No. 11-539

In The Supreme Court of the United States

PENINSULA SCHOOL DISTRICT, a municipal corporation; ARTONDALE ELEMENTARY SCHOOL, a municipal corporation; JODI COY, in her individual and official capacity; JAMES COOLICAN, in his individual and official capacity; JANE DOES 1-10; and JOHN DOES 1-10,

Petitioners,

v.

WINDY PAYNE, individually and as guardian on behalf of D.P., a minor child,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Individuals with Disabilities Education Act ("IDEA") requires a party to exhaust administrative remedies "before the filing of a civil action . . . seeking relief that is also available under [the IDEA]." Did the Ninth Circuit properly hold that, with respect to claims brought under other laws, the IDEA's exhaustion provision applies only in cases where the relief sought by a plaintiff is available under the IDEA?

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Petitioner, the Peninsula School District, et al. ("the District"), has filed a petition for certiorari seeking review of the Ninth Circuit's decision remanding this case to the district court to consider whether Windy Payne and D.P. (collectively, "Payne") properly averred 42 U.S.C. § 1983 claims. Payne respectfully requests that this Court deny the District's petition.

STATEMENT OF THE CASE

A. Relevant Statutory Framework

"The IDEA was enacted to protect children with disabilities and their parents by requiring participating states to provide 'a free appropriate public education [('FAPE')] that emphasizes special education and related services designed to meet [disabled students'] unique needs and prepare them for further education, employment, and independent living." *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 871 (9th Cir. 2011) (citing 20 U.S.C. § 1400(d)(1)(A)). Among other things, the FAPE must conform to a proper Individual Education Program ("IEP") and ensure that disabled students "[t]o the maximum extent appropriate, . . . are educated with children who are not disabled." *Id*. (citing § 1412(a)(1)(A), (a)(4), (a)(5)(A), (d)).

The IDEA lays out an administrative process for aggrieved parties, which includes mediation, a due

process hearing, and an appeal to the state educational agency. *Id*. (citing § 1415(e), (f), (g)). Before turning to the courts to pursue claims arising under other laws, the IDEA requires the aggrieved party to exhaust the administrative remedies if the relief sought is also available under the IDEA. The exhaustion requirement states, in full:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, 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 this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter*.

20 U.S.C. § 1415(l) (emphasis added).

B. Facts and Procedural History

D.P. has autism. *Payne*, 653 F.3d at 867. When he was 7 years old, he began attending a special education class in the Peninsula School District. *Id*. Jodi Coy was D.P.'s teacher for the school year, even though she had no teaching experience and lacked a teaching certificate with a special educational endorsement. *Id*.; *Payne v. Peninsula Sch. Dist.*, 2007 WL 128884 (W.D. Wash. 2007).

To punish D.P., Coy would lock him alone inside her "safe-room," which was unventilated, dark, and roughly the size of a closet.[1] *Payne*, 653 F.3d at 866-67; *Payne v. Peninsula Sch. Dist.*, 598 F.3d 1123, 1129 (9th Cir. 2010). When locked inside the room, D.P. would become fearful and sometimes urinate or defecate on himself, which Coy would make him clean up. *Payne*, 653 F.3d at 866; *Payne*, 598 F.3d at 1125.

D.P. suffered emotional abuse and presented with objective manifestations of non-physical injury and setbacks due to his experiences in the "safe-room." *Payne*, 2007 WL 128884 at *1. He suffered nightmares, wet his bed, chewed holes through his clothes, and verbally protested going to school. *Id*.

In the spring of 2004, D.P.'s mother, Windy Payne, and the District mediated Coy's use of the closet-like room. *Payne*, 653 F.3d at 866. As result, D.P. was transferred to another school, where he attended for one more year before being removed and home-schooled. *Id*.

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[1] At no time did the Washington special education regulations allow school districts or teachers to lock children in dark closet-like spaces without ventilation or supervision. Instead, any isolation room must be "ventilated," "lighted," and "permit continuous visual monitoring of the student from outside the enclosure." Wash. Admin. Code § 392-172A-03130(2) (2008). The applicable regulations also require that "either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student." *Id*.

In 2005, after D.P. left the Peninsula School District, Windy and D.P. filed a lawsuit against the District, seeking relief under 42 U.S.C. § 1983 and the IDEA. *Id*. The District moved for summary judgment, claiming that Payne had failed to exhaust her administrative remedies under 20 U.S.C. § 1415(l). *Id*. The district court granted the motion for summary judgment, finding that Payne had failed to exhaust their administrative remedies as the IDEA required. *Id*.

A divided panel at the Ninth Circuit affirmed the district court. *Payne*, 598 F.3d 1123. The majority examined D.P.'s injury to determine whether exhaustion under § 1415 was required. *Id*. at 1126-27. The panel held that "as an educational strategy (even if a misguided or misapplied one), [Coy's use of the safe room] was better addressed initially by the administrative process." *Id*. at 1128.

In 2010, the Ninth Circuit vacated the panel opinion and decided to hear the case en banc. *Payne*, 653 F.3d at 867. The en banc court held, among other things, that the "IDEA's exhaustion requirement applies to claims only to the extent that the relief actually sought by the plaintiff could have been provided by the IDEA." *Id*. at 874. Under this approach, the court continued, § 1415 requires exhaustion in three situations: (1) "when a plaintiff seeks an IDEA remedy or its functional equivalent," (2) when a plaintiff "seeks prospective injunctive relief to alter an IEP or the educational placement of a disabled student," and (3) when "a plaintiff is seeking to enforce rights

that arise as a result of a denial of a free appropriate public education." *Id*. at 875.

REASONS FOR DENYING THE WRIT

Contrary to the District's assertion, *Payne*'s "relief-centered" approach does not create a circuit split. *Payne* simply sets forth a more comprehensive standard than other courts have thus far employed to analyze whether an aggrieved party is required to exhaust administrative remedies. Instead of eschewing the so-called "injury-centered" approach, *Payne* simply analyzed § 1415(l) more closely than other previous courts and, in so doing, provided refined guidance to any court examining the statute. Indeed, at the time of this writing, at least two courts outside of the Ninth Circuit have favorably cited *Payne*'s holding with little fanfare. *See*, *e.g.*, *A.L.A. ex rel. Liberty v. Avilla R-XIII Sch. Dist.*, 2011 WL 6093301 (W.D. Mo. 2011); *M.W. ex rel. Williams v. Avilla R-XIII Sch. Dist.*, 2011 WL 3354933 (W.D. Mo. 2011).

Further, the District mischaracterizes the alleged "total exhaustion" rule and its application to § 1415 exhaustion cases. No circuit has held that a plaintiff must exhaust IDEA administrative remedies in a claim outside the IDEA's purview. The District's string cited cases, which purportedly require "total exhaustion," are red-herrings: those cites simply held that the § 1415 exhaustion requirement applies to claims where the IDEA provides a form of relief. The District's

approach has not only been rejected but is also inconsistent with § 1415's plain language.

A. *Payne*'s "relief-centered" approach correctly captures Congress's intent with regard to § 1415's exhaustion requirement.

Payne's "relief-centered" approach provides an analytical framework that is more consistent with Congress's intent in enacting § 1415 than looking solely to the injury. The exhaustion requirement in § 1415 is an exception to the general rule that "[n]othing in [the IDEA] shall be construed to restrict" the rights, procedures, and remedies available under § 1983, the ADA, or the Rehabilitation Act. 20 U.S.C. § 1415(l). As *Payne* correctly noted, this general rule reflects Congress's understanding "that parents and students affected by the IDEA would likely have issues with schools and school personnel that could be addressed – and perhaps could only be addressed – through a suit under § 1983 or other federal laws." *Payne*, 653 F.3d at 872.

Payne held that Congress intended the IDEA exhaustion requirement to apply to claims arising under other laws "only to the extent that the relief actually sought by the plaintiff could have been provided by the IDEA." *Id*. at 874. To execute Congress's intent with precision and predictability, *Payne* also adopted much of the approach taken by amicus United States Department of Justice, holding that exhaustion is required in three situations: (1) "when a plaintiff seeks an IDEA remedy or its functional equivalent,"

(2) when a plaintiff "seeks prospective injunctive relief to alter an IEP or the educational placement of a disabled student," and (3) when "a plaintiff is seeking to enforce rights that arise as a result of a denial of a free appropriate public education." *Id*. at 875.

This test strikes a balance between, on the one hand, allowing experts to determine the best way to educate disabled students and, on the other hand, "shield[ing] school officials from all liability for conduct that violates constitutional and statutory rights that exist *independent* from the IDEA and entitles a plaintiff to relief *different* from what is available under the IDEA." *Id*. at 876 (emphasis in original). The District believes that *Payne*'s "relief-centered" approach will open the floodgates to litigation; however, as the foregoing three situations illustrate, *Payne* would not allow a plaintiff to bring a lawsuit seeking relief under the IDEA without first exhausting administrative remedies.

The IDEA requires exhaustion only when the plaintiff's claims under the Constitution or federal law "*seek relief* that is also available" under the IDEA. 20 U.S.C. § 1415(l) (emphasis added). As this plain language indicates, the important question is whether the plaintiff actually seeks relief under the IDEA. *Payne*'s holding captures Congress's intent to allow an aggrieved disabled student to sue under the Constitution or federal laws like any other student, so long as the disabled student is not seeking relief that the IDEA provides. *Payne*, 653 F.3d at 874. This concept is widely accepted and endorsed under existing jurisprudence.

The District appears to contend, however, that looking to what the plaintiff actually sought is inconsistent with those circuits recognizing that "what relief is 'available' does not necessarily depend on what the aggrieved party wants." *E.g.*, *Charlie F. v. Bd. of Educ. of Skokie Sch. Dist.*, 98 F.3d 989, 991 (7th Cir. 1996) (citing Fed.R.Civ.P. 54(c)). The District's contention assumes that the only relief "available" is under the IDEA. This position is at odds with the plain language of § 1415, which clearly states that "[n]othing in [the IDEA] shall be construed to restrict" the rights, procedures, and remedies available under § 1983, the ADA, or the Rehabilitation Act. 20 U.S.C. § 1415(l). If a plaintiff actually seeks relief beyond what the IDEA provides, § 1415 allows the plaintiff to pursue those claims.

B. *Payne*'s "relief-centered" approach did not create a circuit split but rather gave courts a refined standard for determining when § 1415's exhaustion requirement applies.

The District's position in this litigation has always been that a disabled student cannot seek remedies under the Constitution without first exhausting administrative remedies under the IDEA. The *Payne* Court rejected the District's position after carefully considering § 1415's exhaustion requirement and concluding that a "relief-centered" approach best serves Congress's statutory intent. *Payne*'s decision has leveled the playing field for aggrieved disabled students who file lawsuits under the Constitution or other

federal laws. The decision merely provides a more thorough standard for determining when § 1415's exhaustion requirement applies. This Court should deny the District's petition for review and allow *Payne*'s "relief-centered" approach to play-out in the federal circuits.

The District goes to great lengths to argue that *Payne*'s "relief-centered" approach is distinct from the so-called "injury-centered" approach that other circuits follow. However, the reality is that *Payne* has simply set forth a "comprehensive standard for determining when exactly the exhaustion requirement applies." *Payne*, 653 F.3d at 874. *Payne* only recognized that looking to the relief, as opposed to the injury, was more consistent with Congress's intent in enacting § 1415. Unlike *Payne*, no other circuit has closely evaluated whether looking to the injury or to the relief better effectuates Congress's intent. Indeed, even as the District concedes, the method of analyzing § 1415 "has rarely been discussed in detail in court opinions." Brief of Petitioner at 14. Consequently, *Payne*'s "relief-centered" approach is simply a more refined way of executing the legislature's intent behind § 1415; it has provided a better way to apply § 1415, not created a circuit split.

Before *Payne*'s "relief-centered" approach, some circuits held that a plaintiff must exhaust administrative remedies under the IDEA in cases where those remedies can redress the plaintiff to *any degree*. *E.g.*, *Robb v. Bethel Sch. Dist. No. 403*, 308 F.3d 1047, 1050 (9th Cir. 2002), *overruled*, 653 F.3d 863 (2011);

McCormick v. Waukegan Sch. Dist. No. 60, 374 F.3d 564, 568-69 (7th Cir. 2004); *Cudjoe v. Indep. Sch. Dist. No. 12*, 297 F.3d 1058, 1066 (10th Cir. 2002). Other circuits held that limiting a prayer for relief to pure money damages is insufficient for the purposes of the IDEA's exhaustion requirement. *E.g.*, *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 64 (1st Cir. 2002); *Covington v. Knox Cnty. Sch. Sys.*, 205 F.3d 912, 917 (6th Cir. 2000); *N.B. by D.G. v. Alachua Cnty. Sch. Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996). However, these cases did not comprehensively evaluate § 1415.

Payne's "relief-centered" approach has given courts a comprehensive framework under which to analyze whether a plaintiff has met § 1415's exhaustion requirement. The approach that the Ninth Circuit employed before *Payne* treated § 1415 as a "quasi-preemption provision, requiring administrative exhaustion for any case that falls within the general 'field' of educating disabled students." *Payne*, 653 F.3d at 875. This was inconsistent with the face of § 1415, however, because "[n]othing in [the IDEA] shall be construed to restrict" the rights, procedures, and remedies available under § 1983, the ADA, or the Rehabilitation Act. § 1415. *Id*. (citing 20 U.S.C. § 1415). "[T]he remedies available under the IDEA, by rule, are in addition to the remedies parents and students have under other laws." *Id*. at 872.

Through careful analysis, *Payne* acknowledged that the "quasi-preemption" aspect of the "injury-centered" approach was "inconsistent with the IDEA's exhaustion provision." *Id*. at 874. The IDEA requires

exhaustion "before the filing of a civil action . . . seeking relief that is also available under [the IDEA]." *Id*. at 874. What matters under § 1415 is not what relief the plaintiff could have sought but rather what the plaintiff actually sought. *Id*.

Additionally, the District contends that other circuits have looked to the gravamen of the controversy, allowing the action to proceed if sounding in tort, but requiring exhaustion of administrative remedies where the controversy is educational in nature. The District believes that, under *Payne*, "if the plaintiff does not explicitly seek a remedy available through special education, the civil lawsuit may go forward immediately, even where the gravamen of the claim is educational." Brief of Petitioner at 17-18. Apparently, the District's posits that *Payne* has created a split because its "relief-based" approach ignores the gravamen of a controversy. The District is incorrect.

Payne does not ignore the gravamen of a controversy but rather allows claims that can stand independently from the IDEA to proceed. "The IDEA's exhaustion requirement applies to claims only to the extent that the relief actually sought by the plaintiff could have been provided by the IDEA." *Payne*, 653 F.3d at 874. If the plaintiff seeks monetary relief where the dispute is educational, the "relief-centered" approach would still bar the action for failing to exhaust administrative remedies. Thus, *Payne*'s approach will accurately separate those purely educational claims, which must go through administrative channels first, from Constitutional violations, which

may proceed directly to court independent from § 1415.

1. Courts in other circuits have favorably cited *Payne* without acknowledging a circuit split.

District courts in other circuits have favorably cited *Payne* without acknowledging a circuit split. In *A.L.A.*, the issue was whether a plaintiff who sues under § 504 of the Rehabilitation Act and the ADA must exhaust IDEA administrative remedies because the complaint raises issues about whether the plaintiff received a FAPE. *A.L.A.*, 2011 WL 6093301 at *5. In answering this question, the *A.L.A.* Court favorably cited *Payne* for the rule that "section 1415 requires exhaustion in three situations: (1) when a plaintiff seeks an IDEA remedy or its functional equivalent; (2) when a plaintiff seeks a prospective injunctive relief to alter an IEP or the educational placement; and (3) where a plaintiff is seeking to enforce rights that arise as a result of a denial of a FAPE whether pled as an IDEA claim or under another statutory provision." *Id*. (citing *Payne*, 653 F.3d at 875).

The *A.L.A.* Court held that the plaintiff's complaint contained allegations that were "exactly the type of issues addressed in an IEP" and "[t]hus, [p]laintiffs are mistaken in their assertion that their claims are wholly unrelated to the IEP process." *Id*. at *6. The court further found that the monetary damages requested for failing to provide necessary

education materials are not damages actionable outside of the IDEA. *Id*. Citing *Payne*, the court stated, "Courts have determined that reimbursement for services and material that should have been provided under an IEP fall under the purview of the IDEA and thus exhaustion of administrative remedies are required in such circumstances." *Id*. "Therefore, because [Plaintiff's] request for monetary damages relates to the alleged failure of [Defendant] to provide educational materials, her claim could have been addressed through the administrative remedies pursuant to the IDEA and her claim is also subject to the exhaustion requirement." *Id*; *see also*, *M.W.* 2011 WL 3354933 (citing *Payne*, 653 F.3d at 875) (merely averring damages that are not available under the IDEA is insufficient to avoid the IDEA exhaustion requirement because that requirement is triggered when a "plaintiff seeks an IDEA remedy or its functional equivalent.").

As both *A.L.A.* and *M.W.* demonstrate, district courts in other circuits are favorably citing *Payne* with no discussion of a circuit split. This is primarily because *Payne*'s holding is really nothing new: when a plaintiff seeks an IDEA remedy, administrative remedies must be exhausted. *Payne*'s approach to determining when a plaintiff seeks an IDEA remedy is more comprehensive than ever before, but the approach is not inconsistent with any other circuits. As the above sections have explained, *Payne*'s approach is not only sound but is also consistent with Congress's intent in enacting § 1415.

2. *Payne* recognized the concern of and eliminated the possibility of any "artful pleading" that is designed to nullify § 1415's exhaustion requirement.

Payne has guided courts that may face plaintiffs who attempt to avoid exhaustion through artful pleading: "to the extent that a request for money damages functions as a substitute for relief under the IDEA, a plaintiff cannot escape the exhaustion requirement simply by limiting her prayer for relief to such damages." *Payne*, 653 F.3d at 877. In other words, regardless of whether a plaintiff requests only compensatory damages, if the claim for damages relates to a depravation of a FAPE, the IDEA exhaustion requirement applies with full force. *Id*.

Payne recognized that a plaintiff who does not seek relief under an IDEA right or remedy is not bound by the prerequisites for litigation found in § 1415(l). *Id*. at 879. "[A] complaint that presents sound claims wholly apart from the IDEA need not comport with the IDEA's requirements." *Id*. Under this holding, exhaustion is still required in cases where the claim for damages arises as result of a denial of a FAPE, whether under the IDEA or other federal laws, no matter how the claim is pleaded. *Id*. at 880.

C. *Payne* does not conflict with the purported "total exhaustion" rule because courts have never required a plaintiff to exhaust IDEA administrative remedies in non-IDEA claims.

The purported line of cases requiring "total exhaustion" is a red-herring, as all of the cases that the District cites simply held that the § 1415 exhaustion requirement applies to those claims where the IDEA provides a form of relief. *Frazier*, 276 F.3d at 64 ("[W]e hold that plaintiffs who bring an IDEA-based claim under 42 U.S.C. § 1983, in which they seek only money damages, must exhaust the administrative process available under the IDEA as a condition precedent to entering a state or federal court."); *Charlie*, 98 F.3d at 991-92 (7th Cir. 1996) (where a form of relief is available under the IDEA, exhaustion required even though plaintiff seeks only monetary damages under the Constitution or federal laws); *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 803 (3d Cir. 2007) (Congress did not intend § 1983 to remedy violations falling squarely under the IDEA); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 297 (5th Cir. 2005) ("Because [plaintiff's] claims under the ADA and § 504 are factually and legally indistinct from his IDEA claims, issue preclusion is proper in this case."); *M.T.V. v. DeKalb Cnty. Sch. Dist.*, 446 F.3d 1153, 1158-59 (11th Cir. 2006) (retaliation claims "clearly relate" to plaintiff's evaluation and education and, thus, are subject to § 1415's exhaustion requirement); *N.B.*, 84 F.3d at 1379 ("[W]hen parents choose to file suit under another law that protects the rights of handicapped children –

and the suit could have been filed under the [IDEA] – they are first required to exhaust the [IDEA]'s remedies to the same extent as if the suit had been filed originally under the [IDEA]'s provisions.").

Payne accords with the foregoing cases by holding that courts must examine the actual relief sought in determining whether the § 1415 exhaustion requirement applies. *Payne*, 653 F.3d at 874. *Payne* still requires exhaustion for IDEA claims; it merely held, as all courts have, that a plaintiff is not required to exhaust administrative remedies when the plaintiff seeks relief outside of the IDEA. *Id.*

Also consistent with the above cases, *Payne* held that a plaintiff is not excused from § 1415's exhaustion requirement by only seeking monetary damages: "[T]o the extent that a request for money damages functions as a substitute for relief under the IDEA, a plaintiff cannot escape the exhaustion requirement simply by limiting her prayer for relief to such damages." *Id*. at 877. Instead, "exhaustion is clearly required when a plaintiff seeks an IDEA remedy or its functional equivalent." *Id*. at 875. These holdings are consistent with other circuits – *Payne* simply took a more comprehensive look at the proper way to interpret § 1415.

CONCLUSION[2]

Payne did not create a split among the federal circuit courts over how to interpret the IDEA's exhaustion provision. Rather, *Payne* merely gave courts a more refined, workable standard to analyze claims under § 1415. *Payne*'s approach accords with the underlying Congressional intent in promulgating the IDEA and does not disturb the well-settled precedent that non-IDEA claims are not subject to § 1415's exhaustion requirement when they do not seek relief available under the IDEA.

The Paynes respectfully request that this Court deny the District's petition for review.

Respectfully submitted,

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[2] The District also complains that review is necessary to address the *Payne*'s remedy allowing her to amend the complaint. This argument does not warrant review. Allowing Payne to amend her pleadings was a minute evidentiary issue that is wholly within the court's plenary power to decide and is consistent with the judiciary's interest to fairly dispense justice to all litigants. The District can cite to no prejudice in remanding this case for further proceeding.