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 16 (2004).

III. The Petition Is Wrong on the Merits.

Finally, this Court should deny certiorari because the District's position is meritless. The bulk of the District's petition is devoted to presenting a novel argument that the jurisdiction of state administrative agencies under the IDEA should be limited to cases in which a school district "proposes to initiate or change the identification, evaluation, or educational placement of [a] student" or "refuses to do so." Pet. 20. The District's argument, however, runs contrary to the plain text of the IDEA, finds no support in the statute's structure or purpose, and would produce undesirable results that are plainly inconsistent with congressional intent.

As the decision below emphasized, the text of the IDEA allows parties to present administrative complaints "with respect to *any matter* relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education of such child." 20 U.S.C. § 1415(b)(6)(A) (emphasis added). The District contends that this plain language must be limited in light of separate IDEA requirements concerning written notice and pleading. Specifically, the IDEA requires state educational agencies to give parents advance notice whenever any agency "proposes" or "refuses" to initiate or change a child's identification, evaluation, or educational placement, 20 U.S.C. § 1415(b)(3), and requires complaints to include a "description of the nature of the problem of the child relating to such proposed initiation or change." 20 U.S.C. § 1415(b)(7).

But nothing in the IDEA suggests that the written-notice or pleading requirements are intended to affect or limit the state's additional obligation to allow due-process hearings on "any matter" relating to a child's identification, evaluation, or placement. And nothing in the jurisdictional provision suggests that its scope is limited to situations in which the alleged violation of the IDEA is preceded by written notice to a parent. Indeed, the subsection immediately following the jurisdictional provision provides that administrative claims must be brought within two years of the date that the parent or school "knew or should have known" about the alleged action that forms the basis of the complaint, suggesting that Congress recognized that administrative claims would not always be triggered by written notice. 20 U.S.C. § 1415(b)(6)(B). Rather, § 1415(b)(6)(A), by its terms, provides access to the administrative hearing process for claims concerning *any* of the rights and

requirements of the IDEA—including the child-find requirement.

Just two Terms ago, in *Forest Grove v. T.A.*, 129 S. Ct. 2484, 2494 (2009), this Court emphasized the centrality of the child-find requirement within the overall IDEA scheme and the need to ensure that remedies exist for child-find violations. The IDEA, the Court stressed, must be interpreted with due regard for its express purpose—to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). In light of that purpose, "[a] reading of the Act that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress' acknowledgment of the paramount importance of properly identifying each child eligible for services." *Forest Grove*, 129 S. Ct. at 2495. In this case, Compton Unified School District has proposed just such a reading.

As in *Forest Grove*, the District's interpretation would "produce a rule bordering on the irrational. It would be particularly strange for the Act to provide a remedy, as all agree it does, when a school district offers a child inadequate special-education services but to leave parents without relief in the more egregious situation in which the school district unreasonably denies a child access to such services altogether." *Id.* Starvenia Addison's case is a stark illustration of the "more egregious situation." The state administrative law judge, the federal district court, and the court of appeals were correct to allow a remedy.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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