No. 23-936

IN THE

Supreme Court of the United States

ANNE DAVIS, ON BEHALF OF BRAEDEN DAVIS,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Individuals with Disabilities Education Act ("IDEA") ensures that a child with disabilities receives a free appropriate public education in a placement where he is educated to the maximum extent appropriate with non-disabled children. Section 1415(j) of the IDEA, known as the "stay-put" provision, requires that the child "shall remain in [his] then-current educational placement" until any disputes surrounding his placement are resolved. 20 U.S.C. § 1415(j).

Here, petitioner and the District of Columbia agreed that the current educational placement of petitioner's son, Braeden, was and should remain a residential treatment center—a therapeutic and highly structured educational and residential environment. After the center where Braeden had been placed discharged him unilaterally, the District made a diligent but unsuccessful search for another center that could educate him. But petitioner argued that the stay-put provision also required the District to create "a safe place for Braeden to live" (Pet. 10) until another center could be found. The lower courts rejected that argument. The questions presented are:

1. Whether Section 1415(j) compelled the District to create an alternative living environment when Braeden's then-current educational placement became unavailable for reasons beyond the District's control.

2. Whether Section 1415(j)'s stay-put mandate applies during the appeal of an adverse district court decision resolving an IDEA dispute.

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INTRODUCTION

The "stay-put" provision of the Individuals with Disabilities Education Act ("IDEA") requires that, unless the parties agree otherwise, "during the pendency of any proceedings" challenging aspects of a disabled child's special education, "the child shall remain in [his] then-current educational placement." 20 U.S.C. § 1415(j). The provision's typical application is straightforward: a school district proposes to change a child's educational placement by, say, moving the child from an ordinary public school to a specialized school for the disabled (or vice versa); the child's parents disagree with the move, so they file an administrative "due process complaint." In this circumstance, the stay-put provision offers an automatic injunction that requires neither a showing of irreparable harm nor a balancing of equities. The effect is that the school district cannot move the child into (or out of) the specialized school until the due process complaint has been adjudicated.

This case, however, is anything but typical. It involves what the D.C. Circuit aptly called "unique circumstances." App. 2a.

In fall 2021, petitioner's son Braeden was a 21-year-old student with multiple severe disabilities, including autism spectrum disorder. All agreed that his proper educational placement was in a residential treatment center ("RTC"), which would provide the "highly structured educational and residential environment, with 1:1 supervision and a highly structured behavioral intervention program" that Braeden needs. App. 21a. In October, however, the RTC where Braeden was enrolled notified petitioner

and the District of Columbia that it would stop serving Braeden at the end of that month. The District promptly began a thorough, national search for other RTCs to serve Braeden, eventually contacting dozens of institutions. Unfortunately, given Braeden's age, the intensity of his needs, and other factors, the District was unable to find a single RTC that would accept Braeden.

After filing a due process complaint, petitioner argued that the stay-put provision compelled the District to create some kind of alternative living arrangement for Braeden *other* than an RTC—such as paying for him to live in a hotel, attended by aides. A hearing officer, the district court, and a unanimous panel of the D.C. Circuit all correctly rejected that argument. As the D.C. Circuit explained, the stay-put provision is a shield that blocks school districts from unilaterally changing a child's educational placement—which the District never sought to do here—not a sword to compel an *alternative* placement. Petitioner remained free, however, to seek such relief through a motion for a traditional preliminary injunction.

The D.C. Circuit's decision—which not a single judge voted to reconsider en banc—does not warrant review by this Court. To begin, it does not conflict with the decision of any other court of appeals. The decisions petitioner cites from the Ninth, Seventh, and Eleventh Circuits involved much different circumstances and do not show that this case would have come out differently in those circuits. In any event, this case would be a poor vehicle to examine the limits of stay-put relief because Braeden's

situation is an outlier, he has now aged out of stay-put eligibility, and the retrospective relief he requests is not appropriate under the IDEA—an independent ground for denying him relief. Nor is this case important enough to merit review. In the nearly 50 years that the IDEA has existed, it has generated very few cases where once-available placements have suddenly and entirely evaporated. The opinion below is thus likely a non-event. Indeed, in the nine months since it issued, the decision has barely been cited or discussed by anyone.

Finally, petitioner's attempt to entice the Court with a second question, about the duration of stay-put relief, lacks merit. That question was neither pressed nor passed on below, and there is no guarantee it would *ever* arise in this case. This Court rightly denied review of this question when it was *actually* presented, *see Ridley Sch. Dist. v. M.R.*, 575 U.S. 1008 (2015) (No. 13-1547), and it has even more reason to deny review here.

STATEMENT

A. Legal Background.

1. The central substantive guarantee of the IDEA is a "free appropriate public education" ("FAPE") for children with disabilities. 20 U.S.C. § 1412(a)(1)(A). The "primary vehicle" for furnishing a FAPE is the child's individualized education program, or IEP, which is devised by school officials in concert with parents. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 158 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)); *see* 20 U.S.C. § 1414(d) (outlining IEP requirements).

The IDEA also requires schools to identify an "educational placement" based on the child's IEP. 34 C.F.R. § 300.116. The placement must be the child's "[l]east restrictive environment"—the environment where he can be educated to "the maximum extent appropriate" with non-disabled children. 20 U.S.C. § 1412(a)(5); *see id.* § 1414(e). Placements are "alternative[s]" along a "continuum" that includes "instruction in regular classes, special classes, special schools, home instruction, and," at the far end of the spectrum, "instruction in hospitals and institutions." 34 C.F.R. § 300.115. A child will be placed in a "[r]esidential placement"—a highly structured therapeutic setting like a full-time school, institution, or treatment center—only if it is "necessary" for his educational progress. *Id.* § 300.104. "[T]he placement of the disabled child in full-time school that provides services to the child seven days a week, often close to 24 hours a day," is "[t]he farthest point on the continuum of educational placements." 2 Thomas R. Young, *Legal Rights of Children* § 18:17 (3d ed. 2023). It is thus distinct in its restrictiveness from both "home instruction" and instruction in "special [education day] schools." 34 C.F.R. § 300.115.

2. In addition to conferring the substantive right to a FAPE, the IDEA also "establishes various procedural safeguards." *Honig*, 484 U.S. at 311-12; *see* 20 U.S.C. § 1415 ("Procedural safeguards"). For example, parents who disagree "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 to such child," may file an administrative "due process complaint." 20 U.S.C. § 1415(b)(6), (c)(2). And "[a]ny party

aggrieved" by the hearing officer's administrative determination may "bring a civil action" in federal district court. *Id.* § 1415(i)(2)(A).

Of particular relevance here, school districts must give parents prior notice if they propose to change the "educational placement of the child." *Id.* § 1415(b)(3). A parent dissatisfied with the proposed new placement can file a due process complaint challenging it. The setting of the child's education during the pendency of such a dispute is generally governed by another of the IDEA's procedural safeguards: the "stay-put" provision. *Id.* § 1415(j).

First enacted in 1975 and materially unchanged since, the stay-put provision states in relevant part:

> Except as provided in subsection (k)(4) [which addresses changes in placement for certain disciplinary or safety reasons], during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in [his] then-current educational placement.

Id. (previously § 1415(e)(3)); *see* 34 C.F.R. § 300.518(a) (similar). "The current educational placement during the pendency" of such proceedings "refers to the setting in which the IEP is currently being implemented." Assistance to States for the Education of Children with Disabilities, 71 Fed. Reg. 46,540, 46,709 (Aug. 14, 2006). In this context, "setting" refers to the *type* of school or facility, for a "child's current placement is generally not considered to be location-specific." *Id.*

In enacting the stay-put provision, Congress "meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students." *Honig*, 484 U.S. at 323 (emphasis in original). The provision thus operates like an "automatic injunction," *id.* at 326, that "effectively creates a presumption in favor of the child's current educational placement," *id.* at 328. Put otherwise, it "bar[s] schools . . . from changing [a] placement over the parent's objection until all review proceedings [a]re completed." *Id.* at 324.

The stay-put provision, however, does not "operate inflexibly." *Id.* To start, despite its facially universal language, this Court has held that *parents* may unilaterally change a child's placement during proceedings, though they "do so at their own financial risk." *Burlington Sch. Comm. v. Mass. Dep't of Educ.*, 471 U.S. 359, 374 (1985). In addition, "the State or local educational agency" and "the parents" can "otherwise agree" to a different educational placement during proceedings. 20 U.S.C. § 1415(j). Finally, courts retain equitable authority to order an alternative placement as a form of "appropriate" IDEA relief. *Id.* § 1415(i)(2)(C)(iii) (the court "shall grant such relief as [it] determines is appropriate"); *see Honig* 484 U.S. at 327-28.

3. The IDEA gives courts broad remedial authority. 20 U.S.C. § 1415(i)(2)(C)(iii). But any relief ordered must be "'appropriate' in light of the [IDEA's] purpose," which is to provide disabled children with a FAPE. *Burlington*, 471 U.S. at 369 (quoting 20 U.S.C. § 1415(i)(2)(C)(iii)). Appropriate relief under the IDEA encompasses both (1) future

special education and related services that ensure a FAPE or redress past denials of a FAPE, and (2) financial compensation to "reimburse parents" for past "expenditures on private special education" that should have been borne by the state. *Id*. at 369-71 (distinguishing such permissible reimbursement from "damages").

B. Factual Background.

When this case began, petitioner's son Braeden was a 21-year-old student with "multiple disabilities" who qualified for specialized education and related services under the IDEA. Pet. 7; *see* App. 14a. Due to the severity of Braeden's impairments, which include autism spectrum disorder, ADHD, and unilateral fluctuating hearing loss, he "has a history of aggression toward others, self-injury, and property destruction, and he is easily triggered by a wide range of environmental sensory stimuli." App. 5a; *see* C.A. App. 118. His advanced age and physical attributes—he is 6'3" tall and weighs approximately 195 pounds—make his behavioral outbursts "not easy" to manage. C.A. App. 191-92.

Braeden's disabilities have, at all times relevant here, dictated that he be educated in an intensive therapeutic setting: "a residential treatment center" or RTC. Pet. 7-8. An RTC provides Braeden with a "highly structured educational and residential environment, with 1:1 supervision and a highly structured behavioral intervention program." C.A. App. 34. While this highly intensive setting is among the most restrictive under the IDEA, it is "the least restrictive environment in which [Braeden] can be successfully educated." C.A. App. 118-19. In other

words, as petitioner agrees, he "requires" this specific setting "[t]o ensure . . . educational progress." Pet. 3. The educational services Braeden receives in this setting include specialized instruction for 22.5 hours per week, speech and language therapy for 6 hours per month, and occupational therapy and behavioral support services, each for 12 hours per month, and the assistance of a dedicated aide for 8 hours per day. C.A. App. 32-33 (IEP).[1]

At the start of the 2021-2022 school year, Braeden was receiving special education at an RTC called Community Services for Autistic Adults and Children ("CSAAC"). On October 1, however, "without input from [petitioner] or the District," CSAAC stated that it could not meet Braeden's needs and would discharge him at the end of that month. App. 6a; *see* C.A. App. 91.

The District promptly met with petitioner and began referring Braeden to other RTCs. C.A. App. 173-74; *see* App. 6a, 22a. Over the next month, the District referred Braeden to 19 RTCs across the country. App. 22a. None accepted him, however, because the facility either was full, not accepting out-of-state students, could not take someone Braeden's age, or was unable to address his behavioral needs or otherwise implement his IEP. App. 6a; *see* C.A. App. 174-77. By early 2022, the District had contacted over 30 RTCs, still without success. App. 54a-55a.

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[1] Petitioner asserts that Braeden's IEP provides for "two designated staff" (Pet. 8), but that claim was rejected by the district court in a factual finding that the court of appeals did not disturb. *See* App. 27a n.7.

Petitioner "acknowledges that neither CSAAC's decision to end Braeden's residency nor the lack of available openings at the nineteen potential replacement facilities the District identified [as of fall 2021] was attributable to any action taken by the District." App. 10a. The court of appeals also affirmed that "the District has indisputably engaged in a thorough and ongoing search for an appropriate placement." App. 10a (quoting App. 29a n.10).

Meanwhile, as a "backstop" (App. 6a) to diminish any educational consequences pending Braeden's admission to another RTC, the District authorized funding for Braeden to receive specialized instruction and related services with a dedicated aide for 8 hours per day. C.A. App. 179-80, 182-83. Both the district court and the court of appeals recognized these programs as providing "the full complement of [special education] services outlined in [Braeden's] IEP." App. 34a; *see* App. 2a, 7a n.2.

On Braeden's discharge, however, petitioner did not engage these educational services. C.A. App. 183; *see* Pet. 9 (alleging that Braeden "could not actually use" them).[2] Instead, petitioner placed Braeden in "a hotel room at the Staybridge Suites" in McLean, Virginia, where he was attended by aides up to "24/7," at an estimated cost of $7,740.39 per week. C.A. App. 129-30, 191. Petitioner explained that Braeden was

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[2] Petitioner now claims that she was unable to access these services in part because transporting Braeden "requires specialized equipment and staff." Pet. 9 (citing C.A. App. 105-06, 194). But nothing on the cited pages of the appendix mentions Braeden needing specialized equipment or staff, and the courts below did not address this issue.

not safe at home and hoped the hotel setting would "incentivize good behavior." C.A. App. 192. But petitioner reported that Braeden was "still struggling behaviorally" in the hotel because "only a therapeutic environment will provide the behavioral support [Braeden] needs," without which "he also will not be able to take advantage of any instruction, either virtual or in-person." C.A. App. 195.

In the days surrounding Braeden's discharge from CSAAC, petitioner filed both an administrative due process complaint and a complaint in federal district court. She also sought relief under the stay-put provision. The gravamen of her stay-put argument was that, until the District located an RTC, it must either reimburse her for providing hotel-based housing and constant supervision or "keep Braeden in a safe and appropriate location." C.A. App. 127.

C. Decisions Below.

1. Both the hearing officer and then the district court denied as misplaced petitioner's request for this "stay-put" relief. App. 19a-35a; App. 39a-46a.

The district court in particular noted that "[t]he effect of the [stay-put] provision is a statutory stay that maintains the status quo when parents and schools litigate changes to a child's special education program." App. 25a. The circumstances presented here, however, were not of that "type and degree." App. 27a. The District had not sought to alter Braeden's then-current educational placement of "a[n] [RTC] with 1-on-1 support services and significant behavioral intervention." App. 26a. Rather, CSAAC had discharged Braeden "unilaterally without any input from the District." App. 21a.

The district court rejected as unsupported petitioner's argument that the stay-put provision required the District to "approximat[e]" the "housing and personnel" of an RTC "until a new [RTC] is found." App. 20a. None of the authorities cited by petitioner supported that result. *See* App. 29a-31a. Nor was the stay-put provision "susceptible to [petitioner's] novel interpretation," App. 31a, that "the District must provide an *alternative* placement on an interim basis," App. 28a (emphasis added).

The district court noted, however, that petitioner could seek to alter Braeden's placement by moving for a "traditional preliminary injunction" under 20 U.S.C. § 1415(i)(2)(C)(iii). App. 33a-34a.

2. Petitioner declined to seek such relief and instead appealed the stay-put decision to the D.C. Circuit. A unanimous panel affirmed. App. 1a-18a (Childs, J., joined by Pan and Rogers, JJ.).

The court of appeals first agreed that the stay-put provision was not implicated "based on the facts of this case." App. 11a; *see* App. 9a-13a. Citing controlling precedent, the court explained that the "automatic [stay-put] injunction" blocks school district attempts "to alter" the child's "then-current educational placement." App. 4a (cleaned up); *see* App. 12a (citing *Honig* and *Burlington*). Here, however, the District sought to "*maintain*[] [Braeden's] then-current educational placement," which had become "unavailable for reasons outside of the District's control." App. 10a-11a. Because petitioner's "request for stay-put relief rest[ed] entirely on . . . [this] facility unavailability," the stay-put provision did not apply. App. 13a. "At least four

circuits," the court noted, had reached similar conclusions. App. 11a-12a (citing cases from the Fourth, Fifth, Sixth, and Ninth Circuits).

The court noted that even in the absence of stay-put relief, the District was still required to provide Braeden a FAPE. And the District would "ultimately be responsible" if it failed to do so. App. 13a; *see* App. 17a (noting that "compensatory education or retroactive reimbursement may be warranted"). That said, the court acknowledged, "the IDEA's substantive guarantee [of a FAPE] is not necessarily realized through the procedural safeguard of § 1415(j)." App. 13a.

The court of appeals alternatively concluded that "[e]ven if" the stay-put provision applied, App. 13a, its "injunction is solely a tool for maintaining the educational status quo," App. 15a. It does not mandate *alternative* placements that all "agree" are "not similar" to the child's then-current educational placement. App. 14a (cleaned up). Here, all agreed that the "safe alternative living environment" that petitioner sought "would not provide 'the highly structured educational and residential environment' that Braeden's IEP requires." App. 14a (quoting C.A. App. 34). Neither the stay-put provision's "plain language" nor the "automatic nature of [its] relief," the court held, contemplate the provision of a "*new* placement that implements an IEP 'as closely as possible' when" even "a 'similar' placement is not available." App. 14a-15a (emphasis added). "Such a holding," the court cautioned, "would transform [a] procedural safeguard into a roving and unbounded implement for change." App. 16a (cleaned up).

Finally, the court emphasized, while "a stay-put injunction" was "procedurally improper" for the "affirmative relief" petitioner sought, she was not "without a remedy." App. 16a-17a. Apart from trying to "agree" with the District on an educational placement, 20 U.S.C. § 1415(j), she "could seek traditional injunctive relief pursuant to the court's authority under 20 U.S.C. § 1415(i)(2)(C)(iii)." App. 16a-17a. Either approach could potentially provide Braeden with an "alternative residential environment." App. 17a.

3. Davis sought panel rehearing and rehearing en banc, which was denied without any judge requesting a vote. App. 36a-38a.

REASONS FOR DENYING THE PETITION

I. The First Question Presented Does Not Warrant Review.

Petitioner's first question presented—whether and to what extent Section 1415(j) imposes obligations on school officials when a child's pre-dispute educational placement is unavailable—does not warrant review. There is no circuit split on this issue, and no other circuit decision addresses facts remotely like those here. The D.C. Circuit's conclusion that petitioner was not entitled to stay-put relief "in these unique circumstances" (App. 2a) was correct. This case, moreover, is a poor vehicle for considering the scope of stay-put relief because Braeden's circumstances are so unusual and extreme. Plus, he has now aged out of IDEA eligibility altogether and the only category of retrospective relief still at issue (reimbursement for hotel and supervision costs) is fundamentally not appropriate

IDEA relief. Finally, although the stay-put provision may be important as a general matter, the decision below is not. Indeed, in the nine months since the decision issued, it has generated virtually no reaction of any kind.

A. There is no circuit split.

Petitioner asserts that the decision below implicates "an acknowledged circuit conflict" (Pet. 13) that is "intractabl[e]" and "has persisted for more than a decade" (Pet. 2). Nothing about that statement is correct. No court—nor anyone else—has ever "acknowledged" the circuit conflict that petitioner posits. That makes sense, as no conflict exists.

1. To start, there is certainly no "acknowledged" circuit split here. The D.C. Circuit did not say that it disagreed with the reasoning, let alone the holding, of any decision of any other court of appeals. Nor has any other court of appeals said that it disagrees with the decision below. Nor do *any* of the decisions of the Seventh, Ninth, and Eleventh Circuits that petitioner cites express disagreement with any of those from the Fourth, Fifth, and Sixth Circuits—or vice versa.

Petitioner's sole basis for claiming an "acknowledged" split is a student law review note. Pet. 13 (citing Natalie Granada, *The IDEA's Stay-Put Provision: A Staple of Pandemic IEP Litigation?*, 2021 U. Chi. L. Forum 441, 451). But that student note purports to discern a split only between the D.C. Circuit and the Fourth Circuit—two circuits that petitioner says are on the *same* side of the alleged split. *See* Granada, *supra*, at 451; Pet. 17. And the note cites none of the decisions from the Seventh,

Ninth, and Eleventh Circuits that petitioner claims (Pet. 14-17) constitute the other side of the split.

Petitioner has herself been inconsistent on this point. Her petition for rehearing en banc in the D.C. Circuit said that the decision below *conflicted* with Fourth Circuit law—the opposite of her position now. Pet. for Reh'g En Banc 3 (Sept. 14, 2023). And she made no mention of any conflict with the Ninth or Eleventh Circuits.

As far as the District is aware, no court, commentator, scholar, or even prior litigant—no one—has acknowledged the purported circuit split that petitioner describes. If "intractabl[e] divi[sion]" had indeed "persisted for more than a decade" (Pet. 2), that silence would be remarkable. As often, the simpler explanation is the correct one: the split does not exist.

2. Petitioner contends that the decision below conflicts with decisions by the Ninth, Seventh, and Eleventh Circuits. That is wrong. The cited decisions deal with far different factual contexts, and some have been partially superseded by statutory amendments. None suggests that those courts would have reached a different result under the "unique circumstances" (App. 2a) of this case. Nor do those decisions conflict with the decisions of the Fourth, Fifth, and Sixth Circuits.

a. To start, petitioner's reliance on *Ms. S. ex rel. G. v. Vashon Island School District*, 337 F.3d 1115 (9th Cir. 2003), lacks merit. That case involved a school district's IDEA obligations to a newly arrived *transfer student*—that is, a student who voluntarily moved into the school district. Because the IDEA had

not yet been amended to address that situation, the Ninth Circuit applied the stay-put provision to a dispute over a third-grade transfer student's new placement, even as it noted that doing so was inapt because "the 'stay-put' provision is meant to preserve the status quo" and "when a student transfers educational jurisdictions, the status quo no longer exists." *Id*. at 1133. Nevertheless, the court went on to hold that "when a dispute arises under the IDEA *involving a transfer student* and there is disagreement between the parent and [the] new school district about the most appropriate educational placement, the new district will satisfy the IDEA if it implements the student's last agreed-upon IEP" or "adopt[s] a plan that approximates [it] as closely as possible." *Id*. at 1134 (emphasis added).

Applying that holding to the facts before it, the court concluded that "there was a dispute" about the child's educational placement, *id*. at 1133, but that the school district had "abided by" the stay-put provision, *id.* at 1135. It did so by offering an "explicitly temporary" placement that matched the educational goals of the child's stay-put IEP but did not "precisely replicate" the educational environment of her previous school. *Id*. at 1134-35.

Ms. S. was thus both factually and legally far afield from this case. Not least, in *Ms. S.* "there was a dispute" about proper educational placement, *id.* at 1133, whereas here the District and petitioner have at all times *agreed* on Braeden's proper placement, App. 5a. And nothing about that court's acceptance of an "explicitly temporary" placement endorses an alternative stay-put placement. Moreover, *Ms. S.*'s

holding was explicitly tailored to disputes "involving a transfer student," 337 F.3d at 1134, which is not the circumstance here.

In any event, *Ms. S.* cannot be the font of *any* circuit split because, as petitioner acknowledges in passing, the court's holding was superseded by statute roughly 20 years ago. *See* Pet. 14. Since July 2005, the IDEA has directly addressed the unique issues posed by transfer students. *See* Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647, 2711 (codified at 20 U.S.C. § 1414(d)(2)(C) and effective July 1, 2005); *see* 34 C.F.R. § 300.323(e), (f). "Given the tailored nature of [this] provision," the stay-put provision now "does not apply when a student voluntarily transfers school districts." *Y.B. ex rel. S.B. v. Howell Twp. Bd. of Educ.*, 4 F.4th 196, 200 (3d Cir. 2021). Put simply, *Ms. S.* is not only factually inapposite but also legally obsolete on this topic. The Ninth Circuit has never again used its "as closely as possible" language in discussing the stay-put provision.

Also inapposite is *John M. ex rel. Christine M. v. Board of Education of Evanston Township High School District 202*, 502 F.3d 708 (7th Cir. 2007). There too the child had transferred between educational jurisdictions—from "District 65" for middle school to "District 202" for high school—and the dispute arose before the IDEA's transfer provision took effect. *Id.* at 711. But even setting aside the applicability of the transfer provision, *John M.* looks nothing like this case. Everyone in *John M.* agreed that the stay-put provision was applicable because the parents disputed the IEP proposed by the new

school district, whereas everyone in this case endorsed Braeden's IEP. The narrow dispute in *John M.* was whether the stay-put IEP required a "co-teaching" methodology that the school district was not providing. *Id.* at 712.

The Seventh Circuit could not determine on the existing record "whether the parties regarded this methodology as an essential part of the [IEP] or as simply one of several ways by which the [IEP] could be implemented." *Id.* at 716. The court accordingly remanded for the district court to evaluate the stay-put IEP "as a totality" and to determine whether co-teaching needed to be included in the stay-put order. *Id.* Consistent with the court's limited holding, the Seventh Circuit has not cited *John M.* for any reason since it was decided 17 years ago.

Finally, *L.J. ex rel. N.N.J. v. School Board of Broward County*, 927 F.3d 1203 (11th Cir. 2019), involving a child's transition from elementary to middle school, is similarly inapposite. Again, there was no dispute that the stay-put provision applied. The case instead concerned the "legal standard to govern [IEP] implementation cases," *id.* at 1211—that is, cases where the "child's IEP clears the IDEA's substantive threshold *as written*" but "the school has nonetheless failed to properly put the plan into practice," *id.* at 1207. The court stated that, consistent with its sister circuits, it was adopting a "materiality standard," under which the parent "must prove more than a minor or technical gap between the [IEP] and reality; *de minimis* shortfalls are not enough." *Id.* at 1211.

Applying that holding to the case before it, the court determined that none of the alleged implementation failures were material. *Id.* at 1216-20. The court's discussion of the stay-put provision was limited to explaining that a "hair-trigger standard" was an especially "poor fit" for "stay-put IEPs"—which are often "out-of-date IEP[s]" that are being implemented in "educational context[s] that [they were] not designed for." *Id.* at 1213.

Nowhere in this discussion did the Eleventh Circuit "agree[] that in circumstances in which it is impossible to fully implement an IEP, *Section 1415(j) requires* the school district to provide educational services that approximate the student's old IEP as closely as possible." Pet. 16 (cleaned up and emphasis added). Rather the court simply "agree[d] with the district court that schools must be afforded some measure of leeway when they implement a stay-put IEP," 927 F.3d at 1214, which the materiality standard accounted for.

b. In summary, *Ms. S.*, *John M.*, and *L.J.* at most stand for the proposition that school districts are entitled to modest flexibility when implementing a stay-put IEP in the prosaic context of a child changing school districts or advancing to a new grade level. Nothing in the D.C. Circuit's decision here conflicts with that proposition or addresses that context. The problem here is not that another available RTC would implement Braeden's IEP differently than CSAAC, or would need a transition period to implement it fully—and thus would not be an "exact" (Pet. i) or "perfect[]" (Pet. 19) match. The problem is that there is *no* RTC available *at all*. That is a categorically different

problem, for an RTC is the fundamental component of Braeden's "current educational placement."

In demanding that the District create some kind of living environment that is concededly *not* an RTC—and not even "similar," App. 14a—petitioner seeks an *alternative* educational placement. Neither *Ms. S.*, *John M.*, nor *L.J.* says that such a stark change in educational placement is proper under the stay-put provision. Nor does any other decision.

Judge Luttig cogently explained why no such holding exists in *Wagner v. Board of Education of Montgomery County*, 335 F.3d 297 (4th Cir. 2003). In that case, through "no fault" of the school district, *id.* at 300, the sole service provider for the child's "Lovaas home-based intensive early intervention program . . . could not be counted upon to provide services," *id.* at 301. Unlike the District here, the school district in *Wagner* responded to this unavailability by proposing "a new IEP" that changed the child's educational placement from a home-based program to a public school. *Id.* at 299. The parents "rejected the new IEP and initiated due process proceedings," triggering the ordinary operation of the stay-put provision. *Id.*

Observing that the child's current educational placement was concededly unavailable, the district court had ordered the school district to propose "alternative placements." *Id.* at 301. The Fourth Circuit rejected that move. It explained that the district court could not invoke the stay-put provision to mandate that the school district create an "alternative" placement. *Id.* Examining the language and purpose of the stay-put provision, the court explained that only the child's then-current

educational placement, "available or unavailable," is "a proper object for a 'stay put' injunction." *Id.* at 301. "Ordering the child to enter an alternative placement . . . contravenes the statutory mandate and turns the statute on its head by transforming a tool for preserving the status quo into an implement for change." *Id.* at 301-02. Notably, petitioner identifies no decision of any court over the last two decades that has criticized *Wagner*'s reasoning, let alone reached a contrary result on remotely similar facts.

Finally, as petitioner concedes, the decision below is consistent with *Tilton ex rel. Richards v. Jefferson County Board of Education*, 705 F.2d 800 (6th Cir. 1983), and *Weil v. Board of Elementary & Secondary Education*, 931 F.2d 1069 (5th Cir. 1991). The former held that "if a state or local agency must discontinue a program or close a facility for purely budgetary reasons, the requirements of [the stay-put provision] do not apply." 705 F.2d at 805. The latter agreed, though in dictum, that "if [a] change in 'educational placement' is necessitated by the closure of a facility for reasons beyond the control of the public agency, the 'stay-put' provisions of section 1415(e)(3) [now 1415(j)] do not apply." 931 F.2d at 1073 (citing *Tilton*); *see id.* at 1072 (holding that, in fact, "the change of schools under the circumstances presented in this case was not a change in 'educational placement' under section 1415"). And once again, no other circuit has disagreed with *Tilton* or *Weil* or reached a contrary result on remotely similar facts.

3. Petitioner also suggests (Pet. 15) that the decision below conflicts with two district court

decisions, *K.K. v. William S. Hart Union High School District*, No. 2:22-CV-2398, 2022 WL 2162016 (C.D. Cal. Apr. 20, 2022), and *Van Scoy ex rel. Van Scoy v. San Luis Coastal Unified School District*, 353 F. Supp. 2d 1083 (C.D. Cal. 2005). Even if true, that would not be a basis for further review. This Court "will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court." Stephen M. Shapiro et al., *Supreme Court Practice* § 4.8, at 4-27 (11th ed. 2019).

At any rate, there is again no conflict. In *K.K.*, the hearing officer had already entered an order providing that the child's stay-put placement was a "nonpublic residential placement . . . consistent with the services required in the [child's] IEP." 2022 WL 2162016, at *2. The alternative relief entered by the district court—a range of "community-based services," *id.* at *10, that were *not* the child's then-current educational placement, *id.* at *2, *8—was a product of the court's equitable authority under 20 U.S.C. § 1415(i)(2)(C)(iii), not the statutory directive that the child "shall remain in [his] then-current educational placement," *id.* § 1415(j). The court was clear on this point: it was applying "the traditional preliminary injunction analysis . . . and not the 'automatic injunction standard' that applies when considering a stay-put motion." 2022 WL 2162016, at *3 n.4.

Similarly, in *Van Scoy*, the court applied the "traditional preliminary injunction analysis," 353 F. Supp. 2d at 1084, when it ordered the school district

to provide two hours of special education outside the regular school day, even though the school day was already longer now that the child had moved from kindergarten to first grade, *id.* at 1086-87.

Both decisions are thus consistent with the D.C. Circuit's decision here, which likewise recognized that petitioner remained free to "seek traditional injunctive relief pursuant to the court's authority under 20 U.S.C. § 1415(i)(2)(C)(iii)." App. 16a.

* * *

A "genuine conflict" meriting this Court's review exists when "two courts have decided the same legal issue in opposite ways, based on their holdings in different cases with very similar facts." Shapiro et al., *Supreme Court Practice* § 4.3, at 4-11. Petitioner fails to show any such conflict. None of the cases that petitioner cites address the twin issues that remove this case from the scope of the stay-put provision: the complete unavailability of the original placement (or even anything similar) and the absence of any effort by the District to change Braeden's placement, either by moving him or by altering his IEP. That is sufficient to deny the petition.

B. The decision below is correct.

The court of appeals correctly held that on "the facts of this case" (App. 11a) the stay-put provision did not apply and that, even if it did, a stay-put injunction could only maintain the educational status quo—not order an educational "placement" that, all agree, is not even "similar" (App. 14a). Petitioner's contrary arguments lack merit.

1. The court of appeals identified two independent reasons that petitioner was not entitled to the stay-put relief she sought, either of which would sustain the judgment below. Both are correct. And as the D.C. Circuit explained, its decision leaves open other avenues for relief.

a. To start, the court of appeals was correct that the stay-put provision simply has no role to play under the unusual facts of this case. App. 9a-13a. The stay-put provision is designed "to prevent school officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings." *Burlington,* 471 U.S. at 373. Or as the Court put it in *Honig*, it is "meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students . . . from school." 484 U.S. at 323 (emphasis in original). That is consistent with the Court's holding in *Burlington* that, despite the facially universal command of the stay-put provision, *parents* are free to unilaterally change a child's educational placement during the pendency of proceedings. 471 U.S. at 374.

Here, the District has never tried to change Braeden's educational placement. The District and petitioner have at all relevant times *agreed* on that placement. App. 5a; *see* C.A. App. 118-19. And the District has "indisputably engaged in a thorough and ongoing search" for an RTC that can implement Braeden's existing IEP. App. 10a (quoting App. 29a n.10). That it has been unable to find such an RTC anywhere in the United States has been "outside of the District's control." App. 11a. In these

circumstances—where the parties *agree* on the current educational placement and its unavailability in practice is beyond the school district's control—there is simply nothing for the stay-put provision to do.

To be sure, the delay in fully implementing Braeden's IEP may deny him a FAPE. If so, Braeden may receive compensatory education to make up for "deficiencies" caused by the delay. *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 530 (D.C. Cir. 2019). But the delay does not alter or undo Braeden's *educational placement*, which has at all times remained, by necessity, an RTC.

b. The court of appeals was also right that, even if the stay-put provision applies here, it does not provide the relief petitioner seeks. The stay-put provision requires the child to "remain" in only one place during due process proceedings: his "then-current educational placement." 20 U.S.C. § 1415(j). As all courts agree, the provision is designed to preserve the educational status quo. *E.g.*, App. 15a; *Ms. S.*, 337 F.3d at 1133; *Wagner*, 335 F.3d at 302. It is thus fundamentally *not* "an implement for change." *Wagner*, 335 F.3d at 302.

That is confirmed by statutory context. Section 1415(k) explicitly identifies limited circumstances (inapplicable here) in which "[p]lacement in [an] alternative educational setting" is authorized, despite the stay-put provision. *Id.* § 1415(k) (subsection title); *see id.* § 1415(j) (cross-referencing "subsection (k)(4)"). This shows that "Congress clearly knew how to provide for the placement of a child in an interim alternative educational setting when it deemed such

warranted." *Wagner*, 335 F.3d at 302. It is therefore "telling that a district court is not vested with authority under section 1415(j)" to order other kinds of alternative educational placements. *Id.*

Yet the creation of an "alternative placement" is what petitioner concededly sought here. App. 16a; *see* App. 14a (petitioner "agree[s]" that an RTC is "a necessary component of Braeden's IEP and that no 'similar' placement is available"). Seeking this "new placement" *alters* the status quo rather than maintains it. App. 15a. It does violence to the statutory text to interpret the command to "remain" in the "then-current educational placement" to require the child to be *moved* to a *novel* placement. 20 U.S.C. § 1415(j). Petitioner fails to explain how tacking on the cryptic (and atextual) phrase "as close as possible" could change that reality.

Moreover, the court of appeals was right that using the stay-put provision to compel an alternative educational placement "is incompatible with the automatic nature of relief available under § 1415(j)." App. 15a. All courts agree that, where the stay-put provision applies, its operation is "automatic." *E.g.*, *Ventura de Paulino v. N.Y.C. Dep't of Educ.,* 959 F.3d 519, 529 (2d Cir. 2020); *Wagner*, 335 F.3d at 301; *accord* Pet. 7, 28. That automatic operation is possible only if the provision is limited to enforcing the status quo. If the provision could instead be invoked to compel an *alternative* placement—even one putatively "close" to the current educational placement—it could not function automatically. Fact-intensive disputes would inevitably arise about whether a particular arrangement was *actually* "as

close as possible" to the current placement. Instead of simply an automatic "[p]rocedural safeguard," the stay-put provision would be transformed into a substantive battleground requiring active judicial management, as the D.C. Circuit noted, App. 15a-16a.

c. Finally, the court of appeals was correct that the absence of stay-put relief does not leave students and parents without recourse. App. 16a-17a.

First, the stay-put provision allows for an alternative placement if "the State or local educational agency and the parents . . . agree" to one. 20 U.S.C. § 1415(j). *Second*, parents are free to seek an alternative placement by moving for "traditional injunctive relief pursuant to the court's authority under 20 U.S.C. § 1415(i)(2)(C)(iii)." App. 16a; *see Honig*, 484 U.S. at 327 (stay-put provision does not "limit or preempt" this authority). Petitioner has never sought such relief in this case despite multiple invitations to do so. *See* 16a-17a, 33a-34a. *Third*, as noted, the inapplicability of the stay-put provision does not eliminate the District's "statutory obligation to provide [Braeden] a FAPE," which is an enduring, substantive entitlement that applies whether any specific placement is available or not. App. 16a.

2. Petitioner's contrary arguments are unpersuasive. Her primary contention is that, under "ordinary remedial principles," when an agency cannot "literally comply" with a statutory mandate, it still must "'make serious, vigorous attempts to fulfill its statutory responsibilities.'" Pet. 22 (quoting *South Carolina v. United States*, 907 F.3d 742, 765 (4th Cir. 2018)). But even if this principle applies here, it means only that the District must attempt to

effectuate Braeden's "then-current educational placement," 20 U.S.C. § 1415(j), not some makeshift alternative. Every adjudicator in these proceedings has agreed that the District *has* worked diligently to fulfill that statutory responsibility under the stay-put provision. In other words, the District is *already* trying to fund and place Braeden in a suitable RTC "'as soon as possible.'" Pet. 22 (quoting *Forest Guardians v. Babbitt*, 174 F.3d 1178, 1193 (10th Cir. 1999)).

Petitioner is also wrong that the decision below "reliev[es] school districts of any stay-put obligations in this circumstance." Pet. 25. None of the courts below had occasion to decide that issue, as they expressly noted. App. 11a n.5 (leaving open the possibility of stay-put relief if "the District abandoned all reasonable efforts to seek out a new residential placement for Braeden"); App. 34a (similar). Thus, if an RTC capable of implementing Braeden's IEP becomes available and the District fails to authorize and fund his placement there, Davis could move again for stay-put relief.

Nor does the decision below "relieve[] the school district from having to implement *any* components of the IEP if it cannot implement *all* of them." Pet. 26. The D.C. Circuit was clear that, even where a facility is unavailable, the school district retains "its statutory obligation to provide [the student] a FAPE," and thus will be on the hook for compensatory education. App. 16a; *see* App. 17a. To limit that liability, school districts have a strong incentive to do what the District did here: authorize interim educational programming and services to mitigate

any educational harm. *See* App. 34a (finding that "the District has made available to Braeden the full complement of other services outlined in his IEP"); App. 7a n.2 (same). The facts of this case belie that the absence of stay-put relief means that the student gets *nothing*.

Finally, petitioner fails to refute that the proper mechanism for obtaining an alternative educational placement is a traditional preliminary injunction. She says only that such an injunction "*may* be denied for lack of irreparable harm." Pet. 28-29 (emphasis added). But she herself cites two decisions readily finding such harm and granting relief. *See K.K.*, 2022 WL 2162016, at *7-9; *Van Scoy*, 353 F. Supp. 2d at 1087. Given that petitioner has never even asked for such relief, her speculative worry rings hollow.

C. This case is a poor vehicle for resolving the question presented.

At all events, this case would be a poor vehicle to examine whether and how the stay-put provision applies when a student's educational placement becomes unavailable, for several reasons.

First, this case is a factual outlier involving circumstances that are as "unique" as they are extreme, App. 2a—and it has often been said that "hard case[s]" may "make bad law." *FCC v. WOKO, Inc.*, 329 U.S. 223, 229 (1946) (Jackson, J.). Here, everyone agrees that Braeden "requires instruction in a 'highly structured educational and residential environment, with [one-to-one] supervision and a highly structured behavioral intervention program.'" App. 5a (quoting IEP); *see* Pet. 8. But finding an RTC that can accommodate Braeden poses an unusual

challenge. When discharged from CSAAC, Braeden was already 21 years old, 6'3" tall, and 195 lbs. C.A. App. 191. In petitioner's words, he "exhibits challenging and potentially dangerous behaviors, including poor anger management, destroying things, verbal threats, screams, refusing to follow directions when angry, easy frustration and anger, and self-injurious behaviors." C.A. App. 120. As a result, despite the District's "diligent efforts," it has been unable to find any RTC that can accept Braeden. App. 67a.

The D.C. Circuit's decision is "based on the facts" and "circumstances of this case," App. 11a, 17a, and those facts are extreme and rare. In the nearly 50 years since the stay-put provision was enacted, no factually similar case has reached any court of appeals. *See also* C.A. App. 159 (District Court: "I've been on this Court 19 years and I've never heard of a situation like this."). Given the extremity of these circumstances, an opinion in Braeden's case is unlikely to provide useful guidance in more typical cases—that is, cases where the school district *is* responsible for making the placement unavailable, where the school district ceases efforts to locate a "similar" placement, or where the district actively seeks to alter the child's IEP.

Second, this appeal is unlikely to afford Braeden himself any meaningful relief. That is so because Braeden, now 24 years old, has been categorically ineligible for further stay-put relief for almost two years.

With exceptions not relevant here, the IDEA applies to disabled "children" "between the ages of 3

and 21, inclusive." 20 U.S.C. § 1412(a)(1)(A); *see* 34 C.F.R. § 300.101; *Honig*, 484 U.S. at 318 (24-year-old was "no longer entitled to the protections and benefits of the [IDEA]"). In the District of Columbia, the IDEA applies to disabled children through "[t]he end of the school year in which the child turns twenty-two (22) years of age." 5-A DCMR § 3028.1(c). And the availability of stay-put relief ends with the child's IDEA eligibility. *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. 200 v. Ill. State Bd. of Educ.*, 79 F.3d 654, 659-60 (7th Cir. 1996). "Except for the judge-created remedial exception for claims for compensatory education, the entitlements created by the [IDEA] expire when the disabled individual turns [22]." *Id.* at 659. Because "the statute's protections are limited to minors . . . it is natural to presume that the limitation is carried into the stay-put provision, which is silent on the question." *Id.* at 660. Courts are in accord on this point. *See LaRoe v. Div. of L. Appeals BSEA*, No. 3:21-CV-30020, 2022 WL 1542087, at *1 (D. Mass. Apr. 20, 2022) (noting consensus).

Braeden turned 22 in May 2022. Any arguable right to ongoing stay-put relief ended at the end of the 2021-2022 school year. No prospective stay-put relief is possible. That makes this an unsuitable vehicle to explore the scope of a school district's stay-put obligations—and it means that any redress for Braeden himself would *not* include a stay-put injunction.[3]

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[3] In a prior proceeding, Braeden was awarded compensatory education comprising two extra years of special

Third, the only possible relief that remains is reimbursement for costs incurred between late October 2021 and June 2022. But that narrow reimbursement dispute cannot justify this Court's review because it is easily resolved on an alternative ground (which the District pressed below) that is separate from petitioner's first question presented.

To start, the hearing officer has *already* ordered the District to reimburse petitioner for any expenses she incurred for "special education and related services" covered by Braeden's IEP. App. 67a-68a. The only reimbursement that he denied was for the "hotel expenses" that petitioner incurred when she housed Braeden in a hotel between November 2021 and mid-January 2022. App. 68a; *see* App. 55a-56a. But reimbursement for those expenses (including the attendant aides) is unjustified for reasons unrelated to the stay-put provision.

Any relief awarded under the IDEA must "be 'appropriate' in light of the purpose of the Act." *Burlington*, 471 U.S. at 369 (quoting 20 U.S.C. § 1415(i)(2)(C)(iii)). That purpose is providing disabled children with a free and appropriate *education*. *Id.* The IDEA does not independently fund housing, medical care, or other non-educational services. Reimbursement under the IDEA is thus "appropriate" only for programs and services that allow a child to access education. *See Florence Cnty.*

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education services—a period that ends next month. C.A. App. 121. Even if this award extended Braeden's stay-put eligibility—and it does not—his eligibility will still end well before the Court could resolve this case.

Sch. Dist. Four v. Carter ex rel. Carter, 510 U.S. 7, 15 (1993).

Housing Braeden at a hotel did not allow him to access education. Even when paired with dedicated aides, a hotel is not remotely akin to an RTC, which petitioner agrees is Braeden's "proper placement" (Pet. 8) and necessary "[t]o ensure Braeden's . . . educational progress" (Pet. 3). Petitioner's hotel and related aide expenses were, at most, economic damages, but damages are "a form of relief everyone agrees IDEA does not provide." *Luna Perez v. Sturgis Pub. Schs.*, 143 S. Ct. 859, 864 (2023).

D. Petitioner's claim of importance is belied by the absence of similar cases.

Finally, petitioner is wrong that her first question presented is "exceptionally important." Pet. 13. Although Section 1415(j) may be an important provision of the IDEA as a general matter, that is not the relevant inquiry. The Fourth Amendment is undoubtedly an important provision of the Constitution, but that does not make every decision about its scope worthy of this Court's attention. The relevant question is whether the decision below *in particular* merits review. The answer is no.

As noted, aside from the opinion in this case, no court of appeals has *ever* addressed another scenario where an entire category of IDEA placements became suddenly and completely unavailable to a student through no fault of the government. *See supra* p. 30. Nor has any court of appeals deployed the stay-put provision's automatic injunction to require a school district to construct a new placement from whole cloth. But even if the "unavailability" cases that

petitioner cites were somehow comparable to this one, she has identified less than a dozen cases in that category over the nearly 50-year history of the stay-put provision. This Court's intervention is hardly warranted on an issue that arises roughly twice a decade.

Finally, the unimportance of the decision below is further confirmed by the lack of response it has generated. The decision is now more than nine months old. In that time, it has been cited by just a single court, and there only in passing. *See Trenton Pub. Sch. Dist. Bd. of Educ. v. A.C. ex rel. K.C.*, No. 3:23-CV-20295, 2023 WL 6294883, at *3 (D.N.J. Sept. 27, 2023). It has apparently been cited by no court filings other than the briefs in another D.C. Circuit appeal about an earlier stage of Braeden's education (*B.D. v. District of Columbia*, No. 23-7132). It has generated no scholarly discussion, let alone criticism. In short, far from a splash, the decision below has produced barely a ripple. Further review is thus unwarranted.

II. Petitioner's Second Question Is Not Presented Here.

Petitioner's second question is whether the stay-put obligation applies during the appeal of a district court decision on the merits of an IDEA dispute that is adverse to the parents. Petitioner concedes (Pet. 30) that the Court cannot consider this second question unless it grants review of the first. Because the Court should deny review of the first question for the reasons discussed, it need not analyze the second question any further.

But review of the second question is unwarranted in any event because it is not in fact presented here. As petitioner concedes (Pet. 34), since the courts below *denied* stay-put relief, they had no occasion to address its duration. Nor did the parties ever brief the issue. This Court's "traditional rule . . . precludes a grant of certiorari" when, as here, "the question presented was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992) (internal quotation marks omitted).

Petitioner suggests (Pet. 34) that if this Court grants and reverses on the first question, the second will inevitably arise on remand. That is both irrelevant and wrong. It is irrelevant because this Court does not issue preemptive rulings about *future* aspects of a case. *See, e.g.*, *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) ("Ours is a court of final review and not first view."). And it is wrong for two independent reasons. *First*, as explained earlier, Braeden's entitlement to ongoing stay-put relief has already ended. *Supra* pp. 30-31. The durational question thus cannot arise here. *Second*, even if it could arise, it may not. The district court has not yet decided the merits of petitioner's due process complaint, and it is far from clear that its decision *will* be adverse to petitioner. *See* Pet. i, 30 (relying on an "adverse" district court decision). Petitioner accordingly seeks an advisory opinion.

This Court declined to consider this exact question in a case where it was cleanly presented and outcome determinative. *See Ridley Sch. Dist. v. M.R.*, 575 U.S. 1008 (2015) (No. 13-1547). *A fortiori* it should deny review here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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